



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

May 21, 2009
CERTIFIED MAIL
[7007 2560 0001 9534 5620]

AgReserves Inc dba AgriNorthwest
Subsidiary of Farmland Reserve Inc dba K2H Farms
7404 West Hood Place
Kennewick WA 99336-6718

RE: Seasonal Change Authorization No. CS4-01335(B)C@2 – change point of diversion and place of use.

On February 2, 2009, AgReserves Inc, dba AgriNorthwest subsidiary of Farmland Reserve, Inc., dba K2H Farms (K2H Farms) submitted an application seeking a Seasonal Change Authorization to change the point of diversion and a portion of the place of use for Certificate No. S4-01335(B)C. This certificate is currently being used to irrigate property owned by K2H Farms Inc. This water right, having a priority date of April 25, 1966, authorizes the right to divert 7.19 cubic feet per second (cfs) and 1539.7 acre-feet per year (ac-ft/yr) for the purpose of irrigating 359.5 acres from April 1 through October 31. AgriNorthwest currently has an application on file with Benton County Conservancy Board to permanently change a portion of Surface Water Right Certificate No. S4-01335(B)C.

The point of diversion authorized from the Columbia River under this Certificate is located 500 feet south and 100 feet east of the northwest corner of Section 15, T. 5 N., R. 27 E.W.M., being within the NW¼NW¼ of said Section 15. The applicant has requested a seasonal change of point of diversion from the Snake River to a place located in SW¼SW¼ of Section 36, T. 10 N., R. 32 E.W.M.

In addition to this permit, K2H Farms has applied for eleven other Seasonal Change permits for 2009. There are a total of twelve permits. Six were processed by Department of Ecology's Central Region Office (CRO) and six were processed through Department of Ecology's Eastern Region Office (ERO):

- CS4-01335(B)C@2 – CRO (subject application)
- CS4-01337(B)C – CRO
- CS4-16571(A)P – CRO
- CS4-13134(B)P – CRO
- CS4-CV1-4P246 – CRO
- CS4-CV1-4P246@1 – CRO
- CS3-00812C – ERO (two separate changes)
- CS3-20371C – ERO
- CS3-24274C – ERO (two separate changes)
- CS3-24273C – ERO



Approximately 116 acres of the existing place of use for Certificate No. S4-01335(B)C is proposed for transfer and is currently located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, T. 6 N., R. 27 E.W.M. These lands will not be irrigated during the 2009 irrigation season, and are identified on your irrigation maps as Field Nos. 49, 50, and 52.

Approximately 4,389 irrigated acres within the place of use authorized in the above twelve water rights will not be watered during the 2009 irrigation season. A complete description of lands not irrigated during the 2009 irrigation season is described in a letter from AgriNorthwest to Department of Ecology dated January 21, 2009. This letter can be found in the application file for this seasonal change.

The proposed places of use in WRIA 33 of all combined seasonal change Authorizations total 4,369 acres and are in the following locations:

- 253 acres in the S $\frac{1}{2}$ of Section 31, T. 10 N., R. 34 E.W.M.
- 239 acres in the N $\frac{1}{2}$ of Section 11, T. 9 N., R. 33 E.W.M.
- 234 acres in the N $\frac{1}{2}$ of Section 31, T. 10 N., R. 34 E.W.M.
- 133 acres in the SE $\frac{1}{4}$ of Section 5, T. 9 N., R. 33 E.W.M.
- 125 acres in the SE $\frac{1}{4}$ of Section 18, T. 9 N., R. 33 E.W.M.
- 56 acres in the SE $\frac{1}{4}$ of Section 5, T. 9 N., R. 33 E.W.M.
- 169.7 acres in Section 8, T. 9 N., R. 33 E.W.M.
- 151.3 acres in Section 9, T. 9 N., R. 33 E.W.M.
- 366.3 acres in Section 17, T. 9 N., R. 33 E.W.M.
- 380.2 acres in Section 20, T. 9 N., R. 33 E.W.M.
- 488.9 acres in Section 21, T. 9 N., R. 33 E.W.M.
- 362.2 acres in Section 22, T. 9 N., R. 33 E.W.M.
- 125 acres in Section 22, T. 9 N., R. 33 E.W.M.
- 493.0 acres in Section 28, T. 9 N., R. 33 E.W.M.
- 445.7 acres in Section 30, T. 9 N., R. 33 E.W.M.
- 346.5 acres in Section 32, T. 9 N., R. 33 E.W.M.

The existing point of diversion and place of use are located within Water Resource Inventory Area (WRIA) No. 31, in Benton County, Washington. The proposed point of diversion and place of use are located within WRIA No. 33, in Walla Walla County, Washington.

This SEASONAL CHANGE AUTHORIZATION is subject to the following conditions:

- 1) Violation of any of the terms and/or conditions of this authorization will result in immediate termination, issuance of Administrative Orders to Cease and Desist, may also subject the violator to civil penalties.
- 2) The applicant will divert up to 2.3 cfs from April 1, 2009 to October 31, 2009. This Seasonal Change Authorization will expire on October 31, 2009.
- 3) The point of diversion will be located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 10 N., R. 32 E.W.M.

- 4) The seasonal place of use under this authorization will be used to irrigate 116 acres; located within Section 31, T. 10 N., R. 34 E.W.M., SE¼ of Section 5, T. 9 N., R. 33 E.W.M., Sections 8, 9, 11, 17, 18, 20, 21, 22, 28, 30, and 32 all located within T. 9 N., R. 33 E.W.M.
- 5) The maximum annual volume of water allowed for seasonal change is 496.8 ac-ft/yr.
- 6) Irrigation of any lands in excess of 116 acres under this Seasonal Change Authorization for the 2009 irrigation season will constitute an enlargement of the right and this authorization shall be immediately terminated.
- 7) The Department of Ecology assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this Seasonal Change Authorization. Applicants for seasonal change should not construe that this change will result in the granting of a permanent change of water right.
- 8) The issuance of this Seasonal Change does not convey a right of access to or other right to use land, which you do not legally possess. Obtainment of such a right is a private matter between the applicant and owner of that land.
- 9) The applicant and operator of the system under this Seasonal Change Authorization shall:
 - Have a copy of this Seasonal Change Authorization available on-site.
 - Be aware of the parameters and provisions and operate accordingly.
 - Provide said copy as evidence of this authorization upon request by Department of Ecology staff.
- 12) An approved measuring device shall be installed and maintained for the source(s) identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC. Water use data for each Court Claim on the place of use shall be recorded weekly and shall be submitted to Ecology by January 31, 2010.
- 13) The rule above describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed or available from Ecology as a document entitled "Water Measurement Device Installation and Operation Requirements".
- 14) Water use data shall be recorded weekly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to the Department of Ecology by January 31st of each calendar year.

- 15) At a minimum, the following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit or Certificate No., source name, annual quantity used including units, maximum rate of diversion including units, period of use, monthly meter readings including units, and peak flow including units for each month. In the future, Ecology may require additional parameters to be reported or more frequent reporting.
- 16) Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.
- 17) Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions, but only to the extent otherwise allowed by law.
- 18) This Seasonal Change Authorization is subject to Washington Department of Fish and Wildlife fish screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Fish screening criteria are attached to this Report of Examination. Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://wdfw.wa.gov/hab/engineer/habeng.htm>
- 19) The intake shall be screened at all times in accordance with Department of Fish and Wildlife screening criteria. <http://wdfw.wa.gov/hab/engineer/habeng.htm>.
- 20) **No water right in perpetuity will result from this Seasonal Change Authorization.**

This Seasonal Change Authorization shall in no way excuse the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.

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

- File your appeal with the Pollution Control Hearing 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:

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| Mail appeal to: | OR | Deliver your appeal in person to: |
| Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903 | | 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: | OR | Deliver your appeal in person to: |
| Department of Ecology Appeals Coordinator PO Box 47608 Olympia WA 98504-7608 | | Department of Ecology Appeals Coordinator 300 Desmond Dr SE Lacey WA 98503 |

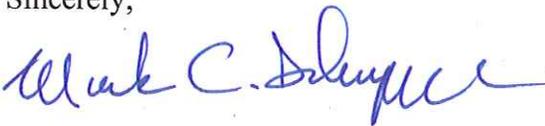
3. And send a copy of your appeal packet to:

Mark C. Schuppe
Department of Ecology
15 W Yakima Ave Ste 200
Yakima WA 98902-3452

*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>*

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

Sincerely,



Mark C. Schuppe, Acting Section Manager
Water Resources Program
Central Region Office

MCS:BZ:gg/090512

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

cc: Philip Rigdon, Deputy Director, Natural Resources Division, Yakama Nation
William Neve, Department of Ecology, ERO (via email)