

FILED  
MAR 12 1998

KIM M. EATON, YAKIMA COUNTY CLERK

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

IN THE MATTER OF THE DETERMINATION )  
OF THE RIGHTS TO THE USE OF THE )  
SURFACE WATERS OF THE YAKIMA )  
DRAINAGE BASIN, IN ACCORDANCE WITH )  
THE PROVISION OF CHAPTER 90.03 )  
REVISED CODE OF WASHINGTON, )  
  
THE STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
  
Plaintiff, )  
  
v. )  
  
JAMES J. ACQUAVELLA, et al, )  
  
Defendants. )

NO. 77-2-01484-5

~~PROPOSED~~  
CONDITIONAL FINAL  
ORDER AS A FINAL  
JUDGMENT PURSUANT  
TO CR 54(b), RAP 2.2(d)  
AND PRETRIAL ORDER  
NO. 8 AS AMENDED

ELLENSBURG WATER  
WATER, COURT  
CLAIM NO. 0194

**I. PROCEEDINGS**

THIS MATTER has come on regularly before the Court with Ellensburg Water Company having had its evidentiary hearing on September 12 and 13, 1994. This Court filed its Report of the Court Concerning the Water Rights for the Ellensburg Water Company on February 14, 1997. Thereafter, this Court held the hearing on exceptions on May 8, 1997. Donald H. Bond, Attorney, represented the defendant Ellensburg Water Company. Mary E. McCrea and Jo Messex Casey, Assistant Attorneys General, repre-

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1 sented the plaintiff State of Washington, Department of Ecology. Maria A. Iizuka,  
2 Attorney with the U.S. Department of Justice, represented the defendant, United States.  
3

4 The Court, after reviewing the exceptions and other materials filed, and after  
5 having heard argument and being fully advised, filed its Supplemental Report of the  
6 Court Concerning the Water Rights for Ellensburg Water Company on October 27, 1997.  
7 This Court now enters this Conditional Final Order based upon said initial Report of the  
8 Court and Supplemental Report of the Court.  
9

10 This Conditional Final Order will ultimately be incorporated into a final decree that  
11 determines and integrates all of the rights of the parties in this adjudication, at which  
12 time it shall be forwarded to the Director of the Department of Ecology for issuance of  
13 Certificate of Adjudicated Water Right.  
14

15 **II. FINDINGS AND DETERMINATION AS TO FINAL JUDGMENT**  
16 **UNDER CR 54(b)**  
17

18 A. This litigation involves the adjudication of all of the surface water rights of  
19 the Yakima River Basin held by several thousand parties. The claims in this litigation  
20 involve instream flows of the rivers and streams of the Basin and diversions of water from  
21 said rivers and streams within a number of subbasins, as well as claims by the United  
22 States for federal reserved non-Indian water rights, federal reserved Indian water rights,  
23 for diversions by diverters and water users within approximately 31 subbasins, and the  
24 claims of water for a number of major claimants, including the United States for the  
25 Yakima Reclamation Project.  
26

27 The Superior Court, by Pretrial Order No. 8 Re Procedures for Claims Evaluation  
28 (Revised), (Document 4263), filed March 3, 1989, made provision for entry of Conditional  
29 Final Orders such as this order. In connection with entry of that Pretrial Order No. 8, the  
30 Court made the following findings:  
31

32 This Order is issued with the following background:

- 33 1. This action involves an unusually large number of  
34 defendants and will take a long period of time to complete.

1           2.     There are claims based upon state or federal laws, and  
2     it has been and will be in furtherance of convenience and  
3     economy to evaluate certain of said claims separately.

4           3.     There are claims based upon either federal or state law  
5     which have been further divided into discrete, manageable  
6     groups.

7           4.     The division of the claims into groups has been and will  
8     be in furtherance of convenience and promote economy.

9           5.     Procedures to govern the expeditious evaluation and  
10    resolution of each claim, consistent with due process, are  
11    necessary and desirable.

12  
13           By its Pretrial Order No. 8, this Court has divided claims into the following groups:

- 14           1.     Federal reserved rights for Indian claims  
15           2.     Federal reserved rights for non-Indian claims  
16           3.     State based rights of major claimants  
17           4.     State based rights for other claimants, by subbasin  
18           5.     Residual claims not otherwise categorized

19  
20           Claims for federal reserved water rights in the Yakima River and outside of the  
21    Yakima Indian reservation have been resolved by Amended Partial Summary Judgment  
22    Entered as Final Judgment Pursuant to Civil Rule 54(b), dated November 29, 1990, and  
23    affirmed by the Washington Supreme Court April 22, 1993, in Department of Ecology v.  
24    Yakima Reservation Irrigation District, (sometimes known as Acquavella II), 121 Wn.2d  
25    257, 850 P.2d 1306. The remaining claims for federal reserved Indian water rights have  
26    been heard with major claims, except for certain public domain claims which have been  
27    heard in subbasin hearings.

28  
29           Claims for federal reserved non-Indian water rights have been resolved by  
30    stipulation.

31  
32           Claims relating to major claimants have been heard in a Major Claimants Pathway  
33    in which the claims of each major claimant have been heard in separate hearings, except  
34

1 in certain cases where claims of major claimants have been combined because of over-  
2 lapping claims, places of delivery or diversion, or water rights, etc.

3  
4 Claims to be heard in the subbasins have been combined in approximately 31  
5 separate subbasins located throughout the Yakima River Basin. Each subbasin collects  
6 and hears together claims for the use of water in that specific subbasin.

7 For these purposes residual claims are not deemed significant.

8  
9 By Order Amending Pretrial Orders No. 5 and 8, filed May 14, 1992, the Court has  
10 amended the procedures relative to Conditional Final Orders. It has there provided that  
11 Reports of the Referee which have not been objected to shall be entered as a Conditional  
12 Final Order as to that group of claimants. If objections are filed, the Court will hear and  
13 determine the objections or remand the case for taking of further evidence. Thereafter,  
14 the Court will enter its Conditional Final Order as to that group of claimants. This Order  
15 Amending also provides:

16  
17 Such order shall be a final order for purposes of appeal except  
18 as to the conditions of final integration. See RAP 2.2(d). Any  
19 appeal of a Conditional Final Order as to any group of  
20 claimants shall not preclude continuing proceeding on any  
21 other claim. See RAP 7.2(1)

22 B. This Court has performed the role of the Referee in hearings for claims in the  
23 Major Claimants Pathway and doing so, has held separate hearing for individual or  
24 groups of major claimants, submitted its report, heard exceptions to its reports, and then  
25 entered a Conditional Final Order pursuant to Pretrial Order No. 8 as amended. These  
26 separate hearings, reports, exceptions and conditional final orders each generally involve  
27 separate and discrete points of diversion, places of use, and history not shared with other  
28 major claimants. In cases where there has been a significant overlap of one or more of  
29 these elements major claimants have been grouped together for a separate, consolidated  
30 hearing. The Court has heard the claims of Ellensburg Water Company, issued its Report  
31 and Supplemental Report as stated above, and is now entering its Conditional Final Order  
32 in accordance with Pretrial Order No. 8 as amended. In this case Ellensburg Water  
33  
34

1 Company has its own separate and discrete point of diversion, place of use, and history  
2 which is not shared with other major claimants.  
3

4 C. The claims adjudicated pursuant to this Conditional Final Order are asserted  
5 by one, and less than all of the parties, and are less than all of the multiple claims of other  
6 major claimants and other parties.

7 D. Numerous claims remain unadjudicated. Orderly judicial administration of  
8 this general adjudication requires continued processing of all claims which remain  
9 unadjudicated.  
10

11 E. The claims adjudicated by this Conditional Final Order are separate and  
12 discrete claims apart from the remaining multiple claims in the general adjudication of  
13 the surface water rights of the Yakima River Basin, including the claims of other major  
14 claimants and claims in subbasins.

15 F. Presentation, consideration and resolution of the matters adjudicated by this  
16 Conditional Final Order as separate and distinct is consistent with the prior orders of this  
17 Court, including Pretrial Order No. 8 as amended, which divides the overall general  
18 adjudication of the river basin into separate pathways based on differences in size,  
19 geographical location or legal bases for claims to water rights, and provides that Condi-  
20 tional Final Orders entered in this adjudication be separately final and appealable to  
21 facilitate an orderly and timely conclusion of the entire general adjudication proceedings.  
22  
23

24 G. The claims which would be reviewed on appeal from this Conditional Final  
25 Order are not before the Court for determination in regard to the remaining claims in the  
26 adjudication of Yakima River Basin surface water rights.

27 H. The claims adjudicated by this Conditional Final Order are not likely to be  
28 rendered moot by the continuing proceedings before the Referee or this Court.  
29

30 I. Entry of this Conditional Final Order will delay neither trial of remaining  
31 claims in the adjudication of Yakima River Basin surface water rights nor, if the order is  
32 affirmed, final adjudication of all claims. Any risk of delay is offset by simplification and  
33 facilitation of resolution of other claims in this adjudication.  
34

1 J. An immediate appeal of this Conditional Final Order will likely, as a  
2 practical matter, prevent:

- 3 1. A waste of judicial resources; and
- 4 2. A waste of the resources of and an economic hardship for the  
5 parties to this adjudication.

6  
7 Absent the separate appeal of Conditional Final Orders the parties and the Court  
8 will be involved in a single appeal of numerous, separate, discrete and diverse claims from  
9 separate hearings for several of the 31 subbasins (which each involve numerous parties  
10 and exhibits) and numerous hearings in the Major Claimants Pathway. Separate and  
11 diverse proof has been developed in each of these numerous and independent hearings,  
12 each with its own numerous and often voluminous exhibits and separate transcripts of  
13 hearings. A combined appeal of all such claims at the end of this adjudication will be  
14 unwieldy and unmanageable and result in substantial waste of judicial resources and the  
15 resources of the parties.

16  
17 K. This Conditional Final Order is an appropriate matter to be entered as a  
18 final judgment pursuant to Civil Rule 54(b), Rule on Appeal 2.2(d), and Pretrial Order No.  
19 8 as amended. There is no just reason for delay in the entry of this Conditional Final  
20 Order as a final judgment, subject only to integration at the end of this adjudication.  
21

### 22 23 **III. CONDITIONAL FINAL ORDER**

24 Based on the foregoing, IT IS:

25  
26 ORDERED, ADJUDGED and DECREED that the final decree shall set forth the  
27 following in regards to the Ellensburg Water Company, Court Claim No. 0194:  
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29 The Department of Ecology shall issue a Certificate of Adjudicated Water Right to  
30 the Ellensburg Water Company as follows:

31  
32 1. With an April 25, 1885, priority date, the Court confirms a right to  
33 Ellensburg Water Company to divert water from the Yakima River in the amounts of  
34

1 43,840 acre-feet per year for irrigation and domestic purposes, and 200 acre-feet per year  
2 for stock water purposes, with the following schedule of delivery:

<u>April through August</u>	<u>September</u>	<u>October</u>
<u>Inclusive</u> 125 cfs	100 cfs	63 cfs

3  
4  
5  
6  
7 2. The purpose of use shall be irrigation of 9,749.33 acres, domestic purposes  
8 and stock water.

9 3. The season of use is from April 1 through October 31.

10 4. The point of diversion from the Yakima River is located approximately 3,200  
11 feet south and 1,850 feet west from the northeast corner of Section 12, being within the  
12 NE ¼NW ¼SE ¼ of Section 12, T. 18 N., R. 17 E.W.M.

13 5. The place of use is identified on EWC 301, as modified, and EWC 304, which  
14 identified both the exclusions and the area within the City of Ellensburg and Central  
15 Washington University (maps).

16 6. The place of use description is found in EWC 313.

17 7. Ellensburg Water Company's claims to municipal supply, the municipal  
18 exemption from relinquishment (RCW 90.14.140(2)(d), and to future use are denied.

19 8. Ellensburg Water Company shall comply with RCW 90.03.380 for any change  
20 in purpose of use to municipal.

21 9. The initial Report of the Court Concerning the Water Rights for the  
22 Ellensburg Water Company shall be modified in accordance with the Supplemental Report  
23 of the Court.

24 10. Ellensburg Water Company retains the right to appeal or cross-appeal this  
25 Court's rulings on the issue of use of local return flows found in Additional Order Re:  
26 Limiting Agreements (Cascade Irrigation District, Ellensburg Water Company, and West  
27 Side Irrigating Company), entered May 12, 1994, as the claims of Cascade Irrigation  
28 District and West Side Irrigating Company are still pending before this court.

29 11. This Conditional Final Order, relating to the confirmation of water rights to  
30 the Ellensburg Water Company constitutes a final order for purposes of appeal [see RAP  
31  
32  
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1 2.2(d)], except for purposes of final integration of all confirmed rights as provided in  
2 Section XII of Pretrial Order No. 8, Procedures for Claim Evaluation, dated March 3, 1989,  
3 of this Court.  
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5  
6 DATED this 12<sup>th</sup> day of March, 1998.  
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12 WALTER A. STAUFFACHER, JUDGE  
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