File NR S1-27351
WR Doc ID 2284275

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington

REPORT OF EXAMINATION FOR WATER RIGHT APPLICATION

PRIORITY DATE
11/18/1993

WATER RIGHT NUMBER
S1-27351

MAILING ADDRESS
WASHINGTON DEPARTMENT OF FISH & WILDLIFE (WDFW)
600 CAPITOL WAY NORTH
OLYMPIA WA 98501-1091

SITE ADDRESS (IF DIFFERENT)

Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
2.23	CFS	1613 (NON-CONSUMPTIVE)

Purpose

	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		
PURPOSE	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	PERIOD OF USE (mm/dd)
FISH PROPAGATION AT MCKINNON POND	2.23		CFS	1613 (NON-CONSUMPTIVE)		01/01 - 12/31

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
0	0		

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
WHATCOM	STREAM 0352	NOOKSACK RIVER	1-NOOKSACK

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	Q	LATITUDE	LONGITUDE
5 INTAKE BOXES	380514331381		38N	5E	14	NE	48.786647	-122.119389
							Datum: NAD83/WGS84	

Place of Use (See Attached Map)

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

See Exhibit A

Proposed Works

The intake to McKinnon Pond consists of 5 screened intake boxes that feed another screened intake settling box. From the latter box the water is then delivered to the pond. All lines consist of 4 and 6-inch diameter PVC pipelines.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	Completed	Already in full use

Measurement of Water Use

How often must water use be measured?	Not required as per RCW 90.03.360
How often must water use data be reported to Ecology?	
What volume should be reported?	
What rate should be reported?	

Provisions

Department of Fish and Wildlife Requirement

The intakes 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).

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, system instantaneous capacity, beneficial use, 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, the diversion works and the associated distribution system for compliance with water law.

Water Quality

Discharges from McKinnon Pond must meet state wastewater discharge requirements. WDFW must contact Ecology's Water Quality Program to obtain necessary permits and/or approvals.

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

Therefore, I ORDER approval of Application No. S1-27351, 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 RD SW Ste 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Bellevue, Washington, this 20 day of July, 2012.

Jacqueline Klug, Section Manager
Water Resources Program
Northwest Regional Office

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 – Washington Department of Fish & Wildlife
Water Right Control Number S1-27351
Buck Smith, Senior Hydrogeologist, Department of Ecology

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S1-27351.

Priority Processing

This application is being priority processed because it qualified under the criteria in which an application may be processed prior to competing applications (WAC 173-152).

Table 1 Summary of Requested Water Right

Applicant Name:	Washington Department of Wildlife - now known as Washington Department of Fish & Wildlife (WDFW)
Date of Application:	11/18/1993
Place of Use	See Exhibit A

County	Waterbody	Tributary To	WRIA
Whatcom	Creek 0352	MF Nooksack River	1-Nooksack

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Fish propagation	10	CFS		January 1	December 31

Source Name	Parcel	Well Tag	Twp	Rng	Sec	Q	Latitude	Longitude
Stream 0352	380514331381		38N	05E	14	NE	48.786647	-122.119389

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Twp = Township; Rng = Range; Sec = Section; Q = Quarter of a section; WRIA = Water Resource Inventory Area; Datum is: NAD83/WGS84.

Legal Requirements for Approval of Appropriation of Water

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 where the water is to be diverted and used. Notice of this application was published in the Bellingham Herald on December 13 and December 20, 1993.

Consultation with the Department of Fish and Wildlife

The Department of Ecology (Ecology) must give notice to WDFW of applications to divert water. This application is for WDFW, so they are aware of the application and desire to have it processed.

State Environmental Policy Act (SEPA)

A SEPA checklist was prepared by the Department of Wildlife for this project in 1991. A Determination of Nonsignificance (DNS) was issued. The water use for this project was deemed to be non-consumptive.

INVESTIGATION

Proposed Use and Basis of Water Demand

In 1993, the Department of Wildlife requested approval to divert up to 10 cubic feet per second (CFS) from stream 0352 to supply a fisheries facility known as McKinnon Pond. This facility is located just downstream from the Mosquito Lake Road Bridge over the Middle Fork of the Nooksack River. McKinnon Pond has been in operation for nearly 20 years. It is currently operating under a Temporary Use Permit issued by Ecology on November 23, 1993. WDFW is requesting their permanent rights to divert in order to satisfy a lease requirement by the property owner, the Washington Department of Natural Resources. The actual diversion rate is 2.23 CFS (1000 gpm).

This application has been stuck for many years in the pending application backlog in WRIA 1. WDFW requested it be processed ahead of other WRIA 1 applications because of the environmental benefit created by the requested water use. Ecology agrees this application qualifies for priority processing under WAC 173-152-050(2)(c), *...a proposed water use that is nonconsumptive and if approved would substantially enhance or protect the quality of the natural environment....*

McKinnon Pond is used to rear (at different times of the year) both Nooksack River steelhead and ESA-listed Spring Chinook. According to Heather Bartlett, WDFW Hatchery Division Manager, *"The Nooksack Spring Chinook are a critical Chinook stock to the overall recovery of the Puget Sound Chinook ESU. Absent it becoming "highly viable (ESA term)" the PS Chinook ESA will not achieve recovery. Our hatchery program is paramount to keeping the genetic material around so re-colonization of natural spawners can occur as habitat improvements take place. We even have funding from the Pacific Salmon Treaty under the Critical Stock program for supporting our hatchery program because of how critical rebuilding this stock is to not only Puget Sound, but the broader international arena since this stock severely restricts mixed stock fisheries."*

In addition, according to Terra Hegy, WDFW Water Rights Specialist, *"The water use for the McKinnon Pond project is totally non-consumptive. 100% of the outflow from the acclimation ponds is returned to the unnamed stream. Approval of this permit definitely would enhance and protect the quality of the natural environment. In the spring, hatchery personnel utilize McKinnon Pond as an acclimation/volitional release site for ESA-listed Nooksack River Spring Chinook. WDFW's Spring Chinook program utilizes several release sites in the North and Middle Forks of the Nooksack River and the entire Middle Fork group from McKinnon Pond (approx. 200,000 Spring Chinook fry) is released here. Looked at another way, if this project was denied, the Spring Chinook release would no longer take place."*

McKinnon Pond is a single pond that is gravity-fed from stream 0352. The intake to the pond consists of 5 screened intake boxes that feed another screened intake settling box. From the latter box the water is then delivered to the pond. All lines consist of 4 and 6-inch diameter PVC pipelines. Water supply is affected by stream flow, which is relatively consistent, but is reduced in late summer. The outflow from the pond consists of a settling box and about 100 yards of heavily vegetated stream channel that returns directly into stream 0352, which then flows into the Middle Fork Nooksack River.

Other Rights Appurtenant to the Place of Use

There are no other water rights appurtenant to the subject place of use.

Impairment Considerations

Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection. A water right application may not be approved if it would:

- Interrupt or interfere with the availability of water at the authorized point of diversion of an existing surface water right.
- Interrupt or interfere with the flow of water allocated by rule, water rights, or court decree to instream flows.
- Degrade the water quality of the source to the point that the water is unsuitable for beneficial use by existing users.

There are no existing surface water right holders on stream 0352, therefore approval of the subject application will not interrupt or interfere with other users.

The Nooksack River (including the Middle Fork) does have minimum instream flows as adopted in WAC 173-501. Specifically, the Middle Fork Nooksack has minimum flow requirements established for a control point (Ecology gaging station 12-2080) at River Mile 5.0, within Section 13, Township 38 North, Range 5 East. This control point is approximately 2/3 mile upstream of the Middle Fork Nooksack confluence with stream 0352. However, because the subject request is totally non-consumptive, there will be no interruption or interference with instream flows in the Middle Fork Nooksack or the downstream control points on the Mainstem Nooksack River.

Water quality will not be affected by approval of the subject application. Outflow from the pond is routed through a settling box before being routed into stream 0352, then is quickly diluted within the flow of the Middle Fork Nooksack. In addition, this approval will be provisioned so WDFW must comply with Ecology's Water Quality Program wastewater discharge requirements.

Water Availability

For water to be available for appropriation, it must be both physically and legally available.

Physical availability

For water to be physically available for appropriation there must be surface water present in quantities and quality and on a sufficiently frequent basis to provide a reasonably reliable source for the requested beneficial use or uses. As part of this investigation, the following factors were considered:

- Volume of water represented by senior water rights, including federal or tribal reserved rights or claims;
- Water right claims registered under Chapter 90.14 RCW; and
- Potential riparian water rights, including non-diversionary stock water.

Lack of data indicating water usage can also be a consideration in determining water availability. If during the course of investigating an application the extent to which existing rights are consistently being utilized cannot be ascertained, then Ecology cannot affirmatively find that water is available for further appropriation.

Legal availability

To determine whether water is legally available for appropriation, the following factors were considered:

- Regional water management plans – which may specifically close certain water bodies to further appropriation.
- Existing rights – which may already appropriate physically available water.
- Fisheries and other instream uses (e.g., recreation and navigation). Instream needs, including instream and base flows set by regulation. Water is not available for out of stream uses where further reducing the flow level of surface water would be detrimental to existing fishery resources.

All of the above listed physical and legal availability factors were taken into consideration during the investigation of the subject application. Because the request is totally non-consumptive and WDFW has acknowledged that late summer flows in stream 0352 may be diminished, it has been determined that water is both physically and legally available for appropriation.

Beneficial Use

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

Public Interest Considerations

No detriment to the public interest shall occur as a result of approving the subject application.

Consideration of Protests and Comments

No protests were filed against the subject application.

Conclusions

This report writer has concluded there will be no impairment to existing rights, water is both physically and legally available, the proposed use is beneficial, and there will be no detriment to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed on pages 2 & 3.

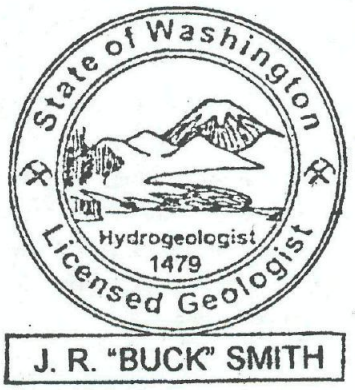
Purpose of Use and Authorized Quantities

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:

2.23 cubic feet per second
1613 acre-feet per year (non-consumptive)
For fish propagation

Point of Diversion
NE¼ of Section 14, Township 38 North, Range 5 East W.M.

Place of Use
See Exhibit A



Buck Smith 7/19/12

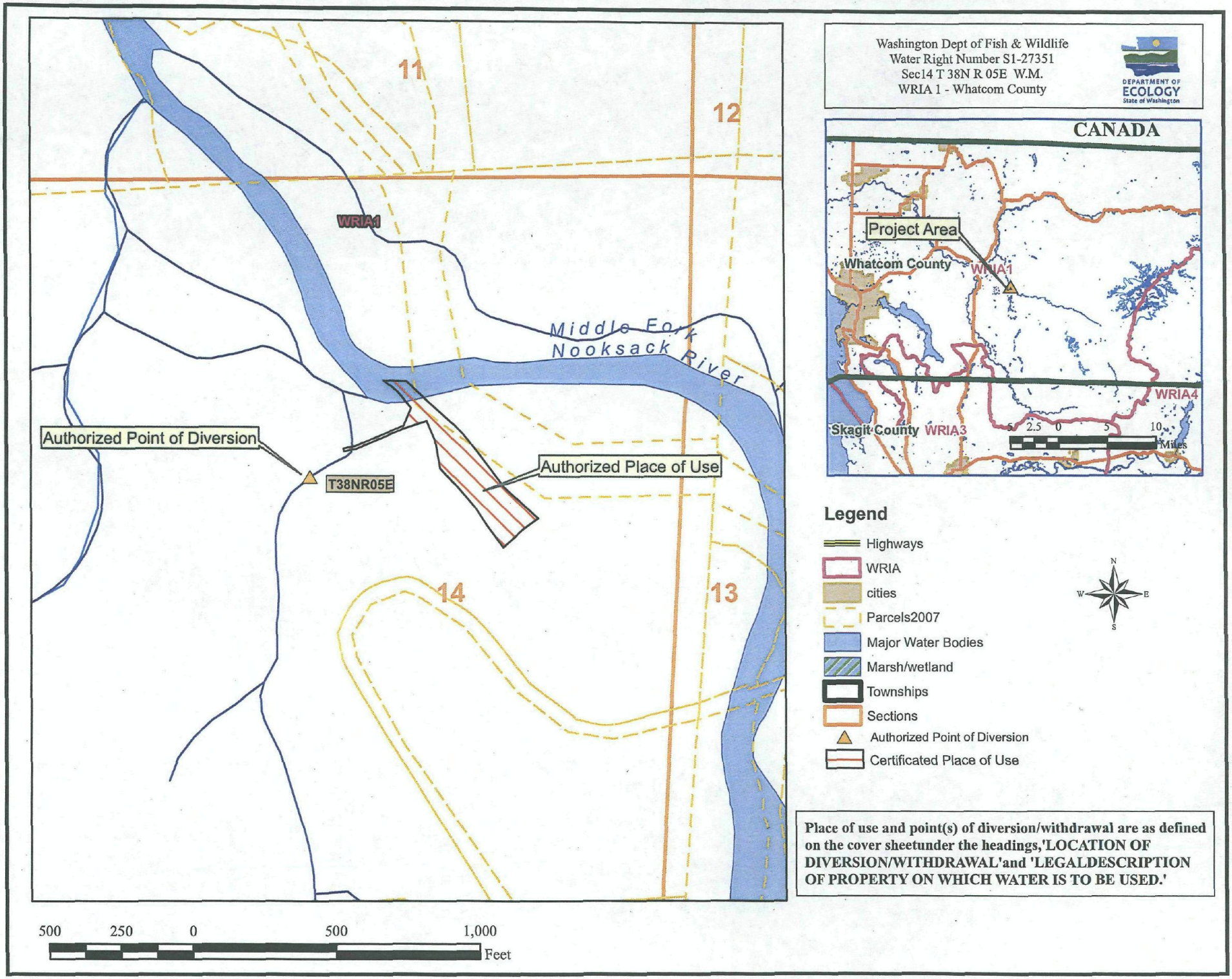
Buck Smith, LG, LHG #1479 *Date*

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.

EXHIBIT A

Commencing at the East Quarter Corner of Section 14, Township 37 North, Range 5 East, W.M.:

thence N26°E 46.2 feet,
thence N65°W 182.7 feet,
thence N30°W 200.0 feet,
thence N54°W 188.4 feet,
thence N54°W 86.7 feet,
thence N84°W 200.0 feet,
thence N90°W 200.0 feet,
thence N31°W 200.0 feet,
thence N30°W 199.4 feet,
thence N02°W 198.8 feet,
thence N49°E 199.0 feet,
thence S72°E 127.8 feet,
thence S56°E 199.4 feet,
thence S44°E 198.9 feet,
thence S42°E 198.8 feet,
thence S63°E 140.7 feet,
thence N90°E 138.6 feet,
thence N76°E 199.4 feet,
thence N73°E 68.4 feet,
thence N18°W 117.4 feet,
thence N66°W 141.0 feet,
thence N64°W 68.9 feet,
thence N57°W 32.1 feet,
thence N52°W 123.1 feet,
thence N54°W 108.0 feet,
thence N54°W 25.4 feet,
thence N54°W 17.4 feet,
thence N51°W 102.7 feet,
thence N51°W 53.6 feet,
thence N49°W 106.9 feet to the true point of beginning of the lease area,
thence N47°W 144.6 feet,
thence N36°W 79.5 feet,
thence N37°W 80.1 feet,
thence N38°W 75.8 feet,
thence N44°W 49.6 feet,
thence N48°W 118.1 feet,
thence N47°W 104.8 feet to the edge of the Middle Fork Nooksack River,
thence N88°W 79.0 feet to the mouth of 352 Creek,
thence S52°E 61.6 feet,
thence S39°E 74.5 feet to the pond outlet,
thence S22°W 67.8 feet,
thence S67°W 184.0 feet,
thence S78°W 42.7 feet,
thence S12°E 5.0 feet to the intake of the inlet pipe,
thence S12°E 5.0 feet,
thence N78°E 42.7 feet,
thence N67°E 184.0 feet,
thence N71°E 82.2 feet,
thence S23°E 73.6 feet,
thence S10°E 102.7 feet,
thence S43°E 82.3 feet,
thence S41°E 98.1 feet,
thence S33°E 77.2 feet,
thence S36°E 97.4 feet to the Southwest corner of the pond,
thence N47°E 96.6 feet,
thence N54°E 68.2 feet to the true point of beginning, comprising an area of 1.638 acres.



Attachment 1