



STATE OF WASHINGTON  
REPORT OF EXAMINATION  
FOR WATER RIGHT APPLICATION

<b>PRIORITY DATE</b>	<b>WATER RIGHT APPLICATION NUMBER</b>
August 6, 2018	S3-30823

<b>NAME AND MAILING ADDRESS</b>	<b>SITE ADDRESS (IF DIFFERENT)</b>
<b>MAILING ADDRESS</b> Thomas E. Owens 164 S. Coeur d'Alene St Ste C103 Spokane, WA 99201	2125 Black Lake Rd Colville, WA 99114

**Total Rate and Quantity Authorized for Diversion**

<b>DIVERSION RATE (cfs)</b>	<b>ANNUAL QUANTITY (ac-ft/yr)</b>
0.02	0.5

cfs = Cubic Feet per Second; ac-ft/yr = Acre-feet per Year

**Purpose**

PURPOSE	DIVERSION RATE (cfs)	ANNUAL QUANTITY (ac-ft/yr)	PERIOD OF USE
Single Domestic Supply	0.02	0.5	1/1-12/31

**Source Location**

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Stevens	Black Lake	Gap Creek	59-Colville

SOURCE NAME	PARCEL	TOWNSHIP	RANGE	SECTION	QQ Q	LATITUDE	LONGITUDE
Black Lake	5615600	35 N	41 E	3	SE¼NW¼	48.56661N	117.62677E

QQ Q = Quarter Quarter

Datum: WGS84

**Place of Use**

<b>PARCEL(S)</b>
5615600

**LEGAL DESCRIPTION OF THE AUTHORIZED PLACE OF USE**

The South 50 feet of the portion of Government Lots 5 and 6 of Section 3, Township 35 North, Range 41, E.W.M. in Stevens County, Washington, described as follows:

Beginning at point in the line between said Lots 5 and 6 located North 00°08'12" West a distance of 257.90 feet from the corner common to Government lots 5, 6 and 12; thence South 89°54'01" West a distance of 197.63 feet to the center of an existing road; thence North 10°22'15" West a distance 40.68 feet along said center of road; thence North 14°52'38" East a distance of 10.33 feet along said center of road; thence North 89°54'01" East a distance of 242.94 to the high water mark of Black Lake; thence

Southerly along the high water mark as approximated by the following three courses: thence South 29°43'17" West a distance of 4.54 feet; thence South 01°27'33" East a distance of 38.55 feet; thence South 14°31'40" East a distance of 7.76 feet; thence South 89°54'01" West a distance 41.32 feet to the Point of Beginning. Parcel number 5615600.

**Proposed Works**

System is in place and fully utilized. Diversion works include a ¾ h.p. pump in the lake, a fish screen and meter.

**Development Schedule**

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	PUT WATER TO FULL USE BY THIS DATE
Begun	Completed	Full Use

**Measurement of Water Use**

HOW OFTEN MUST WATER USE BE MEASURED AND RECORDED?	Monthly
HOW OFTEN MUST WATER USE DATA BE REPORTED TO ECOLOGY?	Upon request by Ecology
WHAT QUANTITY SHOULD BE REPORTED?	Total annual quantity in acre-feet
WHAT RATE SHOULD BE REPORTED?	Annual peak rate of diversion in cfs

**Provisions**

Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances, or regulations.

**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", chapter 173-173 WAC, 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.

**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.

**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). If you have questions about screening, criteria contact the Department of Fish and Wildlife, Attention: Habitat Program 1111 Washington Street SE, Olympia, WA 98501, or (360) 902-2200 or <http://wdfw.wa.gov/about/contact/>

**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.

**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 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 Fact and Order**

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

Therefore, I ORDER **APPROVAL** of Application No. S3-30823, 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 to 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 POB 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board POB 40903 Olympia, WA 98504-0903

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.leq.wa.gov/CodeReviser> .

**Authorizing Signature**

Signed at Spokane, Washington, this \_\_\_\_ day of June, 2020



Jaime R. Short, Section Manager  
Water Resources Program/Eastern Regional Office  
Department of Ecology

# INVESTIGATOR'S REPORT

Thomas E. Owens

Water Right Application No.: S3-30823

Investigator: Eric Davis

## BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S3-30823.

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

<b>Applicant Name</b>	Thomas Owens
<b>Priority Date</b>	August 6, 2018
<b>County</b>	Stevens
<b>WRIA</b>	59-Colville
<b>Water Source</b>	Black Lake
<b>Tributary to</b>	Gap Creek
<b>Place of Use</b>	See page 1

<b>Purpose</b>	<b>Instantaneous Rate (cfs)</b>	<b>Annual Quantity (ac-ft/yr)</b>	<b>Begin Season</b>	<b>End Season</b>
Single Domestic Supply	0.02		1/1	12/31

<b>Source Name</b>	<b>Parcel</b>	<b>Township</b>	<b>Range</b>	<b>Section</b>	<b>QQ Q</b>	<b>Latitude</b>	<b>Longitude</b>
Black Lake	5615600	35N	41E	3	NE¼		

WRIA = Water Resource Inventory Area; cfs = Cubic Feet per Second; ac-ft/yr = Acre-feet per Year; QQ Q = Quarter Quarter

Datum: WGS84

## Legal Requirements for Approval of Appropriation of Water

When an application for appropriation of public waters of the state is made, it is the responsibility of the Department of Ecology, Water Resources Program to determine whether or not the application meets the four part tests listed in RCW 90.03.290(3):

1. Is water available for appropriation,
2. Is the proposed use a beneficial use, and
3. Will the appropriation as proposed in the application impair existing rights,
4. Nor be detrimental to the public welfare

### 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 *Statesmen Examiner* newspaper on September 5 and September 12, 2018. No protests were received regarding this notice.

### Consultation with the Department of Fish and Wildlife and appropriate Indian Tribes

The Department must give notice to the Washington Department of Fish and Wildlife (WDFW) of applications to divert, withdraw or store water. WDFW replied by letter on February 26, 2020 in which WDFW did not oppose issuance of this water right, based on impacts to fish and/or wildlife and the habitat they rely on, and pursuant to 77.57.020 RCW. Screening the intake pipe with a proper sized fish

screen is required for any pipe or pump in the lake. WDFW did not exempt the applicant from compliance with the state Hydraulic Code and fish screening statutes.

### 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.

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

### INVESTIGATION

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, claims, and applications in the vicinity; (3) USGS topographic maps and aerial photos; and (4) discussions with Department of Ecology regional program staff.

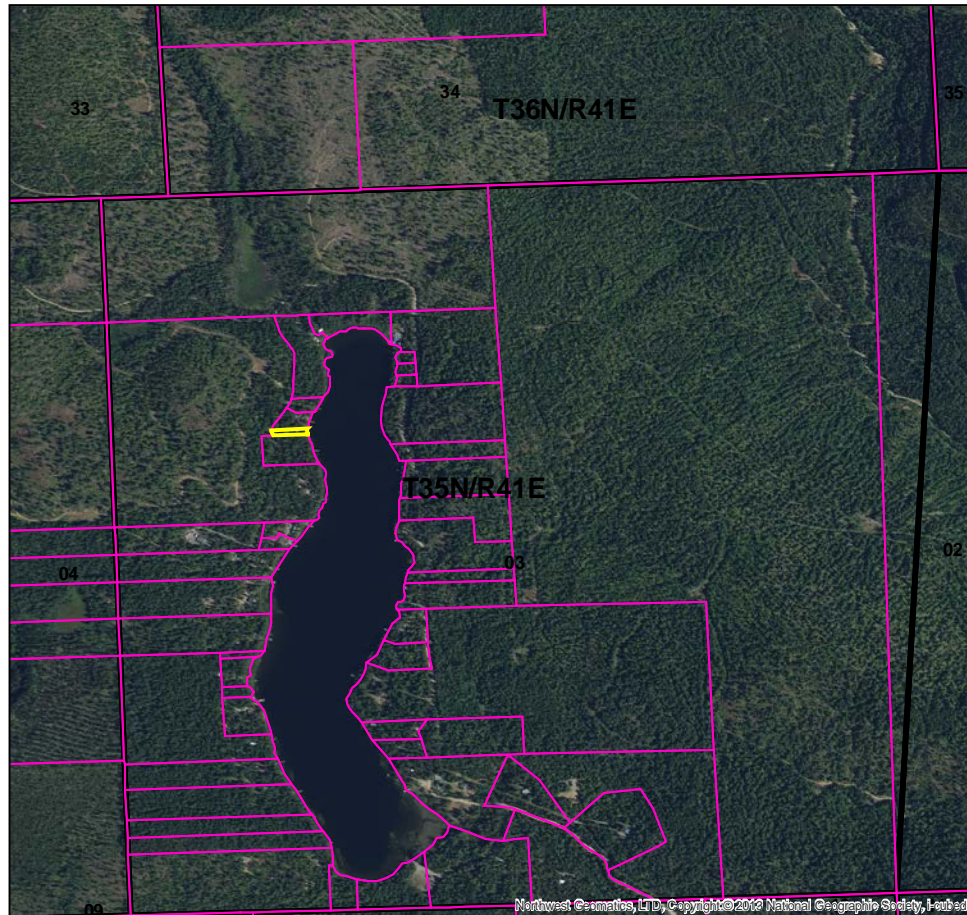
Eric Davis conducted a site visit on July 30, 2019 with Dinah Demeers, one of the owners. The point of diversion is located at Latitude 48.56661°N and Longitude 117.626772°W. The place of use is located within the South 50 foot of the portion of Government Lots 5 and 6 in NW¼ of Section 3, Township 35 North, Range 41, E.W.M.

A recreational cabin was built within the proposed place of use in about 1978. Water has been used from Black Lake for domestic supply since that time. The use consisted of typical recreational use for a small cabin with no lawn or garden irrigation. The current water supply system consists of a ¾ hp centrifugal pump to supply domestic water to the cabin. Currently, a water meter is installed and in good working order.

### Proposed Use and Basis of Water Demand

The applicant had requested 0.02 cubic foot per second (cfs) which is about 9 gallons per minute. The quantity appears to be adequate for the given system and the proposed use requirements of a recreational cabin. The season of use will be year round, which is consistent with historical use. A meter was installed after the field exam and photos were provided to the department showing the system was completed.

## Project Location



### Other Rights Appurtenant to the Place of Use

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A review of department records was conducted for existing water rights, permits, applications and claims within Township 35 N., Range 41 E., Section 3. The search found no other water rights appurtenant to the proposed place of use.

### Impairment Considerations

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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 causes impairment to existing rights or instream flows.



A review of department records was conducted for existing water rights, permits, applications and claims within the vicinity of the proposed diversion. The search found no rights would be impaired by the proposed diversion. The majority of the applications and existing uses at Black Lake are for existing recreational cabins and homes constructed on the lake with little to no irrigation. These property owners have been diverting water from the lake for many years with no significant impact on the lake or other water rights. Therefore, no impairment is anticipated.

### Water Availability

An analysis of water availability must take into account not only the physical limitations on the source of supply, but the legal availability as well. Although water is physically available, the legal availability must not be detrimental to the public interest.

This project is located within the Colville River basin, which is managed under WAC 173-559. Black Lake is a tributary of Gap Creek, which is a tributary of the Little Pend Oreille River, which flows into the Colville River. The Little Pend Oreille River and its tributaries are generally closed to further consumptive appropriations from June 1 to October 31 according to a surface water limitations (SWSL) provided by the Washington State Department of Fish and Wildlife. Single in-house domestic supply is an exception to the SWSL limitation provided no alternate source of water supply is available and the proposed use will not impair existing rights.

The majority of the existing water right, permits, applications and claims investigated at Black Lake are for existing water uses of recreational cabins constructed on the lake. These property owners have been diverting water from the lake for many years. According to the *"Lakes of Washington, Volume 2 of Eastern Washington"*, the volume of Black Lake is approximately 1890 acre-feet. Based on this fact and the minimal amount of water to be permitted for domestic uses under this application and others, water is available for appropriation. The decline of water level in Black Lake in the summer months as a result of the new diversions would be negligible.

### Public Interest Considerations

No protests were received against granting this water right permit, in response to the public notice. The Washington Department of Fish and Wildlife and Kalispel Tribe of Indians have indicated they do not oppose the project, provided it is only used for in-house domestic supply and limited outdoor irrigation. No findings through this investigation indicate there would be any detrimental impact to the public welfare through issuance of the proposed appropriation.

### Beneficial Use

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

### CONCLUSIONS

It is the conclusion of the this examiner that: (1) public surface water is available for appropriation (2) the water use are beneficial uses, and the appropriation (3) will not impair existing water rights, (4) nor will it be detrimental to the public welfare.



## RECOMMENDATIONS

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

### 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:

0.02 cfs

0.5 acre-feet per year

Continuous Single Domestic Supply

Point of Diversion: SE¼NW¼, Section 3, Township 35 North, Range 41 E.W.M.

Place of Use: SEE PAGE 1

[Eric.Davis@ecy.wa.gov](mailto:Eric.Davis@ecy.wa.gov)

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*Eric Davis, Report Writer*

*June 3, 2020*

*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.*