STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
APPLICATION FOR CHANGE/TRANSFER
REPORT OF EXAMINATION
TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

☐ Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)

☒ Ground Water (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
June 17, 1965	7659	7147	5273-A

NAME
Ken Thonney

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
708 Newell Street	Walla Walla	Washington	99362

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
A well

TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
	30	14

QUANTITY, TYPE OF USE, PERIOD OF USE

30 gallons per minute; 14 acre feet per year, each year, for the seasonal irrigation of 3.5 acres

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL

650 feet north and 350 feet west from the southeast corner of Sec. 27

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE, (E. OR W.) W.M.	W.R.I.A.	COUNTY
SE¼SE¼	27	8	37 E.	32	Walla Walla

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
Lot No. 2		Thonney Short Plat

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

3.5 acres within Lot No. 2 of the Thonney Short plat, north of the railroad right-of-way. All within T. 8 N., R. 37 E.W.M., Walla Walla County

DRAFT

DESCRIPTION OF PROPOSED WORKS

Well pump and sprinklers for irrigation

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	WATER PUT TO FULL USE BY THIS DATE:
STARTED	May 1, 2010	May 1, 2011

REPORT

BACKGROUND

An application for change/transfer was submitted by Larry Thonney of Walla Walla, Washington, to Ecology on March 4, 2002. The application was assigned to Ken Thonney on February 9, 2005. Ken Thonney proposes to change the place of use granted under Ground Water Certificate No. 5273-A.

Ground Water Certificate No. 5273-A

Name on Certificate:	Robert Thonney
Priority Date:	June 17, 1965
Instantaneous Quantity – Qi:	30 gallons per minute
Annual Quantity – Qa:	24 acre-feet, per year
Original Source:	A well
Point(s) of Withdrawal:	See Table No. 1--SE¼S¼ of Sec. 27, T. 8 N., R. 37 E.
Purpose of Use:	Seasonal irrigation of 6 acres
Period of Use:	Each year
Place of Use:	Approximation: That portion of the SE¼SE¼ Sec. 27, T. 8 N., R. 37 E.W.M., lying north of State Highway 12

Proposed Change/ Transfer:

Name of Applicant:	Ken Thonney
Date of Application for Change/Transfer:	March 4, 2002
Point of Withdrawal (Diversion):	*No change*
Purpose of Use:	*No change*
Period of Use:	*No change*
Place of Use:	Lot No. 2 of Thonney Short Plat, Walla Walla County

Notice

A notice of application was duly published in accordance with RCW 90.03.280 in the Walla Walla Union on July 24 and July 31, 2002 and no protests were received.

SEPA

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

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) Ground Water Certificate No. 5273-A and other water rights/claims/applications in the vicinity; (3) water well reports for the applicant's well, and other wells in the vicinity; (4) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide (WA210-VI-WAIG, October 1985) and; (5) discussions with Department of Ecology regional program staff.

A site visit of the project was conducted on January 19, 2005 by Dan Tolleson, with Ken Thonney. The project is located adjacent to the western edge of the Town of Dixie, Walla Walla County. The water right is located in the Walla Walla Basin and is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32.

One well is authorized under this certificate and is intended to remain as the only source of withdrawal for this project. The well appears to be in working order other than having the electricity disconnected.

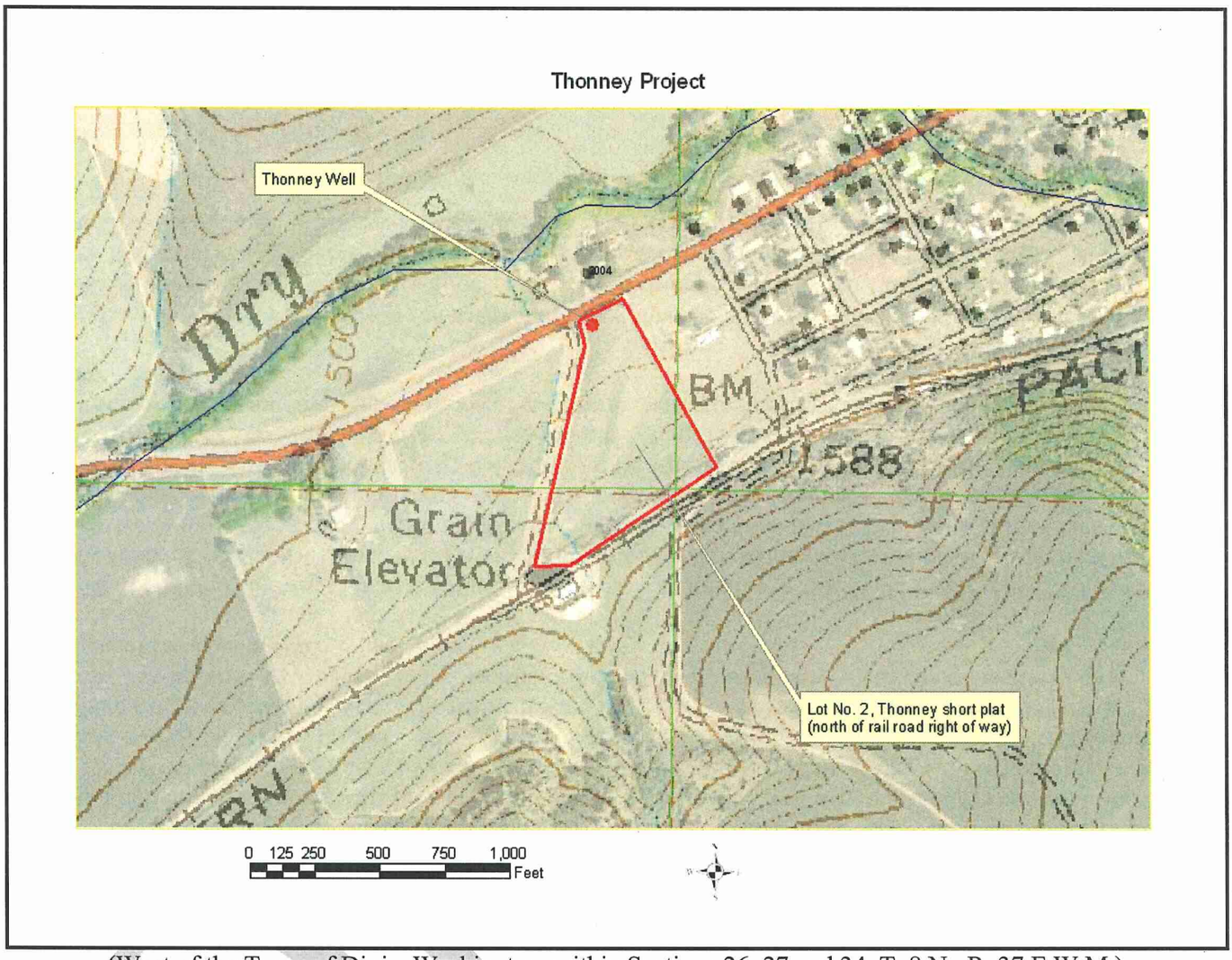
Table No. 1 - Well Status

Well No.	Status	Size (in)	Depth (feet)	Meter Status	Pump Type	Pump HP
1	Offline	6	518	Required	Submersible	3

The place of use authorized under Ground Water Certificate No. 5273-A is described as 6 acres within portions of the SE¼SE¼ of Sec. 27, T. 8 N., R. 37 E.W.M. This parcel of land is located between State Highway 12 and Dry Creek. This parcel is wooded along the creek and has a house located toward the center, near the Highway. The rest of the parcel is relatively flat pasture land and yard.

DRAFT

The proposed place of use is located directly to the south of Highway 12 within the E½SE¼SE¼ of Sec. 27; SW¼SW¼SW¼ of Sec. 26; and the NE¼NE¼NE¼ of Sec. 34, T. 8 N., R. 37 E.W.M. This parcel of land is known as Lot No. 2 of Thonney Short Plat and is divided by a railroad right-of-way. The northern portion of Lot No. 2 (north of the railroad right-of-way) is approximately seven (7) acres and the southern portion of Lot No. 2 (south of the railroad right-of-way) is approximately fifteen (15) acres. According to the applicant, only the portion of Lot No. 2 north of the railroad right-of-way is proposed to be irrigated and the remainder of Lot No. 2 south of the railroad right-of-way is intended for dry land crops. In addition, the applicant proposes to build a house, driveway, barn, and out-buildings within Lot No. 2 of Thonney Short Plat (north of the railroad right-of-way). This parcel of land is relatively flat in the north and slopes up as it goes south.



(West of the Town of Dixie, Washington, within Sections 26, 27 and 34, T. 8 N., R. 37 E.W.M.)

EVALUATION OF THE RIGHT AND BENEFICIAL USE ANALYSIS

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

Aerial photographs were used to help verify the extent of development, historical use and beneficial use of Ground Water Certificate No. 5273-A. It appears that although the parcel of land described as the place of use is approximately 6 acres, only about 3.5 acres were developed for irrigation. Significant portions of the place of use are not irrigable due to the placement of the creek bed and its riparian vegetation as it pertains to the lot. It appears that only an estimated 3.5 acres have been historically irrigated under this right and are the only acres that are available for change. Therefore 3.5 acres are available for change and the remaining 2.5 acres have been abandoned or were never developed.

The authorized well under Ground Water Certificate No. 5273-A had electricity connected in 1965 and remained in service until January of 2000. It appears that during this time the well was used in most years for the purpose of irrigation. Power meter data was available for the irrigation seasons of 1995-2000. It appears that the last date of irrigation was October of 1997. From 1995-1997 it appears that this right was used up to approximately the maximum annual quantity of 4 acre feet, per acre, for the irrigation of approximately 3.5 acres (per conversion of power meter record data in conjunction with digitized air photos).

The authorized place of use was sold in February of 2002, with the agreement that the water right was going to be retained by the seller (Larry Thonney) and was not sold with the property. A change application was filed by Larry Thonney on this right in March of 2002. It appears that the water right was left unused from October of 1997 to February of 2002 which is just over four years and covers 4 irrigation seasons.

Because the place of use was sold, Larry Thonney was not able to exercise the water right after March of 2002, but he did have a fixed and determined plan, per his change application dated March 4, 2002. With the determined plan and the inability to use water on the authorized place of use it appears that 3.5 acres of the right is available for change (RCW 90.14.140[c]).

Recently, Larry Thonney sold Lot No. 2 of Thonney Short Plat along with the water right intended for change to Ken Thonney. According to Ken Thonney, he plans to continue on with Larry Thonney's original plan. It appears that there is a water right available for change in the amount of 3.5 acres.

Water rights are appurtenant to a specific parcel of land or place of use on an acre per acre basis. Therefore, the place of use of this right shall be narrowed down to the smallest legal description possible. The proposed legal description is all of Lot No. 2 of Thonney Short Plat, Walla Walla County. The actual place of use is 3.5 acres within Lot No. 2 of the Thonney Short plat, north of the railroad right-of-way, all within T. 8 N., R. 37 E.W.M.

The authorized water duty under this certificate is 4 acre feet per year, per acre. Historically, this right has been used to irrigate pasture. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that a 2.9 acre feet, per acre, for pasture is required in the Walla Walla area. At a 70% efficiency rate of application, the approximate maximum water duty for crops listed above, is 4.2 acre feet per year, per acre. This appears to be consistent with available power meter data.

HYDROGEOLOGIC ANALYSIS

Applications for change of water right permits and certificates are governed by RCW 90.44.100, which states in part that the holder of a valid right to withdraw public ground waters may, without losing his priority of right, construct wells at a new location in substitution for, or in addition to, those at the original location, or he may change the manner or the place of use of the water. Any amendment shall be issued by the Department of Ecology (Ecology) only under the conditions that: (1) an additional or substitute well or wells shall tap the same body of public ground water as the original well or wells; (2) use of the original well or wells shall be discontinued upon construction of the substitute well or wells; (3) the construction of an additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (4) all existing water rights shall not be impaired. Ecology may specify an approved manner of well construction and shall require a showing of compliance with the provisions of the amendment.

The point of withdrawal for this change application is located within the Walla Walla Basin, a hydrologic sub basin of the Columbia Plateau. This basin developed as a structural trough within the Columbia River Basalt Group that was later overlain by unconsolidated sediments. The lowermost sediment unit is referred to as the "blue clay" which rests directly on the basalt basement rock. Directly overlying the "blue clay" and interfingered with it, is the gravel unit. The various unconsolidated gravels serve as the aquifer material which forms the uppermost, unconfined, water table aquifer. Aquifers are also present within the consolidated, Tertiary-aged, Columbia River Basalt Group. These predominately confined basalt aquifers are separated from the gravel aquifer by the "blue clay" unit.

The basalt aquifer system is comprised of a series of zones, some of which easily conduct water. These high-conductivity zones alternate with zones of dense basalt, which impede the flow of water, and are considered to have low hydraulic conductivity. The highly permeable basalt zones range in thickness from a few feet to 25 feet or more. It is the composite of these permeable, water conducting zones that constitutes the "basalt aquifer" within the sub basin.

Authorized Well

Well No. 1 is identified as 6" x 518 feet deep. The well was constructed in 1965. The static water level was described as 88 feet below land surface and the land surface elevation is approximately 1525 feet above mean sea level. The well is described as being cased and sealed to a depth of 49 feet. The well log suggests that the well was drilled through 40 feet of unconsolidated material and into basalt. The well was cased through sediment and is completed in the basalt aquifer.

EXISTING RIGHTS

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 sections 26, 27, 34 and 35, T. 8 N., R. 37 E.W.M. Five (5) Ground Water Certificates/Permits, twenty-five (25) Surface Water Certificates and forty-six (46) Water Right Claims* were found recorded in this search area in addition to the water right evaluated under this change. The review of Ecology records shows one (1) Water Right appurtenant to the proposed place of use.

DRAFT

Ground Water Permit No. G3-29406P - This permit has only been developed on Mr. Benzel's property and he has no intention of ever developing Lot No. 2 of Thonney Short Plat. A Proof of Appropriation dated March 1, 1999 was filed for Mr. Benzel's land only.

(The validity and extent of the above listed water rights and claims are not determined in this finding.)

*The above referenced claim(s) were filed under the Claims Registration Act, Chapter 90.14 RCW. The intent of this act was to document those uses of surface water in existence prior to the adoption of the State Surface Water Code, Chapter 90.03 RCW, which was adopted in 1917, and those uses of ground water in existence prior to the adoption of the State Ground Water Code, Chapter 90.44 RCW, which was adopted in 1945. Since each code(s) adoption, the only means of acquiring a water right within the state is by filing for, and receiving, a permit from the Department of Ecology or one of its predecessors or by establishing a right under the "domestic exemption" under the ground water code (RCW 90.44.050). The Department of Ecology recognizes that the final determination of the validity and extent associated with a claim registered in accordance with RCW 90.14 ultimately lies with the Superior Court through the general adjudication process provided for by Sections 90.03.110 through 90.03.240 RCW. The Department does, however, recognize that water use may be occurring under these claims. It should be noted that claims for surface water in an adjudicated basin are generally invalid.

IMPAIRMENT ANALYSIS

"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 flows 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.

This application is requesting authorization to change the place of use granted under Ground Water Certificate No. 5273-A. It appears the Ground Water Certificate No. 5273-A has been partially exercised and beneficially used in the past. The proposed change will not increase the amount of water withdrawn from the aquifer, nor will it increase or expand the right. The instantaneous rate of withdrawal for the well associated with this change application will not exceed what is already by exercised. There has been no documented history of pumping interference problems between existing wells in this area, and it is not anticipated that the proposed change would cause any impairment to existing water rights.

FINDINGS

There is a water right available for change/transfer under Ground Water Certificate No. 5273-A in the amount of 30 gallons per minute; 14 acre feet per year, each year, for the seasonal irrigation of 3.5 acres.

When considering an application for change to a water right, Ecology must determine that the proposed change can be made without detriment or injury to existing water rights. Factors considered when determining potential impact include the following:

No Impairment to Existing Rights
There has been no documented history of pumping interference between existing wells in this area, and it is not anticipated that the proposed change/transfer would cause impairment to existing water rights.

No Detriment to the Public Welfare
There has been no public expression of protest regarding the subject proposal, and no findings through this investigation indicate there would be any detrimental impact to the public welfare through issuance of the proposed change/transfer.

No Enhancement of the Original Right
No withdrawal of water over and above what has been authorized for beneficial use would be authorized through approval of this change.

Same Source of Water
The ground water to be withdrawn is supplied by the same body of public water.

CONCLUSION

It is the conclusion of this examiner that, in accordance with Chapters 90.03 and 90.44, this application for change (by changing the place of use granted under Ground Water Certificate No. 5273-A) will not enlarge the quantity of water historically authorized, nor will it impair existing rights or be detrimental to the public welfare provided the terms and conditions below are followed.

DRAFT

RECOMMENDATIONS

It is recommended that the applicant's request to change/transfer of water right (by changing the place of use granted under Ground Water Certificate No. 5273-A) be **approved**, subject to the following provisions:

"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."

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

"The rule above 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."

"Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions."

"All water wells constructed within the State shall meet the minimum standards for construction and maintenance as provided under RCW 18.104 (Washington Water Well Construction Act of 1971) and Chapter 173-160 WAC (Minimum Standards for Construction and Maintenance of Water Wells)."

"Installation and maintenance of an access port as described in Ground Water Bulletin No. 1 is required. An airline and gauge may be installed in addition to the access port."

"Any future pump test data for the well shall be submitted as it is obtained to the Department of Ecology."

"Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances, or regulations."

"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."

"Use of water under this authorization shall be contingent upon the water right holder's utilization of up to date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities."

A superseding certificate of water right will not be issued until a final examination is made.

"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."

Signed at Spokane, Washington
this ____ day of _____, 2009

_____
DAN TOLLESON
Water Resources Program
Eastern Regional Office
Department of Ecology

DT:md:KT:ka
W: DraftROEs/Tolleson2009/Thonney Ken GW Cert. No. 5273-A.doc

DRAFT