



STATE OF WASHINGTON
**APPLICATION FOR CHANGE/TRANSFER
 OF WATER RIGHT**

RECEIVED
 12
 APR 29 2010
 DEPARTMENT OF ECOLOGY
 EASTERN REGIONAL OFFICE

For filing with the Department of Ecology or with County Conservancy Boards

A NON-REFUNDABLE MINIMUM FEE OF \$50.00 PAYABLE TO THE DEPARTMENT OF ECOLOGY MUST ACCOMPANY THIS APPLICATION

(Check all that apply.)

- Change purpose(s) of use
- Add purpose(s) of use
- Change point(s) of diversion/withdrawal
- Add point(s) of diversion/withdrawal
- Change/transfer place of use
- Other (i.e. consolidation, intertie, trust water)

Explain: _____

FOR OFFICE USE ONLY	
CHANGE No.	<u>C63-#02202C(A)@1</u> WRIA <u>34</u>
DATE ACCEPTED	<u>5 / 5 / 2010</u> BY <u>KT</u>
FEE \$	<u>114.33</u> REC'D <u>4 / 12 / 2010</u>
CHECK No.	<u>8369 50.00 4-12-2010</u> <u>8376 64.33 4-29-2010</u>
ECY Coding:	001-002-WR10285-000011
SEPA:	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Not exempt

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS (PLEASE PRINT OR TYPE CLEARLY)

1. Applicant Information:

APPLICANT/BUSINESS NAME <u>Jerry Maley/Union Cattle Company</u>	PHONE NO. <u>(509) 657-3927</u>	FAX NO. <u>(509) 657-3926</u>
ADDRESS <u>Livestock, Inc.</u>	<u>(name changed per applicant's request) per G. Drury</u>	
P.O. Box 48		
CITY <u>Lacrosse</u>	STATE <u>WA</u>	ZIP CODE <u>99143</u>
CONTACT NAME (IF DIFFERENT FROM ABOVE) <u>Shane Berquist/Union Cattle Company</u>	PHONE NO. <u>(509) 549-3123</u>	FAX NO. <u>()</u>
ADDRESS <u>Same as Above</u>		
CITY	STATE	ZIP CODE

2. Water Right Information:

WATER RIGHT OR CLAIM NUMBER <u>Certificate No. 1412-A(A)</u>	RECORDED NAME(S) <u>J.H. Robinette</u>
DO YOU OWN THE RIGHT TO BE CHANGED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
IF NO, PROVIDE OWNER(S) NAME and ADDRESS:	
HAS THE WATER BEEN PUT TO BENEFICIAL USE IN THE LAST FIVE (5) YEARS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	

Please attach copies of any documentation that demonstrates consistent, historical use of water since the right was established. Also, if you have a water system plan or conservation plan, please include a copy with your application.

APP. AMENDED 12-7-12
PER CLAY LANDRY. - PROPOSED P.O.U.
G.D.

FOR OFFICE USE ONLY			
APP. NO. _____	PERMIT NO. _____	CERT. NO. _____	CERT. OF CHANGE NO. _____

3. Point(s) of Diversion/Withdrawal: - No change RT

A. Existing

SOURCE	NO.	¼	¼	SEC.	TWP.	RGE.	PARCEL #	WELL TAG #
Well	1	SE	SW	13	16N	39E		154291(log #)

B. Proposed

SOURCE	NO.	¼	¼	SEC.	TWP.	RGE.	PARCEL #	WELL TAG #
Well	1	SE	SW	13	16N	39E		154291(log #)

DO YOU OWN THE EXISTING AND PROPOSED POINT(S) OF DIVERSION/WITHDRAWAL?
 EXISTING: YES NO PROPOSED: YES NO - IF NO, PROVIDE OWNER(S) NAME:

Please include copies of all water well reports involved with this proposal. Also, if you know the distances from the nearest section corner to the above point(s) of diversion/withdrawal, please include that information in Item No. 6 (remarks) or as an attachment.

4. Purpose of Use: Irrigation of 89.3 acres - No change RT

A. Existing

PURPOSE OF USE	GPM or CFS	ACRE-FT/YR	PERIOD OF USE
Irrigation	1,029gpm	291	April 1 st - September 30 th

B. Proposed

PURPOSE OF USE	GPM or CFS	ACRE-FT/YR	PERIOD OF USE
Irrigation	1,029gpm	291	April 1 st - September 30 th

5. Place of Use: Sections 13 and 24, T. 16 N., R. 39 E.W.M.

A. Existing

LEGAL DESCRIPTION OF LANDS WHERE WATER IS PRESENTLY USED:
 Seasonal irrigation of 89.3 acres in the E 1/2 of the SW 1/4 of Section 13, T. 16 N, R. 39 E.W.M. and the E 1/2 of the NW 1/4 of Section 24, T. 16 N., R. 39 E.W.M. (See map attached)

¼	¼	SEC.	TWP.	RGE.	COUNTY	PARCEL #	# OF ACRES
					Whitman		89.3

DO YOU OWN ALL THE LANDS IN THE EXISTING PLACE OF USE? YES NO - IF NO, PROVIDE OWNER(S) NAME:

B. Proposed

LEGAL DESCRIPTION OF LANDS WHERE NEW USE IS PROPOSED:
 Seasonal irrigation of 89.3 acres in the E 1/2 of the SW 1/4, the SE 1/4 of the NW 1/4, and the SW 1/4 of the SW 1/4 all of Section 13, T. 16 N, R. 39 E.W.M. and the NE 1/4 of the SW 1/4 of Section 24, T. 16 N. R. 39 E.W.M. (See map attached)

Amendment 12-7-12 GAD

¼	¼	SEC.	TWP.	RGE.	COUNTY	PARCEL #	# OF ACRES
					Whitman		89.3

DO YOU OWN ALL THE LANDS IN THE PROPOSED PLACE OF USE? YES NO - IF NO, PROVIDE OWNER(S) NAME:

Attach a detailed map of your proposed change/transfer. The map should show existing and proposed point(s) of diversion/withdrawal, place of use and any other features involved with this application. If platted property, please include a certified copy of the plat map.

Are there any ADDITIONAL WATER rights OR CLAIMS RELATED to the same property as the ONE PROPOSED FOR CHANGE/TRANSFER?
 YES NO - IF YES, PROVIDE THE WATER RIGHT/CLAIM NUMBER(S):

6. Remarks and Other Relevant Information:

On October 5, 2007 a partial change to water right certificate no. 1412-A was approved by Keith Stoffel from Ecology's Eastern Regional Office. The water right was divided into an "A" and "B" portion. Jerry Maley of Union Cattle Company retained the "A" portion. However, the legal Place of Use was different from the actual Place of Use due to center pivots being installed during the 1990's. The change application did not correct the slight differences in the actual vs. legal Place of Use. This change application corrects the discrepancy. There are no changes in Point of Withdrawal, use of water, season of use, or amount of land irrigated.

IF FOR SEASONAL OR TEMPORARY, START DATE ___/___/___ END DATE ___/___/___

Certain applications may incur a Real Estate Excise Tax liability for the seller of the water rights. The Department of Revenue has requested notification of potential taxable water right related actions and therefore may be provided with a copy of this request.

Please contact the State Department of Revenue for further information. The phone number is (360) 570-3265. The address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia, WA 98504-7477.

7. Signatures:

I certify that the information above is true and accurate to the best of my knowledge. I understand that in order to process my application, I am hereby granting staff from the Department of Ecology or the County Conservancy Board access to the above site(s) for inspection and monitoring purposes. If assisted in the preparation of the above application, I understand that all responsibility for the accuracy of the information rests with me.

(Applicant)

Jerry Maley

¹/₁ (Date) *april 23/10*

(Water Right Holder)

Jerry Maley

¹/₁ (Date) *april 23/10*

(Land Owner(s) of Existing Place of Use)

Jerry Maley

¹/₁ (Date) *april 23/10*

IMPORTANT! APPLICATION FILING INFORMATION IS PROVIDED ON THE NEXT PAGE.

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

- APPLICATION FEE NOT ENCLOSED
- MAP NOT INCLUDED or INCOMPLETE
- ADDITIONAL SIGNATURES REQUIRED
- SECTION _____ IS INCOMPLETE
- OTHER/EXPLANATION: _____

STAFF: _____ DATE: ___/___/___



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

October 5, 2007

CERTIFIED MAIL 7003 1680 0007 1563 8386

Hawkins Companies L.L.C.
8645 W. Franklin Road
Boise, ID 83709

CERTIFIED MAIL 7003 1680 0007 1563 8393

Town of Colton
P.O. Box 157
Colton, WA 99113

Dear Sirs:

Re: Application for Change/Transfer under Ground Water Certificate No. 1412-A

On July 26, 2007 our office received from the Whitman County Water Conservancy Board the Record of Decision and Report of Examination 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 application for change/transfer of the water right is approved under the following conditions:

Summary of Ecology's Final Order

RETAINED PORTION "A" (MALEY)

MAXIMUM CUB FT/ SECOND		MAXIMUM GAL/MINUTE		MAXIMUM ACRE-FT/YR		TYPE OF USE, PERIOD OF USE		
		1029		291		Seasonal Irrigation of 89.3 acres from April 1 to September 30, each year		
SOURCE				TRIBUTARY OF (IF SURFACE WATER)				
One (1) Well				N/A				
AT A POINT LOCATED:		¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
PARCEL NO.								
Well # 1, (Maley)		SESE	SW	13	16	39 E.W.M.	34	Whitman
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD								
Seasonal Irrigation of 89.3 acres in the E½ of the SW¼ of Section 13, T.16 N., R. 39 E.W.M. and the E½ of the NW¼ of Section 24, T.16 N., R. 39 E.W.M.								
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE			
	E½	SW	13	16 N	39 E			
	E½	NW	24	16 N	39 E			



CHANGED PORTION "B" (COLTON)

MAXIMUM CUB FT/ SECOND		MAXIMUM GAL/MINUTE		MAXIMUM ACRE-FT/YR		TYPE OF USE, PERIOD OF USE	
		171		100		Continuous Municipal Supply	
SOURCE				TRIBUTARY OF (IF SURFACE WATER)			
Three (3) Wells				N/A			
AT A POINT LOCATED: PARCEL NO.		¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA
Town of Colton well field, Well No's. 1, 2, and 3, 80255000000037		NE	NE	34	13 N	45 E.W.M.	34
COUNTY. Whitman							
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD							
Area served by the Town of Colton as described within the most recently approved Water System Plan.							

On page 3 of the Report of Examination under the heading **"DEVELOPMENT SCHEDULE"** the **"COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE"** for Maley portion of the water right reads: "2009". Ecology modifies this to read: **December 1, 2009.**

On page 3 of the Report of Examination under the heading **"DEVELOPMENT SCHEDULE"** the **COMPLETE PROJECT BY THIS DATE** for the Town of Colton reads: "2015". Ecology modifies this to read: **December 1, 2015. Additionally, the "COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE" reads: "2027". Ecology modifies this to read: December 1, 2027.**

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

- File your appeal with the Pollution Control Hearings 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:

The Pollution Control Hearings Board
 PO Box 40903
 Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
 4224 – 6th Ave SE Rowe Six, Bldg 2
 Lacey, WA 98503

Hawkins Companies L.L.C.
October 5, 2007
Page 3

2. To serve your appeal on the Department of Ecology

Mail appeal to:

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

Deliver your appeal in person to:

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

3. And send a copy of your appeal to:

Keith Stoffel
Department of Ecology
Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205-1295

DATED this 5th day of October, 2007.

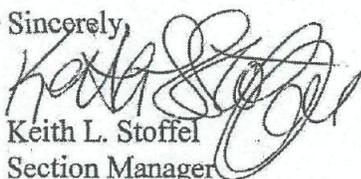
For additional information, visit the Environmental Hearings Office Website:

<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:

<http://www1.leg.wa.gov/CodeReviser>

Sincerely,



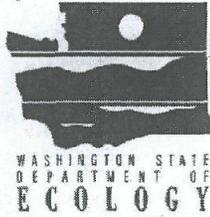
Keith L. Stoffel
Section Manager
Water Resources Program
Eastern Regional Office

KLS:HS:ka
Enclosure

cc: Whitman County Water Conservancy Board
Jerry Maley
Palouse Water Conservation Network
City of Moscow
Adam Gravley
Center for Environmental Law and Policy

I certify that I mailed this letter or an identical copy thereof; postage prepaid, to the above addressee(s) this 5th day of October, 2007.

Water Resources Program, Secretary Lead, Kay Allhiser KA.



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

For Ecology Use Only

RECEIVED

Received: JUL 26 2007

DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

Reviewed by: _____
Date Reviewed: _____

Applicant: Hawkins Companies LLC and Town of Colton, WA

Application Number: WHIT-07-03

This record of decision was made by a majority of the board at an open public meeting of the Whitman County Water Conservancy Board held on July 25, 2007.

Approval: The (board name) Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on July 25, 2007 and submits this record of decision and report of examination to the Department of Ecology for final review.

Denial: The (board name) Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on July 25, 2007 and submits this record of decision to the Department of Ecology for final review.

Signed:

Edward L. Schultz
Edward L. Schultz, Chair
Whitman County Water Conservancy Board

Date: 7-25-07

- Approve
- Deny
- Abstain
- Recuse
- Other

Nancy Belsby
Nancy Belsby, Secretary
Whitman County Water Conservancy Board

Date: 7-25-07

- Approve
- Deny
- Abstain
- Recuse
- Other

David J. Stueckle
David Stueckle, Treasurer
Whitman County Water Conservancy Board

Date: 7-25-07

- Approve
- Deny
- Abstain
- Recuse
- Other

Joe Spoonemore, Member
Whitman County Water Conservancy Board

Date: _____

- Approve
- Deny
- Abstain
- Recuse
- Other

Ron Johnson
Ron Johnson, Member
Whitman County Water Conservancy Board

Date: 7/25/07

- Approve
- Deny
- Abstain
- Recuse
- Other

Mailed to the Department of Ecology Eastern Regional Office of Ecology, and other interested parties on July , 2007.

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).

Ecology is an equal opportunity employer
040-105(03/03)

Record of Decision No. (WR Change App Number)

RETAINED PORTION "A" (Maley) Board's Decision on the Application

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE				
	1029	291	Irrigation (retained)				
SOURCE			TRIBUTARY OF (IF SURFACE WATER)				
One (1) Well			N/A				
AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY
Well # 1, Maley	SESE	SW	13	16	39 E.W.M.	34	Whitman
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD							
Seasonal Irrigation of 89.3 acres in the E1/2 of the SW1/4, Section 13, T16N, R39 E.W.M. and the E1/2 of the NW1/4, Section 24, T16N, R39E.W.M. Note: the SE ¼ of Section 13, T16N, R39E has never been irrigated and is dropped from the Place of Use in the legal description.							
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE		
	E1/2	SW	13	16N	39 E.W.M.		
	E1/2	NW	24	16N	39 E.W.M.		

COLTON PORTION "B" Board's Decision on the Application

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE				
	171	100	Continuous Municipal Supply				
SOURCE			TRIBUTARY OF (IF SURFACE WATER)				
Three (3) Wells			N/A				
AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY
Town of Colton well field, Well No's. 1, 2, and 3, 802550000000037	NE	NE	34	13	45 E.W.M.	34	Whitman
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD							
Area served by the Town of Colton as described within the most recently approved Water System Plan.							
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE		
	N/A	N/A	N/A	N/A	N/A		

Continued

SEPA

The board has reviewed the proposed project in its entirety. This application for change does not include any surface water and is less than 2,250 gallons per minute of ground water and is therefore categorically exempt under WAC 197-11-800

Other

none

COMMENT AND PROTESTS [See WAC 173-153-130(6)(b)]

Public notice of the application was given in the Whitman County Gazette and the Moscow-Pullman Daily News on February 22 and March 1, 2007. An amended public notice was published in the Moscow-Pullman Daily News on March 14 and 21, 2007. Protest period ended on April 20, 2007.

There were 2 protests received during the 30 day protest period. One written protest was received by the Board at an open public meeting on March 28, 2007. This protest was accepted by the Department of Ecology on April 2, 2007. The second written protest was received on March 30, 2007 by the Department of Ecology and accepted by the Department of Ecology on April 2, 2007.

Comment # 1 - There was an oral comment received from Mark Workman, City of Pullman at the board meeting on March 7, 2007.

Comment # 2 and 3 - There was an oral comment received from the Les MacDonald, Moscow Public Works Director/City Engineer for the City of Moscow and an oral comment received from Mark Solomon at the Board meeting on March 28, 2007.

Comment # 4 - There were comments by the applicant at an open public meeting on March 28, 2007, in support of the Hawkins applications.

Comment # 5 - There was written comment by a Whitman County Commissioner which was received at a board meeting on April 24, 2007.

Comment # 6 - A written comment was received on April 25, 2007 from Mark Solomon RE: Buck and Gordon Paradise Creek Mitigation Memo of 4/20/07.

Comment # 7 - Written comments were received from the Whitman County Planner on May 23, 2007.

Comment # 8 - Written comments were received from the City of Moscow on June 6, 2007.

Comment # 9 - Written comments were received from Pacific Groundwater Group on June 4, 2007.

Comment # 10 - Written comments were received from Mark Solomon/Kevin Brackney on July 20, 2007.

Date: March 30, 2007

This was recognized by the board as a Protest Comment

Name/address of protestor/commenter: Ms. Nancy Chaney, Mayor, City of Moscow; P.O. Box 9203; 206 East Third Street; Moscow, Idaho 83843

Issues:

- A. The applicant has failed to demonstrate that the points of origin and the points of destination for the water rights lie within the same public water body as required by RCW 90.44.100.
- B. The applicant has failed to provide the required pump testing documentation that is necessary to establish the same public water body argument reference RCW 90.44.100.
- C. The applicant has failed to recognize the decades of research and science that has occurred within the Palouse Basin's aquifer systems.
- D. The applicant has failed to address the Washington State Statutes, RCW Chapter 90.03.290, requirement of demonstration that the proposed water right transfer will not provide harm to the public interest.
- E. Although the petition to list the Grande Ronde aquifer as a critical aquifer area and the Wanapum aquifer as a ground water management area was denied by the Idaho Department of Water Resources (IDWR), the director of IDWR indicated that the regional entities who utilize the aquifer needed to be more proactive in the management of the water supply. The transfer of new points of diversion into the Moscow portion of the basin and from the La Conner (La Crosse) area to the Colton portion of the basin is likely to have a detrimental affect on the water supply system in those areas, this is contrary to the management efforts set forth by IDWR and DOE in conjunction with the Palouse Basin Aquifer Committee.
- F. The City of Moscow feels the limited supply of potable water in the Wanapum and Grande Ronde aquifers would be best managed through municipal providers who participate in regional cooperative efforts, such as occurs with the Palouse Basin Aquifer Committee.
- G. In the Maley transfer application # WHIT-07-03, there appears to be little evidence to support that the existing point of diversion has a hydrologic connection to the new point of diversion throughout that distance.

Board's analysis:

- A. The Whitman County Water Conservancy Board requested an analysis regarding the same body of public groundwater for WHIT-07-03 from the Washington Department of Ecology (DOE) on February 26, 2007. On March 23, 2007, John Covert L.G., L. Hg. of the DOE responded via a letter to the Board that "all of the wells associated with this change application are completed in the basalt formations of the Columbia River Basalt Group and will be withdrawing from the same body of public groundwater".
- B. RCW 90.44.100 (2) (a) states "the additional or replacement well or wells shall tap the same body of public ground water as the original well or wells". RCW 90.44.100 (3) (a) states "the well shall tap the same body of public of public ground water as the original well or wells". There is no requirement for pump testing to establish the same public body of water. The applicant's findings have been validated by DOE Hydrogeologist, John Covert by letter dated March 23, 2007.
- C. Applicant lists the references used to develop their report titled "Water Right Summary, Proof of Beneficial Use, and Impairment Analysis for Application No. WHIT-07-03 Maley" on page 53 and 54 of that same report. In addition, DOE Hydrogeologist, John Covert also lists three primary references in his March 23, 2007 letter, including the most recent findings of Bush, J.H. and Garwood, D.L., in the unpublished "Potential Groundwater flow in the upper Grande Ronde and Wanapum for the Palouse Basin" study. There is no evidence that the applicant or DOE has failed to recognize the decades of research and science that has occurred within the Palouse Basin's aquifer systems.
- D. The reference cited in the protest, RCW 90.03.290 is for an application of appropriation. This application is for change/transfer of a water right and is subject to RCW 90.44.100 and RCW 90.03.380. There is no evidence which supports that the proposed transfer of 171 G.P.M. and 100 acre-feet/year to the Town of Colton, WA would be detrimental to the public interest or welfare.
- E. Under the concept of the same body of public water, which has been established (see Board Analysis points A. and B. above), there will be no impairment to the Wanapum or Grande Ronde aquifer as a result of this water rights transfer.
- F. The concept of public water being managed by municipal providers would require a change in law and policy and is outside of the prevue of this proposed water right transfer. The concept that only municipal providers participate in regional cooperative efforts and private entities do not, is frankly offensive.
- G. On February 26, 2007 the Board requested an analysis regarding the same body of public groundwater for application WHIT-07-03. In that analysis, dated March 23, 2007, Mr. John Covert L.G., L.Hg., Water Resource Program, Department of Ecology confirms that all the wells associated with this change application are completed within the Columbia River Basalt Group. Mr. Covert also recognizes the work done by Dr. John Bush which indicates that groundwater flow in the Union Flat Creek watershed parallels the surface water drainage until it swings in a westerly direction in the vicinity of T16N, R41EWM and that recharge to the system is derived primarily from infiltration of precipitation. There is sufficient evidence to support the hydrologic connection between the existing point of diversion and the proposed point of withdrawal.

Date: March 28, 2007

This was recognized by the board as a Protest Comment

Name/address of protestor/commenter: Mark Solomon, P.O. Box 8145, Moscow, ID 83843 representing Palouse Water Conservation Network, Palouse Group of the Sierra Club and Moscow Civic Association.

Issues:

- 1. Hawkins has failed to provide any of the necessary evidence to satisfy the WA requirement that water right transfers "tap the same body off public water". On this ground alone, WHIT-07-01, WHIT-07-2, WHIT-07-03 and WHIT-07-04 must be denied.
- 2. Hawkins, through their consultants Pacific Groundwater Group, has failed to include readily available information germane to the examination of hydrological connection and in several instances skewed the data presented in an effort to support their application. On this ground alone, WHIT-07-01, WHIT-07-2, WHIT-07-03 and WHIT-07-04 must be denied.

Board's analysis:

- 1. The Whitman County Water Conservancy Board requested an analysis regarding the same body of public groundwater for WHIT-07-03 from the Washington Department of Ecology (DOE) on February 26, 2007. On March 23, 2007, John Covert L.G., L. Hg. of the DOE responded via a letter to the Board that "all of the wells associated with this change application are completed in the basalt formations of the Columbia River Basalt Group and will be withdrawing from the same body of public groundwater".
- 2. The Board recognizes that there are differences in the professional determinations concerning the Palouse Basin aquifers; however, the Board finds no evidence that the applicant failed to include readily available information (see Pacific Groundwater Group References) nor has the Board found any evidence that the applicant "skewed the data presented in an effort to support their application".

Commenter #1

Date: March 7, 2007 (verbal comment at Board meeting)

This was regarded by the Board as a COMMENT.

Name/address of commenter: Mark Workman, City of Pullman

Issue: Mr. Workman was concerned about Figure 18, Model Domain as displayed in the "Water Right Summary, Proof of Beneficial Use, and Impairment Analysis" report prepared by the applicant, dated February 21, 2007. Mr. Workman stated that the report extends the Pullman/Moscow Basin too far to the South to Colton/Uniontown area. Mr. Workman questions the basis that this was done and felt that the map should not be circulated as fact which would create misunderstanding about the boundaries of the Pullman/Moscow Basin.

Boards Analysis: The commonly accepted boundaries of the Palouse basin have changed through the years. The present map boundaries were most recently changed in 2006.

Commenter # 2

Date: March 28, 2007

This was regarded by the Board as a COMMENT.

Name/address of commenter: Les MacDonald, Director of Public Works/City Engineer for the City of Moscow

Issue: Mr. MacDonald made a verbal presentation of the protest to be filed by the City of Moscow.

Boards Analysis: See response for the March 30, 2007 protest from the City of Moscow.

Commenter #3

Date: March 28, 2007

This was regarded by the Board as a COMMENT

Name/address of commenter: Mark Solomon, representing Palouse Water Conservation Network, Palouse Group of the Sierra Club and Moscow Civic Association

Issue: Mr. Solomon made a verbal presentation of the protest filed at the March 28, 2007 public meeting.

Boards Analysis: See response for the March 28, 2007 protest from Mark Solomon.

Commenter #4

Date: March 28, 2007 (The Hawkins team spoke at the March 28 Board meeting. The team speaking at the meeting. Jeff DeVoe, Adam Gravley, and Linton Wildrick.)

This was regarded by the Board as a COMMENT.

Name/address of commenter: Jeffrey A. DeVoe, Hawkins Companies, 8645 W. Franklin Road, Boise, ID 83709; Adam Gravley, Attorney at Law, Buck & Gordon, 2025 West First Avenue, Suite 500, Seattle, WA 98121-3140; Linton Wildrick, Hydrogeologist with the Pacific Groundwater Group, 1627 Linwood Avenue SW, Tumwater, WA 98512-6856.

Issues: Jeff DeVoe stated that their Lowe's anchor shopping center was recently approved by the Whitman County Board of Adjustment. Adam Gravley noted that Mark Bordsen, Whitman County Planner, had provided the board with a copy of the SEPA documents previously done by Whitman County. Adam Gravley also noted that they had received information from the City of Moscow regarding their discharge into Paradise Creek. Linton Wildrick presented a memorandum and hydrographs on streamflow in Paradise Creek which includes the effluent from the City of Moscow. On the second page of the memorandum, Linton discussed the cone of depression in the piezometric (confined water level) surface of the aquifer. Linton stated: "We just wanted to point out that there is a distinction between the overall drops over a broad geographic area versus the local drop around a single pumping well".

Boards Analysis: The Board will include the additional information in the files.

Commenter #5

Date: April 25, 2007 (The Board received a letter from Whitman County Commissioner Finch dated April 16, 2007, at the board meeting on April 25, 2007)

This was regarded by the Board as a COMMENT.

Name/address of commenter: G. R. Finch, Whitman County Commissioner/Citizen, 400 N. Main Street, Colfax, WA 99111.

Issue: Mr. Finch states in his letter: "Good public policy for Whitman County means having sound zoning ordinances, which we have in place, for orderly county growth and to serve the citizens of Whitman County. . . and I believe the (Hawkins) project is absolutely in the greater public interest, and in the better interest of Whitman County and the State of Washington."

Boards Analysis: The Board will include the letter in the files and consider the input during their investigation and decision.

Commenter #6

Date: April 25, 2007 (Ed Schultz, received a hand delivered letter from Mark Solomon dated April 25, 2007 at the Board Meeting on April 25, 2007).

This was regarded by the Board as a COMMENT.

Name/address of commenter: Mark Solomon, Palouse Water Conservation Network

Issue: Mr. Solomon comments on the Hawkins Companies proposal to mitigate for capture of Paradise Creek flow by Stateline Project Well #2 (Wanapum Aquifer). Mr. Solomon states that the proposal is flawed in two major aspects (1) incorrect sequencing of when Well #1 and Well #2 would be used to offset potential capture (note: during the meeting, the applicant reviewed this issue and agreed that the sequence presented in the mitigation proposal was reversed and incorrect); and (2) that the mitigation proposal will not work because of the hydrogeological nature of the upper Wanapum aquifer and its interaction with the Sediments of Bovill.

Boards Analysis: The first issue raised by Mr. Solomon (sequencing of wells) was correct and the applicant has made the appropriate changes. Mr Solomon's second issue has been noted and will be entered into the files; however, the mitigation plan is to eliminate the impacts to the surface flows and is not intended to recharge the Wanapum aquifer.

This mitigation proposal, Buck & Gordon LLP, dated April 20, 2007 was not accepted by the Board and is currently being modified to include more specificity of water quality standards and operational concepts.

Commenter #7

Date: May 23, 2007 (The Board received a letter mailed to Whitman County Water Conservancy Board, C/O Ed Schultz, Chairman, from Whitman County Planner, Mark Bordsen dated 22 May 2007).

This was regarded by the Board as a COMMENT.

Name/address of commenter: Mark Bordsen, AICP, County Planner, Whitman County Department of Public Works, P.O. Box 430, Colfax, WA 99111-0430.

Issues: In his letter Mr. Bordsen supports development along State Highway 270 in the Pullman-Moscow Corridor District created by a 1999 amendment to the Whitman County Comprehensive Plan and the Zoning Ordinance. Mr. Bordsen states in so doing "Whitman County made a conscious decision that such action was definitely in the best interest of Whitman County, the best "public interest". Specifically, Mr. Bordsen supports the proposed Hawkins Companies development in the Pullman-Moscow Corridor and believes that the allegation that this development is not within the public interest is incorrect/false. Mr. Bordsen also makes several statements in support of the planned development:

- City of Moscow's proposed well #10, which has no water right, if drilled, will draw waters from the State of Washington into Idaho, City of Moscow.
- During the development of the Pullman-Moscow Corridor plan, the City of Moscow did not appeal any of the decisions made in this plan, nor did they raise questions about public interest or water rights.
- Moscow's Mayor has gone on record to state that Moscow would not provide services (to Hawkins development) because Moscow's citizens did not want their property taxes to support development outside of Moscow.
- Whitman County adopted the commercial zone for the corridor because it was absolutely in the best interests of Whitman County and its residents.
- Moscow's allegation that this development is not in the best interest of Moscow, also seems wrong/false. This development will increase the diversity of business opportunities in the area, create a larger business community, attract more consumers and generally benefit many businesses, including those in Idaho. Additional business will create additional jobs and employment opportunities to Moscow and area residents.
- Questions why would Moscow, Idaho be allowed additional water to support future growth (proposed well #10) while Whitman County is denied. Why should a business that desires a county location be rejected and forced to locate within an existing city or town, when ultimately the increase in that business' water consumption would occur whether its location is within or beyond the City of Moscow and in a different State?

Boards Analysis: Mr. Bordsen's letter will be entered into the files and will be considered during the investigation and decision process of the Board.

Commenter #8

Date: June 6, 2007 (The Board received a letter mailed to Whitman County Water Conservancy Board, C/O Ed Schultz, Chairman, from the City of Moscow Mayor Nancy Chaney dated June 4, 2007).

This was regarded by the Board as a COMMENT.

Name/address of commenter: Nancy Chaney, Mayor, City of Moscow; P.O. Box 9203; 206 East Third Street, Moscow, Idaho 83843.

Issues: In this letter Mayor Chaney is responding to the Mark Bordsen letter (see above Commenter # 5). She states that the following are "inaccuracies" of that letter:

- "public interest" is variously and often loosely considered to include short-term economic benefit to a select few, it might also be defined to mean long-term environmental protection to sustain economic development for the many over time. Moscow's

Continued

protest is based on factors of SEPA and Whitman County's conditional use permitting process. Protest is based on science, not on economic competitiveness.

- Predictions of 1991 don't dictate City of Moscow position in 2007.
- Mr. Bordsen's comments about development of the 270 corridor are outside the purview of the Water Conservancy Board.
- Mayor Chaney concurs that the City of Moscow is pumping a significant volume of water. Moscow is trying to reduce consumption. Water consumption must not become a race to the bottom and the "they got theirs, so we need to get more..." mentality is not sustainable.

Boards Analysis: Mayor Chaney's letter will be entered into the files and will be considered during the investigation and decision making process of the Board. The Board does note that Whitman County has conducted SEPA analysis for this proposal and it was approved by the Department of Ecology and was not appealed. The Board agrees that changes since 1991 would invalidate most predictions made at that time. Development in the 270 corridor relates to economic growth, and will be done in an environmentally acceptable manner. Public interest/public welfare, at least in part, does relate to economic growth/benefit both in the short-term and the long-term. Water belongs to the citizens of the State, but is regulated by the State of Washington Department of Ecology.

Commenter # 9

Date: June 4, 2007

This was regarded by the Board as a COMMENT.

Name/address of commenter: Pacific Groundwater Group, Linton Wildrick LHG, Associate Hydrogeologist, Stephan Swope, LHG, Principal Hydrogeologist, 2377 Eastlake Avenue East, Suite 200, Seattle, WA 98102

Issues: In this letter Pacific Groundwater Group responds to the protests of the four water-right transfer applications by the Hawkins Companies for their Stateline project. Pacific Groundwater Group provide clarification of the body of research that they reviewed and provided additional clarification on the following items:

- hydrogeology of palouse basin
- Wanapum formation between Moscow and Pullman
- structural barriers
- Grande Ronde aquifer test
- vertical continuity between aquifers
- groundwater recharge and water-level declines
- groundwater surface water interaction
- soil character at stateline site
- sediments of Bovill will not prevent recharge of Wanapum aquifer
- water quality will not be degraded
- adding flow to Paradise Creek will not recharge the Wanapum aquifer

Boards Analysis: Pacific Groundwater Group's letter will be entered into the files and will be considered during the investigation and decision making process of the Board.

Commenter # 10

Date: July 20, 2007

Name/address of commenter: Mark Solomon/Kevin Brackney, representing Palouse Water Conservation Network, Palouse Group of the Sierra Club and Moscow Civic Association

Issues: This letter was a response to Pacific Groundwater Group's (PGG) letter of June 4, 2007. The following issues were identified concerning the WHIT-07-04 (Jones-Hawkins) application:

- States in a general comment that Washington case law established by the Pollution Control Hearing Board delineates the requirement that only actual pump tests may be utilized to establish the presence or absence of a single aquifer for purposes of determining whether a water right transfer taps the same body of public water. Further states that City of Moses Lake v. Ecology, PCHB No. 91-13 (1992) supports this requirement and that PGG's letter fails to address this requirement in the cases of the Maley/Colton and the Jones/Hawkins applications.

Boards Analysis:

- The Whitman County Water Conservancy Board requested an analysis regarding the same body of public groundwater for WHIT-07-03 from the Washington Department of Ecology (DOE) on February 26, 2007. On March 23, 2007, John Covert L.G., L. Hg. of the DOE responded via a letter to the Board that "all of the wells associated with this change application are completed in the basalt formations of the Columbia River Basalt Group and will be withdrawing from the same body of public groundwater".

INVESTIGATION [See WAC 173-153-130(6)(c)]

A site inspection was conducted by Water Conservancy Board members Edward L. Schultz and David Stueckle on March 13, 2007. They were accompanied by Herman Spangle of DOE. The following information was obtained from that site review and from review of technical reports, the research of department records, the Final Report titled "Water Right Summary, Proof of Beneficial Use, and Impairment Analysis for Application No. WHIT-07-03 Maley" prepared for the Whitman County Water Conservancy Board by WestWater Research and Pacific Groundwater Group, clarification documents received from Westwater Research and Pacific Groundwater Group, and from conversations with the applicant and/or other interested parties.

Site inspection review started at the well site located on the west edge of the Winona South Road and within a few feet of the East/West Section line between Sect. 13 and Sect. 24, T 16 N, R 39 E. It appears that the original pump is still being used. This is a 125 hp electric pump which feeds a 12" mainline that splits approximately 4 feet from the well into two 6" mainlines that are buried but run north and south paralleling the Winona South Road. The North mainline feeds a half center pivot approximately 500 feet north and then another half pivot approximately 2700 feet north. The south mainline is also buried but this line is used to feed hand lines to the south boundary of the Maley property (which is the south line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, S24, T16N, R39E)

There is no evidence of any irrigation, current or in the recent past, on the Maley property east of the Winona South Road, identified in Certificate 1412-A as the SE $\frac{1}{4}$, S13, T16N, R39E.

Several discrepancies or inconsistencies with the report prepared by WestWater Research and Pacific Groundwater Group "Water Right Summary, Proof of Beneficial Use and Impairment Analysis for Application WHIT-07-03, Maley, dated February 21, 2007" were noted:

1. Based on ground review and verbal discussion with Mr. Maley, current hand line irrigation includes the small pasture north of the home site driveway plus the pasture south of the driveway. In addition, Mr. Maley was asked if he used hand lines to irrigate the corners between the $\frac{1}{2}$ center pivots (connections to the mainline were visible) and he replied that they used hand lines to irrigate the corners of the pivots, when necessary.
2. Following the mainline north, it appeared that the mainline continued beyond the second $\frac{1}{2}$ center pivot and fed another full circle pivot located approximately 800 to 1000 feet north of the second $\frac{1}{2}$ pivot. Mr. Maley was asked where the water came from to feed this full circle pivot and he replied that it came from the same well. Good This full pivot was reviewed and it appears that it is north of the authorized legal description found in Certificate 1412-A. The full pivot, consisting of 56.71 acres, has a booster pump with separate electrical meter located adjacent to the Winona South Road approximately $\frac{1}{2}$ mile north of the well site. The size of the booster pump was not determined on the ground and Mr. Maley was not sure of the size.
3. After close examination of the aerial photos and the lay of the ground, it appeared that the second, or most northern, $\frac{1}{2}$ center pivot is not a true $\frac{1}{2}$ but is slightly more than $\frac{1}{2}$ due to the curve of the Winona South Road.

It is also noted that the northern portion of this $\frac{1}{2}$ center pivot has been used and is north of the projected POU shown in Figure 2, Figure 4, and the aerial photos shown in Figure 6 and 7 of the West Water Research and Pacific Groundwater Group report. However, based on Figure 5 of the Pacific Groundwater Group report, it would appear that the northern $\frac{1}{2}$ center pivot is included in the Section Plat attached to Cert. # 1412-A, but is not included in the E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 13 (legal description of Certificate 1412-A).

Because of the inconsistencies of information, the following investigation of records was conducted:

Legal description and irrigated acreage

Application for a Permit To Appropriate Public Ground Waters of the State of Washington No. 2202, received by Division of Water Resources on 10/31/51, showed a legal description for the place of use (POU) as the East part of W $\frac{1}{2}$ and the West part of SE $\frac{1}{4}$, Section 13 and the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 24, T. 16N., R.39 E.W.M. Although this is the way it is described in Application No. 2202, this description would normally be written as the E $\frac{1}{2}$ W $\frac{1}{2}$, and the W $\frac{1}{2}$ SE $\frac{1}{4}$, Section 13 and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 24, T. 16 N., R.39 E.W.M. The map attached to Application No. 2202, labeled as a Section Plat, confirms this location, based on scale shown.

In the Report of Examination on Ground Water Application No. 2202, dated 2/28/52 and signed by Glen H. Fiedler, it is stated "to insure that no error is made as far as the place of use of the quantity appropriated under this application is concerned, at such time as permit is issued the lands benefited should be indicated as follows:

Continued

E½ of SW¼ and the SE¼ of Sec. 13, T16N, R39E, W.M.
E½ of NW¼ of Sec. 24, T16N, R39E, W.M."

Why Mr. Fiedler changed from the East part of W ½ (which could also be written as the E ½ NW ¼ and E ½ SW ¼) to only the E ½ SW ¼ , Section 13 and changed from the West part of SE ¼ to the SE ¼ , Section 13 is unknown. However, his revised legal description carried forward in all the historical documents and is the Legal Description shown on the Certificate of Ground Water Right No. 1412-A.

The POU legal description on the original Application No. 2202 was for 320 acres and after Mr. Fiedler changed the POU description, it still was for 320 acres. However, Mr. Fiedler, in the Report of Examination dated 2/28/52 stated "the water requirement of this land is calculated on each acre needing 4 acre-feet a year, or a total of 700 acre-feet for 175 acres". J.H. Robinette in the Proof of Appropriation of Water, dated April 6, 1953, reported that 125 acres were actually irrigated. This is the acreage shown on the Certificate of Ground Water Right, No. 1412-A.

Historical water use

Based on the field review, aerial photo analysis; Department of Agriculture, Farm Service Agency (FSA) aerial photo acreage determination completed on 3/13/07 and 3/16/07; and personal conversation with landowner Jerry Maley, the following summary of use was determined:

<u>AREA</u>	<u>FSA ACREAGE DETERMINATION</u>	<u>HISTORICAL IRRIGATION</u>	<u>CURRENT METHOD</u>
Southern most Pasture	37.18 acres	37.18 acres	Hand line
Pasture adj. to Home site	7.27 acres	7.27 acres	Hand line
SW corner of S½ pivot	2.65 acres	2.65 acres	Hand line
S½ pivot	44.59 acres	44.59 acres	Pivot
Corner between S&N ½ pivots	15.92 acres	11.81 acres	Hand line
N½ pivot	49.32 acres	49.52 acres	Pivot
NW corner of N½ pivot	2.61 acres	0	
Northern Full pivot	<u>56.71</u> acres	<u>56.71</u> acres	Pivot
Total	216.71 acres	209.53 acres	

Beneficial Use Analysis

Based on aerial photos, distances, and ground review, it was determined that the northern full pivot, 56.71 acres, is located in the E½ NW¼, Section 13 and is outside of the legal description of Certificate 1412-A. It was also determined that the north half of the northern ½ pivot (previously discussed as slightly more than a ½ pivot and has a FSA acreage of 49.32) is also in the E½ NW¼, Section 13 and is outside of the legal description of Certificate 1412-A. This area is estimated at 26 acres. **Therefore, 82.71 acres is outside of the legal description of Certificate 1412-A and can not be included in the beneficial use calculations.**

Also based on aerial photo analysis, ground review and personal discussion with the current landowner, Jerry Maley, it was **determined that historically 126.82 acres were irrigated inside of the legal description of Certificate 1412-A.** This acreage includes 58.91 acres of hand line irrigation (southern most pasture of 37.18 acres, pasture adjacent to home site of 7.27 acres, SW corner of southern ½ pivot of 2.65 acres, and the corner area between the S ½ and N ½ pivot of 11.81 acres) and 67.91 acres of pivot irrigation (S ½ pivot of 44.59 acres and S ½ of the N ½ pivot of 23.32 acres). Certificate 1412-A permits irrigation on 125 acres, the above data clearly shows that historically 125 acres has been irrigated inside of the legal description, therefore, the following calculations use the full permitted acreage of 125 acres.

The above total acreage determinations and the determination of irrigation acres inside and outside of the permitted area of use was discussed with the landowner, Jerry Maley, his partner and the applicants representative, Jeff DeVoe, on March 22, 2007. Mr. Maley stated that he has only irrigated what was irrigated by the previous owners.

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Based on aerial photo analysis, this appears correct. Mr. Maley accepted the determination and said he would implement the following for future irrigation seasons:

1. The northern full pivot would be totally cut off via a valve.
2. He would put in a pivot block on the northern 1/2 pivot to limit irrigation to the permitted area.

A. Beneficial Use Computation based on Crop Irrigation needs and On-Farm Requirements

The State of Washington Irrigation Guide, appendix B dated October 1985 shows that the estimated crop irrigation requirement for the LaCrosse area for Pasture/Turf is 29.40 inches per year or 2.45 acre-feet (AF) per year.

Total Crop Irrigation and Diversion Requirement by Month

Month	CIR - Pasture (acre-feet/acre)	Total Farm CIR - 125 acres (Acre - Feet)
April	0.00	0.00
May	0.18	22.5
June	0.51	63.75
July	0.75	93.75
August	0.60	75.0
September	0.38	47.5
October	0.03	3.75
Season total	2.45	306.25

B. Beneficial Use Computation based on power records and water diversion estimates

Electrical records were obtained from Inland Power by WestWater Research and Pacific Groundwater Group. These records are correct, however they show the power consumption necessary to irrigate the total acreage of 209.5 acres, both inside and outside of the permitted area for Certificate 1412-A.

Because all the area was irrigated at the same time (personal conversation with Jerry Maley), the AF/acre can be recalculated to determine the amount used on the permitted area of 125 acres.

-Year of use	2002	2003	2004	2005	2006
-Total AF used ¹	690.7	605.9	679.7	767.2	646.6
-Total acres Irrigated ²	209.5	209.5	209.5	209.5	209.5
-AF/acre	3.30	2.89	3.24	3.66	3.09
-Total AF used On permitted area Of 125 acres	412.5	361.2	405.0	457.5	386.2

Average use on 125 acres, using the high two years of 2002 and 2005, equals 435 AF/year.

Summary

Beneficial use for Certificate 1412-A is 435 AF/year based on power consumption use converted back to the permitted area of 125 acres.

¹ From WestWater Research and Pacific Ground water Group report

² Net acreage based on FSA acreage determination, field review, aerial photo analysis, and personal conversation with landowner. Also see historical water use section of this report of examination.
040-106(0505)

Consumptive Use Calculation (ACQ)

The consumptive use is to account for those non-consumptive uses which occur during irrigation operations. Non-consumptive uses include evaporation loss and inefficiencies of irrigation systems. The ACQ shown in the original Westwater Research and Pacific Groundwater Group report has been recalculated by Westwater Research and Pacific Groundwater Group and is summarized in the following table:

Maley Water Right Total Consumptive Use Calculation

	Column A	Column B	Column C	Column D	Column E
Month	CIR (in./ac)	CIR (AF/A)	Diversion Quantity (AF/A)¹	Ea Water Consumed/Evaporative Loss (AF/A)	Total Consumptive Use (AF/A)
April	0.00	0.00	0.00	0.00	0.00
May	2.11	0.18	0.24	0.02	0.20
June	6.15	0.51	0.44	0.04	0.56
July	9.00	0.75	0.72	0.07	0.82
August	7.23	0.60	0.74	0.07	0.68
September	4.59	0.38	0.78	0.08	0.46
October	0.33	0.03	0.56	0.06	0.08
Season	29.41	2.45	3.48	0.35	2.80

Estimated On-Farm Irrigation Efficiency²

80.44%

Column F	Column G	Column H
Total Farm Consumptive use on 209.5 acres (AF)	Total Farm Consumptive Use for 125 acres (AF)	Total Farm Consumptive Use for 35 acres (AF)
0.01	0.01	0.00
41.82	24.95	6.99
116.68	69.62	19.49
172.14	102.71	28.76
141.62	84.50	23.66
96.52	57.59	16.12
17.56	10.48	2.93
586.34	349.85	97.96

(1) Diversion quantity is based on the average of the two highest years of diversions in 2002 and 2005.

(2) Estimated On-Farm Irrigation Efficiency based on the estimated diversion quantity (3.5 AF/A * 125 Acres) and the total consumptive use estimate for 125 acres

The proposed transfer, a portion of Certificate 1412-A, to the Town of Colton was for a municipal supply of 171 gallons per minute (GPM) for a total of 100 acre-ft/year. The proposed application for change/transfer was also to retain Certificate 1412-A irrigation use of 1029 GPM and 600 acre-ft/yr for 90 acres. Based on the above analysis, there has been 435 acre-ft/yr used on the 125 acres of permitted area in a beneficial manner (average of the high two years of power consumption calculations). Based on ACQ calculations, 0.35 acre-feet/acre/yr is used non-consumptively (return flow) or 43.75 (rounded to 44) acre-ft/yr on the permitted acreage of 125 acres. Therefore, 391 acre-ft/yr is available to transfer (435 acre-ft/yr minus 44 acre-ft/yr). Transferring 100 acre-ft/yr of consumptive use to the town of Colton will require Certificate 1412-A to be reduced by 35.7 acres of irrigation (100 acre-ft/yr divided by the ACQ of 2.8 acre-ft/acre/yr). This results in reducing the retained portion of Certificate 1412-A to 291 acre-ft/yr and 89.3 acres of irrigation (125 currently permitted acres minus 35.7). The "A" Portion of Certificate 1412-A can retain 1029 GPM for irrigation.

Proposed project plans and specifications

There are two proposed uses: 1. Continuous Municipal Supply for the Town of Colton, WA within the area described in the most recently approved Water System Plan and 2. Maley- continued seasonal irrigation of 90 acres under retained portion of Certificate of Ground Water Right 1412-A.

Other water rights appurtenant to the property (if applicable)

There are two other water rights appurtenant to Certificate 1412-A. The following information is submitted for these appurtenant water rights:

- Certificate 5181

This is a Certificate of Surface Water Right to irrigate 50 acres with 0.75 cubic feet per second (cfs) from Union Flat Creek. Diversion located within the NW¼ NE¼ NE¼, S23, T16N, R39E. POU was the NE¼, S23 and part of the W½ NW¼, S24, T16N, R39E. Original application was for 70 acres but Proof of Appropriation of Water, dated 4/6/53, stated the actually irrigated acreage was 50 acres. Irrigation was apparently to be via pumped diversion and a hand line irrigation system.

This certificate was issued on 4/13/53 for 0.75 cfs for the purpose of irrigation of 50 acres. Current irrigation under this certificate is by full center pivot covering 94.83 acres (aerial photo acreage determination by FSA on 3/16/07). There was no effort made to determine the cfs used or the total acre-feet used under this certificate during the field review.

This Certificate of Surface Water Right is down stream and in southwest direction of Cert. #1412-A.

During a meeting with Mr. Maley, his partner and the applicant's representative Jeff DeVoe, Mr. Malcy stated that he would reduce the irrigated acres of this circle to the certificated acreage.

- Certificate of Surface Water Right No. 2389

This Certificate was issued December 1945 for 15 cfs and 121 acres of irrigation. Based on the Field Examination made 3/21/45 for Water Right Application No. 6257 and Report of Examination dated 2/28/52, the use was to be for flood irrigation during early spring (high run off period). The field that is diked for flood irrigation was measured by FSA office at 83.75 acres.

Based on the Permit to appropriate Public Waters of the State of Washington, book 16, page 4122, application No. 6257, the diversion works is a "concrete wasteway over dam" on Union Flat Creek with a headgate of "concrete 8 feet wide and 5 feet deep". This was located approx. 1680 feet SW of the NE corner of the SW¼ of S24, T16N, R39E. This diverted water into a canal system with a top width of 10 feet, ¼ mile long with a 2ft/1000ft drop. Construction was completed in 1945.

Land to be flood irrigated (POU) was 121 acres (actually irrigated) with 21 acres in section 23 and 100 acres in section 14, T16N, R39E. The POU was changed via a Certificate of Change of Place of Use of Water, dated 6/4/52, to the W½ SW¼, S13 and SE¼, S14, T16N, R39E. This would be a field immediately West of the land being irrigated under Cert. # 1412-A.

Upon field examination, it appears that this Certificate of Water Right has not been used in the recent past. It is obvious that the diversion dam and canals are in disrepair and haven't been active for at least five (5) years.

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 transfer of 100 acre-feet to the Town of Colton for municipal use and the retaining of the balance of the water for irrigation under Certificate No. 1412-A is clearly in the public interest and welfare.

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:

Based on the field review, aerial photo analysis, FSA acreage determination and personal conversation with

Continued

landowner Jerry Maley, the following summary of use was determined:

<u>AREA</u>	<u>FSA ACREAGE DETERMINATION</u>	<u>HISTORICAL IRRIGATION</u>	<u>CURRENT METHOD</u>
Southern most Pasture	37.18 acres	37.18 acres	Hand line
Pasture adj. to Home site	7.27 acres	7.27 acres	Hand line
SW corner of S½ pivot	2.65 acres	2.65 acres	Hand line
S½ pivot	44.59 acres	44.59 acres	Pivot
Corner between S&N ½ pivots	15.92 acres	11.81 acres	Hand line
N½ pivot	49.32 acres	49.52 acres	Pivot
NW corner of N½ pivot	2.61 acres	0	
Northern Full pivot	<u>56.71</u> acres	<u>56.71</u> acres	Pivot
Total	216.71 acres	209.53 acres	

As shown in the above table, historically irrigation under Cert. 1412-A has occurred on 209.53 acres of pasture land. However, based on aerial photos, distances, and ground review, it was determined that the northern full pivot, 56.71 acres, is located in the E½ NW¼, S13 and is outside of the legal description of Certificate 1412-A. It was also determined that the north half of the northern ½ pivot (this ½ pivot is actually more than a ½ pivot due to the curve of the Winona S. Road and has been determined by FSA to have a total of 49.32 acres) is also in the E½ NW¼, S13 and is outside of the legal description of Cert. 1412-A. The area of the northern ½ pivot that is outside of the legal description is estimated at 26 acres. **Therefore, 82.71 acres is outside of the legal description of Certificate 1412-A and can not be included in the beneficial use calculations.**

Based on aerial photo analysis, ground review and personal discussion with the current landowner, Jerry Maley, it was determined that historically 126.82 acres were irrigated inside of the legal description of Certificate 1412-A. This acreage is summarized in the above table and includes 58.91 acres of hand line irrigation (southern most pasture of 37.18 acres, pasture adjacent to home site of 7.27 acres, SW corner of southern ½ pivot of 2.65 acres, and the corner area between the S ½ and N ½ pivot of 11.81 acres) and 67.91 acres of pivot irrigation (S ½ pivot of 44.59 acres and S ½ of the N ½ pivot of 23.32 acres). This acreage is slightly higher than the permitted acreage of 125 acres under Certificate 1412-A. Therefore, only the permitted acreage of 125 acres is used to determine beneficial use.

Based on electrical records for years 2002 through 2006, the acre-feet used to irrigate 209.53 acres varied between 605.9 and 767.2 acre-feet with the average for the two high years equaling 728.95 acre-feet or 3.48 acre-feet/acre/year. Based on this annual rate of 3.48 acre-feet/acre/year, the beneficial use is calculated at 435 acre-feet/year for Certificate 1412-A (125 acres times 3.48 acre-feet/acre). The difference between the 700 acre-feet/year permitted under Certificate 1412-A and the 435 acre-feet/year of allowable beneficial use, or 265 acre-feet/year has been relinquished.

Based on ACQ calculations, 0.35 acre-feet/year is used non-consumptively or 43.75 (rounded to 44) acre-feet/year on the permitted acreage of 125 acres. Therefore, 391 acre-feet/year is available to transfer (435 acre-feet/year minus 44 acre-feet/year). Transferring 100 acre-feet/year of consumptive use to the town of Colton will require Certificate 1412-A to be reduced by 35.7 acres of irrigation (100 acre-feet/year divided by the ACQ of 2.8 acre-feet/acre/year). This results in reducing the Qa of Certificate 1412-A to 291 acre-feet/year and 89.3 acres of irrigation (125 currently permitted acres minus 35.7 idled). Certificate 1412-A can retain the Qi of 1029 GPM for irrigation.

The Qa of 100 acre-feet/year would be transferred to the Town of Colton and added to the Qa of Colton Wells Number 1, 2, and 3. The Qi of 171 G.P.M. will be transferred to the Town of Colton for Wells Number 1, 2, and 3.

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

The Whitman County Water Conservancy Board requested an analysis regarding the same body of public groundwater for WHIT-07-03 from the Washington Department of Ecology (DOE) on February 26, 2007. On March 23, 2007, John Covert L.G., 040-106(0505) Report of Examination No. (Cert/Permit Number)

Continued

L. Hg. of the DOE responded via a letter to the Board that "all of the wells associated with this change application are completed in the basalt formations of the Columbia River Basalt Group and will be withdrawing from the same body of public groundwater".

The original well authorized under Ground Water Right 1412-A was constructed to a depth of 524 feet, cased to 8 feet into the Wanapum formation of the Columbia River Basalt Group and was completed with a static water level of 70 feet. The proposed point of withdrawal, Town of Colton Wells # 1, 2, and 3 were drilled to depths of 80 to 290 feet into the Wanapum formation of the Columbia River Basalt Group.

Mr. Covert, in his March 23, 2007 letter, states "wells in this area are generally developed within the interflow zones of the Columbia River Basalt Group. The basalts are overlain by a relatively thin sedimentary unit. These sediments typically consist of silt and clay. Productive wells rely upon aquifers within the basalts which occur principally in interflow zones between the basalt flows. These zones are general composed of scoriaceous basalt, cinder beds, granular sediments or volcanic ash. All wells associated with this change application are completed within the Columbia River Basalt Group.

Recent work done by Dr. John Bush, a Geology Professor at the University of Idaho, indicates that groundwater flow in the Union Flat Creek watershed parallels the surface water drainage with flow in the Colton area heading in a northwest direction until it swings in a westerly direction in the vicinity of T16N, R41E.W.M. (Bush and Garwood, 2005). Recharge to the system is derived primarily from infiltration of precipitation.

Heinemann (1994) studied groundwater/surface water interactions in Union Flat Creek between Uniontown and Wilcox. He concluded that "wells located near Union Flat Creek generally have static water levels near stream elevations regardless of the depth to which the wells penetrate the basalts." Union Flat Creek receives ground-water discharge along various stream sections from the town of Colton through the town of Wilcox (Heinemann).

Limited synoptic surface water flow data collected on Union Flat Creek on August 29, 1972, by the USGS suggests that Union Flat Creek is gaining flow between Colton and La Crosse (Nassar and Walters)."

The Applicant conducted two calculations to determine the impact of groundwater withdrawals at the new point of withdrawal on any adjacent wells. The two calculations were designed to evaluate potential impairment on adjacent wells from a maximum instantaneous rate pumping and long-term pumping at the annual rate. For both of these calculations, the Applicant provided information on the potential cumulative impact of withdrawing in quantities and rates allowed under the request to transfer the water right at issue in this application

The calculations resulted in less than three (3) feet of drawdown in the closest neighboring well. For short term pumping, the calculation estimated that the interference drawdown in a well 1,000 feet away is 2.85 feet, after 100 days of pumping at the maximum rate (Qi). The long term calculation estimated that the interference drawdown of a well 1,000 feet away is 1.80 feet, after 100 years of pumping at 100 acre feet per year (Qa).

Neither estimated drawdown amount would impair the yield of other wells in the Wanapum-Vantage aquifer, because as demonstrated by the Applicant, well logs indicate that 10's to 100's of feet of drawdown is available. Also, current pumping from the Town of Colton well field is not known to have impaired yields of any surrounding wells.

Other

It was recognized by the applicant that the pumping of 100 acre-feet from the Town of Colton Wells # 1, 2, and 3 will result in capture of water from Union Flat Creek. Monthly capture is estimated from computer models and varies from 50 gallons per minute (gpm) in June to a peak of 62 gpm in September. Union Flat Creek has a Surface-Water Source Limitations (SWSL). Based on this SWSL, established by the Washington Department of Fish and Wildlife (WDFW), there can be no reduction in minimum stream flows. The SWSL summary reads "no diversion after June 15th each year, or whenever the flow recedes to 0.05 cfs, plus the sum of downstream water rights, as measured directly below applicant's point of diversion".

The applicant submitted a mitigation plan to the Board on June 5, 2007 and a modification to the plan on June 12, 2007. This plan, as modified, establishes an annual pumping schedule to return water to Union Flat Creek between June 15 and October 1 in perpetuity. This mitigation meets the requirements of the SWSLs. The mitigation plan was accepted by a letter to the Board from Paul LaRiviere, Instream Flow Biologist, State of Washington Department of Fish and Wildlife, dated June 22, 2007. There will be zero impact to surface flows and therefore there will be no impairment to downstream surface water rights along Union Flat Creek.

CONCLUSIONS [See WAC 173-153-130(6)(d)]

Tentative determination (validity and extent of the right)

Certificate 1412-A has a valid water right of 435 Acre-feet/year to irrigate 125 acres at a rate, not to exceed, 1200 G.P.M. base on the beneficial use analysis.

Relinquishment or abandonment concerns

Certificate 1412-A has relinquished 265 acre-feet/year based on a beneficial use analysis of the authorized place of use.

Hydraulic analysis

The Applicant conducted two calculations to determine the impact of groundwater withdrawals at the new point of withdrawal on any adjacent wells. The two calculations were designed to evaluate potential impairment on adjacent wells from a maximum instantaneous rate pumping and long-term pumping at the annual rate. For both of these calculations, the Applicant provided information on the potential cumulative impact of withdrawing in quantities and rates allowed under the request to transfer the water right at issue in this application

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Consideration of comments and protests

See Boards analysis of the two protests and comments #1 through 7. It is the conclusion of the Board that the issues and concerns of the protestors and comments have been adequately address in this Report of Examination and the supporting documents.

Impairment

Based on the investigation and review by the Board, it is the Boards determination that there will be no impairment to any existing groundwater rights. Based on the final mitigation plan, there will be no impact to surface flows of Union Flat Creek. Therefore, there will be no impairment to any existing surface water rights.

Public Interest

The public interest will be enhanced. Municipal Use by the Town of Colton is a beneficial use and is in the public's interest and welfare. Continued use of the remainder of the water right to irrigate land for pasture and/or a hay crops is also in the publics 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. The Boards conclusions are based on the beneficial use analysis in the investigation section of this report.

DECISION [See WAC 173-153-130(6)(e)]

Based on the data and conclusions above, the decision of the board is to approve the change of a Qi of 171 gallons per minute and a Qa of 100 acre-feet per year to the Town of Colton Wells #1, 2, and 3 for municipal use. The place of use for this 171 gallons per minute and 100 acre-feet per year will be the Town of Colton as described within the most recently approved Water System Plan. The Town of Colton Certificate will be No. 1412-A (B)

Certificate of Ground Water Right No. 1412-A will be changed to No 1412- A (A) showing a Qi of 1029 gallons per minute and a Qa of 291 acre-feet for the purpose of irrigation of 89.3 acres. The place of use for Certificate No. 1412-A (A) will be the E 1/2 SW 1/4, Section 13, Township 16 North, Range 39 East W.M. and the E 1/2 NW 1/4, Section 24, Township 24 North, Range 39 East W.M.

PROVISIONS [See WAC 173-153-130(6)(f)]

1. In accordance with chapter 173-160 WAC, wells shall not be located within certain minimum distances of potential sources of contamination. These minimum distances shall comply with local health regulations, as appropriate. In general, wells shall be located at least 100 feet from sources of contamination. Wells shall not be located within 1,000 feet of a solid waste landfill.
2. 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".
3. Flowing wells shall be constructed and equipped with valves to ensure that the flow of water can be completely stopped when not in use. Likewise, the well shall be continuously maintained to prevent the waste of water through leaky casings, pipes, fittings, valves, or pumps -- either above or below land surface.
4. 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 well(s) authorized herein. All pump test data for the well(s) shall be submitted to the Department as it is obtained.
3. Installation and maintenance of an access port as described in chapter 173-160 WAC is required.
4. In addition to the required access port, the applicant shall install and maintain, in operating condition, an airline and pressure gage. The pressure gage shall be equipped with a standard tire valve and placed in a location accessible to Department of Ecology personnel. 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.
5. 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", chapter 173-173 WAC.
<http://www.ecy.wa.gov/programs/water/measurements/measurements.htm>
6. Water use data shall be recorded weekly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to Ecology by January 31st of each calendar year. Ecology is requiring submittal of monthly meter readings to collect seasonal information for water resource planning, management and compliance.
7. Chapter 173-173 WAC 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 as a document entitled "Water Measurement Device Installation and Operation Requirements".
<http://www.ecy.wa.gov/programs/water/measurements/measurements.htm>
8. Prior to any new construction or alterations of a public water supply system, the State Board of Health rules require public water supply owners to obtain written approval from the Office of Drinking Water of the Washington State Department of Health. Please contact the Office of Drinking Water prior to beginning (or modifying) your project at Eastern Drinking Water Operations, 1500 West Fourth Avenue, Suite 305, Spokane, WA 99204, (509) 456-3115.
9. 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 provisions, and to inspect at reasonable times any measuring device used to meet the above provisions.
10. 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 wells or diversions and associated distribution systems for compliance with water law.
11. The water right holder shall file the notice of Proof of Appropriation of water (under which the superseding certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use.
12. The superseding certificate will reflect the extent of the project perfected within the limitations of the change authorization. Elements of the proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.
13. A superseding certificate of water right will not be issued until a final examination is made by Ecology.
14. 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.
15. 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.
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 Indians under treaty or otherwise.
17. Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances, or regulations.
18. Union Flat Creek capture effects will be mitigated through the following actions:
 - (1) City of Colton Well # 1 will be used for mitigation to prevent any chance of chlorinated water entering the creek.
 - (2) The new pumping at Colton will be mitigated by pumping raw (untreated) groundwater into the creek adjacent to Colton's well field. This will mitigate for new capture between Colton and Wilcox; cessation of the same amount of pumping at Maley will offset any impact to the reach from Wilcox to the mouth.
 - (3) Town of Colton will begin full mitigation immediately and to continue it in perpetuity. Full mitigation is the following schedule of pumping water from City of Colton Well #1 into Union Flat Creek:

Union Flat Creek Mitigation Schedule

Date	Ac-Ft per Period	GPM
June 15	0.00	0
June 16-22	1.59	51
June 23-29	1.59	51
June 30 - July 6	1.61	52
July 7-13	1.63	53
July 14-20	1.65	53
July 21-27	1.67	55
July 28 - Aug, 3	1.70	55
Aug. 4-10	1.72	56
Aug. 11-17	1.74	56
Aug. 18-24	1.76	57
Aug 25-31	1.78	58
Sept. 1-7	1.79	58
Sept. 8-14	1.80	58
Sept. 15-21	1.81	59
Sept. 22-28	1.81	59
Sept. 29-30	0.52	59
Oct. 1	0.00	0
Total Mitigation	26.2	

(4) Stream augmentation will take place from June 16th to October 1st each year. This is the surface water source limitation (SWSL) period for Union Flat Creek. The Town of Colton will not be subject to the minimum stream flow rate of 0.50 cfs requirement of the SWSL.

(5) Pumping of groundwater into the creek will be accomplished by first pumping untreated groundwater into a small pressurized storage tank. Water from the tank will be discharged to the creek through a small pipe. To assure a steady flow rate, the pipe would be equipped with a flow meter having instantaneous and totalizing counters, a pressure regulator upstream of the meter, and a flow valve upstream of the pressure regulator. The Town of Colton will provide Washington Department of Ecology and WDFW with design documents for the mitigation equipment.

(6) Union Flat Creek Mitigation Schedule, shown above will be included in the Town of Colton's water system plan to assure compliance by the water system operator.

Mitigation (if applicable)

The applicant submitted a proposed mitigation plan to the Board on June 5, 2007. The June 5, 2007 plan was revised via letter to the Board dated June 12, 2007. This Mitigation plan, as revised, was accepted by the Washington Department of Fish and Wildlife via a letter to the Board from Paul LaRiviere, Instream Flow Biologist, dated June 22, 2007. The mitigation plan establishes an annual pumping schedule from the Town of Colton Well #1 to be returned to Union Flat Creek from June 15 to October 1. The Town of Colton will implement this pumping schedule immediately following the approval of the transfer of water rights from Certificate 1412-A and will continue the pumping schedule in perpetuity. The mitigation plan is included as a provision under WAC 173-153-130 (6) (f).

Construction Schedule

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:
Irrigation, Maley	done	2009
Town of Colton, begun	2015	2027

Other

In accordance to WAC 173-153-130 (8), the applicant is not permitted to proceed to act on this proposal until ecology makes a final decision affirming, in whole or in part, the above board's recommendation.

Signed at Colfax, Washington
This 25 day of July, 2007


Edward L. Schultz, Board Representative
Whitman County Water Conservancy Board

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).

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