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Proposed Findings of Fact

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. BARBARA J. ANDERSON, et al., Defendants.	CIVIL NO. 3643 PROPOSED FINDINGS OF FACT

Plaintiff United States of America, through its attorneys, hereby submits the following proposed findings of fact.

Parties

1. Plaintiff is the United States of America and the jurisdiction of the Court was invoked under Title 28, Section 1345, United States Code.

2. The Spokane Tribe of Indians, as authorized by the Court in an appropriate order, intervened in this case as a plaintiff-in-intervention.

3. Defendants include the State of Washington, which was represented by its Department of Ecology and Department of Natural Resources and all other landowners within the Chamokane Creek basin who might have some claim to the waters of Chamokane Creek, its tributaries and its groundwater basin.

Spokane Tribe and Reservation

4. The Spokane Indian Reservation is located approximately 40 miles northwest of the City of Spokane, Washington in the eastern portion of that state. The Spokane Tribe of Indians is the present day tribal entity which, with respect to the matters that are the subject of this litigation, is the political successor in interest to the tribe which was a party to the Agreement of August 18, 1877. It is recognized by the United States as a currently functioning Indian Tribe maintaining a tribal government. Its membership is determined in accordance with its Constitution and Bylaws as approved by the Secretary of the Interior. There are currently approximately 1,700 enrolled members of the Spokane Tribe, 600 to 700 of whom reside on the reservation. (Tr. 704-705, 720; PE-1)

5. Since time immemorial, the Spokanes have used and occupied most of what is now Northeastern Washington State. They are known to have fished as far north on the Columbia River as Kettle Falls and as far south as the Snake River. Except for their annual treks to what is now eastern Montana in search of buffalo, they seldom ventured west of the Columbia or east of Spokane Falls. (Tr. 663, 667, 694, 702)

6. The Spokane Tribe was made up historically of three bands: the Upper, Middle and Lower bands. Each of these bands tended to localize their activities in one certain area although they utilized the entire tribal area as necessary in their food gathering. The Upper band lived near the present day site of Spokane, Washington. The Middle Spokanes resided around the confluence of the Spokane and Little Spokane Rivers. The Lower band lived near the confluence of the Columbia River and the

Spokane River on land which is now the Spokane Indian Reservation. (Tr. 659-661, 665, 670)

7. The major food sources of the Spokane Indians were the wild fish, animal and vegetative resources of the area. While the tribal members attempted to vary their diet by gathering such diverse food as deer, buffalo, camas root and bitterroots, fish remained their main item of subsistence. The various waterways which flowed through the area occupied by the tribe, including the Columbia, Spokane and Little Spokane Rivers and Chamokane Creek provided an abundant supply of several varieties of fish. Among the types of fish found in the area were salmon and steelhead trout (which migrated from the Pacific Ocean, up the Columbia River to the upper reaches of the Columbia's tributaries to spawn) and native fresh water fish including trout. The areas chosen by the bands as their more or less permanent sites of residence were chosen primarily because of their proximity to excellent fishing spots. The Upper Spokanes lived near Spokane Falls because of the fact that the salmon and steelhead couldn't ascend the falls and were forced to congregate in pools below the falls making this area a prime one for fishing. The Middle Spokanes chose the confluence of the Spokane and Little Spokane Rivers because that too was a major fishing spot. The Lower Spokanes lived from the confluence of the Columbia and Spokane Rivers to Chamokane Creek for the same reason. There was generally good fishing all along the Spokane River to Chamokane Creek from its mouth upstream. (Tr. 465, 661-662, 665, 667, 674-675, 685, 695, 809; PE-84, p. 8-9)

8. The United States claimed the area now embraced within the State of Washington by discovery and settlement and by the treaty extinguishment of conflicting claims of Spain (Treaty of February 22, 1819, 8 Stat. 252), Russia (Convention of April 17,

1824, 8 Stat. 302), and Great Britain (Treaty of June 15, 1846, 9 Stat. 869). By the Act of August 14, 1848, 9 Stat. 323, the United States established the Oregon Territory and provided that nothing contained in said Act "shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians . . . ." By the mid-1850s, the heavy influx of white settlers into what is now the State of Washington was causing the United States great concern over their safety. As a result, Isaac Stevens, the first Governor and Superintendent of Indian Affairs of the Washington Territory was directed to negotiate treaties with the various tribes under his jurisdiction with the purpose of extinguishing Indian claims to the land in Washington Territory, to establish reservations for the Indians and to provide for peaceful and compatible coexistence of Indians and non-Indians in the area. The United States was concerned with forestalling friction between Indians and settlers and between settlers and the government. Governor Stevens proceeded with his mission and between 1854 and 1856 negotiated treaties with many of the Tribes in what is now Washington, Oregon, Idaho and Montana. Each of those treaties provides for the cession of land to the United States, a reservation of certain land for the Indians and a guarantee of certain rights, among them "[t]he right of taking fish, at all usual and accustomed grounds and stations . . . ." See, e.g. 10 Stat. 1132, 12 Stat. 927 etc.

In 1855, Governor Stevens journeyed to what is now Montana to treat with the Blackfeet. It was his stated intention to meet with the Colvilles, Spokanes and Coeur d'Alenes on his return trip. Having completed negotiating a treaty with the Blackfeet, however, Stevens received word that a major Indian war

had begun in the western portion of the Oregon and Washington territories and he deemed it advisable to return to the Puget Sound area immediately. As a result, the Spokanes did not receive the opportunity to negotiate for a "Stevens treaty" with its specific guarantee of Indian rights which included the fishing right. (PE-50)

9. In 1877, certain Pacific Northwest Indian Tribes were again at war with the United States and wanted the bands of the Spokane Tribe to join them. In order to forestall such a move, the Commissioner of Indian Affairs directed Colonel E. C. Watkins, an Indian Inspector in charge of all agencies in the Washington Territory, to give his attention to gathering the Indians upon permanent reservations. To this end, Watkins arranged to meet with some of the tribes at Spokane Falls in August, 1877. The council lasted from August 16 to August 18, 1877, and was attended by the Lower Spokanes, Chief Garry of the Upper Spokanes and representatives of several other tribes. The negotiations were cordial with the representatives of the United States stressing the need for peace and for the Indians to settle down on a reservation and the Indians emphasizing that they wanted to remain in their native areas where they would be able to continue to fish while they learned to farm. An agreement was entered into between the United States and the Lower Spokanes on August 18, 1877. Under the terms of that agreement, the Spokanes agreed to accept a reservation described as follows: "Beginning at the source of the Chamokan (sic) Creek in Washington Territory thence down said creek to the Spokane River, thence down said river to the Columbia River, thence up the Columbia River to the mouth of the Nimchin Creek, thence easterly to the place of beginning." The Indians further agreed "to go upon the same by the first of November next, with the view of establishing our permanent homes thereon and

engaging in agricultural pursuits." On August 23, 1877, Watkins reported the agreement to the Commissioner of Indian Affairs and on November 26, 1877, he reported that he had been relocating the Indians on the reservation. (Tr. 669-670, 686; PE-57; PE-63)

10. It is evident from the records which were kept of the council proceedings, from the correspondence concerning the negotiations and from what is generally known of the history of that era, that during the treaty negotiations, a primary concern of the Indians whose way of life was so heavily dependent upon the harvesting of fish, was that they be allowed to remain near their usual and accustomed fishing places. It was the intention of the United States Government, in negotiating the Agreement of August 18, 1877, to make the Spokane Indians agriculturalists, although not to restrict them to that, to diversify Indian economy, to teach western skills and trades to the Indians and to accomplish a transition of the Indians into western culture. There was no intent, however, to prevent the Indians from continuing to gather fish as their main food item. In fact, the Indians were encouraged to continue their fishing so that the United States would not have to assume the financial burden of feeding the Indians while they learned to be farmers. The site of the Spokane Indian Reservation was selected, therefore, as a permanent home for the Spokane Indians because it had been their home since time immemorial, and because it contained plentiful fisheries to sustain the Indians while they developed their land and water agriculturally. This combination of fish, water and land was essential to their future.

11. In 1880, the concern of the Federal Government was focused on getting formal approval for the then existing Spokane Indian Reservation and coming to some sort of an agreement with the Middle and Upper Spokanes concerning where they would be

located. By an order dated September 3, 1880, Brigadier General Howard directed the Spokane Reservation be protected against settlement until surveyed or until he received instructions to the contrary. In his order, General Howard noted that Watkins had promised the Spokanes an exclusive reservation and that the Indians were disturbed by attempts of whites to move on to the reservation. General Howard's action was discussed in a letter dated November 3, 1880, from William J. Pollock, Indian Inspector, to the Secretary of the Interior. Pollock noted the dependence of the Spokanes generally on fishing, the proximity of the Spokane Reservation to the good fishing spots and recommended that the reservation be enlarged so that the rest of the Spokanes could live there also. During the next year, there were several exchanges of correspondence between government officials aimed at formalizing the establishment of the Spokane Reservation. These efforts were eventually successful and on January 18, 1881, President Rutherford B. Hayes signed an Executive order which set aside and reserved for the use of the Spokane Indians the following described area:

> Commencing at a point where Chemakane (sic) Creek crosses the forty-eighth parallel of latitude; thence down the east bank of said creek to where it enters the Spokane River; thence across said Spokane River westwardly along the southern bank thereof to a point where it enters the Columbia River; thence across the Columbia River, northwardly along its western bank to a point where said river crosses the said forty-eighth parallel of latitude; thence east along said parallel to the place of beginning.

(Tr. 27-28; PE-52; PE-53; PE-54; PE-56; PE-3-1-74-17)

12. By letter dated July 27, 1886, John V. Wright was instructed by the Commissioner of Indian Affairs to meet with the Upper and Middle Spokanes and to try to get them moved onto a reservation. An agreement was entered into on March 18, 1887.

The agreement was ratified by Congress on July 13, 1892. Although this agreement provided that the Upper and Middle Spokanes would move to the Coeur d'Alene Reservation, it is evident from the parley and supporting documents that the agreement was actually that they would move to the Coeur d'Alene, Jocko and Colville Reservations. The 1887 parley ended with assurances that they could move to the Spokane or "Lot's" Reservation and most of the Middle Band did end up on the Spokane Reservation. (Tr. 671; PE-48; PE-49; PE-51; PE-62)

13. The eastern boundary of the Spokane Indian Reservation is the east bank of Chamokane Creek. The inclusion of the entire creek within the boundaries of the reservation was intentional and reflects the importance that the creek has had to the life of the Spokane Tribe since time immemorial. Historically the Chamokane Creek area was used as the Tribe's winter quarters. During the summer, the Indians would gather camas and bitterroots and dry salmon and store it near Chamokane Creek for winter use. In the fall, the tribe would move to the Chamokane Creek area where they could take advantage of its fresh, pure water which would not freeze during the winter and they would be able to fish for fresh trout. There were three different wintering sites on Chamokane Creek which were used. The first was located at the mouth of the creek. The second was near the present Boise Cascade veneer mill (and was known as SKOF - TA - WEH). The third site was a little above the bridge at Ford, Washington (and was known as CHIMOCANE). (Tr. 665-666, 683)

14. In the years immediately following the agreements of 1877 and 1887, the fishing on and around the Spokane Indian Reservation remained good. About 1907 or 1908, however, Little Falls dam was built which stopped the salmon and steelhead runs in the Spokane

River above the dam. Later, the Grand Coulee Dam was built and after that, no more salmon or steelhead runs appeared in reservation waters. (Tr. 674-675)

15. Fish continue to be a large part of the diet of most Spokane Indians. Some tribal members still smoke and dry fish and use them as their staple food item. Virtually every male member of the Spokane Tribe has fished or will fish on the reservation sometime during his lifetime. (Tr. 763, 809, 828)

16. Early efforts to turn the Indians' attention to farming were for the most part unsuccessful due to the problems involved with clearing the land and bringing in irrigation water. While individual Indians have managed to get relatively small tracts under cultivation, only a few have irrigated their lands and it has been only recently that the Tribe itself found large scale agricultural development of land financially feasible. While the most feasibly irrigable lands are in the Chamokane Creek basin, the Tribe has chosen to protect and preserve Chamokane Creek as a fishing, recreational and esthetic tribal resource rather than to deplete and diminish it by the use of its waters for irrigation. (Tr. 688, 696, 719; PE-37)

17. The Spokane Indian Reservation, as set aside on August 18, 1877, contained approximately 154,898 acres. This land was held in trust by the United States for the use and benefit of the Spokane Tribe under 25 U.S.C. 177. By the beginning of the Twentieth Century, however, the government had begun to make inroads on the property rights as reserved for the Indians. By the Act of May 27, 1902 (32 Stat. 266) the mineral lands on the Spokane Reservation were opened to entry by non-Indians. Lands allotted to Indians, used by the government or used for school purposes were excluded. This act was amended by the Act of June

19, 1902 (32 Stat. 744) which directed the Secretary of the Interior to make allotments on the Spokane Reservation and to open the remainder of the reservation to purchase under the mining laws. There is no evidence that allotments actually took place under this act. (PE-46; PE-47; DE-28, P. 987)

18. On May 29, 1908, Congress passed Public Law 157 which was entitled "An Act to authorize the Secretary of the Interior to sell and dispose of the surplus, unalloted agricultural lands of the Spokane Indian Reservation, Washington, and for other purposes." (35 Stat. 458). Under the provisions of that act, the Secretary of the Interior was authorized and directed to cause allotments of land to be made on the Spokane Reservation. After the completion of the allotment process, the Secretary was to see that the surplus land was classified as either agricultural or timber. The land classified as agricultural was then to be opened to non-Indian settlement under the provisions of the homestead laws under conditions as prescribed by the President. The land classified as timber land was to remain in trust for the benefit of the tribe. The act closed with the provision that "nothing in this Act shall be construed to deprive said Indians of the Spokane Indian Reservation, in the State of Washington, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act." Pursuant to this act, allotments of land were made to individual Indians, the land to be held in trust by the United States for their benefit. Allotments were made to approximately 600 individuals, encompassing between 60,000 and 70,000 acres. The Commissioner of Indian Affairs, acting for the Secretary of the Interior then ordered that the remaining land be classified as either timber or agricultural. On June 15, 1909, Clair Hunt and M. F. Nourse, the

classification commissioners, submitted their report to the Commissioner of Indian Affairs. In this report, they classified 82,647.5 acres as timberland and 5,781.22 acres as agricultural. Most of the agricultural land was located on the eastern portion of the reservation. In a letter dated June 15, 1909, which accompanied the surplus land classification schedule to the Commissioner of Indian Affairs, the commissioners explained how they arrived at their final acreage figures. They stated that they had relied mainly on two sources of data, a soil survey and Forest Service input. The Forest Service's contribution was apparently limited to its opinion that the land eventually described as agricultural was not suitable for inclusion in a forest reserve. No detailed soil classification study as we know them today was attempted nor was any consideration given to the possibility of irrigating the land. (Tr. 812-813, 1346; PE-44; PE-101, PE-102)

19. On May 22, 1909, President Taft issued a proclamation (36 Stat., Part 2, 2494) in which the procedures were specified whereby the non-mineral, unalloted lands classified as agricultural within the Spokane Reservation were opened to homesteading. In the years that followed, several non-Indian families purchased tracts of this land receiving patents from the United States. Not all of the land eligible for homesteading, however, was claimed. (Tr. 1338; PE-43)

20. On September 19, 1934, Secretary of the Interior Harold L. Ickes approved a recommendation that the undisposed of land on the Spokane Reservation, among others, be temporarily withdrawn from disposal. This action was evidently taken so that the matter of the lands permanent restoration to tribal ownership could be given consideration with reference to the Indian Reorganization

Act, Act of June 18, 1934 (43 Stat. 984). See 54 I.D. 559, 562-563.

21. By the Act of May 19, 1958 (72 Stat. 121), the land on the Spokane Reservation which had been eligible for homesteading but which had never been claimed was restored to tribal ownership. Under this act, seventy-seven acres were restored to tribal ownership within the Chamokane Creek basin. (Tr. 813, 1338; PE-98; PE-99)

22. At no time during the period 1909 to 1958 as there any difference in the management, administration or crediting of revenues by the Bureau of Indian Affairs between the unhomesteaded land and general tribal land. Unhomesteaded land was treated the same as general tribal land. (Tr. 904; Response of the United States to Defendant's Reconstruction of the Record, p. 2)

23. Subsequent to the allotment of land to individual Indians, a limited amount of this land was sold to non-Indians. Beginning in the 1930s, the Spokane Tribe undertook a program of purchasing allotments which belonged to individual Indians and had remained in trust status, allotments which had passed to non-Indian ownership and also purchasing land which had been homesteaded. By the Act of June 10, 1968 (82 Stat. 174), as amended by the Act of May 21, 1974 (88 Stat. 142 [25 U.S.C. 487]), the Secretary of the Interior was authorized to purchase for the tribe, lands within the Spokane Reservation. The purchased land is returned to trust status where necessary. Under this act, approximately 2,523.44 acres have been returned to the tribe and trust status and of this amount, 1,798.11 acres are within the Chamokane Creek basin. Once returned to trust status, this land is managed the same as any other tribally owned land. (Tr. 814, 1339-1341; PE-97; PE-99)

24. As of June 1, 1974, the land status of the Spokane Reservation was as follows:

Tribal Trust	100,221A
Individual Trust	29,640A
Fee Ownership	21,683A
Government under Administration by BIA for Tribe	3,085A

(Tr. 1343; PE-100)

Chamokane Creek System

25. The Spokane Indian Reservation is located in northeastern Washington State at the confluence of the Columbia River and the Spokane River. As a result of Grand Coulee Dam, the Columbia River backs up along the western edge of the reservation to form the Columbia River arm of Franklin D. Roosevelt Lake. The dam also causes the Spokane River to back up as far as Little Falls, forming the Spokane arm of F.D.R. Lake. The reservation topography varies from broad valleys and high benches on the east to mountains in the north central area. High areas and meadow valleys are predominant in the western part and in some of the south slope areas. Relatively narrow benches skirt the Spokane and Columbia arms of F.D.R. Lake with basaltic bluffs or steep sand slopes forming the rim. The reservation varies in elevation from 1,300 feet to over 4,000 feet. The northern portion of the reservation is timberland, the southern part or southwest slopes are open benches. (Tr. 31, 748, 859; PE-1; PE-3; PE-82; PE-3-6-74-29, p. 6)

26. The major sources of surface water for the Spokane Reservation are the Columbia and Spokane Rivers. In addition, there are nine drainage basins on the reservation. Excluding the

two main rivers, Chamokane Creek and its drainage basin constitute more than one half of the total on-reservation water resources. (Tr. 24-25; PE-2; PE-3-6-74-29, p. 4)

27. Chamokane Creek has a drainage area of 178 square miles with its headwaters in the Huckleberry Mountains north of the reservation. The creek flows eastward through the Camas Valley (Upper Chamokane area) north of and parallel to the north boundary of the reservation to a point near the town of Springdale, Washington, where it turns southeastward to the north line of the reservation. The creek then flows south and southwesterly through the mid-Chamokane or Walker's Prairie area to Chamokane Creek Falls, forming the east boundary of the reservation. From the falls, it flows south through the Lower Chamokane area to the Spokane River. The drainage basin generally parallels the creek and varies in width from about seven miles wide at the northwest end to about three miles wide just north of the mouth. (Tr. 33; PE-2; PE-10; PE-3-6-74-29, p. 9)

28. Chamokane Creek is unique in several respects. Although the flow of the creek is continuous at the north line of the reservation to a point about two miles south, beginning at this point and for the next five miles the stream is intermittent, being constantly dry during the summer months. Then, beginning just above Ford, Washington, and for the next three miles, massive springs have a regular flow throughout the year. These springs feed the creek which is again continuous to the Spokane River. This unique intermittent nature of the creek's flow was recognized by the Spokane Tribe who called the creek Tshiwesch or "big stream coming out of the ground." Likewise, the area just above Ford, Washington was known as Chimocane meaning "over and under." (Tr. 26, 38, 306, 661-664; PE-3-6-74-29, p. 9)

29. The massive springs area is made of several large springs comprising what is known as the Hatchery Springs, a group of large springs comprising what are called Galbraith Springs and a number of minor springs. Once the water leaves these springs, it flows some three miles to the Chamokane Creek Falls. After the falls, the creek flows another mile and one half to the Spokane River. (Tr. 34).

30. The Chamokane Creek basin was formed through prehistoric glacial action. While the area was affected by two glacial periods, it is the later period which more directly resulted in the basins current geological features. The second period occurred approximately 30,000 to 40,000 years ago and it was during that period that the erosional trough which generally forms the basin was gouged out. It was also at this time that the glacier deposited the rock it was carrying into the trough filling it with what is now the basins overburden. (Tr. 44, 47, 52, 258-259; PE-4, PE-4a; PE-5)

31. The geological make of the Chamokane Creek basin clearly reflects its glacial history. As the later glacier moved southward carving out the trough, it was stopped on the west by basalt and on the east by granite, which today are the respective basin boundary walls. The glacier was stopped in its southward movement by a granite dike which is located approximately one and one-half miles north of the mouth of Chamokane Creek. This granite dike forms the southern boundary wall of the basin. These three physical barriers act to close the basin and keep ground water from flowing out the sides. The entire basin is underlain with granite bedrock. As the glacier retreated, it left a lateral moraine to a depth of 150 feet which blocks off Camas Valley thereby precluding any appreciable ground water flow into the

Chamokane Creek basin from that area. (Tr. 55, 185-186, 260; PE-5; PE-6; PE-7; PE 27-1-7; PE-3-6-74-29, p. 10)

32. As the later glacier retreated, it dropped the material it had picked up as it moved south thereby filling the basin with its present overburden. The glacial recession tended to rinse out the upper layers of the overburden resulting in tighter lower layers and looser upper layers. The looser upper layer of overburden is non-uniform, varies from 20 feet to 50 feet thick and is made up of porous gravel and sand. The lower, tighter layer is more uniform, varies from being quite thin on the edges to as deep as 600 feet, is on the average between 50 feet to 100 feet thick and is made up of sand with some gravel and clay. Ground water is found within both layers. While the lower layer has more water in it, it does not yield it readily. The upper layer, in contrast, does yield its water readily. The lower layer will yield about 3 to 15 gpm and is generally used for domestic purposes, the upper layer will yield around 1,000 to 1,500 gpm in a typical well. (Tr. 47, 52, 55, 71-72, 199-201, 407-408, 1044; PE-8; PE-9; PE-3-6-74-29, pp. 13-19; United States Reconstruction of Record, p. 5)

33. Both the hydraulic gradient and the surface gradient in the Walker's Prairie area are approximately 15 feet to the mile. This drops off near Ford and from there to the falls averages about 36 feet to the mile. The general direction of the gradient is south and southwest. (Tr. 19, 48, 72)

34. The ground water flow in the Chamokane Creek basin from the north line of the reservation to the Massive Springs area is in a generally southwesterly direction. (Tr. 64, 187, 322, 902, 1309; United States Reconstruction of Record, pp. 4-5)

35. As the ground water flows southwesterly through the Chamokane Creek basin, it surfaces either at Massive Springs or at the falls. The reason for the surfacing at Massive Springs is that at that point, the ground water surface intercepts the land surface forcing a ground water discharge. The discharge at the falls is caused by the southwesterly flowing water encountering the granite dike which forces the water up and over the dike as a falls. (Tr. 53-54, 1020; PE-9; United States Reconstruction of Record, p. 5)

36. There is no evidence of any appreciable faults either along the eastern or western basin boundaries or at the southern dike. As a result, the Chamokane Creek basin must be considered a closed basin whose total discharge of water can be measured immediately below the falls. (Tr. 193, 871, 899; PE-41)

37. All of the water entering the Chamokane Creek basin does so in the form of precipitation, either rain or snow. This precipitation either sinks into the ground, runs off or is burned up through evaporation or evapotranspiration. All of the precipitation that enters the drainage basin is eventually measured below the falls minus any manmade depletions, evaporation or evapotranspiration. That portion of the precipitation which sinks into the ground and joins the ground water system eventually exists through Massive Springs. (Tr 67; United States Reconstruction of Record, pp 5-6)

38. In the Huckleberry Mountains north of the reservation, snow accumulates during the winter with some runoff occurring at that time but most coming in the spring. As the snow melts, numerous tributary streams bring the water down into Camas Valley where it joins precipitation that has fallen directly into the valley and either sinks into the ground or flows into Chamokane

Creek. That portion of the water joining the Camas Valley underground reservoir remains in that area due to a lateral moraine separating Camas Valley from the rest of the Chamokane Creek basin. That portion of the runoff joining Chamokane Creek flows out of Camas Valley into Walker's Prairie. Of the water reaching Walker's Prairie, some enters the Chamokane Creek groundwater system as recharge. Water not recharging the aquifer flows out of Walker's Prairie over the falls, usually in the form of spring floods. (Tr. 57, 60-69, 73, 864-865; PE-3; PE-10; United States Reconstruction of Record, pp. 5-6)

39. Precipitation also falls on Walker's Prairie and the hills surrounding the prairie. All of the water falling on the hills or the prairie that is not lost to evaporation or evapotranspiration either sinks into the aquifer or, in reaching the Creek, flows out of the system during the spring runoff. The amount of recharge, like that from Camas Valley, while averaging out and being quite uniform, does vary from year to year because of changing climatic patterns, freezing or nonfreezing of surface soils, speed or slowness of spring thaw and runoff and other factors. (Tr. 58-59, 67-69, 172, 361; PE-3-6-74-29,pp. 9-11; United States Reconstruction of Record, pp. 5-6)

40. Thus, in a normal water year, precipitation in and around the basin contributes a significant recharge to the underground reservoir. Most of the water which each year recharges the aquifer (except that withdrawn by wells finds its way out of the Massive Springs and over the Chamokane Creek Falls. Thus the total flow of Massive Springs equals the "base flow" of Chamokane Creek and, because of the nature of the aquifer and its spring outlets, the total flow is quite uniform throughout the year. During wet seasons the Creek is enlarged by surface flows. This "base flow" and

especially the dry weather flow is exclusively the outflow of the recharge and therefore varies with the annual amount and nature of recharge. (Tr. 62, 70, 76, 206-208; PE-31; PE-3-6-74-29, pp. 9-11; United States Reconstruction of Record, pp. 5-6)

41. The total output of the Chamokane Creek drainage system is measurable at the USGS gage below the falls and measurements taken there indicate an average flow of 34,000 to 35,000 acre-feet per year. The difference between the 35,000 acre-feet total discharge and the flow from Massive Springs is the water which surfaces at the falls and that amount of water which escapes the system by flowing down Chamokane Creek, usually in spring floods. This latter water remains surface flow at all times, never joining the ground water system. There is no significant augmentation of the stream flow below the falls because the runoff from the sides of the rather steep canyon contributes little water to the flow of the stream, especially in the summer. (Tr. 60-61, 67, 134, 206, 268, 851; PE-3; PE-31)

42. Since the USGS gaging station located below Chamokane Creek falls was not established until February 1971, there are no actual records for the total flow of lower Chamokane Creek until that time. Records from that station indicate that the following were the low month flows of lower Chamokane Creek for the period since 1971:

Year	Ave. stream flow low month	Minimum
1971	26.1 cfs	23 cfs
1972	25.2 cfs	19 cfs
1973	19.7 cfs	17 cfs
1974	34.7 cfs	33 cfs
1975	37.8 cfs	34 cfs

1976	29.6 cfs	28 cfs
1977	20.5 cfs	17 cfs

1973 and 1977 reflect unusually dry years with a minimum of runoff and recharge especially in the winter and spring of 1977. The base flow of the stream has remained remarkably stable.(Tr. 20; PE-15, 15A; PE-16, 16A; PE-17A-S3; Affidavit of Walter Woodward, p. 5)

43. Based primarily on the interpolation of the existing flow records of Fish Hatchery Springs, the following average base or daily mean flows for Lower Chamokane Creek can be calculated for the years prior to 1971:

1931-1970	average of 33 cfs
1961-1970	average of 30 cfs

(Tr. 85; PE-19, 19A; PE-36)

44. There is a direct relationship between the extent of precipitation, the amount of water in the underground reservoir and the base flow of Chamokane Creek. There has been a decline in the water surface elevations and the base flow of the creek in the years 1971 to 1974. There has also been a decline in the amount of precipitation during this period. This drop in precipitation, however, accounts for only part of the decline in water surface elevations and base flow. (Tr. 361-363; PE-24, 24A; PE-25, 25A)

45. There has been in recent years, a steady increase in both surface and ground water withdrawals by non-Indians both on and adjacent to the Spokane Reservation. The State of Washington has issued certificates and permits for both surface and ground water withdrawals within the Chamokane Creek basin both on and off the reservation. To date, the State has issued certificates authorizing a total withdrawal of 20.03 cfs, and permits for another 5.95 cfs. This is a total of 25.98 cfs. The total

effective reduction in Chamokane Creek from these uses is 6.62 cfs. In addition, there are applications pending for 31.74 cfs which would effectively reduce Chamokane Creek by 9.33 cfs. Thus, if all existing certificates, permits and applications were utilized to their maximum, Chamokane Creek would be effectively reduced by a total of 15.96 cfs. (Tr. 77, 88-89, 124-25; PE-14; PE-32; PE-33)

46. If the withdrawals as authorized by th State of Washington had not taken place during the period 1971 to 1974, the base flow of Lower Chamokane Creek would have been an average for that period of 33 cfs. (Tr. 87; PE-18, 18A; PE-23A-C)

47. The closed nature of the basin, the fact that the ground water in the basin generally flows southwest to the springs and the falls and the fact that the groundwater flows to and out of the springs means that any ground water withdrawals in the Walker's Prairie area or the diversions of water from any of the streams running into it, affects the flow of the springs and hence the flow of Chamokane Creek. (Tr. 77)

48. Defendant James R. Newhouse owns land directly to the east of Chamokane Creek approximately two miles northeast of the town of Ford, Washington. In 1969, Newhouse drilled a well and began withdrawing water from the ground water reservoir. In 1970, Newhouse's pumping began to be monitored by comparing his withdrawals with the drop in water surface elevation in the Hill well which was located a quarter mile to the west, on the west side of Chamokane Creek. It was discovered that during the summer when Newhouse was not pumping, the rate of decline in the Hill well was fifteen thousandths of a foot per day. Once Newhouse commenced pumping, the rate of decline in the Hill well accelerated to from 30 to 50 thousandths of a foot per day, or

between two and three times the normal daily decrease. Once the Newhouse well ceased pumping, the Hill well resumed its normal decline but did not return to previous water levels. Defendant Newhouse's pumping has drawn water from the under ground sources which comprise the supply for the springs and lower Chamokane Creek. Because the Newhouse well and the springs are hydraulically connected, defendant Newhouse's pumping has caused the water level in lower Chamokane Creek to drop. (Tr. 93-96, 1360-1361; PE-18, 18A; PE-23A-C)

49. Defendants Robert J. and Dorothy Seagle own land on the east and southeast side of Chamokane Creek. Seagle had three wells drilled in 1951 and one in 1956 or 1957. The later well has never been used. The location of these wells adjacent to Chamokane Creek and within the Chamokane Creek basin put them in the same hydraulic relationship with the springs and lower Chamokane Creek and within the Chamokane Creek basin put them in the same hydraulic relationship with the springs and lower Chamokane Creek as the Newhouse well. Thus, because the Seagle wells are hydraulically connected to the springs and lower Chamokane Creek, the pumping of these wells has caused the water level in lower Chamokane Creek to drop. (Tr. 86, 1223-1227)

50. Defendants Smithpeter own land on the Spokane Indian Reservation to the west of and adjacent to Chamokane Creek approximately one mile north of the falls. The Smithpeter withdrawal is a surface diversion directly from Chamokane Creek. It has an immediate effect of withdrawing 2 1/2 cfs from the stream just one mile above the falls. This has an immediate effect of withdrawing up to 2-1/2 cfs from the stream and has the direct effect of decreasing the flow of lower Chamokane Creek by the exact amount being pumped. (Tr. 34, 99, 845, 901; PE-96; DE-10)

51. Defendant Dawn Mining Company owns land on the Spokane Indian Reservation adjacent to and west of Chamokane Creek. Dawn Mining Company has a surface diversion of approximately 1 cfs from the creek which has the immediate and direct effect of reducing the flow in lower Chamokane Creek by 1 cfs. (Tr. 100, 840)

52. Any and all other defendants with ground water withdrawals within the Chamokane Creek basin below Camas Valley are found to be hydraulically connected with the Massive Springs and lower Chamokane Creek. Any withdrawal through those wells has the direct effect of reducing the flow in lower Chamokane Creek. Any and all defendants making surface withdrawals from Chamokane Creek or any of its tributaries anywhere within the Chamokane Creek basin have the direct effect of reducing the flow in lower Chamokane Creek. (Tr. 77, 105-106, 122-123; PE-14; PE-32; PE-33; PE-3-6-74-29, pp. 4, 10)

53. While the ground water within the Chamokane Creek basin percolates down gradient through the overburden from the upper basin to the springs and the falls, it does so slowly thereby creating a time lag in the effect a given withdrawal will have on the flow of the springs or lower Chamokane Creek. There is a delay of from nine months to one year in the effect on the springs of pumping in the Seagle-Newhouse area. The farther upstream the pumping takes place, the longer the time lag. At the north line of the reservation or above, the delay may be up to two years. Withdrawals near the springs have no delay in their effect. Therefore, the reduction of spring flow from ground water withdrawals at any given moment in time is a function of all withdrawals but figuring in the time lag of each withdrawal. Tr. 98, 129, 212, 131, 133, 396, 875)

54. Thus, the evidence substantiates that there is a direct relationship between precipitation (as measured at both Wellpinit and the two snow measuring stations) and the water levels in the Walker's Prairie area monitoring wells. Further, there is a relationship between those water levels and the flow at Fish Hatchery Springs. Through the use of the precipitation records and the well level measurements, qualified hydrologists are able to predict with relative accuracy the base flow of lower Chamokane Creek. (Tr. 869-870; PE-3-6-74-29, p. 11; PE-18, 18A; PE-19, 19A; PE-24, 24A; PE-25, 25A; PE-26; PE-3-6-74-29, pp. 76-88; Affidavit of Walter L. Woodward, p. 4)

Claims of the United States and Spokane Tribe of Indians

Claim No. 1

55. Historically, Chamokane Creek was the spawning grounds of salmon and steelhead trout as well as the permanent home for several species of native trout and other fish. Presently, the creek is inhabited by German brown trout, rainbow trout and eastern brook trout, as well as several varieties of suckers and sculpins. (Tr. 463-465, 675, 695; PE-64, pp. 20-22)

56. The numbers and volume of organisms in Chamokane Creek which can be utilized by trout as food compare favorably with those found in other streams containing sizeable trout populations. Any reduction in flow in the creek during the summer, however will expose areas of the stream thus reducing the food production potential. (Tr. 426, 430, 450, 491; PE-64, p.20)

57. The temperature of the water flowing in Chamokane Creek is inversely proportional to the volume, i.e. other factors remaining constant, more water means a lower temperature. The water temperature is normally a fairly constant 47° F. at the

springs and begins to rise as the water moves downstream. During the period July 18, to August 1, 1973, for example, and during hot weather periods almost every year the maximum water temperature in lower Chamokane Creek exceeded 68 degrees for substantial periods of time and exceeded 60 degrees for longer periods of time. (Tr. 174, 451-452, 483, 772-773; PE-64, pp. 5-14, 18)

58. Trout of the species found in Chamokane Creek have an optimum temperature range of 50° F. to 60° F. Within this range, trout will grow and put on weight. The maximum water temperature for a successful trout habitat is 68° F. When water temperatures rise above 66° F, trout cease feeding. As the water temperature rises above 68° F, trout metabolism begins to increase and the fish begin to undergo physiological stress. As the stress increases, the trout are no longer able to maintain their position in the creek and are forced downstream, many of them eventually ending up in the Spokane River. Once in the Spokane River, most of the fish are unable to reenter Chamokane Creek and those which do are not able to once again get above the falls. The virulency of trout disease also increases above 60° F. (Tr. 440-446; PE-64, pp. 13)

59. At present, higher than desirable water temperatures exist mainly in lower Chamokane Creek from the mouth of the stream to the falls. There is a noticeable lack of trout in that area of the creek as a result of the excessive water temperature in spite of the existence of pools and an abundant food supply. (Tr. 439, 502, 519)

60. Chamokane Creek contains high quality water more than adequate to support a trout fishery. (Tr. 134, 450, 491; PE-64, pp. 14, 19)

61. In order to maintain a water temperature lower than 68° F in lower Chamokane Creek, an average daily minimum flow of 30 cfs is necessary. A minimum flow of 30 cfs would also insure the protection of the entire creek in terms of food production areas and would provide the living space necessary for an optimum trout fishery. (Tr. 453-454, 505, 519, 532, 537)

62. Since 1970, the fishing in lower Chamokane Creek has deteriorated until, at present, the number of trout taken is about one-half of what it was in 1970. (Tr. 796)

63. Chamokane Creek remains today a scenic, rushing stream of pure water which plunges through a beautiful gorge over rapids and picturesque falls. In addition to its use as a fresh water fishing area, it is used for hunting, picnicking and other recreational purposes by both Indians and non-Indians. It has the potential for campground development. The Spokane Tribe recognizes that the Chamokane Creek area is the only undeveloped area of the reservation capable of long term recreational development and has acted through its tribal council to keep the area in its natural state as long as possible. (Tr. 115, 172, 677, 732, 780; Spokane Tribe's Reconstruction of Record, p. 5; PE-27; PE-37; PE-81)

64. The use of Chamokane Creek for recreational activities including fishing, hunting, picnicking, camping and other activities as well as maintenance of the creek for its esthetic value is found to be the highest and best use that could be made of the creek. (Tr. 178)

65. An average daily minimum flow of 30 cfs is necessary to maintain lower Chamokane Creek for its recreational and esthetic purposes and uses. (Tr. 179)

66. There are no feasible alternatives to the establishment of a 30 cfs average daily minimum flow in lower Chamokane Creek. The planting of a legal sized trout is not acceptable over the long term because of the high costs involved, availability of fish and the fact that native trout are a better game fish. Until a minimum flow of 30 cfs is maintained and protected it will not be feasible or practical to plant game fish in the stream and the population of native trout will continue to dwindle. (Tr. 621, 646; PE-42)

67. The State of Washington itself is on record as supporting the establishment of a minimum flow in lower Chamokane Creek for fishery, recreational and esthetic purpose. (PE-87; DE-2; DE-3)

Claim No. 2

68. The character and topography of the Chamokane Creek basin portion of the Spokane Indian Reservation are such that there are two tracts of irrigable land upon which water will be required: (1) a tract of 1,880 acres below elevation 2,100 feet (bottom land) and (2) a tract of about 6,580 acres above elevation 2,100 feet (bench land). (Tr. 108, 111-113, 224, 559, 562; PE-11; PE-12; PE-34)

69. With regard to the bottom land, the evidence introduced at the trial established that there are 1,880 acres lying below elevation 2,100 feet which are of soil class III and IV and therefore, are suitable for the growing of crops if irrigated.

The bench land consists of 6,580 acres which is mainly soil class II (PE-34)

70. Crops suitable for growing on the irrigable land within the Chamokane Creek basin include small grains and hay above elevation 2,200 feet and hay and corn below elevation 2,200 feet. (Tr. 283, 570, 583)

71. The lands upon which the ground water of the Chamokane Creek basin and surface waters of Chamokane Creek and its tributaries are to be used lie in an arid region of the United States. In order to make these lands productive, irrigation thereof is necessary. These lands vary somewhat in texture, terrain, crop use and other factors which affect the amount of water necessary to irrigate different portions of these lands. For proper irrigation and crop productivity during the irrigation season, varying quantities of water per acre should be applied to the land not to exceed three acre-feet per acre during the irrigation season. (Tr. 113)

72. Based upon a maximum requirement of three acre-feet per acre, the irrigable land on the reservation above elevation 2,100 feet will require a maximum of 19,740 acre-feet and the land below elevation 2,100 feet a maximum of 5,640 acre-feet. This makes a total irrigation requirement of 25,380 acre-feet. (Tr. 114)

73. The 1880 acres of bottom and 6,580 acres of bench land which are owned by the United States for the benefit of the Indians are similar to land now being successfully irrigated by defendants east of Chamokane Creek using either surface water from Chamokane Creek or ground water from the basin. The irrigation of these Indian lands using these same sources is as logical as any existing withdrawals or diversions. The Indian lands could be irrigated from either the Spokane River or from the surface and ground waters of the Chamokane Creek basin. Due to the distance involved in bringing water from the Spokane River and the relative proximity of the land to the surface waters and ground waters of the Chamokane Creek basin, it is more economically feasible to irrigate using the Chamokane Creek basin waters. It would be economically feasible to irrigate these Indian lands from the

surface water and ground water of the Chamokane Creek basin. (Tr. 144, 178, 227, 284, 583, 852-855; PE-3-6-74-29, pp. 4, 53)

74. Mot of the acreage claimed as irrigable became part of the reservation in 1877 and has continued in that status until this day. Plaintiffs exhibits 63 (Agreement of August 18, 1877) and 52 (Executive Order of January 18, 1881) establish the original boundaries of the Spokane Reservation. Plaintiff's exhibit 34 shows that the land claimed as irrigable is within the boundaries of the reservation. Plaintiff's exhibits 99 and 100 show that most of the land claimed as irrigable is land which is presently held in trust by the United States and was neither formerly opened to homestead nor formerly non-Indian owned. Thus, except as to that land which has been identified as formerly opened to homestead or formerly non-Indian owned, there is no evidence in the record that the acreage claimed as irrigable has been in anything but trust status since 1877.

75. There are only 77 acres of land within the Chamokane Creek basin portion of the Spokane Reservation which were opened to homesteading under the Act of May 29, 1908, (35 Stat. 548), were never claimed and were restored to tribal ownership under the Act of May 19, 1958 (72 Stat. 121). PE-98, PE-99) Of these 77 acres, only 28.7 acres are claimed as irrigable. (PE-34, PE-98, PE-99) The two parcels claimed as irrigable are described as:

NW1/4NE1/4NE1/4 sec. 24, T. 28 N., R. 39 E. (10 acres)

lot 5, sec. 23, T. 29 N., R. 40 E. (18.7 acres)

The 48.3 acre parcel is not irrigable. See, PE-98, PE-34

76. As has been explained above, the Act of May 29, 1908, authorized both the allotment to individual Indians of reservation land and the opening of certain land to homesteading. As a result, small tracts of land of both types eventually ended up in

non-Indian ownership. Beginning in the 1930s, the Spokane Tribe began reacquiring some of these former reservation lands which had passed to non-Indian ownership. By the act of June 10, 1968 82 Stat. 174), as amended by the Act of May 21, 1974 (88 Stat. 142), the Secretary of the Interior was authorized to return such reacquired land to trust status. To date, approximately 1,798.11 acres of this type of land have been returned to trust status within the Chamokane Creek basin. (PE-97; PE-99) Only a portion, however, of these 1,798.11 acres are claimed as irrigable. Plaintiff's exhibit 97 identifies the land which was formerly non-Indian owned and which has been returned to trust status. By comparing that listing to plaintiff's exhibit 34, which shows the land claimed as irrigable, the following land may be identified as that land which was formerly non-Indian owned, is now in trust status and is claimed as irrigable by the United States and the tribe:

Section Twsp. & Range	Description, Tract No. & Date of Acq. of irrigable land	Acreage claimed as irrigable
Sec. 27, T29N, R39E	N/A	None
Sec. 34, T29N, R39E	N/A	None
Sec. 35, T29N, R39E	E1/2SE1/4, T1000-3/24/42	15.00
Sec. 36, T29N, R39E	SW1/4, T1000-3/24/42 T1001-2/2/42	130.00
Sec. 2, T28N, R39E	lots 1 & 2, S1/2NE1/4, T1010-3/25/42	130.00
Sec. 23, T28N, R39E	Lot 2, S1/2SE1/2NE1/4, NE1/4, SE1/4, T1007-2/7/42	30.00
Sec. 24, T28N, R39E	Lots 7 & 8, T1006-2/7/42	49.00

Sec. 27, T28N, R39E	E1/2SE1/4, T1012-7/16/45	15.00
Sec. 34, T28N, R39E	NE1/4, E1/2SE1/4, T1012-7/16/45	15.00
Sec. 35, T28N, R39E	N/A	None
Sec. 19, T28N, R40E	N/A	None
Sec. 21, T29N, R40E	Lots 5 & 7, E1/2SW1/4, E1/2SE1/4, T1001-2/2/42	20.00
Sec. 22, T29N, R40E	N/A	None
Sec. 23, T29N, R40E	N/A	None
Sec. 28, T29N, R40E	N/A	None
Sec. 31, T29N, R40E	NW1/4, W1/2NE1/4, T1001-2/2/42	110.00
Sec. 25, T29N, R38E	N/A	None
Sec. 2, T27N, R39E	Lots 6 & 9, NE1/4NW1/4, S1/2NW1/4, NW1/4SW1/4, T1001-2/2/42	48.00
Sec. 11, T27N, R39E	N/A	None
	TOTAL	562.00

Claim No. 3

77. The United States, through its Bureau of Reclamation, Department of the Interior is the holder of Surface Water Certificate No. 2831 issued by the State of Washington. This certificate bears a priority date of October 21, 1942, and authorizes the use of 10 cfs of the flow of Spring Creek (a tributary of Chamokane Creek) for fish propagation purposes. The use is non-consumptive and is exercised by the State of Washington in the operation of a fish hatchery pursuant to agreement with the Secretary of the Interior. None of the parties to this action

have challenged the validity of this water rights certificate. (PE-89)

Defendants' Claims

78. Washington State Surface Water Certificate no. 294 is issued in the name of Anna E. Cartier Van Dissel for use on land north of the Spokane Indian Reservation. It has a priority date of December 4, 1925, and a maximum use of 4.0 cfs. The effective reduction in Chamokane Creek from this maximum use is 1.08 cfs. (PE-32; PE-14; DE-57)

79. Washington State Surface Water Certificate No. 1675 is issued in the name of George Russell for use on land north of the Spokane Indian Reservation. It has a priority date of May 13, 1940, and a maximum use of .01 cfs. The effective reduction in Chamokane Creek from this maximum use is .01 cfs. (PE-14; PE-32; DE-52)

80. Washington State Surface Water Certificate No. 1725 is issued in the name of Chris Mickelson for use on land north of the Spokane Indian Reservation. It has a priority date of May 15, 1940, and a maximum use of .01 cfs. The effective reduction in Chamokane Creek from this maximum use is .01 cfs. (PE-14; PE-32; DE-48)

81. Washington State Surface Water Certificate No. 2258 is issued in the name of Fred J. Werth for use on land north of the Spokane Indian Reservation. This certificate is now held by Boise Cascade. It has a priority date of February 12, 1945, and a maximum use of .01 cfs. The effective reduction in Chamokane Creek from this maximum use is .01 cfs. (PE-14, PE-32; DE-59)

82. Washington State Surface Water Certificate No. 3386 is issued in the name of John A. Smith for use on land east of the

Spokane Indian Reservation. It has a priority date of July 8, 1946, and a maximum use of .02 cfs. The effective reduction in Chamokane Creek for this maximum use is .02 cfs. (PE-14; PE-32; DE-53)

83. Washington State Surface Water Certificate No. 8600 is issued in the name of M.B. Echelbarger for use on land northeast of the Spokane Indian Reservation. It has a priority date of October 21, 1946, and a maximum use of 1.0 cfs. The effective reduction in Chamokane Creek from this maximum use is .27 cfs. This surface water diversion may not be exercised when Swamp Creek recedes to 2.0 cfs. (PE-14; PE-32; DE-41)

84. Washington State Surface Water Certificate No. 4872 is issued in the name of Edward A. Franks for use on land north of the Spokane Indian Reservation. It has a priority date of March 17, 1950, and a maximum use of .20 cfs. The effective reduction in Chamokane Creek from this maximum use is .08 cfs. (PE-14; PE-32; DE-43)

85. Washington State Surface Water Certificate No. 6394 is issued in the name of C. W. Noack for use on land north of the Spokane Indian Reservation. It has a priority date of July 21, 1950, and a maximum use of .80 cfs. The effective reduction in Chamokane Creek from this maximum use is .01 cfs. (PE-14; PE-32; DE-50)

86. Washington State Ground Certificate no. 4891A is issued in the name of Robert J. Seagle for use on land east of the Spokane Indian Reservation. It has a priority date of February 1, 1951, and a stated maximum use of 1150 gallons per minute up to 1400 acre-feet per year. This use has never, however, exceeded 528 gallons per minute. The effective reduction in Chamokane Creek from this use is .35 cfs. While there is some evidence of

minor crop production on the Seagle property in the mid-1800s there is no evidence that the crop production utilized in appropriation of water sufficient to become a water right under state law. (Tr. 697, 1228, 1234, 1241-1242; PE-14; PE-32; DE-64A; Interrogatories answered by Seagle, Nos. 10, 11 and 12, dated July 11, 1973)

87. Washington State Ground Water Certificate No. 2768 is issued in the name of Ford Development Company for use on land east of the Spokane Indian Reservation. It has priority date of September 6, 1956, and a maximum use of 100 gallons per minute up to 160 acre-feet per year. The effective reduction in Chamokane Creek from this maximum use is .07 cfs. (PE-14; PE-32; DE-42)

88. Washington State Surface Water Application No. 20248 is issued in the name of Kenneth Swiger for use on land east of the Spokane Indian Reservation. It has a priority date of May 19, 1967, and a maximum use of .20 cfs. The effective reduction in Chamokane Creek from this maximum use is .06 cfs. (PE-14; PE-33; DE-56)

89. Washington State Ground Water Permit No. 9361 is issued in the name of James R. Newhouse for use on land east of the Spokane Indian Reservation. It has a priority date of September 17, 1968, and a maximum use of 1,500 gallons per minute up to 648 acre-feet per year. The effective reduction in Chamokane Creek from this maximum use is .90 cfs. (PE-14; PE-32; PE-86)

90. Washington State Ground Water Permit No. 9563 is issued in the name of Peter M. Welk for use on land east of the Spokane Indian Reservation. It has a priority date of January 30, 1969, and a maximum use of 50 gallons per minute up to 20 acre-feet per year. The effective reduction in Chamokane Creek from this maximum use is .04 cfs. (PE-14; PE-32; DE-58)

91. Washington State Ground Water Application No. 10344 is issued in the name of Leonard E. Lyons for use on land east of the Spokane Indian Reservation. It has a priority date of August 6, 1969, and a maximum use of 1,000 gallons per minute. The effective reduction in Chamokane Creek is .60 cfs. (PE-14; PE-33; DE-47)

92. Washington State Surface Water Application No. 21786 is issued in the name of Robert J. Seagle for use on land east of the Spokane Indian Reservation. It has a priority date of August 25, 1969, and a maximum use of .33 cfs. The effective reduction in Chamokane Creek from this maximum use is .10 cfs. (PE-14; PE-33; DE-64B)

93. Washington State Ground Water Application No. 10386 is issued in the name of James K. Swiger for use on land east of the Spokane Indian Reservation. It has a priority date of September 3, 1969, and a maximum use of 1,000 gallons per minute. The effective reduction in Chamokane Creek from this maximum use is .60 cfs. (PE-14; PE-33; DE-55)

94. Washington State Ground Water Application No. 10506 is issued in the name of Jess Sulgrove, Jr. for use on land east of the Spokane Indian Reservation. It has a priority date of November 18, 1969, and a maximum use of 2,500 gallons per minute up to 7 acre-feet per year. The effective reduction in Chamokane Creek from this maximum use is 1.50 cfs. (PE-14; PE-33; DE-54)

95. Washington State Ground Water Application No. 11227 is issued in the names of Gust and Clara Willging for use on land east of the Spokane Indian Reservation. It has a priority date of September 11, 1970, and a maximum use of 2,000 gallons per minute up to 10 acre feet per year. The effective reduction in Chamokane Creek from this maximum use is 1.20 cfs. (PE-14; PE-33; DE-60)

96. Washington State Surface Water Application No. 22922 is issued in the names of Alice M. Liepold and Frances J. Lindberg for use on land east of the Spokane Indian Reservation. It has a priority date of March 9, 1971, and a maximum use of .01 cfs. The effective reduction in Chamokane Creek from this maximum use is .01 cfs. (PE-14; PE-33; DE-45)

97. Washington State Ground Water Application No. 11753 is issued in the names of Howard W. and Harold A. Dixon for use on land north of the Spokane Indian Reservation. It has a priority date of April 2, 1971, and a maximum use of 100 gallons per minute. It does not affect the flow in Chamokane Creek. (PE-14; PE-33; DE-39)

98. Washington State Ground Water Application No. 11905 is issued in the name of Floyd Norris for use on land northeast of the Spokane Indian Reservation. It has a priority date of May 20, 1971, and a maximum use of 2,000 gallons per minute. The effective reduction in Chamokane Creek from this maximum use is 1.20 cfs. (PE-14; PE-33; DE-51)

99. Washington State Surface Water Application No. 23509 is issued in the name of Henry L. Brown for use on land north of the Spokane Indian Reservation. It has a stated priority date of November 10, 1971, and a maximum use of .12 cfs. The effective reduction in Chamokane Creek from this maximum use is .04 cfs. (PE-14; PE-33; DE-38)

100. Washington State Surface Water Application No. 23551 is issued in the name of John Luper for use on land northeast of the Spokane Indian Reservation. It has a stated priority date of December 3, 1971, and a maximum use of 2.0 cfs not to exceed 250

acre-feet per year. The effective reduction in Chamokane Creek from this maximum use is .54 cfs. (PE-14; PE-33; DE-46)

101. Washington State Ground Water Application No. 321939 is issued in the names of Richard S. and Patricia M. Krieger for use on land north of the Spokane Indian Reservation. It has a stated priority date of October 15, 1973, and a maximum use of 1.0 cfs. This use is nonconsumptive. (PE-14; PE-33; DE-44)

102. Washington State Surface Water Certificate No. 9100 is issued in the name of Arthur A. Miller for use on land north of the Spokane Indian Reservation. Its stated priority date is missing from the record of this case. Its maximum use is .7 cfs not to exceed 105 acre-feet per year. The effective reduction in Chamokane Creek is .20 cfs. (PE-14; PE-32; DE-49)

103. Defendant Boise Cascade Corporation owns approximately 18,000 acres within the Chamokane Creek basin. Some of the land is adjacent to Chamokane Creek, approximately 120 acres lie within the exterior boundaries of the Spokane Indian Reservation. The land is used chiefly for timber production, secondarily for grazing. None of the lands are irrigated. Water is requred by the company in connection with its logging activities and for the stock which grazes its land. The following diversion points and their respective quantities are claimed:

Point No.	Location	Quantity Claimed
1	T. 29 N., R. 40 E.	30 a/f
2	T. 29 N., R. 40 E.	30 a/f
3	T. 30 N., R. 38 E.	30 a/f
4	T. 30 N., R. 38 E.	30 a/f/
5	T. 30 N., R. 38 E.	60 a/f
6	T. 30 N., R. 38 E.	30 a/f

7	T. 30 N., R. 39 E.	30 a/f
8	T. 30 N., R. 39 E.	30 a/f
9	T. 30 N., R. 39 E.	30 a/f/
10	T. 29 N., R. 41 E.	30 a/f
11	T. 29 N., R. 41 E.	40 a/f
12	T. 29 N., R. 41 E.	40 a/f
13	T. 29 N., R. 41 E.	40 a/f

Testimony presented by Boise Cascade indicated that the maximum use in any one year would be approximately 100 acre-feet. The only claim of Boise Cascade which holds a water rights certificate from the State of Washington is point no. 14 (SWC 2258, FF-81). As to the remainder of these claims, there is nothing in the record to indicate the basis upon which a water right is claimed. The quantity of 100 acre-feet is found to be excessive for stock watering and dust abatement and fire protection activities of the type carried on by Boise Cascade. (Tr. 1260, 1262-1263, 1266, 1268-1271, 1281-1282; DE-62; DE-72)

104. The State of Washington owns 15,851.19 acres of land within the Chamokane Creek basin. These lands are generally being used for timber production, grazing of livestock and recreational purposes. There is no irrigation on any of these lands. The Department of Natural Resources claims 1,845,586 gallons per year for use on lands within the watershed and 59,432.4 gallons per year for use on lands outside the Chamokane Creek basin for a total of 1,905,018.4 gallons per year. No state water rights certificate has evern been issued for any of these claims and the evidence shows that none of the water claimed has been put to beneficial use. (Tr. 1204, 1205, 1206, 1218; DE-23; DE-24; DE-31 through DE-36; DE-67; DE-68)

105. Prior to the initiation of this lawsuit, the State of Washington had issued or approved the following water rights certificates, permits and applications for non-Indian appropriation of water within the exterior boundaries of the Spokane Reservation:

Certificate No. 7142	Dawn Mining Co.	August 1, 1956 (DE-19, DE-71)
Certificate No. 8826	Urban S. Schaffner	March 20, 1958 (DE-61)
Permit No. 15894	A.L., F.L. Smithpeter	March 28, 1969 (PE-87, DE-2)
Application No. 11989	B. Dituri, et al.	June 23, 1971 (DE-37)
Application No. 320422	Urban Schaffner	July 3, 1972 (DE-70)
Application No. 320536	Paul Duddy	September 28, 1972 (DE-40)

Of these, the evidence indicates that Certificate No. 8826 and Application No. 320422 are each for uses of water on homestead land within the reservation. The other uses are on lands as to which the source of title is unclear from the record. (Tr. 1248; PE-67; PE-71)

106. Historically the Department of Ecology has granted more water rights on streams than there is water flowing in those streams. (Tr. 1062) There currently exists certificates, permits and applications for water rights to Chamokane Creek in the amount of 57.72 cfs which would effectively reduce Chamokane Creek 15.96 cfs. (Tr. 124-25; PE-32; PE-33). The State of Washington has thus demonstrated that it is either unable or unwilling to

properly manage the water resources of the Chamokane Creek basin, especially within the exterior boundaries of the Spokane Indian Reservation.

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Respectfully submitted,

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