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

FILED  
DEC 14 1995

KIM M. EATON, YAKIMA COUNTY CLERK

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. 19  
(LOWER NACHES)

I.

On December 6, 1991, the Referee, William R. Smith, filed with the Court a "Report of Referee Re: Subbasin No. 19 (Lower Naches). Thereafter, this Court set April 16 and 17, 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.

II.

On April 16 and 17, 1992, the Court held a hearing on exceptions to the Report of Referee. The Court, after reviewing the exceptions and other materials filed, and after having heard argument and being fully advised, filed its Order on Exceptions; Subbasin No. 19 (Lower Naches) on June 17, 1993, which, among other matters, ordered that the Referee schedule a

CONDITIONAL FINAL ORDER:  
SUBBASIN NO. 19 (LOWER NACHES)

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1 remand hearing to further consider certain claims as specified in the  
2 order.

3 III.

4 On November 2, 3, and 4, 1993, the Referee conducted a remand hearing  
5 as directed by the Court. On August 21, 1995, the Referee filed the  
6 Supplemental Report of Referee Re: Subbasin No. 19 (Lower Naches). This  
7 Court set December 14, 1995, for a hearing on exceptions to this report.  
8 Pursuant to the direction of the Court, the Referee then served notice  
9 (together with a copy of the report) upon all parties setting a time period  
10 for filing any exceptions to the report and for the aforementioned hearing  
11 on exceptions.

12 The following exceptions were timely filed:

- 13 1. Donald and Mary Brown, Claim No. 1490 - as to the location of the  
14 point of diversion recommended by the Referee.
- 15 2. Carl W. Van Wechel, Claim No. 1336 (represented by Attorney  
16 Vernon E. Fowler, Jr.) - as to the recommendation that a water right  
17 be confirmed for the irrigation of five acres, rather than the entire  
18 15 acres that have historically been irrigated.
- 19 3. Pacificorp, Claim No. 0496 (represented by Attorney Donald H.  
20 Bond) - to specific findings of the Court and the Referee, as  
21 discussed in the supplemental report, not being carried forward to the  
22 schedule of rights portion of the supplemental report.
- 23 4. Harriet Finney, Claim No. 2032, (also in behalf of Hollis Finney,  
24 Claim No. 2031) - to the location of the point of diversion  
25 recommended for claimants Don and Mary Brown, Claim No. 01490, and  
26 Charles and Peggy Harris, Claim No. 01228; to the priority date  
27 recommended for Charles and Peggy Harris, Claim No. 01228; to the  
recommendation that a water right not be confirmed to T. Sheryl  
Walter, Claim No. 03526; to the recommendation that a water right not  
be confirmed to Dennis Kuehn, Claim No. 03770; to a right not being  
recommended for Hollis and Elizabeth Finney, Claim No. 02031, for  
domestic irrigation of 1/3 acre of land; to the point of diversion  
recommended for the Scott, LaFortune and Powell Ditches, Claims No.  
00122, 00121, 00123.

1 5. Laurie Collins, Claim No. 03526 - exception to the priority date  
2 recommended for Charles and Peggy Harris, Claim No. 01228, based on  
3 the Referee's interpretation of the testimony and evidence presented  
4 in relation to the Northern Pacific Railroad property grant.

5 6. Department of Ecology took the following exceptions: Pacificorp,  
6 Claim No. 00496 - to the quantification of the right as previously  
7 ruled on by the Court in its Amended Order Re: Limiting Agreements,  
8 signed January 3, 1994.

9 Jimmie J. and Ruth M. McKenzie, Claim No. 07414 - to the  
10 recommendation of the Referee, which includes a point of diversion  
11 that was changed after adoption of the Surface Water Code, without  
12 compliance with RCW 90.03.380.

13 Ecology also identified a typographical error on Page 45 of the  
14 Supplemental Report, at line 10. The correct certificate number  
15 should be S3-20821C.

16 The Court held the exception hearing on December 14, 1995. The  
17 exception of Don and Mary Brown, Claim No. 01490, was granted by the Court.  
18 The point of diversion for their confirmed water right shall be from the  
19 South Channel of the Naches River at a point 1300 feet east and 800 feet  
20 south of the west quarter corner of Section 4, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
21 Section 4, T. 14 N., R. 17 E.W.M.

22 The exception of Carl Van Wechel, Claim No. 01336, is granted and the  
23 recommended water right to be confirmed shall be 0.30 cubic foot per  
24 second, 67.5 acre-feet per year from Spring Creek for the irrigation of 15  
25 acres.

26 The Court grants the exception filed by Pacificorp, dba Pacific Power  
27 and Light; however, does not adopt the language proposed by Pacificorp.  
The rights of the Wapatox Ditch Company and the other individual water  
users on the ditch have been specifically identified in the Report of  
Referee with priority date, purpose of use and quantity of water authorized  
for said use. There is no need to duplicate that information in the water  
right confirmed for Pacificorp. However, the Court agrees that it would

1 add clarity to the recommendation if all of the names of the other water  
2 users on the canal were identified and the Court's previous ruling  
3 concerning the Bureau of Reclamation permitting the company to divert flows  
4 greater than 450 cfs were added to the Limitation on Use section of the  
5 right. The Limitation on Use shall read as follows:

6 The authorized diversion is limited to 300 cfs as a minimum and 450  
7 cfs as a maximum under this right and the rights confirmed for  
8 diversions from the Naches River into the Wapatox Canal by the Wapatox  
9 Ditch Company, Thomas E. and Delores I. Vernier, James H. and Nona P.  
10 Nichols, Charles R. and Peggy L. Harris, Carl W. and Alice H. Van  
11 Wechel, Richard J. Albrecht, Vernie and Sig Carlson, Charlotte Fewel,  
12 Keith Hole, Janel Burelbach, Bill C. and Bernice Marrow, Bee and  
13 Voneithel O'Neal, James L. and Marlene J. Rhyno, Gary D. and Gail J.  
14 Ringer, Willis F. and Joy D. Thomson. When flows are available and  
15 senior rights would not be impacted, the United States Bureau of  
16 Reclamation may continue to permit PacifiCorp to divert flows greater  
17 than the maximum of 450 cfs under its limiting agreement. All water  
18 diverted and not used for irrigation by other users on the canal shall  
19 be returned to the Naches River not lower than the tailrace for the  
20 Naches Power Canal.

21 The Court grants the exception of Harriet Finney concerning the  
22 irrigation right for Hollis and Elizabeth Finney, Claim No. 02031. The  
23 recommendation on page 54 of the Supplemental Report shall be amended to  
24 confirm a right for the diversion of 0.0266 cubic foot per second, 5.98  
25 acre-feet per year for the irrigation of one and one-third acres and 0.01  
26 cubic foot per second, 1 acre-foot per year for stock water. Mrs. Finney's  
27 exception to the point of diversion recommended for Don and Mary Brown,  
28 Claim No. 01490, has been resolved through the Court's ruling on the Brown  
29 exception. Mrs. Finney's exception to the point of diversion for the  
30 Scott, Powell and LaFortune Ditch Companies raises no new issues that have  
31 not previously been before the Court and are, therefore, denied.

32 Laurie Collins, in a document filed November 13, 1995, and Harriet  
33 Finney, in a document filed October 9, 1995, takes exception to the

1 Referee's ruling in regard to the claim of Charles and Peggy Harris (Claim  
2 No. 01228). They argue on behalf of the Harris's that the priority date  
3 for the water right recommended should be May 24, 1884, rather than the  
4 priority date assigned by the Referee of May 10, 1895. Mrs. Finney also  
5 took exception to the Referee's recommendation that the claims of Dennis  
6 Kuehn, Claim No. 03770, and T. Sheryl Walters, Claim No. 03526 be denied.  
7 Neither the Harris's, Mr. Kuehn nor Ms. Walters took exception to the  
8 Referee's decision on their own behalf.

9 Without reaching the merits of the arguments advanced by Ms. Collins  
10 or Mrs. Finney, consideration of those issues by this Court is barred by  
11 the doctrine of standing. Furthermore, the proponents do not meet the  
12 requirements for filing amicus curiae briefs. The Court will briefly  
13 explain this ruling.

14 In general, the doctrine of standing prohibits a litigant from  
15 asserting another's legal rights. Miller v. U.S. Bank of Wash., N.A.,  
16 72 Wn.App. 416, 865 P.2d 536 (1994); Haberman v. Washington Public Power  
17 Supply System, 109 Wn.2d 782 (1987), amended 750 P.2d 254 appeal dismissed  
18 488 U.S. 805. Accordingly, to maintain a cause of action, the party  
19 wanting to do so must show a distinct and personal interest in the outcome  
20 of the issue. Erection Co. v. Dept. of Labor and Industries, 65 Wn.  
21 App. 461, 828 P.2d 657 (1992) affirmed 121 Wn2. 1012. In the instant case,  
22 neither Ms. Collins nor Mrs. Finney have demonstrated to the Court a  
23 personal interest in how this Court should rule on their exceptions. As  
24 they have demonstrated no right of their own that is at issue and also  
25 because the claimants themselves did not submit an exception on their own  
26 behalf, this Court declares there to be no controversy on which to rule.

1 Ms. Collins and/or Mrs. Finney might have moved the Court to file  
2 pleadings as an amicus curiae; meaning literally "friend of the court."  
3 Black's Law Dictionary, 5th Ed. (1979). There are no specific rules for  
4 participation of amicus curiae in the Superior Court civil rules.  
5 Therefore, because this Court sits somewhat like an appellate tribunal in  
6 regard to ruling on exceptions to Reports of Referee, it will look to the  
7 Rules of Appellate Procedure (RAP) for guidance on allowing briefs by  
8 amicus curiae. RAP 10.6 provides that an appellate court may entertain a  
9 motion to grant permission to file an amicus curiae brief. This motion  
10 should be granted only if all parties consent or if the filing of the brief  
11 would assist the court. An amicus curiae brief may be filed only by an  
12 attorney authorized to practice law in this state.

13 The Court will consider the briefs filed by Mrs. Finney and Ms.  
14 Collins to be motions to participate as amici curiae. The Court must deny  
15 their motions to participate in this limited capacity. The appellate  
16 courts have consistently declined to hear arguments advanced by amicus  
17 curiae alone. See e.g. Coburn v. Seda, 101 Wn.2d 270 (1984); Schuster v.  
18 Schuster, 90 Wn.2d 626 (1978). At this point in the adjudication, the  
19 Court does not find this assistance particularly helpful on this very  
20 narrow point of law. Nor are these two persons attorneys who are  
21 authorized to practice law. Finally, and perhaps most importantly, this  
22 Court does not wish to set a precedent allowing any party to file pleadings  
23 on any issue of law that arises in this case unless that issue directly  
24 affects that party's particular interest. To allow such unfettered  
25 participation would severely delay the completion of this already lengthy  
26 and expensive proceeding.

1 The Department of Ecology's exception to the Court's prior ruling  
2 concerning the right of Pacificorp is denied. Their exception to the  
3 recommended point of diversion for Ruth McKenzie, Claim No. 07414 is  
4 granted and the point of diversion confirmed shall be at the original point  
5 of diversion. Mrs. McKenzie is directed to contact the Department of  
6 Ecology to determine the procedure for filing an application for change.  
7 The typographical error identified by Ecology will be corrected.

8  
9 VI.

10 The Court, having reviewed the filings, testimony, and Reports of  
11 Referee, and having heard argument and otherwise being fully advised,  
12 orders as follows:

13 1. The "Report of Referee Re: Subbasin No. 19 (Lower Naches)" filed  
14 with the Court on December 6, 1991, as amended by the "Supplemental Report  
15 of Referee Re: Subbasin No. 19 (Lower Naches)" filed with the Court on  
16 August 21, 1995, and the Court's "Amended Order Re: Limiting Agreements",  
17 entered January 3, 1994, as further amended herein are entered as a  
18 Conditional Final Order confirming rights recommended for confirmation in  
19 said reports and orders as existing rights.

20 2. All claims to water rights before the Referee pertaining to  
21 Subbasin No. 19 not so confirmed, are denied.

22 3. This Conditional Final Order, relating to the confirmance of  
23 rights and denial of claims of water rights, constitutes a final order for  
24 purposes of appeal (see RAP 2.2(d)), except for purposes of final  
25 integration of all confirmed rights as provided in Section XII of Pretrial  
26

1 Order No. 8 (Procedures for Claim Evaluation, dated march 3, 1989) of this  
2 Court.

3 DATED this 14<sup>th</sup> day of December, 1995.

4 Walter A. Stauffacher  
5 JUDGE WALTER A. STAUFFACHER

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