



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

September 10, 2013

Mr. Quentin Schwenke
3422 Power Line Road
Walla Walla, Washington 99362

Dear Mr. Schwenke:

Re: PRELIMINARY PERMIT under Surface Water Application No. S3-30674
(WRIA 32- Walla Walla County)

This letter constitutes your PRELIMINARY PERMIT. This Preliminary Permit authorizes monitoring and construction of the diversion facilities, all subject to the following provisions.

No diversion of water is authorized under this Preliminary Permit.

The project proposed under Surface Water Application No. S3-30674 is to recharge the shallow gravel aquifer with water diverted from Mill Creek in the winter and spring months. The intent of this project is to have the recharge water return to the Walla Walla River down gradient of the pond during the summer months to create an environmental enhancement.

Washington Administrative Code (WAC) 173-532-055 provides for surface water withdrawals for Environment Enhancement Projects (EEPs), specifically within the Walla Walla Basin. There are ten requirements which are as follows:

1. Sponsorship
2. Consensus recommendation
3. Measure and evaluate the projects effectiveness
4. Initial short term authorization
5. Not exempt from other appropriate permits
6. Subject to existing rights
7. Managed consistent with salmonid migration needs
8. Monitoring and Sampling
9. Ecology will maintain records
10. Not to exceed maximum allocation of the WAC

This project has been properly sponsored and has response letters from the required review groups. The review groups have made recommendations to go forward with the proposed project provided additional monitoring is conducted. The project will be authorized initially as a short term project by way of this preliminary permit which allows for construction of the facilities and monitoring. This Preliminary Permit does not authorize the diversion of water. Additionally, a temporary use permit application has been applied for under application No. S3-30680. This request is for the temporary diversion of water to operate the aquifer recharge project and is intended to be used in



conjunction with this Preliminary Permit. The temporary use permit cannot be authorized until such time a robust monitoring plan is submitted to and approved by Ecology. This Preliminary Permit in conjunction with the proposed Temporary Permit will provide data for hydrogeologic uncertainties and lack of site specific information required to make a permanent decision.

Revised Code of Washington (RCW) 90.03 authorizes the appropriation of public water for beneficial use and describes the process for obtaining water rights. Laws governing the surface water right permitting process are contained in RCW 90.03.250 through 90.03.340. Preliminary Permits are authorized under RCW 90.03.290.

A notice of application was duly published under Application No. S3-30674 in accordance with RCW 90.03.280 in The Waitsburg Times on September 13 and 20, 2012. This public notice had a ministerial error and was republished. An amended notice was duly published in The Waitsburg Times on October 25 and November 1, 2012. During the field exam it was discovered that the proposed point of division was in a different location than advertised. An amended notice was duly published in The Waitsburg Times on January 31 and a ministerial error was discovered. An amended notice was duly published in The Waitsburg Times on February 7 and 14, 2013. None of the public notices received protests. There has been significant public support for this project. Many of the supporters have indicated that additional monitoring should occur prior to issuance of a permanent water right. In addition, there is some concern as to the effectiveness of the project as it pertains to providing more water for fish at critical times. It is not anticipated that the preliminary permit would cause any detrimental impact to the public welfare, since no water will be diverted. The letters of support for the proposed project are from the following parties: Columbia County Board of Commissioners, City of Walla Walla, Gardena Farms Irrigation District No. 13, County of Walla Walla, Confederated Tribes of the Umatilla Indian Reservation, Snake River Salmon Recovery Board, Walla Walla Watershed Management Partnership, and Washington Department of Fish and Wildlife.

The quantity of surface water requested for Surface Water Application No. S3-30674 exceeds 1 cfs and consequently requires a SEPA checklist and a determination if a probable significant adverse environmental impact may occur. A SEPA checklist was submitted by the project proponent to the department of Ecology. SEPA checklist analysis is not required by the Water Resources Program on this preliminary water right (see WAC 197-11-800(17)). When the preliminary permit has demonstrated the feasibility of the diversion structure, the department will review the project. The project proponent has filed an application for a temporary permit which the Water Resources Program will act upon in the future. At that time, Ecology will review the SEPA checklist and make a determination if a probable significant adverse environmental impact exists or will exist due to the project.

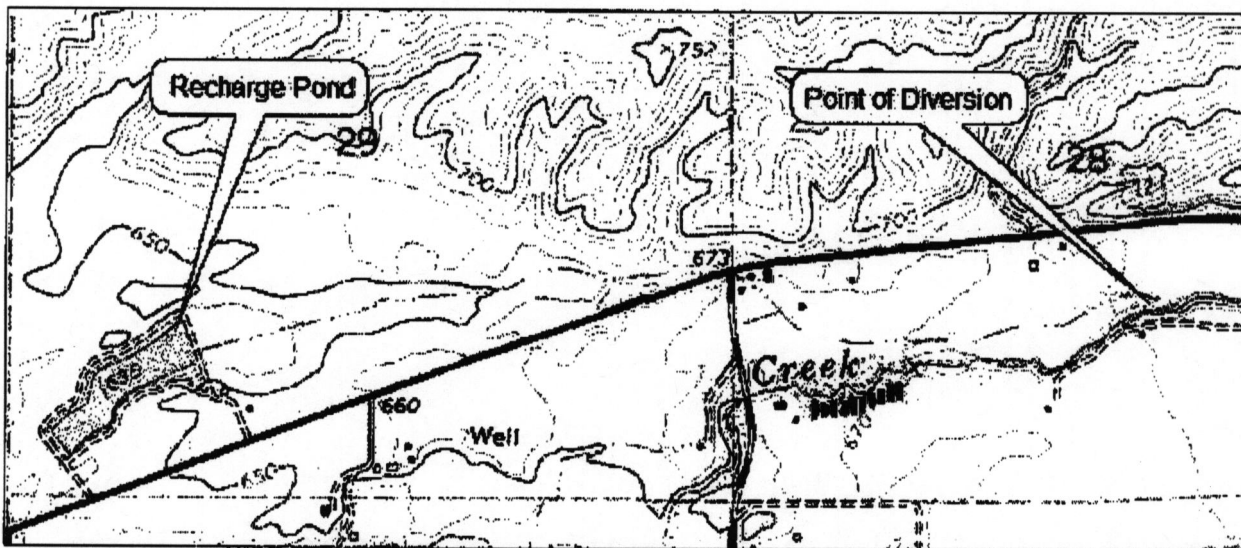
In order to further the decision process, this preliminary permit authorizes the construction of facilities and preliminary monitoring to provide baseline data. In addition, this will allow the applicant to secure funding for the project.

The preliminary monitoring proposed by the applicant includes the monitoring of four existing wells, collecting information from the existing Walla Walla River Gauge at Detour Road and water quality monitoring. Additional monitoring beyond what has been proposed by the applicant will be required to ensure that there are no issues with water availability, impairment, beneficial use and public interest. Additional monitoring under the Preliminary Permit will include that proposed by the above listed review groups and Ecology. This additional monitoring will include stream flow measurements of Mill Creek, both above and below the proposed point of diversion. This will be

required to begin immediately and to continue year round to establish a baseline and to monitor effects of the project.

Please note that water quality sampling is not required under this Preliminary Permit at this time since no diversion of water is authorized. Water Quality may require additional monitoring at any time.

Map of Project



Also, known as the Stiller Ditch/Pond recharge project

PRELIMINARY PERMIT under APPLICATION NUMBER NO: S3-30674
PRIORITY DATE: 12/30/2011

Proposed Works & Diversion Facility Construction Authorization

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA				
Walla Walla	Mill Creek	Walla Walla River	32-Walla Walla				
SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQQ	LATITUDE	LONGITUDE
Mill Creek Diversion	350728310005	7N	35E	28	NW¼SE¼	46.05217	-118.44126
							Datum: NAD83/WGS84

REMARKS

The Preliminary Permit authorizes the construction of a diversion facility only and does not allow for diversion of any water for aquifer recharge. The facility capacity cannot exceed 4.5 cubic feet per second and shall be equipped with an approved meter and fish screen. This authorization also allows for construction required to improve the pond recharge site and associated infrastructure.

Provisions

Preliminary Permit

This PRELIMINARY PERMIT will remain in effect until October 1, 2016, unless sooner revoked by the Department of Ecology.

The permittee may request, prior to the expiration date of October 1, 2016, an extension of the Preliminary Permit. Additional time beyond the initial three years will require approval from the Governor or a designee. Two years is the maximum request for extension allowed, per RCW 90.03.290.

If the applicant fails to comply with the terms of this Preliminary Permit, the water-right application S3-30674 will be rejected and this preliminary permit canceled. The granting of this Preliminary Permit shall not be construed, by inference or otherwise, that subject application will ultimately be approved.

This authorization does not imply or grant any right to divert and use public surface water from Mill Creek under application S3-30674. It only allows for the construction of facilities and for monitoring.

★ Diversion of water in conjunction with this Preliminary Permit has been requested under application S3-30680 (temporary use request). This Temporary Permit is on hold until a robust monitoring plan is provided and approved. In addition, a SEPA determination shall be required at that time.

If at any time the facilities authorized for construction under Preliminary Permit S3-30674 are used for aquifer recharge without an approved Temporary Permit, water-right application S3-30262 will be rejected and this preliminary permit canceled.

If at any time the facilities authorized for construction under Preliminary Permit S3-30674 are used to enhance (beyond what is authorized) the existing irrigation water rights that are proposed to utilize this diversion during the irrigation season, water-right application S3-30262 will be rejected and this preliminary permit canceled.

Violation of any of the terms and/or conditions of the preliminary authorization will result in both authorizations being immediately terminated, issuance of administrative orders to Cease and Desist, and may also subject the violator to civil penalties.

The applicant accepts that even after construction of the subject project and expenses incurred that the resulting decision may be a denial of the underlying application.

Nothing in the preliminary permit authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances or regulations. It is the applicant's responsibility to obtain all applicable permits necessary for this project.

NO DIVERSION OF WATER IS ALLOWED UNDER THIS AUTHORIZATION.

Development Schedule	
BEGIN PROJECT	COMPLETE PROJECT
October 1, 2013	October 1, 2016
Additional Actions and Due Dates	
ACTION	DATE DUE
Monitoring Status Report Due	October 1, 2014
Monitoring Status Report Due	October 1, 2015
Monitoring Status Report Due	October 1, 2016
Measurement of Water Use and Monitoring	
Mill Creek Monitoring -Wallula Ave bridge site @	
NE¼SE¼ of Section 28, T 7 N., R. 35 E.W.M.	
How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Annually (Oct1)
What volume should be reported?	Flow of Mill Creek
Mill Creek Monitoring – Sweagle Road bridge site @	
W¼W¼ of Section 32, T 7 N., R. 35 E.W.M.	
How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Annually (Oct 1)
What volume should be reported?	Flow of Mill Creek
Monitoring Wells (separate data for each well):	
MWSP1- SW¼SW¼ of Section 29, T 7 N., R. 35 E.W.M.	
West Well- SW¼SW¼ of Section 29, T 7 N., R. 35 E.W.M.	
Middle Well- SE¼SW¼ of Section 29, T 7 N., R. 35 E.W.M.	
East Well- SE¼SW¼ of Section 29, T 7 N., R. 35 E.W.M.	
How often must water use be measured?	Daily
How often must water use data be reported to Ecology?	Annually (Oct 1)
What volume should be reported?	Static Water Level
Mill Creek Diversion @	
SE¼SW¼ of Section 28, T 7 N., R. 35 E.W.M.	
How often must water use be measured?	Daily*
How often must water use data be reported to Ecology?	Annually (Oct 1)
What volume should be reported?	Total Annual Volume & Daily Volume
What rate should be reported?	Annual Peak Rate of Diversion, daily Peak Rate of Diversion

* No water diversion is allowed under this PRELIMINARY PERMIT for aquifer recharge, but this diversion is authorized under other water rights. Water use under these water rights is allowed but shall be measured as described above. In addition, this authorization does not allow for an increase to instantaneous quantities under these existing rights and shall be diverted according to their authorization, not to exceed historical beneficial use.

Measurements, Monitoring, Metering and Reporting

Mill Creek Monitoring Requirements:

- Mill Creek at Wallula Avenue Bridge, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T 7 N., R. 35 E.W.M. shall be measured for total flow monthly and reported by August 1 of each year.
- Mill Creek at Sweagle Road Bridge, within the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 32, T 7 N., R. 35 E.W.M. shall be measured for total flow monthly and reported by August 1 of each year.

Both points of Diversion shall be measured as close in time as possible and shall be measured within the same 24 hour period. Both points shall be measured in a consistent manner, indicating who made measurement, site, time, date and method. Monitoring shall begin within 90 day of Beginning of Construction and shall continue year round.

Well Monitoring Requirements:

- MWSP1 located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T 7 N., R. 35 E.W.M., shall be measured for static water level daily and reported by August 1 of each year.
- West Well located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T 7 N., R. 35 E.W.M., shall be measured for static water level daily and reported by August 1 of each year.
- Middle Well located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T 7 N., R. 35 E.W.M., shall be measured for static water level daily and reported by August 1 of each year.
- East Well located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T 7 N., R. 35 E.W.M., shall be measured for static water level daily and reported by August 1 of each year.

All points shall be measured in a consistent manner, indicating who made measurement, site, time, date and method. A well log or description of construction of each well must be submitted with the data. Monitoring shall begin within 90 day of Beginning of Construction and shall continue year round.

Data from the monitoring station at Detour Road, Gage No. 32A100 at River Mile 32.8, Section 31, Township 7 N, Range 35 E.W.M. (N 46.0431°, W 118.4908°) shall be included, with your yearly data report due October of each year.

Failure to provide data in a timely manner will result in water right application S3-30674 being rejected and this preliminary permit canceled.

Recorded water use data shall be submitted to Ecology, Eastern Regional Office, in accordance with the schedule outlined above in "Measurement of Water Use and Monitoring", on Ecology metering forms when applicable.

Diversion Facility Construction Requirements

The intake(s) shall 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). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria.

<http://wdfw.wa.gov/about/contact/>

An approved measuring device shall be installed and maintained for the Mill Creek diversion (located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T. 7 N., R. 35 E.W.M.) in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173. 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 for modifications to some of the requirements.

Easement and Right-of-Way

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right 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.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

General Provisions

The Department assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this preliminary permit authorization. All expenses, risks, and liabilities incurred during this process shall be borne by the applicant.

The project shall be managed consistent with salmonid migration needs as required by Washington Department of Fish and Wildlife.

Upon completion of the data collection, Ecology shall in a reasonable time frame make a permanent decision on your application. The permanent decision under Application No. S3-30674 shall in part be based on the data you have provided, in addition it will take into account applicable laws, rules, procedures and policies.

Therefore, I ORDER approval of Preliminary Permit under Application No. S3-30674, subject to existing rights and the provisions specified above.

Your Right To Appeal

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

File your appeal and a copy of this Order 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 Order 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.