

3/21/15

Stay status continued. Next
status report due by
September 12, 2016.

Monahan
Commissioner

FILED

MAR 14 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

**THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III**

CITY OF LEAVENWORTH,

Appellant,

v.

WASHINGTON STATE
DEPARTMENT OF ECOLOGY,

Respondent.

CASE NO. 312364

SIXTH JOINT STATUS REPORT

Pursuant to the Court's March 11, 2013 Order Staying Further Proceedings, the Department of Ecology (Ecology) and City of Leavenworth (Leavenworth) submit this Sixth Joint Status Report.

1. Icicle Creek Comprehensive Water Resource Strategy and Environmental Review. The Icicle Work Group met during Fall 2015 to identify the base package of water-saving projects for programmatic environmental review under the State Environmental Policy Act (SEPA). One or more of these projects could provide a basis for settlement of this appeal. Consulting work for this SEPA review process is being funded by Ecology's Office of Columbia River. The preparation of a programmatic environmental impact statement (EIS) has commenced through a process to determine the scope of the EIS. Programmatic SEPA review will enable the public to comment on the environmental

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1 impacts and benefits of the alternative projects. This review is then expected to lead to
2 a joint project-specific environmental review process with state and federal agencies.

3 2. Identification of Water-Saving Projects/Settlement Progress. The parties mutually
4 desire to continue studying project feasibility and pursuing environmental review of
5 projects as a prelude to negotiating a settlement agreement in this case, and to continue
6 the stay of this appeal at this time.

7 3. Funding and Permitting of Water-Saving Projects. Until the environmental review
8 process is completed, it is premature to move forward with actions to fund and obtain
9 permits for specific projects. However, the parties to this appeal believe that there are
10 projects within the Icicle sub-basin that have potential to provide a path towards
11 settlement in this case. These projects include, but are not limited to, a source exchange
12 project involving the Cascade Orchards Irrigation Company and upstream storage
13 modifications by the Icicle Irrigation District, both of which would substantially
14 improve instream flows in Icicle Creek.

15 4. Transfer of Water or Water Rights to City of Leavenworth. Until environmental
16 review, funding and permitting of one or more projects is completed, it is premature to
17 move forward with actions to transfer water or water rights to Leavenworth.

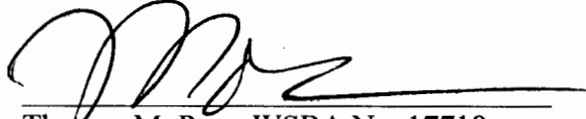
18 5. Court Assistance with Settlement Process. At this point, the parties do not believe that
19 the assistance of the Court is necessary.

20 6. Request for Settlement Conference. Neither party is requesting a settlement conference
21 with the Court at this time.

22 7. Next Status Report. The parties will submit the next joint status report in six months,
23 on or before September 12, 2016.

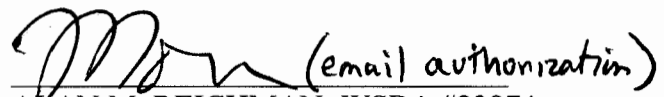
1 DATED this 10th day of March, 2016.
2
3

4 LAW OFFICE OF THOMAS M. PORS

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7 Thomas M. Pors, WSBA No. 17718
8 Attorney for Appellant
9 City of Leavenworth
10 (206) 357-8570

11 ROBERT W. FERGUSON
12 Attorney General

13  (email authorization)
14

15 ALAN M. REICHMAN, WSBA #23874
16 Assistant Attorney General
17 Attorneys for Respondent
18 Washington State Department of Ecology
19 (360) 586-6748
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Law Office of Thomas M. Pors

FILED

MAR 14 2016

Renee S. Townsley, Clerk/Administrator
The Court of Appeals, Division III
North 500 Cedar Street
Spokane, WA 99210-1905

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

*Re: City of Leavenworth v. Washington State Department of Ecology, Case
No. 31236-4-III*

Dear Ms. Townsley:

Enclosed is the parties' Sixth Joint Status Report in this matter, as required by the Order Staying Further Proceedings. I was authorized to sign the report by Mr. Reichman on behalf of the Department of Ecology. At this time, the parties are not requesting any court assistance with the settlement process. The next joint status report will be filed on or before September 12, 2016.

Yours very truly,



Thomas Pors

Encl

Cc: Alan M. Reichman

Tom Pors

From: Reichman, Alan (ATG) <AlanR@ATG.WA.GOV>
Sent: Wednesday, March 9, 2016 12:28 PM
To: Tom Pors
Subject: RE: Leavenworth v Ecology status report due March 11

Yes, you can consider this email as my authorization for you to sign the status report on my behalf.

Alan

From: Tom Pors [mailto:tompors@comcast.net]
Sent: Sunday, March 06, 2016 9:35 AM
To: Reichman, Alan (ATG)
Subject: RE: Leavenworth v Ecology status report due March 11

Alan:

Thanks. I will sign and mail on March 10th when I return to the office. Do I have your permission to sign this version on your behalf?

Tom

From: Reichman, Alan (ATG) [mailto:AlanR@ATG.WA.GOV]
Sent: Thursday, March 3, 2016 3:18 PM
To: Tom Pors <tompors@comcast.net>
Subject: RE: Leavenworth v Ecology status report due March 11

Tom:

I've attached my suggested revisions to the last status report.

Alan

From: Tom Pors [mailto:tompors@comcast.net]
Sent: Tuesday, February 23, 2016 10:47 AM
To: Reichman, Alan (ATG)
Subject: Leavenworth v Ecology status report due March 11

Alan,

Could you check with your client on progress being made on the Icicle Creek process? I understand that SEPA review of alternatives is happening, but need more detail to craft a status report.

I am going to be on vacation from the end of this week to March 10th. I can draft or edit a status report while away, but perhaps you could finalize, sign and send it in this time?

Thanks,

Tom

FILED

FAX COVER SHEET

MAR 21 2016

TO	Joyce
COMPANY	Court of Appeals, Div 3
FAXNUMBER	15094564288
FROM	Thomas M. Pors
DATE	2016-03-21 22:53:05 GMT
RE	Leavenworth v Ecology

COURT OF APPEALS
 DIVISION III
 STATE OF WASHINGTON
 By _____

COVER MESSAGE

You requested the attached email authorization for the 6th Joint Status Report.

FILED

MAR 22 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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**THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III**

CITY OF LEAVENWORTH,
Appellant,

CASE NO. 312364

v.

PROOF OF SERVICE

WASHINGTON STATE
DEPARTMENT OF ECOLOGY,
Respondent.

Pursuant to RCW 9A.72.085 and RAP 5.4(b), I certify that on March 22, 2016, or earlier, I caused to be served the SIXTH JOINT STATUS REPORT in the above-captioned matter upon the parties herein as indicated below:

ALAN M. REICHMAN
ASSISTANT ATTORNEY GENERAL
ECOLOGY DIVISION
P.O. BOX 40117
OLYMPIA, WA 98504-0117

- U.S. Mail
- Hand Delivered
- Overnight Express
- Email AlanR@ATG.WA.GOV
- Facsimile

Michael C. Walter
Keating, Bucklin & McCormack, Inc., P.S.
800 Fifth Avenue
Suite 4141
Seattle, WA. 98104-3175

- U.S. Mail
- Hand Delivered
- Overnight Express
- Email MWalter@kbmlawyers.com
- Facsimile

PROOF OF SERVICE

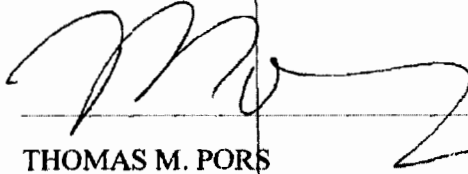
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The foregoing being the last known physical and email addresses.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 22th day of March, 2016, in Seattle, Washington.


THOMAS M. PORS

FILED

MAR 22 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

FAX COVER SHEET

TO	Joyce
COMPANY	Court of Appeals, Div 3
FAXNUMBER	15094564288
FROM	Thomas M. Pors
DATE	2016-03-22 16:23:49 GMT
RE	Leavenworth v Ecology

COVER MESSAGE

Attached please find the Proof of Service you requested.

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



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<http://www.courts.wa.gov/courts>

March 22, 2016

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Alan Myles Reichman
Ofc of the Atty General/ Ecology Division
PO Box 40117
Olympia, WA 98504-0117
alanr@atg.wa.gov

Michael Charles Walter
Keating Bucklin McCormack Inc PS
800 5th Ave Ste 4141
Seattle, WA 98104-3175
mwalter@kbmlawyers.com

CASE # 312364
City of Leavenworth v. Washington State Department of Ecology
CHELAN COUNTY SUPERIOR COURT No. 092007483


Counsel:

Pursuant to the Sixth Joint Status Report, the following notation ruling was entered:

3/21/16
Stay status continued. Next status report due by September 12, 2016.
Monica Wasson
Commissioner

Sincerely,

RENEE S. TOWNSLEY
Clerk/Administrator


Joyce A. Roberts, Senior Case Manager

RST:jr