



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

Changed Point of Diversion

<b>PRIORITY DATE</b> January 1, 1905 (class 32)	<b>WATER RIGHT NUMBER</b> Touchet River Adjudicated Certificate No. 207
--	--

<b>MAILING ADDRESS</b> Sherman Maynard 116 Baileysburg Road Dayton, Washington 99328
---

Total Quantity Authorized for Diversion		
<b>MAXIMUM DIVERSION RATE</b> 0.04	<b>UNITS</b> cfs	<b>ANNUAL QUANTITY (AF/YR)</b> 7

Purpose		
<b>PURPOSE</b> Irrigation	<b>WITHDRAWAL OR DIVERSION RATE</b> 0.027 CFS from 04/01 to 10/15 0.040 CFS from 10/15 to 04/01	<b>ANNUAL QUANTITY (AF/YR)</b> 7

ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
	NON-ADDITIVE		WATER SYSTEM ID	CONNECTIONS
2				

Source Location			
COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Columbia	North Fork Touchet River	Touchet River	32-Walla Walla

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Pump Station	2009390042154	9N	39E	4	NE¼NW¼	46.2921°	-117.9403°

Datum: NAD83/WGS84

380 feet west and 1000 feet south from the N¼ corner of Section 4

Place of Use (See Attached Map)
<b>PARCELS (NOT LISTED FOR SERVICE AREAS)</b> 2009390042450
<b>LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE</b>

Beginning at a point 11.95 chains east and 0.7 chains south of the SW corner of Lot 3, Section 4., Twp. 9 N., Rge 39 E.W.M.; thence north 5.8 chains; thence south 33° east 3.75 chains; thence south 87° east 2.3 chains; thence north 74.25° east 4.1 chains; thence south 2.64 chains; thence south 83° west 8.34 chains to point of beginning, containing 2.27 acres more or less

## Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	Completed	January 1, 2014

## Measurement of Water Use

How often must water use be measured?	Monthly
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 (gpm or cfs)

## Provisions

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 19<sup>th</sup> 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 15<sup>th</sup> to April 1<sup>st</sup>. The total diversion shall not exceed 7 acre-feet for any one year beginning September 15<sup>th</sup>.

The total amount of water authorized for diversion under Touchet River Adjudicated Certificate Nos. 125 and 207 shall be limited to a maximum of 0.107 cfs from April 1 to Sept. 15 and 0.160 cfs from Sept. 15 to April 1, for the irrigation of 8 acres.

The capacity of the authorized pump station (located in the NE¼NW¼ of Section 4, T. 9 N., R. 39 E.W.M.) for Touchet River Adjudicated Certificate Nos. 125 and 207 shall be reduced to a maximum of 0.107 cfs (48 gallons per minute) from April 1 to Sept. 15 and 0.160 cfs (73 gallons per minute) from Sept. 15 to April 1.

### 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 Eastern Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Eastern 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**

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

### **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. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of the change application to Touchet River Adjudicated Certificate No. 207, 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).

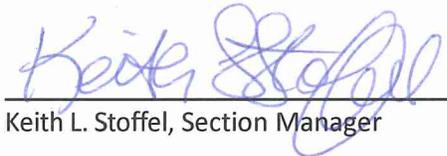
To appeal you must do the following within 30 days of the date of receipt of the Order.

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

Signed at Spokane, Washington, this 3rd day of January, 2013.



---

Keith L. Stoffel, Section Manager

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  
 Dan Tolleson, Department of Ecology  
 Water Right Control Number CS3-\*34207J  
 Touchet River Adjudicated Certificate No. 207

**BACKGROUND**

Description and Purpose of Proposed Change

An application for change/transfer was submitted by Sherman Maynard of Dayton, Washington, to Ecology on May 13, 2009. Mr. Maynard proposes to change the authorized point of diversion as granted under Touchet River Adjudicated Surface Water Certificate No. 207 (TR 207).

Attributes of the Existing Water Right and Proposed Change

	Authorized	Proposed
<b>Name</b>	Carl Bishop	Maynard Sherman
<b>Priority Date</b>	The year 1905 (class 34)	
<b>Change Application Date</b>		5/13/2009
<b>Instantaneous Rate</b>	Up to 0.040 cfs	No change
<b>Annual Quantity</b>	12 af/yr	No change
<b>Purpose(s) of Use</b>	Irrigation of 2 acres	No change
<b>Period of Use</b>	Continuously	No change
<b>Place(s) of Use</b>	Approximation: Portions of NW¼ of Section 4, within, T. 9N., R. 39 E.W.M.	No change

Authorized Source of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Spring Branch of Touchet River		9N	39E	4	NW¼NE¼		

Proposed Sources of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
North Fork Touchet River	2009390042154	9N	39E	4	NE¼NW¼	46.2921°	-117.9403°

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

## Legal Requirements for Requested Change

---

The following is a list of requirements that must be met prior to authorizing the proposed change.

### *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. A Notice of this application was published in June of 2009, but was in error. A second Notice of this application was published in the Dayton Chronicle on July 15 and 22, 2009.

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

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- (a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

### *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**

---

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits, and claims; (3) USGS topographic maps and aerial photographs; (4) diversion works and place of use; (5) Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32 and Watershed Planning; (6)

State of Washington Irrigation Guide (Natural Resources Conservation Service 1997); (7) Touchet River Adjudication; and (8) discussions with Department of Ecology regional program staff.

A field investigation was conducted, by Dan Tolleson and Jeff MacLennan on November 7, 2012. The project is located approximately one mile to the southeast 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 of this project lies within the bottom-land south of the North Fork of the Touchet River within the NW¼ of Section 4, T. 9N., R. 39 E.W.M. The irrigated area is primarily pasture which has water provided under Touchet River Adjudicated Certificate Nos. 207 and 125. The north portion of this parcel of land is irrigated under Certificate No. 207 and the southern portion irrigated under Certificate No. 125. A house with yard, driveway and out building are also located within the project. The irrigation system consists of a mainline with a pressurized handline sprinkler system.

The authorized point of diversion, which has been abandoned, is a Spring Branch tributary to the North Fork of the Touchet River. This Spring Branch was a side channel of the main river and appears to have been directly connected. The authorized point of diversion is proposed to be changed to the currently used diversion, located downstream less than a quarter of a mile. The currently used point of diversion is a pressurized pumping station on the North Fork of the Touchet River. In addition, this pumping station is also used to supply water to Touchet River Adjudicated Certificate No. 125.

## History of Water Use

---

Aerial photographs were used to help verify the extent of development, historical and beneficial use of this project. The legal description of the water right is broken into two portions with the first legal describing 2.27 acres and the second legal description being incomplete. It appears from the original adjudication map that the area actually irrigated under this right is a pasture completely located on Mr. Maynard's land. The complete legal description for the 2.27 acres is sufficient to cover the existing water use under this right. The remainder of the legal description that is incomplete will be removed from the certificate. Historically, it appears that two acres of pasture have been irrigated within the place of use.

It is estimated that the maximum instantaneous quantities authorized under this right are used. According to the existing meter records, the pump station produces around 0.23 cfs (100 gallons per minute) and the maximum authorized total under both TRACs 125 and 207 is 0.160 cfs (72 gallons per minute). Therefore, the capacity of the pump station must be reduced.

The maximum authorized water duty of this certificate is 6 acre-feet per year, per acre. According to the adjudication, 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 15<sup>th</sup> to April 1<sup>st</sup>. Historically, this right has been used to irrigate pasture. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that 2.6 acre-feet, per acre, for pasture is required in the Dayton area. The current pressurized sprinkler type irrigation system is estimated to be 75% efficient. At a 75% efficiency rate of application, the approximate maximum water duty, for the crop listed above is up to a maximum of 3.5 acre-feet per year, per acre. This results in an allocation of 7 acre-feet per year for the irrigation of 2 acres.

## Proposed Use

---

The purpose of this change is to correct the location of the point of diversion. The applicant proposes to move the point of diversion downstream to the currently used location.

## Other Rights Appurtenant to the Place of Use and Proposed Point of Diversion

---

A review of Ecology records was conducted for existing water right certificates, permits, and claims in the surrounding area of the Maynard Project. The search focused primarily on Section 4, T. 9 N., R. 39 E.W.M. The review of Ecology records shows no other water rights appurtenant to the authorized place of use. One other water right uses the proposed point of diversion and is as follows:

Touchet River Adjudicated Certificate No. 125 authorizes up to 0.120 cubic feet per second for the irrigation of 6 acres. This water right is used to irrigate the remainder of the pasture not authorized under TRAC 207. The place of use under Certificate No. 125 does not completely cover the actually irrigated field and it appears that the original certificate was issued in error. It is recommended that Mr. Maynard file a change application to correct this error in place of use.

## Impairment Considerations

---

“Impair” or “impairment” means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, not including earlier filed applications (HB 1832); 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 applicant is requesting authorization to change the authorized point of diversion to Touchet River Adjudicated Certificate No. 207. The change to the authorized point of diversion is a downstream move of approximately 1,200 feet to an existing diversion pump station. The originally authorized diversion (a ditch) was abandoned many years ago and water has been diverted from the proposed pump station without issue. There is no significant change in the stream or major diversions between the authorized and proposed point of diversion. Therefore, no impairment is anticipated by changing the authorized point of diversion. The proposed change will not increase the amount of water withdrawn from the Touchet River nor will it increase or expand the right.

## Consideration of Protest and Comments

---

No protests were filed against this application.

## Conclusions

---

In conclusion, there is a water right available for change under Touchet River Adjudicated Certificate No. 207. In accordance with Chapters 90.03 RCW, approval of this application to change the authorized point of diversion will not enlarge the quantity of water historically authorized, nor will it impair existing rights provided the terms and conditions above are followed.

The amount of water recommended is a maximum limit that shall not be exceeded, and the water user may only use that amount of water within the specified limit that is reasonable and beneficial. This authorization does not increase in any way the original amounts authorized by the certificate.

## **RECOMMENDATIONS**

---

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

### *Purpose of Use and Authorized Quantities*

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

0.027 cfs from 4/1 to 10/15

0.040 cfs from 10/15 to 4/1

7 acre-feet per year

Irrigation of 2 acres

### Point of Diversion

NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, Township 9 North, Range 39 East W.M.

### Place of Use

As described on Page 1 of this Report of Examination.



Dan Tolleson, Report Writer

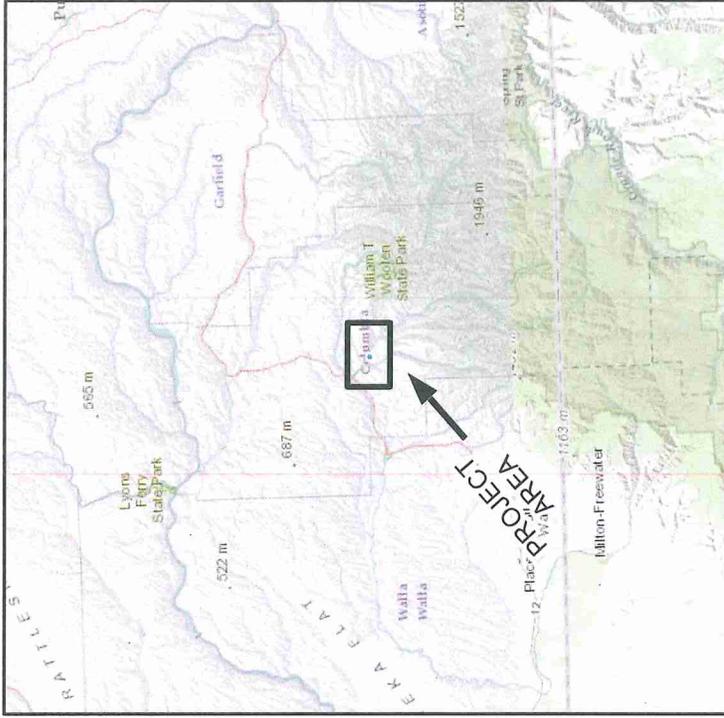
1/3/2013

Date

*If you need this publication in an alternate format, please call the Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*

# ATTACHMENT 1

Sherman Maynard  
 CS3-\*34207J  
 T09N/R39E



Basemap - (ESRI US Topographic Maps)

## Legend

-  Authorized Place of Use
-  Townships
-  Sections

 Authorized Point of Diversion

### Comment:

Place of use and source locations are as defined within the Report of Examination cover sheet for the document identified in the header above.



Map Date: 11/19/2012

Basemap - (NAIP 2011 1m color)

