



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Application for Change
REPORT OF EXAMINATION

PRIORITY DATE	APPLICATION NO.	PERMIT NO.	CERTIFICATE NO.
August 3, 1989	G3-28663	G3-28663	

NAME Pasco Industrial Properties LLC, Mark Peterson		
ADDRESS/STREET	CITY/STATE	ZIP CODE
P O Box 3271	Pasco, WA	99302

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
2 wells
TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr)
	350	140

QUANTITY, TYPE OF USE, PERIOD OF USE
350 gallons per minute, 140 acre-feet per year for agricultural irrigation of 35 acres from March 15 to November 15 each year

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL
500 feet north and 100 feet west from the SE corner of Section 27, T. 9 N., R. 30 E.W.M. 1360 feet north and 1200 feet east of the SW corner of Section 26, T. 9 N., R. 30 E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27 NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26		9 N.	30 E.W.M.	36	Franklin
PARCEL NUMBER	LATITUDE		LONGITUDE		DATUM
	46.22768 46.23002		119.03462 119.02957		

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.]

A 35 acre pivot within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27 and the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, T. 9 N., R. 30 E.W.M.

DESCRIPTION OF PROPOSED WORKS

A pivot

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Started	Complete	In use

Wells, Well logs and Well Construction Standards

All wells constructed in the State shall meet the construction requirements of chapter 173-160 WAC entitled "Minimum Standards for the Construction and Maintenance of Wells" and chapter 18.104 RCW titled "Water Well Construction".

Installation and maintenance of an access port as described in chapter 173-160 WAC is required. An air line and gauge may be installed in addition to the access port.

"A well log of the completed well shall be submitted by the driller to the Department of Ecology within thirty (30) days of completion of this well. This well log shall be complete and all information concerning the static water level in the completed well in addition to any pump test data shall be submitted as it is obtained."

Measurements, Monitoring, Metering and Reporting

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 annually during the development of this permit*. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to Ecology.

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".

Schedule and Inspections

1. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above provisions, and to inspect at reasonable times any measuring device used to meet the above provisions.
2. 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 wells or diversions and associated distribution systems for compliance with water law.
3. The water right holder shall file the notice of Proof of Appropriation when the permanent distribution system has been constructed, all provisions have been satisfied and the quantity of water required by the project has been put to beneficial use. A superseding document will reflect the extent of the project perfected within the limitations of the authorization and subsequent superseding permits. Elements of the proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

General Conditions

4. 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.
5. 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.
6. 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.
7. The water quantities and uses recommended 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.
8. Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances, or regulations.
9. If any water from facilities of any legally formed irrigation district is used on any or all of the lands described herein as the place of use, the quantities of water withdrawn under this authorization shall be proportionately reduced to correspond to the acreage for which district water is not available.

10. That portion of this authorization relating to irrigation is classified as a Family Farm Permit in accordance with Chapter 90.66 RCW (Initiative Measure No. 59). This means the land being irrigated under this authorization shall comply with the following definition: Family Farm - a geographic area including not more than 6,000 acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than 6,000 acres of irrigated agricultural lands in the State of Washington which are irrigated under water rights acquired after December 8, 1977. Furthermore, the land being irrigated under this authorization must continue to conform to the definition of a family farm.

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.

Therefore, I ORDER approval of the recommended change to change the place of use and add a well under Ground Water Permit No. G3-28663P subject to existing rights and the provisions listed above.

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals & Application for Relief
Coordinator
PO Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals & Application for Relief
Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

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

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 2009.

Keith L. Stoffel, Section Manager
Water Resources Program
Eastern Regional Office

BACKGROUND

Description and Purpose of Proposed Change

The applicant proposes to change the place of use and add a well to the underlying permit. The permit authorized the irrigation of 35 acres within the SE¼ of Section 27. A 30 acre pivot was installed, and the irrigated land extended into Section 26. A proof exam found the lands perfected outside of the authorized place of use which generated the subject change application to correct the place of use to be consistent with the lands developed.

Attributes of the Permit and Proposed Change

Summary of Proposed Changes to Ground Water Permit No. G3-28663

<i>Attributes</i>	<i>Existing</i>	<i>Proposed</i>
Instantaneous Quantity	350	350
Annual Quantity	140	140
Source	A well	2 wells
Purpose of Use	irrigation	irrigation
Place of Use	SE¼ of Section 27	SE¼ of Section 27 and W½W½SW¼SW¼ of Section 26

An application for change/transfer was submitted on November 28, 2005. The applicant proposes to add a well and change a portion of the place of use to the subject permit. No other changes are requested.

A notice of application was duly published in accordance with RCW 90.03.280 in the Tri City Herald on May 23 and 30 2008 and no protests were received.

Environmental review under SEPA is required for many projects; however, some minor projects are categorically exempt from SEPA. Appropriations of one cfs or less of surface water, or of 2,250 gpm or less of ground water, for any purpose, and appropriations of 50 cfs or less for surface water used for irrigation are categorically exempt from SEPA. See WAC 197-11-305. Since this water right is for 350 gpm this project is categorically exempt.

Legal Requirements for Proposed Change

- 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. However, when processing an application for change to a water right, the Washington Supreme Court has held that Ecology 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*.
- RCW 90.44.100, 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. Such amendment shall be issued by the Department only on the conditions that: (1) the 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) other existing rights shall not be impaired. The Department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment.

- 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.
- Environmental review under SEPA is required for many projects; however, some minor projects are categorically exempt from SEPA. Appropriations of one cfs or less of surface water, or of 2,250 gpm or less of ground water, for any purpose, and appropriations of 50 cfs or less for surface water used for irrigation are categorically exempt from SEPA. See WAC 197-11-305.

INVESTIGATION

The permit authorized the irrigation of 35 acres within the SE $\frac{1}{4}$ of Section 27. A 30 acre pivot was installed and the irrigated land extended into Section 26. A proof exam in 2005 found the permit perfected outside of the authorized place of use which generated the subject change application to correct the place of use to be consistent with the lands developed.

In considering the proposed change/transfer, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Ground Water Permit G3-28663P and other water rights/claims in the vicinity; (3) water well reports for the applicant's well, and other wells in the vicinity; (4) USGS topographic maps; (5) discussions with Department of Ecology regional program staff; including review by Ecology hydrogeologists.

A site visit was conducted on May 29, 2008. The pivot was operating and irrigating onions. The authorized well and the proposed well were not on. The authorized well has a meter installed. The proposed well did not have a meter installed. The irrigation system is integrated with other wells not included in this subject application for change and not previously authorized.

The applicant needs to file an application for change to address the other wells and legally integrate the system or terminate the connection with this other system. The other rights integrated with this well must also have the subject well added to those rights. The applicant needs to review the irrigation system and the associated rights and file appropriate applications.

The authorized well was constructed in 1995 to a depth of 106 feet. A pivot of approximately 30 acres was developed. Typically the crops are alfalfa, potatoes corn and other rotational crops. No accurate meter information is available.

The proposed additional well is located approximately 2000 feet east within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26. This well is described as a 20 inch well completed to a depth of 133 feet. This well was constructed under authorization of Ground Water Certificate G3-00942C.

Two water right certificates are associated with the second well as follows:

Ground Water Certificate G3-00942C confirmed a right for 4500 gallons per minute, 2500 acre-feet per year from two wells for the irrigation of 500 acres within Section 26 and a portion of the SE $\frac{1}{4}$ of Section 22. Approximately 456 acres are currently irrigated within this legal description.

Ground Water Certificate G3-27897C confirmed a right for 750 gallons per minute, 300 acre-feet per year from a well for the irrigation of 75 acres within the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 35. Approximately 68 acres are currently irrigated within the legal description.

The applicant needs to file applications for change to add the well in Section 27 to these rights, as the well is integrated with these other rights.

Hydrologic/Hydrogeologic Evaluation

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/her 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. Such amendment shall be issued by the Department only on the conditions that: (1) the 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) other existing rights shall not be impaired. The Department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment.

In general, sediments of the Pasco basin which overlie the basalts are the various members of the Miocene Ringold formation, Pleistocene deposits related to glacial outbursts of Lake Bonneville and Lake Missoula, and recent deposits of loess, windblown sand, or of the aforementioned sediments reworked by wind or riverine processes. This package of sediments hosts an unconfined aquifer system, it in itself sourced either from upgradient discharge from Columbia River Basalts, return flow from the Columbia Basin Project, or water lost from the Columbia or Snake Rivers. Data available to the department since the 1980's indicate this aquifer system generally exhibits steady to slightly rising water levels.

The authorized well was constructed in 1995 to a depth of 106 feet. The well penetrates the Pasco sands and gravels.

The proposed well was constructed in 1997. The well is described as a 20 inch well completed to a depth of 133 feet.

Both wells are constructed into the Pasco sands and gravels and are considered to be in the same body of public ground water.

Evaluation of the Water 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.

The permit has been put to beneficial use, is in good standing.

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 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.

There is water available for this change, and it is unlikely this change will result in lasting, frequent, or substantial negative impact to surrounding water users.

FINDINGS

There is a water right available for change/transfer under Ground Water Permit G3-28663P in the amount of 350 gallons per minute, 140 acre-feet per year for the irrigation of 35 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. There may be a reduction in the head in the area, however it is not anticipated that the proposed new wells would cause impairment to existing water rights.

No Detriment to the Public Welfare:

There has been no public expression of protest or concern regarding the subject proposal, and no findings through this investigation indicate that there would be a detrimental impact to the public welfare through issuance of the proposed change.

No Enhancement of the Original Right:

No withdrawal of water over and above what has been authorized to beneficial use would be authorized through approval of this change.

Same Source of Water:

The ground water to be withdrawn from both wells is supplied by the same body of public water.

CONCLUSIONS

It is the conclusion of this examiner that, in accordance with Chapters 90.03 and 90.44 RCW, this application for change to add a point of withdrawal and change the place of use under Ground Water Permit No. G3-28663P will not enlarge the quantity of water authorized to be put to beneficial use, nor will it impair existing rights or be detrimental to the public welfare provided the terms and conditions are followed.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for a change in place of use and to add a point of withdrawal 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:

- 350 gpm
- 140 acre-feet per year
- Agricultural irrigation of 35 acres

Point of Withdrawal

500 feet north and 100 feet west from the SE corner of Section 27, T. 9 N., R. 30 E.W.M.
1360 feet north and 1200 feet east of the SW corner of Section 26, T. 9 N., R. 30 E.W.M.

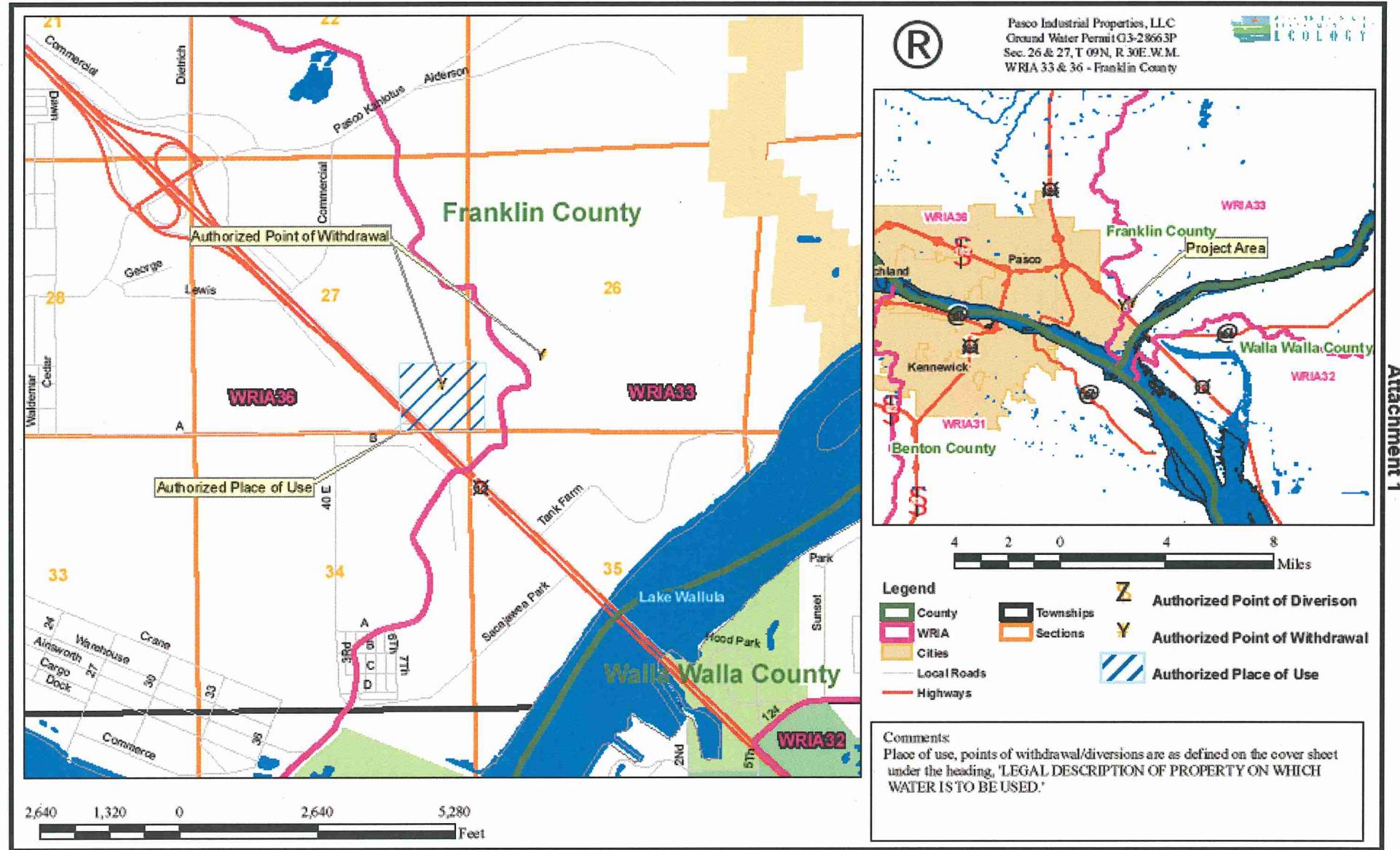
Place of Use

As described on Page 1 of this Report of Examination.

Report by: _____ Date _____
 Kevin Brown
 Water Resources Program

If you need this publication in an alternate format, please call Water Resources Program at 360 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

W/Draft ROEs/Brown 2009/G3-28663 Pasco Industrial



Attachment 1