

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Application for Change
WRTS No CG3-29140@1

PRIORITY DATE January 27, 1992	APPLICATION NUMBER G3-29140	PERMIT NUMBER G3-29140P	CERTIFICATE NUMBER
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NAME Brown Children Trust			
ADDRESS (STREET) 12088 Road 11 SW	(CITY) Royal City	(STATE) WA	(ZIP CODE) 99357

PUBLIC WATERS TO BE APPROPRIATED

SOURCE Three (3) Wells		
TRIBUTARY OF (IF SURFACE WATERS)		

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE 3000	MAXIMUM ACRE FEET PER YEAR 1050
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QUANTITY, TYPE OF USE, PERIOD OF USE
3000 gallons per minute, 1050 acre feet per year, each year, for seasonal irrigation of 300 acres
1800 gallons per minute, 630 acre-feet per year for the irrigation of 180 primary acres, being 60 acres within the S½SW¼ and 120 acres within the SE¼ of Section 8, and 1200 gallons per minute, 420 acre-feet for irrigation of 120 standby/reserve acres within the NW¼ of Section 8, T. 17 N., R. 25 E.W.M.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL
1) 300 feet south and 300 feet east from the NW corner of Section 8,
2) 300 feet south and 300 feet west from the N¼ corner of Section 8,
3) 300 feet south and 1320 feet east from the NW corner of Section 8,

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) N½NW¼	SECTION 8	TOWNSHIP 17 N.	RANGE, (E. OR W.) W.M. 25 E.	W.R.I.A. 41	COUNTY Grant
PARCEL NUMBER 151513000	LATITUDE Optional	LONGITUDE Optional	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.]

300 acres total: 180 primary acres, being 60 acres within the S½SW¼ and 120 acres within the SE¼ of Section 8, and 120 standby/reserve acres within the NW¼ of Section 8, T. 17 N., R. 25 E.W.M.

DESCRIPTION OF PROPOSED WORKS

Three 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*.

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.

5. Chapter 173-173 WAC 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>)

Schedule and Inspections

6. 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.
7. 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

8. If water from facilities of any legally formed irrigation district is used on any or all of the 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.
9. 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.
10. 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.
11. 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.
12. The total acreage irrigated under this authorization, and the associated Bureau contract for 120 acres in the NW¼ of Section 8 shall not exceed 300 irrigated acres.
13. "That portion of this authorization relating to irrigation is classified as a Family Farm Permit in accordance with Chapter 90.66 RCW (Initiative Measure No. 59). This means the land being irrigated under this authorization shall comply with the following definition: Family Farm - a geographic area including not more than 6,000 acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a

person having a controlling interest in no more than 6,000 acres of irrigated agricultural lands in the State of Washington which are irrigated under water rights acquired after December 8, 1977. Furthermore, the land being irrigated under this authorization must continue to conform to the definition of a family farm.”

FINDINGS OF FACT AND DECISION

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 that the requested change, changing the place of use as granted under Ground Water Permit No. G3-29140P is approved, subject to the following:

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.

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

INVESTIGATOR'S REPORT

BACKGROUND

An application for change/transfer was submitted by Mike Brown of Royal City, Washington, to Ecology on January 10, 2005. The applicant proposes to change the place of use as granted under Ground Water Permit No. G3-29140P.

A notice of application was duly published in accordance with RCW 90.03.280 in the South County Sun on May 5, and June 1, 2005, and no protests were received.

Table 1 Summary of Proposed Changes to Water Right Permit G3-29140P

Attributes	Existing	<i>Proposed</i>
Name	Brown Children Trust	Brown Children Trust/Mike Brown
Priority Date / Date of Application for Change	Jan 27, 1992	January 10, 2005
Instantaneous Quantity	3000 gpm	No change
Annual Quantity	1050	No change
Source	3 wells	No change
Purpose of Use	Irrigation	No change
Period of Use	Seasonal	No change
Place of Use	300 acres within the W $\frac{1}{2}$ of Section 8	300 Acres within Section 8

Legal Requirements for Proposed Change

- 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. However, when processing an application for change to a water right, the Washington Supreme Court has held that Ecology 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*.
- 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

Ownership Issues

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 and the Brown Children's Trust. Representatives of both entities signed this application.

SEPA

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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

The application for change on this project exceeds the threshold for compliance with SEPA. The applicant submitted a completed checklist on May 20, 2008. Ecology is the lead agency for the SEPA determination. Review of the checklist is the same as the original checklist April 1, 1992. A Determination of Nonsignificance (DNS) was issued by Ecology on August 15, 1994. The project is essentially the same, and the DNS issued in 1994 is considered adequate.

Investigation

In considering the proposed changes, this investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) Ground Water Permit G3-29140P, and other water right documents in the vicinity; (3) withdrawal works; (4) USGS topographic maps, aerial photographs, State of Washington Irrigation Guide (WA210-VI-WAIG, October 1985) and; (5) discussions with Department of Ecology regional program staff.

This application requests to change the place of use (POU) under Ground Water Permit No. G3-29140P. The original permit is for the W $\frac{1}{2}$ of Section 8, T. 17 N., R. 25 E.W.M. and the changed POU is requested to be for the entire section.

This permit originally issued as being a partially "supplemental" right, meant to supplement Bureau water, to the extent of 120 acres in the NW $\frac{1}{4}$ of Section 8. The supplemental part of this water right is valid only when with the underlying Bureau water contract which is for the same 120 acres in the NW $\frac{1}{4}$ is unavailable.

Three wells are located along the northern edge of the NW $\frac{1}{4}$ of Section 8 and provide water to the pivots in the S $\frac{1}{2}$ of Section 8. Two of the wells are in operation, the third is not. In addition to the wells, two diversion points from the canal are located along the northern edge of the section and convey water under multiple Interruptible Water Service Contracts (IWSC) with the Quincy Columbia Basin Irrigation District. The North half of Section 8 is currently irrigated with IWSC's in the amount of 120 acres in the NW $\frac{1}{4}$, 60.8 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$ and 72.7 acres in the NE $\frac{1}{4}$ of Section 8. The remaining 180 acres under Permit G3-29140P is described as 60 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$ and 120 acres in the SE $\frac{1}{4}$ of Section 8. These lands are considered irrigated under Permit G3-29140P. If additional IWSC water is obtained to irrigate any of the 180 acres of land subject to this permit these lands will be considered non-additive.

Unauthorized acreage watered In 2004, a seasonal change was requested to transfer 240 acres. The authorization granted 120 acres. According to aerial photos, water usage data, and conversations with the applicant, three circles were irrigated in 2004. The NW $\frac{1}{4}$ of Section 8 (approx 118-130 acres) was watered with IWSC water and the ones in the SE $\frac{1}{4}$ and SW $\frac{1}{4}$ (approx 245 acres) were watered with ground water. So, both the 300 acre total acreage limit was exceeded, and the 180 acre primary ground water limit was exceeded in 2004 (and 2003).

The applicant stated that this has been his water usage practice since 1997 without authorization of permit. This information indicates that the terms of the permit have been exceeded (for acreage irrigated) every year. Mr. Brown stated that he thought he had verbal and/or written authorization for the extra acres (approximately 60) of irrigation, but did not produce any supporting documents. Mr. Brown agreed to cut back 60 acres of irrigation (from the SE $\frac{1}{4}$), and to stay within the 300 acre total limit if the 2005 seasonal change was approved. The seasonal change was subsequently approved, and the same understanding applied, he was limited to 180 acres of primary irrigation.

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.

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.

In addition, aerial photographs, metering records and field visits have confirmed the extent of development, historical use and beneficial use in this section. The original acre feet allotment was calculated at 3.5 acre-feet per acre, which is reasonable for this area and consistent with crops grown on these lands.

The three wells are all in an integrated system, meters have been installed on two of the wells (the other hasn't been used in the last few years), and meter readings have been received since 2004. The meter readings for 2004 were found to be inadequate. The meter readings for 2005 had reasonable acre-feet numbers but no instantaneous numbers. If the third well is put back on line as planned it will also need to have a meter installed.

Table 2 G3-29140P - Meter Readings (acre-feet x .001)

	Begin 05	End 05	Begin 06	End 06	Begin 07	End 07	Begin 08	11/13/08
Well 1	761	175*	175	489	489	852	852	173**
Well 2	693	1068	1068	1304	1304	1659	659	874

*Data corrected from 1755 to 175

**Data discrepancy in 2008

Auth gpm: 3000 (in 2008 at 1900 gpm)

In 2005, 2007, and possibly 2008, the authorized annual quantity for the 180 primary acres, was significantly exceeded. See table below.

Table 3 G3-29140 Meter Readings (acre-feet x .001)

	Well 1	Well 2	Well 3	Total AF	Primary Acres (180) Annual Qa - 630 acre-feet	Diff.
2005	414	375	0	789	630	+159
2006	313	236	0	549	630	-81
2007	363	355	0	718	630	+88
2008	**306	215	0	521	630	-109

In order to address this unauthorized use of groundwater, a Notice of Correction was sent to the permittee on March 25, 2009.

History of Quincy Subarea Rule Development

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

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

This application is not requesting to add wells or change the points of withdrawal. Therefore, no further assessment of the above conditions of RCW 90.44.100 is necessary.

Groundwater Permit No. G3-29140P requires submittal of well logs for all constructed wells. To date, all well logs have not yet been submitted.

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 for this application because the three wells authorized by Permit No. G3-29140P have been operating at their current locations since 1995 with no known adverse impacts and no changes are being made to well locations.

FINDINGS

There is a water right permit available for change/transfer under Ground Water Permit No. G3-29140P. Ground water has been historically and beneficially used under this permit.

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 three 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.

Source of Water:

No change in source of groundwater is contemplated or authorized by this change.

CONCLUSIONS

It is the conclusion of this examiner that, in accordance with Chapters 90.03 and 90.44, approval of this application to change the place of use as granted under Ground Water Permit No. G3-29140P 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 the place of use as granted under Ground Water Permit No. G3-29140P is **approved**, subject to the following:

Purpose of Use and Authorized Quantities

3000 gallons per minute, 1050 acre-feet per year, each year, for the seasonal irrigation of 300 acres

1800 gallons per minute, 630 acre-feet per year for the irrigation of 180 primary acres, being 60 acres within the S½SW¼ and 120 acres within the SE¼ of Section 8, and 1200 gallons per minute, 420 acre-feet for irrigation of 120 standby/reserve acres within the NW¼ of Section 8, T. 17 N., R. 25 E.W.M.

Points of Withdrawal

- 1) 300 feet south and 300 feet east from the NW corner of Section 8,
- 2) 300 feet south and 300 feet west from the N¼ corner of Section 8,
- 3) 300 feet south and 1320 feet east from the NW corner of Section 8

Place of Use

300 acres total: 180 primary acres, being 60 acres within the S½SW¼ and 120 acres within the SE¼ of Section 8, and 120 standby/reserve acres within the NW¼ of Section 8, T. 17 N., R. 25 E.W.M.

Report by: _____ Lynn Maser _____
Watermaster, Water Resources Program Date

Attachment 1

