



File NR G4-28481
WR Doc ID 2284158

State of Washington
Department of Ecology
Office Of Columbia River
Report of Examination for
Sullivan Lake Water Supply Project

PRIORITY DATE
6/22/1984

APPLICATION NUMBER
G4-28481

MAILING ADDRESS
DONALD TATLEY
27021 SE 150TH ST
ISSAQUAH, WA 98027-8349

SITE ADDRESS (IF DIFFERENT)

See POU description below.

Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
2,250	GPM	977

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Irrigation of 300 acres	2,250		GPM	977		04/01 - 10/31

REMARKS

Withdrawals from wells and diversions from surface water collectively may not exceed 2,250 gpm and 977 acre-feet per year.

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
OKANOGAN	Groundwater		48-METHOW
OKANOGAN	Columbia River	Pacific Ocean	48-METHOW

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Well #15b	3023242002		30N.	23E.W.M.	24	SE SE	48.07723	-119.89004
Well	3023242002		30N.	23E.W.M.	24	SE SE		
Well	3023242002		30N.	23E.W.M.	24	SE SE		
Well	3023240001		30N.	23E.W.M.	24	NE SW		
Well	3023240001		30N.	23E.W.M.	24	NE SW		
Well	3023240001		30N.	23E.W.M.	24	SE NW		
Columbia River	3024300036		30N.	23E.W.M.	30	SE SW	48.06429	-119.87736
Columbia River	3024300036		30N.	23E.W.M.	30	SW SW		

Datum: NAD83

Place of Use

PARCELS (NOT LISTED FOR SERVICE AREAS)

3023134004, 3023134001, 3023131004, 3023131001, 3023134003, 3023134005, 3023134006, 3023131003, 3023131002, 3023133003, 3023133001, 3023132003, 3023132001, 3023132002, 3023240001, 3023241001, 3023241003, 3023242004, and 3023242002.

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

All of Section 13, T. 30N., R. 23E.W.M, AND
All of Section 24, T. 30N., R. 23E.W.M. lying east of Watson Draw Road, excepting therefrom the N $\frac{1}{2}$ NW $\frac{1}{4}$, the SW $\frac{1}{4}$ SE $\frac{1}{4}$, and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 24.

Proposed Works

Piping and delivery of irrigation water to 300 acres of general agricultural irrigation.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	April 3, 2020	April 3, 2021

Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume in acre-feet
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm)

Provisions

Water Service Contract

Use of water under this permit or certificate is contingent upon the applicant's compliance with a water service contract with Ecology for recovery of costs associated with Sullivan Lake Water Supply Development Project. Failure to comply with the terms of the water service contract will result in cancellation of the permit or revocation of the certificate.

Ties to releases at Sullivan Lake

Water authorized under this Permit is tied to releases of water stored in Sullivan Lake under Pend Oreille PUD's 1907 claimed storage right (Water Right Claim Number 300245 and Certificate of Change Vol. 2 Page 817). The releases are authorized under S3-30635, to benefit fish and provide mitigation water for out-of-stream uses. Water used under this permit is contingent upon the releases from Sullivan Lake occurring under S3-30635(B)C.

Limits on Changes/Transfers

Any future change or transfer proposed under this authorization is limited in geography and purpose of use pursuant to RCW 90.90.110.

Wells, Well Logs and Well Construction Standards

All wells constructed in the state shall meet the construction requirements of WAC 173-160 titled "Minimum Standards for the Construction and Maintenance of Wells" and RCW 18.104 titled "Water Well Construction". Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard shall be decommissioned.

All wells shall be tagged with a Department of Ecology unique well identification number. If you have an

existing well and it does not have a tag, please contact the well-drilling coordinator at the regional Department of Ecology office issuing this decision. This tag shall remain attached to the well. All water measuring reports submitted to Ecology must reference this tag number.

Installation and maintenance of an access port as described in WAC 173-160- 291(3) is required.

Measurements, Monitoring, Metering and Reporting

An approved measuring device must 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", Chapter 173-173 WAC, which 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 shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.

Water Level Measurements

In order to maintain a sustainable supply of water and ensure that your water source is not impaired by future withdrawals, static water levels should be measured and recorded monthly using a consistent methodology. Static water level is defined as the water level in a well when no pumping is occurring and the water level has fully recovered from previous pumping. Static water level data should include the following elements:

- Unique Well ID Number.
- Measurement date and time.
- Measurement method (air line, electric tape, pressure transducer, etc.).
- Measurement accuracy (to nearest foot, tenth of foot, etc.).
- Description of the measuring point (top of casing, sounding tube, etc.).
- Measuring point elevation above or below land surface to the nearest 0.1 foot.
- Land surface elevation at the well head to the nearest foot.
- Static water level below measuring point to the nearest 0.1 foot.

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>

Easement and Right-of-Way

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

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, 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.

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).

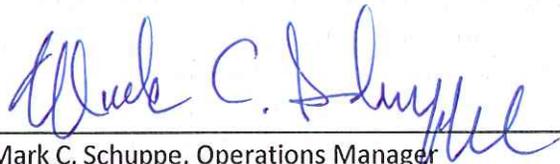
To appeal you must do the following within 30 days of the date of receipt of the Order.

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 Yakima, Washington, this 13th day of June 2016.



Mark C. Schuppe, Operations Manager
Office of Columbia River

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

BACKGROUND

Description and Purpose of Proposed Application

Ecology’s Office of Columbia River (OCR) is processing this application as a potential recipient of a new source of water purchased under the Columbia River Basin Water Supply Development Account (RCW 90:90.010). This water derives from the “Sullivan Lake Water Supply Project” (the Project). Sullivan Lake is located north of Spokane in the far northeast corner of Washington State, near the town of Lone, Washington. Dammed in the early 1900’s, storage releases were primarily managed for summer recreation and hydropower, among other uses, with large releases occurring in the fall. Under the Project, water previously released in the fall will instead be released during summer months. This shifts the hydrograph to a more normative state, enhancing instream flows and providing mitigation for new out-of-stream uses. Public Utility District No. 1 of Pend Oreille County (the PUD) operates the dam and is signatory to an Agreement that controls how water is to be released under the Project (Sullivan Lake Hydroelectric Project Settlement Agreement, dated March 26, 2010, hereafter referred to as the 2010 Settlement Agreement). Other signatories to this Agreement were Ecology, the Washington Department of Fish and Wildlife, the United States Fish and Wildlife Service, the United States Forest Service, the Bureau of Indian Affairs, Seattle City Light, the Kalispel Tribe of Indians, the Selkirk Conservation Alliance, The Lands Council, American Whitewater, the Town of Cusick, and certain citizens-at-large. The PUD and OCR are also signatories to a separate Memorandum of Agreement (MOA) for the Project. On December 12, 2012, Ecology issued a secondary use permit, S3-30635P, authorizing the use of water stored in Sullivan Lake for mitigation of out-of-stream uses, among other purposes. In March 2015, a certificate issued that documented the perfection of 5,000 ac-ft for the purposes of instream flow and mitigation. RCW 90.90.110 limits water allocations under the Project to six Washington State northeastern counties: Douglas, Ferry, Lincoln, Okanogan, Pend Oreille, and Stevens. This application proposes a use in Okanogan County.

As early as 2012, the applicants were notified of the potential availability of Project water as mitigation for this application and they expressed interest then. More recently, in December 2014, as application processing became imminent, the applicants again indicated their intent to participate in the Project. In October of 2015, the applicants had firm estimates of their farming plans and provided them to Ecology.

Attributes of the subject application are presented below in Tables 1 and 2.

Table 1: Application Summary

Name	Don and Darlene Tatley
Priority Date	6/22/1984
Instantaneous Rate	2250 gallons per minute (gpm)
Annual Quantity	Not Specified
Purpose(s) of Use	Domestic and Irrigation
Period of Use	Continuous (Domestic) and Seasonal (Irrigation)
Place(s) of Use	Portions of Sections 13 & 24, T. 30N., R. 24E.W.M.

Table 2: Proposed Sources of Withdrawal and Diversion

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Well #15b	3023242002		30N.	23E.W.M.	24	SE SE	48.07723	-119.89004
Well	3023242002		30N.	23E.W.M.	24	SE SE		
Well	3023242002		30N.	23E.W.M.	24	SE SE		
Well	3023240001		30N.	23E.W.M.	24	NE SW		
Well	3023240001		30N.	23E.W.M.	24	NE SW		
Well	3023240001		30N.	23E.W.M.	24	SE NW		
Columbia River	3024300036	N/A	30N.	24E.W.M.	30	SE SW	48.06429	-119.87736
Columbia River	3024300036	N/A	30N.	24E.W.M.	30	SW SW		

Datum: NAD 83

Legal Requirements for Approval of Appropriation of Water

Chapters 90.03 and 90.44 RCW authorize the appropriation of public water for beneficial use and describe the process for obtaining water rights. Laws governing the water right permitting process are contained in RCWs 90.03.250 through 90.03.340 and RCW 90.44.050. In accordance with RCW 90.03.290, determinations must be made on the following four criteria in order for an application for a water right to be approved:

- Water must be available
- There must be no impairment of existing rights
- The water use must be beneficial
- The water use must not be detrimental to the public interest

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 Quad City Herald during the weeks of March 19 and March 26, 2015.

Notice to the Washington Department of Fish and Wildlife

Ecology must give notice to the Washington Department of Fish and Wildlife (WDFW) of applications to divert, withdraw or store water (RCW 77.57.020). On March 11, 2015, a copy of the application and a brief description of the proposal were sent electronically to WDFW.

Consultation under WAC 173-563-020

Under WAC 173-563-020(4), consultation is required before issuance of new Columbia River water right permits:

The instream flows established and implemented by this chapter for instream and out-of-stream uses, and the average weekly flows applied by this chapter to out-of-stream uses do not apply to any application for water from the main stem Columbia River on which a decision is made by the department of ecology on or after July 27, 1997. Any water right application considered for approval or denial after that date will be evaluated for possible impacts on fish and existing water rights. The department will consult with appropriate local, state, and federal agencies and Indian tribes in making

this evaluation. Any permit which is then approved for the use of such waters will be, if deemed necessary, subjected to instream flow protection or mitigation conditions determined on a case-by-case basis through the evaluation conducted with the agencies and tribes.

On November 7, 2012, Ecology contacted local, state, and federal agencies and Indian tribes requesting consultation and comments on issuing new permits from the Columbia River mitigated by 14,000 acre-feet of water under the Project. Parties were notified by mail. A list of mailing recipients is available in the file.

From these consultations, Ecology received a written response from WDFW, which supports the development of new water supplies under the Project. WDFW also encouraged Ecology to consult with fish managers on the timing of releases. This consideration has been addressed previously in the planning process for the MOA for the Project, which included input from WDFW, and the PUD will release water in a manner consistent with the terms set forth in the MOA.

State Environmental Policy Act (SEPA)

The following is excerpted from the Report of Examination for the Secondary Use Permit S3-30635P:

On April 8, 2011, in compliance with the National Environmental Policy Act (NEPA), the Federal Energy Regulatory Commission (FERC) published a Draft Environmental Impact Statement (EIS) for two related projects: 1) a relicense application of Boundary Dam on the Pend Oreille River by Seattle City Light, and 2) a license surrender application for Sullivan Dam by the PUD. The applications were causally linked by mitigation measures that Seattle City Light proposed for its relicensing that were located at Sullivan Lake. Ecology offered comments to FERC on the project, both during scoping of the EIS and on the draft EIS, which were generally incorporated by FERC into the EIS. On September 21, 2011, Seattle City Light and the PUD, each acting as lead agencies for their respective project actions, adopted the FERC EIS via a SEPA Notice of Adoption.

Secondary use permit S3-30635P is a component of the overall project considered under the FERC EIS, which was adopted under SEPA. As such, Ecology relied on the FERC EIS in its SEPA determination for S3-30635P. The FERC EIS considered all the possible effects on Sullivan Lake as a result of the relicensing effort, including reoperation of the lake to accommodate downstream releases under the 2010 Settlement Agreement. The FERC EIS also considered downstream impacts and cumulative impacts associated with permitting water mitigated by Sullivan Lake releases. Specific impacts associated with proposed out-of-stream uses under the subject application may require additional SEPA review.

Application-Specific SEPA compliance

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.

- It is a surface water right application for more than one cubic foot per second (cfs). If the project is for agricultural irrigation, the threshold is increased to 50 cfs, so long as the project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gpm;
- It is an application combined with other water right applications for the same project and exceeds the amounts above;

- 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);
- It is part of a series of exempt actions that, considered together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

The subject application proposes a water use that does not exceed any of the conditions listed above, and as such does not trigger a SEPA threshold determination.

INVESTIGATION

The subject application was submitted by Don and Darlene Tatley on June 22, 1984, and assigned tracking number G4-28481. The intent is to develop 300 acres of orchard (and perhaps alfalfa/hay) and domestic use for one house. In the 1980s and early 1990s, processing of this application began by Ecology. Questions about water availability in the amount required for 300 acres of agricultural irrigation resulted in an extensive study undertaken by a private consulting firm (McFarland and Associates), which included several resistivity transects to estimate certain aquifer parameters. Some 20+ wells were drilled within the proposed place of use too, which aided in the estimation of aquifer parameters. With the listing of sockeye salmon in 1991, a moratorium on processing applications along the Columbia and Snake Rivers suspended further processing of this application. The moratorium was lifted in 1997. In 2010, processing of this application began through the cost-reimbursement program. The consulting firm hired to process the application (Hart Crowser) found that the applicant's wells intercepted water that discharges to the Columbia River. The applicant's proposed ground water withdrawals could therefore potentially impact threatened and/or endangered aquatic species listed pursuant to the Endangered Species Act of 1973. Upon this finding, consultation with other agencies, tribes, and such was initiated under Chapter 173-563 WAC. From the comments received, it appeared that impacts to listed species would exist and further processing ceased. Sometime prior, the applicants had built a house and hay barn on the property and used a well for their domestic uses. In the summer of 2014, a wildfire of historic proportion burned the entire house and barn down (and indeed, several other homes in the area, including some within nearby Pateros). The applicants have expressed their intent to rebuild the house and barn and would continue using domestic water from a well.

Under the Project, water has become available to mitigate for new uses of Columbia River water in the subject area. The applicant is eager to participate in the Project and begin applying water for irrigation. A pending agreement with a neighboring orchard (Fugachee Orchards) would allow the applicant to use Fugachee Orchards' existing diversion located on the Columbia River. Another site located on the Columbia River may also be used, depending on pump and pipe capacities and other logistical considerations. The applicant would like to retain the use of wells on the property to increase flexibility.

Impairment Considerations

Water Availability

For water to be available for appropriation, it must be both legally and physically available.

Legal Availability

The Project involves releases of 14,000 acre-feet (ac-ft) of water stored in Sullivan Lake under the PUD's 1907 claim to a storage right (Water Right Claim 300245 and Certificate of Change Vol. 2 Page 817). These releases are divided up such that one-third remains instream for stream flow enhancement to benefit aquatic life (4,667 ac-ft) and are not subject to further appropriation or mitigation. The remaining two-thirds, pursuant to RCW 90.90.110, are to supply or offset out-of-stream uses to the six

northern counties identified above (9,333 ac-ft). At least one-half of the out-of-stream water is reserved for municipal, domestic, and industrial uses.

Surface Water Permit S3-30635P was issued on January 12, 2012, to the PUD, authorizing a maximum of 225 cfs, 31,209 ac-ft per year for in-lake and out-of-lake uses, with a priority date of March 4, 2011. In-lake uses include fisheries, recreation, and aesthetics, while out-of-lake uses include instream flow, power, and mitigation from Sullivan Lake discharges. The out-of-lake uses germane to the Project extend through the Pend Oreille River, into the Columbia River, and either (1) continue to Douglas County's southern border (mitigation), or (2) continue along the length of the Columbia River to discharge to the Pacific Ocean (instream flow). From the 2010 Settlement Agreement, Project water used as mitigation is to be used outside the Sullivan Creek drainage, which is defined as "...downstream (in the Pend Oreille River / Columbia River system) of the calculated range of thermal mixing of Sullivan Creek water into the Pend Oreille River or presumptively, river mile 26 on the Pend Oreille River." River mile 26 on the Pend Oreille River is located approximately one mile downstream (north) from the confluence of Sullivan Creek and the Pend Oreille River, near Deadman's Eddy. The Pend Oreille flows north into British Columbia, Canada (BC), makes a turn to the west, and discharges to the Columbia River just inside BC. Two dams are located on the Pend d'Oreille River (Canadians use the spelling "Pend d'Oreille") where it sojourns into BC. BC Hydro operates the first of the dams that water entering BC encounters, known as Seven Mile Dam. This 1970's era dam stands about 215 feet tall and pools water back into Washington, to the toe of Seattle City Light's Boundary Dam. Its primary purpose is hydropower development. The second dam, built in 1954 and located immediately upstream from the confluence with the Columbia River, is privately owned and generates hydropower for metallurgical operations at Trail, BC. This dam is known as Waneta Dam. Neither BC Hydro nor any BC entity is a party to any agreement directly related to the Project.

Permit S3-30635P is considered the "secondary" water use permit authorizing use of water stored under Water Right Claim 300245 and Certificate of Change Vol. 2 Page 817. This permit authorized the release of water from Sullivan Lake according to a new minimum discharge flow regime. This new flow regime involves the release of 5,000 ac-ft during the period June 1 to August 31 and an additional 9,000 ac-ft released during September only. Specifics of the new flow regime can be found in the 2010 Settlement Agreement and in the Memorandum of Agreement between the PUD and OCR (a revised version was executed in June, 2013). In general, the new flow regime shifts the hydrograph towards a more normative state, consistent with the fisheries objectives within NOAA Fisheries 2008 Biological Opinion*. In 2011, the PUD and OCR provided notice of the creation of a Trust water right under RCW 90.42.040 and met the public notice requirements under RCW 90.03.280. Responses were discussed in the ROE for Application S3-30635.

* http://www.westcoast.fisheries.noaa.gov/fish_passage/fcrps_opinion/federal_columbia_river_power_system.html

Pursuant to RCW 90.90.110, the two-thirds of the 14,000 ac-ft released is subject to appropriation under the Project once perfected. In November, 2014, the PUD submitted a Proof of Appropriation form indicating that the initial 5,000 ac-ft had been released according to the new flow regime. Also in December, 2014, the PUD conveyed these 5,000 ac-ft to the State's Trust Water Rights Program (Trust) by quit claim deed. In March, 2015, OCR issued a Trust Water Certificate documenting the perfection of 5,000 ac-ft as instream flow and the conveyance to Trust. The remaining 9,000 ac-ft would be released in 2015 after construction work on Sullivan Lake dam is complete and, as such, OCR issued a Superseding Permit in February, 2015, to account for this future release and the other not-yet-perfected uses.

Until the 9,000 ac-ft are released and certificated, any permitted quantity resulting from the subject application would be mitigated by the already-released and certificated 5,000 ac-ft of instream flow. Under the Project, mitigation is provided at a ratio of one-to-one.

Physical Availability

Within the six northeastern counties identified above, water uses associated with the Project would divert water from the Pend Oreille River downstream of river mile 26 and the Columbia River downstream of its confluence with the Pend Oreille and upstream of Douglas County's southern boundary, or withdraw associated groundwater in close hydraulic connection with these two river reaches. Some uses would be seasonal while others would be on a continuous, year-round basis. Mitigation releases from Sullivan Lake will occur during time periods that will provide a greater benefit to fish populations. These releases will occur during the months in which increased flow in the rivers will benefit fish the most, generally during June through September. The exact quantities and timing of the mitigation releases depend on a complex set of objectives and directives outlined in the 2010 Settlement Agreement. Generally, 5,000 ac-ft are released during the period June 1 to August 31, and 9,000 ac-ft are released during September.

The subject application is being investigated under the mitigation framework established under the Project. In order to mitigate the impacts of any new appropriation of ground water on the Pend Oreille or Columbia Rivers, hydrologic evidence must indicate that impacts on the Pend Oreille or Columbia Rivers associated with the proposed water use would be successfully mitigated by the Sullivan Lake mitigation releases. The applicant intends to use either wells (up to six) located within or near the place of use or surface water diversions located on the Columbia River, or any combination of ground and surface water. Within the defined area where mitigation water is available, diverting surface water directly from the Columbia River is clearly within the mitigation objectives of the Project and thus would be physically available. Conversely, area hydrogeology involved with withdrawing ground water may complicate this determination. Through Ecology's cost-reimbursement program the applicant paid for a private consulting firm (Hart Crowser) to conduct technical analyses to (1) develop a conceptual hydrogeologic model to assess connection between ground water at the applicant's site with local surface water and Columbia River surface water; (2) assess ground water availability; and (3) assess impairment to existing users and instream flows. Hart Crowser submitted three discrete reports to Ecology in response to the three items above, finding that the applicant's wells intercepted water that discharges to the Columbia River. As such, ground water withdrawn from the applicant's wells would have otherwise contributed to Columbia River flows, and project releases would be able to mitigate for the applicant's well water withdrawals.

Beneficial Use

Beneficial use encompasses two principal elements of a water right:

1. Beneficial use refers to the purpose for which water may be used.
2. Beneficial use determines the measure of a water right. The owner of a water right is entitled to the amount of water necessary for the purpose to which it has been used.

The use of water for irrigation and domestic purposes is defined in statute as a beneficial use (RCW 90.54.020(1)).

To determine the amount of water necessary for a beneficial use, courts have developed the principle of “reasonable use”. Reasonable use of water is determined by analysis of the factors of water duty and waste.

Table 3: Other Water Rights within the Place of Use

File Number	Applicant(s)	Document	Type	Priority Date	Purpose	Qi/cfs	Qa (Ac-ft/yr)
S4-116383CL	P. Brownlee	Claim	Surface	N/A	Stock	0.002	1

Currently, no irrigation water rights exist in the immediate area. In discussion with the applicant, approximately 200 acres of cherries and 100 acres of apples are currently proposed for development under this application, for a total of 300 acres. The U.S. Department of Agriculture’s Washington Irrigation Guide (WIG), at its Chief Joseph Dam station, indicates that cherries with cover would require 35.57 inches per acre and apples with cover would require 34.28 inches per acre. Under the acreages proposed, an estimate of 879 ac-ft would be required (593 ac-ft for the cherries, plus 286 ac-ft for the apples). The applicants indicated that a drip system would be used to irrigate the orchards. Using Ecology’s guide to determining irrigation efficiencies (GUID 1210), a 90% efficiency value would be a reasonable estimate. Under a 90% efficiency factor in applying the 879 ac-ft, a total of **977 ac-ft** are estimated for irrigation (879 ac-ft / 90% = 977 ac-ft).

Public Interest Considerations

Analysis of whether this application meets the requirements of RCW 90.03.290, that the proposed use of water will not be detrimental to the public welfare, involves investigation of how the approval of the proposed use of water will affect the range of values that are encompassed by the public interest.

Several sections of statute list the legislative policies that guide the consideration of the public interest during the allocation of water, including sections of the 1971 Water Resources Act (Chapter 90.54 RCW) and the Columbia River Basin Water Supply Act (Chapter 90.90 RCW).

An analysis of the public interest considerations for the Program is contained in the Report of Examination for the secondary use permit for Sullivan Lake releases, S3-30635P.

The public interests associated with the Program’s municipal, domestic, and industrial permitting are specifically cited in several sections of Chapter 90.90 RCW:

- RCW 90.90.005(1) states *“The legislature finds that a key priority of water resource management in the Columbia river basin is the development of new water supplies that includes storage and conservation in order to meet the economic and community development needs of people and the instream flow needs of fish”*.
- RCW 90.90.005(2) directs Ecology to *“aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses”*.
- RCW 90.90.020(3)(b) instructs Ecology to focus on *“Sources of water supply for pending water right applications”*.
- RCW 90.90.020(3)(d) instructs Ecology to focus on *“New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin”*.

If the subject application is approved, the public interest may be affected in several ways:

- Economic activity is likely to result from the use of water for irrigation purposes, as the associated construction and operation activities generate increased economic and social

opportunities.

Consideration of Protests and Comments

Under the Project, issuance of new water rights for pending applications is mitigated by existing water rights held by the PUD for water releases from Sullivan Lake. This water has been conveyed to Trust to mitigate for out-of-stream purposes. The out-of-stream uses are limited to six northern counties located within Washington State.

This Project will have a beneficial impact on ESA-listed fish by providing 4,667 ac-ft of instream flow each year. Water will be released from Sullivan Lake to maximize fish benefits on a schedule as outlined in the 2010 Settlement Agreement.

Project water will be released from storage in Sullivan Lake at times of the year that is in addition to water historically released. The Project is designed to not affect water available to other appropriators and maximize fish benefit along portions of the Pend Oreille River and throughout the Columbia River in Washington State. Project water will only be used to supply water to surface water users located within six northern counties located in Washington State and groundwater users in close hydraulic connection with these surface water bodies.

Under the Project, water is allocated to supply irrigation, domestic, municipal, industrial and other development in six northern counties in Washington State. As described in the public interest section, the project will generate new jobs, revenue, and other economic benefits to individuals and communities throughout the Columbia River Basin, while providing mitigation for fisheries.

Conclusions

Beneficial Use

The proposed use of water for irrigation is considered a beneficial use.

Water Availability

The analyses provided above demonstrate that water is physically and legally available for the proposed use of water.

Impairment

The proposed beneficial use of water is not expected to impair any existing water rights.

Public Interest

The proposed use of water would not be detrimental to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved and a permit be issued 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:

2250 gpm (5cfs)

977 acre-feet per year

For the purposes of irrigation of 300 acres

Six Points of Withdrawal (Wells)

SE $\frac{1}{4}$, SE $\frac{1}{4}$, Section 24, Township 30 North, Range 23E.W.M.

SE $\frac{1}{4}$, SE $\frac{1}{4}$, Section 24, Township 30 North, Range 23E.W.M.

SE $\frac{1}{4}$, SE $\frac{1}{4}$, Section 24, Township 0 North, Range 23E.W.M.

NE $\frac{1}{4}$, SW $\frac{1}{4}$, Section 24, Township 30 North, Range 23E.W.M.

NE $\frac{1}{4}$, SW $\frac{1}{4}$, Section 24, Township 30 North, Range 23E.W.M.

SE $\frac{1}{4}$, NW $\frac{1}{4}$, Section 24, Township 30 North, Range 23E.W.M.

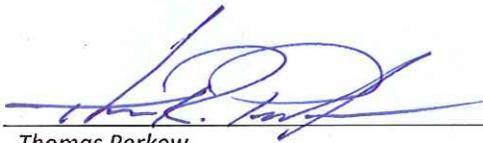
Two Points of Diversion (located on the Columbia River)

SE $\frac{1}{4}$, SW $\frac{1}{4}$, Section 30, Township 30 North, Range 24E.W.M.

SW $\frac{1}{4}$, SW $\frac{1}{4}$, Section 30, Township 30 North, Range 24E.W.M.

Place of Use

Portions of Sections 13 & 24, T. 30 N., R. 24E.W.M.



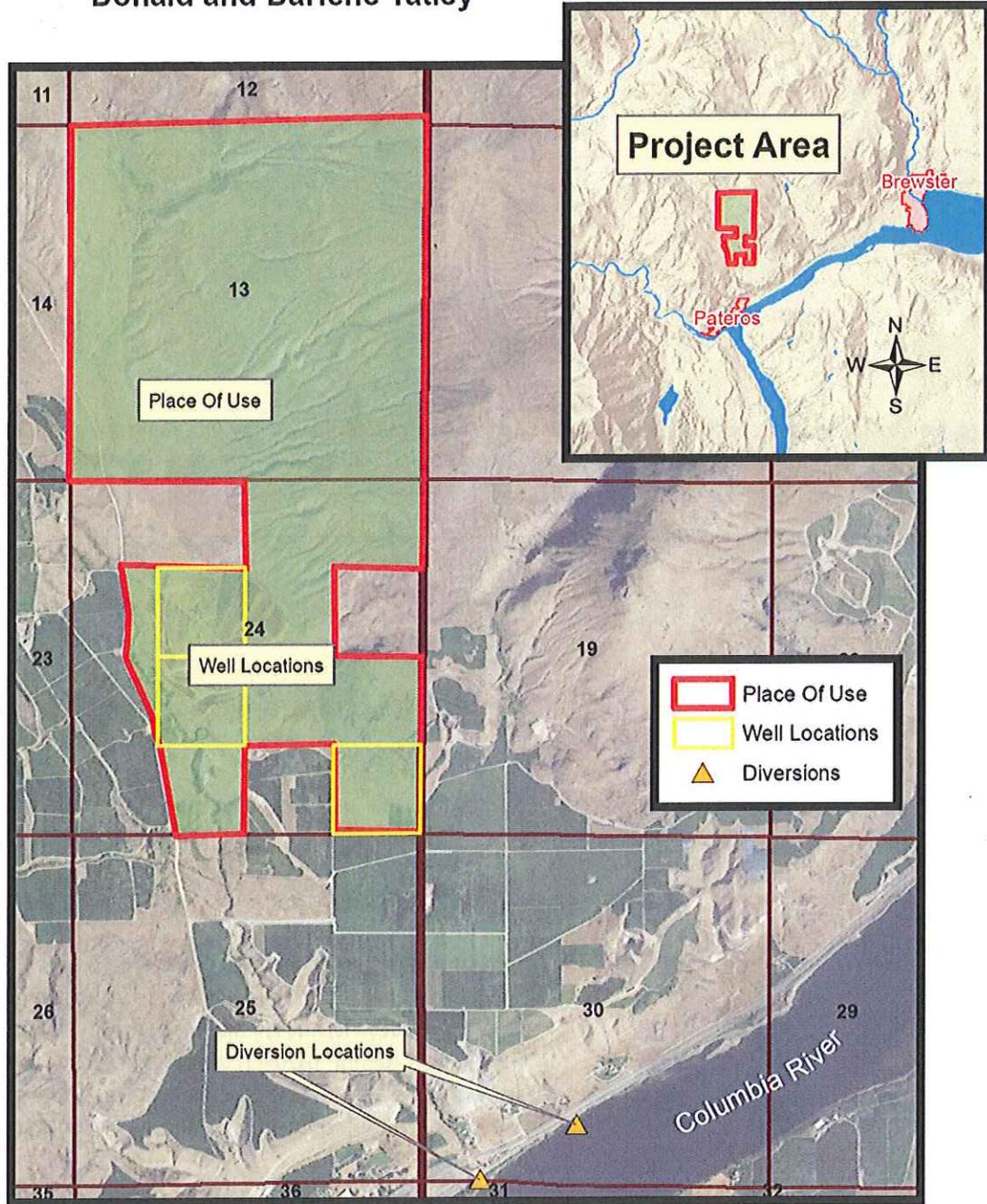
Thomas Perkow

Date

6/14/16

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Water Right Application G4-28481 Donald and Darlene Tatley



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