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Defendant Waltons' list of issues and suggestions regarding record opening

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

FEB 17 1982

J. R. FALLOUJST, Clerk
RF Deputy

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

COLVILLE CONFEDERATED TRIBES,)
)
Plaintiff,)
)
vs.)
)
BOYD WALTON, JR., et ux, et al.,)
)
Defendants,)
)
STATE OF WASHINGTON,)
)
Defendant/Intervenor.)
)

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
WILLIAM BOYD WALTON, et us, et al.,)
)
and THE STATE OF WASHINGTON,)
)
Defendants.)
)

Civil No. 3421 ✓

Civil No. 3831

DEFENDANT WALTONS' LIST OF ISSUES AND
SUGGESTIONS REGARDING RECORD OPENING

Defendant Waltons through their attorney, Richard
B. Price, have re-read and reanalyzed the 9th Circuit's
latest opinion and are convinced that there is but one
issue.

The sole issue for which this matter was remanded
and over which this Court has jurisdiction is the question
of diligence in the beneficial application of water upon the
Defendant Waltons' lands by the Defendant Waltons. The 9th

460

1 Circuit had a chance to review and write two separate
2 opinions and was most specific in relegating the issue on
3 remand to the question of beneficial application of water by
4 the Defendant Waltons and no others.

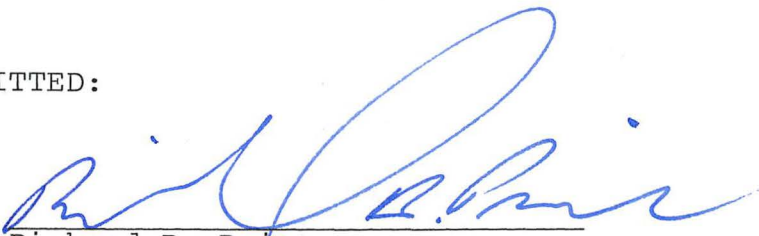
5 If the 9th Circuit felt that it had a sufficient
6 record upon which to render a decision regarding the
7 Waltons' use, the 9th Circuit would have done so. Having
8 remanded the issue, it is apparent that the 9th Circuit
9 expects the trial court to take additional testimony as to
10 that issue.

11 The Plaintiff Tribe and Plaintiff United States
12 Government's attempts to relitigate this case by raising
13 other issues should not be allowed. It is obvious that the
14 Plaintiff Tribe and Plaintiff United States Government are
15 not satisfied with certain aspects of the case and desire to
16 relitigate each of those aspects with which they are not
17 satisfied. The question of water use on Allotment 526 was
18 not remanded by the 9th Circuit for this Court to make any
19 determination as the previous decision by the trial court
20 and the 9th Circuit is and was the law of the case that
21 Allotment 526 acreage is not to be used in computing the
22 Indians' reserved water right.

23 With respect to question of the Plaintiff Tribe's
24 fishery and water allocation, it is Defendant Waltons'
25 considered opinion that to allow calculation of water for
26 fishery on top of that computed in the irrigable acreage
27 test would effectively strip the 9th Circuit Court opinion
28 of any meaningful effect. The 9th Circuit reiterated that
29 the difficulty in this type of case is the open-endedness of
30 the Indians' claimed water rights and that it was attempting
31 to define a limit by which Indians and non-Indians alike

1 conduct their affairs on a rational and meaningful basis
2 with respect to allocation of water. If the Plaintiff
3 Tribe's position were to prevail, it would be feasible then
4 for them to introduce a fresh water species fish into the
5 saline Omak Lake and thereby demand and declare that they
6 are entitled to all the waters of any and all tributaries to
7 the Lake in order to try to diminish the saline content so
8 as to allow a fresh water species of fish to survive.
9 Defendant Waltons believe that the 9th Circuit Court meant
10 what it said when it indicated that it was defining the
11 water right but not limiting the use to which the water
12 right could be put once it was defined. In that regard, the
13 Indians have established a water right to 666 acre feet of
14 water and it will be up to the Tribe to allocate that water
15 as between irrigation and/or fishery and/or whatever other
16 use they might feel appropriate but not to go on endlessly
17 tacking one water useage amount onto the next thereby
18 rendering meaningless any attempt at defining the parties'
19 respective water rights.

20 RESPECTFULLY SUBMITTED:



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22 Richard B. Price
23 Attorney for Defendant Waltons
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