WASHINGTON STATE DEPARTMENT OF ECOLOGY

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

For Ecology Use Only
Received: NOV 16 2012
DEPARTMENT OF ECOLOGY EASTERN REGIONAL OFFICE
Reviewed by: _____
Date Reviewed: _____

Applicant: Lodmell Application Number: WALL-12-09

This record of decision was made by a majority of the board at an open public meeting of the Walla Walla County Water Conservancy Board held on 11/7/12. The undersigned board commissioners certify that they each understand the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that each commissioner, having reviewed the report of examination, knows and understands the content of the report.

X **Approval:** The Walla Walla County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on 11/7/12 and submits this record of decision and report of examination to the Department of Ecology for final review.

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

Signed:

Alan Kottwitz, Chair Walla Walla County Water Conservancy Board	Date: 11/7/12	Approve ☒ Deny ☐ Abstain ☐ Recuse ☐ _____ Other ☐
Mike Dobbins, Member Walla Walla County Water Conservancy Board	Date: 11/07/12	Approve ☑ Deny ☐ Abstain ☐ Recuse ☐ _____ Other ☐
Brian Worden, Member Walla Walla County Water Conservancy Board	Date: 11-7-12	Approve ☑ Deny ☐ Abstain ☐ Recuse ☐ _____ Other ☐
Drex Gauntt, Alternate Walla Walla County Water Conservancy Board	Date: _____	Approve ☐ Deny ☐ Abstain ☐ Recuse ☐ _____ Other ☐
(Name), (Title) (Board Name) Water Conservancy Board	Date: _____	Approve ☐ Deny ☐ Abstain ☐ Recuse ☐ _____ Other ☐

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

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WASHINGTON STATE DEPARTMENT OF ECOLOGY

(Board Name)
WATER CONSERVANCY BOARD
Application for Change/Transfer
OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF THE STATE OF WASHINGTON

RECEIVED
NOV 16 2012
DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

Report of Examination

NOTE TO APPLICANT: Pursuant to WAC 173-153-130(8), the applicant is not permitted to proceed to act on the proposal until Ecology makes a final decision affirming, in whole or in part, the board's recommendation. It is advised that the applicant not proceed until the appeal period of Ecology's decision is complete.

NOTE TO AUTHOR: *Read the instructions for completing a water conservancy board report of examination. Use the F11 key to move through the form.*

09 KT

☐ Surface Water ☒ Ground Water

DATE APPLICATION RECEIVED	WATER RIGHT DOCUMENT NUMBER	WATER RIGHT PRIORITY DATE	BOARD-ASSIGNED CHANGE APPLICATION NUMBER
May 2, 2012	GW Cert. No. G3-29363	December 15, 1992	WALL-12-08

NAME
ANDREW LODMELL & MILES LODMELL

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
120 E. Birch Street, Suite 5	Walla Walla	Washington	99362

Changes Proposed: ☐ Change purpose ☐ Add purpose ☒ Add irrigated acres ☐ Change point of diversion/withdrawal
☐ Add point of diversion/withdrawal ☐ Change place of use ☐ Other (Temporary, Trust, Interties, etc.)_____

SEPA
The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☒ Exempt ☐ Not exempt

BACKGROUND AND DECISION SUMMARY

Existing Right (Tentative Determination)

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE
	2500	680	2500 gallons per minute, 680 acre feet per year (additive), from February 1 to November 30, each year, for the irrigation of 160 acres.

SOURCE	TRIBUTARY OF (IF SURFACE WATER)
A well (basalt aquifer)	

AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
320826110001	N½	N½	26	8	32 E.	32	Walla Walla

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

The SW¼ and E½ of Section 23 and the N½N½ of Section 26, ALL WITHIN T. 8 N., R. 32 E.W.M., in Walla Walla County, Washington.

PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,
Various			23 & 26	8	32 E.

Proposed Use

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE
	2500	680	2500 gallons per minute, 680 acre-feet per year (additive), from February 1 to November 30, each year, for the irrigation of 320 acres.

SOURCE	TRIBUTARY OF (IF SURFACE WATER)
A well (basalt aquifer)	

AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
320826110001	N½	N½	26	8	32 E.	32	Walla Walla

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

The SW¼ and E½ of Section 23 and the N½N½ of Section 26, ALL WITHIN T. 8 N., R. 32 E.W.M., in Walla Walla County, Washington.

PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,
Various			23 & 26	8	32 E.

Board's Decision on the Application

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE
	2500	577*	2500 gallons per minute, 577* acre feet per year (Additive), from February 1 to November 30, each year, for the seasonal irrigation of 320 acres. *The Annual Consumptive Quantity (ACQ) shall not exceed 563 acre-feet in any one year.

SOURCE	TRIBUTARY OF (IF SURFACE WATER)
A well (basalt aquifer)	

AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
320826110001	N½	N½	26	8	32 E.	32	Walla Walla

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

The SW¼ and E½ of Section 23 and the N½N½ of Section 26, ALL WITHIN T. 8 N., R. 32 E.W.M., in Walla Walla County, Washington.

PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,
Various			23 & 26	8	32 E.

DESCRIPTION OF PROPOSED WORKS

One well (basalt aquifer), mainline, center pivot irrigation w/drop tube emitters, secondary handline irrigation between and around the pivots.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:
Started	March 1, 2015	March 1, 2016

REPORT

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

BACKGROUND

On May 2, 2012 Andrew Lodmell and Miles Lodmell of Walla Walla, Washington filed an application for change to add irrigated acres under Ground Water Certificate No. G3-29363 (Cert. No. G3-29363) as authorized under RCW 90.03.380(1). The application was accepted at an open public meeting on May 2, 2012, and the board assigned application number WALL-12-08.

Attributes of the water right as currently documented

Name on certificate, claim, permit:	Andrew Lodmell & Miles Lodmell	
Water right document number:	Ground Water Certificate No. G3-29363	
As modified by certificate of change number:	N/A	
Priority date, first use:	December 15, 1992	
Water quantities:	Qi: 2500 gpm	Qa: 680 acre ft./ year
Source:	A well (basalt aquifer)	

Point of diversion/withdrawal:

150 feet east and 25 feet south of the NW corner of Section 26, within the N½N½ of Sec. 26, T. 8 N., R. 32 E.W.M.

Purpose of use:	Seasonal irrigation of 160 acres.
Period of use:	February 1 to November 30, each year

Place of use:

The SW¼ and E½ of Section 23 and the N½N½ of Section 26, ALL WITHIN T. 8 N., R. 32 E.W.M., in Walla Walla County, Washington.

Existing provisions:

"All water wells constructed within the State shall beet the minimum standards for construction and maintenance as provided under RCW 18.104 (Washington Water Well Construction Act of 1971) and Chapter 173-160 WAC (Minimum Standards for Construction and Maintenance of Water Wells)."

"The installation of an access port, described in Ground Water Bulletin #1, is required. In addition, an airline and pressure gauge shall be installed and maintained in operating condition. The pressure gauge shall be equipped with a standard tire valve and placed in an accessible location. The airline shall extend from land surface to the top of the pump bowls."

"The casing shall be set or placed at least five feet into the first solid, unfractured, non-porous, non-vesicular basalt flow occurring at or below 600 feet below land surface (corresponding with the top of the Wanapum unit), whichever is greater. The wells shall be constructed so as to seal the upper Saddle Mountains formation from the Wanapum unit. Should the well bore extend into the Grand Ronde Unit, the wells shall be constructed so as to effectively and permanently seal the Wanapum from the Grande Ronde formation."

"An approved measuring device shall be installed and maintained for each of the sources identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC."

"Water use data shall be recorded weekly by the landowner and shall be submitted annually to Ecology by January 31st of each year."

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

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

"The amount of water granted is a maximum limit that shall not be exceeded and the water user shall be entitled only to that amount of water within the specified limit that is beneficially used and required for the actual crop grown on the number of acres and the place of use specified."

"Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversion, measuring devices and associated distribution systems for compliance with water law."

"The combined use of water under this authorization and Ground Water Certificate G3-29438 shall not exceed 3000 gallons per minute, 1320 acre-feet per year, for the seasonal irrigation of 320 acres. No change shall be authorized to Ground Water Certificate No. G3-29363 without commensurate change(s) being made to Ground Water Certificate No. G3-29438, such that the total instantaneous withdrawal authorized through a combination of the two rights does not exceed 3000 gallons per minute."

"Issuance of a water right by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between the applicant and owner of that land."

"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."

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

Tentative determination of the water right

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

History of water use

Water has been used in conjunction with a companion water right, Ground Water Certificate No. G3-29438, to irrigate 320 acres since 2003. The irrigation system consists of three 120 acre complete center pivots, and two 70 acre partial center pivots. The use of end guns on the pivots adds an additional 10 acres. The 320 acres authorized for irrigation is rotated annually over an approximately 640 acre place of use. The crops grown include rotations of potatoes, alfalfa hay, wheat and corn .

Previous changes

Ground Water Permit No. G3-29363P originally issued on April 10, 1996. A companion water right application, G3-29438, was approved on this same date for lands adjacent to Permit No. G3 -29363P.

Applications for change to GW Permit Nos. G3-29363P and G3-29438P were approved and superseding permits were issued on October 19th, 2001. These changes consolidated the places of use of GW Permit Nos. G3-29363P and G3-29438P to allow flexibility in water use between the two permits.

A second set of applications for change were approved and superseding permits issued on January 23rd, 2003. These changes consolidated the two points of withdrawal authorized under GW Permit Nos. G3-29363P and G3-29438P.

A third set of applications for change were approved and superseding permits issued on August 10th, 2011. These changes added approximately 240 acres of contiguous land to the existing authorized place of use to Permit Nos. G3-29363P and G3-29438P. These additional acres allowed for the rotation in use of pivots constructed on the lands authorized as the place of use. The rotation of use of these pivots was approved through seasonal change authorizations issued by Ecology on an annual basis from 2004 to 2011.

Water right certificates for Permit Nos. G3-29363P and G3-29438P issued on April 19th, 2012.

SEPA

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

- It is a surface water right application for more than 1 cubic feet per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gallons per minute;
- It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application requests a change in place of use involving quantities of water that exceed 2,250 gallons per minute, this application ***is not*** categorically exempt from SEPA and a threshold determination is required.

This application is subject to the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21 RCW. An Environmental Checklist was filed with the Walla Walla County Water Conservancy Board ("Board") in conjunction with this application. After review of the completed Environmental Checklist and other information on file with the Department, this proposal was determined by the Board to not have a significant adverse impact upon the environment. The Board filed a Final Determination of Non-Significance on 10/3/12 stating that no environmental impact statement is required.

Statutory Requirements/Authorities for Proposed Change

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

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

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

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

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

The Washington Supreme Court has held that under RCW 90.44.100, a groundwater permit may be amended to change the location from which the water is drawn, or to change the manner or place of use of the water, notwithstanding the fact that the water has not actually been applied to a beneficial use. *R.D. Merrill Co. v. Pollution Bd., 137 Wn2d 118, 969 P.2d 459 (1999).*

Other

A concurrent application for change was submitted for Ground Water Certificate No. G3-29438 to the Board on May 2nd, 2012. That application, WALL-12-09, requests the same change as that applied for herein. The current authorized place of use for both of these water rights is identical.

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

COMMENT AND PROTESTS

Public notice of the application was given in the Waitsburg Times on May 17th and May 24th, 2012. Protest period ended on June 25th, 2012.

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

Date: N/A

This was recognized by the board as a ☐ Protest ☐ Comment

Name/address of protestor/commenter: N/A

Issue: N/A

Board's analysis: N/A

Other

None.

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

INVESTIGATION

The following information was obtained from a site inspection conducted by Alan Kottwitz on May 3rd, 2012, technical reports, research of department records, and conversations with the applicant and/or other interested parties.

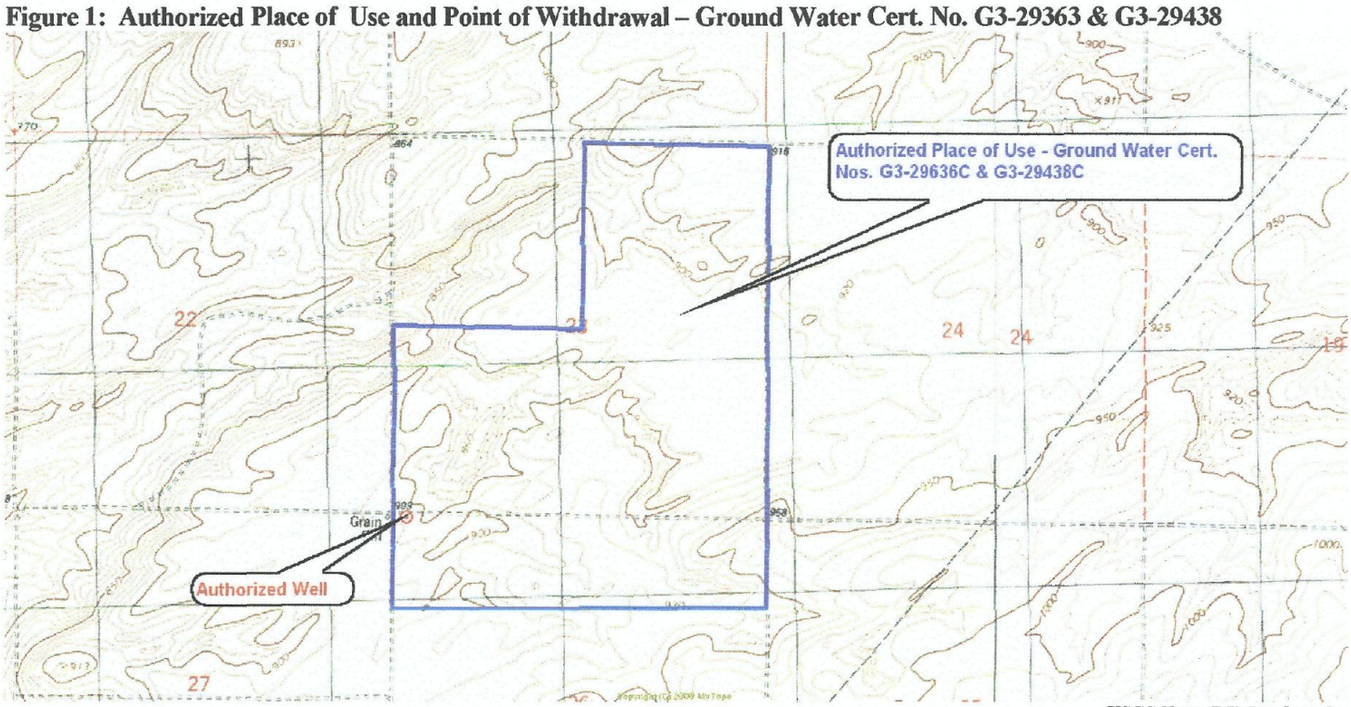
The following are some of the primary sources of information obtained and utilized in this investigation:

- Water right files for Cert. No. G3-29363
- Farm Service Agency (FSA) cropping records
- Technical reports
- U.S. Geological Survey topographic maps
- Aerial photos
- Department of Ecology's Water Right Tracking System (WRTS) database/Water Resource Explorer website
- USBR Agrimet Evapotranspiration Date website; State of Washington Irrigation Guide.
- Review of applicable laws, site visits, rules and policies
- Conversations with the applicant, Miles Lodmell

Proposed project plans and specifications

This application proposes to add 160 acres to the acres currently authorized for irrigation under Cert. No. G3-29363. The applicants are currently authorized to irrigate a combined total of 320 acres within a 640 acre place of use under Cert. Nos. G3-29363 and G3-29438 (See Figure 1). The combined quantities of water originally authorized for use under these certificates were 4500 gallons per minute and 1664 acre-feet per year, which were later reduced at the proof of appropriation stage in 2012 to a combined 3000 gallons per minute and 1360 acre-feet per year to reflect actual beneficial use of water under the permits.

Figure 1: Authorized Place of Use and Point of Withdrawal – Ground Water Cert. No. G3-29363 & G3-29438

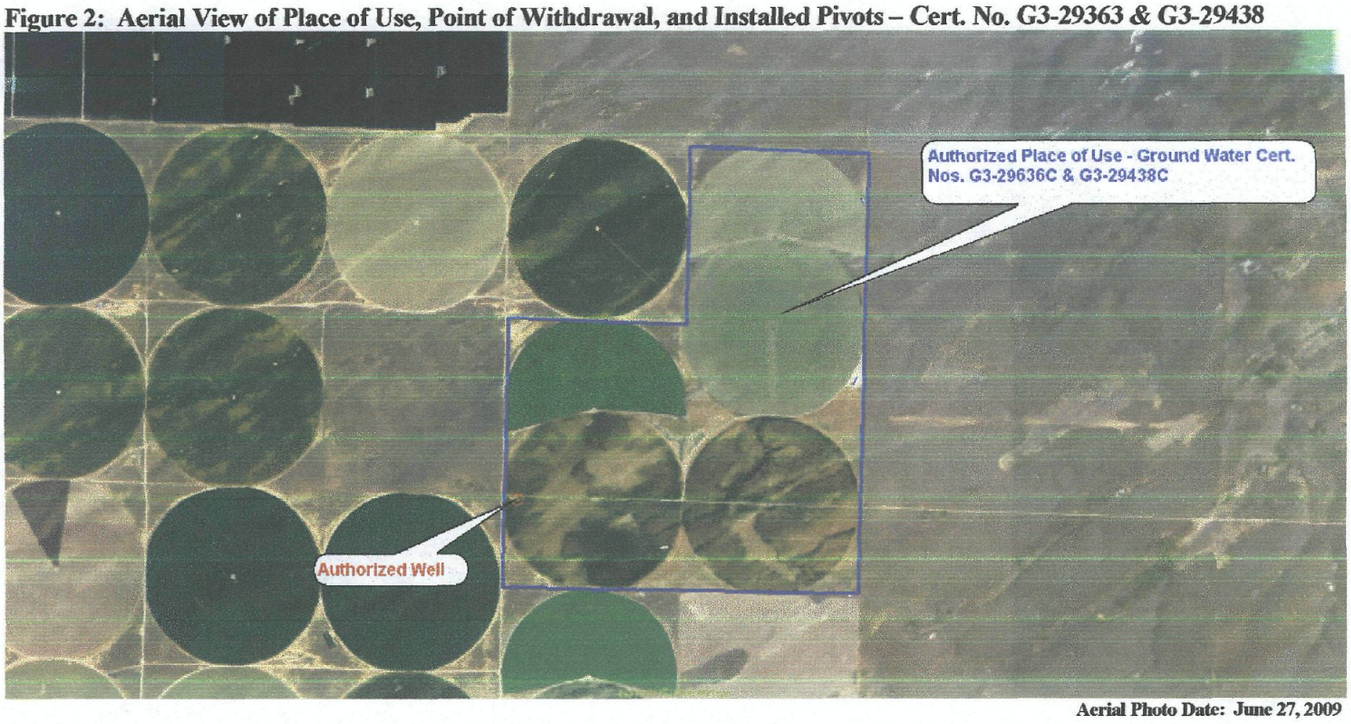


USGS Slater 7.5' Quadrangle

Currently, in certain years through crop rotation, there are lower water requirement crops being grown on the 320 acres authorized for irrigation, which will use only a portion of the water allocated. The applicants are requesting the authority to put the available water to maximum beneficial use by allowing for this water to be used over additional acres in such years. The applicant understands that in certain years there may be no excess water for use on land over and above the 320 acres currently authorized for irrigation under the combined rights, while in other years there may be sufficient available water to fully/partially irrigate crops on additional acres. Additional water put on crops such as wheat, even if not meeting the full water requirement for such crops, can add to crop yield. In recent years alternative crops, such as 1-acre plots of seed corn, have become available and this change would facilitate the ability of the applicants to use water for this and similar type crops, putting water to its maximum beneficial use. The applicants also intend on using some of the most efficient application methods available on the pivots to conserve water.

The authorized place of use consists of three 120-acre full center pivots and two 70-acre partial pivots within a 640 acre place of use (See Figure 2). Use of pivot end guns adds an additional 10 acres to the lands being irrigated. The applicants intend to utilize these existing pivots and handline sprinklers when necessary, to irrigate additional acres within the existing place of use. Additional infrastructure necessary to implement the request expansion in irrigated acres would be limited to the addition of handline sprinklers and/or "corner catchers" pivot extensions for use on areas not currently covered by the pivots.

Figure 2: Aerial View of Place of Use, Point of Withdrawal, and Installed Pivots – Cert. No. G3-29363 & G3-29438



Aerial Photo Date: June 27, 2009

Other water rights appurtenant to the property (if applicable)

There is one other water right appurtenant to the same place of use as Cert. No. G3-29363. Ground Water Certificate No. G3-29438 authorizes the withdrawal of water from a basalt well in the amount of 2000 gallons per minute, 680 acre-feet per year, from February 1 to November 30, each year, for the irrigation of 160 acres. The point of withdrawal and place of use authorized under Cert. No. G3-29438 are identical to those authorized through Cert. No. G3-29363. A summary of the integrated certificates is provided in Table 1, below.

Table 1: Summary of Water Right Permits Appurtenant to Proposed Place of Use

Certificate Number	*Priority Date*	*GPM (Qi)*	*Acre-feet (Qa)*	*Acres*	*POW*
G3-29363	12/15/1992	2500	680	160	One basalt aquifer well
G3-29438	03/30/1993	2000[1]	680	160	One basalt aquifer well
Totals		**3000**	**1360**	**320**	

[1] The 2000 gpm is allocated as 500 gpm additive to G3-29363, 1500 gpm non-additive.

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. Expressions of public interest for this proposed change potentially include: comments or protests regarding approval of the proposed change; Walla Walla County Municipal Code; the WRIA 32 Watershed Plan.

a. *Comments/Protests*: No comments or protests were received regarding potential approval of the proposed change.

b. *Walla Walla County Municipal Code (Codified as Ordinance 369, November 10, 2008):* The place of use for the subject water right is located entirely within the Primary Agriculture – 40 acre-minimum lot size zoning district. As the proposed change would not change the existing agricultural use of the subject lands, it is consistent with the Walla Walla County Code.

c. *WRIA 32 Watershed Plan*: While the existing and proposed place of use are within Water Resources Area 32 (WRIA32), these lands are outside the planning area as defined in the final WRIA 32 Watershed Plan. Even so, as there is no proposed change in the place of use, point of withdrawal, or increase in the quantities of water authorized for withdrawal, the proposal is consistent with the locally developed and approved basin watershed plan, which expressed a desire that new water rights or changes to existing water rights not negatively impact streams, springs, or wells hydraulically connected to surface waters sources within WRIA 32.

Tentative Determination

Extent and Validity of Cert. No. G3-29363

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. The Washington State Supreme Court, in Okanogan Wilderness vs. Town of Twisp and Department of Ecology, 133 Wn.2d 769, 947 P.2d 732 (1997), found that applications for change may be granted only to the extent the water has been historically put to beneficial use, as beneficial use determines the measure of a water right. They also found that the existence and quantification of a water right must be determined, including whether or not the water right has been lost for non-use before the Department can approve a change or transfer of the water right. 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:

Table 2 shows the water use by crop and acres from 2003 through 2012. The final certificate for G3-29363 issued in 2012. The quantities of water and acres irrigated determined to have been put to beneficial use, based on the available crop/acre data were 2500 gallons per minute, 680 acre-feet per year, for the seasonal irrigation of 160 acres. As there has been no 5 consecutive year period of non-use, either before or after issuance of the certificate, and there are no abandonment concerns, these quantities can be considered to be the current extent and validity of Cert. No. G3-29363.

Table 1: Historical Water Use – Crop/Acres

Year	*Crop*	*Acres*	*Crop*	*Acres*	*Pivots*
2003	Potatoes	320			1, 2 &3
2004	Potatoes	200	Wheat	120	1, 4 & 5
2005	Potatoes	320			1, 2 & 3
2006	Hay	200	Wheat	120	2, 4 & 5
2007	Hay	200	Field 2.83/Corn	120	2, 4 & 5
2008	Hay	200	Potatoes	120	1, 4 & 5
2009	Hay	200	Potatoes	70	2, 4 & 5
2010	Hay	200	Potatoes	120	2, 4 & 5
2011	Potatoes	200	Wheat	120	2, 4 & 5
2012	Corn	120	Potatoes	200	1 ,3 & 4

Source: USDA Farm Service Agency, and landowner cropping records

Acreage Expansion – Annual Consumptive Quantity (ACQ) Calculation

Existing statute authorizes the irrigation of additional acres under a water right under certain circumstances. RCW 90.03.380(1), states, in part:

> "A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right."

It is under this statutory authority that the applicant has applied to irrigate up to an additional 160 acres under Cert. No. G3-29363. The first step in evaluating this request is to determine the Annual Consumptive Quantity (ACQ) for this water right.

For purposes of determining the highest 2 years of use over the past 5 years of continuous use, crop irrigation requirements from the State of Washington Irrigation Guide and data from the USBR Agrimet Legrow ET Station were referenced. A comparison of the two sources is provided below in Tables 3, 4 and 5 for the last 5 years of continuous use of water (2007 – 2011).

Table 3: Crop Irrigation Requirement (2007-2011) - Washington State Irrigation Guide (Walla Walla)

Year	*Crop/Acres*	*CIR[1]/Total ac-ft*	*Crop/Acres*	*CIR[1]/ Total ac-ft*	*Total Acre-Feet*
2007	Alfalfa/200	3.22/644	Field Corn/120	2.66/319	**963**
2008	Alfalfa/200	3.22/644	Potatoes/120	2.72/326	**970**
2009	Alfalfa/200	3.22/644	Potatoes/70	2.72/190	**834**
2010	Alfalfa/200	3.22/644	Potatoes/120	2.72/326	**970**
2011	Potatoes/200	2.72/544	Wheat/120	2.04/245	**789**

[1] Crop Irrigation Requirement in acre-feet per acre @ 85% application efficiency for center pivots w/drop tubes & end gun.

Table 4: Crop Irrigation Requirement (2007-2011) - Washington State Irrigation Guide (Richland)

Year	*Crop/Acres*	*CIR[1]/Total ac-ft*	*Crop/Acres*	*CIR[1]/ Total ac-ft*	*Total Acre-Feet*
2007	Alfalfa/200	3.88/776	Field Corn/120	3.07/368	**1,144**
2008	Alfalfa/200	3.22/776	Potatoes/120	3.01/361	**1,137**
2009	Alfalfa/200	3.22/776	Potatoes/70	3.01/211	**987**
2010	Alfalfa/200	3.22/776	Potatoes/120	3.01/361	**1,137**
2011	Potatoes/200	3.01/602	Wheat/120	2.55/306	**908**

[1] Crop Irrigation Requirement in acre-feet per acre @ 85% application efficiency for center pivots w/drop tubes & end gun.

Table 5: Crop Irrigation Requirement (2007-2011) – Agrimet Annual Evapotranspiration (Legrow Station)

Year	*Crop/Acres*	*CIR[1]/Total ac-ft*	*Crop/Acres*	*CIR[1]/ Total ac-ft*	*Total Acre-Feet*
2007	Alfalfa/200	4.12/824	Field Corn/120	2.73/328	**1,152**
2008	Alfalfa/200	4.19/838	Potatoes/120	2.67/320	**1,158**
2009	Alfalfa/200	4.10/820	Potatoes/70	2.56/179	**999**
2010	Alfalfa/200	3.77/755	Potatoes/120	2.40/288	**1,043**
2011	Potatoes/200	2.52/504	Wheat/120	2.29/275	**779**

[1] Crop Irrigation Requirement in acre-feet per acre @ 85% application efficiency for center pivots w/drop tubes & end gun.

The State of Washington Irrigation Guide (WIG) crop irrigation estimates for the Walla Walla and Richland areas are based on 20+ year averages of data collected as far back as the 1960's, which was published in 1985 (supplemented in 1992). The data for Walla Walla were collected some 24 miles to the east of the subject project location, in an area of very different climatic conditions and soil types, and the Richland data collected approximately 20 miles to the west is somewhat similar climatic conditions.

The USBR Agrimet evapotranspiration data is based on actual annual measurements and therefore provides for different values for different years for the same crops. The data is collected 7 miles to the northwest of the project, in an area of very similar soil types, topography, and climatic conditions as the project site. These crop irrigation requirement numbers calculated from these data represent an more accurate estimate of actual water use than the WIG data for this particular project, and will be utilized to estimate the ACQ figures for purposes of this application.

The highest 2 years of the past 5 years of continuous use are 2007 (1,152 acre-feet) and 2008 (1,158 acre feet). The ACQ calculations call for the highest 2 years within the last 5, less estimated return flows, with the results averaged to equal ACQ. Using Ecology Water Resources Program Guidance document GUID1210 – "Determining Irrigation Efficiency and Consumptive Use" as a guide, the return flows for center pivot irrigation system with drop tubes and end guns is estimated to be 2.5%.

2007: 1,152 acre feet – 2.5% (29 ac-ft) = 1,123 acre-feet
2008: 1,158 acre feet – 2.5% (29 ac-ft) = 1,129 acre-feet
2,252 acre-feet/2 = **1,126 acre-feet (ACQ)**

The ACQ of 1,126 acre-feet compares to 1,360 acre-feet currently authorized for withdrawal through a combination of Cert. Nos. G3-29363 and G3-29438. As each of these two additive water rights authorizes the withdrawal of water up to 680 acre-feet for the irrigation of 160 acres, the actual ACQ for each right is one-half of the calculated total, or 563 acre-feet.

As a condition of approval of the proposed acreage expansion, the ACQ may not be exceeded in future years. With the irrigation pivots as the primary irrigation application method, with corner catchers and/or irrigation handline used in areas between the circles, a return flow component of 2.5% is reasonable. This quantity may be added onto the ACQ to become the withdrawal limit under the water right.

The quantities of water tentatively determined to be available for this change under Cert. No. G3-29363 are 2500 gallons per minute, 577 acre-feet per year, for the seasonal irrigation of 320 acres, with an ACQ limit of 563 acre-feet which may not be exceeded in any year.

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

The well authorized for use under both Cert. Nos. G3-29363 & G3-29438 was constructed in 2000 consistent with the applicable permit provisions and state requirements for well construction. The well is cased and sealed into the basalt aquifer.

STATUTORY REQUIREMENTS

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

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

No Detriment/Impairment to Existing Rights

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

The proposed change would expand the number of acres that could be irrigated by 160. It would not change the authorized place of use of Cert. No. G3-29363, nor would there be any change in point of withdrawal. The total quantity of water authorized for withdrawal under this water right would be reduced from the 680 acre-feet currently authorized to 577 acre-feet, with an ACQ of 563 feet. There is no reason to believe that approval of the proposed change would impair any existing water rights.

No Enhancement of the Original Right

The only enhancement of Cert. No. G3-29363 which would occur through approval of the proposed change would be the ability to irrigate additional acres under the statutory authority provided through RCW 90.03.380. Any change authorization issuing through this application would be limited to an ACQ determined through the statutory defined formula in RCW 90.03.380. The instantaneous limit under the existing water right would not change through approval of this proposal, and the annual quantity authorized for withdrawal would actually be reduced to 577 acre-feet from 680 acre-feet. This change will not enhance the right beyond what is statutorily authorized under RCW 90.03.380.

A Valid Right Exists that is Eligible to be Changed

Ground Water Certificate No. G3-29363 issued in 2012, and the right has been used continuously since it was first developed. For purposes of acting on this application, a tentative determination as to the extent and validity of Cert. No. G3-29363 was conducted. The quantities of water determined to be available for this change are 2500 gallons per minute, 577 acre-feet per year, with 563 acre-feet being the Annual Consumptive Quantity limit. There has been no 5 consecutive year period of non-use of the water right, nor are there any abandonment issues to consider.

Same Source of Water

The authorized point of withdrawal currently authorized under G3-29363 will not change, and will continue to withdraw water from the basalt aquifer.

No Detriment to Public Welfare

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

Other

N/A

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

CONCLUSIONS

Tentative determination (validity and extent of the right)

A tentative determination as to the extent and validity of Cert. No. G3-29363 has been made, together with a determination as to the ACQ available for consideration under this proposal. The quantities of water tentatively determined to be available for this change are 2500 gallons per minute, 577 acre-feet per year, for the seasonal irrigation of 320 acres, with an ACQ limit of 563 acre-feet which may not be exceeded in any year.

Relinquishment or abandonment concerns

There have been no 5 consecutive year periods of non-use under Cert. No. G3-29363, nor are there any abandonment concerns with respect to this water right.

Hydraulic analysis

There is no change proposed to the existing point of withdrawal under this change, nor will there be any increase in the quantities of water authorized to be pumped. No hydraulic analysis is necessary to act on this change application.

Consideration of comments and protests

Public notice of the application was published in the Waitsburg Times on February 4th and 11th, 2010. No comments or protests were received. Likewise, no comments or objections were received at open public meetings of the Board.

Impairment

There is no evidence that the beneficial use of water under Cert. No. G3-29363 has impaired any existing water rights to date. As approval of the change would actually reduce the annual quantities approved for withdrawal at the existing withdrawal rate, there is no expectation that approval of the change would impair existing water rights, including instream flows.

Public Interest

There is no evidence that the proposed change would be detrimental to the public interest, nor has there been any expression of public opposition to granting approval to the proposed change.

Other

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

DECISION

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

- The change must not cause detriment or injury to existing rights;
- A valid right/claim exists that is eligible to be changed;
- The change shall not allow for the enhancement of the right perfected under the original certificate
- An additional or new well shall withdraw water from the same source as the original
- The proposed change would not be detrimental to the public welfare.
- To enable irrigation of additional acreage, the must be no increase in the annual consumptive quantity of the right.

It is the conclusion of the Walla Walla County Water Conservancy Board that, in accordance with RCW 90.03.380 and RCW 90.44.100, (1) the proposed change in place of use will not impair existing rights, including instream flows established through WAC 173-532; (2) a valid water right exists and is eligible to be changed to the extent the certificate was originally authorized, as summarized above; (3) that the change will not expand or enhance the quantities issued under the original certificate beyond that allowed under RCW 90.03.380; (4) that the proposed change will not be detrimental to the public welfare. The requested change to enable irrigation of 160 additional acres within the existing place of use of Ground Water Certificate No. G3-29363 is approved, subject to the provisions and conditions listed below.

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

PROVISIONS

Conditions and limitations

Wells, Well Logs and Well Construction Standards

All water wells constructed within the State shall beet the minimum standards for construction and maintenance as provided under RCW 18.104 (Washington Water Well Construction Act of 1971) and Chapter 173-160 WAC (Minimum Standards for Construction and Maintenance of Water Wells).

The installation of an access port, described in Ground Water Bulletin #1, is required. In addition, an airline and pressure gauge shall be installed and maintained in operating condition. The pressure gauge shall be equipped with a standard tire valve and placed in an accessible location. The airline shall extend from land surface to the top of the pump bowls.

The casing shall be set or placed at least five feet into the first solid, unfractured, non-porous, non-vesicular basalt flow occurring at or below 600 feet below land surface (corresponding with the top of the Wanapum unit), whichever is greater. The wells shall be constructed so as to seal the upper Saddle Mountains formation from the Wanapum unit. Should the well bore extend into the Grand Ronde Unit, the wells shall be constructed so as to effectively and permanently seal the Wanapum from the Grande Ronde formation.

Measurements, Monitoring, Metering and Reporting

An approved measuring device shall be installed and maintained for each of the sources identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Water use data shall be recorded weekly by the landowner and shall be submitted annually to Ecology by January 31st of each year.

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

Water Use Efficiency

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

The amount of water granted is a maximum limit that shall not be exceeded and the water user shall be entitled only to that amount of water within the specified limit that is beneficially used and required for the actual crop grown on the number of acres and the place of use specified.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversion, measuring devices and associated distribution systems for compliance with water law.

General

The combined use of water under Ground Water Certificate Nos. G3-29363 and Ground Water Certificate G3-29438 shall not exceed 3000 gallons per minute, 1154 acre-feet per year, for the seasonal (February 1 to November 30) irrigation of 640 acres. The annual consumptive quantity (ACQ) shall not exceed 1126 acre-feet in any one year. No change shall be authorized to Ground Water Certificate No. G3-29363 without commensurate change(s) being made to Ground Water Certificate No. G3-29438, such that the total instantaneous withdrawal authorized through a combination of the two rights does not exceed 3000 gallons per minute.

Issuance of a water right by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between the applicant and owner of that land.

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.

Family Farm

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

Mitigation (if applicable)

N/A

Construction Schedule

A three year development schedule, two years to complete construction and one year to put water to full use, should be sufficient to implement the changes authorized herein.

Other

N/A

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

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

Signed at Walla Walla, Washington
This 7th day of November, 2012

Alan Kottwitz, Board Representative
Walla Walla County Water Conservancy Board

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