STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

December 20, 2012

Gary Deardorff
City of Kennewick
P.O. Box 6108
Kennewick, WA 99336

RE: Water Right Change Application No. CG4-GWC093-D (BENT-12-03)

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

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

1) The ROD does not include adequate information to show that the two existing Layton Park wells (the current points of withdrawal) and the ASR well (the proposed point of withdrawal) will withdraw water "from the same body of public groundwater" as required under RCW 90.44.100(2)(a). The memo from Western Groundwater Services LLC, dated February 28, 2012 indicates that the ASR well will produce groundwater from the Wanapum Formation. It includes some suggestion that the existing Layton Park wells also might withdraw water from the Wanapum Formation, but this is not sufficient or conclusive. To the contrary, Ecology has data that demonstrates the Layton Park wells withdraw water from the Saddle Mountain Aquifer rather than the Wanapum. The ROE does not include adequate information to show that the Wanapum is connected to the Saddle Mountain Aquifer. Without adequate evidence that all wells withdraw from the same body of public groundwater, Ecology is unable to affirm the proposed change in points of withdrawal for Certificates 93D and 94D because compliance with RCW 90.44.100(2)(a) has not been shown.

2) The ROD does not include sufficient evidence to make a tentative determination as to the extent and validity of water right Certificates 93D and 94D. The ROD does not demonstrate that the Layton Park wells have been used since 1946. A memorandum from the City of Kennewick's consultant, Western Groundwater Services (WGS), dated February 28, 2012, describes the existing Layton Park wells as being plugged and no longer in use. This indicates that the wells are not in use and cannot be used without further action. Other than the WGS memo, stating the Layton Park wells are plugged, Ecology has received no other documentation

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that the wells have been used since 1946. Page 6, second paragraph of the ROD does reference the City of Kennewick Water System Plan, dated February 2010, and attached Water Rights Self Assessment 6 and 20 Year Forecast. Certificates 93D and 94D are listed as existing rights, and the water rights are projected to be used in the next 20 years. This includes no information on use. In light of clear evidence that the actual wells are plugged, indicating abandonment, this listing is not sufficient evidence that the rights have been used between 1946 and the date of the ROD.

3) An impairment analysis is also required as part of the transfer application under RCW 90.03.290. The sections Hydraulic Analysis and Existing Wells of the memorandum provided by WGS address part of the required analysis, but are incomplete. An assessment of the general aquifer behavior is provided, but it is based on operational assumptions that are not substantiated by any additional evidence. The surrounding wells shown on Figure 7 of the memorandum are not identified as to owner and screened depth. A complete analysis would also include an assessment of transient water level conditions that may be present during the irrigation season and the impact that pumping on the ASR well would have on identified nearby wells. To concur that no impairment would result from this change, Ecology needs additional information and analysis.

4) In addition to the above reasons for reversal, a number of technical deficiencies must be remedied before approval. Mr. Mark Cunnane of Western Groundwater Services LLC is a Hydrogeologist licensed in the state of Washington. However, the report (memo) received with the ROD did not bear Mr. Cunnane's stamp as required by WAC 308-15-075. Further, the Technical Memorandum included with the ROD dated March 31, 2009 from Golder is incomplete as it appears to be missing pages as well as a geologist or hydrogeologist stamp required by WAC 308-15-075.

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 all of the following within 30 days of the date of receipt of this Decision:

- File your appeal and a copy of this Decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

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

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ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW, Suite 301 Tumwater WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia WA 98504-0903

For additional information visit the Environmental Hearings Office Website: http://www.eho.wa.gov
To find laws and agency rules visit the Washington State Legislature Website: http://www.leg.wa.gov/CodeReviser

If you have any questions or concerns on the above information, please call Mark Dunbar at the Department of Ecology at (509) 575-2024.

Sincerely,

Mark Kemner, LHG, Section Manager
Water Resources Program/CRO

MK:MD:ss/121274
Enclosure: *Your Right To Be Heard*

By Certified Mail: 7010 0290 0000 7131 1576

cc: Dr. Darryll Olsen, Benton County Conservancy Board
Keith Stoffel, Department of Ecology, ERO (email/pdf)

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GARY DEARDORFF
CITY OF KENNEWICK
P.O. BOX 6108
KENNEWICK, WA 99336
WR/ss CB Reversal 12/20/12 CG4-GWC093-D

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