



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

August 18, 2011

Emil and Helen Dorais  
8711 Postma Road  
Moxee WA 98936

Re: Ground Water Permit No. G4-27928P

Dear Mr. and Mrs. Dorais:

We apologize for the delayed response to your letter dated August 27, 2008, (copy enclosed).

On September 2, 2008, the Department of Ecology (Ecology) received a request to extend the above Permit in the *Proof of Appropriation of Water* (PA) stage. The Permit identifies that the system's water right parameters are up to 50 gallons per minute (gpm), 5 acre-feet per year (af/yr) for community domestic supply for up to 5 units with irrigation from Roza Irrigation District for 1 lot and irrigation from Selah-Moxee Irrigation District (SMID) for the remaining four lots.

Permit No. G4-27928P was issued April 7, 1983. A Permit contains a development schedule to ensure that due diligence and reasonable progress is made in putting water to use. The Permit development schedule was set by the Permit to begin construction by April 1, 1984, complete construction by April 1, 1985, and put the water to beneficial use by April 1, 1986. A permit holder is required under RCW 90.03.320 to pursue the construction of a project with due diligence. Since the issuance of the Permit, you have requested and received several extensions, allowing additional time to complete your project.

In response to your request, you are hereby **denied** an extension of time to put the water to full beneficial use. As evidenced by the exceptionally long history of this file, the progress of this project has been unreasonably slow and the delay is contrary to the public interest and is unlikely to change. Although Ecology has previously granted numerous extensions, there is little evidence to support that due diligence toward the completion of this project is near. 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 Lots 1 and 2, Ecology cannot conclude that the development of the project is being pursued with good faith and due diligence.

There have been several Pollution Control Hearing Board cases in which they ruled on criteria for granting extensions of time to develop under a Permit.



The following examples are Ecology's reasons for denying the extension:

- Desire for extension in order to seek to transfer undeveloped Permit to land which might be offered for sale in future does not establish "good cause" for extension as per *Gwyn Farms v. Ecology*, Pollution Control Hearing Board No. 78-159 (1978).
- Extension for circumstances where construction is indefinitely undetermined would be against the public interest involved in prohibiting reservation of water for speculative future use as per *Goldy v. Ecology*, Pollution Control Board No. 938 (1976).
- Speculation of future use is not considered due diligence and cannot be considered in Ecology's assessment whether to approve or deny your extension request.

As stated above, the retention of a Permit for speculative sale and the lack of due diligence and commitment to put the water to full beneficial use does not meet the statutory criteria. **A Proof of Appropriation of Water (PA) notice must be submitted to Ecology within sixty (60) days of this letter to avoid cancellation of the Permit.** The quantity of water required by the project that has currently been put to beneficial use must be identified on the PA form you submit. A PA 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.

For your information, there is one exemption to the requirement for a ground water right permit. The permit exemption allows users of small quantities of ground water to construct wells and develop their water supplies without a water right permit. It appears you do not necessarily need this permit if each lot has its own well and irrigation water is provided by ROZA or SMID. I have enclosed a focus sheet about the Ground Water Permit Exemption.

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



Robert F. Barwin  
Acting Section Manager  
Water Resources Program

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Enclosure(s): *Proof of Appropriation of Water form*  
*Your Right to Be Heard*  
*The Ground Water Permit Exemption Focus Sheet*  
*Letter dated August 27, 2008*

By certified mail: 7007 2560 0001 9534 9819

Cc: Mr. Patrick Andreotti, Attorney at Law