S3-30613
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DEPARTMENT OF
ECOLOGY
State of Washington

State of Washington
Report of Examination
for Water Right Application

PRIORITY DATE
2/19/2010

WATER RIGHT NUMBER
S3-30613

MAILING ADDRESS
WA Department of Fish & Wildlife
Mr. John Whalen
2315 N. Discovery Place
Spokane Valley, Washington 99216

SITE ADDRESS (IF DIFFERENT)
Skookum Creek Fish Hatchery
469 Hatchery Road
Usk, Washington 99180

Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
3	CFS	0

Purpose

PURPOSE	DIVERSION RATE ADDITIVE	DIVERSION RATE NON-ADDITIVE	UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE
fish propagation	3		CFS	0		01/01 - 12/31

3 cubic feet per second, continuously, for non-consumptive fish propagation

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Pend Oreille	Unnamed Spring	Skookum Creek	62 Pend Oreille

SOURCE FACILITY/DEVICE	PARCEL	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Spring Diversion	443322220001	33 N	44 E	22	NW¼NW¼	48.3505	-117.2352

Datum: NAD83/WGS84

1000 feet east and 350 feet south from the NW¼ of Section 22

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)
443322220001

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE
NW¼NW¼ of Section 22, Township 33 N., Range 44 E.W.M.

Proposed Works

Gravity feed diversion works from unnamed spring to supply water for a fish hatchery

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
March 1, 2013	March 1, 2018	March 1, 2019

Measurement of Water Use

How often must water use be measured?	Daily
How often must water use data be reported to Ecology?	Upon Request by Ecology
What volume should be reported?	None
What rate should be reported?	Daily Peak Rate of Withdrawal (gpm or cfs)

Provisions

The fish hatchery is allowed one filling or charging of the system each year, subject to existing water right. Water diversion beyond the first filling requires that inflow equals outflow. Additionally, the water returned must meet water quality standards.

Surface Water Application Nos. S3-30613 and S3-30614 shall be limited to a total of 8 cubic feet per second for non-consumptive fish propagation. The sources are not interchangeable and are restricted to the quantities authorized. The Spring Branch diversion shall be limited to 3 cfs as a maximum and the Skookum Creek diversion shall be limited to 5 cfs as a maximum.

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://www.wdfw.wa.gov/reg/regions.htm

A permit from the Department of Fish and Wildlife may be needed to raise fish in any state waters: http://www.wdfw.wa.gov/reg/regions.htm.

Water Use Efficiency
Use of water under this authorization shall 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 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 Application No. S3-30613, subject to existing rights and the provisions specified above.

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

- File your appeal and a copy of this document 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 document on Ecology in paper form - by mail or in person. (See addresses below.) Email 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 Road SW Suite 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

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 .

Signed at Spokane, Washington, this day of 2012.

Keith L. Stoffel
Section Manager
Water Resources Program

INVESTIGATOR'S REPORT
Application for Water Right -- WA Department of Fish & Wildlife
Water Right Control Number S3-30613
Department of Ecology

BACKGROUND

Washington Department of Fish & Wildlife has simultaneously filed two applications to appropriate waters of the state under Surface Water Application Nos. S3-30613 and S3-30614 for the Usk Fish Hatchery project.

Description and Purpose of Proposed Application

An application to appropriate public surface water was submitted by Washington Department of Fish & Wildlife to the Department of Ecology on February 19, 2010. The application was accepted and assigned Surface Water Application No. S3-30613. The applicant proposes to divert water from an unnamed spring in the amount of 3 cubic feet per second for continuous fish propagation. The proposed point of diversion is to be located within the NW¼NW¼ of Section 22, Township 33 North, Range 44 East of the Willamette Meridian.

Table 1 Application Summary

Attributes	Summary
Name	WA Department of Fish & Wildlife
Priority Date	February 19, 2010
Instantaneous Quantity	3 cfs
Annual Quantity	n/a
Purpose of Use	Fish propagation
Period of Use	Continuous
Place of Use	Skookum Creek Fish Hatchery

Table 2 Proposed Sources of Withdrawal or Diversion

Source Name	Parcel	Twn	Rng	Sec	QQ Q	Latitude	Longitude
Unnamed Springs	443322220001	33 N	44 E	22	NW¼NW¼	48.3505	117.2352

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum: NAD83/WGS84.

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.

This report serves as the written findings of fact concerning all things investigated regarding Water Right Application Number S3-30613.

Public Notice

RCW 90.03.280 requires that notice of a water right application by published one a week, for two consecutive weeks, in a newspaper of general circulation in the area where the water is to be stored, diverted and used. Notice of this application was published in the Newport Miner during the weeks of May 26 and June 2, 2010 and no protests were received.

Consultation with the Department of Fish and Wildlife

RCW 90.03.280 requires the Department to send notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water. The department also provides this notice to appropriate Indian Tribes. Significant comments have been received since the applicant is the Department of Fish and Wildlife. They have provided a mitigation package for this project to ensure the fishery of the stream is protected (see below).

Priority Processing and Overriding Consideration of Public Interest (OCPI)

Priority processing was originally requested by this applicant and was approved since the project initially appeared to meet the criteria under WAC 173-152. Further review of the project revealed that although it is an environmental enhancement, it did not meet specific requirements for non-consumptive use. This resulted in the application no longer being eligible for priority processing. The applicant then pursued OCPI as an alternative to priority process the application. This process was eventually abandoned and a mitigation package was proposed. The application is now being processed without priority.

State Environmental Policy Act (SEPA)

Washington Department of Fish & Wildlife issued a Determination of Nonsignificance and Adoption of Existing Environmental Document on January 6, 2011.

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; (4) air photographs; (5) Pend Oreille (WRIA 62) Watershed Management Plan; and (6) discussions with Department of Ecology regional program staff.

A field investigation was conducted on July 6, 2010, by Dan Tolleson with Douglas Robison of the Department of Fish & Wildlife and Mary Ausburn of SEPA. Washington Department of Fish & Wildlife

owns both the proposed place of use and the proposed point of diversion. The project is located adjacent to Skookum Creek, approximately 3.25 miles northeast of Usk, Washington. This area is located within Water Resource Inventory Area (WRIA) 62, the Pend Oreille River watershed.

The Pend Oreille County Board of Commissioners adopted a watershed management plan, for WRIA 62, in 2005. This plan is currently in Phase 4 Implementation stage, with no instream flows set. Skookum Creek and its tributaries form a sub-basin within WRIA 62, lying generally to the northeast of its confluence with the Pend Oreille River. This area has multiple small tributary creeks and many small tributary lakes. Through the watershed planning process, stream monitoring will occur for Skookum Creek to better understand its flows.

The proposed site currently consists of an old fish hatchery first constructed in 1926, which was used into the 1950s. The fish rearing building, living quarters, shop and several small support buildings remain at the site. The old gravity feed diversion system for the hatchery remains in place although it has degraded to an unusable condition. It consists of pipe diversions from Skookum Creek and from an unnamed spring developed into a pond. The spring and creek were diverted into a control structure just down gradient of the spring site. The combined water was then fed, by a pipe, into the fish hatchery. It was reported by Doug Robison that at some point, a well was constructed to supply domestic water for the facility. Water was withdrawn under the exemption (RCW 90.44.050) since no right exists for domestic supply. Use from this well continued for the caretaker's house until around 2005.

Proposed Use and Basis of Water Demand

The proposed project is a new fish hatchery utilizing a simulated native fish-rearing habitat. The proposal is for all new buildings, ponds, diversions and control structures. The project will be built at the same site as the existing hatchery, once it has been demolished. The applicant proposes to build new diversions at approximately the same sites as the old existing diversions with one being Skookum Creek and the other the unnamed spring. The unnamed spring is the headwater for a small tributary to Skookum Creek, which is referred to in this report as the "Spring Branch". The unnamed spring diversion is requested under water right application S3-30613 and the Skookum Creek diversion is requested under application S3-30614. Water from both diversions will be blended for proper temperature, and utilize a gravity delivery system to provide water for all stages of use in the fish hatchery. This blended water will then be returned to Skookum Creek immediately downstream of the facility. In a specific low flow situation, water will be pumped back to the authorized point of diversion on Skookum Creek to maintain habitat (see Water Availability analysis in the Report of Examination for S3-30614).

The diversion proposed under this application is from the unnamed spring located in the NW¼NW¼ of Section 22, T. 33 N., R. 44 E.W.M. This previously developed spring is proposed to be redeveloped with a new delivery system. The WDFW proposed to appropriate 3 cubic feet per second for fish propagation. No consumptive use of water is proposed under this application, although there will be a bypass reach of approximately 200 yards. This bypass reach will be from the spring site to its confluence with Skookum Creek, adjacent to the hatchery.

A new well, developed under the exemption, is proposed to be constructed for domestic supply of the facility. Water use under the exemption is limited to 5,000 gallons per day for domestic supply purposes. The original domestic well at this site will need to be properly decommissioned if deemed no longer usable for this project.

The Department of Fish and Wildlife has indicated that a 6-year development schedule is required to construct a new facility.

Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing water rights, permits, applications and claims in the vicinity of the proposed point of diversion. The search focused primarily on Section 22 within, Township 33 N., Range 44 E.W.M. The review of Ecology records shows one water right certificate appurtenant to the project.

Surface Water Certificate No. 873 authorizes 7 cubic feet per second, from an unnamed spring to supply water for a fish hatchery. According to the Department of Fish & Wildlife, this fish hatchery was in use from 1926 to the 1950s. Water was diverted from the authorized unnamed spring source and from Skookum Creek, which was not an authorized source. Since water has not been used under this right for more than fifty years, the right has been relinquished from non-use. A voluntary relinquishment will be requested.

(The validity and extent of the above listed water right is not determined in this report.)

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 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 site lies approximately 5 miles upstream from the confluence of Skookum Creek with the Pend Oreille River. This application is requesting authorization to divert non-consumptive water for fish propagation. Water will be diverted approximately 200 yards upstream of the hatchery and will be released directly downstream from the hatchery. This return area will be adjacent to the hatchery and in the vicinity of the confluence of Skookum Creek and the Spring Branch.

No water rights diversions exist within the bypass reach. There are no instream flow restrictions for the Skookum Creek drainage, therefore, the bypass will not violate any instream flow requirements established by law.

The dewatered section of the Spring Branch is solely located on the lands owned by WDFW. No other land owners will be affected by reduced flows. In addition, since it is a non-consumptive right, no downstream water rights will be affected.

The fish hatchery is allowed one filling or charging of the system each year, subject to this existing water right. Water diversion beyond the first filling requires that inflow equals outflow. Additionally, the water returned must meet water quality standards.

The water requested is non-consumptive and the effects of diversion will have minimal impact so it is not anticipated that the proposed appropriation will cause impairment to existing water rights, provided the recommendations are satisfied.

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 is 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 include 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 drainages 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.

The Skookum Creek Basin has an administrative restriction known as Surface Water Source Limitation (SWSL). This SWSL closes Skookum Creek to all new consumptive uses with the exception of single domestic supply and stockwater. The proposed project is non-consumptive overall, therefore, it is allowed under this restriction.

Skookum Creek is listed as low priority by the Pend Oreille Salmonids Recovery Team because there are no document ESA listed species. In addition, the stream is not targeted for any habitat restoration work.

The proposed project will have a bypass reach of approximately 200 yards, which will effectively dewater much of the Spring Branch reach. Sculpin are the most numerous native fish within the bypass reach. The dewatering of the Spring Branch will have little effect on native fish species since only the lower 80 feet has been found to have fish and this was considered poor quality habitat. The dewatered reach also appears to be a gaining reach, therefore, some water will remain within the lower portion of the spring branch.

The facility will be run and regulated by WDFW, which will make certain that the habitat within Skookum Creek will remain at acceptable levels, throughout the year. Additionally, the water returned must meet water quality standards.

As indicated above, the proposed project is non-consumptive and will have no physical impact to the source, beyond the spring branch. The use will have no significant impact to the overall existing flow of Skookum Creek since water will be returned to the system at the site where it normally flowed into Skookum Creek. In addition, there will be no impacts to existing rights, reservations of water, basin management plans, instream flows or other instream uses. Water is available for the proposed non-consumptive fish propagation uses both legally and physically from the unnamed spring of Skookum Creek.

Beneficial Use

The use of water for fish propagation 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, and no findings through this investigation indicate that there would be any detrimental impact to the public welfare through issuance of the water right.

Ecology has received letters of support for the proposed project from the following parties:

- Pend Oreille County Public Utility District
- Department of Interior, U.S. Fish and Wildlife Service
- Washington State Department of Fish and Wildlife

As indicated above, the proposed project would be entirely a non-consumptive water use. This use of water at this location will not affect the instream flows of the Skookum Creek. The facility will be used to help restore bull trout, a threatened species under the Endangered Species Act, in Northeast Washington. In addition, this facility will be used to supply bull trout in other wild stock recovery areas of eastern Washington. The habitat of Skookum Creek, within the bypass area, will be maintained though a pump-back mitigation facility. Based on these facts and this investigation, there are no findings that indicate there would be any detrimental impact to the public welfare through issuance of this permit.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

It is the conclusion of this examiner that: (1) public surface water is available for appropriation for 3 cubic feet per second, non-consumptive, continuously, for fish propagation, (2) the water use is a beneficial use, and the appropriation (3) will not impair existing water rights, (4) nor will it be detrimental to the public welfare.

The entire proposed project for the Skookum Creek Fish Hatchery is to divert 3 cubic feet per second from a spring tributary to Skookum Creek and 5 cubic feet per second from Skookum Creek itself, for fish propagation. The maximum non-consumptive total proposed under both rights is 8 cubic feet per second. The sources are not interchangeable and are restricted to the quantities authorized under Surface Water Application Nos. S3-30613 and S3-30614.

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:

3 cubic feet per second, continuously
Non-consumptive supply, for fish propagation

Point of Diversion

NW¼NW¼, Section 22, Township 33 North, Range 44 E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

Dan Tolleson, Report Writer *Date*

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