State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT CHANGE

Changed Point of Diversion

PRIORITY DATE	WATER RIGHT NUMBER
January 1, 1905 (class 43)	Walla Walla River Adjudicated Certificate No. 658(B)

MAILING ADDRESS
Michelle Maxson
522 Last Chance Road
Walla Walla, Washington 99362

Total Quantity Authorized for Withdrawal or Diversion

MAXIMUM DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.3	CFS	54

Purpose

PURPOSE	DIVERSION RATE	ANNUAL QUANTITY (AF/YR)
Irrigation	0.20 CFS from 04/01 to 07/01 0.15 CFS from 07/01 to 10/01 0.30 CFS from 10/1 to 04/01*	54

*when allowed in accordance with the Walla Walla Adjudication

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
15			

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Walla Walla	Lower Cold Creek	Mill Creek	32-Walla Walla

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Lower Cold Creek	350733210009	7 N.	35 E.	33	NE¼NW¼	46.0474°N	118.4405°W

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

350733210008, 350733210009, 350733210011

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

The N½NW¼ of Section 33, Township 7 N., R. 35 E.W.M. less that part thereof lying easterly and southerly of the following described line: Beginning at a point on the northerly right of way of the Union Pacific Railway 856.6 feet westerly of the section centerline; thence N 23°12′ W 111.0 feet; thence N 45°15′ W 218.0 feet; thence N 23°57′ W 38.0 feet; thence N 4°56′ W 45 feet; thence N 25°11′ E 107.0 feet; thence N 83°13′ E 65.0 feet; thence S 70°22′ E 106.0 feet; thence N 87°43′ E 78.0 feet; thence N 49°40′ E 133.0 feet; thence N 75°21′ E 131.0 feet; thence N 66°44′ E 90.0 feet; thence N 36°38′ E 47.0 feet; thence N 24°42′ E 68 feet; thence N 8°56′ E 214.0 feet; thence N 6°19′ e 62.0 feet; thence S 50°15′ E 49.5 feet; thence S 2°45′ W 69.3 feet; thence N 82°03′ E 92.4 feet; thence S 65°25′ E 49.5 feet; thence N 80°25′ E 224.4 feet to the said section centerline and the terminus of this described line.

Proposed Works

Pump station, mainlines and handlines

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Begun	November 1, 2014	November 1, 2015

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

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.

Water use data shall be recorded weekly and maintained by the property owner for a minimum of five years. The maximum rate of withdrawal and the annual total volume shall be submitted to the Department of Ecology by January 31st of each calendar year. Recorded water use data shall be submitted to the Eastern Regional Office.

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/

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.

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.

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

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.

Ground Water Certificate Nos. 57-A, 308-A and 6888-A are issued as alternate supplies and are less water used under Walla Walla River adjudicated Certificate No. 658(B) which is a primary right.

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 under Walla Walla River Adjudicated Certificate No. 658(B)], 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 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 Road SW Ste 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this 26th day of November, 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
Dan Tolleson, Department of Ecology
Water Right Control Number CS3-*28658J@1
Walla Walla River Adjudicated Certificate No. 658 (Part B)

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number CS3-*28658J@1, Walla Walla River Adjudicated Certificate No. 658 referred to in a previous report as "Part B".

EXISTING Water Right Attributes

Water Right Owner:	L.E. McBee, et al.
Priority Date:	1/1/1905
Place of Use	The N½NW¼ of Section 33, Township 7 N., R. 35 E.W.M.

County	Waterbody	Tributary To	WRIA
Walla Walla	Cold Creek	Mill Creek	32-Walla Walla

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Cold Creek		7 N.	35 E.	28	SE¼SE¼		

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

REQUESTED Water Right Attributes "Part B"

Applicant Name:	Maxson
Date of Application:	12/9/2003
Place of Use	The N½NW¼ of Section 33, Township 7 N., R. 35 E.W.M., portion owned by Michelle Maxson

County	Waterbody	Tributary To	WRIA
Walla Walla	Cold Creek	Mill Creek	32-Walla Walla

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Cold Creek	350733210009	07 N.	35 E.	33	NE¼NW¼	46.0474°N	118.4405°W

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

Legal Requirements for Requested Change

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

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 Walla Walla Union Bulletin on April 2 and 9, 2009 and no protests were received. This notice was published in error. An amended Notice of this application was published in the Walla Walla Union Bulletin on April 27 and May 4, 2009 and no protests were received.

Consultation with the Department of Fish and Wildlife

The Department must give notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water. This notice was submitted via email on 9/16/2013 to Steve Boessow with a 30 day request for comment. A recommendation letter dated September 27, 2013 indicates the proposed change is generally beneficial, provided it follows the hydraulic code (Chapter 77.55) and fish screen statutes (RCW 77.57).

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.

(a) It is a surface water right application for more than 1 cubic foot 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;
(b) It is a groundwater right application for more than 2,250 gallons per minute;
(c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
(d) 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);
(e) 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.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

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

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits, and claims in the vicinity; (3) USGS topographic maps and aerial photographs; (4) diversion works and place of use; (5) Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32 and Watershed Planning; (6) State of Washington Irrigation Guide (Natural Resources Conservation Service 1997); (7) Walla Walla River Adjudication; and (8) discussions with Department of Ecology regional program staff.

A field investigation was conducted by Dan Tolleson with Mr. Ken Maxson on September 10, 2013. The project is located approximately two miles west of College Place, Washington. The water right is located in the Walla Walla Basin, which is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32.

The authorized place of use lies on both sides of Lower Cold Creek within the N½NW¼ of Section 33, Township 7 N., R. 35 E.W.M. The place of use currently has two owners with Ms. Michelle Maxson owing approximately 70 acres of the place of use and Walla Walla College owning the remaining estimated 10 acres. A Report of Examination issued on March 31, 2004, under WWAC 658, authorized a change to the portion of the water right owned by the Walla Walla College. The Report of Examination split the right between the two owners as follows:

Land Owner	Percent of Right	Acres of Irrigation	Portion
Walla Walla College	40%	10	A
Michelle Maxson	60%	15	B

The 2004 Report of Examination only resulted in an authorization for the "A part" owned by Walla Walla College and it appears that the "B part" owned by Michelle Maxson was intended to be issued under this change application. The "B part" of the right will now be referred to as Walla Walla Adjudicated Certificate No. 658(B).

Ms. Maxson proposes to change the point of diversion for her portion of the water right. The authorized point of diversion is proposed to be changed to the currently existing pumping station located downstream on Lower Cold Creek. The proposed point of diversion consists of a centrifugal pump and meter, with no fish screen. The irrigation system for Ms. Maxson's portion of the right consists of main lines with handline laterals. There are several surface water and ground water rights related to this project that have integrated systems (see below). Ms. Maxson and Walla Walla College operate separate irrigation systems.

The proposed pump station will require a fish screen 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, at 600 Capitol Way N, Olympia, WA 98501-1091, Attention: Habitat Program or by phone at (360) 902-2534, if you have questions about screening criteria.

History of Water Use

Aerial photographs were used to help verify the extent of development, historical and beneficial use of Ms. Maxson's portion of the water right. Her portion of the place of use is approximately 70 acres of land with a total of 15 acres of irrigation under this right. She has several additional rights that are used to irrigate the remainder of the place of use. This water right has historically been rotated to various fields within the large place of use as needed. It appears that 15 acres have historically been irrigated under this right within Ms. Maxson's portion of the place of use.

The availability of water from Lower Cold Creek is often limited or unavailable. According to the applicant most of the water from the creek is taken by upstream irrigators. It has been three years since water was available for use by Ms. Maxson. The water right remains in good standing in accordance with RCW 90.14.140(1a), because water has not been physically available to Ms. Maxson.

According to the 2004 Report of Examination, Ms. Maxson owns 60% of the right. The maximum instantaneous quantity authorized under her portion of the right has been put to beneficial use when water is physically available. Ms. Maxson's irrigation system may have more capacity than authorized during the summer season under her portion of the right, but this was not confirmed. Production from the pump station cannot exceed the maximum authorized quantities and shall be reduced if necessary. The maximum authorized quantities for Ms. Maxson's portion of the right are 0.20 CFS (90 gpm) from 04/01 to 07/01, 0.15 CFS (67 gpm) from 07/01 to 10/01 and 0.3 CFS (135 gpm) from 10/1 to 04/01.

The maximum authorized water duty of this certificate is 5 acre-feet per year per acre. According the adjudication 4.2-acre-feet per acre is the maximum allowed when water is available during the regular irrigation season, which is authorized from April 1 to October 1. If a full quantity of water is not available during the regular irrigation season, then water may be diverted from October 1 to April 1 up to a maximum of 5 acre-feet per acre. Historically, this right has been used to irrigate alfalfa. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that a 2.7 acre-feet per acre, for alfalfa is required in the Walla Walla area. At a 75% efficiency rate of application, the approximate maximum water duty, for the crop listed above, is 3.6 acre-feet per year per acre. This results in an allocation of 54-acre-feet per year for the irrigation of 15 acres.

Proposed Use

The primary purpose of this change is to correct the location of the point of diversion. The applicant proposes to move the point of diversion downstream to a currently constructed pump station.

Other Rights Appurtenant to the Place of Use

A review of Ecology records were conducted for existing water right certificates, permits, and claims in the surrounding area of the project. The search focused primarily on Section 33, T. 7 N., R. 35 E.W.M. The review of Ecology records shows five water rights appurtenant to the authorized place of use.

Walla Walla River Adjudicated Certificate No. 659 authorizes a diversion from Lower Cold Creek of up to 0.674 cubic feet per second for the irrigation of 33.7 acres. The place of use overlaps portions of WWAC 658. It is an additive primary right, but a portion of the right may have been relinquished for non-use.

The current point of diversion is not the authorized point of diversion (POD), so the water holder will need to submit a change application on this water right.

Walla Walla River Adjudicated Certificate No. 660 authorizes a diversion of up to 0.400 cubic feet per second, from Lower Cold Creek, for the irrigation of 20 acres. The place of use overlaps portions of WWAC 658. It is an additive primary right, but a portion of this right may have been relinquished for non-use.

Ground Water Certificate No. 308-A, authorizes 200 gallons per minute, from three wells for the supplemental irrigation of 20 acres. The water right has the following provision: "Total withdrawal under this superseding certificate (308-A) and Walla Walla Adjudicated Surface Water Certificate No. 660 shall not exceed 100 acre-feet per year for the irrigation of 20 acres." This certificate is non-additive and is an alternate source.

Ground Water Certificate No. 57-A, together w/chg. 1-3-105 authorized 400 gallons per minute, 232 acre-feet, for the irrigation of 69.8 acres (Primary: 11.1 acres/37 acre-feet; Supplemental: 58.7 acres/195 acres feet). The water right has the following provision: "The total quantity applied to these 69.8 acres under this authorization (57-A) and Walla Walla Adjudicated Surface Water Certificate No. 658, 659 and Certificate of Ground Water Right No. 6888-A shall not exceed 330 acre-feet per year (58.7 acres x 5; 11.1 acres x 3.325). According to the Reports of Examination issued March 31, 2004 for Walla Walla College, this right was split between the two owners. The College has 13.8 acres of the right and Ms. Maxson has the remaining 56 acres of irrigation. This right is an alternate supply with up to 11.1 acres of primary water right.

Ground Water Certificate No. 6888-A authorized 295 gallons per minute, 309 acre-feet (Supplemental), for the irrigation of 91 acres. The water right has the following provisions: "The total annual quantity withdrawn under this authorization shall not exceed 309 acre-feet from March 1 through October 31 of each year, less any amount diverted under Walla Walla River Adjudicated Certificate Nos. 569, 658, 659 and withdrawn under Ground Water Certificate Nos. 57-A and 5813-A." The certificate is non-additive and is an alternate source. It is estimated that 54 acres of this water right are located on the lands owned by Ms. Maxson.

Summary of Water Rights Appurtenant to Maxson Lands

Water Right	Priority date	Acres	Qi	Source	Notes
WW 658 "Part B"	1905	15	0.3	Lower Cold Cr.	Primary Right (split previously see March 31, 2004 ROE "Part A", Walla Walla College)
WW 659	1905	33.7	0.674	Lower Cold Cr.	Primary
WW 660 w/chg 2-585	1905	20	0.4	Lower Cold Cr.	Primary
308-A	1945	20	200	3 wells (Gravel)	Less water with withdrawn under WW 660; WW 660 & 308-A shall not exceed 100 acre-feet per year
57-A (Maxson Portion)	1945	56	320	2 wells (Gravel)	Most of the right is alternate supply with a small part that maybe primary supply, see above "Other Right Appurtenant to the Place of Use"
6888-A (Maxson Portion)	1969	54	172	2 wells (Basalt)	Less any water diverted/withdrawn under 658, 659, 57-A

(The extent and validity of these rights is 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.

The applicant is requesting authorization to change the authorized point of diversion for her portion of Walla Walla River Adjudicated Certificate No. 658. Ms. Maxson proposes to move the authorized point of diversion downstream approximately half a mile to an existing pump station. There is no significant change in the stream or major diversions between the authorized and proposed points of diversion. This proposed pump station has been in use for many years without issue. Therefore, no impairment is anticipated by changing the authorized point of diversion. The proposed change will not increase the amount of water withdrawn from the Lower Cold Creek nor will it increase or expand the right.

Conclusions

In conclusion, there is a water right available for change under Walla Walla River Adjudicated Certificate No. 658 "part B". In accordance with Chapters 90.03 RCW, approval of this application to change the authorized point of diversion will not enlarge the quantity of water historically authorized, nor will it impair existing rights provided the terms and conditions above are followed.

The amount of water recommended is a maximum limit that shall not be exceeded, and the water user may only use that amount of water within the specified limit that is reasonable and beneficial. This authorization does not increase in any way the original amounts authorized by the certificate.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right change be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

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:

0.20 CFS from 04/01 to 07/01
0.15 CFS from 07/01 to 10/01
0.30 CFS from 10/1 to 04/01 (when allowed in accordance with the Walla Walla Adjudication)

54 acre-feet per year

15 acres of irrigation

Point of Diversion

NE¼NW¼ of Section 33, Township 7 North, Range 35 E.W.M.

Place of Use

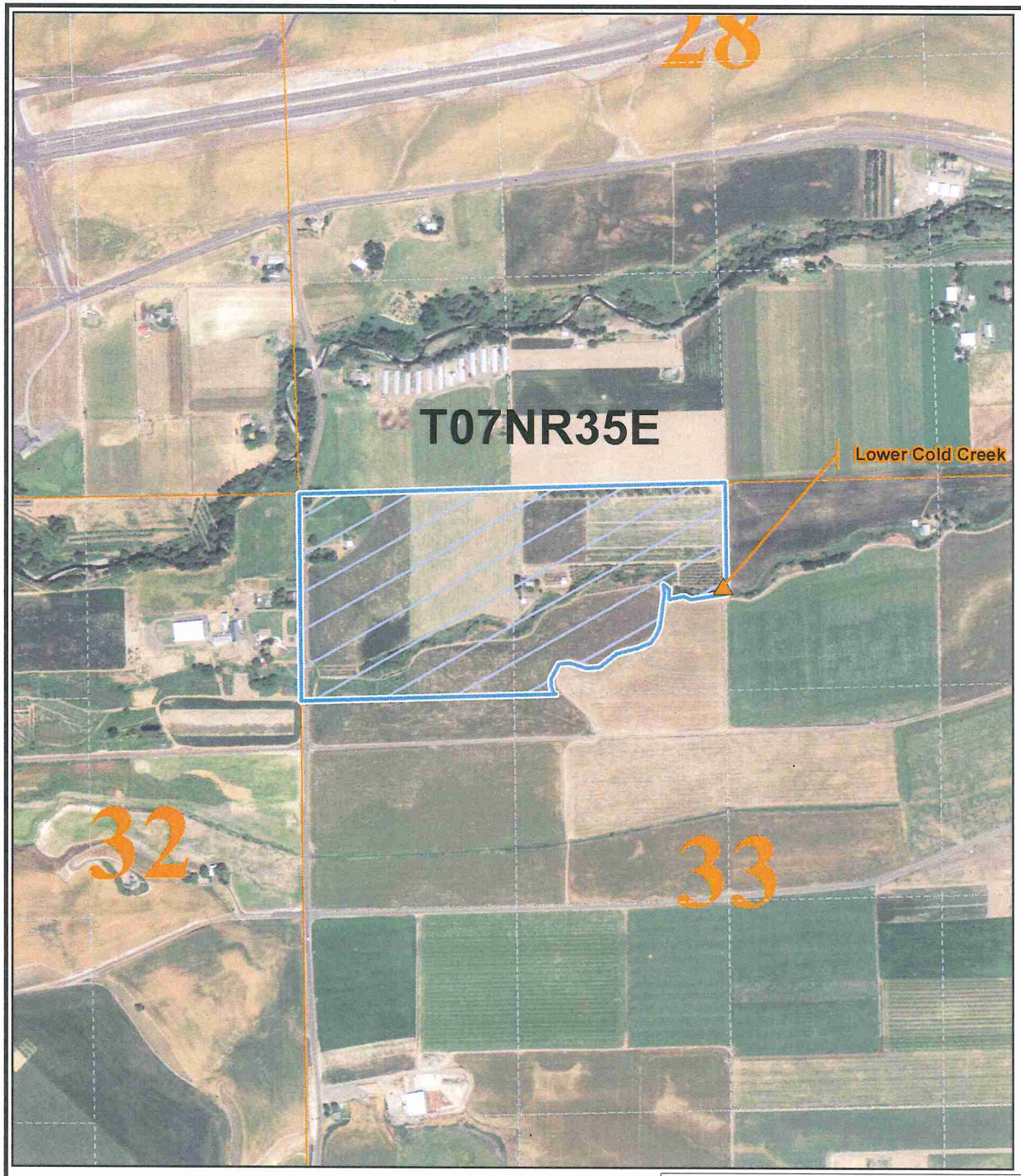
As described on Page 1 of this Report of Examination.

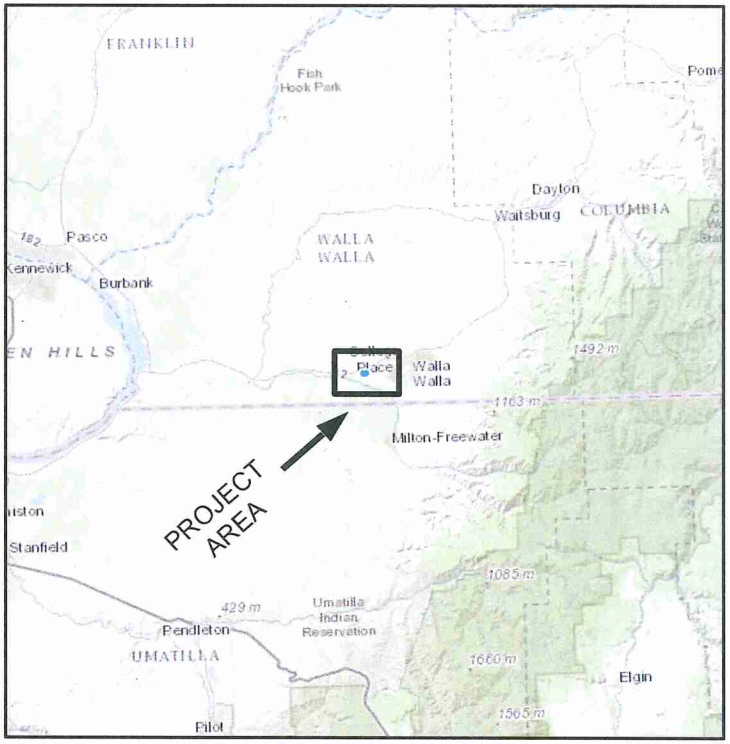
Dan Tall 12/4/2013

Dan Tolleson, Report Writer *Date*

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

Michelle Maxson
Walla Walla River Adjudicated Cert No. 658(B)
T07N/R35E





Basemap - (ESRI US Topographic Maps)

Legend

Authorized Place of Use

Townships

Sections

Authorized Point of Diversion

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

Basemap - (NAIP 2011 1m color)

Map Date: 10/25/2013

Comment:
Place of use and source locations are as defined within the Report of Examination cover sheet for the document identfied in the header above.

ATTACHMENT 1