



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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February 3, 2011

WA Department of Transportation
South Central Office
Attn: Brian White
PO Box 12560
Yakima, WA 98909-2560

RE: Temporary Authorization No. S4-35263 – Riparian Irrigation on Wilson Creek

On October 29, 2009, the Washington State Department of Transportation (WSDOT), submitted an application seeking a Temporary Authorization to withdrawal 0.15 cubic feet per second (CFS), 10 acre-feet per year (ac-ft/yr) (consumptive use) of water to establish 2.91 acres of riparian landscaping at the Wilson Creek mitigation site. Water will be needed for three years (2010 – 2012) during the April 1 to October 31 irrigation season, after that time the vegetation will be fully established and will not require additional water. WSDOT amended their application on June 1, 2010 requesting to lower the annual quantity from 10 to 1 ac-ft/yr.

The proposed diversion from Wilson Creek is at a point located near the center of Section 11, T. 17 N., R. 18 E.W.M. The diversion works will consist of a small portable pumping station. The proposed place of use is a 2.91 acre riparian strip located within the E½ of Section 11 (see provisions below for exact legal descriptions).

The proposed place of use is owned by Lakeside Town Center Associates, LLC (Lakeside). Lakeside and WSDOT signed a Memorandum of Understanding on August 14, 2009 stating WSDOT would purchase 100 ac-ft/yr and that Lakeside would retain enough water to irrigate “a plant buffer” at the original place of use.

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.



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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

Impairment is not anticipated as the 2.91 acres of restoration is located within the historic 35 acre place of use under the Court Claim No. 00366 and the proposed diversion rate (0.15 cfs) is significantly less than the historic diversion rate (1.75 cfs). A mitigated new use of water for riparian landscaping does not lessen wildlife habitat, recreation, water quality, natural value, or other public interests.

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.

Conclusions

There is water available via mitigation for the beneficial use of riparian restoration on Wilson Creek, which can take place on a short term 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 authorization will result in immediate termination, issuance of Administrative Orders to Cease and Desist, may also subject the violator to civil penalties.
- 2) The maximum rate and volume of water allowed to be diverted under this Temporary Authorization is 0.15 cfs and 1.0 ac-ft per year from May 1, 2011 to October 31, 2012. This Temporary Authorization will expire on November 1, 2012.
- 3) The purpose of use is for irrigation of a riparian buffer (riparian restoration).

- 4) Consumptive water use in excess of 1.0 acre-feet per year under this Temporary Authorization will constitute an enlargement of the right and this authorization shall be immediately terminated.
- 5) The point of diversion will be from a point located near the center of the section in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M on Wilson Creek.
- 6) The temporary place of use under this authorization is the Westerly 75 feet of that portion of the NE $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M. known as Tax 27 and a portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M., both tracts west of the right-of-way of the Burlington Northern Railroad.
- 7) 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 that this authorization will result in the granting of a permanent of water right.
- 8) 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.
- 9) The applicant will be responsible for obtaining monthly 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, 2013 will be the last year required to submit water use for this Temporary Authorization.
- 10) 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.* Ecology prefers web based data entry, but accepts hard copies. Ecology will provide forms and electronic data entry information.
- 9) 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.
- 10) 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.

- 11) Ecology and WSDOT must finalize a trust water right conveyance agreement prior to water use commencing for the 2011 irrigation season (May 1, 2011).

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, WF Section Mgr., by IT&US&S Downey

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

MCS:KC:gh
110217

Enclosure: Water Measurement Requirements w/Form 1

By certified mail: 7007 2560 0001 9535 4790

Cc: Lakeside Town Center Associates LLC (certified)
Philip Rigdon, Yakama Nation