



**Walla Walla County
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision**

For Ecology Use Only

Received: _____

Reviewed by: _____
Date Reviewed: _____

Applicant: Pao Application Number: WALL-20-06

This record of decision was made by a majority of the board at an open public meeting of the Walla Walla County Water Conservancy Board held on 12/2/20. The undersigned board commissioners certify that they each understand the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that each commissioner, having reviewed the report of examination, knows and understands the content of the report.

Approval: The Walla Walla County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on 12/2/20 and submits this record of decision and report of examination to the Department of Ecology for final review.

Denial: The Walla Walla County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on (date report of exam was signed) and submits this record of decision to the Department of Ecology for final review.

Signed:

Alan Kottwitz
Alan Kottwitz, Chair
Walla Walla County Water Conservancy Board

Date: 12/2/20 Approve
Deny
Abstain
Recuse
Other

Mike Dobbins, Member
Walla Walla County Water Conservancy Board

Date: _____ Approve
Deny
Abstain
Recuse
Other

Drex Gauntt, Member
Walla Walla County Water Conservancy Board

Date: _____ Approve
Deny
Abstain
Recuse
Other

Robert M Berger
Robert Berger, Alternate
Walla Walla County Water Conservancy Board

Date: 12/2/2020 Approve
Deny
Abstain
Recuse
Other

(Name), (Title)
(Board Name) Water Conservancy Board

Date: _____ Approve
Deny
Abstain
Recuse
Other

Mailed with all related documents to the Dept of Ecology Eastern Regional Office, and other interested parties on _____

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).

Ecology is an equal opportunity employer



Board Name: Walla Walla County Water Conservancy Board

WATER CONSERVANCY BOARD

Application for Change/Transfer

OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF
THE STATE OF WASHINGTON

REPORT OF EXAMINATION

NOTE TO APPLICANT: Pursuant to WAC 173-153-130(8), the applicant is not permitted to proceed to act on the proposal until Ecology makes a final decision affirming, in whole or in part, the board's recommendation. It is advised that the applicant not proceed until the appeal period of Ecology's decision is complete.

NOTE TO AUTHOR: *Read the instructions for completing a water conservancy board report of examination. [Use the Tab key to move through the form or with your mouse, select the fields to enter information.](#)*

Surface Water Ground Water

Date Application Received	October 7, 2020	Water Right Document Number (i.e., claim, permit, certificate, etc.)	Superseding WW River Adj. Cert. No. 54(A) {S3-*28054J(A)}	
Water Right Priority Date	1866 (Class 7)	Board-Assigned Change Application Number	WALL-20-06	
Name:	Since 1961, LLC (Attn: Steve Pao)	Phone:	(509) 240-6709	
		Email:	paos1890@gmail.com	
Address (street):	PO Box 444	City:	Walla Walla	State: Washington Zip: 99362
Changes Proposed:				
<input type="checkbox"/> Change purpose <input type="checkbox"/> Add purpose <input type="checkbox"/> Add irrigated acres <input type="checkbox"/> Change point of diversion/withdrawal <input type="checkbox"/> Add point of diversion/withdrawal <input checked="" type="checkbox"/> Change place of use <input type="checkbox"/> Other (Temporary, Trust, Interties, etc.)				
SEPA:				
The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the <u>application</u> is: <input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Not Exempt				

BACKGROUND AND DECISION SUMMARY

Please include a map(s) reflecting all referenced existing and proposed point(s) of diversion or withdrawal and place(s) of use (RCW 90.03.260(7); WAC 173-153-070 (6)(c)).

Existing Right (Tentative Determination – 8 acres)							
Maximum cub ft/second	0.16 cfs		Maximum gal/minute				
Maximum acre-ft/yr	32.64 ac-ft/yr		Describe Type(s) of use, and period(s) of use	0.106 cfs from April 1 to July 1; 0.08 cfs from July 1 to October 1 and 0.16 cfs from October 1 to April 1 for the irrigation of 8 acres.			
Source	Mill Creek			Tributary of (if surface water)	Walla Walla River		
At a Point Located:	Parcel No.	360719430038	¼	SE	¼	SE	Section 19
Township N.	7N	Range	36E	WRIA	32	County	Walla Walla

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

Type detailed legal description of the place of use:

A parcel of land located in a portion of Government Lot 6, Sec. 30, T. 7 N., R. 36 E.W.M., being more particularly described as follows:

Commencing at the southwest corner of said Gov't Lot 6; thence along the southerly boundary of said Lot 6 N.61°21'49"E., 969.40 feet to a point on the easterly boundary of a parcel of land described in Record of Survey Book 7, Page 205, records of Walla Walla County; thence along the easterly boundary of said parcel N.26°16'28"W., 133.05 feet to THE TRUE POINT OF

BEGINNING; thence continuing along the easterly boundary of said parcel N.26°16'28"W., 24.45 feet to a point on the easterly boundary of that parcel described in Warranty Deed Book 273, Page 2151, records of Walla Walla County; thence the following three (3) courses along said Deed, S.61°21'41"W., 294.89 feet to a point on the easterly boundary of Rosehaven Cottages Subdivision, Auditor's File Number 2005-04533; thence along said Rosehaven Subdivision, N.26°16'28"W., 94.49 feet to the northeasterly corner of said Rosehaven Subdivision, said point also being the southeasterly corner of Sirmon Addition, Auditors File Number 2006-08798; thence along the easterly boundary of said Sirmon Addition N.26°16'28"W., 296.09 feet to a point of non-tangent curve located on the southerly boundary of the abandoned Walla Walla Valley Railroad Company's 30 foot right of way, said point having a radial bearing of N.27°23'12"W., thence the following two (2) courses along said abandoned right-of-way, an arc distance of 110.76 feet along said non-tangent curve, concave to the northwest, being of radius 1466.49 feet, and delta angle of 4°19'38" to a point of tangent line; thence along said tangent line N.58°17'10"E., 715.70 feet to a point on the easterly boundary of that parcel described in Warranty Deed Book 271, Page 374, records of Walla Walla County, said point being on the westerly edge of a 15 foot wide roadway; thence along said roadway S.26°16'28"E., 513.25 feet to a point in the northerly boundary of that parcel described in Warranty Deed Book 234, Page 1718, records of Walla Walla County; thence the following two (2) courses along said parcel S.16°21'32"W., 80.49 feet; thence S.24°44'28"E., 75.11 feet to a point on the southerly boundary of said Government Lot 6; thence along said boundary, S.61°21'32"W., 118.67 feet; thence departing said boundary, N.26°16'28"W., 133.05 feet; thence S.61°21'32"W., 327.66 feet to THE TRUE POINT OF BEGINNING.

Parcel No.	360730220031	¼		¼	Gov't Lot 6	Section	30
Township N.	7N	Range	36E	WRIA	32	County	Walla Walla

Proposed Use							
Maximum cub ft/second	0.16 cfs		Maximum gal/minute				
Maximum acre-ft/yr	32.64 ac-ft/yr		Describe Type(s) of use, and period(s) of use		0.106 cfs from April 1 to July 1; 0.08 cfs from July 1 to October 1 and 0.16 cfs from October 1 to April 1 for the irrigation of 8 acres.		
Source	Mill Creek			Tributary of (if surface water)		Walla Walla River	
At a Point Located: Parcel No.	360719430038	¼	SE	¼	SE	Section	19
Township N.	7N	Range	36E	WRIA	32	County	Walla Walla

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

Type detailed legal description of the place of use:

Revised Lot 1

A parcel of land located in the SW¼SW¼ of Sec. 19, T. 7 N., R. 36 E.W.M., described more particularly as follows:

Commencing at the southwest corner of the SW¼ quarter of Section 19, thence N 89°45'06" E along the South line of said SW¼ of Sec. 19 a distance of 756.50 feet; thence N 00°14'54" at right angles to the South line of the SW¼ of Sec. 19, a distance of 103.90 feet to the True Point of Beginning.

Thence N 00°14'54" W a distance of 700.10 feet to the Northwest corner of those lands deeded to Daltoso according to the Auditor's File No. 238824; thence N 60°59'06 E along the North line of said Daltoso lands a distance of 326.46 feet to a point on the West right of way line of Woodland Street; thence S 28°32'36" E along said West right of water line of Woodland Street a distance of 663.96 feet to a point on the South line of those lands deeded to Daltoso according to the Auditor's File No. 274540. Thence S 65°21'06" W along said Daltoso land described at A.F. No. 274540 a distance of 659.83 feet to the Southwest corner thereof, which is the True Point of Beginning. Having an area of 7.317 acres.

New Lot One of that Record of Survey for Boundary Line Adjustment recorded on September 10, 2014, as Auditor's File No, 2104-06623, records of Walla Walla County.

Parcel No.	360719330011	¼	SW	¼	SW	Section	19
Township N.	7N	Range	36E	WRIA	32	County	Walla Walla

Board's Decision on the Application

Maximum cub ft/second	0.16 cfs	Maximum gal/minute	
Maximum acre-ft/yr	29.13 ac-ft/yr	Describe Type(s) of use, and period(s) of use	0.106 cfs from April 1 to July 1; 0.08 cfs from July 1 to October 1 and 0.16 cfs from October 1 to April 1 for the irrigation of 7.14 acres.
Source	Mill Creek	Tributary of (if surface water)	Walla Walla River
At a Point Located: Parcel No.	360719430038	¼ SE	¼ SE Section 19
Township N.	7N	Range 36E	WRIA 32 County Walla Walla

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

Type detailed legal description of the place of use:

Revised Lot 1

A parcel of land located in the SW¼SW¼ of Sec. 19, T. 7 N., R. 36 E.W.M., described more particularly as follows:

Commencing at the southwest corner of the SW¼ quarter of Section 19, thence N 89°45'06" E along the South line of said SW¼ of Sec. 19 a distance of 756.50 feet; thence N 00°14'54" at right angles to the South line of the SW¼ of Sec. 19, a distance of 103.90 feet to the True Point of Beginning.

Thence N 00°14'54" W a distance of 700.10 feet to the Northwest corner of those lands deeded to Daltoso according to the Auditor's File No. 238824; thence N 60°59'06 E along the North line of said Daltoso lands a distance of 326.46 feet to a point on the West right of way line of Woodland Street; thence S 28°32'36" E along said West right of water line of Woodland Street a distance of 663.96 feet to a point on the South line of those lands deeded to Daltoso according to the Auditor's File No. 274540. Thence S 65°21'06" W along said Daltoso land described at A.F. No. 274540 a distance of 659.83 feet to the Southwest corner thereof, which is the True Point of Beginning. Having an area of 7.317 acres.

New Lot One of that Record of Survey for Boundary Line Adjustment recorded on September 10, 2014, as Auditor's File No, 2104-06623, records of Walla Walla County.

Parcel No.	360719330011	¼ SW	¼ SW Section 19
Township N.	7N	Range 36E	WRIA 32 County Walla Walla

Description of Proposed Works

Description of water diversion/withdrawal, conveyance, and distribution system: **Screened diversion station, pump, water meter, buried mainline/open ditch, turnout pump station, handline sprinklers.**

Development Schedule

Begin project by this date (At least 75 days after Board's ROD issuance):	Started
Complete project by this date:	March 1, 2022
Complete change & put water to full use by this date:	March 1, 2023

Report

NOTE TO AUTHOR: This form reflects the minimum regulatory requirements as required in WAC 173-153-130(6). In accordance with WAC 173-153-130(5), "It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." **Completion solely of the minimum regulatory requirements may not constitute a fully documented decision.**

BACKGROUND [See WAC 173-153-130(6)(a)]

On Month **October**, day **7th**, year **2020**.

Name of applicant: **Since 1961, LLC** of City: **Walla Walla** State: **Washington** filed an application

for change (to do what e.g., POU, POD, POW, etc) **to change the place of use of an 8 acre share of** (Water right number, e.g., certificate, permit,

claim, superseding document #, cert of change #): **Superseding Walla Walla River Adjudication Certificate No. 54(A) {WW Adj. Cert. 54(A)}**. The application was accepted at an open public meeting

on Month: **October**, day: **7th**, year: **2020**, and the board assigned application number(XXXX-YR-##): **WALL-20-06**.

Attributes of the water right as currently documented

Name on certificate, claim, permit:

- **Baker and Baker, et.al.**

Water right document number (e.g., cert #, claim #, permit #, superseding document #):

- **Superseding WW Adj. Cert. No. 54(A) {S3-*28054J(A)}**

As modified by certificate of change number:

- **N/A**

Priority date, first use Date of priority or claimed date water was originally first put to beneficial use:

- **1866 (Class 7)**

Water quantities:

- **Qi (Instant qty): 1.042 cfs (maximum)**
- **Qa (Annual qty): 262.15 ac-ft/year**

Source (well, river, etc):

- **Mill Creek**

Point of diversion/withdrawal (Distance from ¼¼, Section, Township, Range EWM):

- **SE¼SE¼ of Sec. 19, T. 7 N., R. 36 E.W.M. GPS: 46.0657 N. 118.3505 W. WGS 84**

Purpose of use:

- **Irrigation**

Number of Acres if Irrigation:

- **52.43 acres**

Period of use:

- **October 1 to September 30**

Place of use:

Commencing north 305 feet along the west line of Section 19, from the SW corner of Sec. 19, T. 7 N., R. 36 E.W.M., to the Point of Beginning; thence continuing north along the west line of Sec. 19, approximately 1,022 feet to the NW corner of the SW¹/₄SW¹/₄; thence east along the north line of the SW¹/₄SW¹/₄ 870 feet; thence S.30°14'32"E., 241.4 feet; thence S.59°23'42"W., 345.0 feet; thence S.01°03'42"E., 210.0 feet; thence S01°03'45"E., 457 feet; thence S.88°02'56"W., 220.0 feet; thence **N.32°24'25"W.**, thence S.87°22'19"W., 436.0 feet to the point of beginning.

Also, commencing south along the west line of Section 30, from the NW corner of Sec. 30, T. 7 N., R. 36 E.W.M. 95 feet to the Point of Beginning; thence N.84°17'22"E., 820.86 feet; thence S.33°38'09"E., 68.44 feet; thence N.56°24'38"E., 120.00 feet; thence S.33°37'59"E., 141.00 feet; thence S.56°24'38"W., 120.00 feet; thence S.33°37'56"E., 72.26 feet; thence S.84°27'57"W., 27.0 feet; thence S.84°27'47"W., 944.00 feet to the west line of Section 30; thence north along the west line of Section 30, 246.6 feet to the point of beginning.

Also, commencing from a point where the west line of Section 30, T. 7 N., R. 36 E.W.M., intersects with the original north line of the U.S. Military Reserve, thence northeast along said north line of the U.S. Military Reserve 683.4 feet to the Point of Beginning; thence continuing 1,525.6 feet along said north line of U.S. Military Reserve; thence N.29°42'42"W., 682.0 feet; thence S.57°00'44"W., 1,508.6 feet; thence S.27°50'22"E., 596.4 feet to the point of beginning.

Existing provisions (family farm act, interruptable, etc.):

An approved measuring device shall be installed and maintained for the source diversion(s) and withdrawal(s) for the following water right claim(s), permit(s) and certificate(s) Adj. Cert. No. 54. Such measuring devices shall be in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. 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. Summary information on installation, operation and maintenance requirements is enclosed.

Water use data shall be recorded weekly and shall be submitted annually to Ecology by January 31st of each calendar year.

At a minimum, the following information shall be included with each submittal of water use data on a form prescribed by the Department:

- Water right holder name, mailing address and daytime phone number
- Contact name and phone number if different than water right holder,
- WRIA
- Parcel number for place of use of water rights (except public water systems).
- Permit, Certificate of Claim number(s)
- Source name
- Annual quantity of diversion or withdrawal ("Qa")
- Maximum rate of diversion or withdrawal during the entire year ("Qi")
- Date (if available) of maximum rate of diversion or withdrawal,
- Monthly meter readings (Note: Ecology is requiring submittal of monthly meter readings and maximum rate of diversion or withdrawal for each month to collect seasonal information for water resource planning, management, and compliance)
- Maximum rate of diversion or withdrawal during each month,
- Type of meter,
- Last calibration or inspection date, and
- Period of use.

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 superseding certificate is the result of the division of Walla Walla Adjudicated Surface Water Certificate No. 54 under multiple Trust Water Applications and shall not be construed as validation as to the extent of the document. The amounts provided on the superseding portions of this water right reflect the remaining portion of the right not put into the trust program. The actual amounts authorized by the superseding certificate are subject to the historic beneficial use of water under Walla Walla Adjudicated Surface Water Certificate No. 54.

The right to use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, except as provided in RCW 90.03.380, 90.03.390, and 90.44.100.

The certificate of water right is specifically subject to relinquishment for non-use of water as provided in Chapter 90.14 RCW.

Tentative determination of the water right

The tentative determination is provided on the front page of this report.

History of water use

Describe the historical water use information that was considered by the board:

Walla Walla River Adjudication Certificate No. 54 (WW Adj. Cert. 54) issued on June 30, 1929 with a priority date of 1866 (Class 7). The right originally authorized the irrigation of 83.13 acres with portions of Sections 19 and 30, T. 7 N., R. 36 E.W.M. The place of use described was approximately the same size as the acres authorized for irrigation. Water was diverted from Mill Creek at a diversion station located approximately one-half mile upstream from the place of use.

When the certificate was originally issued, the water right was a single parcel of land owned by Baker and Baker Corporation. Over time, the place of use was subdivided into multiple separate lots with many different landowners. In 1955, a district was formed by landowners using water under WW Adj. Cert. No. 54 called the "Water Distribution District No. 1" (district). The place of use of the water right became the district boundaries. According to users of water under this right (including a former original board member) who were interviewed in 2009, the district was operated informally to maintain the water distribution system. Although the district was never officially dissolved, it ceased to exist as a legal entity when RCW 87.60 was repealed in 1971 (see AGO 2009, No. 4). At that time the interest in the water right held by the district reverted back to the individual land owners. The water right is now appurtenant to the lands on which it is currently used within the authorized place of use. The system remains in use and continues to be operated informally by the remaining water users.

In 2008 the Washington Water Trust, working with several of the landowners within the place of use of the water right, submitted five (5) separate change applications to Ecology, requesting that the applicants' respective portions of WW Adj. Cert 54(A) be transferred to the state Trust Water Right program for the purpose of instream flow enhancement in Mill Creek. The current applicant's father vigorously protested approval of the proposed changes to portions of the water right out of the existing partnership system into Mill Creek. Ecology eventually approved each of the applications for transfer, which were finalized in 2010. Ecology conducted extent and validity determinations of historic use of water separately for each application, and only for use of water on the specific property from which the water right was proposed for transfer. Ecology also required only the signature of the landowner(s) of those portions of the place of use proposed for change. After the changes were approved, the residual water right authorizing irrigation of 52.43 acres was issued as Superseding Walla Walla River Adjudication Certificate No. 54(A) {WW Adj. Cert. 54(A)}, together with the full proportionate instantaneous and annual quantities issued under the original certificate.

The current irrigation system, with the exception of pump upgrades and a diversion station/fish screen overhaul, has been in place since at least the 1950's. The system consists of a screened diversion pump, mainline, storage pond (bulge), smaller distributions lines, and individual pump turnouts. The current place of use of WW Adj. Cert. 54(A) includes 20+ landowners, which include the Walla Walla Housing Authority and commercial/industrial properties.

Given the large number of varied landowners within the place of use of WW Adj. Cert. 54(A), and residual hard feelings towards the applicant from the earlier opposition to the 2010 changes, it would be essentially impossible to obtain the signatures from all landowners with the place of use of the water right. As the current application proposes only to change the place of use of a portion of WW Adj. Cert. No. 54(A) to lands located in close proximity to the existing irrigated property, and that this new place of use will be serviced by an existing turnout within the same distribution system, this change will be evaluated only with respect to those acres proposed for change, consistent with the transfers approved in 2010.

Previous changes

Describe any previous change decisions associated with the water right:

As described above, in 2010 Ecology approved five (5) applications for change which authorized portions of the original WW Adj. Cert. 54 to be transferred to the Trust Water Right program for purposes of instream flow in Mill Creek. Each of these change approvals evaluated only those portions of the water right proposed for change. The residual water right remaining after approval of these changes authorized the irrigation of 52.43 acres and was allocated instantaneous and annual quantities proportionate to those issued through the original certificate. This residual right was issued as Superseding Walla Walla River Adjudication Certificate No. 54(A) and is the subject water right of this application.

SEPA

The board has reviewed the proposed project in its entirety (Provide a detailed explanation of how the board complied with the State Environmental Policy Act):

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 feet 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.**

As this application is for agricultural irrigation with a maximum instantaneous quantity (1.042 cfs) of less than 50 cubic feet per second it is categorically exempt from SEPA and a threshold determination is not required.

Statutory Requirements/Authorities for Proposed Change

The following is a list of pertinent Washington State Statute and Case Law requirements that must be considered prior to authorizing the proposed change in place of use and point of withdrawal:

RCW 90.03.380(1) states that a water right which 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 when processing an application for change to a water right, a tentative determination of extent and validity of the claim or right is required. 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 90.14.160 states that any person entitled to divert water through an appropriation authorized through a general adjudication, who abandons or voluntarily fails, without sufficient cause, to divert all or any part of said right for a period of five successive years after July 1, 1967, shall relinquish such right or portion thereof, to the state.

Other

Provide any other pertinent information relative to the background of this water right:

N/A

The information or conclusions in this section were authored and/or developed by (Name of Person): Bill Neve, Water Right Solutions, LLC.

COMMENT AND PROTESTS [See WAC 173-153-130(6)(b)]

Public notice of the application was given in the (Name of Publication(s): **Walla Walla Union Bulletin**
on Dates Published: **October 14th and 21st, 2020**. Protest period ended on (end date of protest period): **November 30th, 2020**

There were # _____ or no protests received during the 30 day protest period. In addition, no or # _____ oral and written comments were received at an open public meeting of the board or other means as designated by the board.

Date (protest/comment received): _____

This was recognized by the board as a Protest Comment

Name/address of protestor/commenter: _____

Issue (describe issues raised): _____

Board's analysis (board's response to the protest/comment): _____

NOTE to author: Repeat this table as necessary to describe each protest or comment (attach a separate sheet if needed)

Other

Provide any other pertinent information relative to the comments and protests receive:

N/A

The information or conclusions in this section were authored and/or developed by (Name of Person): Bill Neve, Water Right Solutions, LLC

INVESTIGATION

The following information was obtained from a site inspection conducted by (person(s)): **Bill Neve, Water Right Solutions on October 1st, 2020 and Bob Berger, Board Alternate Member, on October 7th, 2020**, technical reports, research of department records, aerial photographs, Walla Walla River Adjudication documents, WAC 173-532 (WW Basin Water Management Program rule), Ecology policies and guidelines, and conversations with the applicant and/or other interested parties.

Proposed project plans and specifications

Describe proposed use of water to include # of connections, method of irrigation, type of crop, commercial use, etc. Also describe any issues related to development, such as the proposed development schedule and an analysis of the effect of the proposed transfer on other water rights, pending change applications & instream flows established under state law.

The proposed transfer under this application would involve the change in place of use to 8 acres of water right under WW Adj. Cert. 54(A) from where it is currently being used to a property owned by the applicant located approximately 800 feet to the northeast of the existing place of use. The existing place of use is being sold for development, and the right will no longer be used on the property. The applicant has an existing irrigation turnout within the distribution system utilized under WW Adj. Cert. 54(A) that he uses for irrigation of other lands, and which is proposed for use under this change. The change in place of use to this 8 acres of water right is the only attribute proposed for change under this application.

The applicant has existing handline irrigation pipe that would be used in conjunction with the existing irrigation pump turnout to irrigate the proposed place. It is anticipated that if this change is approved by spring of 2021, that a crop could be irrigated during the 2021 irrigation season, and full use of the water would be made by the spring of 2023.

Other water rights appurtenant to the property (if applicable)

Describe any other water rights or other water uses associated with both the current and proposed place of use and an explanation of how those other rights or uses will be exercised in conjunction with the right proposed to be transferred.

There are no existing water rights appurtenant to the proposed place of use nor the existing place of use, of this 8 acres of water right. The receiving land originally did have existing water right under WW Adj. Cert. 54, but that right was transferred off for instream flow through one of the 5 applications approved for that purpose in 2010. The land has been in dryland status since that time.

Public Interest (groundwater only)

The proposed transfer is subject to RCW 90.44.100 and therefore, cannot be detrimental to the public interest, including impacts on any watershed planning activities. Provide an analysis of the transfer as to whether it is detrimental to the public interest, including impacts on any watershed planning activity. Public interest is not considered if the proposed water right is authorized under RCW 90.03.380 exclusively.

The proposed transfer is a surface water right and is therefore not subject to a public interest test, which is exclusive to changes to ground water rights under RCW 90.44.100. An determination as to whether the proposed change is in the public interest is voluntarily provided herein as part of the overall evaluation of this application. Expressions of public interest for this proposed change potentially include: comments or protests regarding approval of the proposed change and the WRIA 32 Watershed Plan.

- a. **Comments/Protests:** No comments or protests were received regarding potential approval of the proposed changes, either in response to a legal notice published in the Walla Walla Union Bulletin, nor through and comments presented at Board meetings.
- b. **WRIA 32 Watershed Plan:** The locally developed and approved basin watershed plan expressed a desire that new water rights or changes to existing water rights not negatively impact streams, springs, or wells hydraulically connected to surface water sources within WRIA 32. This application requests a change in place of use to 8 acres of water right under WW Adj. Cert. No. 54(A); no other changes are proposed. As such, the proposed change will not increase the quantities of water authorized for use under this right, nor will the number of irrigated acres increase (it actually appears they will slightly decrease). The existing point of withdrawal will continue to be utilized to supply water to this right.

The proposed change is consistent with the WRIA 32 Watershed Plan, in that if approved will not negatively impact surface waters in the basin.

Tentative Determination

In order to make a water right change decision, the Board must make a tentative determination on the validity and extent of the right. The Board has made the tentative determination as displayed upon the first page of this report. There are several circumstances that can cause the board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the following findings. Describe any information indicating that an existing water right or portion of a water right has been relinquished or abandoned due to nonuse and the basis for the determination.

The original water right, WW Adj. Cert. No. 54, was issued through the Walla Walla River Adjudication in 1929, with a priority date of 1866. While records are not available to make a conclusive determination as to consistent use back to that time, a review of available records - which include the adjudication documents, subsequent changes to this water right, aerial photos, discussions with the applicant and other associated individuals and the personal knowledge of this writer - suggest more or less continuous use of water on the existing place of use for this subject portion of the water right.

Each of the quantity attributes of the place of use for this portion of the right will be evaluated separately, below:

Instantaneous Water Use (Oi)

The existing pump station serves both Walla Walla Adj. Cert. Nos. 52 and 54(A), which serve different authorized places of use. The station has a maximum diversion capacity of approximately 2.2 cubic feet per second. The allocations to users within the system are not individually metered, and those quantities appear to be shared between users to maximize irrigation efficiencies. The subject property has been irrigated with up to 25 handline sprinklers, outfitted with Rainbird 30H impact sprinkler heads with 5/32-inch nozzles. The maximum output of this system is 125 gallons per minute, or 0.28 cubic feet per second. In evaluation of the 8-acre portion of the larger water right, only a proportionate share of the overall water right allocations are available for this transfer. These proportionate quantities equate to 0.106 cfs from April 1 to July 1; 0.080 cfs from July 1 to October 1, and 0.160 cfs from October 1 to April 1. These quantities have been put to beneficial use and are available for the proposed change.

Irrigated Area

An analysis of aerial photos in combination with an on-site visit were used to confirm the actual irrigated area. Using digital mapping software and ground truthing to exclude roads, paved area and building footprints, it was determined that a total area of 8 acres have been, and are currently, being irrigated within the 8.49 acre place of use of the subject parcel.

Annual Water Use (Oa)

Washington State University AgWeatherNet data was used to estimate annual water used on the subject acres. The AgWeatherNet system provides real-time evapotranspiration data for a variety of crops through a system of weather stations located throughout the state. The Walla Walla station was selected for purposes of this analysis.

Irrigation system efficiency was estimated using Ecology Guidance Document GUID-121-, Table 1. The application efficiency range for handline sprinklers is shown as 60% - 85%. The average efficiency rate of 75% was selected for use.

The last 5 years of use (2015-2019) were evaluated. The landowner of this property has grown orchard grass and a rotation of grass/seed corn over the subject acres over this time. Table 1, below, summarizes the calculated water use using the data and assumptions outlined above.

Table 1: Summary of Calculated Water Use 2015-2019

<i>Year</i>	<i>Crop</i>	<i>Acres</i>	<i>CIR¹(inches/ac)</i>	<i>Efficiency²</i>	<i>TIR³ (ac-ft/ac)</i>	<i>TIR³ (Total ac-ft)</i>
2015	Orchard Grass	8	36.74	0.75%	4.08	32.65
2016	Orchard Grass	4	35.28	0.75%	3.92	15.68
	Seed Corn	4	25.69	0.75%	2.85	11.40 (27.08)
2017	Orchard Grass	4	34.93	0.75%	3.88	15.52
	Seed Corn	4	25.83	0.75%	2.87	11.48 (27.00)
2018	Orchard Grass	4	35.28	0.75%	3.92	15.68
	Seed Corn	4	26.17	0.75%	2.91	11.64 (27.32)
2019	Orchard Grass	8	34.13	0.75%	3.79	30.32

¹ CIR = Crop Irrigation Requirement Source: WSU AgWeatherNet data

² Average application efficiency values for hand/wheel line systems from Table 1, Ecology Guidance Document GUID-1210 “Determining Irrigation Efficiency & Consumptive Use”

³ TIR = Total Irrigation Requirement

The highest one year of use is 2015, with a total of 32.65 acre-feet. This compares with the proportional allocated quantity of 40.0 acre-feet per year.

Tentative Determination

The tentative determination as to the extent and validity for this 8-acre portion of WW Adj. Cert. 54(A) are 0.106 cfs from April 1 to July 1; 0.080 cfs from July 1 to October 1, and 0.160 cfs from October 1 to April 1, 32.65 acre-feet per year, for the seasonal irrigation of 8 acres.

The receiving property was evaluated and determined to have an irrigable area of 7.14 acres. While the quantities historically put to beneficial use on the existing property can be transferred to the proposed place of use, the acres authorized for irrigation cannot exceed the number of acres which can potentially be irrigated. Therefore the tentative determination as to the quantities available for the proposed change in place of use are:

0.106 cfs from April 1 to July 1; 0.08 cfs from July 1 to October 1, and 0.16 cfs from October 1 to April 1, 32.65 acre-feet per year, for the seasonal irrigation of 7.14 acres

The applicant is advised that these quantities represent maximum potential allocations, and only those portions of the above quantities developed and beneficially used on the authorized place of use will be certificated upon completion of the project.

Geologic, Hydrogeologic, or other scientific investigations (if applicable)

Describe the results of any geologic, hydrogeologic, or other scientific investigations that were considered by the board and how this information contributed to the board's conclusions.

As there is no change in point of diversion proposed under this application, no hydrologic analysis was conducted for purposes of this report.

Other

Provide any other pertinent information relative to the investigation of this application.

N/A

The information or conclusions in this section were authored and/or developed by (Name of Person): Bill Neve, Water Right Solutions, LLC

CONCLUSIONS [See WAC 173-153-130(6)(d)]

Tentative determination (validity and extent of the right)

Describe whether, and to what extent, a valid water right exists.

A tentative determination as to the extent and validity of the subject water right was completed, which resulting in the following quantities determined to be valid and available for consideration of the proposed change in place of use under WW Adj. Cert. 54(A): 0.106 cfs from April 1 to July 1; 0.080 cfs from July 1 to October 1, and 0.160 cfs from October 1 to April 1, 32.65 acre-feet per year, for the seasonal irrigation of 8 acres.

Given that the proposed place of use was determined to have a maximum irrigable area of 7.14 acres, the quantities tentatively determined available for this change are 0.106 cfs from April 1 to July 1; 0.080 cfs from July 1 to October 1, and 0.160 cfs from October 1 to April 1, 32.65 acre-feet per year, for the seasonal irrigation of 7.14 acres.

Relinquishment or abandonment concerns

Describe any relinquishment or abandonment of the water right associated with the water right transfer application as discussed in the investigation section of this report.

RCW 90.14.180 provides that:

“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.”

As noted above, a tentative determination as to historic beneficial use under GW Cert. No. 1901-A(B) concluded that the the quantities available for consideration of the proposed change are 0.106 cfs from April 1 to July 1; 0.080 cfs from July 1 to October 1, and 0.160 cfs from October 1 to April 1, 32.65 acre-feet per year, for the seasonal irrigation of 7.14 acres.

The difference between those quantites put to beneficial use and those proportionately allocated to the subject 8 acres under the Certificate are delineated in Table 2.

Table 2: Tentative Determination vs. Certificated Quantities (Proportional)

	<i>CFS (Qi)</i>	<i>Acre-Feet (Qa)</i>	<i>Acres</i>
WW Adj. 54(A) – 8 acres	0.16 (max)	40	8
Tentative Determination	0.16 (max)	32.65	7.14
Difference	0 cfs	7.35 ac-ft	0.86 acres

The difference between those quantities tentatively determined to have been put to historic beneficial use and those allocated to under WW Adj. Cert. 54(A) are 7.35 ac-ft/yr and 0.86 acres, and are subject to relinquishment through this change. The quantities allocated through this change are also subject to further reduction depending on the extent to which the allocated quantities are put to beneficial use through development of the change at the new place of use.

Hydraulic analysis

Describe the result, as adopted by the board, of any hydraulic analysis done related to the proposed water right transfer.

There is no change proposed to the existing point of diversion under WW Adj. Cert. 54(A). No hydraulic analysis was conducted for purposes of evaluation of the proposed change in place of use.

Consideration of comments and protests

Discuss the board's conclusions of issues raised by any comments and protests received.

Public notice of the application was provided in the Walla Walla Union Bulletin, published in Walla Walla County, on October 14th and 21st, 2020. There were no protests received during the 30-day protest period following the last date of publication. Likewise, no comments or objections regarding this application were received at open public meetings of the Board.

Impairment

Describe how or if the transfer proposal will impair existing rights of others.

As the quantities to be allocated to the proposed place of use are the same as, or less than, those tentatively determined to have been put to beneficial use at the existing place of use, and considering that the place of use will be the only change to the water right (the existing diversion station and distribution station will continue to be used), there will be no impairment of existing rights created through approval of the proposed change in place of use.

Public Interest

If the proposed transfer is authorized pursuant to RCW 90.44.100, describe whether it is detrimental to the public interest. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW 90.03.380 exclusively.

While a public interest determination is not required of a change to surface water rights, an analysis was performed which concluded that the proposed change in purpose of use is consistent with WAC 173-532 (Water Resources Program for the Walla Walla River Basin, WRIA 32), RCW 90.54 (Water Resources Act of 1971) , and the WRIA 32 Watershed Plan.

Other

The board also considered the previous provisions associated with the water right as identified in the background section of this report when making its decision. Provide any other pertinent information relative to the board's conclusions.

N/A

DECISION [See WAC 173-153-130(6)(e)]

Provide a complete description of the board's decision, fully and comprehensively addressing the entire application proposal.

Applications for change to surface water right permits, certificates and claims are governed by RCW 90.03.380 which state in part that: the holder of a valid surface water right may, without losing priority of the right, change the point of diversion and transfer or change the place of use and purpose of use of a water right, provided that:

- **The change must not cause detriment or injury to existing rights;**
- **A valid right/claim exists that is eligible to be changed;**
- **The change shall not allow for the enhancement of the right perfected under the original certificate;**

It is the conclusion of the Walla Walla County Water Conservancy Board that, in accordance with RCW 90.03.380: (1) the proposed change in place of use will not impair existing water rights; (2) a valid right exists and is eligible to be changed to the extent the right has been put to historic beneficial use, as summarized in the tentative determination above, and (3) that the proposed change will not expand or enhance the right which water perfected under the original certificate.

Based on the above investigation and conclusions, the Board recommends that the request for change to the place of use of 8 acres of water right under Walla Walla River Adjudication Certificate No. 54(A) {S3-*28054J(A)} be approved to the extent of:

0.106 cfs from April 1 to July 1; 0.080 cfs from July 1 to October 1, and 0.160 cfs from October 1 to April 1, 32.65 acre-feet per year, for the seasonal irrigation of 7.14 acres, within the place of use as described on Page 3 of this report, and subject to the provisions listed below.

Provide any other pertinent information relative to the board's decision.

There are currently six (6) separate water rights which have divided off from the original WW Adj. Cert. No. 54. It is recommended that those quantities recommended for change herein be allocated to a seventh document, with the residual quantities of the existing WW Adj. Cert. 54(A) remaining as a superseding certificate, as summarized in Table 3, below:

Table 2: Proposed Allocations of Water Right under WW Adj. Cert. 54(A) – {S3-*28054J(A)}

	<i>CFS (Qi)</i>	<i>Acre-Feet (Qa)</i>	<i>Acres</i>
WW Adj. 54(A) – S3-*28054J(A)	0.882 (max)	222.15	44.43
WW Adj. 54(G) – CS3-*28054J@6	0.16 (max)	32.65	7.14

The place of use for a Superseding Walla Walla River Adjudicated Cert. No. 54(A) would be the existing place of use less the legal description of the new place of use defined herein.

Also, please note at least one error (omission of a bearing distance) in the existing legal description of the place of use under Superseding WW Adj. Cert. No. 54(A). This has not been corrected through evaluation of the proposed change herein.

The information or conclusions in this section were authored and/or developed by (Name of Person): Bill Neve, Water Right Solutions LLC and members of the WW County Conservancy Board.

PROVISIONS [See WAC 173-153-130(6)(f)]

Conditions and limitations

Identify any conditions and limitations recommended as part of an approved transfer, and/or any other corrective action necessary to maintain the water use in compliance with state laws and regulations.

Measurements, Monitoring, Metering and Reporting

1. An approved measuring device shall be installed and maintained at the authorized diversion point along Mill Creek in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. This rule 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".
<http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>
2. Water use data shall be recorded monthly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to Ecology by January 31st of each calendar year.

3. Reported water use data shall be submitted via the Internet or by using the enclosed forms. To set up an Internet reporting account, access <https://fortress.wa.gov/ecy/wrx/wrx/Meteringx/>. If you have questions or need additional forms, contact the Eastern Regional Office.

Department of Fish and Wildlife

4. No dam or weir shall be constructed in connection with this diversion.
5. The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria. <http://www.wdfw.wa.gov/reg/regions.htm>

Schedule and Inspections

6. Department of Ecology personnel, upon presentation of proper credentials, shall 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.

Proof of Appropriation

7. Consistent with the development schedule provided in the report (unless extended by Ecology) the water right holder must file a Notice of Proof of Appropriation of Water (PA) with Ecology. The PA documents the project is complete and all the water needed has been put to full beneficial use (perfected). In order to verify the extent of water use under this authorization, an inspection of water use is typically required, known as a "proof exam". After filing the PA, the water right holder's next step is to hire a Certified Water Right Examiner (CWRE) to conduct this proof examination. A list of CWREs is provided to the water right holder upon filing the PA with Ecology. The final water right certificate may then issue based upon the findings of the CWRE. Statutory county and state filing fees may apply prior to certificate issuance.

General Conditions

8. You are advised that the issuance of this change does not convey a right of access to, or other right to use land, which you do not legally possess. Obtainment of such a right is a private matter between the applicant and the owner of the land.
9. Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.
10. Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances or regulations.
11. 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(s) grown on the number of acres and the place of use specified.
12. 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 Native Americans under treaty or otherwise.

Mitigation (if applicable)

Describe any requirement to mitigate adverse effects of the project. Mitigation may be proposed by the applicant or the board and be required in the board's decision.

N/A

Construction Schedule

Provide a schedule for development and completion of the water right transfer, if approved in part or in whole that includes a definite date for completion of the transfer and application of the water to an authorized beneficial use.

The irrigation turnout for the new place of use is already operable as it is used for adjacent lands. The applicant has acquired handline irrigation pipe with which to irrigate the subject property. It is expected that the project can be completed by March 1, 2022 and water put to full use by March 1, 2023.

Other

Provide any other pertinent information relative to provisions

N/A

The information or conclusions in this section were authored and/or developed by (Name of Person): Bill Neve, Water Right Solutions, LLC and members of the Walla Walla County Water Conservancy Board.

The undersigned board commissioner certifies that he/she understands the board is responsible “to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination.” [WAC 173-153-130(5)] The undersigned therefore, certifies that he/she, having reviewed the report of examination, knows and understands the content of this report and concurs with the report’s conclusions.

Signed at Walla Walla, Washington
(City)

This 2nd day of December, 2020
Date (Day) (Month) (Year)

Name of Board Representative: Alan Kottwitz

Name of Water Conservancy Board: Walla Walla

Signature: _____