



**Walla Walla County
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision**

For Ecology Use Only

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Reviewed by: _____
Date Reviewed: _____

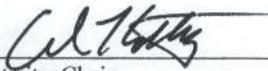
Applicant Broetje Application Number: WALL-14-11

This record of decision was made by a majority of the board at an open public meeting of the Walla Walla County Water Conservancy Board held on 11/4/15. The undersigned board commissioners certify that they each understand the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that each commissioner, having reviewed the report of examination, knows and understands the content of the report.

Approval: The Walla Walla County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on 11/4/15 and submits this record of decision and report of examination to the Department of Ecology for final review.

Denial: The Walla Walla County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on (date report of exam was signed) and submits this record of decision to the Department of Ecology for final review.

Signed:



Alan Kottwitz, Chair
Walla Walla County Water Conservancy Board

Date: 11/4/15 Approve
Deny
Abstain
Recuse
Other

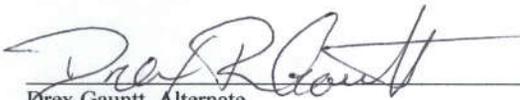
Mike Dobbins, Member
Walla Walla County Water Conservancy Board

Date: _____ Approve
Deny
Abstain
Recuse
Other



Brian Worden, Member
Walla Walla County Water Conservancy Board

Date: 11-4-15 Approve
Deny
Abstain
Recuse
Other



Prex Gauntt, Alternate
Walla Walla County Water Conservancy Board

Date: 11/04/15 Approve
Deny
Abstain
Recuse
Other

(Name), (Title)
(Board Name) Water Conservancy Board

Date: _____ Approve
Deny
Abstain
Recuse
Other

Mailed with all related documents to the Dept of Ecology Eastern Regional Office, and other interested parties on

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Board's Decision on the Application

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE 3200	MAXIMUM ACRE-FT/YR 305	TYPE OF USE, PERIOD OF USE 3200 gallons per minute, 305 acre-feet per year, for the seasonal irrigation of 61 acres.				
SOURCE Four (4) wells (Basalt aquifer)			TRIBUTARY OF (IF SURFACE WATER)				
AT A POINT LOCATED: ¹ PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
#1. 331004410001	SE	SE	4	10	33 E.	33	Walla Walla
#2. 331003110001	SW	NW	3	10	33 E.	33	Walla Walla
#3. 331002120001	NW	NW	2	10	33 E.	33	Walla Walla
#4. 331002110005	SE	NE	1	10	33 E.	33	Walla Walla
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED							
The N½ of Sec. 1, T. 10 N., R. 33 E.W.M., Walla Walla County, Washington.							
¹ GPS Coordinates for Wells: (WGS 84 Datum)							
#1: N. 46.380032 W. 118.675739							
#2: N. 46.373301 W. 118.682903							
#3: N. 46.381860 W. 118.657455							
#4: N. 46.376732 W. 118.619390							
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE		
331002110005		N½	1	10	33 E.		

DESCRIPTION OF PROPOSED WORKS

Four (4) wells (basalt aquifer), mainline, rotator sprinklers for irrigation of orchards.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:
Started	Completed	September 1, 2016

REPORT

NOTE TO AUTHOR: This form reflects the minimum regulatory requirements as required in WAC 173-153-130(6). In accordance with WAC 173-153-130(5), "It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." **Completion solely of the minimum regulatory requirements may not constitute a fully documented decision.**

BACKGROUND

On August 6, 2014, Broetje Orchards of Prescott, Washington filed an application for change to change the place of use, change the point of withdrawal, and add three (3) points of withdrawal to Ground Water Permit No. G3-29364P(B). The application was accepted at an open public meeting of the Walla Walla County Water Conservancy Board ("Board") on August 6, 2014, and the Board assigned the application number WALL-14-11.

Attributes of the water right as currently documented

Name on certificate, claim, permit:	Broetje Orchards
Water right document number:	Ground Water Permit No. G3-29364P(B)
As modified by certificate of change number:	Assignment from original Ground Water Permit No. G3-29364P
Priority date, first use:	December 15, 1992
Water quantities:	Qi: 3200 gpm Qa: 305 acre ft./ year
Source:	A well (basalt aquifer)
Point of diversion/withdrawal:	NE¼SE¼ of Sec. 4, T. 10 N., R. 33 E.W.M.
Purpose of use:	Irrigation of 61 acres
Period of use:	February 1 to November 30
Place of use:	

The E½ of Section 2, T. 10 N., R. 33 E.W.M., Walla Walla County, Washington.

Existing provisions:

"This Superseding Permit reflects amendments to the original permit approved by the Walla Walla County Water Conservancy Board on March 5th, 2003, and Modified by the Department of Ecology on April 18th, 2003. Said amendments add a point of withdrawal and change the place of use to G3-29364P, as provided by RCW 90.44.100".

"Final inspection to be conducted by the Department of Ecology prior to final certificate issuance. The certificate shall reflect the extent of the project being perfected within the limitations of the change authorization. Aspects will include, as appropriate, the as-built source, location, system, annual quantity, instantaneous quantity, beneficial use, acreage, place of use, and satisfaction of conditions".

"The casing for each well shall be set or placed at least 5 (five) feet into the first solid, unfractured, nonporous, nonvesicular basalt flow occurring below land surface".

"Owing to the proximity of neighboring wells, the applicant is reminded of their responsibility toward same and advised that they may be required to regulate their withdrawal and pumping rate if existing rights are impaired".

"Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances, or regulations".

"The amount of water granted is a maximum limit that is beneficially used and required for the actual crop grown on the number of acres and place of use specified".

"This authorization to make use of public waters of the State is subject to existing rights, including any existing rights held by the United State for the benefit of Native Americans under treaty or otherwise".

"All 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)".

"A well log of the completed well shall be submitted by the driller to the Department of Ecology within thirty (30) days of completion of this well. This well log shall be complete and all information concerning the static water level in the completed well in addition to any pump test data shall be submitted as it is obtained".

“Installation and maintenance of an access port as described in Ground Water Bulletin No. 1 is required. An airline and gauge may be installed in addition to the access port”.

“This authorization to use public waters of the State is classified as a Family Farm Permit in accordance with Chapter 90.66 RCW (Initiative Measure No. 59). This means the land being irrigated under this authorization shall comply with the following definition: Family Farm – a geographic area including not more than 6,000 acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than 6,000 acres of irrigated agricultural lands in the State of Washington which are irrigated under water rights acquired after December 8, 1977. Furthermore, the land being irrigated under this authorization must continue to conform to the definition of a family farm”.

“Use of water under this authorization shall be contingent upon the water right holder’s utilization of up-to-date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities”.

“An approved measuring device shall be installed and maintained for each of the sources 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 by the landowner and shall be submitted annually to Ecology by January 31st of each calendar year”.

“The rule above describes the requirements for data accuracy, device installations 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 as a document entitled “Water Measurement Device Installation and Operation Requirements”.

“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 of Certificate No., source name, annual quantity used including units, maximum rate of diversion including units, and period of use. In the future, Ecology may require additional parameters to be reported or more frequent reporting”.

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

“Department of Ecology personnel, upon presentation of proper credentials, 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”.

Tentative determination of the water right

The tentative determination is provided on the front page of this report.

History of water use

Permit No. G3-29364, as originally issued, was jointly developed by Miles Lodmell and Broetje Orchards. As part of the overall development of Permit G3-29364, the applicant developed 61 acres of orchard outside of the authorized place of use of the Permit. The applicant and permit holder subsequently agreed to an Administrative Division of Permit G3-29364, which resulted in the 61 acres of water right being divided off into Permit G3-29364(B). The applicant is now requesting to change the authorized point of withdrawal, add three points of withdrawal, and change the place of use under G3-29364(B) to conform with those wells/acres which have been developed for use under this permit. The four wells proposed for use under this change application have already been constructed under authority of other water right authorizations.

Previous changes

There has been one previous change to Permit G3-29364, which added a point of withdrawal and changed the place of use of the permit. This change authorization was approved by the Walla Walla County Water Conservancy Board on March 5, 2003, and modified by Ecology on April 18th, 2003.

Permit G3-29364 was the subject of Administrative Divisions in 2014 and 2015. The resulting final division of the Permit is as follows:

Original Permit: 10,000 gallons per minute, 3200 acre-feet per year, irrigation of 640 acres.

G3-29364(A): Miles Lodmell – 5,104 gallons per minute, 2735 acre-feet per year, irrigation of 547 acres

G3-29364(B): Broetje Orchards – 3200 gallons per minute, 305 acre-feet per year, irrigation of 61 acres

G3-29364(C): Broetje Land, LLC – 1696 gallons per minute, 160 acre-feet per year, irrigation of 32 acres.

SEPA

The board has reviewed the proposed project in its entirety. The board has reviewed the proposed project in its entirety. A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- It is a surface water right application for more than 1 cubic feet per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gallons per minute;
- It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;

- It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

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

Statutory Requirements/Authorities for Proposed Change

The following is a list of pertinent Washington State Statute and Case Law requirements that must be considered prior to authorizing the proposed change in place of use and point of withdrawal:

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

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

RCW 90.44.100 allows amendment of a ground water right to (1) allow the user to construct a replacement or additional well at a new location outside of the location of the original well, or to (2) change the manner or place of use of the water, if:

- The additional or replacement well taps the same body of public ground water as the original well. RCW 90.44.100(2)(a).
- Where a replacement well is approved, the user must discontinue use of the original well and properly decommission the original well. RCW 90.44.100(2)(b).
- Where an additional well is constructed, the user may continue to use the original well, but the combined total withdrawal from all wells shall not enlarge the right conveyed by the original permit or certificate. RCW 90.44.100(2)(c).
- Other existing rights shall not be impaired. RCW 90.44.100(2)(d)

When changing or adding points of withdrawal to groundwater rights, the wells must withdraw from the same body of public groundwater (RCW 90.44.100). Indicators that wells tap the same body of public groundwater include:

- a. Hydraulic connectivity
- b. Common recharge (catchment) area
- c. Common flow regime
- d. Geologic materials that allow for storage and flow, with recognizable boundaries or effective barriers to flow (same aquifer)

Other

N/A

The information or conclusions in this section were authored and/or developed by Bill Neve, Water Right Solutions.

COMMENT AND PROTESTS

Public notice of the application was given in the Waitsburg Times on August 13th and August 20th, 2015. Protest period ended on September 21st, 2015.

There were no protests received during the 30 day protest period. In addition, no oral and written comments were received at an open public meeting of the board or other means as designated by the board.

The information or conclusions in this section were authored and/or developed by Bill Neve, Water Right Solutions.

INVESTIGATION

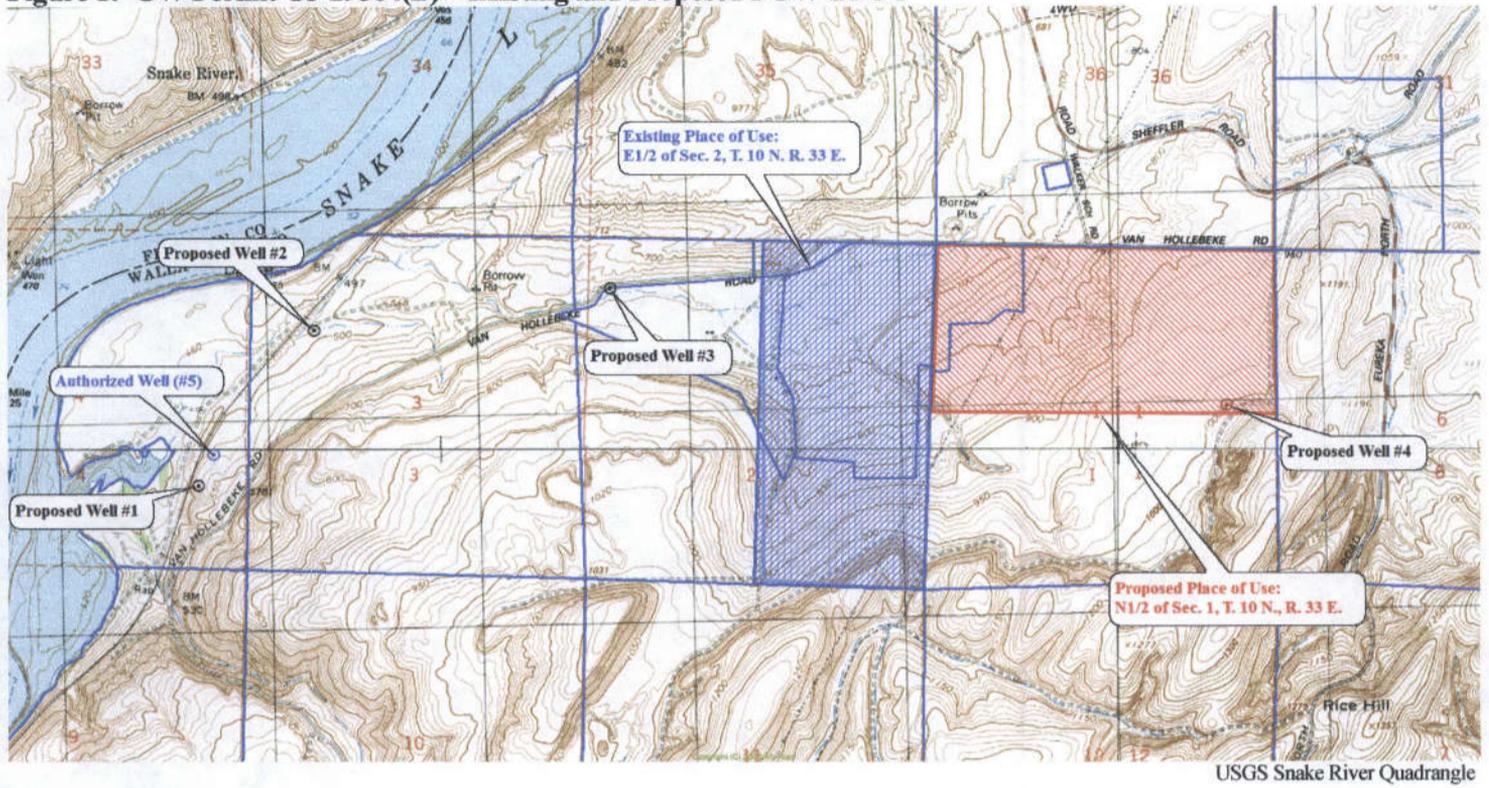
The following information was obtained from a site inspection conducted by Alan Kottwitz on 9/14/15, review of a variety of data sources and technical reports, research of department records, and conversations with the applicant and/or other interested parties. The following are some of the primary sources of information obtained and utilized in this investigation:

- Water right files for Permit G3-29364, and other relevant water right files
- Farm Service Agency (FSA) records
- Technical reports
- U.S. Geological Survey topographic maps
- Aerial photos
- Department of Ecology's Water Right Tracking System (WRTS) database/Water Resource Explorer website
- Review of applicable laws, site visits, rules and policies
- Conversations with the applicant, Ralph Broetje, and Miles Lodmell.

Proposed project plans and specifications

This application proposes to change the point of withdrawal, add three points of withdrawal, and change the place of use to Permit G3-29364(B) (Figure 1). All four of the wells proposed for use have been constructed, and are being used under authority of other water rights in an interconnected irrigation system. This application also requests a change in the place of use to the 61 acres of irrigation authorized under the Permit. These acres have been developed in orchard, but were done so outside the authorized place of use of Permit G3-29364. This application seeks to amend the place of use so these acres will be authorized for irrigation under Permit G3-29364.

Figure 1: GW Permit G3-29364(B) – Existing and Proposed POW's/POU



The currently authorized point of withdrawal was conditioned to be cased into a minimum of 5 feet of basalt, and withdraw water from the basalt aquifer. The four wells proposed for use under this application are all cased into, and withdraw water from, the basalt aquifer.

Other water rights appurtenant to the property (if applicable)

There are several other water rights/applications which include both the existing and proposed places of use herein within their authorized places of use. A summary of the attributes of these water right documents is provided in Table 1, below:

Table 1: Summary of Water Rights Appurtenant to Existing Place of Use – GW Permit No. G3-29364(B)

Document No.	Priority	Purpose	GPM (Qi)	Acre-feet (Qa)	Acres	Source	Notes
Certificates							
G3-27804	4/10/1984	Irrigation	2250	975	225	Well (basalt)	Additive
Permits							
G3-29240	7/7/1992	Irrigation	3500	1209	250	Wells (basalt)	Additive
Change App							
G3-26916	12/23/2005	Irrigation	600	300	80	Wells (basalt)	Additive (proposed)
New Apps							
G3-29643	2/17/1994	Irrigation	4000	1860	400	Wells (basalt)	Additive
G3-29888	9/25/1995	Irrigation	1750	Not given	275	Well (basalt)	Additive

The above described water rights and applications have proposed places of use that include the existing place of use for G3-29364(B), as well as other, surrounding, lands. The 61 acres authorized for use within the E1/2 of Sec. 2 is considered additive to the above described existing water rights and applications. As stated previously, the 61 acres have already been developed as orchard within the proposed place of use requested under this application (Figures 2, 3). This change will have no bearing on the current water rights and change/new applications pending within the existing place of use of G3-29364(B).

Figure 2: G3-29364(B): Existing and Proposed POU/POW's; 61 Acres of Developed Orchard

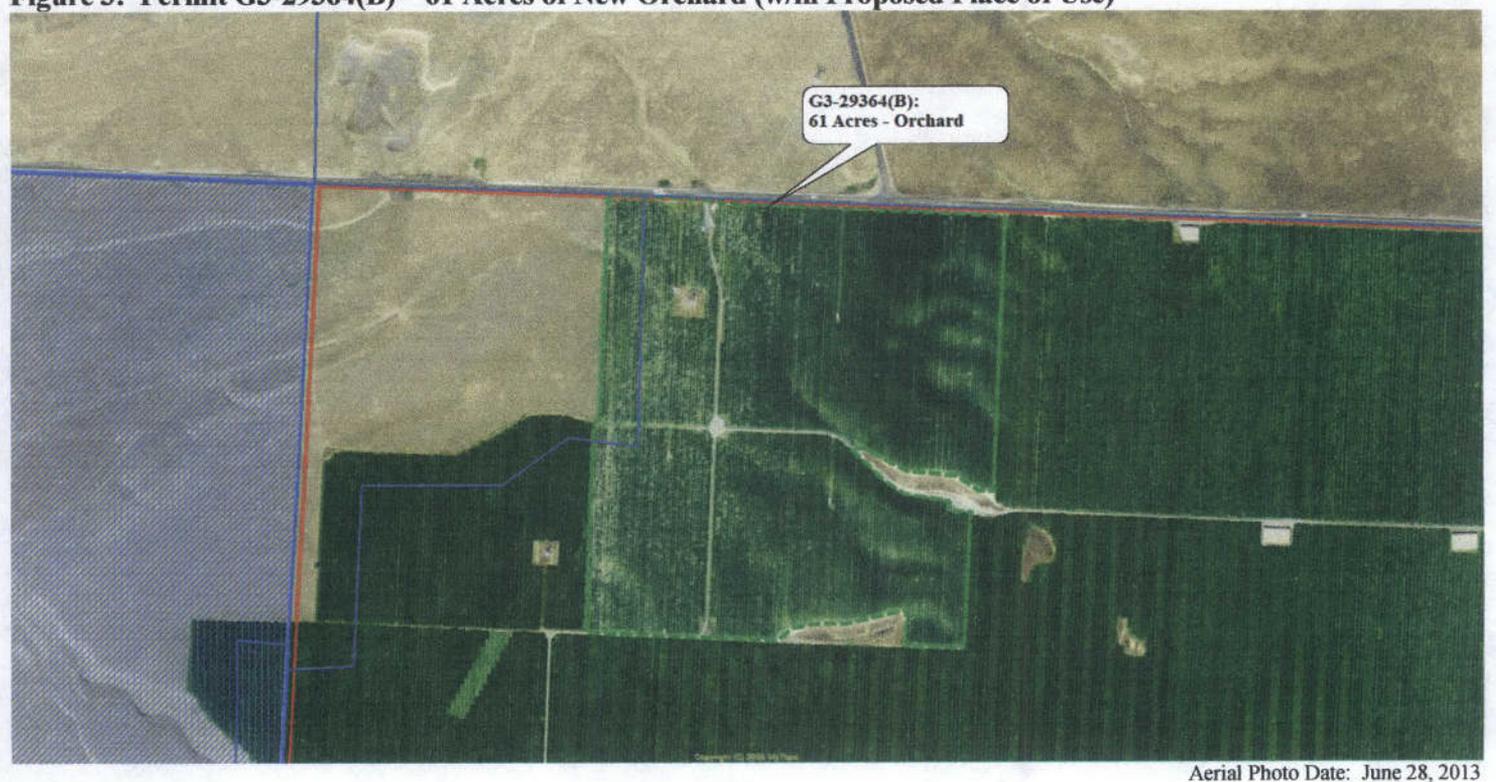


The same water right certificate and applications which cover the existing place of use of G3-29364(B) also cover the place of use proposed under this application, with the exception of Permit G3-29240 (Table 2). The 61 acres proposed for change would be continue to be considered as additive to these existing water rights/applications, and would not impact the use the existing water right, or evaluation of the pending applications. It should be noted that all these existing water rights and applications are under the control of the applicant.

Table 2: Summary of Water Rights Appurtenant to Proposed Place of Use – GW Permit No. G3-29364(B)

Document No.	Priority	Purpose	GPM (Qi)	Acre-feet (Qa)	Acres	Source	Notes
Certificates							
G3-27804	4/10/1984	Irrigation	2250	975	225	Well (basalt)	Additive
Change App							
G3-26916	12/23/2005	Irrigation	600	300	80	Wells (basalt)	Additive (<i>proposed</i>)
New Apps							
G3-29643	2/17/1994	Irrigation	4000	1860	400	Wells (basalt)	Additive
G3-29888	9/25/1995	Irrigation	1750	Not given	275	Well (basalt)	Additive

Figure 3: Permit G3-29364(B) – 61 Acres of New Orchard (w/in Proposed Place of Use)



Public Interest (groundwater only)

The proposed transfer is subject to RCW 90.44.100 and therefore, cannot be detrimental to the public interest, including impacts on any watershed planning activities. The proposed transfer is subject to RCW 90.44.100 and therefore, cannot be detrimental to the public interest, including impacts on any watershed planning activities. Expressions of public interest for this proposed change potentially include: comments or protests regarding approval of the proposed change and the Walla Walla County Municipal Code.

a. *Comments/Protests:* No comments or protests were received, either at public Board meetings or through any other written or verbal correspondence, regarding the changes proposed through this application.

b. *Walla Walla County Comprehensive Plan Update, Walla Walla County Code Title 14, December 2009.* The existing and proposed places of use for the subject water right are located entirely within the Primary Agriculture – 40 acre (PA-40) District. This zoning district is defined in Walla Walla County Code Chapter 17.12.040(A.) as follows:

“All lands in this district are lands of long-term commercial significance. The purpose of this zoning district is to maintain the viability of irrigated and non-irrigated resource lands of long-term commercial significance. Uses are distinctive of the agricultural sector. Natural resource-related industries are priority compatible uses. Limited outdoor recreation uses and agricultural accessory uses and non-agricultural accessory uses and activities that support, promote, or sustain agricultural operations and production consistent with RCW 36.70A.177 are permitted. Residences are an allowed use. Clustering to preserve large tracts of resource land is the preferred method of residential land development.”

As the proposed changes would not change the existing agricultural use of the subject lands, it is consistent with the PA-40 zoning designation and the Walla Walla County Code.

Tentative Determination

In order to make a water right change decision, the Board must make a tentative determination on the validity and extent of the right. The Board has made the tentative determination as displayed upon the first page 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:

The subject water right authorization is a permit, not a certificate. A permit is permission granted by the state to develop a water right, and is not a final water right until such time that water is put to full beneficial use. The proposed changes would be consistent with the original intent of the permit. The requested change in place of use and points of withdrawal will allow for full development of beneficial use of water under the permit. The proposed wells and place of use are in the same vicinity as those currently authorized (Figure 2); the requested changes are for the same purpose of use as the existing authorization and are not speculative in nature.

Ground Water Permit No. G3-29364(B) is in good standing, and the full quantities authorized for use under Permit No. G3-29364(B) are available for consideration for the changes requested herein.

Geologic, Hydrogeologic, or other scientific investigations (if applicable)

The existing authorization for Permit No. G3-29364(B) requires that each well authorized for use be cased at least 5 feet into basalt rock. The intent is that all water withdrawn under this permit be extracted from the basalt aquifer.

Ground Water Permit No. G3-29364 originally authorized a total of 5 wells, 4 of which were to be located in Sec. 17, T. 10 N., R. 33 E.W.M., with the 5th well, which is the same well currently authorized under Superseding Permit G3-29364(B), having an authorized location within Sec. 4, T. 10 N., R. 33 E.W.M. This well has not been constructed.

The proposed four wells have been constructed. A summary of their characteristic is provided in Table 2, below:

Table 2: Permit G3-29364(B) - Summary of Well Construction (Proposed Points of Withdrawal)

Well No.	Date Constructed	Total Depth (ft-bgs)	Depth to Basalt (ft-bgs)	Casing Depth (feet)	Perforations (from feet)	Static Level (ft -bgs)	Well Test (gpm)
1	2/1985	200	34	+1 – 200	110-150	30	3000
2	2/1985	189	65	+1 – 140	88 – 126	41	4200
3	11/1994	420	23	+1 - 72	None	183	2758
4	4/1995	1015	180	+1 - 700	None	560	None

Note: ft-bgs = feet, below ground surface

All four of the proposed wells, described in Table 2, are constructed into and are withdrawing from the consolidated, Tertiary-aged, Columbia River Basalt Group. This underlying basalt aquifer system is composed of three primary formations, in descending order, the Saddle Mountains Basalt Unit, the Wanapum Basalt Unit, and the Grande Ronde Basalt Unit.

The basalt aquifer system of the Columbia River Basalt Group is a series of zones, some of which conduct water easily. These zones of high conductivity alternate with zones of dense basalt, which impede the flow of water and are considered to have low hydraulic conductivity. The highly permeable basalt zones range in thickness from a few feet to 25 feet. It is the composite of the permeable water conducting zones which provides the well with the capability of yielding the desired amount of water. Thus, generally, the deeper the well, the more water will be available since by going deeper more permeable zones will be penetrated.

U.S. Geological Survey Water Resources Investigation Report 87-4238, "Geologic Framework of the Columbia Plateau Aquifer System, Washington, Oregon and Idaho" was reviewed to obtain parameters of the basalt aquifer in the area of the proposed wells. Information from the Report shows the top of the Wanapum Unit in the vicinity of the proposed wells to be at, or very near, land surface, which corresponds to information entered into the well construction logs for those wells. The total thickness of the Wanapum Unit in the area of the wells is estimated to be between roughly 200 to 400 feet, with a gradation to greater thickness moving east of the Snake River. This information would suggest that the proposed wells closest to the Snake River (Well Nos. 1-3) are cased into, and withdraw water from, the Wanapum Unit. Well No. 4, completed to a significantly lower depth and almost 2 miles east of Well Nos. 1-3, would appear to be cased into, and withdrawing water from, the Grande Ronde Unit.

All four of the proposed wells are withdrawing water from aquifers within the Columbia River Basalt Group. For purposes of evaluation of this application in this region, both the Grande Ronde and Wanapum Units may be considered as the same source of public ground water.

A review of Department of Ecology well construction logs show 6 water well logs within a 1 miles radius of the proposed wells, with 5 of those being completed into the basalt rock. All of these wells are owned by the applicant. An examination of those basalt well logs shows the wells are drilled to depths of between 190 and 240 feet below land surface, which would put the bottom of these wells within the Wanapum Unit. These wells had similar static water level and capacity characteristics as the proposed wells. It would appear that the overall yield is largely dependent upon the cased diameter of the well, the total depth to which the well was drilled, and the construction techniques employed by the well driller.

STATUTORY REQUIREMENTS

Applications for change of ground water rights permits and certificates and claims are governed by RCW 90.03.380, and RCW 90.44.100, which state in part that: the holder of a valid right to withdraw public ground waters may, without losing his priority of right, construct wells at a new location in substitution for, or in addition to, those at the original location, or he may change the manner or the place of use of the water. Such amendment shall be issued only on the conditions that:

- The change must not cause detriment or injury to existing rights;
- A valid right/claim exists that is eligible to be changed;
- The change shall not allow for the enhancement of the right perfected under the original certificate
- An additional or new well shall withdraw water from the same source as the original
- The proposed change would not be detrimental to the public welfare.

The Washington State Supreme Court has provided additional clarification with respect to the applicability of RCW 90.44.100 to ground water permits. In *R.D. Merrill Co. v. Pollution Bd.*, 137 Wn2d 118, 969 P.2d 459 (1999), the Court held that changes in place of use and point of withdrawal may be made to unperfected ground water rights, so that the permit holders can beneficially use the groundwater they are entitled to appropriate under their permits. The Court noted, however, that the flexibility is not unlimited.

"The statute places a number of conditions on additional or replacement wells including, among other things, that the same body of public groundwater must be tapped, that the original right may not be enlarged, and that the change permitted by the amendment must not impair the existing right of other water users. (RCW 90.44.100)"

No Detriment/Impairment to Existing Rights

"Impair" or "impairment" means to: 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, and/or 2) to prevent the beneficial use of the water to which one is entitled, and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flow levels established by rule (POL-1200), and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

The proposed change in place of use and points of withdrawal would allow full development of Permit G3-29364(B). The proposed changes will not enlarge the permit as originally issued, in either quantities authorized for withdrawal or acres authorized for irrigation. The proposed change in points of withdrawal will be to wells currently being used to irrigate the subject 61 acres requested as the new place of use for this permit. No additional acreage will be irrigated from the proposed wells as a result of approval of this application.

The proposed wells and place of use requested for change under this application are all located in relatively close proximity to the existing well and place of use under Permit G3-29364(B). It should also be noted that the all the basalt aquifer wells located within a mile of the proposed wells are those owned by the applicant. The four wells being requested to become the authorized wells under Permit G3-29364(B) through this application have been used to irrigate the subject 61 acres without any impairment or detriment to existing water rights to date. Approval of what would essentially be a "de facto" change of an already approved ground water permit should not impair any existing water rights.

No Enhancement of the Original Right:

Neither the quantities of water authorized to be pumped nor the acres authorized for irrigation under Permit No. G3-29364(B) would be enlarged or expanded through approval of this application. As the full quantities of water allocated to Permit No. G3-29364(B) are authorized for use, and the purpose of use will remain the same as that originally authorized, there are no attributes of Permit No. G3-29364(B) which would be enhanced through approval of this change application.

A Valid Right Exists that is Eligible to be Changed:

As this is a water right permit currently in good standing and not a perfected water right, a full extent and validity analysis is not required. The applicant has shown due diligence towards developing full beneficial use of the quantities of water and acres allocated. The full quantities authorized for development under Permit No. G3-29364(B) are available for consideration of the proposed changes.

Same Source of Water:

Both the existing and proposed wells for Permit G3-29364(B) are completed into, and withdraw water from, aquifers with the Columbia River Basalt Group. The changed and new points of withdrawal will remain within the same source of public ground water as the originally authorized wells.

No Detriment to Public Welfare

Public notice of the application was provided in the Waitsburg Times, published in Walla Walla County, on August 13th and August 20th, 2015. There were no protests received during the 30-day protest period following the last date of publication. There has been no public expression or protest or concern, either written or oral, regarding the subject proposal.

There are no findings in this investigation which would indicate that there would be any detrimental impact to the public welfare through issuance of the proposed change.

Other

Approval of the changes proposed through this application would be consistent with the parameters delineated by the Washington State Supreme Court in R.D. Merrill Co. v. Pollution Bd., 137 Wn2d 118, 969 P.2d 459 (1999), regarding changes to unperfected ground water permits.

The information or conclusions in this section were authored and/or developed by Bill Neve, Water Right Solutions.

CONCLUSIONS***Tentative determination (validity and extent of the right)***

The subject water right authorization proposed for change in place of use and change/additions of points of withdrawal is a ground water permit and not a perfected water right; therefore a full extent and validity analysis is not required. The applicant has shown due diligence towards developing full beneficial use of the quantities of water and acres allocated. The full quantities authorized for development under Permit No. G3-29364(B), being 3200 gallons per minute, 305 acre-feet per year, for the irrigation of 61 acres, are available for this change.

Relinquishment or abandonment concerns

Only quantities of water perfected as a water right are subject to relinquishment under Chapter 90.14 RCW. As this is not a perfected water right, but a permit under development, the relinquishment statutes do not apply to this change.

Hydraulic analysis

Three of the proposed wells are located within 1 mile of the currently authorized well, and the fourth is approximately 3 miles distant. All wells within 1 mile of the currently authorized and proposed wells are owned/controlled by the applicant. The hydraulic analysis for this application indicates that: (1) The currently authorized well is required to be cased into, and withdraw water from, the basalt aquifer, and (2) the four proposed wells under this application are completed into, and withdraw water from, aquifers within the Columbia River Basalt Group. The proposed four wells under this application withdraw water from the same source of public ground water as that authorized for the currently authorized well.

Consideration of comments and protests

Public notice of the application was published in the Waitsburg Times on August 13th and August 20th, 2015. No comments or protests were received. Likewise, no comments or objections were received at open public meetings of the Board.

Impairment

There is no evidence that beneficial use of water under the permit has impaired any existing water rights, nor is there any evidence that approval of the proposed changes in place of use and points of withdrawal would result in impairment to any existing water rights, including instream flows.

Public Interest

There was no evidence or indication uncovered during the course of the investigation that the proposed changes in place of use and points of withdrawal would be detrimental to the public interest.

Other

The board also considered the previous provisions associated with the water right as identified in the background section of this report when making its decision.

DECISION

Applications for change of ground water rights permits and certificates and claims are governed by RCW 90.03.380 and RCW 90.44.100, which state in part that: the holder of a valid right to withdraw public ground waters may, without losing his priority of right, construct wells at a new location in substitution for, or in addition to, those at the original location, or he may change the manner or the place of use of the water. Such amendment shall be issued only on the conditions that:

- The change must not cause detriment or injury to existing rights;
- A valid right/claim exists that is eligible to be changed;
- The change shall not allow for the enhancement of the right perfected under the original certificate
- An additional or new well shall withdraw water from the same source as the original
- The proposed change would not be detrimental to the public welfare.

It is the conclusion of the Walla Walla County Water Conservancy Board that, in accordance with RCW 90.44.100, (1) the proposed change in place of use and points of withdrawal will not impair existing rights, including instream flows established through WAC 173-532; (2) a valid ground water permit exists and is eligible to be changed to the extent the permit was originally authorized, as summarized above; (3) that the change will not expand or enhance the quantities issued under the original permit; (4) that the new and additional well will withdraw water from the same source of public ground water (basalt aquifer) as the originally authorized wells; and (5) that the proposed changes will not be detrimental to the public welfare. The requested changes in place of use and points of withdrawal to Ground Water Permit No. G3-29364(C) are approved, subject to the provisions and conditions listed below.

The information or conclusions in this section were authored and/or developed by Bill Neve, Water Right Solutions, and Members of the Walla Walla County Water Conservancy Board.

PROVISIONS**Conditions and limitations****Wells, Well Logs and Well Construction Standards**

1. All wells constructed in the State shall meet the construction requirements of Chapter 173-160 WAC entitled *Minimum Standards for the Construction and Maintenance of Wells* and Chapter 18.104 RCW titled *Water Well Construction*.
2. The water user is required to maintain an access port to measure water levels within the authorized wells, as described in Ground Water Bulletin No. 1. In addition, an airline and pressure gauge shall be installed and maintained in operating condition. The pressure gauge shall be equipped with a standard tire valve and placed in an accessible location. The airline shall extend from land surface to the top of the pump bowls and the total airline length shall be reported to the Department of Ecology upon completion of the pump system.
3. A well log of the completed well(s) shall be submitted by the driller to the Department of Ecology within thirty (3) days of completion of the well. If/when any of the authorized wells are modified or replaced, a completed well report of the well(s) shall be submitted by the driller to the Department of Ecology within 30 days of completing the construction or modifications authorized herein. The well log shall be complete and all information concerning the static water level in the completed well, in addition to any pump test data, shall be submitted to the Department as it is obtained.
4. All wells shall be tagged with a Department of Ecology unique well identification number. If you have an existing well and it does not have a tag, please contact the well-drilling coordinator at the regional Department of Ecology office issuing this decision. This tag shall remain attached to the well. If you are required to submit water measuring reports, reference this tag number.
5. The casing for each well shall be set or placed at least 5 (five) feet into the first solid, unfractured, nonporous, nonvesicular basalt flow occurring below land surface”.

Measurements, Monitoring, Metering and Reporting

6. An approved measuring device shall be installed and maintained for each of the sources authorized by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173. WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements"
<http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>
7. Water use data shall be recorded monthly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to the Department of Ecology by January 31st of each calendar year.
8. Reported water use data shall be submitted via the Internet or by using the enclosed forms. To set up an Internet reporting account, access <https://fortress.wa.gov/ecy/wrx/wrx/Meteringx/>. If you have questions or need additional forms, contact the Eastern Regional Office.
9. A final Certificate of Water Right for Ground Water Permit No. G3-29364(B) will not issue until evidence of meter installation has been submitted to the Department of Ecology.

Quantity Limits, Flow and Regulation

10. The quantities of water and irrigated acres approved for use under this authorization are considered additive to existing water rights which may overlap the same authorized place of use.

Schedule and Inspections

11. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.
12. The water right holder shall file the notice of project completion when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The superseding certificate will reflect the extent of beneficial use within the limitations of the change authorization. Elements of the project completion inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and compliance with provisions.
13. A final water superseding certificate will not issue until a final examination is made.

General Conditions

14. Issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.
15. Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.
16. This authorization to make use of public waters of the State is subject to existing rights, including any existing rights held by the United States for the benefit of Native Americans under Treaty or otherwise.
17. The amount of water granted is a maximum limit that shall not be exceeded and the water user shall be entitled only to that amount of water within the specified limit that is beneficially used and required for the actual crop(s) grown on the number of acres and the place of use specified.
18. The water quantities and uses recommended and/or the number of acres to be irrigated may be reduced at the time of issuance of a final water right commensurate with the capacity of the installed system and the uses and/or number of acres actually irrigated. Nothing in this authorization shall be construed as satisfying other applicable federal, state or local statutes, ordinances, or regulations.
19. This superseding permit shall be subject to cancellation should the permittee fail to comply with the above development schedule and/or to give notice to the Department of Ecology on forms provided by the Department documenting such compliance.
20. This authorization to use public waters of the State is classified as a Family Farm Permit in accordance with Chapter 90.66 RCW (Initiative Measure No. 59). The means the land being irrigated under this authorization shall comply with the following definition: Family Farm - a geographic area including not more than 6,000 acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in not more than 6,000 acres of irrigated agricultural lands in the State of Washington irrigated under water rights acquired after December 8, 1977. Furthermore, the land being irrigated under this authorization must continue to conform to the definition of a family farm.

Mitigation (if applicable)

N/A

Construction Schedule

The subject 61 acres authorized for irrigation through this change have already been developed. The proposed wells and infrastructure necessary to irrigate these 61 acres are also currently in place. A one-year development schedule to put water to full beneficial use and meet all provisions of this authorization will be sufficient.

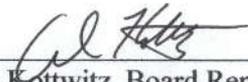
Other

N/A

The information or conclusions in this section were authored and/or developed by Bill Neve, Water Right Solutions, and Members of the Walla Walla County Water Conservancy Board.

The undersigned board commissioner certifies that he/she understands the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that he/she, having reviewed the report of examination, knows and understands the content of this report and concurs with the report's conclusions.

Signed at Walla Walla, Washington
This 4th day of November, 2015



Alan Kottwitz, Board Representative
Walla Walla County Water Conservancy Board

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