

Ee

FILED
APR 13 1995

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,)

NO. KIM M. EATON, CLERK
77-2-01484-5

ORDER RE: "FLUSHING FLOWS"

Plaintiff,

vs.

JAMES J. ACQUAVELLA, et al.,

Defendants.

THIS MATTER coming before the Court pursuant to the motion for an order pendente lite requesting the Bureau of Reclamation be enjoined from releasing storage water from the reservoirs serving the Yakima Project for the purpose of aiding the out-migration of anadromous fish smolts. Alternatively, the motion sought an order characterizing "pulse flows" as promoting the "enhancement" of fish life and not the "maintenance" of fish life as directed by this Court's November 29, 1990, partial summary judgment. The motion was filed by Roza Irrigation District and joined by Kennewick Irrigation District, City of Yakima, Naches-Selah Irrigation District and Kittitas Reclamation District.

This Court having considered all memoranda and affidavits filed by interested parties, legal arguments of counsel and documentary evidence as it relates to legal issues arising therein,

10,566

Rza

1 NOW, THEREFORE, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND
2 CONCLUSIONS OF LAW:

3 1. The Yakama Indian Nation's treaty-protected water rights for
4 fishing purposes are senior to the water rights of all other water users
5 in the Yakima River Basin.

6 2. The ~~that~~ majority of the evidence and opinions of the neutral ^{was}
7 scientists demonstrates that flushing flows or pulse flows have a
8 positive influence on smolt outmigration and survival. Such flows were
9 successful in assisting the outmigration of anadromous smolts in the
10 Yakima River during the Spring of 1994.

11 3. The unanimous recommendation of the Yakima River System
12 Operations Advisory Committee was based on their long-term experience
13 with the Yakima River fishery, sound biological principles, and real
14 time biological data.

15 4. The Bureau of Reclamation's Yakima Field Office Manager
16 properly modified the implementation of the Yakima River System
17 Operations Advisory Committee's recommendation based on last minute
18 naturally occurring events.

19 THEREFORE IT IS HEREBY ORDERED:

20 1. The motion to enjoin the Bureau of Reclamation from releasing
21 storage water for "flushing flows" is hereby denied.

22 2. It is hereby reaffirmed and ordered that the Bureau of
23 Reclamation's Yakima Field Office Manager, in consultation with the
24 Yakima River System Operations Advisory Committee, irrigation district
25 and company managers and others, to whom this Court will defer, shall
have the authority to determine and administer the minimum amount of

1 instream flow that is absolutely necessary to maintain fish life in the
2 Yakima River Basin, as indicated in prior rulings of this Court.

3 3. It shall be the responsibility of the Bureau of Reclamation's
4 Yakima Field Office Manager to provide minimum instream flows to
5 maintain all life stages of anadromous fish in the Yakima River Basin,
6 as indicated in prior rulings of this Court.

7 Dated this 13th day of April, 1995.

8
9 Walter A. Stauffacher
10 Honorable Walter A. Stauffacher
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25