STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Change of: point of diversion
WRTS File # CS3-*30041J

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
The year 1883 (Class 5)			Deadman Creek Adjudicated Surface Water Certificate No. 41

NAME
Don McGreevy

ADDRESS/STREET	CITY/STATE	ZIP CODE
291 Lower Deadman Road	Pomeroy, Washington	99347

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
Deadman Creek

TRIBUTARY OF (IF SURFACE WATERS)
Snake River

MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr)
0.31 cfs from April 15 to Sept. 15 0.47 cfs from Sept. 15 to April 15		85

QUANTITY, TYPE OF USE, PERIOD OF USE
0.31 cubic feet per second from April 15 to September 15, 0.47 cubic feet per second from September 15 to April 15; 85 acre feet per year, each year, for the seasonal irrigation of 23.6 acres

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL
1800 feet North and 450 feet West from the S¼ corner of Section 13, T. 13 N., R. 41 E.W.M.

or

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
NE¼SW¼	13	13 N.	41 E.W.M.	35	Garfield

PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM
	46.6086041° N	117.6096222° W	NAD 83

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

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 E½SW¼ of Sec. 13, T. 13 N., R. 41 E.W.M., lying west of Deadman Creek Road

DESCRIPTION OF PROPOSED WORKS

Pump diversion and hand lines

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Started	Completed	June 1, 2010

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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. 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.

3. 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

4. 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 enclosed with 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

5. 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.

6. The water right holder shall file the notice of Proof of Appropriation of water (under which the superseding 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 superseding certificate 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

7. After all scheduled rights are filled, the surplus water is allotted in the order of the priority at the same rate as that fixed for the period from April 15 to September 15.

8. This right is restricted to a maximum of 9.6 inches of water, per acre, for each 30-day period from April 15 to September 15 and a maximum of 14.4 inches of water, per acre, for each 30-day period from September 15 to April 15.

9. 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.

10. 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.

11. 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.

12. 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.

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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 in point of diversion under Change Application for Deadman Creek Adjudicated Surface Water Certificate No. 41, subject to existing rights and the provisions listed above.

You have a right to appeal this ORDER. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
PO Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Keith L. Stoffel
Department of Ecology
Eastern Region Office
4601 N. Monroe St.
Spokane, WA 99205-1295

Signed at Spokane, Washington, this day of 2009.

_____

Keith L. Stoffel, Section Manager
Water Resources Program
Eastern Regional Office

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BACKGROUND

Description and Purpose of Proposed Change

An application for change/transfer was submitted by Don McGreevy of Garfield County, Washington, to Ecology on March 9, 2007. Mr. McGreevy proposes to change the point of diversion as granted under Deadman Creek Adjudicated Surface Water Certificate No. 41 (Certificate No. 41).

Attributes of the Certificate and Proposed Change

Table 1 Summary of Proposed Changes to Deadman Creek Adjudicated Water Right No. 41

Attributes	*Authorized*	*Proposed*
Name	R.B Keith	Don McGreevy
Priority Date | Date of Application for Change	The year 1883	March 9, 2007
Instantaneous Quantity	0.31 cfs from April 15 to Sept. 15 0.47 cfs from Sept. 15 to April 15	*No change*
Annual Quantity	295 acre feet	*No change*
Source	Deadman Creek	*No change*
Point of Diversion/Withdrawal	SW¼SE¼ of Sec. 13, T. 13 N., R. 41 E.W.M.	NE¼SW¼ of Sec. 13, T. 13 N., R. 41 E.W.M.
Purpose of Use	Irrigation of 23.6 acres	*No change*
Period of Use	Year-round	*No change*
Place of Use	E½SW¼ of Sec. 13, T. 13 N., R. 41 E.W.M.	*No change*

Legal Requirements for Proposed Change

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

- **Public Notice**

A notice of application was duly published in accordance with RCW 90.03.280 in the Pomeroy East Washingtonian on May 16 and May 23, 2007 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 90.03.380(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.

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Ecology cannot adjudicate a claim to a water right; only the superior courts have this authority. However, 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) Deadman Creek Adjudicated Certificate No. 41, 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 December 11, 2007 by Dan Tolleson. The project is located approximately 9 miles north of Pomeroy, Washington. This water right is part of the Deadman Creek Adjudication, Garfield County.

The place of use originally authorized is a portion of the E½SW¼ of Sec. 13, T. 13 N., R. 41 E.W.M. Currently, much of the bottom lands on both sides of Deadman Creek are irrigated hay fields. The remainder of the land within the place of use is primarily non irrigated cattle pasture with some riparian vegetation located along the creek.

Aerial photographs were used to help verify the extent of development, historical use and beneficial use of Certificate No. 41, which authorized 23.6 acres of irrigation within an 80 acre legal description. It appears that approximately 23.6 acres have been historically irrigated under this right and are available for change.

According to the adjudication, water use is restricted to a maximum of 9.6 inches of water, per acre, for each 30-day period from April 15 to September 15 and a maximum of 14.4 inches of water, per acre, for each 30-day period from September 15 to April 15. The right also has the following restriction: After all scheduled rights are filled, the surplus water is allotted in the order of the priority at the same rate as that fixed for the period from April 15 to September 15.

The authorized water duty of this certificate is approximately, 4 acre-feet, per acre, from April 15 to September 15 and 8.5 acre-feet per acre from September 15 to April 15. Historically, hay has been the highest water duty crop grown under this right. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that an estimated 2.52 acre-feet, per acre, is required for alfalfa in the Pomeroy area. The current irrigation system of hand lines is estimated at a 70% efficiency rate of application. With a 70% efficiency rate of application an estimated 3.6 acre-feet per acre would need to be applied to crops that use 2.52 acre-feet per acre. The remaining 8.9 acre-feet, per acre, is no longer required due to modern farming practices. It should be noted that water is not always available during dry years. Therefore, future irrigation of 23.6 acres will require 85 acre-feet per year.

Water rights are appurtenant to a specific parcel of land or place of use on an acre per acre basis. Therefore, the place of use of this right will be narrowed down to the smallest legal description possible which is as follows: The E½SW¼ of Sec. 13, T. 13 N., R. 41 E.W.M., lying west of Deadman Creek Road.

Proposed Use

The applicant proposes to move the original ditch diversion downstream to the current pumping station. This pumping station has been in use for approximately 30+ years and consists of two pumps. One serves the field east of the creek and the other serves the field west of the creek. With both pumps operating it appears that the system is capable of pumping more water than is authorized. Therefore, only one pump can be use at a time and each pump must be restricted to a maximum flow of 0.31 cubic feet per second or 139 gallons per minute from April 15 to September 15. During the reminder of the year from September 15 to April 15 the system must be restricted to 0.47 cubic feet per second or 210 gallons per minute.

Table 2 *Diversion Specifications*

Diversion	Diversion Status	Meter Status	Pump	Fish Screen
(Authorized) Deadman Creek	Abandoned[a]	n/a	n/a	n/a
(Proposed) Deadman Creek	Online	Operational	(2) 15 HP	Yes

[a] abandoned gravity feed ditch diversion

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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 diversions. The search focused primarily on Sections 13 and 24, T. 13 N., R. 41 E.W.M. The review of Ecology records shows two (2) Water Right Certificates appurtenant to the place of use.

Deadman Creek Adjudicated Certificate No. 18 authorized .01 cubic feet per second, for stock and domestic use continuously and for irrigation of a garden. This right has the same place of use as Deadman Creek Adjudicated Certificate No. 41. It is reported by Mr. McGreevy that this right is still used for stockwatering.

Ground Water Certificate No. 3883-A issued for 15 gallons per minute, 5.6 acre feet, for the domestic supply. The authorized place of use overlaps Deadman Creek Adjudicated Certificate No. 41. It appears that Ground Water Certificate No. 3883-A is currently used to supply the house located in the NE¼NW¼ of Sec. 24, T. 13 N., R. 41 E.W.M.

(The validity and extent of above listed water rights 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 the point of diversion, as granted under Deadman Creek Adjudicated Certificate No. 41. This proposed point of diversion downstream approximately ¼ of a mile from the authorized diversion. No significant changes or water right diversions exist in Deadman Creek between the authorized and proposed point of diversion. It appears that this certificate has been exercised and beneficially used in the past. The proposed change will not increase the amount of water withdrawn from Deadman Creek, nor will it increase or expand the right. There will be no impairment to existing rights.

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 the point of diversion, as granted under Deadman Creek Adjudicated Certificate No. 41 will not enlarge the quantity of water historically use, nor will it impair existing rights provided the recommendations below are followed.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request to change the point of diversion of the right be authorized, in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2.

Purpose of Use and Authorized Quantities

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

0.31 cubic feet per second form April 15 to September 15, 0.47 cubic feet per second from September 15 to April 15; 85 acre feet per year, each year, for the seasonal irrigation of 23.6 acres

Point of Diversion

1800 feet North and 450 feet West from the S¼ corner of Section 13, T. 13 N., R. 41 E.W.M.

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Place of Use

The E½SW¼ of Sec. 13, T. 13 N., R. 41 E.W.M., lying west of Deadman Creek Road

Report by: _____ _____

Dan Tolleson — Date

Water Resources Program

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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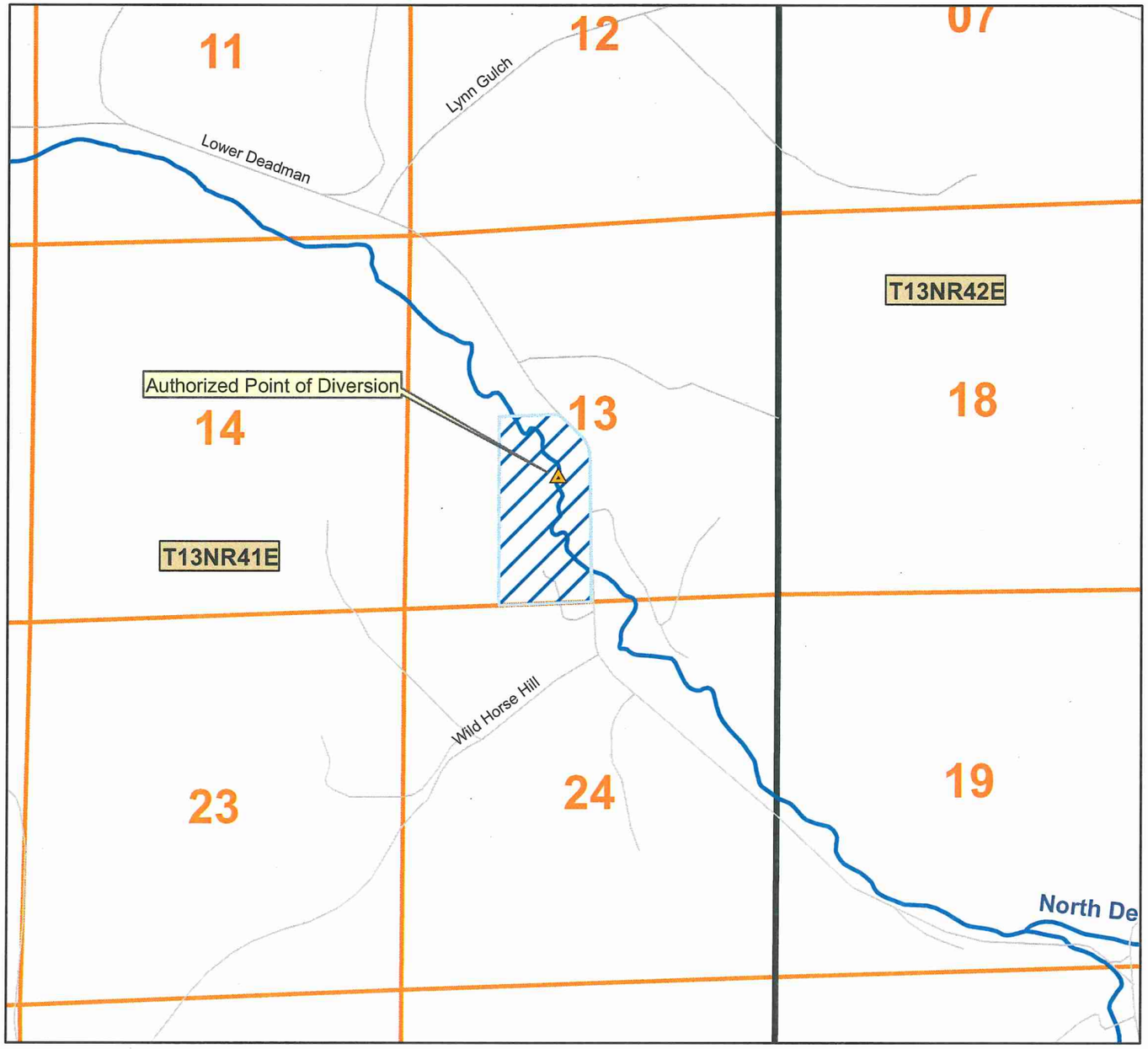
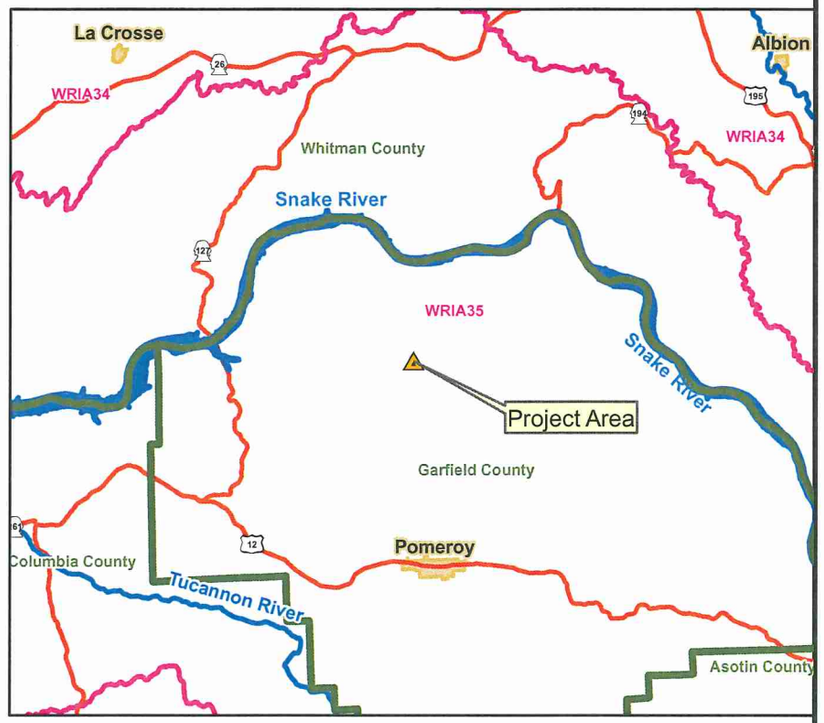


Don McGreevy
Deadman Creek Adjudicated
Surface Water Certificate No. 41
Sec. 13, T 13N, R 41E.W.M.
WRIA 35 - Garfield County



Legend

- County
- WRIA
- cities
- Local Roads
- Highways
- Townships
- Sections
- Authorized Point of Diversion
- Authorized Place of Use

Comments:
Place of use, points of withdrawal/diversions are as defined on the cover sheet under the heading, 'LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'

Attachment 1