



State of Washington REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Changed Point of Diversion

PRIORITY DATE
January 1, 1926 (Class 64)

WATER RIGHT NUMBER
Walla Walla River Adjudicated Certificate No. 869

MAILING ADDRESS
Art Lesser
1606 Detour Road
Walla Walla, WA 99362

Total Quantity Authorized for Diversion

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

Purpose

PURPOSE	DIVERSION RATE	ANNUAL QUANTITY (AF/YR)
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ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
	NON-ADDITIVE		WATER SYSTEM ID	CONNECTIONS

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Walla Walla			32-Walla Walla

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ.Q	LATITUDE	LONGITUDE
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Datum: NAD83/WGS84

DENIED

Place of Use (See Attached Map)

n/a

Proposed Works

n/a

Development Schedule		
BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
n/a	n/a	n/a

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 not available for change since the water right has been relinquished for non-use.

Therefore, I ORDER denial of the application for change to Walla Walla River Adjudicated Surface Water Right 869.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. “Date of receipt” is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this 22nd day of January, 2014.



Keith L. Stoffel, Section Manager

INVESTIGATOR'S REPORT

Dan Tolleson, Department of Ecology

Water Right Control Number CS3-*28869J

Walla Walla River Adjudicated Certificate No. 869

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number CS3-*28869J. The application proposes to change the authorized point of diversion as granted under Walla Walla Adjudicated Surface Water Certificate No. 869.

EXISTING Water Right Attributes

Water Right Owner:	Henry E. Peterson
Priority Date:	1/1/1926 (class 64)
Place of Use	Beginning at a point in the west line of the Narcisse Raymond Donation Claim No. 37 in Township 7 N., Range 34 and 35 E.W.M., according to the government survey of said Donation Claim, 210 yards north of the SW corner thereof; thence east parallel with the south line of said Donation Claim 32 1/3 rods; thence north parallel with the west line of said Donation Claim 149.9 rods; thence westerly in a straight line to a point in the west line of said Donation Claim 147 Rods north to the point of beginning; thence south to the point of beginning.

County	Waterbody	Tributary To	WRIA
Walla Walla	Little Walla Walla River	Walla Walla River	32-Walla Walla

PURPOSE	DIVERSION RATE	ANNUAL QUANTITY (AF/YR)
Irrigation of 4 acres	0.053 CFS from 04/01 to 07/01	20
	0.040 CFS from 07/01 to 10/01	
	0.080 CFS from 10/1 to 04/01*	

*when allowed in accordance with the Walla Walla Adjudication

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Little Walla Walla River	350605220007	6 N.	34 E.	5	NW¼NW¼		

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

REQUESTED Water Right Attributes

Applicant Name:	Art Lesser
Date of Application:	7/ 27/ 2004
Place of Use	Beginning at a point in the west line of the Narcisse Raymond Donation Claim No. 37 in Township 7 N., Range 34 and 35 E.W.M., according to the government survey of said Donation Claim, 210 yards north of the SW corner thereof; thence east parallel with the south line of said Donation Claim 32 1/3 rods; thence north parallel with the west line of said Donation Claim 149.9 rods; thence westerly in a straight line to a point in the west line of said Donation Claim 147 Rods north to the point of beginning; thence south to the point of beginning.

County	Waterbody	Tributary To	WRIA
Walla Walla	Walla Walla River	Columbia River	32-Walla Walla
PURPOSE	WITHDRAWAL OR DIVERSION RATE	MAXIMUM ANNUAL QUANTITY (AF/YR)	
Irrigation of 4 acres	0.053 CFS from 04/01 to 07/01 0.040 CFS from 07/01 to 10/01 0.080 CFS from 10/1 to 04/01*	20	

*when allowed in accordance with the Walla Walla Adjudication

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Walla Walla River	340736510013	7 N.	34 E.	36	SW¼NW¼		

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

Legal Requirements for Requested Change

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

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Waitsburg Times on April 25 and May 2, 2013 and no protests were received.

Consultation with the Department of Fish and Wildlife

The Department of Ecology must give notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water. This notice was submitted via email on September 16, 2013 to Steve Boessow with a 30 day request for comment. A letter dated September 27, 2013 recommends denial of the change application based on impacts to fish and/or wildlife per Chapter 77.57. Specifically it sights impacts to existing water rights, such as Gardena Irrigation District and a concern for expansion of the right in the proposed location. In addition, they have a general concern of moving the diversion from a tributary to the main stem of the Walla Walla River which may increase negative impacts.

State Environmental Policy Act (SEPA)

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

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

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*.

RCW 90.14.130 through 180 defines relinquishment of water rights. Generally, any person entitled to divert or withdraw waters under a water right who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state.

INVESTIGATION

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits, and claims; (3) USGS topographic maps and aerial photographs; (4) diversion works, ditch systems and place of use; (5) Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32 and Watershed Planning; (6) State of Washington Irrigation Guide (Natural Resources Conservation Service 1997); (7) Walla Walla River Adjudication; and (8) discussions with Department of Ecology regional program staff.

A field investigation was conducted, by Dan Tolleson on September 9, 2013. The project is located approximately three miles east of Lowden, 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 point of diversion is a headgate for a ditch system that has been abandoned. The point of diversion is proposed to be changed to the existing pumping station located on the Walla Walla River. The proposed point of diversion consists of a 7.5 hp centrifugal pump, meter and fish screen. This diversion is proposed to provide water for both Walla Walla Adjudicated Certificate Nos. 709 and 869.

The authorized place of use lies directly north of Detour Road and south of the Walla Walla River within portions of the $W\frac{1}{2}W\frac{1}{2}$ of Section 36, T. 7 N., R. 34 E.W.M. The majority of the place of use consists of irrigated farm land. There is significant riparian vegetation on the north edge of the project adjacent to the Walla Walla River. A house with a yard and another building are located approximately 600-700 feet north of Detour Road on the east side of the project.

History of Water Use and Beneficial Use Analysis

Walla Walla Adjudicated Certificate No. 869 historically received water from the Vosberg Ditch. The Vosberg ditch diverted water from the Little Walla Walla River approximately $\frac{3}{4}$ of a mile above its confluence with the main stem Walla Walla River. The ditch system historically supplied water to many water rights in the area, but incrementally fell into disuse. By the late 1980s the ditch was completely abandoned. As the ditch was abandoned, many of the water right holders changed their pump stations without authorization to the main stem of the Walla Walla River.

Prior to 1971, the point of diversion for Walla Walla Adjudicated Certificate Nos. 869 was moved approximately 1.7 miles downstream from the Little Walla Walla River to the main stem Walla Walla River. Mr. Lesser's portion of the ditch system was abandoned due to ditch maintenance issues. Since that time, the diversion for this right has been a single pump station which is the proposed source under this application.

Walla Walla River Adjudicated Surface Water Certificates Nos. 709 and 869 have the same authorized place of use. These two rights are additive to one another, and originally authorized 30 acres of irrigation. Aerial photographs were used to help verify the extent of development, historical use and beneficial use of this project. Historically, it appears that the entire place of use was irrigated but in recent decades this use has been reduced to 24 acres of consistent irrigation. There are several acres of riparian vegetation and flood zone along the Walla Walla River that is not irrigable. The remainder of the place use is covered by buildings, roads and a yard. This reduced use, confirmed by aerial photographs, has occurred since at least 1989. Since only 24 acres have been irrigated in the last twenty-four plus years and this use occurred under Walla Walla Adjudicated Certificate No. 709, the entirety of Walla Walla River Adjudicated Surface Water Certificates No. 869 has been relinquished for non-use.

A request for information was sent by certified mail to the applicant on October 2, 2013 asking for any additional information that would confirm a use of water under WWAC 869. The applicant confirmed non-use of this water right during a phone conversation on October 15, 2013. No additional information was submitted by the applicant to verify beneficial use under this right in the last 20 years.

Based on the information provided and the investigation into the beneficial use, this right has relinquished for non use. Relinquishment of a water right certificate is defined in RCW 90.14.180:

- (RCW 90.14.180) *“Any person hereafter entitled to divert or withdraw waters of the state through an appropriation authorized under RCW 90.03.330, 90.44.080, or 90.44.090 who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250. All certificates hereafter issued by the department of ecology pursuant to RCW 90.03.330 shall expressly incorporate this section by reference. [1987 c 109 § 101; 1967 c 233 § 18.]”*

A formal relinquishment will accompany this report, since Walla Walla River Adjudicated Certificate No. 869 lacks evidence of beneficial use and is relinquished. This process is defined in RCW 90.14.130:

- (RCW 90.14.130) *“When it appears to the department of ecology that a person entitled to the use of water has not beneficially used his water right or some portion thereof, and it appears that said right has or may have reverted to the state because of such nonuse, as provided by RCW 90.14.160, 90.14.170, or 90.14.180, the department of ecology shall notify such person by order: PROVIDED, That where a company, association, district, or the United States has filed a blanket claim under the provisions of *RCW 90.14.060 for the total benefits of those served by it, the notice shall be served on such company, association, district or the United States and not upon any of its individual water users who may not have used the water or some portion thereof which they were entitled to use. The order shall contain: (1) A description of the water right, including the approximate location of the point of diversion, the general description of the lands or places where such waters were used, the water source, the amount involved, the purpose of use, and the apparent authority upon which the right is based; (2) a statement that unless sufficient cause be shown on appeal the water right will be declared relinquished; and (3) a statement that such order may be appealed to the pollution control hearings board. Any person aggrieved by such an order may appeal it to the pollution control hearings board pursuant to RCW 43.21B.310. The order shall be served by registered or certified mail to the last known address of the person and be posted at the point of division or withdrawal. The order by itself shall not alter the recipient's right to use water, if any. [1987 c 109 § 13; 1967 c 233 § 13.]”*

Proposed Use

The purpose of this change is to correct the location of the point of diversion.

Other Rights Appurtenant to the Place of Use

A review of Ecology records were conducted for existing water right certificates, permits, and claims in the surrounding area of the project. The search focused primarily on Section 36, T. 7 N., R. 34 E.W.M. The review of Ecology records show two other water rights appurtenant to the authorized place of use, which are as follows:

Walla Walla Adjudicated Certificate No. 709 authorizes up to 0.52 cubic feet per second for the irrigation of 26 acres. Walla Walla Adjudicated Certificate Nos. 709 and 869 describe the same place of use and are issued as additive. Change applications were filed on both water rights simultaneously, with each having a decision on its own respective finds.

Ground Water Certificate No. G3-21334C authorizes 30 gallons per minute, 62 acre-feet per year, from January 1 to December 31, each year for the irrigation of 30 acres; 10 gallons per minute, 2 acre-feet per year, continuously for domestic supply and stockwater. Walla Walla Adjudicated Certificate Nos. 709 and 869, along with Ground Water Certificate No. G3-21334C shares the same place of use. Ground Water Certificate No. G3-21334C was issued as supplemental to any existing rights and will be proportionately reduced by existing rights to affect the maximum total for irrigation. This mean the right is less any water diverted under Walla Walla Adjudicated Certificate Nos. 709 and 869 for irrigation. According to Mr. Lesser this water right has not been utilized for irrigation in recent years since the well doesn't always have adequate water available, but remains in use for domestic supply.

(The extent and validity of these rights is not determined in the report.)

Impairment Considerations

Lacking evidence of beneficial use, no impairment analysis was conducted as a part of this decision.

Conclusions

In accordance with Chapter 90.14, Walla Walla River Adjudicated Certificate No. 869 appears to be relinquished for non-use. Lacking evidence of beneficial use, the water right change/transfer must be **denied**.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right change be **Denied**.

An Order of Relinquishment will accompany this decision.

Dan Tall

Dan Tolleson, Report Writer

1-22-2014

Date

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