

FILED

APR 09 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: _____

NO. 281141

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

IN THE MATTER OF THE DETERMINATION OF THE RIGHTS
TO THE USE OF THE SURFACE WATERS OF THE YAKIMA
RIVER DRAINAGE BASIN, IN ACCORDANCE WITH THE
PROVISIONS OF CHAPTER 90.03, REVISED CODE OF WA

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,

Plaintiff/Respondent

vs.

JAMES J. ACQUAVELLA, YAKIMA NATION INDIAN,
UNITED STATES OF AMERICA, JOHN COX DITCH CO.,
AHTANUM IRRIGATION DISTRICT, LA SALLE HIGH
SCHOOL, DONALD AND SYLVIA BRULE,
JEROME DURNIL, ALBERT LANTRIP, et al.,

Defendant/Appellants.

CORRECTED BRIEF OF APPELLANTS LA SALLE HIGH
SCHOOL, DONALD AND SYLVIA BRULE, JEROME DURNIL,
AND ALBERT LANTRIP

J. Jay Carroll
Velikanje Halverson P.C.
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509.248.6030

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ASSIGNMENTS OF ERROR

1. **Assignment of Error # 1 (Brule):** The Trial Court erred in denying the Appellant Brule a water right in the Ahtanum Subbasin by entering its Condition Final Order which incorporated its memorandum opinion on exceptions and previous reports and denied the Brule claim.

Issues related to Assignment of Error # 1:

1. Was the correct Brule predecessor in interest served with the Federal *Ahtanum* litigation?

2. Even if the correct Brule predecessor in interest was properly served in the case, were the subsequent owners of the property substituted or served with the lawsuit?

2. **Assignment of Error # 2 (La Salle):** The Trial Court erred in denying the Appellant La Salle a water right in the Ahtanum Subbasin by entering its Condition Final Order which incorporated its memorandum opinion on exceptions, memorandum opinion re: La Salle and previous reports and denied the La Salle claim.

Issues related to Assignment of Error # 2:

1. Was there a proper substitution of La Salle's predecessor in interest under FRCP 25(a)?

2. Even if there was a proper substitution, were the substituted parties served with a document that would put them on notice that they were the parties to a lawsuit?

3. **Assignment of Error # 3 (All Appellants):** The Trial Court erred in denying the Appellants a water right in the Ahtanum Subbasin by entering its Condition Final Order which incorporated its memorandum opinion on exceptions and previous reports and denied the Appellants' claim.

Issues related to Assignment of Error # 3:

1. Was the Federal *Ahtanum* Litigation a general stream adjudication?

2. Did the Court of Appeals decisions in the *Ahtanum* Litigation simply establish an "en gross" allocation of the waters of Ahtanum creek?

4. **Assignment of Error # 4 (All Appellants):** The Trial Court erred in denying the Appellants a water right in the Ahtanum Subbasin by entering its Condition Final Order which incorporated its memorandum opinion on exceptions and previous reports and denied the Appellants' claim.

Issues related to Assignment of Error # 4:

1. Does the language of *Ahtanum II* allow for and permit the awarding of “junior water rights” to those landowners that did not file answers in the Federal *Ahtanum* Litigation?

INTRODUCTION

These consolidated sets of appeals arise from some of the last decisions of the trial court in a general water adjudication involving the Yakima River basin. The general adjudication was initiated in 1977 and has been the subject of numerous appeals over the course of the preceding years.

Due to the vast number of claimants in the adjudication and the distinct nature of the various claims that would be asserted in the course of the proceedings, the Court entered a pretrial order that divided the proceedings into four procedural “pathways” for the presentment of evidence and claims. *See Ecology v. Yakima Reservation Irrig. Dist.*, 121 Wn.2d 257, 262, 850 P.2d 1306 (1993). These appeals involve the fourth pathway involving the individual claims within the identified subbasins.

STATEMENT OF THE CASE

Subbasin 23 is the “Ahtanum” subbasin. The headwaters of Ahtanum creek flow from a point on the eastern slope of the Cascade Mountains and then the creek flows some 40 miles where it joins the Yakima river. (CP 809; Report of the Court, Volume 48 at 35). Ahtanum creek forms a portion of the northern boundary of the Yakama Indian Reservation. Lands to the south of the creek lie on the Reservation and lands to the north are off-Reservation. (CP 809-10; Report of the Court,

Volume 48 at 35-36). The average annual inflow of Ahtanum creek is approximately 62,000 acre feet of water. (CP 810; Report of the Court, Volume 48 at 36).¹

Ahtanum creek was the first creek to be used as a source of irrigation water in the Yakima valley beginning in 1853. There was little development of the property adjacent to the creek until the time period between 1867-75 when practically all the lands riparian to Ahtanum creek were taken by homesteaders and the waters of the creek were used to irrigate the crops that these homesteaders raised. *See In re Water Rights of Ahtanum Creek*, 139 Wash. 84, 86, 245 P. 758 (1926).

The Yakama Indian Reservation was created by the Treaty between the United States and the Yakama Nation of Indians, June 9, 1855, 12 Stat. 951. The first court fight between the non-Indian water users of Ahtanum creek manifested itself in 1896 in the case of *Benton v. Johncox*, 17

¹ An acre foot (af) of water is that amount of water that is needed to cover an acre of land one foot deep with water. An acre foot of water equates to 43,456 cubic feet of water or 325,851 gallons of water. *See Yakima Reservation Irrig. Dist.*, 121 Wn.2d at 263 & n. 5.

Wash. 277, 49 P. 495 (1897). The case involved issues of priorities between riparian water users and subsequent appropriation of Ahtanum creek. *Johncox*, 17 Wash. at 289-90.

In August of 1906, significant disputes had arisen as to the use of the waters of Ahtanum creek by both the Indians and the white homesteaders. A superior court action titled *Dunn v. Redman, et. al.* was filed in the superior court of Yakima County. Redman was in the employ of the United States government and was an Indian Irrigation Service engineer. While the lawsuit itself did not proceed to trial nor did it result in any actual litigation, the filing of the *Dunn* action sparked a significant volume of correspondence, discussion and negotiations as to how the waters of Ahtanum creek should be allocated as between the Indians on the one hand and the white settlers on the other hand. *U.S. v. Ahtanum Irrigation Dist*, 236 F.2d 321, 328-29 (9th Cir. 1956)(hereinafter "*Ahtanum I*").

In the spring of 1908, Chief Engineer Code of the Indian Irrigation Service was dispatched to the Reservation in order to

meet with a contingency of the white water users for the purpose of attempting to arrive at a settlement of water distribution dispute. Such meetings did occur and Code, was able to negotiate a settlement of the dispute which resulted in a signed agreement between the United States and several thousand of the white settlers (through their respective “attorneys in fact”). *Ahtanum I*, 236 F.2d at 329.

This settlement document is now referred to as the “Code Agreement”. The heart of the Code Agreement was to divide the waters of Ahtanum creek by allocating 25% of the natural flow to the Reservation water users and 75% to the white settlers for the use of the water for irrigation purposes. *Ahtanum I*, 236 F.2d at 329. Unfortunately, the signing of the Code Agreement in 1908 did not bring peace nor certainty to the use of the waters of Ahtanum Creek. Beginning in 1912 and up through 1942, there were significant communications with respect to the dissatisfaction of the Indian water users as to

the Code Agreement and its effect. *Ahtanum I*, 236 F.2d at 330 & n. 12.

Likewise, there were disputes arising from the white settlers as to the proper allocation of their 75% share of Ahtanum creek. Accordingly, in the 1920's a general adjudication was instituted under Washington law to adjudicate the various rights of the white settlers with respect to that 75% share of Ahtanum creek:

Twenty-five percent of the water of the streams is owned by the United States and controlled and administered by the Indian Bureau for the use and benefit of the Yakima Indian lands under irrigation, leaving 75 percent of the waters to be adjudicated herein.

In re Ahtanum Creek, 139 Wash. at 88.

The adjudication culminated in 1925 with the issuance of a decree of water rights (hereinafter the "Achepohl decree") which resulted in the 216 claimants who had been confirmed a right being issued a "water rights certificate" that evidenced the nature and extent of that right so awarded. *See In re Ahtanum*

Creek, 139 Wash. at 88; CP 1080; Report of the Court, Volume 48 at 106. The Achepohl adjudication proceeding was appealed to the Washington Supreme Court which issued its final decision in 1926. *See In re Water Rights of Ahtanum Creek* 139 Wash. 84, 86, 245 P. 758 (1926).

The next chapter of the Ahtanum saga cuts to the heart of the main issues that are presented herein on appeal. In 1947 the United States brought an action against the white settlers owning property north of Ahtanum creek. The suit sought to have the Court declare that every drop of water in Ahtanum creek belonged to the Indians for use on Reservation property. *See United States v. Ahtanum Irrigation Dist.*, 124 F. Supp. 818, 824 (E. D. WA 1954)(Federal *Ahtanum* litigation). The summons and complaint named hundreds of individual defendants covering four, single spaced pages. (CP 1081; Report of the Court, Volume 48 at 107).

The particulars of this litigation will be discussed in greater detail below in relation to the arguments being made

herein. However, from a simple timing stance, District Court Judge Fee initially dismissed the action in a written decision issued in 1954. This decision was appealed to the Ninth Circuit and it issued its opinion in 1956. (*Ahtanum I*). The case was remanded back for further proceedings. After those proceedings were complete, an appeal was again filed with respect to the decision rendered. The Ninth Circuit issued its opinion in this second appeal in 1964. See *United States v. Ahtanum Irrigation Dist.*, 330 F.2d 897 (9th Cir. 1964)(*Ahtanum II*).

This brings us full circle to this adjudication. All of these Appellants filed claims within this current adjudication. They presented evidence and testimony to the referee/court. This appeal follows. For the reasons set forth below, the trial court should be reversed and these Appellants should be granted a water right for the waters within the Ahtanum Subbasin.

ARGUMENT

Two of the Appellants have appeal issues that are unique to their respective claims. Those two issues will be discussed first. Thereafter, the issues discussed are applicable to all Appellants herein.

For purposes of these first two arguments, it is important to understand the Court's decision making process in arriving at its decision to deny these claims. In order to successfully present a claim in this present adjudication the Court required a four part showing:

1. A showing of historical beneficial use of water on the land at issue;
2. A showing that a predecessor in interest of the land at issue signed the Code Agreement;
3. A showing that the land at issue was involved in and was granted a water rights certificate in the Achepohl decree;

4. A showing that the land was included in an answer number that was filed in the Federal *Ahtanum* litigation on the remand after the Court's decision in *Ahtanum I*. (CP 934, La Salle Decision at 3)

In both the Brule and the La Salle appeals, there is no issue of fact that they have established the first three prongs of the above listed test. It is undisputed that the reason for the denial of the claim was the failure to fulfill the fourth prong of the test. As is set forth below, those decisions were in error.

A. Don Brule Claim:

The Brule property has a long history of water use within the Ahtanum Creek subbasin. It is covered under Certificate 238 under the Achepohl adjudication and granted a Class 9 right. The evidence introduced at the hearing established a long history of applying water to beneficial use on the property. There was no evidence of abandonment of the water right and no evidence of relinquishment by showing an applicable consecutive five year period of time when water was not

beneficially applied to the land. (CP 496-97). However, the claim was denied because there was no showing that the predecessor in interest to the Brule lands filed an answer in the federal *Ahtanum* litigation. (CP 496-97)

The question presented on this appeal is whether Brule's predecessors in interest were parties to the federal *Ahtanum* litigation. They were not. Since the record with respect to this issue (as well as the similar issue presented by Appellant La Salle) is based entirely on written materials, this Court stands in the same position as the trial court and the standard of review is *de novo*. See *Laffranchi v. Lim*, 146 Wn. App. 376, 381-82 & ¶ 14, 190 P.3d 97 (2008).

Mr. Brule attached a true and accurate copy of a chain of title that he had done with respect to his property. The *U.S. v. Ahtanum* case was started in 1947. At that time, the owners of the property he currently owns were W.C. Cope and Inez Cope. (Appendix A, CP 3625). W.C. Cope and Inez Cope were not named as defendants in the *U.S. v. Ahtanum* case.

The Trial Court had a different take on that issue. It noted that under the service of process documents introduced into evidence, there was a Walter C. Cope and a W.C. Cope who were initially served. However, a closer look at these documents shows that it was not the same owners. The affidavit of service identifies substitute service of process on Mr. Cope's wife, ROSE. (Appendix B; EX-YIN 427). However, as noted in the chain of title documents submitted by Mr. Brule, Mr. Cope's wife's name was INEZ. Thus, from a starting point, the Trial Court erred since the evidence was insufficient to demonstrate that a predecessor in interest was a party to the federal *Ahtanum* litigation.

A second problem is the court's failure to address the subsequent transfers of property and the total lack of evidence that any of these subsequent owners were made parties to the action. It was not until 1964 that the Court rendered its final decision in the *Ahtanum II* opinion. From 1947, when the action was instituted through the Court's final opinion in 1964,

the ownership of the property that Mr. Brule currently owns changed at least five times: (1951) Frank Miller and Bertha Miller; (1959) Ralph Miller and Ivy Miller; (1962) Donald Herber and H. Robert Herber; (1964) H. J. Sieber. There is no evidence that any of these parties were substituted as a party into the *U.S. v. Ahtanum* case as parties with respect to the land that Brule currently owns.

This is especially true since the first transfer noted above (in 1951) occurred not only prior to the District Court's initial decision but also the Court of Appeal's first decision. Thus even if it could be established that the correct Cope was indeed initially served, the court's rationale still fails since there was no substitution of the correct party to the litigation. Any remand order from the Ninth Circuit in 1956 would mean nothing to the then owners of the Brule property since they were not parties to the action. They could not respond to an order that they did not know existed.

Accordingly, since there is no evidence that a predecessor in interest to the Brule property was a party to the federal *Ahtanum* litigation, there can be no res judicata effect to what transpired in that case. Since Brule successfully presented the other elements of his water rights claim, the trial court should be reversed and Brule's right should be affirmed.

B. La Salle High School Claim:

La Salle asserts a theory similar but slightly different than that asserted by Brule. Like Brule, La Salle fulfilled all the requirements for the granting of a water right with the exception of showing that an appropriate answer had been filed in the federal *Ahtanum* litigation. La Salle has a slightly different history in this regard. La Salle's predecessor in interest was Mrs. Jennie Goodman, a widow. She was served with a copy of the federal *Ahtanum* lawsuit on September 3, 1947. Jennie Goodman died about a year later, on November 6, 1948. The Goodman estate sold the property to two separate persons: (1) Wade Langell on April 30, 1949 and (2) H.A.

Richmond on June 30, 1949. (CP 935). It is undisputed that neither Langell nor Richmond were ever substituted into the action for Goodman.

At the time of the Federal *Ahtanum* Litigation, the version of F.R.C.P. 25(a)(1), then in effect, stated that:

If a party dies and the claim is not thereby extinguished, the court within 2 years after the death may order substitution of the proper parties. **If substitution is not so made, the action shall be dismissed as to the deceased party.**

(emphasis added).

The language of F.R.C.P. 25 (a)(1) is mandatory. The failure to make a substitution within the two year period mandates the dismissal of the action as to the deceased party. *See Anderson v. Yungkau*, 329 U.S. 482, 485, 67 S.Ct. 428, 430, 91 L.Ed. 436 (1947). It does not matter whether the failure to make the substitution was a result of “excusable neglect.” *See Anderson*, 329 U.S. at 484-85.

Thus, as stated by the Circuit Court of Appeals, Rule 25 (a) operates both as a statute of limitations upon revivor and as a mandate to the court to

dismiss an action not revived within the two-year period.

Anderson, 329 U.S. at 485.

The Ninth Circuit came to the same conclusion as to the application of F.R.C.P 25(a)(1):

[T]he power to order the substitution of appellees as defendants in his place and stead was limited to the two-year period prescribed in Rule 25(a)(1). That period expired on March 27, 1946. No substitution was made within that period. No valid substitution could be made thereafter.

Fleming v. Sebastiani, 161 F.2d 111, 112, (9th Cir. 1947).

It is undisputed that there was never a substitution of Mr. Richmond or Mr. Langell for Mrs. Goodman in the Federal *Ahtanum* Litigation. After two years from her death passed, the action was deemed dismissed as to Mrs. Goodman. At that point in time, the first trial in the AID Litigation had not even been conducted. Since no proper substitution was made and the action was to be dismissed as to Mrs. Goodman, the concept of *res judicata* has no bearing on the claim currently being asserted by La Salle.

The Trial Court's analysis in its written decision does not change this fact since it is fatally flawed. The Court correctly noted that on October 14, 1949, a number of individuals were dropped from the rolls of the lawsuit and a number of other parties were added. (Appendix C; EX - YIN 431). What the trial court failed to recognize was that, while both Langell and Richmond were added as parties to the action, neither Mrs. Goodman, nor her estate, were dropped from the action nor substituted in any way. (Appendix C; YIN 375). Who knows why Langell and Richmond were added to the suit. Maybe they bought other property along Ahtanum creek. We simply do not know. What we do know is that there has been no substitution of the La Salle predecessors in interest (Langell and Richmond) for Goodman. With this being the case, there can be no res judicata effect since the court was required to dismiss Goodman two years after her death.

Further, even if there had been a legitimate substitution in that action, the affidavit of service filed shows that Mr.

Langell was served on October 29, 1949 and Mr. Richmond was served on October 27, 1949. However, the key consideration is not “were they served,” but, rather, “served with what.” The affidavit of service does **not** reflect that they were served with the Order notifying them that they were being added as defendants. Rather, the affidavit simply states that they were served with “Summons and Complaint.” Note that the affidavit does not say “amended” summons or “amended” complaint.

This record establishes, at most, that Mr. Langell and Mr. Richmond were served with the summons and complaint in the *US v. AID* litigation. However, the summons and complaint did not list them as parties to the action. Thus, they were served with a lawsuit that did not give them notice that they were defendants to the action.

The record does not establish that La Salle’s predecessors in interest were properly served with paperwork that would have put them on notice that they were parties to the Federal

Ahtanum Litigation. This being the case, the concepts of res judicata have no application. The trial court erred in denying La Salle's claim for a water right from Ahtanum creek.

C. **Claims by La Salle, Brule, Durnil and Lantrip that the Federal *Ahtanum* Litigation was not an adjudication thus requiring all potential water claimants to set forth claims therein.**

From a starting point, these Appellants recognize that this issue will also be addressed and advocated by other Appellants. These Appellants adopt those arguments as if fully set forth herein. In an attempt not to be too duplicative, these Appellants assert the following as to why no adjudication occurred in this case.

It is undisputed that under the Achepohl decree, La Salle's predecessors in interest, the Goodmans, were granted a right which contained a period of use from April 1 through October 15. While the Ninth Circuit in the Federal *Ahtanum* Litigation did establish a July 10 cutoff for northside water users, that restriction does not apply to these appellants since

their predecessors in interest were not parties to that decision. Accordingly, the period of use for Appellant's right should be in accord with the Achepohl decree and be established as April 1 through October 15. The same argument as set forth below further establishes that, since there was no general stream adjudication, there can be no requirement that it must be demonstrated that an answer was filed in the litigation in order to now, at this time, be entitled to the granting of a water right in this adjudication.

The fallacy with the U.S. government's suit in the Federal *Ahtanum* Litigation was that it did not institute a stream adjudication. It clearly could have done so. *See e.g. Nevada v. United States*, 463 U.S. 110, 113, 103 S.Ct. 2906, 2910, 77 L.Ed.2d 509, 514 (1983)(referencing the "Orr Ditch" litigation to adjudicate water rights to the Trusckee River brought by the United States). However, it chose not to institute an adjudication but, instead, brought an action to invalidate the 1908 Code agreement and claim all the waters of Ahtanum

Creek for the Yakama Indian Nation. *See United States v. Ahtanum Irrigation Dist.*, 124 F. Supp. 818, 824 (1953). The reason that no adjudication was necessary nor sought by the U.S. is obvious. If the suit was successful, no northside water user would be entitled to a single drop of the water of Ahtanum Creek. It would be a useless task to bring an action to allocate nothing.

However, having made that choice, the United States is now stuck with it. The Ninth Circuit, in its last opinion in the Federal *Ahtanum* litigation, made it crystal clear that no stream adjudication was conducted and only those parties to the action would be bound by its decision.

The United States actually appealed the propriety of the lower court making an allocation to northside users “in gross” as opposed to on an individual basis. *See Ahtanum II* , 330 F.2d at 910.

The appellant has specified error as follows: 'In failing to determine the actual beneficial use made of the waters by individual defendants in 1908 or

at the present time.' This specification relates to the court's third conclusion of law as follows: 'That this water rights adjudication under the issues as presented herein is restricted to a determination of plaintiff's rights to the waters of Ahtanum Creek, as originally reserved under the Treaty of 1855, so far as they were retained by the agreement of 1908, and a determination of defendants' rights, collectively, so far as they were fixed under said agreement. That these rights, under the terms of said agreement, are to be ascertained by measurement and by a percentage division in the aggregate, of Ahtanum Creek waters as provided therein without an adjudication of waters to or for any particular tract of land.' It is argued that that conclusion is not in accord with the directions contained in our original opinion.

* * * *

Appellant particularly complains of the district court's adjudication of the rights of the defendants 'in gross' or 'in the aggregate', as stated in the Conclusion No. 3 previously quoted; and asserts that this treatment of the rights of the defendants as a group, or in the aggregate, is error for several reasons.

Ahtanum II, 330 F.2d at 910-11.

The Court found no error. While the Court noted that the lower court could very well have conducted an adjudication, it was not required to do so. The "in gross" determination was

not error. The Court found that the Government would have no interest in any adjudication among the defendants to the action. How the water that the defendants were granted was divided up would be of no concern to the Government. *See Ahtanum II*, 330 F.2d at 911-12.

This Court must ask itself one simple question concerning the final Ahtanum appeal in order to put the arguments into proper perspective. In *Ahtanum II*, the US appealed the issue of the trial courts failure “to determine the actual beneficial use made of the waters by individual defendants in 1908 or at the present time.” *Ahtanum II*, 330 F.2d at 910.

The question is, why would the US have appealed that issue if it thought that a finding had already been made as to individual water users? If there had been an adjudication, why would the appeal have been filed? The answer is hopefully obvious. The US appealed the issue because no individual determinations such that would be made in an adjudication

were made and it thought that such determinations should have been made. The Court of Appeals disagreed.

The Court of Appeals calculated an “en gross” award for the waters of Ahtanum Creek. While the US could have consented to an adjudication to occur at that time, it chose not to. Accordingly, there was no adjudication. As such, there is no res judicata effect in the event that a claimant in the current adjudication failed to appear in that 1947 action.

D. The Court Erred in Not Allowing for “Junior Rights”.

As with the last discussion, these Appellants will again incorporate by this reference the other arguments made concerning the awarding of “junior water rights” as set forth by the trial court initially. In the event that a full water right is not awarded to these Appellants, a junior water right should be awarded.

The *Ahtanum II* court order is clear. If there are excess waters over and above what is set forth, that water may be used by the non-Indian land owners to the extent that such water

cannot be put to beneficial use by the Indian water users. *See Ahtanum II*, 330 F.2d at 915.

The issue of “whether” such excess water exists is not the point. The true issue is, if such water exists, what rights do the parties have in that excess water. If there is no excess water, then the question is answered. However, in years and at times when the excess water exists, the Court’s initial determination and award of “junior rights” makes perfect sense and makes the allocation of water in a manner that is reasonable under the situation. This Court should reverse the trial court’s determination to hold that no such “junior rights” exist in the Ahtanum subbasin.

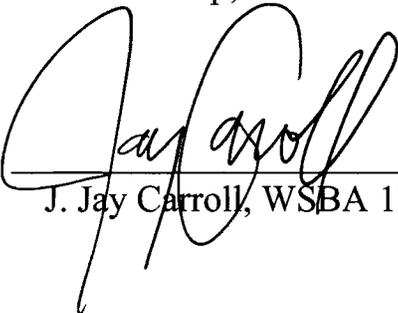
CONCLUSION

For the reasons set forth above, this Court should reverse the decision of the trial court with respect to the Ahtanum Subbasin. Appellants’ Brule and La Salle’s predecessors in interests were not ever made proper parties to the *Ahtanum* federal litigation such that res judicata effects should attach.

Additionally that litigation was not a general adjudication so that there was no determination of the actual water rights involved therein. The Court simply made an “en gross” award of water. Finally, this Court should, at the very least, reverse the trial court’s determination that no “junior water rights” would be awarded.

Respectfully submitted this 8th day of April, 2010.

VELIKANJE HALVERSON P.C.
Attorneys for Appellants La Salle, Brule,
Durnil and Lantrip,

By: 
J. Jay Carroll, WSBA 17424

CERTIFICATE OF SERVICE

I, JENNIFER FITZSIMMONS, hereby certify under penalty of perjury under the laws of the State of Washington that the following is true and correct.

I am the assistant to J. Jay Carroll, the attorney for La Salle High School, Donald and Sylvia Brule, Jerome Durnil and Albert Lantrip, and am competent to be a witness herein.

On April 8th, 2010, I caused to be mailed by U.S. Mail, postage pre-paid, the original and one copy of the foregoing document to the following:

Clerk, Court of Appeals, Div. III
500 N. Cedar Street
Spokane, WA 99210

On April 8th, 2010, I caused a true and correct copy of the foregoing document to be served on the following in the manner indicated below:

Jeffrey S. Schuster
Attorney at Law
PO Box 31197
Seattle, WA 98103-1197

U.S. MAIL

Sharonne E. O'Shea
Barbara A. Markham
Attorney General's Office
PO Box 40117
Olympia, WA 98504-0117

U.S. MAIL

Charles Camillus Flower
Patrick Michael Andreotti
Flower & Andreotti
303 East D Street, Suite 1
Yakima, WA 98901

U.S. MAIL

James Edward Davis
Attorney at Law
308 N. 2nd Street
P.O. Box 590
Yakima, WA 98907

U.S. MAIL

Patrick Barry
US DOJ/ENRD Indian Resources Section
P.O. Box 44378
L'Enfant Plaza Station
Washington, DC 20026-4378

U.S. MAIL

Katherine Barton
US DOJ/ENRD – Appellate Section
P.O. Box 23795
L'Enfant Plaza Station
Washington, DC 20026

U.S. MAIL

Thomas W. Swegle
US DOJ/ENRD
PO Box 4390
Ben Franklin Station
Washington, DC 20044-4390

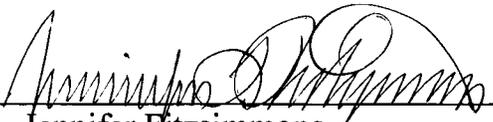
U.S. MAIL

Adrienne E. Smith
Assistant Attorney General
1125 Washington Street, SE
P.O. Box 40100
Olympia, WA 98504-0100

U.S. MAIL

Dated this 8th day of April, 2010.

VELIKANJE HALVERSON P.C.

By: 
Jennifer Fitzsimmons
Legal Assistant to J. Jay Carroll

G:\JJC\water\Appeal - Subbasin 23 CFO\Pleadings\Corrected Brief with TOC and TOA.doc

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SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

IN THE MATTER OF THE)	
DETERMINATION OF THE RIGHTS TO)	
THE USE OF THE SURFACE WATERS)	NO. 77-2-01484-5
OF THE YAKIMA RIVER DRAINAGE)	
BASIN, IN ACCORDANCE WITH THE)	
PROVISIONS OF CHAPTER 90.03,)	EXCEPTION OF
REVISED CODE OF WASHINGTON)	DONALD P. BRULE
)	
STATE OF WASHINGTON)	Claim Number 00040
DEPARTMENT OF ECOLOGY,)	
)	
Plaintiff,)	
)	
v.)	
)	
JAMES J. ACQUAVELLA, et al.)	
)	
Defendants.)	

COMES NOW the claimant Donald P. Brule and submits this exception to the Supplemental Report of the Court for Subbasin 23 (Ahtanum Creek).

1. This property has a long history of water use within the Ahtanum Creek subbasin. It is covered under Certificate 238 under the Achepohl adjudication and granted a Class 9 right. The evidence introduced at the hearing established a long history of applying water to beneficial use on the property. There was no evidence of abandonment of the water right and no evidence of relinquishment by showing an

1 applicable consecutive five year period of time when water was not beneficially
2 applied to the land. Accordingly, the Court erred and the applicable water right as
3 granted under Certificate 238 should be confirmed to this property.

4
5 2. The water for irrigation for this property comes from Spring Creek. We
6 have a situation in this case where NO ONE who irrigates from Spring Creek
7 responded to the *U.S. v. Ahtanum* case. Why is that? Were these documents properly
8 served or was it simply common knowledge that Spring Creek was an independent
9 water source, fed primarily by the return flow of waters from the Congdon Canal
10 (Yakima Valley Canal) that was designed by Edward Bannister in 1894 for use by
11 Congdon properties and other upper valley land owners. Spring Creek should not be
12 considered a part of Ahtanum Creek and this water. I respectfully submit that the
13 Spring Creek lands were not included because they obviously don't irrigate from
14 Ahtanum Creek.
15

16
17 3. Attached to this Exception as Exhibit "A" and incorporated by this
18 reference is a true and accurate copy of a chain of title that I had done with respect to
19 my property. The *U.S. v. Ahtanum* case was started in 1947. At that time, the owners
20 of the property I currently own were W.C. Cope and Inez Cope. (Item 19 on Exhibit
21 "A"). W.C. Cope and Inez Cope were not named as defendants in the *U.S. v.*
22 *Ahtanum* case. I suspect that the reason that they were not named as defendants was
23 that they irrigated the land from Spring Creek and not Ahtanum Creek. Our
24 predecessor was not a party to the *U.S. v. Ahtanum* case with respect to the land I now
25 own. I should be granted a senior water right.
26
27

28
29 4. It was not until 1964 that the Court rendered its final decision in the
30 Ahtanum II opinion. From 1947, when the action was instituted through the Court's
31 final opinion in 1964, the ownership of the property that I currently own changed at
32 least five times: (1951) Frank Miller and Bertha Miller; (1959) Ralph Miller and Ivy
33 Miller; (1962) Donald Herber and H. Robert Herber; (1964) H. J. Sieber. There is
34 no evidence that any of these parties were substituted as a party into the *U.S. v.*
35

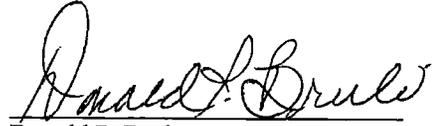
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Ahtanum case as parties with respect to the land that I now currently own. Thus, the *U.S. v. Ahtanum* case has no application to my claim.

5. I also agree with and incorporate the arguments of other parties that the *U.S. v. Ahtanum* case was not an adjudication of water rights and should not be given that effect, even if were to apply to my claim.

6. I also take exception to the court's reversal of its previous decision to award a "junior right" to use the water for the reasons set forth by those others taking exception to this ruling and the rationale of the Court previously expressed.

DATED this 26 day of June, 2008.


Donald P. Brule

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 27th day of June, 2008 that I caused to be served,
3
4 via U.S. Mail, postage prepaid, a copy of the foregoing document to:

5
6 Ms. Sharonne O'Shea
7 Mr. Alan Reichman
8 Ms. Barbara Markham
9 Washington State Office of the Attorney General
10 Ecology Division
11 P.O. Box 40117
12 Olympia, WA 98504-0117

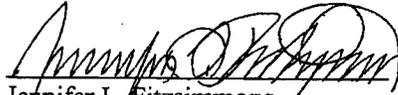
13 Jeffrey S. Schuster
14 Yakama Nation
15 Office of Legal Counsel
16 P.O. Box 31197
17 Seattle, WA 98103

18 Charles Shockey
19 US Dept of Justice/Natural Resources
20 501 - I Street, Suite 90700
21 Sacramento, CA 95814

22 Patrick Barry
23 Indian Resources Section
24 Environmental & Natural Resources Div.
25 U.S. Department of Justice
26 P.O. Box 44378
27 Washington, DC 20026-4378

28 James E. Davis
29 Talbott, Simpson & Davis, P.S.
30 P.O. Box 590
31 Yakima, WA 98907

32 DATED this 27th day of June, 2008.

33 
34 Jennifer L. Fitzsimmons
35

EXCEPTION OF DONALD P. BRULE - 4

Exhibit A

CHAIN OF TITLE GUARANTEE FORM A

SCHEDULE A

Rate Code None	State 48	City 077	Property Type 10	
Office File Number 00054538	Policy Number 7203078 1132	Date of Policy March 21, 2002 at 8:00 a.m.	Amount of Insurance \$1,000.00	Premium \$158.00

The assurances referred to on the face page are:

That, according to those public records which, under the recording laws, impart constructive notice of matters relating to the interest, if any, which was conveyed to:

DONALD P. BRULE and SYLVIA M. BRULE, husband and wife

pursuant to a Statutory Warranty Deed in and to the land described as follows:

Lot 1 of Short Plat, recorded under Auditor's File Number 7019579, records of Yakima County, Washington.

Situated in Yakima County, State of Washington.

Only the following matters appear in such records subsequent to August 7, 1997.

1. Patent,
GRANTOR: United States of America
GRANTEE: Charles Schano
RECORDED: May 13, 1875
VOLUME: A
PAGE: 199
2. Deed,
GRANTOR: Charles Schano
GRANTEE: Mathias
RECORDED: November 2, 1885
VOLUME: D
PAGE: 300
3. Deed,
GRANTOR: Mathias
GRANTEE: Emma Schano
RECORDED: October 23, 1886
VOLUME: E
PAGE: 306

SCHEDULE A (Continued)

File Number: 00054538

Policy Number: 7203078 1132

4. Deed,
GRANTOR: Emma Schano
GRANTEE: Emma Barthoff
RECORDED: April 9, 1887
VOLUME: F
PAGE: 114
5. Deed,
GRANTOR: Thomas Harris
GRANTEE: Joseph Barthoff, Sr.
RECORDED: December 17, 1888
VOLUME: H
PAGE: 277
6. Deed,
GRANTOR: Emma Barthoff
GRANTEE: Joseph Barthoff
RECORDED: March 9, 1889
VOLUME: I
PAGE: 120
7. Deed,
GRANTOR: Joseph Barthoff
GRANTEE: Martha Barthoff
RECORDED: May 1, 1889
VOLUME: I
PAGE: 449
8. Deed,
GRANTOR: Matt Barthoff
GRANTEE: H. L. Tucker
RECORDED: November 18, 1891
VOLUME: N
PAGE: 304
9. Deed,
GRANTOR: Dan R. Fish
GRANTEE: H. L. Tucker
RECORDED: September 11, 1900
VOLUME: 4
PAGE: 198
10. Deed,
GRANTOR: H. L. Tucker
GRANTEE: C. W. Carter
RECORDED: October 17, 1900
VOLUME: 6
PAGE: 127

Chain of Title Guarantee Form A

Page 2

SCHEDULE A (Continued)

File Number: 00054538

Policy Number: 7203078 1132

11. Contract,
GRANTOR: C. W. Carter
GRANTEE: D. L. Savage
RECORDED: April 11, 1906
VOLUME: 43
PAGE: 163
 12. Deed,
GRANTOR: George H. Fresh
GRANTEE: C. W. Gould
RECORDED: October 8, 1909
VOLUME: 94
AUDITOR'S FILE #: 36053
 13. Deed,
GRANTOR: C. W. Gould
GRANTEE: Lizzie Thresh
RECORDED: October 8, 1909
VOLUME: 94
AUDITOR'S FILE #: 36054
 14. Deed,
GRANTOR: C. W. Carter
GRANTEE: Lizzie Thresh
RECORDED: June 7, 1910
VOLUME: 104
AUDITOR'S FILE #: 48643
 15. Deed,
GRANTOR: Lizzie Thresh
GRANTEE: Gertrude Botzer
RECORDED: July 16, 1919
VOLUME: 187
AUDITOR'S FILE #: 162093
 16. Deed,
GRANTOR: Gertrude Botzer
GRANTEE: D. L. Savage
RECORDED: August 1, 1919
VOLUME: 189
AUDITOR'S FILE #: 161657
 17. Contract,
GRANTOR: James Harvey
GRANTEE: D. L. Savage
RECORDED: April 6, 1926
VOLUME: 248
AUDITOR'S FILE #: 381009
- Chain of Title Guarantee Form A

Page 3

SCHEDULE A (Continued)

File Number: 00054538

Policy Number: 7203078 1132

18. Deed,
GRANTOR: David Savage
GRANTEE: Lester E. Savage
RECORDED: May 14, 1928
VOLUME: 266
AUDITOR'S FILE #: 456215
 19. Contract,
GRANTOR: Mary Humbert
GRANTEE: W. C. Cope and Inez Cope
RECORDED: December 15, 1930
VOLUME: 287
AUDITOR'S FILE #: 555365
 20. Deed,
GRANTOR: Sheriff Yakima Co.
GRANTEE: Mary Humbert
RECORDED: February 25, 1932
VOLUME: 296
AUDITOR'S FILE #: 594152
 21. Deed,
GRANTOR: Mary Humbert
GRANTEE: W. C. Cope and Inez Cope
RECORDED: March 25, 1933
VOLUME: 302
AUDITOR'S FILE #: 621364
 22. Deed,
GRANTOR: Marjorie Edgerly
GRANTEE: Frank Miller and Bertha Miller
RECORDED: February 12, 1951
VOLUME: 494
AUDITOR'S FILE #: 1353713
 23. Deed,
GRANTOR: Frank Miller and Bertha Miller
GRANTEE: Ralph Miller and Ivy Miller
RECORDED: December 16, 1959
VOLUME: 601
AUDITOR'S FILE #: 1802719
 24. Contract,
GRANTOR: Ralph Miller and Ivy Miller
GRANTEE: Donald Herber and H. Robert Herber
RECORDED: January 15, 1962
VOLUME: 623
AUDITOR'S FILE #: 1891740
- Chain of Title Guarantee Form A

Page 4

SCHEDULE A (Continued)

File Number: 00054538

Policy Number: 7203078 1132

25. Seller's Assignment of Contract and Deed,
GRANTOR: Ralph Miller and Ivy Miller
GRANTEE: Peoples National Bank
RECORDED: January 15, 1962
VOLUME: 623
AUDITOR'S FILE #: 1891741
26. Deed,
GRANTOR: Robert Herber and Donald Herber
GRANTEE: H. J. Sieber
RECORDED: March 11, 1964
VOLUME: 649
AUDITOR'S FILE #: 1986600
27. Deed,
GRANTOR: Peoples National Bank
GRANTEE: Robert Herber and Donald Herber
RECORDED: March 11, 1964
VOLUME: 649
AUDITOR'S FILE #: 1986601
28. Deed,
GRANTOR: H. J. Sieber
GRANTEE: Bank of Yakima
RECORDED: April 22, 1971
VOLUME: 798
AUDITOR'S FILE #: 2247827
29. Deed,
GRANTOR: Bank of Yakima
GRANTEE: H. J. Sieber
RECORDED: February 22, 1977
VOLUME: 999
AUDITOR'S FILE #: 2451423
30. Deed,
GRANTOR: H. J. Sieber
GRANTEE: Robert Pulse and Phyllis Pulse
RECORDED: November 18, 1982
AUDITOR'S FILE #: 2661539
31. Deed,
GRANTOR: Robert Pulse and Phyllis Pulse
GRANTEE: Donald Brule and Sylvia Brule
RECORDED: August 7, 1997
AUDITOR'S FILE #: 7021035

SCHEDULE A (Continued)

File Number: 00054538

Policy Number: 7203078 1132

This Guarantee does not cover:

1. Taxes, assessments and matters related thereto.
2. Instruments, proceedings or other matters which do not specifically describe said land.

FIDELITY TITLE COMPANY agent for
CHICAGO TITLE INSURANCE COMPANY

Countersigned

A handwritten signature in black ink, appearing to read "J.P. Kissling", is written over a horizontal line.

J.P. Kissling, Authorized Signatory

jb/03-22-02

mef

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF WASHINGTON
Southern DIVISION

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

DEC 6 - 1949

A. A. LAFRAMBOISE, Clerk

NO. 312 *[Signature]* Deputy

AFFIDAVIT OF SERVICE

UNITED STATES OF AMERICA,)
Petitioner,)
v.)
Ahtanua Irrigation District, a corp. et. al.)
Defendants.)

STATE OF WASHINGTON)
COUNTY OF SPOKANE) SS

Elwyn L. Daniel, being first
duly sworn, on oath deposes and says: That affiant is and at
all times hereinafter mentioned was a duly qualified Deputy
United States Marshal in the Eastern District of Washington, a
citizen of the United States of America, over 21 years of age,
competent to be a witness in the above entitled action and not
a party thereto.

That affiant served the ~~Notice and~~ ^{& Complaint} Summons in the
above entitled action upon each of the following named defend-
ants upon the date and at the place hereinafter set forth oppo-
site their respective names by delivering to each of them
personally a true copy of said ~~Notice and~~ ^{& Complaint} Summons

Reproduced at the National Archives and Records Administration - Pacific Alaska Region (Seattle)

<u>Defendant</u>	<u>Date of Service</u>	<u>Place of Service</u>
Cascade Lumber Co, a corp. by serving Stephen Moser, the Secretary.	10-27-49	Yakima, Wash.
Simonne F. Sauve, a widow	10-27-49	" " 307 N. 8th.
Claire Van Eaton, a spinster,	10-27-49	" " 601 S. 3rd.
Hazel Seward	10-27-49	606 S. 2nd. Yakima.
Maude L. Losey	10-27-49	1216 S. Broadway, Yakima.
Rose A. Mary Deymonaz	10-27-49	902 S. 4th. Yakima
Bernice E. Epperson	10-27-49	704 S. 4th. Ave. Yakima
Wyn F. Alexander	10-27-49	311 W. Spruce Yakima
Toletta M. Herberger	10-27-49	102 S. 8th. Ave. Yakima
Ethel M. Cook	10-27-49	303 Crescent, Yakima
Union Oil Company of California, a corp. by serving J. S. Darlow, the Dist. Mgr.	10-27-49	102 W. North, Yakima
H.A. Richmond	10-27-49	609 S. 15th. Ave. Yakima
H.C. Detloff	10-27-49	410 S. 16th. Ave. Yakima
Maggie Wakin	10-27-49	914-19th. Ave S. Yakima
Bernice Kolkman	10-27-49	613 S. 17th. Ave, Yakima
Kenneth E. Bracy	10-27-49	2 mi. sw Yakima
Eugene S. Loop	10-27-49	2 mi. sw Yakima
Lay Borton	10-29-49	222 S. 24th Ave. Yakima
Harry A. Holtzinger	10-29-49	418 S. 25th. Ave. Yakima
Fay Schreiner	10-29-49	1 mile S. Yakima
Stanley E. Cox	10-29-49	2 miles S. Yakima
Fade Langell	10-29-49	3 mi. S. Yakima
Esther Langell	10-29-49	" "
Ear Maica	10-29-49	4 mi. S. Yakima
Lou Maica	10-29-49	" "
John C. Schreiner	10-29-49	2 mi. sw Yakima

WIN EX. 371

mef

That affiant served the ~~Notarized~~ ^{& Complaint} Summons in the above entitled action upon each of the following named defendants, personally, by leaving for each of such defendants a true copy of said ~~Notarized~~ ^{& Complaint} Summons at his or her usual place of abode with a person of suitable age and discretion then resident therein, the defendants so served being then absent therefrom. That each of the defendants so served was at the time of such service a resident of the State of Washington. That the date and place of each of such services and the name of the person with whom a true copy of the ~~Notarized~~ ^{& Complaint} Summons was left is hereinafter set forth opposite the name of each defendant so served.

Pacific Alaska Region (Seattle)
National Archives and Records Administration

<u>Defendant</u>	<u>Date of Service</u>	<u>Place of Service</u>	<u>Left With</u>
C. B. Jones	10-27-49	Union Gap	Elsie Jones, wife.
A. Seward	10-27-49	606 S. 2nd. Yakima	Hazel Seward, wife
Harold T. Armstrong	10-27-49	111 N. 4th. Yakima	Genevieve Armstrong, wife
J. Deymonaz	10-27-49	902 S. 4th. Ave. Yakima,	Rose A. Deymonaz, wife
H. Epperson	10-27-49	704 S. 4th. Ave.	Hernige E. Epperson, wife
J.C. Cope	10-27-49	306 S. 10th. Ave.	Rose Cope, wife
Opal Alexander	10-27-49	311 W. Spruce	Gwyn F. Alexander, wife
Joseph C. Herberger	10-27-49	1028 S. 8th. Ave.	Toletta Herberger, wife
Cloyd L. Cook	10-27-49	303 Crescent	Ethel M. Cook, wife
Gerald E. Thompson	10-27-49	108 N. 3rd. Ave	Cecil Shelton, brother-in-law.
Hazel M. Thompson	10-27-49	" " "	Cecil Shelton, brother
Harry J. Herring	10-27-49	613 S. 20th. Ave.	Gladys Herring, daughter
Yvonne A. Herring	10-27-49	" " " "	" " " "
Ma Wakin	10-27-49	914 S. 19th. Ave.	Maggie Wakin, wife
Fr Kolkman	10-27-49	613 S. 17th. Ave.	Bernice Kolkman, wife
Jean M. Loop	10-27-49	2 mi. SW Yakima	Eugene S. Loop, husband.
Theodore R. Reich, a bachelor (now a married man)	10-29-49	3005 W. Chestnut	Elsie Reich, wife.
B.S. Borton	10-29-49	222 S. 24th. Ave.	May Borton, wife.
Mrs. William F. Morgan	10-29-49	1112 S. 19th. Ave.	William F. Morgan, husband
E.B. Velikanje	10-29-49	1416 S. 16th. "	Louise Velikanje, wife
Leroy Schreiner	10-29-49	1 mi. S. Yakima	Fay Schreiner, wife
Irene Cox	10-29-49	2 mi. S. "	Stanley E. Cox, husband

E. L. Colly
Deputy United States Marshal for the Eastern District of Washington

SUBSCRIBED and SWORN to before me this 5 day of December 1949

E. L. Colly
Deputy Clerk, United States District Court, Eastern District of Washington

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

1
2
3 UNITED STATES OF AMERICA,

4 Plaintiff,

No. 312

5 v.

6 APTANUM IRRIGATION DISTRICT,
7 a corporation, et al.,

ORDER TO DROP AND INCLUDE
ADDITIONAL PARTIES DEFENDANT

8 Defendants.

9 This matter coming on before the Court for hearing this 14th day of
10 October 1949, the Court being fully advised in the premises, hav-
11 ing read the motion of Harvey Erickson, United States Attorney, and it appearing
12 to the satisfaction of the Court that the following defendants are either deceased
13 or no longer have any interest in the lands involved in this suit and therefore
14 should be dropped from the rolls of parties defendant herein:

15
16 CLASS I.

- 17 Estate of Charles F. Allen.
- 18 Estate of Sarah J. Bankard
- 19 Gertrude A. Besancon
- 20 Albert E. Blair and Zoa G. Blair
- 21 Charles Boez and Barbara Boez
- 22 Charles Booz and Barbara Booz
- 23 Mrs. Cecil Bozett
- 24 Charlie Buttler and Georgia Mae Buttler
- 25 William Carpenter and Minnie Carpenter
- 26 Charles T. Chambers
- 27 Gertrude Clark and Emery Clark
- 28 Clasen Fruit and Cold Storage Company, a partnership
- 29 Irven Collings and Marie Collings
- 30 Vince Collings
- 31 John S. Cowdrey and Edna L. Cowdrey, brother and sister
- 32 G. H. Cox and Elizabeth Cox
- L. H. Crocker and Marie Crocker
- Purdy B. Crosno
- Bertha O. Draper
- Charles Druse, a widower
- Nettie G. Makin
- Frank Eglin and Lulu M. Eglin
- Joe Essert and Eva Essert
- Daniel Fauth
- Frank Frazier, a bachelor
- Joseph Gabrinski and Florence Gabrinski
- Orpha Gharst
- Curtiss R. Gilbert and Anne S. Gilbert
- Elon J. Gilbert and John S. Gilbert
- Jack Goff
- Reinhart Gohl

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

OCT 14 1949

A. A. LaFRAMBOISE, Clerk

Francis S. Deary

APPENDIX C TO THE PROCEEDINGS OF THE DISTRICT COURT OF SULLY COUNTY, MINNESOTA

- 1 E. Dale Gordon and Anita A. Gordon
- 2 Joe Grabinski and Florence Grabinski
- 3 W. I. Graham and Edna M. Graham
- 4 Emma C. Grisson
- 5 R. A. Gruhn and Carrie Gruhn
- 6 Kenneth Haines and Ida Haines
- 7 Dorothy Hammer and George Hammer
- 8 Frances S. Hansen
- 9 Jack C. Hansen, a bachelor
- 10 Wesley H. Hansen and Clara G. Hansen
- 11 Vernon A. Harrison and Robina W. Harrison
- 12 William Hause and Emma Hause
- 13 Florence Haupt
- 14 Walter T. Hill and Elizabeth M. Hill
- 15 Ray Johnson, a bachelor
- 16 Elwood Kallner and Etta Kallner
- 17 Bernhardt Kempf and Lydia Kempf
- 18 Estelle Lansing
- 19 John H. Lapp and Emma Lapp
- 20 Russel W. Larson
- 21 Myrtle Leitch
- 22 L. E. Loker
- 23 Agnes Lusby
- 24 Dennis Lusby
- 25 J. W. Lusby
- 26 William Henry Lusby
- 27 Andrew Maier and Marie Maier
- 28 E. B. Mayfield and Ethel L. Mayfield
- 29 George C. Mayfield, a bachelor
- 30 Frank Mayfield and Norma Mayfield
- 31 Alice G. Mecker
- 32 Harry C. Moffett and Laurett M. Moffett
- Alvie Mondor and Olga Mondor
- Earl Thomas Morton and Lorie Gean Morton
- Edna Munson
- Elmond M. Murley and Nellie S. Murley
- Ralph N. Nowery, a bachelor
- Maudie Paschke
- Floyd L. Paschke
- Arlyn D. Paschke
- Donald G. Paschke
- C. D. Wirt, guardian of Donald G. Paschke
- B. F. Payton and Maudie Payton
- Milton L. Pier
- Ralph Ray, a single man
- Karl E. Remick and Annie M. Remick
- Marcus A. Rettig and Hazel Rettig
- John F. Reynolds
- Edith Richwine
- Mary Riemens
- Lester Robel and Angela Mary Robel
- Harley D. Roberts and Mayme Roberts
- Ardilla G. Robinson
- Irvin H. Rosenkranz and Margaret E. Rosenkranz
- Adam Schlecht, a widower
- Bertha Schneider, a widow
- J. W. Schrader
- Lester Frederick Schrader
- J. G. Schwarzer
- Asa W. Schwartz
- Henry Schwartz
- James H. Searles and wife

- 1 Paul A. Shawver and Agatha S. Shawver
- David F. Smith and Elizabeth V. Smith
- 2 Duane Smith
- 3 Grover C. Sterling and Muriel Sterling
- Walter N. Steward and wife
- 4 Flossie M. Still
- Hattie E. Taylor, a widow
- 5 L. W. Taylor
- Charles S. Tyler, Administrator of estate of Frank Leroy Roberts
- 6 Clyde Wallace and Abigail Wallace
- George T. Ward and Maude Ward
- 7 W. O. Warren and Lettie Warren
- Emerson E. Waters
- 8 Lowell E. Webber and Minnie B. Webber
- Charles T. Webber and Clara N. Webber
- 9 Stanley L. Withers and Ellen V. Withers
- Lillian Woodcock, executrix of estate of Marion F. Woodcock
- 10 Maggie Worrell
- Thomas Worrell

11 CLASS II

- 12 Gilbert, Inc.,
- 13 Richey and Gilbert Company, a corporation
- John Reese, James J. Wiley, Roy Nicklos, George Ward, Floyd Willard, W. R.
- 14 Haupt, Lou Palmer, as Trustees of the Wiley City Recreational Club
- Yakima Suburban Orchard Company, a corporation
- 15 Allied Building Credits, Inc.,
- Spokane Breweries, Inc.,

16 CLASS III

- 17 Joseph Bak
- 18 Byron E. Borton
- Byron S. Borton
- 19 John Richard Borton
- Anna Bradley
- 20 Cascade Independent Loan Company
- Stanley E. Cox and Lillian Cox
- 21 Wade Langell
- James F. Morton and Edna T. Morton
- 22 Leroy J. Schreiner
- S. H. Schreiner
- 23 Roy M. West and Mary E. West
- Yakima Investment Corporation

24

25 That the following persons are successors in interest to the rights of

26 the above named defendants in the above captioned case and should be included as

27 parties defendant:

28 CLASS I

- 29 Gwyn F. Alexander and Opal Alexander
- 30 Unknown heirs of S. W. Alford
- Walter W. Allen and May H. Allen
- 31 A. V. Anderson
- Bert V. Anderson
- 32 Stanley E. Anderson and Muriel E. Anderson
- Harold T. Armstrong and Edward B. Armstrong

- 1 ✓ William B. Armstrong
George H. Ashbaugh and Mary Ashbaugh
- 2 Cecil B. Aston and Oris C. Aston
- 3 Elizabeth Amiller, executrix of the estate of W. J. Amiller, deceased
- 4 ✓ Alice L. Austin
Ray E. Babcock and Gladys O. Babcock
- 5 Joseph D. Bak and Annie Bak
Thomas Bates and Beulah Bates
- 6 Thomas E. Bates and Beulah A. Bates
Fred Batt and June Marie Batt
- 7 R. H. Bayly and Violet Bayly
Ralph E. Bland and Wanema Bland
- 8 Rollah G. Bliss and Anna P. Bliss
- 9 ✓ Charles Boaz, a bachelor
- 10 Hildgard Boehler
James G. Bogle and Florence B. Bogle
- 11 James A. Bowers and Dorothy M. Bowers
W. W. Boyd and Bardena Boyd
- 12 Kenneth E. Bracy
Harold D. Brinkley and Norma Nell Brinkley
- 13 Harry Bronkhorst and Lillian Bronkhorst
Joseph P. Brumbaugh and Helen F. Brumbaugh
- 14 ✓ C. G. Bunker and Anna Luella Bunker
Leland B. Campbell, Jr., and Betty Jean Campbell
- 15 Wilbur G. Campbell and Jeannette M. Campbell
Herbert O. Carlson and Dorothy M. Carlson
- 16 ✓ Herman Catron and Frances Catron
✓ Andrew Chong and Clara J. Chong
- 17 Sadie F. Collings, Administratrix of estate of Vince Collings
Cloyd L. Cook and Ethel M. Cook
- 18 W. C. Cope
Furdy B. Crosno and Benna Crosno
- 19 M. G. David and Evelyn Fern David
Lena Davis, a widow
- 20 Robert J. Day and Doris Day
H. C. Detloff
- 21 F. J. Deymonas and Rose A. Deymonas
Claude Bokland and Ida Jane Bokland
- 22 J. H. Epperson and Bernice E. Epperson
Eva Essert, a widow
- 23 Arthur Estes and Juanita Estes
Ernest W. Estes and Helen B. Estes
- 24 Phillip Fauth, as guardian of estate of Filipena Fauth
John Finley and Clara Finley
- 25 D. W. Frame and Helen Frame
Frank Frazier and Bonnie Frazier
- 26 Murney French
Sylvester Fuchs and Grace Fuchs
- 27 A. L. Fullbright and Georgia Fullbright
Alonso T. Fulton and Damsel Fulton
- 28 Thurston Lewis Gardner and Elvera Rose Gardner
W. E. Garrison
- 29 Harvey Gharet and Orpha Gharet
Anne S. Gilbert, executrix of estate of Curtiss R. Gilbert
- 30 Frank Glaspey and Jane Doe Glaspey
Stewart N. Glenn and Grace M. Glenn
- 31 Lorena Marguerite Gordon Gohl
Robert Roy Goldsmith and Bessie L. Goldsmith
- 32 Stella Goldsmith
Alden Frederick Gordon
Kenneth William Gordon
William E. Gordon, A widower

1 Jennie H. Guiland
Marguerite L. Hackett

2 George Hammer and Dorothy Hammer
Claire G. Hansen

3 J. C. Hansen
Jack C. Hansen and Marjorie Hansen

4 Robert J. Hanses
Kenneth Haynes and Ida Haynes

5 Harold B. Hasen and Irene Hazen
Thomas Hasen and Alta Hazen

6 Joseph C. Herberger and Toletta M. Herberger
Joe Herke and Rose Herke

7 Harry J. Herring and Vyonne A. Herring
Everett L. Herron and Rhoda E. Herron

8 R. A. Hess and Mildred A. Hess
Charles E. Hewitt, a widower

9 Martin Hinderlie, a widower
Albertina Hinss, a widow

10 Robert C. Hootor and Helen A. Hootor
Harry K. Holtzinger

11 Ernst Huber and Mina Huber
Alfred Hughes and Florence Hughes

12 Byron B. Hugill and Deloris J. Hugill
Roland L. Hunter and Louise Hunter

13 Clyde Jagger and Irene Jagger
Charley F. Jenkins and Bernice Jenkins

14 C. B. Jones
Herbert Jones and Wilma Jones

15 Terry H. Jones and Kathryn F. Jones
C. E. Judd and Nona Judd

16 Roy Knox and Alma Knox
Victor G. Kohls and Violet M. Kohls

17 Fred J. Kolkman and Bernice Kolkman
Frank L. Konop and Durine Konop

18 August Kramlich and Annette Kramlich
Wade Langell

19 Walter W. Laton and Pauline E. Laton
Homer F. Lee

20 John Liniger and Anna S. Liniger
Tola E. Livingston

21 Eugene S. Loop and Jean M. Loop
A. W. Losey and Maude L. Losey

22 Martin Lowery and Emma Lowery
R. L. McDougall and Vera McDougall

23 Ronald L. McDougall, Jr., and Mary O. McDougall
Earle McKissick and Sylvia McKissick

24 James W. Marshall and Adelyne Marshall
Frank Mayfield and Norma Mayfield

25 Mary Phoebe Mayfield, a widow
William Meyer and Ilah Meyer

26 Ralph A. Miller
Shirley Mondor and Nadine Mondor

27 Vernie Mondor and Dorothy Mondor
Christian Naasz and Emma Naasz

28 Charley G. Orndorff and Delia Hazel Orndorff
Lloyd E. Paige and Nina B. Paige

29 D. F. Pankey, a single man
David E. Pattison and Margaret Pattison

30 Maudie L. Payton, administratrix of estate of B. F. Payton
Bessie Pier, administratrix of estate of Milton L. Pier

31 J. R. Pittmann and Ruth E. Pittmann
William E. Quinn and Gladys C. Quinn

32

- 1 Francis A. Ray and Anna M. Ray
Ralph Ray and Jane Dee Ray
- 2 Walter S. Reames and Frances Reames
Theodore R. Reich, a bachelor
- 3 Donald Rennie and Lorena L. Rennie
H. A. Richmond
- 4 ✓ H. F. Richmond and wife
Joel Richwine and Edith Richwine
- 5 Adam William Riedlinger
Catherine Riemens
- 6 Walter C. Roberts and Selma Roberts
Walter J. Robinson, Jr., and Kathryn E. Robinson
- 7 Fred Robinson and Mildred Robinson
Lester E. Roy and Harriett E. Roy
- 8 L. H. Sanford and Ruby M. Sanford
Simonne F. Sauve, a widow
- 9 James William Schrader and Mollie Schrader
Chester D. Schwartz and Ruth Ball, executors of estate of Asa W. Schwartz
- 10 O. A. Seward and Hazel Seward
John Shiley and Mayme Shiley
- 11 William C. Simpson and Sylvia Moore Simpson
Elizabeth V. Smith, a widow
- 12 Peder Solem and Clara Adele Solem
J. E. Squire and Winifred Squire
- 13 George St. Mary and Bessie St. Mary
John St. Mary
- 14 Henry Steffan and Christina Steffan
William Steffan and Esther Steffan
- 15 Barton Stevenson and Kathryn Stevenson
Gordon K. Stewart and Marian F. Stewart
- 16 ✓ Walter N. Stewart
Flossie M. Still and Clifford L. Still
- 17 Kurt Tabert and Louise Tabert
Walter E. Tate and M. Rosemary Tate
- 18 Lillian Woodcock, administratrix of estate of Hattie E. Taylor
L. W. Taylor
- 19 George M. Teague and Delia Teague
Joseph M. Thome and Joye E. Thome
- 20 Gerald E. Thompson and Hazel M. Thompson
Charlie D. Tolbert and Mae Tolbert
- 21 John Torson and Geneva Torson
- 22 ✓ Charles Traub and Dessie Traub
Florence Tucker
- 23 E. B. Velikanje
Claire Van Babon, a spinster
- 24 David Wakin and Maggie Wakin
Jerald L. Walker and Luella M. Walker
- 25 Arlean R. Warren
T. E. Wayman and Juanita Wayman
- 26 Franklin A. Weed and Ruth E. Weed
Albert P. Wegge and Dorothy Wegge
- 27 Charles J. Wegge
Ceoil R. Weston and Dorothy A. Weston
- 28 Henry Wetsel and Alma Wetsel
I. L. Whitaker and Beatrice Whitaker
- 29 Hiram E. White and Dorothy Ruth White
Martin Will and Magdalene Will
- 30 William F. Willard and Esther Willard
James A. Winkler, a bachelor
- 31 Rudolph Wittmeier and Edna Wittmeier
Etha Henderson Woodcock, a widow
- 32 L. O. Woolsey and Nora B. Woolsey
Thomas Worrell and Alice Worrell
✓ M. P. Yoerger and Jewell G. Yoerger

CLASS II

1 Ahtanum Grange No. 352
2 Ahtanum Valley School District No. 127, a municipal corporation
3 Robert J. Day, Donald Wetsel, Trustees of Don Barton Post, The American Legion
4 Cascade Lumber Company, a corporation
5 Federal Farm Mortgage Corporation
6 First Loan and Investment Company, a corporation
7 Johncox Ditch Company, a corporation
8 Miocene Petroleum Company, a corporation
9 National Public Service Insurance Company
10 Seattle, First National Bank
11 Standard Oil Company of California, a corporation
12 The City of Yakima, Washington, a municipal corporation
13 Union Oil Company of California
14 Yakima County

CLASS III

9 J. D. Bak and Annie Bak
10 Joseph D. Bak and Annie Bak
11 B. S. Borton and May Borton
12 Byron E. Borton and Leone M. Borton
13 John Richard Borton and Veda Borton
14 J. R. Bobton and Veda Borton
15 Sadie P. Collings, Administratrix of the estate of Vince Collings
16 Vincent Collings
17 W. C. Cope
18 Stanley E. Cox and Irene Cox
19 Walter Davis and Ilene E. Davis
20 Federal Land Bank
21 M. J. Freimuth and Eva J. Freimuth
22 A. L. Fullbright
23 Harry Jamaica and Lois Jamaica
24 Ronald C. Kissling and Margaret Kissling
25 Ronald Kissling and Margaret Louise Kissling
26 Wilfred A. Knight and Alice Knight
27 Heirs of Lorena Langell
28 Wade Langell and Esther Langell
29 W. J. Leggate and Blanche L. Leggate
30 Mrs. William F. Morgan
31 Edna T. Morgan (formerly Edna T. Morton) and Frank Morgan
32 Earl T. Morton
33 David Patterson and Martie Patterson
34 John C. Schreiner and Emily Jane Schreiner
35 Leroy Schreiner and Fay Schreiner
36 Mark Schreiner and Betty Schreiner
37 S. H. Schreiner and Emma D. Schreiner
38 Steve H. Schreiner and Emma D. Schreiner
39 R. B. Shewmaker and Florence Shewmaker
40 Louis J. Vetsch and Beatrice Vetsch
41 Mrs. Clyde Wallace
42 Franklin A. Weed and Ruth E. Weed

27 It is, by the Court,

28 ORDERED, ADJUDGED AND DECREED that the above named defendants be dropped

29 and that the above named successors in interest to the rights of said defendants

30 be included herein as parties defendant.

31 DATED this 14th day of October, 1949

32 Presented by:

Harvey Erickson
United States Attorney

James O. [Signature]
United States District Judge