



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

**REPORT OF EXAMINATION**  
**TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON**

PRIORITY DATE	APPLICATION NO.	PERMIT NO.	CERTIFICATE NO.
June 10, 1986	S1-24876		

NAME Kenneth F. Johnson		
ADDRESS/STREET	CITY/STATE	ZIP CODE
12917 Magnolia Lane	Mt. Vernon	98273

**PUBLIC WATERS TO BE APPROPRIATED**

SOURCE
Debay Slough
TRIBUTARY OF (IF SURFACE WATER)
Skagit River

MAXIMUM CUBIC FEET PER SECOND (CFS)	MAXIMUM GALLONS PER MINUTE (GPM)	MAXIMUM ACRE FEET PER YEAR (AFY)
1.22		194

TYPE OF USE, PERIOD OF USE

Irrigation of 136.45 acres, during the irrigation season (May 1<sup>st</sup> through September 30<sup>th</sup>)

Water right is subject to WAC 173-503-040(2) instream flow levels for the following control point:  
Skagit River near Mount Vernon, WA (USGS #12-2005-00)

**LOCATION OF DIVERSION/WITHDRAWAL**

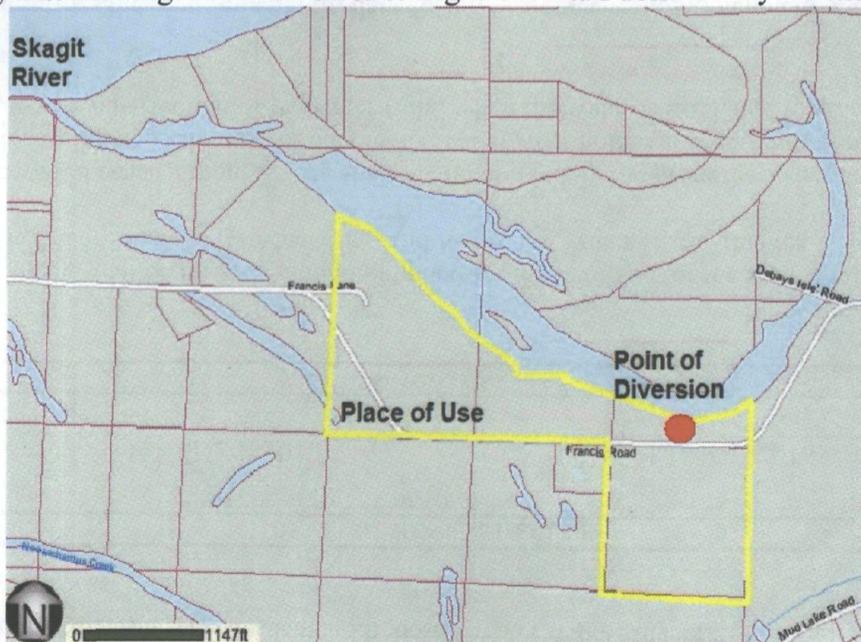
APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL					
1,926 feet east and 2,380 feet south from the NW of Section 2, T. 34 N., R. 4 E.W.M.					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
SE 1/4 NW 1/4	2	34	4E	3	Skagit
PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM		
P23431	48.464781°N	122.261636°W	NAD 1983 HARN		

**LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED**

Government Lot 5 (the southwest (SW 1/4) of the northwest (NW 1/4)); the southeast quarter (SE 1/4) of the northwest (NW 1/4) and the northeast (NE 1/4) quarter of the southwest (SW 1/4) quarter of Section 2, Township 34, Range 4 E.W.M.

Also Government Lot 5 and the portion of Government Lot 1, lying southerly of the slough, Section 3, Township 34, Range 4 E.W.M., EXCEPT roads.

Subject to: Easements granted to Puget Sound Power & Light Co. and Public Utility District No. 1 of record.



Attachment 1 also shows the point of diversion and place of use

**DESCRIPTION OF PROPOSED WORKS**

Water will be pumped using a portable centrifugal type pump. The pump will be powered by a tractor P.T.O. to a long traveling reel irrigator containing 1,300 feet of 4.1 inch i.d. hose. Water will be dispersed through an irrigation gun with a 1.5 inch nozzle.

**DEVELOPMENT SCHEDULE**

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
June 1, 2011	June 1, 2012	June 1, 2016

**PROVISIONS**

Metering Provision:

An approved measuring device shall be installed and maintained for the diversion of the source identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Water use data shall be recorded twice a month. Data shall be maintained by the property owner and promptly submitted to Ecology upon request. Recording and retention of data by the water right holder are required to inform the water users about how much water is used, to prove perfection of the water right, when the water is used, and to assist users in efficient water management.

Chapter 173-173 WAC describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation, and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements."

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

Instream Flow Provision:

This authorization is subject to the following minimum flows taken from Chapter 173-503 WAC as adopted.

Instream flows as established at monitoring station #12-2005-00 shall be protected by regulation of diversions. No diversion of water under this authorization shall take place when the stream flow at this station is below the minimum flows.

Month	Day	USGS Sta. #12-2005-00 Skagit River
Jan	1-31	10,000
Feb	1-29	10,000
Mar	1-31	10,000
Apr	1-30	12,000
<b>May</b>	<b>1-31</b>	<b>12,000</b>
<b>Jun</b>	<b>1-30</b>	<b>12,000</b>
<b>Jul</b>	<b>1-31</b>	<b>10,000</b>
<b>Aug</b>	<b>1-31</b>	<b>10,000</b>
<b>Sep</b>	<b>1-30</b>	<b>10,000</b>
Oct	1-31	13,000
Nov	1-15	13,000
	16-30	11,000
Dec	1-15	11,000
	16-31	10,000

Real-time flow data for USGS station #12-2005-00 can be obtained from the following website:  
<http://waterdata.usgs.gov/wa/nwis/uv?12200500>

Washington Department of Fish and Wildlife provision:

The intake shall be screened at all times in accordance with Department of Fish and Wildlife screening criteria. This water right is issued subject to Washington Department of Fish and Wildlife Hydraulic Project Approval.

Shoreline Management Act:

Nothing in this authorization shall be construed as excusing the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by local agencies under the Shoreline Management Act of 1971.

Family Farm Irrigation:

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.

Other:

This authorization to make use of public waters of the state is subject to existing rights, including any existing rights held by the United States for the benefit of Indian tribes under treaty, reservation, or settlement.

If it can be shown that this diversion has a detrimental effect on existing rights, it shall be the responsibility of the water right holder to mitigate for this impact and/or alter or cease withdrawal of water.

The applicant is advised that a certificate will issue for only that quantity of water that has been diverted and applied to actual beneficial use. Such quantity applied to actual beneficial use shall not exceed the quantity specified in this report of examination and will be calculated based on the best information available to Ecology, including metering data.

A certificate of change will not be issued until a final investigation is made.

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FINDINGS OF FACT AND ORDER

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Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I find the authorization to appropriate public water as recommended will not be detrimental to existing rights or the public interest.

Therefore, I ORDER the approval of Application No. S1-24876, subject to existing rights and the provision specified above.

You have a right to appeal this decision. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

**1. To file your appeal with the Pollution Control Hearings Board**

Mail appeal to:

The Pollution Control Hearings Board  
PO Box 40903  
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board  
4224 – 6th Ave SE Rowe Six, Bldg 2  
Lacey, WA 98503

**2. To serve your appeal on the Department of Ecology**

Mail appeal to:

The Department of Ecology  
Appeals Coordinator  
P.O. Box 47608  
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

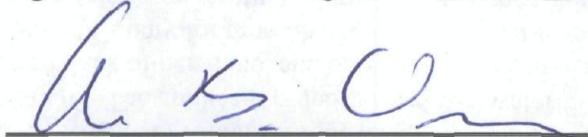
The Department of Ecology  
Appeals Coordinator  
300 Desmond Dr SE  
Lacey, WA 98503

**3. And send a copy of your appeal to:**

Andrew B. Dunn, Section Manager  
Water Resources Program  
Department of Ecology  
Northwest Regional Office  
3190 160<sup>th</sup> Ave SE  
Bellevue, WA 98008

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 Bellevue, Washington, this 15<sup>th</sup> day of October 2009.



Andrew B. Dunn, Section Manager  
Water Resources Program  
Northwest Regional Office

**BACKGROUND**

Mr. Kenneth F. Johnson filed an application for water rights on June 10, 1986. The application was assigned number S1-24876. The applicant proposed to divert water from Debay Slough to irrigate 298 acres of agricultural land. Due to a long-term lack of personnel and ongoing watershed planning, Ecology has not processed applications for new water rights in Skagit County for more than a decade. Personnel are now available, instream flows have been adopted, and application processing is currently underway. Since the submittal of the application in 1986, the applicant has sold portions of his property to the Washington State Department of Fish and Wildlife and the proposed number of acres to be irrigated has been reduced to 136.45.

Attributes of Application

Application Number:	S1-24876
Applicant Name:	Kenneth F. Johnson
Priority Date:	June 10, 1986
Source:	Unnamed Slough (locally known as Debay Slough)
Purpose of Use:	Irrigation
Period of Use:	During the irrigation season
Notice of Publication:	<u>The Skagit Argus</u> on August 12, 1986 and August 19, 1986
Protests:	None
SEPA Compliance:	Exempt

**INVESTIGATION**

In considering this application, my investigation included, but was not limited to, research and/or review of:

- The State Water Code
- Site information
- Irrigation Requirements
- Water Rights
- Notes from site visit conducted on January 26, 2009
- Letters and documents in the file
- State of Washington Irrigation Guide
- Precipitation Data
- Topographic and local area maps

**State Water Code**

Legal Authorization

Chapter 90.03 RCW authorizes the appropriation of public water for beneficial use and describes the process for obtaining water rights. Laws specifically governing the water right permitting process are RCW 90.03.250 through 90.03.340.

Chapter 173-503 WAC

The Instream Resources Protection Program (IRPP) for the Lower and Upper Skagit Water Resources Inventory Area was adopted April 14, 2001 and amended May 15, 2006. The purpose of this chapter is to retain perennial rivers, streams, and lakes in the lower and upper Skagit basins. These rules established minimum instream flows and future water rights shall be conditioned on the instream flows. It also states that existing water rights, including perfected riparian rights, federal Indian and non-Indian reserved rights shall not be affected by the adoption of the instream flows.

State Environmental Policy Act

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 1 cubic feet 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;
- It is a groundwater right application for more than 2,250 gallons per minute;
- It is an application that, in combination with other water right applications for the same project, collectively exceed 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, 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.

Fish and Wildlife Comments

The Department of Fisheries notified the Department of Ecology that they were concerned with low flows and water quality issues in the Skagit River Basin and recommended that new water rights not be issued until instream flows had been established. Pending water right applications and new incoming applications were placed on hold. On April 14, 2001, Chapter 173-503 WAC – Instream Resources Protection Program – Lower and Upper Skagit Water Resources Inventory Area was adopted, and was amended on May 15, 2006.

**Site Information**

Skagit River Watershed

The Skagit River originates in the mountains of Manning Provincial Park in British Columbia, Canada. Gorge Dam, Diablo Dam and Ross Dam impound the Skagit River on the United States side of the border. The river flows through an eagle nesting area and past the towns of Sedro-Woolley, Burlington and Mount Vernon before forming a delta and entering into Skagit Bay. The Skagit is the largest watershed in the Puget Sound Basin. Present management of the Skagit River salmon runs is under the jurisdiction of the state of Washington and the Skagit Tribes. The Skagit Tribes include the Swinomish, Upper Skagit, and Sauk/Suiattle.

Topographic and local area maps

The 7.5 minute Mount Vernon Quadrangle shows an unnamed slough south of the Skagit River within Sections 2 and 3 of Township 34, Range 4E. The outlet is within Section 34, Township 35, Range 4 East at approximately river mile 21. The elevation of the area is approximately 20 feet above sea level.

Precipitation

The Sedro Woolley weather station has precipitation data collected from 8/1/1896 to 12/31/2007. Average total precipitation (in inches) by month is shown below.

Table 1: Precipitation

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Average Total Precipitation (in.)	5.70	4.22	4.26	3.50	2.78	2.57	1.44	1.70	3.07	4.60	6.41	6.13	46.37

**Irrigation Requirements**

Mr. Johnson plans on irrigating pasture grass and occasionally other crops. The State of Washington Irrigation Guide (1992 update) calculates the crop irrigation requirement, with a 2-year return interval (every other year the crop will experience a shortage of water), for pasture/turf at the Sedro Woolley station as being 11.12 inches per year. In this guide, the irrigation of pasture/turf runs from May to September.

Table 2: Irrigation Requirements

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Monthly Net Irrigation Requirements (in.)	0.00	0.00	0.00	0.00	0.63	2.72	4.11	2.75	0.90	0.00	0.00	0.00	11.12

A tractor power take-off (P.T.O.) pump with a capacity of 550 GPM will be used to pump water from the slough. Water will be applied to the irrigated areas using a long traveling reel irrigator containing 1300 feet of 4.1 inch i.d. hose and an irrigation sprinkler gun with a 1.5 inch nozzle.

Efficiency estimates for a sprinkler gun are 55-75% with 65% being the average (Ecology Water Resources Program Guidance 1210). An efficiency of 65% was assumed for this calculation.

$$TIR = \frac{CIR}{E} * 100$$

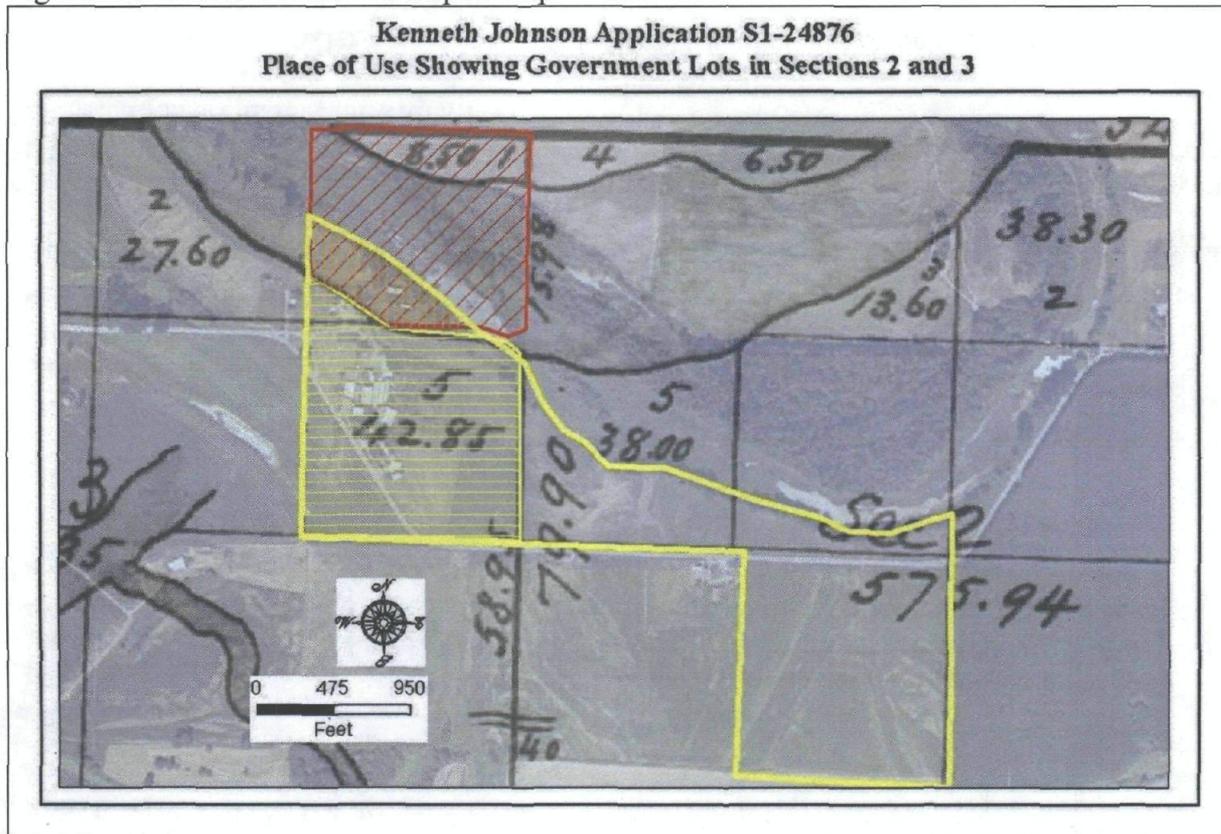
- TIR – Total Irrigation Requirement
- CIR – Crop Irrigation Requirement
- E – Irrigation System Efficiency in percent

$$TIR = \frac{11.12 \text{ inches}}{65} * 100 = 17.10 \text{ inches}$$

Irrigated Areas

The original application submitted in 1986 proposed 298 acres of irrigation. While comparing the legal description for the place of use provided by the applicant to the Skagit County parcel data, a couple of discrepancies were found. The first discrepancy is the legal description provided for parcel number 23454. Kenneth Johnson originally owned all of Government Lots 1 and 5 of Section 3, Township 34, Range 4E. The image below shows Government Lot 1, in red, to the north of Government Lot 5 in section 3. Both areas were included in the original application. Mr. Johnson has sold the portion of land north of the slough to the Washington State Department of Fish and Wildlife, but retains ownership of the portion of Government Lot 1 south of the slough. Although aerial photographs showed buildings on this parcel, Skagit County records showed this area south of the slough as an unidentified parcel. Skagit County was contacted and they corrected the problem by adding that portion of land to parcel number P23454.

Figure 1. Place of Use and BLM plat map



Although this southerly portion of Government Lot 1 has been added to parcel P23454, the legal description of the parcel still only describes Government Lot 5.

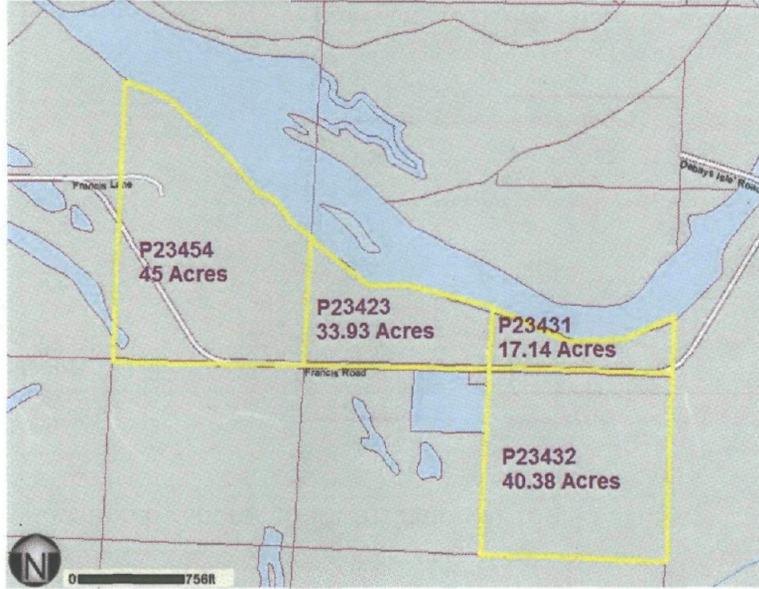
The second discrepancy between the legal description provided for the place of use and actual place of use is found in the SE ¼ NE ¼ of Section 2. Debay Slough now splits this area, but at the time of the BLM survey, this area was not assigned a government lot (refer to figure 1). Kenneth Johnson owned the entire SE ¼ NE ¼ at the time he filed the application, but has sold the portion northerly of the slough to Department of Fish and Wildlife and he retains only the portion southerly of the slough.

Table 3: Additional Parcel Information

Parcel Number	Abbreviated Legal Description	Number of Acres
P23432	NE SW Section 2	40.38
P23431	Portion SE NW Section 2	17.14
P23423	Portion SW NW Section 2	33.93
P23454	SE NE and a Portion NE NE Section 3	45.0
<b>Total</b>		<b>136.45</b>

The image below shows the place of use as defined by the current parcel numbers and acreage of each parcel as listed by Skagit County Assessor's office.

Figure 2: Place of Use and Parcel Numbers



The amount of water needed for 136.45 acres of pasture is 194 acre feet (17.10 in./12 in. per foot = 1.43 ft. x 136.45 acres) per year. The final acre feet issued will be the actual number of afy that have been perfected by the applicant (this final annual quantity may be less than what was requested). This final annual quantity will be based upon meter readings and will take into account any limitations on the pumping rate, and days and hours of pumping. All unperfected quantities will be returned to the state.

**Water Rights**

Existing rights held by Kenneth Johnson

Kenneth Johnson filed a water right claim in June 1974. It was received by Ecology and assigned claim number 123317. The claimed use of water is for cattle water from a ground water source.

Ecology has the authority to make a tentative determination on the validity of a claim if an application to change the claim is filed with the Department. There is no proposed change to this claim; therefore the validity of the claim was not reviewed during the processing of this application.

Other water rights in the area

**Debays Slough**

One water right record was found for a diversion out of Debays Slough. C & S Farms (Christoferson & Stakkeland) holds a surface water certificate with a priority date of July 24, 1959. The diversion is located upstream from the applicant. Tom Moore from the Department of Ecology conducted a site visit on April 13, 1987. He noted that water was not currently being used under that water right and Mr. Johnson believed that water had not been used there for quite some time. Ecology has not looked into whether this water right may have relinquished due to non-use.

**Skagit River**

In addition to the IRPP described above, there are numerous water rights in the Skagit River Basin downstream from the applicant's point of diversion. Existing water rights were taken into consideration when establishing the minimum instream flows and are senior to the flows. Future water rights, including this one, are junior to the instream flow and shall be conditioned on minimum flows. Senior water rights issued prior to the adoption of the instream flows therefore will not be impaired by this application.

IRPP, Instream Flows for the Skagit River USGS Sta. #12-2005-00 (Instantaneous rate in cubic feet per second)

Jan. 1– Mar. 31	Apr.1 – June 30	Jul. 1 – Sept. 30	Oct. 1– Nov. 15	Nov.16 – Dec. 15	Dec. 16 –Dec. 31
10,000	12,000	10,000	13,000	11,000	10,000

The following table lists the average flows for the Skagit River at USGS station 12-2005-00.

Average flows (cfs) for Skagit River calculated for USGS Sta. #12-2005-00, 1941 - 2005 <sup>1</sup>					
Jan. 1– Mar. 31	Apr.1 – June 30	Jul. 1 – Sept. 30	Oct. 1– Nov. 15	Nov.16 – Dec. 15	Dec. 16 –Dec. 31
16,455	16,505	16,227	18,059	18,412	17,979

<sup>1</sup> USGS National Water Information System: Web Interface, <http://nwis.waterdata.usgs.gov/wa/nwis/>

### Site Visit

A site visit was conducted on January 26, 2009. Kenneth Johnson showed me the location of the proposed diversion on the slough and I documented the location with GPS. When flows in the Skagit River are low, the water levels in the slough also drop. Mr. Johnson stated his water use is limited to when water levels are high enough to access the water. It is likely that when the river flow decreases, Mr. Johnson will not be irrigating, therefore, water use conditioned on the instream flows should not be a problem. Mr. Johnson is familiar with the minimum flows and is willing to stop water diversions when flows are not met.

### **FINDINGS**

In accordance with state law, the following criteria must be addressed during the evaluation process for this water right request:

- Water must be available for appropriation
- The water use must be for a beneficial purpose
- The appropriation of water must not impair existing rights
- The appropriation of water must not be detrimental to the public interest

### **Water Availability**

There are no administrative closures on the Skagit River; therefore water is available at the requested point of diversion. According to WAC 173-503-050, 200 cubic feet per second (subject to established instream flows) is available to be appropriated through ground water withdrawal or surface water diversion for further instantaneous consumptive appropriation in the Lower and Upper Skagit watershed (WRIA 3 and 4). This is the first water right issued that takes advantage of this available water.

### **Beneficial Use**

According to RCW 90.54.020, irrigation is considered a beneficial use of water.

### **No Impairment of Existing Rights**

There will be no impairment of existing water rights as a result of approving this request. When established instream flows are not being met on the Skagit River, diversion under this water right shall cease. No other appropriative rights will be impaired.

### **Public Interest**

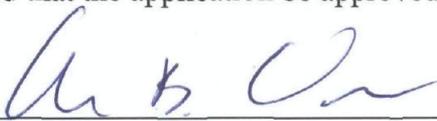
No detriment to the public interest could be identified during the investigation of this application.

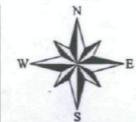
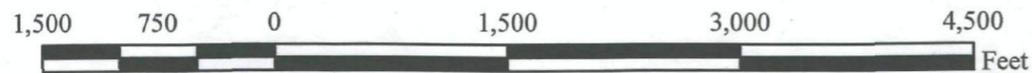
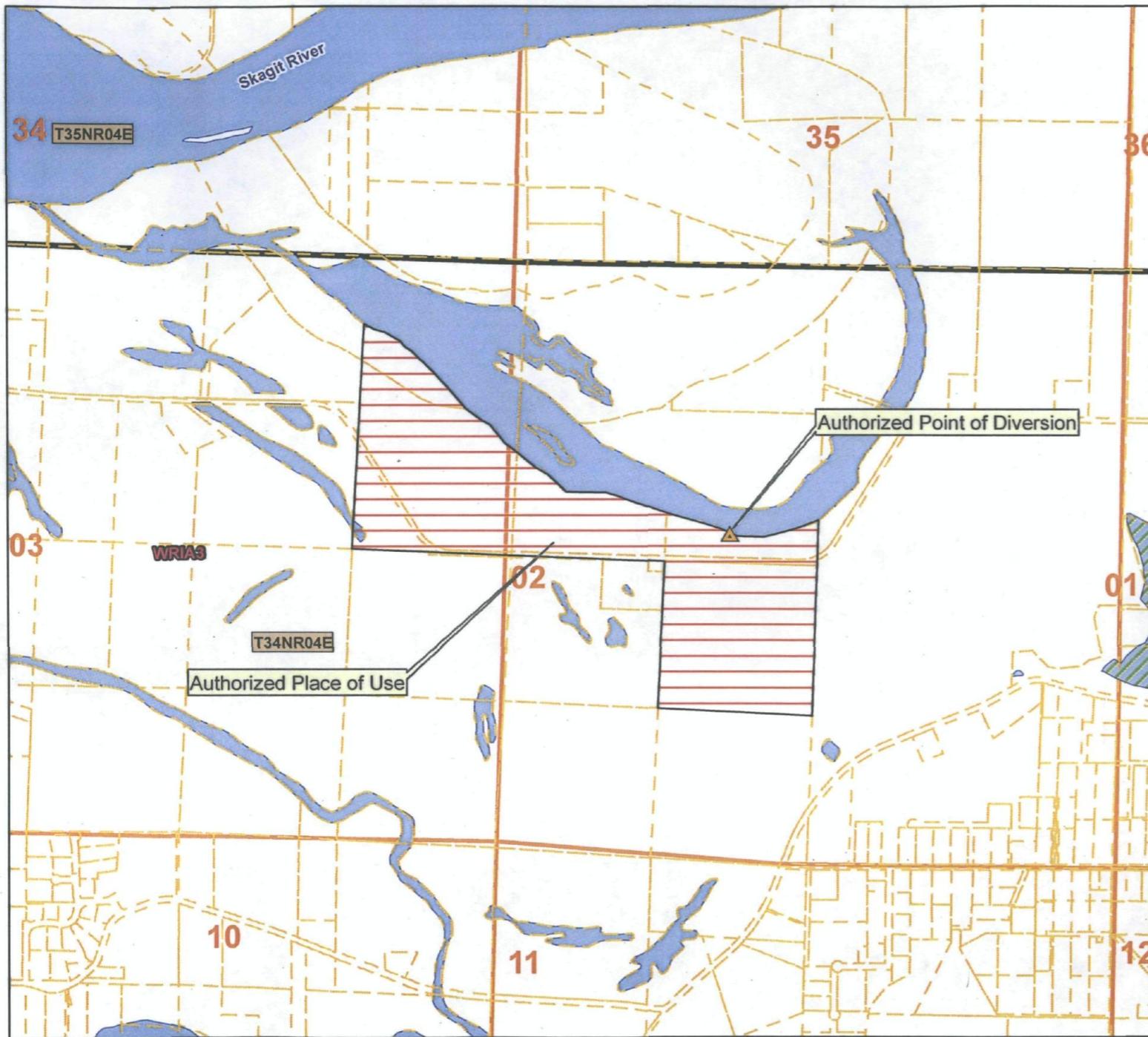
### **CONCLUSIONS**

In accordance with chapter 90.03 RCW, I find there is water available for irrigation from the source in question, the purpose of use is beneficial, there will be no impairment of existing rights, and there will be no detriment to the public interest.

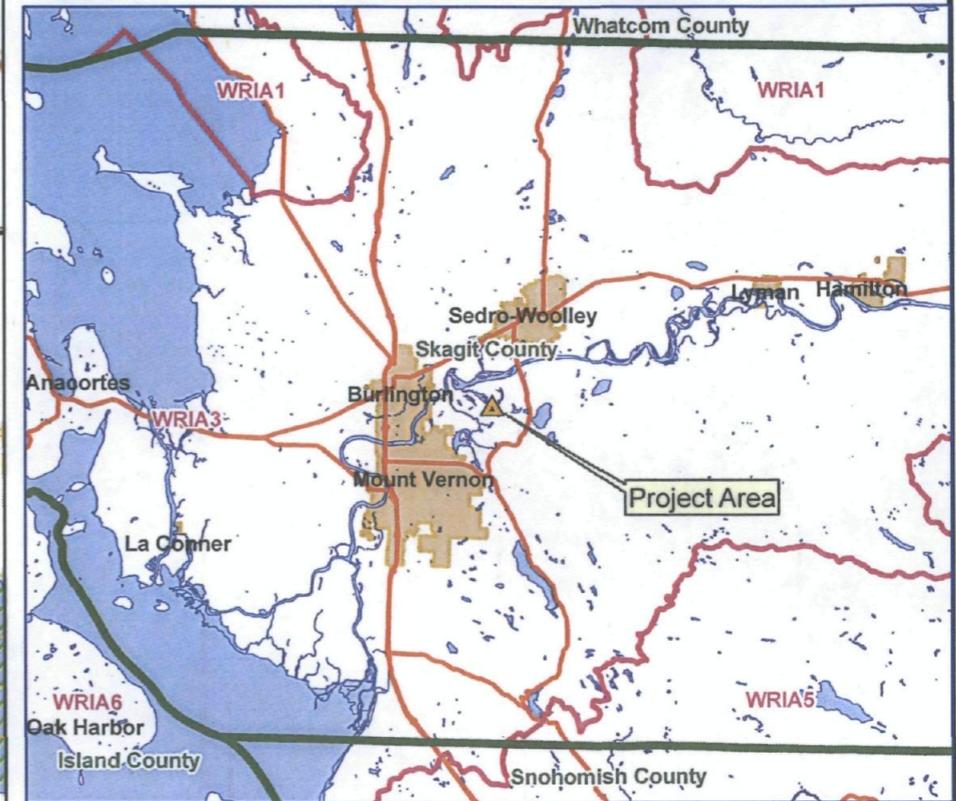
### **RECOMMENDATIONS**

It is recommended that the application be approved for irrigation of 136.45 acres.

Report by:  10/15/2009  
For Melisa Snoeberger Date



Kenneth Johnson  
 Water Right Number S1-24876  
 Sect. 02 T 34N R 04E W.M.  
 WRIA3 - Skagit County



**Legend**

- County
- WRIA
- Highways
- Townships
- cities
- Sections
- Authorized Point of Diversion
- Authorized Place of Use

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

Attachment 1