



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

March 10, 2011

Kititas Co. Conservation District  
Attn: Anna Lael  
607 E Montian View Ave  
Ellensburg WA 98926-3863

**Re: Water Right Application No. S4-33013 – Short Term Surface Water Diversion on Manastah Creek to be used for testing of newly reconstructed headworks and fish screens**

**THIS AUTHORIZATION SHALL IN NO MANNER BE CONSTRUED TO GUARANTEE OR IMPLY THAT A PERMANENT WATER RIGHT WILL ISSUE FOR THE WATER USE HEREIN AUTHORIZED.**

**Background**

On January 11, 2011, Kittitas County Conservation District of Ellensburg, Washington, filed an application to divert water from Manastash Creek to test two newly reconstructed headworks and fish screens from February 1, 2010 through March 31, 2010.

The applicant proposes to temporarily divert a maximum 23.36 cubic feet per second (cfs) from February 1 through March 31, 2011, as applied for in Water Right Application No. S4-33013. The water diverted for this project will be used to test the reconstructed headworks and fish screening facilities on Manastash Creek at the Keach Jensen headworks. The diversion proposes to divert a maximum of 23.36 cfs and is located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 17 N., R. 17 E.W.M., within Kittitas County.

The majority of the diverted water will flow through the Keach/Jenson Ditch to the South Branch Extension canal for the Kititas Reclamation District, and then returned to the Yakima River. A portion of the water may also be diverted down the Keach/Jenson Ditch to the Westside Canal and then returned to the Yakima River.

**Public Notice**

Public notice of the application was published in the Ellensburg Daily Record on January 19, and January 26, 2011. No letters of protest or comments were received during the 30-day protest period.



### **Impairment**

Manastash Creek is a tributary to the Yakima River, all of which are part of the Yakima Basin Adjudication. The requested period of use for this Short Term Authorization is during the non-irrigation season. The probability of impairing senior water rights by diverting water only during the months of February and March is minimal. In addition, there are no points of diversion within the bypass reach. Typically the high flow of Manastash Creek during February and March is at a level that would allow the diversion to take place without being detrimental to aquatic species.

### **Public Interest**

Washington State Department of Fish and Wildlife considers this project beneficial to fish. The goal of rebuilding the headworks and installing fish screening is to improve fish passage and enhance instream flow that will benefit Manastash Creek

### **Conclusions and Decision**

There is water available for the proposed project and can take place on a short term basis without impairing existing water rights, is non-consumptive, and is not contrary to public interest.

### **Provisions**

This Short Term Authorization is subject to the following limitations and provisions:

1. The priority date of this water right is January 11, 2011.
2. The points of diversion will be within the NW¼NE¼ of Section 14, T. 17 N., R. 17 E.W.M., within Kittitas County.
3. The period of use will be March 8, 2011 through March 31, 2011.
4. This authorization will expire March 31, 2011, unless sooner revoked for cause.
5. The diversions shall not exceed 23.36 cubic feet per second.
6. The purpose of use is for testing of the newly constructed headworks and fish screens.
7. The diversion intake shall be tightly screened at all times with wire mesh having openings with dimensions not greater than 0.125 (1/8) inch.
8. The operator of the system under this authorization shall:
  - Be aware of the parameters and provisions and operate accordingly.
  - Have a copy of this Short Term Authorization.
  - Provide said copy of this Short Term Authorization upon request of Department of Ecology staff.
9. Diversion of water under this Short Term Authorization may be limited or otherwise regulated in favor of senior rights.

10. Under RCW 90.03.360, measuring is required for all surface water diversions, and all withdrawals of ground water in fish-critical basins. Whenever water is being diverted, volume of water shall be recorded and maintained by the permittee. These readings shall be documented by time, date, and the person conducting the measurements. Copies of these records shall be submitted to the Department of Ecology by April 30, 2011.
11. The following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit No., source name and maximum instantaneous rate of diversion (cubic feet per second).
12. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.
13. This Short Term Authorization shall in no way excuse the applicant from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.
14. The water source and place of use may not be located entirely upon land owned by the applicant. Therefore, the applicant is advised that issuance of a permit by the Department of Ecology for appropriation of the waters in question does not convey a right of access to, or other right to use, land which the applicant does not legally possess.
15. No water right in perpetuity shall result from this temporary authorization.

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2<sup>nd</sup> Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;

Facts that demonstrate the appellant is entitled to obtain judicial review;  
The appellant's reasons for believing that relief should be granted; and  
A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed**. The appeal must be filed in the same manner as described above.

Sincerely,

*Mark C. Schuppe WR Section Mgr by*  


Mark C. Schuppe, Section Manager  
Water Resources Program/CRO

MCS:EH:gg/110313

Enclosures: Water Measuring Requirements  
Your Right To Be Heard

By Certified Mail: 7007 2560 0001 9535 7500

cc: Philip Rigdon, Director, Natural Resources Division, Yakama Nation