



State of Washington  
**DRAFT**  
 REPORT OF EXAMINATION  
 FOR WATER RIGHT CHANGE

File NR CS1-00375C  
 WR Doc ID 6323609

Added or Changed Purpose of Use  
 Added or Changed Point of Withdrawal/Diversion

<b>PRIORITY DATE</b> March 10, 1971	<b>WATER RIGHT NUMBER</b> S1-00375C
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<b>MAILING ADDRESS</b> ROCKY LOHOFF 1325 233RD STREET SE BOTHELL, WA 98021	<b>SITE ADDRESS (IF DIFFERENT)</b> 23273 PIONEER HIGHWAY MT. VERNON, WA 98273
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**Total Quantity Authorized for Withdrawal or Diversion**

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
9	GPM	1.5

**Source Location**

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
SKAGIT	GROUNDWATER		3-LOWER SKAGIT-SAMISH

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Well	P17549	BIS390	33N	04E	31	NE NW	48.308308	122.347683

Datum: NAD83/WGS84

**Place of Use (See Attached Map)**

PARCEL P17549

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

Beginning on the south line of a certain logging ditch lying directly south of the present county road, running east and west along the north line of Government Lot 5, Sec. 31, T. 33 N., R. 4 E. W.M., at a point where the said south line of said ditch intersects the east line of the Great Northern Railway right of way; thence east along the south line of said ditch a distance of 160 feet; thence southerly parallel with said Great Northern Railway right of way a distance of 50 feet; thence west 50 feet; thence southerly parallel with the Great Northern Railway right of way a distance of 178 feet; thence west to the east line of said railway to the point of beginning; LESS rights of way of Pacific Highway.

**Proposed Works**

Applicant seeks approval of a change in source from a surface water diversion from the Tom Moore Slough to a well located approximately 500 feet east and about 10 above the east bank of the slough.

The well, drilled in January 1998, is 71 foot deep, 6 inch diameter, steel cased, stainless steel screened (last 5 feet), and completed in a three foot water bearing sand layer sandwiched between layers of blue clay. The well has an 18 foot bentonite seal.

<b>Development Schedule</b>		
<b>BEGIN PROJECT</b>	<b>COMPLETE PROJECT</b>	<b>PUT WATER TO FULL USE</b>
Begun	Completed	In full use

<b>Measurement of Water Use</b>	
How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Upon Request by Ecology
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm or cfs)

**Provisions**

**Wells, Well Logs and Well Construction Standards**

All wells constructed in the state must meet the construction requirements of WAC 173-160 titled “Minimum Standards for the Construction and Maintenance of Wells” and RCW 18.104 titled “Water Well Construction”. Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard must be decommissioned.

All wells must be tagged with a Department of Ecology unique well identification number. If you have an existing well and it does not have a tag, please contact the well-drilling coordinator at the regional Department of Ecology office issuing this decision. This tag must remain attached to the well. If you are required to submit water measuring reports, reference this tag number.

Installation and maintenance of an access port as described in WAC 173-160- 291(3) is required.

**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, 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.

**Water Use Efficiency**

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

### **Proof of Appropriation and Issuance of Superseding Certificate**

When a water right change requires significant expense and time to complete, the applicant or Ecology may request a development schedule to ensure diligence in pursuance of the change. Development schedules can also provide a transition from one source to another, or place of use to another over time.

In the present case, the change in source took place shortly after the well was drilled in 1998. A transition is not needed and neither is a development schedule. Addition of the new purpose of use can be phased in over a fifteen year time period, which is available under RCW 90.14 for determined future development independent of the RCW 90.03.380 and RCW 90.44.100 change processes. Therefore, upon final approval of the Report of Examination, and after the 30-day appeal period has expired, a Superseding Certificate shall be issued, assuming all other provisions have been completed, and no successful appeal has been filed.

### **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.

### **Real Estate Excise Tax**

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477 Internet: <http://dor.wa.gov/>. E-mail: REETSP@DOR.WA.GOV.

### **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(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. CS1-00375C 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.

<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Signed at Bellevue, Washington, this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

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Tom Buroker, Section Manager

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

Douglas H. Wood, LHG, Department of Ecology  
 Water Right Control Number CS1-00375C

**BACKGROUND**

This report serves as the written findings of fact concerning Water Right Application Number CS1-00375C.

**EXISTING Water Right Attributes**

<b>Water Right Owner:</b>	<b>FALK, GRANT H.</b>
<b>Priority Date:</b>	3/10/1971
<b>Place of Use</b>	Beginning on the south line of a certain logging ditch lying directly south of the present county road, running east and west along the north line of Government Lot 5, Section 31, Township 33N, Range 4E, W.M., at a point where the said south line of said ditch intersects the east line of the Great Northern Railway right of way; thence east along the south line of said ditch a distance of 160 feet; thence southerly parallel with said Great Northern Railway right of way a distance of 50 feet; thence west 50 feet; thence southerly parallel with the BNSF right of way a distance of 178 feet; thence west to the east line of the said Great Northern Railway right of way; thence northerly along the said east line of said railway to point of beginning; LESS rights of way of Pacific Highway.

County	Waterbody	Tributary To	WRIA
Skagit	Tom Moore Slough	South Fork Skagit River	3-Lower Skagit-Samish

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Domestic	0.02	CFS	1.5	Jan 1	Dec 31

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Tom Moore Slough	P17535	N/A	33N	04E	31	NE NW	48.308507	122.349412

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; Datum in NAD83/WGS84.

### REQUESTED Water Right Attributes

<b>Applicant Name:</b>	Lohoff, Rocky
<b>Date of Application:</b>	10/27/2014
<b>Place of Use</b>	Beginning on the south line of a certain ditch lying directly south of Milltown Road, running east and west along the north line of Government Lot 5, Section 31, Township 33N, Range 4E, W.M., at a point where the said south line of said ditch intersects the east line of the Burlington Northern Santa Fe Railroad (BNSF) right of way; thence east along the south line of said ditch a distance of 210 feet; thence Southwesterly parallel with said BNSF right of way a distance 228ft; thence West to the Easterly line of said right of way; thence Northerly along said Easterly line to the point of beginning, LESS rights of way of Pioneer Highway.

<b>County</b>	<b>Waterbody</b>	<b>Tributary To</b>	<b>WRIA</b>
Skagit	Groundwater		3-Lower Skagit-Samish

<b>Purpose</b>	<b>Rate</b>	<b>Unit</b>	<b>Ac-ft/yr</b>	<b>Begin Season</b>	<b>End Season</b>
Domestic & Commercial/Industrial	9	GPM	0.56	Jan 1	Dec 31

<b>Source Name</b>	<b>Parcel</b>	<b>Well Tag</b>	<b>Twp</b>	<b>Rng</b>	<b>Sec</b>	<b>QQ Q</b>	<b>Latitude</b>	<b>Longitude</b>
Well	P17549	BIS-390	33N	04E	31	NE NW	48.308308	122.347683

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; Datum in NAD83/WGS84.

#### Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the proposed change in point of withdrawal and purpose.

#### 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 *Skagit Valley Herald* on September 18, 2015 and September 25, 2015.

#### Consultation with the Department of Fish and Wildlife

The Department must give notice to the Department of Fish and Wildlife (DFW) of applications to divert, withdraw or store water. The DFW was notified of this application on December 17, 2014 and to date they have not raised any issues with either the location or the project.

#### State Environmental Policy Act (SEPA)

The 9 gpm pumping rate of this proposal does not trigger SEPA review, which is required for non-agricultural project seeking Qi of greater than 1 cubic foot per second (cfs) or about 450 gallons per minute (gpm).

### *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*.

A point of diversion for a surface water right may be changed to a groundwater point of withdrawal. The authority is derived from RCW 90.03.380, RCW 90.44.020-030, RCW 90.44.100 and RCW 90.54.020(9). RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed if it would not result in detriment or injury to other water rights. Additionally, moving the point of diversion to a groundwater withdrawal requires compliance with the groundwater code (RCW 90.44), including a finding that there be no detriment to the public welfare and that the source of the existing diversion and the proposed point of withdrawal be part of the same water body.

When changing or adding points of withdrawal to groundwater rights (RCW 90.44.100), or when consolidating exempt wells with an existing permit or certificate (RCW 90.44.105), the wells must draw from the *same body of public groundwater*. Indicators that wells tap the *same body of public groundwater* include:

- (a) Hydraulic connectivity.
- (b) Common recharge (catchment) area.
- (c) Common flow regime.
- (d) Geologic materials that allow for storage and flow, with recognizable boundaries or effective barriers to flow.

In the present case we begin with a surface water right that is governed by Chapter 90.03 RCW and end with a groundwater right that will be governed under Chapter 90.44 RCW. The relevant change statute will therefore be RCW 90.03.380, so our concerns for approval will be extent and validity of the water right, and whether the proposal will impair existing rights. Once approved however the water right will be governed under Chapter 90.44 RCW, including future changes being completed under the requirements of RCW 90.44.100 that are more stringent than those of RCW 90.03.380.

## **INVESTIGATION**

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As previously stated there are only two parts to this investigation – the tentative evaluation of the right’s extent and validity and an analysis of the potential of the proposed project to impair existing water rights.

### **Extent and Validity**

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Air photo evidence and a site visit on December 17, 2014 confirm that water in quantities of at least 0.9 cfs (9 gpm) and 1.5 ac-ft/yr have been used to supply irrigation and domestic supply needs on the property since at least the early 1990’s when the earliest air photos are available.

## Potential to Impair of Existing Water Rights

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In the present case, since the quantities of water used are small and similar small quantities and since water use is long established, both from the original surface source (1971 to 1998) and from the replacement groundwater source (1998 to present), and since there has not to date been any report of impairment, it can be implied and assumed that impairment has not occurred.

### *Consideration of Protests and Comments*

No protests were filed against this application.

## Conclusions

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So long as beneficial use remains within the limits of the 1.5 acre-feet per year estimated to have been used and retained under S1-00375C, the proposal does not appear to have a potential to impair existing water rights, including instream flows established for the Skagit River under Chapter 173-503 WAC.

## RECOMMENDATIONS

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Based on the above investigation and conclusions, I recommend that this request for change to S1-00375C 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:

Instantaneous Quantity (Qi) : 9 gallons per minute (0.02 cfs)  
Annual Quantity (Qa) : 1.5 acre-feet per year  
Purposes Authorized : Domestic and Commercial/Industrial

### Point of Withdrawal

NE¼, NW¼, Section 31, Township 33 North, Range 4 East, W.M.

### Place of Use

As described on Page 1 of this Report of Examination.

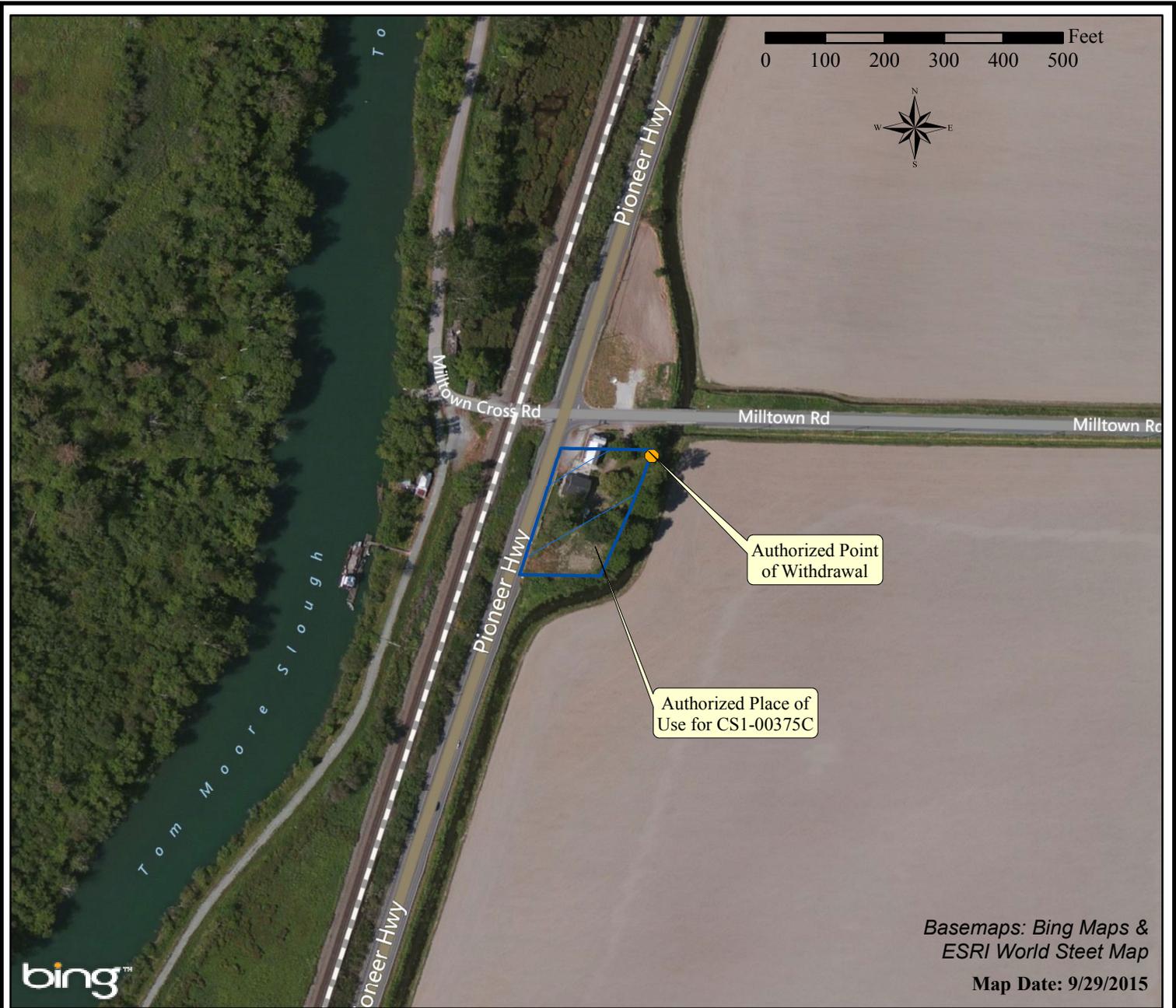
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Douglas H. Wood, MS, P.Geo., LHG

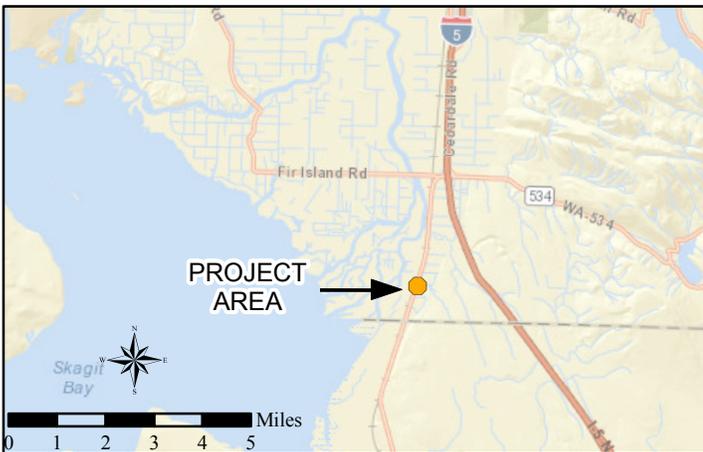
Date

*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.*

# ATTACHMENT 1



Basemaps: Bing Maps &  
ESRI World Steet Map  
Map Date: 9/29/2015



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

## Legend

-  Authorized Place of Use
-  Authorized Point of Withdrawal
-  Water Body
-  Kitsap County Parcels



Rocky Lohoff  
Water Right CS1-00375C  
Section 31 T 33N R 04E W.M.  
WRIA 3 - Skagit County