



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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January 21, 2011

Brian White
WSDOT/SCO
PO Box 12560
Yakima WA 98909

RE: Temporary Authorization No. S4-35264 – Construction Use for Interstate 90

On October 29, 2009, the Washington State Department of Transportation (WSDOT) submitted an application requesting to withdraw 1.60 cubic feet per second (cfs), 116 acre-feet per year (ac-ft/yr) [consumptive use]. WSDOT requested water for a time period of up to 10 years for purposes related to highway construction and landscape watering on a portion of Interstate-90 (I-90) between Milepost 55 and 61.

The proposed diversions are from multiple sites from Keechelus Lake, a tributary to the Yakima River, to be utilized for five years (2010–2015) during the April 1 to October 31 construction/irrigation season. The Department of Ecology (Ecology) issued Short-Term Permit No. S4-35275 on April 21, 2010, for use of water from Keechelus Lake for I-90 construction for the 2010 season.

This project is located in the Yakima River Watershed. WSDOT purchased Acquavella Court Claim No. 00366 to use as mitigation for the I-90 Construction Project and riparian restoration. WSDOT submitted Application No. CS4-00366CTCLsb9@1 with Ecology requesting to change the purpose and place of use of Court Claim No. 00366 to instream flows.

The Report of Examination for Change Application No. CS4-00366CTCLsb9@1 identified 113 ac-ft/yr were available to be transferred to the Trust Water Right Program (this report issued on November 2, 2010 and is available upon request). The 113 ac-ft/yr transferred to trust was based on what was consumptively used to historically irrigate 35 acres under Court Claim No. 00366. WSDOT applied to transfer this water right into the Trust Water Right Program to mitigate for the two new uses described below. The monthly quantities needed for the proposed new uses are broken down by month below.

Proposed Monthly Water Use in Acre-Feet

	May	June	July	August	September	October	Total
I90 Construction Project (S4-35264 - this report)	12	18	25	31	16	10	112
Wilson Creek Restoration (S4-35263)	0.1	0.2	0.2	0.2	0.2	0.1	1.0

On September 13, 2010, WSDOT requested to amend Application No. S4-35264 to request monthly water duties that better satisfy the needs of the project, but differ from how water was used historically. Deviation from the historic monthly water use is possible by utilizing the



Water Storage and Exchange Contract No. 09XX101700¹ initiated on January 29, 2009, between Ecology the U.S. Bureau of Reclamation (USBR). The following monthly quantities were requested to be stored and made available from Keechelus Lake.

September	October	Total
16	10	26 ac-ft

Ecology anticipates assigning 26 ac-ft to the Storage Contract for release during September and October to offset impacts to the Yakima mainstem flows in the Easton to Thorp reach of the Yakima River after the onset of flip-flop². This assignment will be subject to the ESA consultation protocols as contained in the contract. Consumptive use is proposed to be offset with Trust Water Right No. CS4-00366CTCLsb9@1. The total consumptive use being authorized does not exceed the amount of water available under the subject trust water right during the irrigation season, nor does it exceed the availability of unused storage capacity to retain the subject portion of the trust water right for later release during September and October.

WSDOT will pay to Ecology the lump sum of \$2,860 prior to water use commencing on April 1, 2011. The payment amount represents a proportionate share of storage costs charged by USBR to Ecology as described in paragraph 15(a) of the Storage Contract and the annual rate is based on Article 15.a, currently at \$22/ac-ft/yr ($26 \text{ ac-ft} \times \$22/\text{ac-ft/yr} \times 5 \text{ years} = \$2,860$).

Impairment is not anticipated with the utilization of the Storage Contract and withdrawals occurring from a storage reservoir (Keechelus Lake). A mitigated new use of water for highway construction and roadside restoration that ultimately provides a safer, more reliable and efficient transportation link is in the public interest.

The primary water use will be for dust control; however, some water will also be needed for irrigation associated with establishing landscape and may require a subsequent new temporary water right application. Since water will be targeted to particular plants or plantings, a specific number of acres were not identified and this water use is assumed to be fully consumptive. Construction activities will produce fugitive dust due to wind erosion and operating construction equipment on exposed earth surfaces.

WSDOT is required to use Best Management Practices (BMP's) that include requiring contractors to:

1. Water all active construction areas as needed to control dust
2. Apply water regularly, or apply nontoxic soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites

¹ Water Storage and Exchange Contract No. 09XX101700 between Ecology and USBR allows Ecology to store trust water in the reservoirs of the Yakima Basin Storage Project that has been put into trust. USBR manages stored water to ensure that the Total Water Supply Available is not impacted by new water uses. USBR and Ecology cooperate in the management of trust water rights acquired for the purposes of instream flows, primarily under chapter 90.38 RCW and the Yakima River Basin Water Enhancement Program.

² Flip-flop is an operating mode of USBR's Yakima Basin Project in which river flows are managed to improve fish survival. These flow releases were designed to comply with the 1980 Quackenbush Federal Court Order.

- 5) The Keechelus Lake diversions listed below will consist of one or more upland or floating water pumps in or near the lake. A water tank will be placed upland of the points of diversion for access by water trucks. The intakes will be properly screened to meet Washington Department of Fish and Wildlife requirements for screening (<http://wdfw.wa.gov/hab/engineer/habeng.htm>) and diffusion outlined in the Hydraulic Project Approval issued to WSDOT on July 7, 2009 (also see Figure 1).

¼ Section	Section	Township	Range
SW	14	22	11
SE	15	22	11
NW, SW	23	22	11
NW, SW, SE	26	22	11
NE, SE	35	22	11
NE, NW, SE	1	21	11
NE	2	21	11
NE	12	21	11
NW, SW	10	21	12

- 6) The place of use exists within the boundary of Interstate 90 between MP 55 and MP 61, and also within staging areas located within the US Forest Service boundaries, Washington State Parks, and private land, listed below (also see Figure 1):

¼ Section	Section	Township	Range	Site Name
NE, SE	9	22	11	Summit Site
NE, SE	15	22	11	Gold Creek Area
NW	15	22	11	Hyak--I-90 Interchange
SE	15	22	11	Hyak Maintenance Facility
NE, SE	35	22	11	Slide Curve staging/stockpiling
SE	10	21	12	Price Creek Interim Rest Area and Sno-park
NE	15			
SE	14	21	12	Stampede Pass Interchange and Maintenance Area
NE	23			
SE	15	21	12	Crystal Springs Sno Park
NE	22			
SW	14	21	12	Crystal Springs Campground

- 7) Water use under this Temporary Authorization is limited to 112 ac-ft/year for 2011 through 2012 and is limited to 113 ac-ft/year for 2013 through 2015 and also limited to the following monthly quantities:

	May	June	July	August	September	October	Total
2011-2012	12 ac-ft	18 ac-ft	25 ac-ft	31 ac-ft	16 ac-ft	10 ac-ft	112 ac-ft
2013-2015	12 ac-ft	18 ac-ft	25 ac-ft	32 ac-ft	16 ac-ft	10 ac-ft	113 ac-ft

If WSDOT foresees a need for additional water after flip flop (while still limited to 112 or 113 ac-ft/year), there may be some flexibility. However, notification to Ecology is required by the end of the preceding irrigation season. Ecology will provide a determination in the form of a letter order indicating whether or not WSDOT may utilize the 2009 Exchange Contract and adjust the monthly quantities.

3. Use wheel washers to remove mud from construction vehicles prior to exiting the site to reduce the potential emissions from particulate matter
4. Clean road surfaces regularly to reduce re-entrained particulate matter

Public notice of the application was published in the Daily record of Ellensburg, Washington, and in the Northern Kittitas County Tribune of Cle Elum, Washington, on January 28, 2010 and February 4, 2010. No letters of protest or comments were received during the 30-day protest period.

WSDOT issued a Final Environmental Impact Statement (Final EIS) and Section 4(f) Evaluation in August, 2008. The EIS describes the need for large amounts of water for construction purposes and identified the need for valid water rights that would be leased or purchased and approved for use by Ecology (Final EIS, Water Resources, page 3-46). Additional water demand details were presented in the Final EIS, Appendix Y, page 2. All SEPA documents are available upon request.

Conclusions

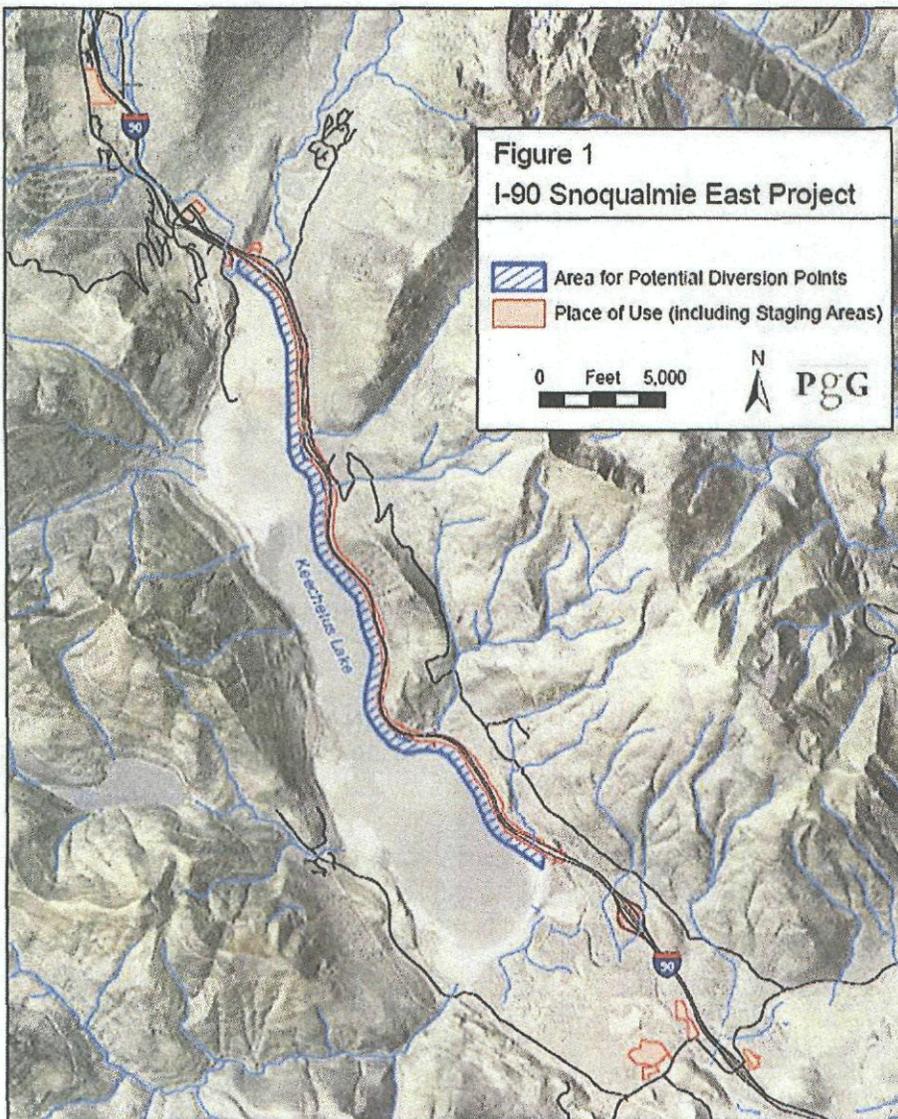
There is water available via mitigation for the beneficial use of road construction and roadside restoration, which can take place on a temporary basis without impairing existing water rights and is not contrary to the public interest.

This TEMPORARY AUTHORIZATION is subject to the following conditions:

- 1) Violation of any of the terms and/or conditions of this Temporary Authorization will result in immediate termination, issuance of Administrative Orders to Cease and Desist, may also subject the violator to civil penalties.
- 2) Water use under this Temporary Authorization is contingent upon Court Claim No. 00366 being in trust and available to provide mitigation (as discussed in Change Authorization No. CS4-00366CTCLsb9@1).
- 3) The purpose of use is road construction, dust abatement, and irrigation for roadside landscaping and restoration.
- 4) The maximum volume of water allowed to be diverted under this Temporary Authorization is 1.60 cfs, 112 ac-ft/yr from May 1, 2011 to October 31, 2012 and 1.75 cfs, 113 ac-ft/yr from May 1, 2013 to October 31, 2015. This Temporary Authorization will expire on November 1, 2015.

- 8) The Department of Ecology assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this Temporary Authorization. Applicants for temporary authorizations should not construe this authorization will result in the granting of a permanent of water right.
- 9) The applicant and operator of the system under this Temporary Authorization shall:
 - Have a copy of this Temporary 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 Ecology staff.
- 10) The applicant will be responsible for recording weekly water use data. The maximum monthly rate of diversion/withdrawal and the monthly total volume shall be submitted to the Department of Ecology by January 31st of each calendar year. January 31, 2016, will be the last year required to submit water use for this Temporary Authorization.
- 11) At a minimum, the following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Authorization No., source name, annual quantity used including units, maximum rate of diversion including units, period of use, monthly meter readings including units, and peak flow including units for each month. In the future, Ecology may require additional parameters to be reported or more frequent reporting. Ecology prefers web based data entry, but accepts hard copies. Ecology will provide forms and electronic data entry information.
- 12) 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.
- 13) This Temporary 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.
- 14) The place of use, water sources, and/or water transmission facilities are not be located on land owned by the applicant. Therefore, the applicant is advised that issuance of a permit by Ecology for appropriation of the waters in question does not convey a right of access to, or other right to use, land which the applicant does not legally possess.
- 15) Ecology and WSDOT must finalize a trust water right conveyance agreement prior to water use commencing for the 2011 irrigation season (May 1, 2011).

16) WSDOT will pay Ecology the lump sum of \$2,860, which represents a proportionate amount of the payment due and owing to the United States for storage and deliver of water under Paragraph 15(a) of Water Storage and Exchange Contract No. 09XX101700, between the Bureau of Reclamation and the State of Washington Department of Ecology, Yakima Project, Washington, dated January 29, 2009. The payment is based on the rate of \$22/ac-ft/yr in Article 15.a of the contract. The consumptive use of 26 ac-ft from September 1 through October 31 is subject to the terms and conditions in the Water Storage and Exchange Contract No. 09XX101700. The term of the assignment is from September 1 to October 31, 2011 thru 2015.



This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

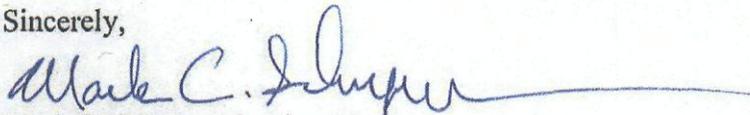
- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
- Facts that demonstrate the appellant is entitled to obtain judicial review;
- The appellant's reasons for believing that relief should be granted; and
- A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed**. The appeal must be filed in the same manner as described above.

If you have further questions or concerns, please call Kelsey Collins, Department of Ecology, Water Resources Program, at 509-575-2640.

Sincerely,



Mark C. Schuppe, Section Manager
Water Resources Program/CRO

MCS:KC:gg/110115

Enclosure: Water Measurement Requirements

By Certified Mail: 7007 2560 0001 9535 8439

cc: Bill Gray, Area Manager, U.S. Bureau of Reclamation, Columbia-Cascades Area Office
Judy Hallisey, U.S. Forest Service, Cle Elum Ranger District
Jason W. Smith, Env. Mgr., South Central Region I-90 Project Office
Philip Rigdon, Director, Natural Resources Division, Yakama Nation