DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE	WATER RIGHT NUMBER
September 12, 2012	S3-30675

MAILING ADDRESS
David Logue
2808 S. Assembly Road #25
Spokane WA 99224

SITE ADDRESS (IF DIFFERENT)

Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.03	CFS	1

Purpose of Use

	DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		
PURPOSE	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	PERIOD OF USE (mm/dd)
Domestic supply	0.03	---	CFS	1		continuous

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
PEND OREILLE	PEND OREILLE RIVER	COLUMBIA RIVER	62-PEND OREILLE

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
PEND OREILLE RIVER	433113140003	31N	43E	13	SE¼NE¼	48.1844526	117.3078979

Datum: WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)
433113140003

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE
S½SE½NE¼ east of the private road in Section 13, Township 31 North, Range 43 E.W.M. Pend Oreille County, Washington

Proposed Works

To be determined

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
January 1, 2014	January 1, 2015	January 1, 2016

Measurement of Water Use

How often must water use be measured?	monthly
How often must data be reported to Ecology?	Upon Request by Ecology
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Diversion (gpm or cfs)

Provisions

Measurements, Monitoring, Metering and Reporting
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", WAC 173-173.

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Department of Fish and Wildlife Requirement(s)
The intake(s) shall 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
The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

Proof of Appropriation
The water right holder shall 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 permit. 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, 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.

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; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Surface Water Application No. S3-30675, subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings 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	**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

Signed at Spokane, Washington, this 3rd day of January, 2013.

Keith L. Stoffel, Section Manager

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
Water Right Application Number S3-30675

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S3-30675.

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 Newport Miner on September 26 and October 3, 2012 and no protests were received

Consultation with the Department of Fish and Wildlife (WDFW)

Steven N. Boessow of Washington State Department of Fish and Wildlife (WDFW) was contacted regarding this proposed diversion. Mr. Boessow provided a recommendation that all new diversions from Davis Creek and its tributaries not be issued until such time that instream flows can be established in Davis Creek or lake levels be established in Davis Lake.

This application requests domestic supply and irrigation of 2 acres. After reviewing the applicant's request and conducting the field examination the applicant proposes only domestic supply and a small garden area. No irrigation of the 2 acres is proposed.

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 foot 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

A site visit was conducted by Kevin Brown on November 8, 2012. The applicant has an existing pole building and trailer constructed on the property. The trailer is self contained. He may build in the

future. The applicant desires to obtain a permit for domestic supply without irrigation. The landowner mows a few acres of the property, but does not intend to irrigate the grass area. The property is low lying and sub-irrigated. The applicant wishes to irrigate a small garden area and drip or buck water to some fruit and nut trees until they are established. With the shallow water table in this area the trees should have a root system deep enough to not require much water in the future. The amount of water necessary for these uses will be considered under the domestic supply and not irrigation of lawns.

A small spring area is located a few hundred feet west of the trailer. Water emerges in a small depression and flows south a hundred feet into another small stream flowing northerly from a swamp to the south of the access road. These form together and flow northward towards Deer Creek. The small stream enters Deer Creek on the applicant's property. The flow of this small stream at the time of the field exam was estimated at 10-15 gallons per minute. This should be sufficient to satisfy the applicant's request for domestic supply.

The applicant proposes to excavate out the spring area and install a rainey collector or spring box, consisting of concrete rings filled with gravel. A pump would be installed in the collector. The water would be piped to the residence.

The spring contributes water to a small unnamed stream tributary to Deer Creek, which is in turn tributary to Davis Lake and the Pend Oreille River.

Existing Water Right Documents

Two Water Right Claims that include the property of the applicant are on file.

Short Form Water Right Claim 151839 in the name of Thomas and Eleanor McMurry claims ground water for domestic supply. The place of use is approximately 160 acres within sections 13 and 18. In review of the assessor records, the property is now subdivided into multiple parcels and owned by different landowners.

Water Right Claim 138241 in the name of Thomas and Eleanor McMurry claims 4 cfs of surface water from Deer Creek for irrigation of 172 acres. The place of use is approximately 160 acres within Sections 13 and 18. Much of the land in Section 13 is wooded and was probably never irrigated. A review of the assessor records indicates the property is subdivided into multiple parcels and owned by different landowners.

It does not appear that surface water has been used on the applicant's property for irrigation under the above described claims.

Beneficial Use

Domestic supply is a beneficial use.

Water Availability

An analysis of water availability must take into account not only the physical limitations on the source of supply, but the legal availability as well.

Steve Boessow from the Department of Fish and Wildlife provided comments to this application. They recommended the tributaries of Davis Lake be closed to future consumptive uses to protect Bull Trout and Dolly Varden. They requested Ecology establish minimum instream flows and/or establish a lake level in Davis Lake prior to issuance of additional water rights in the basin.

Hydrogeologic Analysis: The Department of Ecology has not closed the Pend Oreille River to further consumptive appropriations, however all diversions for uses other than domestic supply shall cease when the flow of the Pend Oreille River falls below 7700 cfs at U.S. Geological Survey (U.S.G.S.) gage #12395500. This low-flow is a recommendation from the Washington State Department of Fish and Wildlife (WDF&W) and applies to surface and ground water in hydraulic continuity with the Pend Oreille River since October 18, 1999.

Therefore, water for domestic supply is **not** subject to the recommendation and water is available for appropriation.

Impairment Considerations

A review of department records was conducted for existing water rights, permits, applications and claims within the vicinity of the proposed diversion.

There are multiple water right documents claiming uses from Deer Creek downstream of the applicant's request. Based on the quantity of water proposed for domestic supply, these claimed and certificated uses will not be impaired.

Public Interest Considerations

There has been no public expression of protest or concern regarding the subject proposal, and no findings through this investigation indicate that there would be any detrimental impact to the public welfare through issuance of the proposed appropriation.

Chapter 90.54 RCW provides that water allocation shall secure maximum net benefits to the people of the state, while also requiring that perennial rivers of the state shall be retained with base flows necessary to provide for the preservation of fish and other environmental values.

The approval of this application for this quantity and use will not be detrimental to the public interest.

Conclusions

Under Chapter 90.03.290 RCW, an application for permit may be approved if water is available for appropriation, and the proposed use would be a beneficial use, would not impair existing water rights, and would not be detrimental to the public welfare.

It is the conclusion of this examiner that public surface water is available for domestic supply. This appropriation is considered a beneficial use and will not impair existing water rights or be detrimental to the public welfare.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

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:

0.03 cubic feet per second
1 acre-foot per year
Domestic supply and garden

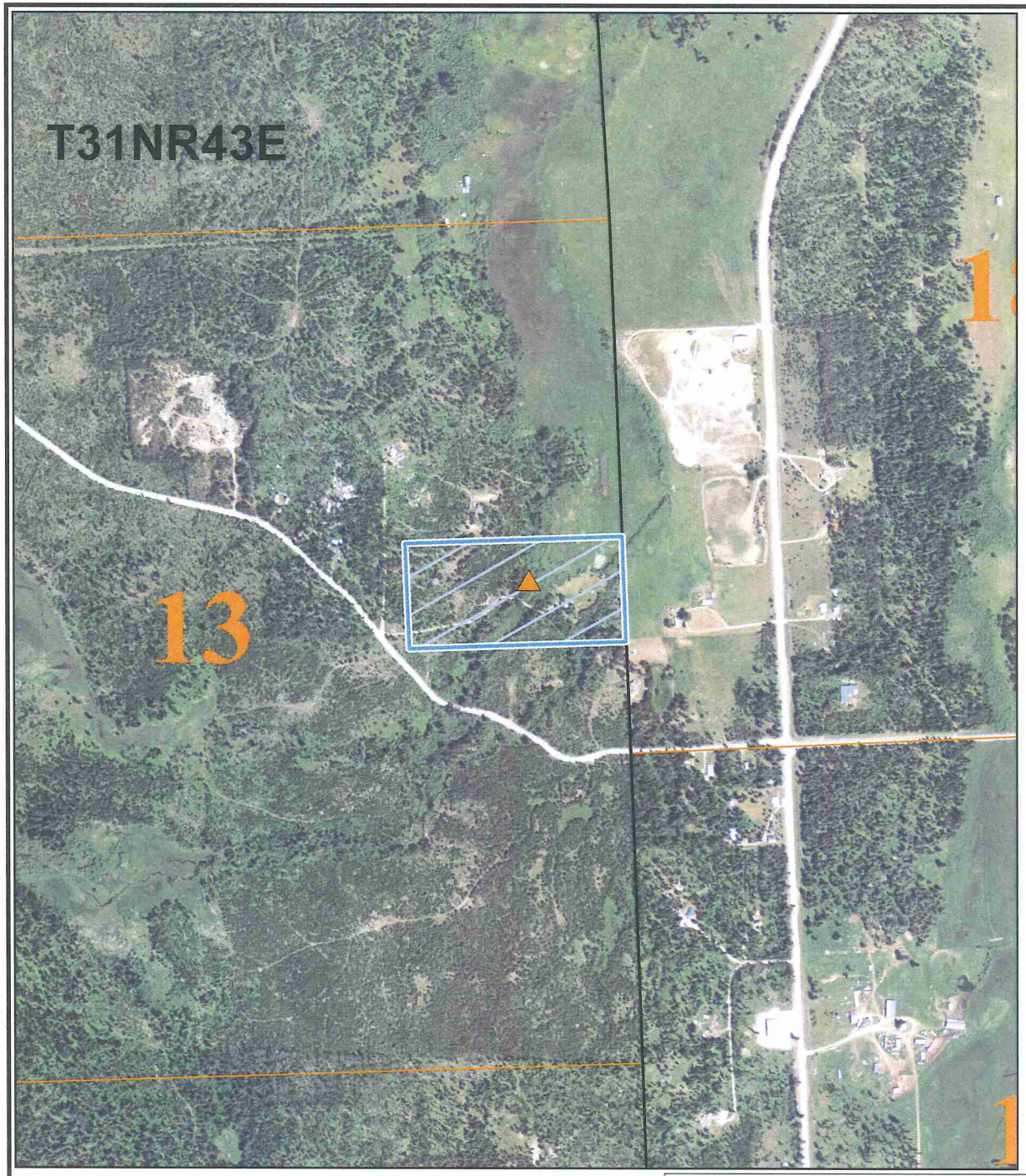
Point of Diversion: SE¼SE¼NE¼, Section 13, Township 31 North, Range 43 E.W.M.

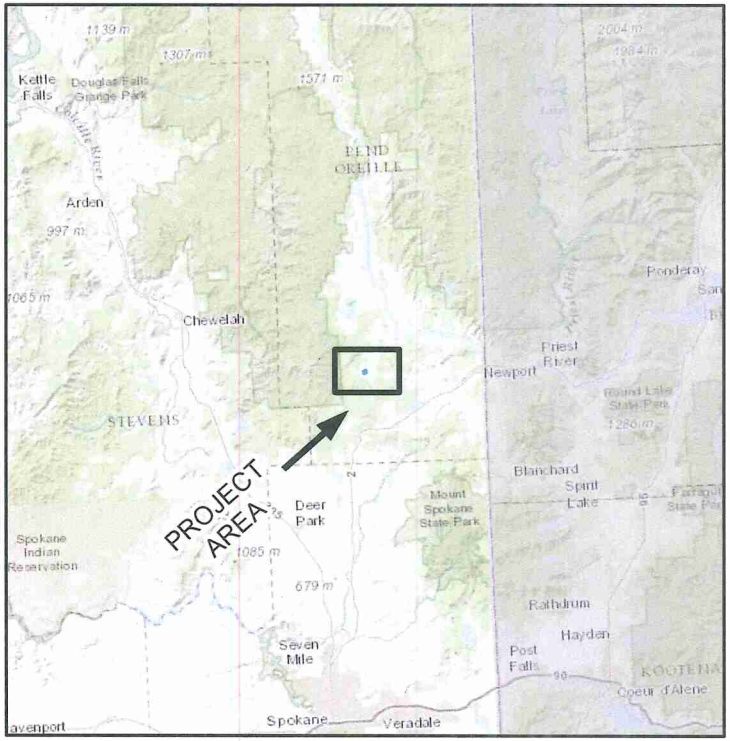
Kevin Brown 1-3-13

Kevin Brown, Report Writer *Date*

If you need this publication in an alternate format, please call the 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.

David Logue
S3-30675
T31N/R43E





Basemap - (ESRI US Topographic Maps)

Legend

- Authorized Place of Use
- Townships
- Sections
- Authorized Point of Diversion

Feet
0 330 660 1,320 1,980 2,640 3,300

Basemap - (NAIP 2011 1m color)

DEPARTMENT OF ECOLOGY State of Washington

Map Date: 12/3/2012

Comment:
Place of use and source locations are as defined within the Report of Examination cover sheet for the document identfied in the header above.

ATTACHMENT 1