PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

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12-6-12

Sent To ConAgra Foods Lamb-Weste
Street, Apt. No.; or PO Box No. 3 cdgs.
City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

**SENDER: *COMPLETE THIS SECTION***

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CONAGRA FOODS LAMB WESTON INC
ATTN: REAGAN GRABNER
PO BOX 1900
PASCO WA 99302-1900

WR/gh CS4-16571(D)@3, CS4 01228C(A)@4, CS4-SWC9974(A)@4

***COMPLETE THIS SECTION ON DELIVERY***

A. Signature
X [signature] ☐ Agent ☐ Address

B. Received by (Printed Name) Jenna Higgins C. Date of Delive 12/10/1

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☑ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandi
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
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PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-15

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

December 6, 2012

ConAgra Foods Lamb Weston Inc
Attn: Reagan Grabner
PO Box 1900
Pasco WA 99302-1900

**Re: Temporary Water Right Change Application Nos. CS4-16571(D)@3, CS4-01228C(A)@4, and CS4-SWC9974(A)@4**

Dear Mr. Grabner:

The temporary water right change applications listed above proposed changes during the 2012 irrigation season only. Due to delays in processing, the applications were not processed in time. As the 2012 irrigation season has ended, these applications are hereby **rejected**.

## YOUR RIGHT TO APPEAL

You have a right to appeal this decision to the Pollution Control Hearings 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.

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

FILE COPY

**ADDRESS AND LOCATION INFORMATION**

| Street Addresses | Mailing Addresses |
|---|---|
| **Department of Ecology**<br>Attn: Appeals Processing Desk<br>300 Desmond Drive SE<br>Lacey WA 98503 | **Department of Ecology**<br>Attn: Appeals Processing Desk<br>PO Box 47608<br>Olympia WA 98504-7608 |
| **Pollution Control Hearings Board**<br>4224 – 6th Avenue SE<br>1111 Israel Road SW Ste 301<br>Tumwater WA 98501 | **Pollution Control Hearings Board**<br>PO Box 40903<br>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*

It appears, however, that similar temporary change applications have been recently submitted for the 2013 irrigation season. Thank you for your timeliness in submitting these applications. I look forward to processing these in advance of the 2013 irrigation season.

If you have any questions, please contact Thomas Perkow at 509-454-4261.

Sincerely,

Mark C. Schuppe
Operations Manager
Office of Columbia River

MCS:TP (121208)

Enclosure: *Your Right to Be Heard*

By certified mail: 7009 2250 0004 4950 7112

(2012-284 Aug. 22 & 29)
**STATE OF WASHINGTON DEPARTMENT OF ECOLOGY YAKIMA, WASHINGTON**

Notice of Applications for changes under a portion of Certificate No. S4-01228C and a portion of Surface Water Certificate (SWC) NO. 9974.

**TAKE NOTICE:** That on or about March 02, 2012, two applications were filed with the Department of Ecology (DOE) to temporarily change the place of use, point of diversion, number of acres irrigated, period of use, and add a purpose of use to portions of Surface Water Certificates SWC 9974 and S4-01228C, as modified by Okanogan County Superior Court Cause No. 91-2-00227-6, dated 19 July 1994, owned by Lake Wallula Vineyards, LLC, of Grandview, WA, with the exception of 0.11 cubic feet per second (cfs) and 16 acre-feet (ac-ft) to irrigate 8 acres under a previously authorized change to S4-01228C (CS4-01228C(A)).

That said portion of Water Right Nos. S4-01228C and SWC 9974 authorize diversions from the Okanogan River via two sources within Govt Lot 7, Sec. 20, T. 37 N., R. 27 E.W.M. That said portions of rights both authorize water to be used within the SW1/4SE1/4 Sec. 7 and the NW1/4NE1/4 Sec. 18; all within T. 37 N., R. 27 E.W.M. That said portion of Water Right No. S4-01228C authorizes the withdrawal of 0.67 cfs and 154 ac-ft per year for irrigation of 38 acres from 4/1 to 9/30 under a priority date of 12/12/1966. That said portion of Water Right No. SWC 9974 authorizes the withdrawal of 0.31 cfs and 79 ac-ft per year for the irrigation of 20 acres during the irrigation season under a priority date of 1/9/1962.

That both portions of said rights are proposed to change their points of diversion to an existing diversion location within the SW1/4NE1/4, Sec. 8, T. 5 N., R. 26 E.W.M.

That both portions of said rights are proposed to change their places of use to 105 acres within the North 3000 feet of the E1/2 of Sec. 33 and the NW1/4 of Sec. 34, T. 6 N., R. 26 E.W.M.

That both portions of said rights are proposed to increase the number of irrigated acres to 105 acres.

That both portions of said rights are proposed to change the period of use to March 1 to November 30.

That the proposed added purpose of use for both portions of said rights is for instream flow as trust water rights.

That the water body in which the trust water rights may be exercised is the Okanogan and Columbia River, within the intervening reaches between the original and amended source locations.

Formal protests or objections against the granting of the application(s) must be accompanied by a fifty dollar ($50) recording fee for each application protested, and be filed with the Department of Ecology, Cashiering Unit, PO Box 47611, Olympia, WA 98504-7611. A valid protest must include: name, address, phone number of protesting party; identification of the change/transfer being protested; a detailed statement of basis for protest; and statutory fee. All letters of protest become public records. Protests must be filed within thirty (30) days from: August 29, 2012.

Published by Omak-Okanogan County Chronicle.

# Affidavit of Publication

STATE OF WASHINGTON
ss.
County of Okanogan

The undersigned, being duly sworn on oath, deposes and says that she is the principal clerk of the Omak–Okanogan County Chronicle, a weekly newspaper, that she is duly authorized to make this affadavit; that said newspaper is a legal newspaper and has been approved as a legal newspaper by order of the Superior Court in the county in which it is published and it is now and has been for more than six months prior to the date of publications hereinafter referred to, published in the English language continuously as a weekly newspaper in Omak, Okanogan County, Washington, and it is now and during all of said time was printed in an office maintained at 618 Okoma Drive, the place of publication of said newspaper. That the annexed is a true copy of

as it was published in regular issues (and not in supplement form) of said newspaper on the following dates:

08/22/12,08/29/12

and that such newspaper was regularly distributed to its subscribers during all of said period. The full amount of the fee charged for the foregoing publication is the sum of $ 312.00 at the rate of $9.75 per column inch.

Kris Vigren
Principal Clerk

Subscribed and sworn to before me 8/29/12

Tammie M Moon
Notary Public in and for the State of Washington

Residing at Okanogan

SEAL

TAMMIE M. MOON NOTARY PUBLIC COMMISSION EXPIRES 03-20-14 STATE OF WASHINGTON

DEPT OF ECOLOGY Received AUG 30 2012 CENTRAL REGION OFFICE

THE WENATCHEE WORLD
www.wenatcheeworld.com • (509) 663-5161
P. O. Box 1511, Wenatchee, WA 98807-1511

| | |
|---|---|
| Account: 130972 | Ad ID #: 129954 |
| Name: MICHELLE SWITZER WR? | Order Taker: CORIELL |
| Company: CONAGRA FOODS LAMB WESTON, INC. | Sales Rep.: Legal Advertising (9607) |
| Address: FARMING DIVISION ACCOUNTS PAYABLE<br>P.O. BOX 1900<br>PASCO, WA 99302 | 1st Run: Tue, 08/21/12<br>Section:<br>Position: |
| Telephone: (509) 737-6603 | |
| Cost: $410.70 | Wenatchee World 08/21/12 08/28/12 Run Days 2<br>Wenatchee World Online 08/21/12 08/28/12 8 |
| Payments & Credits: | |
| Amount Due: $410.70 | Class: 1 LEGALS<br>Lines: 55<br>Ad Size: 1 cols. x 5.569"<br>Color: |

**STATE OF WASHINGTON**
**DEPARTMENT OF ECOLOGY**
**YAKIMA, WASHINGTON**

Notice of Applications for changes under a portion of Certificate No. S4-01228C and a portion of Surface Water Certificate (SWC) NO. 9974.

TAKE NOTICE: That on or about March 02, 2012, two applications were filed with the Department of Ecology (DOE) to temporarily change the place of use, point of diversion, number of acres irrigated, period of use, and add a purpose of use to portions of Surface Water Certificates SWC 9974 and S4-01228C, as modified by Okanogan County Superior Court Cause No. 91-2-00227-6, dated 19 July 1994, owned by Lake Wallula Vineyards, LLC, of Grandview, WA, with the exception of 0.11 cubic feet per second (cfs) and 16 acre-feet (ac-ft) to irrigate 8 acres under a previously authorized change to S4-01228C (CS4-01228C(A)).

That said portions of Water Right Nos. S4-01228C and SWC 9974 authorize diversions from the Okanogan River via two sources within Govt Lot 7, Sec. 20, T. 37 N., R. 27 E.W.M. That said portions of rights both authorize water to be used within the SW1/4SE1/4 Sec. 7 and the NW1/4NE1/4 Sec. 18; all within T. 37 N., R. 27 E.W.M. That said portion of Water Right No. S4-01228C authorizes the withdrawal of 0.67 cfs and 154 ac-ft per year for the irrigation of 38 acres from 4/1 to 9/30 under a priority date of 12/12/1966. That said portion of Water Right No. SWC 9974 authorizes the withdrawal of 0.31 cfs and 79 ac-ft per year for the irrigation of 20 acres during the irrigation season under a priority date of 1/9/1962.

That both portions of said rights are proposed to change their points of diversion to an existing diversion located within the SW1/4NE1/4, Sec. 8, T. 5 N., R. 26 E.W.M.

That both portions of said rights are proposed to change their places of use to 105 acres within the North 3000 feet of the E1/2 of Sec. 33 and the NW1/4 of Sec. 34, T. 6 N., R. 26 E.W.M.

That both portions of said rights are proposed to increase the number of irrigated acres to 105 acres.

That both portions of said rights are proposed to change the period of use to March 1 to November 30.

That the proposed added purpose of use for both portions of said rights is for instream flow as trust water rights.

That the water body in which the trust water rights may be exercised is the Okanogan River and the Columbia River, within the intervening reaches between the original and amended source locations.

Formal protests or objections against the granting of the application(s) must be accompanied by a fifty dollar ($50) recording fee for each application protested, and be filed [illegible] the Department of Ecology, Cashiering Unit, PO Box 47[illegible] Olympia, WA 98504-7611. A valid protest must include: na[illegible] address, phone number of protesting party; identification of [illegible] change/transfer being protested; a detailed statement of b[illegible] for protest; and statutory fee. All letters of protest become pu[illegible] records. Protests must be filed within thirty (30) days from: August 28, 2012.

Ad Name:
**STATE OF WASHINGTON DEPARTMENT OF EC**

DEPT OF ECOLOGY
Received
SEP 0 6 2012
CENTRAL REGION OFFICE

Invoice

THE WENATCHEE WORLD, WENATCHEE, WASHINGTON
AFFIDAVIT OF PUBLICATION
STATE OF WASHINGTON
COUNTY OF CHELAN

MICHELLE SWITZER
CONAGRA FOODS LAMB WESTON, INC.
FARMING DIVISION ACCOUNTS PAYABLE
P.O. BOX 1900
PASCO, WA 99302

REFERENCE INFORMATION:
Account # 130972
Ticket # 129954
Tag Line: STATE OF WASHINGTON DEPARTMENT OF EC

The Wenatchee World is a legal newspaper published in Chelan County, Washington, and approved as such by the Superior Court of said County and State. Serving the counties of Chelan, Douglas, Grant & Okanogan.

PUBLISHED ON: Wenatchee World 08/21/12
Wenatchee World 08/28/12

TOTAL COST: $410.70

Subscribed and sworn to before me on 08/28/12

Jacobi A. Schall

Notary Public in and for the State of Washington, residing in Wenatchee

JACOBI A SCHALL
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
4-06-14

**STATE OF WASHINGTON**
**DEPARTMENT OF ECOLOGY**
**YAKIMA, WASHINGTON**

of Applications for changes under a portion of Certificate 01228C and a portion of Surface Water Certificate (SWC) 974.

KE NOTICE: That on or about March 02, 2012, two applications re filed with the Department of Ecology (DOE) to temporarily change the place of use, point of diversion, number of acres irrigated, period of use, and add a purpose of use to portions of Surface Water Certificates SWC 9974 and S4-01228C, as modified by Okanogan County Superior Court Cause No. 91-2-00227-6, dated 19 July 1994, owned by Lake Wallula Vineyards, LLC, of Grandview, WA, with the exception of 0.11 cubic feet per second (cfs) and 16 acre-feet (ac-ft) to irrigate 8 acres under a previously authorized change to S4-01228C (CS4-01228C(A)).

That said portions of Water Right Nos. S4-01228C and SWC 9974 authorize diversions from the Okanogan River via two sources within Govt Lot 7, Sec. 20, T. 37 N., R. 27 E.W.M. That said portions of rights both authorize water to be used within the SW1/4SE1/4 Sec. 7 and the NW1/4NE1/4 Sec. 18; all within T. 37 N., R. 27 E.W.M. That said portion of Water Right No. S4-01228C authorizes the withdrawal of 0.67 cfs and 154 ac-ft per year for the irrigation of 38 acres from 4/1 to 9/30 under a priority date of 12/12/1966. That said portion of Water Right No. SWC 9974 authorizes the withdrawal of 0.31 cfs and 79 ac-ft per year for the irrigation of 20 acres during the irrigation season under a priority date of 1/9/1962.

That both portions of said rights are proposed to change their points of diversion to an existing diversion located within the SW1/4NE1/4, Sec. 8, T. 5 N., R. 26 E.W.M.

That both portions of said rights are proposed to change their places of use to 105 acres within the North 3000 feet of the E1/2 of Sec. 33 and the NW1/4 of Sec. 34, T. 6 N., R. 26 E.W.M.

That both portions of said rights are proposed to increase the number of irrigated acres to 105 acres.

That both portions of said rights are proposed to change the period of use to March 1 to November 30.

That the proposed added purpose of use for both portions of said rights is for instream flow as trust water rights.

That the water body in which the trust water rights may be exercised is the Okanogan River and the Columbia River, within the intervening reaches between the original and amended source locations.

Formal protests or objections against the granting of the application(s) must be accompanied by a fifty dollar ($50) recording fee for each application protested, and be filed with the Department of Ecology, Cashiering Unit, PO Box 47611, Olympia, WA 98504-7611. A valid protest must include: name, address, phone number of protesting party; identification of the change/transfer being protested; a detailed statement of basis for protest; and statutory fee. All letters of protest become public records. Protests must be filed within thirty (30) days from: August 28, 2012.

THE WENATCHEE WORLD
www.wenatcheeworld.com • (509) 663-5161
P. O. Box 1511, Wenatchee, WA 98807-1511

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

March 28, 2012

ConAgra Foods Lamb Weston Inc
Attn: Reagan Grabner
PO Box 1900
Pasco, WA 99302-1900

**Re: Water Right Application Nos. CS4-SWC9974(A)@4 and CS4-01228C(A)@4**

Dear Reagan Grabner:

We received your temporary water right change applications and have assigned it the numbers above. Please include these numbers in all future contact with us; it will help us serve you more quickly.

Your next step is to publish a legal notice. The notice announces your proposed water use to the public and allows interested persons to comment. We have prepared and enclosed this notice for you.

Review Legal Notice Carefully
It is your responsibility to check the notice carefully before having it published. If you find an error, please contact this office for resolution. If we later find an error in your public notice, you may be required to publish an amended notice at your expense.

Publishing Legal Notice
You need to arrange and pay for publishing the legal notice in a newspaper in several county papers, as in 2009, 2010, and 2011 (For example, the Omak Chronicle, Wenatchee World, and Tri-City Herald).

- Publish the notice in a paper from the enclosed list.
- Select a newspaper with general circulation in the area the water will be used and diverted.
- Ensure that the notice appears once a week for two consecutive weeks.

If your published notice does not meet the above criteria, you will be required to have the notice republished at your expense.

**Publication should start within 30 days from the date of this letter.**

FILE COPY

Next Step
You must request an *Affidavit of Publication* from the newspaper in which your notice appeared. The affidavit must be an original, notarized copy of your published notice. Please forward it to our office as soon as possible.

If you have any questions, please contact me at 509-662-0512 or Teresa Mitchell at 509-575-2597.

Sincerely,

Thomas R. Perkow
Office of Columbia River

TRP:RAZ (120313)

Enclosures: Legal Notice
Newspaper list

Cc: Tim Reierson

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
YAKIMA, WASHINGTON

Notice of Applications for changes under a portion of Certificate No. S4-01228C and a portion of Surface Water Certificate (SWC) No. 9974.

**TAKE NOTICE:** That on March 02, 2012, two applications were filed with the Department of Ecology (DOE) to temporarily change the place of use, point of diversion, number of acres irrigated, period of use, and add a purpose of use to portions of Surface Water Certificates SWC 9974 and S4-01228C as modified by Okanogan County Superior Court Cause No. 91-2-0022706, dated 19 July 1994, owned by Lake Wallula Vineyards, LLC, of Grandview, WA, with the exception of 0.11 cubic feet per second (cfs) and 16 acre-feet (ac-ft) to irrigate 8 acres under a previously authorized change to S4-01228C (CS4-01228C(A)).

That said portions of Water Right Nos. S4-01228C and SWC 9974 authorize diversions from the Okanogan River via two sources within Govt Lot 7, Sec. 20, T. 37 N., R. 27 E.W.M. That said portions of rights both authorize water to be used within the SW¼SE¼ Sec. 7 and the NW¼NE¼ Sec. 18; all within T. 37 N., R. 27 E.W.M. That said portion of Water Right No. S4-01228C authorizes the withdrawal of 0.67 cfs and 154 ac-ft per year for the irrigation of 38 acres from 4/1 to 9/30 under a priority date of 12/12/1966. That said portion of Water Right No. SWC 9974 authorizes the withdrawal of 0.31 cfs and 79 ac-ft per year for the irrigation of 20 acres during the irrigation season under a priority date of 1/9/1962.

That both portions of said rights are proposed to change their points of diversion to an existing diversion located within the SW¼NE¼, Sec. 8, T. 5 N., R. 26 E.W.M.

That both portions of said rights are proposed to change their places of use to 105 acres within the North 3000 feet of the E½ of Sec. 33 and the NW¼ of Sec. 34, T. 6 N., R. 26 E.W.M.

That both portions of said rights are proposed to increase the number of irrigated acres to 105 acres.

That both portions of said rights are proposed to change the period of use to March 1 to November 30.

That the proposed added purpose of use for both portions of said rights is for instream flow as trust water rights.

That the water body in which the trust water rights may be exercised is the Okanogan River and the Columbia River, within the intervening reaches between the original and amended source locations.

Formal protests or objections against the granting of the application(s) must be accompanied by a fifty dollar ($50) recording fee for each application protested, and be filed with the Department of Ecology, Cashiering Unit, PO Box 47611, Olympia, WA 98504-7611. A valid protest must include: name, address, phone number of protesting party; identification of the change/transfer being protested; a detailed statement of basis for protest; and statutory fee. All letters of protest become public records. Protests must be filed within thirty (30) days from

_____.

**[<u>LAST</u> date of publication to be entered by publisher on the above line]**

**[NOTE TO PUBLISHER:** *The above notice is to be published once a week for two consecutive weeks.*]

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

March 30, 2012

The Honorable Stanley Smith
Confederated Tribes of the Warm Springs Indian Reservation
1233 Veterans St
Warm Springs, OR 97761

**RE: NOTICE TO CREATE A TRUST WATER RIGHT**

Dear Chairman Smith:

Under RCW 90.42.040(5), before a trust water right is created, notice shall be sent to all appropriate state agencies, potentially affected local governments, federally recognized tribal governments, and other interested parties. This letter is being sent to you to meet this requirement for temporary change proposals to portions of Surface Water Certificates Nos. SWC9974 and S4-01228C owned by Lake Wallula Vineyards LLC. Two trust water rights are proposed in your area for the 2012 irrigation season. No impairment to other water users is expected. The pertinent information of the proposed trust water rights is as follows:

> Said portions of rights S4-01228C and SWC 9974 authorize diversion from the Okanogan River via two sources within Government Lot 7, Sec. 20, T. 37 N., R. 27 E.W.M. Said portions of these two rights both authorize water to be used within the SW¼SE¼ Sec. 7 and NW¼NE¼ Sec. 18, T. 37 N., R. 27 E.W.M. Said portion of right S4-01228C authorizes irrigation of 38 acres (154 acre-feet per year [af/yr]) from 4/1 to 9/30, and authorizes withdrawal and use of 0.67 cubic feet per second (cfs) under priority date 12/12/1966. Said portion of right SWC9974 authorizes irrigation of 20 acres (79 af/yr) during the irrigation season, and authorizes withdrawal and use of 0.31 cfs under priority date 1/9/1962.

The proposed added purpose of use as trust water rights for both portions of said rights is for instream flows.

The water body in which the trust water rights may be exercised is the Okanogan River and the Columbia River, within the intervening reaches between the original and amended source locations.

The seasonal change is for the 2012 season only, and proposes to transfer these rights for irrigation purposes to a location on Paterson Ridge, located approximately 2.7 miles northeast of Paterson, WA. (The proposed place of use is 105 acres within the North 3000 feet of the E½ of Sec. 33 and the NW¼ of Sec. 34, T. 6 N., R. 26 E.W.M.). The source at the proposed site would be the Columbia River. (The proposed point of diversion is within the SW¼NE¼, Sec. 8, T. 5 N., R. 26 E.W.M). The conveyances into trust for the intervening reaches on the Okanogan and

FILE COPY

Columbia Rivers between the original and proposed points of diversion are to enhance instream flows.

Side note: On January 11, 2008, Ecology modified two Benton County Water Conservancy Board (BCWCB) decisions (CS4-SWC-9974(A) and CS4-01228C(A)) to transfer the places of use and points of diversion of these same portions of Surface Water Certificates Nos. SWC9974 and S4-01228C owned by Lake Wallula Vineyards LLC to an area near Tri-Cities. These changes have not been fully developed yet and are not part of these temporary changes other than, to avoid enlargement of the right, the places of use authorized under CS4-SWC-9974(A) and would be provisioned to be fallowed for the 2011 irrigation season if these seasonal changes are approved, with the exception of 0.11cfs and 16 ac-ft/yr to irrigate 8 acres under CS4-01228C(A).

You may send Ecology formal protests or general comments regarding this seasonal change proposal. They must be received by the Department of Ecology's office by **April 30, 2012**. Letters of protest are public record.

To submit a formal protest, follow these three steps:

1. Write a detailed explanation of why you object to the modification.
2. Include a check or money order for $50 payable to "Department of Ecology". This is a recording fee.
3. Mail your explanation and recording fee to: Department of Ecology, Cashiering Section, PO Box 5128, Lacey, WA 98509-5128

To submit your comment, follow these two steps:

1. Write a letter that explains your comment.
2. Mail your letter to: Derek Sandison, Department of Ecology 15 W Yakima Ave., Ste 200, Yakima, WA 98902-3452

If you have any questions or need additional information, please contact Tom Perkow by telephone at (509) 662-0512 or e-mail at tper461@ecy.wa.gov.

Sincerely,

Derek I. Sandison
Director
Office of Columbia River

TP:DIS:RAZ (120314)

Cc: Brad Houslet, Confederated Tribes of the Warm Springs Indian Reservation

The Honorable Stanley Smith
Confederated Tribes of the
Warm Springs Indian Reservation
1233 Veterans St.
Warm Springs OR 97761

The Honorable Les Minthorn
Confederated Tribes of the
Umatilla Indian Reservation
46411 Timine Way
Pendleton OR 97801

The Honorable Harry Smiskin
Confederated Tribes of the Yakama Nation
PO Box 151
Toppenish WA 98948

The Honorable Michael O. Finley
Confederated Tribes of the Colville Reservation
PO Box 150
Nespelem WA 99155

Jeff Tayer, Regional Director
Washington Department of
Fish & Wildlife, Region 3
1701 S 24th Ave
Yakima WA 98902

Phil Anderson
Director
Washington Department of Fish & Wildlife
600 Capitol Way N
Olympia WA 98501

Dennis Beich, Regional Director
Washington Department of
Fish & Wildlife, Region 2
1550 Alder Street NW
Ephrata WA 98823

The Honorable James Beaver
Benton County Commissioner
PO Box 190
Prosser WA 99350

The Honorable Ron Walter
Chelan County Commissioner
350 Orondo Avenue
Wenatchee WA 98801

The Honorable Dale Snyder
Douglas County Commissioner
213 South Rainier
Waterville WA 98858

The Honorable Robert E. Koch
Franklin County Commissioner
1016 North 4th Avenue
Pasco WA 99301

The Honorable Carolann Swartz
Grant County Commissioner
35 C Street NW
Ephrata WA 98823

The Honorable Paul Jewell
Kittitas County Commissioner
205 West 5th Avenue
Ellensburg WA 98926

The Honorable Andrew Lampe
Okanogan County Commissioner
149 3rd North
Okanogan WA 98840

The Honorable Perry L. Dozier
Walla Walla County Commissioner
PO Box 1506
Walla Walla WA 99362

The Honorable Kevin Bouchey
Yakima County Commissioner
128 North 2nd Street
Yakima WA 98901

Dave McClure
Watershed Coordinator
Klickitat County
228 West Main Street MS-CH-17
Goldendale WA 98620

The Honorable Soo Ing-Moody
Mayor
Town of Twisp
PO Box 278
Twisp WA 98856

Cathy Schaeffer
Walla Walla County
500 Tausick Way
Walla Walla WA 99362

Lee Duncan
Chelan County Natural Resources Department
316 Washington Street #401
Wenatchee WA 98801

Jeff Breckel
Lower Columbia Fish Recovery Board
2127 8th Avenue
Longview WA 98632

Bob Clark
Okanogan Conservation District
1251 South 2nd Avenue #101
Okanogan WA 98840

Britt Dudek
Foster Creek Conservation District
PO Box 428
Waterville WA 98858

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Chelan County Natural Resources Department
316 Washington Street #401
Wenatchee WA 98801

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215 Melody Lane
Wenatchee WA 98801

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921 Murray St.
Okanogan WA 98840

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PO Box 2870
Portland OR 97208-2870

Stephen Wright
Administrator
Bonneville Power Administration
PO Box 3621
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Dennis McLerran
Regional Administrator
US EPA Region 10
RA-140
1200 Sixth Avenue
Seattle WA 98101

Lorri Gray-Lee
Regional Director
Pacific Northwest Region Bureau of
Reclamation - US Dept of the Interior
1150 North Curtis Road Ste 100
Boise ID 83706-1234

Kent Connaughton
Regional Forester
USDA Forest Service
Pacific Northwest Region
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Portland OR 97208-3623

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Chairman
Northwest Power and Conservation Council
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Olympia WA 98501

Dale BamBrick
Branch Chief
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Ellensburg WA 98926

Will Stelle
Regional Administrator
NOAA Fisheries, Northwest Region
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Seattle WA 98115

Robin Thorson
Regional Director
US Fish & Wildlife Service - Pacific Region
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Portland OR 97232

Phillip C. Ward
Director
Oregon Water Resources
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Salem OR 97301

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Warm Springs Indian Reservation
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Warm Springs OR 97761

Eric Quaempts
Department of Natural Resources
Confederated Tribes of the
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Pendleton OR 97801

Philip Rigdon, Director
Natural Resources Division
Yakama Nation
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Toppenish WA 98948

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Washington Department of Fish & Wildlife
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Olympia WA 98501

Mike Kaputa
Chelan County Natural Resources Department
316 Washington Street #401
Wenatchee WA 98801

Victoria Leuba
Washington State Department of Ecology
4601 N Monroe
Spokane WA 99205

Scott McKinney
Washington State Department of Ecology
PO Box 47600
Olympia WA 98503

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

March 13, 2012

ConAgra Foods Lamb Weston, Inc.
Attn: Reagan Grabner
PO Box 1900
Pasco WA 99302-1900

Re: Water Right Change Application Nos. CS4-SWC9974(A)@4 and CS4-01228C(A)@4

We have received your water right change applications and have assigned them numbers shown above. Please use these numbers in future communications with our office.

If you have any questions, please contact Teresa Mitchell at 509-575-2597.

Sincerely,

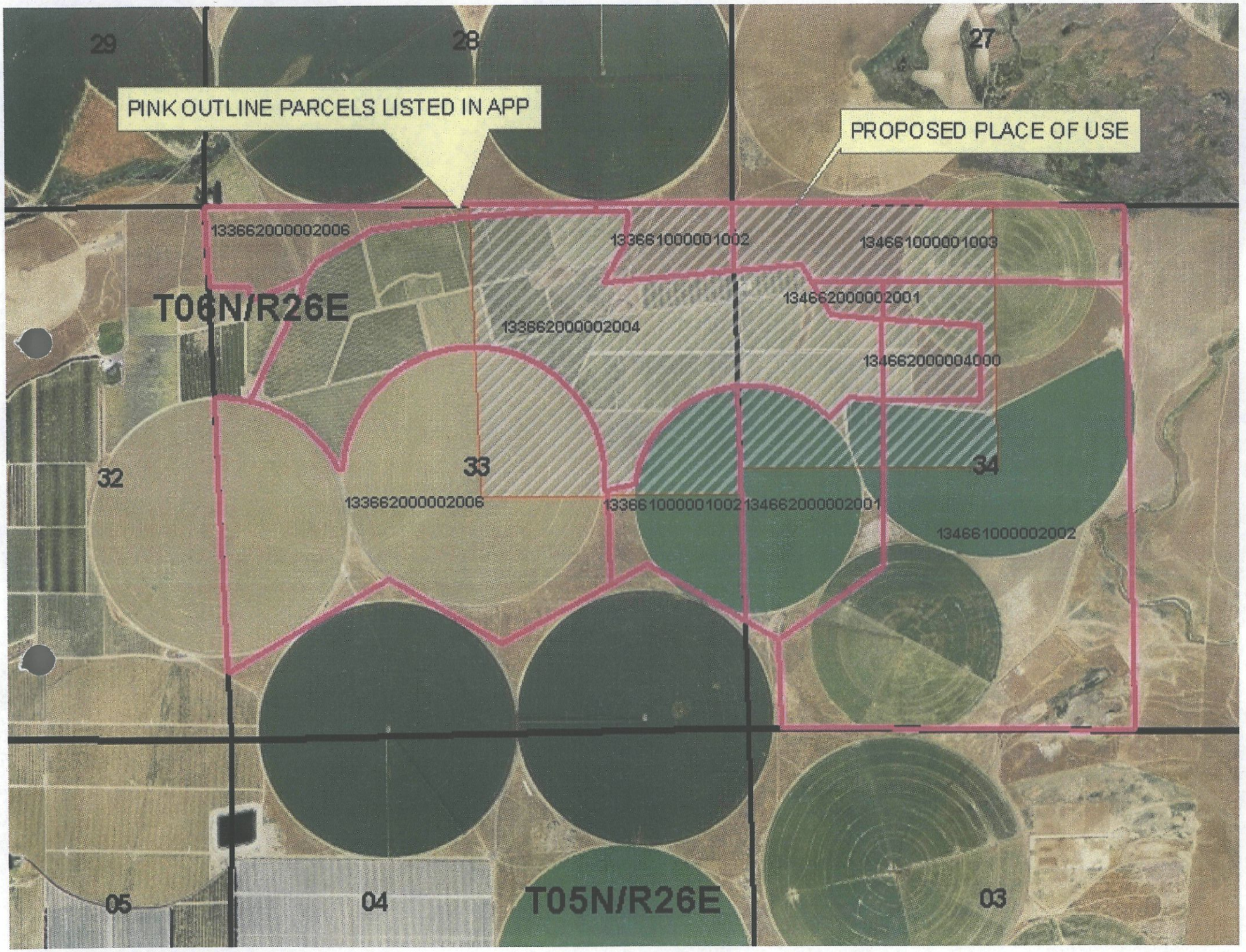
Mark Kemner, LHG
Section Manager
Water Resources Program

MK:hd
120304

App-expedited.doc

FILE COPY

| Parcel_ID | owner1 | mailaddr | mailcity | mailstat | mailzip |
|---|---|---|---|---|---|
| 133661000001002 | WATTS BROS FARMS A PARTNERSHIPA | PO BOX 1900 | PASCO | WA | 99302-1900 |
| 133662000002004 | ZEPHYR RIDGE VINEYARD LLC | 31902 N CROSBY RD | PROSSER | WA | 99350 |
| 133662000002006 | WATTS BROTHERS FARMS | PO BOX 1900 | PASCO | WA | 99302-1900 |
| 134661000001003 | WATTS BROS FARMS A PARNTERSHIPA | 1021 N KELLOGG ST | KENNEWICK | WA | 99336 |
| 134661000002002 | WATTS BROS FARMS A PARTNERSHIPA | PO BOX 1900 | PASCO | WA | 99302-1900 |
| 134662000002001 | WATTS BROS FARMS A PARTNERSHIPA | PO BOX 1900 | PASCO | WA | 99302-1900 |
| 134662000004000 | ZEPHYR RIDGE VINEYARD LLC | 31902 N CROSBY RD | PROSSER | WA | 99350 |


PINK OUTLINE PARCELS LISTED IN APP
PROPOSED PLACE OF USE
29
28
27
1336620000002006
13366100000 1002
1346610000001003
T06N/R26E
1346620000002001
1336620000002004
1346620000004000
32
33
34
1336620000002006
13366100000 1002
1346620000002001
1346610000002002
05
04
T05N/R26E
03

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

January 11, 2008
CERTIFIED MAIL
[7006 0100 0002 8191 4487]

Lake Wallula Vineyards LLC
c/o Andy Den Hoed Jr
63802 N Wilgus Rd
Grandview WA 98930-9686

**RE: Water Right Change Application No. CS4-SWC9974(A) (BENT-07-12)**

In accordance with RCW 90.80.080 the Department of Ecology (Ecology) has reviewed the Record of Decision (ROD), 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.

Ecology has **modified** the decision of the Board and the proposed change/transfer of water right is **approved** under the following conditions:

**Summary of Ecology's Final Order**

| MAXIMUM CUB FT/ SECOND | MAXIMUM GAL/MINUTE | MAXIMUM ACRE-FT/YR | TYPE OF USE, PERIOD OF USE |
|---|---|---|---|
| .31 | | 60 | Irrigation of up to 80 acres, March 1 to November 30 (during October, November and March, water use is subject to instream flow regs) |

| SOURCE | TRIBUTARY OF (IF SURFACE WATER) |
|---|---|
| Columbia River and two proposed (optional) wells. | |

| ¼ | ¼ | SECTION | TOWNSHIP N. | RANGE | WRIA | COUNTY. |
|---|---|---|---|---|---|---|
| | | | 6 | 30 EWM | 31 | Benton |

**AT A POINT LOCATED:**
**PARCEL NO.**

All within T. 6 N., R. 30 E.W.M.:

1) Existing Columbia River diversion: 1725 feet south and 400 feet east of the west quarter corner of Section 27, being within the SW1/4SW1/4 of said section.

2) Proposed optional well: well to be constructed within the NE1/4SE1/4 of Section 27.

3) Proposed optional well: well to be constructed within the S1/2SE1/4 of Section 23 and within 400 feet of the edge of the Columbia River.

**LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD**

All within T. 6 N., R 30 E.W.M.:

Those lands generally described as:

The S1/2NW1/4 and NE1/4NW1/4 and NW1/4SW1/4 and NW1/4NE1/4 of section 24, the S1/2SE1/4 and NE1/4 SE1/4 of Section 23, the N1/2 of Section 26, and the SE1/4NE1/4 and S1/2 of Section 27 EXCEPT the West 1783.01 feet of said S1/2 of Section 27.

And more specifically described as:

Those portions of the following described lands lying northerly of railroad right of way, all within T. 6 N., R. 30 E.W.M.:

Within Section 24, Gov't Lots 1 and 2;
Within Section 23, Gov't Lots 1 and 2;
Within Section 26, Gov't Lots 1, 2 and 3; and
Within Section 27, Gov't Lot 1, Gov't Lot 2, and that portion of Gov't Lot 3 lying West of a line described as beginning at the West quarter corner of said Section 27, thence N 89°12'10" E 1783.01 feet to the true point of beginning, thence S 0°48'00" E 1156.00 feet to the N line of railroad right of way and terminus of said line.

| PARCEL NO. | ¼ | ¼ | SECTION | TOWNSHIP N. | RANGE, |
|---|---|---|---|---|---|
| 124602000001000<br>123604000000000<br>126602000000000<br>127603000001002 | | | | 6 | 30 E.W.M. |

Ecology has **MODIFIED** the decision of the Board as follows:

1) The legal description for the place of use and the authorized locations for the points of diversion and withdrawal have been modified as noted above.

2) In the mitigation section of the ROE the Board has recognized the applicant is planning to place the conveyed water portion of the existing water right into the Trust Water Right Program. Consistent with this intent the following provision is added:

   In order to ensure water is available at the proposed place of use following the change, the applicant has voluntarily agreed to donate or otherwise convey, under RCW 90.42 within the intervening reach, all of the water rights to the trust water system. The applicant will consult with Ecology concerning the term and conditions of the conveyance.

3) The Board has determined that the two proposed wells must be constructed to be in direct hydraulic continuity with the Columbia River. Consistent with this intent the following provision is added to the Board's well construction provision number 16:

   Any wells constructed under this authorization must be located within 400 feet of the edge of the Columbia River, and be completed within the unconsolidated alluvial sediments and\or unconsolidated talus and scree deposits.

4) Add to the table in the Board's provision number 5, the month of October with an instantaneous flows of 50 kcfs and a minimum weekly flow of 60 kcfs.

You have a right to appeal this order. To appeal this you must:

- File your appeal with the Pollution Control Hearing Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board:

| Mail appeal to: | OR | Deliver your appeal in person to: |
|---|---|---|
| Pollution Control Hearings Board<br>PO Box 40903<br>Olympia WA 98504-0903 | | Pollution Control Hearings Board<br>4224 – 6th Ave SE Rowe Six, Bldg 2<br>Lacey WA 98503 |

2. To serve your appeal on the Department of Ecology:

Mail appeal to:

Department of Ecology
Appeals Coordinator
PO Box 47608
Olympia WA 98504-7608

OR

Deliver your appeal in person to:

Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey WA 98503

3. And send a copy of your appeal packet to:

G. Thomas Tebb, L.E.G.
Department of Ecology
15 W Yakima Ave Ste 200
Yakima WA 98902-3452

*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*

If you have concerns or need further information, please contact Teresa Mitchell of the Department of Ecology at 509 575 2597.

Sincerely,

G. Thomas Tebb, L.E.G.
Section Manager
Water Resources Program
Central Region Office

GTT:JTK:gg
080113

Enclosures: Your Right To Be Heard
Beginning of Construction Form
Water Measurement Requirements

cc: Janet Rajala, Department of Ecology, ERO
Darryll Olsen, Benton County Water Conservancy Board
Philip Rigdon, Deputy Director, Natural Resources Division, Yakama Nation

For Ecology Use Only

Received: DEPT OF ECOLOGY Received OCT 31 2007 CENTRAL REGION

Date Stamp

# Benton County
## WATER CONSERVANCY BOARD

BENT-07-12

## Record of Decision

Applicant: Wallula Vineyards Application Number: CS4-SWC9974(A)

This record of decision was made at an open public meeting of the Benton County Water Conservancy Board held on October 25, 2007, 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: 10/25/2007
Darryll Olsen, Ph.D., Chairman
Benton County Water Conservancy Board

*Approves*
Denies
Recused
Abstains
Excused Absence

Signed _____ Date: 10/25/2007
John Jaksch, Ph.D., Vice Chairman
Benton County Water Conservancy Board

*Approves*
Denies
Recused
Abstains
Excused Absence

Signed _____ Date: 10/25/2007
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 11/04/2007.

# BENTON COUNTY
# WATER CONSERVANCY BOARD

DEPT OF ECOLOGY
Received
OCT 3 1 2007
CENTRAL REGION OFFICE

*Application/Review for Change/Transfer*

OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF THE STATE OF WASHINGTON

## Report of Examination

☒ Surface Water  Ground Water

| DATE APPLICATION RECEIVED | WATER RIGHT DOCUMENT NUMBER | WATER RIGHT PRIORITY DATE | BOARD-ASSIGNED CHANGE APPLICATION NUMBER |
|---|---|---|---|
| March 2007 | CS4-SWC-9974(A) | January 9, 1962 | BENT-07-12 |

NAME
Attention: Andy Den Hoed, Lake Wallula Vineyards, 63802 N. Wilgus Rd., Grandview, WA 98930

| ADDRESS (STREET) | (CITY) | (STATE) | (ZIP CODE) |
|---|---|---|---|
| 63802 N. Wilgus Rd. | Grandview | WA | 98930 |

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

Change to points of diversion/withdrawal, place of use, season of use., acreage increase (with reduction to currently allowed quantity of use).

**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 further SEPA review, as the water amount involved is under the SEPA threshold criteria for surface/ground water use.

## BACKGROUND AND DECISION SUMMARY

### Existing Right

| MAXIMUM CUB FT/ SECOND | MAXIMUM GAL/MINUTE | MAXIMUM ACRE-FT/YR | TYPE OF USE, PERIOD OF USE |
|---|---|---|---|
| .31 cfs | | 79 acre-ft. | Seasonal irrigation of 20 acres |
| SOURCE | | | TRIBUTARY OF (IF SURFACE WATER) |
| | | | Okanogan River (via two wells) |

| AT A POINT LOCATED: PARCEL NO. | ¼ | ¼ | SECTION | TOWNSHIP N. | RANGE | WRIA | COUNTY. |
|---|---|---|---|---|---|---|---|
| Diversion Point: (and as described on attachments) | SE1/4 (2 wells) | NW1/4 | 20 | 37N | 27 EWM | 49 | Okanogan |

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

All within:

SW1/4,SE1/4 section 7 and NW1/4,NE1/4 section 18, T.37N, R.27 EWM as per Okanogan County Superior Court July 9. 1994, order. (Prior description also is attached per WADOE change/transfer.)

3727072003
3727181004

## Proposed Use

| MAXIMUM CUB FT/ SECOND | MAXIMUM GAL/MINUTE | MAXIMUM ACRE-FT/YR | TYPE OF USE, PERIOD OF USE |
|---|---|---|---|
| .31 cfs | | 79 acre-ft. | Irrigation of up to 80 acres, March 1 to November 30 |

| SOURCE | TRIBUTARY OF (IF SURFACE WATER) |
|---|---|
| Columbia River via Pump Diversion and Two Proposed (Optional) Wells | Mainstem Columbia River |

| AT A POINT LOCATED: PARCEL NO. | ¼ | ¼ | SECTION | TOWNSHIP N. | RANGE | WRIA | COUNTY. |
|---|---|---|---|---|---|---|---|
| Diversion Point: (and as described on attachments) | 1) Govt. Lot 4 | SW | 27 | 6 | 30 | 31 | Benton 127603000001000 |
| | | NE or SE | 27 | 6 | 30 | 31 | 127603000001000 |
| | | SE1/4 | 23 | 6 | 30 | 31 | 123604000000000 |

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

All within:

NW1/4 and NE1/4 and SE1/4 section 24, SE1/4 section 23, N1/2 section 26, NE1/4 and S1/2 section 27 all within T6N., R.30 EWM. And see attached legal description.
Benton County Parcel Nos. 124602000001000, 123604000000000, 126602000000000, and portion 127603000001000.

## Water Board Decision

| MAXIMUM CUB FT/ SECOND | MAXIMUM GAL/MINUTE | MAXIMUM ACRE-FT/YR | TYPE OF USE, PERIOD OF USE |
|---|---|---|---|
| .31 cfs | | 60 acre-ft. | Irrigation of up to 80 acres, March 1 to November 30 |

| SOURCE | TRIBUTARY OF (IF SURFACE WATER) |
|---|---|
| Columbia River via Pump Diversion and Two Proposed (Optional) Wells | Mainstem Columbia River |

| AT A POINT LOCATED: PARCEL NO. | ¼ | ¼ | SECTION | TOWNSHIP N. | RANGE | WRIA | COUNTY. |
|---|---|---|---|---|---|---|---|
| Diversion Point: (and as described on attachments) | 1) Govt. Lot 4 | SW | 27 | 6 | 30 | | Benton 127603000001000 |
| | | NE or SE | 27 | 6 | 30 | | 127603000001000 |
| | | SE1/4 | 23 | 6 | 30 | | 123604000000000 |

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

All within:

NW1/4 and NE1/4 and SE1/4 section 24, SE1/4 section 23, N1/2 section 26, NE1/4 and S1/2 section 27 all within T6N., R.30 EWM. And see attached legal description.
Benton County Parcel Nos. 124602000001000, 123604000000000, 126602000000000, and portion 127603000001000.

## DESCRIPTION OF PROPOSED WORKS

The existing water right is being used for irrigation of orchard lands along the Okanogan River (pumped from shallow wells in direct hydrologic continuity with the Okanogan River), and the right is in good standing.

The water right is being actively transferred to a diversion/withdrawal point downriver, within the McNary Pool, Columbia River. Water will be diverted via new shallow wells or from an existing pump station site. The water will be used for irrigation of wine grapes. In the future, the proposed new irrigated acreage (80 acres) may receive additional water right coverage.

The applicant also will be applying for a trust water program donation, for the conveyed water between the existing and new diversion/withdrawal points.

## DEVELOPMENT SCHEDULE

| BEGIN PROJECT BY THIS DATE: | COMPLETE PROJECT BY THIS DATE: | COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: |
|---|---|---|
| Immediately | By January 1, 2012 | By January 1, 2013 |

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

### BACKGROUND

A change/transfer application for CS4-SWC9974(A) was received and accepted by the Water Board in March 2007. The water right has been previously changed by WADOE, and the current action is for the (A) portion of the right, as allocated by the Okanogan Superior Court. Re-assignment of the water right to Wallula Vineyards has been submitted.

The applicant requests changing points of diversion/withdrawal, place of use, and time of use. The applicant seeks greater flexibility in the use of the water right, and the change would be consistent with allowed use and changes under RCW 90.03.380.

The applicant's intent is to continue the use of CS4-SWC-9974(A) at a new location, for continued irrigation use.

*Attributes of the water right as currently documented:*

Name on certificate, claim, permit: Wallula Vineyards, LLC, per assignment submittal in July 2006.

Water right document number: CS4-SWC-9974(A)

As modified by change number: CS4-SWC-9974(A)

Priority date, first use: January 9, 1962

Water quantities: Qi: 0.31 cfs, Qa: 79 acre-ft./year

Source: Surface Water, Okanogan River

Point of diversion/withdrawal: See above and attachments

Purpose of use: Irrigation of 20 acres

Period of use: Seasonal Irrigation

Place of use: See above and attachments

Existing provisions: See attached documentation on the water right (see Court Order allocation).

*Tentative determination of the water right:*

See Water Board's Decision Above with reduced Qa allowed for change/transfer per RCW 90.03.380.

*History of water use:*

The water right has been used in conjunction with other water rights to serve irrigation lands along the Okanogan River.

*Previous changes:*

File notes previous change per WADOE action; formal Court allocation of water, and two re-assignments of the water right ownership (see attachments and file records).

SEPA:
As noted above, the water right change request is exempt.

**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.

The application has been distributed to several state resources agencies, tribes, and interested parties. No comments have been received from these parties concerning the application.

The change request received a public notification and public hearing by the Water Board on September 20, 2007, per RCW 90.80 and 90.03.380 provisions. No comments were received at the hearing.

*Issues Raised by WADOE:*

The Water Board has provided the WADOE CRO with the change/transfer application and public notice, and no comments have been received from WADOE staff.

*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**

The following information was obtained from site inspections, technical reports and documents, research of department records, and discussions with the applicant's technical consultant and other interested parties; as well as any discussions with the WADOE staff and /or other parties, and Court records.

*Proposed project plans and specifications:*

As noted above, the applicant will continue to use this water right for irrigation of vineyards, at a new Lower Columbia River site. The applicant will make use of either hydrologic-connected wells to the river system or an existing diversion point (pump station.

**A. Key Technical Issues—Water Right Review:**

*This investigation has included review of 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 a valid water right certificate and change authorization (per Superior Court allocation and provisions) in good standing, and it is on file with the WADOE. The water right is subject to the surface water code provisions, including RCW 90.03.380. The current well sources are located within the advertised legal subdivisions, same source of water, consistent with state water management fundamentals expressed in RCW 90.54.020((9). This statute provides that full recognition shall be given in the administration of water allocation and use programs to the natural interrelationships of surface and groundwaters.

The water right is valid as stands, subject to subsequent change actions by the Water Board and any WADOE administrative changes affecting development.

The certificate has been recently re-assigned per review by the Water Board and WADOE staff.

Second, the change/transfer request must be consistent with RCW 90.03.380, and related water code statutes. The Water Board concludes that this requirement has been met, per the provisions and conditions cited within tis ROE/ROD.

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 allowed 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 concludes that this request requires no expansion of the water right Qa or Qi, as designated under the existing certificate and Court order. Per the Water Board's determination, the water Qa will be reduced, under RCW 90.03.380.

Fourth, the allowed amount of water available for change/transfer under RCW 90.03.380, for change in purpose, is based on the average consumptive quantity (ACQ) for the two-year, peak-year average, covering the most recent five-year period (see attachments, supplemental analysis and methodology).

The Water Board's review of the attached analyses confirms that the available water for change/transfer is 60 acre-ft.

*Hydrologic, and other technical investigations:*

First, based on detailed technical review/discussions with the applicant, it is concluded that the requested change/transfer will divert water from the same body of water—or management area--as that allowed under the existing water right (for down-stream allocation). An existing pump station will be used, located within the mainstem of the Columbia River, McNary Pool; or new hydrologic-connected wells to the river system will be used (optional).

The Water Board notes that 1) the existing well logs demonstrate the hydrologic continuity with the Okanogan River system (shallow wells); 2) the wells are physically about 50 yards from the river; and 3) the question of hydrologic continuity with the Columbia River per potential new well locations has been reviewed with the applicants technical consultant.

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 records, and concludes that impairment is not an issue for this change request. The proposed point of diversion is consistent with the impairment standards under RCW 90.03.380, as a perfected water right.

As a senior (pre-1980) water right, their will be no impairment to any other water right withdrawing water from the McNary Pool; and the change affecting seasonal portions of the water right (March 1 to April 1, and September 30 to November 30) will be subject to critical flow regulations (as a junior-right water withdrawal).

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 close to (within the McNary-John Day Pools) the applicant's existing diversion site.

Third, the change will involve a net reduction in water use relative to the existing allowed use, with peak summer withdrawals generally reduced, with no impact to adjacent water rights. Further, the Water Board has reviewed potential year-round water use (production tends to be consistent throughout the year), for the period outside the

allowed existing use (November-March) and concluded that impairment to other water rights is not an issue. Most (quantity) withdrawals on the mainstem river system are allocated to summer irrigation use, and the existing water rights are classified under pre- and post-1980 seniority (WAC 173-531A). Withdrawals after 1980 are subject to regulation under either WAC 173-531A and 173-563, or RCW 90.90

The Water Board has determined that the year-round use outside the existing permitted use period would be subject to instream flow regulations under WAC 173-563 (see attachment). These regulations establish minimum instantaneous and weekly instream flows for the mainstem Columbia River during critical flow conditions. These minimum flows for the McNary and John Day Pools are:

| | Instantaneous: | Weekly Minimum |
|---|---|---|
| October | 50 kcfs | 60 kcfs |
| November: | 50 kcfs | 60 kcfs |
| December: | 20 kcfs | 60 kcfs |
| January: | 20 kcfs | 60 kcfs |
| February: | 20 kcfs | 60 kcfs |
| March: | 50 kcfs | 60 kcfs |

The critical flow regulation is subject to the criteria stated within WAC 173-563. This regulation may be modified in the future subject to operational measures taken under the 2006 Columbia River Basin Water Supply Act (RCW 90.90).

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 fourth, relative to the change request, the Water Board has 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 of water right granted by the Washington State Dept. of Ecology (and with re-assignment). The Water Board has reviewed the water right documentation, reviewed the applicant's technical information concerning the water right, is familiar with the existing water use and land operations, and has conducted its own review of the water right relative to change/transfer conditions as discussed above. It is concluded that the water right is 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 months of August and October 2007. The Water Board is familiar with the general site area having reviewed other site-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 ROE/ROD.

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 and commercial satellite photos. 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 portions of 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, 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. No comments were received by these parties during the formal, and informal, public comment period for the change/transfer application.

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

**F. Associated Rights and Uses:**

The subject certificate is being beneficially used and developed, and it is being used along with other water rights in the nearby area (Okanogan River withdrawals). The future use site also is served by other water rights owned by the applicant, as used by an existing Columbia River pump station. The other water rights are not directly, or indirectly, 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; no direct impacts are perceived to the operation of other water rights.

**G. Review of Potential Impairment:**

Because the proposed action will not increase the existing allowed 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 withdrawals; 2) changes to time of use are subject to

existing river regulations for impairment; and 3) 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 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 certificate 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 of water right (with Court Order provisions and a new re-assignment), and existing development and 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 and the surface water code. The change/transfer request will not increase the allowed water right Qa; the change/transfer will not increase allowed consumptive use from the designated sources, as allowed by the water code.

3. There will be no increase in water withdrawal on an annual basis; and portions of the annual use are subject to existing river regulation. In addition, continued monitoring of the quantity of water pumped will help ensure that certificated water withdrawals are not exceeded, for the changes requested. New seasonal withdrawals are regulated.

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.

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; the agencies have provided no direct comments to the application. Re-assignment of the water right is consistent with the public notice.
There were no comments received at a separate public hearing for the proposed change/transfer.

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 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 a modified place of use, diversions, and seasonal use are conditioned by the following provisions:

1. The points of diversion/withdrawal and place of use for the water right are designated in the summary table above (under Water Board Decision).

2. The time of use is modified, as designated in the summary table above (under Water Board Decision).

3. Use of water under this authorization shall be contingent upon the water right holder's utilization of up-to-date water conservation practices, and taking into account cost-effectiveness for operations and economic viability.

4. The issued superseding certificate for CS4-SWC-9974(A) shall not exceed 0.31 cfs, 60 acre-ft annually, for seasonal irrigation of up to 80 acres, March 1 to November 30.

5. The seasonal use portion during the months of October-November and March are subject to instream flow regulations under WAC 173-563 (see attachment). These regulations establish minimum instantaneous and weekly instream flows for the mainstem Columbia River during critical flow conditions. These minimum flows for the McNary and John Day Pools are:

| | Instantaneous: | Weekly Minimum |
|---|---|---|
| November: | 50 kcfs | 60 kcfs |
| December: | 20 kcfs | 60 kcfs |
| January: | 20 kcfs | 60 kcfs |
| February: | 20 kcfs | 60 kcfs |
| March: | 50 kcfs | 60 kcfs |

The critical flow regulation is subject to the criteria stated within WAC 173-563. This regulation may be modified in the future subject to operational measures taken under the 2006 Columbia River Basin Water Supply Act (RCW 90.90).

6. By January 1, 2012, the applicant will notify the Water Resources Program, Central Region Office, WADOE, that project construction is completed, unless further extended for good cause.

7. Proof of appropriation (for actual beneficial use of water) is due to the Water Resources Program, Central Region Office, WADOE by January 1, 2013, unless further extended for good cause.

8. The WADOE shall undertake a proof inspection to certify actual development of the water right amended within this ROE.

9. The applicant will provide the WADOE with a metering plan, for the change to purpose of use, prior to water use within the existing place of use, consistent with the provisions of this change decision. The metering plan will ensure that water usage will not exceed the allowed use designated herein, as well as adjacent water rights used at the existing point of diversion.

10. 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.

11. 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."

12. 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.

13. Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

14. 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.

15. At the surface water pump diversion site, the applicant shall install and maintain water intake screens complying with standards prescribed by the Washington State Dept. of Fish and Wildlife.

16. Relative to this water right change/transfer, any water wells constructed within the state shall meet the minimum standards for construction and maintenance, as provided under RCW 18.104 (Washington Water Well Construction Act of 1971) and Chapter 173-160 WAC (minimum Standards for Construction and Maintenance of Water Wells). Installation and maintenance of an access port as described in Groundwater Bulletin No.1 is required. An air line and gage shall be installed in addition to the access port.

Relative to this change/transfer, the applicant will confer with CRO-WADOE staff prior to well drilling, to review any additional requirements or data collection needs for site drilling.

Relative to this change/transfer, any wells constructed must be determined to be in direct hydrologic continuity with the Columbia River flows.

**B. Mitigation Requirements:**

None are required. However, the Water Board recognizes that the applicant is planning to donate into the Trust Water Program the conveyed water portion of the existing water right, from the Okanogan River diversion point to the Columbia River diversion point. This action will be discussed with WADOE staff with completion of this change/transfer action.

## 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 25th day of October August 2007

Approved and Signed on Behalf of the Water Board By:

Signed _____

Darryll Olsen, Ph.D., Chairman
Benton County Water Conservancy Board

Date Mailed to WADOE Director: on or before 11/04//2007