



State of Washington  
DRAFT  
REPORT OF EXAMINATION  
FOR WATER RIGHT CHANGE

Changed Place of Use  
Changed Purpose of Use  
Changed Point of Diversion to a Point of Withdrawal

<b>PRIORITY DATE</b> March 12, 1959	<b>WATER RIGHT NUMBER</b> Surface Water Certificate 7688	<b>APPLICATION FOR CHANGE NUMBER</b> CS1-*15329C
--	---	---

<b>MAILING ADDRESS</b> VICTOR BENSON 19357 KANAKO LANE MOUNT VERNON 98274	<b>SITE ADDRESS (IF DIFFERENT)</b>
--	------------------------------------

Total Quantity Authorized for Withdrawal		
WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
4.5	GPM	0.3

Purpose						
PURPOSE	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Domestic	4.5		GPM	0.3		01/01 - 12/31

Source Location			
COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
SKAGIT	GROUNDWATER		3-LOWER SKAGIT-SAMISH

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Well	P16559	BCS596	33N	04E	08	SESE	48.359624	-122.397149

Datum: NAD83/WGS84

**Place of Use (See Attached Map)**

**PARCELS (NOT LISTED FOR SERVICE AREAS)**

P16559

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

Beginning at the Southeast corner of Sec. 8, T33N, R04E, W.M. Thence N 0° 27' 22"E 2,618.7 ft thence N 89° 09' 51" W 1,001.4 ft to the True Point of Beginning. Thence from the True Point of Beginning S 1° 13' 43" W 1,282.4 ft to the north boundary of J. Nelson Road thence N 88° 50' 31" W 209.2 ft thence N 1° 01' 18" E 368.2 ft thence N 89° 08' 53" W 121.2 ft thence N 0° 51' 03" E 913 ft thence S 89° 09' 49" E 337.7 ft to the True point of Beginning.

**Proposed Works**

A well 6 inches in diameter and 71 ft deep providing water to a single family dwelling.

**Development Schedule**

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
July 1, 2015	July 1, 2018	July 1, 2021

**Measurement of Water Use**

How often must water use be measured?	Annually
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Maximum Instantaneous Rate (in gpm)

**Provisions**

**Wells, Well Logs and Well Construction Standards**

All wells constructed in the state must 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 must be decommissioned.

All wells must be tagged with a Department of Ecology unique well identification number. If you have an existing well and it does not have a tag, please contact the well-drilling coordinator at the regional Department of Ecology office issuing this decision. This tag must remain attached to the well. If you are required to submit water measuring reports, reference this tag number.

Installation and maintenance of an access port as described in WAC 173-160- 291(3) is required.

**Measurements, Monitoring, Metering and Reporting**

An approved measuring device must be installed and maintained on the source 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.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Northwest Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Northwest Regional Office for forms to submit your water use data.

### **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 must file the notice of Proof of Appropriation of water (under which the superseding 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 superseding certificate will reflect the extent of the project perfected within the limitations of the water right. 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, will 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.

### **Real Estate Excise Tax**

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477 Internet: <http://dor.wa.gov/>. E-mail: REETSP@DOR.WA.GOV.

### **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;

- a portion of the subject right is eligible for change,
- the original surface water source and the new groundwater source are in hydraulic connection,
- water is available from the source in question,
- there will be no impairment of existing rights,
- the proposed purpose of use is beneficial,
- and there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. CS1-\*15329C, 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
<p><b>Department of Ecology</b>            Attn: Appeals Processing Desk            300 Desmond Drive SE            Lacey, WA 98503</p> <p><b>Pollution Control Hearings Board</b>            1111 Israel RD SW Ste 301            Tumwater, WA 98501</p>	<p><b>Department of Ecology</b>            Attn: Appeals Processing Desk            PO Box 47608            Olympia, WA 98504-7608</p> <p><b>Pollution Control Hearings Board</b>            PO Box 40903            Olympia, WA 98504-0903</p>

Signed at Bellevue, Washington, this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
Jacqueline Klug, 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  
 John Rose, Department of Ecology  
 Water Right Control Number CS1-\*15329C

**BACKGROUND**

This report serves as the written findings of fact concerning Water Right Application Number CS1-\*15329C.

**EXISTING Water Right Attributes**

<b>Name on Water Right:</b>	Flowers, Louis
<b>Priority Date:</b>	3/12/1959
<b>Place of Use</b>	The NW ¼ of the NW ¼ of Sec. 9, T33N, R04E, Except County Road and ditch right of way, and except the 100 foot strip conveyed to the Rec. Nickle Co., a Corporation, by deed dated July 1, 1939 and recorded April 1, 1939 in Vol. 177 of Deeds page 466 under auditor's file No. 315564, records of said County, and also Except that part thereof described as follows: Beginning at the southeast corner of the NW ¼ of the NW ¼, thence west 636 ft, thence north 280.5 ft thence east 5 rods, thence north 40 ft, thence east 553.5 ft thence south to point of beginning, Except north 40 ft of west 980 ft sold on contract to Diking District No. 3 of Skagit County by contract dated July 21 <sup>st</sup> , 1950 Recorded September 5, 1950 Auditor's file No. 450462

County	Waterbody	Tributary To	WRIA
Skagit	Carpenter Creek	Skagit River	3-Lower Skagit-Samish

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Domestic single	0.01	CFS		January 1	December 31
Irrigation	0.20	CFS	40	April 15	October 1

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Carpenter Creek	P16585	N/A	33N	04E	09	NW NW	48.368503	-122.31301

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Twp = Township; Rng = Range, Sec = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

### REQUESTED Water Right Attributes

<b>Name on Water Right:</b>	Benson, Victor
<b>Date of Application:</b>	1/27/2014
<b>Place of Use</b>	Beginning at the Southeast corner of Sec. 8 T 33N R 04E W.M. Thence N 0° 27' 22"E 2,618.7 ft thence N 89° 09' 51" W 1,001.4 ft to the True Point of Beginning. Thence from the True Point of Beginning S 1° 13' 43" W 1,282.4 ft to the north boundary of J. Nelson Road thence N 88° 50' 31" W 209.2 ft thence N 1° 01' 18" E 368.2 ft thence N 89° 08' 53" W 121.2 ft thence N 0° 51' 03" E 913 ft thence S 89° 09' 49" E 337.7 ft to the True point of Beginning.

County	Waterbody	Tributary To	WRIA
Skagit	Groundwater	Skagit River	3-Lower Skagit-Samish

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Domestic single	0.25	CFS	2.0	January 1	December 31

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Groundwater	P16559	BCS596	33N	04E	08	SE SE	48.359664	-122.31712

#### Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the proposed change:

A certificate of water right will issue for only that quantity of water that has been withdrawn and applied to actual beneficial use. Such quantity applied to actual beneficial use shall not exceed the quantity specified in this report of exam and will be calculated based on the best information available to Ecology, including metering data and/or water duty analysis.

A certificate of water right will not be issued until a final investigation is made.

#### *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 Skagit Valley Herald on March 8, 2014 and May 15, 2014.

#### *Consultation with the Department of Fish and Wildlife*

The Department must give notice to the Washington Department of Fish and Wildlife (WDFW) of applications to divert, withdraw or store water. Ecology's permit writer contacted WDFW's Steve Bossoew on April 17, 2014, by email to inform him of the particulars of this change application. If WDFW does not reply by June 17, 2014, then Ecology will assume that there are no objections to this change application.

*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.

*Water Resources Statutes and Case Law*

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*.

The Supreme Court has held that a prior perfected water right for a seasonal use of water may be changed to year-round use if the change is not detrimental or injurious to existing rights. *R.D. Merrill v. PCHB*.

The holder of the right may change the manner or purpose of use. The Washington State Supreme Court held in *Merrill* that a water right holder may change the season of use when related to a change in the purpose of use of a water right. A change in the purpose of use can be approved only after the water has first been applied to beneficial use.

A point of diversion for a surface water right may be changed to a groundwater point of withdrawal. The authority is derived from RCW 90.03.380, RCW 90.44.020-.030, RCW 90.44.100, and RCW 90.54.020(9). RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed if it would not result in detriment or injury to other water rights. Additionally, moving the point of diversion to a groundwater withdrawal requires compliance with the groundwater code (RCW

90.44), including a finding that there be no detriment to the public welfare and that the source of the existing diversion and the proposed point of withdrawal be part of the same water body.

## **INVESTIGATION**

---

Water right change applicant Victor Benson is seeking to move 0.25 CFS and 2 Ac-ft/yr of Surface Water Certificate (SWC) 7688 (aka application for change number CS1-\*15329C) to Skagit County parcel P16559 owned by Steve Benson to provide for single domestic use on this parcel. The original water right is for 0.01 CFS for domestic purposes and 0.20 CFS, 40 Ac-ft/yr for the irrigation of 20 acres during the period of April 15 to October 1 of each year.

The Washington water code specifies that only the amounts of water certificated and put to beneficial use can be available to transfer. Since this request would constitute an enlargement of this water right in terms of instantaneous quantity, from 0.21 CFS to 0.25 CFS, this latter amount would be unlawful. Therefore, only the original amounts listed on the water right will be considered. If Mr. Benson wants to transfer the irrigation portion of this water right, this will constitute a change from seasonal use to year round use. Moreover this application, if approved will constitute a change from surface water to groundwater.

There is a domestic well on the intended parcel already, but the owner (Steve Benson) cannot acquire a building permit at this time due to the current conflicts with the Skagit Instream Flow rule (WAC 173-503). On the application the total amount of water listed to be moved is 0.25 CFS and 2 Ac-ft/yr, however it will more likely be 0.01 CFS (equivalent to 4.5 gallons per minute) that is needed in this case, as that would be a more appropriate amount of water for the intended purpose of providing water to a single family dwelling. In addition, parcel P16559 already has an irrigation water right associated with it, S1-00551C.

It should be noted that this application is part of an environmental restoration project. Mr. Benson has partnered with the Skagit River System Cooperative to restore the natural drainage of Sandy Creek which flows through his property and the existing place of use of this water right. Transference of this water right is part of the agreement Mr. Benson has with the Skagit River System Cooperative and approval would allow this project to proceed.

### **Location**

---

SWC 7688 covers approximately 34 acres in the Carpenter Creek basin that is tributary to the Skagit River. The property lies south of Mount Vernon at the base of a series of north trending hills that are on the east side of the Skagit River floodplain and east of the Skagit River estuary where the river splits into a north and a south fork, forming Fir Island. The highest peaks in the area are to the east of the water right's Place of Use and consist of Devil's Mountain that has an elevation of 1,727 ft and Scott Mountain with an elevation of 1,620 ft. These hills are characterized by high relief which drains to the west forming a series of parallel streams. This includes Sandy Creek which drains from the southern side of Scott Mountain along a ravine formed from a splay of the Devil's Mountain fault and enters into Carpenter Creek/Hill Ditch on the northern boundary of this Water Right's place of use. (See Map 1. Topographic Features in the vicinity of Water Right CS1-15329C).

Currently the water right's Place of Use consists of 4 parcels, P16585, P99591, P16584, and P16587, which is a roadway easement. Carpenter Creek flows south from the northern portion of the hills mentioned above and travels along the western foot of these hills until it reaches the confluence of Sandy Creek adjacent to the north east corner of Mr. Benson's property, where it enters into the Hill Ditch system and then follows both the northern and western boundaries of Mr. Benson's property for approximately 2,000 ft before eventually joining with Fisher Creek to the south just upstream of the Nature Conservancy Fisher Slough Tidal Marsh Restoration Project.

## Hydrogeology

---

The hills to the east of Mr. Victor Benson's property consist of early Cretaceous to middle Eocene crystalline ultrabasic and metamorphic rocks comprising a sliver of the Helena-Haystack mélange belt, a complex collection of tectonically emplaced rocks that consists of a serpentinite matrix containing adjacent and exotic rock types. This mélange belt separates the Northwest Cascade System from the Western and Eastern Mélange belt. These rocks tend to be very resistant to weathering. Cross cutting this formation is the strike-slip Darrington-Devils Mountain fault which in the vicinity of Mr. Benson's property branches out into various splays, one of which forms the ravine which Sandy creek incises.

On the south side of the ravine is a fault bounded block of Eocene age volcanic rock consisting of mixed rhyolite and andesite. Approximately 20,000 years ago these metamorphic and igneous bedrock formations were overridden by the Puget Sound Lobe of the Cordilleran Ice Sheet, which left extensive glacial deposits of advance outwash, glaciomarine till, glacial till, and recessional outwash deposits.

Below these latest glacial deposits are often seen interglacial layers on top of older glacial deposits caused by the Puget Sound Lobe advancing and retreating repeatedly over a period of 14,000 years. These deposits are typically poorly sorted, often coarse grained, and with the exception of the recessional outwash deposits, well compacted. These layers are overlaid or truncated by alluvial deposits of the Skagit River floodplain as the river and delta meandered across the broad floodplain. These alluvial deposits of active or abandoned channel and flood deposits are typically coarse grained loose sand and gravel.

Finally, there are Lahar runout deposits which sit directly on top of the alluvium consisting of loose, well sorted, medium to fine grained volcanic sand that originated from a Glacier Peak eruptive event and was deposited as an airborne ash on top of existing bedrock deposits to the east and washed down existing channels such as Sandy Creek. For further information see Map 2; Geologic Map of the vicinity of Water right CS1-\*15329C.

## History of Water Use

---

On March 12, 1959, Mr. Louis Flowers submitted an application to divert water from Carpenter Creek, (aka Hill Ditch) in the amount of 0.21 CFS (no annual quantity requested) for the purpose of irrigation of 20 acres and domestic use. Mr. Flowers indicated that the time of the year in which irrigation water would be needed was April 15 to Oct and throughout the year for the proposed domestic use. The seasonal period indicated on the application was further clarified on the Proof of Appropriation

submitted by Mr. Flowers on November 18, 1959, when he indicated the seasonal use for irrigation was April 15 to October 1.

On April 7, 1959, Mr. Eugene Wallace, a geologist with the Division of Water Resources, a predecessor agency of the Department of Ecology, carried out a field exam of Mr. Flowers property in which he observed the nature of diversion proposed, purpose of use, place of use to which surface water would be applied, estimated low flow of Carpenter Creek, and characteristics of Carpenter Creek in the vicinity. In his report, Mr. Wallace noted that stock watering would be an additional use for this water right. On May 27, 1959, a permit was issued to authorize Mr. Flowers to begin construction of the infrastructure to divert 0.21 CFS for irrigation and domestic supply with 0.01 CFS being used for the domestic purpose and 0.20 CFS and 40 Ac-ft/yr for the irrigation purpose to irrigate 20 acres.

On November 18, 1959, Mr. Flowers submitted a Proof of Appropriation form to the Division of Water Resources indicating that construction of such works was complete and water had been put to full beneficial use for the purposes intended. A water right certificate was issued to Mr. Flowers on December 8, 1959. Subsequently, the land passed into the possession of Mr. Robert Benson in 1966, who transferred it to the Benson Family Trust in 2000. At some time in the past, there was parcel division resulting in the 4 parcels that cover the original Place of Use.

RCW 90.14.160 states that: *Any person entitled to divert or withdraw waters of the state through any appropriation authorized by enactments of the legislature prior to enactment of chapter 117, Laws of 1917, or by custom, or by general adjudication, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to divert or withdraw for any period of five successive years after July 1, 1967, shall relinquish such right or portion thereof, and said right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250.* Therefore a detailed investigation of water use after July 1, 1967, is required as part of any change application process.

Investigation of the property via Skagit County's online property website and discussions with the applicant indicate there is currently one home on the original designated Place of Use. This house, on parcel P99591, lies along the west side of Kanako Lane and was built in 1905. Water from Sandy Creek is currently diverted under SWC 7688 for domestic purposes for this house. There is no indication of a 5 year period of non-use of the domestic portion of this water right. For the domestic portion of this water right to be transferred, water use for the house would need to be permanently discontinued.

A detailed investigation of historical use of the irrigation portion of this water right was done using aerial photography obtained from the University of Washington's Suzzallo Library during a visit on April 28, 2014. Aerial photos from a variety of sources covering 1971, 1972, 1978, 1982, and 1995 were obtained and compared with aerial photos covering the time period 2001-2012 available as Ecology Geographic Information System (GIS) layers for past indications of irrigation. This analysis clearly indicates there was a pattern of irrigation/crop use on the Place of Use comprising the western parcel P16585 and portions of P99591 during the period 1971- 1982. However, the post-1995 aerial photos show an increasing amount of this area returning to a more natural state and by 2007 there appears to be no irrigation occurring.

On March 20, 2014, this permit writer met with the applicant Mr. Vic Benson on the property and observed the land conditions and current water uses. The permit writer confirmed the domestic use of this water right and observed the surface water diversion for the house, but observed there is currently no irrigation being performed at the designated Place of Use. Furthermore, this permit writer has conducted an extensive investigation of stream flow within the Carpenter-Fisher Basin since 2010 as part of Ecology's management of the Skagit Instream Flow rule and has not observed any irrigation on this property during that time.

Testimony of Mr. Benson indicated that sometime around 2001, the Carpenter Creek/Hill Ditch system from which the applicant has historically obtained water ceased to be dredged, causing seasonal flooding of his field and rendering it unsuitable for further irrigation purposes. In order to continue to make economic use of this land, Mr. Benson allowed his neighbor, Mr. Dan Sneva to graze cattle on his fields. An affidavit signed by Mr. Sneva and included in the water right file states that from 2003-2009 he grazed approximately 12-20 head of cattle on this property during the months of April to September. A follow up phone call to Mr. Sneva by this permit writer confirmed these details and indicated the cattle were obtaining water from both Carpenter Creek/Hill Ditch directly and from a water trough filled from the same source. Although the water right's purpose of use is for irrigation, it appears that after 2003 there was a de-facto change from irrigation to stock watering.

The Environmental Protection Agency's Manual of Individual and Non-Public Water Supply Systems Manual (May 1991) states that cattle livestock consume approximately 12 gallons per day per animal. This equates to 240 gallons per day for 20 cattle, for 183 days (April to September) or 43,920 gallons per year. This equates to 1.01 Ac-ft/yr that is potentially available to transfer of the "irrigation" portion of water right S1-\*15329C.

#### Impairment of Minimum Instream Flow Water Rights

Changes to water rights are outlined in RCW 90.03.380 and state *"That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights."* This statute was further clarified in 1999 with the Washington State Supreme Court ruling in *Okanogan Wilderness League v. R.D. Merrill and Dep't of Ecology (Merrill)*. The court held that *"timing changes which alter the length of period or the season of the year during which water is diverted and used can cause impermissible third party effect."* The Court held that once the time of use is defined, Ecology must analyze whether a change in the timing of use would result in impairment before a change can be authorized. If impairment is caused by the change in season of use, the Court held that the change should be denied.

The water right in question here clearly has an irrigation portion that is seasonal with an authorized period of use from April 15 to October 1 as stated in the application, permit, and proof of appropriation documents. In *Merrill* the Supreme Court held that even if a seasonal water right has a priority date senior to other existing rights in the vicinity, if there is a timing change proposed to the seasonal senior water right, then other water rights, even junior ones, cannot be impaired if the seasonal to year round change would adversely affect those junior water rights.

In April 2001, Ecology, under the provisions of RCW 90.22 Minimum Water Flows and Levels, RCW 90.54 Water Resources Act of 1971, and Washington Administrative Code 173-500, implemented an Instream Flow Rule for the Skagit River (WAC 173-503). Based on an independent scientific study commissioned by Ecology and a variety of stakeholders, the Instream Flow Rule delineated minimum flows that needed to be maintained to ensure adequate water quality, aquatic and wildlife habitat, recreational, and navigational uses of the river.

Studies done since 2001 have shown that these minimum flows are periodically not met during any given year, with most of the flows dropping below these minimum amounts during certain times of almost every month of the year. There is also a trend that shows that the greatest frequency of low flows occur in late summer and early autumn. As the Instream Flow Rule is considered to be a water right for the river itself, any change in a seasonal water right that would affect the Instream Flow Rule cannot be allowed as per the Supreme Court's decision in *Merrill*.

The Skagit Instream Flow Rule WAC 173-503-040(5) states that *"Future consumptive water right permits issued hereafter for diversion of surface water in the Lower and Upper Skagit (WRIA 3 & 4) and perennial tributaries, and withdrawal of groundwater in hydraulic continuity with surface water {underline added by author} in the Skagit River and perennial tributaries, shall be expressly subject to instream flows..."* Although the exact intention of the applicant is unclear in the water right application due to greater amounts being requested to be transferred than necessary, conversations with Mr. Benson indicate his preference to transfer the seasonal portion of SWC 7688 to year round groundwater use.

According to the USGS report *"Hydrogeologic Framework, Groundwater Movement, and Water Budget in Tributary Subbasins and Vicinity, Lower Skagit River Basin, Skagit and Snohomish Counties Washington* Scientific Investigations Report 2009-5270, the geology underlying both Mr. Vic Benson's property and that of Mr. Steve Benson, where the new proposed point of withdrawal and place of use is, consists of thick beds of alluvial and glacial recessional outwash deposits as described above. This results in a geologic environment that tends to have high porosity and permeability. Although the area consisting of the Skagit flood plain is generally flat, groundwater generally flows from areas of recharge from precipitation to areas of discharge, in this case the Skagit River itself or its tributaries. Therefore groundwater movement in the area is probably from the hills immediately to the east of Mr. Benson's property toward the Skagit River and this is confirmed by the USGS report. That being the case, it is reasonable to assume that there is hydraulic continuity between the proposed future point of withdrawal and the Skagit River to the west and to Carpenter Creek.

As part of the USGS efforts to quantify groundwater and surface water interactions in the vicinity of the Lower Skagit subbasin and adjoining subbasins, a numerical model was developed titled *"Numerical Simulation of the Groundwater-Flow System in Tributary Subbasins and Vicinity, Lower Skagit River Basin, Skagit and Snohomish Counties, Washington"* Scientific Investigations Report 2010-5184. Ecology has used this numerical model to simulate the effects of pumping wells on the existing streams in the 3 tributary subbasins that compromised the study area of this report, which includes Carpenter Creek Subbasin. Based on this simulation, water withdrawals from a well within the vicinity of the proposed new location of water use (Mr. Steve Benson's property) would have a 98% impact on the nearby Carpenter Creek/Hill ditch system. In other words, 98% of the water that would be withdrawn from Mr. Steve Benson's well would otherwise be groundwater recharge to the creek/ditch. A change from a seasonal water use to a year round use would therefore be a subsequent withdrawal during times when

the water right was historically not being used (i.e., during non-irrigation periods). As this would cause a calculable impact when minimum instream flows are not being met, there would be impairment of the Instream Flow water right. Therefore legally, the seasonal water right cannot be changed. However, the domestic portion of this water right, having been used for a year round purpose, and not having any indications of relinquishment is legally available for transfer.

In discussions with the applicant the question has been raised as to the minimum impairment to existing rights that must be met before a water right application should be denied. In other words what threshold of impairment must be met before a water right application must be denied? This is relevant in regards to this application since Mr. Benson wishes only to provide relatively small quantities of water to a single family residence in the vicinity of the existing water right. In October 2000, the Washington State Supreme Court ruled in *Postema v. Pollution Control hearings Board* that an instream flow rule is an appropriation of water entitled to the same protection from impairment by subsequent appropriators as other water rights. Furthermore there is no mention in the statute that says that there is a threshold of impairment. As stated in the case, "RCW 90.03.290 {Appropriation procedures of a water right} does not, however, differentiate between impairment of existing rights based on whether the impairment is de minimis or significant. If the withdrawal would impair existing rights, the statute provides the application must be denied."

### Proposed Use and Well Characteristics

---

On May 10, 2010, Mr. Victor Benson commissioned Dahlman Pump and Well Drilling Inc. to drill a well on parcel P16559 that is currently owned by Mr. Steve Benson and is the intended location of this change application. The well is 6 inches in diameter and 71 ft deep with the lower 6 ft (from depths 65 ft to 71ft) completed in gravelly sand. The well lies approximately 3,500 ft to the SW of the existing point of diversion.

The permit writer was unable to obtain a GPS fix with elevation data from the existing point of diversion due to a lack of access caused by flooding of the field in which it is situated. However, examination of existing LiDAR obtained through the Puget Sound LiDAR Consortium and 10 meter Digital Elevation Models imported into an ArcGIS map display shows the well lies approximately 1 ft down slope of the existing surface water diversion.

The well was cased from 0-66 ft deep and a stainless steel screen with #15 slot size was placed in the gravelly sand interval. The well was properly sealed to a depth of 18 ft using bentonite. A same day static water level measurement indicated 3 ft below the top of well with a top of casing 2 ft above ground surface elevation.

On March 20, 2014, as part of the field exam conducted by the permit writer, a static water level of 0.7 ft (1.3 ft from top of casing) above ground surface elevation was observed. It should be noted that the month of March had 167% normal precipitation at Bellingham (Office of the Washington State Climatologist monthly newsletters April and May 2014). Therefore the most recent static water level should not be viewed as typical.

As mentioned above, in order to transfer a water right to a new location, it must be proven that the proposed point of withdrawal and the existing point of surface water diversion must draw from the

same body of water. Both the existing surface water diversion and the proposed groundwater withdrawal are situated in alluvial and glacial deposits that are in hydraulic continuity with each other as demonstrated by simulated impacts from the USGS numerical groundwater flow model mentioned earlier.

A bailer test was conducted on the well at 10 gpm that resulted in 25 ft of drawdown in 1 hour. No water level measurements were taken in observation wells. Because of this, it is not possible to calculate transmissivity or storage of the aquifer at this specific location. Furthermore, there were no periodic measurements taken of dynamic water levels while water was being pumped. Therefore it isn't possible to get an understanding of the rate of drawdown in the well or if the water level was approaching equilibrium after the one hour bailer test. The permit writer is therefore forced to use his best estimate of if there is sufficient water to fulfill the domestic use requested. Drawdown in the well after only one hour seems to indicate a low transmissivity of the gravely sand aquifer penetrated by the well. This could cause potential problems if the well was operated at the pumping level of 10 gpm indicated by the bailer test. However, domestic uses usually consist of intermittent use of short durations. Most domestic uses do not exceed 1 hour time durations. Therefore, this well probably would serve the desired needs of the applicant. In regards to the annual volume that would be used, since there is no metering data for the historical domestic use on Mr. Vic Benson's property, Ecology has traditionally used 0.3 Ac-ft/yr as a good estimate for single domestic use based on various studies, so this will be the amount that will be calculated for transfer. This equates roughly to 270 gallons per day.

It should be noted that a manufactured home was placed on the property sometime after drilling was complete, but no utilities or well connection was hooked up and a visual inspection of the property by the permit writer indicates the manufactured home is sitting on cinder blocks, instead of a proper foundation.

In July 2013, Ecology closed the Carpenter-Fisher subbasin when it became clear that the reservation created in the 2006 Skagit River Instream Flow Rule Amendment for additional water for future out-of-stream uses was completely allocated. Therefore, Mr. Benson's building permit for the manufactured home was denied due to lack of legal availability of water.

#### Well Tags

WAC 173-160 contains requirements for well drillers, system operators and/or owners to tag new and existing wells with identification tags supplied by Ecology. The well identification program creates a standard system to identify all newly constructed or existing wells, so that property owners and various agencies can readily share well data. In addition, Ecology field staff use the well tag to identify the well. Accordingly, this decision contains provisions requiring each well to be tagged with a unique identification number. The well tag for the existing well on Mr. Steve Benson's property is BCS 596.

#### Other Rights Appurtenant to the Place of Use

Water right (short form) claims S1-157868CL and G1-078078CL have been submitted for the NW ¼ of the NW ¼ of section 9, T33N, R04E, W.M. This covers the entire Place of Use of this change application, plus parcel P16577 which comprises most of the south ½ of the SE ¼ of the NW ¼ of the NW ¼. S1-

157868CL is for irrigation and G1-078078CL is for domestic use. Both claims were submitted on May 31, 1974. Discussions with the applicant indicate that Mr. Robert Benson submitted these claims for water use that was already being used under this water right to insure that his water use was recorded. This was a common occurrence during the claims registry.

In addition a portion of water right S1-25085C for the Cedardale Water Co covers the NW ¼ of the NW ¼ as well. This surface water right is for 0.0560 CFS instantaneous flow and 10 Ac-ft/yr for multiple domestic use and 27 Ac-ft/yr for Stock watering.

## Impairment Considerations

Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection. The subject application cannot be approved if it would:

- Interrupt or interfere with the availability of water to an adequately constructed groundwater withdrawal facility of an existing right. An adequately constructed groundwater withdrawal facility is one that (a) is constructed in compliance with well construction requirements and (b) fully penetrates the saturated zone of an aquifer or withdraws water from a reasonable and feasible pumping lift.
- Degrade the water quality of the source to the point that the water is unsuitable for beneficial use by existing users (e.g., via sea water intrusion).

The potential for impairment of the Skagit Instream Flow rule, if Ecology were to approve a transfer of the irrigation portion of this water right to a year-round use has already been discussed.

Groundwater wells that are at greatest risk of impairment are those which are completed in the same aquifer zone as the subject well, located in close proximity to the subject well, and also located hydrogeologically down-gradient from the subject well. As water in the aquifer travels toward wells that are located down-gradient from the subject well, the subject well may potentially capture this water and impair the production of down-gradient wells. An arbitrarily, yet conservatively chosen area of one-half mile (1/2-mile) from Mr. Steve Benson’s Well (well tag # BCS 596) is used to define “close proximity.” This value is justified experimentally based on current and historical pump test data that show negligible drawdown, and therefore unlikely impairment to wells induced by groundwater withdrawal at distances of 1,000 feet in most cases. Table 1 shows the water rights and claims within a ½ mile radius of the proposed point of withdrawal. See map titled “Water Rights in the vicinity of CS1-\*15329C” for more detail.

**Table 1: Water Rights and Claims within the vicinity of Water Right Change Application CS1-\*15329C**

Water Right No.	Doc Type	Priority date	Qi (CFS)	Qi (gpm)	Qa (Ac-ft/yr)	Irrigated Acres	Purpose	Water Right Holder Name
G1-22064CWRIS	Cert	08/01/1974		20	14		DM	LOWER CEDARDALE WATER
S1-*10080CWRIS	Cert	01/24/1951	0.2			18	IR	NELSON A C
S1-*13871CWRIS	Cert	05/25/1956	0.2		76	38	IR	CASE C E
G1-*01373CWRIS	Cert	02/16/1950		64	10	10	IR	SJOGREN S
S1-*14904CWRIS	Cert	07/10/1958	0.3		60	30	IR	BENSON R H
S1-*22154CWRIS	Cert	04/23/1970	0.15		22.8	12	IR	PEARSON E W
S1-00551CWRIS	Cert	01/26/1972	0.52		99.3	52	IR	BENSON ROBERT H
S1-22065CWRIS	Cert	08/01/1974	0.14		14		DM	LOWER CEDARDALE WATER
G1-*02938CWRIS	Cert	01/20/1953		50	20	10	IR	GROSS M

G1-060759CL	Claim S						DG	VANBATAVIA ROGER
G1-092200CL	Claim S						DG IR	MINER JACK F
G1-092893CL	Claim S						DG ST	CASE CLARENCE
G1-102590CL	Claim S						IR	BAKKE TOLLEF
S1-157869CL	Claim S						IR	BENSON ROBERT H

Cert = water right certificate, Claim S = Short form claim (no information on Qi, Qa or irrigated acreage is listed on these forms)  
For Purpose of use: DM = multiple domestic, IR = irrigation, DG = group domestic, ST = Stockwatering

There are 6 surface water rights and 2 ground water rights plus 5 claims within the ½ mile radius of Mr. Steve Benson’s well (see Map 3; Water Rights in the vicinity of Change Application CS1-\*15329C). A water right claim is a statement of the beneficial use of water that occurred prior to the adoption of the water right codes and is not authorized by a state-issued permit or certificate. The Department of Ecology cannot verify the validity of these claims, as water right claims can only be confirmed in an adjudication by a Washington State Superior Court. Many of the claims represent use under the ground water exemption (RCW 90.44.050) for single or group domestic use.

According to the Geographic Water Rights Information System, which consists of computer map layers displaying the existing water right points of diversion/withdrawal created by Ecology personnel, the 6 surface water and 2 ground water rights have their diversion or withdrawal points at a significant distance (> 900ft) from Mr. Steve Benson’s well. It should be noted that this information is not very precise, as it is based on metes and bounds information provided by the applicants or by Ecology personnel at the time the water right application was being investigated. Experience has shown that many water rights owners shift the location of their diversions/withdrawals over time, often without any record being submitted to Ecology. This analysis represents the best information available regarding locations of points of surface water diversion or groundwater withdrawal.

An examination of the well log for Mr. Steve Benson’s well shows that there is a fairly thick sequence of clay (18 ft) lying above the gravelly sand water-bearing formation. This, plus the shallow static water level, is indicative of a confined aquifer under artesian conditions. If that is the case, and the high drawdown does indicate a low transmissivity, then the well’s radius of influence should be fairly small if the storage coefficient isn’t too small. This, plus the sizeable distance from the well to other water right points of diversion/withdrawal in conjunction with the anticipated low pumping rate for Mr. Steve Benson’s well will likely cause no impairment of existing water rights.

### Public Interest Considerations

This application is part of the Sandy Creek Restoration Project proposed by the Skagit River System Cooperative. Sandy Creek is a small perennial stream that drains about 1.5 square miles of forested land. This project would open up the entire Sandy Creek subbasin to resident and anadromous fish populations. As part of this project an existing culvert that currently restricts fish passage would be replaced by a bridge and a new channel for the lowermost 1000 ft of Sandy Creek would be excavated across Mr. Vic Benson's existing field. This would allow the stream to develop new meanders which over time would restore the historic alluvial fan. Restoration projects of this kind along with transfers of existing water rights for domestic purposes are considered in the public interest.

No potential for detriment to the public interest was identified during the investigation of the subject application.

### *Consideration of Protests and Comments*

No protests were filed against this application.

### Conclusions

The domestic water use portion of SWC 7688 appears to have been beneficially used without relinquishment since the original water right was issued. As it is a year-round use, it can be legally transferred without potential impairment of the existing Skagit River Instream Flow Rule. Furthermore, there appears to be enough physically available water at the proposed new location to fulfill the desired purpose. In addition, the original source of surface water and the proposed source of groundwater are in hydraulic connection. And, finally there does not appear to be a likelihood of impairment of adjacent water rights and this change will not be detrimental to the public interest. Therefore, the change of the domestic use from its current location on parcel P99591 to its proposed location on parcel P16559, and the alteration of the water right from surface water to groundwater, and modification to domestic only should be approved with the understanding that the current domestic use on P99591 be discontinued. The irrigation portion of this water right cannot be changed as it would conflict with the Skagit Instream Flow Rule.

### RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right change 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:

0.01 CFS (4.5 gpm)

0.3 acre-feet per year

For domestic use from a groundwater well

Point of Withdrawal:

SE ¼ SE ¼, Section 8, Township 33 North, Range 04 East, W.M.

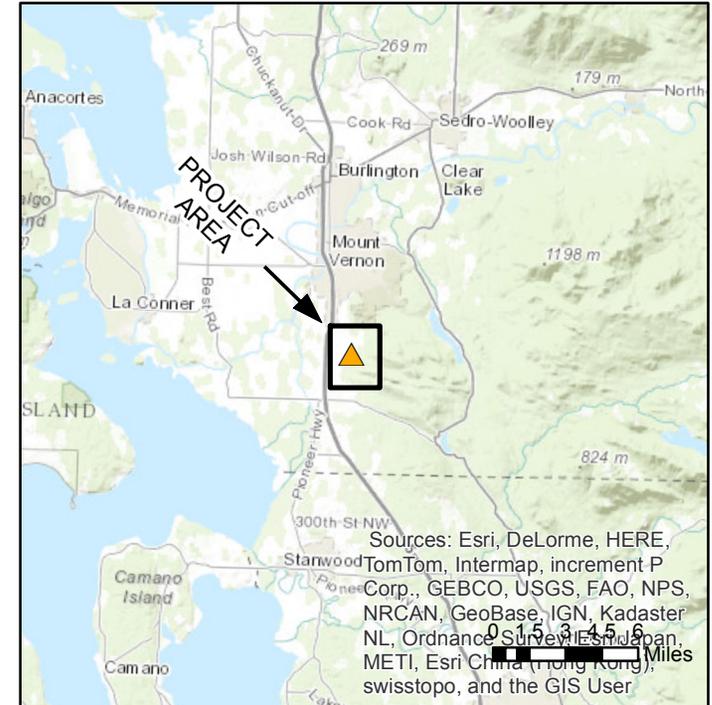
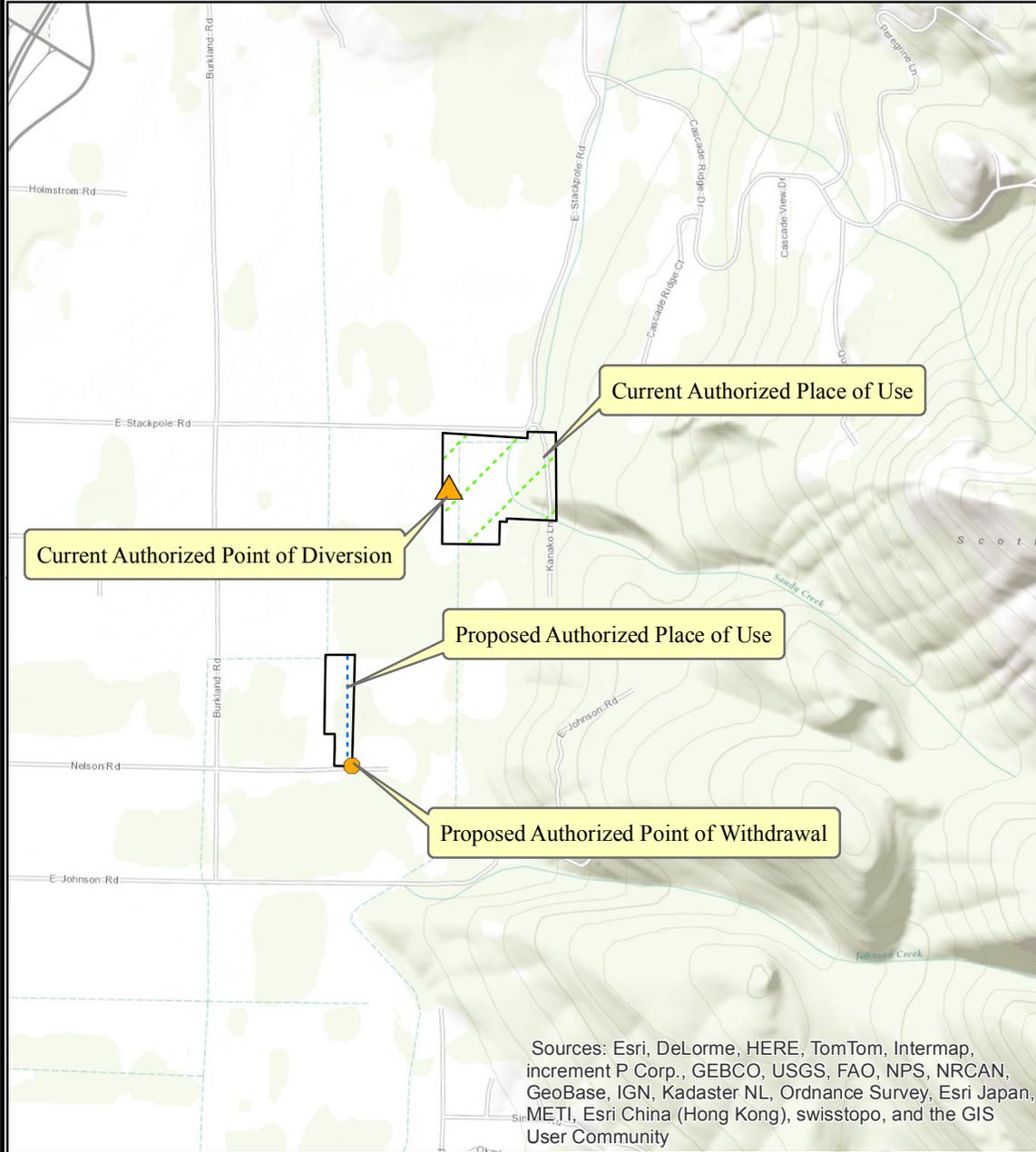
Place of Use

As described on Page 1 of this Report of Examination.

*If you need this publication in an alternate format, please call 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.*

DRAFT

Victor Benson  
 Water Right CS1-\*15329C  
 Section 8 T33N R04E W.M.  
 WRIA3 - Skagit County



**Legend**

- Authorized Place of Use
- Authorized Point of Diversion
- County Boundary
- Water Body
- Parcels
- Townships
- Sections

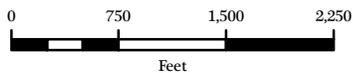
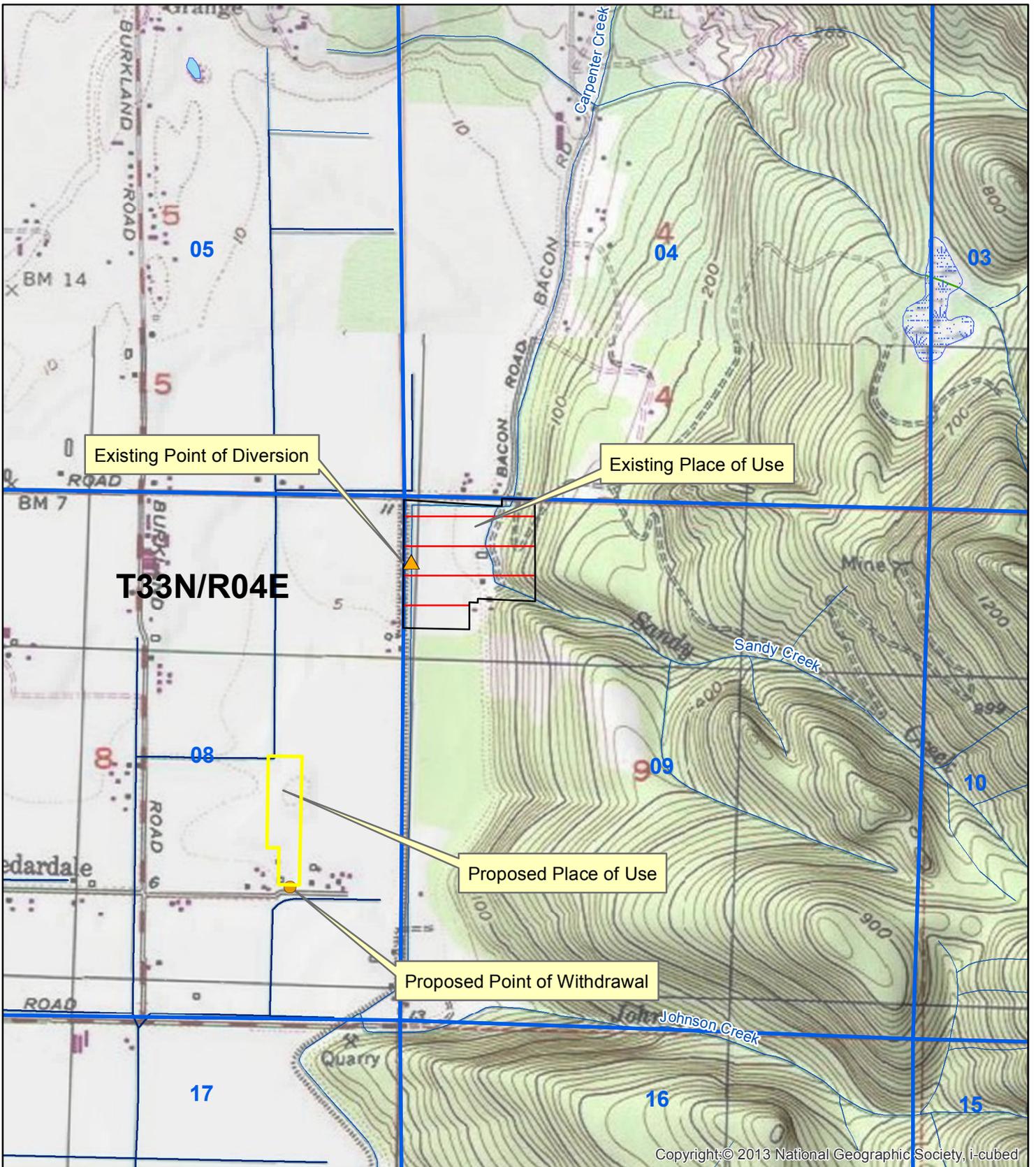
0 1000 Feet



Map Date: 5/15/2014



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.'



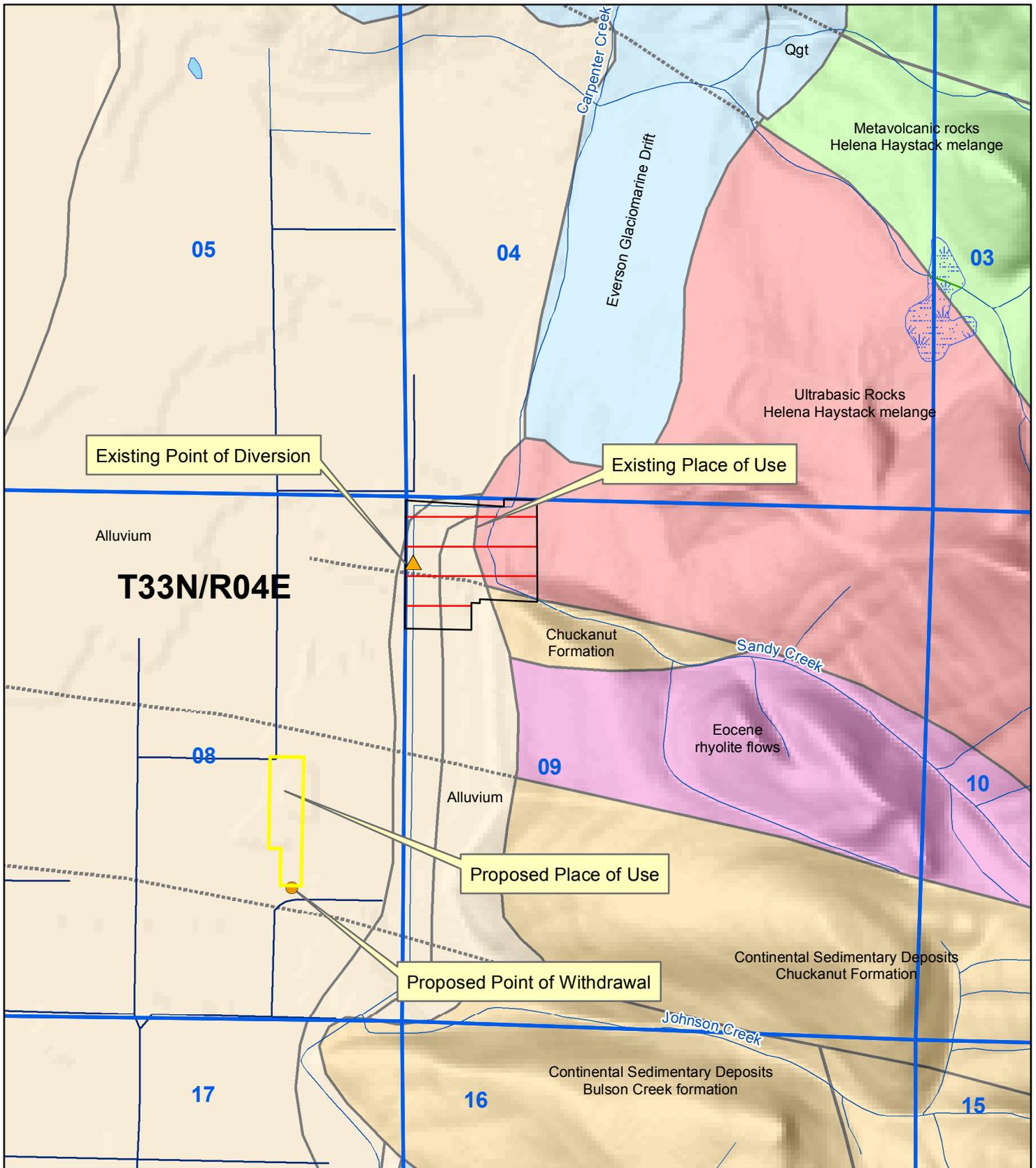
Projection: NAD 83 HARN State Plane Washington South  
1:16,000

5/11/2014

Map 1



**Topographic Features in the vicinity of Water Right CS1-\*15329C**



5/11/2014

## Map 2



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# Geologic Map of the vicinity of Water Right CS1-\*15329C

