



State of Washington

**DRAFT**

REPORT OF EXAMINATION  
FOR WATER RIGHT CHANGE  
CS2-SWC993

File NR CS2-SWC993  
WR Doc ID 46364

Added or Changed Point of Withdrawal/Diversion

<b>PRIORITY DATE</b> June 5, 1930	<b>WATER RIGHT NUMBER</b> CS2-SWC993
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<b>MAILING ADDRESS</b> Ronald Smith Ronald & Carol Smith Trust 215 N Power Rd Unit Mesa, AZ 85205	<b>SITE ADDRESS (IF DIFFERENT)</b> 98 Gold Dust Lane Sequim, WA 98382
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Total Quantity Authorized for Withdrawal or Diversion		
WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.55	CFS	16.54

Purpose						
PURPOSE	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIV E	NON- ADDITIVE	UNITS	ADDITIVE	NON- ADDITIVE	
Irrigation	0.55		CFS	16.54		5/1 - 10/1

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
8.75			

Source Location			
COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Clallam	Matriotti Creek	Dungeness River	18-Elwha-Dungeness

SOURCE FACILITY/DEVICE	PARCEL	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Matriotti Creek	043002329040	30N	04W	02	NWSW	48° 7' 13.85"	-123° 9' 57.53"

Datum: NAD83/WGS84

**Place of Use (See Attached Map)****PARCELS (NOT LISTED FOR SERVICE AREAS)**

043002329040, 043002329050, 043002329060

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

Lots 1, 2 and 3 of the Smith Short Plat, as Recorded in Volume 34 Page 75 Southwest quarter-Short Plat Alteration Volume 34 Page 26

**Proposed Works**

A 2 h.p. pump with an in-take hose 1 ½ inches in diameter draws water directly from Matriotti Creek. Water pumped is conveyed through an above ground 2-inch diameter PVC pipe that empties to a 4-inch buried main line. Hoses, ¾-inches in diameter, attach directly to risers off the mainline.

**Development Schedule****BEGIN PROJECT**

September 1, 2011

**COMPLETE PROJECT**

May 1, 2012

**PUT WATER TO FULL USE**

September 1, 2012

**Measurement of Water Use**

How often must water use be measured?	Annually
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 of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, 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 may 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.

**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.

**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/regions/>

### **Water Use Efficiency**

Use of water under this authorization will be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.

### **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 superseding 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.

### **Real Estate Excise Tax**

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477 Internet: <http://dor.wa.gov/>. E-mail: REETSP@DOR.WA.GOV.

### **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 Application No. CS2-SWC993, 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 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.

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

- Please send a copy of your appeal to:

Thomas Loranger, Section Manager  
Water Resources Program  
Southwest Regional Office  
P.O. Box 47775  
Olympia WA 98504-7775

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>.

Signed at Olympia, Washington, this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

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Thomas Loranger, Section Manager  
SWRO, Water Resources

## INVESTIGATOR'S REPORT

Tammy Hall, Department of Ecology

Water Right Control Number CS2-SWC993

**BACKGROUND****Description and Purpose of Proposed Change**

On June 19, 2009, Ronald Smith, representing the Ronald and Carol Smith Trust, filed an *Application for Change of Water Right* to change the location of the point of withdrawal to Surface Water Certificate (SWC) 993.

SWC993 authorizes the withdrawal of 0.8 cubic feet per second (cfs) from an unnamed stream (Matriotti Creek) for domestic supply and irrigation of 40 acres.

**Attributes of the Existing Water Right and Proposed Change**

Table 1

Attributes	Existing	Proposed
<b>Name</b>	A.W. Cays	Ronald and Carol Smith Trust
<b>Priority Date</b>	06/05/1930	
<b>Change Application Date</b>		06/19/2009
<b>Instantaneous Quantity cubic feet per second (cfs)</b>	0.8	0.55
<b>Annual Quantity Acre-feet (ac-ft) per year</b>	Not specified	16.54
<b>Purpose of Use</b>	Domestic supply and irrigation of 40 acres	Irrigation of 8.75 acres
<b>Period of Use</b>	Domestic supply : continuous use Irrigation: seasonal	May 1- October 1
<b>Place of Use</b>	40 acres in Section 2 of T 30 N, E 4 WWM.	Lots 1, 2 and 3 of the Smith Short Plat, as Recorded in Volume 34 Page 75 Southwest quarter-Short Plat Alteration Volume 34 Page 26

Table 2. Proposed Point of Diversion

Source Name	Parcel	Twn	Rng	Sec	QQ Q	Latitude	Longitude
Matriotti Creek	043002329049	30N	04W	02	NW SW	48° 7' 13.85"	-123° 9' 57.53"

Table 3. Existing Point of Diversion

Source Name	Parcel	Twn	Rng	Sec	QQ Q	Latitude	Longitude
Matriotti Creek	043002329060	30N	04 W	02	NW SW	48° 7' 14.59"	-123° 9' 57.65"

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#### Legal Requirements for Proposed Change

The following are required before authorizing the proposed change in CS2-SWC993.

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#### Public Notice

An original public notice for this project proposal was posted in *The Peninsula Daily News* of Clallam County on April 24 and May 1, 2011. The Department of Ecology did not receive any protests or letters of concern in response to this notice. Because the original notice was for greater quantities, it meets the intent of the legal requirement for public notice for this change application.

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#### 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.

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#### Water Resources Statutes and Case Law

RCW 90.03.380(1) states a water right put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed, as long as it would not harm or injure other water rights.

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*.

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## INVESTIGATION

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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 and e-mail correspondence from Ronald Smith.
- Notes from a site visit on May 24, 2011.
- The WRIA 18 Watershed Plan.

### Project Location and Site Description

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The Ronald and Carol Smith Trust Property is situated about four miles west of the city of Sequim. The property consists of nine acres, three separate lots each roughly three acres in size. The Smiths own two parcels (Lots 1 and 3). A third lot, Lot 2, is developed and has a residence and currently owned by Gary and Karen Parson.

Matriotti Creek, the northern-most tributary to the Dungeness River, flows along the western edge of Lots 2 and 3. The Smith Trust Property is about 1 ½ miles south of the confluence of the Dungeness River and Matriotti Creek. The confluence of Matriotti Creek and the Dungeness River is at River Mile (RM) 1.9.

*See Attachment #1*

### Intent of Proposed Change

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The applicant wishes to move the location of the pump about 50 feet south so owners of Lots 2 and 3 will have easier access to it. The short plat for the lots provides an irrigation easement along the north border of Lot 3, starting from the stream and ending at a Cul-de-sac.

Once Ecology issues a Superseding Certificate, the applicant will likely request an administrative split of the water right so the owner of Lot 2 will have their share of the water right.

### History of Water Use

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The original water right, issued to A.W. Cays, allowed diversion of 0.8 cfs from Matriotti Creek for irrigation and domestic supply. No annual quantity was given.

Mr. Smith purchased roughly nine acres around 1997 of the former Cays property. This is the only portion of the former Cays property currently being irrigated under SWC993. In 2007, the nine-acre parcel was short-platted into three lots, each about three acres in size. Lots 1 and 3 are undeveloped. Lot 2 was sold in 2008 and the owners, Gary and Karen Parson, have built a house on the property. The remaining two lots are up for sale.

Tentative Determination of Extent and Validity of Surface Water Certificate 993

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.

According to Mr. Smith, he is currently irrigating around 1.81 acres on Lot 1 and 2.37 acres on Lot 3, for a total of 4.5 acres of hay. The remainder of Lots 1 and 3 is a 100-foot habitat conservation buffer on Matriotti Creek, as required by Clallam County Critical Areas Ordinance, which is also irrigated. Mr. Smith intends to continue to irrigate this conservation buffer as needed until the plants are fully established.

Up until two years ago, Lot 2 (2.98 acres) was also irrigated until it was sold to the current owners, the Parsons. Mr. Smith feels that once they have easier access to the pump, they will likely begin using creek water to irrigate. About 2.75 acres of Lot 2 can be irrigated.

Based on water use over the past five years, around 8.75 acres has been irrigated. This includes the 100-foot conservation buffer.

The property has been irrigated using a 2 h.p. pump situated on a platform next to Matriotti Creek. The pump's intake hose is placed directly on the stream-bed. This hose is about 1 ½ inches in diameter and the lower two feet are wrapped in screen. The intake of the pump usually sits around one-foot below the water surface of the stream. The pump has a dedicated electric meter and power records show the water was used each year to irrigate the property.

Water pumped is conveyed through an above-ground 2-inch diameter PVC pipe that empties to a 4-inch buried mainline. Hoses, ¾-inches in diameter, attach directly to risers off the mainline. Mr. Smith operates five strings of hose at a time, with three sprinklers on each string, for a total of 15 impact sprinklers operating at once.

Mr. Smith's pump is not metered to measure instantaneous flow rate. But instantaneous demand can be estimated using the number of sprinklers operated at once, radius of spray, size of the area being irrigated, and amount of water being applied. Considering these factors, flow demand of his system is likely around 250 gpm, which is about 0.55 cfs.

Annual water needs can be estimated by combining crop needs, conveyance losses, and evaporative losses. Pasture/turf in the Sequim area requires around 15.88 inches of water each irrigation season (Natural Resources Conservation Services, 2005). Sprinkler irrigation, has an efficiency of about 70%. Using these assumptions, 8.7 of pasture would need about 16.54 ac-ft per year. This is the extent of the validity of the right and the amount eligible to be changed.

The original water right allowed domestic supply, however an exempt well is now being used for that purpose. Therefore, surface water under S2-SWC993 is no longer needed for domestic supply. Since it has not been used within the past five years, it has relinquished back to the state.

Based on my evaluation, I tentatively determine that SWC993 is eligible for change in the reduced amount of 0.55 cfs and 16.54 ac-ft per year. The remaining 0.25 cfs under this right has been

relinquished back to the state for non-use without “sufficient cause” as defined by statute (Chapter 90.14 RCW).

#### Proposed Use

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The purpose of use will remain irrigation and water use will not increase. The property irrigated will not change and may decrease over time as the conservation buffer becomes established and no longer needs irrigation.

#### Other Rights Appurtenant to the Place of Use

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An exempt well on Lot 2 serves the in-house domestic needs of the residence. Another exempt well is on Lot 1.

#### Hydrologic/Hydrogeologic Evaluation

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Matriotti Creek is 9.3 miles long and drains 13.6 square miles. It is one of the largest low-elevation tributaries to the lower Dungeness River, entering on the west side of the river at River Mile (RM) 1.9. Land uses include residential, commercial, agricultural, and livestock use, including a large animal park, the Olympic Game Farm, located near the mouth of Matriotti Creek.

Matriotti Creek has been extensively channelized through most of its length. The channelization has eliminated meanders and diminished the creek’s functioning floodplain, cutting the creek off from historic wetlands.

Coho, summer and fall chum, and pink salmon, along with winter steelhead are identified as the anadromous stocks known to exist in Matriotti Creek. The Limiting Factors Analysis (LFA), (Haring, 1999), has identified water quality and habitat recommendations to address on this stream. Matriotti Creek is listed on the 303(d) list for bacteria and is the subject of a TMDL study and clean-up plan (Entrix, 2005).

#### Impairment Considerations

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##### Effects on existing water users

Because the point of withdrawal is only being moved 50 feet downstream and the amount of water being used will not increase, area surface water right holders will not be affected by this change.

#### Consideration of Protests and Comments

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No protests were filed against this application.

#### Conclusions

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

- SWC993 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 SWC993, subject to the provisions specified above.

## RECOMMENDATIONS

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Based on the above investigation and conclusions, I recommend that the request for change to S2-SWC993 be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2.

### Purpose of Use and Authorized Quantities

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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:

- 0.55 cfs
- 16.54 ac-ft per year
- Irrigation of 8.75 acres

### Point of Diversion

- NW¼,SW¼, Section 2, Township 30 North, Range 4 W.W.M.

### Place of Use

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

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*Report Writer*

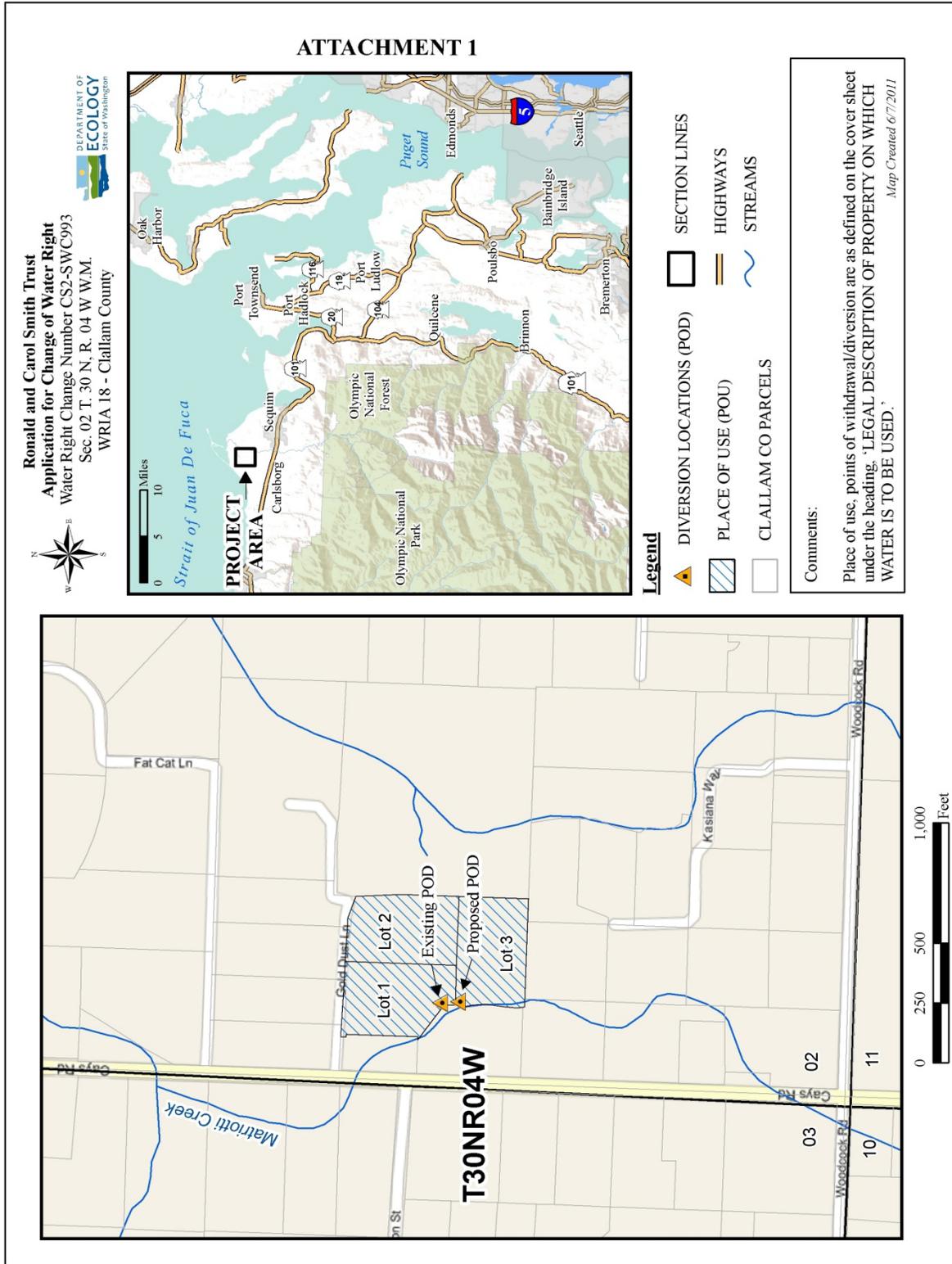
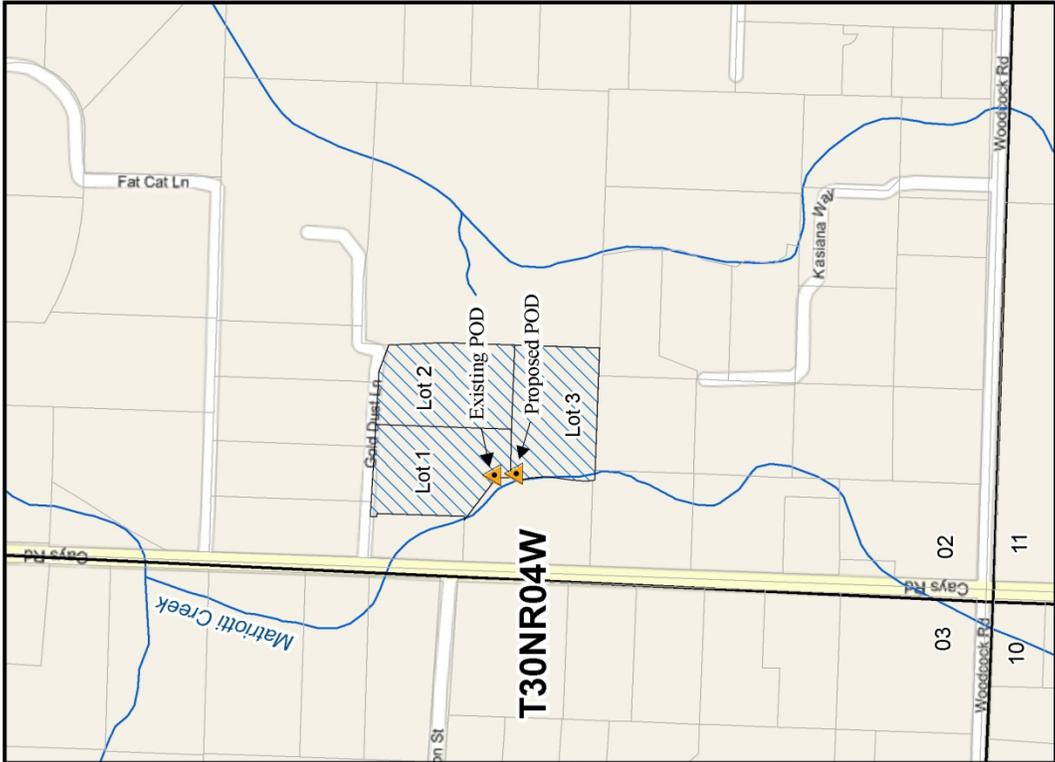
*Date*

*References*

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

Haring, Don. 1999. *Salmon and Steelhead Habitat Limiting Factors: WRIA 18*. Washington State Conservation Commission.

Entrix, 2005, *Elwha-Dungeness Watershed Plan, Water Resource Inventory Area 18 (WRIA18) and Sequim Bay in West WRIA 17*, May 2005.

**T30NR04W**

0 250 500 1,000 Feet