

1 4.6.07, redline from 2.5.07 to 4.6.07
2 All changes in the 2.5.07 draft have been accepted
3 This shows changes from the 2.5.07 draft

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8 **STATE OF WASHINGTON**
YAKIMA COUNTY SUPERIOR COURT

9 IN THE MATTER OF THE
10 DETERMINATION OF THE RIGHTS
11 TO THE USE OF THE SURFACE
12 WATERS OF THE YAKIMA RIVER
13 DRAINAGE BASIN, IN
14 ACCORDANCE WITH THE
15 PROVISIONS OF CHAPTER 90.03,
16 REVISED CODE OF WASHINGTON,

NO. 77-2-01484-5

ECOLOGY'S MOTION TO AMEND
PRETRIAL ORDER NO. 8

17 STATE OF WASHINGTON,
18 DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,

Defendant.

19
20 The State of Washington, Department of Ecology, by its attorney, Barbara Markham,
21 moves this court to amend Pretrial Order No. 8 to reduce the volume of unwanted mail that is
22 sent, to provide more time for claimants to review and object to the statements of their
23 confirmed rights as the rights will be memorialized in the Schedule of Rights in the Final
24 Decree in this action, and to delete references to the role of the Referee in the process of
25 mailing the Proposed Final Decree.

26 Ecology moves that Pretrial Order No. 8 be amended to read as follows:

ECOLOGY'S MOTION TO AMEND
PRETRIAL ORDER NO. 8

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Error! AutoText entry not defined.ATTORNEY
GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504 0117
FAX (360) 586-6760

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2 XII. FINAL ADJUDICATION

3 A. When all hearings have been concluded and Conditional Final Orders have been filed
4 as to all categories of claimants, all of the Conditional Final Orders previously entered
5 by the Court will be integrated into a Proposed Final Decree. The Court shall cause a
6 Notice of Availability of Proposed Final Decree (NOAPFD) to be mailed to all parties.
7 Parties wishing to receive the Proposed Final Decree shall so indicate on the NOAPFD
8 and return the completed NOAPFD to the Court. To reduce the volume of unwanted
9 mail and unnecessary mailing costs, parties not wishing to receive the complete
10 schedule of rights for the entire Yakima basin may elect to receive the schedule of
11 rights by the subbasin or subbasins specific to their interest. Parties may also use the
12 NOAPFD to select format options including electronic, hard copy, or both. The Court
13 shall include with the NOAPFD (1) a copy of this Pretrial Order No. 8, as amended; (2)
14 a notice to parties to review the monthly notices they receive from the Court for copies
15 of the brief summaries of objections, responses, and replies filed with the Court as set
16 forth in paragraphs B, C and D of this Order, which brief summaries shall be included
17 in the monthly notices; and (3) a notice informing parties that they may obtain a
18 complete copy of any objection, response, or reply from the Clerk of Court or from the
19 Department of Ecology, Office of the Referee, 15 W. Yakima Ave. Ste. 200, Yakima,
20 Washington 98902.

21 B. Any party may file a written objection to the Proposed Final Decree with the Court
22 within ninety (90) days after the date of mailing of the NOAPFD. A party filing an
23 objection shall include a cover sheet with a brief summary of the substance of the
24 objection, no more than five sentences long. Any party filing a written objection with
25 the Court shall at the same time mail a complete copy of the objection and cover sheet
26 to the Office of the Attorney General, Acquavella Case Attorney, P.O. Box 40117,

1 Olympia, Washington 98504-0117. Any objections ~~received~~ filed more than ninety
2 (90) days after the date of mailing will be deemed to have been waived.

3 C. Any party may file a response to any timely filed written objection to the Proposed
4 Final Decree with the Court within one hundred eighty (180) days after the date of
5 mailing of the NOAPFD. A party filing a response to an objection shall include a cover
6 sheet with a brief summary of the substance of the response, no more than five
7 sentences long. Any party filing a written response with the Court shall at the same
8 time mail a complete copy of the response and cover sheet to the Office of the Attorney
9 General, Acquavella Case Attorney, P.O. Box 40117, Olympia, Washington 98504-
10 0117.

11 D. Any party may reply to any party's response to an objection within two hundred
12 ~~fortyten~~ (210240) days after the date of mailing of the NOAPFD. A party filing a reply
13 to an objection shall include a cover sheet with a brief summary of the substance of the
14 reply, no more than five sentences long. Any party filing a written reply with the
15 Court shall at the same time mail a complete copy of the reply and cover sheet to the
16 Office of the Attorney General, Acquavella Case Attorney, P.O. Box 40117, Olympia,
17 Washington 98504-0117.

18 E. If no objections are received by the Court, the Court will consider the Proposed Final
19 Decree and will enter a Final Decree determining the rights of all parties according to
20 the evidence. The Court shall cause a Notice of Availability of Final Decree (NOAFD)
21 to be mailed to all parties. Parties wishing to receive the Final Decree shall so indicate
22 on the NOAFD and return the completed NOAFD to the Court. To reduce the volume
23 of unwanted mail and unnecessary mailing costs, parties not wishing to receive the
24 complete schedule of rights for the entire Yakima basin may elect to receive the
25 schedule of rights by the subbasin or subbasins specific to their interest. Parties may
26 also use the NOAFD to select format options including electronic, hard copy, or both.

1 F. If objections are filed, the Court will set the date or dates for the hearing thereof and
2 will take such action thereon as may be deemed necessary.

3 G. As noted before, sanctions may be imposed by the Court for any objections deemed to
4 be frivolous.

5 RESPECTFULLY SUBMITTED this ____ day of _____, 2007.

6 ROBERT M. McKENNA
7 Attorney General

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9 BARBARA A. MARKHAM, WSBA# 30234
10 Assistant Attorney General
11 Attorneys for Plaintiff
12 Washington State Department of Ecology
13 (360) 586-6749