

.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 1890 (Class 28)	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER Walla Walla River Adjudicated Certificate, Vol. 4A, Pg. 356
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NAME Don and Marjorie Mathews			
ADDRESS (STREET) 3060 Reservoir Road	(CITY) Walla Walla	(STATE) WA	(ZIP CODE) 99362

PUBLIC WATERS TO BE APPROPRIATED

SOURCE Walla Walla River	TRIBUTARY OF (IF SURFACE WATERS) Columbia River	
MAXIMUM CUBIC FEET PER SECOND 0.260	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR 49.44

QUANTITY, TYPE OF USE, PERIOD OF USE

0.173 cubic feet per second from April 1 to July 1, 0.130 cubic feet per second from July 1 to Oct. 1, and 0.260 from Oct. 1 to April 1, 49.44 acre feet per year, each year, for the seasonal irrigation of 12.0 acres.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION—WITHDRAWAL

1858 feet south and 750 feet east of the NW¹/₄ corner of Section 23.
 46.0735733 N., and 118.2797413W (NAD 27)

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) SW ¹ / ₄ NW ¹ / ₄	SECTION 23	TOWNSHIP N. 7	RANGE, (E. OR W.) W.M. 36 E.	W.R.I.A. 32	COUNTY Walla Walla
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RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
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LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

Beginning at a point in the south line of the SW¹/₄NW¹/₄ of Section 23, Township 7 N., Range 36 E.W.M., which point is 28.0 rods east, measured along said south line, from the SW corner of said SW¹/₄NW¹/₄, and running thence north, parallel to the west line of said subdivision, a distance of 80.0 rods to a point in the north line thereof; thence east, along said north line, a distance of 26.0 rods; thence south, parallel to the west line of said subdivision, a distance of 80.0 rods to a point in the south line thereof; thence west, along said south line, a distance of 26 rods to the point of beginning.

Excepting therefrom, however, the following described tract, to wit:

Beginning at a point in the south line of the SW¹/₄NW¹/₄ of Section 23, Township 7 N., Range 36 E.W.M., which point is 429.0 feet west, measured along said south line, from the SE corner of said subdivision, and running thence north, parallel to the east line of said subdivision, a distance of 81.0 feet to the center line of Yellowhawk Creek; thence along the center line of said creek by the following courses and distances: north 72°17' west 118.3 feet; thence south 79°17' west 37.65 feet; thence south 42°46' west 108.97 feet; thence south 56°45' west 36.74 feet; thence south 84°40' west 107.46 feet to a point in the south line of said SW¹/₄NW¹/₄; thence leaving the center line of said creek and running east along the south line of said subdivision a distance of 361.2 feet more or less to the point of beginning.

DESCRIPTION OF PROPOSED WORKS

One 3-hp pump and hand lines

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: Started	COMPLETE PROJECT BY THIS DATE: Completed	WATER PUT TO FULL USE BY THIS DATE: October 1, 2009
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BACKGROUND

Application: An application for change of point of diversion was submitted by Don and Marjorie Mathews to the Department of Ecology on February 13, 2002. The application was accepted and processed. The applicant proposes to change the point of diversion (POD) as granted under Walla Walla River Adjudicated Surface Water Certificate recorded as Vol. 4A, Page 356.

Attributes of Certificate No. 356

Name on Certificate:	Conrad Moore
Priority Date:	1890
Class:	28
Instantaneous Quantity – Q (i):	0.173 cfs April 1 to July 1 0.130 cfs July 1 to Oct. 1 0.260 cfs Oct. 1 to April 1
Annual Quantity – Q (a)	65 acre-feet per year (5 acre feet per acre)
Source:	Garrison Creek
Point of Diversion:	SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 23, T. 07 N., R. 36 E.W.M.
Purpose of Use:	Irrigation of 13 acres
Period of Use:	Continuous
Place of Use:	<i>see legal description on certificate</i>

Proposed Change for Certificate No. 356

Name of Applicant:	Don and Marjorie Mathews
Date of Application for Change/Transfer:	February 13, 2002
Instantaneous Quantity – Q (i):	<i>no change proposed</i>
Annual Quantity – Q (a):	<i>no change proposed (will be reduced to 4.12 acre feet from 5 acre feet per acre as authorized under the Walla Walla River Adjudication through this change)</i>
Source:	<i>no change proposed</i>
Point of Diversion:	SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 23, T. 7 N., R. 36 E.W.M.
Purpose of Use:	<i>no change proposed (will reduce acres from 13 to 12 through this change)</i>
Period of Use:	<i>no change proposed</i>
Place of Use	<i>no change proposed (will exclude piece of land lying southeast of property through this change)</i>

History: Certificate No. 356 was originally issued to Conrad Moore from a point of diversion located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 23, T. 7 N., R. 36 E.W.M. The present property owner proposes to change the point of diversion to a new point located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of this same township and range. His original point of diversion was from Garrison Creek and delivered water to the property through ditches. Local flooding has rendered the ditches unusable, and as a result, he has moved his point of diversion directly to Garrison Creek. He is not requesting a change in the purpose of use nor the quantities allocated under the adjudication.

Notice: A notice of application was duly published in accordance with RCW 90.03.280 on May 16th and May 23rd 2002. No protests or objections 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 change, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Walla Walla River Adjudicated Surface Water Certificate No. 356 and records of other water rights/claims in the vicinity; (3) USGS topographic maps and vicinity/plat maps; (4) discussions with regional program staff; (5) one site investigation conducted by Laurie Dahmen from Ecology on November 30, 2004 with Mr. and Mrs. Mathews.

The project site is located at the east edge of the town of Walla Walla. Garrison Creek runs through the center of the property and is tributary to the Walla Walla River in Walla Walla County, Washington. Additionally, Yellowhawk Creek runs through the south end of the property. This project is within Water Resource Inventory Area (WRIA) 32. This change is designed to change the original point of diversion located on Garrison Creek to a new point of diversion (existing), also located on Garrison Creek. The place of use will be changed to match the legal description on the property owner's deed. The number of acres will be reduced to exclude a $\frac{1}{2}$ -acre lying southeast of Yellowhawk Creek and a $\frac{1}{2}$ -acre for building footprints and riparian lands. The applicant has installed a fish screen but not a flow meter at the time of the field investigation.

Existing Water Rights

A review of Ecology records was conducted for existing surface and ground water rights, including permits and applications in the surrounding area. The search focused on the NW $\frac{1}{4}$ of Sec. 23 of Township 7 N., Range 36 E.W.M. A total of nine (9) Walla Walla River Adjudicated water rights and four (4) state issued water rights were found within this $\frac{1}{4}$ -Section. Research of these existing water rights disclosed no other water rights appurtenant to this land.

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 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.

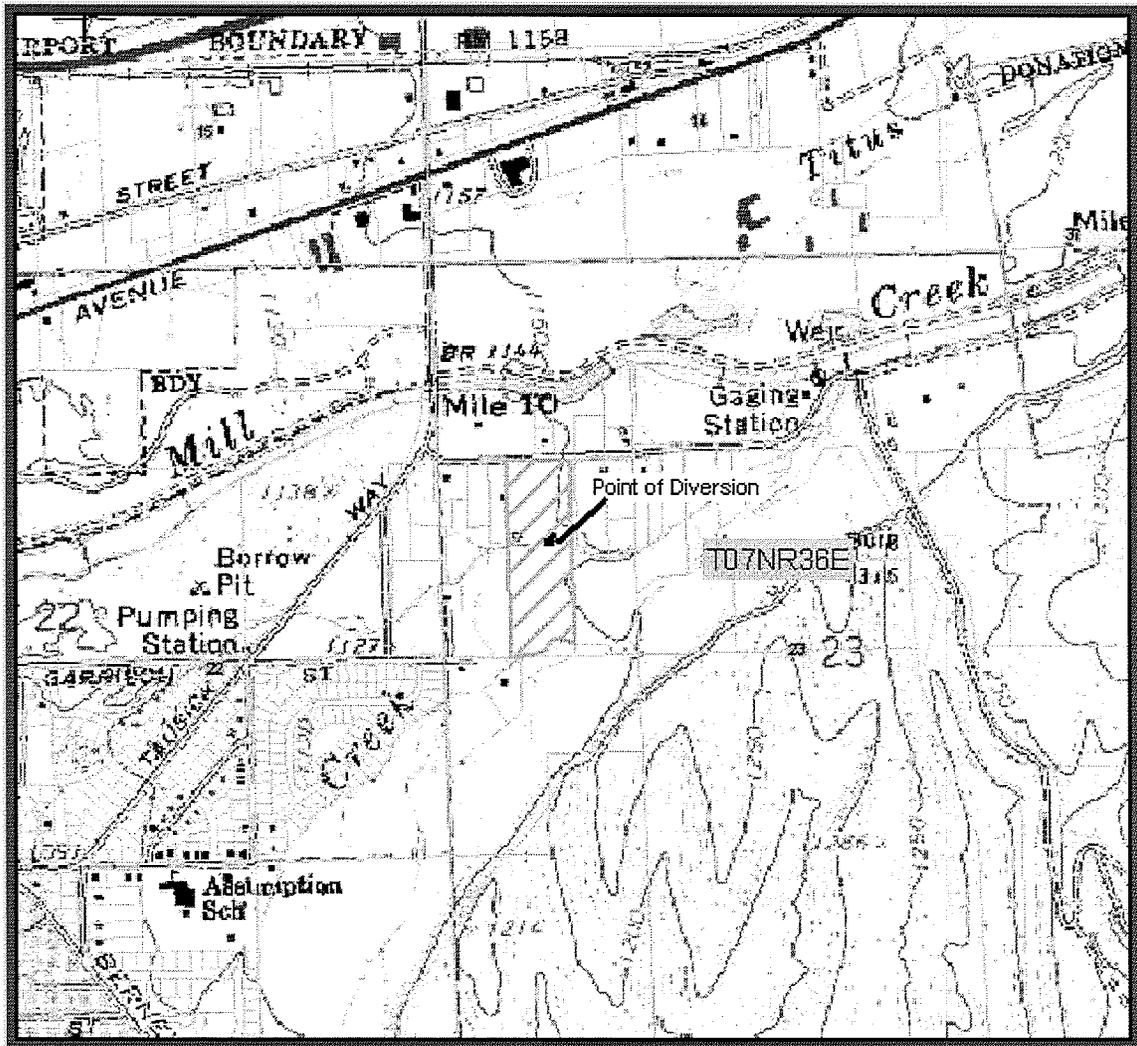
The field investigation, statements from Mr. and Mrs. Mathews, and aerial photographs disclosed that the place of use as described in the landowners deed is presently and has historically been irrigated north of Yellowhawk Creek that runs at the southerly edge of their property. The amount of acres will be reduced from the original 13 acres to 12 acres to exclude a $\frac{1}{2}$ -acre lying southeast of Yellowhawk Creek and a $\frac{1}{2}$ -acre for building footprints and riparian lands.

The original water right authorized five (5) acre-feet per acre. However, this five (5) acre-feet per acre was a general guide under the Walla Walla River Adjudication and considered conveyance losses as well as on farm application rates. Since there is no conveyance loss associated with this project, the Washington Crop Irrigation Guide (WA210-VI-October 1985) was used to find the highest water requirement of the crops commonly grown on this property. The water requirement in this area for pasture is 34.83 inches per year per acre. At 70% system efficiency, each acre requires 4.12 acre-feet per acre for an annual diversion of 49.44 acre-feet for the irrigation of these 12 acres. This recalculated water duty will be reflected in this water right change. The difference between the original acre-footage allowance of five (5) acre-feet per acre (as granted under the Walla Walla River Adjudication) and the new acre-footage requirement of 4.12 acre-feet per acre, based on historic use of 12 acres, is 10.56 acre-feet annually.

Water System

One (1) point of diversion will be recognized for Certificate No.356 at the applied for location through this application for change. There is a 3-hp pump with 2-inch pipes to sprinklers and handlines.

Place of Use and Point of Diversion
Walla Walla River Adjudicated Surface Water Certificate No. 356



Section 23, Township 7 N., Range 36 E. W.M.

FINDINGS

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:

- A valid right exists that is eligible to be changed;
- The change must not cause detriment or injury to existing rights;
- The change shall not allow for the enhancement of the right perfected under the original certificate; and
- All new points of diversion must be from the same source of water as authorized under the original certificate.

Validity of the Water Right

Surface water has been historically and beneficially used on the 12 acres as described on the property owner's deed within the original place of use.

No Impairment to Existing Rights

"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 in stream 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.

The proposed change has been evaluated as to the potential for impairment to existing water rights in the area. This change will not be detrimental to existing rights based on field investigations, lack of negative response to the public notice and the short distance of the move from the original point of diversion to the proposed new point of diversion. This change will not alter pumping amounts or practices. There are 15.56 acre-feet tentatively determined to be relinquished and not available for change.

No Enhancement of the Original Certificate

No diversion of water over and above what has been historically put to beneficial use would be authorized through approval of this change. In fact, this water right is being reduced to reflect the recent historic use from the new point of diversion.

Same Source of Water

The point of diversion is from the same source of surface water as authorized for use in the original right.

CONCLUSION

It is the conclusion of this examiner that, in accordance with Chapters 90.03 and 90.44 RCW, this application for change of point of diversion under Walla Walla River Adjudicated Surface Water Certificate No. 356 will not enlarge the right conveyed by the original certificate, nor will it impair existing rights provided the terms and conditions below are followed.

RECOMMENDATIONS

The applicant's request to change the point of diversion under Surface Water Certificate No. 356 is hereby **APPROVED**, subject to the following:

Provisions

"The total quantities authorized under the Walla Walla River Adjudication, Surface Water Certificate No. 356 shall be limited to 0.173 cubic feet per second from April 1 to July 1, and 0.130 cubic feet per second from July 1 to Oct. 1, and 0.260 from Oct. 1 to April 1, 49.44 acre-feet, each year, for the seasonal irrigation of 12.0 acres."

"An approved measuring device shall be installed and maintained for each of the sources authorized by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173."

"WAC 173-173 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. Installation, operation and maintenance requirements are enclosed as a document titled "Water Measurement Device Installation and Operation Requirements".

<http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

"Water use data shall be recorded bi-weekly (every other week beginning the first week of March 2009) and maintained by the property owner for a minimum of five years. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to the Department of Ecology by January 31st of each calendar year (beginning 2010)."

"Reported water use data shall be submitted via the Internet. To set up an Internet reporting account, access <https://fortress.wa.gov/ecy/wrx/wrx/Meteringx/>. If you do not have Internet access, contact the Eastern Regional office for forms to submit your data."

"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."

"By accepting this transfer and change, the holder hereof consents to allow the Department of Ecology to access the property in question during normal business hours to determine whether the conditions and provisions contained or incorporated directly or indirectly herein have been or are being complied with."

"A future Superseding Certificate for Walla Walla River Adjudicated Surface Water Certificate No. 356 will not issue until evidence of meter installation has been submitted to the Department of Ecology. Photographs of the installed meter and purchase invoice will be adequate evidence of meter installation."

"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."

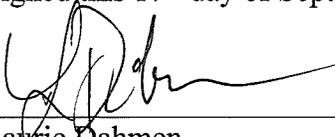
“Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances, or regulations.”

“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.”

In accordance with the recommendations of the Washington Department of Fish and Wildlife, this authorization shall be issued subject to the following provision:

"This authorization is subject to Washington Department of Fish and Wildlife juvenile salmon and game fish screening criteria (pursuant to RCW 77.16.220, RCW 77.55.040 and RCW 77.55.070). Please contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091, Attention: Habitat Program, Phone: (360) 902-2534, or call (509) 575-2734 for the Yakima Construction Shop to obtain technical assistance for your project. Juvenile salmon screening criteria are attached to the Report of Examination if applicable to your diversion."

Signed this 17th day of September, in Spokane, Washington.



Laurie Dahmen
Water Resources Program
Department of Ecology

