COPY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

August 12, 2005

Mr. Robert Harrison
P.O. Box 564
Chewelah, Washington 99109-0564

Dear Mr. Harrison:

Re: Emergency Drought Change/Transfer under Chewelah Creek Adjudicated Certificate No. 77 with Certificate of Change 1-3-175 and No. 71 with Certificate of Change 1-3-174 (WRIA 59- Stevens County)

Your requests for an Emergency Drought Change/Transfer for the 2005 irrigation season under RCW 43.83B.410 has been received and is granted conditionally as follows:

Background:

Robert Harrison owns a portion of Chewelah Creek Adjudicated Surface Water Certificate No. 77 with Certificate of Change 1-3-175 and all of Chewelah Creek Adjudicated Surface Water Certificate No. 71 with Certificate of Change 1-3-174.

Mr. Harrison's portion of Adjudicated Certificate No. 77 with Certificate of Change 1-3-175 authorizes .60 cubic feet per second, 157.6 acre-feet per year for the irrigation of 49 acres from April 15, to September 15, each year. The place of use is within NW¼SW¼, less the south 275 feet, and that part of the SW¼NW¼, lying south of County Road, Sec. 2, T. 32 N., R. 40 E.W.M. The point of diversion is located in the NW¼NE¼SW¼ of Sec. 2, T. 32 N., R. 40 E.W.M.

Adjudicated Certificate No. 71 with Certificate of Change 1-3-174 authorizes .15 cubic feet per second, 28.9 acre-feet per year for the irrigation of 9 acres from April 15 to September 15, each year. The place of use is that part of the NW¼SW¼, lying south of County Road and the NW¼SW¼, less the south 275 feet; All in Sec. 2, T. 32 N., R. 40 E.W.M. The point of diversion is located in the NW¼NE¼SW¼ of Sec. 2, T. 32 N., R. 40 E.W.M.

Drought conditions have been declared statewide. The dry conditions may require the department to regulate state issued water rights in the Colville River Basin which have been conditioned with low flow provisions.

The applicant proposes to change/transfer .75 cubic feet per second to a downstream water right holder who holds a water right that is subject to instream flows on the Colville River. Owen Pullen operates a tree farm in and around the Town of Chewelah.

Mr. Pullen owns Surface Water Certificate No. S3-00846C that authorizes the diversion of 1.11 cubic feet per second, 268 acre-feet per year for the irrigation of 100 acres from May 15 to September 15, each year. The place of use is located in Government Lots 3 and 4, except the east 660 feet of the N½ of Government Lot 3; The west 100 feet of the SE¼SW¼ of Sec. 31, T. 32 N., R. 40 E.W.M., less right of way. The authorized point of diversion is located 1400 feet north and 1950 feet east from the southwest corner of Sec. 31, T. 33 N., R. 40 E.W.M. This certificate is provisioned with a low flow on the Colville River.

Under low flow conditions Certificate S3-00846C is regulated off, therefore the water right is not adequate to cover the seasonal irrigation of the tree farm project. The applicant proposes to change/transfer his water rights to the existing facilities owned and operated by Owen Pullen to cover the regulated certificate. This emergency drought change/transfer is issued to prevent loss of recently planted seedling trees.

Temporary drought changes/transfers may be authorized RCW 43.83B.410 if the following conditions are met;

- The waters proposed for withdrawal are to be used for a beneficial use involving a previously established activity or purpose;
- The previously established activity or purpose was furnished water through rights applicable to the use of a public body of water that cannot be exercised due to the lack of water arising from natural drought conditions; and
- The proposed withdrawal will not reduce flows or levels below essential minimums necessary (A) to assure the maintenance of fisheries requirements, and (B) to protect federal and state interests including, among others, power generation, navigation, and existing water rights.

Decision:

In the event that the department is required to regulate S3-00846C this authorization will be in effect until September 15, 2005. You are authorized to divert .75 cubic feet per second, 52 acre-feet for the irrigation of 58 acres from a pump facility located 1400 feet north and 1950 feet east from the southwest corner of Sec. 31, T. 33 N., R. 40 E.W.M., Stevens County. The place of use shall be in Government Lots 3 and 4, except the east 660 feet of the N½ of Government Lot 3; The west 100 feet of the SE¼SW¼ of Sec. 31, T. 32 N., R. 40 E.W.M., less right of way.

The authorized place of use under Chewelah Creek Adjudicated Certificate No. 77 with Certificate of Change 1-3-175 and Chewelah Creek Adjudicated Certificate No. 71 with Certificate of Change 1-3-174 shall not be irrigated during this temporary change/transfer authorization.

The total quantity of water to be withdrawn under this temporary drought change/transfer authorization shall not exceed .75 cubic feet per second, 52 acre-feet for the irrigation of 58 acres.

The diversion used under this temporary drought authorization shall be metered for instantaneous and for cumulative quantities. With proper consent, Ecology officials shall have right of access to the meter(s) at all times. In the event the meter(s) or measuring device(s) should become damaged or inoperable, all diversion of water under this authorization should cease until such time as the meter or measuring device is restored to proper working order.

You are advised that the issuance of this drought change/transfer by the Department 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 the applicant and the owner of the land.

The Department assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this drought change/transfer authorization. Applicants for temporary drought changes/transfers should not construe that an emergency drought authorization will result in the granting of a permanent change/transfer of a water right.

Violation of any of the terms and/or conditions of this temporary drought change/transfer will result in this authorization being immediately terminated, issuance of administrative orders to Cease and Desist, and may also subject the violator to civil penalties.

The Department may field-verify this drought change/transfer at any time for compliance with the terms and/or conditions of this authorization.

Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances or regulations.

This decision may be appealed pursuant to RCW Chapter 43.21B. Any person wishing to appeal this decision must file an appeal with the Pollution Control Hearings Board **within thirty-(30) days of receipt of this decision**. Send the appeal to Pollution Control Hearings Board, P.O. Box 40903, Olympia, Washington 98504-0903. At the same time, a copy of the appeal **must** be sent to Department of Ecology, Water Resources Appeals Coordinator, P.O. Box 47600, Olympia, Washington 98504-7600.

Sincerely,

Keith L. Stoffel
Section Supervisor
Water Resource Program

KLS:hs/kla
w: misc letters/2005/Harrison59 ltr 08 12 2005

cc: Quartzite Mountain Nursery
Owen Pullen
P.O. Box 897, Chewelah, WA 99109-0897