STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Change of: Walla Walla River Adjudication Certificate No. 871(B)
WRTS File # CS3-*28871J(B)@1

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
1926 (Class 64)			WW Adj. Cert. No. 871(B)

NAME
Walla Walla River Packing & Storage c/o Alan Hamada

ADDRESS/STREET	CITY/STATE	ZIP CODE
PO Box 1137	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)
0.200		36.0

QUANTITY, TYPE OF USE, PERIOD OF USE
0.133 cubic feet per second from April 1 to July 1; 0.10 cubic feet per second from July 1 to October 1; and 0.20 cubic feet per second from October 1 to April 1, when authorized, for the seasonal irrigation of 10 acres

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION—WITHDRAWAL
500 feet North and 100 feet East from the center of Section 35, T. 7 N., R. 35 E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
SW¼NE¼	35	7 N.	34 E.W.M.	32	Walla Walla

PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM
34-07-35-13-0001	46.04297	118.52295	WGS 84

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

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.]

That part of the following legal description lying South of the East-West center line of Sec. 35, T. 7 N., R. 34 E.W.M.:

Beginning at the intersection of the North-South centerline of Sec. 35, T. 7 N., R. 34 E.W.M., with the North right-of-way line of Detour Road, and run thence East, along said North right-of-way line 650 feet; thence North, parallel to said North-South centerline 2050 feet, more or less, to the center of the Walla Walla River; thence Southwesterly, along said centerline to the aforesaid North-South centerline of Sec. 35; thence South, along said North-South centerline 1950 feet, more or less, to the point of beginning.

DESCRIPTION OF PROPOSED WORKS

River pump, meter, irrigation mainline, handline sprinklers

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Started	Completed	September 1, 2012

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PROVISIONS

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", WAC 173-173. http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html

2. Water use data shall be recorded monthly 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. 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.

   WAC 173-173 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.

   In the future, the Department of Ecology may require additional parameters to be reported or more frequent reporting. The Department of Ecology prefers web based data entry, but does accept hard copies. The Department of Ecology will provide forms and electronic data entry information. http://www.ecy.wa.gov/pubs/ecy070170.pdf

4. A future Superseding Certificate for Walla Walla River Adjudicated Surface Water Certificate No. 871(B), will not be issued until evidence of meter installation has been submitted to the Department of Ecology.

Fish and Department of Fish and Wildlife

5. No dam or weir shall be constructed in connection with this diversion.

6. The intake(s) shall 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://www.wdfw.wa.gov/reg/regions.htm

Quantity Limits, Flow and Regulation

7. 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 in the Walla Walla River Adjudication Decree, the owner of such right is entitled to divert water during the period of October 1 to April 1. The total diversion shall not exceed 3.6 acre feet per acre for any year beginning October 1.

Schedule and Inspections

8. 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, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

9. The water right holder shall file the notice of project completion 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 superseding certificate will reflect the extent of beneficial use within the limitations of the change authorization. Elements of the project completion inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and compliance with provisions.

10. A final water superseding certificate will not issue until a final examination is made.

Family Farm Permits and Agricultural Irrigation

11. 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 and required for the actual crop grown on the number of acres and place of use specified.

General Conditions

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12. 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.

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 change the point of diversion under Change Application No. Walla Walla Adjudicated Certificate No. 871(B), 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

Walla Walla River Adjudication Certificate No. 871 ("WW Adj. Cert. No. 871(B)") originally issued on April 17th, 1931, by virtue of the Walla Walla River Adjudication Decree. A change in point of diversion was granted on March 11th, 1988, through Certificate of Change at Volume 1-3, Page 498, Book of Changes. In June of 2004, an Administrative Division was completed, which divided the water right into two separate certificates: an "A" certificate for irrigation of 15 acres, and a "B" portion for the irrigation of 10 acres. This latter water right, the 10-acre "B" certificate, issued to the applicant and is the subject water right for this application.

The purpose of this application is to change the point of diversion for this 10-acre irrigation right from the NW¼SE¼NE¼ of Sec. 35, T. 7 N., R. 34 E.W.M., to a point on the applicant's own property, within the SW¼NE¼ of Sec. 35, T. 7 N., R. 34 E.W.M.

Attributes of the Walla Walla Adj. Cert. No. 871(B) and Proposed Change

Table 1: Summary of Proposed Changes to WW Adj. Cert No. 871(B)

Attributes	*Existing*	*Proposed*
Name	Walla Walla River Packing & Storage	N/C
Priority Date | Date of Application for Change	1926 (Class 64)	N/C
Instantaneous Quantity	0.133 cfs from 4/1 – 7/1; 0.100 cfs 7/1 – 10/1; 0.200 cfs 10/1 – 4/1 (when authorized)	N/C
Annual Quantity	40 acre-feet	N/C
Source	Walla Walla River	N/C
Point of Diversion/Withdrawal	**NW¼SE¼NE¼ of Sec. 35, T. 7 N., R. 34 E.W.M.**	**SW¼NE¼ of Sec. 35, T. 7 N., R. 34 E.W.M.**
Purpose of Use	Irrigation of 10 acres	N/C
Period of Use	October 1 through September 30	N/C
Place of Use	Lands (~ 28 acres) within the E½ of Sec. 35, T. 7 N., R. 34 E.W.M.	N/C

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in point of diversion to WW Adj. Cert No. 871(B):

- **Public Notice**
  A notice of application was duly published in accordance with RCW 90.03.280 in the Walla Walla Union Bulletin on March 18th and March 25th, 2008. No protests or objections 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 of the following conditions are met:

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- 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 exceeds the amounts above;
- Is 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 proceeding conditions, and is therefore categorically exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21C RCW.

- **Water Resources Statutes and Case Law**

This application is subject to legal requirements in statute, administrative rules, and relevant case law which must be considered prior to issuance of the requested change(s). Among these legal requirements:

- **RCW 90.03.380(1)** allows for a water right that has been put to beneficial use to be changed. The point of diversion, place of use, and purpose of use may be changed if the change would not result in harm or injury to existing water rights.

- **RCW 90.14.160** states that water rights issued through an adjudication may revert to the state for failure to put the water to beneficial use for a period of five successive years after July 1, 1967.

- **WAC 173-532-030(3)** provides that instream flows set through that rule shall not be impaired by any future changes to existing (senior or junior) water rights.

- **Walla Walla River Superior Court Adjudication Decree No. 19075** sets forth conditions and provisions through which water rights issued through the decree may be used.

- 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 Co. v. Pollution Bd., 137 Wn.2d 118, 969 P.2d 459 (1999)* and *Okanogan Wilderness v. Town of Twisp and Department of Ecology, 133 Wn.2d 769, 947 P.2d 732 (1997)*

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) WW Adj. Certificate No. 871(B) and other water rights/claims/applications in the vicinity; (3) the Walla Walla River Basin Adjudication Decree; (4) Farm Service Agency records, (5) USGS topographic maps; (6) discussions with Department of Ecology regional program staff and the applicant.

A site visit was conducted by Bill Neve on April 9th, 2009. The project site is located on the south bank of the Walla Walla River, approximately two miles southwest of the Whitman Mission National Historic Site.

Walla Walla River Adjudication Certificate No. 871(B) {"WW Adj. Cert No. 871(B)"} was divided from the original certificate through an Administrative Division process in 2004, and is appurtenant to a 27+ acre site owned by Walla Walla Packing and Storage (Hamada). Hamada has constructed an onion packing facility on the site, and irrigates 10 acres of cropland on an annual basis.

Other Rights Appurtenant to the Place of Use

There is one (1) existing water right appurtenant to the same place of use as WW Adj. Cert No. 871(B). Surface Water Certificate No. 10331(B) authorizes the diversion of water from the Walla Walla River as follows:

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Surface Water Certificate No. 10331(B)

Priority Date: April 30, 1964
Source: Walla Walla River
Quantities: 0.13 cubic feet per second from 10/1 – 7/1;
Purpose of use: Irrigation of 10 acres
Diversion point: E½NE¼ of Sec. 35, T. 7 N., R. 34 E.W.M.

Together, SW Cert. No. 10331(B) and WW Adj. Cert No. 871(B) authorize the withdrawal of up to 50 acre-feet annually for the irrigation of 10 acres. Cert. No. 10331(B) is additive to WW Adj. Cert. No. 871(B) in instantaneous quantity only; it is non-additive in terms of annual quantity and acres authorized for irrigation.

The same point of diversion change being requested herein is also being requested for WW Adj. Cert. No. 10331(B).

Evaluation of the Water Right - Beneficial Use Analysis

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.

There are several circumstances that can cause the results of the tentative determination to differ from the extent of the water right documentation. Water right documents define the maximum limitation to a water right, rather than the actual extent to which a water right has been maintained through actual beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or part, not put to beneficial use for a period of five consecutive years since 1967 are subject to relinquishment under RCW 90.14.130 through 90.14.180. Water rights may also be lost through common law abandonment.

United States Department of Agriculture Farm Service Agency records of crop type and acreage are commonly used by Ecology in tentative determinations. They, however, did not have any current cropping records for this particular property. The applicant was able to provide information on crops grown and acres irrigated, which appear to be consistent with Bill Neve's, the former Walla Walla watermaster, knowledge of irrigation of the subject property. Records prior to 2003 were not available. The records provided show the following irrigated crops by acres and year:

Table 2: Historic Beneficial Use of Water

Year	*Crop Type*	*Acres*	*WIG* Consumptive Use (CU - inches)*	*Total CU (acre-feet)*	*Combined CU (acre-feet)*	*Total Irr. Requirement @ 75% efficiency*
2003	Onions	10	30.92	25.77	25.77	**34.36**
2004	Onions	10	30.92	25.77	25.77	**34.36**
2005	Wheat Onions	5 5	18.64 30.92	7.77 12.88	20.65	**27.53**
2006	Wheat Onions	8 2	18.64 30.92	12.43 5.15	17.58	**23.44**
2007	Wheat Onions	8 2	18.64 30.92	12.43 5.15	17.58	**23.44**
2008	Alfalfa Onions	8 2	32.85 30.92	21.90 5.15	27.05	**36.07**

* Washington State Irrigation Guide, WA210-VI-WAIG, October 1985

Washington State University Irrigation Guide was used to estimate water use requirements for the crops grown in this location. The highest water use year from the data supplied is from 2008 at 36.07 total acre-feet, or 3.6 acre-feet per acre. While the five year consecutive period from 2003 to 2007 had a lower maximum annual water use estimate of 34.36 acre-feet, RCW 90.14.140(1)(k) provides the following sufficient cause for non-use:

> *The reduced use of irrigation water resulting from crop rotation. For purposes of this subsection, crop rotation means the temporary change in the type of crops grown resulting from the exercise of generally*

recognized sound farming practices. Unused water resulting from crop rotation will not be relinquished if the remaining portion of the water continues to be beneficially used. RCW 90.14.140(1)(k).

The cropping patterns from 2003 through 2008 represent common rotational practices for the Walla Walla River Valley. The 36.07 acre-feet determined to have been beneficially used in 2008 represent the tentative extent of the subject water right, and will be the quantity determined to be available for the subject change. The full instantaneous quantities authorized for use under this right have been put to full beneficial use.

Hydrologic/Hydrogeologic Evaluation

The proposed change in point of diversion would move the authorized point of diversion for this right approximately one-half mile downstream of the existing point of diversion. There are no existing authorized diversion pumps on the Walla Walla River between the existing point of diversion and that being proposed. Nor are there any tributary inputs to the Walla Walla River between the existing and proposed points of diversion that could potentially benefit the applicant through the proposed change.

The source of water for the subject right would remain the same, being the Walla Walla River.

The flow of the Walla Walla River during the summer irrigation season, and the relationship of this right relative to other, more senior water rights located both upstream and downstream from the subject diversion, result in a situation where WW Adj. Cert. No. 871(B) is subject to frequent regulation in favor of senior water rights. As there are no intervening pumping stations between the existing and proposed points of diversion, the proposed change, if approved, would not alter this regulatory scheme.

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.

Instream flows were adopted for the Walla Walla River through a 2007 amendment to the Water Resources Program for the Walla Walla River Basin WRIA-32 (Chapter 173-532 WAC). The term "instream flow" is used to identify a specific stream flow (typically measured in cubic feet per second, or cfs) at a specific location for a defined time, and typically following seasonal variations. Instream flows are usually defined as the stream flows needed to protect and preserve instream resources and values, such as fish, wildlife and recreation. Instream flows are most often described and established in a formal legal document, typically (as in this case) an adopted state rule.

Once established, a minimum flow constitutes an appropriation with a priority date as of the effective date of the rule establishing the minimum flow (RCW 90.03.345). Thus, a minimum flow set by rule is an existing right which may not be impaired (RCW 90.03.345; RCW 90.44.030). The amended rule for the Walla Walla Basin specifically requires that the instream flows be protected from impairment "…by all future changes and transfers of senior and junior water rights." (WAC 173-532-030(3).

The point of diversion is proposed to be moved approximately ½ mile downstream from the existing diversion point. Having this water remain instream through this reach prior to being diverted would result in an overall benefit to instream flows through this reach. And as there are no surface tributaries or pumping stations between the proposed and existing points of diversion, there should be no impairment of existing rights diversionary rights through approval of the proposed change.

Public Interest Considerations

Public interest considerations do not apply to changes authorized for surface water rights through RCW 90.03.380.

Consideration of Protests and Comments

No protests or concerns, written or verbal, were received regarding this proposed change.

CONCLUSIONS

In accordance with Chapter 90.03 RCW, I find that:

- Walla Walla River Adjudicated Certificate No. 871(B) is a valid water right and is eligible for the proposed change.

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- The proposed diversion point will access the same source of surface water as the existing diversion point (Walla Walla River).
- Irrigation is a beneficial use.
- The proposed change in point of diversion will not impair existing rights, including instream flows.
- Approval of the proposed change will not enlarge the original right conveyed by Walla Walla River Adjudication Certificate No. 871(B).

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to Walla Walla River Adjudication Certificate No. 871(B) 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:

- 0.20 cfs
- 36 acre-feet per year
- For the purpose of irrigation of 10 acres

Point of Diversion/Withdrawal

SW¼, NE¼, Section 35, Township 7 North, Range 35 E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

Report by: _____ _____
Dan Tolleson Date
Water Resources Program

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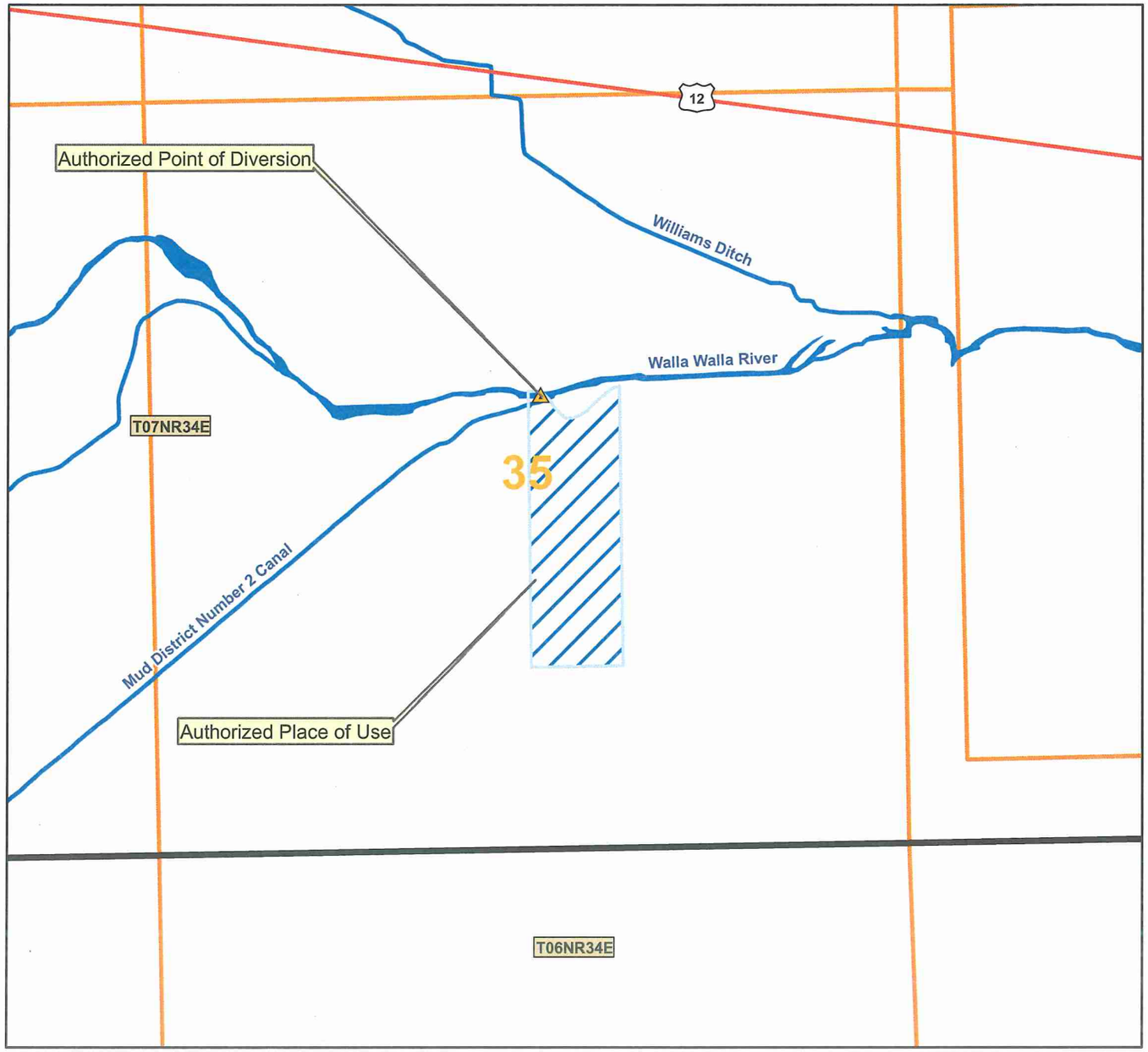
Walla Walla River Packing & Storage
Surface Water Certificate 871(B)
WRTS No CS3-*28871J(B)@1
Sec. 35, T 07N, R 34E.W.M.
WRIA 32 - Walla Walla County

WASHINGTON STATE DEPARTMENT OF ECOLOGY



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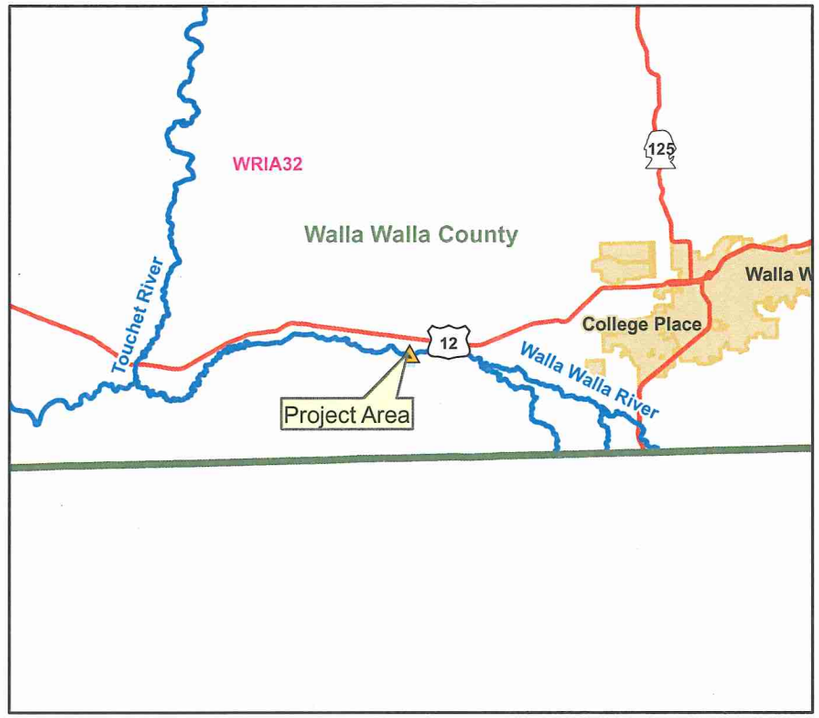

6 3 0 6 12 Miles

Legend

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