



State of Washington
DRAFT
 REPORT OF EXAMINATION
 FOR WATER RIGHT CHANGE

Changed Place of Use
 Added or Changed Point of Withdrawal/Diversion

PRIORITY DATE
 January 1, 1907

WATER RIGHT NUMBER
 Water Right Claim 200096A

MAILING ADDRESS
 STREDWICK LAND, LLC
 6573 HWY 283 N
 EPHRATA WA 98823-9784

SITE ADDRESS (IF DIFFERENT)

Total Quantity Authorized for Withdrawal

WITHDRAWAL RATE	UNITS	ANNUAL QUANTITY (AF/YR)
Denied		Denied

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
GRANT	GROUNDWATER		41-LOWER CRAB

Findings of Facts

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 there is not a water right eligible for change.

Therefore, I ORDER Denial of Application for Change No.CG3-200096ACL.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual

receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this day of 2014.

Keith L. Stoffel, Section Manager

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>.

BACKGROUND

An application for change/transfer was submitted by Stredwick Land LLC on November 27, 2013. The applicant proposes to change the point of withdrawal and place of use to a portion of Ground Water Claim G3-200096A.

A notice of application was duly published in accordance with RCW 90.03.280 in the Columbia Basin Herald on January 15 and 22, 2014 and no protests were received.

This application is categorically exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21C RCW.

Attributes of Ground Water Claim G3-200096A

Recorded Name: Wayne Zeigler
Priority Date(date of first use): 1907
Instantaneous Quantity – Q(i): 1000 gallons per minute
Annual Quantity – Q(a): 350 acre-feet per year
Source: A well
Point(s) of withdrawal: NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 21, T. 19 N., R. 27 E.W.M.
Purpose of Use: irrigation of 100 acres

A second application for change was filed by the applicant for Water Right Certificate 848-D together with Certificate of Claim (CC) Vol. 3-1139 and Vol. 1-3 pg 422. These two rights will be discussed in the report.

History

1949 - Certificate 848-D issued with a priority date of 1907 for a well in the amount of 1000 gallons per minute, 450 acre-feet per year for irrigation of 100 acres.

1971 - Certificate of Change Vol. 3 pg 1139 issued to Wayne Zeigler for Certificate 848-D and changed the point of withdrawal from the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21 to the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21.

1980 – Wayne Zeigler filed application under RCW 90.14.090 to obtain a water right claim under 200096A for 1000 gallons per minute, 350 acre-feet per year for irrigation of 100 acres. (The point of withdrawal, place of use, purpose of use, acres and priority date are the same as Certificate 848-D w/chg 1139)

1985 – Certificate of Change 1-3 pg 422 issued to Wayne Zeigler for Certificate 848-D w/chg 1139 to add a point of withdrawal in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 and changed a portion of the place of use of 40 acres of the right.

Water Rights

The Surface Water Code (RCW 90.03) was adopted in 1917. The code required all diversions of surface water to obtain authorization from the state. The Ground Water Code (RCW 90.44) was adopted in 1945. The ground water code required ground water uses to obtain a water right in the same manner as a surface water use.

Prior to 1945 many wells were constructed and ground water was used for many purposes. These uses were identified as “vested rights” to ground water. The 1945 Ground Water Code provided these person claiming a “vested right” established prior to 1945 the opportunity to file an application with the Department and obtain a certificate for the “vested right” (RCW 90.44.090).

The original land owner of this water right complied with the requirements of RCW 90.44.090 and obtained Certificate 848-D in 1949. The “vested right” was certified and the land owner received a water right certificate for the ground water use originating in 1907.

In 1967 the state adopted the Claims Registration Act (RCW 90.14). A portion of this law required all users of surface water established prior to 1917 and all users of ground water established prior to 1945 to file a claim for the "vested rights" to be placed in the Water Right Claims Registration or forfeit the right. This claim registration did not require holders of existing water rights issued by the department to file a claim. In this instance, the landowner of this "vested right" was not required to file a claim, because he had obtained a Certificate (848-D) in accordance with RCW 90.44.090 to the "vested right" in 1949.

The claims registration act (RCW 90.14) was amended and reopened in 1979 (RCW 90.14.043). This registration reopened for filing of claims and required claimants to submit appropriate documents and obtain certification from the Pollution Control Hearing Board (PCHB) confirming they had met the requirements of RCW 90.14.043. The certification was not to establish the claim was a valid right, but only to certify the claimant had submitted sufficient information to meet the requirements of RCW 90.14.043.

The land owner of the property during this time (Wayne Zeigler) filed paperwork with the PCHB and obtained Ground Water Claim 200096. The paperwork submitted in support of the claim was the same as filed by the previous land owner in 1946 to support the declaration. The claimant actually filed the Ground Water Certificate 848-D as supporting documentation to establish Ground Water Claim 200096. (The point of withdrawal, place of use, purpose of use, acres and priority date are the same as Certificate 848-D w/chg 1139).

These two documents Certificate 848-D and Ground Water Claim 200096 are the same "vested right" for 100 acres. These water right documents are not additive.

In 1985, the landowner (Wayne Zeigler) filed an application for change and changed a portion of the place of use of Certificate 848-D (CC 1-3-422). A change to the claim was not pursued and remained at the original place of use. The change in the claim was not required as the right was memorialized in Certificate 848-D. The claim and the certificate were no longer identifying the same place of use and led to confusion over the water right records.

Evaluation of the Water Right and Beneficial Use Analysis:

The Washington State Supreme Court, in *Okanogan Wilderness v. Town of Twisp and Department of Ecology*, 133 Wn.2d 769, 947 P.2d 732 (1997), found that applications for change may be granted only to the extent the water has been historically put to beneficial use, as beneficial use determines the measure of a water right. They also found that the existence and quantification of a water right must be determined, including whether or not the water right has been lost for non-use before the Department can approve a change or transfer of the water right.

Based on the analysis above these two documents represent the same vested right. The right is memorialized in Certificate 848-D. The water authorized under 848-D was established and is addressed in a separate application for change.

CONCLUSIONS

It is the conclusion of this examiner that, in accordance with Chapters 90.03 and 90.44 RCW, a valid right does not exist under Water Right Claim G3-200096. This application for change to add a point of withdrawal and change a portion of the place of use if approved will enlarge the quantity of water of the vested right identified.

Because it is determined the Claim is not eligible or transferrable, no public interest, impairment or beneficial use is made.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to Ground Water Claim G3-200096(A) be denied. (The vested right is subject to the original Water Right Certificate 848-D and associated change authorizations.)

Report by: _____ Date _____
Kevin Brown
Water Resources Program