



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

October 9, 2008

**CERTIFIED MAIL** 7003 1680 0007 1588 2901

Mr. Thomas Maiden  
4290 Touchet North Road  
Touchet, WA 99360

Re: Application for Change under Touchet River Adjudicated Certificate No. 262  
w/change Vol. 2, pg. 539

Dear Mr. Maiden:

Enclosed is a copy of the Department of Ecology's *Report of Examination for Change*.  
This report constitutes our decision regarding the above-referenced application.

Your application has been approved. A superseding permit will be issued consistent with  
the enclosed *Report of Examination for Change* after the appeal period has expired, if no  
appeals have been filed.

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**



Mr. Thomas Maiden  
October 9, 2008  
Page 2

Mail appeal to:

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

Deliver your appeal in person to:

OR  
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

Deliver your appeal in person to:

OR  
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> .*

If you have any questions, please contact Dan Tolleson at 509 329-3526.

Sincerely,



Keith L. Stoffel  
Section Manager  
Water Resources Program

KLS:DT:ka

Enclosures: *Report of Examination  
Your Right To Be Heard*

cc: Charles Maiden

I certify that I mailed this letter or an identical copy thereof; postage prepaid, to the above  
addressee(s) this 9th day of October, 2008.  
Water Resources Program, Secretary Lead, Kay Allhiser. KA

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 November 17, 1919 (Class 52)	APPLICATION NUMBER ---	PERMIT NUMBER ---	CERTIFICATE NUMBER Touchet River Adj. Certificate No. 262 w/chg. Vol. 2, pg. 539
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NAME Thomas Maiden			
ADDRESS (STREET) 4290 Touchet North Road	(CITY) Touchet	(STATE) Washington	(ZIP CODE) 99360

cc: Charles Maiden, 4609 Touchet North Road, Touchet, WA 99360

**PUBLIC WATERS TO BE APPROPRIATED**

SOURCE Touchet River		
TRIBUTARY OF (IF SURFACE WATERS) Walla Walla River		
MAXIMUM CUBIC FEET PER SECOND 3.319	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR 550

QUANTITY, TYPE OF USE, PERIOD OF USE

3.319 cubic feet per second, 550 acre feet per year, for any one year beginning September 15, for the irrigation of 141 acres

**LOCATION OF DIVERSION/WITHDRAWAL**

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL

- Diversion No. 1- NE $\frac{1}{4}$ SE $\frac{1}{4}$ , of Sec. 3**  
1330 feet North and 100 feet West from the SE corner of Sec. 3
- Diversion No. 2- NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 10**  
200 feet South and 175 feet West from the NE corner of Sec. 10
- Diversion No. 3- NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 10**  
675 feet South and 750 feet West from the NE corner of Sec. 10
- Diversion No. 4- NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 10**  
1100 feet South and 800 feet West from the NE corner of Sec. 10
- Diversion No. 5- SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 10**  
925 feet North and 900 feet West from the SE corner of Sec. 10
- Diversion No. 6-SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 10**  
875 feet North and 1050 feet West from the SE corner of Sec. 10

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) ---	SECTION ---	TOWNSHIP N. 7	RANGE, (E. OR W.) W.M. 33 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**

141 acres within the following: E $\frac{1}{2}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 10, lying west of the Touchet North Road; the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 10; the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Sec. 3; the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 2, lying east of Touchet North Road; the W $\frac{1}{2}$  of Sec. 11, lying west of Touchet North Road, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 11; all within T. 7 N., R. 33 E.W.M.

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**DESCRIPTION OF PROPOSED WORKS**

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Six points of diversion for irrigation

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**DEVELOPMENT SCHEDULE**

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BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	WATER PUT TO FULL USE BY THIS DATE:
Started	July 1, 2009	July 1, 2010

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**REPORT**

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**BACKGROUND**

An application for change/transfer was submitted by Thomas Maiden of Touchet, Washington, to Ecology on June 27, 2002. Mr. Maiden proposes to add two points of diversion and to change two points of diversion, for a total of six points of diversion, and correct the place of use as granted under Touchet River Adjudicated Certificate No. 262 w/chg. Vol. 2, pg. 539 (Cert 262 w/539).

**Touchet River Adj. Certificate No. 262 w/chg. Vol. 2, pg. 539**

Name on Certificate:	Pacific Coast Joint Stock Land Bank of Portland
Priority Date:	November 17, 1919 (Class 52)
Instantaneous Quantity – Qi:	3.319 cubic feet per second
Annual Quantity – Qa:	846 acre feet per year
Original Source:	Touchet River
Point(s) of Diversion:	Four points of diversion
Purpose of Use:	Irrigation of 141 acres
Period of Use:	Seasonally
Place of Use:	E½ of Sec. 10, the E½SE¼ of Sec. 3., and the SW¼SW¼ of Sec. 2, all within T. 7 N., R. 33 E.W.M.

**Proposed Change/ Transfer:**

Name of Applicant:	Thomas Maiden
Date of Application for Change/Transfer:	June 27, 2002
Point of Withdrawal (Diversion):	Add and change points of diversion for a total of 6 points
Purpose of Use:	<i>No change</i>
Period of Use:	<i>No change</i>
Place of Use:	Correct to current/historical

**Notice**

A notice of application was duly published in accordance with RCW 90.03.280 in The Waitsburg Times on December 19, and December 26, 2002 and no protests were received.

**SEPA**

This application is not exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21 RCW, due to the fact that the cumulative quantities of water for this project under all water rights, including those proposed for trust water herein, constitute a withdrawal of more than one (1) cubic foot per second. The Department of Ecology (Ecology), acting as lead agency, determined that the subject action does not have a significant adverse impact on the environment and an environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). A final Determination of Non-Significance was issued by Ecology on July 11, 2008.

**INVESTIGATION**

In considering the proposed changes/transfers, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Touchet River Adj. Certificate No. 262 w/chg. Vol. 2, pg. 539, Touchet River Adj. Certificate No. 355 w/chg. Vol. 2, pg. 537 and other water rights/claims/applications in the vicinity; (3) diversion works; (4) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide (WA210-VI-WAIG, October 1985) and; (5) discussions with Department of Ecology regional program staff.

A site visit of the project was conducted on August 17, 2005 by Dan Tolleson, with Charles and Thomas Maiden. The project is located approximately 5 miles north of Touchet, Washington. The water right is located in the Walla Walla Basin and is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32.

Historically, Certificate 262 w/539 and Certificate 355 w/537 were used for the irrigation of one farm. The place of use of Certificate 355 w/537 is currently owned by Charles Maiden. The place of use of Certificate 262 w/539 is owned by Charles Maiden and Thomas Maiden. Charles Maiden owns the northern portion of the water right and Thomas Maiden owns the southern portion of the water right. Although, they are now separate farms they work with one another.

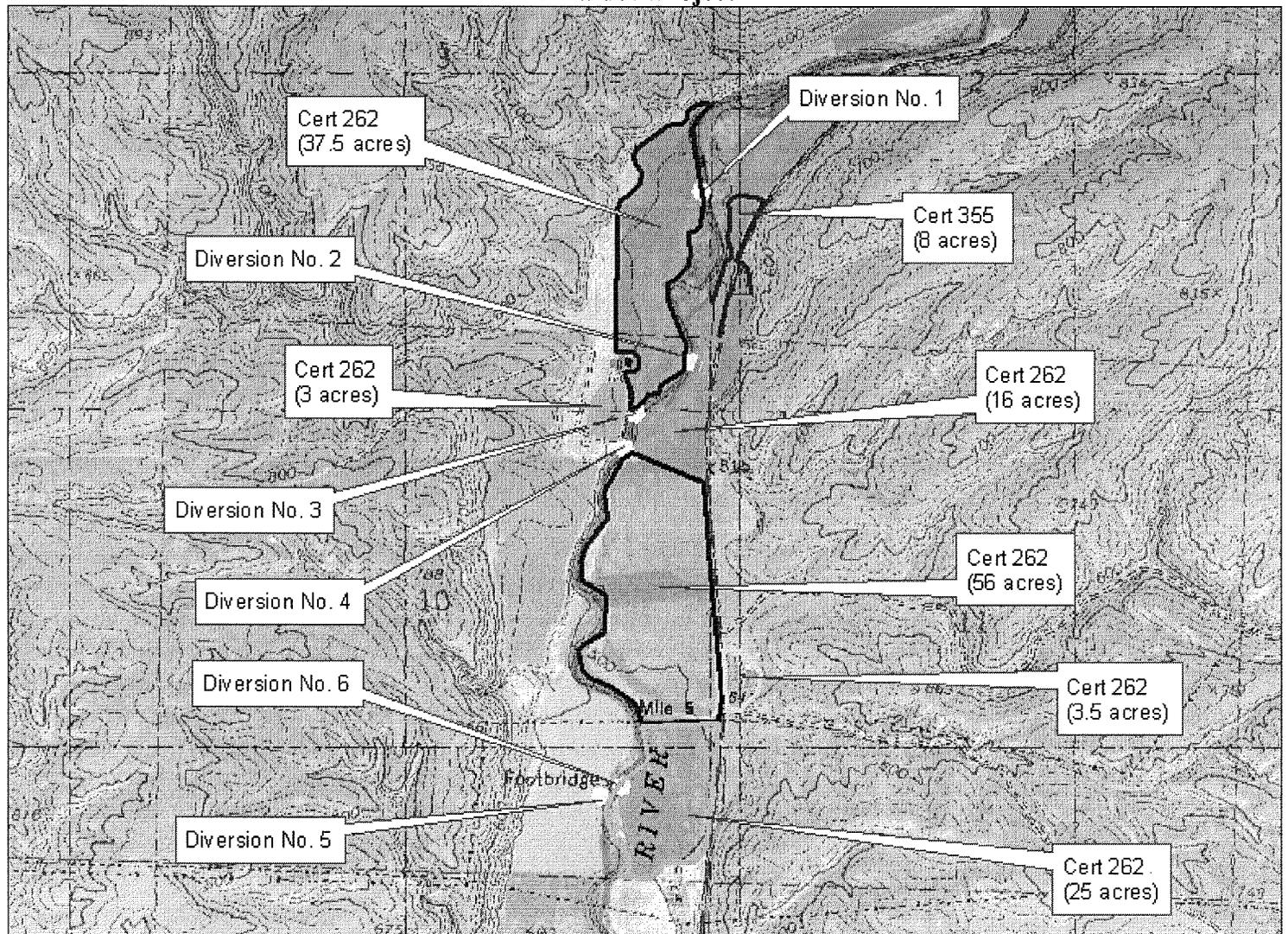
The place of use authorized under Certificate 262 w/539 is 141 acres within the E½ of Sec. 10, the E½SE¼ of Sec. 3., and the SW¼SW¼ of Sec. 2, all within T. 7 N., R. 33 E.W.M. The irrigated parcels of land are basically the bottom land along both sides of the Touchet River, less riparian vegetation. All of the upland within the authorized place of use is not irrigated, nor does it appear that it ever was. The irrigation system consists of one pivot, wheel lines and hand lines. A house, several barns and out building are located within the place of use.

Four points of diversion are authorized under Certificate 262 w/539 which are located within the following: the E½SE¼ of Sec. 3, and the NE¼NE¼, SE¼NE¼, NE¼SE¼ of Sec. 10. Mr. Maiden proposed to retain two points of diversion, still in use, one located within the NE¼SE¼ (Diversion No. 1) of Sec. 3 and the other located within the NE¼NE¼ (Diversion No. 3) of Sec. 10. The other two authorized points of diversion are no longer used and are proposed to be moved to the SE¼SE¼ of Sec. 10 (Diversions No. 5 and 6). Two additional points of diversion are proposed to be added in the NE¼NE¼ of Sec. 10, for a total of six points of diversion. All located within T. 7 N., R. 33 E.W.M.

### Diversion Specifications

Diversion	Pump Status	Meter Status	Pump	Fish Screen
No. 1	Online	Operational	25 HP cent.	Yes
No. 2	Online	Operational	15 HP cent.	Yes
No. 3	Online	Required	7.5 HP cent.	Yes
No. 4	Online	Not working- required to work	15 HP cent.	Yes
No. 5	Online	Not working- required to work	15 HP cent.	Yes
No. 6	Online	Required	20 HP cent.	Required

### Maiden Project



All within Sections 2, 3, and 10, T. 7 N., R. 33 E.W.M.

### EVALUATION OF THE RIGHT AND BENEFICIAL USE ANALYSIS

Surface Water Right No. 149-A was issued on November 18, 1926 with a priority date of November 17, 1919. This right was issued prior to the Touchet River Adjudication, which looked at all the surface water use in the water shed. Subsequently, Touchet River Adjudicated Certificate No. 262 was issued on January 12, 1938 with a priority date of November 17, 1919 and supersedes Surface Water Right 149-A. Two certificates of change were authorized for Touchet River Adjudicated Certificate No. 262 on June 16, 1958. These two changes authorized the split of the certificate into two portions, including changes to the place of use and additional points of diversion. Touchet River Adjudicated Certificate No. 262 w/chg. Vol. 2, pg. 538, authorized the following: 0.681 cubic feet per second for the irrigation of 29 acres within portions of Sections 26 and 27, T. 6 N., R. 33 E.W.M., with two new points of diversion. Touchet River Adjudicated Certificate No. 262 w/chg. Vol. 2, pg. 539, authorized the

following: 3.319 cubic feet per second for the irrigation of 141 acres within the original authorized place of use with four new points of diversion. The applicant proposes to change only that portion of the right described by Certificate of Change Vol. 2, pg. 539.

### Division under Certificates of Change

Certificate of Change for Touchet River Adjudicated Certificate No. 262	Qi c.f.s.	<sup>1</sup> Qa Af/year	Acres
Vol. 2, pg. 539	3.319	846	141
Vol. 2, pg. 538	0.681	174	29
Total	4.0	1,020	170

<sup>1</sup>(6 acre feet per acre, per year, which begins September 15 of each year)

Aerial photographs were used to help verify the extent of development, historical use and beneficial use of Cert 262 w/539. The authorized place of use is approximately 440 acres with an authorization to irrigate 141 acres. It should be noted that 8 additional acres are authorized under Touchet River Adj. Certificate No. 355 w/chg. Vol. 2, pg. 537 for a total of 149 acres. Historically, a gravity feed ditch diversion was used to supply water, and because of the varied terrain only about half of the place of use was historically irrigable. Currently, about 231 acres are irrigable and are developed for irrigation within the place of use. According to Mr. Maiden, only 149 acres are irrigated at one time under both rights and the remaining acres are used for crop rotation. Taking into account crop rotation it appears that that an estimated 141 acres have been historically and beneficially irrigated under this right. The acreage irrigated within the place of use is consistent with that authorized by the certificate and the certificate of change. The remaining 2.1 acre feet per acre is no longer required due to modern farming practices and is relinquished for non use.

Water rights are appurtenant to a specific parcel of land or place of use on an acre per acre basis. Therefore, the place of use of this right will be narrowed down to the smallest legal description possible. The legal description for the 141 acres will be within the following: E $\frac{1}{2}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 10, lying east of the Touchet North Road; the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 10; the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Sec. 3; the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 2, lying east of Touchet North Road; the W $\frac{1}{2}$  of Sec. 11, lying west of Touchet North Road, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 11; all within T. 7 N., R. 33 E.W.M. The remainder of the land that is irrigable (approximately 82 acres) but is not covered under the new place of use is proposed to be used on a rotational basis under the seasonal change program. The delivery systems are in place but can only be used upon the approval of a seasonal change.

### EXISTING RIGHTS

A review of Ecology records was conducted for existing water rights, permits, and claims in the area surrounding the diversions. The search focused primarily on Sections 2, 3, 10, and 11, T. 7 N., R. 33 E.W.M. Six (6) Surface Water Certificates (with various certificates of change) and three (3) Water Right Claims were found recorded in this search area in addition to the water right evaluated under this change. The review of Ecology records shows one (1) Water Right document appurtenant to the place of use.

Touchet River Adj. Certificate No. 355 w/chg. Vol. 2, pg. 537 authorized the irrigation of 8 acres. Touchet River Adj. Certificate No. 262 w/chg. Vol. 2, pg. 539 and Touchet River Adj. Certificate No. 355 w/chg. Vol. 2, pg. 537 share the same place of use in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 2, T. 7N., R. 33 E.W.M. It appears that these water rights were additive on an acre per acre basis.

### 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.

The proposed and authorized diversions are located on the Touchet River which is a tributary to the Walla Walla River. The applicant proposes to add two points of diversion, change two points of diversion and leave two points of diversion as they are. All of the proposed points of diversion are located downstream from the originally authorized point of diversion. No tributaries or water right diversions, other than this project’s, exist between the existing and proposed points of diversion.

This application is requesting authorization to add two points of diversion and to change to points of diversion, for a total of six points of diversion, as granted under Touchet River Adjudicated Certificate No. 262 w/chg. Vol. 2, pg. 539. It appears this certificate has been exercised and beneficially used in the past.

## FINDINGS

There is a water right available for change/transfer under Certificate 262 w/539 in the amount of 3.319 cubic feet per second; 550 acre feet per year, each year, for the seasonal irrigation of 141 acres.

Surface water has been historically and beneficially used under this certificate.

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:

The authorized water duty of this certificate is 6 acre feet per year, per acre. Historically, a variety of crops have been grown under this water right, with alfalfa having the highest required water duty. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that an estimated 2.7 acre feet, per acre, is required for alfalfa in the Walla Walla area. The current irrigation system of overhead sprinkler center pivots, wheel lines and hand lines is estimated at a 70% efficiency rate of application. With a 70% efficiency rate of application an estimated 3.9 acre feet per acre would need to be applied to crops that use 2.7 acre feet per acre. The proposed change will not increase the amount of water withdrawn from the Touchet River, nor will it increase or expand the right. There will be no impairment to existing rights.

### No Impairment to Existing Rights:

No water will be diverted above what has been historically used, and it is not anticipated that the proposed change/transfer would cause impairment to existing water rights.

### No Enhancement of the Authorized Right:

No withdrawal of water over and above what has been historically authorized would be approved through this change.

## CONCLUSION

It is the conclusion of this examiner that, in accordance with Chapter 90.03, this application for change (by adding two points of diversion and two change to points of diversion, for a total of six points of diversion, and correct the place of use as granted under Touchet River Adjudicated Certificate No. 262 w/chg. Vol. 2, pg. 539) will not enlarge the quantity of water historically used, nor will it impair existing rights provided the terms and conditions below are followed.

## RECOMMENDATIONS

The applicant's request to change/transfer of water right certificate (by add two points of diversion and to change to points of diversion, for a total of six points of diversion, as granted under Touchet River Adjudicated Certificate No. 262 w/chg. Vol. 2, pg. 539) is **approved**, subject to the following provisions:

**"The total amount of water authorized for withdrawal under Touchet River Adj. Certificate No. 262 w/chg. Vol. 2, pg. 539 and Touchet River Adj. Certificate No. 355 w/chg. Vol. 2, pg. 537 shall be limited to a maximum of 3.48 cubic feet per second, 581 acre feet per year, for any one year beginning September 15, for the irrigation of 149 acres."**

**"This authorization is subject to the provisions set forth in the decree of the Superior Court of Walla Walla, State of Washington, made and entered on the 19<sup>th</sup> day of September, 1929, recorded in Volume 18 of the Superior Court Journal at Page 1, otherwise known as Touchet River Decree No. 22066."**

"After all rights scheduled in the Touchet River 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 3.87 acre-feet per acre for any one year beginning September 15<sup>th</sup>."

"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."

"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."

"The water quantities and uses recommended and/or the number of acres to be irrigated 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."

“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.”

“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 upon request.”

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”.

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.

“This authorization is subject to Washington Department of Fish and Wildlife juvenile salmon and gamefish 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.”

“The water source and/or water transmission facilities are not wholly located upon the land owned by the applicant. Issuance of a permit by this Department for appropriation of the waters in question does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtainment of such right is a private matter between applicant and owner of that land.”

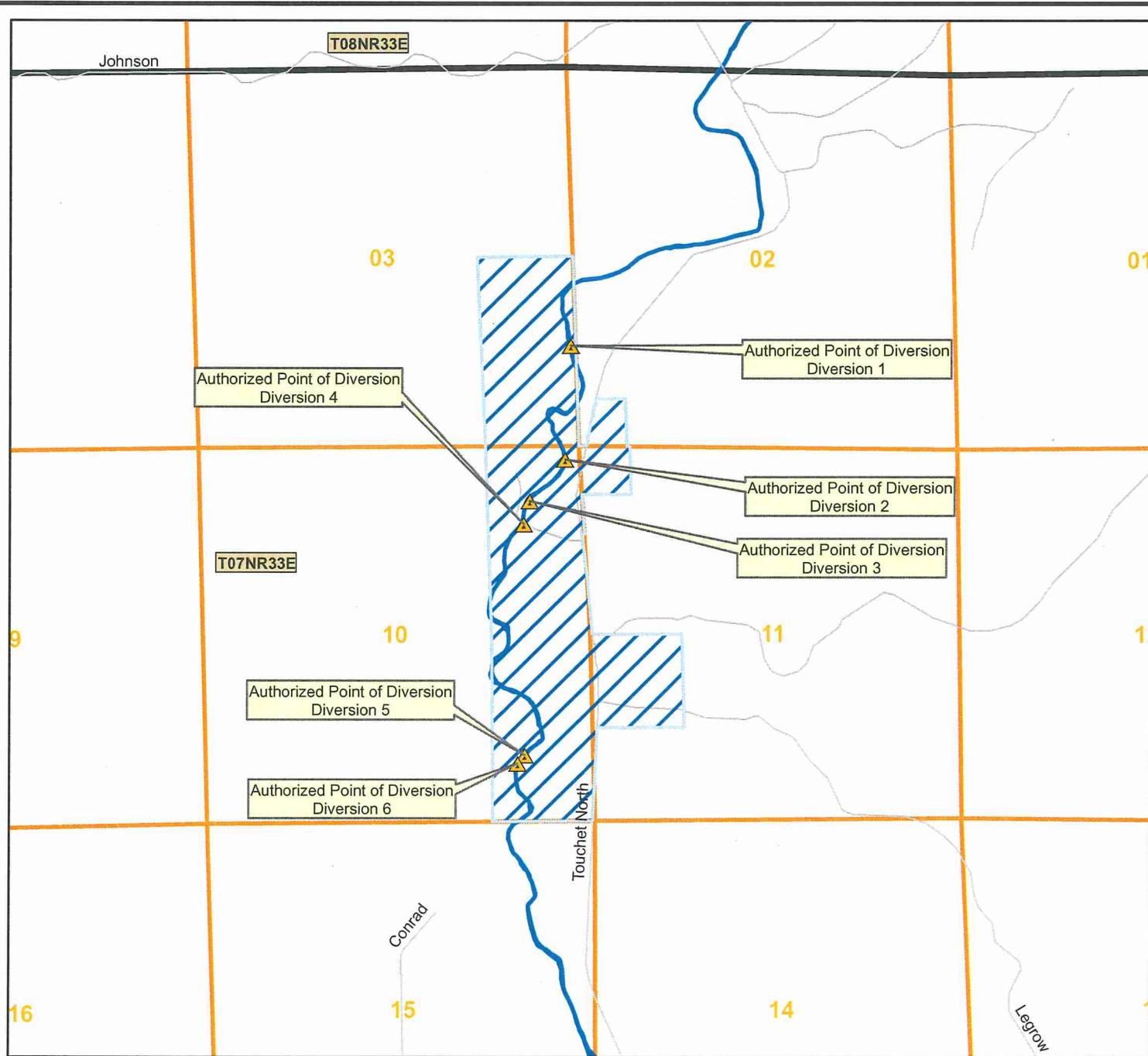
Signed at Spokane, Washington  
this 9th day of October, 2008



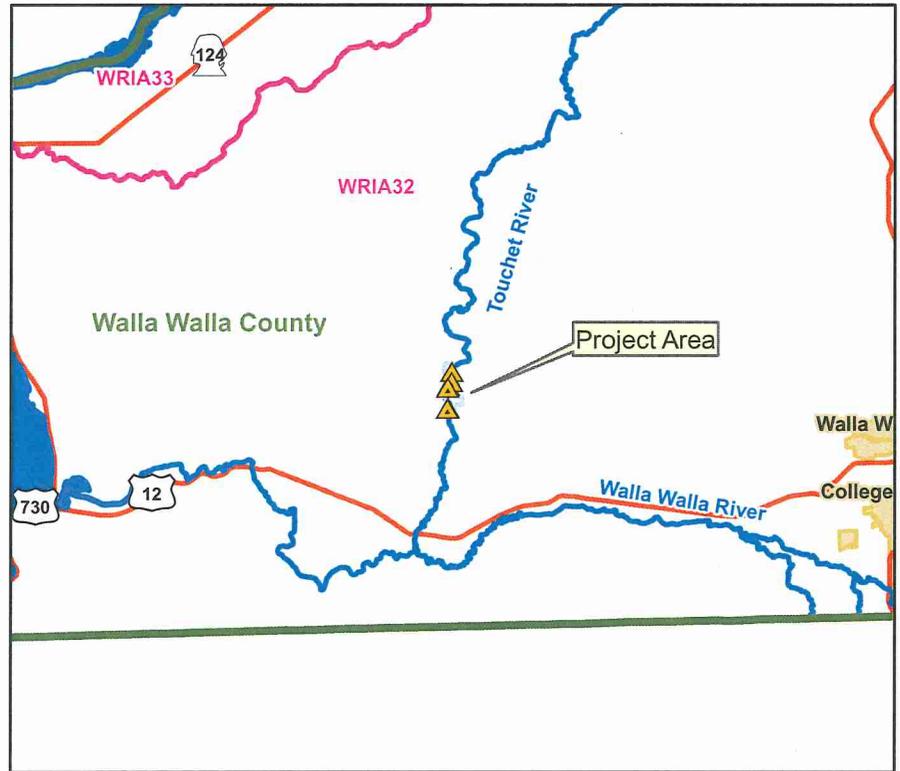
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Dan Tolleson  
Water Resources Program  
Department of Ecology

W/Draft ROEs/Tolleson 2008



Thomas C. Maiden  
 Touchet River Adjudicated Surface Water Certificate 262  
 Sec 2, 3, 10 & 11 T 07N, R331E.W.M.  
 WRIA 32 - Walla Walla County



- Legend**
- County
  - Townships
  - Sections
  - Cities
  - Local Roads
  - Highways
  - Authorized Point of Diversion
  - Authorized Place of Use

Comments:  
 Place of use, points of withdrawal/diversions are as defined on the cover sheet under the heading, 'LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'

Attachment 1