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

1	IN THE MATTER OF THE DETERMINATION)	
2	OF THE RIGHTS TO THE USE OF THE	)	NO. 77-2-01484-5
3	SURFACE WATERS OF THE YAKIMA RIVER)	
4	DRAINAGE BASIN, IN ACCORDANCE WITH	)	PROPOSED
5	THE PROVISIONS OF CHAPTER 90.03,	)	CONDITIONAL FINAL ORDER
6	REVISED CODE OF WASHINGTON	)	AS A FINAL JUDGMENT
7	THE STATE OF WASHINGTON,	)	PURSUANT TO CR 54(b)
8	DEPARTMENT OF ECOLOGY,	)	AND RAP 2.2(d), AND
9		)	PRETRIAL ORDER NUMBER 8
10	Plaintiff,	)	AS AMENDED
11)	
12	v.	)	NEW SCHANNO DITCH
13		)	COMPANY, COURT
14	JAMES J. ACQUAVELLA, et al.,	)	CLAIM NO. 1210
15)	
16	Defendants.)	

THIS MATTER has come on regularly before the Court with New Schanno Ditch Company having had its evidentiary hearing on February 13 through 16, 1995. The Court filed its Report of the Court Concerning the Water Rights for New Schanno Ditch Company, Vol. 40, on October 27, 1997. Thereafter, the Court held the hearing on exceptions March 11 through 13, 1998. Joe Falk, Jr., attorney, represented the defendant New Schanno Ditch Company. Maria A. Iizuka, attorney with the Department of Justice, represented the defendant United States, Bureau of Reclamation. Jeffrey Schuster, attorney, represented the defendant Yakama Nation. Jo Messex Casey, Assistant Attorney General, represented the Plaintiff State of Washington, Department of Ecology.

The Court, after reviewing the exceptions and other materials filed, and after having heard argument and being fully advised, filed it's Supplemental Report of the Court Concerning the Water Rights for New Schanno Ditch Company,

16, 862

1 Volume 40A, Part II, on February 14, 2003. The Court now
2 enters this Conditional Final Order based upon said initial
3 Report and Supplemental Report of the Court. This Conditional
4 Final Order will ultimately be incorporated into a final
5 decree that determines and integrates all of the rights of
6 the parties in this adjudication, at which time it shall be
7 forwarded to the Director of the Department of Ecology for
8 issuance of Certificates of Adjudicated Water Right.

9 Based on the foregoing, IT IS:

10 ORDERED, ADJUDGED AND DECREED that the final decree
11 shall include the following in regards to New Schanno Ditch
12 Company, Court Claim No. 1210:

- 13 1. The point of diversion is located approximately 2,500
14 feet north and 100 feet west of the southeast corner of
15 Section 9, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, T. 13 N., R.
16 18 E.W.M.
- 17 2. The priority date is June 30, 1871.
- 18 3. The purpose of use is irrigation of 388.6 acres of
19 residential, commercial and agricultural land.
- 20 4. The place of use is described in NS 19 and identified
21 on COY 15F-1 (Upper New Schanno), COY 15I-1 (Western New
22 Schanno), COY 15K-1 (Eastern New Schanno), COY 15N-1 (Lower
23 New Schanno) and COY 15C-1.
- 24 5. The season of use is April 1 through October 31.
- 25 6. New Schanno is authorized to divert from the Naches
26 River into the Fruitvale Canal 3,149 acre-feet for irrigation
27 of 194.3 acres within the Upper and Western portions of the
28 New Schanno. The following schedule of delivery shall apply:

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<u>April-Aug.</u>	<u>Sept.</u>	<u>Oct.</u>
9.38 cfs	6.25 cfs	4.69 cfs

New Schanno is authorized to divert from the Fruitvale Canal via the pumps located at 3rd Avenue and Peach and 10th Avenue and Willow, 1,939 acre-feet for irrigation of 194.3 acres within the Upper and Western portions of the New Schanno. The following schedule of delivery shall apply:

<u>April-Aug.</u>	<u>Sept.</u>	<u>Oct.</u>
6.0 cfs	4.0 cfs	3.0 cfs

In the event that the primary supply of water from the West Side Drain is not available to shareholders in the Eastern and Lower New Schanno, then New Schanno shall be allowed to exercise its standby and reserve right. New Schanno may divert these additional quantities:

	<u>April-Aug.</u>	<u>Sept.</u>	<u>Oct.</u>	<u>Ac-Ft.</u>
Naches River:	5.6 cfs	3.75 cfs	2.81 cfs	<u>2,014</u>
At New Schanno: (16 th /Cherry)	3.6 cfs	2.4 cfs	1.8 cfs	1,289

Any quantity delivered to New Schanno shareholders via the West Side Drain is not in addition to those quantities confirmed in Yakima's Conditional Final Order, November 21, 2002. Yakima will not be required to reduce its diversions at Glead when the West Side Drain is not discharging to New Schanno.

The Court finds the following,

1. New Schanno's claim to an unauthorized or defacto change in point of diversion is denied.
2. New Schanno's claim to a standby or reserve supply from the Glead Plant for the unissued shares is denied (see Section III and Section VII.A of this Supplemental Report).
3. New Schanno's claim to a municipal supply is denied.
4. New Schanno's water right pursuant to the unassigned

1 shares is relinquished for failure to put water to beneficial
2 use or supply a sufficient cause for nonuse.

3 In accordance with RCW 90.03.240, Certificate of
4 Adjudicated Water Right shall be issued as quantified and
5 described above.

6 This Conditional Final Order, relating to the
7 confirmation of water rights to New Schanno Ditch Company
8 constitutes a final order for purposes of appeal [see RAP
9 2.2(d)], except for purposes of final integration of all
10 confirmed rights as provided in Section XII of Pretrial Order
11 No. 8, procedures for Claim Evaluation, dated March 3, 1989,
12 of this Court.

13 DATED this 10th day of April, 2003.

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15 Walter A. Stauffacher
16 WALTER A. STAUFFACHER, JUDGE
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