File NR CS4-25639(J)C
WR Doc ID 5645789

State of Washington
REPORT OF EXAMINATION
FOR TEMPORARY WATER RIGHT CHANGE FOR 2013 SEASON ONLY

Temporary Change of Place of Use Only

PRIORITY DATE
April 22, 1977

WATER RIGHT NUMBER
CS4-25639(J)C

MAILING ADDRESS
BRENT HARTLEY LAND LLC
21301 E REESE RD
PROSSER, WA 99350

SITE ADDRESS (IF DIFFERENT)
See Field below for "Place of Use"

Total Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
6.21	CFS	1,253.29

Purpose

PURPOSE	DIVERSION RATE ADDITIVE	DIVERSION RATE NON-ADDITIVE	UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Irrigation	6.21		CFS	1,253.29		02/1 - 11/15

IRRIGATED ACRES ADDITIVE	IRRIGATED ACRES NON-ADDITIVE	PUBLIC WATER SYSTEM INFORMATION WATER SYSTEM ID	PUBLIC WATER SYSTEM INFORMATION CONNECTIONS
378		N/A	

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
BENTON	COLUMBIA RIVER	PACIFIC OCEAN	31-ROCK-GLADE

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
COLUMBIA RIVER	1-1856-000-0000-000		05N	26E.W.M.	18	NWNW		

Datum: NAD83

Place of Use

PARCELS (NOT LISTED FOR SERVICE AREAS)

1-1276-000-0000-000; 1-1176-100-0000-000; 1-1476-100-0002-000; 1-0877-300-0001-000; 1-0977-200-0000-000

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Existing: S½ of Section 12, SE¼ of Section 11, NE¼ of Section 14 all within T. 7N., R. 26E.W.M.
Added: S½ Section 8, T.7N., R. 27E.W.M. and W½ Section9, T.7N., R. 27E.W.M.

Proposed Works

Temporary change of place of use (POU) for 2013 season to include parcels: 1-0877-300-0001-000; 1-0977-200-0000-000, in addition to the certificated POU.

FILE COPY

Measurement of Water Use	
How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	By January 31 of 2014
What volume should be reported?	Maximum volume of diversion in acre-feet
What rate should be reported?	Annual peak rate of diversion in cfs

Provisions

Measurements, Monitoring, Metering and Reporting

An approved measuring device must 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, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Department of Fish and Wildlife Requirement(s)

The intake(s) must be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. http://wdfw.wa.gov/about/contact/.

Expiration

This seasonal change shall expire on November 15, 2013.

No Expansion of Original Right

This temporary change authorization does not allow for the number of acres, the water diversion rate or the annual quantity given on the original water right certificate to be exceeded. At no time shall more than 378 acres be irrigated, a rate greater than 6.21 cfs be diverted, or a total of more than 1495.37 ac-ft be diverted between the two documents (S4-25639(J)C and CS4-25639(J)C).

Water Use Efficiency

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

Schedule and Inspections

Department of Ecology personnel upon presentation of proper credentials will 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.

Real Estate Excise Tax

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia, WA 98504-7477 Internet: http://dor.wa.gov/. E-mail: REETSP@DOR.WA.GOV.

Findings of Facts

Upon reviewing the Investigator's Report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose of use is beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Temporary Change Application No. CS4-25639(J)(C), subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. 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 the Order.

File your appeal and a copy of this Order 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 Order 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.

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.

Signed at Yakima, Washington, this 24th day of May 2013.

Mark C. Schuppe

Mark C. Schuppe, Operations Manager
Office of Columbia River

INVESTIGATOR'S REPORT
Application for Water Right – Brent Hartley Land LLC
Water Right Control Number CS4-25639(J)C
Carolyn Comeau, Department of Ecology

BACKGROUND

On February 15, 2013, Ecology accepted from Mr. Robert Brent Hartley/Brent Hartley Land, LLC, an application for temporary change of a water right certificate, S4-25639(J)C. Ecology assigned the application the number CS4-25639(J)C. The proposed seasonal change for February 1, 2013 through November 15, 2013 requests to transfer 252 acres of land from the existing place of use (POU) to the proposed POU. The total irrigated acreage would remain at 378 acres.

EXISTING WATER RIGHT ATTRIBUTES (S4-25639(J)C)

Water Right Owner:	R. Brent Hartley
Priority Date:	04/22/1977
Place of Use	S½ Section12 and SE¼ Section 11 and NE¼ Section 14 of T.7N., R.26E.W.M.

County	Waterbody	Tributary To	WRIA
Benton	Columbia River	Pacific Ocean	31-Rock-Glade

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Irrigation	6.21	CFS	1495.37	02/01	11/15

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Columbia River	1-1856-000-0000-000		05N	26E	18	NW NW		

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83

REQUESTED WATER RIGHT ATTRIBUTES (CS4-25639(J)C)

The application requests a temporary change in POU only. All other attributes of S4-25639(J)C remain unchanged.

Applicant Name:	Robert Brent Hartley/Brent Hartley Land LLC
Date of Application:	2/15/2013
Place of Use	Add to the existing POU: S½ of Section 8, T. 7N., R. 27E.W.M. and W½ of Section 9, T. 7N., R. 27E.W.M.

Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the proposed change in POU.

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Prosser Record Bulletin beginning on April 10, 2013 and ending on April 17, 2013.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met:

(a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
(b) It is a groundwater right application for more than 2,250 gallons per minute;
(c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
(d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
(e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp.*

INVESTIGATION

The investigation process consisted of reviews of Ecology records, aerial photography, satellite imagery and metering data, and email and phone correspondences with the applicant's agents, Mr. Travis Lorton, Controller, Mr. Dave Walker, General Manager and Mr. Raymond Anason, Irrigation Manager.

History of Water Use

On November 21, 1997 Ecology issued water right certificate S4-25639(J)C. As explained by Mr. Lorton, the original intent was to irrigate three crop circles in the certificated POU. However, since the water delivery system's design supported irrigation of only one crop circle in the authorized POU, water has historically also been applied to two crop circles located in the proposed POU. Metering data supplied by Mr. Lorton suggests that while the amount of water used was below the certificated quantity of 1495.37 acre feet, the acres irrigated remained within the certificated acreage. Before the 2014 irrigation season, Mr. Lorton intends to submit to the Benton County Water Conservancy Board an application for a permanent change of POU.

Extent and Validity (E&V):

Examination of aerial photography and satellite imagery for years 1996 to 2011 support that up to 2011, approximately 378 acres have been irrigated within the authorized and proposed POUs.

Metering data supplied by the applicant for 2003-2007, demonstrates that the highest annual quantity of irrigation water applied was 1,253.29 acre-feet in 2003. Under RCW 90.14.180, water rights acquired through appropriation under RCW 90.03.330 are subject to relinquishment for non use of water for any period of five successive years. However, certain exceptions exist (RCW 90.14.140). The applicant has provided sufficient reasons for non use for the period 2003 to present under RCW 90.14.140(1)(g) "Temporarily reduced water need for irrigation use where such reduction is due to varying weather conditions..." and RCW90.14.140(1)(k), "The reduced use of irrigation water resulting from crop rotation...". The Washington Irrigation Guide for Prosser lists water use for: Sugar beets at 38.47 inches/acre; onions at 31.67 inches/acre and pasture/turf at 37.30. The applicant's metering data shows a water use of 33.16 inches/acre which is below WIG values for sugar beets and pasture/turf. The applicant has indicated that being so far from their surface water diversion on the Columbia River and with such high lift, many conservative irrigation techniques are practiced.

Proposed Use

The applicant's request is to temporarily transfer 252 acres of irrigation from the existing POU to the proposed POU for the 2013 season only.

Other Rights Appurtenant to the Place of Use

There are no other rights appurtenant to the authorized or proposed POUs.

Impairment Considerations

Impairment is defined as doing injury or detriment to existing rights. Impairment to existing rights is not expected since: 1) The point of diversion, annual quantity, instantaneous rate of withdrawal, and purpose of use remain the same, 2) The same crops historically grown will be irrigated, 3) The proposed POU is on land nearly adjacent to the certificated POU and 4) Irrigation within the proposed POU has been ongoing since at least 1997 and there is no history of complaints received by Ecology.

Public Interest Considerations

It is expected that approval of this application would not be contrary to the public interest since a temporary change of place of use supports the economic viability of eastern Washington communities.

Consideration of Protests and Comments

No protests filed against this application during the protest period which ended May 17, 2013.

Conclusions

The proposed seasonal change of POU can be made without impairment to existing rights and can be made in the public's interest.

The proposed seasonal change of POU is consistent with the water resource fundamental principles in Chapter 90.54.020.

The tentative extent and validity determination concludes that up to 6.21 cfs and 1,253.29 ac-ft have been applied to beneficial use under S4-25639(J)C to irrigate 378 acres and are available for temporary change.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a seasonal change of POU be approved in the amounts and within the limitations listed below and subject to the provisions listed above

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

6.21 cfs
1,253.29 acre-feet per year
For irrigation of 378 acres

Point of Withdrawal Location:
NW¼, NW¼, Section 18, Township 5 North, Range 26 E.W.M.

Place of Use Location:
S½ of Section 12, SE¼ of Section 11, NE¼ of Section 14 all within T. 7N., R. 26E.W.M.,
S½ of Section 8, T. 7N., R. 27E.W.M. and W½ of Section 9, T. 7N. R .27E.W.M.

Carolyn Comeau — May 24, 2013
Report Writer — *Date*

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