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**F** U L L E T T E R S  
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KIM M. EATON, YAKIMA COUNTY CLERK

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

IN THE MATTER OF THE DETERMINATION )  
OF THE RIGHTS TO THE USE OF THE )  
SURFACE WATERS OF THE YAKIMA )  
DRAINAGE BASIN, IN ACCORDANCE WITH )  
THE PROVISION OF CHAPTER 90.03 )  
REVISED CODE OF WASHINGTON, )  
THE STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
Plaintiff, )  
v. )  
JAMES J. ACQUAVELLA, et al, )  
Defendants. )

NO. 77-2-01484-5

ADDITIONAL ORDER RE:  
LIMITING AGREEMENTS  
(CASCADE IRRIGATION  
DISTRICT, ELLENSBURG  
WATER COMPANY, AND  
WEST SIDE IRRIGATING  
COMPANY)

THIS MATTER duly came on for hearing before the Honorable Walter A. Stauffacher, the Judge to whom the above-captioned matter has been permanently assigned, who considered all the affidavits, exhibits, legal memoranda, and arguments of counsel representing the Cascade Irrigation District, West Side Irrigating Company, Union Gap Irrigation District, Yakima Valley Canal Company, Columbia Irrigation District, Ellensburg Water Company, Pacific Power & Light Company, the United States, and the State of Washington Department of Ecology, and thereupon entered upon the 14th day of October, 1993, his Order Re: Limiting Agreements, which by its terms did

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1 not apply to and was not intended to pertain to interpretation of the limiting agreements  
2 of Cascade Irrigation District, Ellensburg Water Company, or West Side Irrigating  
3 Company (herein sometimes the "Water Suppliers"). Subsequently, Pacific Power &  
4 Light Company moved for reconsideration by the court of the Order entered October 14,  
5 1993. The court further heard the argument of counsel on that motion and being duly  
6 informed, entered its Amended Order Re: Limiting Agreements dated January 3, 1994,  
7 which also did not apply to the Water Suppliers.  
8

9 In the meantime, motions had been filed by the Water Suppliers for reconsideration  
10 by the Court of its Memorandum Opinion: Limiting Agreements filed herein June  
11 16, 1993. The Water Suppliers were permitted by the court to submit additional factual  
12 and legal arguments to enable the court to reconsider and clarify its opinion. Briefs and  
13 evidentiary materials were submitted by the Water Suppliers, the United States and the  
14 Washington State Department of Ecology. Reconsideration of the Memorandum Opinion  
15 filed June 16, 1993, as aforesaid, came on for hearing before the Court on March 10,  
16 1994, the Water suppliers, the United States, and the Washington State Department of  
17 Ecology appeared by and through their attorneys of record, and other major claimants  
18 were given due notice and an opportunity to be heard. The court heard the argument  
19 of counsel and is now fully advised in the premises and FINDS AND ORDERS that:  
20  
21

22  
23 WHEREAS, the success of the Yakima Reclamation Project (hereinafter referred  
24 to as "Project") hinges on the limitation and definition of their appropriations from the  
25 Yakima River and its tributaries by a majority of the pre-Project users in order to  
26 provide storage water; and  
27

28 WHEREAS, in order to avoid litigation, to encourage storage, and to secure the  
29 benefits derived from increased irrigation, 51 pre-Project diverters voluntarily agreed,  
30 in 1905 and 1906 or later, to limit their respective rights of appropriation to certain  
31 maximum monthly quantifies established in most cases at an amount actually diverted  
32 in August 1905, which quantities when added to 650 c.f.s. limited to the Washington  
33  
34

1 Irrigation Company and 147 c.f.s. limited to the Yakama Indian Nation totalled nearly  
2 1,900 c.f.s., which agreements are commonly referred to as "limiting agreements"; and

3 WHEREAS, the subject matter and objective of the limiting agreements was to  
4 assure the United States of a sufficient water supply to facilitate further irrigation  
5 development of the Yakima River basin while providing a reasonable expectation of  
6 repayment from the water users for the cost and maintenance of the Yakima  
7 Reclamation Project and also to resolve disputes between the pre-Project water users;  
8 and  
9

10 WHEREAS, not all return flows in the Kittitas basin can be characterized as  
11 "Project return flows." Many upper basin water rights are natural flow rights (belonging  
12 to major claimants, as well as individuals) and not created by the efforts of the United  
13 States; and  
14

15 WHEREAS, the waters diverted to Kittitas Reclamation District and return flows  
16 created pursuant thereto are ~~foreign~~ <sup>Project</sup> return flows; and <sup>was</sup>

17 WHEREAS, no evidence has been presented by any party to persuade the court  
18 that Project return flows were considered at the time of the making of the limiting agree-  
19 ments, and the Court finds that rights and uses of return flows are not governed by  
20 those agreements; and  
21

22 WHEREAS, the United States has not abandoned or forfeited its rights to Project  
23 return flows, but in allowing Cascade Irrigation District, Ellensburg Water Company,  
24 and West Side Irrigating Company to use this water before it eventually ran into the  
25 Yakima River, the United States was making a distribution decision as to water in which  
26 it still retained rights; and  
27

28 WHEREAS, the United States retains the right to make a different distribution  
29 system by way of modification in the Kittitas Reclamation District delivery system or  
30 some other upgradient delivery system change in an effort to make a second or further  
31 use of the water on Project lands within the Yakima basin.

32 WHEREAS, accordingly, Cascade Irrigation District, Ellensburg Water Company,  
33 and West Side Irrigating Company as downstream users have no right to compel  
34

1 continued <sup>Availability</sup> ~~abandonment~~ in the future or to control stream utilization of the water  
2 creating the return flows; and

3 WHEREAS, return flows from non-Project sources are also used by some or all of  
4 Cascade Irrigation District, Ellensburg Water Company, and West Side Irrigating  
5 Company; and

6  
7 WHEREAS, the United States withdrawal pursuant to what is now RCW  
8 90.40.030 does not apply to non-Project return flows because they are only subject to  
9 right of recapture and not appropriation.

10  
11 IT IS NOW ORDERED AND ADJUDGED that:

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13 1. The limiting agreements, being free from ambiguity are binding on the  
14 respective successors in interest to the original signatories, including Cascade Irrigation  
15 District, Ellensburg Water Company, and West Side Irrigating Company.

16  
17 2. The limiting agreements limit diversion from the natural flow of the Yakima  
18 River, including, where applicable, water courses tributary to the Yakima River, during  
19 the months stated in each respective agreement regardless of the condition of the river  
20 or other sources of water in the basin.

21  
22 3. The United States/Bureau of Reclamation has not voluntarily, intentionally,  
23 or implicitly waived, nor is it estopped to assert any rights it may have under the  
24 limiting agreements to limit Cascade Irrigation District, Ellensburg Water Company, and  
25 West Side Irrigating Company, or any of them, to the diversions set out in each  
26 agreement from natural flows of water in the Yakima River basin.

27  
28 4. The United States cannot charge Project return flows captured by Cascade  
29 Irrigation District, Ellensburg Water Company, and West Side Irrigating Company  
30 against their limiting agreements.

31  
32 5. Neither Cascade Irrigation District, Ellensburg Water Company, nor West  
33 Side Irrigating Company have any right that return flows from upgradient irrigation  
34 should become available to them in the future as they have in the past. The United  
States retains the right to make a different distribution decision by way of modification

1 in the Kittitas Reclamation District delivery system or some other upgradient delivery  
2 system change in an effort to make a second or further use of the water on Project lands  
3 within the Yakima basin.

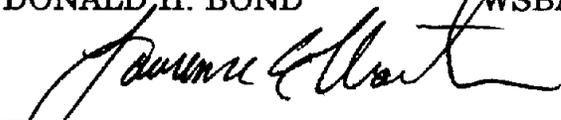
4 6. Return flows other than Project return flows may be captured and used by  
5 Cascade Irrigation District, Ellensburg Water Company, and West Side Irrigating  
6 Company, or any of them, so long as they are available, but said Water Users are not  
7 entitled to an award of a specific water right in any such return flows.  
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9  
10 DONE IN OPEN COURT this 12<sup>th</sup> day of May, 1994.  
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13 \_\_\_\_\_  
14 JUDGE WALTER A. STAUFFACHER

15 Presented by:

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17 \_\_\_\_\_  
18 DONALD H. BOND WSBA #3215  
19

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21 \_\_\_\_\_  
22 LAWRENCE E. MARTIN WSBA #18743  
23 Halverson & Applegate, P.S.  
24 Attorneys for Ellensburg Water Company  
and West Side Irrigating Company

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