



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

April 21, 2010

WA Dept of Transportation
Attn: Brian White
PO Box 12560
Yakima WA 98909

RE: Temporary Authorization No. S4-35275 – Construction Use

On March 11, 2010, the Washington State Department of Transportation (WSDOT) submitted an application seeking a Temporary Authorization to withdrawal 0.90 cubic feet per second (cfs), 60 acre-feet per year (ac-ft/yr) of water from Keechelus Lake for uses related to highway construction on a portion of Interstate 90 between Milepost 55 and 59. Water will be diverted from Keechelus Lake at multiple sites and used during the 2010 construction season ending October 31, 2010.

This project is located in the Yakima River Watershed. To mitigate the potential impacts of new water appropriations on the Yakima River, WSDOT purchased Acquavella Court Claim No. 00366, and filed an Order Pendente Lite (OPL) with Yakima County Superior Court (Court) requesting to temporarily transfer the claim to trust for instream flows. The Court signed the order as requested on March 11, 2010 for the 2010 irrigation season.

Court Claim No. 00366 was originally confirmed with a priority date of May 24, 1884, by the Court on April of 2006 in its Conditional Final Order for Subbasin No. 9, the Wilson-Naneum drainages. The claim was confirmed for the diversion of 1.75 cfs, and 350 ac-ft/yr from Wilson Creek for the irrigation of 35 acres that are located within that portion of the NE $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M. known as Tax 27 and a portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M., both tracts west of the right of way of the Burlington Northern Railroad.

The Court temporarily transferred Court Claim No. 00366 to instream flows for the purpose of providing mitigation for this Temporary Authorization (S4-35275) for 2010. In the OPL, the Court identified monthly instream water quantities that exceed what WSDOT has requested for use in the 2010 construction season. Ecology will only consider authorizing the lesser quantities identified in WSDOT's application as follows:

	April	May	June	July	August	September	October	Total
Application No. S4-35275	0	5	11	13	14	12	5	60
OPL instream flow quantities	6.45	8.06	20.97	20.97	16.12	19.35	8.06	99.98

Note: WSDOT requested to amend their application to eliminate water use in April and increase August.



The primary use of the water will be for dust control. Construction activities will produce fugitive dust due to wind erosion and by operating construction equipment on exposed earth surfaces. Other uses include embankment compacting, gravel processing, and equipment washing. WSDOT is required to use Best Management Practices (BMPs) that include requiring contractors to:

1. Water all active construction areas as needed to control dust
2. Apply water regularly, or apply nontoxic soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites
3. Use wheel washers to remove mud from construction vehicles prior to exiting the site to reduce the potential emissions from particulate matter
4. Clean road surfaces regularly to reduce re-entrained particulate matter

Public notice of the application was published in the Daily record of Ellensburg, Washington, and in the Northern Kittitas County Tribune of Cle Elum, Washington, on January 28, 2010 and February 4, 2010. No letters of protest or comments were received during the 30-day protest period.

This TEMPORARY AUTHORIZATION is subject to the following conditions:

- 1) Violation of any of the terms and/or conditions of this authorization will result in immediate termination, issuance of Administrative Orders to Cease and Desist, and may also subject the violator to civil penalties.
- 2) The maximum volume of water allowed to be diverted under this Temporary Authorization is 0.90 cfs, 60 ac-ft/yr from April 1, 2010 to October 31, 2010 for the purpose of road construction. This Temporary Authorization will expire on October 31, 2010 – OR - when a Report of Examination for Water Right Application No. S4-35264 is issued, but in no case later than October 31, 2010.
- 3) The Keechelus Lake diversions listed below will consist of one or more upland or floating water pumps in or near the lake. A water tank will be placed upland of the points of diversion for access by water trucks. The intakes will be properly screened to meet Washington Department of Fish and Wildlife requirements for screening (<http://wdfw.wa.gov/hab/engineer/habeng.htm>.) and diffusion outlined in the Hydraulic Project Approval issued to WSDOT on July 7, 2009.

¼ Section	Section	Township	Range
SW	14	22	11
SE	15	22	11
NE, NW, SW, SE	22	22	11
NW, SW	23	22	11
NW, SW, SE	26	22	11
NE, NW, SE	27	22	11
NE	34	22	11
NE, NW, SW, SE	35	22	11

- 4) The place of use exists within the boundary of Interstate 90 construction corridor between MP 55 and MP 59, and also within staging areas located within the US Forest Service boundaries, WA State Parks, and private land listed below:

¼ Section	Section	Township	Range	Site Name
SE	9	22	11	CNL Income Snoqualmie LLC
NE, SE	15	22	11	Gold Creek Area
NW	15	22	11	Hyak--I-90 Interchange
SE	15	22	11	Hyak Maintenance Facility
SE, NE	15, 23	21	12	Crystal Springs Sno Park
SW	14	21	12	Crystal Springs Campground

- 5) **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.** The Department of Ecology assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this Temporary Authorization.
- 6) The applicant and operator of the system under this Temporary Authorization shall:
- Have a copy of this Temporary Authorization available on-site.
 - Be aware of the parameters and provisions and operate accordingly.
- 7) Provide said copy as evidence of this authorization upon request by Ecology staff.
- 8) The applicant will be responsible for metering the water use authorized under this Temporary Authorization. A record of water use shall be submitted to Ecology by January 31, 2010. At a minimum, the following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Authorization No., source name, annual quantity used including units, maximum rate of diversion including units, period of use, monthly meter readings including units, and peak flow including units for each month.
- 9) Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.
- 10) 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, but only to the extent otherwise allowed by law.
- 11) This Temporary Authorization shall in no way excuse the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.
- 12) The water sources and/or water transmission facilities may not be located entirely upon the land owned by the applicant. Therefore, the applicant is advised that issuance of a permit by 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.

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 2nd 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.

If you have further questions or concerns, please call Kelsey Collins, Department of Ecology, Water Resources Program, at 509-575-2640.

Sincerely,



Mark C. Schuppe, Section Manager
Water Resources Program

MCS:KC:gg/100421

Enclosures: Water Measuring Requirements

Certified Mail: 7006 0100 0002 8191 9741

cc: Philip Rigdon, Director, Natural Resources Division, Yakama Nation
Jason Smith, Environmental Manager