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# Proposed Conclusions of Law by State of Washington, Department of Natural Resources

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FILED IN THE  
U. S. DISTRICT COURT  
Eastern District of Washington

JUN 16 1978

J. R. FALLOQUIST, Clerk  
*JRF*  
Deputy

1 UNITED STATES DISTRICT COURT FOR THE  
2 EASTERN DISTRICT OF WASHINGTON  
3 AT SPOKANE

3 UNITED STATES OF AMERICA, )  
4 Plaintiff, )  
5 v. )  
6 BARBARA J. ANDERSON, et al., )  
7 Defendants. )

CIVIL NO. 3643

PROPOSED CONCLUSIONS OF LAW  
BY STATE OF WASHINGTON,  
DEPARTMENT OF NATURAL RESOURCES

8  
9 1. The effective date of the creation of the Spokane Indian  
10 Reservation is January 18, 1881, the date of the Executive Order  
11 signed by President Rutherford B. Hayes.

12 2. The federal government reserved the right to use the water  
13 for lands withdrawn from the public domain to the extent necessary  
14 to fulfill the purpose of the Reservation and no more.

15 3. Waters reserved are of a final amount and priorities and  
16 are appurtenant to specifically define lands.

17 4. The reservation of waters by the federal government in creat-  
18 ing the Spokane Indian Reservation was for the purpose of domestic  
19 and irrigation purposes.

20 5. No reservation of waters were intended or implied for fishery  
21 of trout in Chamokane Creek or its tributaries.

22 6. No reservation of waters were intended or implied for  
23 ceremonious , religious, aesthetic, or recreational purposes in  
24 Chamokane Creek or its tributaries.

25 7. Settlement and payment of claims to the Spokane Indian  
26 Reservation for the lands and property ceded to the United States  
27 lying outside the boundaries of the Spokane Indian Reservation

1 pursuant to proceedings before the Indian Claims Commission elimin-  
2 ates any extra territorial rights as to water by the Spokane Indians  
3 and any water right reservations of waters that affect land outside  
4 the Spokane Indian Reservation.

5 8. Settlement and payment of claims by the Spokane Indians for  
6 the land and property rights ceded to the United States pursuant to  
7 the proceedings before the Indian Claims Commission lying outside the  
8 boundaries of the Spokane Indian Reservation permits use of waters on  
9 such lands lying outside such boundaries consistent with State law  
10 and not subject to any implied reservation of water rights.

11 9. Plaintiffs and intervenors in the exercise of any water  
12 rights and protection thereof have only the rights through State law  
13 afforded them by reason of ownerships of lands riparian to Chamokane  
14 Creek.

15 10. In the alternative, the Act of May 29, 1908 (35 Stat. 45)  
16 terminated any reservation of waters by reason of the creation of  
17 the Spokane Indian Reservation except for the purpose of management  
18 of timber, domestic uses, irrigation of individual Indian allotments  
19 made prior to January 1, 1909.

20 11. The State of Washington, Department of Natural Resources  
21 is entitled to the right to utilize 1,905,018.40 gallons annually on  
22 the lands and in the individual amounts as shown on Exhibit 24, with  
23 the priority dates as shown on Exhibit 67, except that indemnity land  
24 shall have a priority date of statehood.

25 12. Nothing in this action shall prohibit the State of Wash-  
26 ington to utilize such amounts of water from Chamokane Creek, its  
27 tributaries or any waters of the Chamokane Creek basin for fire  
28 protection.

29 13. The plaintiffs are not entitled to an injunction against  
30 any defendants in this action.

31 14. Plaintiffs have failed to establish what portion of the  
32 partial irrigable land lying within the Chamokane Creek watershed  
33 are not:

- 1 a. lands classified as timber lands under the Act of  
2 May 28, 1908,  
3 b. lands classified as agricultural lands under the Act of  
4 May 28, 1908,  
5 c. lands allotted prior to January 1, 1909 and not sub-  
6 sequently alienated.

7 15. Lands classified as timber lands under the Act of May 28,  
8 1908 have reserved waters for timber management purposes only.

9 16. Lands classified as agricultural lands under the Act of  
10 May 28, 1908 have no reserved water rights.

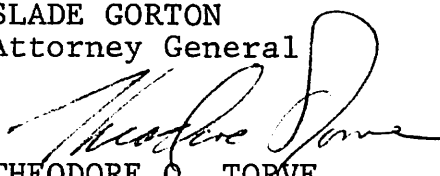
11 17. Lands allotted prior to January 1, 1909 and not subsequently  
12 alienated have reserved water for agricultural purposes if contained  
13 within the approximately 6000 acres of irrigable land within the  
14 Chamokane basin.

15 18. Lands with reserved rights must be irrigated out of the  
16 Spokane and Columbia Rivers first if such is economically feasible.

17 Dated this 15 day of June, 1978.

18 Respectfully submitted,

19 SLADE GORTON  
20 Attorney General

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22 THEODORE O. TORVE  
23 Assistant Attorney General  
24 Attorneys for State of Washington  
25 Department of Natural Resources  
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