



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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JUL 24 2012

Mr. Robert Hart
Skagit County Drainage & Irrigation District #15
15920 Best Road
Mount Vernon, WA 98273



Your address
is in the
**Lower Skagit-
Samish**
watershed

Dear Mr. Hart:

Re: Your request for a change in point of diversion for the PRELIMINARY and TEMPORARY PERMIT issued on June 18, 2010, under Water Right Application S1-28607

BACKGROUND INFORMATION

On January 6, 2012, the Department of Ecology (Ecology) received an application for change for the **Preliminary and Temporary Permit (S1-28607)** issued to Skagit County Drainage & Irrigation District #15 (District) on June 18, 2010. The District's request is to change their point of diversion to a new downstream location approximately 1400 feet south of the previously authorized point of diversion. The District has an Interlocal Agreement (ILA) with Skagit County Dike District No. 1 for the siting and operation of the diversion intake and pump at this location, within Skagit County parcel #P15292.

The project design was revised to change the pump location because of private landowner concerns with the originally authorized project pump site. No construction had begun at the originally proposed site and no water had been diverted. Completion of construction at the proposed new location is anticipated to occur in the fall of 2012.

The District published notice of the requested change in the La Conner Weekly News on March 28 and April 4, 2012. No protests were received during the 30 day protest period following the second date of publication. However, Ecology did receive a protest letter dated May 15, 2012, from Larry Wasserman, Environmental Policy Manager for the Swinomish Indian Tribal Community (Swinomish). Mr. Wasserman stated Swinomish is opposed to the issuance of the requested change for the following reasons.

1. The utilization of water for out of stream purposes which would be authorized by this



permit may result in reduced instream flows and therefore adversely affect senior water rights, including senior instream flow rights and harm fisheries resources in the Skagit River and the Skagit estuary.

2. This application does not provide a mechanism whereby the Department can be certain that water will not be withdrawn when Skagit River minimum instream flow levels are not being met.
3. Further, because water will be diverted to ditches, it will be impossible for the Department to determine whether the water withdrawn from ditches exceeds the total quantity of water that would be authorized by the permit. Absent this determination, it will be impossible to determine if the total allowable withdrawal limit provided for within the Skagit Rule will be exceeded.
4. In addition, the utilization of water for out of stream purposes that would be authorized by this permit may impair federally reserved Tribal Treaty and/or other senior water rights due to reductions in streamflows associated with the use sought by this application. In order to minimize the risk of action being taken on the basis of a proposed water supply that may later be determined to be unavailable and/or subject to interruption to prevent impairment of senior water rights (including but not limited to federally reserved senior water rights), the application should either be denied or deferred pending adjudication of the Tribe's federal rights.

DEPARTMENT OF ECOLOGY CONSIDERATIONS OF REASONS FOR PROTEST

It is Ecology's duty to investigate, consider, and address all the reasons for protest of an application. Ecology's responses to the Swinomish reasons for protest listed above are as follows.

1. In order to be protective of instream flow rights and fishery resources, the subject (existing) Preliminary and Temporary permit contains the following provisions (in italics):

This authorization is an interruptible supply, subject to the following minimum flows as promulgated in chapter 173-503 WAC.

Instream flows as established at USGS monitoring station 12200500 (Mt. Vernon), at river mile 15.7, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, W.M., as presented in the table below, shall be protected by regulation of diversions. No diversion of water under this authorization shall take place when the stream flow at this station is below the minimum instream flows.

Minimum Instream Flows in the Lower Skagit - WRIA 3
Instantaneous flow in cubic feet per second (cfs)

<i>Month</i>	<i>Day</i>	<i>USGS Monitoring Station 12200500 Skagit River</i>
<i>June</i>	<i>1-30</i>	<i>12,000</i>
<i>July</i>	<i>1-31</i>	<i>10,000</i>
<i>August</i>	<i>1-31</i>	<i>10,000</i>

2. In order to provide a mechanism whereby Ecology can be certain that water will not be diverted when Skagit River minimum instream flow levels are not being met, the subject Preliminary and Temporary permit contains the following provisions:

*The District must submit a written plan to Ecology to ensure this authorization will be used only when minimum instream flows are being met. This plan must contain detailed information on how the "on-off" system will work (i.e., float valve, computer program linked to the USGS real-time data website, manual operation, etc.). In addition, the plan must contain information on how the data will be recorded, and a QA/QC program for guaranteeing data accuracy and maintenance of the system. (*Ecology approved the District's written plan dated November 11, 2011. Swinomish was provided a copy of this plan.)*

Currently, minimum instream flows are not met approximately 30% of time during the months of June, July, and August. The District must employ a method and/or install a device (as detailed in their approved plan) to ensure use of this authorization is only occurring during periods when minimum instream flows are being met. Times and dates of pumping shall be recorded and included in the letter report in table format. Include a column(s) indicating instream flow level at the Mt. Vernon monitoring station at the time pumping begins and ends.

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, diversions, measuring devices, and associated distribution systems for compliance with water law.

*A new provision has been added regarding real time monitoring for compliance (see Ecology's Decision on the next page).

3. In order for Ecology to determine whether or not the District's total diversion limit of state regulated water has been exceeded, the subject Preliminary and Temporary permit contains the following provisions:

An approved measuring device shall be installed and maintained on the source authorized by this authorization in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173.

The District shall submit an annual letter report. This report shall be submitted by January 31st of each year to the Department of Ecology, Water Resources Program, Northwest Regional Office, [detailing] the maximum rate of diversion and the total daily and total annual volume pumped. This information shall be included in the letter report in table format.

4. The District (along with all other junior water right holders) must accept the risk of legal actions being taken by senior water users to prevent impairment of their rights. As such, the subject Preliminary and Temporary permit contains the following provisions:

All expenses, risks, and liabilities incurred during construction, testing, operation, and monitoring of the diversion and delivery system shall be borne by the District.

The granting of this authorization shall not be construed, by inference or otherwise, that the subject application will ultimately be approved.

This authorization to make use of public waters of the state is subject to existing rights, including any existing rights held by the United States for the benefit of Tribes under treaty or settlement. If impairment does occur, the District will be required to diminish or cease pumping, or mitigate for this impairment.

DEPARTMENT OF ECOLOGY DECISION

Your request is in compliance with the terms and conditions of the original authorization to determine the best location for placement of the diversion pump. Therefore, this letter serves as an **APPROVAL of the requested change to the Preliminary Permit** for construction and testing, **and to the Temporary Permit** for operation and monitoring of the District's proposed surface water diversion from the North Fork of the Skagit River.

The authorized point of diversion of this **Preliminary and Temporary Permit** is hereby changed from the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, Township 34 North, Range 3 East, to the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, Township 33 North, Range 3 East. The proposed new point of diversion location is approximately 1,100 feet west and 475 feet south of the NE corner of Section 2.

***New Provision – The District shall install an indicator light in a location visible to the public. This indicator light shall come on when the pump is operating and turn off when the pump has been turned off.**

This letter also serves as a two year extension of time to complete work under the **Preliminary Permit** portion of this authorization. The **Preliminary Permit** portion of this authorization shall now remain in effect through June 18, 2015. All other attributes, terms, conditions, and provisions of the originally issued **Preliminary and Temporary Permit** shall remain in effect as they existed prior to the issuance of this approval.

OPPORTUNITY TO APPEAL

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

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

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

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk P.O. Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board Environmental Hearings Office 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board P.O. Box 40903 Olympia, WA 98504-0903

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Skagit County Drainage & Irrigation District #15
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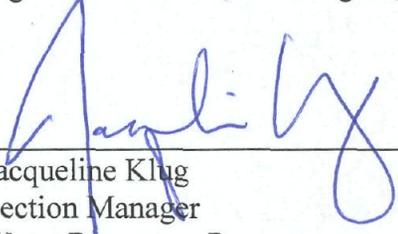
For additional information visit the Environmental Hearings Office Website:

<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:

<http://www1.leg.wa.gov/CodeReviser>

Signed at Bellevue, Washington, this 24th day of July, 2012.



Jacqueline Klug
Section Manager
Water Resources Program

jk/bs/mc

Enclosure: Your Right to be Heard

By certified mail: 7010 3090 0000 1910 2597

cc: Mike Shelby, Western Washington Agricultural Association
Larry Wasserman, Swinomish Indian Tribal Community