DRAFT

File NR G3-27959
WR Doc ID 2129260

DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE
3/22/1985

WATER RIGHT NUMBER
G3-27959

MAILING ADDRESS
EL ORO CATTLE CO
18857 ROAD 2.7 SE
MOSES LAKE WA 98837

SITE ADDRESS (IF DIFFERENT)

Quantity Authorized for Withdrawal or Diversion

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

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE ADDITIVE	WITHDRAWAL OR DIVERSION RATE NON-ADDITIVE	WITHDRAWAL OR DIVERSION RATE UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Domestic supply for 2 homes, office, shop, stockwater	DENIED			DENIED		01/01 - 12/31

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
GRANT	GROUNDWATER		41-LOWER CRAB

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Well 1			18N	30E	18	NE¼		
Well 2			18N	30E	18	NE¼		
Well 3			18N	30E	18	NE¼		
Well 4			18N	30E	18	NE¼		
Well 5			18N	30E	18	SE¼		
Well 6			18N	30E	18	SE¼		

Datum: NAD83/WGS84

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; that there will be impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be detriment to the public interest.

Therefore, I ORDER Application No. G3-27959 be DENIED.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

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

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this 18th day of July, 2012.

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Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: http://www.eho.wa.gov. To find laws and agency rules visit the Washington State Legislature Website: http://www1.leg.wa.gov/CodeReviser.

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INVESTIGATOR'S REPORT
Application for Water Right -- El Oro Cattle Company
Water Right Control Number G3-27959

This report serves as the written findings of fact concerning Water Right Application Number G3-27959.

BACKGROUND

This application requests a new appropriation of public groundwater from an aquifer within the Quincy Ground Water Subarea, as defined in Chapter 173-124A WAC. The Quincy Subarea was established after many years of studies, investigations, reports and hearings regarding the development of the Columbia Basin Irrigation Project (Project). The Project was designed and developed to divert irrigation water from the Columbia River (FDR Lake) into a series of canals and waterways for delivery to Project lands. The northern portion of the Columbia Basin Project has been designated as the Quincy Subarea (Chapters 173-124A WAC and 173-134A WAC).

The Quincy Subarea, commonly known as the Quincy Basin, is a saucer-like topographic and structural basin. The northern and southern boundaries are formed by the ridges of the Beezley and Frenchman Hills, respectively. The western boundary of the basin is formed by the Evergreen-Babcock Ridge, and the eastern boundary of the basin is coincident with the East Low Canal.

Irrigation blocks within the Quincy Subarea were developed in accordance with the Columbia Basin Project. By 1966, the irrigable area of the Project was approximately 290,000 acres. Drainage systems and wasteways were constructed to protect Project lands and to recover return flows and to store those flows in Potholes Reservoir behind O'Sullivan Dam. The stored water was then conveyed to the South Columbia Basin Irrigation District for beneficial use. The development of the recapture facilities was essential to complete the Project water supply.

In 1967, the State of Washington made a tentative determination that all naturally-occurring ground water in the Quincy Subarea had been appropriated. As a result of a Memorandum of Understanding with the United States Bureau of Reclamation (USBR), a five year ground water study was undertaken to verify the tentative determination that all ground water available for appropriation had been appropriated. The study, which was substantially completed by December 31, 1972, confirmed the tentative determination.

On January 15, 1973, following completion of the study and confirmation that all ground water available for appropriation in the Quincy Basin Subarea had been appropriated, the Department of Ecology designated the Quincy Ground Water Subarea pursuant to RCW 90.44.130 as Chapter 173-124 WAC. The remaining artificially stored groundwaters within the Quincy Subarea were then claimed by the Bureau of Reclamation.

By the end of 1973, approximately 3.5 million acre-feet of imported waters were stored underground within the Quincy Subarea. A permitting program was required to manage this artificially stored groundwater. The program was created through adoption of the Quincy Ground Water Subarea Management Policy (WAC 173-134A) in 1975, which was later amended in 1979.

The Quincy Subarea management policy (Chapter 173-134A WAC) includes two sections that establish maximum allowable quantities of naturally-occurring groundwater that could be appropriated for two separate management units within the Subarea, known as the shallow and deep management units (WAC 173-134A-060 and 173-134A-080). The rule also established a maximum quantity of artificially stored ground water that could be withdrawn from the Quincy Subarea, without interfering with the operation of the recapture facilities and delivery of water to the South Columbia Basin Irrigation District. The rule also established a reserved quantity of artificially stored groundwater to be used for domestic and group domestic purposes.

Since adoption of the Quincy Ground Water Subarea Management Policy (WAC 173-134A), water right applications have been on file with the Department of Ecology for many years. This application requests authorization of a permit to withdraw natural occurring groundwater from within the Quincy Subarea as described below.

Table 1 Summary of Requested Water Right

Applicant Name:	El Oro Cattle Co
Date of Application:	3/22/1985
Place of Use	Irrigation Bock 42 Farm Units 290, 165, 164 within Sections 18 and 19 T. 18 N., R. 30 E.W.M.

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Domestic supply for 2 homes, office , shop, stockwater	400	GPM	240	01/01	12/31

Source	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Well 1			18N	30E	18	NE¼NE¼		
Well 2			18N	30E	18	NE¼NE¼		
Well 3			18N	30E	18	SE¼NE¼		
Well 4			18N	30E	18	SW¼NE¼		
Well 5			18N	30E	18	NW¼SE¼		
Well 6			18N	30E	18	NE¼SE¼		

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. Notice of this application was published in the Columbia Basin Herald on March 6 and 12 of 2012. No protests were received.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

(a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
(b) It is a groundwater right application for more than 2,250 gallons per minute;
(c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
(d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
(e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

INVESTIGATION

A field examination was conducted on May 9, 2012. We conducted a site visit to all of the wells. Seven wells are used for stockwatering at the feed lot and domestic supply at the office and shop. One well is located northwest of the feedlot and used for domestic supply for two homes and stockwater for horses.

The pending water right application requested 400 gallons per minute for a 30,000 cattle feedlot, domestic supply for 2 homes, a shop and office. Based on an estimated water use of 7 gallons per day per head and 2 acre-feet for domestic use, the request would be approximately 240 acre-feet per year.

The proposed property is developed into an existing feed lot. Seven wells have been constructed and in operation. The applicant filed for and received Artifically Stored Ground Water Permit QB-1083 for uses associated with the feedlot. Quincy Basin Permit QB-1083 issued to El Oro Cattle Company for 400 gallons per minute, 240 acre-feet per year for the feedlot in 1993. The project is in operation under an existing water right authorization.

The drinking water is supplied under WAC 173-134A-120(3).

Other Rights Appurtenant to the Place of Use

The property is currently authorized to withdraw under Quincy Basin Permit QB-1083. Seven water right claims were filed during the claims registration period(s). The rights and claims are described as follows:

Quincy Basin Artificially Stored Ground Water Permit QB-1083 issued on April 22, 1993 for this facility in the amount of 400 gallons per minute, 240 acre-feet per year for stockwater for a 30,000 head feedlot.

Seven Water Right Claims were filed under the name of Wheatheart Northwest Inc. during the claims registration periods, each claiming 20 gallons per minute, 32 acre-feet per year for stockwater use. One claim was filed for each of the seven wells. The claimed date of first water use varies from 1952 to 1971.

These claims do not appear to represent valid claims to water use as the date of first use was not prior to development of the groundwater code in 1945.

The intent of the Claims Registration Act, Chapter 90.14 RCW, was to document those uses of surface water in existence prior to the adoption of the State Surface Water Code, Chapter 90.03 RCW, which was adopted in 1917, and those uses of ground water in existence prior to the adoption of the State Ground Water Code, Chapter 90.44 RCW, which was adopted in 1945. Since each code(s) adoption, the only means of acquiring a water right within the state is by filing for, and receiving, a permit from the Department of Ecology or one of its predecessors or is allowed under the domestic exemption to the ground water code (RCW 90.44). The Department of Ecology recognizes that the final determination of the validity and extent associated with a claim registered in accordance with RCW 90.14 ultimately lies with the Superior Court through the general adjudication process provided for by Sections 90.03.110 through 90.03.245 RCW and 90.03.620 through 90.03.645 RCW.

Water Availability

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

For water to be 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.

Legal availability

In Chapter 173-134A WAC, the limit of natural occurring groundwater to be appropriated in the Quincy Subarea was established as 58,000 acre-feet per year from the shallow management unit and 97,901 acre-feet per year from the deep management unit. Based on an evaluation of existing water rights (permits and certificates) conducted in 1974, Ecology determined that these quantity limits had been reached, and therefore all naturally occurring public water had been allocated. The evaluation of existing water rights in 1974 did not include water right claims that were subsequently filed under the Claims Registration Act. Review of the water right claims filed between 1974 and 1998 reveals that up to an additional 35,000 acre-feet of naturally occurring groundwater could be appropriated for beneficial use under claims indicating a first use prior to 1945.

In Chapter 173-134A-080, the rule established a reservation of 4000 acre-feet annually for domestic and group domestic uses. Review of the records confirms Ecology has issued permit and certificates that

exceeded the established reservation for domestic and group domestic supplies. Water is not available from the reservation.

Review of water right permits and certificates records currently on file with Ecology within the Quincy Basin indicate state-issued water right permits and certificates authorize beneficial use of approximately 157,000 acre-feet of naturally occurring groundwater each year. As much as an additional 35,000 acre-feet or naturally occurring groundwater could be used each year under water right claims.

Based on this recent review of water rights and the limits established in Chapter 173-134A, naturally occurring public waters in the Quincy Subarea have been fully appropriated and no naturally occurring public waters are legally available for issuance of a new permits.

Impairment Considerations

Impairment is an adverse impact on the 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).

Impairment

Issuance of a new permit to natural occurring water within the Quincy Subarea would exceed the quantity available for appropriation established by WAC 173-134A and potentially impair the ability of the Bureau of Reclamation to manage the Columbia Basin Project. The project operation required capture and reuse of waters for delivery to the South Columbia Basin lands. Issuance of permits would reduce the amount of water available to be captured in Potholes Reservoir.

Beneficial Use

The proposed use of water is defined in statute as a beneficial use (RCW 90.54.020(1)). Existing permits have been issued under the artificially stored water and this permit is not required.

Public Interest Considerations

The public interest is expressed in Chapter 173-134A and the established availability of water is identified. The quantity of water available to appropriate is identified in the rule that is established to protect project distribution and recapture facilities and existing water users.

The issuance of the additional water rights for the use of naturally occurring public groundwater in the Quincy Subarea is not in the public interest. Quantity limits of natural occurring ground water for appropriation established in Chapter 173-134A WAC have already been exceeded.

Landowners within the Quincy Subarea have other alternatives to obtain water rights through changes or transfers of existing water rights or filing an application to obtain a permit under the artificially stored ground water program.

Conclusions

In conclusion, naturally occurring groundwater within the Quincy Subarea is not available for appropriation. Issuance of water right permits are not in the public interest. Issuance of a new permit could impair existing water rights including the rights of the U. S. Bureau of Reclamation that are required for the operation of the Columbia Basin Irrigation Project. The requested beneficial use is currently satisfied under QB Permit QB-1083.

RECOMMENDATIONS

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

Kevin Brown, Report Writer *Date*

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