

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
 Application for Change
REPORT OF EXAMINATION

*Application has been made to change a portion of the place of use locations under
 Ground Water Permit G3-29405P.*

PRIORITY DATE February 25, 1993	APPLICATION NUMBER G3-29405	PERMIT NUMBER G3-29405	CERTIFICATE NUMBER
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NAME Lawrence Orchards, LLC			
ADDRESS (STREET) 13000 Road D SW	(CITY) Royal City	(STATE) WA	(ZIP CODE) 99357

PUBLIC WATERS TO BE APPROPRIATED

SOURCE Two Wells		
TRIBUTARY OF (IF SURFACE WATERS)		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE 2500	MAXIMUM ACRE FEET PER YEAR 840
QUANTITY, TYPE OF USE, PERIOD OF USE 2500 gallons per minute, 840 acre feet per year, each year, for seasonal irrigation of 240 acres and frost protection		

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION—WITHDRAWAL					
<ul style="list-style-type: none"> • Original well: 1850 feet east and 2550 feet north of the SW corner of Section 21, NE¼SW¼ • Second well: Location to be defined within the N¼SW¼ of Section 21, T. 17 N., R. 27 E.W.M. 					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) N¼SW¼	SECTION 21	TOWNSHIP 17 N.	RANGE (E. OR W.) .M. 27 E.	W.R.I.A. 41	COUNTY Grant
PARCEL NUMBER	LATITUDE		LONGITUDE	DATUM	

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
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LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

[Attachment 1 shows location of the authorized place of use and point(s) of diversion or withdrawal.]

205 acres within the SW¼ and the S½SE¼ of Section 21, and 35 acres within the N¼NE¼ and N½S½NE¼ of Section 28, T. 17 N., R. 27 E.W.M.

DESCRIPTION OF PROPOSED WORKS

Two wells, pumps, and distribution lines

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: Complete	COMPLETE PROJECT BY THIS DATE: December 2011	WATER PUT TO FULL USE BY THIS DATE: December 2012
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Wells, Well logs and Well Construction Standards

1. All wells constructed in the State shall meet the construction requirements of chapter 173-160 WAC entitled "Minimum Standards for the Construction and Maintenance of Wells" and chapter 18.104 RCW titled "Water Well Construction".
2. Installation and maintenance of access ports as described in chapter 173-160 WAC is required. Air lines and gauges may be installed in addition to the access ports.

Measurements, Monitoring, Metering and Reporting

3. 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 and maintained by the property owner for a minimum of five years, and shall be promptly submitted to Ecology annually during the development of this permit. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to Ecology.

The rule above describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements".

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.

Schedule and Inspections

4. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above provisions, and to inspect at reasonable times any measuring device used to meet the above provisions.
5. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times wells or diversions and associated distribution systems for compliance with water law.

General Conditions

6. Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.
7. 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.
8. The amount of water recommended is a maximum limit that shall not be exceeded, and the water user may only use that amount of water within the specified limit that is reasonable and beneficial. This authorization does not increase in any way the original amounts authorized by this permit.
9. That portion of this authorization relating to irrigation is classified as a Family Farm Permit in accordance, with Chapter 90.66 RCW (Initiative Measure No. 59). This 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 no more than 6,000 acres of irrigated agricultural lands in the State of Washington which are 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.

FINDINGS OF FACT AND DECISION

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated.

Therefore, I ORDER that the requested change, changing the place of use is approved, subject to the following:

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

- File your appeal with the Pollution Control Hearings Board within 30 days of the “date of receipt” of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

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

OR

Deliver your appeal in person to:

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

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals & Application for Relief
Coordinator
PO Box 47608
Olympia, WA 98504-7608

OR

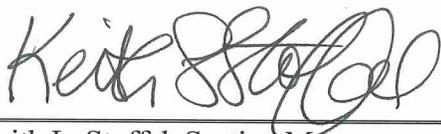
Deliver your appeal in person to:

The Department of Ecology
Appeals & Application for Relief
Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

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

Signed at Spokane, Washington, this 28th day of April, 2010.



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

Legal Requirements for Proposed Change

- RCW 90.03.380(1) states that a water right that 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.
- When processing an application for change to a water right, the Washington Supreme Court has held that Ecology is required to make a tentative determination of extent and validity of the claim or right. 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*.
- Environmental review under SEPA is required for many projects; however, some minor projects are categorically exempt from SEPA. Appropriations of one cfs or less of surface water, or of 2,250 gpm or less of ground water, for any purpose, and appropriations of 50 cfs or less for surface water used for irrigation are categorically exempt from SEPA. See WAC 197-11-305.
- Applications for change of water right permits and certificates are governed by RCW 90.44.100, which states in part: 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 by the Department only on the conditions that: (1) the additional or substitute well or wells shall tap the same body of public ground water as the original well or wells, (2) use of the original well or wells shall be discontinued upon construction of the substitute well or wells, (3) the construction of an additional well or wells shall not enlarge the right conveyed by the original permit or certificate, and (4) other existing rights shall not be impaired. The Department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment.

BACKGROUND

An application for change/transfer was submitted by Lawrence Orchards, LLC on March 3, 2008. The application requests to change a portion of the place of use under Ground Water Permit G3-29405P.

A notice of application was duly published in accordance with RCW 90.03.280 in The South County Sun on August 27 and September 3, 2008, and no protests were received.

This application is not categorically exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21C RCW. A DNS issued on March 23, 2010.

INVESTIGATION

In considering the proposed changes, this investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Ground Water Permit G3-29405P, and other water rights/claims/permits in the vicinity; (3) the well and water system; (4) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide (WA210-VI-WAIG, October 1985) and; (5) discussions with Department of Ecology regional program staff.

This permit authorizes the development of 240 acres of agricultural irrigation and frost protection. In review of the aerial photos, approximately 205 acres have been developed within the authorized place of use. The remaining property is in roads and non-irrigated areas. The applicant requests to transfer the remaining 35 acres to adjacent land to the east. This acreage will be added to 15 acres authorized by Permit G3-29590 to irrigate a small 50 acre pivot. No other changes are requested.

There are meter records to establish beneficial use for the developed lands.

Ground Water Permit G3-29590 authorizes 1500 gallons per minute, 483 acre-feet per year for irrigation of 138 acres within the NW¼ of Section 28, T. 17 N., R. 27 E.W.M. lying north of the canal. These permitted quantities are additive to Permit No. G3-29405. The total under both rights shall not exceed 4000 gallons per minute, 1323 acre-feet per year. A final proof examination should consider the total quantities pumped from the well(s) for these rights should additional well(s) be constructed.

Evaluation of the Permit and Beneficial Use Analysis:

The Washington State Supreme Court, in Okanogan Wilderness v. 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.

Ground Water Permit G3-29405 authorizes 240 acres of irrigation and up to 3.5 acre-feet per acre. 205 acres have historically been irrigated. The remaining portion of the permit is inchoate.

As this permit is still in the development stage and in good standing, the full quantities of the permit are recognized for development.

Hydrologic/Hydrogeologic Evaluation

The applicant has not proposed a change in well locations.

Existing well

The well log indicates the original well was 20" in diameter and 1530 feet deep, constructed by LK Drilling in 1996. The well was deepened to a depth of 2505 feet in 2008. The static water level was listed at 456 feet. A pump test at the time of well construction identified a yield of 2500 gallons per minute.

The second authorized well has yet to be constructed.

Impairment Considerations

"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.

Existing Rights

No impairment issues arise because this well has been operating at this location, with no known adverse impacts, and no changes are being made to well location.

FINDINGS

There is a water right permit available for change/transfer under Ground Water Permit No. G3-29405P. Ground water is authorized to be used under this permit, for the seasonal irrigation of 240 acres at up to 2500 gallons per minute, 840 acre-feet per year.

When considering an application for change to a water right, Ecology must determine that the proposed change can be made without detriment or injury to existing water rights. Factors considered when determining potential impact include the following:

Impairment to Existing Rights:

No impairment issues arise since a well has been pumped at this location, with no known adverse impacts.

Detriment to the Public Welfare:

There has been no public expression of protest or concern regarding the subject proposal, and no detrimental impacts have been found that would result from the approval of this change.

Enhancement of the Original Right:

The approval of this change would not enhance this water permit.

Source of Water:

The original well is not being changed. A second well will be constructed.

CONCLUSIONS

In accordance with Chapters 90.03 and 90.44, approval of this application to change the place of use will not enlarge the quantity of water historically authorized, nor will it impair existing rights or be detrimental to the public welfare provided the terms and conditions above are followed.

The amount of water recommended is a maximum limit that shall not be exceeded, and the water user may only use that amount of water within the specified limit that is reasonable and beneficial. This authorization does not increase in any way the original amounts authorized by this permit.

RECOMMENDATIONS

The applicant's request to change/transfer the place of use under Ground Water Permit No. G3-29450 is **approved**, subject to the following:

Purpose of Use and Authorized Quantities

2500 gallons per minute, 840 acre feet per year, each year, for seasonal irrigation of 240 acres

Point of Withdrawal

Original well: 1850 feet east and 2550 feet north of the SW corner of Section 21, NE $\frac{1}{4}$ SW $\frac{1}{4}$
Second well: Location to be defined within the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 21, T. 17 N., R. 27 E.W.M.

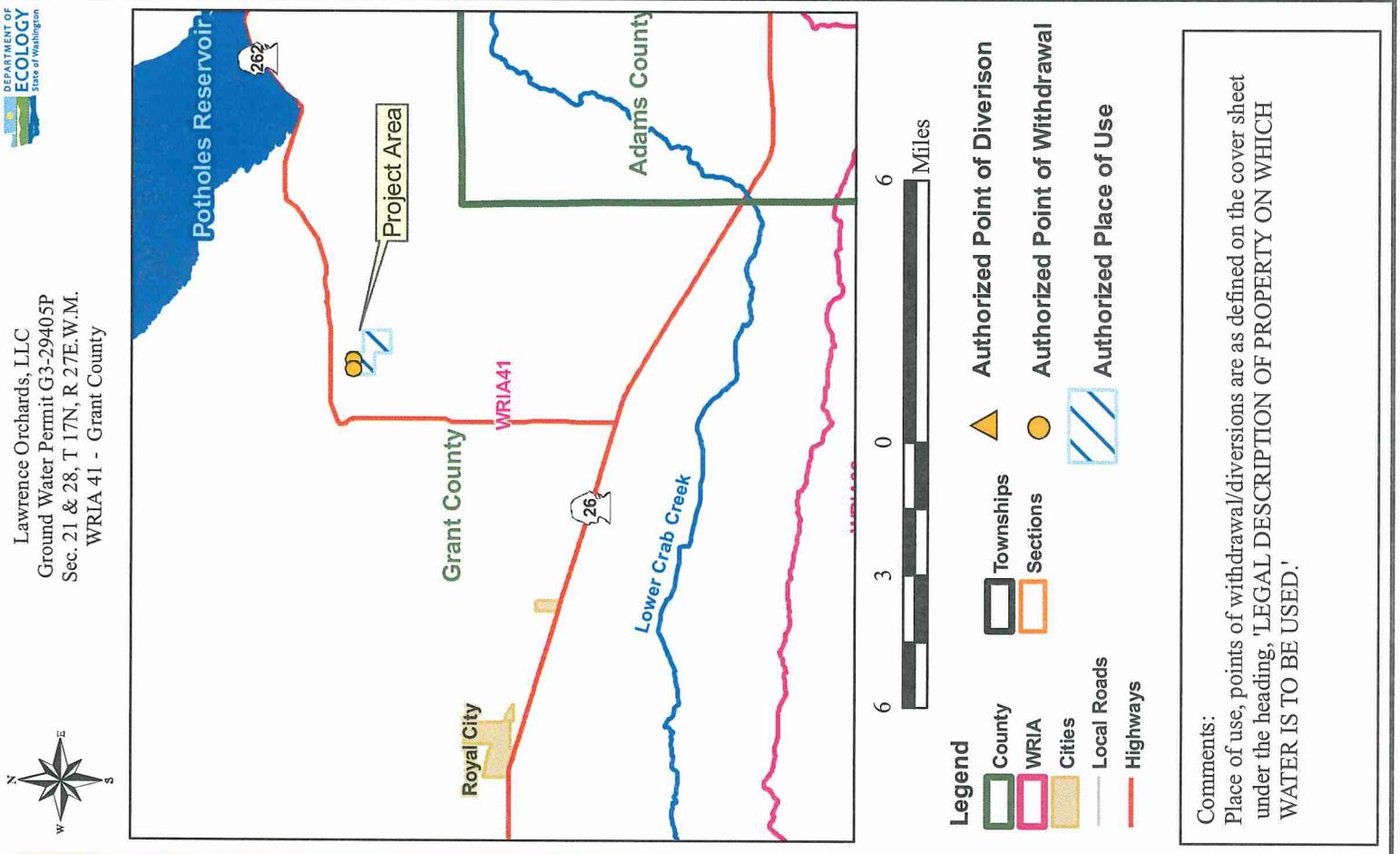
Place of Use

205 acres within the SW $\frac{1}{4}$ and the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 21, and 35 acres within the N $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28, T. 17 N., R. 27 E.W.M.

Report by: Kevin Brown *Kevin Brown* 4/27/2010
Water Resources Program Date

Y/Final docs/ROEs/Brown/2010/G3-29405 Lawrence

Attachment 1



Comments:
Place of use, points of withdrawal/diversions are as defined on the cover sheet under the heading, 'LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'

