



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PROTESTED REPORT OF EXAMINATION
Change approval: Place of Use
WRTS File #CG1-26168P

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
May 6, 1991		G1-26168P	

NAME Sunny Hill Water System		
ADDRESS/STREET	CITY/STATE	ZIP CODE
2233 West Shore Drive	Lummi Island, WA	98262

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
Well
TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr)
	20	4.5

TYPE OF USE & PERIOD OF USE
Group domestic supply for 9 homes, year-round as needed

LOCATION OF POINT OF WITHDRAWAL

APPROXIMATE LOCATION OF POINT OF WITHDRAWAL
1393 feet north and 429 feet west of the southeast corner of Section 5

SOURCE NAME	PARCEL #	LATITUDE	LONGITUDE	QTR/QTR	SECTION	TOWNSHIP	RANGE
Sunny Hill Well	370105540165	48.72208	-122.70105	NE1/4 SE1/4	5	37N	1E

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED
[Attachment 1 shows location of the authorized place of use and point of withdrawal]

Original place of use:

A tract of land in a portion of the Southeast quarter of Section 5, Township 37 North, Range 1 East, W.M., Lummi Island, Whatcom County, Washington, described as follows: Beginning at the East quarter corner of said Section 5; thence South 01°02'20" West, 1,331.51 feet along the East line of said Section 5 to the Southeast corner of the Northeast quarter of said Southeast quarter; thence North 89°18'06" West, 1,329.96 feet to an iron pipe in an existing fence line marking the North line of said Southeast quarter; thence South 89° 22'00" East, along said North line of the Southeast quarter, for a distance of 1,350.42 feet, to the Point of Beginning; Except any portion lying within the Southeast quarter of the Southeast quarter.

New place of use:

A tract of land in a portion of the Southeast quarter of Section 5, Township 37 North, Range 1 East, W.M., Lummi Island, Whatcom County, Washington, described as follows: Beginning at the East quarter corner of said Section 5; thence South 01°02'20" West, 1,331.51 feet along the East line of said Section 5 to the Southeast corner of the Northeast quarter of said Southeast quarter; thence North 89°18'06" West, 1,329.96 feet to an iron pipe in an existing fence line marking the North line of said Southeast quarter; thence South 89° 22'00" East, along said North line of the Southeast quarter, for a distance of 1,350.42 feet, to the Point of Beginning; Except any portion lying within the Southeast quarter of the Southeast quarter.

Except

Lot B Sunny Hill II Short Plat as recorded in Book 25 Short Plats Page 96 (parcel #370105545230).

And now including

Co-joined tracts 8 & 9 in Fultons Addition to Bellingham, also known as the East half of the East half of the Northwest quarter of the Southeast quarter of Section 5, Township 37 North, Range 1 East, W.M. (parcel #370105 447200).

DESCRIPTION OF WATER WORKS

The water works consists of the following:

- A 6-inch diameter, 181 foot deep well, with a ¾ horsepower Franklin submersible pump
- Two 1,500 gallon pre-cast concrete tanks (each 12 feet long, 6 feet wide, & 4 feet high)
- A 300 gallon galvanized pressure tank
- A 1½ horsepower Franklin submersible booster pump
- A 4-inch to 3-inch diameter distribution pipeline

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Begun	Completed	November 15, 2014

PROVISIONS

1. Meter Installation

An approved measuring device shall be installed and maintained for the source authorized by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173. See <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

2. Metering Rule Description And Petition Info

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. Installation, operation and maintenance requirements are enclosed as a document titled "Water Measurement Device Installation and Operation Requirements".

See <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

3. Record Water Use, Report Upon Request by Ecology

Water use data shall be recorded bi-weekly. Data shall be maintained by the water system operator and shall be promptly submitted to the Department of Ecology upon request.

4. Authority To Access Project

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, point of withdrawal, measuring devices and associated distribution systems for compliance with water law.

5. No Impairment of Existing Rights

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 Tribes under treaty or settlement. The Lummi Nation protested the subject application because of their concern about negative impacts on Lummi Island groundwater. By ensuring no greater use of water than currently permitted for, this change authorization will have no greater impact on the resource than originally contemplated.

6. Conservation

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.

7. Well Construction Standard

All wells constructed in the state shall meet the construction requirements of WAC 173-160 titled "Minimum Standards for the Construction and Maintenance of Wells" and RCW 18.104 titled "Water Well Construction". Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard shall be decommissioned.

8. Well Tag

The well shall be tagged with a Department of Ecology unique well identification number. If your existing well does not have a tag, please contact the well-drilling coordinator at the Department of Ecology, Northwest Regional Office. This tag shall remain attached to the well. When submitting water measuring reports, please reference this tag number.

9. Access Port

Required installation and maintenance of an access port as described in WAC 173-160- 291(3).

10. Easement Right-of-Way

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.

11. 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 superseding permit. Elements of a proof inspection may include, as appropriate, the source, system instantaneous capacity, beneficial use, annual quantity, place of use, and satisfaction of provisions.

The following provisions are carried forward from the original permit:**12. Chloride Sampling**

The permittee shall provide data on chloride concentrations for the well authorized by this permit with analysis performed by a state certified laboratory. Sampling shall occur April and August of each year and permittee shall submit by October 15th of the same year, written results for both sampling events to the Department of Ecology, Northwest Regional Office, Water Resources Program. Depending on the results of this data collection, withdrawal of ground water under this permit may be limited or other action required.

13. Chloride Limitation

If pumping of the well authorized by this permit causes chloride concentrations to exceed 99 mg/L, the permittee shall be required to take immediate action to prevent concentrations from increasing. If corrective measures fail to prevent chloride concentrations from exceeding said level in the future, permittee shall relinquish the option to perfect additional allocated quantities regardless of the state of construction.

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 under Change Application No. CG1-26168P, 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:

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 and Application for Relief
Coordinator
PO Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

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

3. And send a copy of your appeal to:

Andrew B. Dunn
Department of Ecology
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 _____ day of _____ 2009.

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

INVESTIGATOR'S REPORT
by Buck Smith - Senior Hydrogeologist

BACKGROUND INFORMATION

Description and Purpose of Proposed Change

The Sunny Hill Water System (SHWS) is located in the northern half of Lummi Island, approximately one mile west of the ferry terminal and one-half mile north of Legoe Bay. The water system currently serves three homes, has an additional four water shares sold, and has two water shares that are unsold.

SHWS currently holds Groundwater Permit G1-26168P (see list of attributes on the next page). This permit is in good standing and is eligible for change in accordance with state law.

The purpose of this report is to address the SHWS application for change in place of use filed on February 5, 2009. The operators of the system requested to have one lot (parcel #370105545230) removed from their existing place of use and have it replaced with another lot (parcel #370105447200) located immediately to the west (see Figure 1 below). This adjacent lot is within the "declared service area" of the Sunny Hill Water System, as submitted to the Whatcom County Health Department in February 2002.

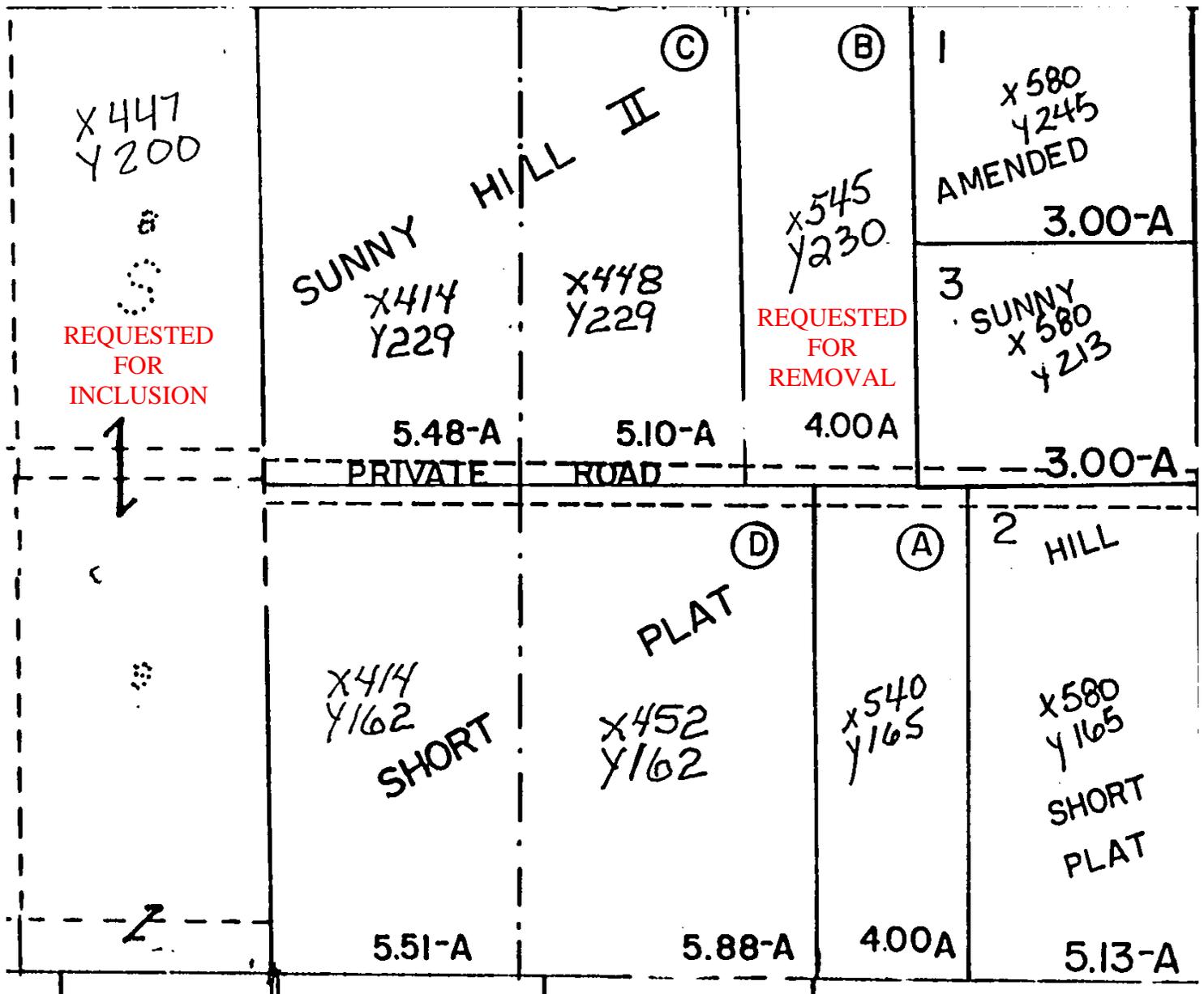


Figure 1: The Sunny Hill Water System "declared service area". This figure shows the parcel SHWS requested to have removed from their service area (place of use) and the parcel SHWS requested for inclusion.

On May 14, 2009, I visited the site and verified the requested change in place of use. I saw the wellhead, pump house, storage tanks, meter, etc. The owners of SHWS (Richard Poole & Dale Granger) requested to have their names removed from the water right permit in order to administratively ease the eventual transfer of the system to the property owners.

Attributes of the Permit and Proposed Change

<i>Attributes</i>	<i>Existing</i>	<i>Proposed</i>
Name on Permit	Sunnyhill Water System (Richard Poole & Dale Granger)	Sunny Hill Water System
Priority Date	May 6, 1991	Same
Instantaneous Quantity	20	Same
Annual Quantity	4.5 ac-ft/yr	Same
Source	Sunny Hill Well	Same
Point of Withdrawal	NE¼ SE¼ of Section 5, Township 37N, Range 1E	Same
Purpose of Use	Group domestic supply for 9 homes	Same
Period of Use	Year-round, as needed	Same
Place of Use	See page 1 (Original Place of Use)	See page 1 (New Place of Use)

Legal Requirements Prior to Processing

The following legal requirements were accomplished prior to processing the subject water right change application:

- Public Notice**
Public notice of the application was published in the *Record Journal* and in the *Lynden Tribune* on February 25 and March 4, 2009. The Lummi Nation filed a protest during the 30-day statutory protest period. No other protests were received.
- State Environmental Policy Act (SEPA)**
In accordance with WAC 197-11-305 and WAC 197-11-800(4), it was determined this water right change application is exempt from SEPA because the instantaneous withdrawal rate is less than 2250 gallons per minute.

Legal Analysis to be Conducted During Processing

RCW 90.44.100(2)(d) allows Ecology to amend a ground water permit to change the place of use of water if other existing rights are not impaired.

INVESTIGATION

The investigation results of the original permit decision (issued on September 9, 1993) addressed the standard four tests (beneficial use, water availability, public interest, and potential for impairment). The results of the original four tests should not be affected by the subject request for an exchange of a single parcel (one-for-one) within the place of use. But, by law, a change in place of use can only be allowed if other existing rights are not impaired.

Impairment Considerations

SHWS is served by a single well completed by Livermore & Son, Inc. on April 18, 1990. This well is 6 inches in diameter and 181 feet deep. It is completed in glacial deposits consisting of blue clay, sand, and gravel. It has a welded steel casing with a stainless steel 20 slot screen installed from 176 to 181 feet below ground surface. Ground surface elevation is approximately 120 feet above mean sea level. Therefore, this well is completed at approximately 61 feet below sea level. The static water level was 106 feet below the top of casing (+1 foot) at the time of completion. A 20+ gallon per minute bailer test (on the date of completion) resulted in 10 feet of drawdown after 2 hours. On March 25, 1991, Pump Service & Supply conducted a 4-hour pumping test with a one horsepower submersible pump with the intake set at 168 feet. The well was pumped at 14 gallons per minute, which resulted in a drawdown of 1 foot (from 104.5 feet to 105.5 feet).

On February 25, 1991, a water sample from the well tested at 22 mg/L of chlorides. This is considered to be in the low range for chloride concentration. But, because this well is completed below sea level and it is located approximately one-half mile from the shoreline, the original permit contained provisions for biannual monitoring of chlorides and a maximum allowable chloride concentration level of 99 mg/L. On October 12, 2007, a water sample tested at 23 mg/L (essentially no change from the 1991 test results).

These chloride concentration levels are in the low range, but I believe it would be prudent to carry forward the existing chloride provisions to this change authorization. Monitoring chlorides is a vital component in the prevention of water quality impairments of down-gradient groundwater users, especially when utilizing water from a near shore well completed below sea level.

No water quantity impairment is anticipated as a result of this change authorization. The historical instantaneous pumping rate will remain unchanged. The annual volume pumped under this right will be no greater than originally anticipated because this change authorization is a straight “one property-for-one property” swap.

ADDITIONAL INVESTIGATION INFORMATION

Other Rights Appurtenant to the Place of Use and/or Point of Withdrawal

The existing and proposed SHWS place of use is within the place of use recorded in Water Right Claim No. 157782. This claim was filed by Frank Granger on June 4, 1973. It lists the date of first use as 1930. It claims water use from two wells (neither of which is the SHWS well) and from a pond. The purpose of use claimed is for the irrigation of 120 acres. Water from this claim is not currently being used within the SHWS place of use. For details of this claim see Attachment 2.

It is important to note that a water right claim is not a state-issued water right. It is simply a *claim* to a vested (or grandfathered) water right for a beneficial use that pre-dates the state water permitting system. The state water right permitting system for surface water went into effect on June 6, 1917, and on June 6, 1945, for groundwater. In order for a water right claim to be considered a vested right, beneficial use of water had to begin prior to those applicable dates.

The actual validity of a claim can only be confirmed through a general water right adjudication, which is conducted by the county superior court. In an adjudication, the court will either deny or confirm a water right, and direct Ecology to issue a Certificate of Adjudicated Water Right for rights confirmed.

There are no other rights or claims appurtenant to the SHWS place of use or point of withdrawal.

Consideration of the Protest

This application was protested by the Lummi Nation on March 26, 2009. Their letter of protest expressed concern about affects on Lummi Island groundwater. This concern is understandable, but the subject water right is an existing permit, in good standing, and is legally eligible for change. Approval of the change request will not alter the permit holder’s requirement to monitor chloride concentrations to protect water quality. No additional withdrawals over and above the currently authorized quantities will be allowed. And, the number of allowable connections (nine) will not change.

In addition, the following will be included in the provisions section of this report and any subsequent documents issued under this water right:

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 Tribes under treaty or settlement.

CONCLUSIONS

In accordance with chapter 90.44 RCW, I conclude permit G1-26168P is in good standing and the change in place of use will not impair existing rights.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change in place of use 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:

- 20 gallons per minute
- 4.5 acre-feet per year
- Group domestic supply for 9 homes, year-round as needed

Point of Withdrawal

NE¼ SE¼, Section 5, Township 37 North, Range 1 East, W.M.

Place of Use

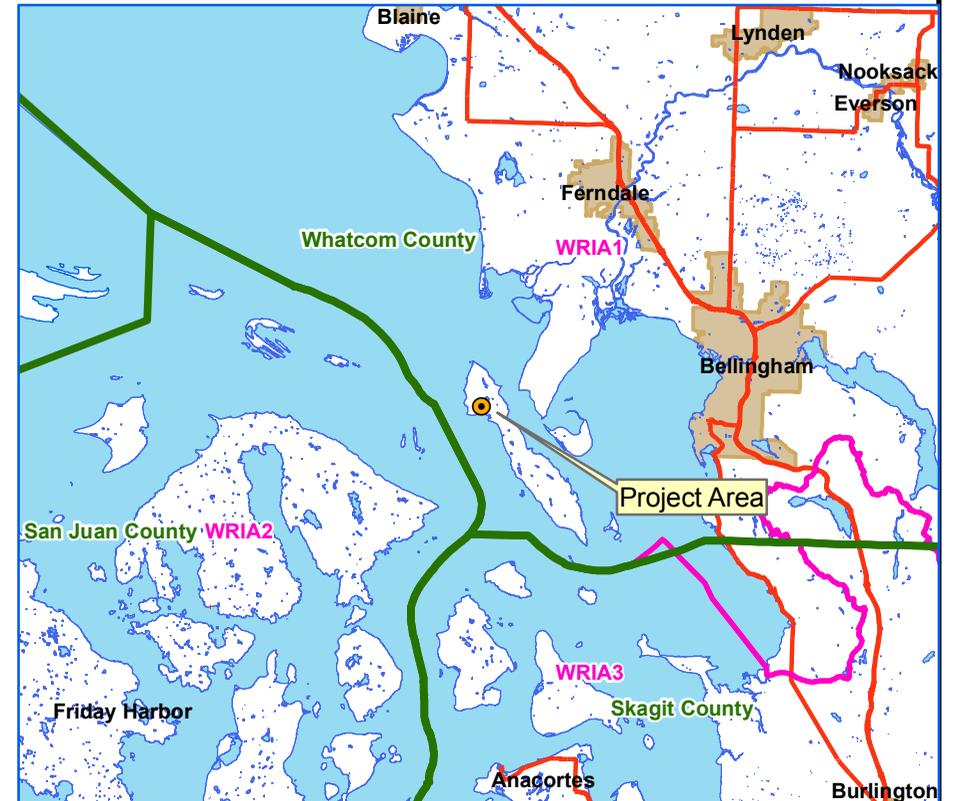
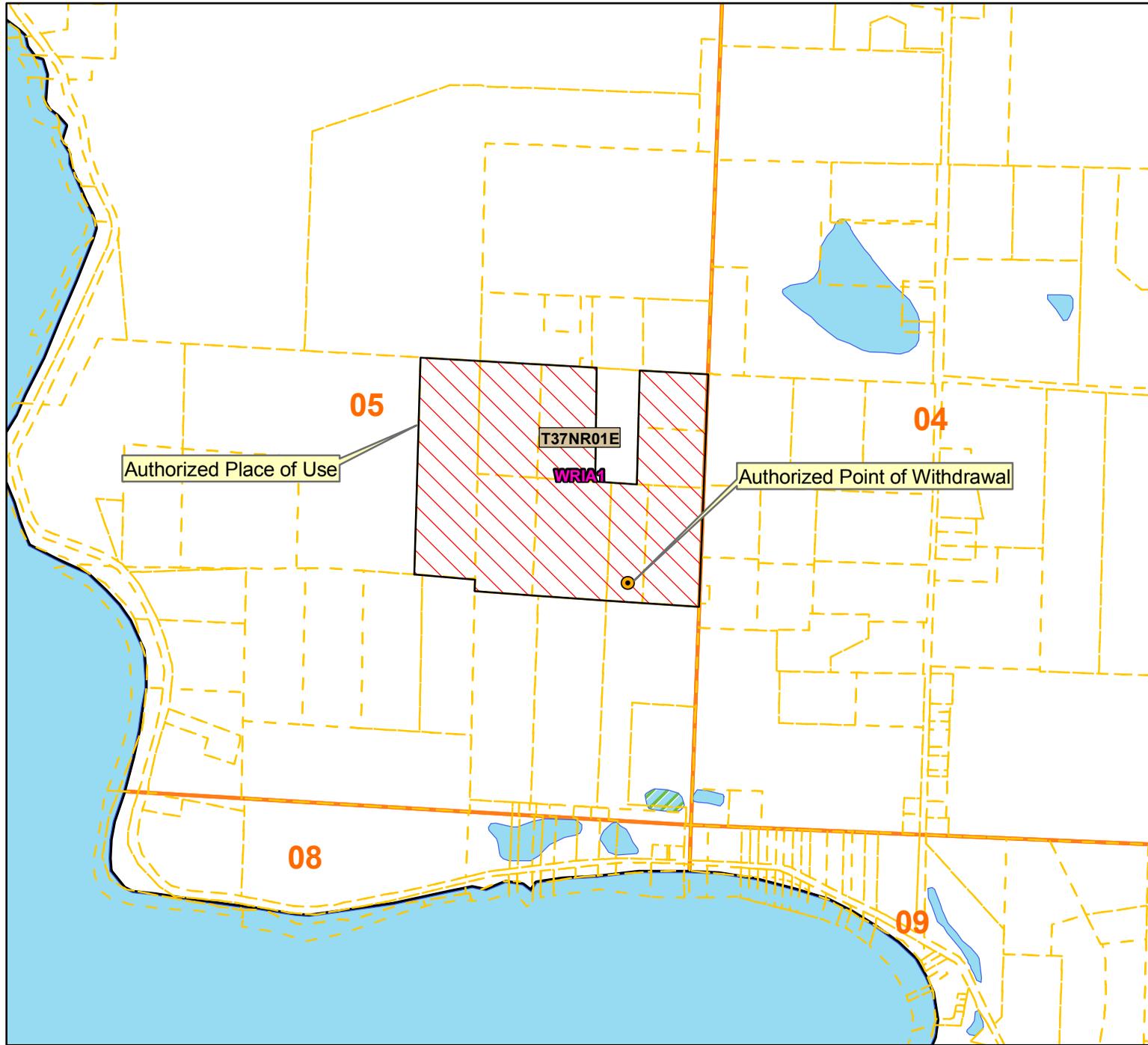
As described on Page 1 of this Report of Examination.

Report by: _____
Buck Smith, LG, LHG

Date

Licensed Geologist/Hydrogeologist No. 1479

If you need this publication in an alternate format, please call the Water Resources Program at 425- 649-7000. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.



Legend

- County
- WRIA
- Sections
- Townships
- cities
- Sections
- Authorized Point of Withdrawal
- Authorized Place of Use
- Highways

Place of use and point(s) of diversion/withdrawal are as defined on the cover sheet under the headings, 'LOCATION OF DIVERSION/WITHDRAWAL' and 'LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'



Attachment 2



STATE OF WASHINGTON
DEPARTMENT OF WATER RESOURCES
DIVISION OF WATER MANAGEMENT

WATER RIGHT CLAIM

RECEIVED
DEPARTMENT OF ECOLOGY
JUN -4 73040164
CASH OTHER NONE

1. NAME Frank Granger
ADDRESS 2233 W. Shore Drive
Lummi Island, WA ZIP CODE 98262

2. SOURCE FROM WHICH THE RIGHT TO TAKE AND MAKE USE OF WATER IS CLAIMED: ground and surface
(SURFACE OR GROUND WATER) W.R.I.A. 01 RECEIVED DEPARTMENT OF ECOLOGY
(LEAVE BLANK) May 24 1973 110873

A. IF GROUND WATER, THE SOURCE IS 2 wells CASH OTHER NONE
B. IF SURFACE WATER, THE SOURCE IS a pond

3. THE QUANTITIES OF WATER AND TIMES OF USE CLAIMED:
A. QUANTITY OF WATER CLAIMED 8 gallons per minute PRESENTLY USED 4 gallons per minute
(CUBIC FEET PER SECOND OR GALLONS PER MINUTE)
B. ANNUAL QUANTITY CLAIMED 13 acre feet per year PRESENTLY USED 6.5 acre feet per year
(ACRE FEET PER YEAR)
C. IF FOR IRRIGATION, ACRES CLAIMED 120 PRESENTLY IRRIGATED none
D. TIME(S) DURING EACH YEAR WHEN WATER IS USED: year-round

4. DATE OF FIRST PUTTING WATER TO USE: _____ MONTH _____ YEAR 1930
Two wells (1) 30 East
5. LOCATION OF THE POINT(S) OF DIVERSION/WITHDRAWAL: (2) 400 FEET East AND
30 North the SE 1/4
200 FEET South FROM THE NW corner of / corner OF SECTION 5
BEING WITHIN SE 1/4 OF SECTION 5 T. 37 N. R. 1 East (E. OR W.) W.M.
and also one pond
IF THIS IS WITHIN THE LIMITS OF A RECORDED PLATTED PROPERTY, LOT 7 BLOCK _____ OF

6. LEG Ful
The West half of the Southwest quarter of Section 4 and the
Northeast quarter of the Southeast quarter of Section 5, Township
37 North, Range 1 East of the Willamette Meridian; also Lots 3 to
13, inclusive, Lots 15 and 16, part of Lots 1 and 2 in Fulton's
Addition to the Bellingham Bay Cities, lying South and East of the
following described line:
Beginning at a point 163.1 feet West of the Northwest corner of
Lot 3 of said Fulton's Addition, running thence South 23° West 208
feet; thence West to a point 100 feet East of the present County
Road; thence Southwesterly 208 feet parallel to said County Road
and 100 feet East thereof; thence West to West line of said Addi-
tion; thence Northeasterly along said West line of said Addition
to North line of said Addition; thence East to point of beginning.

8. THE LEGAL DOCTRINE(S) UPON WHICH THE RIGHT OF CLAIM IS BASED: appropriation and prescription

DO NOT USE THIS SPACE

THE FILING OF A STATEMENT OF CLAIM DOES NOT CONSTITUTE AN ADJUDICATION OF ANY CLAIM TO THE RIGHT TO USE OF WATERS AS BETWEEN THE WATER USE CLAIMANT AND THE STATE OR AS BETWEEN ONE OR MORE WATER USE CLAIMANTS AND ANOTHER OR OTHERS. THIS ACKNOWLEDGEMENT CONSTITUTES RECEIPT FOR THE FILING FEE.

DATE RETURNED _____ REGISTRY NUMBER _____

THIS HAS BEEN ASSIGNED
WATER RIGHT CLAIM REGISTRY NO:
APR 14 1973 157782

John Rigo
ASSISTANT DIRECTOR DIVISION OF WATER MANAGEMENT - DEPARTMENT OF WATER RESOURCES

I HEREBY SWEAR THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

X Frank E. Granger
DATE May 31, 1973
IF CLAIM FILED BY DESIGNATED REPRESENTATIVE, PRINT OR TYPE FULL NAME AND MAILING ADDRESS OF AGENT BELOW.

ADDITIONAL INFORMATION RELATING TO WATER QUALITY AND/OR WELL CONSTRUCTION IS AVAILABLE.

A FEE OF \$2.00 MUST ACCOMPANY THIS WATER RIGHT CLAIM RETURN ALL THREE COPIES WITH CARBONS INTACT, ALONG WITH YOUR FEE TO:
DEPARTMENT OF WATER RESOURCES
DIVISION OF WATER MANAGEMENT
UNION AVE. BUILDING-OLYMPIA, WASHINGTON 98501

ORIGINAL
DWR