



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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JUL 20 2015

Jeff & Rodney DeJong  
Eaglemill Farms  
1364 Abbot Road  
Lynden, WA 98264

Dear Jeff & Rodney DeJong:

RE: APPROVED Drought Seasonal Change Authorization for Surface Water Certificate (SWC) 11456, Whatcom County, Water Resources Inventory Area 1

In accordance with the provisions of RCW 43.83B.405, on May 21, 2015, it was determined and ordered by Director Maia Bellon of the Department of Ecology (Ecology) and Governor Jay Inslee that the entire State of Washington is under drought conditions. In accordance with the provisions of WAC 173-166-080, the Department of Ecology is, under the terms of this Order, issuing a **DROUGHT SEASONAL CHANGE AUTHORIZATION** for SWC 11456. The intent of this Authorization is to reduce your hardship from the current drought conditions.

**THIS AUTHORIZATION SHALL IN NO MANNER BE CONSTRUED TO GUARANTEE OR IMPLY THAT A FINAL (REGULAR) CHANGE AUTHORIZATION WILL ISSUE FOR THE FUTURE USE OF THE WATER HEREIN AUTHORIZED.**

Ecology received your application for a drought seasonal change on July 16, 2015. The subject drought change application was assigned control number **CS1-\*14333AWC**. Please refer to this number when corresponding with us about this Authorization.

BACKGROUND INFORMATION

SWC 11456 authorizes the diversion of 1.24 cubic feet per second (cfs), 220 acre-feet per year (AFY), from an unnamed stream, an unnamed slough, and the Nooksack River, each year, from June 1<sup>st</sup> to August 31<sup>st</sup>, for the irrigation of 124 acres. The certificate was issued to William Scholten, Jr. with a priority date of May 16, 1957.

The authorized place of use (POU) is in Section 6, Township 39 North, Range 4 East, Willamette Meridian: that part of the North quarter lying Westerly of the Nooksack River, LESS the North 660 feet of the West 660 feet thereof; AND that part of the North 845 feet of the South half of



the Northwest quarter lying westerly of an unnamed slough of the Nooksack River; ALL LESS rights of way.

The authorized points of diversions (PODs) are described as within the North three-quarters of the Northwest quarter and the Northwest quarter of the Northeast quarter of Section 6, Township 39 North, Range 4 East, Willamette Meridian.

The authorized place of use for SWC 11456 is also known as parcel 3904061284350000. The parcel ownership is shared by multiple members of the Fekkes and Juergens families. The owners are Shirley Fekkes (55%), John Fekkes (15%), Gerald & Gertie Juergens (15%), and Sidney Fekkes(15%). Based on Whatcom County Auditor's records, Fred Fekkes & Shirley Fekkes and Gerald Juergens & Gertie Juergens purchased the appurtenant property from William K Scholten in 1986. Then, in 1994, both couples gifted part of their shared ownership to other members of the Fekkes Family. Based on aerial photography from 1998-2013, this parcel has been part of an actively irrigated farm. It appears that as much as 124 acres may have been irrigated. The subject parcel will not be irrigated this season.

Under the subject application, you are requesting to change SWC 11456 to down-gradient parcels you (Eaglemill) farm. The requested changes are as follows:

- To change the point of diversion to a location on the Nooksack River, within the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 27, Township 40 N, Range 3E, in Parcel 400327135610000
- To irrigate approximately 124 acres
- To change the place of use to:
  - The S  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of Section 27, LESS the N 231 ft of the W 376 ft of said subdivision, AND ALSO LESS the N 60 ft of the E 379 ft of the W 755 ft of said subdivision, AND ALSO LESS the S 761 ft of the W 1005 ft of said subdivision.
  - The W  $\frac{1}{2}$  of the SE  $\frac{1}{4}$  of Section 27, LESS the N 458 ft of the W 859 ft of the E 1030 ft of said subdivision, AND ALSO LESS the N 637 ft of the W 329 ft of said subdivision.
  - The NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 28.
  - The W  $\frac{1}{2}$  of the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 28.
  - The South 485 ft of the SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 28.

All in Township 40 N, Range 3 E, W.M., in Whatcom County, Washington, LESS easements and roads (*portions of parcels 4003272053000000, 4003271353610000, 4003273381390000, 4003273800880000, 4003272811050000, 4003281603500000, and 4003280682850000*).

On January 8, 2015, Andy Dunn, Jim Bucknell, and Adam Neff of RH2 Engineering, and Kasey Cykler of the Department of Ecology conducted a site visit on your proposed place of use and met with Jeff DeJong for a new surface water application you had filed, S1-28783. The point of diversion identified in that application and during that investigation is the same as the diversion you are requesting to use in this subject application. The details of the point of diversion and the irrigation system are taken from S1-28783's Report of Examination (ROE):

“The farm currently has 8-inch and 6-inch diameter buried mainline with 6-inch rises across the proposed place of use. This line is used for irrigation and for land application of nutrients from the dairy. Irrigation is accomplished using two traveling big gun sprinkler systems that he [Jeff] plans to operate simultaneously.”

Jeff indicated during the site visit that the crops to be irrigated are grass and corn. The ROE indicates that the proposed works do not include any storage.

The requested point of diversion is located downstream of the certificated point of diversion, so there will be no impairment of existing water users. The subject certificate pre-dates WAC-173-501, so minimum instream flows will not be impaired.

#### **DEPARTMENT OF ECOLOGY DECISION – INCLUDING TERMS AND CONDITIONS**

Your request for a drought seasonal change in the place of use and point of diversion for the 2015 irrigation season is hereby **APPROVED** under the terms and conditions listed below.

- This drought seasonal change does not authorize an enlargement of water use or total irrigated acres as described in SWC 11456.
- The certificated (original) point of diversion shall not be used during the 2015 irrigation season.
- The certificated instantaneous rate (1.24 cfs, or 556.55 gpm) cannot be exceeded at any time.
- The total volume used under this Authorization shall not exceed 220 acre-feet.
- 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 drought 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 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.
- 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.
- 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, point of diversion, measuring device, and associated distribution systems for compliance with water law.
- The diversion intake shall be screened in accordance with Washington Department of Fish and Wildlife screening criteria. See: <http://wdfw.wa.gov/about/contact/>
- This drought seasonal change shall be in effect through August 31, 2015 (unless canceled sooner); at which time the subject right will revert back to the original attributes described in SWC 11456.

If you have any questions or concerns regarding this Authorization, please contact Kellie Arthur at [kellie.arthur@ecy.wa.gov](mailto:kellie.arthur@ecy.wa.gov) or (425) 649-7186.

#### 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

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 20<sup>th</sup> day of July, 2015.



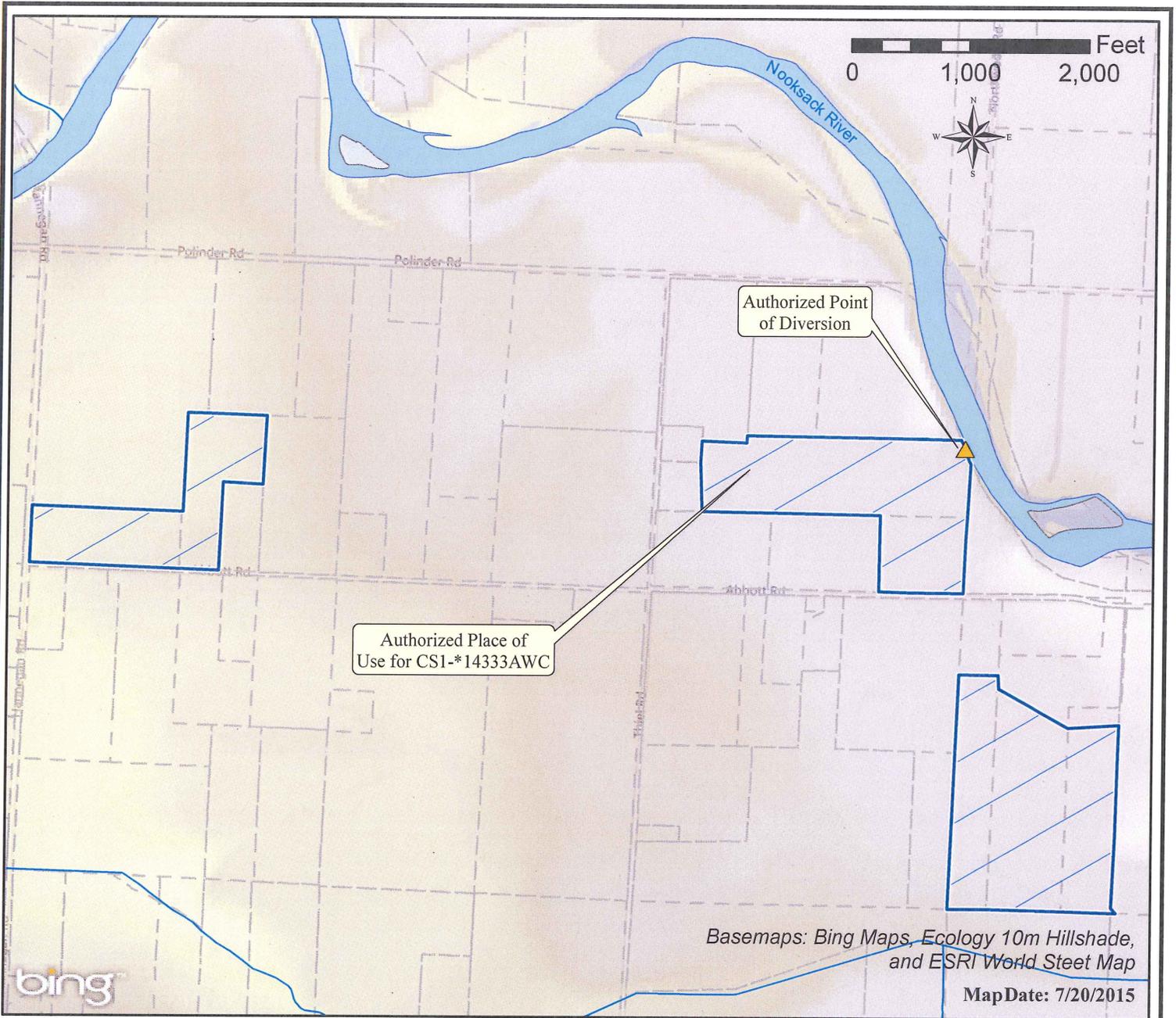
Thomas Buroker  
Section Manager  
Water Resources Program

tb:ka:mc

Enclosure: Your Right to be Heard

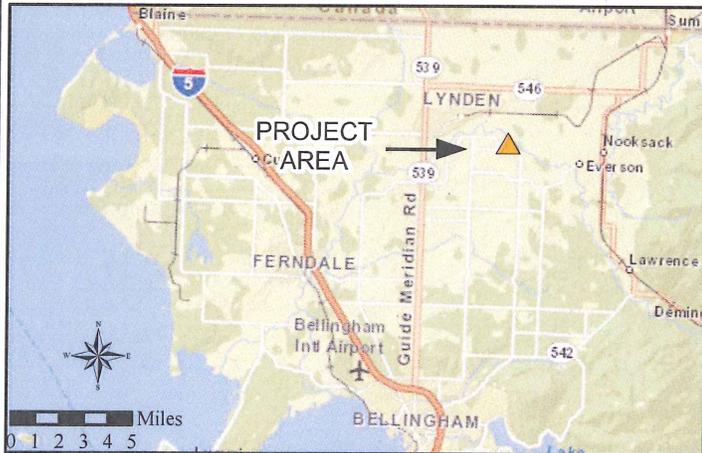
By Certified Mail: 9171 9690 0935 0088 4619 29

# ATTACHMENT 1



Basemaps: Bing Maps, Ecology 10m Hillshade, and ESRI World Street Map

MapDate: 7/20/2015



## Legend

-  Authorized Place of Use
-  Water Body
-  Authorized Point of Diversion
-  Whatcom County Parcels



Eagle Mill Farms  
 Water Right CS1-\*14333AWC  
 Section 27 T 40N R 03E W.M.  
 WRIA 1 - Whatcom County

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