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

OKANOGAN COUNTY,

Plaintiff/ Petitioner,

No. 21-2-00039-24

v.

WASHINGTON STATE DEPARTMENT OF
ECOLOGY, a Washington State agency,

Defendant/ Respondent.

**AMENDED ORDER ON
CROSS MOTIONS FOR
SUMMARY JUDGMENT
After RECONSIDERATION**

THIS MATTER came before the Court on Plaintiff Okanogan County's Motion for Reconsideration of the Court's August 3, 2021 Order pertaining to the cross-motions for summary judgment on Plaintiff's cause of action under the Uniform Declaratory Judgment Act, RCW 7.24. Having come for hearing on July 20, 2021, and November 3, 2021, and the Court having reviewed the files and records herein and being fully advised in the premises:

1. Okanogan County's June 4, 2021 Motion for Summary Judgment on First Cause of Action and Memorandum in Support;
2. Declaration of Angela Hubbard in Support of Plaintiff Okanogan County's Motion for Summary Judgment;

AMENDED ORDER ON
CROSS MOT. FOR SUMM. J. [PROPOSED] - 1

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- 1 3. Declaration of Jenna Mandell-Rice in Support of Plaintiff Okanogan County's
- 2 Motion for Summary Judgment;
- 3 4. Department of Ecology's June 4, 2021 Motion for Summary Judgment;
- 4 5. Department of Ecology's June 4, 2021 Memorandum in Support of Motion for
- 5 Summary Judgment;
- 6 6. Declaration of Alan M. Reichman in Support of Department of Ecology's Motion
- 7 for Summary Judgment;
- 8 7. Okanogan County's June 18, 2021 Response to Defendant's Motion for Summary
- 9 Judgment;
- 10 8. Second Declaration of Angela Hubbard in Support of Okanogan County's Motion
- 11 for Summary Judgment;
- 12 9. Department of Ecology's June 18, 2021 Memorandum in Response to Okanogan
- 13 County's Motion for Summary Judgment;
- 14 10. Second Declaration of Alan M. Reichman in Support of Department of Ecology's
- 15 Motion for Summary Judgment;
- 16 11. Okanogan County's July 2, 2021 Reply in Support of its Motion for Summary
- 17 Judgment;
- 18 12. Department of Ecology's July 2, 2021 Reply Memorandum in Support of Motion
- 19 for Summary Judgment;
- 20 13. Okanogan County's August 13, 2021 Motion for Reconsideration/Clarification;
- 21 14. Department of Ecology's Response to Plaintiff's Motion for
- 22 Reconsideration/Clarification; and
- 23 15. Okanogan County's August 27, 2021 Reply in Support of Motion for
- 24 Reconsideration/Clarification.
- 25

1 **It is now, therefore, ORDERED that:**

2 1. Plaintiff Okanogan County's Motion for Reconsideration/Clarification is
3 GRANTED, as further explained herein.

4 2. With respect to Issue 1 in this case, Plaintiff Okanogan County's Motion for
5 Summary Judgment is DENIED, and Defendant Department of Ecology's
6 Motion for Summary Judgment is GRANTED on the following grounds:

7 a. A division of a parcel of land, as proposed by the County and
8 described as a "Two Lot Subdivision Exception", which thereby
9 creates one additional parcel for a home that would rely on water
10 from a reservation of water for "single domestic use" is unlawful
11 under the Methow River Basin Instream Flow Rule, WAC 173-548.

12 3. With respect to Issue 2 in this case, Plaintiff Okanogan County's Motion for
13 Summary Judgment is GRANTED and Defendant Department of Ecology's
14 Motion for Summary Judgment is DENIED on the following three grounds:

15 a. First, a building permit application for a single family home on a
16 single lot and that is unrelated to any other building permit
17 application may rely on the single domestic use reservation under
18 WAC 173-548-030, regardless of whether the lot was previously
19 created through a division of land.

20 b. Second, RCW 19.27.097(5) applies to the Methow Basin (WRIA
21 48) such that any permit-exempt groundwater withdrawal
22 associated with a water well, constructed in accordance with the
23 provisions of chapter 18.104 RCW before January 19, 2018, is
24 evidence of adequate water supply.

25

1 c. Third, the owners of vacant lots that were created by subdivision
2 after March 28, 2002 (the date of the *Department of Ecology v.*
3 *Campbell & Gwinn*, 146 Wn.2d 1, 43 P.3d 4 (2002), decision) but
4 created before January 26, 2021 (the date of Okanogan County's
5 moratorium on new subdivisions in WRIA 48), may have vested
6 rights to build homes based on the prior subdivision approvals
7 which included a determination of legal water availability.

8 d. Fourth, subdivision applications vest to the ordinances in effect at
9 the time the application was completed pursuant to RCW
10 58.17.033(1).

11 4. Based on these conclusions, Ecology's opinion expressed in its January 13,
12 2021 Letter Interpretation that the County should deny any and all pending
13 building and subdivision applications, submitted after March 2002, that
14 seek to rely on the reservation of water for single domestic use under WAC
15 173-548-030, is unlawful.

16
17 DATED this 5th day of November, 2021.

18 
19 THE HONORABLE HENRY RAWSON

20 Presented by:

21 VAN NESS FELDMAN LLP

22 /s/ Jenna Mandell-Rice

23 Tadas A. Kisielius, WSBA No. 28734

24 Adam W. Gravley, WSBA No. 20343

25 Jenna R. Mandell-Rice, WSBA No. 49667

Attorneys for Petitioner, Okanogan County