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Proposed Final Decree 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

L. R. FALLQUIST, Clerk
Deputy

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

1	UNITED STATES OF AMERICA,)	
2)	
3)	CIVIL NO. 3643
4	Plaintiff,)	
5	v.)	PROPOSED FINAL DECREE
6	BARBARA J. ANDERSON, et al.,)	BY STATE OF WASHINGTON,
7	Defendants.)	DEPARTMENT OF NATURAL RESOURCES

Defendant, State of Washington, Department of Natural Resources, through its attorneys, hereby submits the following proposed final decree.

This cause having been heretofore heard by the Court, and the Court having considered the arguments of counsel, and the evidence, and having made its findings of fact and conclusions of law, now, therefore, in accordance therewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The United States of America and the Spokane Tribe of Indians have no reserved water rights and have the right to beneficially use waters present within the boundaries of the Indian Reservation as may be allowed under State law and with priorities under State law.

2. The State of Washington has full jurisdiction to regulate all water rights of plaintiff.

The following paragraphs 3 - 9 are in the alternative:

3. The rights of the United States of America and Spokane Tribe of Indians. For the benefit of the Spokane Indian Reservation, have a reserve right to use the waters of Chamokane Creek as it flows through the Indian Reservation and its tributaries thereon and from the ground water basin lying within the Indian Reservation for the

1 following purposes:

2 a. For domestic purposes

3 b. For timber management

4 c. For irrigation on lands allotted prior to January 1,
5 1909 and not subsequently alienated from trust status.

6 4. The priority dates of such lands are as follows: January
7 18, 1881, as to the lands not classified as agricultural lands under
8 the Act of May 29, 1908, lands previously allotted and alienated
9 from trust status and repurchased or returned to private ownership
10 and all Sections 16s and 36s.

11 As to lands not having the priority date of January 18, 1881,
12 they shall have the priority date as the date they were repurchased
13 by the Tribe, returned to Tribal ownership and the date of the clear
14 list as to Sections 16s and 36s lying within the Spokane Indian
15 Reservation.

16 5. No reserve right is granted to the plaintiffs for the pur-
17 pose of ceremonial, religious, aesthetic, or fishery purposes.

18 6. No reserve right for irrigation purposes is granted to any
19 lands classified as timber under the Act of May 29, 1908.

20 7. The amount of water that can be applied to irrigated lands
21 cannot exceed 3.0 acre feet per acre per year.

22 8. The only lands on which water can be used for irrigation
23 purposes are lands allotted to individual Indians prior to January
24 1, 1909 and contained within the 1880 acres of bottom land and 6580
25 acres of bench land. No evidence has been introduced as to the pre-
26 cise location of such lands. Therefore, use of water for irrigation
27 purposes out of the Chamokane Creek or the ground water basin within
28 the Reservation will be allowed subject to further court order and
29 establishment of the precise location of the lands authorized herein.

30 9. Plaintiffs are not entitled to an injunction against any
31 defendant for the use of waters. The Court may, however, have the
32 authority to appoint a water master to carry out and enforce the
33 provisions of the further orders of the court in the event there is

1 interference with the rights of the parties in the actual use of
2 water for irrigation, timber or domestic use. Nothing herein shall
3 prohibit the State of Washington to regulate water rights within the
4 Spokane Indian Reservation on lands that have been alienated from
5 trust status. Nothing herein shall prohibit the State of Washington
6 to regulate water rights held by any person lying outside the bound-
7 aries of the Spokane Indian Reservation. Nothing herein shall pro-
8 hibit the State of Washington to set minimum flow standards on
9 Chamokane Creek in accordance with State law.

10 10. The State of Washington, Department of Natural Resources
11 is entitled to the use of waters of Chamokane Creek, its tributaries
12 and ground waters for the purpose of livestock grazing, timber manage-
13 ment, and domestic use in the amount of 1,905,018.40 gallons annually
14 on the lands shown on Exhibit 23 and Exhibit 24.

15 11. The priority of the rights confirmed to the State of
16 Washington, Department of Natural Resources are as contained in Ex.
17 67, with the exception that all indemnity lands have a priority of
18 statehood, November 11, 1889.

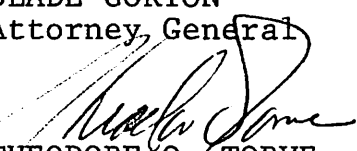
19 12. Nothing in this decree shall prohibit plaintiffs nor the
20 defendants to use the waters of Chamokane Creek, its tributaries,
21 or ground water for fire protection and fire fighting purposes.

22 13. The several parties to this suit shall pay and bear their
23 own costs.

24 DATED this 15th day of June, 1978.

25 Respectfully submitted,

26 SLADE GORTON
27 Attorney General

28 
29 THEODORE O. TORVE
30 Assistant Attorney General
31 Attorneys for Defendant
32 State of Washington,
33 Department of Natural Resources