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

February 29, 2012

Benton Irrigation District
Bob Buoy, Chiarman, Board of Directors
PO Box 626
Benton City WA 99320-0626

Re: Water Right Application No. S4-33025 – Short-Term Surface Water Diversion on the Yakima River to be Used For Pressure Testing of Newly Piped Irrigation Line

THIS AUTHORIZATION SHALL IN NO MANNER BE CONSTRUED TO GUARANTEE OR IMPLY THAT A PERMANENT WATER RIGHT WILL ISSUE FOR THE WATER USE HEREIN AUTHORIZED.

Background
On June 27, 2011, Benton Irrigation District (BID) of Benton City, Washington, filed an application to divert water from the Yakima River to pressure test the newly piped irrigation line from December 1, 2011 through April 1, 2013.

The applicant proposes to temporarily divert a maximum 6.68 cubic feet per second (cfs) [3000 gallons per minute (gpm)] and 10.8 acre feet per year from December 1, 2011 through April 1, 2012, and again from December 1, 2012 through April 1, 2013 as applied for in Water Right Application No. S4-33025. The water diverted for this project will be used to pressure test newly installed section of an irrigation pipe. The point of diversion is located at the BID's headworks located within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M, Benton County Parcel No. 11964000003000. In the event all or part of the system needs to be drained, the water will be drained back to the Yakima River through the pipeline or natural surface drainages.

Public Notice
Public notice of the application was published in the Tri-City Herald on August 26 and September 2, 2011. No letters of protest or comments were received during the 30-day protest period.

Impairment
The Yakima River is part of the Yakima Basin Adjudication. The requested period of use for this Short-Term Authorization is during the non-irrigation season. The probability of impairing

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senior water rights by diverting water only during the months of December through March is minimal. Typically the high flow of Yakima River during December through March is at a level that would allow the diversion to take place without being detrimental to aquatic species.

Public Interest
Washington State Department of Fish and Wildlife considers this project beneficial to fish. The goal of piping irrigation lines to control ditch loss is beneficial to the Yakima River.

Conclusions and Decision
There is water available for the proposed project and can take place on a temporary basis without impairing existing water rights, is non-consumptive, and is not contrary to public interest.

Provisions
This Short-Term Authorization is subject to the following limitations and provisions:

1. The priority date of this water right is June 27, 2011.

2. The points of diversion will be located within the SE¼ of Section 11, T. 9 N., R. 26 E.W.M, Benton County Parcel No. 11964000003000.

3. The period of use will be Febuary 29, 2012 through April 1, 2013.

4. This Short-Term Authorization will expire April 1, 2013, unless sooner revoked for cause.

5. The diversions shall not exceed 6.68 cubic feet per second. The total quantity diverted shall not exceed 10.8 acre feet per year.

6. The purpose of use is for pressure testing of the newly constructed irrigation pipe.

7. The diversion intake shall be tightly screened at all times with wire mesh having openings with dimensions not greater that 0.125 (1/8) inch.

8. When draining the pipe, the water shall be released in a controlled manner to reduce erosion.

9. The operator of the system under this authorization shall:
   - Be aware of the parameters and provisions and operate accordingly.
   - Have a copy of this Short-Term Authorization.
   - Provide said copy of this Short-Term Authorization upon request of Department of Ecology staff.

10. Diversion of water under this Short-Term Aauthorization may be limited or otherwise regulated in favor of senior rights.

11. Under RCW 90.03.360, measuring is required for all surface water diversions, and all withdrawals of ground water in fish-critical basins. Whenever water is being diverted,

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volume of water shall be recorded and maintained by the permittee. These readings shall be documented by time, date, and the person conducting the measurements. Copies of these records shall be submitted to the Department of Ecology by April 30 of each year.

12. 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 No., source name and maximum instantaneous rate of diversion (cubic feet per second).

13. Department of 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.

14. This Short-Term Authorization shall in no way excuse the applicant from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.

15. The water source and place of use may not be located entirely upon land owned by the applicant. Therefore, the applicant is advised that issuance of a permit by the Department of 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.

16. No water right in perpetuity shall result from this Short-Term Authorization.

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.

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

Sincerely,

Mark Kemner, LHG
Section Manager
Water Resources Program

MK:EH:ss
120226

Enclosures: Water Measuring Requirements
Form 1 – Measuring Device Information

By Certified Mail: 7009 2250 0004 4952 1545

cc: Philip Rigdon, Director Natural Resources Division Yakama Nation
Stan Isley, Water Resources Program, Department of Ecology (email pdf)