



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

December 31, 2013

Zirkle Fruit Company  
Attn: Bill Wangler Jr  
P.O. Box 190  
Selah WA 98942

**RE: Water Right Change Application No. CG4-24758P(C) (BENT-13-02)**

Dear Mr. Wangler, Jr.:

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**.

The requirements of the State Environmental Policy Act (SEPA), RCW 43.21C and WAC 197-11 were not met. The ROE application constitutes a SEPA proposal as defined in WAC 197-11-055. The ROE claims a SEPA exemption for appropriations of water under 2,250 gpm. WAC 197-11-800(4). The ROE proposes the change and transfer of a total of 2,386 gpm, which is greater than the exemption amount. Ecology cannot approve the ROE without additional information about whether the ROE has a probable significant adverse environmental impact. Because the ROE does not comply with SEPA, Ecology issues this reversal as required by the time periods specified in RCW 90.80.080(4).

Aside from SEPA compliance, Ecology has requested confirmation of the claimed consumptive quantity in the tentative determination, as well as adequate evidence of proof of appropriation. Any future approval of a resubmitted ROE will be contingent on receipt and review of such information.

#### **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.



**FILE COPY**

- 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.

**ADDRESS AND LOCATION INFORMATION**

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW, Suite 301 Tumwater WA 98501	<b>Pollution Control Hearings Board</b> 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/131225

Enclosure: Your Right To Be Heard

By Certified Mail: 7010 0290 0000 7126 5442

cc: Dr. Darryll Olsen, Benton County Conservancy Board  
Mark Dunbar, Conservancy Board Coordinator (email pdf)  
Philip Rigdon, Director Natural Resources Division Yakama Nation

