



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

October 29, 2010

Robert & Carol Inouye
1780 Nile Rd
Naches WA 98937-8925

RE: Preliminary Permit to test side channel water quantity needed for fish habitat and rearing within Rattle Snake Creek a tributary to Naches River within Yakima County, Washington, for Application No. S4-35271

This letter serves as a PRELIMINARY PERMIT to conduct testing under Application No. S4-35271. Please read this letter carefully. In accordance with RCW 90.03.290, **failure to comply with the conditions of this Preliminary Permit shall result in the cancellation of the Preliminary Permit and the associated water right applications.**

On March 8, 2010, Robert and Carol Inouye of Naches, Washington, filed Application No. S4-35271 with Washington State Department of Ecology (Ecology) to appropriate water for Rattlesnake Creek a tributary to the Naches River. The application proposes to divert water from Rattlesnake Creek into a 0.75 mile manmade side channel for the purpose of fish habitat and rearing. The applicant does not know the quantity of water that will be required for the proposed purpose. The applicant is working closely with the Yakima Nation and the Washington Department of Fish and Wildlife (WDFW). The Yakama Nation and WDFW are co-fish managers and have projected the water needed will be from four cubic feet per second (cfs) to seven cfs.

The proposed point of diversion is located 214 feet north and 1024 feet west from the SE corner being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 15 N., R. 15 E.W.M., being within Yakima County Parcel No. 15150444003 in WIRA 38. The water will return to Rattlesnake Creek approximately $\frac{3}{4}$ -mile downstream.

Ecology has not approved this application request, but has performed an initial water right investigation and found nine Yakima River Adjudicated Water rights use the same point of diversion. The water rights are Claim No's. 7735, 0933, 2104, 1635, 0965, 1643, 1609, 1632, and 0964; all confirmed in the Conditional Final Order for Subbasin 16 (Upper Naches) on April 8, 1993.

As with any water right application seeking authorization to appropriate water, it is Ecology's duty to investigate the application. In order to issue a permit, Ecology must find there is water physically available for appropriation for beneficial use, and that the appropriation as proposed in the application will not impair existing rights or be detrimental to the public welfare.

If the application does not contain and the applicant does not promptly furnish sufficient information on which to base such findings, Ecology may issue a Preliminary Permit for a period not to exceed three years. The issuance of a Preliminary Permit requires the applicant to make such surveys, investigations, studies, and progress reports as may, in the opinion of Ecology, be necessary (RCW 90.03.290). This application lacked sufficient information regarding the timing



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required for the side channel fish-rearing project. Site specific data analysis is required to evaluate the flows for creating beneficial habitat and fish rearing. Furthermore, these flows must be identified as available, showing no impairment to existing water rights, and prove not detrimental to the public welfare.

Due to the uncertainties of the quantities needed to support fish habitat and rearing, and that it is unknown if the fish will actually use the side channel, Ecology is unable to make a decision regarding this application. In response, the applicant has proposed to test the system for up to three years to determine the feasibility of the project, and more accurately describe the water quantities needed for the project.

Under the authority of RCW 90.03.290, Ecology may issue a Preliminary Permit requiring the applicant to conduct studies, surveys, and investigations necessary to provide information needed to properly assess the subject applications.

The objectives of this PRELIMINARY PERMIT are:

- To authorize the diversion of water to test the side channels conveyance loss and the flow that will be needed for the proposed purposes.
- To determine whether the proposed purpose of use (fish habitat and rearing) will be achieved.

You are hereby granted a PRELIMINARY PERMIT to proceed with diversion and testing for project feasibility. This letter serves as a PRELIMINARY PERMIT subject to existing rights and the following conditions:

General Conditions

1. This PRELIMINARY PERMIT becomes effective immediately and will remain in effect until October 15th, 2013, unless sooner revoked by the Department of Ecology.
2. The priority date for this PRELIMINARY PERMIT will be March 8, 2010
3. All expenses, risks, and liabilities incurred during testing shall be borne by the applicant. If senior water right holders, including wells exempt from permitting under RCW 90.44.050, are adversely affected during any portion of the testing, or data collection activities, the test shall be terminated immediately.
4. The granting of this PRELIMINARY PERMIT shall not be construed, by inference or otherwise, that the subject application will ultimately be approved. If the applicant fails to comply with the terms and conditions outlined in this Preliminary Permit, this Preliminary Permit and the associated water right applications, shall be cancelled.
5. The scope of this PRELIMINARY PERMIT is limited as set forth below:

Project Management Detail

1. The applicant shall be required to notify the Department of Ecology within 30-days from the receipt of this PRELIMINARY PERMIT that water is being diverted. The applicant will plan, oversee, and provide analysis of test data and other relevant information for side channel use.

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2. The project coordinator for Ecology is:

Name: Eric Hartwig
Address: 15 West Yakima Avenue, Suite 200
Yakima, Washington 98902
Phone: (509) 454-7297

3. To the maximum extent possible, communications between the Department of Ecology and the applicant, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this PRELIMINARY PERMIT shall be directed through the Ecology project coordinator and the applicant.

Site Report

The applicant shall submit a report by November 30, 2013, in accordance with the following:

1. **Project scope** - Describe project scope, the specific location, proposed water source, water use, timing requirements, and fish species that will using the side channel.
2. **General Description** - Describe the general geologic setting of the side channel.
3. **Site Specific Description** – Describe site-specific surface water features:
 - a. Specific locations of proposed and existing project point of diversion.
 - b. Specific location of proposed and existing project points where water returns to Rattlesnake Creek.
4. **Professional Opinion** - The applicant shall include a professional opinion from a fish biologist addressing the effectiveness of the project that shows the benefit to the fish species that will utilize the side channel.
5. **Water Quantities** - The applicant shall submit a report of the amount of water that is diverted into the side channel, the amount of conveyance water, and the amount of water that flows through the side channel and back into Rattlesnake Creek. In no instance shall diversions under this PRELIMINARY PERMIT exceed seven cubic feet per second.

MEASUREMENTS, MONITORING, METERING AND REPORTING

1. **Meter Installation**

An approved measuring device shall be installed and maintained the source authorized by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173.
<http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>
2. **Record Monthly, Report Annual Totals**

Water use data shall be recorded monthly and maintained by the property owner. The maximum rate of diversion, the annual total volume, ditch loss, and fish presence shall be submitted to the Department of Ecology before November 1 each year.

3. **Metering Rule Description And Petition Info**

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. Installation, operation and maintenance requirements are enclosed as a document titled "Water Measurement Device Installation and Operation Requirements".

<http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

DEPARTMENT OF FISH AND WILDLIFE

1. **Fish Screening Criteria**

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). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria.

SCHEDULE AND INSPECTIONS

1. **Authority To Access Project**

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.

Please pay particular attention to the Recommendation section for the terms and conditions of this approval.

If you have any questions or concerns about this decision, or if we can otherwise provide further assistance, please call the Department of Ecology at 509-575-2490. Should you have any questions regarding this PRELIMINARY PERMIT please contact Eric Hartwig at (509) 454-7297.

Sincerely,



Mark C. Schuppe, Section Manager
Water Resources Program
Central Region Office

MCS:EH:gg/101017

Enclosures: Water Measurement Requirements

By Certified Mail: 7007 2560 0001 9535 8118

cc: Philip Rigdon, Director, Natural Resources Division, Yakama Nation
John A. Easterbrooks, Washington Department of Fish and Wildlife, Yakima
Todd Newsome, Biologist, Yakama Nation Fisheries