DEPARTMENT OF
ECOLOGY
State of Washington

State of Washington
DRAFT
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE
6/24/2005

WATER RIGHT NUMBER
S3-30490

MAILING ADDRESS
GORDON WALKER
PO BOX 280
METALINE FALLS WA 99153

SITE ADDRESS (IF DIFFERENT)

Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.1	CFS	10

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)
Group Domestic Supply for 5 homes, 5 acres of non-agricultural irrigation (1 acre lawn and garden for each residence)	0.1			10		01/01 - 12/31
Fire Protection as needed						

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
PEND OREILLE	UNNAMED STREAM		62-PEND OREILLE

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Intake/diversion	N/A	40N	43E	13	NW¼SE¼	48.9643108	117.3108183
						Datum: NAD83/WGS84	

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

434013510001

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

The East ¾ of the SW¼SW¼ and the W½SE¼SW¼ less the south 380 feet thereof, all lying west of State Highway in Section 13, T. 40 N., R. 43 E.W.M.

Proposed Works

A new diversion structure, pipeline, and delivery system to serve five new parcels to be developed on the property

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
January 2, 2016*	January 1, 2017	January 1, 2020

*Prior to construction of the diversion facility or pipeline, the permittee is required to obtain Right of Way Agreements and/or easements, complete local County SEPA process and obtain Plat approval. These documents shall be completed and submitted with the Beginning of Construction Notice.

Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Upon request
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm or cfs)

Provisions

The diversion structure must be developed below and downstream from the existing spring diversion box and pipeline overflow established for the Lower Slumber Domestic Water Association (LSDWA, S3-25934C).

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 Health Requirements

Prior to any new construction or alterations of a public water supply system, the State Board of Health rules require public water supply owners to obtain written approval from the Office of Drinking Water of the Washington State Department of Health. Please contact the Office of Drinking Water prior to

beginning (or modifying) your project at DOH/Division of Environmental Health, 16201 E. Indiana Avenue, Suite 1500, Spokane Valley, WA 99216, (509) 329-2100. The design and construction of this system must be approved in writing and approval of the design must be submitted prior to Beginning of Construction.

Permits, Easements and Right-of-Way
The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

The following authorizations are required prior to any construction of the diversion facility and are required to be submitted as part of the Beginning of Construction of this authorization.

The permittee is required to acquire and submit a Special Use Permit from the U.S. Forest Service authorizing the development of the easement, diversion facility and pipeline. This authorization must be submitted to the Department of Ecology prior to any construction.

The permittee is required to submit a written authorization (easement) from the Department of Transportation authorizing the development of the diversion facility and pipeline under the highway. This authorization must be submitted to the Department of Ecology prior to any construction.

According to Pend Oreille County, a Long Plat would be required for this development. The property will require local county SEPA for the rezone of the property from Timber Classification to add a five lot subdivision. The local SEPA, rezone and Preliminary Plat/Plat approval must be obtained prior to any construction of the diversion facility.

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. S3-30490, 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 2013.

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.

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S3-30490.

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 May 10 and 17, 2006 and no protests were received. On December 10, 2008, a letter of concern was received from the Lower Slumber Domestic Water Association (LSDWA). This letter of concern will be discussed later in the report.

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 by Ecology. However, this application will require local SEPA review. No construction is authorized until such time that local SEPA review is completed.

INVESTIGATION

A site visit was conducted by Kevin Brown and Jeff MacLennan, November 1, 2012. The applicant declined to participate in the field examination. Two members of the LSDWA accompanied Ecology staff to the existing diversion facility for the LSDWA and provided information and access to their structure and location of their diversion, pipeline and design information.

The unnamed stream originates at the base of a steep slope on the west side of Slumber Peak in the NW¼SE¼ of Section 13 on USFS property. The spring flows into a small stream continuing westerly approximately 400 yards. As the creek reaches the flat areas near the highway, it percolates back into the ground and does not cross the highway or flow directly into Lime Creek. The unnamed creek has a gaining reach from the springs almost the entire length before discharging into the ground. Flows near the spring were measured at the LSDWA diversion with a bucket and stopwatch. The flows were 60

gallons per minute. The stream bypassing the LSDWA diversion increases in flow downstream and below the existing delivery system. There appears to be sufficient water downstream to satisfy this request. The LSDWA has previously measured flows at their diversion between 40 -70 gallons per minute depending on the year and time.

The applicant's property is approximately 32 acres in size. One residence is currently constructed on the property. Water is supplied to this residence from the LSDWA water system. Most all of the property is currently in timber.

Between the spring and the existing LSDWA diversion the flow was measured at 60 gallons per minute. This is the quantity authorized for diversion under Surface Water Certificate S3-25934C. There is not sufficient water between the spring and the diversion box for additional water use. However, additional springs converge below the existing diversion box and create a flowing stream of sufficient capacity to supply the 0.1 cfs (50 gallons per minute) requested under the subject application.

Existing Water Rights

The LSDWA currently holds a water right. Surface Water Certificate S3-25934 confirms a right of 0.13 cfs (58.3 gallons per minute), 4 acre-feet per year for continuous group domestic supply of four residences. The authorized point of diversion is located within the NW¼SE¼ of Section 13. The authorized place of use is described as the W½SE¼SW¼, E¾SW¼SW¼ of Section 13 and E¾NW¼NW¼, W¾NE¼NW¼ of Section 24, T. 40 N. R. 43 E.W.M. The diversion exists as described and serves four properties all lying west of the highway. Although included in the legal description, no property is served on the east side of the highway. The diversion is constructed near the spring and ditched/piped to a concrete screened box and cleanout. From the spring box, to a 1000 gallon storage tank, then a 4 inch pipe flows southwesterly along the access road and reduces to a 3 inch line and crosses under the highway. Once across the highway the line is reduced to a 2 inch line and serves all four residences on the west side, including the applicant's existing residence. According to the LSDWA, this system is at capacity and cannot handle any increase in connections.

Beneficial Use

Group domestic supply for five homes and irrigation of up to one acre per lot and, fire protection are beneficial uses.

The applicant proposes five homes and irrigation of five acres of lawn (one acre per lot). The Washington State Irrigation Guide (WA210-Vi-WAIG, AMEND.1NOVEMBER1990 at Newport, Washington) estimates 34.44 inches of water or 2.87 acre-feet per acre (based on 70% system efficiency). This area is 50 miles north of Newport and significantly wetter. Probably less than 2 acre-feet per acre is required for irrigation at this site. Therefore, 10 acre-feet of water should be adequate for the domestic supply of five homes and irrigation of five acres (one acre lawn and garden for each residence) under this authorization. This authorization may be reduced to correspond with the total number of homes and acres actually developed from this diversion.

Protests and Concerns

A letter of concern was filed and signed by all the members of the Lower Slumber Domestic Water Association on December 10, 2008. The Association is concerned that the intent of the application is to add five additional units onto the existing water system thus exceeding the capacity of the existing system and/or develop a new diversion above the existing water system and impair the ability of the existing water system to provide an adequate supply.

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.

Based on the site investigation, water would be available below and downstream from the existing LSDWA system, not above.

Although this stream does not directly discharge to Lime Creek, the subsurface flows do contribute to Lime Creek lower in the basin.

Hydrogeologic Analysis: The Department of Ecology has not closed the Pend Oreille River or its tributaries 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 (WDF&W) 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 portion of this authorization ceases when the Pend Oreille River falls below the low flow recommendation from the Washington State Department of Fish and Wildlife. This flow recommendation does not apply to in-house domestic use or fire protection, should an incident occur.

Water is available provided the construction of a new diversion is below and downstream of the existing water system.

Impairment Considerations

A review of department records was conducted for existing water rights, permits, applications and claims within the vicinity of the proposed diversion.

Surface Water Certificate S3-25934 confirms a right of 0.13 cfs, 4 acre-feet per year from an unnamed stream for group domestic supply for 4 residences. The applicant's existing residence is one of these four residences.

As described above, sufficient water is not available above the existing diversion to satisfy the proposed new application without impairing the ability of the LSDWA to satisfy their rights nor is there capacity within the existing system to handle additional hookups.

Water is available downstream and below the existing diversion.

If the use of water for irrigation is subject to the low flow recommendations of the Department of Fish and Wildlife, there should be no impairment of instream flows or fisheries.

Public Interest Considerations

There have been no findings through this investigation that indicate 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 portion of this 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 WDF&W on October 18, 1999.

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

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 an unnamed stream, is available for group domestic supply of five homes, fire protection and the seasonal irrigation of five acres. This appropriation is considered a beneficial use and will not impair existing water rights or be detrimental to the public welfare provided the conditions of construction are followed.

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:

0.10 cubic feet per second
10 acre-feet per year
Group Domestic Supply of five homes, fire protection and seasonal non-agricultural irrigation of five acres

Point of Diversion: within the NW¼SE¼ of Section 13, Township 40 North, Range 43 E.W.M.

Kevin Brown, 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.