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	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
The year 1896 (Class 25)	---	---	Touchet River Adj. Certificate No. 173(B)

NAME
Eugene Warren

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
813 E. Clay	Dayton	Washington	99328

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
Touchet River

TRIBUTARY OF (IF SURFACE WATERS)
Walla Walla River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
1.386 cfs from April 1 to September 15 2.08 cfs from September 15 to April 1		239

QUANTITY, TYPE OF USE, PERIOD OF USE

1.386 cubic feet per second from April 1 to September 15, 2.08 cubic feet per second from September 15 to April 1; 239 acre-feet per year, for any one year beginning September 15, for the irrigation of 104 acres

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL

Diversion -1650 feet South and 1500 feet West from the NE corner of Sec. 4

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE, (E. OR W.) W.M.	W.R.I.A.	COUNTY
SW¼NE¼	4	9	38 E.	32	Columbia

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

104 acres within the following: the E½ Sec. 4, lying south of US Highway 12 and north of Old County Road, all within T. 9 N., R. 38 E.W.M.

DRAFT

DESCRIPTION OF PROPOSED WORKS

One point of diversion for irrigation, with wheel lines

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	WATER PUT TO FULL USE BY THIS DATE:
Started	Completed	In use

REPORT

BACKGROUND

An application for change/transfer was submitted by Gene Warren of Dayton, Washington, to Ecology on June 10, 2003. Mr. Warren proposes to change the point of diversion as granted under Touchet River Adjudicated Certificate No. 173(B).

Touchet River Adjudicated Certificate No. 173(B)

Name on Certificate:	Gene Warren
Priority Date:	The year 1896 (Class 25)
Instantaneous Quantity – Qi:	Up to 2.08 cubic feet per second
Annual Quantity – Qa:	239 acre-feet per year
Original Source:	Touchet River
Point(s) of Diversion:	One point of diversion
Purpose of Use:	Irrigation of 104 acres
Period of Use:	Seasonally
Place of Use:	Portions of the E½ of Sec. 4, within T. 9 N., R. 38 E.W.M.

Proposed Change/ Transfer:

Name of Applicant:	Gene Warren
Date of Application for Change/Transfer:	June 10, 2003
Point of Withdrawal (Diversion):	Change point of diversion downstream
Purpose of Use:	*No Change*
Period of Use:	*No Change*
Place of Use:	*No Change*

Notice

A notice of application was duly published in accordance with RCW 90.03.280 in The Dayton Chronicle on August 25, and September 1, 2004, and no protests were received.

SEPA

This application is categorically exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21C 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) Touchet River Adjudicated Certificate No. 173(B) and other water rights/claims/applications in the vicinity; (3) diversion works; (4) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide (WA210-VI-WAIG, October 1985) and; (5) discussions with Department of Ecology regional program staff.

A site visit of the project was conducted on May 2, 2006, by Dan Tolleson. The project is located approximately three miles south west of Dayton, Washington. The water right is located in the Walla Walla Basin, which is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32.

The place of use authorized under Touchet River Adjudicated Certificate No. 173(B) is approximately 104 acres within the SE¼ of Sec. 4, T. 9 N., R. 38 E.W.M. The irrigated parcel of land is within the bottom land south of the Touchet River. The northern border of the place of use is US Highway 12 and the southern border is abandoned Old County Road. The current irrigation system consists of wheel lines. A house and barn are located near the center of the parcel of land. (See attachment A)

The applicant proposed to move the originally authorized point of diversion downstream to the currently used point of diversion. The authorized point of diversion was abandoned many years ago and the proposed point of diversion has been in use since then. It should be noted that the pump is removed during the winter and early spring due to flooding, which is common to this area.

Diversion Specifications

Diversion	Pump Status	Meter Status	Location[1]	Fish Screen
Authorized	Abandoned	n/a	SW¼NE¼ of Sec. 3	n/a
Proposed	Online	Operational (required)	SW¼NE¼ of Sec. 4	Yes

[1](all within T. 9 N., R. 38 E.W.M.)

EVALUATION OF THE RIGHT AND BENEFICIAL USE ANALYSIS

Aerial photographs were used to help verify the extent of development, historical use and beneficial use of Touchet River Adjudicated Certificate No. 173(B). Currently, 104 acres are being irrigated within the place of use which is consistent with the authorized acres. Therefore, 104 acres are available for change under this right.

The authorized water duty of this certificate is 2.3 acre-feet per year, per acre. Historically, a variety of crops have been grown under this water right, with spring grain being the highest water duty crop. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that an estimated 1.55 acre-feet per acre is required for grain in the Dayton area. The current irrigation system of wheel lines is estimated at a 70% efficiency rate of application. With a 70% efficiency rate of application an estimated 2.3 acre-feet per acre would need to be applied to crops that use 1.55 acre-feet per acre. The actual beneficial water use is consistent with the authorized water duty.

EXISTING RIGHTS

A review of Ecology records was conducted for existing water rights, permits, and claims in the area surrounding the project. The search focused primarily on Sections 3 and 4, T. 9 N., R. 38 E.W.M. The review of Ecology records shows two water rights appurtenant to the authorized place of use, which are as follows:

Ground Water Certificate No. 3071-A: This water right certificate authorized the irrigation of 20 acres within the SE¼ of Sec. 4, T. 9 N., R. 38 E.W.M., from an infiltration trench. The trench was filled in approximately 10 years ago according to Eugene Warren. Therefore, it appears that this right has been abandoned.

Ground Water Certificate No. 5005-A: This water right certificate authorized the irrigation of 150 acres within the SE¼ and the S½NE¼ of Sec. 4, T. 9 N., R. 38 E.W.M., from a well. It contains a provision that states the authorized quantity is reduced by the quantities used under Touchet River adjudicated rights. This right was issued as an alternate source to Touchet River Adjudicated Certificate No. 173. Ground Water Certificate No. 5005-A and Touchet River Adjudicated Certificate No. 173 are limited to a total of 160 acres of irrigation. According to Mr. Eugene Warren, this right is still used as a back up or standby right for his portion of the water right (Portion B). The authorized well has a submersible pump and the power is disconnected. Currently, pipe line from this well is connected into Mr. Warren's water delivery system (Portion B), which can irrigate 104 acres. The remainder of this ground water right appears to be abandoned.

(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 and authorized diversion is located on the Touchet River which is a tributary to the Walla Walla River. The applicant proposes to move the authorized point of diversion downstream approximately one mile. This point of diversion has been in use for many years. There will be no impairment to existing rights.

This application is requesting authorization to change the point of diversion, as granted under Touchet River Adjudicated Certificate No. 173(B). It appears this certificate has been exercised and beneficially used in the past. The proposed change will not increase the amount of water withdrawn from the Touchet River, nor will it increase or expand the right.

FINDINGS

There is a water right available for change/transfer under Touchet River Adjudicated Certificate No. 173(B).

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.

FINDINGS OF FACT AND DECISION

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated.

Therefore, I ORDER that the requested change is approved, subject to the following:

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 Pollution Control Hearings Board 1111 Israel Road SW Suite 301 Tumwater , WA 98501	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

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 .

Signed at Spokane, Washington, this day of, 2011.

Keith L. Stoffel, Section Manager
Water Resources Program
Eastern Regional Office

CONCLUSION

It is the conclusion of this examiner that, in accordance with Chapters 90.03, this application for change (changing the point of diversion of Touchet River Adjudicated Certificate No. 173(B)) 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 of water right certificate (changing the point of diversion Touchet River Adjudicated Certificate No. 173(B)) is **approved**, subject to the following Provisions:

"The total amount of water authorized for withdrawal under Touchet River Adj. Certificate No. 173(B) and Ground Water Certificate No. 5005-A shall be limited to a maximum of 104 acres of irrigation."

"This authorization is subject to the provisions set forth in the decree of the Superior Court of Walla Walla, State of Washington, made and entered on the 19th day of September, 1929, recorded in Volume 18 of the Superior Court Journal at Page 1, otherwise known as Touchet River Decree No. 22066."

After all rights scheduled in the Touchet River Decree No. 22066 are filled, the surplus water is allotted in the order of priority in amounts sufficient to increase the rate to the quantity allotted for the period from September 15th to April 1st. The total diversion shall not exceed 2.3 acre-feet per acre for any one year beginning September 15th."

"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."

"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 weekly 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".

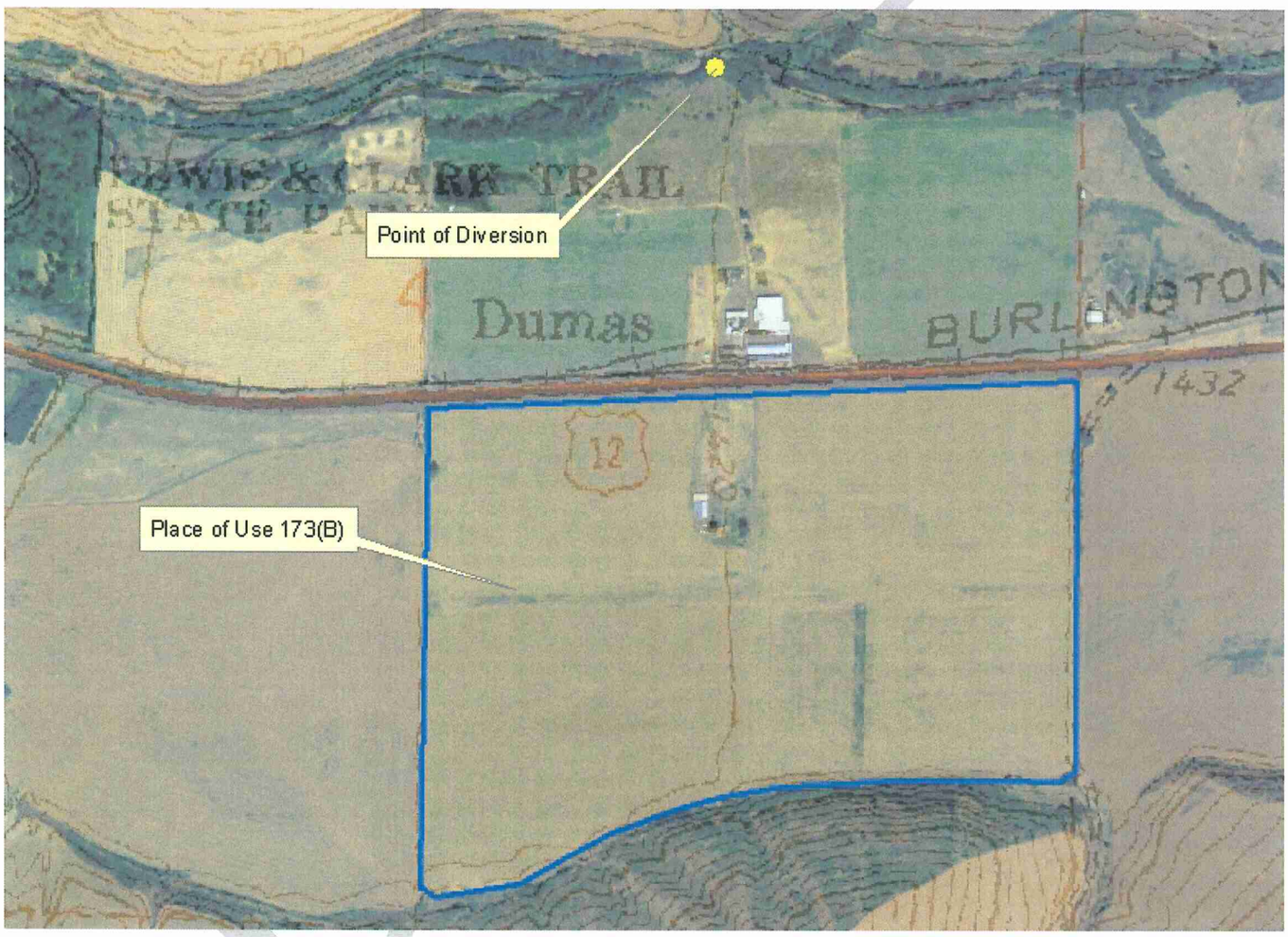
Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

"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."

"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 applicant and owner of that land."

Signed at Spokane, Washington
this ___ day of _____, 2011

_____
Dan Tolleson
Water Resources Program
Department of Ecology

W/Draft ROEs/Tolleson 2011/TRAC 173(B) Warren

Attachment A