Roza

FILED

2005 MAR 10 AM 10 57

KIM M. EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

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 **REVISED ORDER LIMITING POST-1905 DIVERSIONS DURING PERIODS OF WATER SHORTAGE** ~~(PROPOSED)~~ WS

THIS MATTER came 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 was joined by Kittitas Reclamation District, Kennewick Irrigation District and the Sunnyside Division. This Revised Order modifies and replaces the Order Limiting Post-1905 Diversions During Periods of Water Shortage dated June 10, 2004.

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 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 non-proratable water users under the Judgment, for the prorationing of the remaining water among the proratable water users who share the May 10, 1905 priority date.

It appearing that during prorationing in the Yakima River Basin, one or more of the Yakima Project's proratable water right holders receives less than their full water right entitlement.

It further appearing that the Court has previously entered Conditional Final Orders for Roza Irrigation District, Kennewick Irrigation District, Kittitas Reclamation District, the Sunnyside Division and others establishing priority dates for all or a portion of their 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.

It further appearing that the permanent Order Limiting Post-1905 Diversions was initially entered by the Court during the 2004 irrigation season, that the interested parties met with Ecology after the 2004 irrigation season to review the implementation of the Order during 2004, and that Ecology has reported to the Court with regard to modifications of the Order for subsequent prorated years proposed by Ecology and the interested parties.

It further appearing that this Revised Order reflects the modifications proposed to the Court by Ecology and the interested parties.

NOW THEREFORE IT IS HEREBY ORDERED that, in any year in which the U.S. Bureau of Reclamation implements prorationing, those parties who have rights to divert water from the Yakima River or its tributaries with a priority date later than May 10, 1905 shall cease all diversions of water from the Yakima River or its tributaries during the period of time when a proratable water user

receives less than its full entitlement. Curtailment under this Order shall begin on the date on which the U. S. Bureau of Reclamation implements prorationing (i.e., non-voluntary reduction in entitlement for the proratable water rights holders), and shall end on October 31 of that year, or on the date on which the U.S. Bureau of Reclamation ends prorationing, if prior to October 31.

IT IS FURTHER ORDERED that this Order to curtail diversions shall not apply to:

A. Those Post-1905 water rights with points of diversion below the Prosser Dam, (Reclamation gauging station YRPW, river mile 45);

B. Those Post-1905 water rights that have been or are granted an exception to the permanent Order Limiting Post-1905 Diversions by the Court;

C. Those Post-1905 water rights for which the Court determines that the holder has transferred or dedicated sufficient mitigation water rights to eliminate fully any impairment of a senior water right;

D. Those Post-1905 water rights for which the Court determines that the holder has proven that their diversion of water will not limit or diminish the water available for diversion by a more senior water right; or

E. The non-consumptive portion of those Post-1905 water rights and permits for which the Conditional Final Order, certificate or permit designates a non-consumptive purpose of use, such as non-consumptive fish propagation, provided that such non-consumptive use of water does not limit or diminish the water available to a more senior water right; or

F. 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, in any year in which the U.S. Bureau of Reclamation implements prorationing, the Washington State Department of Ecology shall provide notice of

curtailment pursuant to this Order to those Post-1905 water rights holders that are required to curtail diversions, and shall report to the Court and to the parties any diversions it finds that appear to violate this Order.

IT IS FURTHER ORDERED that the Department of Ecology or any other party may ask the Court for an Order to Show Cause requiring a water right holder alleged to have violated this Order to show why that 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, including the exceptions enumerated above, shall not be deemed to limit the right of any party to seek curtailment of any water right upon proof of impairment, nor to seek any remedy available for enforcement or implementation of any water right, including but not limited to any rights in storage or carryover, and the Yakama Nation's Treaty water right for fish.

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

So ordered this 10th day of March, 2005.

Walter A. Stauffacher

WALTER A. STAUFFACHER, Judge

Presented by
COWAN WALKER, P.S.

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