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YAKIMA, WASHINGTON

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YAKIMA COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
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, v. JAMES J. ACQUAVELLA, et al., Defendants	No. 77-2-01484-5 **ORDER LIMITING POST-1905 DIVERSIONS DURING PERIODS OF WATER SHORTAGE**

THIS MATTER coming before the Court pursuant to the Motion of the Roza Irrigation District to limit the diversions of water from the Yakima River and its tributaries by those parties with a priority date subsequent to May 10, 1905, which Motion has been joined by Kittitas Reclamation District, Kennewick Irrigation District and the Sunnyside Division.

This Court has previously recognized the Total Water Supply Available and the Prorationing provisions contained in Sections 18 and 19 of the Judgment entered in Kittitas Reclamation District, et al v Sunnyside Valley Irrigation District, et al, United States District Court, Eastern District of Washington, Civil 21, on January 31, 1945. The Judgment provides for the

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determination by the United States Bureau of Reclamation of the Total Water Supply Available in the Yakima Basin and, further provides, in times of shortage, after delivery of water to senior non-proratable water users, the proration of the remaining water among the junior proratable water users who share the May 10, 1905 priority date.

It appearing that during periods of water shortages in the Yakima River Basin the Yakima Project's proratable water right holders such as Roza Irrigation District, Kennewick Irrigation District, Sunnyside Division and the Kittitas Reclamation District are likely to receive less than their full water right entitlement.

It further appearing that the Court having previously entered Conditional Final Orders for Roza Irrigation District, Kennewick Irrigation District, Kittitas Reclamation District and the Sunnyside Division establishing priority dates for all or a portion of the Districts diversions as May 10, 1905.

It further appearing that the Court has established through Reports of the Referee and the entry of Conditional Final Orders for some of the subbasins that a number of the parties have a water right with a priority date subsequent to May 10, 1905.

NOW THEREFORE IT IS HEREBY ORDERED that those parties who have water rights to divert water from the Yakima River or its tributaries with a priority date later than May 10, 1905, under the terms of this Order, shall cease diversions of water from the Yakima River or its tributaries after the U. S. Bureau of Reclamation begins storage control for operation of the Yakima Project and releases of water from the storage reservoirs during any period of time when the proratable water users will receive less than their full entitlement and this curtailment shall continue until the end of the irrigation season on October 31.

IT IS FURTHER ORDERED that the Department of Ecology has submitted to the Court a list of diverters who at this time have had their priority dates determined by a Report of the Referee, or the Court Commissioner, or by a Conditional Final Order and those diverters are required to curtail their diversions after the commencement of storage control by the Bureau of Reclamation, unless the party is able to prove that its diversion of water will not limit or diminish the water available for diversion by a more senior water right; provided, however, those diverters whose diversion is noted as non-consumptive on the Department of Ecology list, or whose diversion is for fish propagation listed on Ecology's Temporary SW Permit list, ~~as attached~~, are not required to curtail their diversions as long as the non-consumptive use of water does not limit or diminish the water available to a more senior water right.

IT IS FURTHER ORDERED that parties may use water for emergency firefighting or emergency fire suppression, to the extent the parties do not have other sources or water available for such use, provided that, this shall not be deemed to permit use of water for outdoor irrigation.

IT IS FURTHER ORDERED that Washington State Department of Ecology shall report to the Court and to the parties any diversions it finds which appear to violate this Order and the Department of Ecology or any affected party may ask the Court for an order requiring a party alleged to have violated this Order to show cause why that party's diversion should not be limited as provided in this Order, or may seek other appropriate relief from the Court.

IT IS FURTHER ORDERED that this Order shall only apply to state-law-based water rights outside of the Yakama Reservation.

IT IS FURTHER ORDERED that the interested parties shall meet with Ecology after the 2004 irrigation season to review the implementation of this Order and to report to the Court no later than February1, 2005 with regard to any modifications of this Order for subsequent years.

So ordered this 10th day of June, 2004.

WALTER A. STAUFFACHER, Judge

Presented by
COWAN WALKER, P.S.

By: Thomas A. Cowan
Thomas A. Cowan, WSBA #5079
Attorneys for Roza Irrigation District