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DEC - 4 2006

KIM M. EATON, YAKIMA COUNTY CLERK

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

IN THE MATTER OF THE DETERM-)	
INATION OF THE RIGHTS TO)	
THE USE OF THE SURFACE WATERS)	NO. 77-2-01484-5
OF THE YAKIMA DRAINAGE BASIN,)	
IN ACCORDANCE WITH THE)	PROPOSED SPO
PROVISION OF CHAPTER 90.03)	CONDITIONAL FINAL ORDER
REVISED CODE OF WASHINGTON,)	AS A FINAL JUDGMENT
)	PURSUANT TO CR54(b),
THE STATE OF WASHINGTON,)	RAP 2.2(d) AND PRE-TRIAL
DEPARTMENT OF ECOLOGY,)	ORDER NO. 8, AS AMENDED
)	
Plaintiff,)	City of Ellensburg
v.)	Claim No. 02085
)	
JAMES J. ACQUAVELLA, et al,)	
)	
Defendants.)	

I. PROCEEDINGS

THIS MATTER originally came on before this Court in connection with the adjudication of Subbasin No. 7 claims. The Referee recommended an award to City of Ellensburg under the above Court Claim in connection with the April 21, 1995, *Report of Referee Re: Subbasin No. 7 (Reecer Creek)*. Thereafter, this Court set October 12, 1995, for a hearing on exceptions to that Report.

On October 12, 1995, the Court held a hearing on exceptions to the Report of Referee. The Court, after reviewing the exceptions and other

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1 materials, filed its *Order on Exceptions Re: Subbasin 7 (Reecer)* on November
2 14, 1996.

3 On February 25 – 28 and March 4 and 5, 1997, the Referee conducted a
4 supplemental hearing as directed by the Court. On July 6, 1998, the Referee
5 filed the *Supplemental Report of Referee RE: Subbasin No. 7 (Reecer Creek)*.
6

7 On November 12, 1998, the Court held a hearing on exceptions to said
8 *Supplemental Report*. The Court, after reviewing the exceptions and other
9 materials, filed its *Order on Exceptions to Supplemental Report of Referee RE:*
10 *Subbasin 7 (Reecer Creek)* on January 13, 2000.
11

12 On April 12 and 18, 2000, the Referee conducted a supplemental hearing
13 as directed by the Court. On January 17, 2001, the Referee filed the *Second*
14 *Supplemental Report of Referee Re: Subbasin No. 7 (Reecer Creek)*.
15

16 On July 27, 2000, the Washington Department of Ecology ("Ecology")
17 filed an Exception to the Report of Referee and Supplemental Report of Referee
18 Re: Claim No. 02085, City of Ellensburg, Subbasin No. 7 (Reecer Creek), and a
19 Motion to Allow Filing of Late Exception in Regard to Claim No. 02085, City of
20 Ellensburg, Subbasin No. 7 (Reecer Creek).
21

22 Following hearing on exceptions to the above described *Second*
23 *Supplemental Report*, on August 20, 2001, the Court ruled on those exceptions
24 in its *Memorandum Opinion and Order Re: Exceptions to the Second*
25 *Supplemental Report of Referee, Subbasin No. 7*.
26

27 On April 12, 2001, the Court issued its *Order Severing Claim of City of*
28 *Ellensburg, No. 02085, from the Proceeding for Subbasin No. 7 (Reecer Creek)*,
29 pursuant to which the City of Ellensburg's claim was severed from the
30 Subbasin No. 7 proceeding in the Subbasin Pathway to enable the Court to
31 complete that proceeding while allowing for potential resolution of Ecology's
32 Exception to said claim through the mediation process. As a result, the
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1 proceeding relating to the City of Ellensburg's Court Claim No. 02085 is now
2 part of the Major Claimant Pathway in this adjudication.

3 On September 22, 2006, Ecology withdrew its Exception and requested
4 the Court to issue a conditional final order confirming a water right to the City
5 of Ellensburg based on the recommendations in the earlier Reports of the
6 Referee in the Subbasin No. 7 proceeding.

7 This Conditional Final Order will ultimately be incorporated into a final
8 decree that determines and integrates all of the rights of the parties in this
9 adjudication, at which time it shall be forwarded to the Director of Ecology for
10 issuance of Certificates of Adjudicated Water Right.

11 The claims adjudicated by the Conditional Final Order are separate and
12 discrete claims apart from the remaining multiple claims in this case. The
13 claims adjudicated by this Conditional Final Order are asserted by one of the
14 multiple parties to this proceeding and are less than all of the multiple claims
15 of other major claimants and other parties. Numerous claims remain
16 unadjudicated in the proceeding, and any appeal from this Conditional Final
17 Order is unlikely to delay trial of unadjudicated matters. The claims that
18 would be reviewed on any appeal from this Conditional Final Order are not
19 likely to be rendered moot by the continuing proceedings before this Court. As
20 a practical matter, an immediate appeal of this Conditional Final Order will
21 likely prevent waste of judicial resources and prevent a waste of resources for
22 the parties to this case. Absent separate appeal of this Conditional Final
23 Order, the parties and the Court will be involved in a single appeal of
24 numerous, separate, discrete and diverse claims from separate hearings. A
25 combined appeal of all such claims at the end of the adjudication will be
26 unwieldy and unmanageable and result in substantial waste of judicial
27 resources and the resources of the parties. The Court finds that City of
28 Ellensburg would be prejudiced by any delay.
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2 **II. CONDITIONAL FINAL ORDER**

3 Based on the foregoing, IT IS ORDERED, ADJUDGED AND DECREED,
4 as follows:
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6 1. That the water right under City of Ellensburg Claim No. 02085 as
7 recommended pursuant to the Report of Referee for Subbasin No. 7 (Reecer
8 Creek), as amended by the Supplemental Report of Referee Re: Subbasin 7
9 (Reecer Creek) and Second Supplemental Report of Referee Re: Subbasin 7
10 (Reecer Creek), and as further amended by the Order of the Court severing said
11 claim from the Subbasin No. 7 proceedings, is hereby entered as a Conditional
12 Final Order in the Major Claimant Pathway, confirming said water right
13 consistent with herein-described prior proceedings, to wit:
14

15 Source: Yakima River

16 Use: Municipal supply

17 Period of Use: April 20 through October 15

18 Quantity: 23.33 cubic feet per second, 6,000 acre-feet per year

19 Priority Date: May 10, 1905

20 Point of Diversion: The SW ¼ SE ¼ of Section 3 and the W ½ NE ¼ of
21 Section 10, T. 17 N., R. 18 E.W.M.
22

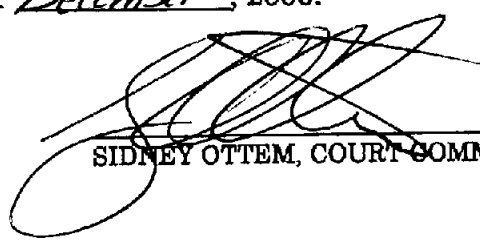
23 Place of Use: Land served by the Ellensburg Municipal Water
24 System in the Ellensburg urban area.
25

26 Limitations of Use: Water use under this right shall be consistent with
27 the contract signed between the City of Ellensburg,
28 Kittitas Reclamation District and United States,
29 Department of Interior, Bureau of Reclamation, on
30 December 21, 1971, and specifically the schedule of
31 water delivery on page 11 of that contract and the
32 right shall issue to the United States Bureau of
33 Reclamation as trustee for the City of Ellensburg and
34 its water users.

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2. That this Conditional Final Order constitutes a final judgment pursuant to Civil Rule 54(b), Rule of Appellate Procedure 2.2(d), and Pretrial Order No. 8 as amended and that there is no just reason for delay in the entry of this Conditional Final Order as a final judgment, subject only to integration of all confirmed rights at the conclusion of this Adjudication.

DATED this 4th day of December, 2006.



SIDNEY OTTEM, COURT COMMISSIONER

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