

12-9-1988

Order Modifying the Minimum Flow Provisions of This Court's Memorandum Decision of July 23, 1979

Eastern District of Washington, District Court

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James R. Larsen
JAMES R. LARSEN, Clerk
Deputy

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 SPOKANE TRIBE OF INDIANS,)
)
 Plaintiff/Intervenor,)
)
 v.)
)
 BARBARA J. ANDERSON, et al.,)
)
 Defendants.)

No. 3643

ORDER MODIFYING THE
MINIMUM FLOW PROVISIONS OF
THIS COURT'S MEMORANDUM
DECISION OF JULY 23, 1979

This matter comes on for hearing in relation to the Spokane Tribe of Indians' (Tribe) Second "Cause of Action," as set forth in the Tribe's Petition of May 28, 1986, which relates to a request by the Tribe to modify the minimum flow originally established by the "Memorandum Opinion and Order" of Judge Marshall Neill, dated July 23, 1979, and reaffirmed by the "Memorandum and Order Granting, In Part, Motions to Amend Memorandum Opinion and Order" of Judge Justin L. Quackenbush, dated August 23, 1982. On the basis of (1) an agreement between the plaintiffs Tribe and United States of America, and defendant State of Washington recommending modification of the minimum flow established in the aforementioned Memorandum Opinion and Order of July 23, 1979, (2) prior

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1 notice of said recommended modification having been provided
2 to all parties together with a notice of an opportunity to the
3 parties to present their views and objections to this Court,
4 orally or in writing, as to the recommended modification, and
5 (3) the Court having neither heard nor otherwise received any
6 formal objections to the recommended modification, now,
7 therefore;

8
9 IT IS HEREBY ORDERED:

10 As to the minimum flow established on page 10 of
11 Memorandum Decision of Judge Marshall Neill, dated July 23,
12 1979, and affirmed on page 7 of the Memorandum Decision of
13 Judge Justin L. Quackenbush, dated August 23, 1982, said
14 minimum flow is modified as follows:

15 1. In relation to all water rights recognized as
16 existing as set forth on pages 13 and 14 of Judge Neill's
17 Memorandum Decision of July 23, 1979 and continuing to exist
18 on the date of this order, including those embodied in permits
19 or certificates issued by the Department of Ecology after the
20 entry of said Memorandum Decision, the presently decreed
21 minimum flow (which provides for a maximum temperature of 68
22 degrees Fahrenheit but never less than 20 c.f.s.) is modified
23 to a minimum flow which is 24 c.f.s. regardless of
24 temperature; and
25

26 ORDER MODIFYING THE MINIMUM
FLOW PROVISION

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2 2. In relation to water rights (with a priority date on
3 or before September 13, 1988) established subsequent to the
4 entry of this Order pursuant to state law by the State of
5 Washington, Department of Ecology, said rights shall be
6 subject to a minimum flow of 24 c.f.s. regardless of
7 temperature.

8 3. In relation to all other water rights established
9 subsequent to the entry of this order pursuant to state law by
10 the State of Washington, Department of Ecology, said rights
11 shall be subject to a minimum flow of 27 c.f.s. regardless of
12 temperature.

13 4. For the purposes of this order, "minimum flow of 24
14 cfs" and "minimum flow of 27 cfs" shall be determined by
15 calculating the average of the daily average flows of the
16 previous seven days.

17 IT IS FURTHER ORDERED:

18 1. As to all water rights established under state law
19 subsequent to the entry of the Memorandum Opinion and Order by
20 Judge Neill on July 23, 1979 and the entry of this order and
21 issued to and now held by persons or entities that are not
22 parties to this proceeding, the defendant, State of
23 Washington, is directed (with the concurrence of the holders
24 thereof) to modify any of said rights which include a minimum
25 flow provision therein to a minimum flow of 24 c.f.s.

26 ORDER MODIFYING THE MINIMUM
FLOW PROVISION

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2 regardless of temperature. Said defendant is directed to
3 report to the Court not later than December 31, 1988 as to the
4 implementation of the directive of the preceeding sentence.

5 2. All remaining "Causes of Action" set forth in the
6 Tribe's Petition, dated May 28, 1986, are dismissed without
7 prejudice.

8 DONE in open Court this 9th day of December
9 1988.

10
11 
12 JUSTIN L. QUACKENBUSH
13 United States District Judge

14 Presented by:

15 Entered on Court Docket on 12-9-88
16 Jam

17 Charles B. Roe, Jr.
18 CHARLES B. ROE, JR.
19 Sr. Assistant Attorney General
20 Attorney for Defendant
21 State of Washington
22 Department of Ecology

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24 ROBERT D. DELLWO
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27 Thomas O. Rice by CBR
28 THOMAS O. RICE
29 Assistant United States Attorney
30 Attorney for Plaintiff
31 United States of America

32 ORDER MODIFYING THE MINIMUM
FLOW PROVISION

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CERTIFICATE OF MAILING

I hereby certify that a copy of the Order Modifying the Minimum Flow Provisions of This Court's Memorandum Decision of July 23, 1979 was mailed first class, postage paid, on the 9 day of December, 1988 to the parties at the following addresses:

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