File NR CS4-00389C(A)@1
WR Doc ID 4669128

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
AMENDED REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Change Place of Use
Add Point of Diversion

PRIORITY DATE
August 19, 1929

WATER RIGHT NUMBER
Superseding Certificate No. S4-00389C(A)

CHANGE APPLICATION NUMBER
CS4-00389C(A)@1

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

Total Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AC-FT/YR)
1.24	CFS	203.4

Purpose

	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AC-FT/YR)		
PURPOSE	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	PERIOD OF USE (mm/dd)
Irrigation	1.24		CFS	203.4		04/15-10/15

REMARKS: This change authorization is part of a water swap in which JD Land is transferring a portion of Certificate No. 389 (which is non-interruptible) downstream to Aston Irrigation Association (AIA). In exchange, JD Land is receiving water from AIA under Change Authorization No. CS4-24234C@2 (an interruptible right).

IRRIGATED ACRES	
ADDITIVE	NON-ADDITIVE
62.6 acres (3.25 ac-ft/acre)	

Source Limitations

SOURCE FACILITY/DEVICE	DIVERSION RATE	ANNUAL QUANTITY (AC-FT/YR)	PERIOD OF USE (mm/dd)
AIA Diversion	**1.24**	**203.4**	04/15 - 10/15

1,280 feet South and 15 feet West from the Northeast Corner of Section 36, T. 34 N., R. 26 E.W.M.

Source Location

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

SOURCE FACILITY/DEVICE	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
OKANOGAN RIVER	34N	26E	36	NENE	48.40610	-119.49539 Datum: NAD83/WGS84

Place of Use (See Map: Attachment 1)

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

The W½ of Section 30, and the NW¼ of Section 31 lying north of the Okanogan River, all in T. 34 N., R. 27 E.W.M., Okanogan County, Washington.

Proposed Works

AIA's point of diversion is served by a 20-hp centrifugal pump and water is conveyed north to two, 75-hp booster pumps that work independently and are separately metered. The east booster pump is in use when the demand is approximately 750 gpm (1.67 cfs). The west booster pump, installed with a variable frequency drive, is in use when the demand less. When demand is above 750 gpm, both pumps operate to provide 850 gpm (1.89 cfs). The surface water pumped from the booster pumps flows through the main flow meter located approximately 1,000 feet north of the booster pumps, the total system usage is metered and then the water is delivered to multiple parcels for residential irrigation. The irrigation system is separate from the in-house water, which is supplied by a local groundwater source. Each parcel is individually metered.

Development Schedule

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

Measurement of Water Use

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

Provisions

Total Use Limitations

AIA is authorized to divert a total of 2.57 cfs, 463.20 ac-ft/yr based on the combination of this authorization and their remaining portion of Certificate No. S4-24234C and Certificate No. 755. When minimum flows at the Malott station have not been met (WAC 173-549-020), AIA's total diversion is limited to 1.7 cfs, 295.4 ac-ft/yr. (See Appendix 2 for a summary of the surface rights for JDLA and AIA.)

Measurements, Monitoring, Metering and Reporting

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

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

The entire opening of the diversion intake shall be tightly screened at all times with wire mesh having openings with dimensions not greater than 0.125 (1/8) inches. Water approach velocity to the screen shall be less than 1 foot per second and approaching 0.5 foot per second, as measured one (1) foot in front of the screen.

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.

Department of Fish and Wildlife Requirement(s)

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

Easement and Right-of-Way

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

Water Use Efficiency

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

Proof of Appropriation

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

Schedule and Inspections

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

Real Estate Excise Tax

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

Findings of Facts

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

Therefore, I ORDER the requested change to the place of use and adding a point of diversion under Change Application No. CS4-00389C@1 be APPROVED subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

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

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW Ste 301 Tumwater WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia WA 98504-0903

Signed at Yakima, Washington, this 4 day of OCTOBER 2012.

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

For additional information visit the Environmental Hearings Office Website: http://www.eho.wa.gov. To find laws and agency rules visit the Washington State Legislature Website: http://www1.leg.wa.gov/CodeReviser.

INVESTIGATOR'S REPORT

BACKGROUND

Description and Purpose of Proposed Change

Aston Irrigation Association (AIA), and JD Land Associates (JDLA) have requested to swap a portion of their surface water rights from the Okanogan River. On February 11, 2010, JDLA submitted Application No. CS4-00389C(A)@1 to transfer 1.24 cfs, 203.4 ac-ft to AIA. On February 11, 2010 AIA submitted Application No. CS4-24234C@2 to transfer 1.02 cfs, 167.04 ac-ft to JDLA. JDLA's water right is senior to minimum flows established on the Okanogan River (WAC 173-549-020). Therefore, this swap would allow AIA to divert water when they would otherwise be interrupted. Figure 1 shows the relative locations of the proposed changes.

Figure 1: The existing places of use and points of diversion involved in the water rights swap.

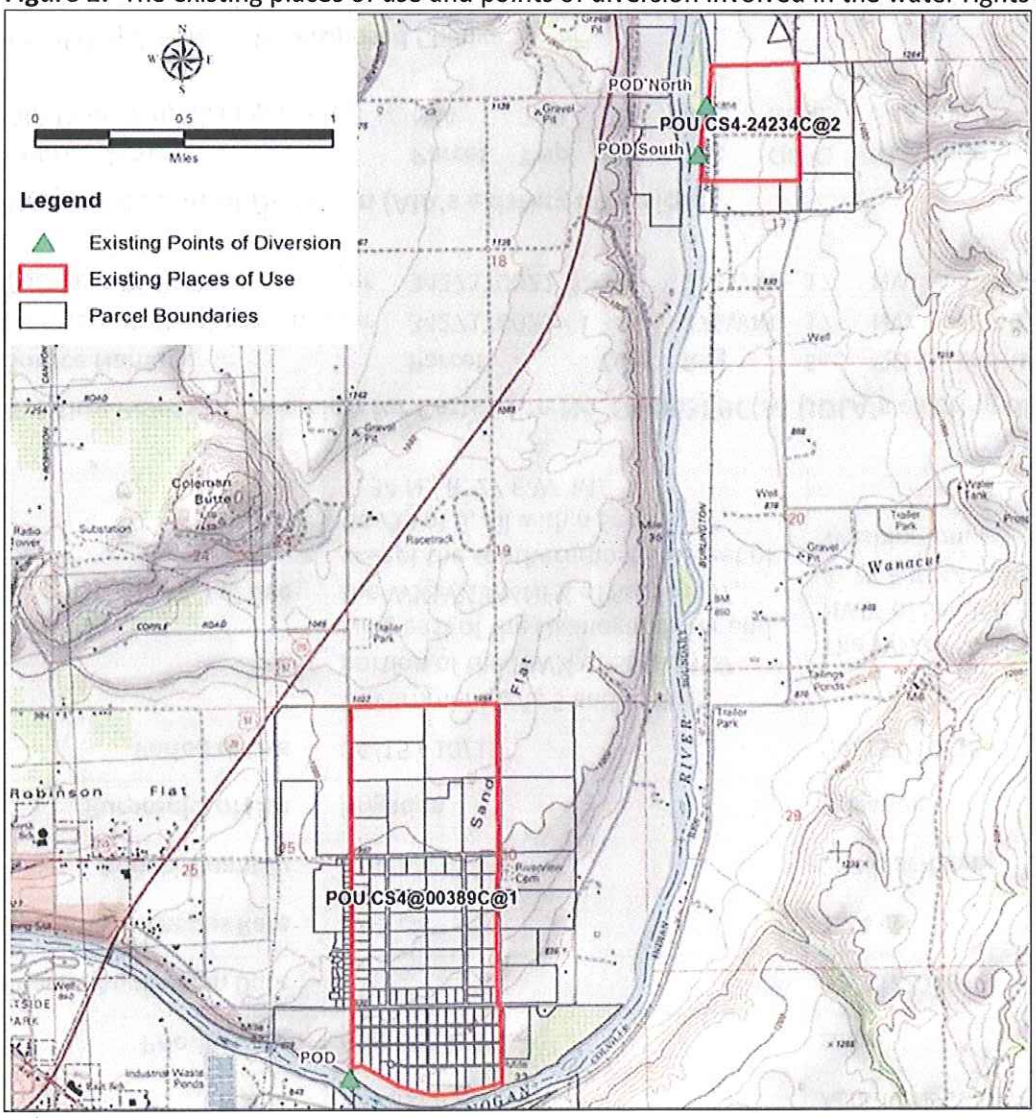

Table 1: Attributes of Application No. CS4-00389C@1

	Existing	Proposed
Name	JD Land Associates	Aston Irrigation Association Inc.
Priority Date	August 19, 1929	same
Change Application Date		02/11/2010
Instantaneous Rate	1.38 cfs	1.24 cfs
Annual Quantity	224.9 ac-ft/yr	203.4 ac-ft/yr
Purpose(s) of Use	Irrigation	Irrigation
Period of Use	04/15 - 10/15	04/15 - 10/15
Place(s) of Use	Government Lots 5 and 6: that portion of the NW¼ of Section 17 lying east of the Okanogan River and the W½W½W½NE¼ of Section 17, except the southernmost 550 feet of Gov't Lot 6; all within Section 17, T. 34 N., R. 27 E.W. M.	The W½ of Section 30, and the NW¼ of Section 31, all in T. 34 N., R. 27 E.W.M., Okanogan County, Washington.

Existing Points of Diversion for Certificate No. S4-00389C(A) (JDLA's existing diversions)

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Northern POD, Okanogan River	3427170021	34N	27EWM	17	NW	48.45239	-119.46808
Southern POD, Okanogan River	3427170021	34N	27EWM	17	NW	48.45005	-119.46875

Proposed Point of Diversion (AIA's existing diversion)

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
AIA Diversion, Okanogan River	N/A	34N	26E	36	NENE	48.40610	-119.49539

Legal Requirements for Proposed Change

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

- **Public Notice**
  RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Omak-Okanogan County Chronicle during the weeks of August 24, 2011 and August 31, 2011.
- **State Environmental Policy Act (SEPA)**
  The subject water right is subject to SEPA [WAC 197-11-305 and WAC 197-11-800(4)] because the instantaneous quantity is greater than the threshold of 1 cfs. The SEPA Determination of Non-Significance was published on September 21, 2011. No comments were received within the 14-day comment period.

Water Resources Statutes and Case Law

- RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.
- The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp.*

INVESTIGATION

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

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

Site Visit

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

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

History of Water Use – Tentative Determination

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

On May 22, 2008, Ecology modified and approved the Okanogan Conservancy Board's decision to correct the place of use for Certificate 389 based on Application No. CS4-00389C. At that time a tentative determination was made that the right was valid for 72.7 acres of irrigation. On October 25, 2010, JDLA submitted an assignment form to Ecology requesting to split Surface Water Certificate No. 389 between JDLA and Jimmie and Anita Willis. The Willis' own 3.5 acres of irrigation under this certificate. The site visit for this investigation did not include the Willis' property. Ecology issued Superseding Certificates to JDLA (Superseding Certificate No. S4-00389C(A)) and the Willis' (Superseding Certificate No. S4-00389C(B)) based on the assignment form both parties signed and submitted to Ecology.

We have tentatively determined that the 72.7 acre duty identified by the Conservancy Board in 2008 was fully used (possibly exceeding the allocation prior to flow meter installation). Therefore, it is valid to consider adding a point of diversion to JDLA's portion of Certificate No. 00389.

Other Rights Appurtenant to the Place of Use

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

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

Impairment Considerations

The places of use and points of diversion involved in the proposed water right swap are located between the Malott and Tonasket Stream Management Control Stations cited in WAC 173-549-020. A transfer between the two parties shown in Figure 1 would not affect the way water is managed for junior or senior surface water users on the Okanogan River. Furthermore, if the senior right is moved downstream, the Okanogan River and the water users in the intervening five miles will benefit from the increased flows during times when minimum instream flows are not met.

Consideration of Protests and Comments

No protests were received during the public comment period.

Conclusions

It is tentatively determined that Certificate No. S4-00389C(A) is in good standing and is eligible for change. The water right is considered legally available. The requested change is not expected to interrupt or interfere with the availability of water to existing rights.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to No. CS4-00389C(A)@1 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:

1.24 cfs
203.4 ac-ft/yr
Irrigation of 62.6 acres (3.25 ac-ft/acre) from April 15 through October 15

Point of Diversion

1,280 feet South and 15 feet West from the Northeast Corner of Section 36 within the NE¼NE¼ of Section 36, T. 34 N., R. 26 E. W.M.

Place of Use

The W½ of Section 30, and the NW¼ of Section 31 lying north of the Okanogan River, all in T. 34 N., R. 27 E.W.M., Okanogan County, Washington.

Report by: Kelsey J Collins — Kelsey Collins, Water Resources Program

10/4/12 — Date

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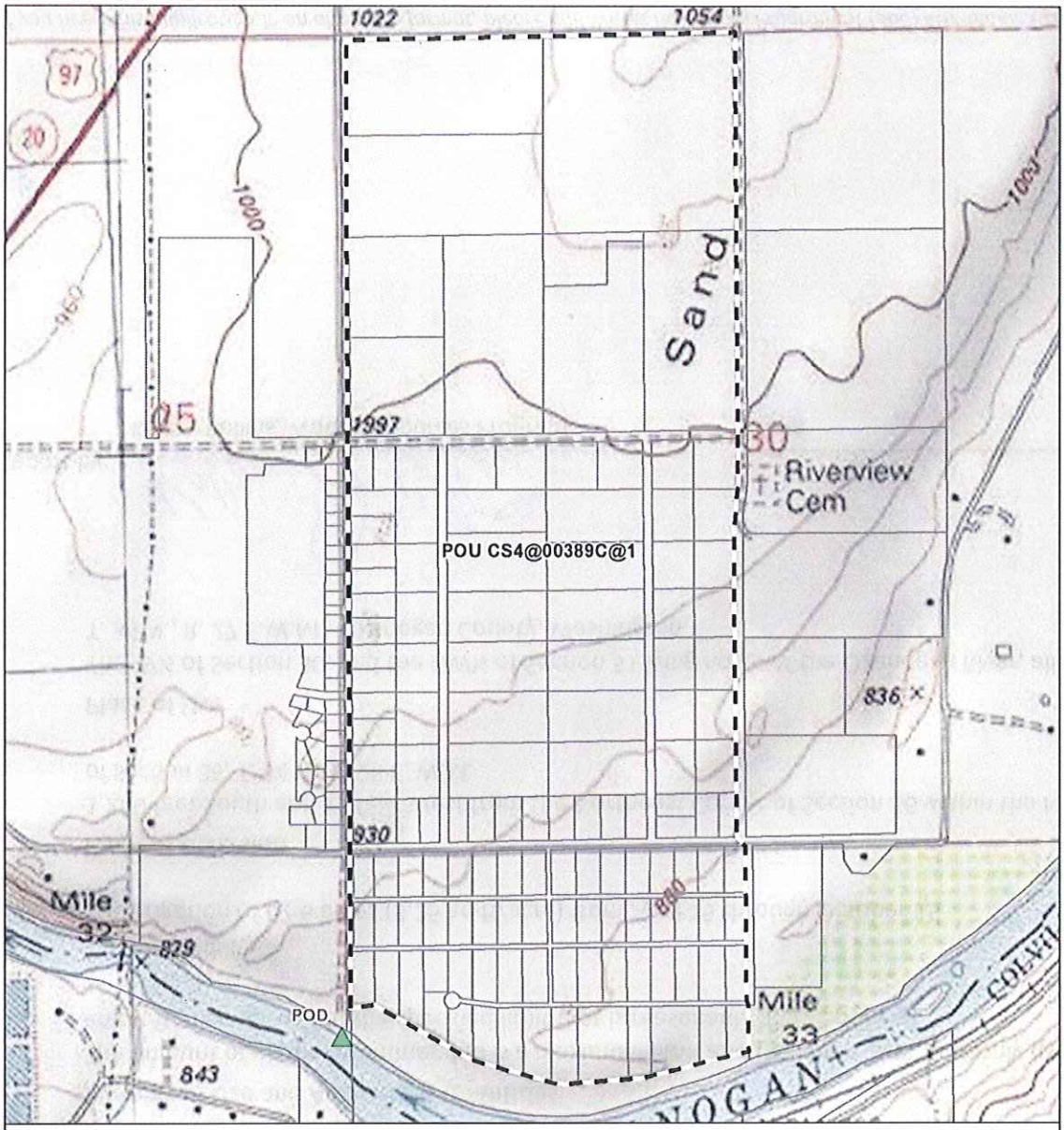

Legend

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

N
W E
S

1,000 0 1,000
Feet

Data Source: Esri USA Topo Maps.

Projection: NAD 1983 HARN StatePlane Washington North FIPS 4601 Feet

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

POU and POD Locations

Aston Irrigation Association Water Right Transfer
Omak, Washington

GeoEngineers

Attachment 1

APPENDIX 2

Aston Irrigation Association (AIA) and JD Land Associates (JDLA) requested a water right swap in February of 2010 under Change Application No.'s CS4-24234C@2 and CS4-00389C(A)@1 respectively. The following tables summarize the surface water rights held by each party, assuming that these change applications are approved.

Aston Irrigation Association			
Water Right No.	**CFS**	**AC-FT/YR**	**Comment**
*S4-00389C(C)	1.24	203.4	Senior right acquired from JDLA through Change Application No. CS4-00389C(A)@1.
*S4-24234C(A)	.0.87	167.80	AIA retained this portion of their interruptible water right following the swap with JDLA (and a previous swap with Gateway).
*S4-SWC755(B)	0.46	92	Senior right acquired from Gateway (formally Harms) through Change Application No. CS4-SWC755 as part of a water rights swap. (Gateway acquired this same quantity from AIA through Change Application No. CS4-24234C@1(B)).
TOTAL	*1.7*	*295.4*	*During interruption according to WAC 173-549-020 (only senior rights are available)*
TOTAL	*2.57*	*463.20*	*No interruption*

JD Land Associates			
Water Right No.	**CFS**	**AC-FT/YR**	**Comment**
*S4-24234C(C)	1.02	167.04	Interruptible right acquired from AIA through Change Application No. CS4-24234C@2.
*S4-00389C(A)	0.14	21.5	JDLA retained this portion of their water right following the swap with AIA. This will be documented through re-issuance of Superseding Certificate No. S4-00389C(A). (Prior to the JDLA-AIA swap, Ecology issued Superseding Certificate No. S4-00389C(A) to JDLA and Superseding Certificate No. S4-00389C(B) to the Willis' in response to a request for an administrative split of the water right.
*S4-00389C(A)	--	--	Legalized JDLA's additional point of diversion through Change Application No. CS4-00389C(A)@2. This change will be documented through re-issuance of Superseding Certificate No. S4-00389C(A).
TOTAL	*0.14*	*21.5*	*During interruption according to WAC 173-549-020 (only senior rights are available)*
TOTAL	*1.16*	*188.54*	*No interruption*

*These documents have not been issued yet. When AIA and JDLA submits Proof of Appropriation forms indicating they have completed the changes that were authorized by putting water to beneficial use, Superseding Certificates will be issued with these numbers.