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2 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
3 IN AND FOR THE COUNTY OF YAKIMA

4 IN THE MATTER OF THE DETERMINATION )  
5 OF THE RIGHTS TO THE USE OF THE )  
6 SURFACE WATERS OF THE YAKIMA RIVER )  
7 DRAINAGE BASIN, IN ACCORDANCE WITH )  
8 THE PROVISIONS OF CHAPTER 90.03, )  
9 REVISED CODE OF WASHINGTON, )

No. 77-2-01484-5

ORDER RE: COMMENTS ON DRAFT  
PROPOSED FINAL DECREE

8 STATE OF WASHINGTON,  
9 DEPARTMENT OF ECOLOGY,

Plaintiff,

10 vs.

11 JAMES J. ACQUAVELLA, ET AL.,  
12 Defendants

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13 On October 23, 2006, the Court issued a Notice requesting any interested party in the  
14 adjudication to create a Final Decree Working Group with the goal of supplying the Court with a  
15 Draft Proposed Final Decree. The Working Group was an open and inclusive process with all  
16 parties invited to participate and included the assistance of facilitators, Roundtable Associates. It  
17 met in person six times and once by conference call. The Work Group submitted its first status  
18 report on February 21, 2007. On May 17, 2007, the Working Group filed a Second Status Report,  
19 amended by comments in Court on June 14, 2007, and indicates that the group has concluded its  
20 meetings. Consistent with the intent of the Working Group, the Department of Ecology has  
21 submitted a Draft Proposed Final Decree. Prior to making this a Final Proposed Final Decree, the  
22 Working Group and the Court desire to make available the Draft Proposed Final Decree to all  
23 parties through publication in the July 1, 2007, Monthly Notice. Dates for filing written  
24 objections/comments to the Draft Proposed Final Decree along with a hearing date are set forth  
25 below.

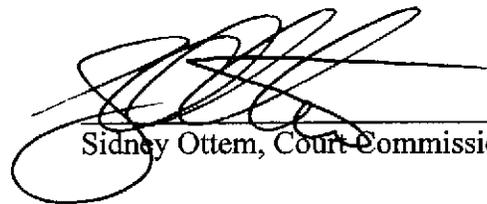
It is HEREBY ORDERED:

1 The Final Decree Working Group has concluded its meetings and a Draft Proposed Final  
2 Decree (Draft) has been submitted to the Court by the Department of Ecology. That Draft is  
3 attached to this Order.

4 Any party that has a comment/objection ("objection") to the Draft shall submit such to the  
5 Court by August 22, 2007. The objection need not be briefed at this time, but shall be sufficiently  
6 clear to allow the Court and other parties to determine its meaning and intent.

7 A hearing will be held September 13, 2007, beginning at 9:30 a.m. to discuss objections to  
8 the Draft. The Court will then consider such objections and determine if further briefing is needed  
9 or other wise advise the parties when a final Proposed Final Decree shall be available.

10 Dated this 18<sup>th</sup> day of June, 2007.

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13 Sidney Ottem, Court Commissioner

14 Attachment: Draft Proposed Final Decree  
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6 **STATE OF WASHINGTON**  
**YAKIMA COUNTY SUPERIOR COURT**

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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  
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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.,

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

[DRAFT] [PROPOSED] FINAL  
DECREE

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, including the Kennewick Irrigation District, but excluding the McNary Pool  
10 of the Columbia River, and no valid surface water rights currently exist in the Yakima River Basin  
11 except:

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

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

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

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

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

5 The CFOs entered, and their dates of entry, are listed below. Amendments and  
6 corrections to the CFOs are also listed, but amendments and corrections do not change the  
7 original date of entry of a CFO. The rights in a CFO are determined as of the original date of  
8 entry, even if the CFO has been amended or corrected since that time, except as provided  
9 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-Schanno Irrigation 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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<b>Major Claimant Name</b>	<b>Date of Entry of CFO</b>
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)

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.

1 (c) 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 except as provided in this Decree or as acquired by process of law subsequent to this Decree.

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

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

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

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

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

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

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

1           5. Ecology shall issue certificates of adjudicated water right pursuant to RCW  
2 90.03.240 to the confirmed water right holders herein whose rights are listed in the schedule of  
3 rights, or their successors, provided that each such holder or successor first pays Ecology the  
4 required fee for each certificate pursuant to RCW 90.03.470 (10) and the required fee for recording  
5 the certificate pursuant to RCW 90.03.330 (1). RCW 90.03.470(13). Except for the United States,  
6 the Yakama Nation, and members of the Yakama Nation, each holder of a water right confirmed in  
7 this action shall pay such fees to Ecology within 180 days after Ecology has requested payment of  
8 such fees from the holder.

9           6. 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. Conditions or limitations applicable to each right as originally  
12 confirmed or as changed prior to the entry of this Decree shall be only as set forth in the Schedule  
13 of Rights, or elsewhere in this Decree, or in other applicable orders of this court. Ecology may add  
14 additional conditions or limitations only when acting pursuant to RCW 90.03.380 or other statutory  
15 authority to change after the entry of this Decree.

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

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

4     11/29/1990    Amended Partial Summary Judgment Entered As Final Judgment Pursuant to  
5                    Civil Rule 54(b)

6     12/22/1994    Memorandum Opinion Re: "Flushing Flows"

7     3/1/1995      Final Order Re: Treaty Reserved Water Rights At Usual and Accustomed  
8                    Fishing Places

9     4/13/1995     Order Re: "Flushing Flows"

10    7/16/1996     Revised Order re: Motion to Limit Treaty Water Right for Fish to Natural  
11                    Flow and Abatement of Non-Proratable Water Rights

12    12/10/2001    Memorandum Opinion re: Unavailability of Water

13    2/8/2002      Memorandum Opinion re: Unavailability of Water

14    10/8/2002     Memorandum Opinion and Order re: Exceptions to Second Supplemental  
15                    Report of Referee Subbasin 4 (Swauk Creek)

16    10/8/2003     Memorandum Opinion re: Ahtanum Creek Threshold Legal Issues

17    12/24/2003    Clarification of October 8, 2003 Memorandum Opinion Re: Ahtanum Creek  
18                    Legal Issues

19    5/20/2004     Memorandum Opinion and Order Re: Exceptions to Supplemental Report of  
20                    Referee Subbasin 9

21    6/10/2004     Memorandum Opinion Re: Poisel v. Ecology

22    12/6/2004     Clarification of Memorandum Opinion Re: Poisel v. Ecology

23    11/4/2004     Memorandum Opinion Re: Department of Ecology's Motion for  
24                    Authorization to Perform a Tentative Determination Court Claim No. 01566,  
25                    Estate of Ted and Agnes Bugni Subbasin No. 3

1 3/10/2005 Revised Order Limiting Post-1905 Diversions During Periods of Water  
2 Shortage  
3 2/14/2007 Memorandum Opinion and Order Re: Water Rights for the United States of  
4 America Bureau of Reclamation  
5 3/5/2007 Memorandum Opinion and Order Re: Exceptions to Report of Referee  
6 Subbasin 25 (Toppenish)  
7 5/21/2007 Memorandum Opinion and Order Re: Objections to Entry of Conditional  
8 Final Order Subbasin 25 (Toppenish)  
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10 9.

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

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

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