STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

November 24, 2015

Hawley Farms
c/o Mike Hawley
355 W. Wiser Lake Road
Ferndale, WA 98248

Dear Mr. Hawley:

Re: APPROVED Seasonal Change Authorization for Surface Water Certificate 6820, Whatcom County, Water Resources Inventory Area 1

BACKGROUND INFORMATION

On March 24, 2014, the Department of Ecology (Ecology) received an application to seasonally change Surface Water Certificate (SWC) 6820. The application requested to expand the place of use to include two parcels leased by Hawley Farms and owned by June Johnson. No additional changes were requested. Hawley Farms published legal notice for the proposed seasonal change in the *Lynden Tribune* on November 19 and 26, 2014. No protests were received during the statutory 30-day protest period.

On May 14, 2014, the Lummi Nation protested the proposed seasonal change based on "concerns over current and future potential impacts on instream flows." The Lummi Nation objected to the application based on their status as senior water rights holders and on-going negotiations with the United States and the State of Washington over unresolved issues. No specific technical arguments were made. The first provision in this authorization is included in consideration of senior water right holders, including tribal water rights asserted by the Lummi Nation to the extent they may exist.

Ria Berns, Water Resources Specialist, conducted a site examination on October 7, 2015. She confirmed the location of the diversion works, visited the proposed place of use, and examined the irrigation infrastructure used during the irrigation season. At the time of the site visit, the pump and other irrigation works were stored for next season.

SWC 6820 was originally issued to Victor B. Ritter with a priority date of June 13, 1956. It authorizes diversions of up to 0.20 cubic feet per second (CFS) and 40 acre-feet per year (ac-ft/yr), for irrigation of 20 acres. The authorized point of diversion is on the Nooksack River within the W½ of Government Lot 5, Section 35, Township 40 North, Range 2 East. The authorized place of use is the West 20.43 acres of Lot 5, less Wash Road, Section 35, Township 40 North, Range 2 East.

The Ritter Estate sold the property to Malcolm and June Johnson in 1984 and the new owners started leasing the property to Hawley Farms in the early 1990s. The Hawleys have attested that, to the best of their knowledge, the property has been continuously farmed since the mid-1950s with a rotation of crops, including hay, corn, and, for the last twenty-five years, seed potatoes. These crops were historically irrigated using a combination of hand lines and big gun sprinklers.

When the Hawleys first leased the property, they found 4-5 inch aluminum irrigation pipes already laid on the property. It is likely these were first installed by the Ritters. Hawley Farms uses these aluminum pipes as well as moveable hose lines. They irrigate potatoes using big gun sprinklers and have three pumps that they interchangeably use on this and other property. Each has the capacity to pump at least 0.20 CFS and can be adjusted to pump only this certificated amount.

It's reasonable to assume that only a portion of the certificated annual quantity is available for change. For the last twenty-five years, the place of use has been planted with potato crops irrigated with big gun sprinklers. Using the 1985 Washington Irrigation Guide to calculate the crop irrigation requirement (CIR), the total ac-ft/yr requirement for the place of use is 20.32 ac-ft/yr. The place of use is equidistant from the three Whatcom County WIG climate stations (Bellingham, Blaine, and Clearbrook) and thus, the CIR for each climate station was averaged (see Table 1). This amount is less than the 40 ac-ft/yr annual quantity listed on the certificate. Because there is no metering data to demonstrate a higher average annual quantity, Hawley Farms will be limited to 20.32 ac-ft/yr.

Table 1. Crop Irrigation Requirements and Annual Quantity Calculations for Potatoes Irrigated with Big-Gun Sprinklers

WIG Climate Station	Potato Crop Irrigation Requirement (inches)	Total Acre-Feet/Year Requirement (Potatoes)
Bellingham	8.54	21.90
Blaine	8.22	21.08
Clearbrook	7.01	17.97
Average	**7.82**	**20.32**

The request here is to seasonally change the place of use to include Whatcom County parcel numbers 400235032093 *and* 400235091093. This will increase the operational flexibility of the farm. The total place of use will be ~40 acres, of which only 20 acres will be irrigated. Twenty acres of potatoes will be planted and irrigated within the place of the use. The remaining arable acreage will be planted with non-irrigated corn crops.

DEPARTMENT OF ECOLOGY DECISION - INCLUDING TERMS & CONDITIONS

Your request for a seasonal change in the place of use for the 2016 irrigation season is hereby **APPROVED** under the terms and conditions listed below:

- This change authorization is subject to existing rights, including any rights held by the United States for the benefit of tribes under treaty or settlement. By ensuring no greater use

of water than authorized under the existing certificate, this seasonal change authorization should have no greater impact on tribal rights than the original.

- This seasonal change does not authorize an enlargement of water use or total irrigated acres.
- The certificated instantaneous rates cannot be exceeded at any time.
- The annual quantity is limited to 20.32 ac-ft/yr for the 2016 irrigation season.
- An approved measuring device shall be installed and maintained on the authorized point of diversion in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173. In order to ensure compliance with the terms of this authorization, water use data shall be recorded weekly and shall be promptly submitted to Ecology upon request.
- WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document titled "Water Measurement Device Installation and Operation Requirements". See http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html
- If it can be shown that water use authorized by this seasonal change is causing impairment of existing rights or is being used illegally, then this authorization will be immediately canceled.
- This seasonal change does not convey a right of access to, or other right to use land, which you do not legally possess. Obtainment of such a right is a private matter between you and the owner of the land.
- Violation of any of the terms and conditions of this seasonal change will result in this authorization being immediately canceled, issuance of administrative orders to cease and desist, and may also subject the violator to civil penalties.
- 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, point of diversion, measuring device, and associated distribution systems for compliance with water law.
- **This seasonal change shall be in effect through the 2016 irrigation season** (unless canceled sooner); at which time the subject rights will revert back to their original attributes.

THIS AUTHORIZATION SHALL IN NO MANNER BE CONSTRUED TO GUARANTEE OR IMPLY THAT A FINAL (REGULAR) CHANGE AUTHORIZATION WILL ISSUE FOR FUTURE USE OF THE WATER HEREIN AUTHORIZED.

If you have any questions or concerns regarding this authorization, please contact Ria Berns at ria.berns@ecy.wa.gov or (425) 649-7217.

OPPORTUNITY TO APPEAL

You have a right to appeal this action to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this document. 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 this document:

File your appeal and a copy of this document 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 document on Ecology in paper form - by mail or in person. (See addresses below.) Email 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
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk P.O. Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board Environmental Hearings Office 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board P.O. Box 40903 Olympia, WA 98504-0903

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 Bellevue, Washington, this 24th day of November, 2015.

Thomas Buroker
Section Manager
Water Resources Program

tb:rb:mc

Enclosure: Your Right to be Heard

By Certified Mail: 9171 9690 0935 0088 4623 77