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STATE OF WASHINGTON

BY  DEPUTY

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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GERALD G. RICHERT, et al.,

Plaintiffs/Respondents,

v.

CITY OF TACOMA,

Defendant/Petitioner.

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BRIEF OF APPELLANT CITY OF TACOMA

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## I. INTRODUCTION AND SUMMARY OF ARGUMENT

Courts, parties, and the public have a vital interest in protecting the finality of judgments. That interest is at its zenith in matters involving real-property rights. In 1921, in *City of Tacoma v. Funk*, Mason County Superior Court No. 1651, the City of Tacoma (“Tacoma”) condemned and acquired all the land parcels and other real property rights required to build and operate hydroelectric dams on one of the tributaries of the Main Stem of the Skokomish River. Plaintiffs are current owners of land located downstream from the dams, along the Main Stem. As part of the final judgment in *Funk*, Tacoma compensated plaintiffs’ predecessors, both for taking some of the property rights attached to their land—including all riparian rights—and also for any damage to the owners’ remaining property rights. Because the final judgment in *Funk* bars plaintiffs from seeking additional compensation now, the court below erred as a matter of law by denying Tacoma’s summary judgment motion.

In the nine decades since entry of the *Funk* judgment, Tacoma has operated the dams as licensed by federal regulators and in compliance with state and federal environmental requirements—diverting varying amounts of water from the North Fork at different times over the years. As part of relicensing proceedings that began in 1974, the government required Tacoma to maintain a minimum flow from the dams into the North Fork in order to benefit fish species. Tacoma’s current license requires it to release up to the natural inflow level of the North Fork.

Plaintiffs filed this suit in November 2010 claiming the existence of natural flow (or less) in the North Fork improperly raised water levels and lowered the value of their downstream properties. Tacoma denied that its dam operations caused plaintiffs' alleged damages, but contended that, in any event, the final judgment in *Funk* barred plaintiffs from asserting claims for additional compensation. The parties filed cross-motions for summary judgment regarding the impact of the *Funk* judgment on plaintiffs' claims. The trial court granted plaintiffs' motion to strike Tacoma's defenses based on *Funk*, and denied Tacoma's motion. Without reaching the question of causation, the court ruled that the current set of claims were "not within the contemplation of the *Funk* litigants or the *Funk* court." RP (6/8/12) 7:16-17. This Court should reverse the lower court's ruling on three separate and independent grounds:

**First**, plaintiffs' claims regarding changed water levels in the Main Stem seek damages solely for an alleged invasion of lower riparian rights. But as part of the *Funk* judgment, Tacoma acquired ***all riparian rights*** attaching to the properties at issue. As the current holder of those rights, Tacoma—not plaintiffs—was entitled to determine the amount of North Fork water entering the Main Stem and flowing across each of these properties. *See, e.g., De Ruwe v. Morrison*, 28 Wn.2d 797, 805, 184 P.2d 273 (1947). Plaintiffs may not sue Tacoma for its lawful exercise of property rights it already paid to acquire.

**Second**, the final judgment in *Funk* also bars plaintiffs' claims under ordinary *res judicata* principles. Tacoma fully compensated

plaintiffs—both for taking some of their predecessors’ property rights and also for damaging their remaining property rights. Even if Tacoma had not specifically acquired plaintiffs’ riparian rights, plaintiffs still could not sue for additional alleged damage to their property, because their new claims involve the same subject matter as the claims in *Funk*. See, e.g., *Corbin v. Madison*, 12 Wn. App. 318, 323, 529 P.2d 1145 (1974).

**Third**, Tacoma has an independent legal right to allow waters to flow into the North Fork up to the amount of the natural flow. As a matter of law, the owner of a dam has no duty to maintain water levels for the benefit of lower riparian owners, and is free to open the dam and return the outflow of water to its natural level. See, e.g., *Drainage Dist. No. 2 of Snohomish Cnty. v. City of Everett*, 171 Wash. 471, 480-81, 18 P.2d 53 (1933); see also *Hood v. Sleskin*, 88 R.I. 178, 143 A.2d 683 (1958). Plaintiffs cannot turn the incidental benefits they received from Tacoma’s prior Project operations into a perpetual obligation to operate the Project in plaintiffs’ preferred manner.

The court’s decrees in *Funk* gave Tacoma the right, but not the obligation, to divert up to the full amount of North Fork flows in perpetuity. Because the *Funk* judgment bars plaintiffs’ claims as a matter of law, this Court should reverse the lower court’s judgment, and remand the case with directions to enter summary judgment in favor of Tacoma.

## II. ASSIGNMENTS OF ERROR

1. The trial court erred in entering its June 24, 2012 Order denying Tacoma's motion for partial summary judgment and granting plaintiffs' motion for summary judgment with regard to *Tacoma v. Funk*. (Sub. no. 127, CP 87-92) (Appendix at A-1 – A-6).

2. The trial court erred in entering its June 29, 2012 Final Judgment as to issues regarding *Tacoma v. Funk*. (Sub. no. 126, CP 94-96) (Appendix at A-7 – A-9).

## III. STATEMENT OF ISSUES

1. Are plaintiffs' claims—which seek damages solely for the alleged invasion of riparian rights—barred by Tacoma's acquisition in *Funk* of all riparian rights attaching to the properties at issue?

2. Under ordinary principles of *res judicata*, does a final condemnation judgment that took some of the property rights held by a group of landowners and compensated them for damage to their remaining property rights bar the landowners' successors from asserting claims for additional damages?

3. Does plaintiffs' claim that Tacoma must operate its dam in perpetuity in a manner that maintains water levels for plaintiffs' benefit fail as a matter of law?

#### IV. STATEMENT OF CASE

##### A. Factual Summary

##### 1. Tacoma and the Cushman Hydroelectric Project

Tacoma is a Washington municipality situated in Pierce County, Washington. For almost ninety years, Tacoma has operated the Cushman Hydroelectric Project (“Project”) on the North Fork of the Skokomish River in Mason County, Washington. CP 3647-56. The Project consists of two dams and related structures, which Tacoma operates pursuant to

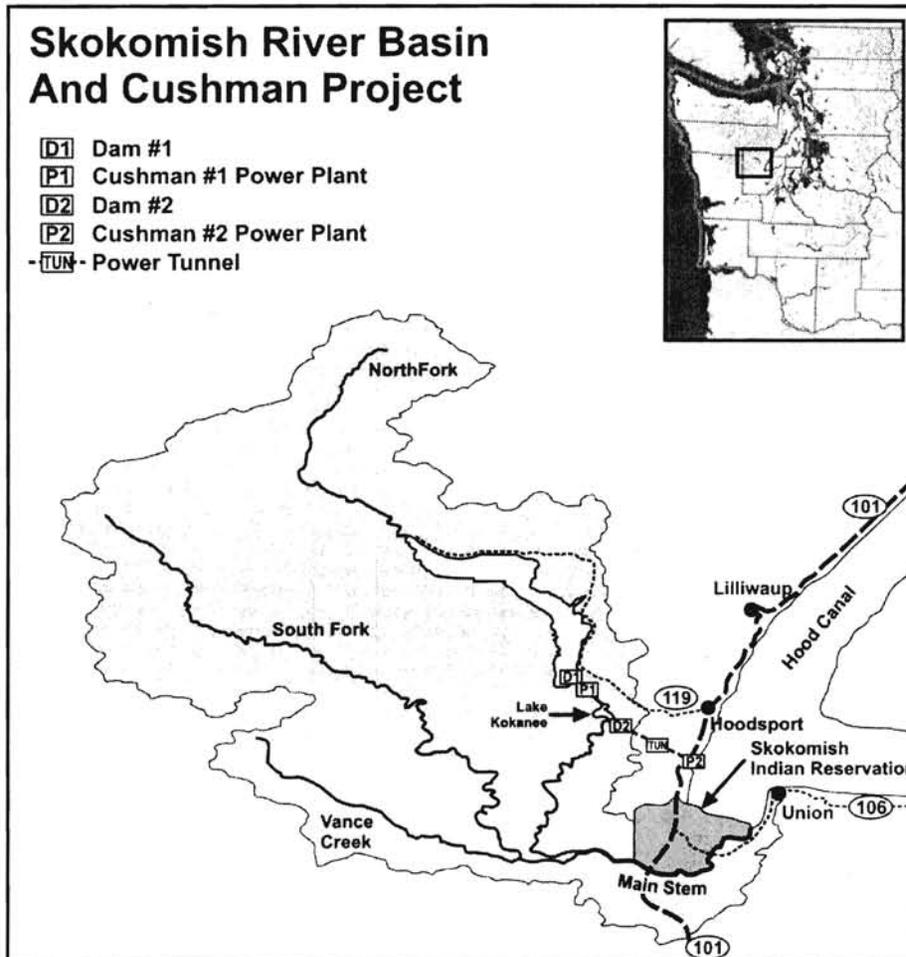


FIGURE 1 (See CP 401, 2569)

Federal Energy Regulatory Commission (“FERC”) licenses issued under the Federal Power Act. CP 3774-3973. The first dam, completed in 1926, impounds Lake Cushman, a 9.6-mile long reservoir that supplies water for generation at a powerhouse with a capacity of 50 megawatts (“MW”). CP 3775 at ¶ 4. The second dam, completed in 1930 and located two miles downstream of the first dam, impounds Lake Kokanee and diverts a portion of the waters of the North Fork to a second powerhouse with a capacity of 81 MW located on Hood Canal. *Id.* See Figure 1.

## **2. The Skokomish River Basin**

The North Fork, including the Project, is part of the Skokomish River basin, which is located in the southwest portion of the Olympic Peninsula. See Figure 1. With headwaters in the Olympic Mountains, the river basin includes three major tributaries: the North Fork (approximately 33 miles long), the South Fork (approximately 28 miles long), and Vance Creek (which flows into the South Fork), all flowing into the Main Stem channel that continues east to the Hood Canal. *Id.* The Main Stem has much less gradient than the upper forks, with a broad and generally flat flood plain between the valley walls, and a channel that has meandered since at least 1861. CP 2542. This has resulted in continuous erosion problems for settlers and farmers. CP 2577. Aggradation—the gradual buildup of river floor from sediment— has also occurred in the basin. CP 2572 (Army Corps of Engineers Report) (“the valley has been in an aggradational environment for around 2,000 years”).

### 3. Land Owned By Plaintiffs

Plaintiffs are the current owners of land parcels adjacent to the Main Stem, which begins approximately fifteen miles below the Project. See Figure 2.<sup>1</sup> Plaintiffs' parcels are located in the floodway of the Skokomish River, which is part of the river's natural watercourse. CP 2544. The river has a history of regular flooding. CP 2542-43.

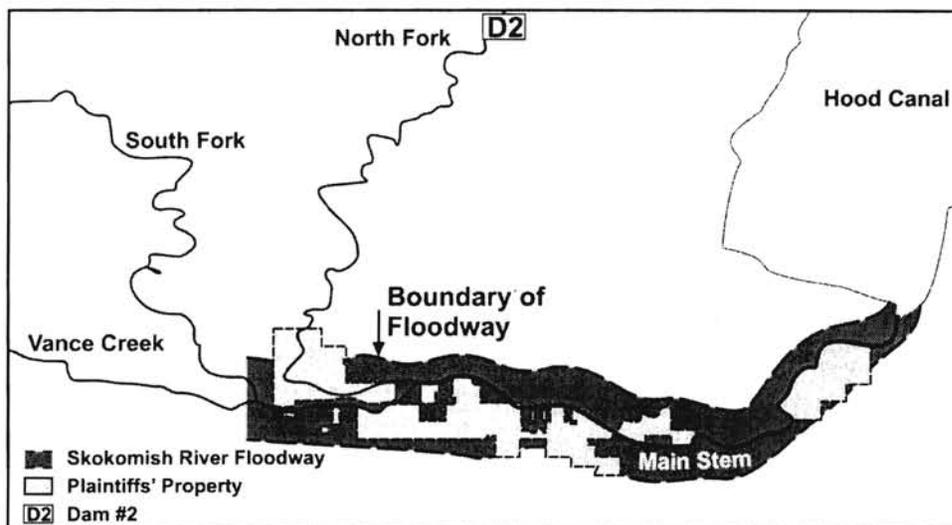


FIGURE 2 (See CP 2718, 2754)

### 4. *City of Tacoma v. Funk* Condemnation Action

Before constructing the Project, on September 11, 1920, Tacoma initiated the *City of Tacoma v. Funk* condemnation action in Mason County Superior Court for the purpose of acquiring all land parcels and other real property rights necessary to allow for the Project's construction, operation, and maintenance. CP 1348-1408.

<sup>1</sup> Plaintiffs' Complaint also refers to issues related to other parcels in the area, but they are not part of this appeal.

In the Petition for Condemnation filed on September 11, 1920 (the “Petition”) (Appendix at A-10), Tacoma identified those parcels subject to condemnation in whole or part for the creation of the Lake Cushman and Lake Kokanee reservoirs and the diversion of water from the North Fork. CP 1348, 1354-56, 1382, 1392-93. *Funk* involved two types of parcels: *first*, land that would simply be acquired by Tacoma in its entirety, such as upstream parcels that would be submerged by the newly-formed reservoirs, *see, e.g.*, CP 3298; and *second*, land where title would not be acquired in its entirety, but for which Tacoma paid compensation—both to take some of the bundle of property rights held by the landowners, and also for damage to the owners’ remaining property rights. *See* CP 3329-31.

The Petition expressly acknowledged that, through construction and operation of the Project, “a *portion* of the waters of said North Fork of Skokomish River will be diverted from the present channel thereof” and that “the volume of water in said river below said dam will be diminished.” A-14 (emphasis added). Accordingly, Tacoma sought to condemn and acquire “the water rights, riparian rights, easements, privileges and other facilities upon said river *below* said dam, necessary and adequate for the proper development, construction, operation and maintenance of [the Project].” *Id.* (emphasis added).

On January 22, 1921, the *Funk* court issued an Order Adjudging Public Use and Necessity, finding that the “contemplated use for which the lands, rights-of-way, waters, water rights, overflowage rights,

reservoirs, easements, privileges and properties are sought to be appropriated is a public use.” CP 1715 (“Public Use Order”) (Appendix at A-17).

On June 1, 1921, defendant Skokomish River valley property owners, including some of plaintiffs’ predecessors, filed a Cross-Complaint in *Funk* alleging that their properties have “valuable riparian rights apertinent [*sic*] thereto by reason of the flowage of the said River alongside their several tracts of land.” CP 1790 (Appendix at A-20). The owners alleged a loss in property value and sought recovery for all damages:

the fair market value of their said premises will be and are greatly depreciated by reason of the proposed taking away of the riparian rights therefrom which attach to the whole and every part of their said above described premises and which taking of said water will deprive said premises of all their riparian rights . . . .

A-27. The parties sought “compensation for *any and all damages of every kind and nature whatsoever* that will accrue to their said properties *by reason of the doing of the things to be done by the plaintiff and petitioner as alleged in the complaint.*” A-27 – A-28 (emphasis added).

Also on June 1, 1921, additional downstream landowners, including other plaintiffs’ predecessors, filed a successful petition to intervene in *Funk*. CP 1794-1805 (Appendix at A-29 – A-40). These claimants likewise alleged that the proposed dam project “involves the taking away of the riparian rights” of intervenors, and contended that they would be “damaged in diverse and other ways by reason of the said

proposed damming of the waters of the North Fork of the said Skokomish river.” A-40.

On September 8, 1923, the court issued a judgment awarding Tacoma title to various parcels acquired for the Project. CP 2891-2900. Tacoma paid an average of \$123.56 per acre to take this land outright. CP 2490. Other land was acquired by stipulation, such as \$40.99 per acre paid to the Skokomish Power Company. CP 1299-1303.

Also on September 8, 1923, the court issued a Decree of Appropriation awarding Tacoma broad property rights attached to the additional parcels that the city did not acquire outright, including the 88 parcels owned by plaintiffs:

it is hereby ORDERED AND DECREED that there is hereby appropriated and granted to and *vested in fee simple* in said City of Tacoma, a municipal corporation, petitioner herein, for the construction, operation and manitenance [sic] of an hydro electric power plant on and along the North Fork of the Skokomish river and on and along Lake Cushman in Mason County, Washington, as set forth in the petition herein on file, the waters, water rights, *riparian rights*, easements and privileges, *including the right to divert the waters of the North Fork of the Skokomish River* located in Mason County, Washington, appertaining and appurtenant to the following described real estate, lands and premises . . . .

CP 1715-17 (“Decree”) (Appendix at A-44 – A-46) (emphasis added).

This appeal is limited to land parcels before the court in *Funk* where Tacoma condemned only a portion of the bundle of associated property rights. Tacoma paid an average of \$7.96 per acre to acquire the condemned property rights and to compensate the landowners for damage to their remaining property interests. CP 2490. Unlike the other *Funk*

condemnees, these property owners retained title to the land and all other associated property rights not acquired by Tacoma. CP 2489. For over ninety years, the landowners and their successors have enjoyed the benefit of their residual property interests, using the land for agricultural, recreational, and other purposes. CP 3203.

The Decree concludes by re-emphasizing the comprehensive scope of rights acquired by Tacoma, including

the right, *at any time hereafter*, to take possession of, appropriate and use all of the waters, water rights, *riparian rights*, easements and privileges appertaining and appurtenant to the lands, real estate and premises hereinabove described, together with *the right to divert the waters of the North Fork of the Skokomish River*, and the same is hereby appropriated and granted unto, and the title shall vest in *fee simple* in said City of Tacoma as of the 11th day of September, 1920, and its successors forever; the same being for a public use.

A-50 (emphasis added).

##### **5. Flow Levels and Project Relicensing**

The Project was originally licensed in 1924. CP 3775.

Throughout the dam's operation, Tacoma has diverted varying amounts of water from the North Fork. Although Tacoma has diverted most of the water from the North Fork throughout that period, flows in the North Fork and releases from the Project have fluctuated, as shown in the U.S. Geological Survey daily average flow graph below:

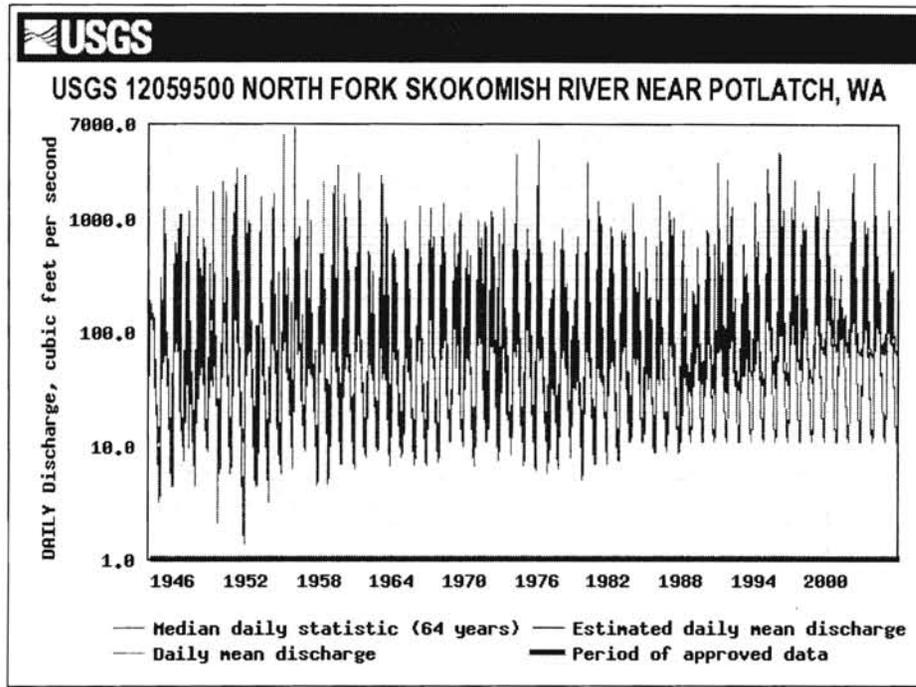


FIGURE 3<sup>2</sup>

The Project was the subject of FERC relicensing proceedings that began in 1974. During the 36-year relicensing process (one of the longest in FERC’s history), Tacoma was required to release minimum flows into the North Fork in order to benefit fish. In 1988, the Washington Pollution Control Board upheld the Department of Ecology’s issuance of a water quality certification requiring Tacoma to release 30 cubic feet per second (“cfs”) minimum flows to the North Fork, with the recognition that a final

<sup>2</sup> See [http://waterdata.usgs.gov/wa/nwis/dv?cb\\_00060=on&cb\\_00065=on&format=gif\\_default&period=&begin\\_date=1944-04-01&end\\_date=2012-11-18&site\\_no=12059500&referred\\_module=sw](http://waterdata.usgs.gov/wa/nwis/dv?cb_00060=on&cb_00065=on&format=gif_default&period=&begin_date=1944-04-01&end_date=2012-11-18&site_no=12059500&referred_module=sw) (accessed 11/19/2012).

FERC license would ultimately require additional flows. *City of Tacoma Dep't of Pub. Util. v. Wash.*, 1988 WL 158974, ¶¶ 1-2 (Wash. Pol. Control Bd. 1988). On July 30, 1998, FERC issued a new Project license (“1998 License”) that required Tacoma to provide a minimum flow of the *lesser* of 240 cfs, or natural inflow, in order to benefit fish species. While the effect of the 1998 License was stayed pending judicial review, Tacoma was required to increase minimum flows to 60 cfs. *City of Tacoma, Wash.*, 87 FERC ¶¶ 61,197, 61,736 (1999).

In 2006, the D.C. Circuit Court of Appeals ruled on the merits of the license challenges, and vacated the stay. *City of Tacoma v. FERC*, 460 F.3d 53, 78 (D.C. Cir. 2006). After constructing the Project modifications necessary for the license, on March 7, 2008, Tacoma began diverting less water by releasing 240 cfs into the Main Stem through the North Fork. CP 3777.

While the relicensing proceedings were pending, numerous stakeholders—including some of these plaintiffs—identified concerns regarding the Project, including the appropriate water levels and the impact of logging, geology, and other factors on the river basin. *See, e.g.*, CP 3813. After remand from the D.C. Circuit Court of Appeals, Tacoma resolved long-standing litigation over the 1998 License, reaching a settlement agreement among National Marine Fisheries Service, U.S. Forest Service, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, Washington Department of Fish and Wildlife, and the Washington Department of Ecology, which led to FERC issuing an amended license

for the Project on July 15, 2010 (“Amended License”).<sup>3</sup> *City of Tacoma, Wash.*, 132 FERC ¶ 61,037 (2010); CP 738 (Settlement Agreement). In conjunction with the relicensing settlement, Tacoma entered into a settlement with the Skokomish Indian Tribe resolving a longstanding suit seeking damages for the alleged impacts of the Project on the Tribe’s treaty fishing rights and reservation. Tacoma also unsuccessfully sought insurance coverage for the tribe’s claims. CP 419-23.

The Amended License imposes a new North Fork water flow regime (to benefit listed fish species) intended to mimic the natural conditions of the North Fork of the Skokomish River. CP 3800. Tacoma is required to release a minimum flow of 240 cfs or inflow, whichever is less. *Id.* The Amended License includes an annual water budget that determines the minimum flows. CP 3800-02. Under the Amended License, Tacoma continues to divert most of the waters of the North Fork for hydroelectric power generation.

## **6. Plaintiffs’ Claims**

Plaintiffs filed suit against Tacoma in 2010, alleging that Project operations damaged their properties. CP 4010-23. According to

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<sup>3</sup> Following issuance of the Amended License, Gerald Richert (one of the Plaintiffs in this action who had also been granted intervenor status in the federal case) sought rehearing before FERC to challenge the license terms regarding the Project’s operating conditions. On May 19, 2011, FERC denied Mr. Richert’s request for rehearing. Mr. Richert appealed this decision to the U.S. Court of Appeals for the Ninth Circuit. However, following the trial court’s ruling in this matter, Mr. Richert moved to dismiss his petition for review. The Ninth Circuit granted his motion and dismissed the petition on June 22, 2012.

plaintiffs, beginning with the 240 cfs flow releases in March 2008 (but apparently not the 1988 or 1999 flow releases), Tacoma's diversion of less water than otherwise permitted by its original license damaged their land by raising the groundwater table in the Skokomish River valley and exacerbating overbank flooding. *See, e.g.*, CP 3205-06 at ¶ 2.7.

### **B. Procedural Background**

Plaintiffs filed their Second Amended Complaint on January 24, 2012. CP 3200-19. Because plaintiffs' predecessors in interest were parties to the *Funk* condemnation action and received payments under the *Funk* Decree, Tacoma has asserted defenses based on the prior action. CP 3764.

On February 27, 2012, the parties filed cross-motions for partial summary judgment pertaining to the effect of the *Funk* Condemnation action on plaintiffs' claims. *See* CP 3713-40; CP 2505-35. The parties also disputed plaintiffs' contention that dam operations caused their alleged damages, as well as the scope of the Public Use Order.<sup>4</sup> But the parties agreed that there were no material issues regarding the "narrow issue" of the impact of the *Funk* judgment. RP (6/8/12) 2:19-23.

On June 29, 2012, the court entered orders granting plaintiffs' motion for summary judgment regarding *Funk*, and denying Tacoma's

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<sup>4</sup> As the trial court observed, although the parties had submitted extensive expert and other materials regarding the causes and role of "aggradation" (river floor buildup) in the Main Stem, their factual disputes were irrelevant to the resolution of the effect of the *Funk* judgment. RP (6/8/12) 2:24–3:7. The court's written judgment incorporates its oral ruling. A-8.

motion for summary judgment. CP 87-92 (A-1 – A-6). The court agreed that the Public Use Order remains valid, and that the outflow required by the 1998 License falls within the Order, which is *res judicata*. RP (6/8/12) 9:6–10:14. Nevertheless, the court concluded that the *Funk* judgment did not bar plaintiffs’ claims because their alleged damages were “not within the contemplation of the *Funk* litigants or the *Funk* court.” RP (6/8/12) 7:16-17.

At the trial court’s suggestion, and pursuant to CR 54(b) and RAP 2.2(d), the court entered a final judgment regarding the impact of *Funk*. CP 94-96 (A-7 – A-9).<sup>5</sup> Tacoma filed a timely notice seeking appellate review on July 26, 2012, CP 52-86, and an Amended Notice of Appeal on August 8, 2012. CP 9-41.

## V. ARGUMENT

### A. Standard of Review.

Orders granting or denying summary judgment are reviewed *de novo*. *Mike M. Johnson, Inc. v. County of Spokane*, 150 Wn.2d 375, 386 n.4, 78 P.3d 161 (2003). Summary judgment is appropriate if “there is no genuine issue as to any material fact and [] the moving party is entitled to a judgment as a matter of law.” CR 56(c).

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<sup>5</sup> The trial court also entered an order finding in the alternative, pursuant to 2.3(b)(4), that immediate appellate review was warranted. A-8.

**B. The Judgment In *Tacoma v. Funk* Bars Plaintiffs' Claims As A Matter Of Law.**

The doctrine of *res judicata* protects the finality of judgments. *Hayes v. City of Seattle*, 131 Wn.2d 706, 712, 934 P.2d 1179, 943 P.2d 265 (1997). Washington has a strong policy in favor of enforcing final judgments on the merits. *Stanley v. Cole*, 157 Wn. App. 873, 887, 239 P.3d 611 (2010); *Lane v. Brown & Haley*, 81 Wn. App. 102, 106, 912 P.2d 1040 (1996). In cases determining *property rights*, finality is particularly critical to an owners' ability to safely proceed with the use and development of his or her property rights. *Skamania Cnty. v. Columbia River Gorge Comm'n*, 144 Wn.2d 30, 26 P.3d 241 (2001); *Deschenes v. King Cnty.*, 83 Wn.2d 714, 717, 521 P.2d 1181 (1974). Courts therefore have a special concern in protecting the final effect of judgments affecting "rights in real property," particularly "with respect to water rights in the Western United States." *Arizona v. California*, 460 U.S. 605, 620 (1983).

*Res judicata* bars subsequent action involving "(1) the same subject matter, (2) the same cause of action, (3) the same persons or parties, and (4) the same quality of persons for or against whom the decision is made as did a prior adjudication." *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d 726, 730, 254 P.3d 818 (2011); *Loveridge v. Fred*

*Meyer, Inc.*, 125 Wn.2d 759, 763 P.2d 898 (1995). In this case, the parties dispute only the second factor, which requires consideration of the following criteria:

- (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action, (2) whether substantially the same evidence is presented in the two actions, (3) whether the two suits involve infringement of the same right, and (4) whether the two suits arise out of the same transactional nucleus of facts.

*Kuhlman v. Thomas*, 78 Wn. App. 115, 122, 897 P.2d 365 (1995) (citing *Rains v. State*, 100 Wn.2d 660, 664 (1983)). Because plaintiffs' claims are predicated on the same property rights that Tacoma acquired in the *Funk* condemnation action, the trial court erred as a matter of law by failing to give preclusive effect to the *Funk* judgment.

1. **The *Funk* Judgment Bars Plaintiffs' Claims Because It Conveyed To Tacoma All Riparian Rights In The Properties.**

A landowner whose land bounds a river, stream, lake, or salt water is a "riparian" owner. *Dept. of Ecology v. Abbott*, 103 Wn.2d 686, 689, 698 P.2d 556 (1985) (riparian rights derive from the ownership of land "contiguous to or traversed by a watercourse"). "Riparian rights" are among the bundle of specific rights in real property that may be separately conveyed by deed or by a condemnation judgment. *See In Re Clinton Water Dist.*, 36 Wn.2d 284, 286, 218 P.2d 309 (1950); *see also Kiely v. Graves*, 173 Wn.2d 926, 936, 271 P.3d 226 (2012) (government may

acquire “some but not all rights” pertaining to particular real property parcel).

Riparian rights include the right to a continuation of the “natural flow” of water past the riparian owner’s land, “as it was wont to run, without diminution or alteration.” *Crook v. Hewitt*, 4 Wash. 749, 749-50, 31 P.28 (1892). Variations in the flow of water within the watercourse, including the flood channel, are therefore governed by the law of riparian rights. *Sund v. Keating* 43 Wn.2d 36, 44-45, 259 P.2d 1113 (1953). The holder of the riparian rights in a land parcel has both the right “not to have the level of the natural watercourse lowered,” and also “the right not to have it raised.” *DeRuwe*, 28 Wn.2d at 805. *See also Hood v. Slefkin*, 88 R.I. 178, 133 A.2d 683 (1958) (rejecting claims of downstream landowners against dam operator who increased flow, on ground that plaintiffs did not establish they were owners of riparian rights attached to property). The holder of riparian rights attaching to a particular downstream property may assert claims contending that the property has been “damaged by the interference with the natural flow of a stream by an upstream owner without compensation.” *Marshland Flood Control Dist. of Snohomish Cnty. v. Great N. Ry. Co.*, 71 Wn.2d 365, 368-69, 428 P.2d 531 (1967).

As part of the judgment in *Funk*, Tacoma acquired from plaintiffs' predecessors *all* of "the . . . *riparian rights* . . . appertaining and appurtenant to [plaintiffs'] lands, real estate and premises." A-44 (emphasis added). Tacoma's condemnation of all riparian rights attached to plaintiffs' property necessarily included the right to vary the water flow past the property without further compensation. *DeRuwe*, 28 Wn.2d at 805; *Marshland Flood Control Dist.*, 71 Wn.2d at 368. Yet plaintiffs assert claims *solely* for the alleged violation of these riparian rights. CP 4018-19; *see also* CP 4023 (plaintiffs concede their claims are limited to riparian rights). Because Tacoma—not plaintiffs—owns the riparian rights attaching to each of the properties at issue in this appeal, *res judicata* bars plaintiffs from seeking damages for the alleged invasion of those same rights. *See, e.g., Corbin*, 12 Wn. App. at 323. Plaintiffs may not recover damages based on rights they do not own. The trial court erred as a matter of law by entering summary judgment in favor of plaintiffs, rather than in favor of Tacoma.

**2. The *Funk* Judgment Also Bars Plaintiffs' Claims Under Ordinary *Res Judicata* Principles.**

As discussed in the previous section, the *Funk* Decree specifically conveyed to Tacoma the riparian rights that are at issue in this action. It therefore is unnecessary for the Court to reach the general *res judicata* effect of the *Funk* judgment. In any event, even if the Complaint involved

other rights attaching to the property, plaintiffs' claims are nevertheless barred by the preclusive effect of the final judgment in *Funk*. This Court may reverse the lower court's judgment on this separate and independent ground.

The doctrine of *res judicata* bars both claims that *were* actually decided in a prior suit as well as those claims which *could have been decided*. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 865, 93 P.3d 108 (2004) (quoting *Shoeman v. N.Y. Life Ins. Co.*, 106 Wn.2d 855, 859, 726 P.2d 1 (1986)); *Bradley v. State*, 73 Wn.2d 914, 917, 442 P.2d 1009 (1968) (condemnation barred claims for additional alleged damage to real property interests, but not to personal property not included in action). Although a condemnation judgment does not bar a subsequent claim "to take or damage a *distinct and separate property right* which was not specifically included in the condemnation proceedings," a condemnor who has paid for the right to "take and damage the specifically described property" cannot be compelled to pay additional compensation for damage to the same property rights. *Great Northern Ry. Co. v. City of Seattle*, 180 Wash. 368, 373, 39 P.2d 999 (1935) (emphasis supplied). Whether *res judicata* bars an action is a question of law. *Lynn v. Dep't of Labor & Indus.*, 130 Wn. App. 829, 837, 125 P.3d 202 (2005).

As part of the proceedings in *Funk*, Tacoma took and paid for some of the "bundle of sticks" pertaining to the land owned by plaintiffs' predecessors, *Kiely*, 173 Wn.2d at 936, including all "riparian rights." A-50 (Decree). The final *Funk* judgment broadly covers "all of the waters,

water rights, riparian rights, easements and privileges appertaining and appurtenant to the lands, real estate and premises” held by plaintiffs’ predecessors. A-44. Unlike the upstream landowners whose property rights were extinguished, however, plaintiffs’ predecessors nevertheless retained some property interests. The judgment included compensation for damage to each of their specifically described parcels. A-41 – A-50. As the trial court acknowledged in its oral ruling (incorporated by reference into the Final Judgment, A-8), plaintiffs’ predecessors litigated their claims for “**any and all damages from any operation of the project.**” RP (6/8/12) 4:2-3 (emphasis added).

Nevertheless, the court refused to dismiss plaintiffs’ claims seeking additional compensation for damage to the **same** property interests that were before the court in *Funk*. *Id.* Instead, the trial court improperly held that unless the parties to the *Funk* Condemnation specifically discussed the future effect of releasing variable flows on the landowners’ remaining interest in the property, Tacoma’s right to “diminish” flows in the North Fork should be read instead as a requirement to **forever** remove **all** flows—with the City subject to claims for additional damages when operations change. *See id.* at 6:23 – 7:24. But plaintiffs may not sue again for alleged injuries to the same property interests that were before the court in *Funk*. *Bradley*, 73 Wn.2d at 917. The trial court erred as a matter of law in its application of *res judicata*. *See, e.g., id.; Corbin*, 12 Wn. App. at 323.

The trial court's erroneous holding that plaintiffs may assert claims for damage to their property allegedly resulting from recent changes in Project operations results in absurd consequences. The uncertainty resulting from such an approach would not be limited to the parties in this case.<sup>6</sup> There are over one thousand dams in Washington State, including dozens of hydroelectric projects, all of which will be subject to new lawsuits each time their license or operating requirements change, with claimants potentially seeking additional compensation for alleged damage to property interests that were previously condemned or acquired.<sup>7</sup> Under the trial court's approach, no condemnation decree will ever be *res judicata* regarding a dam operator's liability for property damage resulting from the diversion of water for public purposes. If affirmed, the trial court's order would mean that—despite a prior condemnation decree—**every** time FERC orders Tacoma to change flow levels (either up or down) as a condition of relicensing, Tacoma will be subject to **new** damages from these **same** plaintiffs and their successors. Unless this Court reverses the lower court's decision, both the *Funk* Decree and the supposedly "final" judgment entered in this action will be equally ephemeral. This Court

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<sup>6</sup> Indeed, counsel for plaintiffs have already filed a separate action against Tacoma challenging dam operations under the 1998 License on behalf of a putative class. CP 3522.

<sup>7</sup> There are 1162 dams in Washington, located in all 39 counties, including dozens of hydroelectric projects potentially affected by a ruling here. See <https://fortress.wa.gov/ecy/publications/publications/94016.pdf>. See also <http://www.ecy.wa.gov/programs/wq/ferc/existingcerts.html> (identifying hydroelectric projects certified by government).

should reverse the judgment below, and uphold Washington's strong policy favoring finality of judgments involving real property interests.

**C. Plaintiffs' Claims Also Fail As A Matter Of Law Because Tacoma Does Not Have An Obligation To Maintain Water Diversion In Perpetuity For The Benefit Of Downstream Property Owners.**

The judgment in *Funk* gave Tacoma the *right* to divert flow from the North Fork and to build and operate a dam. CP 1715-17; 94-96 A-17 (Public Use Decree); A-41 (Judgment). But the owner of a dam has *no obligation* to maintain dam operations unchanged for the benefit of lower riparian owners. *Drainage Dist. No. 2*, 171 Wash. at 480-81. This Court should reverse the judgment below on the separate and independent ground that even if Tacoma had not explicitly acquired all riparian rights attached to plaintiffs' downstream properties, as discussed above, the City would nevertheless have the right to return the dam outflow to the natural flow level—thus barring plaintiffs' claims as a matter of law.

In *Drainage Dist. No. 2*, the Washington Supreme Court held that a downstream riparian property owner has no right to the continuation of artificial stream conditions created by the maintenance of an upstream dam, regardless of whether the downstream property owners have used or improved their property based on that artificial condition. *Id.* at 479-80. *Drainage Dist. No. 2* involved a dam built in 1901 after condemnation

proceedings for the use of defendant City of Everett. The dam diverted all of the natural flow of Wood Creek, approximately two and one-half million to four million gallons per day. *Id.* at 473. Plaintiff drainage district was organized by downstream landowners who, after the dam was built, began using a portion of the former slough bed for agricultural purposes. *Id.* Plaintiff's drainage system did not take into consideration any of the former creek flow because of its appropriation and diversion by the city. *Id.* at 474. In 1931, the city decided to abandon the Wood Creek water system. After gradually draining the dammed lake, "the city opened the dam to allow the waters naturally flowing in the Woods creek system to pass through." *Id.* Because of alterations to the channel further downstream, "the escaping waters deposited sediment and silt in Mootz lake and the drainage ditches" that had been built by plaintiff. *Id.* The downstream landowners sued both for damages and also to enjoin the city from continuing to release the natural flow. *Id.* at 472. The Washington Supreme Court rejected both claims, holding that the city "had the legal right to discontinue the use of that reservoir at any time it saw fit." *Id.* at 480. As the Court observed:

The lower proprietors (the owners of the land within the drainage district) who had improved their property with reference to the change in the course of the stream and the impounding of its waters by appellant, and in reliance on the continuance of that condition, did not acquire a

reciprocal right to have the artificial condition remain undisturbed. ***The appellant could not be compelled to maintain the dam for the benefit of the lower proprietors.*** The right to maintain the dam, like other rights, could be abandoned. If the doctrine of reciprocal rights obtains, then appellant could never abandon its easement, but must forever maintain the dam for the benefit of the respondent and its successors.

*Id.* at 478 (emphasis added). Because the city was entitled to return the waters to their natural flow, “no right of action could be maintained against it.” *Id.* at 477.

Like Everett’s dam in *Drainage Dist. No. 2*, Tacoma’s dam was “legally constructed and maintained.” *Id.* at 480. The amount of water being diverted is consistent with the applicable FERC orders. CP 3800. Like the downstream claimant in *Drainage Dist. No. 2*, plaintiffs allege that they have been damaged by a release that is no greater than the North Fork’s natural flow.<sup>8</sup> And as in *Drainage Dist. No. 2*, plaintiffs’ claims against the City fail as a matter of Washington common law. *Drainage Dist. No. 2*, 171 Wash. at 477.

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<sup>8</sup> The flow amount by the City has varied throughout the decades of dam operation. Although the current 240 cfs and mimicking flow requirements are higher than the flow regime in the history of the Project generally, CP 3800, Tacoma is still diverting the majority of the North Fork flow, and placing substantially *less* water into the Main Stem through the North Fork than would exist in the absence of the dam. In other words, the flow of water past plaintiffs’ properties remains *less* than the natural flow that existed when their property, water, and riparian rights were condemned.

The “great weight of authority” from other jurisdictions likewise provides that “the owners of a dam are under no legal obligation to keep in operation for the benefit of others.” *Powers v. Lawson*, 86 R.I. 441, 446, 136 A.2d 613 (1957) (citations omitted) (owner permitted to increase water flow over dam).<sup>9</sup> For example, in *Hood v. Slefkin*, the owners of land downstream from a dam were among the plaintiffs who sued when the defendant altered its operations to permit additional water to flow past the dam, allegedly flooding the channel adjoining one downstream plaintiff’s property, and drying up the channel adjoining the other downstream plaintiff. The Rhode Island Supreme Court held plaintiffs did not have a right to have the “water level preserved” at the level provided by prior dam operations. 143 A.2d at 188. Similarly, in *Mitchell Drainage Dist. v. Farmer’s Irr. Dist.*, plaintiffs sought to enjoin the upstream property owner from changing its operations by opening a release valve that had remained closed for several decades. 256 N.W.at

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<sup>9</sup> See, e.g., *Green v. City of Williamstown*, 848 F. Supp. 102, (E.D. Ky. 1994); *Custis Fishing Club. v. Johnson*, 214 Va. 388, 394, 200 S.E.2d 542 (1973) (“Having the right to maintain the water level to the high water mark permitted by the dam, the Club could maintain a lower water level without incurring liability”); *Board of Levee Comm’rs v. Withers*, 192 Miss. 433, 6 So.2d 115 (1942) (defendant had right to allow dammed pond to revert to original flow); *Hood*, 133 A.2d at 188 (claims brought both by upstream and downstream riparians); *Mitchell Drainage Dist. v. Farmer’s Irr. Dist.*, 127 Neb. 484, 256 N.W. 15 (1934) (downstream property owners could not compel continued diversion of waters).

16. The Nebraska Supreme Court rejected the downstream property owners' contention that they were entitled to have the waters permanently diverted. *Id.* at 21. In particular, the court rejected any suggestion of estoppel or reliance, concluding that “all idea of permanency is destroyed by the spillway which was put in when the dam was constructed,” even though the spillway was generally not in use. *Id.* at 22; *see also Kuhlman v. Folkers*, 179 Neb. 80, 88, 136 N.W.2d 364 (1965) (rejecting downstream plaintiffs' contention that defendant “had permanently changed the watercourse and that they had a right to rely upon the change”). As in *Mitchell Drainage Dist.*, Tacoma's dam was constructed with a spillway and release valves, and Tacoma has released varying amounts of water over the decades.<sup>10</sup>

The *Funk* judgment authorized Tacoma to divert some or all of the North Fork flows—but it did *not* impose an obligation to do so in

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<sup>10</sup> The project at issue in *Mitchell Drainage Dist.* included both the original spillway and a subsequently added “needle-gate.” 256 N.W. at 22. Similarly, Tacoma designed and constructed Cushman Dam No. 2 with two 78-inch-diameter butterfly valves to allow for the release of water. *See City of Tacoma, Washington*, 107 FERC ¶ 61,288, at P 40 (Jun. 21, 2004). In order to implement the 1998 License's requirement to maintain the minimum instream flows and comply with license ramping requirements, Tacoma replaced one of these butterfly valves with a new 78-inch discharge regulating valve (referred to as a “jet valve” by plaintiffs). *Id.* This valve is many miles from any of plaintiffs' properties. Tacoma began releasing minimum flow from this new valve into the North Fork on March 7, 2008. CP 3777.

perpetuity, “notwithstanding the damage and inconvenience to those below the dam” from the reintroduction of the natural flow. *De Ruwe*, 28 Wn.2d at 807 (citing *Drainage Dist. No. 2*, 171 Wash. at 477). The trial court incorrectly converted Tacoma’s **right** to divert some or all of the water from the North Fork as necessary for Project operations into an **obligation** to always divert all water. Because the lower court erred as a matter of law, this Court may reverse the judgment on this additional independent ground.

## VI. CONCLUSION

The *Funk* judgment explicitly conveyed to Tacoma all of the real property rights required to build and operate the Project, including all riparian rights attached to the properties at issue in this appeal. Tacoma compensated plaintiffs’ predecessors in *Funk* for taking some of the property rights attached to their land and for any damage to the owners’ remaining property rights. The judgment also authorized Tacoma to divert some or all of the North Fork flows, without obligating Tacoma to do either in perpetuity. Plaintiffs are barred as a matter of law from seeking additional compensation when dam operations change.

As the United States Supreme Court has observed, the “fundamental precept” that final judgments are binding applies with particular force to “rights in real property.” *Arizona*, 460 U.S. at 619-20. The trial court erred by disturbing the parties’ longstanding property rights. This Court should reverse the lower court’s judgment and its

orders granting plaintiffs' motion for summary judgment and denying Tacoma's cross-motion, and should remand the case with directions to enter summary judgment in favor of Tacoma.

DATED this 19th day of November, 2012.

Respectfully submitted,

By:

  
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*Attorneys for Petitioner City of Tacoma*

**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On November 19, 2012, I caused to be served in the manner noted below, true and correct copies of the foregoing on the following:

**Via Legal Messenger**

Karen A. Willie/Bradley E. Neunzig  
Terrell Marshall Daubt & Willie PLC  
936 North 34th Street, Suite 400  
Seattle, WA 98103  
*Attorneys for Respondents/Plaintiffs*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 19<sup>th</sup> day of November, 2012, in Seattle, Washington.

  
Suzette Barber

FILED  
COURT OF APPEALS  
DIVISION II  
2012 NOV 21 PM 1:11  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

FILED  
COURT OF APPEALS  
DIVISION II

2012 NOV 21 PM 1:11

NO. 43825-II

STATE OF WASHINGTON

IN THE COURT OF APPEALS BY \_\_\_\_\_  
OF THE STATE OF WASHINGTON DEPUTY  
DIVISION II

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GERALD G. RICHERT, et al.,

Plaintiffs/Respondents,

v.

CITY OF TACOMA,

Defendant/Petitioner.

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APPENDIX TO BRIEF OF APPELLANT CITY OF TACOMA

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**INDEX TO APPENDIX TO BRIEF OF APPELLANT  
CITY OF TACOMA**

<b>PAGE NOS.</b>	<b>TITLE</b>
A-1 – A-6	Order Granting Plaintiffs’ Second Motion for Summary Judgment with Regard to <i>Tacoma v. Funk</i> and Denying Defendant’s Motion for Summary Judgment and Addressing Related Motions dated June 29, 2012
A-7 –A-9	Order Entering Final Judgment Pursuant to CR 54(b) and RAP 2.2(d) as to Issues Regarding <i>Tacoma v. Funk</i>
A-10 – A-16	Petition for Condemnation filed September 11, 1920
A-17 – A-19	Order Adjudging Public Use and Necessity dated January 22, 1921
A-20 – A-28	Statement and Cross Complaint filed June 1, 1921
A-29 – A-40	Petition in Intervention filed June 1, 1921
A-41 – A-50	Decree of Appropriation dated September 8, 1923

**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On November 19, 2012, I caused to be served in the manner noted below, true and correct copies of the foregoing on the following:

**Via Legal Messenger**

Karen A. Willie/Bradley E. Neunzig  
Terrell Marshall Daubt & Willie PLC  
936 North 34th Street, Suite 400  
Seattle, WA 98103  
*Attorneys for Respondents/Plaintiffs*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 19<sup>th</sup> day of November, 2012, in Seattle, Washington.

  
\_\_\_\_\_  
Suzette Barber



1 limited liability company; WILLIAM O.  
2 HUNTER AND CAROL HUNTER, husband  
3 and wife and the marital community thereof;  
4 PAUL B. HUNTER AND LESLIE HUNTER,  
5 husband and wife and the marital community  
6 thereof; WILLIAM O. HUNTER, JR. AND  
7 LUAYNE HUNTER, husband and wife and  
8 the marital community thereof; DOUGLAS  
9 RICHERT, a single man; EVAN TOZIER, on  
10 behalf of RIVERSIDE FARM, a Washington  
11 partnership; ARTHUR TOZIER, a single man;  
12 MAXINE TOZIER, in her individual capacity;  
13 and EVAN TOZIER, a single man,

14 Plaintiffs,

15 vs.

16 THE CITY OF TACOMA, a Washington  
17 municipality,

18 Defendants.

19 THESE MATTERS having come before the Court upon Plaintiffs' Second Motion  
20 for Summary Judgment with Regard to Tacoma v. Funk, and Defendant's Motion for  
21 Summary Judgment, and the Court having heard the oral argument of counsel for all parties  
22 and reviewed the following documents:

- 23 1. **Plaintiffs' Second Motion for Summary Judgment with Regard to**  
24 **Tacoma v. Funk;**
- 25 2. Declaration of Derek B. Booth, Ph.D., P.E. in Support of Motion for Remand,  
26 with attached exhibits;
3. Declaration of Derek B. Booth, Ph.D., P. E., L.G. in Support of Plaintiffs'  
Second Motion for Summary Judgment with Regard to Tacoma v. Funk, with attached  
exhibits;

ORDER GRANTING PLAINTIFFS' SECOND MOTION FOR  
SUMMARY JUDGMENT WITH REGARD TO TACOMA V.  
FUNK -AND DENYING DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT AND ADDRESSING RELATED  
MOTIONS 2

DWT 19771787v1 0020822-000017

1           4.       Declaration of Marley L. Young, P.E., P.L.S. in Support of Plaintiffs' Second  
2 Motion for Summary Judgment with Regard to Tacoma v. Funk, with attached exhibit;

3           5.       Declaration of Bradley E. Neunzig in Support of Plaintiffs' Second Motion for  
4 Summary Judgment with Regard to Tacoma v. Funk, with attached exhibits;

5           6.       Declaration of Fred Burnside in Support of Defendant's Motion to Strike,  
6 Continue, Stay and Consolidate, and in the Alternative, Response to Plaintiffs' Summary  
7 Judgment Motion, with attached exhibits;

8           7.       Declaration of Karen A. Willie in Support of Plaintiffs' Motion for Summary  
9 Judgment, with attached exhibits;

10          8.       Defendant's Opposition to Plaintiffs' Second Motion for Summary Judgment  
11 with Regard to Tacoma v. Funk and Defendant's Motions to Strike;

12          9.       Declaration of Andreas Kammereck Re: Opposition to Plaintiffs' Second  
13 Motion for Summary Judgment with Regard to Tacoma v. Funk and attached exhibits;

14          10.      Second Declaration of Maureen Barnes Re: Opposition to Plaintiffs' Second  
15 Motion for Summary Judgment with Regard to Tacoma v. Funk;

16          11.      Declaration of Tyson Kade Re: Opposition to Plaintiffs' Second Motion for  
17 Summary Judgment with Regard to Tacoma v. Funk, with attached exhibits;

18          12.      Plaintiffs' Reply on Second Motion for Summary Judgment with Regard to  
19 Tacoma v. Funk;

20          13.      Declaration of Paul B. Hunter in Support of Plaintiffs' Reply on Second  
21 Motion for Summary Judgment with Regard to Tacoma v. Funk and attached exhibit;

22          14.      Declaration of Richard T. Hoss in Support of Plaintiffs' Reply on Second  
23 Motion for Summary Judgment with Regard to Tacoma v. Funk;

24  
25  
26 ORDER GRANTING PLAINTIFFS' SECOND MOTION FOR  
SUMMARY JUDGMENT WITH REGARD TO TACOMA V.  
FUNK -AND DENYING DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT AND ADDRESSING RELATED  
MOTIONS 3

DWT 19771787v1 0020822-000017

1           15. Declaration of Derek B. Booth, Ph.D., P. E., L.G. in Support of Plaintiffs'  
2 Reply on Second Motion for Summary Judgment with Regard to Tacoma v. Funk and  
3 attached exhibits; and

4           16. Declaration of Karen A. Willie in Support of Plaintiffs' Reply on Second  
5 Motion for Summary Judgment with Regard to Tacoma v. Funk and attached exhibits.

6           17. Plaintiffs' Opposition to Defendant's Motions to Strike, Continue, Stay and  
7 Consolidate;

8           18. Declaration of Karen A. Willie in Support of Plaintiffs' Opposition to  
9 Defendant's Motions to Strike, Continue Stay and Consolidate

10          19. **Defendant's Motion for Summary Judgment;**

11          20. Defendant's Memorandum in Support of Motion for Summary Judgment;  
12 Declaration of Matthew Love in Support of Defendant's Motion for Summary Judgment and  
13 attached exhibits;

14          21. Declaration of Andreas Kammereck in Support of Defendant's Motion for  
15 Summary Judgment and attached exhibits;

16          22. Declaration of Maureen Barnes in Support of Defendant's Motion for  
17 Summary Judgment and attached exhibits;

18          23. Plaintiffs' Response to Defendant's Motion for Summary Judgment;

19          24. Declaration of Karen A. Willie in Support of Plaintiffs' Response to  
20 Defendant's Motion for Summary Judgment and attached exhibits;

21          25. Plaintiffs' Second Motion for Summary Judgment with Regard to Tacoma v.  
22 Funk (incorporated);

23          26. Declaration of Derek B. Booth, Ph.D., P.E. in Support of Motion for Remand  
24 with attached exhibits (incorporated);

25  
26 ORDER GRANTING PLAINTIFFS' SECOND MOTION FOR  
SUMMARY JUDGMENT WITH REGARD TO TACOMA V.  
FUNK -AND DENYING DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT AND ADDRESSING RELATED  
MOTIONS 4

DWT 19771787v1 0020822-000017

1           27. Declaration of Derek B. Booth, Ph.D., P. E., L.G. in Support of Plaintiffs'  
2 Second Motion for Summary Judgment with Regard to Tacoma v. Funk, with attached  
3 exhibit (incorporated);

4           28. Declaration of Marley L. Young, P.E., P.L.S. in Support of Plaintiffs' Second  
5 Motion for Summary Judgment with Regard to Tacoma v. Funk, with attached exhibit  
6 (incorporated);

7           29. Declaration of Bradley E. Neunzig in Support of Plaintiffs' Second Motion for  
8 Summary Judgment with Regard to Tacoma v. Funk, with attached exhibits (incorporated);

9           30. Declaration of Fred Burnside in Support of Defendant's Motion to Strike,  
10 Continue, Stay and Consolidate, and in the Alternative, Response to Plaintiffs' Summary  
11 Judgment Motion, with attached exhibits E, K and O (incorporated);

12           31. Declaration of Karen A. Willie in Support of Plaintiffs' Motion for Summary

13           32. Judgment; with attached exhibit (incorporated);

14           33. Defendant's Reply Brief to Plaintiff's Response to Motion for Summary  
15 Judgment; Declaration of Andreas Kammereck in Support of Reply Brief in Support of  
16 Defendant Motion for Summary Judgment, and attached exhibits;

17           34. Plaintiffs' First Motion for Summary Judgment (incorporated);

18           35. Plaintiffs' Second Amended Complaint;

19           36. Defendant's Answer to the Second Amended Complaint.

20           IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiffs'  
21 Second Motion for Summary Judgment with Regard to Tacoma v. Funk is GRANTED and  
22 Defendant City of Tacoma's Motion for Summary Judgment with regard to Tacoma v. Funk  
23 and challenging the standing of Norma Bourgault is DENIED.  
24  
25

26 ORDER GRANTING PLAINTIFFS' SECOND MOTION FOR  
SUMMARY JUDGMENT WITH REGARD TO TACOMA V.  
FUNK -AND DENYING DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT AND ADDRESSING RELATED  
MOTIONS 5

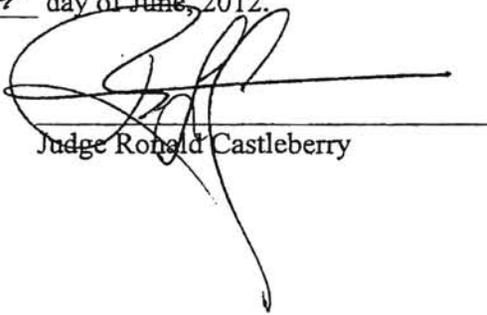
DWT 19771787v1 0020822-000017

1 IT IS FURTHER ORDERED that the Defendant's Motion to Strike the Plaintiffs'  
2 reliance on *Indemnity Insurance v. City of Tacoma*, 158 Wn. App. 1022 (2010) is DENIED  
3 and it is noted that the City withdrew its motion to strike the declarations of Derek Booth in  
4 Support of Second Motion for Summary Judgment With Regard to Tacoma v. Funk and that  
5 of Paul Grant filed in another matter. The Court did not consider the letter written on  
6 November 9, 1920 by G.L. Parker in its analysis.  
7

8 IT IS FURTHER ORDERED Defendant's motion for summary judgment seeking the  
9 Court's declaration that the owners of the 23 properties not explicitly involved in the *Tacoma*  
10 v. *Funk* case must seek damages, if any, through reopening of the Funk Condemnation, is

11 denied. *PLAINTIFFS have withdrawn one property # 421152420080*  
12 *from this litigation.*

13 DONE IN OPEN COURT this 29<sup>th</sup> day of June, 2012.

14   
15 \_\_\_\_\_  
16 Judge Ronald Castleberry  
17  
18  
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25

26 ORDER GRANTING PLAINTIFFS' SECOND MOTION FOR  
SUMMARY JUDGMENT WITH REGARD TO TACOMA V.  
FUNK -AND DENYING DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT AND ADDRESSING RELATED  
MOTIONS 6

DWT 19771787v1 0020822-000017

OK

The Honorable Ronald Castleberry

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PAT SWARTOS, CO. CLERK  
BY \_\_\_\_\_ DEPUTY

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

GERALD RICHERT, et al.,  
  
Plaintiffs,  
  
v.  
  
THE CITY OF TACOMA,  
  
Defendant.

No. 10-2-01058-4

ORDER ENTERING FINAL  
JUDGMENT PURSUANT TO CR  
54(b) AND RAP 2.2 (d) AS TO ISSUES  
REGARDING *TACOMA v. FUNK*

126

This matter came before the Court on cross-motions for summary judgment on a number of issues. The Court has granted Plaintiffs' motion to strike the City's affirmative defense based on the 1921 condemnation action *Tacoma v. Funk* and denied the City's motion to bar the Plaintiffs' lawsuit in its entirety as to eighty-eight properties based on *Tacoma v. Funk*. This Order does not apply to the twenty two properties which were not explicitly included in the *Tacoma v. Funk* condemnation.<sup>1</sup> It does not apply to any of the other issues adjudicated on summary judgment. As a result, to preserve the parties' and judicial resources, the Court pursuant to CR 54(b) and RAP 2.2(d), enters final judgment as to the *Tacoma v. Funk* claims upon which it granted summary judgment.

THE COURT HEREBY ORDERS, as follows:

A. There is no just reason for delay in the appellate review of the issues with

<sup>1</sup> One property, Auditor's number 421152460080, was voluntarily withdrawn from the lawsuit by the Plaintiffs.

ORDER ENTERING FINAL JUDGMENT PURSUANT TO CR 54(b) AND RAP 2.2(d) AS TO ISSUES REGARDING *TACOMA v. FUNK* - 1

DAVE WRIGHT, Esq. JLP  
LAW OFFICE  
**ORIGINAL**

1 regard to *Tacoma v. Funk* entered on June 8, 2012 and the parties have both agreed that  
2 immediate appellate review of the impact to the eighty-eight properties in that action is in  
3 the best interests of their respective clients;

4 B. This is a well-defined issue of law not dependent on any further legal  
5 determinations below and it needs no further fact finding. It is a unique legal issue not  
6 directly addressed by an appellant court; however, it is an issue that can be presented in a  
7 straightforward way. <sup>\*</sup>The issue is distinct from the unresolved issues in the case, and its  
8 final resolution will expedite the ultimate resolution of all issues in the case.;

9 C. The correctness or incorrectness of the Superior Court's decision is vital to  
10 the remainder of the case and an early decision can avoid costly and lengthy litigation.  
11 Appellate review will not unduly delay the trial as no trial date is set yet. ~~The other~~  
12 ~~matters can proceed and with the posture of this case, all matters can be ready for trial after~~  
13 ~~appellate review.~~ <sup>\*</sup>

14 IT IS SO ORDERED.

15 DATED this 29 day of June, 2012.

16  
17   
18 Judge Ronald Castleberry

19 Presented by:

20 COUNSEL FOR DEFENDANT:

21 VAN NESS FELDMAN, PC

*\* This order involves a  
controlling question of law  
w/ no to which there is  
substantial ground for a  
difference of opinion.*

22  
23 By \_\_\_\_\_

24 Matthew A. Love, WSBA #25281  
25 Tyson C. Kade, WSBA # 37911  
26 719 Second Avenue, Suite 1150  
27 Seattle, WA 98104  
Tel: (206) 623-9372  
Fax: (206) 623-4986

*\* The court hereby incorporated  
\* its oral remarks made during  
the course of its decision as  
if fully set forth herein. RC*

ORDER ENTERING FINAL JUDGMENT PURSUANT TO CR 54(b) AND  
RAP 2.2(d) AS TO ISSUES REGARDING *TACOMA v. FUNK* - 2

CEA 1452976-2 66200 14

1 DAVIS WRIGHT TREMAINE LLP

2  
3 By \_\_\_\_\_  
4 Fred Burnside, WSBA #32491  
5 Craig Gannett, WSBA #9269  
6 Carly Summers, WSBA #42198  
7 1201 Third Avenue, Suite 2200  
8 Seattle, WA 98101  
9 Tel.: (206) 757-7016  
10 Fax: (206) 757-7016

11 COUNSEL FOR PLAINTIFFS

12 TERRELL MARSHALL DAUDT & WILLIE PLLC

13 *Karen A. Willie*

14 By \_\_\_\_\_  
15 Karen A. Willie, WSBA # 15902  
16 936 North 34<sup>th</sup> Street, Suite 400  
17 Seattle, WA 98103  
18 Tel.: (206) 816-6603  
19 Fax: (206) 350-3528  
20  
21  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,  
IN AND FOR MASON COUNTY.

CITY OF TACOMA,  
a municipal corporation,

No. 1651

Petitioner,

PETITION FOR  
CONDEMNATION.

- v -

GEORGE H. FUNK and Mrs. George H. Funk, his wife; William T. Putnam and Harriett G. Putnam, his wife; A. G. Cushman and Mrs. A. G. Cushman, his wife; Russell Homan, a bachelor; Puget Mill Company, a corporation; Olive Hanson, widow of Arne Hanson, deceased; Marius Hanson, Simon Hanson, Fritjof Hanson; Valborg Rustad, Mina Caroline Davis; Olofine Thue, Agnes Gilbertson, Olaf Hanson, children, heirs at law and devisees of Arne Hanson, deceased; Frances Hanson, Carrie Falie, Hassie Hanson, Ole Hanson, Fred Hanson and Jeanette Hanson, his wife, heirs at law of Arne Hanson, deceased; Alice E. Dow Browner and C. W. Browner, her husband; A. E. Hillier and Stella Hillier, his wife; Henry O. Pixley; William Musser and Mrs. William Musser, his wife; Ida M. Finch and Vincent Finch, her husband; Tacoma Savings Bank & Trust Company, a corporation, as Trustee; Marie H. Bradley, William E. Bradley and Edith C. Bradley, his wife; James W. Bradley; Martha E. Hayward, a widow; Weyerhaeuser Timber Company, a corporation; Thad B. Preston and Mrs. Thad B. Preston, his wife; Ellen Rudy and John Doe Rudy, her husband; Dr. J. Richter and Mrs. J. Richter, his wife; Potlatch Commercial & Terminal Company, a corporation; Sig. G. Aardal and Mrs. Sig. G. Aardal, his wife; H. N. Woolfield and Mrs. H. N. Woolfield, his wife; E. A. Sims and Mrs. E. A. Sims, his wife; George Franz and Mrs. George Franz, his wife; Myra L. Lutz and John Doe Lutz, her husband; W. D. Davidson and Mrs. W. D. Davidson, his wife; Morrison F. Pixley and Mrs. Morrison F. Pixley, his wife; M. M. Grogan and Mrs. M. M. Grogan, his wife; J. A. Schmidt and Mrs. J. A. Schmidt, his wife; Wm. Wagner and Mrs. Wm. Wagner, his wife; Abraham J. Gross and Mrs. Abraham J. Gross, his wife; Perry J. Perkins and Mrs. Perry J. Perkins, his wife; The Oregon Mortgage Co., Ltd., a corporation; Higgins-Gady Timber Co. a corporation; L. W. Olds and Mrs. L. W. Olds, his wife; J. T. Argyle and Mrs. J. T. Argyle, his wife; Stephen Merrick and Mrs. Stephen Merrick, his wife; Mae Land Company, a corporation; Kneeland Investment Co. a corporation; Rob't E. Andrews and Mrs. Rob't E. Andrews, his wife; Edw. F. Leach and Mrs. Edw. F. Leach, his wife; Northern Pacific Railway Company, a corporation; S. K. Waterman and Mrs. S. K. Waterman, his wife; Mary A. O. Rechenderfer and John Doe Rechenderfer, her husband; Olympia Door Co., a corporation;

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AND FILED

SEP 11 1920

*Hattie E. Purdie-Gusfield*  
CLERK OF THE SUPERIOR COURT  
MASON COUNTY, WASH.

1348

FUNK 000052

That T. G. Garrison and Mary L. Garrison are husband and wife. That Karl Rose and Emilie Rose are husband and wife. That H. B. Jackson and Mary A. Jackson are husband and wife. That John L. Sutherland and Mrs. John L. Sutherland are husband and wife. That R. B. Wilson and Bertha Wilson are husband and wife. That William M. Foster and Mrs. William M. Foster are husband and wife. That Thomas W. Webb and Maude Webb are husband and wife. That George Cameron and Louise Cameron are husband and wife. That ~~xxxxxxxMcNeeleyxxxxx~~ John Doe McNeeley, whose true christian name is to petitioner unknown, and Geneva A. McNeeley are husband and wife. That W. A. Morris and Maude Morris are husband and wife. That George F. Weaver and Mabel H. Weaver are husband and wife. That J. C. McKiel and Mrs. J. C. McKiel are husband and wife. That W. A. Nobles and Mrs. W. A. Nobles are husband and wife. That Joseph Veil and Mrs. Joseph Veil are husband and wife. That W. A. Hunter and Oliver Hunter are husband and wife. That William Deyette and Mrs. William Deyette are husband and wife. That Lew Ottermatt and Jeanette F. Ottermatt are husband and wife. That Jos. C. Mongrain and Mrs. Jos. C. Mongrain are husband and wife. That Alex Johnson and Mrs. Alex Johnson are husband and wife. That John Doe Hauptly, whose true christian name is to petitioner unknown, and Fannie L. Hauptly are husband and wife. That Arthur H. Bells and Mrs. Arthur H. Bells are husband and wife. Thatasmus Hanson and Mrs.asmus Hanson are husband and wife. That George Webb and Mrs. George Webb are husband and wife. That I.N.Wood and Ethel Wood are husband and wife. That Robert Lewis and Mrs. Robert Lewis are husband and wife. That Henry Allen and Mrs. Henry Allen are husband and wife. That McCainney Pulsifer and Mrs McCainney Pulsifer are husband and wife. That Frank MacKean and Mrs. Frank MacKean are husband and wife, that A.D.Miller and Mrs. A.D. Miller are husband and wife. That Alonzo Kay and Bessie Kay are husband and wife. That Joseph Wickstrom and Mrs. Joseph Wickstrom are husband and wife. That W.B. Sammons and Mrs. W.B.Sammons are husband and wife. That W.H.Rowe and Mrs. W.H.Rowe are husband and wife. That W.G.Rex and Mrs. W.G.Rex are husband and wife. That W.H.Smith and Mrs. W.H.Smith are husband and wife. That Albert Hale and Mrs. Albert Hale are husband and wife. That Frank W. Hale and Mrs. Frank W.Hale, are husband and wife. That Clinton O. Harris and Mrs. Clinton O. Harris are husband and wife. That Joseph M. Sparr and Mrs. Joseph M. Sparr are husband and wife. That F.A.Robison and Mrs. F.A.Robison are husband and wife.

IX.

That at all times since the year 1893 the City of Tacoma has been engaged in the business of owning lands, real estate, rights of way, franchises, easements, privileges and other facilities, and owning, operating and maintaining works, plants and facilities for the purpose of furnishing said City of Tacoma and the inhabitants thereof and any other persons, with electricity and electric energy for lighting, heating, fuel, power and other public purposes, and has regulated and controlled the use, distribution and price thereof.

X.

That heretofore and prior to August 12th, 1919, the corporate authorities, to wit, the City Council of said City of Tacoma, deemed it advisable that said City of which they were officers, should acquire

by condemnation or purchase, of both of said methods, a site, which should include land and real estate, rights of way, water rights, overflowage rights, easements, privileges and other facilities for the purpose of making certain additions, betterments and extensions, hereinafter mentioned, to the present electric generating plant and system now owned, controlled, operated and maintained by said City, and the said City Council of said City thereupon and on the 9th day of July, 1919, duly passed an ordinance, numbered 7040, entitled:-

"An ordinance declaring the advisability of the City of Tacoma's acquiring a site for establishing a hydro-electric power plant on the North Ford of the Skokomish River and on and along Lake Cushman in Mason County, Washington, with the necessary water rights, overflowage rights, easements and other property rights incident and necessary thereto as an addition to and extension of its electric light and power system; specifying and adopting the system and plan proposed; declaring the estimated cost thereof, as near as may be; and providing for the submission of this ordinance and the system and plan herein set forth to the qualified voters of the City for their ratification or rejection thereof at a special election to be held on the 12th day of August, 1919; and repealing Ordinance No. 6938";

which said ordinance was signed by the Mayor of said City and was thereafter duly published in the official newspaper of said City on the 10th day of July, 1919.

#### XI.

That said Ordinance No. 7040 specified and adopted the system or plan proposed for the acquisition of said site for such proposed additions, betterments and extensions of its present electric generating system, and declared the estimated cost of said site as near as might be, and said ordinance and the plan and system therein specified and adopted was thereafter, on August 12th, 1919, submitted for ratification or rejection to the qualified voters of said City, and at said election said ordinance and the plan and system therein specified and adopted was ratified by the affirmative vote of such a majority of the qualified voters of said City voting at said election as was required by the statute in such cases made and provided. That a copy of said Ordinance No. 7040 is attached hereto, marked Exhibit A, and made a part of this petition.

XII.

That the system and plan specified and adopted by said ordinance was and is to acquire by condemnation or otherwise a site upon and along Lake Cushman, and on and along the North Fork of the Skokomish River, in Mason County, Washington, for a hydro-electric generating plant to be known and designated "Hydro-electric Power Unit No 2 of the City of Tacoma"; said plant to be owned, constructed, operated and maintained as an addition, betterment and extension of and to the present system of said City, which site so to be acquired and owned by said City, should include all lands, rights of way, water rights, overflowage rights, reservoirs, easements and privileges as should be necessary for the ultimate development thereof, including also sufficient rights of way, franchises, and easements to provide a double pole line and private telephone line where it may be located from the headworks to the Pierce County Line.

XIII.

That pursuant to the further provisions of said Ordinance No. 7040 said City of Tacoma, by its Commissioner of Light and Water and its City Council has caused the proper and necessary surveys to be made and prepared, and has determined that in order to develop and put in operation said Hydro-electric Power Unit No.2 of the City of Tacoma hereinafter described, it is and will be necessary and convenient to include in said site the lands, rights of way, water rights, overflowage rights, easements and privileges hereinafter described, and said City of Tacoma heretofore and on the 7th day of July, 1920, duly passed Ordinance No. 7281, entitled:-

"An ordinance authorizing and directing the City Attorney of the City of Tacoma to institute and prosecute an action or actions in the proper courts in the name of the City of Tacoma, under the right of eminent domain, for the condemnation and acquisition of lands, real estate, premises, rights-of-way, riparian rights, water rights, overflowage rights, easements and privileges necessary for the construction, operation and maintenance of the hydro-electric power plant on and along the North Fork of the Skokomish River, and on and along Lake

CIII.

That with the construction of said dam in the North Fork of said Skokomish River, above mentioned, and the construction of said tunnel and canal and the utilization of said waters in the manner herein set forth, a portion of the waters of said North Fork of Skokomish River will be diverted from the present channel thereof and used by petitioner upon the site herein described, and to be acquired by these proceedings for the operation of said proposed Hydro-Electric Power Unit #2 of the City of Tacoma, and the volume of water in said river below said dam will be diminished and by reason thereof it is and will be necessary and convenient for said City of Tacoma to take and acquire, as a part of the site for said proposed power plant, pursuant to the provision of said Ordinances No. 7040 and No. 7281, the water rights, riparian rights, easements, privileges and other facilities upon said river below said dam, necessary and adequate for the proper development, construction, operation and maintenance of said power plant.

CIV.

That the lands, real estate and premises mentioned and described in Group 11 of said Ordinance No. 7281, attached hereto as Exhibit B, and hereinafter described, abut upon and lie adjacent to said river, and the defendants:

CV.

That defendant Olympia Door Company, a corporation, is or claims to be the owner of the following described tracts of land, with the riparian rights upon said river appurtenant thereto, to-wit:-  
the N.E.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$ ;

Government Lot 1, being the N.W.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$ ; the S.W.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$ ; the N.W.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$ ; the N.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  and Government Lot 8 being the S.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$ ; all in Section 6, Township 21 North, Range 4 West, W.M. Also that portion of the N.E.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  of Section 8, Township 21 North, Range 4 West, W.M., lying North of Skokomish River.

And that defendant Ella A. L. Waddle, has or claims some interest in the N.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of said Section 6, and Defendant Washington Mill Company, a corporation, has or claims some interest in said portion of N.E.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  of said Section 8, lying North of Skokomish River.

CVI.

That defendants C. A. Hudson and Mrs. C. A. Hudson, his wife, are or claim to be the owners of the W.  $\frac{1}{2}$  of Section 7, Township 21 North, Range 4 West, W.M., except the N.E.  $\frac{1}{4}$  of the N.W.  $\frac{1}{4}$  of said section, and of the riparian rights on and along said river appurtenant thereto.

That defendants T. G. Garrison and Mary L. Garrison, his wife, are or claim to be the owners of said N.E.  $\frac{1}{4}$  of the N.W.  $\frac{1}{4}$  of said Section 7, and of the riparian rights on and along said river appurtenant thereto hereinafter named are or claim to be the owners of the respective tracts or parcels of land hereinafter mentioned and of the water rights, riparian rights, privileges and easements upon and along said river, appurtenant or pertaining thereto, and that all of said lands are in Mason County, Washington.

Foster, is deceased. That John Doe Pulsifer, whose true Christian name is unknown to petitioner, husband of defendant Kate Pulsifer, is deceased. That Mrs. Ben Johns, wife of defendant Ben Johns, is deceased. That Mrs. Allen Yellout, wife of defendant Allen Yellout, is deceased. That there has never been any adjudication of or determination of, who the heirs at law of the deceased persons above mentioned are. That the heirs at law of each of said deceased persons above mentioned are proper and necessary parties defendant in the above entitled proceeding. That said deceased persons are Indians and that it is impossible to ascertain or determine who the respective heirs of said deceased persons are, until the Indian Department shall have passed upon their several claims and petitioner has made diligent search and inquiry but has been unable to ascertain the names, or residence of any such heirs or whether or not there are any heirs of said deceased persons.

CLXIII.

That all of the tracts of land mentioned and described in paragraphs numbered 140 to 162 inclusive, are in the Skokomish Indian Reservation and the defendants named in said respective paragraphs are Indians and that said tracts abut upon said Skokomish River and that it is and will be convenient and necessary for said City to take and acquire the rights to take a portion of the water from said river at a point near said dam as above described.

CLXIV.

That the County of Mason has or claims to have some lien for taxes upon the lands hereinbefore described.

CLXV.

That the defendants named herein and made parties hereto are the owners and occupants of the lands, waters, water rights, riparian rights, overflowage rights, easements and privileges affected by this proceeding, and all of the persons having any interest therein so far as known to the Mayor of said City and the City Attorney thereof; or appearing from the records in the office of the Auditor of Mason County.

CLXVI.

That it is necessary, pursuant to the laws of the State of Washington, in such cases made and provided, that the taking and damaging, if any, of the lands, rights-of-way, water rights, riparian rights, overflowage rights, easements and privileges herein alleged to be necessary and convenient to be taken and acquired for the purposes herein set forth, should be adjudged to be a public use and necessity; that just compensation should be made to said defendants and each of them for their said lands, rights-of-way, water rights, overflowage rights, easements, franchises and privileges and property taken or damaged, and that such damages and compensation, if any, should be ascertained in the manner provided by law.

WHEREFORE - Your Petitioner prays:-

That it may be adjudged herein that the taking and damaging, if any, of the lands, rights-of-way, waters, water rights, overflowage rights, easements, privileges and property of said defendants for the purposes of acquiring the said site for petitioner's said hydro-electric power plant, is and will be a public use and necessity; that thereupon

the just compensation to be paid to said defendants, and each of them, for their said lands, rights-of-way, water rights, waters, overflowage rights, easements, privileges and property, as the case may be, or any damages thereto, may be ascertained and determined in the manner provided by law; and that upon payment by said City of Tacoma of the amounts so awarded this Court may finally adjudge and decree that the title to said lands, rights-of-way, waters, water rights, easements, privileges and property are vested in fee simple in said City.

And petitioner will ever pray.

J. Louis Dennis  
Percy P. Boush  
Burns Poir  
Peters & Powell  
J. C. R. Lewis  
Attorneys for petitioner.

STATE OF WASHINGTON)  
:ss.  
County of Pierce. )

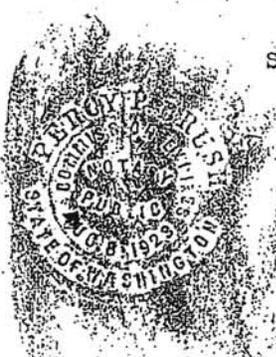
C. M. RIDDELL being first duly sworn on oath deposes and says: That he is the duly elected, qualified and acting Mayor of the City of Tacoma, the petitioner herein, and as such is authorized by law to verify pleadings on behalf of said City; that he has read and knows the contents of the above and foregoing Petition for Condemnation and that the statements contained therein are true as he verily believes.

C. M. Ridell

Subscribed and sworn to before me this 10<sup>th</sup> day of

September 1920.

Percy P. Boush  
Notary Public in and for the  
State of Washington, residing  
at Tacoma.



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF MASON.

CITY OF TACOMA, a municipal  
corporation,

Petitioner,

-vs-

GEORGE H. FUNK, et al,

Defendants.

No. 1651.

ORDER ADJUDGING PUBLIC

USE AND NECESSITY

The above entitled cause coming on regularly to be heard before the Court, sitting without a jury; on the 20th day of November, 1920, and continued from time to time, upon the application of the petitioner, City of Tacoma, for the determination of the question of public use preliminary to its condemnation and appropriation of the lands, rights-of-way, waters, water rights, overflowage rights, reservoirs, easements, privileges and properties of the defendants described in the petition on file; and the City of Tacoma, petitioner herein, appearing by Messrs. J. Chas. Dennis, Percy P. Brush and Burns Poe, City Attorneys, and Messrs. Peters & Powell and Chas. R. Lewis of counsel, and the following named attorneys appearing for certain of the defendants, to-wit:

Messrs. Hayden, Langhorne & Metzger, for defendants, William Musser, Mrs. William Musser and Weyerhaeuser Timber Company; Flick & Paul, attorneys for defendants, L. W. Olds and Mrs. L. W. Olds; Tucker & Hyland, attorneys for defendant, Ivan L. Hyland; M. M. Logan, attorney for Mason County; Alden Bailey, attorney for defendants, Rasmus Hansen, Mrs. Rasmus Hansen, Frank Fredson and Mrs. Frank Fredson; Max Hardman, attorney for S. K. Waterman; J. A. Coleman, attorney for defendants, C. A. Hudson, Mrs. C. A. Hudson, Skokomish Boom & Rafting Co., a corporation, and Skokomish Boom Co., a corporation; G. E. de Steiguer, attorney for defendant, H. C. Henry Investment Co., a corporation; Chadwick, McMicken, Ramsey & Ripp, attorneys for defendants, Puget Sound Mill Co., a corporation, and Puget Mill Co., a corporation; George H. Funk, attorney for himself and Mrs. George H. Funk; Poe & Falknor, attorneys for defendant, Southwest Peninsula Power Co.; Lundén & Barto, attorneys for defendant, E. N. Woolfield; J. M. Hawthorne, attorney for defendant, William R. Hawthorne; Frank C. Owings, attorney for Mason County Power Company, Olympic Electric Reduction Co., Olympia Door Co., Kneeland Investment Co., Frank MacKean and Mrs. Frank MacKean; Troy & Sturdevant and George F. Yantis, attorneys for Edwin Aherne, Henry Barrett, Oliver Bishop, W. E. Pixley, Albert Pfundt, Karl Rose, Mrs. Karl Rose, George Cameron, Mrs. George Cameron, School District #43, Mason County, William Deyette, Mrs. William Deyette, John L. Sutherland, Mrs. John L. Sutherland, Robert

Ebert, Joseph Vail, Mrs. Joseph Vail, Agnes Eaton, Ordella E. Vater, Earnest Eaton, W. O. Watson, Hugh Eaton, George F. Weaver, Mrs. George F. Weaver, Arthur Eells, Mrs. Arthur Eells, T. W. Webb, Mrs. T. W. Webb, E. L. France, Mrs. E. L. France, R. B. Wilson, Mrs. R. B. Wilson, T. G. Garrison, Mrs. T. G. Garrison, W. A. Hunter, Mrs. W. A. Hunter, E. B. Harris, Fannie L. Hauptly, William H. Johnson, Joseph C. Mongrain, Mrs. Joseph C. Mongrain, J. C. McKiel, Mrs. J. C. McKiel, W. A. Nobles and Mrs. W. A. Nobles; and defendants, Skokomish Boom Co., Olympic Electric Reduction Co., and Southwest Peninsula Power Co., having entered voluntary appearances and having been made parties to said action, by stipulation in open Court; and it appearing that defendants, Alice Johnston, Warren Johnston and Gertrude Johnston are minors and necessary parties defendant, and the Court having heretofore appointed P. M. Troy, an attorney, as guardian ad litem for said minors; and

It appearing that due and legal notice of the time and place of this hearing had been given to all of the above named parties appearing herein; and

It further appearing to the Court that due and legal service of the Summons and Petition had been made upon each of the defendants named in the Summons and Petition herein on file, by personal service and by publication of Summons in the manner required by law, as more fully appears from the files herein, the Sheriff's Return of Personal Service, the Proof of Publication of Summons, and Affidavit of Percy P. Brush, one of the attorneys for petitioner; that more than twenty (20) days had elapsed since the personal service of said Summons upon each of the defendants shown by the record to have been personally served; and that more than sixty (60) days had elapsed since the first publication of Summons as to said defendants served by publication and prior to said 20th day of November, 1920; and that none of the defendants named in said Summons and Petition had made any appearance in said cause, except those defendants above named appearing by their respective counsel; and that all of said defendants except those appearing as above named are in default;

Thereupon the cause proceeded by the introduction of evidence, oral and documentary, on the part of the petitioner, and like evidence on the part of the appearing defendants; and the Court having heard and considered the evidence adduced at said hearing, and having heard and considered the argument of respective counsel, and in all respects being fully advised as to the law and evidence,

The Court finds that the allegations contained in the petition herein are true and that the contemplated use for which the lands, rights-of-way, waters, water rights, overflowage rights, reservoirs, easements, privileges and properties are sought to be appropriated is really a public use, and that the public interest requires the prosecution of the enterprise being prosecuted by the petitioner and requires the appropriation of said lands, rights-of-way, waters, water rights, overflowage rights, reservoirs, easements, privileges and properties, as prayed for in said petition; and that the said lands, rights-of-way, waters, water-rights, overflowage rights, reservoirs, easements, privileges and properties described in said petition and sought to be appropriated by said petitioner are required

and necessary for the purposes of such enterprise;

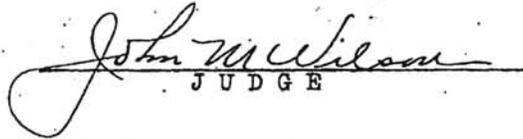
NOW, THEREFORE, by virtue of the premises

IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED that the contemplated use for which the lands, rights-of-way, waters, water rights, overflowage rights, reservoirs, easements, privileges and properties are sought to be appropriated is a public use, and that public interest requires the prosecution of the enterprise being prosecuted by the petitioner, and requires the appropriation of the said lands, rights-of-way, waters, water rights, overflowage rights, reservoirs, easements, privileges and properties described in the petition and as prayed for therein; and

That the lands, rights-of-way, waters, water rights, overflowage rights, reservoirs, easements, privileges and properties described in said petition and sought to be appropriated by said petitioner are required and necessary for the purposes of such enterprise; and

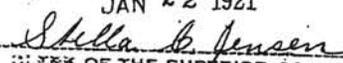
IT IS FURTHER ORDERED that the above entitled cause proceed to the ascertainment of the damages to be paid by the petitioner for the properties proposed to be appropriated in the manner provided by law.

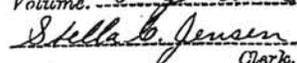
Done in open Court this 22<sup>nd</sup> day of January, 1921.

  
J U D G E

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AND FILED

JAN 22 1921

  
CLERK OF THE SUPERIOR COURT  
BLAINE COUNTY, WASH.

Entered on Page 247-8  
Volume "8" Journal  
  
Clerk.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,  
IN AND FOR MASON COUNTY.

-----  
CITY OF TACOMA, a municipal corporation,

Plaintiff.

-vs-

GEORGE H. FUNK, et als.,

Defendants.  
-----

No. 1651

STATEMENT AND CROSS COMPLAINT

Come now the following named defendants, T. W. Webb and \_\_\_\_\_ Webb, husband and wife, G. F. Weaver, and \_\_\_\_\_ Weaver, husband and wife, J. C. Mongrain, and \_\_\_\_\_ Mongrain, husband and wife, W. H. Johnston and \_\_\_\_\_ Johnston, husband and wife, W. O. Watson and \_\_\_\_\_ Watson, husband and wife, Fred Lassale as Administrator of the Estate of George Cameron, Karl T. Rose and \_\_\_\_\_ Rose, husband and wife, A. H. Eells, and \_\_\_\_\_ Eels, husband and wife; R. B. Wilson, and \_\_\_\_\_ Wilson, husband and wife; Oliver Bishop and \_\_\_\_\_ Bishop, husband and wife, William Deyette and \_\_\_\_\_ Deyette, husband and wife; J. L. Sutherland, and \_\_\_\_\_ Sutherland, husband and wife; F. A. Robison and \_\_\_\_\_ Robison, husband and wife, M. F. Pixley and \_\_\_\_\_ Pixley, husband and wife; W. A. Nobles and \_\_\_\_\_ Nobles, husband and wife; J. C. Mc Kiel and \_\_\_\_\_ Mc Kiel, husband and wife, Jean Todd Fredson and \_\_\_\_\_ Fredson, husband and wife, and Joseph Sparr and \_\_\_\_\_ Sparr, husband and

wife, and by way of statement and cross complaint allege:-

I

That the above named T. W. Webb and \_\_\_\_\_ Webb are now and at all times mentioned herein were husband and wife and that they were the owners of the following described premises situate, lying and being in Mason County, Washington, to-wit:-

Lot Two (2); the Southwest quarter of Northwest quarter; the West half of the southwest quarter of Section Seven, (7) Township twenty one (21), North, Range Three, (3); Lots Seven (7), Eight (8), Nine (9) Ten (10) and Lot Eleven (11), except School Cite. Also, the Southeast quarter of the southwest quarter; the Northeast quarter of the southeast quarter and the West half of the Southeast quarter, Section Twelve, Township Twenty-one (21) North, Range 4, West of W. M. and the Northeast quarter of the Northwest quarter of Section Thirteen (13) Township Twenty one (21) North, Range Four, (4) West of W. M.

II

That the above named G. F. Weaver and \_\_\_\_\_ Weaver are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises situate, lying and being in Mason County, Washington, to-wit:-

Lot Eleven (11) and the South twenty five (25) acres of the Southwest quarter of the Northwest quarter of Section Fifteen (15), Township Twenty one (21) North Range Four (4) West of W. M.

III

That the above named J. C. Mongrain, and \_\_\_\_\_ Mongrain, are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

*Northwest quarter of*  
The East half of the Northeast quarter of Section Sixteen (16), Township Twenty one (21) North, Range Four (4) West of W. M.

IV

That the above named W. H. Johnston and \_\_\_\_\_

Johnston are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

Southwest quarter of the southeast quarter of Section Eight (8), Township Twenty one (21) North, Range Four (4) West, W. M.

V

*alleged*  
That the above named W. O. Watson and \_\_\_\_\_ Watson are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

The Northeast quarter of the Northeast quarter of Section Sixteen (16), Township Twenty one (21), North, Range Four (4) West of W. M.

VI

That the above named Fred Lassais is Administrator of the Estate of George Cameron and that the estate owns the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

Lots Five, (5), Six (6), Seven (7) and the South half of the Southwest quarter of Section Fourteen (14) Also the East half of the Southeast quarter of Section Fifteen (15) all in Township Twenty one (21) North, Range Four, West of W. M.

VII

That the above named Karl T. Rose and \_\_\_\_\_ Rose are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

The South half of the Southeast quarter of Section Seven (7), Township Twenty one (21) North, Range Four (4) West of W. M.

VIII

That the above named A. H. Eells and \_\_\_\_\_ Eells are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

The West half of the Northwest quarter of the Northeast quarter and the west half of the southwest quarter of the Northeast quarter; the Northwest quarter of the Northwest quarter of the southeast quarter of Section Eighteen, Township Twenty one (21) North, Range Four (4), West of W. M.

IX

That the above named R. B. Wilson and \_\_\_\_\_ Wilson are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises situate, lying and being in Mason County, Washington, to-wit:-

The Southeast quarter of the southwest quarter of Section Eight (8), Township Twenty one (21) North, Range Four (4) West W. M.

X

That the above named Oliver Bishop and \_\_\_\_\_ Bishop are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises situate, lying and being in Mason County, Washington, to-wit:-

The East half of the Southeast quarter lying South of the Skokomiah River, except west 5 chains thereof and except the west 208.7 feet of south 364.6 feet of east 15 chains of East half of the Southeast quarter, Section Eight (8) Township Twenty one (21) North Range Four (4) West of W. M.

XI

That the above named William Deyette and \_\_\_\_\_ Deyette are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises situate, lying and being in Mason County, Washington, to-

wit:-

The West half of the Northwest quarter of the Northeast quarter of Section Sixteen (16) Township Twenty-one (21) North, Range Four (4) West W. M.

XII

That the above named J. L. Sutherland and \_\_\_\_\_ Sutherland are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

Beginning at the southwest corner of the southeast quarter of the southeast quarter run thence east on south line 5 chains; thence north to Skokomish River; thence following river in westerly direction to west line of Northeast quarter of southeast quarter, said Section Eight, run thence south on west line of East half of southeast quarter to place of beginning containing 15 acres, more or less, Section Eight, Township Twenty one (21) North, Range Four (4) West W. M.,

XIII

That the above named F. A. Robison and \_\_\_\_\_ Robison are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

Lots twenty two and twenty three (22 and 23) in Section Fourteen (14) Township Twenty One (21) North, Range Four (4) West W. M. ALSO Indian Lots Three, (3) four (4), five (5) and ten (10) in Section Twelve (12) Township twenty one (21) North, Range Four, West W. M.

XIV

That the above named M. F. Pixley and \_\_\_\_\_ Pixley are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

Lot One (1) in Block <sup>Twelve</sup> ##### (12) in Townsend's Addition to Union City, Mason County, Washington.

XV

That the above named W. A. Nobles and \_\_\_\_\_ Nobles are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises situate, lying and being in Mason County, Washington, to-wit:-

The Northwest quarter of the southeast quarter of Section Fifteen (15) Township Twenty one (21) North, Range Four, West W. M.

XVI

That the above named J. C. Mc Kiel and \_\_\_\_\_ Mc Kiel are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises situate, lying and being in Mason County, Washington, to-wit:-

Government Lot Eleven (11) lying north of the main channel of the Skokomish River.

XVII

That the above named Jean Todd Fredson and \_\_\_\_\_ Fredson are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises situate, lying and being in Mason County, Washington, to-wit:-

The West half of the Northwest quarter of the Northeast quarter of Section Sixteen, (16) Township Twenty one (21) North, Range Four (4) West W. M.

XVIII

That the above named Joseph Sparr and \_\_\_\_\_ Sparr are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises situate, lying and being in Mason County, Washington, to-wit:-

A portion of Indian Lot Eleven (11), Government Lot Five (5), Section Twelve (12) Township Twenty one (21) North, Range Four (4) except a portion sold to Frank Fredson.

XIV

That in addition to the damages to the said several

tracts of land caused by the taking of the riparian rights therefrom by reason of the proceedings on the part of the petitioner wach and all of said tracts are greatly damaged and affected thereby and the fair market value of the same depreciated by reason of the menace of the dam proposed to be erected by the petitioner and plaintiff herein, and the impounding of the large body of water proposed to be impounded by the said petitioner and plaintiff and the consequent damages of the premises of these defendants being inundated and flooded through the chance of the said dam washing out or the said impounded waters breaking through and around the proposed dam of petitioner or plaintiff and escaping from said impounding basin and flooding the premises of these defendants and doing great damage thereto and by reason of the fear of such escaping of water from said impounding basin and the fear of resulting injury to their said several tracts of land above described; that the menace of said proposed dam and the said proposed project has and does greatly depreciate the fair market value of the said property of these defendants by reason of the fear and apprehension of the washing out of said dam or the escaping of said impounded waters around the said dam and the inundating and flooding of their said premises, aforesaid.

XV 19

That the said several tracts of land above described are suitable and used for agricultural purposes and lie in the lower end of a narrow valley commencing at the mouth of a narrow canyon of the North Fork of the Skokomish River in which canyon the plaintiff and petitioner proposes to erect its dam behind which dam and up the said North Fork of said River will be impounded a great and vast body of water; that the natural and only outlet of said waters is through the said canyon and valley and over the said above de-

described lands of these defendants.

~~XVI~~ 20

That by reason of the storage of said waters so situated with reference to the above described lands of these defendants these defendants and any persons purchasing or occupying lands in the said valley are <sup>placed</sup> in constant fear of impending disaster by reason of the storage of said water and apprehension of damage from flowage or of the dam or storage basin and the escaping of water therefrom with the possibility of destruction of the property of these defendants, together with loss of life of the inhabitants residing therein so that the property of these defendants so situated, has become undesirable and unmarketable and the fair market value thereof greatly depreciated.

~~XVII~~ 21

That each and all of said tracts of land lie contiguous to said Skokomish River in the said valley lying below the canyon in which the petitioner proposes to erect its dam and have valuable riparian rights appertinent thereto by reason of the flowage of the said River alongside their several tracts of land.

~~XVIII~~ 22

That the fair market value of their said premises will be and are greatly depreciated by reason of the proposed taking away of the riparian rights therefrom which attach to the whole and every part of their said above described premises and which taking of said water will deprive said premises of all their riparian rights including the benefits that annually accrue thereto by virtue of subirrigation from the said river.

WHEREFORE, they pray the Court:-

1- That they be awarded compensation for any and all damages of every kind and nature whatsoever that will accrue to their said

properties by reason of the doing of the things to be done by the plaintiff and petitioner as alleged in the complaint and the matters and things alleged in this statement and cross-complaint.

2- For their costs and disbursements of suit herein.

3- For such other and further relief as shall seem meet in the premises.

*Wm. F. ...*  
*...*  
Attorneys for above named defendants.

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AND FILED

JUN 1 1921

*Stella G. Jensen*  
CLERK OF THE SUPERIOR COURT  
MASON COUNTY, WASH.

*By M. D. Knight* *deputy*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,  
IN AND FOR MASON COUNTY.

-----  
CITY OF TACOMA, a  
municipal corporation,  
Plaintiff.

-vs-

GEORGE H. FUNK, et al.,  
Defendants.  
-----

No. 1651

PETITION IN INTERVENTION.

Come now T. G. Garrison, and \_\_\_\_\_ Garrison, husband and wife, Blanche B. Bell and Al L. Bell, wife and husband, Fred R. Bell, and Mayme Bell, his wife, J. Ernest Eaton, and \_\_\_\_\_ Eaton, husband and wife, Harry Deyette and \_\_\_\_\_ Deyette, his wife, Victor Roberts and \_\_\_\_\_ Roberts, his wife, George N. Adams and \_\_\_\_\_ Adams, his wife, Charles Fisk and \_\_\_\_\_ Fisk his wife, John Hawk and \_\_\_\_\_ Hawk, his wife, William Morris and \_\_\_\_\_ Morris, his wife, Joshua Jemison and Mattie Jemison, his wife, W. A. Hunter and \_\_\_\_\_ Hunter, his wife, Teofil Rickert and Helena Rickert, his wife, Robert N. Johnson and \_\_\_\_\_ Johnson, his wife, Ed O'Heren and \_\_\_\_\_ O'Heren, his wife, Henry Barrett and \_\_\_\_\_ Barrett, his wife, William Mc Dowell and \_\_\_\_\_ Mc Dowell, his wife, Will H. Peterson and \_\_\_\_\_ Peterson his wife, O. T. Aubol and \_\_\_\_\_ Aubol, his wife, John Edmiston and \_\_\_\_\_ Edmiston, his wife, Hugh Brydon and \_\_\_\_\_ Brydon, his wife, George W. Dixon and \_\_\_\_\_ Dixon, his wife, Mary Adams and \_\_\_\_\_ Adams, her husband, Jesse Kirkland and \_\_\_\_\_ Kirkland, his wife, and B. C. Willey and \_\_\_\_\_ Willey, his wife, Warren Lincoln, and \_\_\_\_\_ Lincoln, his wife, Edward A. Harris and \_\_\_\_\_ Harris his wife, Charles W. Mason

and \_\_\_\_\_ Mason, his wife, J. G. Haller and \_\_\_\_\_  
Haller, his wife, I. N. Wood and \_\_\_\_\_ Wood, his wife,  
and petition and represent to the Court as follows, to-wit:-

I

That the above named T. G. Garrison and \_\_\_\_\_ Garrison  
are now and at all times mentioned herein were husband and wife  
and that they are the owners of the following described premises,  
situate, lying and being in Mason County, Washington, to-wit:-

The southwest quarter of the Northeast quarter, the  
Northeast quarter of the Northwest quarter, the Southeast  
quarter of the Northwest quarter, the Northeast quarter of  
the Southwest quarter, the Southeast quarter of the South-  
west quarter, the Northwest quarter of the Southeast quarter  
all in Section Seven, (7), Township Twenty one (21), North  
Range Four (4) West of W. M.

II

That the above named Blanche B. Bell and A. L. Bell are now  
and at all times mentioned herein were wife and husband, and that  
they are the owners of the following described premises, situate,  
lying and being in Mason County, Washington, to-wit:-

The West half of the Southwest quarter of Section Fifteen  
(15) and the South half of the Northeast quarter of the South-  
east quarter of the Section Sixteen (16) Township Twenty one  
(21) North Range Four (4) West of W. M.

III

That the above named Fred R. Bell and Mayme Bell are now  
and at all times mentioned herein were husband and wife, and that  
they are the owners of the following described premises, situate,  
lying and being in Mason County, Washington, to-wit:-

The Southeast quarter of the Northeast quarter, except  
seven acres conveyed to Jean Todd Fredson, recorded in vol.  
36, Deeds, page 515, records Auditor's Office, Mason County,  
ALSO, the North half of the Northeast quarter of the south-  
east quarter, all in Section Sixteen (16), Township Twenty  
one (21), North Range Four (4) West of W. M.

IV

That the above named J. Ernest Eaton and \_\_\_\_\_ Eaton are  
now and at all times mentioned herein were husband and wife, and that



Township twenty one North, Range Four, West W. M. except one (1) acre thereof conveyed to James by deed recorded in Vol. 33, page 486, Mason County Deed Records.

VIII

That the above named Charles Fisk and \_\_\_\_\_ Fisk are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises situate, lying and being in Mason County, Washington, to-wit:-

The south half of the northwest quarter of the Northwest quarter of the Northeast quarter of Section Eleven, (11) Township Twenty one (21) North, Range Four, West of W. M. except west twenty (20) feet for road.

IX

That the above named John Hawk and \_\_\_\_\_ Hawk are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises situate, lying and being in Mason County, Washington, to-wit:-

The South twenty six- $\frac{2}{3}$  acres of the West 53- $\frac{1}{3}$  acres of the North Half of the Northwest quarter of Section Eleven (11) Township Twenty one (21) North Range Four West W. M., also the West half of the Southeast quarter of the Southeast quarter of Southeast quarter or tract #7 and tract #3, both in Section Twelve (12) Township Twenty one (21) North Range Four (4) West of W. M.

X

That the above named William Morris and \_\_\_\_\_ Morris are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

Lots nine (9) and twelve (12) and the Southeast quarter of the Northeast quarter of Section Fifteen, (15) Township Twenty one (21) Range Four (4) West of W. M.

XI

That the above named Joshua Jemison and Mattie Jemison

are now and at all times mentioned herein were husband and wife,  
and that they are the owners of the following described premises,  
situate, lying and being in Mason County, Washington, to-wit:-

The Northeast quarter of the Southwest quarter of  
Section Sixteen (16) Township Twenty one (21) North  
Range Four (4) West of W. M.

XII

That the above named W. A. Hunter and \_\_\_\_\_  
Hunter are now and at all times mentioned herein were husband and  
wife, and that they are the owners of the following described pre-  
mises, situate, lying and being in Mason County, Washington, to-  
wit:-

The West half of the Northwest quarter of Section  
Sixteen and the East half of the Northeast quarter and  
Southwest quarter of the Northeast quarter of Section  
Seventeen (17) all in Township Twenty one (21) North,  
Range Four (4) West of W. M.

XII

That the above named Teofil Rickert and Helena Rickert  
are now and at all times mentioned herein were husband and wife,  
and that they are the owners of the following described premises,  
situate, lying and being in Mason County, Washington, to-wit:-

The Northwest quarter of the Northwest quarter and  
the Southwest quarter of the Northwest quarter of Section  
Seventeen, Township Twentyone (21) North Range Four, West  
of W. M.

XIII

That the above named Robert N. Johnson and \_\_\_\_\_  
Johnson are now and at all times mentioned herein were husband and  
wife, and that they are the owners of the following described  
premises, situate, lying and being in Mason County, Washington, to-  
wit:-

The Northeast quarter of the Northwest quarter, Sec. 17  
Township Twenty one (21) North Range Four (4) West of W. M.

XIV

That the above named Ed. O'Heren, and \_\_\_\_\_  
O'Heren, are now and at all times mentioned herein were husband  
and wife, and that they are the owners of the following described  
premises, situate, lying and being in Mason County, Washington,  
to-wit:-

The East half of the West half of the Southeast quarter of  
the Northeast quarter, except right of way, Section Eighteen  
(18) Township Twenty one (21) North, Range Four (4) West W. M.

XV

That the above named Henry Barrett and \_\_\_\_\_  
Barrett are now and at all times mentioned herein were husband  
and wife, and that they are the owners of the following described  
premises, situate, lying and being in Mason County, Washington,  
to-wit:-

The Northeast quarter of the Northeast quarter of Section  
Eighteen (18), Township Twenty one (21) North, Range  
Four, West W. M.

XVI

That the above named William Mc Dowell and \_\_\_\_\_  
Mc Dowell are now and at all times mentioned herein were husband  
and wife, and that they are the owners of the following described  
premises, situate, lying and being in Mason County, Washington,  
to-wit:-

The Northwest quarter of the Southeast quarter and strip  
100 feet by 35 rods, in Northeast quarter of Southwest quarter  
and about  $\frac{1}{2}$  acre between above land and the County Road in the  
Southwest quarter of Northwest quarter, all in Sec. 12, Tp. 21.  
North, Range 5, W.W.M. XVII

That the above named Will H. Peterson and \_\_\_\_\_  
Peterson are now and at all times mentioned herein were husband  
and wife and that they are the owners of the following described.

premises, situated lying and being in Mason County, Washington,  
to-wit:-

35' X 300' in Southeast corner of West half of the North-  
east quarter of the Southwest quarter, East half of south-  
east quarter of Northwest quarter and East half of Northeast  
quarter of Southwest quarter, except .060 acres. A tract 104'  
X 125' adjoining County Road in Southeast quarter of south-  
east quarter of Southwest quarter, all in Section Twelve (12)  
Township Twenty one (21), North Range Five (5) West W. M.  
XVIII

That the above named O. T. Aubol and \_\_\_\_\_ Auboli  
are now and at all times mentioned herein were husband and  
wife and that they are the owners of the following described  
premises, situate, lying and being in Mason County, Washington,  
to-wit:-

The south half of the southeast quarter; Southeast quarter  
of Southwest quarter, except 104' X 125' and except about  
one-half acre, all in Section Twelve (12), Township Twenty-  
one (21), ~~#####~~ North Range Five, West W. M.

XIV

That the above named John Edmiston and \_\_\_\_\_  
Edmiston, are now and at all times mentioned herein were husband  
and wife and that they are the owners of the following described  
premises, situate, lying and being in Mason County, Washington,  
to-wit:-

The north half of the southeast quarter of Section Eleven  
(11) Township Twenty one (21) North Range Five, (5), West  
W. M.

XX

That the above named Hugh Brydon and \_\_\_\_\_  
Brydon are now and at all times mentioned herein were husband  
and wife and that they are the owners of the following described  
premises, situate, lying and being in Mason County, Washington,  
to-wit:-

The Southeast quarter of the Northeast quarter and about one third acre in the Northeast corner of the Northeast quarter of the southeast quarter, all in Section ten (10) Township Twenty one (21) North Range Five, (5) West W. M.

XXI

That the above named George W. Dixon and \_\_\_\_\_ Dixon are now and at all times mentioned herein were husband and wife and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

The East half of the southeast quarter of the Northwest quarter, in Section Seventeen (17) Township Twenty one (21) North Range Four (4) West W. M.

XXII

That the above named Mary Adams and \_\_\_\_\_ Adams are now and at all times mentioned herein were wife and husband and that they are the owners of the following described premises situate, lying and being in Mason County, Washington, to-wit:-

The east half of the southwest quarter, of Section Eleven, Township twenty one (21) North Range Four, West W. M.

XXIII

That the above named Jesse Kirkland and \_\_\_\_\_ Kirkland are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

The North half of the Southeast quarter, except 1/3 acre to Hugh Brydon and except a tract 4 ch. x 2 ch. along the North Line of North half of the southeast quarter, Section Ten (10), Township Twenty one (21) North Range Five, West W. M. ALSO, Northwest quarter of Southwest quarter, of Section Eleven (11) Township twenty one (21), North, ## Range Five (5) West W. M.

XXIV

That the above named B. C. Willey and \_\_\_\_\_ Willey are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

The southwest quarter of the Northeast quarter and the Northwest quarter of the Southeast quarter, except a five acre tract in Section Eleven (11) Township Twenty one (21), North Range Four, (4) West of W. M.

XXV

That the above named Warren Lincoln and \_\_\_\_\_ Lincoln are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

The Southeast quarter of the Southeast quarter of S Section Sixteen (16) Township Twenty one (21) North Range Four, West of W. M.

XXVI

That the above named Edward A. Harris and \_\_\_\_\_ Harris are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

XXVII

That the above named Charles W. Mason and \_\_\_\_\_ Mason are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

The East 24.75 acres of the Southwest quarter of the southwest quarter of Section Nine (9) and also the South Sixteen (16) feet of the West 15.25 acres of the said southwest quarter of the southwest quarter of said Section Nine (9) Also a tract of land sixteen (16) feet square in the southeast corner of the southeast quarter of the southeast quarter of

of Section eight (8) and also a strip of land sixteen (16) feet wide from the last above described South tract to the County Road in the Northeast corner of the Northeast quarter of the Northeast quarter of Section Seventeen (17) all in Township Twenty one (21) North Range Four, West W. M.

XXVIII

That the above named J. G. Haller and \_\_\_\_\_ Haller are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

Tract three (3) Lot Two (2) Section Twelve (12) and the West half of the East half of the Southwest quarter of the Southeast quarter of Section \_\_\_\_\_, all in Township Twenty one (21) North, Range Four, containing 12.65 acres more or less.

XXIX

That the above named I. N. Wood and \_\_\_\_\_ Wood are now and at all times mentioned herein were husband and wife, and that they are the owners of the following described premises, situate, lying and being in Mason County, Washington, to-wit:-

The West half of the Northeast quarter of the Northwest quarter of Section Seven (7) Township Twenty one (21) North Range Three (3) West W. M.

XXIV

That each and all of said tracts are greatly damaged by the project of the petitioner or plaintiff herein inasmuch as the value of the premises of the foregoing petitioners in intervention are each and all affected thereby and the fair market value of said premises is depreciated by reason of the menace and threat of the erection of the dam proposed to be erected by the petitioner and plaintiff herein and the impounding of the large body of water proposed to be impounded by the said petitioner and plaintiff and the danger of the premises of these petitioners for intervention described above of being inundated and flooded through the chance of the said dam washing out or the water of the said Skokomish River breaking through and around the proposed dam of the petitioner or plaintiff and flooding the premises of these intervenors and doing great damage thereto; that the menace of said dam and said proposed project has and does greatly depreciate the fair market value of the ~~the~~ said property of these petitioners in intervention.

XXV

That the said premises of intervenors are seriously damaged and injured in their fair market value by reason of the fact that the sub-irrigation of their lands, the same being agricultural lands, will be greatly deteriorated and that their lands will suffer great injury thereby by virtue of the fact that they will be devoid of a large amount of moisture that will be due to the diversion of the waters of the North Fork of the said Skokomish River.

XXVI

That the said premises of these intervenors will be and are affected and damaged in diverse and other ways by reason of the said proposed damming of the waters of the North Fork of the said Skokomish River and diverting of said waters elsewhere.

XXVII

That these petitioners for intervention will suffer and are suffering great and irreparable damages unless they be permitted to intervene herein and for their damages assessed and fixed by the jury herein in this eminent domain proceedings.

XXVIII

That the project of the petitioner or plaintiff herein involves the taking away of the riparian rights of these intervenors and their said premises all to the great damage and injury of the said premises.

WHEREFORE, they pray the Court:-

- 1- That they be permitted to intervene herein and have their damages assessed in the manner and form prescribed by law, together with their costs and disbursements of suit.
- 2- For such other and further relief as to the Court shall seem meet in the premises.

*[Handwritten signatures]*  
 Attorneys for Intervenor.

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JUN 1 1921

*[Handwritten signature]*  
CLERK OF THE SUPERIOR COURT  
MASON COUNTY, WASH.

*[Handwritten signature]*  
*[Handwritten signature]*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR MASON COUNTY.

CITY OF TACOMA, a municipal  
corporation,

Petitioner,

No. 1651

- v -

GEORGE H. FUNK, et al,

-DECREE OF APPROPRIATION-

Defendants.

Now on this 7<sup>th</sup> day of September 1923, this  
cause coming on regularly for hearing upon the application of  
the petitioner herein for a decree of appropriation of the  
waters, water rights, riparian rights, easements and privileges  
mentioned in the petition on file herein and appertaining and  
appurtenant to the lands, real estate and premises hereinafter  
described, and it appearing to the Court that heretofore ver-  
dicts were duly rendered in the above entitled action in favor  
of the defendants George Webb and Mrs. George Webb, his wife,  
in the sum of NOTHING; George Franz and Martha Franz, his wife,  
in the sum of \$175.00; Thomas W. Webb and Federal Land Bank of  
Spokane in the sum of \$2,250.00; Louise Cameron, Fred Lassoie,  
Administrator of the estate of George Cameron, deceased, the  
heirs of George Cameron, deceased, the State Bank of Shelton  
and C. I. Pritchard in the sum of \$1,250.00; Hugh Eaton in  
the sum of \$960.00; George F. Weaver and Mabel H. Weaver,  
his wife, J. C. McKiel, and the Federal Land Bank of Spokane,  
in the sum of \$1,080.00; Nels Jydstrup, W. A. Nobles,  
Mrs. W. A. Nobles, his wife, the Federal Land Bank of

Spokane and Joseph Vail, in the sum of \$960.00; Alex Johnson and Mrs. Alex Johnson, his wife, W.O. Watson and Mrs. W.O. Watson, his wife, Fannie L. Hauptly and the State of Washington, in the sum of \$1,500.00; Robert Ebert, E. A. Harris and Mrs. E. A. Harris, his wife, and the State of Washington, in the sum of \$375.00; Oliver Bishop, Washington Mill Company, a corporation, James M. Sweetland, George A. Sheppard, and Lumberman's Mercantile Company in the sum of \$2,100.00; Jeanette F. Ottermatt and Lew Ottermatt her husband, Jos. C. Mongrain and the State of Washington, in the sum of \$450.00; Jean Todd Fredson, William Deyatte, and the State of Washington in the sum of \$510.00; John L. Sutherland, Mrs. John L. Sutherland, his wife, State Bank of Shelton, and Washington Mill Company, in the sum of \$270.00; William H. Johnston, Alice Johnston, Warren Johnston, Gertrude Johnston, Mrs. Lila Fieser, Mrs. Nellie Bryden, Herman Ahern, Edwin Ahern, Chester Vally, children and heirs at law of Alice Johnston, deceased wife of William H. Johnston, and Washington Mill Company, in the sum of \$1,575.00; R. B. Wilson and Bertha Wilson his wife, and the Washington Mill Company, in the sum of \$410.00; Arthur H. Eells and Mrs. Arthur H. Eells his wife in the sum of \$1,500.00; Karl Rose and Emilie Rose his wife, H. Parry Jones and C. A. Hudson in the sum of \$1,252.50; John Hawk and Mrs. John Hawk his wife in the sum of \$560.00; Charles Fisk and Mrs. Charles Fish his wife, in the sum of \$37.50; A. B. Roe and Mrs. A. B. Roe his wife, in the sum of \$151.25; Mary Adams and William Adams her husband in the sum of \$500.00; Warren Dicky and Mrs. Warren Dicky his wife, B. C. Willey and Mrs. B. C. Willey his wife, in the sum of \$465.00; George N. Adams and

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Mrs. Geo. N. Adams his wife, in the sum of \$183.75; Charles Olson and Jane Doe Olson his wife, in the sum of \$525.00; Allan Bell and Blanch B. Bell his wife, in the sum of \$1100.00; T. G. Garrison and Mary L. Garrison his wife, in the sum of \$2,182.50; Marion Smart and Mrs. Marion Smart his wife, in the sum of \$156.00; George M. Dixon and Mrs. George M. Dixon his wife, in the sum of \$125.50; Fred R. Bell and Mayme Bell, his wife, in the sum of \$1,252.50; Jean Todd Fredson in the sum of \$170.00; Harry Deyette and Mrs. Harry Deyette his wife, in the sum of \$600.00; Robert C. Johnson and Mrs. Robert C. Johnson his wife, in the sum of \$800.00; Victor Roberts and Mrs. Fannie Roberts his wife in the sum of \$607.00; Warren Lincoln and Blanche W. Lincoln his wife in the sum of \$340.00; Teofil Rickert and Helena Rickert his wife in the sum of \$1,268.00; School District No. 43 of Mason County, Washington, in the sum of \$450.00; W. A. Hunter and Mrs. W. A. Hunter his wife in the sum of \$3,360.00; Blanch B. Bell and A. L. Bell, husband and wife, in the sum of \$200.00; Joshua Jemison and Mattie Jemison his wife and the State of Washington in the sum of \$450.00; Louis Pfundt and Mrs. Louis Pfundt his wife in the sum of \$137.50; Albert Pfundt and Mrs. Albert Pfundt his wife in the sum of \$112.50; Henry Barrett, Alice Latham and C. A. Hudson in the sum of \$634.00; E. J. A'Hern in the sum of \$176.00; Puget Mill Company, Charles Nuby, C. I. Pritchard and C. A. Hudson in the sum of \$400.00; D. B. Jackson, Mary A. Jackson, Puget Mill Company, and Washington Mill Company in the sum of \$10.00; Maria Jensen, Mrs. John Dockar, Arthur Jensen, Anna Jensen Flannigan, Mrs. Lillian Wallace and Mrs. Lowdoff, children and heirs at law of Hans Jensen, deceased husband of Maria Jensen, and Stella Jensen, widow of Carl Jensen a deceased son of said Hans Jensen, deceased, and C. A. Hudson, in the sum of \$10.00;

Geneva A. McNeeley and John Doe McNeeley her husband in the sum of \$10.00; Martha E. Hayward, widow of Anthony J. Hayward, deceased, Tacoma Savings Bank and Trust Company as the Trustee; James W. Bradley, William T. Bradley and Edith G. Bradley his wife, and Marie A. Bradley, a widow, in the sum of \$1,500.00; Odelia Vater in the sum of \$300.00; E. G. Wolfe in the sum of \$300.00; Ellen Young in the sum of \$50.00;

Said verdicts being against said City of Tacoma; and that thereafter, to wit: on the 10th day of October, 1921, judgments were duly and regularly entered upon said verdicts in favor of the above named defendants and in the amounts herein set forth, together with costs;

And it further appearing to the court that the said petitioner has paid into this court for the benefit of said defendants the *full* sum of  which sum included the said several judgments and costs hereinabove mentioned;

Now on motion of P. C. Sullivan, City Attorney, and Percy P. Brush, Assistant City Attorney, counsel for the said petitioner, it is hereby

ORDERED AND DECREED that there is hereby appropriated and granted to and vested in fee simple in said City of Tacoma, a municipal corporation, petitioner herein, for the construction, operation and maintenance of an hydro electric power plant on and along the North Fork of the Skokomish river and on and along Lake Cushman in Mason County, Washington, as set forth in the petition herein on file, the waters, water rights, riparian rights, easements and privileges, including the right to divert the waters of the North Fork of the Skokomish River located in Mason County, Washington, appertaining and appurtenant to the following described

premises of the defendants hereinabove named, to wit:-

George Webb and Mrs. George Webb, his wife: Lot 5 of Section 6, Township 21 North, Range 3 West, W.M. Mason County, Washington.

George Franz and Martha Franz, his wife: Lot 3 of Section 6, Tp. 21 N., R. 3 W., W.M.

Thomas W. Webb and the Federal Land Bank of Spokane: Lot 2; the southwest quarter of northwest quarter; the west half of the southwest quarter of Section 7, Tp. 21 N., R. 3 W., W.M.; Lots 7, 8, 9, 10 and 11, except School Site; also the southeast quarter of the southwest quarter; the northeast quarter of the southeast quarter and the west half of the southeast quarter, Sec. 12, Tp. 21 N., R. 4 W., W.M.; and the northeast quarter of the northwest quarter of Sec. 13, Tp. 21 N., R. 4 W., W.M.; all in Mason County, Washington.

Louise Cameron and Fred Lassoie, Administrator of the estate of George Cameron, deceased, the heirs of George Cameron, deceased, the State Bank of Shelton and C. I. Pritchard: Government Lots 5, 6 and 7 of Sec. 14, Tp. 21 N., R. 4 W., W.M.

Hugh Eaton: Government Lot 10 and the north 15 acres of the southwest quarter of the northwest quarter of Section 15, Tp. 21 N., R. 4 W., W.M.

George F. Weaver, and Mabel H. Weaver his wife, J. C. McKiel and the Federal Land Bank of Spokane; Government Lot 11 and the south 25 acres of the southwest quarter of the northwest quarter of Sec. 15, Tp. 21 N., R. 4 W., W.M.

Nels Jydstrup, a widower, W. A. Nobles, Mrs. W. A. Nobles his wife, the Federal Land Bank of Spokane and Joseph Vail: the northwest quarter of the southeast quarter of Sec. 15, Tp. 21 N., R. 4 W., W.M.

Alex Johnson and Mrs. Alex Johnson, his wife, W. O. Watson and Mrs. W. O. Watson his wife, Fannie L. Hauptly and the State of Washington: the northeast quarter of the northeast quarter of Sec. 16, Tp. 21 N., R. 4 W., W.M.

Robert Ebert, E. A. Harris and Mrs. E. A. Harris his wife, and the State of Washington: the northeast quarter of the northwest quarter of Sec. 16, Tp. 21 N., R. 4 W., W.M.

Oliver Bishop, Washington Mill Company, James M. Sweetland, George A. Sheppard, and Lumberman's Mercantile Company: the southwest quarter of the southwest quarter of Sec. 9, Tp. 21 N., R. 4 W., W.M.; that portion of Sec. 8, Tp. 21 N., R. 4 W., W.M. described as follows: the east half of southeast quarter lying south of the Skokomish River except west five chains thereof and except the west 208.7 feet of south 364.6 feet of east 15 chains of east half of southeast quarter.

Jeanette F. Ottermatt and Lew Ottermatt her husband, Jos. C. Mongrain and the State of Washington: the east half of the northwest quarter of the northeast quarter of Sec. 16, Tp. 21 N., R. 4 W., W.M.

Jean Todd Fredson, William Deyetta, and the State of Washington; the west half of the northwest quarter of the northeast quarter of Sec. 16, Tp. 21 N., R. 4 W., W.M.

John L. Sutherland, Mrs. John L. Sutherland his wife, State Bank of Shelton, and Washington Mill Company: the following described lands situate in Sec. 8, Tp. 21 N., R. 4 W., W.M.- Beginning at the southwest corner of the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ ; run thence east on south line 5 chains; thence north to Skokomish river; thence following river in westerly direction to west line of NE $\frac{1}{4}$  of SE $\frac{1}{4}$ , said section; run thence south on west line of E $\frac{1}{2}$  of SE $\frac{1}{4}$  to place of beginning, containing 13 acres, more or less, and being the west 5 chains of the E $\frac{1}{2}$  of SE $\frac{1}{4}$  south of Skokomish river.

William H. Johnston, Alice Johnston, Warren Johnston, Gergrude Johnston, Mrs. Lila Fieser, Mrs. Nellie Bryden, Herman Ahern, Edwin Ahern, Chester Vally, children and heirs at law of Alice Johnston deceased wife of William H. Johnston, and Washington Mill Company: the southwest quarter of the southeast quarter of Sec. 8, Tp. 21 N., R. 4 W., W.M.

and Washington Mill Co.;  
R. B. Wilson and ~~Mrs.~~ Bertha Wilson his wife: the southeast quarter of the southwest quarter of Sec. 8, Tp. 21 N., R. 4 W., W.M.

Arthur H. Eells and Mrs. Arthur H. Eells his wife; the west half of the northwest quarter of the northeast quarter, the west half of the southwest quarter of the northeast quarter, and the northwest quarter of the northwest quarter of the southeast quarter, all in Sec. 18, Tp. 21 N., R. 4 W., W.M.

Karl Rose and Emilie Rose his wife, H. Parry Jones and C. A. Hudson: the south half of the southeast quarter of Sec. 7, Tp. 21 N., R. 4 W., W.M.

John Hawk and Mrs. John Hawk, his wife; the south half of the west  $5\frac{1}{3}$  acres of the north half of the northeast quarter of Sec. 11, Tp. 21 N., R. 4 W., W.M. and the north half of the southeast quarter of the northeast quarter of said section.

Charles Fisk and Mrs. Charles Fisk, his wife: the south half of ~~the~~ the northwest quarter of the northwest quarter of the northeast quarter of Sec. 11, Tp. 21 N., R. 4 W., W.M.

A. B. Roe and Mrs. A. B. Roe his wife: the north half of the northwest quarter of the northwest quarter of the northeast quarter of Sec. 11, Tp. 21 N., R. 4 W. W.M.

Mary Adams and William Adams her husband: the east half of the southwest quarter of Sec. 11, Tp. 21 N., R. 4 W., W.M.; Indian Lots 3, 8 and 19, Sec. 14, Tp. 21 N., R. 4 W.M.;  $7\frac{1}{2}$  acres in Indian Lots 12 and 13, Sec. 11, Tp. 21 N., R. 4 W., W.M.

Warren Dicky and Mrs. Warren Dicky his wife, B. C. Willey and Mrs. B.C. Willey: the west half of the southwest quarter of the northeast quarter and Indian Lots 10 and 11; the south half of the northeast of the northwest quarter of the southeast quarter; the northwest quarter of the northwest quarter of the southeast quarter; the southwest quarter of the northwest quarter of the southeast quarter and the southeast quarter of the northwest quarter of the southeast quarter, all being in Section 11, Tp. 21 N., R. 4 W., W.M.

George N. Adams and Mrs. Geo. N. Adams, his wife: 12.50 acres in Indian Lots 12 and 13, Sec. 11, Tp. 21 N., R. 4 W., W.M., and Indian Lot 8 (the southwest quarter of the southwest quarter of the northwest quarter), Sec. 12, Tp. 21 N., R. 4 W., W.M., except one acre therein conveyed by Joseph M. Sparr to James by deed recorded in Vol. 33 of Deeds, at page 486.

Charles Olson and Jane Doe Olson his wife: the east 25 acres of the southwest quarter of the northeast quarter of Sec. 16, Tp. 21 N., R. 4 W., W.M.

Allan Bell and Blanch B. Bell his wife: the west half of the southwest quarter of Sec. 15, Tp. 21 N., R. 4 W., W.M.

T. G. Garrison and Mary L. Garrison his wife: the east half of the northwest quarter, the east half of the southwest quarter, the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter, of Sec. 7, Tp. 21 N., R. 4 W., W.M.

Marion Smart and Mrs. Marion Smart his wife: the west half of the southeast quarter of the northwest quarter of Sec. 17, Tp. 21 N., R. 4 W., W.M.

George M. Dixon and Mrs. George M. Dixon his wife: the east half of the southeast quarter of the northwest quarter of Sec. 17, Tp. 21 N., R. 4 W., W.M.

Fred R. Bell and Mayme Bell his wife: the north half of the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter (except seven acres sold to Jean Todd Fredson) all in Sec. 16, Tp. 21 N., R. 4 W., W.M.

Jean Todd Fredson: Beginning at the northwest corner of the southeast quarter of the northeast quarter of Sec. 16, Tp. 21 N., R. 4 W., W.M.; thence run south on the west line of said southeast quarter of northeast quarter 935 feet to a point near the center of the creek; thence east 326.1 feet; thence north parallel with the west line, 935 feet to the north line of said southeast quarter of northeast quarter; thence west on said north line 326.1 feet to the place of beginning, containing 7 acres, all in Sec. 16, Tp. 21 N., R. 4 W., W.M.

Harry Deyette and Mrs. Harry Deyette his wife: the west 30 acres of the southeast quarter of the northwest quarter of Sec. 16, Tp. 21 N., R. 4 W., W.M.

Robert C. Johnson and Mrs. Robert C. Johnson his wife: the northeast quarter of the northwest quarter of Sec. 17, Tp. 21 N., R. 4 W., W.M.

Victor Roberts and Mrs. Fannie Roberts his wife: the west 15 acres of the southwest quarter of the northeast quarter, and the east 10 acres of the southeast quarter of the northwest quarter of Sec. 16, Tp. 21 N., R. 4 W., W.M.

Warren Lincoln and Blanche W. Lincoln his wife: the southeast quarter of the southeast quarter of Sec. 16, Tp. 21 N., R. 4 W., W.M.

Teofil Rickert and Helena Rickert his wife: the northwest quarter of the northwest quarter, and the southwest quarter of the northwest quarter of Sec. 17, and the east half of the southeast quarter of the northeast quarter of Sec. 18, Tp. 21 N., R. 4 W., W.M.

School District No. 43, Mason County, Washington: the south 364.6 feet of the west 208.7 feet of the east 15 chains of the east half of the southeast quarter of Sec. 8, Tp. 21 N., R. 4 W., W.M. lying south of the Skokomish river.

W. A. Hunter and Mrs. W. A. Hunter his wife: the west half of the northwest quarter of Sec. 16, and the east half of the northeast quarter and the southwest quarter of the northeast quarter of Sec. 17, except land in the northeast quarter of the northeast quarter of Sec. 17, 80 links by 15 chains, sold to Oliver Bishop, all in Tp. 21 N., R. 4 W., W.M.

Blanch B. Bell and A. L. Bell, husband and wife: the south half of the northeast quarter of the southeast quarter of Sec. 16, Tp. 21 N., R. 4 W., W.M.

Joshua Jemison and Mattie Jemison his wife, and the State of Washington: the northeast quarter of the southwest quarter of Sec. 16, Tp. 21 N., R. 4 W., W.M.

Louis Pfundt and Mrs. Louis Pfundt his wife: the southwest quarter of the southeast quarter of Sec. 15, Tp. 21 N., R. 4 W., W.M.

Albert Pfundt and Mrs. Albert Pfundt his wife: the southeast quarter of the southwest quarter of Sec. 15, Tp. 21 N., R. 4 W., W.M.

Henry Barrett, Alice Latham and C. A. Hudson: the northeast quarter of the northeast quarter of Sec. 18, Tp. 21 N., R. 4 W., W.M.

E. J. A'Hern: the east half of the west half, and the east half of the northeast quarter of Sec. 18, Tp. 21 N., R. 4 W. W.M.

Puget Mill Company, Charles Nuby, C.I. Pritchard, and C. A. Hudson: the northwest quarter and the west half of the west half of the southwest quarter of Sec. 29; the northeast quarter, and the east half of the southeast quarter of Sec. 31; all in Tp. 22 N., R. 4 W., W.M.

D. B. Jackson, Mary A. Jackson, Puget Mill Company, and Washington Mill Company: the northwest quarter of the southeast quarter of Sec. 8, Tp. 21 N., R. 4 W., W.M.

Maria Jensen, Mrs. John Dockar, Arthur Jensen, Anna Jensen Flannigan, Mrs. Lillian Wallace and Mrs. Lomdorf, children and heirs at law of Hans Jensen, deceased husband of Maria Jensen, and Stella Jensen, widow of Carl Jensen, a deceased son of said Hans Jensen, deceased, and C. A. Hudson: the southwest quarter of the southwest quarter of Sec. 8, Tp. 21 N., R. 4 W., W.M.

Geneva A. McNealey and John Doe McNealey: Government Lot 8 of Sec. 14, Tp. 21 N., R. 4 W., W.M.

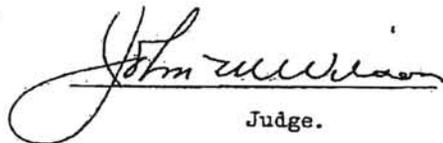
Martha E. Hayward, widow of Anthony J. Hayward, deceased, Tacoma Savings Bank and Trust Company, as the Trustee, James W. Bradley, William T. Bradley and Edith C. Bradley his wife, and Maria A. Bradley, a widow: the southeast quarter of the southeast quarter of Sec. 17, Tp. 22 N., R. 4 W., W.M., and the southeast quarter of Sec. 20, Tp. 22 N., R. 4 W., W.M.

Odelia Vater: the east half of the northwest quarter of the northeast quarter of Section 18, Township 21 North, Range 4 West, W.M., and also that parcel of land lying south of the above described tract and north of the County road and more particularly described as follows, to-wit: Beginning at the intersection of the east 1/16 line with the north 1/16 line in the above mentioned section; thence west 10 chains; thence south 3.40 chains to the center of the county road; thence north 84 degrees 15' East, 10.06 chains along center line of county road; thence north 2.40 chains to the point of commencement, and being in the southwest quarter of the northeast quarter of said section, township and range, containing in the aggregate 22.85 acres, more or less.

E. G. Wolfe: Beginning at a point 2.40 chains south of the northeast corner of the southwest quarter of the northeast quarter of Section 18, Township 21 North, Range 4 West, W.M., thence south to the southeast corner of said southwest quarter of the northeast quarter; thence west along the south line of said southwest quarter of the northeast quarter 10 chains to a point; thence north 16.60 chains, more or less, to the center of the county road; thence north 84 degrees 15' East 10.06 chains along the center line of said county road to the place of beginning, excepting therefrom the northerly 15 feet included within the right of way for said road, and containing 17.15 acres more or less.

Ellen Young: Beginning at a point 16.20 chains east of 1/4 post west boundary of Section 2, Township 21 North, Range 4 West, W.M., which is a post 30 feet east of the center of Olympic Highway; run thence north 2 degrees 15' east 3.33 chains; thence north 4 degrees 15' west 7.56 chains; thence east 2.73 chains to west side of county road; thence south 29 degrees 45' east along west boundary of county road 12.36 chains to center line east and west of section 2; thence west on said line 8.50 chains to point of beginning on east side of highway, containing 5.80 acres, more or less.

It is further ORDERED AND DECREED that the said petitioner, City of Tacoma, a municipal corporation, be and it is hereby granted the right, at any time hereafter, to take possession of, appropriate and use all of the waters, water rights, riparian rights, easements and privileges appertaining and appurtenant to the lands, real estate and premises hereinabove described, together with the right to divert the waters of the North Fork of the Skokomish River, and the same is hereby appropriated and granted unto, and the title shall vest in fee simple in said City of Tacoma as of the 11th day of September, 1920, and its successors forever; the same being for a public use.

  
Judge.

Entered on Page 61-67  
Volume 9 Journal  
S. J. & Co. No. 1111