

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE
3/3/1995

WATER RIGHT NUMBER
S3-29827

MAILING ADDRESS
STEVE SHAFFER
3514 LAEL ROAD
KETTLE FALLS WA 99141

SITE ADDRESS (IF DIFFERENT)

Quantity Authorized for Diversion

| DIVERSION RATE | UNITS | ANNUAL QUANTITY (AF/YR) |
|----------------|-------|-------------------------|
| 0.4 | CFS | 46.8 |

Purpose

| PURPOSE | DIVERSION RATE | | UNITS | ANNUAL QUANTITY (AF/YR) | | PERIOD OF USE (mm/dd) |
|-------------------------------------|----------------|--------------|-------|-------------------------|--------------|--------------------------|
| | ADDITIVE | NON-ADDITIVE | | ADDITIVE | NON-ADDITIVE | |
| Agricultural irrigation of 18 acres | 0.4 | | CFS | 46.8 | | 05/01 - 9/31 |

Source Location

| COUNTY | WATERBODY | TRIBUTARY TO | WATER RESOURCE INVENTORY AREA |
|---------|-------------|----------------|-------------------------------|
| STEVENS | CROWN CREEK | COLUMBIA RIVER | 61-UPPER LAKE ROOSEVELT |

| SOURCE FACILITY/DEVICE | PARCEL | WELL TAG | TWP | RNG | SEC | QQ Q | LATITUDE | LONGITUDE |
|------------------------|---------|----------|-------|-------|-----|--------|-----------|------------|
| CROWN CREEK | 2001900 | | 39 N. | 38 E. | 14 | NW¼SW¼ | 48.875963 | 117.949122 |

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

2001900, 2001800

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

SW¼SW¼NW¼, W½NW¼SW¼, and NW¼SW¼SW¼ of Section 14, T. 39 N., R 38 E.W.M.

Proposed Works

Diversion pump in creek and wheel lines

Development Schedule

| BEGIN PROJECT | COMPLETE PROJECT | PUT WATER TO FULL USE |
|-----------------|------------------|-----------------------|
| October 1, 2016 | October 1, 2018 | October 1, 2020 |

Measurement of Water Use

| | |
|---|--------------------------------------|
| 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 (cfs) |

Provisions

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/>

Construction of the facilities for the appropriation of water under the application may require removal of material from or adjacent to a stream channel or watercourse. A Hydraulic Approval may be obtained from the Department of Fish and Wildlife prior to commencing work.

The diversion is subject to a bypass flow of the creek. The Department of Fish and Game recommends a bypass flow of 3.0 cfs to protect fish and habitat in Crown Creek (Letter dated October 23, 2001). In accordance with the recommendations of the Department of Fish and Wildlife, the permit shall be issued subject to the following provisions: All diversion shall cease when the flow of Crown Creek falls to 3 cfs as measured at the point of diversion.

The Water Resources Act of 1971, Chapter 90.54 RCW specifies certain criteria regarding utilization and management of the waters of the State in the best public interest. Favorable consideration of this application has been based on sufficient waters available, at least during portions of the year. However,

it is pointed out to the applicant that this use of water may be subject to regulation at certain times, based on the necessity to maintain water quantities sufficient for preservation of the natural environment.

Family Farm Irrigation

This authorization to use public waters of the state is classified as Family Farm Permit in accordance with Chapter 90.66 RCW. This means the land being irrigated under this authorization shall comply with the following definition: Family Farm - a geographic area including not more than 6,000 acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than 6,000 acres of irrigated agricultural lands in the state of Washington which are irrigated under water rights acquired after December 8, 1977. Furthermore, the land being irrigated under this authorization must continue to conform to the definition of a family farm.

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 contracting with a Certified Water Right Examiner (CWRE) to confirm 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. S3-29827, 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 28th day of January, 2015.



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 S3-29827.

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 December 12 and 19, 2001 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 October 23, 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 present. A residence and barn exist on the property. The domestic uses are supplied by an exempt well. The proposed place of use is currently a dry land hay field.

The applicant proposes to construct a pump station and irrigate when water is available. Crown Creek was dry as it enters the property in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14. The applicant indicated that it does dry up in this area a few years in ten. Sometimes the creek flows continuously at this location but not every year. Downstream, approximately 2000 feet in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of the section is a large cedar grove. The creek re-emerges from springs and flows continuously from this location to the Columbia River. The creek was estimated at 2-3 cfs in this gaining reach near the applicant's residence in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14.

The proposed property encompasses approximately 18 acres of irrigable ground on the flat areas west of the house. The slope hillside fields are rocky and not irrigable.

The applicant also requests to install a hydropower system. The proposal is to install a device in the creek without diverting water. Since there will be no diversion, a water right is not required. However, since they will be working in the creek, a Hydraulic Project Approval will be required.

Beneficial Use

Irrigation of 18 acres is considered a beneficial use. Ten gallons per minute per acre is a reasonable amount of water for a total of 180 gallons per minute (0.4 cfs). The Washington State Irrigation Guide confirms a consumptive use of 2.0 acre-feet per year for the months of May through September. If applied at a 75% efficiency of application, 2.6 acre-feet per acre would be required.

Consideration of Comments

The Department of Fish and Wildlife submitted comments on October 23, 2001.

The recommendation of the Department of Fish and Wildlife did not object to the application provided a 3 cfs bypass condition is applied to the diversion.

The flow of the creek at the time of the field examination was approximately 2-3 cfs. Based on the proposed 0.4 cfs diversion the recommended bypass flows would still be met in most years.

The Department of Fish and Wildlife also requires the applicant obtain a Hydraulic Project Approval (HPA) and screening requirements would be determined at that time.

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. There is sufficient water for irrigation for portions of the irrigation season.

Therefore, water for agricultural irrigation of 18 acres is available for appropriation.

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 six water rights of record and one claim downstream of the applicant's proposal, described as follows.

Surface Water Certificate 1224 confirmed a right of 0.36 cfs for irrigation of 18 acres within the S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24. A large home, barns, stalls and corrals are currently developed on the property. Approximately seven acres of land could be subject to irrigation. No irrigation was seen at the time of the examination.

Surface Water Certificate 1532 confirmed a right of 0.01 cfs for single domestic supply for one acre and stock for the property near the intersection of Lael road and Flat Creek Road. A house is on the property.

Surface Water Certificate S3-01450 confirmed a right of 0.41 cfs for irrigation of 20 acres in the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ lying south of the road. The property now has an aircraft landing

strip over much of the property. Approximately seven acres are irrigable. No evidence of irrigation was seen at the time of the examination. This right is also subject to a 1.5 cfs bypass as a condition of the water right.

Surface Water Certificates S3-25475, S3-27844, and S327683 confirm small diversions of less than 0.04 cfs for domestic uses in Section 25.

Surface Water Claim 148649 claims a use of 0.22 cfs for irrigation of 40 acres. The date of first use is claimed as 1920. This does not appear to represent a valid right as it does not claim to predate 1917. The property is all in timber and does not appear to be irrigated.

Total authorized and claimed uses total 1.06 cfs. It is not clear if all of these certificated uses are still exercised or claims valid.

Based on the recommendations of Fish and Wildlife, if the subject application is approved with a 3 cfs bypass, there would be sufficient water to satisfy downstream water uses and the rights if valid would not be impaired.

The intent of the Claims Registration Act, Chapter 90.14 RCW, was to document those uses of surface water in existence prior to the adoption of the State Surface Water Code, Chapter 90.03 RCW, which was adopted in 1917, and those uses of ground water in existence prior to the adoption of the State Ground Water Code, Chapter 90.44 RCW, which was adopted in 1945. Since each code(s) adoption, the only means of acquiring a water right within the state is by filing for, and receiving, a permit from the Department of Ecology or one of its predecessors or by establishing a right under the "domestic exemption" under the ground water code (RCW 90.44.050). The Department of Ecology recognizes that the final determination of the validity and extent associated with a claim registered in accordance with RCW 90.14 ultimately lies with the Superior Court through the general adjudication process provided for by Sections 90.03.110 through 90.03.240 RCW.

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.

The Water Resources Act of 1971, Chapter 90.54 RCW specifies certain criteria regarding utilization and management of the waters of the State in the best public interest. Favorable consideration of this application has been based on sufficient waters available, at least during portions of the year. However, it is pointed out to the applicant that this use of water may be subject to regulation at certain times, based on the necessity to maintain water quantities sufficient for preservation of the natural environment.

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 approval of this application for this quantity and use will not be detrimental to the public interest provided the bypass conditions are met.

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 surface water is available for agricultural irrigation of 18 acres. 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:

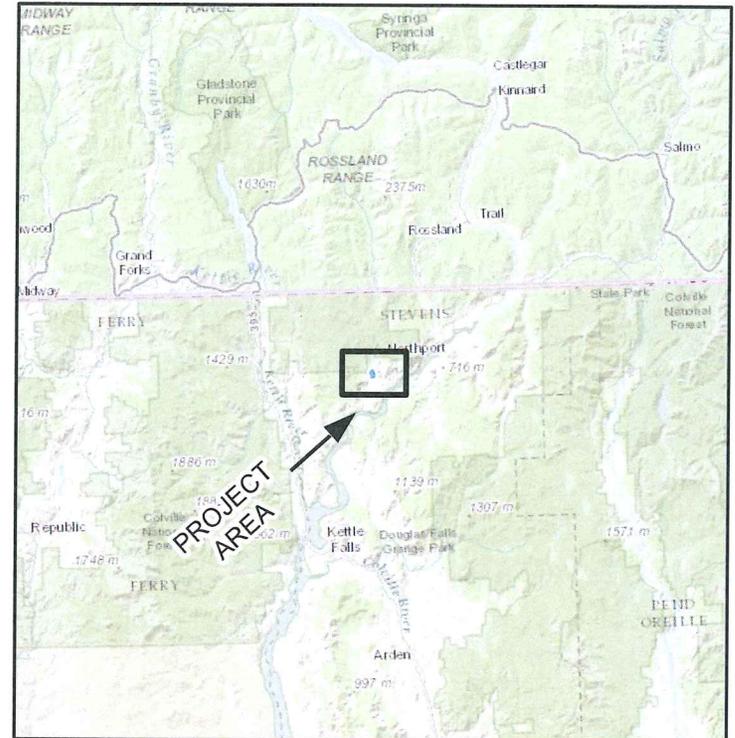
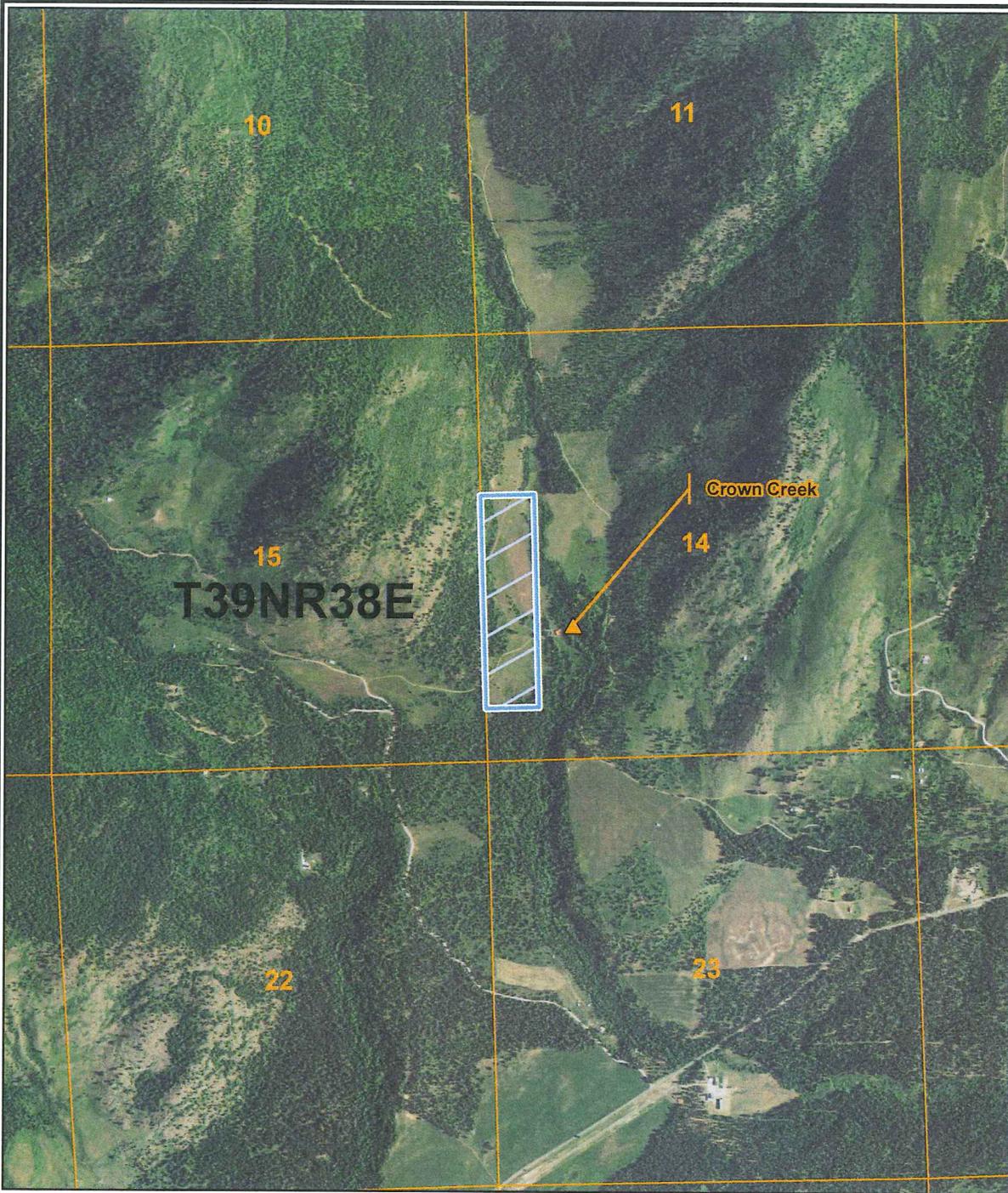
0.4 cubic feet per second
46.8 acre-feet per year
Agricultural irrigation of 18 acres


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.

Steve Schaffer
 S3-29827
 T39N/R38E

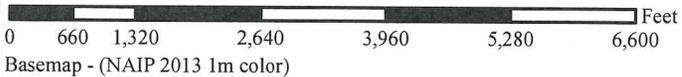


Basemap - (ESRI US Topographic Maps)

Legend

-  Authorized Place of Use
-  Townships
-  Sections
-  Authorized Point of Diversion

ATTACHMENT 1



Basemap - (NAIP 2013 1m color)



Map Date: 1/27/2015



Comment:

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