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

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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., Defendants	No. 77-2-01484-5 ORDER REQUIRING METERING, MEASURING, AND REPORTING REQUIREMENTS, ALL SUBBASINS (1-31) IN BENTON, KITTITAS, AND YAKIMA COUNTIES

THIS MATTER having come before the Court on the Department of Ecology's (Ecology) Petition for Order Pendente Lite Re: Metering, Measuring, and Reporting Requirements, All Subbasins (1-31) in Benton, Kittitas, and Yakima Counties. The Court heard from all interested parties and specifically the testimony of Mr. Perry Harvester from the Department of Fish and Wildlife who testified Fish and Wildlife has determined that salmonid stocks in the Yakima Basin are depressed or critical as set forth in RCW 90.03.360. The Court having been fully advised, hereby:

ORDERS, consistent with RCW 90.03.360, all water right owners with water rights confirmed in a Conditional Final Order (CFO) as of the date of this Order shall install an approved metering or measuring device at each confirmed surface water diversion point below 2,000' elevation by April 1, 2006. Those surface water diversion points confirmed in a CFO, as of the date of this Order that are above 2,000' elevation shall have an approved metering or measuring device installed by April 1, 2007. The approved metering or measuring device(s) shall comply with the requirements contained in WAC 173-173-090 through 175.

IT IS FURTHER ORDERED, consistent with RCW 90.03.360, all water right owners with water rights confirmed in a CFO subsequent to this Order shall install an approved metering or measuring device at each confirmed surface water diversion point. This includes individual water users located within or serviced by Ahtanum Irrigation District, who have been recognized as

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having individual water rights. Diversion of individual water rights shall be subject to this Order to the same extent as other parties with water rights in their individual name although such rights may be delivered by the irrigation district. For CFOs entered on or before August 31 of any given year, the measuring device shall be installed by April 1 of the following calendar year. For CFOs entered on or after September 1 of any given year, the measuring device shall be installed by April 1 of the second following calendar year. However, this Order does not apply to those water users whose *sole* source of water stems from the confirmed right of an irrigation district, canal company, etc. when that water delivery institution is measuring its total diversion. Similarly, this Order also does not apply to any use of water that is otherwise measured by another entity, including clusters of domestic users who divert and are measured at a common point. The approved metering or measuring device(s) shall comply with requirements contained in WAC 173-173-090 through 175.

IT IS FURTHER ORDERED that said water right owners shall generate and maintain diversion records for each water right. For water rights with a diversion rate greater than 1.0 cfs, said water right owners shall provide the diversion records to Ecology on the form it prescribes in accordance with WAC 173-173-050 through 080 and 173-173-180. For those parties with diversions less than 1.0 cfs, records must be maintained, but need not be provided to Ecology unless requested. Where two or more individual water right holders share a common diversion point and the combined diversion is 1.0 cfs or greater, the water right holders shall provide the diversion records to Ecology. All records sent to Ecology shall be provided in accordance with WAC 173-173-050 through 080, and 173-173-180. Individuals who hold water rights for standby purposes shall, during periods when the standby right is not utilized, simply record that no water was used.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any person/entity covered by this Order who fails to install an approved metering or measuring device at each such diversion point by the schedule set forth in this Order and continues to use the diversion point thereafter must notify Ecology in writing. The notification shall state the reasons that an approved metering or measuring device was not or could not be installed within the time allowed by this Order and clearly identify the claim number and the relevant point of diversion under the claim. Ecology may make a case-by-case determination based upon the notification and modify the schedule for compliance, subject to WAC 173-173-175. If Ecology grants a variance, it shall issue an order specifying the conditions of the variance.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any person/entity who fails to install and maintain a metering or measuring device in accordance with the requirements and schedule in the Order or obtain a variance from Ecology shall be considered to be in violation of this Court Order, provided, however, in the event a person/entity is applying to Ecology for a variance or pursuing the appeal of the denial of a variance then that person or entity shall not be considered in violation of the Order until a final decision is made on the variance request or the appeal is complete.

The applicability of the requirements and procedures for measuring and reporting water use by persons/entities with diversions of 1.0 cfs or more from the Yakima, Naches, and Tieton Rivers pursuant to ORDER PENDENTE LITE REGARDING METERING, MEASUREMENT, AND REPORTING, dated October 13, 1994, are not affected by this Order. Persons/entities that divert less than 1.0 cfs from the Yakima, Naches, and Tieton Rivers are affected by this Order and are subject to the requirements to install and maintain a metering or measuring device with the schedule set forth herein.

The applicability of the requirements and procedures for measuring and reporting water use by persons/entities within the Teanaway River and Big Creek subbasins pursuant to ORDER PENDENTE LITE REGARDING METERING, MEASURING, AND REPORTING REQUIREMENTS, dated August 27, 1998, are superseded by this Order. All other requirements of that ORDER remain in effect.

This Order does not apply to diversions for emergency fire fighting.

This Order does not apply within portions of Subbasins 23, 25, 27, and 29, located within the exterior boundaries of the Yakama Reservation.

Entered this 15th day of September, 2005.

Sidney P. Ottem, Court Commissioner