



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

May 1, 2013

T&R Farms Inc
Attn: Ron Reimann
Reid Reimann
1120 Klundt Rd
Pasco WA 99301-9710

RE: Water Right Change Application No. CS3-22005C(B)@3 (BENT-12-01)

This modification order **SUPERSEDES** the previous order of the Department of Ecology (Ecology) related to the above referenced water right change application, dated, September 27, 2012. This modification order is the result of settlement between the parties in the Pollution Control Hearings Board (PCHB) case No. 12-116, which includes the above referenced water right change. The original order issued in accordance with RCW 90.80.080, which reversed the Benton County Water Conservancy Board's (Board) Record of Decision (ROD) and Report of Examination (ROE) dated July 2, 2012, and denied the water right change application, leading to the referenced appeal.

Summary of Department of Ecology's Superseding Order

MAXIMUM CUB FT/ SECOND (B) 27.43 cfs (D) 4.25 cfs	MAX GAL/MIN	MAXIMUM ACRE-FT/YR (B) 6,666 ac-ft (D) 1,030 ac-ft	TYPE OF USE, PERIOD OF USE (B) irrigation up to 2,020 acres from Feb. 1 to Nov. 30 (D) irrigation up to 1,450 acres from Feb. 1 to Nov. 30			
SOURCE (B) John Day Pool, Columbia River (D) Ice Harbor Pool, Snake River			TRIBUTARY OF (IF SURFACE WATER)			
¼ (B) NE (D) Gov Lot 4	¼ NE SW	SECTION 28 13	TOWNSHIP 5 N. 10 N.	RANGE 25 E.W.M. 32 E.W.M.	WRIA 31 33	COUNTY Benton Franklin
AT A POINT LOCATED: (B) 600 feet south and 400 feet west from the northeast corner of Section 28, T. 5 N., R. 25 E.W.M. (D) 1165 feet east and 140 feet north from the SW corner of Section 13, T. 10 N., R. 32 E.W.M.						
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD						
(B) Attachment A, which describes an area within: Sections 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, & 21 T. 5 N., R. 25 E.W.M. and Sections 13 & 24, T. 5 N., R. 24 E.W.M. (D) N½ of section 16, E½ section 20, sections 21 & 28, all within T. 10 N., R. 32 E.W.M.						

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The Department of Ecology (Ecology) has **MODIFIED** the decision of the Board as follows:

- 1) Pursuant to the order of the Superior Court in Benton County Case No. 12-2-02469-1, Ecology has taken the information it received on May 21, 2012, on the Request for Administrative Confirmation or Division of a Water Right Form for Water Right No. CS3-22005C(B)@2 between Sandpiper Tree Farm and T&R Farms and has recorded T&R Farms' ownership of a portion of the right in the water right file and in the Water Right Tracking System (WRTS). No further Request for Administrative Confirmation or Division of a Water Right Form will be required of the applicant. Pursuant to the Superior Court order, Ecology is not required to issue superseding certificates based on the May 21st submittal of the administrative division form.
- 2) Notwithstanding paragraph 1), Ecology has performed extent and validity and annual consumptive quantity (ACQ) analyses on the entire water right CS3-22005C(B)@2 as required under RCW 90.03.380.

As a result of this change authorization under RCW 90.03.380, the water right is subdivided into two portions; the (B) portion which remains with Sandpiper Tree Farms¹ on the original place of use in Benton County, and the (D) portion which belongs to T&R Farms and is being transferred to a place of use in Franklin County. See the summary table on page 1 of this order for the specific details on the divided portions as a result of the change to this water right.

The (D) portion equates to quantities approved for transfer to Franklin County in the CS3-22005C(B)@2 and CS3-22005C(B)@3 change authorizations;

Water Right Change No.	cfs	ac-ft	no. acres
CS3-22005C(B)@2	0.34	80	40
CS3-22005C(B)@3	3.91	950	1,410
Total for (D) portion	4.25	1,030	1,450

Note all the water right attributes of the CS3-22005C(B)@2 change are accounted for in this change authorization and the CS3-22005C(B)@2 change will become inactive as a result of this order modifying the Board's ROE and ROD and approving CS3-22005C(B)@3.

- 3) Ecology removes from the Board's ROE the analysis on application of the Determined Future Development (DFD) exception to relinquishment under RCW 90.14.140(2)(c). Any reference to or discussion of DFD in the ROE is DELETED.

¹ The Department of Natural Resources purchased this portion of the land and the appurtenant water right subsequent to the change application being filed with the Benton County Water Conservancy Board in April 2012.

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- 4) The metering data and field map provided by Patrick Tucker, president of Sandpiper Farms², on March 29, 2013, for water right no. CS3-22005C(B)@2 is ADDED to the record to provide supplemental additional information to the ROE analysis documents.

In addition to the analysis conducted by the Board in its ROE, Ecology has conducted its own ACQ analysis, using 2007 through 2011 as the most recent five-year period of continuous beneficial use of the water right, and reached the same conclusion as the Board regarding the water change under RCW 90.03.380.

- 5) The following provision is ADDED to the (B) portion of the water right:

Prior to this change authorization, the right authorized the irrigation of a maximum of 2,308 acres. The maximum number of irrigated acres allowed under this change is 2,020 acres. Prior to the beginning of each irrigation season, an irrigation farm plan addressing the use of the CS3-22005C(B)@3 change including a description of irrigated acreage will be prepared and submitted to Ecology.

- 6) The following provision is ADDED to the (D) portion of the water right:

The maximum number of irrigated acres authorized for the (D) portion is 1,450 acres, however, the superseding certificate shall issue only after the change development schedule³ is fulfilled.

Prior to the beginning of each irrigation season, an irrigation farm plan addressing the use of the CS3-22005C(D)@3 change including a description of irrigated acreage will be prepared and submitted to Ecology. If necessary this will be coordinated with any water right changes and transfers for Conservation O&M Program implementation if approved by the Office of Columbia River (OCR), Ecology.

YOUR RIGHT TO APPEAL

You have a right to appeal this decision to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this decision. The appeal process is governed by chapter 43.21B RCW and chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of this 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.

² Sandpiper Farms was the sole owner of the parent water right no. CS3-22005C prior to the first administrative division of the water right in 2010, which split the water right into 3 portions: (A) Sandpiper Farms, (B) Sandpiper Tree Farms and (C) Department of Natural Resources. The (B) portion is the subject of this order.

³ The complete project date is January 1, 2016 and the put water to full beneficial use date is January 1, 2017.

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

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road 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://www.leg.wa.gov/CodeReviser>

If you have any questions or concerns on the above information, please call Melissa Downes at the Department of Ecology at (509)454-4259.

Sincerely,



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

MK:MD:ss/130502

Enclosure: Your Right To Be Heard
Attachment A

By Certified Mail: 7010 0290 0000 7131 2733

Certified cc: 7010 0290 0000 7131 2740
Rick Roeder, Department of Natural Resources, Asset and Property Division
7010 0290 0000 7131 2757
Luke Maynard, Sandpiper Tree Farm LLC

cc: Dr. Darryll Olsen, Benton County Water Conservancy Board
Philip Rigdon, Director Natural Resources Division Yakama Nation
Mark Dunbar, Department of Ecology, Central Region Office (email pdf)

Attachment A

REAL PROPERTY WITHIN THE PLACE OF USE AS DESCRIBED IN WATER RIGHT CERTIFICATE NO. S3-22005C LOCATED IN SECTIONS 4, 5, 6, 7, 8, 9, 17, 18, 19, 20 AND 21 TOWNSHIP 5 NORTH, RANGE 25 EAST OF THE WILLAMETTE MERIDIAN AND IN SECTIONS 13 AND 24, TOWNSHIP 5 NORTH, RANGE 24 EAST OF THE WILLAMETTE MERIDIAN BENTON COUNTY, WASHINGTON BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 9 AND BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH $1^{\circ}25'33''$ WEST, 1783.60 FEET ALONG THE EAST LINE OF SAID SECTION 9; THENCE SOUTH $40^{\circ}00'16''$ WEST, 4629.00 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 9; THENCE SOUTH $87^{\circ}35'27''$ WEST, 2305.64 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 9; THENCE SOUTH $2^{\circ}00'08''$ WEST, 5205.63 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 17; THENCE NORTH $87^{\circ}41'05''$ EAST, 1321.04 FEET ALONG THE NORTH LINE OF SAID SECTION 21; THENCE SOUTH $1^{\circ}55'59''$ EAST, 2623.23 FEET; THENCE SOUTH $01^{\circ}49'52''$ EAST, 1301.39 FEET; THENCE NORTH $89^{\circ}30'03''$ WEST, 2908.47 FEET; THENCE NORTH $35^{\circ}22'07''$ WEST, 266.78 FEET; THENCE NORTH $47^{\circ}35'48''$ WEST, 277.03 FEET; THENCE NORTH $40^{\circ}15'08''$ WEST, 151.38 FEET; THENCE NORTH $33^{\circ}16'59''$ WEST, 156.14 FEET; THENCE NORTH $24^{\circ}21'19''$ WEST, 272.57 FEET; THENCE NORTH $13^{\circ}54'02''$ WEST, 134.50 FEET; THENCE NORTH $6^{\circ}44'34''$ WEST, 289.31 FEET; THENCE NORTH $4^{\circ}19'05''$ EAST, 32.37 FEET; THENCE NORTH $7^{\circ}49'00''$ EAST, 315.02 FEET; THENCE NORTH $7^{\circ}08'55''$ EAST, 207.93 FEET; THENCE NORTH $3^{\circ}13'32''$ EAST, 114.96 FEET; THENCE NORTH $4^{\circ}47'44''$ WEST, 271.01 FEET; THENCE NORTH $14^{\circ}50'20''$ WEST, 53.57 FEET; THENCE NORTH $15^{\circ}48'45''$ WEST, 305.63 FEET; THENCE NORTH $23^{\circ}16'37''$ WEST, 153.02 FEET; THENCE NORTH $60^{\circ}19'06''$ WEST, 1050.56 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS SOUTH $29^{\circ}44'39''$ WEST, 1490.30 FEET); THENCE WESTERLY AND SOUTHWESTERLY, 2765.10 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $106^{\circ}18'23''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE NORTH $90^{\circ}00'00''$ WEST, 117.60 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS SOUTH $63^{\circ}52'03''$ WEST, 1492.26 FEET); THENCE NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY, 3765.19 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $144^{\circ}33'56''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE NORTH $90^{\circ}00'00''$ WEST, 124.16 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS SOUTH $58^{\circ}50'51''$ WEST, 1493.92 FEET); THENCE NORTHWESTERLY, WESTERLY, SOUTHWESTERLY AND SOUTHERLY, 4516.72 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $173^{\circ}13'43''$ TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 24; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE ALONG SAID NORTH LINE SOUTH $89^{\circ}20'56''$ WEST, 741.74 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS SOUTH $69^{\circ}08'33''$ WEST, 1492.15 FEET); THENCE NORTHWESTERLY AND WESTERLY, 2298.73 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $88^{\circ}16'02''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE SOUTH $70^{\circ}52'26''$ WEST, 1068.41 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 24; THENCE NORTH $1^{\circ}57'04''$ WEST, 2073.90 FEET TO THE NORTHWEST CORNER OF SAID SECTION 24; THENCE NORTH $00^{\circ}14'16''$ EAST, 5268.92 FEET TO THE NORTHWEST CORNER OF SAID SECTION 13; THENCE NORTH $89^{\circ}11'04''$ EAST, 5231.12 FEET TO THE NORTHEAST CORNER OF SAID SECTION 13; THENCE SOUTH $0^{\circ}56'17''$ EAST, 852.65 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS SOUTH $89^{\circ}32'27''$ EAST, 1370.81 FEET); THENCE SOUTHEASTERLY AND EASTERLY, 3026.43 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $126^{\circ}29'45''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE SOUTH $60^{\circ}44'51''$ EAST, 163.86 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS SOUTH $83^{\circ}26'46''$ EAST, 1363.78 FEET); THENCE SOUTHERLY AND SOUTHEASTERLY, 4539.45 FEET

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ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $190^{\circ}42'49''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE NORTH $65^{\circ}39'23''$ EAST, 150.00 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS NORTH $48^{\circ}26'22''$ EAST, 1358.89 FEET); THENCE SOUTHEASTERLY AND NORTHERLY AND WESTERLY, 6789.96 FEET, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $286^{\circ}17'23''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE NORTH $58^{\circ}21'16''$ WEST, 263.34 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS NORTH $56^{\circ}11'07''$ WEST, 1366.32 FEET); THENCE NORTHERLY AND NORTHWESTERLY, 2956.37 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $123^{\circ}58'24''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE NORTH $0^{\circ}07'57''$ WEST, 2550.16 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS NORTH $0^{\circ}06'01''$ WEST, 1420.11 FEET); THENCE NORTHEASTERLY, NORTHERLY, NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY, 6833.31 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $275^{\circ}41'49''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE SOUTH $57^{\circ}03'05''$ WEST, 138.03 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS SOUTH $34^{\circ}48'03''$ WEST, 1366.03 FEET); THENCE WESTERLY AND SOUTHWESTERLY, 2426.84 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $101^{\circ}47'23''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE SOUTH $89^{\circ}12'15''$ WEST, 71.99 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 7; THENCE NORTH $0^{\circ}32'15''$ EAST, 274.30 FEET TO THE NORTHWEST CORNER OF SAID SECTION 7; THENCE NORTH $0^{\circ}32'15''$ EAST, 2640.03 FEET ALONG THE WEST LINE OF SAID SECTION 6; THENCE NORTH $86^{\circ}27'18''$ EAST, 4498.08 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 5; THENCE NORTH $0^{\circ}15'09''$ EAST, 291.04 FEET ALONG SAID WEST LINE; THENCE SOUTH $89^{\circ}59'57''$ EAST, 145.92 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS NORTH $45^{\circ}51'32''$ EAST, 1378.70 FEET); THENCE SOUTHEASTERLY AND EASTERLY, 1466.33 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $60^{\circ}56'15''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE SOUTH $43^{\circ}46'15''$ EAST, 45.71 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS SOUTH $49^{\circ}18'40''$ EAST, 1374.71 FEET); THENCE SOUTHERLY AND SOUTHEASTERLY, 3479.92 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $145^{\circ}02'16''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE SOUTH $49^{\circ}48'22''$ EAST, 53.03 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS SOUTH $49^{\circ}49'18''$ EAST, 1373.33 FEET); THENCE SOUTHERLY AND SOUTHEASTERLY, 3561.87 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $148^{\circ}36'09''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE NORTH $57^{\circ}22'03''$ EAST, 805.81 FEET; THENCE NORTH $58^{\circ}44'31''$ EAST, 503.05 FEET; THENCE NORTH $57^{\circ}29'10''$ EAST, 3395.49 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS NORTH $21^{\circ}51'02''$ WEST, 1357.43 FEET); THENCE NORTHEASTERLY AND NORTHERLY, 2515.25 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $106^{\circ}09'59''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE NORTH $32^{\circ}42'05''$ EAST, 184.08 FEET TO A POINT ON A NON-TANGENT CURVE (RADIUS POINT BEARS NORTH $2^{\circ}45'41''$ EAST, 1375.57 FEET); THENCE NORTHEASTERLY, 1582.24 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $65^{\circ}54'15''$; THENCE LEAVING SAID CURVE ON A NON-TANGENT LINE NORTH $89^{\circ}59'59''$ EAST, 116.09 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 4; THENCE SOUTH $0^{\circ}04'03''$ WEST, 3127.25 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING. CONTAINS 3270 ACRES MORE OR LESS.

EXCEPTING THE N1/2 OF SECTION 6, THE SE1/4 OF SECTION 9, AND THAT PORTION OF THE W $\frac{1}{2}$ W $\frac{1}{2}$ OF SECTION 21, T. 5 N., R 25 E.W.M. NOT COVERED BY THE CERTIFICATED PLACE OF USE DESCRIBED ABOVE.

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