

**ESTABLISHMENT OF A PERMANENT PLAN
FOR MEASURING & REPORTING**

**Yakima River Basin
Washington**

Report To:

Secretary of the Interior

and

State of Washington

From:

**Yakima River Basin
Conservation Advisory Group**

November 16, 1998

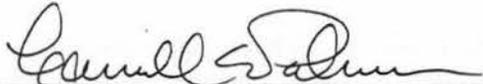
REPORT ON MEASURING & REPORTING
Yakima River Basin
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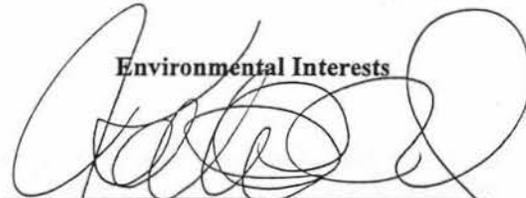
Members

Yakama Indian Nation



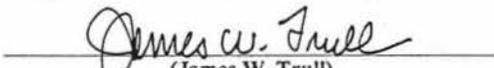
(Carroll E. Palmer)

Environmental Interests



(Katherine P. Ransel)

Non-Proratable Irrigators



(James W. Trull)

Proratable Irrigators



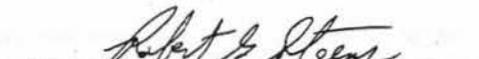
(Ron Van Gundy)

**Washington State
Department of Fish and Wildlife**



(Brent D. Renfrow)

**Washington State University
Cooperative Extension**



(Robert G. Stevens)

November 16, 1998

**ESTABLISHMENT OF A PERMANENT PLAN FOR
MEASUREMENT AND REPORTING
Yakima River Basin, Washington**

The Yakima River Basin Water Enhancement Project (YRBWEP) Conservation Advisory Group (CAG) was directed by Title XII of Pub. Law 103-434 to provide “recommendations to the Secretary and the State of Washington regarding the establishment of a permanent program for the measurement and reporting of all natural flow and contract diversions within the basin.”

CAG recognizes the jurisdictional complexities relating to water resource management within the Yakima River basin, including the sovereignty of the Yakama Indian Nation. Implementation of these recommendations will have to be tailored to each different jurisdictional situation. Nothing herein implies State jurisdiction over the water rights of the Yakama Indian Nation.

I. Background

A. Water Supply Problems and Needs

Out of Stream Water Use

Water supplies are not adequate in all years to meet the needs of all Yakima Basin water users. During poor water years, junior-priority water right holders receive a prorated portion of their normal-year water delivery. The amount of proration is determined by the US Bureau of Reclamation (Reclamation) using the total water supply available (TWSA) formula. In 1994, a year of severe shortfall, prorable water users received just 38% of their Federal contract water amount. In the tributaries of the Yakima River, junior-priority water right holders are subject to regulation and curtailment every year to satisfy senior water rights in those subbasins.

An effective program of measuring and reporting of diversion quantities and enforcement is necessary to eliminate illegal water use, to ensure that water users do not exceed their diversion limits, and to curtail junior-priority water rights to satisfy senior water rights, according to the basin’s schedule of rights.

Instream Issues

Many of Washington’s streams and rivers have insufficient instream flow to support adequate aquatic habitat for fish. In 1996, pursuant to the Federal Clean Water Act, the State Department of Ecology (Ecology) identified 48 stream segments in Washington that have insufficient instream flows to satisfy state water quality standards for, among other things, the provision of adequate fish habitat. Among those listed were the Yakima mainstem and several of its tributaries, as reported in CAG’s Basin Conservation Plan.

In 1992, the Washington State Department of Fish and Wildlife found that 42% of the fish stocks in Washington, whose status could be determined, were either depressed or critical. A depressed fish stock is one whose production is below natural rates. A critical fish stock is

one whose production level is so low that permanent damage to the stock is likely or has already occurred. Each of the stream segments in the Yakima Basin listed as having flows too low to support designated salmonid uses under the Clean Water Act was also listed by the Washington Department of Fish and Wildlife as depressed or critical. In addition, the U.S. Fish and Wildlife Service have listed bull trout in the Yakima Basin under the Federal Endangered Species Act. The National Marine Fisheries Service will act on a proposal to list steelhead in the Yakima Basin under the Endangered Species Act in the spring of 1999.

Thus, measuring and reporting water use and effective enforcement against illegal and unauthorized use of water are critical components of the YRBWEP's efforts to improve instream flow conditions in the Yakima River basin.

B. Washington Law on Water Metering

To manage and regulate public waters, the Washington legislature amended RCW 90.03.360 in 1993, requiring that “[t]he owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted,” RCW 90.03.360(1). To implement this mandate, the statute directs Ecology to require metering under certain conditions. Subsection (1) of RCW 90.03.360 provides: “Metering of diversions or measurements by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing water rights.” Subsection (2) of RCW 90.03.360 provides that “[w]here water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims.”

Subsection (1) makes metering mandatory for all new permits. Metering for existing rights is discretionary unless the diversion falls within the categories described in subsection (2). Subsection (2) mandates metering for all existing rights where diversions are from streams containing depressed or critical salmonid stocks or exceed one cfs. The statute further provides that Ecology's enforcement of the metering requirement for such rights must be prioritized ahead of Ecology's existing compliance workload “where a delay may cause a decline of wild salmonids,” RCW 90.03.360 (2). In addition, the statute authorizes Ecology to require the owner of a permit or right to file reports documenting the amounts being diverted, RCW 90.03.360.

The metering requirements of RCW 90.03.360 would appear to apply equally to surface and groundwater appropriations. The statutory provisions regulating groundwater, found in RCW 90.44, incorporate and apply the surface code provisions to the groundwater code. RCW 90.44.020 states that “[t]his chapter regulating and controlling groundwaters of the state of Washington shall be supplemental to chapter 90.03 RCW, which regulates the surface waters of the state, and is enacted for the purpose of extending the application of such surface water statutes to the appropriation and beneficial use of ground waters within the state.”

Indeed, when Ecology adopted rules to implement the metering statute (WAC 508-64), it explicitly recognized that the metering requirements of RCW 90.03.360 apply equally to both surface and groundwater appropriations. WAC 508-64-010 (Ecology vested with the power to require metering of “those diverting and/or withdrawing waters of the state, both surface and ground”) (citing RCW 90.03.360 and RCW 90.44.020).

The rules state that conflicts arising from increased competition for limited water resources make it “necessary to . . . insure that those entitled to make beneficial use of water neither waste water in exercising their rights nor use waters by withdrawal or diversion thereof in amounts in excess to which they are entitled. . . . It has been increasingly apparent that a satisfactory water management program can be carried out only if surface and ground water withdrawals are closely monitored and accurately measured.” WAC 508-64-010 (emphasis added).

C. Court Actions in the Yakima Basin Adjudication Concerning Water Metering

The surface water rights in the Yakima River basin are being adjudicated in the State Superior Court of Yakima County. The Court retains jurisdiction, including regulatory jurisdiction, over all claimants to surface water rights in the Yakima River basin, during the adjudication.

Mainstem

The Court ordered, on October 14, 1994 and March 9, 1995, that all persons/entities with diversions of 1 cubic foot per second (cfs) or more from the Yakima, Naches, and Tieton Rivers, install an approved measuring or metering device at each diversion of 1 cfs or greater before March 1, 1995. The Court orders require these mainstem water diverters to measure and report diversion quantities and changes in diversion quantities to Reclamation. The March 9, 1995, order specifically provides for enforcement by Ecology of the measuring requirements. Reclamation or any other party with legal standing in the adjudication could also petition the Court requesting enforcement of these orders (by issuance of a temporary restraining order or other appropriate relief).

Tributary Subbasins

On August 27, 1998, the Court issued another order requiring metering, measuring, and reporting of all diversions from Big Creek, within Subbasin No. 2, and from the Teanaway River and its tributaries, within Subbasin No. 3. This order was patterned directly after the 1994 and 1995 mainstem orders but includes some modifications. The Court order requires all of these water diverters to measure and report diversion quantities and changes in diversion quantities to Reclamation, commencing in 1999. Reporting requirements do not apply to single families diverting less than 1 cfs of water for purely domestic purposes. The Court appointed a stream patrolman to enforce the provisions of the order.

Effect of the Adjudication on Water Metering, Reporting and Enforcement

The adjudication Court retains jurisdiction over all adjudication claimants during the adjudication. After completion of the adjudication, jurisdiction will return to Ecology (water rights administration) and Reclamation (water contract and Yakima Project administration). The 1994, 1995, and 1998 Court Orders on Metering, Measuring, and Reporting Requirements will expire upon completion of the adjudication.

D. Principles of Effective Enforcement Programs

The way to achieve voluntary compliance in a regulated community is by implementing a strategic enforcement program designed to make the cost of non-compliance greater than that of compliance. Without such an enforcement strategy, voluntary compliance by the vast majority of those subject to the law should neither be expected nor will it be achieved. Government's failure to enforce against illegal water use not only promotes non-compliance in the regulated community at large, but it is simply unfair to those who do comply with the law because it puts them at an economic disadvantage. Moreover, it is important to remember that a fine that is less than the cost of compliance will also promote more widespread non-compliance rather than stem it.

The classic example of an effective enforcement program is that of the Internal Revenue Service. Against their economic interests, millions of Americans voluntarily meet their tax obligations each year. They do so primarily because they hold the belief that if they do not, there is a reasonable chance that their delinquency will be uncovered and the consequences will be vastly more burdensome in economic terms than simply paying their taxes.

An effective enforcement program should be designed to achieve the maximum net benefit for every action taken. An effective strategy is one that induces those subject to legal obligations to fulfill them completely, timely, and at the lowest possible cost to the government. In order to induce that behavior, the government must create a reasonable expectation in those legally obligated that fulfillment of their legal obligations will be less costly than failure to fulfill them. The components of an effective enforcement strategy include:

- Educate the public and obligated community to the importance of its mission and the requirements of the law;
- Effectively detect those who violate those requirements;
- Penalize those individuals so that the cost of non-compliance is greater than the cost of compliance; and
- Effectively publicize the consequences of non-compliance.

By following these principles, the agencies can minimize their enforcement costs and promote fairness among water users, resulting in widespread voluntary compliance.

II. Discussion and Recommendations

CAG believes that a combination of the approaches outlined above is essential to the success of the Yakima River Basin Water Enhancement Project.

A. Recommendation One

CAG believes that all surface water diversions in the Yakima Basin and its tributaries should be metered, monitored, and regulated by stream patrolmen, watermasters, or other regulatory personnel sufficient to ensure that compliance is maintained throughout the irrigation season basin-wide. Compliance staff must:

- 1) identify all water users not complying with Court ordered measuring and reporting requirements;
- 2) monitor water use reports to identify users who are exceeding their water rights;
- 3) take enforcement actions against targeted non-compliers that are designed to promote and maintain voluntary compliance in the rest of the regulated community, consistent with the enforcement principles outlined above in Section ID.

B. Recommendation Two

CAG agrees with the Department of Ecology that “a satisfactory water management program can be carried out only if surface and ground water withdrawals are closely monitored and accurately measured.” WAC 508-64-010. Thus, CAG believes that all non-exempt groundwater withdrawals (those requiring water right permits under RCW 90.44.050) in the Yakima Basin should be metered, monitored and reported.

C. Recommendation Three

CAG also believes that good water management requires the ability to meter and monitor water use to allow for the adoption of incremental water pricing structures. Thus, CAG recommends that metering be extended to each farm delivery point and/or to each individual ownership, where practicable.

D. Recommendation Four

CAG believes that streamflow gages must be adequate to measure progress in complying with YRBWEP needs as well as a number of other Federal and State laws and obligations that Reclamation and Ecology are subject to (e.g. the Clean Water Act and the Endangered Species Act). CAG recommends that Ecology and Reclamation cooperate in quickly assessing where additional streamflow gages are necessary to insure that streamflow can be measured to meet the needs of these various Federal and State obligations.

E. Recommendation Five

Reclamation and Ecology should jointly petition the adjudication Court to extend its 1998 Order on Metering, Measuring, and Reporting Requirements as necessary, to other subbasins or water users, consistent with the recommendations above.

F. Recommendation Six

Because after the completion of the adjudication, jurisdiction over water use metering, reporting and enforcement returns to Ecology and Reclamation, they should petition the Court to issue an Order on Metering, Measuring, and Reporting Requirements as indicated above, applicable basin-wide, as part of the final Yakima Adjudication Decree.

G. Recommendation Seven

Both during and after the completion of the Adjudication, Ecology and Reclamation should cooperate in establishing an effective water use metering, monitoring and enforcement program with effective deterrents to non-compliance consistent with the enforcement principles outlined in Section ID above. The agencies should give this program the highest priority, as it protects those water users who comply with their water rights from harm by those who may not, and puts them on an equal economic footing. Allowing non-compliance to go undetected and unpunished puts those who comply at an economic disadvantage, and thus promotes more widespread non-compliance.

These agencies have several tools available for designing such an enforcement strategy. For instance, Section 90.03.600 RCW provides Ecology authority to issue civil penalties for violations of the surface water code or of regulatory orders issued by Ecology; Section 90.44.500 RCW applies the civil penalty authority granted to Ecology by 90.03.600 RCW to the ground water code; Section 43.27A.190 RCW authorizes Ecology to issue regulatory orders where it finds violations of the state surface and ground water codes; and Chapter 90.08 RCW authorizes Ecology to appoint a stream patrolman for adjudicated streams and establishes procedures for compensation of the stream patrolman by the water users. Reclamation has the authority to enforce the provisions of its Federal water delivery contracts with Yakima Project water users.

LEGAL

REFERENCES

WASHINGTON STATE

LAWS & REGULATIONS

LAWS AND REGULATIONS - WATER RESOURCES
PART OF CHAPTER 43.27A RCW
WATER CODE

RCW 43.27A.190 Water resource orders. Notwithstanding and in addition to any other powers granted to the department of ecology, whenever it appears to the department that a person is violating or is about to violate any of the provisions of the following:

- (1) Chapter 90.03 RCW; or
- (2) Chapter 90.44 RCW; or
- (3) Chapter 86.16 RCW; or
- (4) Chapter 43.37 RCW; or
- (5) Chapter 43.27A RCW; or
- (6) Any other law relating to water resources administered by the department; or
- (7) A rule or regulation adopted, or a directive or order issued by the department relating to subsections (1) through (6) of this section; the department may cause a written regulatory order to be served upon said person either personally, or by registered or certified mail delivered to addressee only with return receipt requested and acknowledged "by him. The order shall specify the provision of the statute, rule, regulation, directive or order alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. The regulation of a headgate or controlling works as provided in RCW 90.03.070, by a watermaster, stream patrolman, or other person so authorized by the department shall constitute a regulatory order within the meaning of this section. A regulatory order issued hereunder shall become effective immediately upon receipt by the person to whom the order is directed, except for regulations under RCW 90.03.070 which shall become effective when a written notice is attached as provided therein. Any person aggrieved by such order may appeal the order pursuant to RCW 43.21B.310. [1987 c 109 § 11; 1969 ex.s. c 284 § 7.]

LAWS AND REGULATIONS - WATER RESOURCES
PART OF CHAPTER 90.03 RCW
WATER CODE

RCW 90.03.360 Controlling works and measuring devices--Metering of diversions--Impact on fish stock. (1) The owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Metering of diversions or measurement by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing surface water rights. The department may also require, as a condition for all water rights, metering of diversions, and reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the department.

(2) Where water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims. The department shall attempt to integrate the requirements of this subsection into its existing compliance workload priorities, but shall prioritize the requirements of this subsection ahead of the existing compliance workload where a delay may cause the decline of wild salmonids. The department shall notify the department of fish and wildlife of the status of fish screens associated with these diversions.

This subsection (2) shall not apply to diversions for public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the waters from which it was diverted. [1994 c 264 § 85; 1993 sp. s. c 4 § 12; 1989 c 348 § 6; 1987 c 109 § 92; 1917 c 117 § 37; RRS § 7389. Formerly RCW 90.28.070.]

NOTES:

Findings--Grazing.lands--1993 sp.s. c 4: See RCW 79.01.2951.

Severability--1989 c 348: See note following RCW 90.54.020.

Rights not impaired--1989 c 348: See RCW 90.54.920.

Purpose--Short title--Construction--Rules--Severability--Captions--1987 c 109: See notes following RCW 43.21B.001.

Instream flows: RCW 90.22.060.

LAWS AND REGULATIONS - WATER RESOURCES
PART OF CHAPTER 90.03 RCW
WATER CODE

RCW 90.03.600 Civil penalties. Except as provided in RCW 43.05.050 through 43.05.080 and 43.05.150, the power is granted to the department of ecology to levy civil penalties of up to one hundred dollars per day for violation of any of the provisions of this chapter and chapters 43.83B, 90.22, and 90.44 RCW, and rules, permits, and similar documents- and regulatory orders of the department of ecology adopted or issued pursuant to such chapters. The procedures of RCW 90.48.144 shall be applicable to all phases-of the levying of a penalty as well as review and appeal of the same. [1995 c 403 § 635;. 1987 c 109 § 157; 1977 ex.s. c 1 § 8. Formerly RCW 43.83B.335.]

NOTES:

Findings--Short title--Intent--1995 c 403: See note following RCW 34.05.328.

Part headings not law--Severability--1995 c 403: See RCW 43.05.903 and 43.05.904.

Purpose--Short title--Construction--Rules--Severability--Captions--

LAWS AND REGULATIONS - WATER RESOURCES
PART OF CHAPTER 90.44 RCW
WATER CODE

RCW 90.44.020 Purpose of chapter. This chapter regulating and

the state, and is enacted for the purpose of extending the application of such surface water statutes to the appropriation and beneficial use of ground waters within the state. [1945 c 263 § 1; Rem. Supp. 1945 § 7400-1.]

RCW 90.44.050 Permit to withdraw. After June 6, 1945, no withdrawal of public ground waters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: EXCEPT, purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: PROVIDED, HOWEVER, That the department from time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: PROVIDED, FURTHER, That at the option of the five thousand gallons per day, applications under this section or declarations under RCW 90.44.090 may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day. [1987 c 109 § 108; 1947 c 122 § 1; 1945 c 263 § 5; Rem. Supp. 1947 § 7400-5.]

NOTES:

Purpose--Short title--Construction--Rules--Severability--Captions--

RCW 90.44.500 Civil penalties. See RCW 90.03.600

RCW (11/12/97 14:15)

Chapter 90.08 RCW

Sections

- 90.08.040 Stream patrolmen ----- Appointment-----Powers.
- 90.08.050 Stream patrolmen----- Compensation, travel expenses.
- 90.08.060 Stream patrolme ----- Users to share in payment of compensation.
- 90.08.070 Right of county to sue user for unpaid share of expenses.

RCW 90.08.040 Stream patrolmen ----- Appointment ----- Powers. Where water rights of a stream have been adjudicated a stream patrolman shall be appointed by the director of the department of ecology upon application of water users having adjudicated water rights in each particular water resource making a reasonable showing of the necessity therefor, which application shall have been approved by the district water master if one has been appointed, at such time, for such stream, and for such periods of service as local conditions may indicate to be necessary to provide the most practical supervision and to secure to water users and owners the best protection in their rights.

The stream patrolman shall have the same powers as a water master appointed under RCW 90.03.060, but his district shall be confined to the regulation of waters of a designated stream or streams. Such patrolman shall be under the supervision of the director or his designated representative. He shall also enforce such special rules and regulations as the director may prescribe from time to time. [1977 c 22 § 1; 1925 ex.'s. c 162 § 1; RRS § 7351-1.]

Water masters

- appointment, compensation: RCW 90.03.060.
- duties: RCW 90.03.070.
- power of arrest: RCW 90.03.090.

RCW 90.08.050 Stream patrolmen ----- Compensation, travel expenses. Each stream patrolman shall receive a wage per day for each day actually employed in the duties of his office, or if employed by the month, he shall receive a salary per month, which wage or salary shall be fixed in the manner provided by law for the fixing of the salaries or compensation of other state officers or employees, plus travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or here after amended, to be paid by the county in which the work is performed. In case the service extends over more than one county, each county shall pay its equitable part of such wage to be apportioned by the director. He shall be reimbursed for actual necessary expenses when absent from his designated headquarters in the performance of his duties, such expense to be paid by the county in which he renders the service. The accounts of the stream patrolman shall be audited and certified by the director and the county auditor shall issue a warrant therefor upon the current expense fund. [1977 c 22 § 2; 1975—'76

2nd ex.s. c 34 § 180; 1947 c 123 § 1; 1925 ex.s. c 162 § 2; Rem. Supp. 1947 § 7351-2.]

Effective date-----Severability----1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.
Public officers, salaries and fees: Chapter 42.16 RCW.
Slate government, salaries and expenses: Chapter 43.03 RCW.

RCW 90.08.060 Stream patrolmen----- Users to share in payment of compensation. The salary of the stream patrolman shall be borne by the water users receiving the benefits and shall be paid to the county or counties in the following manner:

The county or counties may assess each water user for his proportionate share of the total stream patrolman expense in the same ratio that the amount of water diverted by him bears to the total amount diverted from the stream during each season, on an annual basis, to recover all such county expenses. The stream patrolman shall keep an accurate record of the amount of water diverted by each water user coming under his supervision. On the first of each month the stream patrolman shall present his record of water diversion to the county or counties for the preceding month. Where the water users are organized into an irrigation district or water users' association, such organization may enter into an agreement with the county or counties for direct payment to the stream patrolman in order to minimize administrative costs. [1977 c 22 § 3; 1925 ex.s. c 162 § 3; RRS § 7351-3.]

Irrigation districts generally: Chapter 87.03 RCW.

RCW 90.08.070 Right of county to sue user for unpaid share of expenses. Upon failure of any water user to pay his proportionate share of the expense referred to in RCW 90.08.050 and 90,08.060, the county or counties shall be entitled to sue for and recover any such unpaid portion in any court of competent jurisdiction. [1977 c 22 § 4; 1925 ex.s. c 162 § 4; RRS § 7351-4.]

Chapter 508-64 WAC

MEASURING DEVICES FOR WATER DIVERSION AND WITHDRAWAL FACILITIES

WAC	
508 64 010	Background and purpose of regulation.
508 64 020	Meter specifications.
508 64 030	Meter installation requirements.
508 64 040	Meter operation and maintenance.
508 64-050	Meter—When required.
508 64-060	Unauthorized diversion or withdrawals—Enforcement agent.
508-64-070	Appeals.
508-64-080	Regulation review.

WAC 508-64-010 Background and purpose of regulation. With the passage of time and issuance of an additional number of water rights in each year, competition for rights to use of our limited water resources increases. Conflicts also develop where uses presently authorized compete for water supplies which may vary on seasonal or annual bases, due to changes in hydrologic conditions. For these reasons it becomes necessary to manage our state's water resources so as to insure that those entitled to make beneficial use of water neither waste water in exercising their rights nor use waters by withdrawal or diversion thereof in amounts in excess to that which they are entitled.

One of the ^{tools} tools of water management vested in the department of ecology is the power to require that those diverting and/or withdrawing waters of the state, both surface and ground, provide a measuring device so as to provide for accurate measurement of waters so utilized. See RCW 90.03.360 and 90.44.020. It has been increasingly apparent that a satisfactory water management program can be carried out only if surface and ground water withdrawals are closely monitored and accurately measured.

Under RCW 43.27A.090(11), the department of ecology is authorized to adopt such regulations as are necessary to carry out the provisions of the surface and ground water statutes of chapters 90.03 and 90.44 RCW. Acting under the authority of RCW 43.27A.090(11) and 90.03.360, the following regulation is adopted for the purpose of setting forth:

(1) The specifications for meters installed on water withdrawal facilities for pressure systems;

(2) The installation requirements for a meter;

(3) The operation and maintenance requirements for a meter; and

(4) The procedures the department of ecology will follow in determining when installation of a meter shall be required and how notification of this requirement shall be given to the water user. [Statutory Authority: Chapters 43.21A, 43.27A and 90.44 RCW, 88-13-037 (Order 88 11), § 508-64-010, filed 6/9/88; Order DWR 69-9, § 508-64-010, filed 11/6/69.]

WAC 508-64-020 Meter specifications. All meter required to be installed, as provided under WAC 508-64-010, shall meet the following requirements:

(1) Meters shall be of the velocity-propeller type with enclosed propeller made of noncorrosive materials. Positive displacement and other types of meters may be used with the express approval of the department of water resources. All meters shall be line meters. For pressures in excess of 100 pounds per square inch, high pressure welded saddle or tube type meters shall be required. Meters shall be complete with meter head, register box with locking hasp, and straightening vanes for attachment to existing pipe or contained within a tube. The saddle or tube-type meters shall be of a construction such that any part of the propeller gears, shafts, totalizer, or any other moving part can be removed for repair with relative ease. The saddle-type meter shall be designed and constructed so as to be suitable for welding to the existing or installed steel pipe but with removable meter-head or designed so that it may be secured to the pipe by anchor bars welded to the pipe with U-bolts, or with threaded straps. All meters shall have the size, serial number, and direction of the flow through the meter properly and clearly indicated.

(2) The meter shall have a rated accuracy of plus or minus 2 percent of actual flow for all rates of flow within the range of flow for which the meter is designed. The meter shall register the full range of discharge from the source of water for which it is to be used.

(3) The meter shall have a visual, mechanical, digital totalizer located on or adjacent to the meter. The register shall be protected.

(4) Units of measurement for irrigation uses shall be in acre-feet. The totalizer shall read directly in acre-feet with six digits to read to the nearest hundredths (0000.00). Both the register and meter unit shall be provided with a method of sealing with a wire or lead seal to prevent unauthorized tampering. For other uses, different units of measurement may be used with the express approval of the department of water resources. All totalizers or registers shall be equipped with a sweep hand with adequate markings or divisions for test purposes.

(5) Register boxes - the register box shall have a protective hinged cover over the window glass. Register box screws shall be drilled for seal wire holes.

(6) Propeller - the propeller shall be made of polyethylene or equivalent corrosion-resistant material and such that it will operate effectively and without distortion at temperatures between 32 degrees and 100 degrees Fahrenheit. The propeller shall be located in the center of the pipe and normal to the centerline of flow.

The measuring propeller, together with its spindle, shall be the same specific gravity as water or less. [Order DWR 69-9, § 508-64-020, filed 11/6/69.]

WAC 508-64-030 Meter installation requirements. Meters required to be installed, as provided under WAC 508-64-010, shall meet the following installation requirements:

(1) The meter shall be installed in accordance with manufacturer specifications and in such a manner that there shall be a full pipe of water at all times when water is being withdrawn.

(2) Straightening vanes shall be installed in the pipe in the manner recommended by the manufacturer of the meter, or vanes may be part of the tube furnished with tube-type meters or separate units for installation in the discharge pipe upstream of the meter.

(3) There shall be no turnouts or diversions between the source of water and the meter installation, except for faucet or other similar small outlets.

(4) The meter shall be placed in the pipe not less than five pipe diameters downstream from any valves, elbows, or other obstructions which might create turbulent flow, or as recommended by the meter manufacturer. There shall also be at least one pipe diameter of unobstructed flow on the downstream side of the meter.

(5) The meter and register shall not be enclosed in a building or structure in such a manner as to prevent access to the register. The register or meter shelter may be equipped with a lock to prevent tampering or breakage, provided that a key is made available to authorized employees of the department of ecology at the place of business during normal working hours or at the residence in case of private parties.

(6) Provisions shall be made for removal and rating of the meter in accordance with the manufacturer's specifications.

(7) In those cases where wells are authorized for the purpose of supplementing surface waters with water from combined sources not to exceed a total quantity, both sources of water shall be metered.

(8) In the case of artesian wells which flow at times, the meter shall be installed in a manner which will measure both pumped and flowing discharge.

(9) The owner shall cause the department of ecology to be notified within ten days from the installation of the meter.

(10) The meter installation shall be inspected and approved by the department of ecology. [Statutory Authority: Chapters 43.21A, 43.27A and 90.44 RCW. 88-13-037 (Order 88-11), § 508-64-030, filed 6/9/88; Order DWR 69-9, § 508-64-030, filed 11/6/69.]

WAC 508-64-040 Meter operation and maintenance. Meters installed hereunder shall be operated and maintained in accordance with the following:

(1) No withdrawal or diversion of water shall be made unless the meter installation has been inspected and approved by the department of ecology and is in proper operating condition.

(2) Meters shall be repaired and returned to operation as soon as possible upon discovery of a malfunctioning meter. The department of ecology shall be notified immediately of such malfunctioning meter. In all cases the meter reading immediately prior to repair and the reading of the new or repaired meter shall be submitted to the department of ecology on forms provided within ten days following reinstallation of the meter and/or meter head.

(3) Water use data shall be submitted to the department of ecology on forms provided for that purpose at such times as may be required by the department.

(4) Meters shall be kept clear of debris or any other material or vegetative growth which would impede their operation. All meters shall be lubricated as specified by the manufacturer.

(5) Meters which are not properly operated and maintained shall be repaired or replaced upon order of the department of ecology within the time specified within said order. [Statutory Authority: Chapters 43.21A, 43.27A and 90.44 RCW. 88-13-037 (Order 88-11), § 508-64-040, filed 6/9/88; Order DWR 69-9, § 508-64-040, filed 11/6/69.]

WAC 508-64-050 Meter—When required. Meters shall be installed on water diversion and/or withdrawal facilities existing prior to or constructed subsequent to the effective date hereof whenever it shall appear to the department of ecology that one of the following conditions exist:

(1) The need exists to accurately measure the instantaneous rate of diversion (withdrawal) and/or the total water use by a facility operating over a specified period of time, for purposes of determining if the quantities of water utilized are within the limits of the established rights, or

(2) Studies, inventories and investigations of stream and/or aquifer systems are being conducted by the department of ecology for purposes of determining location, extent, depth, volume and flow of said waters for planning, utilization and management purposes; and accurate determination of existing diversion and/or withdrawals is necessary for proper conduct of such studies, inventories and investigations, or

(3) When it has been established by the department of ecology, or there is reasonable reason to believe that a mining of ground waters is taking place within a defined area and that an accurate determination as to the extent of existing use of ground waters is necessary to properly manage such use for the purpose of maintaining a reasonable or feasible pumping lift (or reasonable or feasible reduction of artesian pressure) within the defined area, or

(4) Conflict in use under established rights exist and accurate determination of the rate of diversion (withdrawal) and/or volumetric use over a given period of time is necessary for a proper resolution of the conflict.

The requirement that a meter shall be installed on an existing facility shall be given by written notice served upon the owner or person having control thereof, as appropriate, personally or by registered or certified mail.

COURT

ORDERS

Daily Diversion, in Cubic Feet, per Second, of _____
 for the Water Year commencing October 1, 19____, ending September 30, 19____

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

NO. 77-201484-5

ORDER PENDENTE LITE
 REGARDING METERING,
 MEASUREMENT AND
 REPORTING REQUIREMENTS

THIS matter having come before the Court on the Plaintiff's Petition for Pendente Lite Regarding Reporting Requirements, the Court having heard from all interested parties and being fully advised; now, therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that all persons/entities with diversions of 1 cfs or more from the Yakima, Naches, and Tieton Rivers, shall install an approved measuring or metering device at each diversion of 1 cfs or greater before March 1, 1995. An approved metering or measurement device shall be a (1) standard weir structure, (2) parshall flume(s), (3) velocity type meter, (4) pump flow-meter (5) stable rated section with a rating table, provided the rated section has a stable control, the staff gage is readable throughout the full range of flows experienced in a water year, and monthly flow measurements are made to verify the rating table and to determine shifts if necessary; or (6) other device capable of measuring flow within plus or minus 5%.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that records of the diversions shall be kept on a Standard Form 192 (attached and incorporated as part of this order) showing the average daily gage height and flow for each day of the water season.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that diversion records required to be kept by this order shall be provided to the Bureau of Reclamation weekly, and the Bureau of Reclamation shall provide the records to the Department of Ecology.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that an annual summary of diversions shall be provided to the Bureau of Reclamation by November 1 of each year.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all persons/entities with diversions of 2 cfs or more from the Yakima, Naches, and Tieton Rivers shall report to the Bureau of Reclamation any planned diversions, either plus or minus, in excess of 23 cfs or 2% whichever is greater, by telephoning (509)454-5621 or (509) 575-5854 (from 8:00 a.m. - 4:30 p.m. weekdays and 8:00 a.m. - 10:00 a.m. on weekends) at least 48 hours prior to making said changes.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all persons/entities with diversions of 2 cfs or more from the Yakima, Naches, and Tieton Rivers shall report any unplanned changed in diversions, which are either plus or minus, 2 cfs or 2% whichever is greater by telephoning (509)454-5621 or (509)575-5854 (from 8:00 a.m. - 4:30 p.m. weekdays and 8:00 a.m. - 10:00 a.m. on weekends) as soon as possible after the change.

IT IS FINALLY ORDERED, ADJUDGED AND DECREED that this order is not intended to apply to diversions within the Yakima Reservation.

DONE IN OPEN COURT this 13th day of October, 1994.

/s/ Honorable Walter A. Stauffacher

Daily Diversion, in Cubic Feet, per Second, of _____
 for the Water Year commencing October 1, 19____, ending September 30, 19____

ADJUDICATION
 Yakima River Drainage Basin
 Sub-basin

RCW 90.03.360 Controlling works and measuring devices --- Metering of diversions. The owner or owners of any ditch or canal shall maintain to the satisfaction of the Department of Ecology, substantial controlling works, and a measuring device at the point where water is diverted, and these shall be so constructed and maintained as to permit accurate measurement, practical regulation of the flow of water diverted into said ditch or canal. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the Department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Metering of diversions or measurement by other approved methods may be required as a condition for all new water right permits. The Department may also require, as a condition for such permits, reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the Department [1989 c 348 § 6; 1987 c 109 § 92; 1989 c 117 § 37; RRS § 7389. Formerly RCW 90.28.070.]

Severability — 1989 c 348: See note following RCW 90.54.020.

Rights not impaired — 1989 c 348: See RCW 90.54.920.

Purpose — Short title — Construction — Rules — Severability — Captions — 1987 c 109: See notes following RCW 43.21B.001.

WAC 508-12-030 Regulation of water right diversions --- Controlling works --- Measuring devices. Where controlling works or measuring devices are not installed or maintained to the satisfaction of the Department of Ecology, proper notice shall be given to the owner to install or repair such controlling works or measuring device. This notice shall allow not less than ten days time to make necessary repairs or installations. In the event the work outlined in the notice is not completed in the specified time, the diversion shall be closed to further flow of water, until such time as the notice has been fully complied with. [Statutory Authority: Chapter 43-.27A RCW. 88-13-037 (Order 88-11), § 508-12-030. filed 6/9/88: Rule 3, filed 3/23/60. Formerly WAC 134-12-030.]

WAC 508-12-040 Regulation of water right diversions--Controlling works--Headgates. Controlling works or headgates shall be so constructed that they can be regulated and locked in place by the watermaster or stream patrolman. [Rule 4, filed 3/23/60. Formerly WAC 134-12-040.]

 Diversion's measuring device must be located within a minimal distance from initial point of diversion from the river/creek/canal, below fishscreen return flow, above diversion's consumptive use, and above any significant system conveyance loss. Site approved by project hydrologic engineer.

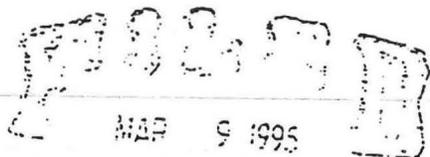
Diversion records (copy of Form 192) shall be provided/mailed weekly to the Bureau of Reclamation, Yakima Field Office, Hydrology, P.O. Box 1749, Yakima, WA 98907.

Diversion changes shall be reported at least 48 hours prior to making said changes. Report changes by telephoning (509)454-5621 (from 08:00 a.m. - 4:30 p.m. weekdays and 8:00 - 10:00 a.m. on weekends) or after hours at (509) 575-5854 (leave message on recorder).

cc

RECEIVED

'95 MAR 9 AM 10 37



CLERK OF COURT

KIM M. EATON, YAKIMA COUNTY CLERK

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

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,)
vs.)
JAMES J. ACQUAVELLA, et al.,)
Defendants.)

NO.: 77-2-01484-5
~~PROPOSED~~ ORDER ON
PENDENTE LITE RE:
ENFORCEMENT OF ORDER
PENDENTE LITE REGARDING
METERING, MEASURING AND
REPORTING REQUIREMENTS

This matter having come before the Court on the
Petitioners', State of Washington, Department of Ecology, and
United States, Bureau of Reclamation, Petition for Order
Pendente Lite Re: Enforcement of Order Pendente Lite Regarding
Metering, Measuring and Reporting Requirements, the Court having
heard from all interested parties and being fully advised; now,
therefore, it is hereby

ORDERED ADJUDGED, AND DECREED that in the event that any
person/entity that diverts 1 cfs or more water from the Yakima,
Naches or Tieton Rivers fails to install an approved measuring

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1 or metering device at the diversion by March 1, 1995, the
2 Department of Ecology shall notify the person/entity that they
3 must install an approved metering or measurement device as
4 identified in the Court's Order Pendente Lite Regarding
5 Metering, Measurement and Reporting Requirements within one (1)
6 month of the date of the Notice. The Notice shall be in writing
7 and be posted at the person/entity's point of diversion or
8 personally delivered to the person or any individual who
9 represents the entity. A copy of the Notice shall be filed with
10 the Department of Ecology and the Bureau of Reclamation at the
11 agency offices in Yakima; and,

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any
13 person/entity who fails to comply within one (1) month of the
14 date of the Notice shall be considered to be in violation of the
15 Court's Order dated October 14, 1994. The Department of Ecology
16 shall issue a cease and desist order to the person/entity
17 ordering them to terminate the diversion unless and until the
18 person/entity installs an approved metering or measuring device
19 and notifies Ecology of such installation. The cease and desist
20 order shall be served by registered mail or personally upon the
21 person, or any individual who represents the entity to whom the
22 order is directed. A copy of the cease and desist order shall
23 be filed with the Department of Ecology and with the Bureau of
24 Reclamation at the agency offices in Yakima. Any person/entity
25 who fails to comply with the cease and desist order will be
26 subject to all enforcement and penalty orders available to

1 Ecology, including penalties issued pursuant to RCW 90.03.600.
2 The order may be appealed only to the Pollution Control Hearings
3 Board as provided in RCW 43.21B.310. *During the pendency of this*
4 *action, any appeal from a decision of the Pollution Control Hearings*
5 *Board shall be heard by the Presiding Judge of this case.*
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DONE IN OPEN COURT this 9th day of March, 1995.

Walter Stauffacher
WALTER A. STAUFFACHER, JUDGE

Presented by:

CHRISTINE O. GREGOIRE
Attorney General

Mary E. McCre

MARY E. McCREA, WSBA #20160
Assistant Attorney General
Attorneys for Plaintiff
State of Washington
Department of Ecology
(360) 459-6155

Mary E. McCre for

CHARLES O'CONNELL
Attorney for Defendant
U.S. Department of Justice
Land & Natural Resources Div.
Indian Resources Section
(202) 272-4210

{t2\acquavella\metering.ord}

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

IN THE MATTER OF THE DETERMINATION) NO. 77-2-01484-5
OF THE RIGHTS TO THE USE OF THE)
SURFACE WATERS OF THE YAKIMA RIVER)
DRAINAGE BASIN, IN ACCORDANCE WITH) CERTIFICATE OF SERVICE
THE PROVISIONS OF CHAPTER 90.03)
REVISED CODE OF WASHINGTON,)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Plaintiff,)
)
v.)
)
JAMES J. ACQUAVELLA et al.,)
)
Defendants.)
_____)

The undersigned hereby certifies that she is an employee at the Bureau of Reclamation, of the United States Department of the Interior, 1917 Marsh Road, Yakima, Washington, 98901; over the age of eighteen years, not a party to or interested in the above-entitled action and competent to be a witness therein.

I certify that on this 2nd day of September 1998, I caused to be served a true and correct copy of the following:

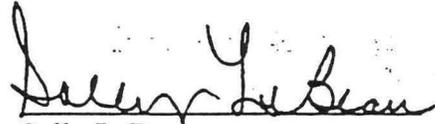
- 1) Order Pendente Lite Re: Metering, Measuring, and Reporting Requirements, Teanaway River and Big Creek, Kittitas County; and,
- 2) Letter from Jim Esget transmitting Order Pendente Lite and introducing Stan Isley, Court Appointed stream patrolman for Teanaway River and Big Creek, Kittitas County,
- 3) Photograph of Stan Isley; and,
- 4) SF-192, form for reporting diversion quantities.

by causing said copies to be served on all necessary parties pursuant to the requirements of PRETRIAL ORDER NO. 6.

I have provided, by certified mail, a copy of the above documents to:

Each of the water right claimants of record for Subbasin #2.
Each of the water right claimants of record for Subbasin #3.
All Major Claimants.

I have provided, by regular mail, a copy of this set of documents to each of the attorneys and agents of record in the above entitled matter.



Sally LeBear
for the US Bureau of Reclamation
September 2, 1998

R
AUG 28 1998
U.S.B.R.
Yakima, Washington

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EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

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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
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.,

Defendant.

NO. 77-2-01484-5

**ORDER PENDENTE LITE RE:
METERING, MEASURING AND
REPORTING REQUIREMENTS,
TEANAWAY RIVER AND BIG
CREEK, KITTTAS COUNTY**

FILED
AUG 27 1998

KIM M. EATON, YAKIMA COUNTY CLERK

THIS MATTER having come before the Court on the Petitioner's, United States Bureau of Reclamation, Petition for Order Pendente Lite Re: Metering, Measuring, and Reporting Requirements, Teanaway River and Big Creek, Kittitas County, the Court having heard from all interested parties and being fully advised; now, therefore,

IT IS ORDERED, ADJUDGED, AND DECREED that all persons diverting water from the Teanaway River or its tributaries (Subbasin No. 3) or from Big Creek (within Subbasin No. 2) shall install an approved metering or measuring device at each of their diversion points by May 1, 1999. An approved metering or measuring device shall be a: 1) standard weir structure; 2) Parshall flume; 3) velocity type meter; 4) pump flow meter; 5) stable rated section with a rating

ORDER PENDENTE LITE RE:
METERING, MEASURING AND
REPORTING REQUIREMENTS
TEANAWAY RIVER AND BIG CREEK
KITTTAS COUNTY

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13,355

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 438-7743

2

1 table, provided the rated section has a stable control, the staff gage is readable throughout the full
2 range of flows experienced in a water year, and monthly flow measurements are made to verify
3 the rating table and to determine shifts if necessary; or 6) other device capable of measuring flow
4 within plus or minus five percent (5%).

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that records of the
6 diversions shall be kept on a Standard Form 192 (attached and incorporated as part of this Order)
7 showing the average daily gage height and flow for each day of the water use season. This record
8 keeping requirement does not apply to single families diverting less than 1 cfs for purely domestic
9 purposes.

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that diversion records
11 required to be kept by this Order as to all diversions greater than 1 cfs shall be provided to the
12 Bureau of Reclamation weekly, and the Bureau of Reclamation shall provide the records to the
13 Department of Ecology. This reporting requirement does not apply to single families diverting
14 less than 1 cfs for purely domestic purposes.

15 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an annual summary of
16 diversions shall be provided to the Bureau of Reclamation by November 1 of each year. This
17 reporting requirement does not apply to single families diverting less than 1 cfs for purely
18 domestic purposes.

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all persons/entities
20 with diversions of 2 cubic feet per second (cfs) or more from the Teanaway River or its tributaries
21 or from Big Creek, shall report to the Bureau of Reclamation any changes in diversion quantities,
22 either plus or minus, of 2 cfs or more, by telephoning (509) 575-5848 ext. 219 or (509) 575-5854
23 (from 8:00 AM to 4:30 PM weekdays and 8:00 AM to 10:00 AM on weekends). Planned
24 diversion changes shall be reported at least 48 hours prior to making said changes. Unplanned
25 diversion changes shall be reported as soon as possible after the change.

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each diversion
2 metering or measuring device shall be located within a minimal distance from the point of
3 diversion from the river/water source; below the fish screen return flow point, if applicable; above
4 the diversion's consumptive use; and above any significant system conveyance loss. The site must
5 be approved by the Department of Ecology and the Bureau of Reclamation.

6 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in the event that any
7 person/entity who diverts water from the Teanaway River or its tributaries or from Big Creek fails
8 to install an approved metering or measuring device at each diversion point by May 1, 1999, the
9 Department of Ecology shall notify the person/entity that he/she shall install an approved metering
10 or measuring device within one (1) month of the date of the notice. The notice shall be in writing
11 and be posted at the person/entity's point of diversion or personally delivered to the person or any
12 individual who represents the entity. A copy of the notice shall be filed with the Department of
13 Ecology and the Bureau of Reclamation at the agency offices in Yakima.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any person/entity
15 who fails to comply within one (1) month of the date of the notice shall be considered to be in
16 violation of this Court Order.

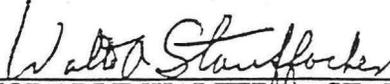
17 The Bureau of Reclamation or the Department of Ecology may request a temporary
18 restraining order or other appropriate relief from this Court against any person/entity who fails to
19 comply with the provisions of this Court Order Re: Metering, Measuring, and Reporting
20 Requirements, or against any diverter who is exceeding the term or limits of his/her water right or
21 diverting water to the injury of senior water right holders, including the Bureau of Reclamation
22 under its leases of instream flow water rights.

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Stan Isley shall
24 perform necessary stream patrolman duties for the diversions from Big Creek to ensure
25 compliance with this order and to ensure compliance with the terms and limits of the water rights
26 appurtenant to each diversion. The water rights for the Big Creek diversions are as defined by the

1 February 13, 1997, Conditional Final Order for Subbasin No. 2. Big Creek water users may be
2 required to hire a stream patrolman for 1999 and subsequent water years to ensure compliance
3 with this Court Order and with the terms and limits of their water rights, pursuant to a future
4 order of this Court, or pursuant to RCW 90.08.

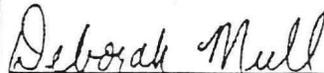
5 IT IS FINALLY ORDERED, ADJUDGED, AND DECREED that Stan Isley shall
6 perform necessary monitoring and enforcement duties for the diversions from the Teanaway River
7 Subbasin to ensure compliance with this Court Order and to ensure compliance with the terms
8 and limits of the water rights appurtenant to each diversion. The water rights for the Teanaway
9 River Subbasin diversions are as defined in the June 16, 1921, Amosso Decree and the January
10 25, 1996, Report of Referee for Subbasin No. 3 (as modified by the upcoming Supplemental
11 Report of Referee for Subbasin No. 3); pending issuance of a Conditional Final Order for the
12 Teanaway River Subbasin No. 3. After a Conditional Final Order is entered for Subbasin No. 3,
13 Teanaway River Subbasin water users may be required to hire a stream patrolman for 1999 and
14 subsequent water years to ensure compliance with this Court Order and with the terms and limits
15 of their water rights, pursuant to a future order of this Court, or pursuant to RCW 90.08.

16 DONE IN OPEN COURT this 27th day of August, 1998.

17
18 
19 THE HONORABLE WALTER A. STAUFFACHER

20 Presented by:

21 CHRISTINE O. GREGOIRE
22 Attorney General

23 

24 ALAN M. REICHMAN, WSBA #23874
25 Assistant Attorney General
26 Attorneys for Plaintiff
State of Washington
Department of Ecology
(360) 459-6161

27 FACASES\AR3\ACQUAVELLA\ORDER PENDENTE LITE TEANAWAY
ORDER PENDENTE LITE RE: 4
METERING, MEASURING AND
REPORTING REQUIREMENTS
TEANAWAY RIVER AND BIG CREEK
KITITAS COUNTY

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 438-7743

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
HYDROLOGY

Diversion Code _____
Diversion _____
Water Year _____

Po Box 1749
Yakima, WA 98907-1749

DAY	APRIL		MAY		JUNE		JULY		AUGUST		SEPTEMBER		DAY	FIRST	SECOND	THIRD	FOURTH
	Gage height	Discharge															
1													1				
2													2				
3													3				
4													4				
5													5				
6													6				
7													7				
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any green flow in the ion's impl. about any sign... system conveyance loss, and must be approved by a hydrologic engineer from Reclamation or Ecology.

QUARTER
G. H. copied
G. H. checked
Date

QUARTER
DISCH. applied
DISCH. checked
Date

QUARTER
Computed
Checked
Date

PERIOD
YEAR

Diversion records (copy of Form 192) shall be provided/mailed weekly to the US Bureau of Reclamation, Yakima Field Office, Hydrology, PO Box 1749, Yakima, WA 98907-1749.

Planned diversion changes of 2 cfs or more shall be reported at least 48 hours prior to making said changes. Unplanned diversion changes of 2 cfs or more shall be reported as soon as possible after the change. Report changes by telephoning (509) 575-5848, ext. 219 (from 8:00 AM to 4:30 PM weekdays and 8:00 AM to 10:00 AM on weekends) or after hours at (509) 575-5854 (leave message on recorder).

9-192-D (Rev. Dec. 1994)

Diversion Code _____

Daily Diversion, in Cubic Feet, per Second, of _____
 for the Water Year commencing October 1, 19____ and ending September 30, ____
 Gage/meter read to _____ once/twice a day by _____ (Observer)
 Phone: _____

Day	OCTOBER		NOVEMBER		DECEMBER		JANUARY		FEBRUARY		MARCH	
	Gage height	Discharge										
1												
2												
3												
4												
5												
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30												
31												
Total												
Mean												
Maximum												
Minimum												
Acre/feet												



United States Department of the Interior

BUREAU OF RECLAMATION

Upper Columbia Area Office
1917 Marsh Road
P.O. Box 1749

Yakima, Washington 98907-1749

IN REPLY REFER TO:

UCA-1205

WTR-1.10

SEP 2 1998

Water Users in Subbasins Two and Three
Kittitas County, Washington

Subject: Metering, Measuring and Reporting Requirements, Teanaway River and Big Creek

To All Interested Parties:

The Bureau of Reclamation is enclosing with this letter a copy of the Order Pendente Lite Re: Metering, Measuring and Reporting Requirements, Teanaway River and Big Creek, Kittitas County which was recently signed by the Honorable Walter Stauffacher, the judge presiding over the adjudication, In the Matter of the Determination of the Rights to Use of the Surface Waters of the Yakima River Drainage Basin, otherwise known as State of Washington, Department of Ecology v. James J. Acquavella, No. 77-2-01484, in the Superior Court of the State of Washington for Yakima County.

A copy of the Proposed Order was previously sent to you on June 22, 1998. The relevant provisions of the Final Order are as follows:

1. All persons diverting water from the Teanaway River or its tributaries (Subbasin No. 3) or from Big Creek (within Subbasin No. 2) are required to have in place by May 1, 1999, an approved metering or measuring device.
2. Records of diversions exceeding 1 cfs must be kept on a Standard Form 192, a copy of which is enclosed.
3. Such diversion records shall be provided to the Bureau of Reclamation weekly and the Bureau will, in turn, provide copies to the Department of Ecology. Diversion records must be mailed to the Bureau of Reclamation, Yakima Field Office, Hydrology, PO Box 1749, Yakima, Washington 98907-1749.
4. Those individuals who divert less than 1 cfs and use such water purely for domestic purposes are exempt from these provisions.

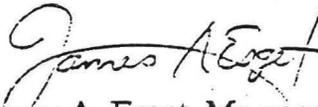
5. Stan Isley, an employee of the Department of Ecology, currently on detail to the Bureau of Reclamation, has been authorized to monitor diversions on the lands covered by this Order. Such monitoring requires Mr. Isley to go onto your property for the sole purpose of monitoring diversions. Mr. Isley will be making such visits on a regular basis, somewhere between a week and ten days.

6. If it is found that any individual is exceeding the terms or limits of his or her water right and diverting water to the injury of senior water rights, appropriate action may be taken including action by the Superior Court enjoining such diversions which exceed water rights.

7. Similarly, the failure to install an approved measuring or metering device by May 1, 1999, can also result, after appropriate notice and opportunity of one month to install a device, in an action by the Superior Court.

The Bureau of Reclamation and Mr. Isley appreciate your cooperation and look forward to working with you and answering questions you might have. We plan to continue with the cooperative working relationships we have experienced with local landowners in both Subbasins No. 2 and No. 3, and will work with you to continue successful irrigation as we try to bring the fisheries back together. Mr. Isley can be reached at this office at (509) 575-5848, extension 281. Enclosed is a photocopy of a photograph of Mr. Isley to help you recognize him as he conducts his monitoring inspections.

Sincerely,



James A. Esget, Manager
Yakima River Basin Water Enhancement Project

Enclosures - 3

cc: The Honorable Walter A. Stauffacher
Yakima County Superior Court
128 N 2nd Street
Yakima WA 98901-2614
(w/copy of SF-192 and photo)