

1  
2  
3  
4  
5  
6  
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,

16 STATE OF WASHINGTON,  
17 DEPARTMENT OF ECOLOGY,

18 Plaintiff,

19 v.

20 JAMES J. ACQUAVELLA, et al.,

21 Defendant.

NO. 77-2-01484-5

ECOLOGY'S MOTION TO AMEND  
PRETRIAL ORDER NO. 8

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

Ecology moves that Pretrial Order No. 8, Section XII, be amended to read as follows:

///  
26

XII. FINAL ADJUDICATION

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

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

1 Olympia, Washington 98504-0117. Any objections filed more than ninety (90) days  
2 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 forty  
12 (240) days after the date of mailing of the NOAPFD. A party filing a reply to an  
13 objection shall include a cover sheet with a brief summary of the substance of the reply,  
14 no more than five sentences long. Any party filing a written reply with the Court shall  
15 at the same time mail a complete copy of the reply and cover sheet to the Office of the  
16 Attorney General, Acquavella Case Attorney, P.O. Box 40117, Olympia, Washington  
17 98504-0117.

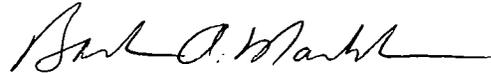
18 E. If no objections are received by the Court, the Court will consider the Proposed Final  
19 Decree and will enter a Final Decree determining the rights of all parties according to  
20 the evidence. The Court shall cause a Notice of Availability of Final Decree (NOAFD)  
21 to be mailed to all 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 12<sup>th</sup> day of June, 2007.

6 ROBERT M. McKENNA  
7 Attorney General

8 

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

14  
15  
16  
17 F:\CASES\MARKHAM\ACQUAVELLA\MASTER CASE\FINAL DECREE\ECYMOT-AMENDPT08.DOC