

Many Water Rights

Croisier, Sheila

From: Atkins, Linda
Sent: Tuesday, September 29, 2009 5:55 PM
To: Dave Clar
Cc: Croisier, Sheila
Subject: Water rights claims adjudication, Acquavella v. Ecology case # 77-2-01484-5

Follow Up Flag: Follow up
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Attachments: 00466.pdf; 00622.pdf; Ref excerpts report subbasin 2.PDF; Condl final order subbasin 2.PDF

Dave,

As we discussed last week, I have completed some research regarding the Ecology notice that appeared in the Yakima Herald-Republic on August 21, 2009. That notice is regarding a motion by the Dept. of Ecology for a default order against parties who at some point filed a water rights claim with Ecology, but who have not ever responded to the summons that Ecology filed for adjudication of those claims in the case of Ecology v. Acquavella, Yakima County Superior Court Cause No. 77-2-01484-5.

The Mountaineers are not included among the parties identified in the notice of default, because the Mountaineers claims have been adjudicated. As we discussed, the Mountaineers had filed two water rights claims (see the first two documents attached below) regarding Yakima basin water. Both of those claims were considered in the adjudication in the 1990's. Evidence regarding the two claims was presented to a court-appointed referee in 1989 and 1990. The referee reached a conclusion about the two claims, see the third document below. No objections were filed to the referee's conclusions, and so his decision was officially rendered and confirmed in the Conditional Final Order for Sub-basin 2, see the fourth document below.



00466.pdf (347 KB)00622.pdf (492 KB)Ref excerpts report subbasin 2... Condl final order subbasin 2.P...

This history was pretty accurately summarized for the Mountaineers board in 1997 in a memo prepared by Brooke Drury.

The findings and conclusions of the Conditional Final Order were not appealed when the order was issued. The order clearly states that it is a final order for purposes of appeal.

We discussed that the facts concerning the water rights claims may not have been fully or altogether accurately presented to the referee. It appears that the Mountaineers appeared *pro se* in the adjudication. The evidentiary presentation for a water rights claim is technical, and the executive director at the time may not have known what to emphasize. It would not be surprising if some relevant facts were not brought to the referee's attention.

The order was entered in February 1997. Because so much time has passed since then, it does not seem likely that there is a good opportunity to correct the record now. There is a court rule that allows an order to be reopened for mistake, or newly discovered evidence, but typically such an action has to be brought within a year of entry of the order. We are well past that window now.