

May 23, 2012

Jaspinder & Sharnjit Mann  
976 East Pole Road  
Everson, WA 98247

Dear Jaspinder & Sharnjit Mann:

**Re: APPROVED Protested Seasonal Change Authorization for Surface Water  
Certificate (SWC) 5183, Whatcom County, Water Resources Inventory Area 1**

The Department of Ecology (Ecology) received your application for seasonal change on December 15, 2011. You published a legal notice in the Bellingham Herald on April 2, 2012 and April 9, 2012. The Lummi Nation filed a protest on your application due to the potential for adverse impacts on their rights. No other protests were received.

**BACKGROUND INFORMATION**

The above-referenced certificate authorizes the diversion of 0.24 cubic feet per second (cfs) from Kamm Ditch for the irrigation of 24 acres. This certificate was issued to Norman Beukelman with a priority date of March 10, 1952. The authorized place of use is Whatcom County parcel number 400320495365, located within the E $\frac{1}{2}$  E $\frac{1}{2}$  of Section 20, Township 40 North, Range 3 East. The authorized point of diversion is within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 20, Township 40 North, Range 3 East.

SWC 5183 is currently owned by Howard Top of Lynden, Washington. Mr. Top historically has pumped up to 0.24 cfs from Kamm Ditch to sprinkler irrigate 24 acres of grass within his 34-acre farm property.

You met last fall with Tom Buroker of Ecology's Bellingham Field Office. With Mr. Buroker's technical assistance, and Mr. Top's agreement, you are requesting to add Whatcom County Parcel number 400320540230 to the existing place of use of SWC 5183 for the upcoming 2012 irrigation season. You, with Mr. Top's agreement, are not requesting to increase the authorized total number of irrigated acres. The total allowable number of irrigated acres will remain at 24. Mr. Top has agreed to reduce his number of irrigated acres this season in order to free up water for your use.

In addition, much of Mr. Top's property has been entered into the Conservation Reserve Enhancement Program (CREP), thus reducing his need for irrigation water this season. The entire length of Kamm Ditch within Mr. Top's property is now a riparian buffer zone of native vegetation planted to help protect water quality, stabilize the stream bank, reduce erosion, and create shade to lower water temperature.

You, with Mr. Top's agreement, have also requested to seasonally change the authorized point of diversion from the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 20, Township 40 North, Range 3 East, to the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 20, Township 40 North, Range 3 East. This move is entirely within Mr. Top's property (the certificated place of use). Because of this, there will be no impairment of existing water users.

#### DEPARTMENT OF ECOLOGY DECISION - INCLUDING TERMS & CONDITIONS

Your request for a seasonal change in the place of use and point of diversion for the 2012 irrigation season is hereby **APPROVED** under the terms and conditions listed below.

- You and Mr. Top are authorized to irrigate no more than 24 acres total within parcels 400320495365 and 400320540230, all within the E $\frac{1}{2}$  E $\frac{1}{2}$  of Section 20, Township 40 North, Range 3 East.
- This seasonal change does not authorize an enlargement of water use or total irrigated acres as described in SWC 5183. Irrigation of any lands removed from irrigation within the original place of use will constitute an enlargement of the right and will result in immediate cancellation of this authorization.
- The point of diversion from Kamm Ditch shall be located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 20, Township 40 North, Range 3 East.
- The authorized instantaneous rate cannot be exceeded at any time. The rate of diversion shall not exceed 0.24 cubic feet per second. You are required to coordinate with Mr. Top to ensure compliance with this condition.
- An approved measuring device shall be installed and maintained on the authorized point of diversion in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173. In order to ensure compliance with the terms of this authorization, water use data shall be recorded weekly and shall be promptly submitted to Ecology upon request.
- WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document titled "Water Measurement Device Installation and Operation Requirements". See <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>
- This seasonal change is subject to existing rights, including any rights held by the United States for the benefit of tribes under treaty or settlement. By ensuring no enlargement of the rate of water use or the number of irrigated acres, this seasonal change authorization should have no greater impact on tribal rights than the original authorization.
- If it can be shown that water use authorized by this seasonal change is causing impairment of existing rights or is being used illegally, then this authorization will be immediately canceled.

- This seasonal change does not convey a right of access to, or other right to use land, which you do not legally possess. Obtainment of such a right is a private matter between you and the owner of the land.
- This seasonal change shall be in effect through October 1, 2012 (unless canceled sooner); at which time the subject right will revert back to the original attributes described in SWC 5183.
- Violation of any of the terms and conditions of this seasonal change will result in this authorization being immediately canceled, issuance of administrative orders to cease and desist, and may also subject the violator to civil penalties.
- The Department of Ecology may field verify this seasonal change at any time for compliance with the terms and conditions of this authorization.

If you have any questions or concerns regarding this authorization, please call Tom Buroker at (360) 715-5223 or Buck Smith at (425) 649-7147.

#### 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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*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 \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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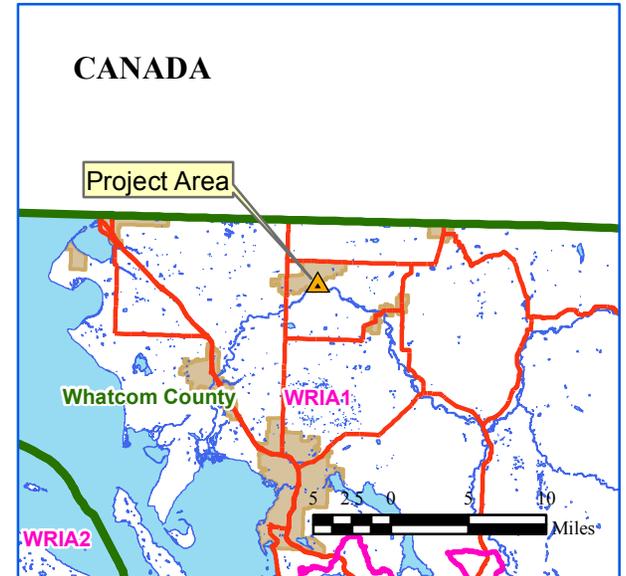
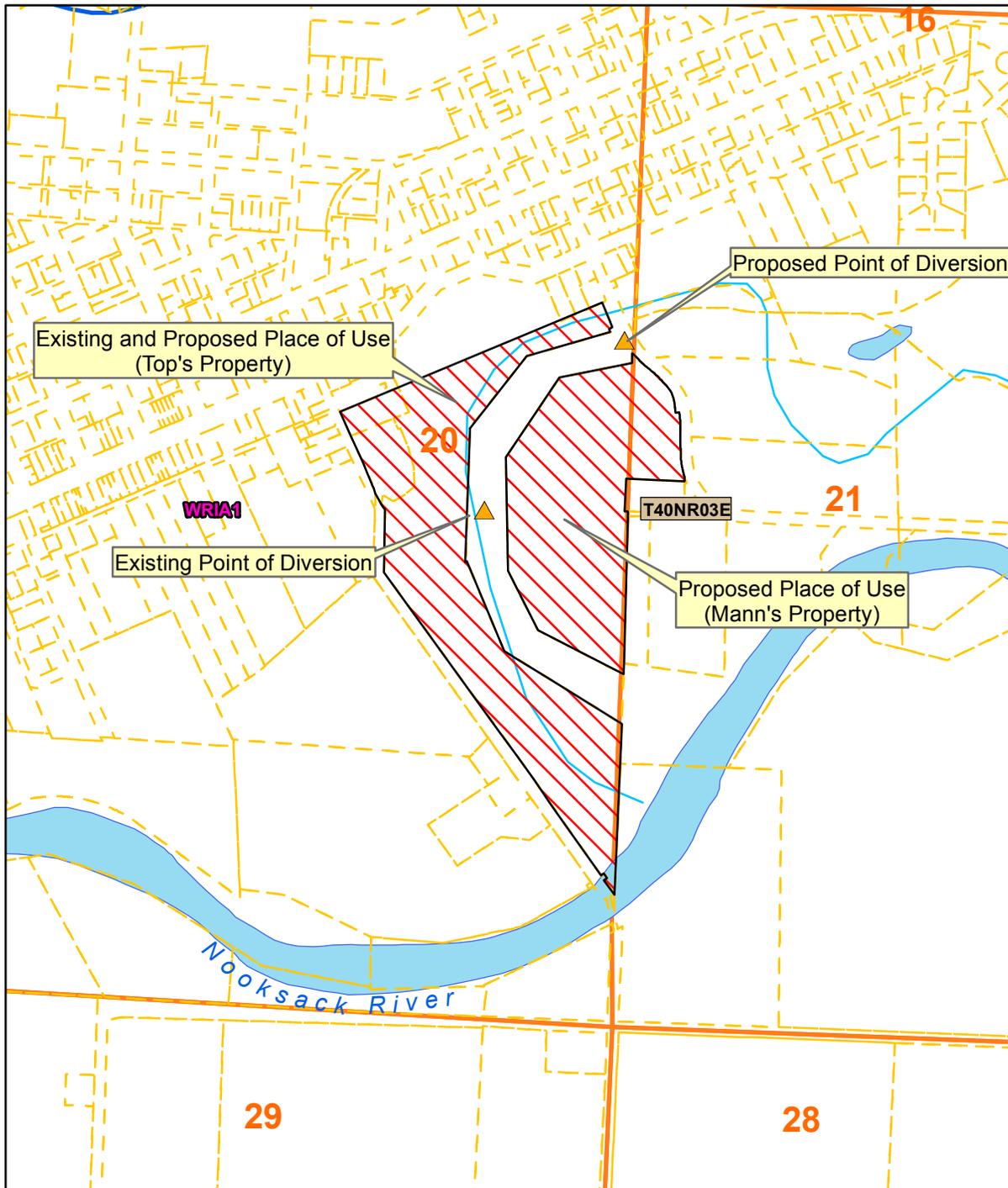
Jacqueline Klug  
Section Manager  
Water Resources Program  
Northwest Regional Office

JK:bs:ng

Attachment (map)  
Enclosure

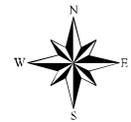
Certified Mail [7010 3090 0000 1910 1965]

cc: Howard Top  
Lesa Starkenburg-Kroontje  
Leroy Deardorff, Lummi Indian Business Council



**Legend**

-  WRIA
-  Highways
-  Townships
-  Sections
-  cities
-  Parcels2007
-  Major Water Bodies
-  Marsh/wetland
-  Authorized Point of Diversion
-  Certificated Place of Use



Place of use and point(s) of diversion/withdrawal are as defined on the cover sheet under the headings, 'LOCATION OF DIVERSION/WITHDRAWAL' and 'LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'

