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

September 10, 2013

J.R. Simplot Company
999 Main Street
Suite 1300
Boise, Idaho 83702

COPY

Dear Sirs:

Re: Application for Change/Transfer under Ground Water Certificate No. 2651-A (GRAN-12-04), Ground Water Certificate No. 3021-A (GRAN-12-05), Ground Water Certificate 5791-A (GRAN-12-06), Ground Water Certificate G3-01400C (GRAN-12--07)

On July 1, 2013 our office received from the Grant County Water Conservancy Board Records of Decision and Reports of Examination for the above referenced applications for change/transfer of water right certificates. In accordance with RCW 90.80.080 the Department of Ecology (Department) has reviewed the Records of Decision and Reports of Examination and has considered all comments, protests, objections, and other relevant information submitted to the Department regarding the proposed changes/transfers.

The Department has **reversed** the decision of the Board and the proposed change/transfer of water rights is **denied.**

In reviewing the decisions/recommendations of the Grant County Water Conservancy Board, Ecology has determined that the public notices has errors and omissions in the notices for the above referenced Applications for Change/Transfer.

The original Applications for Change/Transfer requested to add two (2) additional wells. One of the wells was to be located in the SE¼SW¼ of Section 16, T. 19 N., R. 29 E.W.M. Not one of the public notices state that this new location was requested in all four (4) Applications for Change/Transfer. However, the board approved the proposed new location in their decisions.

WAC 173-153-080(5) states:
(5) The public notice must be republished in all newspapers of original publication when an applicant substantively amends an application for a transfer of a water right subsequent to publication of the notice, or when the publication contains a substantive error or omission occurs in the publication. All parties who were sent the original application as required by WAC 173-153-070(22) and/or the original public notice must be sent corrected copies of any amended transfer application and/or an amended public notice. For the purposes of this subsection, the term "substantive error or omission" for publication purposes, refers to any item identified in subsection (1) of this section that is omitted from or inadequately characterized in the public notice. An application is considered substantively amended if it expands the intent of the original proposal or results in a substantial change, such as an alteration to the proposed point of diversion or withdrawal, proposed purpose(s) of use, or to the proposed place of use.

The Grant County Water Conservancy Board failed to give proper public notice of the intent of the Applications for Change/Transfer.

Additionally, the public notice for Ground Water Certificate No. G3-01400C lists the wrong priority date of the water right. The correct priority date of the water right is September 10, 1968.

The Board also changed the location of the Industrial Waste Water disposal place of use. The Board deleted the "and 60 acres in the N½ of Section 35, lying northerly of the East Low Canal; ALL IN T. 19 N., R. 29 E.W.M., Grant County Washington." The Department believes that the limited place of use is contrary to RCW 90.46.150 which states in part: "*The owner of the agricultural processing plant who obtains a permit under this section has the exclusive right to the use of any agricultural industrial process water generated from the plant and to the distribution of such water through facilities including irrigation systems. Use and distribution of the water by the owner is exempt from the permit requirements of RCW 90.03.250, 90.03.380, 90.44.060, and 90.44.100.*

Therefore, limiting the place of use for Industrial Waste Water Disposal under RCW 90.03.380 and RCW 90.44.100 is contrary to law.

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

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

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

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

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

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

DATED this 10th day of September, 2013, at Spokane, Washington.

Keith Stoffel
Section Manager
Water Resources Program
Eastern Regional Office

KLS/HS:md
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Enclosure

cc: Grant County Water Conservancy Board

By Certified Mail: 7011 3500 0001 8621 7095