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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

UNITED STATES OF AMERICA,  
Plaintiff,

SPOKANE TRIBE OF INDIANS,  
  
Plaintiff/Intervenor,

v.

BARBARA J. ANDERSON, et al.,  
  
Defendants.

NO. 2:72-cv-03643-SAB  
**[PROPOSED]** ORDER  
MODIFYING PREVIOUS  
ORDERS

This Court entered an *Order To Show Cause Why Five Amendments to Prior Orders Should Not be Entered* on \_\_\_\_\_ (Show Cause Order ).

In the Show Cause Order, the Court specified a process by which landowners within the Chamokane Creek Basin: (1) were provided notice of the Government Parties' Settlement Agreement and the proposed amendments to the prior orders of this Court; and (2) were given an opportunity to object to the modifications and amendments to the Court's prior orders that were proposed by the Government Parties.

On \_\_\_\_\_ the Court held a hearing on the proposed modifications to the prior orders [and no objections were filed] [and objections were filed and found to be without substance]. On the basis of the record filed in **ORDER MODIFYING PREVIOUS ORDERS**

1 this matter and the arguments presented at the hearing, the Court concludes that the  
2 Settlement is fair and reasonable and the Government Parties have shown that  
3 circumstances warrant changes to the orders in this case consistent with the  
4 standards governing this case, Dkt. No. 196, at XXV. The Court last modified the  
5 Judgment in this case on December 9, 1988, *Order Modifying the Minimum Flow*  
6 *Provisions of this Court's Memorandum Decision of July 23, 1979*, Dkt. No. 360.  
7

8 Accordingly, **IT IS HEREBY ORDERED:**

9  
10 **Modifications Required for Upper Chamokane Creek Connectivity Findings**

11 **Court Dkt. No. 189**

12 The Court overrules as necessary and modifies Court Dkt. No. 189,  
13 Memorandum Opinion and Order, July 23, 1979, page 3, lines 19-22, by removing  
14 the following sentence: "The precipitation absorbed into the ground in the Upper  
15 Chamokane area becomes part of an underground reservoir unconnected to the  
16 Chamokane drainage system."  
17

18 The Court overrules as necessary and modifies Court Dkt. No. 189, page 4,  
19 lines 10-13, by removing the following sentence: "Groundwater withdrawals in the  
20 Upper Chamokane region have no impact upon the creek flow below the falls  
21 because groundwater in this area is part of a separate aquifer."  
22

23 The Court overrules as necessary and modifies Court Document 189 page 4  
24 lines 10-13 by replacing the above sentence with the following: "**The aquifer in**  
25

26 **ORDER MODIFYING PREVIOUS ORDERS**

1 **the Upper Chamokane Creek region is connected to the aquifer in the Middle**  
2 **Chamokane Creek Region, and ground and surface water withdrawals in the**  
3 **Upper Chamokane Creek region impact Creek flow below the falls.”**

4  
5 **Court Dkt. No. 196**

6 The Court overrules as necessary and modifies Court Dkt. No. 196, Judgment,  
7 dated September 12, 1979, page 1, Section I, by removing the third sentence:  
8 “Ground water withdrawals in the Upper Chamokane region have no impact upon  
9 the flow of Chamokane Creek because groundwater in the Upper Chamokane  
10 Region is part of a separate aquifer.”

11  
12 The Court overrules as necessary and modifies Court Dkt. No. 196, page 1,  
13 Section I, by replacing the above sentence with the following: “**The aquifer in the**  
14 **Upper Chamokane Creek region is connected to the aquifer in the Middle**  
15 **Chamokane Creek Region, and ground and surface water withdrawals in the**  
16 **Upper Chamokane Creek region impact Creek flow below the falls.”**

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19 **Court Dkt. No. 252**

20 Finally, the Court overrules as necessary and modifies the following findings  
21 in Court Dkt. No. 252, Memorandum and Opinion Granting, in part, Motions to  
22 Amend Memorandum Opinion and Order, August 23, 1982. On page 4, lines 21-  
23 24, the Court stated: “In the Upper Chamokane Creek area, the precipitation  
24 absorbed into the ground area becomes part of an underground reservoir  
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26

1 unconnected to the Chamokane drainage system.” The Court strikes this sentence.  
2 Additionally, on page 5, lines 6-9, the Court stated: “Groundwater withdrawals in  
3 the Upper Chamokane region have no impact upon creek flow below the falls  
4 because groundwater in this area is part of a separate aquifer. Groundwater  
5 withdrawals in the Mid-Chamokane area, however, eventually do reduce creek  
6 flow.” The Court replaces these sentences with the following: “**Groundwater**  
7 **withdrawals in the entire Chamokane Creek area eventually do reduce creek**  
8 **flow.**”  
9  
10

#### 11 **Modifications Required for Spring Instream Flow**

##### 12 **Court Dkt. No. 360**

13  
14 The Court overrules as necessary and modifies Court Dkt. No. 360, page 3, by  
15 adding a new paragraph 4, and renumbering existing paragraph 4 as 5 and  
16 amending, as follows:

17  
18 **4. Any new excess surface water rights issued after the date of**  
19 **this Order modifying the Court’s previous Order of December 9,**  
20 **1988, shall continue to be subject to a minimum flow of 27 cfs**  
21 **regardless of temperature for the months of May through**  
22 **February and shall be subject to minimum flows of 140 cfs for**  
23 **the month of March and 151 cfs for the month of April.**

24 **5. For the purposes of this order, “minimum flow of 24 cfs”, and**  
25 **“minimum flow of 27cfs”, and “minimum flow of 151 and 140**  
26 **cfs” shall be determined by calculating the average of the daily**  
**average flows of the previous seven days.**

1                   **Modifications Required for Domestic and Stockwater Uses**

2                                   **Court Dkt. No. 189**

3  
4           The Court overrules as necessary and modifies Court Dkt. No. 189, page 16,  
5 lines 23-25, by removing: “2. Water for domestic use is not included within the  
6 judgment, as it is de minimus and should always be available.”

7           The Court overrules as necessary and modifies Court Dkt. No. 189, page 16,  
8 lines 23-25, by replacing the above sentence with the following: “**2. Water for**  
9 **domestic use is included within this judgment, but is not quantified or**  
10 **adjudicated at this time.**”

11                                   **Court Dkt. No. 196**

12  
13           The Court overrules as necessary and modifies Court Dkt. No. 196, page 10,  
14 Section XX, by removing the following: “Water for domestic use is not included  
15 within this Judgment nor adjudicated herein since the use of water for domestic  
16 purposes is deminimus and sufficient water for such domestic purposes always  
17 should be available.”

18  
19           The Court overrules as necessary and modifies Court Dkt. No. 196, page 10,  
20 Section XX, by replacing the above sentence with the following: “**Water for**  
21 **domestic use and normal stock water use at the carrying capacity of the land**  
22 **without the use of impoundments is included in this Judgment, but it is**  
23 **neither adjudicated nor quantified at this time.**”

**Court Dkt. No. 252**

1  
2 The Court overrules the following in Court Dkt. No. 252, page 16, lines 25-30  
3 (emphasis in original): “The undisputed evidence is that normal stock water use  
4 (grazing related to the carrying capacity of the land) and domestic water use is de  
5 minimus and does not include impoundments. The Memorandum Opinion is  
6 therefore adjusted to reflect that these uses are not included in the judgment and  
7 should always be available.”  
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10 The Court adjusts the above two sentences by stating them as follows:

11 **“Water for domestic use and normal stock water use at the carrying capacity**  
12 **of the land without the use of impoundments is included in this Judgment, but**  
13 **it is neither adjudicated nor quantified at this time.”**  
14

15 The Court further overrules as necessary and modifies another portion of this  
16 opinion that adopted a Magistrate Judge’s finding that stock and domestic use was  
17 de minimis. Consistent with the above rulings regarding stock and domestic use,  
18 the Court’s adoption of the Magistrate’s findings is revised as follows (insertions  
19 in bold): “This court **disagrees with paragraph (a) and agrees with paragraphs**  
20 **(b), (c) and (d)**, and the Opinion and Judgment shall be so amended.” Dkt. No.  
21 252, page 22, lines 19-20.  
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**Water Master Modifications**

**Court Dkt. Nos. 189 and 196**

The Court ordered the Government Parties in this case to provide a proposed order that summarized the powers and responsibilities of the Water Master in the *Order Approving the Water Master’s 2014 Report; Order to Meet and Confer*, dated April 8, 2015. ECF No. 825. The Government Parties prepared and filed the Proposed Order on June 1, 2015. ECF No. 829-2. The Proposed Order provides a clear statement of the Water Master’s powers and responsibilities as ordered by this Court over the course of this case. Based on the agreement of the parties and the modifications to the previous orders above, the Court adjusts the previous orders contained in Court Dkt. Nos. 189 and 196 by adding to the Water Master’s powers and responsibilities the following:

**The State of Washington, through its Department of Ecology, may delegate to the Water Master duties as required to administer state water law, exclusive of the Water Master’s duties under previous orders in this Case, and perform duties pursuant to the Agreement reached by the sovereign parties in this Case for the administration of the agreed upon mitigation program.**

**The State of Washington, through its Department of Ecology, shall be responsible for funding these additional duties of the Water Master in this Case consistent with State law and the Agreement reached between the sovereign parties in this Case.**

1 The Government Parties shall file an amended Proposed Order identical to ECF  
2 No. 829-2, with the addition of the above language, within seven - (7) days of the  
3 entry of this Order.  
4

5 **Registry Claims**

6 **Court ECF No. 825**

7 The Government Parties described their activities related to the Court's April 8,  
8 2015 Order, ECF No. 825 regarding water rights claims that may predate the  
9 Tribe's reserved water rights. ECF No. 912 at 12-15. The Court overrules and  
10 modifies the April 8, 2015 Order at page 2, Section 2, and strikes the requirements  
11 contained therein regarding water rights potentially senior to the Tribe's, and  
12 thereby relieves the Government Parties from that Order's requirement.  
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15 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.  
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18 \_\_\_\_\_  
19 Stanley A. Bastien  
20 United States District Judge  
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