File NR S3-30504
WR Doc ID 4265378

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
Department of Ecology
Office Of Columbia River
Report of Examination for Lake Roosevelt Incremental Storage Releases Water Permit

PRIORITY DATE
1/6/2006

APPLICATION NUMBER
S3-30504

MAILING ADDRESS
ROBERT ANDERSON
68 MARTIN CREEK DRIVE
KETTLE FALLS WA 99141

Co-Applicant
Carl David
72 Martin Creek Drive
Kettle Falls WA 99141

Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.06	CFS	9.5

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE ADDITIVE	WITHDRAWAL OR DIVERSION RATE NON-ADDITIVE	UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Non-agricultural irrigation of 3.75 acres	0.06		CFS	9.5		04/01 - 10/31

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
FERRY	FRANKLIN D ROOSEVELT LAKE	PACIFIC OCEAN	58-MIDDLE LAKE ROOSEVELT

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Lake Roosevelt	3537-16-50-000038-00	35 N.	37 E.	17	SE¼SE¼	TBD	TBD

Datum: NAD83/WGS84

Place of Use (See Attached Map and Attached)

PARCELS (NOT LISTED FOR SERVICE AREAS)
3537-16-50-000038-00, 3537-16-50-000038-000-00003

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE
Lots 3 and 4 of the Martin Creek Tree Farm within the SE¼SE¼ of Section 17, T. 35 N., R. 37 E.W.M.

Proposed Works

Pump in the lake and pipeline to the property

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
July 1, 2014	July 1, 2016	July 1, 2017

Measurement of Water Use

How often must water use be measured?	Monthly
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 (cfs)

Provisions

Water Service Contract

Use of water under this permit or certificate is contingent upon the applicant's compliance with a water service contract with Ecology for recovery of costs associated with the Lake Roosevelt Incremental Storage Releases Program. Failure to comply with the terms of the water service contract will result in cancellation of the permit or revocation of the certificate.

The amount of water supplied under this authorization will be considered non-additive to water supplied under CertificateG3-25769 and Permit G3-29314, if available, up to one acre-foot per lot for irrigation purposes and additive for the remainder of the 3.75 acres of irrigation. If water is not supplied under these existing rights, this right will be primary.

Measurements, Monitoring, Metering and Reporting

An approved measuring device must 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, which 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.

Department of Fish and Wildlife Requirement(s)

The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. http://wdfw.wa.gov/about/contact/

Easement and 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.

Water Use Efficiency

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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.

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.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearing 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 Yakima, Washington, this day of 2013.

Mark C. Schuppe, Operations 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

BACKGROUND

Description and Purpose of Proposed Application

On January 6, 2006, the Washington State Department of Ecology (Ecology) accepted Water Right Application Number S3-30504 submitted by Robert Anderson and Carl David . Attributes of the application are presented below in Table 1.

On June 6, 2013, the applicant was notified of the availability of mitigation water for this application, developed by the Office of Columbia River as part of the Lake Roosevelt Incremental Storage Release Program (Program). On June 10, 2013, the applicant indicated his intent to receive water under the Program.

The lands upon which the proposed point of diversion is located are owned by the National Park Service.

The proposed water use is associated with a 49-lot subdivision. These applicants' two lots receive water from their municipal water system for domestic supply. This application requests authorization to use water from the river to irrigate these lots for lawns and landscaping.

Table 1 Application Summary

Name	**Anderson, David**
Priority Date	1/6/2006
Instantaneous Rate	0.06 cfs
Annual Quantity	9.5 af/yr
Purpose(s) of Use	Non agricultural irrigation of 3.75 acres
Period of Use	April to October
Place(s) of Use	Lots 3 and 4 of the Martin Creek Tree Farm

Table 2 Proposed Sources of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
LAKE ROOSEVELT	3537-16-50-000038-00	35 N.	37 E.	17	SE¼SE¼	TBD	TBD

Legal Requirements for Approval of Appropriation of Water

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, 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.

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 during the weeks of March 30 and April 6, 2006 and no protests were received.

Consultation with the Washington Department of Fish and Wildlife

Ecology must give notice to the Washington Department of Fish and Wildlife (WDFW) of applications to divert, withdraw or store water (RCW 77.57.020). WDFW was notified of the application. No comments were received.

Consultation under WAC 173-563-020

Under WAC 173-563-020(4), consultation is required before issuance of new Columbia River water right permits:

> *The instream flows established and implemented by this chapter for instream and out-of-stream uses, and the average weekly flows applied by this chapter to out-of-stream uses do not apply to any application for water from the main stem Columbia River on which a decision is made by the department of ecology on or after July 27, 1997. Any water right application considered for approval or denial after that date will be evaluated for possible impacts on fish and existing water rights. The department will consult with appropriate local, state, and federal agencies and Indian tribes in making this evaluation. Any permit which is then approved for the use of such waters will be, if deemed necessary, subjected to instream flow protection or mitigation conditions determined on a case-by-case basis through the evaluation conducted with the agencies and tribes.*

On December 14, 2009, Ecology contacted local, state, and federal agencies and Indian tribes requesting consultation and comments on issuing new municipal and industrial permits from the Columbia River mitigated by 13,527 acre-feet of water under the Program. On November 5, 2010, Ecology consulted with local, state, and federal agencies and Indian tribes again to update the quantity of water released, to 37,500 acre-feet for municipal/industrial uses and associated instream releases.

From these consultations, Ecology received written responses from the WDFW, Bonneville Power Administration, U.S. Fish and Wildlife Service, Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation, and the United States Forest Service. Ecology also had several meetings with stakeholders, including the Columbia River Policy Advisory Group (PAG) where it received oral comments.

Copies of the written comments received are available in the file and PAG meeting notes are available on-line at: http://www.ecy.wa.gov/programs/wr/cwp/cr_pag.html. The comments generally identified

that the Program was adequate mitigation for up to 25,000 acre-feet of water for new municipal, multiple domestic and industrial permits.

State Environmental Policy Act (SEPA)

Pursuant to the State Environmental Policy Act (SEPA) (Chapter 43.21C RCW) and the SEPA Rules (Chapter 197-11 WAC), the Program was addressed in the Final Programmatic Environmental Impact Statement (FPEIS) for the Columbia River Management Plan. A Final Supplemental Environmental Impact Statement (FSEIS) was released on August 29, 2008 and an Addendum to the FSEIS was released on December 29, 2009; both documents address the Program in detail. On June 12, 2009, the United States Bureau of Reclamation (Reclamation) issued an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the project under the National Environmental Policy Act (NEPA).

The above described SEPA Documents are available online:
FPEIS - http://www.ecy.wa.gov/programs/wr/cwp/eis.html
FSEIS and FSEIS Addendum - http://www.ecy.wa.gov/programs/wr/cwp/cr_lkroos.html
EA and FONSI - http://www.ecy.wa.gov/programs/wr/cwp/cr_lkroos_envirostudies.html.

Project specific SEPA compliance

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.

- It is a surface water right application for more than 1 cubic foot per second (cfs). If the project is for agricultural irrigation, the threshold is increased to 50 cfs, so long as the project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gallons per minute (gpm);
- It is an application combined with other water right applications for the same project and exceeds the amounts above;
- 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);
- It is part of a series of exempt actions that, considered 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

Water Availability

For water to be available for appropriation, it must be both physically and legally available.

Legal Availability

The Program involves releases of water stored in Lake Roosevelt under Reclamation's 1938 storage right (Reservoir Certificate Number 11793) to provide municipal, domestic and industrial water supply; provide water to replace some groundwater in the Odessa Subarea; enhance stream flows in the Columbia River to benefit fish; and provide drought relief for interruptible water right holders.

Surface Water Permit Number S3-30556 was issued on December 1, 2008 to the USBR, authorizing a maximum of 305 cfs, 37,500 acre-feet per year for instream purposes in Lake Roosevelt and below Grand Coulee Dam with a priority date of May 16, 1938. Surface Water Permit Number S3-30556 is considered the "secondary" water use permit authorizing use of water stored under Reservoir Certificate Number 11793.

On December 21, 2010, Ecology issued Superseding Certificate of Trust Water Right S3-30556, accepting 305 cfs, 37,500 acre-feet per year to the Washington State Trust Water Right Program (TWRP) for the purpose of instream flow. Under Superseding Certificate of Trust Water Right S3-30556, water is held in the TWRP to mitigate the impacts of 25,000 acre-feet of new state water rights issued under the Program's municipal and industrial water right permitting; the remaining 12,500 acre-feet is reserved exclusively for instream flows. In June 2011, Ecology provided notice under RCW 90.42.040(5) that it would modify Superseding Certificate of Trust Water Right S3-30556 to allow for mitigation of domestic uses as well as municipal and industrial uses. No comments from this notification were received, and Ecology issued a second Superseding Certificate of Trust Water Right S3-30556 on August 17, 2011.

Physical Availability

Municipal, domestic, and industrial water uses associated with the Program will divert or withdraw water from the Columbia River or tributary groundwater on a continuous, year-round basis. In the preferred Alternative 1C, identified in the SEIS, mitigation releases from Lake Roosevelt will occur during time periods that will provide the greatest benefit to fish populations. These releases will occur during the months in which increased flow in the Columbia River will benefit fish the most, generally during April through September. The exact quantities and timing of the mitigation releases will be determined annually by the Fish Flow Releases Advisory Group (FFRAG). The membership of the FFRAG agrees that mitigation releases should be scheduled to help restore normative flows in the Columbia River. Since flows in October through March are higher than normative, mitigation for diversions and withdrawals under the Program during this time period are not seen as critical by FFRAG, leaving water available for release during the critical April through September period. This strategy was also supported in the consultations for the Program.

The subject application is being investigated under the mitigation framework established under the Program. In order to mitigate the impacts of any new appropriation of water on the Columbia River, hydrologic evidence must indicate that impacts on the Columbia River associated with the proposed water use would be successfully mitigated by the Lake Roosevelt mitigation releases. Additionally, it must be possible to manage the impacts on the Columbia River of proposed pumping in a manner that avoids carry-over of impacts across mitigation cycles.

The applicant proposes to pump directly from Lake Roosevelt for non-agricultural irrigation of lawns and

landscaping. The municipal water supply water system for this subdivision does not have capacity to serve lawn and landscaping on the subject property in excess of ½ acre.

Impairment Considerations

Columbia River Water Rights

An investigation of a water right application includes an analysis of whether the proposed water use will impair other existing water rights. The impairment analysis involves identifying how the proposed water use may impact the current water rights regime.

In considering impacts to existing water right holders and the instream flow rule, an analysis must consider actual river operation, particularly in drought years when water availability issues are most acute. In the context of this application, there are four classes of water uses that must be considered:

- Water right holders with priority dates senior to May 16, 1938.[1]
- Uninterruptible water rights with priority dates junior to May 16, 1938.
- Interruptible water rights with priority dates junior to May 16, 1938.
- The June 24, 1980 Instream Flow Rule (WAC 173-563).

A detailed analysis of the current water rights regime on the Columbia River was issued in the Report of Examination (ROE) for S3-30556.

Under the Program, 37,500 acre feet per year of mitigation water is held in the TWRP for instream purposes under Superseding Trust Water Certificate S3-30556 with a priority date of May 16, 1938, 25,000 acre-feet of which may be used for mitigation of new out-of-stream uses. Under the State's priority system, the mitigation water is senior to all water rights issued after May 16, 1938. The mitigation water rights are specifically exempted from the Columbia River instream flow rule (WAC 173-563-020(5)). Additionally, the mitigation water is protected under the TWRP from diversion by junior water right holders who may be curtailed during low-flow years. These junior users total approximately 379 interruptibles who are curtailed based on a forecast methodology outlined in WAC 173-563. Although junior to the mitigation that is available for this application, no conflict is expected between the applicant's diversions or withdrawals and interruptible water users because of the mitigation provided by the Program.

Water Rights in the Vicinity

There are no other water rights in the area diverting from the lake. The applicant is part of the Martin Creek Community Association (MCCA). The MCCA has one certificate, one permit and one application on file with Ecology. The permit and certificate together authorize 101 gallons per minute, 50 acre-feet per year for municipal water supply purposes within the Plat of Martin Creek Tree Farm. Four wells have been drilled and they are continuing to pursue developing the allocation authorized. The wells are up slope from the river and do not produce significant amounts of water. The water system is currently limited on its service to the platted lands.

[1] Although the priority date of this application is [DATE] based on the date of filing with Ecology, the application is backed by mitigation with a priority date of May 16, 1938, which is how it will be managed if regulation of Columbia River water rights is required.

The applicants propose to divert water from Lake Roosevelt for lawn and landscaping irrigation on their lots within the service area of the municipal water system. At this time the municipal system cannot supply sufficient water to satisfy their requests due to well capacity and an existing quantification of one acre-foot per residence within the plat.

The pending water right application for MCCA, G3-30165 requests an additional 200 gallons per minute for domestic supply for the 49 lots and irrigation of up to 75 acres within their service area. They are still evaluating the proposed well locations and other options to see if they can qualify for additional water under the OCR Program.

Beneficial Use

The use of water for non-agricultural irrigation of lawns and landscaping purposes is defined in statute as a beneficial use (RCW 90.54.020(1)). Beneficial use encompasses two principal elements of a water right:

1. Beneficial use refers to the purpose for which water may be used.
2. Beneficial use determines the measure of a water right. The owner of a water right is entitled to the amount of water necessary for the purpose to which it has been used.

To determine the amount of water necessary for a beneficial use, courts have developed the principle of "reasonable use". Reasonable use of water is determined by analysis of the factors of water duty and waste.

Currently MCCA is authorized to deliver up to one acre-foot per residence under existing permits and certificates. This authorization requests 0.06 cfs for irrigation of 3.75 acres of property on Lots 3 and 4.

The Irrigation Guide confirms a water need of 2.5 acre-feet per acre (including application efficiency). This would result in an annual need of 9.5 acre-feet for non-agricultural irrigation of lawns and landscaping.

Public Interest Considerations

Analysis of whether this application meets the requirements of RCW 90.03.290, that the proposed use of water will not be detrimental to the public welfare, involves investigation of how the approval of the proposed use of water will affect the range of values that are encompassed by the public interest.

Several sections of statute list the legislative policies that guide the consideration of the public interest during the allocation of water, including sections of the 1971 Water Resources Act (Chapter 90.54 RCW) and Chapter 90.90 RCW titled "Columbia River Basin Water Supply".

An analysis of the public interest considerations for the Program is contained in the Report of Examination for Application No. S3-30556, the "secondary use" permit for the Lake Roosevelt releases.

The public interests associated with the Program's municipal, domestic and industrial permitting are specifically cited in several sections of Chapter 90.90 RCW.

- RCW 90.90.005(1) states "The legislature finds that a key priority of water resource management in the Columbia river basin is the development of new water supplies that includes storage and conservation in order to meet the economic and community development needs of people and the instream flow needs of fish".

- RCW 90.90.005(2) directs Ecology to "aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses".

- RCW 90.90.020(3)(b) instructs Ecology to focus on "Sources of water supply for pending water right applications".

- RCW 90.90.020(3)(d) instructs Ecology to focus on "New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin".

- RCW 90.90.060(3) states that Lake Roosevelt releases "will bolster the state economy and will meet the following critical needs" including "new water supplies for municipalities with pending water right applications".

The Program's municipal, domestic and industrial permitting achieves the statutorily mandated public interest requirements by allowing new state water rights to be issued while mitigating the impacts to fish.

If the subject application is approved, the public welfare may be affected in several ways:

- Economic activity is likely to result from the use of water for commercial/industrial purposes, as the associated construction and operation activities generate increased economic and social opportunities.

- The use of water for non-agricultural use of lawn and landscaping purposes is not expected to affect local cultural, recreational, or environmental resources.

- The adaptive management strategy for mitigation releases will ensure releases occur at times that are most beneficial for Endangered Species Act-listed salmon and steelhead species in the Columbia River, thus assuring effective mitigation for this appropriation of water.

Conclusions

Beneficial Use

The proposed use of water for non-agricultural use of lawn and landscaping purposes is considered to be a beneficial use.

Water Availability
The analysis provided above demonstrates that water is physically and legally available for the proposed use of water.

Impairment
The proposed beneficial use of water will not impair existing water rights.

Public Interest
The proposed use of water would not 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 and a permit be issued 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:

0.06 cfs
9.5 acre-feet per year
3.75 acres of non-agricultural use of lawn and landscaping purposes

Point of Diversion

SE¼SE¼ of Section 17, Township 35 North, Range 37 E.W.M.

Place of Use

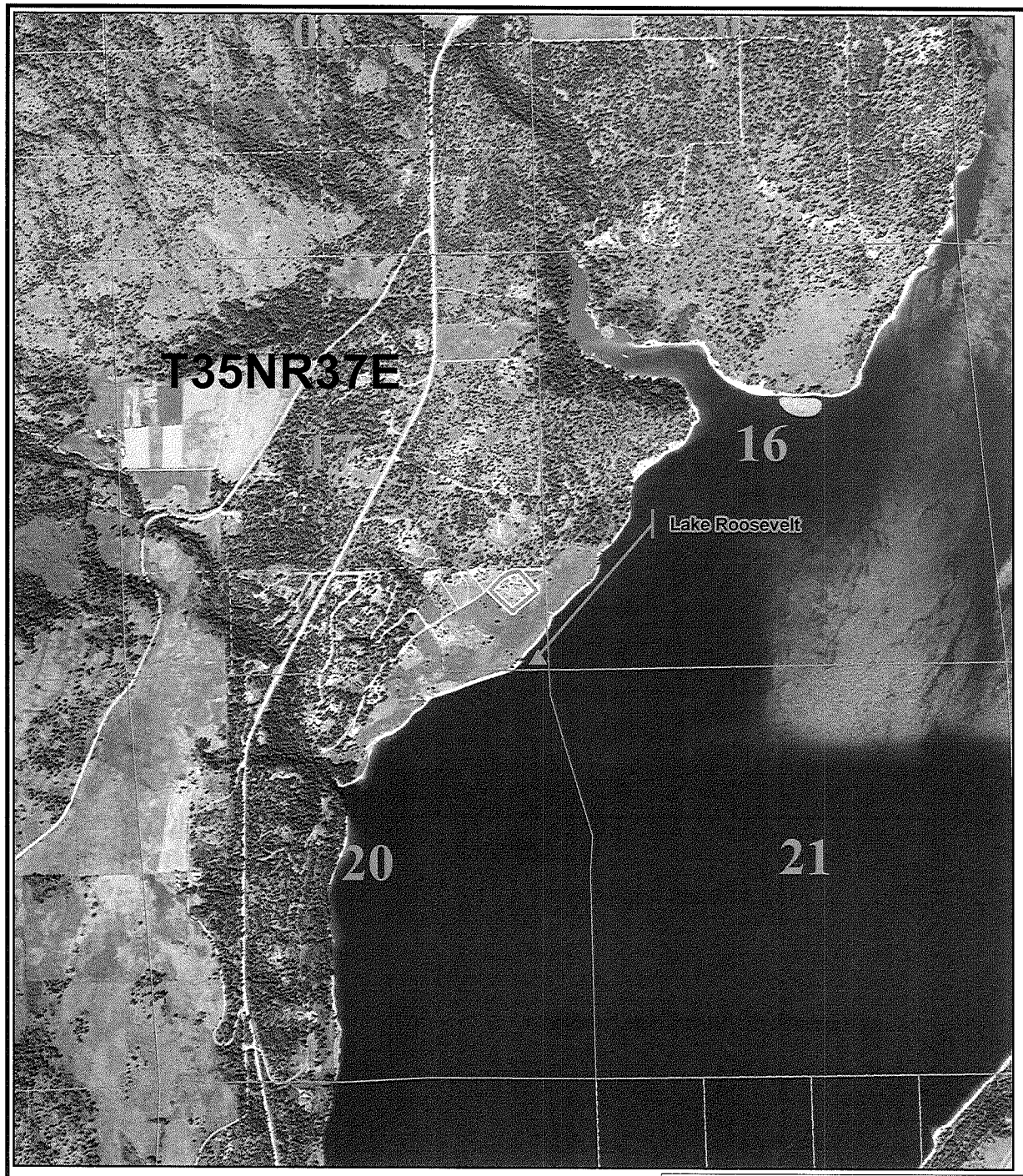
Lots 3 and 4 of the Plat of Martin Creek Tree Farm, Section 17, T. 35 N, R. 37 E.W.M.

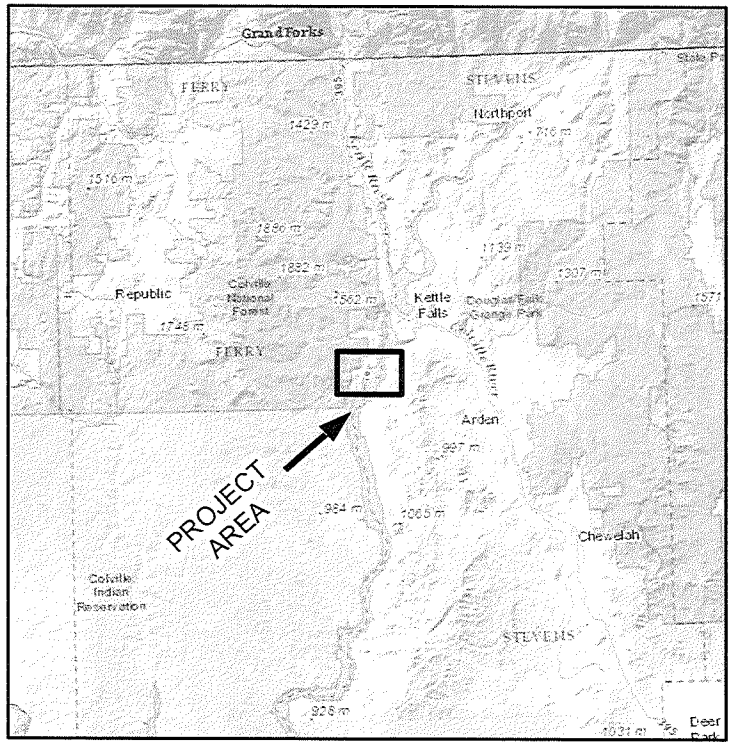
Kevin Brown, Report Writer *Date*

DRAFT

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.

Robert Anderson & Carl David
S3-30504
T35N/R37E





Basemap - (ESRI US Topographic Maps)

Legend

Authorized Place of Use

Townships

Sections

Authorized Point of Diversion

0 660 1,320 2,640 3,960 5,280 6,600 Feet

Basemap - (NAIP 2011 1m color)

DEPARTMENT OF ECOLOGY State of Washington

Map Date: 6/25/2013

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