



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

January 26, 2011

McBride Hereford Ranches, Inc.
Attn: Carol McBride or Gary Hess
1350 Hale Road
Mabton WA 98935

Re: Surface Water Superseding Permit No. S4-30053(B)P

Dear Ms. McBride or Mr. Hess:

This letter relates to the last correspondence from the Department of Ecology (dated December 30, 2008), and the most recent extension request received April 12, 2007 (copy enclosed). Ecology's letter requested the following:

- A written description of the progress that has been made toward fulfilling the requirements of the Permit since April of 2007.
- A detailed plan of how the distribution system will be modified to only allow for the irrigation of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27, T. 5 N., R. 23 E.W.M., since it appears the water delivery is made there (center of pivot).
- A copy of any written agreement between McBride Hereford Ranches Inc. and the Carma Irrigation District to complete the distribution system to serve this Permit. The timeline for completion was also requested.

The original Permit was issued in 1992. You acquired a portion of the authorization and a Superseding Permit was issued for your portion in 1996 and the Development Schedule required that the Completion of Construction stage be completed by December 1, 1996, and water was to be put to full beneficial use by December 1, 1997. Ecology heard nothing until 2000 when you requested an extension of time to complete the production of the remaining 29 acres. Your extension was granted to Complete Construction by December 1, 2004.

To date, your circumstances have gone unchanged. The lack of expansion since 1996 when you acquired the partially developed Permit does not satisfy the due diligence requirement of permitted projects. The Pollution Control Hearings Board (PCHB) has asserted in past rulings that the lack of funds to develop is not sufficient reason for failure to meet the Development Schedule. In the last extension request, you indicated that Carma Irrigation District, which operates the source pumps, is unable to deliver additional water and there is no evidence this situation is likely to change.



Another observation noted is that it appears that approximately 22 acres of the authorized 80 acres (of the 51 developed acres) under Superseding Permit No. S4-30053(B)P actually lies outside of the authorized place of use. Enclosed is a July 2009 satellite image with the parcels owned by you outlined in yellow and the permitted POU outlined in red. In order to align this Permit into compliance, a change application must be filed with either the Klickitat or Benton County Conservancy Board (information enclosed). This process should begin immediately.

Therefore, in response to your request, you are hereby **denied** an extension of time to further increase the acres being irrigated.

As evidenced by the history of this file, the progress of this Superseding Permit has been unreasonably slow and due diligence has not been shown. Although Ecology has previously granted extensions, there is no evidence to support that any progress has been made since 1996. The long delay in perfecting irrigation is contrary to the public interest. The State Water Code does not allow the reservation of water for use at an unspecified time in the future. As such, due to the ongoing lack of development of irrigable acreage, Ecology cannot conclude that the development of the permitted project is being pursued with good faith and due diligence.

Upon complete beneficial use of the water in agreement with the terms of the Permit or for any lesser amount, a Proof of Appropriation (PA) form is appropriate for you to submit.

If you wish to keep active the portion of the project that is complete, approximately 51 acres, **and to avoid cancellation of the Permit, a Proof of Appropriation notice must be submitted to Ecology within sixty days (60) of the date of this letter.** The quantity of water required by the project that has currently been put to beneficial use must be identified. A Proof of Appropriation inspection will then be conducted. Elements of the proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions. The Certificate to follow will reflect the extent of the project perfected within the limitations of the Superseding Permit.

YOUR RIGHT TO APPEAL

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

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

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

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503</p> <p>Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater WA 98501</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608</p> <p>Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903</p>

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
Section Manager
Water Resources Program

MCS:CLG:gh
110152

Enclosures: *Proof of Appropriation*
Your Right to Be Heard
Extension request dated 4/12/07 (copy)
Ecology correspondence dated 12/30/08 (copy)
2009 aerial satellite photo
Application for Change/Transfer of Water Right
Conservancy Board Contact List and Fees

By certified mail: 7007 2560 0001 7674 1755

CC extension denied.doc