

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

**REPORT OF EXAMINATION**  
*Application for Change*  
**WRTS No. CG3-29067@1**

PRIORITY DATE October 21, 1991	APPLICATION NUMBER G3-29067	PERMIT NUMBER G3-29067	CERTIFICATE NUMBER
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NAME Brown Children Trust/Mike Brown/Dorothy Brown			
ADDRESS (STREET) 12088 Road 11 SW	(CITY) Royal City	(STATE) WA	(ZIP CODE) 99357

**PUBLIC WATERS TO BE APPROPRIATED**

SOURCE Four Wells		
TRIBUTARY OF (IF SURFACE WATERS)		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE 5280	MAXIMUM ACRE FEET PER YEAR 2317

QUANTITY, TYPE OF USE, PERIOD OF USE

5280 gallons per minute, 2317 acre-feet per year, each year, for seasonal irrigation and frost protection for 662 acres as follows:  
3144 gallons per minute, 1375.5 acre-feet per year for the irrigation of 393 primary acres  
2136 gallons per minute, 941.5 acre-feet for irrigation of 269 standby/reserve acres

**LOCATION OF DIVERSION/WITHDRAWAL**

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL

- 1) 300 feet south and 200 feet west from the N<sup>1</sup>/<sub>4</sub> corner of Section 7, within the NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>
- 2) 300 feet south and 200 feet west from the NE corner of Section 7, within the NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>
- 3) 300 feet south and 200 feet east from the NW corner of Section 7, within the NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>
- 4) 300 feet south and 200 feet east from the N<sup>1</sup>/<sub>4</sub> corner of Section 7, within the NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION 7	TOWNSHIP 17 N.	RANGE (E. OR W.) W.M. 25 E.	W.R.I.A. 41	COUNTY Grant
PARCEL NUMBER 151509001, 151510001, 151509000	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.]

393 primary acres:

124 acres within the NE<sup>1</sup>/<sub>4</sub> of Sec. 18, T. 17 N., R. 25 E.W.M.;  
140 acres within the NW<sup>1</sup>/<sub>4</sub> of Sec. 18, T. 17 N., R. 25 E.W.M.;  
11 acres within the SW <sup>1</sup>/<sub>4</sub> of Sec. 7, T. 17 N., R. 25 E.W.M.;  
76 acres within the NE<sup>1</sup>/<sub>4</sub> of Sec. 13, T. 17 N., R. 24 E.W.M.; and  
42 acres within the SE<sup>1</sup>/<sub>4</sub> of Sec. 12, T. 17 N., R. 24 E.W.M.

Standby/reserve: 269 acres within Section 7, T. 17 N., R. 25 E.W.M., lying southerly of Irrigation Block 78  
Should interruption of the Columbia Basin Project interruptible Water Service Contract occur, the landowner shall identify the 269 acres subject to irrigation. The remaining property within Section 7 shall not be irrigated.

**DESCRIPTION OF PROPOSED WORKS**

Four wells, pumps, and distribution lines

**DEVELOPMENT SCHEDULE**

BEGIN PROJECT BY THIS DATE: Completed	COMPLETE PROJECT BY THIS DATE: Completed	WATER PUT TO FULL USE BY THIS DATE: Completed
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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 an access port as described in chapter 173-160 WAC is required. An air line and gauge may be installed in addition to the access port.

### **Measurements, Monitoring, Metering and Reporting**

3. 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", chapter 173-173 WAC.
4. Water use data shall be recorded *weekly* and shall be submitted *annually* to Ecology by *January 31st of each calendar year*.

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.

<http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

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 #, source name, annual quantity used including units, maximum rate of diversion including units, and period of use. In the future, Ecology may require additional parameters to be reported or more frequent reporting. Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

### **Schedule and Inspections**

5. 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.
6. 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**

7. If water from facilities of any legally formed irrigation district is used on any or all of the primary lands described herein as the place of use, the quantities of water withdrawn under this authorization shall be proportionately reduced to correspond to the acreage for which district water is not available.
8. 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.
9. 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.
10. The amount of water granted is a maximum limit that shall not be exceeded and the water user shall be entitled only to that amount of water within the specified limit that is beneficially used.
11. The water quantities and uses recommended may be reduced at the time of issuance of a final water right commensurate with the capacity of the installed system and the uses and/or the number of acres actually irrigated.

Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not be detrimental to existing rights or the public welfare.

Therefore, I ORDER the requested change be made, to change the water right permit by changing the location of two (2) points of withdrawal, and by changing a portion of the place of use as granted under Ground Water Permit No. G3-29067P, subject to existing rights and the provisions specified above.

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            day of            , 2010.

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

**INVESTIGATOR'S REPORT**

**BACKGROUND**

An application for change/transfer was submitted by the Brown Children Trust/Mike Brown/Dorothy Brown of Royal City, Washington, to Ecology on January 10, 2005. They propose to change this water right permit by changing the location of two (2) points of withdrawal, and changing a portion of the place of use as granted under Ground Water Permit No. G3-29067P.

A notice of application was duly published in accordance with RCW 90.03.280 in the South County Sun on June 8 and June 15, 2005 and no protests were received.

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.

This authorization exceeds the exemption from SEPA. A checklist was submitted for the original project. A Determination of Significance (DNS) was issued for this project March 8, 1994. A new checklist was submitted with the application for change. The change in place of use does not substantially change the project.

**Table 1** Summary of Proposed Changes to Water Right Permit G3-29067P

<i>Attributes</i>	<i>Existing</i>	<i>Proposed</i>
Name	Brown Children Trust	Brown Children Trust/Mike Brown/Dorothy Brown
Priority Date / Date of Application for Change	Oct 21, 1991	January 10, 2005
Instantaneous Quantity	5280 gpm	No change
Annual Quantity	2317	No change
Source	4 wells	No change
Points of Withdrawal	1) NE $\frac{1}{4}$ NW $\frac{1}{4}$ 2) NE $\frac{1}{4}$ NE $\frac{1}{4}$ 3) NE $\frac{1}{4}$ SW $\frac{1}{4}$ 4) NE $\frac{1}{4}$ SE $\frac{1}{4}$	1) NE $\frac{1}{4}$ NW $\frac{1}{4}$ 2) NE $\frac{1}{4}$ NE $\frac{1}{4}$ 3) NW $\frac{1}{4}$ NW $\frac{1}{4}$ 4) NW $\frac{1}{4}$ NE $\frac{1}{4}$
Purpose of Use	Irrigation and frost protection	No change
Period of Use	Seasonal	No change
Place of Use	Section 7, T 17 N., R. 25 E.	Sections 7, 12, 13, and 18, T. 17 N., R. 25 E.

**INVESTIGATION**

The project is located on the north slope of the Frenchman Hills. The proposed project is located within the "Gray Area" of the Quincy Subarea.

Ground Water Permit G3-29067P was issued on June 28, 1994. Several extensions have been requested and granted. The Proof of Appropriation was filed on June 7, 1999. There has been a very involved history of compliance issues associated with this permit. A letter dated April 7, 2005, details some of the historical highlights, some of the provisions that apply to this permit, and includes a Statement of Agreement between Ecology and the applicant. A copy of the letter and a separate signed "Statement of Agreement" will be enclosed with this report.

In considering the proposed changes/transfers, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights/claims/applications in the vicinity; (3) water well reports for the applicant's wells, and other wells in the vicinity; (4) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide; (5) discussions with Department of Ecology regional program staff; (6) and multiple site visits and meetings were conducted by Lynn Maser in 2005 with Mike and/or Farrah Brown.

**The Well Changes**

Two of the four wells for this permit were not constructed in the authorized locations. All four wells are in a more or less straight line paralleling, and near to, the irrigation canal. However, the original permit authorized Wells 3

and 4 at locations about 2500 feet further south than they were constructed. This application for change asks to change the authorized well locations for two wells to match the locations where they were actually drilled near the canal.

The location for Well 3 is proposed to be changed from the NE¼SW¼ to the NW¼NW¼, and the location for Well 4 is proposed to be changed from the NE¼SE¼ to the NW¼NE¼ of Section 7. In making those changes, the wells from west to east will be numbered #3, #1, #4, and #2. (The common practice of the Browns however, is to refer to them as 1-4 from west to east, and the meter reading sheets are numbered that way. In the agreement mentioned above, the Browns agreed to decommission a fifth well in Section 7. At the time of preparation of this report, the well was not yet decommissioned.)

The four wells are all in use in an integrated system, meters have been installed on all four, and meter readings were received for all years from 2005 to 2008. Readings for 2004-05 were inadequate. The readings have reasonable acre-feet numbers, but no instantaneous numbers. At the beginning of 2006 the Browns were given meter sheets to help them keep track of instantaneous amounts as well as acre-feet, but those weren't used until 2008.

**Table 2** G3-29067 (Sec 7) - Meter Readings (acre-feet)

	Brown Begin 05	My Begin 1/05	Brown End 05	Brown Begin 06	Brown End 06	Brown Begin 07	Brown End 07	Brown Begin 08	My Begin 4/2/8	11/13/08
Well 1* (.01)	1231	<b>1225</b>	1681	1681	1681	1681	1681	1681	<b>1681</b>	1782
Well 2 (.01)	9913	<b>9913</b>	9972	9972	10658	10658	11144	1114(?)	<b>1149</b>	1818
Well 3 (.001)	500	<b>494</b>	986	986	1536	1536	1777	777(?)	<b>788</b>	869
Well 4 (.01)	1086	<b>1086</b>	1985	1985	2982	2982	3979	3979(?)	<b>4004</b>	4760

\*Pump has been out for some time. Authorized gpm: 5280. (In '08 they were there without well 3...no data)

In 2006, the annual quantity allowed for the primary acres plus the acreage allowed under the agreement was exceeded by 212 acre-feet. In 2007, the authorized annual quantity for the 393 primary acres (2006 was the last year for watering the other 185 acres), was exceeded by 348 acre-feet. In 2008 the acre-feet limit was exceeded by 231.5 acre-feet. See Table 3 below.

**Table 3** Water Use G3-29067 (Section 7+)

G3-29067P	Well 1 (acre-feet)	Well 2 (acre-feet)	Well 3 (acre-feet)	Well 4 (acre-feet)	Total Used/Year (acre-feet)	Authorized Primary Ac Annual Qa	Diff. AF
2005	450	59	486	899	1894	<b>2023</b> (393 ac + 185 ac)	-
2006	0	687	551	997	2235	<b>2023</b> (393 ac + 185 ac)	<b>212</b>  (10%)
2007	0	485	241	997	1723	<b>1375.5</b> (393 acres)	<b>348</b>  (25%)
2008	101	669	81	756	1607	<b>1375.5</b> (393 acres)	<b>231.5</b> <b>(17%)</b>
							+791.5

In order to address the unauthorized use of groundwater, a Notice of Correction was sent to the permittee, on March 25<sup>th</sup> 2009.

### The Place of Use Changes

The place of use authorized by the original permit is for land in Section 7, T. 17 N., R. 25 E.W.M.

There has been a long history of confusion and problems with this permit, some of them having to do with the supplemental nature of the permit. A letter dated April 7, 2005, to the applicant provides detail about the problems and the agreement reached between Ecology and the applicant to resolve the issues. The agreement provided that in the final certificate, the POU will be as indicated in the description above. There will be primary irrigation in Section

18 (264 acres), Section 13 (76 acres), Section 7 (11 acres), and Section 12 (42 acres). The total for those is 393 acres of primary irrigation, which reflects what has actually been done in recent years. The remaining 269 acres of the right is standby/reserve on other acreage in Section 7. Section 7 is watered with water from the Columbia Basin Project (662 acres) under a water service contract. That will be the source of water for that section, and only in a year when Bureau water is not available, could this ground water right be exercised on 269 of those acres. (It should also be noted that in the last few years, the contract with the Bureau was modified, to exclude the corners in Section 7, and move that acreage over to include the N½ of the circle in the SW¼ of in Section 8.)

The agreement also recognized that through 2006, 185 acres of leased land could be watered in Section 17, as has been the practice in past years. That water was, in effect, part of the 269 acres destined for standby/reserve status in Section 7. According to the agreement, after 2006, irrigation in Section 17 was no longer authorized.

### **Ownership of Permit**

The Brown family uses many different entities for the ownership of their lands. In this case, the lands are owned in part by Mike Brown, Dorothy Brown, and the Brown Children's Trust. Representatives of all three entities signed this application.

### **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.

Aerial photographs and field visits have confirmed the extent of development, historical use and beneficial use in all of the sections under consideration. The situation was complicated by seasonal changes and/or lack of them in earlier years. The original acre-feet allotment for this permit was calculated at 3.5 acre-feet per acre, which is reasonable for this area and consistent with crops grown on these lands.

The permit is in good standing. Seasonal transfers have authorized water to be transferred in 2005, 2008, and 2009. The permit is available for transfer and change.

Policy 1120 states: A simplified tentative determination may be conducted when a tentative determination or other actions confirming beneficial use of the water right has recently occurred. Under these circumstances, an investigation of the complete history of the water right is not required. Instances where simplified tentative determinations can be conducted include:

- a. The existing water right has had recent departmental action, such as the issuance of a change approval within the last 5 years;
- b. The existing water right was confirmed as part of an adjudication or other court action that determined the extent and validity of the right within the last 5 years;
- c. The existing water right is for a municipal water supply in accordance with RCW 90.03.330(3).

The seasonal change authorizations recognized the authorized quantities of the permit in good standing as the extent of this water right permit. Based on the simplified tentative determination (Policy 1120), the right is available for change as described above.

### **Background - History of Quincy Subarea Rule Development**

This water right covers land within the "Gray Area" part of the Quincy Ground Water Management Subarea. This section contains an overview of the subarea.

Since the early 1950s, irrigation waters have been delivered to the Columbia Basin Project area through an engineered system of canals and ditches. Leakage from the canals and ditches and infiltration of waters applied to fields has resulted in artificial recharge of aquifers in the project area that previously contained only naturally-occurring groundwater. As a result, water levels in aquifers located throughout much of the project area, including the Quincy Basin, have risen dramatically in the past half century. In the Quincy Basin, most of the imported irrigation waters have been "artificially stored" in unconsolidated sediments and sedimentary rocks that overlie a thick sequence of Columbia River Basalt Group basalt flows and intercalated sediments.

In 1973, Chapter 173-124 WAC was promulgated, which established the Quincy ground water management subarea within the Columbia Basin Project area, and defined boundaries of the Quincy subarea. Chapter 173-134

WAC was subsequently promulgated, which set forth rules for administration of both naturally-occurring and artificially-stored groundwaters in the Quincy subarea. Two groundwater management units, the “*shallow management unit*” and the “*deep management unit*”, were established for the Quincy subarea. The *shallow management unit* was defined as groundwater hydraulically continuous between land surface and a depth of 200 feet into basalt flows of the Columbia River Basalt Group. The *deep management unit* was defined as all groundwater underlying the shallow management unit.

In WAC 173-134, Ecology also made the determination that by the end of the 1973 irrigation season, there was approximately 3,493,142 acre-feet of imported irrigation water stored underground in the Quincy subarea, and that most of the imported water was located in the *shallow management unit* where it commingled with naturally-occurring groundwater.

In 1975, the U.S. Bureau of Reclamation (USBR) filed a declaration pursuant to RCW 90.44.130 to claim all artificially-stored groundwater in the Quincy subarea. The exterior boundaries of the area claimed by the USBR in the declaration were different from the exterior boundaries of the Quincy subarea originally defined in WAC 173-124. The USBR-claimed area was surrounded on the north, west, and south by a one- to three-mile-wide strip of land that was outside of the area claimed by the USBR but inside the Quincy subarea. In subsequent years, the area claimed by the USBR came to be known informally as the “*yellow area*”, and the surrounding strip of land outside the USBR-claimed area came to be known informally as the “*gray area*”.

Applicants for new groundwater withdrawals from the “*gray area*” were caught in a catch-22 situation. They could not receive a federal license from the USBR for withdrawal of artificially-stored water in the Quincy subarea, but state water was not available for appropriation either. Therefore, in 1983, WAC 173-134 was repealed and Chapter 173-134A WAC was adopted to replace it. In the new rule, the department confirmed the determination that all naturally-occurring groundwater in the “*yellow area*” of the Quincy subarea had been appropriated under state law by the issuance of water right permits and certificates. The new rule also determined that some naturally-occurring public groundwater in the “*gray area*” was still available for appropriation, and recognized Ecology’s authority to make decisions on applications for new withdrawals of public groundwater from the “*gray area*”.

In 1986, WAC 173-134A was amended to confirm that groundwater withdrawal limitations established in WAC 173-134A-060 and 173-134A-080 only apply to the geographical area within the Quincy subarea claimed by the USBR (i.e., only apply to the “*yellow area*”). This amendment had the effect of allowing Ecology to issue additional state permits for the withdrawal of naturally-occurring groundwater in the “*gray area*”, subject to the requirements of both the state groundwater code and the Quincy subarea rule.

In summary, Ecology may still issue permits for the withdrawal of naturally-occurring public groundwater from the “*gray area*” of the Quincy subarea. However, all naturally-occurring, public groundwater in the “*yellow area*” has been appropriated. As a result of the 1975 USBR claim to all artificially-stored groundwater in the Quincy subarea, Ecology has no authority to appropriate artificially-stored groundwater in the “*yellow area*”.

### **Hydrologic/Hydrogeologic Evaluation**

This project lies within the boundaries of the Quincy Ground Water Management Subarea as defined in Chapter 173-124 WAC. This Subarea covers the northern portion of the Columbia Basin Project (by the US Department of Interior, Bureau of Reclamation) and lies mostly within Grant County.

Much of the Quincy Subarea is underlain by unconsolidated sediments and/or sedimentary rocks. Most of the unconsolidated sediments were deposited by a series of glacial outburst floods that occurred during the most recent ice age between approximately 15,000 and 12,000 years ago. The sedimentary rocks were deposited in a series of ancestral rivers and lakes that occupied much of the Columbia Basin between about 8.5 and 3.5 million years ago. The sediments and sedimentary rocks comprise the “*Quincy unconsolidated zone*” as defined in WAC 173-124-050. The thickness of the *Quincy unconsolidated zone* generally varies from a few feet to several hundred feet, but it is absent in places.

The sediments and sedimentary rocks of the *Quincy unconsolidated zone* overlie a thick sequence of basalt flows assigned to the Columbia River Basalt Group (CRBG), which erupted between 17 and 6 million years ago. The CRBG is subdivided into three formations, from youngest to oldest, the Saddle Mountains Basalt, the Wanapum Basalt, and the Grande Ronde Basalt. All CRBG basalt flows in the Quincy Subarea are assigned to the “*Quincy basalt zone*”, as defined in WAC 173-124-050. The *Quincy basalt zone* varies from a few hundred feet to several thousand feet thick.

Applications for change of water right permits and certificates are governed by RCW 90.44.100, which states in part that: 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.

For this "Gray Area" water right, the existing wells (using original permit numbers, which, west to east, are #3, #1, #4, #2 ) are:

Well No. 3 (Well #1 on log) is identified as 16" x 187 feet deep. The well was constructed in 1995. The static water level was described as 30 feet below the top of the well.

Well No. 1 (Well #2 on well log) is identified as 16" x 171 feet deep. The well was constructed in 1995. The static water level was described as 30 feet below the top of the well.

Well No. 4 (Well #3 on well log) is identified as 16" x 190 feet deep. The well was constructed in 1995. The static water level was described as 30 feet below the top of the well.

Well No. 2 (Well #4 on well log) is identified as 16" x 197 feet deep. The well was constructed in 1995. The static water level was described as 30 feet below the top of the well.

According to well logs it appears that all four wells are completed into the upper basalt aquifer.

### **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 since these four existing wells have been operating at their current locations since 1995, with no known adverse impacts.

### FINDINGS

There is a water right permit available for change/transfer under Ground Water Permit No. G3-29067P. Ground water has been historically and beneficially used under this permit, for the seasonal irrigation of up to 662 acres. 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 four wells have been operating at their current locations since 1995, 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 beyond what has been historically used for many years.

#### Source of Water:

The four authorized wells withdraw water from the same body of public water.

### CONCLUSIONS

It is the conclusion of this examiner that, in accordance with Chapters 90.03 and 90.44, approval of this application for change to change two (2) points of withdrawal, and to change a portion of the place of use as granted under

Ground Water Permit No. G3-29067P 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 below are followed.

## **RECOMMENDATIONS**

The applicant's request to change/transfer water right permit by changing two (2) points of withdrawal, and changing a portion of the place of use as granted under Ground Water Permit No. G3-29067P is **approved**, subject to the following:

### **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. No withdrawal of water over and above what has been historically authorized would be approved through this change.

5280 gallons per minute, 2317 acre feet per year, each year, for the seasonal irrigation and frost protection of 662 acres

### **Points of Withdrawal**

1) 300 feet south and 200 feet west from the N $\frac{1}{4}$  corner of Section 7, within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; (2) 300 feet south and 200 feet west from the NE corner of Section 7, within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ ; (3) 300 feet south and 200 feet east from the NW corner of Section 7, within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ ; (4) 300 feet south and 200 feet east from the N $\frac{1}{4}$  corner of Section 7, within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ .

### **Place of Use**

The primary 393 acres are:

124 acres within the NE $\frac{1}{4}$  of Sec. 18, T. 17 N., R. 25 E.W.M.;  
140 acres within the NW $\frac{1}{4}$  of Sec. 18, T. 17 N., R. 25 E.W.M.;  
11 acres within the SW $\frac{1}{4}$  of Sec. 7, T. 17 N., R. 25 E.W.M.;  
76 acres within the NE $\frac{1}{4}$  of Sec. 13, T. 17 N., R. 24 E.W.M.;  
and 42 acres within the SE $\frac{1}{4}$  of Sec. 12, T. 17 N., R. 24 E.W.M.

269 acres of this right are "standby/reserve" in Section 7 on lands covered by a Columbia Basin Project interruptible Water Service Contract contract.

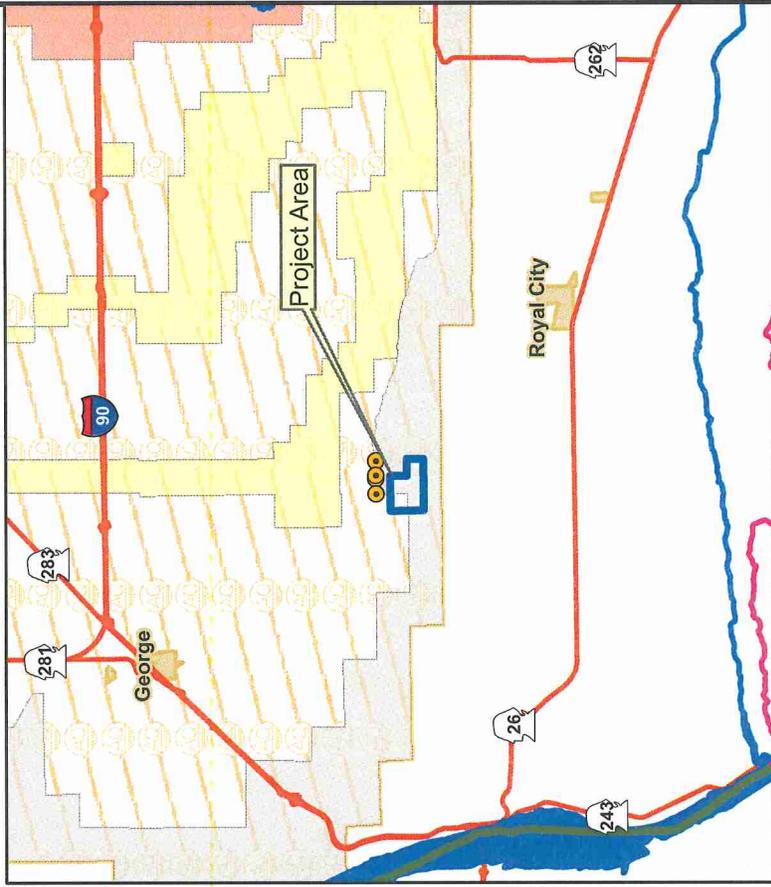
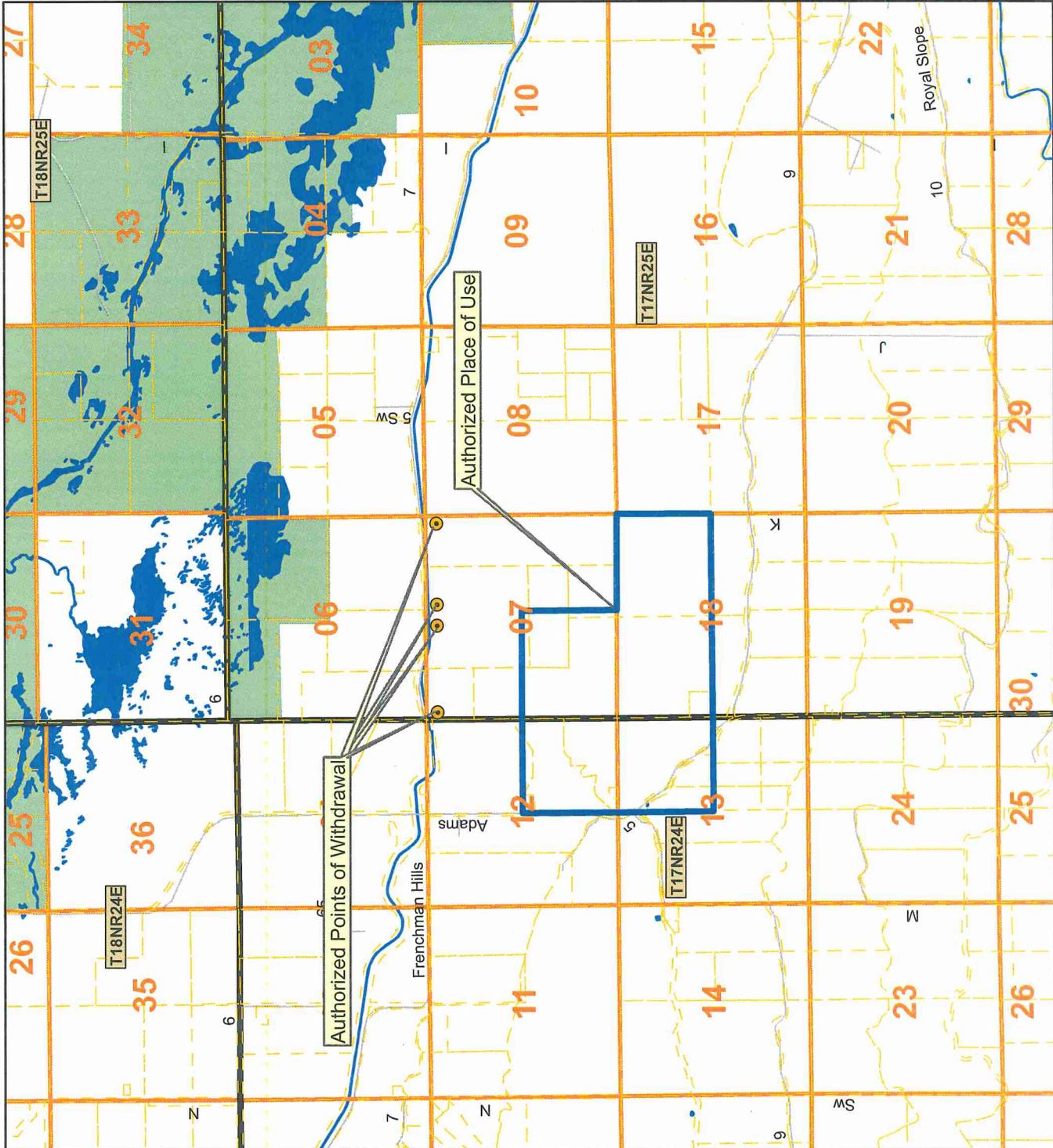
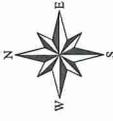
Report by: Lynn Maser  
Watermaster, Water Resources Program

\_\_\_\_\_  
Date

W/Draft ROEs/Maser 2010/G3-29067 Brown

# Attachment 1

Brown Children Trust / Mike Brown / Dorothy Brown  
 Change Application Number CG3-29067@1  
 Sec. 8, T 17N, R 25E, W.M.  
 WRIA 41 - Grant County



- Legend**
- County
  - WRIA
  - cities
  - County Parcels
  - Local Roads
  - Highways
  - Townships
  - Sections
  - QuincyGrey
  - QuincyBuffer
  - QuincyBank
  - QuincyBorder

**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.'



FILE COPY

STATE OF WASHINGTON  
DEPARTMENT OF  
4601 N Monroe Street • Spokane, Washingtn

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

April 7, 2005

**CERTIFIED MAIL** (7000 1670 0000 6083 8369)

Mr. Mike Brown  
Ms. Farrah Brown  
12088 Road 11 SW  
Royal City, Washington 99357

Dear Mike and Farrah:

Re: Seasonal Change for 2005 under Ground Water Permit G3-29067P  
(WRIA 41- Grant County)

We have had several meetings about this water right and your request for a seasonal change for a part of the right. In this letter I will include some of the history, and the details of the agreement we have reached.

First, here is a brief outline of some of the pertinent facts in this situation.

<b>Location:</b>	Frenchman Hills (North Slope); Sec. 7, T 17 N., R. 25 E.W.M.; by canal. (Gray Area)
<b>Priority Date:</b>	Oct 21, 1991 (permit issued June 28, 1994 to Dorothy Brown)
<b>Details:</b>	4 wells, 5280 gpm, 2317 acre-feet for irrigation and frost protection of 662 acres (same 662 acres covered by bureau water)
<b>Report of Exam:</b>	Issued April 12, 1994
<b>Development Schedule</b>	Beginning of Construction - May 1, 1995 Completion of Construction - May 1, 1996 Proof of Appropriation - May 1, 1997

Quote from report:

*"This project currently enjoys a Water Service Contract issued by the Quincy Columbia Basin Irrigation District. The contract was issued as an Interruptible Contract, which means that the surface water supply from the canal could be cut off during times of water rationing.*

*The applicant has submitted this application for ground water withdrawals in order to replace the Water Service Contract. He wants to replace the contract so that the water supply will not be interrupted and so that he would no longer have to pay for the water pumped from the canal."*

7000 1670 0000 6083 8369

BROWN G3-29067P Seasonal	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postman Here 4-11-05	
Recipient's Name (Please Print Clearly) (to be completed by mailer) Mike Brown	
Street, Apt. No. or PO Box No. 12088 Rd 11 SW	
City, State, ZIP+4 Royal City, WA 99357	
PS Form 3800, February 2000 See Reverse for Instructions	



**Permit Cancelled:** 1996  
**Stipulation and Agreed Order of Dismissal:** 1996 (reinstating permit w/new development schedule, culminating in PA below.)  
**Proff of Appropriation Filed:** June 7, 1999  
**Proof Exam:** Proof of Appropriations was received in 1999, but no proof exam has been done.  
**Seasonal Changes:** The Browns have some documents relating to possible requests for seasonal changes in the years before 2002, but neither Ecology or the Brown's have any record of a formal response to any such request.

**2002:** Ecology granted moving 187 acres to the E½ of Section 17 (meter provision, etc.)

*"Irrigation of any land removed from irrigation under this authorization for the 2002 season will constitute an enlargement of the right and this authorization shall be immediately terminated."*

**Irrigation of lands within Section 17 must be irrigated with ground water only. The use of project water will result in the immediate termination of this authorization."**

**2003:** Requested moving 525 acres out of Section 7.  
Letter dated April 4, 2003 rejected the application, noting:

- wells in wrong place
- no copy of current contract submitted
- meters not installed

**2004:** Request similar to 2003 for 525 acres out of Section 7.  
Letter of January 20, 2004 returned application as unacceptable, noting:

- permit not in good standing because it has not been assigned to proper Brown entity.
- application for change was not followed up on and was rejected.
- wells in wrong place

**2005:** Request similar to last two, with some modifications.

**Issues in 2005:** Given this context, the following issues have been identified.

\***Land Ownership.** Ecology's letter in January of 2004 returning that seasonal change application as unacceptable, pointed out that there was a discrepancy in the land ownership. That application said that the land had been transferred from Dorothy Brown (original permit holder) to the Brown Children's Trust. No assignment had been received. The 2005 application still lists Dorothy Brown as land owner along with the Brown Children Trust. Farrah Brown, BCT trustee signed as water right holder, but this permit still has not been assigned to the trust, so an assignment is apparently still in order.

\***Wells.** Of the four authorized wells, 2 wells are still in the wrong location, and after several years of reminders an application for change was received in January, 2005 to correct that problem. However, there is an extra (5<sup>th</sup>) well that has been drilled in this section, which is not authorized and needs to be decommissioned.

\*Supplemental issues. This permit may have been intended to be a supplemental right, meant to supplement Bureau water, as described above. That means that this water right would be valid only in conjunction with the underlying Bureau water contract which is for the same 662 acres. So, if any acres of this ground water right were to be transferred out of this section, it could only happen if a corresponding number of acres within Section 7 were not watered from either source for that year.

However, this apparently has never been the understanding of the Browns. Their claim is that no one has ever explained this to them, either in person or in writing. Nothing in Ecology's files shows such an explanation and the language in the original Report of Exam is unclear.

\*Unauthorized acreage watered. In 2003 and 2004, no seasonal changes were granted. Yet, aerial photos show, and Mike Brown confirms, that the requested acres were irrigated anyway. This occurred even though he continued to water the full extent of the developed lands within Section 7 with Bureau water.

In recent meetings (March 16 and March 25, 2005), Mr. Brown stated that he has watered 385-400 acres in Sections 12,13, and 18 with ground water from this water right ever since 1997. And that since 2001 he has irrigated another 185 acres in Section 17 (leased ground) also with ground water from this permit. All along since 1997 he has continued to water fully the lands in section 7 with surface water from the irrigation district.

Mr. Brown stated that he thought he had authorization all along to do this irrigation. One of his former employees stated at the meeting on March 25 that she deliberately kept the fact that his seasonal change requests were not approved from him for personal reasons. Still, hundreds of acres were irrigated in every year since 1997, and in the last two years those acres were irrigated even though Ecology formally rejected or returned seasonal applications for that irrigation.

\*Meters. They have been installed on four wells. Readings from meters in 2004 are inadequate (no weekly readings, no instantaneous readings...just ditto marks, and it appears that one meter was broken towards the end of year, but the pumping continued for a month). The data submitted was also inaccurate (readings show as one year, when Brown now states that the readings represent 2 years worth of water usage).

\*Unauthorized acre-feet in 2004 . The meter readings submitted for 2004, show approximately 1225 + 1171 (and possibly more when the meter was broken) + 494 + 1086 = 3976 acre feet pumped from the four wells under this right, which is limited to 2317 acre feet! The Browns now contend that those totals represent 2 years worth of irrigation rather than the one that is indicated on the sheets.

There had been considerable disagreement about the nature of this water right permit. The Brown's understanding and historical usage demonstrate their contention that this permit is not a supplemental water right. Ecology takes a different position, but there is little in the file that shows an attempt to sort this out, or to take any enforcement action. Therefore, we have had several meetings to come to some agreement about how to move forward. On the following page is the text of the agreement recently signed (4/4/05) by both parties:

**"Statement of Agreement"**

After numerous meetings between Ecology and Mike & Farrah Brown about water right G3-29067 (Sec. 7, 17/25), we have come to an understanding of the situation as described below. This agreement will be the basis for moving forward, will be incorporated into a response letter to a seasonal change application, and will be the likely basis for the pending proof exam & issuance of the certificate.

\* A seasonal change is not really the intention here. The Browns believe they are entitled to irrigate Section 7 with Bureau water, and additional acres with this permit. Therefore, their seasonal change application will be neither approved nor rejected. It will be returned as inappropriate, since there is no intention of taking land out of production in Section 7 on a seasonal basis.

\* There is a pending application for change for this permit, and there is also a pending proof exam. Under these processes, it is likely that this year Ecology will approve the change of POU of this permit to include the approximately 385 acres in Sections 12, 13, and 18, and include those acres on the final certificate as primary acres under this water right. The 185 acres being watered in Section 17 will be allowed until the lease runs out after the irrigation season in 2006. At that time those acres (185) under the permit will be permanently considered supplemental to the Bureau water in Section 7. That means that those acres cannot ever be separated from the acreage irrigated by the Bureau, unless the acreage is not watered with Bureau water for that year.

\* Under the pending application for change and proof exam, we will also likely change the locations of the two wells (of four permitted) that are in locations not authorized on the permit.

\* The Browns will decommission the 5<sup>th</sup> well on the property in 2005.

\* The Browns have already submitted (end of March 2005) assignment documents clarifying the land ownership situation.

\_\_\_\_\_  
Lynn Maser, Watermaster, Dept of Ecology

\_\_\_\_\_  
Date

\_\_\_\_\_  
Farrah Brown, Brown Children's Trust

\_\_\_\_\_  
Date

Mr. Mike Brown and Ms. Farrah Brown  
Seasonal Change 2005 – G3-29067P  
Page 5 of 6  
April 7, 2005

With this understanding in hand, it is also understood that Ground Water Permit G3-29067P will be exercised under the usual provisions, including the following:

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 by December 31, each year.

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.

The withdrawal used under this authorization shall be metered for instantaneous and/or cumulative quantities as per conditions under the original water right. With proper consent, Ecology officials shall have the right to access the meter(s) at all times. In the event the meter(s) or measuring device(s) should become damaged or inoperable, all withdrawal should cease until such time as the meter or measuring device is restored to proper working order.

The Department may field verify usage under this permit at any time for compliance with the terms and/or conditions of this agreement.

Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances or regulations.

This then, is the situation as it now stands for Ground Water Permit G3-29067P. As we move forward, if you have any further questions, please feel free to call me, or the Watermaster, Lynn Maser, (509-754-0268, or 509-990-7660) any time.

Mr. Mike Brown and Ms. F h Brown  
Seasonal Change 2005 – G3-29067P  
Page 6 of 6  
April 7, 2005

This decision may be appealed pursuant to RCW Chapter 43.21B. Any person wishing to appeal this decision must file an appeal with the Pollution Control Hearings Board **within thirty (30) days of receipt of this decision**. Send the appeal to: Pollution Control Hearings Board, P.O. Box 40903, Olympia, Washington 98504-0903. At the same time, a copy of the appeal **must** be sent to: Department of Ecology, Water Resources Appeals Coordinator, P.O. Box 47600, Olympia, Washington 98504-7600.

Sincerely,



Keith Stoffel  
Section Manager  
Water Resources Program  
Eastern Regional Office

KS/LM:md

W Maser/2005/Brown Mike G3-29067P seasonal change 4-07-2005.doc

cc: Lynn Maser, Ephrata Watermaster

I certify that I mailed this letter or an identical copy thereof, postage prepaid, to the above addressee(s) this 7<sup>th</sup> day of April, 2005.  
Water Resources Program, Office Assistant, Molly A. Davis 

Statement of Agreement

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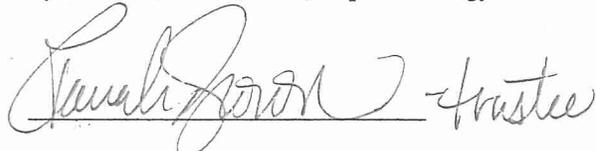
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\_\_\_\_\_  
Lynn Maser, Watermaster, Dept of Ecology

4.4.05  
Date

  
\_\_\_\_\_  
Farrah Brown, Brown Children's Trust

4-4-05  
Date