DRAFT

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Changed Place of Use
Added Point of Diversion

PRIORITY DATE
January 1, 1913 (Class 42)

WATER RIGHT NUMBER
Touchet River Adjudicated Certificate No. 239(C)

MAILING ADDRESS
Paul and Deanna Phillips
236 Wolf Fork Road
Dayton, Washington 99328

SITE ADDRESS (IF DIFFERENT)

Total Quantity Authorized for Withdrawal or Diversion

MAXIMUM DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.06	CFS	2.3

Purpose

PURPOSE	DIVERSION RATE	ANNUAL QUANTITY (AF/YR)
Irrigation	0.04 CFS from 04/01 to 9/15 0.06 CFS from 9/15 to 04/01	2.3

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
0.67			

The total diversion under Touchet River Adjudicated Certificate Nos. 151(C) and 239(C) shall be limited to 0.0443 cubic feet per second from April 1 to September 15, 0.0666 cubic feet from September 15 to April 1; 3.5 acre-feet per year for the irrigation of 1 acre.

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Columbia	Wolf Fork	North Fork Touchet River	32-Walla Walla

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Wolf Fork	2009390143337	9 N.	39 E.	23	S½SW¼	46.2517°N	-117.9019°W
						Datum: NAD83/WGS84	

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

2009390143337

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

A tract of land located in the South half of the Southwest Quarter of Section 14, and the North half of the Northwest Quarter of Section 23, all in Township 9 North, Range 39, East of the Willamette Meridian, Columbia County, Washington, described as follows: Commencing at the Southwest corner of said Section 14; thence North 87°59'28" East 843 feet to the True Point of Beginning; thence North 7°11'30" East 199.16 feet, thence North 3°16'17" West 97.05 feet, thence North 21°55'29" West 141.12 feet, thence North 54°56'35" East 143.17 feet, thence North 85°59'04" East 778.92 feet to a point in the West line of the Wolf Fork County Road, thence South 07°33'02" East 408.58 feet along said west line; thence South 87°52'33" West 301.25 feet to a point in the center of the Wolf Fork of the Touchet River; thence South 00°23'11" West 23.88 feet; thence South 03°21'38" East along the center of the river for 202.67 ft; thence North 82°41'23" West 630.41 feet to the Point of Beginning. Lying east of Wolf Fork Creek

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	April 1, 2015	April 1, 2016

Measurement of Water Use

How often must water use be measured?	Monthly
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

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 the Touchet River 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 2.3 acre-feet per acre for any one year beginning September 15th.

The total diversion under Touchet River Adjudicated Certificate Nos. 151(C) and 239(C) shall be limited to 0.0443 cubic feet per second from April 1 to September 15, 0.0666 cubic feet from September 15 to April 1; 3.5 acre-feet per year for the irrigation of 1 acre.

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.

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.

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 the change application to Touchet River Adjudicated Certificate No. 239(C), 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 2014.

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-*34239J@2
Touchet River Adjudicated Surface Water Certificate No. 239(C)

BACKGROUND

An application for change/transfer was submitted by Roy Leid, Henry Holmberg and Paul Phillips of Dayton, Washington, to Ecology on August 29, 2013. They propose to change the authorized point of diversion, add two points of diversion, change the place of use and split the water right into three portions as granted under Touchet River Adjudicated Surface Water Certificate (TRAC) No. 239.

EXISTING Water Right Attributes

Water Right Owner:	McCully, W. E.
Priority Date:	1/1/1913 (class 43)
Place of Use	A portion of the N½NW¼ of Section 23, T 9 N., R. 39 E.W.M.

County	Waterbody	Tributary To	WRIA
Columbia	Wolf Fork	North Fork Touchet River	32-Walla Walla

Purpose	Rate	Ac-ft/yr
Irrigation of 9 acres	0.12 CFS from 4/1 to 9/15 0.18 CFS from 9/15 to 4/1	54

Source Name	Parcel		Twp	Rng	Sec	QQ Q	Latitude	Longitude
Wolf Fork			9 N.	39 E.	25	SW¼SE¼		

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

Applicant Name:	Roy Leid, Henry Holmberg and Paul Phillips
Date of Application:	8/29/2013

Name	Proposed Split	Percentage of the right	Place of use
Roy Leid	239(A)	33%	Mr. Leid's lot within the N½NW¼ of Section 23, T 9 N., R. 39 E.W.M.
Henry Holmberg	239(B)	33%	Mr. Holmberg's lot within the N½NW¼ of Section 23, T 9 N., R. 39 E.W.M.
Paul Phillips	239(C)	33%	Mr. Phillips's lot within the S½SW¼ of Section 14, T 9 N., R. 39 E.W.M.

Attributes of change listed below are for the "C" portion only.

County	Waterbody	Tributary To	WRIA
Columbia	Wolf Fork	North Fork Touchet River	32-Walla Walla

Purpose	Rate	Ac-ft/yr
Irrigation of 3 acres	0.04CFS from 4/1 to 9/15 0.06 CFS from 9/15 to 4/1	18

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Wolf Fork		9 N.	39 E.	14	N½NW¼	46.2517°N	-117.9019°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 Dayton Chronicle on October 16 and 23, 2011 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 December 2, 2013 to Steve Boessow with a 30 day request for comment. No recommendation was received, but the project will be required to follow 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; (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) Touchet River Adjudication; and (8) discussions with Department of Ecology regional program staff.

A field investigation was conducted by Dan Tolleson with Roy Leid, Henry Holmberg and Paul Phillips on August 15, 2013. This field examination was originally for several water right change applications that have since been rejected and replaced with the current applications. The project is located approximately five mile to the southeast of Dayton, 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 place of use currently overlaps several lots with various land owners. Three of the land owners in this general area have access to Wolf Fork and continue to use the water rights. These water users have proposed to divide the two water rights between themselves in an agreement received by Ecology on June 13, 2012. They each propose to retain 33% of Touchet River Adjudicated Certificate No. 151 and 239, which is listed above in "Requested Water Right Attributes". This report will only review that portion of the right appurtenant to Mr. Phillips' lot. Each application will have decisions based on its own respective findings.

Mr. Phillips owns a parcel of bottom-land along both sides of Wolf Fork just to the north of the place of use of this water right within the S½SW¼ of Section 14, T. 9 N., R. 39 E.W.M. The lands located to the west of the creek consist of native vegetation and trees. Most of the lands east from the creek to the county road are irrigated. A house, out buildings and a small pond are also located in the area. The pond is filled by ground water and does not require a water right. The irrigation system consists of a centrifugal pump which diverts from Wolf Fork through a hose to yard type sprinklers. Mr. Phillips proposes to add his parcel of land to the water right since he maintains it has been used this way for many years.

A flow meter will need to be installed at the proposed pump station in accordance with WAC 173-173. In addition, a fish screen is required 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.

The authorized source was a ditch diversion from Wolf Fork upstream of the project. This ditch was abandoned decades ago, which resulted in diversion being moved downstream and a pump put directly in Wolf Fork for this portion of the right.

Proposed Use

The purpose of this change is to correct the authorized place of use to what is actually irrigated and to split the water right into three portions, so each water user has their own separate right. In addition, they propose to change the point of diversion from an abandoned ditch system to the three currently used pump stations. Each of the water users under this water right currently utilize separate pump stations and irrigation systems.

History of Water Use

Aerial photographs were used to help verify the extent of development, historical and beneficial use of this project. The place of use consists of approximately 46 acres of land, most of which is covered by steep treed terrain and riparian vegetation along Wolf Fork Creek. It appears that much of the bottom land adjacent to Wolf Fork was historically irrigated. Touchet River Adjudicated Certificate (TRAC) Nos. 151 and 239 authorized a total of 10 acres of irrigation for this bottomland area. This total use has been reduced over the years as the land was developed, subdivided and houses were built. Irrigation practices and the lands physically irrigated have been adapted to these changes in land use, resulting in three separate water users. Currently, Mr. Leid's lot consists of most of the authorized place of use lying west of Wolf Fork. He irrigates 3 acres of pasture and lawn around his house. Mr. Holmberg's lot consists of most of the authorized place of use lying east of Wolf Fork. He irrigates 3 acres of pasture/yard and some trees. Mr. Philips owns a lot that is just to the north of the authorized place of use, lying east of Wolf Fork. A portion of TRAC Nos. 151 and 239 were put to use on his lot even though it is outside the place of use. He irrigates 1 acre of yard around his house. This means a total of 7 acres are still being put to beneficial use under both rights. Of this total, one acre is put to use under TRAC 151 and 6 acres are put to use under TRAC 239. The remaining 3 acres of irrigation authorized under TRAC 239 have been relinquished from non use. According to the agreement dated June 8, 2012, each of the applicants owns 33% of TRAC Nos. 151 and 239. Although according to their agreement, 3 acres of TRAC 239 is owned by Mr. Phillips, only that portion of the right put to beneficial use is available for change. Therefore, 0.67 acres of irrigation are available for change with the remaining 2.33 acres of irrigation being relinquished from non-use.

It is estimated that the maximum instantaneous quantities authorized under this right are still being put to beneficial use. It appears that the irrigation system may have more capacity than authorized under existing rights, but this was not confirmed since the pump station does not have a meter. Production from the proposed pump station cannot exceed the maximum authorized quantity under existing rights and shall be reduced if necessary. The maximum authorized quantities for Mr. Phillips' portion of Touchet River Adjudicated Certificate No. 239 are 0.04 cfs (17.5 gpm) from 4/1 to 9/15 and 0.06 cfs (26.5

gpm) from 9/15 to 4/1. The instantaneous quantities authorized under Touchet River Adjudicated Certificate Nos. 151 and 239 are additive and share the same pump station. The total diversion under Mr. Phillips' portion of Touchet River Adjudicated Certificate Nos. 151 and 239 is limited to 0.0443 cfs (20 gpm) from 4/1 to 9/15 and, 0.0666 cfs (30 gpm) from 9/15 to 4/1.

In water short years, TRAC 239 may be subject to regulation due to its junior priority date in comparison to other rights within this basin. In that situation, the pump station capacity must be reduced and storage may be needed for irrigation since the authorized instantaneous quantities are very limited under TRAC 151.

The maximum authorized water duty of this certificate is 6 acre-feet per year, per acre. According to the adjudication, after all rights scheduled in the Touchet River 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. This right was historically used to irrigate a variety of crops with pasture having the highest water duty. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that 2.6 acre-feet, per acre, for pasture is required in the Dayton area. The irrigation system consists of a rainbird type sprinklers and is estimated to be 75% efficient. At a 75% efficiency rate of application, the approximate maximum water duty, for the crop listed above is 3.5 acre-feet per year, per acre. This results in an allocation of 2.3 acre-feet per year for the irrigation of 0.67 acres.

Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing water right certificates, permits, and claims in the surrounding area of this project. The search focused primarily on Sections 14 and 23 of T. 9 N., R. 39 E.W.M. The review of Ecology records shows two other water right appurtenant to a portion of the proposed place of use and two water right appurtenant to the authorized place of use which are as follows:

Within the Proposed Place of use

Touchet River Adjudicated Surface Water Certificate No. 152 authorizes up to 0.1 of a cubic foot per second for the irrigation of 5 acres. The place of use describes approximately 160 acres of land within the NW¼ of Section 14. The place of use of this water right overlaps with Mr. Phillips' lot, which is proposed to be added under this change application. This water right is not used on the lands owned by Mr. Phillips.

Touchet River Adjudicated Surface Water Certificate No. 240 authorizes up to 0.4 of a cubic foot per second for the irrigation of 20 acres. The place of use described approximately 160 acres of land within the NW¼ of Section 14. The place of use of this water right overlaps with Mr. Phillips' lot, which is proposed to be added under this change application. This water right is not used on the lands owned by Mr. Phillips.

Within the Authorized Place of use

Surface Water Certificate No. 5240 authorizes 0.25 cubic foot per second for the purpose of an artificial pond. The pond is located on the parcel of land owned by Mr. Holmberg and is still in use.

Touchet River Adjudicated Surface Water Certificate No. 151 authorizes up to 0.02 cubic feet per second for the irrigation of 1 acre. The place of use authorized is the same as TRAC 239. A change application has been filed on this water right and will have decisions based on its own respective findings.

The validity and extent of above listed water rights 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, not including earlier filed applications (HB 1832); 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.

Mr. Phillips is requesting authorization to change the authorized point of diversion, for his portion of Touchet River Adjudicated Certificate No. 239. The authorized point of diversion may have been incorrectly described on the original certificate. It appears the historically used point of diversion was the same as that used by Touchet River Adjudicated Certificate No. 151, which is a ditch diversion, located in Section 23. The authorized point of diversion is described as being approximately 2¼ miles upstream from the project and what appears to be the historically used diversion is approximately ¾ of mile upstream from the project. Regardless of the location, Mr. Phillips proposes to move the authorized point of diversion for his portion of the right downstream to his existing pump station. There is no significant change in the stream flow or major diversions between the authorized and proposed point of diversion. 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 Wolf Fork nor will it increase or expand the right.

Conclusions

In conclusion, there is a water right available for change under Mr. Phillips' portion of Touchet River Adjudicated Certificate No. 239. In accordance with Chapters 90.03 RCW, approval of this application to change the authorized place of use and change the 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:

0.04 cfs from 4/01 to 9/15
0.06 cfs from 9/15 to 4/01
2.3 acre-feet per year
Irrigation of 0.67 acres

Point of Diversion

S½SW¼, Section 14, Township 9 North, Range 39 E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

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.