File NR CS2-SWC10458
WR Doc ID 4924010

State of Washington

DRAFT

REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Added or Changed Point of Withdrawal/Diversion

PRIORITY DATE	WATER RIGHT NUMBER
February 26, 1968	CS2-SWC10458

MAILING ADDRESS	SITE ADDRESS (IF DIFFERENT)
I &A MATLOCK LLC 10809 MOLLER DR NW GIG HARBOR WA 98332	15302 96TH ST E PUYALLUP WA 98372

Total Quantity Authorized for Withdrawal or Diversion

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

Total withdrawals or diversions from all sources must not exceed the total quantity authorized for withdrawal or diversion listed above.

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Irrigation	0.1		CFS	10		06/01 - 08/30

REMARKS

This water right is appurtenant to the same lands as SWC4087 and S2-25501.

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
10			

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Pierce	Puyallup River	Commencement Bay	10-PUYALLUP-WHITE

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Puyallup River	0519067701	19N	05E	06	S ½ S ½	47.1556	-122.2204
Puyallup River	0519067702	19N	05E	06	S ½ S ½	47.1566	-122.2181

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

0519067701, 0519067702

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Beginning at the northwest corner of Government Lot 13, Section 6, T. 19 N., R. 9 E. W. M.; thence north 87°04’53” east 810 feet, thence south 02°38’26” west 637.80 feet more or less to the Puyallup River; thence southwesterly along said river to the south line of Government Lot 12 of said Section 6; thence

south 87° 11'15" west to a point which is 651 feet east of the southwest corner of said Government Lot 12, thence north 28°53'38" east 1542.15 feet to the point of beginning.

Proposed Works

Each diversion has a pump situated in a pump house next to the Puyallup River. The pump's intake is a 6-inch in diameter pipe that extends from the pump house to the river. Water is pumped from the river, through a buried mainline. Sprinkler lines are attached to risers.

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?	Monthly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm or cfs)

Provisions

Measurements, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for each sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use". 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.

Recorded water use data can be submitted via the Internet. To set up an Internet reporting account, contact the Southwest Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Southwest Regional Office for forms to submit your water use data.

Department of Ecology personnel, upon presentation of proper credentials, will 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.

Department of Fish and Wildlife Requirement(s)

The intake(s) must 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/

Family Farm Permit

This authorization to use public waters of the state is classified as Family Farm Permit in accordance with Chapter 90.66 RCW. The land being irrigated under this authorization must fit the definition of a Family Farm as described in Chapter 90.66 RCW.

Proof of Appropriation
The water right holder must 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 water right. 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, will 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.

Therefore, I ORDER approval of Change Application No. CS2-SWC10458, subject to existing rights and the provisions specified above.

Signed at Olympia, Washington, this day of 2011.

_____
Michael J. Gallagher, Section Manager

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 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.

Mailing Addresses	Street Addresses
Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903 **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 **Department of Ecology** Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503

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
Tammy Hall, Department of Ecology
Water Right Control Number CS2-SWC10458

BACKGROUND

Description and Purpose of Proposed Change

On August 31, 2011, Ivan Matlock, representing I &A Matlock, LLC and DLM GEM, LLC (Matlocks), and Gilbert A (and Sandy) Mendoza (Mendozas), filed an *Application for Change of Water Right* to add a point of diversion to Surface Water Certificate (SWC) S2-SWC10458.

SWC10458, issued September 16, 1969 authorizes diversion of 0.1 cubic foot per second (cfs) and 10 acre-feet (ac-ft) per year from the Puyallup River for irrigation of 10 acres.

Attributes of the Existing Water Right and Proposed Change

Table 1. Attributes of original certificate and proposed change to SWC10458.

	Existing	***Proposed***
Name	Wallace H. Winters.	I &A Matlock LLC, DLM GEM, LLC, Gilbert A and Sandy Mendoza
Priority Date	02/26/1968	
Change Application Date		08/31/2011
Instantaneous Rate	0.1 cfs	Same
Annual Quantity	10 ac-ft/yr	Same
Purpose(s) of Use	Irrigation of 10 acres	Same
Period of Use	June 1- August 30	Same
Place(s) of Use	Beginning at the northwest corner of Government Lot 13, Section 6, T. 19 N., R. 9 E. W. M.; thence north 87°04'53" east 810 feet, thence south 02°38'26" west 637.80 feet more or less to the Puyallup River; thence southwesterly along said river to the south line of Government Lot 12 of said Section 6; thence south 87° 11'15" west to a point which is 651 feet east of the southwest corner of said Government Lot 12, thence north 28°53'38" east 1542.15 feet to the point of beginning	Same

Table 2. Proposed Sources of Diversion

Source Name	*Parcel*	*Twp*	*Rng*	*Sec*	*QQ Q*	*Latitude*	*Longitude*
Puyallup River	0519067701	19N	05E	06	S ½ S ½	47.1556	-122.2204
Puyallup River	0519067702	19N	05E	06	S ½ S ½	47.1566	-122.2181

Table 3. Existing Source of Diversion

Source Name	*Parcel*	*Twp*	*Rng*	*Sec*	*QQ Q*	*Latitude*	*Longitude*
Puyallup River	0519067702	19N	05 E	06	S ½ S ½	47.1566	-122.2181

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in S2-SWC10458

Public Notice

RCW 90.03.280 requires notice of a water right application be published once a week for two consecutive weeks in a newspaper of general circulation in the county where the water is diverted. An original public notice for this project proposal was posted in *The Peninsula Gateway,* published in Pierce County on October 19 and October 26, 2011. The Department of Ecology did not receive any protests or letters of concern in response to this notice.

State Environmental Policy Act (SEPA)

A SEPA determination evaluates if a proposed withdrawal will cause significant adverse environmental impacts. A SEPA threshold determination is required for:

1) Surface water applications for more than 1 cubic feet per second (cfs). For agricultural irrigation, the threshold increases to 50 cfs, if the project isn't receiving public subsidies.
2) Groundwater applications requesting more than 2,250 gpm.
3) Projects with several water right applications where the combined withdrawals meet the conditions listed above.
4) Projects subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA).
5) Applications that are part of several exempt actions that collectively trigger SEPA under WAC 197-11-305.

This application does not meet any of these conditions and is categorically exempt from SEPA.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states a water right put to beneficial use can be changed. The point of diversion, place of use, and purpose of use can be changed as long as other water rights will not be harmed or injured.

The Washington Supreme Court has held that when Ecology processes an application for change to a water right, they are required to make a tentative determination. A tentative determination establishes

the extent and validity of the claim or water right to verify that it is eligible for change.(*R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp.)*

INVESTIGATION

The material reviewed in support of this application included the following:

- The State Surface Water Codes, administrative rules, and policies.
- Department of Ecology's Water Right Tracking System (WRTS) database.
- Topographic and local area maps.
- Telephone interviews with Ivan Matlock and David Matlock.
- Notes from a site visit on August 25, 2011.

Intent of Proposed Change

The intent of this proposed change is to add a second point of diversion to this water right. The new proposed point of diversion is about 730 feet downstream of the currently authorized point of diversion. This will allow each of the two parcels in the place of use to have their own diversion. After Ecology issues the Superseding Certificate for this proposed change, Ecology will perform an administrative split of the water right to apportion a share of the water right to each parcel.

History of Water Use

The subject property is located in Alderton, in Pierce County, about two miles south of Sumner. Ivan Matlock (I&A Matlock, LLC) and David Matlock (DLM GEM, LLC) (Matlocks) have historically farmed around 275 acres in the Puyallup River basin near Alderton.

The subject of this *Application for Change* is about 15.5 acres of agricultural property, consisting of two parcels, on the north bank of the Puyallup River. One 11-acre parcel is owned by the Matlocks and a second parcel, 4.53 acres, is owned by the Mendozas.

See Attachment #1

The subject property of this *Application for Change* has been continuously irrigated since about 1950. At that time, Paul Arndt owned about 25 acres and irrigated roughly 6 acres of cleared land. This irrigation was permitted under SWC4087.

Wallace Winters purchased the property in the 1960's. Mr. Winters cleared more land and increased the irrigated area. He applied for and received a water right allowing him to irrigate an additional 10 acres (SWC10458, the subject of this *Application for Change*).

In 1975, the Matlocks (Matlock Fruit Farms) purchased the property and continued to irrigate the same 15.5 acres of property. They applied for a water right without realizing that irrigation was already permitted under two previously issued certificates. In February 1980, SWC S2-25501 was issued allowing irrigation of 9.6 acres and 19.2 ac-ft (partially non-additive to the previously issued certificates). Because the irrigated property has remained unchanged since Ecology issued SWC10458, Ecology likely made a ministerial error. S2-25501 should have authorized 15.5 acres of irrigation rather than 9.6.

In 2009, the Matlocks sold the 4.53 acre parcel to the Mendozas.

Tentative Determination of Extent and Validity of SWC10458

The Washington Supreme Court holds that when processing an application for change to a water right, Ecology is required to make a tentative determination of extent and validity of the claim or right. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*. This is necessary to establish whether the claim or right is eligible for change.

The Matlocks irrigate using a 20 h.p. pump capable of producing up to 500 gpm situated in a pump house next to the Puyallup River. The pump's intake is a 6-inch in diameter pipe that extends from the pumphouse to the river. Water is pumped from the river, through a buried mainline, and sprinkler lines are attached to risers. The crop grown varies seasonally, but typical crops in the area are strawberries, green beans, pumpkins, and corn.

Total irrigation requirements are a combination of crop needs, conveyance losses, and evaporative losses. Crop needs vary; strawberries require little irrigation (4.63 inches) whereas corn needs much more water (10.4 inches) (Natural Resources Conservation Services, 2005). Using an irrigation efficiency of about 70% for sprinkler irrigation, 15.5 acres of corn would need 19.2 ac-ft a year.

Since SWC10458 authorized irrigation of 10 acres and 10 ac-ft per year at a rate of 0.1 cfs (45 gpm), the entire amount tentatively is determined to be valid and eligible for change.

Proposed Use

The purpose use will not change.

Other Rights Appurtenant to the Place of Use

The Matlock property is also covered by these two water right certificates:

- S2-*08141CWRIS (4087C) was issued in June 1951 to Paul Arndt for irrigation of 6 acres. This certificate is appurtenant to the entire eastern parcel, currently owned by the Mendozas (4.53 acres) and about 1.48 acres of the parcel currently owned by the Matlocks. Although this certificate authorized diversion of 0.06 cfs (Puyallup River) it did not specify an annual quantity. During the evaluation for S2-25501, a water duty of 1 ac-ft per acre was assumed for Certificate 4087 in the Report of Examination.
- SWC S2-25501, issued February 26, 1980, authorizes diversion of 1 cfs and 19.2 ac-ft per year (non-additive) from the Puyallup River for irrigation of 9.6 acres. The place of use of this water right is for both parcels.

Other Rights using the same Point of Diversion

S2-25500 issued March 17, 1981 to Jerry Oliver et al and Matlock Farms uses the same Point of Diversion. The Place of Use for S2-25500 is property adjacent to the Place of Use for S2-25501, SWC4087, and SWC10458. S2-25500 authorizes 1 cfs and 54 ac-ft for irrigation of 27 acres.

Hydrologic/Hydrogeologic Evaluation

The Puyallup River originates from glaciers on the west slopes of Mount Rainier. The river is about 45 miles long and flows generally northwest, emptying into Commencement Bay. The Puyallup River and its tributaries drain an area of about 948 square miles in Pierce County and southern King County. The

watershed is the youngest in the Puget Sound region, forming from a series of lahars starting about 5,600 years ago.

The subject property is at about River Mile (RM) 12, roughly 15 miles from where the Puyallup River empties into Commencement Bay. In the area of the subject site, the Puyallup River floodplain is relatively flat and about two miles wide.

Impairment Considerations

This change is not expected to impair streamflow in the Puyallup River since water use will not increase. The change will add a second point of diversion 730 feet downstream of the currently authorized point of diversion. Further, there are no other certificated water rights for use from the Puyallup River between the proposed new point of diversion and the original point of diversion.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

In accordance with Chapters 90.03 and 90.44 RCW, I find that:

- SWC 10458 is in good standing and available for change.
- Irrigation is a beneficial use.
- The proposed change of point of diversion will not impair existing rights.
- Approval of the requested changes will not enlarge the original right conveyed by SWC10458, subject to the provisions specified above.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to SWC10458 be approved in the amounts and in the limits listed below and subject to the provisions beginning on Page 2.

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:

- 0.1cfs
- 10 ac-ft per year
- Irrigation of 10 acres

Point of Diversion

- S ½ S ½, Section 6, Township 19 North, Range 5 E.W.M.

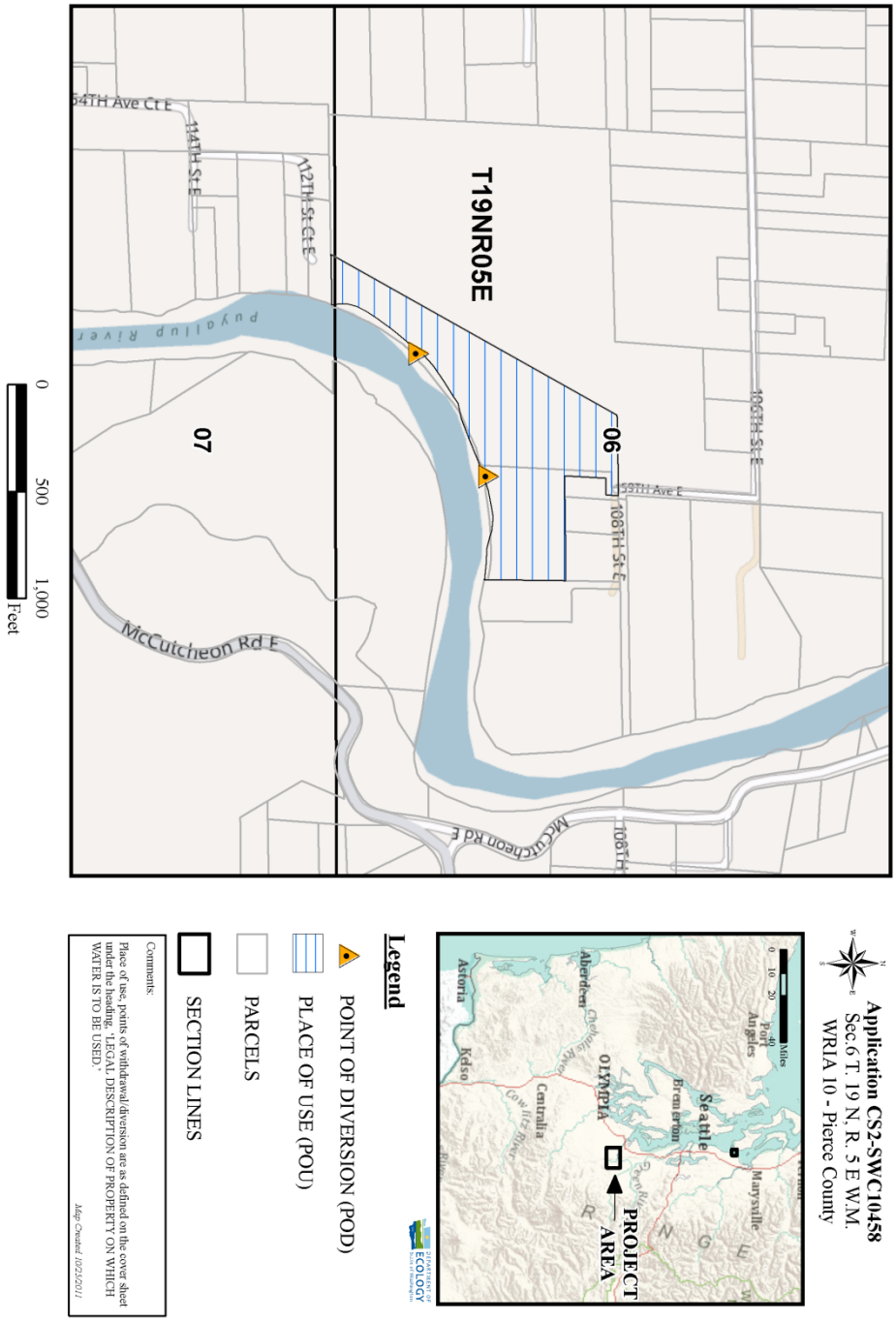
Place of Use

- As described on Page 1 of this Report of Examination.

Tammy Hall *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.

References:

Natural Resources Conservation Services, 2005, *Washington State Irrigation Guide*.

Attachment #1: Site Location Map