



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

**REPORT OF EXAMINATION**  
*Application to change the place of use under  
Harvey Creek Adjudicated Surface Water Certificate No. 155*

PRIORITY DATE	CHANGE APPLICATION NO.	ADJUDICATED SURFACE WATER CERTIFICATE NO.
March 1, 1904 (CLASS XIII)	CS3-66155J	Harvey Creek No. 155

NAME William O. and Judy R. Singer		
ADDRESS/STREET	CITY/STATE	ZIP CODE
3665 Harvey Creek Road	Hunters, WA	99137

**PUBLIC WATERS TO BE APPROPRIATED**

SOURCE South Fork of Harvey Creek		
TRIBUTARY OF (IF SURFACE WATERS) Columbia River		
MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr)
0.16	72	36
QUANTITY, TYPE OF USE, PERIOD OF USE 0.16 cubic feet per second, 36 acre-feet per year, each year from May 1 to October 1, for the irrigation of 12 acres		

**LOCATION OF DIVERSION/WITHDRAWAL**

APPROXIMATE LOCATION OF DIVERSION—WITHDRAWAL 1,300 feet north and 1,400 feet west of the SE corner of Sec. 18					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) NE $\frac{1}{4}$ SE $\frac{1}{4}$	SECTION 18	TOWNSHIP 31 N.	RANGE 38 E.W.M.	WRIA 58	COUNTY Stevens
PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM		

**RECORDED PLATTED PROPERTY**

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
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**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.]

12 acres within portions of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 18, T. 31 N., R. 38 E.W.M. (See map: Attachment 2)

**DESCRIPTION OF PROPOSED WORKS**

Gravity flow system

**DEVELOPMENT SCHEDULE**

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Started	Completed	In use

**Quantity Limits, Flow and Regulation:**

1. This change authorizes one point of diversion in the amounts of 0.16 cubic feet per second, 36 acre-feet per year, each year from May 1 to October 1, for the irrigation of 12 acres under Harvey Creek Adjudicated Surface Water Certificate No. 155.

**General Conditions:**

2. 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.

**Schedule and Inspections:**

3. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times wells or diversions and associated distribution systems for compliance with water law.

**Measurements, Monitoring, Metering and Reporting:**

4. An approved measuring device shall be installed and maintained for each of the sources identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use," Chapter 173-173 WAC. Water use data shall be recorded *weekly* and maintained by the property owner for a *minimum* of five years, and shall be promptly *submitted to Ecology upon request*.

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>

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 conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

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**FINDINGS OF FACT AND ORDER**

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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 application to change the place of use under Harvey Creek Adjudicated Surface Water Certificate No. 155, 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

Deliver your appeal in person to:

The Pollution Control Hearings Board  
OR 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 & Application for Relief  
Coordinator  
PO Box 47608  
Olympia, WA 98504-7608

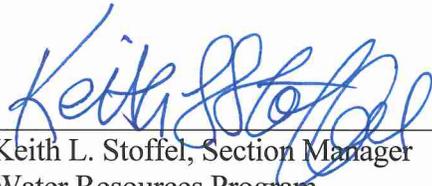
Deliver your appeal in person to:

OR The Department of Ecology  
Appeals & Application for Relief  
Coordinator  
300 Desmond Dr SE  
Lacey, WA 98503

**3. And send a copy of your appeal to:**

Keith L. Stoffel  
Department of Ecology  
Eastern Regional Office  
4601 North Monroe Street  
Spokane, WA 99205

Signed at Spokane, Washington, this 9th day of June, 2009.



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

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**INVESTIGATOR'S REPORT**

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**BACKGROUND**

An application for change was submitted by William O. and Judy R. Singer of Hunters, Washington to the Department of Ecology on August 6, 2007. The applicant proposes to change the place of use under Harvey Creek Adjudicated Surface Water Certificate No. 155. The current point of diversion is from the South Fork of Harvey Creek within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 18, T. 31 N., R. 38 E.W.M. The authorized place of use is the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 18, T. 31 N., R. 38 E.W.M. The applicant proposes to correct the place of use description to that which has been historically irrigated on the property. No other changes in water use are proposed. The proposed place of use is the existing irrigated 12 acres of crop fields located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 18, T. 31 N., R. 38 E.W.M.

A notice of application was duly published in accordance with RCW 90.03.280 in The Chewelah Independent on October 4 and 11, 2007. No protests or objections were received.

This application is categorically exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21C RCW.

**Harvey Creek Adjudicated Surface Water Certificate No. 155**

Recorded Name:	George L. and Burgi Singer
Priority Date:	March 1, 1904 (CLASS XIII)
Instantaneous Quantity - Q(i):	0.16 cubic feet per second,
Annual Quantity - Q(a):	36 acre-feet per year
Source:	South Fork of Harvey Creek
Point of diversion:	NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 18, T. 31 N., R. 38 E.W.M.
Purpose of Use:	Irrigation of 12 acres
Period of Use:	May 1 to October 1
Place of Use:	SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 18, T. 31 N., R. 38 E.W.M.

**INVESTIGATION**

**History and Water Use**

The Washington State Supreme Court, in Okanogan Wilderness v. Town of Twisp and Department of Ecology, 133 Wn.2d 769, 947 P.2d 732 (1997), found that applications for change may be granted only to the extent the water has been historically put to beneficial use, as beneficial use determines the measure of a water right. They also found that the existence and quantification of a water right must be determined, including whether or not the water right has been lost for non-use, before the Department can approve a change or transfer of the water right.

Harvey Creek Adjudicated Surface Water Certificate No. 155

Certificate No. 155 was issued by the department on November 12, 1974 as directed by Stevens County Superior Court in the case of Arden Tree Farms, Inc., et al. County Cause No. 17651 which decree determined the rights of all known claimants to the use of waters of Harvey Creek drainage basin. Harvey Creek is located in Water Resource Inventory Area (WRIA) 58 in Stevens County, WA. The Singer farm is located just over five miles east of Cedonia, WA.

George and Burgi Singer owned the property in 1974 when the adjudication on Harvey Creek was completed. Their son, William (Bill) Singer now farms the same property and continues to irrigate about 12 acres on the 160 acre farm. A portion of the 12 acres presently irrigated on the Singer farm is outside the legal description of the place of use on Harvey Creek Adjudicated Surface Water Certificate No. 155. The land located in the SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Sec. 18, T. 31 N., R. 38 E.W.M. is the land in question (aka Field #4). The majority of this field is not within the authorized place of use which is the SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> of Sec. 18, T. 31 N., R. 38 E.W.M. Therefore, an application was filed to correct the legal description. This error was recently discovered by Ecology during regulation of Harvey Creek water rights in 2007. Bill Singer has stated that the existing 12 acres of land (including Field #4) has been irrigated for well over 50 years. This examiner has witnessed the existing 12 acres being irrigated throughout the years during field visits to the area.

A review of the adjudication record was also conducted. Information regarding the Singer Claim (Claimant No. 29) was requested from Ecology's Adjudication Section located in Lacey, Washington. Michael Thomas of the Adjudication Section provided the original Statement of Claim along with the Official Transcript of Proceedings from the Harvey Creek Adjudication for Singer. The testimony describes how Singer's water system went from a gravity flow system to pump system in 1950 then back to a gravity system just prior to the adjudication. There was discussion of 12 acres being irrigated and water use for that land. There was a statement in the testimony indicating that the map provided in the adjudication was not quite correct.

This examiner obtained aerial photographs of the property from the USDA Farm Service Agency office in Colville, WA for the years 1957, 1968 and 1980. The photos do indicate that the authorized place of use was farmed during these years. After reviewing the complete record, there was no other evidence that an error was made in describing the place of use of the 12 acre water right. It appears that the place of use had changed over time and the property owner did not make application to the state.

It is clear that a total of 12 acres have historically been irrigated on the Singer farm along with the associated quantities of water. This application, made by William O. (Bill) Singer, will correctly identify the 12 acres now being irrigated on the farm.

This examiner conducted a field investigation with Bill Singer on October 30, 2008. On this date, he showed me the existing five fields that were irrigated along with the existing point of diversion and irrigation equipment. The irrigated fields are identified by the Singers as Fields #1 thru #5. In 2007, it was estimated by Bill's son, Kelly Singer, that they irrigated around 11.18 acres. His calculations were as follows:

Field #1 = 5.90 acres  
Field #2 = 0.49 acres  
Field #3 = 0.54 acres  
Field #4 = 4.00 acres  
Field #5 = 0.25 acres  
**Total = 11.18 acres irrigated in 2007**

GPS readings and aerial photographs confirmed the irrigation on the Singer farm in these areas. Rick Darnell, (Ecology WR GIS processing) calculated acreage using a 2006 NAIP (National Agricultural Imagery Program) aerial photograph. The total area of these fields is actually around 19 acres. In 2006, it appears that the Singers actually irrigated about 12.6 acres within this 19 acre area. The department's calculations were as follows:

Field #1 = 5.80 acres  
Field #2 = 1.30 acres  
Field #3 = 0.80 acres  
Field #4 = 4.30 acres  
Field #5 = 0.40 acres  
**Total = 12.60 acres irrigated in 2006**

Water from the South Fork of Harvey Creek is gravity fed through a 4 inch pvc mainline pipe and then reduced to 3 inch pipe to the irrigated fields. There was no diversion on the day of the field examination; however, the creek was estimated by this examiner at around 1 cubic foot per second at the Singer point of diversion. Hand lines with impact sprinklers are used to irrigate these five fields. Bill Singer says he uses no more than 16 sprinklers at a time to irrigate the fields to stay within the allocated quantity of 0.16 cubic feet per second (or about 72 gallons per minute). The full quantity of water under Harvey Creek Adjudicated Surface Water Certificate No. 155 has been

used on the 12 acres. This is consistent with testimony provided by George Singer in the Harvey Creek Adjudication.

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

The Singers hold two other water rights on their farm for domestic supply and stockwater use. The two rights were also confirmed in the Harvey Creek Adjudication:

#### **Harvey Creek Adjudicated Surface Water Certificate No. 154**

Recorded Name: George L. and Burgi Singer  
Priority Date: 1890 (CLASS II)  
Instantaneous Quantity - Q(i): 0.01 cubic foot per second,  
Annual Quantity - Q(a): 0.08 acre-foot per year  
Source: South Fork of Harvey Creek  
Point of diversion: Traversing the W $\frac{1}{2}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 18, T. 31 N., R. 38 E.W.M.  
Purpose of Use: Stockwater  
Period of Use: Continuously  
Place of Use: W $\frac{1}{2}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 18, T. 31 N., R. 38 E.W.M.

#### **Harvey Creek Adjudicated Surface Water Certificate No. 156**

Recorded Name: George L. and Burgi Singer  
Priority Date: 1904 (CLASS XXIII)  
Instantaneous Quantity - Q(i): 0.02 cubic foot per second,  
Annual Quantity - Q(a): 1 acre-foot per year  
Source: An Unnamed Spring  
Point of diversion: NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 18, T. 31 N., R. 38 E.W.M.  
Purpose of Use: Domestic supply and stockwater  
Period of Use: Continuously  
Place of Use: SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 18, T. 31 N., R. 38 E.W.M.

### **Impairment Considerations**

“Impair” or “impairment” means to: 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, including earlier filed applications, 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 only change the applicant has proposed to this water right is to correctly identify the existing 12 acres which are irrigated on the Singer farm. No other changes in water use are requested.

### **Consideration of Protests and Comments**

No protests or objections received.

### **CONCLUSIONS**

It is the conclusion of this examiner that, in accordance with Chapters 90.03, this application to change the place of use under withdrawal under Harvey Creek Adjudicated Surface Water Certificate No. 155 will not enlarge the quantity of water historically authorized, nor will it impair existing rights provided the terms and conditions below are followed.

### **RECOMMENDATIONS**

Based on the above investigation and conclusions, I recommend that the request to change the place of use under Harvey Creek Adjudicated Surface Water Certificate No. 155 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:

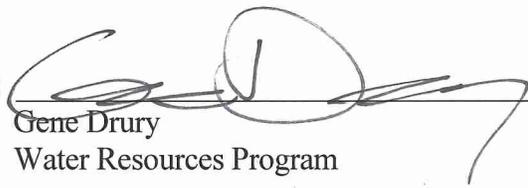
- 0.16 cubic feet per second,
- 36 acre-feet per year
- Irrigation of 12 acres

**Point of Diversion**

South Fork of Harvey Creek within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 18, T. 31 N., R. 38 E.W.M.

**Place of Use**

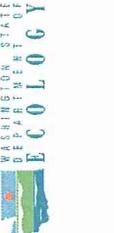
12 acres within portions of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 18, T. 31 N., R. 38 E.W.M.

Report by:  \_\_\_\_\_ Date 6/9/2009  
Gene Drury  
Water Resources Program

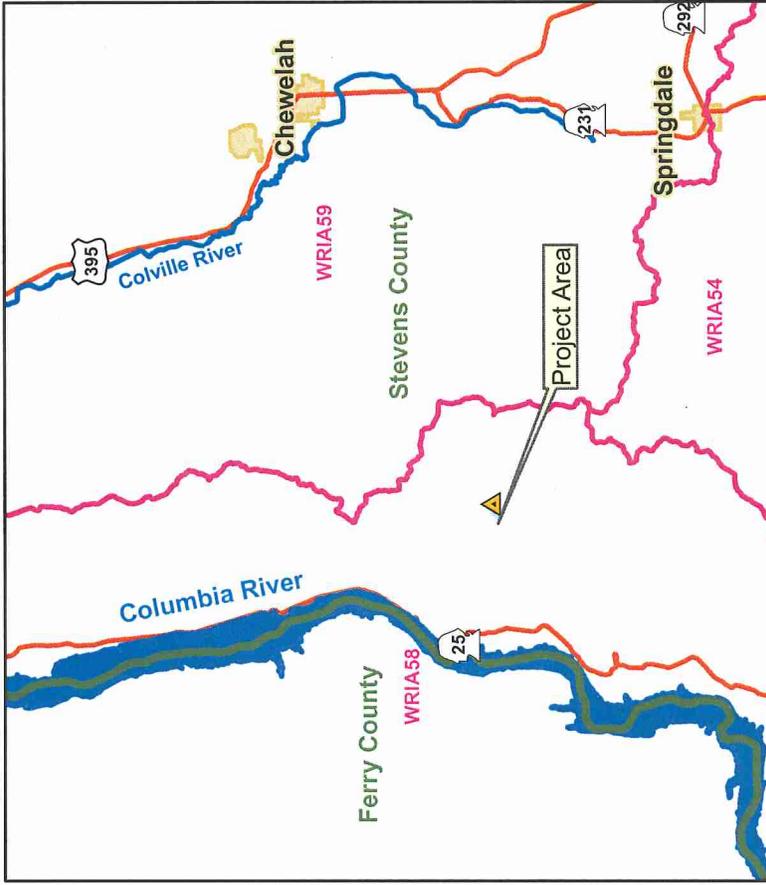
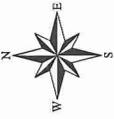
*If you need this publication in an alternate format, please call Water Resources Program at 360 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*

Y/Final docs/ROEs/Drury 2009/Harvey Creek Adj 155

# Attachment 1

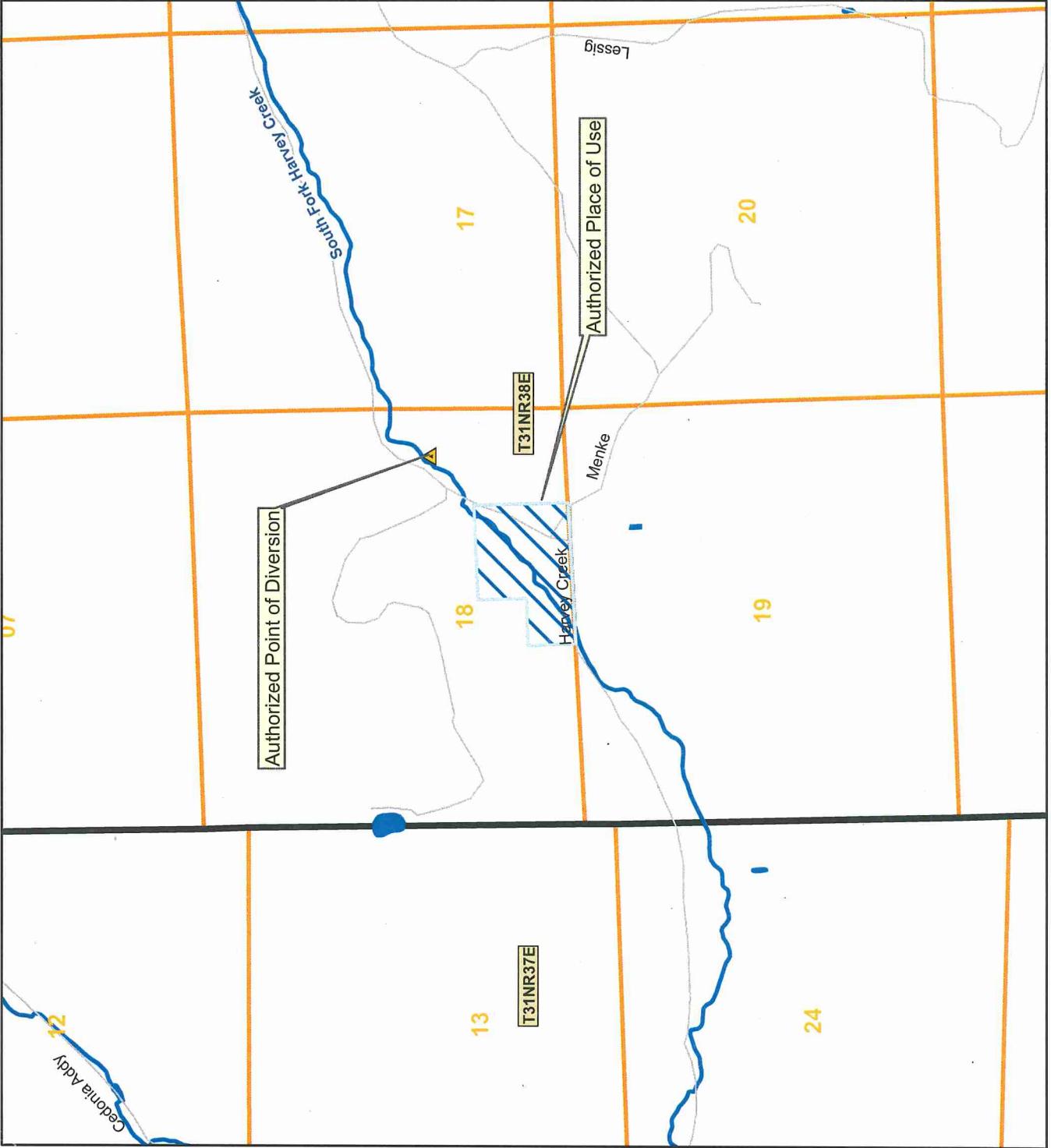


William & Judy Singer  
 Change to Harvey Creek Adjudicated Certificate 155  
 Sec. 18, T 31N, R 38E, W.M.  
 WRIA 58 - Stevens County



- Legend**
- County
  - WRIA
  - Cities
  - Townships
  - Sections
  - Local Roads
  - Highways
  - Authorized Point of Diversion
  - Authorized Point of Withdrawal
  - 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 2

William & Judy Singer  
 Change to Harvey Creek Adjudicated Certificate 155  
 Sec. 18, T 31N, R 38E.W.M.  
 WRIA 58 - Stevens County

