

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

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EXCEPTIONS CLERK OF
SUPERIOR COURT
YAKIMA COUNTY WASH

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,

vs.

JAMES J. ACQUAVELLA, ET AL.,

Defendants

MEMORANDUM OPINION AND ORDER
RE: OBJECTIONS TO PROPOSED
CONDITIONAL FINAL ORDER
SUBBASIN 27
(SATUS)

I. INTRODUCTION

This Court held a hearing March 9, 2006 to consider objections to the *Memorandum Opinion and Order Re: Exceptions to Report of Referee Subbasin 27* dated December 22, 2005 (*Opinion*) and Proposed Conditional Final Order for Subbasin 27. That hearing was continued on March 15, 2006. Objections/comments were timely filed by the Yakama Nation (Claim Nos. 00752, 00753, 07253, 14025A and 14026A), the United States, Satus Meadows (Claim No. 00252 – formerly Satus Gun Club), Melvin E. and Marilene Foster (Claim Nos. 01114, 14101, 14099, 14102 and 1698), the Department of Ecology (Ecology) and the Yakima Reservation Irrigation District. Colleen Kent, a Subbasin No. 25 claimant, also filed an objection in regard to issues in Subbasin No. 27 that are identical to those in Subbasin No. 25. The Court, having been fully advised by the parties through written exceptions and oral argument, makes the following rulings in regard to the Subbasin 27 objections. The Court’s analysis regarding all exceptions relating to the Fosters is set forth in a section under the Fosters’ name below and is applicable to Ms. Kent’s objections.

II. ANALYSIS

a. **United States**

The United States filed a number of exceptions to the *Opinion*. Most of the objections are aimed at the Court’s interpretation of the law in regard to the water rights of the Fosters and will be

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1 considered in the section below pertaining the Fosters' water rights. However, the United States did
2 raise a separate issue as to how ownership of rights deriving from the Yakama Nation would be
3 designated. In the *Opinion*, the Court adopted the request of the Yakama Nation to indicate that
4 rights would be confirmed in the name of the "United States, Bureau of Indian Affairs as trustee for
5 the Yakama Nation and water users within the Wapato-Satus Unit of the Wapato Irrigation Project."
6 The United States asks those rights be confirmed in the name of "The United States, Bureau of
7 Indian Affairs, as trustee for the Yakama Nation and individual Indian allottees, and as owner of
8 water rights to be delivered under contracts with other users within the Wapato-Satus Unit of the
9 Wapato Irrigation Project." The Yakima Reservation Irrigation District (YRID) disagrees with the
10 United States and believes the language used in the *Opinion* is consistent with the language used by
11 the Court in the Conditional Final Order for the Yakama Nation (see CFO dated September 12,
12 1996 at 9-10) as well as the Order on Partial Summary Judgment related to the rights of YRID's
13 members within the Wapato-Satus Unit of the Wapato Irrigation Project. RP at 171.

14 The Court agrees with YRID that this matter has been decided previously in this
15 adjudication and the ownership language in the *Opinion* reflects the law of the case. The United
16 States had its day in court on the issue in 1996 and the issue will not be revisited as the sovereign
17 points to no specific change in the law that would warrant a change in the Court's approach.

18 **b. Satus Meadow -- Claim No. 00252**

19 The Court denied Satus Meadow's exception in its December 22, 2005 *Opinion*. In that
20 decision, the Court found Satus Meadows had failed to provide evidence that Mr. Gunnyon, the
21 Indian allottee, or his successor, Mr. MacCallum, had initially used the water for a deliberate
22 irrigation practice and then modified the use of water to include wildlife considerations. This
23 showing was necessary because previous rulings in this case established the principle that
24 supporting wildlife was not one of the recognized purposes of the treaty between the United States
25 and the Yakama Nation. See *Opinion* at 5-7. The Court also found that the source of water utilized
by Satus was Yakima Project Return flow and that the consistent position of the Court has been to
decline confirming rights to such flows. See *Opinion* at 7. Satus Meadow also filed an objection .

First, no new evidence or argument was provided by Satus Meadow regarding the use of
Project return flow.¹ Therefore a right cannot be confirmed on those grounds. However, Ecology

¹ In fact, Satus Meadow did not appear at the March 9, 2006 hearing. See RP at 174.

1 has asked the Court not to deny the right on the basis that water was used for waterfowl purposes.
2 The agency agrees that irrigation and fisheries were the primary purposes of the reservation as
3 expressed in the treaty, but that analysis only applies for purposes of quantifying the award.
4 Subsequently, the water could be used for any purpose. Those arguments are not inconsistent with
5 the findings of the Court in its *Opinion*² and appear to acknowledge that although a water right may
6 be used for any use, this Court's initial inquiry must include whether the water was used for a
7 primary purpose of the reservation – here irrigation or fishery uses. The Court's position is that
8 consistent with *Walton*, 647 F.2d at 50, there must be evidence of water use by the allottee or
9 his/her immediate successor, and in the case of the Yakama Nation's treaty, that initial use must be
10 for irrigation or fishery purposes. Satus Meadow asserts that Mr. Gunnyon, its allottee predecessor,
11 grazed cattle on the property. See January 24, 2006 Objection. Cattle grazing, in and of itself, does
12 not prove irrigation. Although the Court does not believe it inappropriately applied the law
emanating from *Walton*, it recognizes that for purposes of this claim the merits need not be reached
as to that issue. Thus, the Court will DENY the objection of Satus Meadow.

13 The Court reasserts its position that the wildlife stipulation on pages 3-4 does apply to
14 waterfowl and that Satus Meadow will be included on the list of entities that may use water for that
15 purpose. However, that use is for only naturally occurring sources of water and no actions may be
taken which will result in the artificial ponding of water.

16 **c. Yakama Nation**

17 The Yakama Nation raised four general objections, two of which require rulings. In addition
18 to addressing issues pertaining to the Foster matter, discussed in the section pertaining to the
19 Fosters, the Yakama Nation filed a Late Exception regarding the former Jack Shattuck land (Claim
20 No. 1698) which the Yakama Nation acquired after the initial exceptions hearing. See YIN-365,
21 366. The land in question is known as the "Gardner Place" and is located in the SE¼ and S½NE¼
22 of Section 7 and S½NW¼ of Section 8, T. 9 N., R. 21 E.W.M. The hearing on Claim 1698 was held
23 March 15, 2006. The Nation supplied the testimony of Mr. Tracy Hames and a number of
documents that were all admitted into evidence. See March 15, 2006 RP at page 20.

24 ² The Court stated the following in its *Opinion* at page 6, line 24: "Accordingly, a use of water for wildlife must have
25 been initially perfected as an irrigation use and subsequently changed in order for a right to be confirmed to the Yakama
Nation. In extending the principles applied to the Yakama Nation, *supra*, it is the ruling of this Court that a *Walton*-
based right can only be established through an initial irrigation use by the allottee or the immediate successor." Emphasis in original.

1 The Court last addressed the former Shattuck property in the Report of the Court Re:
2 Subbasin No. 27 dated July 23, 2002. In the discussion on pages 35-36, the Court determined the
3 record at that time was inadequate to confirm a water right with a date of reservation priority. There
4 was no evidence indicating whether the property had been allotted to a Yakama Nation tribal
5 member. Further, consistent with the *Walton* cases, evidence must be supplied to show water was
6 used by the allottee or their immediate successor within a reasonable time and that the use
7 continued. 752 F.2d at 402; Report of the Court Re: Subbasin 27 at 6-7. According to the *Opinion*,
8 the only evidence of use pertained to irrigation in the mid-1960s.

9 The record now shows the land in question was allotted to four different individuals: See-
10 lix-ser Wan-ta (Allotment 1030), Martha Lee (Allotment 2311), Emma E-ah-teen (Allotment 2320)
11 and Hootes-ha Charley (Allotment 2315). See YIN 363 – 364. The evidence also shows the land at
12 issue derived from Indian ownership and the Court must determine if water was put to beneficial
13 use by the allottees or by their successors in a reasonable time. The Court notes there is an
14 Application for Water Right (dated April 10, 1952) for land lying north of Satus Creek that is
15 appurtenant to the S½NE¼ of Section 7. See YIN 367; RP at 10. YIN 366 (title report) does not
16 show any liens and testimony indicates there has been no foreclosure by WIP and the property is
17 still irrigated with WIP water. Thus, a right for six acres in the S½NE¼ of Section 7 is recognized.

18 In terms of Satus Creek water use, it appears water was historically diverted from Shearer
19 Ditch to irrigate about 150 acres. YIN 369, a 1949 aerial photograph, shows the land was well-
20 developed and irrigated at that time. Mr. Hames also testified that he had viewed maps that showed
21 water use about every 10 years. Mr. Hames testified he was familiar with this use beginning in
22 1989 when Mr. Shattuck owned the property. Mr. Shattuck quit irrigating from that source in the
23 early 1990s because he was unable to obtain leases for property directly north of those in question
24 where water was diverted from Satus Creek. The portion of Satus Creek that intersects with Shearer
25 Ditch was severely damaged during floods in the 1996-97 and would take substantial repair work to
be operable. The Yakama Nation now uses wells to irrigate approximately 130 acres.

On November 17, 1999, Mr. Terry Hastings provided testimony regarding the use of Shearer
Ditch for irrigation of the so-called “Gardener Place” lands. Although the record is somewhat
fragmented, the record suggests the land in question was irrigated with Satus Creek flows dating
back to about 1908. RP at 30-31. Mr. Hastings had personal knowledge of water use beginning in
the mid-1960s and confirmed about 141 acres were irrigated. *Walton* rights can be lost by non-

1 Indian successors for nonuse, and this right has not been used since 1992. The Court may look to
2 state law for guidance on water law principles relating to reserved rights but is not bound by them.
3 *Walton*, 752 F.2d 397 (1985). Although Satus water has not been used for many years, the Court
4 finds sufficient reason for that nonuse. Further, water has been used, albeit from a different source.

5 Based on the record, the Court confirms to the Yakama Nation a right with a June 9, 1855
6 priority date to irrigate 130 acres in the SE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 7 and S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 8,
7 T. 9 N., R. 21 E.W.M. Consistent with information set forth in the Report on page 2, the Yakama
8 Nation will be authorized to divert from Satus Creek 2.6 cubic feet per second (.02 cfs per acre) and
9 520 acre-feet during the irrigation season (four acre-feet per acre). The point of diversion shall be
10 1,500 feet south and 500 feet west from the northeast corner of Section 14, being within the
11 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T. 9 N., R. 21 E.W.M. The season of use shall be April 1 through October
12 15. Since the property is now in tribal ownership, it will not be subject to loss for nonuse.

13
14 **d. Department of Ecology**

15 Ecology requests the Court to clarify certain findings in the Report. Those clarifications are
16 set forth in the section that pertains to the specific claimant such as Foster and Satus Meadow.

17 **e. Melvin E. and Marilene Foster (Claim Nos. 01114, 14101, 14099, 14102 and**
18 **1698)**

19 The Fosters filed objections to the Court's *Opinion* in regard to the analysis of the Foster's
20 claims as did the United States, the Yakama Nation, the Department of Ecology and Colleen Kent.
21 The three governments agree that certain prior decisions of this Court resolve the Foster's claim and
22 that much of the argument is superfluous to that issue. The Court frames the issue as follows:

23 *1. Was the issue of appurtenancy/ownership of trust water rights determined in the*
24 *proceedings leading up to the Conditional Final Order entered September 12,*
25 *1996 in regard to the Yakama Nation's claims to on-reservation streams?*

26 The Court notes at the outset that it did analyze this issue in its *Opinion* and that is where
27 this discussion must begin. See *Opinion* at pages 15-16. There the Court found:

28 To reach its own conclusion as to which entity actually owns the water right, the Court
29 begins with an analysis of the 1996 CFO. That order was entered after the Court analyzed
30 the uncontested evidence submitted by the United States on behalf of the Yakama Nation
31 and entered a Report of the Court for the Yakama Indian Nation, dated November 13, 1995
32 and a Supplemental Report of the Court dated June 21, 1996. The focus of the 1996 CFO
33 and the litigation leading up to it only pertained to diversions from the strictly on-reservation

1 creeks – Toppenish, Simcoe and Satus. The CFO is clear it applies to the Yakama Nation.
2 See CFO at 3 (“the final decree shall set forth the following in regards to the Yakama Indian
3 Nation, Court Claim Nos. 2276 and 7253); see also page 8-9 (“The Department of Ecology
4 shall issue a Certificate of Adjudicated Water Right to the United States, in trust for the
5 Yakama Indian Nation as to those water rights from Toppenish, Simcoe and Satus Creek
6 specifically set forth in this Conditional Final Order”). It should be noted the Court does not
7 believe the issue of ownership was raised during those periods.

8 The CFO also describes, beginning on page 4, paragraph 3, the rights that were
9 quantified for the Yakama Nation both in regard to “Future and Idle lands” as well as
10 “Presently irrigated lands” from the three on-reservation creeks. The CFO references
11 numbers of acres and acre-feet for diversion from the various water sources. The CFO
12 incorporated by reference Attachment D and E from the Report. In regard to Future and Idle
13 lands, Attachment D indicates that 13,329 acres in the Satus area would be irrigated by the
14 proposed irrigation plan submitted by the United States. Attachment E shows 387.3 acres of
15 presently irrigated trust and tribal fee lands would continue to be irrigated. The Fosters
16 continue to query whether their lands were included in the presently irrigated category
17 submitted as a part of this claim and where the exhibit is that specifically identifies those
18 lands. The Court was appraised during the October 13, 2004 hearing that Foster’s land was
19 included. However, the Court believes the Foster’s should be allowed to review the exhibit
20 to specifically determine if their trust land was included and orders that it be made available
21 to them.

22 The water rights quantified in the 1996 CFO from Toppenish, Simcoe and Satus
23 Creeks were awarded to the United States, Bureau of Indian Affairs as trustee for the
24 Yakama Indian Nation and no mention is made of the rights of tribal members to use that
25 water. However, the Court believes this was more of a generalization rather than a specific
finding and the Court did note on page 2 of the Report that “YIN claims sufficient water to
irrigate all practicably irrigable lands within the Yakama Indian Reservation owned by or
held in trust for YIN and its members.” The Nation was very clear at the October 13, 2004
hearing the Fosters’ trust lands were included in the 1996 CFO and helped to make up the
land base that formed the basis for the water right. See e.g. October 13, RP at 170-71. Thus,
although there is no question the CFO accords the beneficial ownership of the PIA right
from the creeks to the Yakama Nation, that fact, in and of itself, does not deprive tribal
members of any rights. Therefore, it is necessary to look at the case law and statutes to
determine if they shed any light on this problem.

26 However, the briefing and arguments have been further developed and the Court notes that
27 Ecology, Yakama Nation and United States all seem to agree that at least ownership was decided in
28 the proceedings leading up to and set forth in the September 12, 1996 Conditional Final Order. See
29 March 9, 2006 RP at pages 195-196. In addition to the discussion set forth above, the Court has
30 made decisions on other matters during the course of the adjudication that must be considered in
31 relation to this issue. See January 12, 2006 RP beginning at page 25. The Court has elaborated as to
32 when it will consider reopening matters already encompassed in a Conditional Final Order. This
33 Court recently indicated in regard to a Subbasin 2 matter that it would not reopen a claim already

1 the subject of a Conditional Final Order unless it can be readily established the Court/Referee made
2 a math/clerical error or the right summarized in a schedule of rights is clearly inconsistent with the
3 intention of the Court/Referee as set forth in that tribunal's analysis. See January 12, 2006 RP at
4 28-29. That decision bears on this Court's consideration of the trust land claims of the Fosters and
5 the decisions that were made by the Court as a part of and leading up to the September 12, 1996
6 Conditional Final Order (1996 CFO). Therefore, the Court must determine if it is within its self-
7 imposed limits in designating a portion of the right confirmed to the Yakama Nation in the 1996
8 CFO to property held in trust for Mr. Foster. To make that decision, the Court must examine the
9 proceedings which led up to the decisions made in the mid-1990s.

10 The Court analyzed the uncontested evidence introduced by the United States and relied
11 heavily on it in quantifying the practicably irrigable acreage from Toppenish, Satus and Simcoe
12 Creeks. See Report of the Court dated November 13, 1995 beginning at page 10. In terms of
13 historically irrigated acreage from Satus Creek (the category the Fosters believe should contain their
14 lands) the Court utilized US – 209A, a document prepared by HKM Associates entitled "Yakima
15 Indian Reservation Toppenish, Simcoe, and Satus Creek Drainages Hydrographic Survey Irrigated
16 Lands" (November, 1994). Mr. Ralph Saunders primarily prepared that document for the United
17 States Department of Justice and it was entered as evidence on May 16, 1995.

18 The Court closely analyzed HKM's survey (US – 209A) and summarized the document on
19 pages 13-14 of the Report and ultimately documented the conclusions reached by HKM as to
20 arability of lands on the Yakama Reservation. That summary is as follows. After determining a
21 hydrographic survey was necessary, HKM then examined land ownership to separate out trust and
22 allotted lands from fee patent lands – Indian owned fee patent lands were then differentiated from
23 fee patent lands. Mr. Saunders then relied on a number of relevant documents to assist in
24 determining which lands were historically irrigated, many of which included consideration of the
25 Mr. Foster's trust lands.³ A field investigation was also performed. He conducted a stereoscopic
analysis using aerial photographic coverage from 1978 – 1979 as supplemented by 1985 – 1987
photographs, which were later field checked. The results from this process were ultimately digitized
into the HKM ARC/INFO GIS and supplied to the Court as Attachment B. In drafting the

³ See for example 209(A) Attachment A "Yakima Indian Reservation – Irrigation Interview Sessions" on page 23 which summarizes conversations with Wapato Irrigation Project ditch rider Greg Lamebull. The comments for lands in

1 November 13, 1995 Report, it does not appear the Court examined Attachment B to identify the
2 location of the historically irrigated land. Rather, since there was no challenge to the evidence, the
3 Court simply adopted the findings of HKM.

4 To better address this dispute, the Court has now reviewed US 209(A) Attachment B which
5 consists of three large books of maps. Mr. Foster's allotted trust land, located in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of
6 Section 11, N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13 and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T. 9 N., R. 21 E.W.M. were
7 depicted in Book 1 and the corresponding identification numbers used by HKM to identify those
8 properties. The information that can be gleaned from Attachment B land is as follows:

- 9 • S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11 includes HKM 4128, 4125 and 4139 which are all
10 characterized as "arable future";
- 11 • N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13 includes HKM 4139, 4142, 4150-51 which are characterized
12 as "arable future" (4139 and 4142) and arable idle (4150-51, 26.7 acres);
- 13 • SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15 includes HKM 4154 which is characterized as 4.5 acres of
14 irrigated field crops.

15 The Court considers this expert evidence and a comprehensive effort by the United States to
16 identify all arable trust and tribal fee acreage within the Yakama Reservation. It also leads the Court
17 to find that Mr. Foster's trust property was evaluated for purposes of the PIA right. Ownership of
18 the right that encompasses the PIA analysis was determined in the 1996 CFO and found to be in the
19 name of the United States, Bureau of Indian Affairs in trust for the Yakama Indian Nation.

20 After considering the factual and legal issues set forth above, it is the finding of this Court
21 that the proceedings and decisions leading up to entry of the Yakama Nation's September 12, 1996
22 Conditional Final Order included consideration of the Foster's land and the unchallenged, expert
23 evidence of the United States determined which trust and tribally owned fee lands were "practically
24 irrigable" or currently irrigated. The Court has examined the record and recounted above the
25 findings of HKM Associates in regard to the Foster's land. Although the Court did not provide
specific legal descriptions as to the lands to which the right is appurtenant (and does not do so here),
given the heavy reliance of the Court on the evidence submitted by the United States, those
documents would seem persuasive as to where the right belongs. This appears logical considering

Section 11 and 14, where most of Mr. Foster's trust property lies, indicate no delivery of water for a variety of reasons. It was noted that one cutting of alfalfa had occurred based on possible subirrigation.

1 the Court adopted the conclusions set forth in HKM's evidence as Attachment A through E and
2 such findings are only one level more abstract than a parcel-by-parcel analysis. For example, as a
3 result of findings set forth on pages 4-5 of the 1996 CFO the Court has established how much water
4 can be diverted from each source and the number of acres to which this right can be applied. In
5 doing so, this Court believes it has properly performed its McCarran adjudication function
6 *consistent with the evidence and argument submitted to it at that time.* Anything beyond that is a
7 matter of distribution to be determined by the Secretary of the Interior pursuant to 25 U.S.C. § 381.

8 If the Fosters believe this study does not properly represent the condition or history of water
9 use on their land, then their dispute lies with the United States and/or Yakama Nation. In addition,
10 if the United States and/or Yakama Nation does not deliver water to the trust land the Fosters
11 believe to be irrigable, then that is also a dispute between those parties. It is clear to this Court that a
12 decision was made in 1996 regarding all water rights for Yakama Reservation trust and tribally
13 owned fee lands irrigated from Toppenish, Simcoe and Satus creeks. The right that encompassed
14 all the irrigable lands was awarded to the United States, Bureau of Indian Affairs in trust for the
15 Yakama Indian Nation. Further, the Court has indicated it will not reopen this adjudication to
16 consider matters that were not clearly math errors or where the CFO is inconsistent with the
17 analysis of the Court. To the contrary, this Court is satisfied that the lands in question were
18 evaluated by the United States, that a right was confirmed to the United States on behalf of the
19 Yakama Nation as a part of the PIA analysis and that the decision in the CFO is consistent with that
20 evidence. The Fosters had a full and fair opportunity to participate in that process before this Court
21 and chose to not exercise that right. Reexamination of those decisions at this later date is barred by
22 *res judicata. Ecology v. YRID*, 121 Wash. 2d 257, 850 P.2d 1306 (1993).

23 The Court declines to address any issues beyond the quantification question answered
24 above. An analysis of the cases cited by the parties is unwarranted in light of the fact the Court has
25 already decided the issue in 1996. No preference for a particular argument based on those cases is
intended or implied.

2. *Other Foster Issues*

Other issues were raised regarding the Foster's fee claims which are unrelated to the matter
discussed above.

The Yakama Nation points out in regard to WIP Parcel No. 2819 that the land at issue had
already been awarded water as part of the Yakama Nation's CFO. The United States generally

1 appears to agree with the Nation that undivided parcels held partly in trust are treated as "trust land"
2 for the purpose of water claims and share in the award of trust water authorized in the 1996 CFO.
3 The Fosters disagree and indicate the United States and Yakama Nation have not supplied any legal
4 authority for denying a specific award to the Foster's for their undivided fee portion.

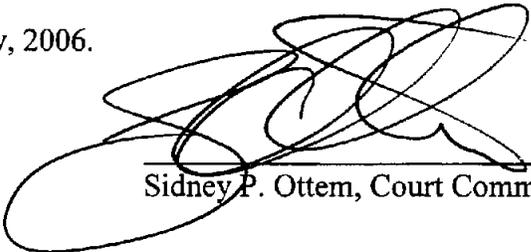
5 In the initial Report of the Court, the Court found the Fosters are assessed for 20 acres of
6 "A" lands and 20 acres of "B" lands in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, T. 9 N., R. 21
7 E.W.M. See page 25 at lines 11-14. The account was in good standing as of that date and no party
8 has supplied evidence to suggest the account is now delinquent. In that Report, the Court noted the
9 United States was the owner of this right and the parcel was delivered water through the Wapato
10 Irrigation Project which is operated by the Bureau of Indian Affairs. However, there is no
11 Application for Water Right to require the delivery of water to these lands as there generally is for
12 fee lands on the reservation that otherwise receive water through WIP. The Court has also reviewed
13 U.S. 209B and specifically Attachment B. There is no question the HKM study recognizes a
14 considerable amount of active irrigation on the parcels at issue. Study numbers 4272 and 4277 are
15 located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 and show 18.6 and 17 acres of irrigation respectively. Study
16 Number 4251 is a large parcel that encompasses a large part of Section 21, including nearly all of
17 the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 21. Attachment B shows active irrigation of 212.5 acres.

18 The Court will not specifically award a portion of the United States' WIP water to the
19 property at issue because there is no pertinent Application for Water Right and because undivided
20 land that is partially in trust is treated as "trust land."

21 **III. CONCLUSION**

22 The Court ORDERS that the claims addressed in this Opinion are modified to reflect the
23 Court's findings. All other exceptions not addressed in this Opinion are Denied. A Conditional
24 Final Order shall be entered at the July 13th water day hearing.

25 Dated this 12th day of July, 2006.



Sidney P. Ottem, Court Commissioner