

Western States Adjudication Conference
October 9, 2006

Legal Principles – Fruits of the Yakima River Basin Adjudication



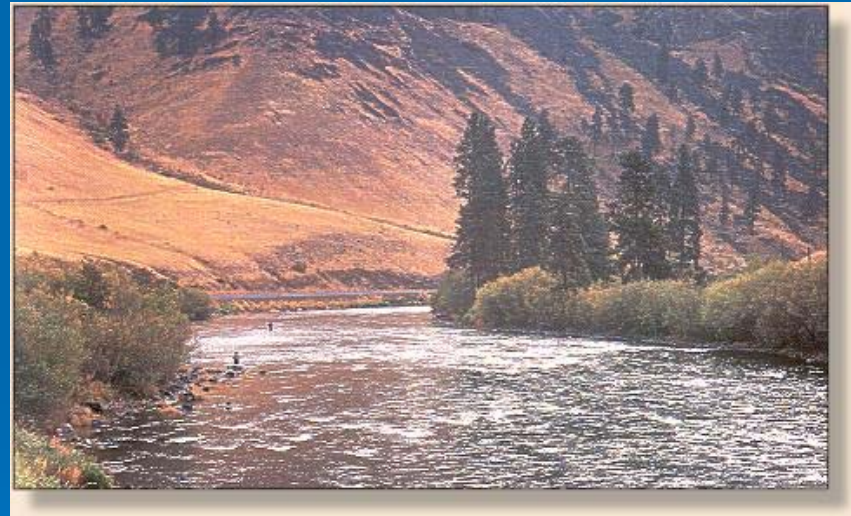
By: Alan Reichman, Assistant Attorney General
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Washington

WHY ADJUDICATE?

- Period of “soul searching” in Washington related to present adjudication -- and potential future adjudications.
- *Acquavella* is winding down.
- Possible adjudications for Spokane and Colville Basins being considered.

WHY ADJUDICATE?

- Need to justify *Acquavella* in Legislature in light of long length of case and budgetary demands.
- Need to tout benefits of *Acquavella* to justify future adjudications needed to clarify water rights in basins throughout Washington.



WHY DID ACQUAVELLA START IN THE FIRST PLACE?

- Filed in 1977 in race to courthouse when U.S. threatened to sue in federal court on behalf of Yakama Nation.
- Tension from drought of 1977.
- Remanded by federal court back to state court in 1979.

BENEFITS OF ADJUDICATING YAKIMA BASIN WATER RIGHTS

- Approximately 4,000 surface water claims, serving 40,000 landowners. Some claims adjudicated in 1920s, and many never determined.
- Yakima River and tributaries key to economy, culture, and recreation in basin.



BENEFITS OF ADJUDICATING YAKIMA BASIN WATER RIGHTS

- Yakima County ranked 5th in U.S. in total agricultural production.
- Nearly half of U.S. apple production, 75% of hops, and 73% of mint.
- 60 kinds of fruit and vegetables, seed, grain, forage, and specialty crops.
- Salmon and steelhead important for culture and recreation.

STATUS OF ACQUAVELLA: CLOSE BUT NOT QUITE THERE YET

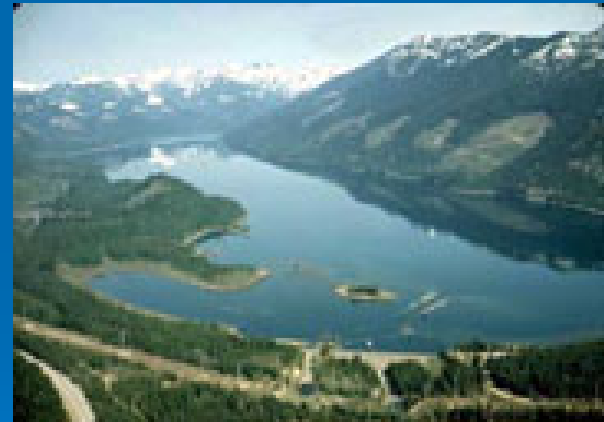
- CFOs for 29 out of 31 Major Claimants. Need CFO for rights of U.S. BOR.
- CFOs for 28 out of 31 Subbasins.
- Hearing in October 2006 on features of final decree and final steps.

STATUS OF *ACQUAVELLA*: WHAT HAVE WE GAINED?

- CFOs clarify validity of vast majority of basin's surface water rights.
- Determination of federal reserved rights of Yakama Nation. Most other Indian reserved rights in Washington are unquantified, leaving uncertainty.

STATUS OF ACQUAVELLA: WHAT HAVE WE GAINED?

- Workable system for delivery of water in Yakima Project.
- Burgeoning market for water right transfers, e.g. Suncadia Resort.
- Case law applicable throughout state and for future adjudications.



Acquavella I, Wash. Supreme Ct. 674 P.2d 160 (1983)

ISSUE:

In a general adjudication, does the Due Process Clause require service of process on all individual water users -- or can process be served on irrigation districts and other water distributing entities?

Acquavella I, Wash. Supreme Ct. 674 P.2d 160 (1983)

- Adjudication procedures require service of summons on all those, known and unknown, claiming water rights.
- Ecology personally served all those with claims forms, permits, and certificates.
- Summons was published in local newspapers.
- SVID contended that all water users had to be served.

Acquavella I, Wash. Supreme Ct. 674 P.2d 160 (1983)

HOLDING:

- Court acknowledged that individual landowners hold water rights based on their beneficial use.
- In large-scale adjudication, due process is met by service of process on irrigation districts and other entities providing water under contract. There is an identity of interest between them similar to a trustee-beneficiary relationship.
- In smaller-scale adjudication, service on individual water users might be required.

Acquavella II, Wash. Supreme Ct. 850 P.2d 1306 (1993)

ISSUES:

- Did trial court properly quantify federal reserved rights held by Yakama Nation?
- Were the Yakama Nation's water rights reduced as a result of prior actions involving the federal government, including settlement of the Nation's damages claim in the Indian Claims Commission?

***Acquavella II*, Wash. Supreme Ct. 850 P.2d 1306 (1993)**

- Court applied *Winters* Doctrine to determine reserved water rights of Yakama Nation based on its 1855 Treaty with the U.S.
- Under *Winters*, Court found that irrigation and fishing were primary purposes of the Reservation created under the Treaty.
- Court had to determine whether Nation's rights for irrigation and fishing purposes were reduced due to actions involving federal government.

Acquavella II, Wash. Supreme Ct. 850 P.2d 1306 (1993)

HOLDING:

- Nation's settlement of claim for damages to fishing rights constituted acknowledgement that its reserved right to instream flows for fish were diminished.
- Nation is entitled to "minimum instream flow necessary to maintain anadromous fish life in river, according to annual prevailing conditions." Priority date of right is "time immemorial."

***Acquavella II*, Wash. Supreme Ct. 850 P.2d 1306 (1993)**

- Trial court's confirmation of Nation's water rights for irrigation purposes was affirmed.
- Nation's reserved water rights for irrigation were determined in a Congressional Act in 1914, and were further determined in federal court in 1945.

Acquavella III,
Washington Supreme Court
935 P.2d 595 (1997)

ISSUES:

- Can an irrigation district's water right be quantified based on its contracts with BOR or its canal capacity, or must it be based on actual beneficial use of water?
- Should the place of use of an irrigation district's water right be based on "irrigable" or "irrigated" acres of land?

Acquavella III,
Washington Supreme Court
935 P.2d 595 (1997)

HOLDING:

- All water rights, including those held by irrigation districts in federal project, must be quantified based on actual use -- and not based on contracts with BOR or system capacity.
- YTID claim remanded to trial court for 2-step analysis: 1) what quantity was perfected based on actual use?, and 2) was any perfected quantity lost through statutory relinquishment or common law abandonment?

Acquavella III,
Washington Supreme Court
935 P.2d 595 (1997)

- Place of use for right of irrigation district in federal project can be based on irrigable acres. Water right is appurtenant to all irrigable acres within district, and not just those that were actually irrigated. A reasonable use analysis must be based on number of acres actually irrigated.

Acquavella IV,
Washington Court of Appeals
51 P.3d 800 (2002)

ISSUES:

- Did *res judicata* bar U.S. Timberland's claim to water when the right sought was not asserted or awarded in an earlier adjudication of the Teanaway River?
- Did *res judicata* not apply because the earlier Teanaway River adjudication only covered irrigation claims and did not include claims to water for timber management purposes?

Acquavella IV, Washington Court of Appeals 51 P.3d 800 (2002)

HOLDING:

- *Res judicata* applied and U.S. Timberland's claim was properly denied because their predecessor never asserted a water right claim in the earlier Teanaway River adjudication.
- The court documents demonstrated that the earlier adjudication covered claims to water for all purposes of use.
- It did not matter that U.S. Timberlands and its predecessors had made beneficial use of water for its timber operations.

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