

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

File NR CS4-24234C@2
WR Doc ID 4669043

Change Place of Use
Add Points of Diversion

PRIORITY DATE
March 25, 1976

WATER RIGHT NUMBER
CS4-24234C@2

MAILING ADDRESS
ASTON IRRIGATION ASSOCIATION INC
PO BOX 3233
OMAK WA 98841-3233

Total Quantity Authorized for Withdrawal or Diversion

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

Purpose

PURPOSE	DIVERSION RATE	ANNUAL QUANTITY (AC-FT/YR)	PERIOD OF USE (mm/dd)
Irrigation of 50.8 acres (4.0 ac-ft/acre)	1.24 CFS	203.4	04/15 - 9/30

REMARKS

This change authorization is part of a water rights swap between Aston Irrigation Association and JD Land Associates LLC. JDLA is transferring a portion of Certificate No. S4-00389(A) (a non-interruptible right) downstream to AIA, and AIA is transferring a portion of S4-24234C (an interruptible right) upstream to JDLA.

Source Limitations

SOURCE FACILITY/DEVICE	DIVERSION RATE	ANNUAL QUANTITY (AF/YR)	PERIOD OF USE (mm/dd)
Northern Diversion	1.24	203.4	04/15 - 9/30
Southern Diversion			

A|S: A=Alternate; S=Standby/Reserve

Source Location

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

SOURCE FACILITY/DEVICE	PARCEL	GOVT LOT	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Northern Diversion	3427170021	5	34N	27E	17	NW	48.45239	-119.46808
Southern Diversion	3427170021	6	34N	27E	17	NW	48.45005	-119.46875

Datum: NAD83/WGS84

Place of Use (See Map: Attachment 1)

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Government Lots 5 and 6: that portion of the NW ¼ 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. Okanogan County, Washington.

Proposed Works

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. Water is conveyed from each diversion through an above ground 4-inch diameter flow meter located at the top of the bank. The water is then conveyed through 5-inch pipe to wheel lines with impact sprinklers. Gate valves separate the surface water irrigation within the place of use from a conveyance system for an irrigation system that is associated with a separate tribal groundwater right.

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

JDLA is authorized to divert 1.38, 224.9 based on the combination of this authorization and their remaining portion of Certificate No. 389. When minimum flows at the Malott station have not been met, JDLA's total diversion is limited to 0.14 cfs, 21.5 ac-ft/yr.

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.

Instream Flow Limitations

This authorization is subject to the provisions of Chapter 173-549 WAC as adopted in Olympia, Washington, August 14, 1976, and revised effective July 19, 1984, and the general rules of the Department of Ecology as specified under Chapter 173-500 WAC.

Instream flows as established at United States Geological Survey monitoring station 124.450.00 presented in the table below shall be maintained by regulation of diversions as set forth in said WAC 173-549.

Instream flow hydrographs, as represented in WAC 173-549-900, shall be used for definition of instream flows on those days not specifically identified in WAC 173-549-020(2).

Primary Control Station: 124.450.00
River mile: 50.8

Minimum Instream Flows in the Okanogan/Similkameen Rivers
(Instantaneous rate in cubic feet per second)

Station: 124.450.00 Middle Okanogan (Tonasket)
Section 8, T.36 N., R. 27 E.

RIVER MILE:	(50.8)
April 1	910
April 15	1,070
May 1	1,200
May 15	3,800
June 1	3,800
June 15	3,800
July 1	2,150
July 15	1,200
Aug 1	840
Aug 15	600
Sep 1	600
Sep 15	600
Oct 1	730
Oct 15	900

No diversion of water under this authorization shall take place when the stream flow at station 124.450.00 is below the flows listed above.

Water available under this authorization will not provide a firm supply throughout each irrigation season. Based on projection of water availability for this location on the Okanogan River, a firm supply (flow levels exceeding minimum instream flows) will likely not be available during the months of August and September, three out of every four years. Therefore, water shortages and regulation should be expected at least one year out of ten, but probably more often, during the above-designated months.

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/>

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.

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.

DRAFT

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. CS4-24234C@2 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
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p> <p>Pollution Control Hearings Board 1111 Israel RD SW Ste 301 Tumwater, WA 98501</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p> <p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

Signed at Yakima, Washington, this _____ day of _____ 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 along the Okanogan River. AIA submitted application No. CS4-24234C@2 (this report) and JDLA submitted application no. CS4-00389C(A)@1, both proposing to add new points of diversion and places of use in order to exchange 1.24 cfs, 203.4 ac-ft/yr. This swap would provide AIA with a portion of JDLA's senior water right. Figure 1 shows the relative locations of the proposed changes. AIA's Certificate No. S4-24234C is subject to minimum flows (interruptible) according to WAC 173-549 (interruptible); the swap with JDLA will allow AIA to divert 1.24 cfs, 203.4 ac-ft without being curtailed during periods of low flows.

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

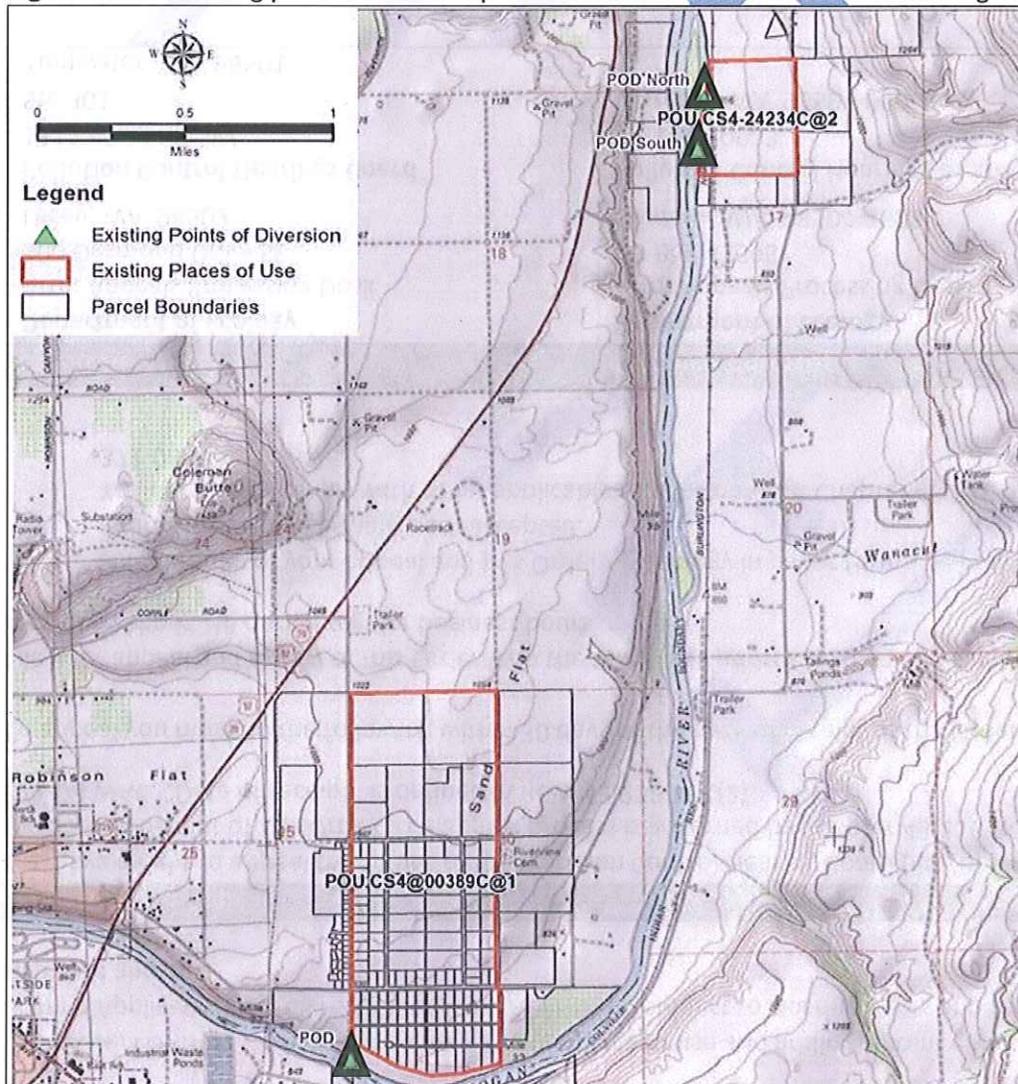


Table 1: Attributes of Application No. CS4-24234C@2

	Existing	Proposed
Name	Aston Irrigation Association Inc	JD Land Associates
Priority Date	March 25, 1976	
Change Application Date		February 11, 2010
Instantaneous Rate	1.89 cfs	1.24
Annual Quantity	334.84 ac-ft/yr	203.4
Purpose(s) of Use	Irrigation	Irrigation
Period of Use	04/15 - 10/15	04/15 - 10/15
Place(s) of Use	The W½ of Section 30, and the NW¼ of Section 31, all in T. 34 N., R. 27 E.W.M., Okanogan County, Washington.	Government Lot 5 and 6; that portion of the NW ¼ of Section 17 lying east of the Okanogan River and the W½W½W½NE ¼ of Section 17, except the southernmost 550 feet of Gov't Lot 6; all within T. 34 N., R. 27 E.W.M.

Existing Point of Diversion for Certificate No. S4-24234C (AIA's existing diversion)

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
OKANOGAN RIVER	N/A	34N	26E	36	NENE	48.40610	-119.49539

Proposed Points of Diversion (at JD Land's POU):

Source Name	Parcel	Twp	Rng	Sec	Gov't Lot	Latitude	Longitude
OKANOGAN RIVER	3427170021	34N	27 E	31	5	48.45239	-119.46808
OKANOGAN RIVER	3427170021	34N	27 E	31	6	48.45005	-119.46875

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

- **Administrative Status of Surface Water Bodies**

Surface water bodies in the region are subject to administrative regulations governing the right to withdraw water for beneficial use. Minimum instream flow regulations for the Okanogan watershed (WRIA 49) have been adopted. Washington Administrative Code (WAC) Chapter 173-549 establishes instream flows in several streams and partial-year closures to further water right allocations in all streams in the basin. WAC 173-549-020 lists instream flows and control points. The primary control point for the subject application is the Middle Okanogan River near Tonasket (USGS Gauging Station 12445000).

- 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

The examination of Surface Water Right Change Application Nos. CS4-24234C@2 and CS4-00389C(A)@1 was led by consultants from GeoEngineers, Inc. under contract to the Washington State Department of Ecology (Ecology) as part of its cost reimbursement program to facilitate the phased processing of the application. Kelsey Collins of the Water Resources Program, Central Region, Ecology oversaw the examination and provided review.

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/wellog/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. Dale Hice of AIA and Jack Crane of JDLA gave a tour of the facilities and property. The tour included the inspection of the points of diversion, irrigated properties and general facilities of both the existing a proposed PODs and POU. 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.

History of Water Use – Tentative Determination

On July 27, 2004, AIA submitted an application to the Okanogan Conservancy Board requesting to swap a portion of their water right permit with Richmond Harms (that later became Gateway Northern

Investments LLC). On February 26, 2008, Ecology issued Certificate No. S4-24234C to Aston Irrigation Association. Under Application No. CS4-24234C@1 and OKAN -06-07, AIA was granted the transfer of 0.46 cfs and 92 ac-ft/yr to Mr. Harms. AIA's remaining portion of S4-24234C is 1.89 cfs and 334.84 ac-ft/yr for the irrigation of 83.71 acres.

AIA's remaining 83.71 acres of irrigation covered by Surface Water Certificate No. S4-24234C, have been irrigated nearly continuously 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. The POU for AIA is a residential area of approximately 124 lots. Portions of the lots are irrigated lawns, shrubs, non-commercial gardens and fruit trees. The irrigation is via various types of sprinkler systems and hoses that are typical of single-family residences.

Flow meters were installed at the AIA POD prior to the irrigation season of 2001. Individual flow meters were installed in 2010 at each parcel receiving irrigation water. Review of the flow meter records indicate that the usage has been above the applicable Qi and Qa from 2001 to 2010 except in 2006. According to the records, since 2004, AIA has a lease agreement with Okanogan-Tonasket Irrigation District that allows for additional diversion, including outside the April 15 through September 30 usage period of Certificate No. S4-24234C and during times when the usage is interrupted due to instream flow restrictions. However, even excluding the leased amount noted on the records from the diversion total, the total diverted by AIA is greater than the Qi and Qa allocated under S4-24234C and, since 2008, allocated under S4-24234C. Note that the water swap with Mr. Harms (Gateway) allows AIA to divert 0.46 cfs and 92 ac-ft/yr under Change Authorization No. CS4-SWC755 during times of instream flow restrictions.

We have tentatively determined that AIA has beneficially used the full Qi and Qa allocated for the certified surface water right S4-24234C (exceeding the allocation most years). Therefore, 1.24 cfs and 203.4 ac-ft/yr is available for transfer.

Proposed Use

The proposed use is for irrigation of 50.8 acres within Section 17 served by JDLA. The POU is Parcel No. 3427170021, where a rotation of crops of alfalfa, hay, and other grains have been previously irrigated. The irrigation is via a water delivery system of 4-inch and 5-inch diameter lines that supply wheel irrigation lines equipped with impact sprinklers (described above).

There will be no increase in the amount of water used and no increase in the acreage of the currently irrigated area within the JDLA POU as a result of the proposed water right swap.

Other Rights Appurtenant to the Place of Use

AIA has several water rights and change applications associated with their service area lying adjacent to the Okanogan River. AIA's rights and change applications are summarized in Table 2.

Table 2. AIA's Existing Surface Water Rights and Change Applications.

Control Number	Status	Priority Date	Qi cfs	Qa ac-ft/yr	Irrigated Acres	Source
S4-24234C	Certificate	3/25/1976	1.89	334.84	83.71	Okanogan River
CS4-24234C@1	Change/ROE	5/7/2004	1.89	334.84	83.71	Okanogan River
CS4-24234C@2	Change App	5/7/2004	1.24	203.4	50.8	Okanogan River
CS4-SWC755	Change/ROE	5/7/2004	0.46	92	23	Okanogan River
CS4-01245C@5	Change App	3/15/2011	0.33	66.4	16.6	Okanogan River

There are also groundwater rights, an application, and claims that overlap AIA's POU for CS4-24234C@2. These are related to potable groundwater for domestic use and are summarized below in Table 3.

Table 3. Summary of Existing Groundwater Water Rights, Claims and Applications that are appurtenant to AIA's POU.

Name	Control Number	Status	Priority Date	Qi (gpm)	Qa (ac-ft/yr)	Purpose
Mar-San Inc.	G4-23805CWRIS	Certificate	1/6/1975	40	54	DM
Mar-San Inc.	G4-23806CWRIS	Certificate	1/6/1975	45	54	DM
Sandflat Water Users Association	G4-26301P	Permit	7/20/1978	250	220	DM
Aston Lela M Estate	G4-29424CWRIS	Certificate	9/23/1987	90	54.9	DM
Emmit R Aston	G4-102439CL	Claim	--	40	--	DG
Emmit R Aston	G4-102438CL	Claim	--	60	--	DG
E. R. Aston	G4-154741CL	Claim	--	--	--	DG

Notes: DM = Multiple Domestic Supply; DG = General Domestic Supply

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 5 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. S4-24234C is in good standing and is eligible for change. The water right is considered legally available, except when minimum instream flow requirements are not met. 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 Application No. CS4-24234C@2 be approved 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:

1.24 cfs
203.4 ac-ft/yr
Irrigation of 50.8 acres from April 15 through September 30

Point of Diversion

Government Lot 5 within the NW ¼ of Section 17, T. 34 N., R. 27 E. W.M. (Northern Diversion)
Government Lot 6 within the NW ¼ of Section 17, T. 34 N., R. 27 E. W.M. (Southern Diversion)

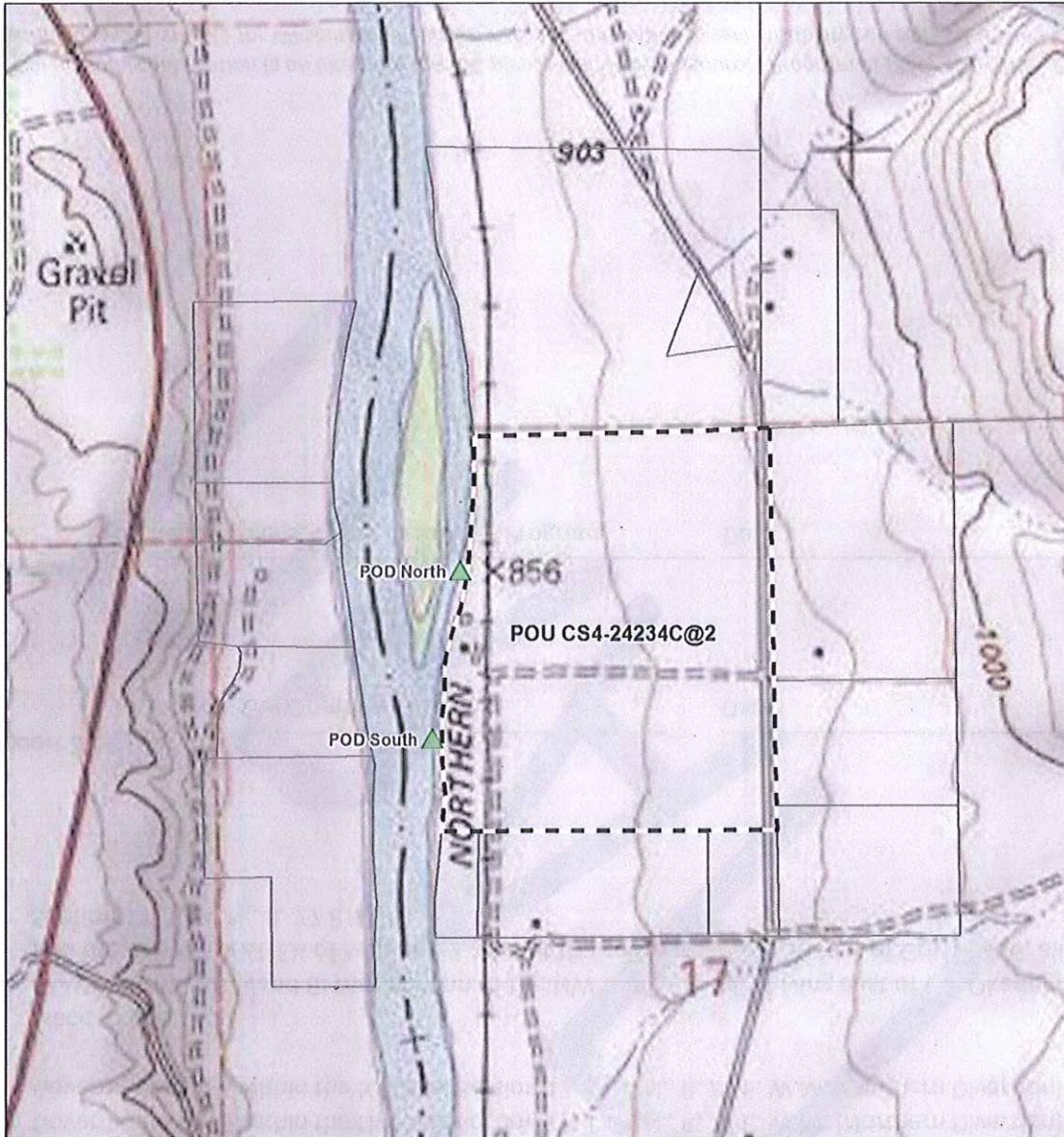
Place of Use

Government Lots 5 and 6: that portion of the NW ¼ 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.

Report by: _____ Date _____
Joel Purdy, GeoEngineers

Reviewed by: _____ Date _____
Kelsey Collins, 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.



Legend

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



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



Attachment 1