



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

DRAFT

REPORT OF EXAMINATION
Change of: Point of Diversion
WRTS File # CS2-11079

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
December 8, 1965		14647	11079

NAME		
Silver King LLC		
ADDRESS/STREET	CITY/STATE	ZIP CODE
Mailing: PO Box 910	Port Angeles, WA	98362

PUBLIC WATERS TO BE APPROPRIATED

SOURCE		
Jim Creek		
TRIBUTARY OF (IF SURFACE WATERS)		
Strait of Juan de Fuca		
MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (afy)
0.06		1.61
QUANTITY, TYPE OF USE, PERIOD OF USE		
1.61 Acre-feet per year	Multiple Domestic	Year-round, as needed

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL					
151 feet north and 1478 feet east from the West ¼ corner of Section 13, T. 31 N., R. 11 W.W.M.					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
SE ¼ NW ¼	13	31 N.	11 W.W.M.	19	Clallam
PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM		
113113220000	48.184	-124.064			

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

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]

Government Lot 2, Section 13, Township 31 North, Range 11 W.W.M.; except that portion conveyed to the State of Washington by warranty deed recorded under Auditor's File No. 411198, and except that portion conveyed to the State of Washington by warranty deed recorded under Auditor's File No. 703162; and subject to an easement to the Pacific Telephone and Telegraph Company as recorded under Auditor's File No. 297557.

DESCRIPTION OF PROPOSED WORKS

Two seepage storage tanks which are perforated for water capture and storage within Jim Creek. A pump will convey water from the storage tanks to a large reservoir. From this point, water will be gravity-fed in a pipe downhill to the outlet locations, including one boat-cleaning area, one sewage disposal station, and one general water area.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE

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", WAC 173-173. <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>
2. Water use data shall be recorded annually and maintained by the property owner for a minimum of five years, and shall be promptly submitted to the Department of Ecology upon request.

Department of Fish and Wildlife

3. No dam or weir shall be constructed in connection with this diversion.
4. 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.html>
5. Any previous diversion, no longer in use, within Jim Creek shall be dismantled and removed from the stream channel.

Schedule and Inspections

6. 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.
7. The water right holder shall file the notice of project completion 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 *Superseding Certificate* will reflect the extent of beneficial use within the limitations of the change authorization. Elements of the project completion inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and compliance with provisions.

General Provisions

8. The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.
9. 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 under Change Application No. CS2-11079, subject to existing rights and the provisions listed above.

You have a right to appeal this decision. 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:	OR	Deliver your appeal in person to:
The Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903		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:	OR	Deliver your appeal in person to:
The Department of Ecology Appeals Coordinator P.O. Box 47608 Olympia WA 98504-7608		The Department of Ecology Appeals Coordinator 300 Desmond Dr SE Lacey WA 98503

3. And send a copy of your appeal to:

Thomas Loranger
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia WA 98504-7775

Signed at Olympia, Washington, this _____ day of _____, 2009.

Thomas Loranger, Section Manager
Water Resources Program
Southwest Regional Office

INVESTIGATOR'S REPORT
Amy Nielson, Department of Ecology
Water Right Control Number CS2-11079

Background

Description and Purpose of the Proposed Change

On October 24, 2005, Silver King LLC submitted an *Application for Change/Transfer of Water Right* to change the point of diversion under Surface Water Certificate (SWC) 11079.

This certificate was issued to Merrill and Ring Company of Seattle with a priority date of December 8, 1965. It authorizes diversion of water from Jim Creek in the amount of .06 cubic feet per second (cfs) and 18 acre feet per year (afy). The purpose of use is identified as domestic supply for a camping and recreational vehicle resort located near the Strait of Juan de Fuca.

A group of 25 individuals, Silver King LLC, purchased the property and water system in 2004. At that time, they filed a change application to update the point of diversion, as identified on Water Right Certificate 11079, located in the SW ¼ SW ¼ of Section 13, Township 31, and Range 11 W.W.M. in Clallam County. The applicants requested to move the point of diversion to the diversion point most recently utilized by Merrill and Ring Company, located in the SE ¼ NW ¼ of Section 13, Township 31, and Range 11 W.W.M. in Clallam County, approximately 790 ' from the mouth of the Jim Creek.

Attributes of the Change Application and Proposed Change

Table 1. Summary of Proposed Changes to Water Right Change Application No. CS2-11079

<i>Attributes</i>	<i>Existing</i>	<i>Proposed</i>
Name	Merrill and Ring Co.	Silver King LLC
Priority Date Date of Application for Change	December 8, 1965	October 24, 2005
Instantaneous Quantity	0.06 cfs	No Change
Annual Quantity	18 afy	1.61 afy
Source	Jim Creek	No Change
Point of Diversion	SW ¼ SW ¼ Section 13, T. 31N R. 11WWM	SE ¼ NW ¼ Section 13, T. 31N R. 11WWM
Purpose of Use	“Domestic Supply for Resort”	“Multiple Domestic Supply”
Period of Use	“During entire year”	“Year-round, as needed”
Place of Use	As described, within Government Lot 2, Section 13, Township 31 North, Range 11 W.W.M.	No Change

Legal Requirements for Proposed Change

Public Notice (RCW 90.03.280)

A public notice to change the point of diversion to existing water rights was published in the *Peninsula Daily News* of Clallam and Jefferson Counties on December 13 and 20, 2005. Ecology received no letters of concern or protest regarding this application.

Due to an error in the original public notice, an amended public notice to change the point of diversion to existing water rights was published in the *Peninsula Daily News* of Clallam and Jefferson Counties on January 24 and 31, 2008. Ecology received no letters of concern or protest regarding this application.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation of significant adverse environmental impacts) if any of the following conditions are met:

- 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;
- It is a groundwater right application for more than 2,250 gallons per minute;
- It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- 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);
- 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.

Consultation with the Department of Fish and Wildlife (WDFW)

Ecology notifies WDFW of applications to divert or store water (RCW 77.57.020).

State Water Code Requirements

The following is a list of requirements that must be met prior to authorizing the proposed change in point of diversion for Water Right Certificate CS2-11079.

- **Statement of Authorities**

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 such a change can be made without detriment or injury to other existing water rights (RCW 90.03.380).

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*.

- **Water Resources Statute and Case Law**

The Revised Code of Washington (RCW) Chapters 90.03 and 90.44 authorize the appropriation of public water for beneficial use and describe the process for obtaining water rights including the process to amend or change existing rights. Laws specifically governing the water right permitting process are RCW 90.03.250 through RCW 90.03.340 and RCW 90.44.060. Changes or amendments to these rights are covered under RCW 90.03.380 and RCW 90.44.100. Water right claims are administered under RCW 90.14.010 through RCW 90.14.121.

Investigation

The following information was used to evaluate this *Application for Change*:

- Washington Groundwater and Surface Water Codes, administrative rules, and policies.
- Other recorded water rights in the area.
- Topographic and local area maps.
- Information collected during a site visit conducted on December 21, 2007 by Abigail Brown and Amy Nielson.
- Interviews with members of Silver King, LLC.
- Water use estimates provided by Jessica Kuchan of Mentor Law Group.
- 2001 Washington State Department of Health Design Manual.
- Interviews with Belinda Perro, representing Clallam County Health Department.
- January 16, 2008 letter from Washington Department of Fish and Wildlife (WDFW) biologist Steve Boessow.

History of Water Use

Ecology issued SWC 11079 to Merrill and Ring Company in May of 1970. The water right authorized the diversion of 0.06 cfs and 18 afy from Jim Creek, a tributary to the Straits of Juan de Fuca.

Silver King Resort has been operating since the 1970s and originally consisted of about 175 campsites, an office/store, restrooms, an RV dump station, boat launch, and a fish cleaning station. Water was diverted from Jim

Creek and treated with chlorine in a holding tank. Water was then stored in a 5,000 gallon tank until it was transmitted to the resort through a network of 1” and 2” diameter PVC pipe (Mentor, 2008). In the early 1990s, limitations of an on-site sewage disposal system and the addition of a caretaker’s mobile home caused the resort to reduce the number of campsites to 41 (Swope, 1992).

In 1995, Merrill and Ring hired Polaris Engineering and Surveying to assess the resort’s infrastructure. Results of the assessment showed the existing water treatment facilities did not comply with Washington State Department of Health’s surface water treatment requirements. According to Department of Health’s records, Merrill and Ring stopped using the water treatment facility on August 29, 1995.

Despite decommission of the water treatment facility, the resort continued to use water under the authorization of SWC 11079 for non-potable uses. Resort managers filled 250 gallon plastic tanks with water for boat washing, RV cleaning, and for using in the resort’s store (Mentor, 2008).

In June 2000, Merrill and Ring hired Mike Szatlocky, of the Cedarwood Group, to design a water treatment facility for the resort. Szatlocky contacted Ecology to discuss the possibility of drilling an exempt well to use as a source in addition to its surface water (Szatlocky, 2000). Consequently, two wells were drilled and neither yielded water. As a result, Merrill and Ring opted to rely on the surface water right as the resort’s primary water source.

Through 2000 to 2003, Szatlocky continued work on the design of a water treatment facility in order to provide potable water to Silver King Resort. However, in 2005 the project was cancelled when Merrill and Ring sold the resort property to Silver King LLC.

Silver King LLC currently operates the resort and continues to utilize the water for non-potable purposes.

Proposed Use

This water right authorization will provide the resort with a source of non-potable water to 30 recreational vehicle (RV) sites for boat cleaning, RV septic tank flushing, and irrigation. Water demands for these uses are approximated as follows:

Proposed Use	Proposed Annual Quantity (afy)
Boat Cleaning	0.42
RV Septic Tank Flushing (Sanitation)	0.19
Irrigation	1.0
Total Annual Quantity (Q_a)	1.61 afy

The purpose of use of the original water right is “Domestic Supply for Resort”. Although this change is approved for “Multiple Domestic Supply”, the purposes are identical and it is understood that it includes some incidental irrigation of the grounds.

The original certificate lists the period of use as “during entire year”. This change authorizes “year-round, as needed”. These two periods of use are identical.

Other Rights Appurtenant to the Place of Use

A search in Ecology’s Water Rights Tracking System (WRTS) showed that there are no other existing water rights appurtenant to the applicant’s place of use.

Impairment Considerations

The proposed diversion site is located approximately 790 feet from the mouth of Jim Creek. There are no existing water rights or senior water users downstream from the proposed diversion.

Water Availability

In assessing water availability, Ecology distinguishes between *physical* and *legal* water availability.

Physical Availability

Under the original water right authorization for SWC 11079, water from Jim Creek was found to be available in the instantaneous amount of 0.06 cfs and the annual quantity of 18 afy. Furthermore, the site visit performed on December 21, 2007, demonstrated that flows in Jim Creek exceeded 0.06 cfs and water is physically available.

Legal Availability

Historic evidence of water use under the asserted right does not show use approached 18 afy (Mentor, 2008). A more reasonable quantity of water which has been perfected through continuous use since the issuance of the certificate is 1.6 afy.

Although the annual quantity of 1.6 afy is significantly less than that authorized by the original right, it has been deemed a sufficient quantity to provide water for the resort's necessary water uses (Health, 2001).

As noted above, there are no senior water rights – either for instream or out-of-stream purposes – that predate the Jim Creek permit. Water is therefore legally available for appropriation, consistent with the original allocation.

Recommendation of the Department of Fish and Wildlife

Ecology received comments regarding this project from WDFW Biologist Steve Boessow on January 16, 2008. According to Mr. Boessow, these waters and/or the affected reaches downstream are inhabited by coho salmon and cutthroat trout as well as other game and non-game fish species. WDFW has no objection to approval of this application provided the following conditions are met:

- An HPA will be required for any work on the surface diversion.
- Surface diversion must be screened for fish (addressed in the HPA).
- Any abandoned surface diversions must be decommissioned in a manner that prevents potential harm or entrapment of fish.

Consideration of Protest and Comments

No protests were filed against this application.

Conclusions

To approve a surface water change under RCW 90.03.380(1), Ecology must show that such a change can be made without detriment or injury to existing rights. This investigation confirms:

- Water continues to be available for appropriation.
- The proposed use, multiple domestic, is a beneficial use.
- Existing rights will not be impaired by this change.

Recommendations

Based on the above investigation and conclusions, I recommend that the request for change to SWC 11079 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:

- 0.06 cfs
- 1.6 acre-feet per year
- Multiple Domestic Supply

Point of Diversion

SE ¼, NW ¼, Section 13, Township 31 North, Range 11 W.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

Report by: _____
Amy Nielson Date
Water Resources Program

If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6300. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

References

Mentor, Joe. 2008. Letter to Ms. Abby Brown. Seattle, WA, USA. June 20, 2008.

Swope, Dennis. 1992. Letter to Mr. John Haller. Port Angeles, WA, USA. October 27, 1992.

Szatlocky, Mike. 2000. Letter to Merrill & Ring Tree Farm, Attn: Mr. Joe Murray. Port Angeles, WA, USA. June 14, 2000.

Washington State Department of Health. 2001. Water Demand Requirements. *Water System Design Manual*. Olympia, WA. 2001, DOH Pub #331-123 (Rev. 8/01), pp. 5-14.

ATTACHMENT 1

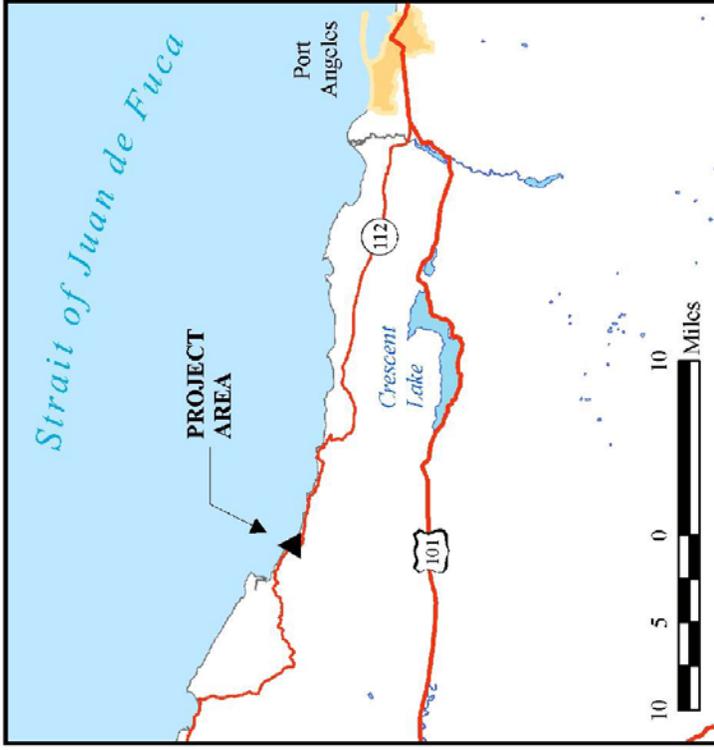


 Silver King LLC

 Water Right Number CS2-11079

 Sec. 13 T 31N, R 11W W.M.

 WRIA 19 - Clallam County



- Legend**
-  PLACE OF USE (POU)
 -  POINT OF DIVERSION (POD)
 -  CITIES
 -  SECTION LINES
 -  TOWNSHIP LINES
 -  HIGHWAYS

Comments:
 Place of use, points of withdrawal/diversion are as defined on the cover sheet under the heading: 'LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'
 Map Created 5/18/2009 atn

