

**FILED**  
JUN 14 2004

KIM M. EATON, YAKIMA COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF YAKIMA

IN THE MATTER OF THE )  
DETERMINATION OF THE RIGHTS )  
TO THE USE OF THE SURFACE )  
WATER RIGHTS OF THE YAKIMA )  
RIVER DRAINAGE BASIN, IN )  
ACCORDANCE WITH THE PROVISION )  
OF CHAPTER 90.03, REVISED )  
CODE OF WASHINGTON, )

No. 77-2-01484-5

THE STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )

Plaintiff, )

**PETITION FOR ORDER  
PENDENTE LITE RE: REQUEST  
FOR TEMPORARY TRANSFER  
OF SURFACE WATER RIGHT  
UPPER NACHES & TIETON  
SUBBASINS 16 & 17**

v. )

JAMES J. ACQUAVELLA, et al., )

Defendants. )

Petitioner requests the court, pursuant to Section 2 of the PRETRIAL ORDER NO. 6 and Section 2 of PRETRIAL ORDER NO. 12, to issue an Order Pendente Lite, authorizing the temporary transfer of the petitioner's water right for an additional place of use and point of diversion. In support thereof, the petitioner states as follows:

1. Name of Petitioner: The petition is filed jointly by Selah-Moxee Irrigation District (SMID) and the following non-profit organizations operating summer camps and related activities within the boundaries of Subbasins 16 & 17, collectively identified as the "non-profit camps"

1. Fort Simcoe Area Council – Boy Scouts of America (Camp Fife)
2. Camp Prime Time
3. Young Men’s Christian Association (Camp Dudley)
4. First Presbyterian Church (Camp Ghormley)
5. Indian Creek Corral

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2. Subbasin Involved: This Petition relates to Subbasin 16, Upper Naches and Subbasin 17, Tieton.

3. Relief Requested: The Petitioners SMID and the non-profit camps are seeking approval by this court for a temporary transfer of the point of diversion and place of use of a portion of SMID’s water right recommended for approval in the Conditional Final Order-SMID (CFO) filed September 9, 1998 to either the non-profit camps individually, to the Washington Water Trust program or to the US Bureau of Reclamation. The right is based on Claim Nos. 1653, 1651 & 1888, filed by SMID, Moxee Ditch Co. and Moxee Hubbard Ditch Co., and is more fully described as follows:

Priority Date: January 26, 1887 for the natural flow component of the SMID water right and May 10, 1905 for the Warren Act component.

Quantity: The total quantity to be transferred is 0.7 cfs; 15.2 acre-feet per year. Individually, the quantity to be transferred is:

- Camp Prime Time: 0.10 cfs; 1.8 acre-feet per year,
- Indian Creek Corral: 0.04 cfs; 1.4 acre-feet per year,
- YMCA – Camp Dudley: 0.11 cfs; 4 acre-feet per year,
- First Presbyterian Church/Camp Ghormley: 0.25 cfs; 6 acre-feet/year,
- Ft. Simcoe Area Council/Boy Scouts/Camp Fife: 0.20 cfs; 2 acre-feet/yea

Purpose of Use: The proposed purpose of use by the non-profit camps is group or community domestic supply for youth camps.

Period of Use: June through October of 2004

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Point of Diversion: The point of diversion for the Moxee-Hubbard portion of the SMID water right is: 1900 feet south and 400 feet east from the northwest corner of Section 7, being within the SW1/4NW1/4 of Section 7, T. 13 N., R. 19 E.W.M.. The point of diversion for the proposed uses by the various non-profit camps is as set forth in the attached pages from Report of Referee Re: Subbasin 16 and Report of Referee Re: Subbasin 17. [Exhibits 1-4]

Place of Use: The proposed place of use by the non-profit camps is as set forth in the pages from Report of Referee Re: Subbasin 16 and Report of Referee Re: Subbasin 17. [Exhibits 1-4]

4. Statement of Reasons: The water rights of the non-profit camps are all post 1905 rights and are subject to the Order Limiting Post-1905 Diversions During Periods of Water Shortage entered by this Court on June 10, 2004. As a result, the non-profit camps are required to cease using water when the USBR announces initiation of "storage control". All of the non-profit camps have camping schedules previously in place, which involve contracts with hundreds of camper, vendors and contractors, the disruption of which will cause serious financial loss to each of the non-profit camps and will deprive hundreds of children of a camping experience.

SMID is willing and able to provide the senior water right necessary to allow the non-profit camps to continue operation during the upcoming camp season. The water proposed to be transferred to the non-profit camps was confirmed by this Court and has been applied to beneficial use by SMID ever since.

Such a transfer may be permitted if the change results in no increase in the annual consumptive quantity of water under the right. Within the past five years, SMID has instituted conservation practices to reduce the amount of water necessary for irrigation of crops due to the washout of one of its diversion works and the inability to totally replace the amount of water previously diverted. The SMID water right, as confirmed in the SMID CFO, is not subject relinquishment because the washout of its diversion works

acts as a sufficient cause to non use, the unavailability of water. (RCW 90.14.140 (1)(a))  
The non-profit camps will beneficially use the transferred water, thereby further  
protecting it from relinquishment. Furthermore, the year 2001 was a drought year,  
thereby removing it from any calculation of beneficial use.

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5. Names of Parties Affected: SMID, Fort Simcoe Area Council – Boy  
Scouts of America (Camp Fife), Camp Prime Time, Young Men’s Christian  
Association (Camp Dudley), First Presbyterian Church (Camp Ghormley), Indian  
Creek Corral, Major Claimant Project water users and other water users within  
Subbasins 16 & 17.

6. Service. The Petitioners certify that a copy of this petition and  
attachments and a notice of the time and place of the hearing by the court on said Petition  
have been transmitted by US Mail, by personal service or by publication in the monthly  
Adjudication Newsletter to all affected parties.

DATED this 14<sup>th</sup> day of June, 2004.

TALBOTT, SIMPSON, GIBSON  
& DAVIS, P.S.  
Attorneys for Petitioner

By:   
JAMES E. DAVIS, #5089

**EXHIBIT "1"**

1 CLAIMANT NAME: Fort Simcoe Area Council COURT CLAIM NO. 1728  
2 Boy Scouts of America

3 Source: Strawberry Creek

4 Use: Group domestic supply for a recreational camp, including  
5 maintenance of a swimming pool

6 Period of Use: Continuously

7 Quantity: 0.20 cfs, 2 acre-feet per year

8 Priority Date: March 28, 1938

9 Point of Diversion: 100 feet north and 100 feet west of the east  
10 quarter corner of unsurveyed Section 11, within  
11 the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of unsurveyed Section 11 T. 16 N.,  
12 R. 12 E.W.M., Snoqualmie National Forest

13 Place of Use: Lots 1, 2, 3, 4, 5, 6, 7, and 8 of Fife's  
14 Gooseprairie Home Tracts, as recorded at Page 27,  
15 Volume G of Plats, Yakima County, EXCEPT that  
16 portion of Lot 8 beginning at the northeasterly  
17 corner of said Lot 8, thence S 36°36' E 340 feet;  
18 thence S 53°24' W 1137.5 feet; thence N 36°37' W  
19 533.4 feet to the northwest corner of said Lot 8;  
20 thence northeasterly along the north line of said  
21 Lot 8 to the point of beginning; and EXCEPT the  
22 extreme easterly 20 feet and the northerly 20 feet  
23 of said portion of Lot 8 for right of way for county  
24 road, ALL in unsurveyed Section 22, T. 16 N., R. 12  
25 E.W.M.

26  
27 REPORT OF REFEREE

28 Re: Subbasin No. 16

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**EXHIBIT "2"**

1 CLAIMANT NAME: Indian Creek Corral COURT CLAIM NO. 2219  
2 Source: Unnamed spring  
3 Use: Domestic supply and stock water.  
4 Period of Use: Continuously  
5 Quantity: 0.04 cfs; 1.4 acre-feet per year  
6 Priority Date: June 3, 1952  
7 Point of Diversion: 640 feet east and 1000 feet north of the  
8 center of Section 6, being within the  
9 SW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 6, of Unsurveyed T. 13 N.,  
10 R. 13 E.W.M., Snoqualmie National Forest.  
11 Place of Use: Indian Creek Corral, located within that  
12 portion of the NE $\frac{1}{4}$  Section 6, of Unsurveyed  
13 T. 13 N., R. 13 E.W.M., lying northerly of  
14 State Highway 12, easterly of Indian Creek,  
15 southerly of the Bootjack development and  
16 westerly of Forest Service Road No. 1382,  
17 Snoqualmie National Forest.

14 CLAIMANT NAME: Prime Time COURT CLAIM NO: 0602  
15 Source: Cold Creek tributary to North Fork Tieton River.  
16 Use: Community domestic supply for 100 person  
17 educational camp facility.  
18 Period of Use: Continuously  
19 Quantity: 0.10 cfs; 1.8 acre-feet per year  
20 Priority Date: February 10, 1954  
21 Point of Diversion: 1400 feet north and 300 feet east of the  
22 southwest corner Section 7, being within  
23 the NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 7, of Unsurveyed T. 13  
24 N., R. 13 E.W.M., Snoqualmie National  
25 Forest.  
26 Place of Use: Five acres, more or less, located at site  
27 of abandoned CCC Camp BR-49, Clear Creek,  
being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 12, of  
Unsurveyed T. 13 N., R. 12 E.W.M.,  
Snoqualmie National Forest.

27 REPORT OF REFEREE Re: Subbasin No. 17 - 33

# EXHIBIT "3"

1 CLAIMANT NAME: Young Men's Christian Association COURT CLAIM NO. 0249 &  
2 Association 3129(A)

3 Source: Unnamed spring tributary to Clear Lake.

4 Use: Community domestic supply for 150 person camp.

5 Period of Use: Continuously

6 Quantity: 0.11 cfs; 4 acre-feet per year

7 Priority Date: December 16, 1941

8 Point of Diversion: 1400 feet west and 700 feet south of the  
9 northeast corner Section 11, being within  
10 the NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 11, of Unsurveyed T. 13  
11 N., R. 12 E.W.M., Snoqualmie National  
12 Forest.

13 Place of Use: Tract "0-1" of Randall Yakima Highway  
14 Recreation Unit Plan within the NW $\frac{1}{4}$  Section  
15 12, of Unsurveyed T. 13 N., R. 12 E.W.M.,  
16 Snoqualmie National Forest.

17 CLAIMANT NAME: Twelve West Resort COURT CLAIM NO. 2217

18 Source: Hart Creek tributary to Rimrock Lake

19 Use: Community domestic supply for residence and  
20 resort.

21 Period of Use: Continuously

22 Quantity: 0.02 cfs; 6.5 acre-feet per year

23 Priority Date: June 3, 1946

24 Point of Diversion: 250 feet east and 1100 feet north of the  
25 west quarter corner Section 2, being within  
26 the SW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 2, of Unsurveyed T. 13  
27 N., R. 13 E.W.M., Snoqualmie National  
Forest.

REPORT OF REFEREE Re: Subbasin No. 17 - 29

**EXHIBIT "4"**

1 COURT CLAIM NO. 2079  
 2 (Continued)

3 Point of Diversion: 1400 feet east and 350 feet north of the  
 4 center of Section 10, being within the  
 SE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 10, of Unsurveyed T. 13 N.,  
 R. 13 E.W.M., Snoqualmie National Forest.

5 Place of Use: Within the site plan for Bear Cove Cabins,  
 6 Inc. in the E $\frac{1}{2}$ NW $\frac{1}{4}$  Section 11, of Unsurveyed  
 T. 13 N., R. 13 E.W.M., Snoqualmie National  
 7 Forest.

8 CLAIMANT NAME: First Presbyterian Church of North Yakima COURT CLAIM NO. 0664,  
 9 2339(A), 3062(A)

10 Source: Jumpoff Creek tributary to Tieton River and an  
 11 unnamed spring

12 Use: Community domestic supply (150 person church  
 13 camp) and swimming pool maintenance.

14 Period of Use: Continuously

15 Quantity: 0.25 cfs; 6 acre-feet per year (0.005 cfs -  
 16 spring, 0.245 cfs - Jumpoff Creek)

17 Priority Date: January 29, 1940

18 Point of Diversion: 1000 feet north and 650 feet west (Jumpoff  
 19 Creek); 1150 feet north and 950 feet west  
 (unnamed spring), both from the south  
 quarter corner Section 27, being within the  
 SE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 27, T. 14 N., R. 14 E.W.M.,  
 Snoqualmie National Forest.

20 Place of Use: Camp Ghormley, consisting of 13.4 acres  
 21 located within the N $\frac{1}{2}$ SW $\frac{1}{4}$  Section 27, T. 14  
 N., R. 14 E.W.M., Snoqualmie National  
 22 Forest.

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 27 REPORT OF REFEREE Re: Subbasin No. 17 - 28

**EXHIBIT "5"**

# Water Rights Listing

Priority Dates After May 10, 1905

Priority Date	Cert Nbr	Inv ID	Sub	Claimant Name
07/22/1933	33028	0000238	02	Charles S. Malcomson

**Address**

c/o William J. Bowlan  
4423 Waterman Ridge LN E

**City/State/Zip**

Port Orchard, WA 98366-

Source: An unnamed spring  
Quantit (1) Annual Total Volume - 0.50 acre foot

(2) Instantaneous Use - 0.01 cfs  
Purpose Continuous domestic supply for one recreational home

08/25/1933 33017 0000199 02 Leon Carlson

Source: Tucker Creek  
Quantit 0.30 cfs; 20 acre-feet per year  
Purpose Irrigation of 10 acres

12/30/1933 33852 0000764 31 Laura W. Duncan

Source: Yakima River  
Quantit 1.50 cubic feet per second; 357.5 acre-feet per year  
Purpose Irrigation of 65 acres

02/09/1934 33691 0003405 22 Carl A. Burmaster

Source: Wide Hollow Creek  
Quantit 9.0 cfs (non-consumptive)  
Purpose Power generation (hydromechanical-milling)

03/28/1938 33415 0000722 16V Fort Simcoe Area Council; B.S.A.

Source: Strawberry Creek  
Quantit 0.20 cfs, 2 acre-feet per year  
Purpose Group domestic supply for a recreational camp, including maintenance of a swimming pool

16125 Juanita Woodinville Way NE  
Unit 2402

Bothell, WA 98011-9445

4315 Main Street

Union Gap, WA 98903

PO Box 9216

Yakima, WA 98909

**EXHIBIT "6"**

# Water Rights Listing

## Priority Dates After May 10, 1905

Priority Date	Cert Nbr	Inv ID	Sub	Claimant Name	Address	City/State/Zip
06/06/1938	33002	0000525	01	Lake Cle Elum Community Club	PO Box 251	Roslyn, WA 98941
Source: Unnamed spring tributary of Lake Cle Elum						
Quantit	0.10 cfs; 7.3 acre-feet per year					
Purpose	Community domestic supply including lawn and garden irrigation for 30 recreational residences					
04/21/1939	33201	0000506	17	Bear Cove Cabins, Inc.	5309 Crest Acres Place	Yakima, WA 98908
Source: Unnamed spring						
Quantit	0.025 cfs; 4 acre-feet per year					
Purpose	Community domestic supply for 50 recreational residences					
01/29/1940	33202	0000507	17	✓ First Presbyterian Church N. Yakima	9 S 8th Avenue	Yakima, WA 98902
Source: Jumpoff Creek tributary to Tieton River and an unnamed spring						
Quantit	0.25 cfs; 6 acre-feet per year (0.005 cfs - unnamed spring, 0.245 cfs - Jumpoff Creek)					
Purpose	Community domestic supply (150-person church camp) and swimming pool maintenance					
10/11/1941	33041	0000302	02	WA State Dept of Fish and Wildlife	600 Capitol Way	Olympia, WA 98501-1091
Source: An unnamed stream						
Quantit	Instantaneous Use - 1.94 cfs					
Purpose	Continuous, nonconsumptive fish propagation					
12/16/1941	33203	0000508	17	✓ Young Men's Christian Association	5 N Naches Avenue	Yakima, WA 98901
Source: Unnamed spring tributary to Clear Lake						
Quantit	0.11 cfs; 4 acre-feet per year					
Purpose	Community domestic supply for 150-person camp					

**EXHIBIT "7"**

# Water Rights Listing

Priority Dates After May 10, 1905

Priority Date	Cert Nbr	Inv ID	Sub	Claimant Name
01/20/1953	33425	0000732	16	Charles A. Severn

Address  
403 S 11th Avenue  
Yakima, WA 98902

City/State/Zip

Yakima, WA 98902

Source: Webb Spring and stream

Quantit 0.0025 cfs, 0.50 acre-foot per year

Purpose Single domestic supply

04/20/1953 33320 0003216 26 Katsumi Taki

330 Mellis Road

Wapato, WA 98951

Source: Unnamed springs and pond

Quantit 0.38 cf; 76 acre-feet per year for irrigation

Purpose Irrigation of 19 acres

02/10/1954 33210 0000517 17 Prime Time

PO Box 148

Yakima, WA 98907-0148

Source: Cold Creek tributary to North Fork Tieton River

Quantit 0.10 cfs; 1.8 acre-feet per year

Purpose Community domestic supply for 100-person educational camp facility

02/11/1955 33006 0000529 01 Frank Abbott

2809 NE 77th Street

Seattle, WA 98115

Source: An unnamed creek tributary of Cle Elum River

Quantit 0.03 cfs; 1.5 acre-feet per year

Purpose Domestic supply for 3 recreational cabins

03/18/1955 33051 0002436 02 Whitaker Land Company

1505 NW Gilman Boulevard

Issaquah, WA 98027

Source: Unnamed spring area and stream

Quantit 0.41 cfs

Purpose Non-consumptive pond maintenance for wildlife habitat

Wednesday, June 02, 2004

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**EXHIBIT "8"**

# Water Rights Listing

Priority Dates After May 10, 1905

Priority Date	Cert Nbr	Inv ID	Sub	Claimant Name	Address	City/State/Zip
12/11/1950	33422	0000729	16	W. Kenneth McCoy-LaForce	1223 S. Spokane Street	Seattle, WA 98144-7329
Source: Webb spring and stream						
Quantit. 0.0025 cfs, 0.5 acre-foot per year						
Purpose Single domestic supply						
03/17/1952	33424	0000731	16	Theodore W. Mellotte, Jr.	213 Santa Roza Dr.	Yakima, WA 98901-5606
Source: Webb Spring and stream						
Quantit 0.005 cfs, 1.80 acre-feet per year						
Purpose Group domestic supply for eight cabins and eight trailer hookups						
03/17/1952	33423	0000730	16	David L. Lund	210 Lund Lane	Cle Elum, WA 98922
Source: Webb spring and stream						
Quantit 0.005 cfs, 0.50 acre-foot per year						
Purpose Group domestic supply for a home and cafe/grocery store						
06/03/1952	33209	0000516	17	Indian Creek Corral	805 Seattle Street	Ellensburg, WA 98926
Source: Unnamed spring						
Quantit 0.04 cfs, 1.4 acre-feet per year						
Purpose Domestic supply and stock water						
01/19/1953	33823	0000645	30	Edith A. Stier	58607 North River Road	Benton City, WA 99320-
Source: An unnamed drainage ditch, tributary to the Yakima River						
Quantit 0.40 cfs; 77 acre-feet per year						
Purpose Irrigation of 14 acres						

# EXHIBIT "9"

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR YAKIMA COUNTY

IN THE MATTER OF THE DETERMINATION )  
OF THE RIGHTS TO THE USE OF THE )  
SURFACE WATERS OF THE YAKIMA RIVER )  
DRAINAGE BASIN, IN ACCORDANCE WITH )  
THE PROVISIONS OF CHAPTER 90.03, )  
REVISED CODE OF WASHINGTON, )

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.

CLERK OF  
SUPERIOR COURT  
YAKIMA WASHINGTON

NO. 77-2-01484-5

CONDITIONAL FINAL  
ORDER AS A FINAL  
JUDGMENT PURSUANT TO  
CR 54(b) AND RAP 2.2(d)  
AND PRETRIAL ORDER  
NUMBER 8 AS AMENDED

SELAH-MOXEE IRRIGATION  
DISTRICT COURT CLAIM  
NO. 1653, NO. 16519  
NO. 1888

**FILED**  
SEP 19 1998

KIM M. EATON, YAKIMA COUNTY CLERK

I. PROCEEDINGS

THIS MATTER has come on regularly before the Court with Selah-Moxee Irrigation District having had its evidentiary hearing on June 1, 1994, and the Moxee Irrigation District having its evidentiary hearing on March 21, 1994. This Court filed its Report of the Court Concerning the Water Rights for the Selah-Moxee Irrigation District on October 31, 1996, and for the Moxee Irrigation District on December 18, 1996. On January 14, 1997, the Selah-Moxee Irrigation District and the Moxee Irrigation District merged. Thereafter, this Court held a consolidated hearing on exceptions on March 13, 1997. James E. Davis, attorney, represented the defendant Selah-Moxee Irrigation District. Mary E. McCrea, Assistant Attorney General, represented the plaintiff State of Washington, Department of Ecology. Maria A. Iizuka, attorney with the U.S. Department of Justice, represented the defendant, United States. John P. Gilreath, attorney, represented the defendant

1 Kittitas Reclamation District. Attorneys Donald H. Bond and  
2 Lawrence E. Martin represented the defendants Ellensburg Water  
3 Company and West Side Irrigating Company. Charles C. Flower,  
4 attorney represented the defendant Sunnyside Division.

5 The Court, after reviewing the exceptions and other  
6 materials filed, and after having heard argument and being  
7 fully advised, filed its Supplemental Report of the Court  
8 Concerning the Water Rights for the Selah-Moxee Irrigation  
9 District on July 20, 1998. This Court now enters this  
10 Conditional Final Order based upon said initial Reports of the  
11 Court and Supplemental Report of the Court.

12 This Conditional Final Order will ultimately be  
13 incorporated into a final decree that determines and  
14 integrates all of the rights of the parties in this  
15 adjudication, at which time it shall be forwarded to the  
16 Director of the Department of Ecology for issuance of  
17 Certificates of Adjudicated Water Right.

18  
19 **II. CONDITIONAL FINAL ORDER**

20 Based on the foregoing, IT IS:

21 ORDERED, ADJUDGED and DECREED that the final decree shall  
22 set forth the following in regards to the Selah-Moxee  
23 Irrigation District, Court Claim No. 1653, No. 1651 and No.  
24 1888:

25 The Department of Ecology shall issue Certificates of  
26 Adjudicated Water Rights to Selah Moxee Irrigation District  
27 from the Yakima River as follows:

1           1. With a priority date of November 9, 1884, the Court  
 2 confirms a right to the Selah-Moxee Irrigation District in the  
 3 following amounts:

<u>April 1 through August 31</u>	<u>September</u>	<u>October</u>
54 cfs	41.8 cfs	28.4 cfs

4  
 5           A maximum of \*17,970.5 acre-feet per year from natural  
 6 flow shall be diverted pursuant to this water right for  
 7 irrigation of 5,393.63 acres, frost protection, stock water  
 8 and other agricultural purposes. The irrigation season shall  
 9 be from April 1 through October 31.

10           \*Of this amount, 2,415.8 acre-feet is attributed to the  
 11 impact from return flows.

12           2. With a priority date of November 9, 1900, the Court  
 13 confirms a right to Selah-Moxee Irrigation District in the  
 14 following amounts:

<u>April 1 through August 31</u>	<u>September</u>	<u>October</u>
18 cfs	14 cfs	9.4 cfs

15  
 16  
 17           A maximum of \*5,990.2 acre-feet per year of natural flow  
 18 shall be diverted pursuant to this water right for irrigation  
 19 of 5,393.63 acres, frost protection, stock water and other  
 20 agricultural purposes. The irrigation season shall be from  
 21 April 1 through October 31.

22           \*Of this amount, 805.2 acre-feet is attributed to the  
 23 impact from return flows.

24           3. The maximum quantity of water which Selah-Moxee  
 25 Irrigation District shall be entitled to pursuant to its  
 26 natural flow rights shall be 23,960.7 acre-feet, less that  
 27 amount entering the Selah-Moxee Canal through measured return  
 28 flows.

1           4. With a priority date of May 10, 1905, the Court  
 2 confirms a right to the United States, Bureau of Reclamation,  
 3 as trustee for the Selah-Moxee Irrigation District and its  
 4 water users, in the amounts of 58 cfs and 1,107 acre-feet per  
 5 year from March 15 through March 31 for irrigation of 5,393.63  
 6 acres, frost protection, stock water and other agricultural  
 7 purposes.

8           5. With a priority date of May 10, 1905, the Court  
 9 confirms a water right to the United States, Bureau of  
 10 Reclamation, as trustee for the Selah-Moxee Irrigation  
 11 District and its water users in the following amounts:

<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>
7.2 cfs	11.1 cfs	13.7 cfs	14.6 cfs	14.4 cfs	9.8 cfs

12  
 13           A maximum of 4,281.3 acre-feet per year shall be diverted  
 14 pursuant to this water right and the Warren Act Contracts.  
 15 The irrigation season shall be from April 1 through September  
 16 30. The schedule of delivery may be modified in accordance  
 17 with the terms of the contract (§7, Rate of Delivery, SMID 9).  
 18 The purposes of use are irrigation and incidental domestic  
 19 supply, which includes irrigation of lawns, gardens and  
 20 landscaping, of 5,393.63 acres.

21           6. The following provision shall be included in the  
 22 previously described water rights for the Selah-Moxee  
 23 Irrigation District, including those issued to the U.S. Bureau  
 24 of Reclamation:

25           \*\*"The maximum amount of water the Selah-Moxee Irrigation  
 26 District shall be entitled to divert from the Yakima  
 27 River is 29,349 acre-feet. Of this amount:  
 28           1,107 acre-feet may be diverted during March, if in  
           the opinion of the Project Superintendent this  
           water is available.

4,281.3 acre-feet may be diverted pursuant to the Warren Act Contracts.

Of the remaining 23,960.7 acre-feet, 3,221 acre-feet may be diverted from the Yakima River only if it has been determined by the Project Superintendent that the return flows have decreased sufficiently, and in commensurate amounts, to warrant such an increase in diversion."

7. Selah-Moxee Irrigation District's water right shall carry the following provision:

"The maximum amount of water Selah-Moxee Irrigation District shall be entitled to divert or receive pursuant to its November 9, 1884 and November 9, 1900 water rights, from the natural flow of Yakima River shall be:

	<u>April through August</u>	<u>September</u>	<u>October</u>
11/9/1884	54 cfs	41.8 cfs	28.4 cfs
11/9/1900	18 cfs	14.0 cfs	9.4 cfs

A portion of these quantities may be taken through alternate points of delivery, that being the return flow drains which discharge into the Selah Moxee Canal."

8. The monthly schedule of diversion for the natural flow and the Warren Act Contract water rights shall be:

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>
11/9/1884	54	54	54	54	54	41.8	28.4
11/9/1900	18	18	18	18	18	14.0	9.4
Warren Act Contracts	<u>7.2</u>	<u>11.1</u>	<u>13.7</u>	<u>14.6</u>	<u>14.4</u>	<u>9.8</u>	<u>----</u>
Total	79.2	83.1	85.7	86.6	86.4	65.4	37.8

9. The point of diversion for the previously described water rights is 750 feet north and 1200 feet west from the southeast corner of Section 8, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 14 N., R. 19 E.W.M.

10. Selah-Moxee Irrigation District shall be required to measure the amount of return flows entering the system and report this data daily to the United States, Bureau of Reclamation, at the discretion of the Project Superintendent.

WOS

1 11. With a priority date of January 26, 1887, the Court  
2 confirms a right to Selah-Moxee Irrigation District in the  
3 following amounts:

<u>April 1 through August 31</u>	<u>September</u>	<u>October</u>
38 cfs	29 cfs	22 cfs

4  
5 A maximum of 13,781.0 acre-feet per year shall be  
6 diverted pursuant to this right.

7 12. The irrigation season shall be April 1 through  
8 October 31. Water shall be used for irrigation of 2,001.94  
9 acres, frost protection, other agricultural purposes and stock  
10 water.

11 13. The point of diversion for this right shall be 1000  
12 feet north and 1300 feet west from the southeast corner of  
13 Section 7, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7, T. 13 N.,  
14 R. 19 E.W.M..

15 14. The Court confirms a May 10, 1905, water right to  
16 the United States, Bureau of Reclamation, as trustee for SMID  
17 or Moxee Ditch, Sub-A water users, in the amounts of 3.1 cfs  
18 (maximum) and 959.4 acre-feet per year. The monthly schedule  
19 of delivery for the instantaneous quantities are:

<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>
1.4	2.3	3.1	3.0	3.0	2.1	1.0

20  
21  
22 The irrigation season is April 1 through October 31. The  
23 purposes of use are irrigation of 345 acres and incidental  
24 domestic supply which includes irrigation of lawns, gardens  
25 and landscaping.

26 The Sub-A water users who pay for the Warren Act water  
27 are listed on MID 18 and the place of use is identified on  
28 SMID 31.

15. SMID's point of diversion for the Sub-A water right is located approximately 1900 feet south and 400 feet east from the northwest quarter corner of Section 7, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, T. 13 N., R. 19 E.W.M..

16. Selah-Moxee Irrigation District shall not exceed the following quantities at the headworks pursuant to the 1887 and Sub-A Warren Act Contract water rights:

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>
January 26, 1887	38	38	38	38	38	29	22
May 10, 1905	<u>1.4</u>	<u>2.3</u>	<u>3.1</u>	<u>3</u>	<u>3</u>	<u>2.1</u>	<u>1</u>
Total	39.4	40.3	41.1	41.0	41.0	31.1	23.0

17. The place of use for all of the rights described above is identified on SMID 23.

18. The initial Reports of the Court Concerning the Water Rights for the Selah-Moxee Irrigation District (Vol. 34) and the Moxee Irrigation District (Vol. 35) shall be modified in accordance with this Supplemental Report of the Court.

19. This Conditional Final Order, relating to the confirmation of water rights to the Selah-Moxee Irrigation District, constitutes a final order for purposes of appeal [see RAP 2.2(d)], except for purposes of final integration of all confirmed rights as provided in Section XII of Pretrial Order No. 8, procedures for Claim Evaluation, dated March 3, 1989, of this Court.

DATED this 10<sup>th</sup> day of September, 1998.

Walter A. Stauffacher  
 WALTER A. STAUFFACHER, JUDGE

