

File NR S1-28797
WR Doc ID 6458773

State of Washington REPORT OF EXAMINATION FOR WATER RIGHT APPLICATION

PRIORITY DATE 1/21/2015	WATER RIGHT NUMBER S1-28797
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MAILING ADDRESS STEVENS & PATRICIA TRAINER 1305 EAST REPUBLICAN STREET #2 SEATTLE WA 98102	SITE ADDRESS (IF DIFFERENT) 4106 POINT LAWRENCE ROAD OLGA WA 98279
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Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.12	CFS	0.3

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Irrigation	0.12		CFS	0.3		04/15 - 10/15

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
0.6			

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
SAN JUAN	UNNAMED POND		2-SAN JUAN

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Unnamed Pond	1735-4200-3000		37N	1E	35	NWSE	48.650407 N	122.780875 W

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

1735-4200-3000

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

The Northwest quarter of the Southeast quarter of Section 35, Township 37 North, Range 1 West, W. M., in San Juan County, Washington.

EXCEPT that portion of the Northwest quarter of the Southeast quarter of said Section 35, described as follows: Commencing at the quarter section corner in the center of said Section; thence east along the quarter section line 697.62 ft; thence S 19° W 81.18 ft; thence S 52° W 106.26 ft; thence S 20° W 84.48 ft; thence S 43°30' W 302.94 ft; thence S 57°30' W 105.6 ft; thence West 261.36 to the quarter section line; thence North along said quarter section line 497.64 ft to the point of beginning, AND

EXCEPT Roads, AND

EXCEPT conditions and covenants resulting from application for designation of forest lands as set forth in Chapter 294, Laws of 1971, First Executive Session, State of Washington, application dated December 21, 1971 and recorded on April 27, 1973 under Auditor's File No. 81584.

Proposed Works

Proposal is to use a 3 HP Grundfos Model JP12-51ASA Shallow Well Jet Pump attached to a 2-inch intake covered by 1/16th inch mesh screen set in the pond located at the south end of the planned blue berry crop area covering approximately 0.6 acres (see figure 1).

The intake would be connected by either a 1,200 gallon tank or directly to a drip irrigation system via disc filters set out in four zones controlled by a timer and valves.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
June 1, 2015	December 31, 2016	December 31, 2021

Measurement of Water Use

How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Upon Request by Ecology
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 shall 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.

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.

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/>

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. This means the land being irrigated under this authorization shall comply with the following definition:

- Family Farm - a geographic area including not more than 6,000 acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than 6,000 acres of irrigated agricultural lands in the state of Washington which are irrigated under water rights acquired after December 8, 1977.
- Furthermore, the land being irrigated under this authorization must continue to conform to the definition of a family farm.

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.

Non-Additive to Confirmed Claims

There are two claims for vested right on file with Ecology for this property (S1-115857CL and G1-115743CL). The water use authorized under this appropriation shall be considered non-additive to any water rights confirmed for said claims as a result of a general adjudication through Superior Court, should adjudication be undertaken. If the adjudication results in rejection of the claims, the non-additive quantities associated with this appropriation shall be deemed additive.

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. Please keep thorough records of water use prior to filing of the Proof of Appropriation notice.

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.

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 available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S1-28797, 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 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 Bellevue, Washington, this 22nd day of July 2015.

Tom Buroker, 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>.

INVESTIGATOR'S REPORT

Application for Surface Water Right – Stevens & Patricia Trainer
Water Right Control Number S1-28797
Doug Wood, Department of Ecology

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S1-28797.

Table 1 Summary of Requested Water Right

Applicant Name:	Stevens & Patricia Trainer
Date of Application:	1/21/2015
Place of Use	See Attachment 1

County	Waterbody	Tributary To	WRIA
San Juan	Unnamed Pond		2-San Juan

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Irrigation	0.12	CFS	0.3	01/01	12/31

SOURCE Name	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Pond	1735-4200-3000	N/A	37N	1E	35	NWSE	48.650407 N	122.780875 W

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

Legal Requirements for Approval of Appropriation of Water

The four legal tests required for approval of a new water right are:

- Is the proposed water use beneficial?
- Is water available for the proposed use?
- Will the proposed use impair existing water rights?
- Will the proposed use prove detrimental to the public interest?

This investigation must affirm the first two tests and negate the last two.

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 *Island's Sounder* on April 8, 2015 and April 15, 2015, thus satisfying the publication requirement.

Consultation with the Department of Fish and Wildlife

The Department of Ecology must give notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water.

Mr. Steven Boessow of the Washington Department of Fish and Wildlife (DFW) was contacted by email on April 1, 2015 and informed of this application. As of the time this report was published, a response had not been 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.

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

INVESTIGATION

Proposed Use and Basis of Water Demand

The proposal here is to irrigate blueberries and other potential crops using water from a pond constructed during the 1970's by the applicant.

Other Rights Appurtenant to the Place of Use

Property owner Stevens Trainer filed two claims for vested water use on the same property during the 1970's claims opening. These are G1-115743CL for 10 gallons per minute and 5 acre-feet per year of groundwater for domestic and irrigation purposes, and S1-115857CL for 10 gallons per minute and 4 acre-feet per year of surface water from and unnamed stream for irrigation and fish propagation purposes.

Extent and validity of claims is always an issue prior to those claims being adjudicated. The principal issue regarding validity is whether use of the water for surface water claims began prior to July 1917 and for groundwater claims prior to July 1945. The stated dates of first use on the claims forms are January 1973 (S1-115857CL) and April 1973 (G1-115743CL). This may not however represent the date of first use of water on the property though, but rather the first use of water by the person filing the claim. This is a problem often encountered.

According to the San Juan County Assessor's website, the improvements (house, barn and garage) on the Trainer property were constructed in 1938. It is therefore likely that groundwater has been used at this site for domestic use since at least that time. It is also likely that groundwater was used for irrigation given the proximity of the water table to the surface and the abundance of groundwater in the shallow outwash aquifer.

Based on field evidence it is apparent that the pond is artificial and dates from the 1970's. That does not negate the possibility or even likelihood that groundwater supplied irrigation was later replaced by surface water supplied from the pond.

In any case the present application should issue with a provision which would make the Qi and Qa non-additive with respect to any irrigation use established through a future adjudication of the claims to vested water rights claimed through claims registry entries S1-115857CL and G1-115743CL.

The Four Tests

Beneficial Use

The proposed use of water, irrigation, is defined in statute as a beneficial use (RCW 90.54.020(1)).

Water Availability

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

Physical availability

At the time of the field visit on April 15, 2015 the creek was flowing at a rate of less than 1 cfs both into and out of the pond.

A review of geological maps of the area (Figure 1) and confirmation of the site geological conditions during the course of a field visit conducted on April 15, 2015, indicates that the pond is fed primarily from groundwater rather than from surface water, therefore the 1 cfs or less flowing in the creek does not limit availability.

A better estimate of water availability can be estimated based on catchment size of the aquifer for which the pond provides a window. Based on the mapped area underlain by glacial outwash and situated up-gradient of the pond, it is estimated that with an annual rainfall of 20 inches and 30% recharge rate that there is an annual flux of 33 acre-feet.

Only a portion of the 33 acre-feet of water estimated above likely passes through the pond which is proposed as the source for this appropriation. The exact proportion is dependent on the overall morphology of the aquifer, however only a small portion is required to accommodate the 0.30 acre-feet per year for the proposed project.

The recharge area contemplated in the above estimate would also contribute to water rights downgradient from the proposed point of diversion (POD), but there are no water rights found upgradient. The downgradient rights are supplied by a much larger catchment area with an estimate recharge potential of 154 acre-feet per year based on same criteria as above.

Legal availability

In some sub-basins, streams have been closed at the request of DFW or through adoption of instream flow rules. That is not the case here, so legal availability is not at issue.

Impairment

Impairment is an adverse impact on the physical 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).

Table 2: Water rights potentially impacted by proposed new water right (from Bailey, et al, 2013)

File #	Person	Doc	Priority Dt	Purpose	Qi	Units	Qa	Ir Acres
S1-21567C	ADAMS CLOVIS C	Cert	5/2/1974	IR	0.05	CFS	1	1
G1-23210C	Polarity Health Institute	Cert	9/6/1978	DM	27.5	GPM	21	
G1-25434G	SCHOONMAKER VICTOR	Cert	4/24/1989	IR,DS	5	GPM	1.5	1
S1-28092C	Jensen Chris	Cert	10/25/2000	IR,FR	0.018	CFS	0.09	0.25
G1-140322CL	GLENN MILLER ENTERPRISES	Claim L	2/1/1916	DG	65	GPM	5	
G1-125510CL	BOND THURMAN C	Claim L	8/1/1946	DG,ST,IR	15	GPM	0.83	0.5
G1-136124CL	JENSEN ALICE L	Claim S		IR,DG		GPM		
S1-136125CL	JENSEN ALICE L	Claim S		IR,DG		CFS		
G1-121672CL	BOND THURMAN C	Claim S		ST,IR		GPM		
G1-105798CL	KEEL JOHN T	Claim S		ST,IR		GPM		
G1-105799CL	KEEL JOHN T	Claim S		ST,IR		GPM		
G1-053060CL	BOND THURMAN C.	Claim S		ST,DG		GPM		
G1-043413CL	ABRAHAMSEN CLARA M.	Claim S		DG		GPM		

There do not appear to be any recorded water rights upgradient within the glacial aquifer that is the source of water for both the pond and the well that serves the Trainer home. There are homes upgradient, which are likely to be served by permit exempt groundwater wells. The creek appears to be

too small to be of use for providing a stable source for either domestic or agricultural needs and there do not appear to be any surface water rights upstream.

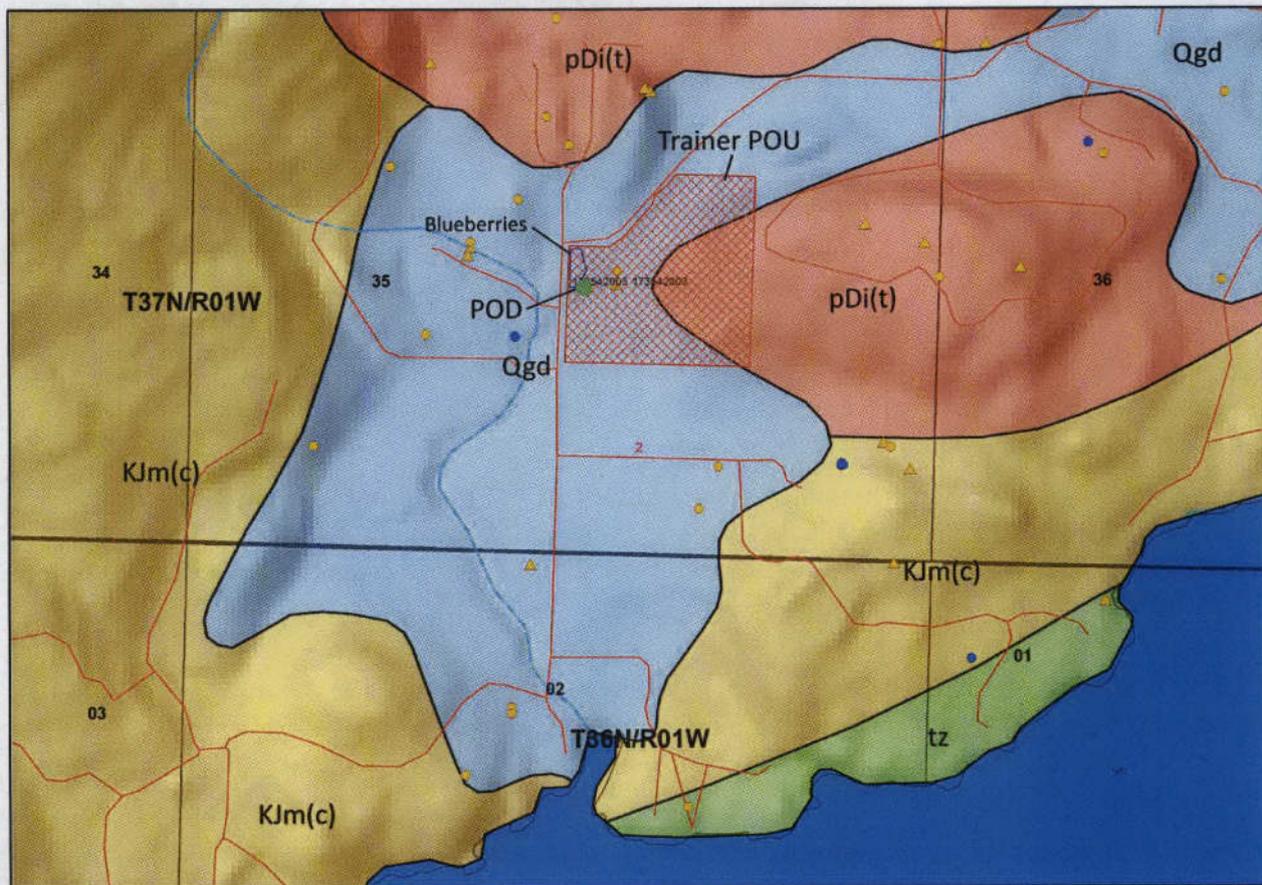


Figure 1: Surface geology of the Doe Bay Area, Orcas Island showing locations of Trainer POU and water rights records.

Several water rights are found associated with both groundwater and surface water down stream and gradient from the Trainer property. Based on Ecology records and DNR geological mapping, there are 13 water rights (4 certificates and 9 claims) sharing the source area underlain by glacial deposits in the Doe Bay area and which might be impacted by the proposed water right. Seven of these 13 are located downgradient of the Trainer diversion (green dot in Figure 1) and place of use (red hatched area on Figure 1). Geological mapping of the Doe Bay area was obtained as a GIS layer based on Washington Department of Natural Resources 1:100,000 scale mapping (Lapen, 2000). Units of interest in Figure 1 are tz, Qgd, KJm(c), and pDi(t).

Map Unit	Description
tz	Tectonically disrupted bedrock.
Qgd	Glacial outwash materials. Vashon Stade unconsolidated sand, silty sand and gravelly sand.
KJm(c)	Constitution Formation. Jurassic-Cretaceous marine sedimentary rocks.
pDi(t)	Turtleback Complex. Pre-Devonian intrusive rocks, undivided.

Since the current proposal does not in fact represent a new use, but rather an existing use seeking a more secure right to that use, any impacts would long ago (since the 1970's at least) have manifested themselves. Since these other water rights have coexisted with the Trainer's use to date without complaint it is reasonably construed that no impairment has occurred.

Public Interest

The majority of accessible land on Orcas Island is not suitable for agricultural development due to steep slopes, poor soils and lack of reliable water sources capable of supplying water in quantities suitable for irrigation. The small amount of land that is suitable faces competition for development from recreational users and small scale agriculture.

As previously stated, the proposed use of surface water for irrigation has been occurring on the Trainer property for the past 40 or more years, but under authority of a claim that, if valid, must have begun as a groundwater right vested in the late 1930's and early 1940's. The current Trainer claim for surface water (S1-115857CL) may not however be recognized through adjudication as a surface water right.

The current proposal seeks to ensure that existing surface water use is authorized under a less questionable water right. This will help preserve the Trainer property as irrigated agricultural land should out of stream uses to the unnamed stream serving Trainer Property uses be limited by future regulation or through other circumstances.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

Water is available for proposed appropriation and it is determinate that the use is beneficial and that it will not result in impairment to existing rights or harm to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for a new water right under application number S1-28797 be approved 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:

Quantities

0.12 cfs

0.3 acre-feet per year

Irrigation

0.6 acres

Point of Diversion

NW¼, SE¼, Section 35, Township 37 North, Range 01 West, W.M.

Place of Use

See legal description on page 2.



DOUGLAS H. WOOD

Douglas H. Wood
Douglas H. Wood, M.Sc., P.Geo., L.H.G.

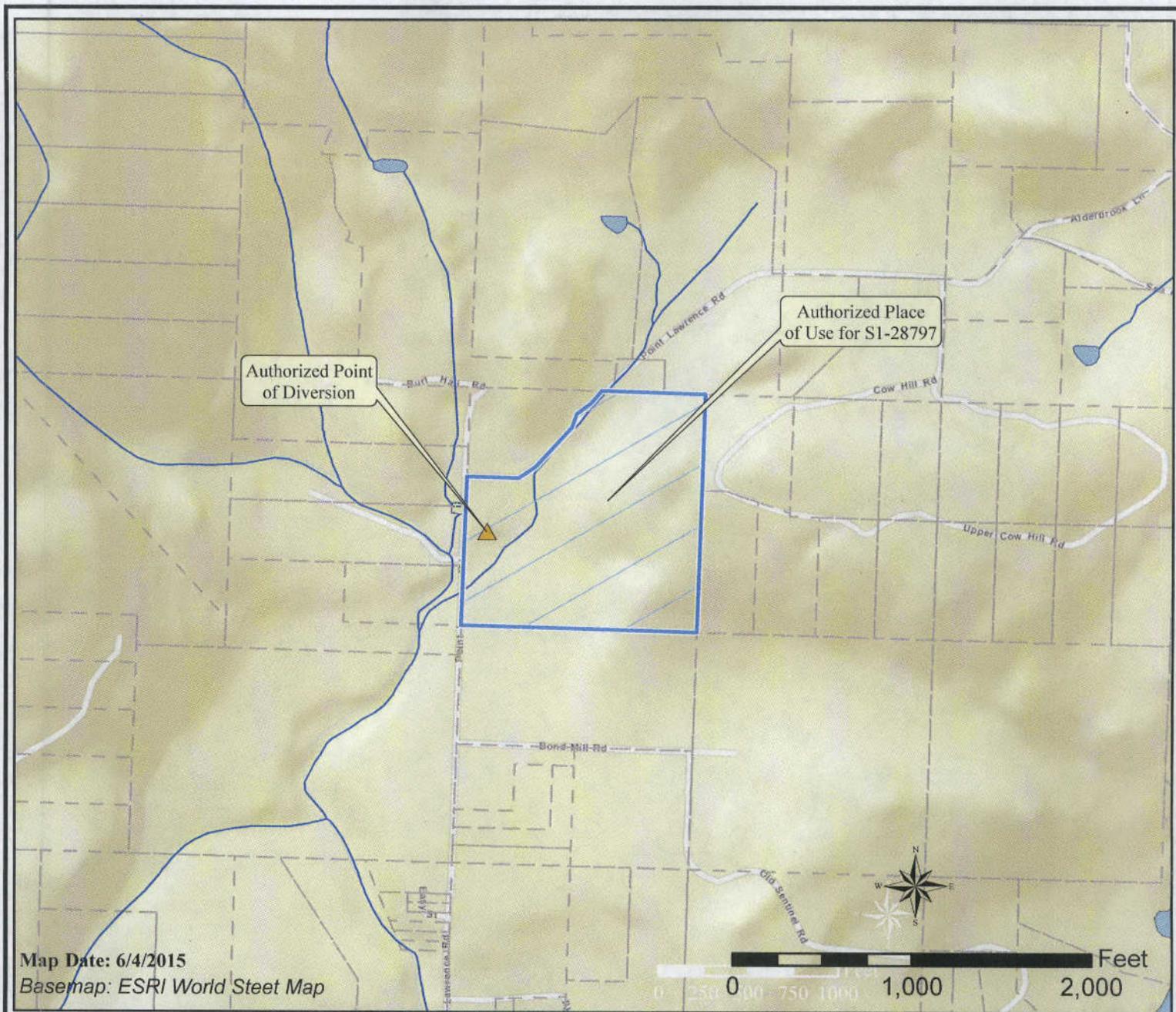
July 21, 2015
Date

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.

Selected References

- Bailey, S. et al., 2011 - Water Rights Tracking System (WRTS) Database; Washington Department of Ecology.
- Lapen, Thomas J., 2000 - Map of the Bellingham 1:100,000 Quadrangle, Washington, Division of Geology and Earth Resources, Department of Natural Resources; Open File Report 2000-5, 36 pages plus maps.

ATTACHMENT 1



Map Date: 6/4/2015

Basemap: ESRI World Street Map



Legend

-  Authorized Place of Use
-  Water Body
-  Authorized Point of Diversion
-  San Juan County Parcels



Stevens and Patricia Trainer
 Water Right S1-28797
 Section 35 T 37N R 01W W.M.
 WRIA 2 - San Juan County
 Orcas Island

Place of use and point(s) of withdrawal are as defined on the cover sheet under the headings, 'LOCATION OF WITHDRAWAL' and 'LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'