FILED

JAN 04 1994

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 RIVER DRAINAGE BASIN, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 90.03, REVISED CODE OF WASHINGTON, STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff, vs. JAMES J. ACQUAVELLA, et al., Defendants.	NO. 77-2-01484-5 AMENDED ORDER RE: LIMITING AGREEMENTS

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 affidavits, exhibits, legal memoranda, and arguments of counsel representing the Cascade Irrigation District, West Side Irrigating Company, Union Gap Irrigating 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 on the 14th day of October, 1993, its Order Re: Limiting Agreements.

This matter having come on for hearing on November 4, 1993, on the Motion of Pacific Power & Light Company for Reconsideration by the court of the foregoing Order, the defendant Pacific Power & Light Company, appearing by and through its attorney of record, and other major claimants having been given due notice and opportunity to be heard, and

8862

the court having heard the argument of counsel and being otherwise duly informed in the premises, finds and ORDERS that:

WHEREAS the success of the Yakima Reclamation Project (hereinafter referred to as "Project") hinges on the majority of the pre-Project users limiting and defining their appropriations from the Yakima River and its tributaries in order to provide storage water, and

WHEREAS, in order to avoid litigation, to encourage storage, and to secure the benefits derived from increased irrigation, 51 pre-Project diverters voluntarily agreed, in 1905 and 1906 or later, to limit their respective rights of appropriation to certain maximum monthly quantities established in most cases at an amount actually diverted in August, 1905, which quantities when added to 650 c.f.s. limited to the Washington Irrigation Company and 147 c.f.s. limited to the Yakima Indian Nation totalled nearly 1,900 c.f.s., which agreements are commonly refereed to as "limiting agreements"; and

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

IT IS NOW ORDERED AND ADJUDGED that:

1. The limiting agreements, being free from ambiguity, are binding on the respective successors-in-interest to the original signatories, including the Columbia Irrigation District, the Union Gap

Irrigation District, and the Yakima Valley Canal Company. Specifically, all appropriation rights under the limiting agreements are limited to the amounts of natural flow set forth in each such agreement.

a. As to the Pacific Power & Light Company, its agreement unambiguously limits its diversion rights to the natural flow of the Naches River to a minimum of 300 c.f.s. and a maximum of 450 c.f.s., if the flow is naturally available and the rights of all prior rights on the river between the headrace and tailrace of the canal belonging to Pacific Power & Light Company are satisfied. In addition, the Pacific Power & Light Company's diversion rights under its limiting agreement includes its contractual obligations owing to Wapatox Ditch Company. The terms and conditions of Pacific Power & Light Company's limiting agreement do not obligate the United States Bureau of Reclamation to provide storage flows at any time. However, when flows are available and senior rights to divert between the headrace and tailrace of the Pacific Power canal are not adversely impacted, the Bureau ~~will~~ may continue to permit the Company to divert non-consumptive flows greater than its rights under it limiting agreement of 300 c.f.s. and 450 c.f.s.

2. The limiting agreements limit diversion from the natural flow of the Yakima River including, where applicable, water courses tributary to the Yakima River as well as all return flows. The limiting

agreements restrict diversions of the successors-in-interest from all sources of water, including all return flows, during the months stated in each respective agreement regardless of the condition of the river or other sources of water in the basin.

The United States/Bureau of Reclamation has not voluntarily, intentionally, or implicitly waived its rights under the agreement to limit the successors-in-interest to the diversions set out in each agreement from all sources of water in the Yakima River basin and, accordingly, the United States/Bureau of Reclamation is not estopped from asserting those rights.

4. At this time, nothing in this Order shall apply to or is intended to pertain to interpretation of the limiting agreements of Cascade Irrigation District, Ellensburg Water Company, or West Side Irrigating Company. As to those limiting agreements, this Court will enter an Order at a later date.

Dated this 3rd day of January, 1994.

Walter A Stauffacher

Judge Walter Stauffacher