

## SETTLEMENT AGREEMENT

THIS AGREEMENT, by and between the Tulalip Tribes of Washington ("Tulalip Tribes"), and Public Utility District No. 1 of Snohomish County, Washington ("Snohomish PUD"), is made and entered effective this 6<sup>th</sup> day of November, 1999.

### 1. BACKGROUND

1.1 Snohomish PUD holds ground water certificates 6488 and G1-20625C, with priority dates of July 1, 1969, and May 17, 1963 respectively, to serve its developing May Creek Water System. Effective July 31, 1987, Snohomish PUD submitted to the Washington State Department of Ecology an application for change of such certificates to change the point of withdrawal; to change the use from group domestic to municipal; and to add a new section to the "area served by" the water right. Appendix A. Ground Water Change Application. The point of withdrawal is located generally in the SE¼ NW¼ SW¼, S.4, T27N, R9E, Snohomish County and is in hydraulic continuity with May Creek.

1.2 On May 1, 1996, the Department of Ecology issued its Report of Examination approving the change application.

1.3 On June 6, 1996, the Tulalip Tribes appealed the decision of the Department of Ecology to the Pollution Control Hearings Board ("PCHB").

1.4 May Creek, a tributary to the Wallace River, was closed to further appropriations of surface and ground water pursuant to WAC 173-507-030(2), and WAC 173-507-040, adopted in 1979.

1.5 Snohomish PUD and the Tulalip Tribes have developed a stream flow augmentation plan that the parties agree will benefit the instream flows of May Creek and provide acceptable mitigation for the requested water rights changes.

## 2. STIPULATION

2.1 The parties wish to resolve the dispute herein and not incur any further expense or time in litigation of this appeal and, therefore, stipulate and agree as provided in this document.

2.2 The parties agree that the augmentation plan proposed in Section 3 below will benefit instream flows and fisheries habitat of May Creek and will offset impacts of the water rights changes requested by Snohomish PUD to serve its May Creek Water System.

## 3. AUGMENTATION PLAN

The Snohomish PUD shall implement the following augmentation plan:

3.1 Flow Augmentation. Snohomish PUD will provide flow augmentation by means of a delivery pipe approved by the Washington Department of Fish and Wildlife.

3.2 Point of Augmentation and Source of Water. The point of flow augmentation input will be at or near 423<sup>rd</sup> Avenue SE, at its intersection with May Creek, as depicted on the attached map,

Appendix B. The source of the water will be the May Creek well field indicated on Appendix B, and will be taken from those water withdrawal and use quantities authorized in the existing ground water certificates as described in Subsection 1.1 hereinabove.

3.3 Timing, Quality, and Rate of Discharge. Whenever the Snohomish PUD May Creek Water System withdraws, in any calendar day, a quantity of water exceeding 398,880 gallons (277 gpm times 1,440 minutes per day), for May Creek Water System use, Snohomish PUD shall cause to be diverted to May Creek a quantity of water (the "mitigation flow") equal to the volume calculated utilizing the "Jenkins Depletion Model - May Creek Well Field" (the "Depletion Model"), using a storage coefficient of 0.010, to mitigate for such water system withdrawal and use in excess of 398,880 gallons per day. The "mitigation flow" shall be diverted to May Creek at the rate and time determined by the Depletion Model. A description of the Depletion Model is attached hereto as Appendix C.

Provided, that in no event shall the total quantity of water withdrawn by the Snohomish PUD from its May Creek well field exceed 500 gallons-per-minute, or 319.5 acre feet per year; and provided further, that the parties may agree in writing that the volume of "mitigation flow" required hereunder for augmentation of May Creek may be withdrawn and discharged to May Creek during an alternate period and at a different rate of discharge for purposes of greater

fishery enhancement or in accordance with an alternate stream depletion model selected by both parties, following reevaluation, and deemed by each of the parties to provide a more accurate and beneficial mitigation flow regime under this Agreement.

The mitigation discharge may be interrupted only in instances of immediate emergency endangering the public safety, or threatening property damage, such as (but not limited to) maintenance of flows necessary for fire suppression, main rupture with loss of water and system pressure, and storage recovery following emergency response, but in no event will the flow augmentation provided for in this Section 3 be curtailed or reduced to avoid the imposition of water usage restrictions in response to increasing demands due to area population growth and development.

#### 3.4 Monitoring and Reporting.

a. Snohomish PUD will install a totalizing flow meter and rate-of-flow control valve to monitor and control the rate of release of augmentation flows to May Creek. Snohomish PUD will monitor the releases at least weekly during the augmentation period. Snohomish PUD will provide written reports of metering data to the Department of Ecology (NWRO-SHWR, 3190 160<sup>th</sup> Ave. SE, Bellevue, WA 98008) and the Tulalip Tribes Natural Resources Division (7615 Totem Beach Road, Marysville, WA 98271) no later than November 1 of each year.

b. Snohomish PUD agrees to permit one or more representatives of the Tulalip Tribes Natural Resources Division to inspect the flow augmentation system installed pursuant to this agreement once per year, upon 72 hours' notice to the Assistant General Manager, Water Resources Division. Provided, that additional brief inspections may be made by such Tulalip representatives at times when Snohomish PUD's personnel are otherwise scheduled to be present at the site; Snohomish PUD shall not unreasonably withhold approval for such brief inspections.

3.5 System Maintenance. Snohomish PUD is responsible for all augmentation system maintenance. The physical components of the augmentation plan will be included on routine maintenance and monitoring schedules for Snohomish PUD personnel. In the event inadequate maintenance results in non-compliance with the terms of this agreement, water withdrawals from Snohomish PUD's May Creek Water System Well Field shall be limited to 398,880 gallons in any calendar day, which limitation shall continue pending completion of necessary maintenance or repairs to return the system to compliance, and the Tulalip Tribes shall have all other remedies allowed by law unless by written approval of the Tulalip Tribes, such limitation is not required under the circumstances.

3.6 Implementation of the Augmentation Plan. Snohomish PUD will begin construction of augmentation facilities upon receipt of all necessary governmental permits and authorization, including but

not limited to hydraulic permits and state approval of a water right change amendment. The parties intend that the augmentation plan will be implemented and available for use not later than June 15, 2001, but it is understood and agreed that issuance of change authorizations and permits may be subject to matters beyond the reasonable control of Snohomish PUD, and any delays not the fault of Snohomish PUD shall not be deemed non-compliance with this Stipulation. It is further understood and agreed that stream flow augmentation shall not be required for withdrawals for water system use in any calendar day of less than 398,880 gallons as described in subsection 3.3 above. There shall be no water withdrawals of greater than 398,880 gallons in any calendar day at any time prior to implementation of the augmentation plan.

### 3.7 Necessary Permits and Easements.

a. Snohomish PUD agrees to secure any and all permits and easements necessary to construct and utilize the augmentation system required to carry out the Augmentation Plan described in this Section 3. (See Appendix D for Schematic of Augmentation System). In the event that any permit cannot be issued consistent with Section 3, the parties will meet in good faith to revise this agreement in a manner to accomplish the same general purposes as outlined in this Section 3 above.

Snohomish PUD agrees that not later than March 1, 1999, it shall submit an amended application to the Department of Ecology

NWRO to include as an additional purpose of use authorized by Certificates 6488 and G1-20625C that stream flow augmentation of May Creek as provided in this agreement.

b. The Tulalip Tribes agree that they shall not further appeal or protest the change application described in this agreement or any decision by the Department of Ecology to approve and issue a certificate of change in use for Certificates 6488 and G1-20625C which complies with this agreement.

c. The Tulalip Tribes agree not to oppose the issuance of any and all state and local permits required of Snohomish PUD to carry out the augmentation plan described in this Section 3 so long as said permits are consistent with the terms of this agreement and applicable law.

#### 4. BINDING AGREEMENT

The parties agree that this stipulation is a contract that is binding on the parties, that valuable consideration was given and received for its execution, and that it may be enforced as a contract pursuant to the laws of the State of Washington. In the event of suit to enforce its terms, the parties agree to jurisdiction and venue in Snohomish County Superior Court. In the event of such suit, all remedies allowed by law, including but not limited to damages, specific performance, injunctive relief, and other equitable remedies shall be available. Any suit to enforce

this agreement shall be in addition to remedies available through the Department of Ecology or the Pollution Control Hearings Board.

#### 5. CONTINUING NEGOTIATIONS

Snohomish PUD and the Tulalip Tribes agree and pledge good faith efforts to engage in cooperative discussions regarding Snohomish PUD's and the Tribes' respective water utility supply and fisheries resource issues and concerns. Snohomish PUD specifically agrees to consult with the Tulalip Tribes regarding the water resource acquisition or development plans of its water utility which Snohomish PUD reasonably believes may impact the water resource or fishery interests of the Tulalip Tribes; the objective of the parties is to adopt an overall understanding and cooperative framework and approach for the mutual exchange of information and assistance to promote the accomplishment of the overall goals and objectives of each of the parties. To this end, the parties agree to schedule periodic meetings for consultation.

If Snohomish PUD requests, in writing, a meeting for consultation regarding a particular matter, and such meeting cannot be conducted within a reasonable time, which shall be deemed to be 30 days from the date of mailing any such written request, written communication to the Tulalip Tribes regarding such matter shall meet Snohomish PUD's obligation under this section.



6. WITHDRAWAL OF APPEAL

This agreement resolves all disputes arising from Ground Water Right Change Application No. 6488 and G1-20625C and its appeal by the Tulalip Tribes. The Tulalip Tribes hereby agree to withdraw the appeal in this matter before the Washington Pollution Control Hearings board, and to execute and submit, without delay, any and all documentation as may be reasonably required by such Board or the Department of Ecology to accomplish such withdrawal and termination of the subject appeal.

THE TULALIP TRIBES OF WASHINGTON

By: *Herman A. Williams*

Title: \_\_\_\_\_

PUBLIC UTILITY DISTRICT NO 1 OF SNOHOMISH COUNTY

By: *H. Craig Thompson*

Title: Assistant General Manager, Water Resources

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

RECEIVED

FEB 7 1995

APPLICATION FOR CHANGE OF WATER RIGHT

DEPT OF ECOLOGY  
7/31/87GW

- PURPOSE  DIVERSION OR WITHDRAWAL
- PLACE  ADDITIONAL POINT OR POINTS



NAME: Public Utility District No. 1 of Snohomish County

ADDRESS: P. O. Box 1107, Everett, WA

APPLICATION NUMBER: 01-25948

PERMIT NUMBER: 01-286250

CERTIFICATE NUMBER: 6488 (500 gpm - 15 ac-ft)

01-286250 (200 gpm - 310.5 ac-ft)

DECEASED RIGHT (TITLE OF CLAIM)

APPROPRIATIONS MADE (GIVE DATE IF PRIOR TO JUNE 7, 1917 IF SURFACE WATER, OR JUNE 7, 1918 IF GROUND WATER)

IS THE WATER RIGHT RECORDED IN YOUR NAME?  YES  NO

IF NO, GIVE NAME RECORDED UNDER

RIGHT CONSISTS OF

WATER USED FROM (STREAM, LAKE, WELL, OR OTHER SOURCE): Well

GALLONS PER MINUTE OR CUBIC FEET PER SECOND: 500 GPM

WATER CURRENTLY USED FOR: Community Domestic Supply

DATE OF USE: Year Round

LOCATION OF PRESENT POINT OF DIVERSION OR WITHDRAWAL

ENTER BELOW THE DISTANCES FROM THE NEAREST SECTION OR PROPERTY CORNER TO THE DIVERSION OR WITHDRAWAL:

1.029 feet south and 1.085 feet east of the west 1/4 corner of Sec 4 (27-9) E. 1/4

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION): SE 1/4, NW 1/4, SW 1/4

SECTION: 4, TOWNSHIP N: 27, RANGE (E. OR W.) 9, COUNTY: Snohomish

IF THIS IS WITHIN THE LIMITS OF A RECORDED PLATTED PROPERTY, COMPLETE THIS SECTION

LOT: \_\_\_\_\_ BLOCK: \_\_\_\_\_ OR (GIVE NAME OF WELL OR ADDITION)

LEGAL DESCRIPTION OF LANDS WATER IS USED ON

The Plat of May Creek Mountain View Tracts and the Plat of May Creek Mountain View Tracts Divisions 2, 3 and 4; all in Sec. 5, T27N. R9E W.M. (373 legal lots)

SECTION: 5, TOWNSHIP N: 27, RANGE (E. OR W.) R9E, COUNTY: Snohomish

(ATTACH SEPARATE SHEET IF NECESSARY)

ARE YOU THE LEGAL OWNER OF THE ABOVE DESCRIBED LANDS?  YES  NO

IF NO, EXPLAIN YOUR INTEREST: The PUD owns the public water system that provides service to the above-described lands.

REASONS FOR THE PROPOSED CHANGE

1) To provide municipal supply to the area served by the PUD's May Creek Water System; and

1A) Add an additional point of withdrawal

2) To perfect the OI amount (the current well (Well 1) is not capable of 500 gpm).

A MINIMUM FEE OF \$10.00 MUST ACCOMPANY THIS APPLICATION

CONTINUE ON REVERSE SIDE

CHANGE

DO NOT WRITE IN THESE SPACES

APPENDIX A

**CHANGE REQUESTED**

<b>CHANGE WATER USE TO</b> Municipal	<b>TIME OF USE</b> Year Round (no change)	<b>GALLONS PER MINUTE OR CUMULATIVE FOR RECORDING</b> 500 GPM (no change)
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**LOCATION OF PROPOSED POINT OF DIVERSION OR WITHDRAWAL**

BY ACCOMPANYING SECTION MAPS, ACCURATELY MARK AND IDENTIFY EACH POINT OF DIVERSION, SHOW NORTH-SOUTH AND EAST-WEST DISTANCES FROM NEAREST SECTION CORNER OR PROPERTY CORNER.

ALSO ENTER BELOW THE BEARING FROM THE NEAREST SECTION OR PROPERTY CORNER TO THE DIVERSION OR WITHDRAWAL.

1,029 feet south and 1,112 feet east of the west 1/4 of Section 4 (27-9) E. W.M.

<b>LOCATED BY THE CHALLEST LEGAL SUBDIVISION</b> SE 1/4, NW 1/4, SW 1/4	<b>SECTION</b> 4	<b>TOWNSHIP N.</b> 27	<b>RANGE E. OR W.3 WEST</b> 9E	<b>COUNTY</b> Spokane
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IF THIS IS WITHIN THE LIMITS OF A RECORDED PLATTED PROPERTY, COMPLETE THIS SECTION

<b>LOT</b>	<b>BLOCK</b>	<b>OF SOME PART OF PLAT OR ADDITION</b>
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ARE YOU THE OWNER OF THE LAND ON WHICH THE PROPOSED POINT OF DIVERSION OR WITHDRAWAL IS TO BE LOCATED?

YES     NO

**LEGAL DESCRIPTION OF LANDS WATER IS TO BE USED ON**

Area served by the May Creek Water System of the Public Utility District No. 1 of Spokane County within Sections 4, 5, 6, 8 and 9 of Township 27 North, Range 9, East, W.M.

<b>SECTION</b> 4, 5, 6, 8, 9	<b>TOWNSHIP N.</b> 27	<b>RANGE E. OR W.3 WEST</b> 9E	<b>COUNTY</b> Spokane
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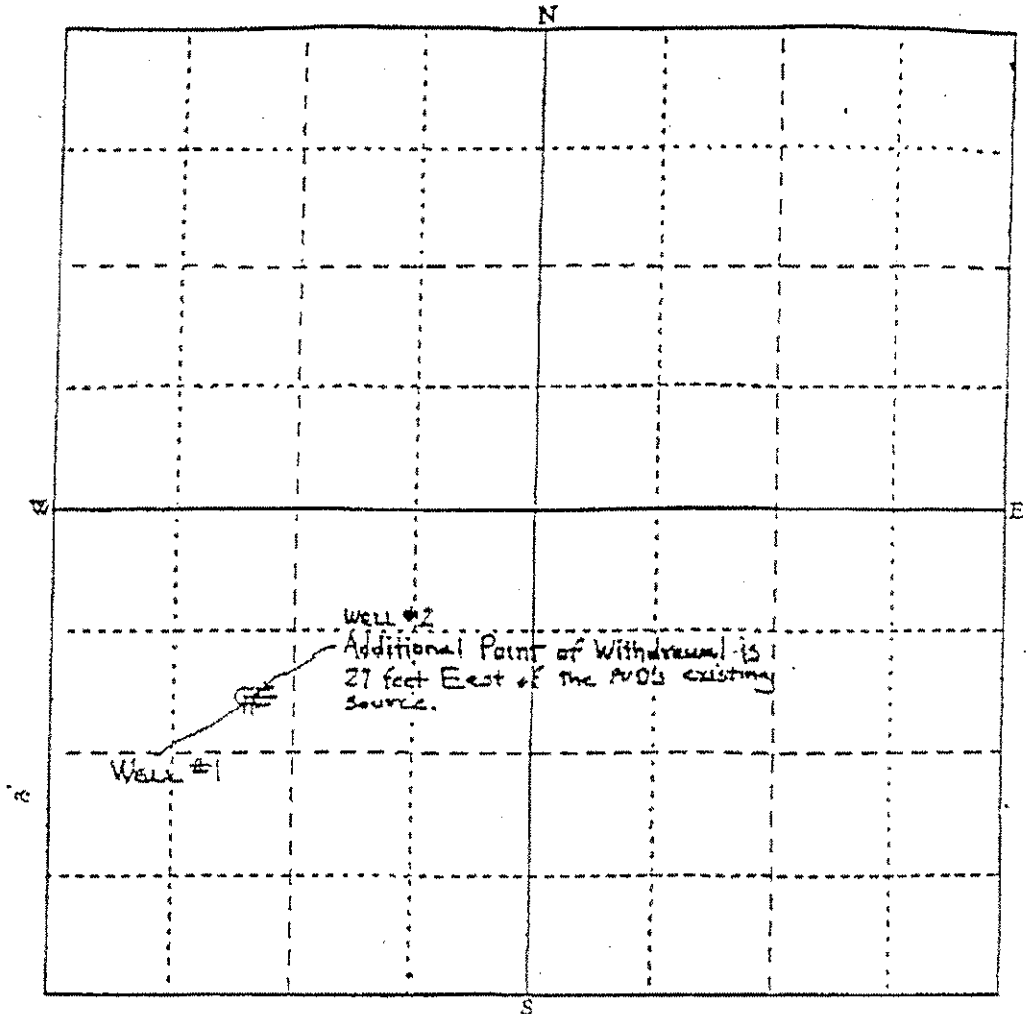
(ATTACH SEPARATE SHEET IF NECESSARY)

ARE YOU THE LEGAL OWNER OF THE ABOVE DESCRIBED LANDS? IF NO, EXPLAIN YOUR INTEREST

YES     NO    Municipal Water Utility, serving its designated water service area

*Mark D. Seaman*  
APPLICANT'S SIGNATURE

Sec. 4 Twp. 27 N. R. 9 E



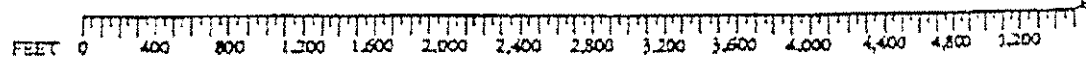
Scale: 1 inch = 200 feet (each small square = 10 acres)

Show by a cross (X) the location of points of diversion (surface water source) or point of withdrawal (ground water source). For ground water applications, show by a circle (O) the locations of other wells or works within a quarter of a mile. Indicate traveling directions from source town in space below.

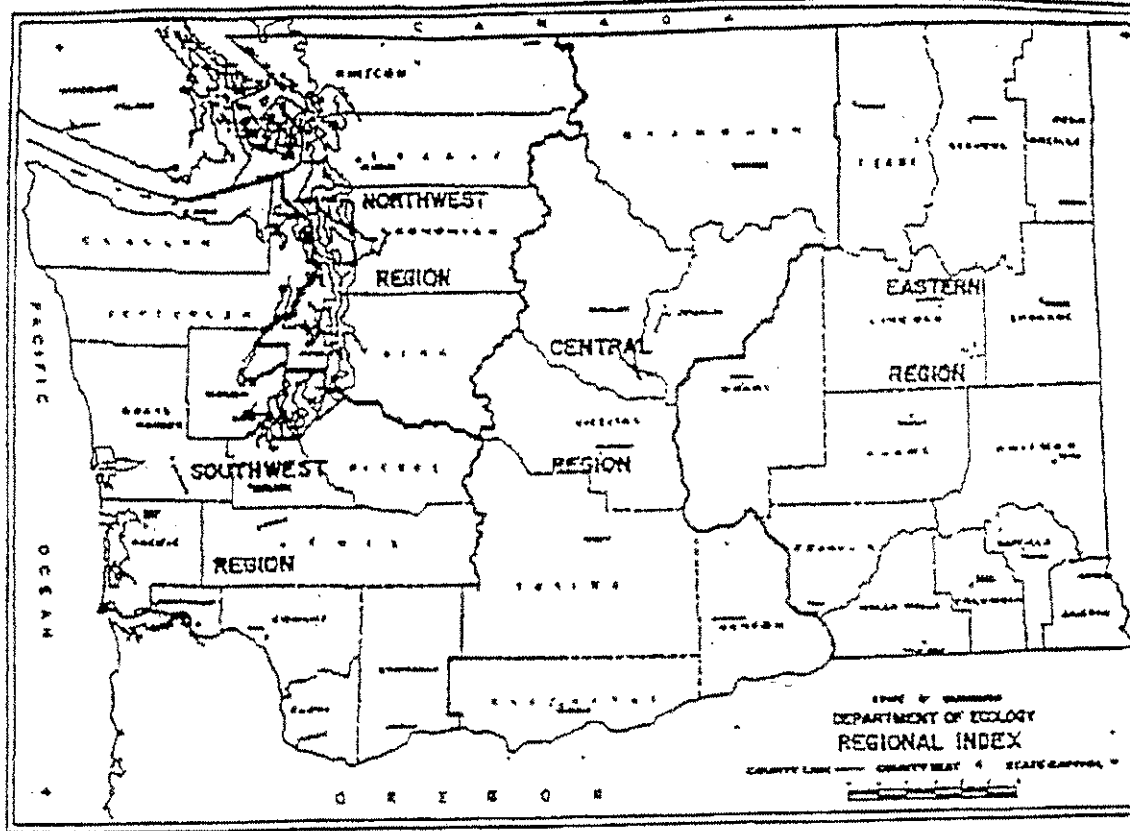
At the intersection of US Highway 2 and 156th Ave. S.E. (Dickinson Blvd) go North to 164th St. S.E., then East to 419th Ave. S.E., then North to 156th St. S.E., then South on 423rd Ave. S.E., 1/4 mile to PUD chain link gate on the right.

Detach here

Fold along sc1



Detach this scale at the perforation, fold across paper under or over the scales by covering along the scale line. This scale corresponds to the SECTION MAP above. You can read feet directly from this scale to existing property and locate points of diversion or withdrawal on the SECTION MAP. Enclose this map along with the application and \$10.00 examination fee.



Your water right application will be processed by the Regional Office of the Department of Ecology having jurisdiction in the area in which your water works are located. Please submit your completed application form, map, sketches and \$10.00 examination fee to the appropriate Regional Office.

Northwest Regional Office  
 4150 150th Avenue N.E.  
 Redmond, Washington 98072 - 5301  
 Tel. (206) 885-1900

Central Regional Office  
 3601 West Washington  
 Yakima, Washington 98903 - 1164  
 Tel. (509) 575-2491

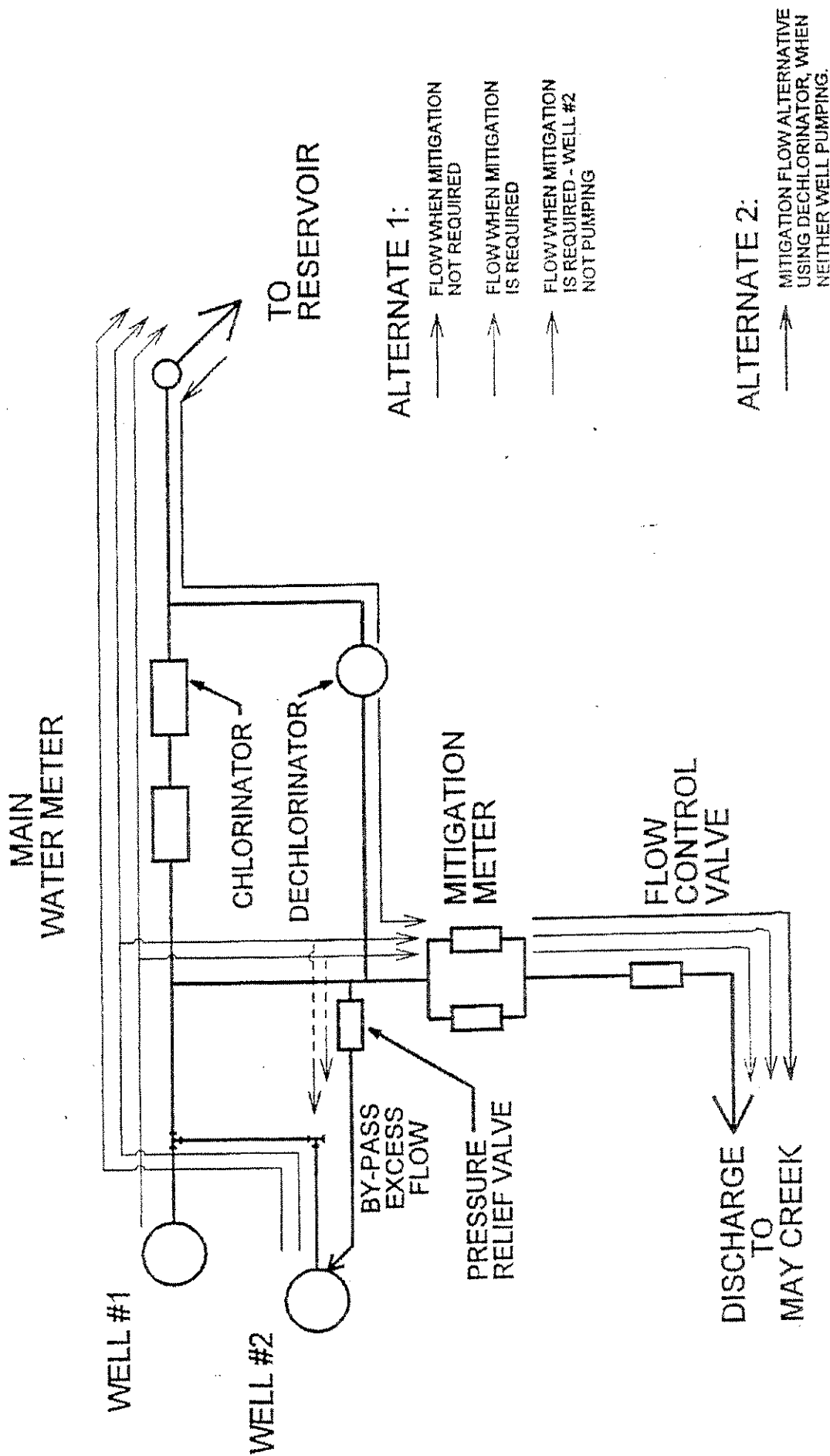
Southwest Regional Office  
 7272 Clearwater Lane  
 Olympia, Washington 98504 - 6511  
 Tel. (206) 753-2153

Eastern Regional Office  
 N. 4601 Monroe, Suite 100  
 Spokane, Washington 99205 - 1235  
 Tel. (509) 456-2926

The appropriate Regional Office will be happy to answer any further questions you may have.

# MAY CREEK MITIGATION PLAN

## APPENDIX D





THE TULALIP TRIBES  
OF  
WASHINGTON

RESOLUTION NO. 99-311

BE IT RESOLVED: By the Board of Directors of the Tulalip Tribes of Washington, an Indian Tribe organized pursuant to the Indian Reorganization Act of June 18, 1934, (25 USCA 476-477) and in accordance with its Constitution Article VI, Section 1, (a) and the By-Laws as approved by the Secretary of the Interior, and

WHEREAS: the Tulalip Tribes of Washington is a federally recognized Indian Tribe under the Treaty of Point Elliott, signed in 1855, and

WHEREAS: the Tribes Treaty reserved rights include fishing in their usual and accustomed areas, and

WHEREAS: Maintaining the instream flows necessary for salmon production are very important for exercising the Tribes Treaty rights for harvesting fish, and

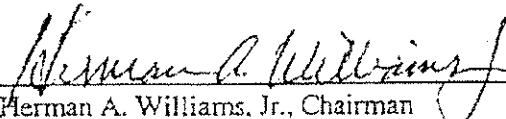
WHEREAS: the Public Utility District Number 1 of Snohomish County, Washington, desires to withdraw well water, which has a hydraulic continuity to May Creek within the Tulalip usual and accustomed fishing areas, and

WHEREAS: Tulalip has appealed the permits issued for the water withdrawals in order to protect stream flows, and

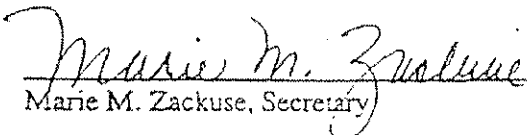
WHEREAS: Tulalip staff have negotiated a settlement agreement which includes supplementing the stream flows to May Creek with well water, to offset the estimated loss of stream flows from the groundwater withdrawals, and

NOW THEREFORE BE IT RESOLVED: that the Board of Directors for the Tulalip Tribes of Washington, hereby authorize the Chairman (or Vice Chair in his absence) to sign the settlement agreement with the Public Utility District No. 1 of Snohomish County, Washington.

PASSED this 11 day of November-1999 in Special Session with a quorum present, by a vote of 6 FOR and 0 AGAINST.

  
Herman A. Williams, Jr., Chairman

ATTESTED:

  
Marie M. Zackuse, Secretary



