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

7
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

12 STATE OF WASHINGTON,
13 DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

15 JAMES J. ACQUAVELLA, et al.,

16 Defendant.

17
18 This case is a general adjudication of rights to surface water in the Yakima River Basin,
19 located in Yakima, Kittitas, Klickitat and Benton Counties, Washington. The State of
20 Washington, Department of Ecology began this case by filing a Petition for a determination of
21 the surface water rights pursuant to chapter 90.03 RCW. Pursuant to RCW 90.03.160, the
22 Court referred the case to the Director of Ecology, who appointed Referees to hold hearings,
23 take testimony, and file reports containing recommendations with regard to claims for certain
24 surface water rights, and the Court retained other claims for surface water rights and conducted
25 hearings. Because the case is so large, with so many parties, by Pretrial Order No. 8, entered
26 March 3, 1989 the Court divided claims into the four pathways of federal reserved rights for

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

6 ORDERS, ADJUDGES AND DECREES as follows:

7 1. This is a quiet title action to all surface water rights of the Yakima River Basin, and
8 including the entire Yakima Reclamation Project, as shown in the map attached to Pretrial Order
9 No. 3, April 18, 1985, and no valid surface water rights currently exist in the Yakima River Basin
10 except:

Deleted: including the Kennewick Irrigation District, but excluding the McNary Pool of the Columbia River,

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

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13 (b) as set forth in surface water permits, including temporary permits, or change authorizations, the
14 final resolution of which is under the administrative jurisdiction of the Department of Ecology
15 (“Ecology”); and

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

17 2. The Conditional Final Orders (“CFOs”) previously entered in this action
18 confirmed the valid surface water rights in this case, and those rights are integrated in this
19 Final Decree. Each water right entered in a CFO was confirmed as of the original date of entry
20 of the CFO, so any future determination of the extent and validity of the water right (including
21 any determination of relinquishment) shall commence from the date of entry of the CFO unless
22 as otherwise provided by law including the prior opinions and orders of this Court. Each water
23 right so confirmed is set forth in the Schedule of Rights herein in an integrated order of
24 priority. The rights are indexed alphabetically by the name of each listed holder of the right.

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Deleted: 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) 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.

25 The CFOs entered, and their dates of entry, are listed below. Amendments and
26 corrections to the CFOs are also listed, but amendments and corrections do not change the

1 original date of entry of a CFO. The rights in a CFO are determined as of the original date of
 2 entry, even if the CFO has been amended or corrected since that time, except as provided
 3 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)
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

Major Claimant Name	Date of Entry of CFO
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)

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

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Subbasin		Date of Entry of CFO
No.	Name	
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)
21	Burbank	1/12/95
22	Wide Hollow	12/9/99
23	Ahtanum Creek/ Irrigation District/ John Cox	

Subbasin		Date of Entry of CFO
No.	Name	
	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.b 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.

(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.

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

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

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

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

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

15 5. Ecology shall issue certificates of adjudicated water right pursuant to RCW
16 90.03.240 to the confirmed water right holders herein whose rights are listed in the schedule of
17 rights, or their successors, provided that each such holder or successor first pays Ecology the
18 required fee for each certificate pursuant to RCW 90.03.470 (10) and the required fee for recording
19 the certificate pursuant to RCW 90.03.330 (1). RCW 90.03.470(13). Except for the United States,
20 the Yakama Nation, and members of the Yakama Nation, each holder or holders of a water right
21 confirmed in this action shall pay such fees to Ecology within 90 days after Ecology has requested
22 payment of such fees from the holder.

23 6. Each certificate of adjudicated water right shall have a certificate number, and, if
24 applicable, a subbasin number for ease of reference. Each right shall include the date of the CFO
25 in which the right was determined. Conditions or limitations applicable to each right as originally
26 confirmed or as changed prior to the entry of this Decree shall be only as set forth in the Schedule

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Deleted: . . . 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.¶

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1 of Rights, or elsewhere in this Decree, or in other applicable orders of this court. Ecology may add
2 additional conditions or limitations only when acting pursuant to RCW 90.03.380 or other statutory
3 authority to change after the entry of this Decree.

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

15 8. The rights integrated in this Final Decree shall be administered and interpreted in
16 accordance with all of the opinions and orders entered in the course of this adjudication.

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- Deleted: These opinions and orders include, but are not limited to:
- Deleted: 11/29/1990
- Deleted: Amended Partial Summary Judgment Entered As Final Judgment Pursuant to Civil Rule 54(b)
- Deleted: 12/22/1994
- Deleted: Memorandum Opinion Re: “Flushing Flows”
- Deleted: 3/1/1995
- Deleted: Final Order Re: Treaty Reserved Water Rights At Usual and Accustomed Fishing Places
- Deleted: 4/13/1995
- Deleted: Order Re: “Flushing Flows”
- Deleted: 7/16/1996
- Deleted: Revised Order re: Motion to Limit Treaty Water Right for Fish to Natural Flow and Abatement of Non-Proratable Water Rights
- Deleted: 12/10/2001
- Deleted: Memorandum Opinion re: Unavailability of Water
- Deleted: 2/8/2002
- Deleted: Memorandum Opinion re: Unavailability of Water
- Deleted: 10/8/2002
- Deleted: Memorandum Opinion and Order re: Exceptions to Second Supplemental Report of Referee Subbasin 4 (Swauk Creek)
- Deleted: 10/8/2003
- Deleted: Memorandum Opinion re: Ahtanum Creek Threshold Legal Issues
- Deleted: 12/24/2003
- Deleted: Clarification of October 8, 2003 Memorandum Opinion Re: Ahtanum Creek Legal Issues

- Deleted: 5/20/2004¶
- Deleted: Memorandum Opinion and Order Re: Exceptions to Supplemental Report of Referee Subbasin 9
- Deleted: 6/10/2004
- Deleted: Memorandum Opinion Re: Poisel v. Ecology
- Deleted: 12/6/2004
- Deleted: Clarification of Memorandum Opinion Re: Poisel v. Ecology
- Deleted: 11/4/2004
- Deleted: 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
- Deleted: 3/10/2005
- Deleted: Revised Order Limiting Post-1905 Diversions During Periods of Water Shortage
- Deleted: 2/14/2007
- Deleted: Memorandum Opinion and Order Re: Water Rights for the United States of America Bureau of Reclamation
- Deleted: 3/5/2007
- Deleted: Memorandum Opinion and Order Re: Exceptions to Report of Referee Subbasin 25 (Toppenish)
- Deleted: 5/21/2007
- Deleted: Memorandum Opinion and Order Re: Objections to Entry of Conditional Final Order Subbasin 25 (Toppenish)
- Deleted: the
- Deleted: pursuant to RCW 43.21A.064(3), RCW 43.27A.190, RCW 90.03.605, and 43 U.S.C. § 666,
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(a) The Department of Ecology has statutory authority to administer and enforce this Decree 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. Generally, 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. However, given the unique aspects of the Yakima Basin, the possibility of potential appeals, the likely need to perform various administrative functions after this Decree has been entered and the significant federal presence, it is the intention of this Court to retain jurisdiction for at least three years from the date of this Decree's entry to review administration and enforcement decisions by the governing authorities and those seeking injunctive relief as allowed pursuant to Section 9(b). This action is supported by the Court's statutory authority set forth in RCW 90.03.110 et seq. as the entity to oversee the adjudication of this basin, along with its inherent authority and expertise in interpreting and causing to be enforced the complex and unique decisions it has made over the last 25 years. After the conclusion of the three-year period and if and when the Court has assisted the parties in working through the administration and enforcement of the numerous rulings of this

1 general adjudication, the Court may, on its own initiative or upon motion by a party, consider
2 transfer of administrative authority to the Pollution Control Hearings Board as contemplated by
3 RCW 43.21B.110 for appeals from Ecology decisions only. The Court would retain authority
4 over this Decree to the extent that it would hear any appeals from those PCHB decisions and
5 any actions for injunctive relief as set forth in Section 9(b). The Yakama Indian Nation's right
6 for instream flows for fish shall be administered and enforced as specifically set forth in orders of
7 this case and the initial determination on that issue resides with the Yakima Area Manager with
8 review to remain with this Court.

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

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17 DATED this ____ day of _____, 2007.

Deleted: 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.

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20 Sidney P. Ottem
21 Court Commissioner
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