



**Whatcom County Bar Association Water
Adjudication Advisory Committee**

Whatcom
County Bar
Association

April 17, 2024
Meeting Summary

**Agenda, Materials and email to members to focus discussion that were distributed to committee are attached to this summary.*

Members in Attendance:

Shannon Hinchcliffe, Bridget Bryck, Betsy Brinson, Charles Hurt, Dominique Zervas, Gabriel D. Cantu, Genissa Richardson, Hayley Hurst, James Hanika, Jessica Kuchan, Jonathan Charnitski, James Stroud, Jon Sitkin, Kristen Cavanaugh, Luke Phifer, Stephanie Kraft, and Sallye Quinn.

Others in Attendance:

Kate Dumas (AOC), Dan Raas, Dylan R. Hedden-Nicely, Hayley Ventoza, Jay Weiner, Rio Rodrigues, Heidi Bode, and Piper Tolbert,

Meeting began at 9:01 a.m.

Started with the motions practice discussion and clarified that the feedback being requested is related to the early phase of the case.

- It is important that the court give certainty through an early order.
- Those who spoke to the issue agreed with enlarged timelines such as those laid out in early *Acquavella* orders.
- Several members commented that it is important in motions practice that there are standard recurring days and times set for hearings.
- While there is general support about the meeting of parties when necessary, the feedback suggests that it should be encouraged but not required at this point.
- The moving party should not be able to note the matter for hearing or serve notice of the hearing date on any other parties.
- The court can use its discretion on requiring parties to meet based on the nature of the motion/proceeding.
- Choosing counsel or limiting those who engage in oral argument will be dependent on how parties align on an issue. Arizona may be a good model on how parties respond and confer to scheduling a motion for oral argument and the time allowed.

- When asked about concerns or requests related to briefing schedules and/or page limitations, members expect the court to give their guidelines and if necessary parties want exceptions they can petition the court.
- Concerns still remain about consistent publication of a docket sheet and receiving notice of filings and case events.
- Predictability of process and schedule is critical.
- Concerns were raised about self-represented litigants, as well as citizens that may or may not be aware of the proceeding, and how they will be informed about the events of the case.

This dovetailed into outreach concerns:

- Members discussed concerns related to outreach to make citizens aware of the proceeding.
- Resources should be easy to find and easy to use.
- Possibly there should be a PSA campaign related to the water adjudication.
- The concern about having adequate notice via the docket sheet and what the requirements will be to serve a motion on potential claimants still persists.

Continued to the self-represented litigants' resources part of the agenda. Heidi Bode, Executive Director and Piper Tolbert, Programs Manager from Law Advocates introduced themselves and took questions. They explained that Law Advocates has an income eligibility requirement to assist individuals but there could possibly be some flexibility in general outreach. Further discussion with committee members and Law Advocates, some issues were identified about holding legal clinics for water adjudication including what attorneys could assist with Law Advocates clinics given how RPC 6.5 addresses known conflicts of interest.

Shannon gave a brief review of the resources that are in discussion and will become available in the near future including an eFiling training video, the Guide and File application, technical assistance from Ecology at their field office, Whatcom Public Works water estimator, FAQs, and other court and clerk staff training.

Shannon invited additional feedback regarding the formation of a case management committee, including how large the committee should be, eligibility requirements to be a committee member, and how often they should meet. Additionally, Shannon will request the committee to suggest topics for the May meeting considering any developments that occur between now and then.



Whatcom County Bar Association Water Adjudication Advisory Committee

April 17, 2024
Zoom Only

Whatcom County Bar Association

Purpose: To provide feedback related to Whatcom Superior Court Administration related to the procedural and administrative processes in the anticipated Nooksack WRIA 1 water adjudication.

AGENDA

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| <p>1. Featured Meeting Topic(s)¹: Motions practice, self-represented litigant resources, remote proceedings.</p> <p>A. Motions Practice – early stages of the case; prior to all claimants joining the case</p> <ol style="list-style-type: none"> 1. <i>Acquavella</i> PTO #1 (Sep. 17, 1981) (moving party may not note the matter for hearing nor serve notice of a hearing date, court notifies all parties of hearing date, opposing parties required to meet and confer, time limits, selecting counsel to be heard during oral argument/lead counsel, pro se involvement in argument) 2. <i>Acquavella</i> PTO #2 (June 6, 1984) 3. Arizona Gila PTO #1 pps.10-13 4. Establish briefing schedules and page limits for motions <p>B. Self-Represented Litigants’ Resources</p> <ol style="list-style-type: none"> 1. Law Advocates – discuss potential for helping self-represented litigants 2. eFiling training video 3. Guide and File application 4. Technical assistance from Ecology – field office kiosk 5. Whatcom Public Works – water estimator 6. FAQs and other resources <p>C. Remote Proceedings vs. In-person Proceedings</p> <ol style="list-style-type: none"> 1. Current state of physical facilities & courtroom space 2. Concerns related to remote proceedings | <p>Shannon Hinchcliffe</p> <p>pps. 3-5</p> <p>pps. 6-12</p> |
|---|---|

¹ Topic sourced from areas of concern cited at January 17, 2024 committee meeting, issues list submitted for February, 21, 2024 meeting, and court’s request for feedback.

<p>2. Items that have been on past agendas but not discussed</p> <p>A. Assigning Claims to New Owners; Substitution of Parties; Change of Ownership (CR 24 and CR 25) <i>*Beginning of Notice and Service List discussion</i></p> <ol style="list-style-type: none"> 1. <i>Acquavella</i> PTO #7 & Corresponding Motion to Adopt Form Related to Joinder of Additional Parties 2. AZ - Gila River Adj. PTO #4 3. OR - Klamath Basin Adj. CMO #13 4. OR - Klamath Basin Adj. Change of Ownership Form <p>B. Substitution of Parties, Change of Ownership (CR 24 and CR 25),</p> <ol style="list-style-type: none"> 1. <i>Acquavella</i> PTO #3 Continuing Duty to Update Change in Address or Ownership; <i>Acquavella</i> PTO #7 & Corresponding Motion to Adopt Form Related to Joinder of Additional Parties 2. AZ - Gila River Adj. PTO #4 3. OR - Klamath Basin Adj. CMO #13; OR - Klamath Basin Adj. Change of Ownership Form vs. Change of Address Form 4. Create a suggested form(s)? Attach copy of real estate contract or deed optional? Other feedback or concerns? <p>C. Service List/Court Approved Mailing List</p> <ol style="list-style-type: none"> 1. Examples: Gila River AZ Court Approved Mailing List, Utah Lake and Jordan River Adjudication Service Matrices, Colorado Div. 1 email request for distribution list, Klamath Basin OR Service List 2. Concerns related to creation, maintenance, and accessibility of a service/mailing list? 	<p>(see Feb. 21, 2024 materials)</p> <p>(see March 20, 2024 materials)</p> <p>(see March 20, 2024 materials)</p>
<p>General Information:</p> <ul style="list-style-type: none"> • Target date for eFiling to be live is April 22nd • Ecology online “lunch and learn” webinar May 6th at noon. 	
<p>Identified Procedural and Administrative Topics by the Court</p> <ul style="list-style-type: none"> • Local Court Rules • Objection Form (and the need for other standardized forms) • Remote Proceedings • Service Lists and other published website information • Other issues identified by the court or committee members 	
<p>Next Meeting: Wednesday, May 22, 2024 @ 9:00 a.m.</p>	

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Filed for Record 9-17-81
and microfilmed on Roll
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BETTY MCGILLEN, County Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR YAKIMA COUNTY

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 WASHINGTON,)
THE STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Plaintiff,)
vs.)
JAMES J. ACQUAVELLA, et. al.,)
Defendants.)

NO. 77-2-01484-5
PRE-TRIAL ORDER NO. 1
RE: MOTIONS IN GENERAL

WHEREAS, several motions have been filed herein and the Court desiring to establish a uniform procedure for the filing, noting and hearing of any and all motions in this matter, now, therefore,

IT IS HEREBY ORDERED as follows:

1.

The following procedures shall be strictly adhered to for the filing, noting and hearing of all motions of any kind and nature in this proceeding.

2.

Upon the filing of any motion herein with the Clerk of the Court the moving party shall, contemporaneously with such filing, furnish a duplicate copy of such motion to the Court, together with a copy of any accompanying affidavits or memoranda.

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The moving party shall not note the matter for hearing nor serve notice of any hearing date on any other parties, except by leave of the Court. Upon receipt of the motion from the moving party, the Court shall determine a date for the hearing of the motion and shall notify all necessary parties of such hearing for the said motion.

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The Court will not entertain or hear any motion or objection with respect to Rules 26,27,30,31,33,34 or 36, Civil Rules for Superior Court, unless it affirmatively appears, by affidavit, that the opposing parties have met and conferred with respect thereto. The moving or objecting party shall arrange such a conference.

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Upon receipt of any motion, the Court will establish the time limits for the filing of memoranda, affidavits and/or counter affidavits. All parties desiring to do so may and shall file such documents within such time limits.

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With the exception of motions and objections pertaining to Rules 26,27,30,31,33,34 or 36, Civil Rules for Superior Courts, and specifically on all major or general motions herein, any party desiring to present oral argument shall so notify the Court in writing. Depending upon the number of persons who wish to be heard, the Court may order that counsel shall select from among this number wishing to be heard a specified number of "lead counsel" to present the oral arguments on behalf of all counsel.

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2 Depending upon the nature of the motion and the number of
3 persons to be heard, the Court may order a time limitation for
4 presentation of any argument to the Court by each counsel or
5 party. The Court may also, in its discretion, allow, limit or
6 disallow argument by any person appearing pro se.

7 DATED this 16th day of September, 1981.

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9 Walter Stauffer
10 JUDGE
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DRAINAGE BASIN, IN ACCORDANCE WITH)
THE PROVISIONS OF CHAPTER 90.03,)
REVISED CODE OF WASHINGTON,)
THE STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Plaintiff,)
vs.)
JAMES J. ACQUAVELLA, et al.,)
Defendants.)

NO. 77-2-01484-5
PRE-TRIAL ORDER NO. 2
RE: PENDING AND OTHER
MOTIONS

WHEREAS, certain jurisdictional and due process issues, initially determined by this Court, have now been settled by the United States and Washington State Supreme Courts, and

WHEREAS, there are several motions presently pending before this Court, copies of which are attached hereto, and

WHEREAS, other parties may also have similar motions (pertaining to prior water right decrees or judgments involving the same or similar issues), or may have other motions that should, in the orderly conduct of this proceedings, be raised at this time; and

WHEREAS the Court determines that all issues relating to such motions should be properly framed, noted and potentially heard and ruled upon, now, therefore,

IT IS HEREBY ORDERED as follows:

1.

Any party who desires to present an issue of:

a. the binding or nonbinding effect of any

1
2 prior decree or judgment affecting their
3 water right claim, or

4 b. a nature that should be resolved by the
5 Court before the evidence-receiving phase
6 of this proceeding takes place,

7 shall do so by formal motion filed with the Court. All such motions
8 shall clearly and explicitly frame the specific issues proposed to
9 be heard by the Court and shall be filed with the Court in tripli-
10 cate. The Court will then furnish copies of all such motions to
11 all parties so as to apprise the parties of the issues raised.

12 2.

13 All briefs, memorandums of points and authorities, and
14 any supporting affidavits, exhibits, and evidentiary documents shall
15 be filed with the Court in triplicate. Upon request to the Court,
16 any interested party (1) may obtain copies of any or all of the
17 aforescribed materials from the Court at a cost of ten cents
18 (\$.10) per page or (2) may copy such materials at ^{it's} ~~the~~ own expense. WDS

19 3.

20 The time schedule, to be strictly adhered to, shall be
21 as follows:

22 All motions to be filed by August 13, 1984;

23 Briefs and supporting documents supporting a motion
24 filed by September 17, 1984;

25 Briefs and supporting documents opposing a motion
26 filed by November 12, 1984;

27 Reply briefs to opposing briefs filed by December 28,
28 1984.

29 The Court will hear oral argument on the motions beginning
30 at 9:30 a.m. on Monday, January 28, 1985 in Department No. 2,
Superior Court, Yakima County Courthouse.

4.

Any party desiring to present oral argument shall so

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2 notify the Court in writing by January 18, 1985 with an accompanying
3 statement setting forth with specificity the motions and issues
4 to be addressed. Depending upon the number of persons to be heard,
5 the Court may order a time limitation for presentation of any
6 argument by each attorney. The Court may also, in its discretion,
7 allow, limit or disallow oral argument by any party appearing on
8 their own behalf without counsel.

9 5.

10 For the purpose of discussing this order and its imple-
11 mentation, the Court will conduct a pre-hearing conference beginning
12 at 1:30 p.m. on July 6, 1984 in Department No. 2, Superior Court,
13 Yakima County Courthouse. Any interested party, or counsel re-
14 presenting a party, may attend (although there is no requirement to
15 do so).

16 6.

17 The plaintiff herein shall serve a copy of this order
18 on all parties or their counsel of record on or before June 22,
19 1984.

20 DATED this 6th day of June, 1984.

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23 Walter Stauffer
24 JUDGE
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

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 WASHINGTON,)

NO. 77-2-01484-5

THE STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)

MOTION FOR SUMMARY
JUDGMENT

Plaintiff,)

vs.)

JAMES J. ACQUAVELLA, et al.,)

Defendants.)

APR 19 1977
CLERK OF SUPERIOR COURT

COME NOW the Defendant-Irrigation Districts within the Sunnyside Division, Yakima Project (Benton Irrigation District, Grandview Irrigation District, Granger Irrigation District, Home Irrigation District, Outlook Irrigation District, Prosser Irrigation District, Snipes Mountain Irrigation District, Sunnyside Valley Irrigation District, and Zillah Irrigation District) (herein all "Sunnyside Division"), and move the Court pursuant to Superior Court and local rule for summary judgment against all parties herein who are also parties in Kittitas Reclamation District, et al., vs. Sunnyside Valley Irrigation District, et al., U. S. Federal Eastern District of Washington Court, Civil No. 21, including the Yakima Indian Nation, all of whose rights to water from the Yakima River and its tributaries were as between themselves finally determined by general adjudication in U. S. Federal District Court Civil No. 21 and are precluded by res judicata and estoppel from asserting otherwise herein. This Motion is based on the entire record and file of U. S. Federal Eastern District of Washington Court Civil No. 21 which is incorporated in this Motion together with the record and file herein.

There is no genuine issue of any material fact and Defendants are entitled to judgment in their favor as a matter of law.

MOTION FOR SUMMARY JUDGMENT/1

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LAW OFFICE OF
FLOWER & ANDREOTTI, P.S.
SUITE 2, YAKIMA LEGAL CENTER
303 EAST "D" STREET
YAKIMA, WASHINGTON 98901
(509) 248-9084

DATED: August 24, 1981.

Charles C. Flower

FLOWER & ANDREOTTI, P.S.,
Attorneys for Defendants.

APR 1 4 03 PM '91

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

IN THE MATTER OF THE DETERMINATION)
OF THE RIGHTS TO THE USE OF THE)
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DRAINAGE BASIN, IN ACCORDANCE WITH)
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THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,

Defendants

NO. 77-2-01484-5

DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

[Handwritten notes and stamps, including "FILED" and "BETTY MCGILLEN, COUNTY CLERK"]

1. Relief Sought. Prosser Irrigation District and

City of Prosser, defendants herein, move that the Court enter
a summary judgment of adjudication that the Judgment (Consent
Decree) entered January 31, 1945, IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE EASTERN DISTRICT OF WASHINGTON, SOUTHERN
DIVISION, Cause No. 21, entered January 31, 1945, Kittitas
Reclamation District et al, Plaintiffs vs Sunnyside Valley
Irrigation District et al, Defendants, adjudicates:

1.1 all surface irrigation water rights of Irrigation
Districts who were parties thereto, and of all lands within the
boundaries of such Irrigation Districts as existing on January 31,
1945:

1.2 that such Irrigation Districts have exclusive rights
to permit the use of surface waters, or not, for beneficial use
for irrigation on otherwise non-irrigable lands within such
boundaries of the respective Irrigation Districts who were parties
thereto.

EMERELY CLERK
DEPT. OF ECOLOGY
FRANZ BLANK

March 30,

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DWIGHT A. HALSTEAD
ROBERT INGVALSON
TEL. 786-2200 OR 786-2211
P. O. Box 708
Prosser, Wash. 99350

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2. Grounds. There is no genuine issue in this cause as to any material fact as to the above Relief Sought, and Summary of Judgment should be accordingly entered as a matter of law.

DATED March 30, 1981

Dwight A. Halstead

Dwight A. Halstead
Attorney for Prosser Irrigation District,
and City of Prosser
P.O. Box 708
1221 Meade Avenue
Prosser WA 99350
Tel No. (509) 786-2200
(509) 786-2211

~~FILED
MAY 11 1981
PROSSER, WASH.~~

CERTIFIED TRUE COPY
I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY
OF THE FOREGOING TO THE DIRECTOR FOR
PLAINTIFF-DEFENDANTS POSTAGE PREPAID
ON March 30, 1981

Dwight A. Halstead
ATTORNEY

DWIGHT A. HALSTEAD
ROBERT INGVALSON
TEL. 786-2200 OR 786-2211
P. O. Box 708
Prosser, Wash. 99350