

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF YAKIMA

2006 APR 17 AM 10 02

3 IN THE MATTER OF THE)
4 DETERMINATION OF THE RIGHTS TO)
5 THE USE OF THE SURFACE WATERS OF)
6 THE YAKIMA RIVER DRAINAGE BASIN,)
7 IN ACCORDANCE WITH THE)
8 PROVISIONS OF CHAPTER 90.03,)
9 REVISED CODE OF WASHINGTON)

RECEIVED IN
EXHIBIT CENTER OF
No. 77-2-01484-5
YAKIMA COUNTY
SECOND MEMORANDUM OPINION AND
ORDER RE: WATER RIGHTS FOR THE
UNITED STATES OF AMERICA
COURT CLAIM NO. 02276

THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

U.S. FOREST SERVICE
TOPPENISH NATIONAL
WILDLIFE REFUGE

Plaintiff,

vs.

JAMES J. ACQUAVELLA, et al.,

Defendants.

13
14 **I. INTRODUCTION**

15 The United States of America, through Court Claim No. 02276 asserted rights to use
16 various surface water sources in the Yakima River Basin. The Court entered its *Supplemental*
17 *Report of the Court for the United States of America, U. S. Forest Service and Toppenish*
18 *National Wildlife Refuge* on October 5, 2005 (*Supplemental Report*) and held a hearing on
19 objections to that *Supplemental Report* on December 8, 2005. Subsequent to that hearing, the
20 Court on January 26, 2006, entered its *Memorandum Opinion and Order Re: Water Rights for*
21 *the United States of America U.S. Forest Service and Toppenish National Wildlife Refuge*
22 (*Opinion*) addressing exceptions to the *Supplemental Report*. Pursuant to the *Opinion*, the
23 United States and the Department of Ecology provided additional information sought by the
24 Court by April 3, 2006.

23 **II. ANALYSIS**

24 a. *Department of Ecology*

25 1. Normandy Cabin – Ecology asks the Court to strike language in the *Opinion* that
states the Court denied their request for clarification. As the Court indicated in the *Opinion*,
Ecology’s request for clarification was unclear; however, it asked the Court to make specific

1 statements that the Court declined to do. Thus, the Court denied the clarification requested. The
2 language used by the Court will not be struck and Ecology's request is DENIED.

3 2. Bootjack Cabin – Ecology asks the Court to reverse its earlier decision to not
4 require compliance with RCW 90.03.380 and instead confirm to the United States the water right
5 as described in Surface Water Certificate No. 8262 and allow the United States to submit an
6 application for change. The United States has indicated a willingness to do so. The Court,
7 however, will not change its prior decision. Both the Forest Service and Richard Stiles presented
8 evidence showing the current source of water and diversion were developed and put to use prior
9 to issuance of the certificate and that no physical change has occurred. Ecology has produced no
10 contrary information, nor have they pointed to any provision of RCW 90.03 that requires
11 compliance with 90.03.380 to correct errors on a certificate. Ecology's objection is DENIED.

12 3. Bumping Lake Boat Landing – Ecology asks the Court to adopt a point of
13 diversion description that does not rely solely on section, township and range, but rather also
14 uses longitude and latitude. "Ecology recognizes that descriptions utilizing section, township
15 and range in unsurveyed areas are susceptible to error and ascribes discrepancies between the
16 permit application and the location as determined by the USFS to the lack of survey." The Court
17 agrees that trying to describe locations in an unsurveyed area is a challenge, leading the Court to
18 use the evidence provided and its discretion when confirming rights, so that the water right
19 accurately describes the place of use and point of diversion. The Court will include the latitude
20 and longitude information provided by the Forest Service in the place of use and point of
21 diversion when confirming the water right.

22 4. Ecology acknowledges the Court's determination that an application for change is
23 needed to change the purpose of use from mining to domestic supply for the water right based on
24 Surface Water Certificate No. 0748.

25 b. *United States*

In response to the Court's request for additional information, the United States
submitted the Supplemental Declaration of Thomas A. Robison. Mr. Robison's supplemental
declaration provided the following information:

1. Corrected a typographical error in the township number for the water right
described in page 4, lines 5 – 6 of the *Opinion*, so that the township is 16 rather than 26.

1 2. Provided the correct point of diversion and place of use information for Bumping
2 Lake Boat Landing, discussed beginning on page 5, line 24 through page 7, line 2 of the
3 *Opinion*. This clarification allows the Court to confirm a right described below (#15).

4 3. Confirmed that the quantity of water in the water right described on page 8, line 1
5 – 6 of the *Opinion* is correct.

6 4. Corrected the point of diversion and place of use information for the water right
7 discussed on page 8, lines 7 – 21, allowing for confirmation of the water right below (#9).

8 **III. CONCLUSION**

9 The Court herein confirms to the United States Forest Service the following water rights.
10 This compilation incorporates all of the rights confirmed in the Court's earlier reports and
11 opinions related to the Forest Service. Since the water rights for the Toppenish Wildlife Refuge
12 have not been modified since the initial report, they will not be repeated herein.

13 1) With a May 10, 1905, date of priority, a right for the diversion of 0.02 cfs, 1 acre-foot
14 per year from Spring Creek for single domestic supply at the Normandy Cabin in the NE $\frac{1}{4}$ SW $\frac{1}{4}$
15 of Section 14, T. 16 N., R. 12 E.W.M. The point of diversion is located 150 feet south and 1100
16 feet east of the west quarter corner of Section 14, within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T. 16 N.,
17 R. 12 E.W.M.

18 2) With a June 30, 1912, date of priority a right to divert from an unnamed spring, 0.03
19 cfs, 1 acre-foot per year from June 1 to October 31 for stock watering and domestic supply in the
20 NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T. 13 N., R. 14 E.W.M. The point of diversion is located 600 feet
21 south and 350 feet east of the northwest corner of Section 4, being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
22 Section 4, T. 13 N., R. 14 E.W.M.

23 3) With a June 16, 1932, date of priority a right for the diversion of 0.01 cfs, 0.5 acre-foot
24 per year from an unnamed spring for mining within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T. 17 N.,
25 R. 11 E.W.M. The point of diversion is located approximately 1600 feet north and 420 feet west
of the southeast corner of Section 31, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of unsurveyed Section 31,
T. 17 N., R. 11 E.W.M.

 4) With a July 22, 1933, date of priority a right for the diversion of 0.05 cfs, 3 acre-feet
per year from an unnamed stream tributary to Lake Keechelus for group domestic supply for six
cabins on Lots 6 – 11 of Rocky Run Summer Homes in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T. 22 N.,

1 R. 11 E.W.M. The diversion point is located approximately 200 feet south and 200 feet east of
2 the north quarter corner of Section 26, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26.

3 5) With a priority date of February 28, 1939, a right to divert 0.02 cfs, 2 acre-feet per year
4 from an unnamed spring branch tributary to American River for continuous domestic supply for
5 the American Forks Summer Homes in the SE $\frac{1}{4}$ of unsurveyed Section 12, T. 17 N.,

6 R. 13 E.W.M. The point of diversion is approximately 80 feet north and 200 feet east of the
7 southwest corner of Section 12, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 17 N., R. 13 E.W.M.

8 6) With a February 21, 1940, date of priority a right to divert 0.3 cfs, 2 acre-feet per year
9 from Salmon la Sac Creek for continuous domestic supply for a campground and guard station in
10 the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 22 N., R. 14 E.W.M. The point of diversion is located 160
11 feet south and 1000 feet west of the east quarter corner of Section 16, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$
12 of Section 16, T. 22 N., R. 14 E.W.M.

13 7) With an April 11, 1940, date of priority a right to divert 0.20 cfs, 2 acre-feet per year
14 from an unnamed spring for continuous domestic supply for a campground at the Swauk Creek
15 Campground in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T. 21 N., R. 17 E.W.M. The point of diversion is
16 located 220 feet north and 1160 feet west of the southeast corner of Section 1, being within the
17 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T. 21 N., R. 17 E.W.M.

18 8) With an August 26, 1940, date of priority a right to divert 0.01 cfs, 1 acre-foot per
19 year from Timber Creek, tributary of American River, for single domestic supply on Lot 3,
20 Timber Creek Summer Home Tracts in Section 2, T. 16 N., R. 11 E.W.M. The diversion point
21 is 390 feet south and 100 feet west of northeast corner of Section 2, in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
22 Section 2, T. 16 N., R. 11 E.W.M.

23 9) With a July 24, 1941, date of priority a right for the diversion of 0.005 cfs, 0.50 acre-
24 foot per year for single domestic supply on Lot 1 of Edgewater Summer Home Lots in the
25 NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T.17 N., R. 13 E.W.M. The point of diversion from an unnamed
spring is approximately 400 feet south and 1800 feet east of the northwest corner of Section 23
(latitude 46°57'13.57", longitude 121°11'18"), being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T.17
N., R. 13 E.W.M.

10) With a January 15, 1942, date of priority a right to divert 0.05 cfs, 1 acre-foot per
year from Thetis Creek for continuous domestic supply for Baker's Resort in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 32, T. 22 N., R. 13 E.W.M. The point of diversion is located 100 feet north and 200 feet

1 west of the southeast corner of Section 31, in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T. 22 N.,
2 R. 13 E.W.M.

3 **11)** With a priority date of July 21, 1944, a right for the diversion of 0.01 cfs, 0.5 acre-
4 foot per year from an unnamed creek for continuous single domestic supply on Lot 13 of
5 Bumping Lake Summer Homes, in Section 22, T. 16 N., R. 12 E.W.M. The point of diversion is
6 approximately 800 feet south and 700 feet west of the center of unsurveyed Section 22, in the
7 NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T. 16 N., R. 12 E.W.M.

8 **12)** With a priority date of July 21, 1949, a right for the diversion of 0.04 cfs, 4 acre-feet
9 per year from an unnamed spring continuously for an alternate group domestic supply for Lots 9
10 and 10 of Russell Creek Summer Homes, in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T. 13 N.,
11 R. 13 E.W.M. The point of diversion is located 1000 feet north and 1200 feet east from the west
12 quarter corner of Section 4, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T. 13 N., R. 13 E.W.M.

13 **13)** With a priority date of August 20, 1958, a right to divert 0.005 cfs, 1 acre-foot per
14 year from an unnamed spring for continuous group domestic supply for the Teanaway Summer
15 Home Tract in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, T. 22 N., R. 16 E.W.M. The point of diversion is
16 located approximately 600 feet south and 350 feet west of the east quarter corner of Section 32,
17 being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 22 N., R. 16 E.W.M.

18 **14)** With a priority date of August 19, 1958, a right to divert 0.13 cfs, 6 acre-feet per year
19 from an unnamed spring for continuous community domestic supply in Lots 1 through 13,
20 Bootjack Summer Homes, located in the NE $\frac{1}{4}$ of unsurveyed Section 6, T. 13 N., R. 13 E.W.M.
21 The point of diversion is located 700 feet north and 75 feet east of the south quarter corner of
22 Section 31, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T. 14 N., R. 13 E.W.M.

23 **15)** With a July 25, 1955, date of priority a right for the diversion of 0.01 cfs, 1 acre-foot
24 per year for continuous domestic supply at the Bumping Lake Boat Landing in unsurveyed
25 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T. 16 N., R. 12 E.W.M. The point of diversion is approximately 1425
feet south and 1475 feet west of the northeast corner of Section 22, (latitude 46°51'59", longitude
121°18'37") being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T. 16 N., R. 12 E.W.M.

16) With a priority date of March 23, 1961, a right to divert 0.01 cfs, 2 acre-feet per year
from an unnamed spring for continuous domestic supply for the Silver Cove Resort in the
NW $\frac{1}{4}$ SW $\frac{1}{4}$ of unsurveyed Section 1, T. 13 N., R. 13 E.W.M. The point of diversion is located

1 approximately 800 feet north and 1320 feet east of the west quarter corner of Section 1, being
2 within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T. 13 N., R. 13 E.W.M.

3 17) With an April 24, 1962, date of priority a right to divert 0.007 cfs, one-half acre-foot
4 per year from an unnamed spring for continuous domestic supply on Lot 12, Indian Creek
5 Summer Home Site, in unsurveyed Section 6, T. 13 N., R. 13 E.W.M. The point of diversion is
6 located approximately 320 feet south and 920 feet east of the west quarter corner of Section 6,
7 being with the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T. 13 N., R. 13 E.W.M.

8 18) With a priority date of June 12, 1962, a right to divert 0.02 cfs, 1 acre-foot per year
9 from an unnamed spring for continuous domestic supply for the Taneum Campground in the
10 SW $\frac{1}{4}$ of Section 28, T. 19 N., R. 16 E.W.M. The point of diversion is located approximately
11 600 feet south and 620 feet east of the west quarter corner of Section 28, being within the
12 Government Lot 3 of Section 28, T. 19 N., R. 16 E.W.M.

13 19) With a priority date of January 31, 1963, a right to divert 0.01 cfs, 1 acre-foot per
14 year from an unnamed spring for continuous domestic supply for two homes on Lots 18 and 20,
15 Indian Creek Summer Home Group, in unsurveyed Section 6, T. 13 N., R. 13 E.W.M. The point
16 of diversion is located approximately 720 feet north and 400 feet east of the center of unsurveyed
17 Section 6, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T. 13 N., R. 13 E.W.M.

18 20) With a priority date of July 3, 1968, a right for the diversion of 0.01 cfs, 2 acre-feet
19 per year from an unnamed spring tributary to Kachess Lake for continuous domestic supply on
20 Tract 65 of the Plat of Lake Kachess Summer Home Sites, within Government Lot 2, Section 22,
21 T. 21 N., R. 19 E.W.M. The point of diversion is located approximately 700 feet south and 700
22 feet east of the west quarter corner of Section 22, being within Government Lot 1 of Section 22,
23 T. 21 N., R. 19 E.W.M.

24 21) With a priority date of July 18, 1974, a right to divert 0.022 cfs, 5 acre-feet per year
25 from Cedar Creek from June 1 to October 31 for stock water in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13,
T. 19 N., R. 15 E.W.M. The point of diversion is located 350 feet south and 500 feet east of the
west quarter corner of Section 13, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T. 19 N.,
R. 15 E.W.M.

22) With a priority date of July 18, 1974, a right to divert 0.011 cfs, 2 acre-feet per year
from an unnamed spring from June 1 to October 31 for stock watering in the NE $\frac{1}{4}$ of Section 21,
T. 19 N., R. 15 E.W.M. The point of diversion is located 1300 feet north and 400 feet west of

1 the east quarter corner of Section 21, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T. 19 N.,
2 R. 15 E.W.M.

3 **23)** With a priority date of July 18, 1974, a right to divert 0.05 cfs, 14 acre-feet per year
4 from Larkin Spring May 1 to October 31 for recreational purposes in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
5 Section 23, T. 19 N., R. 15 E.W.M. The point of diversion is located approximately 1100 feet
6 south and 525 feet east from the northwest corner of Section 23, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
7 Section 23, T. 19 N., R. 15 E.W.M.

8 **24)** With a priority date of July 18, 1974, a right to divert 0.005 cfs, 1 acre-foot per year
9 from an unnamed spring June 1 to October 31 for stock watering in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27,
10 T. 20 N., R. 18 E.W.M. The point of diversion is located 950 feet north and 1000 feet west of
11 the southeast corner of Section 27, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T. 20 N.,
12 R. 18 E.W.M.

13 **25)** With a priority date of July 18, 1974, a right to divert 0.005 cfs, 1 acre-foot per year
14 from an unnamed spring June 1 to October 31 for stock watering in the SW $\frac{1}{4}$ of Section 33,
15 T. 20 N., R. 18 E.W.M. The point of diversion is located 225 feet south and 1980 feet east of the
16 west quarter corner of Section 33, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T. 20 N.,
17 R. 18 E.W.M.

18 **26)** With a July 18, 1974, date of priority, a right to divert 0.01 cfs, 3.6 acre-feet per year
19 from an unnamed spring April 1 to November 1 for recreational purposes in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
20 Section 33, T. 20 N., R. 18 E.W.M. The point of diversion is located 1250 feet north and 1700
21 feet east from the southwest corner of Section 33, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33,
22 T. 20 N., R. 18 E.W.M.

23 **27)** With a priority date of July 18, 1974, a right to divert 0.005 cfs, 1 acre-foot per year
24 from an unnamed spring May 1 to October 31 for stock watering in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
25 Section 35, T. 20 N., R. 18 E.W.M. The point of diversion is located 500 feet north and 1200
feet east of the west quarter corner of Section 35, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, T. 20 N.,
R. 18 E.W.M.

28) With a priority date of July 18, 1974, a right to divert 0.005 cfs, 1 acre-foot per year
from an unnamed spring June 1 to October 31 for stock watering in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 35, T. 20 N., R. 18 E.W.M. The point of diversion is located 175 feet south and 1100

1 feet east of the west quarter corner of Section 35, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, T. 20 N.,
2 R. 18 E.W.M.

3 **29)** With a priority date of July 18, 1974, a right to divert 0.005 cfs, 1 acre-foot per year
4 from an unnamed spring June 1 to October 31 for stock watering in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35,
5 T. 20 N., R. 18 E.W.M. The point of diversion is located 1320 feet north and 150 feet east of the
6 south quarter corner of Section 35, within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T. 20 N., R. 18 E.W.M.

7 **30)** With a priority date of July 18, 1974, a right to divert 0.005 cfs, 1 acre-foot per year
8 from an unnamed spring June 1 to October 31 for stock watering in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15,
9 T. 21 N., R. 18 E.W.M. The point of diversion is located 575 feet south and 250 feet west of the
10 center of Section 15, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, T. 21 N., R. 18 E.W.M.

11 **31)** With a May 12, 1975 priority date a right to divert 0.01 cfs, 1 acre-foot per year from
12 American River (tributary to Naches River) for domestic supply on Lot 1, American River
13 Summer Homes, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T. 17 N., R. 13 E.W.M. The diversion
14 point is 500 feet north and 300 feet east of the west quarter corner of Section 12, in the
15 SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T. 17 N., R. 13 E.W.M.

16 **32)** With a priority date of May 9, 1980, a right to divert 0.002 cfs, 0.206 acre-foot per
17 year from Short and Dirty Spring from July 16 to September 5 for stock watering and as required
18 for wildlife within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T. 13 N., R. 13 E.W.M. The point of diversion is
19 located 500 feet north and 800 feet west of the east quarter corner of Section 22, being within the
20 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T. 13 N., R. 13 E.W.M.

21 **33)** With a priority date of May 9, 1980, a right to divert 0.004 cfs, 0.403 acre-foot per
22 year from Glen Spring and Hart Spring July 16 to September 5 for stock watering and as
23 required for wildlife within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, both
24 in T. 13 N., R. 13 E.W.M. The point of diversion from Glen Spring is located 800 feet south and
25 1100 feet east of the west quarter corner of Section 24, in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24 and from
Hart Spring 1800 feet north and 500 feet west from the southeast corner of Section 13, being
within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13; both in T. 13 N., R. 13 E.W.M.

34) With a priority date of May 9, 1980, a right to divert 0.002 cfs, 0.12 acre-foot per
year from Bethel Ridge Spring July 1 to July 13 for stock watering and as required for wildlife
within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, T. 14 N., R. 14 E.W.M. The point of diversion is located

1 100 feet south and 1000 feet east of the center of Section 17, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
2 Section 17, T. 14 N., R. 14 E.W.M.

3 **35)** With a priority date of May 9, 1980, a right to divert 0.004 cfs, 0.17 acre-foot per
4 year from Pine Tree Spring and Pinegrass Spring from September 6 to October 5 for stock
5 watering and as required for wildlife in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
6 Section 16, both in T. 13 N., R. 13 E.W.M. The point of diversion from Pine Tree Spring is
7 located 1000 feet south and 1000 feet west from the northeast corner of Section 15, in the
8 NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15 and the point of diversion from Pinegrass Spring is located 700 feet
9 north and 500 feet west of the center of Section 16, in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16; both in
10 T. 13 N., R. 13 E.W.M.

11 **36)** With a priority date of May 9, 1980, a right to divert 0.004 cfs, 0.16 acre-foot per
12 year from Cash Prairie Spring and Greyback Spring from August 16 to September 5 for stock
13 watering and as required for wildlife in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 14 N., R. 13 E.W.M. and
14 the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T. 15 N., R. 14 E.W.M. The point of diversion from Cash Prairie
15 Spring is located 2000 feet north and 2000 feet east from the southeast corner of Section 12, in
16 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 14 N., R. 13 E.W.M. and the point of diversion from Greyback
17 Spring is located 400 feet south and 200 feet east of the northwest corner of Section 33, being
18 within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T. 15 N., R. 14 E.W.M.

19 **37)** With a priority date of May 9, 1980, a right to divert 0.002 cfs, 0.13 acre-foot per
20 year from Timberwolf Spring from June 10 to July 20 in odd years and from September 6 to
21 September 30 in even years for stock watering and as required for wildlife in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
22 Section 30, T. 15 N., R. 14 E.W.M. The point of diversion is located 700 feet north and 1100 feet
23 west from the south quarter corner of Section 30, in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T. 15 N.,
24 R. 14 E.W.M.

25 **38)** With a priority date of May 9, 1980, a right to divert 0.002 cfs, 1.0 acre-foot per year
from Deadhole Spring from June 5 to July 15 and from September 6 to October 5 for stock
watering and as required for wildlife in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, T. 14 N., R. 14 E.W.M.
The point of diversion is located 500 feet south and 700 feet east from the north quarter corner of
Section 35, in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, T. 14 N., R. 14 E.W.M.

39) With a priority date of May 9, 1980, a right to divert 0.004 cfs, 0.76 acre-foot per
year from Ironstone Spring and an unnamed spring from July 20 to September 30 for stock

1 watering and as required for wildlife in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 14 N., R. 13 E.W.M.
2 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T. 14 N., R. 14 E.W.M. The point of diversion from Ironstone
3 Spring is located 1100 feet south and 200 feet east from the north quarter corner of Section 29, in
4 the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 14 N., R. 13 E.W.M. and the point of diversion from the
5 unnamed spring is located 400 feet south and 700 feet east of the west quarter corner of
6 Section 19, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T. 14 N., R. 14 E.W.M.

7 **40)** With a priority date of May 9, 1980, a right to divert 0.002 cfs, 0.206 acre-foot per
8 year from Andy Spring from July 20 to September 30 for stock watering and as required for
9 wildlife in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T. 14 N., R. 13 E.W.M. The point of diversion is located
10 800 feet north and 600 feet west from the south quarter corner of Section 29, in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
11 Section 29, T. 14 N., R. 13 E.W.M.

12 **41)** With a priority date of May 9, 1980, a right to divert 0.002 cfs, 0.285 acre-foot per
13 year from an unnamed spring from July 20 to September 30 for stock watering and as required
14 for wildlife in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, T. 14 N., R. 14 E.W.M. The point of diversion is
15 located 700 feet north and 300 feet east from the west quarter corner of Section 29, in the
16 SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, T. 14 N., R. 14 E.W.M.

17 **42)** With a priority date of May 9, 1980, a right to divert 0.002 cfs, 0.12 acre-foot per
18 year from Poverty Basin Spring from June 20 to July 1 for stock watering and as required for
19 wildlife in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 14 N., R. 14 E.W.M. The point of diversion is located
20 400 feet south and 2000 feet west from the east quarter corner of Section 29, in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
21 Section 29, T. 14 N., R. 14 E.W.M.

22 **43)** With a priority date of July 11, 1980, a right to divert 0.0024 cfs, 0.43 acre-foot per
23 year from Morgan Draw Spring during the months of June through August in odd years for stock
24 watering in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T. 16 N., R. 14 E.W.M. The point of diversion is located
25 250 feet north and 750 feet west from the southeast corner of Section 34, in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 34, T. 16 N., R. 14 E.W.M.

44) With a priority date of July 11, 1980, a right to divert 0.001 cfs, 0.36 acre-foot per
year from Little Bald Spring continuously for stock watering in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11,
T. 16 N., R. 13 E.W.M. The point of diversion is located 800 feet south and 2100 feet west from
the northeast corner of Section 11, in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 16 N., R. 13 E.W.M.

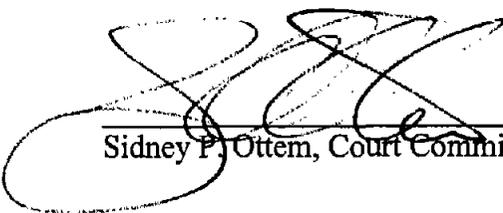
1 **45)** With a priority date of July 11, 1980, a right to divert 0.001 cfs, 0.13 acre-foot per
2 year from Red Rock Spring from June 10 to July 20 in odd years and from September 6 to
3 September 30 in even years for stock watering and wildlife in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21,
4 T. 15 N., R. 14 E.W.M. The point of diversion is located 1325 feet south and 875 feet east from
5 the north quarter corner of Section 21, in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T. 15 N., R. 14 E.W.M.

6 **46)** With a priority date of July 11, 1980, a right to divert 0.001 cfs, 0.13 acre-foot per
7 year from Willow Spring from July 10 to July 20 in odd years and from September 6 to
8 September 30 in even years for stock watering in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T. 15 N.,
9 R. 14 E.W.M. The point of diversion is located 2000 feet north and 2500 feet west from the
10 southeast corner of Section 16, in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T. 15 N., R. 14 E.W.M.

11 **47)** With a priority date of July 11, 1980, a right to divert from an unnamed spring 0.01
12 cfs; 1.0 acre-foot per year continuously for stock watering and 6.2 acre-feet per year
13 continuously for fisheries enhancement in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 17 N., R. 14 E.W.M.
14 The point of diversion is located 250 feet south and 750 feet west from the northeast corner of
15 Section 28, in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 17 N., R. 14 E.W.M.

16 The Court recognizes that the United States will be filing with Ecology applications for
17 change on several of these water rights. However, the Court intends to proceed with entry of the
18 Conditional Final Order. The parties should follow the procedures in Pre-trial Orders No. 12 and
19 17 to update the Court records as these applications are processed.

20 Dated this 17th day of April, 2006.

21 
22 _____
23 Sidney P. Ottem, Court Commissioner
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25