DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE	WATER RIGHT NUMBER
7/31/2006	S3-30516

MAILING ADDRESS	SITE ADDRESS (IF DIFFERENT)
JOHN FAHSHOLTZ 5009 HOMESITE DRIVE YAKIMA WA 98908	

Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.02	CFS	2

Purpose

	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		
PURPOSE	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	PERIOD OF USE (mm/dd)
Single Domestic Supply and irrigation of one acre	0.02			2		Continuous 01/01 - 12/31

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
FERRY	UNNAMED SPRING		60-KETTLE
FERRY	UNNAMED STREAM	Tenas Mary Creek	60-KETTLE

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
UNNAMED SPRING	2-40-23-21-00010-06	40N	32E	23	NW¼NW¼	48.9600438	118.744370
UNNAMED STREAM	2-40-14-33-00010-06	40N	32E	14	SE¼SW¼	48.9583006	118.7447620
						Datum: NAD83/WGS84	

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

2-40-14-33-00010-00, 2-40-14-33-000010-06, 2-40-23-21-00010-00, 2-40-23-21-00010-06

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

SW¼SW¼ and W½SE¼SW¼ of Section 14, N½NW¼NW¼ and the NW¼NE¼NW¼ of Section 23, T. 40 N., R. 32 E.W.M.

Proposed Works

TBD

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
January 1, 2015	January 1, 2017	January 1, 2019

Measurement of Water Use

How often must water use be measured?	Annually
How often must water use data be reported to Ecology?	Upon Request by Ecology
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm or cfs)

Provisions

All diversion for irrigation shall cease when the flow of the Kettle River falls below 600 cubic feet per second, from April 1 to July 31 and 300 cubic feet per second, from August 1 to September 30 as measured and recorded by the United States Geological Survey (USGS) at Ferry, Washington.

Measurements, Monitoring, Metering and Reporting

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173.

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.

Water Use Efficiency

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

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 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.

Schedule and Inspections
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.

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 water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S3-30516, subject to existing rights and the provisions specified above.

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 **Pollution Control Hearings Board** 1111 Israel Road SW Ste 301 Tumwater, WA 98501	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 **Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this 22nd day of January, 2013.

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.

INVESTIGATOR'S REPORT
Water Right Application Number S3-30516

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S3-30516.

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Republic News Miner on October 18 and 25, 2012 and no protests were received. The notice contained an error. A second publication occurred November 15 and 22, 2012. No protests were received.

Consultation with the Department of Fish and Wildlife

RCW 90.03.280 requires the Department to send notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water. The department also provides notice to appropriate Indian Tribes. The department has developed an electronic procedure to meet this statutory requirement. Applications are posted to an RSS (Really Simple Syndication) feed to which Department of Fish and Wildlife, Tribes and other agencies have been advised to subscribe. Through subscription to

the RSS feed, interested parties may review new water right applications and provide comment. The department did not receive any comments or objections to the granting of this permit.

State Environmental Policy Act (SEPA)

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

(a) It is a surface water right application for more than 1 cubic foot 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;
(b) It is a groundwater right application for more than 2,250 gallons per minute;
(c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
(d) 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);
(e) 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.

INVESTIGATION

A site visit was conducted December 5, 2012. The applicant was not present. The applicant has an existing residence (cabin) constructed on the property. A well was constructed in 2007 to supply water to the existing cabin. A small pond is located east of the cabin and held back by an access road (spring 1). The spring/pond overflows to the field and surface flow completely diminishes. Two additional small wetland ponds are evident in the middle of the pasture area near the well. The draw located to the northwest does not have flowing water off the property. The draw located to the south has a spring (spring 2) emerging at the edge of the pasture area and flows a few hundred feet down to Tenas Mary Creek. Tenas Mary Creek was flowing approximately ½ cfs at the time of the field exam. A manual Pitcher Pump is constructed over concrete ring tiles in the spring area.

The applicant requested authorization for single domestic supply and irrigation of one acre from two sources. The applicant may subdivide the property in the future and intends to supply the undeveloped parcel from these sources.

The spring (No. 1) emergent in the SE¼SE¼SW¼ of Section 14 created a small pond above the access road. The overflow of the pond flows under the access road to the field and flows back into the ground. The overflow from the spring/pond was flowing at approximately 2-3 gallons per minute at the time of the field examination.

The spring (No. 2) emergent in the NE¼NW¼NW¼ of Section 23 flows south towards Tenas Mary Creek. The spring was flowing at approximately 2-3 gallons per minute at the time of the field examination. The flow increases downstream from the Pitcher Pump. Tenas Mary Creek flows south and turns

westerly towards the Kettle River. As the creek flows across the easterly section of Section 23, much of the water of Tenas Mary Creek seeps into the alluvial deposits before entering the Kettle River. The lower property is private and access to the lower section of the creek was not available.

Construction and development

The applicant has proposed to subdivide and provide water to a new residence or owner. The applicant will be provided two years to begin the process, and pursue subdivision of the property. Beginning of Construction will be considered upon completion of the subdivision process and the start of the piping and development of the spring to a new residence/cabin. Completion of Construction will be considered upon completion of the delivery system to the new residence. Proof of Appropriation will be considered when the property owner has constructed the residence and water is put to beneficial use. The permitee may request extensions of these dates provided the project is pursued with diligence.

Beneficial Use

Single domestic supply including one acre of nonagricultural lawn and garden is a beneficial use. Ten gallons per minute, two acre-feet per year should be sufficient for single domestic supply and irrigation of one acre.

Water Availability

An analysis of water availability must take into account not only the physical limitations on the source of supply, but the legal availability as well.

Hydrogeologic Analysis: The Department of Ecology has not closed the Kettle River to further consumptive appropriations, however the Department of fish and Wildlife has provided the following comment.

All diversion shall cease when the flow of the Kettle River falls below 600 cubic feet per second, from April 1 to July 31 and 300 cubic feet per second, from August 1 to September 30 as measured and recorded by the United States Geological Survey (USGS) at Ferry, Washington.

Therefore, water is available for appropriation as long as irrigation ceases when the Kettle River falls below the low flow recommendation from the Washington State Department of Fish and Wildlife.

Impairment Considerations

A review of department records was conducted for existing water rights, permits, and claims within the vicinity of the proposed diversion.

Surface Water Claim 028275 claims a use of 0.45 cfs, 120 acre-feet per year for the irrigation of 30 acres from Tenas Mary Creek. The claimed point of diversion is located in Gov't Lot 7 of Section 22, T. 40 N., R. 32 E.W.M. The place of use is described as Lot 7, 8, 9 of Section 22, T. 40 N., R. 32 E.W.M.

The intent of the Claims Registration Act, Chapter 90.14 RCW, was to document those uses of surface water in existence prior to the adoption of the State Surface Water Code, Chapter 90.03 RCW, which was adopted in 1917, and those uses of ground water in existence prior to the adoption of the State Ground Water Code, Chapter 90.44 RCW, which was adopted in 1945. Since each code(s) adoption, the

only means of acquiring a water right within the state is by filing for, and receiving, a permit from the Department of Ecology or one of its predecessors or is allowed under the domestic exemption to the ground water code (RCW 90.44). The Department of Ecology recognizes that the final determination of the validity and extent associated with a claim registered in accordance with RCW 90.14 ultimately lies with the Superior Court through the general adjudication process provided for by Sections 90.03.110 through 90.03.245 RCW and 90.03.620 through 90.03.645 RCW.

It does not appear the use of ten gallons per minute for in-house domestic use will impair the downstream claimed use. The irrigation of land may be regulated to satisfy the claimed use if the flow in Tenas Mary Creek is below 0.45 cfs at the downstream diversion.

Public Interest Considerations

There has been no public expression of protest or concern regarding the subject proposal, and no findings through this investigation indicate that there would be any detrimental impact to the public welfare through issuance of the proposed appropriation.

Chapter 90.54 RCW provides that water allocation shall secure maximum net benefits to the people of the state, while also requiring that perennial rivers of the state shall be retained with base flows necessary to provide for the preservation of fish and other environmental values.

The approval of this application for this quantity and use will not be detrimental to the public interest.

Conclusions

Under Chapter 90.03.290 RCW, an application for permit may be approved if water is available for appropriation, and the proposed use would be a beneficial use, would not impair existing water rights, and would not be detrimental to the public welfare.

It is the conclusion of this examiner that public surface water is available for single domestic supply and irrigation of one acre. This appropriation is considered a beneficial use and will not impair existing water rights or be detrimental to the public welfare.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

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:

0.02 cubic feet per second
2 acre-feet per year
Single domestic supply and irrigation of one acre

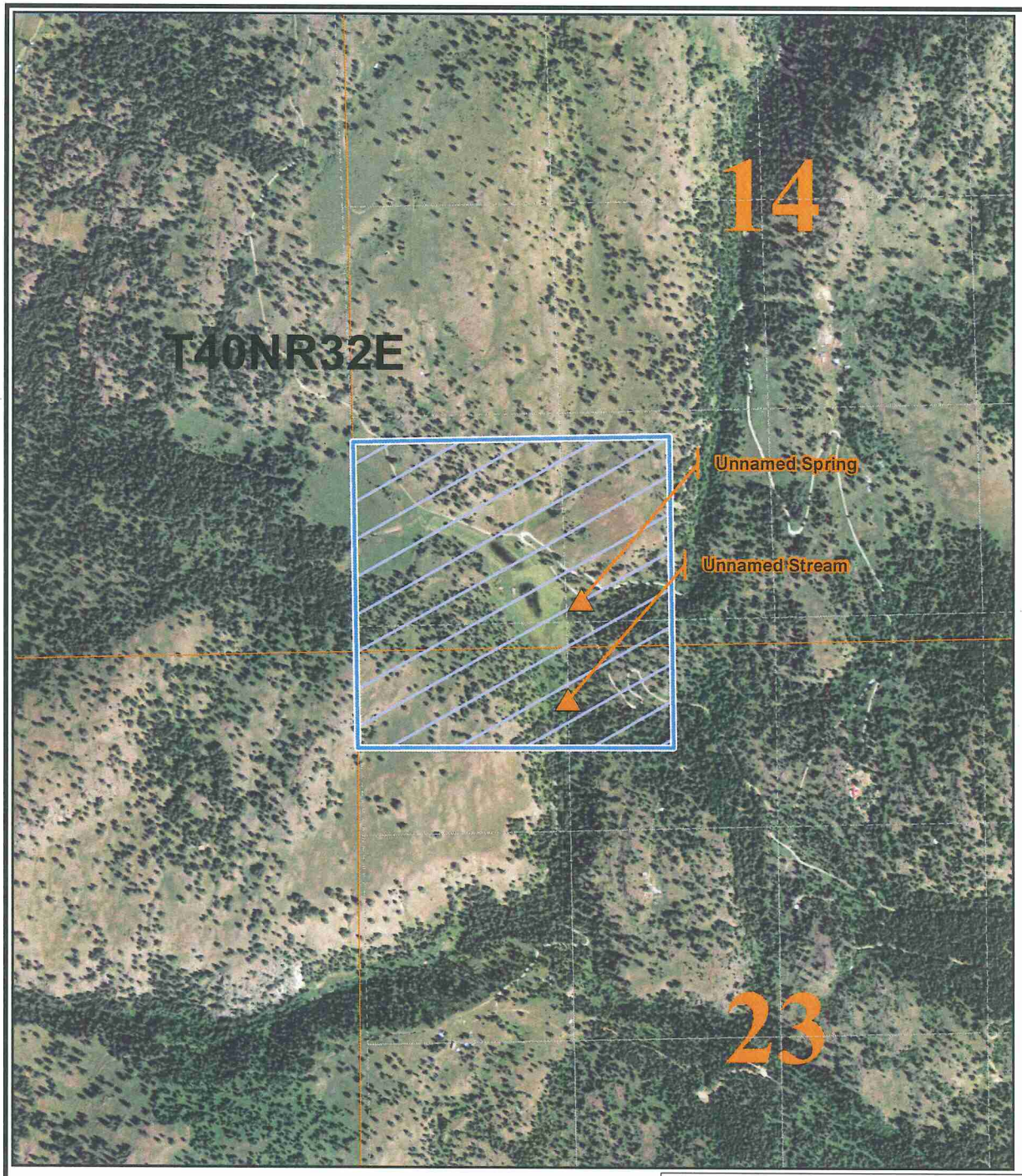
Point of Diversion: within the NW¼NW¼ of Section 23 and SE¼SW¼ of Section 14, T. 40 N. R. 32 E.W.M. Ferry County, Washington

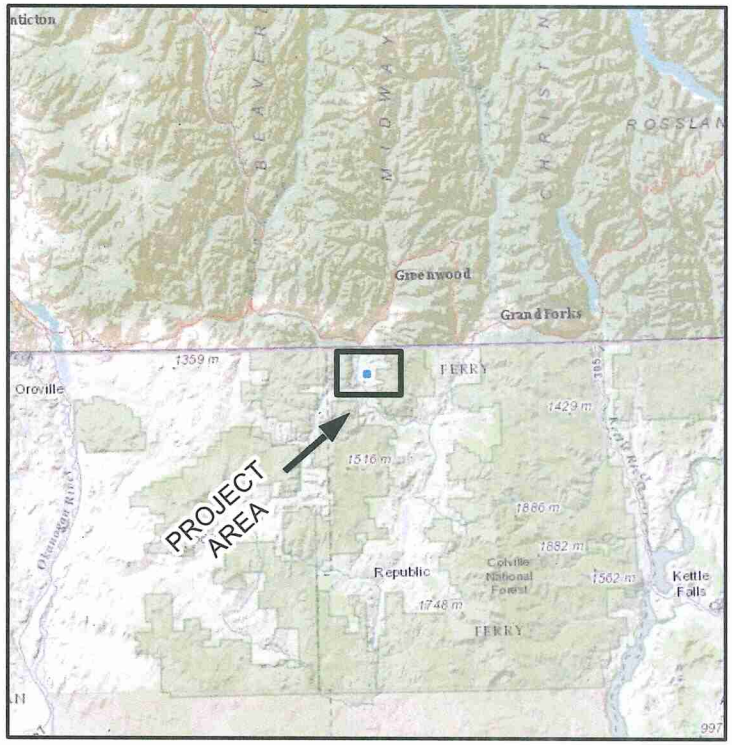
Kevin Brown 1/22/13

Kevin Brown, Report Writer *Date*

If you need this publication in an alternate format, please call the Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

John Fahsholtz
S3-30516
T40N/R32E





Basemap - (ESRI US Topographic Maps)

Legend

- Authorized Place of Use
- Townships
- Sections
- Authorized Point of Diversion

0 330 660 1,320 1,980 2,640 3,300 Feet

Basemap - (NAIP 2011 1m color)

Map Date: 1/14/2013

Comment:
Place of use and source locations are as defined within the Report of Examination cover sheet for the document identfied in the header above.

ATTACHMENT 1