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

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

NO. 77-2-01484-5

[DRAFT] [PROPOSED] FINAL
DECREE

13 STATE OF WASHINGTON,
14 DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

16 JAMES J. ACQUAVELLA, et al.,

Defendant.

18
19 This case is a general adjudication of rights to surface water in the Yakima River Basin,
20 located in Yakima, Kittitas, Klickitat and Benton Counties, Washington. The State of
21 Washington, Department of Ecology began this case by filing a Petition for a determination of
22 the surface water rights pursuant to chapter 90.03 RCW. Pursuant to RCW 90.03.160, the
23 Court appointed a Referee to hold hearings, take testimony, and file a report containing
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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

ATTORNEY GENERAL OF WASHINGTON

Ecology Division
PO Box 40117
Olympia, WA 98504 0117
FAX (360) 586-6760

1 recommendations with regard to claims for certain surface water rights, and the Court retained
2 other claims for surface water rights and conducted hearings. Because the case is so large,
3 with so many parties, by Pretrial Order No. 8, entered March 3, 1989 the Court divided claims
4 into the four pathways of federal reserved rights for Indian claims, federal reserved rights for
5 non-Indian claims, state-based rights of major claimants, and state-based rights for other
6 claimants, by subbasin. Conditional Final Orders have now been entered for each pathway and
7 for each subdivision within each pathway. The time for appeals of these Conditional Final
8 Orders has now expired, and all timely filed appeals of the Condition Final Orders have been
9 completed, except as to the Conditional Final Order for Subbasin 23, the Ahtanum Irrigation
10 District, and the Johncox Ditch Company. The Court has now considered the contentions of
11 counsel, and has reviewed the files, evidence and records herein. NOW THEREFORE the
12 Court

13 ORDERS, ADJUDGES AND DECREES as follows:

14 1. This is a quiet title action to all surface water rights in the Yakima River Basin, and
15 including the entire Yakima Reclamation Project, and no valid surface water rights exist in the
16 Yakima River Basin except:

17 (a) as set forth in the Final Decree, either in the schedule of rights or in paragraph 4 herein, and

18 (b) for surface water permits or other use authorizations, the final resolution of which is under the
19 administrative jurisdiction of the Department of Ecology (“Ecology”) as of the date of this Final
20 Decree. These include, but are not limited to: City of Yakima surface water permit # S4-
21 01141P(B); City of Yakima change authorization for groundwater certificate # 938-D;
22 Yakima-Tieton Irrigation District reservoir permit # R4-26540; and ----- . Accordingly,
23 nothing in the foregoing shall prevent or prohibit the beneficial use of water under, or the
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1 administrative recognition of, these identified surface water permits or other use authorizations
2 that were under the administrative jurisdiction of Ecology as of the date of this Final Decree.

3 2. The Conditional Final Orders (“CFOs”) previously entered in this action
4 confirmed the valid surface water rights in this case, and the rights confirmed in those CFOs
5 are integrated in this Final Decree. Each water right entered in a CFO was confirmed as of the
6 date of entry of the CFO, so that any future determination of the extent and validity of the
7 water right (including any determination of relinquishment) shall commence from the date of
8 entry of the CFO. The only exceptions to that are (a) if a complete five-year period of non-use
9 began before the entry of the CFO but did not conclude until after entry, the statutory period
10 for relinquishment begins before the date of entry of the CFO when the non-use begins; and (2)
11 any water right which was changed pursuant to RCW 90.03.380 after the date of the entry of
12 the CFO in which it was determined is affirmed as of the date of the last such change. Each
13 water right so confirmed is set forth in the Schedule of Rights herein in an integrated order of
14 priority.

15 The CFOs entered, and their dates of entry, are listed below. Amendments to the CFOs
16 are also listed, but amendments do not change the original date of entry of a CFO. The rights in
17 a CFO are determined as of the original date of entry, even if the CFO has been amended since
18 that time.

19 3. Each water right confirmed shall have a date of priority as shown in the Schedule
20 of Rights or in paragraph 4 herein. ~~No~~ Every user of a water right may exercise it ~~is hereby~~
21 perpetually enjoined, restrained, and prohibited from diverting or using water in the Yakima River
22 Basin, including the entire Yakima Reclamation Project, so as to impair a water right with a senior
23 priority date. ~~A senior water right with an upstream point of diversion can not be impaired by a~~
24 ~~junior water right with a downstream point of diversion, because regulating the downstream junior~~

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1 ~~water right could not provide more water to the upstream senior water right. In addition, as~~
2 ~~between water rights diverting from different streams above the confluence of those streams, no~~
3 ~~junior water right on one stream shall be regulated because a senior water right on another stream~~
4 ~~above the confluence of the streams is not receiving all the water to which the senior water right is~~
5 ~~entitled.~~

6 4. In addition to the water rights listed in the schedule of rights, an historic water right
7 to non-diversionary stockwater in watercourses that flow across or are adjacent to riparian lands,
8 and in ponds or springs that are located on or adjacent to the lands, if the lands were used as pasture
9 or range for livestock at the time of this adjudication, in amounts, priority, and with conditions as
10 set forth in Order Re: Non-Diversionary Stockwater Rights, entered July 10, 1997 was confirmed
11 in this adjudication. A non-diversionary right to water for wildlife was included in each CFO.

12 5. This Court has also recognized in this adjudication that certain uses of water do not
13 require a water right. These are:

14 a. Use of foreign return flows, with conditions and limitations as set forth in
15 Memorandum Opinion Re: Motion for Reconsideration of Limiting Agreements, April 1, 1994.

16 b. Uses of water for fire suppression, with conditions and limitations as set
17 forth in Stipulation Re: Water Use for Fire Suppression, December 12, 1996.

18 c. Use of springs that surface on claimants' property and form no regular
19 water course off of the property and not leaving the property, hydrologically connected to any other
20 surface water, or affecting any existing water rights, when there was beneficial use of these waters
21 prior to enactment of the 1917 Water Code, with conditions and limitations as set forth in Opinion
22 Re: Exception of Dwayne and Alvina Dormaier (Claim No. 4706 Re Subbasin No. 21 (Burbank
23 Creek), September 16, 1993, and the Memorandum Opinion and Order Re: Exception of Tom and

1 Zeldia Worrell to Supplemental Report of Referee, Subbasin No. 22 (Wide Hollow), November 8,
2 1999.

3 6. Ecology shall issue certificates of adjudicated water right pursuant to RCW
4 90.03.240 to the claimants herein whose rights are listed in the schedule of rights, provided that
5 each claimant first pays Ecology the required fee for each certificate pursuant to RCW 90.03.470
6 (10) and the required fee for recording the certificate pursuant to RCW 90.03.330 (1). RCW
7 90.03.470(13). Each holder of a water right confirmed in this action shall pay such fees to Ecology
8 within 180 days after Ecology has requested payment of such fees from the holder.

9 7. Each certificate of adjudicated water right shall have a certificate number, and, if
10 applicable, a subbasin number for ease of reference. Each right shall include the date of the CFO
11 in which the right was determined. County parcel information, required for recording with the
12 county auditors, shall be included on the certificates. Conditions or limitations applicable to each
13 right, whether particular to the specific right, particular to all rights in a CFO, or generally
14 applicable such as, including without limitation, the Order Pendente Lite Regarding Metering,
15 Measurement, and Reporting, October 13, 1994, and the ~~such as metering~~Order Requiring
16 Metering, Measuring, and Reporting Requirements, All Subbasins (1-31) in Benton, Kittitas, and
17 Yakima Counties, September 15, 2005 (together, the “metering orders”), shall be referenced on
18 each certificate. The metering orders are hereby made perpetual, and shall continue as permanent
19 conditions on each water right after this Final Decree is entered.

20 8. The rights integrated in this Final Decree shall be administered and interpreted in
21 accordance with the orders entered in the course of this adjudication.

22 9. The Department of Ecology has the ~~right~~ authority to administer and enforce this
23 Decree pursuant to 43 U.S.C. § 666, except that the Yakama Indian Nation has the ~~right~~ authority

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1 as specifically set forth in orders in this action to administer and enforce water rights confirmed to
2 the Yakama Indian Nation or its members.

3 10. The court shall not retain continuing jurisdiction of this action once the Final
4 Decree is entered.

5 11. Ecology shall within 180 days after entry of this Final Decree prepare a Notice of
6 Availability and include it in the monthly notice, and shall mail it to each party in this action with a
7 preprinted postcard which can be mailed back to Ecology to request a copy, informing parties that
8 a copy of the Final Decree is available (a) on Ecology's website or (b) by mail in paper or
9 electronic format by request to Ecology, or (c) at libraries in the cities of Yakima, Ellensburg, Cle
10 Elum, Sunnyside, and Richland.

11 12. Each party to this action or the party's successors in interest shall inform Ecology
12 within 90 days of any change in address or change in ownership of a water right confirmed in this
13 action.

14 DATED this ____ day of _____, 2007.

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17 _____
18 Sidney P. Ottem
19 Court Commissioner

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