



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office
PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

Sent via Email

May 18, 2022

George Sandhu
536 West Hemmi Road
Bellingham, WA 98226
rsandhu123@hotmail.com

RE: APPROVED Seasonal Change Authorization for Ground Water Certificate G1-
*00106C(B), Whatcom County, Water Resources Inventory Area 1

Dear George Sandhu:

The Department of Ecology (Ecology) received your application for a seasonal change of Ground Water Certificate G1-*00106C(B) on April 20, 2022. The application has been assigned control number CG1-GWC479(B)@2. Please refer to this number when corresponding with us about this seasonal change request.

BACKGROUND INFORMATION

G1-*00106CWRIS originally issued to Dr. D. R. Nugen with a priority date of February 1, 1946. It authorized the withdrawal of up to 260 gallons per minute (gpm), 40 acre-feet per year (afy), from a well, for the irrigation of 40 acres. The original authorized point of withdrawal is within the NW¼ SE¼ of Section 15, Township 39 North, Range 2 East. The original authorized place of use is within the NW¼ SE¼ of Section 15, Township 39 North, Range 2 East.

A request for an administrative confirmation of division of a water right was submitted in 2020 for G1-*00106CWRIS, which resulted in two superseding certificates: G1-*00106C(A) and G1-*00106C(B). The (B) portion is the subject of this seasonal change proposal. The (B) portion issued to Loren & Jodi Sweitzer on August 4, 2020, for 120.3 gallons per minute (gpm) and 18.5 acre-feet per year (ac-ft/yr) for the irrigation of up to 18.5 acres. Ecology notes that under Ecology's Policy 1070, no analysis or determination on a water right's validity and extent is made when processing an administrative division of a water right.

The subject seasonal change application requests a change in the points of withdrawal and the place of use. The proposed points of withdrawal are three wells within the NW¼ SE¼ of Section 15, Township 39 North, Range 2 East (parcel 390215386124). The original (Nugen) point of withdrawal is described in Ecology records as being 36 inches in diameter, 33 feet deep, with a static water level measured at 8 feet on July 29, 1946. It is located within the Wiser Lake/Cougar Creek subbasin and completed in the Sumas Aquifer. All three proposed points of withdrawal, BBF094, BBF095, and BBF096, are 36 inches in diameter. These wells do not have original well

log reports; however, Associated Earth Sciences, Inc. (AESI) was able to provide the following well information:

Well	Ecology Tag	Latitude	Longitude	Well Depth (ft)	Groundwater Elevation (ft) 3/10/2020
Well 1	BBF094	48.86671	-122.53879	25	60.1
Well 2	BBF095	48.86681	-122.53820	17	58.5
Well 3	BBF096	48.86738	-122.53757	25	60.4

The three proposed wells appear to be at a similar depth as the original well, have similar static water levels, and are completed within the Sumas Aquifer. Therefore, they appear to be within the same body of public groundwater.

The (B) portion's place of use is within Whatcom County Parcel Nos. 390215285231, 390215313233, and 390215381233. The seasonal change proposes to transfer 18.5 acres to the following area:

Whatcom County Parcel No. 390215386124 located within the SE¼ of Section 15, Township 39 North, Range 2 East, W.M. More specifically, 18.5 acres within the SE¼ of Section 15, Township 39 North, Range 2 East, W.M., EXCEPT the following described tract: Beginning at the SE corner of the Piper and Northwest Drive right-of-ways; and running thence East along the South line of Piper Road 300 feet; thence South at right angles 640 feet; thence West 300 feet to the East line of Northwest Road; thence North 640 feet to the Point Of Beginning; also EXCEPT the North 630 feet of the remainder of said SE quarter; also EXCEPT the portion deeded to Whatcom County on October 4, 2004, under Auditor's File No. 2041000467; and EXCEPT right-of-way for Northwest Avenue lying along the West line thereof.

Public notice of the proposed change was made in the Lynden Tribune in June 10th and 17th, 2020, for a substantially identical seasonal change proposed and approved in 2020. A substantially identical seasonal change was also proposed and approved in 2021. The Lummi Nation protested the change, citing concerns over current and future potential impacts on instream flows and/or groundwater availability. The 2020 and 2021 approvals addressed these concerns by indicating that the water quantities of the (B) portion are not being increased and that there is no expected increase in consumptive use. A provision was also included stating that the subject right is subject to senior, tribal water rights. The Lummi Nation received a copy of Ecology's decision to approve the seasonal change. No appeals were filed.

The 2021 irrigation season application packet included aerial photos from 2011, 2014, 2015, 2016, 2017, and 2018, as well as a photo of a hose reel taken in 2020 on the Sweitzer property, to support that the original place of use has consistently been irrigated.

The (B) portion (parcel #390215285231, 390215313233, and a portion of 390215381233) is owned by Loren & Jodi Sweitzer. A notarized affidavit dated March 18, 2020, by Loren Sweitzer was submitted with the 2021 application attesting to water use on the (B) portion from 2003 to present.

On May 22, 2014, Buck Smith, a Water Resources Program Senior Hydrogeologist, conducted a site examination of your property for an earlier seasonal change request related to a different certificate. Mr. Smith observed the proposed points of withdrawal, the proposed beneficial use (drip irrigation of berries), and the proposed place of use.

Based upon Ecology's review of the above information, Ecology's 2019 aerial photography, and calculations using USDA's Washington Irrigation Guide and WSU's AgWeatherNet data with an efficiency factor for big gun irrigation, Ecology makes the tentative determination that the Sweitzer's portion of the water right appears to be valid to the extent as proposed for change.

The three proposed wells appear to tap the same aquifer and are located further away than the original well to other, neighboring wells. No enlargement of the Sweitzer's portion of the water right is proposed or authorized. No impairment is expected.

DEPARTMENT OF ECOLOGY DECISION - INCLUDING TERMS & CONDITIONS

The request for a seasonal change in place of use and points of withdrawal under application CG1-GWC479(B)@2 is hereby **APPROVED** under the terms and conditions listed below:

- Water use under this seasonal authorization shall comply with all provisions set forth here and in all other Orders, enforcement documents, and settlements issued by Ecology related to water use on Whatcom County parcel #390215386124. This includes but is not limited to Docket #9573, #10893, and the Settlement Agreement of PCHB No. 13-119 (Notice of Penalty Docket #10089). Failure to comply with these terms will result in cancellation of this authorization.
- The authorized instantaneous rate and annual volume of G1-*00106C(B) shall not be exceeded at any time. **Pumping from the seasonally authorized points of withdrawal shall not exceed 120.3 gallons per minute and 18.5 acre-feet per year.** All pumping shall be monitored to ensure compliance with this condition. Failure to do so will result in cancellation of this authorization.
- **Irrigation under this seasonal change shall not exceed 18.5 acres.** All irrigated lands shall be monitored to ensure compliance with this condition. Failure to do so will result in cancellation of this authorization.
- Irrigation of any lands at the original place of use under G1-*00106C(B) will result in immediate cancellation of this authorization.
- **This seasonal change authorization is subject to existing rights, including any rights held by the United States for the benefit of tribes under treaty or settlement. By ensuring no greater use of water than authorized under the existing certificate, this seasonal change authorization should have no greater impact on tribal rights than the original authorization.**
- An approved measuring device shall be installed and maintained on the authorized points of withdrawal 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.

- The approved metering devices must be equipped to transmit raw data directly and remotely, via telemetry, to Ecology via a web-based system. The recipient of this seasonal change authorization shall meet the following requirements:
 1. At a minimum, the metering data shall include instantaneous (Qi) and total volumes (Qa).
 2. At a minimum, meter data must be recorded hourly.
 3. At a minimum, meter data must be transmitted at least daily.
 4. The water right holder is solely responsible for all troubleshooting and technical assistance required to set up and maintain the metering and telemetry requirements.
 5. All points of withdrawal must be metered and configured such that all water use data are automatically transmitted to Ecology via telemetry.
 6. Data from the meters shall be transmitted via telemetry to a web-based system and Ecology shall have full access to the raw data via web access.
 7. The water right owner must notify Ecology when a system is selected so that Ecology may ensure that the telemetry system is configured properly by the manufacturer to meet the requirements of these provisions.
- If it can be shown that water use authorized by this seasonal change is causing impairment of existing rights, then this authorization will be immediately canceled.
- Ecology assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this seasonal change authorization.
- Department of Ecology personnel, with proper credentials, will have access to the project location to inspect records of water use, wells, measuring devices, and associated distribution systems for compliance with water law at all times.
- All conditions and provisions in the original water right and this seasonal change authorization must be complied with. Failure to abide by these conditions and provisions may result in additional enforcement actions, possibly including civil or criminal penalties, and/or immediate cancellation of this seasonal water right change.
- **THIS AUTHORIZATION SHALL IN NO MANNER BE CONSTRUED TO GUARANTEE OR IMPLY THAT A FINAL (PERMANENT) CHANGE AUTHORIZATION UNDER RCW 90.44.100 WILL ISSUE FOR THE FUTURE USE OF THE WATER HEREIN AUTHORIZED.**
- **This seasonal change authorization shall be in effect through October 1, 2022**, unless canceled sooner; at which time the subject right will automatically revert back to the original attributes described in G1-*00106C(B) or as proposed for administrative division of the water right.

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.

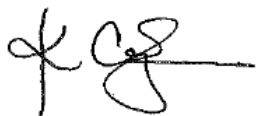
You must also comply with other applicable requirements in chapter 43.21B RCW and chapter 371-08 WAC.

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 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

For additional information, visit the Environmental Hearings Office Website: <http://www.cho.wa.gov>. To find laws and agency rules, visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

If you have any questions or concerns regarding this authorization, please call Kelly Hamilton at (360) 255-4385 or email her at kelly.hamilton@ecy.wa.gov.

Signed at Shoreline, Washington, this 18th day of May, 2022.



Kasey Cykler
Section Manager
Water Resources Program

Enclosure: *Your Right to be Heard*

cc: Loren & Jodi Sweitzer, 1069 Piper Road, Ferndale, WA 98248

ecc: Kelly Hamilton, Water Master, Bellingham Field Office
Lesa Starkenburg-Kroontje
Kara Kuhlman, Water Resources Manager, Lummi Natural Resources Department
Andy Ross, Lummi Nation