DEPARTMENT OF
ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE
9/11/2008

WATER RIGHT NUMBER
S3-30602

MAILING ADDRESS
Phumee Elleseg
181 Cusick Creek Road
Cusick, Washington 99119

SITE ADDRESS (IF DIFFERENT)

Quantity Authorized for Withdrawal or Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.54	CFS	1.35

Purpose

PURPOSE	DIVERSION RATE ADDITIVE	DIVERSION RATE NON-ADDITIVE	UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Irrigation	0.04			1.35		4/1 - 10/31
Pond use	0.5			0		1/1 - 12/31

0.04 cubic feet per second, from April 1 to October 31, for the irrigation of ½ acre of lawn and garden; and 0.5 cubic feet per second, continuously, for non consumptive pond use

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Pend Oreille	Cusick Creek	Pend Oreille River	62-Pend Oreille

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Cusick Creek Diversion	433413529004	34 N.	43 E.	13	NW¼SW¼	48.4440°	117.3257°
						Datum: NAD83/WGS84	

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)
433413529004

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE
Lot 4 Seven Devils West First Addition, according to plat recorded in the office of the Pend Oreille County Auditor, Pend Oreille County, Washington

Proposed Works

Non-consumptive diversion to fill a pond and pump station from pond for irrigation of lawn/garden

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
May 1, 2013	May 1, 2015	May 1, 2016

Measurement of Water Use

How often must water use be measured?	Every two weeks
How often must water use 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 Withdrawal (gpm or cfs)

Provisions

Pond Requirements

The pond/excavations (small impoundment) associated with use of water under this authorization shall be lined in accordance with RCW 90.03.370(8), for the purpose of minimizing the loss of water through seepage.

The pond is allowed one filling or charging of the system each year, subject to existing right. Water diversion beyond the first filling requires that inflow equals outflow, less water diverted for irrigation. The outflow water from the pond shall be returned at the same point it was diverted with no bypass reach. Additionally, the water returned must meet water quality standards.

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) 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/

No dam shall be constructed in connection with this diversion.

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.

Pend Oreille River Low Flow
All irrigation shall cease when the flow of the Pend Oreille River falls below 7700 cubic feet per second at U.S. Geological Survey (U.S.G.S.) gage #12395500, Pend Oreille River at Newport, located within Section 24, Township 56 N., Range 6 W.B.M.

Real Estate Excise Tax
This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477 Internet: http://dor.wa.gov/. E-mail: REETSP@DOR.WA.GOV.

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. S3-30602, 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 day of 2013.

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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
Application for Water Right – Phumee Elleseg
Water Right Control Number S3-30602
Dan Tolleson, Department of Ecology

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S3-30602.

Table 1 Summary of Requested Water Right

Applicant Name:	Phumee Elleseg
Date of Application:	9/11/2009
Place of Use	Lot 4 Seven Devils West First Addition, according to plat recorded in the office of the Pend Oreille County Auditor, Pend Oreille County, Washington

County	Waterbody	Tributary To	WRIA
Pend Oreille	Cusick Creek	Pend Oreille River	62-Pend Oreille

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Irrigation	0.04	CFS	3	04/01	10/31
Non-consumptive pond	0.50	CFS	0	01/01	12/31

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Cusick Creek	433413529004	34 N.	43 E.	13	NW¼SW¼	48.4440°	117.3257°

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

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

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 notice to appropriate Indian Tribes. The department has developed an electronic procedure to meet this statutory requirement. Applications are posted to an RSS (Really Simple Syndication) feed to which Department of Fish and Wildlife, Tribes and other agencies have been advised to subscribe. Through subscription to the RSS feed, interested parties may review new water right applications and provide comment. In addition, a copy of the water right application and map were submitted, by email, to Steve Boessow at WDFW in October of 2012 and no comments were received.

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

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 September 25, 2012 by Dan Tolleson, with Phumee Elleseg. Ms. Elleseg owns both the proposed place of use and the proposed point of diversion. The project is located adjacent to Cusick Creek, approximately 7 miles north of Cusick, 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. Cusick

Creek makes up a sub-basin within WRIA 62, lying generally to the northwest of its confluence with the Pend Oreille River. This basin has multiple small tributary creeks and several small tributary lakes.

The proposed project has two parts, with one being the redevelopment of a pond and the other seeking the authorization to use the existing irrigation system. The applicant proposed to divert water from Cusick Creek into the pond and use the existing pump station at the pond to irrigate the yard. The proposed pond was put into use approximately 35 years ago with a ditch diversion from Cusick Creek. The tail water was returned immediately downstream of the pond. The small dam that diverted water from the creek was removed about three years ago to comply with Washington Department of Fish and Wildlife. In addition, the diversion ditch and return ditch were backfilled. Water from Cusick Creek has not been used since that time.

The proposed project is for redevelopment of the existing small impoundment/pond and to use water from the pond to provide irrigation of the yard. The proposed pond is approximately 80 feet long and 25 feet wide lying parallel to the creek. The pond has no dam and is dug into the ground to a maximum depth of about 6 feet. The pond is estimated to hold ¼ of an acre-foot and does not require a reservoir permit. The pond currently collects ground water and remains partially full. The irrigation system has a pump station on the existing pond, which is proposed to be retained. The pumping station was used to irrigate the lawn and garden around the house with a solid set sprinkler. The irrigated lawn and garden around the house is estimated to be one-half acre. After the pond diversion was removed the yard was irrigated from the domestic well under the exemption.

Proposed Use and Basis of Water Demand

This applicant proposes to divert a maximum of 0.5 cfs for non-consumptive pond use. The pond is a small impoundment that does not require a reservoir permit. In addition, the applicant proposes to divert a maximum of 0.04 cfs, for the irrigation of one-half of an acre.

The proposed seasonal irrigation is for a lawn and garden. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that an estimated 2 acre-feet, per acre, is required for grass/turf in the Newport area. At a 75% efficiency rate of application, the approximate maximum water duty, for the land and garden is up to a maximum of 2.7 acre-feet per year, per acre. This results in an allocation of 1.35 acre-feet per year for the irrigation of one-half of an acre.

Impairment Considerations

Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection.

A review of Ecology records was conducted for existing water right certificates, permits, and claims in the area surrounding the project. The search focused primarily on Section 13, T. 34 N., R. 43 E.W.M. The review of Ecology records shows two water rights downstream of the project on Cusick Creek and two water right claims appurtenant to the proposed place of use, described as follows:

- Surface Water Certificate No. S3-24075 authorizes 0.01 cubic foot per second, 1 acre-foot per year for the irrigation of one-half acre. Use under this water right was not determined during the investigation. The authorized point of diversion is on the next lot downstream of the Ms. Elleseg's proposed point of diversion.

- Water Right Claim No. 112140, Seven Devils Ranch Inc., 60 cubic feet per second, 105 acre-feet per year for the domestic supply, stock water and for the irrigation of 20 acres. The claimed source is Cusick Creek. The claimed place of use overlaps Ms. Elleseg's proposed place of use and the claimed point of diversion appears to be just downstream of Ms. Elleseg's proposed point of diversion. No water use was apparent under this claim at the time of the field exam. In addition, the claimed quantity is more than the creek's total flow.

- Water Right Claim No. 112141, Seven Devils Ranch Inc., 0.03 cubic feet per second, 5 acre-feet per year for domestic supply, stock water and for the irrigation of one acre. The claimed source is two wells. The claimed place of use overlaps Ms. Elleseg's proposed place of use. The claimed priority date is 1949 which postdates the water code, meaning the claim may not be valid.

Water under Claim Nos. 112140 and 112141 is not used on the applicant's property, however, the overall water use and validity of these two claims was not investigated. The Department of Ecology recognizes that the final determination of the validity and extent associated with a claim registered in accordance with RCW 90.14 ultimately live with the Superior Court through the general adjudication process provided for by Sections 90.03.110 through 90.03.240 RCW.

Ms. Elleseg's proposed project is located approximately ¾ of a mile upstream from the confluence of Cusick Creek with the Pend Oreille River. This application is requesting authorization to divert non-consumptive water to fill a pond and consumptive water for the irrigation of one-half acre. The proposed pond and irrigation system were installed in the mid 1970s and used until a few years ago. The water use proposed by Ms. Elleseg has occurred for most of the past 35 years without any reported impairment to existing rights. There is little if any water actually diverted downstream of the project, on Cusick Creek, under existing rights. Continued use of the diversion for one-half acre of irrigation is not anticipated to cause any impairment to existing rights, since it essentially has already been put to use. In the event of low flows on Cusick Creek it is possible that this authorization may be regulated to satisfy the senior rights.

The use of water for a pond is not anticipated to cause impairment, provided it remains non-consumptive. To ensure that it remains non-consumptive the following restrictions will be in place. The pond is allowed one filling or charging of the system each year, subject to existing right. Water diversion beyond the first filling requires that inflow equals outflow, less any water diverted for the irrigation of one-half acre, described above. The outflow water from the pond shall be returned at the same point it was diverted with no bypass reach. The water returned must meet water quality standards. Additionally, a pond liner will need to be installed to ensure that seepage is kept to a minimum.

Water Availability

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

Cusick Creek does not have an administrative restriction or Surface Water Source Limitation (SWSL), meaning the creek is not legally closed to new appropriations. The most recent new water Report of Examination (S3-27520 dated 10/14/1983) for this creek indicated that water was available. The water use proposed by Ms. Elleseg has occurred for most of the past 35 years. This essentially means the proposed water use would not cause a new impact since it is already in use. The flow of the creek has

adequate capacity for the irrigation requested under this application. Therefore, water is available for the irrigation portion of the proposed appropriation.

Cusick Creek flows directly into the Pend Oreille River. The Department of Ecology has not closed the Pend Oreille River to further consumptive appropriations, however all diversions 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. Although water is available for appropriation, all irrigation shall cease when the Pend Oreille River falls below the low flow recommendation from the Washington State Department of Fish and Wildlife.

Water is available for the proposed pond portion of the project since it is non-consumptive. The flow of Cusick Creek can drop to approximately a half of a cubic foot per second in some years. During these dry times water may be physically available but it may not be practical to divert. In these situations the instantaneous quantity of the diversion may need to be reduced. In addition, no dam shall be constructed in connection with the diversion from Cusick Creek, to make more water available.

Beneficial Use

The proposed uses of water are beneficial uses (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 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. To maintain these values the irrigation authorizations shall be subject to the minimum instream flow of 7700 cfs as measured at U.S.G.S. gage #12395500 near Newport set by WDF&W on October 18, 1999.

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

Conclusions

It is the conclusion of this examiner that public ground water is available for the seasonal irrigation of one-half an acre and for the non-consumptive pond use. 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:

0.04 cfs, 1.35 acre-feet per year, from April 1 to October 31 for the irrigation of ½ acre
0.5 cfs, 0 acre-feet per year, continuously, for non-consumptive pond use

Point of Diversion

NW¼SW¼ of Section 13, Township 34 North, Range 43 E .W.M.

Place of Use

Lot 4 Seven Devils West First Addition, according to plat recorded in the office of the Pend Oreille County Auditor, Pend Oreille County, Washington

Dan Tolleson, 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.