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

June 10, 2011

Mary K. Bailey
62 Bailey Way
Brewster, WA 98812-9622

Re: Seasonal Change Authorization No. CS4-29264C@1 (for 2011 and 2012 seasons only).

Dear Ms. Bailey:

DECISION: This SEASONAL CHANGE AUTHORIZATION to change the points of diversion to Government Lot 3 of Section 36, of T. 30 N., R. 23 E.W.M., and the place of use to the NE¼NE¼ Section 1, T. 29 N., R. 23 E.W.M., the N½NW¼, the W½NW¼NE¼, and the NE¼NW¼NE¼ all in Section 6, T. 29 N., R. 24 E.W.M., and the SW¼ and the W½SE¼ Section 31, T. 30 N., R. 24 E.W.M., all in Douglas County, for 3 acres of irrigation and frost control as needed, during the period April 1 to October 31, at a maximum instantaneous diversion rate of 0.49 cfs and a maximum quantity of 9.96 ac-ft for 2011 and a maximum quantity of 15.9 ac-ft – which includes 3.9 ac-ft for frost protection – for 2012 is granted subject to the following provisions and conditions:

Department of Fish and Wildlife

1. No dam or weir shall be constructed in connection with this diversion.

2. The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria. http://www.wdfw.wa.gov/reg/regions.htm

Quantity Limits, Flow and Regulation

3. This change does not authorize an enlargement of those quantities in cubic feet per second or acre-feet per year as described in No. S4-29264C.

4. The original place of use of No. S4-29264C shall be fallowed for the duration of the 2011 and 2012 irrigation seasons. Irrigation occuring during the 2011 or 2012 irrigation seasons (April 1 to October 31) in the original place of use of No. S4-29264C shall constitute a violation of the terms of this authorization, and will result in its immediate termination. Other enforcement actions, including but not limited to fines and/or penalties, may also follow as a result of a violation.

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Schedule and Inspections

5. This Seasonal Change Authorization shall expire at the end of the 2012 irrigation season, being October 31, 2012, at which time the place of use and points of diversion shall revert back to that described under No. S4-29264C.

6. Department of Ecology (Ecology) personnel may field-verify this seasonal change at any time for compliance with the terms and/or conditions of this authorization.

7. 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.

General Conditions

8. You are advised that the issuance of this Seasonal Change Authorization by Ecology does not convey a right of access to, or other right to use land, which you do not legally possess. Obtainment of such a right is a private matter between the applicant and the owner of the land.

9. Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.

10. Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances or regulations.

11. Ecology assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this seasonal change authorization. Applicants for seasonal change should not construe that a seasonal change will result in the granting of a permanent change of water right.

12. The quantities authorized through this seasonal change do not represent a full tentative determination as to the extent and validity of the subject water right. A full tentative determination would take place at the time a permanent change application is acted upon, and may result in the quantities authorized under the water right being reduced to reflect actual historic beneficial use of water under the right.

YOUR 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).

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To appeal you must do the following within 30 days of the date of receipt of this document:

- File your appeal and a copy of this document 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 document on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- Serve a copy of your appeal and this decision in paper form – by mail or in person. (See address 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 RD 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://www1.leg.wa.gov/CodeReviser

DATED this 8th of June, 2011.

Mark C. Schuppe
Operations Manager
Office of Columbia River

MCS:TP:gh
110614

Enclosure: *Your Right to Be Heard*

By certified mail: 7707 2560 0001 9535 2758

Cc: Mark Miller
Colville Confederated Tribres

Analysis

Background: During water right mapping efforts in 2008, Office of Columbia River staff noticed a potential compliance issue located immediately across the Columbia River from Brewster, WA, on property owned by Hillcrest Orchards, Inc. (HOI). It appeared HOI was irrigating approximately 85 acres not covered by a water right. The landowners were contacted in early 2009 by letter. After several meetings with Ralph Dobson, owner of HOI, and Mark Miller of the Okanogan County Water Conservancy Board, three seasonal applications were submitted for the 2010 irrigation season to address the issue. The three applications were submitted by a neighboring landowner, Mary Bailey, and Ecology issued three temporary/seasonal change authorizations for the 2010 season only.

For the 2011 and 2012 seasons, three applications again were submitted by Mary Bailey. As in 2010, the three applications propose to change their respective places of use and points of diversion such that HOI may irrigate some of the 85 acres not covered by a water right. Collectively, the three applications (CS3-00481C@1, CS4-26684C@1, and CS4-29264C@1) propose to transfer a total of 2.49 cubic feet per second (cfs) and 207.4 acre-feet per year (ac-ft/yr) for the irrigation of 41.5 acres. The three applications all describe a place of use allowing for maximum flexibility in where HOI may irrigate, subject to acreage limitations. Acreage limitations were discussed in a 2010 meeting with the applicant, Ralph Dobson, Mark Miller, and the author of this seasonal change. Mr. Dobson agrees to not irrigate the remaining 43.5 acres (85 acres – 41.5 acres). Application No. CS4-29264C@1, the subject of this seasonal authorization, accounts for 0.49 cfs and 15.9 ac-ft for the irrigation of 3 acres and frost control.

Water Right Attributes: The attributes of S4-29264C are as follows:

Priority Date:	April 22, 1987
Source:	Columbia River (Wells Pool)
Quantities:	0.49 cfs, 15.9 ac-ft/yr
Season of Use:	April 1 to October 31
Purpose of Use:	Irrigation of 3 acres, and frost control as needed
P.O.Ds:	#1: GL 1 of Sec. 1, T. 29 N., R. 23 E.W.M. #2: GL 3 of Sec. 36, T. 30 N., R. 23 E.W.M.
Place of Use:	That portion of Government Lot 7 of Sec. 36, T. 30 N., R. 23 E.W.M., Douglas County, Washington, further described as follows: Beginning at the SE corner of said Section 36, a brass-capped monument, and the true point of beginning; thence N 00° 10' 40"E 800 feet; thence N 58° 45' 31" W 529.87 feet; thence S 64° 48' 11" W 718.25 feet; thence S 88° 23' 30" W 483.06 feet to the boundary line of the Wells Hydroelectric Project; thence following said boundary line in a southerly direction to its intersection with the S section line; thence N 88° 23' 30" E 1461.11 feet more or less to the true point of beginning.

Proposal Attributes: The proposed seasonal change is intended only for the 2011 and 2012 irrigation seasons. The attributes of the proposal are as follows:

Priority Date:	Subject change application received March 2, 2011
Source:	No change
Quantities:	No change
Season of Use:	No change
Purpose of Use:	No change
P.O.D.:	GL 3 of section 36 of T. 30 N., R. 23 E.W.M.
Place of Use:	NE¼NE¼ of Section 1 of T. 29 N., R. 23 E.W.M., the N½NW ¼ and the NW¼NE¼ of Section 6 (excepting the SE¼NW¼NE¼ of said Section 6) of T. 29 N., R. 24 E.W.M., and the SW¼ and the W½SE¼ of Section 31, T. 30 N., R. 24 E.W.M., all in Douglas County.

Legal Requirments: This change application is subject to the provisions of RCWs 90.03.380 and 90.03.390. Under RCW 90.03.380, the place of use and point of diversion of a water right that has been put to beneficial use may be changed if the change can be made without detriment or injury to existing rights.

Under RCW 90.03.390, seasonal or temporary changes in point of diversion or place of use can be made provided such change can be made without detriment to existing rights and requires the permission of the watermaster of the district or of the department.

Under RCW 43.21C.035 and Chapter 197-11 WAC this temporary change is exempt from a SEPA review.

RCW 90.03.380 (tentative determination of extent and validity):

Quantities proposed for this temporary change derive from those given on No. S4-29264C. These values are: 0.49 cfs and 15.9 ac-ft/yr to irrigate up to three acres from April 1 to October 31. Chapter 90.14 RCW may cause return to the state of any water rights which are no longer exercised by applying them to beneficial use for a five year period since 1967, with limited exceptions. The applicant indicates that a five-year period of non-irrigation has not occurred since 1988, the year Certificate No. S4-29264C issued to her husband, Victor Bailey. Review of aerial photography of the place of use of S4-29264C taken in 1998 and 2005 indicates that approximately 12 acres were irrgated in both of these years. The place of use is shared by another water right, No. S4-26684C which authorizes 8.5 acres of irrigation. In 2006, it appears only approximately four acres were irrigated within the place of use of the two Certificates. In 2009, it appears only two acres were irrigated within the place of use of the two Certificates. Additionally, USGS topographic quad maps of the "Pateros" area dated 1989 and 1992 delineate some acres as orchard within the place of use of the two certificates.

In 2010, the entire right was proposed for change to irrigate the same lands as in this application. While the application was filed prior to irrigation season, due to Public Notice requirements and

other delays in processing, the authorization did not issue until after irrigation season had begun. As such, the authorization only captured a portion of the entire right. However, Ecology recognizes that water under No. S4-29264C was applied to beneficial use during the entire 2010 irrigation season: Ecology staff had been working with the applicant, the landowner of the proposed place of use, and their agent to facilitate this change and, as such, there is recognition that water under No. S4-29264C had been applied at the proposed place of use beginning on April 1, 2010, and continued through the irrigation season.

From the above, it appears a five year period of non-use has not occurred since Certificate No. S4-29264C issued. The full quantities authorized under this Certificate appear available for change.

Water Right Certificate No. S4-29264C issued for 15.9 ac-ft to irrigate three acres with 3.9 of the ac-ft being alloted to frost protection. The Report of Examination (ROE) for this Certificate, dated May 17, 1988, indicates that orchard in this general area requires 48 inches of water per acre. No efficiency coefficient is given in the ROE. This value is in agreement with the current Washington Irrigation Guide (WIG) if an approximate 30% efficiency coefficient is applied. The WIG indicates that at the Chief Joseph Dam area only 34.28 inches per acre are required for apples with cover crop. The water right holder is advised that the measure of a water right is that water applied to beneficial use, not to exceed the amount given on the Water Right Certificate.

If approved, the estimated date of approval is June 10, 2011. Using WIG consumptive use data for apples at the Chief Joseph Dam vicinity as a model, approximately 17% of the consumptive use occurs prior to June 10. (Total yearly consumptive use is 34.28 inches/ac; consumptive use up to June 1 is 3.19 inches/ac; consumptive use for June is 7.82 inches/ac; one-third of 7.82 is 2.61; 34.28 – 3.19 – 2.61 = 28.48; 28.48 / 34.28 = 83%; 100 – 83 = 17). Reducing the full amount available for change calculated above by 17% yields 9.96 ac-ft (12 ac-ft – (12 ac-ft * 17%)). This is the maximum amount that could be approved assuming a June 10 approval. The full amount of 15.9 ac-ft could be available for the 2012 season. Note: The amount available for change for the 2011 season would not include the 3.9 ac-ft of frost protection water given on the Certificate, as frost season is over. It would be included for the 2012 season.

RCW 90.03.380 and RCW 90.03.390 (detriment or injury to existing rights):

This change application proposes to move one point of diversion less than a mile to the northeast; the other remains in the same general area. The proposed point of diversion would still divert from the same surface water body, Lake Pateros (aka Wells Pool, backwater held by Wells Dam on the Columbia River). Changing the water right's point of diversion within the same pool should not reduce the availability of water to intervening water users, if any. Ecology's water right mapping system indicates that there may be two intervening surface water users; one of which is adjacent to the proposed diversion, the other approximately 250 feet to the west.

RCW 90.03.280 (public notice):

The subject application was filed on March 2, 2011, ahead of the April 1 beginning of irrigation season. Public notice was published on April 28 and May 5, 2011, in the Empire Press; the signed affidavit of publication was received on May 12, 2011, by fax and May 17, 2011, in original. There were no protests received during the 30 day protest period, which expired June 5th.

Chapter 90.66 RCW (Family Farm Water Act):

The original Certificate issued subject to the Family Farm Water Act (Chapter 90.66 RCW). Subsection 90.66.065(2a) RCW allows for the transfer of water rights subject to the Family Farm Water Act to other agricultural irrigation purposes; Subsection 90.66.065(5) RCW stipulates that the new place of use be within the same WRIA as the original place of use. This seasonal transfer meets both criteria: purpose remains agricultural irrigation and the irrigation would be occurring within the same WRIA as the original place of use.

Chapter 173-563 WAC:

The original Certificate was also subject to instream flows under Chapter 173-563 WAC. This authorization is similarly subject to instream flows under Chapter 173-563 WAC. Refer to original Certificate for minimum flow provisions. For 2011, no curtailment under Chapter 173-563 WAC is expected. Evaluation for the 2012 season will be as described in Chapter 173-563 WAC.