

TALBOTT, SIMPSON & DAVIS, P.S.
ATTORNEYS AT LAW

PHYSICAL ADDRESS:
308 NORTH SECOND STREET
YAKIMA, WASHINGTON 98901
PHONE 509 / 575-7501

MAILING ADDRESS:
POST OFFICE BOX 590
YAKIMA, WASHINGTON 98907
FAX 509 / 453-0077

May 19, 2010

Via facsimile (509) 456-4288

Ms. Renee S. Townsley
Clerk/Administrator
Court of Appeals of the
State of Washington, Division III
500 N. Cedar St.
Spokane, WA 99201-1905

Re: ***Department of Ecology v. James J Acquavella, et al.***
Case No. 281141 (consolidated with 281159, 211167, 281175 and 281191)
YAKIMA COUNTY SUPERIOR COURT No. 77 2 014845

Dear Ms. Townsley:

Enclosed for filing, please find the *Motion of Ahtanum Irrigation District to Amend Briefing Schedule and Joinder in Motion of Yakama Nation to Amend Briefing Schedule*, along with a *Certificate of Service*.

If you have any questions regarding the foregoing, please feel free to give our office a call.

Sincerely,
TALBOTT, SIMPSON & DAVIS, PS


DEBBIE J. WILSON
Legal Assistant to
JAMES E. DAVIS

:djw

Enclosure
cc: Counsel of record

NO.281141

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

**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/Respondent**

v.

**JAMES J. ACQUAVELLA; UNITED STATES; YAKAMA NATION;
AHTANUM IRRIGATION DISTRICT; JOHN COX DITCH
COMPANY; LA SALLE HIGH SCHOOL; DONALD BRULE;
SYLVIA BRULE; JEROME DURNIL; and ALBERT LANTRIP.
Defendants/Appellants**

**MOTION OF AHTANUM IRRIGATION DISTRICT
TO AMEND BRIEFING SCHEDULE AND JOINDER IN
MOTION OF YAKAMA NATION TO AMEND
BRIEFING SCHEDULE**

**JAMES E. DAVIS, WSBA# 5089
TALBOTT, SIMPSON & DAVIS, PS
P.O. Box 590, YAKIMA, WA 98907
(509) 575-7501
jdavis@talbottlaw.com**

I. IDENTITY OF MOVING PARTY

Appellant, Ahtanum Irrigation District, (AID) is the moving party.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 10.1(f), 10.1(h) & 18.8, AID requests that the Court allow the appellants the opportunity to file a response brief to the briefs of the other appellants, including the Department of Ecology and (2) to file an additional reply to the responses of the other parties.

AID further joins in the Yakama Nation's Motion To Amend Briefing Schedule, filed May 18, 2010.

III. FACTS RELEVANT TO MOTION

Under the Court's current briefing schedule, the briefs of the State of Washington Department of Ecology's (as respondent/cross appellant) and the Department of Natural Resource's (as respondent) are due May 20, 2010. The reply briefs of the other appellants/cross-respondents will then be due "30 days after the service of the respondent/cross appellant's brief (Department of Ecology) is filed."¹

Under the current schedule the appellants, AID, Yakama Nation, Johncox Ditch Co. and LaSalle et. al., will have no opportunity to file briefs in opposition to each other, even though some appellants have positions in opposition to each other. The appellants have filed opening briefs, but will only have the opportunity to file one more brief in reply

¹ Letter from Clerk/Administrator to Counsel (May 11, 2010).

to the others but not a reply in defense of their own appeals. The appellants are in the position of respondents to each other as well as to the Department of Ecology. To avoid prejudice to the appellants, each appellant should have the opportunity to file a response brief to answer the opening brief of every other appellant as well as the Departments of Ecology and Natural Resources and then file a reply brief in final defense of its own appeal.

IV. GROUNDS FOR RELIEF & ARGUMENT

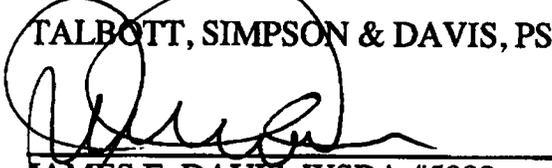
AID adopts and incorporates by this reference, the remaining Grounds for Relief and Argument in the Motion of Yakama Nation referred to above.

IV. CONCLUSION

Claims of many of the parties are adverse to each other. Each of the appellants should be treated as appellant/cross-appellees with respect to every other claimant. The appellants should each be allowed to file a response brief to the others and a reply brief in support of its own appeal. The appellants will be prejudiced if they are not given the opportunity to both file a response to all the other appellants' opening briefs and a reply in defense of our own appeals.

Respectfully submitted,

TALBOTT, SIMPSON & DAVIS, PS



JAMES E. DAVIS, WSBA #5089
P.O. Box 590, YAKIMA, WA 98907
(509) 575-7501

jdavis@talbottlaw.com

Dated, Filed and Served by fax: May 19, 2010

VIII. CERTIFICATE OF SERVICE

THE UNDERSIGNED STATES:

1. That I am over the age of 18 years, am a resident of the State of Washington, not a party hereto and am competent to testify herein.
2. On the below subscribed date, I sent the MOTION OF AHTANUM IRRIGATION DISTRICT TO AMEND BRIEFING SCHEDULE AND JOINDER IN MOTION OF YAKAMA NATION TO AMEND BRIEFING SCHEDULE, via facimsile to:

Sharonne E. O'Shea
Assistant Attorney General
State of Washington
Department of Ecology
P.O. Box 40117
Olympia, WA 98504-0117
360-586-6760

Jeffrey S. Schuster
Attorney at Law
P.O. Box 31197
Seattle, WA 98103
206-632-7160

Jay Carroll
Velikanje Halverson
405 East Lincoln
Yakima, WA 98901
509-453-6880

Patrick Barry
Department of Justice
Environmental & Natural
Resources Division

Indian Resources Division
P.O. Box 44378
Washington, DC 20026-4378
202-305-0271

Charles Flower
Patrick Andreotti
Yakima Legal Center
303 E. "D" Street, Suite 1
Yakima, WA 98901
509-248-9372

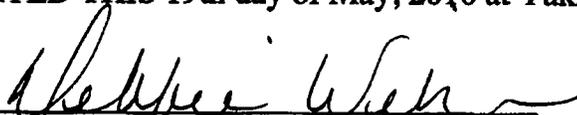
Katherine J. Barton
Environment and Natural Resources Division
P.O. Box 23795, L'Enfant Plaza Station
Washington, DC 20026
202-353-1873

Thomas Walter Swegle
US Dept of Justice-ENRD
P.O. Box 4390
Ben Franklin Station
Washington, DC 20044
202-353-1873

Adrienne E. Smith
Assistant Attorney General
WA State Department of Natural Resources
P.O. Box 40100
Olympia, WA 98504-0100
360-586-2756

I certify under penalty of perjury under the laws of the
State of Washington that the foregoing is true and correct.

DATED THIS 19th day of May, 2010 at Yakima,
Washington.


DEBBIE J. WILSON