STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

January 9, 2012

Berg Farms, LLC
c/o Matt and Nicole Berg
PO Box 127
Paterson, WA 99345

RE: Extension of Trust Water Donation CS4-30834@4

Dear Mr. and Ms. Berg:

The purpose of this letter is to acknowledge Department of Ecology's acceptance of your request to extend to the 2012 irrigation season your 2011 donation to the Washington State Trust Water Right Program (TWRP). Please refer to control number CS4-30834@4 when corresponding with us about this trust water right.

The Department of Ecology, pursuant to RCW 90.42.080(1)(b), acknowledges your donation in the amount of 4.6 cubic-feet per second (cfs) and 1,000 acre-feet per year. The purpose of the donation is to benefit instream flow in the Columbia River from April 1 to October 31. The instream place-of-use commences at approximately River Mile 270 and ends at the Pacific Ocean.

This trust water right expires on December 31, 2012.

The parent water right, S4-30834, authorizes the withdrawal of 13.37 cfs, up to 2,850 afy for the irrigation of 750 acres during the irrigation season. The recorded place of use is located within the NE1/4 of T. 6 N., R. 25 E.W.M., and in Sections 6, 7, and 18 of T. 6 N., R. 26 E.W.M.

RCW 90.42.080 provides in part that the total of any portion of the water right remaining with the donor plus the donated portion of the water right may not exceed the extent to which the water right was exercised during the five years before the donation.

In accordance with RCW 90.42.040(6), RCW 90.14.140(h), and RCW 90.14.251, a water right is not subject to relinquishment while it is managed within the Trust Water Right Program. Ecology's acceptance of the donated water right into the trust water right program is not evidence of the validity or quantity of the right. When the period of trust ends, the water right 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.

Your water right is a Family Farm Water Act (FFWA) water right as defined under Chapter 90.66 RCW. The Act does not provide explicit authority for Ecology to accept water rights via the donation process as described under the trust water 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 Family Farm Act or the trust 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), RWC

90.14.140(h), and RCW 90.14.215. Ecology is willing to work with FFWA water right holders on a case-by-case basis to determine whether options exist to reduce or eliminate this legal risk.

If, prior to expiration of this temporary donation, you would like to extend the temporary donation, please send us a written request. Also, if you wish to modify any terms of your donation, your letter must include the new terms. Ecology will review your request and any new or modified terms and conditions and will notify you whether the donation can be extended.

If you have questions or concerns, please call Patricia Kirk at (509) 249-6299.

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 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 Rd SW Ste 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 .

Sincerely,

Derek I. Sandison
Director
Office of Columbia River

PK:DIS:RAZ (120108)

Enclosure: Your Right to be Heard

By certified mail: 7007 2560 0001 7675 5912