

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

KIM M. EATON
CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

1 IN THE MATTER OF THE DETERMINATION)
2 OF THE RIGHTS TO THE USE OF THE)
3 SURFACE WATERS OF THE YAKIMA RIVER)
4 DRAINAGE BASIN, IN ACCORDANCE WITH)
5 THE PROVISIONS OF CHAPTER 90.03,)
6 REVISED CODE OF WASHINGTON,)

NO. 77-2-01484-5

7 STATE OF WASHINGTON,
8 DEPARTMENT OF ECOLOGY,

) CONDITIONAL FINAL
) ORDER AS A FINAL
) JUDGMENT PURSUANT TO
) CR 54(b) AND RAP 2.2(d)
) AND PRETRIAL ORDER
) NUMBER 8 AS AMENDED

9 Plaintiff,

10 v.

11 JAMES J. ACQUAVELLA, et al.,

) SELAH-MOXEE IRRIGATION
) DISTRICT, COURT CLAIM
) NO. 1653, NO. 1654 AND
) NO. 1888

12 Defendants.

FILED
SEP 10 1998

13 I. PROCEEDINGS

KIM M. EATON, YAKIMA COUNTY CLERK

14 THIS MATTER has come on regularly before the Court with
15 Selah-Moxee Irrigation District having had its evidentiary
16 hearing on June 1, 1994, and the Moxee Irrigation District
17 having its evidentiary hearing on March 21, 1994. This Court
18 filed its Report of the Court Concerning the Water Rights for
19 the Selah-Moxee Irrigation District on October 31, 1996, and
20 for the Moxee Irrigation District on December 18, 1996. On
21 January 14, 1997, the Selah-Moxee Irrigation District and the
22 Moxee Irrigation District merged. Thereafter, this Court held
23 a consolidated hearing on exceptions on March 13, 1997. James
24 E. Davis, attorney, represented the defendant Selah-Moxee
25 Irrigation District. Mary E. McCrea, Assistant Attorney
26 General, represented the plaintiff State of Washington,
27 Department of Ecology. Maria A. Iizuka, attorney with the
28 U.S. Department of Justice, represented the defendant, United
States. John P. Gilreath, attorney, represented the defendant

1 Kittitas Reclamation District. Attorneys Donald H. Bond and
2 Lawrence E. Martin represented the defendants Ellensburg Water
3 Company and West Side Irrigating Company. Charles C. Flower,
4 attorney represented the defendant Sunnyside Division.

5 The Court, after reviewing the exceptions and other
6 materials filed, and after having heard argument and being
7 fully advised, filed its Supplemental Report of the Court
8 Concerning the Water Rights for the Selah-Moxee Irrigation
9 District on July 20, 1998. This Court now enters this
10 Conditional Final Order based upon said initial Reports of the
11 Court and Supplemental Report of the Court.

12 This Conditional Final Order will ultimately be
13 incorporated into a final decree that determines and
14 integrates all of the rights of the parties in this
15 adjudication, at which time it shall be forwarded to the
16 Director of the Department of Ecology for issuance of
17 Certificates of Adjudicated Water Right.

18
19 **II. CONDITIONAL FINAL ORDER**

20 Based on the foregoing, IT IS:

21 ORDERED, ADJUDGED and DECREED that the final decree shall
22 set forth the following in regards to the Selah-Moxee
23 Irrigation District, Court Claim No. 1653, No. 1651 and No.
24 1888:

25 The Department of Ecology shall issue Certificates of
26 Adjudicated Water Rights to Selah Moxee Irrigation District
27 from the Yakima River as follows:

1 1. With a priority date of November 9, 1884, the Court
2 confirms a right to the Selah-Moxee Irrigation District in the
3 following amounts:

<u>April 1 through August 31</u>	<u>September</u>	<u>October</u>
54 cfs	41.8 cfs	28.4 cfs

4
5 A maximum of *17,970.5 acre-feet per year from natural
6 flow shall be diverted pursuant to this water right for
7 irrigation of 5,393.63 acres, frost protection, stock water
8 and other agricultural purposes. The irrigation season shall
9 be from April 1 through October 31.

10 *Of this amount, 2,415.8 acre-feet is attributed to the
11 impact from return flows.

12 2. With a priority date of November 9, 1900, the Court
13 confirms a right to Selah-Moxee Irrigation District in the
14 following amounts:

<u>April 1 through August 31</u>	<u>September</u>	<u>October</u>
18 cfs	14 cfs	9.4 cfs

15
16 A maximum of *5,990.2 acre-feet per year of natural flow
17 shall be diverted pursuant to this water right for irrigation
18 of 5,393.63 acres, frost protection, stock water and other
19 agricultural purposes. The irrigation season shall be from
20 April 1 through October 31.

21 *Of this amount, 805.2 acre-feet is attributed to the
22 impact from return flows.

23 3. The maximum quantity of water which Selah-Moxee
24 Irrigation District shall be entitled to pursuant to its
25 natural flow rights shall be 23,960.7 acre-feet, less that
26 amount entering the Selah-Moxee Canal through measured return
27 flows.
28

1 4. With a priority date of May 10, 1905, the Court
2 confirms a right to the United States, Bureau of Reclamation,
3 as trustee for the Selah-Moxee Irrigation District and its
4 water users, in the amounts of 58 cfs and 1,107 acre-feet per
5 year from March 15 through March 31 for irrigation of 5,393.63
6 acres, frost protection, stock water and other agricultural
7 purposes.

8 5. With a priority date of May 10, 1905, the Court
9 confirms a water right to the United States, Bureau of
10 Reclamation, as trustee for the Selah-Moxee Irrigation
11 District and its water users in the following amounts:

<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>
7.2 cfs	11.1 cfs	13.7 cfs	14.6 cfs	14.4 cfs	9.8 cfs

12
13
14 A maximum of 4,281.3 acre-feet per year shall be diverted
15 pursuant to this water right and the Warren Act Contracts.
16 The irrigation season shall be from April 1 through September

17 30. The schedule of delivery may be modified in accordance
18 with the terms of the contract (§7, Rate of Delivery, SMID 9).

19 The purposes of use are irrigation and incidental domestic
20 supply, which includes irrigation of lawns, gardens and
21 landscaping, of 5,393.63 acres.

22 6. The following provision shall be included in the
23 previously described water rights for the Selah-Moxee
24 Irrigation District, including those issued to the U.S. Bureau
25 of Reclamation:

26 **"The maximum amount of water the Selah-Moxee Irrigation
27 District shall be entitled to divert from the Yakima
28 River is 29,349 acre-feet. Of this amount:

 1,107 acre-feet may be diverted during March, if in
 the opinion of the Project Superintendent this
 water is available.

4,281.3 acre-feet may be diverted pursuant to the Warren Act Contracts.

Of the remaining 23,960.7 acre-feet, 3,221 acre-feet may be diverted from the Yakima River only if it has been determined by the Project Superintendent that the return flows have decreased sufficiently, and in commensurate amounts, to warrant such an increase in diversion."

7. Selah-Moxee Irrigation District's water right shall carry the following provision:

"The maximum amount of water Selah-Moxee Irrigation District shall be entitled to divert or receive pursuant to its November 9, 1884 and November 9, 1900 water rights, from the natural flow of Yakima River shall be:

	<u>April through August</u>	<u>September</u>	<u>October</u>
11/9/1884	54 cfs	41.8 cfs	28.4 cfs
11/9/1900	18 cfs	14.0 cfs	9.4 cfs

A portion of these quantities may be taken through alternate points of delivery, that being the return flow drains which discharge into the Selah Moxee Canal."

8. The monthly schedule of diversion for the natural flow and the Warren Act Contract water rights shall be:

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>
11/9/1884	54	54	54	54	54	41.8	28.4
11/9/1900	18	18	18	18	18	14.0	9.4
Warren Act Contracts	<u>7.2</u>	<u>11.1</u>	<u>13.7</u>	<u>14.6</u>	<u>14.4</u>	<u>9.8</u>	<u>---</u>
Total	79.2	83.1	85.7	86.6	86.4	65.4	37.8

9. The point of diversion for the previously described water rights is 750 feet north and 1200 feet west from the southeast corner of Section 8, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T. 14 N., R. 19 E.W.M.

10. Selah-Moxee Irrigation District shall be required to measure the amount of return flows entering the system and report this data daily to the United States, Bureau of Reclamation, *at the discretion of the Project Superintendent.*

WOS

1 15. SMID's point of diversion for the Sub-A water right
2 is located approximately 1900 feet south and 400 feet east
3 from the northwest quarter corner of Section 7, being within
4 the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T. 13 N., R. 19 E.W.M..

5 16. Selah-Moxee Irrigation District shall not exceed the
6 following quantities at the headworks pursuant to the 1887 and
7 Sub-A Warren Act Contract water rights:

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>
8 January 26, 1887	38	38	38	38	38	29	22
9 May 10, 1905	<u>1.4</u>	<u>2.3</u>	<u>3.1</u>	<u>3</u>	<u>3</u>	<u>2.1</u>	<u>1</u>
10 Total	39.4	40.3	41.1	41.0	41.0	31.1	23.0

11 17. The place of use for all of the rights described
12 above is identified on SMID 23.

13 18. The initial Reports of the Court Concerning the
14 Water Rights for the Selah-Moxee Irrigation District (Vol. 34)
15 and the Moxee Irrigation District (Vol. 35) shall be modified
16 in accordance with this Supplemental Report of the Court.

17 19. This Conditional Final Order, relating to the
18 confirmation of water rights to the Selah-Moxee Irrigation
19 District, constitutes a final order for purposes of appeal
20 [see RAP 2.2(d)], except for purposes of final integration of
21 all confirmed rights as provided in Section XII of Pretrial
22 Order No. 8, procedures for Claim Evaluation, dated March 3,
23 1989, of this Court.

24 DATED this 10th day of September, 1998.

25
26 Walter A. Stauffacher
27 WALTER A. STAUFFACHER, JUDGE
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