File NR S2-30399
WR Doc ID 4414693

DEPARTMENT OF
ECOLOGY
State of Washington

State of Washington
DRAFT
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE
4/25/2007

WATER RIGHT NUMBER
S2-30399

MAILING ADDRESS
MICHAEL W BAILEY
2110 13TH AVE NW
PUYALLUP WA 98371

SITE ADDRESS (IF DIFFERENT)
643 SUMMIT LAKE SHORE ROAD NW
OLYMPIA WA 98502

Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.02	CFS	0.34

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE ADDITIVE	WITHDRAWAL OR DIVERSION RATE NON-ADDITIVE	UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Single Domestic Supply	0.02		CFS	0.34		01/01 - 12/31

REMARKS
In-house use only

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Thurston	Summit Lake	Kennedy Creek	14-Kennedy-Goldsborough

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Summit Lake	77200004700		18N	03 W	18	NE NW	47.051094	-123.106838

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)
77200004700

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE
Plat of SUMMIT LAKE TRACTS LOT 47 Document 011/029 within NE 1/4 NW 1/4 Section 18, T. 18 N., R. 3 W.W.M.

Proposed Works

A screened surface-water intake with a pump capable of .02 cfs discharging to a water line for a single residence.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	Completed	In Full Use

Measurement of Water Use

How often must water use be measured?	Annually
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

Use of water under this authorization is limited to in-house use only.

This water right must be relinquished when a public water supply becomes available to the authorized place of use.

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.

Water use must be recorded annually and maintained by the property owner for a minimum of five years, and must be promptly submitted to Ecology upon request.

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/regions/

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 of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S2-30399, 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 Hearing 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 this 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.

ADDRESS AND LOCATION INFORMATION

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

And Send a Copy of Your Appeal to: Thomas Loranger Department of Ecology Southwest Regional Office PO Box 47775 Olympia, WA 98504-7775	

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 Olympia, Washington, this 22nd day of April 2011.

Thomas Loranger

Thomas Loranger
Section Manager
Water Resources Program -- Department of Ecology
Southwest Region

INVESTIGATOR'S REPORT
Application for Water Right S2-30399
Water Right Control Number S2-30399
Marie Peter, Department of Ecology

BACKGROUND

On April 25, 2007, Gary Everson filed an application for a permit to appropriate public surface waters for single domestic use from Summit Lake, tributary to Kennedy Creek. The application was accepted and assigned number S2-30399. On October 16, 2009, it was assigned to Michael W. Bailey.

Description and Purpose of Proposed Application

This application was filed for domestic supply for an existing single-family residence.

Table 1 Application Summary

Attributes	Summary
Name	Gary Everson/assigned to Michael W. Bailey
Priority Date	April 25, 2007
Instantaneous Quantity	.03 cubic feet per second (cfs)
Annual Quantity	0.5 acre-feet per year
Purpose of Use	Single Domestic Supply
Period of Use	Year-round, as needed
Place of Use	Plat of SUMMIT LAKE TRACTS LOT 47 Document 011/029 within NE 1/4 NW 1/4 Section 18, T. 18 N., R. 3 W.W.M. Thurston County Parcel Number: 77200004700 Address: 643 Summit Lake Shore Road NW

Table 2 Proposed Sources of Withdrawal or Diversion

Source Name	Parcel	Twn	Rng	Sec	QQ Q	Latitude	Longitude
Summit Lake	77200004700	18N	03W	18	NE NW	47.051094	-123.106838

Legal Requirements for Approval of Appropriation of Water

RCW 90.03 authorizes the appropriation of public water for beneficial use and describes the process for obtaining water rights. Laws governing the surface water right permitting process are contained

in RCW 90.03.250 through 90.03.340. In accordance with RCW 90.03.290, determinations must be made on the following four criteria in order for an application for a water right to be approved:

- Water must be available.
- Existing rights must not be impaired.
- The water use must be beneficial.
- The water use must not be detrimental to the public interest.

This report serves as the written findings of fact concerning all things investigated regarding Water Right Application Number S2-30399.

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 area where the water is to be stored, diverted and used. A legal notice of the proposed appropriation was published in *The Olympian* during the weeks of July 4 and 11, 2007.

Consultation with the Department of Fish and Wildlife

The Department of Ecology must give notice to the Washington Department of Fish and Wildlife (WDFW) of applications to divert, withdraw or store water (RCW 77.57.020). Steve Boessow of WDFW commented on pending Summit Lake applications by e-mail on November 3, 2010.

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 ismet:

(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

My investigations included a review of Department of Ecology water rights and claims in the Kennedy Creek basin, review of Chapter 173-514 Washington Administrative Code (WAC) and information provided by the applicant.

Location and Project Area Description

This application was filed for an existing single-family residence located on a waterfront lot on the south shore of Summit Lake (see Attachment 1). Summit Lake is located approximately nine miles west of the city of Olympia in Thurston County, within the Kennedy-Goldsborough Water Resource Inventory Area (WRIA 14). The lake drains to Kennedy Creek which empties into Oyster Bay on Totten Inlet.

The headwaters of Kennedy Creek originate within the Black Hills. The outlet stream from Summit Lake is one of several main tributaries of Kennedy Creek. Below the lake, approximately 2.5 miles upstream of the mouth, Kennedy Creek drops through a narrow canyon where a series of falls, cascades and log jams form a barrier to the migration of anadromous fish.

Summit Lake is situated in a steep, forested valley formed by erosion into Tertiary basalt. The lake was created by natural damming of the valley by fluvial and glaciofluvial terrace deposits. These terrace deposits occur at the western end of the lake.

The lake shore is generally densely developed with single-family residences and vacation cabins. Most of the western shoreline belongs to a Boy Scout camp and is relatively undeveloped. The level of development decreases rapidly away from the lakeshore such that the hills surrounding the lake are mostly forested.

There is a small dam owned and maintained by WDFW at the outlet of Summit Lake. This earthfill dam was constructed in 1955. It has a crest length of 90 feet and is three feet high. The dam structure includes a series of flashboards that can be removed or added to control the outflow and lake level. The lake level is set by Superior Court decree under the provisions of Chapter 90.24 RCW. Although lake levels are regulated, WDFW does not otherwise control the outflow to Kennedy Creek.

Proposed Use and Basis of Water Demand

This application requests 0.03 cfs and 0.5 acre-feet per year for single domestic supply. However, 0.02 cfs and 0.34 acre-feet per year are sufficient for in-house single domestic supply purposes. This amounts to an average use of approximately 300 gallons per day.

Other Rights Appurtenant to the Place of Use

My review of water right records indicates that there are no ground or surface water rights appurtenant to the place of use of this application.

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 to an adequately constructed groundwater withdrawal facility of an existing right. An adequately constructed groundwater withdrawal

facility is one that (a) is constructed in compliance with well construction requirements and (b) fully penetrates the saturated zone of an aquifer or withdraws water from a reasonable and feasible pumping lift.

- Interrupt or interfere with the availability of water at the authorized point of diversion of a surface water right. A surface water right conditioned with in-stream flows may be impaired if a proposed use or change would cause the flow of the stream to fall to or below the in-stream flow more frequently or for a longer duration than was previously the case.
- Interrupt or interfere with the flow of water allocated by rule, water rights, or court decree to in-stream flows; or degrade the water quality of the source to the point that the water is unsuitable for beneficial use by existing users (e.g., via sea water intrusion).

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 ground or 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. In addition, the following factors are 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;
- Ground water uses established in accordance with Chapter 90.44 RCW, including those that are exempt from the requirement to obtain a permit; 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 the department cannot ascertain the extent to which existing rights are consistently utilized and cannot affirmatively find that water is available for further appropriation.

Summit Lake has a volume of approximately 28,090 acre-feet. According to the Kennedy-Goldsborough Watershed (WRIA 14) Phase II – Level 1 Assessment, the upper Kennedy Creek watershed, which includes Summit Lake, receives an annual average precipitation of approximately 74 inches. Consequently, the Summit Lake basin, with an area of approximately 2.82 square miles, receives an annual average precipitation of approximately 11,130 acre-feet.

The *Kennedy-Goldsborough Watershed (WRIA 14) Phase II Level 1 Assessment* estimated the average evapotranspiration in the upper Kennedy Creek watershed at 29 percent of the precipitation, the average runoff at 62 percent, and the average ground water recharge at 9 percent. Summit Lake itself takes up a significant portion of the basin (approximately 30 percent). Thus, the average evapotranspiration and ground water recharge percentages for the Summit Lake basin are lower than the averages for the watershed and the runoff percentage is higher. Assuming all precipitation hitting the lake goes directly to runoff, the runoff percentage is estimated at 73 percent. If all the runoff in the basin enters the lake, the lake would receive an average annual inflow of approximately 8,125 acre-feet.

Legal availability

To determine whether water is legally available for appropriation, the following factors are 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 in-stream uses (e.g., recreation and navigation). In-stream needs, including in-stream and base flows set by regulation. Water is not available for out-of-stream uses where further reduction of stream flow would be detrimental to existing fishery resources.
- The Department may deny an application for a new appropriation in a drainage where adjudicated rights exceed the average low flow supply, even if the prior rights are not presently being exercised. Water would not become available for appropriation until existing rights are relinquished for non-use by state proceedings.

Regional Water Management Plans
In 2006, the WRIA 14 Watershed Planning Unit voted on a Final Draft Watershed Plan. However, consensus was not reached, planning was terminated and the plan was never adopted. There is no other water management plan for the Summit Lake area.

Existing Rights in the Kennedy Creek Basin
The following records of surface water use on Summit Lake, Kennedy Creek and downstream unnamed streams are on file with the Department of Ecology. These rights and claims are located in Township 18 N., Range 3 W.W.M., Sections 5-8 and 17-18; Township18 N., Range 4 W.W.M., Sections 1-3 and 10-14; Township 19 N., Range 3 W.W.M., Sections 31-32; and Township 19 N., Range 4 W.W.M., Section 36.

- 256 water right certificates and 90 permits have been issued to date on Summit Lake, authorizing a total diversion of approximately 5.89 cfs and 126 acre-feet per year. All but five of these water rights are for single domestic use.

- Five downstream certificates have been issued on Kennedy Creek, authorizing a total diversion of 1.10 cfs and an estimated total amount of 22 acre-feet per year.

- Two downstream certificates have been issued on unnamed streams that may be influenced by surface and/or groundwater flows from Summit Lake. These authorize a total of 0.03 cfs and 2.0 acre-feet per year.

- 93 surface water right claims are recorded that list the water source as Summit Lake. Another 14 claims are recorded that may have either Summit Lake as a source or other surface water sources downstream of Summit Lake.

Ecology's Water Rights Tracking System (WRTS) database indicates that there are also approximately 43 records of groundwater rights and claims in the Kennedy Creek basin. Ecology's well log database also shows additional permit-exempt wells in this area.

In addition to recorded surface and ground water rights and claims, there are un-quantified rights held by the Squaxin Island Tribe that are senior to all other water rights. These include rights to in-stream flows sufficient to support treaty fishing rights.

Actual consumptive use of water from Summit Lake is considerably less than the amount represented by water rights. The majority of water used enters septic systems. This is especially true for authorizations

that are restricted to in-house use. The vast majority (approximately 85 to 90 percent) of water entering septic systems becomes recharge to either Summit Lake or returns to Kennedy Creek via sub-surface groundwater flow or springs and seeps. Given the steep slopes and shallow soils surrounding Summit Lake, there is probably more recharge to the lake and groundwater system. Also, many residences at Summit Lake are vacation or weekend cabins and are used only part-time or seasonally.

Fisheries and In-stream flow Considerations
There are no active streamflow gaging stations on Kennedy Creek. However, historical stream flow records are available from USGS Gaging Station #12078400 from February 1960 to September 1971. These records indicate that mean monthly flows may range from as low as 3 cfs in September to a high of approximately 200 cfs in January.

Under Chapter 173-514 Washington Administrative Code (WAC), minimum flows have been established for Kennedy Creek, to which Summit Lake is tributary. This rule is considered a water right pre-dating this application and Kennedy Creek in-stream flows are thus subject to protection from impairment.

Kennedy Creek is closed to all consumptive appropriations from May 1 through November 15 and is subject to minimum flows throughout the rest of the year. Minimum in-stream flow requirements range from 7 cfs (from August 1 to October 14) to 60 cfs (from November 15 to April 14).

Single domestic use is exempt from the minimum flow provisions established in Chapter 173-514 WAC. However, WAC 173-514-060 specifies that if the cumulative impacts of numerous single domestic diversions would significantly affect the quantity of water available for in-stream uses, then only single domestic in-house use shall be exempt, if no alternative source is available.

In a letter dated January 10, 2005, WDFW indicated that:

- Summit Lake contributes a significant part of Kennedy Creek flow necessary for chum and coho salmon, steelhead and cutthroat.
- Summit Lake supports a variety of resident fish including trout and kokanee (land-locked sockeye salmon).
- Kennedy Creek's summer and fall low flows limit fish production.
- The cumulative impact of additional diversions in the Kennedy Creek basin would further reduce stream flows and be detrimental to fish production.

The Department of Ecology received updated comments from Steve Boessow of WDFW on November 3, 2010. Mr. Boessow indicates that although WDFW does not support additional diversions from the Kennedy Creek basin, the exemption for single-domestic in-house use under Chapter 173-514 WAC is acknowledged. Thus, WDFW does not object to approval of currently pending Summit Lake applications.

Beneficial Use

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

Public Interest Considerations

Investigation of alternatives
The Washington state Department of Health indicates that the only Group A public water system in the Summit Lake area is the Transient Non-Community Boy Scouts of America's Thunderbird water system. There are three existing Group B public water systems in the area: 1) The 12-connection Turkey Road water system on the southern shoreline area; 2) the Summit Lake Community Church water system southwest of the lake; and 3) the Summit Lake Community Club system also southwest of the lake. Hookups to these systems are not available and there are currently no plans to develop a public water supply to serve the Summit Lake area.

Due to small lot sizes and limited groundwater availability along the shores of Summit Lake, private wells are not a viable alternative water source for most properties. The applicant has no well or alternative source of water.

Conditions for approval of this application
Under RCW 90.03.247, whenever an application for a water right permit is approved relating to a stream or other water body for which minimum flows or levels have been adopted, the permit shall be conditioned to protect the levels or flows. As a condition of approving this water right, I recommend that water use be limited to in-house purposes and that this water right be relinquished when public water becomes available to the place of use.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

- Water is available from Summit Lake for in-house single domestic supply.
- Domestic supply is a beneficial use.
- The proposed appropriation will not impair existing rights.
- The appropriation, as recommended, will not be detrimental to the public interest.

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:

- 0.02 cfs
- 0.34 acre-feet per year
- Single domestic supply, in-house use only
- Point of Diversion: NE¼, NW¼, Section 18, Township 18 N., Range 03 W.W.M.
- Place of Use: As described on Page 1 of this Report of Examination.

Marie C Peters

Report Writer *Date*

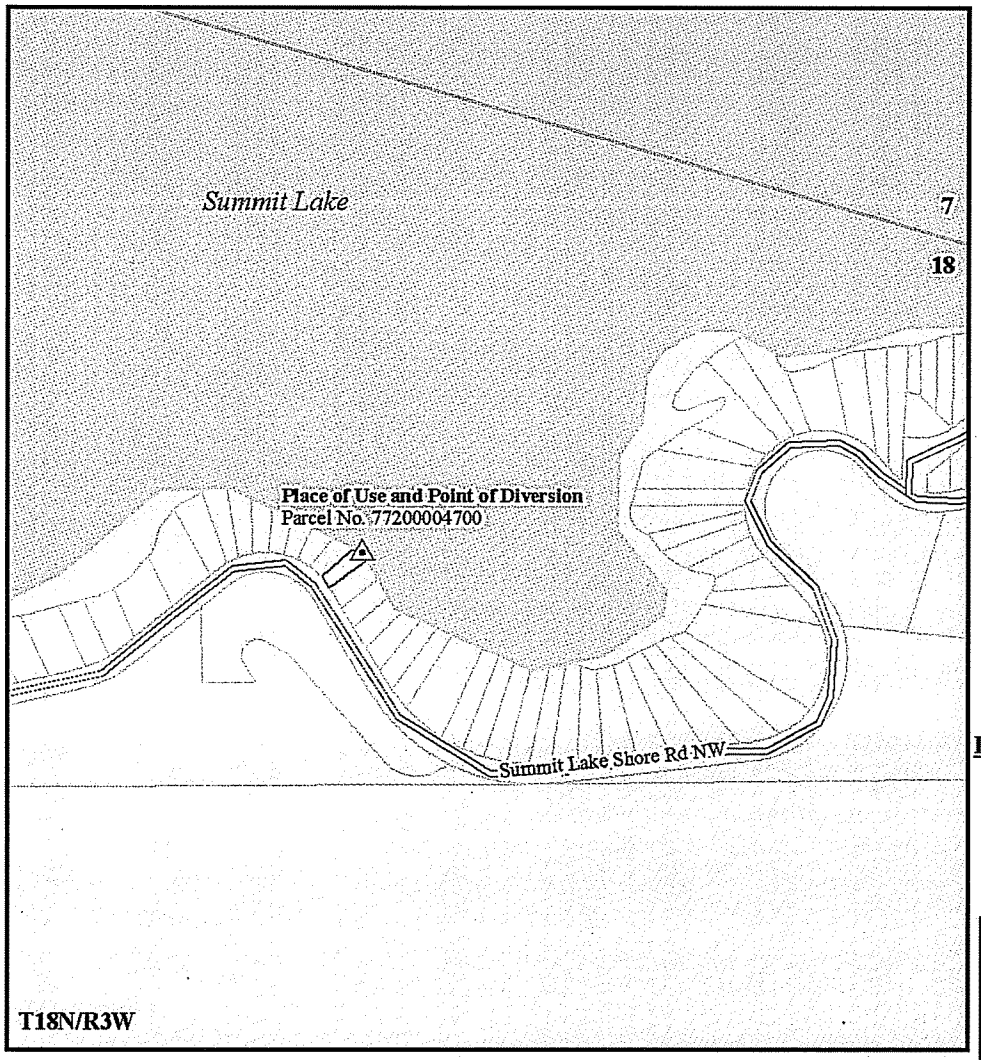
If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Selected References

Golder Associates. March, 2003. *Kennedy-Goldsborough Watershed (WRIA 14) Phase II Level 1 Assessment*. Prepared for the WRIA 14 Planning Unit.

Plateau Technical Communication Services. May 2006. *WRIA 14 Watershed Management Plan Kennedy-Goldsborough Watershed.* Prepared for the WRIA 14 Planning Unit.

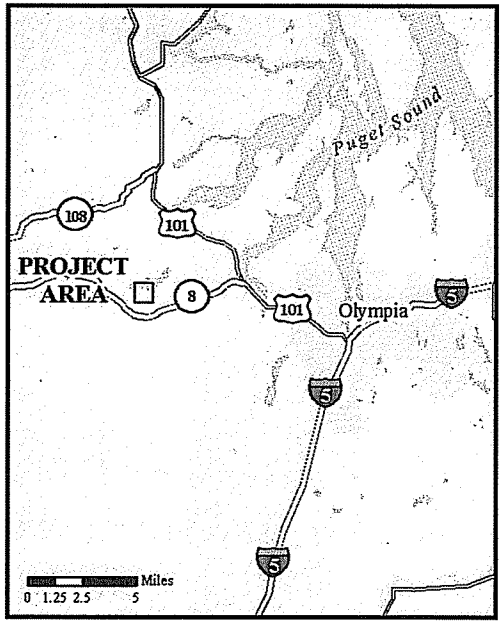
Washington State Department of Ecology. December, 1983. *Kennedy-Goldsborough Instream Resources Protection Program Including Proposed Administrative Rules WAC 173-514 (Water Resource Inventory Area 14).*



380 190 0 380 760 1,140 1,520 Feet

DEPARTMENT OF ECOLOGY State of Washington

Michael Bailey
Surface Water Right Number S2-30399
Sec. 18 T 18 N, R 3 W.W.M.
WRIA 14 - Thurston County



Legend

- POINT OF DIVERSION (POD)
- PLACE OF USE (POU)
- THURSTON CO. PARCELS
- HIGHWAYS
- CITIES

Comments:

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

Map Created 1/18/2011 aln

ATTACHMENT 1