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SUPERIOR COURT

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YAKIMA COUNTY

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

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, )

v. )

JAMES J. ACQUAVELLA, et al., )

Defendants. )

No. 77-2-01484-5

**CONDITIONAL FINAL ORDER:  
SUBBASIN NO. 16  
(UPPER NACHES)**

On May 7, 1991, the Referee, William R. Smith, filed with the court a "Report of Referee re: Subbasin No. 16 (Upper Naches)," dated April 15, 1991. Thereafter, this court set February 20, 1992 for a hearing on exceptions to this report. Pursuant to the direction of the court, the Referee then served a notice (together with a copy of the report) upon all parties, setting a time period for filing any exceptions to the report and for the aforementioned hearing on exceptions.

**CONDITIONAL FINAL ORDER:  
SUBBASIN NO. 16 (UPPER NACHES) - 1**

OFFICE OF THE ATTORNEY GENERAL  
Ecology Division  
PO Box 40117  
Olympia WA 98504-0117  
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1           Written exceptions were received from the following  
2 claimants:

- 3           1.    J. Bruce Alexander, Claim 4033, as to the denial of  
4           a right to use water from Union Creek and American  
5           River for domestic supply;
- 6           2.    Florence Baun, Claim 0913, as to the denial of a  
7           right to use waters from the Naches River;
- 8           3.    Boise Cascade Corporation, Claim 2206, as to the  
9           legal description of point of diversion number 1;
- 10          4.    Charles and Gerald Chase, Claims 1825 and 1241, as  
11          to the denial of water rights and other matters;
- 12          5.    Cliff Dell Summer Home Association, Claims 1325 and  
13          3017A, seeking clarification of the 52 lots  
14          receiving a recommendation of a right for use of  
15          waters from Davison Spring;
- 16          6.    Phil J. and Barbara DeRousseau and Ernest J. and  
17          Delores Barker, Claims 1308, 2013 and 2014, as to  
18          the denial of a right for use of waters from Rock  
19          Creek;
- 20          7.    Ronald L. Dixon, Claim 1397, as to the denial of a  
21          right for use of waters from the Naches River via  
22          the Nile Ditch;
- 23          8.    George and Eleanore Ehlert, Claim 1324, as to the  
24          denial of a right for use of waters from a spring  
25          for domestic supply;
- 26          9.    Norma Ennis, Claim 1242, as to the denial of a right  
            to the use of waters from an unnamed stream, and as  
            to the denial of water rights for Claims 1825 and  
            1241 (Charles and Gerald Chase);
10.   Don Forgey, Claim 0593, seeking a right to waters  
            from a spring;
11.   George and Sherry Jefferson, Claim 2197, as to the  
            denial of a right to the use of waters from the  
            Naches River due to relinquishment;

**CONDITIONAL FINAL ORDER:**  
**SUBBASIN NO. 16 (UPPER NACHES) - 2**

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- 12. Arthur Marsh, Claim 1885, as to the denial of a right to the use of waters from Gold Creek;
- 13. Richard Matson, Claim 1396, as to the omission of 24 acres of land from the recommendation of a water right from Nile Creek;
- 14. Naydene Nutley Maykut, Claim 0164, seeking to substitute her name for that of her deceased father, Van E. Nutley;
- 15. Dwane and Anna McIlroy, Claim 0424, as to the denial of a right to the use of waters from the Naches River;
- 16. William K. and Loveda A. McJilton, Claim 0162, as to the denial of a right to the use of waters of an unnamed spring;
- 17. George and Mable Millard, Claim 0317, as to the denial of a right to the use of waters from Lost Creek;
- 18. Nile Ditch Association, Claim 1397, as to the omission of 12.23 acres from the recommendation of a water right, and requesting that the water rights be recognized relative to the individual parcels;
- 19. Sarah Palmer, Claim 1113, as to the denial of a right to the use of waters from the Naches River;
- 20. Glenn K. Rice, Claim 0994, seeking correction of the claim number in the Referee's Recommendation of a water right;
- 21. Lewis and Lillian Richey, Claim 5131, as to the denial of a right to the use of waters from an unnamed spring;
- 22. Robert F. and Patricia Ann Sutphen, Claim 0870, as to the denial of a right to the use of waters from an unnamed spring and Spring Creek;
- 23. Mildred VanderHouwen, Claim 0531, as to the priority date provided for her water right;

**CONDITIONAL FINAL ORDER:  
SUBBASIN NO. 16 (UPPER NACHES) - 3**

- 1           24. Stanley Walters, Claim 1715, as to the denial of a  
2           right to the use of waters from an unnamed spring  
3           for domestic supply; and  
4           25. Robert L. and Evelyn D. Wood, Claim 0452, seeking  
5           correction of the legal description of the point of  
6           diversion.

7           Additionally, on February 20, 1992, John J. and  
8           Margaret W. Callahan appeared through their attorney Donald H.  
9           Bond and moved for leave to file late exceptions as to the  
10          denial of a right to the use of waters from Rattlesnake Creek.

11          Appearing at the February 20 hearing were Ronald F.  
12          Whitaker, Attorney at Law, for defendants Sutphen;  
13          Donald H. Bond, Attorney at Law, for defendants Chase, Ennis,  
14          Wood, and Callahan; Vernon Fowler, Attorney at Law, for  
15          defendants Baun, Matson, and Nile Ditch Association; Randall  
16          Ommen, Attorney at Law, for defendants Cliff Dell Summer Home  
17          Association, and Mildred VanderHouwen; Jay Carroll, Attorney  
18          at Law, for defendants Jefferson and McIlroy; Larry Martin,  
19          Attorney at Law, for defendant Palmer; the following  
20          defendants who appeared pro se: J. Bruce Alexander;  
21          DeRousseau/Barker; Ronald Dixon; George Ehlert; Arthur Marsh;  
22          William McJilton; George and Mable Millard; Lewis and Lillian  
23          Richey and Stanley Walters; Deborah Mull and Kerry O'Hara,  
24          Assistant Attorneys General, for plaintiff Department of  
25          Ecology; and William Smith, Referee. Defendants Forgey, Boise  
26          Cascade, Maykut and Rice did not appear.

**CONDITIONAL FINAL ORDER:**  
**SUBBASIN NO. 16 (UPPER NACHES) - 4**

1           The court, after reviewing the exceptions and other  
2 materials filed, and having heard argument and being fully  
3 advised, issued its oral ruling which was entered as "Order on  
4 Exceptions: Subbasin No. 16 (Upper Naches)," dated April 9,  
5 1992. The order granted several exceptions and directed the  
6 Referee to make corrections to those claims in his  
7 supplemental report. It further denied several exceptions,  
8 and ordered the Referee to conduct a remand hearing to  
9 consider those claims for which additional evidence was  
10 requested. (See Order on Exceptions: Subbasin No. 16 (Upper  
11 Naches), entered April 9, 1992.)

12           A hearing was conducted on July 15-16, 1992 to consider  
13 those claims which had been remanded for additional evidence.  
14 Appearing at the remand hearing were Donald H. Bond, Attorney  
15 at Law, for defendants John J. and Margaret W. Callahan,  
16 Gerald Chase, Charles Chase, and Norma Ennis; Attorney J. Jay  
17 Carroll for defendants George, Jr. and Sherry Jefferson;  
18 Attorney Lawrence E. Martin for defendants Sarah Palmer,  
19 Larry L. Palmer, and Charles F. and Virginia B. Adams;  
20 Attorney Ronald F. Whitaker for defendants Robert F. and  
21 Patricia Sutphen; Attorney Randall L. Ommen for defendant  
22 Mildred VanderHouwen for Union Creek Recreation Residences;  
23 the following defendants appearing pro se: Rod Vetsch for the  
24 claim of Florence Baun, Charley and Phyllis Chapman, Phil

25  
26 **CONDITIONAL FINAL ORDER:**  
**SUBBASIN NO. 16 (UPPER NACHES) - 5**

1 DeRousseau, George Ehlert, William McJilton, George Millard,  
2 Ronald Dixon, and Lillian Richey; and Kerry O'Hara, Assistant  
3 Attorney General for plaintiff Ecology.

4 On September 14, 1992, Referee Smith filed with the court  
5 a "Supplemental Report of Referee re: Subbasin No. 16 (Upper  
6 Naches)," dated September 10, 1992. Thereafter, this court  
7 set a hearing on January 14, 1993 to consider exceptions filed  
8 in reference to this report. Pursuant to the direction of the  
9 court, the Referee then served a notice (together with a copy  
10 of the report) upon all claimants in Subbasin No. 16,  
11 scheduling a time period for the filing of any exceptions to  
12 the supplemental report and for the aforementioned hearing on  
13 exceptions. Pursuant to the court's order of August 8, 1991,  
14 amending Pretrial Orders No. 5 and 8, notification of the  
15 report's filing was sent to all parties, providing an  
16 opportunity for them to request a copy of the supplemental  
17 report and advising of the dates for filing exceptions and of  
18 the hearing on exceptions.

19 Written exceptions were received as follows:

- 20 1. Phyllis M. and Charley L. Chapman, Claim No. 7143,  
21 objecting to the Referee's characterization of  
22 Lot 14 of the Federal Forest Service Summer Home  
Lots, North Section, as a part of, and represented  
by, Cliffdell Summer Homes Association;
- 23 2. Ronald L. Dixon, Claim No. 1397, as to the denial of  
24 a right under the Nile Ditch Association for the  
Dixon claim; and

25  
26 **CONDITIONAL FINAL ORDER:**  
**SUBBASIN NO. 16 (UPPER NACHES) - 6**

- 1 3. William K. and Loveda A. McJilton, Claim No. 0162,  
2 objecting to the Referee's characterization of  
3 Lot 15 of the Federal Forest Service Summer Home  
4 Association;
- 4 4. George B. and Mable E. Millard, Claim No. 0317,  
5 objecting to the denial of a water right for their  
6 claim;
- 6 5. Sarah V. Palmer, Claim No. 1113, objecting to the  
7 quantification of water usage, the period of use,  
8 the Referee's failure to find substantial compliance  
9 with ch. 90.14 RCW, and his holding that she was  
10 precluded from changing from one beneficial use to  
11 another beneficial use;
- 10 6. State of Washington, Department of Ecology,  
11 objecting to the confirmation of a water right to  
12 Florence and George Baun (Claim No. 0913).

12 Appearing at the January 14, 1993 hearing were: Randall  
13 Ommen, Attorney at Law, for defendant Cliffdell Summer Home  
14 Association; Lawrence E. Martin, Attorney at Law, for  
15 defendant Sarah Palmer, et al.; the following defendants  
16 appearing pro se: George and Mable Millard, Charley Chapman,  
17 and Ronald Dixon; Kerry O'Hara, Assistant Attorney General for  
18 plaintiff State of Washington, Department of Ecology; Tom  
19 McDonald, Assistant Attorney General for the Referee; and the  
20 Honorable William R. Smith, Referee. Additionally, a late  
21 exception was accepted and heard from Lewis and Lillian  
22 Richey, Claim No. 5131, as to the denial of their claim.  
23 Subsequent to the filing of the Supplemental Report of  
24 Referee, the court had admitted the following claims:

25 Claim No. 7735 - Robert W. and Carol G. Inouye;

26 **CONDITIONAL FINAL ORDER:**  
**SUBBASIN NO. 16 (UPPER NACHES) - 7**

1           Claim No. 7893 - Robert E. and Ruth V. Speer.  
2           Testimony was presented at the January 14, 1993 hearing by  
3           Mr. Inouye and Mr. Speer, appearing pro se on behalf of their  
4           respective claims. Mr. Gerald Henning, Claim No. 0588, also  
5           appeared at the January 14, 1993 hearing.

6           The court, after reviewing the exceptions filed, along  
7           with supporting briefs and other materials, and having heard  
8           argument, and otherwise being fully advised, issued an oral  
9           ruling which is attached as "Order on Exceptions to the  
10          Supplemental Report of Referee: Subbasin No. 16 (Upper  
11          Naches)" and hereby incorporated by reference.

12          The court, having reviewed the filings, testimony, and  
13          Reports of Referee, and having heard argument and otherwise  
14          being fully advised, orders as follows:

15          1.    The "Report of Referee Re: Subbasin No. 16," as  
16          filed with the court, and the "Supplemental Report of Referee  
17          Re: Subbasin No. 16," as filed with the court and as amended  
18          by this order and the attached "Order on Exceptions to the  
19          Supplemental Report of Referee: Subbasin No. 16 (Upper  
20          Naches)" are entered as a Conditional Final Order confirming  
21          claimed rights recommended for confirmation in said reports as  
22          existing rights.

23          2.    All claims to water rights before the Referee  
24          pertaining to Subbasin No. 16 not so confirmed, are denied.

25  
26          **CONDITIONAL FINAL ORDER:**  
            **SUBBASIN NO. 16 (UPPER NACHES) - 8**



1 3. This Conditional Final Order, relating to the  
2 confirmation of rights and denial of claims of water rights,  
3 constitutes a final order for purposes of appeal (see RAP  
4 2.2(d)), except for purposes of final integration of all  
5 confirmed rights as provided in Section XII of Pretrial Order  
6 No. 8 (Procedures of Claims Evaluation, dated March 3, 1989)  
7 of this court.

8 DATED this 8<sup>th</sup> day of April, 1993.

9  
10 Walter Stauffer  
11 JUDGE WALTER STAUFFACHER

12 Presented by:

13  
14 Mary E. McCrea  
15 MARY E. MCCREA, WSBA #20160  
16 Assistant Attorney General  
17 Attorney for Plaintiff  
18 State of Washington  
19 Department of Ecology

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CONDITIONAL FINAL ORDER:  
SUBBASIN NO. 16 (UPPER NACHES) - 9

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