



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

July 17, 2012

Thomas Allen  
PO Box 567  
Manson WA 98831-0567

Re: Surface Water Change Authorization No. CS4-26615C(B)

Dear Mr. Allen:

On June 11, 2012, Ecology received fees and an extension request for Change Authorization No. **CS4-26615C(B)**. In response to your request, you are hereby **denied** an extension of time in which to put the water to full beneficial use.

The original Certificate was issued on November 30, 1993, and authorized community domestic supply for four homes. On October 12, 2005, Ecology split the original Certificate into an "A" portion and a "B" portion, authorizing Mr. Yates, owner of the A portion to divert up to .66 acre-feet per year for continuous domestic use for two homes and authorizing you, owner of the B portion to divert up to .66 acre-feet per year for continuous domestic use for two homes.

In 2009 Ecology staff, Ryan Murphy, contacted you informing you that the development schedule for your project was out of compliance and you stated to him that the delivery system was in and was being used; however, you submitted a request for an extension, which Ecology approved solely to allow additional time for meter data to be collected and submitted.

A change authorization contains a development schedule to ensure that due diligence and reasonable progress is made in putting water to use. A permit holder is required under RCW 90.03.320 to pursue the construction of a project with due diligence; however, your extension request letter mentions that you have not completed the project because you cannot sell the two lots. As such, due to the lack of development of the points of diversion, coupled with the lack of development of 1 of the 2 lots currently for sale, Ecology cannot conclude that the development of the permitted project is being pursued with good faith and due diligence.



There have historically been several Pollution Control Hearings Board (PCHB) cases in which they ruled on criteria for granting extensions of time to develop under a Permit. The following examples are Ecology's reasons for denying this extension:

- Extension for circumstances where construction is indefinitely undetermined would be against the public interest involved in prohibiting reservation of water for speculative future use as per *Goldy v. Ecology*, PCHB No. 938 (1976).
- Holding off on permitted development on the possibility that another use might appear more attractive does not provide grounds for reversal of decision to cancel a Permit for failure to complete appropriation on a development schedule approved by state. *Arazi v. Ecology*, PCHB No. 82-182 (1983).
- Speculation of future use is not considered due diligence and cannot be considered in Ecology's assessment whether to approve or deny your extension request.

As stated above, the lack of due diligence and commitment to put water to full beneficial use does not meet the statutory criteria. If you wish to keep active the portion of the project that is complete (1 home instead of 2 homes), then a ***Proof of Appropriation of Water* form must be re-submitted to Ecology within sixty (60) days of this letter to avoid cancellation of the change authorization.** The quantity of water required by the project that has currently been put to beneficial use must be identified. A Proof of Appropriation inspection will then be conducted. Elements of the proof inspection may include, as appropriate, the sources, system instantaneous capacity, beneficial use, annual quantity, place of use, and satisfaction of provisions.

Once this process is completed, and if you choose to add a home on the one lot which currently is undeveloped, a new application for water right will be required for the additional development.

## **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> 1111 Israel Rd SW Ste 301 Tumwater WA 98501	<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>

If you have any questions or concerns about this information, please call the Department of Ecology at (509) 575-2597.

Sincerely,



Mark Kemner, LHG  
Section Manager  
Water Resources Program

MK:CLG:gh/ss  
120620/120707

Enclosures: *Your Right to Be Heard*  
*Proof of Appropriation form*

By certified mail: 7007 2560 0001 7675 7114

