



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
DENIED

REPORT OF EXAMINATION
To Appropriate Public Waters of the State of Washington

PRIORITY DATE	APPLICATION NO.	PERMIT NO.	CERTIFICATE NO.
March 18, 1981	S1-23928		

NAME High Country Resources – William L. Devine		
ADDRESS/STREET	CITY/STATE	ZIP CODE
PO Box 68	Maple Falls, Washington	98266

PUBLIC WATERS TO BE APPROPRIATED

SOURCE Rocky Creek		
TRIBUTARY OF Skagit River		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
N/A		

TYPE OF USE, PERIOD OF USE Hydropower & Manufacturing – year round

LOCATION OF DIVERSION

APPROXIMATE LOCATION OF DIVERSION 1,600 feet north and 2,045 feet east of the southwest corner of Section 9.					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
NE 1/4 SW 1/4	9	35	10E	4	Skagit

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

DENIED

DESCRIPTION OF PROPOSED WORKS

DENIED

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
N/A	N/A	N/A

PROVISIONS

N/A

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated.

As a result, I ORDER ***denial*** of application S1-23928.

You have a right to appeal this decision. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

Deliver your appeal in person to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

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

3. And send a copy of your appeal to:

Andrew B. Dunn, LG, LHG
Department of Ecology
Northwest Regional Office
3190 160th Ave SE
Bellevue, WA 98008

*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>*

Signed at Bellevue, Washington, this 26th day of May 2009.

Andrew B. Dunn, LG, LHG
Section Manager
Northwest Regional Office
Water Resources Program

INVESTIGATOR'S REPORT

AUTHORIZATION

Chapter 90.03 RCW authorizes the appropriation of public water for beneficial use and describes the process for obtaining water rights. Laws specifically governing the water right permitting process are RCW 90.03.250 through 90.03.340. Chapter 508-12 WAC regulates water right appropriation procedures. Surface water appropriation procedures are specifically administered by WAC 508-12-090 through 508-12-210.

BACKGROUND

Surface Water Application No.: S1-23928
Applicant Name: High Country Resources – William L. Devine
Priority Date: March 18, 1981
Source: Rocky Creek
Purpose of Use: Hydroelectric - Manufacturing
Period of Use: Year round
Notice of Publication: *Skagit Valley Herald*, June 1 and June 8, 1983
Protests: none

The Department of Ecology (Ecology) is currently processing applications in Water Resources Inventory Area (WRIA) 4. This application is the oldest (senior-most) in the WRIA.

INVESTIGATION

Evaluation of this application consisted of review of office records, the applicant's file, and review of water right statutes and rules.

Mr. William L. Devine submitted the subject application to Ecology on March 18, 1981. Upon examination, Ecology found the application to be defective because it did not contain the legal landowner's signature as required under WAC 508-12-130. The legal landowner is the United States Department of Agriculture, Mt. Baker-Snoqualmie National Forest.

WAC 508-12-130 states: *Where the applicant is other than the legal owner or part owner of the land on which the water is to be used, the application shall bear the signature and address of the legal owner in addition to the signature of the applicant.*

In accordance with RCW 90.03.270, the application was returned to Mr. Devine for completion on March 19, 1981. In June 1981, Mr. Devine requested additional time to obtain the landowner's signature. Ecology granted the request with the understanding that the signature would be obtained within a reasonable time.

RCW 90.03.270 states: *Upon receipt of an application it shall be the duty of the department to make an endorsement thereon of the date of its receipt, and to keep a record of the same. If upon examination, the application is found to be defective, it shall be returned to the applicant for correction or completion, and the date and the reasons for the return thereof shall be endorsed thereon and made a record in his office. No application shall lose its priority of filing on account of such defects, provided acceptable maps, drawings and such data as is required by the department shall be filed with the department within such reasonable time as it shall require.*

In preparation for application processing in WRIA 4, a certified letter was sent to Mr. Devine on December 19, 2007 requesting Mr. Devine to provide the legal landowner's signature within sixty days. To date, Mr. Devine has not provided the Forest Service's signature and therefore has not submitted a complete application.

FINDINGS

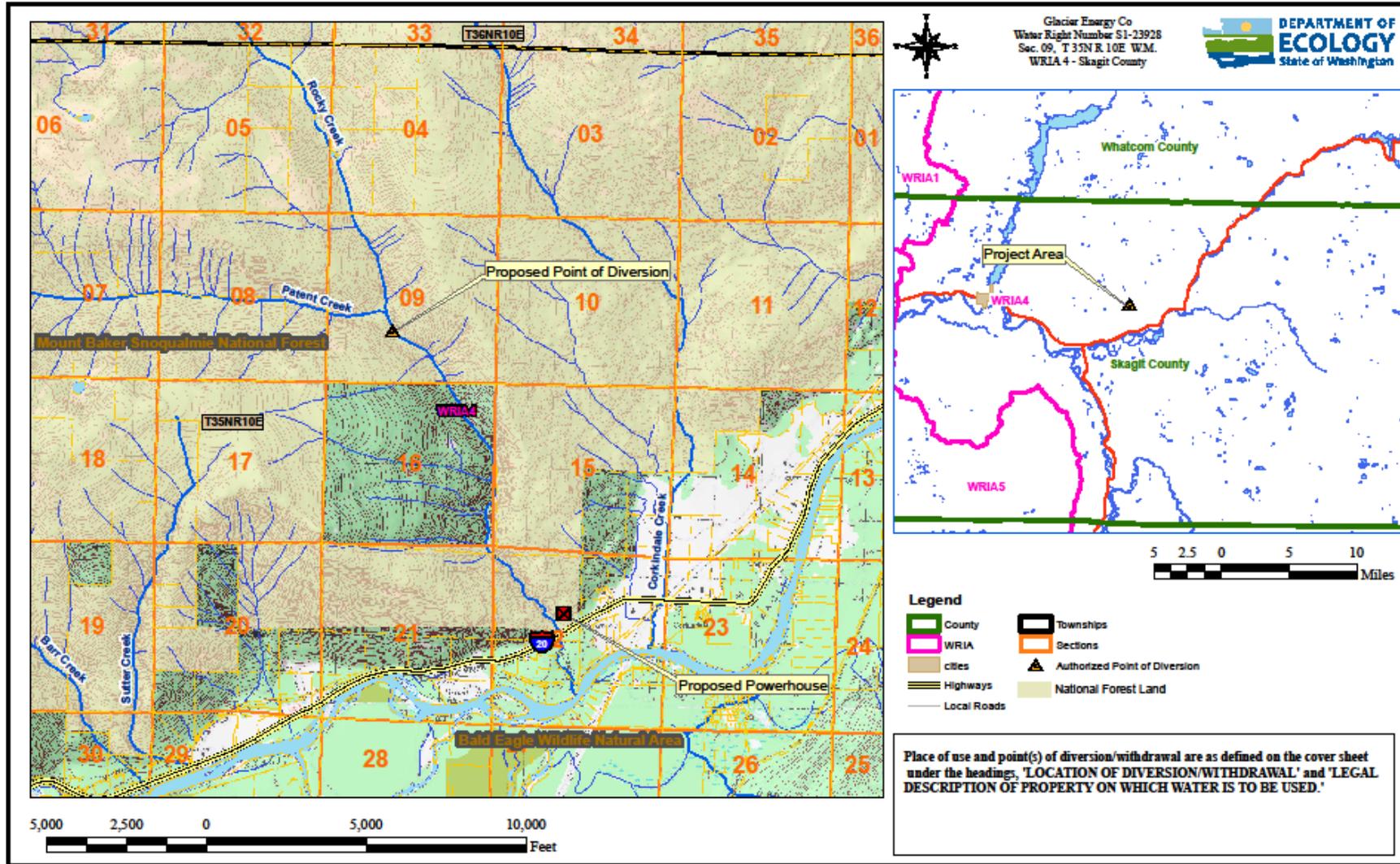
Based on the above investigation, I find the following:

The subject application does not contain the legal landowner's signature; therefore it does not comply with the requirements of WAC 508-12-130. Ecology has allowed a reasonable length of time (more than 28 years) for Mr. Devine to obtain the signature.

RECOMMENDATIONS

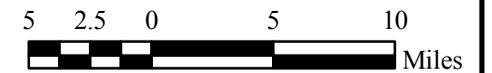
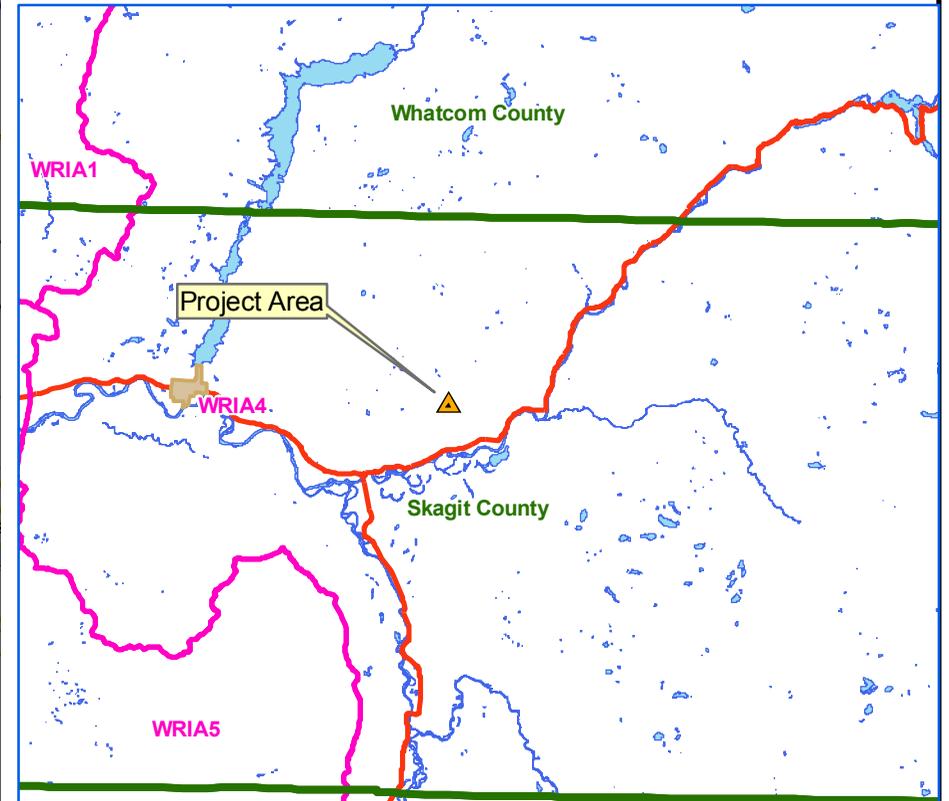
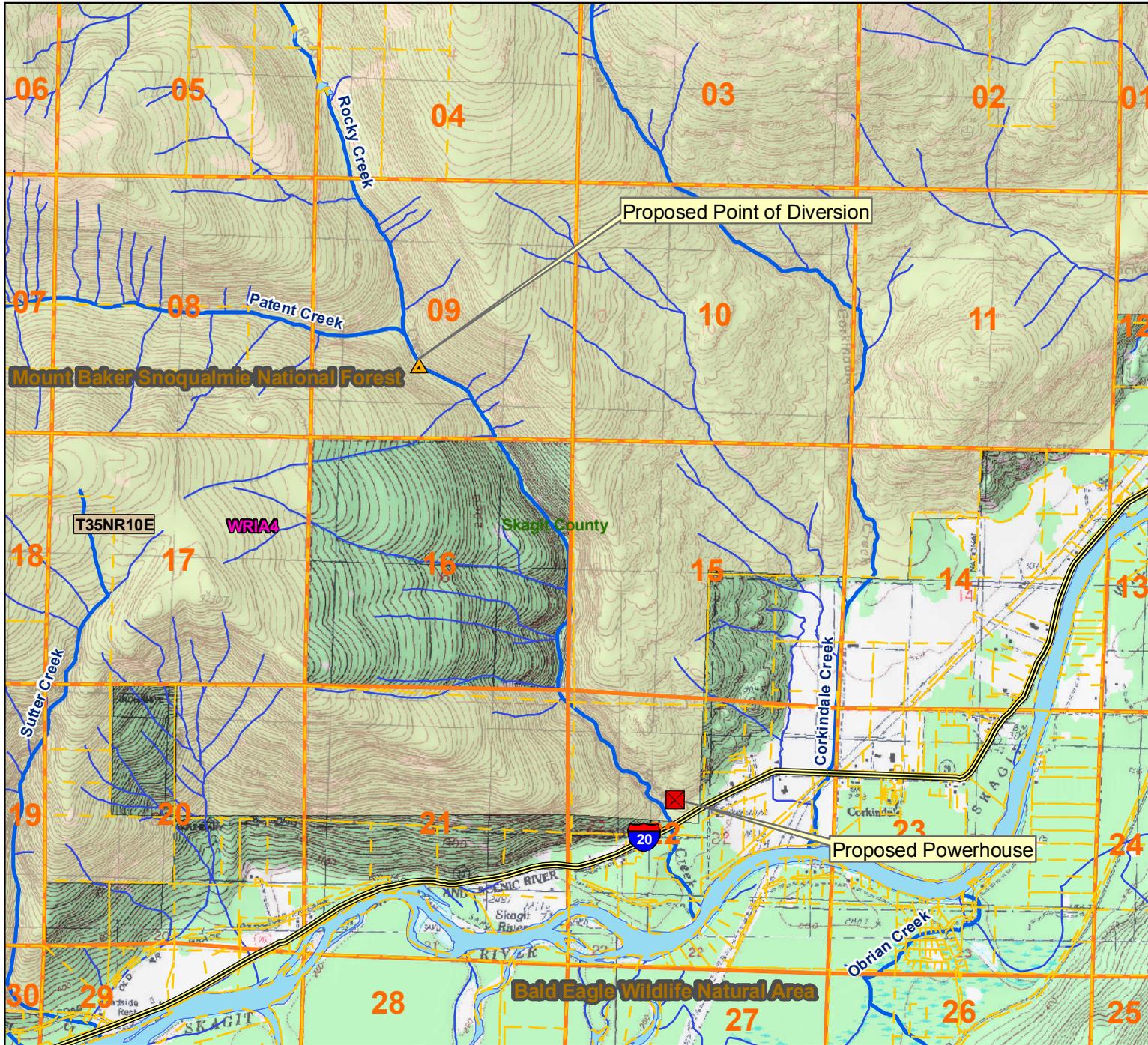
Application S1-23928 should be **DENIED**. Mr. Devine can reapply when he is able to submit a complete application.

Report by: _____ Date: May 27, 2009
Melisa Snoeberger
Water Resources Program



Attachment 1

DENIED REPORT OF EXAMINATION



Legend

- County
- Townships
- WRIA
- Sections
- cities
- Proposed Point of Diversion
- Highways
- National Park Land
- Local Roads

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.'