File NR CS2-SWC238J@6
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DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT CHANGE

Change in Point of Diversion

PRIORITY DATE	WATER RIGHT NUMBER
July, 1919	Dungeness Adjudicated Certificate 238

MAILING ADDRESS	SITE ADDRESS (IF DIFFERENT)
CLINE IRRIGATION DISTRICT 322 Clark Rd SEQUIM WA 98382	

Total Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
9	CFS	2040

This quantity does not include stockwater and domestic use.

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE ADDITIVE		UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE		PERIOD OF USE (mm/dd)
Irrigation	9		CFS	2040		04/15 - 09/15

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
745			

And for the purposes of stock and domestic use continuously.

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Clallam	Dungeness River		18 Elwha-Dungeness

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Dungeness River		30N	04W	26	SW NE		

Datum: NAD83/WGS84

Place of Use

PARCELS (NOT LISTED FOR SERVICE AREAS)

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Lands within the boundaries of the irrigation district.

Proposed Works

A diversion on the Dungeness River.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	Completed	In Full Use

Measurement of Water Use

How often must water use be measured?	Weekly
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?	Annual Peak Rate of Withdrawal (cfs)

Provisions

Measurements, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for the source identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use". 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.

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

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.

Department of Fish and Wildlife Requirement(s)

The intake(s) must 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/

Findings of Facts

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

Therefore, I ORDER approval of Change Application No. CS2-SWC238J@6, subject to existing rights and the provisions specified above.

Signed at Olympia, Washington, this 8th day of August 2012.

Michael J. Gallagher

Michael J. Gallagher, Section Manager

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearing 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.

Mailing Addresses	Street Addresses
Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903	**Pollution Control Hearings Board** 1111 Israel RD SW Ste 301 Tumwater, WA 98501
Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608	**Department of Ecology** Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503

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
Phil Crane, Department of Ecology
Water Right Control Number CS2-SWC238J@6

BACKGROUND

Description and Purpose of Proposed Change

On May 17, 2012, Gary Smith, representing Cline Irrigation District, filed an *Application for Change of Water Right* to change the place of use of Dungeness Adjudicated Certificate 238.

Certificate 238 was issued as a result of the Dungeness River Adjudication in 1924. The Cline Irrigation District was confirmed a diversion of 46 cubic foot per second (cfs) from the Dungeness River for irrigation of 2,300 acres, with a priority date of July, 1919. The place of use on the certificate is described as "Lands within the boundaries of the irrigation district."

Attributes of the Existing Water Right and Proposed Change

Table 1. Attributes of original certificate and proposed change to SWC10458.

	Existing	***Proposed***
Name	Cline Irrigation District	Same
Priority Date	July, 1919	July, 1919
Change Application Date		5/17/2012
Instantaneous Rate	46	9
Annual Quantity	N/A	2042
Purpose(s) of Use	Irrigation of 2,300 acres	745
Period of Use	April 15 – September 15	Same
Place(s) of Use	Lands within the boundaries of the irrigation district.	Same

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the change in S2-ADJSWC238

Public Notice

RCW 90.03.280 requires notice of a water right application be published once a week for two consecutive weeks in a newspaper of general circulation in the county where the water is diverted. An original public notice for this project proposal was posted in *The Sequim Gazette,* published in Clallam

County on June 6th and June 13th, 2012. The Department of Ecology did not receive any protests or letters of concern in response to this notice.

State Environmental Policy Act (SEPA)

A SEPA determination evaluates if a proposed withdrawal will cause significant adverse environmental impacts. A SEPA threshold determination is required for:

1) Surface water applications for more than 1 cubic feet per second (cfs). For agricultural irrigation, the threshold increases to 50 cfs, if the project isn't receiving public subsidies.
2) Groundwater applications requesting more than 2,250 gpm.
3) Projects with several water right applications where the combined withdrawals meet the conditions listed above.
4) Projects subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA).
5) Applications that are part of several exempt actions that collectively trigger SEPA under WAC 197-11-305.

This application does not meet any of these conditions and is categorically exempt from SEPA.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states a water right put to beneficial use can be changed. The point of diversion, place of use, and purpose of use can be changed as long as other water rights will not be harmed or injured.

The Washington Supreme Court has held that when Ecology processes an application for change to a water right, they are required to make a tentative determination. A tentative determination establishes the extent and validity of the claim or water right to verify that it is eligible for change.(*R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp.)*

INVESTIGATION

The material reviewed in support of this application included the following:

- The State Surface Water Codes, administrative rules, and policies.
- Ecosystem Economics Report titled, "A review of the implementation of the 1998 MOU between the Department of Ecology and the Dungeness Water Users Association, March 2010
- Information provided by the applicant

Intent of Proposed Change

The intent of this change is to correctly identify the current point of diversion for the water right.

History of Water Use

In 1924 the Superior Court of Clallam County held a general adjudication of the surface water irrigation rights diverting water from the Dungeness River. Over 25,900 acres of irrigation was confirmed in the adjudication, with a cumulative draw on the Dungeness River of over 500 cfs. These quantities have never been achieved.

This change is to correctly identify the current point of diversion of the Cline Irrigation District. In the past this POD has been moved downstream from the NWSE to the SWNE quarter-quarter of section 26. The diversion is shared by the Dungeness Group and the Clallam Irrigation Company.

Tentative Determination of Extent and Validity of Dungeness Adjudicated Certificate 238

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

Beginning in the late 2000's Ecology contracted with Washington Water Trust to investigate the water rights of the Dungeness River Water Users Association's. They in turn, subcontracted this work to Ecosystem Economics of Bend, Oregon. A final report was issued in March 2010. The report looked at historical water use of the Dungeness irrigators. The report, "A Review of the Implementation of the 1998 MOU Between the Department of Ecology and the Dungeness Water Users Association" is being used to quantify the irrigator's water rights as Ecology prepares to issue superseding Certificates to the irrigators. The quantification of this right in this Report of Examination is taken from the report.

Impairment Considerations

When changing a surface water right, the only consideration is whether the proposed change will impair existing water rights. This change has already occurred and this change is administrative in nature to correct the point of diversion on the water right. The downstream move has not impaired other water users. Water will continue to be diverted from the Dungeness River at the current diversion, in amounts at or less than historically diverted.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

In accordance with Chapter 90.03 I find that:

- Dungeness Adjudicated Certificate 238 is in good standing and available for change.
- The change in point of diversion has not impaired existing rights.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to Dungeness Adjudicated Certificate 238 be approved.

Point of Diversion

SW¼NE¼ Section 26, T. 30 N., R 4 W.W.M

Phil Crane 8/8/2012

Phil Crane *Date*

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.