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

April 3, 2002

CERTIFIED MAIL

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

**RE: Temporary Permits for beneficial use and to assess the relationship of surface water and ground water aquifer under Application No.'s S4-30622, S4-30624, and S4-32415 in association with related Application No.'s 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**

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 numbers 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.

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Under application number 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 gallons per minute [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 cubic feet per second (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 No.'s 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 No.'s 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 No.'s S4-30622PRET, S4-30624PRET, and S4-32415PRET based on Ecology's determination that pumping rates from the wells authorized in Preliminary/Temporary Permit No.'s 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 No.'s 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.

Application No.'s 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.'s G4-32414. However, the applicant proposed to use 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. These applications were recognized as for the same proposed non-consumptive purpose and the feasibility of the project is dependent on all five applications.

## 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. Based on the *Supplemental Water Right Application Report* provided by the applicants in April 2002, the final water use needs for Phase 1 development of the hatchery are reduced to approximately 25 cfs, as opposed to the 32.6 cfs requested in the applications. The permit conditions authorized herein have been modified based on the updated data.

Based on a review of data collected under permit conditions required in Preliminary/Temporary Permit No.'s G4-32504PRET and G4-32414PRET, Ecology has determined that additional data is needed to investigate compliance with the non-consumptive nature of these rights. As such, Temporary Permit No.'s 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 is granted herein.

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.

Further, the co-managers of the fisheries of the Yakima River Basin, Washington Department of Fish and Wildlife and the Yakama Indian Nation have 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 No.'s S4-30622, S4-30624, S4-32415, and ground water withdrawals under ground water Application No.'s 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, 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.

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 April 4, 2007.

3. These **TEMPORARY PERMITS** together authorize the diversion of up to 25.0 cfs (11,220 gpm) from a point of diversion located within the SW¼NW¼ of Section 33, Township 20 N., Range 15 E.W.M., Kittitas County, Washington. 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 and reporting as specified in groundwater TEMPORARY PERMIT No.'s G4-32414 and G4-32504, the purpose of which is to determine the degree of communication between the groundwater source and the surface waters of the State of Washington, and related matters.

5. 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 quarterly to Ecology by March 31, June 30, September 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.

6. For Temporary Permit No.'s G4-32504 and G4-32414 the applicant is required to submit an Interim Report by June 30, 2005, that meets the data collection, reporting, and analysis requirements in the permits. For Temporary Permit No.'s S4-30622, S4-30624, and S4-32415, the applicant will also include a summary of surface water monthly and annual withdrawals (in acre-feet), and maximum instantaneous withdrawals (in gpm) for the 3 year period (running year defined from April to April) in the Interim Report. This information shall also be updated in the Final Report required by January 31, 2006, for the temporary ground water permit authorizations.

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 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 NO.'S 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 No.'s 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 No.'s S4-30622, S4-30624, S4-32415, G4-32414, and G4-32504 to be canceled.

16. This Order may be appealed pursuant to RCW Chapter 43.21B. The person to whom this Order is issued, if he or she wishes to file an appeal, must file the appeal with the Pollution Control Hearings Board **within thirty (30) days of receipt of this Order**. Send the appeal to: Pollution Control Hearings Board, P.O. Box 40903, Olympia, Washington 98504-0903. At the same time, a copy of the appeal **must** be sent to: Department of Ecology, Water Resources Appeals Coordinator, P.O. Box 47600, Olympia, Washington 98504-7600. All others receiving notice of this Order, who wish to file an appeal, must file the appeal with the Pollution Control Hearings Board within **thirty (30) days of the date the Order was mailed.** The appeal must be filed, with both the Pollution Control Hearings Board and the Department of Ecology, in the same manner as described above.

Sincerely,

Robert F. Barwin, Section Manager
Water Resources Program
Central Regional Office

DH:gg
020403

Enclosures: Screening Requirements for Water Diversions
Your Right to Be Heard
Water Measurement Device Installation & Operation Requirements

cc: Carroll Palmer, Yakama Indian Nation
Jeff Randall
Pat Spurgin

**SENDER:** *COMPLETE THIS SECTION*

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits. Temp Permits

1. Article Addressed to:

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

54-30622, 54-30624, 54-32415
G4-32444 & G4-32504

*COMPLETE THIS SECTION ON DELIVERY*

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C. Signature
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☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)* 2098-0190

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

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PS Form 3800, February 2000 See Reverse for Instructions