STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

August 7, 2015

Lower Stemilt Irrigation District
221 Palouse Street
Wenatchee, WA 98801

RE: Temporary Emergency Drought Change Authorization No. CS4-30502C(A)@2

In accordance with the provisions of RCW 43.83B.405, on March 17, 2015, it was ordered and determined by the Director of the Department of Ecology that the State of Washington is under drought conditions. In accordance with the provisions of WAC 173-166-080, the Department of Ecology is under the terms of this Order, issuing a TEMPORARY DROUGHT CHANGE AUTHORIZATION. The intent of this authorization is to alleviate hardships and reduce the burdens on water users arising from the drought conditions.

THIS AUTHORIZATION SHALL IN NO MANNER BE CONSTRUED TO GUARANTEE OR IMPLY THAT A FINAL (REGULAR) CHANGE AUTHORIZATION WILL ISSUE FOR THE FUTURE USE OF THE WATER USE HEREIN AUTHORIZED.

Background

On July 17, 2015, Marc Marquis, on behalf of the Lower Stemilt Irrigation District (LSID), submitted a temporary emergency drought change application requesting to change the points of diversion (PODs), place of use (POU), and purpose of use for surface water right certificate S4-30502C. This water right has a priority date of December 17, 1990, and is currently authorized to divert 0.43 cubic feet per second (cfs), 67.9 acre-feet per year (ac-ft/yr), for the purpose continuous municipal and domestic supply.

The authorized PODs are located within the SE¼SW¼ Section 8, and the NW¼NW¼ of Section 16, located in T. 27 N., R. 22 E.W.M., and the NE¼SW¼, Section 16, located in T. 28 N., R. 21 E.W.M. The authorized POU was changed by the Chelan County Water Conservancy Board and Ecology under Change Authorization No. CS4-30502C (CHEL-08-11) in 2011 to continuous single domestic supply for Lot Two, Replat of Cottage Beach, Lake Chelan, Chelan County, Washington, and Parcel No. 282116510010, and continuous municipal supply for the service area of the 2005 Lakeview Utilities Company. The 2006 Lakeview Utilities Company service area is located in Sections 7, 8, 16, and 17, located in T. 27 N., R. 22 E.W.M., and is more fully described in the amended 2006 Lakeview Utilities Company Water System Plan.

The applicant has requested a temporary emergency drought authorization to change the PODs to a point located on the Colombia River in the SW¼SE¼ of Section 19, T. 22 N., R. 21 E.W.M. The applicant is also requesting to change the POU to lands served by the LSID within the district's boundaries, and change the purpose of use to irrigation and frost protection.

The applicant is requesting this temporary emergency drought change to offset water shortages caused by drought conditions within the Stemilt Creek Basin, which have resulted in the available water supply from Stemilt Creek to be less than 75%.

The Washington Supreme Court has held that the Department of Ecology (Ecology), when processing an application for change to a water right, is required to make a tentative determination of extent and validity

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of the claim or right (see *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*). This is necessary to establish whether the claim or right is eligible for change.

RCW 90.14.140(2)(c) states that a water right not used for more than 5 years is not relinquished if it is claimed for a determined future development to take place within 15 years of the last beneficial use of water under the water right. In addition, a series of court cases provide additional guidance in assessing such a plan. In order to be valid, a determined future development plan must satisfy a series of tests as established in *R.D. Merrill Company v. Pollution Control Hearings Board; City of Union Gap and Ahtanum Ridge Business Park LLC v. Washington State Department of Ecology;* and *Protect Our Water v. Islanders for Responsible Water Management (Interveners), State of Washington, Department of Ecology, and King County Water District No. 19:*

- The project must be sufficiently complex as to require more than 5 years to complete;
- The plan must be determined and fixed within five years of the last beneficial use of the water;
- The party exercising the plan must have equity in the water right;
- The plan must remain fixed, and;
- Affirmative steps must be taken to implement the plan within 15 years.

In this case, on October 25, 2011, Ecology approved a change request made by Bear Mountain Water District for surface water right S4-30502C in which the applicant claimed a determined future development exemption from relinquishment under RCW 90.14.140. As such, and since the new purpose of use is "continuous municipal and domestic water supply", the validity and extent determination made in 2011 will not be disturbed under this review.

Impairment

The proposed temporary emergency drought change would result in the PODs currently located on Lake Chelan moving approximately 1.5 miles downstream on the Columbia River. Water from Lake Chelan discharges to the Columbia River. If this temporary change is approved, there will be numerous PODs, with both junior and senior priority dates, located in the intervening reach between the original authorized PODs and the proposed new POD. Absent the effects of other water users, there would be the same amount of water physically available at the new PODs as at the authorized POD.

This temporary emergency drought application is also requesting to change the original authorized POU and purpose of use. Bear Mountain Water District (BMWD) has indicated that they have a surplus of water, and LSID proposes to temporarily transfer some of this surplus water. This surplus water is associated with lands located in the current authorized POU and under determined future development status. The requested temporary change in POU and purpose of use would not increase the total quantity of water available for diversion, nor would it allow for additional irrigated acreage within the lands currently served by LSID. In addition, there are numerous other water rights associated with water users within the BMWD, and those users would still have access to their normal water supply.

Conclusions

Based on the above investigation, approval of this temporary emergency drought change request to change the PODs, POU, and purpose of use will not impair existing rights and will not enlarge the subject right provided the use conforms to the provisions listed below.

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PROVISIONS

1) **This temporary emergency drought change authorization expires October 31, 2015.**

2) The irrigation water authorized to be diverted is an alternate source of supply to an existing portfolio of rights held by the LSID. Hence, the only water permitted for diversion is that required to compensate for any deficit in this supply. This amount shall not exceed 67.9 ac-ft being diverted at a maximum rate of 0.43 cfs. Water used under this temporary emergency drought change authorization would not be available for use at the original POU for the remainder of this year.

3) Violation of any of the terms and/or conditions of this temporary emergency drought change authorization may result in immediate termination of this authorization and may be subject to formal enforcement actions.

4) The POD under this temporary emergency drought change authorization is located in the SW¼SE¼ of Section 19, T. 22 N., R. 21 E.W.M.

5) The POU and purpose of use under this temporary emergency drought change authorization is for the irrigation of lands located within the boundaries of the LSID. A more precise description of those lands is available upon request from Ecology's Water Resources Program's Central Regional Office, located in Union Gap, Washington.

6) In order to prevent enlargement of the water right, water may not be diverted from the new POD during any time when water would not normally be available for diversion at the original PODs.

7) The Department of Ecology assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this temporary emergency drought authorization. Applicants for temporary emergency drought authorization should not construe that a temporary emergency drought authorization will result in the granting of a permanent change of water right.

8) Where the water source and/or water transmission facilities are not wholly located upon land owned by the applicant, issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

9) The applicant and operator of the system under this temporary emergency drought authorization shall:

   - Have a copy of this temporary emergency drought change authorization available on-site.
   - Be aware of the parameters and provisions and operate accordingly.
   - Provide said copy as evidence of this authorization upon request by Department of Ecology staff.

11) 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," WAC 173-173.

WAC 173-173 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.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Regional Office for forms to submit your water use data.

12) The rule above 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 or available from Ecology as a document entitled "Water Measurement Device Installation and Operation Requirements".

13) 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, but only to the extent otherwise allowed by law.

14) The intake(s) must 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
600 Capitol Way N.
Olympia, WA 98501-1091

Phone: (360) 902-2534
Web site: http://wdfw.wa.gov/conservation/habitat/planning/screening

To obtain technical assistance for your project call the Yakima Construction Shop at (509) 575-2104.

15) This temporary emergency drought change authorization shall in no way excuse the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.

16) To avoid conflicting approvals, a final decision on CS4-30502C(A)@2 will not issue until after this temporary drought change authorization expires.

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 of this decision. 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 this decision:

- File your appeal and a copy of this decision 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 decision on 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.

ADDRESS AND LOCATION INFORMATION	
Street Addresses	**Mailing Addresses**
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503 **Pollution Control Hearings Board** 1111 Israel Road SW Ste 301 Tumwater WA 98501	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608 **Pollution Control Hearings Board** PO Box 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://www.leg.wa.gov/CodeReviser

If you have any questions, please contact Jacquelyn Metcalfe by phone at 509-457-7148 or via email at jmet461@ecy.wa.gov .

Sincerely,

THOMAS PERKOW FOR SAGE PARK
Sage Park, Section Manager
Water Resources Program

SP:JMM:SS/150804
WR ID# 6674907

Enclosures: Your Right To Be Heard
Water Measuring Requirements and Form 1

By certified mail: 7010 0290 0000 7126 6227

cc: Marc Marquis, Attorney; Peterson and Marquis Law Office
Philip Rigdon, Director Natural Resources Division Yakama Nation