



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

July 22, 2016

Randal W. Fox
15250 Highway 24
Moxee, WA 98936

RE: Water Right Change Application No. CG4-26237C@1 (YAKI-14-05)

Dear Mr. Fox:

In accordance with RCW 90.80.080 the Department of Ecology (Ecology) has reviewed the Record of Decision (ROD) and Report of Examination (ROE), and all comments, protests, objections and other relevant information submitted by the Yakima County Water Conservancy Board (the Board) for the above referenced application for change.

The Department of Ecology **REVERSES** the decision of the Board and the subject change is **DENIED**.

The Board has issued two decisions concurrently (YAKI-14-04 and YAKI-14-05) regarding G4-26237. Under the two decisions, (both decisions change the point of withdrawal and place of use) the entire balance of the right would be transferred to two parties (Randal Fox & DeVries Family Farm). Due to the issues described below, including the quantity eligible for change, Ecology is unable to approve or modify the Board decisions. The applicant and Board are encouraged to address the issues and develop new decisions. Ecology is able to provide technical assistance if requested.

1. **Lack of Analysis Regarding Overlapping and Related Rights** – The Board has failed to fully evaluate another water right (G4-23208C) within the current place of use (POU). G4-26237C (priority 1979) has additive and non-additive portions relative to G4-23208C (priority 1974). While separate wells were authorized under each right, both rights share a common POU description. G4-23208C was certificated for 33 acre-feet per year for domestic use and 6 acres of irrigation. G4-26237C originally authorized 190 acre-feet per year for the irrigation of 50 acres “less any amount supplied to these same lands under existing rights under G4-23208C.”

On Page 4 of the ROE, the Board indicates that “because it [G4-23208C] supplies a separate system the uses it serves are not included in this [*History of Water Use*] analysis. Ecology disagrees with the logic that the Board has relied upon to avoid assessing and describing the balance of water use between the two fully over-lapping and related water



rights. Without this information, Ecology cannot determine what water use is attributable to G4-26237C and what, if any, use will be retained under G4-23208C.

2. **Lack of Adequate Review Regarding Right Extent and Validity** – The Board failed to adequately account for a period of reduced use and non-use in the extent and validity analysis. The Board received two protests (Gefre and Hart) which identify a period during the early 2000s of reduced and non-use. Nonetheless, the Board record is largely silent on water use during this period and instead focuses on water use from 2005 forward. Ecology’s review of available air photos and satellite image data confirms the asserted reduced and non-use.

Between 2001 and 2005, photos and data show no more than approximately 25 acres was irrigated within the POU. It appears additional land was brought back into irrigation in 2008. Ecology agrees with the Board that a portion of the right has been forfeited by non-use. However, 2001-2005 appear to be the limiting years, rather than the period between 2005-2013 which was used by the Board.

3. **Lack of Land Owner Signatures** – Ecology’s files and the Board record does not contain signatures from the three current land owners within the existing place of use (POU). Current land owners within the POU must sign an application for change unless it is clearly demonstrated that they do not have ownership interest in the subject water rights. At this time, it is uncertain to what extent the parties involved have ownership interest in G4-26237C and G4-23208C. Ecology requires signatures or additional ownership information to clarify this matter.

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.

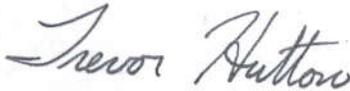
You must also comply with other applicable requirements in chapter 43.21B RCW and chapter 371-08 WAC.

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 Road 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>

If you have any questions or concerns on the above information, please call Kurt Walker at the Department of Ecology at (509) 454-4237.

Sincerely,



Trevor Hutton
Section Manager
Water Resources Program
Central Regional Office

TH:KW:JR/160707
WRTS No. 6323850

Enclosure: Your Right to Be Heard

By Certified Mail: 7014 3490 0001 5527 0695

cc: Philip Rigdon, Director Natural Resources Division Yakama Nation
Yakima County Water Conservancy Board
Kurt Walker, Department of Ecology, CRO (ecc)