



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

RESERVOIR
REPORT OF EXAMINATION
TO CONSTRUCT A RESERVOIR AND STORE FOR BENEFICIAL USE
WATER OF THE STATE OF WASHINGTON

PRIORITY DATE	APPLICATION NO.	PERMIT NO.	CERTIFICATE NO.
April 14, 1994	R1-27455		

NAME Thomas F. Nichols		
ADDRESS/STREET	CITY/STATE	ZIP CODE
26864 Helmick	Sedro Woolley	98284

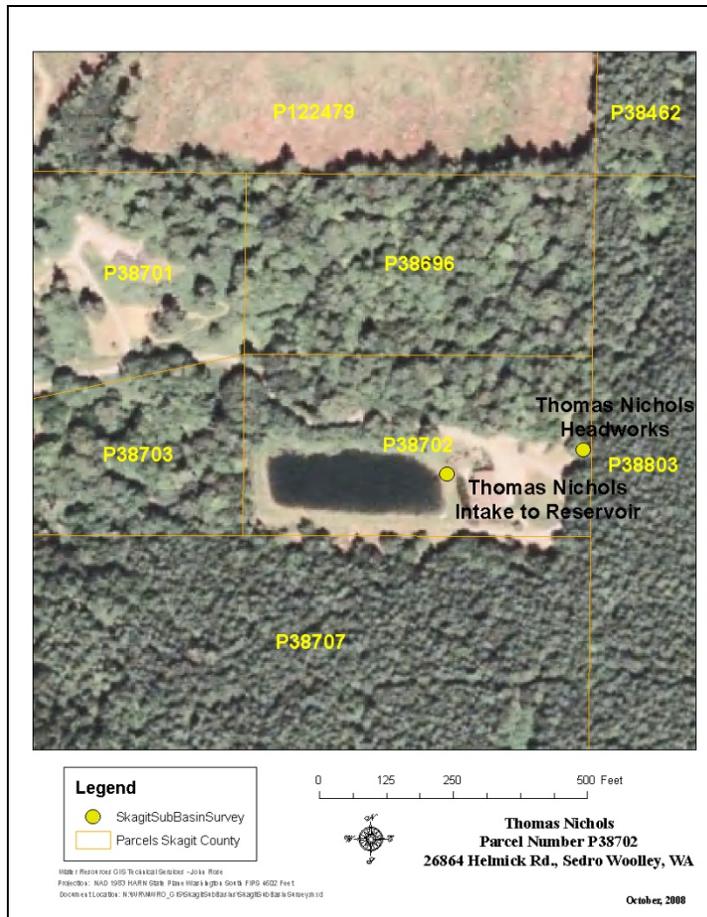
NAME OF STREAM OR OTHER SOURCE FOR RESERVOIR SUPPLY	TRIBUTARY OF (IF SURFACE WATER)
Unnamed	Skagit River
NUMBER OF ACRE FEET STORED WHEN RESERVOIR IS FULL	USE(S) TO BE MADE OF IMPOUNDED WATER
10	Fire Protection – as needed Wildlife Refuge and Fish Propagation

LOCATION OF IMPOUNDING STRUCTURE

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
NE 1/4 NE 1/4	09	35	05E	3	Skagit

PARCEL OF LAND IN WHICH THE SUBMERGED AREA IS LOCATED

Tract 2 of short plat no 37-81, approved August 3, 1981, and recorded August 3, 1981, in Volume 5 of short plats, page 107, being a portion of the NE 1/4 Section 9, Township 35 North, Range 5 East, W.M. Parcel Number P38702 as shown in photo below.



DESCRIPTION OF IMPOUNDING STRUCTURE

Reservoir was constructed by excavating a pond and forming a dike along the south and west sides. Water is diverted from an intermittent stream to the pond and flow is returned to the stream through 2 - 12 inch pipes. The reservoir is about 12-15 feet deep.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Begun	Completed	In use

PROVISIONS

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE: Any new work to the dam or inlet/outlet of the pond may require an HPA or fish screens. An Area Habitat Biologist should be contacted prior to any work that would have any effect on waters of the state. The addition of fish to this pond will require a fish stocking permit.

DAM SAFETY: Dam owners are required to evaluate the safety of their dam and all appurtenant works and to make modifications, as become necessary, to reasonably secure safety to life and property. For current requirements, please contact:

Doug Johnson
Dam Safety Office Leader
Department of Ecology Dam Safety Office
PO Box 47600, Olympia, WA 98504-7600
(360) 407-6623
djisd461@ecy.wa.gov

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 authorization to appropriate public water as recommended will not be detrimental to existing rights or the public interest.

Therefore, I ORDER the approval of Reservoir Application No. R1-27455, subject to existing rights and the provision specified 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.
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1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

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

OR

Deliver your appeal in person to:

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:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Andrew B. Dunn, Section Manager
Water Resources Program
Department of Ecology
Northwest Regional Office
3190 160th Ave SE
Bellevue, WA 98008

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 Bellevue, Washington, this 18th day of February, 2009.

Andrew B. Dunn, Section Manager
Water Resources Program
Northwest Regional Office

INVESTIGATOR'S REPORT

This report is being written many years after the Department of Ecology received the water right application for this project. Due to a long-term lack of personnel and ongoing watershed planning, Ecology has not processed applications for new water rights in Skagit County for more than a decade. Personnel are now available, instream flows have been adopted, and application processing is currently underway.

BACKGROUND

Reservoir Application #: R1-27455
Applicant Name: Thomas F. Nichols
Priority Date: April 14, 1994
Source for Reservoir Supply: Unnamed Stream
Purpose of Use: Fire Protection as needed, Wildlife Refuge and Fish Propagation
Period of Use: Year round continuously
Notice of Publication: The Courier Times on June 30, 1994 and July 7, 1994
Protests: None
SEPA Compliance: Exempt

Skagit River Watershed

The Skagit River originates in the mountains of Manning Provincial Park in British Columbia, Canada. Gorge Dam, Diablo Dam and Ross Dam impound the Skagit River on the United States side of the border. The river flows through an eagle nesting area and past the towns of Sedro-Woolley, Burlington and Mount Vernon before forming a delta and entering into Skagit Bay. The Skagit is the largest watershed in the Puget Sound Basin. Present management of the Skagit River salmon runs is under the jurisdiction of the state of Washington and the Skagit Tribes. The Skagit Tribes include the Swinomish, Upper Skagit, and Sauk/Suiattle.

Coal Creek Sub-basin

Coal Creek sub-basin is within the Skagit watershed and originates on the south face of Lyman Hill. The headwaters start at an elevation of about 3,000 feet and flows southerly to the confluence with Skiyou Slough before joining the Skagit River. There are several unnamed intermittent streams in the basin.

INVESTIGATION

In considering this application, my investigation included, but was not limited to, research and/or review of:

- The State Water Code
- Topographic and local area maps
- Records of existing water rights held by Thomas Nichols
- Records of existing water rights in the vicinity
- Notes from a site visit on August 7, 2008
- Letters and documents in the file

State Water Code

Chapter 90.03 RCW authorizes the appropriation of public water for beneficial use and describes the process for obtaining water rights. Laws governing the water right permitting process are contained in RCW 90.03.250 through 90.03.340. Laws specifically related to reservoir storage rights are contained in RCW 90.03.350 and 90.03.370.

Topographic and local area maps

The Sedro-Woolley North Quadrangle, Washington, 7.5 minute series topographic map shows the center of the reservoir to be located at about 360 feet west and 560 feet south from the NE corner of Section 9, Township 35 North and Range 5EastW.M. and about 520 feet above sea level.

Existing rights held by Thomas Nichols

A reservoir was constructed on the applicant's property around 1982, by excavating a pond and forming a dike along 2 sides. Water was diverted from a small intermittent stream nearby to fill the reservoir and the outflow was returned to the same stream. In 1986, the applicant applied for a surface water right for the diversion. A water right certificate (S1-24924) to divert water from an unnamed stream for fire protection, wildlife refuge and fish propagation was issued to Mr. Nichols in 1994. During processing of this application, Ecology notified Mr. Nichols that he also needed a water right for the reservoir. He submitted this application in 1994, but Ecology was not able to process the application at that time.

Other water rights in the area

The Department of Ecology Water Rights Tracking System was queried to identify potential surface water rights that may be downstream of the reservoir. Seven records were found in sections down gradient of the reservoir, including six surface water claims and one certificate.

The source of water for the certificate is an intermittent unnamed spring that is potentially downstream of the reservoir. Because there are numerous intermittent springs in the area, it is not clear if this is the same source.

The six surface water claims were all filed on short forms, so they lack information to determine their source locations and therefore lack information to determine if they are downstream of the applicant's point of diversion.

Consideration of Protests

No protests were received during the statutory 30-day protest period.

Other Comments

Doug Johnson of the Ecology Dam Safety Section inspected the reservoir in 1994. He noted a few minor deficiencies and stated the dam is well maintained and operated and is in satisfactory condition. Based on his investigation, he determined the downstream hazard below the dam should be classified as *Low*, Hazard Class 3.

FINDINGS

In accordance with state law, the following criteria must be addressed during the evaluation process for this water right request:

- Water must be available for appropriation
- The water use must be for a beneficial purpose
- The appropriation of water will not impair existing rights
- The appropriation of water will not be detrimental to the public interest

Water Availability

There are no administrative closures on Coal Creek. The reservoir has existed since 1982 and water rights to fill the reservoir were approved by the Department in 1994, therefore water is available.

Beneficial Use

Use of water for fish propagation and wildlife refuge is deemed beneficial under RCW 90.54.020(1).

No Impairment of Existing Rights

One certificate and six claims may possibly exist downstream. This water right grants storage of water for non-consumptive uses. The reservoir has existed since 1982. Ecology has not received any complaints or concerns regarding the reservoir, therefore we determine that there will be no impairment of existing rights.

Public Interest

No potential for detriment to the public interest could be identified during the investigation of this application.

CONCLUSIONS

In accordance with chapter 90.03 RCW, I find there is water available for storage from the source in question, the purposes of use are beneficial, there will be no impairment of existing rights, and there will be no detriment to the public interest.

RECOMMENDATIONS

It is recommended that the application be approved for the storage of 10 acre-feet. Due to the fact that this reservoir has been in full use for so many years, it is not necessary for a permit to be issued. Construction has long been completed and the storage of water has been fully perfected. A final reservoir certificate can be issued immediately following the 30-day appeal period (assuming no appeals).

Report by: _____
Melisa Snoeberger

February 18, 2009
Date

