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Benton County
WATER CONSERVANCY BOARD

BENT-11-23
CS4-25639(S)C01

Record of Decision
ROE and ROD Reviewed and Approved by BCWCB Members

Applicant: Mercer Canyons Application Number: CS4-25639(S)~~P~~C01

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 March 1, 2012, 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: 3/01/2012
Darryll Olsen, Ph.D., Chairman
Benton County Water Conservancy Board

Approves
~~Denies~~
Recused
Abstains
Excused Absence

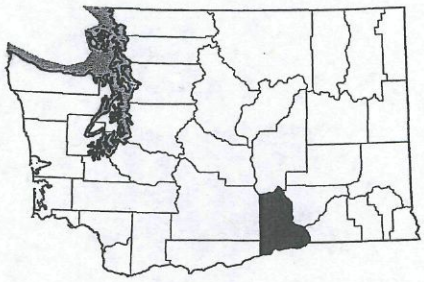
Signed _____ Date: 3/01/2012
John Jaksch, Ph.D., Vice Chairman
Benton County Water Conservancy Board

Approves
~~Denies~~
Recused
Abstains
Excused Absence

Signed _____ Date: 3/01/2012
Matt Berg, Treasurer
Benton County Water Conservancy Board

Approves
Denies
Recused
Abstains
Excused Absence

Final ROE/ROD Mailed to the Department of Ecology, Regional Office of Ecology, via tracked mail, and other interested parties on or before 3/10/2012



BENTON COUNTY
WATER CONSERVANCY BOARD

DEPT OF ECOLOGY
Received
MAR 09 2012
CENTRAL REGION 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
(December 2011 Public Notice)	CS4-01344(A)C	October 13, 1965	BENT-10-08
	CS4-30053(A)P	July 24, 1980-8/89	BENT-10-09
	CS4-30053(K)P	July 24, 1980	BENT-10-10
	CS4-30053(P)P	July 24, 1980	BENT-10-11
	CS4-25639(I)P	April 22, 1977	BENT-10-12
	CS4-25639(P)P	April 22, 1977	BENT-10-13
	CS4-25639(S)P	April 22, 1977	BENT-10-14

NAME
Mercer Canyons, (Contact Mr. Rob Mercer, President, Mercer Canyons)

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
46 Sonova Rd.	Prosser	WA	99350

Changes Proposed: ☐ Change purpose ☐ Add purpose ☒ Add irrigated acres ☐ Change point of diversion/withdrawal

☐ Other (Temporary, Trust, Interties, etc.) X Change Place of Use per RCW 90.03.380/390

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 SEPA-RCW threshold criteria (50 cfs surface water).

BACKGROUND AND DECISION SUMMARY

Prepared by Members of the Benton County Water Conservancy Board

Existing Right (Pre-2011 Season)

See Table 1. For Specific Water Right Information (as previously submitted to the BCWCB in Mercer Canyons, 2011, seasonal change/transfer detailed application and supporting materials for 2011-2013 period).

Below Information Is for Combined Summary:

CS4-01344(A)C
CS4-30053(A)P
CS4-30053(K)P
CS4-30053(P)P
CS4-25639(I)P
CS4-25639(P)P
CS4-25639(S)P

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE
131.3cfs		26,505	Seasonal irrigation of 6,534.7 acres (See Table 1)
SOURCE			TRIBUTARY OF (IF SURFACE WATER) Mainstem Columbia River, John Day Pool

AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
Diversion Point: (and as described on attached certificate/permits)	NE1/4	NE1/4	6	4N	24 EWM		Benton

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

All within: Mercer Canyons (and Associates) all within T.4N and T.5N, R.23 and 24 EWM.

See specific sections listed in Table 1.

Proposed Use (2012 Seasonal)

See Table 1. For Specific Water Right Information (as previously submitted to the BCWCB in Mercer Canyons, 2011, seasonal change/transfer detailed application and supporting materials for 2011-2013 period).

Below Information Is for Combined Summary:

CS4-01344(A)C
CS4-30053(A)P
CS4-30053(K)P
CS4-30053(P)P
CS4-25639(I)P
CS4-25639(P)P
CS4-25639(S)P

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE
131.1 cfs		19,055	2012 Seasonal irrigation of up to 7,375 acres (2011-2013); actual additional irrigation for 2012 season (730 acres).
SOURCE			TRIBUTARY OF (IF SURFACE WATER) Mainstem Columbia River, John Day Pool

AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
Diversion Point: (and as described on permit)	NE1/4	NE1/4	6	4N	24 EWM		Benton

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

All within: Mercer Canyons (and Associates) all within T.4N and T.5N, R.23 and 24 EWM.

See specific sections listed in Table 1.

And added seasonal use all within T.5N, R.23 EWM, all within:

All within Section 15, 320 acres (2012 operations)
NE1/4, Section 20 (120 acres, 2012 operations)
NE1/4, Section 21 (290 acres, 2012 operations)

Water Board Decision (2012 Seasonal)

See Table 1. For Specific Water Right Information (as previously submitted to the BCWCB in Mercer Canyons, 2011, seasonal change/transfer detailed application and supporting materials for 2011-2013 period).

Below Information Is for Combined Summary:

CS4-01344(A)C
CS4-30053(A)P
CS4-30053(K)P
CS4-30053(P)P
CS4-25639(I)P
CS4-25639(P)P
CS4-25639(S)P

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE
131.1 cfs		19,055	2012 Seasonal irrigation of up to 7,375 acres (2011-2013); actual additional irrigation for 2012 season (730 acres).
SOURCE			TRIBUTARY OF (IF SURFACE WATER) Mainstem Columbia River, John Day Pool

AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
Diversion Point: (and as described on permit)	NE1/4	NE1/4	6	4N	24 EWM		Benton

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

All within: Mercer Canyons (a[illegible]Associates) all within T.4N and T.5N, [illegible]3 and 24 EWM.

See specific sections listed in Table 1.

And added seasonal use all within T.5N, R.23 EWM, all within:

All within Section 15, 320 acres (2012 operations)
NE1/4, Section 20 (120 acres, 2012 operations)
NE1/4, Section 21 (290 acres, 2012 operations)

DESCRIPTION OF PROPOSED WORKS

The existing certificate/permits are being used for irrigation of lands along the John Day Pool, Columbia River (Horse Heaven Hills). The water rights are in good standing per WADOE files.

The applicant seeks to increase the flexibility of the water rights by adding a place of use, and increasing irrigated acres, with a lower overall water duty (relying on Conservation O&M and change to vineyard grounds). The water delivery will utilize the existing pump station, mainline, and water distribution system.

This is a seasonal change for 2012 that will be requested in subsequent years per the implementation of Conservation O&M measures. The 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 2011-2013 plan of new development, with Conservation O&M measures to be implemented in 2011-2012 and thereafter.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:
Immediately	Immediately-2012 season	Immediately-2012 season

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

A seasonal change/transfer application for certificate/permits CS4-01344(A)C, CS4-30053(A)P, CS4-30053(K)P, CS4-30053(P)P, CS4-25639(I)P, CS4-25639(P)P, CS4-25639(S)P were received and accepted by the Water Board in December 2011, with further information provided in January-February 2012.

The applicant seeks to increase the flexibility of the water rights by adding a place of use, and increasing irrigated acres, with a lower overall water duty (relying on Conservation O&M and change to vineyard grounds). The water delivery will utilize the existing pump station, mainline, and water distribution system. The change would be consistent with allowed use and changes under RCW 90.03.380-390.

This is a seasonal change for 2012 that will be requested in subsequent years per the implementation of Conservation O&M measures. The 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 2011-2013 plan of new development, with Conservation O&M measures to be implemented in 2011-2012 and thereafter.

The applicant's existing point of diversion is a Columbia River (John Day Pool) pump station owned by the applicant.

The existing water rights are in good standing.

Attributes of the water rights as currently documented:

See attached detailed documentation.

Existing provisions: See attached

Tentative determination of the water right:

See Water Board's Decision Above; water right is in permit assignment stage, in good standing.

History of water use:

The permit has been used in conjunction with other water rights to serve irrigation lands in the Horse Heaven Hills area. The existing point of diversion serves several other water rights.

Previous changes:

Several of the permits involved have been re-assigned ownership.

SEPA:

As noted above, the water right change request is exempt; affected new lands and water use are below SEPA-RCW threshold criteria.

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.

The application has been distributed to several state resources agencies, tribes, and interested parties. A Comment letter was received from Mr. Steve Boessow, Habitat Program, WDFW, Olympia Office (see attachment).

This application has been directly discussed with WADOE staff. No technical issues were raised.

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 BCWCB staff have met directly with the Director, Office of the Columbia River, WADOE, to discuss this project (and similar proposals) in detail. Per these discussions, the project is determined to be consistent with RCW 90.03.380/390, and the promotion of conservation projects related directly, or indirectly, to RCW 90.90 objectives. The project relies on existing water rights to expand irrigation development along the Columbia-Snake River system, creating no empirically measurable impacts to river system flows.

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:

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.

Proposed project plans and specifications:

As noted above, the applicant will continue to use these water rights 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 surface water pump station, already in existence.

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

A. Key Technical Issues—Water Right Review:

This investigation has included several issues:

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 valid water right certificate/permits in good standing, and they are on file with the WADOE. The water rights are subject to the surface water code provisions, including RCW 90.03.380/390 for change/transfer provisions.

The certificate/permits are 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 90.03.380-390, 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 with carrots and sweet corn, with wheat cover cropping; tree fruit crops, and wine grape crops (see detailed 2011 applicant submission packet and detailed ACQ review therein).

The crop water duties are based on WSU AgWeatherNet estimates for the local area and direct center pivot meter numbers for selected crops and site-specific estimates (the 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).

The Water Board has reviewed the data in detail and determined that additional machine application efficiencies will not be added to these estimates, as the center pivot data should incorporate said estimates (given machine performance data) and the WSU data with soil profile additions are within a reasonable range of total consumptive water use, given soil and climate conditions within this specific area. If included, the estimated machine efficiencies would increase allowed ACQ estimates by about another 10%. Consequently, the ACQ estimates used here are considered conservative or within a reasonable range; the Water Board notes as well that mainline metered readings (included in application packet) further support the above estimates as being conservative.

For each separate water right, the ACQ two-year, peak-year average is identified within the application packet submittal data tables (ACQ analyses). In summary, the combined water rights reviewed here have a nameplate rating of about 26,505 acre-ft.; the ACQ estimate is about 19,055 acre-ft. for 6,375 acres, representing a water duty of about 3.0 acre-ft./acre (about a 28 % reduction in water use relative to the nameplate allowed use).

The applicant will be using Conservation O&M measures 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.

In 2011-13, conservation O&M measures will provide about a 17% savings across multiple crop types (as documented by the Benton-Franklin Conservation Districts and other—see summary Table attached). This will yield up to 3,239 acre-ft. available for additional irrigated land use, with a total average annual water duty within the existing and new place of use of about 2.58 acre-ft./acre. The incremental 2011-2012 operations use about 1.8 acre-ft./acre.

In 2012, the applicant will be including about 730 acres within a new place of use, representing about one-half of the total savings capacity available from the new farm-wide Conservation O&M program. This will be the second application of the full Conservation O&M program package, per Benton-Franklin County Conservation District review, applied to Mercer Canyons. Further development will occur in subsequent years, per the seasonal use of the Conservation O&M program.

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 certificated/permitted 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 this request requires no expansion of the water right, as designated under the existing permit. In 2012, the applicant intends to use the available water savings for new vineyard (wine grape) production, expanding irrigated acres up to 730 acres, using about 1,315 acre-ft. This represents a limited portion of the savings under Conservation O&M; and the total water use is fully compatible with water spreading for the existing water rights per RCW 90.03.380-390.

Fourth, the Water Board has requested data on the field acreages for the certificate/permit and has verified that the change/transfer is based on the said acres (GPS farm data, 2009-2010).

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 the 2012 season (and thereafter per Conservation O&M program implementation).

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 Columbia River, John Day Pool.

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 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.

As a senior (pre-1980) water right, there will be no impairment to any other water right withdrawing water from the John Day Pool. As junior, pre-1980 water rights, the new place of use irrigation operations would be subject to existing regulations under WAC 173-563-050 (per flow regimes designated under existing permit table—see attached permits in detailed 2011 application submission).

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 John Day Pool.

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 related to any potential flow impacts affecting environmental resources, and determined that no empirically measurable, negative impacts will occur to environmental resources. This includes river hydrologic data, NOAA Fisheries flow-survival and river system survival data/analyses, University of Washington river system survival data, and data/analyses referenced by WADOE-sponsored studies.

B. Water Right Adjudication Process:

Water right adjudication does not affect this application.

C. Verification of Existing Water Right:

As noted above, the existing water use retains a certificate/permits of water right granted by the Washington State Dept. of Ecology (and with re-assignments). The Water Board has reviewed the water right(s) documentation, reviewed the applicant's technical information concerning the water right(s), is familiar with the existing water use and land operations, and has conducted its own review of the water right(s) relative to change/transfer conditions as discussed above. It is concluded that the water rights are 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 December 2010 and September 2011 (and per previous and ongoing site visits to Mercer Canyons). 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). Note: the comment received by the WDFW staff did not include and data, information, or technical analyses affecting the change/transfer.

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

F. Associated Rights and Uses:

The subject certificate/permits are being beneficially used, and they are being used along with other water rights in the nearby area, by the applicant and others; as served by the existing Columbia River pump station. Other water rights are not directly 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 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 certificate/permits 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 90.03.380-390, 90.90 Columbia River Program, 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 90.03.380-390 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 point of diversion is designated in the summary table above (under Water Board Decision).

3. Use of water for the new pla[illegible]f use, under this authorization for 201[illegible]hall be contingent upon the water right holder's documented utilization of Conservation O&M program measures, for about two-thirds of the existing certificate/permits acreage (4,200 acres); and recognizing future expansion of the Conservation O&M program farm-wide. The Benton-Franklin Conservation District will monitor the program for 2012 operations.

In 2012, the applicant will be including about 730 acres within a new place of use, representing about one-half of the total savings capacity available from the new farm-wide Conservation O&M program. This will be the second application of the full Conservation O&M program package, per Benton-Franklin County Conservation District review, applied to Mercer Canyons. Further development will occur in subsequent years, per the seasonal use of the Conservation O&M program.

4. The 2012 seasonal water use for the certificate/permits shall not exceed 131.1 cfs, 19,055 acre-ft., for seasonal irrigation use of up to 7,105 (6,375 and 730 per ACQ analyses) acres. Note: 2011-2013 program use up to 7,375 acres (@2.6 acre-ft./acre), per full farm-wide development of the Conservation O&M program and subsequently approved seasonal (or temporary) change/transfers.

5. By May 1, 2012, the applicant will notify the Water Resources Program, Central Region Office, WADOE, that project operations are initiated.

6. Documentation for the 2012 Conservation O&M Program, including Benton-Franklin Conservation District confirmation of monitoring, will be submitted to the Columbia River Office, WADOE, by January 1, 2013. The 2011 monitoring confirmation has been already submitted to BCWCB/WADOE.

7. The applicant will provide the WADOE with measured water use data, for the existing and new place of use, consistent with the provisions of this change decision. The metered or measured data will ensure that water usage will not exceed authorized amounts, as well as that within adjacent water rights used at 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 standards prescribed by the Washington State Dept. of Fish and Wildlife.

14. Junior (pre-1980 water rights) are subject to existing regulations under WAC 173-563-040/050 (per flow regimes designated under existing permit table—see attached permits).

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 1stth day of March 2012

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 3/10/2012