



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

July 18, 2011

Troy Grimes – VP Finance
ConAgra Foods Lamb Weston Inc.
PO Box 1900
Pasco, WA 99302

RE: Seasonal Change Authorization for 2011 for “Colbert” portion of Surface Water Certificate SWC 9974 as modified by Okanogan County Superior Court Cause No. 91-2-0022706, dated 19 July 1994 (now assigned to Lake Wallula Vineyards, LLC). Seasonal Change Authorization Number: CS4-SWC9974(A)@3

Dear Mr. Grimes:

DECISION: This SEASONAL CHANGE AUTHORIZATION to change the point of diversion to the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8 of T. 5 N., R. 26 E.W.M., the place of use to the NW $\frac{1}{4}$ Section 34 and the North 3000 feet of the E $\frac{1}{2}$ of Section 33 of T. 6 N., R. 26 E.W.M., the number of irrigated acres to 105 acres, the season of use to March 1 to November 30, and add instream flow as a purpose of use to Lake Wallula Vineyard LLC’s portion of SWC 9974 at a maximum instantaneous diversion rate of 0.31 cubic feet per second (cfs) and a maximum quantity of 49.02 acre-feet (ac-ft) is granted subject to the provisions and conditions given below.

In addition, the trust water place of use extends downstream from the originally authorized point of diversion on the Okanogan River located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T. 37 N., R. 27 E.W.M. to the proposed point of diversion on the Columbia River located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T. 5 N., R. 26 E.W.M. Trust water rates and quantities are as described in Additional Information bullet #3 and given in Table 1 at the end of this report.

Measurements, Monitoring, Metering and Reporting

1. An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.
2. The diversion used under this authorization shall be metered for instantaneous and for cumulative quantities. Water use data under this temporary authorization shall be separated from any other water use data from other rights using the same source meter. Water use data shall be recorded weekly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to the Department of Ecology (Ecology) by January 31st of 2012. Ecology is requiring the recording and reporting of meter data as described above to collect seasonal information for compliance (WAC 173-173-080).
3. The following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Temporary Authorization No., source name, monthly meter readings which include annual quantity used and maximum rate of withdrawal, purpose of use, and period of use.

FILE COPY

Department of Fish and Wildlife

1. No dam or weir shall be constructed in connection with this diversion.
2. The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria. <http://www.wdfw.wa.gov/reg/regions.htm>

Quantity Limits, Flow and Regulation

1. This change does not authorize an enlargement of those quantities in cubic feet per second or acre-feet per year as described under Lake Wallula Vineyards LLC's portion of Surface Water Certificate No. SWC 9974.
2. The expanded period of use is subject to instream flows on the Columbia River measured at John Day Dam as such: for the periods from March 1 to March 31 and from October 1 to November 30, depending on the March 1st forecast for this year, the minimum instream flow which may need to be met is 50,000 cfs.
3. The original place of use of Lake Wallula Vineyards, LLC, portion of Surface Water Certificate No. SWC 9974 and the place of use under Change Authorization No. CS4-SWC9974(A) shall be fallowed for the duration of the 2011 irrigation season. Irrigation occurring during the 2011 irrigation season within the places of use of SWC 9974 or CS4-SWC9974(A) shall constitute a violation of the terms of this authorization, and will result in its immediate termination. Other enforcement actions, including but not limited to fines and/or penalties, may also follow as a result of a violation.

Schedule and Inspections

1. This seasonal change shall expire at the end of the 2011 irrigation season, being November 30, 2011, at which time the place of use shall automatically revert back to that described under Surface Water Certificate No. SWC 9974 and/or CS4-SWC9974(A).
2. In accordance with RCW 90.42.080(9), the full quantity of water conveyed into the trust water rights program shall revert to Lake Wallula Vineyards, LLC, on November 30, 2011.
3. 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 Conditions

1. You are advised that the issuance of this seasonal change by Ecology does not convey a right of access to, or other right to use land, which you do not legally possess. Obtainment of such a right is a private matter between the applicant and the owner of the land.
2. Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.
3. Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances or regulations.

4. Ecology assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this seasonal change authorization. Applicants for seasonal change should not construe that a seasonal change will result in the granting of a permanent change of water right.
5. The quantities authorized through this seasonal change do not represent a full tentative determination as to the extent and validity of the subject water right. A full tentative determination would take place at the time a permanent change application is acted upon, and may result in the quantities authorized under the water right being reduced to reflect actual historic beneficial use of water under the right.

YOUR RIGHT TO APPEAL

You have a right to appeal this decision to the Pollution Control Hearing 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 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.) E-mail is not accepted.
- Serve a copy of your appeal and this decision in paper form - by mail or in person. (See address 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

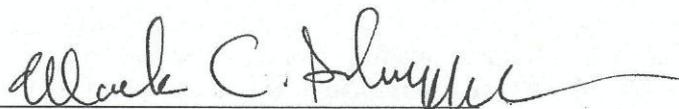
Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW Ste 301 Tumwater, WA 98501	Pollution Control 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://www1.leg.wa.gov/CodeReviser>

Mr. Grimes
July 18, 2011
Page 4 of 11

DATED this 18th of July, 2011.



Mark C. Schuppe
Operations Manager

TP:MCS:RAZ (110717)

Enclosure: *Your Right to Be Heard*
Water Measurement Requirements – Form 1

By certified mail: 7007 2560 0001 7675 5578

Cc: Tim Reiersen
Yakama Nation

Analysis

Background: Two applications for change for the 2011 season only were submitted by ConAgra Foods Lamb Weston, Inc, on January 7, 2011 (CS4-SWC9974(A)@3, and CS4-01228C(A)@3). These applications share the same proposed place of use. This report addresses CS4-SWC9974(A)@3 only. The application proposes to temporarily change the place of use, points of diversion, number of acres irrigated, season of use, and add a purpose of use to the "Colbert" portion of Surface Water Certificate SWC 9974 as modified by Okanogan County Superior Court Cause No. 91-2-0022706, dated 19 July 1994. The Okanogan County Superior Court in this Order and Judgment awarded the Colbert party up to 0.31 cubic feet per second (cfs), not to exceed 79 acre-feet per year (ac-ft/yr), to irrigate up to 20 acres "during the irrigation season". The original place of use is located west of Tonasket, WA. The two points of diversion (now withdrawal) are located just south of Tonasket and draw water in continuity with the Okanogan River. [Note: Ecology is currently processing a Superseding Certificate as requested by the Court in its Order and Judgment to do so "in a timely fashion".] Since the Court's Order, this portion of SWC 9974 has transferred ownership to Lake Wallula Vineyards, LLC. ConAgra Foods Lamb Weston, Inc, intends to lease this water for the 2011 irrigation season to irrigate approximately 105 acres of vineyard on Paterson Ridge, located approximately 2.7 miles northeast of Paterson, WA. This seasonal change analysis pertains to Lake Wallula Vineyards, LLC's portion of SWC 9974 for the 2011 irrigation season only.

Water Right Attributes: The attributes of the portion of SWC 9974 now owned by Lake Wallula Vineyards, LLC, are as follows:

Priority Date:	January 9 th , 1962
Source:	Okanogan River
Quantities:	0.31 cfs, 79 ac-ft/yr
Season of Use:	During the irrigation season
Purpose of Use:	Irrigation of 20 acres
P.O.D. (two P.O.Ws.):	SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 20, T. 37 N., R. 27 E.W.M.
Place of Use:	SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 7 and NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 18; all within T. 37 N., R. 27 E.W.M.

Proposal Attributes: The proposed seasonal change is intended only for the 2011 irrigation season. The attributes of the proposal are as follows:

Priority Date:	Application received on January 7, 2011
Source:	Columbia River
Quantities:	0.31 cfs, 79 ac-ft/yr
Season of Use:	March 1 to November 30
Purpose of Use:	Instream flow, irrigation of 105 acres of vineyard
P.O.D.:	None for instream flow; SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 8, T. 5 N., R. 26 E.W.M. for the irrigation use.
Place of Use:	The place of use for instream flow would extend from the original two points of "diversion" on the Okanogan River to the proposed point of diversion on the Columbia River; the place of use for the irrigation use would be 105 acres within the North 3000 feet of the E $\frac{1}{2}$ of Sec. 33 and the NW $\frac{1}{4}$ of Sec. 34, T. 6 N., R. 26 E.W.M.

Legal Requirements: This change application is subject to the provisions of RCWs 90.03.380 and 90.03.390, and Chapter 90.42 RCW. Under RCW 90.03.380, the place of use and point of diversion of a water right that has been put to beneficial use may be changed if the change can be made without detriment or injury to existing rights. In addition, an annual consumptive quantity analysis (ACQ) is required when a purpose of use is added or an increase in irrigated acreage is proposed. In this instance, both criteria are met. Authority of the department to change the season of use falls within the scope of *R.D. Merrill Co. v. Pollution Bd.* 137 Wn.2d 118.

Under RCW 90.03.390, seasonal or temporary changes in point of diversion or place of use can be made provided such change can be made without detriment to existing rights and requires the permission of the watermaster of the district or of the department.

Under RCW 90.42.080(1)(a), "The state may acquire all or portions of existing water rights, by purchase, gift, or other appropriate means..." This proposed conveyance into the Trust Water Rights Program (TWRP) falls into the "other appropriate means" category. It is not a donation as described under RCW 90.42.080(1)(b). As such, the proposed change to instream flows would also be subject to the requirements of RCWs 90.03.380 and 90.03.390 (given above). In addition, this conveyance into trust would be subject to RCW 90.42.040(4) and RCW 90.42.040(5). RCW 90.42.040(4) provides that, should a trust water right be exercised, "...neither water rights existing at the time the trust water right is established, nor the public interest will be impaired." RCW 90.42.040(5) provides that notice be published before any trust water right is created once a week for two consecutive weeks in a newspaper of general circulation published in the county or counties in which the use is to be made. In addition the statute provides that a notice be sent to all appropriate state agencies, potentially affected local governments and federally recognized tribal governments, and other interested parties containing pertinent information of the trust water right.

Under RCW 43.21C.035 and Chapter 197-11 WAC this temporary change is exempt from a SEPA review.

RCW 90.03.380 (tentative determination of extent and validity):

Quantities proposed for this temporary change derive from an Okanogan County Superior Court Order and Judgment dated 19 July 1994. These values are: up to 0.31 cubic feet per second (cfs) and up to 79 acre-feet per year (ac-ft/yr) to irrigate up to 20 acres "during the irrigation season". The subject right proposed for change (Lake Wallula Vineyards, LLC's portion of SWC 9974) underwent place of use and point of diversion changes through the BCWCB on October 25, 2007. Ecology issued a modification letter to this change on January 11, 2008. (Note: The places of use of Lake Wallula Vineyard, LLC's portions of SWC 9974C and S4-01228C, as determined by the Okanogan County Superior Court Order and Judgment dated 19 July 1994, describe the same area. The Court affirmed 58 acres of historically irrigated land under the portions of these two certificates now owned by Lake Wallula Vineyard, LLC. The Court divided the acres as such: 20 acres went to Lake Wallula Vineyard, LLC's portion of SWC 9974C and 38 acres went to Lake Wallula Vineyard, LLC's portion of S4-01228C). As a component of the change, a review of the extent and validity was performed on the subject right by a consultant (a licensed engineer). The Benton County Water Conservancy Board (BCWCB) accepted the consultant's findings and tentatively determined that the right is valid and no relinquishment had occurred.

In 2009, for a different seasonal change for this right (CS4-SWC9974(A)@1) proposed for the 2009 irrigation season only, aerial photography of the place of use under SWC 9974C taken in 1998, 2005, and 2006 was reviewed. These photos indicated that approximately 58 acres were irrigated during those years within the place of use description.

Along with other 2009-only seasonal change authorizations, the full quantities available for change under CS4-SWC9974(A)@1 were transferred to a place of use near Paterson, WA. From 2009 aerial photography, the entire number of acres (145) under the seasonal change authorizations appeared irrigated.

In 2010, an identical change as this one was proposed under this right and Ecology issued an authorization in July, 2010. From 2010 satellite imagery, it appears the entire authorized place of use for that change was irrigated.

In conjunction with the ACQ analysis discussion below, it appears that a five year period of non-use has not occurred since the Court Order and Judgement of 1994.

RCW 90.03.380 (annual consumptive quantity):

ConAgra Foods Lamb Weston, Inc proposes to increase the amount of acres irrigated from 20 acres to 105 acres and add a purpose of use (instream flow). Under RCW 90.03.380, both of these types of changes trigger an ACQ analysis. An ACQ analysis evaluates the consumptive water use of the two peak years within the most recent five year period of continuous beneficial use. This amount of consumptive use cannot be exceeded at the proposed place of use.

The same change mentioned above by the BCWCB (in 2007) and modified by Ecology (in 2008) also included an ACQ analysis on the subject right (in accordance with RCW 90.03.380). The same consultant who performed the review of the extent and validity also provided an ACQ discussion. As no meter readings were available, the consultant relied on Washington Irrigation Guide (WIG) standard crop requirements and electrical power consumption records for years 2001-2005. Peak years were 2003 and 2004. The consultant calculated the ACQ for the subject right as 60 acre-feet, and the BCWCB approved this amount.

Since the last known water use at the original place of use occurred in 2006 and there are data indicating continuous water use from 2006 back to at least 2001, the ACQ analysis for this change covers years 2002-2006. A more recent five-year period of continuous use is not available, since there appears to have been no use in 2007. This five year period (2002-2006) includes the two peak water years as the previous ACQ analysis approved by the BCWCB (2003 and 2004) The calculations of the previous change were reviewed by the author and appear reasonable. As such, 60 acre-feet (per year) of water for consumptive use would be available for this seasonal change.

The consultant's ACQ discussion provided to the BCWCB for the previous change did not address return flow quantities. It can be inferred, however, that since the percent Consumptive Use (%CU) given in the consultant's discussion was estimated at 90%, there is an approximate 10% component of non-consumptive use associated with the previous use on the original place of use. Return flow at the original place of use is estimated to be on the order of 6.7 acre-feet per year (60 ac-ft / 90% minus 60 ac-ft). The proposed place of use has an above-ground drip system installed. From Ecology's Guidance Document Number 1210, this type of water delivery system has an average consumptive use efficiency of 93%, and a maximum of 95%. ConAgra Foods Lamb Weston, Inc incorporates technologically advanced irrigation practices and, as such, if this authorization is approved, return flow would be expected to be at most 7% of the total diverted. This equates to approximately 4.5 acre-feet of return flow (60 ac-ft / 93% minus 60 ac-ft). To ensure that there would be no increase in consumptive use, only 64.5 acre-feet would be available for this seasonal change (60 ac-ft + 4.5 ac-ft). Metering efforts would ensure that quantities authorized under this change authorization, if approved, would not be exceeded. [See "Provisions" above.]

The application indicates that the intent of this seasonal change is to cover 105 acres of vineyard in conjunction with another change application, CS4-01228C@3. The water duty for vineyard is estimated by the applicant to be on the order of 18 inches per acre per year. In-office experience suggests that this estimate is reasonable (Dan Haller, 2010 – personal communication), and is supported by a Washington State University publication located at the following web address:

<http://users.tricity.wsu.edu/~cdaniels/profiles/WineGrapes.pdf>

For 105 acres of wine grapes, 157.5 acre-feet of water would then be required each season (105 acres * 18 inches/acre ÷ 12 inches/foot). Clearly, this change proposal alone would not supply sufficient water for a full irrigation season for the 105-acre vineyard. More rights would need to be transferred to satisfy crop needs for an entire irrigation season. The applicant recognizes this separate need and has another change application filed for additional water (CS4-01228C(A)@3). These two change proposals together appear to cover the needed 157.5 ac-ft of water to irrigate 105 acres of wine grapes (98 ac-ft + 60 ac-ft = 158 ac-ft).

Note that the water duty provided by the applicant is only an estimate and may not fully account for evaporative loss (a consumptive component of water duty) associated with the above-ground drip system. The applicant is advised that any future changes will need to consider this potential increase in water duty.

Since the application was not submitted until January 7 and a public notice publication error was made, all public notice requirements, additional information requests, and internal Ecology reviews were not completed until late June. Ecology does not retroactively approve water used without authority, and as such, quantities potentially approved for this change proposal would reflect only the period of time from the approximate date of approval to the end of irrigation season. If approved, the estimated date of approval is early July, 2011. Using Washington Irrigation Guide consumptive use data for juice grapes in Richland as a model, approximately 24% of the consumptive use occurs by June 30. (Total consumptive use is 29.33 inches/ac; consumptive use through June is approximately 7.13 inches/ac). Reducing the full amount available for change calculated above by 24% yields **49.02 ac-ft** (64.5 ac-ft - (64.5 ac-ft * 24%)). This is the maximum amount that could be approved assuming an early July approval.

RCW 90.03.380 and RCW 90.03.390 (detriment or injury to existing rights):

Changing the water right downstream and trusting the right for instream flow in the intervening reach will not reduce the availability of water to intervening water users, provided Ecology only protects the consumptive use historically exercised (see ACQ analysis above).

RCW 90.42.040(4) (impairment to existing rights):

At first glance, it is difficult to imagine a scenario where impairment would occur where water remains in a creek, stream, or river instead of being diverted. However, there could be impairment where other users may be dependent on return flows originating from the subject right which would no longer be available. An impairment analysis to existing rights resulting from a change in purpose of use to instream flows is therefore facilitated by examining existing rights in the area with respect to the existing and historic hydraulic regime. A cursory examination of projected return flow pathways of the subject right suggests that return flows from the original place of use would likely be intercepted by two unnamed creeks that converge in the southwest quarter of Section 17 of T. 37 N., R. 27 E.W.M. and discharge to the Okanogan River. Where the unnamed creeks converge, they incise into glacial sediments, drop relatively steeply for approximately ¼ mile, level out somewhat, and then arrive at the flat Okanogan River valley. No surface water diversions appear in Ecology's records for these unnamed creeks. No wells appear in Ecology's records above the confluence of the unnamed creeks, in the steep, incised area or in the flat valley bottom; six wells are mapped in the somewhat leveled out area. Water right documents associated with these six wells are: WRC034449 (domestic), WRC021895 (domestic), WRC088137 (domestic), G4-23992P (irrigation of 576 acres), G4-28548C (multiple domestic), and G3-21195C (multiple domestic).

From the previous change to this subject right approved by the BCWCB, the consultant estimated that the irrigation system at the original place of use has a consumptive use efficiency of 90%. Under the consultant's calculated 60 acre-feet of consumptive use, this would result in approximately 6.7 acre-feet of return flow over the entire irrigation season. If the wells captured the return flow, this would be a maximum of approximately 1.1 acre-feet for each well, some of which would arrive at the six wells at some point after the season was over. While an effect may be felt by these wells as a result of the nonuse, it is not expected to result in impairment. The amount of water previously diverted would, under this change proposal, remain in the Okanogan River to its confluence with the Columbia River, and then flow in the Columbia River to the proposed point of diversion. Availability would remain the same, however the timing would be altered. Additionally, it is possible that all or some of the wells discharge to the Okanogan River. Surface water exchange with river water may mute effects from "retimed" return flow.

Though no reports of impairment due to the change in purpose of use to instream flow were submitted to Ecology in 2009 and 2010 for similar changes to this water right, and no impairment is expected for this season, under RCW 90.42.040(4), “[if] impairment becomes apparent during the time a trust water right is being exercised, the department shall cease or modify the use of the trust water right to eliminate the impairment.”

RCW 90.42.040(4) (impairment to public interest):

Creation of a trust water right may not be contrary to the public interest. A trust water right for instream flow will increase flows downstream from the historic point of diversion. The Water Resources Act of 1971 (Chapter 90.54 RCW) was enacted to provide a strategic means of “providing and securing sufficient water to meet the needs of people, farms, and fish”. Protecting stream flows along the Okanogan and Columbia Rivers is expected to improve fish habitat. Improving fish habitat is considered an interest of the public.

Both the Okanogan and Columbia Rivers are subject to minimum instream flows (Chapter 173-549 WAC and Chapter 173-563 WAC, respectively). Under this change proposal, the Okanogan River would have increased flow from the original point of diversion down to its confluence with the Columbia River. No impairment is expected along this reach of the Okanogan. The Columbia River would have increased flow from its confluence with the Okanogan River down to the proposed point of diversion near Paterson, WA. No impairment is expected along this reach of the Columbia River.

RCW 90.42.040(5) (public notice):

In accordance with RCW 90.42.040(5), public notice of this seasonal change proposal was published in the Omak Chronicle on March 2 and March 9 of 2011, the Wenatchee World on February 27 and March 6 of 2011, and the Tri-City Herald on March 2, May 17, and May 24 of 2011. There were no protests received during the 30 day protest period.

In accordance with RCW 90.42.040(5)b, letters of notice describing the pertinent information of the change proposal were sent to 30 state agencies, potentially affected local governments, federally recognized tribal governments, and other interested parties on March 15, 2011. Only one comment was received during the 30-day comment period. The comment was submitted by the Washington Department of Fish and Wildlife (WDFW), dated April 13, 2011. Essentially, WDFW did not object to the placement of this water into trust.

R.D. Merrill Co. v. Pollution Bd. 137 Wn.2d 118. (change in period of use):

R.D. Merrill Co. v. Pollution Bd. discusses the implications of changing the season of use to a water right in terms of detriment to other users. Should the department find that a proposed change in timing of the right would cause detriment to other users, the “time of use should be denied or conditioned to protect other water rights holders by, for example, limiting the use for new purposes to the same season as the historical use.”

During the investigation of the 2009 seasonal change proposal to this same right, a discrepancy was observed between Lake Wallula Vineyards’ portions of SWC 9974 and S4-01228C as divided by the Okanogan County Superior Court regarding the period of use. These two rights share the same place of use description, yet the Court entered “during the irrigation season” for SWC 9974 and “April 1 to September 30” for S4-01228C. The priority date of SWC 9974 is 1962, and the priority date for S4-01228C is 1966. For the purposes of the 2009 seasonal change only, it was assumed that uncertainty in 1962 had been resolved by 1966 and “during the irrigation season” had been defined as April 1 through September 30. The same assumption was made for processing the 2010 seasonal change proposal and will again be made for 2011. This change proposal, as in 2009 and 2010, seeks to expand the irrigation season to March 1 through November 30.

This change proposal alters the quantities authorized under Lake Wallula Vineyard, LLC's portion of SWC 9974, as discussed in the ACQ section above. However, an expansion of the season of use would not enlarge the right provided that the consumptive use quantity is not exceeded. This authorization, if approved, would be provisioned as such.

Though the priority date of the right proposed for change pre-dates the set instream flow priority date on the Columbia River, expanding the season is in effect a new "hit" on the river during the expanded periods which could cause impairment. The expanded period of use would be therefore subject to the set instream flow rates. These would be the periods of March 1 to March 31 and October 1 to November 30 only (these two periods do not include the original period of use of April 1 to September 30).

During the proposed expanded period of use only, diversions might be subject to instream flows set for the Columbia River under Chapter 173-563 WAC. This depends on the March 1 forecast. Under certain conditions, the minimum instream flows to be met would be measured at John Day Dam. For March 1 to March 31, the minimum instream flow to be met is 50,000 cfs. For October 1 to November 30, the minimum instream flow to be met is also 50,000 cfs. The March 1, 2011, forecast did not trigger the minimum instream flow requirement.

For the trust water conveyance, impairment to set instream flows under Chapter 173-549 WAC (Water Resources Program in the Okanogan River Basin, WRIA 49) and Chapter 173-563 WAC (Instream Resources Protection Program for the Main Stem Columbia River in Washington State), is similarly not expected. Under this change proposal, the conveyance into trust for instream flow allows Ecology to ensure that consumptively used water formerly diverted at the original place of use stays in the Okanogan River, continues to the Columbia River, and is available at the proposed point of diversion. This year, 2011, is not expected to be a drought year for the Columbia River; instream flows on the Columbia River are expected to be met. Indeed, formerly diverted water would remain in the long intervening reach on the Okanogan and Columbia Rivers between the original point of diversion to the proposed point of diversion.

Additional Information:

- 1) At some point in the 1990s, the original surface water diversion changed to two ground water wells. It appears the change to wells was made without first obtaining authorization from Ecology pursuant to Chapters 90.03 and 90.44 RCW. This is known as a "de facto, or after-the-fact" change. A letter dated November 18, 1994, from Ecology indicated that change applications to reflect the change in point of diversion to two wells needed to be submitted. This submittal does not appear to have occurred. Ecology, however, recognizes the continued beneficial use of the right for this change authorization, in alignment with *Ecology v. Grimes (1993)* and *Ecology v. Acquavella (Lavinal) (2003)*. In addition, Ecology considered that the two wells lie in close proximity to the Okanogan River, a licensed Hydrogeologist on Ecology's staff has determined that the two wells draw water that is in hydraulic continuity with the Okanogan River, the right was initially a surface water authorization, and a change authorization issued by the BCWCB (CS4-SWC9974(A)) and modified by Ecology did not address this issue.
- 2) On January 11, 2008, Ecology modified a Benton County Water Conservancy Board (BCWCB) decision (CS4-SWC-9974(A)) to transfer the place of use and point of diversion of the same right subject to this change proposal to an area near Tri-Cities. This change has not been fully developed and is not part of this temporary change other than, if this seasonal change is approved, the place of use authorized under CS4-SWC-9974(A) would be provisioned to be fallowed for the 2011 irrigation season.
- 3) Due to the distance involved in this temporary change proposal, the proposed change involves the temporary conveyance of the right into the trust water right program (TWRP) as instream flow. The place of use of the right conveyed into the TWRP would extend from the original point of diversion on the

Okanogan River to the proposed point of diversion on the Columbia River. This conveyance, if exercised, would allow Ecology to protect the water right quantities along this distance from potential withdrawal by other users and ensure that the water right quantities are available at the proposed point of diversion. The 60 acre-feet resulting from the ACQ analysis that would be conveyed into trust can be distributed on a monthly basis similar to the way it was consumed by the crops at the original place of use. In this case, distribution is in proportion to the crop duty provided in the Washington Irrigation Guide for the Omak area (see Table 1 below and the *tentative determination of extent and validity* section above). The instantaneous rate is calculated as a continuous diversion of the monthly volume.

Table 1: Trust Water Calculation

	May	June	July	August	September	October	Total
WIG apples w/cover	2.76	7.5	9.68	7.03	4.39	0.29	31.67 [sic]
% of WIG total	8.7%	23.7%	30.6%	22.2%	13.9%	0.9%	101%
WIG % of 60 ac-ft	5.2	14.2	18.4	13.3	8.3	0.5	59.9
ac-ft converted to cfs	0.08	0.24	0.30	0.22	0.14	0.01	N/A

U.S. Postal Service TM
CERTIFIED MAIL TM RECEIPT
 (Domestic Mail Only; No Insurance Coverage)
 For delivery information visit our website

7007 2560 0001 7675 5578

OFFICIAL

Postage \$ _____
 Certified Fee \$ _____

Return Receipt (Endorsement) Mark Here
 Restricted (Endorsement)

**TROY GRIMES - VP FINANCE
 CONAGRA FOODS LAMB WESTON INC
 PO BOX 1900
 PASCO WA 99302
 CS4-SWC9974(A)@3-110717**

Street or P.O. _____
 City, State _____

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece. 	A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee <i>Jenna Heald</i>	
	B. Received by (Printed Name) <i>Jenna Heald</i>	C. Date of Delivery <i>7/19/11</i>
TROY GRIMES - VP FINANCE CONAGRA FOODS LAMB WESTON INC PO BOX 1900 PASCO WA 99302 CS4-SWC9974(A)@3-110717	address different from item 1? <input type="checkbox"/> Yes after delivery address below: <input type="checkbox"/> No	
	3. Service type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
7007 2560 0001 7675 5578		
PS Form 3811, February 2004	Domestic Return Receipt	102595-02-M-1540