

## GUIDELINES FOR FILING AND HEARING

### **Motion to Divide Water Right**

### **Motion to Divide Water Right and Join/Substitute Parties**

#### Filing Documents

The following documents must be filed with the Yakima County Clerk's Office by the 18<sup>th</sup> day of the month in order for the motion to be heard on the water day hearing two months after the filing date:

- Motion to Divide Water Right – this document includes information on the names of parties, the court claim no., subbasin identification, and how the water right is to be divided. A copy of the water right being divided **must** be attached to the motion (latest version of water right from Report of Referee, Supplemental Report of Referee, Change decision, etc.)
- Note for Motion Docket – this document causes the motion to be added to the Court's hearing calendar, which is required.

A Motion to Divide Water right may require a hearing before the Court at one of the monthly Water Day Hearings. Water Day Hearings are held the second Thursday of each month at the Yakima County Courthouse and begin at 9 a.m. After considering the motion and comments from other parties, the Court will either grant the motion by signing an order, or deny the motion; sometimes the Judge may ask for clarification and/or for a claimant to make amendments to the motion. The documents should be mailed to the following address: Yakima County Superior Court Clerk, Yakima County Courthouse, 2<sup>nd</sup> St. and Martin Luther King Blvd., Yakima WA 98901

#### Order Granting Motion to Divide Water Right

The moving party must prepare an original Proposed Order Granting the Motion to Divide Water Right for the Court to review and determine whether a hearing is necessary. If the Court determines the order can be signed without a hearing, the moving party will be notified and upon payment of a \$30 fee, the order will be signed. If the moving party prefers to not pay the fee, he/she can appear at the hearing and present the original order for signature.

#### Names on Water Right

If anyone whose name is to be on the divided water right is not a party to the case, they need to be added to the claim. This can be done by filing a Motion to Divide Water Right and Join/Substitute Parties all in the same motion or by filing a motion to be joined to the claim prior to filing the Motion to Divide.

Forms and Instructions are available from the Yakima County Clerk's Office or from Ecology's website at: <http://www.ecy.wa.gov/programs/wr/rights/adjhome.html>

**This process does not apply to motions to only join or substitute parties. See Ecology's website for forms and instructions for that action.**

### Common Mistakes in Motions to Divide Water Right

The motion does not have the proper signatures

- Every party on the confirmed right must sign the motion to divide the water right.

The annual and/or instantaneous quantity or number of irrigated acres of the divided water right total more or less than the confirmed right

- The entire quantity of the right needs to be addressed and may not exceed the confirmed amounts.
- The number of irrigated acres may not be more than the confirmed right and, if less, should be explained.

Quantities for two purposes of use have been combined

- For example, if the confirmed right has a separate quantity each for irrigation and stockwater, the quantities must be divided separately and remain separate, even if they have the same period of use.

Place of use is not within the confirmed place of use

- The places of use for the divided water rights must be within the confirmed place of use.
- Changing the place of use of a water right requires approval from Ecology pursuant to RCW 90.03.380

Point of Diversion

- The points of diversion for the divided water rights are different than the confirmed point of diversion
- Changing or adding a point of diversion of a water right requires approval from Ecology pursuant to RCW 90.03.380

INSTRUCTIONS FOR MOTION TO DIVIDE AND  
JOIN PARTIES AND MOTION TO DIVIDE WATER RIGHT

Attached is a suggested form (Motion) that can be used to request that the Court change its records to show the identity of owners of property and divide a water right confirmed to that property in this action (*State of Washington Department of Ecology v. James J. Acquavella, et al.*). See guidelines for additional information.

INSTRUCTIONS

1. Complete the information required on the motion form. Attach a copy of the water right that reflects the most recent version of the right, i.e. Report of Referee, Supplemental Report of Referee, Change decision.
2. Attach additional sheets as necessary.
3. The division of this water right shall not be considered as validation of the extent and validity of the right.
4. The sum of the parts must not exceed the water right confirmed in any of the parameters.
5. Draft a proposed order that reflects the division of the water right as shown in the motion.
6. The completed and signed Motion, along with a proposed order, must be mailed or delivered in person to:

Yakima County Superior Court Clerk  
Yakima County Courthouse  
2<sup>nd</sup> St. and Martin Luther King Blvd.  
Yakima WA 98901

7. The Court will review the Motion and determine whether a hearing is necessary prior to signing the proposed. If the Court determines an order can be signed without an hearing, the proposed order will be signed and printed in the monthly notice.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

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, )  
vs. )  
JAMES J. ACQUAVELLA, et al., )  
Defendant )

Case No.: 77-2-10484-5  
MOTION TO  
DIVIDE WATER RIGHT  
COURT CLAIM NO. \_\_\_\_\_  
SUBBASIN NO. \_\_\_\_\_

Claimants state they have an interest in a water right confirmed in this action and move the Court for an Order Dividing a Water Right under Court Claim No. \_\_\_\_\_ Subbasin No. \_\_\_\_\_.

The water right to be divided was confirmed as follows:

Claimant Name(s): \_\_\_\_\_

Source: \_\_\_\_\_

Purpose of Use (including number of acres if for irrigation): \_\_\_\_\_

\_\_\_\_\_

Period of Use: \_\_\_\_\_

Quantity: (Qi) \_\_\_\_\_ (Qa) \_\_\_\_\_ Priority Date: \_\_\_\_\_

Point(s) of Diversion: \_\_\_\_\_

\_\_\_\_\_

being within the \_\_\_ 1/4 \_\_\_ 1/4 of Section \_\_\_ T. \_\_\_ R. \_\_\_ E.W.M.

(Attach additional sheets as needed)

Place of Use: \_\_\_\_\_

\_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

being within \_\_\_ 1/4 \_\_\_ 1/4 Section \_\_\_ T. \_\_\_ R. \_\_\_ E.W.M.

(Attach additional sheets as needed)

Limitations (if any): \_\_\_\_\_

Pursuant to this Motion, claimants seek the Court's approval to divide the subject water right as follows:

Water Right No. 1:

Claimant Name(s): \_\_\_\_\_

Source: \_\_\_\_\_

Purpose of Use (including number of acres if for irrigation): \_\_\_\_\_

Period of Use: \_\_\_\_\_

Share of Quantity: (Qi) \_\_\_\_\_ (Qa) \_\_\_\_\_ Priority Date: \_\_\_\_\_

Point(s) of Diversion: \_\_\_\_\_

being within the \_\_\_ 1/4 \_\_\_ 1/4 of Section \_\_\_ T. \_\_\_ R. \_\_\_ E.W.M.

(Attach additional sheets as needed)

Place of Use:

County \_\_\_\_\_ Tax Parcel No. \_\_\_\_\_

Legal Description: \_\_\_\_\_

being within the \_\_\_ 1/4 \_\_\_ 1/4 of Section \_\_\_ T. \_\_\_ R. \_\_\_ E.W.M.

(Attach additional sheets as needed)

Water Right No. 2:

Claimant Name: \_\_\_\_\_

Source: \_\_\_\_\_

Purpose of Use (including number of acres if for irrigation): \_\_\_\_\_

1 Period of Use: \_\_\_\_\_

2 Share of Quantity: (Qi) \_\_\_\_\_ (Qa) \_\_\_\_\_ Priority Date: \_\_\_\_\_

3 Point(s) of Diversion: \_\_\_\_\_

4 \_\_\_\_\_  
5 being within the \_\_\_ 1/4 \_\_\_ 1/4 of Section \_\_\_ T. \_\_\_ R. \_\_\_ E.W.M.

(Attach additional sheets as needed)

6 Place of Use:

7 County \_\_\_\_\_ Tax Parcel No. \_\_\_\_\_

8 Legal Description: \_\_\_\_\_

9 \_\_\_\_\_  
10 being within the \_\_\_ 1/4 \_\_\_ 1/4 of Section \_\_\_ T. \_\_\_ R. \_\_\_ E.W.M.

11 (Attach additional sheets as needed)

12 (If dividing into more than two rights, attach additional sheets with all the required information)

13 I hereby declare under penalty of perjury that I have read the forgoing MOTION TO DIVIDE  
14 WATER RIGHT UNDER COURT CLAIM NO. \_\_\_\_\_, that I know the content thereof, and that the  
15 facts therein stated are true.

16  
17 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

18  
19  
20  
21 \_\_\_\_\_  
(Signature of Moving Party)

22  
23  
24 \_\_\_\_\_  
(Signature of Moving Party)



1 Place of Use:  
2 County \_\_\_\_\_ Tax Parcel No. \_\_\_\_\_  
3 Legal Description: \_\_\_\_\_  
4 \_\_\_\_\_

4 being within the \_\_\_ 1/4 \_\_\_ 1/4 of Section \_\_\_ T. \_\_\_ R. \_\_\_ E.W.M.  
5 (Attach additional sheets as needed)

6 Water Right No. 2:  
7 Claimant Name: \_\_\_\_\_  
8 Source: \_\_\_\_\_  
9 Purpose of Use (including number of acres if for irrigation): \_\_\_\_\_  
10 \_\_\_\_\_

10 Period of Use: \_\_\_\_\_  
11 Share of Quantity: (Qi) \_\_\_\_\_ (Qa) \_\_\_\_\_ Priority Date: \_\_\_\_\_

11 Point(s) of Diversion: \_\_\_\_\_  
12 \_\_\_\_\_

13 being within the \_\_\_ 1/4 \_\_\_ 1/4 of Section \_\_\_ T. \_\_\_ R. \_\_\_ E.W.M.  
14 (Attach additional sheets as needed)

14 Place of Use:  
15 County \_\_\_\_\_ Tax Parcel No. \_\_\_\_\_  
16 Legal Description: \_\_\_\_\_  
17 \_\_\_\_\_

18 being within the \_\_\_ 1/4 \_\_\_ 1/4 of Section \_\_\_ T. \_\_\_ R. \_\_\_ E.W.M.  
19 (Attach additional sheets as needed)  
(If dividing into more than two rights, attach additional sheets with all the required information)

20 This ex parte order shall be effective upon filing with the Clerk. Any objections to the order  
21 must be filed with the Clerk within thirty (30) days of publication in the monthly notice or shall be  
22 deemed waived.

23 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

24 \_\_\_\_\_  
25 F. James Gavin, Judge