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POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

CITY OF CHEHALIS,  
  
Appellant,  
  
v.  
  
STATE OF WASHINGTON, DEPARTMENT  
OF ECOLOGY,  
  
Respondent.

PCHB No. 21-061  
  
STIPULATION AND MOTION FOR  
AGREED ORDER OF DISMISSAL

**I. INTRODUCTION**

Appellant City of Chehalis (Appellant or Chehalis), through its attorneys Tom McDonald and Cascadia Law Group PLLC, and Respondent State of Washington, Department of Ecology (Ecology), through its attorney, Alan M. Reichman, Senior Counsel, submit this stipulation in full settlement of all issues pertaining to the above-captioned appeal.

**II. STIPULATION**

1. Within thirty (30) days of the Pollution Control Hearings Board’s entry of an order of dismissal based on this Stipulation and Motion for Agreed Order of Dismissal, Ecology shall issue the attached Superseding Order on Water Right Change Application No. CS2-SWC1185 (LEWI-20-01) (Superseding Order). This letter order, upon issuance by Ecology, shall supersede Ecology’s previous letter decision dated September 1, 2021

1 reversing the Lewis County Water Conservancy Board's Record of Decision dated  
2 June 17, 2021, which conditionally approved the City of Chehalis' Application for Change  
3 No. CS2-SWC1185.

4         2. For and in consideration of Ecology's agreement to issue the Superseding  
5 Order in this matter, Chehalis, its assigns and other successors in interest, hereby releases and  
6 forever discharges Ecology and its officers, agents, employees, agencies, and departments  
7 from any and all existing and future claims, damages and causes of action of any nature  
8 whatsoever arising out of this appeal.

9         3. The parties agree that the terms of this Stipulation and Motion for Agreed  
10 Order of Dismissal have been completely read and are fully understood and voluntarily  
11 accepted, for the purpose of making a full and final settlement of any and all claims, disputed  
12 or otherwise, in relation to this appeal.

13         4. For and in consideration of Ecology's agreement to issue the attached  
14 Superseding Order in this matter, Chehalis agrees not to appeal the Superseding Order.

15         5. The parties signing this Stipulation and Motion for Agreed Order of Dismissal  
16 have authority to enter into this agreement.

17         6. By entering into this settlement, the parties are not admitting to the legal  
18 positions of the other party in this Appeal and do not waive their respective arguments  
19 including those regarding the applicability and interpretation of statutory provisions relating  
20 to water rights for municipal supply purposes, and RCW 90.03.395 and .397.

21         7. Based on the parties' meeting their respective obligations under this  
22 Stipulation and incorporation of the terms of the Stipulation herein, the parties agree that this  
23 appeal should be dismissed.

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III. MOTION

Based on and in conformity with the Stipulation above, the parties respectfully request the Board to enter an order dismissing this case, PCHB No. 21-061.

DATED: December 15, 2022.

CASCADIA LAW GROUP PLLC

ROBERT W. FERGUSON  
Attorney General

  
Tom McDonald, WSBA No. 17549

  
Alan M. Reichman, WSBA No. 23874  
Senior Counsel

*Attorneys for Appellant City of Chehalis*

*Attorneys for Respondent State of  
Washington, Department of Ecology*

\_\_\_\_\_, 2022

City of Chehalis  
 Attn: Lance Bunker  
 2007 NE Kresky Avenue  
 Chehalis, WA 98532

**Re: Superseding Order on Water Right Change Application No. CS2-SWC1185 (LEWI-20-01)**

Dear Lance Bunker:

In accordance with the Stipulation and Motion for Agreed Order of Dismissal in PCHB No. 21-061, the Department of Ecology (Ecology) is issuing this Superseding Order regarding the above-referenced Lewis County Water Conservancy Board (LCWCB) Record of Decision (ROD), which incorporated the LCWCB’s Report of Examination (ROE) on City of Centralia’s Water Right Change Application No. CS2-SWC1185. In a letter decision and order dated September 1, 2021, Ecology reversed the LCWCB’s ROD and denied the City’s water right change application (Order). That Order was appealed by the City to the Pollution Control Hearings Board and the case was designated as PCHB No. 21-061. That case has been settled, and this Superseding Order is being issued pursuant to the settlement between the City and Ecology.

Ecology **MODIFIES** the decision of the LCWCB and approves the City of Chehalis’s water right change application, which requested an additional point of diversion, with the following conditions. Ecology approves the City’s request for approval of a new point of diversion on the Chehalis River in addition to the existing point of diversion on the North Fork of the Newaukum River. A summary table of the decision follows:

**Summary of Ecology’s Superseding Order**

MAXIMUM CUB FT/ SECOND 10	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 5, 376	TYPE OF USE, PERIOD OF USE Municipal Supply, year-round as needed				
SOURCE North Fork Newaukum River (one point of diversion) Chehalis River (a second point of diversion)			TRIBUTARY OF (IF SURFACE WATER) Chehalis River				
AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
035631001000	SW	SE	20	14	01E	23	Lewis
005818001000	NW	SE	31	14	02W	23	Lewis
<b>LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD</b>							
Area served by the City of Chehalis. The place of use of this water right is the approved service area for the City of Chehalis as described in a Water System Plan approved by the Washington State Department of Health. RCW 90.03.386 may have the effect of revising the place of use of this water right if the criteria in section RCW 90.03.386(2) are met.							
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,		

## **PROVISIONS**

The following conditions and limitations are added to those specified on Pages 12 and 13 of the LCWCB's ROE:

This water right, Surface Water Certificate No. 1185, is non-additive to another water right held by the City, Water Right Claim No. S2-301-3012347CL. The City is authorized to divert and use a maximum annual quantity of 5,376 acre-feet per year, and a maximum instantaneous quantity of 10 cubic feet per second, under **both** this water right, Surface Water Certificate No. 1185, and Water Right Claim No. S2-301-3012347CL

Under these two related water rights, the first 3,136 acre-feet per year of water diverted from the City's point of diversion on the North Fork of the Newaukum River will be attributed to Water Right Claim No. S2-301-3012347CL. Any water diverted by the City from its point of diversion on the North Fork of the Newaukum River in excess of 3,136 acre-feet per year of water, and all water diverted from the City's point of diversion on the Chehalis River under these two related water rights, will be attributed to Surface Water Certificate No. 1185.

The water measuring and reporting conditions provided on Pages 12 and 13 of the LCWCB's ROE are modified to provide as follows:

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", chapter 173-173 WAC, which 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. The City has provided information to Ecology regarding its current measuring devices as being in compliance with the rule.

Recorded water use data shall be submitted electronically by January 31 each year. To set up an Internet reporting account, contact the Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Southwest Region Office for forms to submit your water use data.

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/Certificate/Claim No., source name, annual quantity used including units, maximum rate of diversion including units, monthly metering readings including units, peak monthly flow including units, Department of Health WFI water system number and source number(s), purpose of use, well tag number, open channel flow or pressurized diversion and period of use.

## **ADDITIONAL MODIFICATIONS**

The Development Schedule provided on Pages 2 and 13 of the ROE is modified to state that the date to complete the change and put water to full use is November 1, 2072, with the opportunity to file requests for extensions under RCW 90.03.320.

The analysis related to Water Right Claim No. S2-301-3012347C on Page 5 of the ROE is modified. In its tentative determination, Ecology has ascertained that Surface Water Certificate No. 1185 is closely related to Water Right Claim No. S2-301-3012347CL because, for among other reasons, they both share the same point of diversion on the North Fork of the Newaukum River. Based on this relationship, Ecology has found that the annual and instantaneous quantities of water authorized for use under Surface Water Certificate No. 1185 are non-additive to those authorized under Water Right Claim No. S2-301-3012347CL Under a 1954 Court Decree, the City has a right to divert 3,136 acre-feet per year and 4.34 cubic feet per second of water under Water Right Claim No. S2-301-3012347CL Thus, because Water Right Claim No. S2-301-3012347CL has a 1914 priority date, which is senior to the 1923 priority date for Surface Water Certificate No. 1185, the first 3,136 acre-feet

per year of water diverted from the City’s point of diversion on the North Fork of the Newaukum River will be attributed to Water Right Claim No. S2-301-3012347CL.

The Tentative Determination analysis provided on Page 7-9 of the ROE is modified. Ecology has tentatively determined that approximately 2,051 acre-feet of the water authorized for use under Water Right Claim No. S2-301-3012347CL, as recognized by the Superior Court for Lewis County, and Surface Water Certificate No. 1185 has been perfected by the City through actual beneficial use, and that the remainder of the water remains inchoate. Further, Ecology has determined, based on the City’s reasonable diligence in developing the water right, the City’s projected future need for water that it has estimated through water system planning, and other factors, that 3,325 acre-feet per year of inchoate water remains in good standing and is valid and eligible for change.

This Superseding Order has been issued to carry out a settlement that was reached between Ecology and the City through compromise on issues relating to the interpretation and implementation of relevant laws. As such, this decision cannot be considered as providing any precedential value for future water rights decisions, other than this Superseding Order, that will be made by Ecology, and it does not preclude Ecology from interpreting and applying those laws in a different manner in the future. This disclaimer applies, without any limitation to other scenarios, to applications for changes of water rights with inchoate quantities.

If you have any questions or concerns on the above information, please call Tammy Hall, Department of Ecology, at (360) 407-6099.

### **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**

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

Please send a copy of your appeal to:

Michael Gallagher  
Department of Ecology  
Southwest Regional Office  
PO Box 7775  
Olympia WA 98504-7775

*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,

Michael Gallagher, Section Manager  
Water Resources Program, Southwest Regional Office

By Certified Mail:

Enclosure: *Your Right To Be Heard*

cc: \_\_\_\_\_, Lewis County Water Conservancy Board