DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Change Place of Use
Change Purpose of Use
Add and Change Point of Withdrawal

PRIORITY DATE
June 25, 1940

WATER RIGHT NUMBER
54-D

MAILING ADDRESS
Columbia Pulp 1, LLC
164 Main Street
PO Box 183
Dayton, Washington 99328

Total Quantity Authorized for Withdrawal

WITHDRAWAL RATE	UNITS	ANNUAL QUANTITY (AF/YR)
700	GPM	178.5

Total withdrawals from all sources must not exceed the total quantity authorized for withdrawal listed above.

Purpose

PURPOSE	WITHDRAWAL RATE ADDITIVE	WITHDRAWAL RATE NON-ADDITIVE	UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Industrial Supply	700			178.5		01/01 - 12/31

IRRIGATED ACRES ADDITIVE	IRRIGATED ACRES NON-ADDITIVE	PUBLIC WATER SYSTEM INFORMATION WATER SYSTEM ID	PUBLIC WATER SYSTEM INFORMATION CONNECTIONS

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Columbia	Groundwater		35-Middle Snake

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q
Well No. 1	268344 or 268341		13 N.	37 E.	32	SE¼ or NE¼
Well No. 2	268344 or 268341		13 N.	37 E.	32	SE¼ or NE¼
Well No. 3	268344 or 268341		13 N.	37 E.	32	SE¼ or NE¼

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

2684343, 268344, 268347, 268041

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Government Lots 3, 4, and 5; SE1/4NW1/4; E1/2SW1/4; W1/2SE1/4 and SE1/4SE1/4 of Section 32, Township 13 North, Range 37, E.W.M. Government Lot 6 in Section 33, Township 13 North, Range 37, E.W.M. Government Lots 1, 2 and 3; S1/2NE1/4 of Section 4, Township 12 North, Range 37, E.W.M.

Proposed Works

Three wells constructed into the basalt aquifer for industrial supply of a pulp mill, with wastewater being land applied.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
September 1, 2016	September 1, 2020	September 1, 2021

Measurement of Water Use

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

Provisions

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, reference this tag number.

Installation and maintenance of an access port as described in WAC 173-160- 291(3) is required.

Proposed Well Nos. 1-3, located within the SE¼ or NE¼ of Section 32, T. 13 N., R. 37 E.W.M., shall be properly completed into the Basalt Aquifer. Note: the wells recently approved under Surface Water Certificate No. 6350, together with ROE dated 10/2/2014, cannot be used for this authorization since they are within a different body of public ground water.

The original authorized well located within the SE¼SE¼ of Section 19, T. 10 N., R. 39 E.W. M., shall be properly capped in accordance with WAC 173-160-301. Capping must be affixed by solid welds or equal seal to prevent unauthorized access to the well.

Measurements, Monitoring, Metering and Reporting
An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Water Use Efficiency
The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

Proof of Appropriation
The water right holder must file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the water right. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

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.

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

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(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application for change to Ground Water Certificate No. 54-D, subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings 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.

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 1111 Israel Road SW Ste 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this day of 2015.

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Keith L. Stoffel, Section Manager

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://www1.leg.wa.gov/CodeReviser.

INVESTIGATOR'S REPORT
Dan Tolleson, Department of Ecology
Water Right Control Number CG3-*00097S@1
Ground Water Certificate No. 54-D

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number CG3-*00097S@1 under Ground Water Certificate No. 54-D

EXISTING Water Right Attributes

Water Right Owner:	Blue Mountain Canneries Inc.
Priority Date:	6/25/1940
Place of Use	Irrigation: 119 acres in the S½ of the Section 3, T. 9 N., R. 38 E.W.M. Manufacturing: Property of Blue Mountain Canneries, Inc. located in the SE¼SE¼ of Section 19; and the NE¼NE¼ of Section 30, T. 10 N., Range 39 E.W.M., lying within the city limits of Dayton. This property is more particularly described on the original Certificate.

County	Waterbody	Tributary To	WRIA
Columbia	Groundwater		32-Walla Walla

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Manufacturing (cannery) Irrigation of 119 acres	700	GPM	234.3	01/01*	12/31*

*According to the declaration application the season of use for irrigation was 6/25 – 9/1. This does not necessarily reflected intended long term use, since the season is too short for almost all crops grown within this area. This limitation was not carried forward and recorded on the certificate issued in 1946.

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Well	1080130180000		10 N.	39 E.	19	SE¼SE¼	46.3249	117.9739

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

REQUESTED Water Right Attributes

Applicant Name:	Columbia Pulp 1, LLC
Date of Application:	8/20/2014
Place of Use	Government Lots 3, 4, and 5; SE1/4NW1/4; E1/2SW1/4; W1/2SE1/4 and SE1/4SE1/4 of Section 32, Township 13 North, Range 37, E.W.M. Government Lot in Section 33, Township 13 North, Range 37, E.W.M. Government Lots 1, 2 and 3; S1/2NE1/4 of Section 4, Township 12 North, Range 37, E.W.M.

County	Waterbody	Tributary To	WRIA
Columbia	Groundwater		35-Middle Snake

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Industrial Supply	700	GPM	215.86	01/01	12/31

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q
Well No. 1	268344 or 268341		13 N.	37 E.	32	SE or NE
Well No. 2	268344 or 268341		13 N.	37 E.	32	SE or NE
Well No. 3	268344 or 268341		13 N.	37 E.	32	SE or NE

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the proposed change.

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 Dayton Chronicle on November 5th and 12th, 2014. No protests were received within the 30 day period of time outlined within the notice. However, one letter of concern was received prior to the newspaper notice regarding this application, which is detailed in the Public Interest portion of the report.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

(a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
(b) It is a groundwater right application for more than 2,250 gallons per minute;

(c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
(d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
(e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp.*

RCW 90.44.100 allows Ecology to amend a ground water permit 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), or when consolidating exempt wells with an existing permit or certificate (RCW 90.44.105), 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.

INVESTIGATION

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits and claims; (3) USGS topographic maps, air photographs; (4) authorized point of withdrawal and proposed points of withdrawal; (5) authorized and proposed places of use; (6) Watershed Planning for WRIA 35; (7) State of Washington Irrigation Guide (Natural Resources Conservation Service 1997); and (8) discussions with Department of Ecology regional program staff.

A field investigation was conducted by Dan Tolleson on April 8, 2015. The authorized places of use are located in the vicinity of the City of Dayton, Washington. This authorized area is located in the Walla Walla Basin, which is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32. The proposed place of use is located approximately four miles northwesterly of Starbuck, Washington, near the Snake River. This proposed area is located within the Middle Snake Basin WRIA 35, which is actively undergoing Watershed Planning.

The authorized place of use of this water right has two land owners. Seneca Foods owns the manufacturing portion of the place of use and the authorized well. John and Tarah McCaw own the land described as "119 acres of irrigation". The application for change of this water right that was submitted to Ecology was signed by Seneca but not by the McCaws. On October 6, 2014, Ecology sent a letter to the McCaws to ask if they believed they had an interest in the water right. They indicated through an attorney that they did have an interest in this water right and were opposed to the change.

The Pollution Control Hearings Board, in Orondo Fruit Co., et al, v. Ecology PCHB No. 10-164 & 165 found that Ecology can change a water right without all landowner's signatures if sufficient information is available to process the request. Ecology believes we have sufficient information to make a determination of the extent and validity of this water right, for the requested change application.

The authorized place of use describes two non-contiguous parcels of land, with one being for the manufacturing portion of the right and the other for the irrigation portion of the right. The cannery/manufacturing portion of the place of use is located on the northeastern edge of the City of Dayton and is currently owned by Seneca Foods. This portion of the place of use is developed commercial buildings, historically used for processing and canning vegetables. Currently the majority of the facility is not in use. However, a small part of the operation is now used as a seed mill. The irrigation portion of the place of use is located approximately 3.5 miles southwest of the City of Dayton. The legal description on the certificate is relatively large but was narrowed down by a detailed map within the water right file to the lands now owned by John and Tarah McCaw. This portion of the place of use is currently used for dryland crops with no irrigation system in place. One house with outbuildings is located at this site.

The authorized point of withdrawal is a well located within the cannery portion of the place of use, more specifically the SE¼SE¼ of Section 19, T. 10 N., R. 39 E.W.M. The well is the only authorized source for the project, which is currently offline. The pump has been removed, but the rest of the infrastructure remains in place, including a flow meter. Seneca Foods proposes to retain this well for a possible future project. Currently, an old wood box is used to cover the well head. According to WAC 173-160-301, any

well not in use or temporarily out of service must be properly capped. Capping must be affixed by solid welds or equal seal to prevent unauthorized access to the well.

The proposed place of use is located within portions of Sections 32 and 33, T. 13 N., R. 37 E.W.M. and Section 4, T. 12, R. 37 E.W.M. This area is for the most part undeveloped land other than railroad tracks and Highway 261 which roughly parallel one another in a northwesterly direction. Columbia Pulp proposes to build a pulp mill on the portion of the place of use between the railroad tracks and Highway 261. The remaining larger portion of the place of use is intended to be used for land application of wastewater. Some of the area proposed for wastewater application is very steep and cannot be developed.

The proposed points of withdrawal are intended to be constructed within an odd shaped 40 acre parcel of land located within portions of the S½NE¼ and the N½SE¼ of Section 32, T. 13 N., R. 37. E.W.M. They propose to construct up to three wells for this project.

History of Water Use

Ground Water Right 54-D was issued in 1946 under a declaration. This right originally authorized manufacturing use (cannery use) and the irrigation of 119 acres. The canning facility was constructed in 1940 on the eastern edge of Dayton and remained in use until it was shut down at the end of the 2005 season. Water used for irrigation under this right during this time, was primarily wastewater produced as part of the canning process. The authorized place of use for the irrigation portion of the right is described as being approximately 3.5 miles southwest of the cannery. Limited information exits on how water was conveyed to this site and put to use for irrigation. Reportedly, water was put into a pipeline/ditch and transported to this location. Testimonials, photographs and maps of an abandoned system were provided as evidence that water was conveyed and used at the authorized site in the distant past. The original permit file notes that this irrigated land was leased and not owned by the cannery. Regardless of how this system was used, no water has been pumped from the authorized well to this site since the 1950s. In the 1950s, a pipeline was constructed from the authorized well to a parcel of land just to the northeast of the cannery, which is known as "Patit Creek Lands". The Patit Creek lands were not authorized as a portion of the place of use under this right. Reportedly, wastewater along with some fresh water was pumped into a mixing tank and used to irrigate these lands. This switching of irrigated fields in the mid-1950s is consistent with the easement established for a pipeline to the Patit Creek lands. It was during this time that the actual acres of irrigation went from the 119 acres as authorized to approximately 157 acres. Most of the Patit Creek Lands were irrigated under a lease and not owned by the cannery. These acres of irrigation were reduced over time to approximately 147 acres, as lands along Patit Creek were placed into the federal CREP program. Various documents show contracts to irrigate this land with both wastewater from the cannery and fresh water from the authorized well. From 2006 - 2009, only fresh water was provided for irrigation of Patit Creek lands, since no wastewater was available from the cannery. In 2010 all use under this water right ceased. The water right was then put into the state's Trust Water Program for the 2012 season to present. The cannery has had several owners throughout the years, with Seneca Foods Corporation being the current owner.

Timeline of use for Ground Water Certificate No. 54-D

1940	Well was constructed and first put to use for the cannery.
1945	Ground Water Code was established RCW 90.44.
1946	Water Right Certificate issued under a declaration for 700 gpm, 234.3 af/y, for manufacturing and irrigation of 119 acres. According to the water right file, the land used for irrigation at that time was leased.
1940s - 1950s	Water was reportedly conveyed downstream for the irrigation of 119 acres of land now owned by John and Tarah McCaw. No records exist on exactly how this process worked or the exact years it occurred.
1956	An easement was established with the RR Company for a pipeline that was used to irrigate Patit Creek lands*. It appears that well water was provided for irrigation of Patit Creek lands to the east of the cannery began around this time.
1962	The authorized well was deepened from 942' to 1187'
1967	Relinquishment statute was established RCW 90.14.180
1972 - 1996	Records of leases with Broughton Land Company for the irrigation of Patit Creek lands. Leases indicate that wastewater from the plant and water directly pumped from the well were used to irrigate Patit Creek lands. Lease documents from 1997 – 2009 are missing, but reportedly were similar to the 1972-1996 leases.
2005	The cannery was closed and no manufacturing water has been used since the end of the 2005 processing season. In addition, the Wastewater contract expired, so no land application of wastewater has occurred since then.
2006-2009	Irrigation of Patit Creek land continued without the use of wastewater. In 2007, Seneca applied for and received a seasonal change to this water right for three acres of irrigation.
2012 – 2015	Water right 54-D was donated into the trust water program with Ecology. Donation for 119 acres of irrigation expires 12/31/2015.

*Note: Irrigated "Patit Creek lands" are within portions of the S½ of Section 17 and Section 20, all within T. 10 N., R. 39 W.W.M. The entire irrigated area is cross-fenced and located within the bottom lands of Patit Creek. This area is currently pasture land used for cattle grazing. The storage tank and risers from the old big gun irrigation system are still located within the area.

Aerial photographs were used to help verify the extent of development, historical and beneficial use of this water right. The authorized place of use for the irrigation portion of this project currently consists of approximately 105 acres of cultivated dryland crops. This dryland only use is verified by available photographs that date back to the 1980s. The unauthorized Patit Creek lands, claimed by Seneca Foods under this project currently consist of approximately 147 acres of pasture. According to available photographs these lands were consistently irrigated through 2009.

The maximum authorized annual quantity of Certificate 54-D is 234.3 acre-feet for manufacturing and irrigation. The manufacturing portion of the right was used for the canning process, which includes the cleaning, processing and water added to cans. Much of the water used in this process is not consumed but ends up as wastewater. This wastewater along with some fresh water from the well was historically used for irrigation of pasture. In recent years this water right was used to irrigate pasture with fresh water directly from the well, since the cannery was shut down and no wastewater was generated. The

State of Washington Irrigation Guide (WA210-VI-WAIG) states that 2.6 acre-feet per year, per acre, are required for pasture in the Dayton area. The most recent irrigation system consisted of big guns that are estimated to have an efficiency rate of 55-75 percent. Since this system had limited water available it is estimated to have been operated with the higher efficiency rate of 75%. At this rate of efficiency, the maximum water duty, for the crop listed above, is 3.5-acre-feet per year, per acre. Although this estimated maximum water duty is significantly higher than what this water right authorizes, it appears to be reasonable given the project. The original primary use of the water right was for canning with irrigation being a secondary use resulting from the canning process. Originally wastewater was intended to irrigate lands that had a junior water right (McCaw lands) and would typically only need additional water in the summer months. When the water right was moved to the Patit Creek lands, it appears the area was sub-irrigated to some extent and needed less water. The irrigated pasture was used for grazing and had multiple zones, which allows for more flexibility when maintaining a pasture. As indicated by the available meter records, the maximum water duty of this right was utilized when the cannery operated and water was used for irrigation. However, in the last six years prior to the water right being donated into trust, water use was reduced since only the irrigation portion of the right was utilized. The maximum annual quantity used in this time period is 216 acre-feet for the irrigation of 147 acres of pasture or 1.5 acre-feet per acre.

Water Use 54-D

Year	Water Use
2012 – present	Donated to Trust Program
2011	0
2010	0
2009	162 af
2008	216 af
2007	203 af
2006	100 af
2005	Last year the cannery operated

This water right originally authorized 119 acres of irrigation. It appears that this use was expanded sometime after the mid-1950s to 157 acres of irrigation. This expansion occurred when the irrigation portion of the water right began on Patit Creek lands. Eventually portions of the lands irrigated along Patit Creek were put into CREP, leaving approximately 147 acres of irrigation. A water right cannot be expanded or enlarged beyond the amount documented on the certificate. In addition, only 119 acres of this water right was accepted into the trust donation program. Therefore, only 119 acres of irrigation are available for change.

Since the proposed change includes purpose of use, only the consumptive portion of the right can be changed to the new use. Given the authorized source is a deep basalt well, none of the return flow practically makes it back to the original source. This means the right was entirely consumptive to the deep basalt aquifer. Therefore, 119 acres of irrigation with its proportionate share of annual quantity of 178.5 acre-feet (119 x 1.5 = 178.5) is available for change to the new use.

The maximum instantaneous quantity authorized under this right is 700 gallons per minute. The most recent maximum capacity estimate of the pumping system was determined to be 1325 gallon per minute. This system utilized a variable frequency drive (VFD) pump that allows pumping rates to remain at 600-700 gallons per minute. This quantity of water is approximately half of what is typically required to irrigate 147 acres of land, which means the project was irrigated in separate zones. This use is consistent with the design of the irrigation system. Since the maximum instantaneous quantities were used in zones, the entire 700 gpm was used on the available 119 acres at one time. Therefore, the maximum instantaneous quantities authorized under this right have been put to beneficial use and are available for change.

Proposed Use

The applicant proposes to change the source of this water right from a basalt well in the City of Dayton to three wells, approximately four miles northwesterly of Starbuck, Washington. The purpose of use is proposed to be changed from the seasonal irrigation of 119 acres to continuous industrial supply of a pulp mill. The pulp mill is estimated to need this additional water when fully developed, in addition to Surface Water Certificate No. 6350 (see discussion below).

Requirements for Proposed Wells

WAC 173-160 contains requirements for well drillers, system operators and/or owners to tag new and existing wells with identification tags supplied by Ecology. The well identification program creates a standard system to identify all newly constructed or existing wells, so that property owners and various agencies can readily share well data. In addition, Ecology field staff use the well tag to identify the well. Accordingly, this decision contains provisions requiring each well to be tagged with a unique identification number.

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting.

Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing water right certificates, permits, and claims appurtenant to the existing project, to the unauthorized land used for irrigation and to the proposed place of use. The search focused primarily on Sections 17, 19, 20 and 30 within T. 10 N., 39 E.W.M.; Section 3 within T. 9, R. 38 E.W.M.; Sections 32 and 33, Township 13 North, Range 37, E.W.M.; and Section 4, Township 12 North, Range 37, E.W.M. This review shows five water rights appurtenant to the authorized place of use, one water right appurtenant to the unauthorized irrigation lands (Patit Creek lands) and two water rights appurtenant to the proposed place of use, which are as follows:

Authorized manufacturing/cannery portion of the Place of Use:

Surface Water Certificate No. 2189 authorizes 0.93 cfs for non-consumptive elevating (lifting of products) and cooling purposes of the Blue Mountain Canneries (the same cannery as this project), with a priority date of 1939. The authorized source is the Touchet River within the SW¼SW¼ of Section 2, T.

9 N., R. 39 E.W.M. The authorized place of use of this right overlaps the northern half of the cannery's place of use authorized under Certificate 54-D. The water right is in the name of the City of Dayton and appears to have been abandoned many years ago.

Ground Water Certificate Nos. G3-26587 and SWC 31-D are municipal supply water rights for the City of Dayton. This municipal supplier now provides water to the old cannery facility, which is currently used as a seed mill.

Authorized Irrigation portion of the Place of Use:

Touchet River Adjudicated Certificate No. 164 authorizes up to 0.1 cfs from the Touchet River for the irrigation of five acres. The authorized place of use of this water right overlaps the authorized irrigation portion of the place of use described under Certificate 54-D. Certificate No. 164 has a similar place of use as Touchet River Certificate 214. The authorized point of diversion is approximately half a mile to the northeast and was originally a ditch system. This ditch system is now abandoned and any portion of the water right appurtenant to John and Tarah McCaw lands is relinquished for non-use.

Touchet River Adjudicated Certificate No. 214 authorizes up to 2.7 cfs from the Touchet River for the irrigation of 135 acres. The authorized place of use of this water right overlaps the authorized irrigation portion of the place of use described under Certificate 54-D. Certificate No. 214 has a similar place of use as Touchet River Certificate 164. The authorized point of diversion is approximately half a mile to the northeast and was originally a ditch system. This ditch system is now abandoned and the portion of the water right appurtenant to Mr. and Mrs. McCaw lands is relinquished for non-use.

Unauthorized irrigation (Patit Creek lands):

Touchet River Adjudicated Certificate No. 304 authorizes up to 1.772 cfs, from Patit Creek, for the irrigation of 88.6 acres. The authorized place of use of this right overlaps a portion of the unauthorized land irrigated under Certificate No. 54-D. It appears that this right has not been used in decades and has been relinquished for non-use. Broughton Land Company currently owns the land described as the place of use under this water right.

Proposed Place of Use:

Water Right Claim 096242 is on a short form and claims stockwatering from a spring. This area is still used for cattle, but air photographs do not show any identifiable use under this claim. The validity of the claim is unknown, since there was no access to the area.

Surface Water Certificate No. 6350, together with ROE dated 10/2/2014 authorizes 0.87 cfs for industrial use of a pulp mill. The authorized source locations and the place of use are the same as this application for change. Certificate 54-D is proposed to be added to this existing right, which is still in the development stage.

The validity and extent of above listed water rights are not determined in this report.

Hydrologic/Hydrogeologic Evaluation

The following hydrogeologic analysis was written by John Covert, Hydrogeologist, of the Water Resources Program Technical Unit in Ecology's Eastern Regional office.

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.

The applicant hired Landua Associates to submit a Technical Memorandum in support of the change application. The memo in the file is dated 3/4/14. The 18 page memo evaluated the same body and impairment questions that need to be addressed during the change evaluation process.

Regarding the same body of public groundwater question, the memo concludes that the original point of withdrawal in T10NR39E-19, and the proposed points of withdrawal, drilled into and completed within the Grande Ronde member of the Columbia River Basalt Group in T13NR37E-32, will be completed within the same body of public groundwater. This conclusion is supported by the facts laid out in the memo and I concur.

Regarding the impairment analysis, the memo calculated the likely drawdown in the Grande Ronde aquifer at the closest existing well to the new points of withdrawal associated with this change application. They concluded that it should not lead to impairment of the senior water uses in the vicinity. The memo utilized realistic aquifer characteristics for basalt wells in the area and used a conservative analytical approach to calculate drawdown after a year's continuous pumping. I concur with their conclusion.

Impairment Considerations

"Impair" or "impairment" means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, not including earlier filed applications (HB 1832); 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.

The authorized and proposed wells (provided they are properly constructed into the basalt aquifer) withdraw water from the same source according to the Hydrogeologic Evaluation. In addition, this evaluation indicated that the proposed wells will not impair senior water uses. The season of use is proposed to be changed from seasonal to year round which will spread impacts out over the year. No

significant increases in pumping rates are proposed. No additional water will be withdrawn under this change beyond what is authorized and has not been relinquished for non-use. There has been no documented history of pumping interference between existing wells in this area. Therefore, it is not anticipated that this change would cause any impairment to existing water rights.

Public Interest Considerations

There has been one public expression of protest or concern regarding this specific proposal, but no findings through this investigation indicate that there would be any detrimental impact to the public welfare through issuance of the proposed change.

Consideration of Protests and Comments

A letter of concern was submitted by attorney Steven Frol, on October 31, 2014, who represents John and Tarah McCaw. A follow-up letter with additional information was received on March 13, 2015. They object to this change application and claim interest in Certificate 54-D, since they own a portion of the originally authorized place of use. A statement from a nearby land owner indicates that water had historically been run through a ditch/pipe system from the cannery to the McCaw lands for irrigation. Photographs of an old conveyance system and maps of a ditch system were provided as supporting documentation. They maintain that this use occurred in the 1940s and 1950s. This appears to fit the information within the original permit file regarding the irrigation portion of the water right. Wastewater from the cannery was historically sent offsite for disposal by way of land application, which is typical of this type of facility. This wastewater, which was used to provide the vast majority of the irrigation portion of the water right, is a direct result of the canning process. The cannery maintained the wastewater permits for land application, which is essentially the irrigation portion of the right. This water right certificate does not specifically split out the manufacturing portion of the water right from the irrigation portion, indicating they were directly linked. The small authorized annual quantity of this right reflects the water duty required by the canning process and not what is typically required by a general irrigation right. This means historically the irrigation portion of the water right relied on the manufacturing portion of the right. The original permit file for this right indicates that the lands now owned by the McCaws were leased and not owned by the cannery. In later years the cannery had leases with Broughton Land Company for a similar land application of wastewater and the irrigation of a crop. Once water use was completely stopped under this right, the cannery which is owned by Seneca Foods, put the remaining water right into trust to protect it from relinquishment. This history of leases, land application of wastewater, trusted water and related documents indicates that Seneca Foods retained the water rights. The portion of the place of use owned by the McCaws has not been used for irrigation under this right in approximately 60 years. Therefore, the McCaw portion of the place of use has been relinquished for non-use.

Relinquishment

Based on the information provided and the investigation into the beneficial use, portions of Ground Water Certificate No. 54-D have been relinquished for nonuse. These relinquished portions of the water right were not utilized for five consecutive years or more without sufficient cause. Relinquishment applies to that portion of the place use of now owned by the McCaws (described as 119 acres within S½ of Section 3, T. 9 N., R. 38 W.W.M.), which has not been used in approximately 60 years. The irrigation system has been removed and what little of the water conveyance system that remains is in total disrepair. Reportedly the

McCaws were not aware of this water right until they were contacted by Seneca Food to sign this application for change. The evidence also indicates that this portion of the place of use of the water right was abandoned. In addition, the manufacturing (cannery) portion of the water right is relinquished for non-use. The cannery is now owned by Seneca Foods (within a portion of the S½SE¼ of Section 19 and the N½NE¼ of Section 30, T. 10 N., R. 39 W.W.M.), and has not been used in 10 years. The portion of the right donated into the trust program by Seneca Foods is the only part of the right that is not relinquished for non-use.

Ecology sent a letter to John and Tarah McCaw on May 13, 2015, giving them the opportunity to provide information that their portion of the place of use was not relinquished. Their attorney Steve Frol responded, but did not provide the requested information. Also, Ecology sent a letter to Seneca Foods on May 13, 2015, to give them the opportunity to provide information that the manufacturing portion of the water right was not relinquished. Chris Shires of Seneca foods responded and indicated that this relinquishment assessment was correct.

Relinquishment of a water right certificate is defined in RCW 90.14.180:

- (RCW 90.14.180) *"Any person hereafter entitled to divert or withdraw waters of the state through an appropriation authorized under RCW 90.03.330, 90.44.080, or 90.44.090 who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250. All certificates hereafter issued by the department of ecology pursuant to RCW 90.03.330 shall expressly incorporate this section by reference. [1987 c 109 § 101; 1967 c 233 § 18.]"*

A formal relinquishment will accompany this report, since portions of Ground Water Certificate No. 54-D lacks evidence of beneficial use and are relinquished for non-use. This process is defined in RCW 90.14.130:

Conclusions

In accordance with Chapters 90.03 and 90.44, approval of this application to change the place of use, change the purpose of use and change the point of withdrawal to three wells as granted under Ground Water Certificate No. 54-D will not enlarge the quantity of water historically authorized, nor will it impair existing rights nor be detrimental to the public welfare provided the terms and conditions above are followed.

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

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

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:

700 gallons per minute
178.5 acre-feet per year
Industrial supply, continuously

Point of Withdrawal

Well No. 1 –S½NE¼ or N½SE¼, Section 32, Township 13 North, Range 37 E.W.M.
Well No. 2 –S½NE¼ or N½SE¼, Section 32, Township 13 North, Range 37 E.W.M.
Well No. 3 –S½NE¼ or N½SE¼, Section 32, Township 13 North, Range 37 E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

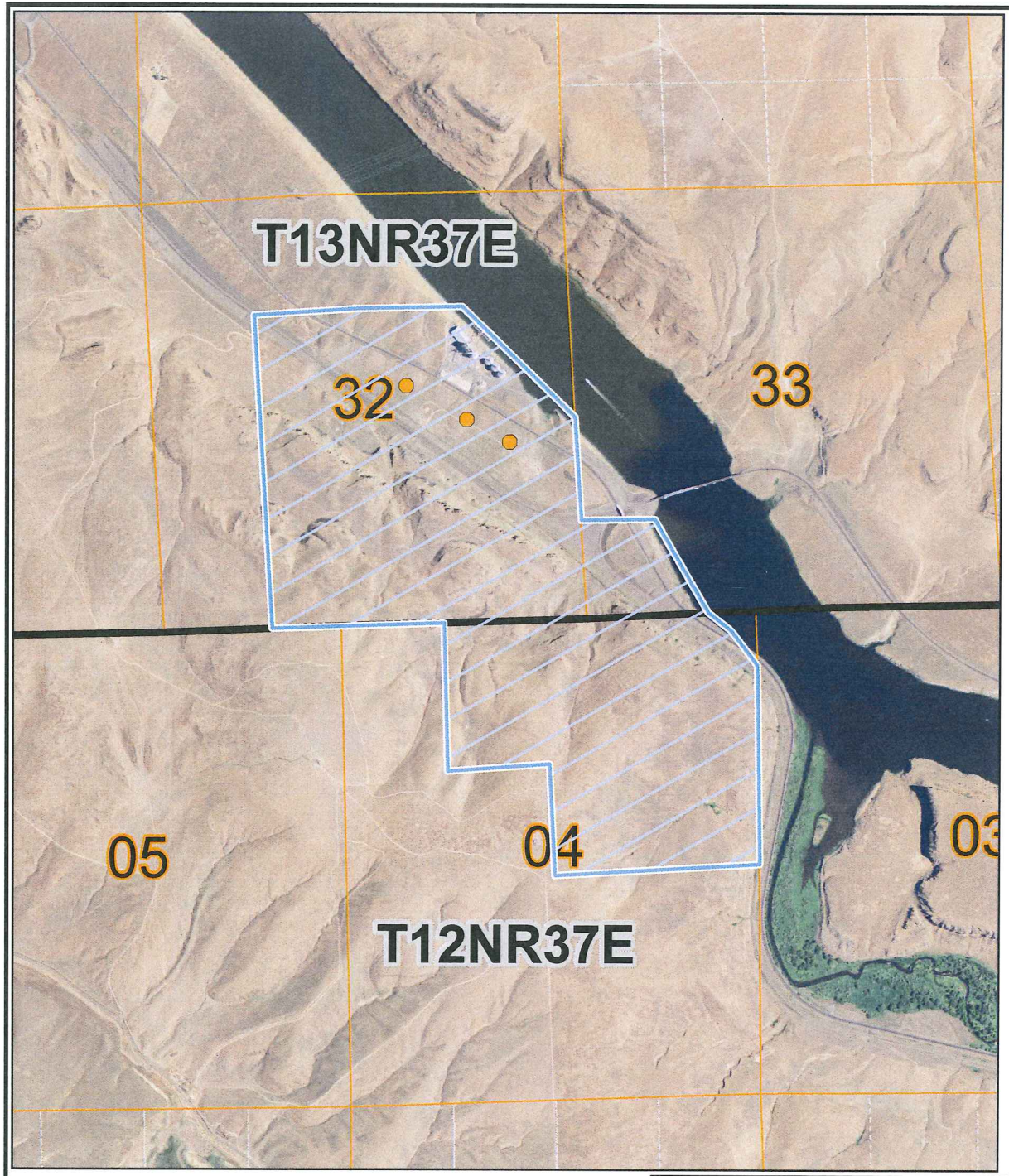
Orders of Partial Relinquishment of Ground Water Right No. 54-D will be issued with this decision to Seneca Foods and the McCaws.

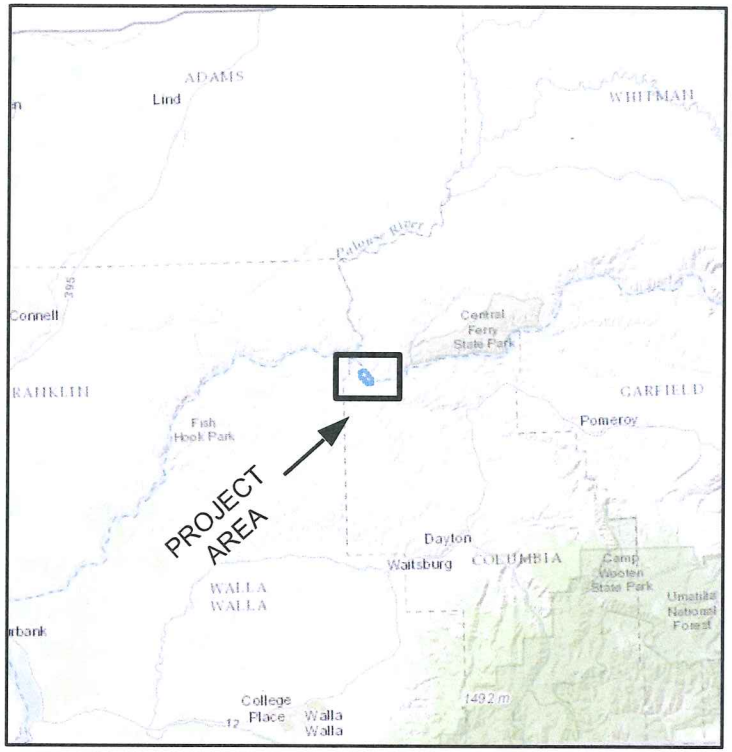
Dan Tolleson, Report Writer *Date*

cc: Seneca Foods Corporation
John and Tarah McCaw
Attorney Steven C. Frol
Water Rights Solutions, Bill Neve

If you need this publication in an alternate format, please call the Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Columbia Pulp, LLC
54-D
T13N/R37E





Basemap - (ESRI US Topographic Maps)

Legend

Authorized Place of Use

Townships

Sections

Authorized Point of Withdrawal

(Source locations may vary in their accuracy and precision as stated within the body of the report.)

Feet
0 660 1,320 2,640
Basemap - (NAIP 2013 1m color)

DEPARTMENT OF ECOLOGY State of Washington

Map Date: 8/25/2015

Comment:
Place of use and source locations are as defined within the Report of Examination cover sheet for the document identfied in the header above.

ATTACHMENT 1