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

1	IN THE MATTER OF THE DETERMINATION)	
2	OF THE RIGHTS TO THE USE OF THE	)	NO. 77-2-01484-5
3	SURFACE WATERS OF THE YAKIMA RIVER)	
4	DRAINAGE BASIN, IN ACCORDANCE WITH	)	PROPOSED
5	THE PROVISIONS OF CHAPTER 90.03,	)	CONDITIONAL FINAL ORDER
6	REVISED CODE OF WASHINGTON	)	AS A FINAL JUDGMENT
7		)	PURSUANT TO CR 54(b)
8	THE STATE OF WASHINGTON,	)	AND RAP 2.2(d), AND
9	DEPARTMENT OF ECOLOGY,	)	PRETRIAL ORDER NUMBER 8
10		)	AS AMENDED
11	Plaintiff,)	
12)	
13	v.	)	BROADGAUGE DITCH
14		)	COMPANY, COURT
15	JAMES J. ACQUAVELLA, et al.,	)	CLAIM NO. 1213
16)	
17	Defendants.)	
18)	

THIS MATTER has come on regularly before the Court with Broadgauge Ditch Company having had its evidentiary hearing on February 13 through 16, 1995. The Court filed its Report of the Court Concerning the Water Rights for Broadgauge Ditch Company, Vol. 40, on October 27, 1997. Thereafter, the Court held the hearing on exceptions March 11 through 13, 1998. Joe Falk, Jr., attorney, represented the defendant Broadgauge Company. Maria A. Iizuka, attorney with the Department of Justice, represented the defendant United States, Bureau of Reclamation. Jeffrey Schuster, attorney, represented the defendant Yakama Nation. Jo Messex Casey, Assistant Attorney General, represented the Plaintiff State of Washington, Department of Ecology.

The Court, after reviewing the exceptions and other materials filed, and after having heard argument and being fully advised, filed it's Supplemental Report of the Court Concerning the Water Rights for Broadgauge Ditch Company,

16,861

1 Volume 40A, Part II, on February 14, 2003. The Court now
2 enters this Conditional Final Order based upon said initial
3 Report and Supplemental Report of the Court. This Conditional
4 Final Order will ultimately be incorporated into a final
5 decree that determines and integrates all of the rights of
6 the parties in this adjudication, at which time it shall be
7 forwarded to the Director of the Department of Ecology for
8 issuance of Certificates of Adjudicated Water Right.

9 Based on the foregoing, IT IS:

10 ORDERED, ADJUDGED AND DECREED that the final decree
11 shall include the following in regards to Broadgauge Ditch
12 Company, Court Claim No. 1213:

13 1. The point of diversion is located approximately 2,500
14 feet north and 100 feet west of the southeast corner of
15 Section 9, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, T. 13 N., R.
16 18 E.W.M.

17 2. The priority date is June 30, 1885.

18 3. The purpose of use is irrigation of 91.2 acres of
19 residential, commercial and agricultural land.

20 4. The place of use is described in BRD 17 and identified
21 on COY 15J-1.

22 5. The season of use is April 1 through October 31.

23 6. Broadgauge is authorized to divert from the Naches
24 River into the Fruitvale Canal 1,764 acre-feet per year with
25 the following schedule of delivery:

<u>April through August</u>	<u>September</u>	<u>October</u>
5.18 cfs	3.96 cfs	2.53 cfs

27 Broadgauge is authorized to diverted from the Fruitvale
28 Canal and into the Broadgauge ditch at 16th/Cherry, 1,080

acre-feet per year with the following schedule:

<u>April through August</u>	<u>September</u>	<u>October</u>
3.3 cfs	2.53 cfs	1.63 cfs

The Court finds the following,

1. Broadgauge's claim to an unauthorized or defacto change in point of diversion is denied.
2. Broadgauge's claim to a standby or reserve supply is denied.
3. Broadgauge's claim to a municipal supply is denied.
4. Broadgauge's water right pursuant to the unassigned shares is relinquished for failure to put water to beneficial use or supply a sufficient cause for nonuse.

In accordance with RCW 90.03.240, Certificate of Adjudicated Water Right shall be issued as quantified and described above.

This Conditional Final Order, relating to the confirmation of water rights to Broadgauge Ditch Company constitutes a final order for purposes of appeal [see RAP 2.2(d)], except for purposes of final integration of all confirmed rights as provided in Section XII of Pretrial Order No. 8, procedures for Claim Evaluation, dated March 3, 1989, of this Court.

DATED this 10th day of April, 2003.

Walter A. Stauffacher
WALTER A. STAUFFACHER, JUDGE