



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Central Region Office

1250 West Alder St., Union Gap, WA 98903-0009 • 509-575-2490

SENT VIA EMAIL

May 6, 2022

Ryan Clark
1571 Nile Rd.
Naches, WA 98937
rpclark99@gmail.com

RE: 2022 Seasonal Change Authorization for CS4-83449-J@3

Dear Ryan Clark:

Background

On August 12, 2019 The Department of Ecology (Ecology) received a complaint that Yakima County Parcel No. 15150313404, located at 1571 Nile Road, Naches, Washington was irrigating without a water right. Ecology staff confirmed the information by observation from the road. Ecology enforcement staff then contacted Ryan Clark by telephone on August 29, 2019. A follow up letter was sent by Ecology in accordance with the Revised Code of Washington (RCW) 90.03.605. The applicant, Ryan Clark, was offered multiple options on how to become compliant with RCW 90.03. Ryan Clark contacted Wes Gibbons to transfer a portion, 0.08 cfs and 3 ac-ft, of Gibbons' water right to his property. Wes Gibbons irrigates 9.87 acres under S4-83449-J, receiving water from the Nile Ditch Association's ditch, with a priority date of August 26, 1889.

On May 5, 2020, Ryan Clark submitted an application to temporarily add a Point of Diversion (POD) and temporarily add to the existing place of use (POU) under Certificate Number S4-83449-J. Ecology processed the 2020 seasonal change request granting Ryan Clark 0.852 acre-feet at a maximum diversionary rate of 0.08 CFS.

On March 17, 2021, Ecology received an application to temporarily add a POD and temporarily add to the existing POU under certificate Number S4-83449-J. Ecology processed the 2021 seasonal change request granting Ryan Clark a maximum of 7.8 acre-feet at a maximum diversionary rate of 0.08 cfs.

On February 17, 2022 Ryan Clark submitted an application to temporarily add a POD and temporarily add to the existing POU under Certificate Number S4-83449-J. The attributes requested in the seasonal change application are provided in Table 1 (below).

Table 1: 2022 Seasonal Use

	Original	2022 Seasonal Use
Water Right File No.	S4-83449-J, Court Claim No. 01397	CS4-83449-J@3
Source	Naches River	Pond in continuity with Naches River
Purpose	Irrigation of 48.32 acres and Stockwater (Wes Gibbons' Portion: Irrigation of 9.87 acres and stockwater)	Irrigation of 3 acres.
Period of Use	April 15 to October 15	Date of this Authorization to October 15, 2022
Wes Gibbons Diversion Quantities	1.60456 cubic feet per second (cfs), 290.92 ac-ft/yr (Wes Gibbons' Portion: 0.1974 cfs, 39.48 ac-ft/yr)	0.08 cfs, 12 ac-ft
Priority Date	August 26, 1889	Same
Point of Diversion	<u>Nile Ditch Diversion:</u> 450 feet north and 350 feet east from the south quarter corner of Section 21, within the SW¼SW¼SE¼ of Section 21, T. 16 N., R. 15 E.W.M.	From a surface pond located at Section 03 Township 15 Range 15 Quarter NE: Plat SP AF# 7089375: Lot 4 LOT 4 OF SHORT PLAT RECORDED UNDER AUDITOR'S FILE NUMBER 7089375, RECORDS OF YAKIMA COUNTY, WASHINGTON, TOGETHER WITH THE EAST 175.00 FEET OF LOTS 3 AND 4 OF SHORT PLAT RECORDED UNDER AUDITOR'S FILE NUMBER 7097036, RECORDS OF YAKIMA COUNTY, WASHINGTON. (Yakima County, Parcel No. 151503-13404)
Place of Use	The south 1076 feet of Section 28, T. 16 N., R. 15 E.W.M., EXCEPT that portion thereof lying easterly of Nile Loop County Road; AND Beginning 221 feet north of the southwest corner of the NE¼NW¼ of Section 33, T. 16 N., R. 15 E.W.M.; thence northeasterly to a point 405.7 feet north of the southeast corner of the NE¼NW¼;	Section 03 Township 15 Range 15 Quarter NE: Plat SP AF# 7089375: Lot 4 LOT 4 OF SHORT PLAT RECORDED UNDER AUDITOR'S FILE NUMBER 7089375, RECORDS OF YAKIMA COUNTY, WASHINGTON, TOGETHER WITH THE EAST 175.00 FEET OF

Table 1: 2022 Seasonal Use – *continued*.

	Original	2022 Seasonal Use
Place of Use - <i>continued</i>	thence N 86°26' E 2671 feet to the east line of said section; thence north to the northeast corner of said section; thence west to the northwest corner of the NE¼NW¼ of said section; thence south to the point of beginning; EXCEPT that portion thereof lying easterly of Nile Loop County Road; AND the NE¼SE¼ of Section 29, T. 16 N., R. 15 E.W.M. (Wes Gibbons' Property: Yakima County Parcel No. 151628-43401)	LOTS 3 AND 4 OF SHORT PLAT RECORDED UNDER AUDITOR'S FILE NUMBER 7097036, RECORDS OF YAKIMA COUNTY, WASHINGTON. (Yakima County Parcel No. 151503-13404).
Limitations of Use	None	Same

Impairment

The proposed change is a downstream move with an acre for acre exchange. Therefore, no impairment to the Naches River is expected.

Public Notice

Notice of previously submitted applications for the 2020 and 2021 seasons were published in the Yakima Herald-Republic on June 6, 2020 and June 13, 2020 and again on May 12, 2021 and May 19, 2021, respectively.

No protests to these previous seasonal change applications were received.

In 2020 and 2021, Ecology presented CS4-83449-J@1 and CS4-83449-J@2, respectively, at the Yakima River Basin Water Transfer Working Group (WTWG). The WTWG after initial concerns in 2020 were resolved in collaboration with Ecology's co-managers. The 2021, CS4-83449-J@2, was approved by the WTWG. Ecology nor its co-managers have not received any complaints or concerns from the community regarding the past two seasonal change authorizations. Therefore, Ecology sent an e-mail to its co-managers within the WTWG seeking their approval of progressing without presentation at the WTWG.

Ecology must give notice to the Washington Department of Fish and Wildlife (WDFW) of application to divert, withdraw, or store water RCW 90.03.280. WDFW was notified on April 21, 2022 via email correspondence with Jonathan Kohr. WDFW acknowledged receipt of the email and reported no concerns as long as acre for acre swap was maintained. Ecology also sought out approval of the Yakama Nation and the Bureau of Reclamation via the same email dated April 21, 2022. Yakama Nation's Danielle Squeochs confirmed receipt of the email and reported no concerns with the application via email reply on April 22, 2022.

Conclusions

Based on the investigation and as provisioned, approval to temporarily change the POD and POU will not cause impairment.

The applicant is limited to 12 acre-feet of total water use. The applicant will be irrigating three (3) acres of grass from the time that Ecology issues the authorization until October 15, 2022. The applicant is mitigating this 12 acre-feet by fallowing three (3) acres at Wes Gibbons' property. Fallowing three (3) acres at Wes Gibbons' property will ensure that this temporary transfer is water budget neutral.

Recommendations

Based on the information presented above, the author recommends approval of the Applicant's requested change in POD and POU for the quantities and diversion point below:

- **Instantaneous quantity:** 0.08 cfs.
- **Annual Quantity:** 12 ac-ft/yr, for the remaining 2022 irrigation season (the date of this authorization to October 15, 2022.)
- **Point of Diversion:** A pond located within Section 03, Township 15 N., Range 15 E.W.M., Quarter NE: Plat SP AF# 7089375: Lot 4 LOT 4 OF SHORT PLAT RECORDED UNDER AUDITOR'S FILE NUMBER 7089375, RECORDS OF YAKIMA COUNTY, WASHINGTON, TOGETHER WITH THE EAST 175.00 FEET OF LOTS 3 AND 4 OF SHORT PLAT RECORDED UNDER AUDITOR'S FILE NUMBER 7097036, RECORDS OF YAKIMA COUNTY, WASHINGTON (within Yakima County Parcel No. 15150313404).
- **Place of Use:** Ryan and Amy Clark-3 acres within Section 03, Township 15 N., Range 15 E.W.M., Quarter NE: Plat SP AF# 7089375: Lot 4 LOT 4 OF SHORT PLAT RECORDED UNDER AUDITOR'S FILE NUMBER 7089375, RECORDS OF YAKIMA COUNTY, WASHINGTON, TOGETHER WITH THE EAST 175.00 FEET OF LOTS 3 AND 4 OF SHORT PLAT RECORDED UNDER AUDITOR'S FILE NUMBER 7097036, RECORDS OF YAKIMA COUNTY, WASHINGTON (within Yakima County Parcel No. 15150313404).
- **Purpose of Use:** Irrigation not to exceed three (3) acres.

Your application for seasonal change is approved, subject to the following provisions:

- 1) Violation of any of the terms and/or conditions of this authorization may result in immediate termination of this authorization and may be subject to formal enforcement actions.
- 2) This water right holder may only initiate a priority call on junior rights between the original and new PODs when the amount of water at the original authorized POD is insufficient to exercise the right.
- 3) In order to prevent enlargement of the water right, water may not be diverted from the seasonally authorized POD during any time when water would not normally be available for diversion at the original POD.
- 4) The Department of Ecology assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this Seasonal Change Authorization.
Applicants for seasonal change should not construe that a seasonal change will result in the granting of a permanent change of water right.

- 5) Where the water source and/or water transmission facilities are not wholly located upon land owned by the applicant, issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.
- 6) The applicant and operator of the system under this Seasonal Change Authorization shall:
 - Have a copy of this Seasonal Change Authorization available on-site.
 - Be aware of the parameters and provisions and operate accordingly.
 - Provide said copy as evidence of this authorization upon request by Department of Ecology staff.
- 7) Withdrawal or diversion of water under other rights appurtenant to the POU may be, or will continue to be, limited or otherwise regulated in favor of senior rights.
- 8) An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use" WAC 173-173.
- 9) WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology (Ecology) for modifications to some of the requirements. Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.
- 10) The rule above describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modification to some of the requirements. Installation, operation and maintenance requirements are enclosed or available from Ecology as a document entitled "Water Measurement Device Installation and Operation Requirements".
- 11) 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, but only to the extent otherwise allowed by law.
- 12) The intake(s) must be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). If you have questions about screening criteria contact the Department of Fish and Wildlife, or to obtain technical assistance for your project call the Yakima Construction Shop at (509) 575-2104.

Department of Fish and Wildlife
Attention: Habitat Program
600 Capitol Way N.
Olympia, WA 98501-1091

Phone: (360) 902-2534
Email: habitatprogram@dfw.wa.gov

Website: <http://wdfw.wa.gov/conservation/habitat/planning/screening/>

- 13) This Seasonal Change Authorization shall in no way excuse the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.
- 14) Irrigation on Yakima County Parcel No. 151628-43401 shall be reduced by three (3) acres and a reduction in diversion rate to no more than 0.1174 cfs.
- 15) The Nile Ditch Company shall reduce their diversion by 0.08 cfs.

YOUR RIGHT TO APPEAL

You have a right to appeal this Decision to the Pollution Control Hearings 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 all of 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
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW, Suite 301 Tumwater WA 98501	Pollution Control Hearings Board PO 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://www.leg.wa.gov/CodeReviser>

Ryan Clark
May 6, 2022
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If you have any questions, please contact Nigel Kingsbury by phone at (509) 454-7887 or via email at Nigel.Kingsbury@ecy.wa.gov.

Sincerely,



Trevor Hutton, Section Manager
Water Resources Program
Central Regional Office

TH:NK:SS/220509
WRTS No. 6804468

Enclosures: Your Right to be Heard
Water Measuring Requirements
Form 1 - Measuring Device Information
Form 2 – Water Use Data Collection Reporting
Telemetered Metering Options
Fish Screening Requirements

cc: Nile Ditch Association
Wes Gibbons

ecc: Philip Rigdon, Director Natural Resources Division Yakama Nation