



State of Washington
**REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION**

PRIORITY DATE
2/18/1997

WATER RIGHT NUMBER
S3-30023

MAILING ADDRESS
WILLIAM STINETTE
10402 FRIAR CREEK ROAD
MONROE WA 98272

SITE ADDRESS (IF DIFFERENT)
4109 Flat Creek Road
Kettle Falls WA 99141

Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
Denied	CFS	Denied

Purpose

PURPOSE	DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Irrigation of 10 acres	denied		CFS	denied		01/01 - 12/31

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
STEVENS	SQUAW CREEK		61-UPPER LAKE ROOSEVELT

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
SQUAW CREEK	2374650		39 N.	39 E.	10	NW¼NE¼		

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)
2374602

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Lot SP 43-88-1: That part of Section 10, T. 19 N., R. 39 E.W.M. described as follows:

Commencing at the Northeast corner of Section 10, thence along the north line of Section 10, N. 89 45' 20" W 755.6 feet to the Point of Beginning; thence S 52 32' 08" W 475 feet; thence S 37 27' 52" E 975 feet to the mean high water mark of the Columbia River; thence along the mean high water line northeasterly 480 feet more or less to a point that bears S 37 27' 52" E from the point of beginning; thence N 37 27' 52" west 825 feet more or less to the point of beginning.

REPORT OF EXAMINATION

Proposed Works

Existing 1" pvc pipe in creek, gravity flow to residence, being used for lawn irrigation

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 not 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 detriment to the public interest and stream flows.

Therefore, I ORDER Denial of Application No. S3-30023.

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 15th day of December, 2014.


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 S3-30023.

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 Statesman Examiner on November 15 and 22, 2000 and no protests were received

Consultation with the Department of Fish and Wildlife

RCW 90.03.280 requires the Department to send notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water. The Department of Fish and Wildlife provided written comments on December 4, 2000 and November 15, 2001. These comments will be addressed 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.

INVESTIGATION

A site visit was conducted August 26, 2014. The applicant was not present.

The original application requested group domestic supply for four homes and irrigation of 40 acres. The proposed place of use included four separate lots in the NE¼ of Section 10. Since the application filing, three of the lots have been sold or are no longer owned by the applicant. The applicant owns Lot 1 of the proposed place of use.

The applicant has constructed a residence on the property including an exempt well being used for in-house domestic use. The well log indicates the well was constructed in September of 1999 (AFF358) and produced two gallons per minute. The well is constructed into limestone.

Discussions with the applicant indicate the domestic uses are no longer requested. He desires to obtain an irrigation right for irrigation of up to 10 acres of lawn and green areas around the home on Lot 1 and the neighbor's land. The neighbor's land is Parcel No 2374645 and was not part of the original proposed lands and cannot be added to the application. If the neighbor wants a water right for his parcel a new application would need to be filed.

The area around the house (Lot 1) is currently irrigated and approximately ½ an acre of lawn is irrigated with an irrigation timing system. Approximately 1500 feet of 1 inch pvc line connects the irrigation system to the creek and is run by gravity. The remaining portion of Lot 1 is natural vegetation.

The creek was flowing approximately 0.20 cfs (90 gallons per minute) at the time of the field investigation. The creek flows through the applicant's property across adjacent property and discharges into the Columbia River.

Existing Water Right Documents

The applicant provided a copy of a Vested Water Right filed with Stevens County in May of 1902. The filing claimed the use of 1 cfs of water for the purposes of domestic and irrigation from Squaw Creek approximately ¾ of a mile from the mouth of the creek to be used on the NE¼ of Section 10, T. 39 N., R. 39 E.W.M.

The Claims Registration Act, RCW 90.14 was adopted in 1967. The Claims Registration Act required water users to file a statement of claim for vested rights. The failure to file a statement of claim by any person claiming the right to divert or withdraw waters of the state, the statute confirmed the landowner of the right shall be conclusively deemed to have waived and relinquished any right, title or interest in said right. (RCW 90.14.071)

Based on the lack of evidence of filing a statement of claim it appears this vested right from 1902 was relinquished.

Beneficial Use

Irrigation of lawn is considered a beneficial use.

Consideration of Comments

The Department of Fish and Wildlife submitted comments on December 4, 2000 and November 15, 2001. The first recommendation was to deny the application because the proposed application would significantly impact fish and habitat in Squaw Creek which is a small 2nd order stream with a 2-3 square mile watershed. They asked to hold the application pending field review. The second letter also recommends denial of the application indicating the diversion would significantly impact fish and habitat in Squaw Creek. Due to fish resources present, condition of habitat, and amount of available water, the Department of Fish and Wildlife requests this application be denied.

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. Although water is physically available, the legal availability must not be detrimental to the public interest.

Public Interest Considerations

There has been concern regarding the subject proposal, and findings through this investigation to indicate that there would be 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.

The Department of Fish and Wildlife has determined this proposed appropriation will significantly affect the fish resources and habitat in Squaw Creek.

An alternate source is available for the purpose of irrigation through means of the exempt well.

The approval of this application for this quantity and use will be detrimental to the public interest.

Impairment Considerations

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

There are no rights of record within the vicinity of the diversion.

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 based on the recommendation of the Department of Fish and Wildlife surface water is not available for irrigation and would be detrimental to the public interest described in RCW 90.54.

This appropriation is considered a beneficial use and would not impair existing diversionary water rights.

RECOMMENDATIONS

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


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.