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

1 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)
2 THE PROVISIONS OF CHAPTER 90.03,)
REVISED CODE OF WASHINGTON,)
STATE OF WASHINGTON,)
3 DEPARTMENT OF ECOLOGY,)
Plaintiff,)
4 vs.)
JAMES J. ACQUAVELLA, et al.,)
5 Defendants.)

NO. 77-2-01484-5

MEMORANDUM OPINION RE:
COURT CLAIM NO. 11942 -
EDWIN E. SPAULDING, JR. &
LINDA ANN NORTH -
SUBBASIN NO. 30

FILED
MAY 27 1997

KIM M. EATON, YAKIMA COUNTY CLERK

6 Background

7 Claim No. 11942 has been filed for the Two Bar A Ranch, presently
8 owned by Edwin E. Spaulding, Jr. And Linda Ann North, husband and
9 wife, who basically acquired the Ranch in February of 1991. It was
10 originally thought that the claim was for eight springs possibly
11 located in Subbasins 26, 28 and 30. It was later determined that two
12 of the springs are in Subbasin 26 and those will be dealt with by the
13 Referee in his Report for that Subbasin. None were found to be in
14 Subbasin 28. This Opinion deals only with the six springs that are in
Subbasin 30.

1 The evidentiary hearings for Subbasin 30 were held by the Referee
on July 25 to 28, 1988. No adjudication claim for the Two Bar A Ranch
2 or it's then owner had been filed at that time. The Referee's Report,
Volume 6, was issued April 24, 1990 and hearings on Exceptions to that
3 Report were held March 6 and April 11, 1991. The Supplemental Report
was issued May 28, 1991 and the Conditional Final Order on Subbasin 30
4 was entered March 12, 1992 (Document No. 7083).

After the adjudication claim was filed, the claimants appeared
5 and presented evidence and testimony at the evidentiary hearing for
Subbasin 26, on October 23, 1996. At that hearing, they also
6 presented their evidence and testimony pertaining to the six springs
located in Subbasin 30, requesting that, in essence, the Subbasin 30
7 hearings be re-opened. The Department of Ecology objected as to these
six claims in Subbasin 30. On December 12, 1996, the Court held a
8 hearing as to whether the "late claim" by the owners of Two Bar A
Ranch for Subbasin 30 should be allowed. At the request of the
9 claimants, the Court agreed to review the evidence presented for the
springs in Subbasin 30 and then issue this opinion.

10 Evidence

Pursuant to the Water Right Claims Registration Act (R.C.W.
11 90.14), Water Right Claims (WRC) were filed in 1974 for each of six
12

1 springs in Subbasin 30. The WRC's for each of the springs are
2 numbered 97023 through 97028. Linda North testified to measuring and
3 quantifying each spring, (transcript, p. 137), and Defense Exhibits 38
4 through 43 were admitted. The pertinent evidence is as follows:

<u>WRC No.</u>	<u>Water Quantity Flow</u>	<u>Spring Location</u>
4 97023	.016 cfs - 12 A/F year	SE ¼ of Sec. 28, Twp 12, Range 23
97024	.011 cfs - 8 A/F year	NW ¼ of Sec. 32, Twp 12, Range 23
5 97025	.0066 cfs - 4 A/F year	NE ¼ of Sec. 1, Twp 11, Range 23
97026	.011 cfs - 8 A/F year	SE ¼ of Sec. 27, Twp 12, Range 23
6 97027	.0049 cfs - 3 A/F year	NE ¼ of Sec. 2, Twp 11, Range 23
97028	.0088 cfs - 6 A/F year	SE ¼ of Sec. 35, Twp 12, Range 23

7
8 The Ranch Properties in Range 23 approximate about 11,000 acres.
9 With only one exception, all of the water from the other springs is
10 used solely for stock water and also for large herds of deer and elk
11 along with chukars (transcript p. 133-134). The exception is the
12 spring covered by WRC No. 97023 which provides water for domestic use,
13 as the sole source of water for the house and corrals as well as the
14 grass around the house (transcript p. 137). Throughout the area there
are a number of undeveloped seeps which flow out after a rainfall

1 (transcript p. 142). Attached to Defense Exhibits 38 through 43 are
2 photographs of each of the six springs, which photos portray how the
3 springs have been developed so that the waters therefrom can be piped
4 to and retained in water troughs from which the stock and wildlife can
5 drink. It is abundantly clear that none of the springs could ever
6 flow off of the ranch or ever reach any other natural watercourse.

7 The property upon which the springs are located was patented to
8 the Northern Pacific Railroad Company in 1895. In 1897, the Railroad
9 leased the property to Pete Ollivier, who later purchased it by
10 contract in 1901. Ownership has passed through various sheep and
11 cattle ranchers up to the present owners-claimants. Thus, the
12 claimants claim June 30, 1897 as the priority date for all of the
13 springs. All of the springs have been reconditioned and the evidence
14 is that the black pipe, not galvanized, which was dug up had some of
it rotted away and had been in the ground for a very long time
(transcript pp. 145, 146). Thus, it is clear that their springs have
been developed and used from 1897 to the present.

Opinion

10 It is abundantly clear that all of the six springs that the
11 claimants have in Subbasin 30 fall squarely within the previous ruling
12 of this Court in Opinion Re: Exception of Dwayne and Alvina Dormaier
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1 (Claim No. 4706 Re: Subbasin 21) Burbank Creek. (Court Document
8584). Indeed, the evidence here is much clearer and further
2 exemplifies the "Dormaier Opinion".

Here we have six springs, all of which had to be manually
3 developed before they could become useable. In order to utilize any
of the water from them, they have had to be piped to water troughs to
4 hold the water and prevent it from seeping back into the soil. This
is further demonstrated by the almost "de minimus" amounts of water
5 that the springs produce. They are not and cannot be hydrologically
connected to any other water course.

6 As quoted in the "Dormaier Opinion" from 78 Am, Jun 2nd, p. 625:

7 "Where the waters of a spring do not form a
watercourse which leaves the lands upon which
the spring arises, but sinks back into the
8 earth at the spring, spread over the
surrounding land, or flow in a course
9 entirely upon the lands upon which they
arise, disappearing before reaching adjoining
10 lands, the spring is ordinarily regarded as
the exclusive property of the owner of the
11 land on which it is situated, who has all the

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rights incident thereto that one might have
as to any other species of property".

From that quote, the Court ruled, p. 9, ". . . that when water
arises from springs and seeps back into the ground without forming a
stream or leaving the owner's property, than that water is the
exclusive private property of that landowner."

It should be further noted that their springs were all developed
well before 1917, so that the 1917 Water Code does not apply to their
pre-existing private rights. Accordingly, the Court rules that each
of these springs are the private personal property of the claimants.
Therefore, they are not subject to this adjudication and there is no
reason to re-open the hearings on Subbasin 30.

Dated this 27th day of May, 1997.

Walter Stauffer

Judge