

RECEIVED

FILED  
FEB 18 1997

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

AND FOR YAKIMA COUNTY  
KIM M. EATON, YAKIMA COUNTY CLERK

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, )  
 STATE OF WASHINGTON, )  
 DEPARTMENT OF ECOLOGY, )  
 Plaintiff, )  
 vs. )  
 JAMES J. ACQUAVELLA, et al., )  
 Defendants. )

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  
 YAKAMA RESERVATION  
 IRRIGATION DISTRICT  
 COURT CLAIM NO. 2111

THIS MATTER has come on regularly before the Court with Yakima Reservation Irrigation District having had its evidentiary hearing on May 16, 1995. Eric Gustafson, attorney, and Jeffrey Cutter represented the defendant Yakima Reservation Irrigation District. Mary McCrae, assistant attorney general, represented the plaintiff State of Washington. Charles E. O'Connell, Jr., attorney for the Department of Justice, represented the United States and Jeffrey Schuster, attorney, represented the Yakama Indian Nation.

This Court entered the Memorandum Opinion Re: Yakima Reservation Irrigation District June 14, 1993 and its Order Granting Partial Declaratory/Summary Judgment and for Entry of Final Judgment Pursuant to CR 54 (b) on October 14, 1993. This Court filed its Report of The Court Concerning the Water Rights for The Yakima Reservation Irrigation District on October 8, 1996. Thereafter, this Court held the hearing on

12,205

1 exceptions on December 12, 1996. The Court, after reviewing the  
2 exceptions and other materials filed, and after having heard argument  
3 and being fully advised orally denied the exceptions taken by Yakima  
4 Reservation Irrigation District. This Court now enters this Conditional  
5 Final Order based upon the rulings made in the initial Report and at the  
6 time of argument for exceptions taken to that report.

7 This Conditional Final Order will ultimately be incorporated into  
8 a final decree that determines and integrates all of the rights of the  
9 parties in this adjudication, at which time it shall be forwarded to the  
10 Director of the Department of Ecology for issuance of Certificates of  
11 Adjudicated Water Rights.

12 Based on the foregoing, IT IS:

13 ORDERED, ADJUDGED AND DECREED that the final decree shall set forth  
14 the following in regards to the Yakima Reservation Irrigation District,  
15 Court Claim No. 2111:

16 A. The members of Yakima Reservation Irrigation District owning  
17 property in the Wapato-Satus and Additional Works Units of the Wapato  
18 Irrigation Project shall receive the federally reserved perpetual water  
19 rights as set forth in this Court's Memorandum Opinion Re: Yakima  
20 Reservation Irrigation District June 14, 1993 and its Order Granting  
21 Partial Declaratory/Summary Judgment and for Entry of Final Judgment  
22 Pursuant to CR 54 (b) on October 14, 1993.

23 B. The members of the Yakima Reservation Irrigation District in  
24 the Toppenish-Simcoe Unit of the Wapato Irrigation Project are remanded  
25 to the Subbasin 25 proceedings where, in order to receive a water right,

1 they shall be required to present evidence pursuant to the Ninth  
2 Circuit's ruling in Colville Confederated Tribes v. Walton, 647 F. 2d 42  
3 (1981) as to the following: (1) the quantity of water diverted by the  
4 Indian allottee or by the allottee's successor in a reasonable time  
5 thereafter; (2) land to which the water is applied; and (3) the time  
6 period in which the water is used. Claimants who successfully produce  
7 this evidence will receive a date-of-reservation priority; June 9, 1855.

8 C. This Conditional Final Order, relating to the claims of water  
9 rights by the Yakima Reservation Irrigation District, constitutes a  
10 final order for purposes of appeal [see RAP 2.2 (d)], except for  
11 purposes of final integration of all confirmed rights as provided in  
12 Section XII of Pretrial Order No. 8, procedures for Claim Evaluation,  
13 dated March 3, 1989, of this Court.

14 There is no just reason to delay appeal of this Order, as the  
15 rulings herein set forth constitute the final order for purposes of  
16 appeal. The benefits from final resolution in this case of the issues  
17 in this order call for a determination that this is an appealable order  
18 pursuant to RAP 2.2 (d) and CR 54 (b).

19 An immediate appeal of the Conditional Final Order will likely, as  
20 a practical matter, prevent a waste of judicial resources and prevent a  
21 waste of the resources for the parties to this case. Absent the  
22 separate appeal of Conditional Final Orders, the parties and the Court  
23 will be involved in a single appeal of numerous, separate, discrete and  
24 diverse claims from separate hearings. A combined appeal of all such  
25 claims at the end of this adjudication will be unwieldy and unmanageable

1 and result in substantial waste of judicial resources and the resources  
2 of the parties.

3 The claims adjudicated pursuant to this Conditional Final Order are  
4 asserted by one, and less than all of the parties, and are less than all  
5 of the multiple claims of other major claimants and other parties.

6 Numerous claims remain unadjudicated. Orderly judicial  
7 administration of this adjudication requires continued processing of all  
8 claims which remain unadjudicated.

9 The claims adjudicated by this Conditional Final Order are separate  
10 and discrete claims apart from the remaining multiple claims in this  
11 case.

12 The claims which would be reviewed on appeal from this Conditional  
13 Final Order are not likely to be rendered moot by the continuing  
14 proceedings before this Court.

15  
16 DATED this 13th day of February, 1997.

17 Walter A. Stauffacher  
18 Walter A. Stauffacher, Judge  
19  
20  
21  
22  
23  
24  
25