



State of Washington
**REPORT OF EXAMINATION
 FOR WATER RIGHT CHANGE**

File NR CS4-00389C(A)@2
 WR Doc ID 5042891

Add a Point of Diversion

PRIORITY DATE
 August 19, 1929

WATER RIGHT NUMBER
 S4-00389C(A)

CHANGE APPLICATION NUMBER
 CS4-00389C(A)@2

MAILING ADDRESS
 JD Land Associates
 646 Okoma Drive, Suite A
 Omak, WA 98841-9515

Total Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AC-FT/YR)
1.38	CFS	224.9

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE		UNITS	ANNUAL QUANTITY (AC-FT/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Irrigation	1.38		CFS	224.9		04/15 - 10/15

IRRIGATED ACRES

ADDITIVE	NON-ADDITIVE
69.2 acres (3.25 ac-ft/acre)	

Source Limitations

SOURCE FACILITY/DEVICE	DIVERSION RATE	ANNUAL QUANTITY (AC-FT/YR)	PERIOD OF USE (mm/dd)
Northern POD	1.38	224.9	04/15 - 10/15
Southern POD			

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
OKANOGAN	OKANOGAN RIVER	COLUMBIA RIVER	49-OKANOGAN

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Northern POD	3427170021	34N	27E	17	NW	48.45239	-119.46808
Southern POD	3427170021	34N	27E	17	NW	48.45005	-119.46875

Datum: NAD83/WGS84

Place of Use (See Map: Attachment 1)

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE
 Government Lots 5 and 6: that portion of the NW¼ of Section 17 lying east of the Okanogan River and the W½W½W½NE¼ of Section 17, except the southernmost 550 feet of Govt Lot 6; all within Section 17, T. 34 N., R. 27 E.W. M.

Proposed Works

The two diversions in Section 17 each consist of 6.5-inch-diameter, 20-hp pumps with estimated flow rates of 375 to 400 gpm. Water is conveyed from each diversion through an above ground 4-inch-diameter flow meter located at the top of the bank. The water is then conveyed through 5-inch pipe to wheel lines with impact sprinklers. Gate valves separate the surface water irrigation within the place of use from a conveyance system for an irrigation system that is associated with a separate tribal groundwater right.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	Completed	September 30, 2012

Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (cfs)

Provisions

General Conditions

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.

Measurements, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.

Department of Fish and Wildlife Requirement(s)

The intake(s) must be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://wdfw.wa.gov/about/contact/>

Easement and Right-of-Way

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

Water Use Efficiency

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

Proof of Appropriation

The water right holder must file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the water right. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, will have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Real Estate Excise Tax

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477 Internet: <http://dor.wa.gov/>. E-mail: REETSP@DOR.WA.GOV.

Findings of Facts

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

Therefore, I ORDER the requested change to add a point of diversion under Change Application No. CS4-00389C(A)@2 be APPROVED subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. 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 the Order.

File your appeal and a copy of this Order 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 Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail 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 RD SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Yakima, Washington, this 27 day of JUNE 2012.



Mark Kemner, LHG, Section Manager
 Water Resources Program/CRO

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>.

INVESTIGATOR'S REPORT

BACKGROUND

JD Land Associates submitted Application No. CS4-00389C@2 requesting to add a point of diversion (POD). This proposed POD is located on the Okanogan River just south of their authorized point of diversion. JD Land has applied to change their water right to match what is already in use.

Existing Point of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
OKANOGAN RIVER	3427170021	34N	27E	17	NW	48.45239	-119.46808

Proposed Additional Point of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
OKANOGAN RIVER	34270021	34N	27 E	17	NW	48.45005	-119.46875

Legal Requirements for Proposed Change

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

- **Public Notice**
RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Omak-Okanogan County Chronicle during the weeks of August 24, 2011 and August 31, 2011.

- **State Environmental Policy Act (SEPA)**
The subject water right is subject to SEPA [WAC 197-11-305 and WAC 197-11-800(4)] because the instantaneous quantity is greater than the threshold of 1 cfs. The SEPA Determination of Non-Significance was published on September 21, 2011. No comments were received within the 14-day comment period.

- **Water Resources Statutes and Case Law**
 - RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

 - 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*.

INVESTIGATION

Consultants from GeoEngineers, Inc. assisted in this investigation, under contract with the Washington State Department of Ecology (Ecology) as part of its cost reimbursement program. The investigation included, but was not limited to, the review of:

- The State Water Code, specifically WAC 173 and RCW 90.
- Washington State Department of Ecology, 2011, Washington State Well Log Viewer website, <<http://apps.ecy.wa.gov/welllog/index.asp>> (Accessed July 2011).
- Washington State Department of Ecology, 2011, Washington State Water Resources Explorer website, <<https://fortress.wa.gov/ecy/waterresources/map/WaterResourcesExplorer.aspx>> (Accessed July 2011).
- Washington State Department of Ecology, 2011, Water Rights Tracking System (WRTS) website <<http://www.ecy.wa.gov/programs/wr/rights/tracking-apps.html>> (Accessed July 2011).
- United States Geological Survey (USGS) topographic maps.
- Information submitted by and conversations and/or meetings with Dale Hice and Jack Crane representing both JDLA and AIA, and Scott DeTro of Callaway & DeTro PLLC.
- A site visit on August 16, 2011.

Site Visit

Joel Purdy, a Senior Hydrogeologist with GeoEngineers, conducted a site visit on August 16, 2011. The visit included the inspection of the points of diversion and irrigated properties. Diversion (pumping) of surface water, metering of use and irrigation were observed during the site visit. Photographs were taken of key system elements and the locations (latitude and longitude) of the diversion and flow meter were recorded by GPS.

The two diversions in Section 17 each consist of 6.5-inch-diameter, 20-hp pumps with estimated flow rates of 375 to 400 gpm. From the Southern POD, water is conveyed above ground through a 4-inch-diameter flow meter located at the top of the bank. The water is then conveyed approximately 1,200 feet easterly through a 5-inch-diameter pipe to a tee. From the tee, a 5-inch pipe runs approximately 250 feet south and 750 feet north. From the North POD, the water is conveyed above ground through a 4-inch-diameter flow meter located at the top of the bank. Water is then conveyed through a 5-inch-diameter pipe that runs east approximately 750 feet where it connects with the 5-inch-diameter pipe originating from the South POD. At the junction with the South POD line, a 4-inch-diameter pipe runs approximately 500 feet to the east property line and a 4-inch-diameter pipe runs approximately 1,000 feet to the northeasterly lines to wheel irrigation lines with impact sprinklers. Gate valves separate the surface water irrigation within the POU from a conveyance system for a well-based irrigation system that is associated

History of Water Use – Tentative Determination

Okanogan River Surface Water Certificate No. 389 has been used for irrigation nearly continuous for at least the last 5 years, based on the examination of flow meter records, aerial photographs dating back to July 1996, and review of previous examinations related to Proof Examinations and Reports of Examination. Jack Crane of JDLA reported that a rotation of crops of alfalfa, hay and other grains has been grown. The water usage in 2008 and 2009 was estimated at 302.61 and 265.55 acre-feet, respectively, based on an analysis of power meter records (Water & Natural Resource Group, 2010). Flow meters were installed at both the JDLA PODs in 2010. Review of the flow meter records indicates that the usage was 193.913 acre-feet in 2010.

On May 22, 2008 Ecology modified and approved the Okanogan Conservancy Board's decision to correct the place of use for Certificate 389 based on Application No. CS4-00389C. At that time a tentative determination was made that the right was valid for 72.7 acres of irrigation. On October 25, 2010, JDLA submitted an assignment form to Ecology requesting to split Surface Water Certificate No. 389 between JDLA and their neighbor, the Willis. On December 29, 2011, Ecology issued Superseding Certificate No. S4-00389C(A) to JDLA for 1.38 cfs, 224.9 ac-ft/yr, for the irrigation of 69.2 acres. And on March 22, 2012 Ecology issued Superseding Certificate No. S4-00389C(B) to the Willis' for 0.697 cfs, 11.375ac-ft/yr for the irrigation of 3.5 acres.

JDLA is also part of a water right swap. JDLA has applied to transfer a portion this certificate downstream to Aston Irrigation Association (AIA) in exchange for an equal amount of water from AIA. On February 11, 2010 JDLA submitted Application No. CS4-00389C(A)@1 to transfer 1.24 cfs, 203.4 ac-ft to AIA. On February 11, 2010 AIA submitted Application No. CS4-24234C@2 to transfer 1.24 cfs, 203.4 ac-ft to JDLA. JDLA's water right is senior to minimum flows established on the Okanogan River (WAC 173-549-020). Therefore, this swap would allow AIA to divert water when they would otherwise be interrupted. Refer to these pending water right changes for additional information.

Other Rights Appurtenant to the Place of Use

JDLA does not have other state issued water rights or applications associated with their current POU east of the Okanogan River. According to Ecology's Water Resources database, there is a claim under the name of Wallace Campbell that is appurtenant to JDLA's POU. It is for 480 gpm and 2 acre-feet/year (afy) for general domestic and stock watering use. If this claim is valid, it would be junior right to Certificate No. 00389. Adjacent parcels controlled by JDLA are served by a tribal groundwater right of an unknown amount.

Certificate No. 00389 was issued prior to the Okanogan River instream flow rule, WAC 173-549. Therefore JDLA's water right is not interrupted during low flow periods.

Impairment Considerations

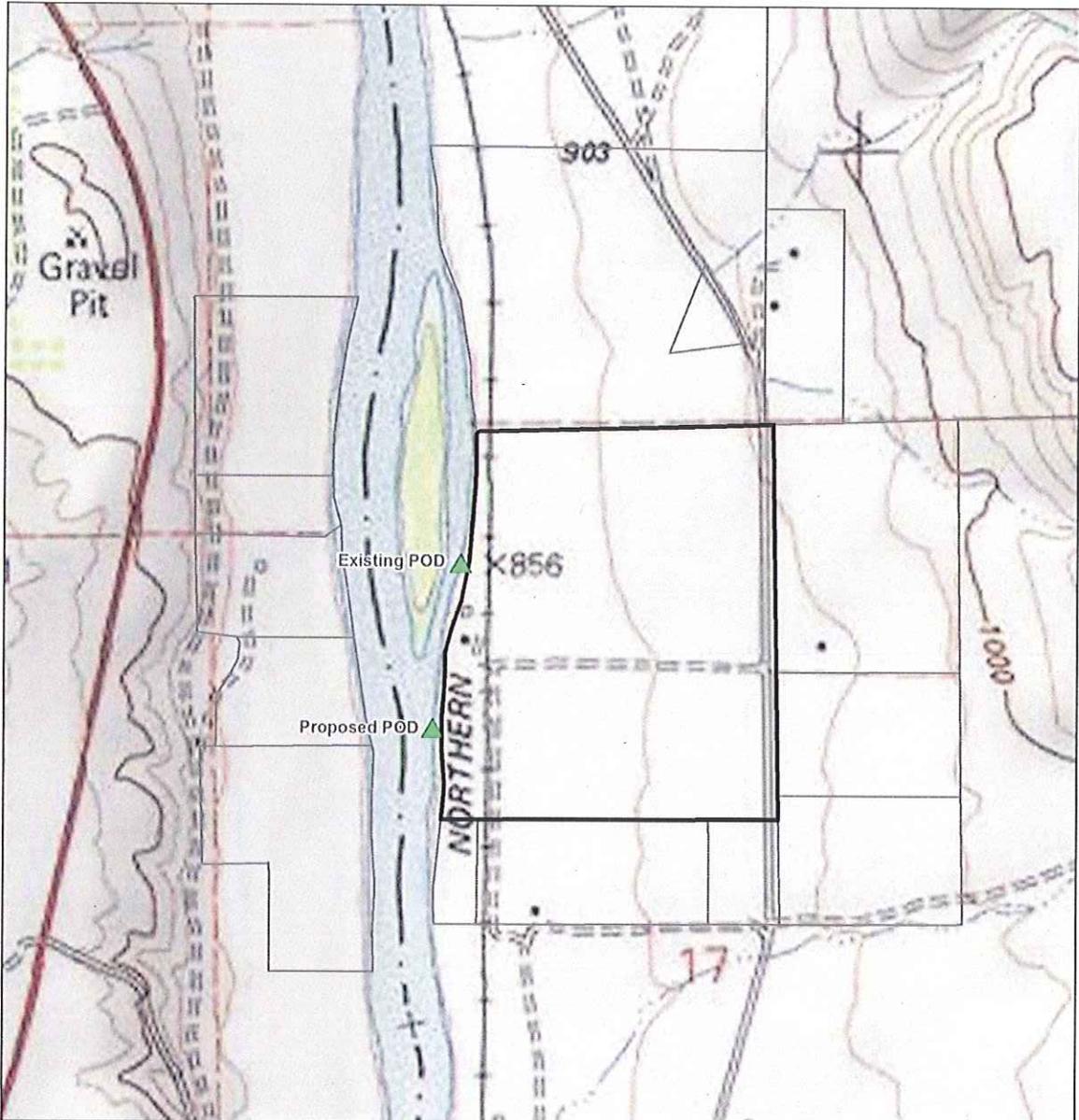
There are no other authorized surface water diversions within JDLA's place of use. No additional volume of water is being considered in this change.

Consideration of Protests and Comments

No protests were received during the public comment period.

Conclusions

It is tentatively determined that Certificate No. S4-00389(A) is valid and eligible for change. The requested change to add a point of diversion is not expected to impair any existing rights.



Legend

-  Points of Diversion
-  Proposed Place of Use
-  Parcel Boundaries



Data Source: Esri USA Topo Maps.

Projection: NAD 1983 HARN StatePlane Washington North FIPS 4601 Feet

Notes:

1. The locations of all features shown are approximate.
2. This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document. GeoEngineers, Inc. cannot guarantee the accuracy and content of electronic files. The master file is stored by GeoEngineers, Inc. and will serve as the official record of this communication.

Points of Diversion

Aston Irrigation Association Water Right Transfer
Omak, Washington



Attachment 1