STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
*Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000*
*711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341*

May 20, 2013

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

**Re: Our acceptance of your temporary trust water right donation of a portion of Surface Water Certificate 3433 (aka CS1-*03754C). 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 donation to the Washington State Trust Water Right Program (TWRP). Your donation has been assigned the control number CS1-*03754C@1. Please refer to this number when corresponding with us about this trust donation. This donation is being made from Surface Water Certificate 3433, as modified by Report of Examination for Change CS1-*03754C, on March 19, 2002.

On May 2, 2013, the Department of Ecology (Ecology) received your offer of donation to temporarily place 25 acre-feet per year (afy) of the commercial use portion of the subject right into the TWRP. In addition, you submitted a Trust Water Right Agreement to be entered into by Misty Isle Farms (corporately owned by Development Services of America) and Ecology. This agreement was signed by you (Richard H. Wilson) on April 30, 2013, as a legal representative of Misty Isle Farms. This agreement will be countersigned by me (Jacqueline Klug) and returned to you as an enclosure to this letter.

Surface Water Certificate (SWC) 3433 was issued to August Wax with a priority date of November 29, 1932. It authorized a surface water diversion of up to 0.05 cubic feet per second (cfs) for domestic supply and irrigation. No annual volume was specified. The authorized point of diversion was listed as being within the SE¼ NW¼ of Section 13, Township 22 North, Range 2 East, W. M., in King County. The place of use was described as:

> NW¼ of Section 13, Township 22 North, Range 2 East, EXCEPT the E½ of the NE¼ of the NW¼.

On May 19, 2002, per a change application request from Robert and Elizabeth Sestrap (for Wax Orchards, Incorporated and Misty Isle Farms), Ecology corrected and changed the attributes of SWC 3433 as follows.

- Corrected the instantaneous rate from 0.05 cfs to 0.08 cfs (equivalent to 35 gallons per minute). The certificate had been issued in error. The original permit, proof of appropriation, and perfected beneficial use had all been 0.08 cfs.
- Quantified the perfected beneficial annual volume as 35 afy.
- Split the right for use by Wax Orchards, Incorporated and Misty Isle Farms.
- Changed the originally authorized surface water point of diversion to two groundwater wells. One well (the Wax Orchards well) is located in the SW¼ NW¼ of Section 13, Township 22 North, Range 2 East. The second well (the Misty Isle Farms well) is located in the SE¼ NW¼ of Section 13, Township 22 North, Range 2 East.
- Changed the purpose of use from domestic supply and irrigation to the following:
    - Wax Orchards (25 gallons per minute)
        - Domestic supply (3 residences) – 3 afy (continuously)
        - Commercial Fruit Cannery – 25 afy (continuously)
    - Misty Isle Farms (10 gallons per minute)
        - Domestic supply (single residence) – 1 afy (continuously)
        - Irrigation (4 acres) – 6 afy (May to October)
- Changed the place of use to the following:
    - Wax Orchards – King County Assessors Tax Lots 9006, 9055, and 9062, located within the W½ of the NW¼ of Section 13, Township 22 North, Range 2 East.
    - Misty Isle Farms – NW¼ of Section 13, Township 22 North, Range 2 East, except the areas covered by King County Assessors Tax Lots 9049, 9005, 9006, 9062, and 9055.

According to your trust water right application, Development Services of America owns Misty Isle Farms and now controls the Wax Orchards properties and water rights. As such, you have applied to place the 25 afy for the Wax Orchard commercial fruit cannery into the TWRP. This quantity is currently authorized for use under the report of examination for change. It is still within the development schedule of the change approval and has been historically perfected through beneficial use.

Your donation will be for groundwater preservation purposes. In your Trust Water Right Agreement submitted to Ecology, you specified your donation terms as follows:

1. The temporary trust water right donation of 25 afy under CS1-*03754C@1 shall end on June 1, 2026. This temporary trust water right donation reflects only that portion of the water right approved for commercial use. The remaining 10 afy (and the existing instantaneous rate of 35 gpm) will continue to be beneficially used by Misty Isle Farms/Wax Orchards for irrigation and domestic supply.

2. The water right being placed in the TRWP as a temporary donation currently has a development schedule date of July 1, 2014, established by Ecology in 2011. Those portions of the water right not being placed in the TRWP will continue to be subject to the July 1, 2014, development schedule date. Ecology will establish a new development schedule date for that portion of the water right being temporarily donated to the TRWP when the donation period ends.

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) and a signed Trust Water Right Agreement (enclosed).

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 CS1-*03754C.

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 terms and your donation in the amount of 25 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.

If you have any questions or concerns, please call Buck Smith at (425) 649-7147 or email him at 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.

**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<br>Attn: Appeals Processing Desk<br>300 Desmond Drive SE<br>Lacey, WA 98503 | Department of Ecology<br>Attn: Appeals Processing Desk<br>P.O. Box 47608<br>Olympia, WA 98504-7608 |
| Pollution Control Hearings Board<br>Environmental Hearings Office<br>1111 Israel Road SW, Suite 301<br>Tumwater, WA 98501 | Pollution Control Hearings Board<br>P.O. Box 40903<br>Olympia, WA 98504-0903 |

**Please also send a copy of your appeal to:**

Jacqueline Klug
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008

*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 20 day of May, 2013.

Jacqueline Klug
Section Manager
Water Resources Program
Northwest Regional Office

JK:bs:sa
Enclosures: Your Right To Be Heard
Trust Water Right Agreement

By certified mail: 7011 2970 0000 0455 4799

cc: Scott Coffey, CDM/Smith, 1218 – 3rd Avenue, Suite 1100, Seattle, WA 98101