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Elizabeth A. McCown
Megan M. Curry
Kristin M. Ferrera
Clay M. Gatens

October 12, 2010

2007-0507-0001

VIA E-MAIL AND REGULAR MAIL: gars461@ecy.wa.gov

Mr. Gary Steele
Columbia River Trust Water Rights Coordinator
Department of Ecology
Office of Columbia River
Central Region Office
15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3452

RECEIVED
OCT 15 2010
DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

Re: Trust Water Right Applications CS4-00540(C)C, CS4-00564(C)C, CS4-01052(D)C@1

Dear Mr. Steele:

This letter is in response to yours of July 8, 2010, a copy of which is attached for your convenience. I understand that in my sabbatical absence you have discussed this matter with my associates, Todd Kiesz and Michelle Green. I understand that after those discussions you have requested our proposed revisions to the Trust Water Applications by October 15, 2010. Please consider this the response to your request.

Rather than apportion the requested transfer to trust between the three potential water rights, our request is that you process only Application CS4-01052(D)C@1. It is our understanding that will resolve your question regarding apportionment plus resolve any issues because of a minor overlap in the legal descriptions of the other two applications, CS4-00540(C)C and CS4-00564(C)C, with the adjoining Beebe Ranch property.

We look forward to your confirmation that this alleviates your concerns and that the Department is processing Application CS4-01052(D)C@1.

Having made this change, we also ask that you reconsider whether the original method of applying with all three rights was in fact proper. The original ROE for Certificate 1052 dated April 14, 2004, details the relationship between these three water rights on the last page. In subsection 1(d) on that page it notes that, "the annual, calendar year, withdrawal amount for this

2600 Chester Kimm Rd. • P. O. Box 1688 • Wenatchee, WA 98801
Phone: 509-662-3685 • Fax: 509-662-2452 • www.jdsalaw.com

right from the penstock is an amount not to exceed 4,098.1 acre feet, consisting of 4,088 acre feet detailed in their ROEs for Certificates 540 and 564 . . . ." At subsection (e) it continues indicating that, "the combined diversion from penstock under Certificate No. 540 . . . ; Certificate No. 564 . . . ; and Certificate 1052 . . . shall not exceed 15 cfs and 4,098.1 acre feet per year." In short, these three certificates are non-additive. A review of the DOE terms in Policy – 1040 indicates that non-additive rights are "alternate rights." Alternate rights are defined as those that can be used either instead of or simultaneously with the other water rights. As a result, it is still our position that the 157.818 acre-feet being put into trust from CS4-01052(D)C@1 should be put simultaneously into trust from 540 and 564 because they are alternate sources that can be used either instead of, or simultaneously with, with the total amount being put into trust. This method is consistent with that 2004 ROE referenced above and consistent with the DOE's past treatment of these three "alternate rights."

Finally, if it is still the DOE's position that it is not possible to put the same amount from each certificate into trust simultaneously, we express our intent that if at some point in the future it is determined that the 157.815 acre feet allocated under CS4-01052(D)C@1 is found to be based upon an invalid certificate, that the water put into trust from that certificate then be considered as coming from either CS4-00540(C)C or CS4-00564(C)C.

Sincerely,

DONALD L. DIMMITT

DLD:lrh
Enclosure
cc: Mr. Gary Piro (w/enc.)
Mr. Dave Zuluaga (w/enc.)
Mr. Greg Peterson (w/enc.)
Mr. Aaron Penvose (w/enc.)

Steele, Gary (ECY)

From: Michelle A. Green [michelleg@JDSALaw.com]
Sent: Thursday, September 23, 2010 9:43 AM
To: Steele, Gary (ECY)
Cc: Todd Kiesz; Cheryl Abel; garypiro@yahoo.com; Aaron Penvose
Subject: Beebe/Corral Creek

Gary-

Thank you for having a phone conference with us this morning regarding the various pending trust water right applications filed by Aaron Penvose from Trout Unlimited (for Beebe Ranch) and filed by Don Dimmitt from our office (for Corral Creek). Per your request, I am sending this email to confirm that you have agreed to extend the deadline to October 15, 2010 for our response to your inquiry regarding apportionment of water among the rights for trust. We expect to be providing you with this information soon. In the meantime, please give us a call if there are any further questions or concerns.

Thank you,

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

Michelle A. Green
Attorney at Law

Jeffers, Danielson, Sonn & Aylward, P.S.
2600 Chester Kimm Road
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Steele, Gary (ECY)

From: Steele, Gary (ECY)
Sent: Wednesday, July 21, 2010 9:52 AM
To: 'Michelle A. Green'
Cc: Cheryl Abel; Todd Kiesz
Subject: RE: L.H. Piro-Beebe Trust Water Applications

Michelle,

I confirm and agree with your recap of our telephone conversation from this morning, as you've outlined in your e-mail below, regarding:

1. The water right holder's responsibility to quantify the trustable portion of their water rights; and,
2. Ecology granting an extension of time for you to respond to 9/15/2010.

Regards,
--Gary

Gary Steele
Columbia River Trust Water Rights Coordinator
Department of Ecology, Office of Columbia River
Central Region Office
15 W. Yakima Avenue, Suite 200
Yakima, WA 98902-3452

(509) 249-6299 phone
(509) 575-2809 fax
gars461@ecy.wa.gov

From: Michelle A. Green [mailto:michelleg@JDSALaw.com]
Sent: Wednesday, July 21, 2010 9:00 AM
To: Steele, Gary (ECY)
Cc: Cheryl Abel; Todd Kiesz
Subject: L.H. Piro-Beebe Trust Water Applications

Gary-

As we discussed this morning, I am handling this matter for Don Dimmitt who is on sabbatical. You indicated that while the original narratives attached to each trust water right application touched on the issue of apportionment, it is up to the applicant to quantify for each water right the amount going into trust. I understand from our phone conversation that you have agreed to give us until September 15, 2010 to provide you with apportionment information for the proposed 157.815 acre-feet of trust water among the three subject trust water right applications. If you could confirm that new timeline with an email back, I would appreciate it.

Thank you,

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

Michelle A. Green
Attorney at Law

Jeffers, Danielson, Sonn & Aylward, P.S.
2600 Chester Kimm Road
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WASHINGTON STATE DEPARTMENT OF ECOLOGY

TELEPHONE RECORD

Date 7/9/2010

Time 11:20 ☑ a.m. ☐ p.m.

☑ CALLED BY
☐ CALLED

Mr./Ms. Donald Dimmitt's legal secretary Telephone 509-662-3685

Address Wenatchee, WA

Representing

LH Piro-Beebe, LLC

Project

Trust water rights CS4-01052(D)@1, CS4-00540(C), CS4-00564(C)

Discussed

Donald Dimmitt is on sabbatical until October. This will be handed off to an associate who will address the matter of providing portions for each trust water right of the proposed aggregate 157.815 AF trust water quantity.

Signed Gary Stalo

ECY 010-46(b) (Rev 6/04)

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

July 8, 2010

Donald Dimmitt, Esq.
Jeffers, Danielson, Sonn & Aylward, P.S.
PO Box 1688
Wenatchee WA 98801-1688

RE: Trust Water Right Applications CS4-00540(C)C, CS4-00564(C)C, CS4-01052(D)C@1

Dear Mr. Dimmitt:

I am writing to address an issue with the above-referenced trust water right applications, which were received by the Department of Ecology on November 9, 2009. These applications were initially assigned to Mr. Scott Turner, a fellow water rights specialist in this office. The processing delay is due to a combination of internal factors and as such, your trust water right applications have remained unprocessed. With that, I assumed responsibility of your applications only recently and will process them as quickly as possible. Once approved, each trust water right will reflect an effective date of April 15, 2010 and ending on September 15, 2010—or the full irrigation season.

The issue mentioned above, which must be resolved before the applications can be approved, is to quantify the apportionment of the proposed 157.815 acre-feet of trust water between each of the three subject water right applications. In order to accept any portion of a water right into the Trust Water Rights Program, a trust water quantity for each water right must be identified.

I will hold your applications while you confer with your client and arrive at separate trust water quantities for each application. I would like to hear from you within 30 days of your receipt of this letter. You may contact me at (509) 249-6299 or e-mail me at gars461@ecy.wa.gov.

Sincerely,

Gary Steele
Columbia River Trust Water Rights Coordinator
Office of Columbia River

GS:RAZ(100706)

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

March 31, 2010

Mr. Aaron Penvose
Trout Unlimited–Washington Water Project
103 Palouse Street, Suite 200
Wenatchee, WA 98801

RE: Beebe Orchards Water Association, et al, Trust Water Right Application for Water Rights S4-01052C(A), S4-01052C(C), S4-00540C(A), S4-00540C(B), S4-00540C(C), S4-00564C(A), S4-005564C(B), S4-00564C(C).

Dear Aaron:

I am returning your application to enter the above listed BeeBe Orchards water rights into the state's Trust Water Rights Program. The reason is that each application is limited to one water right.

The business rule of one change application per water right is pursuant to WAC 508-12-110 *Surface Water Appropriation Procedure — Number of Applications* and internally under Procedure 1000 – *Water Right Administration Procedures*.

You are welcome to resubmit separate applications for each water right proposed for placement in the Trust Water Rights Program.

Regards,

Gary Steele
Trust Water Rights Coordinator
Office of Columbia River

GS:RAZ (100331)

Enclosure: Rejected application

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

January 4, 2010

L H Piro-Beebe LLC, et al.
538 Hyacinth Road
Manson WA 98831-9738

Re: Water Right Change Application Nos. CS4-00540(C)C, CS4-00564(C)C and CS4-01052(D)C@1

We have received your trust water right applications and have assigned the application numbers shown above. Please use these numbers in future communications with our office.

If you have any questions, please contact Teresa Mitchell at 509-575-2597.

Sincerely,

Mark C. Schuppe
Section Manager
Water Resources Program

MCS:hd
100101

cc: Donald L. Dimmitt, Jeffers, Danielson, Sonn & Aylward, P.S.

App-trustwater.doc

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