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

FILED

JUL 22 2003

KIM M. EATON
YAKIMA COUNTY CLERK

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

STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Plaintiff,)

Memorandum Opinion Re: Willowbrook Farms LLP

vs.)

Court Claim Nos. 00520 & 00569(A)

JAMES J. ACQUAVELLA, ET AL.,)
Defendants)

Subbasin 8 (Thorp)

I. Introduction

Willowbrook Farms LLP (Willowbrook), Claim Nos. 00520 and 00569(A) asked the Court to reopen the record regarding its claim to incorporate Order No. 03WRHQ-5596, issued by the Department of Ecology on June 26, 2003. The Order approved Willowbrook's requested amendment to the place of use under Water Right Claim No. 024277. That Order was the result of a long process undertaken by Willowbrook that started with Ecology, moved to the Pollution Control Hearings Board, then to Kittitas County Superior Court and finally to the Court of Appeals. Division III found in Willowbrook's favor in *Willowbrook Farms v. Dep't of Ecology*, 116 Wn. App. 392 (2003).

The Order, accepted into evidence as DE-S174, expanded the place of use to include the SW1/4 and the SE1/4 of Section 14, T. 18 N., R. 17 E.W.M. (Italics showing the added quarter section). As noted at the hearing, although the RCW 90.14 claim may have been expanded to include 100 acres in those two quarter sections, the Court's previous beneficial use findings may be inconsistent with that total. See *Memorandum Opinion and Order Re: Exceptions to Supplemental Report of Referee Subbasin 8 (Thorp)* dated August 3, 2000. In that decision, the Court indicated that DE - 173 demonstrated irrigation of 5 acres in the SE1/4SE1/4, 25 acres in the SW1/4SE1/4 and 5 acres in the SE1/4SE1/4 of Section 14. See p. 2. However, the Court determined it needed an opportunity to review the entire factual record before issuing a decision. Having now done that, this

1 Opinion comprises the Court's decision on Willowbrook's beneficial use of water from Fogey
2 Creek.

3 **II. ANALYSIS**

4 The fundamental tenet of water law is that the basis, measure and limit of a water right is
5 governed by the doctrine of beneficial use. *Department of Ecology v. Acquavella*, 131 Wn.2d 746
6 (1997). The Court was unable, because of limitations imposed by the original RCW 90.14 claim
7 filed by Mr. Paul Harrel, to quantify a water right from Fogey Creek that represented
8 Willowbrook's maximum beneficial use of water. Water Right Claim No. 024277, as amended,
9 authorizes irrigation of up to 100 acres in the SE1/4 and SW1/4 of Section 14. A review of the
10 record and the Court's prior decision shows that much of the Fogey Creek water is diverted to land
11 in Section 23. The amended 90.14 claim does not register a claim to irrigate those lands and the
12 Court is unable to quantify a right to include irrigation in Section 23. Thus, this analysis consists of
13 an evaluation of the record in regard to beneficial use in the SW1/4 and SE1/4 of Section 14. Much
14 of the aspects of the water right were set forth in the Court's prior opinion at page 6 and those
15 conclusions will not be revisited herein. The Court has used the water duty of 0.02 cfs and 4 acre-
16 feet per acre in quantifying the water right.

17 To reach its decision, the Court has reviewed the evidence submitted at the initial hearing
18 before the Referee and subsequent hearings before the Court, including DE - 27 through 31, DE --
19 S6 through S9, and DE - 173. Those documents demonstrate beneficial use of water in the S1/2 of
20 Section 14. Of particular value are DE - 27, a large map broken into fields by field number, DE -
21 28, the Report prepared by Richard Bain, DE - 29, the Affidavit of Jeff Slothower and DE - 173, an
22 aerial photograph of Willowbrook lands located in Section 14. The record is clear that Fogey Creek
23 water is used on part of Field 16 and all of Fields 21 and 22. However, much of Field 21 is located
24 in Section 23 for which a right cannot be confirmed. Unfortunately, no professional measurements
25 of field sizes were provided. However, the Court reaches the following conclusions based on its
interpretation of the evidence. It appears that the entirety of the SW1/4SE1/4 consisting of 40 acres
is irrigated from Fogey Creek, which includes the eastern portion of Field 16 and a portion of Field
21. In addition, approximately 5 acres in the SE1/4SW1/4 (Field 21) are also irrigated from that
source. Finally, over half of the SE1/4SE1/4 (Field 22) is irrigated from Fogey Creek, consisting of
approximately 25 acres. In total, this Court can confirm a right to irrigate 70 acres within the
SW1/4 and SE1/4 of Section 14, as more particularly set forth below.

1 CLAIMANT NAME: Willowbrook Farms LLP Court Claim No.
2 0520 & (A)0569

3 Source: Fogey Creek

4 Use: Irrigation of 70 acres and Stock water

5 Period of Use: February 1 through October 1

6 Quantity: 1.40 cfs; 280 acre-foot per year

7 Priority Date: June 30, 1876

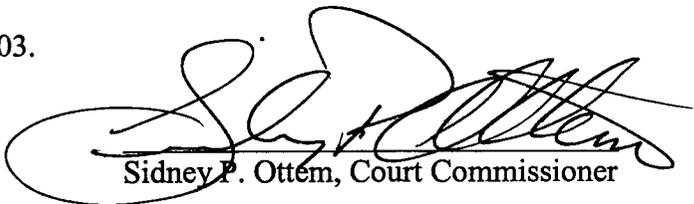
8 Point of Diversion: 2270 feet East and 18 feet North from the SW
9 corner of Section 14, being within the SW1/4
10 of Section 14, T. 18 N., R. 17 E.W.M.

11 Place of Use: The S1/2SE1/4, except that land lying north
12 and east of Thorp Cemetery Road and the
13 E1/2SE1/4SW1/4 of Section 14, T. 18 N., R. 17
14 E.W.M.

15 **III. CONCLUSION**

16 This Opinion resolves all remaining exceptions for Subbasin 8 and a Proposed Conditional
17 Final Order and Notice of Entry is included with this Opinion. However, the Court will consider
18 exceptions to this Opinion, if any, pursuant to the attached Notice of Hearing.

19 Dated this 22nd day of July, 2003.

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21 Sidney P. Ottem, Court Commissioner
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