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DEC 31 2012

DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

December 10, 2012

Timothy and Joanne O'Brien
73 Sherman Homes Road
Kettle Falls, WA 99141

Re: Water Right Application No. S3-30644

Dear Mr. and Ms. O'Brien:

The Department of Ecology has determined that your Water Application Number S3-30644 must be rejected. It is our understanding that even though water is available from the National Park Service, it is your desire to have a water right in your name. That is not possible for two reasons. From the state's perspective, under RCW Chapter 90.03.380, a water right becomes appurtenant to the land upon perfection. Essentially, the land owner becomes the controlling interest in a water right when it changes from being a permit to a certificate. So, even though you made the investment in time, money, and materials to develop your project, in the end the United States as the land owner controls the water right.

Also, the lease agreement between you and the National Park Service expressly prohibits lessees from owning water rights: "Title to any and all water appropriations made under State law shall be perfected in the name of the United States as appurtenant to the lands." See section 2e under the Terms and Conditions of the 2012 lease agreement. Again, the federal government becomes the controlling party.

As you are aware, surface water from the Columbia River is available from the National Park Service for the purposes you identified in your application. This is currently your only choice if you wish to continue pumping from the river.

For these reasons your application is hereby **rejected**.

YOUR RIGHT TO APPEAL

You have a right to appeal this decision to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this decision. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

FILE COPY



To appeal you must do the following within 30 days of the date of receipt of this decision:

- File your appeal and a copy of this decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW. Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

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://www.leg.wa.gov/CodeReviser>

If you have any questions, please contact Jeff MacLennan at (509) 329-3480.

Sincerely,



Mark C. Schuppe
Operations Manager
Office of Columbia River

JM:MCS:RAZ (121203)

Enclosure: *Your Right to Be Heard*

Cc: National Park Service

By certified mail: 7009 2250 0004 4950 7532

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

7009 2250 0004 4950 7532

Postage \$		Postmark
Certified Fee		
Return Receipt Fee		
(Er) TIMOTHY AND JOANNE O'BRIEN (Er) 73 SHERMAN HOMES ROAD T KETTLE FALLS WA 99141 Se.		
Str. or PO Box No. _____ City, State, ZIP+4 _____		
PS Form 3800, August 2006		See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

TIMOTHY AND JOANNE O'BRIEN
73 SHERMAN HOMES ROAD
KETTLE FALLS WA 99141

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *Timothy O'Brien* Agent Addressee

B. Received by (Printed Name) *Timothy O'Brien* C. Date of Delivery *12/13/*

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
 (Transfer from service label)

7009 2250 0004 4950 7532

CALLED BY
 CALLED



TELEPHONE RECORD

DATE: 11-19-2012 TIME: 1315 STAFF: J Ince

FILE NO: <u>53-30644</u>	NAME: <u>Tim O'Brien</u>
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- Tim called in response to my email telling him there was an issue w/ his application
- I explained to Tim that the lease he signed with the Nat'l Park Service required any ~~of~~ state water rights developed on leased property will be perfected in the name of the United States.
- In essence, the ~~of~~ use of water under the Park Service's permit provides exactly what a right he might develop and it will still be in The Park Service's name (U.S.)
- He said he wanted to talk to his neighbors. He would get back to me next week.

J Ince

Provide by the National Park Service 11/19/2012.

Pages 1 and 2 of a 12 page lease agreement for cabin sites on ShermanCk.

Terms and Conditions

J. Mac

1. Special Use Permit to Occupy the Vacation Cabin Site:

The National Park Service (hereinafter known as the Service) authorizes, through the issuance of this Special Use Permit, the Permit Holder's use of the following described site:

(Cabin Location & #), as shown on the attached drawing (Exhibit A), for the sole purpose of occupying and maintaining the existing single-family recreational cabin, including authorized structures and improvements as set forth in Exhibit B of this Permit, and subject to the provisions of this Permit. This Permit authorizes the use of the Vacation Cabin Site for the existing recreational cabin only.

2. Term of Permit. Subject to 43 CFR Part 21 Determinations, Recreational Intent of Permit:

- a) The term of this Permit shall be for five (5) years, commencing on January 1, 2012, and running through December 31, 2016.
- b) Renewals or extensions are at the discretion of the Service. The Permittee has no legal rights to the renewal or extension of this Permit. There will be no extension or renewal of this Permit upon its termination or expiration except as provided by 43 CFR Part 21.4(a).
- c) During the five year period of this permit commencing on January 1, 2012, the Service will complete an analysis to determine if the continued use of the vacation cabin site is inconsistent with the needs of the general public for use of the area. Should the Service make such a preliminary determination, a notice will be published in the Federal Register with a designated public comment period. The Vacation Cabin Permittee will be given written notice and at least one public meeting will be held prior to a final determination being made. Upon final determination, one additional five (5) year permit, as allowed by 43CFR Part 21.4(b), will be granted.
- d) This Permit grants no possessory real property interest in the lands or waters of the United States, and it does not convey any property rights in either real estate or material.
- e) The Service does not agree, nor is it obligated, to furnish any water to the Permittee, and no representation has been made that this permit creates or recognizes any water right to the Permittee. The Permittee may arrange to obtain any water necessary to carry out the purposes of this Permit, in compliance with all applicable laws, and with the approval of the Superintendent. Title to any and all water appropriations made under State law shall be perfected in the name of the United States as appurtenant to the lands. The Service reserves the right to impose conditions to provide the greatest conservation and efficient use of water in connection with the approval of any plans for water system development.

- f) No new wells will be permitted. Existing wells may be maintained until failure of the well or casing renders the water system inoperable. Replacement of failed wells will be determined on a case by case basis in compliance with current state and federal laws and regulations. Development of a replacement well which services multiple cabins is strongly encouraged.
- g) The Permittee acknowledges that this permit is for recreational use only, and that the land may not be used for a primary residence.
- h) Violation of any of the provisions of this Article and/or proceeding Articles, as determined by the Service, will be grounds for termination of this Permit. Such violations require immediate corrective action by the Permittee and shall make the Permittee liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation or termination of the Permit.

3. Acceptance of Risk of Loss of Investment:

The Permittee, in light of the terms and conditions of this Permit, particularly those found in Articles 1 and 2 above, acknowledges that he or she is accepting the risk that any investment made in structures and improvements located on the Vacation Cabin Site may not be fully recovered, depreciated, and/or amortized prior to the termination or expiration of this Permit. The Permittee further acknowledges that the United States has no responsibility to assure the recovery, depreciation, and/or amortization of any such investment made by the Permittee and the United States bears no liability for losses which the Permittee may incur in this regard.

4. Annual Permit Fees:

- a) The Permittee shall pay to the Service an annual land use fee for the Special Use Permit. The annual fee for the period will be \$_____.
- b) The Permit fee is due and payable on January 1 of each year.
- c) Fees not paid by the due date shall be subject to interest and penalties, in accordance with the Debt Collection Act. If the annual fee for this Permit is not paid in full 90 days after the due date, this Permit shall be terminated. Debts over 180 days past due will be turned over to the United States Treasury Department for collection.
- d) The Permit fee does not include any leasehold taxes that may be levied by State and local jurisdictions. Said taxes are independent of the fees collected for this Permit, and the Permittee is responsible for payment of all such taxes.

Ferry County View

The Ferry County View
PO Box 1117
Republic, WA 99166
(509) 775-2425

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NOV 06 2012

DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

Joanne OBrien
73 Sherman Homes Rd
Kettle Falls WA 99141

Re: Notice of Application to Appropriate Public Waters

Affidavit of Publication

State of Washington
County of Ferry

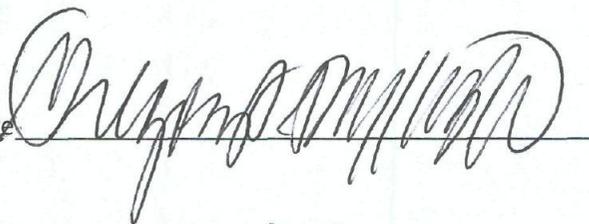
The undersigned on oath states that he is an authorized representative of The Ferry County View, a newspaper of general circulation, published weekly in Ferry County, State of Washington. The Ferry County View has been approved as a legal newspaper by order of the Superior Court of Ferry County.

This notice, in the exact form annexed, was published in the regular and entire issue of said paper and distributed to its subscribers during all of the said period.

Publication Date(s): 10/17/2012 10/24/2012

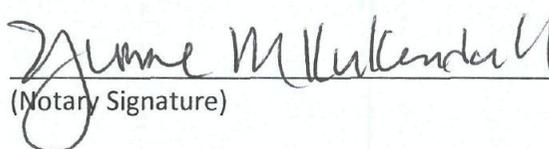
Gregory S. Sheffield, Publisher

Signature



Subscribed and sworn to before me on Oct. 30, 2012 (date)




(Notary Signature)

Notary Public in and for the State of Washington, Ferry County, residing at Republic.

My appointment expires: 6-19-14

AFF. OK: ✓
AFF. EXP.: Nov. 23, 2012
CHKD BY: KT
newspaper will send tear sheet - per call 11/6 Rec'd 11-7

October 17, 2012 • Ferry County View • 11

PO BOX 47611
OLYMPIA, WA 98504-7611

RECEIVED

NOV 07 2012

DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

Legal Notice

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
NOTICE OF APPLICATION TO AP-
PROPRIATE PUBLIC WATERS**

TAKE NOTICE:

That Joanne O'Brien of Kettle Falls, WA on Aug. 30, 2011 under Application No. S3-30644 filed for permit to appropriate public waters, subject to existing rights, from Lake Roosevelt (Columbia River) in the amount of 0.08 of a cubic foot per second, each year, for seasonal irrigation of one-half acre, and fire protection as needed. The source of the proposed appropriation is located within Lot 3 of Sherman Creek Homes, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, Township 36 N., Range 37 E.W.M., in Ferry County.

Protests or objections to approval of this application must include a detailed statement of the basis for objections; protests must be accompanied by a fifty-(\$50.00) dollar recording fee and filed with the Department of Ecology, at the address shown below, within thirty (30) days from October 24, 2012.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
WATER RESOURCES PROGRAM
- ERO



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

October 9, 2012

Ms. Joanne O'Brien
73 Sherman Homes Road
Kettle Falls, WA 99141

COPY

Dear Ms. O'Brien:

Re: Application for Water Right No. S3-30644
WRIA 58 – Ferry County

We are ready to continue processing applications for water rights in your area.

Your next step is to publish a legal notice. The notice announces your proposed water use to the public and allows interested persons to comment. We have prepared and enclosed this notice for you.

Review Legal Notice Carefully

It is your responsibility to check the notice carefully before having it published. If you find an error, please contact this office for resolution. If we later find an error in your public notice, you may be required to publish an amended notice at your expense.

Publishing Legal Notice

You need to arrange and pay for publishing the legal notice in a newspaper in Ferry County.

- Publish the notice in the Republic News-Miner.
- Ensure that the notice appears once a week for two consecutive weeks.

If your published notice does not meet the above criteria, you will be required to have the notice republished at your expense.

Publication should start within 30 days from the date of this letter.

Next Step

You must request an Affidavit of Publication from the newspaper in which your notice appeared. The affidavit must be an original, notarized copy of your published notice. Please forward it to our office as soon as possible.

If you have any questions, you may contact me at 329-3585.

Sincerely,

Karen Tusa
Water Resources Program
Eastern Regional Office

KT:md

Enclosure: Legal Notice



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

NOTICE OF APPLICATION TO APPROPRIATE PUBLIC WATERS

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(Last date of publication to be entered above by publisher)

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
WATER RESOURCES PROGRAM - ERO
PO BOX 47611
OLYMPIA, WA 98504-7611

NOTICE