File NR S3-30533
WR Doc ID 4396071

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
DRAFT
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE	WATER RIGHT NUMBER
APRIL 23, 2007	S3-30533

MAILING ADDRESS	SITE ADDRESS (IF DIFFERENT)
YVONNE R. BERG 4609 N. HARVARD ROAD OTIS ORCHARDS, WA 99027	

Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.02	CFS	2.15

Purpose

PURPOSE	DIVERSION RATE ADDITIVE	DIVERSION RATE NON-ADDITIVE	UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Irrigation & Fire Protection as needed	0.02	---	CFS	2.15	---	May 1 – Oct 1

IRRIGATED ACRES ADDITIVE	IRRIGATED ACRES NON-ADDITIVE	PUBLIC WATER SYSTEM INFORMATION WATER SYSTEM ID	PUBLIC WATER SYSTEM INFORMATION CONNECTIONS
3/4	0		

Source Limitations

SOURCE FACILITY/DEVICE	DIVERSION RATE (CFS)	ANNUAL QUANTITY (AF/YR)	PERIOD OF USE (mm/dd)
PEND OREILLE RIVER	0.02	2.15	01/01 - 12/31

A|S: A=Alternate; S=Standby/Reserve

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
PEND OREILLE	PEND OREILLE RIVER	COLUMBIA RIVER	62-PEND OREILLE

SOURCE	PARCEL	TWP	RNG	SEC	QQ	LATITUDE	LONGITUDE
PEND OREILLE RIVER	443216529008	32N	44E	16	NE¼NW¼	48.27947°N	117.2556°W

Lot 8, Block 1, Davis River Pines Estates, First Addition, Pend Oreille County, Washington

Datum: WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

443216529008

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Lot 8, Block 1, Davis River Pines Estates, First Addition, Pend Oreille County, Washington

Proposed Works

½ hp pump, irrigation system

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
November 1, 2013	November 1, 2014	November 1, 2015

Measurement of Water Use

How often must water use be measured?	Monthly
How often must 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

Pend Oreille River Low Flow

All irrigation shall cease when the flow of the Pend Oreille River falls below 7700 cubic feet per second at U.S. Geological Survey (U.S.G.S.) gage #12395500, Pend Oreille River at Newport, located within Section 24, Township 56 N., Range 6 W.B.M.

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.

WAC 173-173 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.

Department of Fish and Wildlife Requirement(s)

The intake(s) 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). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. http://wdfw.wa.gov/about/contact/

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
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.

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.

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. S3-30533, 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 Road SW Ste 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this day of 2012.

Keith L. Stoffel, 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
Application for Water Right -- Berg
Water Right Control Number S3-30533
Gene Drury, Department of Ecology

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S3-30533.

Table 1 Summary of Requested Water Right

Applicant Name:	Yvonne R. Berg
Date of Application:	April 23, 2007
Place of Use	Lot 8, Block 1, Davis River Pines Estates, First Addition, Pend Oreille County, Washington

County	Waterbody	Tributary To	WRIA
Pend Oreille	Pend Oreille River	Columbia River	62-Pend Oreille

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Irrigation	0.02	CFS	2.15	May 1	Oct 1
Fire protection	0.02*	CFS	--	As needed	As needed

*non-additive

Source Name	Parcel	Twp	Rng	Sec	QQ	Latitude	Longitude
Pend Oreille River	443216529008	32N	44E	16	NE¼NW¼	48.27947°N	117.2556°W

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: WGS84.

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 Newport Miner on August 22 and 29, 2012.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

(a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
(b) It is a groundwater right application for more than 2,250 gallons per minute;

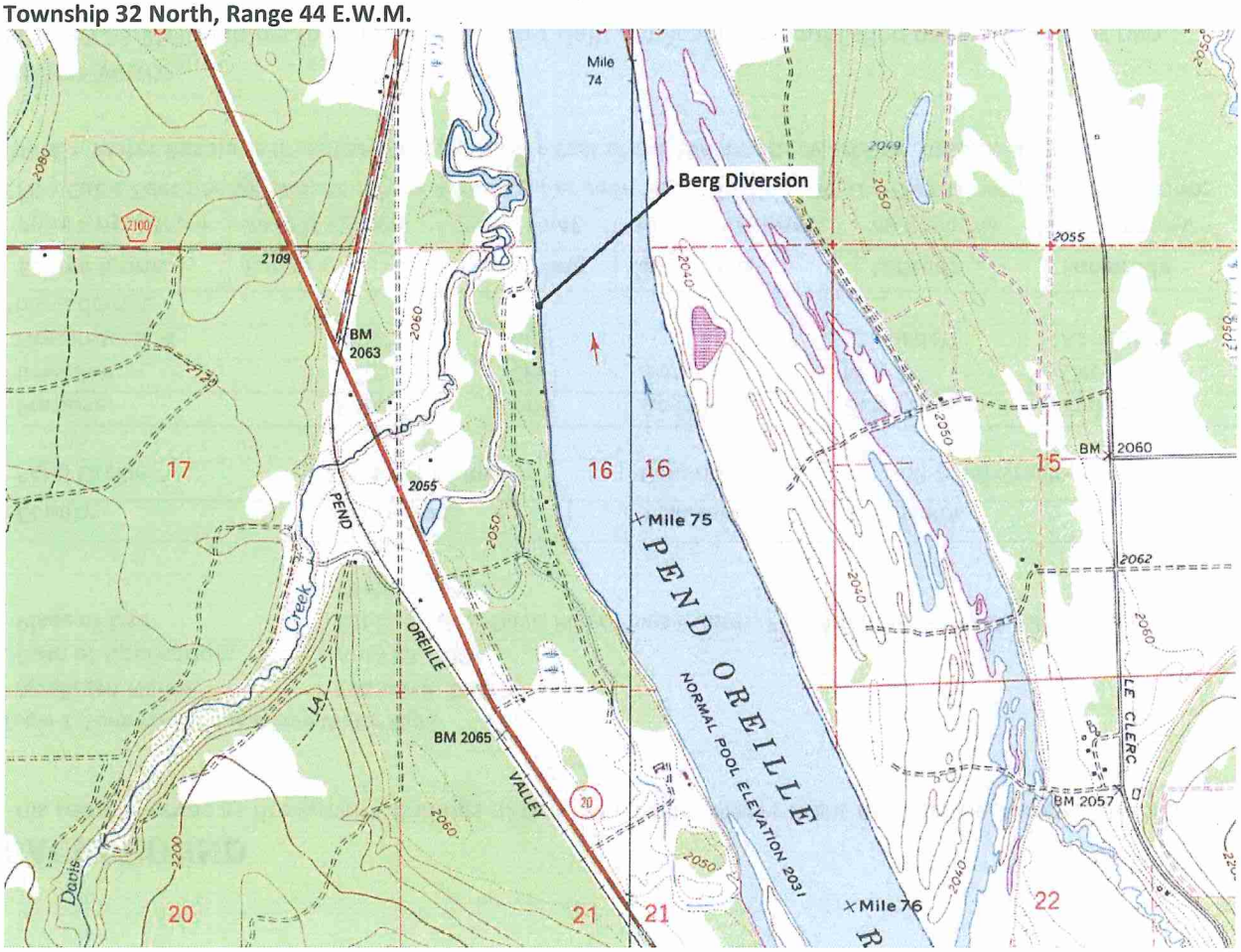
(c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
(d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
(e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

INVESTIGATION

A site visit was conducted by Gene Drury on September 17, 2012. The project is located on the west side of the Pend Oreille River, a few miles south of Usk, Washington. It was noted that the project had not been started.

Township 32 North, Range 44 E.W.M.



USGS 7.5 Minute (Topographic Map) - "Cusick"

The point of diversion and place of use will both be located on Lot 8, Block 1 of Davis River Pines Estates, First Addition in the NE¼NW¼, Sec. 16, T. 32 N., R. 44 E.W.M. The applicant proposes a ½ horsepower

pump to divert water from the Pend Oreille River to irrigate approximately ¾ of an acre of grass and some trees. Fire protection was also requested. A small travel trailer is located on the property along with a small red and white shed. No domestic water is requested. The applicant said that water is hauled in to the property for domestic use.

The Washington State Irrigation Guide (WA210-Vi-WAIG, AMEND.1NOVEMBER1990 at Newport, Washington) estimates that 34.44 inches of water (or 2.87 acre-feet of water per acre) will be required based on 70% system efficiency. Therefore, only 2.15 acre-feet of water will be needed for the ¾ acre under this permit.

Impairment Considerations

A review of Ecology records was conducted for existing water rights, permits, and claims in the vicinity of the proposed point of diversion and within the NW¼NE¼, Section 16, T. 32 N., R. 44 E.W.M. There are no other water rights appurtenant to the applicant's property. The proposed appropriation under the Berg application will not cause any impairment to existing water rights, provided the recommendations of the minimum flow are satisfied.

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.

Hydrogeologic Analysis: The Department of Ecology has not closed the Pend Oreille River to further consumptive appropriations, however all diversions shall cease when the flow of the Pend Oreille River falls below 7700 cfs at U.S. Geological Survey (U.S.G.S.) gage #12395500. This low-flow is a recommendation from the Washington State Department of Fish and Wildlife (WDFW) and applies to surface and ground water in hydraulic continuity with the Pend Oreille River since October 18, 1999.

Therefore, water is available for appropriation as long as irrigation ceases when the Pend Oreille River falls below the low flow recommendation from the Washington State Department of Fish and Wildlife.

Beneficial Use

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

Public Interest Considerations

There has been no public expression of protest or concern regarding the subject proposal, and no findings through this investigation indicate that there would be any detrimental impact to the public welfare through issuance of the proposed appropriation.

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 authorization shall be subject to the minimum instream flow of 7700 cfs as measured at U.S.G.S. gage #12395500 near Newport set by WDFW on October 18, 1999.

The approval of this application for this quantity and use will not be detrimental to the public interest.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

Under Chapter 90.03.290 RCW, 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 surface water, from the Pend Oreille River, is available for irrigation of ¾ acre and fire protection as needed. This appropriation is considered a beneficial use and will not impair existing water rights or be detrimental to the public welfare.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right 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:

Quantities and Purpose: 0.02 cubic foot per second; 2.15 acre-feet per year for the irrigation of ¾ acre and fire protection as needed.

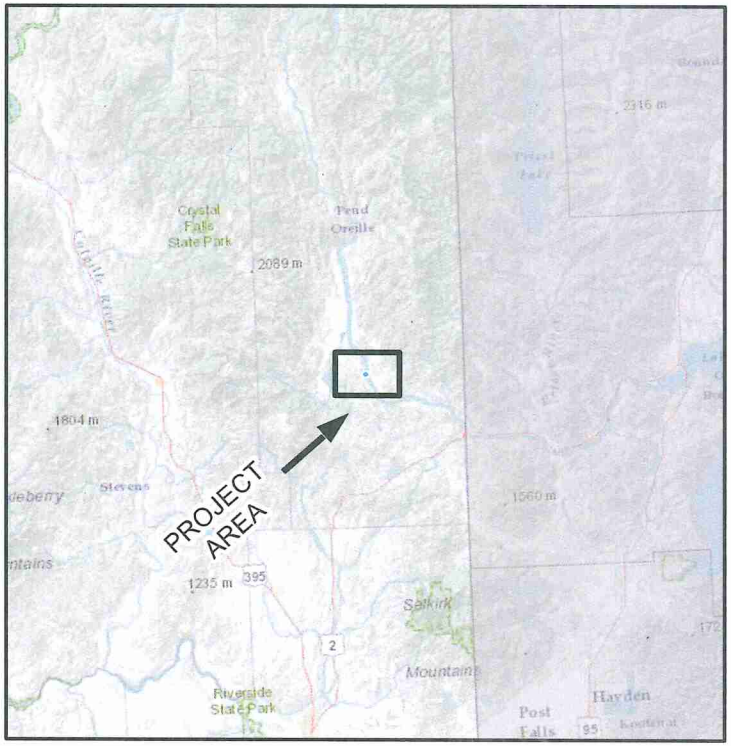
Point of Diversion and Place of Use: Lot 8, Block 1 of Davis River Pines Estates, First Addition in the NE¼NW¼, Sec. 16, T. 32 N., R. 44 E.W.M.

11-8-2012

Gene Drury, Report Writer *Date*

If you need this publication in an alternate format, please call the 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.

Yvonne R. Berg
S3-30533
T38N/R43E



Basemap - (ESRI US Topographic Maps)

Legend

Authorized Place of Use

Townships

Sections

Authorized Point of Diversion

0 120 240 480 720 960 Feet

Basemap - (NAIP 2011 1m color)

DEPARTMENT OF ECOLOGY State of Washington

Map Date: 10/4/2012

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

ATTACHMENT 1