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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
YAKIMA COUNTY

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 WASHINGTON,)

No. 77-2-01484-5

ORDER RE: RES JUDICATA
MOTIONS

THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiffs,

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.

~~SEP 6 1985~~

This matter comes before the Court in the context of motions filed by various defendants pertaining to the "res judicata" effects of various decrees, entered by various state and federal courts, relating to claims to water rights appurtenant to surface waters of the Yakima River Drainage Basin. The motions relate, in part, to the decree of January 31, 1945 entered in the Kittitas Reclamation District, et al. v. Sunnyside Valley Irrigation District, et al., Civil No. 21, United States District Court, Eastern District of Washington. The defendants filing motions pertaining to this decree include Prosser Irrigation

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District and City of Prosser (both represented by Dwight A. Halstead), Sunnyside Valley Irrigation District (represented by Charles C. Flower), Yakima-Tieton Valley Canal Company, Union Gap Irrigation District, Yakima-Tieton Irrigation District (all represented by Donald H. Bond) and Naches-Selah Irrigation District (represented by Robert M. Leadon). The remaining nine motions, filed by Wenas Irrigation District and Scott Baird, et al. (represented by James P. Hutton) Westside Irrigating Company (represented by by Richard A. Lemargie), Manastash Ditch Company and Teanum Ditch Company (represented by H. K. Dano), Frank W. Phelps (represented by Douglas D. Peters), C. James Lust, et al. (represented by C. James Lust), John I. Haas, Inc. and Robert L. Mondor (represented by Thomas A. Dietzen), request this court to affirm either (1) previous court judgments concerning water rights between the parties thereto; or (2) water certificates or storage water permits issued by the plaintiff, Department of Ecology (or one of its predecessor agencies). This Court, having read the briefs and memorandums filed herein, heard oral argument and being otherwise fully advised, reaches the following findings and conclusions:

1. This proceeding is not in a proper posture for this Court to make a definitive ruling on the motions now before it.

2. This Court has previously referred this case to a Referee, by Order dated July 6, 1984, to receive evidence and prepare a report for submission to this Court as provided in RCW 90.03.160.

1 3. Any definitive rulings on the motions now before it are
2 deferred pending the receipt of evidence and a report of
3 recommendations from the Referee.

4 4. The following general rules are noted as ones which may
5 be considered by the Court and the Referee as this case is
6 processed further.

7 A. As to the water right claims related to the nine motions
8 before the Court, noted above:

9 (1) Those claims which are impacted by "pre-1917" decrees
10 and judgments shall be governed by RCW 90.03.170 and the evidence
11 produced at the hearing conducted by the Referee (as said
12 evidence may possibly affect the preclusiveness of any such
13 decrees and judgements).

14 (2) Those claims which are impacted by "post-1917" decrees
15 and judgments shall be assessed in view of the doctrine of res
16 judicata and the evidence produced at the hearing conducted by the
17 Referee (as said evidence may possibly affect the preclusiveness
18 of any such decrees or judgments).

19 B. As to the water right claims related to the motions
20 involving the decree entered on January 31, 1945 ("1945 Decree")
21 in Kittitas Reclamation District, et al. v. Sunnyside Valley Irriga-
22 tion District, et al., noted above:

23 (1) This Court need not defer to the federal courts for
24 interpretation of the 1945 decree, although this Court is bound
25 by prior federal decisions upon the same issues.

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1 (2) Although the 1945 decree did not involve a general
2 adjudication, it may bind the parties thereto and be prima facie
3 evidence against those water right claimants in this proceeding
4 who were not parties to the "1945 decree."

5 5. All of the above findings and conclusions, and the
6 general rules for further processing of this proceeding set forth
7 in paragraphs 1 through 4 are underlain by the analysis contained
8 in this Court's Memorandum Opinion: Re Res Judicata Motion, entered
9 by this Court on June 21, 1985.

10 Based on the foregoing

11 IT IS THEREFORE ORDERED that rulings on the motions pending
12 before this Court pertaining to res judicata issues are deferred
13 pending the receipt of evidence and the Referee's recommendations.

14 Entered this 6th day of September, 1985.

15
16 Waltra Stauffer
17 JUDGE

18 Presented by:

19
20 Charles B. Roe, Jr.
21 CHARLES B. ROE, JR.
22 Senior Assistant Attorney General
23 Attorney for Plaintiff
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