

## WATER TRANSFER WORKING GROUP PROJECT DESCRIPTION

APPLICATION NO./COURT CLAIM NO.		
APPLICANT NAME <b>Suncadia, LLC Kittitas Reclamation District</b>	CONTACT NAME <b>Jamie M. Morin John Gilreath</b>	TELEPHONE NO. <b>(206) 493-2324</b>
WATER RIGHT HOLDER'S NAME (if different) <b>Diversion: Suncadia, LLC / Court Claim 01724 (Mainstem Yakima River) Mitigation: Suncadia, LLC / Court Claim 02255 (Teanaway) Suncadia, LLC / Court Claim 00755 (Big Creek) Suncadia, LLC / Court Claim 01685 (Swauk) Suncadia, LLC / Court Claim 00648 (First Creek)</b>		EMAIL <a href="mailto:morin@mentorlaw.com">morin@mentorlaw.com</a> <a href="mailto:johngilreath@elltel.net">johngilreath@elltel.net</a>

DATE OF APPLICATION <b>March 25, 2005, <u>revised April 6, 2005</u></b>	PRIORITY DATE <b>Various</b>
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WATER SOURCE <b>Yakima River</b>	CROP <b>Various</b>
INSTANTANEOUS QUANTITY: <b><u>8.812</u> cfs</b>	ANNUAL QUANTITY: <b>Up to <u>1,200</u> <del>1,600</del> acre-feet diversion / 800 acre-feet consumptive (assuming KRD irrigation efficiency at <u>3350%</u>)*</b>
PERIOD OF USE: <b><u>Beginning on date of Reclamation Storage Control for 2005, Ending on date when KRD ceases to receive water under its Reclamation Contract. April 1 to October 15</u></b>	
PLACE OF USE: <b>Kittitas Reclamation District Service Area</b>	PURPOSE OF USE: <b>Irrigation</b>
IRRIGATION METHOD:	

CONSUMPTIVE USE CALCULATION: <b>Department of Ecology approved Reports of Examination, Available Upon Request</b>
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NARRATIVE DESCRIPTION OF PROJECT: <b>See Attached, Memo from Jamie M. Morin dated March 30, 2005 and Memo from Andy Kindig dated March 31, 2005.</b>
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**\*KRD Irrigation Efficiency: According to KRD's Water Conservation Plan, KRD loses approximately 33 percent of its water to physical losses in its conveyance system. Of these losses, 27.5 percent are attributed to conveyance losses and 5.5 percent to operational spills, Kittitas Reclamation District Water Conservation Plan, p. 3-8 (Draft Dec. 1998).**

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

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.,  
Defendants.

**No. 77-2-01484-5**

**NOTE FOR MOTION  
April 14, 2005**

**MOTION TO SHORTEN TIME  
AND  
PETITION FOR ORDER  
PENDENTE LITE RE:  
SUNCDIA 2005 DROUGHT  
TRANSFER TO KRD**

TO: CLERK OF THE COURT;  
AND TO: All Parties and Attorneys of Record.

PLEASE TAKE NOTICE that this cause will be set for hearing in Yakima  
County Superior Court on the petition of Suncadia, LLC (formerly  
MountainStar Resort Development, LLC) and Kittitas Reclamation District.

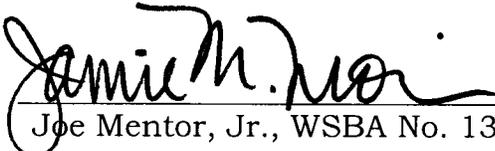
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DATE: Thursday, April 14, 2005  
TIME: 9:30 a.m.  
JUDGE: The Honorable Walter A. Stauffacher  
MOTION: Petition for Order *Pendente Lite* Re: Suncadia 2005 Drought  
Transfer to KR.D.

If you (or your attorney on your behalf) do not appear in court at the time shown above, the relief requested in this petition may be granted by the court in your absence.

DATED this 7<sup>th</sup> day of March, 2005

MENTOR LAW GROUP, PLLC

  
\_\_\_\_\_  
Joe Mentor, Jr., WSBA No. 13053  
Jamie M. Morin, WSBA No. 29815  
Attorneys for MountainStar Resort  
Development, LLC  
(206) 493-2300

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
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IN THE MATTER OF THE  
DETERMINATION OF THE RIGHTS TO  
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BASIN, IN ACCORDANCE WITH THE  
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STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,

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JAMES J. ACQUAVELLA, ET AL.,  
  
Defendants.

**NO. 77-2-01484-5**

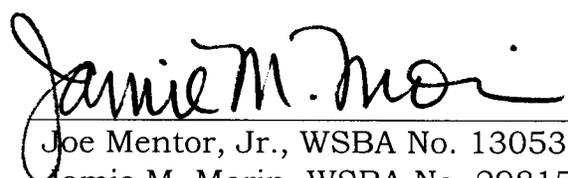
**MOTION FOR ORDER SHORTENING  
TIME FOR HEARING ON PETITION  
FOR ORDER *PENDENTE LITE* RE:  
SUNCADIA 2005 DROUGHT  
TRANSFER TO KRD**

Co-Petitioners MountainStar Resort Development, LLC, and Kittitas Reclamation District (KRD) requests this Court for an Order Shortening Time, to allow the Petition for Order *Pendente Lite* re Suncadia 2005 Drought Transfer to KRD, to be heard at the April 14, 2005, Oversight Hearing. The Petition for Order *Pendente Lite* is being filed to allow MountainStar's to share its surplus water with the patrons of KRD during the 2005 irrigation season.

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Dated this 16<sup>th</sup> day of February 2005.

MENTOR LAW GROUP, PLLC



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Joe Mentor, Jr., WSBA No. 13053  
Jamie M. Morin, WSBA No. 29815  
Attorneys for Claimant  
MountainStar Resort Development, LLC  
(206) 493-2300

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

10 IN THE MATTER OF THE  
11 DETERMINATION OF THE RIGHTS TO  
12 THE USE OF THE SURFACE WATERS  
13 OF THE YAKIMA RIVER DRAINAGE  
14 BASIN, IN ACCORDANCE WITH THE  
15 PROVISIONS OF CHAPTER 90.03,  
16 REVISED CODE OF WASHINGTON  
17 STATE OF WASHINGTON  
18 DEPARTMENT OF ECOLOGY,  
19  
20 Plaintiff,  
21  
22 V.  
23 JAMES J. ACQUAVELLA, ET AL.,  
24  
25 Defendants.

**NO. 77-2-01484-5**

**ORDER SHORTENING TIME FOR  
HEARING ON PETITION FOR  
ORDER *PENDENTE LITE* RE:  
SUNCADIA 2005 DROUGHT  
TRANSFER TO KRD**

21 This ex parte matter came before the Court on motion of co-petitioners  
22 MountainStar Resort Development, LLC and Kittitas Reclamation District,  
23 requesting this Court for an Order Shortening Time, to allow the Petition for  
24 Order *Pendente Lite* re: Suncadia 2005 Drought Transfer to KRD, to be heard at  
25 the April 14, 2005, Oversight Hearing. The Court, having considered the  
26 motion and the basis therefore, hereby orders that this matter shall be heard at  
9:30 a.m. on April 14, 2005, or as soon thereafter as this matter may be called.

ORDER GRANTING MOTION TO  
SHORTEN TIME

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Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Judge Walter A. Stauffacher

Presented by:

MENTOR LAW GROUP, PLLC

\_\_\_\_\_  
Jamie M. Morin, WSBA No. 29815  
Attorneys for MountainStar Resort  
Development, LLC  
(206) 493-2300

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
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.,  
  
Defendants.

**NO. 77-2-01484-5**  
  
**PETITION FOR ORDER  
PENDENTE LITE RE: SUNCADIA  
2005 DROUGHT TRANSFER TO  
KRD**

Co-Petitioners Suncadia, LLC (formerly MountainStar Resort  
Development, LLC), and Kittitas Reclamation District (KRD) request the Court,  
pursuant to Pretrial Order No. 6, to issue an Order *Pendente Lite* re: Suncadia  
2005 Drought Transfer to KRD, to allow KRD to use a portion of Suncadia's  
water rights during the 2005 irrigation season. In relation thereto, Petitioners  
state the following:

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**1. Identity of Petitioners**

Suncadia Resort Development, LLC, is a Delaware limited liability company, registered to do business in Washington. Suncadia is developing the Suncadia Resort (formerly known as the Suncadia Master Planned Resort). Suncadia has acquired surface water rights on the Mainstem Yakima River and various upper Yakima River tributaries. The Washington Department of Ecology (Ecology) has approved a change in use of Suncadia’s Mainstem Yakima River water rights to allow the use of those rights on the Suncadia Resort. Ecology has approved a change in use of the Suncadia’s tributary water rights to instream flow purposes in the tributaries of origin, and—subject to conveyance to the Trust Water Rights Program—as part of Total Water Supply Available (TWSA) in the Mainstem Yakima River to mitigate impacts from the use of water by the Suncadia Resort. This Court entered an Order *Pendente Lite* on February 10, 2005, conveying Suncadia’s tributary rights to the Trust Water Rights Program.

Kittitas Reclamation District (KRD) is an irrigation district formed under Chapter 87.03 RCW. KRD provides irrigation water to approximately 59,000 acres in Kittitas County.

**2. Affected Subbasins**

This Petition relates to all Major Claimants to this Adjudication and the Yakama Nation.

**3. Relief Requested**

Petitioners request the Court examine this Petition and supporting declaration, and examine any additional evidence presented at a hearing before the Court on Thursday, April 14, 2005, at 9:30 a.m., or as soon thereafter as this matter may be called;

1 That the Court issue an order authorizing the change in point of  
2 diversion and place of use of Suncadia's untransferred Pautzke water rights  
3 allowing those rights to be diverted by KRD during the 2005 irrigation season;  
4 and

5 That the Court modify its earlier issued orders to allow the use of  
6 Suncadia's tributary water rights (conveyed to State Trust Water Program by  
7 Order of Court, Feb. 10, 2005) and new Mainstem water rights (conveyed to the  
8 State Trust Water Program by Order of the Court Jan. 13, 2005), to allow  
9 surplus mitigation under those transfers to mitigate for consumptive uses by  
10 KRD under the transferred Pautzke water rights during the 2005 irrigation  
11 season.

12 Petitioner requests the Court's Order –

13 (1) recognize the same quantities, priorities, and season of use for  
14 Suncadia's untransferred Pautzke Yakima River water rights as  
15 confirmed under Court Claim 01724 in the Conditional Final Order for  
16 Subbasin No. 7 (Reecer) (October 25, 2001) and as subsequently  
17 authorized for transfer by Ecology Reports of Examination for Change  
18 No. CS4-YRB07CC01724@1, CS4-YRB07CC01724@2, CS4-YRB07CC01724@3;  
19 CS4-01724(A)CTCL, CS4-01724(B)CTCL, and CS4-01724(C)CTCL;

20 (2) authorize the transfer of 8.83 cfs, not to exceed 1,200 AF, for  
21 use by KRD under Suncadia's untransferred Pautzke Yakima River water  
22 rights during the 2005 irrigation season, to be used for irrigation within  
23 the KRD service area, from KRD's the authorized diversion point on the  
24 Yakima River;

25 (3) authorize a season of use under this transfer starting on the  
26 date the Bureau of Reclamation (Bureau) implements storage control  
within the Yakima basin for purpose of releasing water and ending on the  
day KRD shuts off for the 2005 irrigation season; and

1 (4) amend this Court's previously entered Orders *Pendente Lite* Re:  
2 Water Rights Claim No. 00255 Subbasin No. 3 (Teanaway); No. 00755  
3 Subbasin No. 2 (Easton); and Nos. 00648 and 01685 Subbasin No. 4  
4 (Swauk) (entered Jan. 14, 2005); and Nos. 00908 (Lamb), 05259  
5 (Anderson), and 00626 (Anderson) Subbasin No. 7 (Reecer) (entered Feb.  
6 10, 2005), to allow Suncadia's water rights previously transferred to the  
7 Trust Water Program, in surplus of Suncadia's needs, to alleviate third-  
8 party impacts on the Yakima River that otherwise would result from  
9 KRD's use of water under the transferred Pautzke rights.

10 Petitioner requests that the Court's Order remain in effect for the 2005  
11 irrigation season, or until further order of the Court.

12 **4. Statement of Reasons for Petition**

13 KRD expects to receive significantly less water during the 2005 irrigation  
14 season than their federal water contract entitlements allow. Consequently,  
15 KRD is seeking to acquire additional water supplies on a temporary basis.  
16 Suncadia anticipates water rights in surplus of its 2005 water needs, in part  
17 due to delaying construction of one of its golf courses during this drought year.  
18 Suncadia is interested in sharing its surplus, to allow a portion of its water  
19 rights to be used by KRD during the 2005 irrigation season.

20 Suncadia has a water Monitoring and Measurement Plan in place,  
21 approved by Ecology and the Bureau, which determines the water available  
22 that Suncadia can draw from the river each month throughout the year. Using  
23 the actual flow data from 2001 as a guide for this year and a reasonable  
24 estimate of Suncadia's 2005 demands shows a consumptive surplus of about  
25 800 AF. Suncadia proposes to transfer some or all of this surplus to KRD,  
26 together with diversion authority under Suncadia's untransferred Pautzke

1 Yakima River water rights. Assuming KRD's efficiency at 33%, Suncadia could  
2 provide as much as 1,200 AF of water KRD could divert this season.

3 Under this transfer, Suncadia will determine its surpluses on a bi-weekly  
4 basis and report them to KRD. For that same period, KRD would credit an  
5 equal volume of its diversion to the Suncadia-transferred rights, thereby  
6 extending the period it could draw from Reclamation storage under its  
7 contract.

8 In order to enact this proposal, Suncadia is petitioning the Court to enter  
9 an order authorizing diversion of a portion of its Pautzke water rights under  
10 Court Claim 01724, the diversion and use thereof to be mitigated by the water  
11 rights Suncadia previously conveyed to the Trust Water Program under Court  
12 Claims Nos. 00255 Subbasin No. 3 (Teaway); 00755 Subbasin No. 2  
13 (Easton); 00648 and 01685 Subbasin No. 4 (Swauk); and 00908, 05259, and  
14 00626 Subbasin No. 7 (Reecer).

15 The three Pautzke Water Rights originally acquired by Suncadia  
16 authorized the diversion of up to 23.39 cfs of water during the irrigation season  
17 of April 1 to October 15, not to exceed 4,401.20 AF for irrigation and  
18 stockwater during the irrigation season, and 381.88 AF for stockwater outside  
19 of irrigation season. At the time of its Ecology approved water right transfers,  
20 Suncadia's development proposal required the transfer of only 2,100.7 AF  
21 during the irrigation season, and 871.3 AF outside the irrigation season. The  
22 remaining, untransferred portion of Suncadia's Pautzke water right is 1,811.08  
23 AF, with a maximum diversion rate of 8.83 cfs. **See Exhibit A, attached**  
24 **hereto and incorporated by reference.**

25 Suncadia petitions the Court to change the previously untransferred  
26 Pautzke water rights for the 2005 irrigation season only, to allow the place of  
use and point of diversion to be that the Court has previously confirmed for

1 KRD. Suncadia requests that the Court authorize the diversion of up to 8.83  
2 cfs, not to exceed 1,200 AF or what lesser amount Suncadia determines to be  
3 in surplus under its Monitoring and Management Plan, for use starting with  
4 Reclamation Storage Control and ending when KRD shuts off for the 2005  
5 irrigation season.

6 To avoid what otherwise would be an impact to senior water users within  
7 the Yakima Basin during this irrigation season from KRD's diversion of the  
8 remaining Pautzke right, Suncadia petitions the Court to amend its previously  
9 entered Orders Pendente Lite Re: Water Rights Claim No. 00255 Subbasin No.  
10 3 (Teanaway); No. 00755 Subbasin No. 2 (Easton); and Nos. 00648 and 01685  
11 Subbasin No. 4 (Swauk) (entered Jan. 14, 2005); and Nos. 00908 (Lamb),  
12 05259 (Anderson), and 00626 (Anderson) Subbasin No. 7 (Reecer) (entered Feb.  
13 10, 2005) to the use of these waters as part of TWSA to mitigate KRD's  
14 diversion as well as on and offside impacts from Suncadia's water use.

#### 15 **5. Identity of Affected Parties**

16 This Petition potentially affects the following parties: all Major Claimants,  
17 the Yakama Nation, the Washington Department of Fish and Wildlife, and the  
18 Washington Department of Ecology.

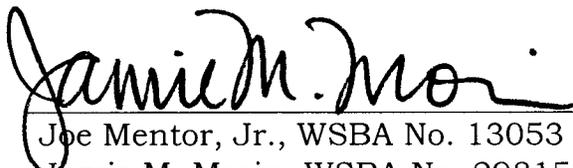
#### 19 **6. Certification of Service**

20 Petitioners certify that a copy of this Petition and exhibits, a proposed  
21 Order *Pendente Lite*, and a Notice of Hearing of the Petition have been sent by  
22 Federal Express to the Washington Department of Ecology. Petitioner sent a  
23 copy of this Petition and exhibits by email to the Major Claimants and  
24 Attorneys of Record.  
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Dated this 7<sup>th</sup> day of April 2005.

MENTOR LAW GROUP, PLLC



Joe Mentor, Jr., WSBA No. 13053  
Jamie M. Morin, WSBA No. 29815  
Attorneys for Claimant  
Suncadia, LLC (formerly MountainStar  
Resort Development, LLC)  
(206) 493-2300

EXHIBIT A	Conditional Final Order No. 7 (Reecer)		Subbasin		Portion Approved for Transfer to Suncadia by ECY		Untransferred Portion	
	Annual Quantity (AF)	Instantaneous Quantity (CFS)	Annual Quantity (AF)	Instantaneous Quantity (CFS)	Annual Quantity (AF)	Instantaneous Quantity (CFS)	Annual Quantity (AF)	Instantaneous Quantity (CFS)
<b>RIVERSIDE RANCH (SOUTH PORTION) WATER RIGHT (Priority Date October 30, 1884)</b>								
CS4-YRB07CC01724@2 & CS4-01724(B)CTCL	967.2 (Apr 1-Oct 15)	3.9 (Apr 1-Oct 15)	659.94 (Apr 1-Oct 15)	2.81 (Apr 1-Oct 15)	307.26	1.09		
<b>HUNDLEY RANCH WATER RIGHT (Priority Date October 30, 1884)</b>								
CS4-YRB07CC01724@3 & CS4-01724(C)CTCL	1,609.00 (Apr 1-Oct 15) 6.88 (Oct 16-Mar 31)	6.59 (Apr 1-Oct 15) 0.29 (Oct 16-Mar 31)	982.42 (Apr 1-Oct 15) 39.74 (Oct 16-Mar 31)	4.43 (Apr 1-Oct 15) 1.25 (Oct 16-Mar 31)	593.72	1.20		
<b>RIVERSIDE RANCH (NORTH PORTION) WATER RIGHT (Priority Date May 6, 1893)</b>								
CS4-YRB07CC01724@1 & CS4-01724(A)CTCL	1,825.00 (Apr 1-Oct 15) 375 (Oct 16-Mar 31)	12.9 (Apr 1-Oct 15) 1.14 (Oct 16-Mar 31)	458.34 (Apr 1-Oct 15) 831.56 (Oct 16-Mar 31)	3.86 (Apr 1-Oct 15) 3.64 (Oct 16-Mar 31)	910.10	6.54		
<b>TOTAL PAUTZKE WATER RIGHTS</b>								
	4,401.20 (Apr 1-Oct 15) 381.88 (Oct 16-Mar 31)	23.39 (Apr 1-Oct 15) 1.43 (Oct 16-Mar 31)	2,100.70 (Apr 1-Oct 15) 871.3 (Oct 16-Mar 31)	11.10 (Apr 1-Oct 15) 4.89 (Oct 16-Mar 31)	1,811.08	8.83		

**Mentor Law Group, PLLC**  
1100 Market Place Tower  
2025 First Avenue  
Seattle, Washington 98121  
TEL 206.493.2300 FAX 206.493.2310

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JAMES J. ACQUAVELLA, ET AL.,  
  
Defendants.

**NO. 77-2-01484-5**  
  
**ORDER PENDENTE LITE RE:**  
**SUNCADIA 2005 DROUGHT**  
**TRANSFER TO KRD**

This matter is before the Court on the Petition by Suncadia, LLC (formerly MountainStar Resort Development, LLC) (Suncadia), and Kittitas Reclamation District (KRD), for an Order *Pendente Lite*. The Court having heard from all interested parties and being fully advised; now, therefore,

IT IS ORDERED, ADJUDGED, AND DECREED for the 2005 irrigation season, or until further order of the Court, as follows:

1 (1) The Court recognizes the same quantities, priorities, and season of  
2 use for Suncadia's untransferred Pautzke Yakima River water rights as  
3 confirmed under Court Claim 01724 in the Conditional Final Order for  
4 Subbasin No. 7 (Reecer) (October 25, 2001) and as subsequently authorized for  
5 transfer by Ecology Reports of Examination for Change No.  
6 CS4-YRB07CC01724@1, CS4-YRB07CC01724@2, CS4-YRB07CC01724@3; CS4-  
7 01724(A)CTCL, CS4-01724(B)CTCL, and CS4-01724(C)CTCL.

8 (2) The Court authorizes a temporary change to the rights confirmed  
9 under Court Claim 01724 to authorize the transfer of 8.83 cfs, not to exceed  
10 1,200 AF, for use by KRD under Suncadia's untransferred Pautzke Yakima  
11 River water rights during the 2005 irrigation season, to be used for irrigation  
12 within the KRD service area, from KRD's the authorized diversion point on the  
13 Yakima River.

14 (3) The Court authorizes the season of use under this temporary change  
15 starting on the date the Bureau of Reclamation implements storage control  
16 within the Yakima basin for purpose of releasing water and ending on the day  
17 KRD shuts off for the 2005 irrigation season.

18 (4) The Orders *Pendente Lite* Re: Water Rights Claims No. 02255  
19 Subbasin No. 3 (Teanaway); No. 00755 Subbasin No. 2 (Easton); and Nos.  
20 00648 and 01685 Subbasin No. 4 (Swauk) (entered Feb. 10, 2005); and Nos.  
21 00908 (Lamb), 05259 (Anderson), and 00626 (Anderson) Subbasin No. 7  
22 (Reecer) (entered Jan. 13, 2005) are hereby amended to designate these water  
23 rights as part of the Total Water Supply Available (TWSA) for irrigation and  
24 other uses within the Yakima River to be available to alleviate third-party  
25 impacts on the Yakima River that otherwise would result from Suncadia and  
26 KRD diversions.

(5) This approval applies only to the 2005 irrigation season. This  
approval does not set a precedent for water transfers in future years of on any

1 issue including, but not limited to, the validity and extent of the water rights at  
2 issue. Approval shall not be used as evidence of, nor waive any argument  
3 concerning, future proposed permanent or temporary transfers under either  
4 applicable federal law or contract or state law, including RCW 90.03.380.

5  
6 Entered this \_\_\_\_ day of April 2005.

7  
8 WALTER A. STAUFFACHER, JUDGE

9 Presented by:

10 MENTOR LAW GROUP, PLLC

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13  
14 Joe Mentor, Jr., WSBA No. 13053  
15 Jamie M. Morin, WSBA No. 29815  
16 Attorneys for Claimant  
17 Suncadia, LLC (formerly MountainStar  
18 Resort Development, LLC)  
19 (206) 493-2300