STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

April 7, 2011

Yakama Nation
c/o Bill Fiander
PO Box 151
Toppenish, WA 98948-151

RE: Water Right Application No. G4-35345 – Temporary Authorization to divert water for anadromous fish propagation and for adult steelhead reconditioning.

Dear Mr. Fiander:

On June 10, 2010, the Yakama Nation submitted a temporary application seeking authorization to withdraw 3600 gallons per minute (gpm) continuously for a non-consumptive anadromous fish propagation and for adult steelhead reconditioning at the Yakima River Basin Fish Enhancement Facility in Prosser. The application has been assigned Control No. G4-35345. This project proposes to divert water from three shallow wells adjacent to the Yakima River.

The Yakama Nation applied for a permanent ground water right on July 26, 2004 to withdraw 3200 gpm and was assigned application No. G4-34946. A temporary permit to withdraw the 3200 gpm was issued on August 12, 2004 for the permanent application; however it expired on December 31, 2006.

The Director of Ecology at the time of the 2004 permanent application specified that during the pendency of the Yakima River Basin Adjudication no new permanent surface water applications will be processed within the Yakima River Basin. The permanent application is for shallow wells that are in direct hydraulic continuity with the Yakima River. The 2004 temporary permit was issued due to the ongoing Yakima River Basin Adjudication.

This project has completed a SEPA checklist and a Determination of Non-Significance was issued on August 12, 2004 with the Department of Ecology being the lead agency.

The three wells that are proposed for this project are located within the:

- SW¼SE¼ Section 36, T. 9 N., R. 24 E.W.M.
- SE¼SW¼ Section 36, T. 9 N., R. 24 E.W.M.
- SE¼SE¼ Section 36 ,T. 9 N., R. 24 E.W.M.

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The wells will be used to provide water for the Prosser fish hatchery. The water will be used to flow through the fish holding tanks and then returned to the Yakima River. The water will return to the Yakima River upstream of the well locations. By returning the water at an upstream location, the impacts to the flows within the Yakima River will not be negatively affected.

The Yakama Nation has entered into Memorandum of Agreement with the United States Department of Interior Bureau of Reclamation (USBR). The agreement is to allow the Yakama Nation to utilize lands owned by the USBR for a fish hatchery at the Chandler Canal near Prosser, Washington (subject of this application).

This water right application is being processed prior to competing applications in accordance to WAC 173-152-050(2)(b). This temporary water right is considered non-consumptive and will enhance or protect the quality of the environment.

This TEMPORARY AUTHORIZATION has the following parameters and provisions:

- 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, and may also subject the violator to civil penalties.

- A withdrawal of 3200 gpm may take place continuously. This Temporary Authorization will expire when a Report of Examination for Water Right Application No. G4-34946 is issued or sooner revoked by Ecology, but in no case no later than December 31, 2016.

- The points of withdrawal under this authorization will be three wells located within the;
  - SW¼SE¼ Section 36, T. 9 N., R. 24 E.W.M.
  - SE¼SW¼ Section 36, T. 9 N., R. 24 E.W.M.
  - SE¼SE¼ Section 36, T. 9 N., R. 24 E.W.M.

- The temporary purpose of use under this authorization will be to provide water for non-consumptive anadromous fish propagation and for adult steelhead reconditioning at the Yakima River Basin Fish Enhancement Facility in Prosser, located within the SE¼ SW¼ and SW¼, SE¼ of Section 36, T. 9 N., R. 24 E.W.M.

- The maximum annual volume of water allowed is 3200ac-ft/yr.

- The priority date for this water right is June 10, 2010.

- The Department of Ecology assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this Temporary Authorization. <u>Applicants for a temporary water right should not construe that a temporary authorization will result in the granting of a permanent water right.</u>

- 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 Department of Ecology staff.
- An approved measuring device shall be installed and maintained for the source identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.
- 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".
- Water use data shall be recorded weekly. The maximum monthly rate of diversion and the monthly total volume shall be submitted to Ecology by January 31 each year. Ecology requires submittal of monthly meter readings to collect seasonal information for water resource planning, management, and compliance.
- Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.
- 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, Permit or Certificate 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 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.
- 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.

- Withdrawal of water under this temporary authorization shall be terminated if the target flow of the Yakima River below the Prosser Dam at Prosser cannot be maintained without detriment to senior rights.

YOU'RE RIGHT TO APPEAL

You have a right to appeal this decision to the Pollution Control Hearing 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	**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

Please send a copy of your appeal to:

Mark C. Schuppe
Department of Ecology
Central Regional Office
15 W Yakima Ave., Ste 200
Yakima WA 98902-3452

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

Sincerely,

Mark C. Schuppe

Mark Schuppe
Section Manager
Water Resources Program

MCS:EH:gh
110414

Enclosures: *Your Right to Be Heard*
Water Measurement Requirements – Form 1

cc: Bill Gray, US Bureau of Reclamation
Philip Rigdon, Yakama Nation

By certified mail: 7007 2560 0001 9535 3366

7007 2560 0001 9535 3366

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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

YAKAMA NATION
C/O BILL FIANDER
PO BOX 151
TOPPENISH WA 98948-151

WR/gh G4-35345 (Temp Auth)

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Stephen A. Thompson ☐ Agent ☐ Addressee

B. Received by (*Printed Name*) Stephen A Thompson
C. Date of Delivery 4-8-11

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (*Extra Fee*) ☐ Yes

2. Article Number
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PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540