WR File NR CG1-022172CL
WR Doc ID: 5442024

DEPARTMENT OF ECOLOGY
State of Washington

# State of Washington
# REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

**Change Purpose of Use** X **Change Place of Use** X **Add or Change Point of Diversion/Withdrawal** X
**Change Season of Use** X

| PRIORITY DATE | WATER RIGHT NUMBER |
|---|---|
| November 1914 | Ground Water Claim 022172 (G1-022172CL)<br>Recorded name – Clyde & Robert Greene |

| MAILING ADDRESS | SITE ADDRESS (IF DIFFERENT) |
|---|---|
| MJD Farms, LLC<br>Mr. Mike Douma<br>8300 N. Enterprise Road<br>Custer, WA 98240<br>360-410-2048 | 1679 Loomis Trail Road<br>Custer, WA 98240 |

## Total Quantity Authorized for Withdrawal or Diversion

| WITHDRAWAL OR DIVERSION RATE | UNITS | ANNUAL QUANTITY (AF/YR) |
|---|---|---|
| 10 | GPM | 0.92 |

## Purpose

| PURPOSE | WITHDRAWAL OR DIVERSION RATE | | | ANNUAL QUANTITY (AF/YR) | | PERIOD OF USE (mm/dd) |
|---|---|---|---|---|---|---|
| | ADDITIVE | NON-ADDITIVE | UNITS | ADDITIVE | NON-ADDITIVE | |
| Irrigation | 10 | 0 | GPM | 0.92 | 0 | 4/15 – 9/30 |

| IRRIGATED ACRES | | PUBLIC WATER SYSTEM INFORMATION | |
|---|---|---|---|
| ADDITIVE | NON-ADDITIVE | WATER SYSTEM ID | CONNECTIONS |
| 402* | NA | NA | NA |

* Combined total of 402 acres authorized under GWC 3630-A, GWC 5433-A, G1-022169CL, G1-022170CL, G1-022172CL, and G1-022173CL

## Source Location

| COUNTY | WATERBODY | TRIBUTARY TO | WATER RESOURCE INVENTORY AREA |
|---|---|---|---|
| Whatcom | Groundwater | NA | 01 - Nooksack |

| SOURCE FACILITY/DEVICE | PARCEL | WELL TAG | TWN | RNG | SEC | QQ Q | LATITUDE | LONGITUDE |
|---|---|---|---|---|---|---|---|---|
| IW-1 | 400216071150 | BHE783 | 40N | 02E | 16 | SW SW | 48.95219 | -122.57053 |
| IW-2 | 400221337280 | BHE785 | 40N | 02E | 21 | SW NE | 48.94407 | -122.56285 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| IW-3 | 400221337280 | BHE786 | 40N | 02E | 21 | SW NE | 48.94433 | -122.56241 |
| IW-4 | 400221337280 | AAX420 | 40N | 02E | 21 | SW NE | 48.94302 | -122.56295 |
| IW-5 | 400221235138 | BHE788 | 40N | 02E | 21 | SE NW | 48.94459 | -122.56375 |
| IW-7 | 400220472461 | BHN672 | 40N | 02E | 20 | NE NE | 48.94811 | -122.57685 |
| IW-8 | 400220472461 | BHN674 | 40N | 02E | 20 | NE NE | 48.94955 | -122.57669 |
| IW-9 | 400221100424 | BHN670 | 40N | 02E | 21 | NW NW | 48.94986 | -122.57235 |
| IW-10 | 400221100424 | BHN669 | 40N | 02E | 21 | NW NW | 48.94987 | -122.57212 |
| IW-11 | 400221337280 | BHN664 | 40N | 02E | 21 | SW SE | 48.93752 | -122.55785 |
| HW-1 | 400221234404 | BHN675 | 40N | 02E | 21 | NE NW | 48.94643 | -122.56519 |

Datum: NAD83/WGS84

## Place of Use (See Attached Map)

**PARCELS**

400216071150, 400216090010, 400217523069, 400217490067, 400220472461, 400221100424, 400221077285, 400221234404, 400221235138, and 400221337280

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

NW ¼ SW ¼ and East 30 acres of the SW ¼ SW ¼, Section 16, Township 40 North, Range 2 East W.M.
East 20 acres of the SE ¼ SE ¼, Section 17, Township 40 North, Range 2 East W.M.
NE ¼ NE ¼, Section 20, Township 40 North, Range 2 East W.M.
NW ¼, Section 21, Township 40 North, Range 2 East W.M.
W ½ E ½, Section 21, Township 40 North, Range 2 East W.M.
E ½ E ½ SW ¼, Section 21, Township 40 North, Range 2 East W.M. EXCEPT the portion defined as follows – Beginning at the southeast corner of the southwest quarter, thence west along south line of southwest quarter 190 feet thence north at right angle 30 feet to the northerly right-of-way margin of Birch Bay Lynden Road, which is the point of beginning. Thence, continue north, perpendicular to said south line 270 feet, thence west parallel to said south line of southwest quarter165 feet thence south perpendicular to said south line 270 feet, thence east parallel to said south line of southwest quarter 165 feet to the true point of beginning.
All less roads

## Proposed Works

One infiltration trench (HW-1) and ten wells (IW-1, IW-2, IW-3, IW-4, IW-5, IW-7, IW-8, IW-9, IW-10, and IW-11). The irrigation system consists of 6-inch PVC mainlines that extend across the entire place of use with 4-inch risers. Riser spacing is approximately 250 feet. One lined pond is currently used for storage of water that is later used for irrigation. Pumps include 5 hp submersibles installed in the wells, a diesel powered pump used at the infiltration trench, and a 150 hp tractor PTO (power take-off) pump that can be used to withdraw water from any of the wells.

## Development Schedule

| BEGIN PROJECT | COMPLETE PROJECT | PUT WATER TO FULL USE |
|---|---|---|
| Started | December 31, 2014 | December 31, 2019 |

## Additional Actions and Due Dates

| ACTION | DATE DUE |
|---|---|
| Water Meter Installation and Metering Plan | April 1, 2014 |

Due to the number of sources and use of a tractor PTO pump, a particular method for metering will not be prescribed. However, the water right holder must put forth and implement a plan for how all water used for irrigation under this water right will be metered and accounted for, consistent with the intent of WAC 173-173.

## Measurement of Water Use

| | |
|---|---|
| How often must water use be measured? | Weekly |
| How often must water use data be reported to Ecology? | Annually (by January 31) |
| What volume should be reported? | Annual Volume |
| What rate should be reported? | Peak Rate of Withdrawal (gpm) |

## Provisions

**New or Replacement Wells**

RCW 90.44.100 allows for the drilling of new or replacement wells within the original advertised location for the point of withdrawal of the water right without requiring a water right change application. Because MJD Farms, LLC does not own all of the property included within the original advertised area, any new or replacement wells must be constructed within the area currently owned by MJD Farms, LLC as listed below:

- SW ¼ SW ¼, Section 16, Township 40 North, Range 2 East, W.M.
- NW ¼ NW ¼, Section 20, Township 40 North, Range 2 East, W.M.
- NW ¼ NW ¼, Section 21, Township 40 North, Range 2 East, W.M.
- W ½ NE ¼, Section 21, Township 40 North, Range 2 East, W.M.
- W ½ SE ¼, Section 21, Township 40 North, Range 2 East, W.M.
- E ½ NW ¼, Section 21, Township 40 North, Range 2 East, W.M.
- E ½ E ½ SW ¼, Section 21, Township 40 North, Range 2 East, W.M.

New or replacement wells may not be located within 500 feet of IW-6 (a source of domestic water supply), as long as it continues to be the point of withdrawal under G1-022171CL, which is located in the SE ¼ SE ¼ SW ¼, Section 21, Township 40 North, Range 2 East W.M.

**Wells, Well Logs and Well Construction Standards**

All wells constructed in the state must 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 must be decommissioned.

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

**Measurements, Monitoring, Metering and Reporting**
Due to the number of sources and use of a tractor PTO pump, a particular method for metering will not be prescribed. However, the water right holder must put forth and implement a plan for how all water used for irrigation, under this water right, will be metered and accounted for consistent with the intent of WAC 173-173. The water right holder shall submit this plan to Ecology no later than April 1, 2014, for review and approval.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact Ecology's Bellingham Field Office. If you do not have Internet access, you can still submit hard copies by contacting the Bellingham Field Office for forms to submit your water use data.

**Easement and Right-of-Way**
The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change authorization 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 the owner of that land.

**Proof of Appropriation**
The water right holder must file the notice of Proof of Appropriation of water (under which the 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 change authorization. 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.

**Schedule and Inspections**
Department of Ecology personnel, upon presentation of proper credentials, will 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.

**Findings of Facts**
Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose of use is beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. CG1-022172CL subject to existing rights and the provisions specified above, with the exception of the request to add IW-6 as an additional point of withdrawal, which has been denied.

## Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. 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 the Order.

File your appeal and a copy of this Order 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 Order 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**<br>Attn: Appeals Processing Desk<br>300 Desmond Drive SE<br>Lacey, WA 98503 | **Department of Ecology**<br>Attn: Appeals Processing Desk<br>PO Box 47608<br>Olympia, WA 98504-7608 |
| **Pollution Control Hearings Board**<br>111 Israel RD SW<br>STE 301<br>Tumwater, WA 98501 | **Pollution Control Hearings Board**<br>PO Box 40903<br>Olympia, WA 98504-0903 |

Signed at Bellevue, Washington, this 17 day of April 2013.

Jacqueline Klug, Section Manager
Water Resources Program -- Department of Ecology, Northwest Regional Office

## INVESTIGATOR'S REPORT

### BACKGROUND

Water Right Claim 022172 was received by the Department of Ecology on January 30, 1973. The long form water right claim document was submitted by Clyde & Robert Greene. On the form, the date of first use is identified as November 1914, which predates the groundwater code. Water use is stated as "continual" for domestic and stock, and the rate claimed is 10 gpm and 2 afy, while the rate presently used is identified as 5 gpm and 1 afy. The point of withdrawal is identified as being within the NW ¼ NW ¼, Section 21, Township 40 North, Range 2 East, W.M.

**Table 1: Attributes of the Existing Water Right and Proposed Change**

| Attributes | Existing | Proposed |
|---|---|---|
| **Name** | Clyde & Robert Greene | Mike Douma/MJD Farms, LLC |
| **Priority Date/ Change Application Date** | November 1914 | September 21, 2012 |
| **Instantaneous Quantity** | 10 gallons per minute (gpm) | 10 gpm |
| **Annual Quantity** | 2 acre-feet | 2 acre-feet |
| **Purpose of Use** | Domestic and Stock | Irrigation |
| **Period of Use** | Continuous | April 15-October 1 |
| **Place of Use** | W ½ NE ¼, South 2 rods of E ½ E ½ NW ¼, W ½ SE ¼, E ½ E ½ NW ¼ Except South 2 rods thereof, West 120 acres of the NW ¼, E ½ E ½ SW ¼, all less county roads of Section 21, Township 40 North, Range 2 East, W.M. | Parcel Nos. 400216071150, 400216090010, 400217523069, 400217490067, 400220472461, 400221100424, 400221077285, 400221234404, 400221235138, and 400221337280<br><br>NW ¼ SW ¼ and East 30 acres of the SW ¼ SW ¼, Section 16, Township 40 North, Range 2 East W.M.<br>East 20 acres of the SE ¼ SE ¼, Section 17, Township 40 North, Range 2 East W.M.<br>NE ¼ NE ¼, Section 20, Township 40 North, Range 2 East W.M.<br>NW ¼, Section 21, Township 40 North, Range 2 East W.M.<br>W ½ E ½, Section 21, Township 40 North, Range |

| | | |
|---|---|---|
| | | 2 East W.M.<br>E ½ E ½ SW ¼, Section 21, Township 40 North, Range 2 East W.M. EXCEPT the portion defined as follows – Beginning at the southeast corner of the southwest quarter, thence west along south line of southwest quarter 190 feet thence north at right angle 30 feet to the northerly right-of-way margin of Birch Bay Lynden Road, which is the point of beginning. Thence, continue north, perpendicular to said south line 270 feet, thence west parallel to said south line of southwest quarter165 feet thence south perpendicular to said south line 270 feet, thence east parallel to said south line of southwest quarter 165 feet to the true point of beginning.<br>All less roads |
| **Point of Withdrawal** | Historical:<br>NW ¼ NW ¼, Section 21, Township 40 North, Range 2 East, W.M.<br><br>Current:<br>*De-facto* change to points of withdrawal identified as proposed points of withdrawal | All in T 40 N, R 2E, Whatcom County<br>IW-1 SW ¼ SW ¼ S16, Parcel #400216071150, Well Tag BHE783<br>IW-2,SW ¼ NE ¼,S21, Parcel # 4002213337280, Well Tag BHE785<br>IW-3 SW ¼ NE ¼, S21, Parcel # 400221337280, Well tag BHE786<br>IW-4, SW ¼ NE ¼, S21,Parcel # 400221337280, Well Tag AAX420<br>IW-5, SE ¼ NW ¼, S21, Parcel # 400212234404, Well Tag BHE788<br>IW-6 SE ¼ SW ¼, S21, Parcel # 400221235138, Well Tag BHE789<br>IW-7 NE ¼ NE ¼, S20, Parcel # 400220472461, Well Tag BHN672<br>IW-8 NE ¼ NE ¼, S20, Parcel # 400220472461, Well Tag BHN674<br>IW-9 NW ¼ NW ¼, S21, Parcel # 400221100424, Well Tag BHN670<br>IW-10 NW ¼, NW ¼, S21, Parcel 3 400221100424, Well Tag BHN669<br>IW-11, SW ¼ SE ¼ S21, Parcel # 400221337280, Well Tag BHN664<br>Infiltration Trench, HW-1, NE ¼ NW ¼, S21, Parcel # 400221234404, Well Tag BHN675 |

**Legal Requirements for Proposed Change**

The following is a list of requirements that must be met prior to authorizing the proposed change in place of use, point of withdrawal, and purpose of use.

**Public Notice**

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to

be stored, diverted, and used. Notice of this application was published in *The Bellingham Herald* commencing with the issue of October 26, 2012, and ending with the issue of November 2, 2012.

The Lummi Indian Business Council submitted a protest to this change application.

**State Environmental Policy Act (SEPA)**
This water right application is categorically exempt from the requirements of SEPA under WAC 197-11-800(4).

**Water Resources Statutes and Case Law**

RCW 90.44.100 allows Ecology to amend 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:

(a) The additional or replacement well taps the same body of public ground water as the original well. RCW 90.44.100(2)(a),
(b) 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),
(c) 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),
(d) Other existing rights shall not be impaired. RCW 90.44.100(2)(d).

When changing or adding points of withdrawal to groundwater rights (RCW 90.44.100) the wells must draw from the *same body of public groundwater*. Indicators that wells tap the *same body of public groundwater* include:
(a) Hydraulic connectivity.
(b) Common recharge (catchment) area.
(c) Common flow regime.
(d) Geologic materials that allow for storage and flow, with recognizable boundaries or effective barriers to flow.

The Washington State Supreme Court held that Ecology must make a tentative determination of the extent and validity of the right to be changed (R.D. Merrill v. PCHB and Okanogan Wilderness League v. Town of Twisp). See Extent and Validity section of this report, below.

**Cost Reimbursement Processing**

This application is being processed under a Cost Reimbursement Agreement between the applicant and the Department of Ecology. The applicant selected RH2 Engineering, Inc. to process their applications on Ecology's behalf. These change applications are being processed without requiring processing of previously filed water right change applications, as allowed under RCW 90.03.265, since the transfers will not diminish the water available to earlier pending applicants for changes or transfers from the same source of supply.

## INVESTIGATION

### Site Visit

On January 30, 2013, Jim Bucknell and Andrew Dunn from RH2 Engineering met with Mike and Jeb Douma (MJD Farms, LLC) and their consultant Charles Lindsay (Associated Earth Sciences). The site visit consisted of an office meeting to discuss the details of water use under the water rights and a tour of the farm and water-related facilities.

We discussed the infrastructure associated with the irrigation and domestic/stockwater delivery systems. Also discussed was the general operation and how water was used for the various dairy purposes.

During the farm tour we viewed irrigation equipment that was in storage, but was indicated by Mike Douma to be used on the property. These included a traveling Big Gun (with 1-inch nozzle) wheeled sprinkler with hose reel, a diesel powered pump that is used to withdraw water from the infiltration trench, and a PTO pump that can be used with a tractor to withdraw water from any of the wells if needed.

Since the site visit occurred in the winter, no crops were actively growing. However, fields either contained pasture grass, or they contained the remnants of corn stalks that had been harvested for silage in the previous irrigation season. Raspberry canes had been recently planted and some were cut back on the south end of Parcel 400221337280. The plantings were new, as confirmed from Mike Douma, and no berry trellises or drip lines had yet been installed.

We field confirmed most of the well locations based on the map provided with the application and aerial photos. Depth to static water level and approximate casing stickup were measured in Wells IW-1, IW-2, IW-4, IW-5, IW-7, IW-8, IW-10, and IW-11. At one well the protective well caps could not be manually removed and no measurement could be taken (Well IW-9). One well was pumping and no static water level measurement could be taken (Well IW-3). Distance between risers was paced off and was approximately 255 feet.

Charles Lindsay had previously placed Ecology Unique Well ID tags on all of the wells and submitted paperwork to Ecology to assist with identification and numbering of wells. Some of the well tags have popped off and were not able to be located (Wells IW-1 and IW-7).

Well IW-6 was not visited since it is used for domestic supply of a neighboring property that is not owned by MJD Farms, even though the well is located on MJD Farms' property.

Field conditions were very wet and the water table was near ground surface over much of the farm. The tributary to Dakota Creek that passes just south of the infiltration trench was full and flowing to the southwest as the weather had been very wet leading up to the site visit. There was no surface water inflow contribution to the infiltration trench.

**Extent and Validity**

Domestic and stockwatering use has remained within the place of use, but the source of the water has moved from the original point of withdrawal identified on the claim form to the other wells on the property (*de-facto* change). Ecology Water Resources Program Policy 1120 – "Water Resources Program Policy for Conducting Tentative Determinations of Water Rights" states the following related to *de-facto* changes:

> 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.

*Point of Withdrawal*

The well location for G1-022172CL is identified on the water right claim form as being within the NW ¼ NW ¼, Section 21, Township 40 North, Range 2 East, W.M. or more specifically 940 feet east and 250 feet south from the northwest corner of Section 21. Included in the water right file is a map that shows the well location approximately as described. The well is located in proximity to the existing dairy facility. Aerial photos provided with the change application clearly show structures have existed at that location at least as far back as 1951 (date of earliest available aerial photos). There is currently no well located at the described location and it is likely that the source of water was moved (through a *de-facto* change) to the infiltration trench and other wells on the property.

*Herd Size*

AESI (2012) indicated that Mr. Green's dairy operations consisted of approximately 1,000 head of cattle between 1940 and 1990 and then the dairy was sold to MJD Farms. MJD Farms expanded the operation to include between 2,000 and 3,000 head of dairy cattle, which is the size of the present-day operation.

*Annual Volume*

Accepting that there has been at least 1,000 head of dairy cattle on the property since the 1940s, we can use this number to estimate the minimum historical stockwater use on the property that would be included under the four water right claims (G1-022169CL, G1-022170CL, G1-022172CL and G1-022173CL). Estimates for the use of water per dairy cow range from 20 gallons per day for drinking (WADOH Water System Design Manual, December 2009) to 35 gallons per day for drinking and servicing (EPA Manual of Individual and Non-Public Water Supply Systems, May 1991). The historical use of water for stockwatering, assuming 1,000 head, could range from 20,000 to 35,000 gallons per day (22.4 to 39.2 afy). The four water right claims that exist on the MJD Farms property and are proposed to be changed to irrigation include a total claimed right of 8 afy for domestic and stock water use. The volume of water historically and currently put toward stockwatering is much in excess of the volume documented in the four water right claims. MJD Farms is currently utilizing the unlimited stockwatering exemption under RCW 90.44.050, as described in AGO 2005 No. 17 – November 18, 2005, to cover use above the water right claims. After the four water right claims are changed to irrigation, MJD Farms will be totally reliant on the groundwater permit exemption for its entire domestic and stockwatering water use.

Given the magnitude of the water currently used for stockwater by MJD Farms, it is reasonable to conclude that water in excess of the annual volume identified by the four claims has been beneficially used each year within the claimed place of use, even if not from the identified point of withdrawal.

Therefore, the full annual volume of 2 afy claimed under this water right claim is considered to have been maintained through time by beneficial use and is valid.

*Instantaneous Rate*

AESI (2012) provided a pump curve for the diesel portable pump that withdraws water from the infiltration trench and also for the 5 hp submersible pumps located in most of the remaining wells. The diesel portable pump is capable of pumping greater than 400 gpm, which is at least 140 gpm higher than the 260 gpm currently authorized under GWC 5433-A (AESI, 2012). The maximum pumping rate from each well with a submersible pump is approximately 120 gpm.

Each well currently utilized by MJD Farms is capable of providing the entire 40 gpm allowed under the four water right claims (G1-022169CL, G1-022170CL, G1-022172CL and G1-022173CL).

Therefore, the full instantaneous rate of 10 gpm under this water right claim is considered to have been maintained through time by beneficial use and is valid.

**Proposed Use**

The proposed use of water after the change is irrigation. The irrigation season requested by the applicant is from April 15 – October 1, which is five and a half months (168 days). The annual volume under G1-022172CL that is assumed to have been continuously used during the proposed irrigation season is 0.92 afy, which is calculated as: 2 afy * (168 days/365 days) = 0.92 afy. Since the surface water bodies surrounding MJD Farms are closed year round (Dakota Creek and Bertrand Creek) and the Nooksack River has minimum instream flows that are not met occasionally, even outside of the irrigation season, the season of use of the non-irrigation season portion of this water right cannot be moved into the irrigation season.

**Other Water Rights Appurtenant to the Proposed Place of Use**

There are a total of 9 water right documents (2 certificates, 5 long form claims, 1 short form claim, and 1 water right application) associated with the proposed place of use (Table 2). Change applications have been submitted by MJD Farms on six of these water rights and all are being processed concurrently. There are also two permit exempt wells serving two homes within the proposed place of use. These homes are located on parcel 400221077285 at 8300 N. Enterprise Road and parcel 400216090010 at 1634 Loomis Trail Road.

Short Form Claim G1-136939CL (Leo C. Nielsen) identifies the place of use as parcel 400217490067 and is assumed to represent the source of water for the home on that parcel, located at 1736 Loomis Trail Road. No change application has been filed for this water right claim.

The water right application was submitted by Herm Douma "MJD Ranch" on August 1, 1994, and was assigned water right number G1-27515, and is still pending.

Water right claim G1-022171CL is not being changed since it is used for domestic supply of a parcel not part of MJD Farms LLC.

## Table 2. Summary of Water Right Documents Appurtenant to the Proposed Place of Use

| Water Right Number | Name | Type | Qi (gpm) | Qa (afy) | Type of Use | | Irrigation Acres | | Part of Concurrent Change Requests |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | Existing | Proposed | Existing | Proposed | |
| G1-*04475C | Remington | Certificate | 150 | 60 | Irrigation | Irrigation | 30.0 | 402.0 | Yes |
| G1-*07005C | Greene | Certificate | 260 | 80 | Irrigation | Irrigation | 40.0 | | Yes |
| G1-022169CL | Greene | Claim [L] | 10 | 2 | Stock/Dom | Irrigation | 0.0 | | Yes |
| G1-022170CL | Greene | Claim [L] | 10 | 2 | Stock/Dom | Irrigation | 0.0 | | Yes |
| G1-022172CL | Greene | Claim [L] | 10 | 2 | Stock/Dom | Irrigation | 0.0 | | Yes |
| G1-022173CL | Greene | Claim [L] | 10 | 2 | Stock/Dom | Irrigation | 0.0 | | Yes |
| G1-022171CL | Greene | Claim [L] | 10 | 2 | Stock/Dom | NA | NA | NA | No |
| G1-136939CL | Nielsen | Claim [S] | NA | NA | Stock/Dom/Irr | NA | NA | NA | No |
| G1-27515 | Douma | Application | 80 | 75 | NA | Stock | | 0.0 | No |

Qi – Instantaneous Rate in gallons per minute (gpm)
Qa – Annual Volume in acre-feet per year (afy)
Claim [L] – Long Form Claim
Claim [S] – Short Form Claim
NA – Not applicable/available
Stock – Stockwatering
Dom – Domestic
Irr - Irrigation

### Additional Consultations

On February 1, 2013, RH2 Engineering sent an e-mail to Mr. Steve Boessow of the Washington State Department of Fisheries and Wildlife (WDFW) to find out if WDFW has any concerns about the proposed change application. Additional requests for comments were sent via e-mail on February 15 and February 22, 2013. No comments were received from Mr. Boessow as of March 8, 2013.

### Hydrologic/Hydrogeologic Evaluation

A separate hydrogeologic memorandum was prepared by Andrew B. Dunn, LG, LHG, focusing on the same body of public groundwater test and impairment (RH2 Engineering, 2013). A summary of that memorandum is presented here and more detail can be obtained from the memorandum if desired.

The points of withdrawal and place of use involved in this water right change lie within the geographic feature commonly referred to as the Custer Trough. The Custer Trough is a low-lying region located south of the Boundary Upland and north of the Mountain View Upland. The Custer Trough contains Dakota Creek and California Creek, both of which flow to the northwest and discharge directly into the marine waters of Drayton Harbor near the City of Blaine. All of the existing and proposed points of withdrawal fall within the South Fork Dakota subbasin as defined by the WRIA 1 watershed planning group and are completed within the Sumas Outwash Aquifer, which is composed of fine to medium sand at this location. Recharge to the aquifer is almost exclusively through vertical infiltration of precipitation. Groundwater flow is to the south-southwest and the water table is less than 5 feet below ground surface in the winter and drops by approximately 3 feet in the summer and early fall due to seasonal changes in recharge and groundwater use (Figure 1).

There are a number of factors at play in the project area that prevent the pumping of a well to cause a neighboring well to go dry:

1. The aquifer is very thin and most wells fully penetrate the aquifer (typically a depth of less than 30 feet).
2. The hydraulic conductivity of the aquifer is only moderate (approximately 13,000 gpd/ft).
3. The aquifer is unconfined, which results in a higher storage coefficient (specific yield) than if the aquifer was confined (approximately 0.2).

Pumping a well completed at the base of a thin aquifer with a moderate hydraulic conductivity and high storage coefficient will tend to create a steep cone of depression around the well. This steep cone of depression often reduces the ability to pump these wells at a high rate for a long enough duration to impact neighboring wells.

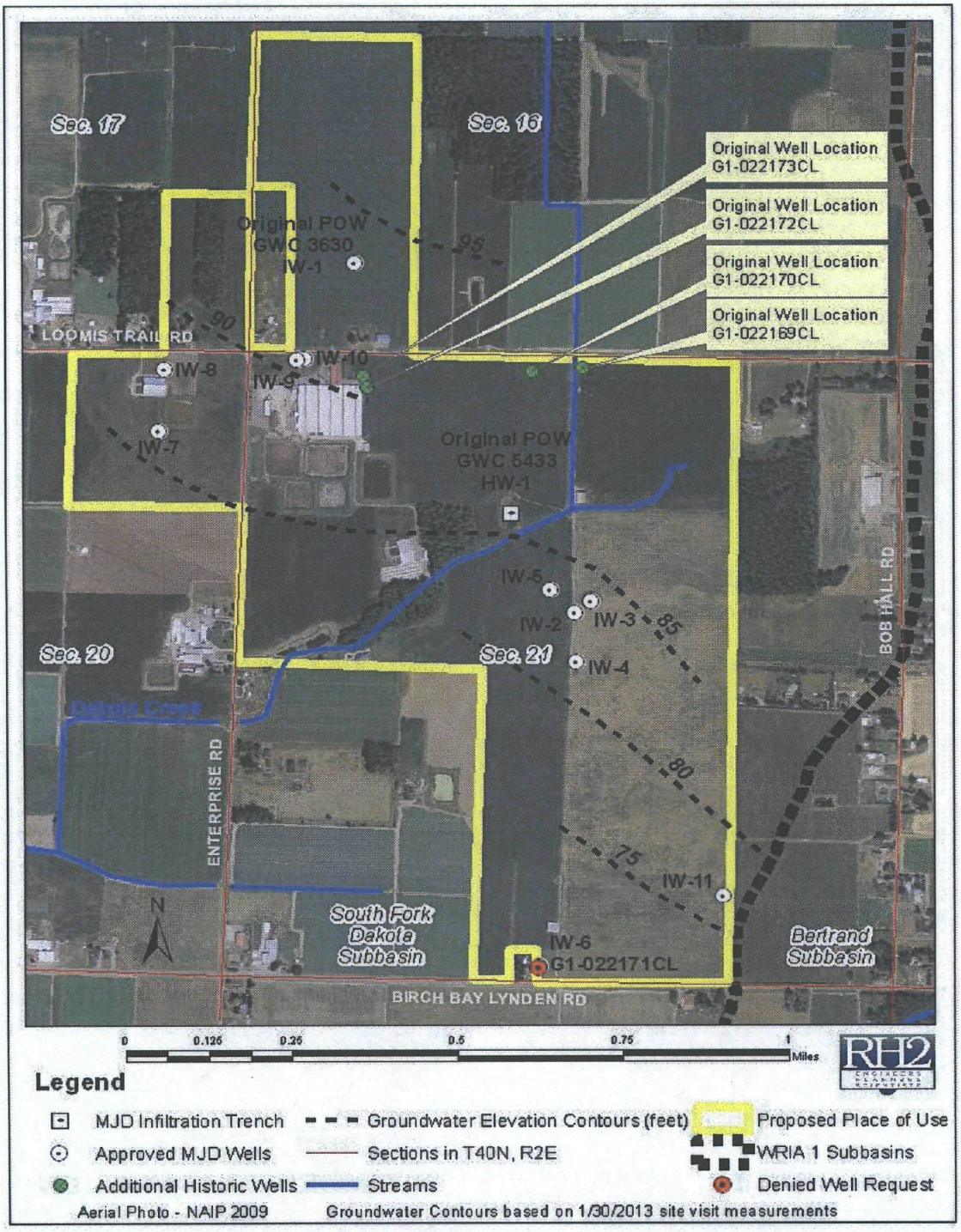


**Figure 1. Original Points of Withdrawal, Recommended Approved Points of Withdrawal (Wells and Infiltration Trench), and Recommended Denied Point of Withdrawal. Groundwater elevations and flow directions based on January 30, 2013, water level measurements. WRIA 1 subbasin boundaries.**

**Same Body of Public Ground Water**

In order for the requested additional points of withdrawal to be added to each ground water right, all points of withdrawal must tap the same body of public ground water. We conclude all wells located on the MJD Farms property tap the same body of public ground water based on the following facts:

1. All of the proposed points of withdrawal, including the infiltration trench, tap the Sumas Outwash aquifer.
2. All wells are located within the South Fork Dakota subbasin as defined by the WRIA 1 watershed planning group (2001).
3. No groundwater flow divides or flow boundaries exist between any of the proposed points of withdrawal.
4. While the maximum distance between any of the proposed wells is 1.2 miles, the similarity of the hydrogeologic setting of all of the wells is so similar that the distance is not significant.
5. While withdrawing water from the existing wells or the infiltration trench will ultimately decrease the amount of water flowing through the unconfined Sumas Outwash aquifer, the impacts of withdrawing water from any combination of these sources will have the same impacts as if all of the water had been withdrawn exclusively from the original points of withdrawal as identified on the water rights. Therefore, the changes being requested will result in no change to the impacts associated with these water withdrawals.

**Impairment Considerations**

The particular hydrogeologic characteristics of the Sumas outwash aquifer at the project location (shallow, thin, moderate transmissivity, and unconfined) provides a form of automatic-regulation of pumping rates and helps to protect neighboring well owners from well interference that could lead to impairment. Ecology has no record of any complaints of impairment from well owners near the MJD property, even though they have been using the proposed points of withdrawal without authorization for approximately 20 years. Allowing these water rights to be pumped from additional points of withdrawal spread across the MJD Farms property will not impair existing rights.

MJD Farms should be reminded that while RCW 90.44.100(3) allows for replacement and additional wells to be added to existing water right, these new wells cannot impair any water rights existing at the time the new well is drilled. So, any new wells constructed should be preferentially located away from neighboring wells.

IW-6 is currently associated with groundwater claim G1-0221771CL. In order to protect that existing water right, this specific well is <u>not</u> approved as an additional point of withdrawal under the MJD Farms water rights.

RCW 90.44.100 allows for the drilling of new or replacement wells within the original advertised location for the point of withdrawal of the water right without requiring a water right change application. Because MJD Farms, LLC does not own all of the property included within the original advertised area and to avoid impairment of neighboring water rights any new or replacement wells must be constructed within the area currently owned by MJD Farms, LLC as listed below:

SW ¼ SW ¼, Section 16, Township 40 North, Range 2 East, W.M.
NW ¼ NW ¼, Section 20, Township 40 North, Range 2 East, W.M.
NW ¼ NW ¼, Section 21, Township 40 North, Range 2 East, W.M.
W ½ NE ¼, Section 21, Township 40 North, Range 2 East, W.M.
W ½ SE ¼, Section 21, Township 40 North, Range 2 East, W.M.
E ½ NW ¼, Section 21, Township 40 North, Range 2 East, W.M.
E ½ E ½ SW ¼, Section 21, Township 40 North, Range 2 East, W.M.

**Public Interest Considerations**

No detriment to the public interest will occur as a result of adding points of withdrawal, changing the purpose of use, and changing the place of use of the subject water right claim.

Changing the season of use to concentrate withdrawal of water under this claim will alter the impact to closed surface water bodies. Therefore, the annual volume that can be changed to irrigation is that which was historically withdrawn during the irrigation season, which is equal to 0.92 afy. Increasing the impact during the irrigation season would be against the public interest.

**Consideration of Protests and Comments**

The October 18, 2012, protest letter from the Lummi Indian Business Council indicates that all of the change applications are for points of withdrawal located within the Nooksack/WRIA 1 watershed. Their protest is based on concerns over current and future potential impacts on instream flows. However, these are change applications and not applications for new (consumptive) water use. Because the quantities of water involved will remain unchanged and because each of the sources pumps from the same body of public water, no additional or new impacts are associated with the changes being proposed. The pumping of water from any of the subject wells will not change stream flows from current conditions.

Therefore, this protest does not justify denial of the change application.

**CONCLUSIONS**

This table is provided as a means of easily understanding how the six MJD Farms water rights relate following the change application process.

| Water Right Number | Type | Qi (gpm) | Qa (afy) | Purpose of Use | Irrigated Acres | Points of Withdrawal |
|---|---|---|---|---|---|---|
| GWC 3630 | Certificate | 150 | 60 | Irrigation | 402 | IW-1, IW-2, IW-3, IW-4, IW-5, IW-7, IW-8, IW-9, IW-10, IW-11, HW-1 |
| GWC 5433 | Certificate | 260 | 80 | Irrigation | | |
| G1-022169CL | Claim [L] | 10 | 0.92 | Irrigation | | |
| G1-022170CL | Claim [L] | 10 | 0.92 | Irrigation | | |
| G1-022172CL | Claim [L] | 10 | 0.92 | Irrigation | | |
| G1-022173CL | Claim [L] | 10 | 0.92 | Irrigation | | |
| | Total | 450 | 143.68 | | 402 | |

## RECOMMENDATIONS

Based on the above investigation and conclusions, the authors partially recommend the request for change to add new points of withdrawal, change the purpose of use, and change the place of use be approved in the amounts and within the limitations listed below and subject to the provisions beginning on page 3. The proposed change related to IW-6 is denied in order to protect the existing domestic use of water from that well.

### Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:
10 gpm
0.92 afy
Irrigation from April 15 through October 1

### Points of Withdrawal

| SOURCE FACILITY/DEVICE | PARCEL | WELL TAG | TWN | RNG | SEC | QQ Q | LATITUDE | LONGITUDE |
|---|---|---|---|---|---|---|---|---|
| IW-1 | 400216071150 | BHE783 | 40N | 02E | 16 | SW SW | 48.95219 | -122.57053 |
| IW-2 | 400221337280 | BHE785 | 40N | 02E | 21 | SW NE | 48.94407 | -122.56285 |
| IW-3 | 400221337280 | BHE786 | 40N | 02E | 21 | SW NE | 48.94433 | -122.56241 |
| IW-4 | 400221337280 | AAX420 | 40N | 02E | 21 | SW NE | 48.94302 | -122.56295 |
| IW-5 | 400221235138 | BHE788 | 40N | 02E | 21 | SE NW | 48.94459 | -122.56375 |
| IW-7 | 400220472461 | BHN672 | 40N | 02E | 20 | NE NE | 48.94811 | -122.57685 |
| IW-8 | 400220472461 | BHN674 | 40N | 02E | 20 | NE NE | 48.94955 | -122.57669 |
| IW-9 | 400221100424 | BHN670 | 40N | 02E | 21 | NW NW | 48.94986 | -122.57235 |
| IW-10 | 400221100424 | BHN669 | 40N | 02E | 21 | NW NW | 48.94987 | -122.57212 |
| IW-11 | 400221337280 | BHN664 | 40N | 02E | 21 | SW SE | 48.93752 | -122.55785 |
| HW-1 | 400221234404 | BHN675 | 40N | 02E | 21 | NE NW | 48.94643 | -122.56519 |

### Place of Use

As shown on Attachment 1 and described in Legal Description of Authorized Place of Use on page 2 of this Report of Examination.

Report by: Jim Bucknell — 4/17/2017
Jim Bucknell – RH2 Engineering — Date

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822
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Report by: _____ 4/17/2013
Andrew B. Dunn – RH2 Engineering Date

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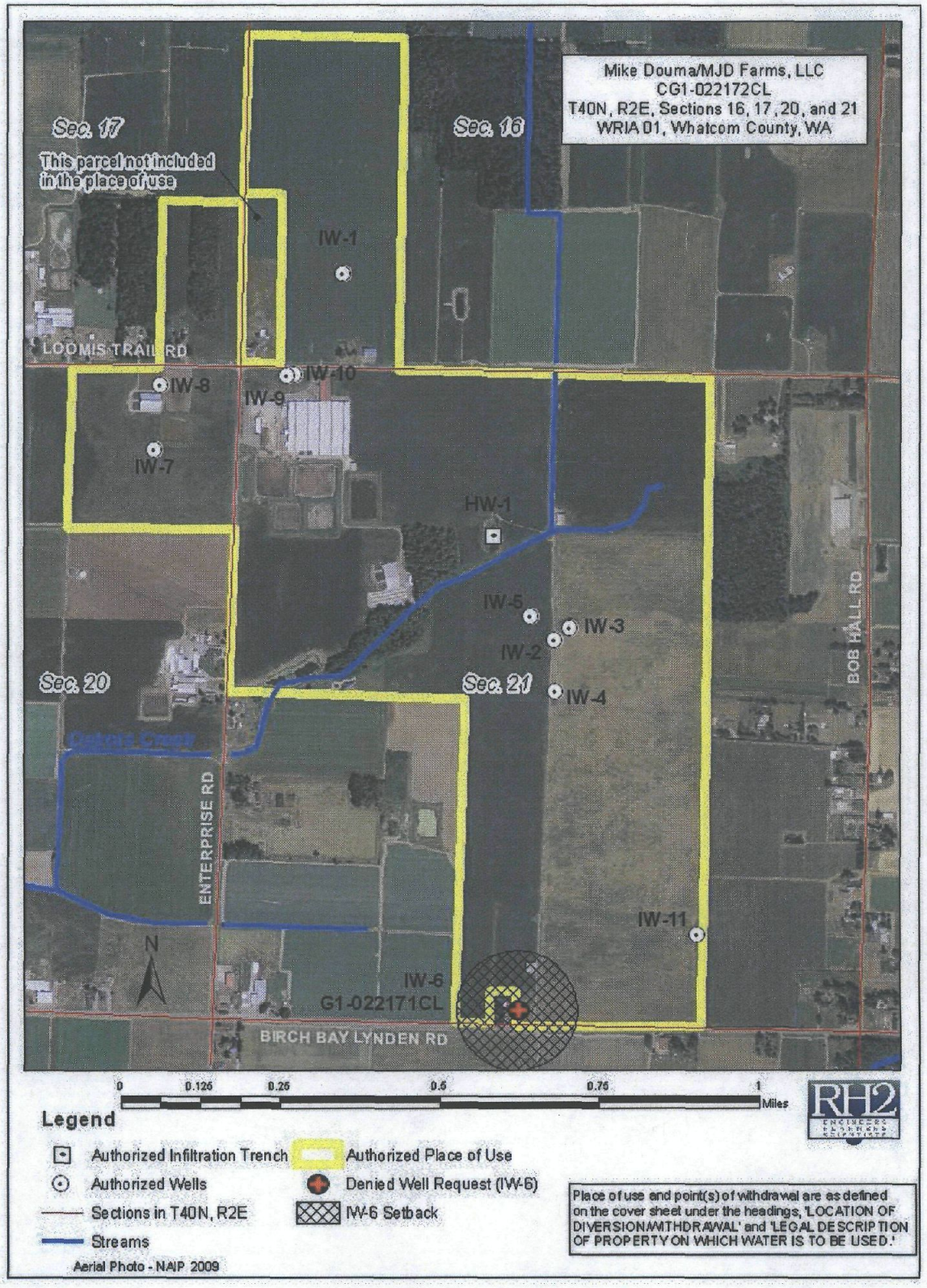
J. R. "BUCK" SMITH

Reviewed by: _____ 4/17/13
Buck Smith – Dept. of Ecology Date

ATTACHMENT 1. Authorized Points of Withdrawal and Place of Use