

NO. 281141

COURT OF APPEALS, DIVISION III  
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 WA

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,

Plaintiff/Respondent

vs.

JAMES J. ACQUAVELLA, YAKIMA NATION INDIAN,  
UNITED STATES OF AMERICA, JOHN COX DITCH CO.,  
AHTANUM IRRIGATION DISTRICT, LA SALLE HIGH  
SCHOOL, DONALD AND SYLVIA BRULE,  
JEROME DURNIL, ALBERT LANTRIP, et al.,

Defendant/Appellants.

---

BRIEF OF APPELLANTS LA SALLE HIGH SCHOOL, DONALD  
AND SYLVIA BRULE, JEROME DURNIL, AND ALBERT  
LANTRIP

---

J. Jay Carroll  
Velikanje Halverson P.C.  
Attorneys for La Salle, Brule,  
Durnil and Lantrip  
P.O. Box 22550  
Yakima, WA 98907  
509.248.6030

**TABLE OF CONTENTS**

ASSIGNMENTS OF ERROR..... 1

    1. Assignment of Error # 1 (Brule) ..... 1

    2. Assignment of Error # 2 (La Salle)..... 1

    3. Assignment of Error # 3 (All Appellants). ..... 2

    4. Assignment of Error # 4 (All Appellants). ..... 3

INTRODUCTION ..... 3

POINTS AND AUTHORITIES ..... 10

    A. Don Brule Claim:..... 12

    B. La Salle High School Claim: ..... 16

    C. Claims by La Salle, Brule, Durnil and Lantrip that the Federal  
    *Ahtanum* Litigation was not an adjudication thus requiring all  
    potential water claimants to set forth claims therein. .... 21

    D. The Court Erred in Not Allowing for “Junior Rights”. ..... 26

CONCLUSION..... 27

Appendix A

Appendix B

Appendix C

## TABLE OF AUTHORITIES

### Federal Cases

<i>Anderson v. Yungkau</i> , 329 U.S. 482, 485, 67 S.Ct. 428, 430, 91 L.Ed. 436 (1947).....	17
<i>Fleming v. Sebastiani</i> , 161 F.2d 111, 112, (9th Cir. 1947) .....	18
<i>Nevada v. United States</i> , 463 U.S. 110, 113, 103 S.Ct. 2906, 2910, 77 L.Ed.2d 509, 514 (1983).....	22
<i>U.S. v. Ahtanum Irrigation Dist</i> , ("Ahtanum I") 236 F.2d 321, 328-29 (9th Cir. 1956).....	6, 7, 10, 11
<i>United States v. Ahtanum Irrigation Dist.</i> ("Federal Ahtanum Litigation"), 124 F. Supp. 818, 824 (E. D. WA 1954) .....	9, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 27.
<i>United States v. Ahtanum Irrigation Dist.</i> , ("Ahtanum II") 330 F.2d 897 (9th Cir. 1964) .....	10, 14, 23, 24, 25, 26, 27

### State Cases

<i>Benton v. Johncox</i> , 17 Wash. 277, 49 P. 495 (1897) .....	5, 6
<i>Ecology v. Yakima Reservation Irrig. Dist.</i> , 121 Wn.2d 257, 262, 850 P.2d 1306 (1993).....	4, 5

*In re Water Rights of Ahtanum Creek*,  
139 Wash. 84, 86, 245 P. 758 (1926) ..... 5, 8, 9

*Laffranchi v. Lim*,  
146 Wn. App. 376, 381-82 & ¶ 14, 190 P.3d 97 (2008)..... 13

**Federal Statutes**

12 Stat. 951 ..... 5

**Federal Rules**

F.R.C.P. 25(a)(1)..... 17, 18

FRCP 25(a) ..... 2

## ASSIGNMENTS OF ERROR

1. **Assignment of Error # 1 (Brule):** The Trial Court erred in denying the Appellant Brule a water right in the Ahtanum Subbasin by entering its Condition Final Order which incorporated its memorandum opinion on exceptions and previous reports and denied the Brule claim.

### Issues related to Assignment of Error # 1:

1. Was the correct Brule predecessor in interest served with the Federal *Ahtanum* litigation?

2. Even if the correct Brule predecessor in interest was properly served in the case, were the subsequent owners of the property substituted or served with the lawsuit?

2. **Assignment of Error # 2 (La Salle):** The Trial Court erred in denying the Appellant La Salle a water right in the Ahtanum Subbasin by entering its Condition Final Order which incorporated its memorandum opinion on exceptions, memorandum opinion re: La Salle and previous reports and denied the La Salle claim.

Issues related to Assignment of Error # 2:

1. Was there a proper substitution of La Salle's predecessor in interest under FRCP 25(a)?

2. Even if there was a proper substitution, were the substituted parties served with a document that would put them on notice that they were the parties to a lawsuit?

3. **Assignment of Error # 3 (All Appellants):** The Trial Court erred in denying the Appellants a water right in the Ahtanum Subbasin by entering its Condition Final Order which incorporated its memorandum opinion on exceptions and previous reports and denied the Appellants' claim.

Issues related to Assignment of Error # 3:

1. Was the Federal *Ahtanum* Litigation a general stream adjudication?

2. Did the Court of Appeals decisions in the *Ahtanum* Litigation simply establish an "en gross" allocation of the waters of Ahtanum creek?

4. **Assignment of Error # 4 (All Appellants):** The Trial Court erred in denying the Appellants a water right in the Ahtanum Subbasin by entering its Condition Final Order which incorporated its memorandum opinion on exceptions and previous reports and denied the Appellants' claim.

Issues related to Assignment of Error # 4:

1. Does the language of *Ahtanum II* allow for and permit the awarding of “junior water rights” to those landowners that did not file answers in the Federal *Ahtanum* Litigation?

## INTRODUCTION

These consolidated sets of appeals arise from some of the last decisions of the trial court in a general water adjudication involving the Yakima River basin. The general adjudication was initiated in 1977 and has been the subject of numerous appeals over the course of the preceding years.

Due to the vast number of claimants in the adjudication and the distinct nature of the various claims that would be asserted in the course of the proceedings, the Court entered a pretrial order that divided the proceedings into four procedural “pathways” for the presentment of evidence and claims. *See Ecology v. Yakima Reservation Irrig. Dist.*, 121 Wn.2d 257, 262, 850 P.2d 1306 (1993). These appeals involve the fourth pathway involving the individual claims within the identified subbasins.

Subbasin 23 is the “Ahtanum” subbasin. The headwaters of Ahtanum creek flow from a point on the eastern slope of the Cascade Mountains and then the creek flows some 40 miles where it joins the Yakima river. (CP 809; Report of the Court, Volume 48 at 35). Ahtanum creek forms a portion of the northern boundary of the Yakama Indian Reservation. Lands to the south of the creek lie on the Reservation and lands to the north are off-Reservation. (CP 809-10; Report of the Court, Volume 48 at 35-36). The average annual inflow of Ahtanum

creek is approximately 62,000 acre feet of water. (CP 810; Report of the Court, Volume 48 at 36).<sup>1</sup>

Ahtanum creek was the first creek to be used as a source of irrigation water in the Yakima valley beginning in 1853. There was little development of the property adjacent to the creek until the time period between 1867-75 when practically all the lands riparian to Ahtanum creek were taken by homesteaders and the waters of the creek were used to irrigate the crops that these homesteaders raised. *See In re Water Rights of Ahtanum Creek*, 139 Wash. 84, 86, 245 P. 758 (1926).

The Yakama Indian Reservation was created by the Treaty between the United States and the Yakama Nation of Indians, June 9, 1855, 12 Stat. 951. The first court fight between the non-Indian water users of Ahtanum creek manifested itself in 1896 in the case of *Benton v. Johncox*, 17 Wash. 277, 49 P. 495 (1897). The case involved issues of

---

<sup>1</sup> An acre foot (af) of water is that amount of water that is needed to cover an acre of land one foot deep with water. An acre foot of water equates to 43,456 cubic feet of water or 325,851 gallons of water. *See Yakima Reservation Irrig. Dist.*, 121 Wn.2d at 263 & n. 5.

priorities between riparian water users and subsequent appropriation of Ahtanum creek. *Johncox*, 17 Wash. at 289-90.

In August of 1906, significant disputes had arisen as to the use of the waters of Ahtanum creek by both the Indians and the white homesteaders. A superior court action titled *Dunn v. Redman, et. al.* was filed in the superior court of Yakima County. Redman was in the employ of the United States government and was an Indian Irrigation Service engineer. While the lawsuit itself did not proceed to trial nor did it result in any actual litigation, the filing of the *Dunn* action sparked a significant volume of correspondence, discussion and negotiations as to how the waters of Ahtanum creek should be allocated as between the Indians on the one hand and the white settlers on the other hand. *U.S. v. Ahtanum Irrigation Dist*, 236 F.2d 321, 328-29 (9<sup>th</sup> Cir. 1956)(hereinafter "*Ahtanum I*").

In the spring of 1908, Chief Engineer Code of the Indian Irrigation Service was dispatched to the Reservation in order to meet with a contingency of the white water users for the

purpose of attempting to arrive at a settlement of water distribution dispute. Such meetings did occur and Code, was able to negotiate a settlement of the dispute which resulted in a signed agreement between the United States and several thousand of the white settlers (through their respective “attorneys in fact”). *Ahtanum I*, 236 F.2d at 329.

This settlement document is now referred to as the “Code Agreement”. The heart of the Code Agreement was to divide the waters of Ahtanum creek by allocating 25% of the natural flow to the Reservation water users and 75% to the white settlers for the use of the water for irrigation purposes. *Ahtanum I*, 236 F.2d at 329. Unfortunately, the signing of the Code Agreement in 1908 did not bring peace nor certainty to the use of the waters of Ahtanum Creek. Beginning in 1912 and up through 1942, there were significant communications with respect to the dissatisfaction of the Indian water users as to the Code Agreement and its effect. *Ahtanum I*, 236 F.2d at 330 & n. 12.

Likewise, there were disputes arising from the white settlers as to the proper allocation of their 75% share of Ahtanum creek. Accordingly, in the 1920's a general adjudication was instituted under Washington law to adjudicate the various rights of the white settlers with respect to that 75% share of Ahtanum creek:

Twenty-five percent of the water of the streams is owned by the United States and controlled and administered by the Indian Bureau for the use and benefit of the Yakima Indian lands under irrigation, leaving 75 percent of the waters to be adjudicated herein.

*In re Ahtanum Creek*, 139 Wash. at 88.

The adjudication culminated in 1925 with the issuance of a decree of water rights (hereinafter the "Achepohl decree") which resulted in the 216 claimants who had been confirmed a right being issued a "water rights certificate" that evidenced the nature and extent of that right so awarded. *See In re Ahtanum Creek*, 139 Wash. at 88; CP 1080; Report of the Court, Volume 48 at 106. The Achepohl adjudication proceeding was appealed

to the Washington Supreme Court which issued its final decision in 1926. *See In re Water Rights of Ahtanum Creek* 139 Wash. 84, 86, 245 P. 758 (1926).

The next chapter of the Ahtanum saga cuts to the heart of the main issues that are presented herein on appeal. In 1947 the United States brought an action against the white settlers owning property north of Ahtanum creek. The suit sought to have the Court declare that every drop of water in Ahtanum creek belonged to the Indians for use on Reservation property. *See United States v. Ahtanum Irrigation Dist.*, 124 F. Supp. 818, 824 (E. D. WA 1954)(Federal *Ahtanum* litigation). The summons and complaint named hundreds of individual defendants covering four, single spaced pages. (CP 1081; Report of the Court, Volume 48 at 107).

The particulars of this litigation will be discussed in greater detail below in relation to the arguments being made herein. However, from a simple timing stance, District Court Judge Fee initially dismissed the action in a written decision

issued in 1954. This decision was appealed to the Ninth Circuit and it issued its opinion in 1956. (*Ahtanum I*). The case was remanded back for further proceedings. After those proceedings were complete, an appeal was again filed with respect to the decision rendered. The Ninth Circuit issued its opinion in this second appeal in 1964. *See United States v. Ahtanum Irrigation Dist.*, 330 F.2d 897 (9<sup>th</sup> Cir. 1964)(*Ahtanum II*).

This brings us full circle to this adjudication. All of these Appellants filed claims within this current adjudication. They presented evidence and testimony to the referee/court. This appeal follows. For the reasons set forth below, the trial court should be reversed and these Appellants should be granted a water right for the waters within the Ahtanum Subbasin.

### **POINTS AND AUTHORITIES**

Two of the Appellants have appeal issues that are unique to their respective claims. Those two issues will be discussed

first. Thereafter, the issues discussed are applicable to all Appellants herein.

For purposes of these first two arguments, it is important to understand the Court's decision making process in arriving at its decision to deny these claims. In order to successfully present a claim in this present adjudication the Court required a four part showing:

1. A showing of historical beneficial use of water on the land at issue;
2. A showing that a predecessor in interest of the land at issue signed the Code Agreement;
3. A showing that the land at issue was involved in and was granted a water rights certificate in the Achepohl decree;
4. A showing that the land was included in an answer number that was filed in the Federal *Ahtanum* litigation on the remand after the Court's decision in *Ahtanum I*.

(CP La Salle Decision at 3)

In both the Brule and the La Salle appeals, there is no issue of fact that they have established the first three prongs of the above listed test. It is undisputed that the reason for the denial of the claim was the failure to fulfill the fourth prong of the test. As is set forth below, those decisions were in error.

A. **Don Brule Claim:**

The Brule property has a long history of water use within the Ahtanum Creek subbasin. It is covered under Certificate 238 under the Achepohl adjudication and granted a Class 9 right. The evidence introduced at the hearing established a long history of applying water to beneficial use on the property. There was no evidence of abandonment of the water right and no evidence of relinquishment by showing an applicable consecutive five year period of time when water was not beneficially applied to the land. (Appendix A). However, the claim was denied because there was no showing that the predecessor in interest to the Brule lands filed an answer in the federal *Ahtanum* litigation. (CP 496-97)

The question presented on this appeal is whether Brule's predecessors in interest were parties to the federal *Ahtanum* litigation. They were not. Since the record with respect to this issue (as well as the similar issue presented by Appellant La Salle) is based entirely on written materials, this Court stands in the same position as the trial court and the standard of review is *de novo*. See *Laffranchi v. Lim*, 146 Wn. App. 376, 381-82 & ¶ 14, 190 P.3d 97 (2008).

Mr. Brule attached a true and accurate copy of a chain of title that he had done with respect to his property. The *U.S. v. Ahtanum* case was started in 1947. At that time, the owners of the property he currently owns were W.C. Cope and Inez Cope. (Appendix A). W.C. Cope and Inez Cope were not named as defendants in the *U.S. v. Ahtanum* case.

The Trial Court had a different take on that issue. It noted that under the service of process documents introduced into evidence, there was a Walter C. Cope and a W.C. Cope who were initially served. However, a closer look at these

documents shows that it was not the same owners. The affidavit of service identifies substitute service of process on Mr. Cope's wife, ROSE. (Appendix B; YIN 371). However, as noted in the chain of title documents submitted by Mr. Brule, Mr. Cope's wife's name was INEZ. Thus, from a starting point, the Trial Court erred since the evidence was insufficient to demonstrate that a predecessor in interest was a party to the federal *Ahtanum* litigation.

A second problem is the court's failure to address the subsequent transfers of property and the total lack of evidence that any of these subsequent owners were made parties to the action. It was not until 1964 that the Court rendered its final decision in the *Ahtanum II* opinion. From 1947, when the action was instituted through the Court's final opinion in 1964, the ownership of the property that Mr. Brule currently owns changed at least five times: (1951) Frank Miller and Bertha Miller; (1959) Ralph Miller and Ivy Miller; (1962) Donald Herber and H. Robert Herber; (1964) H. J. Sieber. There is no

evidence that any of these parties were substituted as a party into the *U.S. v. Ahtanum* case as parties with respect to the land that Brule currently owns.

This is especially true since the first transfer noted above (in 1951) occurred not only prior to the District Court's initial decision but also the Court of Appeal's first decision. Thus even if it could be established that the correct Cope was indeed initially served, the court's rationale still fails since there was no substitution of the correct party to the litigation. Any remand order from the Ninth Circuit in 1956 would mean nothing to the then owners of the Brule property since they were not parties to the action. They could not respond to an order that they did not know existed.

Accordingly, since there is no evidence that a predecessor in interest to the Brule property was a party to the federal *Ahtanum* litigation, there can be no res judicata effect to what transpired in that case. Since Brule successfully presented

the other elements of his water rights claim, the trial court should be reversed and Brule's right should be affirmed.

**B. La Salle High School Claim:**

La Salle asserts a theory similar but slightly different than that asserted by Brule. Like Brule, La Salle fulfilled all the requirements for the granting of a water right with the exception of showing that an appropriate answer had been filed in the federal *Ahtanum* litigation. La Salle has a slightly different history in this regard. La Salle's predecessor in interest was Mrs. Jennie Goodman, a widow. She was served with a copy of the federal *Ahtanum* lawsuit on September 3, 1947. Jennie Goodman died about a year later, on November 6, 1948. The Goodman estate sold the property to two separate persons: (1) Wade Langell on April 30, 1949 and (2) H.A. Richmond on June 30, 1949. (CP 935). It is undisputed that neither Langell nor Richmond were ever substituted into the action for Goodman.

At the time of the Federal *Ahtanum* Litigation, the version of F.R.C.P. 25(a)(1), then in effect, stated that:

If a party dies and the claim is not thereby extinguished, the court within 2 years after the death may order substitution of the proper parties. **If substitution is not so made, the action shall be dismissed as to the deceased party.**

(emphasis added).

The language of F.R.C.P. 25 (a)(1) is mandatory. The failure to make a substitution within the two year period mandates the dismissal of the action as to the deceased party. *See Anderson v. Yungkau*, 329 U.S. 482, 485, 67 S.Ct. 428, 430, 91 L.Ed. 436 (1947). It does not matter whether the failure to make the substitution was a result of “excusable neglect.” *See Anderson*, 329 U.S. at 484-85.

Thus, as stated by the Circuit Court of Appeals, Rule 25 (a) operates both as a statute of limitations upon revivor and as a mandate to the court to dismiss an action not revived within the two-year period.

*Anderson*, 329 U.S. at 485.

The Ninth Circuit came to the same conclusion as to the application of F.R.C.P 25(a)(1):

[T]he power to order the substitution of appellees as defendants in his place and stead was limited to the two-year period prescribed in Rule 25(a)(1). That period expired on March 27, 1946. No substitution was made within that period. No valid substitution could be made thereafter.

*Fleming v. Sebastiani*, 161 F.2d 111, 112, (9<sup>th</sup> Cir. 1947).

It is undisputed that there was never a substitution of Mr. Richmond or Mr. Langell for Mrs. Goodman in the Federal *Ahtanum* Litigation. After two years from her death passed, the action was deemed dismissed as to Mrs. Goodman. At that point in time, the first trial in the AID Litigation had not even been conducted. Since no proper substitution was made and the action was to be dismissed as to Mrs. Goodman, the concept of res judicata has no bearing on the claim currently being asserted by La Salle.

The Trial Court's analysis in its written decision does not change this fact since it is fatally flawed. The Court correctly

noted that on October 14, 1949, a number of individuals were dropped from the rolls of the lawsuit and a number of other parties were added. (Appendix C; YIN 375). What the trial court failed to recognize was that, while both Langell and Richmond were added as parties to the action, neither Mrs. Goodman, nor her estate, were dropped from the action nor substituted in any way. (Appendix C; YIN 375). Who knows why Langell and Richmond were added to the suit. Maybe they bought other property along Ahtanum creek. We simply do not know. What we do know is that there has been no substitution of the La Salle predecessors in interest (Langell and Richmond) for Goodman. With this being the case, there can be no res judicata effect since the court was required to dismiss Goodman two years after her death.

Further, even if there had been a legitimate substitution in that action, the affidavit of service filed shows that Mr. Langell was served on October 29, 1949 and Mr. Richmond was served on October 27, 1949. However, the key

consideration is not “were they served,” but, rather, “served with what.” The affidavit of service does **not** reflect that they were served with the Order notifying them that they were being added as defendants. Rather, the affidavit simply states that they were served with “Summons and Complaint.” Note that the affidavit does not say “amended” summons or “amended” complaint.

This record establishes, at most, that Mr. Langell and Mr. Richmond were served with the summons and complaint in the *US v. AID* litigation. However, the summons and complaint did not list them as parties to the action. Thus, they were served with a lawsuit that did not give them notice that they were defendants to the action.

The record does not establish that La Salle’s predecessors in interest were properly served with paperwork that would have put them on notice that they were parties to the Federal *Ahtanum* Litigation. This being the case, the concepts of res

judicata have no application. The trial court erred in denying La Salle's claim for a water right from Ahtanum creek.

C. **Claims by La Salle, Brule, Durnil and Lantrip that the Federal *Ahtanum* Litigation was not an adjudication thus requiring all potential water claimants to set forth claims therein.**

From a starting point, these Appellants recognize that this issue will also be addressed and advocated by other Appellants. These Appellants adopt those arguments as if fully set forth herein. In an attempt not to be too duplicative, these Appellants assert the following as to why no adjudication occurred in this case.

It is undisputed that under the Achepohl decree, La Salle's predecessors in interest, the Goodmans, were granted a right which contained a period of use from April 1 through October 15. While the Ninth Circuit in the Federal *Ahtanum* Litigation did establish a July 10 cutoff for northside water users, that restriction does not apply to these appellants since their predecessors in interest were not parties to that decision.

Accordingly, the period of use for Appellant's right should be in accord with the Achepohl decree and be established as April 1 through October 15. The same argument as set forth below further establishes that, since there was no general stream adjudication, there can be no requirement that it must be demonstrated that an answer was filed in the litigation in order to now, at this time, be entitled to the granting of a water right in this adjudication.

The fallacy with the U.S. government's suit in the Federal *Ahtanum* Litigation was that it did not institute a stream adjudication. It clearly could have done so. *See e.g. Nevada v. United States*, 463 U.S. 110, 113, 103 S.Ct. 2906, 2910, 77 L.Ed.2d 509, 514 (1983)(referencing the "Orr Ditch" litigation to adjudicate water rights to the Trusckee River brought by the United States). However, it chose not to institute an adjudication but, instead, brought an action to invalidate the 1908 Code agreement and claim all the waters of Ahtanum Creek for the Yakama Indian Nation. *See United States v.*

*Ahtanum Irrigation Dist.*, 124 F. Supp. 818, 824 (1953). The reason that no adjudication was necessary nor sought by the U.S. is obvious. If the suit was successful, no northside water user would be entitled to a single drop of the water of Ahtanum Creek. It would be a useless task to bring an action to allocate nothing.

However, having made that choice, the United States is now stuck with it. The Ninth Circuit, in its last opinion in the Federal *Ahtanum* litigation, made it crystal clear that no stream adjudication was conducted and only those parties to the action would be bound by its decision.

The United States actually appealed the propriety of the lower court making an allocation to northside users “in gross” as opposed to on an individual basis. *See Ahtanum II*, 330 F.2d at 910.

The appellant has specified error as follows: 'In failing to determine the actual beneficial use made of the waters by individual defendants in 1908 or at the present time.' This specification relates to the court's third conclusion of law as follows: 'That

this water rights adjudication under the issues as presented herein is restricted to a determination of plaintiff's rights to the waters of Ahtanum Creek, as originally reserved under the Treaty of 1855, so far as they were retained by the agreement of 1908, and a determination of defendants' rights, collectively, so far as they were fixed under said agreement. That these rights, under the terms of said agreement, are to be ascertained by measurement and by a percentage division in the aggregate, of Ahtanum Creek waters as provided therein without an adjudication of waters to or for any particular tract of land.' It is argued that that conclusion is not in accord with the directions contained in our original opinion.

\* \* \* \*

Appellant particularly complains of the district court's adjudication of the rights of the defendants 'in gross' or 'in the aggregate', as stated in the Conclusion No. 3 previously quoted; and asserts that this treatment of the rights of the defendants as a group, or in the aggregate, is error for several reasons.

*Ahtanum II*, 330 F.2d at 910-11.

The Court found no error. While the Court noted that the lower court could very well have conducted an adjudication, it was not required to do so. The "in gross" determination was not error. The Court found that the Government would have no

interest in any adjudication among the defendants to the action. How the water that the defendants were granted was divided up would be of no concern to the Government. *See Ahtanum II*, 330 F.2d at 911-12.

This Court must ask itself one simple question concerning the final Ahtanum appeal in order to put the arguments into proper perspective. In *Ahtanum II*, the US appealed the issue of the trial courts failure “to determine the actual beneficial use made of the waters by individual defendants in 1908 or at the present time.” *Ahtanum II*, 330 F.2d at 910.

The question is, why would the US have appealed that issue if it thought that a finding had already been made as to individual water users? If there had been an adjudication, why would the appeal have been filed? The answer is hopefully obvious. The US appealed the issue because no individual determinations such that would be made in an adjudication

were made and it thought that such determinations should have been made. The Court of Appeals disagreed.

The Court of Appeals calculated an “en gross” award for the waters of Ahtanum Creek. While the US could have consented to an adjudication to occur at that time, it chose not to. Accordingly, there was no adjudication. As such, there is no res judicata effect in the event that a claimant in the current adjudication failed to appear in that 1947 action.

**D. The Court Erred in Not Allowing for “Junior Rights”.**

As with the last discussion, these Appellants will again incorporate by this reference the other arguments made concerning the awarding of “junior water rights” as set forth by the trial court initially. In the event that a full water right is not awarded to these Appellants, a junior water right should be awarded.

The *Ahtanum II* court order is clear. If there are excess waters over and above what is set forth, that water may be used by the non-Indian land owners to the extent that such water

cannot be put to beneficial use by the Indian water users. *See Ahtanum II*, 330 F.2d at 915.

The issue of “whether” such excess water exists is not the point. The true issue is, if such water exists, what rights do the parties have in that excess water. If there is no excess water, then the question is answered. However, in years and at times when the excess water exists, the Court’s initial determination and award of “junior rights” makes perfect sense and makes the allocation of water in a manner that is reasonable under the situation. This Court should reverse the trial court’s determination to hold that no such “junior rights” exist in the Ahtanum subbasin.

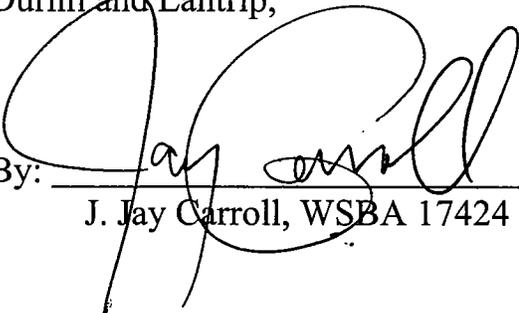
### **CONCLUSION**

For the reasons set forth above, this Court should reverse the decision of the trial court with respect to the Ahtanum Subbasin. Appellants’ Brule and La Salle’s predecessors in interests were not ever made proper parties to the *Ahtanum* federal litigation such that res judicata effects should attach.

Additionally that litigation was not a general adjudication so that there was no determination of the actual water rights involved therein. The Court simply made an “en gross” award of water. Finally, this Court should, at the very least, reverse the trial court’s determination that no “junior water rights” would be awarded.

Respectfully submitted this 15<sup>th</sup> day of March, 2010.

VELIKANJE HALVERSON P.C.  
Attorneys for Appellants La Salle, Brule,  
Durnil and Lantrip,

By:   
\_\_\_\_\_  
J. Jay Carroll, WSBA 17424

CERTIFICATE OF SERVICE

I, JENNIFER FITZSIMMONS, hereby certify under penalty of perjury under the laws of the State of Washington that the following is true and correct.

I am the assistant to J. Jay Carroll, the attorney for La Salle High School, Donald and Sylvia Brule, Jerome Durnil and Albert Lantrip, and am competent to be a witness herein.

On March 15<sup>th</sup>, 2010, I caused to be mailed by U.S. Mail, postage pre-paid, the original and one copy of the foregoing document to the following:

Clerk, Court of Appeals, Div. III  
500 N. Cedar Street  
Spokane, WA 99210

On March 15<sup>th</sup>, 2010, I caused a true and correct copy of the foregoing document to be served on the following in the manner indicated below:

Jeffrey S. Schuster  
Attorney at Law  
PO Box 31197  
Seattle, WA 98103-1197

U.S. MAIL

Sharonne E. O'Shea  
Barbara A. Markham  
Attorney General's Office  
PO Box 40117  
Olympia, WA 98504-0117

U.S. MAIL

Charles Camillus Flower  
Patrick Michael Andreotti  
Flower & Andreotti  
303 East D Street, Suite 1  
Yakima, WA 98901

U.S. MAIL

James Edward Davis  
Attorney at Law  
308 N. 2<sup>nd</sup> Street  
P.O. Box 590  
Yakima, WA 98907

U.S. MAIL

Patrick Barry  
US DOJ/ENRD Indian Resources Section  
P.O. Box 44378  
L'Enfant Plaza Station  
Washington, DC 20026-4378

U.S. MAIL

Katherine Barton  
US DOJ/ENRD – Appellate Section  
P.O. Box 23795  
L'Enfant Plaza Station  
Washington, DC 20026

U.S. MAIL

Thomas W. Swegle  
US DOJ/ENRD  
PO Box 4390  
Ben Franklin Station  
Washington, DC 20044-4390

U.S. MAIL

Adrienne E. Smith  
Assistant Attorney General  
1125 Washington Street, SE  
P.O. Box 40100  
Olympia, WA 98504-0100

U.S. MAIL

Dated this 15<sup>th</sup> day of March, 2010.

VELIKANJE HALVERSON P.C.

By:   
Jennifer Fitzsimmons  
Legal Assistant to J. Jay Carroll

G:\JJC\water\Appeal - Subbasin 23 CFO\Brief with TOC and TOA.doc

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  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

IN THE MATTER OF THE	)	
DETERMINATION OF THE RIGHTS TO	)	
THE USE OF THE SURFACE WATERS	)	NO. 77-2-01484-5
OF THE YAKIMA RIVER DRAINAGE	)	
BASIN, IN ACCORDANCE WITH THE	)	
PROVISIONS OF CHAPTER 90.03,	)	EXCEPTION OF
REVISED CODE OF WASHINGTON	)	DONALD P. BRULE
	)	
STATE OF WASHINGTON	)	Claim Number 00040
DEPARTMENT OF ECOLOGY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES J. ACQUAVELLA, et al.	)	
	)	
Defendants.	)	
	)	

COMES NOW the claimant Donald P. Brule and submits this exception to the Supplemental Report of the Court for Subbasin 23 (Ahtanum Creek).

1. This property has a long history of water use within the Ahtanum Creek subbasin. It is covered under Certificate 238 under the Achepohl adjudication and granted a Class 9 right. The evidence introduced at the hearing established a long history of applying water to beneficial use on the property. There was no evidence of abandonment of the water right and no evidence of relinquishment by showing an

1 applicable consecutive five year period of time when water was not beneficially  
2 applied to the land. Accordingly, the Court erred and the applicable water right as  
3 granted under Certificate 238 should be confirmed to this property.

4  
5 2. The water for irrigation for this property comes from Spring Creek. We  
6 have a situation in this case where NO ONE who irrigates from Spring Creek  
7 responded to the *U.S. v. Ahtanum* case. Why is that? Were these documents properly  
8 served or was it simply common knowledge that Spring Creek was an independent  
9 water source, fed primarily by the return flow of waters from the Congdon Canal  
10 (Yakima Valley Canal) that was designed by Edward Bannister in 1894 for use by  
11 Congdon properties and other upper valley land owners. Spring Creek should not be  
12 considered a part of Ahtanum Creek and this water. I respectfully submit that the  
13 Spring Creek lands were not included because they obviously don't irrigate from  
14 Ahtanum Creek.  
15

16  
17 3. Attached to this Exception as Exhibit "A" and incorporated by this  
18 reference is a true and accurate copy of a chain of title that I had done with respect to  
19 my property. The *U.S. v. Ahtanum* case was started in 1947. At that time, the owners  
20 of the property I currently own were W.C. Cope and Inez Cope. (Item 19 on Exhibit  
21 "A"). W.C. Cope and Inez Cope were not named as defendants in the *U.S. v.*  
22 *Ahtanum* case. I suspect that the reason that they were not named as defendants was  
23 that they irrigated the land from Spring Creek and not Ahtanum Creek. Our  
24 predecessor was not a party to the *U.S. v. Ahtanum* case with respect to the land I now  
25 own. I should be granted a senior water right.  
26

27  
28 4. It was not until 1964 that the Court rendered its final decision in the  
29 *Ahtanum II* opinion. From 1947, when the action was instituted through the Court's  
30 final opinion in 1964, the ownership of the property that I currently own changed at  
31 least five times: (1951) Frank Miller and Bertha Miller; (1959) Ralph Miller and Ivy  
32 Miller; (1962) Donald Herber and H. Robert Herber; (1964) H. J. Sieber. There is  
33 no evidence that any of these parties were substituted as a party into the *U.S. v.*  
34  
35

1 *Ahtanum* case as parties with respect to the land that I now currently own. Thus, the  
2 *U.S. v. Ahtanum* case has no application to my claim.

3 5. I also agree with and incorporate the arguments of other parties that the  
4 *U.S. v. Ahtanum* case was not an adjudication of water rights and should not be given  
5 that effect, even if were to apply to my claim.  
6

7 6. I also take exception to the court's reversal of its previous decision to  
8 award a "junior right" to use the water for the reasons set forth by those others taking  
9 exception to this ruling and the rationale of the Court previously expressed.  
10

11  
12 DATED this 26 day of June, 2008.

13  
14   
15  
16 Donald P. Brule  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 27<sup>th</sup> day of June, 2008 that I caused to be served,  
3  
4 via U.S. Mail, postage prepaid, a copy of the foregoing document to:

5  
6 Ms. Sharonne O'Shea  
7 Mr. Alan Reichman  
8 Ms. Barbara Markham  
9 Washington State Office of the Attorney General  
10 Ecology Division  
11 P.O. Box 40117  
12 Olympia, WA 98504-0117

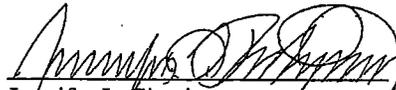
13 Jeffrey S. Schuster  
14 Yakama Nation  
15 Office of Legal Counsel  
16 P.O. Box 31197  
17 Seattle, WA 98103

18 Charles Shockey  
19 US Dept of Justice/Natural Resources  
20 501 - I Street, Suite 90700  
21 Sacramento, CA 95814

22 Patrick Barry  
23 Indian Resources Section  
24 Environmental & Natural Resources Div.  
25 U.S. Department of Justice  
26 P.O. Box 44378  
27 Washington, DC 20026-4378

28 James E. Davis  
29 Talbott, Simpson & Davis, P.S.  
30 P.O. Box 590  
31 Yakima, WA 98907

32 DATED this 27<sup>th</sup> day of June, 2008.

33   
34 Jennifer L. Fitzsimmons  
35

EXCEPTION OF DONALD P. BRULE - 4

# Exhibit A

# CHAIN OF TITLE GUARANTEE FORM A

## SCHEDULE A

Rate Code <b>None</b>	State <b>48</b>	City <b>077</b>	Property Type <b>10</b>	
Office File Number <b>00054538</b>	Policy Number <b>7203078 1132</b>	Date of Policy <b>March 21, 2002 at 8:00 a.m.</b>	Amount of Insurance <b>\$1,000.00</b>	Premium <b>\$158.00</b>

The assurances referred to on the face page are:

That, according to those public records which, under the recording laws, impart constructive notice of matters relating to the interest, if any, which was conveyed to:

**DONALD P. BRULE and SYLVIA M. BRULE, husband and wife**

pursuant to a Statutory Warranty Deed in and to the land described as follows:

**Lot 1 of Short Plat, recorded under Auditor's File Number 7019579, records of Yakima County, Washington.**

**Situated in Yakima County, State of Washington.**

Only the following matters appear in such records subsequent to August 7, 1997.

1. Patent  
GRANTOR: United States of America  
GRANTEE: Charles Schano  
RECORDED: May 13, 1875  
VOLUME: A  
PAGE: 199
2. Deed,  
GRANTOR: Charles Schano  
GRANTEE: Mathias  
RECORDED: November 2, 1885  
VOLUME: D  
PAGE: 300
3. Deed,  
GRANTOR: Mathias  
GRANTEE: Emma Schano  
RECORDED: October 23, 1886  
VOLUME: E  
PAGE: 306

**SCHEDULE A (Continued)**

File Number: 00054538

Policy Number: 7203078 1132

4. Deed,  
GRANTOR: Emma Schano  
GRANTEE: Emma Barthoff  
RECORDED: April 9, 1887  
VOLUME: F  
PAGE: 114
5. Deed,  
GRANTOR: Thomas Harris  
GRANTEE: Joseph Barthoff, Sr.  
RECORDED: December 17, 1888  
VOLUME: H  
PAGE: 277
6. Deed,  
GRANTOR: Emma Barthoff  
GRANTEE: Joseph Barthoff  
RECORDED: March 9, 1889  
VOLUME: I  
PAGE: 120
7. Deed,  
GRANTOR: Joseph Barthoff  
GRANTEE: Martha Barthoff  
RECORDED: May 1, 1889  
VOLUME: I  
PAGE: 449
8. Deed,  
GRANTOR: Matt Barthoff  
GRANTEE: H. L. Tucker  
RECORDED: November 18, 1891  
VOLUME: N  
PAGE: 304
9. Deed,  
GRANTOR: Dan R. Fish  
GRANTEE: H. L. Tucker  
RECORDED: September 11, 1900  
VOLUME: 4  
PAGE: 198
10. Deed,  
GRANTOR: H. L. Tucker  
GRANTEE: C. W. Carter  
RECORDED: October 17, 1900  
VOLUME: 6  
PAGE: 127

Chain of Title Guarantee Form A

Page 2

SCHEDULE A (Continued)

File Number: 00054538

Policy Number: 7203078 1132

11. Contract  
GRANTOR: C. W. Carter  
GRANTEE: D. L. Savage  
RECORDED: April 11, 1906  
VOLUME: 43  
PAGE: 163
  12. Deed  
GRANTOR: George H. Fresh  
GRANTEE: C. W. Gould  
RECORDED: October 8, 1909  
VOLUME: 94  
AUDITOR'S FILE #: 36053
  13. Deed  
GRANTOR: C. W. Gould  
GRANTEE: Lizzie Thresh  
RECORDED: October 8, 1909  
VOLUME: 94  
AUDITOR'S FILE #: 36054
  14. Deed  
GRANTOR: C. W. Carter  
GRANTEE: Lizzie Thresh  
RECORDED: June 7, 1910  
VOLUME: 104  
AUDITOR'S FILE #: 48643
  15. Deed  
GRANTOR: Lizzie Thresh  
GRANTEE: Gertrude Botzer  
RECORDED: July 16, 1919  
VOLUME: 187  
AUDITOR'S FILE #: 162093
  16. Deed  
GRANTOR: Gertrude Botzer  
GRANTEE: D. L. Savage  
RECORDED: August 1, 1919  
VOLUME: 189  
AUDITOR'S FILE #: 161637
  17. Contract  
GRANTOR: James Harvey  
GRANTEE: D. L. Savage  
RECORDED: April 6, 1926  
VOLUME: 248  
AUDITOR'S FILE #: 381009
- Chain of Title Guarantee Form A

**SCHEDULE A (Continued)**

File Number: 00054538

Policy Number: 7203078 1132

18. Deed,  
GRANTOR: David Savage  
GRANTEE: Lester E. Savage  
RECORDED: May 14, 1928  
VOLUME: 266  
AUDITOR'S FILE #: 456215
  19. Contract,  
GRANTOR: Mary Humbert  
GRANTEE: W. C. Cope and Inez Cope  
RECORDED: December 15, 1930  
VOLUME: 287  
AUDITOR'S FILE #: 555365
  20. Deed,  
GRANTOR: Sheriff Yakima Co.  
GRANTEE: Mary Humbert  
RECORDED: February 25, 1932  
VOLUME: 296  
AUDITOR'S FILE #: 594152
  21. Deed,  
GRANTOR: Mary Humbert  
GRANTEE: W. C. Cope and Inez Cope  
RECORDED: March 25, 1933  
VOLUME: 302  
AUDITOR'S FILE #: 621364
  22. Deed,  
GRANTOR: Marjorie Edgerly  
GRANTEE: Frank Miller and Bertha Miller  
RECORDED: February 12, 1951  
VOLUME: 494  
AUDITOR'S FILE #: 1353713
  23. Deed,  
GRANTOR: Frank Miller and Bertha Miller  
GRANTEE: Ralph Miller and Ivy Miller  
RECORDED: December 16, 1959  
VOLUME: 601  
AUDITOR'S FILE #: 1802719
  24. Contract,  
GRANTOR: Ralph Miller and Ivy Miller  
GRANTEE: Donald Herber and H. Robert Herber  
RECORDED: January 15, 1962  
VOLUME: 623  
AUDITOR'S FILE #: 1891740
- Chain of Title Guarantee Form A

Page 4

SCHEDULE A (Continued)

File Number: 00054538

Policy Number: 7203078 1132

25. Seller's Assignment of Contract and Deed,  
GRANTOR: Ralph Miller and Ivy Miller  
GRANTEE: Peoples National Bank  
RECORDED: January 15, 1962  
VOLUME: 623  
AUDITOR'S FILE #: 1891741
26. Deed,  
GRANTOR: Robert Herber and Donald Herber  
GRANTEE: H. J. Sieber  
RECORDED: March 11, 1964  
VOLUME: 649  
AUDITOR'S FILE #: 1986600
27. Deed,  
GRANTOR: Peoples National Bank  
GRANTEE: Robert Herber and Donald Herber  
RECORDED: March 11, 1964  
VOLUME: 649  
AUDITOR'S FILE #: 1986601
28. Deed,  
GRANTOR: H. J. Sieber  
GRANTEE: Bank of Yakima  
RECORDED: April 22, 1971  
VOLUME: 798  
AUDITOR'S FILE #: 2247827
29. Deed,  
GRANTOR: Bank of Yakima  
GRANTEE: H. J. Sieber  
RECORDED: February 22, 1977  
VOLUME: 999  
AUDITOR'S FILE #: 2451425
30. Deed,  
GRANTOR: H. J. Sieber  
GRANTEE: Robert Pulse and Phyllis Pulse  
RECORDED: November 18, 1982  
AUDITOR'S FILE #: 2661539
31. Deed,  
GRANTOR: Robert Pulse and Phyllis Pulse  
GRANTEE: Donald Brule and Sylvia Brule  
RECORDED: August 7, 1997  
AUDITOR'S FILE #: 7021035

**SCHEDULE A (Continued)**

File Number: 00054538

Policy Number: 7203078 1132

This Guarantee does not cover:

1. Taxes, assessments and matters related thereto.
2. Instruments, proceedings or other matters which do not specifically describe said land.

**FIDELITY TITLE COMPANY** agent for  
**CHICAGO TITLE INSURANCE COMPANY**

Countersigned

A handwritten signature in black ink, appearing to read "J.P. Kissling", is written over a horizontal line. The signature is stylized and cursive.

J.P. Kissling, Authorized Signatory

jb/03-22-02

me'

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF WASHINGTON  
Southern DIVISION

**FILED IN THE**  
**U. S. DISTRICT COURT**  
Eastern Dist. of Washington

DEC 6 - 1949

**A. A. LAFRAMBOISE, Clerk**

NO. 312 *Phas* Deputy

**AFFIDAVIT OF SERVICE**

UNITED STATES OF AMERICA, )  
 )  
 Petitioner, )  
 )  
 v. )  
 Ahtanum Irrigation District, a corp. et al. )  
 )  
 Defendants. )

STATE OF WASHINGTON )  
 ) SS  
 COUNTY OF SPOKANE )

Elywn L. Daniel, being first  
duly sworn, on oath deposes and says: That affiant is and at  
all times hereinafter mentioned was a duly qualified Deputy  
United States Marshal in the Eastern District of Washington, a  
citizen of the United States of America, over 21 years of age,  
competent to be a witness in the above entitled action and not  
a party thereto.

That affiant served the ~~Notaricand~~ <sup>& Complaint</sup> Summons in the  
above entitled action upon each of the following named defend-  
ants upon the date and at the place hereinafter set forth opp-  
osite their respective names by delivering to each of them  
personally a true copy of said ~~Notaricand~~ <sup>& Complaint</sup> Summons & Complaint

Reproduced at the National Archives and Records Administration - Pacific-Alaska Region (Seattle)

<u>Defendant</u>	<u>Date of Service</u>	<u>Place of Service</u>
Cascade Lumber Co, a corp. by serving Stephen Moser, the Secretary.	10-27-49	Yakima, Wash.
Simonne F. Sauve, a widow	10-27-49	" " 307 N. 8th.
Clair Van Eaton, a spinster,	10-27-49	" " 601 S. 3rd.
Hazel Seward	10-27-49	606 S. 2nd. Yakima,
Maude L. Losey	10-27-49	1216 S. Broadway, Yakima.
Rose A. Xany Deymonaz	10-27-49	902 S. 4th. Yakima
Bernice E. Epperson	10-27-49	704 S. 4th. Ave. Yakima
Gwyn F. Alexander	10-27-49	311 W. Spruce Yakima
Toletta M. Herberger	10-27-49	102 S. 8th. Ave. Yakima
Ethel M. Cook	10-27-49	303 Crescent, Yakima
Union Oil Company of California, a corp. by serving J. B. Darlow, the Dist. Mgr.	10-27-49	102 W. North, Yakima
H. A. Richmond	10-27-49	609 S. 15th. Ave. Yakima
H. C. Detloff	10-27-49	410 S. 16th. Ave. Yakima
Maggie Wakin	10-27-49	914-19th. Ave S. Yakima
Bernice Kolkman	10-27-49	613 S. 17th. Ave, Yakima
Kenneth E. Bracy	10-27-49	2 mi. sw Yakima
Eugene S. Loop	10-27-49	2 mi. sw Yakima
Lay Borton	10-29-49	222 S. 24th Ave. Yakima
Harry K. Holtzinger	10-29-49	418 S. 25th. Ave. Yakima
Fay Schreiner	10-29-49	1 mile S. Yakima
Stanley E. Cox	10-29-49	2 miles S. Yakima
Made Langell	10-29-49	3 mi. S. Yakima
Esther Langell	10-29-49	" "
Ear Maica	10-29-49	4 mi. S. Yakima
Lou Maica	10-29-49	" "
John C. Schreiner	10-29-49	2 mi. sw Yakima

WIN Ex. 371

mef

That affiant served the ~~Notarized~~ <sup>& Complaint</sup> Summons in the above entitled action upon each of the following named defendants, personally, by leaving for each of such defendants a true copy of said ~~Notarized~~ <sup>& Complaint</sup> Summons at his or her usual place of abode with a person of suitable age and discretion then resident therein, the defendants so served being then absent therefrom. That each of the defendants so served was at the time of such service a resident of the State of Washington. That the date and place of each of such services and the name of the person with whom a true copy of the ~~Notarized~~ <sup>& Complaint</sup> Summons was served is hereinafter set forth opposite the name of each defendant so served.

Reproduced at the National Archives and Records Administration, Pacific Alaska Region (Seattle)

<u>Defendant</u>	<u>Date of Service</u>	<u>Place of Service</u>	<u>Left With</u>
C. E. Jones	10-27-49	Union Gap	Elsie Jones, Wife.
A. Seward	10-27-49	606 S. 2nd. Yakima	Hazel Seward, wife
Harold T. Armstrong	10-27-49	111 N. 4th. Yakima	Genevieve Armstrong, wife
J. Deymonaz	10-27-49	902 S. 4th. Ave. Yakima,	Rose A. Deymonaz, wife
H. Epperson	10-27-49	704 S. 4th. Ave. "	Hernige E. Epperson, wife
C. Cope	10-27-49	306 S. 10th. Ave. "	Rose Cope, wife
Opal Alexander	10-27-49	311 W. Spruce "	Gwyn F. Alexander, wife
Joseph C. Herberger	10-27-49	1028 S. 8th. Ave. "	Toletta Herberger, wife
Cloyd L. Cook	10-27-49	303 Crescent "	Ethel M. Cook, wife
Gerald E. Thompson	10-27-49	108 N. 3rd. Ave. "	Cecil Shelton, brother-in-law.
Hazel M. Thompson	10-27-49	" " " "	Cecil Shelton, brother
Harry J. Herring	10-27-49	613 S. 20th. Ave. "	Gladys Herring, daughter
Vyonne A. Herring	10-27-49	" " " " "	" " " "
Da Makin	10-27-49	914 S. 19th. Ave. "	Maggie Makin, wife
Fr Kolkman	10-27-49	613 S. 17th. Ave. "	Bernice Kolkman, wife
Jean E. Loop	10-27-49	2 mi. SW Yakima	Eugene S. Loop, husband.
Theodore R. Reich, a bachelor (now a married man)	10-29-49	3005 W. Chestnut	Elsie Reich, wife.
B.S. Borton	10-29-49	222 S. 24th. Ave. "	May Borton, wife.
Mrs. William F. Morgan	10-29-49	1112 S. 19th. Ave. "	William F. Morgan, husband
E.S. Velikanje	10-29-49	1416 S. 16th. " "	Louise Velikanje, wife
Leroy Schreiner	10-29-49	1 mi. S. Yakima	Fay Schreiner, wife
Irene Cox	10-29-49	2 mi. S. "	Stanley E. Cox, husband

*Edmund P. Daniel*  
 Deputy United States Marshal for the Eastern District of Washington

SUBSCRIBED and SWORN to before me this 5 day of December 1949.

*F. L. Colly*  
 Deputy Clerk, United States District Court, Eastern District of Washington

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
SOUTHERN DIVISION

1  
2  
3 UNITED STATES OF AMERICA,  
4  
5 Plaintiff,  
6  
7 v.  
8 AHTANUM IRRIGATION DISTRICT,  
9 a corporation, et al.,  
10  
11 Defendants.

No. 312

ORDER TO DROP AND INCLUDE  
ADDITIONAL PARTIES DEFENDANT

This matter coming on before the Court for hearing this 14<sup>th</sup> day of  
October 1949, the Court being fully advised in the premises, hav-  
ing read the motion of Harvey Erickson, United States Attorney, and it appearing  
to the satisfaction of the Court that the following defendants are either deceased  
or no longer have any interest in the lands involved in this suit and therefore  
should be dropped from the rolls of parties defendant herein:

CLASS I.

17 Estate of Charles P. Allen  
18 Estate of Sarah J. Bankerd  
19 Gertrude A. Besancon  
20 Albert E. Blair and Zoa G. Elair  
21 Charles Boez and Barbara Boez  
22 Charles Boez and Barbara Boez  
23 Mrs. Cecil Bozett  
24 Charlie Buttler and Georgia Mae Buttler  
25 William Carpenter and Minnie Carpenter  
26 Charles T. Chambers  
27 Gertrude Clark and Emery Clark  
28 Glasen Fruit and Cold Storage Company, a partnership  
29 Irven Collings and Marie Collings  
30 Vince Collings  
31 John S. Cowdrey and Edna L. Cowdrey, brother and sister  
32 G. H. Cox and Elizabeth Cox  
L. H. Crocker and Marie Crocker  
Purdy B. Crosne  
Bertha O. Draper  
Charles Druse, a widower  
Nettie G. Eakin  
Frank Eglin and Lulu M. Eglin  
Joe Essert and Eva Essert  
Daniel Fauth  
Frank Frazier, a bachelor  
Joseph Gabrinski and Florence Gabrinski  
Orpha Gharet  
Curtiss R. Gilbert and Anne S. Gilbert  
Elon J. Gilbert and John S. Gilbert  
Jack Goff  
Reinhart Gohl

FILED IN THE  
U. S. DISTRICT COURT  
Eastern Dist. of Washington

OCT 14 1949

A. A. LaFRAMBOISE, Clerk

Thomas L. Lemay, Deputy

Approved for Release by NSA on 05-08-2013 pursuant to E.O. 13526

- 1 E. Dale Gordon and Anita A. Gordon
- 2 Joe Grabinski and Florence Grabinski
- 3 W. I. Graham and Edna M. Graham
- 4 Emma C. Grissom
- 5 R. A. Gruhn and Carrie Gruhn
- 6 Kenneth Haines and Ida Haines
- 7 Dorothy Hammer and George Hammer
- 8 Frances S. Hansen
- 9 Jack C. Hansen, a bachelor
- 10 Wesley H. Hansen and Clara G. Hansen
- 11 Vernon A. Harrison and Robina W. Harrison
- 12 William Hause and Emma Hause
- 13 Florence Haupt
- 14 Walter T. Hill and Elizabeth M. Hill
- 15 Ray Johnson, a bachelor
- 16 Elwood Kellner and Etta Kellner
- 17 Bernhardt Kempf and Lydia Kempf
- 18 Estelle Lansing
- 19 John H. Lapp and Emma Lapp
- 20 Russel W. Larson
- 21 Myrtle Leitch
- 22 L. E. Loker
- 23 Agnes Lusby
- 24 Dennis Lusby
- 25 J. W. Lusby
- 26 William Henry Lusby
- 27 Andrew Maier and Marie Maier
- 28 E. B. Mayfield and Ethel L. Mayfield
- 29 George C. Mayfield, a bachelor
- 30 Frank Mayfield and Norma Mayfield
- 31 Alice G. Meeker
- 32 Harry C. Moffett and Laurett M. Moffett
- 33 Alvie Mondor and Olga Mondor
- 34 Carl Thomas Morton and Lorie Gean Morton
- 35 Edna Munson
- 36 Elmond M. Murley and Nellie S. Murley
- 37 Ralph N. Nowery, a bachelor
- 38 Maude Paschke
- 39 Floyd L. Paschke
- 40 Arlyn D. Paschke
- 41 Donald G. Paschke
- 42 C. D. Wirt, guardian of Donald G. Paschke
- 43 B. F. Payton and Maudie Payton
- 44 Milton L. Pier
- 45 Ralph Ray, a single man
- 46 Karl E. Remick and Annie M. Remick
- 47 Marcus A. Rettig and Hazel Rettig
- 48 John F. Reynolds
- 49 Edith Richwine
- 50 Mary Riemens
- 51 Lester Robel and Angela Mary Robel
- 52 Harley D. Roberts and Mayme Roberts
- 53 Ardilla G. Robinson
- 54 Irvin H. Rosenkranz and Margaret E. Rosenkranz
- 55 Adam Schlecht, a widower
- 56 Bertha Schneider, a widow
- 57 J. W. Schrader
- 58 Lester Frederick Schrader
- 59 J. G. Schwarzer
- 60 Asa W. Schwartze
- 61 Henry Schwartz
- 62 James H. Searles and wife

1 Paul A. Shawver and Agatha S. Shawver  
2 David F. Smith and Elizabeth V. Smith  
3 Duane Smith  
4 Grover C. Sterling and Muriel Sterling  
5 Walter N. Steward and wife  
6 Flossie M. Still  
7 Hattie E. Taylor, a widow  
8 L. W. Taylor  
9 Charles S. Tyler, Administrator of estate of Frank Leroy Roberts  
10 Clyde Wallace and Abigail Wallace  
11 George T. Ward and Maude Ward  
12 W. O. Warren and Letthe Warren  
13 Emerson E. Waters  
14 Lowell E. Webber and Minnie B. Webber  
15 Charles T. Webber and Clara N. Webber  
16 Stanley L. Withers and Ellen V. Withers  
17 Lillian Woodcock, executrix of estate of Marion F. Woodcock  
18 Maggie Worrell  
19 Thomas Worrell

20 CLASS II

21 Gilbert, Inc.,  
22 Richey and Gilbert Company, a corporation  
23 John Reese, James J. Wiley, Roy Nicklos, George Ward, Floyd Willard, W. R.  
24 Haupt, Lou Palmer, as Trustees of the Wiley City Recreational Club  
25 Yakima Suburban Orchard Company, a corporation  
26 Allied Building Credits, Inc.,  
27 Spokane Breweries, Inc.,

28 CLASS III

29 Joseph Bak  
30 Byron E. Borton  
31 Byron S. Borton  
32 John Richard Borton  
33 Anna Bradley  
34 Cascade Independent Loan Company  
35 Stanley E. Cox and Lillian Cox  
36 Wade Langell  
37 James F. Morton and Edna T. Morton  
38 Leroy J. Schreiner  
39 S. H. Schreiner  
40 Roy M. West and Mary E. West  
41 Yakima Investment Corporation

42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

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  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

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  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428

- 1 ✓ William B. Armstrong  
George H. Ashbaugh and Mary Ashbaugh
- 2 Cecil B. Aston and Oris C. Aston
- 3 ✓ Elizabeth Aumiller, executrix of the estate of W. J. Aumiller, deceased  
✓ Alice L. Austin
- 4 Ray E. Babcock and Gladys O. Babcock
- 5 Joseph D. Bak and Annie Bak  
Thomas Bates and Beulah Bates
- 6 Thomas E. Bates and Beulah A. Bates
- 7 Fred Batt and June Marie Batt  
R. H. Bayly and Violet Bayly
- 8 Ralph E. Bland and Wanema Bland
- 9 Rollah G. Bliss and Anna P. Bliss
- 10 ✓ Charles Boaz, a bachelor
- 11 Hildegard Boehler
- 12 James G. Bogle and Florence B. Bogle
- 13 James A. Bowers and Dorothy M. Bowers
- 14 W. W. Boyd and Bardena Boyd
- 15 Kenneth E. Braoy
- 16 Harold D. Brinkley and Norma Nell Brinkley
- 17 Harry Bronkhorst and Lillian Bronkhorst
- 18 Joseph P. Brumbaugh and Helen F. Brumbaugh
- 19 ✓ C. G. Bunker and Anna Luella Bunker
- 20 Leland B. Campbell, Jr., and Betty Jean Campbell
- 21 Wilbur G. Campbell and Jeannette M. Campbell
- 22 Herbert O. Carlson and Dorothy M. Carlson
- 23 ✓ Herman Catron and Frances Catron
- 24 ✓ Andrew Chong and Clara J. Chong
- 25 Sadie F. Collings, Administratrix of estate of Vince Collings
- 26 Cloyd L. Cook and Ethel M. Cook
- 27 W. C. Cope
- 28 Purdy B. Crosno and Benna Crosno
- 29 M. G. David and Evelyn Fern David
- 30 Lena Davis, a widow
- 31 Robert J. Day and Doris Day
- 32 H. C. Detloff
- 33 F. J. Deymonaz and Rose A. Deymonaz
- 34 Claude Eokland and Ida Jane Eokland
- 35 J. H. Epperson and Bernice E. Epperson
- 36 Eva Essert, a widow
- 37 Arthur Estes and Juanita Estes
- 38 Ernest W. Estes and Helen B. Estes
- 39 Phillip Fauth, as guardian of estate of Filipena Fauth
- 40 John Finley and Clara Finley
- 41 D. W. Frame and Helen Frame
- 42 Frank Frazier and Bonnie Frazier
- 43 Murney French
- 44 Sylvester Fuchs and Grace Fuchs
- 45 A. L. Fullbright and Georgia Fullbright
- 46 Alonzo T. Fulton and Damsel Fulton
- 47 Thurston Lewis Gardner and Elvera Rose Gardner
- 48 W. E. Garrison
- 49 Harvey Gharet and Orpha Gharet
- 50 Anne S. Gilbert, executrix of estate of Curtiss R. Gilbert
- 51 Frank Glaspey and Jane Doe Glaspey
- 52 Stewart N. Glenn and Grace M. Glenn
- 53 Lorena Marguerite Gordon Gohl
- 54 Robert Roy Goldsmith and Bessie L. Goldsmith
- 55 Stella Goldsmith
- 56 Alden Frederick Gordon
- 57 Kenneth William Gordon
- 58 William E. Gordon, A widower

1 Jennie H. Gulland  
Marguerite L. Hackett

2 George Hammer and Dorothy Hammer  
Claire G. Hansen

3 J. C. Hansen  
Jack C. Hansen and Marjorie Hansen

4 Robert J. Hanses  
Kenneth Haynes and Ida Haynes

5 Harold B. Hazen and Irene Hazen  
Thomas Hazen and Alta Hazen

6 Joseph C. Herberger and Toletta M. Herberger  
Joe Herke and Rose Herke

7 Harry J. Herring and Vyonne A. Herring  
Everett L. Herron and Rhoda E. Herron

8 R. A. Hess and Mildred A. Hess  
Charles E. Hewitt, a widower

9 Martin Hinderlie, a widower  
Albertina Hinsz, a widow

10 Robert C. Hootor and Helen A. Hootor  
Harry K. Holtzinger

11 Ernst Huber and Mina Huber  
Alfred Hughes and Florence Hughes

12 Byron B. Hugill and Deloris J. Hugill  
Roland L. Hunter and Louise Hunter

13 Clyde Jagger and Irene Jagger  
Charley F. Jenkins and Bernice Jenkins

14 C. B. Jones  
Herbert Jones and Wilma Jones

15 Terry H. Jones and Kathryn F. Jones  
C. E. Judd and Nona Judd

16 Roy Knox and Alma Knox  
Victor G. Kohls and Violet M. Kohls

17 Fred J. Kolkman and Bernice Kolkman  
Frank L. Konop and Durine Konop

18 August Kramlich and Annette Kramlich  
Wade Langell

19 Walter W. Laton and Pauline E. Laton  
Homer F. Lee

20 John Liniger and Anna S. Liniger  
Tola E. Livingston

21 Eugene S. Loop and Jean M. Loop  
A. W. Losey and Maude L. Losey

22 Martin Lowery and Emma Lowery  
R. L. McDougall and Vera McDougall

23 Ronald L. McDougall, Jr., and Mary O. McDougall  
Earle McKissick and Sylvia McKissick

24 James W. Marshall and Adelyne Marshall  
Frank Mayfield and Norma Mayfield

25 Mary Phoebe Mayfield, a widow  
William Meyer and Ilah Meyer

26 Ralph A. Miller  
Shirley Mondor and Nadine Mondor

27 Vernie Mondor and Dorothy Mondor  
Christian Naasz and Emma Naasz

28 Charley G. Orndorff and Delia Hazel Orndorff  
Lloyd E. Paige and Nina B. Paige

29 D. F. Pankey, a single man  
David E. Pattison and Margaret Pattison

30 Maudie L. Payton, administratrix of estate of B. F. Payton  
Bessie Pier, administratrix of estate of Milton L. Pier

31 J. R. Pittmann and Ruth E. Pittmann  
William E. Quinn and Gladys C. Quinn

32

- 1 Francis A. Ray and Anna M. Ray  
Ralph Ray and Jane Doe Ray
- 2 Walter S. Reames and Frances Reames  
Theodore R. Reich, a bachelor
- 3 Donald Rennie and Lorena L. Rennie  
H. A. Richmond
- 4 ✓ H. F. Richmond and wife  
Joel Richwine and Edith Richwina
- 5 Adam William Riedlinger  
Catherine Riemens
- 6 Walter C. Roberts and Selma Roberts  
Walter J. Robinson, Jr., and Kathryn E. Robinson
- 7 Fred Robinson and Mildred Robinson  
Lester E. Roy and Harriett E. Roy
- 8 L. H. Sanford and Ruby M. Sanford  
Simonne F. Sauve, a widow
- 9 James William Schrader and Mollie Schrader  
Chester D. Schwartz and Ruth Ball, executors of estate of Asa W. Schwartz
- 10 O. A. Seward and Hazel Seward  
John Shiley and Mayme Shiley
- 11 William C. Simpson and Sylvia Moore Simpson  
Elizabeth V. Smith, a widow
- 12 Peder Solem and Clara Adele Solem  
J. E. Squire and Winifred Squire
- 13 George St. Mary and Bessie St. Mary  
John St. Mary
- 14 Henry Steffan and Christina Steffan  
William Steffan and Esther Steffan
- 15 Barton Stevenson and Kathryne Stevenson  
Gordon K. Stewart and Marian F. Stewart
- 16 ✓ Walter N. Stewart  
Flossie M. Still and Clifford L. Still
- 17 Kurt Tabert and Louise Tabert  
Walter E. Tate and M. Rosemary Tate
- 18 Lillian Woodcock, administratrix of estate of Hattie E. Taylor  
L. W. Taylor
- 19 George M. Teague and Delia Teagus  
Joseph M. Thome and Joye E. Thome
- 20 Gerald E. Thompson and Hazel M. Thompson  
Charlie D. Tolbert and Mae Tolbert
- 21 John Torson and Geneva Torson  
✓ Charles Traub and Dessie Traub
- 22 Florence Tucker  
E. B. Velikanje
- 23 Claire Van Eaton, a spinster  
David Wakin and Maggie Wakin
- 24 Jerald L. Walker and Luella M. Walker  
Arlean R. Warren
- 25 T. E. Wayman and Juanita Wayman  
Franklin A. Weed and Ruth E. Weed
- 26 Albert P. Wegge and Dorothy Wegge  
Charles J. Wegge
- 27 Cecile R. Weston and Dorothy A. Weston  
Henry Wetzel and Alma Wetzel
- 28 I. L. Whitaker and Beatrice Whitaker  
Hiram E. White and Dorothy Ruth White
- 29 Martin Will and Magdalene Will  
William F. Willard and Esther Willard
- 30 James A. Winkler, a bachelor  
Rudolph Wittmeier and Edna Wittmeier
- 31 Etha Henderson Woodcock, a widow  
L. C. Woolsey and Nora B. Woolsey
- 32 Thomas Worrell and Alice Worrell  
✓ M. P. Yoerger and Jewell G. Yoerger

CLASS II.

1 Ahtanum Grange No. 352  
Ahtanum Valley School District No. 127, a municipal corporation  
2 Robert J. Day, Donald Wetzel, Trustees of Don Barton Post, The American Legion  
Cascade Lumber Company, a corporation  
3 Federal Farm Mortgage Corporation  
First Loan and Investment Company, a corporation  
4 Johncox Ditch Company, a corporation  
Miocene Petroleum Company, a corporation  
5 National Public Service Insurance Company  
Seattle, First National Bank  
6 Standard Oil Company of California, a corporation  
The City of Yakima, Washington, a municipal corporation  
7 Union Oil Company of California  
Yakima County

CLASS III

8  
9 J. D. Bak and Annie Bak  
10 Joseph D. Bak and Annie Bak  
E. S. Borton and May Borton  
11 Byron E. Borton and Leone M. Borton  
John Richard Borton and Veda Borton  
12 J. R. Borton and Veda Borton  
Sadie P. Collings, Administratrix of the estate of Vince Collings  
13 Vincent Collings  
W. C. Cope  
14 Stanley E. Cox and Irene Cox  
Walter Davis and Ilene E. Davis  
15 Federal Land Bank  
M. J. Freimuth and Eva J. Freimuth  
16 A. L. Fullbright  
Harry Jamaica and Lois Jamaica  
17 Ronald C. Kissling and Margaret Kissling  
Ronald Kissling and Margaret Louise Kissling  
18 Wilfred A. Knight and Alice Knight  
Heirs of Lorena Langell  
19 Wade Langell and Esther Langell  
W. J. Leggate and Blanche L. Leggate  
20 Mrs. William F. Morgan  
Edna T. Morgan (formerly Edna T. Morton) and Frank Morgan  
21 Earl T. Morton  
David Patterson and Martie Patterson  
22 John C. Schreiner and Emily Jane Schreiner  
Leroy Schreiner and Fay Schreiner  
23 Mark Schreiner and Betty Schreiner  
S. H. Schreiner and Emma D. Schreiner  
24 Steve H. Schreiner and Emma D. Schreiner  
R. B. Shewmaker and Florence Shewmaker  
25 Louis J. Vetsch and Beatrice Vetsch  
Mrs. Clyde Wallace  
26 Franklin A. Weed and Ruth E. Weed

27 It is, by the Court,

28 ORDERED, ADJUDGED AND DECREED that the above named defendants be dropped  
29 and that the above named successors in interest to the rights of said defendants  
30 be included herein as parties defendant.

31 DATED this 14<sup>th</sup> day of October, 1949

32 Presented by:

Lawrence Erickson  
United States Attorney

James O. [Signature]  
United States District Judge