DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
DRAFT
REPORT OF EXAMINATION
FOR WATER RIGHT CHANGE

Added or Changed Point of Withdrawal/Diversion

PRIORITY DATE
Class 28 (Year 1899)

WATER RIGHT NUMBER
Touchet River Adjudicated Certificate No. 187

MAILING ADDRESS
Nancy A. Shaw
11858 Hwy 124
Prescott WA 99348

SITE ADDRESS (IF DIFFERENT)

Total Quantity Authorized for Diversion

MAXIMUM DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.335	CFS	58.9

Purpose

PURPOSE	DIVERSION RATE	ANNUAL QUANTITY (AF/YR)
Irrigation	0.238 cfs 4/1 - 9/15 0.335 cfs 9/15 - 4/1	58.9

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
15.75			

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Columbia	Touchet River	Walla Walla River	32-WALLA WALLA

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Touchet River	360901410007		9N	36E	1	SW¼SE¼	46.28228°	-118.24830°

Datum: WGS84

Proposed Source: 600 feet north and 1655 feet west from the SE corner of Section 1, T. 9 N., R. 36 E.W.M.

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

360901410007

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

A tract of land located in the SE¼ of Section 1, T. 9 N., R. 36 E.W.M., Walla Walla County, more particularly described as follows:
Beginning at the SW corner of section 1 in T. 9 N., R. 36 E.W.M., and run thence N 00°7'45" W., along the east line of said section 1 a distance of3968.97 feet to a point in the south line of Blue Mountain Railroad right of way (UPRR); thence S. 61°30'06" east, along said south line of said railroad a distance of 4314.60 feet to the true point of beginning; thence continuing S. 61°30'06" east, along said south line of said railroad a distance of 783.37 feet; thence S. 14°10'24" W., a distance of 1131.88 to a point in the centerline of the Touchet River; thence westerly along the centerline of said Touchet River the following courses: N. 79°15'31" W., a distance of 386.39 feet; N. 72°18'57" W., a distance of 95.62 feet; N. 50°42'23" W., a distance of 212.43 feet to a point which is S. 10°16'02" W., 1255.72 feet from the true point of beginning; thence N. 10°16'02" E., a distance of 1255.72 feet to the true point of beginning.

Proposed Works

The irrigation system is comprised of an 8.5-hp pump station, mainline, and wheel lines or hand lines.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	April 1, 2014	April 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 Diversion

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", 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.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Eastern Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Eastern Regional Office for forms to submit your water use data.

Water use data shall be recorded **weekly**. 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.

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.

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.

General Provisions
This authorization is subject to the provisions set forth in the decree of the Superior Court of Walla Walla, State of Washington, made and entered on the 19th day of September, 1929, recorded in Volume 18 of the Superior Court Journal at Page 1, otherwise known as Touchet River Decree No. 22066.

After all rights scheduled in Touchet River Adjudication Decree No. 22066 are filled, the surplus water is allotted in the order of priority in amounts sufficient to increase the rate to the quantity allotted for the period from September 15th to April 1st. The total diversion shall not exceed 3.74 acre-feet per acre for any one year beginning September 15th.

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 No. CS3-*34217J(E) 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 day of 2012.

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
Jeff MacLennan, Department of Ecology
Water Right Control Number CS3-*34187J@1
Touchet River Adjudicated Certificate No. 187

BACKGROUND

Description and Purpose of Proposed Change

An application for change was submitted by Kris Huether of Prescott, Washington, to Ecology on December 6, 2005. Ms. Huether assigned the change application to Ms. Nancy Shaw on May 19, 2006. The change application proposes to change the authorized point of diversion (POD) and place of use (POU) under Touchet River Adjudicated Certificate No. 187 (TRAC No. 187). The change to the authorized point of diversion is intended to correct the location of the point of diversion to the location actually being used. The change to the POU accommodates changes in land ownership by shifting the original POU approximately 400 feet downstream.

Table 1 below compares the existing and proposed attributes of the water right.

Table 1. Attributes of the Existing Water Right and Proposed Change

	Existing	Proposed
Name	Glenn McCaw	Nancy A. Shaw
Priority Date	Class 28 (Year 1899)	
Change Application Date		12/6/2005
Instantaneous Rate	Up to 0.357cfs	Same
Annual Quantity	107 acre-feet per year	Same
Purpose(s) of Use	Irrigation of 17.84 acres	Same
Period of Use	Year Round, Season Starting 9/15	Same
Place(s) of Use	Portions of the SE¼, Section 1, T. 9 N., R. 36 E.W.M.	Portions of the SE¼, Section 1, T. 9 N., R. 36 E.W.M.

Proposed Source of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Touchet River Diversion	360901410007	9N	36E	1	SW¼SE¼	46.28230°	-118.24826°

Authorized Source of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Touchet River Diversion		9N	37E	7	NW¼NE¼		

Legal Requirements for Proposed 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 Times* during the weeks of January 19th and 26nd, 2006. No protests were received.

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.

- 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;
- It is a groundwater right application for more than 2,250 gallons per minute;
- It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- 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);
- 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.

This application does not meet any of the above listed 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; (3) USGS topographic maps, LandSat imagery, and aerial photographs; (4) diversion works and place of use; (5) State of Washington Irrigation Guide (WA210-VI-WAIG, AMEND. 1 November 1990); (6) Touchet River Adjudication; and (7) discussions with Department of Ecology regional program staff.

Ecology employees Dan Tolleson and Jeff MacLennan met with Bud Shaw on the project site on May 17, 2012. The project is located about three miles east of Prescott, Washington. This 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** POU is an 18-acre field in the SE¼ of section 1, T. 9 N., R. 36 E., bounded on the north by the O.W.R. & N. Co. right of way, on the south by the Touchet River, and on the east by an unnamed stream. Mr. James Burres owns this land, the land directly to the south, and the land west of the **proposed** POU. The **proposed** POU is a parcel that has been carved out of Mr. Burres's land. It was initially owned by Kris Huether who later sold it to Nancy Shaw. The **proposed** change requires shifting the POU about 400 feet to the west. The **proposed** POU is also bounded on the north by the O.W.R. & N. Co. right of way and on the south by the Touchet River. It encompasses 20.2 acres with about 16 of those acres available for irrigation.

The authorized point of diversion was on the Touchet River in the NW¼NE¼ of section 7, T. 9 N., R. 37 E.W.M. At some time prior to Ms. Shaw's ownership of the property, the diversion was moved downstream to the SW¼SE¼ of section 1, T. 9 N., R. 36 E.W.M. The proposed point of diversion is an existing pressurized pumping station with associated fish screen located on the Touchet River.

History of Water Use

Aerial photographs and LandSat imagery were used to verify the extent of historical beneficial use of this project. A review of aerial photos and LandSat images back to the 1980s showed there is evidence of irrigation. During the site visit, however, it was clear the irrigation system had not been used for some time: the main line from the river was severely crimped; the meter was broken; it was obvious the wheels of the wheel line system had not been moved in a long while; and many of the wheel line pipes were damaged. In later discussions with Ms. Shaw, she explained she did not irrigate in 2010 or 2011 for a variety of reasons and that flooding during the spring run-off of 2011 had caused most of the damage.

On August 9, 2012, Ms. Shaw provided the following evidence as proof water had been put to beneficial use.

a. A letter explaining the condition of the irrigation system;
b. A copy of a letter dated January 25, 2010 sent to an insurance company seeking compensation for the damaged irrigation system;
c. Cost of the irrigation system from a 2003 estimate;
d. Information on the pump in the form of a manual;
e. Three photos of irrigation wheel lines in operation labeled as being taken in 2009; and
f. Three affidavits claiming irrigation occurred through 2009.

Five LandSat photos taken throughout the summers of 2008 and 2009 tend to support her claims. Aerial photos from 2009 and 2011 show 15.75 acres received irrigation.
The maximum authorized water duty for the original certificate is 6 acre-feet per year per acre for any one year beginning September 15th. According to the adjudication, water can be diverted from April 1st to September 15th of each year to the lands irrigated from the Touchet River at a rate not to exceed 1 cubic foot per second for each 75 acres for land east of the township line between ranges 34 and 35 east of the Willamette Meridian. If there is still water available during this period after all rights have been filled, the excess may be diverted in the order of scheduled priority in amounts sufficient to increase the rate to a maximum delivery of 1 cubic foot per second for each 50 acres of land. The diversion rate from September 15th to April 1st shall not exceed 1 cubic foot per second for each 50 acres of land in the scheduled priority, with the total diversion for any given tract of land not to exceed 6 acre feet per acre per year.

At 6 acre-feet per acre, the original authorized water duty for TRAC No. 187was 107 acre-feet per year for the irrigation of 17.84 acres. Due to a reduction in the number of irrigated acres and improvements in farming practices, the water duty should be reduced to 58.9 acre-feet per year. Ms. Shaw's proposed place of use is 15.75 acres which she uses as pasture. The State of Washington Irrigation Guide (WA210-VI-WAIG) calls for a water duty of 31.42 inches per acre annually for pasture land. At 70%efficiency, this equates to 3.74 acre-feet per acre or 58.9 acre-feet for 15.75 acres.

Because farming methods have become more efficient since the Touchet River Adjudication, the instantaneous rate of flow should be reduced between September 15 and April 1. TRAC No.187 authorizes 0.238 cfs (107 gpm) from April 1 to September 15 and 0.357 cfs (160 gpm) the remainder of the year. A reasonable instantaneous rate is 10 gpm per acre, or 160 gpm for this application. Ms. Shaw claims to have an 8.5-horsepower pump. Assuming the pump is capable of 65% efficiency at a system pressure of 60 psi, the system is capable of 150 gpm or 0.335 cfs. The instantaneous rate should be reduced between September 15 and April 1 from its current authorized rate of 0.357 cfs to 0.335 cfs.

Purpose for Change

This change moves the point of diversion and the place of use and reflects current use. The point of diversion was moved approximately a mile downstream for more convenient access. The change in place of use accommodates a land sale. Mr. Burres, the original land owner, subdivided his land and shifted the place of use from an abutting parcel he still owns to the parcel now owned by Ms. Shaw.

Other Rights Appurtenant to the Place of Use

There are 14 Touchet River Adjudicated water rights, one surface water claim, and four groundwater claims within a half mile of the proposed place of use. Of those, two are water rights that overlap the west half of Ms. Shaw's property: TRAC Nos. 184 and 313. TRAC No. 184 is a class 28 water right for irrigation of 20 acres. TRAC No. 313 is a class 64 water right for irrigation of 50 acres. Except for the portion owned by Ms. Shaw, ownership of the land covered by these two rights is owned in part by Mr. Burres with the remainder owned by Mr. Jack McCaw. These water rights are unrelated to TRAC No. 187.

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 approval to change the authorized place of use and point of diversion for TRAC No. 187. The change in place of use shifts the area receiving irrigation about 400 feet to the west. This shift was agreed to by Jim Burres, the only neighbor abutting Ms. Shaw's property. The change to the authorized point of diversion is a downstream move of approximately 0.9 miles to an existing diversion structure. Ms. Shaw does not know when the move was made to the current location. Considering the current diversion has been in place for several years with no known impact to existing rights or significant change in stream flow, no impairment is anticipated. The proposed change will not increase the amount of water withdrawn from the Touchet River, nor will it increase or expand the right.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

In conclusion, there is a water right available for change under Touchet River Adjudicated Certificate No. 187.

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 the request to change the authorized point of diversion be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, and following.

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:

0.238 cfs from April 1 to September 15
0.335 cfs September 15 to April 1
58.9 acre-feet per year
Irrigation of 15.75 acres

Point of Diversion

600 feet north and 1655 feet west from the SE corner of Section 1, T. 9 N., R. 36 E.W.M.

Place of Use:

A tract of land located in the SE¼ of Section 1, T. 9 N., R. 36 E.W.M, Walla Walla County, more particularly described as follows:
Beginning at the SW corner of Section 1, T. 9 N., R. 36 E.W.M., thence north along the west line of said Section 1 a distance of 3,968.97 feet to a point in the south line of Blue Mountain Railroad right of way (U.P.R.R.); thence S. 61°30'06" E. along said railroad a distance of 4,314.60 feet to the true point of beginning; thence continuing along said railroad S. 61°30'06" E., a distance of 783.37 feet; thence S. 14°10'24" W., a distance of 1,131.88 feet to a point in the centerline of the Touchet River; thence westerly along the centerline of the Touchet River along the following course: N. 79°15'31" W., a distance of 386.39 feet; N. 72°18'57" W., a distance of 95.62 feet; N. 50°42'23" W., a distance of 212.43 feet; thence N. 10°16'02" E., 1,255.72 feet to the true point of beginning.

Jeff MacLennan, Report Writer *Date*

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