DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE
2/20/1995

WATER RIGHT NUMBER
S3-29797

MAILING ADDRESS
Michael D. Buckley
11537 W Highway 12
Walla Walla, WA 99362

Quantity Authorized for Withdrawal or Diversion

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

Denied

Purpose

	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		
PURPOSE	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	PERIOD OF USE (mm/dd)
			CFS			

Denied

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
WALLA WALLA	DRY CREEK	WALLA WALLA RIVER	32-WALLA WALLA

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE

Datum: NAD83/WGS84

Place of Use (See Attached Map)

Denied

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
NA	NA	NA

Provisions

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 not available from the source in question; that there will be impairment of existing rights; and that there will be detriment to the public interest.

Therefore, I ORDER **denial** of Application No. S3-29797.

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

Signed at Spokane, Washington, this 7th day of February, 2012.

Keith L. Stoffel, 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.

INVESTIGATOR'S REPORT
Application for Water Right -- Buckley
Water Right Control Number S3-29797
Dan Tolleson, Department of Ecology

BACKGROUND

On August 16, 2011, letters were sent to all applicants for new surface water within the Walla Walla Basin, indicating that water was no longer available within the basin. Each applicant had the opportunity to either withdraw his or her application or request a formal decision. On August 23, 2011, Mr. Buckley requested that his application be processed and a formal decision issued.

Attributes of Proposal
An application to appropriate public surface water was submitted by Michael D. Buckley to the Department of Ecology on February 20, 1995. The application was accepted and assigned Surface Water Application No. S3-29797. The applicant proposes to divert water from Dry Creek in the amount of 2 cubic feet per second, from November 15 to April 15, for the irrigation of 124.9 acres.

Table 1 Application Summary

Name	**Buckley**
Priority Date	9/22/1995
Instantaneous Rate	2 cfs
Annual Quantity	374.7 acre-feet
Purpose(s) of Use	Irrigation of 124.9 acres
Period of Use	11/15 – 4-15
Place(s) of Use	Within portions of Sections 13, 14, 21, 22, 23 24, and 28, all within T. 7 N., R. 34 E.W.M.

Table 2 Proposed Sources of Withdrawal or Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
DRY CREEK	340713310004	07N	34E	13	SW¼SW¼		
DRY CREEK	340722110004	07N	34E	22	NE¼SE¼		
DRY CREEK	340713310004	07N	34E	23	SE¼NW¼		
DRY CREEK	340713310004	07N	34E	23	NE¼NE¼		

Legal Requirements for Approval of Appropriation of Water

RCW 90.03 authorizes the appropriation of public water for beneficial use and describes the process for obtaining water rights. Laws governing the surface water right permitting process are contained in RCW 90.03.250 through 90.03.340. In accordance with RCW 90.03.290, determinations must be made on the following four criteria in order for an application for water rights to be approved:

- Water must be available
- There must be no impairment of existing rights
- The water use must be beneficial
- The water use must not be detrimental to the public interest.

WAC 173-532 authorizes the management of all water within the Walla Walla River Basin, within Washington (WRIA 32). In accordance with WAC 173-532-045, future permits may only be approved if they meet the applicable requirement of law and one of the following criteria:

- Non consumptive uses
- Proposed water is from the basalt aquifer
- Use of proposed surface water occurs during non-closures and is for an environmental enhancement project.

This report serves as the written findings of fact concerning all things investigated regarding Water Right Application Number S3-29797.

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 Walla Walla Union-Bulletin during the weeks of November 22 and 29, 1995. One protest was received, which is further described in the Consideration of Protest and Comments.

Consultation with the Department of Fish and Wildlife

The Department must give notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water (RCW 77.57.020).

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.

INVESTIGATION

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, claims, and applications in the vicinity; (3) USGS topographic maps and air photographs; (4) diversion works and proposed place of use; (5) Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32 and Watershed Planning; (6) State of Washington Irrigation Guide (Natural Resources Conservation Service 1997); (7) Dry Creek Adjudication; and (8) discussions with Department of Ecology regional program staff.

A field investigation was conducted on November 7, 2011, by Dan Tolleson. Mr. McCoy owns both the proposed place of use and the proposed points of diversion. The project is located on a bluff and hillside above the North Fork of Dry Creek, approximately six miles east of Dixie, Washington.

The proposed source is unnamed springs that are tributary to the north fork of Dry Creek which is a primary tributary of Dry Creek. The basin was adjudicated in the 1950s under the Dry Creek adjudication. The springs proposed for use under this application were historically developed but this existing system has fallen into disrepair. An unused waterline and power line are in place at the springs that were intended to provide water to Mr. McCoy's existing home. The existing home and yard are the proposed place of use.

Proposed Use and Basis of Water Demand

Mr. McCoy originally applied under this application to develop the springs as the only source for domestic supply of a single home. He has since had a well constructed, which currently serves his house. This well has limited production and requires the use of two large storage tanks to keep up with the existing domestic requirements. The intent of this application at this time is to use the springs to supplement the existing well by providing additional water in the late summer and fall when the well production is low. In addition, it would provide a back up source in the event of a well failure. No specific annual quantity has been requested but has been estimated to be one acre-foot per year in the event the exempt well fails.

Other Rights Appurtenant to the Place of Use

There are no water rights overlapping the proposed place of use. One of the many springs near the proposed point of diversion is the source for Water Right Claim No. 301431. Claim No. 301431 is no longer in use and was replaced with an exempt well approximately one year ago. In addition, one domestic exempt well is located and used within the proposed place of use to supply Mr. McCoy's existing home.

Impairment Considerations

Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection. A water right application may not be approved if it would:

- Interrupt or interfere with the availability of water to an adequately constructed groundwater withdrawal facility of an existing right. An adequately constructed groundwater withdrawal facility is one that (a) is constructed in compliance with well construction requirements and (b)

fully penetrates the saturated zone of an aquifer or withdraws water from a reasonable and feasible pumping lift.

- Interrupt or interfere with the availability of water at the authorized point of diversion of a surface water right. A surface water right conditioned with instream flows may be impaired if a proposed use or change would cause the flow of the stream to fall to or below the instream flow more frequently or for a longer duration than was previously the case.
- Interrupt or interfere with the flow of water allocated by rule, water rights, or court decree to instream flows.
- Degrade the water quality of the source to the point that the water is unsuitable for beneficial use by existing users (e.g., via sea water intrusion).

The proposed source is located within the Dry Creek Adjudicated Basin. Water is not always available for the existing water rights within the basin. The additional consumptive water use proposed under this project will impair existing water rights, by reducing water available throughout the year. In addition, Dry Creek is a tributary to the Walla Walla River, which does not always meet its instream flows and is often regulated. With approval of this application, less water would flow into the Walla Walla River that would cause further impairment of the instream flow and senior water rights.

Water Availability

For water to be available for appropriation, it must be both physically and legally available.

Physical availability

For water to be physically available for appropriation there must be ground or surface water present in quantities and quality and on a sufficiently frequent basis to provide a reasonably reliable source for the requested beneficial use or uses. In addition, the following factors are considered:

- Volume of water represented by senior water rights, including federal or tribal reserved rights or claims;
- Water right claims registered under Chapter 90.14 RCW
- Ground water uses established in accordance with Chapter 90.44 RCW, including those that are exempt from the requirement to obtain a permit; and
- Potential riparian water rights, including non-diversionary stock water.
- Lack of data indicating water usage can also be a consideration in determining water availability, if the department cannot ascertain the extent to which existing rights are consistently utilized and cannot affirmatively find that water is available for further appropriation.

Legal availability

To determine whether water to be legally available for appropriation, the following factors are considered:

- Regional water management plans – which may specifically close certain water bodies to further appropriation.
- Existing rights – which may already appropriate physically available water.
- Fisheries and other instream uses (e.g., recreation and navigation). Instream needs, including instream and base flows set by regulation. Water is not available for out of stream uses where further reducing the flow level of surface water would be detrimental to existing fishery resources.
- The Department may deny an application for a new appropriation in a drainage where adjudicated rights exceed the average low flow supply, even if the prior rights are not presently

being exercised. Water would not become available for appropriation until existing rights are relinquished for non-use by state proceedings.

In accordance with WAC 173-532-045, any request for a new water right appropriation, within WRIA 32, must meet a specific list of criteria, in addition to the applicable requirement of law before a permit can be issued. This application is requesting a consumptive domestic and irrigation water right from a surface source within WRIA 32 for year round use. The only consumptive projects that can receive a new water right permit, in accordance with WAC 173-532, are those that provide an environmental enhancement. This proposed project will not meet the requirements set forth in WAC 173-532, meaning water is not legally available for this project.

Beneficial Use

The use of water for domestic supply purposes is defined in statute as a beneficial use (RCW 90.54.020(1)).

Public Interest Considerations

There has been no public expression of protest or concern regarding the subject proposal. However, findings through this investigation indicate that approval of this proposed water right would have detrimental impact to the public welfare. The applicant is proposing to divert water from a source closed by rule (WAC 173-532). This rule was updated in August of 2007, with extensive public participation by way of pre-proposal workshops, formal hearings and rule implementation workshops. The result of this was to close all surface sources to new consumptive appropriations unless there is an environmental benefit. This indicates that issuing new water for any other uses than those expressly listed in the rule is not in the public interest.

Conclusions

In conclusion, water is not available for the proposed appropriation. It is not legally available according to the WAC 173-532, will cause impairment and issuance of a new appropriation is not in the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be **denied**.

Dan Tolleson — 2/2/2012

Dan Tolleson, Report Writer — *Date*

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