STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
TRUST WATER RIGHT
REPORT OF EXAMINATION
Change of Purpose and Place of Use

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
The year 1866 (class 7)			Walla Walla Adjudicated Surface Water Certificate No. 54(E)

NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM
State of Washington, for Robert Maiuri

ADDRESS/STREET	CITY/STATE	ZIP CODE
4601 N. Monroe	Spokane, Washington	99205-1295

TRUST WATER RIGHT ATTRIBUTES

SOURCE
Mill Creek

TRIBUTARY OF (IF SURFACE WATERS)
Walla Walla River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
0.06		8.7

QUANTITY, TYPE OF USE, PERIOD OF USE
0.04 cubic feet per second April 1 to July 1, 0.03 cubic feet per second July 1 to Oct. 1, 0.06 cubic feet per second, Oct. 1 to April 1, and 8.7 acre-feet per year for the purpose of instream flows within Mill Creek in perpetuity

PLACE OF USE and AFFECTED REACHES
[See Attachment for map of the trust water right location.]

APPROXIMATE LOCATION OF HISTORIC DIVERSION

Approximately 600 feet north and 1200 feet west of the SE corner of Section 19, T. 7 N., R. 36 E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
SE¼SE¼	19	7 N.	36 E.	32	Walla Walla

Mill Creek: River Mile 6.7 to approximately River Mile 4.7

PROJECT SUMMARY

This project consists of changing 3 acres of irrigation to in-stream flow for Mill Creek. In addition, four other applicants propose to change 27.7 acres of the right to instream flow. The remaining 52.43 acres of irrigation under this water right have not been evaluated and are not a part of the project. Saved water from this project will increase flows within Mill Creek resulting in increased habitat functions benefiting fish year round, especially during the summer and early fall.

TRUST WATER RIGHT TERM

BEGIN DATE	END DATE
January 1, 2010	In perpetuity

PORTION OF WATER RIGHT
NOT PLACED INTO TRUST
(Remaining 52.43 acres)

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
The year 1866			Walla Walla Adjudicated Surface Water Certificate No. 54(A)

NAME		
Baker and Baker, et al.		
ADDRESS/STREET	CITY/STATE	ZIP CODE
	Walla Walla, WA	99359

WATER RIGHT ATTRIBUTES

SOURCE
Mill Creek

TRIBUTARY OF (IF SURFACE WATERS)
Walla Walla River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
1.042		262.15

QUANTITY, TYPE OF USE, PERIOD OF USE

0.698 cubic feet per second April 1 to July 1, 0.521 cubic feet per second July 1 to Oct. 1, 1.042 cubic feet per second, when allowed, Oct. 1 to April 1; 262.15 acre-feet, each year, for the seasonal irrigation of 52.43 acres

LOCATION OF DIVERSION

APPROXIMATE LOCATION OF DIVERSIONS

Approximately 600 feet north and 1200 feet west of the SE corner of Section 19, T. 7 N., R. 36 E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
SE¼SE¼	19	7 N.	36 E.	32	Walla Walla
PARCEL NUMBER	LATITUDE		LONGITUDE	DATUM	
360719430038	46.0657 N.		118.3505 W.	WGS 84	

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED
[See Attachment for map of the place of use and point of diversion.]

Property, to-wit: Commencing north 305 ft along the west line section 19, from the SW corner of Sec. 19 Twp. 7 N., Rge 36 E.W.M. to the Point of Beginning; thence continuing north along the west line of Sec 19, approximately 1,022 ft, to the NW corner of the SW¼ of the SW¼; thence east along the north line of the SW¼ of the SW¼ 870 ft; thence south 30°14"32' east 241.4 ft; thence south 59°23"42' west 345 ft; thence south 1°3"42' east 210 ft; thence south 1°3"45' east 457 ft; thence south 88°2"56' west 220 ft; thence north 32°24"25' west; thence south 87°22"19' west 436 ft to the point of beginning.
Also, Commencing south along the west line of Section 30, from the NW corner of Sec. 30 Twp. 7 N., Rge 36 E.W.M. 95 ft to the Point of Beginning; thence north 84°17"22' east 820.86 ft; thence south 33°38"9' east 68.44 ft; thence north 56°24"38' east 120.00 ft; thence south 33°37"59' east 141.00 ft; thence south 56°24"38 west 120.00 ft; thence south 33°37"56 east 72.26 ft; thence south 84°27"57 west 27 ft; thence south 84°27"47' west 944.00 ft to the west line of Sec. 30; thence north along the west line Sec. 30, 246.6 ft to the point of beginning.
Also, Commencing from a point where the west line of Sec. 30 Twp. 7 N., Rge 36 E.W.M., intersects with the original north line of the U.S. Military Reserve, thence northeast along said north line of the U.S. Military Reserve 683.4 ft to the Point Of Beginning; thence continuing 1,525.6 ft along said north line of U.S. Military Reserve; thence north 29°42"42" west 682 ft; thence south 57°0"44' west 1,508.6 ft; thence south 27°50"22' east 596.4 ft to the point of beginning.

DESCRIPTION OF WATER SYSTEM

The project consists of a pump diversion on Mill Creek, a pipeline for conveyance and a storage pond used for redistribution.

DEVELOPMENT SCHEDULE

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

PROVISIONS

TRUST WATER RIGHT PROVISIONS:

1. Consistent with RCW 90.42.080(1)(a), this trust water right shall be managed by Ecology as an instream flow right for Mill Creek, as described in this trust water report.

PROVISIONS RELATED TO PORTION OF WATER RIGHT NOT PLACED INTO TRUST:

Measurements, Monitoring, Metering and Reporting

1. An approved measuring device shall be installed and maintained for the source diversion(s) and withdrawal(s) for the following water right claim(s), permit(s) and certificate(s) Adj. Cert. No. 54.

   Such measuring devices shall be in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. 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. Summary information on installation, operation and maintenance requirements is enclosed.

2. Water use data shall be recorded weekly and shall be submitted annually to Ecology by January 31st of each calendar year.

3. At a minimum, the following information shall be included with each submittal of water use data on a form prescribed by the Department:
   - water right holder name, mailing address and daytime phone number,
   - contact name and phone number if different than water right holder,
   - WRIA,
   - parcel number for place of use of water rights (except for public water systems),
   - Permit, Certificate or Claim number(s),
   - source name,
   - annual quantity of diversion or withdrawal ("Qa"),
   - maximum rate of diversion or withdrawal during the entire year ("Qi"),
   - date (if available) of maximum rate of diversion or withdrawal,
   - monthly meter readings (Note: Ecology is requiring submittal of monthly meter readings and maximum rate of diversion or withdrawal for each month to collect seasonal information for water resource planning, management and compliance),
   - maximum rate of diversion or withdrawal during each month,
   - type of meter,
   - last calibration or inspection date, and
   - period of use.

Schedule and Inspections

4. 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.

General Conditions

5. This superseding certificate is the result of the division of Walla Walla Adjudicated Surface Water Certificate No. 54 under multiple Trust Water Applications, and shall not be construed as validation as to the extent of the document. The amounts provided on the superseding portions of this water right reflect the remaining portion of the right not put into the trust program. The actual amounts authorized by the superseding certificate are subject to the historic beneficial use of water under Walla Walla Adjudicated Surface Water Certificate No. 54.

FINDINGS OF FACT AND ORDER

Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not be detrimental to existing rights or detrimental to the public interest.

Therefore, I ORDER the requested change of place and purpose of use under Trust Water Right Application for Walla Walla Adjudicated Surface Water Certificate No. 54, be approved subject to existing rights and the provisions specified above.

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 4224 – 6th Avenue SE Rowe Six, Building 2 Lacey, WA 98503	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 2010.

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

BACKGROUND

Description and Purpose of Proposed Change

A Trust Water Application for Walla Walla Adjudicated Surface Water Certificate No. 54 (WWAC 54) was submitted by Amanda Cronin of the Washington Water Trust on behalf of Robert Maiuri to the Department of Ecology on January 14, 2008. The applicant proposes to permanently place a portion of the water right into the state's Trust Water Right Program (TWRP) for the purpose of instream flow to be used exclusively for instream flows within Mill Creek.

Water right change applications may be processed prior to applications submitted at an earlier date when the proposed water use, if approved, would substantially enhance or protect the quality of the natural environment (WAC 173-152-050(3)(a)).

Attributes of the Certificate and Proposed Change

Table 1 Summary of Existing Attributes and Proposed Changes to Water Right No. 54

Attributes	Documented	Proposed Trust Water	Portion of Right not placed into Trust
Name	Baker and Baker	State of Washington (Maiuri)	Baker and Baker, et al.
Priority Date | Date of Application for Change	The year 1866	January 14, 2008	January 14, 2008
Instantaneous Quantity	1.108 April 1 to July 1 0.831 July 1 to Oct. 1 1.662 Oct. 1 to April 1	0.04 April 1 to July 1 0.03 July 1 to Oct. 1 0.06 Oct. 1 to April 1	0.698 April 1 to July 1 0.521 July 1 to Oct. 1 1.042 Oct. 1 to April 1
Annual Quantity	415.65 acre-feet	8.7 acre-feet	262.15 acre-feet
Source	Mill Creek	*No change*	*No change*
Point of Withdrawal	SE¼SE¼ of Section 19, T. 6 N., R. 36 E.W.M.	N/A	*No Change*
Purpose of Use	Irrigation of 83.13 acres	Instream flow	Irrigation of 52.43 acres
Period of Use	per year	*No change*	*No change*
Place of Use	Approximation: portions of the W¾S½SW¼ of Sec. 19 and N¾NW¼ of Sec. 30, all within T. 7 N., R 36 E.W.M.	Mill Creek (*see map*)	*No change (less portion put into trust)*

In addition to this application, four other trust water applications were filed on Walla Walla Adjudicated Surface Water Certificate No. 54, by various other owners of the right. Each application will have decisions based on its own respective findings. A significant portion of the right is not proposed for change under the existing applications. A superseding certificate will be issued for this remaining portion.

Table 2 Summary of Trust Water Project

Portion	*Applicants*	*Proposed use after changes*
A	Remainder of Right*	Irrigation of 52.43
B	JoAnn Collins	Instream flow
C	Daltoso Farms	Instream flow
D	Walla Walla Housing Authority	Instream flow
E	Robert Maiuri	Instream flow
F	Greg and Gloria Ponti	Instream flow

**For portion of right not put into trust program, see page 2.*

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in purpose of use and place of use.

- **Public Notice**

A notice of application was duly published in accordance with RCW 90.03.280 in The Walla Walla Union-Bulletin on January 10 and 17, 2010. This publication contained a ministerial error. An amended notice of application was duly published in accordance with RCW 90.03.280 in The Walla Walla Union-Bulletin on February 4 and 11, 2010. One letter of concern was received on February 12, 2010.

- **State Environmental Policy Act (SEPA)**

Environmental review under SEPA is required for many projects; however, some minor projects are categorically exempt from SEPA. Appropriations of one cfs or less of surface water, or of 2,250 gpm or less of ground water, for any purpose, and appropriations of 50 cfs or less for surface water used for irrigation are categorically exempt from SEPA. See WAC 197-11-305.

- **Water Resources Statutes and Case Law**

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. R. D. Merrill v. PCHB and Okanogan Wilderness League v. Town of Twisp.

RCW 90.03.380(1) allows for a water right that has been put to beneficial use to be changed. The point of diversion, place of use, and purpose of use may be changed if the change would not result in harm or injury to existing water rights.

RCW 90.14.160 states that any person entitled to divert water through an appropriation authorized through a general adjudication, who abandons or voluntarily fails , without sufficient cause, to divert all or any part of said right for a period of five successive years after July 1, 1967, shall relinquish such right or portion thereof, to the state.

RCW 90.14.140(2)(c) states that a water right not used for more than five years is not relinquished if it is claimed for a determined future development to take place within 15 years of the last beneficial use of water under the water right. In addition, a series of court cases provide additional guidance in assessing such a plan. In order to be valid, a determined future development plan must satisfy a series of tests as established in *R. D. Merrill Company v. Pollution Control Hearings Board ; City of Union Gap and Ahtanum Ridge Business Park LLC v. Washington State Department of Ecology;* and *Protect Our Water v. Islanders for Responsible Water Management (Intervenors), State of Washington, Department of Ecology, and King County Water District No. 19:*

- The project must be sufficiently complex as to require more than five years to complete;
- The plan must be determined and fixed within five years of the last beneficial use of the water;
- The party asserting the plan must have equity in the water right;
- The plan must remain fixed, and;
- Affirmative steps must be taken to implement the plan within 15 years.

INVESTIGATION

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Walla Walla River Adjudicated Surface Water Certificate No. 54, and other water rights/claims/permit in the vicinity; (3) diversion works; (4) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide (Natural Resources Conservation Service 1997) and; (5) discussions with Department of Ecology regional program staff.

A site visit of the project was conducted on May 5, 2008, by Dan Tolleson with Amanda Cronin and Robert Maiuri. This project is located within the northwestern portion of the City of Walla Walla, 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.

History of Water Use

Walla Walla Adjudicated Surface Water Certificate No. 54 was issued on June 30, 1929, with a priority date of 1866 (Class 7). This right authorized 83.13 acres of irrigation within portions of Sections 19 and 30 all within T. 7 N., R. 36 E.W.M. The place of use described is approximately the same size as the acres authorized. Water has historically been diverted from Mill Creek approximately one half mile upstream from the place of use.

In 1955, this water right was used to form a district called "Water Distribution District No. 1" (district). The place of use of the water right became the district boundaries. According to the applicants and Louis Bossini, an original board member, the district was operated informally to maintain the water distribution system. Although the district was never officially dissolved, it ceased to exist as a legal entity when RCW 87.60 was repealed in 1971 (see AGO 2009 No. 4). At that time the interest in the water right held by the district reverted back to the individual land owners. The water right is now appurtenant to the land on which it is currently used within the authorized place of use. The system remains in use and continues to be operated informally by the remaining water users.

The current irrigation system, with the exception of pump upgrades, has been in place since at least the 1950s. The system consists of a pond, a mainline, smaller distribution lines to the individual fields and a pump station with fish screen. At night the mainline is used to fill the storage pond which is located within the place of use. During the day, both the pond and mainline are used to distribute water for irrigation to multiple small fields.

When the certificate was originally issued, the water right was a single parcel of land owned by Baker and Baker Corporation. Over time, the place of use was subdivided into multiple lots, with many owners. Land use on many of these lots has changed from farmland to residential use. Since there are multiple owners, only that portion of the place of use owned by Mr. Maiuri will be evaluated in this report.

Proposed Use

The purpose of instream flow is to enhance instream flows for fish maintenance and enhancement within Mill Creek.

Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing water rights, permits, and claims in the area of the project. The search focused primarily on Sections 19 and 30, T. 7 N., R. 36 E.W.M. The review of Ecology records shows several municipal water rights that overlap the authorized place of use of WWAC 54. These municipal rights are as follows: 3151-A, 1900-A, 4081-A, 1063-A, 1062-A and G3-20306C. No water rights other than municipal supply rights are appurtenant to the Robert Maiuri portion of the place of use.

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

Hydrologic/Hydrogeologic Evaluation

John Covert, Department of Ecology Hydrogeologist, provided the following on the Mill Creek basin: Draining an area of 108 square miles, Mill Creek generally flows west from its headwaters in the Blue Mountains of southwestern Columbia County (6250 ft) to its confluence with the Walla Walla River (595 feet). Near its headwaters, Mill Creek flows into Oregon (for about five miles), where a portion of the streamflow is diverted for the City of Walla Walla water supply, and then continues back across the Washington border and downstream through the City of Walla Walla. Its confluence with the Walla Walla River is located six miles southwest of the city near the historical Whitman Mission.

The City of Walla Walla and the U.S. Army Corps of Engineers built a control structure in the 1940s to stop catastrophic flooding during the spring months. Currently, a portion of Mill Creek's spring flow is diverted at river mile (RM) 10.5 into Garrison Creek, Yellowhawk Creek, and to Bennington Lake. Mill Creek's remaining flow passes through the city of Walla Walla in an engineered concrete channel. During May through October, the majority of Mill Creek flow is diverted at RM 10.5 to Yellowhawk and Garrison Creeks which enter the Walla Walla River just upstream of the Mill Creek confluence.

Trust Water Right Calculations

While an entire water right, or portion thereof, may be accepted into trust, the extent to which that water right may be exercised is based on the highest water use within the last five (5) years or the most recent five year period provided an acceptable plan was in place prior to relinquishment. The calculation for the extent to which a water right may be exercised as a Trust Water Right is not a tentative determination of the water right and is not a finding of relinquishment or abandonment. WWAC No.54 has been evaluated for available instantaneous and annual quantities based on historical use of Mr. Maiuri's portion of the right.

Aerial photographs were used to help verify the extent of development, historical use and beneficial use of Mr. Maiuri's portion of WWAC 54. According to a 1939 air photograph, the entirety of their parcel was once irrigated cropland. Over the years, the acres of actual irrigation have been reduced due to the construction of homes and roads. The photographs used to help verify land use were from 1939, 1996, 2002-2006 and 2009. Approximately, three acres were consistently irrigated within their parcel of land through 2004. Mr. Maiuri sold his land within the place of use of WWAC No. 54 in 2005, but retained the water right in his sales agreement. This parcel of land was then developed into a housing project that is served city water. In 2007, Mr. Maiuri signed a contract and filed a change application to put this portion of WWAC 54 into the Trust Water Program. Although, more than five years

of nonuse has occurred, this right did not relinquish since the applicant had sufficient cause. Sufficient cause in this case applies since the applicant has kept a fixed and determined plan in place. This plan along with the application and contract were in place before the water right was relinquished from nonuse. The project was essentially complete when the application was filed, but it took several years to sort out the various issues surrounding the right with the most complex being the old water district (see History of Water Use). Therefore, the three acres of historically irrigated land are available for trust.

The season of use is estimated to be from March 1 to October 31 as a maximum in dry years. This is consistent with the types of crops grown and the season of use described in the State of Washington Irrigation Guide (WA210-VI-WAIG).

The pump station, which currently serves Walla Walla Adjudicated Certificate Nos. 54 and 52, can produce approximately 2.2 cfs. There is no data available to determine instantaneous water use within the system for each individual lot and water right. The authorized instantaneous quantity of WWAC 54 determined under the adjudication is not to exceed 1.108 cubic feet per second April 1 to July 1, 0.831 cubic feet per second July 1 to Oct. 1 and, when allowed 1.662 cubic feet per second October 1 to April 1. This quantity appears to have been shared between users to improve the efficiency of the system. Since the water use was shared on an informal basis and no meters exist within the system, Mr. Maiuri's share of the instantaneous quantity has been determined proportionately. His proportionate share of the right, based on three acres of irrigation during the estimated irrigation season, is determined to be 0.04 cubic feet per second April 1 to July 1, 0.03 cubic feet per second July 1 to Oct. 1, 0.06 cubic feet per second, Oct. 1 to Oct. 31 and March 1 to April 1.

The authorized water duty or annual quantity of this certificate is five acre-feet per year, per acre. Historically, it appears that this right was used to irrigate various crops, with sod having the highest water duty. Irrigated sod is estimated to have a similar water duty to grass/turf. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that an estimated 2.9 acre-feet, per acre, is the consumptive use required for grass/turf in the Walla Walla area. Therefore, Mr. Maiuri's three acres of irrigation put into trust has 8.7 acre-feet of water for consumptive use.

The quantities of water determined to be available for placement into Trust under this application are 0.04 cubic feet per second April 1 to July 1, 0.03 cubic feet per second July 1 to Oct. 1, 0.06 cubic feet per second, Oct. 1 to Oct. 31 and March 1 to April 1; and 8.7 acre-feet per year for the purpose of instream flows within Mill Creek in perpetuity.

Trust Water Place of Use

Trust Water use for instream flow is generally split into primary and secondary reaches in order to distinguish the contribution of return flows from a water use and the benefits of any reduction in consumptive water use. The annual quantity placed into Trust is calculated differently for a primary reach and secondary reach due to the effects of return flows. The primary reach of a stream is the portion that benefits from both the reintroduction of return flows and any reduced consumptive water use. It is considered to be the reach starting at the point of diversion for the subject right, and extending downstream to a point on the stream where return flows from the irrigated lands have rejoined the stream. The secondary reach, that portion that benefits by the reintroduction of water that would otherwise be lost to consumptive use, is the reach extending from the end of the primary reach to such point downstream as it is practical and feasible to regulate for the subject right.

Primary Reach

The Trust Right for the primary reach is from Mill Creek beginning at the original point of diversion (approximately River Mile 6.7) and ending at the terminus of the channelized flood control zone (approximately River Mile 4.7).

Secondary Reach

There is no secondary reach in this trust water right.

Trust Water Management

Consistent with RCW 90.42.080(1)(a), this Trust Water Right shall be managed by Ecology as an instream flow right for Mill Creek, as described in this Trust Water Report.

Impairment Considerations

"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 trust water has been evaluated as to the potential for impairment to existing water rights in the area. The water retained instream from the Trust Water Right will be available to other water rights in accordance with seniority and no impairment of any water right will occur. The primary reach has been designated in part to avoid potential impairment to existing water rights.

No Enhancement of the Original Certificate

No diversion of water over and above what has been historically put to beneficial use would be authorized through approval of this change. Total water between trust and that portion remaining with the right holder will not exceed the greatest use within the last five (5) years of water use, prior to the fixed plan, nor will the total exceed the historical extent of the water right.

Consideration of Protests and Comments

One letter was received against granting this change, in response to the public notice. John Pao's letter of protest was received on February 12, 2010. Since only one fee was received to protest five applications, the letter is only accepted as a letter of concern. The five applicants are Daltoso Farms, Walla Walla Housing Authority, Robert Maiuri, Greg Ponti and JoAnn Collins. The following is the summary of Mr. Pao's major concerns and Ecology's responses:

- *Concern:* Mr. Pao indicates in his letter that most of the applicants have made little or no use of the water right in the last 5 years, leaving a possible relinquishment of portions of the water right.
- *Response:* An analysis of each applicant's portion of the right is addressed in the "History of Water Use" and "Trust Water Calculations" of this report. Only that portion of the right determined to be valid and not relinquished will be authorized for change into the Trust Program.

- *Concern:* The public notice lists the entire right and is the basis of concern from Mr. Pao that there will be nothing left for his use.
- *Response:* The entire quantity of the right proposed for change is routinely listed in each publication. Only that portion of the right that pertains to an individual's lot in conjunction with the application is potentially available for change. Therefore, a superseding certificate will be issued for the remainder of the right not changed by the applicants. See page 2 "PORTION OF WATER RIGHT NOT PLACED INTO TRUST" for details.

- *Concern:* The potential issue of there will not be enough water in the shared ditch to supply the "Dement Brothers Property". This property lies directly to the northeast of WWAC 54 and is reported to share the same mainline and pumping station.
- *Response:* The "Dement Brothers Property" has its own water right, with its own authorized instantaneous quantities. This right is not part of this change and does not share instantaneous or annual quantities of water with WWAC 54.

- *Concern:* The potential issue that there will be a financial burden to reduce the size of the system, if the changes are approved.
- *Response:* Ecology does not have the authority to deny the applications based on the potential cost to change diversion equipment. This is a private matter between Mr. Pao and the applicants.

- *Concern:* Mr. Pao indicates that the remaining users of this right will not have enough instantaneous quantity for all crops if the changes are approved. In addition, Mr. Pao asked who would compensate him in the event there is not enough water.
- *Response:* The proportionate share of this right is approximately 6 gpm per acre from April 1 to July 1, 4.5 gpm per acre from July 1 to October 1 and when allowed 9 gpm per acre from October 1 to April 1. According to the letter, an informal water sharing agreement is in place for water use that allowed individuals to pump beyond their proportionate share. Any changes to this water sharing agreement are a private matter between Mr. Pao and the applicants.

- *Concern:* The possibility that the water delivery system will not function with a reduced instantaneous quantity, specifically to irrigate his land.
- *Response:* Ecology does not have the authority to deny the applications based on a possible need to change the delivery system (see below PCHB No. 02-113). This is a private matter between Mr. Pao and the applicants.

- *Concern:* Mr. Pao requests a bond from the applicants to deal with cost of reducing the system size.
- *Response:* Ecology does not have the authority to require a bond. This is a private matter between Mr. Pao and the applicants.

- *Concern:* Mr. Pao has a concern that his part of the right will be reduced in the change process. In addition, the possibility that all the above listed issues together will create a situation that is detrimental to his portion of the water right.
- *Response:* Mr. Pao's portion of the water right will not be evaluated in this change, but is limited to historical and beneficial use not to exceed the water right.

The Pollution Control Hearings Board (PCHP) held in Big Creek Water Users Assoc. v. Ecology, PCHB No. 02-113 (2002) that a joint user of a ditch may change their right to instream flow without any impairment to other water right holders. In addition, the trust applicant is not required to divert water into the ditch system to protect another's access to water.

CONCLUSIONS

It is the conclusion of this examiner that, in accordance with Chapter 90.42 RCW, that this application for trust water (as granted under Walla Walla Adjudicated Surface Water Certificate No. 54) will not enlarge the quantity of water historically used under Mr. Maiuri's portion, nor will it impair existing rights provided the provisions, terms and conditions contained within this report are followed.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change in purpose of use and place of use to Walla Walla Adjudicated Surface Water Certificate No. 54 be approved in the amounts and within the limitations listed below and subject to the provisions listed in the Report of Examination.

Trust Water Right Attributes:

0.04 cubic feet per second April 1 to July 1, 0.03 cubic feet per second July 1 to Oct. 1, 0.06 cubic feet per second, Oct. 1 to Oct. 31 and March 1 to April 1; and 8.7 acre-feet per year for the purpose of instream flows within Mill Creek in perpetuity.

The primary reach begins at a point on Mill Creek at approximately River Mile 6.7 located within the SE¼SE¼ of Section 19, Township 7 N., Range 36 E.W.M.

There is no secondary reach in this project for this water right.

Portion of Water Right Not Placed into Trust:

0.698 cubic feet per second April 1 to July 1, 0.521 cubic feet per second July 1 to Oct. 1, 1.042 cubic feet per second, when allowed, Oct. 1 to April 1; 262.15 acre-feet, each year, for the seasonal irrigation of 52.43 acres

Points of Withdrawal

SE¼SE¼, Section 19, Township 7 North, Range 36 E.W.M.

Place of Use

As described on Page 2 of this Report of Examination.

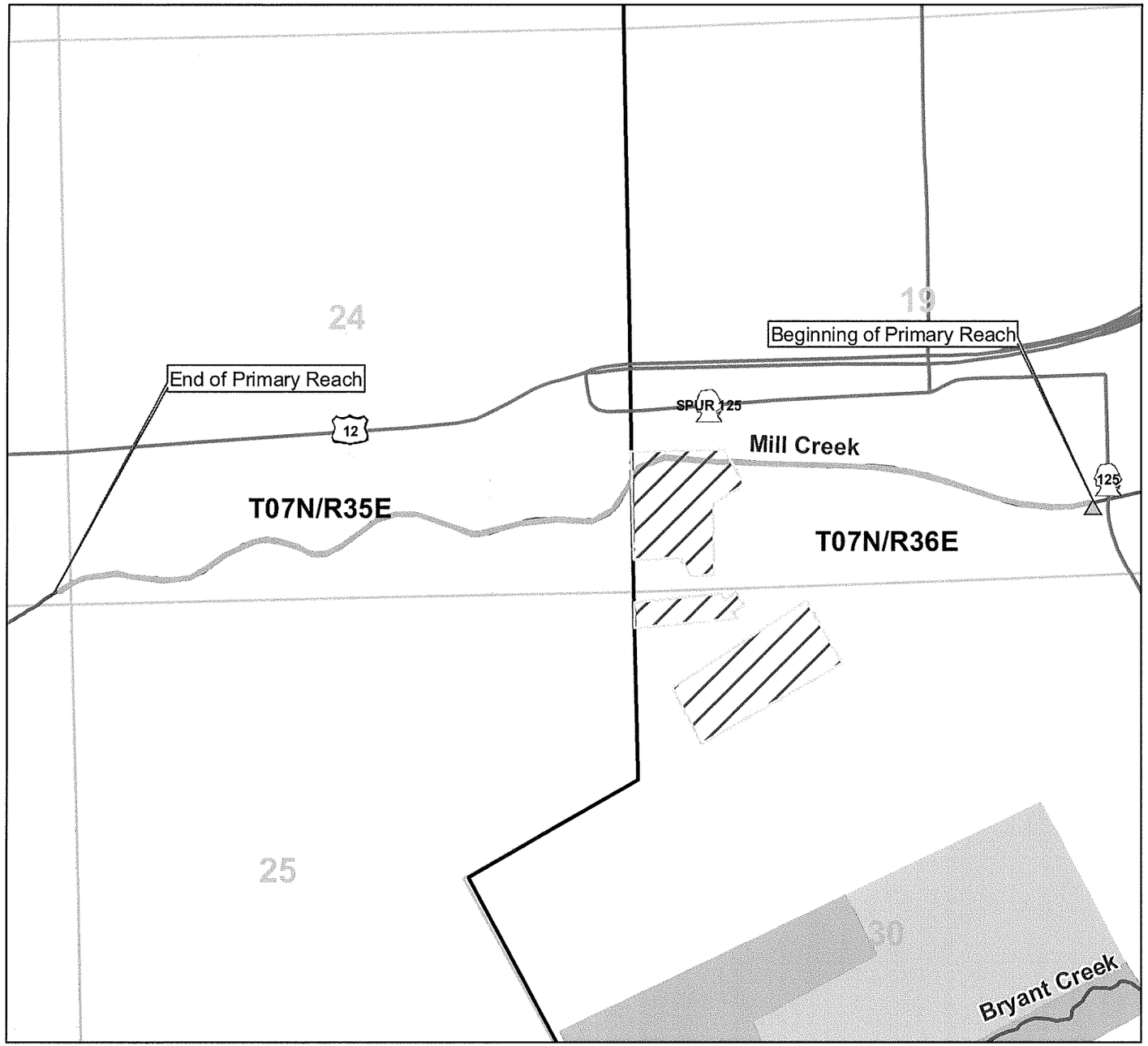
Report by: _____ _____

Dan Tolleson Date
Water Resources Program

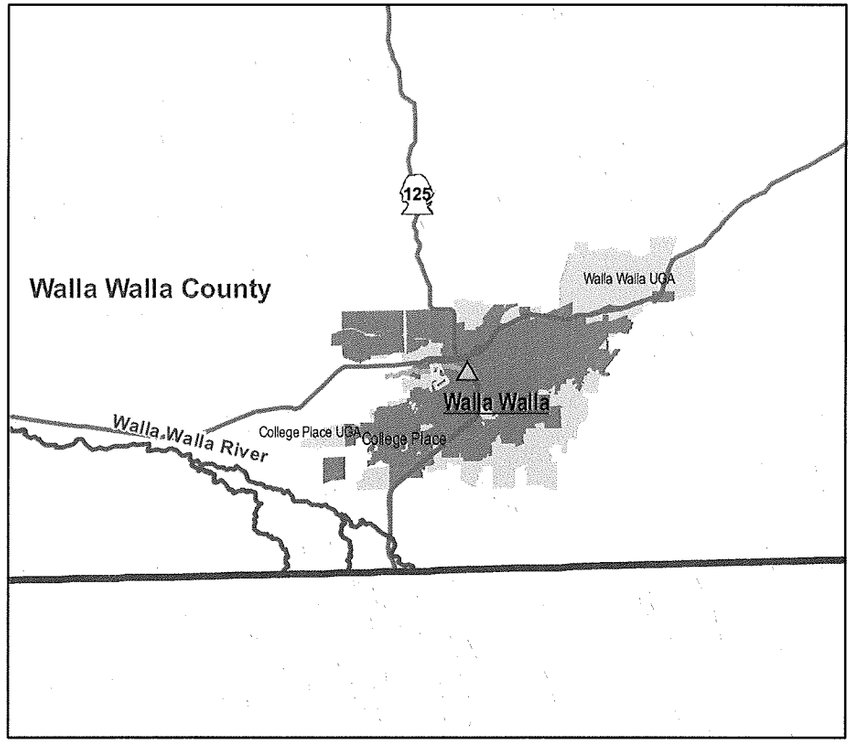
W/Draft ROEs/Tolleson 2010/WWAC 54(E) Maiuri

State of Washington, for Robert Maiuri
Walla Walla Adjudicated Surface Water Certificate No. 54(E)
Sec. 24, T 07N, R 35E.W.M., Sec. 19, T 07N, R 36E.W.M
WRIA 32 - Walla Walla County

DEPARTMENT OF ECOLOGY State of Washington



2,640 1,320 0 2,640 5,280 Feet



5 2.5 0 5 10 Miles

Legend

- County
- WRIA
- Cities
- Local Roads
- Highways
- Townships
- Sections
- Authorized Point of Diverison
- Authorized Place of Use Under Certificate 54(A)
- Primary Reach

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.'

Attachment 1