STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

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, STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff, v. JAMES J. ACQUAVELLA, et al., Defendants.	NO. 77-2-01484-5 ECOLOGY'S NOTICE OF FILING DRAFT PROPOSED FINAL DECREE

The State of Washington, Department of Ecology, by and through its counsel, Barbara A. Markham, Assistant Attorney General, gives notice of filing a draft Proposed Final Decree in accordance with the Court's Notice Re: Development and Initial Meeting of Final Decree Working Group dated October 23, 2006, and hereby files the draft Proposed Final

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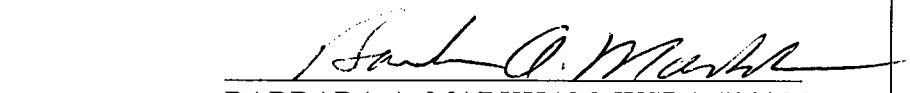
Decree with the Court. A copy of the draft Proposed Final Decree is attached to this Notice of Filing.

RESPECTFULLY SUBMITTED this 14th day of June, 2007.

ROBERT M. McKENNA
Attorney General



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This case is a general adjudication of rights to surface water in the Yakima River Basin, located in Yakima, Kittitas, Klickitat and Benton Counties, Washington. The State of Washington, Department of Ecology began this case by filing a Petition for a determination of the surface water rights pursuant to chapter 90.03 RCW. Pursuant to RCW 90.03.160, the Court referred the case to the Director of Ecology, who appointed Referees to hold hearings, take testimony, and file reports containing recommendations with regard to claims for certain surface water rights, and the Court retained other claims for surface water rights and conducted hearings. Because the case is so large, with so many parties, by Pretrial Order No. 8, entered March 3, 1989 the Court divided claims into the four pathways of federal reserved rights for

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Indian claims, federal reserved rights for non-Indian claims, state-based rights of major claimants, and state-based rights for other claimants, by subbasin. Conditional Final Orders have now been entered for each pathway and for each subdivision within each pathway. The Court has now considered the contentions of counsel, and has reviewed the files, evidence and records herein. NOW THEREFORE the Court

ORDERS, ADJUDGES AND DECREES as follows:

1. This is a quiet title action to all surface water rights of the Yakima River Basin, and including the entire Yakima Reclamation Project, as shown in the map attached to Pretrial Order No. 3, April 18, 1985, including the Kennewick Irrigation District, but excluding the McNary Pool of the Columbia River, and no valid surface water rights currently exist in the Yakima River Basin except:

(a) as set forth in the Final Decree, either in the Schedule of Rights, which is attached hereto and incorporated herein by reference, or in paragraph 4.c and d herein;

(b) as set forth in surface water permits, including temporary permits, or change authorizations, the final resolution of which is under the administrative jurisdiction of the Department of Ecology ("Ecology") as of the date of this Final Decree; and

(c) as may accrue to the United States pursuant to RCW Chapter 90.40.

2. The Conditional Final Orders ("CFOs") previously entered in this action confirmed the valid surface water rights in this case, and the rights confirmed in those CFOs are integrated in this Final Decree. Each water right entered in a CFO was confirmed as of the original date of entry of the CFO, so that any future determination of the extent and validity of the water right (including any determination of relinquishment) shall commence from the date of entry of the CFO. The only exceptions are (a) as stated in opinions and orders in this case as referenced in paragraph 8 of this Decree; (b) that any water right which was changed pursuant to RCW 90.03.380 after the date of the entry of the CFO in which it was determined, but prior to the date of this Decree, is affirmed, as so changed, as of the date of the last such change; (c)

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as among the parties thereto, the date of any agreements concerning the terms of a CFO entered into subsequent to the date of the CFO; and (d) as otherwise provided by law. Each water right so confirmed is set forth in the Schedule of Rights herein in an integrated order of priority. The rights are indexed alphabetically by the name of each listed holder of the right.

The CFOs entered, and their dates of entry, are listed below. Amendments and corrections to the CFOs are also listed, but amendments and corrections do not change the original date of entry of a CFO. The rights in a CFO are determined as of the original date of entry, even if the CFO has been amended or corrected since that time, except as provided above.

Major Claimant Name	Date of Entry of CFO
Ahtanum Irrigation District	
Broadgauge Ditch Company	4/10/03
Cascade Irrigation District	6/6/2006 7/12/06 (Amended CFO)
City of Ellensburg	12/4/2006
City of Yakima	11/21/02
Columbia Irrigation District	2/12/04
Ellensburg Water Company	3/12/98
Fowler Ditch Association	9/16/99
Fruitvale-SchannoIrrigation Company	4/10/03
John Cox Ditch Company	
Kennewick Irrigation District	10/16/01
Kiona Irrigation District	2/8/96 4/11/98 (Amended CFO)

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Major Claimant Name	Date of Entry of CFO
Kittitas Reclamation District	6/1/94
Moxee Ditch Association	9/10/98
Naches-Cowiche Canal Company	3/12/98
Naches-Selah Irrigation District.	9/12/96
New Schanno Ditch Company	4/10/03
Old Union Irrigation Company	4/10/03
R S & C Irrigation Company	4/10/03
Roza Irrigation District	6/1/94
Selah-Moxee Irrigation District	9/10/98
Sunnyside Division	8/14/03
Union Gap Irrigation District	9/16/99
USA/Bureau of Rec/City of Cle Elum	2/14/07 (amended 3/12/2007)
USFS/Firing Center, etc.	6/22/06
USA/ Yakama Nation/ Ahtanum Claims (Subbasin No. 23)	
West Side Irrigating Company	8/11/05
Yakama Nation	9/12/96
Yakima Reservation Irrigation District	2/13/97
Yakima Valley Canal Company	12/12/96
Yakima-Tieton Irrigation District	9/14/95 5/10/01 (Amended CFO)

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Subbasin		Date of Entry of CFO
No.	Name	
1	Lake Cle Elum	6/9/89
2	Easton	2/13/97
3	Teanaway River	2/8/01
4	Swauk Creek	1/09/03
5	Elk Heights	2/8/01 6/27/05 (Corrected CFO)
6	Taneum Creek	10/8/98
7	Reecer Creek	10/25/01
8	Thorp	10/9/03
9	Wilson-Naneum	4/17/06
10	Kittitas	12/4/06
11	Manastash	6/14/01
12	Shushuskin Canyon	1/14/93
13	Umtanum Creek	1/11/91
14	Roza Creek	7/11/96
15	Wenas Creek	11/12/98
16	Upper Naches	4/8/93 6/29/93 (Corrected CFO)
17	Tieton	6/9/89
18	Cowiche	9/9/04
19	Lower Naches	12/14/95
20	Selah	4/11/96 7/8/99 (Corrected CFO)

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Subbasin		Date of Entry of CFO
No.	Name	
21	Burbank	1/12/95
22	Wide Hollow	12/9/99
23	Ahtanum Creek/ Ahtanum Irrigation District/ John Cox Ditch Co./ USA/ Yakama Indian Nation (Subbasin No. 23)	
24	Moxee	5/09/02
25	Toppenish	5/21/2007
26	Granger	12/9/99
27	Satus Creek	7/12/06
28	Sunnyside	9/9/04
29	Mabton Prosser	5/13/04
30	Hanford	3/12/92 5/8/97 (Amended CFO)
31	Richland	11/4/93

3.

(a) Each water right confirmed shall have a date of priority as shown in the Schedule of Rights or as set forth in paragraph 4.d herein. As among the parties to this Decree and their successors in interest, surface water rights will be regulated pursuant to the priorities established herein.

(b) Every user of surface water and each and all of the parties, their successors in interest, and the assigns of any, are hereby enjoined, estopped and restrained from asserting or claiming any right, title or interest existing at the time of this Decree in or to the waters of the area described in paragraph 1 of this Decree, except the rights specified, determined and allowed by this Decree.

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(c) Every user of surface water and each and all of the parties, their successors in interest, and the assigns of any, are hereby perpetually restrained, estopped and enjoined from diverting, taking, using, or interfering in any way with, the waters of the area described in paragraph 1 of this Decree except as provided in this Decree or as acquired by process of law subsequent to this Decree.

(d) Every user of surface water and each and all of the parties, their successors in interest, and the assigns of any, are hereby perpetually restrained, estopped and enjoined from diverting, taking, using, or interfering in any way with, the waters of the area described in paragraph 1 of this Decree so as in any manner to impair the diversion, use or enjoyment of said waters by the owners of prior or superior rights therein as defined and established by this Decree.

(e) Nothing herein shall impair the right to convey or manage water pursuant to RCW 90.03.030 or RCW 90.40.020, or consistently with the orders of this Court.

4. Certain uses of water do not require an adjudicated water right. These are:

a. Use of foreign return flows, only to the extent permitted by the Memorandum Opinion Re: Motion for Reconsideration of Limiting Agreements, April 1, 1994.

b. Use of water for fire suppression, only to the extent permitted by the Stipulation Re: Water Use for Fire Suppression, December 12, 1996.

c. Use of certain springs that surface on a person's property, only to the extent permitted by the Opinion Re: Exception of Dwayne and Alvina Dormaier (Claim No. 4706 Re Subbasin No. 21 (Burbank Creek), September 16, 1993, and the Memorandum Opinion and Order Re: Exception of Tom and Zeldia Worrell to Supplemental Report of Referee, Subbasin No. 22 (Wide Hollow), November 8, 1999.

d. Non-diversionary use of natural watercourses, ponds or springs for stockwater only to the extent permitted by the Order Re: Non-Diversionary Stockwater Rights, entered July 10, 1997, and for wildlife only to the extent permitted by the CFOs entered in this case.

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5. Ecology shall issue certificates of adjudicated water right pursuant to RCW 90.03.240 to the confirmed water right holders herein whose rights are listed in the schedule of rights, or their successors, provided that each such holder or successor first pays Ecology the required fee for each certificate pursuant to RCW 90.03.470 (10) and the required fee for recording the certificate pursuant to RCW 90.03.330 (1). RCW 90.03.470(13). Except for the United States, the Yakama Nation, and members of the Yakama Nation, each holder of a water right confirmed in this action shall pay such fees to Ecology within 180 days after Ecology has requested payment of such fees from the holder.

6. Each certificate of adjudicated water right shall have a certificate number, and, if applicable, a subbasin number for ease of reference. Each right shall include the date of the CFO in which the right was determined. Conditions or limitations applicable to each right as originally confirmed or as changed prior to the entry of this Decree shall be only as set forth in the Schedule of Rights, or elsewhere in this Decree, or in other applicable orders of this court. Ecology may add additional conditions or limitations only when acting pursuant to RCW 90.03.380 or other statutory authority to change after the entry of this Decree.

7. The Order Pendente Lite Regarding Metering, Measurement, and Reporting, October 13, 1994, and the Order Requiring Metering, Measuring, and Reporting Requirements, All Subbasins (1-31) in Benton, Kittitas, and Yakima Counties, September 15, 2005 (together, the "metering orders") are hereby made perpetual, and shall continue as permanent conditions on each water right after this Final Decree is entered. Except as stated in this paragraph, every successor to a confirmed water right holder of an adjudicated water right shall notify the Department of Ecology at the time the next annual report is due of the change in ownership of the right and the address of the new holder of the right. A city, town, irrigation district, canal company, or other similar entity shall not be required to notify the Department of Ecology of any change in ownership of the land or of a confirmed adjudicated water right or change of address so long as the entity continues to file its annual report as required by the metering orders.

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8. The rights integrated in this Final Decree shall be administered and interpreted in accordance with all of the opinions and orders entered in the course of this adjudication. These opinions and orders include, but are not limited to:

11/29/1990	Amended Partial Summary Judgment Entered As Final Judgment Pursuant to Civil Rule 54(b)
12/22/1994	Memorandum Opinion Re: "Flushing Flows"
3/1/1995	Final Order Re: Treaty Reserved Water Rights At Usual and Accustomed Fishing Places
4/13/1995	Order Re: "Flushing Flows"
7/16/1996	Revised Order re: Motion to Limit Treaty Water Right for Fish to Natural Flow and Abatement of Non-Proratable Water Rights
12/10/2001	Memorandum Opinion re: Unavailability of Water
2/8/2002	Memorandum Opinion re: Unavailability of Water
10/8/2002	Memorandum Opinion and Order re: Exceptions to Second Supplemental Report of Referee Subbasin 4 (Swauk Creek)
10/8/2003	Memorandum Opinion re: Ahtanum Creek Threshold Legal Issues
12/24/2003	Clarification of October 8, 2003 Memorandum Opinion Re: Ahtanum Creek Legal Issues
5/20/2004	Memorandum Opinion and Order Re: Exceptions to Supplemental Report of Referee Subbasin 9
6/10/2004	Memorandum Opinion Re: Poisel v. Ecology
12/6/2004	Clarification of Memorandum Opinion Re: Poisel v. Ecology
11/4/2004	Memorandum Opinion Re: Department of Ecology's Motion for Authorization to Perform a Tentative Determination Court Claim No. 01566, Estate of Ted and Agnes Bugni Subbasin No. 3

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3/10/2005	Revised Order Limiting Post-1905 Diversions During Periods of Water Shortage
2/14/2007	Memorandum Opinion and Order Re: Water Rights for the United States of America Bureau of Reclamation
3/5/2007	Memorandum Opinion and Order Re: Exceptions to Report of Referee Subbasin 25 (Toppenish)
5/21/2007	Memorandum Opinion and Order Re: Objections to Entry of Conditional Final Order Subbasin 25 (Toppenish)

9.

(a) The Department of Ecology has the authority to administer and enforce this Decree pursuant to RCW 43.21A.064(3), RCW 43.27A.190, RCW 90.03.605, and 43 U.S.C. § 666, except that the Yakama Indian Nation and/or the United States Bureau of Indian Affairs have the authority as specifically set forth in orders in this action to administer and enforce water rights either confirmed to the Yakama Indian Nation or its members, or confirmed on the Yakama Indian Reservation. Appeals of decisions of Ecology in administering and enforcing this Decree shall be to the Pollution Control Hearings Board pursuant to RCW 43.21B.110. The Yakama Indian Nation's right for instream flows for fish shall be administered and enforced as specifically set forth in orders of this case.

(b) In addition to the authority and powers to administer and enforce otherwise held by the Department of Ecology and by the Yakama Indian Nation and/or the United States Bureau of Indian Affairs, any party, including the Department of Ecology, the Yakama Indian Nation and/or the United States Bureau of Indian Affairs, may bring a motion to show cause in this court to enforce the injunctions set forth in this Decree in ¶3.

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10. This court shall retain continuing jurisdiction of this action once the Final Decree is entered, only to the extent the court has inherent continuing jurisdiction under state law.

DATED this ____ day of _____, 2008.

_____
Sidney P. Ottem
Court Commissioner

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