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DEPARTMENT OF ECOLOGY
State of Washington

# State of Washington
# *Trust Water Right*
# REPORT OF EXAMINATION
# *Change of Purpose and Point of Withdrawal*

**PRIORITY DATE**
September 15, 1939

**WATER RIGHT NUMBER**
398-D(A)

**MAILING ADDRESS**
Department of Ecology
Eastern Regional Office
4601 North Monroe
Spokane, WA 99205-1295

**SITE ADDRESS (IF DIFFERENT)**

## TRUST WATER RIGHT ATTRIBUTES

### Source
Ground Water – Shallow alluvial aquifer, in hydraulic continuity with Mill Creek

### Quantity Authorized for Withdrawal

| WITHDRAWAL RATE | INSTANTANEOUS QUANTITY (GPM) | ANNUAL QUANTITY (AF/YR) |
|---|---|---|
| | 10.49 | 16.9 |

### Purpose of Use
For the mitigation of outdoor use of water from permit-exempt wells in accordance with WAC 173-532-050(6)

### Source Location

| COUNTY | WATERBODY | WATER RESOURCE INVENTORY AREA |
|---|---|---|
| Walla Walla | Shallow alluvial aquifer | 32-Walla Walla |

| SOURCE FACILITY/DEVICE | PARCEL | TWP | RNG | SEC | QQ Q | LATITUDE | LONGITUDE |
|---|---|---|---|---|---|---|---|
| N/A | | | | | | | |

### Trust Reaches (See Attached Map)
**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**
The place of use of this Trust Water Right will be the gravel/alluvial aquifer within the Walla Walla/Touchet Watersheds.

### Trust Water Right Term

| BEGIN DATE | END DATE |
|---|---|
| January 1, 2014 | Permanent |

## REMAINING WATER RIGHT ATTRIBUTES

**PRIORITY DATE**
September 15, 1939

**WATER RIGHT NUMBER**
398-D(A)

**MAILING ADDRESS**
Cheryl Scholl and Michael Lasher
620 NW 4th Street
Pendleton, OR 97801

**SITE ADDRESS (IF DIFFERENT)**
511 Pearmain Avenue
Walla Walla, WA 99362

### Source

A Well – Alluvial aquifer, in hydraulic continuity with Mill Creek

### Quantity Authorized for Withdrawal

| WITHDRAWAL RATE | INSTANTANEOUS QUANTITY (GPM) | ANNUAL QUANTITY (AF/YR) |
|---|---|---|
| The total quantities authorized for withdrawal under 398-D(A) and 4082-A(A) are limited to 108.07 gpm and 50.48 afy for the irrigation of 13.83 acres. | 30.31 | 15.76 |

### Purpose of Use

30. 31 gallons per minute, 15.76 acre-feet per year for the irrigation of 13.83 acres

### Source Location

| COUNTY | WATERBODY | WATER RESOURCE INVENTORY AREA |
|---|---|---|
| Walla Walla | Alluvial aquifer | 32-Walla Walla |

| SOURCE FACILITY/DEVICE | PARCEL | TWP | RNG | SEC | QQ Q | LATITUDE | LONGITUDE |
|---|---|---|---|---|---|---|---|
| A well | 350726220009 | 7 N. | 35 E. | 26 | NW¼NW¼ | 46.060281 | -118.4092502 Datum: WGS84 |

### Place of Use (See Attached Map)

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

The place of use is limited to 13.83 acres within a parcel # 350726220009 (which is 20.75 acres), and within portions of the NE¼NE¼ and the SE¼NE¼ of Sec. 27, the NW¼NW¼ and the SW¼NW¼ of Sec. 26, all within Township 7 N., Range 35 E.W.M. More specifically described as Blalock Orchards Adjustment Tract, as shown and recorded on SP 4-41, SP 4-53, Book 10, page 144, June 5, 2007, County of Walla Walla, State of Washington. Also Blalock Orchards Cockerline parcel, as shown and recorded on SP4-41, SP4-53, Book 9, Page 167, October 28, 2004, County of Walla Walla, State of Washington.

### Water Right Term

| BEGIN DATE | PROJECT SCHEDULE | END DATE |
|---|---|---|
| Begun | Completed | In use |

## Measurement of Water Use

| | |
|---|---|
| How often must water use be measured? | Weekly |
| How often must data be reported to Ecology? | |
| What volume should be reported? | Total Annual Volume |
| What rate should be reported? | Annual Peak Rate of Withdrawal (gpm) |

## Provisions

Consistent with RCW 90.42.080(1)(a), this Trust Water Right shall be managed by Ecology for the purpose of mitigation of new consumptive permit-exempt well withdrawals, as described in this trust water report.

For Superseding Certificate No. 398-D(A), the combined quantities of water placed into the trust water program and remaining for irrigation shall not exceed 40.8 gallons per minute and 32.66 acre-feet annually.

**Wells, Well Logs and Well Construction Standards**

All wells constructed in the state must meet the construction requirements of WAC 173-160 titled "Minimum Standards for the Construction and Maintenance of Wells" and RCW 18.104 titled "Water Well Construction". Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard must be decommissioned.

All wells must be tagged with a Department of Ecology unique well identification number. If you have an existing well and it does not have a tag, please contact the well-drilling coordinator at the regional Department of Ecology office issuing this decision. This tag must remain attached to the well. If you are required to submit water measuring reports, reference this tag number.

Installation and maintenance of an access port as described in WAC 173-160- 291(3) is required.

**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.

Well water use data shall be recorded weekly and maintained by the landowner for a minimum of five years. The weekly maximum rate of withdrawal and the annual total volume shall be reported to Ecology by January 31$^{st}$ of each calendar year.

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.

**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.

**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 Application for change to 398-D(A), 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**<br>Attn: Appeals Processing Desk<br>300 Desmond Drive SE<br>Lacey, WA 98503<br><br>**Pollution Control Hearings Board**<br>1111 Israel Road SW Ste 301<br>Tumwater, WA 98501 | **Department of Ecology**<br>Attn: Appeals Processing Desk<br>PO Box 47608<br>Olympia, WA 98504-7608<br><br>**Pollution Control Hearings Board**<br>PO Box 40903<br>Olympia, WA 98504-0903 |

Signed at Spokane, Washington, this 18th day of December, 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
Ying Fu, Department of Ecology
Trust Water Right Control # 4667602
Ground Water Certificate No. 398-D(A)

## BACKGROUND

A Trust Water Right Application for Ground Water Declaration Certificate 398-D was submitted by Amanda Cronin of the Washington Water Trust, on behalf of Cheryl Scholl and Michael Lasher, to the Department of Ecology on November 2, 2009. At that time, the applicant proposed to permanently place a portion of the water right into the State Trust Water Program for the purpose of instream flow.

In April 2012, through their consultant Bill Neve, land owners Scholl and Lasher submitted a letter to amend the original application. The amended application proposed to place into trust only the Scholl/Lasher portion of Certificate 398-D, which was subsequently designated by Ecology as Certificate 398-D(A) through an administrative division of Certificate 398-D completed in June 2013. The amended application now proposes the purpose of use of the trust water right to be for mitigation of new outdoor uses from permit exempt wells in accordance with the provisions of WAC 173-532-050(6).

### Description and Proposed Change

Ground Water Certificate No. 398-D was issued in 1947 as an alternate source for surface water rights WWRAC 590 and 731, which authorize diversion of Spring and Mill Creek water for agricultural irrigation. The shallow well for 398-D was constructed in 1939 to a depth of 30 feet and was indicated at the time to be hydraulically connected to nearby springs that empty into Mill Creek.

The subject groundwater right 398-D(A) is appurtenant to a 20.75 acre parcel. Prior to June, 2013, the applicants owned portions of four water rights covering the same place of use: WWRAC 590(B), WWRAC 731(B), 398-D and 4082-A. In request forms for administrative division of all four water rights by all three land owners, Scholl/Lasher claimed zero interest in the two surface water rights. After the administrative division, 398-D(A) became the Scholl/Lasher primary water right. Groundwater Certificate 4082-A(A) became an alternate groundwater right.

The applicant proposes to permanently place the portion of Certificate 398-D(A) that is currently a riparian buffer area into the State Trust Water Program. The applicant proposes to continue irrigating 13.86 acres of land in the existing POU. The land owner had enrolled in Federal funded CREP program (Conservation Reserve Enhancement Program) from 2001 to 2011. The Walla Walla Conservation District estimated that 4.7 acres out of the 5.9 acres under CREP contract were historically irrigated prior to the enrollment in that program.

The land owner also filed change applications in June of 2006, to add a well to the original Certificate 398-D and the alternate supply groundwater right Certificate 4082-A. The new well was drilled in December of 2006, but it has not been used pending approval from Ecology. A separate ROE will discuss in detail the change of POW.

Tables 1 and 2 below summarize proposed changes of the two Scholl/Lasher certificates:

**Table 1 Proposed Point of Withdrawal Change**

| Water Right | Original POW | Proposed POW | New Well GPS Reading | |
|---|---|---|---|---|
| 398-D(A) | SE¼SE¼ Sec. 22, T7N, R35EWM | Within SW¼SW¼ or NW¼NW¼ of Sec.26, T7N,R35EWM | 46.0602816 | -118.4092502 |

**Table 2 Proposed Trust changes**

| Water right | Superseding Certificate | Proposed Trust | Remaining Water Right |
|---|---|---|---|
| 398-D(A) | Qi: 40.8 gpm<br>Qa: 32.66 afy<br>Acres: 20.41 | Qi: 0<br>Qa: 17.16 afy<br>Acres: 4.7 | Qi: 40.8 gpm<br>Qa: 15.53 afy<br>Acres: 13.86 |
| 4082-A(A) | Qi: 77.76 gpm<br>Qa: 77.76 afy<br>Acres: 19.44 | | Qi: 77.84 gpm<br>Qa: 35.06 afy<br>Acres: 13.86 |
| **Total:** | **Qi: 118.56 gpm**<br>**Qa: 77.76 afy**<br>**Acres: 20.41** | | **Qi: 118.7 gpm**<br>**Qa: 50.59 afy**<br>**Acres: 13.86** |

## Project Description

In November 2009, Washington Water Trust representing an owner of Certificates 398-D and 4082-A, submitted a Trust Water Application to Ecology, proposing to permanently place a portion of the water rights into the state trust water program. The Washington Water Trust had negotiated a contract with the landowners to purchase the portion of the ground water rights that were in an established riparian buffer area along Mill Creek.

Superseding Certificate No. 398-D(A) authorizes the withdrawal of water from a gravel aquifer well in the amount of 40.8 gallons per minute, 32.66 acre-feet per year, for the irrigation of 20.41 acres. The land and water right owners proposed to place 17.16 acre-feet per year and 4.7 acres of the right into Trust. They proposed to retain 15.53 acre-feet and all 40.8 gallons per minute for continued irrigation of their land.

Acquisition of the water rights were to be funded by Department of Ecology to help seed the Walla Walla permit exempt well mitigation bank.

The purpose of putting water into trust is for the sole purpose of mitigation of outdoor water use from permit exempt wells drawing water from the shallow alluvial aquifer during the period of May 1 to November 30 each year. The annual quantity for the outdoor use of each permit exempt well is to be 0.55 acre-feet per year.

The previous land owner had enrolled in 2001 in the federally funded CREP program (Conservation Reserve Enhancement Program) for a 10-year term. The Walla Walla Conservation District estimated that 4.7 acres of the 5.9 acres under CREP contract had been irrigated prior to enrollment in the program.

The land owner also filed change applications in June of 2006, to add a well to the original certificates 398-D and 4082-A. The well would be the only source well for both rights. The new well was drilled in December 2006.

The Walla Walla River Basin provides habitat for steelhead and bull trout, two salmonid species listed as threatened under the Endangered Species Act (ESA). Walla Walla basin surface waters are over appropriated, in that most years during the summer there is insufficient water in the stream to fill those water rights that are already appropriated. Significant amounts of time, effort and money have been invested within this basin by local, state, federal and tribal interests to restore and preserve habitat conditions for these species. Instream flow has been identified as a primary limiting factor to species recovery in multiple water related plans which have been completed for this basin in recent years, including the Bonneville Power Administration Sub-basin Plan, Snake River Region Salmon Recovery Plan, and the Walla Walla Watershed Plan. These plans are being implemented to improve instream flows in the basin, or at a minimum, to prevent further degradation of stream flows. Placing these water rights into the Trust Water Program will mitigate the impacts of new withdrawals of ground water from some new permit exempt wells, thereby preventing further reduction in stream flows.

**Legal Requirements for Proposed Change**

The following is a list of requirements that must be met prior to authorizing the proposed change from irrigation to mitigation for groundwater pumping from new permit exempt wells.

- **Public Notice**

  A notice of application was duly published in accordance with RCW 90.42.040(5)(c) in the Walla Walla Union Daily Bulletin on December 13th, and December 20th, 2012, for the trust water project. No protests or objections were received.

- **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.

  - It is a surface water right application for more than 1 cubic feet 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;
  - It is a groundwater right application for more than 2,250 gallons per minute;
  - It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;

- 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);
- 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.

This application does not meet any of these conditions, and is therefore categorically exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21C RCW.

- **Water Resources Statutes and Case Law**

Trust water rights are governed statewide by RCW 90.42 and in the Yakima Basin by RCW 90.38. The statutes limit the portion of a water right eligible for transfer to the Trust Water Program (TWRP) to the extent the water right was exercised in the five years prior to application. A water right accepted into the TWRP may not be enlarged. When a portion of a water right is accepted into TWRP, the portion remaining with the landowner and the portion in trust combined may not exceed the greatest amount exercised within the last five years before application. Any trust water right found to impair an existing water right will be modified to prohibit impairment.

This application is subject to legal requirements in statute, administrative rules, and relevant case law which must be considered prior to issuance of the requested change(s). Among these legal requirements:

- 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 90.03.380(1) states that a purpose of use may be added to a water right if the annual consumptive quantity is not increased. The annual consumptive quantity is the average of the two highest years within the most recent five-year period of ongoing beneficial use of the water right.

**Attributes of the Existing Water Right and Proposed changes**

**Table 3 GW 398-D(A) Existing Attributes and Proposed Changes**

| Attributes | Existing | Proposed Trust Water Right | Remain with the Original Right |
|---|---|---|---|
| Name | Cheryl Scholl/Michael Lasher | Department of Ecology Trust Water Program | Same |
| Priority Date | September 15, 1939 | same | Same |
| Instantaneous Quantity: gpm | 40.8 | 0 | 40.8 |
| Annual: Qa (acre-feet/yr) | 32.66 | 17.16 | 15.53 |
| Purpose of Use | Irrigation | Mitigation | Irrigation |
| Place of Use: acres | 20.41 | 4.7 | 13.86 |
| Point of Withdrawal | SE¼SE¼ Sec. 22, T7N, R35EWM | N/A | NW¼NW¼ Sec.26,T7N,R35EWM |

## INVESTIGATION

Reports and materials considered during the course of this investigation include the following:

- Change applications for GW 398-D(A) and trust water application 398-D(A).
- State Water Code (RCW 90.03), and State Ground Water Code (RCW 90.44), Trust Water Code (RCW 90.42) and RCW 90.14, and administrative rules and policies, relevant case law.
- Other water rights in the vicinity of that proposed for change.
- Notes documenting three site visits by Ying Fu and other Ecology WRP staff, memos and correspondences from applicant's consultant.
- Washington Irrigation Guide (WIG.)
- Aerial photographs when they are available for the past 10 years.
- USGS topographic maps.
- Farm Service Administration crop records.
- Walla Walla County Assessor records.
- Discussions with other Ecology staff in the ERO Water Resources Program.

**Site Inspection**

The project site is located approximately one mile west of the City of College Place and four miles west of the City of Walla Walla. The site is along Mill Creek, a tributary to Walla Walla River in Walla Walla County, Washington.

The first field exam was conducted by Ying Fu on March 25, 2010. Amanda Cronin, the land owner Cheryl Scholl and Bill Neve (water master for Walla Walla region, and an Ecology employee at the time) were present during the site visit. A walk through of the field was conducted. The wells for water right No. 398-D and No. 4082-A (prior to the administrative division) were examined. Well pumping data had been recorded, but were not available on the day of the site visit. At that time, the irrigation system was set up to automatically shift pumping between Mill Creek and the well. During spring high water period, the pumping was mainly from the Mill Creek. Mid or late spring, or early summer, the source pumping alternated between surface and ground water. Later in the summer, pumping was predominantly or entirely from the well.

Because of the alternating source system, it is very difficult to identify the source of water pumped from the pumping record, and it is even more difficult to separate the data for one land owner when the total of approximately 100 acres were farmed together by a contract farmer for all three land owners during those years.

The GPS measurements were taken at the well sites of 398-D and 4082-A (original POWs). The Mill Creek diversion point (for surface rights WWRAC 590(B) and 731(B)) was also examined during the site visit. Since landowners Scholl/Lasher no longer have any interest in the two surface rights, discussion of those two rights will not be necessary in this ROE.

The 4.7 acres of riparian buffer area along Mill Creek on Cheryl Scholl's property were visited. Trees, shrubs, grapes and grass were planted and were well established and growing nicely at the time of the site visit. The CREP program had certified the riparian buffer area as a functioning buffer in a NRCS document.

A second field visit was conducted by Ying Fu on February 11, 2011. Amanda Cronin was also present. The site visit concentrated on discussion of complications of this trust project at the time, including concerns about other pending change applications filed by the applicant and other land owners sharing the same two surface water rights and two ground water rights within the same place of use. The uncertainty at the time was that this Trust Project needed to be combined with all the pending change applications, and the two surface water rights might also need to have applications filed for Trust, because the two surface rights were primary rights and the two groundwater rights were alternate source rights. In addition, signatures from all land owners had not yet been obtained on the Trust applications.

A third field examination was conducted by Ying Fu, Dan Tolleson and Jeff MacLennan on July 12, 2012. They met all five land owners and water right holders at the time. Bill Neve (private consultant for the land owner at the time) was also present to help organize the meeting. The contract famer, Mr. Ted Reid, was also present. The meeting was concentrated on discussions of all pending change applications for WWRAC 590(A), (B) and (C), and WWRAC 731(A), (B) and (C) and Ground Water Rights 398-D and 4082-A. The group discussed the possibility of splitting the B portion of the two surface water rights, and the two ground water rights into three sub portions during the ROE (Report of Examination) process. Some ideas from this site visit later led to the decision, in 2013, to submit requests for administrative divisions of WWRAC 590(B) and WWRAC 731(B) and 398-D and 4082-A.

Neighbor Mr. Richard Czyhold had farmed approximately 100 acres including the subject project site from the 1980s to 2006. From 2007 to 2012, the crop land was contracted to Ted Reid. Cheryl Scholl and Richard Czyhold provided copies of historical Farm Services Agency (FSA) crop records. FSA records

submitted from 1998 to 2010 show crops have been rotated. They include pasture, alfalfa, wheat, barley, and oats. Dan Tolleson took a GPS reading for the existing well (installed in 2006) on the Cheryl Scholl/Michael Lasher property, as 46.0602816; -118.4092502.

**Other Water Rights Appurtenant to the Place of Use**

A review of Ecology records was conducted for existing water rights surrounding the project's place of use. The search focused primarily on Sections 26 and 27, Township 7 N., and Range 35 E.W.M. where the Scholl/Lasher parcel occupies approximately five acres (in Sec. 27) , and 15.75 acres (in Sec. 26). The Table below lists those water rights that overlap some of the place of use of Superseding Certificate 398-D(A).

**Table 4 Summary of Water Rights Overlapping POU with 398-D(A)**

| Water right # | Priority date | Recorded name | Purpose of use | Source water | Place of use |
|---|---|---|---|---|---|
| 4082-A(A) | Feb. 8, 1960 | Scholl/Lasher | Irrigation | Same well | Same as 398-D(A) |
| G3-29617 | Jan. 24, 1994 | Blalock Orchard District No. 12 | Municipal | A well | 70 connections in Service area |
| WWRAC 396 | 1892 | Blalock Irrigation District No. 3 | Irrigation | Mill Creek | 369.66 acres within the District |
| WWRAC 621 | 1904 | | Irrigation | Mill Creek | 247.44 acres within the District |
| WWRAC 636 | 1904 | | Irrigation | Spring branch | 14.1 acres within the District |
| WWRAC 649 | 1904 | | Irrigation | Lower Butcher Creek | 5 acres within the District |

4082-A(A): This is a ground water right that is supplemental (additive quantities) to 398-D(A), and is appurtenant to the same place of use.

G3-29617: This is a municipal water right. The Blalock Orchard District #12 provides domestic water to 70 connections. The added new well for the subject project will not interfere with the Water District water usage. The two source wells are about ¾ mile apart.

WWRAC 396, 621, 636, 649: These four adjudicated surface water rights belong to the same water right holder: Blalock Irrigation District #3. Their combined irrigated acres are approximately 500 acres and overlap with the POU of 398-D(A). The District diverts water from different surface water sources. The changes proposed in this ROE to the subject water right will not interfere, or have any impact to the District's ability to provide water to its customers.

**History of Water Use**

Historically, the current 20.75 acre parcel owned by Scholl/Lasher was owned by Scholl's uncle, Don Scholl, and was part of a much bigger parcel that was farmed by neighbor Richard Czyhold from the

1980s to 2006. Crop records at FSA for 1998 (the earliest available record) to 2010 have been submitted by Richard Czyhold. Crops have been rotated; they included pasture, alfalfa, wheat, barley and oats.

In 2001, 5.9 acres of the 20.75 acres of land adjacent to Mill Creek were entered into the CREP program. The CREP contract expired in 2011. Of these 5.9 acres, approximately 4.7 acres of riparian buffer area were previously farmed within the current Scholl property. 1.2 acres of the 5.9 acres in the riparian buffer area were not farmed. Water previously used to irrigate these 4.7 acres is proposed to be placed into the State of Washington Trust Water Right Program.

From 2006 to 2012, the approximate 14.85 (20.75-5.9 = 14.85) remaining acres of land was contracted out to farmer Ted Reid. Cropping records are also available for this period. Surface water is used first under water rights WWRAC 590(B) and 731(B), during spring when water is available in Mill Creek. During late spring or early summer when Mill Creek is low, Ground Water Rights 398-D and 4082-A are exercised. The surface water rights have been historically regulated on regular basis (according to previous Ecology water master Bill Neve for the area), in this stretch of the river. For reasons previously discussed, water usage for this project will be evaluated based on cropping records on the parcel subject to this project. It can be concluded from the three field investigations, statements from contract farmers, and the cropping records, that water has been historically put to beneficial use.

**Trust Water Right Calculation**

According to RCW 90.03.380 and RCW 90.42.080(4), the extent and validity analysis for a water right proposed to be placed into Trust is performed on the most recent five years of beneficial use prior to submittal of the trust application. The trust applications for Certificates 398-D and 4082-A were submitted in 2009 and 2010, respectively. Therefore the evaluation periods would be for the years from 2004 to 2008.

However, the 4.7 acres of land in the riparian buffer area were not irrigated between 2001 and 2011 when the CREP contract was in effect. Therefore, the five years of nonuse between 2004 and 2008 is excused in accordance with RCW 90.14.140 and RCW 90.42.080(10). The evaluation period for this trust is the most recent five years before the CREP contract became effective in 2001. Therefore, the beneficial use analysis for the trust application is from 1996 to 2000.

Records available for the five year evaluation period from 1996 to 2000 include: FSA cropping records from 1998 to 2000 (there is no FSA record prior to 1998), 1996 Ecology black/white aerial photo (there are no aerial photos from 1997 to 2000), and the statement in the applicant's 2009 trust application that stated, "The area that was planted in riparian buffer was formerly irrigated alfalfa until the plantings were installed in 1997." Table 5 summarizes the available records from 1996 to 2000:

**Table 5 Crop Records from 1996 to 2000**

| Year | Crop | Acres | Crop | Acres |
|---|---|---|---|---|
| 1996 | Alfalfa | 18.46 | ? | ? |
| 1997 | Alfalfa | ? | ? | ? |
| 1998 | Wheat | 17.8 | Grape | 1.9 |
| 1999 | Wheat | 18.0 | Grape | 1.5 |
| 2000 | Wheat | 18.5 | Grape | 1.0 |

In Table 5, it is determined that alfalfa planted in 1996 is the highest water duty during the 5 year evaluation period. It is not clear how many acres of alfalfa were planted in 1997 because both aerial photos and FSA records were not available for that year. From the 1996 aerial photo, the digitized area of irrigated land shows a maximum of 18.46 acres (see map below). The irrigated acres include part of the proposed POU acres for the trust program. Therefore 18.46 acres of alfalfa crop will be used to determine the beneficial use of water for trust evaluation.

$$(\text{Crop acres} \times \frac{[1]\text{Crop water need}}{12 \text{ inch/1ft}} / {}^{[2]}\text{Ea}) = __?__ \text{AF (acre-feet)}$$

[1] The specific crop water need is based on Washington State Irrigation Guide 2010.
[2] The application efficiency Ea is determined in Ecology guidance document GUID-1210.

For the project site at Walla Walla County, the annual water need for alfalfa is 32.85 inches (WSIG). The application efficiency is estimated to be 75% assuming handline sprinklers for the alfalfa field. Using the equation above, the estimate of water usage for the year 1996 is as follows:

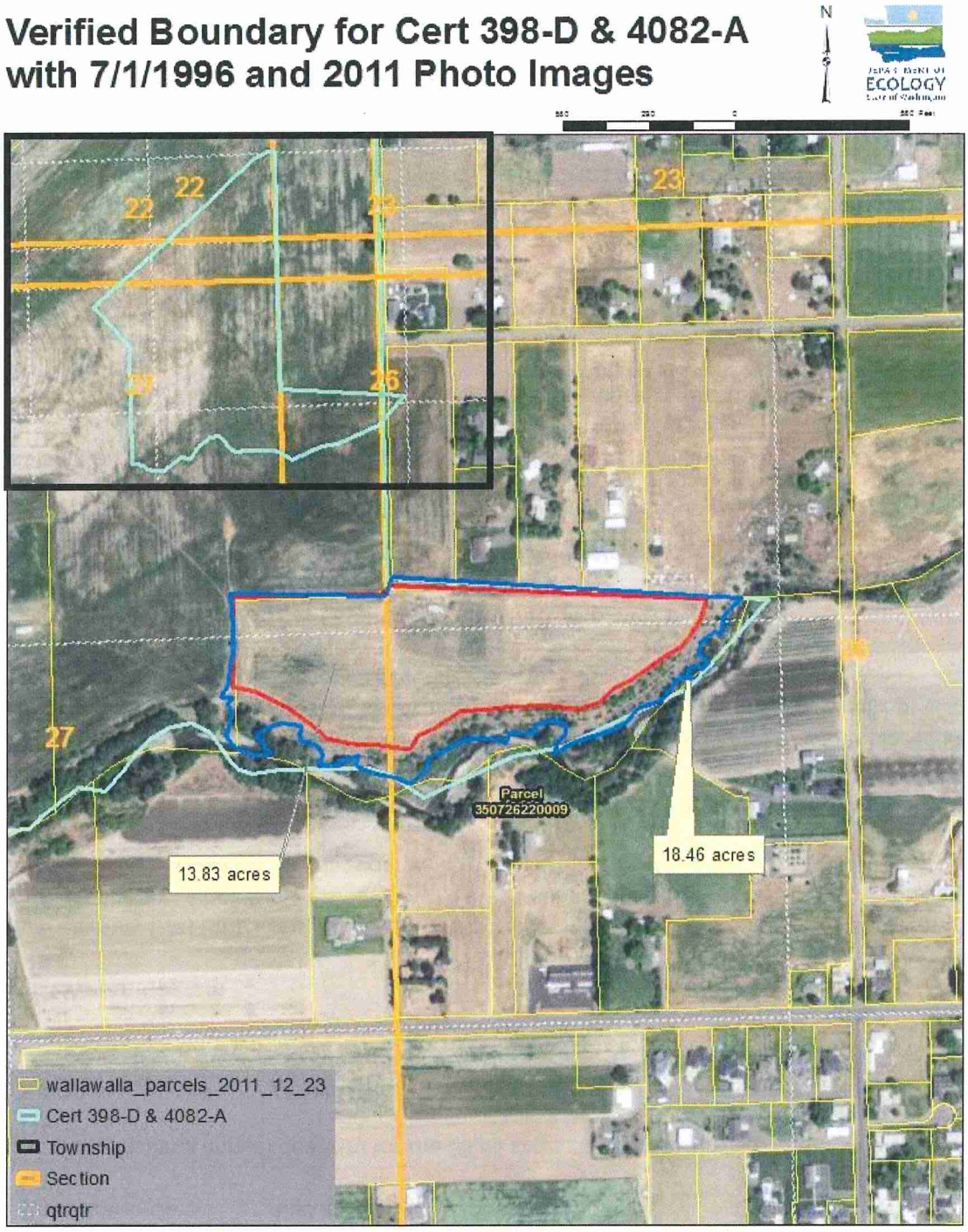
18.46 x (32.85/12)/75% = 67.38 acre-feet

Meter records or power records for this instantaneous withdrawal were not available. From discussions with the applicant and the contract farmer who operated the irrigation system for the combined 100 acres at the time, it is reasonable to assume that the full instantaneous pumping rate of 118.56 gallons per minute authorized under Certificate 398-D(A) and the supplemental Certificate 4082-A(A) was utilized.

A tentative determination of the extent and validity of Certificates 398-D(A) and 4082-A(A) is therefore 118.56 gpm, and 67.38 acre-feet per year for the irrigation of 18.46 acres. The difference between this tentative determination and the total annual quantity (77.76 ac-ft) allocated in the original two ground water rights is considered relinquished due to nonuse (RCW 90.14.180). This relinquished annual quantity will be deducted from the supplemental right 4082-A(A).

77.76 ac-ft - 67.38 ac-ft = 10.38 ac-ft

# Verified Boundary for Cert 398-D & 4082-A with 7/1/1996 and 2011 Photo Images



**Qa for Trust Water Program**

From aerial photo digitization (Figure 2 above), it is estimated that 4.63 acres in the riparian buffer area are qualified for Trust calculation of Qa:

Trust Water Qa: 4.63 x (32.85/12)/75% = 16.9 ac-ft

Therefore, the remaining annual quantity for the 13.83 acres the applicant will continue to irrigate is:

Remaining Qa: 67.38 ac-ft – 16.9 ac-ft = 50.48 ac-ft

**Qi for Trust Water Program**

The annual quantity (Qa) for trust is 16.9 ac-ft. The corresponding Qi value can be calculated from the correlation parameter: 448.8 GPM = 1.98 acre-ft/day. Assuming the reserved trust water is flowing 24 hours per day, 7 days per week, 365 days per year, the Qi is therefore:

Trust Water Qi: 16.9 ac-ft /1.98 ac-ft/day x 448.8 gpm / 365 days = 10.49 gpm

The annual quantity (16.9 acre-feet) and the instantaneous quantity (10.49 gpm) of water placed into Trust is deducted from primary water right Certificate 398-D(A). The trusted quantities will not also be deducted from supplemental Certificate No. 4082-A(A).

The remaining primary irrigation right 398-D(A) is therefore as follows:

Qa: 32.66 ac-ft – 16.9 ac-ft = 15.76 acre-feet/year
Qi: 40.8 gpm – 10.49 gpm = 30.31 gpm

The remaining supplemental irrigation right 4082-A(A) is therefore as follows:

Qa: 50.48 acre-feet/year (less any water withdrawn under 398-D(A))
Qi: 77.76 gpm

## Irrigated Acres

18. 46 acres were determined to be the irrigated acres from the 1996 digitized aerial photo, and 4.63 acres were determined to be qualified to be placed into the Trust Water Program. The remaining irrigated acres for the applicant therefore are:

18.46 acres – 4.63 acres = 13.83 acres

The cropping data submitted by the applicant are consistent with the CREP contract requirement from 2002 to 2011. It was close to the calculation above of the remaining irrigated acres of land (see Table 6 below):

**Table 6 Acres planted post CREP Program from 2002 to 2011**

| Year | Crop | Acres | Crop | Acres |
|---|---|---|---|---|
| 2002 | Alfalfa | 13.86 | | |
| 2003 | Alfalfa | 13.86 | | |
| 2004 | Alfalfa | 13.86 | | |
| 2005 | Alfalfa | 13.86 | | |
| 2006 | No records | ? | | |
| 2007 | Alfalfa | 13.86 | | |
| 2008 | Wheat | 13.86 | | |
| 2009 | Wheat | 13.86 | | |
| 2010 | Wheat | 11.9 | Pasture | 1.9 |
| 2011 | Alfalfa | 13.86 | | |

Therefore the remaining place of use and the irrigated acres for Water Rights 398-D(A) and 4082-A(A) will be:

POU: 20.75 acres – 5.9 acres (under CREP contract) = 14.85 acres
Irrigated: 18.46 acres – 4.63 acres (qualified for trust) = 13.83 acres

The final Trust Water Right and the remaining two water rights remaining for irrigation are shown in the following table:

**Table 7 Original, Trust Water and Remaining Water Rights Distribution**

| Water Right | Superseding Certificate Quantity | Relinquished Quantity | Trust Water Program Quantity | Remaining Right Quantity |
|---|---|---|---|---|
| 398-D(A) | Qa: 32.66 ac-ft<br>Qi: 40.8 gpm<br>Parcel: 20.75 acres<br>Irri area: 20.41 acres | Qa: 10.38 ac-ft<br>Qi: 0 | Qa: 16.9 ac-ft<br>Qi: 10.49 gpm | Qa: 15.76 ac-ft<br>Qi: 30.31 gpm<br>POU: 14.85 acres<br>Irri: 13.83 acres |
| 4082-A(A) | Qa: 77.76 ac-ft<br>Qi: 77.76 gpm<br>POU: 20.75 acres<br>Irri. area: 19.44 acres | | | Qa: 50.48 ac-ft (less any water withdrawn under 398-D(A)<br>Qi: 77.76 gpm<br>POU: 14.85 acres<br>Irri: 13.83 acres |
| Total | Qa: 77.76 ac-ft<br>Qi: 118.56 gpm<br>Irri area: 20.41 acres | | | Qa: 50.48 ac-ft<br>Qi: 108.07 gpm<br>Irri.: 13.83 acres |

## Purpose of Proposed Trust Water Use

This trust water right will be used for mitigation of outdoor water use from new permit exempt wells, drilled in the gravel aquifer, within the Walla Walla River Watershed (WRIA 32). The emphasis for this proposed trust water purpose of use is on the annual quantity available for mitigation during the May 1 to November 30 period required in the Basin Management Rule (WAC 173-532-050(6)). Because this trust water will mitigate new groundwater pumping, a sufficient instantaneous withdrawal Qi must be associated with the annual quantity. The quantities of water determined to be placed into Trust are 16.9 acre-feet per year and 10.49 gallons per minute. More details are listed in Table 5.

## Hydrologic/Hydrogeologic Evaluation

John Covert, Ecology Eastern Regional lead Hydro-geologist, provided the following analysis of ground and surface water in the project area:

The original well (398-D) authorized for use is located within the SE¼SE¼ Section of 22, T7N and R35EWM. It was dug in 1939 to a depth of 30 feet. It was completed in a water bearing gravel. It had a static water level of 12 feet. The new well, located within the NW¼NW¼ Section of 26, T7N and R35E, was drilled in 2006 to a depth of 78 feet. It was completed in unconsolidated sands and gravels. It had a static water level of 14 feet. Both wells are completed in the gravel aquifer of the Walla Walla basin and are completed within the same body of public groundwater.

The well proposed to be authorized for use is located approximately 1500 to 2000 feet from Mill Creek, which is a tributary to the Walla Walla River. All of the water rights to these streams were adjudicated in the early 1900's, indicative of the long history of water shortages during the primary irrigation season for this basin. According to amended WAC 173-532 for WRIA 32 in 2007, Ecology established instream flow rules and a closure to new consumptive appropriations on the Walla Walla River and its tributaries. Through this rule, instream flows were adopted on Mill Creek for the reach of stream in which the proposed change would take place {WAC 173-532-030(5)}. Based on the hydrogeology of the basin, gravel aquifers are hydraulically connected to surface waters in the basin WAC 173-532-040. This rule also requires that these instream flow water rights be protected from impairment by all future changes and transfers of both senior and junior water rights {WAC173-532-030(3)}.

Mill Creek originates in the Blue Mountains in the State of Oregon and flows in a northwesterly direction, crossing into Walla Walla County, Washington. Mill Creek is the principal tributary of the Walla Walla River and furnishes a large part of the water supply for the irrigation of lands in the project area.

Approval of the proposed change would authorize a change in the POW for 398-D(A) that was made seven years ago in December 2006. The trust water would be used for the purpose of mitigation in WRIA 32 watershed, during the May 1 to November 30 period required in the Basin Management Rule (WAC 173-532-050(6)).

**Trust Water Place of Use**

The place of use for this Trust Water Right will be the gravel/alluvial aquifers within the Walla Walla/Touchet Watersheds. This Trust Water Right would be used for mitigation of new exempt wells, drilled in the gravel aquifer, within areas zoned for the density of one residence per ten acres or more within the Wall Walla River Watershed.

If this trust water right is not fully utilized for the above desired mitigation purpose, it would benefit instream flows in Mill Creek. The reaches influenced from the creation of the proposed Trust Water Right would be from Mill Creek in the NW¼NW¼ Section of 26, T7N and R35E, downstream to the Walla Walla River. Based on the hydrogeology of the basin, gravel aquifers are hydraulically connected to surface waters in the basin.

**Trust Water Management**

Consistent with RCW 90.42.080 and WAC 173-532-050, the purpose of this Trust Water Right is to offset, or mitigate, outdoor use of water from new permit-exempt wells drilled in the gravel aquifer in high density areas of WRIA 32. This mitigation "bank" will be managed jointly by Ecology and Walla Walla County. All persons drilling new exempt wells in WRIA 32 with the intent to use water outdoors from gravel aquifer wells located within areas zoned at a minimum of one home per ten acres will be required to have mitigation in place prior to that use, and will also be required to install a meter with which to record and report their water withdrawals.

## FINDINGS

**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) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150).

The proposed trust water has been evaluated as to the potential for impairment to existing water rights in the area. The water retained for the future mitigation purpose of the trust water right was based on historical consumptive use quantity, and will not be a new appropriation, and therefore no impairment of any water right will occur.

398-D(A) and supplemental groundwater right 4082-A(A) have been exercised at the current place of use since the 1980s based on known records. The change application for the subject water right was originally submitted to obtain authorization for a new source well for certificate 398-D. The amended application now applies solely to administratively split superseding certificate 398-D(A). Past irrigation practice and withdrawal and beneficial use of water under this right has not caused any impairment to other water users in the vicinity, so exercise of the right in a similar manner should not cause impairment of any water rights in the future.

**No Enhancement of the Original Certificate**

No withdrawal of water over and above what has been historically put to beneficial use would be authorized through approval of this change. Total quantity of water put into trust and that portion remaining for irrigation will not exceed the greatest use within the last five (5) years of water use nor will the total exceed the historical extent of the water right.

## Consideration of Protests and Comments

No protests or comments regarding this application were received.

**CONCLUSIONS**

It is the conclusion of this examiner that, in accordance with Chapter 90.42 RCW and RCW 90.03.380, this application for trust water right under superseding Ground Water Declaration Certificate 398-D(A) will not impair existing water rights, is a beneficial use of water, will not enlarge the right originally conveyed by the certificate, and is not detrimental to the public interest.

1). **Tentative Determination of Extent and Validity:** Superseding ground water right 398-D(A), (a portion of the original certificate 398-D) and supplemental groundwater right 4082-A(A) have been historically beneficially used. During the 5-year period from 1996 to 2000, the extent of the two rights has been determined to be 118. 56 gallons per minute and 67.38 acre-feet per year for the irrigation of 18.46 acres.

10.38 acre-feet per year of original Certificate 4082-A(A) has been determined to be relinquished for non-use in accordance with RCW 90.14.160.

2). **No Impairment of Existing Water Rights**: 398-D(A) and the supplemental right 4082-A(A) share the same body of water source, and share the same authorized place of use. The newly authorized quantities for 398-D(A) are Qi: 30.31 gpm and Qa: 15.76 ac-ft per year. The new point of withdrawal is only approximately 1,000 feet from the existing POW, therefore approval of the proposed change will not impair any existing water rights.

3). **Trust Water Right Attributes and the Remaining Water Right for 398-D(A)**: The validity and extent analysis indicates the historical highest beneficial use of Superseding Certificates 398-D(A) and 4082-A(A) has been 67.38 acre-feet per year, and the quantity of acres qualified to be placed into trust is 4.63 acres. From Table 5, the Trust Water Attributes and the Remaining Water Right for 398-D(A) can be summarized as following:

**Table 7 Trust Right Attributes and Remaining Right for 398-D(A)**

| GW 398-D(A) | Qa (ac-ft/yr) | Qi (gpm) | POU (acres) | Irrigated (acres) |
|---|---|---|---|---|
| Trust Water | 16.9 | 10.49 | | |
| Remaining Right | 15.76 | 30.31 | 14.85 | 13.83 |

## RECOMMENDATIONS

Based on the above investigation, analysis and conclusions, I recommend that the request for change in point of withdrawal be approved; the request for placing a portion of the subject water right into trust program be approved, and upon approval of change ROEs, superseding certificates be issued according to the new allocations as follows:

**Point of Withdrawal**:

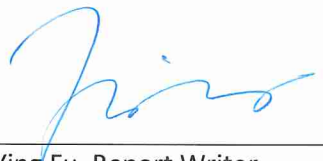
Township 7N; Range 35E; Section26 with NW¼NW¼; Latitude:46.0602816 and Longitude:-118.4092502.

**Trust and Remaining Water Right**:

| | Qi (gpm) | Qa (ac-ft/yr) | Acres |
|---|---|---|---|
| Trust Water Attributes: | 10.49 | 16.9 | |
| 398-D(A) remains: | 30.31 | 15.76 | 13.83 (irrigated) |

**Water Withdrawal Measurement and Water Use Reporting**

Water use data shall be recorded weekly and shall be submitted annually to Ecology by January 31st of each calendar year for metering data of previous year. At a minimum, the following information shall be included with each submittal of water use data; owner, contact name if different, mailing address, daytime phone number, WRIA, Permit or Certificate No., source name, annual quantity used including units, maximum rate of diversion including units, and period of use. In the future, Ecology may require additional parameters to be reported or more frequent reporting.



12/18/13

Ying Fu, Report Writer — Date

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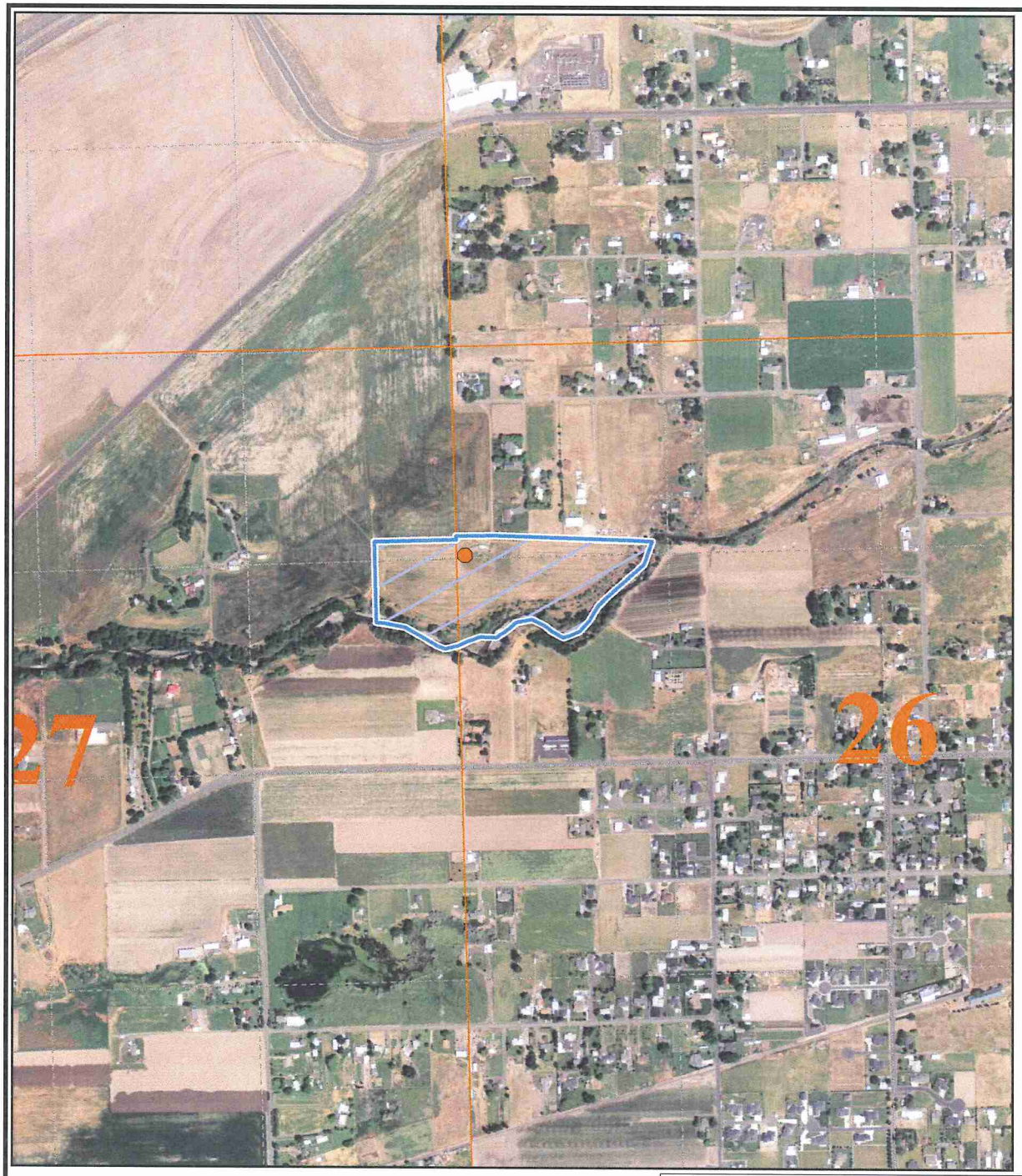
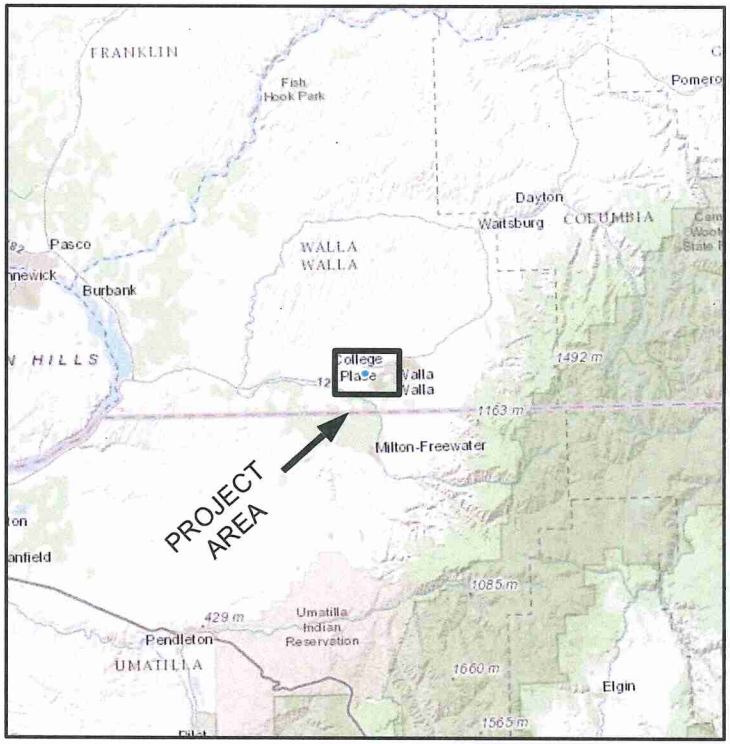
WA Dept of Ecology
Cheryl Scholl and Michael Lasher
398-D(A)
T07N/R35E




Basemap - (ESRI US Topographic Maps)

**Legend**

**Authorized Place of Use**

Townships

Sections

0 330 660 1,320 1,980 2,640 3,300 Feet

Basemap - (NAIP 2011 1m color)

DEPARTMENT OF ECOLOGY State of Washington

Map Date: 12/6/2013

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ATTACHMENT 1