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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
APPLICATION FOR CHANGE

REPORT OF EXAMINATION

TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

[X] 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
1869 (Class 9)			Vol. 4, Page 76

NAME
U.H. BERNEY FARMS, INC.

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
P.O. Box 1757	Walla Walla	Washington	99362

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
Yellowhawk Creek

TRIBUTARY OF (IF SURFACE WATERS)
Walla Walla River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
0.330		82.5

QUANTITY, TYPE OF USE, PERIOD OF USE
0.220 cubic feet per second from April 1 to July 1; 0.165 cubic feet per second from July 1 to October 1; and 0.330 cubic feet per second from October 1 to April 1, when allowed, for the irrigation of 16.5 acres.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION–WITHDRAWAL
1) 455 feet north and 650 feet west from the SE corner of Sec. 22, being within the SE¼SE¼ of Sec. 22
2) 450 feet north and 650 feet west from the SE corner of Sec. 22, being within the SE¼SE¼ of Sec. 22
3) 450 feet south and 1150 feet west from the NE corner of Sec. 27, being within the NE¼NE¼ of Sec. 27

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE, (E. OR W.) W.M.	W.R.I.A.	COUNTY
ALL WITHIN	----	7	36 E.	32	Walla Walla

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

That part of the SE¼SE¼ of Sec. 22, T. 7 N., R. 36 E.W.M., lying Southeasterly of the Southeast bank of Yellowhawk Creek.

ALSO, the W½SW¼ of Sec. 23, T. 7 N., R. 36 E.W.M. EXCEPTING THEREFROM the following described tract, to wit:

Beginning at a point on the North line of the SW¼ of Sec. 23 in T. 7 N., R. 36 E.W.M., which point is S 89°45' W 12.12 chains from the NE corner of the NW¼SW¼ of said Sec. 23; thence S 00°15' W 5.60 chains; thence S 52°30' W 9.80 chains, more or less, to a point which is 0.45 chains East of the West line of said Sec. 23; thence North 6.74 chains; thence East 0.15 chains; thence North 0.75 chains; thence W 0.60 chains; thence North along the West line of Sec. 23 to the NW corner of the SW¼ of said Sec. 23; thence North 89°45' E along the North line of said SW¼ to the point of beginning;

ALSO, EXCEPTING THEREFROM the following described tract, to-wit:

Beginning at a point in the North line of the SW¼ of Sec. 23 in T. 7 N., R. 36 E.W.M., which point is 429 feet West, measured along the said North line, from the NE corner of the NW¼SW¼ of said Sec. 23; and running thence North 81 feet; thence N 72°17' W 118.3 feet; thence S 79°17' W 37.65 feet; thence S 42°46' W 108.97 feet; thence S 56°45' W 36.74 feet; thence S 84°40' W 107.46 feet to a point in the aforesaid North line; thence

Legal description continued on page 4.

DESCRIPTION OF PROPOSED WORKS

Pumps (3), pipeline, sprinklers.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	WATER PUT TO FULL USE BY THIS DATE:
Started	Completed	February 1, 1998

REPORT

BACKGROUND

An application for change was submitted by U.H. Berney Farms, Inc. to the Department of Ecology on October 20, 1995. The application was accepted and processed. The applicant proposes to add a point of diversion and change the place of use to Walla Walla River Adjudicated Certificate No. 76.

A notice of application was duly published in accordance with RCW 90.03.280; no protests or objections were received.

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

INVESTIGATION

A field examination was conducted by Bill Neve on December 5, 1996. The project site is located approximately ½ mile east of Walla Walla, Washington.

Walla Walla River Adjudicated Certificate No. 76 (Certificate No. 76) authorizes the diversion of water from Yellowhawk Creek (0.220 cubic feet per second from April 1 to July 1; 0.165 cubic feet per second from July 1 to October 1; and 0.330 cubic feet per second from October 1 to April 1, when allowed) for the irrigation of 16.5 acres.

The applicant is proposing to add a point of diversion, and change the place of use to Certificate No. 76 in order to have the certificate reflect the actual use of water under this right. This application is one of four concurrent change applications the applicants have filed, the others being to Walla Walla Adjudicated Certificate Nos. 44, 202, and Surface Water Certificate No. 6802. When these changes are finalized, the points of diversion and place of use would be the same for the U.H. Berney Farms portion of each of these rights.

Mr. Robert Collins owns a 3 acre share of Adjudicated Certificate No. 76, together with a supplemental allocation of 3 acres under Surface Water Certificate No. 6802. Through concurrent changes being applied for to these rights, Mr. Collins will be issued separate superseding certificates for his portion of the rights.

U.H. Berney Farms has two 40 H.P. pumps side-by-side on Yellowhawk Creek within the SE¼SE¼ of Sec. 22, T. 7 N., R. 36 E.W.M. The additional point of diversion to be added is for Mr. Collins' pump, located within the NE¼NE¼ of Sec. 27, T. 7 N., R. 36 E.W.M.

The place of use of this right will change to be consistent with changes being made to the three other aforementioned rights for the U.H. Berney property. The irrigation setup from the Yellowhawk Creek diversion site is integrated across the entire proposed place of use. This change will result in the appurtenant certificates reflecting this system integration.

Records reviewed at the U.S.D.A. Natural Resource Conservation Service office in Walla Walla show 237 acres of tillable ground within the proposed place of use of these rights (excluding Collins). Therefore, any changes issued will be provisioned to limit the number of acres to be irrigated under Adjudicated Certificate Nos. 44, 76, 202 and Surface Water Certificate No. 6802 on lands owned by U.H. Berney Farms to 237 total acres.

The resulting allocation for U.H. Berney Farms from all the proposed changes, after allocation to Mr. Collins of his 3 acres, would be 66 acres of irrigation under Adjudicated Certificate Nos. 44, 76 and 202. This leaves 171 acres of Certificate No. 6802 as primary right, and 28 acres supplemental to the existing Adjudicated rights.

Consistent with Chapter 90.03.360 RCW, a metering device which measures both instantaneous and annual quantities of water diverted will be required to be installed and maintained on all diversion pumps approved herein.

CONCLUSIONS

It is the conclusion of the examiner that this application for change to add one point of diversion and change the place of use to Adjudicated Certificate No. 76 will neither enlarge the right conveyed by the original certificate, nor impair existing water rights.

As the proposed changes have been made, the only action which needs to be completed prior to issuance of superseding certificates is to install metering devices on all three surface water pumps. Upon completion of this requirement, and receipt of the statutory certificate and recording fees, superseding certificates will be issued.

It is the conclusion of the examiner that this application for change to add a point of diversion and change the place of use should be approved, subject to the following provisions:

"This authorization adds a point of diversion, and changes the place of use of the subject certificate as provided by Chapter 90.03.380 RCW, and will supersede Certificate of Water Right recorded in Volume 4 of Water Right Certificates at Page 76, dated April 19, 1929. Said Certificate was issued by a decree of the Superior Court of the State of Washington in and for Walla Walla County, made and entered on the 12th day of September, 1928, and recorded in Vol. 16 of the Superior Court Journal of said County at Page 1."

"When the supply of water for irrigation purposes is insufficient in the Walla Walla Valley to fill any right in the above mentioned 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 5 acre feet per acre for any year beginning October 1."

"The total number of acres that may be irrigated under Walla Walla Adjudicated Certificate Nos. 44, 76 and 202 within the area herein described as the place of use (excluding Collins) shall not exceed 66 acres in any one irrigation season. The total number of acres that may be irrigated under the above described Adjudicated Certificates and Surface Water Certificate No. 6802 shall not exceed 237 acres."

"An approved measuring device shall be installed and maintained in accordance with RCW 90.03.360 and/or WAC 508-64-020 through WAC 508-64-040." (Installation, operation and maintenance requirements attached hereto).

"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 the place of use specified."

"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."

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

In accordance with the recommendations of the Department of Fish and Wildlife, the superseding certificate shall be issued subject to the following provision(s):

"This superseding certificate shall be issued subject to Washington Department of Fish and Wildlife screening criteria as outlined in a Hydraulic Project Approval. Please contact the Department of Fish and Wildlife, 600 Capitol Way North, Olympia, Washington 98501-1091, Attention: Habitat Management Division, Phone (360) 902-2534, to obtain specific requirements for your project."

"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."

Signed at Spokane, Washington
This 22nd day of January, 1997

Cindy A. Christian
for WILLIAM L. NEVE
Shorelands & Water Resources Program
Department of Ecology

Legal Description Continued

West, along the said North line, a distance of 9.72 feet more or less to a point which is 799.92 feet West of the NE corner of said NW¼SW¼; thence S 0°15' W 192.5 feet; thence N 49°15' E 149 feet; thence N 70°24' E 284.3 feet more or less to the point of beginning;

ALSO, the W½NW¼ of Sec. 26, T. 7 N., R. 36 E.W.M.;

The E½NE¼ of Sec. 27, T. 7 N., R. 36 E.W.M.