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Transcript of proceedings Volume II, Part 3, pages 442-502

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Court Reporter

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THE COURT: You are saying it is irrigable, but doesn't need very much?

THE WITNESS: That's correct, Your Honor. I am saying that it is substantially non-irrigable. The area receives a lot of water from the ground water table.

THE COURT: Well, you used the term substantially non-irrigable, and I think that's confusing. You are saying that good husbandry, a farmer might put some water on it each season, or would he put on any water?

THE WITNESS: I have not seen Mr. Walton irrigate that area at all.

THE COURT: Well, no, but we are talking about your opinion, and I don't know that I know what you mean when you say it is substantially non-irrigable in the warm summer, the dry summer. Would it be proper to irrigate it then?

THE WITNESS: Even in a dry summer, Your Honor, the ground water table is going to be very near the surface. This ground water table doesn't fluctuate very much, and I would say that some small amounts of water could be beneficially applied here.

THE COURT: Okay.

Q. (By Mr. Veeder) Now, would you proceed?

A. Moving now into Allotment 525 into the area marked

1 7 and containing 5 acres, this is in the southwest
2 corner of Allotment 525, and it is bounded by the
3 south by the northern boundary of 2371, bounded by
4 the west by the western boundary of 525, and bounded
5 by the east by a fence line that was in place on the
6 Walton property in 1954.

7 This area is moving north. There has never
8 been any irrigation on that land during the period
9 that we have observed this from 1975, until present,
10 and it is an area that is used for pasture today.

11 Q. And would you state whether it is irrigable or not
12 irrigable in your view?

13 A. As we are moving further north, the ground water
14 table, especially as we get to the Walton house,
15 begins to recede from the land surface to some degree,
16 so there is some small amount of water that could be
17 applied in Area 7. Certainly, it would not be anywhere
18 near a full water duty.

19 Q. Would that be any particular time of year when it
20 would be required there?

21 A. Certainly, not until after the first of July.

22 Q. Would you proceed then? I see you designated a parcel
23 of land outside of 525 to the west.

24 A. This area delineated to the west of Allotment 525,
25 Area No. 8 containing 4.3 acres, the character of this

1 land is the same as the character of the land
2 described for Area 7 as an extension of that land
3 into Tribal property.

4 It is an area that Mr. Walton has used for
5 pasturing his cattle in the past, and there is no
6 fence in there today.

7 Q. Would you proceed then on through the rest of 525?

8 THE COURT: Now, what did you say about that
9 that's irrigable or non-irrigable?

10 THE WITNESS: Yes, it has the same characteristics
11 as Area No. 7.

12 THE COURT: All right.

13 THE WITNESS: Some small amounts of water would
14 be beneficial.

15 THE COURT: Okay.

16 THE WITNESS: Moving northward to Area No. 5, this
17 is an area bounded by No Name Creek on the east, by
18 the fence line described with Area 7 on the west, and
19 the Walton buildings on the north. This is 13.5 acres,
20 and it is an area that in 1954, was fenced off for
21 whatever purposes that land was being used at that
22 time.

23 It is land very similar in character to
24 Areas 7 and 8, and something less than a full duty of
25 water, in fact, about a half duty of water would be

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beneficial in some years on that particular tract of land.

Q. (By Mr. Veeder) Would you just go ahead and finish up then?

A. Across the creek to the east is Area No. 6 containing 8.8 acres. That area is bounded by the east by the county road, bounded by the west by No Name Creek, and that area contains 8.8 acres.

There are some-- there is a surfacing of ground water at various locations along this particular tract. It appears to be wetter than the tracts on the west side of the creek, and it would require less water than Area No. 5, for example.

Q. When you say less water now we are getting down to a point of what, two inches of water? How much water do you think would have to be applied annually to be beneficially used on that parcel of land?

A. Well, certainly nothing in excess of one and a half acre feet per acre. This is also the area, very near the area that testimony was given yesterday with respect to the growing of corn without irrigation. This is the area that was related to in that testimony.

Now, the northern boundary of this Area 6 is the Walton driveway, and going on the other side of

1 the driveway is an area shown as 3 containing 1.7
2 acres. The character of that land is very similar to
3 the character of land described in Area 6, and one and
4 a half acre feet per acre would be a water requirement
5 that could be used beneficially on that land in some
6 areas.

7 Area No. 4 containing 2.3 acres is the area
8 containing the Walton buildings in the 1954 period,
9 and this is the area that also contains the Walton
10 buildings today. It is an area east -- excuse me --
11 west of No Name Creek, and east of the rocks forming
12 the valley floor.

13 Area 2 is in the extreme northern end of
14 Allotment 525. This is the area that Mr. Walton's
15 irrigation well is located in. This area is above the
16 ground water table to a similar degree as the lands of
17 the Colville Confederated Tribes to the north;
18 however, at the extreme southern end of this Area 2,
19 this is the principal area of the spring zone of No
20 Name Creek so that is where the ground water table in
21 the No Name Creek aquifer encounters the land surface,
22 discharges from underground, and forms the surface
23 flow of No Name Creek.

24 THE COURT: That originates in the northern part
25 of Mr. Walton's property?

1 A. There is a substantial area of discharge at this
2 location, and the state of nature the water levels
3 were sufficiently high that the ground water table
4 discharged at the surface of the ground several
5 hundred yards north of the Walton property. The area
6 of discharge is substantially dictated by the water
7 level in the No Name Creek aquifer.

8 Q. (By Mr. Veeder) That was on 892 where it originated?

9 A. Yes.

10 THE COURT: Where along this whole area does the
11 Tribe inject its pump water into the stream?

12 THE WITNESS: Your Honor, the Tribe pumps water
13 from the No Name Creek aquifer on Allotment 526, in
14 the center portion of Allotment 526, to the west of
15 the county road and to the south of Omak Creek.

16 It discharges that water into a pipeline
17 that extends in a southerly direction across the full
18 length of 526, across the full length of Allotment
19 892, and discharges into the natural channel of No
20 Name Creek at the southern boundary of Allotment 892.

21 THE COURT: Above the boundary of Mr. Walton's
22 property?

23 THE WITNESS: Above the boundary of Mr. Walton's
24 property, probably within 50 feet.

25 Now, there are other sources of water and

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alternatives as well, including a well we call Colville No. 2, which is located immediately south of the north boundary of Allotment 892, and water is also delivered to the channel of No Name Creek from a well we described as Colville No. 3, which is located near the southern boundary of Allotment 892, so the wells are pretty evenly distributed across those allotments.

Each of those that we have just cited can be used to deliver water either singly or in combination to No Name Creek.

Q. (By Mr. Veeder) Just for the record, what is the measuring point there at the common boundary between 892 and 525?

A. A partial flume is located at that location. It is a nine-inch partial flume. It is a very accurate measuring device, and the water is conducted into that flume, measured, and then discharged into the natural channel.

Q. That's been referred to as Flume A?

A. That's Flume A.

THE COURT: I didn't get the area or the quantity of acres in what you designed as Area 2.

THE WITNESS: Area 2 is 8.5 acres.

Q. (By Mr. Veeder) Does that cover the whole area, Mr.

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Watson?

A. There is one additional area, Area 1, which contains 13.2 acres, and that is an area north of the Walton buildings, south of the north boundary of his Allotment 525, west of No Name Creek, and east of the rock containing the valley floor.

Q. Does that finish 49-A?

A. Yes.

Q. Mr. Watson, I hand you for your review U-W, I guess that's U-W. Is that U-W? It's a Walton exhibit, and would you state into the record what is depicted there? It is a photograph.

A. This photograph labeled U-W is a view in a southerly directly from the north end of the Walton property to Omak Lake.

Now, in the very center portion of this photograph and a little bit to the right of center, but nevertheless, in the central portion of the photograph is an area on Colville Allotment 903, and it is a very green area.

This photograph was taken in the spring of the year. It is a very green area. The area was not irrigated at that time.

MR. PRICE: Your Honor, I don't think we have a question. He was asked to identify the photo.

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MR. VEEDER: I will ask the question.

THE COURT: All right.

Q. (By Mr. Veeder) Would you state into the record whether you can observe from Walton U-W, the high water phenomenon that you have testified to extensively in regard to the 1954 aerial?

A. Yes. It is very clear on this photograph. The photograph shows the Walton's sump, which on Colville Exhibit 49-A, begins on the eastern edge of the Walton Allotment 2371, in Area No. 12, extends across Tribal property Area No. 18, and continues in a southerly direction into Allotment 894, Area 15.

The photograph shows the sump beyond a series of curves and to the right of center in that photograph and at the north end of the sump, and continuing from the north end in a westerly direction to No Name Creek is an area of ponded water again evidencing the fact that this land described in Areas 15 --

Q. Areas now you are speaking from 49-A?

A. Referring to the '54 photo, Area 15, 12 and 10, and in that vicinity this photograph does show standing, ponding water which is evident there during all periods that I have observed this piece of property.

Q. Do you have any other comments on that?

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MR. PRICE: Well, Your Honor --

THE COURT: Yes. I don't think we should invite and solicit gratuitous comments.

MR. VEEDER: I wasn't really soliciting.

THE COURT: It's difficult for Counsel to frame an objection if the witness is invited to volunteer, so let's stay with questions, if we may.

MR. VEEDER: I understand.

Q. (By Mr. Veeder) Would you state whether you find any other standing water on that photograph, Exhibit U-W?

A. Yes, I will.

Q. Proceed. What do you find?

A. There is standing water also at the point of diversion to the sump, and that point is located at the south boundary of Allotment 525, and at the northern boundary of Allotment 371.

MR. VEEDER: I have no further questions.

THE COURT: I think before we start cross-examination, Mr. Price, I will give our Reporter a little break. You people talk fairly fast sometimes. We will take about ten minutes.

(A recess taken at this time.)

1 Q. (By Mr. Veeder) Mr. Watson, you have completed the
2 phase of the testimony regarding the 1954 photo-
3 graph. I ask you to step to the easel and state
4 for the record what the map is that is on the aerial
5 photograph, and what year is that photograph?

6 MR. PRICE: Your Honor, just excuse me, Mr. Watson.
7 Just for the record, I thought we were going to start
8 on cross-examination.

9 THE COURT: Yes, I did, too.

10 MR. VEEDER: Your Honor, I didn't hear what you
11 said. I had just a little bit more with this witness.

12 THE COURT: Oh, I see. All right. Well, go
13 ahead.

14 Q. (By Mr. Veeder) Would you step to the -- read the
15 exhibit designation, and then state in the record
16 what that represents.

17 A. Plaintiff's Exhibit 50, and it is a September 7, 1963,
18 aerial photo of that portion of the No Name Creek
19 Basin containing the Walton properties at the north,
20 and the north end of Omak Lake at the south end of
21 the photo.

22 Q. Now, what is 50-A? What is that?

23 A. 50-A is a reproduction of the exact same image on
24 Colville Exhibit 50, the image of the September 7,
25 1963, aerial photo on a scale of one inch equals

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463 feet, and the image also has located upon it the allotment boundaries of 525, 2371, and 894.

Q Now, would you state into the record your background in regard to the interpretation and utilization of aerial photography and the work that you perform as a civil engineer and hydrologist?

A. As a civil engineer, in my course work at the university in the surveying courses that I took for well over a year, I had extensive background in the use of aerial photography, the interpretation of aerial photography for engineering, land use and other purposes.

Certainly, since I have been a professional engineer, I have had regular use of aerial photographs for the purposes of identifying land use characteristics, hydrologic characteristics, and these kinds of things. That experience extends not only to low level aerial photography such as this, but also to the interpretation of satellite photography that is now produced.

Q Would you state into the record whether you are -- state in the record your experience in regard to utilizing aerial photography for the determination of the wetness of land or other characteristics of the land as you encounter in the problems in the No Name Creek Valley.

1 MR. PRICE: Your Honor, we have had Mr. Kaczmarek
2 testify to the same thing that we are now being
3 questioned about. Mr. Watson it was told, that he
4 would be forthcoming for other issues. Now we are
5 going back to Mr. Kaczmarek's testimony.

6 I object. It is cumulative, and I think we
7 have had enough of it in this case.

8 MR. VEEDER: Your Honor, this is an aerial
9 photograph for the year 1963. It brings it down to
10 the time when Boyd Walton took over the operations.
11 We think it is extremely important from the standpoint
12 of due diligence and the utilization of water in the
13 No Name Creek Basin to have a clear demonstration
14 of the amount of water that was being utilized, the
15 areas that were being irrigated, all that data in to
16 the end that we will demonstrate that for the protracted
17 period from 1921, until 1963, there was very, very
18 small development of irrigable land and irrigated
19 land within the No Name Creek Basin.

20 It is my purpose from the standpoint of
21 due diligence to bring the matter down today to show
22 that this land has not been used for a period of 40
23 years.

24 THE COURT: Mr. Watson, you plan to have
25 testimony from this aerial as to how much irrigating

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Mr. Walton was doing?

THE WITNESS: Yes, I do, Your Honor.

THE COURT: All right. Well, I will permit it.

Q. (By Mr. Veeder) Would you step to the photograph --

MR. VEEDER: First, we offer in evidence Exhibit 50 and 50-A.

MR. SWEENEY: No objection.

THE COURT: Aside from your other objection, do you have any, Mr. Price?

MR. PRICE: Yes. We have at least seven of these aerial photos that depict the same ground in evidence. I have the same objection.

THE COURT: All right. Mr. Sweeney?

MR. SWEENEY: No objection, Your Honor.

THE COURT: Well, I will admit it. I trust we won't plow too much of the same ground.

MR. VEEDER: I am trying to move it along, Your Honor.

THE COURT: All right.

Q. (By Mr. Veeder) When we are talking due diligence, time is important. So, would you step to the Exhibit 50 and 50-A and start at the south end of the No Name Creek Valley just north of the granitic lip and testify as to the lands that are and continue to be subject to the high water table as you have testified

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in regard to previous years?

MR. PRICE: Well, now, excuse me, Your Honor. He is now asking about the high water table. We have just gone through that. He represented this exhibit as something that would evidence irrigation in '63, not what the high water table was in '63.

THE COURT: That was my understanding.

MR. VEEDER: Well, I would like to ask those questions, but go ahead and outline into the record the lands that appear to have been irrigated in 1963.

THE WITNESS: The lands that obviously were irrigated in 1963, are shown exclusively in Allotment 525, the north edge of the photo has Allotment 525 located, and there is a clear demonstrable area south and north of the Walton buildings within Allotment 525.

There is no evidence of irrigation on any other allotment in this 1963 photo.

Q. (By Mr. Veeder) Do you discern -- moving very rapidly, do you discern the same high water table that you witnessed in the other exhibits?

A. Yes. The presence of water on the poorly drained, soggy, boggy areas of Allotments 894 and 2371 are very well demonstrated on Colville Exhibits 50 and 50-A.

1 For example, in the western and northern end
2 of Allotment 894 that was previously referred to as
3 Area No. 15, on Colville Exhibit 49-A, the appearance
4 of wet ground from the discharge of ground water is
5 very evident. In fact, in the extreme northwest
6 corner of Allotment 894, and to the west of Allotment
7 2371, there is a man-made feature immediately west
8 of the road where the south end of the sump is
9 presently located and extending from that excavation
10 at that location an area that we know is very
11 saturated and discharging ground water.

12 There is a ditch conducting water away from
13 that area, and that ditch extends southerly across
14 the extreme southeastern corner of Allotment 2371
15 and joins No Name Creek.

16 That feature is very easily discerned on
17 Colville Exhibit 50, and it is a facility to conduct
18 water away from the area rather than to conduct water
19 to it.

20 Q. Now, Mr. Watson, you testified that you found on
21 Exhibit 50 and 50-A in 1963, that the only irrigation
22 that you perceived from that aerial photograph to
23 have been in 525; is that correct?

24 A. That's correct.

25 Q. I ask if you have examined the exhibit -- what is the

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number of this? What is the number of the Walton exhibit? It looks like QQQQ. Have you examined this exhibit and taken into consideration the declaration that there are 112 acres of irrigated land in 1951? Have you compared that with Exhibit -- the 1963 photo?

A. Yes, I have.

Q. Would you state into the record whether based upon your comparison of those two exhibits whether the statement is correct as to whether there is 112 acres of land irrigated in the Walton property?

MR. PRICE: I will object to the form of the question, Your Honor. There is no foundation. This witness has not indicated that he was on the land and observed the land in 1951. He is testifying from --

THE COURT: Well, I think the objection is well taken. Mr. Walton has testified as to his opinion based upon analyzing this photo, and, obviously, there is a conflict in the evidence, but I don't think he should be saying whether Mr. Walton is right or wrong.

MR. VEEDER: Your Honor, I would like to ask a couple more questions then.

THE COURT: All right.

1 Q. (By Mr. Veeder) Would you state into the record
2 whether based upon your review of the exhibit the
3 1951 exhibit correctly portrays the irrigable lands
4 within the No Name Creek Basin based upon your
5 experience as and analysis of the photographs, could
6 you tell whether there had been irrigation to that
7 extent in 1951, by what would appear on the 1963
8 photograph?

9 MR. PRICE: I am going to object to the form of
10 the question, Your Honor.

11 THE COURT: Well, I think we are beating a horse
12 here. I am not the smartest guy in the world, but
13 I can here what the witness has testified to. It is
14 obvious that Mr. Watson has given an opinion based
15 upon his analysis of this photograph that the only
16 irrigated area in 1963 was in Allotment 525.

17 There is obviously a disagreement between
18 his testimony and some of the other evidence and
19 testimony in the case. I don't see where we are gaining
20 much by beating this horse.

21 MR. VEEDER: Well, I would like -- in your
22 opinion, as an expert --

23 THE COURT: I will let him render his opinion.
24 Go ahead.

25 MR. PRICE: Your Honor, I would like to make a

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statement for the record.

THE COURT: All right.

MR. PRICE: That what goes to the appellate courts is a record of volumes, volumes of Mr. Veeder -- objections being well taken by the Court, but through his persistence, repeated testimony in terms soggy, boggy, by him asking questions, by the witness, by repeated exhibits to the point that the reviewing court just by the sheer volume of what's in there in terms of soggy boggy would walk away thinking this place was under water. Fortunately, we have some photographs that may counter that, but I raise the objection that the cumulative effect of Mr. Veeder's unwillingness to, what I perceive, to abide by the ruling of the Court is prejudicial, very seriously prejudicial to the Waltons.

THE COURT: Well, it doesn't -- well, I agree. It doesn't help making a neat record.

MR. VEEDER: I resent very much the statement that I have burdened this, Your Honor. I think that we have moved along, and all I am saying --

THE COURT: Well, I am not being critical of you.

Q. (By Mr. Veeder) I ask this question: Would there be evidence in your opinion as an expert of irrigation to that extent that appears on Exhibit QQQQ of 112

1 acres on the 1963 aerial if that irrigation had
2 existed in 1951?

3 A. No.

4 THE COURT: No what?

5 Q. (By Mr. Veeder). Did I ask you if you have an opinion?
6 Do you have an opinion?

7 A. Yes, I have an opinion.

8 Q. And would you state into the record what that opinion
9 is, Mr. Watson?

10 MR. PRICE: Well, I think he answered the question,
11 Your Honor, and Mr. Veeder saw himself in a bind and
12 is now trying to rephrase the question a little
13 differently.

14 THE COURT: Well, as far as I am concerned, the
15 testimony of Mr. Watson on this issue is his opinion
16 is based on the photograph and he has given that,
17 and I think we ought to move on to something else.

18 MR. PRICE: Thank you.

19 Q. (By Mr. Veeder) Mr. Watson, have you considered the
20 irrigable acres as depicted --

21 THE COURT: Let me ask Mr. Watson a question so
22 we can get something done.

23 You have testified, Mr. Watson, that the
24 only irrigation that in your opinion was taking place
25 in 1963, was in Allotment 525; is that correct?

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THE WITNESS: That's correct, Your Honor.

THE COURT: All right. Now, how many acres?

THE WITNESS: Approximately 40 acres.

THE COURT: All right. Now, can we end it there?

MR. VEEDER: If that is acceptable.

THE COURT: Well, I am not saying it is acceptable. I am saying we should move on. I understand what Mr. Watson's position is. I understand what Mr. Watson's position is, and at some point I am going to have to resolve this, but --

MR. VEEDER: Perhaps, Your Honor, I have labeled this a little hard, but what I want to say is that in the state of the record Mr. Price brought up the issue, Mr. Price brought up the issue of what's going to go to the appellate court.

Now, on the basis of the record that we have here, there is 30 years, 1951 to 1981, and the record as it now stands with Mr. Walton's testimony is that for a period of 30 years we have this kind of irrigation in the No Name Creek Valley, and that simply is incorrect.

THE COURT: That's not what we are talking about, Mr. Veeder. We are talking about the testimony of Mr. Watson. I think he has clearly given his

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testimony. He wasn't wandering around up there seeing who was irrigating property in 1963, I gather.

MR. PRICE: Mr. Veeder is attempting to make his closing argument through Mr. Watson, and that is inappropriate, I think.

THE COURT: I am going to hold to my ruling. Mr. Watson has given his testimony, and I don't think there is anything to be gained in trying to go further and trying to dispute specific evidence on the other side.

Q. (By Mr. Veeder) Mr. Watson, have you compared the irrigable acreage as depicted on -- I think these are areas that are important. Have you reviewed the irrigable -- the claimed irrigated acreage on SSSS, Walton's Exhibit, for the year 1949, with Walton's Exhibit T-W in regard to the land allegedly irrigated?

A. Yes.

Q. And would you state into the record which -- the disparity between those two exhibits, and where the lands are situated, where the disparity takes place?

A. Yes, I will.

MR. PRICE: Your Honor --

THE COURT: Just a moment, Mr. Watson.

MR. PRICE: It is a very leading question, Your Honor.

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THE COURT: Are we talking now about what was going on in 1948?

MR. VEEDER: No, no. We are speaking about -- we are speaking and we are trying to get a straight record on this.

THE COURT: You are not getting there very rapidly.

MR. VEEDER: We have testimony here yesterday by Mr. Walton of 32 acres of land comprising two tracts of land, one of which is in 525 and one of which is in 894.

THE COURT: This was related to his testimony about what was transpiring in 1948, wasn't it?

MR. VEEDER: That's right. Now, I could leave the record this way and shout about it. Now, there is an area to which Mr. Walton's father testified which is right up in here up in the northeast corner of 525, and there is a very clear conflict and we get into the issue of due diligence. When we get into the issue of how much water you may allocate to Mr. Walton, I think it is extremely important to the Tribe that we have brought to your attention the various serious conflict between Mr. Walton's testimony and that of his father.

THE COURT: Well, but what is Mr. Watson going to

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contribute to this?

MR. VEEDER: Well, I think it is essential that we have an expert make the identification. It is not for me to make the identification. We can leave it go.

THE COURT: Well, you are saying the testimony in the previous hearing with this exhibit and with Mr. Walton Jr.'s testimony that I will find a conflict.

MR. VEEDER: There is a terrible conflict.

THE COURT: But, what is Mr. Watson going to add to that?

MR. VEEDER: The only thing is that I thought we would have to put it in with a new witness, and I would like to have the matter straightened out, but it is his record, not mine.

THE COURT: I am going to have Counsel refer to the previous record where appropriate and to refer to the exhibits, but I don't see where Mr. Watson is going to shed much light on that question.

MR. PRICE: I know of no rule --

MR. VEEDER: As long as the err is there --

MR. PRICE: Excuse me, Counsel. I started first. I know of no rule of law, Your Honor, that allows a witness to come up and testify as to alleged discrepancies in a transcript already before the Court.

1 THE COURT: I am having a little trouble with that
2 as well.

3 MR. VEEDER: It suits me to leave it that way.

4 THE COURT: All right. We have agreed on some-
5 thing finally.

6 MR. VEEDER: You can cross-examine.

7 THE COURT: You see, when we talk these things
8 out, we might get something resolved.

9 MR. VEEDER: Well, I just know that we are going
10 to have problems on this when we come to make a
11 finding.

12

13

CROSS-EXAMINATION

14

BY MR. PRICE:

15

Q. Mr. Watson, you were asked to look at a photograph
16 marked Exhibit U-W, and I believe it is the same
17 photograph that I am holding here in front of you
18 that is framed; is that correct?

19

A. I would have to see U-W to make that comparison.

20

21

THE COURT: I think it can be represented that
21 it is an enlargement of the same photograph, can't we?

22

MR. PRICE: I believe so.

23

24

Q. (By Mr. Price) It is a picture taken of the same
24 thing, of the same time, same vicinity. Does it depict
25 the same area?

1 A. It is not taken at the same time, no.

2 Q. Does it depict the same area?

3 A. Same area substantially different.

4 Q. Substantially?

5 A. Substantially.

6 Q. All right. What is different about it?

7 A. For example, the area --

8 Q. Well, strike that. Strike that.

9 A. -- in the area 894 --

10 Q. Looking at U-W, the area that you indicated previously

11 where you could see standing water is an area that I

12 am pointing to on the enlarged photograph, am I not?

13 A. That's not the area that I first identified.

14 Q. You first identified an area now that I am pointing to.

15 A. That's not the area that I first identified.

16 Q. Where did you first identify?

17 A. I identified an area to the east of the sump between

18 the sump and No Name Creek on this photograph that

19 shows standing water, and also to the north of the

20 sump on this photograph. That feature does not appear

21 on this, nor does the character of the tall wheat

22 grass in the south end of 894 appear on this photograph.

23 Q. Let's stick with U-W then. Does not U-W depict

24 standing water where the sump is located that you have

25 described on your exhibits?

1 A. Yes, it does.

2 Q. And do you describe that as standing water?

3 A. Well, it is definitely standing water in the sump.

4 Q. That is an area that you described that naturally
5 discharges spring water, quite a bit of it, isn't that
6 correct?

7 A. I didn't say that.

8 Q. It doesn't? Where is this area that you indicated
9 was so boggy, soggy, or whatever it is located on
10 U-W?

11 A. It is located on the north end of the sump on U-W
12 immediately east of the outside of the curve going
13 around the rock just before getting to the sump area.

14 A. And does that not indicate to you that there is spring
15 water or underground water coming to the surface in
16 that area?

17 A. There definitely is ground water, high water table
18 discharging at that location..

19 Q. Does it not appear to you that the large sump area
20 dug out there is an attempt to capture some of those
21 waters?

22 A. It is obviously an attempt to capture some of the
23 underground water that is flowing through that area.
24 It was also used to drain water away in the 1963
25 photograph.

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Q. All right. An attempt to drain water away. Does that signify to you that somebody is making an attempt to utilize the land?

A. Attempting to remove the water.

Q. The question was does that signify to you that somebody is thereby attempting to utilize the land?

A. Yes.

Q. So, one of the factors that we know from that photograph then is that somebody was attempting to make use of that land?

A. They were attempting to drain the water away, for what reasons, I can't say.

Q. All right. The waters were drained away to where, Mr. Watson?

A. Those waters were draining in the ditch to No Name Creek at the south boundary of Allotment 2371.

Q. So, we have a sump to capture spring water, and an effort for the waters that the sump couldn't hold to drain those back into No Name Creek. Is that a fair representation?

A. The sump is not an attempt to drain water back into No Name Creek.

Q. I see. We have a sump to capture a portion of the well waters, and what the sump couldn't handle, this attempt was being made to drain that back into the

1 creek. Is that not correct?

2 A. No. The sump captures well water, but it is
3 Colville well water.

4 Q. No, Mr. Watson. Tell me this: Walton's farm existed
5 before you ever knew about it, didn't it? Didn't it?

6 A. (No response.)

7 Q. Can you answer that question?

8 A. The Walton farm and the farming on 901 and 903, the
9 irrigation on 901 and 903, existed well before my
10 time.

11 Q. Mr. Watson, when did you first learn of the Boyd Walton
12 family?

13 A. 1975.

14 Q. You knew the Waltons came to this property in '49,
15 didn't you?

16 A. I have been told that.

17 Q. A sump was there before you ever came onto the property
18 or ever came in --

19 A. '64.

20 Q. That's when you came on the project?

21 A. No, I came on the project in 1975.

22 Q. All right. The sump was there a long time before you,
23 wasn't it?

24 A. It was there eleven years before I came there.

25 Q. All right. Was it collecting Tribal water in 1964?

1 A. Yes, it was.

2 Q. It was? I see. Was it collecting pumped Tribal water
3 in 1964?

4 A. No, it was not.

5 Q. I see. What are you designating as Tribal water,
6 Mr. Watson?

7 A. The natural flow of No Name Creek that in the 1920's
8 and 1930's, was used by the Timentwas in Allotments
9 901 and 903 for a substantial area of irrigation.

10 Q. That is when you say we had about a half second foot
11 of water flowing in the creek?

12 A. The USGS Survey records in 1972, show that there was
13 .50 cubic foot per second in No Name Creek as it
14 crossed the Walton property.

15 Q. And the Timentwas were using the totality of that
16 water, correct?

17 A. The Timentwas were using a substantial portion of
18 that water based on my own personal investigation of
19 the system, the remnants of which --

20 Q. You can just answer that yes or no.

21 MR. VEEDER: Let him finish. I think we should
22 let the witness finish.

23 THE COURT: Well, gentlemen, you talk about the
24 record, we have got two people talking at the same
25 time, and the Reporter isn't capable of doing that,

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so let's go back and you can start your question again,
Mr. Price.

Q. (By Mr. Price) Mr. Watson, wasn't it your testimony
that the Timentwas were using substantially all that
water?

A. The Timentwas were using most of the natural flow of
No Name Creek at that time.

Q. Thank you. It was also your testimony that from that
half second foot rill irrigation, it would be possible
to irrigate approximately 30 to 40 acres; is that
correct?

A. That's correct.

Q. So that in effect during the '30's and '40's anybody
using reasonable diligence, the maximum amount that
they would be able to put under irrigation would be
30 to 40 acres, isn't that correct?

A. It is correct that the full beneficial use of water
at that time could not have extended to more than 30
to 40 acres.

Q. Fine.

A. The physical supply of water was insufficient to
irrigate more land.

Q. What made it possible to irrigate more land than 30
to 40 acres? Was it the advent of electric power
into the valley?

1 A. No. It was the development of the Colville wells.
2 Q. Oh. So, you contest that it was impossible for the
3 Waltons to ever irrigate more than 30 or 40 acres
4 even when they were utilizing the creek water, is that
5 not correct, until the Tribal wells came along?
6 A. The Tribal wells have supplied substantially more
7 water to that stream than was provided by the Waltons.
8 THE COURT: When were the Tribal wells activated?
9 THE WITNESS: '76, Your Honor.
10 Q. (By Mr. Price) Mr. Watson, you are aware that the
11 Waltons have irrigated on their property prior to
12 1976, are you not?
13 A. We have heard testimony that they have. Exactly
14 where and how much is a real question.
15 Q. All right. Is it your testimony then that it was not
16 physically possible for the Waltons or their predecessors
17 in using due diligence to have ever put more than 30 or
18 40 acres under irrigation until the Tribal wells came
19 along in '76?
20 A. It was impossible for the Waltons or their predecessors
21 to develop a full water supply for more than 30 to 40
22 acres from the surface flow of No Name Creek.
23 Q. Thank you.
24 A. You are welcome.
25 Q. I think I'll go away amenable today.

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In terms of the flow of No Name Creek, the surface flow, I believe it was your testimony that as the Tribe pumps water it diminishes the water that would be available for the natural spring occurrence at the origin of No Name Creek; is that correct?

A. Not as much as the Walton well, but it does diminish the flow.

Q. Are you familiar with the fact that prior to 1976, and the Tribe's irrigation program that Mr. Walton utilized the surface flow of No Name Creek and pumped from two wells at the head of No Name Creek where they are presently located?

A. He didn't pump from two wells at the same time.

Q. No, alternating. You are aware of that?

A. I am aware that there was a well in the creek bed, I believe in 1967 or '68, and that that well was abandoned, and that another well was drilled in 1975.

Q. And you are aware that he utilized both the surface flow of the creek which continued in 1975, as well as the well water from his well?

A. Yes. I have observed him diverting the full, natural flow of No Name Creek, and he did use the well simultaneously.

Q. And it was not due to any Tribal pumped water in 1975, was it?

- 1 A. There was no pumped water by the Colvilles in 1975.
- 2 Q. Thank you. Mr. Watson, in determining what areas
3 might be irrigable and what areas might not be
4 irrigable, did that have any relationship to the
5 type of farming that might be going on there? In
6 other words, what were you considering that the land
7 might be put to use if irrigation water was put on?
- 8 A. I am not sure I understand your question on that,
9 Mr. Price.
- 10 Q. Well, I take it you can grow different crops on a
11 given piece of land, and that there are considerations
12 that different crops might grow on different pieces
13 of land; is that correct?
- 14 A. Depending upon the character of the land.
- 15 Q. What kind of crops did you take into consideration
16 that would not be appropriate for irrigation on these
17 areas that you found not to be appropriate for irri-
18 gation?
- 19 A. It is not a matter of the type of crop; it's a matter
20 of the presence of the high water table on the lands
21 that were described as non-irrigable.
- 22 Q. Have you ever run a dairy, operated a dairy?
- 23 A. No, I never have.
- 24 Q. Have you ever raised hay for a dairy herd?
- 25 A. Not for a dairy herd, no.

- 1 Q. Do you have any idea whether a dairy herd will eat
2 tall wheat grass?
- 3 A. I have observed --
- 4 Q. Do you know, Mr. Watson, whether a dairy herd can
5 utilize tall wheat grass?
- 6 A. Well, I was answering that question, and I have
7 observed very little forage of the tall wheat grass
8 by the Walton dairy cattle on the Walton property.
- 9 Q. I take it your answer is you do not know?
- 10 A. No.
- 11 Q. Thank you.
- 12 A. I didn't say that I don't know.
- 13 Q. How much of the tall wheat grass will a dairy herd
14 utilize, can it utilize and in what --
- 15 A. Speaking hypothetically or --
- 16 Q. No.
- 17 A. With respect to the Walton properties?
- 18 A. With respect to what your knowledge is as to what
19 portions of the year will the consume that crop
20 product?
- 21 A. Well, Mr. Walton harvests that for the purpose of
22 simply taking that cover off the land. When we were
23 there Monday, for example, the tall wheat grass had
24 been cut, and it had been left in the field.
- 25 Q. Mr. Watson, I would ask that you direct your answers

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to my questions. We know that you were there on Monday by several accounts now. That is not really what I am interested in.

Do you know whether or not the dairy herd -- what months of the year it will consume that as an edible crop, a forage crop?

A. I don't know that there are any months that those dairy cows will consume that.

Q. Do you know that there are some months that they will?

A. I don't know that there are any months that the dairy cattle will consume that grass.

Q. You have no basis for such a decision or an answer, do you?

A. Oh, I have a basis for the observations that the dairy cattle on the Walton property have not foraged that tall wheat grass substantially.

Q. Mr. Watson, you are aware that Mr. Walton irrigates more acreage than you have testified to as being practicable to being put to irrigation; is that correct?

A. What are you saying I testified to as being practicable?

Q. I thought you testified at length here that some acres were irrigable in your opinion, and some were not.

MR. VEEDER: I wish Counsel would speak up. I

1 can't hear. Would you ask that question again?

2 Q. (By Mr. Price) Did you testify here today that

3 some acreages on the Walton property were irrigable

4 and some were not?

5 A. That's correct.

6 Q. Okay. Does Mr. Walton irrigate more acres than you

7 determined should be irrigated, less acres than you

8 determined should be irrigated, or the exact amount

9 that you determined should be irrigated?

10 A. He applies water to more acres than were indicated

11 were suitable for irrigation.

12 Q. If he does that and you are right, he is going to

13 destroy his crop, isn't he?

14 A. Well, he is going to do a number of things including --

15 Q. He is going to destroy his crop, isn't he?

16 A. He will certainly damage the crop, damage the soil,

17 and deprive the lower allotments of water.

18 Q. Do you know of any reason that Mr. Walton would be

19 embarked upon a course of destroying his crops and

20 damaging his soil?

21 A. Well, in 1979, for example, we were in the middle of

22 the spawning season and applying water on 901 and 903,

23 and Mr. Walton diverted huge quantities of water from

24 the surface flow of No Name Creek at unmeasured

25 diversion points D-1 and D-2 that had the affect of

DARON BRADFORD BOND

1 drying up the pump and supplying water to Allotments
2 901 and 903 and destroying some of the fish that were
3 in the stream.

4 Q. I didn't ask you what he did. I asked you do you
5 know any reason why he wants to destroy his crop
6 and damage his land?

7 A. I am not --

8 MR. VEEDER: Your Honor, I object to this. This
9 is simply Counsel arguing with the witness, and he
10 doesn't like the answers he's getting, and we are
11 just arguing whether Mr. Walton was doing right or
12 doing wrong. I don't see where we are going on this
13 course of questioning.

14 MR. PRICE: To the contrary, I do like the
15 answers, Counsel.

16 THE COURT: Well, I don't know if Mr. Watson
17 has any explanation for that or not, but I think since
18 this is cross-examination I will permit him to answer,
19 if he can answer.

20 THE WITNESS: If we are going to the intent of
21 Mr. Walton, I don't know if his application of water
22 during that period, for example, was intended to
23 deprive the Colvilles of water, or that he thought
24 that that land would benefit from irrigation.

25 Q. (By Mr. Price) The photograph U-W does not depict a

1 farm of damaged crops or damaged lands, does it,
2 Mr. Watson?

3 A. I think it would be an unfair statement to say that,
4 Mr. Price.

5 Q. Okay.

6 A. This photograph was taken in the early spring. The
7 hillsides are very green. The valley floor is very
8 green, and there are definitely areas that I recognize
9 from personal experience here that are very soggy and
10 boggy and on the verge of being saline.

11 Q. On the verge of being saline? Do you see any irriga-
12 tion going on on any of the properties there?

13 A. This photograph does not show sufficient detail to
14 identify water being applied by sprinklers. I see
15 that the sump is full. That doesn't necessarily mean
16 that there was irrigation going on.

17 Q. The sump is full just as a natural occurrence even
18 when there is no irrigation going on, isn't that true?

19 A. No, that's not correct.

20 Q. I see.

21 A. It's dry in the later part of the year when water
22 is not diverted from No Name Creek, and there is --

23 Q. What is it in the spring, Mr. Watson, that you say
24 this photograph depicts?

25 A. Pardon me?

1 Q. Isn't that the time of high runoff waters in the
2 Okanogan Valley?
3 A. Not necessarily. There have been some very short
4 water years since we have been out there.
5 Q. Okay. Do you have a recollection of the precipitation
6 in the No Name Creek Valley in the 1930's, for instance,
7 as to whether or not it was above average, below
8 average, or average?
9 A. In the early part of the 1930's, it was below average.
10 Q. Is it not true that in one of those years they hit
11 the lowest recorded rainfall?
12 A. Not in the 1930's, no.
13 Q. When was it recorded?
14 A. It was in the late 1920's.
15 Q. Late 1920's.
16 MR. PRICE: Could I have Exhibit 25-2, please?
17 If I might, to save some time, if I might approach
18 the witness, Your Honor?
19 THE COURT: All right. Go ahead, Mr. Price.
20 Q. (By Mr. Price) Showing you what I purport to be a
21 Xeroxed copy of Exhibit 25-2, do you recognize that
22 exhibit?
23 A. I believe I do, Mr. Price.
24 Q. And it depicts the annual precipitation records as
25 recorded at the Omak Weather Station for 1907 to 1977.

1 A. The exhibit depicts the annual precipitation at the
2 Omak and Omak No. 2 Northwest Weather Stations
3 spanning the period of years 1907, through 1977.
4 Q. And in a brief look there, it appears in the 1930's
5 that we reached an all-time low. Is that not correct?
6 A. No.
7 Q. That's not what that exhibit depicts?
8 A. No. I will save you some time, Mr. Price. It was
9 1929.
10 Q. All right. Through the period of 1925, 1929, and
11 the 1930's, what is the rainfall for precipitation
12 recorded in terms of the average for that area?
13 A. Well, in 1928, 1929, and 1930, precipitation was
14 substantially below normal. The black line on this
15 Exhibit 25-2, and by the way, this exhibit was
16 admitted in March, 1978, the black line represents
17 the 69 year average precipitation of 11.54 inches.
18 Q. And did you use that? Did you refer to that exhibit
19 or utilize that information in making your determina-
20 tion that the flow in Omak or No Name Creek in the
21 '30's and '40's was one-half cfs?
22 A. No. I used the published records of the U.S. Geologi-
23 cal Survey, actual measurements of the flow of the
24 stream.
25 Q. So, you are satisfied that one-half cfs would have been

1 a fairly constant irrespective of the precipitation
2 records?

3 A. Well, in 1972, the U.S. Geological Survey measured
4 the flow of No Name Creek at Mr. Walton's point of
5 diversion. He was diverting .24 cubic feet per
6 second, and .08, an unusable quantity of water, was
7 the water in the No Name Creek channel below his
8 surface diversion.

9 That .05 cubic feet per second is representa-
10 tive of the amount of water being discharged on a
11 fairly uniform basis throughout the year. Now, there
12 are periods when thunderstorms --

13 Q. I think that's sufficient for my question. I think
14 that satisfies it. Thank you.

15 How do you explain -- do you have any
16 explanation for the fact that you indicate the
17 available water was being utilized in total by the
18 Timentwas on Allotments 901, or 903, in the '30's and
19 '40's? How do you explain Mr. Wham's testimony
20 and Mr. Hampson's testimony that irrigation was being
21 employed to the north of the Timentwas' property
22 by the Whams and their predecessors?

23 A. That evidence is very consistent with our findings.
24 Mrs. Johnson, I believe, yesterday confirmed that --
25 confirmed earlier testimony that we heard in this case

1 that there was a very small amount of acreage on
2 Allotment 525. The only allotment that was irrigated,
3 according to their testimony, was somewhere on the
4 order of 5 to 7 acres which were in alfalfa, and that
5 there was subirrigated corn, and that there was
6 some irrigated corn, and that is all very consistent
7 with our findings that those people were using very
8 small quantities of water, and that the substantial
9 portion of the natural flow of No Name Creek was
10 being used in the very elaborate, efficient, and
11 sophisticated system, the remnants of which are still
12 located on Allotment 901.

13 Q. Did you uncover any records that indicated --
14 Mr. Veeder indicated to the Court yesterday that the
15 Johnsons, being Christian people, knew that they had
16 to let that water go down the creek for the Timentwas,
17 and that that's what they intended to do. Did you find
18 any historical evidence --

19 MR. VEEDER: May I have that question read back,
20 please?

21 (Pending question read.)

22 MR. PRICE: I will rephrase the question.

23 Q. (By Mr. Price) Did you find any historical evidence
24 to indicate that the Johnsons were intending to allow
25 water to run down to the Timentwas?

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MR. VEEDER: Now, wait a minute. I object.
There is not a word in the record about the Johnsons
letting water run down the stream.

THE COURT: The question was whether he knows of
any evidence about anything.

MR. PRICE: I think Mr. Veeder made a Motion
yesterday at the end of our case that the Johnsons
knew that the --

THE COURT: Just a minute. There is a question
to the witness as to whether or not he has evidence
of a certain fact, and I will overrule the objection.
If he can answer the question, he can answer it. So,
there is no sense in discussing it.

Q. (By Mr. Price) Can you answer that yes or no, Mr.
Watson?

THE COURT: If you need it read back or something--
just ask him the question again.

Q. (By Mr. Price) Do you know of any historical documen-
tation or records indicating that the Johnsons intended
as a purposeful matter, to allow water to flow down
to the Timentwas?

A. I would say, yes.

Q. And what are those records, please?

A. The records are the --

MR. VEEDER: Your Honor, may I just interrupt for

1 a second? This colloquy is strange because the
2 Johnsons are not involved. It was the Whams and
3 six months from now we are all going to wonder who
4 the Johnsons were, and the Whams were the people who
5 owned the land.

6 THE COURT: Wasn't Mrs. Johnson a Wham?

7 MR. VEEDER: Well, I don't know if she ever got
8 involved in letting the water run down the stream.

9 MR. PRICE: For Counsel's purposes, let's inter-
10 pose the name Wham for Johnson.

11 THE COURT: All right. That takes care of that.

12 MR. VEEDER: All right. Fine.

13 MR. PRICE: And the records, Mr. Watson?

14 THE WITNESS: The records are the substantial
15 evidence on the 1936 and 1946 aerial photos showing
16 no irrigation on Allotments 525, 2371, or 894, and
17 the fact that on the 1936 photo, there is substantial
18 evidence of irrigation on Allotment 901, and substan-
19 tial evidence of irrigation on the St. Mary's Mission.

20 That photo shows clearly areas irrigated,
21 and there is no evidence of irrigation on the Walton
22 allotments, and the 1946 photo also shows --

23 Q. (By Mr. Price) Just --

24 A. It also evidences the same thing.

25 Q. Mr. Watson, I know that you are into a narrative, but

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let me interrupt you for a moment.

It is interesting, is it not, that those photographs can find irrigation above the Walton property in 1936, and below the Walton property in 1936, but can't depict the irrigation that was testified to by Mrs. Johnson, Mr. Hampson --

A. Now, there is an area in the vicinity --

Q. -- is there? Do you have an explanation as to why the photographs would not depict the irrigation that was obviously going on as testified to by a person who lived there?

A. That's correct. The reason is that the irrigation practices to the extent there were any, and I am not trying to dispute the testimony of Mrs. Johnson or Mr. Hampson, but there was less intensity of any kind of operation in the vicinity of the Walton buildings, and there is clear evidence that there was no irrigation anywhere else in Allotments 2371, 525, or 894.

There is demonstrable evidence of irrigation on Allotments 901, and also demonstrable evidence of irrigation on the St. Mary's Mission. Those are very clear, and I certainly wouldn't want to say that the testimony by Mrs. Johnson, or the testimony by Mr. Hampson was incorrect, but there is evidence that any irrigation practices on Allotment 525, up to 7 to

1 10 acres was far less intense than irrigation being
2 practiced elsewhere in that vicinity.

3 Q. Your recollection is 7 to 10 acres? That was one
4 of the fields. There was an upper field and a lower
5 field.

6 A. No. I accumulated those.

7 Q. I see. All right. That's fine. On the --

8 MR. VEEDER: Is it all right if I sit over in
9 the jury box? I can't hear very much what Counsel
10 is saying.

11 THE COURT: Certainly, Mr. Veeder.

12 Q. (By Mr. Price) Mr. Watson, when you flood -- are you
13 familiar with the fact that in farming practices that
14 flood irrigation is employed from time to time?

15 A. It was employed on Allotment 901 and the St. Mary's
16 Mission in 1936, over substantial acreages.

17 Q. I guess the question is are you familiar with whether
18 flood irrigation is practiced in agricultural, for
19 agricultural purposes from time to time?

20 A. Yes.

21 Q. When flood irrigation is utilized, is there a
22 period of time when water stands on the land?

23 A. Not if the land is capable of receiving the water,
24 the water does not stand for long periods of time,
25 no.

1 Q. What does flooding signify to you, Mr. Watson?

2 A. It means spreading of the water over the land surface
3 and the reception of that water by the land surface.

4 Q. For a period of time the water has to be over the
5 land surface in order to constitute flooding in the
6 first place, doesn't it?

7 A. A small amount of water, yes.

8 MR. PRICE: Thank you, Mr. Watson.

9 THE COURT: Mr. Sweeney, do you have any questions?
10

11 CROSS-EXAMINATION

12 BY MR. SWEENEY:

13 Q. As I understand it, Mr. Watson, in your opinion the
14 natural flow of No Name Creek is .5 cfs?

15 A. That was measured by the U.S. Geological Survey in
16 1972, before any pumping of the No Name Creek aquifer
17 by either the Waltons or the Tribal wells.

18 Q. And as I understand it then, you agree or you feel
19 that that's a reasonable figure for the natural flow
20 throughout the year?

21 A. I think that's a reasonable figure for the natural
22 flow from the spring zone, and during thunderstorms,
23 during periods of snow melt runoff, definitely there
24 would be some additions to that flow for very short
25 periods of time.

1 Q. Okay. When is the irrigation season in No Name Creek
2 Valley?
3 A. The irrigation season generally, Mr. Sweeney, would
4 run from April 1st through September 30th, depending
5 upon the year.
6 Q. Which is approximately six months?
7 A. Six months.
8 Q. Could you tell me how many gallons per minute is
9 represented by .5 cfs?
10 A. 225 gallons per minute.
11 Q. Can you calculate that into a per acre feet figure?
12 A. It's one acre feet per day, basically.
13 Q. Basically, it is, isn't it?
14 A. Yes.
15 Q. So that would be approximately 180 acre feet of water
16 in the natural flow during the irrigation season in
17 the No Name Creek Valley?
18 A. It would be 180 acre feet not counting for the times
19 when harvesting is going on and other periods when
20 it is not necessary to irrigate.
21 Q. Well, I just asked that that calculates out at 180
22 acre feet for that period, that six-month period?
23 A. If there was a continuous flow of water being diverted
24 for irrigation purposes, or am I understanding your
25 question properly?

1 Q. Well, I didn't have diverted in mind, but it -- if it
2 were diverted, it would be 180 acre feet for the
3 irrigation season?

4 THE COURT: Isn't that just a mathematical
5 question?

6 MR. SWEENEY: Yes, I think it is, Your Honor.

7 Q. (By Mr. Sweeney) How many acres were being irrigated,
8 or are now being irrigated on 901 and 903?

9 A. There are 60 -- well, between 60 and 65 acres.

10 Q. Are presently being irrigated?

11 A. On Allotments 901 and 903, correct.

12 Q. What is the irrigable acreage on those two allotments?

13 A. I would have to refer to some additional information
14 if I could, Mr. Sweeney, on that.

15 Q. Have you got it readily available?

16 A. I think so.

17 Q. Okay.

18 MR. VEEDER: You are asking for the irrigable
19 acreage?

20 MR. SWEENEY: Yes.

21 MR. VEEDER: This is decreed acreage?

22 MR. SWEENEY: Well, it is 41.1, plus --

23 Q. (By Mr. Sweeney) I have got it here. I will just
24 read it to you. 41.1 acres on Allotment 901, and
25 57.3 on Allotment 903. So, it is a total of 98.4?

1 A. Correct.

2 THE COURT: Is the earlier figure in there, the
3 60 to 65 -- oh, you are talking irrigable acres. All
4 right.

5 MR. SWEENEY: Yes.

6 THE COURT: What was that figure?

7 MR. SWEENEY: 98.4, the total irrigable acres.

8 Q. (By Mr. Sweeney) Now, as I understand it, Mr. Watson,
9 you are in charge of the Colville Irrigation Project?

10 A. I have been responsible for the operation and super-
11 vision of the water related to that project, yes.

12 Q. Yes. I see. When did you first embark upon that?

13 A. In 1976.

14 Q. When was the first time that you saw the No Name Creek
15 Valley?

16 A. In 1975.

17 Q. Okay. At that time, had Mr. Walton drilled his well
18 near the north boundary of Allotment 525?

19 A. Yes.

20 Q. It had just been drilled that spring; is that correct?

21 A. I don't really have any personal knowledge on that,
22 Mr. Sweeney.

23 Q. But, it was there when you saw it sometime in 1975?

24 A. Yes.

25 Q. Do you know how deep that well is?

1 A. I have known in the past. I can't tell you right now
2 how deep it is.

3 Q. Do you know how many gallons per minute is its
4 capacity, rated capacity?

5 A. Again, I would be guessing on that.

6 Q. Would you have that information?

7 A. I do have that information, although I am not sure
8 how readily available it is. I do have that informa-
9 tion, though, yes.

10 Q. Now, were there any wells on Allotments 526 or 892
11 at the time that you came to the No Name Creek Valley
12 in 1976?

13 A. Now, you are talking about Allotment 892?

14 Q. The two Tribal allotments lying to the north of Mr.
15 Walton.

16 A. I believe there was, yes. Yes, there was. I know
17 there was.

18 Q. How many wells were there?

19 A. At least one.

20 Q. How many wells are there now, for instance?

21 A. There are, counting production wells and observation
22 wells --

23 Q. No. Let's skip the observation wells; just for the
24 production wells.

25 A. There are four.

1 Q Now, were any of those four wells in existence at the
2 time you first came to the No Name Creek Valley?
3 A No.
4 Q So, the wells that you said were in existence were
5 not what we call production wells as we refer to them
6 now?
7 A Well, the four wells that we are talking about as
8 irrigation wells were not there. There was a domestic
9 well on the Peters allotment.
10 Q Oh, the Peters allotment.
11 A Yes.
12 Q That's not used for irrigation at this time?
13 A No.
14 Q It hasn't been since the Colville Irrigation Project
15 has been in operation?
16 A No.
17 Q It has, however, been used for observation purposes?
18 A Yes.
19 Q Okay. When were the four production wells put in on
20 those two allotments?
21 A The four production wells were put in from 1976,
22 to 1978.
23 Q Which was the first one?
24 A I don't know. I don't know the answers to those
25 questions, Mr. Sweeney. There were other people

1 involved, and I could look at the records and tell you.

2 Q. Well, isn't there the Pashal Sherman well?

3 A. Yes, there is.

4 Q. That's the most northerly well?

5 A. Yes.

6 Q. Then, the Colville No. 1 well?

7 A. Yes.

8 Q. Then the Colville No. 2?

9 A. Yes.

10 Q. Then, the Colville No. 3?

11 A. Yes.

12 Q. Okay. Where is the Pashal Sherman well located?

13 A. It is located in Allotment 526 in the central portion

14 of that allotment.

15 Q. And it is the well, a well that supplies water out

16 of the aquifer to the channel of No Name Creek?

17 A. And for irrigation on Allotments 526 and 892. That

18 well is located very near Omak Creek.

19 Q. You don't know when that well was drilled?

20 A. Well, maybe I could save you a little bit of time on

21 that. The Colville No. 1, the Colville No. 2, and

22 the Pashal Sherman irrigation wells were all drilled

23 in the same time frame within a matter of a few days.

24 Q. In 1976?

25 A. In 1976, and they are pretty equally distributed

1 across the northern end of the aquifer.

2 Q. Do you have a map that shows Allotments 526 and 892

3 among those documents that are on the easel?

4 A. I believe I do.

5 Q. Could we turn to that maybe? Maybe that would make

6 it simpler.

7 A. All right.

8 Q. That's exhibit what number?

9 A. This is Colville Exhibit 49-A.

10 Q. Okay. Could you just point and indicate on the map

11 where the location of the Pashal Sherman well is on

12 Allotment 526?

13 A. It is located toward the north end of Allotment 526,

14 and south of Omak Creek.

15 Q. Then, the Colville well No. 1, where is that?

16 A. Colville No. 1 is located near the midpoint of the

17 aquifer at the north boundary of 892.

18 Q. Okay. Is it on 892 or 596?

19 A. It is on 892.

20 Q. Where is Colville No. 2?

21 A. Colville No. 2 is located in the southern portion of

22 Allotment 892.

23 Q. How close is it to the boundary between 525 and 892?

24 A. It is a fair distance from the south boundary of 892,

25 approximately 150 feet.

1 Q Where is Colville No. -- no, wait a minute. Pashal
2 Sherman well and Colville wells Nos. 1 and 2 were all
3 drilled approximately at the same time in 1976?
4 A That's my recollection.
5 Q Okay. Then, there is a Colville well No. 3?
6 A Yes.
7 Q Where is that located?
8 A That well is located a little bit north of the Colville
9 No. 2 well in the southern half of Allotment 892.
10 Q So, it is similarly about 150 feet from the boundary
11 line?
12 A It is further. It is further from the boundary line
13 than Colville No. 2.
14 Q When was Colville No. 2 drilled?
15 A Colville No. 3?
16 Q Yes.
17 A Colville No. 3, I'm having a little trouble with my
18 recollection on that, but I believe it was 1978.
19 Q Where is the Walton well located with reference to the
20 525 and 892 boundary?
21 A The Walton well is located very far north in Allotment
22 525, within just a few feet of the north boundary
23 of that allotment.
24 Q So, it is about 150 feet away from Colville No. 2?
25 A I would say it is 20 feet further, 20 feet south of

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the fence.

Q. Okay. Now, how many -- was 901 and 903 being irrigated when you came to the valley and the Colville Irrigation Program was commenced before that, I mean?

A. Yes. It had been irrigated before I came.

Q. Okay. Was it being irrigated in 1975?

A. No.

Q. Okay. You don't know how long before it had not been irrigated, or do you?

A. Well, it was irrigated pretty extensively from 1920, through 1940.

MR. VEEDER: Your Honor, I would like to interpose an objection to this. I think it goes far beyond anything on direct examination.

THE COURT: Well, as I mentioned earlier, Counsel, in this trial there is a great deal of latitude insofar as scope is concerned, and when a witness is here on the stand I am going to permit cross-examination. I will overrule the objection.

Q. (By Mr. Sweeney) Similarly, was there irrigation ongoing on Allotment 526?

A. No.

Q. And how about 892?

A. No.

MR. SWEENEY: I have no further questions. Thank

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you.

THE COURT: Is there any redirect, Mr. Veeder?

MR. VEEDER: Yes.

REDIRECT EXAMINATION

BY MR. VEEDER:

Q. Mr. Watson, in the cross-examination the issue was raised about the utilization by the Defendant Waltons of the waters of No Name Creek, and I ask you this: Do you have any personal knowledge as to the impact of the Walton utilization of water as it pertains to 901 and 903? What is the impact upon the stream running down to 901 and 903?

A. It draws up the water available to 901 and 903.

MR. PRICE: Your Honor, that issue has been litigated. We are talking about allocation of reserved waters. I object to the form of the question. It is not relevant, and it is repetitious.

MR. VEEDER: Your Honor, this very man who is objecting to my inquiries on redirect is the one that asked the question.

THE COURT: Mr. Watson has already answered the question for what it's worth.

Q. (By Mr. Veeder) Now, Mr. Watson, have you witnessed the growth of what we call rye grass or wheat grass

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on a large segment of the Walton property?

A. Yes, I have.

MR. PRICE: Excuse me, Your Honor. I don't know that this is redirect.

MR. VEEDER: Well, the only point is that you cross-examined extensively on wheat grass and rye grass.

THE COURT: Well, as I said, I am going to be a little liberal. I would like to keep it as much as possible as redirect.

Q. (By Mr. Veeder) Well, have you witnessed the harvest of that rye grass for anything, the utilization of it? The growth that you have seen down there in the Walton property, have you ever seen it harvested in five years?

A. I have visualized it cut and left to lay in the field.

Q. Was it ever stacked or taken up or anything like that?

A. No.

MR. VEEDER: I have no further questions, Your Honor.

THE COURT: All right. Mr. Price, do you have anything further?

MR. PRICE: No, Your Honor.

THE COURT: All right. I guess you may be excused then, Mr. Watson. Thank you.

1 MR. VEEDER: Could we continue this in the
2 morning, Your Honor?

3 THE COURT: Well, let me see what you think your
4 time frame looks like now. We can start earlier in
5 the morning. I have rescheduled our Motion Calendar
6 to start at 1:00.

7 MR. VEEDER: Well, we can move it right along.
8 I would just as soon start at 8:30.

9 THE COURT: Is that acceptable?

10 MR. SWEENEY: Yes, Your Honor.

11 MR. PRICE: Yes, Your Honor.

12 THE COURT: Whatever time you would like to
13 start, I would like you to indicate that there would
14 be no problem finishing the testimony by tomorrow,
15 at least.

16 MR. VEEDER: That's right..

17 THE COURT: So, keep in mind that we should do
18 that no later than noon.

19 MR. VEEDER: I think we can save some time for
20 this.

21 THE COURT: I think insofar as argument and
22 proposals and such, we can talk about that tomorrow,
23 but I would like to finish the testimony and then we
24 can take it from there.

25 MR. VEEDER: Fine, Your Honor. That will be done.

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THE COURT: Well, we will see if we can commence promptly at 8:30 in the morning then, gentlemen.

MR. VEEDER: Yes, Your Honor.

(Court recessed for the day.)