File NR CS1-22314C
WR Doc ID 4691546

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
DRAFT
REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Changed Place of Use
Added Point of Diversion

PRIORITY DATE
July 2, 1974

WATER RIGHT NUMBER
CS1-22314C

MAILING ADDRESS
MONA REARDON
599 E LAKE SAMISH DR
BELLINGHAM, WA 98226

SITE ADDRESS (IF DIFFERENT)

Total Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.04	CFS	2

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE ADDITIVE	WITHDRAWAL OR DIVERSION RATE NON-ADDITIVE	UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Domestic multiple and irrigation	0.04		CFS	2		01/01 - 12/31

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
WHATCOM	SAMISH LAKE	FRIDAY CREEK	3-LOWER SKAGIT-SAMISH

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
SAMISH LAKE	370325012137		37N	03E	25	NWSW	48.6632	-122.3756
	370325065115		37N	03E	25	SWSW	48.6626	-122.3755

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

370325082137

370325065115

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Parcel # 370325082137 AKA that portion of Government Lots 2 and 3, Section 25, T37N R03E. W.M. , lying westerly of Interstate Hwy No. 5, Northerly of the South line of state ditch easement as shown on the plat of "Barnes Samish Lake Addition," as per the map thereof, recorded in Book 9 of Plats, Page 75, in Auditor's office of Whatcom County, Washington, and South of the Following described line:

Beginning at a point on the west right of way line of the said Interstate Hwy. No. 5 which is 230 ft northerly along said highway from the south line of the aforesaid state ditch easement and running thence westerly in a straight line to the west line of Government lot 2, said line running through a point 230 feet due north of the northwest corner of lot 15 of said "Barnes Samish Lake Addition."

Parcel 370325065115 AKA Lot A lot line adjustment to Lots 14 & 15 Barnes Samish Lake Addition.

Proposed Works

Ms. Reardon proposes to put in an additional point of diversion using a ¾ hp submersible pump placed under her dock and providing water to her home via a 1-inch PVC pipe.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
October 31, 2012	October 31, 2016	October 31, 2016

Measurement of Water Use

How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (cfs)

Provisions

Measurements, Monitoring, Metering and Reporting

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

    - Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Northwest Regional Office. If you do not have Internet

access, you can still submit hard copies by contacting the Northwest Regional Office for forms to submit your water use data.

- WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements".

- Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

Department of Fish and Wildlife Requirement(s)
The intake(s) must be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. http://wdfw.wa.gov/about/contact/

Water Use Efficiency
Use of water under this authorization will 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.

Proof of Appropriation
The water right holder must file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the water right. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

Schedule and Inspections
Department of Ecology personnel, upon presentation of proper credentials, will 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.

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change:

A certificate of water right will issue for only that quantity of water that has been withdrawn and applied to actual beneficial use. Such quantity applied to actual beneficial use shall not exceed the quantity specified in this report of exam and will be calculated based on the best information available to Ecology, including metering data and/or water duty analysis.

A certificate of water right will not be issued until a final investigation is made.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; and that the purpose(s) of use are beneficial.

Therefore, I ORDER approval of Application No. CS1-22314C, subject to existing rights and the provisions specified above.

Signed at Bellevue, Washington, this _____ day of _____, 2011.

_____

Jerry L. Liszak, Acting Section Manager
Water Resources Program

For additional information visit the Environmental Hearings Office Website: http://www.eho.wa.gov. To find laws and agency rules visit the Washington State Legislature Website: http://www1.leg.wa.gov/CodeReviser.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. 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).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order 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 Order 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.

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

INVESTIGATOR'S REPORT
John M. Rose LG, Department of Ecology
Water Right Control Number CS1-22314C

BACKGROUND

Description and Purpose of Proposed Change

Ms. Mona Reardon submitted change application CS1-22314C on August 3, 2010, to alter her existing water right by adding a point of diversion, and changing the place of use. The existing and proposed points of diversion are from Lake Samish in southwestern Whatcom County in section 25, Township 37N Range 03E. (See Figure 1)

Attributes of the Existing Water Right and Proposed Change

	Existing	Proposed
Name	REARDON, DONALD G. AND MONA C.	REARDON, MONA C.
Priority Date	07/02/1974	
Change Application Date		08/03/2010
Instantaneous Rate	0.12 cfs	0.12 cfs

Annual Quantity	8.64 af/yr	8.64 af/yr
Purpose(s) of Use	Multiple Domestic and Irrigation	Multiple Domestic and irrigation
Period of Use	Year round	Year round
Place(s) of Use	See text	See text

Proposed New Source of Withdrawal or Diversion

Source Name	Parcel	WellTag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
SAMISH LAKE	370325082137		37N	03E	25	NW ¼ SW ¼	48.6632	-122.3756

Existing Sources of Diversion

Source Name	Parcel	WellTag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
SAMISH LAKE	370325065115		37N	03 E	25	SW ¼ SW ¼	48.6645	-122.3793

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Bellingham Herald during the weeks of 11/24/2010 and 12/1/2010.

State Environmental Policy Act (SEPA)

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.

(a) 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;
(b) It is a groundwater right application for more than 2,250 gallons per minute;
(c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
(d) 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);
(e) 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.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that 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 Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. 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.*

INVESTIGATION

In considering this application, my investigation included, but was not limited to, research and/or review of:

- USGS Bellingham South and Lake Whatcom, Wash. 7.5 minute topographic maps
- Larson, Arthur G. Water Resources Program Water-Supply Bulletin 58 (1990): The Effects of Withdrawals on the Hydrology of Samish Lake and Upper Friday Creek.
- Irvin, A. Linda. Whatcom County Council (1991): Background Document for Proposed Whatcom County Lake Management District No. 1 for Lake Samish.
- Duke Engineering & Services Inc. Skagit Council of Governments (2001): Instream Flow Assessment-Samish Sub-Basin Lower and Upper Watershed Plan.
- Various Geologic, Hydrologic, and Topographic GIS layers, available through Department of Ecology GIS Internet site
- Notes, photos and GPS data from my site visit with Christy Fiedler, Department of Ecology Environmental Specialist, on July 20, 2011
- Records of existing water rights in the vicinity
- Review of all relevant water right documents with Department of Ecology's Water Right Tracking System database.

Hydrologic/Hydrogeologic Evaluation

Lake Samish sits in a glacially carved depression with underlying Chuckanut formation to the north and Darrington Phyllite to the south. Much of Lake Samish overlies the contact between these two formations. The Chuckanut is composed of sandstone, conglomerate, shale and intermittent coal beds. The underlying Darrington formation is composed of low grade, metamorphosed, fine grained foliated phyllite, greenschist and slate derived from shale. Both these formations are poor producers of economically useful amounts of water due to being well cemented or consolidated and having limited amount of fractures. (Larson 1990) Chuckanut Mountain to the west consists of a series of anticlinal and synclinal folds that extend to the south. (See Figure 2)

In attempting to develop the nursery parcel, the applicant drilled a well, but was unsuccessful in obtaining adequate water.

Source

Lake Samish lies about ten miles southeast of the city of Bellingham in a depression between Chuckanut Mountain on the west and Lookout Mountain to the east. The lake is the source waters for Friday Creek, a tributary of the Samish River, which feeds into Samish Bay. The entire drainage for the lake is about 7,050 acres of the surrounding area. The lake itself comprises about 810 acres. The lake contains roughly 32,000 acre-ft. of dead water storage below the level of the lake outlet to Friday Creek. (Larson 1990)

In the early 1980's concerned citizens and the Washington Department of Fish and Wildlife successfully petitioned Ecology to place a temporary moratorium on existing water rights due to low stream flow conditions on Friday Creek during summer months and damage to shoreline property due to high lake levels during peak winter storm conditions. The ensuing negotiations between shoreline owners, Ecology, Fish and Wildlife, and Whatcom County Officials resulted in the formation in 1991 of the Lake Management District No. 1 which would determine how best to restore and manage lake levels. Subsequently, a lake outlet channel enhancement program was developed to remove residual woody debris left over from logging and sawmill practices from the early 1900's and a retention weir was built at the confluence of Lake Samish and Friday Creek to retain spring runoff to insure a minimum of 2 cfs in Friday Creek during the critical low stream flows in the summer and early fall. (Irvin 1991)

History of Water Use

Applicants Donald G. and Mona C. Reardon filed water right application S1-22314 on July 2, 1974, requesting 0.18 cubic feet per second (CFS) of water drawn from Lake Samish from a single point of diversion to service 2 homes and for irrigation of 4 acres of azaleas and rhododendrons for a nursery on the south eastern part of the proposed place of use. On November 15, 1974 Ecology issued a permit for a total of 0.12 CFS and 8.64 acre feet per year (AF/YR) with 0.04 CFS and 2.0 AF/YR for the two homes and 0.08 CFS and 6.64 AF/YR for nursery use. After proper submittal of a Proof of Appropriation, Ecology issued a certificate for those amounts on January 31, 1977. The point of diversion is currently not metered.

Subsequently Ecology received two applications from the Reardon family in May 1992 that were appurtenant to the property covered by S1-22314C. S1-26566 was filed by Messrs. Donald G. and Harold E. Reardon and Robin C. Geleynse on May 7, 1992, for .04 CFS and 2.0 AF/YR to develop the nursery parcel into a 4 home development. Ecology issued a permit for such use on October 15, 1992, with a development completion date of October 15, 2006. A provision within this permit dictated that a superseding certificate for S1-22314C would be issued once development of this new permit was competed which would amend the legal description of the Place of Use for S1-22314C to exclude the nursery parcel. S1-26581 was filed by Mrs. Mona Reardon on May 13, 1992 for .02 CFS and 2 AF/YR to develop the east 360ft of her property into a two home development. Ecology Issued a permit for .02 CFS and 1.0 AF/YR on October 15th 1992, with a development completion date of October 15th, 2006. Subsequently Ecology issued extensions to both permits to expire on Oct 15, 2013.

Ecology has not received any Proofs of Appropriation for these new permits nor have the properties been subdivided in the 19 years since the permits were issued. In a telephone conversation on September 9, 2011 Mr. Reardon indicated his intent to sell the nursery property and have it remain undeveloped, but that he wished to have the permit extensions run until their expiration date. Unless the applicants can show due diligence in the pursuit of development of these permits or sufficient extenuating circumstances, Ecology may have to cancel these permits when the extensions expire.

On August 3, 2010, Ecology received application CS1-22314C which is the subject of this report. The applicant, Mrs. Mona C. Reardon, proposes to add a point of diversion to the underlying certificate so that each of the two established homes will have their own water source, to change the Place of Use to include only parcels 370325065115 and 370325082137, which would exclude the nursery parcel, and to change the purpose of use from multiple domestic and irrigation to only multiple domestic. Parcel 370325082137 is owned by Mrs. Reardon. The other parcel is owned by her daughter Mrs. Robin Geleynse and is adjacent to and south of Mrs. Reardon's property. Barnes Creek flows between the two properties. In subsequent telephone conversations with Mr. Don Reardon, acting on behalf of his mother, he indicated that they still intended to irrigate approximately 1 acre of grass, fruit trees and bushes. Based on my observations during my visit to the property, I believe this is consistent with historical practices. Therefore the provision to change the purpose to only multiple domestic was dropped.

Proposed Use

Water is currently drawn from the lake on the property south of Barnes Creek, using a 5 hp pump and servicing a 500 gallon storage tank. The property where the new diversion would be installed is adjacent to and just north of Barnes Creek. The new point of diversion will consist of a ¾ hp submersible pump installed under the dock that supplies water to the house via a 1-inch PVC line.

On July 20, 2011, I visited the property along with Christy Fielder of Ecology's Northwest Regional Office. We observed the existing and proposed points of withdrawal, the place of use, and noted any indications of past and current water use including irrigation. We observed that Ms. Reardon has approximately 20 blueberry bushes immediately to the east of her house alongside the driveway and approximately 20 fruit trees further to the east near the edge of the road. In an email dated August 8th, 2011, Mr. Don Reardon, Mrs. Reardon's son, indicated that they intended to irrigate about 1 acre in the future on her property. Even though the current diversion is not metered, based on our on-site observations, historic aerial photo interpretation, and investigation using the Whatcom County property database it is Ecology's conclusion that water has been in regular use since the water right was established for the two homes. Therefore the quantities of .04 cfs and 2 AF/YR for the domestic part of the underlying water right appear to be valid and can be applied to this change application.

Impairment Considerations

Since there will be no increase in the instantaneous and annual quantities of this water right, there will be no impairment to existing water rights to consider.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

In conclusion, It appears that the domestic quantities of the underlying certificate of .04 CFS and 2 AF/YR is has been beneficially used and is available for change and there will be no impairment of existing water rights.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to CS1-22314C be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, et seq.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

Instantaneous Rate: .04 CFS
Annual Quantity: 2.0 acre-feet per year
Purpose: For multiple domestic use for two homes and irrigation of 1 acre.

Points of Diversion
NW ¼ SW ¼ and SW¼ SW¼, Section 25, Township 37 North, Range 03 E .W.M.

Place of Use

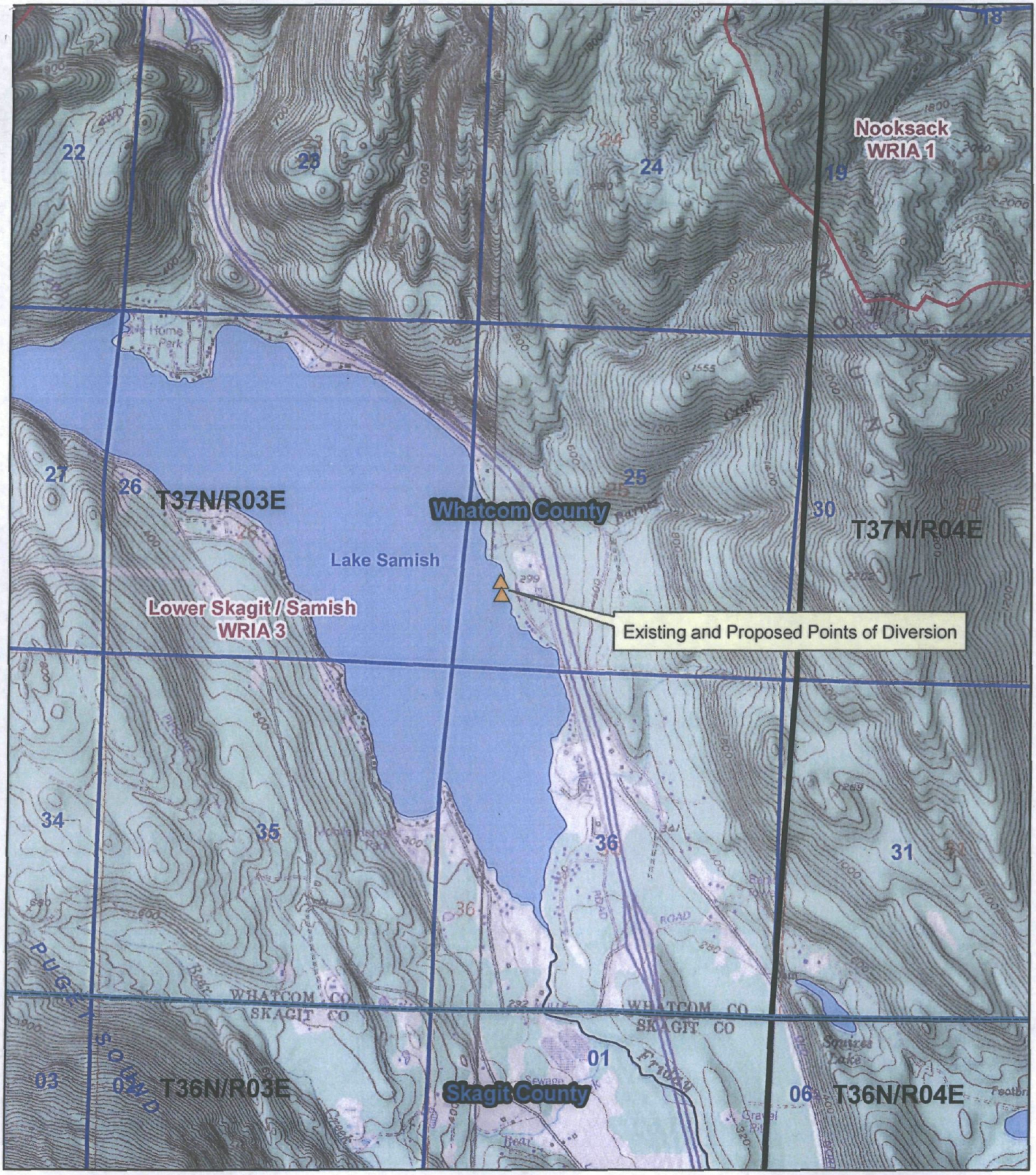
Parcel # 370325082137 AKA that portion of Government Lots 2 and 3, Section 25, T37N R03E. W.M. , lying westerly of Interstate Hwy No. 5, Northerly of the South line of state ditch easement as shown on the plat of "Barnes Samish Lake Addition," as per the map thereof, recorded in Book 9 of Plats, Page 75, in Auditor's office of Whatcom County, Washington, and South of the Following described line:

Beginning at a point on the west right of way line of the said Interstate Hwy. No. 5 which is 230 ft northerly along said highway from the south line of the aforesaid state ditch easement and running thence westerly in a straight line to the west line of Government lot 2, said line running through a point 230 feet due north of the northwest corner of lot 15 of said "Barnes Samish Lake Addition."

Parcel 370325065115 AKA Lot A lot line adjustment to Lots 14 & 15 Barnes Samish Lake Addition.

John M. Rose Licensed Geologist #2827 *Date*

If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.



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W E
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Feet
1:24,000

11/7/2011

Major Water Bodies

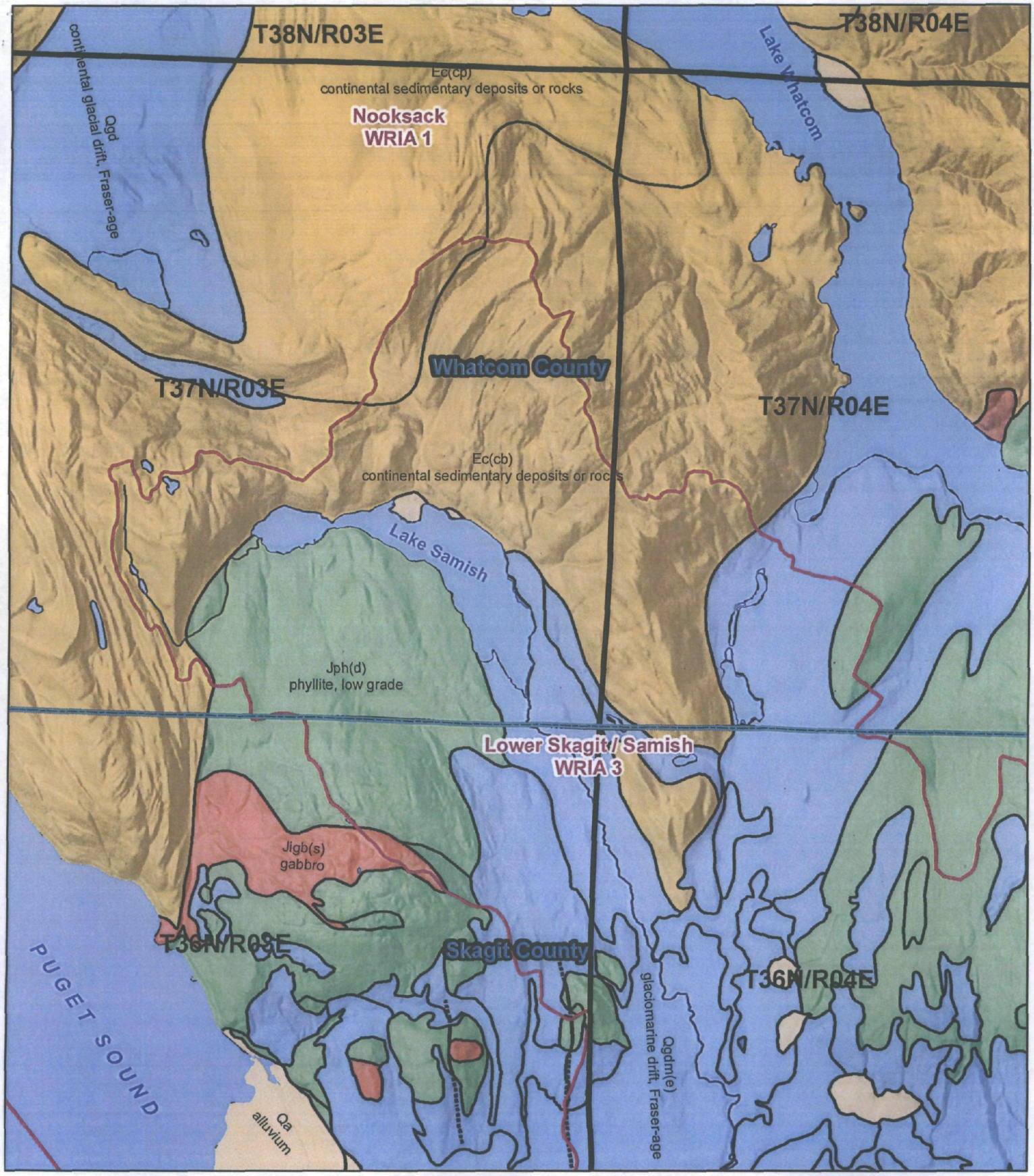
Streams

FIGURE 1

DEPARTMENT OF ECOLOGY
State of Washington

Topographic Map for Water Right Change CS1-22314C

Whatcom and Skagit Counties WA



11/7/2011

Major Water Bodies

Streams

0 1 2

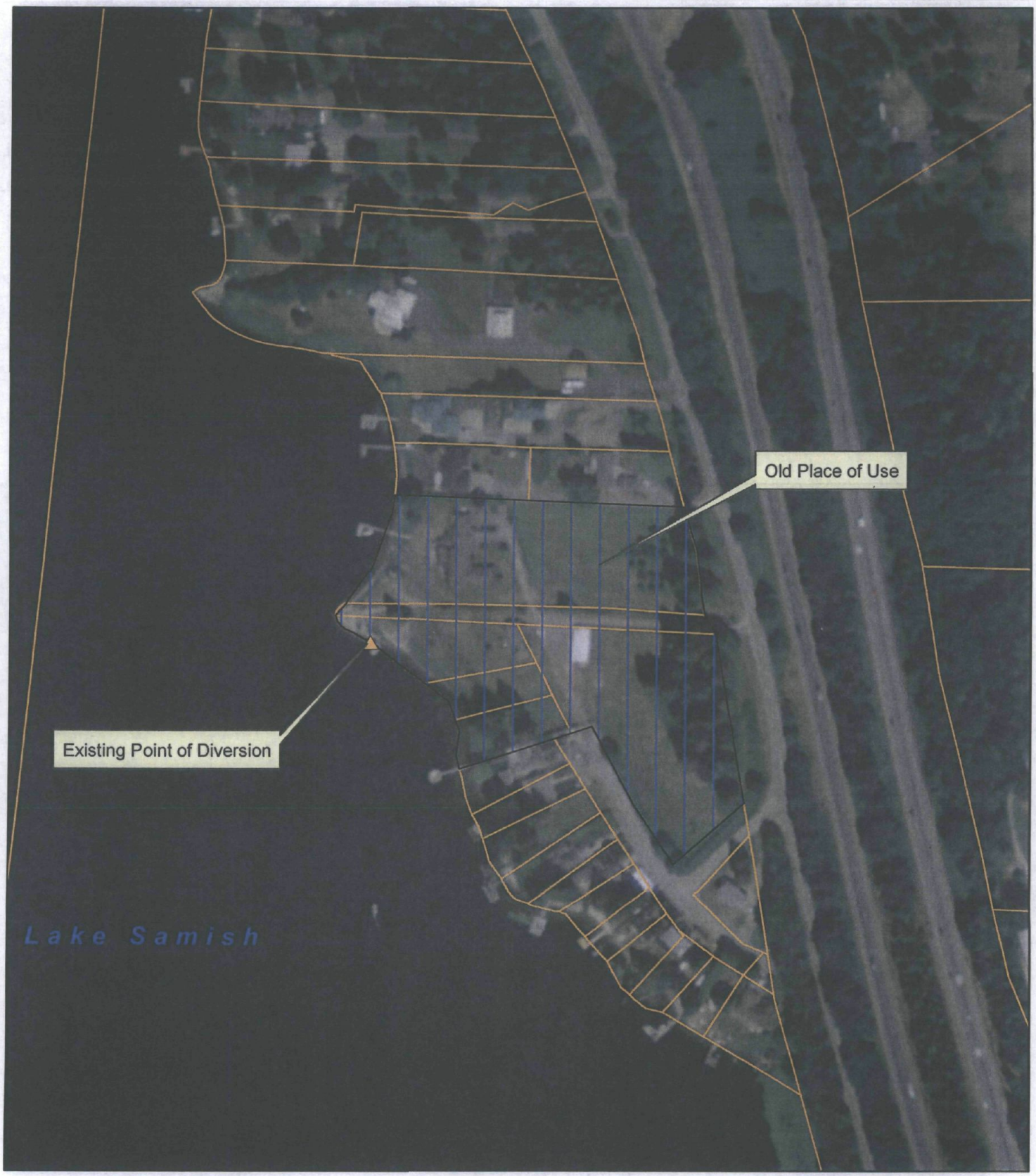
Miles

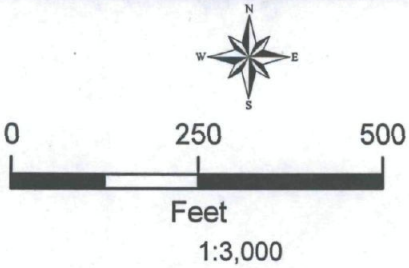
1:75,000

DEPARTMENT OF ECOLOGY
State of Washington

Geologic Map
Vicinity of Lake Samish
Whatcom and Skagit Counties WA

FIGURE 2





11/7/2011

Major Water Bodies

Streams

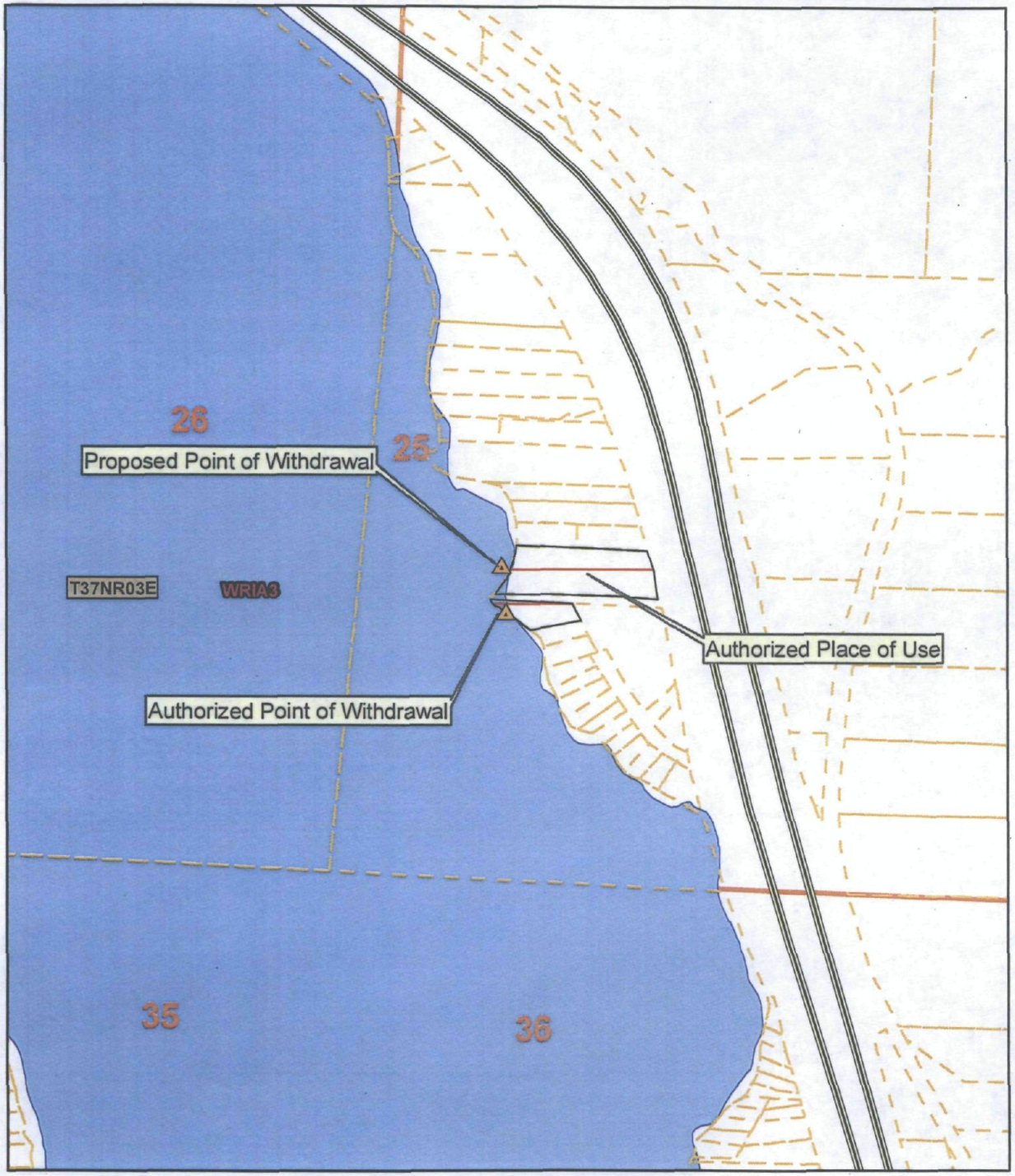
FIGURE 3

DEPARTMENT OF ECOLOGY State of Washington

Pre-existing water right
S1-22314CWRIS
Whatcom County WA

Mona Reardon
Water Right Number CS1-22314C
Sec 25 T 37N R 03E W.M.
WRIA3 - Whatcom County

DEPARTMENT OF ECOLOGY
State of Washington



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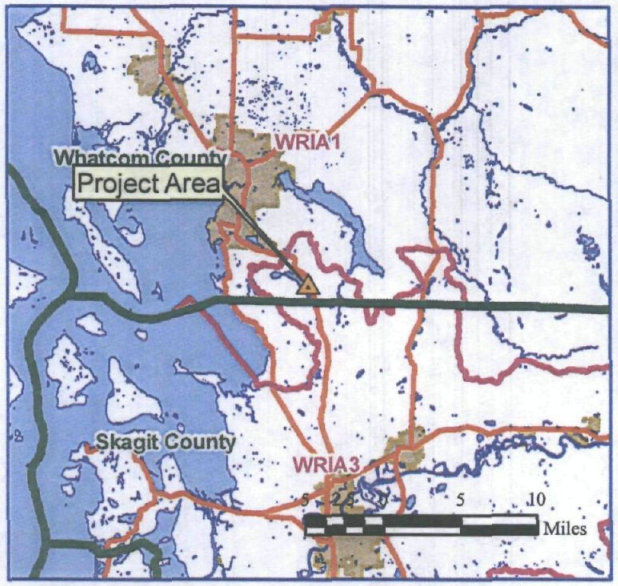

Legend

- WRIA
- Highways
- Townships
- Sections
- cities
- Parcels2007
- Major Water Bodies
- Marsh/wetland
- Authorized Point of Withdrawal
- Certificated Place of Use

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Place of use and point(s) of diversion/withdrawal are as defined on the cover sheetunder the headings,'LOCATION OF DIVERSION/WITHDRAWAL'and 'LEGALDESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'

Attachment 1