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

June 27, 2007
CERTIFIED MAIL

Bonneville Power Administration
Marian Wolcott - TSR/ACQ
PO Box 3261
Portland OR 97208-3621

RE: Amended Temporary Permits for beneficial use of surface water under Application Nos. S4-30622, S4-30624, and S4-32415 and to assess long duration well field monitoring associated with related Application Nos. G4-32414 and G4-32504

The source of your proposed appropriation falls within the Yakima River Basin. The historical water rights of all surface water uses within the Yakima River drainage basin are under adjudication in Yakima County Superior Court. This adjudication may take several years to complete. The Director of the Department of Ecology has specified that during the pendency of the adjudication, water right permits will not be issued for any surface waters within the Yakima River drainage basin. TEMPORARY PERMITS, however, may be issued if all the requirements of the Revised Code of Washington (RCW 90.03) can be satisfied.

In accordance with the provisions of RCW 90.03.250, you may consider this letter to be a TEMPORARY PERMIT which is issued subject to the limitations and provisions contained herein.

BACKGROUND

The Cle Elum Supplementation & Research Facility (CESRF) was cooperatively developed by the Bonneville Power Administration, the Yakama Indian Nation, the Washington Department of Fish and Wildlife, and the Northwest Power and Conservation Council. It is an integral part of the Yakima/Klickitat Fisheries Project (YKFP) in which restoration of a self-sustaining population of naturally spawning spring chinook is a goal. The CESRF will benefit the public through scientific investigation of artificial production methods designed to enhance the natural production of the depressed spring chinook salmon population in the Yakima River Basin and increase harvest opportunities. Subsequently, substantial environmental enhancement of a declining natural resource and restoration of the associated ecosystem function are some of the expected public benefits anticipated from the CESRF.

FILE COPY

On November 26, 1990, the Department of Ecology (Ecology) received an application from the Bonneville Power Administration (BPA) requesting authorization to use up to 21.3 cubic feet per second (cfs), 9559 gallons per minute (gpm) from surface waters of the State of Washington. On the same day, Ecology received an application from the applicant requesting authorization to use up to 5.0 cfs (2244 gpm). The applications were accepted as complete and assigned Application Nos. S4-30622 and S4-30624, respectively. Proper publications of notice describing the applicant's intent were made on July 25 and August 1, 1991. No protests were received. On July 24, 1991, Ecology received a copy of a letter from the U.S. Bureau of Reclamation to the applicant releasing said applications from the February 17, 1981 (Yakima River Basin Watershed Enhancement Project) withdrawal.

Under Application No. S4-30622, the Bonneville Power Administration (BPA) applied for a permit to appropriate surface waters of the State of Washington for fish propagation. Said application requested the appropriation of up to 21.3 cfs, 9559 gpm, from a point along the Yakima River located in the SW¼NW¼ of Section 33, for continuous use in fish propagation facilities located in those portions of Sections 27, 28, 33, and 34, Township 20 N., Range 15 E.W.M., Kittitas County, Washington. In consideration of the need to evaluate suitability of the proposed diversion, Ecology issued Preliminary Permit No. S4-30622PRE on March 6, 1997, authorizing the construction of the proposed point of diversion, and authorizing preliminary testing of the proposed water source and system by temporarily diverting a quantity of up to 21.3 cfs.

Similarly, under Application No. S4-30624, the BPA applied for a permit to appropriate surface waters of the State of Washington for fish propagation. The applicant requested authorization to divert up to 5 cfs from the Yakima River located in the SW¼NW¼ of Section 33, for use in fish propagation facilities located in those portions of Sections 27, 28, 33, and 34, Township 20 N., Range 15 E.W.M., Kittitas County, Washington. In consideration of the need to evaluate suitability of the proposed diversion, Ecology issued Preliminary Permit No. S4-30624PRE on March 6, 1997, authorizing the construction of the proposed point of diversion, and authorizing preliminary testing of the proposed water source by temporarily diverting a quantity of up to 5.0 cfs.

On February 16, 1996, Ecology received an application from the BPA requesting authorization to use up to 6.3 cfs (2827 gpm) from the Yakima River from the same point of diversion and for the same place of use as requested in Application Nos. S4-30622 and S4-30624. The application was accepted as complete and assigned Application No. S4-32415. Proper publication of notice describing the applicant's intent was made on March 21 and March 28, 1996. No protests were received. On April 24, 1997, Ecology received a copy of a letter from the U.S. Bureau of Reclamation to the applicant releasing said applications from the February 17, 1981 (Yakima River Basin Watershed Enhancement Project) withdrawal.

On April 7, 1997, Ecology issued Preliminary/Temporary Permit Nos. S4-30622PRET, S4-30624PRET, and S4-32415PRET with a combined non-consumptive diversion of 32.6 cfs. This diversion was authorized until April 5, 2000.

On March 24, 2000, BPA requested a two-year extension for Preliminary/Temporary Permits Nos. S4-30622PRET, S4-30624PRET, and S4-32415PRET based on Ecology's determination that pumping rates from the wells authorized in Preliminary/Temporary Permit Nos. G4-32504PRET and G4-32414PRET from 1998 to 2000 constituted a consumptive use of the public water supply. The extension was requested to explore modifications to the pumping schedule to comply with the non-consumptive nature of the permits.

On April 5, 2000, Ecology granted the requested extension for Preliminary/Temporary Permit Nos. S4-30622PRET, S4-30624PRET, and S4-32415PRET through April 4, 2002. The extension was conditioned on BPA providing a scope of work and schedule for conducting the necessary water supply and water management feasibility investigations, and Ecology's written concurrence that said scope of work was adequate by July 15, 2000. On July 7, 2000, the BPA submitted the required scope of work, and Ecology confirmed that said scope of work was adequate.

On April 2, 2002, the applicant submitted the results of the long duration well test and provided a hydrogeologic analysis of the data for Ecology review. The data submitted suggested that sustainable non-consumptive use of the ground water source was not possible in the quantities requested on the application and in the quantities allowed under the previous authorizations. However, Ecology determined that the operational conservation efforts implemented since about 2000 appeared to be consistent with achieving permit requirements and that continuing to investigate and monitor compliance with the non-consumptive requirements of the ground water authorizations was appropriate. As such, Temporary Permit Nos. G4-32504 and G4-32414 issued with conditions requiring further monitoring and reporting and an expiration date of April 4, 2007. Because the feasibility of the proposed project is dependent on all five applications, a similar authority for the surface water permits was also granted.

Also in April, 2002, the "Supplementary Water Right Application Information for the Cle Elum Supplementation Research Facility (CESRF) and the "Exhibit II: 'Bypass Reach' Analysis: Justification in Support of Surface Water Right Applications were submitted to Ecology by the applicant. Within these documents, the co-managers of the fisheries of the Yakima River Basin, Washington Department of Fish and Wildlife, and the Yakama Nation concluded that:

- Based on a review of the fisheries habitat in the Yakima River channel, instream flows for salmonid habitat will not be impaired within the bypassed reach.
- For surface water diversions under Application Nos. S4-30622, S4-30624, S4-32415, and ground water withdrawals under ground water Application Nos. G4-32414 and G4-32504, a greater area of higher quality habitat will be provided within the hatchery slough.
- Fish passage channels will remain open during flows as low as 200 cfs on the mainstem Yakima River within the bypass reach.

- Based on the reduced project flows for Phase 1 development of the hatchery from 32.6 cfs to 25 cfs between October and February, the infrequency and short duration of flow events below 200 cfs, and the superior habitat provided by hatchery slough over the mainstem bypass reach, no flow restrictions for the surface water permits identified herein are needed to protect State aquatic resources in the bypass reach.

On January 31, 2007, the applicant submitted a Final Long Duration Well Field Monitoring (LDWFM) Report required under the associated April 3, 2002 Amended Temporary Ground Water Permits. Initial Ecology review of the ground water data suggested that reductions in the ground water withdrawals and best management practices appeared to have been relatively effective in stabilizing ground water levels within a range of seasonal fluctuations since about the beginning of 2002 to the present. It was clear, however, to achieve stable water levels over the life of the facility's authorization, additional reduction of permitted maximum withdrawal rates and volumes, additional restrictions on well and pump modifications, as well as continuous monitoring would be required.

On March 2, 2007, Ecology extended the existing ground water and surface water authorizations to June 30, 2007. The extension allowed time for discussion of issues and planning for changes of existing requirements to assure the facility can conform to non-consumptive and environmentally beneficial use.

On June 25, 2007, John A. Easterbrooks, YKFP Policy Representative, Regional Fish Program Manager – Region 3 – Washington Department of Fish & Wildlife submitted "Justification in Support of Renewal of Temporary Surface Water Right Permit Nos. S4-30622, S4-30624, and S4-32415" to Ecology on behalf of the applicant. Within these documents, the co-managers of the fisheries of the Yakima River Basin, Washington Department of Fish and Wildlife and the Yakama Nation requested that a maximum instantaneous surface water diversion of 31.0 cfs (13,900 gpm) be allowed during high flow summer months when no negative biological impacts will occur from increased diversion. Additionally, potential lowest flows, generally occurring in late October, were re-evaluated to determine whether a 27.4 cfs surface water diversion might be considered instead of the current 25 cfs. The small 2.4 cfs increase did not change earlier (2002) conclusions that fish resources in the bypass reach will not be harmed by continued, non-interruptible operation of the CESRF during potential lowest flows. WDFW, after consultation with BPA and the Yakama Nation YKFP representatives, further asked that a maximum instantaneous combination of surface water and ground water be established at 32.6 cfs when conditions are conducive to operating the River Water Cooling Facility effectively to lower high summer water temperature.

Original Application Nos. S4-30622, S4-30624, and S4-32415, together sought authorization to divert up to 32.6 cfs (14631 gpm) from the surface waters of the State of Washington for continuous fish propagation from the same point of diversion, and for use on the same place of use. The applicant also requested authorization to use up to 5,025 gpm (approximately 11.2 cfs) under Application No. G4-32504, and up to 3,000 gpm (approximately 6.68 cfs) under Application No. G4-32414. However, the applicant proposed to use a maximum of no more than 32.6 cfs between the five applications, by substituting well water for surface water when the surface water sources are not appropriate for the proposed use. The applicant further recognizes

that, during periods in which flows in the Yakima River at the point of diversion are below 240 cfs, limiting the combined surface water diversion to no more than 27.4 cfs for fish propagation will prevent impacts to necessary instream flows in the bypass reach. These applications were recognized as for the same proposed non-consumptive purpose and the feasibility of the current project design and operation is dependent on all five applications.

Temporary Permits may be issued if all the requirements of the Revised Code of Washington (RCW 90.03) can be satisfied. One requirement of 90.03 is that there be no impairment to existing rights, including instream flows for anadromous fish habitat. After thorough investigation, the Department of Ecology finds that there are no other authorized surface water diversions from the Yakima River along the proposed project boundary.

PERMIT CONDITIONS

Since the authorization of the 1997 preliminary and temporary surface water permits, the applicant has completed Phase 1 construction of the hatchery facilities as well as documented water use patterns established by hatchery operations. Based on the *Justification in Support of Renewal of Temporary Surface Water Right Permit Nos. S4-30622, S4-30624, and S4-32415,* provided by the applicants in June, 2007, the combined maximum water use needs for the hatchery are re-evaluated at 32.6 cfs as requested in the original applications. The permit conditions authorized herein have been modified based on the updated data.

In consideration of the above, and in accordance with the provisions of Section 90.03.250 RCW, you may consider this letter to be a **TEMPORARY PERMIT** which is issued subject to the following limitations and provisions:

1. The priority date for **TEMPORARY PERMIT**:

   No. S4-30622 is November 26, 1990,
   No. S4-30624 is November 26, 1990, and
   No. S4-32415 is February 16, 1996.

2. The duration of these **TEMPORARY PERMIT** authorizations is until the completion of the Yakima Basin Adjudication, State of Washington Department of Ecology vs James J. Acquavella, et al, Cause No. 77-2-01484-5, AND at such a time a final determination is made by the Department of Ecology on the underlying applications, pursuant to chapter 90.03 RCW.

3. These **TEMPORARY PERMITS** together authorize the diversion of up to 32.6 cfs (14,670 gpm) from a point of diversion located within the SW¼NW¼ of Section 33, Township 20 N., Range 15 E.W.M., Kittitas County, Washington when flows on the Yakima River are at or above 240 cfs. If flows at or upstream of the "CESRF bypass reach fall below 240 cfs, then the authorized maximum combined surface water diversion

shall be restricted to a maximum of 27.4 cfs (12,330 gpm) during the period the river remains below 240 cfs. These **TEMPORARY PERMITS** authorize said beneficial use for continuous fish propagation on those portions of Section 27, 28, 33, and 34, Township 20 N., Range 15 E.W.M., more particularly described in Exhibits A and B.

For copies of Exhibits A and B contact the Department of Ecology at (509) 575-2491.

4. These **TEMPORARY PERMITS** are also a component of long duration monitoring as specified in groundwater TEMPORARY PERMIT Nos. G4-32414T and G4-32504T, the purpose of which is to assure compliance with permit provisions and related matters.

5. The two ground water TEMPORARY PERMIT Nos. G4-32414T and G4-32504T, while not described as supplemental, are not additive to the three main hatchery surface water TEMPORARY PERMIT Nos. S4-30622T, S4-30624T, and S4-32415T. The ground water permits are intended for a 1:1 replacement "when surface water sources are not appropriate for the proposed use." Therefore, the maximum combined total water use from the five Temporary Permits (3 surface water and 2 ground water) is limited to 32.6 cfs or 14,670 gpm.

6. An approved measuring device shall be installed and maintained for each of the sources identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", chapter 173-173 WAC. Water use data shall be recorded daily and shall be submitted semi-annually to Ecology by June 30 and December 31 of each year on a form prescribed by Ecology. In the future, Ecology may require additional parameters to be reported or more frequent reporting.

7. All expenses, risks, and liabilities incurred during testing shall be borne by the applicant.

8. 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 the production and observation wells, and any measuring device used to meet the conditions contained herein.

   A copy of this permit shall remain on-site at the hatchery for use by hatchery staff, and shall be produced upon request by Ecology staff during site inspections.

9. These **TEMPORARY PERMITS** shall in no manner be construed to guarantee or even imply that final (regular) permits will issue pursuant to the subject applications or similar applications filed in the future. Any final determinations will be made by the Department of Ecology, pursuant to chapter 90.03 RCW.

10. These **TEMPORARY PERMITS** can be canceled at any time if there is impairment of senior rights, instream flows, or if provisions of applicable law are otherwise not met.

11. This authorization is subject to Washington Department of Fish and Wildlife juvenile salmon and gamefish screening criteria (pursuant to RCW 75.20.040). Please contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091, Attention: Habitat Management Division, Phone: (360) 753-3318 or call (509) 575-2733 for the Yakima Screen Shop to obtain specific gamefish requirements for your project. Salmon screening criteria are attached to this TEMPORARY PERMIT.

12. Should modifications to the existing diversion structure be required during this authorization, the applicant must obtain Hydraulic Project Approval from the Washington Department of Fish and Wildlife for all construction activities occurring within the ordinary high water mark of the Yakima River and its tributaries. Please contact the Department of Fish and Wildlife, Region 3, 1701 S. 24th Ave., Yakima, WA 98902-5720 or by telephoning Russell Klatt at (509) 925-1013.

13. At the time this authorization ends unless otherwise authorized, the diversion developed under authority of PRELIMINARY PERMIT NOS. S4-30622PRE and S4-30624PRE, PRELIMINARY/TEMPORARY PERMIT NO. S4-32415PRET, and as further recognized in these **TEMPORARY PERMITS** shall be abandoned to prohibit water use. The unauthorized diversion, storage, possession, or use of water is a violation of the surface water code and is a misdemeanor (chapter 90.03.400 RCW).

14. Failure to comply with any element of these **TEMPORARY PERMITS**, or related authorizations including Nos. G4-32414 and G4-32504, may result in termination of these **TEMPORARY PERMITS**, and rejection of the applications without further notice.

15. Release of water from storage facilities in the Yakima River Basin for delivery to the project, or to supplement instream flows adjacent to the facility as a result of operation of the subject facility shall constitute prima facie evidence of the project requiring the consumptive use of the surface waters of the Yakima River. Demonstration that fish propagation on the subject property requires the consumptive use of water is sufficient cause for this and related non-consumptive use authorizations issued under Application Nos. S4-30622, S4-30624, S4-32415, G4-32414, and G4-32504 to be canceled.

You have a right to appeal this order. To appeal this you must:

- File your appeal with the Pollution Control Hearing Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board:

Mail appeal to:	OR	Deliver your appeal in person to:
Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903		Pollution Control Hearings Board 4224 – 6th Ave SE Rowe Six, Bldg 2 Lacey WA 98503

2. To serve your appeal on the Department of Ecology:

Mail appeal to:	OR	Deliver your appeal in person to:
Department of Ecology Appeals Coordinator PO Box 47608 Olympia WA 98504-7608		Department of Ecology Appeals Coordinator 300 Desmond Dr SE Lacey WA 98503

3. And send a copy of your appeal packet to:

G. Thomas Tebb, L.E.G.
Department of Ecology
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://www1.leg.wa.gov/CodeReviser

Sincerely,

G. Thomas Tebb, L.E.G.
Section Manager
Water Resources Program

MD:AH:gg/070610

Enclosures: Fish Screening Requirements
Your Right To Be Heard
Water Measurement Requirements

cc: Philip Rigdon, Deputy Director, Natural Resources Division, Yakama Nation
Charles Strom, CESRF Manager
Jeff Randall, Ch2Mhill
Pat Spurgin, YKFP Policy and Legal Analyst

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1. Article Addressed to:

BONNEVILLE POWER ADMIN
MARIAN WOLCOTT - TSR/ACQ
PO BOX 3261
PORTLAND OR 97208-3621

WR/gg Temp Auth S4-30622, S4-30624, S4-32415

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X ☐ Agent ☐ Addressee

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JUL 02 2007

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2. Article Number
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