STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

August 21, 2009

Painted Summer Hills, LLC
Attn: Burke de Briere, Manager
PO Box 82244
Kenmore, WA 98028-0244

Re: Ground Water Permit No. G4-29196P

Dear Mr. de Briere:

Pursuant to the Order Granting Stay of Proceedings in *Painted Summer Hills, LLC v. Ecology*, PCHB No. 09-006 dated August 3, 2009, the Department of Ecology (Ecology) hereby grants you an extension of the *Proof of Appropriation* (PA) stage of the above-numbered Permit and allows you to put the water to full beneficial use for the reason(s) below:

- Additional time is needed to complete the reconfiguration of the irrigation system and replanting of crop(s) for the irrigation portion of the Permit.
- Local development patterns and rate of growth occurring in rural Douglas County necessitate more time to develop community domestic supply to 12 homes as originally authorized under the Permit.
- The parties to the pending appeal involving the Permit have agreed to postpone resolution of PCHB No. 09-006 until final disposition of *Lummi Indian Nation v. State of Washington*, Supreme Court Case No. 81809-6.

The new deadline to submit your *Proof of Appropriation of Water* is two (2) years after the date by which a final decision is issued in the matter of *Lummi Indian Nation v. State of Washington,* Supreme Court Case No. 81809-6. This extension supersedes the extension dated June 3, 2009.

Thank you for providing the detailed history of the Permit since December 2004. Please note that while Painted Summer Hills (PSH) acquired this Water Right Permit in 2006, the Permit originally issued in 1991 and has already been extended multiple times prior its assignment to PSH. Ecology evaluates and reviews any extension request(s) for a Permit from the date of issuance of the original Permit and not just the date of the most recent assignment.

Ecology's policy on Permit extensions is POL 1050[1]. This policy states that "staff should consider with increased scrutiny extension requests for long-standing permits where several extension requests have already been authorized."

[1] http://www.ecy.wa.gov/programs/wr/rules/images/pdf/pol1050r.pdf.

This Permit and the associated development period is approaching 20 years.

POL 1050 further states:

> "When granting any extension, specific goals may be set and required of the permit holder during the extension period."

Given the numerous extension requests already granted for this Permit, Ecology is conditioning this extension request with the following reporting requirements, which shall be submitted to Ecology one (1) month prior to the *Proof of Appropriation of Water* deadline as described above.

1. A detailed cost summary since the previous extension request on funds spent towards putting water to beneficial use as it relates to development of the project associated with the permit. The summary should differentiate between costs allocated for development of the irrigation and domestic portions of the Permit. For example, costs could be itemized by equipment or seed purchased, materials or equipment purchased or rented, or labor or engineering services contracted or hired.
2. A narrative description and map of the reconfiguration or improvements made to the irrigation system infrastructure (i.e., sprinklers installed, pump revamped, etc.).
3. The breakdown of acres of orchard land cleared, acres prepped for replanting, and existing acres maintained in irrigation from previous years - and the parcel(s) associated with each activity.
4. The type of crop for each irrigated agricultural acre, (i.e., pasture, orchard, other, etc.)
5. Copies of any signed lease agreements or other relevant contracts for development of the water Permit.
6. The number and location of homes or other buildings constructed and served under the Permit.
7. The square footage of new lawn, landscaping and garden planted and existing lawn, landscaping and garden served.

In addition to the conditions set forth in original Permit No. G4-29196P, the following condition shall apply: "An approved measuring device shall be installed and maintained for the domestic water supply well identified by this water right, in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. Water use data shall be recorded on forms to be provided by Ecology. Chapter 173-173 WAC describes the requirements for data accuracy, device installation and operation, and information reporting, as well as opportunities for a water user to petition Ecology for modifications to some of the requirements." Specifically, pursuant to WAC 173-173-060, PSH shall record weekly water use from both the irrigation and domestic wells and report weekly totals annually by January 31 of each calendar year.

You have a right to appeal this decision. To appeal this decision you must:

- File your appeal with the Pollution Control Hearings Board (Board) within thirty (30) days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.

- Serve your appeal on the Department of Ecology within thirty (30) days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your *Notice of Appeal.*
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals & Application for Relief Coordinator
PO Box 47608
Olympia WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals & Application for Relief Coordinator
300 Desmond Dr SE
Lacey WA 98503

3. And send a copy of your appeal to:

Mark C. Schuppe
Department of Ecology
Central Regional Office
15 W. Yakima Ave, Ste 200
Yakima, WA 98902-3452

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, please contact Teresa Mitchell at 509-575-2597.

Sincerely,

Mark C. Schuppe
Acting Section Manager
Water Resources Program

MCS:MD:gh
090805

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

By certified mail: 7007 2560 0001 9534 9895

cc: Sarah Mack, Attorney
Maia Bellon, Assistant Attorney General

PA extension granted.doc