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KIM M. EATON
EX OFFICIO CLERK
SUPERIOR COURT
YAKIMA COUNTY
WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

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

No. 77-2-01484-5

ORDER

12 STATE OF WASHINGTON DEPARTMENT OF)
13 ECOLOGY,)

OBJECTIONS TO
ECOLOGY'S PROPOSED
ORDER OF DEFAULT

14 Plaintiff,

15 v.

16 JAMES J. ACQUAVELLA, et al.

17 Defendants.

18 Ecology filed its Motion for Default Order and Entry of Default Judgment and
19 Abbreviated Service on August 21, 2009, noting a hearing for October 8, 2009. Service
20 was made through publication in the Yakima Herald Republic, the Ellensburg Daily
21 Record, the Tri-City Herald, and the September 1, 2009 Monthly Notice. Defendants
22 with known addresses and attorneys of record were served by mail. Objections were
23 received from several parties and responses to many of the objections were filed by
24 Ecology.

25 Kittitas Reclamation District filed an objection to the language in the Proposed
26 Order. Several other Districts joined KRD's objection.

1 On October 8, 2009 the Court held a hearing on entry of the default judgment.
2 The court instructed Ecology to include language indicating that Conditional Final
3 Orders (CFOs) prevail over the default order and default judgment. Nothing in the order
4 affects or disturbs water rights confirmed in the court's CFOs, including rights confirmed
5 under names that are different from those found in Ecology's Motion for Default Order,
6 Default Order and Default Judgment. The rights confirmed in this case control over the
7 Order of Default and Default Judgment. Neither the Order of Default nor the Default
8 Judgment affect any right a person may have to water delivery provided by an irrigation
9 district, municipality or other entity which has been confirmed a right in this case. CFOs
10 control if there is an ambiguity between them and the Order of Default and Default
11 Judgment.
12

13 Under **CR 55 (a)(1)** when a party fails to appear after having been served with
14 proper process, the serving party may, without notice, move for, and obtain, default
15 against the served party. The served party can appear and respond to the pleading at
16 any time before the motion and supporting affidavit are filed. If they have already been
17 filed, the served party "may not respond to the pleading nor otherwise defend without
18 leave of the court."***(Pleading after default ((a)(2))***.
19

20 Almost all of the respondents in this motion for default failed to appear and
21 respond prior to the service and filing of the motion. Moreover, none of them requested
22 leave of court for permission to respond after the filing of the motion with the
23 accompanying affidavit. Under **(a)(2)** defaults should be granted against all of them.
24 However, **CR55(f)(1)** provides that if more than one year has elapsed since the service
25
26

1 of summons, even though the party served has not appeared, the moving party must
2 give a minimum of a ten-day notice of the motion for default to the party served.

3
4 Ecology's motion was filed substantially more than one year after the service of
5 the summons. During the hearing the court commented that (a)(2) seemed to settle the
6 issue. Since the respondents failed to follow that subsection, they probably should be
7 defaulted. Further review of the rule, especially (f)(1), causes the court to conclude
8 otherwise. That subsection requires service of notice of the motion giving the served
9 party an opportunity to appear and respond prior to the hearing on the motion.

10
11 The Court finds that the appearance of the following Defendants at the
12 October 8, 2009 hearing or by written response to the default motion results in removal
13 from the default notice.

14 Evelyn Keirn
15 Thomas J. Willette
16 Carl and Rene Pettijohn
17 William J. Ryan
18 Neill Pierce
19 Martha Robert
20 Anna Marie Robert
21 Joe G. and Rachel Molano
22 Raymond E. Dean
23 Harold R. Dean
24 Nancy Root
25 Jewel Rider Sr.
26 Ann F. Davis
Ira and Bessie Ford
Benjamin F. Ferguson
Edith Thomas
Burrill Ferguson
Darrel C. Curry
Theiline P. Wright
Theodore and Coleen Sonstegaard
William H. Zirkle and Patricia P. Zirkle
The Lust Brothers
J.P. Hodkinson and Son

1 Delbert W. Whitish and spouse if any
2 John L. Whitaker and Mary C. Whitaker

3 The Court Orders the above named defendants removed from the default list.
4 However, the Court rules that they cannot file Statements of Claim in this adjudication.
5 Any Statements of Claim that may have already been or subsequently filed by these
6 defendants are not approved for further processing.

7 Attorneys having appeared for the following Defendants, they will remain on the
8 default list for the reasons stated.

9 A.V. Harrel and spouse -- modification of the Proposed Order resolves their
10 concerns.

11 Patrick J. Hand (spouse, if any), George A. (Mary) Watts and George B.
12 Rominger – modification of the Proposed Order resolves their concerns. Motions to
13 Join may be filed.

14 Beatrice Jasper, as spouse of Randolph C. Jasper -- Mrs. Jasper will file
15 substitution paperwork.

16 Lyle and Louise Schneider –An order joining Louise Schneider has been entered
17 by the Court.

18 Harriet Brain -- Motion to Join may be filed.

19 Bradley Matson, Daryl Matson, Roderick Matson, Joan B. Matson – modification
20 of the Proposed Order resolves concerns. May file Motion to Join.

21 Yakama Nation objects to the inclusion of names on the default list who are prior
22 owners of land for which the Nation was confirmed water rights. Those defendants are:

1 John J. Rentschler and Jane Doe Rentschler
2 Spouse, if any of Dale V. Tapscott; and
3 Spouse, if any of Jack Shattuck.

4 Modification of the Proposed Order resolves the Nation's concerns.

5 Ahtanum Irrigation District (AID) filed objections to Ecology's Motion. The Court
6 could find no instance where an appearance had been made in the name of the
7 defaulted parties listed in AID objections. Having a similar name is not adequate.

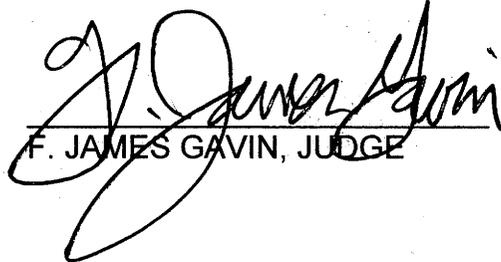
8 AID's objections are denied. The following shall remain on the list of defaulted
9 defendants:

10 Vance R. Armstrong and Jane Doe Armstrong;
11 Donald Baggarley and spouse, if any;
12 Marvin A. Baggarley and spouse, if any;
13 Spouse, if any of Kenneth P. Bates Jr.;
14 Robert E. Bohannon Jr. and spouse, if any;
15 Jess F. Bowden and spouse, if any;
16 Spouse, if any of Eugene E. Carlson;
17 Wesley M. Carson and Jane Doe Carson;
18 Catholic Diocese of Yakima;
19 Daniel W. Clark and Janet M. Clark;
20 John Clark and Kay Lee Clark;
21 John Lee Clark and Jane Doe Clark;
22 Spouse, if any of R.E. Cornelius;
23 Spouse, if any of Donald Day;
24 Emma Pearl Decoto;
25 Julie Sopia Decoto;
26 Isaac F. Drury and spouse, if any;
Spouse, if any of Frances E. Eno;
Stanley R. Glenn;
Eugene G. Gohl and spouse, if any;
Fred Gohl and spouse, if any;
Spouse, if any of Allen W. Grissom;
George W. Harris and Jane Doe Harris;
George B. Hartshorn and Jane Doe Hartshorn;
Spouse, if any of Frederick Hatfield;
David W. Hull and spouse, if any;
Louis Hull and spouse, if any;
Robert V. Hull and Jane Doe Hull;
Spouse, if any James C. Ives;
Lester I. Johnson and Aleta Johnson;

1 Richard M. Onustock and Jane Doe Onustock;
2 Albert Ribail and Jane Doe Ribail;
3 Lulu M. Shockley and spouse, if any;
4 St. Joseph's Mission, The Catholic Church;
5 Hiram E. White;
6 Gordon J. Wiley;
7 Hugh W. Wiley and Jane Doe Wiley;
8 Robert F. Wiley and spouse, if any;
9 Spouse, if any of Gail Woodhouse;

7 Ecology is ordered to modify the Order of Default as indicated herein and present
8 an amended Order of Default for signature at the December 10, 2009 water day
9 hearing.

10 DATED 20 of October, 2009.

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12 F. JAMES GAVIN, JUDGE
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