



Benton County  
WATER CONSERVANCY BOARD

BENT-11-01

Record of Decision

ROE and ROD Reviewed and Approved by BCWCB Members

Applicant: Frank Tiegs, LLC, and Lewis and Clark Ranch, LLC. Application Number: CS4-00879sb31

The attached Report of Examination has been reviewed by the BCWCB members; and this Record of Decision was made at an open public meeting of the Benton County Water Conservancy Board held on October 20, 2011, with any changes to ROE/ROD based on information received from the applicant and WADOE staff.

(X) Approval:

The Benton County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination and submits this record of decision and report of examination to the Department of Ecology for final review or consideration.

( ) Denial:

The Benton County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination and submits this record of decision to the Department of Ecology for final review or consideration.

Signed  Date: 10/20/2011  
Darryll Olsen, Ph.D., Chairman  
Benton County Water Conservancy Board

- Approves
- Denies
- Recused
- Abstains
- Excused Absence

Signed  Date: 10/20/2011  
John Jaksch, Ph.D., Vice Chairman  
Benton County Water Conservancy Board

- Approves
- Denies
- Recused
- Abstains
- Excused Absence

Signed  Date: 10/20/2011  
Matt Berg, Treasurer  
Benton County Water Conservancy Board

- Approves
- Denies
- Recused
- Abstains
- Excused Absence

Final ROE/ROD Mailed to the Department of Ecology, CRO, via tracked mail, and other interested parties on or before 11/05/2011.

**BENTON COUNTY  
WATER CONSERVANCY BOARD**

RECEIVED

NOV 01 2011

DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

*Application/Review for Seasonal Change-Transfer*

OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF  
THE STATE OF WASHINGTON

**Report of Examination**

Prepared by Members of the Benton County Water Conservancy Board

Surface Water

Ground Water

DATE APPLICATION RECEIVED	WATER RIGHT DOCUMENT NUMBER	WATER RIGHT PRIORITY DATE	BOARD-ASSIGNED CHANGE APPLICATION NUMBER
(March-April 2011)	CS4-00879sb31 Per CFO Claim No. 0879 Acquavella Proceeding No. 77-2-01484-5, Subbasin 31, Vol. 11 (signed April 18, 1993, and per S4-01340C, with a priority date of April 18, 1969).	Court signed November 1993, with a priority date of April 18, 1969.	BENT-11-01

NAME

Frank Tiegs, LLC, and Lewis and Clark Ranch, LLC,

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
P.O. Box 3110	Pasco	WA	99350

**Changes Proposed:**     Change purpose     Add purpose     Add irrigated acres     Change point of diversion/withdrawal  
 Other (Temporary, Trust, Interties, etc.)     Change Place of Use per RCW 90.03.380

**SEPA**

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is:     Exempt (water right)                      Not exempt (proposed project)

The direct water right change/transfer described herein is exempt from SEPA review, as the water amount involved for additional irrigated acres is under the RCW threshold criteria (50 cfs surface water).

# BACKGROUND AND DECISION SUMMARY

Prepared by Members of the Benton County Water Conservancy Board

## Existing Right

Below Information Is for CFO Claim No. 0879, Acquavella Proceeding No. 77-2-01484-5, Subbasin 31, Vol. 11 (signed April 18, 1993, and per S4-01340C). Priority date of April 18, 1969.

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE				
86.1		15,015	Feb 1-Nov 30, Irrigation of 4,620				
SOURCE			TRIBUTARY OF (IF SURFACE WATER)				
			Yakima River and CID Canal				
AT A POINT LOCATED:							
	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
Diversion Point: (and as described in CFO and below)	Main Diversion	Govt. Lot 5	9	10N	27 EWM	31	Benton
	Secondary Diversion	Govt. Lot 6	3	10N	27 EWM	31	Benton

AT A POINT LOCATED:

- 1) 200 feet south and 2,500 feet west from the east quarter corner of section 9, within government lot 5 of section 9, T.10N., R. 27 EWM.
- 2) 1,750 feet north and 200 feet west from the south quarter corner of section 3, within government lot 6 of section 3, T.10N, R.27 EWM.

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED:

As stated within CFO, and all within T.10N, R.27 EWM:

- Diversion easement east and south-east within section 9, section 15;
- All lands east and south of the Yakima River, within sections 16, 21, and 22;
- Lands located approximately within the W1/3 and S1/3 of section 23;
- Lands located approximately within the W1/4 of the W1/4 of section 25;
- Lands within section 26, with the exclusion of lands approximately within the E1/2 of the E1/2 of the NE1/4;
- All lands within section 27;
- Lands approximately north and north-east of the old railroad within section 28;
- Lands approximately north-east of the old railroad within section 33;
- A portion of lands approximately north and north-east of the old railroad within section 34;
- All lands within section 35;
- Lands approximately within the W1/3 of section 36.

And as stated within the CFO, and all within T.9N, R.27 EWM:

- Lands approximately within the N1/2 of the S1/4, and NE1/4 of section 2.

Note: Parcel Numbers Are Attached.

## Proposed Use

Below Information Is for CFO Claim No. 0879, Acquavella Proceeding No. 77-2-01484-5, Subbasin 31, Vol. 11 (signed April 18, 1993, and per S4-01340C); and with change amendment under CS4-00879sb31. Priority date of April 18, 1969.

MAXIMUM CUB FT/ SECOND 86.1	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 14,961.1	TYPE OF USE, PERIOD OF USE Feb 1-Nov 30, Irrigation of up to 5,370 acres				
SOURCE			TRIBUTARY OF (IF SURFACE WATER) Yakima River and CID Canal (Yakima River)				
AT A POINT LOCATED:  Diversion Point: (and as described in CFO and below)	¼ Main Diversion  Secondary Diversion	¼ Govt. Lot 5  Govt. Lot 6	SECTION 9  3	TOWNSHIP N. 10N  10N	RANGE 27 EWM  27 EWM	WRIA 31  31	COUNTY. Benton  Benton

**AT A POINT LOCATED:**

- 3) 200 feet south and 2,500 feet west from the east quarter corner of section 9, within government lot 5 of section 9, T.10N., R. 27 EWM.
- 4) 1,750 feet north and 200 feet west from the south quarter corner of section 3, within government lot 6 of section 3, T.10N, R.27 EWM.

**LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED:**

As stated within CFO, and all within T.10N, R.27 EWM:

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- Lands located approximately within the W1/4 of the W1/4 of section 25;
- Lands within section 26, with the exclusion of lands approximately within the E1/2 of the E1/2 of the NE1/4;
- All lands within section 27;
- Lands approximately north and north-east of the old railroad within section 28;
- Lands approximately north-east of the old railroad within section 33;
- A portion of lands approximately north and north-east of the old railroad within section 34;
- All lands within section 35;
- Lands approximately within the W1/3 of section 36.

And as stated within the CFO, and all within T.9N, R.27 EWM:

- Lands approximately within the N1/2 of the S1/4, and NE1/4 of section 2.

**AND** all within T.10N, R.27 EWM:

- Lands located south of the Yakima River within section 17;
- Lands located south of the Yakima River within section 19;
- Lands located south of the Yakima River within section 19;
- Lands located south of the Yakima River within section 20;
- Land approximately north of Ruppert Road, except the W1/2 of the SW1/4 of section 29;
- Land approximately within the E1/2 of section 30;
- Land approximately within the NE1/4 of the NE1/4 of section 31.

Note: Parcel Numbers Are Attached.

# Water Board Decision

Below Information Is for CFO Claim No. 0879, Acquavella Proceeding No. 77-2-01484-5, Subbasin 31, Vol. 11 (signed April 18, 1993, and per S4-01340C); and with change amendment under CS4-00879sb31. Priority date of April 18, 1969.

MAXIMUM CUB FT/ SECOND <b>86.1</b>	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR <b>14,961.1</b>	TYPE OF USE, PERIOD OF USE <b>Feb 1-Nov 30, Irrigation of up to 5,370 acres</b>				
SOURCE			TRIBUTARY OF (IF SURFACE WATER) <b>Yakima River and CID Canal (Yakima River)</b>				
AT A POINT LOCATED:	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
Diversion Point: (and as described in CFO and below)	Main Diversion	Govt. Lot 5	9	10N	27 EWM	31	Benton
	Secondary Diversion	Govt. Lot 6	3	10N	27 EWM	31	Benton

**AT A POINT LOCATED:**

- 5) 200 feet south and 2,500 feet west from the east quarter corner of section 9, within government lot 5 of section 9, T.10N., R. 27 EWM.
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**LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED:**

As stated within CFO, and all within T.10N, R.27 EWM:

- Diversion easement east and south-east within section 9, section 15;
- All lands located east and south of the Yakima River, within sections 16, 21, and 22;
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- Lands located approximately within the W1/4 of the W1/4 of section 25;
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- Lands approximately north and north-east of the old railroad within section 28;
- Lands approximately north-east of the old railroad within section 33;
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- All lands within section 35;
- Lands approximately within the W1/3 of section 36.

And as stated within the CFO, and all within T.9N, R.27 EWM:

- Lands approximately within the N1/2 of the S1/4, and NE1/4 of section 2.

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- Lands located south of the Yakima River within section 17;
- Lands located south of the Yakima River within section 19;
- Lands located south of the Yakima River within section 19;
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- Land approximately north of Ruppert Road, except the W1/2 of the SW1/4 of section 29;
- Land approximately within the E1/2 of section 30;
- Land approximately within the NE1/4 of the NE1/4 of section 31.

Note: Parcel Numbers Are Attached.

**DESCRIPTION OF PROPOSED WORK**

The existing CFO (and certificate) is being used for irrigation of lands along the Lower Yakima River. The water rights are in good standing per WADOE files, per CFO Claim No. 0879 Acquavella Proceeding No. 77-2-01484-5, Subbasin 31, Vol. 11 (signed April 18, 1993, and per S4-01340C, with a priority date of April 18, 1969).

The applicant seeks to increase the flexibility of the water right by adding a place of use, and increasing irrigated acres, with a lower overall water duty per acre--relying primarily on new Conservation O&M measures, improvements to their main canal infrastructure, and some changes to vineyard ground. The water delivery will utilize the existing pump station, main canal/mainline, and water distribution system.

This is a permanent change that will be metered for CFO/certificate compliance. The new Conservation O&M measures are based on accepted procedures for irrigation scheduling, weather and temperature conditions monitoring, the use of WSU AgWeatherNet real-time data and forecast analyses, and the water application monitoring per O&M data and analyses.

The overall project is based on a 2011-2015 construction schedule and plan of new development.

**DEVELOPMENT SCHEDULE**

<small>BEGIN PROJECT BY THIS DATE:</small> Immediately	<small>COMPLETE PROJECT BY THIS DATE:</small> December 31, 2014	<small>COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:</small> December 31, 2015
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NOTE: The Water Board establishes the development schedule, as required under RCW 90.80.070, 90.80.080, and WAC 173-153-130. The schedule may be extended by WADOE if diligence is demonstrated in the completion of this project.

# REPORT OF EXAMINATION

Prepared by Members of the Benton County Water Conservancy Board

## BACKGROUND

The existing CFO (and certificate) is being used for irrigation of lands along the Lower Yakima River. The water rights are in good standing per WADOE files, per CFO Claim No. 0879, Acquavella Proceeding No. 77-2-01484-5, Subbasin 31, Vol. 11 (signed April 18, 1993, and per S4-01340C, with a priority date of April 18, 1969).

The applicant seeks to increase the flexibility of the water right by adding a place of use, and increasing irrigated acres, with a lower overall water duty per acre--relying primarily on new Conservation O&M measures, improvements to their main canal infrastructure, and some changes to vineyard ground. The water delivery will utilize the existing pump station, main canal/mainline, and water distribution system.

This is a permanent change that will be metered for CFO/certificate compliance. The new Conservation O&M measures are based on accepted procedures for irrigation scheduling, weather and temperature conditions monitoring, the use of WSU AgWeatherNet real-time data and forecast analyses, and the water application monitoring per O&M data and analyses.

The overall project is based on a 2011-2015 construction schedule and plan of new development.

### Attributes of the water right as currently documented:

#### Existing Water Right and No.:

Donald G. and Mary Mackay and Arch and Pauline A. MacDonald, per CFO Claim No. 0879, Acquavella Proceeding No. 77-2-01484-5, Subbasin 31, Vol. 11 (signed April 18, 1993, and per S4-01340C, with a priority date of April 18, 1969). Note: Ownership Administrative Change to be Submitted.

#### Water Right Change No.:

CS4-00879sb31, BENT-11-01

### Attributes of the water rights as currently documented and with change:

Existing: 86.1 cfs, 15,015 acre-ft., irrigation of 4,620 acres February 1 to November 30.

Change: 86.1 cfs, 14,961.1 acre-ft., irrigation of 5,370 acres February 1 to November 30.

#### Existing Provisions:

See attached CFO.

#### Tentative Determination of the Water Right:

See Water Board's Decision Above; water right is in good standing.

#### History of Water Use:

The water right has been subject to adjudication and is in CFO disposition. It has been used to irrigate lands along the Lower Yakima River. The right has undergone ACQ review per this ROE/ROD.

#### Previous Changes or Administrative Actions:

Water right is in CFO status per the Acquavella Adjudication. No other previous administrative actions at this time (changes or ownership designations).

#### SEPA Compliance:

Yes, per RCW threshold determination noted above (50 cfs surface water).

## COMMENT AND PROTESTS

Public notification for the applicant's request was filed in the Tri-City Herald. A copy is provided in the Public Notice attachments. The WADOE/Water Board did not receive a protest notice, or comments, from a third party via the general public newspaper notice.

### Issues Raised by WADOE:

The Water Board has provided the WADOE CRO with the change/transfer application and public notice, and a Water Board representative has discussed in detail the change request with WADOE staff, and requested an explicit identification of any issues of concern related to the change request or the Water Board's preparation of the ROE/ROD. The WADOE staff requested greater descriptive detail regarding the legal description of the water right, and the Water Board has made all recommended changes thereof; and per staff discussions, a more detailed SEPA review was completed, with a SEPA compliance determination per existing RCW (50 cfs surface water).

The Water Board has determined, via applicant data records that the said water right is being beneficially used, and operating under the requirements of water code provisions and the issued certificate/permits.

### Protests:

Date: None Received.

This was recognized by the board as a  Protest  Comment

Name/address of protestor/commenter:

Issue:

Board's analysis:

### Other:

None.

## INVESTIGATION

Prepared by Members of the Benton County Water Conservancy Board

The following information was obtained from site inspections, technical reports and documents, research of department records, and discussions with the applicant's technical representative/consultant and other interested parties; as well as discussions with the CRO-WADOE staff. The Water Board has prepared technical analyses related to the water beneficial use, as well.

### Proposed Project Plans and Specifications:

As noted above, the applicant will continue to use this water right at the current and proposed place of use, with no change to the authorized water volumes, and with an increase to allowed irrigated acres. The water right will involve the use of one primary surface water pump station, and a secondary canal pump station, already in existence.

The applicant's intent is to continue the use of the CFO/certificate at its existing and proposed place of use, as described above.

## A. Key Technical Issues—Water Right Review:

### This Investigation has Included Several Areas:

#### Tentative Determination:

In order to make a water right change decision, the Water Board must make a tentative determination on the extent and validity of the right. The Water Board has made the tentative determination as displayed upon the first section of this report. There are several circumstances that can cause the Board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the following findings.

First, the water right applicant holds a valid water right CFO/certificate in good standing, and it is on file with the WADOE. The water right is subject to the surface water code provisions, including RCW 90.03.380/390 for change/transfer provisions.

The CFO/certificate is valid as stands, subject to subsequent change actions by the Water Board and any WADOE administrative changes affecting development.

Second, the change/transfer request must be consistent with RCW 90.03.380, and related water code statutes. The annual consumptive quantity (ACQ-beneficial use) analysis for the existing acres indicates that much of this land has received a two-in-five-year potato rotation, along with other field crops, sweet corn, with wheat and mustard cover cropping (see applicant submission packet and detailed ACQ review therein attached to ROE/ROD).

The crop water duties are based on a detailed review of the WSU irrigation guide and WSU AgWeatherNet estimates for the local area, along with some confirmation by direct center pivot meter data for selected crops and site-specific estimates (the selected pivot numbers tend to be equal to or less than crop duty estimates where applicable). The crop water duty information also includes the application of soil-profile and stability water use, consistent with local irrigation practices for the area (as recognized by the Benton-Franklin County Conservations Districts). Also, some metered pump station data was available as well, though meter calibration has been an issue in some years—the owners are skeptical of the meter performance.

The detailed water right audit and ACQ Technical Review covered the years 2003-2008. The applicant has continued the same crop rotation schedule in 2009-2010; therefore, the Water Board is accepting the 2003-2008 period Technical Review as applicable to the 2009-2010 period, and reviewing metered data for all years available (see attachments, Technical Review of M&M Farms Water Right, CSRIA June 12, 2009).

The ACQ two-year, peak-year average is identified within the Technical Review and submitted data tables (ACQ analyses). In summary:

- The Water Board recognizes the adjustments made in the Technical Review to account for only irrigated acres within the existing water right place of use (some portions of pivots 10 and 11 were outside the designated POU).
- For the allowed acreage, the ACQ analyses suggest that the total acre-ft. use is about 15,796 (peak two-year average), reflecting an overall water duty of 3.43 acre-ft./acre. This water duty is consistent with the

relatively high water duty crops being grown, and the water right does not make any provisions for main canal-system losses (the water allocation is treated as being all consumptive use).

- The most recent pump station meter data (2010) are consistent with this use level, suggesting full system (consumptive) use at about 15,949 acre-ft.
- Because the allowable ACQ use for the change/transfer cannot exceed the CFO provisions, the actual available beneficial use cannot exceed the existing 3.25 acre-ft./acre for the 4,603 acres being irrigated, or about 14,961.1 acre-ft.

The applicant will be using an aggressive Conservation O&M program based on approved procedures for irrigation scheduling, weather and temperature conditions monitoring, the use of WSU AgWeatherNet real-time data and forecast analyses, and the water application monitoring per O&M data and analyses.

The applicant will be changing a portion of the existing and future crop mix to integrate lower water duty crops, such as wine grapes.

The applicant will be integrating additional system hardware efficiency measures to improve the main canal and mainline distribution systems.

Third, under the change request, the total amount of water withdrawal from the existing right and proposed change cannot exceed the amount within the currently CFO/certificated water right. The change/transfer request must not exceed the existing water right limits; no enlargement of the water right is allowed.

The Water Board notes that, with the above operational changes, the request requires no expansion of the water right, as designated under the existing CFO/certificate. The total water use change is fully compatible with water spreading for the existing water right per RCW 90.03.380.

Fourth, the Water Board has requested data on the field acreages for the CFO/certificate and has verified that the change/transfer is based on the said acres (GPS farm data, 2008-2010).

And fifth, based on the above information and analyses, the Water Board has determined that the full amount of the said water right for change/transfer is presented within the above "Board Decision" summary, and should be the amount not exceeded by the applicant within future operations. In summary:

- Annual operations up to 86.1 cfs, 14,961.1 acre-ft., irrigation of 5,370 acres February 1 to November 30.
- Average farm-wide water duty of about 2.79 acre-ft./acre.

Hydrologic, and other technical investigations:

First, based on detailed technical review/discussions with CRO-WADOE staff, it is concluded that the requested change/transfer will divert water from the same body of water (management area) as that allowed under the existing water rights. The existing pump station will be used, located within the mainstem of the Lower Yakima River.

Second, the change request cannot create impairment. The Water Board has reviewed with the applicant information on potential impairment, along with the WADOE point of diversion and water right records (Columbia River Water Management Program-WRP interactive mapping system), and concludes that impairment is not an issue for this change request. The point of diversion is consistent with the impairment standards under RCW 90.03.380-390, as perfected water rights.

Further, it is noted that:

- 1) For this immediate area, no record/affirmation of impairment has been noted by the Water Board or WADOE.
- 2) The Water Board has required the applicant to review impairment issues for the applicant's change request. This review indicates that the change action will not impair other water rights.
- 3) Based on the public notice of this change request, the Water Board has received no impairment issue comments from other existing water right holders, including those who divert water from sites within the Lower Yakima River.

Given the above review, the Water Board concludes that the proposed action will not create impairment to other water rights per the provisions and conditions established under the existing permit and the conditions provided within this ROE/ROD.

And third, relative to the change request, the Water Board has previously evaluated extensive technical data and analyses on the Yakima River system related to any potential flow impacts affecting environmental resources, and determined that no empirically measurable, negative impacts will occur to environmental resources. This change request is a "no net loss" water allocation, with no change to season allocation distribution.

#### **B. Water Right Adjudication Process:**

Water right is subject to the Acquavella Adjudication—the right exists as an adjudicated certificate under the standing Conditional Final Order (CFO).

#### **C. Verification of Existing Water Right:**

As noted above, the existing water use retains a CFO/certificate of water right granted by the Washington State Dept. of Ecology (and with re-assignments). The Water Board has reviewed the water right documentation, reviewed the applicant's technical information concerning the water right, is familiar with the existing water use and land operations, and has conducted its own review of the water right relative to change/transfer conditions as discussed above. It is concluded that the water right is in good standing, and subject to the conditions contained within this ROE/ROD for change/transfer.

#### **D. Field Examination:**

The field examination was conducted by Dr. Darryll Olsen, Chairman, BCWCB, with an on-site visit during the month of May 2011 (and per previous site visits to M&M Farm). Further, the Water Board is familiar with this area having recently reviewed other related applications and has previously toured the area with the applicant.

The field examination confirmed the information within the application request and technical information, which is more fully elaborated upon in this Report of Examination.

The field examination consisted of viewing the existing/proposed water use sites, existing pumping site, and the surrounding area. A visual examination of the site water use area was conducted, along with a review of the applicant's maps. In essence, the field investigations confirmed information provided by the applicant through personal communications and supporting application materials.

#### **E. Technical Information, Investigations, or Reports Reviewed:**

The Water Board has reviewed the applicant's WADOE file and records contained therein, including any reports/comments submitted by WADOE staff, and pertinent WADOE water right records.

The applicant has provided technical information, personal communications, and technical references requested by the Water Board, including data to verify the existing and proposed use areas; and the applicant has communicated extensively with individual Water Board members to answer specific questions about the change/transfer request. The Water Board has conducted a field examination to verify the information contained within the applicant's current water rights and supporting technical information. The Water Board has requested and received supplemental information from the applicant and has discussed future water usage needs with the applicant.

The Water Board has reviewed the standing of the water right(s), documentation provided by the water right holder concerning land holdings and management, and aerial photography for the existing and proposed water right place of use and purpose.

The Water Board has forwarded copies of the application change/transfer request and public notice to the state Dept. of Fish & Wildlife, the Dept. of Health, the Tribes, and to all parties requesting such copies. Comments received by any of these parties during the formal, and informal, public comment period for the change/transfer application have been reviewed and addressed (see above).

The Water Board has reviewed the applicant's SEPA compliance needs.

#### **F. Associated Rights and Uses:**

The subject CFO/certificate is not related directed or indirectly to other water rights. Other water rights are not affected by the proposed change/transfer.

The Water Board has identified nearby water rights adjacent to the existing and proposed place of use, as indicated within the WRATS database; and identified nearby wells and surface water pump stations, as indicated on the WADOE website and data bases.

#### **G. Review of Potential Impairment:**

Because the proposed action will not increase the existing CFO/certificated water use (with change modifications), or increase the water amount put to allowed beneficial use, or likely affect other existing water rights (or applications for new water rights), no impairment is perceptible. The applicant's technical information has been reviewed on water use within the same body of water for management purposes and potential impairment.

The proposed change/transfer will be beneficial in the conservation and management of water resources from existing practices for the following reasons: 1) there will be no increase in diversion/withdrawal on an annual basis after the change/transfer, compared to existing permitted/certificated withdrawals; and 2) better controls and monitoring on the quantity of water pumped will help ensure that the authorized quantity is not exceeded, as required under a metering and development plan.

The Water Board has published public notice of the proposed action and reviewed any potential technical issues concerning impairment.

Existing water rights located within the nearby area--within the same section and adjacent sections--were noted according to information contained within the WADOE WRATS data base system and visual inspection, and ongoing Water Board review within this area.

As noted above based on the applicant's technical information and the Water Board's review, it is concluded that no impairment would occur related to the water right change/transfer request.

The field investigation revealed that the applicant's request for change/transfer is consistent with existing land and water use practices within the immediate area, reflecting the development of and consistency with the Benton County Comprehensive Land Use Plan.

The change/transfer request is consistent with net beneficial use and return flow considerations contained in RCW 90.03.380 and other applicable statutes. The change will not increase water diversions or net depletions from the surface water source. More specifically, the subject application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, and to provide greater operational control to water managers.

Given the fact that no increase in water withdrawal from the existing surface water management source will occur relative to that permitted and allowed for beneficial use, there is no reason to expect any impairments to other water sources, consistent with the conditions and provisions provided under the existing water right modification order granted by the WADOE. Also, because the change/transfer proposed by the applicant does not affect withdrawals from new water sources—without regulation—or increase existing allowed net annual withdrawals/diversions from that currently permitted, the change/transfer request does not affect local conditions surrounding the status quo for water use, as permitted by WADOE.

This application decision has no impact on WADOE's existing water right decisions, the condition of local surface water or groundwater resources based on empirical data, or the priority for water rights between junior and senior water right holders within the local area. The Water Board does include conditions within this ROE to ensure that the public interest affecting water use is protected, and that they are consistent with actions that would be pursued by WADOE to avoid future or potential impairment problems or regulation actions.

**H. Effect or Benefit to Public Interest:**

A recent Washington State Supreme Court ruling has stated that "...a 'public interest' test is not a proper consideration when Ecology acts on a change application under RCW 90.03.380." PUD No. 1 of Pend Oreille County v. Dep't of Ecology, 70372-8 (2002). By extension, neither does the Water Board have authority to apply a public interest test when evaluating a change in water right request under RCW 90.03.380.

Nevertheless, the Water Board concludes that the requested change/transfer is not contrary to the public interest governing water use. To the extent review of public interest is applicable, the Water Board finds that the application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, to provide greater operational control to water managers, and to ensure no impairment exists.

Because the proposed action will not increase the existing allowed annual water use, or increase the water put to actual beneficial use, or result in an impact on other existing water rights or applications for new water rights, it does not negatively change the existing status quo for water use impacts. Thus, no impairment is perceived, because of the change/transfer requested in the application. Water use is provided consistent with statutory requirements for beneficial use.

The proposed action does provide for a continuation of the existing beneficial use as stated within the permit of water right, increasing the economic benefits to the state and local area by allowing for continued use and development of irrigated lands. The development is taking place in the land-use management area of Benton County.

This action is consistent with the intent of RCW 90.03.380, and 90.80 (amended May 10, 2001) and other applicable statutes; and it is consistent with Benton County's Comprehensive Land-Use Plan. No impairment is consistent with the public interest; all pertinent water right issues are addressed above; conditions are recommended within this ROE to further protect the public interest consistent with state water law.

The application for change/transfer is consistent with the public interest requirements for beneficial water use, and consistent with the procedural, technical, and legal review requirements by the state.

#### **I. Consideration of Pending Applications:**

The applicant's request will not affect the priority for action on pending new water rights or change/transfer applications filed with the Washington State Department of Ecology, for Benton County. Existing applications for Benton County were noted (WADOE data base); and no infringement on priority for action for these applications is perceived by (WADOE or the Water Board).

This application review also is consistent with legislative changes made in 2001 affecting the processing of change/transfer applications by the WADOE, as well as the amendments made to RCW 90.03.380.

Public notice has been provided for requesting all water right holders within the Benton County to submit existing or new water right change/transfer applications to the Benton County Water Board—or the WADOE. Applications received by the WADOE or Water Board are first reviewed for accuracy, completeness, and purpose to ensure they fall within the purview of the agency's and Board's jurisdiction. Those that are found wanting are referred back to the applicant for re-submittal or withdrawal. The remaining ones are acted on by a first-come, first-serve basis, taking into account received application's priority date and the technical/legal review requirements thereof.

#### **FINDINGS AND CONCLUSIONS**

1. The CFO/certificate of water right and associated beneficial use are verified.
2. The proposed change/transfer will result in no increase in the annual quantity of water authorized and is consistent with the requirements of RCW 90.03.380 and the surface water code. The change/transfer request will not increase the allowed water right(s); the change/transfer will not increase allowed consumptive use from the designated source, as allowed by the water code.
3. There will be no increase in water withdrawal on an annual or seasonal basis. In addition, continued monitoring of the quantity of water pumped will help ensure that allowed water withdrawals are not exceeded, for the changes requested.
4. The Water Board has determined that impairment is not an issue affecting this change request; the change is within the same body of water for management purposes; and the use is allowed under RCW.90.03.380-390.
5. Public notice has been provided for the proposed action, and any public concerns have been reviewed by the Water Board. Public notice and application submittal has been forwarded to several state resource agencies/tribes/interested parties for comment; any agency comments have been reviewed and explicitly addressed.
6. The Water Board has reviewed the proposed project for SEPA compliance.
7. The proposed action creates no perceived detrimental impacts or impairments to other water right holders or permit applicants; adequate data and information exists to make this determination with confidence.

8. No protests have been made by third parties on this application.
9. The proposed action is consistent with the intent of RCW 90.03.380 and 90.80 (as amended May 10, 2001) and recent case reviews by the Washington State Supreme Court.
10. The proposed action supports the public interest concerned with the direct use of water rights, is consistent with allowed beneficial uses, and is consistent with local area economic development needs and land uses.
11. The Water Board has provided for specific conditions and provisions affecting the use of the water right, as identified below.

### RECOMMENDED PROVISIONS

#### **A. Provisions:**

The applicant's water right change for an added place of use is conditioned by the following provisions:

1. The place of use for the water right is designated in the summary table above (under Water Board Decision).
2. The points of diversion are designated in the summary table above (under Water Board Decision).
3. Use of water for the new place of use shall include an adoption of cost-effective and efficient irrigation best management practices.
4. The future water use for the CRO/certificate shall not exceed 86.1 cfs, 14,961.1 acre-ft., for irrigation use for up to 5,370 acres, February 1 to November 30.
5. By December 31, 2014, the applicant will notify the Water Resources Program, Central Region Office, WADOE, that project construction has been completed.
6. By December 31, 2015, the applicant will notify the Water Resources Program, Central Region Office, WADOE, that proof of appropriation for the water use has been completed, unless extended for good cause.
7. The applicant will provide the WADOE with measured water use data, for the main points of diversion, consistent with the provisions of this change decision. The metered or measured data will ensure that water usage will not exceed authorized amounts, for the existing points of diversion.
8. An approved measuring device(s) shall be installed and maintained for the sources (all points of diversion) identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Water use data shall be recorded weekly and shall be submitted annually to Ecology by January 31st of each calendar year typically.

9. The rule above describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed or available from Ecology as a document entitled "Water Measurement Device Installation and Operation Requirements."

10. At a minimum, the following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit or Certificate No., source name,

annual quantity used including units, maximum rate of diversion including units, period of use, weekly meter readings including units, and peak flow including units for each month. In the future, Ecology may require additional parameters to be reported or more frequent reporting.

11. Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

12. Department of Ecology personnel, upon presentation of proper credentials and prior notification, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions, but only to the extent otherwise allowed by law.

13. At the pump diversion sites, the applicant shall install and maintain water intake screens complying with industry standards prescribed by the Washington State Dept. of Fish and Wildlife.

**B. Mitigation Requirements:**

None are required.

**DECISION**

**Approvals:**

The Benton County Water Conservancy Board hereby APPROVES the water right change/transfer described within this record of examination and record of decision, and submits this certificate for conditional approval to the Director of the Washington State Department of Ecology. If the Director takes no action within forty-five days of receipt of this ROE/ROD, then the Water Board's decision, as written, is final.

Approved Unanimously by the BCWCB  
Kennewick, Washington  
This 20<sup>th</sup> day of October 2011

Approved and Signed on Behalf of the Water Board By:

Signed



Darryll Olsen, Ph.D., Chairman  
Benton County Water Conservancy Board

Date Mailed to CRO-WADOE Director: on or before 11/05/2011