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

JAN 15 1979

J. R. FALLQUIST, Clerk
Deputy

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

IN THE MATTER OF THE DETERMINATION OF THE RIGHTS TO THE USE OF THE SURFACE RIGHTS OF THE YAKIMA RIVER DRAINAGE BASIN, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 90.03 OF THE REVISED CODE OF WASHINGTON	No. C-77-347
THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff, -vs- JAMES J. ACQUAVELLA, et al, Defendants.	MEMORANDUM AND ORDER

This matter having come on regularly for hearing before the Court upon the motion of the State of Washington (Department of Ecology) for an order remanding these proceedings to the Superior Court of the State of Washington in and for Yakima County, and the Court having considered the briefs and arguments of the parties, and it appearing to the Court:

1. That this is a water adjudication proceeding commenced by the State of Washington (Department of Ecology) pursuant to Chapter 90.03, Revised Code of Washington, to adjudicate the rights to the use of surface waters in the Yakima River Basin in south central Washington state.

2. That a water adjudication proceeding is sui

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generis in that all the named defendants are in effect involuntary parties plaintiff, and each has an interest adverse to every other party; therefore, the usual requirement that all named defendants join the petition for removal does not apply.

3. That this action was nevertheless removed "improvidently and without jurisdiction" within the meaning of 28 U.S.C. §1447(c), because the McCarran Amendment, 43 U.S.C. §555, as interpreted in Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976), evidences a Congressional policy favoring state courts for resolution of water adjudication cases; this policy would be defeated if the United States could invariably remove such cases under 28 U.S.C. §1441(a); therefore the McCarran Amendment constitutes an Act of Congress which "expressly provide[s] [otherwise]" within the meaning of 28 U.S.C. §1441(a). Wherefore, it is

ORDERED, ADJUDGED AND DECREED that the motion of the State of Washington (Department of Ecology) to remand these proceedings to state court be, and it hereby is, GRANTED, and this case is remanded to the Superior Court for the State of Washington for Yakima County. A certified copy of this Order, together with the file herein, shall be transmitted by the Clerk of this Court to the Clerk of the Superior Court of the State of Washington for Yakima County.

DONE BY THE COURT this 12th day of January, 1979.

United States District Judge

Entered in Civil Docket on 1/15/79

ATTEST: A True Copy,
J. R. FALLQUIST, Clerk,
United States District Court,
Eastern District of Washington

By Dorothy Duffy
Deputy Clerk

FPI-SS-12-8-76

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT 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 OF THE REVISED CODE OF WASHINGTON,	
THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff,	No. C-77-347
v.	ORDER OF REMAND TO STATE COURT
JAMES J. ACQUAVELLA, et al., Defendants.	

This matter was heard on the 18th day of September, 1978, on the motion of plaintiff State of Washington, Department of Ecology, to remand this case to Yakima County Superior Court. Having considered the motion, the records and the files of this case, the provisions of 28 U.S.C. § 1441(a) and (b) and 28 U.S.C. § 1447, as well as the McCarran Amendment, 43 U.S.C. § 666, embodying the specific Congressional policy of allowing general adjudications of water rights to be conducted in state court, and being aware of the provisions of the decree entered by this Court in 1945 in Kittitas Irrigation District v. Sunnyside Valley Irrigation District, Civil No. 21, it appears to this Court that the case was removed improvidently and without jurisdiction and should therefore be remanded to state court.

EXHIBIT A

IT IS THEREFORE ORDERED that plaintiff's motion to remand is granted and this case hereby is remanded to the Superior Court of the State of Washington for Yakima County and that a certified copy of this Order be mailed by the Clerk of this Court to the Clerk of the Superior Court of the State of Washington for Yakima County.

DATED this _____ day of _____, 197__.

_____
MARSHALL A. NEILL
United States District Judge

Presented by:

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT 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 OF THE REVISED CODE OF WASHINGTON,	
THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff,	No. C-77-347
v.	AFFIDAVIT OF MAILING
JAMES J. ACQUAVELLA, et al., Defendants.	

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

SUSAN CLINTON, being first duly sworn on oath, deposes and says:

That she is a secretary in the legal division of the Department of Ecology, that on the 3rd day of January, 1979, she duly forwarded by United States mail, postage prepaid, true and correct copies of the Memorandum of the Department of Ecology Regarding Entry of Order of Remand to the people listed on the attached distribution list, the addresses listed being the

last known post office addresses of the people.

Susan Clinton
SUSAN CLINTON

SUBSCRIBED AND SWORN TO before me this 3rd day of January, 1979.

Virginia M. Bath
NOTARY PUBLIC, in and for the State of Washington, residing at Olympia.

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