WR File NR CS2-SWC1878
WR Doc ID 5802054

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT CHANGE
DRAFT

Changed Place of Use
Added or Changed Point of Diversion

PRIORITY DATE	WATER RIGHT NUMBER
May 10, 1929	CS2-SWC1878

MAILING ADDRESS	SITE ADDRESS (IF DIFFERENT)
WA DEPT. OF FISH AND WILDLIFE 600 CAPITAL WAY N. C/O REAL ESTATE OLYMPIA, WA, 98501	VOIGHTS CREEK HATCHERY 19112 PIONEER WAY EAST ORTING, WA, 98360

Total Quantity Authorized for Withdrawal or Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AC-FT/YR)
5 (non-consumptive)	CFS	3,618

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Fish Propagation	5		CFS	3,618		01/01-12/31

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Pierce	Voights Creek	Carbon River	10

SOURCE	PARCEL	TOWNSHIP	RANGE	SECTION	QQ Q	LATITUDE	LONGITUDE
S01- Voights Creek	0519334056	19	05 EWM	33	SW SE	47.082886	-122.176467

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

7002280010

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Section 04 Township 18 Range 05 Quarter 12 VOIGHT CREEK MEADOWS L 1 EASE OF RECORD OUT OF 05-18-04-1-030 SEG 2012-0053 BB 8/18/11 BB

Proposed Works

The diversion structure is at River Mile 0.5 of Voights Creek. Five electric pumps at the diversion carry water approximately 500 feet to the hatchery. Four of the pumps have a combined instantaneous

capacity of 24.98 cfs and the remaining pump produces 2 cfs. Diverted water is returned to Voights Creek roughly 10 feet downstream of the diversion.

Development Schedule		
BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	Completed	September 1, 2015

Measurement of Water Use	
How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Annually
What rate should be reported?	Monthly Peak Rate of Diversion (cfs) Monthly Average Rate of Diversion (cfs) Annual Quantity (ac-ft)

Provisions

Measurements, Monitoring, Metering and Reporting

An approved measuring device must 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.

Department of Ecology personnel, upon presentation of proper credentials, must have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

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

No dam or weir may be constructed in connection with this diversion.

Easement and Right-of-Way

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

Water Use Efficiency

Use of water under this authorization will be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.

Proof of Appropriation
The water right holder must 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 superseding 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, 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.

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 of use is beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. CS2-SWC1878, 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 **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 **Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Olympia, Washington, this _____ day of _____, 2015.

_____

Michael J. Gallagher
Water Resources Program/Southwest Region
Department of Ecology

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
Water Right Control Number CS2-SWC1878.
Washington Department of Fish and Wildlife

BACKGROUND

Description and Purpose of Proposed Change

Application for Change/Transfer of Water Right CS2-SWC1878 was filed by Phil Crane, representing Washington Department of Fish and Wildlife, on June 13, 2013. This application requested to change the point of diversion to a new diversion and place of use to a new hatchery facility.

This report serves as the written findings of fact concerning Water Right Application Number CS2-SWC1878.

EXISTING Water Right Attributes

Water Right Owner:	**Washington Department of Fish and Wildlife**
Priority Date:	May 10, 1929
Place of Use	Section 33 Township 19 Range 05 Quarter 33 : BEG 145.47 FT N & 30 FT W OF S 1/4 COR OF SEC TH S 64 DEG 54 MIN W 57.83 FT TH W 155.60 FT TH N 421.97 FT TH E 208 FT TO W LI CO RD TH S ALG SD CO RD 397.44 FT TO BEG ALSO THAT POR OF S 1/2 OF SE OF SW LY NLY OF THREAD OF VOIGHTS CREEK EXC THAT POR LY WITHIN 1ST DESC TR

County	Waterbody	Tributary To	WRIA
Pierce	Voights Creek	Carbon River	10 Puyallup - White

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Fish Propagation (non-consumptive)	5.0	cfs	3,618	01/01	12/31

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Source 1 (Upper)	0519334038	N/A	19	05E	33	SE SE	47.0843	-122.1697

Datum: NAD83/WGS84

CFS = Cubic Feet per Second; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian

REQUESTED Water Right Attributes

Applicant Name:	**Washington Department of Fish and Wildlife**
Date of Application:	June 13, 2013
Place of Use	Section 04 Township 18 Range 05 Quarter 12 VOIGHT CREEK MEADOWS L 1 EASE OF RECORD OUT OF 05-18-04-1-030 SEG 2012-0053 BB 8/18/11 BB

County	Waterbody	Tributary To	WRIA
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Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Fish Propagation	5.0	cfs	3,618	01/01	12/31

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
S01 – Voights Ck	0519334056	19	05	33	SW SE	47.082886	-122.176467

Datum: NAD83

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

Legal Requirements for Requested Change

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 *News Tribune* on September 22, 2014 and September 29, 2014. No comments were received.

Consultation with the Department of Fish and Wildlife

The Department must give notice to the Department of Fish and Wildlife of applications to divert, withdraw, or store water. The Applicant is the Washington Department of Fish and Wildlife for fish propagation purposed. Diversion of water will be conducted according to Washington Department of Fish and Wildlife best management practices.

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 water right application is not categorically exempt from SEPA because it is a surface water right for more than 1 cfs. An Environmental Assessment (EA) for construction of the proposed new hatchery facility (including the diversion structure) was completed by the Federal Emergency Management

Agency (FEMA, 2013) in response to an application by WDFW to receive federal funding for the new hatchery project. The EA provided a Finding of No Significant Impact in accordance with the National Environmental Policy Act (NEPA) of 1969, allowing the release of federal funds to support the project. SEPA allows the use of NEPA documents to meet SEPA requirements (WAC 197-11-610).

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights. The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right 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 Code, administrative rules, and policies.
- Department of Ecology's Water Right Tracking System (WRTS) database.
- Topographic and local area maps.
- Information submitted with the application.
- Notes from a site visit on February 26, 2015.

Project Description and Location

The Washington Department of Fish and Wildlife (WDFW) has operated the Voights Creek Hatchery (hatchery) since prior to 1942, serving a key role in recovery of native fish stocks and supplementing fisheries. The hatchery has experienced frequent operational complications due to flooding of Voights Creek and a new hatchery complex has been approved and funded by the Washington State Legislature. The new hatchery will be constructed near the original site, but out of the Voights Creek floodplain to avoid flooding issues and protect the long term viability of the facility. The project has received full support from the Puyallup Tribe of Indians, which acknowledges the critical role of the hatchery in local fisheries.

See Attachment #1

The requested new point of diversion is located 258 feet upstream from the existing diversion, at River Mile 0.6. The new intake is designed to pass gravel more effectively than existing structures, minimizing maintenance and stream disturbance; it will operate using electric pumps installed above the 100-year floodplain of Voights Creek. Diverted water is passed through 3 hatchery ponds and returned to Voights Creek within approximately 10 feet of the point of diversion.

Site Visit

A site visit was conducted on March 3, 2015 by Chris Pitre of Golder Associates Inc. to verify site details and construction status. Andrew Lunden of the Washington Department of Fish and Wildlife was present to provide operational details.

Construction of the new Voights Creek Salmon Hatchery (i.e. proposed new place of use) was almost complete but the facility was not yet operational. The new diversion structure was fully constructed. Five electric pumps were installed at the new diversion; four pumps had a combined instantaneous capacity of 24.98 cfs and the remaining pump is capable of discharging approximately 2 cfs. The capacity of the proposed new point of diversion was therefore capable of exercising the full water rights in a controlled manner (i.e. 22 cfs from April 15 to October 1 and 25 cfs for the remainder of the year).

History of Water Use

The Voights Creek Hatchery has been operating as a state salmon and steelhead hatchery since before 1942 and has been in general operation since the early 1900s. Water right Certificate No. 1878 was issued October 16, 1942 with a priority date of May 10, 1929. The facility was expanded beginning in 1966 and 1972 and additional water rights (i.e., Certificate Nos. 9802 and 11856, respectively) were issued to support those expansions. Proofs of appropriation were completed following issuance of the associated permits and the hatchery has operated nearly continuously since establishment.

Proposed Use

The hatchery currently operates two diversion structures on Voights Creek under three water rights for up to 25 cubic feet per second (cfs) for non-consumptive use. Diverted water flows to a series of ponds operated by the hatchery for fish propogation. The first point of diversion is located at the existing hatchery facility at River Mile 0.6 and is permitted to divert up to 15 cfs continuously under certificate SWC-11856. The second diversion is located approximately 2,350 feet upstream from the hatchery facility and can divert 5 cfs continuously under certificate SWC-1878 and an additional 5 cfs under certificate SWC-9802 (i.e., 2 cfs from April 15 to October 1 and 5 cfs for the remainder of the year).

WDFW plans to decommission the existing diversion structures and has requested change the three water rights associated with the hatchery to all have a common point of diversion and place of use Construction of the new diversion is complete and is almost complete for the hatchery complex. The existing hatchery facility is planned to be demolished once the new facility comes online.

Other Rights Appurtenant to the Place of Use

Three Surface Water Certificates associated with the Voights Creek Hatchery are issued to WDFW. SWC 9802 is for non-consumptive use of 2 cfs from April 15 to October 1 and for 5 cfs for the remainder of the year. SWC11856 is for non-consumptive use of up to 15 cfs continuously. The priority dates for SWC 9802 and 11856 are January 19, 1966 and May 7, 1970, respectively. Change requests have been concurrently submitted to transfer place of use and point of diversion to the new hatchery facility and diversion structure, respectively, for other appurtenant water rights.

Impairment Considerations

Voights Creek was closed to further consumptive allocation on February 26, 1975 by a surface water source limitation established administratively under the authority of chapter 90.03 RCW and RCW 75.20.050.

This proposed change involves changing the point of diversion of a non-consumptive water right 258 feet upstream. Water at the proposed new point of diversion is returned to Voights Creek within approximately 10 feet downstream of where it is being diverted. As a result, only a short segment of

stream will be directly affected. However because the bypass reach is so short, actual impacts to streamflow in the bypass reach will be negligible.

Conclusions

In accordance with Chapters 90.03 and 90.44 RCW, I find that:

- SWC1878 is in good standing and available for change.
- Fish propagation is a beneficial use.
- The proposed change of point of diversion will not impair existing rights.
- Approval of the requested changes will not enlarge the original right conveyed by SWC1878, subject to the provisions specified above.

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:

- 5.0 cfs, 3,618 ac-ft per year, year round use.
- Non- consumptive.
- For fish propagation purposes.

Point of Diversion

- SW ¼, SE ¼, Section 33, Township 19 North, Range 5 E .W.M.

Place of Use

- See legal description on page 1.

Tammy Hall, L.HG *Date*

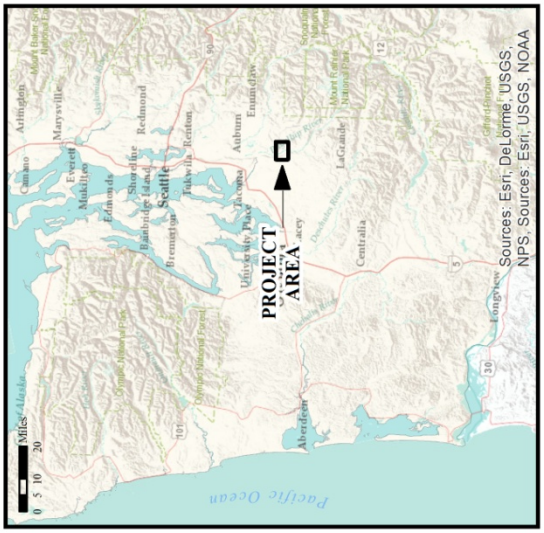
If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Selected References

Federal Emergency Management Agency (FEMA) 2013. Final Environmental Assessment: *Voights Creek Fish Hatchery Repair and Replacement*. FEMA-1817-DR-WA.

ATTACHMENT 1

WA Dept. of Fish & Wildlife
CS2-SWC1878
Sec. 33/34, T019N/R05E & T018N/R05E
WRIA 10 - Pierce County



Basemap - ESRI Terrain

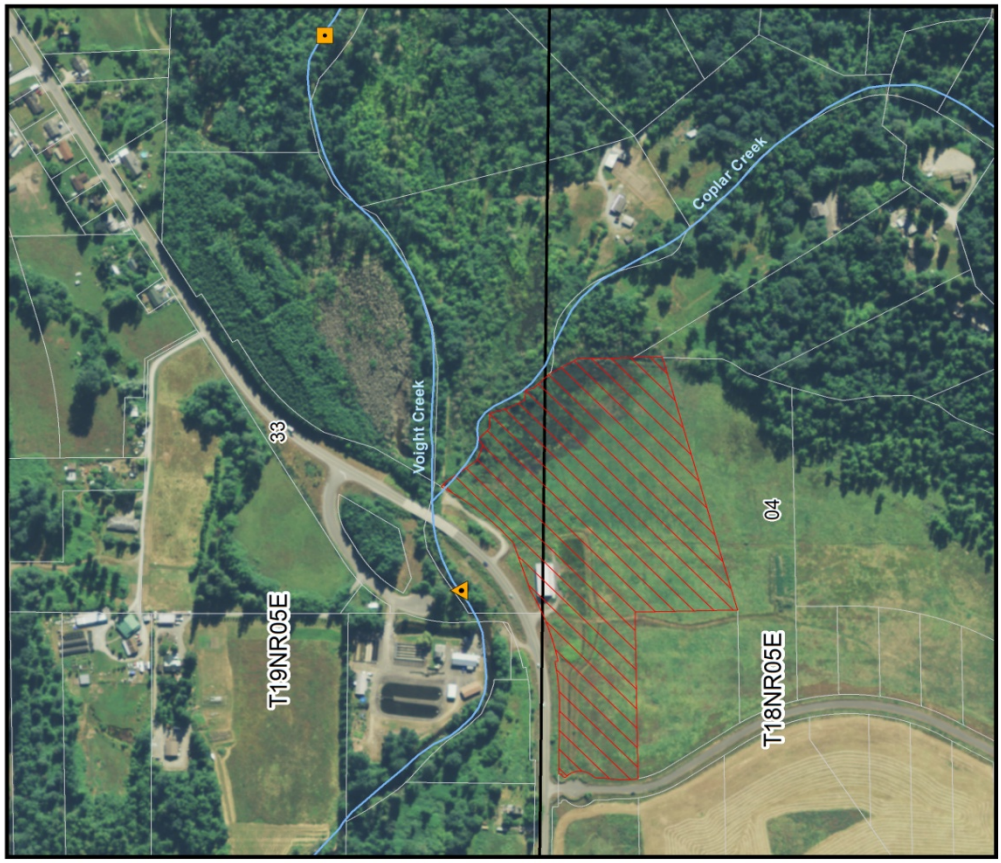
Legend

- PROPOSED POD
- ORIGINAL POD
- PLACE OF USE
- SECTIONS
- PARCELS

Comments:

Place of use, points of withdrawal/diversion are as defined on the cover sheet under the heading, 'LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'

Map Created 4/15/2015



Basemap - ESRI

DEPARTMENT OF ECOLOGY State of Washington