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

IN THE MATTER OF THE DETER- )  
MINATION OF THE RIGHTS TO THE )  
USE OF THE SURFACE WATERS OF THE )  
YAKIMA RIVER DRAINAGE BASIN, IN )  
ACCORDANCE WITH THE PROVISIONS OF )  
CHAPTER 90.03 REVISED CODE OF )  
WASHINGTON, )  
THE STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
Plaintiff, )  
vs. )  
JAMES J. ACQUAVELLA, et al, )  
Defendants. )

NO. 77-2-01484-5

SUPPLEMENTAL MEMORANDUM OPINION  
RE: MOTION TO DISMISS (SUNNYSIDE  
VALLEY IRRIGATION DISTRICT) AND  
MOTION FOR DETERMINATION OF  
JURISDICTION AND ORDER FOR JOINDER  
OF NECESSARY PARTIES (UNION GAP  
IRRIGATION DISTRICT AND YAKIMA  
VALLEY CANAL CO.)

The motions in this matter were initially argued to the Court on November 12, 1981. Thereafter, on February 16, 1982, this Court filed its Memorandum Opinion concerning these motions. Presentation of an Order to confirm the findings of the Court in such Memorandum Opinion was scheduled for April 13, 1982. On that date, however, Sunnyside Valley Irrigation District filed a memorandum and presented oral argument, with others, to the effect that the Court had not considered joining water users of pre-Yakima Reclamation Project vested water rights. Subsequently, a letter memorandum on this point was filed jointly by the Union Gap Irrigation District and the Yakima Valley Canal Co. The U. S. Justice Department also filed a memorandum.

Initially, the Court will correct an error in the recitation of facts contained on page 4 of the original Memorandum Opinion, as

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2 pointed out by the Justice Department. In attempting to paraphrase  
3 the affidavit of Robert M. Sweeney (Exh. 36) the Court incorrectly  
4 stated:

5 "However, the United States, in diverting water  
6 through the Yakima Project and the Wapato Project  
7 states it does not purport to represent all the  
8 individual interest of irrigators whose lands are  
9 held in trust by the U. S."

10 The exact statement, as contained in that affidavit  
11 referred to, is as follows:

12 "The United States diverts water, or permits the  
13 diversion of water, for other than its sole use,  
14 through the Yakima Reclamation Project ("the Yakima  
15 Project") and the Wapato Indian Irrigation Project  
16 ("the Wapato Project"). By claiming water for  
17 those projects, the United States does not purport  
18 to represent all the individual interests of all  
19 irrigators who use Yakima Project or Wapato Project  
20 water. The only individual irrigators represented  
21 by the United States in this matter are those Indians  
22 whose lands are held in trust by the United States."

23 This distinction, however, does not affect the ultimate  
24 import of the Court's Memorandum Opinion.

25 The Court would further agree that all claimants similarly  
26 situated must, and shall, be treated consistently, as requested  
27 by the Union Gap Irrigation District (UGID) and Yakima Valley Canal  
28 Co. (YVCC). It is interesting to note that the UGID and YVCC  
29 mention the Fowler Ditch Company. The first claim of water right  
30 for that entity appears to have been filed in 1880 by C. V. Fowler.  
The history of the passing of these early water rights claims down  
to present day water suppliers is set forth in Lentz, page 15  
(Exh. 1). In point of fact, a great many of the pre-Yakima Project  
water claims, and their passage to and inclusion in the present  
diverter/suppliers claims, are contained throughout the Lentz Review.  
The Court was intimately aware of, and considered, these pre-Yakima

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2 Project water claims in the Memorandum Opinion.

3 This Court totally disagrees with the initial premise  
4 contained in the brief of the Sunnyside Valley Irrigation District  
5 (SVID) which reads as follows:

6 "The Court determined that although the individual  
7 landowner-water users have vested property water  
8 rights, the Bureau of Reclamation, irrigation districts  
9 and other diverter-appropriators obtained some rights  
10 with respect to the water they divert and deliver to  
11 the users. The Court apparently based its conclusion  
12 on the assumption the Bureau of Reclamation or irri-  
13 gation districts were the original appropriators,  
14 under state law, of the water applied to beneficial  
15 use by the landowners. See: United States v. Tilley,  
16 124 F.2d 850, 857, 861 (8 Cir. 1942)."

17 As noted above, the Court did not, and does not, assume  
18 that the named diverter/deliverers were actually the original  
19 appropriators. Quite the contrary. The Lentz Review (Exh. 1)  
20 clearly demonstrates otherwise. Lawrence v. Southard, 192 Wash. 287,  
21 at page 291, clearly indicates that the water rights therein in-  
22 volved were first appropriated in April of 1891 and then were  
23 thereafter merged into the Sunnyside Division of the Yakima  
24 Project. In all probability, this erroneous conclusion by SVID  
25 was precipitated by the indiscriminate use, by the Court on page  
26 15 of the Memorandum Opinion, of the word "appropriator", where the  
27 Court said: "Thus, we see that the diverter/appropriator/deliverers  
28 retain the right to bring action, on behalf of the users, to prevent  
29 others from taking water which belongs to the appropriators and  
30 their users." It would have been much more concise for the Court  
to have said: "Thus, we see that the diverter/deliverers retain the  
right to bring action, on behalf of all their water users, to  
prevent others from taking water which belongs to their users and is  
delivered through their system." That was the intent of the Court.

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2 Notice also that the Court, in speaking of the "rights" of the  
3 diverter/deliverer was speaking in terms of the "right" to represent  
4 their water users to whom they deliver water. United States v.  
5 Tilley, supra. This is completely different from the "water rights"  
6 claimed for itself by the distributing entity in Alexander v. Central  
7 Oregon Irrigation District, 528 Pac.2d 582, cited by the U.S. and  
8 is thus distinguishable.

9           As indicated in the original Memorandum Opinion, those  
10 water users whose original appropriations predated the Yakima and  
11 Wapato Project and which have been, by contract, etc., merged into  
12 successor diverters/deliverer entities from whom they solely obtain  
13 all of their water are covered by the proviso in RCW 90.03.120 and  
14 the order of this Court entered June 5, 1981. They are, therefore,  
15 not "necessary parties" and personal service on each of such water  
16 users is not required.

17           In this regard, the U.S. argues that the Court must inquire  
18 into the inter-relationship between pre-Project users, the present  
19 diverter/deliverers and other users under or within those entities to  
20 determine if there may be some conflict between the various water  
21 users within a district. It appears to the Court that this could  
22 only be done concisely by investigating each of the claims filed  
23 herein by each delivering entity. This process will actually occur  
24 during the adjudication.

25           In response to the number of questions posed by the U.S.  
26 on page 3 of its brief, the Court would allude to the authorities  
27 cited in its original Memorandum Opinion and answer those questions  
28 as follows. Firstly, it is the duty of the Court, through the  
29 referee (RCW 90.03.160 et seq.) to analyze and quantify and qualify  
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2 each water right claim. In this regard, (using SVID as an example  
3 of a diverter/deliverer) the SVID, in its representative capacity,  
4 must present to the referee and the Court all of the evidence  
5 establishing all of the water rights to all of the water they are  
6 required, by contract or otherwise, to deliver. The unique  
7 characteristics of each of the claims of appropriation and beneficial  
8 use, whether they be of pre-Project or post-Project appropriations,  
9 must be included in the proof of the claims presented by the SVID.  
10 If any water user does not feel that their claim is being adequately  
11 presented by SVID, they are entitled to intervene and present their  
12 own evidence to the referee or the Court. Upon proper presentation  
13 of the evidence, the question of whether the rights of any water  
14 users are adverse to the rights of other users within the SVID  
15 (i.e., pre-Project appropriations as to post-Project appropriations,  
16 etc.) is for the ultimate determination by the Court after receipt  
17 of the report of the referee. (RCW 90.03.200). Whatever charges,  
18 assessments or construction costs that may be charged by SVID are  
19 not part of this action, except insofar as they may be evidence of  
20 the time of appropriation; this action is to quantify and qualify  
21 the specific rights to water. If individual claims, as opposed  
22 to the SVID claim filed herein, have been filed by a pre-Project  
23 appropriator or their successor in interest, that claim can, and  
24 will be, assessed by the referee and the Court and handled, according  
25 to the evidence, as any other duplication of claims will be handled,  
26 if indeed it is a duplication.

27 We turn now to the other question posed by SVID, to-wit,  
28 the joinder of persons who have a claim of pre-Project appropriation  
29 and the beneficial use thereof who do not obtain all of their water  
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2 from one of the diverter/deliverer entities. I agree that, as to  
3 those appropriations, the water user is not in privity with the  
4 districts and they are "necessary parties" to this action. They  
5 had previously been required to have a certificate or permit to  
6 divert surface waters under RCW 90.03 or file a claim pursuant to  
7 the Water Claims Registration Act of 1967, RCW 90.14. According to  
8 the JIS computer, the DOE named 6,416 defendants in this action as  
9 persons holding these certificates, permits or had filed claims  
10 under RCW 90.14. The DOE served them as required by the provisions  
11 of RCW 90.03.130. They were specifically notified by paragraph 2  
12 of the order of June 5, 1981 that they must individually file their  
13 own claims. Approximately 4290 known persons or entities were  
14 served with a copy of this Court order. As indicated on page 3 of  
15 the original Memorandum Opinion, there have been publications in all  
16 of the major newspapers in the area. There has been an enormous  
17 amount of publicity in this matter. At least one claim has been  
18 filed from as far away as West Germany.

19 To now require each of the diverting/delivering entities  
20 to comb their records to ascertain if there might be a pre-Project  
21 appropriator who does not receive all of his water from that entity  
22 within the district is totally impractical, time consuming and  
23 extremely costly. It is impossible for the DOE to guarantee that  
24 each person falling into this subject category has been personally  
25 served. Due process in this general adjudication does not require  
26 overcoming this impossible and impractical obstacle. See Mullane  
27 v. Central Bank and Trust Co., 339 U.S. 306 and Olympia Forest  
28 Products, Inc. v. Chausee Corporation, 82 Wn.2d 418 as mentioned on  
29 pages 20 and 21 of the original Memorandum Opinion.  
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2 In addition, if there are any unserved pre-Project  
3 appropriators whose claim is not covered by another entity and who  
4 later either appears or becomes known to the referee or the Court,  
5 during the 10, 15 or 20-year duration of this adjudication, such  
6 persons may be joined herein pursuant to CR 19 or CR 20 or may  
7 intervene herein under CR 24.

8 Therefore, the Court reiterates its conclusions contained  
9 on page 28 and 29 of the original opinion. In addition thereto,  
10 the Court holds that all reasonable steps to serve and join all  
11 "necessary parties", including pre-Project appropriators not covered  
12 by other entity claims, have been taken and that all necessary  
13 parties are now before the Court.

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15 DATED this 24<sup>th</sup> day of June, 1982.

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18 Walter Stauffer  
19 JUDGE