



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

September 9, 2010

AgReserves Inc dba AgriNorthwest
Farmland Reserve Inc dba K2H Farms
ATTN: R Thomas MacKay
7404 West Hood Place
Kennewick WA 99336-6718

RE: Seasonal Change Authorization No. CS4-13134(B)P@1 – Change Point of Diversion and Place of Use

On December 16, 2009, AgReserves, Inc., dba AgriNorthwest, subsidiary of Farmland Reserve, Inc., dba K2H Farms (K2H Farms) submitted an application seeking a Seasonal Change Authorization to change the point of diversion and a portion of the place of use for Surface Water Permit No. S4-13134(B)P. This water right, having a priority date of August 14, 1962, authorizes the right to divert 16.65 cubic feet per second (cfs) and 2800 acre-feet per year (ac-ft/yr) for the purpose of irrigation of 700 acres.

There are six points of diversion authorized from the Columbia River under this Permit including a point of diversion located 500 feet south and 100 feet east of the northwest corner of Section 15, T. 5 N., R. 27 E.W.M., being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15. The applicant has requested a seasonal change of point of diversion to the Snake River to a place located in SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 10 N., R. 32 E.W.M.

In addition to this Permit, K2H Farms has applied for four other Seasonal Change Permits for 2010 with the Washington Department of Ecology, Water Resources Program, Central Region Office (CRO). The change applications filed with the CRO for the applicant's 2010 irrigation plan are:

- CS4-01337(B)C@2 (309 acres)
- CS4-01351(L)C (63 acres)
- CS4-16571(E)P (969 acres)
- CS4-13134(B)P@1 (435 acres)
- CS4-CV1-4P246@2 (51 acres)

Approximately 1,827 acres irrigated within the place of use authorized in the above five water rights will not be watered during the 2010 irrigation season. A complete description of lands not irrigated during the 2010 irrigation season is described in a letter from AgriNorthwest to Department of Ecology (Ecology) dated December 14, 2009. This letter can be found in the application file for this seasonal change.

The applicant has also applied with Ecology's Water Resources Program in the Eastern Region Office (ERO) to seasonally transfer 995 acres. There will be a total of 2,837 acres left fallow in the authorized locations by the applicant. The combined land to be irrigated in the new locations totals 2,791 acres. By doing this, there will be a total of 46 extra acres left fallow.



Approximately 435 acres of the existing place of use for Water Right No. S4-13134(B)P is proposed for transfer. Water will come from approximately 435 acres within the following described locations;

- Sections 1 and 12, T. 5 N., R. 27 E.W.M., Parcel No. 136670000000000 within Benton County, Washington
- Section 5, T. 5 N., R. 28 E.W.M., Parcel No. 131680000000000 within Benton County, Washington
- Section 31, T. 6 N., R. 28 E.W.M., Parcel No. 131680000000000 within Benton County, Washington

Lands that will not be irrigated within these sections during the 2010 irrigation season are the same as transferred in 2009 by CS4-13134(B)P. Per phone conversation on April 7, 2010 with Tom Mackay (contact for the applicant), the fields are identified as Field Nos. 624, 628, 629, 630, and 632. The applicant does have the ability to apply water to some of these fields with their industrial discharge water. Therefore, these fields may appear on aerial photos as being irrigated.

In the same phone conversation, Mr. Mackay mentioned that the water to be transferred for this application is the same as the authorized quantities in 2009 for CS4-13134(B)P. The 2009 authorization authorized the applicant to transfer 10.3 cubic feet per second (cfs) to the Snake River.

The proposed places of use of all combined seasonal changes applied for at Central Region Office total approximately 1,870 acres, and are in the following locations in Water Resource Inventory Area (WRIA) 33, Walla Walla County, Washington:

- 338.3 acres in Section 17, T. 9 N., R. 33 E.W.M.
- 242.2 acres in Section 20, T. 9 N., R. 33 E.W.M.
- 493.0 acres in Section 28, T. 9 N., R. 33 E.W.M.
- 445.7 acres in Section 30, T. 9 N., R. 33 E.W.M.
- 350.4 acres in Section 32, T. 9 N., R. 33 E.W.M.

The existing point of diversion and place of use are located within WRIA 31, in Benton County, Washington. The proposed point of diversion and place of use are located within SW¹/₄ of Section 36, T. 10 N., R. 32 E.W.M., being within WRIA 33, in Walla Walla County, Washington.

This SEASONAL CHANGE AUTHORIZATION is subject to the following conditions:

- 1) Violation of any of the terms and/or conditions of this Seasonal Authorization will result in immediate termination, issuance of an Administrative Order to Cease and Desist, and may also subject the violator to civil penalties.
- 2) The applicant will divert up to 10.35 cfs thru October 31, 2010. This Seasonal Authorization will expire on October 31, 2010.

- 3) The point of diversion will be located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 10 N., R. 32 E.W.M.
- 4) The seasonal place of use under this Seasonal Authorization will be used to irrigate 435 acres; located within Sections 17, 20, 28, 30, 32 all within T. 9 N., R. 33 E.W.M.
- 5) The maximum annual volume of water allowed for seasonal change is 1,740 ac-ft/yr.
- 6) Irrigation of any lands in excess of 435 acres under this Seasonal Authorization for the 2010 irrigation season will constitute an enlargement of the right and this authorization shall be immediately terminated.
- 7) The Department of Ecology assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this Seasonal Authorization. Applicants for seasonal change should not construe that this change will result in the granting of a permanent change of water right.
- 8) The issuance of this Seasonal Authorization does not convey a right of access to, or other right to use land, which you do not legally possess. Obtainment of such a right is a private matter between the applicant and owner of that land.
- 9) The applicant and operator of the system under this Seasonal Authorization shall:
 - Have a copy of this Seasonal Authorization available on-site.
 - Be aware of the parameters and provisions and operate accordingly.
 - Provide said copy as evidence of this authorization upon request by Department of Ecology staff.
- 10) An approved measuring device shall be installed and maintained for the source(s) identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. Water use data for each Court Claim on the place of use shall be recorded weekly and shall be submitted to Ecology by January 31, 2011.
- 11) 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 or available from Ecology as a document entitled "Water Measurement Device Installation and Operation Requirements".
- 12) At a minimum, the following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit or Certificate No., source name, annual quantity used including units, maximum rate of diversion including units, period of use, monthly meter readings including units, and peak flow including units for each month. In the future, Ecology may require additional parameters to be reported or more frequent reporting.
- 13) Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

- 14) 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, but only to the extent otherwise allowed by law.
- 15) This Seasonal Authorization is subject to Washington Department of Fish and Wildlife fish screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Fish screening criteria are attached to this Report of Examination. Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://wdfw.wa.gov/hab/engineer/habeng.htm>
- 16) The intake shall be screened at all times in accordance with Department of Fish and Wildlife screening criteria. <http://wdfw.wa.gov/hab/engineer/habeng.htm>.
- 17) **No water right in perpetuity will result from this Seasonal Authorization.**
- 18) This Seasonal Authorization shall in no way excuse the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.

YOUR RIGHT TO APPEAL

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.) E-mail is not accepted.

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

ADDRESS AND LOCATION INFORMATION

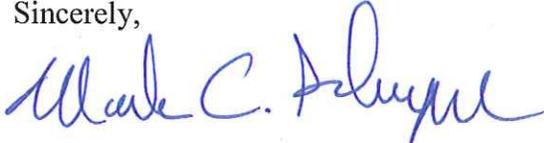
Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608
Pollution Control Hearings Board 4224 – 6 th Avenue SE Rowe Six Building 2 Lacey WA 98503	Pollution 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://www.leg.wa.gov/CodeReviser>.

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If you have further questions or concerns, please call Breean Zimmerman, Department of Ecology, Water Resources Program at 509 454 7647.

Sincerely,



Mark C. Schuppe, Section Manager
Water Resources Program/CRO

MCS:EH:gg/100906

Enclosures: Fish Screening Requirements
Water Measuring Requirements
Your Right To Be Heard

cc: Philip Rigdon, Director, Natural Resources Division, Yakama Nation
Kevin Brown, Water Resources Program, Department of Ecology/ERO