

## State of Washington REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Added or Changed Point of Withdrawal/Diversion

<b>PRIORITY DATE</b> Class 64	<b>WATER RIGHT NUMBER</b> Touchet River Adjudicated Certificate 318
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<b>MAILING ADDRESS</b> Jill Borup P.O. Box 104 Prescott WA 99348	<b>SITE ADDRESS (IF DIFFERENT)</b>
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### Total Quantity Authorized for Diversion

<b>DIVERSION RATE</b> 1.933	<b>UNITS</b> CFS	<b>ANNUAL QUANTITY (AF/YR)</b> 458
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### Purpose

<b>PURPOSE</b> Irrigation	<b>DIVERSION RATE</b> 1.933 cfs 4/1 - 9/15 1.933 cfs 9/15 - 4/1	<b>ANNUAL QUANTITY (AF/YR)</b> 458
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<b>IRRIGATED ACRES</b>		<b>PUBLIC WATER SYSTEM INFORMATION</b>	
<b>ADDITIVE</b> 130	<b>NON-ADDITIVE</b>	<b>WATER SYSTEM ID</b>	<b>CONNECTIONS</b>

### Source Location

<b>COUNTY</b>	<b>WATERBODY</b>	<b>TRIBUTARY TO</b>	<b>WATER RESOURCE INVENTORY AREA</b>
WALLA WALLA	Touchet River	Walla Walla River	32-WALLA WALLA

<b>SOURCE FACILITY/DEVICE</b>	<b>PARCEL</b>	<b>WELL TAG</b>	<b>TWP</b>	<b>RNG</b>	<b>SEC</b>	<b>QQ Q</b>	<b>LATITUDE</b>	<b>LONGITUDE</b>
Touchet River	360902410003		9N	36E	2	NW¼SE¼	46.28628°	-118.26852°
Datum: WGS84								

Proposed Source: 2020 feet north and 1510 feet west from the SE corner of Section 2, T. 9 N., R. 36 E.W.M.

### Place of Use (See Attached Map)

#### PARCELS (NOT LISTED FOR SERVICE AREAS)

360902110002, 360902110003

#### LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

The SE¼ north of the Touchet River and the NE¼ south of O.W.R. & N. Co. right of way, in Section 2, T. 9 N., R. 36 E.W.M.

### Proposed Works

The irrigation system is comprised of a 75-hp pump station, mainline, and wheel lines.

### Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	Completed	Put to Use

### Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Diversion

### Provisions

#### Measurements, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", 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.

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.

#### 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/>

#### Easement and Right-of-Way

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

**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.

**General Provisions**

In the event of a water short year, upon request by Ecology, the acres authorized under Touchet River Adjudicated Certificate No. 318 shall be identified within the place of use for the purpose of regulation.

After all rights scheduled in Touchet River Adjudication Decree No. 22066 are filled, the surplus water is allotted in the order of priority in amounts sufficient to increase the rate to the quantity allotted for the period from September 15<sup>th</sup> to April 1<sup>st</sup>. The total diversion shall not exceed 3.52 acre-feet per acre for any one year beginning September 15<sup>th</sup>.

TRAC No. 13 and No. 318 shall have a total maximum diversion of 2.033 cfs and 475.6 acre-feet per year for the irrigation of 135 acres.

**Findings of Facts**

Upon reviewing the investigator’s report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. CS3-\*34318J 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
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this 15th day of May, 2012.



Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

INVESTIGATOR'S REPORT  
 Jeff MacLennan, Department of Ecology  
 Water Right Control Number CS3-\*34318J  
 Touchet River Adjudicated Certificate No. 318

**BACKGROUND**

Mrs. Borup filed two change applications concurrently under Touchet River Adjudicated Certificate Nos. 13 and 318. Both share the same diversion. Each application will have decisions based on its respective findings.

**Description and Purpose of Proposed Change**

An application for change was submitted by Bryan Borup of Prescott, Washington, to Ecology on June 30, 2003. Mr. Borup proposes to change the authorized point of diversion under Touchet River Adjudicated Certificate No. 318 (TRAC No. 318). The change to the authorized point of diversion is intended to correct the location of the point of diversion to that actually being used.

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

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

	Existing	Proposed
<b>Name</b>	Mary A. Painter, et al.	Jill Borup
<b>Priority Date</b>	Class 64	
<b>Change Application Date</b>		6/30/2003
<b>Instantaneous Rate</b>	Up to 2.9 cfs	Same
<b>Annual Quantity</b>	870 acre-feet per year	Same
<b>Purpose(s) of Use</b>	Irrigation of 145 acres	Same
<b>Period of Use</b>	Per Season Starting 9/15	Same
<b>Place(s) of Use</b>	Approximation: Portions of Section 2 within T. 9 N., R. 36 E.W.M.	Approximation: Portions of Section 2 within T. 9 N., R. 36 E.W.M.

**Proposed Source of Diversion**

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Touchet River Diversion	360902410003	9N	36E	2	NW¼SE¼	46.28628°	-118.26852°

**Authorized Source of Diversion**

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Touchet River Diversion	360901410009	9N	36E	1	NW¼SE¼		

## Legal Requirements for Proposed Change

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The following is a list of requirements that must be met prior to authorizing the proposed change.

### Public Notice

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RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in *The Times* during the weeks of June 15<sup>th</sup> and 22<sup>nd</sup>, 2006. No protests were received.

### State Environmental Policy Act (SEPA)

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A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gallons per minute;
- It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

This application does not meet any of the above listed conditions. It is categorically exempt from SEPA and a threshold determination is not required.

### Water Resources Statutes and Case Law

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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

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In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits, and claims; (3) USGS topographic maps, LandSat imagery, and aerial photographs; (4) diversion works and place of use; (5) State of Washington Irrigation Guide (WA210-VI-WAIG, AMEND. 1 November 1990); (6) Touchet River Adjudication; and (7) discussions with Department of Ecology regional program staff.

Ecology employees Dan Tolleson, Leigh Bedell, and Jeff MacLennan met with Justin Gagnon at the project site on February 14, 2012. Mr. Gagnon and his father Joe Gagnon are leasing the land from Mrs. Borup. The project is located about two miles east of Prescott, 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 authorized place of use (POU) lies within the east half of section 2, T. 7 N., R. 34 E.W.M. It includes all the NE $\frac{1}{4}$  south of the railroad tracks, the W $\frac{1}{2}$ SE $\frac{1}{4}$ , and the NE $\frac{1}{4}$  SE $\frac{1}{4}$ . The Touchet River flows northwesterly through the SE $\frac{1}{4}$ . The portion of the POU south of the river is very steep and unsuitable for farming. The authorized place of use allows for up to 145 acres of irrigation. Since the Touchet River Adjudication, however, the POU has been subdivided into three parcels. The southern parcel includes that portion south of the river and approximately 26 acres along the length of the north bank of the river. That leaves about 139 acres available for farming on the relatively flat portion north of the river. Mrs. Borup has been irrigating 135 acres of the north portion. According to the Walla Walla County Assessor's Office there is a small parcel, less than an acre in extent, not owned by Mrs. Borup that is within the current POU. This parcel will be discussed below.

The authorized point of diversion was on the Touchet River in section 1, T. 9 N., R. 36 E.W.M. Mr. Borup passed away since submitting this application. Mrs. Borup does not know exactly where the original diversion was located or why Mr. Borup moved the diversion to its current location. According to the application, the change in the diversion's location occurred decades ago. This change application proposes to move the authorized point of diversion in section 1 to the location where it is currently being used in section 2. The proposed point of diversion is an existing pressurized pumping station with associated fish screen located on the Touchet River. The pumping station is on land that is not owned by Mrs. Borup. According to Mr. Gagnon, there is an easement in place.

## History of Water Use

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Aerial photographs and LandSat imagery were used to verify the extent of historical beneficial use of this project. Using imagery dating back to the 1970's, it appears the parcels within the place of use owned by Mrs. Borup were irrigated. Aerial photos show 135 acres being irrigated. Of this 135 acres, 5 acres are irrigated under TRAC No. 13, leaving 130 acres irrigated under TRAC No. 318. There is no historical evidence of irrigation in the portion of the original place of use south of the Touchet River. The legal description for the place of use is therefore amended accordingly.

There is a small parcel within the POU that does not belong to Mrs. Borup. The Walla Walla County Assessor's Office identified Mrs. Loree Price as the owner. Jeff MacLennan contacted Mrs. Price on February 29, 2012, to ensure she would allow continued irrigation of her property. According to Mrs. Price, she abandoned the property several years ago; the property defaulted back to Household Financial Corporation (HFC); and HFC has refused to pay property taxes. It appears to be a parcel without an owner.

There is also a question as to the exact location of this parcel. Mrs. Price says she lived on the property for a number of years, but no structures appear in this parcel in any of the historical aerial photos. Regardless of the county's location of this parcel, however, there has been no change to the place of use of the water right and, therefore, is still attached to the land which includes this parcel.

The maximum authorized water duty of this certificate is 6 acre-feet per year per acre for any one year beginning September 15<sup>th</sup>. According to the adjudication, water can be diverted from April 1<sup>st</sup> to September 15<sup>th</sup> of each year to the lands irrigated from the Touchet River at a rate not to exceed 1 cubic foot per second for each 75 acres for land east of the township line between ranges 34 and 35 east of the Willamette Meridian. If there is still water available during this period after all rights have been filled, the excess may be diverted in the order of scheduled priority in amounts sufficient to increase the rate to a maximum delivery of 1 cubic foot per second for each 50 acres of land. The diversion rate from September 15<sup>th</sup> to April 1<sup>st</sup> shall not exceed 1 cubic foot per second for each 50 acres of land in the scheduled priority, with the total diversion for any given tract of land not to exceed 6 acre-feet per acre per year.

According to Mr. Justin Gagnon, the current lessee of this property, this right has been used to irrigate alfalfa. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that 2.47 acre-feet per acre of water is required for alfalfa in the Dayton area. This place of use falls into the Dayton area. At a 70% efficiency rate of application, the approximate maximum water duty for alfalfa is 3.52 acre-feet per year per acre. The resulting annual requirement would then be 458 acre-feet per year.

The calculated annual water duty is a reduction in the annual water duty from the originally authorized 870 acre-feet per year. The reduction occurs for two reasons: fewer acres are being irrigated and improved irrigation practices. The original certificate authorized irrigation of 145 acres. Historical photos show only 135 acres under irrigation. Of that 135 acres, 5 acres falls under TRAC No. 13, leaving 130 acres of irrigation under TRAC No. 318. Irrigation practices have improved significantly since the days of the Touchet River adjudication. Gravity fed flood irrigation was the norm at that time. Mrs. Borup is currently using a pressurized pump with a wheel-line sprinkler system.

The point of diversion serves TRAC No. 318 and No. 13 simultaneously. TRAC No. 318 authorizes 1.933 cfs (867 gpm) during the irrigation season, April 1 –September 15, and 2.9 cfs the remainder of the year. TRAC No. 13 authorizes 0.067 cfs (30 gpm) during the irrigation season, April 1 –September 15, and 0.1 cfs the remainder of the year. Mr. Gagnon claims the pumping station contains a 75-hp pump. Using equation 1 found on page 9, assuming a pump efficiency of 50% and a system pressure of 60 psi, the pump is capable of more than 950 gpm (2.12 cfs). Mr. Gagnon reported he typically pumps at a rate of about 800 gpm (1.8 cfs) from April through September. This is within the realm of the pumps capability and slightly below the authorized rate for TRAC No. 318. Therefore the authorized rate between April 1 and September 15 has been beneficially used and should remain 1.933 cfs.

Eqn. 1.

$$Q_i = \frac{3960HP(P_{eff})}{2.31(psi) + lift}$$

HP = horsepower  
P<sub>eff</sub> = pump efficiency  
psi = pressure at the pump outlet  
3960 & 2.31 – conversion factors  
lift = elevation difference between in-take  
and point of delivery

The instantaneous rate should be reduced between September 15 and April 1 from its current authorized rate of 2.9 cfs to 1.933 cfs for two reasons. First, flood irrigation requiring large rates of diversion was used when this right was perfected. Mrs. Borup now uses a more efficient pressurized sprinkler irrigation system. Secondly, the irrigation system as it is currently configured is not capable of producing 2.9 cfs. It appears the reduced rate of diversion occurred decades ago when the original diversion was abandoned and modern farming practices were implemented. When that occurred, it was no longer necessary to divert at 2.9 cfs causing the unused portion of the diversion rate to be relinquished.

### Purpose for Change

The primary purpose of this change is to account for the change in the location of the point of diversion. The change to the authorized point of diversion is a downstream move of approximately 1.5 miles to an existing diversion structure. According to Mr. Borup’s explanation in the application, the originally authorized diversion was abandoned decades ago. Neither Mrs. Borup, the current land owner nor Mr. Gagnon, the current lessee, know where the original diversion was located or why it was moved. The current location is more conveniently located to the place of use, however.

### Other Rights Appurtenant to the Place of Use

A review was conducted for any rights that might overlap the authorized place of use (POU). The only other right appurtenant to the POU is Touchet River Adjudicated Certificate No. 13. TRAC No. 13 and TRAC No. 318 are primary additive rights. The attributes of TRAC No. 13 are:

- 0.1 cfs 9/15 – 4/1 and 0.067 cfs 4/1 – 9/15
- 6 acre-feet per year per acre
- Irrigation of 5 acres within the same POU as TRAC No. 318
- Touchet River Adjudication Class 3

TRAC No. 13 shares the same source and irrigation system with TRAC No. 318 and is also the subject of a similar change application. Because TRAC No. 13 is a class 3 water right, water is likely to always be available even during periods of regulation.

## Impairment Considerations

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“Impair” or “impairment” means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection; and/or 2) to prevent the beneficial use of the water to which one is entitled; and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flow levels established by rule (POL-1200); and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

The applicant is requesting approval for the change in the authorized point of diversion for TRAC No. 318. The change to the authorized point of diversion is a downstream move of approximately 1.5 miles to an existing diversion structure. According to the application, the originally authorized diversion was abandoned decades ago and water has been diverted from the proposed diversion without issue since its relocation. There are no major changes or diversions in the river between the authorized POD and the proposed POD. Therefore, no impairment is anticipated by recognizing the change in the authorized point of diversion. The proposed change will not increase the amount of water withdrawn from the Touchet River, nor will it increase or expand the right.

## Consideration of Protests and Comments

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No protests were filed against this application.

## Conclusions

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In conclusion, there is a water right available for change under Touchet River Adjudicated Certificate No. 318. In accordance with Chapters 90.03 RCW, approval of this application to change the authorized point of diversion will not enlarge the quantity of water historically authorized, nor will it impair existing rights provided the terms and conditions above are followed.

The amount of water recommended is a maximum limit that shall not be exceeded, and the water user may only use that amount of water within the specified limit that is reasonable and beneficial. This authorization does not increase in any way the original amounts authorized by the certificate.

## RECOMMENDATIONS

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Based on the above investigation and conclusions, I recommend that the request to change the authorized point of diversion be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, and following.

### Purpose of Use and Authorized Quantities

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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:

1.933 CFS from September 15 to September 15  
458 acre-feet per year  
Irrigation of 130 acres

### **Point of Diversion**

2020 feet north and 1510 feet west from the SE section corner, being in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 2, T. 9 N., R. 36 E.W.M.

### **Place of Use**

The SE $\frac{1}{4}$  north of the Touchet River and the NE $\frac{1}{4}$  south of O.W.R. & N. Co. right of way, in Section 2, T. 9 N., R. 36 E.W.M.



5-14-2012

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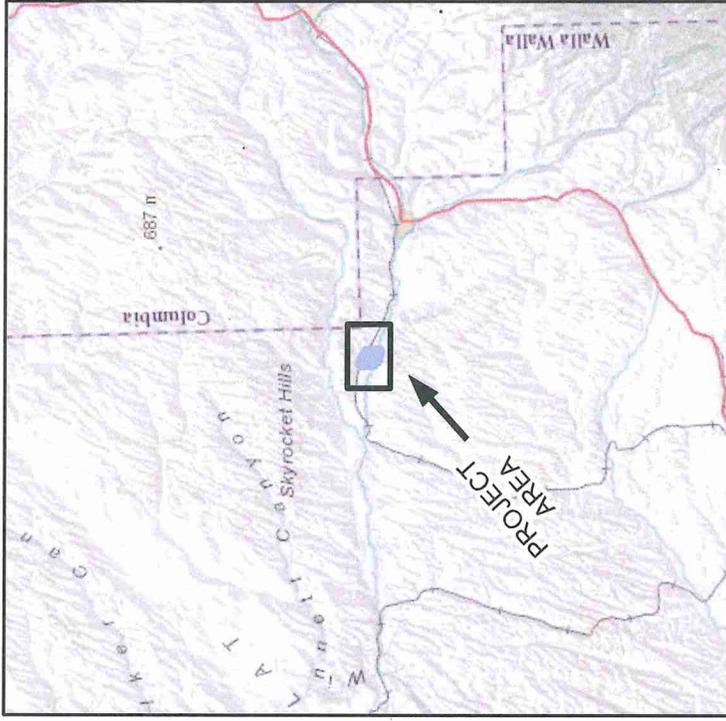
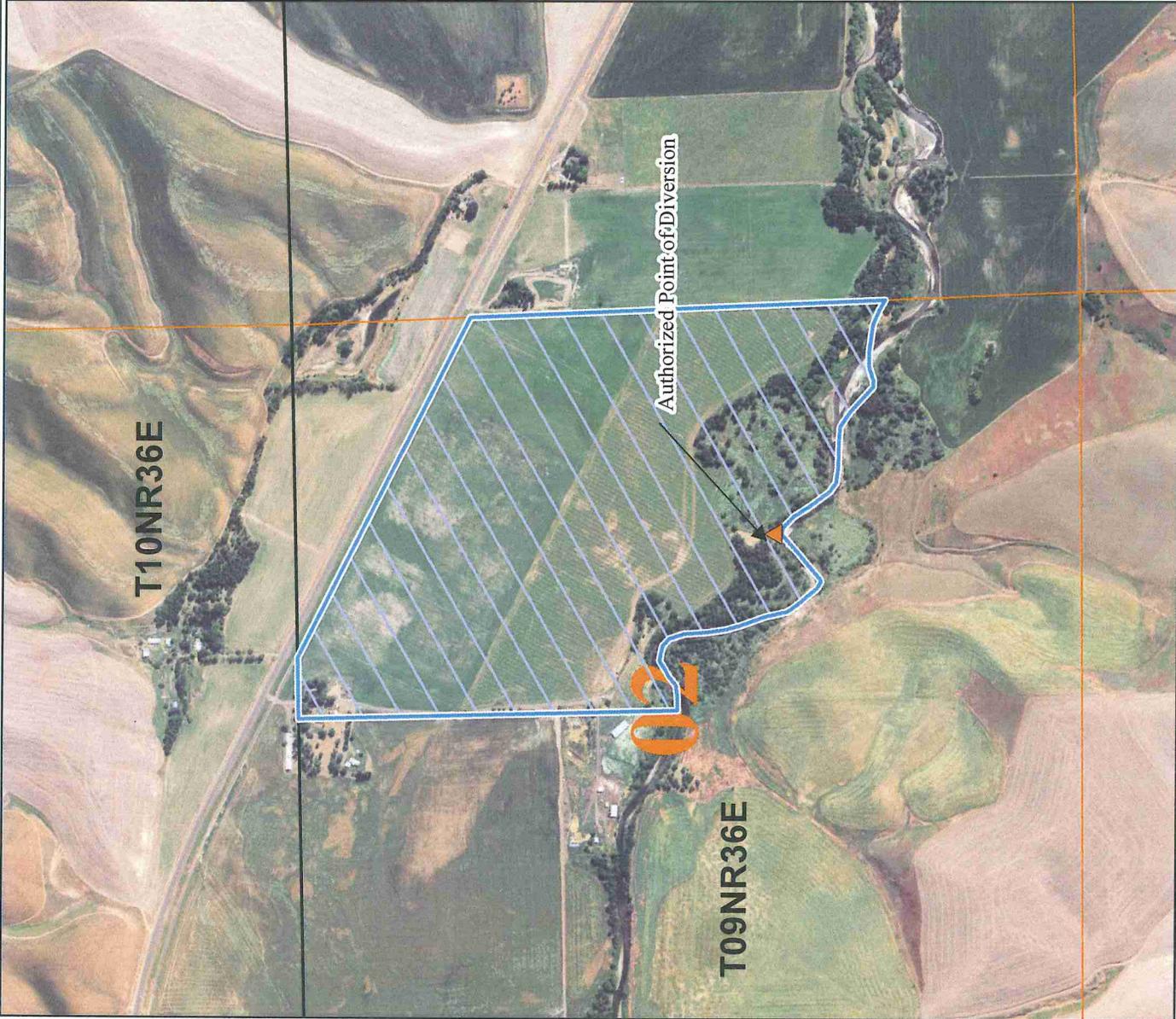
Jeff MacLennan, Report Writer

Date

*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.*

# ATTACHMENT 1

Mrs. Jill Borup  
 CS3-\*34318J  
 T09N/R36E



Basemap - (ESRI US Topographic Maps)

**Legend**

-  Townships
-  Sections

 Authorized Place of Use

 Authorized Point of Diversion

**Comment:**

Place of use and source locations are as defined within the Report of Examination cover sheet for the document identified in the header above.



Map Date: 3/12/2012

Basemap - (NAIP 2011 1m color)

