



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

PRIORITY DATE	APPLICATION NO.	PERMIT NO.	CERTIFICATE NO.
August 18, 2008	S1-28591A		

NAME		
Bellingham Technical College		
MAILING ADDRESS	CITY/STATE	ZIP CODE
3028 Lindbergh Avenue	Bellingham, WA	98225-1599
SITE ADDRESS	CITY/STATE	
1600 C Street	Bellingham, WA	

**PUBLIC WATERS TO BE APPROPRIATED**

SOURCE		
Whatcom Creek		
TRIBUTARY OF (IF SURFACE WATERS)		
Bellingham Bay		
MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr)
5.8		Non-consumptive
TYPE OF USE, PERIOD OF USE		
Hatchery operations, year-round as needed		

**LOCATION OF POINT OF DIVERSION**

APPROXIMATE LOCATION OF POINT OF DIVERSION							
2066 feet south and 1106 feet east of the northwest corner of Section 30							
SOURCE NAME	PARCEL #	LATITUDE	LONGITUDE	QTR/QTR	SECTION	TOWNSHIP	RANGE
Whatcom Creek	380330088358	48.755	-122.481	SW¼ NW¼	30	38N	3E

**LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED**  
[Attachment 1 shows location of the authorized place of use and point of diversion]

Supplemental map of Whatcom, Tracts A through G, reserve-being Whatcom Mill parcel of land recorded in volume 9-D-138. These tracts are located within the NW¼ of Section 30, Township 38 North, Range 3 East, W.M.

**DESCRIPTION OF WATER WORKS**

Water is supplied to the hatchery facility from a water intake located beneath the Dupont Street Bridge. See project description beginning on page 3 for details.

**DEVELOPMENT SCHEDULE**

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Begun	Complete	Already in full use

**PROVISIONS**

**Proof of appropriation**

Construction of the hatchery and water works has been complete for many years and water has already been fully appropriated. Because of this there is no need for the issuance of a permit. This authorization can proceed directly to final certificate upon successful completion of the statutory 30 day appeal period and submittal by the applicant of a Proof of Appropriation form.

**Fish screening criteria**

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://www.wdfw.wa.gov/reg/regions.htm>

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**FINDINGS OF FACT AND ORDER**

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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, the purpose of use is beneficial, there will be no impairment of existing rights, and there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S1-28591, subject to existing rights and the provisions listed on page 1.

You have a right to appeal this ORDER. 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:

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

OR

Deliver your appeal in person to:

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:

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

OR

Deliver your appeal in person to:

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  
Department of Ecology  
3190 160<sup>th</sup> 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 \_\_\_\_ day of \_\_\_\_\_, 2009.

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

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**INVESTIGATOR'S REPORT**  
**by Buck Smith - Senior Hydrogeologist**

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**BACKGROUND**

On August 18, 2008, Ecology received a water right application from Bellingham Technical College (BTC) for 5.8 cubic feet per second to supply water to the Whatcom Creek Hatchery. The hatchery has been in continuous operation since 1978. Last year while going through the hydraulic project approval process (in order to install a new intake screen), BTC discovered the hatchery did not have water rights. The subject application was filed in order to address that deficiency. Included with the application was a letter from Debra Jones, BTC Vice President for Administrative Services, requesting the application be priority processed because it is for a non-consumptive use that substantially enhances the environment.

On October 16, 2008, Andrew B. Dunn, Water Resources Section Manager, approved the request for priority processing based on the following factors:

- WAC 173-152-050(2) allows an application to be processed prior to competing applications if the department determines the proposed water use is non-consumptive and if approved would substantially enhance or protect the quality of the natural environment.
- The requested water is diverted from Whatcom Creek and then discharged back to the creek (or marine waters at high tide) after being used at the hatchery. This use is considered to be non-consumptive because all the water is returned to the source after being beneficially used.
- On September 24, 2008, Ted Thygesen, WA Department of Fish & Wildlife, Mt. Baker Complex Manager, sent an e-mail in support of the request for priority processing. Mr. Thygesen wrote "*Whatcom Creek Hatchery enhances the quality of the natural environment by providing chum and pink salmon and steelhead to the waters of Puget Sound. Adult chum return to Whatcom Creek and bypass the hatchery for natural spawning and nutrient enhancement. The hatchery facility's presence reminds people that placing harmful chemicals into Whatcom Creek can be detrimental to fish in the stream and the hatchery. The graduates of the programs are important. There are several graduates that are currently employed by hatcheries throughout the state. In my area alone, there are 8 permanent employees and 2 seasonal. The quality of these graduates is excellent. The program also places graduates in science tech positions that are hired by our biologists for recovery enhancement. Some are involved in habitat restoration.*"

**Project description**

The following information was provided by Earl Steele, BTC Fisheries Technology Instructor:

*The Whatcom Creek Hatchery is located at the mouth of Whatcom Creek on the waterway which goes by the old Georgia Pacific Pulp Mill. The site of the hatchery is a city park and city facility, but Bellingham Technical College occupies the building and hatchery. The park is the Maritime Heritage Park and is an old landfill created on both sides of the creek in the 1930s over the shore of Bellingham Bay, which generated more land for other buildings and the start of the mile long dock which stretched out into the bay. On the north side of the creek, a wastewater treatment plant was built in the 1940s and the old Roeder Mills was built on the south side of the creek in the 1920s.*

*Salt water influences Whatcom Creek from just below the foot bridge to just outside of Roeder Avenue. Three of the ponds at the hatchery were clarifiers at the old wastewater treatment plant. Students do all of the fish culture work and the parks department does all of the grounds keeping and maintenance. The hatchery is located about one half mile upstream from the mouth of the creek near the GP treatment pond. The water intake which supplies the hatchery with creek water is on the north side of the creek and just below the Dupont Street Bridge. The intake screen is approximately 5' by 5' with a 1/8" aluminum slotted screen which covers the square concrete box which is level with the sill that is at the top of the falls. The exact location of the intake is 48° 45' 18" north and 122° 28' 52" west.*

*There is a stream-side fish ladder that was jack-hammered into the sandstone during the summer of 1980 on the south side of the creek which allows fish passage (around the falls) during low and medium flows. At extreme low water, the intake screen and fish ladder are the only places the water flows. The sill is a little higher and water is diverted to those two areas. The maximum water flow that is diverted to the settling pond is 5.8 cfs. The unused water is discharged through a 12" standpipe in pond 0, which is the settling pond, which drains into the estuary through the seawall. The location of this discharge is 48° 45' 16" north and 122° 28' 58" west. The water also drains out through a 12" line that is used to drain pond 4 and release fish. The location of the end of the pipe is 48° 45' 16" north and 122° 28' 59" west. Water is also discharged down a hatchery fish ladder and out into the estuary which is very near the end of the 12" pipe mentioned before. All of the water is gravity flow except the hatchery building water which is pumped.*



Photo 1: Looking upstream from the hatchery toward the Dupont Street Bridge



Photo 2: Looking downstream from under the Dupont Street Bridge

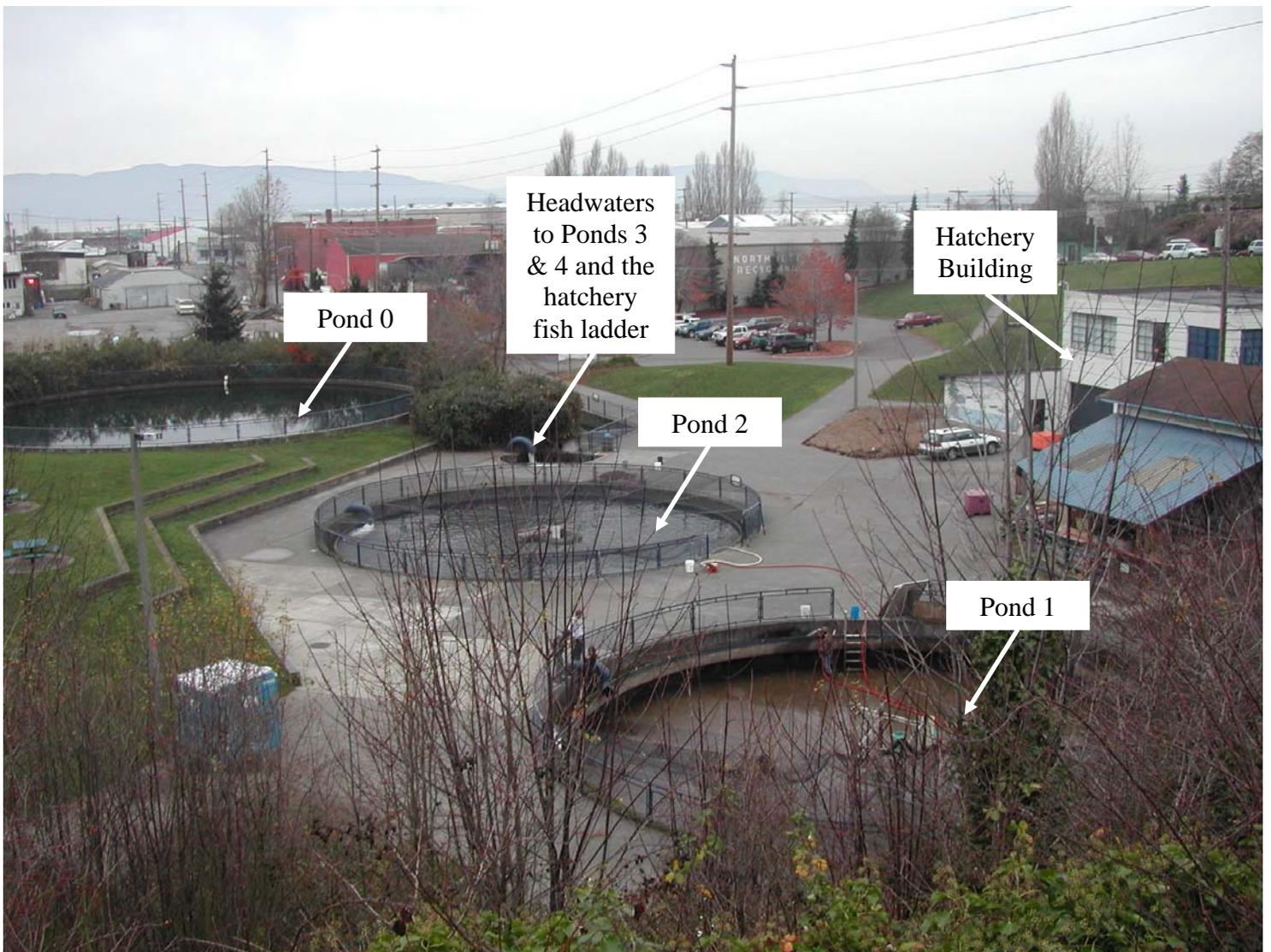


Photo 3: Looking south from the Dupont Street Bridge. Whatcom Creek is immediately to the left.

*Ponds 1 and 2 are former clarifier ponds from the old treatment plant. They are approximately 60' in diameter and 4' deep with aluminum slotted screens and are 10,500 cubic feet. The water is either discharged into the headwater which goes into ponds 3 and 4 and down the hatchery fish ladder, or into the C Street drain. The C Street drain is a 4' pipe which is a rainwater discharge and follows down C Street and into the waterway near the old Georgia Pacific treatment pond. Water flows in these two ponds is anywhere from 200 gpm to 1,500 gpm.*

*The hatchery building is supplied with a 2 HP sump pump which is located in the middle of the settling pond (pond 0) and held at the surface by a small raft. The water is pumped into a distribution box which is 10' in elevation where the water flows by gravity to incubators, troughs, and tanks in the hatchery building. The water flow ranges from 100 gpm to 225 gpm through the hatchery building and the water is discharged into the headwaters which is the start of the holding ponds and hatchery fish ladder.*

### **Legal requirements prior to processing**

The following legal requirements were accomplished prior to processing the subject water right change application:

- **Public notice**  
Public notice of the application was published in *The Bellingham Herald* on September 13 & 20, 2008. There were no protests during the statutory 30-day protest period.
- **State Environmental Policy Act (SEPA)**  
The subject water right application is not categorically exempt under SEPA WAC 197-11-305 and WAC 197-11-800(4) because the instantaneous diversion rate is greater than one cubic foot per second.

The lead agency (Bellingham Technical College) determined this proposal will not have a significant adverse impact on the environment. An environmental impact statement (EIS) was not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request. A determination of nonsignificance (DNS) was issued on July 24, 2009, in accordance with WAC 197-11-340(2). Comments must be submitted to the lead agency by August 7, 2009.

### **Site visit**

On February 25, 2009, I visited the hatchery facility. I met with Earl Steele and Eve Magyar, Capital Projects Manager. I was given a tour of the entire facility. I observed the water intake, water returns, ponds, fish ladders, hatchery building, etc.

## **Database search of existing water rights**

A search of the Department of Ecology Water Rights Tracking System showed there are no other water rights appurtenant to the hatchery property. This search also showed no other water rights located downstream of the hatchery water intake.

## **INVESTIGATION**

### **Criteria to be investigated during application processing**

In accordance with RCW 90.03.290, the following four criteria must be investigated during the processing of an application for water rights:

- Water availability
- Beneficial use
- Potential for impairment of existing rights
- Potential for detriment to the public interest

### **Water availability**

#### Legal Availability

WAC 173-501-040 lists Whatcom Creek as being closed year-round to new consumptive appropriations. Because the subject application is for a non-consumptive appropriation, water is legally available. This is supported by WAC 173-501-070(3) which states: *Non-consumptive uses which are compatible with the intent of this chapter may be approved.*

#### Physical Availability

According to Earl Steele, the requested 5.8 cfs is always physically available from Whatcom Creek. This is supported by the City of Bellingham's upstream release of 10 cfs. Bellingham holds surface water certificate 4631, priority date of April 6, 1937, for the release of water from Lake Whatcom for the purpose of maintaining flow in Whatcom Creek for sanitary purposes. The point of release is located approximately 3 miles upstream from the hatchery.

### **Beneficial use**

Water supply for a fish hatchery is considered to be a beneficial use under RCW 90.54.020(1). The volume of water requested is reasonable for the proposed purpose of use.

### **Potential for impairment of existing rights**

The point of diversion is located essentially at the mouth of Whatcom Creek. There are no existing rights between the point of diversion and the points of return; therefore there is no potential for impairment of other rights.

### **Potential for detriment to the public interest**

No potential for detriment to the public interest could be identified during the investigation of this application.

## **CONCLUSIONS**

In accordance with chapter 90.03 RCW, I conclude there is water available from the source in question, the purpose of use is beneficial, there will be no impairment of existing rights, and there will be no detriment to public interest.

## **RECOMMENDATION**

Based on the above investigation and conclusions, I recommend the subject application be approved with the attributes listed below, and subject to the provisions listed on page 1.

### **Authorized instantaneous rate**

- 5.8 cubic feet per second from Whatcom Creek

### **Purpose of use**

- Non-consumptive for hatchery operations, year round

**Point of diversion**

- Within the SW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>, Section 30, Township 38 North, Range 3 East, W.M.

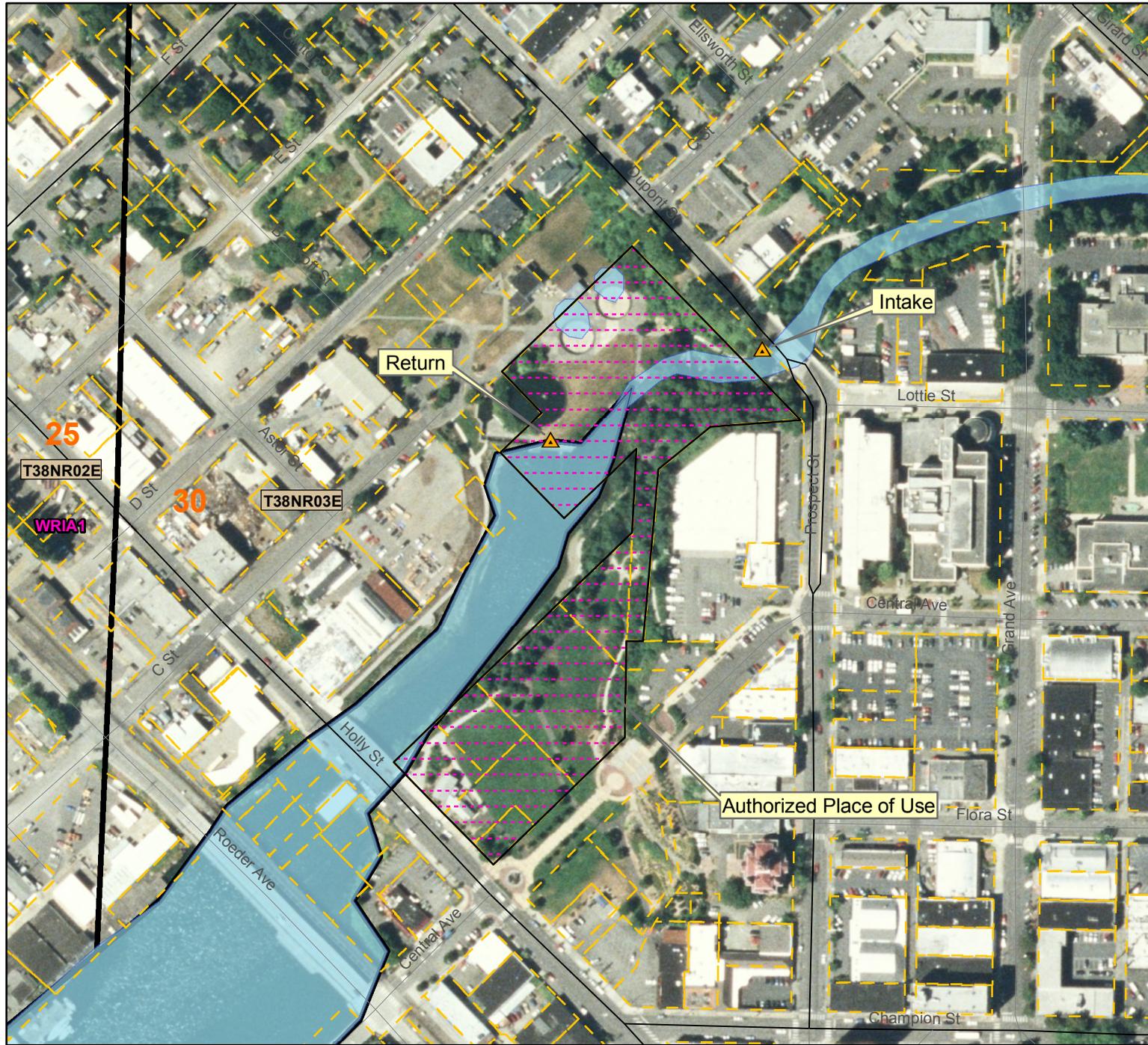
**Place of use**

- Supplemental map of Whatcom, Tracts A through G, reserve-being Whatcom Mill parcel of land recorded in volume 9-D-138. These tracts are located within the NW<sup>1</sup>/<sub>4</sub> of Section 30, Township 38 North, Range 3 East, W.M. (See map on Attachment 1.)

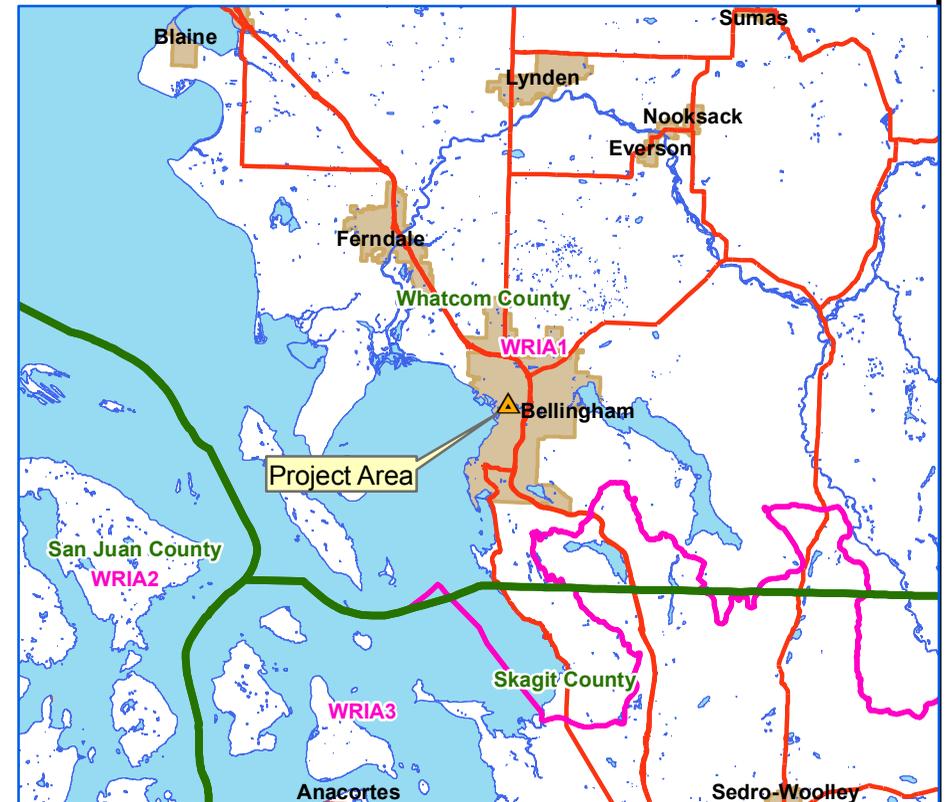
Report by: \_\_\_\_\_ Date \_\_\_\_\_  
                    Buck Smith, LG, LHG

\_\_\_\_\_  
Licensed Geologist/Hydrogeologist No. 1479

*If you need this publication in an alternate format, please call the Water Resources Program at (425) 649-7000. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*



Bellingham Technical College  
 Water Right Number S1-28591  
 Sect. 30 T 38N R 03E W.M.  
 WRIA 1 - Whatcom County



**Legend**

- County
- WRIA
- Highways
- Townships
- cities
- Sections
- Authorized Point of Diversion
- Authorized Place of Use

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.'



Attachment 1