



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Change of: Place of use and Point of Diversion
WRTS File # CS3-24163C

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
December 4, 1974		S3-24163	S3-24163

NAME Rock'n J Properties		
ADDRESS/STREET	CITY/STATE	ZIP CODE
43977 Joseph Creek Road	Asotin, WA	99402

PUBLIC WATERS TO BE APPROPRIATED

SOURCE		
Joseph Creek		
TRIBUTARY OF (IF SURFACE WATERS)		
Grande Ronde River		
MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr)
0.31		68.5
QUANTITY, TYPE OF USE, PERIOD OF USE		
0.31 cubic feet per second, 67.5 acre-feet per year, from April 1 to September 15, each year, for irrigation of 15 acres, 1 acre-foot per year for continuous stockwater		

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL						
450 feet North and 150 east of the center of Section 35						
SOURCE	LATITUDE	LONGITUDE	QTR/QTR	SECTION	TOWNSHIP	RANGE
Diversion	46.0396°	117.0060°	SW ¹ / ₄ NE ¹ / ₄	35	7 N.	46 E.W.M.

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

[Attachment 1 shows location of the authorized place of use and point(s) of diversion or withdrawal]

SW¹/₄NE¹/₄, W¹/₂NE¹/₄NE¹/₄ of Sec. 35, lying east of Joseph Creek Road and the S³/₄W¹/₂SE¹/₄ of Sec. 26 lying east of Joseph Creek and west of Joseph Creek Road, all within T. 7 N., R. 46 E.W.M.

DESCRIPTION OF PROPOSED WORKS

Pump diversion, main line and traveling big guns

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Started	May 1, 2012	May 1, 2013

PROVISIONS

Measurements, Monitoring, Metering and Reporting

1. An approved measuring device shall be installed and maintained for each of the sources authorized by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", chapter 173-173 WAC. <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>
2. Water use data shall be recorded weekly and maintained by the property owner for a minimum of five years. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to the Department of Ecology by January 31st of each calendar year.
3. Chapter 173-173 WAC 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".
<http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

Fish and Department of Fish and Wildlife

4. This authorization is subject to Washington Department of Fish and Wildlife fish screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Fish screening criteria are attached to this Report of Examination. 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>

Schedule and Inspections

5. 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 provisions, and to inspect at reasonable times any measuring device used to meet the above provisions.
6. The water right holder shall file the notice of Proof of Appropriation of water (under which the certificate of change 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 of change will reflect the extent of the project perfected within the limitations of the change authorization. Elements of the proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

General Conditions

7. This authorization to make use of public waters of the State is subject to existing rights, including any existing rights held by the United States for the benefit of Indians under treaty or otherwise.
8. The amount of water granted is a maximum limit that shall not be exceeded and the water user shall be entitled only to that amount of water within the specified limit that is beneficially used.
9. The water quantities and uses recommended and/or the number of acres to be irrigated may be reduced at the time of issuance of a final water right commensurate with the capacity of the installed system and the uses and/or the number of acres actually irrigated.
10. 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.

FINDINGS OF FACT AND ORDER

Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not be detrimental to existing rights.

Therefore, I ORDER approval of the recommended change of place of use and point of diversion under Change Application No. S3-24163C, subject to existing rights and the provisions listed above.

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the “date of receipt” of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

Deliver your appeal in person to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

Deliver your appeal in person to:

The Department of Ecology
Appeals & Application for Relief
Coordinator
PO Box 47608
Olympia, WA 98504-7608

OR

The Department of Ecology
Appeals & Application for Relief
Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Keith L. Stoffel
Department of Ecology
Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205

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 2010.

Keith L. Stoffel, Section Manager
Water Resources Program
Eastern Regional Office

BACKGROUND

Description and Purpose of Proposed Change

An application for change/transfer was submitted by Rock'n J Properties of Asotin, Washington, to Ecology on November 9, 2007. The application was amended August 18, 2008. They propose to change the place of use and point of diversion as granted under Surface Water Certificate No. S3-24163C.

Attributes of the Certificate and Proposed Change

Table 1 Summary of Proposed Changes to Water Right No. S3-24163C

<i>Attributes</i>	<i>Documented</i>	<i>Proposed</i>
Name	Fred and Mildred Haberman	Rock'n J Properties
Priority Date Date of Application for Change	December 4, 1974	August 18, 2008
Instantaneous Quantity	0.31 cubic feet per second	No Change
Annual Quantity	71 acre feet	No change
Source	Joseph Creek	No change
Point of Diversion/Withdrawal	SE¼SE¼NW¼ of Sec. 35, T. 7 N., R. 46 E.W.M.	SW¼NW¼ of Sec. 35, T. 7 N., R. 46 E.W.M.
Purpose of Use	Irrigation of 15 acres and stock water	No Change
Period of Use	April 1 to October 31*	No Change
Place of Use	SE¼SE¼NW¼ of Sec. 35, and SW¼SE¼ of Sec. 36, all within T. 7 N., R. 46 E.W.M.	Portions of Sec. 35 and 26, within T. 7 N., R. 46 E.W.M.

*(The original provision stated in part the following: "Upon the establishment of a base flow the irrigation period will be extended to October 31 each year...")

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in place of use.

- **Public Notice**

A notice of application was duly published in accordance with RCW 90.03.280 in the Lewiston Morning Tribune on December 1 and 12, 2007, and no protests were received. An amended notice of application was duly published in accordance with RCW 90.03.280 in the Lewiston Morning Tribune on November 7 and 14, 2008, and no protests were received. This amended notice reflects amendments to the application.

- **State Environmental Policy Act (SEPA)**

Environmental review under SEPA is required for many projects; however, some minor projects are categorically exempt from SEPA. Appropriations of one cfs or less of surface water, or of 2,250 gpm or less of ground water, for any purpose, and appropriations of 50 cfs or less for surface water used for irrigation are categorically exempt from SEPA. See WAC 197-11-305.

- **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 the proposed changes/transfers, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Surface Water Certificate No. G3-24163C and other water rights/claims/permit in the vicinity; (3) diversion works; (4) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide (Natural Resources Conservation Service 1997) and; (5) discussions with Department of Ecology regional program staff.

Joseph Creek is located in the middle Snake Watershed, WRIA 35. This area is currently undergoing active Watershed Planning. This planning process reviews water quality, quantities authorized and in use and habitat. They are currently in Phase 2 of the planning process. For more information see the web site at <http://www.ecy.wa.gov/apps/watersheds/planning/35.html>

A site visit of the project was conducted on August 14, 2008, by Dan Tolleson with Mike Haberman. This project is located approximately 21 miles south of Asotin, Washington. The diversion being less than one mile upstream on Joseph Creek from the confluence of the Grande Ronde River, within WRIA 35.

History of Water Use

This project historically consisted of a gravity feed ditch system that followed the contours of the hillside and was used for flood irrigation and stock water. The system is in the process of being converted to a pressurized mainline system with traveling big guns. The new system is proposed to continue to provide stock water. Most of this new system is in place and was being utilized during the field visit.

It appears that the point of diversion authorized under the certificate was issued in error. The diversion described on the certificate is well up on the hillside and not near Joseph Creek which is the authorized source. This historically used point of diversion is located approximately 600 feet to the east of the authorized site, on Joseph Creek. The historical diversion consisted of a head gate and fish screen for a gravity-feed ditch. The proposed point of diversion is located downstream several hundred feet from the historical point of diversion. The diversion was moved to the proposed site and a new pumping station was installed to provide water for a pressurized mainline. This proposed diversion was completed several months prior to this field exam in 2008.

It appears that the legal description for the authorized place of use in Section 36 was issued in error. The place of use described by the certificate is for the most part extremely steep land that could not have been irrigated by the historical gravity-feed irrigation ditch. The map within the original permit file describes what is currently being irrigated and not what was authorized on the certificate. Furthermore, the place of use requested on the original water right application, although somewhat to the west, is similar to what is actually irrigated. The current place of use is the bottom land along the east side of Joseph Creek, consisting of five small fields of various shapes and sizes.

Aerial photographs were used to help verify the extent of development, historical use and beneficial use of Surface Water Certificate No. S3-24163C. It appears that approximately 15 acres have been historically irrigated within five small fields of various sizes under this right. The actual irrigated land is consistent with the map within the original permit file and not the authorized place of use which was issued in error.

It appears that stockwatering has historically occurred under this right primarily for cattle. It is used at various times of the year for varying amounts of animals up to 1 acre-foot.

This water right was originally issued with the following provision: *"Irrigation shall be allowed from April 1 to September 15 each year until such time that a base flow is established. Upon the establishment of a base flow the irrigation period will be extended to October 31 each year with the annual quantity increased proportionately to the adjusted irrigation season and withdrawal from September 15 to October 31 shall be subject to established base flow."* It appears that at the time this right was issued, it was assumed that a base flow for Joseph Creek would be established in a reasonably short time frame. A base flow for this creek has not been established in the 30 years since this certificate was issued. No use of water was ever authorized during the September 16 - October 31 period, and

because of this no water could have been put to beneficial use under this right during the time. Therefore, the season of use remains limited to April 1- September 15. When a base line or instream flow is established, a change application or new application can then be filed with Ecology to request an extension for the season of use. The annual quantity which was to be adjusted proportionately, per the provision, to the possible extended season, is what has historically and beneficially been used from April 1 – September 15. Any additional annual quantity for an extended season of use will need to be requested under a new application for appropriation of water.

Historically, it appears that this right has predominately been used to irrigate pasture and grain. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that an estimated 2.5 acre-feet, per acre, is required for grass/turf in the Pomeroy area from April 1 to September 15. The Pomeroy area is estimated to have a similar water requirement. The current irrigation system of traveling big guns is estimated at a 60% efficiency rate of application. With a 60% efficiency rate of application an estimated 4.1 acre-feet per acre would need to be applied for crops that use 2.5 acre-feet per acre. The authorized water duty of this certificate is 4.67 acre-feet per year, per acre from April 1 to September 15. Continued irrigation of this project will require 68.5 acre-feet per acres per year for the irrigation of 15 acres. It appears that up to the remaining 0.57 acre-feet of the water duty is no longer required due to the change from an unlined ditch to a pressurized pipe system and modern farming practices.

Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing water rights, permits, and claims in the area surrounding the project. The search focused primarily on Section 26, 35 and 36, T. 7 N., R. 46 E.W.M. The review of Ecology records shows five claims that overlap the project and are as follows:

Water Right Claim No. 088378, claims one gallon per minute, one acre-foot, continuously for stock water from a spring. The claimed place of use overlaps with the authorized place of use of S3-24163C. This overlap exists within that portion of the place of use of S3-24163C that was issued in error.

Water Right Claim Nos. 067484, 067485 and 067486 each claim 0.004 cubic feet per second, 0.5 acre of an acre-foot, for stock water and wildlife. The claim was filed by Washington State Department of Natural Resources, for springs. The claimed places of use overlap with the authorized place of use of S3-24163C. These overlaps exist within that portion of the place of use of S3-24163C that was issued in error.

Water Right Claim No. 08837, claims ten gallons per minute, one acre-foot, continuously for domestic supply. The claimed source is a spring and the claimed place of use overlaps with the proposed place of use of S3-24163C. The claimed place of use is located within an area that has not, nor is intended to be irrigated under S3-24163C.

(The validity and extent of above listed water rights and claims are not determined in this report.)

Impairment Considerations

“Impair” or “impairment” means to: 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, and/or 2) to prevent the beneficial use of the water to which one is entitled, and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flow levels established by rule (POL-1200), and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

The proposed and existing diversions are located on the Joseph Creek approximately one mile from its confluence with the Grande Ronde River. The applicant proposes to move the authorized point of diversion several hundred feet downstream to the proposed and existing point of diversion. This application is requesting authorization to change the place of use and the point of diversion, granted under Surface Water Certificate No. S3-24163C. It appears that this water right has been exercised and beneficially used in the past.

CONCLUSIONS

No Impairment to Existing Rights:

No tributaries or water right diversions exist between the authorized and proposed points of diversion. There will be no impairment to existing water rights. No water will be diverted above what has been historically used and it is not anticipated that the proposed change/transfer would cause impairment to existing water rights.

No Enhancement of the Authorized Right:

The proposed change will not increase the amount of water withdrawn from Joseph Creek, nor will it increase or expand the right. No withdrawal of water over and above what has been historically authorized is approved through this change.

It is the conclusion of this examiner that, in accordance with Chapters 90.03, this application for change (by changing the place of use and point of diversion, as granted under Surface Water Certificate No. S3-24163C) will

not enlarge the quantity of water historically used, nor will it impair existing rights provided the recommendations are followed.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to the place of use and point of diversion be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2.

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:

- 0.31 cubic feet per second
- 68.5 acre-feet per year
- Irrigation of 15 acres and stockwater

Point of Diversion

SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, Township 7 North, Range 46 E.W.M.

Place of Use

SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 35, lying east of Joseph Creek Road and the S $\frac{3}{4}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ of Sec. 26 lying east of Joseph Creek and west of Joseph Creek Road, all within T. 7 N., R. 46 E.W.M.

Report by: _____
Dan Tolleson
Water Resources Program

_____ Date

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W/Draft ROEs/Tolleson 2010/S3-24163 Rock 'n J Properties

Attachment 1

