



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

September 29, 2009

Joe Bretz/dba JBS Enterprises
PO Box 51
1 D Hwy 7
Tonasket WA 98855

Re: Water Right Application No. S4-35259 – Temporary Surface Water Diversion on Bonaparte Creek to be Used for Dust Abatement

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.

Background

On August 25, 2009, Joe Bretz of JBS Enterprises filed an application to divert water from Bonaparte Creek for dust abatement from September 30, 2009, through October 31, 2009.

The applicant proposes to divert water at a maximum of 300 gallons per minute (0.67 cubic feet per second) into a 3,500 gallon tanker truck to use for dust abatement for an annual barter and family fair. The water will be used on Cayuse Mountain road leading up to the grounds, and along walkways within the event. It is projected there will be a need for use of a maximum of four truck loads of water per day (14,000 gallons) during the initial preparation of the event which could taper off to approximately two truck loads of water per day (7,000 gallons). The use of water will aid in greatly improving the air quality before, during, and after the event.

The point of diversion will be located within NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 37 N., R. 29 E.W.M., Okanogan County, Parcel No. 3729310006.

The place of use will be located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T. 37 N., R. 29 E.W.M., Okanogan County, Parcel Nos. 3729300013 and 3729300014; the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T. 37 N., R. 28 E.W.M., Okanogan County, Parcel No. 3728251005; AND the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 37 N., R. 28 E.W.M., Okanogan County, Parcel No. 3728242002.

Impairment

Bonaparte Creek was adjudicated in the late 1970's with 34 different classes of Water Right Certificates issuing in 1980. The period of use for those certificates is May 1 to October 31 each year. This year, the watermaster has needed to regulate junior water users in favor of senior water users in the greater Okanogan River Watershed, which suggests water may not be available even for a small use such as dust abatement on a temporary basis. In any case, such an authorization would be junior to all classes of water right in the Bonaparte Creek Adjudication.



Conclusions and Decision

It is anticipated the proposed small intermittent diversion can take place on a temporary basis without impairing existing water rights.

This Short Term Authorization is subject to the following limitations and provisions:

1. This authorization is subject to all down stream water rights being satisfied.
2. The point of diversion will be from Bonaparte Creek located within NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 37 N., R. 29 E.W.M., Okanogan County, Parcel No. 3729310006.
3. The place of use is located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T. 37 N., R. 29 E.W.M., Okanogan County Parcel Nos. 3729300013 and 3729300014; the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T. 37 N., R. 28 E.W.M., Okanogan County, Parcel No. 3728251005; AND the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 37 N., R. 28 E.W.M., Okanogan County, Parcel No. 3728242002.
4. The period of use will be September 30, 2009 through October 31, 2009.
5. The diversion shall not exceed 0.67 cubic feet per second (300 gallons per minute). Water to the road and event grounds will be distributed using a water truck. The volume of water allowed is 1.0 acre-foot per year.
6. The diversion intake shall be tightly screened at all times with wire mesh having openings with dimensions not greater than 0.125 (1/8) inch. The approach velocity of the water is to be no greater than 0.40 feet per second.
7. The operator of the system under this authorization shall:
 - Be aware of the parameters and provisions and operate accordingly.
 - Have a copy of this Temporary Change Authorization.
 - Provide said copy of this authorization upon request of Department of Ecology staff.

Provisions

The following provisions shall apply to this change authorization:

1. Under RCW 90.03.360, measuring is required for all surface water diversions, and all withdrawals of ground water in fish-critical basins. Whenever water is being diverted, volume of water shall be recorded and maintained by the permittee. These readings shall be documented by time, date, number of truck loads, and the person conducting the measurements. Copies of these records shall be submitted to the Department of Ecology by January 2010.
2. The following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit No., source name, annual quantity used (acre-feet) and maximum instantaneous rate of diversion (cubic feet per second).

3. Department of 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.

Diversion of water under this temporary authorization may be limited or otherwise regulated in favor of senior rights.

4. This Short Term Authorization shall in no way excuse the applicant from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.
5. The water source may not be located entirely upon land owned by the applicant. Therefore, the applicant is advised that issuance of a permit by the Department of 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.
6. This project falls within the Instream Resources Protection Plan for Okanogan River basin and will be subject to minimum flows taken from Chapter 173-549 WAC adopted in Olympia, Washington, August 14, 1976, and revised effective July 19, 1984.
7. Your water right permit or certificate is subject to minimum flows established for the Okanogan River at the Tonasket Gauging Station (and any reaches further downstream). The Okanogan River flow has already been below the adopted minimum flows this season.
8. You must call the River Flow Information Line any day you intend to divert water. The recorded message will advise you of the actual river flow, the minimum flow, whether or not your river reach is open or closed for water diversion, and when the message will be updated next. The recorded message will modify this Order on a daily basis, if appropriate. The Toll-Free number is **1-866-277-4092**. If you do not have access to a touch tone phone, you must call the Central Regional Office at (509) 575-2490 to request the latest information.
9. This Order will remain in effect for the duration of your Short Term Authorization. You may divert or withdraw water under only when advised by the River Flow Information Line that the actual river flows for your reach of the Okanogan River and downstream reaches are above the adopted minimum flows. It is your responsibility to call each day before pumping to determine that your reach of the river and downstream reaches are above the minimum flows. If you have any questions about the daily messages, contact the Department of Ecology at (509) 575-2490 for clarification.

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

- File your appeal with the Pollution Control Hearing Board within 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 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:

OR

Deliver your appeal in person to:

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

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:

OR

Deliver your appeal in person to:

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

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

3. And send a copy of your appeal packet to:

Mark C. Schuppe, Section Manager
Water Resources Program, Dept. of Ecology
Central Region 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>

Sincerely,

*Mark C. Schuppe, WR Section Manager by
Thomas L. Marcus*
Mark C. Schuppe, Section Manager
Water Resources Program

MCS:EH:gg/090929

Enclosures: Water Measuring Requirements
Your Right To Be Heard

Certified Mail: 707 2560 0001 9534 6368

cc: Lois Trevino, Water Administrator, Office of Environmental Trust, Colville Confederated Tribes
Susan Burgdorff-Beery, Water Resources Program, Department of Ecology (email)
John Sullivan