



STATE OF WASHINGTON  
FINAL  
REPORT OF EXAMINATION  
FOR WATER RIGHT APPLICATION

WR Doc ID: 2085416

<b>PRIORITY DATE</b>	<b>WATER RIGHT APPLICATION NUMBER</b>
07/27/1987	G4-29339

<b>NAME AND MAILING ADDRESS</b>	<b>SITE ADDRESS (IF DIFFERENT)</b>
George E. Berney 1750 Conconully Rd. Okanogan, WA 98840	

### Findings of Fact and Order

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated.

Therefore, I ORDER **DENIAL** of Application No. G4-29339.

### Your Right To Appeal

You have a right to appeal this decision to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt. 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 all of the following within 30 days of the date of receipt of this decision:

- File your notice of appeal and a copy of this decision with the PCHB (see filing information below). "Filing" means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. "Notice of appeal" is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this decision on the Department of Ecology by mail, in person, or by email (see addresses below).

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

### Filing An Appeal

#### Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://eluhu.wa.gov/> or call: 360-664-9160.

#### Service on Ecology

**Street Address:**  
Department of Ecology  
Attn: Appeals Processing Desk  
300 Desmond Drive SE  
Lacey, WA 98503

**E-mail Address:**  
[ecologyappeals@ecy.wa.gov](mailto:ecologyappeals@ecy.wa.gov)

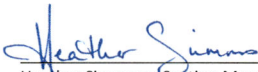
**Mailing Address:**  
Department of Ecology  
Attn: Appeals Processing Desk  
PO Box 47608  
Olympia, WA 98504-7608

### More Information

- **Pollution Control Hearings Board Website**  
<https://elaho.wa.gov/>
- **Chapter 43.21B RCW – Environmental Hearings Office – Pollution Control Hearings Board**  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Ecology's Laws, Rules & Rulemaking**  
<https://www.ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking#ws>

### Authorizing Signature

Signed at Union Gap, Washington, this 5th day of February 2026.



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Heather Simmons, Section Manager  
Water Resources Program  
Central Regional Office  
Department of Ecology

HS:NL:jw (260205)

# INVESTIGATOR'S REPORT

Water Right Application No.: G4-29339 (George Berney)  
 Investigator: Nathan Longoria

## BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number G4-29339.

On July 27, 1987 George Berney filed an application with the Department of Ecology (Ecology) for a new groundwater right out of well in Water Resource Inventory Area (WIRA) 49 within the Okanogan River Basin. The application was accepted and assigned Application No. G4-29339. The requested attributes of the water right are listed below in Table 1.

**Table 1. Summary of Requested Water Right**

Applicant Name	George E. Berney
Priority Date	07/27/1987
County	Okanogan
WRIA	49
Water Source	Groundwater
Place of Use	T. 35 N., R. 25 E. Portions of Section 8 SW¼ SW¼, Portions of Section 17 NW¼ NW¼, Portions of Section 18 NE¼ NE¼. Containing about 70 Acres of land under ¼ pivot circle.

Purpose	Instantaneous Rate (gpm)	Annual Quantity (ac-ft/yr)	Season of Use
Irrigation	400	225	During the irrigation season

Source Name	Parcel	Well Tag	Township	Range	Section	QQ Q	Latitude	Longitude
A well			35 N.	25 E.	18	NE NE		

WRIA = Water Resource Inventory Area; gpm = Gallons per Minute; ac-ft/yr = Acre-feet per Year; QQ Q = Quarter Quarter

Datum: NAD83/WGS84

A Statement of Intent (SOI) with three different options for how they wanted to proceed with processing this new water right was mailed to the applicant on March 28, 2024. Mr. Berney indicated his desire to have this application **processed as submitted**. The applicants' options as proposed by Ecology are listed below:

- **No longer interested:** I am no longer interested in pursuing the above application to appropriate public waters of the state. I understand that the application will be rejected and ecology will close the file and remove it from the waiting list.
- **Process:** I request that Ecology process this application in its current state. I hereby request that the application be evaluated for approval or denial, which is an appealable action.
- **Mitigate with a plan:** I request that Ecology issue a preliminary permit for my application in order to pursue a mitigation plan. I understand that I have a year to provide Ecology with a mitigation plan.

Applicants were requested to return the option based letter within forty five (45) days from the date the original letter was sent and to provide supporting documentation if needed. The letter also stated that if they did not respond or return the form within forty-five (45) days, Ecology would reject the application. Ecology received the applicant's response on April 22, 2024, requesting to have the application processed in its current state.

## **INVESTIGATION**

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### **Proposed Use and Basis of Water Demand**

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#### ***Site Description***

The Place of Use (POU) occurs 0.38 miles east of the Conconully Reservoir and is owned and operated by Berney Ranch Inc., that grows a crop of alfalfa on roughly 115 acres of farmland. The closest city is the city of Conconully 1.18 miles to the north. The elevation of the POU is 2,353 feet above sea level, and occurs on the boundary where conifers naturally propagate to the west and shrub steppe occurs to the east. Existing on this boundary is further supported by the fact that trees are present on northern facing slopes in the area while southern facing slopes rarely exhibit naturally occurring conifer trees.

#### ***Water System Description***

Water is applied through a large center pivot located within the Place of Use for this application. The source for this water is an already existing well that was drilled in 1987 and is the requested source for this application. Outside of the place of use for this application, there are other pivots operated by Berney Ranch Inc. that irrigate additional crop ground to the Northeast and the Northwest. There also seems to be some acreage that is not irrigated at all and given the natural precipitation and elevation grass hay can be cultivated for one cutting without any direct irrigation of the soil (depending on the year). These areas occur outside of pivot coverage area, are usually irregular shapes, and when viewed through aerial imagery appear to be much drier than the irrigated area under the pivots.

#### ***History of Water Use***

Reviewing both aerial imagery and Landsat data shows that portions of the property have been irrigated since 1984 (United State Geological Survey, 2025). Some of the methods of irrigation have changed over time, flood irrigation and wheel lines may have been employed at various times in the property's history. It looks like historically roughly 115 acres have been irrigated at various times since 1988.

#### ***Proposed Use***

Using the Washington State University's Washington Irrigation Water Needs Tool for estimating the water needs of specific crops at specific locations (Washington State University, 2025). It was estimated that the crop CIR (Crop Irrigation Required) is 23.6 inches of water per acre is needed to meet the growing needs of Alfalfa at Conconully. This value is the need of the plant (net need) and does not account for the efficiency of the irrigation application applied.

Based on the other overlapping water rights that cover the Place of Use (POU) it looks like each right is used on a sperate portion of crop ground and are not used in an overlapping fashion meaning they are additive in nature.

Other Rights Associated with Project or Place of Use

**Table 2: Appurtenant Water Rights that overlap with the POU for this water right**

Water Right Document No.	Priority Date	Instantaneous Quantity (CFS or GPM)	Annual Quantity (AC-FT/YR)	Purpose(s) of Use	Point of Diversion or Withdrawal
G4-110861CL	8/1/1965	450 gpm	180	Irrigation of 45 Ac.	From a well
G4-*06674CWRIS	4/12/1963	150 gpm	120	Irrigation of 40 Ac.	From a well
G4-CV14P126 (corresponding change to the above water right)	4/12/1963	150 gpm	120	Irrigation of 40 Ac.	From a well (changed to a new well as the source)
CG4-GWC5227-A (corresponding change to the above water right)	4/12/1963	150 gpm	120	Irrigation of 40 Ac.	To 3 wells
G4-24587CWRIS	2/10/1977	150 gpm	120	Irrigation of 30 Ac.	From a well
CG4-24587C (corresponding change to the above water right)	2/10/1977	150 gpm	120	Irrigation of 30 Ac.	To 3 wells
G4-110862CL	Did not claim a date of first use. "Not in use yet"	150 gpm	120	Irrigation of 30 Ac.	From a well
G3-210881C	5/3/1973	0.17 CFS	22.5 Additive 7.5 Non-additive	Municipal	Surface Water from Okanogan River
S4-28099(A)C	12/15/1982	0.31 CFS	12.07	Dust Control	Surface Water from Okanogan River and Similkameen River

Groundwater Claim **G4-110861CL** is an assertion that water was put to beneficial use pre-dating the groundwater code of 1945. George Berney in 1974 claimed that water had been first put to beneficial use in **August of 1965** for irrigation of **45 acres** of land. In the claim document it cites Ground Water Permit 6262 as the legal doctrine for the claim. This information indicates this claim is **duplicative** of the

water right **G4-\*006674CWRIS**. This means this water right claim appears to be duplicative to the water right certificate that has already been issued, as well as appearing to be filed in a manner that is not consistent with RCW 90.14.

Groundwater Claim **G4-110862CL** is an assertion that water was put to beneficial use pre-dating the groundwater code of 1945. George Berney in 1974 claimed that water had been first put to beneficial use in “**Not in Use Yet**” (did not supply a date of first use) for irrigation of **30 acres** of land. It’s hard to interpret the details of this claim, since no date was provided illustrating any use that pre-dates groundwater code of 1945. Lacking necessary claim information in the claim document results in the water right claim appearing to be filed in a manner that is not consistent with RCW 90.14.

Groundwater Certificate **G4-CV14P126** is a certificate of change that was issued on the parent right **G4-\*06674CWRIS** to add a new well as a point of withdrawal. That right was then changed again with **CG4-GWCS227-A** to help clarify the place of use (POU) for this water right and to add 3 wells as points of withdrawal. This right authorizes the **irrigation on 40 acres** of land. This right needs a Proof of Appropriation submitted, to progress the water right towards a superseding certificate. If the water right holder is not ready to submit a Proof of Appropriation, a request for an extension to the development schedule for this was water right should be submitted as soon as possible to keep the water right in compliance with its development schedule. If neither a Proof of Appropriations nor a request for an extension to the development schedule are submitted the water right change may be cancelled.

Groundwater Certificate **G4-24587CWRIS** is a certificate that was originally issued, but then changed under **CG4-24587** which sought to clarify the POU for this water right and to add 3 wells as points of withdrawal. This authorizes the **irrigation on 30 acres** of land. This right needs a Proof of Appropriation submitted, to progress the water right towards a superseding certificate. If the water right holder is not ready to submit a Proof of Appropriation, a request for an extension to the development schedule for this was water right should be submitted as soon as possible to keep the water right in compliance with its development schedule. If neither a Proof of Appropriations nor a request for an extension to the development schedule are submitted the water right change may be cancelled.

Surface Water Certificate **S4-28099(A)C** and Groundwater Certificate **G3-21081(C)D** are large area permits held by Okanogan County for dust abatement throughout the county. These water rights are not used by the applicant and will not be considered part of their water use.

## Hydrogeologic Evaluation

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A Hydrogeological Evaluation was conducted by Anna Hoselton and was reviewed and confirmed by Chris Ducan in 2025. In her memo she stated.

“The well(s) referenced in this application are located in Graveyard Flat, immediately east of Conconully Reservoir. Graveyard Flat is composed of glacial drift sediments deposited as what appears to be a kame terrace or a recessional moraine type deposit. An older, deep well is located on top of the terrace at approximately the 2,350 ft elevation. A second well, from which the applicant has requested withdrawal of 400 gpm for irrigation purposes, is located in a kettle-like depression at approximately the 2,300 – 2,280 ft elevation. To the north and south, resistant ridges of crystalline rock (biotite-hornblend orthogneiss) form valley walls that rise to approximately 3,100 ft in elevation above the terrace. Springs emerge from the east edge of Graveyard Flat and coalesce down valley contributing to the flow in Scotch Creek. Scotch Creek flows southeast, away from the terrace.

The applicant's water well reports indicate that all of the wells penetrate stratified unconsolidated sands and gravels consistent with glacial drift deposits. None of the applicant's wells penetrate the underlying bedrock. No significant occurrence of confining clays is noted on the well reports. Accordingly, it is assumed that the source for these wells is the unconfined water table aquifer.

Hydraulic continuity between the applicant's well and Scotch Creek is probable. The location of the applicant's well, relative to the reservoir and Scotch Creek, in addition to aquifer characteristics, appear to ensure the interception of some ground water flow from Conconully Reservoir to Scotch Creek by the applicant's well."

**Conclusions are as follows:**

- Hydraulic continuity is probable between the applicant's well, Conconully Reservoir and Scotch Creek.
- Timing of impact on stream due to proposed pumping withdrawals may be in the vicinity of 133 days or less.
- Degree of impact appears to be small, if and only if values used to calculate are reasonably representative of field conditions."

This information supports the fact that surface water and groundwater pumped by the well are interconnected and that using the well has some impact to surface water.

**Materials Submitted in Support of Application**

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Several letters of support were submitted, most detailing how they felt Mr. Berney using his well would not have an impact on Scotch Creek and its flow of water. The letters of support number 9 in total and they were written by Grant Smith, Michael and Debra Morris, Lawerance Cunningham, Wade Cunningham, an unknown person at 1649 Conconully Hwy., Henry and Norma Jean Mulloy, William Bolin, Ted Bolin, and Archie Bolin.

**ANALYSIS**

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Under Washington State law (RCW 90.03.290), each of the following four criteria must be met for an application for a new water right permit to be approved:

- Water must be available for appropriation.
- Water withdrawal and use must not cause impairment of existing water rights.
- The proposed water use must be beneficial.
- Water use must not be detrimental to the public interest (public welfare).

**Water Availability**

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For any new appropriation, water must be both physically and legally available.

***Physical Availability***

For water to be physically available for appropriation, water must be present in quantities and quality and on a sufficiently frequent basis to provide a reasonably reliable source for the requested beneficial use or uses. An analysis of physical availability is required for both surface water and groundwater applications.

Water at the depth of 64 below ground surface is physically available and has been consistently used since the drilling of the well in 1987 for irrigation.

### **Legal Availability**

To meet the legal availability test, the proposed appropriation may not withdraw and use water that is already “spoken for”, such as water from sources that are protected by administrative rule or court order.

In 1976 Ecology established WAC 173-549, “The Water Resources Program in the Okanogan River Basin, WRIA 49”. This rule was implemented to “to satisfy the requirements of RCW 90.54.020 (3)(a) while, at the same time, allowing the continued use of water for other beneficial uses such as agriculture, which is acknowledged as a vital activity greatly benefiting the citizens of the Okanogan Basin and the state of Washington.” WAC 173-549-015. Among other things, the rule established minimum instream flows on the mainstem of the Okanogan River and some of its tributaries. It also closed all perennial streams, except those with established minimum flows, to further uses from May 1 – October 1 each year (WAC 173-549-025). The summarized information in the “Hydrogeological Evaluation” portion of this document indicates that the well is in hydraulic continuity with surface water and that small impacts maybe experienced by Scotch Creek and Conconully Reservoir. The quantification of the impact experienced by surface water sources is particularly relevant in the post-Foster and Postema landscape, since now even de minimis impacts to surface water are not allowed. Because this new use would impact a stream closed by rule under WAC 173-549, water is not legally available for appropriation.

To further elaborate, in the 2011 USGS Yakima Basin Groundwater Study confirmed that surface water and groundwater are directly connected in the Yakima Basin (Ely, 2011). This same relationship is believed to exist in other river basins in Washington State but to what degree is not fully understood or quantified. This study helps establish a scientific precedent for groundwater withdrawals having some impact on surface water flows. In the Supreme Court case Foster (2015) and Postema (2000) it was established that impairment of instream flows is not permissible, even “de minimis” impacts to stream flows are not allowed and that mitigation or impacts to surface water should be considered drop-for-drop in nature (since de minimis impacts cannot be claimed, and out-of-kind mitigation is not permissible). Since you are requesting to pump groundwater in a basin whose perennial streams are closed by rule, even a de minimis impact to those streams is not allowed.

### **Impairment**

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In analyzing impairment, Ecology must make a determination as to whether existing water rights, including adopted instream flows, may be impaired by the withdrawal and proposed use.

There are a few senior water rights authorized in the source of Conconully Reservoir that may be impaired by this new appropriation of water. Additionally, Okanogan Irrigation District (OID) has a water right for irrigation that they deliver out of Conconully Reservoir that they feel may be impacted by the approval of this new water right.

Many of the tributary streams that feed the Okanogan River are over appropriated currently, meaning there are more water rights issued than the streams’ natural flow can satisfy. Any additional uses of water that effect these streams would decrease the amount of water available for existing rights and would not allow them to divert their full quantity of water or require them to be curtailed earlier. Thus, if this application was approved it would impair senior water rights in this source and in downstream sources.

Additionally, by granting new appropriations of water in tributaries it will decrease the quantity of water coalesces in the main steam Okanogan River. WAC 173-549-20(2) establishes the minimum instream flow for the Okanogan River, a new appropriation of water in a tributary upstream would deprive this

reach of potential water and as mentioned above and would result in a condition where new appropriations will decrease the amount of water available for existing rights.

### **Beneficial Use**

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The proposed appropriation must be for a beneficial use of water.

Irrigation is considered a beneficial use of water under RCW 90.54.020(1).

### **Public Interest**

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The withdrawal and associated use must not be detrimental to the public interest. At a minimum, the following are considered when making this assessment.

#### ***Notification to the Washington Department of Fish and Wildlife***

Per RCW 90.03.280 and 77.57.020, Ecology must give notice to the Washington Department of Fish and Wildlife (WDFW) of applications to divert, withdraw, use, or store water.

Ecology met with WDFW as part of the initiation of Ecology's Targeted Application Processing effort in the Okanogan River Basin. During that meeting it was discussed that WDFW preferred not to be notified of applications that Ecology was recommending for denial. This application is part of the Targeted Application Processing effort discussed in that meeting.

#### ***State Environmental Policy Act (SEPA)***

Under chapter 197-11 WAC, a water right application is subject to a SEPA threshold determination (i.e., an evaluation of whether there will be significant adverse environmental impacts) if any of the following conditions are met:

- It is a surface water right application for more than 1 cfs, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cfs, so long as that irrigation project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gpm;
- 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.

Considering that none of the above conditions are met, the application under review is categorically exempt from a SEPA threshold determination.

#### ***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 Omak-Okanogan County Chronicle on August 19, 1987 and August 26, 1987.

#### ***Consideration of Protests***

No protests to this water right application were received. Okanogan Irrigation District (OID) sent a letter stating their concern over the approval of this water right in 1993.

### **Other Public Interest Concerns**

Ecology is mandated under RCW 90.54 to retain the base flows in the perennial rivers and streams to provide for the preservation of fish, wildlife, scenic, aesthetic and other environmental values. In Okanogan River Basin, many of the streams are over appropriated and have a difficult time meeting the above base flows. The use applied for in this application would further diminish the stream flows resulting in an insufficient amount of water left in the effected streams to meet the above needs.

A specific public interest concern that ties to diminished streams flows, involves the fisheries resource present in Salmon Creek. Summer Steelhead are documented as spawning in Salmon Creek in the spring, and whose redds persist well into the month of May (WDFW Salmonscape, 2025). The emergence of alevin has been documented to occur roughly in the month of June (based on thermal units (TUs)), which coincides with higher temperatures and greater demand on water resources for irrigation (Wydonski, 2003) (Quinn, 2005). By approving this application request would result in further reducing stream flows during this critical period and exacerbating the effects of increased stream temperatures on this temperature sensitive species.

Because the proposed use would further diminish base flows below the acceptable value as required in RCW 90.54, this application would be detrimental to the public interest.

### **Conclusions**

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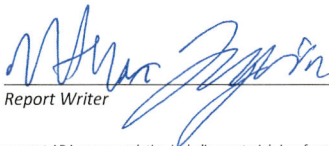
I find that:

- Water is physically but **not** legally available.
- The appropriation **will** impair existing rights.
- The proposed irrigation is a beneficial use.
- Approval of this application **will be** detrimental to the public interest.

### **RECOMMENDATIONS**

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Based on the above investigation and conclusions, I recommend this request for a water right be **Denied** in the amounts and within the limitations listed below and subject to the provisions listed above.

  
\_\_\_\_\_  
Report Writer

February 5, 2026  
\_\_\_\_\_  
Date

*To request ADA accommodation including materials in a format for the visually impaired, call Ecology Water Resources Program at 360-407-6872. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.*

## References

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