



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

February 28, 2011

Ms. Beverly Berrier
4886 Biscuit Ridge Road
Waitsburg, WA 99361

Re: Application for Change under Dry Creek Adj. Certificate No. 119

Dear Ms. Berrier:

Enclosed is a copy of the Department of Ecology's *Report of Examination for Change*. This report contains our decision regarding your application.

Your application has been approved.

You have a right to appeal this action to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this document. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal, you must do the following within 30 days of the date of receipt of this document:

- File your appeal and a copy of this document with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this document on Ecology in paper form - by mail or in person. (See addresses below.) Email is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903



Ms. Beverly Berrier
February 28, 2011
Page 2

Please also send a copy of your appeal to:

Mr. Keith L. Stoffel
Department of Ecology
Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205-1295

*For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature
Website: <http://www1.leg.wa.gov/CodeReviser>.*

Please also send a copy of your appeal to:

Mr. Keith L. Stoffel
Department of Ecology
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Website: <http://www1.leg.wa.gov/CodeReviser>.*

If you have any questions, please contact Dan Tolleson at 509 329-3526.

Sincerely,



Keith L. Stoffel
Section Manager
Water Resources Program

KLS:DT:ka

Enclosures: Report of Examination for Change
Your Right To Be Heard
Focus on Water Right Relinquishment

By CERTIFIED MAIL 7009 1410 0000 1369 2131

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
APPLICATION FOR CHANGE/TRANSFER
REPORT OF EXAMINATION
TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

- Surface Water** (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)
- Ground Water** (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE The year 1882 (class eight)	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER Dry Creek Adj. Certificate No. 119
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NAME Beverly Berrier, CC: (Judith Skillings, 4413 Biscuit Ridge Road, Waitsburg, WA 99361) (Gary Bunch, 4609 Biscuit Ridge Road, Waitsburg, WA 99361)			
ADDRESS (STREET) 4886 Biscuit Ridge Road	(CITY) Waitsburg	(STATE) WA	(ZIP CODE) 99361

PUBLIC WATERS TO BE APPROPRIATED

SOURCE Dry Creek		
TRIBUTARY OF (IF SURFACE WATERS) Walla Walla River		
MAXIMUM CUBIC FEET PER SECOND 0.027 cfs from April 1 to July 1 0.020 cfs from July 1 to October 1	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR 8.4
QUANTITY, TYPE OF USE, PERIOD OF USE		

0.027 cubic feet per second from April 1 to July 1, 0.020 cubic feet per second from July 1 to October 1; 8.4 acre-feet per year for the irrigation of 2 acres

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION-WITHDRAWAL

- Diversion No. 1- NE¹/₄NW¹/₄, of Sec. 18 (Skillings)**
1000 feet south and 750 feet east from the N¹/₄ corner of Sec. 18
- Diversion No. 2- NW¹/₄NE¹/₄ of Sec. 18 (Berrier)**
650 feet south and 1150 feet east from the N¹/₄ corner of Sec. 18

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) BOTH WITHIN	SECTION 18	TOWNSHIP N. 7	RANGE, (E. OR W.) W.M. 38 E.	W.R.I.A. 32	COUNTY Walla Walla
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RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION) Dry Creek Estates
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LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

Berrier: ³/₄ of an acre within that portion of Lot No. 12 Dry Creek Estates, located south of Biscuit Ridge Road (Dry Creek Road) and north of Dry Creek, all within the NW¹/₄NE¹/₄ of Sec. 18, T. 7 N., R. 38 E.W.M.

Bunch: ¹/₄ of an acre within that portion of Lot No. 4 Dry Creek Estates, located north of Biscuit Ridge Road (Dry Creek Road) and Dry Creek within the S¹/₂E¹/₂SE¹/₄NW¹/₄ and the S¹/₂W¹/₂SW¹/₄NE¹/₄ of Sec. 18, T. 7 N., R. 38 E.W.M.

Skillings: 1 acre within that portion of Lot No. 1 Dry Creek Estates, located north of Biscuit Ridge Road (Dry Creek Road), within the SW¹/₄NE¹/₄NW¹/₄ of Sec. 18, T. 7 N., R. 38 E.W.M.

DESCRIPTION OF PROPOSED WORKS

Two diversions with pumps and sprinkler systems

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:

Started

COMPLETE PROJECT BY THIS DATE:

March 1, 2012

WATER PUT TO FULL USE BY THIS DATE:

March 1, 2013

REPORT

BACKGROUND

An application for change/transfer was submitted by Beverly M. Berrier of Waitsburg to Ecology on June 16, 2003. Beverly Berrier proposes to change a portion of the place of use and add one point of diversion (Mrs. Berrier now requests only one additional point of diversion instead of the two which was originally requested) as granted under Dry Creek Adjudicated Certificate No. 119 (DCAC 119).

Dry Creek Adjudicated Certificate No. 119

Name on Permit:	Marcia Weir
Priority Date:	1882 (Class 8)
Instantaneous Quantity – Qi:	0.027 cfs April 1 to July 1, 0.02 cfs July 1 to Oct. 1
Annual Quantity – Qa:	10 acre-feet per year
Original Source:	Dry Creek
Point(s) of Withdrawal/Diversion:	See Table No. 1
Purpose of use:	Irrigation
Period of use:	April to October
Place of use:	Approximation: Portions of Sec. 12, T. 7 N., R. 37 E.W.M. and Portions of Sec. 7 and 18, within T. 7 N., R. 38 E.W.M.

Proposed Change/ Transfer:

Name of Applicant:	Beverly Berrier
Date of Application for Change/Transfer:	June 16, 2003
Point of Withdrawal/Diversion:	add one point of diversion for a total of two
Purpose of Use:	<i>No change</i>
Period of Use:	<i>No change</i>
Place of Use:	Approximation of additional place of use: That portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 18, T. 7 N., R. 37 E.W.M.

Notice

A notice of application was duly published in accordance with RCW 90.03.280 in The Times on June 15 and June 22, 2006 and no protests were received.

SEPA

This application is exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21 RCW.

INVESTIGATION

In considering the proposed changes/transfers, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes, (2) Dry Creek Adjudicated Certificate No. 119 and other water rights/claims/applications in the vicinity, (3) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide (WA210-VI-WAIG, October 1985) and; (4) discussions with Department of Ecology regional program staff.

A site visit of the project was conducted on May 31, 2006, by Dan Tolleson, with Beverly Berrier. The project is located approximately eight miles east of Walla Walla, Washington. The water right Certificate is located in the Walla Walla Basin and is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32.

The place of use authorized under Dry Creek Adjudicated Certificate No. 119 is described as approximately two acres of land within portions of the SW $\frac{1}{4}$ of Sec. 12, T. 7 N., R. 37 E.W.M. and portions of the S $\frac{3}{4}$ of Sec. 7 and the N $\frac{1}{2}$ N $\frac{1}{2}$ of Sec. 18, within T. 7 N., R. 38 E.W.M. Most of the place of use is the uplands north of Dry Creek, which are not physically irrigable from the historical ditch diversion irrigation system. A small portion of the place of use is the bottom lands along Dry Creek. Most of this land is covered in trees and heavy brush. Several homes with large yards are located in this area. One approximately 3-acre irrigated field is located nearby in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 18, which appears to be the historically irrigated land under this water right.

The change in place of use proposed by Mrs. Berrier is to move $\frac{3}{4}$ of an acre of right to her parcel of land. Located just north of the authorized place of use within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 18, T. 7 N., R. 38 E.W.M. (Lot No. 12 of Dry Creek Estates). This parcel of land is south of Biscuit Ridge Road (Dry Creek Road) and north of Dry Creek. Water will be used to irrigate the yard and garden around her home.

The certificate authorizes one point of diversion from Dry Creek within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 18. The authorized diversion is currently in use by Judith Skillings and is known as Diversion No. 1. The proposed point of diversion is approximately 1500 feet upstream from the original diversion. This proposed diversion is currently in use by Beverly Berrier and is known as Diversion No. 2. According to Beverly Berrier, the point of diversion has been in use for over 25 years. A third unauthorized point of diversion is in use under this right for the land owned by Gary Bunch. Mr. Bunch has been advised to file a change to add this point of diversion.

Table No. 1
Diversion Specifications

Diversion	Status	Fish screen	Meter Status	System
Authorized (No. 1)	Online	required	required	Pump
Proposed (No. 2)	Online	In use	required	Centrifugal pump

EVALUATION OF THE WATER RIGHT AND BENEFICIAL USE ANALYSIS

Historically, Dry Creek Adjudicated Certificate No. 119 utilized a gravity feed ditch diversion for irrigation within the place of use. This system has since been replaced with an electric pump and pressurized impact sprinklers.

Aerial photographs were used to help verify the extent of development, historical use and beneficial use of DCAC 119. Although the parcel of land described as the place of use is approximately 640 acres, only a very small portion was irrigable from the historical gravity feed irrigation ditch. The area that was physically irrigable from the ditch system would have been the bottom lands along Dry Creek near the original homestead. The original homestead was reportedly in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 18, north of Biscuit Ridge Road (per the current owner of the original homestead land, Mr. Skillings). The clearing around the old homestead appears to be consistent with the acres authorized under this Dry Creek Adjudicated Certificate No. 119 and 181, which authorized a total of 3 acres of irrigation. Three acres have historically been irrigated in the field around the original homestead.

According to Mrs. Skillings and Mrs. Berrier, $\frac{3}{4}$ of an acre of the water right was sold to Mrs. Berrier and her husband over 25 years ago. Mrs. Berrier has irrigated her land from Dry Creek since that time. The Berriers were unaware that they needed to file a change to the water right at that time. It wasn't until she was contacted about needing a fish screen that she became aware of the need for a change which was filed soon after. According to Mr. Bunch, $\frac{1}{4}$ of an acre of the water right was sold to him when he purchased the land from Mrs. Skillings' father. Mr. Bunch has irrigated his yard, under this right, since his home was built. Therefore, only two acres of land are available for change under this right.

The maximum authorized water duty of this permit is 5 acre-feet per year, per acre. Historically, this right has been used to irrigate alfalfa and pasture. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that 2.9 acre-feet, per acre, for pasture is required in the Walla Walla area. At a 70% efficiency rate of application, the approximate maximum water duty, for crops listed above, is 4.2 acre-feet per year, per acre. The remaining 0.8 acre-foot per acre is no longer required due to modern irrigation practices and is subject to relinquishment for nonuse.

The instantaneous quantities authorized under this right were 0.027 cfs (12 gallons per minute) from April 1 to July 1 and 0.020 cfs (9 gallons per minute) from July 1 to October 1. Because of the low instantaneous quantities the water users have agreed to take turns using the water, which is specified in a water use agreement located in the file.

Water rights are appurtenant to a specific parcel of land or place of use on an acre per acre basis. Therefore, the place of use of this certificate will be narrowed down to the smallest legal description possible which is described on Page 1 of this Report of Examination.

EXISTING RIGHTS

A review of Ecology records was conducted for existing water rights, permits, and claims in the surrounding area of the Berrier Project. The search focused primarily on Section 12, T. 7 N., R. 37 E.W.M. and Sections 7 and 18, T. 7 N., R. 38 E.W.M. The review of Ecology records shows two water rights appurtenant to the authorized place of use, which is as follows:

Dry Creek Adjudicated Certificate No. 181 (DCAC 181): This water right certificate authorizes 1 acre of irrigation within the same 640 acre place of use of DCAC 119. It appears that this water right has been used for irrigation

around the old homestead within the NE¼NW¼ of Sec. 18. DCAC 119 and DCAC 181 are separate primary rights that have an overlapping place of use. Currently, WWAC 819 is still in use on the lands owned by Judith Skillings (the NE¼NW¼ of Sec. 18, T. 7 N., R. 38 E.W.M.). She has a total of 2 acres of irrigation on her land authorized by the two certificates.

Dry Creek Adjudicated Certificate No. 5 (DCAC 5): This water right certificate authorizes domestic supply and stock water. It has the same place of use as DCAC 181 and DCAC 119. It appears that this water right was historically used for the homestead within the NE¼NW¼ of Sec. 18, but the domestic supply has apparently been abandoned and stock water is only used to a limited extent.

(The validity and extent of above listed water rights and claims are not determined in this report.)

IMPAIRMENT ANALYSIS

“Impair” or “impairment” means to: 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, and/or 2) to prevent the beneficial use of the water to which one is entitled, and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flow levels established by rule (POL-1200), and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

The proposed point of diversion is located approximately 1500 feet upstream from the authorized point of diversion. No significant changes occur in Dry Creek between the originally authorized point of diversion and the proposed point of diversion. The proposed diversion has been in use for more than 25 years with no impairment. Therefore, no impairment exists by moving the diversion to the proposed site.

This application is requesting authorization to change a portion of the place of use and add one point of diversion, as granted under Dry Creek Adjudicated Certificate No. 119. DCAC 119 has been exercised and beneficially used in the past. The proposed change will not increase the amount of water withdrawn from Mill Creek nor will it increase or expand the right.

FINDINGS

There is a water right available for change/transfer under Dry Creek Adjudicated Certificate No. 119 in the amount of 0.027 cfs from April 1 to July 1, and 0.020 cfs from July 1 to October 1, 8.4 acre feet per year, each year, for the irrigation of 2 acres.

Surface water has been historically and beneficially used under this certificate.

When considering an application for change to a water right, Ecology must determine that the proposed change can be made without detriment or injury to existing water rights. Factors considered when determining potential impact include the following:

No Impairment to Existing Rights:

No water will be diverted above what has been historically used, and it is not anticipated that the proposed change/transfer would cause impairment to existing water rights.

No Enhancement of the Authorized Right:

No withdrawal of water over and above what has been historically authorized would be approved through this change. The Shared Water Use Agreement shall be followed to prevent enlargement of the right.

CONCLUSION

It is the conclusion of this examiner that, in accordance with Chapters 90.03, this application for change (changing a portion of the place of use and adding one point of diversion) will not enlarge the quantity of water historically used, nor will it impair existing rights provided the terms and conditions below are followed.

RECOMMENDATIONS

The applicant’s request to change/transfer this water right certificate (changing a portion of the place of use and adding one point of diversion), as granted under Dry Creek Adjudicated Certificate No. 119 is **approved**, subject to the following provisions:

“The total amount of water authorized for withdrawal under Dry Creek Adjudicated Certificate No. 119 and Dry Creek Adjudicated Certificate No. 181 shall be limited to a maximum of 0.04 cubic feet per second from April 1 to July 1 and 0.03 cubic feet per second from July 1 to October 1, each year, for the irrigation of 3 acres.”

“This authorization to make use of public waters of the State is subject to existing rights, including any existing rights held by the United States for the benefit of Indians under treaty or otherwise.”

“The amount of water granted is a maximum limit that shall not be exceeded and the water user shall be entitled only to that amount of water within the specified limit that is beneficially used.”

“The water quantities and uses recommended and/or the number of acres to be irrigated may be reduced at the time of issuance of a final water right commensurate with the capacity of the installed system and the uses and/or the number of acres actually irrigated.”

“Use of water under this authorization shall be contingent upon the water right holder’s utilization of up-to-date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities.”

"A superseding certificate of water right will not be issued until a final examination is made."

“The water source and/or water transmission facilities are not wholly located upon the land owned by the applicant. Issuance of a permit by this Department for appropriation of the waters in question does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtainment of such right is a private matter between the applicant and the owner of that land.”

"An approved measuring device shall be installed and maintained for each of the sources identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. Water use data shall be recorded monthly and maintained by the property owner for a minimum of five years, and shall be promptly submitted to Ecology upon request."

The rule above describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements".

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.”

“This authorization is subject to Washington Department of Fish and Wildlife juvenile salmon and gamefish screening criteria (pursuant to RCW 77.16.220, RCW 77.55.040 and RCW 77.55.070). Please contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091, Attention: Habitat Program, Phone: (360) 902-2534, or call (509) 575-2734 for the Yakima Construction Shop to obtain technical assistance for your project. Juvenile salmon screening criteria are attached to the Report of Examination if applicable to your diversion.”

No dam shall be constructed in connection with this diversion.

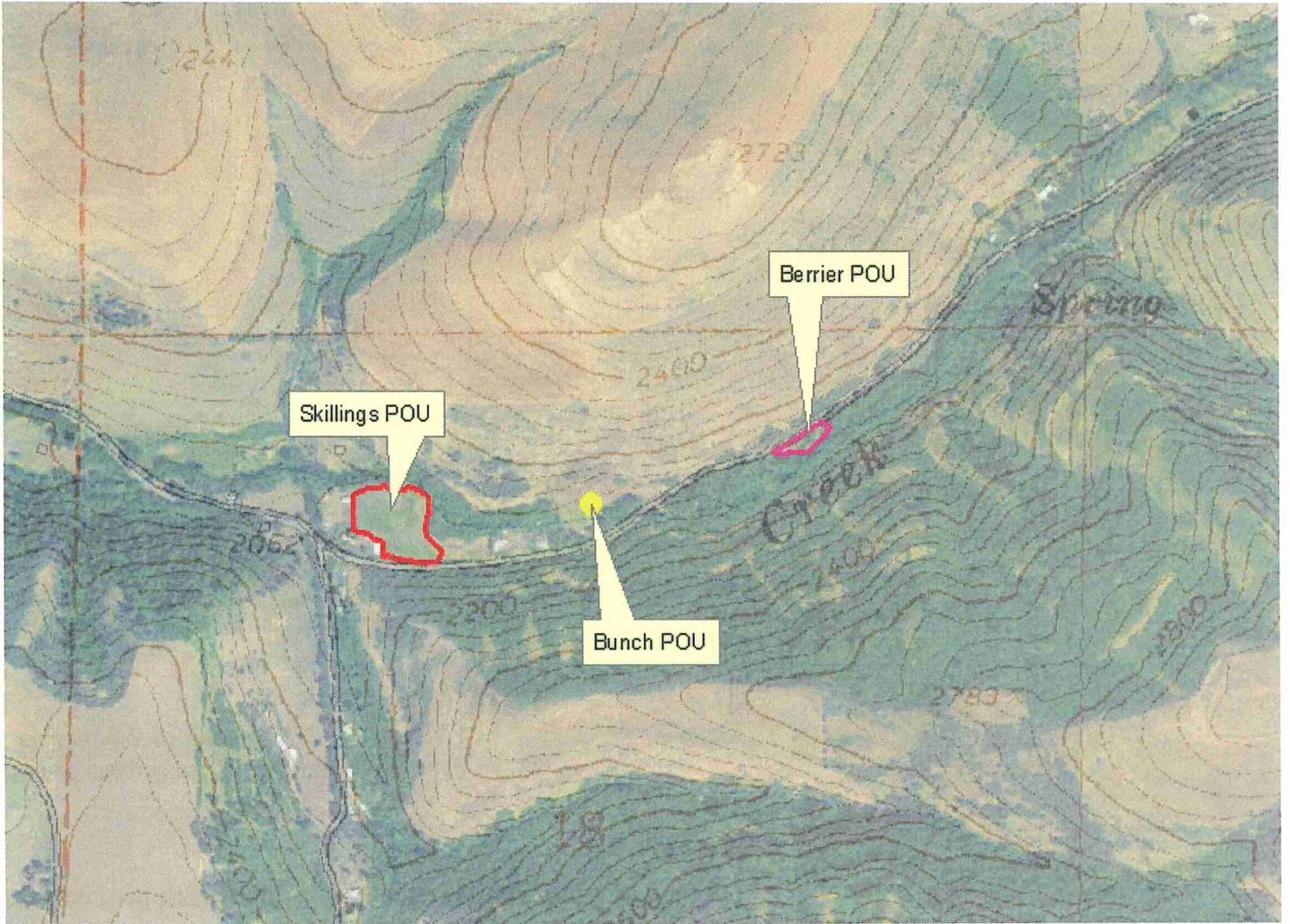
Signed at Spokane, Washington,
this 25th day of February, 2011.



DAN TOLLESON
Water Resources Program
Department of Ecology

Y/Final docs/ROEs/Tolleson 2011/DC 119 Berrier

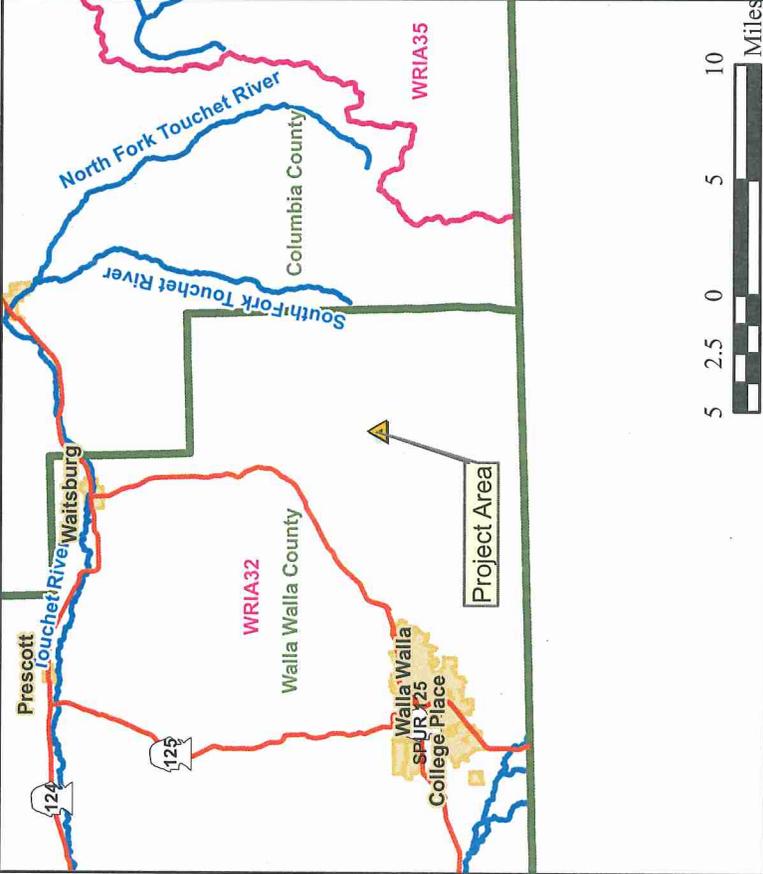
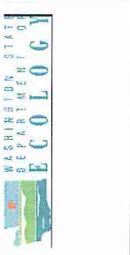
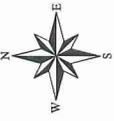
Dry Creek Adjudicated Certificate No. 119



All within the N½ of Sec. 18, T. 7 N., R. 38 E.W.M.

Attachment 1

Beverly Berrier
 Dry Creek Adj. Certificate No. 119
 Sec. 18, T 07N, R 38E, W.M.
 WRIA 32 - Walla Walla County



- Legend**
- County
 - WRIA
 - cities
 - Local Roads
 - Townships
 - Sections
 - Parcels
 - Authorized Point of Diversion
 - Authorized Place of Use

Comments:
 Place of Use, points of withdrawal/diversions are as defined on the cover sheet under the heading, 'LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'

