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CLERK OF  
COURT  
WASHINGTON

FILED

AUG 14 2003

KIM M. EATON  
YAKIMA COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

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

NO. 77-2-01484-5

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

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Petitioner,

SUNNYSIDE DIVISION  
COURT CLAIM NO. 1752

vs.

JAMES J. ACQUAVELLA, ET AL.,

Defendants.

THIS MATTER has come on regularly before the Court with the Sunnyside Division having had its evidentiary hearing on November 14-18, 1994. On October 23, 2001, the Report of the Court Concerning the Water Rights for the Sunnyside Division was issued. The Court issued a briefing schedule and set a pre-hearing conference for February 14, 2002. The Court granted a motion for a continuance and postponed the hearing to May 9, 2002 to allow the Parties to pursue a mediated settlement. On June 17, 2002, the Court announced "Threshold Questions" that the Parties were to address at hearing on September 11-12, 2002. The Court later granted four

CONDITIONAL FINAL ORDER - 1 -

17,206

LAW OFFICE OF  
**FLOWER & ANDREOTTI**  
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1 continuances which postponed the hearing to November 20-21, 2002,  
2 January 15-16, 2003, March 19-20, 2003 and May 14-15, 2003.

3 The 7/31/03 Amended Stipulation Re: Sunnyside Division (“Amended  
4 Stipulation”) to resolve Court Claim No. 1752 and associated claims of the  
5 Sunnyside Division entities was filed on August 12, 2003. The Sunnyside  
6 constituent entities have all agreed to merger and resolution of their  
7 separately filed claims in Court Claim No. 1752. (See, Stipulation, pp. 1-2,  
8 Fn. 1 and 2, which are incorporated herein.) All parties to this adjudication  
9 were provided an opportunity to file exceptions to the 5/08/03 Stipulation  
10 Re: Sunnyside Division (Clerk’s #16,961) and the 7/31/03 Amended  
11 Stipulation filed 8/12/03. The Court held a hearing on the Amended  
12 Stipulation on August 14, 2003.

13 The Court finds that the Amended Stipulation is fair, reasonable and  
14 equitable, does not prejudice any party to this adjudication, and does not  
15 violate law or public policy. The Court is not, by approving the Amended  
16 Stipulation, deciding any issue of fact or law on the merits. The Court does  
17 not intend the Court’s approval of the Amended Stipulation to be legal  
18 precedent in this or any other proceeding.

19 This Conditional Final Order will ultimately be incorporated into a  
20 final decree that determines and integrates all of the rights of the parties in  
21 this adjudication, when it shall be forwarded to the Director of the Depart-  
22 ment of Ecology for issuance of Certificates of Adjudicated Water Right;  
23 now, therefore,

24 IT IS ORDERED, ADJUDGED, AND DECREED that the Final Decree  
25 shall set forth the following re: Sunnyside Division, Court Claim No. 1752.

26 1. The water rights for the Sunnyside Division are described in  
27 the Parties’ 7/31/03 Amended Stipulation, filed 8/12/03, which is

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incorporated herein.

2. This Conditional Final Order, relating to confirmation of water rights to the United States on behalf of all the Sunnyside Division including its member entities and the City of Prosser, is a final order for appeal pursuant to Civil Rule 54(b) and Rule of Appellate Procedure 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.

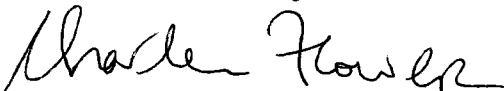
The Court determines that there is no just reason for delay of appeal and makes the following specific findings. The claims adjudicated by this Conditional Final Order are separate and discrete claims apart from the remaining multiple claims in this case. The claims adjudicated by this Conditional Final Order are asserted by one of the multiple parties to this proceeding and are less than all of the multiple claims of other major claimants and other parties. Numerous claims remain unadjudicated in the proceeding, and any appeal from this Conditional Final Order is unlikely to delay trial of unadjudicated matters. The claims that would be reviewed on any appeal from this Conditional Final Order are not likely to be rendered moot by the continuing proceedings before this Court. As a practical matter, an immediate appeal of this Conditional Final Order will likely prevent a waste of judicial resources and prevent a waste of resources for the parties to this case. Absent separate appeal of this Conditional Final Order, the parties and the Court will be involved in a single appeal of numerous, separate, discrete and diverse claims from separate hearings. A combined appeal of all such claims at the end of the adjudication will be unwieldy and unmanageable and result in substantial waste of judicial resources and the resources of the parties. The Sunnyside Division intends

1 to perform irrigation water system improvement projects in reliance on this  
2 Conditional Final Order. Accordingly, the Court finds that the Sunnyside  
3 Division would be prejudiced by any delay.

4 DATED: August 14, 2003.

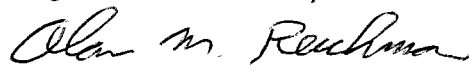
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7 WALTER A. STAUFFACHER, JUDGE


8 Presented on 8/14/03 by:

9   
10 CHARLES C. FLOWER, WSBA #143  
11 FLOWER & ANDREOTTI,  
Attorneys for Sunnyside Division.

12 Agreed and Notice of Presentation  
13 Waived, 8/14/03:

14   
15 JEFFREY S. SCHUSTER, WSBA #07398.  
Attorney for the Yakama Nation.

16   
17 ALAN M. REICHMAN, WSBA #23874.  
Assistant Attorney General.  
18 Attorney for Plaintiff-State of Washington,  
Department of Ecology.

19   
20 CHARLES R. SHOCKEY, DCBA #914879.  
21 U.S. Department of Justice.  
Environment & Natural Resources Division.  
22 Attorney for United States of America.