



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

March 31, 2009

CERTIFIED MAIL
7007 2560 0000 6214 2130

Terry G. Spragg and Associates
420 Highland Avenue
Manhattan Beach, CA 90266-5721

Dear Mr. Spragg:

Re: Second Amended Preliminary Permit for Surface Water Right Applications
Nos. S2-28890 and S2-28891

Under the provisions of RCW 90.03.290, the Department of Ecology (Ecology) may issue a Preliminary Permit requiring applicants to conduct studies, surveys, and investigations that Ecology deems necessary to properly evaluate water right applications. On September 25, 2007, Ecology issued a Preliminary Permit under Surface Water Right Applications S2-28890 and S2-28891. You appealed the decision and an Amended Preliminary Permit was issued in accordance with the Pollution Control Hearings Board's Stipulation and Agreed Order of Dismissal dated January 28, 2008.

On May 14, 2008, you informed Ecology that you were unable to comply with the requirements of the Amended Preliminary Permit due to unresolved issues involving the Tacoma Power's Cushman Hydropower Project. On October 1, 2008, you signed a statement indicating that you would accept a priority date junior to Tacoma Power's proposed new applications and to re-publish notice of your applications. Under these conditions, Ecology agreed to extend the time schedule for compliance with the terms of the Amended Preliminary Permit.

Priority dates amended to February 13, 2009

On February 12, 2009, Tacoma Power filed six new applications (Applications S2-30504, S2-30505, S2-30506, G2-30507, R2-30508, and R2-30509) for operation and mitigation of the Cushman Hydropower Project. Accordingly, the priority dates on Applications S2-28890 and S2-28891 have been amended to February 13, 2009.

All of the Tacoma Power applications on file have been accepted for expedited processing under a cost-reimbursement agreement. The processing agreement includes all pending applications in the same source, all of which are now senior to your amended applications. Once the Tacoma Power applications have been processed, your applications will become the most senior in the source.

This letter serves as a Second Amended Preliminary Permit and supersedes the Amended Preliminary Permit dated February 6, 2008. It requires you to provide Ecology with



information demonstrating the viability of the project proposed under Water Right Applications S2-28890 and S2-28891.

The permit is effective upon your receipt of this letter and expires on September 25, 2010. No diversion or use of water is authorized.

Attributes of Surface Water Right Applications S2-28890 and S2-28891

Date applications filed	July 1, 1993
New priority date	February 13, 2009
Instantaneous quantity requested	2,720 cubic feet per second (cfs) for both applications combined
Annual quantity requested	20,000 acre-feet per year under both applications combined
Source	North Fork Skokomish River surface-water discharge from Cushman Power Plant No. 2
Point of diversion	Immediately upstream of discharge point to Hood Canal of Tacoma Power Cushman Project Power Plant No. 2; within W $\frac{1}{2}$ NW $\frac{1}{4}$, Section 16, T. 22 N., R. 4 W.W.M. in the Skokomish-Dosewallips Water Resource Inventory Area (WRIA 16)
Period of use	Year-round
Purpose of use	Municipal and industrial supply
Place of Use	S2-28890: within Washington state S2-28891: unspecified out-of-state

Protests and Concerns

A legal notice of the proposed appropriations was published in *The Shelton-Mason County Journal* on April 14 and 21, 1994. In response to this notice, Ecology received letters of protest from the Skokomish Indian Tribe, American Rivers, Hood Canal Coordinating Council, Hood Canal Environmental Council, Mason County Board of Commissioners, as well as private citizens.

The Skokomish Tribe filed a formal letter of protest, stating that the proposed diversions would be detrimental to Indian fisheries and treaty-protected resources, both on the Reservation and at usual and accustomed places. The Tribe also indicated that Federal-reserved water rights of the Skokomish Indian Reservation would be unlawfully interfered with.

Washington Department of Fish and Wildlife (WDFW) voiced concerns about the potential effect of your project on flows in the North Fork Skokomish River and on the waters of Hood Canal. WDFW requested that the applications be denied or that water right decisions not be issued until after in-stream flows have been established on the North Fork Skokomish River.

Low dissolved oxygen concentrations are a serious problem in Hood Canal, particularly near the Great Bend where you propose to divert water. You will need to begin addressing water quality and other environmental concerns associated with your project. In addition, various state and local permits and approvals will be needed to implement this project. You must demonstrate progress toward obtaining these approvals.

Because it has been 15 years since you advertised the original public notice for your project, you will also be required to re-publish notice and solicit updated comments.

Actions required:

- Re-publish a public notice for Applications S2-28890 and S2-28891.
- Submit a comprehensive list of permits, agreements, and other approvals that will be required to implement your project as well as a proposed timeline for obtaining them.
- Submit reports from any environmental studies that have been conducted for your project.
- Demonstrate that you have discussed your proposal with the Skokomish Tribe and that the diversion will not be detrimental to Indian fisheries and treaty-protected resources and will not interfere with Federal-reserved rights held by the Tribe.

SEPA Checklist Must Be Filed

The State Environmental Policy Act (SEPA) directs all governmental agencies to consider the environmental impacts of a proposal before making decisions. Your project requires that an environmental checklist be filed with Mason County to initiate the SEPA review process.

Comments received through the SEPA process will help identify environmental issues associated with your project. We recommend that you initiate SEPA as soon as possible to determine the overall feasibility of your project. *If you choose to delay going through SEPA, Ecology will view the delay as evidence of speculation and will not consider a further extension of this Preliminary Permit.*

Action required:

- File a SEPA environmental checklist with Mason County and provide copies of the checklist and subsequent SEPA-related documents to the Department of Ecology's Southwest Regional Office Water Resources Program.
- Begin addressing environmental concerns revealed through SEPA.

MOU with City of Tacoma

The applications were accompanied by a copy of a Memorandum of Understanding (MOU) between Terry Spragg and Associates and the City of Tacoma Department of Public Utilities (TPU), dated November 7, 1991. However, this MOU did not indicate TPU's agreement to your proposal to tap into discharge waters at the Cushman No. 2 power plant facility. You also have not provided Ecology with details of the proposed works for tapping into the City of Tacoma's discharge waters.

Under this Second Amended Preliminary Permit, you will need to provide Ecology with a copy of an agreement showing that TPU supports your proposal and that collection of discharge waters at the Cushman No. 2 Power Plant is feasible. We understand that this agreement will need to be contingent on approval of the City of Tacoma's water right applications currently on file with Ecology.

Action required:

- Submit a detailed description of the proposed works for filling the floating bags with freshwater discharging from the City of Tacoma's Cushman Power Plant No. 2 facility.
- Submit a copy of an agreement with Tacoma Public Utilities indicating their consent to your proposal.

Reciprocity Requirement

RCW 90.03.300 states that Ecology has the discretion to decline to issue a permit where the point of diversion is within the state of Washington but the place of beneficial use is in another state or nation, unless the receiving state or nation allows diversions of water for beneficial use within the state of Washington.

Application S2-28891 does not list or specify the states or nations that will be using the waters applied for. You will need to identify or provide a finite list of places where water diverted under Application S2-28891 will be applied to beneficial use and provide evidence that the receiving states or nations may reciprocate.

Under RCW 90.54.020, Ecology is required to manage the waters of the state to secure maximum net benefits for the people of the state. It would not be cost-effective for a non-neighboring state or nation to import water if water of sufficient quantity and quality is locally available. Thus, even if the receiving entity does not have laws specifically prohibiting the export of water to this state, it would be reasonable to assume that water transported out-of-state will result in a net loss of water to benefit the people of this state.

Action required:

- Explain how the proposed transfer of water out-of-state is consistent with the requirement that public water be managed and used for maximum net benefit for the people of the State of Washington.

Local Watershed Planning Unit does not Support Proposals to Export Water

The Skokomish-Dosewallips Watershed Management Plan, adopted on May 11, 2006, by the Water Resources Inventory Area 16 Planning Unit, indicates that the local governments and interest groups are generally opposed to transfer of water out of the basin. The WRIA 16 Watershed Plan specifically identifies the export of water as a planning issue and proposes that the unit consider and evaluate the option of creating a policy to prohibit out-of-basin transfers or export of water. The Plan also requests that Ecology involve local governments, tribal governments, and the WRIA 16 Planning Unit throughout the review of applications for out-of-basin transfers.

Under RCW 90.82.130(4), Ecology must use the adopted local watershed plan as a framework for future water resource decision-making. In addition, the plan must be relied on as a primary consideration in determining the public interest related to these decisions. As such, it appears highly unlikely that either of your applications will ultimately be approved. However, if you choose to pursue these applications, you will need to show that your proposal is consistent with the goals of the WRIA 16 watershed plan.

Action required:

- Demonstrate that you have discussed your project with the WRIA 16 Watershed Planning Group and that they support your proposal to export water from the watershed.

Summary of Actions Required by September 25, 2010 under Second Amended Preliminary Permit for Applications S2-28890 and S2-28891

1. Re-publish a public notice for Applications S2-28890 and S2-28891.
2. Submit a comprehensive list of permits, agreements, and other approvals that will be required to implement your project as well as a proposed timeline for obtaining them. The Office of Regulatory Assistance can help you identify the requirements that will be applicable to your project. Please contact Annie Szvetecz at (360) 407-6957 (phone) or annie.szvetecz@ora.wa.gov (e-mail).
3. Submit reports from any environmental studies that have been conducted for your project.
4. File a SEPA environmental checklist with Mason County and provide copies of the checklist and subsequent SEPA-related documents to the Department of Ecology's Southwest Regional Office Water Resources Program.
5. Begin addressing environmental concerns identified through the SEPA process.
6. Submit a detailed description of the proposed works for filling the floating bags with freshwater discharging from the City of Tacoma's Cushman Power Plant No. 2 facility.
7. Submit a copy of an agreement with Tacoma Public Utilities indicating their consent to your diversion proposal.
8. Explain how the proposed transfer of water out-of-state is consistent with the statutory requirement that public water be managed and used for maximum net benefit for the people of the State of Washington.
9. Demonstrate that you have discussed this project with the WRIA 16 Watershed Planning Group and that they support your proposal to export water from the watershed.
10. Demonstrate that you have discussed your proposal with the Skokomish Tribe and that the diversion will not be detrimental to Indian fisheries and treaty-protected resources. Also show that it will not interfere with Federal-reserved rights held by the Tribe.

This Second Amended Preliminary Permit has been extended to reflect the three-year maximum allowed under RCW 90.03.290(2)(a). However, a further extension may be approved if, prior to its expiration:

- 1) You file a verified report of expenditures made and work completed under this Second Amended Preliminary Permit; and
- 2) Ecology agrees that you have established good faith, intent, and ability to develop this project.

If you fail to comply with the requirements of this Preliminary Permit, it will be canceled and Water Right Applications Nos. S2-28890 and S2-28891 will automatically be rejected as required under RCW 90.03.290(2)(a).

If you have any questions regarding the requirements of this Second Amended Preliminary Permit, please contact Marie Peter of my staff at (360) 407-0279.

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

- File your appeal with the Pollution Control Hearings Board within thirty (30) days of the "date of receipt" of this document. Filing means actual receipt by the Pollution Control Hearings Board during regular office hours.
- Serve your appeal on the Department of Ecology within thirty (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:

The Pollution Control Hearings Board
PO Box 40903
Olympia WA 98504-0903

OR Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowè Six, Bldg 2
Lacey WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia WA 98504-7608

OR Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey WA 98503

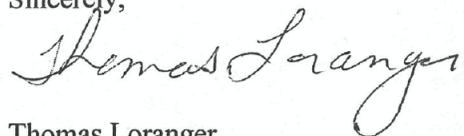
3. And send a copy of your appeal to:

Thomas Loranger
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia WA 98504-7775

*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>.*

If you have any questions, please contact Ecology at (360) 407-6300.

Sincerely,



Thomas Loranger
Water Resources Section Manager

TL:MP:th

Cc: City of Tacoma Public Utilities
Joseph Pavel, Skokomish Tribal Nation
Phil Wiatrak, Department of Ecology
American Rivers
Hood Canal Coordinating Council
Hood Canal Environmental Council
Mason County Board of Commissioners
Gary A. Cunningham
Donald H. Woods
Herbert L. Wells and Thelma Floor Wells
Chris Jensen, Okanogan Irrigation District



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

March 27, 2009

Terry Spragg and Associates
420 Highland Avenue
Manhattan Beach CA 90266-5721

Re: Water Right Application No's. S2-28890 & S2-28891

Dear Sir or Madam:

We received your water right applications and have assigned the numbers above. Please include these numbers in all future contact with us; it will help us serve you more quickly.

Your next step is to publish a legal notice. The notice announces your proposed water use to the public and allows interested persons to comment. We have prepared and enclosed this notice for you.

Review Legal Notice Carefully

It is your responsibility to check the notice carefully before having it published. If you find an error, please contact this office for resolution. If we later find an error in your public notice, you may be required to publish an amended notice at your expense.

Publishing Legal Notice

You need to arrange and pay for publishing the legal notice in a newspaper in **Mason** County.

- Publish the notice in a paper from the enclosed list.
- Select a newspaper with general circulation in the area the water will be used and diverted.
- Ensure that the notice appears once a week for two consecutive weeks.

If your published notice does not meet the above criteria, you will be required to have the notice republished at your expense.

Publication should start within 30 days from the date of this letter.



Next Step

You must request an *Affidavit of Publication* from the newspaper in which your notice appeared. The affidavit must be an original, notarized copy of your published notice. Please forward it to our office as soon as possible.

If you have any questions, please contact Sheri Carroll at (360) 407-0240.

Sincerely,

A handwritten signature in cursive script that reads "Sheri Carroll". The signature is written in black ink and is positioned below the word "Sincerely,".

Sheri Carroll
Water Resources Program

Enclosures: Legal Notice
 Newspaper List

State of Washington
Department of Ecology, SWRO

NOTICE OF APPLICATION TO APPROPRIATE PUBLIC WATERS

TAKE NOTICE: That on February 13, 2009, Terry Spragg and Associates of Manhattan Beach, California, filed for permits to appropriate public waters, subject to existing rights, from North Fork Skokomish River under Application Numbers S2-28890 and S2-28891. S2-28890 requests water for intra-state use; S2-28891 is for export out-of-state to unspecified locations. Up to 2,720 cubic feet per second and 200,000 acre-feet per year of surface water currently diverted by the City of Tacoma will be collected immediately below the Cushman No. 2 Powerhouse, prior to discharging to Hood Canal. The source of the proposed appropriation is located within W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 26, T. 22 N., R. 4 W.W.M. in Mason County, Washington.

Protests or objections to approval of this application must include a detailed statement of the basis for objections; protest must be accompanied by a (\$50.00) recording fee and filed with Department of Ecology, at the address shown below, within thirty days from the last date of publication.

***Department of Ecology
Cashiering Section
PO Box 47611
Olympia WA 98504-7611***

*****Notice is to be published once a week for two consecutive weeks*****

CONSENT FORM ALLOWING AMENDMENT OF PRIORITY DATES

I, TERRY G. SPRAGG, hereby agree to allow the Department of Ecology to amend the priority dates of Applications S2-28890 and S2-28891 to the one day after Tacoma Power files for new applications related to the operation and mitigation of the Cushman Hydroelectric Project that are expected to be filed in the near future. By agreeing to this action, I understand that my applications will be considered junior to the City of Tacoma's new applications and to all existing pending applications competing for water from the Skokomish River watershed. I also agree to re-advertise the public notice for these applications, at my own expense.

Terry G. Spragg
Printed Name

October 1, 2008
Date

(copy)
original consent form in
File S2-28890



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

RECEIVED

OCT 07 2008

Washington State
Department of Ecology

September 12, 2008

Terry G. Spragg & Associates
420 Highland Avenue
Manhattan Beach, CA 90266-5721

Dear Mr. Spragg:

Re: Surface Water Right Applications S2-28890 and S2-28891

On August 4, 2008 the Department of Ecology mailed a consent form for you to sign. The form stated that you would agree to have the priority date amended on the above-referenced applications. The priority date would be changed to a date one day after such time as the City of Tacoma submits new water right applications for the Cushman Hydroelectric Project.

On August 18, 2008, we received a modified version of our consent form bearing your signature. The modifications made your consent conditional upon agreement that the Department would not require you to pursue the resolution of the issues identified in the preliminary permits until "...such time as the City of Tacoma has mitigated and resolved all outstanding issues with the Department of Ecology, FERC, the Skokomish Tribe and all other parties related to the City of Tacoma's operation of the Cushman Hydroelectric Project and a new license to operated the Cushman Hydroelectric Project has been granted to the City of Tacoma has been accepted by FERC, DOE, the Skokomish Tribe, and all other interested parties." These conditions are not acceptable to us.

You have two options:

- 1. Sign the enclosed consent form without modifying the wording and submit it to us within 30 days of your receipt of this letter.**
- 2. Withdraw your applications and reapply at such time as the City of Tacoma's water rights, FERC licensing, and other issues have been resolved to your satisfaction. Alternatively, if we do not receive a response within 30 days, we will reject the applications.**





STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

September 12, 2008

Terry G. Spragg & Associates
420 Highland Avenue
Manhattan Beach, CA 90266-5721

Dear Mr. Spragg:

Re: Surface Water Right Applications S2-28890 and S2-28891

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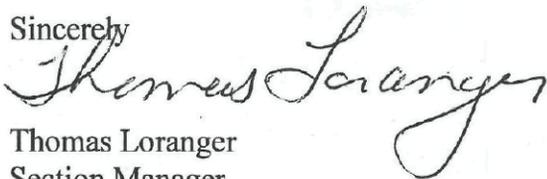


If you choose Option 1, the preliminary permit schedule will remain in effect until we receive a signed consent form. Failure to comply with the schedule will result in dismissal of your application. However, as we noted in our August 4, 2008 letter, we will revise the schedule on the preliminary permit with extended due dates if you sign the consent form.

Applications for water rights must contain detailed information on the proposed water use and cannot be based on speculative intent. Thus, if you choose to maintain your original applications with amended priority dates, you must diligently pursue the additional information Ecology requests once the City of Tacoma's applications are in process. You will need to begin addressing issues pertaining to your applications even all issues surrounding the City of Tacoma's Cushman Hydroelectric Project have not yet been resolved. Please respond within 30 days if it is your intent to maintain these applications.

Please contact Jeff Marti at (360) 407-0275 if you have any questions. Thank you.

Sincerely



Thomas Loranger
Section Manager
Southwest Region Water Resources Program

TL:JM:th

July 2, 2008

Jeff Marti
Southwest Region
Water Resources Program
Department of Ecology
Box 47775
Olympia, Wash. 98504-7775

cc: Enf. Database Coord.
 Rew/Rec - Cost Recovery
 Don Davidson, Janet Rajala
 File - Fax to ATG Jeff Marti
 ATG Docket Clerk
 Tom Longenger
Initial: MC 7/2/08

Dear Mr. Marti,

52-28890/28891

I apologize for not responding sooner to your June 17, 2008 letter but I have been traveling.

I will not be sending the information you referred to in your June letter until the water rights issues between the City of Tacoma and the Department of Ecology and others have been resolved. As I explained in my May 14, 2008 letter this would be a waste of time and money for all concerned. All these issues will become moot if the City of Tacoma is not able to resolve the status of its water rights with the Department of Ecology, FERC, the Skokomish Tribe and others.

This was explained during our last conference call and I thought this had been agreed to during this conversation. As I stated in my May 14, 2008 letter,

“According to my conversations with DOE staff my water right application is problematic based on these circumstances.”

In addition, while I have engineering drawings and economic calculations that have been developed by CH2M-Hill, I consider this information proprietary. I have been told that once this information is submitted to Ecology it becomes public knowledge. Therefore, until we can resolve this issue I would prefer to keep this information in confidence and in my possession.

In response to your questions 1) and 2) I would like to hear what the City of Tacoma and the Department of Ecology suggest is the best way to handle this issue before I respond, as I would like to cooperate with all the parties involved. There are too many unknowns involved so that I cannot answer these questions.

Since September of last year I have dealt with the following people with regard to this issue:

Terry G. Spragg & Associates

420 Highland Avenue / Manhattan Beach, California 90266 / USA
(310) 374-2005 / Fax (310) 372-3163 • Http://www.waterbag.com

Maia Bellin
Annie Szvetecz
Andrea Doyle
Mary Sue Wilson
John Kirner

Patrick McCarty
Debbi Young
Paul Hickey
Thomas Loranger

and yourself. I have received Certified Letters dated September 26, 2007, January 3, 2008, and February 6, 2008, all requesting similar information.

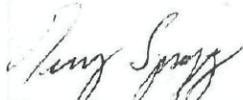
I have received an order granting a temporary stay of expiration of preliminary permit until May 1, 2008. I assumed that when this date passed, because of the discussions during the past conference call, that my request to wait until the issues between the City of Tacoma and the Department of Ecology had been resolved had been agreed to.

I was told by the City of Tacoma that they had discussed my May 14, 2008 letter with the Department of Ecology and had told Ecology that I had sent them a copy of this letter in advance so that they could review it and make any suggestions they felt were appropriate, which they did.

I am trying to cooperate with all the parties involved but I am greatly confused as to what I am being asked to do. Until the above issues are resolved I do not understand why my application is so important to be processed at this time. Maybe you can help to answer this question.

I look forward to hearing from you.

Best regards,



Terry Spragg

TGS/lps

Cc. Department of Ecology
Appeals Coordinator
Box 47608
Olympia, WA. 98504-7608

Pollution Control Hearings Board
Box 40903
Olympia, WA. 98504-0903

Patrick McCarty
Generation Manager
TPU
3628 South 35th St.
Tacoma, WA. 98409

RECEIVED

JUL 07 2008

Washington State
Department of Ecology

July 2, 2008

Jeff Marti
Southwest Region
Water Resources Program
Department of Ecology
Box 47775
Olympia, Wash. 98504-7775

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Maia Bellin
Annie Szvetcz
Andrea Doyle
Mary Sue Wilson
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Patrick McCarty
Debbi Young
Paul Hickey
Thomas Loranger

and yourself. I have received Certified Letters dated September 26, 2007, January 3, 2008, and February 6, 2008, all requesting similar information.

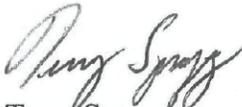
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I look forward to hearing from you.

Best regards,



Terry Spragg

TGS/lps

Cc. Department of Ecology
Appeals Coordinator
Box 47608
Olympia, WA. 98504-7608

Pollution Control Hearings Board
Box 40903
Olympia, WA. 98504-0903

Patrick McCarty
Generation Manager
TPU
3628 South 35th St.
Tacoma, WA. 98409

RECEIVED

AUG 18 2008

Washington State
Department of Ecology

CONSENT FORM ALLOWING AMENDMENT OF PRIORITY DATES

I, Terry Spragg, hereby agree to allow the Department of Ecology to amend the priority dates of Application S2-28890 and S2-28891 to one day after Tacoma Power files for new applications related to the operation and mitigation of the Cushman Hydroelectric Project that are expected to be filed in the near future. By agreeing to this action, I understand that my application will be considered junior to the City of Tacoma's new applications and to all existing pending applications competing for water from the Skokomish River watershed.

In consideration for Spragg accepting this amended date the Department of Ecology agrees that until such time as the City of Tacoma has mitigated and resolved all outstanding issues with the Department of Ecology, FERC, the Skokomish Tribe, and all other parties related to the City of Tacoma's operation of the Cushman Hydroelectric Project, and a new license to operate the Cushman Hydroelectric Project has been granted to the City of Tacoma and has been accepted by FERC, DOE, the Skokomish Tribe, and all other interested parties, that the Department of Ecology will not require that Spragg pursue the resolution of the issues raised in the preliminary permit for surface water right applications S2-28890 and S2-28891 issued to Spragg on February 6, 2008 until these issues have been resolved between all the above parties and the City of Tacoma.

All previous fees paid by Spragg in his original application shall be applied toward the new application and no other fees will be assessed against Spragg for this new application and the Department of Ecology will accept these new applications and will waive all fees toward these new applications.

Spragg agrees to re-advertise, at his expense, public notice of his application at such time as the Department of Ecology directs. At such time the Department of Ecology will send Spragg the necessary forms for such publication and the names and addresses in which this public notice shall appear.

Date Signed: August 12, 2008, Printed Name: Terry G. Spragg

Signed: Terry G. Spragg

August 12, 2008

Jeff Marti
Southwest Region
Water Resources Program
Department of Ecology
State of Washington
Box 47775
Olympia, Washington 98504-7775

RECEIVED

AUG 18 2008

Washington State
Department of Ecology

Dear Jeff,

I have revised and signed the enclosed consent form based on my understanding of the issues we discussed and agreed to during our last phone conversation.

As I have continued to maintain and discuss with you, Maia Bellon and others, and as I indicated in my May 14, 2008 letter and in my July 2, 2008 letter to you, all the issues raised in the preliminary permit questions sent to me dated February 6, 2008 become moot if the City of Tacoma is not able to resolve the status of its water rights with the Department of Ecology, FERC, the Skokomish Tribe and others.

I repeat my statement in my July 2, 2008 letter that it was my understanding that this issue had been agreed to during our phone conversation prior to July 2, 2008, and as I stated in my May 14, 2008 letter and I repeated in my July 2, 2008 letter,

"According to my conversations with DOE staff my water right application is problematic based on these circumstances."

This is the reason why I have changed your draft of the consent form so that it reflects my understanding of these issues and the understanding of the DOE staff related to my having to comply with the terms of the preliminary permit letter sent to me on February 6, 2008 and on subsequent dates.

I hope this helps to clarify the addition I have made to your consent form. I do not understand why DOE continues to want to pursue this preliminary permit issue until after such time that the City of Tacoma has resolved all its outstanding issues with the parties that are mentioned above. There is no way that I would be able to have the right to transport a drop of water from the Cushman Hydroelectric Project without the City of Tacoma first having resolved all its issues with DOE, FERC, the Skokomish Tribe and others. So what is the point in DOE and me spending the time and money to pursue the issues raised in your preliminary permit? Until the above issues are resolved between the City of Tacoma and all the other parties, pursuing the preliminary permit is irrelevant.

Terry G. Spragg & Associates

420 Highland Avenue / Manhattan Beach, California 90266 / USA
(310) 374-2005 / Fax (310) 372-3163 • [Http://www.waterbag.com](http://www.waterbag.com)

I hope this letter helps to clarify this issue.

Best regards,

A handwritten signature in cursive script, appearing to read "Terry G. Spragg".

Terry G. Spragg

TGS/lps

Enclosure

Cc. Maia Bellon, Ecology AGs



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

August 4, 2008

CERTIFIED MAIL
7006 3450 0001 6754 1809

Terry G. Spragg & Associates
420 Highland Avenue
Manhattan Beach, CA 90266-5721

Dear Mr. Spragg:

Re: Surface Water Right Applications S2-28890 and S2-28891

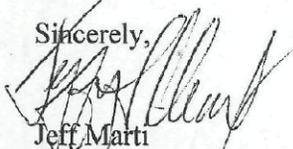
Per my telephone conversations with you, I have attached a signature form for you to indicate your consent to the Department of Ecology amending the priority date of your pending water right applications, which seek to capture and transport freshwater discharged from the Tacoma Power powerhouse on Hood Canal. By signing this letter, you agree to that the priority dates on these applications will be amended to a date one day after such time as the City of Tacoma submits new applications related to the operation and mitigation of its Cushman Hydroelectric Project. You will also be agreeing to republish, at your expense, public notice of your applications at such time as the Department of Ecology directs.

Please sign the attached consent form to allow Ecology to amend the priority dates on Applications S2-28890 and S2-28891 and submit it to our office by September 1, 2008.

Upon receipt of your consent letter, the Department of Ecology will send you an acknowledgement letter. When Tacoma submits new applications, Ecology will amend the priority date of your applications and notify you by letter of the new priority date of your applications. Ecology also will provide to you a revised schedule for you to comply with the terms of the preliminary permit issued to you on February 6, 2008.

Please contact me at (360) 407-0275 or jema461@ecy.wa.gov if you have any questions.

Sincerely,


Jeff Marti
Southwest Region
Water Resources Program

Cc: Maia Bellon, Ecology AGs



CONSENT FORM ALLOWING AMENDMENT OF PRIORITY DATE'S

I, _____, hereby agree to allow the Department of Ecology to amend the priority dates of Applications S2-28890 and S2-28891 to the one day after Tacoma Power files for new applications related to the operation and mitigation of the Cushman Hydroelectric Project that are expected to be filed in the near future. By agreeing to this action, I understand that my applications will be considered junior to the City of Tacoma's new applications and to all existing pending applications competing for water from the Skokomish River watershed. I also agree to re-advertise the public notice for these applications, at my own expense.

Date Signed

Printed Name

July 2, 2008

Jeff Marti
Southwest Region
Water Resources Program
Department of Ecology
Box 47775
Olympia, Wash. 98504-7775

cc: Enf. Database Coord.
 Rev/Rec - Cost Recovery
 Don Davidson Janet Rejzler
 File - Fax to ATG Jeff Marti
 ATG Docket Clerk
 Tom Lorganser
initial: MC 7/2/08

Dear Mr. Marti,

I apologize for not responding sooner to your June 17, 2008 letter but I have been traveling.

I will not be sending the information you referred to in your June letter until the water rights issues between the City of Tacoma and the Department of Ecology and others have been resolved. As I explained in my May 14, 2008 letter this would be a waste of time and money for all concerned. All these issues will become moot if the City of Tacoma is not able to resolve the status of its water rights with the Department of Ecology, FERC, the Skokomish Tribe and others.

This was explained during our last conference call and I thought this had been agreed to during this conversation. As I stated in my May 14, 2008 letter,

"According to my conversations with DOE staff my water right application is problematic based on these circumstances."

In addition, while I have engineering drawings and economic calculations that have been developed by CH2M-Hill, I consider this information proprietary. I have been told that once this information is submitted to Ecology it becomes public knowledge. Therefore, until we can resolve this issue I would prefer to keep this information in confidence and in my possession.

In response to your questions 1) and 2) I would like to hear what the City of Tacoma and the Department of Ecology suggest is the best way to handle this issue before I respond, as I would like to cooperate with all the parties involved. There are too many unknowns involved so that I cannot answer these questions.

Since September of last year I have dealt with the following people with regard to this issue:

Terry G. Spragg & Associates

420 Highland Avenue / Manhattan Beach, California 90266 / USA
(310) 374-2005 / Fax (310) 372-3163 • [Http://www.waterbag.com](http://www.waterbag.com)

Maia Bellin
Annie Szvetez
Andrea Doyle
Mary Sue Wilson
John Kirner

Patrick McCarty
Debbi Young
Paul Hickey
Thomas Loranger

and yourself. I have received Certified Letters dated September 26, 2007, January 3, 2008, and February 6, 2008, all requesting similar information.

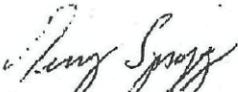
I have received an order granting a temporary stay of expiration of preliminary permit until May 1, 2008. I assumed that when this date passed, because of the discussions during the past conference call, that my request to wait until the issues between the City of Tacoma and the Department of Ecology had been resolved had been agreed to.

I was told by the City of Tacoma that they had discussed my May 14, 2008 letter with the Department of Ecology and had told Ecology that I had sent them a copy of this letter in advance so that they could review it and make any suggestions they felt were appropriate, which they did.

I am trying to cooperate with all the parties involved but I am greatly confused as to what I am being asked to do. Until the above issues are resolved I do not understand why my application is so important to be processed at this time. Maybe you can help to answer this question.

I look forward to hearing from you.

Best regards,



Terry Spragg

TGS/lps

Cc: Department of Ecology
Appeals Coordinator
Box 47608
Olympia, WA. 98504-7608

Pollution Control Hearings Board
Box 40903
Olympia, WA. 98504-0903

Patrick McCarty
Generation Manager
TPU
3628 South 35th St.
Tacoma, WA. 98409



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

June 17, 2008

Terry G. Spragg and Associates
420 Highland Avenue
Manhattan Beach, CA 90266-5721

Re: Preliminary Permit for Water Right Application No's. S2-28890 and S2-28891

Dear Mr. Spragg,

Thank you for your May 14, 2008 letter regarding the February 6, 2008 preliminary permit issued for Water Right Application No's. S2-28890 and S2-28891. This preliminary permit was issued in accordance with a settlement agreement between you and the Department of Ecology arising from your appeal of a previous preliminary permit issued on September 25, 2007. You requested a postponement of your obligation to respond to the permit's action items which are part of the settlement agreement between you and the Department of Ecology.

Your letter references the preliminary permit's requirement that you develop a memorandum of understanding with the City of Tacoma (Tacoma Power) which shows that Tacoma "supports your proposal and that collection of discharge is feasible."

You note that settlement discussions are underway between Tacoma and other parties with interests in the Cushman Hydroelectric Project and state that, "Until these negotiations are completed and the City resolves the outstanding issues pertaining to its appropriation of water for the Cushman plant it is premature for me to develop an agreement with Tacoma."

Your letter contained an offer to "step aside" and allow "TPU to take my place in line as long as I would be allowed back in line immediately after this additional TPU water right application is made." You also requested that your fees paid on your first water right application be applied to the "new water right application."

We seek clarity on a couple questions related to your proposal:

- 1) When you refer to your "new water right application," do you mean that you would withdraw your current applications and re-apply after Tacoma has submitted its new applications?
- 2) When you request that the fees on your first water right applications be applied to your new water right application(s), are you requesting that the fees paid on your first applications be deemed to satisfy the entire fees due on any new applications, or



do you mean if you submit a new application(s), you would pay any balance between what has already been paid and any new fees?

If you are proposing to withdraw your applications and then reapply following Tacoma's submittal of new applications, please send us a signed letter indicating your desire to withdraw the applications. When Tacoma has submitted new applications, you may reapply, but you will be subject to new application fees.

If, on the other hand, you would like to retain your existing applications but allow Tacoma's application to be processed beforehand, please submit a letter indicating your agreement to allow Ecology to amend the priority date of your pending applications to a date immediately after Tacoma submits new applications. Amending the priority date of your application would allow us to proceed on Tacoma's applications and Tacoma would obtain a senior priority date for any permit(s) it is issued. *No additional application fees would be required*, though you would be expected to still pay other fees associated with the processing of your application. To proceed with this option, please do the following:

- 1) Submit a letter indicating that you agree to amend the priority date of your application to a date soon after Tacoma's submittal of new applications.
- 2) In the same letter, communicate whether you wish to revise any information contained within the applications. Based upon previous conversations with you, I understand that your project may require less instantaneous capacity than is reflected in your applications.¹
- 3) Indicate that you agree to republish, at your cost, a public notice on your application(s) if and when Ecology requests you to do so.
- 4) Affirm that you will continue to diligently work to provide the information specified in the pending preliminary permit, with the understanding that the deadline for submitting the information items may be revised if diligence is shown.

Until we receive a letter as described above, the timeline described in the existing preliminary permit will remain unchanged. **You are still required to comply with the terms of the permit.** If the information items described in the permit are not provided to Ecology as required in accordance with the settlement agreement, the applications may be rejected.

¹ You have two pending applications, each for 2720 cubic feet per second for the purpose of diverting water at Tacoma's Cushman No. 2 Powerhouse located on Hood Canal. Thus, your applications at least seek the right to divert a total of 5440 cubic per second on an instantaneous basis. However, in a previous conversation, you stated that your project would actually withdraw at most a quantity that approximated a rate between 400 and 500 cubic feet per second (1 cfs = 448.8 gallons per minute). If your project is based upon a design of 400 - 500 cubic feet per second, you should take this opportunity to revise your application.

Please let us know as soon as possible about your preferred course of action, as the Phase 1 items for this preliminary permit are expected on July 6, 2008. Those items are repeated here for your convenience:

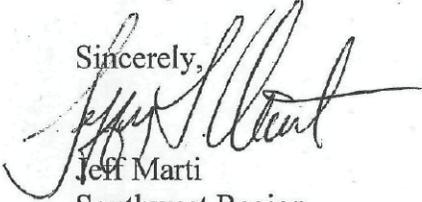
Phase 1:

- Submit a comprehensive list of permits, agreements, and other approvals that will be required to implement your project as well as a proposed timeline for obtaining them. The Office of Regulatory Assistance can help you identify the requirements that will be applicable to your project. Please contact Annie Szvetcz at (360) 407-6957 (phone) or annie.szvetcz@ora.wa.gov (e-mail).
- Submit reports from any environmental studies that have been conducted for your project.
- File a SEPA environmental checklist and provide a copy of the SEPA checklist to the Department of Ecology.
- Submit a description of the proposed works for filling the floating bags with freshwater discharging from the City of Tacoma's Cushman Power Plant No. 2 facility, and a copy of an agreement with Tacoma Public Utilities indicating their approval of your proposal.

Please let me know at (360) 407-0275 or jema461@ecy.wa.gov if you have any questions.

Thank you.

Sincerely,



Jeff Marti
Southwest Region
Water Resources Program

Cc: Pat McCarty, Generation Manager, Department of Public Utilities
Thane Somerville, Morisset, Schlosser, Jozwiak and McGaw,

May 14, 2008

Thomas Loranger
Section Manager
Water Resources Program
Department of Ecology
Southwest Regional Office
Box 47775
Olympia, WA 98504-7775

cc: Enf. Database Coord.
 Rev/Rec - Cost Recovery
 Don Davidson (E)
orig: File - Fax to ATG
 ATG Docket Clerk
 Tom Loranger (E)
initial: Mc 5/19/08

Re: Water Right Application No's. S2-28890 and S2-28891

Dear Mr. Loranger,

In your letter to me dated February 6, 2008, one of the Actions required by DOE that is requested under the heading, "MOU with City of Tacoma," states the following:

"...this MOU did not indicate TPU's agreement to your proposal to tap into discharge water at the Cushman No. 2 power plant facility. Under this Preliminary Permit, you will need to enter into discussions with the City of Tacoma and provide Ecology with a copy of an agreement which shows that TPU supports your proposal and that collection of discharge is feasible. The agreement will need to be contingent on the City of Tacoma's acquisition of water rights to legally divert the amount of water currently used for power generation."

I understand that the City of Tacoma is currently engaged in settlement negotiations with the Skokomish Tribe, and federal and state agencies, that may address the outstanding water rights issues associated with the operation of the Cushman Project. Until these negotiations are completed and the City resolves the outstanding issues pertaining to its appropriation of water for the Cushman plant it is premature for me to develop an agreement with Tacoma.

As a result, I cannot submit a completed response to the issues raised in your February 6, 2008 letter. According to my conversations with DOE staff my water right application is problematic based on these circumstances.

Therefore, I would like to request that I be allowed to postpone the response to the additional issues raised in the February 6, 2008 letter I received from you. A lot of time and money would need to be spent responding to the other issues raised in this letter when in fact the issues to be resolved between TPU and FERC, DOE, and the Skokomish Tribe may make the answers to these questions moot.

Terry G. Spragg & Associates

420 Highland Avenue / Manhattan Beach, California 90266 / USA
(310) 374-2005 / Fax (310) 372-3163 • [Http://www.waterbag.com](http://www.waterbag.com)

I also understand that DOE is requesting a further water right application from TPU and that my water right application stands in the way of this additional application.

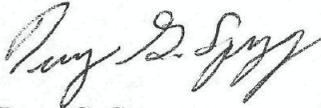
It was stated that this was one of the reasons that my water right application was being processed at this time, in order to make room for the new TPU water right application being requested by DOE.

If my application and TPU's application are still seen by DOE to be in conflict I would consider stepping aside and allowing TPU to take my place in line as long as I would be allowed back in line immediately after this additional TPU water right application is made. I would also request that the fees paid for my first water right application be applied to my new water right application as a result of the courtesy I am extending to DOE and TPU.

I am happy to cooperate with TPU and DOE in any way as long as my water right application is not put in jeopardy. In no way do I want to be in conflict with TPU's water right application.

I look forward to working with DOE to resolve this issue and I hope DOE will agree to my request to delay this application.

Best regards,



Terry G. Spragg

TGS/lps

Cc. The Department of Ecology
Appeals Coordinator
Box 47608
Olympia, WA. 98504-7608

The Pollution Control Hearings Board
Box 40903
Olympia, WA. 98504-0903

Patrick McCarty
Generation Manager
TPU
3628 South 35th St.
Tacoma, WA. 98409



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

February 6, 2008

CERTIFIED MAIL
7006 3450 0001 6753 7406

Terry G Spragg and Associates
420 Highland Avenue
Manhattan Beach CA 90266-5721

Re: Water Right Application No's. S2-28890 and S2-28891

Dear Mr. Spragg:

We have enclosed your *Amended Preliminary Permit*. Be sure to read the entire document carefully. Failure to comply with the conditions of this *Amended Preliminary Permit* shall result in the cancellation of the *Amended Preliminary Permit* and the associated water right applications.

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

- File your appeal with the Pollution Control Hearings 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:

The Pollution Control Hearings Board
PO Box 40903
Olympia WA 98504-0903

OR Deliver your appeal in person to:

The 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:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia WA 98504-7608

OR Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey WA 98503

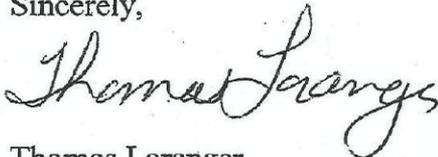
3. And send a copy of your appeal to:

Marie Peter
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia WA 98504-7775

*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>.*

If you have any questions, please contact us at 360-407-6300.

Sincerely,



Thomas Loranger
Water Resources Section Manager

Enclosure: Amended Preliminary Permit
Your Right To Be Heard



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

February 6, 2008

CERTIFIED MAIL
7006 3450 0001 6753 7406

Terry G. Spragg and Associates
420 Highland Avenue
Manhattan Beach, CA 90266-5721

Dear Mr. Spragg:

Re: Amended Preliminary Permit for Surface Water Right Applications
Nos. S2-28890 and S2-28891

Under the provisions of RCW 90.03.290, the Department of Ecology (Ecology) may issue a Preliminary Permit requiring applicants to conduct studies, surveys, and investigations that Ecology deems necessary to properly evaluate water right applications. This letter serves as a Preliminary Permit. It requires you to provide Ecology with information demonstrating the viability of the project proposed under Water Right Applications Nos. S2-28890 and S2-28891.

In accordance with the Stipulation and Agreed Order of Dismissal entered between yourself and Ecology, that was executed by the Pollution Control Hearings Board on January 28, 2008, this Amended Preliminary Permit supersedes the Preliminary Permit previously issued by Ecology on September 25, 2007.

Proposed Diversion

On July 1, 1993, Terry G. Spragg & Associates filed Surface Water Right Applications Nos. S2-28890 and S2-28891. The applications request diversion of up to 2,720 cfs of surface water, and a maximum annual quantity of 200,000 acre-feet. The proposed use is for municipal and industrial supply, year-round, as needed. The place of use for Application S2-28890 is within Washington State; Application S2-28891 is for out-of-state use. The proposed point of diversion is at the City of Tacoma Cushman Power Plant No. 2 site on Hood Canal in the SE ¼ of the NW ¼ of Section 16, T. 22 N., R. 4 W.W.M., within Water Resources Inventory Area 16 (the Skokomish-Dosewallips WRIA). Surface water, currently diverted by the City of Tacoma from the North Fork of the Skokomish River for power generation, will be captured immediately prior to its discharge point into Hood Canal.



Protests and Concerns

A legal notice of the proposed appropriations was published in *The Shelton-Mason County Journal* on April 14 and 21, 1994. In response to this notice, Ecology received letters of protest from the Skokomish Indian Tribe, American Rivers, Hood Canal Coordinating Council, Hood Canal Environmental Council, Mason County Board of Commissioners, as well as private citizens.

The Skokomish Tribe filed a formal letter of protest, stating that the proposed diversions would be detrimental to Indian fisheries and treaty-protected resources, both on the Reservation and at usual and accustomed places. They also note that Federal-reserved water rights of the Skokomish Indian Reservation would be unlawfully interfered with.

Washington Department of Fish and Wildlife (WDFW) is also concerned about the potential effect of your project on flows in the North Fork Skokomish River and on the waters of Hood Canal. WDFW requests that the applications be denied or that water right decisions not be issued until after in-stream flows have been established on the North Fork Skokomish River.

Low dissolved oxygen concentrations are a serious problem in Hood Canal, particularly near the Great Bend where you propose to divert water. You can expect that your proposal will receive a great amount of scrutiny and probably opposition, too. You will need to begin addressing water quality and other environmental concerns associated with your project via the State Environmental Policy Act (SEPA) process. In addition, various state and local permits and approvals will be needed to implement this project. You will need to demonstrate progress toward obtaining these approvals.

Action required: Submit a comprehensive list of permits, agreements, and other approvals that will be required to implement your project as well as a proposed timeline for obtaining them. Also submit reports from any environmental studies that have been conducted for your project. This action must be met within 180 days from the date of receipt of this letter.

SEPA Checklist Must Be Filed

The State Environmental Policy Act (SEPA) requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. Your project requires an environmental checklist which needs to be filed with Mason County for the SEPA review process. The water right decision process cannot be initiated until after Ecology receives a copy of the completed checklist.

Action required: File an environmental checklist within 180 days of your receipt of this letter and provide a copy of the checklist to the Department of Ecology.

MOU with City of Tacoma

The applications were accompanied by a copy of a Memorandum of Understanding (MOU) signed by Terry G. Spragg and the City of Tacoma Department of Public Utilities (TPU), dated November 7, 1991. However, this MOU did not indicate TPU's agreement to your proposal to tap into discharge waters at the Cushman No. 2 power plant facility. Under this Preliminary Permit, you will need to enter into discussions with the City of Tacoma and provide Ecology with a copy of an agreement which shows that TPU supports your proposal and that collection of discharge waters at the plant is feasible. This agreement will need to be contingent on the City of Tacoma's acquisition of water rights to legally divert the amount of water currently used for power generation.

Action required: Submit a description of the proposed works for filling the floating bags with freshwater discharging from the City of Tacoma's Cushman Power Plant No. 2 facility, and a copy of an agreement with Tacoma Public Utilities indicating their consent to your proposal. This action item must be met within 180 days from the date of receipt of this letter.

Reciprocity Requirement

RCW 90.03.300 states that Ecology has the discretion to decline to issue a permit where the point of diversion is within the state of Washington but the place of beneficial use is in another state or nation, unless the receiving state or nation allows diversions of water for beneficial use within the state of Washington. Application No. S2-28891 does not list or specify the states or nations that will be using the waters applied for. Please identify or provide a finite list of places where water diverted under Application No. S2-28891 will be applied to beneficial use, and evidence that the receiving states and nations may reciprocate.

Under RCW 90.54.020, Ecology is required to manage the waters of the state to secure maximum net benefits for the people of the state. It would not be cost-effective for a non-neighboring state or nation to import water if water of sufficient quantity and quality is locally available. Therefore, even if the receiving entity does not have laws specifically prohibiting the export of water to this state, Ecology will assume that water transported out-of-state will result in a net loss of water available to benefit the people of this state.

Action required: Explain how the proposed transfer of water out-of-state is consistent with the requirement that public water be managed and used for maximum net benefit for the people of the state. Also demonstrate that the diversion would not interfere with Federal-reserved rights held by the Skokomish Tribe. This action item must be met within one year from the date of your receipt of this letter.

Local Watershed Planning Unit does not Support the Proposed Export of Water

Although reciprocity is not an issue for Application No. S2-28890 for intra-state use of water, the Skokomish-Dosewallips Watershed Management Plan, adopted on May 11, 2006 by the Water Resources Inventory Area 16 Planning Unit, indicates that the local governments and interest groups are generally opposed to transfer of water out of the basin. The WRIA 16 Watershed Plan specifically identifies the export of water as a planning issue and proposes that the unit consider and evaluate the option of creating a policy to prohibit out-of-basin transfers or export of water. The Plan also requests that Ecology involve local governments, tribal governments, and the WRIA 16 Planning Unit throughout the review of applications for out-of-basin transfers.

Under RCW 90.82.130(4), Ecology must use the adopted local watershed plan as a framework for future water resource decision-making. In addition, the plan must be relied on as a primary consideration in determining the public interest related to these decisions. As such, it appears highly unlikely that either of the subject applications will ultimately be approved.

If you believe that your project is feasible without harming the environment or impairing existing rights and that water can be appropriated without detriment to the public interest, please follow through with the requirements of this Preliminary Permit.

Summary of Actions Required

Phase 1: Within 180 days of your receipt of this letter, you will need to:

- Submit a comprehensive list of permits, agreements, and other approvals that will be required to implement your project as well as a proposed timeline for obtaining them. The Office of Regulatory Assistance can help you identify the requirements that will be applicable to your project. Please contact Annie Szvetecz at (360) 407-6957 (phone) or annie.szvetecz@ora.wa.gov (e-mail).
- Submit reports from any environmental studies that have been conducted for your project.
- File a SEPA environmental checklist and provide a copy of the SEPA checklist to the Department of Ecology.
- Submit a description of the proposed works for filling the floating bags with freshwater discharging from the City of Tacoma's Cushman Power Plant No. 2

facility, and a copy of an agreement with Tacoma Public Utilities indicating their approval of your proposal.

Phase 2: Within one (1) year of your receipt of this letter, you will need to:

- Explain how the proposed transfer of water out-of-state is consistent with the statutory requirement that public water be managed and used for maximum net benefit for the people of the State of Washington.
- Demonstrate that the diversion would not interfere with Federal-reserved treaty rights held by the Skokomish Tribe.

No diversion or use of water is authorized under this permit.

This Preliminary Permit is effective immediately upon your receipt of this letter and expires one (1) year from the date of your receipt of this letter. An extension may be approved for Phase 1 and/or Phase 2 for good cause shown, if requested prior to the respective due dates contained within this letter.

If you fail to comply with the requirements of this Preliminary Permit, it will be cancelled and Water Right Applications Nos. S2-28890 and S2-28891 will be rejected by the Department of Ecology.

If you have any questions regarding the requirements of this Amended Preliminary Permit, please contact Marie Peter of my staff at (360) 407-0279.

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

- File your appeal with the Pollution Control Hearings Board within thirty (30) days of the "date of receipt" of this document. Filing means actual receipt by the Pollution Control Hearings Board during regular office hours.
- Serve your appeal on the Department of Ecology within thirty (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:

The Pollution Control Hearings Board
PO Box 40903
Olympia WA 98504-0903

OR

Deliver your appeal in person to:

The 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:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia WA 98504-7608

OR Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey WA 98503

3. And send a copy of your appeal to:

Thomas Loranger
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia WA 98504-7775

*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://www.l.leg.wa.gov/CodeReviser> .*

If you have any questions, please contact Ecology at (360) 407-6300.

Sincerely,



Thomas Loranger
Section Manager
Water Resources Program

TL:MP:th

Cc: City of Tacoma Public Utilities
Keith Dublanica, Skokomish Tribal Nation
Phil Wiatrak, Department of Ecology
American Rivers
Hood Canal Coordinating Council
Hood Canal Environmental Council
Mason County Board of Commissioners
Gary A. Cunningham
Donald H. Woods
Herbert L. Wells and Thelma Floor Wells
Chris Jensen, Okanogan Irrigation District



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

September 25, 2007

CERTIFIED MAIL

7006 0100 0002 2925 8376

Terry G. Spragg and Associates
200 The Strand Penthouse
Manhattan Beach, CA 90266

Dear Mr. Spragg:

Re: Preliminary Permit for Surface Water Right Applications Nos. S2-28890 and
S2-28891

Under the provisions of RCW 90.03.290, the Department of Ecology may issue a Preliminary Permit requiring applicants to conduct studies, surveys, and investigations necessary to properly evaluate water right applications. This letter serves as a Preliminary Permit. It requires you to provide the Department of Ecology with information demonstrating the viability of the project proposed under Water Right Applications Nos. S2-28890 and S2-28891.

Proposed Diversion

On July 1, 1993, Terry G. Spragg & Associates filed Surface Water Right Applications Nos. S2-28890 and S2-28891. The applications request diversion of up to 2,720 cfs of surface water, and a maximum annual quantity of 200,000 acre-feet. The proposed use is for municipal and industrial supply, year-round, as needed. The place of use for Application S2-28890 is within Washington State; Application S2-28891 is for out-of-state use. The proposed point of diversion is at the City of Tacoma Cushman Power Plant No. 2 site on Hood Canal in the SE ¼ of the NW ¼ of Section 16, T. 22 N., R. 4 W.W.M., within Water Resources Inventory Area 16 (the Skokomish-Dosewallips WRIA). Surface water currently diverted by the City of Tacoma from the North Fork of the Skokomish River for power generation, will be captured immediately prior to its discharge point into Hood Canal.

Protests and Concerns

A legal notice of the proposed appropriations was published in *The Shelton-Mason County Journal* on April 14 and 21, 1994. In response to this notice, the Department of Ecology received letters of protest from the Skokomish Indian Tribe, American Rivers,

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Hood Canal Coordinating Council, Hood Canal Environmental Council, Mason County Board of Commissioners, as well as private citizens.

The Skokomish Tribe filed a formal letter of protest, stating that the proposed diversions would be detrimental to Indian fisheries and treaty-protected resources, both on the Reservation and at usual and accustomed places. They also note that Federal-reserved water rights of the Skokomish Indian Reservation would be unlawfully interfered with.

Washington Department of Fish and Wildlife (WDFW) is also concerned about the potential effect of your project on flows in the North Fork Skokomish River and on the waters of Hood Canal. WDFW requests that the applications be denied or that water right decisions not be issued until after in-stream flows have been established on the North Fork Skokomish River.

Low dissolved oxygen concentrations are a serious problem in Hood Canal, particularly near the Great Bend where you propose to divert water. You can expect that your proposal will receive a great amount of scrutiny and probably opposition, too. You will need to begin addressing water quality and other environmental concerns associated with your project via the State Environmental Policy Act (SEPA) process. In addition, various state and local permits and approvals will be needed to implement this project. You will need to demonstrate progress toward obtaining these approvals.

Action required: Submit a comprehensive list of permits, agreements, and other approvals that will be required to implement your project as well as a proposed timeline for obtaining them. Also submit reports from any environmental studies that have been conducted for your project.

SEPA Checklist Needs to be Filed Immediately

The State Environmental Policy Act (SEPA) requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. Your project requires an environmental checklist which needs to be filed with Mason County for the SEPA review process. The water right decision process cannot be initiated until after Ecology receives a copy of the completed checklist.

Action required: File an environmental checklist within 90 days of your receipt of this letter and provide a copy of the checklist to the Department of Ecology.

MOU with City of Tacoma

The applications were accompanied by a copy of a Memorandum of Understanding (MOU) signed by Terry G. Spragg and the City of Tacoma Department of Public Utilities (TPU), dated November 7, 1991. However, this MOU did not indicate TPU's agreement to your proposal to tap into discharge waters at the Cushman No. 2 power plant facility.

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Ecology involve local governments, tribal governments, and the WRIA 16 Planning Unit throughout the review of applications for out-of-basin transfers.

Under RCW 90.82.130(4), Ecology must use the adopted local watershed plan as a framework for future water resource decision-making. In addition, the plan must be relied on as a primary consideration in determining the public interest related to these decisions. As such, it appears highly unlikely that either of the subject applications will ultimately be approved.

If you believe that your project is feasible without harming the environment or impairing existing rights and that water can be appropriated without detriment to the public interest, please follow through with the requirements of this Preliminary Permit.

Summary of Actions Required

Within 90 days of your receipt of this letter, you will need to:

- Submit a comprehensive list of permits, agreements, and other approvals that will be required to implement your project as well as a proposed timeline for obtaining them.
- Submit reports from any environmental studies that have been conducted for your project.
- File an environmental checklist and provide a copy of the checklist to the Department of Ecology.
- Submit a description of the proposed works for filling the floating bags with freshwater discharging from the City of Tacoma's Cushman Power Plant No. 2 facility, and a copy of an agreement with Tacoma Public Utilities indicating their approval of your proposal.
- Explain how the proposed transfer of water out-of-state is consistent with the statutory requirement that public water be managed and used for maximum net benefit for the people of this state.
- Demonstrate that the diversion would not interfere with Federal-reserved rights held by the Skokomish Tribe.

No diversion or use of water is authorized under this permit.

This Preliminary Permit is effective immediately and expires on January 1, 2008. An extension may be approved for good cause if requested prior to its expiration.

Under this Preliminary Permit, you will need to enter into discussions with the City of Tacoma and provide the Department of Ecology with a copy of an agreement which shows that TPU supports your proposal and that collection of discharge waters at the plant is feasible. This agreement will need to be contingent on the City of Tacoma's acquisition of water rights to legally divert the amount of water currently used for power generation.

Action required: Submit a description of the proposed works for filling the floating bags with freshwater discharging from the City of Tacoma's Cushman Power Plant No. 2 facility, and a copy of an agreement with Tacoma Public Utilities indicating their consent to your proposal.

Reciprocity Requirement

RCW 90.03.300 states that Ecology has the discretion to decline to issue a permit where the point of diversion is within the state of Washington but the place of beneficial use is in another state or nation, unless the receiving state or nation allows diversions of water for beneficial use within the state of Washington. Application No. S2-28891 does not list or specify the states or nations that will be using the waters applied for. Please identify or provide a finite list of places where water diverted under Application No. S2-28891 will be applied to beneficial use, and evidence that the receiving states and nations may reciprocate.

Under RCW 90.54.020, Ecology is required to manage the waters of the state to secure maximum net benefits for the people of the state. It would not be cost-effective for a non-neighboring state or nation to import water if water of sufficient quantity and quality is locally available. Therefore, even if the receiving entity does not have laws specifically prohibiting the export of water to this state, Ecology will assume that water transported out-of-state will result in a net loss of water available to benefit the people of this state.

Action required: Explain how the proposed transfer of water out-of-state is consistent with the requirement that public water be managed and used for maximum net benefit for the people of the state. Also demonstrate that the diversion would not interfere with Federal-reserved rights held by the Skokomish Tribe.

Local Watershed Planning Unit does not Support the Proposed Export of Water

Although reciprocity is not an issue for Application No. S2-28890 for intra-state use of water, the Skokomish-Dosewallips Watershed Management Plan, adopted on May 11, 2006 by the Water Resources Inventory Area 16 Planning Unit, indicates that the local governments and interest groups are generally opposed to transfer of water out of the basin. The WRIA 16 Watershed Plan specifically identifies the export of water as a planning issue and proposes that the unit consider and evaluate the option of creating a policy to prohibit out-of-basin transfers or export of water. The Plan also requests that

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If you fail to submit the requested information to the Department of Ecology within 90 days of your receipt of this letter, Water Right Applications Nos. S2-28890 and S2-289981 will be rejected.

If you have any questions regarding the requirements of this Preliminary Permit, please contact Marie Peter of my staff at (360) 407-0279.

Your right to appeal

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty (30) days of the date of your receipt of this document. To appeal this action or decision, your notice of appeal must contain a copy of the Ecology order, action or decision you are appealing.

Mail your appeal to:
Pollution Control Hearings Board **OR**
PO Box 40903
Lacey, Washington 98504-0903

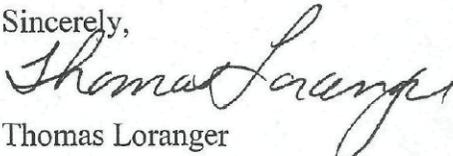
Deliver your appeal to:
Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Olympia, Washington 98503

AND MAIL TO BOTH ADDRESSES BELOW

Mail your appeal to:
Department of Ecology
Appeals Coordinator **AND**
PO Box 47608
Lacey, Washington 98504-7608

Mail your appeal to:
Thomas Loranger
Department of Ecology
PO Box 47775
Lacey, Washington 98504-7775

Sincerely,



Thomas Loranger
Water Resources Section Manager
Southwest Region Office

TL:MP:th

Cc: City of Tacoma Public Utilities
Keith Dublanica, Skokomish Tribal Nation
Phil Wiatrak, Department of Ecology
American Rivers
Hood Canal Coordinating Council
Hood Canal Environmental Council
Mason County Board of Commissioners
Gary A. Cunningham
Donald H. Woods
Lawrence E. Crow
William H. & Judith W. Matchett
Herbert L. Wells and Thelma Floor Wells

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October 25, 2007

Thomas Loranger
Water Resources Section Manager
Southwest Region Office
Department of Ecology
Box 47775
Lacey, Washington 98504-7775

RECEIVED

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WA STATE
DEPARTMENT OF ECOLOGY
SW REGIONAL OFFICE

Dear Mr. Loranger,

On October 24, 2007 I received by certified mail a copy of your September 23, 2007 letter regarding my Preliminary Permit for Surface Water Right Application Nos. S2-28890 and S2-28891.

It has been 14 years since this application was filed.

This response requires many detailed responses to a variety of complex political, environmental, financial, and other issues. I have been asked to respond to this letter and the issues raised in this letter within 90 days of receipt.

It is impractical and impossible for me to prepare this response in this time period for a variety of reasons.

I would like to request that under the above circumstances that I be given three years to respond to these issues.

Sincerely,



Terry G. Spragg

TGS/lps

cc. Pollution Control Hearing Board, Lacey, Washington
Appeals Coordinator, DOE, Lacey, Washington

Terry G. Spragg & Associates

420 Highland Avenue / Manhattan Beach, California 90266 / USA
(310) 374-2005 / Fax (310) 372-3163 • [Http://www.waterbag.com](http://www.waterbag.com)