



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000  
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June 3, 2015

Richard H. Wilson  
President/CEO  
Development Services of America, Inc.  
16100 North 71<sup>st</sup> Street, Suite 520  
Scottsdale, AZ 85254

RE: Our acceptance of your temporary trust water right donation of a portion of Water Right Certificates G1-23431C & S1-23432C. Per your request, this acceptance expires on June 1, 2026.

Dear Mr. Wilson:

The purpose of this letter is to acknowledge our acceptance of your temporary donation of 74 acre-feet per year (afy) of water to the Washington State Trust Water Right Program (TWRP). Your donation has been assigned the control numbers CG1-23431C@3 and CS1-23432C@3. Please refer to these numbers when corresponding with us about this trust donation. This donation is being made from Ground Water Certificate G1-23431C and Surface Water Certificate S1-23432C.

In 2013, you submitted a Trust Water Right Agreement to the Department of Ecology (Ecology). This agreement was signed by you (Richard H. Wilson) on April 30, 2013, as a legal representative of Misty Isle Farms (corporately owned by Development Services of America), and countersigned by Jacqueline Klug (Ecology Section Manager) on May 20, 2013. The original terms of this Agreement and Ecology's subsequent trust water right letter of acceptance specified a temporary donation of 85 afy from certificates G1-23431C and S1-23432C.

On May 14, 2015, Ecology received your request to modify the terms of the Agreement and reduce your temporary donation to 74 afy.

#### BACKGROUND

Ground Water Certificate G1-23431C was issued to Misty Isle Farms with a priority date of July 10, 1979. It authorizes a ground water withdrawal of up to 250 gallons per minute, 112 afy for domestic use (2 afy) and irrigation supply for 68 acres (110 afy). The authorized point of withdrawal is listed as being within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 12, Township 22 North, Range 2 East, W. M., in King County. The place of use is described as:



All of the NE $\frac{1}{4}$  of Section 13, Township 22 North, Range 2 East, EXCEPT the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$ . The E $\frac{1}{2}$  of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 13, Township 22 North, Range 2 East. All of the S $\frac{1}{2}$  of the SE $\frac{1}{4}$  and the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 12 Township 22 North, Range 2 East. Tax parcels 033-1222029089 and 033-1222029026 in the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 12, Township 22 North, Range 2 East. The W $\frac{1}{2}$  of the W $\frac{1}{2}$  of the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 18, Township 22 North, Range 3 East. Not including roads.

Surface Water Certificate S1-23432C was also issued to Misty Isle Farms with a priority date of July 10, 1979. It authorizes a surface water diversion of up to 0.44 cubic feet per second from an unnamed stream and pond, 112 afy for stockwatering (1.68 afy for 100 head of cattle of the 2 afy allocated under G1-23431C for domestic purposes) and irrigation supply for 68 acres (110 afy). This right was issued as being totally supplemental (non-additive) in its annual quantity to G1-23431C. As such, the annual quantity used under S1-23432C and G1-23431C cannot exceed a total of 112 afy. The authorized point of diversion for S1-23432C is listed as being within the S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 12, Township 22 North, Range 2 East, W. M., in King County. The place of use for S1-23432C is the same as described in G1-23431C.

The operators of Misty Isle Farms have claimed the entire 112 afy has been beneficially used or placed in trust during the past five years (pursuant to RCW 90.42.080(4)).

#### ECOLOGY'S ACCEPTANCE

Your donation from G1-23431C shall be for groundwater preservation purposes. Your donation from S1-23432C shall be for instream flow purposes (the unnamed stream and pond from which water has historically been diverted are tributary to Fisher Creek). Your terms of donation and Ecology's acceptance are as follows:

1. The temporary trust water right donation of 74 afy under G1-23421C and S1-23432C shall end on June 1, 2026. The remaining 38 afy and the existing instantaneous rates under these two rights will continue to be beneficially used by Misty Isle Farms for irrigation and domestic purposes.
2. The 74 afy being placed in the TWRP is based on best estimates regarding the quantity of water that will be needed by Misty Isle Farms to fulfill foreseeable irrigation and domestic needs during the next few years. Misty Isle Farms reserves the right to place additional quantities of water in or remove quantities of water from the TWRP.
3. During the temporary trust water right donation period, the water rights will be held by and managed in trust by the State of Washington under Chapter 90.42 RCW (the TWRP). Ecology shall issue Misty Isle Farms a Trust Water Right letter of acceptance (this letter).
4. The temporary trust water rights donation may be terminated by Misty Isle Farms with 15 days written notice from Misty Isle Farms to Ecology's Northwest Regional Office. Upon expiration of the 15 day notice period, the water rights shall no longer be temporary trust water rights, and Misty Isle Farms is entitled to beneficial use under the limitations of G1-23421C and S1-23432C.

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5. The temporary trust water right donation may be assigned by Misty Isle Farms upon the giving of written notice to Ecology.
6. Amendments to the Trust Water Right Agreement must be in writing and signed by an authorized representative of each of the parties. Any modifications proposed by Misty Isle Farms will be reviewed and accepted or rejected by Ecology within 15 days of written submission by Misty Isle Farms.
7. The Trust Water Right Agreement will be governed and enforced under the laws of the State of Washington. Venue for any action arising under or related to the Trust Water Right Agreement shall be in King County, Washington. (The appeal process for this letter of acceptance is a separate issue as explained below.)

Effective immediately (unless overturned by a court proceeding), the Department of Ecology, pursuant to RCW 90.42.080(1)(b), hereby accepts your donation in the amount of 74 acre-feet per year. When the period of trust ends on June 1, 2026, the water rights will revert back to the water right holder or landowner in the full quantity accepted into the trust water program and for the original purposes. Ecology's acceptance of the donated water rights into the trust water right program is not evidence of the validity or quantity of the rights.

Your water right is a Family Farm Water Act (FFWA) water right as defined under Chapter 90.66 RCW. The FFWA does not provide explicit authority for Ecology to accept water rights via the donation process as described under the trust water right statutes of Chapters 90.38 or 90.42 RCW. However, Ecology will accept a FFWA water right via donation into the TWRP with disclosure that certain legal risks to the future validity of your water right may exist. The primary risk could be relinquishment should a court proceeding determine that your water right was not legally able to qualify for trust status as defined under the FFWA or the trust water right statutes. Absent a court ruling to the contrary, Ecology will view FFWA water rights donated to the TWRP as beneficially used and not subject to relinquishment consistent with RCW 90.42.040(6), RCW 90.14.140(h), and RCW 90.14.215.

All existing water quality monitoring and reporting requirements specified in your water rights will continue to be under the supervision of Ecology's Water Quality Program. Farm practices shall continue to conform to Best Management Practices (BMP's) as documented in a Farm Plan recommended by King Conservation District (Mirro, 2001) and as adjusted through agreement with or by order of Ecology's Water Quality Program.

If you have any questions or concerns, please call Buck Smith at (425) 649-7147 or email him at [buck.smith@ecy.wa.gov](mailto:buck.smith@ecy.wa.gov).

You and/or other interested parties have a right to appeal this action to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this letter. 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). If this letter of acceptance is overturned through a court proceeding, the Trust Water Right Agreement shall be considered null and void.

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**To appeal, you must do the following within 30 days of the date of receipt of this document:**

File your appeal and a copy of this document 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 document on Ecology in paper form - by mail or in person. (See addresses below.) Email is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

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 P.O. Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board Environmental Hearings Office 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board P.O. 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://www1.leg.wa.gov/CodeReviser>

Signed at Bellevue, Washington, this 3<sup>rd</sup> day of June, 2015.



Thomas Buroker  
Section Manager  
Water Resources Program

By Certified Mail: 9171 9690 0935 0088 4612 71

tb:bs:mc

Enclosures: Your Right To Be Heard

cc: Scott Coffey, CDM/Smith  
Bill Clarke, Attorney at Law