File NR S3-30677
WR Doc ID 5441238

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
DRAFT
REPORT OF EXAMINATION FOR WATER RIGHT APPLICATION

PRIORITY DATE	WATER RIGHT NUMBER
SEPTEMBER 17, 2012	S3-30677

MAILING ADDRESS	SITE ADDRESS (IF DIFFERENT)
JEFF MASSNICK P.O. BOX 71 METALINE FALLS, WA 99153	932 Gregory Road Metaline Falls, WA 99153

Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.111	CFS	10.94

Purpose

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)
Fish propagation/pond filling	0.10	---		5.20	---	01/01 - 12/31
Irrigation	0.011	---		5.74	----	05/01 - 10/01
TOTAL	**0.111**	**---**	**CFS**	**10.94**	**---**	

IRRIGATED ACRES ADDITIVE	IRRIGATED ACRES NON-ADDITIVE	PUBLIC WATER SYSTEM INFORMATION WATER SYSTEM ID	PUBLIC WATER SYSTEM INFORMATION CONNECTIONS
2			

Source Limitations

SOURCE	DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
WOLF CREEK	0.111	Cubic foot per second	10.94

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
PEND OREILLE	WOLF CREEK	PEND OREILLE RIVER	62-PEND OREILLE

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Wolf Creek	USFS	38N	43E	04	SW¼NE¼	48.8252136°N	117.3745179°W

Datum: WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

43380407900 and 433804140001

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Tract No. 1

The H.E. Survey 269 embracing a portion of approximately Section 4, Township 38 North, Range 43, E.W.M., Pend Oreille County, Washington, more particularly bounded and described as follows: Beginning at Corner No. 1, identical with the South Quarter corner of Section 33, Township 39 North, Range 43, E.W.M., thence North 89°57' East, 10.01 chains to Corner No. 2; thence South 3 minutes West, 10.97 chains to Corner No. 3; thence South 89°57' West 10.01 chains to Corner No. 4; thence North 1 minute East, 10.97 chains to Corner No. 1 and place of beginning.

Tract No. 2

That part of Government Lot 14 in Section 4, Township 38 North, Range 43 E.W.M., Pend Oreille County, Washington described as follows: Beginning at the North Quarter Corner of said Section 4; thence southerly along the east line of said Government Lot 14 to the Southeast corner of said Government Lot 14, a distance of 1394 feet, more or less; thence North 75°25' West, a distance of 346.2 feet; thence North 0°03' West, a distance of 1, 248 feet, more or less, to a point on the southeasterly line of Bull Moose Claim as shown on Supplemental Plat of said Section 4 by the U.S. Supervisor of Surveys, and dated March 5, 1928; thence North 29°17' East, a distance of 69.9 feet, more or less, to the North line of said Government Lot 14; thence Easterly along the North line of said Government Lot 14, a distance of 300.3 feet, more or less, to the point of beginning.

Proposed Works

Gravity fed system

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	July 1, 2014	July 1, 2015

Measurement of Water Use

How often must water use be measured?	Every two weeks
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 Withdrawal (cfs)

Provisions

This authorization to make use of public waters of the State is subject to existing rights, including any existing rights held by the United States for the benefit of Indians under treaty or otherwise

Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances, or regulations.

Bypass

The applicant shall allow at least half the flow of Wolf Creek to bypass the point of diversion at all times.

Pend Oreille River Low Flow
All diversion 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. Additional measuring devices may be needed to accurately record that amount of water which is used for the fish propagation/pond filling portion under this permit.

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/

A permit from the Department of Fish and Wildlife may be needed to raise fish in any state waters: http://wdfw.wa.gov/about/contact/.

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 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 Application No. S3-30677, 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 day of 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.

INVESTIGATOR'S REPORT
Application for Water Right -- Massnick
Water Right Control Number S3-30677
Gene Drury, Department of Ecology

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S3-30677.

Table 1 Summary of Requested Water Right

Applicant Name:	Jeff Massnick
Date of Application:	September 17, 2012
Place of Use	Tract No. 1 The H.E. Survey 269 embracing a portion of approximately Section 4, Township 38 North, Range 43, E.W.M., Pend Oreille County, Washington, more particularly bounded and described as follows: Beginning at Corner No. 1, identical with the South Quarter corner of Section 33, Township 39 North, Range 43, E.W.M., thence North 89°57' East, 10.01 chains to Corner No. 2; thence South 3 minutes West, 10.97 chains to Corner No. 3; thence South 89°57' West 10.01 chains to Corner No. 4; thence North 1 minute East, 10.97 chains to Corner No. 1 and place of beginning. Tract No. 2 That part of Government Lot 14 in Section 4, Township 38 North, Range 43 E.W.M., Pend Oreille County, Washington described as follows: Beginning at the North Quarter Corner of said Section 4; thence southerly along the east line of said Government Lot 14 to the Southeast corner of said Government Lot 14, a distance of 1394 feet, more or less; thence North 75°25' West, a distance of 346.2 feet; thence North 0°03' West, a distance of 1, 248 feet, more or less, to a point on the southeasterly line of Bull Moose Claim as shown on Supplemental Plat of said Section 4 by the U.S. Supervisor of Surveys, and dated March 5, 1928; thence North 29°17' East, a distance of 69.9 feet, more or less, to the North line of said Government Lot 14; thence Easterly along the North line of said Government Lot 14, a distance of 300.3 feet, more or less, to the point of beginning.

County	Waterbody	Tributary To	WRIA
Pend Oreille	Wolf Creek	Pend Oreille River	62-Pend Oreille

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Fish propagation/pond filling	0.10	CFS	5.20	01/01	12/31
Irrigation	0.011	CFS	5.74	05/01	10/01
TOTAL	**0.111**	**CFS**	10.94		

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Wolf Creek	USFS	38N	43E	04	SW¼NE¼	48.8252136°N	117.3745179°W

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

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 10 and 17, 2012.

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.

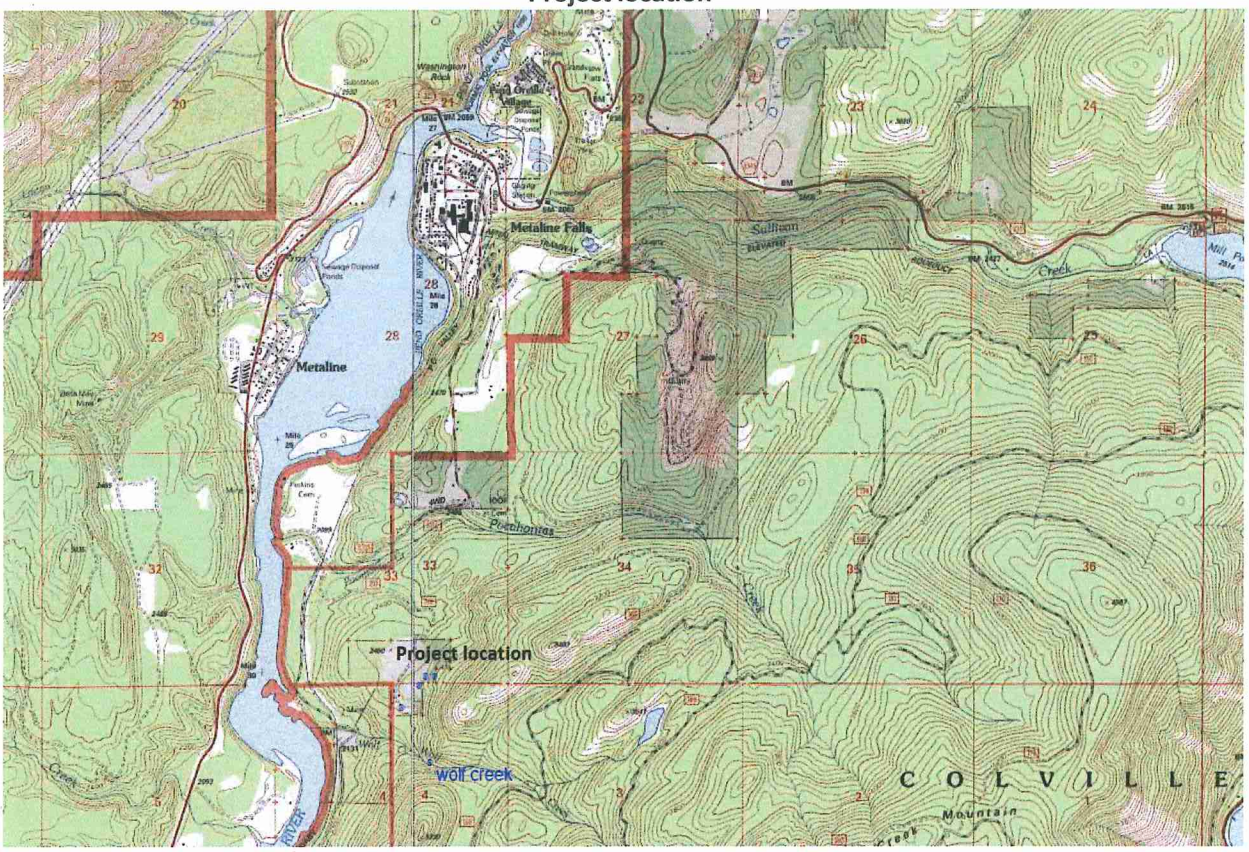
Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

INVESTIGATION

A site visit was conducted by Gene Drury with Roger Hanlin (previous landowner and contact) and Jay Hedrick (caretaker) on August 21, 2012. The project is known as "Wolf Creek Ranch" and is located a few miles south of Metaline Falls, WA in the hills above the Pend Oreille River. The address of the 71

acre property is 932 Gregory Road, Metaline Falls. The project has been started and both surface and ground water have been used at this site for the purposes requested under this application.

Project location



On the day of investigation, the applicant had been proposing to obtain only a Surface Water Permit under S3-30515 for a diversion from Wolf Creek in the amount of 0.01 cubic foot per second for domestic supply, stockwater and pond use. The investigation revealed an existing diversion works that could exceed this amount along with existing drilled wells being used on the property. It was recommended that two separate applications be filed to cover the existing water use. One for surface water (S3-30677) and the other for ground water (G3-30676). These two applications were both filed on September 17, 2012.

<u>Surface Water Application No. S3-30677</u>

This application requests 0.111 cubic foot per second (or 50 gallons per minute) from an existing diversion on Wolf Creek. The existing diversion is located within the SW¼NE¼ of Sec. 4, T. 38 N., R. 43 E.W.M. The applicant has requested 45 gpm for pond maintenance/fish propagation and 5 gpm for irrigation of 2 acres. The existing diversion is gravity fed and the intake is over 1000 feet upstream of the place of use. No water was being diverted on the day of investigation. The 4-inch pvc pipe intake runs about 500 feet to a "T" were water is then delivered via one inch poly pipe. On the date of investigation, Wolf Creek was flowing well over 225 gallons per minute (or 0.50 cfs) at the diversion.

There are a total of three ponds located on the property identified as Pond #1 ("Rock Pond"), #2 and #3. They are each constructed below natural grade with no dam or dike retaining water. Because of this no reservoir permits will be required. These ponds are each lined and there is no outlet other than for emergency spillage. Pond #2 and #3 are both stocked with cutthroat trout. There are no plans to divert water to the Rock Pond.

Water from Wolf Creek will only be diverted to Pond #3, the lowest pond on the property. No surface water from Wolf Creek will be diverted into Pond #2. Pond #3 is approximately 0.52 acre in surface area with an average depth of less than 10 feet. Therefore the total pond volume would be 5.2 acre-feet or less. Water from Wolf Creek will be used to maintain the level of Pond #3.

A very small amount of water will be needed annually to account for evaporative losses. It is estimated that the 0.52 acre pond fed by surface water will have around 20 inches of net evaporative loss over the summer. Therefore, it will take about 0.9 acre-feet of water over the summer to replace this lost volume. 5.2 acre-feet will be authorized for the pond use but the exact amount required for the pond maintenance will be determined at proof of examination stage through metered records.

Water will also be gravity fed from the diversion to irrigate the 2 acres of grass. The Washington State Irrigation Guide (WA210-Vi-WAIG, AMEND.1NOVEMBER1990 at Newport, Washington) estimates that 34.44 inches of water (or 2.87 acre-feet of water per acre) is required based on 70% system efficiency. Therefore, 5.74 acre-feet of water should be adequate for the irrigation of the 2 acres under this permit.

Wolf Creek Ranch

Impairment Considerations

A review of Ecology records was conducted for other existing water rights, permits, and claims on Wolf Creek and in the vicinity of the point of diversion within the SW¼NE¼ of Sec. 4, T. 38 N., R. 43 E.W.M. The following is a list of water rights generated from the Water Resources Tracking System (WRTS) database:

File #	Person	Priority	Purpose	Qi	UOM	Qa	TRS	QQ/Q	1stSrc
G3-075109CL	TAFT A.	---	IR,DG		GPM		38.0N 43.0E 04		
S3-26532C	HANLIN R.	4/16/80	ST,DS	0.01	CFS	1	38.0N 43.0E 04	SW¼NE¼	WOLF CREEK
S3-28787CWRIS	W L ESENSEE	5/31/90	DM	0.02	CFS	2	38.0N 43.0E 04	SE¼NW¼	UNNAMED SPRING

There was one other water right appurtenant to the Wolf Creek Ranch property recorded under Surface Water Certificate No. S3-26532C (Hanlin), with priority of April 16, 1980. This certificate authorized diversion from Wolf Creek in the amount of 0.01 cfs for single domestic supply and stockwater use. According to the previous land owner, Mr. Hanlin, this water right has not been used for a very long time and would appear to have been relinquished. The applicant (Massnick) was trying to re-establish the water right through the filing of Surface Water Application No. S3-30515, however, it will no longer be needed if the other two applications (S3-30677 and G3-30676) are approved.

The proposed appropriation under the Massnick application will not cause any impairment to existing water rights, provided the recommendations of the minimum flow of the Pend Oreille River is satisfied.

Water Availability

The Department of Ecology has not closed Wolf Creek or the Pend Oreille River to further consumptive appropriations, however all new diversions are required to 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 provision is a recommendation from the Washington State Department of Fish and Wildlife (WDFW) and does not apply to in-house domestic supply uses. Nor does the provision apply to ground water sources which are not in hydraulic continuity with the river. Therefore, Ground Water Application No. G3-30676 will not be provisioned with the low flow because the 4 wells do not affect the flow of the Pend Oreille River. The Wolf Creek diversion under Surface Water Application No. S3-30677 will include the low flow provision on the Pend Oreille River. Additionally, the applicant will be required to bypass one-half the flow of Wolf Creek at all times for wildlife habitat.

Beneficial Use

The proposed use of water is defined in statute as a beneficial use (RCW 90.54.020(1)).

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. To maintain these values the authorization shall be subject to the minimum instream flow of 7700 cfs on the Pend Oreille River as measured at U.S.G.S. gage #12395500 near Newport set by WDF&W on October 18, 1999.

The approval of this application for this quantity and use will not be detrimental to the public interest.

Consideration of Protests and Comments

No protests were filed against this application.

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 Wolf Creek, is available for appropriation. 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:

0.111 cubic foot per second and 10.94 acre-feet per year (0.10 cubic foot per second, 5.20 acre-feet per year for continuous fish propagation/pond filling and 0.011 cubic foot per second, 5.74 acre-feet per year for the seasonal irrigation of 2 acres)

Wolf Creek point of Diversion: SW¼NE¼, Section 4, Township 38 North, Range 43 E.W.M.

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Gene Drury, 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.