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

IN THE MATTER OF NORTHWEST
STEELHEAD AND SALMON COUNCIL
SOUTH KING COUNTY CHAPTER,

Petitioners,

and

STATE OF WASHINGTON, DEPARTMENTS
OF FISHERIES AND GAME,

Cross-Petitioners,

v.

CITY OF TACOMA,

Respondent-Cross
Appellant,

and

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

No. 83-2-01104-1

CERTIFICATE FOR RELEASE
OF STIPULATED JUDGMENT

*Green Fish
River
W. Wash*

TO: Clerk of the Court

AND TO: All parties of record.

The Washington State Department of Fisheries ("DOF")
and the Washington State Department of Game ("DOG") hereby
certify that the South King County Chapter of the Northwest
Steelhead and Salmon Council of Trout Unlimited ("NSSC") has

CERTIFICATE FOR RELEASE - 1

LAW OFFICES OF
SYRDAL, DANELO, KLEIN & MYRE
A PROFESSIONAL SERVICE CORPORATION
SUITE 2400
FOURTH & BLANCHARD BUILDING
SEATTLE, WASHINGTON 98121
(206) 464-1490

1 promised to use the sum of \$50,000 paid into the registry of
2 the Court in accordance with the judgment in this case in a
3 manner that will benefit or enhance the Green River fishery and
4 that does not conflict with the regulation and enhancement of the
5 Green River fishery by DOF, DOG or other state agencies. DOF and
6 DOG request that the Clerk of the Court release the sum of
7 \$50,000 to NSSC.

8 DATED this 13 day of SEPTEMBER, 1985.

9 WASHINGTON DEPARTMENT OF FISHERIES

10
11 By *William R. Wilkerson*
12 *William R. Wilkerson*

13 WASHINGTON DEPARTMENT OF GAME

14 By *Jack S. Maryland*
15 *Jack S. Maryland*

16 Approved as to form;
17 notice of presentation waived:

18 *[Signature]*
19 D: Anthony Weeks
20 Assistant Attorney General
21 Counsel for the State of
22 Washington, Departments of
23 Fisheries and Game

24 Presented by:

25 SYRDAL, DANELO,
26 KLEIN & MYRE, P.S.

27 *Linda R. Larson*

Attorneys for South King County
Chapter, Northwest Steelhead
and Salmon Council of Trout
Unlimited

8992b/8-30-85

TERMS AND CONDITIONS
100 cfs WATER RIGHT
CITY OF TACOMA/GREEN RIVER

Tacoma's request to appropriate an additional 100 cfs from presently available public water resources shall be approved in the same form as that proposed by the Washington State Department of Ecology in its Report of Examination, dated August 19, 1981, with the following additional conditions applicable to this 100 cfs water right only which are necessary to conform to the Water Resources Act of 1971:

1. Water in the Green-Duwamish River Basin placed there for fish conservation purposes from storage behind Howard Hanson Dam, as operated now or in the future, shall not be subject to appropriation under this permit.

2. Continuous stream gauging, through instrumentation and a program approved by DOE, shall be conducted by the City of Tacoma. An instantaneous monitoring system shall be installed in order that both the City of Tacoma and DOE shall be apprised at all times of stream flows.

3. A suitable measuring method shall be in place on Pipeline Nos. 1 and 5 to measure the rate of diversion. Both Pipelines Nos. 1 and 5 shall have equipment to "throttle-back" the quantity of water diverted.

4. No declaration of a critical period or of overriding considerations of public interest shall be made by the

Director of DOE with respect to diversions under this permit until, in addition to satisfying the conditions of WAC 173-509-030(2), the City of Tacoma demonstrates that it has carried out all provisions of a pre-established drought contingency plan submitted to and approved by DOE.

5. No insufficiency of ground water supplies shall be grounds for a declaration of a critical period or of over-riding considerations of public interest by the Director of DOE with respect to diversions under this permit until, in addition to satisfying the conditions of WAC 173-509-030(2), the City of Tacoma demonstrates that it has made a plan and actively pursued development of alternative and supplemental water sources.

6. The perfection period for development of a right under this permit shall be 20 years, subject to extensions.

7. This permit is subject to Chapter 173-509 WAC and that stipulation and judgment as filed in Thurston County Cause No. 83-2-01104-1.

8. Tacoma shall design any new obstructions in the Green River, including but not limited to any additions to Tacoma's diversion dam, to minimize the adverse impacts of these obstructions on downstream migrant fish, in accordance with the applicable standards used for issuance of hydraulics permit approvals pursuant to RCW 75.20.100.

9. Tacoma shall not oppose requests for releases of stored water by the Corps of Engineers in the late summer

and fall for the purpose of attracting returning fish into the Green River system. Tacoma agrees not to divert under this permit any of such extra releases or the pre-existing conservation flow. The quantity of these extra releases shall be designated in advance by agreement between the U.S. Corps of Engineers, the Department of Fisheries and the Department of Game (hereinafter "WDF", "WDG", and "State fisheries agencies").

10. If in the future Tacoma develops a water filtration plant to treat water obtained from the Green River, Tacoma shall not object to the planting of adult anadromous fish in the watershed above Howard Hanson Dam.

11. (a) The City will provide (by non-use) 750 cfs days annually from the second diversion water right, awarded by the Department of Ecology, at a schedule as requested by the State fisheries agencies but in no case at a rate higher than 50 cfs. The State fisheries agencies shall agree on and provide all parties with the name of a single contact person who has been delegated by the head of each department the authority to make or modify such requests. Tacoma will likewise designate a contact person for the purposes of receiving and implementing such requests and other communications pursuant to this judgment.

Water left in the river pursuant to such request shall not be considered part of this 750 cfs day volume unless 1) it is water that the City is authorized to withdraw by the subject appropriation and 2) it is water that

the City would have otherwise withdrawn from the Green River to meet actual daily system demands.

Actual daily system demands are defined as the daily amount of water withdrawn from the river plus water obtained from alternative sources.

Upon request of the State fisheries agencies, diversions under the second diversion water right will be reduced by up to 50 cfs, and the 750 cfs annual allotment will be reduced as follows:

Subtract the quantity of water diverted from the river by Tacoma from the actual daily demand. If less than zero, no reduction in the 750 cfs day annual allotment will be made. If greater than zero, reduction in the 750 cfs day allotment will be made for the water made available to fisheries, up to a maximum of 50 cfs days. In no case shall the 750 cfs day annual allotment be reduced by more than the amount Tacoma's second diversion is curtailed.

Reduction in diversions to provide fishery water will be made only from natural flow covered by the second diversion, and not from the first diversion or from any stored water.

Calculations shall be based upon data from actual stream gauging stations and water meters. A summary of calculations affecting the 750 cfs day allotment shall be prepared by Tacoma and submitted to the State fisheries agencies and such other parties as they may designate on a weekly basis for each week in which a contribution to the 750

cfs day commitment is claimed. Tacoma will notify the State fisheries agencies and such other parties as they may designate of their intent to begin operation of the Pipeline No. 5 project at least 30 days prior to commencing operation. The State fisheries agencies and such parties as they designate will then provide Tacoma with an address to which to send the weekly data submittal.

(b) This commitment will remain in effect unless and until the Corps of Engineers establishes additional storage at Howard Hanson Dam after which time Tacoma may execute one of two options:

(i) Tacoma may continue to provide water from the second diversion water right to be delivered at a schedule as requested by the State fisheries agencies as discussed in Section (a) above, or

(ii) Tacoma may purchase 1000 cfs days of storage for fisheries purposes at Howard Hanson Dam. If storage is purchased, Tacoma will not provide water from the second diversion water right to fill this storage but will pay for the cost of the storage right. This section does not constitute approval by any party to future increased water storage requests.

12. As a means of assisting the South King County Chapter of the Northwest Steelhead and Salmon Council of Trout Unlimited ("NSSC") in mitigating any adverse impacts resulting from the withdrawal of water under this permit as required by Chapter 43.21C RCW, Tacoma shall pay into the registry of this

Court the sum of \$50,000.00. This amount shall be released by the Clerk of this Court to the NSSC upon certification by the Departments of Fisheries and Game that the NSSC has promised to complete within five years the projects set forth in the attached letter dated August 26, 1985. Such projects will benefit or enhance the Green River fishery in a manner that does not conflict with the regulation and enhancement of the Green River fishery by the Departments of Fisheries and Game or other state agencies. The \$50,000 is not proposed by the City of Tacoma nor recognized by any state agency as mitigation or compensation for the future construction impacts of the Pipeline 5 project or past, present or future damages claimed for the existence of Tacoma's existing water diversion dam on the Green River.

APPROVED:



Kenneth F. Olson
Superintendent, Water Division

APPROVED:



William J. Barker
Chief Assistant City Attorney

Daniel Syrdal
Attorney for N.W. Steelhead
and Salmon Council,
South King County Chapter

8992b

August 26, 1985

William R. Wilkerson
Director, Department of Fisheries
Olympia, Washington

Jack Wayland
Director, Department of Game
Olympia, Washington

Dear Messrs. Wilkerson and Wayland:

The South King County Chapter of Trout Unlimited has a long history of fishery rehabilitation and enhancement projects in the Green River basin. During the last fifteen years, those projects have included restoring the Icy Creek rearing facility, a wild captive program for steelhead, planting fry in the Green River, maintenance of egg boxes, an imprint program at Kristy Creek in Flaming Geyser State Park, and habitat restoration along the river. As these projects demonstrate, our chapter has a continuing commitment to restoration and enhancement of the Green River fishery.

During the last four years, the chapter has also pursued an appeal challenging the City of Tacoma's proposed diversion of an additional 100 cfs from the Green River for municipal water supplies. The chapter, along with your departments, appealed first to the Pollution Control Hearings Board and then to Thurston County Superior Court the Department of Ecology's approval of Tacoma's water right. The appeal was based in part on the proponents' failure to adequately analyze and mitigate the fishery impacts that would result from the diversion. In the settlement of that litigation, your agencies and the other parties to the case agreed to the following stipulation:

12. As a means of assisting the South King County Chapter of the Northwest Steelhead and Salmon Council of Trout Unlimited ("NSSC") in partially mitigating any adverse impacts resulting from the

Messrs. Wilkerson and Wayland
August 26, 1985
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withdrawal of water under this permit as required by Chapter 43.12C RCW, Tacoma shall pay into the registry of this Court the sum of \$50,000.00. This amount shall be released by the Clerk of this Court to the NSSC upon certification by the Department of Fisheries and Game that the NSSC has promised to complete within five years the projects set forth in the attached letter dated August 26, 1985 and that such projects will benefit or enhance the Green River fishery in a manner that does not conflict with the regulation and enhancement of the Green River fishery by the Departments of Fisheries and Game or other state agencies....

The purpose of this letter is to provide you with the information needed to make such a certification.

While our enhancement projects are often highly labor intensive, they nearly always involve a significant up-front investment for equipment and materials. Obviously, when our members are involved in fund raising, they do not have as much time left for volunteer labor on enhancement projects. We therefore believe that any monies received by the chapter from the settlement in this case will directly translate into increased enhancement activity on our part on the Green River system.

The South King County Chapter proposes several enhancement projects of benefit to the Green River fishery that we believe are consistent with the regulation and enhancement of the river by your agencies. First, we have planned a project to be completed this summer to restore an old beaver pond and provide cover on Snow Creek. The plans for this project were designed by the U.S. Forest Service and have already been approved by the Washington Departments of Fisheries and Game. This project is located on federal land and will be directed by Forest Service personnel. Trout Unlimited has provided \$600 as seed money for partial payment of necessary materials and direct costs. The chapter must provide additional matching funds of \$600. We will provide over 800 hours of labor, valued at \$10/hour, resulting in a minimum for the project of approximately \$9,200. This project will be completed this summer. A copy of our grant application is enclosed. With the settlement funds, we also propose to do similar work in five upstream ponds in the system over the next five summers.

Messrs. Wilkerson and Wayland
August 26, 1985
Page 3

These projects again would be coordinated with your departments and the U.S. Forest Service. The cost of these projects, using the initial project as a guideline, is \$46,000.

The chapter also proposes instream habitat construction projects in Tacoma Creek, Twin Camp Creek, Soos Creek, and Kent's Mill Creek. All of these projects will require similar amounts of seed money and labor by the chapter. It should be noted that all of these projects could be valued at much larger sums if calculated with other costs that a private contractor would charge for a project, such as administrative costs, transportation taxes and profit margins.

In addition to the instream habitat construction projects outlined above, the chapter proposes various riparian zone revegetation projects. One such project has been planned for completion by the end of this summer on Tacoma Creek in consultation with the Department of Game and the United States Forest Service. It will involve planting broadleaf shrubs and conifers along the stream, as well as putting in instream structures to improve rearing habitat with the creation of more pools. This project requires approximately \$700 in seed money contributed by Trout Unlimited, as well as approximately 24 man days in labor contributed by the chapter. The actual cost of this project is thus in excess of \$3,000. A copy of our grant application for the project is enclosed. In addition to the work on Tacoma Creek, the chapter proposes to do similar work on Sunday Creek, Upper Green Mainstem, Snow Creek, East Creek, Twin Camp Creek, Soos Creek, and Kent's Mill Creek over the next five years. Your agencies would be consulted before any of these projects are implemented. Again, with the settlement monies, such projects would be made possible and would have a minimum cost of \$21,000.

Another major project proposed for the Green River system is the remodeling and repair of our Flaming Geyser rearing facility at an estimated cost of \$30,000. This work will involve excavating and laying a new supply system to include a larger diversion box, excavating and laying a new drain system to include weirs, and resurfacing and reinforcing the ponds. The Richard King Melon Foundation has provided matching funds for a 50% share of this project under Trout Unlimited's Living Brightwater Program. Thus, \$15,000 of the settlement money would apply to this project, and construction would begin this year. However, it should be noted that this project is dependent upon the issuance of a water right by the Department of Ecology.

Messrs. Wilkerson and Wayland
August 26, 1985
Page 4

Finally, a more long term project which the chapter intends to investigate is constructing a new Flaming Geyser spawning channel. It is anticipated that just the survey and design work alone in order to determine the project's feasibility could cost up to \$5,000. We hope to be able to begin such work in the near future. If this facility proves feasible, we believe it would be a very significant benefit to the Green River fishery.

Finally, we believe that all of the appellants in the litigation should congratulate themselves on the great benefits to the Green River that resulted from the appeal. The 750 cfs days of water that Tacoma agreed to leave in the river for the benefit of instream resources has a commercial value of approximately \$2 million according to Tacoma's calculations. Its value to the fishery in the future cannot be measured. Together with the chapter's proposed enhancement projects, we believe that the Green River will benefit immensely from the settlement, and that we should all be proud of the settlement.

Very truly yours,

Tom Miller
President
South King County Chapter of the
Northwest Steelhead and Salmon
Council of Trout Unlimited