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4 STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

5 IN THE MATTER OF THE) NO. 77-2-01484-5
6 DETERMINATION OF THE RIGHTS)
7 TO THE USE OF THE SURFACE)
8 WATERS OF THE YAKIMA RIVER)
9 DRAINAGE BASIN, IN) FINAL DECREE
10 ACCORDANCE WITH THE)
11 PROVISIONS OF CHAPTER 90.03,)
12 REVISED CODE OF WASHINGTON,)
13)
14 STATE OF WASHINGTON,)
15 DEPARTMENT OF ECOLOGY,)
16)
17 Plaintiff,)
18 v.)
19)
20 JAMES J. ACQUAVELLA, et al.)
21)
22 Defendants.)
23)

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16 This case is a general adjudication of rights to surface water in the Yakima River Basin,
17 located in Yakima, Kittitas, Klickitat and Benton Counties, Washington. The State of
18 Washington, Department of Ecology commenced this case by filing a Petition for a
19 determination of the surface water rights pursuant to chapter 90.03 RCW. Pursuant to RCW
20 90.03.160, this court referred the case to the Director of Ecology, who appointed referees to
21 hold hearings, take testimony, and file reports containing recommendations with regard to
22 claims for certain surface water rights. This court retained other claims for surface water rights
23 and conducted hearings. Due to the large number of parties, on March 3, 1989 this court, by
24 Pretrial Order No. 8, divided claims into four pathways: "Federal reserved rights for Indian
25 claims", "Federal reserved rights for non-Indian claims", "State-based rights of the major
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1 claimants”, and “State-based rights for other claimants, by subbasin”. Conditional Final
2 Orders (CFOs) have been entered for each pathway and for each subdivision within each
3 pathway. This court having considered arguments of counsel, and having reviewed the files,
4 evidence and records herein:

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6 ORDERS, ADJUDGES AND DECREES as follows:

7 1. This is a quiet title action to all surface water rights of the Yakima River Basin,
8 including the entire Yakima Reclamation Project, as shown in the map attached to Pretrial
9 Order No. 3, April 18, 1985. No valid surface water rights currently exist in the Yakima River
10 Basin except:

11 (a) as set forth in this Final Decree, either in the Schedule of Rights which is
12 incorporated herein by reference, or in paragraphs 4 (a) and 4 (b) herein;

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14 (b) as set forth in surface water permits, including temporary permits, or change
15 authorizations, the final resolution of which is under the administrative jurisdiction of the
16 Department of Ecology (“Ecology”); and

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18 (c) as may accrue to the United States pursuant to RCW Chapter 90.40.

19 The Yakima River Basin excludes the McNary Pool of the Columbia River.

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21 2. The CFOs entered in this action confirm the valid surface water rights in this
22 case, and those rights are integrated in this Final Decree. Since each water right entered in a
23 CFO was confirmed as of the original date of entry of the CFO, any future determination of the
24 extent and validity of the water right (including any determination of relinquishment) shall
25 commence from the date of entry of the CFO unless otherwise provided by law, including the
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1 prior opinions and orders of this court. Each confirmed water right is listed in the Schedule of
2 Rights.

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4 In the event of a conflict between the Schedule of Rights and this Final Decree, which
5 under Paragraph 8 incorporates all orders and opinions entered in the case, this Final Decree
6 shall govern. The following language shall be included in the Final Schedule of Rights:

7 *This Schedule of Rights is issued pursuant to the Final Decree made and entered by the*
8 *Superior Court of the State of Washington in and for Yakima County on the 9th day of*
9 *May, 2019, in the case of State of Washington, Department of Ecology v. James J.*
10 *Acquavella, et al., Yakima County Cause No. 77-2-01484-5. The water rights described*
11 *in this Schedule are subject to and will be administered according to the Final Decree,*
which under Paragraph 8 incorporates all orders and opinions entered in the case. In
the event of a conflict between this Schedule of Rights and the Final Decree, the Final
Decree shall govern.

12 The CFOs entered, and their dates of entry, are listed below. Amendments and
13 corrections to the CFOs are also listed, but amendments and corrections do not change the
14 original date of entry of a CFO. The rights in a CFO are determined as of the original date of
15 entry, even if the CFO has been amended or corrected since that time, except as provided
16 above.

Major Claimant Name	Date of Entry of CFO
Ahtanum Irrigation District	4/15/2009 5/21/2009 (Order Reconsideration) 5/9/2019 (Amended CFO)
Broadgauge Ditch Company	4/10/2003
Cascade Irrigation District	6/6/2006 7/13/2006 (Amended CFO)
City of Ellensburg	12/4/2006
City of Yakima	11/21/2002
Columbia Irrigation District	2/12/2004
Ellensburg Water Company	3/12/1998

1	Fowler Ditch Association	9/16/1999
2	Fruitvale-Schanno Irrigation Company	4/10/2003
3	John Cox Ditch Company	4/15/2009
4	Kennewick Irrigation District	10/16/2001
5	Kiona Irrigation District	2/8/1996 4/11/1998 (Amended CFO)
6	Kittitas Reclamation District	6/1/1994
7	Moxee Ditch Association (SMID)	9/10/1998
8	Naches-Cowiche Canal Company	3/12/1998
9	Naches-Selah Irrigation District	9/12/1996
10	New Schanno Ditch Company	4/10/2003
11	Old Union Irrigation Company	4/10/2003
12	R.S.&C. Irrigation Company	4/10/2003
13	Roza Irrigation District	6/1/1994
14	Selah-Moxee Irrigation District	9/10/1998
15	Sunnyside Division	8/14/2003
16	Union Gap Irrigation District	9/16/1999
17	USA/Bureau of Reclamation/City of Cle Elum	2/14/2007 3/12/2007 (Amended CFO) 12/11/2008 (Correction)
18	USFS/Firing Center, etc.	6/22/2006
19	USA/Yakama Nation/Ahtanum Claims (Subbasin No. 23)	4/15/2009 5/21/2009 (Order Reconsideration) 5/9/2019 (Amended CFO)
20	West Side Irrigating Company	8/11/2005
21	Yakama Nation	9/12/1996
22	Yakima Reservation Irrigation District	2/13/1997
23	Yakima Valley Canal Company	12/12/1996
24	Yakima-Tieton Irrigation District	9/14/1995 5/10/2001 (Amended CFO)
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Subbasin		Date of Entry of CFO
No.	Name	
1	Lake Cle Elum	6/9/1989
2	Easton	2/13/1997
3	Teanaway River	2/8/2001
4	Swauk Creek	1/09/2003
5	Elk Heights	2/8/2001 6/27/2005 (Corrected CFO)
6	Taneum Creek	10/8/1998
7	Reecer Creek	10/25/2001
8	Thorp	10/9/2003
9	Wilson-Naneum	4/17/2006
10	Kittitas	12/4/2006
11	Manastash	6/14/2001
12	Shushuskin Canyon	1/14/1993
13	Umtanum Creek	1/11/1991
14	Roza Creek	7/11/1996 10/31/1996 (Corrected CFO)
15	Wenas Creek	11/12/1998
16	Upper Naches	4/8/93 6/19/1993 (Corrected CFO)
17	Tieton River	6/9/1989
18	Cowiche Creek	9/9/2004
19	Lower Naches	12/14/1995
20	Selah Creek	4/11/1996 7/8/1999 (Corrected CFO)
21	Burbank Creek	1/12/1995
22	Wide Hollow Creek	12/9/1999
23	Ahtanum Creek/Ahtanum Irrigation District/John	4/15/2009 5/21/2009 (Order Reconsideration)

	Cox Ditch Company/ USA/Yakama Nation	5/9/2019 (Amended CFO)
24	Moxee	5/9/2002
25	Toppenish	5/21/2007
26	Granger	12/9/1999
27	Satus Creek	7/13/2006
28	Sunnyside	9/9/2004
29	Mabton-Prosser	5/13/2004
30	Hanford	3/12/1992 5/8/1997 (Amended CFO)
31	Richland	11/4/1993

3. (a) Each confirmed water right shall have a date of priority as shown in the Schedule of Rights or as set forth in paragraph 4 (b) herein. As among the parties to this Final Decree and their successors in interest, surface water rights shall be regulated pursuant to the priorities established herein.

(b) Every user of surface water and each and all of the parties, their successors in interest, and the assigns of any, are hereby restrained, estopped and enjoined from asserting or claiming any rights, title or interest existing at the time of this Final Decree in or to the waters of the area described in paragraph 1 of this Final Decree, except for the rights specified, determined and allowed by this Final Decree.

(c) Every user of surface water and each and all of the parties, their successors in interest, and the assigns of any, are hereby restrained, estopped and enjoined from diverting, taking, using, or interfering in any way with, the waters of the area described in paragraph 1 of this Final Decree except as provided in this Final Decree or as acquired by process of law subsequent to this Decree.

1 (d) Every user of surface water and each and all of the parties, their successors
2 in interest, and the assigns of any, are hereby restrained, estopped and enjoined from diverting,
3 taking, using or interfering in any way with, the waters of the area described in paragraph 1 of
4 this Final Decree, so as in any manner to impair the diversion, use or enjoyment of said waters
5 by the owners of prior or superior rights therein as defined and established by this Final Decree.
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7 (e) Nothing herein shall impair the right to convey or manage water pursuant to
8 RCW 90.03.030 or RCW 90.40.020, or consistently with orders of this Court.

9 4. (a) Use of water for fire suppression, only to the extent permitted by the
10 Stipulation Re: Water Use for Fire Suppression, December 12, 1996, does not require a water
11 right.
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13 (b) Non-diversionary use of natural watercourses, ponds or springs for
14 stockwater to the extent authorized by the Amended Order RE: Non-Diversionary Stockwater
15 Rights, entered October 9, 1997, and for non-diversionary use of water for wildlife, only to the
16 extent permitted by the CFOs, does not require an adjudicated certificate.
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18 5. Ecology shall issue certificates of adjudicated water right pursuant to RCW
19 90.03.240 to the confirmed water right holders herein whose rights are listed in the schedule of
20 rights, or their successors, provided that each such holder or successor first pays Ecology the
21 required fee for each certificate pursuant to RCW 90.03.470(10) and the required fee for
22 recording the certificate pursuant to RCW 90.03.330(1). RCW 90.03.470(13). Each holder or
23 holders of a water right confirmed in this action shall pay these fees to Ecology within 90 days
24 after Ecology has requested payment of the fees from the holder. The United States, the
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1 Yakama Nation and members of the Yakama Nation do not have to pay the fee to receive a
2 certificate and a certificate is not needed to use their water rights.

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4 6. Each certificate of adjudicated water right shall have a certificate number, and, if
5 applicable, a subbasin number for ease of reference. Each right shall include the date of the
6 CFO in which the right was determined. Conditions or limitations applicable to each right as
7 originally confirmed or as changed prior to entry of this Decree shall be only as set forth in the
8 Schedule of Rights, or elsewhere in this Decree, or in other orders of this court. Ecology may
9 add additional conditions or limitations only when acting pursuant to RCW 90.03.380 or other
10 statutory authority after entry of this Decree.

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12 In the event of a conflict between a certificate of adjudicated water right and this Final
13 Decree, which under Paragraph 8 incorporates all orders and opinions entered in the case, the
14 Final Decree shall govern. The Department of Ecology shall include the following language in
15 each certificate of adjudicated water right:

16 *This certificate of adjudicated water right is issued pursuant to the Final Decree made*
17 *and entered by the Superior Court of the State of Washington in and for Yakima County*
18 *on the 9th day of May, 2019, in the case of State of Washington, Department of Ecology*
19 *v. James J. Acquavella, et al., Yakima County Cause No. 77-2-01484-5. This water*
20 *right is subject to and will be administered according to the Final Decree, which under*
21 *Paragraph 8 incorporates all orders and opinions entered in the case. In the event of a*
22 *conflict between this Certificate and the Final Decree, the Final Decree shall govern.*

23 7. The Order Pendente Lite Regarding Metering, Measurement, and Reporting,
24 October 13, 1994, as amended by Order Granting the United States' Motion to Amend the
25 October 13, 1994 Order Pendente Lite Regarding Metering, Measurement, and Reporting
26 Requirements Doc. No. 9,955 (April 12, 2018) and the Order Requiring Metering, Measuring,
and Reporting Requirements, All Subbasins (1-31) in Benton, Kittitas, and Yakima Counties,
September 15, 2005, as amended by Order Amending September 15, 2005 Order Requiring

1 Metering and Measuring Devices Subbasin No. 23 Ahtanum (May 7, 2012), (together, the
2 “metering orders”) are hereby made perpetual, and shall continue as permanent conditions on
3 each water right after this Final Decree is entered. Except as stated in this paragraph, every
4 successor to a confirmed water right holder of an adjudicated water right shall notify the
5 Department of Ecology at the time the next annual report is due of the change in ownership of
6 the right and the address of the new holder of the right. A city, town, irrigation district, canal
7 company, or other similar entity shall not be required to notify the Department of Ecology of
8 any change in the ownership of the land or of a confirmed adjudicated water right or change of
9 address so long as the entity continues to file its annual report as required by the metering
10 orders.
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12 8. The rights integrated in this Final Decree shall be administered and interpreted
13 in accordance with all of the opinions and orders entered in the course of this adjudication.
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15 9. (a) The Department of Ecology has statutory authority to administer and enforce
16 this Decree, except that the Yakama Nation and/or the United States Bureau of Indian Affairs
17 have the authority as specifically set forth in orders in this action to administer and enforce
18 water rights either confirmed to the Yakama Nation or its members, the United States in trust
19 for the Yakama Nation or its members, or confirmed on the Yakama Reservation. Appeals of
20 administrative decisions of Ecology in administering and enforcing this Final Decree, including
21 decisions of Ecology to enforce against junior right holders in order to protect senior water
22 rights, including the Yakama Nation’s right for instream flows for fish and other aquatic life,
23 shall be to the Pollution Control Hearings Board pursuant to RCW 43.21B.110. Ecology does
24 not have the authority to determine the quantification of the Yakama Nation’s right for instream
25 flows for fish and other aquatic life. The Yakama Nation’s right for instream flows for fish and
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1 other aquatic life shall be determined, administered and enforced as specifically set forth in
2 orders of this case. Any dispute regarding determination of the quantification of the Yakama
3 Nation's right for instream flows for fish and other aquatic life shall be brought for resolution
4 to this Court.

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6 (b) In addition to the authority and power to administer and enforce otherwise
7 held by the Department of Ecology and by the Yakama Nation and/or United States, any party,
8 including the Department of Ecology, the Yakama Nation and/or the United States, may bring a
9 motion to show cause in this court to enforce the injunctions set forth in this Decree in
10 paragraph 3.

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12 DATED this 9th day of May, 2019.

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15 F. JAMES GAVIN, JUDGE *PRO TEM*
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