



Benton County  
WATER CONSERVANCY BOARD

**Record of Decision**

Applicant: Lamb Weston/ConAgra

Application Number: SWP-16571(D)P


The attached Report of Examination has been reviewed by the BCWCB members; and this Record of Decision was made at an open public meeting of the Benton County Water Conservancy Board held on July 10, 2018, with any changes to ROE/ROD based on information received from the applicant and WADOE staff.

**(X) Approval:**


The Benton County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination and submits this record of decision and report of examination to the Department of Ecology for final review or consideration.

**( ) Denial:**

The Benton County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination and submits this record of decision to the Department of Ecology for final review or consideration.

  
Signed Original \_\_\_\_\_ Date: 7/10/2018  
Darryll Olsen, Ph.D., Chairman  
Benton County Water Conservancy Board

- Approves
- Denies
- Recused
- Abstains
- Excused Absence

  
Signed Original \_\_\_\_\_ Date: 7/10/2018  
Scott Revell, Board Member  
Benton County Water Conservancy Board

- Approves
- Denies
- Recused
- Abstains
- Excused Absence

Signed Original \_\_\_\_\_ Date: 7/10/2018  
Matt Berg, Board Member  
Benton County Water Conservancy Board

- ~~Approves~~
- Denies
- Recused
- ~~Abstains~~
- Excused Absence

Final ROE/ROD Mailed to the Department of Ecology, Regional Office of Ecology, via tracked mail, and other interested parties on or before 7/24/2018.



**BENTON COUNTY  
WATER CONSERVANCY BOARD**

*Application/Review for Change/Transfer*

OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF  
THE STATE OF WASHINGTON

**RECEIVED**  
**JUL 17 2018**  
DEPARTMENT OF ECOLOGY  
CENTRAL REGIONAL OFFICE

**Report of Examination**

Prepared by Staff/Members of the Benton County Water Conservancy Board  
Per ECY-040-106 (08/2015) Form Format

Pursuant to WAC 173-153-130(8), the applicant is not permitted to proceed to act on the proposal until Ecology completes its review of the Water Boards decision. If Ecology takes no action within forty-five days of receipt of this ROE/ROD, then the Water Board's decision, as written, is final.

Surface Water

Ground Water

DATE APPLICATION RECEIVED December 2017, with Subsequent Information, Jan- April 2018	WATER RIGHT DOCUMENT NUMBER SWP-16571(D)@7 (SP Issued March 26, 2013)	WATER RIGHT PRIORITY DATE February 4, 1971	BOARD-ASSIGNED CHANGE APPLICATION BENT-17-03
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NAME  
Attention: Mr. Matt Hawley E-Mail: matt.hawley@lambweston.com

ADDRESS (STREET) (CITY) (STATE) (ZIP CODE)  
P.O. Box 1900 Pasco WA 99302-1900

**Changes Proposed:**  Change purpose  Add purpose  Add irrigated acres  Add point of diversion/withdrawal  
 Change under RCW 90.03.380.  Added Place of Use.

**SEPA**

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is:  Exempt (water right)  Not exempt (proposed project)

Determination of Non-Significance

The direct water right change/transfers described herein is not subject to further SEPA review, and the change/transfer Qi affecting new water allocations is below the SEPA threshold criteria (50 cfs surface water for private entities). There is no actual change to the base water right Qa or Qi, or total allowed irrigated acres.

## BACKGROUND AND DECISION SUMMARY

Prepared by Members of the Benton County Water Conservancy Board

### Existing Right 2013 Superseding Permit

SWP-16571(D)P	MAXIMUM GPM-CFS 19.33 cfs	MAXIMUM ACRE-FT/YR 3,685	TYPE OF USE, PERIOD OF USE Irrigation of 867 acres, February 15 to October 31				
SOURCE John Day Pool, Columbia River			TRIBUTARY OF (IF SURFACE WATER) Columbia River				
AT A POINT LOCATED: PARCEL NO. 10856300000100	¼ SW	¼ NE	SECTION 8	TOWNSHIP N. 5	RANGE EWM 26	WRIA 31	COUNTY Benton
<b>LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED</b>							
<p>All within: W1/2 of NW1/4 and SW1/4 of Section 22, and W1/2 of Section 27, and portions of Section 33 per permit description, and portions of Section 34 (including W3/4) and all within T.6N, R.26 EWM.</p> <p>Parcel Nos.: 1-2266-200-000-000, 1-2766-200-0000-000, 1-2766-300-000-00, 1-3366-100-0001-002, 1-3366-200-0002-004, 1-3466-200-0004-000, 1-366-100-0001-003, 1-3466-200-0002-001, 1-3466-100-0002-002.</p>							

### Existing Right with 2017-18 Temporary Change And Proposed Use

SWP-16571(D)P	MAXIMUM GPM/CFS	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE				
Existing POU*	16.98 cfs	3,096.2	Irrigation of 719.8 acres, February 15 to October 31				
Added POU*	2.35 cfs	588.8	Irrigation of 147.2 acres, February 15 to October 31				
Combined Total	19.33 cfs	3,685.0	Irrigation of 867.0 acres, February 15 to October 31				
SOURCE Surface Water: Groundwater in hydraulic continuity with McNary Pool, Columbia River, Ranney Well Collectors.			TRIBUTARY OF (IF SURFACE WATER) Columbia River				
AT A POINT LOCATED: PARCEL NO. (See Attachments)	¼ SW	¼ NE Govt Lot 1	SECTION 8 4	TOWNSHIP N. 5 4	RANGE EWM 26 24	WRIA 31 31	COUNTY Benton Benton
<b>LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED</b>							
<p>All within: W1/2 of NW1/4 and SW1/4 of Section 22, and W1/2 of Section 27, and portions of Section 33 per permit description, and portions of Section 34 (including W3/4) and all within T.6N, R.26 EWM.</p> <p>Parcel Nos.: 1-2266-200-000-000, 1-2766-200-0000-000, 1-2766-300-000-00, 1-3366-100-0001-002, 1-3366-200-0002-004, 1-3466-200-0004-000, 1-366-100-0001-003, 1-3466-200-0002-001, 1-3466-100-0002-002.</p> <p>And all within: S1/2 of S1/2 of Section 27 and N1/2 of N1/2 of Section 34, T.5 N, R.24 EWM.</p> <p>Parcel Nos.: 1-3454-100-0000-000 and portion of 1-2754-300-0000-000.</p>							

\*Qi and Qa allocation between existing and new place of use requested by applicant, within allowed irrigated acres.

## Water Board Decision with Permanent Change with Applicant's 2017 POA Filing

SWP-16571(D)P Existing POU* Added POU* Combined Total	MAXIMUM GPM/CFS  12.15 cfs 2.35 cfs 14.50 cfs	MAXIMUM ACRE-FT/YR  2,710.2 588.8 3,299.0	TYPE OF USE, PERIOD OF USE  Irrigation of 719.8 acres, February 15 to October 31 Irrigation of 147.2 acres, February 15 to October 31 Irrigation of 867.0 acres, February 15 to October 31				
SOURCE Surface Water: Groundwater in hydraulic continuity with McNary Pool, Columbia River, Ranney Well Collectors.			TRIBUTARY OF (IF SURFACE WATER) Columbia River				
AT A POINT LOCATED: PARCEL NO. (See Attachments)	$\frac{1}{4}$ SW	$\frac{1}{4}$ NE <u>Govt Lot 1</u>	SECTION 8 4	TOWNSHIP N. 5 4	RANGE EWM 26 24	WRIA 31 31	COUNTY Benton Benton
<b>LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED</b>							
<p>All within: W1/2 of NW1/4 and SW1/4 of Section 22, and W1/2 of Section 27, and portions of Section 33 per permit description, and portions of Section 34 (including W3/4) and all within T.6N, R.26 EWM. Parcel Nos.: 1-2266-200-000-000, 1-2766-200-0000-000, 1-2766-300-000-00, 1-3366-100-0001-002, 1-3366-200-0002-004, 1-3466-200-0004-000, 1-366-100-0001-003, 1-3466-200-0002-001, 1-3466-100-0002-002.</p> <p>And all within: S1/2 of S1/2 of Section 27 and N1/2 of N1/2 of Section 34, T.5 N, R.24 EWM. Parcel Nos.: 1-3454-100-0000-000 and portion of 1-2754-300-0000-000.</p>							

\*Qi and Qa allocation between existing and new place of use requested by applicant, within allowed irrigated acres.

### DESCRIPTION OF PROPOSED WORKS

Existing river pump stations will be used for primary water diversion, along with existing mainlines and water distribution systems in place. Some new irrigation application systems may be modified or developed.

### DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: Immediately	COMPLETE PROJECT BY THIS DATE: By January 1, 2021	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: By January 1, 2022
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NOTE: The Water Board establishes the development schedule, as required under RCW 90.80.070, 90.80.080, and WAC 173-153-130. The schedule may be extended by WADOE if diligence is demonstrated in the completion of this project.

# REPORT OF EXAMINATION

Prepared by Staff/Members of the Franklin County Water Conservancy Board

## BACKGROUND

The applicant is Lamb-Weston, Attention Mr. Matt Hawley, P.O. Box 1900, Pasco, WA 99302-1900.

The change/transfer application is for superseding permit SWP-16571(D), with a temporary change/transfer for 2017-2018. The application was received and accepted by the Water Board in December 2017, with further information provided to the Water Board, January-May, 2018. This water right permit has undergone several previous changes and administrative actions, the most recent of which is a seasonal change for 2017-2018 operations, as authorized by the Office of Columbia River, Ecology. The change request herein is identical to the previous seasonal change, but for a permanent time period.

The existing water right is in good standing and on file with Ecology.

### *Attributes of the water right as currently documented:*

Name on Superseding Permit (2013):

ConAgra Foods Lamb Weston, Inc.

SWP-16571(D)P	MAXIMUM GPM-CFS 19.33 cfs	MAXIMUM ACRE-FT/YR 3,685	TYPE OF USE, PERIOD OF USE Irrigation of 867 acres, February 15 to October 31				
SOURCE John Day Pool, Columbia River			TRIBUTARY OF (IF SURFACE WATER) Columbia River				
AT A POINT LOCATED: PARCEL NO. 10856300000100	$\frac{1}{4}$ SW	$\frac{1}{4}$ NE	SECTION 8	TOWNSHIP N. 5	RANGE EWM 26	WRIA 31	COUNTY Benton
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED							
All within: W1/2 of NW1/4 and SW1/4 of Section 22, and W1/2 of Section 27, and portions of Section 33 per permit description, and portions of Section 34 (including W3/4) and all within T.6N, R.26 EWM. Parcel Nos.: 1-2266-200-000-000, 1-2766-200-0000-000, 1-2766-300-000-00, 1-3366-100-0001-002, 1-3366-200-0002-004, 1-3466-200-0004-000, 1-366-100-0001-003, 1-3466-200-0002-001, 1-3466-100-0002-002.							

### *Tentative determination of the water right:*

See Water Board's Decision above; the water right is in good standing.

### *Previous changes:*

This water right permit has undergone several previous changes and administrative actions, the most recent of which is a seasonal/temporary change for 2017-2018 operations, a superseding permit issued in 2013, and a temporary permit issued in 2011, as authorized by Ecology. See attached superseding permit and change/transfer actions.

### *History of water use:*

The water right permit has been put to beneficial use per the existing records and information received from the

applicant. It is under a suite of irrigation water rights owned by the applicant.

**SEPA:** The direct water right change/transfer described herein is exempt from further SEPA review, as the directly affected water amount involved is under the SEPA threshold criteria (50 cfs for surface water, for private sector entities).

**Family Farm Act Compliance:** The 1971 priority date for this permit is not subject to the Family Farm Act administration.

## COMMENT AND PROTESTS

Public notification/hearings for the applicant's request was filed in the Tri-City Herald. A copy is provided in the Public Notice attachments. The WADOE/Water Board did not receive a protest notice, or comments, from a third party.

The application has been distributed to several state resources agencies, tribes, and interested parties. No comments have been received from these parties concerning the application.

The application notice was provided to the Benton County Commission staff. A public hearing was offered for the change/transfer action—no participants attended.

### *Issues Raised by WADOE:*

The Water Board has provided the CRO-WADOE with the change/transfer application and public notice, and a Water Board representative has discussed the change/transfer with CRO-WADOE staff, and has requested an explicit identification of any issues of concern related to the change request or the Water Board's preparation of the ROE/ROD.

CRO-WADOE staff did not raise a specific issue other than to note that this change/transfer is within the Columbia-Snake River system management area—surface water pools. This change/transfer request remains within the John Day Pool. Staff also observed RCW 90.03.395 and 397.

### *Protests:*

Date: None Received.

This was recognized by the board as a  Protest  Comment

Name/address of protestor/commenter:

Issue:

Board's analysis:

*Other Items/Issues:*

*Pertinent Comments:*

## INVESTIGATION

Prepared by Members of the Benton County Water Conservancy Board

The following information was obtained from site inspections (March 2018), and previous inspections/work in this area by the Water Board. technical reports and documents, research of Department records, and discussions with the



applicant's technical representatives and consultant, and other interested parties; as well as discussions with the OCR-CRO-WADOE staff.

The Water Board has reviewed the applicant's WADOE E-file and records contained therein, including any reports/comments submitted by WADOE staff, and pertinent WADOE water right records.

The applicant has provided technical information, personal communications, and technical references requested by the Water Board, including data to verify the existing and proposed use areas; and the applicant has communicated extensively with individual Water Board members to answer specific questions about the change/transfer request. The Water Board has conducted a field examination to verify the information contained within the applicant's current water right and supporting technical information. The Water Board has requested and received supplemental information from the applicant and has discussed future water usage needs with the applicant.

The Water Board has reviewed the standing of the water right, documentation provided by the water right holder concerning land holdings and management, and aerial photography for the existing and proposed water right place of use and purpose.

The Water Board has forwarded copies of the application change/transfer request and public notice to the state Dept. of Fish & Wildlife, the Tribes, and to all parties requesting such copies. No comments were received by these parties during the formal, and informal, public comment period for the change/transfer application.

The Water Board has reviewed the applicant's SEPA compliance needs (noted above).

#### ***Verification of Existing Water Right:***

The existing water use retains a superseding permit of water right granted by the Washington State Dept. of Ecology; last modified with a temporary change/transfer for 2017-2018 operations, for irrigation purposes. The Water Board has reviewed the water right documentation, reviewed the applicant's technical information concerning the water right, is familiar with the applicant's existing water use and land operations, and has conducted its own review of the water right relative to the proposed change/transfer conditions. It is concluded that the water right is in good standing, subject to the conditions contained within this ROE/ROD.

#### ***Proposed project plans and specifications:***

Existing pumping/delivery infrastructure will be used for primary pumping and mainlines, from the withdrawal/diversion sites. The existing pump stations are within the John Day Pool, Columbia River (see attached location maps).

The end effect of the change/transfer will be more efficient use the existing water rights and improved water delivery operations—all under RCW 90.03.380 provisions and consideration for the water right's permit status.

#### ***Other Water Rights Appurtenant to the Property and Associated Rights:***

No other water rights are being used on the place of use for the proposed change/transfer. This change ensures adequate water right coverage for the applicant's farming operations; it reflects existing water use allowed under the current seasonal change/transfer, with modifications provided taking into account the applicant's 2017 proof of appropriation (POA) filing to Ecology.

The Water Board has identified nearby water rights adjacent to the existing and proposed place of use, as indicated within the Ecology E-database; and identified nearby wells and surface water pump stations, as indicated on the WADOE website and data bases.

***Effect or Benefit to Public Interest:***

A Washington State Supreme Court ruling has stated that "...a 'public interest' test is not a proper consideration when Ecology acts on a change application under RCW 90.03.380." PUD No. 1 of Pend Oreille County v. Dep't of Ecology, 70372-8 (2002). By extension, neither does the Water Board have authority to apply a public interest test when evaluating a change in water right request under RCW 90.03.380. This Court decision involved a surface water right; the requested change/transfer is not contrary to the public interest governing water use, nor subject to groundwater statutes under the RCW 90.44 title.

To the extent review of public interest is applicable, the Water Board finds that the application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, to provide greater operational control to water managers, and to ensure no impairment exists.

Because the proposed action will not increase the existing allowed annual water use, or increase the water put to actual beneficial use, or result in an impact on other existing water rights or applications for new water rights, it does not negatively change the existing status quo for water use impacts. Thus, no impairment is perceived, because of the change/transfer requested in the application. Water use is provided consistent with statutory requirements for beneficial use.

The proposed action does provide for a continuation of the existing beneficial use as stated within the superseding permit of water right, increasing the economic benefits to the state and local area by allowing for continued use and development within the region. The development is taking place in the land-use management area of Benton County.

The application for change/transfer is consistent with the public interest requirements for beneficial water use, and consistent with the procedural, technical, and legal review requirements by the state.

***Tentative Determination:***

In order to make a permanent water right change decision, the Water Board must make a tentative determination on the extent and validity of the right. The Water Board has made a full tentative determination as displayed upon the first section of this report. There are several circumstances that can cause the Board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Some water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the following findings.

Water Right Standing/History:

First, the water right applicant holds a valid water right superseding permit in good standing, and it is on file with Ecology. The right also has been subject to a recent (seasonal) temporary change/transfer, also on file with Ecology.

As a water right with demonstrated beneficial use, the Water Board has reviewed it relative to RCW 90.14.140, 90.03.380, 90.03.390, 90.03.395, 90.03.397. and other related statutes.



The Water Board notes that the water right's beneficial use standing must be taken under consideration relative to its permit status, and relative to 90.14.140 provisions. As a permit, the peak year of maximum appropriation defines the extent and validity of right (along with other factors). As a perfected surface water right, the perfected use is available for change/transfer, subject to full tentative extent and validity considerations.

Second, under the change request, the total amount of water diversion from the existing right and proposed change cannot exceed the amount within the currently allowed water right—more specifically, the portion of the right that has been put to actual beneficial use or is statutorily protected from non-use factors (or de facto relinquishment). The change/transfer request must not exceed the existing water right limits and perfected use; no enlargement of the water right is allowed.

The Water Board has verified that the existing superseding permit is part of the applicant's water right inventory, and designated as a primary water right to meet their irrigation demands.

#### Extent and Validity/ACQ Analyses:

The Water Board confirms that this change request requires no Qa or Qi expansion of the water right. The change request exhibits no jeopardy for impairment to other rights per the RCW 90.03.380 standard. The change request does not alter or add a new purpose of use nor expand already authorized irrigated acres.

The Water Board has directly taken into account the beneficial use/annual consumptive quantity requirements for RCW 90.03.380 (and its regulatory time period). As an acre-for-acre change/transfer, the right requires a full tentative extent and validity determination, but this change does not require an ACQ definition review per RCW 90.03.380 (two-year, peak-year average for changing purpose of use or water spreading); nor is the permit appropriation period limited to the past five-year period. The Water Board concurs with Ecology's 2011 report of examination finding that the full tentative extent and validity review was not required for temporary permit change/transfer under RCW 90.03.390; but it is required under a permanent change/transfer or certification process (proof of appropriation filing).

The right is protected from some relinquishment conditions, or de facto relinquishment, given its permit and actual beneficial use status.

The Water Board has reviewed the right's available water for change/transfer, relying on crop and irrigated acreage data from the applicant, a review of the pertinent crop water use data bases like AgWeatherNet, and the data and analyses provided in the applicant's POA submission to Ecology.

The Water Board has reviewed the complete beneficial use period for the water right permit, 1993-2017 (superseding permit to superseding permit issued in 2013). As reported by the applicant, reflecting changing cropping patterns and the more recent, temporary change/transfers, the year of highest water use occurred in 1999 (see attached POA). The applicant's POA tacitly acknowledges lower water crop duties in years under the temporary change/transfers.

As included in the applicant's POA filing analysis, the water Board also is aware of the application of the (consumptive or non-return flow) water savings achieved through the Scientific Irrigation Scheduling practices, with a portion of the savings made available for change/transfer. This methodology is more further described in CSRIA's Conservation O&M Program, supported by the Benton-Franklin Conservation Districts (see CSRIA.org). The methodology applied in the applicant's POA also has been recently jointly review with the Water Board and the Office of Columbia River, Ecology (review of POA Methodology, with Trust Program applications).

Tentative Determination Finding:

Based on the above information and analyses (and attachments), the Water Board has determined that the full amount of the said water right permit for change/transfer is presented within the above "Board Decision" summary (and noted below), and it should be the amounts not exceeded by the applicant within the final proof of appropriation filing (process) and within the new certificate issued by WADOE. This amount is in full consideration of and compliance with applicable statutes.

Water Board Decision, with applicant's POA:

	MAXIMUM GPM/CFS	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE
SWP-16571(D)P			
Existing POU*	12.15 cfs	2,710.2	Irrigation of 719.8 acres, February 15 to October 31
Added POU*	2.35 cfs	588.8	Irrigation of 147.2 acres, February 15 to October 31
Combined Total	14.50 cfs	3,299.0	Irrigation of 867.0 acres, February 15 to October 31

\*Allocation per applicant's request, for allowed irrigated acres.

***Hydrologic, and Other Technical Investigations:***

The change/transfer relies on an existing point(s) of diversion, drawing water from the same body of water (management area) as that allowed under the existing water right (John Day Pool, Columbia River). This is confirmed by the Water Board's technical review. The points of diversion also are the same as authorized under the current temporary change/transfer (2017-2018).

***Review of Potential Impairment:***

The Water Board determines that this change/transfer request will not create impairment. The Water Board makes this determination, with certainty, given the proposed operations of the new diversions, a detailed review of the issue with the applicant, and the technical information submitted by the technical consultant; and the years of working experience in this specific location, and detailed knowledge of the Columbia River hydro system and reservoirs (pools).

The existing/proposed points of diversion are consistent with the impairment standards under RCW 90.03.380, for a perfected water right (permit).

Further, the Water Board notes:

- 1) For this immediate area, no record/affirmation of impairment has been noted by the Water Board or Ecology.
- 2) The Water Board has required the applicant to review, in detail, impairment issues for the applicant's change request. This review indicates that the change action will not impair other water rights, as noted above.
- 3) Based on the public notice of this change request, the Water Board has received no impairment issue comments from other existing water right holders, including those who withdraw water from nearby sites.
- 4) The change will not increase water use relative to the existing allowed use, create impairment, or detrimental environmental impacts.

Given the above review, the Water Board concludes that the proposed action will not create impairment to other water rights per the provisions and conditions established under the existing permit and the conditions provided within this ROE/ROD.

Because the proposed action will not increase the existing allowed water use (with change modifications), or increase the water amount put to allowed beneficial use, or likely affect other existing water rights (or applications for new water rights), no impairment is perceptible. The applicant's technical information has been reviewed on water use within the same body of water for management purposes and potential impairment.

The proposed change/transfer will be beneficial in the conservation and management of water resources from existing practices for the following reasons: 1) there will be no increase in diversion/withdrawal on an annual basis after the change/transfer, compared to existing permitted withdrawals; and 2) better controls and monitoring on the quantity of water pumped will help ensure that the authorized quantity is not exceeded, as required under a metering and development plan.

The Water Board has published public notice of the proposed action and reviewed any potential technical issues concerning impairment.

Existing water rights located within the nearby area--within the same section and adjacent sections--were noted according to information contained within the WADOE E-data base system and visual inspection, and ongoing Water Board review within this area.

The change/transfer request is consistent with net beneficial use and return flow considerations contained in RCW 90.03.380 and other applicable statutes. The change will not increase water diversions or net depletions from the surface water source. More specifically, the subject application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, and to provide greater operational control to water managers.

Given the fact that no increase in water withdrawal from the existing surface water management source will occur relative to that permitted and allowed for beneficial use, there is no reason to expect any impairments to other water sources, consistent with the conditions and provisions provided By the Water Board and Ecology. Also, because the change/transfer proposed by the applicant does not affect withdrawals from new water sources—without regulation--or increase existing allowed net annual withdrawals/diversions from that currently permitted, the change/transfer request does not affect local conditions surrounding the status quo for water use, as permitted by WADOE.

Water Board concludes, with certainty, that no impairment would occur related to the water right change/transfer approved herein.

***Water Right Adjudication Process:***

Water right adjudication does not affect the application.

**DECISION CONCLUSIONS:**

***Tentative Determination-Extent and Validity:***

1. The permit and RCW protection against relinquishment (de facto relinquishment) are verified; the full tentative extent and validity analysis, including any relevant RCW 90.03.380/ACQ analysis, has been conducted by the Water Board.
2. The proposed change/transfer will result in no increase to allowed consumptive use from the designated sources, as allowed by the water code.

3. There will be no increase in water diversion on an annual basis. In addition, continued monitoring of the quantity of water pumped will help ensure that allowed water diversions are not exceeded, for the changes requested.

***Relinquishment or Abandonment Concerns:***

4. The Water Board's review above indicates no relinquishment or abandonment actions by the applicant, subject to the limitations and conditions for change/transfer under RCW 90.03.380 and 90.14.140. Full consideration of RCW 90.03.380 (with 90.14.140), 90.03.390, and 90.03.395-397 has been conducted by the Water Board.

***Hydraulic Analysis:***

5. Per the above cited information and attachments, the Water Board concluded that the change/transfer will be implemented in the same body of water for management purposes, as well as other technical and policy factors. No other technical review is required to make this determination with certainty.

***Impairment:***

6. The Water Board has determined that impairment is not an issue affecting this change request; the change is within the same body of water for management purposes; the proposed action creates no perceived detrimental impacts or impairments to other water right holders or permit applicants (consistent with 90.03.380); adequate data and information exists to make this determination with confidence.

***Consideration of Comments/Protests:***

7. Public notice has been provided for the proposed action, and any public concerns have been reviewed by the Water Board. Public notice and application submittal has been forwarded to several state resource agencies/tribes/interested parties for comment; the agencies have provided no direct comments to the application. No protests have been made by third parties on this application.

***SEPA Review:***

8. The Water Board has reviewed the proposed project for SEPA compliance.

***Public Interest:***

9. The proposed action supports the public interest concerned with the direct use of water rights, is consistent with allowed beneficial uses, and is consistent with local area economic development needs and land uses.

10. The proposed action is consistent with the intent of RCW 90.03.380, 90.14.140, and 90.80 (as amended May 10, 2001) and recent case reviews by the Washington State Supreme Court.

11. The Water Board has provided for specific conditions and provisions affecting the use of the water rights, as identified below. The Water Board's decision is contained in the Water Board Decision table above.

**PROVISIONS**

***Conditions and Limitations:***

1. The point of withdrawal, place(s) of use, purpose of use, and period of use for the water right are designated in the summary table above (under Water Board Decision table).

2. Per issued certificate for the subject water right, water diversions shall not exceed the total instantaneous and volume use, irrigated acres, and periods of use designated above under Water Board Decision table.
3. Use of water under this authorization shall be contingent upon the water right holder's utilization of up-to-date water conservation practices (such as that proscribed in the CSRIA Conservation O&M Program (CSRIA.org)).
4. For the surface water diversions, the water right holder will comply with all water intake provisions (screening/volume requirements) required by the WA State Dept. of Fish & Wildlife.
5. An approved measuring device(s) must be installed and maintained for the sources (all points of withdrawal/diversion) identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use," WAC 173-173, describing 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."
6. Water use will be measured and recorded for water supply use. 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 No., source name, annual quantity used including units, maximum rate of diversion including units, period of use, weekly 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.

Recorded water use data shall be submitted via internet. To set up an internet reporting account, contact the Central Regional Office. If you do not have internet access, you can still submit hard copies by contacting the Central Region Office for forms to submit your water use data.

7. Department of Ecology personnel, upon presentation of proper credentials and prior notification, shall have access at reasonable times, to project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with the law.

***Mitigation:***

8. None is required.

***Construction Schedule:***

9. By January 1, 2020, the applicant will notify the Water Resources Program, Central Region Office, WADOE, that project construction is completed, unless further extended for good cause.
10. Proof of appropriation (for actual beneficial use of water) is due to the Water Resources Program, Central Region Office, WADOE by January 1, 2021, unless further extended for good cause. The Water Board notes that at this time the applicant may apply for a permanent change/transfer for the rights.
11. The WADOE shall undertake a proof inspection to certify actual development of the water right amended within this ROE.

**DECISION APPROVALS**

***Approvals:***

The conclusions in this Report of Examination were authored/developed by Water Board, with the applicant or applicant's representative providing support information as requested.

The undersigned Water Board Commissioner certifies that he/she understands the Board is responsible to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the Board's evaluation process, are thoroughly evaluated and discussed in the Board's deliberations. The Report of Examination documents all factors reviewed and considered by the Water Board. The undersigned therefore, certifies that he/she, having reviewed the report of examination, knows and understands the content of this Report of Examination and concurs with the ROE's conclusions.

The Benton County Water Conservancy Board hereby APPROVES the water right change/transfer described within this record of examination and record of decision, and submits this certificate for conditional approval to the Director of the Washington State Department of Ecology. If the Director takes no action within forty-five days of receipt of this ROE/ROD, then the Water Board's decision, as written, is final.

Approved Unanimously by the BCWCB  
Kennewick, Washington  
This 10<sup>th</sup> day of July, 2018

Approved and Signed on Behalf of the Water Board By:

Signed 

Chairman  
Benton County Water Conservancy Board  
Date Mailed to WADOE Director: on or before 7/24/2018