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KIM M. EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

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

7	IN THE MATTER OF THE DETERMINATION)	
8	OF THE RIGHTS TO THE USE OF THE)	
9	SURFACE WATERS OF THE YAKIMA RIVER)	
10	DRAINAGE BASIN, IN ACCORDANCE WITH)	NO. 77-2-01484-5
11	THE PROVISIONS OF CHAPTER 90.03,)	
12	REVISED CODE OF WASHINGTON,)	CONDITIONAL FINAL
13	STATE OF WASHINGTON,)	ORDER AS A FINAL
14	DEPARTMENT OF ECOLOGY,)	JUDGMENT PURSUANT TO
15		CR 54(b), RAP 2.2(d)
16		AND PRETRIAL ORDER
17	Plaintiff,)	NUMBER 8 AS AMENDED
18)
19	v.)	WEST SIDE IRRIGATING
20		COMPANY, COURT CLAIM
21	JAMES J. ACQUAVELLA, et al.,)	NOS. 1629, 3036(A)
22		AND 3195(A)
23	Defendants.)	
24)

I. PROCEEDINGS

THIS MATTER has come on regularly before the Court with West Side Irrigating Company having had its evidentiary hearing on December 12, 1994. The Report of the Court issued on January 31, 2000. An exception hearing was held November 8-9, 2001. The Court entered its Memorandum Opinion RE: Unavailability of Water on February 8, 2002.

The following parties entered into negotiations and ultimately stipulated to West Side Irrigating Company's water rights: West Side Irrigating Company, the Department of Ecology, the United States, and the Yakama Nation.

West Side Irrigating Company filed its Stipulation and

1 Settlement on June 9, 2005. All parties to this adjudication
2 were provided an opportunity to file exceptions to this
3 stipulation. None were received. On August 11, 2005, the
4 Court held a hearing on the Stipulation.

5 This Court filed its Supplemental Report of the Court
6 Concerning the Water Rights for West Side Irrigating Company
7 on August 11, 2005. The Supplemental Report incorporates the
8 Stipulation of the parties, including a map of the service
9 area and the written legal description of the Company. West
10 Side's water rights are set forth in the Stipulation. Thus,
11 the Court considers the Supplemental Report to be the final
12 resolution of the West Side Irrigating Company's water
13 rights.

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

20 This Conditional Final Order is an appropriate matter
21 to be entered as a final judgment pursuant to Civil Rule
22 54(b), Rule of Appellate Procedure 2.2(d), and Pretrial Order
23 No. 8 as amended. There is no just reason for delay in the
24 entry of this Conditional Final Order as a final judgment,
25 subject only to integration at the end of this adjudication.

26 The claims adjudicated by the Conditional Final Order
27 are separate and discrete claims apart from the remaining
28

1 multiple claims in this case. The claims adjudicated by this
2 Conditional Final Order are asserted by one of the multiple
3 Parties to this proceeding and are less than all of the
4 multiple claims of other major claimants and other parties.
5 Numerous claims remain unadjudicated in the proceeding, and
6 any appeal from this Conditional Final Order is unlikely to
7 delay trial of unadjudicated matters. The claims that would
8 be reviewed on any appeal from this Conditional Final Order
9 are not likely to be rendered moot by the continuing
10 proceedings before this Court. As a practical matter, an
11 immediate appeal of this Conditional Final Order will likely
12 prevent a waste of judicial resources and prevent a waste of
13 resources for the parties to this case. Absent separate
14 appeal of this Conditional Final Order, the Parties and the
15 Court will be involved in a single appeal of numerous,
16 separate, discrete and diverse claims from separate hearings.
17 A combined appeal of all such claims at the end of the
18 adjudication will be unwieldy and unmanageable and result in
19 substantial waste of judicial resources and the resources of
20 the Parties. In addition, the Court understands that West
21 Side Irrigating Company intends to perform irrigation water
22 system improvement projects in reliance on this Conditional
23 Final Order, and the Court finds that West Side Irrigating
24 Company would be prejudiced by any delay.

25 II. CONDITIONAL FINAL ORDER

26 Based on the foregoing, IT IS:

27 ORDERED, ADJUDGED and DECREED that the final decree
28

1 shall set forth the following in regards to West Side
2 Irrigating Company, Court Claim Nos. 1629, 3036(A) and
3 3195(A):

4 1. The water rights for West Side Irrigating Company
5 are set forth in the Stipulation. The Stipulation, service
6 area map and the written legal description are included
7 herein.

8 2. This Conditional Final Order, relating to the
9 confirmation of water rights to West Side Irrigating Company
10 constitutes a final order for purposes of appeal pursuant to
11 Civil Rule 54(b) and Rule of Appellate Procedure 2.2(d),
12 except for purposes of final integration of all confirmed
13 rights as provided in Section XII of Pretrial Order No. 8,
14 procedures for Claim Evaluation, dated March 3, 1989, of this
15 Court.

16
17 DATED this 11th day of August, 2005.

18
19 Walter Stauffer
20 WALTER A. STAUFFACHER, JUDGE

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

IN THE MATTER OF THE DETER-)	
MINATION OF THE RIGHTS TO)	
THE USE OF THE SURFACE WATERS)	NO. 77-2-01484-5
OF THE YAKIMA DRAINAGE BASIN,)	
IN ACCORDANCE WITH THE)	STIPULATION RE:
PROVISION OF CHAPTER 90.03)	WEST SIDE IRRIGATING
REVISED CODE OF WASHINGTON,)	COMPANY
)	
THE STATE OF WASHINGTON,)	CLAIM NOS. 1629,
DEPARTMENT OF ECOLOGY,)	3036(A) and 3195(A)
)	
Plaintiff,)	
v.)	
)	
JAMES J. ACQUAVELLA, et al,)	
)	
Defendants.)	

West Side Irrigating Company ("WSIC"), the State of Washington Department of Ecology ("Ecology"), the United States, and the Yakama Nation, (hereinafter "the Parties"), after extensive Court-approved facilitated negotiations and mediation, hereby respectfully submit this Stipulation Re: West Side Irrigating Company, Court Claim Nos. 1629, 3036(A) and 3195(A) ("Stipulation") to resolve all claims. The Parties request that the Court include the

HANLON & ASSOCIATES, P.S.

311 NORTH FOURTH STREET - P.O. Box 22730
YAKIMA, WASHINGTON 98907-2715
PHONE (509) 576-6611

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1 water rights identified herein in a Conditional Final Order and Final Decree
2 for WSIC as adjudicated water rights. WSIC, Ecology, the United States, and
3 the Yakama Nation have filed a separate Joint Memorandum in Support of the
4 Stipulation Re: West Side Irrigating Company, Court Claim Nos. 1629, 3036(A)
5 and 3195(A).
6
7

8 **1. WEST SIDE IRRIGATING COMPANY WATER RIGHTS**

9 The Parties stipulate that water rights totaling an annual quantity of
10 33,967.5 acre feet (AF) per year should and shall be confirmed, and that
11 certificates of adjudicated water rights should and shall be issued in the name
12 of West Side Irrigating Company and the United States on behalf of WSIC for
13 the following two water rights enumerated in 1.A. through 1.B.
14

15 **A. Certificate:** The Parties stipulate that the following water right
16 should and shall be confirmed and that, after entry of the final decree in this
17 adjudication, a "Certificate of Adjudicated Water Right" should and shall be
18 issued in the name of West Side Irrigating Company for the following water
19 right:
20

21 Source: Yakima River

22 Annual Quantity: 25,767.5 AF

23 Instantaneous Rate: 80 CFS, April 1 to September 30;

24 34 CFS, October 1 to October 31

25 Purpose of Use: Irrigation of a maximum of 5,373 irrigated acres

26 Priority Date: June 6, 1889

27 Point of Diversion: Approximately 1200 feet North and 350 feet

28 West from the Southeast corner of Section 33, being within
29 the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, Township 19 North, Range 17,
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Attachment 2 is controlling as the description of WSIC's place of use.

Period of Use: April 20 through September 30

2. SCOPE OF STIPULATION

This Stipulation applies to all WSIC claims, which are merged into, and resolved in, Court Claim Nos. 1629, 3036(A) and 3195(A), and it is not intended to address or resolve any other water right claims or issues. This Stipulation, and other writings evidencing the agreement of the Parties, is not intended to be an admission of any legal or factual issue and is not intended to waive or concede any legal arguments in this case or any other case. Accordingly, the Parties hereto withdraw their exceptions to all WSIC claims and to Court Claim Nos. 1629, 3036(A) and 3195(A).

3. COVENANT NOT TO SUE

WSIC and Ecology agree not to appeal, seek to reopen, challenge, or support any challenge to the Yakama Nation's Conditional Final Order dated September 12, 1996, including issues litigated in the Yakama Nation's Reports of the Court Nos. 25 (Nov. 13, 1995), and 25A (June 21, 1996).

4. WRITTEN AGREEMENT

In addition to this Stipulation, the Parties hereto have entered a full written WSIC Water Right Settlement Agreement (Agreement) dated May 20, 2005, incorporating the terms in Paragraph 1 above, and additional provisions between the Parties. Because some of the provisions of the Agreement may be beyond the interest or jurisdiction of this Court, the Parties are not requesting the Court to approve the Agreement. The Parties have filed with the Clerk duplicate originals of the Agreement for the

HENDERSON ADLEGATE, P.S.

311 NORTH FOURTH STREET - P.O. Box 22730
YAKIMA, WASHINGTON 98907-2715
PHONE (509) 576-6611

1 information of the Court. The Agreement is not intended to affect any non-
2 signatory party.

3
4
5 **5. REVOCATION OF STIPULATION**

6 If for any reason the Court rejects, modifies, amends, or alters this
7 Stipulation or fails to adopt a Conditional Final Order with these terms on the
8 surface water rights for WSIC, the individual Parties retain the right to revoke
9 or rescind this Stipulation, provided that any such revocation or rescission
10 shall not affect in any way the validity of the Agreement which has separate
11 revocation provisions. In the event of a revocation or rescission, this Stipula-
12 tion and any issues contained herein shall not be an admission of any legal or
13 factual issue or waive any argument of the Parties, and no Party shall argue
14 that it constitutes any such admission or waiver.
15
16

17
18 **6. REQUEST FOR EXPEDITED CONDITIONAL FINAL ORDER**
19 **FOR WSIC WATER RIGHTS**

20 The Parties respectfully request that the Court expedite the issuance of
21 a Conditional Final Order for WSIC's water rights with the same water right
22 elements described in Paragraph 1.A. through 1.B. of this Stipulation.
23
24

25 **7. REQUEST FOR CONDITIONAL FINAL ORDER AS FINAL**
26 **ORDER FOR PURPOSES OF APPEAL**

27 The Parties respectfully request that the Court issue the above-described
28 Conditional Final Order for WSIC's water rights as a final order for appeal
29 pursuant to Civil Rule 54(b) and Rule of Appellate Procedure 2.2(d).
30

31 The Parties respectfully request that the Court expressly determine, in
32 the Conditional Final Order, that there is no just reason for delay of appeal and
33 make supporting specific findings, including the following:
34

HAINESON APPELLATE, P.S.

311 NORTH FOURTH STREET - P.O. Box 22730
YAKIMA, WASHINGTON 98907-2715
PHONE (509) 575-6611

1 "The claims adjudicated by this Conditional Final Order
2 are separate and discrete claims apart from the
3 remaining multiple claims in this case. The claims
4 adjudicated by this Conditional Final Order are asserted
5 by one of the multiple Parties to this proceeding and are
6 less than all of the multiple claims of other major
7 claimants and other parties. Numerous claims remain
8 unadjudicated in the proceeding, and any appeal from
9 this Conditional Final Order is unlikely to delay trial of
10 unadjudicated matters. The claims that would be
11 reviewed on any appeal from this Conditional Final Order
12 are not likely to be rendered moot by the continuing
13 proceedings before this Court. As a practical matter, an
14 immediate appeal of this Conditional Final Order will
15 likely prevent a waste of judicial resources and prevent a
16 waste of resources for the parties to this case. Absent
17 separate appeal of this Conditional Final Order, the
18 Parties and the Court will be involved in a single appeal
19 of numerous, separate, discrete and diverse claims from
20 separate hearings. A combined appeal of all such claims
21 at the end of the adjudication will be unwieldy and
22 unmanageable and result in substantial waste of judicial
23 resources and the resources of the Parties. In addition,
24 the Court understands that WSIC intends to perform
25 irrigation water system improvement projects in reliance
26 on this Conditional Final Order, and the Court finds that
27 WSIC would be prejudiced by any delay."

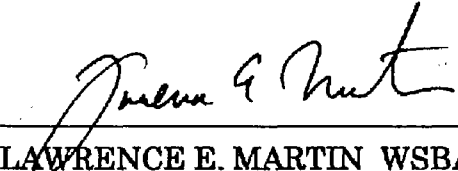
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8. CONCLUSION

The opinion of the Parties is that this Stipulation for WSIC will save the Parties and the Court significant time and expenses that would be necessary to litigate the complex water right issues of WSIC, will promote judicial economy, and will substantially shorten the time and reduce the work necessary to conclude the *Acquavella* litigation.

DATED this 9th day of June, 2005.

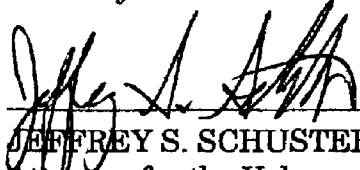
1 **STIPULATED AND AGREED:**

2
3
4 Date June 8, 2005



LAWRENCE E. MARTIN WSBA #18743
Halverson Applegate P.S.
Attorneys for West Side Irrigating Company

5
6
7
8
9 Date June 6, 2005



JEFFREY S. SCHUSTER, WSBA #07398
Attorney for the Yakama Nation

10
11
12
13 Date _____

BARBARA A. MARKHAM, WSBA #30234
Assistant Attorney General
Attorney for Plaintiff-State of Washington
Department of Ecology

14
15
16
17
18
19 Date _____

CHARLES R. SHOCKEY, DCBA #914879
U.S. Department of Justice
Environment & Natural Resources Division
Attorney for United States of America

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STIPULATED AND AGREED:

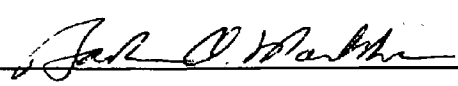
Date _____

LAWRENCE E. MARTIN WSBA #18743
Halverson Applegate P.S.
Attorneys for West Side Irrigating Company

Date _____

JEFFREY S. SCHUSTER, WSBA #07398
Attorney for the Yakama Nation

Date 5/27/05



BARBARA A. MARKHAM, WSBA #30234
Assistant Attorney General
Attorney for Plaintiff-State of Washington
Department of Ecology

Date _____

CHARLES R. SHOCKEY, DCBA #914879
U.S. Department of Justice
Environment & Natural Resources Division
Attorney for United States of America

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HALVERSON APPLGATE, P.S.

811 NORTH FOURTH STREET - P.O. Box 22730
YAKIMA, WASHINGTON 98907-2715
PHONE (509) 575-0611

1 STIPULATED AND AGREED:
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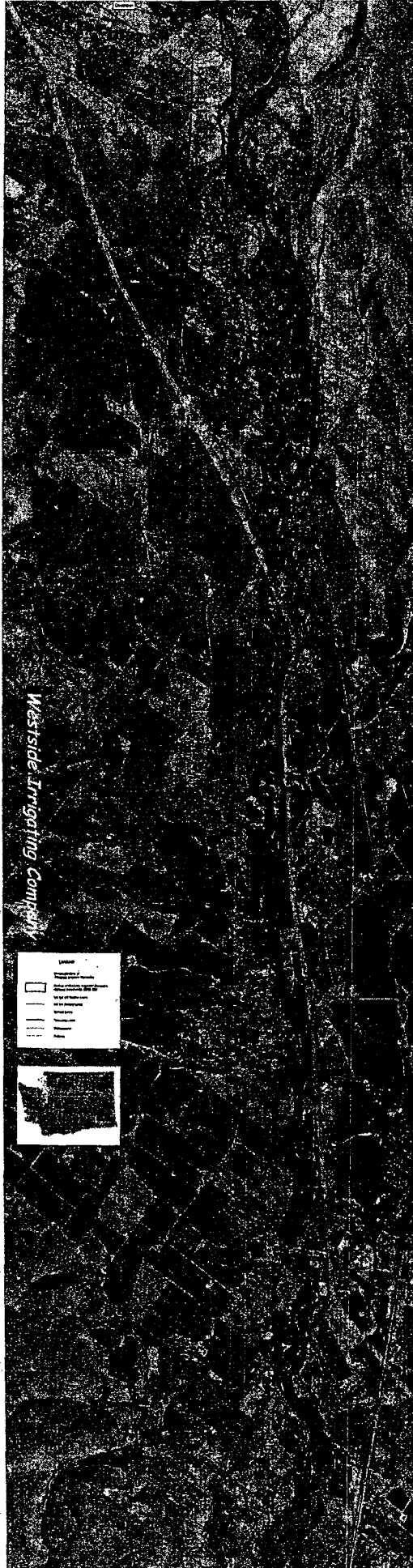
4 Date _____
5 LAWRENCE E. MARTIN WSBA #18743
6 Halverson Applegate P.S.
7 Attorneys for West Side Irrigating Company
8

9 Date _____
10 JEFFREY S. SCHUSTER, WSBA #07398
11 Attorney for the Yakama Nation
12

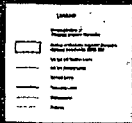
13 Date _____
14 BARBARA A. MARKHAM, WSBA #30234
15 Assistant Attorney General
16 Attorney for Plaintiff-State of Washington
17 Department of Ecology
18

19 Date 5/25/05 _____ Charles R. Shockey
20 CHARLES R. SHOCKEY, DCBA #914879
21 U.S. Department of Justice
22 Environment & Natural Resources Division
23 Attorney for United States of America
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Westside Irrigating Company



WSIC
EXHIBIT DI332
Attachment 1

WESTSIDE IRRIGATING COMPANY CANAL/SERVICE AREA DESCRIPTION

The Westside Irrigating Company diversion and intake works lie within the SE quarter of the SE quarter of Section 33, T19N R17E. The canal extends northeasterly through a fish screen passing through the SW quarter of the SW quarter of Section 34; thence through the NW quarter of the SW quarter, the NE quarter of the SW quarter, the NW quarter of the SE quarter and the SW quarter of the SE quarter of said section before reaching the point of beginning of the service area boundary, said point being 1512.5 feet North 82d 31m West of the SE corner of Section 34. The boundary follows, in a southerly direction, along the canal, entering the NW quarter of the NE quarter of Section 3, T18N R17E. The canal then proceeds in a generally southerly direction through the NE quarter of the NE quarter, the SE quarter of the NE quarter, the NE quarter of the SE quarter and the SE quarter of the SE quarter before entering the SW quarter of the SW quarter of Section 2. The canal then exits Section 2 entering the NW quarter of the NW quarter of Section 11, and the canal then proceeds through the SW quarter of the NW quarter, the SE quarter of the NW quarter, the NE quarter of the SW quarter and passes through a small portion of the NW quarter of the SW quarter before re-entering the NE quarter of the SW quarter and then flowing through the SE quarter of the SW quarter and the SW quarter of the SE quarter before entering the NE quarter of the NW quarter of Section 14. It then flows through the NW quarter of the NE quarter, the SW quarter of the NE quarter, the NW quarter of the SE quarter, the NE quarter of the SE quarter and the SE quarter of the SE quarter before entering the SW quarter of the SW quarter of Section 3. The canal then flows into the NW quarter of the NW quarter of Section 24 and generally southeasterly through the SW quarter of the SW quarter, the SE quarter of the NW quarter, the NE quarter of the SW quarter, the NW quarter of the SE quarter and the SW quarter of the SE quarter of said section before entering the NW quarter of the NE quarter of Section 25. The canal proceeds through the NE quarter of the NE quarter, the SE quarter of the NE quarter and the NE quarter of the SE quarter before entering the SW quarter of the SW quarter of Section 30 of T18N R18E. It then proceeds into the NW quarter of the NW quarter of Section 31, and thence into NE quarter of the NW quarter, the NW quarter of the NE quarter, the SW quarter of the NE quarter and the SE quarter of the NE quarter; and thence into the SW quarter of the NW quarter of Section 32. The canal then proceeds into the NW quarter of the SW quarter, the SW quarter of the SW quarter, the NE quarter of the SW quarter and the SE quarter of the SW quarter, before entering the NE quarter of the NW quarter of Section 5 of T17N R18E. The canal then proceeds through the SW quarter of the NE, the SE quarter of the NE quarter and the NE quarter of the SE quarter of said section; thence it bends through the NW quarter of the SW quarter of Section 4 returning to the SE quarter of the SE quarter of Section 5 before entering the NE quarter of the NE quarter of Section 8. The canal exits Section 8 near the northeastern corner of the SE quarter of the NE quarter of said section, entering the SW quarter of the NW quarter of Section 9 before proceeding South through NW quarter of the SW quarter and

5/2/2005

WSIC
EXHIBIT DI 333 1

Attachment 2

WSIC SERVICE AREA

the SW quarter of the NW quarter, entering NW quarter of the NW quarter of Section 16 extending through the SW quarter of the NW quarter, the SE quarter of the NW quarter, the SW quarter of the NE quarter, the NW quarter of the SE quarter and the NE quarter of the SE quarter before exiting near the corner of the SE quarter of the SE quarter of said section into the SW quarter of the SW quarter of Section 15. The canal proceeds through SE quarter of the SW quarter into the NE quarter of the NW quarter of Section 22, thence through the SE quarter of the NW quarter, the SW quarter of the NE quarter, the NW quarter of the SE quarter and the NE quarter of the SE quarter before entering NW quarter of the SW quarter of Section 23, before bending back into the NE quarter of the SE quarter of Section 22. The service area boundary then proceeds southeastward along the alignment of the canal to the East line of Section 23; thence southward along the East line of said Section to the NW corner of the SW quarter of the SW quarter of Section 23, thence eastward along the North line of the SW quarter of the SW quarter of said Section to the NE corner of the SW quarter of the SW quarter of said Section; thence northward along the East line of the NW quarter of the SW quarter, and of the SW quarter of the NW quarter of said Section, to the NE corner of the SW quarter of the NW quarter of the Section; thence eastward along the North line of the SE quarter of the NW quarter of Section 23, where said line intersects the Fogarty Ditch. The service area boundary then proceeds northward along the alignment of the Fogarty Ditch through the SW quarter of the SW quarter of Section 14 and the South three-quarters of the East half of the East half of Section 15, T17N R18E, to the South line of the NE quarter of the NE quarter of said Section 15. The boundary continues eastward along said South line, to the East line of Section 15; thence northward along said East line, to the NE corner of Section 15, and thence westward along the North line of said Section, to again meet the Fogarty Ditch. The boundary then leaves the Fogarty Ditch, heading northward along the alignment of the Fogarty Ditch, through the SE quarter of Section 10 to the Yakima River at the North line of the NW quarter of the SE quarter of said section.

The service area boundary then extends northward and westward along the Yakima River to the terminus of the Packwood Canal in the SE quarter of the NE quarter of Section 32, T18N R18E. It then proceeds along the right of way alignment of the Packwood Canal, (also known as Ellensburg Power Canal), to a point, 200 feet South of the North line of the SE quarter of the SW quarter of Section 19; thence eastward along a line, 200 feet south of, and parallel to, the North line of the SE quarter of the SW quarter of Section 19 to a point about 105 feet West of the North-South center line of Section 19, and thence northward along a line about 105 feet West of, and parallel to, the North-South center line of Section 19 to a point about 105 feet West of the center of said section. The service area boundary thence proceeds North 44d 11m 27.94s West - 442.8 feet; thence North 43d 25m 37.08s West - 280 feet; thence South 45d 32m 15.64s West - 290 feet; thence North 65d 25m 32.48s West - 913.5 feet; thence North 47d 59m 40.62s West - 131.4 feet; thence North 87d 21m 31.26s West - 870.1 feet, along field boundaries, to the Packwood Canal alignment and thence

WSIC SERVICE AREA

northward along the Packwood Canal, crossing the alignment of the Interstate 90 freeway in the NE of SE of Section 13, T18N R17E. The boundary proceeds northward and westward through the East half of the NE quarter, and then runs westward along the North boundary of Section 13 to a point about 1603 feet East of the SW corner of Section 12; thence North 35d 32m 15.64s West - 255.6 feet; thence North 12d 59m 40.62s West - 99.14 feet; thence North 56d 5m 37.40s West - 141 feet, to the East line of the SW quarter of the SW quarter of Section 12; thence northward, along the East line of the SW quarter of the SW quarter, about 158 feet; thence North 75d 45m 30s West - 446 feet; thence North 41d 24m 37.28s West - 355.5 feet, to the East line of the NW quarter of the SW quarter of the SW quarter; thence, northward along the East line of the NW quarter of the SW quarter of the SW quarter, to a point 50 feet South of the North line of the NW quarter of the SW quarter of the SW quarter; thence, westward along a line 50 feet south, and parallel to the North line of the NW quarter of the SW quarter of the SW quarter, to the West line of Section 12; thence, northward along the West line of Section 12, 894.55 feet; thence South 87d 47m West - 316.7 feet; thence South 68d 57m 44.96s West - 48.97 feet; thence North 27d 20m 59.55s West - 344.4 feet; thence North 50d 4m 46.58s West - 224.6 feet; thence North 22d 11m 25.04s East - 144.3 feet; thence North 82d 38m 17.61s West - 686.7 feet, to the West line of the SE quarter of the NE quarter of Section 11; thence southward, along said West line, to the SW corner of the SE quarter of the NE quarter of Section 11; thence westward, along the East-West centerline of said Section, 565 feet; thence North 15d 30m West - 358 feet, more or less, to the East line of the SW quarter of the SW quarter of the NE quarter of Section 11; thence, North along said line, to the NE corner of the SW quarter of the SW quarter of the NE quarter, thence westward along the North line of said subdivision, to the North-South centerline of Section 11; thence northward along said line, to the NE corner of the SE quarter of the NW quarter of said Section; thence westward 602 feet, along the North line of the NE quarter of the SE quarter of the NW quarter; thence North 37d 46m West - 519 feet; thence North 29d 3m 16.57s West - 126.1 feet; thence North 49d 59m 37.47s West - 448.0 feet; thence North 84d 17m 21.86s West - 184.7 feet; thence North 39d 6m 39.86s West - 235.7 feet; thence North 51d 27m 31.73s West - 292.7 feet; thence North 46d 26m 25.70s West - 203.8 feet; thence North 41d West - 386 feet, entering the SW quarter of the SW quarter of Section 2, T18N R17E.

The service area boundary then bears North 32d 29m 10s West - 1559 feet, making a line 200 feet northeasterly of, and parallel, with the Westside canal, passing into the NE quarter of the SE quarter of Section 3; thence North 9d 18m 35.78s West - 14.70 feet; thence North 0d 17m 29.05s West - 55.23 feet; thence North 15d 4m 41.23s East - 47.71 feet; thence North 11d 48m 10.80s East - 38.78 feet; thence North 7d 43m 06.76s East - 115.1 feet; thence North 13d 23m 32.99s East - 252.4 feet; thence North 29d 53m 17.90s East - 51.85 feet; thence North 30d 30m 36.85s East - 131.3 feet; thence North 27d 3m 21.49s East - 106.6 feet; thence North 14d

WSIC SERVICE AREA

32m 40.38s East - 56.37 feet; thence North 34d 12m 56.52s East - 61.10 feet; thence North 35d 28m 11.53s East - 198.5 feet; thence North 7d 7m 30.05s East - 130.3 feet; thence North 2d West - 44.46 feet; thence northwesterly along the West right of way of the Thorpe Highway to its intersection with the West right of way of the Burlington Northern Railway; thence along said right of way 872 feet; thence, easterly 92 feet, more or less, to the point of beginning, within the SE quarter of the SW quarter of the SE quarter of Section 34, T19N R17E.

There is also an island of service area within the North half of the NW quarter of the NE quarter of Section 11, and within the SW quarter of the SE quarter, the NW quarter of the SE quarter, the SE quarter of the SW quarter, the NE quarter of the SW quarter and the NW quarter of the SW quarter of Section 2 both within T18N R17E, described as follows:

Beginning at a point 651.9 feet South 72d 25m 30s East of the West quarter corner of said Section 2; thence North 81d 15m 13.81s East - 103.3 feet; thence East - 102.1 feet; thence South 29d 28m 33.20s East - 207.5 feet; thence South 47d 43m 34.71s East - 116.8 feet; thence South 57d 15m 53.18s East - 130.7 feet; thence South 57d 59m 40.62s East - 74.12 feet; thence South 29d 44m 41.57s East - 63.34 feet; thence South 81d 52m 11.63s East - 55.55 feet; thence South 56d 18m 35.75s East - 84.98 feet; thence South 18d 26m 58.15s East - 99.38 feet; thence South 48d 48m 50.66s East - 167.0 feet; thence North 85d 14m 10.88s East - 94.61 feet; thence North 53d 7m 48.36s East - 78.56 feet; thence North 73d 18m 27.20s East - 82.02 feet; thence North 45d 0m 0.000s East - 77.77 feet; thence North 26d 33m 54.18s West - 52.70 feet; thence North 78d 41m 24.24s West - 40.06 feet; thence North 29d 44m 41.57s West - 63.34 feet; thence North - 54.99 feet; thence North 56d 18m 35.75s East - 56.65 feet; thence North 78d 41m 24.24s East - 80.12 feet; thence South 40d 36m 46.60s East - 72.43 feet; thence South 23d 11m 54.92s East - 59.83 feet; thence South 21d 48m 50.74s West - 42.31 feet; thence South 18d 26m 58.15s West - 24.84 feet; thence South 30d 57m 49.52s East - 45.81 feet; thence South 86d 49m 12.61s East - 141.6 feet; thence North 79d 6m 52.10s East - 208.0 feet; thence North 73d 18m 27.20s East - 164.0 feet; thence North 72d 28m 27.95s East - 156.5 feet; thence North 61d 55m 39.04s East - 133.5 feet; thence South 69d 26m 38.23s East - 67.12 feet; thence South 35d 13m 33.34s East - 163.4 feet; thence South 59d 32m 40.38s East - 154.9 feet; thence South 63d 26m 58.15s East - 210.8 feet; thence South 56d 18m 35.75s East - 226.6 feet; thence South 44d 59m 59.99s East - 133.3 feet; thence South 5d 26m 25.19s East - 331.4 feet; thence South 3d 21m 59.25s East - 267.5 feet; thence South 1d 25m 55.54s East - 314.3 feet; thence South 2d 20m 14.30s East - 385.3 feet; thence South 9d 9m 44.44s East - 246.7 feet; thence South 29d 21m 27.91s East - 144.2 feet; thence South 46d 32m 53.36s East - 205.6 feet; thence South 47d 29m 22.39s East - 127.9 feet; thence South - 125.7 feet; thence North 63d 26m 5.815s West - 35.13 feet; thence North 59d 2m 10.47s West - 137.4 feet; thence West - 62.85 feet; thence South 79d 22m 49.24s West - 127.9 feet; thence

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South 86d 25m 25.19s West - 125.9 feet; thence North 78d 41m 24.24s West - 120.1 feet; thence North 66d 2m 15.03s West - 77.38 feet; thence North 79d 41m 42.55s West - 87.84 feet; thence North 57d 15m 53.18s West - 130.7 feet, to an intersection with the northeasterly right of way of the Burlington Northwestern railway; thence in a northwesterly direction along said right of way to the point of beginning.