STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Change of Diversion
WRTS File # CS3-*28708J

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
The year 1908 (Class 46)			Walla Walla Adj. Certificate No. 708, w/chg. 1-3-475

NAME
Gary L. Wirth

ADDRESS/STREET	CITY/STATE	ZIP CODE
1526 Detour Road	Walla Walla, Washington	99362

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
Walla Walla River

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		20

QUANTITY, TYPE OF USE, PERIOD OF USE

0.107 cubic feet per second from April 1 to July 1, 0.08 cubic feet per second from July 1 to October 1, 0.16 cubic feet per second, when allowed, from October 1 to April 1, 20 acre-feet, per year, for the seasonal irrigation of 8 acres

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL

1400 feet East and 750 feet North from the W¼ corner of Section 36

SOURCE	PARCEL	LATITUDE	LONGITUDE	QTR/QTR	SECTION	TOWNSHIP	RANGE
Walla Walla River	340736510060	46.0439° N	118.5076°W	SE¼NW¼	36	7 N	34 E.W.M.

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.]

Beginning at the Southwest corner of Parcel 1B of amended, Amended Jean Stiller Short Plat according to the official plat thereof recorded in Volume 4 of Short plats at Page 58 under Auditor's Fine No. 2003-05053; Thence North 01°46'40" West, along the West line of said parcel 1B, and said line extended, a distance of 1165.57 feet; Thence South 88°05'11" East a distance of 374.87 feet; Thence South 01°46'40" East a distance of 1165.57 feet to a point on the South line of Parcel 1B; Thence North 88°05'11" West, along said South line , a distance of 374.87 feet to the Point of Beginning. Being adjusted Parcel 1B as disclosed by the certain survey recorded May 19, 2003 in Volume 9 of Surveys at Page 10 as Auditor's File No. 2003-07308. Situated in Walla Walla County, State of Washington

DESCRIPTION OF PROPOSED WORKS

Portable diversion pump, mainline and handlines

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Started	In use	June 1, 2011

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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 and maintained by the property owner for a minimum of five years. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to the Department of Ecology by January 31st of each calendar year.

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 attached to 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 certificate of change 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 of change 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. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. The total use of water under Surface Water Certificate No. 9430 and Walla Walla Adjudicated Certificate No. 708 w/chg. 1-3-475, for that portion of the rights appurtenant to adjusted Lot 1B Stiller Short Plat, shall be limited 0.211 cubic feet per second from April 1 to July 1, 0.08 cubic feet per second from July 1 to October 1, up to 0.32 cubic feet per second, when allowed, from October 1 to April 1; 20 acre-feet per year for the seasonal irrigation of 8 acres.

FINDINGS OF FACT AND ORDER

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 to add one point of diversion under Walla Walla Adjudicated Certificate No. 708 with Certificate of Change 1-3-475, subject to existing rights and the provisions listed above.

You have a right to appeal this action to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this document. 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 this document:

- File your appeal and a copy of this document 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 document on Ecology in paper form - by mail or in person. (See addresses below.) Email 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 Pollution Control Hearings Board 1111 Israel Road SW Suite 301 Tumwater , WA 98501	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Please also send a copy of your appeal to:

Mr. Keith L. Stoffel
Department of Ecology
Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205-1295

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 .

Signed at Spokane, Washington, this day of 2011.

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 Mark and Debra Conwell of College Place, Washington, to Ecology on November 5, 2003. The application was assigned to Gary Wirth on April 23, 2008. He proposes to add a point of diversion to his portion of the right, as granted under Walla Walla River Adjudicated Certificate No. 708, with Certificate of Change volume 1-3, page 475 (Certificate No. 708 w/chg. 1-3-475).

Attributes of the Certificate and Proposed Change

Table 1 Summary of Existing Attributes and Proposed Changes to Certificate No. 708, w/chg. 1-3-475

Attributes	Documented	Proposed
Name	Harry T. McGuire and Burnadett McGuire	Gary Wirth
Priority Date | Date of Application for Change	1908 (Class 46)	November 5, 2003
Instantaneous Quantity	0.866 cfs from April 1 to July 1 0.650 cfs from July 1 to October 1 1.300 cfs from October 1 to April 1	*No change*
Annual Quantity	325 acre-feet per year	*No change*
Source	Walla Walla River	*No Change*
Point of Diversion/Withdrawal	SE¼NW¼ of Section 36, T. 6 N, R. 37 E.W.M.	Additional diversion within: SE¼NW¼ of Section 36, T. 7 N., R. 34 E.W.M.
Purpose of Use	Irrigation of 65 acres	*No change*
Period of Use	Year round	*No change*
Place of Use	Approximation: Portions of the W½ of Sec. 36, T. 7 N, R. 34 E.W.M. north of Detour Road	*No change*

In addition to this application, one other application was filed by Gary Wirth on Surface Water Certificate No. 9430. Each application will have decisions based on its own respective findings.

Legal Requirements for Proposed Change

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

- **Public Notice**

A notice of application was duly published in accordance with RCW 90.03.280 in The Walla Walla Union-Bulletin on April 2nd and 29th, 2009 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**

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RCW 90.03.360 requires that the owner of any water diversion maintain substantial controlling works and a measuring device. It must be constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Technical requirements for the measuring and reporting of water use are described in WAC 173-173. This decision contains provisions requiring the measuring and reporting of the quantities of water withdrawn or diverted.

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 changes/transfers, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Water Right Certificate No. 708 w/chg. 1-3-475, 868, 9430, G3-25620C, 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 October 28, 2008 by Dan Tolleson with Gary Wirth. This project is located approximately 5 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.

History of Water Use

Walla Walla Adjudicated Surface Water Certificate No. 708 was issued on August 23, 1929 with a priority date of the year 1908 (Class 46). Water for this right was historically conveyed from the Little Walla Walla River by the Vosberg Ditch. At some point in the 1980's the Vosberg ditch was abandoned. Certificate of Change volume 1-3, page 475, issued March 30, 1987, authorized a change in point of diversion for this right. The change essentially consisted of moving the original point of diversion downstream approximately one mile to the main stem Walla Walla River.

The authorized point of diversion lies within the NW¼SE¼NW¼ of Sec. 36, T. 7 N., R. 34 E.W.M. with its source being the Walla Walla River. This site is also the authorized diversion for Water Right Certificate No. 9430. Currently, two pump stations, within a few feet of each other, are located at the authorized site. These authorized diversions are currently used to provide water to much of the eastern portion of the place of use. Approximately, 250 feet west and downstream of the authorized diversions is a portable pump station that provides water to Mr. Wirth's lot. Mr. Wirth's proposed diversion consists of a pickup with fish screens, centrifugal pump and pressurized main line. Within a few hundred feet to the west and downstream of Mr. Wirth's diversion are two more unauthorized pump stations that provide water for the remainder of the place of use.

The authorized place of use, lies primarily south of the Walla Walla River and north of Detour Road within portions of the W½ of Section 36 (also known as the W½ of the Narcisse Raymond Donation Land Claim), T. 7 N., R. 34 E.W.M. This area is for the most part cultivated land with riparian vegetation adjacent to the river. Several homes, barns and outbuildings are also located within this place of use on six different lots with five separate owners. The homes and yards are supplied water from domestic wells under the exemption. Only the portion of the water right appurtenant to land owned by Gary Wirth is proposed for change under this application. His parcel of land is known as adjusted Lot 1B of Stiller Short Plat.

Aerial photographs were used to help verify the extent of development, historical use and beneficial use of this project. Historically it is estimated that 70 acres were irrigable within the place of use, taking into account the location of the Walla Walla River. Over time it appears that changes in the river course, encroachment of riparian vegetation and the development of houses have reduced the actual irrigable land. Currently, only 57 acres are irrigable within the place of use of these rights. Water Right No. 708, w/chg. 1-3-475 authorizes enough acres to potentially provide irrigation to all of the existing irrigable land within the place of use. Approximately 8.5 acres have been historically irrigated within Mr. Wirth's lot in recent years. Eight of these acres are irrigated with Walla Walla River water for a grain crop. The remaining half acre of irrigation is for his yard and is supplied from his domestic well, under the exemption.

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The authorized water duty of this certificate is 5 acre-feet per year, per acre. Historically, this right has been used to irrigate various crops. In the last five or so years, grain has been the only irrigated crop. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that an estimated 1.74 acre-feet, per acre, is required for spring grains in the Walla Walla area. The current irrigation system of sprinkler is estimated at a 70% efficiency rate of application. With a 70% efficiency rate of application an estimated 2.5 acre-feet per acre would need to be applied for crops that use 1.74 acre-feet per acre. The remaining 2.5 acre-feet per acre is no longer required due to current farming practices and is subject to relinquishment for non-use. Continued irrigation of the lot owned by Mr. Wirth will require 20 acre-feet, per year, for the irrigation of 8 acres.

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 project. The search focused primarily on Section 36, Township 7 north, Range 34 E.W.M. The review of Ecology records shows four water rights that overlap the authorized place of use, which are as follows:

Walla Walla Adjudicated Surface Water Certificate No. 868 was issued on September 25, 1929, with a priority date of the year 1926 (Class 64). This right authorized 5 acres of irrigation within a portion of the W½ of the Narcisse Raymond Donation Land Claim, which lies within the S¾W½ of Sec. 36, T. 7 N., R. 34 E.W.M. This right is a primary right. This water right shares approximately the same 72 acre legal description of Walla Walla Adjudicated Surface Water Certificate No. 708 w/chg.1-3-475, 9430 and G3-25620C. Water under this right was conveyed down the Vosberg Ditch which was abandoned in the 1980's. No use has occurred under this right since the ditch was abandoned and is subject to relinquishment for non-use.

Surface Water Certificate No. 9430 was issued on August 18, 1965 with a priority date of April 20, 1964. This right authorized 62.5 acres of irrigation within a portion of the W½ of the Narcisse Raymond Donation Land Claim, which lies within the S¾W½ of Sec. 36, T. 7 N., R. 34 E.W.M. This water right shares approximately the same 72 acre legal description of Water Certificate Nos. 868, 708 w/chg.1-3-475 and G3-25650C. This right was issued as an alternate supply. The acres and annual quantity are issued less existing rights, which are Surface Water Certificate Nos. 868 and 708 w/chg. 1-3-475.

Ground Water Certificate No. G3-25650 was issued on April 12, 1985, with a priority date of September 9, 1977. This right authorized 35 acres of irrigation, single domestic supply and stockwater within a portion of the W½ of the Narcisse Raymond Donation Land Claim, which lies within the S¾W½ of Sec. 36, T. 7 N., R. 34 E.W.M. This water right shares approximately the same 72 acre legal description of Surface Water Certificate Nos. 868, 708 and 9430. This right was issued as an alternate supply. The acres and annual quantity are issued less existing rights, which are Surface Water Certificate Nos. 9430, 868 and 708 w/chg.1-3-475. According to Mr. Wirth, this right has not been used in many years and is not part of his project.

Walla Walla Adjudicated Surface Water Certificate Nos. 630 w/chg. 1-3-127 and 833 w/chg.1-3-188 authorize the same approximate 190 acres place of use for a total of 120 acres of irrigation. This authorized place of use overlaps the entire place of use of Water Certificate Nos. 868, 708 w/chg.1-3-475, 9430 and G3-25620C. It appears that the actual use under Certificate Nos. 630 w/chg. 1-3-127 and 833 w/chg.1-3-188 is north of the Walla Walla River. No use under these rights occurs on Mr. Wirth's project which lies south of the Walla Walla River.

(The validity and extent of above listed water rights and claims 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.

The proposed point of diversion is located approximately 250 feet downstream from the point of diversion authorized under the original certificate with its accompanying certificate of change. No other diversions or significant changes occur in the Walla Walla River between the originally authorized point of diversion and the proposed point of diversion. No water is authorized to 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.

Enhancement Considerations

The proposed change will not increase the amount of water diverted from the Walla Walla River, nor will it increase or expand the right. No withdrawal of water over and above what has been historically authorized would be approved through this change.

CONCLUSIONS

There is a water right available for change/transfer under Walla Walla River Adjudicated Certificate No. 708, w/chg. Vol. 1-3-475 in the amount of 0.107 cubic feet per second from April 1 to July 1, 0.08 cubic feet per second from July 1 to October 1, 0.16 cubic feet per second, when allowed, from October 1 to April 1, 20 acre-feet per year for the seasonal irrigation of 8 acres.

It is the conclusion of this examiner that, in accordance with Chapters 90.03, this application for change (to add a point of diversion, as granted under Walla Walla River Adjudicated Certificate No. 708, w/chg. Vol. 1-3-475) will not enlarge the quantity of water historically used on adjusted Lot 1B of Stiller Short Plat, nor will it impair existing rights provided the recommendations are followed.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to add a point of diversion be approved in the amounts and within the limitations listed below and subject to the provisions 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:

- 0.107 cfs from April 1 to July 1
- 0.08 cfs from July 1 to October 1
- 0.16 cfs from October 1 to April 1, when allowed
- 20 acre-feet per year
- Irrigation of 8 acres

Point of Diversion

SE¼, NW¼, Section 36, Township 7 North, Range 34 E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

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.

W/Draft ROEs/Tolleson 2011/WWAC 708 Wirth

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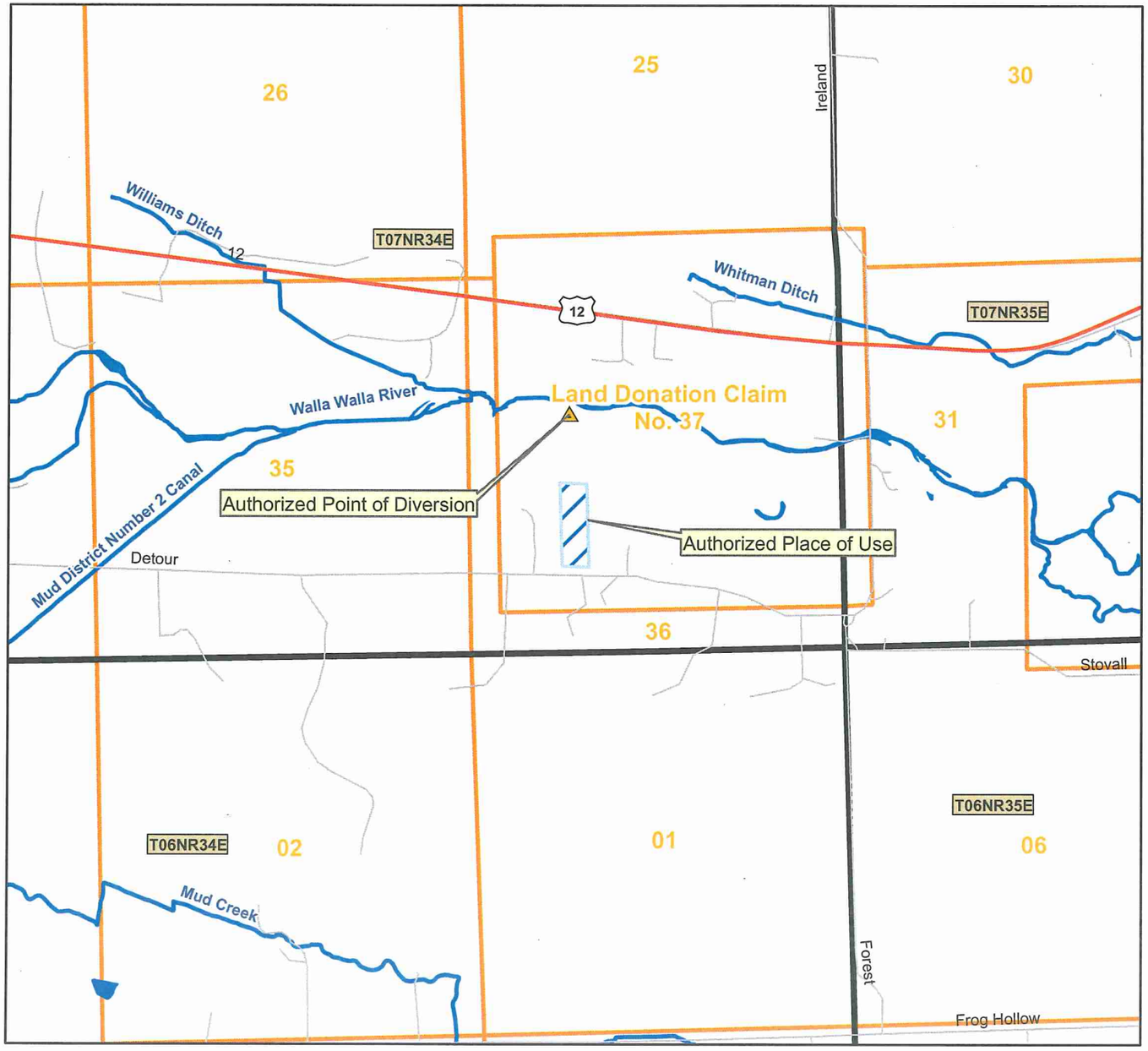
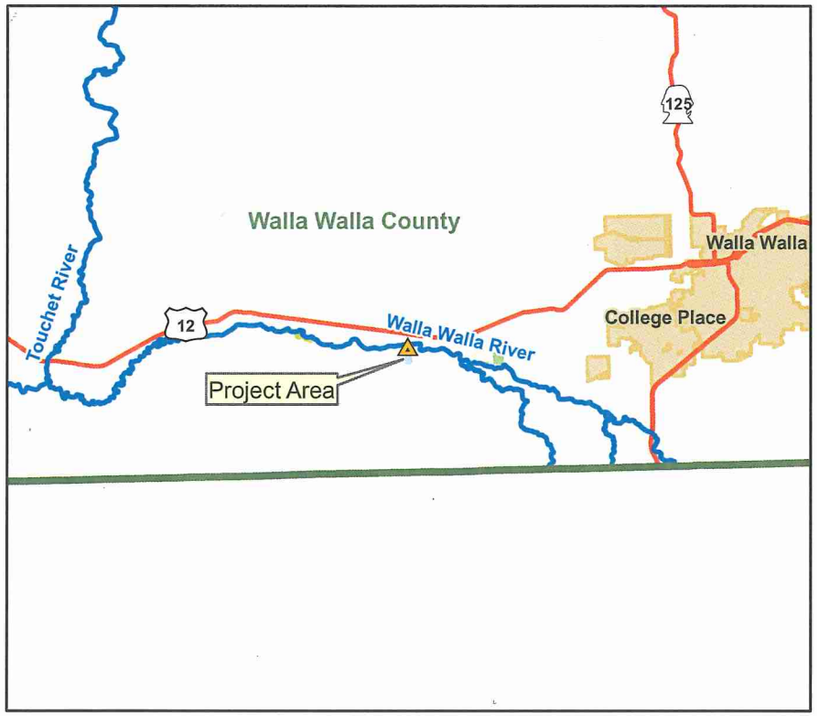
Mr Gary L Wirth
Walla Walla Adjudicated Surface Water Certificate No. 708
Sec. 36, T 07N, R 34E.W.M.
WRIA 32 - Walla Walla County





Legend

- County
- WRIA
- Cities
- Local Roads
- Highways
- Townships
- Sections
- Authorized Point of Diverison
- 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 1