

ee

FILED
SEP 14 1995

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR YAKIMA COUNTY

SEP 14 1995

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. K7712-01484-5 COUNTY CLERK

CONDITIONAL FINAL ORDER
AS A FINAL JUDGMENT
PURSUANT TO CR 54(b),
RAP 2.2(d) AND PRETRIAL
ORDER NO. 8 AS AMENDED

YAKIMA-TIETON
IRRIGATION DISTRICT
CLAIM NO. 1513

I. PROCEEDINGS

THIS MATTER has come on regularly before the Court with Yakima-Tieton Irrigation District having had its evidentiary hearing on May 5, 1993. Donald H. Bond, attorney, represented the defendant Yakima-Tieton Irrigation District. Mary E. McCrea and Deborah L. Mull, assistant attorney general, represented the plaintiff State of Washington, Department of Ecology. Charles E. O'Connell, Jr., attorney for the Department of Justice, represented the United States. Charles C. Flower, attorney, represented defendant Sunnyside Division. Thomas A. Cowan, attorney, represented defendant Roza Irrigation District. John P. Gilreath, attorney, represented defendant Kittitas Reclamation District. James E. Davis, attorney, represented Jerrie Vander Howen, a shareholder of the Yakima-Tieton Irrigation District. This Court filed its Report of the Court Concerning the Water Rights for the Yakima-Tieton Irrigation District on April 12, 1994.

10,976

1 Thereafter, this Court held the hearing on exceptions on July 14,
2 1994. The Court, after reviewing the exceptions and other materials
3 filed, and after having heard argument and being fully advised, filed
4 its Supplemental Report of the Court Concerning the Water Rights for the
5 Yakima-Tieton Irrigation District. This Court now enters this
6 Conditional Final Order based upon said initial Report of the Court and
7 Supplemental Report of the Court.

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

13 II. FINDINGS AND DETERMINATION AS TO FINAL JUDGMENT UNDER CR 54(b)

14 A. This litigation involves the adjudication of all of the
15 surface water rights of the Yakima River Basin held by several thousand
16 parties. The claims in this litigation involve instream flows of the
17 river and stream of the Basin and diversion of water from said rivers
18 and streams within a number of subbasins, as well as claims by the
19 United States for federal reserved non-Indian water rights, federal
20 reserved Indian water rights, for diversions by diverters and water
21 users within approximately 31 subbasins, and the claims of water for a
22 number of major claimants, including the United States for the Yakima
23 Reclamation Project.

24 The Superior Court, by Pretrial Order No. 8 Re Procedures for
25 Claims Evaluation (Revised), (Document 4263), filed March 3, 1989, made
provision for entry of Conditional Final Orders such as this order. In

1 connection with entry of that Pretrial Order No. 8, the Court made the
2 following findings:

3 This order is issued with the following background:

4 1. This action involves an unusually large number of
5 defendants and will take a long period of time to complete.

6 2. There are claims based upon state or federal laws, and it
7 has been and will be in furtherance of convenience and economy
8 to evaluate certain of said claims separately.

9 3. There are claims based upon either federal or state law
10 which have been further divided into discrete, manageable
11 groups.

12 4. The division of the claims into groups has been and will
13 be in furtherance of convenience and promote economy.

14 5. Procedures to govern the expeditious evaluation and
15 resolution of each claim, consistent with due process, are
16 necessary and desirable.

17 By its Pretrial Order No. 8, this Court has divided claims into
18 the following groups:

- 19 1. Federal reserved rights for Indian claims
- 20 2. Federal reserved rights for non-Indian claims
- 21 3. State based rights of major claimants
- 22 4. State based rights for other claimants, by subbasin
- 23 5. Residual claims not otherwise categorized

24 Claims for federal reserved water rights in the Yakima River and
25 outside of the Yakama Indian reservation have been resolved by Amended
Partial Summary Judgment Entered as Final Judgment Pursuant to Civil
Rule 54(b), dated November 29, 1990, and affirmed by the Washington
Supreme Court April 22, 1993, in Department of Ecology v. Yakima
Reservation Irrigation District, (sometimes known as Acquavella II), 121
Wn.2d 257, 850 P.2d 1306. The remaining claims for federal reserved

1 Indian water rights have been heard with other major claimants, except
2 for certain public domain claims which have been heard in subbasin
3 hearings.

4 Claims for federal reserved non-Indian water rights have been
5 resolved by stipulation.

6 Claims relating to major claimants have been heard in a Major
7 Claimants Pathway in which the claims of each major claim have been
8 heard in separate hearings, except in certain cases where claims of
9 major claimants have been combined because of overlapping claims, places
10 of delivery or diversion, or water rights, etc.

11 Claims to be heard in the subbasins have been combined in
12 approximately 31 separate subbasins located throughout the Yakima River
13 Basin. Each subbasin collects and hears together claims for the use of
14 water in that specific subbasin.

15 For these purposes residual claims are not deemed significant.

16 By Order Amending Pretrial Orders No. 5 and 8, filed May 14, 1992,
17 the Court has amended the procedures relative to Conditional Final
18 Orders. It has there provided that Reports of the Referee which have
19 not been objected to shall be entered as a Conditional Final Order as to
20 that group of claimants. If objections are filed, the Court will hear
21 and determine the objections or remand the case for taking of further
22 evidence. Thereafter, the Court will enter its Conditional Final Order
23 as to that group of claimants. This Order Amending also provides:

24 Such order shall be a final order for purposes of appeal except as
25 to the conditions of final integration. See RAP 2.2(d). Any
appeal of a Conditional Final Order as to any group of claimants
shall not preclude continuing proceeding on any other claim. See
RAP 7.2(1).

1 B. This Court has performed the role of the Referee in hearing
2 for claims in the Major Claimants Pathway and doing so, has held
3 separate hearing for individual or groups of major claimants, submitted
4 its report, heard exceptions to its reports, and then entered a
5 Conditional Final Order pursuant to Pretrial Order No. 8 as amended.
6 These separate hearings, reports, exceptions and conditional final
7 orders each generally involve separate and discrete points of diversion,
8 places of use, and history not shared with other major claimants. In
9 cases where there has been a significant overlap of one or more of these
10 elements major claimants have been grouped together for a separate,
11 consolidated hearing. The Court has heard the claims of Yakima-Tieton
12 Irrigation District, issued its Report and Supplemental Report as stated
13 above, and is now entering its Conditional Final Order in accordance
14 with Pretrial Order No. 8 as amended. In this case Yakima-Tieton
15 Irrigation District has its own separate and discrete points of
16 diversion, place of use, delivery contracts with the United States
17 Bureau of Reclamation, and history which is not shared with other major
18 claimants.

19 C. The claims adjudicated pursuant to this Conditional Final
20 Order are asserted by one, and less than all of the parties, and are
21 less than all of the multiple claims of other major claimants and other
22 parties.

23 D. Numerous claims remain unadjudicated. Orderly judicial
24 administration of this general adjudication requires continued
25 processing of all claims which remain unadjudicated.

 E. The claims adjudicated by this Conditional Final Order are

1 | separate and discrete claims apart from the remaining multiple claims in
2 | the general adjudication of the surface water rights of the Yakima River
3 | Basin, including the claims of other major claimants and claims in
4 | subbasins.

5 | F. Presentation, consideration and resolution of the matters
6 | adjudicated by this Conditional Final Order as separate and distinct is
7 | consistent with the prior orders of this Court, including Pretrial Order
8 | No. 8 as amended, which divides the overall general adjudication of the
9 | river basin into separate pathways based on differences in size,
10 | geographical location or legal bases for claims to water rights, and
11 | provides that Conditional Final Orders entered in this adjudication be
12 | separately final and appealable to facilitate an orderly and timely
13 | conclusion of the entire general adjudication proceedings.

14 | G. The claims which would be reviewed on appeal from this
15 | Conditional Final Order are not before the Court for determination in
16 | regard to the remaining claims in the adjudication of Yakima River Basin
17 | surface water rights.

18 | H. The claims adjudicated by this Conditional Final Order are not
19 | likely to be rendered moot by the continuing proceedings before the
20 | Referee or this Court.

21 | I. Entry of this Conditional Final Order will delay neither trial
22 | of remaining claims in the adjudication of Yakima River Basin surface
23 | water rights nor, if the order is affirmed, final adjudication of all
24 | claims. Any risk of delay is offset by simplification and facilitation
25 | of resolution of other claims in this adjudication.

 J. An immediate appeal of this Conditional Final Order will

1 likely, as a practical matter, prevent:

- 2 1. A waste of judicial resources; and
- 3 2. A waste of the resources of and an economic hardship
- 4 for the parties to this adjudication.

5 Absent the separate appeal of Conditional Final Orders the parties
6 and the Court will be involved in a single appeal of numerous, separate,
7 discrete and diverse claims from separate hearings for several of the 31
8 subbasins (which each involve numerous parties and exhibits) and
9 numerous hearings in the Major Claimants Pathway. Separate and diverse
10 proof has been developed in each of these numerous and independent
11 hearings, each with its own numerous and often voluminous exhibits and
12 separate transcripts of hearings. A combined appeal of all such claims
13 at the end of this adjudication will be unwieldy and unmanageable and
14 result in substantial waste of judicial resources and the resources of
15 the parties.

16 K. This Conditional Final Order is an appropriate matter to be
17 entered as a final judgment pursuant to Civil Rule 54(b), Rule on Appeal
18 2.2(d), and Pretrial Order No. 8 as amended. There is no just reason
19 for delay in the entry of this Conditional Final Order as a final
20 judgment, subject only to integration at the end of this adjudication.

21 **III. CONDITIONAL FINAL ORDER**

22 Based on the foregoing, IT IS:

23 ORDERED, ADJUDGED and DECREED that the final decree shall set forth
24 the following in regards to the Yakima-Tieton Irrigation District, Court
25 Claim No. 1513:

1. The Department of Ecology shall issue a Certificate of

1 Adjudicated Water Right to the United States, Bureau of Reclamation as
2 trustee for the Yakima-Tieton Irrigation District and its water users in
3 the amounts of:

4 • 347* cubic feet per second, 110,700 acre-feet per year from
5 the Tieton River for irrigation of 27,900 acres, domestic (cistern
6 filling), spraying, frost protection and power generation, based on the
7 following schedule:

<u>Cubic Feet Per Second</u>	<u>Acre-Feet Per Year</u>	<u>Month</u>
300 cfs	6,000 acre-feet	April 1 through 30
347* cfs	84,700 acre-feet	May 1 through August 31
336* cfs	20,000 acre-feet	September 1 through 30

11 October is authorized as part of the irrigation season.

12 The certificate shall carry the following provision:

13 *250 cfs, 75,865 acre-feet per year will be excluded from
14 proration in times of shortage of drought. *was*

15 • 76 cubic feet per second, 3881 acre-feet per year from the Tieton *was*
16 River for domestic (cistern filling) spray water, priming the canal and
17 power generation from November 1 through March 31.

18 2. The point of diversion from the Tieton River is located
19 1600 feet north and 1200 feet east from the southwest corner of Section
20 30, being within the NW 1/4 SW 1/4 of Section 30, T. 14 N., R. 15
21 E.W.M..

22 3. The Department of Ecology shall issue a Certificate of
23 Adjudicated Water Right to the United States, Bureau of Reclamation as
24 trustee for the Yakima-Tieton Irrigation District and its water users in
25 the amounts of 20 cubic feet per second, 908 acre-feet per year from the
North Fork of Cowiche Creek from March 1 through July 31 as follows:

1 •March 1 through March 31 for domestic (cistern filling),
2 spraying, and canal flushing;

3 •April 1 though July 31 for domestic (cistern filling),
4 spraying, canal flushing and irrigation of 27,900 acres.

5 4. The point of diversion from the North Fork of Cowiche
6 Creek is located approximately 1320 feet west and 1000 feet north from
7 the southeast corner of Section 11, being within the S 1/2 SE 1/4 of
8 Section 11, T. 14 N., R. 16 E.W.M..

9 5. Until the Conditional Final Order issues regarding
10 Cowiche Creek, Subbasin 18, YTID's diversion of water from the North
11 Fork of Cowiche Creek shall be subject to the following provision:

12 "This right is subject to the adjudicated water rights fixed
13 by court decree, case of State of Washington vs. C.A. and Anna
14 G. Alexander, Records of the Superior Court for Yakima County,
involving water rights of Cowiche Creek."

15 6. Upon issuance of the Conditional Final Order for Cowiche
16 Creek, Subbasin 18, the following provision will apply:

17 "YTID's right to the North Fork of Cowiche Creek is subject to
18 the adjudicated water rights for Cowiche Creek, Subbasin 18,
19 previously adjudicated by the Yakima County Superior Court in
the case of State of Washington v. Alexander as the same are
fixed by court decree, in the case of Department of Ecology v.
James J. Acquavella, et al., Cause No. 77-2-01484-5."

20 When the adjudicated certificate issues for YTID, it shall carry
21 the above stated provision.

22 7. The place of use under both certificates is described as
23 follows:

24 "The place of use are those irrigable lands within the
25 boundaries of the Yakima-Tieton Irrigation District as
described by YTID 51. The current irrigable acreage is
subject to change based on future reclassification by the
Bureau of Reclamation."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

8. The priority date under both certificates is May 10, 1905.

9. Certificate No. 4495 and No. 4496, which originally issued to the United States of America, Bureau of Reclamation, shall be canceled, rescinded or otherwise made null and void by the Department of Ecology.

10. This Conditional Final Order, relating to the confirmation of water rights to the United States, Bureau of Reclamation as trustee for the Yakima-Tieton Irrigation District and its water users, and to the Yakima-Tieton Irrigation District 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 14th of September, 1995.

Walter A. Stauffacher
Walter A. Stauffacher, Judge