



File No.: S4-35666
WR Doc ID: 6047716

State of Washington
**REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION**

PRIORITY DATE
January 8, 2014

CHANGE APPLICATION NUMBER
S4-35666

MAILING ADDRESS
SOUTH FIRST KACHESS SUMMER HOMES
C/O ARTHUR W. WHITHAM
7038 - 123RD AVE. S.E.
NEWCASTLE, WA 98056-1215

REMARKS: This water right will be mitigated by a water right held in trust with a pre-1905 priority date.

Quantity Authorized for Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.01	CFS	0.03

Purpose

PURPOSE	DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Single Indoor Domestic Supply	0.01			0.03		continuous

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
KITTITAS	THETIS CREEK	KACHESS LAKE	39-UPPER YAKIMA

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Point of Diversion	22-13-31000-0001		22N	13E	31	SE SE	47°20'52.65"N	121°15'16.239"W

Datum: NAD83/WGS84

Place of Use (See Attachment 1)

PARCELS (NOT LISTED FOR SERVICE AREAS)

21-13-05020-0006

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

That part of the NW¼ of the NW¼ , Section 5, T. 21 N., R. 13 E.W.M., situate in the vicinity of Lake Kachess, Kittitas County described as follows:

Beginning at a point, which point is South 0 degrees 05' East for 508 feet from the Northwest corner of said Section, thence South 74 degrees 00' East for 169.49 feet, thence South 25 degrees 32' West for 70.28 feet, thence North 74 degrees 00' West for 137.85 feet, thence North 0 degrees 05' West for 72.14 feet to the point of beginning.

Proposed Works

Water is diverted from the Thetis Creek, stored in a tank, and then distributed to the cabin. Return flow to the lake occurs through septic.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Complete	Complete	January 1, 2019

Measurement of Water Use

How often must water use be measured?	Monthly
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

A. Mitigation

Water use under this authorization is mitigated by a contract between Ecology and the Arthur Whitham Summer Homes for an equal or greater amount of the consumptive use (0.01 ac-ft/yr) from trust water rights held by Ecology as part of the Washington State Trust Water Right Program (TWRP).

The Department of Ecology may assign a portion of its trust water to the United States Bureau of Reclamation (USBR)-Ecology Water Storage and Exchange Contract No. 09XX101700 to mitigate for operational impacts to the Yakima Irrigation Project. You shall pay Ecology, as part of your mitigation agreement, for storage and delivery of water under paragraph 15(a) of the exchange contract.

During periods of water shortages, priority calls against the source trust water right providing mitigation for this project may be made. If that priority call for water is found to be valid, water use under this authorization may be temporary curtailed until the priority call for water ends.

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

C. Easement and Right-of-Way

If the water source and/or water transmission facilities are not wholly located upon land owned by the applicant, issuance of a water right 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.

D. Water Use Efficiency

Use of water under this authorization shall 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.

E. Certification

A temporary permit may issue to appropriate surface water based on the quantities described on Page 1 of this report following the appeal period for this decision, and will remain in permit status through the pendency of the Yakima County Superior Court Adjudication Proceedings *State of Washington v. Acquavella*. A final certificate will issue only after the Court's Final Decree is entered and all matters (i.e. appeals) in the Adjudication Proceedings are settled.

F. 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.

G. Fish Screening

The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria. See: <http://wdfw.wa.gov/about/contact/>.

Finding 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. S4-35666, subject to existing rights and the provisions specified above.

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
- Facts that demonstrate the appellant is entitled to obtain judicial review;
- The appellant's reasons for believing that relief should be granted; and
- A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed**. The appeal must be filed in the same manner as described above.

Signed at Union Gap, Washington, this 2ND day of FEBRUARY 2016.



Thomas Perkow, Acting Section Manger
Water Resources Program/CRO
Department of Ecology

To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program at 360-407-6872. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

INVESTIGATOR'S REPORT

BACKGROUND

Project Description

On January 8, 2014, Arthur W. Whitham filed Application No. S4-35666 with the Washington State Department of Ecology (Ecology) requesting an appropriation of public surface water. Mr. Whitham originally applied for water on behalf of all seven cabins in the South First Kachess Summer Homes, however the application was later amended to just a single domestic supply for his cabin. The other six cabins are covered by Court Claim No. 00302, (Draft Certificate No. S4-83040-J). Mr. Whitham proposes to divert an instantaneous rate (Qi) of 0.01 cubic-feet per second (cfs) and a cumulative annual diversion volume (Qa) of 0.03 acre-feet per year (ac-ft/yr). The purpose of use is for one cabin year round for indoor domestic supply.

Table 1. Summary of Application No. S4-35666

<i>Attributes</i>	<i>Proposed</i>
Applicant	Arthur Whitham
Application Received	January 8, 2014
Instantaneous Quantity	0.01 cubic-feet per second
Source	Thetis Creek
Point of Diversion	SE¼SE¼, Section 31, T. 22 N., R. 13 E.W.M.
Purpose of Use	Single Domestic Supply (indoor only)
Period of Use	Year round
Place of Use	South First Kachess Summer Homes (Parcel No. 21-13-05020-0006)

The subject application qualifies for processing as part of Ecology's Cabin Owner Mitigation Program. As directed by Senate Bill 6861, Ecology is providing banking opportunities for Yakima Basin Cabin Owners with junior claims (post-1905) to purchase senior mitigation credits to offset the consumptive use of water during years of rationing by the USBR. The program is also available to some unauthorized water users when specific suitability criteria are met. In these cases, the program allows Ecology to issue new mitigated permits and water budget neutral determinations.

Ecology completed a survey in 2006 to identify the number of water users that rely on surface water, how they use water (in-house and/or outside irrigation), and how much water they use. Ecology received 285 completed surveys from water users with and without water rights. Ecology estimated annual water use by multiplying the gallons per day identified on the survey by the number of days the cabin was occupied. In cases where a water duty was not provided, Ecology used criteria developed for mitigation during the 2005 drought and/or procedures outlined in the Washington State Department of Health (2009) Water System Design Manual.

Consumptive use will be mitigated through purchase of mitigation credits from Ecology's Cabin Owner Mitigation Program (Trust Water Right Nos. CS4-00195CTCL(A)sb6, CS4-00195CTCL(B)sb6, and CS4-00195CTCL(C)sb6 – collectively known as the Bruton Ditch Mitigation). The application is therefore water budget neutral with respect to Total Water Supply Available (TWSA), which is a calculation of the

volume of water available to supply water users in the Yakima Basin. Out-of-season and/or carry over impacts to instream flows will be managed with use of Water Storage and Exchange Contract No. 09XX101700 between Ecology and the USBR.

Legal Requirements for Application Processing

The following requirements must be met prior to processing a water right application:

- **Public Notice**

Notice of the proposed appropriation was published in the Ellensburg Daily Record on May 13 and 20, 2014. No comments were received during the 30-day comment period.
- **State Environmental Policy Act (SEPA)**

The subject application is categorically exempt under SEPA (WAC 197-11-305 and WAC 197-11-800(4)) because the instantaneous quantity is less than the 1.0 cfs threshold.
- **Water Resources Statutes and Case Law**

RCW 90.42.100(1) states that Ecology is authorized to use the Trust Water Rights Program (TWRP) in the Yakima River basin for water banking purposes. RCW 90.42.100(2)(a) states that water banking may be used to mitigate for any beneficial use under chapter 90.03, 90.44 or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users. RCW 90.42.100(2)(b) states that water banking may be used to document water right transfers to and from the TWRP.
- **Expedited Processing**

This application qualifies for expedited processing under WAC 173-152-050(2)(g), which states that within each regional office and among applications processed under chapter 90.90 RCW, the department may prioritize applications that propose a water budget neutral project as defined in WAC 173-152-020(18) ahead of all other competing applications.

INVESTIGATION

In consideration of this application, Ecology reviewed available documents pertaining to the historic use of water, site conditions, and the potential effect on existing water rights. This included information submitted by the applicant and pertinent Ecology records including adjudication and water rights records and water resource policy and guidance documents.

A site visit was completed on August 6, 2013. Tyson Carlson (Aspect Consulting) visited with the applicant to inspect the point of diversion, place of use, and answer questions regarding estimates of total and consumptive use.

This project was presented at the Water Transfer Working Group (WTWG) on April 7, 2014. This group represents private, federal, state and tribal groups interested in water right changes in the Yakima Basin. There were no objections to the cabins of South First Kachess Summer Homes receiving surface water permits mitigated by a senior water right held by Ecology, as long as the consumptive use quantity needed for mitigation is assigned to Water Storage and Exchange Contract No. 09XX101700 between Ecology and the USBR. WTWG reminded Ecology that the mitigation for this project only offsets impacts to TWSA. If flows drop to a point where fish and other aquatic life are affected, then the proposed water use could be curtailed.

In light of the USBR's withdrawal of all remaining unappropriated waters of the Yakima River – including all tributaries and groundwater in continuity (chapter 90.40 RCW), Ecology consulted with the USBR about new appropriations for cabin owners. The USBR granted a release for these types of projects that are mitigated and water budget neutral with respect to TWSA in a letter dated May 25, 2012.

Site Description

The proposed point of diversion is located approximately 1,100 feet above where Thetis Creek discharges to Lake Kachess, in the southeast quarter of the southeast quarter of Section 31, in Township 22 N., Range 13 East of the Willamette Meridian (E.W.M.), in the Kittitas Water Resource Inventory Area (WRIA 39).

The point of diversion consists of a small surface water diversion directly from Thetis Creek. Water is diverted from the creek, conveyed approximately 1,000 feet, and then distributed to the cabin community. Water which is not consumptively used is discharged to an individual on-site septic system.

Six other cabins within the South First Kachess Summer Homes community are supported by a post-1905 claim (Adjudicated Court Claim No. 00302). They will also have an opportunity to purchase mitigation credits.

Lake Kachess is a migratory barrier to anadromous salmonids (Kachess Dam has no fish passage facilities). Thetis Creek commonly goes subsurface and is not considered as being accessible to anadromous salmonids (Reclamation 2005). In addition, WDFW fish distribution data indicate no presence of Bull Trout or other ESA-listed fish.

Other Water Rights Appurtenant to the Place of Use

There is one overlapping water right located on Thetis Creek (listed in the table below). South First Kachess Summer Homes is the current water right holder which is used for domestic supply for 6 other cabins within the community.

In addition to the overlapping water right, there is 1 temporary permit (S4-26549 T) held by Emma Larson of South First Kachess Summer Homes (listed in the table below) and is used for single domestic supply for one lot.

Table 2. Water Rights Appurtenant to the Place of Use

Water Right Document No.	Priority Date	Instantaneous Quantity (CFS or GPM)	Annual Quantity (AF/YR)	Purpose(s) of Use	Point of Diversion or Withdrawal
S4-83040-J	May 19, 1958	0.03 cfs	3.0	Domestic	Diversion
S4-26549 T	February 3, 1980	0.005	0.05	Domestic	Diversion

Domestic Water Use

Based on the available data, Ecology determined that the average seasonal recreational cabin uses no more than 100 gallons per day (gpd), up to 105 days per year for a total of no more than 0.03 ac-ft/yr. For consistency, Ecology has assumed the same consumptive use defined by rule (WAC 173-539(A)-050(3)) in upper Kittitas County as 30 percent of total use (Qa), or approximately 0.01 ac-ft/yr per cabin. The applicant must purchase 0.01 ac-ft/yr to mitigate for the consumptive use.

The total use of 0.03 ac-ft/yr and mitigated consumptive use of 0.01 ac-ft/yr. Because most cabins are rustic and use very little water, and few are occupied year-round, the numbers are considered to be a liberal estimate of actual use.

Four Statutory Tests

This Report of Examination (ROE) evaluates the application based on the information presented above and in referenced documents. To approve the application, Ecology must issue written findings of fact and determine that each of the following four requirements of RCW 90.03.290 has been satisfied:

1. The proposed appropriation is a beneficial use;
2. Water is available for appropriation;
3. The proposed appropriation would not impair existing water rights; and
4. The proposed appropriation would not be detrimental to the public welfare.

Beneficial Use

In accordance with RCW 90.54.020(1), the proposed appropriation for single domestic indoor use is a beneficial use of water. As detailed on the Application for Permit and observed during the site visit, the point of diversion is supported by the necessary infrastructure to deliver the full appropriation of water to the cabin community.

Availability

The diversion point is located on Thetis Creek, which discharges directly to Lake Kachess, and has provided the cabin community's water supply for over 50 years.

The appropriation proposed under the subject application will be water budget neutral by dedicating 0.01 ac-ft/yr of consumptive use available from Ecology's Cabin Owner Mitigation Program.

Potential for Impairment

The proposed uses that are the subject of this application will be water budget neutral with respect to TWSA by dedicating 0.01 ac-ft/yr from Ecology's water bank used for the Cabin Owner Mitigation Program. Month-by-month scheduling accounts for the project's indoor-only use during the irrigation season (April 1 – October 31). Out-of-season indoor-only use (November 1 – March 31) and potential carry over impacts to instream flows will be mitigated through use of the USBR-Ecology Storage Contract. This mitigation water will be managed to offset any impacts to TWSA.

The proposed diversion from Thetis Creek is less than one percent of the respective critical low flow. Therefore, the requirements associated with the USBR-Ecology Storage Contract are met and assignment of 0.01 acre-feet is appropriate since flow reduction resulting from the new uses is below the consultation threshold in paragraph 18(b) of the contract.

The Yakama Nation holds a time immemorial water right in its usual and accustomed hunting and fishing areas. While this time immemorial water right was not quantified by the Acquavella Adjudication, if water use under this permit were to affect fish and other aquatic life, the Yakama Nation could make a call for their time immemorial water right. Local impairment concerns are not addressed with the assignment of Ecology's mitigation and water use under the subject application could be regulated if a valid priority call is made.

Public Welfare

WDFW fish distribution data indicate no presence of Bull Trout or other ESA-listed fish in Thetis Creek. Issuing a mitigated permit for water use by existing cabins was part of the Legislature’s directive. No protests were received during the public notice or comment period.

CITATIONS

Ecology 2006. 2006 Report to the Legislature, Potential Water Solution for Domestic Surface Water Users, Yakima Basin Camps & Cabin Owners. Publication No. 06-11-044. December 2006.

Reclamation, 2005. Phase I Assessment Report, Storage Dam Fish Passage Study, Yakima Project, Washington. Revised April 2005

WDFW. SalmonScape. <http://wdfw.wa.gov/mapping/salmonscape/index.html>

CONCLUSIONS

The conclusions based on the above investigation are as follow:

- 1. The proposed appropriation for single domestic use (indoor only) is a beneficial use of water;
- 2. The quantity of water requested is made available by purchase of mitigation credits;
- 3. The proposed appropriation will not impair senior water rights or local habitat; and
- 4. The proposed appropriation will not be detrimental to the public welfare.

RECOMMENDATION

Based on the information presented above, the author recommends that a temporary permit be authorized; until the Yakima Superior Court Adjudication is complete, and a permanent permit will be issued to appropriate surface water in the amounts described, limited, and provisioned on page 1 through 3 of this report.

Purpose of Use and Authorized Quantities

0.01 cfs, 0.03 ac-ft/yr for continuous single domestic use.

Point of Diversion

SE¼SE¼, Section 31, T. 22 N., R. 13 E.W.M., Kittitas County.

Place of Use

That part of the NW¼ of the NW¼ , Section 5, T. 21 N., R. 13 E.W.M., situate in the vicinity of Lake Kachess, Kittitas County described as follows:

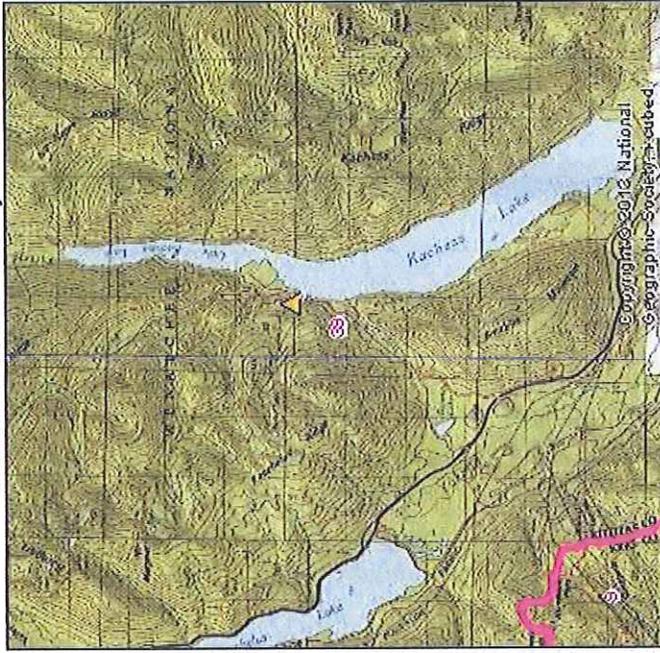
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Report by: 
Kelsey Collins, Permit Writer

1/27/16
Date

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South First Kachess Summer Homes
 C/O Arthur W. Whitham
 S4-35666
 T21NR13E
 WR1A 39 - Kintitas County

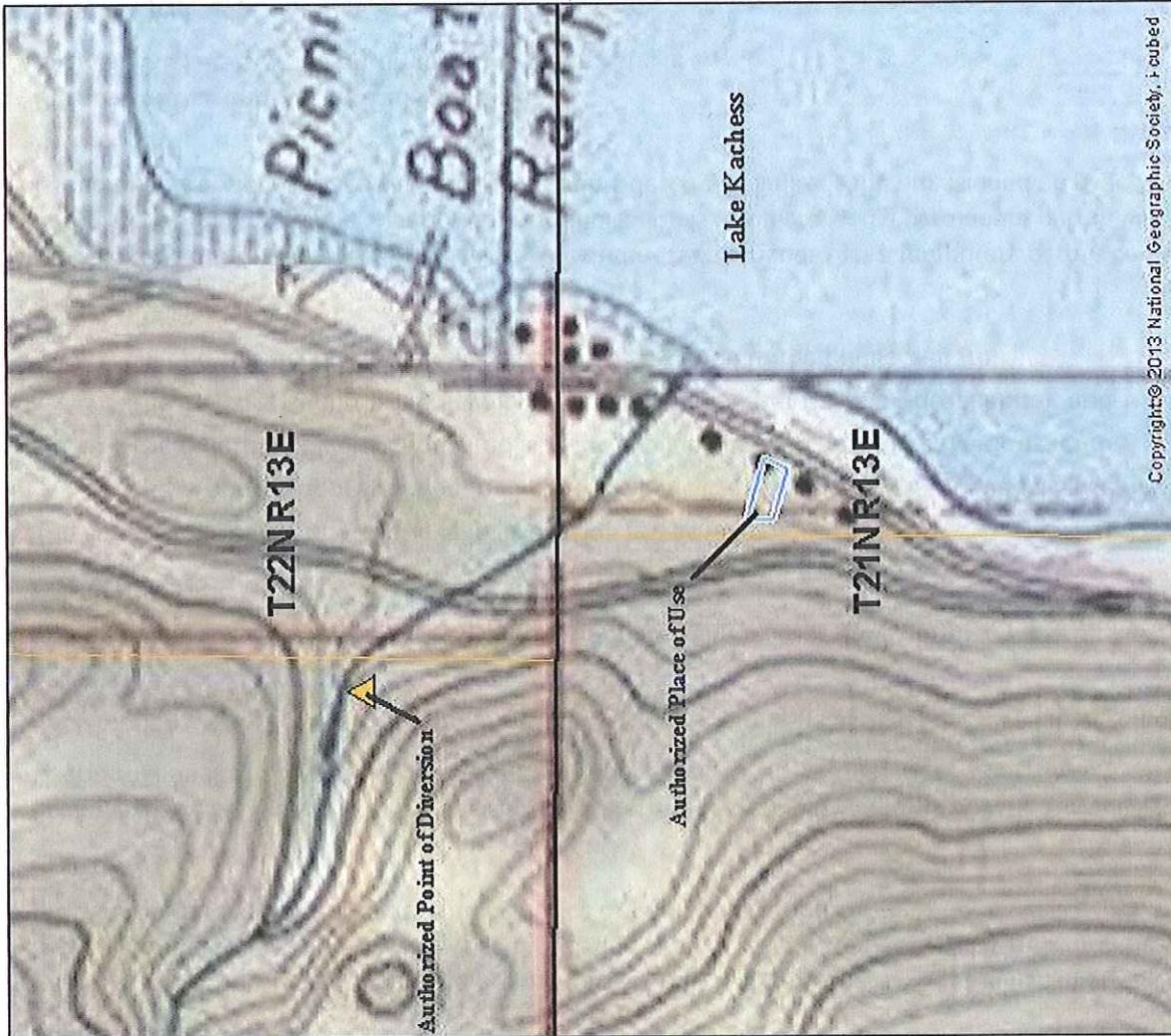


Basemap ESRI US Topographic Maps

Legend

-  Townships
-  Sections
-  WRIA
-  Counties

-  Authorized Place of Use
-  Authorized Point of Diversion



Basemap ESRI US Topographic Maps

Scale: 0, 205, 410, 820, 1,230, 1,640 Feet

Map Date: 9/25/2014

Comment:
 Place of use and source locations are as defined within the Report of Examination cover sheet for the document identified in the header above.