



2167461

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600  
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

April 7, 2003

CERTIFIED MAIL

Ms. Loretta M. Smalley  
907 Salmon Creek Road  
Naselle, WA 98638

Dear Ms. Smalley:

Thank you for sending the Amended Claim for Water Right Claim No. 118900 (this is the actual Claim Number; the number you had used when you completed the Amended Claim for Water Right form was a number associated with the date stamp used when Ecology received the original Claim). I apologize for the fact that it has taken this long for Ecology to respond.

The amendment you requested regarding the point of diversion of the claimed water has been accepted as a "ministerial" amendment, correcting typographical errors made in the original claim. The amendment concerning the lands where the water is used was not accepted because it does not meet any of the legal requirements for amending a Water Right Claim; however, this amendment was not necessary because the claim form already indicates that the water is used for domestic supply. A formal order explaining these conclusions is enclosed.

If you wish to appeal the enclosed order, you may do so within thirty days of your receipt of the order. The appeal procedure is described in the order. If you have any questions, please contact Thom Lufkin at (360) 407-6631 or [tlhw461@ecy.wa.gov](mailto:tlhw461@ecy.wa.gov).

Sincerely,

Joe Stohr  
Program Manager  
Water Resources

JS:ThL

Enclosure

cc: Darlene Treece, WR-HQ  
Sheri Carroll, WR-SWRO

Tracked



DEPARTMENT OF ECOLOGY

IN THE MATTER OF FILING IN THE )  
WATER RIGHTS CLAIM REGISTRY ) Order No.  
AN AMENDMENT BY LORETTA M. SMALLEY ) 03WRHQ-5449  
FOR WATER RIGHT CLAIM NO. 118900 )

The Department of Ecology is responsible for the Water Rights Claims Registry, and amendments to the Water Rights Claims Registry, Chapter 90.14 RCW.

RCW 90.14.065 states that any person or entity, or their successor, having a statement of claim on file with the Water Rights Claims Registry on April 20, 1987, may submit an amendment to the statement of claim if the submitted amendment is based on:

1. An error in estimation of the quantity of the applicant's water claim prescribed in RCW 90.14.051 if the applicant provides reasons for the failure to claim such a right in the original claim;
2. A change in circumstances not foreseeable at the time the original claim was filed, if such a change in circumstances relates only to the manner of transportation or diversion of the water and not to the use or quantity of such water; or
3. The amendment being ministerial in nature.

The Department of Ecology shall accept any such submission and file the same in the registry unless the Department by written determination concludes that the requirements of any of subsections (1), (2), or (3) of RCW 90.14.065 have not been satisfied.

Ms. Loretta M. Smalley submitted a request to amend Water Right Claim No. 118900, pursuant to RCW 90.14.065. (Ms. Smalley indicated the Claim No. as "132133," but that number was associated with the stamp Ecology used to identify the date the Claim was received; the actual Claim No. is 118900.) The request is dated May 29, 1998. Ecology received the request on June 5, 1998. No field investigation was conducted in association with this review, nor were any documents examined except those provided by the applicant.

The proposed amendments relate to: 1) the location of the point of diversion; and 2) the legal description of the lands on which the water is used.

**1) The location of the point of diversion.** The original claim filed with Ecology stated that the location of the point of diversion was: "660 FEET South AND 100 FEET West FROM THE North 1/16 CORNER OF SECTION 33 BEING WITHIN South-east 1/4 OF SECTION 33, T. 11, N., R. 8 W W. M." (Written into this description, by what appears to be another individual, is "NE corner" following "North 1/16" and "of NW 1/4" following "South-east 1/4.") The claim amendment request asks that this description be changed to "650 FEET North AND 100 FEET West FROM THE C 1/4 CORNER OF SECTION 33 BEING WITHIN the SE 1/4 NW 1/4 OF SECTION 33, T. 11 N. R 8 W W.M." The explanation provided on the Amended Claim form states: "Legal description had typographical errors."

**Response:** This amendment request is based on the assertion that the various changes being requested are to correct typographical errors. Because such errors are allowed to be corrected under the ministerial criterion (RCW 90.14.65(3)) this request for an amendment is approved.

**2) The legal description of the lands on which the water is used.** The legal description on the original Claim said: "South-east 1/4 of the North-west 1/4 of Section 33, Township 11 North, Range 8 West W. M." (Below this, in what appears to be a different hand, is written: "660' South and 100 ft. West of the NE Corner of the NE Corner of the SE 1/4 NW 1/4.") The request for an amendment to this description asks that it be changed to read: "Residence in SE 1/4 NW 1/4 Sec. 33 T 11 N R 8 W."

**Response:** This amendment request appears to be unnecessary. The two descriptions (i.e., the original description on the claim form and the requested "amended" description) are, whether or not intended by the applicant, essentially the same description. That is, while the proposed amendment adds the phrase "[r]esidence in" and is written in a more brief format than the original description, except for the reference to the residence, the particulars of the two descriptions (i.e., the area they refer to) are identical.

Presumably the applicant wished to emphasize that the water is used specifically in her residence, which is located *within* the area description, rather than being used on all of the area within the description. However, the legal description would not be changed by this amendment; i.e., adding "[r]esidence in" doesn't affect the legal description which follows. (Also, the fact that the claim form already indicates the water is for "domestic supply" generally implies it is used in a residence in the described area.) There is no legal basis for this amendment, so this request is denied.

In view of the foregoing, under the authority granted to the Department of Ecology by RCW 43.27A.190, IT IS HEREBY ORDERED THAT the proposed amendments to the location of the point of diversion be accepted for filing with the Water Rights Claims Registry and the proposed amendment to the legal description of the lands on which the water is used not be accepted for filing with the Water Rights Claims Registry.

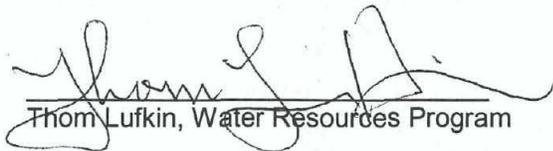
**PLEASE NOTE** that the decision to approve or deny the filing of amendments to Water Right Claim No. 118900 does not constitute an adjudication of any claim to use water. The final determination of the validity, extent, and other details associated with a claim registered in accordance with Chapter 90.14 RCW ultimately lies with the Superior Court through the adjudication process provided for by Sections 90.03.110 through 90.03.240 RCW.

This Order may be appealed pursuant to Chapter 43.21B RCW. The person to whom this Order is issued, if he or she wishes to file an appeal, must file the appeal with the Pollution Control Hearings Board **within thirty (30) days of receipt of this Order**. Send the appeal to: Pollution Control Hearings Board, P.O. Box 40903, Olympia, Washington, 98504-0903 At the same time, a copy of the appeal **must** be sent to: Department of Ecology, Water Resources Appeals Coordinator, P O Box 47600, Olympia, Washington, 98504-7600.

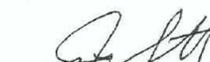
All others receiving notice of this Order who wish to file an appeal must file the appeal with the Pollution Control Hearings Board within **thirty (30) days of the date the Order was mailed**. The appeal must be filed, with both the Pollution Control Hearings Board and the Department of Ecology, in the same manner as described above.

An appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with the provisions of Chapter 43.21B RCW.

SIGNED and DATED at Lacey, Washington this 7<sup>th</sup> day of April, 2003.

  
Thom Lufkin, Water Resources Program

I hereby concur with this determination. This constitutes a final Order and Decision in this matter.

  
Joe Stohr, Manager,  
Water Resources Program