

For Ecology Use Only

Received:

FRANKLIN COUNTY

Date Stamp

WATER CONSERVANCY BOARD

Application for Change/Transfer

OCT

of Conditional Approval

ECOLOGY

Reviewed by:

Date Reviewed:

Applicant: Billand Cinda Middleton

DEPARTMENTIONAL OF OFFICE

Application Number: CG3-*04558C@1

Approval:

The Franklin County Water Conservancy Board hereby grants conditional approval for the water right transfer described within the Record of decision on October 3, 2002 and submits this record of decision and certificate for conditional approval to the Department of Ecology for final review or consideration.

Denial:

The Franklin County Water Conservancy Board hereby denies conditional approval for the water right transfer described within the Record of decision on and submits this record of decision to the Department of Ecology for final review or consideration.

Signed:

Date: 10/8/02

Approves

R. Henry Johnson, Chair

Denies

Franklin County Water Conservancy Board

Recuse

Date: 10/8/02

Approves

John Griffin Vice-Chair

Denies

Franklin County Water Conservancy Board

Recuse

Louis W. Musiness

Date: 10-09-02

Approves

Louis Meissner, Treasurer

Denies

Franklin County Water Conservancy Board

Recuse

Mailed to the Department of Ecology Eastern Regional Office of Ecology, via certified mail,

and other interested parties on 10/10/02

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Certificate of Conditional Approval/Notice of Denial

No. CG3-*04558C@1

Updated: 02/13/01

FRANKLIN COUNTY

WATER CONSERVANCY BOARD

Application for Change/Transfer

Record of Decision

TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

Surface Water

(Issued in accordance with the provisions of Chapter 117,

I

2002

Laws of Washington for 1917, and amendments thereto, and

the rules and regulations of the Department of Ecology.)

DEPARTMENT

Ground Water

(Issued in accordance with the provisions of Chapter 263,

EASTERN REGIONAL OFFICE

Laws of Washington for 1945, and amendments thereto, and

the rules and regulations of the Department of Ecology.)

PRIORITY DATE

PERMIT

CERTIFICATE

CHANGE APP.

DATE APPLICATION

NUMBER

NUMBER

NUMBER WRATS

RECEIVED

March 26, 1957

4281

2844

CG3-*04558C@1

NAME

William and Cinda Middleton

ADDRESS (STREET)

(CITY)

(STATE)

(ZIP CODE)

1441 Pasco-Kahlotus Road

Pasco

WA

99301

DECISION HISTORICAL SUMMARY

Existing Use

Proposed Use

QUANTITY, TYPE OF USE, PERIOD OF USE

QUANTITY, TYPE OF USE, PERIOD OF USE

1,050 gpm, 480ac-ft/year, Irrigation season each year for

1,050 gpm, 376 ac-ft/year year for Irrigation use; Irrigation season

Irrigation use.

SOURCE

Glorfield Well

SOURCE

Five Middleton wells

NO

1/4

1/4

SEC.

T

R

NO.

1/4

1/4

1/4

1/4

SEC.

T

RANGE,

1/4

1/4

A

NE

NE

23

9N

30EWM

1

NW

NW

23

9N

30EWM

SW

21

19N

40E

2

NW

SW

14

9N

30EWM

B

NE

NE

14

9N

30EWM

7

NE

14

9N

30EWM

Place of Use

Place of Use

Legal Description of Lands where Water is Presently Used:

Legal Description of lands Where New Use is Proposed)

Whitman County Washington; within,

See Attachment ""y" and Map C.2

NO

SEC.

T

RANGE,

NO.

1/4

1/4

1/4

SEC.

T.

RANGE,

21

19N

40EWM

15

19N

40EWM

23

19N

40EWM

SEPA

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules

11 WAC and has determined the application is:

Exempt

Not exempt

BOARD DECISION

MAXIMUM CUB

MAXIMUM

MAXIMUM ACRE-FT/YR

TYPE OF USE, PERIOD OF USE

FT/ SECOND

GAL/MINUTE

376

Seasonal irrigation of 120 acres.

1,050

SOURCE:5 Wells

Tributary of (if surface water)

AT A POINT LOCATED:

1/4

1/4

section

TOWNSHIP

RANGE

WRIA

COUNTY.

A 800'S & 850' W of NE cor. sec. 23

NE

NE

23

9N

30 EWM

33

Franklin

1 1,160'S & 1,160' E of NW cor. sec. 23

NW

NW

23

9N

30 EWM

33

Franklin

2

73'S & 34' E of W qtr. cor. sec. 14

NW

SW

14

9N

30 EWM

33

Franklin

7 1,320'S & 1,320' W of NE cor. sec. 14

NE

14

9N

30 EWM

33

Franklin

B 100'S & 400' W of NE cor. sec 14

NE

NE

14

9N

30 EWM

33

Franklin

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Continued

LEGAL DESCRIPTION OF PROPER ON WHICH WATER IS TO BE USED: see below

The detailed legal description for Middleton's Parcel 1 and 2:

Parcel 1.

The E 1,000 ft. of the SE 1/4 section 15, T9N, R30EWM

Containing approximately 40 acres;

And,

Parcel 2.

That portion of Section 23, Township 9 North, Range 30 East, W.M., Franklin County,

Washington, more particularly described as follow;

Beginning at the point of intersection with the Southerly right of way line of Pasco/Kahlotus Road

and the West line of said Section 23; thence Northeasterly along said Southerly right of way line

750 feet to the True Point of Beginning; then Southeasterly at right angles to said right of way line

1,000 feet; thence Northeasterly parallel to and distant 1,000 feet from said Pasco/Kahlotus Road to the Intersection with the Westerly boundary line of said Smith Canyon Wasteway as described in Deed to the United States of America, recorded July 14, 1964, under Auditor's File No. 262947, thence Northerly along said Westerly boundary line to the Southerly right of way line of said Pasco/Kahlotus Road; thence Southwesterly along said right of way line to the Point of Beginning.

Containing approximately 92 acres:

PARCEL NO.

NO.

TOWNSHIP

RANGE,

DESCRIPTION OF PROPOSED WORKS

Infrastructure for irrigation including five wells integrated into an associated crop water delivery system with such pipes, pumps, and appurtenances as necessary.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:

COMPLETE PROJECT BY THIS

COMPLETE CHANGE AND PUT WATER

DATE:

TO FULL USE BY THIS DATE:

Upon Approval

4/1/2003

9/1/2004

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Updated: 06/02

Report of Examination, Findings and Recommendation

IN THE MATTER OF APPLICATION FOR CHANGE/TRANSFER

)

Report of Examination,

BY BILL MIDDLETON OF GLORFIELD GROUND WATER RIGHT

)

Findings and

CERTIFICATE 2844 (WRATS CG3-*04558C@1)

)

Recommendations

REPORT

See WAC 173-153-130

Introduction

William and Cinda Middleton of Pasco, Washington filed the above application for change/transfer of water right with the Franklin County Water Conservancy Board (FCWCB). The FCWCB accepted the application; thence the Spokane office of the Department of Ecology; and, public notice was made in accordance with RCW 90.03.280. No letters of protest or request for intervener status were received during the thirty-day protest period associated with said publication. In addition, a public meeting was duly advertised and held on June 27, 2002 in Whitman County, as required. This Report of Examination, Findings and Recommendations contains information constituting a Technical Analysis; substantiation for a Record of Decision; content for a Certificate of conditional Approval; and, was prepared to support decision-making pursuant to said application. The following information was obtained from the applicant, individuals with relevant personal knowledge, review of Department of Ecology records, analysis of pertinent data and one field examination of the area of concern.

Background

Ground Water Certificate No. 2844 issued June 28, 1957 with a priority date of March 26, 1957; in the

amounts of 1,050 gallons per minute (gpm); up to 480 acre-feet per year (af/yr) for the seasonal irrigation of 120 acres.

The permit was issued for one well in the SW 1/4 of Sec 21 within T 19 N., R. 40 E.W.M. of Whitman County.

The Certificate owner has used subject water upon lands owned by their family with the principal crop being alfalfa. The original Water Right Certificate was issued in the name of Glorfield and Mills. However, ownership interest in the Place of Use (POU), other than Ben Glorfield, was reported by Jack and Bernice Glorfield, who did execute an assignment transferring all of their rights and interest in the prior pending change filing over to Ben J. Glorfield on May 14, 1998 thereby having a deferral of interest to Ben Glorfield as a matter of record with the non-consummated change approval dated November 10, 1999.

Prior to this current Application for Change/Transfer of POU and POW's filed by William and Cinda Middleton with regard to their conditional interest in GWC 2844 owned by Ben Glorfield, Mr. Glorfield did, on November 8, 1994, file an application to change subject Purpose of Use from seasonal Irrigation to Commercial Use. No action was taken on this filing until November 10, 1999, when a conditional approval was granted with a development schedule extending to December 1, 2007. No action to implement this change has been effected by Mr. Glorfield; therefore, this approved change with attendant conditions related to Trust Water Rights and Hillis Rule would be null and void when the Glorfield to Middleton change is approved. Said Report of Examination considered this possibility and stated, in part, that:

"If the application for change is not perfected then the application for change will be canceled and the Certificate will return to its original place, purpose and season of use the applicant is advised to continue irrigating the 120 acres "

Mr. Glorfield has continued said irrigation through the 2001 season and has concurred with applicant Middletons in the requested change to the Place of Use (POU) owned by the applicant and to change from the one Glorfield well to Middleton's integrated system to include five wells. The Purpose of Use would remain as seasonal irrigation.

Approval of this proposed change would constitute the clear intent of the Glorfields to not perfect the project contemplated under the November 10, 1999 conditional approval.

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Investigation and related policy

Requested Change/Transfer: The application for change/transfer proposes to change the Glorfield POW from one well in Whitman County in recognized hydraulic continuity with Surface Waters (Springs, wetlands and seeps) which are directly or indirectly tributary to Packer Creek (see Ecology's Hydrogeologist James M Lyerla statement in his 11/10/99 Findings associated with the non-executed Change from Irrigation to Commercial use under said GWC 2844, pg. 3, that it is likely that there is some degree of interconnection between this (Glorfield) well and local surface water sources."); thence, in Surface Water continuity through Packer Creek, a recognized fifth order stream which is tributary to Rock Creek, which is tributary to the Palouse River, which is tributary to the Snake River, which is tributary to the Columbia River (Lake Wallula-McNary Pool), a recognized first order stream with a normal pool surface water elevation of 340' msl for documentation of this chain of continuity; thence, the Middleton wells A, 1, 2, 7 and B have wellhead elevations in the range of 480' msl +/-, static water levels of 385+/- with a test pump level of 365+/- with screens beginning as low as 305' msl (Well 2) or 35' below the normal level of Lake Wallula. The regional groundwater source for the Middleton wells is in hydraulic continuity with said Lake Wallula as indicated on a cross-section which runs due north from Snake River Mile 2.6 for 3.5+ miles. The five wells involved are located both East (wells B, 7 and A) and West (wells 1 and 2) of this transect and are in the same general regional groundwater setting per said cross-section.

Current State policy in this regard flows from administrative actions allowing Changes as between surface and ground waters or ground and surface waters, so long as hydraulic continuity exists in at least one direction. In the Glorfield to Middleton case, this test is met throughout this proposed change. The administrative policy is based generally on a series of court decisions from John Plakos et al V. Ecology and the Hubbard Bros. V.

Ecology through the Postema case which serve as the underpinning of the "one-molecule" approach to continuity as between surface and ground, or ground and surface waters. Measurability of the degree of continuity has not been required, just the likely, or in some cases, possible, continuity relationship between the ground water and surface water involved.

No change in purpose of use is requested: this is an irrigation-to-irrigation change.

The transfer does not involve any increase in the amount of water pumped as provided under GWC-2844.

The effect of the transfer will be to withdraw the water from multiple wells in an integrated system in hydraulic continuity with the Columbia River McNary pool (Lake Wallula) instead of one well in hydraulic continuity with Packer Creek located upstream and over 1,300' higher in elevation and to apply this water at the Middleton POU over 90 miles downstream from the Glorfield POU.

Demonstrated Use

Water has been continuously used as indicated by various power records over the years. The guidance currently provided in administering changes (RCW 90.03.380) is that the estimated or actual consumptive use of the average of the two highest of the last five years is eligible for change. An analysis of monthly data from the State of Washington Irrigation Guide for Colfax for alfalfa is that 31.14 inches of water are needed for crop use. When this need is modified by the effective rainfall at the Glorfield farm (el. 1,820) for 1997 2001 data from U. S. G. S. Water-Resources Investigations Report 88-4105 (prorated from St. John at el. 1945' msl and Ritzville at el. 1,830' msl) the following annual crop need for the last five years is derived (see Table 1, attachment T):

1997

1998

1999

2000

2001

25.02"

25.08"

26.10"

25.07"

26.54"

When 1999 and 2001 (26.10" and 26.54") are averaged the need is 26.32".

The total consumptive need demand of 26.32" with a 70% efficient system (reasonable efficiency for the Glorfield irrigation system-wheel and hand move) yields 37.6 inches per year or 376 acre feet per year available to transfer for the 120 acres.

It is noted that GWC 2844 provides for up to 480 acre-feet/year with documented past use of up to 457 acre-feet/year (1977 drought year) on the Glorfield POU.

There was prior concurrence with Ecology Hydrogeologist Jim Lyerla that all applied water would be consumed by the crop at a lower level of use under prior standards and that no deep percolation or surface runoff would occur from the field, so full consumption use was assumed then. The current analysis is conservative in nature and uses the referenced documentation for the "estimated" 376 acre-feet per year available to transfer for the 120 acres. It is noted that both the years used under the current standard are later than, and not included in, the earlier assessment done under a different (earlier Statutory) standard. It is reasonable to assume that the full 376 acre-feet per year represent the consumptive use amount and that no return flow occurs.

For purposes of the change/transfer application, the valid, transferable right under GWC 2844 is reasonably represented by an amount of up to the full allotment of 1,050 gpm, 376 af/yr. for seasonal irrigation of 120 acres.

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Continued

Place of Use.

The requested new Places of Use (POU) is owned by the Applicant and are described as follows:

Parcel 1.

The E 1,000 ft. of the SE 1/4 section 15, T9N, R30EWM

Containing approximately 40 acres;

And,

Parcel 2.

That portion of Section 23, Township 9 North, Range 30 East, W.M., Franklin County,

Washington, more particularly described as follow;

Beginning at the point of intersection with the Southerly right of way line of Pasco/Kahlotus Road and the West line of said Section 23; thence Northeasterly along said Southerly right of way line 750 feet to the True Point of Beginning; then Southeasterly at right angles to said right of way line 1,000 feet; thence Northeasterly parallel to and distant 1,000 feet from said Pasco/Kahlotus Road to the Intersection with the Westerly boundary line of said Smith Canyon Wasteway as described in Deed to the United States of America, recorded July 14, 1964, under Auditor's File No. 262947, thence Northerly along said Westerly boundary line to the Southerly right of way line of said Pasco/Kahlotus Road; thence Southwesterly along said right of way line to the Point of Beginning.

Containing approximately 92 acres.

Middleton's Places Of Use for 120 acres irrigation are within the approximately 132 acres in parcels 1 and 2.

Potential Conflict.

There is no conflict created by the change/transfer, as no greater consumptive use of water will occur in the Snake River basin from the proposed change.

Moreover, in excess of 90 stream miles will benefit from an incremental additional flow from the proposed change, as would certain associated wetlands as noted in the aforementioned provisional change, which has not been implemented. This incremental additional flow will be proportionally greater in Packer Creek than in Rock Creek and get proportionally less through the Palouse, Snake and, thence, the Columbia Rivers. While this change would not effect a measurable increase in the Rivers involved, measurability in fact is not the

standard now in place in Washington State. No net theoretical diminishment of flow in the associated Rivers will occur by this proposed change.

Local ground waters exhibit no known conflicts with other water rights as 20 years of Static Water Levels (SWL) in Well #3 (8" monitoring well) observed by the USBR indicated a range of Mean Sea Level (MSL) 368' and 386' with a normative annual fluctuation of about 7' with no declining trend. The nearby production well (#2) has a SWL of 372'; a Pumping Water Level (PWL) of 352' with screening from MSL 302' - 312' and MSL 322' - 342'; and, the McNary Pool elevation range of 336' - 342', or, basically 30' of screening is at or below the upper level of McNary Pool.

Impairment Analysis.

The effect of the transfer is to move the water withdrawal from the existing single Point of Withdrawal (POW) to five Points of Withdrawal (POW's) over 90 miles downstream and over 1,300 feet lower in elevation as proposed would not be detrimental to existing Surface or Ground Water Rights

An impairment analysis for the transfer decision just evaluates whether existing water rights will be impaired due to the transfer in well location. The two Well Logs noted in Attachments "0" of the associated Technical report dated June 6, 2002 along with the analysis noted under Potential Conflict adequately document that no impairment will occur as a result of this change/transfer.

While this general aquifer does not qualify as the same body of public groundwater as the local aquifer of origin under GWC-2844; under the policies and procedures of the Department of Ecology there is clearly a continuity of waters, in at least one direction, relating the original POW with the proposed POW. This combined analysis indicates that no impairment will occur as a result of approval of this proposed Change/Transfer.

In summary, with knowledge of the hydrogeology of ground and surface waters involved, rights of record and other pertinent data, it is concluded that the change/transfer requested will not impair existing water rights.

Public Interest.

Water right transfers are provided for by the State Water Code; and, standards have been set forth therein.

Subject application for change/transfer is consistent with public policy objectives of said Code and the

policies and administrative decisions derived from the Code and various Court interpretations thereof to provide for the efficient use of water resources through the change/transfer of the terms of an existing water right. There are no detrimental effects to the public interest associated with the requested transfer.

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State Environmental Policy Act (SEPA).

The requested change/transfer involves a water right modification including an intertie of 5 wells for a total project of 5,846 gpm. The applicant submitted a SEPA checklist and the FCWCB issued a Determination of Non-significance (DNS). Public notice of the SEPA determination was published in the Franklin County Graphic. The SEPA checklist and DNS was also submitted to the Department of Ecology and the information was published on their web site. All SEPA requirements were fulfilled and no public comments were received.

Special Conditions.

The total usage under Ground Water Certificate 2844 will be limited to a maximum of 1,050 gpm, 376 af/yr.

from the proposed wells. The following Water Rights are additive to the 1,050 gpm rate and 376 af/yr.

proposed for change hereunder:

Middleton Water Right Change (Franklin County Ground Water Rights)

A summary matrix of primary uninterruptible * Ground Water Right Certificate data follows:

Water Right

Filing Number

Function

G3-24312C

G3-28778C

G3-20251C**

G3-28727C

G3-28155C

Date of Priority

1/31/75

6/11/90

6/2/72

1/29/90

4/3/86

Withdrawal Rate (GPM)

1,400

2,500

1211**

585

150

Annual Quantity (AF/yr.)

744

1,122

556**

222

60

Purpose of Use

Irrigation

Irrigation

Irrigation

Irrigation

Irrigation

Dom./Stock (2af)

(new POU)

Acres

142

280

139**

65

15

Time of Use

1/1-12/31

Season

4/1-9/30

Season

Season

Place of Use

Points of Withdrawal

7

2 & 3.

1

1

A,1,2,7 & B

Duty

9.9 gpm/A

8.9 gpm/A

8.7 gpm/A

9 gpm/A

10 gpm/A

5.2+ AF/A

4.0 AF/A

4.0 AF/A

3.4 AF/A

4.0 AF/A

*

These Rights do not have restrictions with regard to instream flow settings by regulation or policy on the Snake and/or Columbia

GWC20251 was issued to BN for 2,745 gpm up to 1,260 AF for up to 315 acres and has been apportioned based on 139 acres.

The Place of Use (POU) and Points of Withdrawal(s) (POW) are as indicated within data before the Franklin County Conservanc

Bill Middleton proposes expedited completion of this project. Completion of Construction due by April 1,

2003 unless further extended for good cause. Proof of appropriation (for actual beneficial use of water) by

September 30, 2004 unless further extended for good cause.

The proposed schedule is suitable for accommodating orderly development, taking into account the type and

magnitude of the project. A proof inspection by the Department of Ecology is recommended for consideration

to certify actual development of the water right as changed/transferred.

No change/transfer of the priority date, acres irrigated, instantaneous quantity, net annual consumptive use

impact, or purpose of use is requested hereunder; therefore, the priority date, instantaneous quantity of

1,050 gpm, the 120 irrigated acres and purpose of use under GWC 2844 are not modified.

Findings.

1.

There is a water right eligible for change/transfer.

2.

The proposed change/transfer will not enlarge the right.

3.

The proposed change/transfer conforms to the criteria of continuity as between surface and ground waters necessary and sufficient for approval of said proposal.

4.

The proposed change/transfer will not impair existing rights.

5.

Approval of the change/transfer will not be detrimental to the public interest.

In accordance with these Findings, the State Water Code, Rules, Policies and Procedures allow for approval of the change/transfer per the application in the amounts and manner requested.

Recommendations

It is recommended that a Superseding Certificate order conditionally approving the requested change/transfer be issued as described herein for GWC 2844:

Name:

William L. and Cinda J. Middleton

1441 Pasco-Kahlotus Road, Pasco, WA 99301

Priority Date:

March 26, 1957.

Quantities and uses:

1,050 gpm, 376 af/yr. for the seasonal irrigation of 120 acres.

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Source:

Five wells in an integrated system located approximately:

Well A

800' S and 850' W of the NE corner of Sec. 23

Well no. 1

1,160' S and 1,160 E of the NW quarter of Sec. 23

Well no. 2

73' S and 34' E of the W quarter corner of Sec. 14

Well no. 7

1,320 S and 1,320 W of the NE corner of Sec. 14

Well B

100' S and 400' W of the NE corner of Sec. 14

All within T9N; R30E.W.M.; WRIA 33; Franklin County.

Place of Use:

Lands within Parcels 1 and 2 described above and within Sections 15 and 23,

T9N, R30E.W.M., Franklin County.

PROVISIONS

In addition to provisions of the original GWC 2844, the following provision is recommended to apply to the change/transfer authorization.

Completion of Construction (construction of well "A") shall be by April 1, 2003 unless further extended as allowed by statute. Proof of Appropriation (full beneficial use of water) shall be by September 30, 2003 unless further extended as allowed by statute.

An approved measuring device shall be installed and maintained in accordance with RCW 90.03.360 or WAC 508-64-020 through WAC 508-54-040.

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 and required.

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.

A Superceding Certificate of water right will not be issued until a final examination is made.

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

Installation and maintenance of an access port as described in Ground Water Bulletin No. 1 is required. An airline and gauge may be installed in addition to the access port.

All water wells constructed within the state shall meet the minimum standards for construction and maintenance as provided under RCW 18.104 (Washington Water Well Construction Act of 1971) and Chapter 173-160 WAC (Minimum Standards for Construction and Maintenance of Water Wells).

A well log of the completed well shall be submitted by the driller to the Department of Ecology within thirty (30) days of completion of well A. This well log shall be complete and all information concerning the static water level in the completed well in addition to any pump test data shall be submitted as it is obtained.

The authorization to use public waters of the state, which is proposed hereunder, is not classified as a Family Farm Development Permit under Chapter 90.66 RCW. The Applicant owns the new POU and the Applicant has less than 6,000 acres of irrigated lands under ownership.

This is an agriculture-to-agriculture change with no change in the purpose of use.

Signed at Pasco, Washington

R. Henry Johnson, Chair

This 8 day of October, 2002

Franklin County Water Conservancy Board

Record of Decision

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Updated: 06/02