

FILED

2009 DEC 10 AM 9:51

KIM REATON
EX OFFICIO CLERK
SUPERIOR COURT
YAKIMA WASHINGTON

STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

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,

NO. 77-2-01484-5

~~[SECOND AMENDED PROPOSED]~~ *gy*
ORDER OF DEFAULT AND ENTRY
OF DEFAULT JUDGMENT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.

THIS MATTER having come before the Court on Ecology's Motion for Default Order and Entry of Default Judgment, and Abbreviated Certificate of Service, and Notice of Time and Place of Hearing dated August 12, 2009, hearings having been held on October 8, 2009, at the court having entered its *ORDER - objection to Ecology's proposed* *gy* 9:00 a.m. and on December 10, 2009 at 9:00 a.m., the Court having heard from all interested *ORDER of Default on 10/20/09,* parties and being fully advised; now, therefore,

[SECOND AMENDED PROPOSED]
ORDER OF DEFAULT AND ENTRY OF
DEFAULT JUDGMENT *21,427*

ORIGINAL

1 The Court finds as follows:

2 1. Each and all of the defendants in this case have been duly and regularly served
3 with the summons in the manner and form and time required by law. *See Dep't of Ecology*
4 *v. Acquavella*, 100 Wn.2d 651, 674 P.2d 160 (1983).

5 2. Timely notice of this hearing was provided pursuant to this Court's December
6 13, 2007, Order Approving Method of Serving Notice of Application for Order of Default and
7 this Court's December 11, 2008, Order Approving Amended Method of Serving Notice of
8 Application for Order of Default.

9 3. Each of the defendants known and identified or unknown, listed in Ecology's
10 Motion for Default Order and Entry of Default Judgment, and Abbreviated Certificate of
11 Service, and Notice of Time and Place of Hearing has failed to appear, answer, or otherwise
12 defend in this action, with the following exceptions:

- 13 a. Myrna Antonich
- 14 b. Spouse, if any, of Larry Keith Becker
- 15 c. Harriet Brain
- 16 d. Darrel C. Curry
- 17 e. Ann F. Davis
- 18 f. Harold R. Dean
- 19 g. Raymond E. Dean
- 20 h. Benjamin F. Ferguson
- 21 i. Ira and Bessie Ford
- 22 j. Spouse, if any, of James D. Forsythe
- 23 k. J.P. Hodkinson and Son
- 24 l. Spouse, if any, of Randolph C. Jasper
- 25 m. Evelyn Keirn
- 26 n. The Lust Brothers

- 1 o. Joe G. and Rachel Molano
2 p. Spouse, if any, of Harry E. Moore
3 q. Neill Pierce
4 r. Carl and Rene Pettijohn
5 s. Jewel Rider Sr.
6 t. Anna Marie Robert
7 u. Martha Robert
8 v. Nancy Root
9 w. William J. Ryan
10 x. Louise M. Schneider
11 y. Theodore and Colleen Sonstegaard
12 z. Spouse, if any, of Edith Thomas
13 aa. Delbert W. Whitish and spouse if any
14 bb. John L. Whitaker and Mary C. Whitaker
15 cc. Thomas J. Willette
16 dd. Theiline P. Wright
17 ee. William H. Zirkle and Patricia P. Zirkle
18 ff. *MARIETTA D. SMETS*
4. The time for appearing and answering Plaintiff's complaint has passed.
19 5. Venue is proper.

20 NOW, THEREFORE, IT IS HEREBY ORDERED

21 6. That the defendants listed in Ecology's Motion for Default Order and Entry of
22 Default Judgment, and Abbreviated Certificate of Service, and Notice of Time and Place of
23 Hearing, except those listed in paragraph 3 above, are in default for failure to file a claim of
24 water right as required by law.
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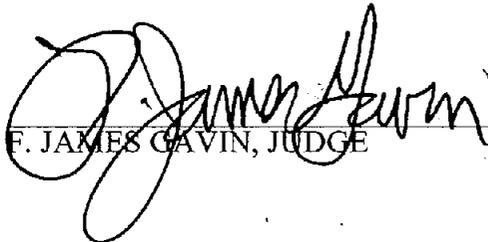
1 7. That a judgment of default is entered against each of the defendants listed in
2 Ecology's Motion for Default Order and Entry of Default Judgment, and Abbreviated Certificate
3 of Service, and Notice of Time and Place of Hearing, except those listed in paragraph 3 above.

4 8. That consistent with RCW 90.03.220, each of the defendants listed in Ecology's
5 Motion for Default Order and Entry of Default Judgment, and Abbreviated Certificate of
6 Service, and Notice of Time and Place of Hearing, named or unknown, except those listed in
7 paragraph 3 above, having failed to appear in this proceeding, is estopped from asserting any
8 right or claim to the use of the surface waters of the Yakima River Basin within Kittitas,
9 Yakima, Klickitat, and Benton Counties, and including the entire Yakima Reclamation Project,
10 as shown in the map attached to Pretrial Order No. 3, April 18, 1985.

11 9. That nothing in this Order affects or disturbs water rights confirmed in this
12 Court's Conditional Final Orders, including rights confirmed under names that are different
13 from those found in Ecology's Motion for Default Order and Entry of Default Judgment, and
14 Abbreviated Certificate of Service, and Notice of Time and Place of Hearing. The rights
15 confirmed in this case control over the Order of Default and Entry of Default Judgment.
16 Conditional Final Orders control if there is an ambiguity between them and the Order of
17 Default and Entry of Default Judgment. Neither the Order of Default nor the Default Judgment
18 affect any right a person may have to water delivery provided by an irrigation district,
19 municipality or other entity which has been confirmed a right in this case.

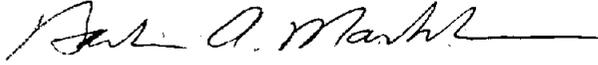
20 10. That the defendants listed in paragraph 3 above cannot file Statements of Claim
21 in this adjudication. Any Statements of Claim that may have already been or subsequently
22 filed by these defendants are not approved for further processing.

23 ENTERED this 10 day of December, 2009.

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F. JAMES GAVIN, JUDGE

1 Presented by:

2 ROBERT M. MCKENNA
3 Attorney General

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5 BARBARA A. MARKHAM, WSBA #30234
6 Assistant Attorney General
7 Attorneys for State of Washington
8 Department of Ecology
9 (360) 586-6770

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