

ROE/ROD



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

For Ecology Use Only Received: DEPT OF ECOLOGY Stamp MAY 10 2013 Reviewed by: Date Reviewed:

Applicant: Lake Wenatchee Water District

Application Number: CHEL-12-09

This record of decision was made by a majority of the board at an open public meeting of the Chelan County Water Conservancy Board held May 9th, 2013.

Approval: The Chelan County Water Conservancy Board hereby grants conditional approval for the water right transfer described and conditioned within the report of examination on May 9th, 2013 and submits this record of decision and report of examination to the Department of Ecology for final review.

Denial: The Chelan County Water Conservancy Board hereby denies conditional approval for the water right transfer as described within the report of examination on May 9th, 2013 and submits this record of decision to the Department of Ecology for final review.

Signed:

Don Phelps, Chair Chelan County Water Conservancy Board

Date: 5-10-13

- Approve [checked] Deny [] Abstain [] Recuse [] Other []

Waikale M. Frantz, Member Chelan County Water Conservancy Board

Date: 5-10-13

- Approve [checked] Deny [] Abstain [] Recuse [] Other []

Karin Whitehall, Member Chelan County Water Conservancy Board

Date: 5-10-13

- Approve [checked] Deny [] Abstain [] Recuse [] Other []

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

Date:

- Approve [] Deny [] Abstain [] Recuse [] Other []

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

Date:

- Approve [] Deny [] Abstain [] Recuse [] Other []

Mailed to the Department of Ecology Central Regional Office of Ecology, via certified mail, and other interested parties on

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Board's Decision on the Application

MAXIMUM CUB FT/ SECOND 0.11cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 30.5af	TYPE OF USE, PERIOD OF USE Municipal Continuous				
SOURCE ing Wells			TRIBUTARY OF (IF SURFACE WATER) Barnard Creek				
AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
271718400050	NW	SW	18	27N	17EWM	45	Chelan
271613410050	NW	SE	18	27N	17EWM		
	NE	SE	13	27N	16EWM		
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD							
<p>The place of use (POU) of this water right is the service area described in the most recent Water System Plan/Small Water System Management Program approved by the Washington State Department of Health, so long as <u>Lake Wenatchee Water District</u> is and remains in compliance with the criteria in RCW 90.03.386(2). RCW 90.03.386 may have the effect of revising the place of use of this water right.</p>							
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,		

DESCRIPTION OF PROPOSED WORKS

Water will be purveyed via a newly constructed municipal water system that will provide water to the subject area which is located within the service area of the Lake Wenatchee Water District. Existing POWs and PODs will be maintained for future potential intertie into the municipal system. Additional points of withdrawal may be installed as required at authorized POWs to insure access to maximum instantaneous water quantities.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: Project Started	COMPLETE PROJECT BY THIS DATE: 2022	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: 2032
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REPORT

BACKGROUND

Public notice of the application was published in the Wenatchee World on 9/18/2012 and 9/25/2012. Protest period ended on 10/26/2012. See attached Notice of Application for Changes to a Water Right together with it's affidavit of publication. In addition to publication this notice was sent to the Department of Fish and Wildlife, Indian Tribes, and other parties of record.

The attributes of the right/claim and the proposed changes as recited in the notice are as follows:

Name on Doc	Whispering Pines Water Users Association
Document Number	S4-26470C
As Modified by Change #	CS4-267470C
Priority/First Use	10/26/1979
Source	Spring
Qi	0.11cfs
Qa	30.5af
POD	NWSW Sec 18, T27, R17
Place of Use	Land served by Whispering Pines Water Users Assoc. Within Sec 18, T27, R17
Purpose of Use	Community Domestic Supply

Notice:

Surface Water Certificate #S4-264740C was originally issued to Whispering Pines Water Users Association with a priority date of 10/26/1979 authorizes the diversion of 0.11cfs and 30.5afy from a spring located within NW1/4 SW1/4 Sec. 18, T27N, R17EWM for use within Sec. 18, T27N, R17E all in Chelan County, WA to provide for continuous domestic supply.

Proposed changes to this right include authorization of additional points of withdrawal locations TBD in Sections 12 and/or 13, T27N, R16EWM and/or Sections 7, 17, and/or 18 T27N, R17EWM and changing the place of use to the service area of the Lake Wenatchee Water District all in Chelan County, WA.

Signatures:

LWWD is the municipal supplier for all residences located within the described place of use. Water systems/users located within the service area of LWWD have executed MOUs to allow for redistribution of the subject right as municipal supply. The applicant has provided all required signatures on the application for the purposes of conforming the water right to the service area of LWWD.

Tentative Determination

The source of water, location of diversion, place of use, and extent of beneficial use are as tentatively described on the front page of this report. Hearings were held in Chelan County by the Chelan County Water Conservancy Board which tentatively determined the extent and validity of the right as referenced above following investigation into the historical water use as described below. A full analysis of the Board's tentative determination is provided in the Investigation Section.

SEPA:

This subject transfer is exempt from the provisions of the State Environmental Policy Act pursuant to WAC 197-11-800 (4) as it would authorize a surface water diversion less than 1 cfs and/or a ground water withdrawal of less than 2250gpm.

This water right has been changed subsequent to its priority date in the following manner:

The Whispering Pines Water Users Association (Whispering Pines) held two water rights: 1) surface water certificate number S3-00959C to divert water from Barnard Creek for domestic use (0.6 cfs and 18 afy) with a priority date of December 18, 1969; and 2) surface water certificate number S4-26470C to divert water from a spring that is tributary to Barnard Creek for domestic use (0.11 cfs and a total of 30.5 afy) with a priority date of October 26, 1979. For S3-00959C, no changes have been processed on this water right certificate since its issuance. However, in November 2001, Whispering Pines submitted a change application to Ecology (CS3-00959C) that requests to change the point of diversion from Barnard Creek to a spring that is tributary to Barnard Creek. This is the same spring that is currently approved as the point of diversion under S4-26470C. This change application is still pending as of the date of this WSP. Originally, water right S4-26470C was just for diversion from Barnard Creek. However, a change to this water right (CS4-26470C) was processed and ultimately approved by Ecology on October 21, 1992. This change made the spring that is tributary to Barnard Creek the authorized point of diversion and removed authorization to use the original Barnard Creek point of diversion. The two water rights held by Whispering Pines contain provisional language that has been interpreted by the District as described below. The original report of examination for S3-00959C contained a provision that stated "The total annual diversion for community domestic supply use authorized under permit for this application shall not exceed 18 acre-feet less any amount diverted for this use under other rights appurtenant to the same lands." At the time the report of examination was written there was another active permit (15951) for the project that has since been cancelled. Since the right that preceded this right has been cancelled, this right should be considered primary.

For S4-26470C, ^{the} ~~the~~ language on the original report of examination and certificate indicated that "A total of 30.5 acre-feet shall be allowed for the purpose of community domestic supply, less any amount applied to these same lands under existing rights." Since both S3-00959C and S4-26470C are being used to supply water to the same lands, the total combined annual quantity that can be diverted under these two water rights is 30.5 afy. Of that 30.5afy, up to 18 afy can be diverted under S3-00959C, or up to the full 30.5 afy can be diverted under S4-26470C. Both S3-00959C and S4-26470C are for municipal water supply purposes since the Whispering Pines Water Association system serves 15 or more residential service connections and/ or provides residential water to a nonresidential population of 25 people for at least 60 days a year. The Whispering Pines Water Association is a municipal water supplier.

The applicant intends that the subject change application, which includes all attributes of prior requested changes, shall serve as a request for withdrawal and replacement for pending application CS4-26470C.

Proposed Use:

The proposed use is as described on the front page of this report.

History:

See above narrative regarding subsequent changes to the water right.

COMMENT AND PROTESTS

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

INVESTIGATION

The Lake Wenatchee Water District has been established to consolidate numerous small community water systems for the purposes of improving water quality and enhancing the accessibility and reliability of municipal water service within the boundaries of LWWD. LWWD proposes to retain the existing POWs/PODs for potential intertie into the new municipal system and to add LWWD's authorized POWs to the subject right to help meet current and existing consumer demands.

The applicant requests that the development schedule reflect a 20 year planning horizon. POL 1280 requires that municipal development scheduling be integrated with Department of Health review of water system planning efforts so this decision will adopt the 2032 date as the date beneficial use must be achieved absent an extension of this date as the result of the plan review process.

Other water rights appurtenant to the property: (Excerpted from LWWD 2011 Water System Plan

LWWD brings together what had been five independent systems (Lake Wenatchee Water Users Association, Mountain Park/Zufall, Brown Road Water Users Association, Lester Addition Water Company and Whispering Pines Water Users Association) that held six water rights from various sources of supply. The cumulative total of the water rights held by the District is 1.92 cfs (862.5gpm) instantaneous rate and at least 113.76afy annual volume as shown in **Table 4-1**. This includes water rights from three different well sources, one spring source and three Barnard Creek sources.

**Table 4-1
Existing Water Rights**

DOH Source No. ¹	Source Name	Water Right Number	Priority Date	Instantaneous (Qi)		Annual (Qa)		
				Primary		Primary	Supplemental	
				(cfs)	(gpm)	(acre-ft)	(gpm)	(acre-ft)
S02	Dickinson Well (Lake Wenatchee Users)	Claim 017516	8/14/1909	0.8	359.1	17.76	11.0	
S01	Zufall Well (Mountain Park) ²	Claim 030577	6/20/1933	0.11	50	4.5	2.8	
S01 & S02	Barnard Creek & Brown Road Well (Brown Road)	SWC 8453	11/16/1961	0.2	89.8	55	34.1	
	Barnard Creek (Lester) ³	SWC 9776	8/15/1963	0.1	44.9	6	3.7	
S01	Barnard Creek (Whispering Pines) ⁴	S3-00959C	12/18/1969	0.6	269.3	18	11.2	
S02	Barnard Creek Spring (Whispering Pines) ⁵	S4-26470C	10/26/1979	0.11	49.4	12.5	7.7	18
TOTAL				1.92	862.5	113.76	70.5	18

1 = Since these were independent water systems, the originally assigned Source Number, if one was assigned, is shown here. New source numbers should be assigned for the District to avoid confusion.

2 = Nothing is noted for the annual volume claimed. For planning purposes, the annual right was estimated to be 4.5 acre-feet based on 0.5 acre-ft times the number of connections (9).

3 = No annual volume was indicated on the certificate. For planning purposes, the annual right was estimated to be 6 acre-feet based on 0.5 acre-ft times the number of connections (12).

4 = The language on the report of examination indicated that "The total annual diversion for community domestic supply use authorized under permit for this application shall not exceed 18 acre-feet less any amount diverted for this use under other rights appurtenant to the same lands." At the time the ROE was written, there was another active permit (15951) that has since been cancelled.

5 = The language on the original report of examination and certificate indicated that "A total of 30.5 acre-feet shall be allowed for the purpose of community domestic supply, less any amount applied to these same lands under existing rights". Since both S3-00959C and S4-26470C are being used to supply water to the same lands, the total combined annual quantity that can be diverted under these two water rights is 30.5 afy. Of that 30.5 afy, up to 18 afy can be diverted under S3-00959C, or up to the full 30.5 afy can be diverted under S4-26470C.

Each individual water right, organized by the system that originally held it, is listed in Table 4-1 and discussed below.

Lake Wenatchee Water Users Association

The Lake Wenatchee Water Users Association (Lake Wenatchee Users) held water right claim number 017516 to divert water from the Dickinson Well for community domestic residential use (0.8 cfs and 17.76 afy) with a claimed date of first use of June 14, 1909. Originally, the water right was just for diversion from Fall Creek. However, a change to this water right was processed by the Chelan County Water Conservancy Board and ultimately approved by Ecology with modifications on May 8, 2002. This change application also split the claim into a Record A, which was retained by the Lake Wenatchee Users and a Record B, which was retained by Don West, LLC. Only the Lake Wenatchee Users portion is available for use by the District and will be discussed here. The 2002 decision changed the approved point of diversion/withdrawal from Fall Creek to the Dickinson Well. However, the change approval listed the wrong legal description for the Dickinson Well. So, in June 2009, the Lake Wenatchee Users filed another change application (CS4-017516CL(A)@4) to correct this error, which is still pending as of the date of this Water System Plan (WSP). Water Right Claim 017516 is for municipal water supply purposes since the Lake Wenatchee Water Users Association system serves 15 or more residential service connections and/or provides residential water to a nonresidential population of 25 people for at least 60 days a year. The Lake Wenatchee Water Users Association is a municipal water supplier.

Mountain Park/Zufall

The Mountain Park/Zufall (Mountain Park) water system held water right claim number 030577 to withdraw water from a well for domestic use with a claimed date of first use of June 20, 1933. The name on the face of the water right claim is Mr. Ralph Zufall. This document indicates that he claimed 50 gpm but was only using 25 gpm when the claim was filed in 1973. It does not have any information related to the annual volume claimed or used at the time of filing. Water Right Claim 030577 is not for municipal water supply purposes since the system serves less than 15 residential service connections and does not provide residential water to a nonresidential population of 25 people for at least 60 days a year. Therefore, the Mountain Park/Zufall water system is not a municipal water supplier.

Brown Road Water Users Association

The Brown Road Water Users Association (Brown Road) held surface water certificate number SWC 8453 to divert water from Barnard Creek and withdraw water from a well for domestic use (0.2 cfs and 55afy) with a priority date of November 16, 1961. Originally, the water right was just for diversion from Barnard Creek. However, a change to this water right (CS4-SWC8453@1) was processed by the Chelan County Water Conservancy Board and ultimately approved by Ecology with modifications on June 18, 2003. This change added a well as an additional point of withdrawal/diversion while retaining the original Barnard Creek diversion. Even though the Barnard Creek diversion was retained on SWC 8453 when the well was added as an approved point of withdrawal, the water system has been relying solely on the well as its source of supply since October 2003. SWC 8453 is for municipal water supply purposes since the Brown Road Water Association system serves 15 or more residential service connections and/ or provides residential water to a nonresidential population of 25 people for at least 60 days a year. The Brown Road Water Association is a municipal water supplier.

Lester Addition Water Company

The Lester Addition Water Company (Lester) held surface water certificate number SWC 9776 to divert water from Barnard Creek for community domestic supply of 10 homes (0.1cfs) with a priority date of August 15, 1963. Since issuance of the certificate on October 24, 1966, no requests have been made to change any attributes of this water right. As is common on older surface water rights, there is only an instantaneous rate listed with no mention of the authorized annual volume. Water Right SWC 9776 is not for municipal water supply purposes since the system serves less than 15 residential service connections and does not provide residential water to a nonresidential population of 25 people for at least 60 days a year. Therefore, the Lester Addition Water Company is not a municipal water supplier.

Whispering Pines Water Users Association

The Whispering Pines Water Users Association (Whispering Pines) held two water rights: 1) surface water certificate number S3-00959C to divert water from Barnard Creek for domestic use (0.6 cfs and 18 afy) with a priority date of December 18, 1969; and 2) surface water certificate number S4-26470C to divert water from a spring that is tributary to Barnard Creek for domestic use (0.11 cfs and a total of 30.5 afy) with a priority date of October 26, 1979. For S3-00959C, no changes have been processed on this water right certificate since its issuance. However, in November 2001, Whispering Pines submitted a change application to Ecology (CS3-00959C) that requests to change the point of diversion from Barnard Creek to a spring that is tributary to Barnard Creek. This is the same spring that is currently approved as the point of diversion under S4-26470C. This change application is still pending as of the date of this WSP. Originally, water right S4-26470C was just for diversion from Barnard Creek. However, a change to this water right (CS4-26470C) was processed and ultimately approved by Ecology on October 21, 1992. This change made the spring that is tributary to Barnard Creek the authorized point of diversion and removed authorization to use the original Barnard Creek point of diversion. The two water rights held by Whispering Pines contain provisional language that has been interpreted by the District as described below. The original report of examination for S3-00959C contained a provision that stated "The total annual diversion for community domestic supply use authorized under permit for this application shall not exceed 18 acre-feet less any amount diverted for this use under other rights appurtenant to the same lands." At the time the report of examination was written there was another active permit (15951) for the project that has since been cancelled. Since the right that preceded this right has been cancelled, this right should be considered primary.

For S4-26470C, ^{the} ~~the~~ language on the original report of examination and certificate indicated that "A total of 30.5 acre-feet shall be allowed for the purpose of community domestic supply, less any amount applied to these same lands under existing rights." Since both S3-00959C and S4-26470C are being used to supply water to the same lands, the total combined annual quantity that can be diverted under these two water rights is 30.5 afy. Of that 30.5afy, up to 18 afy can be diverted under S3-00959C, or up to the full 30.5 afy can be diverted under S4-26470C. Both S3-00959C and S4-26470C are for municipal water supply purposes since the Whispering Pines Water Association system serves 15 or more residential service connections and/ or provides residential water to a nonresidential population of 25 people for at least 60 days a year. The Whispering Pines Water Association is a municipal water supplier.

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. The purpose of the proposed change is to improve drinking water quality and enhance reliability and accessibility of municipal water service within the boundaries of LWWD. Therefore, the public interest is served by this transfer of ground water as it facilitates land use in a manner consistent with the relevant planning policies.

Tentative Determination:

Metering data is not available for the subject right. In the absence of metering data the Board assumed a maximum of 800gpd as suggested by DOE POL1230. Here, the subject right is authorized for 52 residential connections which results in a maximum projected annual quantity of approximately 52afy. However, maximum projections are not likely achieved as the described connections primarily consist of vacation homes which received less than full-time use. Whispering Pines Water Users have utilized water rights S3-00959C and S4-26470C to provide for a total authorized volume of 30.5afy. Therefore, based upon the limited information available, the Board tentatively determines the extent and validity of the right is equal to 0.11cfs and 30.5af as described within the 2011 Water System Plan.

The subject right provides water service to 15 or more residential connections and/or a nonresidential population of 25 people for more than 60 days per year. As such, by operation of law, the subject right provides for municipal service and is therefore exempt from relinquishment per RCW 90.03.

Abandonment:

The subject right has been used continuously to provide for community domestic supply within the described place of use. The Board observed no evidence of intent to abandon the water right.

Geologic, Hydrogeologic, or other scientific investigations

Steve Nelson, RH2 Licensed Hydrogeologist has performed an analysis of the transfer application and determined the proposed points of withdrawal are in hydraulic connectivity with existing points of withdrawal/diversion and that the proposed changes can be made without impairment to other water rights. DOE has been consulted and concurs with this analysis. The Board fully incorporates the contents of this report herein the subject change application (see attached Technical Memorandum and DOE emails).

CONCLUSIONS

The water right proposed for change exists to the extent set forth above on page 1.

The water right authorized for change is in a valid exercisable status with regard to the amounts proposed for change, the statutory forfeiture provisions of Chapter 90.14 RCW are not met relative to the amounts requested for change. At no time was there intent by the water right holder(s) to abandon the rights authorized for change.

The proposed changes will withdraw water from the same body of water and will not impair any existing water rights.

There were no comments or protests.

The proposed changes can be made without injury or detriment to existing water rights.

The proposed change is SEPA exempt.

The public interest is served by this transfer of ground water as it facilitates land use in a manner consistent with the relevant planning policies. There are no detriments to the public interest resulting from the proposed changes.

Approval of this change will not enlarge the right.

DECISION

Name on Water Right:	Lake Wenatchee Water District
Priority Date:	10/26/1979
Instantaneous Quantity:	0.11cfs
Annual Quantity:	30.5af
Source:	Spring and Two wells
Point of Diversion/ Withdrawal:	(Spring) NW1/4 SW1/4 Sec. 18, T27N, R17E (Well) NW1/4 SE1/4 Sec.18, T27N, R17E Parcel# 271718400050 (Well) NE1/4 SE1/4 Sec. 13, T27N, R16E Parcel #271613410050
Purpose of Use: (and number of acres irrigated)	Municipal
Period of Use:	Continuous
Place of Use:	Approved Service Area of Lake Wenatchee Water District

PROVISIONS

The following provisions are to be included as a part of the application approval decision referred to in the preceding section:

- 1) 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. This authorization shall in no way excuse the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.
- 2) An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.
- 3) To prevent the authorized instant withdrawal rates of all Lake Wenatchee Water District rights from being exceeded at any time, the installed instantaneous capacity of the diversion/withdrawal points must be no greater than the total authorized withdrawal for all of said rights. In the future, if additional sources are added to the subject right, then they must be utilized in such a manner that the combined use of all sources does not exceed the total instant demand of all Lake Wenatchee Water District rights which is 1.92cfs/865.2 gpm and 113.76 af.
- 4) The provisions and requirements outlined in previous Ecology modification orders and Board decisions shall remain in effect.
- 5) If the criteria in RCW 90.03.386(2) are not met the place of use of this water right reverts to the service area described in the Water System Plan/Small Water System Management Program most recently approved after September 9, 2003. If the criteria in RCW 90.03.386(2) are not met and no Water System Plan/Small Water System Management Program has been approved after September 9, 2003, the place of use reverts to the last place of use described by Ecology in a water right authorization.
- 6) 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.
- 7) Water use data shall be recorded weekly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to Ecology by January 31st of each calendar year.
- 8) Reported water use data shall be submitted via the Internet or by using forms available at the Central Regional Office of the Department of Ecology in Yakima. To set up an Internet reporting account, access <https://fortress.wa.gov/ecy/wrx/wrx/Meteringx/>. If you have questions or need forms, contact the Central Regional office.

Appeal

This Order may be appealed pursuant to RCW Chapter 43.21B. Any person wishing to appeal this Order must file an appeal with the Pollution Control Hearings Board within thirty (30) days of receipt of this Order. Send the appeal to: Pollution Control Hearings Board, PO Box 40903, Olympia, Washington 98504-0903. At the same time, a copy of the appeal must be sent to: Department of Ecology, Water Resources Appeals Coordinator, PO Box 47600, Olympia, Washington 98504-7600.

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 Wenatchee, Washington.

	<u>5-10-13</u>
Don Phelps, Chair	Date
Chelan County Water Conservancy Board	

Appendix:

1. Application
2. Application Map
3. Copy of the Existing Water Right Document
4. Hydrogeologic Report
5. Notice of Application declaration of publication
6. Notice of Application to Department of Fish and Wildlife, Indian Tribes, and other Parties of Record