



STATE OF WASHINGTON APPLICATION TO ENTER A WATER RIGHT INTO THE TRUST WATER RIGHT PROGRAM

NOTE: THIS FORM IS ONLY TO BE USED FOR THE
ACQUISITION OF WATER INTO THE TRUST WATER RIGHT PROGRAM

(Check all that apply.)

- Lease
 Purchase
 Donation
 Other

Explain: _____

Portion of the identified existing water right

IF FOR SEASONAL OR TEMPORARY, START DATE 4/15/12
 END DATE 4/14/13

FOR OFFICE USE ONLY	
FILE No. <u>CS4-006963CL@2</u>	WRIA <u>46</u>
DATE ACCEPTED <u>07, 10, 2013</u>	BY <u>[Signature]</u>
FEE \$ <u>[initials]</u>	REC'D <u>07, 03, 2013</u>
CHECK No. <u>[initials]</u>	
SEPA: <input type="checkbox"/> Exempt <input type="checkbox"/> Not exempt	

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS (PLEASE PRINT OR TYPE CLEARLY)

1. Applicant Information:

APPLICANT/BUSINESS NAME Harris Orchard Co., LP		PHONE NO. (509) 784-1827	FAX NO. ()
ADDRESS P.O. Box 477			
CITY Entiat	STATE WA	ZIP CODE 98822-0477	

CONTACT NAME (IF DIFFERENT FROM ABOVE) Donald L. Dimmitt		PHONE NO. (509) 662-3685	FAX NO. (509) 662-2452
ADDRESS 2600 Chester Kimm Road, P.O. Box 1688			
CITY Wenatchee	STATE WA	ZIP CODE 98807-1688	

2. Water Right Information:

WATER RIGHT OR CLAIM NUMBER CS4-006963	RECORDED NAME(S) Premium Developments, LLC
DO YOU OWN THE RIGHT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF NO, PROVIDE OWNER(S) NAME and ADDRESS: Premium Developments shows up as the current claimholder. However, Harris Orchard Co. has reacquired the property through foreclosure.	
HAS THE WATER BEEN PUT TO BENEFICIAL USE IN THE LAST FIVE (5) YEARS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO ARE WATER DIVERSIONS/WITHDRAWALS OF THIS WATER RIGHT METERED OR MEASURED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
IMPORTANT! PROVIDE INFORMATION SHOWING THE EXTENT OF WATER USE FOR EACH OF THE LAST FIVE YEARS SEE REMARKS AT #7	

Please attach copies of any documentation that demonstrates consistent, historical use of water since the right was established. Also, if you have a water system plan or conservation plan, please include a copy with your application.

FOR OFFICE USE ONLY	
WATER RIGHT NO. _____	FILE (contract) NO. _____
<u>CS4-006963CL@2</u>	

3. How is Water to be Made Available for Trust?

<input type="checkbox"/> Alteration in method of diversion	<input type="checkbox"/> Alteration in water use/ irrigated acreage
<input type="checkbox"/> Alteration in method of delivery/conveyance	<input type="checkbox"/> Nonuse of one or more points of diversion
<input type="checkbox"/> Alteration in method of water application	<input checked="" type="checkbox"/> Nonuse of all or a portion of the named water right
<input type="checkbox"/> Alteration in type of crop	<input type="checkbox"/> Other, Explain below:
Name of funding source(s):	

WATER RIGHT DESCRIPTION *

4. Point(s) of Diversion/Withdrawal:

A. Existing

SOURCE	NO.	¼	¼	SEC.	TWP.	RGE.	PARCEL #	WELL TAG #
Columbia River Diversion		SW	NE	16	26	21	262116310055	

Please include copies of all water well reports involved with this proposal. Also, if you know the distances from the nearest section corner to the above point(s) of diversion/withdrawal, please include that information in Item No. 6 (remarks) or as an attachment.

5. Purpose of Use:

A. Existing Use of the Water Right

PURPOSE OF USE	GPM or CFS	ACRE-FT/YR	PERIOD OF USE
Irrigation	.44 cfs	107.36	April - October

B. Proposed Purpose of the Trust Water Right:

DESCRIBE THE PURPOSE(S) OF USE DURING THE PERIOD OF TRUST:	
PURPOSE OF USE	ACRE-FEET/YR
Instream flow	107.36

6. Place of Use:

A. Existing:

LEGAL DESCRIPTION OF LANDS WHERE WATER IS PRESENTLY USED:							
¼	¼	SEC.	TWP.	RGE.	COUNTY	PARCEL #	# OF ACRES
		16	26	21	Chelan	262116110050 262116310055 262116240030	22
DO YOU OWN ALL THE LANDS IN THE EXISTING PLACE OF USE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO - IF NO, PROVIDE OWNER(S) NAME:							

* If additional space is needed, please continue on the form: Attachment for Application to Enter a Water Right into the Trust Water Right Program.

6. Place of Use (continued)

B. Proposed:

IDENTIFY THE WATER BODY TO BE BENEFITED OR OTHER PLACE TO BE BENEFITED
Columbia River

7. Remarks and Other Relevant Information:

See attachment.

Certain applications may incur a Real Estate Excise Tax liability for the seller of the water rights. The Department of Revenue has requested notification of potential taxable water right related actions and therefore may be provided with a copy of this request.

Please contact the State Department of Revenue for further information. The phone number is (360) 570-3265. The address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia, WA 98504-7477.

8. Signatures:

I certify that the information above is true and accurate to the best of my knowledge. I hereby grant staff from the Department of Ecology access to the above site(s) for inspection and monitoring purposes. If assisted in the preparation of the above application, I understand that all responsibility for the accuracy of the information rests with me.

HARRIS ORCHARD CO., L.P.

By James R. Small 6/27/13
 James R. Small, Managing General Partner (Date)
 (Applicant)

HARRIS ORCHARD CO., L.P.

By James R. Small 6/27/13
 James R. Small, Managing General Partner (Date)
 (Water Right Holder)

HARRIS ORCHARD CO., L.P.

By James R. Small 6/27/13
 James R. Small, Managing General Partner (Date)
 (Land Owner(s) of Existing Place of Use)

James R. Small 6/27/13
 James R. Small, Owner (Date)

Barbara B. Harris 6/27/13
 Barbara B. Harris, Owner (Date)

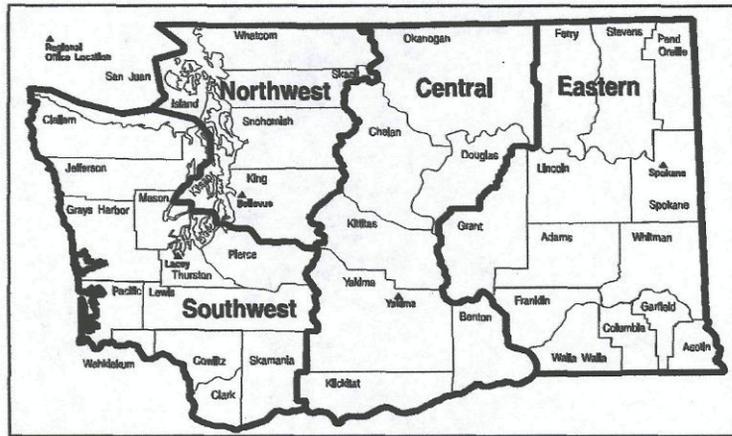
IMPORTANT! APPLICATION FILING INFORMATION IS PROVIDED ON THE NEXT PAGE.

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):	
<input type="checkbox"/> ADDITIONAL SIGNATURES REQUIRED	<input type="checkbox"/> SECTION _____ IS INCOMPLETE
<input type="checkbox"/> OTHER/EXPLANATION: _____	
EC	STAFF: _____ DATE: ____/____/____

Into gram

IMPORTANT!

Submit your application to Ecology at the regional office for the area of proposed or existing water use. Below is a map of the State of Washington, with outlines of the four Ecology regional offices. If you have questions about your application, contact the Water Resources program at the regional office in which your project is located.



Department of Ecology
Central Regional Office
15 W. Yakima Avenue, Suite 200
Yakima, WA 98902
Telephone: (509) 575-2490

Department of Ecology
Eastern Regional Office
N. 4601 Monroe, Suite 202
Spokane, WA 99205-1295
Telephone: (509) 329-3400

Department of Ecology
Northwest Regional Office
3190 - 160th Avenue SE
Bellevue, WA 98008-5452
Telephone: (425) 649-7000

Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775
Telephone: (360) 407-6300

If you need assistance in the application process or those needing this application in an alternate format, please call the Water Resources Program at (360) 407-6600 or 800-833-6388 (TTY).

NARRATIVE (6963 (22 Acres))

7. Remarks and Other Relevant Information

The applicant currently owns the water right. As detailed below, the applicant sold the underlying property, including the water right, to Premium Developments but ended up getting the property back through forfeiture.

During the interim period, Premium Developments applied for and received a partial change of use. That decision resulted in a tentative determination by the Department that the water right included 91.85 acre feet per year that could be used on 18 acres of orchard.

That 91.85 acres was accepted into trust on June 11, 2013, and was assigned No. CS4-006963CL@1.

During the application process Premium Developments entered into a settlement agreement with the Department that gave up the water attributable to 22 acres of the original 40 acres. Those 22 acres represented 107.36 acre feet of water. Premium Developments, as a real estate contract purchaser, had no authority to agree to a relinquishment of a portion of the water right that was subject to the terms of the real estate contract. Premium Developments' lack of authority was a matter of public record because the Real Estate Contract was recorded and thus the Department was deemed to have constructive notice of Premium Developments' lack of authority to enter into such a settlement agreement. At no point during the process was any notice provided to the applicant, Harris Orchard Company, the vendor of the Real Estate Contract which evidenced Premium Developments' interest in the water right.

In addition, the decision by the Department was only a tentative determination. No notice or opportunity to challenge that tentative determination was provided to Harris Orchard Company and thus it was not a final action. Premium Developments failed to provide the Department the evidence establishing that the use of the water on the 22 acres was never relinquished.

The water attributable to the 22 acres was last used in 2006. While 5 years of nonuse has passed with regard to these 22 acres, that nonuse by the applicants was a result of the operation of legal proceedings. RCW 90.14.140. Therefore, this water should be entered into trust based upon RCW 90.42.080(10)(a), as the applicant's nonuse was excused by the operation of legal proceedings.

The applicant, Harris Orchard Company, sold the property to Premium Developments, the entity that currently shows up as the water right holder, in June of 2006. Premium Developments defaulted on their real estate contract in February of 2009. The applicants began a forfeiture that same month. See attached Notice of

Intent to Forfeit recorded February 17, 2009. However, before that forfeiture was completed Premium Developments filed a Petition of Bankruptcy in December of 2009. See attached Voluntary Petition for Bankruptcy dated December 4, 2009. This Petition stayed the forfeiture action and precluded the applicants from obtaining possession of the property. The Bankruptcy stay of proceedings precluded the applicants from being able to put the water back to beneficial use or even to apply to put the water into trust because they had no ownership right to the water during the forfeiture process. The Bankruptcy was dismissed in May of 2011. See attached Order of Dismissal of Chapter 11 Case dated May 4, 2011. The applicants were required to restart the forfeiture after the Bankruptcy dismissal. See attached Notice of Intent to Forfeit recorded May 17, 2011. They obtained the property in September of 2011. See attached Declaration of Forfeiture recorded September 8, 2011.

The Bankruptcy stay of proceedings by itself resulted in over 18 months of delay due solely to the operation of those legal proceedings. The forfeiture process resulted in a total of over two and a half years delay in reacquiring ownership of the property. This appears to be a classic situation where the nonuse was caused by the operation of legal proceedings and thus the water is eligible for the trust program.