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Response by the United States to findings and conclusions and order proposed by the State of Washington

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

JUN 22 1979

J. R. FALLOQUIST, Clerk
RF Deputy

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

COLVILLE CONFEDERATED TRIBES,)
Plaintiff,)

-vs-

Civil No. 3421 ✓

BOYD WALTON, JR., and KENNA)
JEANNE WALTON, his wife; and)
WILSON WALTON and MARGARET)
WALTON, his wife,)
Defendants,)

RESPONSE BY THE UNITED
STATES TO FINDINGS AND
CONCLUSIONS AND ORDER
PROPOSED BY THE STATE
OF WASHINGTON

STATE OF WASHINGTON,)
Defendant-Intervenor.)

UNITED STATES OF AMERICA,)
Plaintiff,)

-vs-

Civil No. 3831

WILLIAM BOYD WALTON and KENNA)
JEANNE WALTON, his wife; and)
the STATE OF WASHINGTON,)
Defendants.)

Comes now the United States of America, plaintiff in Civil
No. C-3831, and in response to the Findings of Fact and Conclusions
of Law and Order proposed for entry by the State of Washington,
states as follows:

1. The pleading proposed by the State of Washington, in
general, follows the Court's oral decision of June 4, 1979.
2. However, the United States objects to the finding
that limits the Colville Tribes reserved water right to 428.8
acre feet of water this year calculated upon the acreage presently
irrigated by the Colville Tribes for the reason that this improperly

1. - RESPONSE BY THE U.S.

1 uses irrigated acreage as a limit upon the Tribe's reserved water
2 right rather than a method of measurement of such reserved water
3 right, and since the Court has recognized the right of the Tribes
4 to use waters reserved to the Tribes for purposes other than
5 irrigation (i.e., a fishery), that in order to be consistent
6 the Court should recognize the Tribe's reserved right to 666.4
7 acre feet of water as quantified by Judge Neill.

8 3. The United States objects to the State's proposed
9 Finding No. 1(c), upon the following grounds:

10 (a) The Judgment of February 9, 1979, did not
11 confirm any rights to water in the defendants Walton
12 that were not subject to the paramount reserved
13 water right of the Colville Tribes.

14 (b) As stated above, the waters reserved to
15 the Colville Tribes should be calculated as 666.4
16 acre feet rather than 428.8 acre feet.

17 (c) Defendants Walton certificate of water
18 right from the State of Washington is for irrigation
19 of 65 acres by diversion from No-Name Creek;
20 defendants Walton have no state-sanctioned right
21 to withdraw ground waters within the No-Name Creek
22 Basin for irrigation purposes;

23 (d) The proposed Findings intimates that the
24 Colville Tribes must obtain approval from the State
25 of Washington to utilize waters on trust lands within
26 No Name Creek Valley where the water use exceeds
27 428.8 acre feet, and such a finding is not sanctioned
28 in law nor is such finding necessary to this order
29 under the facts presently before the Court.

30 4. With respect to the language proposed by the State in
31 paragraph 3 of the Order, it is respectfully suggested that in
32 view of the water situation in No Name Creek Valley that the parties
2. - RESPONSE BY THE U.S.

1 be directed to submit weekly rather than monthly reports to the
2 U.S.G.S. of the amount of water withdrawn or diverted by the
3 parties.

4 Respectfully Submitted,

5 JAMES J. GILLESPIE
6 United States Attorney

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32 3. - RESPONSE BY THE U.S.