



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

August 31, 2010

Mary K. Bailey  
62 Bailey Way  
Brewster, WA 98812-9622

Re: Seasonal Change Authorization for 2010 season only for S3-00481C.

**DECISION:** This SEASONAL CHANGE AUTHORIZATION to change the point of diversion to Government Lot 3 of Section 36 of T. 30 N., R. 23 E.W.M., and the place of use to the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1 of T. 29 N., R. 23 E.W.M., the N $\frac{1}{2}$ NW  $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6 of T. 29 N., R. 24 E.W.M., and the SW $\frac{1}{4}$  and the W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 31, T. 30 N., R. 24 E.W.M., all in Douglas County, at a maximum instantaneous diversion rate of 1.5cfs and a maximum quantity of 24.56 ac-ft is granted subject to the following provisions and conditions:

**Department of Fish and Wildlife**

1. No dam or weir shall be constructed in connection with this diversion.
2. The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria. <http://www.wdfw.wa.gov/reg/regions.htm>

**Quantity Limits, Flow and Regulation**

3. This change does not authorize an enlargement of those quantities in cubic feet per second or acre-feet per year as described in S3-00481C.
4. The original place of use of S3-00481C shall be followed for the duration of the 2010 irrigation season. Irrigation occurring during the 2010 irrigation season (April 1 to October 15) in the original place of use of S3-00481C shall constitute a violation of the terms of this authorization, and will result in its immediate termination. Other enforcement actions, including but not limited to fines and/or penalties, may also follow as a result of a violation.

### Schedule and Inspections

5. This seasonal change shall expire at the end of the 2010 irrigation season, being October 15, 2010, at which time the place of use shall revert back to that described under S3-00481C.
6. Department of Ecology personnel may field-verify this seasonal change at any time for compliance with the terms and/or conditions of this authorization.
7. 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.

### General Conditions

8. You are advised that the issuance of this seasonal change by the Department 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 the applicant and the owner of the land.
9. Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.
10. Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances or regulations.
11. The Department assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this seasonal change authorization. Applicants for seasonal change should not construe that a seasonal change will result in the granting of a permanent change of water right.
12. The quantities authorized through this seasonal change do not represent a full tentative determination as to the extent and validity of the subject water right. A full tentative determination would take place at the time a permanent change application is acted upon, and may result in the quantities authorized under the water right being reduced to reflect actual historic beneficial use of water under the right.

**YOUR RIGHT TO APPEAL**

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

- File your appeal and a copy of this decision 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 decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

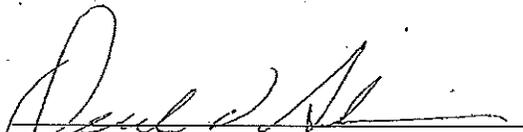
You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

**ADDRESS AND LOCATION INFORMATION**

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608
<b>Pollution Control Hearings Board</b> 4224 - 6 <sup>th</sup> Avenue SE Rowe Six Building 2 Lacey WA 98503	<b>Pollution Control Hearings Board</b> PO 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://www.leg.wa.gov/CodeReviser>

DATED this August 31, 2010

  
Derek I. Sandison, Director  
Office of Columbia River  
Central Regional Office

TP:DIS:RAZ(100817)

CC: Michael O. Finley, Confederated Tribes of the Colville Reservation

Background: During water right mapping efforts, Office of Columbia River staff noticed a potential compliance issue located immediately across the Columbia River from Brewster, WA, on property owned by Hillcrest Orchards, Inc. (HOI). It appeared HOI was irrigating approximately 85 acres not covered by a water right. The landowners were contacted in early 2009 by letter. After several meetings with Ralph Dobson, owner of HOI, and Mark Miller of the Okanogan County Water Conservancy Board, three seasonal applications were submitted for the 2010 irrigation season to address the issue. The three applications were submitted by a neighboring landowner, Mary Bailey. The three applications propose to change their respective places of use and points of diversion such that HOI may irrigate some of the 85 acres not covered by a water right. Collectively, the three applications (CS3-00481C, CS4-26684C, and CS4-29264C) propose to transfer a total of 2.49 cubic feet per second (cfs) and 207.4 acre-feet per year (ac-ft/yr) for the irrigation of 41.5 acres. The three applications all describe a place of use allowing for maximum flexibility in where HOI may irrigate, subject to acreage limitations. Acreage limitations were discussed in a meeting with the applicant, Ralph Dobson, Mark Miller, and the author of this seasonal change. Application CS3-00481C, the subject of this seasonal authorization, accounts for 1.5cfs and 153.5ac-ft for the irrigation of 30 acres.

Water Right Attributes: The attributes of S3-00481C are as follows:

**Priority Date:** October 21, 1970  
**Source:** Columbia River (Lake Pateros)  
**Quantities:** 1.5 cfs, 153.5 ac-ft/yr  
**Season of Use:** April 1 to October 15  
**Purpose of Use:** Irrigation of 30 acres, and frost protection as required  
**P.O.D.:** GL 1 of Sec. 1, T. 29 N., R. 23 E.W.M.  
**Place of Use:** That portion of Government Lot 1 of Sec. 1, T. 29 N., R. 23 E.W.M., lying easterly of the Wells Dam project boundary:

Proposal Attributes: The proposed seasonal change is intended only for the 2010 irrigation season. The attributes of the proposal are as follows:

**Priority Date:** Subject change application received March 31, 2010  
**Source:** No change  
**Quantities:** No change  
**Season of Use:** No change  
**Purpose of Use:** No change  
**P.O.D.:** GL 3 of section 36 of T. 30 N., R. 23 E.W.M.  
**Place of Use:** NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1 of T. 29 N., R. 23 E.W.M., the N $\frac{1}{2}$ NW  $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6 of T. 29 N., R. 24 E.W.M., and the SW $\frac{1}{4}$  and the W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 31, T. 30 N., R. 24 E.W.M., all in Douglas County.

Legal Requirments: This change application is subject to the provisions of RCWs 90.03.380 and 90.03.390. Under RCW 90.03.380, the place of use and point of diversion of a water right that has been put to beneficial use may be changed if the change can be made without detriment or injury to existing rights.

Under RCW 90.03.390, seasonal or temporary changes in point of diversion or place of use can be made provided such change can be made without detriment to existing rights and requires the permission of the watermaster of the district or of the department.

Under RCW 43.21C.035 and Chapter 197-11 WAC this temporary change is exempt from a SEPA review.

RCW 90.03.380 (tentative determination of extent and validity):

Quantities proposed for this temporary change derive from those given on S3-00481C. These values are: 1.5cfs and 153.5ac-ft/yr to irrigate up to 30 acres from April 1 to October 15. Chapter 90.14 RCW may cause return to the state of any water rights which are no longer exercised by applying them to beneficial use for a five year period since 1967, with limited exceptions. Review of aerial photography of the place of use of S3-00481C taken in 1998 and 2005 indicates that approximately 30 acres were irrigated in both of these years. In 2006, it appears only approximately 8 acres were irrigated within the place of use of S3-00481C. In 2009, it appears no lands were irrigated within the place of use of S3-00481C. Additionally, USGS topographic quad maps of the "Pateros" area dated 1989 and 1992 delineate approximately 26 acres as orchard within the place of use of S3-00481C. The applicant indicates that a 5-year period of non-irrigation has not occurred since 1975, the year certificate S3-00481C issued.

From the above, it appears a five year period of non-use has not occurred since certificate S3-00481C issued. The full quantities authorized under this certificate appear available for change.

While the application was filed on March 31, 2010, ahead of the April 1 beginning of irrigation season, public notice was not published until the end of July. Apparently, recollection of this requirement lapsed. Ecology does not retroactively approve water used without authority, and as such, quantities potentially approved for this change proposal would reflect only the period of time from the appoximate date of approval to the end of irrigation season. However, Ecology staff had been working with the applicant, the landowner of the proposed place of use, and their agent to facilitate this change and, as such, there is recognition that water under S3-00481C had been applied at the proposed place of use beginning on April 1, 2010, and continued through the irrigation season.

If approved, the estimated date of approval is August 31, 2010. Using Washington Irrigation Guide consumptive use data for apples at the Chief Joseph Dam vicinity as a model, approximately 84% of the consumptive use occurs by mid-July. (Total consumptive use is 34.28

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inches/ac; consumptive use up to mid-July is 28.91 inches/ac). Reducing the full amount available for change calculated above by 84% yields 24.56 ac-ft (153.5 ac-ft – (153.5 ac-ft \* 84%)). This is the maximum amount that could be approved assuming a mid-July approval.

RCW 90.03.380 and RCW 90.03.390 (detriment or injury to existing rights):

This change application proposes to move the point of diversion less than a mile to the northeast. The proposed point of diversion would still divert from the same surface water body, Lake Pateros (aka Wells Pool, backwater held by Wells Dam on the Columbia River). Changing the water right's point of diversion within the same pool would not reduce the availability of water to intervening water users.

RCW 90.03.280 (public notice):

In accordance with RCW 90.03.280, public notice of this seasonal change proposal was published in the Omak Chronicle on July 22 and July 29 of 2010. There were no protests received during the 30 day protest period.