

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION

TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

- Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)
- Ground Water (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE July 9, 2004	APPLICATION NUMBER G3-30426	PERMIT NUMBER	CERTIFICATE NUMBER
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NAME Paul R. Brush and Wayne Davis			
ADDRESS (STREET) 1361 Greenhouse Road (Brush) 1241 Greenhouse Road (Davis)	(CITY) Ione	(STATE) Washington	(ZIP CODE) 99139

PUBLIC WATERS TO BE APPROPRIATED

SOURCE A well
TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND ---	MAXIMUM GALLONS PER MINUTE 170	MAXIMUM ACRE FEET PER YEAR 43
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QUANTITY, TYPE OF USE, PERIOD OF USE
170 gallons per minute, 43 acre-feet per year (40 acre-feet per year, from April 1 to October 31, for the irrigation of 14 acres; 2 acre-feet per year, continuously, each year, for domestic supply of two homes; 1 acre-foot per year, continuously, for stockwater supply).

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL
700 feet south and 170 feet west from the E¹/₄ corner of Section 12

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) NE ¹ / ₄ SE ¹ / ₄ (Parcel #423712 41 0002)	SECTION 12	TOWNSHIP N. 37	RANGE, (E. OR W.) W.M. 42 E.	W.R.I.A. 62	COUNTY Pend Oreille
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RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
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LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

Brush parcel: A portion of the N¹/₂NE¹/₄SE¹/₄ of Sec. 12, T. 37 N., R. 42 E.W.M. (Parcel #423712 41 0001)

Davis parcel: South 165 feet of the N¹/₂NE¹/₄SE¹/₄ and N¹/₂SE¹/₄NE¹/₄SE¹/₄ of Sec. 12, T. 37 N., R. 42 E.W.M. (Parcel #423712 41 0002)

DESCRIPTION OF PROPOSED WORKS

Well, submersible pump, domestic and irrigation water system, hand lines

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: May 1, 2010	COMPLETE PROJECT BY THIS DATE: May 1, 2011	WATER PUT TO FULL USE BY THIS DATE: May 1, 2012
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REPORT

BACKGROUND

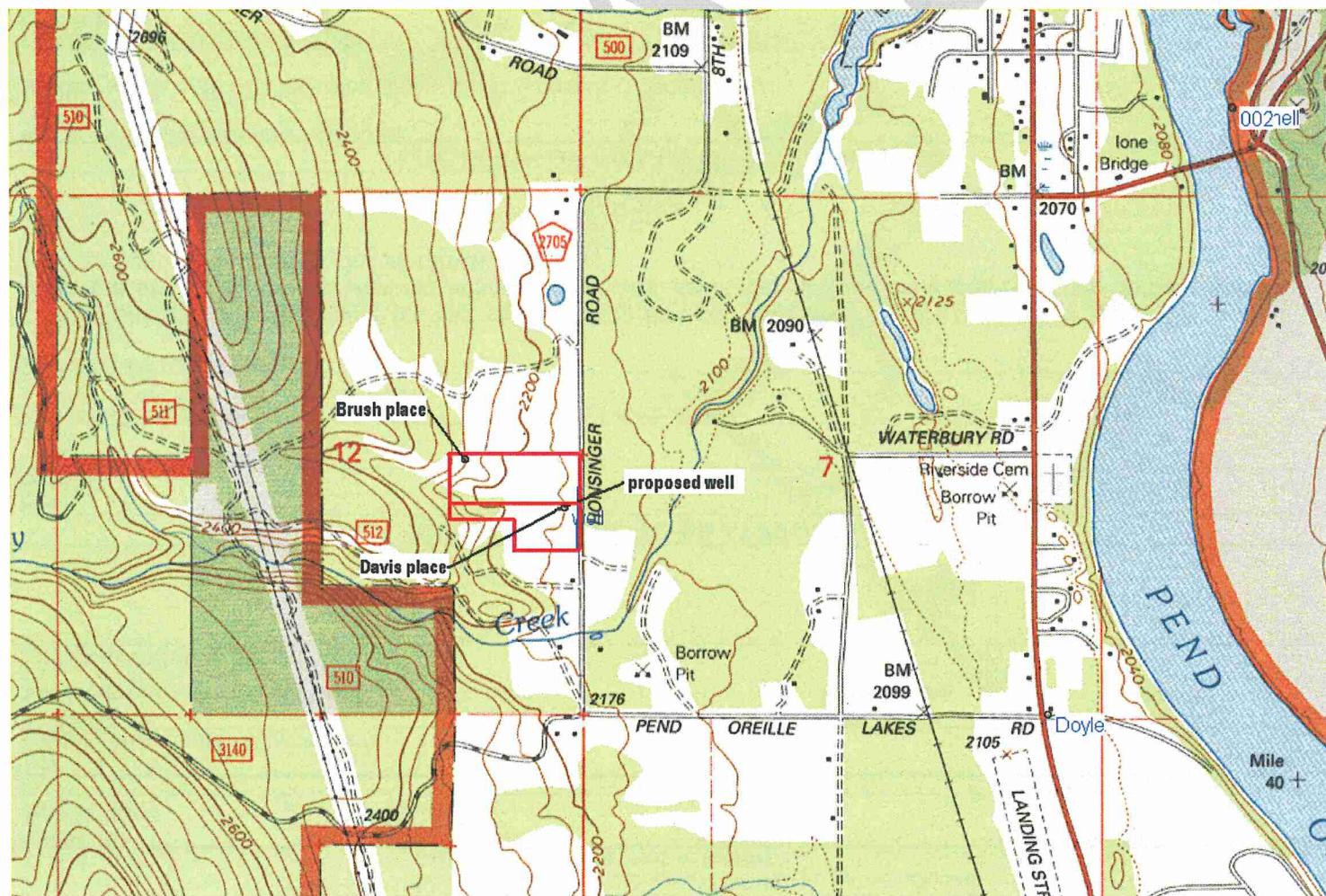
An application to appropriate public surface water was submitted by Paul R. Brush and Jeannette M. Davis to the Department of Ecology on July 9, 2004. Mrs. Davis is now deceased. The application was accepted and assigned Ground Water Application No. G3-30426. The applicant proposes to withdraw water from a well in the amount of 170 gallons per minute for continuous domestic supply, stockwater and irrigation of 14 acres. The proposed point of withdrawal is to be located within the NE¼SE¼ of Sec. 12, T. 37 N., R. 42 E.W.M.

A notice of application was duly published in accordance with RCW 90.03.280 in the Newport Minor on October 25 and November 1, 2006 and no protests were received.

This application is categorically exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21C RCW.

INVESTIGATION

In considering the proposed application, the investigation included, but was not limited to, research and review of (1) appropriate rules and statutes; (2) other water rights/claims/applications in the vicinity; (3) USGS topographic maps and; (4) discussions with Department of Ecology regional program staff. The project site is within Water Resource Inventory Area (WRIA) 62, the Pend Oreille River watershed.



Township 37 North, Range 42 E.W.M. (Ione - U.S.G.S. 7.5 minute)

A field investigation was conducted by Gene Drury with applicant Paul Brush on March 14, 2007. It was noted that a well was constructed and water was being used for domestic supply of the two homes. The well is located on the 9 acre Davis property within the NE¼SE¼ of Sec. 12, T. 37 N., R. 42 E.W.M. The well is a flowing artesian well which was constructed in the 1980's according to Mr. Brush. The well was pump tested at well over 250 gallons per minute. The applicant's propose to use water for the two homes and irrigate lawn, garden and pasture. Mr. Brush said that he may want to grow some other crops such as corn on his property. Of the 14 acres, 6 acres would be irrigated by Davis and 8 acres would be irrigated by Brush. The proposed irrigation system would consist of handlines and impact sprinklers.

Crop requirements for pasture in this area is calculated at 24.11 inches or per acre according to the Washington State Irrigation Guide (WA210-Vi-WAIG, AMEND.1NOVEMBER1990 at Newport, Washington). Assuming 70% system efficiency, this calculates to a total of 34.4 inches per acre (or 2.87 acre-feet per acre). This calculates to an irrigation water requirement of 40.0 acre feet for the proposed 14 acres. 2.0 acre-feet per year should be adequate for the domestic supply of the two homes (Brush and Davis). Mr. Brush also proposes stockwater and may have up to 10 head of cattle and 5-10 hogs. An additional 1.0 acre-feet is adequate for this use. The application and notice incorrectly listed 32 acre-feet per year, however more water is actually required for the requested uses. Because the notice accurately listed the correct quantity of 170 gallons per minute, the notice will not need to be re-published.

The existing well is located between the Davis existing yellow house, the older brick house and out buildings. The GPS location was at Latitude 48.71983° N. and Longitude 117.43309 ° W. In 2005, Mr. Brush constructed a log home on his property. He had tried to develop a couple other wells which did not work out.

EVALUATION

When evaluating an application for a new water right permit, the following statutory (RCW 90.03.290) requirements are met:

1. The proposed use of water will be a beneficial one.
2. There is water available for appropriation.
3. There will be no impairment to existing water rights.
4. The requested water right will not be detrimental to the public interest.

1. Beneficial Use

The proposed use of water for continuous domestic supply, stockwater and irrigation of 14 acres are all beneficial uses.

2. Water Availability

An analysis of water availability must take into account not only the physical limitations on the source of supply, but the legal availability as well. As noted earlier, the well appears to provide adequate water for the proposed project. A review of surrounding well logs indicate well depths ranging from 12 feet to 240 feet with the majority of wells averaging about 54 feet. Static water levels range from 6 feet to 38 feet below land surface in the shallower wells. These wells produced quantities ranging from 1 to 30 gpm. As noted earlier, the well under this application has already been constructed and provides sufficient quantities for the proposed project.

3. No Impairment of Existing Water Rights

A review of department records was conducted for existing water rights, permits, applications and claims within the vicinity of the proposed withdrawal. The search focused on a one-half mile radius of the proposed point of withdrawal. There were no recorded ground water rights in Sec. 12, T. 37 N., R. 42 E.W.M. There were two surface water diversions recorded within this area, both from Big Muddy Creek (SWC #9426 – Young and SWC #562 – Koch). There were six recorded ground water claims in Section 7, T. 37 N., R. 43 E.W.M. The majority of these claims appear to be for small domestic uses and no more than one acre of irrigation. These claims are east of the proposed point of withdrawal. The intent of the Claims Registration Act, Chapter 90.14 RCW, was to document those uses of surface water in existence prior to the adoption of the State Surface Water Code, Chapter 90.03 RCW, which was adopted in 1917, and those uses of ground water in existence prior to the adoption of the State Ground Water Code, Chapter 90.44 RCW, which was adopted in 1945. Since each code(s) adoption, the only means of acquiring a water right within the state is by filing for, and receiving, a permit from the Department of Ecology or one of its predecessors or by establishing a right under the “domestic exemption” under the ground water code (RCW 90.44.050). The Department of Ecology recognizes that the final determination of the validity and extent associated with a claim registered in accordance with RCW 90.14 ultimately lies with the Superior Court through the general adjudication process provided for by Sections 90.03.110 through 90.03.240 RCW.

A review of existing recorded well logs was also conducted for this area. In the search area, there were four wells within Sec. 12, T. 37 N., R. 42 E.W.M.; Mendenhall and Koch (3). There were seven wells recorded within Section 7, T. 37 N., R. 43 E.W.M.; Redd, Larson, Maupin, Davis, Town of Ione (2) and Powers.

The search found no other water rights appurtenant to the applicant’s property. There have been no reported interference problems in this area and it is not anticipated that the proposed appropriation will cause impairment to existing water rights.

4. Public Interest

The existing well is located approximately 1000 feet from Big Muddy Creek and about one mile west of the Pend Oreille River at an elevation of 2160 feet above sea level (asl). Big Muddy Creek and the Pend Oreille River are not

closed to further appropriations, however, the Pend Oreille River does have recommended minimum instream flows which are required to be met.

It was noted that a well was constructed and water was being used for domestic supply of the two homes. The well is located within the NE¼SE¼ of Sec. 12, T. 37 N., R. 42 E.W.M. According to the well owner, the well is a flowing artesian well which was constructed in the 1980's. The well was pump tested at over 250 gallons per minute. No well log is available. The land surface elevation at the well is approximately 2160 feet above sea level (asl). The existing well is located approximately 1000 feet from Big Muddy Creek and about one mile west of the Pend Oreille River. Groundwater at this location is tributary to Big Muddy Creek. As Big Muddy Creek is tributary to the Pend Oreille River, this application should be subjected to the low flow provisions associated with the Pend Oreille River.

There has been no documented history of pumping interference problems between existing wells in this area, and given the artesian head and highly productive nature of the proposed well, it is not anticipated that the new pumping would cause impairment to existing water rights.

Chapter 90.54 RCW provides that water allocation shall secure maximum net benefits to the people of the state, while also requiring that perennial rivers of the state shall be retained with base flows necessary to provide for the preservation of fish and other environmental values. To maintain these values the irrigation portion of this authorization shall be subject to the minimum instream flow of 7700 c.f.s. as measured at U.S.G.S. gage #12395500 near Newport set by WDFW on October 18, 1999.

CONCLUSIONS

Under RCW 90.03.290, an application for permit may be approved if water is available for appropriation, and the proposed use would be a beneficial use, would not impair existing water rights, and would not be detrimental to the public welfare.

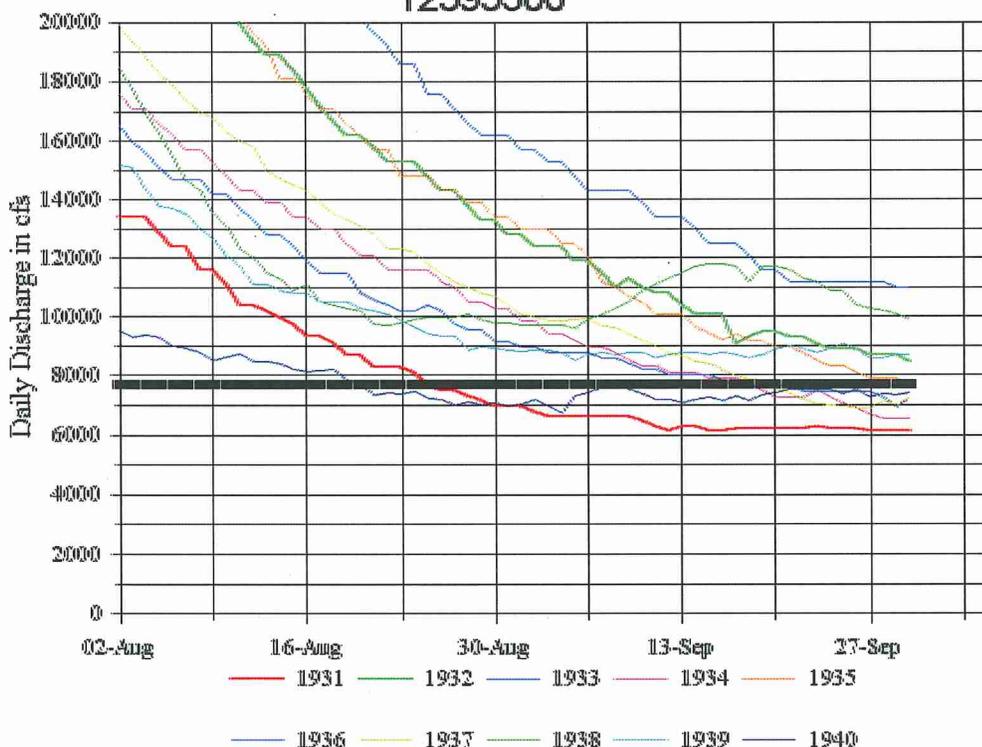
It is the conclusion of this examiner that: public ground water is available for appropriation for domestic supply of two homes, stockwater supply and for the irrigation of 14 acres; the water uses are all beneficial uses; the appropriation will not impair existing water rights or be detrimental to the public welfare.

RECOMMENDATIONS

It is recommended that this application for withdrawal from a well be APPROVED for 170 gallons per minute, 43 acre-feet per year (2 acre-feet per year, continuously, each year, for domestic supply of two homes; 1 acre-foot per year, continuously, for stockwater supply, 40 acre-feet per year, from April 1 to October 31, for the irrigation of 14 acres, subject to the following provisions:

The following hydrographs for the U.S.G.S. Gage on the Pend Oreille River at Newport, Idaho (12395500) demonstrate important hydrologic characteristics of the Pend Oreille River. Before the construction of the Albeni Falls Dam, the river exhibited normal, riverine flow conditions. The first hydrograph shows the typical late summer flow regime for 10 different water years in the 1930s and early 1940s. The solid line at 7700 cfs represents WDFW's recommended instream flow value as it would have applied to the river in the 1930s. When summer flows reached their baseflow, they tended to stay down at that level for the remainder of the water year.

**Pend Oreille R at Newport
12395500**



With the construction of the Albeni Falls dam in 1952, the character of the daily discharge changed dramatically from a riverine regime to an impounded, highly regulated, flow regime. The next hydrograph depicts the late summer, daily average discharge for a ten-year period in the 1980s through the early 1990s. The highly variable discharge data reflects the flows that result from the power generation demands that are placed on the river.

An approved measuring device shall be installed and maintained for each of the sources identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. Water use data shall be recorded weekly and maintained by the property owner for a minimum of five years, and shall be promptly submitted to Ecology upon request.

The rule above 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 as a document entitled "Water Measurement Device Installation and Operation Requirements".

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."

"The water source and/or water transmission facilities are not wholly located upon the land owned by the applicant. Issuance of a permit by this Department for appropriation of the waters in question does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtainment of such right is a private matter between applicant and owner of that land."

"The amount of water granted is a maximum limit that shall not be exceeded and the water user shall be entitled only to that amount of water within the specified limit that is beneficially used and required."

"All wells constructed within the State shall meet the minimum standards for construction and maintenance as provided under RCW 18.104 (Washington Water Well Construction Act of 1971) and Chapter 173-160 WAC (Minimum Standards for Construction and Maintenance of Water Wells)."

"This authorization to make use of public waters of the State is subject to existing rights, including any existing rights held by the United States for the benefit of Indians under treaty or otherwise."

"Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances, or regulations."

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

"A certificate of water right will not be issued until a final examination is made."

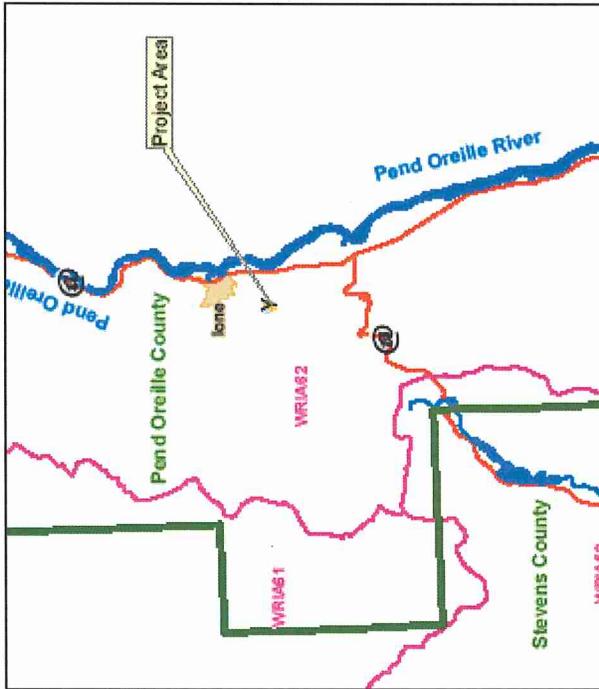
DATED this XX day of XXXXX, 2009 in Spokane, Washington.

Gene Drury
Water Resources Program
Department of Ecology – Eastern Regional Office

GD:ka
W/Draft ROEs/Drury 2009/G3-30426 Brush

Attachment 1

Paul R. Brink and Wayne Davis
 Applications G3-30426
 Sec. 12, T. 37N, R. 42E, W.M.
 WRIA 62 - Pend Oreille County



- Legend**
- County
 - WRIA
 - Cities
 - Local Roads
 - Highways
 - Townships
 - Sections
 - Authorized Point of Diversion
 - Authorized Point of Withdrawal
 - Authorized Place of Use

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

