STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

June 28, 2012

KEY ROCK CONSTRUCTION INC
MR KEITH GESCHKE
PO BOX 174
MARSHALL WA 99020

Dear Sirs:

Re: Application for Change/Transfer under Ground Water Claim No. 031022

On April 25, 2012, our office received from the Spokane County Water Conservancy Board a Record of Decision for the above referenced application for change/transfer. In accordance with RCW 90.80.080 the Department of Ecology has reviewed the Record of Decision and Report of Examination and has considered all comments, protests, objections, and other relevant information.

The Department 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
	180	**44.12**	**Continuous for Industrial Supply**

SOURCE	TRIBUTARY OF (IF SURFACE WATER)
Two (2) Wells (Unconsolidated Unit)	

AT A POINT LOCATED:	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
Well #1	**SW¼**	**SW¼**	**15**	**24N**	**42E**	**56**	**Spokane**
Well# 2	**SW¼**	**SW¼**	**15**	**24N**	**42E**	**56**	**Spokane**

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED
The W½W½ of Section 15 and the NE¼SE¼, SE¼SE¼, SE¼NE¼ of Section 16, T. 24 N., R 42 E.W.M. ALL IN Spokane County Washington.

PARCEL NO.	¼	¼	SECTION	TOWNSHIP	RANGE
			15 and 16	**24N**	**42E**

Consideration of Comments Received by Ecology

During the thirty (30) day public comment period pursuant to RCW 90.80.080 and WAC 173-153-150, Ecology received one (1) comment letter on the proposed water right change/transfer. Ecology considered this a letter of concern of the proposed water right change/transfer. The following is a summary of the comments and Ecology's response to them.

Letter of Concern from Mitchell Smith of the South West County Coalition

- **Irretrievable and irreversible environmental effects. Water right transfer should not be exempt from the State Environmental Policy Act (SEPA).**
  Ecology's Response: Ecology has reviewed the complete water right change/transfer file and the Board's recommendation. State Environmental Policy Act process was performed by Spokane County Division of Planning. A Determination of Non-Significance was issued on September3, 2002. An addenda to the SEPA was done by Spokane County Clean Air Authority on March 7, 2011.

  Categorical Exemptions to the SEPA Process under WAC 197-11-800(4) reads; Water rights. Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of groundwater, for any purpose. The exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pump house reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation.

  The Spokane County Water Conservancy Board determined the proposed transferred/changed quantities (0.4 cfs and 44.26 acft) under the application for change/transfer would not trigger SEPA.

- **No valid water right exists.**
  Ecology's Response: A concrete check dam was operated by placing boards/plywood to back up the water of Marshall Creek. This allowed flood irrigation to occur on the subject property through small lateral ditches/canals on the pasture. Air photos provided evidence that historical beneficial use of the water has occurred without five (5) years of non-use of the water right claim. Ecology's decision reflects only the consumptive use quantities that will be allowed for change/transfer to the new purpose of use.

  Additionally RCW 90.80.055(1)(b)states) A board may act upon an application to transfer a water right claim filed under chapter 90.14 RCW. In acting upon such an application, the board must make a tentative determination as to the validity and extent of the right, if any, embodied in the claim and may only issue a record

of decision regarding a transfer of such a claim to the extent it is tentatively determined to be valid. Neither the board's tentative determination, nor the director's acceptance of such a tentative determination, constitutes an adjudication of the right under RCW 90.03.110 through 90.03.240 or 90.44.220, and such a determination does not preclude or prejudice *a subsequent challenge to the validity, priority, or quantity of the right in a general adjudication under those sections.*

- **There is no hydraulic continuity:**
  Ecology's Response: March 19, 2012 the Water Conservancy Board requested technical assistance on whether the proposed new points of withdrawal would be hydraulically connected to Marshall Creek. Ecology's Water Resources hydro-geologist evaluated the proposed locations of the new points of withdrawal and determined the geologic formation the Marshall Creek valley supports a determination that the creek and the shallow unconsolidated aquifer are in connection with each other.

  Additionally the applicant's consultant also determined that the unconsolidated sands and gravels, which have varied depths of up to 200 feet deep, are connected to Marshall Creek. The new points of withdrawal are required to be constructed and completed in the unconsolidated deposits located in the valley floor.

- **Conclusions based on illegally operated and maintained diversions:**
  Ecology's Response: The additional surface water diversions have not been authorized by Ecology's Water Resources Program. No previous complaints have been received by Ecology's Water Resources Department. The owners of the other diversions will be required to file applications for change /transfer to add their points of diversion. The Water Resources Program and/or The Spokane County Water Conservancy Board will evaluate if these new diversions may be approved under Washington Water Law.

  Ecology does not have jurisdiction as to the Washington State Fish and Wildlife permits that may be required.

- **Concerns about Conservancy Board Conduct and Operations**
  Ecology's Response: WAC 173-153-120(5) states Ecology recognizes that boards are independent entities with the legal right to make records of decision on water right transfer applications without seeking assistance from ecology. However, should a board desire assistance from ecology in processing an application or regarding its administrative functions, ecology will provide technical assistance upon request of the board. This technical assistance may address issues involved in application processing, including procedural requirements and administrative functions, and can include specific information regarding approaches to resolving particular issues. However, in deference to the independent status of boards, such technical assistance shall be solely in the form of guidance and shall not

dictate or otherwise direct any board to reach a specific conclusion regarding any aspect of application processing or of a board's administrative functions.

Modification

On page 2 of the Report of Examination under the heading **"Board's Decision on the Application"** and sub-heading "LEGAL DESCRIPTIONOF THE PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD", parcel numbers 24164.9040, 24164.9038 and 24161.9039 all state they are located in Section 15. **Ecology modifies the "Section" to read: Section 16.**

On page 3 of the Report of Examination under the heading **"DESCRIPTION OF PROPOSED WORKS"** the paragraph reads: "Key Rock Construction, Inc proposes groundwater diversions of the transferred portion of the Claim from two wells: Proposed Groundwater Well #1, SW¼, SW¼, Section 15, T24N, R42E.W.M. and Proposed Groundwater Well #2, SW¼, SW¼, Section 15, T24N, R42E.W.M., Parcels #24153.9046 and/or 24153.9009." **Ecology modifies this paragraph to read: Key Rock Construction, Inc. proposes to use ground water diversions (wells) for the transferred portion of Surface Water Claim No. 31022: Both proposed ground water wells will be located within the SW¼SW¼ of Section 15, T. 24 N., R. 42 E.W.M., being within parcels #24153.9046 and/or 24153.9009.**

On page 3 of the Report of Examination under the heading **"DEVELOPMENT SCHEDULE"** and sub-heading "BEGIN PROJECT BY THIS DATE" **reads;** "<At least 75 days after Board's ROD". **Ecology modifies this date to read: December 31, 2012.**

On page 3 of the Report of Examination under the heading **"BACKGROUND"** the last sentence of the first paragraph reads; "Key Rock Construction, Inc proposes ground water diversions of the transferred portion of the Claim from two wells: Proposed Groundwater Well #1, SW¼, SW¼, Section 15, T24N, R42E.W.M. and Proposed Groundwater Well #2, SW¼, SW¼, Section 15, T24N, R42E.W.M., Parcels #24153.9046 and/or 24153.9009." Ecology modifies this sentence to read: **Key Rock Construction, Inc. proposes to use ground water diversions (wells) for the transferred portion of Surface Water Claim No. 31022: Both proposed ground water wells will be located within the SW¼SW¼ of Section 15, T. 24 N., R. 42 E.W.M., being within parcels #24153.9046 and/or 24153.9009.**

On page 5 of the Report of Examination under the heading "**INVESTIGATION**" and sub-heading *Change in Place of Diversion/Withdrawal* the last sentence of the paragraph reads: "The new point of withdrawals will be located in the SW¼, SW¼, of Section 15." **Ecology modifies the sentence to read: The proposed points of withdrawal will be located in the SW¼SW¼ of Section 15, T. 24 N., R. 42 E.W.M.**

On page 5 of the Report of Examination under the heading "**INVESTIGATION**" and sub-heading *Change in Place of Use* the first sentence reads; "Claim 031022 is issued for the beneficial use for irrigation for 150 acres in the Marshall Creek Valley". **Ecology modifies this sentence to read: Surface Water Claim No. 031022 claimed a beneficial use of water from Marshall Creek for**

continuous domestic use and seasonal irrigation of 150 acres located in the Marshall Creek Valley.

On page 6 of the Report of Examination under the heading **"Tentative Determination"** the last sentence of the first paragraph reads: "The Board has made a tentative determination that Claim #031022 is a valid Claim and not subject to relinquishment and that 0.4 cfs and 44.26 acreft/year are available for transfer to the fixed future plan of providing industrial supply to the Key Rock Construction, Inc. grave pit." **Ecology modifies this sentence to read: The Board has made a tentative determination that Claim #031022 is a valid claim and has not been relinquished and that 0.4 cubic feet per second and 44.12 acre-feet are available for transfer to the fixed future plan of providing industrial supply to the Key Rock Construction, Inc. gravel pit.**

On page 7 of the Report of Examination under the heading "**DECISION**" the second sentence reads; "The Board has determined that 0.4 cfs and 44.26 acre ft/yearis eligible for transfer to the Key Rock Construction, Inc. gravel pit through two points of withdrawal and that the purpose of use be changed from seasonal irrigation to continuous Industrial supply." **Ecology modifies the sentence to read: The Board has determined that 0.4 cfs and 44.12 acre-feet are eligible for transfer to the Key Rock Construction, Inc. gravel pit through two points of withdrawal and that the purpose of use be changed from seasonal irrigation to continuous Industrial supply.**

On page 8 of the Report of Examination under "**DEVELOPMENT SCHEDULE**" and sub-heading "**BEGIN PROJECT BY THIS DATE**" reads: "<At least 75 days after Board's ROD". **Ecology modifies this date to read: December 31, 2012.**

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

To appeal, you must do the following within 30 days of the date of receipt of this decision:

- File your appeal and a copy of this decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this decision on Ecology in paper form - by mail or in person. (See addresses below.) Email is not accepted.

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

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

For additional information visit the Environmental Hearings Office Website: http://www.eho.wa.gov. To find laws and agency rules visit the Washington State Legislature Website: http://www1.leg.wa.gov/CodeReviser.

DATED this 28th day of June, 2012 at Spokane, Washington.

Keith L. Stoffel
Section Manager
Water Resources Program
Eastern Regional Office

KS:HS:ka
Enclosure: Your Right to Be Heard

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KEY ROCK CONSTRUCTION INC
MR KEITH GESCHKE
PO BOX 174
MARSHALL WA 99020

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