



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Change of: Place of Use
WRTS File # CS3-*28118J

PRIORITY DATE The year 1878 (Class 17)	CLAIM NO.	PERMIT NO.	CERTIFICATE NO. Walla Walla Adjudicated SW Certificate No. 118, w/chg. Vol. 1, pg. 213
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NAME Wayne Brock		
ADDRESS/STREET 135 Laurel Street	CITY/STATE Walla Walla, Washington	ZIP CODE 99362

PUBLIC WATERS TO BE APPROPRIATED

SOURCE Mill Creek		
TRIBUTARY OF (IF SURFACE WATERS) Walla Walla River		
MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr)
*0.287 April 1 to July 1		2.25
*0.215 July 1 to Oct. 1		
*0.430 Oct. 1 to April 1		
QUANTITY, TYPE OF USE, PERIOD OF USE *0.287 cubic foot per second April 1 to July 1, 0.215 cubic foot per second July 1 to Oct. 1, 0.430 cubic foot per second, when allowed, Oct. 1 to April 1; 2.25 acre feet, each year, for the seasonal irrigation of 0.45 acres *(Maximum total diversion under the right, water use for this portion of the right is determined under a shared water use agreement.)		

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL 600 feet North from the center of Section 22, T. 7 N., R. 36 E.W.M.					
or LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)					
SECTION	TOWNSHIP	RANGE	WRIA	COUNTY	
22	7N.	36 E.W.M.	32	Walla Walla	
PARCEL NUMBER		LATITUDE	LONGITUDE	DATUM	
360722110030		46.0730807° N.	118.2932377° W	NAD 83	

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
Within lot 74		Valley Homes

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED
[Attachment 1 shows location of the authorized place of use and point(s) of diversion or withdrawal.]

The south 135 feet of Lot 74 in Valley Homes, as recorded in Volume A of Plats, page 81, in the office of the Auditor of Walla Walla, County, Washington, in Volume 181 of Deeds at page 128. Lying within the NW¹/₄SW¹/₄ of Sec. 22, T. 7 N., R. 36 E.W.M.

DESCRIPTION OF PROPOSED WORKS

Diversion ditch, two centrifugal pumps and rain bird sprinklers

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE Started	COMPLETE PROJECT BY THIS DATE June 1, 2013	WATER PUT TO FULL USE BY THIS DATE June 1, 2014
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PROVISIONS

Measurements, Monitoring, Metering and Reporting

1. An approved measuring device shall be installed and maintained for each of the sources authorized by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", chapter 173-173 WAC. <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>
2. The approved measuring devices shall be installed at the head-gate of the ditch and at both pump sites within the ditch system used by Wayne Brock.
3. Water use data shall be recorded weekly. The maximum monthly rate of diversion/withdrawal and the monthly total volume shall be submitted to Ecology by January 31st of each calendar year. Ecology is requiring submittal of monthly meter readings to collect seasonal information for water resource planning, management and compliance.
4. Chapter 173-173 WAC 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".
<http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

Fish and Department of Fish and Wildlife

5. This authorization is subject to Washington Department of Fish and Wildlife fish screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Fish screening criteria are attached to this Report of Examination. 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://www.wdfw.wa.gov/reg/regions.htm>

Schedule and Inspections

6. 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 provisions, and to inspect at reasonable times any measuring device used to meet the above provisions.
7. The water right holder shall file the notice of Proof of Appropriation of water (under which the certificate of change 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 of change will reflect the extent of the project perfected within the limitations of the change authorization. Elements of the proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

General Conditions

8. 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.
9. 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.
10. 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.
11. Use of water under this authorization shall 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.
12. Any amended or new water use agreements for this ditch system shall be submitted to Ecology.
13. Upon completion of the project and full beneficial use, and a final examination is made, Ecology will issue

a Certificate of Change.

14. When the supply of water for irrigation purposes from April 1 to October 1 is insufficient in the Walla Walla Valley to fill any right contained in the foregoing schedule, the owner of such right is entitled to divert water during the period of October 1 to April 1.

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.

Therefore, I ORDER approval of the recommended change of place of use under Change Application Walla Walla Adjudicated Surface Water Certificate No. 118, w/chg. Vol. 1, pg. 213, subject to existing rights and the provisions listed 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	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 4224 – 6th Avenue SE Rowe Six, Building 2 Lacey, WA 98503	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 Region Office

BACKGROUND

Description and Purpose of Proposed Change

An application for change/transfer was submitted by Wayne Brock of Walla Walla, Washington, to Ecology on June 13, 2003. Wayne Brock proposes to change a portion of the place of use to his lot as granted under Walla Walla Adjudicated Surface Water Certificate No. 118, w/chg. Vol. 1, page 213 (WWAC 118).

Attributes of the Certificate and Proposed Change

Table 1 Summary of Proposed Changes to Water Right No. 118, w/chg. Vol. 1, page 213

<i>Attributes</i>	<i>Authorized</i>	<i>Proposed</i>
Name	Mary Preston	Wayne Brock
Priority Date Date of Application for Change	The year 1878	June 13, 2003
Instantaneous Quantity	0.287 April 1 to July 1 0.215 July 1 to Oct. 1 0.430 Oct. 1 to April 1	<i>No Change</i>
Annual Quantity	87.5 af/year	<i>No Change</i>
Source	Mill Creek	<i>No Change</i>
Point of Diversion/Withdrawal	SE¼NW¼ of Sec. 22, T. 7 N., R. 36 E.W.M.	<i>No Change</i>
Purpose of Use	Irrigation of 17.5 acres	<i>No Change</i>
Period of Use	Per year	<i>No Change</i>
Place of Use	Various lots of Valley Homes Addition within a portions of Sec. 22, T. 7 N., R. 36 E.W.M.	The south 135 feet of Lot 74 in Valley Homes addition

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.

- **Public Notice**

A notice of application was duly published in accordance with RCW 90.03.280 in The Waitsburg Times on February 21 and 28, 2008, and no protests were received.

- **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**

RCW 90.03.360 requires that the owner of any water diversion maintain substantial controlling works and a measuring device. It must be constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Technical requirements for the measuring and reporting of water use are described in WAC 173-173. This decision contains provisions requiring the measuring and reporting of the quantities of water withdrawn or diverted.

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 changes/transfers, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Walla Walla Adjudicated SW Certificate No. 118 w/chg. Vol. 1, page 213, 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 14, 2008, by Dan Tolleson with Caron David. This project is located within the eastern 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 Right

Walla Walla Adjudicated Surface Water Certificate (WWAC) No. 118 was issued on May 16, 1929, with a priority date of the year 1878 (Class 17). This right authorized 25 acres of irrigation within the N½NW¼ of Sec. 22, T. 7 N., R. 36 E.W.M.

Certificate of Change Volume 1, page 213, issued August 29, 1944, authorized a change in place of use and point of diversion for a portion of WWAC 118. The change in place of use consisted of moving 21.5 acres of the original irrigation right to various lots within Valley Homes Addition. These various lots only totaled approximately 17 acres of land, which left four acres unaccounted for. The reason for this discrepancy is unknown but may have been intentionally done to provide more instantaneous quantity for this portion of the right. It is noted in the Certificate of Change petition that one-half acre of the right was abandoned to cover any potential conveyance loss of the ditch system. The change in point of diversion appears to consist of moving the diversion down stream approximately 2,500 feet to an existing diversion ditch (sometimes known as Mulhin Ditch) that was already used to supply water to various water rights within Valley Homes Addition. These existing rights that predated this certificate of change had poor priority dates and would have been interruptible. It is noted in the Certificate of Change petition that 14 of these water rights, which are specifically listed, were abandoned and replaced with WWAC 118. It appears that a few of these existing rights that predated this certificate of change were not specifically listed in the petition and may still be providing water from this ditch system.

Certificate of Change Volume 1, page 472, issued on July 3, 1956, authorized a change in the place of use of a portion of WWAC 118 together with Certificate of Change Volume 1, page 213. The portion of the right appurtenant to Lot 29 of Valley Homes Addition was moved to Lot 69 of Valley Homes Addition. The point of diversion was not changed. These lots do not overlap the portion of the water right proposed for change under this application.

It appears that 3.5 acres of the original water right were never changed and remain appurtenant to the NW¼NW¼ of Sec. 22, T. 7 N., R. 36 E.W.M. This portion of the place of use is a shopping center and is not part of this change.

Table 2 Summary of Authorized Cubic Feet per Second as Related to the Certificates of Change

Portion of Walla Walla Adj. SW Cert. No. 118	April 1- July 1 Qi	July 1 – Oct. 1 Qi	Oct. 1 – April 1 Qi
Vol. 1, page 213 and Vol. 1, page 472	0.287 cfs (129 gpm)	0.215 cfs (96 gpm)	0.430 cfs (193 gpm)
Unchanged portion of the right	0.046 cfs (21 gpm)	0.035 cfs (16 gpm)	0.070 cfs (31 gpm)
Total	0.333 cfs	0.250 cfs	0.500 cfs

Qi = instantaneous quantities cfs = cubic feet per second gpm = gallons per minute

The place of use authorized under Walla Walla Adj. SW Cert. No. 118 w/chg. Vol. 1, pg. 213 is approximately 17 acres of land lying within Valley Homes Addition which is located within the S½NW¼ and the N½SW¼ of Sec. 22,

T. 7 N., R. 36 E.W.M. The place of use currently consists of various houses, out buildings and irrigated yards and gardens. It appears that some of it is still irrigated with surface water from the ditch system. It appears that some portions of the irrigation are being served by domestic wells and/or municipal water supplies. All of the in-house domestic water use is being supplied by domestic wells or municipal water.

The authorized point of diversion for Walla Walla Adj. SW Cert. No. 118 w/chg. Vol. 1, pg. 213 is within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 22, T. 7 N., R. 36 E.W.M. This diversion currently consists of a head-gate and a rudimentary screen for the pipe that diverts water under the levee of the flood control zone of Mill Creek. A weir is located beyond the flood control levee to determine the quantity of water diverted. Actual water diversion is roughly estimated by a notch in the weir which appears to be generally near what is authorized. The ditch system beyond the weir consists of various types of pipes, lined and unlined ditches and a small section of flume. Various internal pipes and ditch gates are used to provide water to the different sections of the system.

A water use agreement is in place for the ditch system described in Certificate of Change Volume 1, page 213. This agreement was established due to the low instantaneous quantity authorized. The current version is dated 1993 and includes seventeen water users. The water use agreement allows on average 2-3 irrigators to withdraw up to a total of the maximum authorized quantities from the ditch system at one time. It should be noted that this water use agreement is not strictly followed and is considered a fall back agreement in situations of conflict. Generally, the water users within this system work together to ensure that everyone gets their share of the water quantities authorized.

Three applications for change are filed under Walla Walla Adj. SW Cert. No. 118 w/chg. Vol. 1, pg. 213. The applicants are Wayne Brock, Steven Duquette and James Chastain. Each application will have decisions based on its own respective findings.

Proposed Use

Wayne Brock proposes to change two-thirds of the irrigation right appurtenant to Lot 23 of Valley Homes Addition to his lot which is known as the south 135 feet of lot 74 of Valley Homes Addition.

Extent of Beneficial Use

Walla Walla Adjudicated SW Certificate No. 118, w/chg. Vol. 1, page 213 currently has 38 lots with various land owners within the authorized place of use. This water right authorizes enough acres to potentially provide irrigation for all the place of use. Because of multiple owners, this change will only determine the extent and validity of that portion of the water right proposed for change by Wayne Brock.

The portion of the water right for lot 23 of Valley Homes Addition was sold to two different parties in 1981, one of which was Wayne Brock's lot. At that time, the land owners were unaware that a change was required through Ecology. It appears that actual use was abandoned on lot 23 in approximately 1981. At about the same time it appears that water use was started on the south 135 feet of lot 74. This use is to be consistent with the investigation and sales agreement that pertains to this portion of the water right.

Aerial photographs were used to help verify the extent of development, historical use and beneficial use of Walla Walla Adj. SW Cert. No. 118 w/chg. Vol. 1, pg. 213. It appears that approximately 0.7 of an acre was historically irrigated within lot 23 Valley Homes. In recent years it appears that approximately 0.45 acres were irrigated within the south 135 feet of lot 74 of Valley Homes.

The authorized water duty of this certificate is 5 acre-feet per year, per acre. Historically, this right has predominately been used to irrigate yards. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that an estimated 2.9 acre-feet, per acre, is required for grass/turf in the Walla Walla area. The current irrigation system of sprinkler is estimated at a 70% efficiency rate of application. With a 70% efficiency rate of application an estimated 4.2 acre-feet per acre would need to be applied for crops that use 2.9 acre feet per acre. In dry years, full water quantities are often not available.

It appears that up to the remaining 0.8 acre-foot of the water duty is used for ditch conveyance losses. The extent of this loss is unknown and will be determined during the proof exam after the meters have been installed and data has been collected.

The diversion point from Mill Creek for this system is proposed to be updated and the existing diversion will be abandoned. The new pump station is proposed to pump water over the levee of Mill Creek into the current gravity feed ditch. The system will require a modern Washington Department of Fish and Wildlife approved fish screen. A flow meter is required at the head-gate to account for water use and to help determine ditch loss.

Mr. Brock currently diverts water from the system with two small 1.5 horse power centrally pump from small basins within the ditch line itself. Water is pumped into a garden hose that uses a rain-bird type sprinkler for

application. Flow meters are required at each of these pump sites to account for water use and to help determine ditch loss.

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 surrounding the project. The search focused primarily on Section 22, T. 7 N., R. 36 E.W.M. The review of Ecology records shows many water rights that overlap the authorized place of use of Walla Walla Adj. SW Cert. No. 118 w/chg. Vol. 1, pg. 213. Many of these rights are for municipal supply of the City of Walla Walla. Of those overlapping rights, which are not for municipal supply only one is appurtenant to Lot 23 Valley Homes addition. No water rights other than municipal supply rights are appurtenant to the proposed place of use, which is a portion of Lot 74. The overlapping non municipal supply right is as follows:

Walla Walla Adjudicated SW Certificate No. 576 authorizes up to 0.02 cfs, for 1 acre of irrigation within Lot 23 of Valley Homes Addition. The point of diversion is from Mill Creek in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 22, T. 7 N., R. 36 E.W.M. This right is specifically listed in the Certificate of Change Volume 1, page 213 petition as being abandoned in favor of WWAC 118. It appears that this right has not been used since 1944 and is abandoned.

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

This application is requesting authorization to change a portion of the place of use, as granted under Walla Walla Adjudicated SW Certificate No. 118, w/chg. Vol. 1, pg. 213. Mr. Brock’s portion of the certificate has been exercised and beneficially used in the past. The proposed change will not increase the amount of water withdrawn from the Mill Creek, nor will it increase or expand the right.

CONCLUSIONS

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.

It is the conclusion of this examiner that, in accordance with Chapters 90.03, this application for change (by changing a portion of the place of use, as granted under Walla Walla Adjudicated SW Certificate No. 118, w/chg. Vol. 1, pg. 213) will not enlarge the quantity of water historically used under Mr. Brock’s portion, nor will it impair existing rights provided the recommendations are followed.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to a portion of the place of use to Walla Walla Adj. SW Cert. No. 118 w/chg. Vol. 1, pg. 213 be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, et seq.

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:

- 2.25 acre-feet per year
- 0.45 acres of an acre of irrigation
- Instantaneous Quantities
 - *0.287 April 1 to July 1
 - *0.215 July 1 to Oct. 1
 - *0.430 Oct. 1 to April 1

(Maximum total diversion under the right, water use for this portion of the right is determined under a shared water use agreement.)

Point of Diversion

SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 22, Township 7 North, Range 36 E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

Report by: _____
Dan Tolleson
Water Resources Program

_____ Date

If you need this publication in an alternate format, please call 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.

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