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SUPERIOR COURT
YAKIMA CO. WA

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

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.,)
Defendant)

Case No.: 77-2-01484-5

AMENDED CONDITIONAL FINAL
ORDER ON REMAND

SUBBASIN 23
AHTANUM

AHTANUM IRRIGATION DISTRICT
JOHNCOX DITCH COMPANY
UNITED STATES/YAKAMA NATION

On April 15, 2009 this court entered a Conditional Final Order in Subbasin 23, the consolidated Ahtanum proceedings. Several parties appealed, and on March 7, 2013 the Washington State Supreme Court issued its initial opinion (*State of Washington, Department of Ecology v. Acquavella*, 177 Wn.2d 299, 296 P. 3d 835 (2013)). The State Supreme Court changed its opinion on May 22, 2013. The mandate was issued on June 17, 2013. That decision is known as *Acquavella V.*

Some rulings were remanded for reconsideration, and others were ordered to be changed. This court has ruled on the remanded issues and has issued orders pursuant to those rulings. Those orders, with filing dates, are: *Order Re: Motion for Reconsideration Sub. 23 (Ahtanum)* (January 12, 2017), *Order- Subbasin 23 (Ahtanum)* (October 17, 2016), as amended by *Amended*

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1. *Order* (October 31, 2016) and the *Order on Motion of Ahtanum Irrigation District* (March 3,
2 2016). These orders are incorporated into this Amended Conditional Final Order, and shall
3 control if there are any conflicts with the April 15, 2009 Conditional Final Order.

4 *Order Re: Motion for Reconsideration Sub. 23 (Ahtanum)* (January 12, 2017):

5 This order amended the irrigation water rights for the United States of America
6 Bureau of Indian Affairs as trustee for the Yakama Nation and Allottees for trust and
7 tribal fee lands to read as follows:

8
9 Claimant Name: The United States Bureau of Indian Affairs as trustee for the Yakama
Nation and Allottees

10 Priority Date: June 9, 1855

11 Source: Ahtanum Creek and South Fork Ahtanum Creek

12 Period of Use: Diversions: Presently Irrigated from March to December
13 Future irrigation from April 1 to October 1
14 Storage: See below in Quantity and Limitations of Use /Special Terms of
Use Sections

15 Purpose of Use: Irrigation and Stock water

16 Instantaneous Quantity: Upper Ahtanum Canal: 190.8 cfs
17 Lower Ahtanum Canal: 16.0 cfs
South Fork Ahtanum Canal: 6.4 cfs

18 Annual Quantity: 21,553 acre-feet per year, including 9,966 acre-feet for presently irrigated
19 lands, 11,587 for future and idle lands, and a maximum (for July) monthly
20 demand of 5,447 acre-feet per month.

21 Operational Model: Natural Flow to irrigate 2,728.7 acres
22 Natural Flow and reservoir to irrigate 3,652.6 acres
Reservoir storage capacity: 9,216 acre-feet

23 Trust and Tribal Fee Acres: 2,728.7 irrigated acres
24 3,652.6 irrigable acres
25 6,381.3 PIA acres

1 Points of Diversion: No. 1: Ahtanum Canal #1: Approximately 2700 feet south and 300 feet
2 west of the NE corner of Section 14, being within Lot 5 of the
3 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T. 12 N., R. 16 E.W.M.
4 No. 2: Ahtanum Canal #2: Approximately 2100 feet north and 700 feet
5 west of the SE corner of Section 7, being within Lot 8 of the
6 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T. 12 N., R. 18 E.W.M.
7 No. 3: Unnamed Canal: Approximately 100 feet north and 800 feet east
8 of the SW corner of Section 18, being within Lot 11 of the SW $\frac{1}{4}$ SW $\frac{1}{4}$
9 of Section 18, T. 12 N., R. 16 E.W.M.
10 No. 4: Unnamed Canal: Approximately 1200 feet north and 2400 feet west
11 of the SE corner of Section 16, being within Lot 7 of the SW $\frac{1}{4}$ SE $\frac{1}{4}$
12 of Section 16, T. 12 N., R. 16 E.W.M.
13 No. 5: Unnamed Canal: Approximately 1600 feet south and 1700 feet east
14 of the NW corner of Section 24, being within Lot 6 of the NW $\frac{1}{4}$ of
15 Section 24, T. 12 N., R. 15 E.W.M.
16 6: South Fork Ahtanum Creek

17 Place of Use: As described in the Conditional Final Order and on other lands on the
18 Yakama Reservation within the Ahtanum Watershed.

19 Limitations of Use/Special Terms of Use:

20 From April 1 through April 14: The United States as trustee for Yakama Nation and
21 Allottees may divert and store water from Ahtanum Creek in its entirety, subject to
22 Johncox's right and subject to minimum instream flow necessary to support fish and
23 other aquatic life.

24 From April 15 through July 10: 25% of the natural flow of Ahtanum Creek as
25 measured at the north and south gauging stations. If the natural flow exceeds 51.8
cubic feet per second (north-side users are permitted to divert 38.839 cfs which is
equal to 75% of the 51.8 cfs), all the excess over that figure is awarded to the United
States as trustee for the Yakama Nation and Allottees for Trust and Tribal fee lands,
to the extent water can be put to a beneficial use. The 38.839 cfs is subject to further
reductions due to reversions by north-side parties.

This water right is a portion of the proratable 25% of the Ahtanum Creek natural
flow that is available from April 15 through July 10 for use on lands within the
Yakama Reservation.

All waters not used on the north side parcels with valid water rights shall become
available for use on the reservation lands. The United States may divert and store the
entirety of Ahtanum Creek subject to water rights allocated to users located north of
Ahtanum Creek and the Nation's instream flow right.

From July 11 to March 31st: All waters of Ahtanum Creek not used to support fish
and other aquatic life shall be available to, and subject to diversion and storage by

1 the United States, Bureau of Indian Affairs, as trustee for the Yakama Nation and
2 Allottees.

3 The above diversionary and storage rights to irrigation and stock water shall be in
4 addition to and junior to the Yakama Nation's Treaty water right for fish and other
5 aquatic life as recognized in previous orders of the court.

6 *Order- Subbasin 23 (Ahtanum)* (October 17, 2016):

7 The water right confirmed to Clifford Hagemeyer and described on page 258 of the
8 Supplemental Report of the Court (February 25, 2008) is withdrawn.

9 The Chancery:

10 An additional water right for the Chancery is awarded as follows:

11 Source: Bachelor and Hatton Creeks

12 Use: irrigation of 20.07 acres

13 Period of Use: April 15 through July 10

14 Quantity: 0.20 cfs, 35.60 acre-feet per year

15 Priority Date: June 30, 1889

16 Points of Diversions: SW $\frac{1}{4}$ NE $\frac{1}{4}$ and Government Lot 4 of Section 13, T.12 N. R. 16

17 E.W.M. and Government Lots 1 and 2 and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 18, T.12 N.R. 17

18 E.W.M.

19 Place of Use: That portion of Government Lots 1 and 2 lying north of the centerline of
20 Hatton Creek and south of Ahtanum Road in Section 18, T.12 N. R. 17 E.W.M. (Parcel #
21 171218-23001, Answer No.46).

22 Limitation of Use: When water is available in excess of that needed to satisfy all
23 confirmed water rights both on and off the reservation and any water needed to satisfy the
24 Yakama Nation's minimum instream flow right for fish and other aquatic life, an
25 additional 0.20 cfs, 11.88 acre-feet per year can be diverted

1 Non-diversionary stock water:

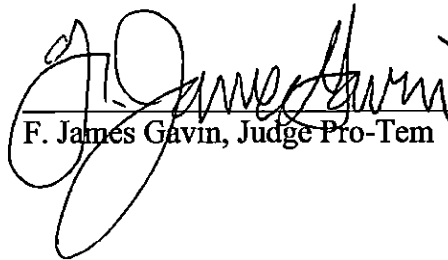
2 Pursuant to the remand, this court signed the October 17, 2016 order which amended the
3 January 31, 2002 Report of the Court for Water Rights for Subbasin 23 (Ahtanum Creek)
4 regarding non-diversionary stock water to read as follows:

5 Waters in natural watercourses in the subbasin shall be retained when naturally available,
6 in an amount not to exceed 0.25 cubic feet per second (cfs), for stock water uses in such
7 watercourses as they flow across or are adjacent to lands, which are now used as pasture
8 or range for livestock. Retention of such water shall be deemed senior (or first) in
9 priority, except as that use is inconsistent with the Yakama Nation's instream right for
10 fish which carries a priority date of "time immemorial" or as that use is inconsistent with
11 the Yakama Nation's treaty water rights for irrigation which carry a priority date of
12 June 9, 1855, in which case the Nation's rights shall have priority. Regulation of these
13 watercourses outside of the Yakama Reservation by the plaintiff or, in the case of
14 watercourses on the Yakama Reservation, regulation by the United States Bureau of
15 Indian Affairs or the Yakama Nation shall be consistent with such retention requirements.
16

17 The April 15, 2009 Conditional Final Order (Sub 23) remains in effect subject to this
18 Amended Conditional Final Order, the above discussed orders and Acquavella V.

19 This Amended Conditional Final Order constitutes a final order for appeal purposes.

20 Signed this 9th day of May, 2019.

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F. James Gavin, Judge Pro-Tem

F. JAMES GAVIN