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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR YAKIMA COUNTY

3 IN THE MATTER OF THE DETERMINATION)
4 OF THE RIGHTS TO THE USE OF THE)
5 SURFACE WATERS OF THE YAKIMA RIVER)
6 DRAINAGE BASIN, IN ACCORDANCE WITH)
7 THE PROVISIONS OF CHAPTER 90.03,)
8 REVISED CODE OF WASHINGTON,)
9 STATE OF WASHINGTON,)

7 Plaintiff,

8 vs.

9 JAMES J. ACQUAVELLA, et al.,)

10 Defendants.)

FILED
NO. FEB 3 1995

KIM M. EATON, YAKIMA COUNTY CLERK
NO. 77-2-014-5

Memorandum Opinion Re:
Subbasin 6 Exceptions
of Taneum Canal Co. &
Department of Ecology
to Taneum Canal Co.

11 I. INTRODUCTION

12 The Department of Ecology and the Taneum Canal Company
13 (TCC) have excepted to the Referee's determination of the
14 rights for the Taneum Canal Company. The Court makes the
15 following conclusions concerning those exceptions.
16

17 II. OPINION

18 A. Place of Use and Irrigated Acres

19 Ecology excepted to the recommendation that TCC be
20 confirmed a right for the irrigation of 3700 acres and asks
21 that the claim be remanded to take testimony of the place of
22 use regarding the number of acres historically irrigated. TCC
23 contends that Ecology had the opportunity to challenge the
24 evidence presented in that regard at the evidentiary hearing,
25 chose not to do so and should be estopped from doing so at
26 this time.

27 Exceptions of Ecology and
28 Taneum Canal Co.

10,320

1 The exception phase of this proceeding provides all
2 parties an opportunity to challenge the conclusions reached by
3 the Referee and the resulting recommendations to the Court.
4 This opportunity extends to the plaintiff. Upon review of the
5 evidence presented, the Court rules that the service area
6 boundaries as described and depicted on the map submitted as
7 evidence is an adequate place of use description for the TCC
8 right. However, the evidence is not clear concerning the
9 number of acres historically irrigated within the service
10 area. The Engineering Report prepared by Richard C. Bain for
11 TCC and TCC's response to Ecology's exception raises a
12 question as to whether the 3700 acres testified to are the
13 gross acres in the service area or the number of acres
14 historically irrigated.

15 The TCC claim is remanded to allow representatives of the
16 canal company to present testimony and evidence on the number
17 of acres historically irrigated.

18 B. Stock water

19 Ecology excepted to the confirmation of any right to
20 stock water for TCC (Exceptions, p. 2, lines 5 and 6~~X~~). This
21 exception was based upon a failure by TCC to list "stock
22 water", in addition to the word "irrigation", as a purpose of
23 use on the RCW 90.14 claim filed by TCC. Ecology asserts that
24 "Filing of the claim was necessary to protect any right
25 asserted by the claimant." (Lines 11 and 12)

1 RCW 90.14.051 states: "The statement of claim for each
2 right shall include substantially the following: . . . (5)
3 the purpose of use, including, if for irrigation, the number
4 of acres irrigated." TCC attached to its 90.14 claim the
5 Decrees in Tenem I and Tenem II, clearly indicating that the
6 claimed water rights were based upon those cases. The
7 Findings of Fact in both cases indicated ". . . appropriating
8 and using the same for domestic purposes, for stock, for
9 irrigating lands for farming and other agricultural purposes
10 . . ." (Tenem I); ". . . for purposes of irrigation and for
11 stock and domestic uses . . ." (Tenem II). The Court finds
12 that TCC "substantially" complied with the statute and stock
13 water will not be denied to TCC.

14 Ecology further excepted to the Referee's recommendation
15 that a right be confirmed to TCC for stock watering outside
16 the irrigation season and to the instantaneous quantity of
17 water recommended for that purpose. The Court orally denied
18 that exception at the exception hearing.

19 C. Conveyance Loss Quantification

20 TCC excepted to the Referee's recommendation that a
21 specific quantity of water be identified as conveyance loss.
22 The exception seems to presume that by recommending an
23 instantaneous quantity of water specifically for conveyance
24 loss, the Referee is suggesting this is not a beneficial use
25 of the water. That is not the case. The Court recognizes
26 that the custom and historic practice in the Kittitas Valley

1 is to use unlined canals which results in a necessary
2 conveyance loss. The Referee, in the subbasin pathway, has
3 recommended confirming a quantity of water for conveyance loss
4 when the testimony has been sufficient to allow that
5 determination. See Reports of Referee for Subbasins No. 12,
6 16, 19 and 30. TCC in the presentation of its claim included
7 very specific evidence on conveyance loss, which the Referee
8 adopted as part of the recommendation to the Court. TCC has
9 not presented anything that would cause the Court to determine
10 that the Referee erred in confirming a quantity of water for
11 conveyance loss. That exception by TCC is denied.

12 C. Annual Quantity of Water

13 TCC has excepted to the determination by the Referee that
14 its right is limited to 9,620 acre-feet per year. TCC points
15 out that the extent of its right is beneficial use, citing to
16 Neubert v. Tieton Irrigation District, 171 Wn.2d 233, 237, 814
17 P.2d 199 (1991). The Court agrees with that point. TCC
18 presented evidence that it has historically diverted 9,620
19 acre-feet per year during irrigation season. That is the
20 extent of their diversion for beneficial use and the limit to
21 their right. The Court does not find this to be in conflict
22 with the Taneum I and Taneum II cases and denies this
23 exception.

24 D. Taneum Canal Company and Ecology have both excepted
25 to the Referee's determination of the irrigation season for
26 the canal company right. This exception has been remanded to

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the Referee to take additional testimony. The rulings
contained herein shall be incorporated into the Order on
Exceptions for Subbasin No. 6.

Dated this 3rd day of February, 1995.

Walter A. Stauffacher
Judge Walter A. Stauffacher