STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

APPROVED
PROTESTED REPORT OF EXAMINATION
To Appropriate Public Waters of the State of Washington

PRIORITY DATE	APPLICATION NO.	PERMIT NO.	CERTIFICATE NO.
October 25, 2000	S1-28092A		

NAME		
Chris Jensen		
MAILING ADDRESS	CITY/STATE	ZIP CODE
6741 25th Avenue NW	Seattle, WA	98117

PUBLIC WATERS TO BE APPROPRIATED

SOURCE		
Unnamed stream (into a pond)		
TRIBUTARY OF (IF SURFACE WATERS)		
Rosario Strait		
MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr)
0.018	8	0.09
TYPE OF USE, PERIOD OF USE		
Irrigation supply, during the irrigation season		

LOCATION OF DIVERSION

APPROXIMATE LOCATION OF DIVERSION

1900 feet east and 2000 feet north from the southwest corner of Section 35

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
NE1/4 SW1/4	35	37 N	1W	2	San Juan
PARCEL NUMBER					
173531005000 (3955 Point Lawrence Road)					

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

S1/2 of the N1/2 of the NE1/4 of the SW1/4 of Section 35, Township 37 North, Range 1 West, W.M.

Attachment 1 shows the location of the authorized place of use and point of diversion.

DESCRIPTION OF PROPOSED WORKS

The Jensen irrigation system consists of a small dam and excavated pond, ¾ horsepower 220 volt electric pump, 1¼ inch PVC mainline pipe, 80 gallon pressure tank, and sprinklers.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Complete	Complete	January 1, 2012

PROVISIONS

1. METER INSTALLATION: An approved measuring device shall be installed and maintained for the diversion identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

   Chapter 173-173 WAC describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed in a document titled "Water Measurement Device Installation and Operation Requirements".

2. RECORDING & REPORTING: Water use data shall be recorded annually and maintained by the property owner for a minimum of five years, and shall be promptly submitted to the Department of Ecology upon request.

3. AUTHORITY TO ACCESS PROJECT: Department of Ecology personnel, upon presentation of proper credentials, shall 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.

4. 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.

5. DAM SAFETY: Dam owners are required to evaluate the safety of their dam and all appurtenant works and to make modifications, as become necessary, to reasonably secure safety to life and property. For current requirements, please contact:

   Doug Johnson
   Dam Safety Office Leader
   Department of Ecology Dam Safety Office
   PO Box 47600, Olympia, WA 98504-7600
   (360) 407-6623
   djsd461@ecy.wa.gov

FINDINGS OF FACT AND ORDER

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

Therefore, I ORDER approval of Application No. S1-28092, subject to existing rights and the provisions listed above.

You have a right to appeal this ORDER. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:		Deliver your appeal in person to:
The Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903	OR	The Pollution Control Hearings Board 4224 – 6th Ave SE Rowe Six, Bldg 2 Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Andrew B. Dunn
Department of Ecology
3190 160th Ave SE
Bellevue, WA 98008

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.

Signed at Bellevue, Washington, this 23rd day of December, 2008.

_____

Andrew B. Dunn, LG, LHG
Section Manager
Water Resources Program
Northwest Regional Office

BACKGROUND

Project Proposal

Mr. Chris Jensen owns approximately 10 acres of land off of Point Lawrence Road, just north of Doe Bay on Orcas Island. Mr. Jensen has applied for surface water rights to irrigate ¼ acre of garden and flowers from an existing pond located entirely on his property. The home on his property is served domestic supply water from a permit-exempt well.

Legal Requirements for Application Processing

Chapter 90.03 RCW authorizes the appropriation of public water for beneficial use and describes the process for obtaining water rights. Laws governing the water right permitting process are contained in RCW 90.03.250 through 90.03.340.

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

- **Public Notice**
  Public notice of the application was published in *The Islands' Sounder* on September 14 & 21, 2005. There was one written protest during the statutory 30-day protest period. It was received on October 18, 2005, from William and Bradley Keel.

- **State Environmental Policy Act (SEPA)**
  The subject water right application is categorically exempt under SEPA WAC 197-11-305 and WAC 197-11-800(4) because the instantaneous diversion rate is less than one cubic foot per second.

INVESTIGATION

In considering this application, my investigation included, but was not limited to, research and/or review of:

- Information supplied with the application
- The USGS Mount Constitution 7.5 minute topographic map
- Water Supply Bulletin No. 46, Geology and Water Resources of the San Juan Islands, Dept. of Ecology, 1975
- Notes from my site visit on September 24, 2008
- Records of existing water rights within the place of use
- Records of other water rights in the vicinity

Description of the Place of Use

The requested place of use is located just outside (to the east) of Moran State Park and southeast of Mount Pickett. The land surface elevation is approximately 200 feet above mean sea level.

Geologic/Hydrogeologic Information

The area where the Jensen pond is located is underlain by a Pleistocene to Recent age sedimentary unit. Water Supply Bulletin No. 46 described this unit as alluvium, beach deposits, glacial outwash, and glacial till. Beneath this sedimentary unit is likely a bedrock formation of Ordovician age. This formation is known as the Turtleback Complex. It is composed of gabbro, diorite, and quartz diorite, with minor pyroxenite and serpentinite.

Site Visit

On September 24, 2008, I visited the Jensen property. Mr. Jensen was not present, but he had previously given me permission to enter his property. I observed the irrigation pond, dam, unnamed stream, and the area proposed for irrigation.

The pond is crescent-shaped and is approximately 225 feet in length. Mr. Jensen reports it is less than 10 feet deep. It is partially excavated into the confluence of an unnamed stream and a smaller tributary drainage. Water is retained by an approximately 160 foot long earthen dam. Crest width of the dam is approximately 10-12 feet. The dam contains a rectangular concrete spillway at its eastern end. The spillway is approximately 6 feet wide x 2 feet high x 25 feet long. A concrete apron carries spillway flow down the face of the dam into the natural stream drainage below. The dam face is otherwise grass-covered. The water level in the pond was about one foot below the spillway lip on the day of my visit. Mr. Jensen installs a portable pump at the end of his wooden dock during the irrigation season. The portable pump supplies water to the irrigation system.

Based on my observations of the unnamed stream, I do not believe it is utilized by any fish species. On the day of my visit there was no observable stream flow (i.e., a dry streambed).

Other Water Rights Appurtenant to the Place of Use

On June 27, 1974, Alice L. Jensen filed two water right claims for the subject place of use. Both claims are short form claims. Claim No. 136124 is groundwater for domestic supply and irrigation of lawn and garden. Claim No. 136125 is for surface water from a reservoir on an unnamed stream for domestic supply and irrigation of lawn and garden. (Not enough detail is provided on the short form claim to determine if the claimed reservoir is the same as the subject irrigation pond.) The validity of these claims was not determined in this investigation. But, in order for the claims to be valid pre-code (vested) water rights, the groundwater use must have begun prior to 1945 and the surface water use must have begun prior to 1917.

Mr. Jensen has also established a permit-exempt right (under RCW 90.44.050) to use groundwater. He has a domestic supply well on the west side of his property. This well was drilled in January 2004. It is 6 inches in diameter and 360 deep.

Other Water Rights on the Same Source

Ecology's water rights tracking database has eleven other surface water right records in Section 35 (the section the Jensen property is located in). My research indicates the points of diversion for all of these records are located either upgradient or on different water courses than the Jensen point of diversion.

After leaving Section 35 the subject stream flows south through Section 2 of Township 36 North, Range 1 West, just prior to entering Rosario Strait. Ecology's water rights tracking database has one water right record listed for Section 2. It is surface water certificate S1-21567C issued to Clovis Adams with a priority date of May 2, 1974. It allows for the diversion of 0.05 cubic feet per second and 1.0 acre-feet per year, for the irrigation of 1 acre. Water is allowed to be diverted from the unnamed stream into storage from November 15 through May 15 of each year. The place of use and point of diversion are now owned by Michael J. Harler.

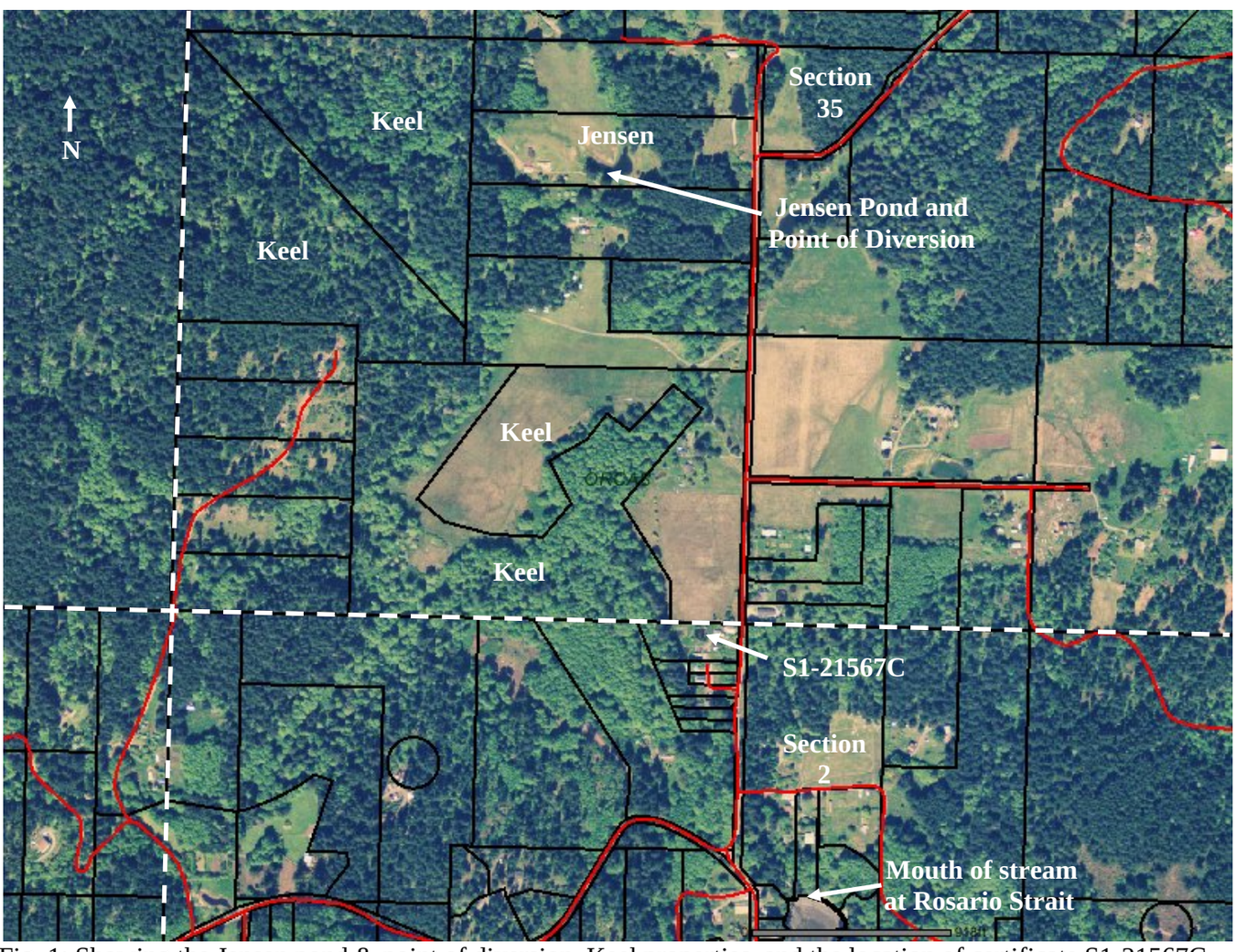


Fig. 1: Showing the Jensen pond & point of diversion, Keel properties, and the location of certificate S1-21567C.

Additional Information

The Jensen pond is less than 10 feet deep and less than 10 acre-feet in volume, so a reservoir permit is not required.

DETERMINATIONS

In accordance with RCW 90.03.290, determinations must be made on the following four criteria in order for an application for water rights to be approved:

- Water must be available
- There must be no impairment of existing rights
- The water use must be beneficial
- The water use must not be detrimental to the public interest

In addition, all protests must be acknowledged and the reasons for protest analyzed.

Water Availability

Legal Availability
There are currently no regulatory closures or legal restrictions affecting water availability within the unnamed stream watershed.

Physical Availability
Recharge to the Jensen irrigation pond will occur in three ways - by direct precipitation, inflow from the unnamed stream, and groundwater discharge from the surrounding watershed. Water should be physically available to fill the pond during the wet season, followed by a decline in pond water level during the dry (irrigation) season.

Impairment

The Clovis Adams certificate (S1-21567C) is the only water right that needs to be considered for potential impairment. The diversion quantities allowed by this downstream certificate are very small (as are the Jensen requested quantities) and can only occur into off-channel storage during the rainy season. Therefore, no impairment is anticipated. In addition, the Jensen pond and dam have been in place for many years without a complaint of downstream impairment.

Beneficial Use

Irrigation supply is considered to be a beneficial use under RCW 90.54.020(1). The volume of water requested (0.09 acre-feet per year) is reasonable for the proposed purpose of use.

Public Interest

No potential for detriment to the public interest could be identified during the investigation of this application.

Protest

There was one protest filed on this application. It was filed on October 18, 2005, by William J. Keel and Bradley J. Keel. The Keel's are adjacent property owners. Their concern is that Mr. Jensen is applying for a water right to divert water from a pond located on their property. This is not the case. The subject pond and point of diversion are located entirely on Mr. Jensen's property (see aerial photo on Figure 1 and map on Attachment 1).

FINDINGS

As a result of my investigation and determinations, I find the following:

- Water is both physically and legally available
- There will be no impairment of existing rights
- The use will be beneficial and the approved quantities of water are reasonable
- There will be no detriment to the public interest

RECOMMENDATION

Based on the above investigation, determinations, and findings, I recommend the subject application be approved, within the limitations listed below, and subject to the provisions on page 2.

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:

- 0.018 cubic feet per second (8 gallons per minute)
- 0.09 acre-feet per year
- For irrigation supply, during the irrigation season

Point of Diversion

NE¼ SW¼, Section 35, Township 37 North, Range 1 West, W.M.

Place of Use

As described on page 1 and as shown in Attachment 1.

Report by: _____ _____December 17, 2008_____

Buck Smith, LG, LHG Date

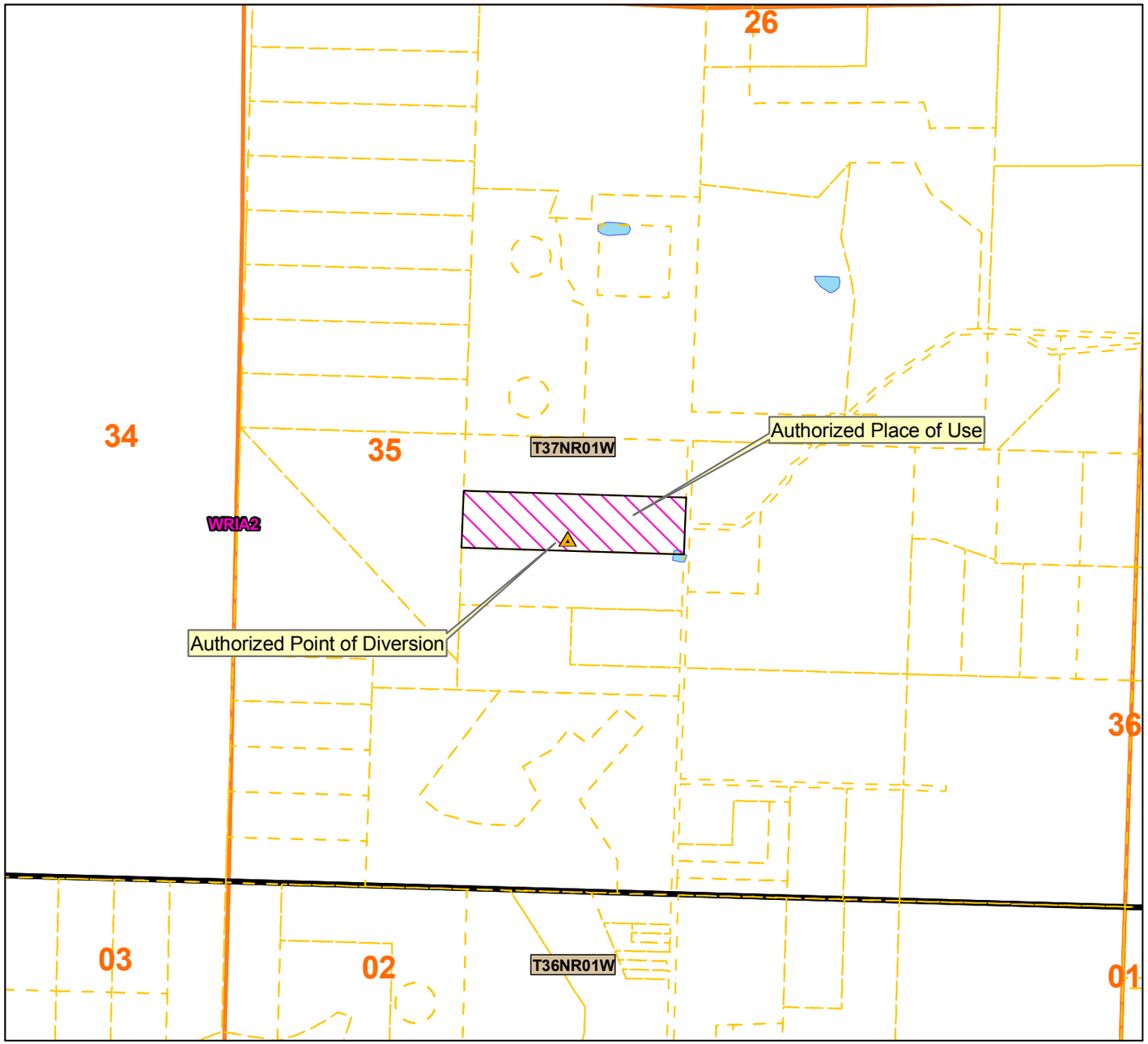
_____

Licensed Geologist/Hydrogeologist No. 1479

If you need this publication in an alternate format, please call the Water Resources Program at (425) 649-7000. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Chris Jensen
Water Right Number S1-28092
Sec. 35, T 37N R 01W W.M.
WRIA 2 - San Juan County

DEPARTMENT OF ECOLOGY
State of Washington



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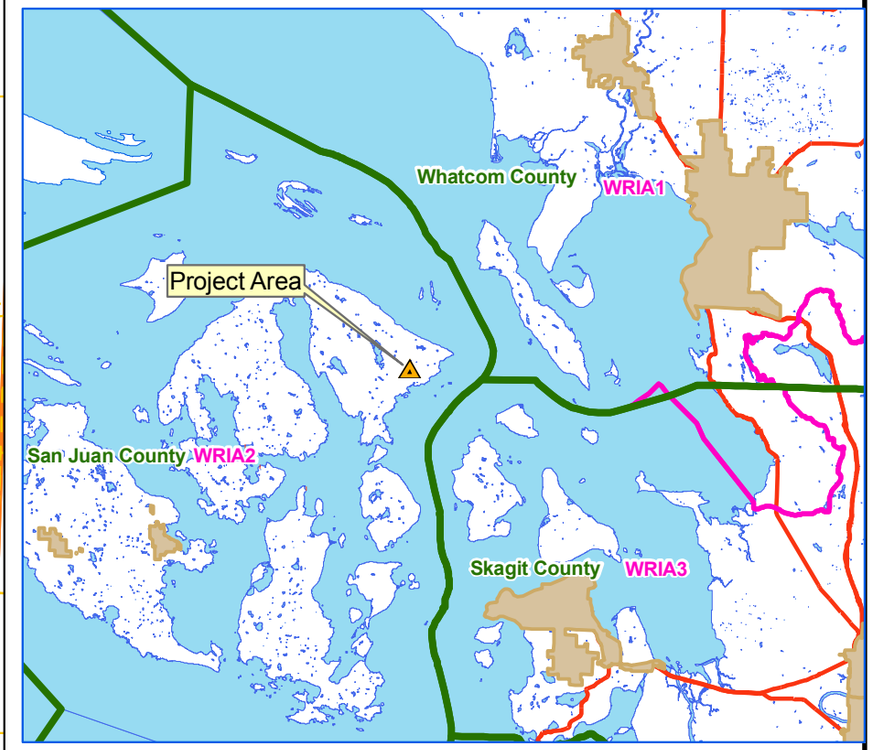

5 2.5 0 5 10 Miles

Legend

- County
- WRIA
- cities
- Highways
- Local Roads
- Townships
- Sections
- Authorized Point of Diversion
- Authorized Place of Use

Place of use and point(s) of diversion/withdrawal are as defined on the cover sheet under the headings, 'LOCATION OF DIVERSION/WITHDRAWAL' and 'LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'

Attachment 1