



STATE OF WASHINGTON
 DEPARTMENT OF ECOLOGY
REPORT OF EXAMINATION
To Appropriate Public Waters

PRIORITY DATE May 8, 2008	APPLICATION NO. S2-30471	PERMIT NO.	CERTIFICATE NO.
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NAME PacifiCorp		
ADDRESS/STREET 1407 W. North Temple #110	CITY/STATE Salt Lake City, UT	ZIP CODE 84116

PUBLIC WATERS TO BE APPROPRIATED

SOURCE Frasier Creek		
TRIBUTARY OF (IF SURFACE WATERS) North Fork Lewis River		
MAXIMUM CUBIC FEET PER SECOND (cfs) 4	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr) 2,898 (non-consumptive)
QUANTITY, TYPE OF USE, PERIOD OF USE 2,898 Acre-feet per year,	Wetland Development	Year-round, As Needed

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION – WITHDRAWAL										
1,554 feet north & 623 feet east of the southwest corner of Section 29.										
SOURCE NAME	PARCEL	LATITUDE	LONGITUDE	QTR/QTR	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY	
Frasier Creek	ER2911001	45.9711	-122.3470	NW ¼ SW ¼	29	6 N	4 E	27	Cowlitz	

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

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

Tax Lot ID ER2911001 owned by PacifiCorp, in the NW ¼ SW ¼ of Section 29, Township 6 N, Range 4 E.W.M.

DESCRIPTION OF PROPOSED WORKS

Water is diverted from Frasier Creek by means of a stop log. Diverted water travels easterly approximately 172 feet into Cedar Grove Pond, then southerly approximately 471 feet into Chestnut Pond, and then southwesterly approximately 306 feet back into the natural channel of Frasier Creek.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE
BegunCOMPLETE PROJECT BY THIS DATE
CompleteWATER PUT TO FULL USE BY THIS DATE
In Use

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.
3. 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".
<http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

Schedule and Inspections

4. 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.

Proof of Appropriation

5. 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.

Diversion Management

6. The diversion shall be operated to ensure a continuous base flow of water in Frasier Creek at all times.

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 concur with the investigator that under RCW 90.03.290(3) water is available from the source in question, the purpose of use is beneficial, there will be no impairment of existing rights, and there will be no detriment to the public interest.

Therefore, I order APPROVAL of Application No. S2-30414, 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 Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

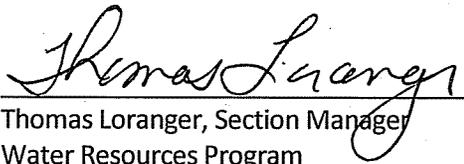
Deliver your appeal in person to:

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

3. And send a copy of your appeal to:

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

Signed at Olympia, Washington, this 10th day of December, 2009.



Thomas Loranger, Section Manager
Water Resources Program
Southwest Regional Office

INVESTIGATOR'S REPORT

Amy Nielson, Department of Ecology
Water Right Control Number S2-30471

Background

Project Description

On June 25, 2007 Claudia Conder, on behalf of PacifiCorp, submitted an *Application for a Water Right Permit* for a new surface water right from Frasier Creek for wetland development at Frasier Meadows. Diverted water is used to augment wetland habitat and supply water to two artificial ponds known as Cedar Grove and Chestnut Pond.

These wetlands provide habitat for rough-skinned newts, red-legged frogs, Northwestern salamanders, wood ducks, buffleheads, mallards, hooded mergansers, and many other species of amphibians and water fowl. Furthermore, Frasier Meadows is known to be used as a grazing/browsing site for a herd of approximately 40 elk.

The wetlands were created around 1984 in cooperation with Washington Department of Fish and Wildlife (WDFW) and are currently managed by PacifiCorp under the Merwin Wildlife Habitat Management Program (WHMP). The Federal Energy Regulatory Commission (FERC) required creation of the wetlands as a provision of the company's current Hydroelectric Project license.

When the diversion was first created, PacifiCorp coordinated with WDFW and obtained a Hydraulic Project Approval permit, but there is no indication that a water right permit was ever secured. The diversion and the wetlands are expected to be managed under the new Lewis River Hydroelectric Projects license and the new WHMP, so PacifiCorp is filing this application to appropriately secure authorization to divert water from Frasier Creek.

Priority Processing

This application is eligible for priority processing as outlined by WAC 173-152-050(2)(b). The proposed water use is non-consumptive and will substantially enhance and protect the quality of the natural environment by enhancing wildlife habitat and developing wetland areas for native species of amphibians, waterfowl, and mammals.

Legal Requirements

Public Notice

A public notice to appropriate public waters was published in *The Daily News* of Cowlitz County June 10 and 17, 2009. Ecology received no letters of concern or protest regarding this application.

State Environmental Policy Act (SEPA)

The agency must determine whether the appropriation is an action or part of an action that is subject to an environmental review and requires a threshold determination under SEPA (RCW 43.21C, WAC 197-11).

Since this application proposes a diversion greater than 1 cfs it meets the requirements of a SEPA environmental review. PacifiCorp submitted a SEPA checklist to the Cowlitz County Department of Building and Planning who issued a Determination of Non-Significance on August 12, 2009. The County opened the DNS for comment through August 26, 2009 and no appeals were filed.

Determinations

Chapters 90.03 and 90.44 RCW authorize the appropriation of public water for beneficial use and describe the process for obtaining water rights. Laws governing the water right permitting process are contained in RCW 90.03.250 through 90.03.340 and RCW 90.44.050. In accordance with RCW 90.03.290, favorable determinations must be made on the following four criteria in order for an application for a water right 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.

Investigation

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

- Information supplied with the application.
- 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 October 16, 2008 by Ecology's Amy Nielson.
- Interviews with employees of PacifiCorp.
- A May 6, 2008 letter from WDFW Water Rights Biologist Steve Boessow.

History of Water Use

The diversion on Frasier Creek described in this application has been in use since the mid-1980's and has provided water for two created wetlands known as Cedar Grove and Chestnut Ponds. Approximately 4 cubic-feet per second (cfs) has been diverted continuously between the months of November and July and then gravity fed to the wetland areas since the time the original diversion was put in place.

Historic use has been primarily non-consumptive as the water travels from the wetland areas and returns to the natural channel of Frasier Creek approximately 600 feet downstream of the diversion. Historic use of the diversion on Frasier Creek has not been authorized by a water right.

Proposed Use

PacifiCorp is proposing to utilize this diversion the same way it has historically been used and is applying for a water right to authorize the diversion.

Approximately 4 cfs will be diverted from Frasier Creek by means of a stop log between the months of November and July and gravity fed to two wetland areas to provide habitat for amphibians, water fowl, and other animals. Water is diverted from the stream and travels 172 feet to Cedar Grove Pond which holds about 1.0 acre-foot of water and then travels 471 feet to Chestnut Pond which holds about 0.2 acre-feet of water. Water then flows from the wetland areas about 306 feet back to the natural channel of Frasier Creek.

The proposed use is non-consumptive and will substantially enhance and protect the quality of the natural environment by providing wetland habitat in Frasier Meadows for many native animals.

Relationship of New & Existing Rights

No water rights currently authorize diversions from Frasier Creek at this location.

Other Rights Appurtenant to the Place of Use & Impairment Considerations

A search of Ecology's Water Rights Tracking System (WRTS) revealed no existing water rights, claims, or applications in the same section as the subject application. Furthermore, a search for other diversions from Frasier Creek did not return any results. However, since water will be returned to Frasier Creek 600 feet south of the diversion and use is primarily non-consumptive, any downstream users should not be affected by approval of this application.

Water Availability

Physical Availability

For water to be physically available for appropriation there must be ground or surface water present in quantities and quality and on a sufficiently frequent basis to provide a reasonably reliable source for the requested beneficial use or uses. Sufficient water is physically available for the proposed nonconsumptive use of 4 cfs.

Legal Availability

Water use in WRIA 27 is governed by WAC 173-527 (Water Resources Management Program for the Lewis Basin, WRIA 27). Within this chapter, WAC 173-527-070 closes all surface waters from the Lower Lewis River and its tributaries to any further consumptive appropriation.

However, because this application is non-consumptive and diverted water will be returned to the natural channel of the stream 600 feet south of the diversion intake, there is no risk that other water rights downstream of the project will be impaired. Nor is there a risk that instream resources will be adversely affected. Water is therefore legally available.

Recommendation of the Department of Fish and Wildlife

Ecology received comments regarding this project from WDFW Water Rights Biologist Steve Boessow on May 6, 2008. According to Mr. Boessow, Frasier Creek is not known to have any fish presence, and this project was completed as part of an agreement with WDFW. He states that water use will be primarily non-consumptive and will benefit habitat by maintaining two wetland complexes. WDFW is in support of the project and the issuance of the proposed water right.

Public Interest Considerations

No potential for detriment to the public interest could be identified during the investigation of this application. The proposed use under this application will enhance wildlife habitat and provide wetland areas for many native species of amphibians, waterfowl, and mammals.

Consideration of Protests & Comments

No protests were filed against this application.

Conclusions

To approve a new water right permit under RCW 90.03.290, Ecology must show that such a water right can be issued without detriment or injury to existing rights. This investigation confirms:

- Water is available for appropriation.
- The proposed use, fish propagation, is a beneficial use.
- Existing rights will not be impaired by this water right.
- Issuance of this water right is not detrimental to the public interest.

Recommendations

Based on the above investigation and conclusions, I recommend that the application to appropriate public water 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:

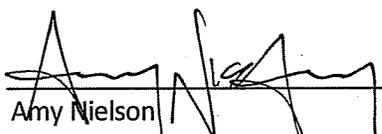
- 4 cubic feet per second
- 2,898 acre-feet per year, (non-consumptive use)
- Wetland Development

Point of Diversion

NW ¼, SW ¼, Section 29, Township 6 North, Range 4 E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

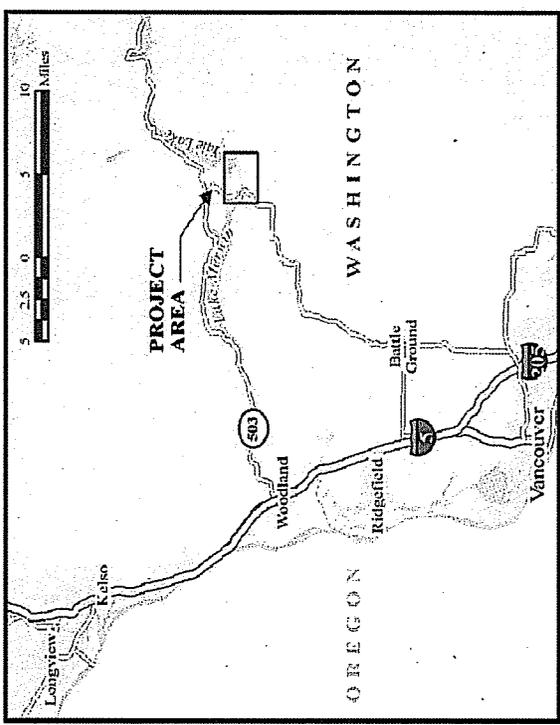
Report by: 
Amy Nielson
Water Resources Program

12.7.2009
Date

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.

ATTACHMENT 1

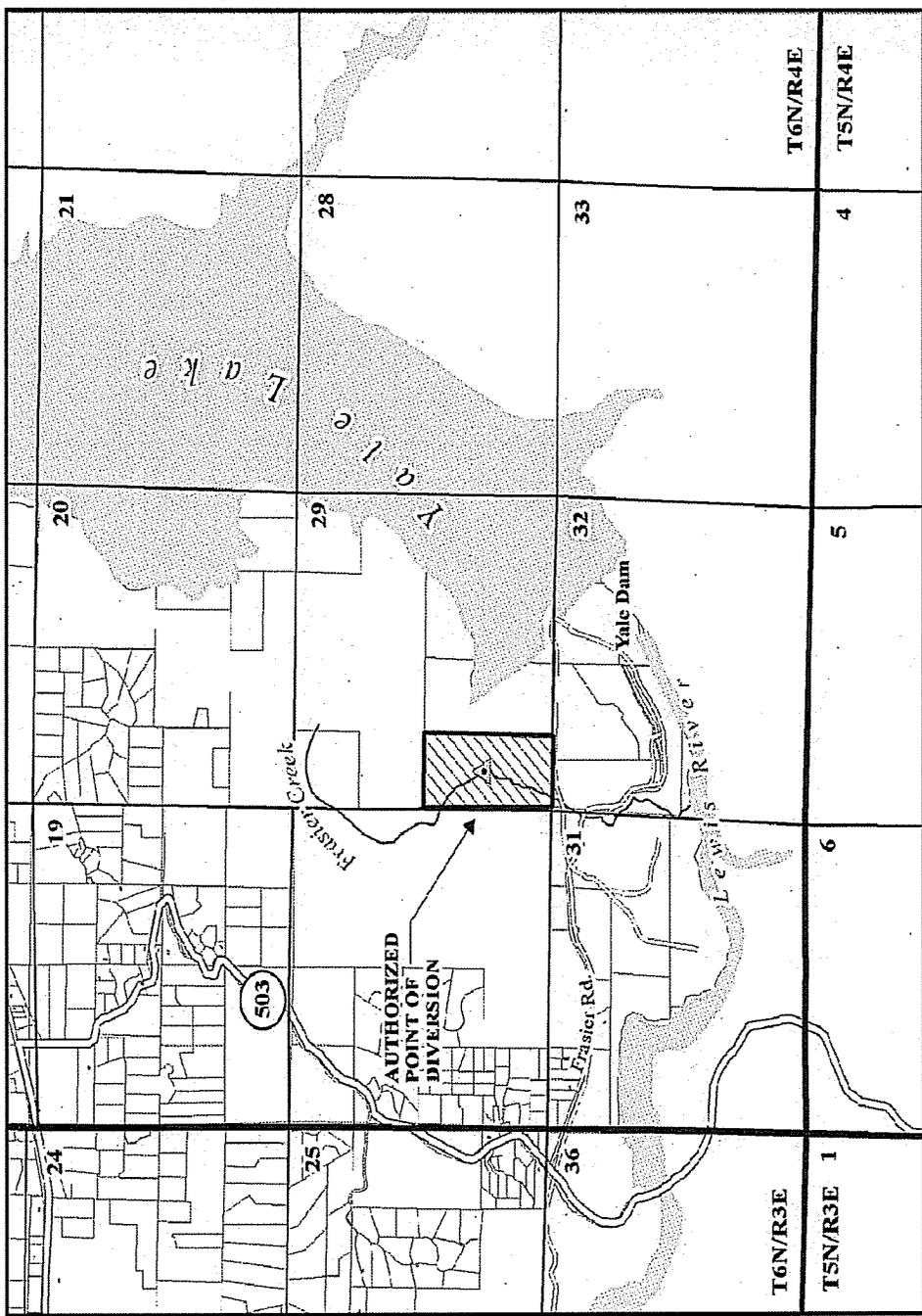
PacificCorp
 Water Right Number S2-30-471
 Sec. 29 T 6 N, R 4 E W.M.
 WR1A 27 - Cowitz County



- 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 6/9/2009 ah



T6N/R3E					T6N/R4E
TSN/R3E 1	6	5	4		TSN/R4E

