



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

August 5, 2015

Toby McKay
2708 N Road 60
Pasco, WA 99301

Re: Water Right Application No. S3-30738

Dear Mr. McKay:

Enclosed is a copy of the Department of Ecology's *Term Permit*. This report contains our decision regarding your application.

Your application has been approved.

If you have any questions or for other options to protect your water right, please contact Lara Henderson at (509) 454-4255.

Sincerely,

Mark C. Schuppe, Operations Manger
Office of Columbia River

MCS:aa (150802)

Enclosures: *Term Permit*
Your Right To Be Heard
Measuring Device Information Form 1 (ECY 070-170)
Assignment Form (ECY 040-1-61)
Water Service Contract

By certified mail: 7009 2250 0004 4950 2223

cc: Roy and Sandra Anderson

FILE COPY



7009 2250 0004 4950 2223

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2708 N RD 60
PASCO WA 99301

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PS Form 3800, August 2006 See Reverse for Instructions

15-0812 33-307 38

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 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.

1. Article Addressed to:

TOBY MCKAY
2708 N RD 60
PASCO WA 99301

2. Article Number
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7009 2250 0004 4950 2223

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
Toby McKay Addressee

B. Received by (Printed Name) **Toby McKay** C. Date of Delivery **8/8/15**

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

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State of Washington
 Department of Ecology
 Office of Columbia River
 TERM PERMIT S3-30738P

File NR S3-30738
 WR Doc ID 6563069

PRIORITY DATE
 4/1/2015

WATER PERMIT APPLICATION NUMBER
 S3-30738

MAILING ADDRESS
 International Farming Corporation
 c/o Toby McKay
 2708 N Road 60
 Pasco, WA 99301

SITE ADDRESS

Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.99	CFS	35

Purpose

PURPOSE	DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Irrigation of 10 acres		0.99	CFS	35		04/01 - 10/31

REMARKS

- (1) Water used under this authorization is mitigated by water being leased by the applicant from Ecology under an associated water service contract. Mitigation water is subject to the terms of Ecology's lease contract with the Port of Walla Walla (Contract C1100119).
- (2) All 35 ac-ft authorized are mitigated by water subject to curtailment during periods of low flow pursuant to Chapter 173-563 WAC. See *Provisions* below for details.
- (3) This TEMPORARY AUTHORIZATION expires on November 30, 2020, or earlier. See *Provisions* below for details.

ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
	NON-ADDITIVE		WATER SYSTEM ID	CONNECTIONS
10	0		N/A	

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA		
Franklin	Columbia River	Pacific Ocean	36-Esquatzel Coulee		
SOURCE FACILITY/DEVICE	PARCEL/LOT NO.	TWP	RNG	SEC	QQ Q
Columbia River	Gov't Lot 4	11N.	28E.W.M.	24	SW¼SW¼

Place of Use

PARCELS
 126290239
 LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE
 NW¼ of Section 25, T. 11N., R. 28E.W.M.

Proposed Works

Existing diversion on the Columbia River. Details of the diversion are in the investigator's report.

Measurement of Water Use

How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Annually (By Jan 31 of the following year)
What volume should be reported?	Total annual volume in acre-feet
What rate should be reported?	Annual peak rate of diversion in cfs

Provisions

Temporary Authorization, Termination, Cancellation

This temporary authorization relies upon mitigation water leased from Ecology under an associated water service contract and is subject to the terms of that contract.

The associated water service contract remains in effect for a maximum of six (6) irrigation seasons yet allows for early termination under certain circumstances. As such, this temporary authorization shall remain in effect for up to six irrigation seasons (until November 30, 2020, at the latest), or at such time as the associated water service contract is terminated.

This temporary authorization shall be subject to cancellation for non-compliance with its limitations and provisions. In such instance, should non-compliance continue, enforcement proceedings by Ecology may be initiated.

This temporary authorization shall be subject to cancellation for non-payment of lease fees as outlined in the associated water service contract. In such instance, should water use continue, enforcement proceedings by Ecology may be initiated.

Measurements, Monitoring, Metering and Reporting

An approved measuring device shall be installed and maintained for the source identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.

Chapter 173-173 WAC describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Department of Fish and Wildlife Requirement(s)

The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://wdfw.wa.gov/about/contact/>.

No dam or weir shall be constructed in connection with this diversion.

Quantity Limits, Flow and Regulation

35 ac-ft of this authorization is subject to the following minimum flows as specified in WAC 173-563-040 and WAC 173-563-050 and the following table. It is subject to regulation by the Department of Ecology for protection of instream resources whenever the March 1 forecast of April-September runoff at The Dalles is 60 MAF or less, and when gauged flows are predicted by the BPA 30-Day Power Operation.

Plan to violate the following minimum flow provisions at:

Primary Control Station: McNary
River Mile: 292.0

Minimum Average Weekly Flows
Columbia River Projects
(1,000 cubic feet/second)

PRIMARY CONTROL STATION RIVER MILE	Chief Joseph*	Wells/Rocky Reach*	Rock Island & Wanapum*	Priest Rapids	McNary	John Day	The Dalles
	(545.1)	(473.7)	(415.8)	(397.1)	(292.0)	(215.6)	(191.5)
Jan	30	30	30	70	60	60	60
Feb	30	30	30	70	60	60	60
Mar	30	30	30	70	60	60	60
Apr 1-15	50	50	60	70	100	100	120
Apr 16-25	60	60	60	70	150	150	160
Apr 26-30	90	100	110	110	200	200	200
May	100	115	130	130	220	220	220
Jun 1-15	80	110	110	110	200	200	200
Jun 16-30	60	80	80	80	120	120	120
Jul 1-15	60	80	80	80	120	120	120
Jul 16-31	90	100	110	110	140	140	140
Aug	85	90	95	95	120	120	120
Sep	40	40	40	40	60	85	90
Oct 1-15	30	35	40	40	60	85	90
Oct 16-31	30	35	40	70	60	85	90
Nov	30	30	30	70	60	60	60
Dec	30	30	30	70	60	60	60

* For the reach from Grand Coulee through Wanapum, minimum average weekly flows shall be as shown above, or as necessary to maintain minimum flows (subject to low runoff and adjustment) at Priest Rapids, whichever is higher. As provided in WAC 173-563-050(1), the minimum average weekly flows set forth in this subsection are subject to a reduction of up to 25 percent during low flow years, except that in no case shall the outflow from Priest Rapids Dam be less than 36,000 cfs.

Use of water under this authorization shall be contingent upon the water right holder's use of up-to-date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities.

Easement and Right-of-Way

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

Water Use Efficiency

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials shall have access at reasonable times to the project location and to inspect at reasonable times records of water use, wells, diversions, measuring devices, and associated distribution systems for compliance with water law.

Findings of Facts

Upon reviewing the investigator’s report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Term Permit Application No. S3-30738, subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. “Date of receipt” is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p>
<p>Pollution Control Hearings Board 1111 Israel RD SW Ste 301 Tumwater, WA 98501</p>	<p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

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>.

Signed at Yakima, Washington, this 5th day of August 2015.


 Mark C. Schuppe, Operations Manager
 Office of Columbia River

INVESTIGATOR'S REPORT

Application for Water Right -- Anderson
Water Right Control Number S3-30738
Lara Henderson, Department of Ecology

BACKGROUND

This report serves as the written findings of fact concerning Term Permit Application Number S3-30738.

Table 1: Summary of Requested Term Permit

Applicant Name:	Roy and Sandra Anderson
Date of Application:	4/1/2015
Place of Use	NW¼ of Section 25, T. 11N., R. 28E.W.M., Franklin County, Washington. Franklin County Parcel No. 126290239

Point of Diversion	County	Waterbody	Tributary To	WRIA
Existing point of diversion	Franklin	Columbia River	Pacific Ocean	36-Esquatzel Coulee

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Irrigation, Frost protection, Heat protection for crops	0.99 (non-additive)	CFS	35	04/01	10/31

Source Name	Parcel/Lot No.	Twp	Rng	Sec	QQ Q
Columbia River	Gov't Lot 4	11N	28 E.W.M.	24	SW¼SW¼

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum: NAD83/WGS84.

Legal Requirements for Approval of Appropriation of Water

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Tri-City Herald on May 19 and May 26, 2015. No protests were received in the 30-day response period provided.

Notice to the Washington Department of Fish and Wildlife

Under RCW 77.57.020, Ecology must give notice to the Washington Department of Fish and Wildlife (WDFW) of applications to divert, withdraw or store water. Such notice was sent to WDFW on May 6, 2015. In a letter dated May 29, 2015, WDFW indicated that they do not oppose the approval of the subject application. WDFW indicated also that they recognize that this permit would be fully mitigated and is temporary. WDFW points out that the applicant is not exempted from compliance with the state Hydraulic Code (Chapter 77.55 RCW) and fish screening statutes (RCW 77.57.010, RCW 77.57.040, and RCW 77.57.070), which may be required in order to divert water.

Consultation under Chapter 173-563 WAC

Under WAC 173-563-020(4), before any application is considered for approval or denial after July 27, 1997, Ecology must consult with appropriate local, state, and federal agencies and Indian tribes. The consultation process solicits input regarding possible impacts on fish and existing water rights.

Consultation letters were sent on May 6, 2015. No responses other than the WDFW responses discussed above were received in the 30-day comment period provided.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e. an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met:

- (a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second (22,440 gallons per minute), so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g. the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

INVESTIGATION

Proposed Use

A 40 Horsepower (HP) turbine pump is used to transport water from an existing pumping station on the Columbia River. The existing pump station has a maximum withdrawal capacity of 0.99 cfs. A 10 HP in-line booster is used to transport water upslope through a 6-inch mainline for distribution and application of water using under-tree rotator sprinklers to provide irrigation water, and water for frost protection and heat control for 10 acres of cherry orchard. No new construction is proposed.

Other Rights Appurtenant to the Place of Use

The existing water system also supplies water for irrigation authorized under Surface Water Certificate No. 10078 (SWC 10078) to lands owned by the applicant adjacent to the proposed place of use. Attributes of SWC 10078 are presented below in Table 2. No other water rights overlap the proposed POU.

Table 2: Summary of Surface Water Certificate No. 10078

File Number	Document	Priority Date	Purpose	Qi/Units	Qa (ac-ft/yr)
S3-*13267CWRIS (SWC 10078)	Certificate	01/25/1955	Irrigation of 60 acres	0.99 CFS	240

Impairment Considerations

Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection. A water right application may not be approved if it would:

- Interrupt or interfere with the availability of water to an adequately constructed groundwater withdrawal facility of an existing right. An adequately constructed groundwater withdrawal facility is one that (a) is constructed in compliance with well construction requirements and (b)

fully penetrates the saturated zone of an aquifer or withdraws water from a reasonable and feasible pumping lift.

- Interrupt or interfere with the availability of water at the authorized point of diversion of a surface water right. A surface water right conditioned with instream flows may be impaired if a proposed use or change would cause the flow of the stream to fall to or below the instream flow more frequently or for a longer duration than was previously the case.
- Interrupt or interfere with the flow of water allocated by rule, water rights, or court decree to instream flows.
- Degrade the water quality of the source to the point that the water is unsuitable for beneficial use by existing users (e.g. via sea water intrusion).

Water use under this authorization is mitigated proportionately by water no longer being used and temporarily placed into the State's Trust Water Right Program (TWRP). This mitigation water derives from seven water rights temporarily leased by Ecology's Office of Columbia River (OCR). Five of these rights, comprising a combined total of 1,658 ac-ft, predate Chapter 173-563 WAC and are not subject to curtailment during periods of low flow in favor of the instream flows as described within this WAC (Instream Flows). However, two of these seven rights, comprising a combined total of 3,103 ac-ft, are subject to Instream Flows.

All of the water in the TWRP predating Chapter 173-563 WAC has already been allocated under a separate Term Permit (S4-33082P), leaving only water that is subject to Instream Flows and which may be curtailed during periods of low flow as described within Chapter 173-563 WAC. However, should senior leases expire in whole or in part, and older water not subject to Chapter 173-563 WAC become available, this authorization may benefit in whole or in part. Such mitigation water accounting will be managed by OCR and discussed with the applicant prior to each irrigation season.

This authorization would be subject to curtailment during periods of low flow as outlined in Chapter 173-563 WAC and, as such, interruption or interference with Instream Flows is not expected. Only surface water is proposed for diversion, and interruption or interference with groundwater users is not expected.

Water Availability

For water to be available for appropriation, it must be both physically and legally available.

Physical availability

For water to be physically available for appropriation there must be ground or surface water present in quantities and quality and on a sufficiently frequent basis to provide a reasonably reliable source for the requested beneficial use or uses. In addition, the following factors are considered:

- Volume of water represented by senior water rights, including federal or tribal reserved rights or claims;
 - Water right claims registered under Chapter 90.14 RCW;
 - Ground water uses established in accordance with Chapter 90.44 RCW, including those that are exempt from the requirement to obtain a permit; and
 - Potential riparian water rights, including non-diversionary stock water.
- Lack of data indicating water usage can also be a consideration in determining water availability, if the department cannot ascertain the extent to which existing rights are consistently utilized and cannot affirmatively find that water is available for further appropriation.

Water use under this application is proposed to be diverted from the Columbia River from an existing pump station. The pump station is located upstream of McNary Dam and downstream of Priest Rapids Dam. There are no reports of unavailability of water at this pump station.

Legal availability

To determine whether water is legally available for appropriation, the following factors are considered:

- Regional water management plans – which may specifically close certain water bodies to further appropriation.
- Existing rights – which may already appropriate physically available water.
- Fisheries and other instream uses (e.g., recreation and navigation). Instream needs, including instream and base flows set by regulation. Water is not available for out of stream uses where further reducing the flow level of surface water would be detrimental to existing fishery resources.
- The Department may deny an application for a new appropriation in a drainage where adjudicated rights exceed the average low flow supply, even if the prior rights are not presently being exercised.

Water use under this authorization is mitigated by water placed into the State's Trust Water Right Program under a lease agreement. That lease agreement (C 1100119) remains in effect for a maximum of six (6) irrigation seasons yet allows for early termination under certain circumstances. As such, this temporary authorization shall remain in effect for up to six irrigation seasons (until November 30, 2020, at the latest), or at such time as the associated water service contract is terminated. The mitigation water would not be available during periods of low flow as described in Chapter 173-563 WAC. As such, water may not be available to be diverted under this authorization during such low flow periods.

Water use under this authorization would be mitigated by water formerly used under G3-28146C.

Beneficial Use

The proposed use of water – irrigation – is defined in statute as a beneficial use (RCW 90.54.020(1)). Beneficial use also encompasses reasonable use. The proposed use of 35 ac-ft/yr to irrigate 10 acres of cherries equates to 3.5 ac-ft per acre each year. Data from the Washington Irrigation Guide and institutional knowledge support this annual quantity of irrigation for the production of cherries in this area under the proposed irrigation system. This quantity would not result in a waste of water resulting from excess irrigation of cherries in this area.

Public Interest Considerations

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

All legal requirements have been satisfactorily addressed:

- 1) The proposal was properly noticed.
- 2) Notice was given to the Washington Department of Fish and Wildlife for consultation.
- 3) Consultation with relevant agencies and tribes was solicited.
- 4) Impairment is not expected.
- 5) Water is available through mitigation.
- 6) Water will be applied to beneficial use without waste.
- 7) The proposed water use will not be detrimental to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above on the *Term Permit*.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

0.99 cfs non-additive to Surface Water Certificate No. 10078

35 ac-ft/yr

For the purpose of irrigation, frost protection and heat control of 10 acres

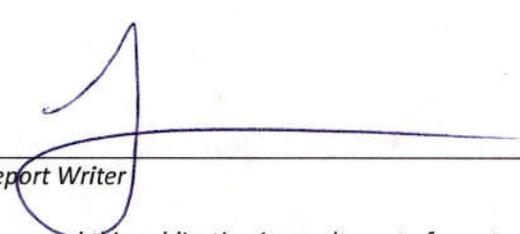
Point of Diversion

One existing surface water diversion within Section 24, Township 11 North, Range 28 E.W.M.

Place of Use

Within the NW¼ of Section 25 of Township 11 North, Range 28 E.W.M., Franklin County, Washington.

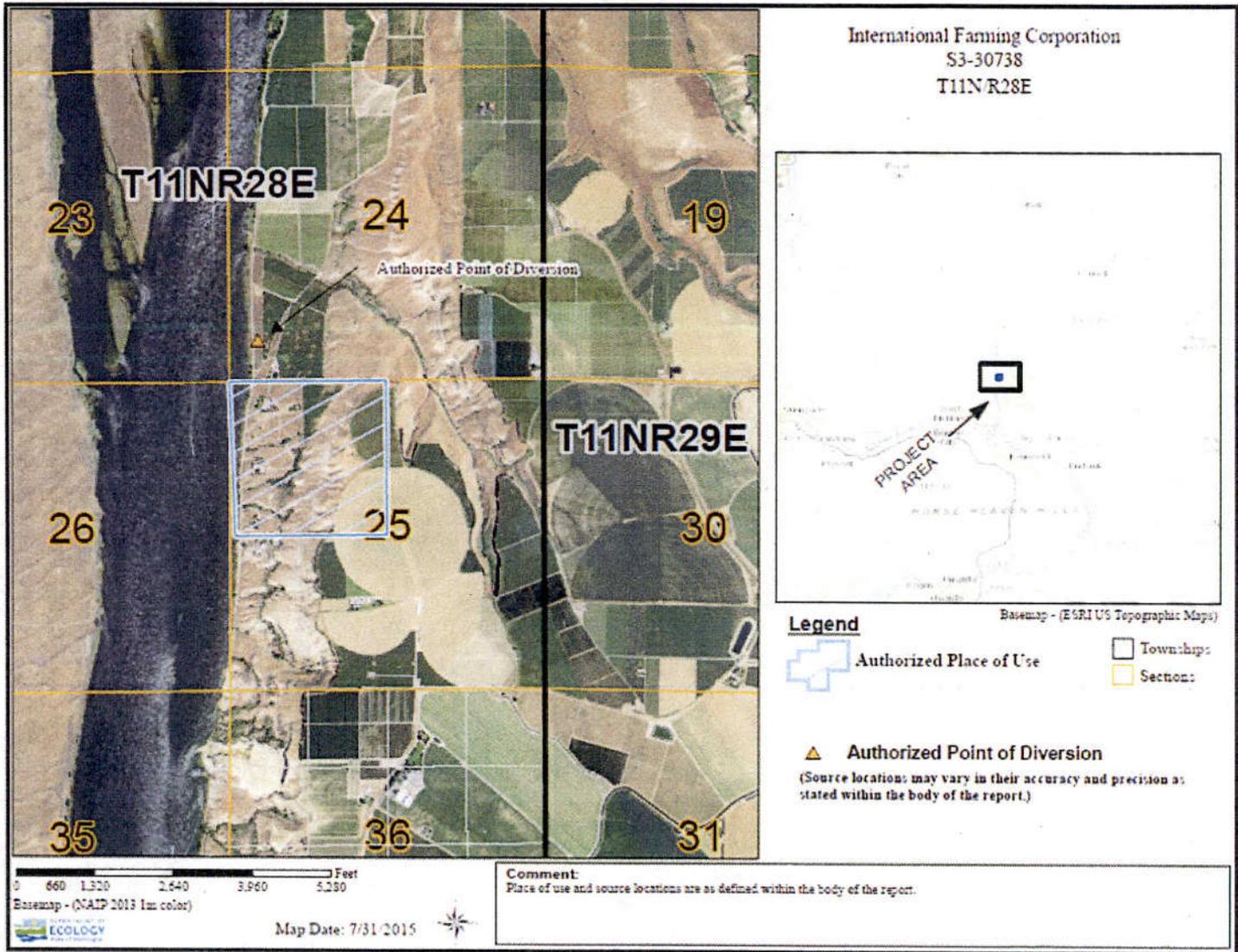
(Franklin County parcel No. 126290239)


Report Writer

8/4/2015
Date

If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600.

Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.



ATTACHMENT 1

**WATER SERVICE CONTRACT
BETWEEN THE
WASHINGTON DEPARTMENT OF ECOLOGY'S
OFFICE OF COLUMBIA RIVER
AND MR. TOBY MCKAY**



This Mitigation Water Lease Agreement ("Agreement") is entered into between the Washington State Department of Ecology ("ECOLOGY") and Mr. Toby McKay, ("LESSEE"), each a "Party" and collectively "Parties". This Agreement takes effect once executed by both Parties. The purpose of this Agreement is for LESSEE to lease water from ECOLOGY as a means to mitigate for temporary irrigation of 10 acres north of Pasco, WA, from a diversion on the Columbia River. A separate Term Permit accompanies this lease agreement describing the attributes and limitations of the leased water.

EXPLANATORY RECITALS:

Whereas, the following preliminary statements are made in explanation:

1. RCW 90.90.010 authorizes ECOLOGY'S Office of Columbia River (OCR) to enter into water service contracts to recover all or a portion of the cost of developing water supplies.
2. ECOLOGY holds seven water rights in the State's Trust Water Rights Program (TWRP), subject to the terms of a separate lease agreement with the Port of Walla Walla (Ecology Contract No. C 1100119, hereafter referred to as C 1100119). As such, and subject to the terms of this other contract, those water rights conveyed into the TWRP may be used to supply water for new uses or as mitigation for continuing diversions that would otherwise have a negative impact on the Columbia River.
3. ECOLOGY'S cost to lease the water rights under C 1100119 is \$105 per acre-foot.
4. LESSEE plans to mitigate for temporarily irrigating 10 acres of cherries north of Pasco, WA, for up to six years. An existing pumping station on the Columbia River is proposed as the point of diversion.
5. Water leased from Ecology under the terms of this Agreement will mitigate the use of water under the new permit and will be offset by water formerly used under G3-28146C, one of the seven water rights mentioned in Recital #2 above. This water is subject to curtailment due to low flows under Chapter 173-563 WAC.
6. Under C 1100119, withdrawal of some or all of leased water rights from the TWRP is possible. Withdrawal of water rights follows a prescriptive process outlined in C 1100119.
7. Under the terms of C 1100119, ECOLOGY lacks the ability to ensure the availability of this water for mitigation for longer than one irrigation season at a time. ECOLOGY will know by December 15th each year whether water is available for the subsequent irrigation season. ECOLOGY will report to LESSEE on availability of water at that time.
8. LESSEE is the representative for the owners of an application for a Term Permit (Application No. S3-30738) that was filed with Ecology on April 1, 2015. The applicants are Roy and Sandra Anderson. LESSEE will acquire the property and permit once the permit issues. LESSEE resides at address 2708 N Road 60, Pasco, WA 99301, and phone number 509-430-6592.

AGREEMENT

I. IT IS THE PURPOSE OF THIS AGREEMENT to establish a contractual framework for LESSEE to reimburse the State of Washington through ECOLOGY an agreed upon annual sum to use permitted waters of the State of Washington under Term Permit No. S3-30738P for beneficial use of that water. This Agreement is intended to describe the annual costs, the conditions to the Agreement and the term of service for the use of that water.

II. STATEMENT OF PERFORMANCE: ECOLOGY has conducted a water right investigation and will issue a Term Permit approving the application after LESSEE signs this Agreement. The Term Permit will be appealable for 30 days after receipt. All provisions, conditions, and limitations of water use identified in the Term Permit are incorporated into this contract.

The supply of water authorized under the Term Permit is a temporary authorization mitigated by a water right(s) held by ECOLOGY under a separate temporary lease agreement (Contract C 1100119).

III. PERIOD OF PERFORMANCE: The period of performance of this Agreement shall commence on the date of Term Permit issuance and expire on November 30, 2020, unless terminated sooner as provided herein. Section VII outlines the processes of termination.

IV. TERMS OF PAYMENT: Cost recovery payments for this Agreement are based on costs incurred by ECOLOGY as a result of C 1100119. Contract C 1100119 and its terms and conditions are incorporated by reference into this Agreement. Annual payments due by LESSEE to ECOLOGY are as follows: LESSEE shall pay ECOLOGY an annual sum of \$105 per acre-foot per year based on the quantity described in Term Permit S3-30738P. Under Term Permit S3-30738P LESSEE would be authorized 35 acre-feet of water each year. Calculated at \$105 per acre-foot, LESSEE agrees to pay a total of \$3,675 for each season's water use. This Agreement does not allow for any proration of costs based on using less water, except in the case of curtailment under Chapter 173-563 WAC. In such instance, LESSEE will be credited for the following year's invoice commensurately at the same rate of \$105 per acre-foot, except in the final year of this lease. In the final year of the lease, should the potential for curtailment be triggered by the March 1st forecast for runoff at the Dalles, OR, pursuant to Chapter 173-563 WAC, the Billing Procedure (Section V below) may be amended such that a portion of the payment may be made later in the year. The deferred payment amount and due date of that amount will depend on conditions specific to that year, and will be agreed upon by both Parties by July 1st of that year. These payment details will be captured in an amendment to this Agreement by July 1st of that year or the Term Permit shall cancel.

V. BILLING PROCEDURE: Payment shall be based on the full permitted quantity. Payment shall be due by July 1st each year for the current year's water use. ECOLOGY shall send a notice of payment due to the LESSEE by June 1st of each year.

VI. AGREEMENT ALTERATIONS, AMENDMENTS, AND ASSIGNMENTS: This Agreement may be amended or assigned by mutual agreement of the parties. Such amendments or assignments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

VII. TERMINATION: LESSEE may terminate this Agreement upon thirty (30) calendar days' prior written notification to ECOLOGY. In that event, the subject permit shall be cancelled by ECOLOGY. In no case will any payments be refunded to LESSEE. ECOLOGY shall not terminate this Agreement or cancel the Term Permit unless:

1. LESSEE fails to honor the terms of this Agreement, including payment.
2. LESSEE fails to comply with any of the Provisions of the Term Permit that issues for Application S3-30738.
3. Contract C 1100119 is terminated in full. Note that the LESSEE's use of water will not be curtailed during the irrigation season (defined as April 1 through October 15) in the event that the contract is terminated.
4. A partial withdrawal of water rights under Contract C 1100119 is made such that said partial withdrawal affects water use under S3-30738P. In such instance, this Agreement will be adjusted commensurately.

ECOLOGY shall not terminate this Agreement as described in 1 or 2 above, until the following steps have been taken:

I. ECOLOGY must provide notice to LESSEE of LESSEE'S failure to comply with this Agreement or any of the Provisions of the associated Term Permit and provide for 30 calendar days response by LESSEE. If LESSEE corrects such non-compliance within said 30 day period, ECOLOGY shall not terminate the Agreement. Except however, that if such non-compliance is due to failure to promptly provide annual payment as required herein, a late penalty of 5% shall be assessed.

II. If non-compliance persists beyond the 30 day notice period, ECOLOGY may initiate termination of the Agreement by Departmental Order. In the event of such termination, any associated Term Permit shall be cancelled.

In the event of termination by either party, all payments paid for the current year shall remain with ECOLOGY without refund.

ECOLOGY and LESSEE are each responsible for their own respective costs and attorney's fees in connection with this Agreement and any dispute related to the proper interpretation or implementation of this Agreement. No damages, direct or indirect, may be awarded to LESSEE due to failure of ECOLOGY, or ECOLOGY'S officers, agents, or employees, to perform any obligation under this Agreement.

VIII. GOVERNANCE: This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington. The provisions of this Agreement shall be construed to conform to those laws. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable state statutes and rules;
- Any other provisions of the Agreement, including material incorporated by reference.

IX. WAIVER: A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the Party and attached to the original Agreement.

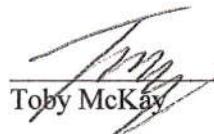
X. ALL WRITINGS CONTAINED HEREIN: This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

XI. IN WITNESS WHEREOF, the parties have executed this Agreement

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

LESSEE


G. Thomas Tebb, L.Hg., L.E.G. 7-29-15
Date
Director
Office of Columbia River
Department of Ecology


Toby McKay 7/25/15
Date