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KIM M. EATON
YAKIMA COUNTY CLERK

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

KIM M. EATON
CLERK OF SUPERIOR COURT

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

THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,

Defendant.

) YAKIMA-TIETON
) IRRIGATION DISTRICT,
) COURT CLAIM NO. 1513

I. PROCEEDINGS

THIS MATTER has come on regularly before the Court with the Yakima-Tieton Irrigation District having had its evidentiary hearing on May 5, 1993. This Court filed its Report of the Court Concerning the Water Rights for the Yakima-Tieton Irrigation District on April 12, 1994. Yakima-Tieton then had its exception hearing on July 14, 1994. This Court then issued its Supplemental Report of the Court Concerning the Water Rights for Yakima-Tieton Irrigation District on April 18, 1995. On September 14, 1995, the Court entered its Conditional Final Order for Yakima-Tieton Irrigation District.

The parties appealed certain rulings for Yakima-Tieton Irrigation District to the State Supreme Court. Other rulings were not appealed. The Supreme Court issued its decision Department of Ecology v. James J. Acquavella, 131 Wn.2d 746, 935 P.2d 595 (1997) and remanded to this Court the

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1 duty of quantifying the annual quantity of Yakima-Tieton's
2 water right. This Court then held a hearing on remand on
3 February 10, 1998 and issued its Report of the Court on
4 Remand for Yakima-Tieton Irrigation District on September 2,
5 1999.

6 Yakima-Tieton Irrigation District, the Department of
7 Ecology, the United States, the Yakama Nation and other
8 parties then entered into a process to attempt to negotiate a
9 settlement of Yakima-Tieton's water rights. A Stipulation
10 was entered into, offered into evidence and a hearing was
11 then held on February 8, 2001. The Court's Supplemental
12 Report on Remand for the Yakima-Tieton Irrigation District
13 issued on February 21, 2001. In the Supplemental Report, the
14 Court reached a decision on the annual quantity of Yakima-
15 Tieton's water right that did not include the Stipulation.
16 All other aspects of Yakima-Tieton's water right are as set
17 forth in the Conditional Final Order dated September 14,
18 1995.

19 Various parties filed exceptions to the Court's
20 Supplemental Report including Yakima-Tieton Irrigation
21 District, Department of Ecology, United States, Sunnyside
22 Division and the Yakama Nation. This Court held a hearing May
23 10, 2001 to consider exceptions to the Supplemental Report
24 and entry of this Conditional Final Order.

25 This Conditional Final Order will ultimately be
26 incorporated into a final decree that determines and
27 integrates all of the rights of the parties in this
28 adjudication, at which time it shall be forwarded to the

1 Director of the Department of Ecology for issuance of
2 Certificates of Adjudicated Water Right.

3 This Conditional Final Order is an appropriate matter
4 to be entered as a final judgment pursuant to Civil Rule
5 54(b), Rule on appeal 2.2(d), and Pretrial Order No. 8 as
6 amended. There is no just reason for delay in the entry of
7 this Conditional Final Order as a final judgment, subject
8 only to integration at the end of this adjudication.

9 II. CONDITIONAL FINAL ORDER

10 Based on the foregoing, IT IS:

11 ORDERED, ADJUDGED AND DECREED that the final decree
12 shall set forth the following in regard to the water rights
13 of the Yakima-Tieton Irrigation District, Court Claim No.
14 1513:

15 1. The Washington Supreme Court directed this Court
16 to "first determine YTID's vested water right, based on
17 evidence of past beneficial use. It should then examine . .
18 .[if] YTID has forfeited a portion of its right through
19 abandonment or voluntary nonuse." Department of Ecology v.
20 Acquavella, 131 Wn.2d 746, 759 (1997) (Acquavella III).

21 Pursuant to the Report on Remand, the Court has determined
22 that the Yakima-Tieton Irrigation District has perfected a
23 water right in the annual quantity of 102,409 acre-feet
24 during the irrigation season. Report on Remand at 9-37.

25 Although the Department of Ecology has demonstrated that
26 "YTID has failed to use any or all of its right for five
27 successive years," YTID has met "the burden of showing how
28 its nonuse falls under one of the narrow categories in RCW

1 90.14.140." Acquavella III at 758. Therefore, no part of the
2 vested right has been relinquished or abandoned. See
3 Supplemental Report on Remand at 8; see also Declaration of
4 Rick Dieker dated March 23, 2001.

5 2. Sunnyside Division filed exceptions to the Court's
6 Report on Remand and Supplemental Report on Remand Re:
7 Yakima-Tieton Irrigation District. Those exceptions were
8 WITHDRAWN in court on May 10, 2001. All other exceptions,
9 other than those supplied by Yakima-Tieton Irrigation
10 District, are DENIED. This Court has found that Yakima-
11 Tieton Irrigation District did not relinquish any of its
12 perfected water rights. See Supplemental Report on Remand at
13 8; see also Declaration of Rick Dieker dated March 23, 2001.
14 However, neither Sunnyside Division nor any other party is
15 precluded from arguing issues of law that were raised by the
16 Court's Report and Supplemental Report on Remand Re: Yakima-
17 Tieton Irrigation District at a later time should those
18 decisions be incorporated into a final order. (See order
19 entered March 8, 2001). Any party may raise such issues
20 through motions or exceptions to other reports or
21 proceedings.

22 3. The Department of Ecology shall issue a
23 Certificate of Adjudicated Water Right to the United States,
24 Bureau of Reclamation as trustee for the Yakima-Tieton
25 Irrigation District and its water users in the amounts of:

26 .347* cubic feet per second, 102,409 acre-feet per
27 year from the Tieton River for irrigation of 27,900 acres,
28 domestic (cistern filling), spraying, frost protection and

power generation, based on the following schedule:

300 cfs from April 1 through 30;
347* cfs from May 1 through August 31;
336* cfs from September 1 through 30;

October is authorized as part of the irrigation season.

The certificate shall carry the following provision:

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

.76 cubic feet per second, 3,881 acre-feet per year from the Tieton River for domestic (cistern filling), spray water, priming the canal and power generation from November 1 through March 31.

4. The point of diversion from the Tieton River is located 1600 feet north and 1200 feet east from the southwest corner of Section 30, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T. 14 N., R. 15 E.W.M.

5. The Department of Ecology shall issue a Certificate of Adjudicated Water Right to the United States, Bureau of Reclamation as trustee for the Yakima-Tieton Irrigation District and its water users in 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:

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

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

6. The point of diversion from the North Fork of

1 Cowiche Creek is located approximately 1320 feet west and
2 1000 feet north from the southeast corner of Section 11,
3 being within the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11, T. 14 N., R. 16 E.W.M.

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

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

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

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

23 When the adjudicated certificate issues for YTID, it
24 shall carry the above stated provision.

25 9. The place of use under both certificates is
26 described as follows:

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

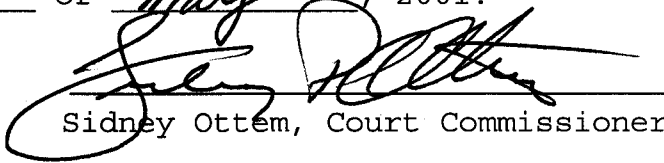
10. The priority date under the certificates is
May 10, 1905.

11. Certificates No. 4495 and No. 4496, which
originally issued to the United States of America, Bureau of

1 Reclamation, shall be canceled, rescinded or otherwise made
2 null and void by the Department of Ecology.

3 12. This Conditional Final Order, relating to the
4 confirmation of water rights to the United States, Bureau of
5 Reclamation as trustee for the Yakima-Tieton Irrigation
6 District constitutes a final order for purposes of appeal
7 [see RAP 2.2(d)], except for purposes of final integration of
8 all confirmed rights as provided in Section XII of Pretrial
9 Order No. 8, procedures for Claim Evaluation, dated March 3,
10 1989, of this Court.

11 DATED this 10th of July, 2001.

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13 Sidney Ottem, Court Commissioner
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