WASHINGTON STATE DEPARTMENT OF ECOLOGY

ADAMS COUNTY
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision

For Ecology Use Only
Received:
RECEIVED
SEP 30 2013
Date Stamp
DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

Reviewed by: _____
Date Reviewed: _____

Applicant: Application Number: ADAM-13-03

This record of decision was made by a majority of the board at an open public meeting of the Adams County Water Conservancy Board held on 9/23/2013. The undersigned board commissioners certify that they each understand the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that each commissioner, having reviewed the report of examination, knows and understands the content of the report.

☒ **Approval:** The Adams County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on 9/23/2013 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 (date report of exam was signed) and submits this record of decision to the Department of Ecology for final review.

Signed: Chris Lyle
Chris Lyle, Chair
Adams County Water Conservancy Board
Date: 9/23/2013
Approve ☒ Deny ☐ Abstain ☐ Recuse ☐ Other ☐

Reid Phillips
Reid Phillips, Vice Chairman
Adams County Water Conservancy Board
Date: 9/23/2013
Approve ☒ Deny ☐ Abstain ☐ Recuse ☐ Other ☐

_____
Damon Roth, Treasurer
Adams County Water Conservancy Board
Date: _____
Approve ☐ Deny ☐ Abstain ☐ Recuse ☐ Other ☐

Rudy Plager
Rudy Plager, Alternate
Adams County Water Conservancy Board
Date: 9/23/13
Approve ☒ Deny ☐ Abstain ☐ Recuse ☐ Other ☐

Mailed with all related documents to the Department of Ecology Spokane Regional Office and other interested parties on 9/27/2013.

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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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
SEP 30 2013
DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

Report of Examination

☐ Surface Water ☒ Ground Water

DATE APPLICATION RECEIVED	WATER RIGHT DOCUMENT NUMBER (i.e., claim, permit, certificate, etc.)	WATER RIGHT PRIORITY DATE	BOARD-ASSIGNED CHANGE APPLICATION NUMBER
7/11/2013	4671-A	May 9, 1962	ADAM-13-03

NAME: McCain Foods USA, Inc.

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
PO Box 607	Othello	WA	99344

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.) Add Place of Use

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
	700	445	Manufacturing and Domestic Supply, Continuous

SOURCE	TRIBUTARY OF (IF SURFACE WATER)
McCain Well No. 2	

AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
1529030681008	NW	NW	34	16	29 EWM	41	Adams

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

The point of beginning is 30 feet south and 30 feet east of the northwest corner of Sec. 34, T. 16 N., R. 29 E.W.M, thence 90°00'east 670 feet, thence 90°00' south 668 feet, thence west 90°00' 670 feet, thence 90°00' north 668 feet to the point of beginning.

PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,
			34	16	29 EWM

Proposed Use

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE
	700	445	Manufacturing and Domestic Supply, Continuous

SOURCE	TRIBUTARY OF (IF SURFACE WATER)
Wells (13)	

AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
1529030681008	NW	NW	34	16	29 EWM	41	Adams
1529030680289	NW	NW	34	16		41	
		SW	33	16		41	
	N½	N½	33	16		41	
1529030502001		NW	3	15		36	
1529030680212	SE	SE	34	16		36	
1529030680208	NE	SE	3	15		36	
1529030680297	SE	SW	3	15		36	
1529030502509	NE	NE	4	15		36	
1529031042163	SE	SE	9	15		36	
2100450692350	SW	SW	26	16		36	
2100450781014	SE	SW	36	16		36	
		NW	27	16		36	

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

N½SW¼NW¼ and the NW¼NW¼ of Section 34, T. 16 N., R. 29 E.W.M.

PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,
			34	16	29 EWM

Board's Decision on the Application

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE
	700	445	Manufacturing and Domestic Supply, Continuous

SOURCE	TRIBUTARY OF (IF SURFACE WATER)
Wells (13)	

Continued

AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
1529030681008	NW	NW	34	16	29 EWM	41	Adams
1529030680289	NW	NW	34	16		41	
		SW	33	16		41	
	N½	N½	33	16		41	
1529030502001		NW	3	15		36	
1529030680212	SE	SE	34	16		36	
1529030680208	NE	SE	3	15		36	
1529030680297	SE	SW	3	15		36	
1529030502509	NE	NE	4	15		36	
1529031042163	SE	SE	9	15		36	
2100450692350	SW	SW	26	16		36	
2100450781014	SE	SW	36	16		36	
		NW	27	16		36	

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

N½SW¼NW¼ and the NW¼NW¼ of Section 34, T. 16 N., R. 29 E.W.M.

PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,
			34	16	29 EWM

DESCRIPTION OF PROPOSED WORKS

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:
March 31, 2014	March 31, 2017	March 31, 2021

The Board selected a 3 year time period to allow McCain Foods to drill, test, and incorporate multiple new wells into their system. This also allows McCain time to coordinate with the City on contractual arrangements for service to McCain Foods. Some variability in McCain Foods processing exists, and an additional four years was selected for Proof of Appropriation to accommodate the full use of this right following construction of the wells.

REPORT

BACKGROUND [See WAC 173-153-130(6)(a)]

On July 11, 2013, McCain Foods of Othello, Washington filed an application for change to add place of use and add points of withdrawal under water right G3-00246C. The application was accepted at an open public meeting on July13, 2013, and the board assigned application number ADAM-13-04. McCain Foods has filed one other water right change application with Adams County Conservancy Board, application no. ADAM-13-03. Both water right change applications were reviewed concurrently.

McCain Foods operates two wells under their two water rights (Certificates 4671-A and G3-00246C). Both wells are completed in the Wanapum Basalt aquifer. Currently water right 4671-A authorizes use of Well No. 2 and water right G3-00246C authorizes use of Well No. 2 and Well No. 1. Well No. 1 was authorized under G3-00246C by a Showing of Compliance filed with the Department of Ecology on July 14, 2003 (Appendix A).

McCain Foods has been faced with chronic regional groundwater declines, as well as local well pumping interference associated with the City of Othello (City) supply wells. McCain and the City have been coordinating pumping and service to the extent possible to minimize this interference. McCain experiences well pumping drawdown during the peak summer use period, requiring the facility to curtail water use from its wells and occasionally cease pumping to prevent pump cavitation. During these periods McCain Foods has relied on City water supply wells, in part or in whole, to delivery sufficient water to remain in production. This coordination was preferable to both parties rather than seeking resolution on priority of pumping associated with each party's water rights. The goal was to ensure adequate supply to McCain Foods, which is a significant economic contributor to the City of Othello.

McCain Foods initially attempted to address well production limitations by deepening and rehabilitating its wells and lowering the pumps, with short-term improvements in the reliability of supply. This would allow McCain to once again supply its facility with its own infrastructure. More recently, McCain Foods decided to coordinate with the City to formalize its long-standing practice of using the City's well field and conveyance infrastructure to provide water under McCain's water rights. McCain is also interested in drilling additional wells on its land, to ensure that a firm facility supply is available from a combination of McCain Foods and City of Othello wells.

Through the two subject water right change applications (ADAM-13-03 and ADAM-13-04) McCain proposes to:

- Add portions of the McCain Foods facility located in the NW1/4NW1/4 of Section 34, T. 16 N., R. 29 E.W.M. to the authorized pace of use not currently recognized under Certificates 4671-A and G3-00246C;
- Add seven existing City wells (City Well Nos. 2 through 8) to both water rights as additional points of withdrawal;
- Add two planned City wells to both water rights as additional points of withdrawal;
- Add McCain Foods Well No. 1 to Certificate 4761-A as an additional point of withdrawal (note, this item is not the subject of this Report of Examination); and
- Add up to two proposed McCain Foods wells as additional points of withdrawal to both water rights.

In summary, a well field comprised of nine City wells (seven existing and two proposed) and four McCain Foods wells (two existing and two proposed) would be authorized as points of withdrawal under McCain Foods' water rights through these changes. These changes would allow the City and McCain Foods to more effectively manage the groundwater resource in the area to minimize seasonal drawdown effects and maximize the reliability of the water supply.

Attributes of the water right as currently documented

Name on certificate, claim, permit: Chicago, Milwaukee, St. Paul & Pacific R.R. Co.

Water right document number: 4671-A

Priority date, first use: May 9, 1962

Water quantities: Qi: 700 gpm Qa: 445 acre ft./ year

Source: Well

Point of diversion/withdrawal:NW¼NW¼ of Section 34, T. 16 N., R. 29 E.W.M.

Purpose of use: Manufacturing and Domestic Supply

Period of use: Continuous

Place of use: The point of beginning is 30 feet south and 30 feet east of the northwest corner of Sec. 34, T. 16 N., R. 29 E.W.M, thence 90°00' east 670 feet, thence 90°00' south 668 feet, thence west 90°00' 670 feet, thence 90°00' north 668 feet to the point of beginning.

Tentative determination of the water right

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

History of water use

At the time the water rights were originally issued, McCain relied solely on its wells to supply water to its facility. Over time, in response to both regional groundwater declines and increasing summer interference amongst wells in the area around McCain Foods, McCain began to take action to augment its supply. These activities include improving its own wells (e.g. deepening wells, changing pumps) and obtaining its water from City wells instead.

Since McCain's own facilities varied from year-to-year in their reliability, to continually operate the McCain Foods facility, McCain Foods periodically purchased delivery of water to their facility from the City of Othello, which also obtains its supply from water supply wells from the same aquifer.

Summarized in Table 1 attached is water use from the McCain Foods facility for the period 1987 through 2010. McCain Foods' total water use has approached but not exceeded its aggregate water right authorization of 2,960 acre-feet per year, with the highest use occurring in 1994 at 2,934.9 acre-feet. As shown in Table 1, the quantity of water obtained from the City has varied and correlates to McCain Foods yield capacity constraints and operational issues associated with the two facility wells.

McCain Foods has gone through periods of reliable well supply. For example, following installation of a second on-site well in 2003, very little to no water was needed from City wells (e.g., 2004 through 2006). Conversely, there were years when more than half of McCain Food's water supply was provided by City wells (e.g., 1995 to 2001) because of constraints on McCain wells.

The City and McCain Foods water supply wells are located in relatively close proximity and share the same source of supply. McCain Foods relied on the City supply as a *de facto* alternative groundwater supply during periods when the facility supply was constrained. The water supplied from the City was McCain's water, as use at the facility essentially continued unabated. The only difference is which well supplied the water and who owned the well. *De facto* changes are common, as many water right holders proceed with infrastructure changes in advance of receiving final water right authority from the Department of Ecology. Under this *de facto* change, water pumped from City wells and used at McCain Foods since the mid-1980s should be debited against McCain Food's two water rights and not against the City's water portfolio. The intent of this change is to recognize this practice and improve the long-term reliability and coordinated management of groundwater supply for both the McCain and the City. Both the City and Ecology concur with that McCain's fact pattern is consistent with a *de facto* change. The City supports this interpretation, and supports the change applications filed by McCain Foods to add the City wells as additional points of withdrawal to McCain Foods' water rights, refer to an email from the Mayor of City of Othello attached as Appendix B. Ecology supports this interpretation, as evidenced by their letter dated July 11, 2013 and provided in Appendix C.

This determination that debit of water against McCain water rights from production by City wells is also consistent with sections of Ecology's Policy 1120 addressing *de facto* changes to water rights, has precedent in recent Ecology and Adjudication Court decisions, as discussed in the following paragraphs.

First, Ecology Policy 1120[1] states: "When evaluating unauthorized changes to water rights, the department generally considers beneficial use to be the measure of the right, even if some attributes of the right may not be consistent with the current authorization". This is consistent with McCain Food's situation. The beneficial use (water used at the facility) continued, even though water was supplied from City wells at varying amounts depending on how reliable McCain's wells were in a given year. Policy 1120 goes on to describe Ecology's opinion on types of *de facto* changes: "For example, an unauthorized change in point of diversion may be relatively easy to investigate, whereas an unauthorized change in purpose or place of use may be very difficult to investigate". McCain Foods' situation falls into this first category. The water right remained *appurtenant* to McCain's facility, it just was supplied from a different well.

Second, the Yakima Adjudication *Acquavella* case has approved transfers involving *de facto* changes, by putting greater emphasis on beneficial use than where the water was supplied from. For example, on October 10, 1994, a water right for the Naches-Cowiche Canal Company was confirmed through *Aquavella*. In the Naches-Cowiche Canal Company case, the Court, citing Alpowa Creek, 129 Wash. 9, 224 P. 29 (1924), attributed the water quantities utilized within the Naches-Cowiche Canal Company service area from d*efacto* sources (please refer to Appendix D attached). In this case, the Court recognized that over time, water that was traditionally served by the historic Naches-Cowiche Canal Company point of diversion began to be served by a City of Yakima diversion (see Page 6-7, 19, 39, Appendix D). The City of Yakima point of diversion was not claimed by Naches-Cowiche Canal Company on the original water right. However, the parcels served by both the original and *de facto* change in point of diversion did not change, nor did the beneficial use quantity. Only the point of supply changed. Although the City of Yakima held its own water rights (Appendix D, Page 35) from that same diversion, the *Acquavella* Court attributed the water used from the *de facto* point of diversion to the rights held by Naches-Cowiche Canal Company based on where the water was beneficially used. McCain's situation is analogous. The Court only confirmed a point of diversion for the historic point of diversion, because adjudication courts do not process changes (Appendix D, Page 41-42). Instead, the Court indicated that a change authorization was necessary to authorize the City of Yakima point of diversion, which is also the case here with the applications McCain filed. However, the Court did attribute the water use from the *de facto* source to Naches-Cowiche Canal Company's water rights. In other words, the answer to a *de facto* change in point of diversion is to file and obtain a change authorization, not a finding of relinquishment if beneficial use has continued.

Another case where the *Acquavella* Court had to determine extent and validity in the face of a *de facto* change occurred in the Lavinal Corporation (Lavinal) case. On October 8, 2002, Lavinal filed a Court Claim for a surface water right from Swauk

[1] See http://www.ecy.wa.gov/programs/wr/rules/images/pdf/pol1120.pdf, Page 5.

Creek for the purpose of mining. The original Lavinal claim was based on water use as described in water right Claim No. 136707 that asserted a right to divert water from Williams Creek. Water was diverted from Williams Creek until 1976 when the diversion structure collapsed and water was then diverted from Swauk Creek. Ecology recommended that a water right not be confirmed based on a lack of evidence of beneficial use from the Swauk Creek prior to 1976 and that the use from Swauk Creek was unauthorized. The Court concluded that the Williams Creek right did not relinquish when an unauthorized change in point of diversion was utilized (Appendix E attached). Key excerpts from this case include:

- "That brings the Court to the legal issue of whether or not the Williams Creek right for the Lavinal property has relinquished in light of the nonuse of that source and point of diversion since at least 1976." (Page 7, Appendix E).
- "Lavinal counters, stating the right has been exercised continuously during the 25-year period, albeit from another source/point of diversion and this continued use of water prevents the right from relinquishing." (Page 7, Appendix E).
- "The Court finds RCW 90.14.160 to be concerned with the beneficial use of water and not the point of diversion or source." (Page 8, Appendix E).
- "An interpretation of the statutes leads to the conclusion such enforcement is the way and the means to curtail unauthorized uses and changes of water—not a relinquishment proceeding pursuant to RCW 90.14." (Page 9, Appendix E).

In other words, the Court in Lavinal concluded that Ecology could take enforcement action (e.g., penalties, fines) against those that made *de facto* changes, but could not make relinquishment findings if beneficial use continued. In this case, McCain seeks to correct its *de facto* change and has Ecology's written support (see Ecology letter, Appendix C).

In another example, on August 27, 2012, Ecology approved a similar *de facto* change for Pioneer Water Users Association (Pioneer), CS4-022119CL (CHEL-12-03), a decision first approved by the Chelan County Water Conservancy Board on July 12, 2012. Part of the purpose of this change decision was to bring into compliance several *de facto* changes of points of diversion. Through this approved water right change, Pioneer was able to address historic changes in source. Shareholders, formerly served by Pioneer, had begun receiving water from a Regional Water System (the City of Wenatchee, East Wenatchee Water District and the Chelan County PUD). The beneficial use did not change, merely the source providing the water. As in McCain Food's case, the supply came from nearby City-owned wells. Because the beneficial use to the appurtenant properties was constant, Ecology agreed that the water served by this Regional Water System was attributable to Pioneer's water rights, and these *de facto* changes were recognized and authorized by Ecology in the August 27, 2012 water right change (see Appendix F attached).

Finally, before filing these applications with the Adams County Water Conservancy Board, McCain attended a pre-application conference with Ecology to discuss the approach for an extent and validity determination of its rights. Based on this meeting, McCain's *de facto* change is further supported by Ecology in a letter dated July 11, 2013, see attached Appendix C. In this letter Ecology recognizes water pumped from City wells since the early 1990s to the McCain facility being debited against McCain's two groundwater rights (4761-A and G3-00246C) rather than the City's water right portfolio.

The subject certificate authorizes both irrigation and manufacturing use without apportioning quantities amongst them. This issue was addressed by the PCHB in the Cornelius case. "Where a water right includes multiple purposes of use, without apportioning the authorized quantity between/among the different purposes, Ecology at times has concluded that the entire right may properly be characterized as being for any of the listed purposes." (Cornelius et al v. Ecology and WSU[2], PCHB 06-099, Order on Summary Judgment, Page 15). Currently, McCain diverts water for manufacturing use at its Othello facility. Subsequently, the water from potato washing and processing is transported by pipe to the east for irrigation within Sections 28, 32, and 33, of T. 16 N., R. 29 E.W.M.

The subject water right authorizes 2,500 gpm. Review of well production data from McCain indicates that Well No. 1 had a capacity of 1,900 gpm when it first came on line in 2003. The capacity of Well No. 1 began decreasing starting around 2005 in response to declining regional groundwater levels and local, seasonal well pumping interference associated with the City supply wells. Since 2008 the peak capacity of Well No. 1 has been about 1,500 gpm. The older Well No. 2 had a capacity of about 700 gpm in 2004. Withdrawal rates from Well No. 2 have varied since 2004, ranging from about 550 gpm in 2005 to 750 gpm in 2008. Based on pumping rates since 2008, the maximum achievable combined withdrawal from Well No. 1 and Well No. 2 is about 2,250 gpm, less than the authorized 2,500 gpm. McCain has made numerous efforts to increase the production capacity of its wells, including performing well rehabilitation and lowering the pumps, with short-term success. Despite these efforts, regional declines in groundwater elevation have reduced the capacity of McCain's wells to below the authorized instantaneous quantity, necessitating the additional points of withdrawal requested under this change application to fully exercise McCain's water rights.

Previous changes

There have been no previous changes to this water right.

SEPA

The board has reviewed the proposed project in its entirety. This transfer is not exempt from the provisions of the State Environmental Policy Act. The provisions of the Act were satisfied by the issuance of a Determination of Non-Significance by the City of Othello on August 13, 2013. The Board adopts the City of Othello Determination, see attached Appendix G. A comment letter was received by the City of Othello from Department of Ecology dated August 26, 2013. Ecology's letter states concerns for potential wetlands within the vicinity of the project location.

[2] See http://www.eho.wa.gov/searchdocuments/2006%20archive/pchb%2006-099%20summary%20judgment.pdf.

The proposed project includes the drilling of McCain Foods proposed well Nos. 3 and 4 (see Figure 1 attached). A review of imagery shows these proposed wells to be drilled are not included within a wetland. Roads that will be used to mobilize drilling equipment will not disturb any wetlands (see Supplemental DNS in Appendix G).

The information or conclusions in this section were authored and/or developed by Doug Hahn and Jeremy Hopkins with McCain Foods, USA and Breean Zimmerman, Joe Morrice, Dan Haller, and Tim Flynn with Aspect Consulting and Chris Lyle, Rudy Plager, Reid Phillips, Damon Roth with the Adams County Conservancy Board.

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

Public notice of the application was given in the Ritzville Journal and the Othello Outlook on July 18, 2013, and July 25, 2013. Protest period ended on August 30, 2013.

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

The information or conclusions in this section were authored and/or developed by Doug Hahn and Jeremy Hopkins with McCain Foods, USA and Breean Zimmerman, Joe Morrice, Dan Haller, and Tim Flynn with Aspect Consulting and Chris Lyle, Rudy Plager, Reid Phillips, Damon Roth with the Adams County Conservancy Board.

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

The following information was obtained from a site inspection conducted by Chris Lyle (Adams County Conservancy Board), Jeremy Hopkins (McCain Foods), and Breean Zimmerman (Aspect Consulting) on March 15, 2013; technical reports; research of department records; and conversations with the applicant and/or other interested parties.

Proposed project plans and specifications

Under the proposed change, McCain Foods would add nine City wells (seven existing and two proposed) and two new proposed McCain Foods wells to the two McCain foods wells currently authorized under G3-00246C (see Figure 1 for existing and proposed well locations). The authorized place of use would also be expanded to include the entire McCain Foods processing facility. Well nos. 3 and 4 would be completed in either the Wanapum Basalt or the Grande Ronde Basalt. McCain Foods would construct a pipeline to convey water from proposed McCain Well Nos. 3 and 4 to the facility. The City would build conveyance from proposed City Well Nos. 9 and 10 to tie-in to the City distribution system. The purpose of these changes is to provide additional flexibility to the City and McCain Foods in managing groundwater withdrawals from the Wanapum Basalt, with the intent of minimizing well interference between the City's and McCain Foods' wells. This will improve reliability of the water supply and provide the necessary certainty that facility interruptions would not occur.

Other water rights appurtenant to the property (if applicable)

McCain owns two water rights that supply water to the McCain Foods facility. They are water right no. G3-00246C, the subject of this report, and water right no. 4671-A. These water rights collectively authorize 2,500 gpm and 2,960 acre-feet per year. Water Right No. 4671-A is described below:

Water Right No. G3-00246C:

Priority date, first use: April 23, 1970

Water quantities: Qi: 2500 gpm Qa: 2960 acre ft./ year

Source: Wells (two)

Point of diversion/withdrawal: Two wells located within NW¼NW¼ of Section 34, T. 16 N., R. 29 E.W.M.

Purpose of use: Irrigation of 740 acres and manufacturing

Period of use: Continuous

Place of use: W½E½, Sec. 28; AND S½, Sec. 32 including Farm Unit 6, Irrigation Block 49, Columbia Basin Project; AND SENE, Sec. 32 and ALL of Sec. 33 including Farm Units 3, 4, and 5, of said Block 49 which lies westerly of the Chicago, Milwaukee, St. Paul and Pacific Railroad; EXCEPT those portions lying northwesterly of the following described straight line: Beginning at the NE¼ corner of the NW¼NW¼ said Sec. 33; thence in a southwesterly direction to a point midway of the south line of the SE¼SE¼ of Sec. 32; AND the north 425.17 feet of the NE¼NE¼ of Sec. 33 which lies east of the aforesaid railroad, EXCEPT the east 67 feet thereof; AND the north 1010 feet of the west 660 feet of Farm Unit 89, Irrigation Block 45 of the said Columbia Basin Project. ALL of the above properties are within T. 16 N., R. 29 E.W.M.

Provisions: 1800 gpm is primary and 700 gpm non-additive to the 4671-A.

McCain's facility also falls within the service area of the City of Othello which owns eight water rights (Water Right Nos. 182-D, 183-D, 3390-A, 5338-A, G3-20368P, G3-25032P, G3-25033P, G3-25933P) authorizing withdrawal of 9,550 gpm, 7,100 acre-feet per year from seven exiting and two planned wells for municipal supply. Under the proposed change the

City's wells will be available as points of withdrawal for McCain's water rights. Under an agreement to be developed between the City and McCain, the two parties will coordinate the metering of all wells approved under the proposed change to allow tracking and reporting to Ecology the annual quantities exercised under each McCain and City water right.

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.

Water use, subject of this transfer, was authorized under G3-00246C having a priority date of May 9, 1970, and has been used to the extent available since that time. The approval of this water right transfer would provide stability and assurance of supply to the McCain Foods facility, and therefore, is not detrimental to the public interest. Providing reliable water supply for food processing is in the public interest. No party has raised any claims of detriment to the public interest.

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 information described in the history of water use section of this report and Table 1 – Water Use, water pumped for beneficial use at the McCain facility from either McCain Well Nos. 1 and 2 or from the City wells through de facto change for the most recent five years of continuous use (2008 – 2012) has not exceeded an amount of 2265.2 acre-feet per year. This is less than the authorized combined quantity of 2,960 acre-feet. The applicant did not assert that a relinquishment exception under RCW 90.14.140 was applicable.

McCain's wells were originally capable of producing in excess of the authorized instantaneous withdrawal of 2,500 gpm. However, despite numerous efforts by McCain to maintain and improve yields, achievable well production has declined to about 2,250 gpm in response to declining regional groundwater elevations. One purpose of the proposed change is to add additional points of withdrawal that will allow McCain to again fully exercise the instantaneous quantity under its water rights. Given the initial capacity of McCain's wells and their diligence in maintaining well capacity the Board finds the authorized Qi of 2,500 gpm to be valid.

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

A hydrogeology memorandum was prepared by Aspect Consulting, see attached Appendix G. This memorandum describes hydrogeologic conditions near Othello, evaluates the sources of groundwater tapped by the authorized and proposed points of withdrawal, and assesses the potential for the proposed changes to impair other water rights or permit-exempt wells. Pertinent conclusions from the hydrogeologic evaluation include:

- The currently authorized points of withdrawal (Well No. 1 and Well No. 2) tap the same body of public groundwater as the requested additional points of withdrawal. The existing McCain Foods wells are completed in the Wanapum Basalt aquifer. The proposed McCain Foods Well Nos. 3 and 4 will be drilled in either the Wanapum Basalt aquifer or Grande Ronde Basalt aquifer, and all City wells proposed as additional points of withdrawal are or will be completed in the Wanapum Basalt and/or Grande Ronde Basalt aquifer. Ecology considers the Wanapum and Grande Ronde aquifers in the vicinity of the City of Othello to be the same body of public groundwater for water right permitting purposes (see letter from Ecology in Appendix C).

- The proposed changes are unlikely to impair other water rights. Review of Ecology water rights and well log files indicates that no wells tap the same body of groundwater (i.e., Wanapum Basalt or Grande Ronde Basalt) within two miles of proposed McCain Foods Well Nos. 3 and 4. McCain's intent by drilling these wells in the County on McCain-owned land is to move some of its source of supply further away from the City's wells, which should help historic well interference. Six wells identified as likely completed in the Wanapum Basalt are located near existing City Well Nos. 2, 4, 5, and 6, which were constructed between 1940 and 1968. Through a *de facto* change the City of Othello wells have been supplying McCain Foods with water during the summer months for more than 25 years without impairment to surrounding wells and water users. Furthermore, no additional water will be withdrawn from the Wanapum and Grande Ronde aquifer than what has already been authorized.

The information or conclusions in this section were authored and/or developed by Doug Hahn and Jeremy Hopkins with McCain Foods, USA and Breean Zimmerman, Joe Morrice, Dan Haller, and Tim Flynn with Aspect Consulting and Chris Lyle, Rudy Plager, Reid Phillips, Damon Roth with the Adams County Conservancy Board.

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

Tentative determination (validity and extent of the right)

The Board's tentative determination, based on the investigation provided in this report, is that 2500 gpm up to 2,265.2 acre feet per year for the purpose of continuous manufacturing and irrigation is available for both water rights combined. For the subject water right, the Board's tentative determination is 700 gpm and 445 acre-feet.

Relinquishment or abandonment concerns

The Board finds that no applicable relinquishment exceptions under RCW 90.14.140 exist, and that the difference in annual quantity for both water rights between the historic authorization of 2,960 acre-feet and the Board's tentative determination of 2,265.2 acre-feet is relinquished. No portion of the subject water right of 445 acre-feet is relinquished as it is the senior water right.

Hydraulic analysis

Joe Morrice, LHG, of Aspect Consulting has performed an analysis of this transfer application and has determined the proposed points of withdrawal are in the same body of groundwater as the authorized points of withdrawal and the proposed changes are unlikely to result in impairment to other rights. (see attached Hydrogeologic Memorandum, Appendix H).

Consideration of comments and protests

No comments or protests were received.

Impairment

Ecology's well log and water rights databases were queried to identify water supply wells, groundwater claims, and groundwater rights located within an approximately 2-mile radius of the four McCain wells (two existing and two proposed locations) and the nine City of Othello wells (seven existing and two proposed locations). As an initial screening, logs of wells shallower than 200 feet were excluded from the search, as these wells likely tap a different body of groundwater (i.e., Saddle Mountain Basalt or unconsolidated deposits) than the McCain and City wells, and therefore have limited hydraulic continuity with the deeper basalts of the Grande Ronde and Wanapum Formations and are unlikely to be impacted by exercising McCain's water rights at the additional points of withdrawal.

The wells identified as likely completed in the Wanapum Basalt are located near existing City Well Nos. 2, 4, 5, and 6, which were installed between 1940 and 1968. The City's wells have been supplying McCain Foods with water during the summer months through *de facto* change of McCain's water rights for more than 25 years without any reported impairment to surrounding wells and water users. Formal recognition of this *de facto* change is not expected to alter the City's operation of its well field relative to historical or current operations and would not increase total annual withdrawals from the Wanapum Basalt aquifer. Based on these considerations, adding the proposed additional points of withdrawal to McCain's water rights is not expected to result in impairment of other water users.

Public Interest

The proposed transfer will not be detrimental to the public interest.

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

The proposed appropriation is a beneficial use of water, the 700 gpm and 445 acre-feet (2500 gpm, 2265.2 acre-ft/year combined for both water rights) from four McCain wells (two existing and two proposed) and nine city wells will not impair existing water rights, and will not be detrimental to the public interest.

Based on the information presented above, the author recommends that the request be approved as described, limited, and provisioned on page 1 through 3 of this report.

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

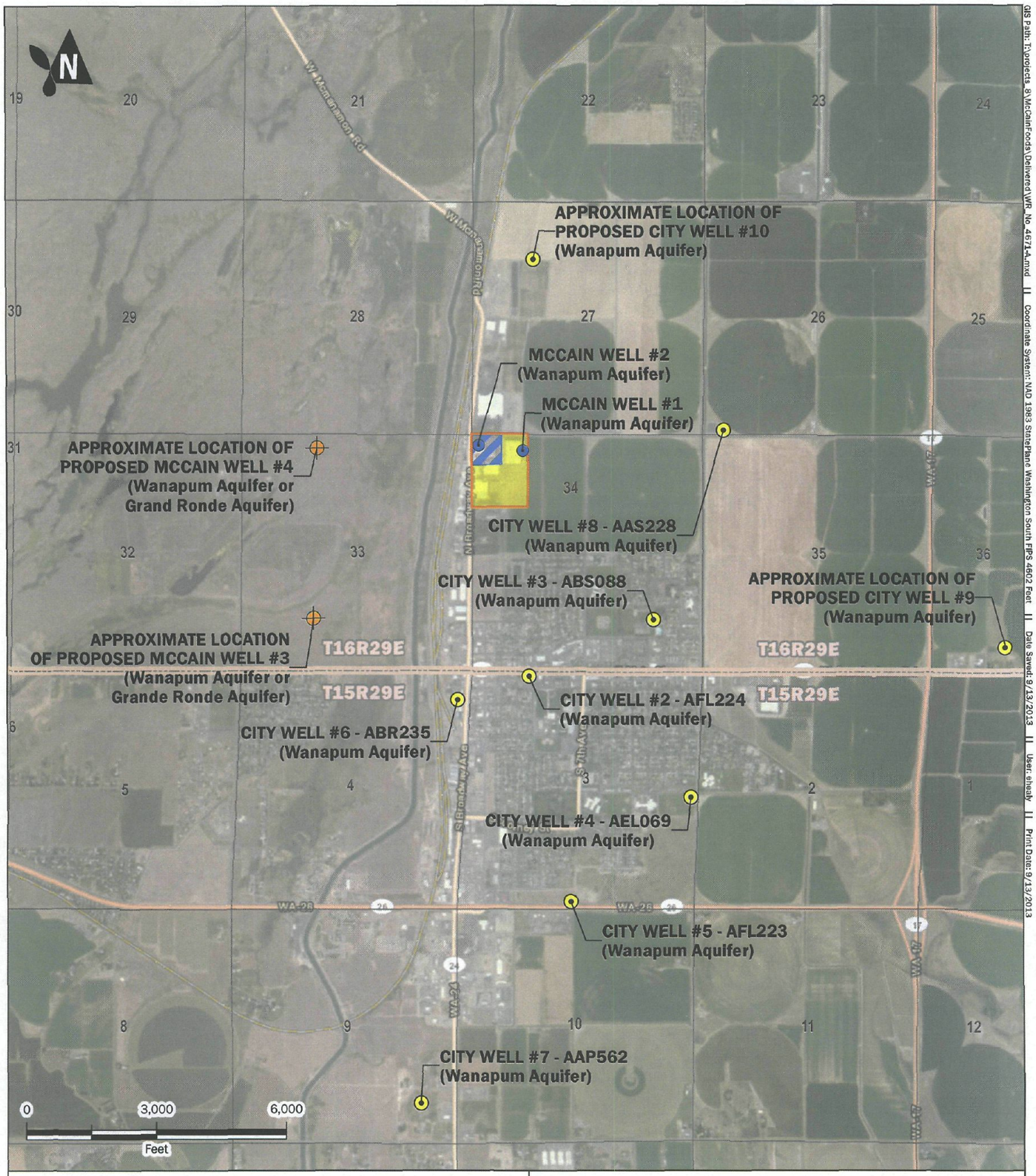
Conditions and limitations

All wells constructed shall be completed in the Wanapum or Grande Ronde aquifer.

Wells, Well Logs and Well Construction Standards

All wells constructed in the state shall meet the construction requirements of WAC 173-160 titled "Minimum Standards for the Construction and Maintenance of Wells" and RCW 18.104 titled "Water Well Construction". Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard shall be decommissioned.

All wells shall be tagged with a Department of Ecology unique well identification number. If you have an existing well and it does not have a tag, please contact the well-drilling coordinator at the regional Department of Ecology office issuing this



City of Othello Wells

McCain Foods Proposed Wells

Existing Point of Withdrawal (GPS)

Additional Proposed Place of Use

McCain Facility

Existing Place of Use

Township and Range

Section

Water Right No. 4671-A

McCain Foods Othello Facility Water Supply
Othello, Washington

Aspect CONSULTING	SEP-2013	BY: BZ / EAH	FIGURE NO.
	PROJECT NO. 100160	REV BY: ---	1

GIS Path: T:\projects_8\McCainFoods\Delivered\WR_No_4671A.mxd || Coordinate System: NAD 1983 StatePlane Washington South FIPS 4602 Feet || Date Saved: 9/13/2013 || User: ehealy || Print Date: 9/13/2013

decision. This tag shall remain attached to the well. If you are required to submit water measuring reports, reference this tag number.

Required installation and maintenance of an access port as described in WAC 173-160- 291(3).

Measurements, Monitoring, Metering and Reporting

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

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

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. Reported water use data shall be submitted via the Internet or by using forms available at the Eastern Regional Office of the Department of Ecology in Yakima. To set up an Internet reporting account, access https://fortress.wa.gov/ecy/wrx/wrx/Meteringx/. If you have questions or need forms, contact the Central Regional office.

Construction Schedule

The water right holder shall file the notice of Proof of Appropriation of water (under which the 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. The Certificate will reflect the extent of the project perfected within the limitations of the water right. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

Other

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

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477 Internet: http://dor.wa.gov/ E-mail: REETSP@DOR.WA.GOV.

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.

Construction Schedule

As provided on page 3 of this report.

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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 Ritzville, Washington
This 23rd day of September, 2013

Chris Lyle

Chris Lyle, Board Representative
Adams County Water Conservancy Board