DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE	WATER RIGHT NUMBER
August 13, 2009	S3-30599

MAILING ADDRESS
Ray Westover
25118 North Regal Road
Chattaroy WA 99003

SITE ADDRESS (IF DIFFERENT)

Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.02	CFS	0.5

Purpose of Use

PURPOSE	DIVERSION RATE ADDITIVE	DIVERSION RATE NON-ADDITIVE	UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
In-house single domestic supply, fire protection and dust control	0.02	---	CFS	0.5		continuous

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
PEND OREILLE	Marshall Lake	Pend Oreille River	62-PEND OREILLE

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Marshall Lake	453223529023	32N	45E	23	SE¼	TBD	TBD

Datum: WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

453223529023

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Lot 23 Magart's Lakehill Addition according to the Plat thereof recorded in Book 2 of Plats, page 65 being a part of the SE¼ of Section 23, T. 32 N. R. 45 E.W.M. Pend Oreille County, Washington

Proposed Works

TBD

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
January 1, 2014	January 1, 2015	January 1, 2016

Measurement of Water Use

How often must water use be measured?	Annually
How often must 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 Diversion (gpm or cfs)

Provisions

Pend Oreille River Low Flow

All dust control shall cease when the flow of the Pend Oreille River falls below 7700 cubic feet per second at U.S. Geological Survey (U.S.G.S.) gage #12395500, Pend Oreille River at Newport, located within Section 24, Township 56 N., Range 6 W.B.M.

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.

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/

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 Surface Water Application No. S3-30599, 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	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this 9th 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.

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S3-30599.

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 Newport Miner on October 17 and 24, 2012 and 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. This application was forwarded to the Department of Fish and Wildlife and the Kalispell Tribe for comments. The department did not receive any 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 not conducted. The applicant was contacted November 27, 2012 and the application was discussed. The applicant has an existing summer use residence constructed on Lot 23. The water

system has not been constructed. The applicant wishes to obtain a permit for in-house domestic supply, dust control, and fire protection from Marshall Lake.

Beneficial Use

In-house single domestic supply is a beneficial use. Ten gallons per minute, 0.5 acre-feet per year should be sufficient for in-house domestic supply and dust control. Fire protection is authorized as needed to fight fires.

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. Marshall Lake has a surface area of 189 acres.

Hydrogeologic Analysis: The Department of Ecology has not closed the Pend Oreille River to further consumptive appropriations, however all diversions for uses other than domestic supply shall cease when the flow of the Pend Oreille River falls below 7700 cfs at U.S. Geological Survey (U.S.G.S.) gage #12395500. This low-flow is a recommendation from the Washington State Department of Fish and Wildlife (WDF&W) and applies to surface and ground water in hydraulic continuity with the Pend Oreille River since October 18, 1999.

Therefore, water for in-house domestic supply is **not** subject to the recommendation and water is available for appropriation.

Impairment Considerations

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

Marshall Lake and Marshall Creek Drainage Basin Adjudication was completed in June 1990. Numerous small diversions were confirmed in addition to Certificate No. 2 described below.

Marshall Creek Adjudicated Certificate No. 2 confirmed a right of 920 acre-feet to Clarence Grimes for the purpose of storage for irrigation and recreation. The Report of Referee described the storage use to have recreational benefits not only to the riparian owners around the lake but also to the general public through the use of the resort facilities located on the lake. The natural lake level was established as 2720 feet above mean sea level to establish the measurement of the storage right in the Report of Referee Pursuant to the Order on Exceptions of May 19, 1988.

The majority of the applications that were investigated at Marshall Lake are for small domestic water uses for existing recreational cabins constructed on the lake. According to the "*Lakes of Washington, Volume 2 of Eastern Washington*", the area of Marshall Lake is approximately 190 acres. Based on this fact and the minimal amount of water to be permitted for in-house domestic uses under this application and others, it appears that water is available for appropriation. The decline of water level in Marshall Lake in the summer months as a result of the new diversions would be negligible and not impair existing water rights.

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, from Marshall Lake tributary to the Pend Oreille River, is available for in-house single domestic supply, dust control and fire protection. 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 foot per second
0.5 acre-foot per year
In-house single domestic supply, dust control, fire protection

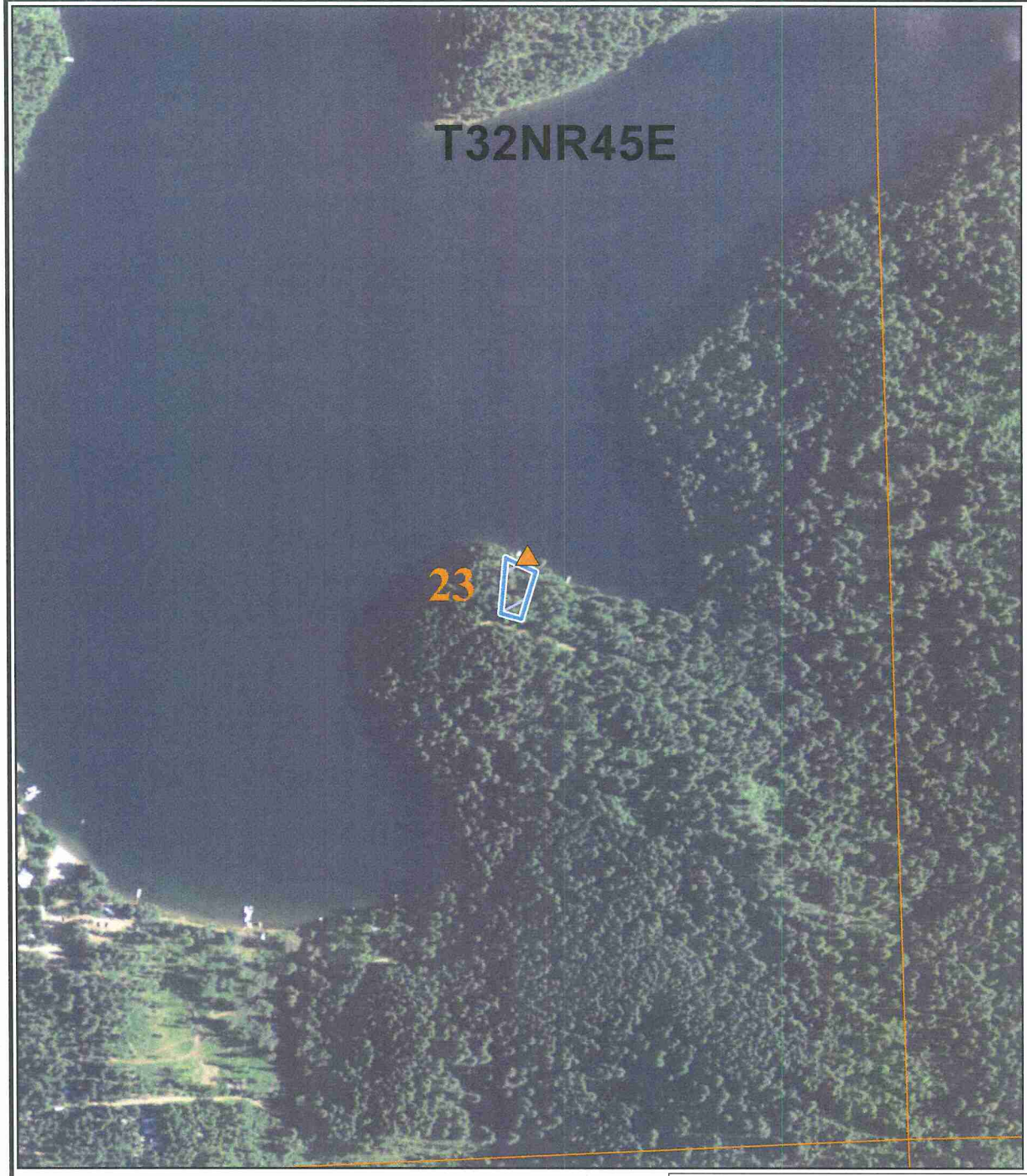
Point of Diversion: Lot 23 Magart's Lakehill Addition according to the Plat thereof recorded in Book 2 of Plats, page 65 being a part of the SE¼ of Section 23, T. 32 N. R. 45 E.W.M. Pend Oreille County, Washington

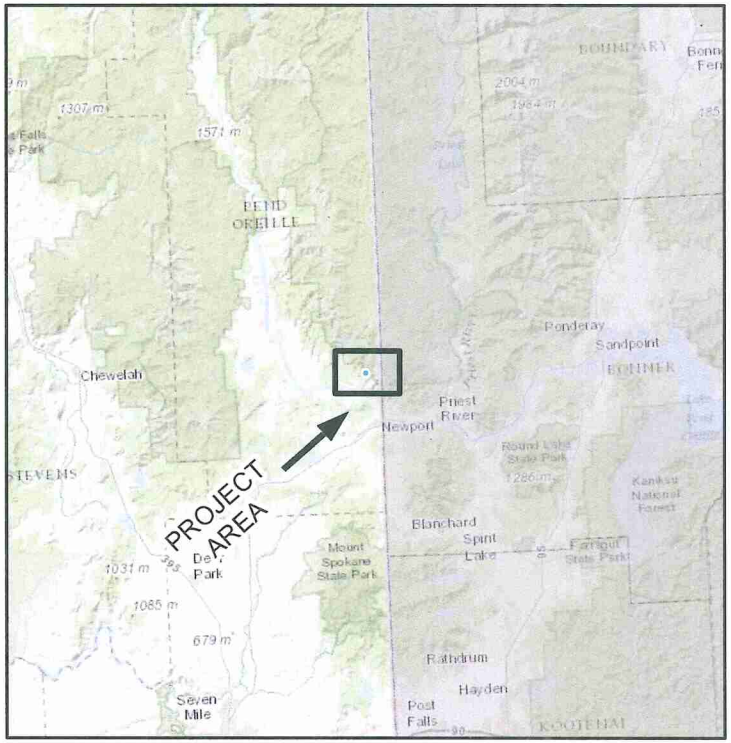
Kevin Brown 1/9/13

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.

Ray Westover
S3-30599
T32N/R45E





Basemap - (ESRI US Topographic Maps)

Legend

Authorized Place of Use

Townships

Sections

Authorized Point of Diversion

0 165 330 660 990 1,320 1,650 Feet

Basemap - (NAIP 2011 1m color)

Map Date: 12/3/2012

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