



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

**PRIORITY DATE**  
7/22/2005

**WATER RIGHT NUMBER**  
S1-28265

**MAILING ADDRESS**  
CHARLES BEST  
2260 NE 30TH AVENUE  
PORTLAND OR 97212-5045

**SITE ADDRESS (IF DIFFERENT)**  
486 ROCKY BAY RD  
FRIDAY HARBOR WA 98250

**Quantity Authorized for Diversion**

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.022	CFS	0.63

**Purpose**

PURPOSE	DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Irrigation	0.022		CFS	0.63		04/01 - 10/31

IRRIGATED ACRES	
ADDITIVE	NON-ADDITIVE
0.5	0

**Source Location**

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA				
SAN JUAN	UNNAMED STREAM	PUGET SOUND	2-SAN JUAN				

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
UNNAMED STREAM	362033005000	N/A	36N	03W	20	SW SW	N 48.597	123.102 W

Datum: NAD83/WGS84

**Place of Use (See Attachment 1)**

PARCELS (NOT LISTED FOR SERVICE AREAS)  
362033005000

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

SW¼ SW¼ of Section 20, Township 36 North, Range 3 West (see Attachment 2 for full legal description)

**Proposed Works**

This water right application is for irrigation of a half acre of combined home garden, orchard, and pasture. The source is an unnamed stream on northeastern San Juan Island. The proposal is to connect a ½ HP movable pump to a screened intake and a handline/sprinkler irrigation system.

**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 and potential public interest concerns exist.

Therefore, I ORDER denial of Application No. S1-28265, 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).

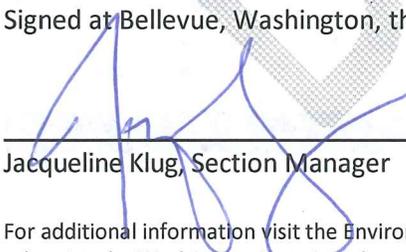
To appeal you must do the following within 30 days of the date of receipt of the Order.

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
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Signed at Bellevue, Washington, this 13 day of May, 2013.

  
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 Jacqueline Klug, 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 -- Best  
 Water Right Control Number S1-28265  
 Ria Berns, Department of Ecology

**BACKGROUND**

This report serves as the written findings of fact concerning Water Right Application Number S1-28265, submitted to Ecology on July 25, 2005.

Charles Best applied for a water right to appropriate water from an unnamed stream flowing through his property. The purpose of use is seasonal irrigation of a half acre of combined garden, orchard, and pasture. The unnamed stream originates at Dream Lake and flows north before cutting through the Best property and terminating in Rocky Bay on northeast San Juan Island. The proposed point of diversion and place of use are within the SW¼ SW¼ of Section 20, Township 36 North, Range 3 West, W.M.

The Washington State Department of Fish and Wildlife (WDFW) recommends denial of this application based on potential impacts to fish and fish habitat. Pursuant to the 1989 Memorandum of Understand between WDFW and the Washington State Department of Ecology (Ecology), Ecology is heeding WDFW's recommendation and denying this water right application.

**Table 1. Summary of Requested Water Right**

<b>Applicant Name:</b>	Charles Best
<b>Date of Application:</b>	7/22/2005
<b>Place of Use</b>	See Attachment 1 Map

County	Waterbody	Tributary To	WRIA
San Juan	Unnamed Stream	Puget Sound (Rocky Bay)	2-San Juan

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Irrigation	.022	CFS	0.63	04/01	10/31

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Unnamed Stream	362033005000	N/A	36N	03W	20	SW SW	N 48.597	123.102 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; Datum: NAD83/WGS84.

**Legal Requirements for Approval of Appropriation of Water**

*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. Because this application is denied due to WDFW concerns, the Department of Ecology will not require publication of a public notice.

*Consultation with the Department of Fish and Wildlife*

Ecology must give notice to WDFW of applications to divert, withdraw or store water. On April 5, 2013, WDFW submitted comments on this proposed appropriation of surface water. Pursuant to RCW 77.57.020, WDFW recommends denial of this application due to impacts to fish and fish habitat. This recommendation is based on physical surveys of the stream habitat, which show suitable habitat for fish rearing and spawning. The most critical habitat is the stream reach below Rocky Bay Road where the diversion is proposed.

*State Environmental Policy Act (SEPA)*

A surface water right application is subject to a SEPA threshold determination (i.e., an evaluation of whether there are likely to be significant adverse environmental impacts) if the application is greater than 1 cfs. However, if the project is for agricultural irrigation, the threshold is increased to 50 cfs, so long as the irrigation project will not receive public subsidies. Because this application does not meet these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

## **INVESTIGATION**

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Charles Best submitted an application for appropriation of surface water from an unnamed stream on July 25, 2005. The proposed purpose of use is seasonal irrigation of a half acre of combined home garden, orchard, and pasture. The point of diversion is an unnamed stream that flows directly into Rocky Bay on northeast San Juan Island. The proposed place of use and point of diversion are located within the SW¼ SW¼ of Section 20, Township 36 North, Range 3 West, W.M.

On April 17, 2013, Jerry Lyszak (Senior Hydrogeologist, Department of Ecology) and I met Charles Best at his property on San Juan Island. The project information described below was gathered during the site visit and supplemented by follow-up exchanges with the applicant. During the site visit, we confirmed the intended purpose of use and discussed the proposed irrigation system. We also relayed WDFW's concerns related to the proposed diversion as well as their recommendation for denial.

### **Project Description**

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*Proposed Project*

Charles Best applied for a water right to withdraw surface water from an unnamed stream on property jointly owned by the applicant, Robert Asher, and Pamela Hedberg. The proposed purpose of use is seasonal irrigation of a half acre of combined home vegetable garden, small orchard (5 fruit trees), and horse pasture.

*Source Water*

The unnamed stream originates in Dream Lake and flows northeast, cutting through the Best property (see Photo 1) before discharging into Rocky Bay. The stream is fed by overflow from Dream Lake as well as downstream surface water runoff and shallow groundwater discharge (Wild Fish Conservancy, 2007). The stream flows year round; however, the discharge decreases significantly during the summer months.

*Irrigation Works*

The proposed seasonal-use irrigation system includes a ½ HP gasoline-powered, moveable tractor engine pump with an estimated maximum instantaneous flow ( $Q_i$ ) of 10 gpm. The pump will be moved

to the stream bank during the irrigation season and attached to a hose with a screened intake. The orchard and garden will be irrigated using a hand line and sprinklers.



**Photo 1. Downstream View of Source Water with Proposed Diversion Point Circled (April 17, 2013)**

### Geography and Climate

The land surrounding the Best property is primarily forested land with seasonally used and year-round homes. Charles Best's property and the proposed place of use are on a mostly wooded 3 acre parcel with a half acre area of cleared land. The property slopes down and northward into Rocky Bay, a small inlet on northeast San Juan Island. The unnamed stream originates from an overflow outlet on Dream Lake and flows through several culverts before it cuts through the Best property and ultimately terminates in Rocky Bay. The discharge varies significantly throughout the year.

The temperate climate of the San Juan Islands is typified by cool, dry summers, and mild, moderately wet winters. Due to the rainshadow effect from the Olympic Mountains, the San Juan Islands have significant variations in annual and seasonal precipitation (USGS, 2002). The 2002 USGS Water-Resources Investigations Report 02-4114 found the mean annual precipitation for the place of use to be 30-32 inches/year. This aligns closely with the mean average precipitation of 28.95 inches/year registered at the Olga, Washington weather station on Orcas Island.

### Other Rights Appurtenant to the Place of Use

The Department of Ecology has record of 17 water rights, claims, and new applications within a half mile radius of the proposed point of diversion (see Table 2 and Attachment 3). Of the water rights considered as part of the impairment analysis, three are state-issued water right certificates for groundwater, seven

are short-form claims (6 for groundwater, 1 for surface water), six are long-form claims for groundwater, and one is the applicant's own application for a new surface water right.

**Table 2. Record of Water Rights within Half Mile Radius of Proposed Point of Diversion**

Control Number	Name on Document	Document Type	Priority Date	Purpose	Q <sub>i</sub> (gpm)	Q <sub>a</sub> (ac-ft/yr)	Location
G1-*11949CWRIS	Nash, E H and A	Cert	1971	DS	3	0.5	S20, T36N, R03W
G1-00093CWRIS	Cary, Carl & Mary	Cert	1971	DS	5	1	S20, T36N, R03W
G1-20036CWRIS	Asher, P/Best, B	Cert	1972	DS	10	1	S20, T36N, R03W
G1-044439CL	Emmel, Harry	Claim S	N/L	DG	N/L	N/L	S20, T36N, R03W
G1-073377CL	Boyce, Alton	Claim S	N/L	DG ST	N/L	N/L	S20, T36N, R03W
G1-073376CL	Boyce, Alton	Claim S	N/L	DG ST	N/L	N/L	S20, T36N, R03W
S1-073375CL	Boyce, Alton	Claim S	N/L	DG ST	N/L	N/L	S20, T36N, R03W
G1-073374CL	Boyce, Alton	Claim S	N/L	DG ST	N/L	N/L	S20, T36N, R03W
G1-073373CL	Boyce, Alton	Claim S	N/L	DG ST	N/L	N/L	S19, T36N, R03W
G1-094557CL	Baer, Charles R	Claim S	N/L	DG	N/L	N/L	S29, T36N, R03W
G1-099162CL	Dolsen, Charles S	Claim L	N/L	DG	N/L	N/L	S30, T36N, R03W
G1-106052CL	Campbell, R Bruce	Claim L	N/L	DG ST	N/L	N/L	S30, T36N, R03W
G1-131588CL	Rouleau, Stanley	Claim L	N/L	DG	N/L	N/L	S19, T36N, R03W
G1-000035CL	Millman, Vern	Claim L	N/L	DG	N/L	N/L	S29, T36N, R03W
G1-002681CL	Burnett, John	Claim L	N/L	DG	N/L	N/L	S20, T36N, R03W
G1-019710CL	Apperson, R C	Claim L	N/L	DG	N/L	N/L	S20, T36N, R03W
S1-28264	Best, Charles	New App	2005	DM	N/L	N/L	NW¼ NW¼ S20, T36N, R03W

Abbreviation Key: Q<sub>i</sub> – instantaneous quantity, Q<sub>a</sub> – annual quantity, gpm – gallons per minute, Claim L – long form claim, Claim S – short form claim, DG – domestic general, DM – domestic multiple, DS – domestic single, ST – stockwater, S – Section, T – Township, R – Range, N/L – not listed

## 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 instream flows may be impaired if a proposed use or change would cause the flow of the stream to fall to or below the instream 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 instream flows.
- 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).

The applicant's proposed diversion site is not in direct hydraulic continuity with any of the water rights listed in Table 2. The diversion site is in a streambed, downstream and down-gradient from all water

rights in the area and 300 feet from the stream's terminus into Rocky Bay. Thus, the proposed diversion will not impact proximate water rights.

## Water Availability

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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.

When we visited the Best property, the pump was in storage and thus, we were not able to measure  $Q_i$ . Based on conversations with the applicant, the  $Q_i$  is estimated to be 10 gpm (.022 cfs), which, to the best of our knowledge, we find to be physically available from the stream.

The Department of Ecology uses the Washington Irrigation Guide (WIG) to determine crop water duties when the actual volume of water applied per acre is not known, or to assess whether actual use is reasonable for a given crop (see Table 3). Application efficiency ( $E_a$ ) values are from *GUID-1210, Determining Irrigation Efficiency and Consumptive Use*. The consumptive irrigation requirements (CIR) for the home vegetable garden is based on an average CIR for twelve common vegetables, the orchard CIR is based on apple trees with cover, and the pasture is based on the pasture/turf CIR. Annual precipitation data is taken from the Olga, Washington weather station.

**Table 3. Calculation of Total Irrigation Requirements**

<i>Crop and System Type</i>	<i>Total Irrigation Requirement (TIR) (CIR ÷ Ea)</i>
<p><b>Crop :</b> Mixed Vegetable Garden  <b>System:</b> Sprinkler: Periodic Move (Handline)  <b>Area:</b> 0.25 acres  <b>CIR:</b> 0.45 ac-ft/ac  <b>Ea:</b> 75%</p>	<p>0.45 ac-ft/ac                      ÷ 75%                      = 0.60 ac-ft/ ac</p>
<p><b>Crop :</b> Orchard  <b>System:</b> Sprinkler: Periodic Move (Handline)  <b>Area:</b> 0.13 acres  <b>CIR:</b> 1.37 ac-ft/ac  <b>Ea:</b> 75%</p>	<p>1.37 ac-ft/ac                      ÷ 75%                      = 1.83 ac-ft/ ac</p>
<p><b>Crop :</b> Pasture  <b>System:</b> Sprinkler: Periodic Move (Handline)  <b>Area:</b> 0.13 acres  <b>CIR:</b> 1.38 ac-ft/ac  <b>Ea:</b> 75%</p>	<p>1.38 ac-ft/ac                      ÷ 75%                      = 1.85 ac-ft/ ac</p>
<p><b>Total Irrigation Requirement All Acres</b></p>	<p><b>(TIR * No. of Acres)                      = 0.63 ac-ft/year</b></p>

Abbreviation Key: Ea – the ratio of the average depth of water infiltrated and stored in the root zone to the average depth of water applied, expressed as a percentage; TIR – water supplied by irrigation to satisfy evapotranspiration, miscellaneous water requirements, and irrigation efficiency; CIR – water supplied by irrigation to satisfy evapotranspiration that is not provided by water stored in the soil and precipitation.

**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 instream uses (e.g., recreation and navigation). Instream needs, including instream and base flows set by regulation. Water is not available for out of stream uses where further reducing the flow level of surface water 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.

There are no regulatory closures or restrictions affecting water availability on San Juan Island. However, WDFW finds that instream needs would not be met if the proposed diversion is approved.

**Department of Fish and Wildlife Concerns Related to Water Availability**

Based on a 1989 Memorandum of Understanding, the Department of Ecology is required to cooperatively review surface water right applications with WDFW in order to improve compliance with the state’s water and fishery codes. Ecology defers to WDFW on concerns related to fish, wildlife, and

the habitat they rely on. WDFW submitted comments on April 5, 2013 recommending denial of this application. The justification for this denial is quoted from the letter, below.

*Physical surveys of the habitat in the stream proposed as the diversion indicate suitable habitat for rearing and spawning in key reaches. The most important reach, downstream of Rocky Bay Road, would be impacted most by this diversion of water. WDFW encourages Ecology to work with the applicant to develop an alternate source for water. WDFW is also concerned about the large quantity of water proposed for diversion. We recommend a quantity more consistent with average daily use for homes on San Juan Island.*

*This letter does not exempt the applicant from compliance with state Hydraulic Code (Chapter 77.55 RCW) and fish screening statutes (RCW 77.57.010, RCW 77.57.040, and RCW 77.57.070), which will be required in order to divert water, if this application were to be approved. Water right applications may trigger review under SEPA. If so, instream flows and impacts due to water diversion/withdrawal should be addressed under SEPA.*

Based on these comments submitted by WDFW, I find that water is not available for appropriation due to potential impairments on fish and fish habitat.

### Beneficial Use

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Irrigation is considered a beneficial use under RCW 90.54.020(1).

### Public Interest Considerations

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The WDFW comments on this application raise fish and wildlife-related public interest concerns. Protecting fish and wildlife and the habitat they rely on is in the public interest and potential impacts must be critically evaluated. The unnamed stream is considered a Type F water body, defined by WAC 222.16.031 as having a moderate to high fish, wildlife, or human use value. These waters are considered to have high restoration potential. WDFW have found that rainbow trout are present upstream in Lakedale Lakes and other fish may be present in the unnamed stream. The timing of the proposed diversion (i.e., during low flow periods) conflicts with instream fish needs. Furthermore, San Juan County Marine Resources Committee, among other public entities, is investing significant resources in salmon recovery and habitat restoration across the county. The fact that public resources are directed towards these recovery efforts supports the public interest concerns raised by WDFW.

No protests were filed against this application; however, a public notice for this application of surface water was not published pursuant to 90.03.280 and thus, the public did not have an opportunity to protest.

### Conclusions

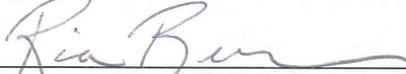
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In accordance with chapter 90.03 RCW, I conclude that the purpose of use is beneficial and there will be no impairment to existing rights. However, due to WDFW concerns, I find that water is not available for appropriation due to potential impairments to fish and fish habitat. These potential impairments also raise public interest-related concerns.

## **RECOMMENDATIONS**

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

  
Ria Berns, Report Writer

05/07/2013  
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.*

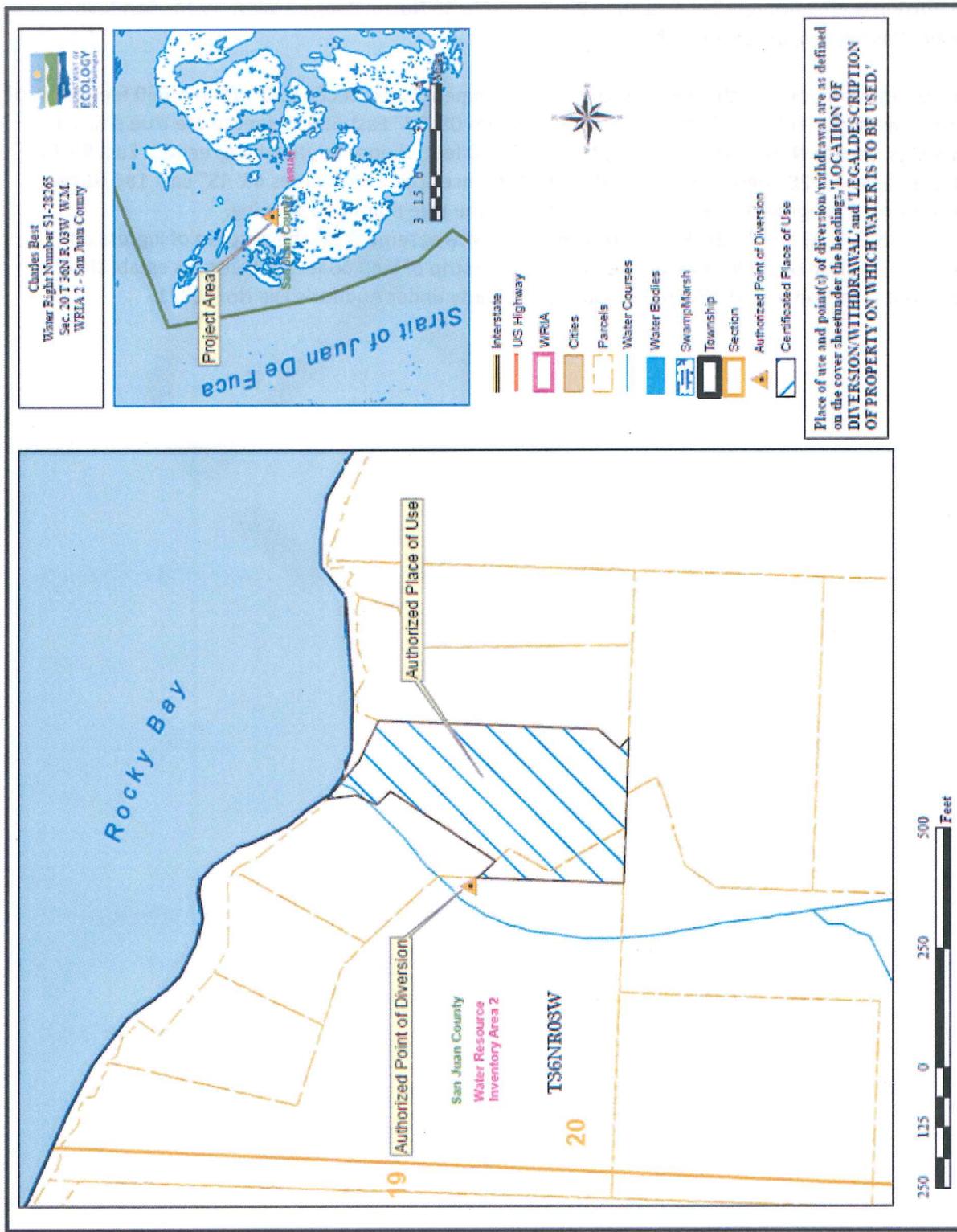
## **Selected References**

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U.S. Geological Survey. 2002. *Estimates of Ground-Water Recharge from Precipitation to Glacial Deposits and Bedrock Aquifers on Lopez, San Juan, Orcas, and Shaw Islands, San Juan County, Washington*. U.S. Geological Survey, Water-Resources Investigations Report 02-4114.

Wild Fish Conservancy Northwest. *Western Washington Water Type Assessments: 2005-2012*. <http://wildfishconservancy.org/maps?center=-122.97,48.6>. Accessed, April 30, 2013.

Attachment 1: Place of Use Map



Attachment 2: Place of Use Legal Description

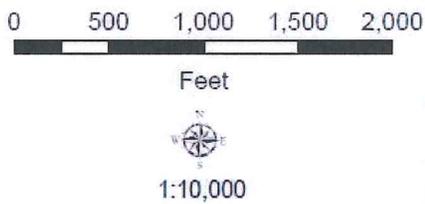
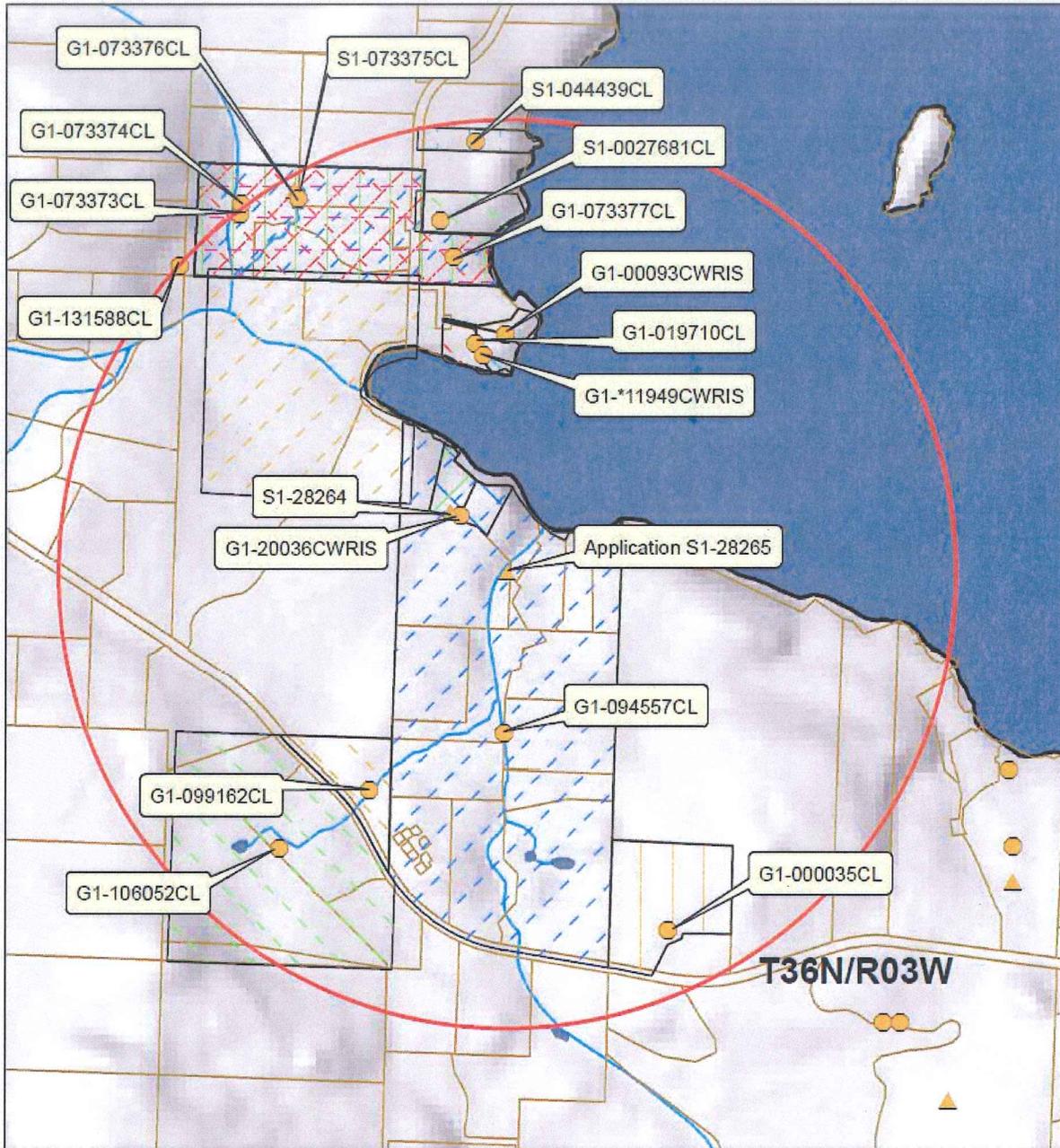
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That Portion of Government Lot 4, Section 20, Township 36 North, Range 3 West, W.M., San Juan County, Washington, described as follows:

Commencing at a point on the west line of said Government Lot 4, Section 20, which is 660 feet north of the southwest corner thereof; thence South 89 degrees 08' 57" East 656.18 feet to the true point of beginnings; thence North 0 degrees 50' 58" East 309.00 feet; thence South 44 degrees 00' East 89.73 feet; thence South 28 degrees 32' West 98.26 feet, thence South 30 degrees 46' 45" East 186.01 feet, thence North 89 degrees 08' 57" West 115.17 feet to the true point of beginning.

SUBJECT TO and TOGETHER WITH a non-exclusive easement for the purpose of ingress and egress and location of public utilities over and across a strip of land 60 feet in width, as established by instrument recorded with the Auditor of San Juan County under Auditor's File No. 90321.

Attachment 3: Water Rights in the Vicinity of S1-28265



- ▲ Surface Water Source
- Well
- Stream
- Water Body
- Parcels



Water Rights in the Vicinity of Application S1-28265  
San Juan County, Washington  
April 2013

