

FILED
DEC 12 1996

RECEIVED

El

KIM M. EATON, YAKIMA COUNTY CLERK

96 DEC 12 AM 11:38

KIM EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA COUNTY WASHINGTON

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

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)	NO. 77-2-01484-5
THE PROVISIONS OF CHAPTER 90.03,))
REVISED CODE OF WASHINGTON,)	CONDITIONAL
STATE OF WASHINGTON,)	FINAL ORDER AS A FINAL
DEPARTMENT OF ECOLOGY,)	JUDGMENT PURSUANT TO
)	CR 54(b) AND RAP 2.2(d)
)	AND PRETRIAL ORDER
Plaintiff,)	NUMBER 8 AS AMENDED
))
v.)	YAKIMA VALLEY CANAL
)	COMPANY, COURT CLAIM
JAMES J. ACQUAVELLA, et al.,)	NO. 1510
))
Defendants.))

THIS MATTER has come on regularly before the Court with Yakima Valley Canal Company having had its evidentiary hearing on December 13, 1993. This Court filed its Report of the Court Concerning the Water Rights for the Yakima Valley Canal Company on April 19, 1996. Thereafter, this Court held the hearing on exception on July 11, 1996. Donald H. Bond, Attorney, represented the defendant Yakima Valley Canal Company. Mary E. McCrea, Assistant Attorney General, represented the plaintiff State of Washington, Department of Ecology. Maria Iizuka, Attorney for the Department of Justice, represented the defendant United States, Bureau of Reclamation.

CONDITIONAL FINAL ORDER
YAKIMA VALLEY CANAL COMPANY

1
12,082

El

1 The Court, after reviewing the exceptions and other
2 materials filed, and after having heard argument and being
3 fully advised, filed its Supplemental Report of the Court
4 Concerning the Water Rights for the Yakima Valley Canal
5 Company on October 31, 1996. On November 6, 1996, Yakima
6 Valley Canal Company filed a Motion for Amendment of the
7 Supplemental Report and the Proposed Conditional Final Order
8 requesting amendment of their purposes of use.

9 This Court now enters this Conditional Final Order based
10 upon said initial Report of the Court, Supplemental Report of
11 the Court and said Motion.

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 Based on the foregoing, IT IS:

19 ORDERED, ADJUDGED and DECREED that the final decree shall
20 set forth the following in regards to the Yakima Valley Canal
21 Company, Court Claim No. 1510:

22 The Supplemental Report shall be modified, and Page 2,
23 lines 1-3 (the first sentence) shall be replaced with the
24 following:

25 The Court also requested that YVCC explain the
26 purposes relating to the phrase "incidental domestic
27 supply" so that the uses under their water rights,
28 including the Warren Act rights, are properly
described.

1 The rest of the paragraph will remain unchanged.

2 At Page 16, lines 8-10 shall be replaced with the
3 following:

4 The purpose of use of water diverted by YVCC, including
5 deliveries under the Warren Act Contract includes
6 incidental domestic supply which includes irrigation of
7 lawns, gardens and landscaping.

8 The Department of Ecology shall issue two Certificates of
9 Adjudicated Water Right to the Yakima Valley Canal Company as
10 follows:

11 1. With a June 30, 1893 priority date, the Court
12 confirms a right in the amounts of 1.5 cfs and 344 acre-feet
13 per year from the Naches River with the following schedule of
14 delivery:

<u>April through September</u>	<u>October</u>
<u>inclusive</u>	
1.5 cfs	0.75 cfs

15 2. With a March 22, 1894, priority date, the Court
16 confirms a right in the amounts of 62.5 cfs and 16,876 acre-
17 feet per year from the Naches River with the following
18 schedule of delivery:

<u>April through August</u>	<u>September</u>	<u>October</u>
<u>inclusive</u>		
62.5 cfs	40.0 cfs	30.0 cfs

19 3. The purpose of use shall be irrigation, including
20 incidental domestic uses, of 2,947.03 acres. Incidental
21 domestic uses includes irrigation of lawns, gardens and
22 landscaping. The season of use is from April 1 through
23 October 31.
24
25
26
27
28

1 4. The Court confirms two water rights to the United
2 States, as trustee for the Yakima Valley Canal Company and its
3 water users, as follows:

4 5. With a priority date of May 10, 1905, the Court
5 confirms a right to divert up to 64 cfs and 4,300 acre-feet
6 per year pursuant to the Warren Act contract (YVCC 20) with
7 the following rate of delivery:

8 <u>July through August</u>	<u>September</u>
64 cfs	41.5 cfs

9 It shall be recognized that the U.S. may deliver this
10 water to Yakima Valley Canal Company at a different rate of
11 delivery at the request of the Yakima Valley Canal Company and
12 in accordance with the terms of their contract.

13 6. The purposes of use pursuant to the Warren Act
14 contract are irrigation and incidental domestic supply, which
15 includes irrigation of lawns, gardens and landscaping of
16 2,947.03 acres.

17 7. Use of water pursuant to the Warren Act contract is
18 a reserve or standby supply and not subject to relinquishment
19 for non-use. RCW 90.14.140(2)(b).

20 8. The Court denies the U.S. request to include RCW
21 90.38 and RCW 90.40 as reasons for non-relinquishment for the
22 Warren Act contract. RCW 90.14.140(2)(b) adequately protects
23 this right.

1 9. The season of use pursuant to the Warren Act
2 contract shall be July, August, and September. It shall be
3 recognized that water may be delivered upon a different
4 schedule at the request of Yakima Valley Canal Company and in
5 accordance with the terms of their contract.

6 10. With a priority date of May 10, 1905, the Court
7 confirms a right to divert up to 1,100 acre-feet per year from
8 flood water, March 1 through June 30, and based on the
9 following rate of delivery:

10	<u>March</u>	<u>April through June</u>
11	33 cfs	<u>inclusive</u> 4 cfs

12 11. For purposes of all four water rights, the point of
13 diversion from the Naches River is located approximately 2,000
14 feet north and 400 feet east from the southwest corner of
15 Section 24, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T. 14 N.,
16 R. 17 E.W.M..

17 12. The place of use for all four water rights is
18 identified on YVCC 39, Figures 1A, 1B and 1C (maps).

19 13. The place of use description for all four water
20 rights is found in YVCC 46.

21 14. This Conditional Final Order, relating to the
22 confirmation of water rights to the Yakima Valley Canal
23 Company and the United States, Bureau of Reclamation as
24 trustee for the Yakima Valley Canal Company and its water
25 users, constitutes a final order for purposes of appeal [see
26 RAP 2.2(d)], except for purposes of final integration of all
27 confirmed rights as provided in Section XII of Pretrial Order
28

1 No. 8, procedures for Claim Evaluation, dated March 3, 1989,
2 of this Court.

3
4 DATED this 12th day of December, 1996.

5
6 Walter A. Stauffacher
7 WALTER A. STAUFFACHER, JUDGE

8 ep
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28