

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE
7/1/1992

WATER RIGHT NUMBER
S2-28574

MAILING ADDRESS
JOHN MULLENIX
11162 US HWY 12/ PO BOX 788
RANDLE WA 98377-9110

SITE ADDRESS (IF DIFFERENT)

Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
	DENIED	

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Environmental quality Irrigation						DENIED

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
LEWIS	DAVIS CREEK	COWLITZ RIVER	26-COWLITZ

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
DAVIS CREEK	29788002000 & 029788001000	--	12N	08E	16	NW NW	46.53447	-121.81643

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)
29788002000 & 029788001000

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Proposed Works

To divert water from Davis Creek into a man-made gravel settling pond for flood control and irrigation.

Development Schedule

BEGIN PROJECT

COMPLETE PROJECT

PUT WATER TO FULL USE

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 there will be detriment to the public interest.

Therefore, I ORDER denial of Application No. S2-28574.

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).

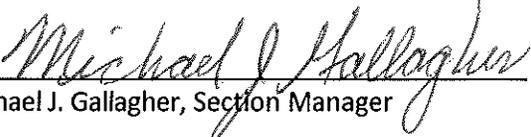
To appeal you must do the following within 30 days of the date of receipt of the Order.

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 RD SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Olympia, Washington, this 12th day of March 2015.


 Michael J. Gallagher, Section Manager

INVESTIGATOR'S REPORT

Application for Water Right -- Mullenix

Water Right Control Number S2-28574

Matthew K. Rakow, Department of Ecology

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application S2-28574.

On July 1, 1992 John and Carolyn Mullenix submitted Water Right Application S2-28574 requesting to divert one cubic foot per second (cfs) from Davis Creek for pond/flood control and irrigation purposes. The Mullenix's also submitted Reservoir Application R2-28575 concurrently with Water Right Application S2-28574 to construct a gravel settling pond adjacent to Davis Creek.

Table 1. Summary of Requested Water Right

Applicant Name:	John L. & Carolyn M. Mullenix
Date of Applications:	7/1/1992
Place of Use	That portion of the northwest quarter of the northwest quarter of Sec. 16, T. 12 N., R. 8 E., W.W.M., in Lewis County, Washington, lying south of Primary State Highway Number 5 (U.S. Highway 12).

County	Waterbody	Tributary To	WRIA
Lewis	Davis Creek	Cowlitz River	26-Cowlitz

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Pond/Flood Control	1	CFS	Not Specified	01/01	12/31
Irrigation	1	CFS	8	10/01	05/01

Source Name	Parcels	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Davis Creek	29788002000 & 029788001000	12N	08E	16	NW NW	46.53447	-121.81643

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; W.W.M. = West of the Willamette Meridian; Datum: NAD83/WGS84.

Legal Requirements for Approval of Appropriation of Water*Required Tests for New Appropriations of Water*

In accordance with RCW 90.03.290, in order to approve an application for a new water right, each element of the following 4-part test must be satisfied:

- Water must be for beneficial use.
- The use of water must not be detrimental to the public interest.
- Water must be physically and legally available.
- New appropriations must not impair existing water right holders.

A new application for a water right must be denied if it fails any one of these four tests.

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 *Morton Journal* on September 2 and 9, 1992. The Department of Ecology (Ecology) received no protests or letters of concern because of this notice.

Consultation with the Department of Fish and Wildlife

Ecology must give notice to the Department of Fish and Wildlife (DFW) of applications to divert, withdraw, or store water. Ecology gave notice of this water right application to the DFW in late 1992 and requested additional consultation in 2014.

State Environmental Policy Act (SEPA)

Lewis County issued a Mitigated Determination of Non-significance on August 4, 1992. The mitigating measures require the applicant to complete all work to the requirements of the DFW.

INVESTIGATION

Project Area Description

This project is located approximately five miles east of the town of Randle in Water Resource Inventory Area (WRIA) 26. The proposed point of diversion and place of use are located on the Davis Creek alluvial fan approximately 1.1 miles northeast of the Cowlitz River.

The headwaters of Davis Creek start at an elevation of approximately 4,000 feet (ft) above mean sea level (amsl) in a bowl feature situated between Purcell and Davis mountains. Water flowing down to the base of the mountains and onto the alluvial fan loses approximately 3,000 ft of elevation over a distance of approximately 4.7 miles. The applicant's property is located approximately 800 ft south from the base of the mountains.

Proposed Use and Basis of Water Demand

The proposed use of water under this water right application is for a flood control pond and irrigation. Flood control falls under the use category of Environmental Quality.

Flood Control Pond

The applicants have had problems with their property flooding after large storm events. Large quantities of gravel wash down from the mountains into Davis Creek during and after the storm events. The applicant's property sits on the alluvial fan of Davis Creek where the gradient of the creek is gentle. The gentle grade causes gravel to deposit near the applicant's property and the creek subsequently floods the applicant's property.

The project consists of diverting water under this water right into a spillway that feeds a gravel settling pond. Ideally, gravel carried down from the mountains would enter the diversion and settle into the pond. Water then would flow out of the settling pond back into Davis Creek leaving behind its gravel load.

Reservoir permit application R2-28575 requests the construction of the settling pond and maintains the same priority date of application S2-28574. The proposed dimensions of the settling pond measure one acre in area and a maximum depth of 12 feet. Construction of a dam is not required for this project.

Irrigation

The applicant plans to use water from the settling pond to irrigate eight acres of land described in the place of use portion of the application.

Other Rights Appurtenant to the Place of Use

There is one water right appurtenant to the proposed place of use. Water Right Certificate S2-26340 has a priority date of May 3, 1983 and authorizes the diversion of 1.0 cfs instantaneously from Davis Creek and an annual total of 4.0 ac-ft/yr. The listed uses for this water right are recreation, irrigation, and fish propagation.

Discussion of Considerations

The processing of this water right application and Reservoir Permit Application R2-28575 has halted due to the DFW's conclusions and recommendations for this project. The proposed project fails the statutory test requiring new appropriations of water not to be a detriment to the public interest.

The following is a brief summary of significant correspondence between the DFW, Ecology, and John Mullenix:

- January 13, 1993 - DFW requests Ecology postpone any application decisions until the DFW conducts its own investigation into the project.
- June 4, 1993 - DFW issues a formal decision of denial of Mr. Mullenix's Hydraulic Project Approval (HPA).
- August 17, 1993 - Ecology requests an update from the DFW on the status of the DFW's investigation.
- December 2, 1993 - DFW provides a copy of the June 4, 1993 letter sent to Mr. Mullenix and a summary letter explaining its recommendations.
- July 22, 2014 – Matt Rakow (Ecology) discusses with DFW Lewis County Habitat Biologist Scott Brummer regarding the DFW's current position on the proposed project.

The DFW's June 4, 1993 letter to John Mullenix, citing a project assessment from DFW engineer Ken Bates P.E., indicated that substantial upstream head cutting and channel movement would occur if the proposed diversion structure failed. Alternatively, the main channel of Davis Creek adjacent to the settling pond would degrade and be depleted of gravel should it succeed. Furthermore, adult and juvenile fish strandings would occur in the settling pond.

The DFW's summary letter to Ecology states, "We recommend that the application be denied, due to likely significant adverse impacts to resident and anadromous fisheries resources in Davis Creek, that would result from potential structure failures, fish stranding, stream morphology destabilization, passage barriers, etc."

Scott Brummer indicates that there are no recent HPA applications on file with the DFW. He is familiar with Mr. Mullenix's proposed project because he conducted an in-person pre-application consultation with Mr. Mullenix. Mr. Brummer's opinion is that the DFW would reject a new HPA application for the proposed project and recommend denial of both S2-28574 and R2-28575.

Based on the DFW's conclusions, there is a significant risk that this project would result in the following:

- Head cutting and channel movement upstream of the applicant's property jeopardizing personal property of other citizens.
- Degradation of the stream channel and fish habitat due to gravel depletion.
- Stranding of resident and anadromous fish species in the gravel settling pond.

Because of these potentially serious consequences, which far outweigh the benefit of flood control on the applicant's property, the proposed uses would be a detriment to the public interest.

WRIA 26 Watershed Planning Goals

The initiating local governments created and adopted the 2004 WRIA 25 and 26 Watershed Management Plan under authority of RCW 90.82. The watershed plan sets forth three planning goals that include protecting or enhancing conditions in the watershed, processes for developing and implementing the watershed plan, and improving information and data management. The proposed project does not protect or enhance the conditions in the Cowlitz Watershed.

Conclusions

I find that approval of this application will be detrimental to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that Water Right Application S2-28574 be denied.



Matthew K. Rakow



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.