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KIM M. EATON
EX OFFICIO CLERK OF

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)

NO. 77-2-01484-5

THE STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)

CONDITIONAL FINAL ORDER
SUBBASIN NO. 22
(WIDE HOLLOW)

Plaintiff,)

v.)

JAMES J. ACQUAVELLA, et al.,)

Defendants.)

FILED

DEC 09 1999

KIM M. EATON
YAKIMA COUNTY CLERK

I.

On May 23, 1996, the Referee, Douglas Clausing, filed with the Court the "Report of Referee Re: Subbasin No. 22 (Wide Hollow)". Thereafter, this Court set November 14, 1996, 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.

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1 II.

2 On November 14, 1996, the Court held a hearing on exceptions
3 to the Report of Referee. The Court, after reviewing the
4 exceptions and other materials and being fully advised, filed its
5 Order RE: Subbasin 22 (Wide Hollow) Exceptions Hearing on
6 April 10, 1997, which, among other matters, ordered that the
7 Referee schedule a supplemental hearing to further consider
8 certain claims as specified by the order.
9

10 III.

11 On August 19 and 20, 1997, Referee Douglas Clausing
12 conducted a supplemental hearing as directed by the Court. On
13 September 22, 1998, the Referee filed the Supplemental Report of
14 Referee Re: Subbasin No. 22 (Wide Hollow). This Court set
15 February 11, 1999, for a hearing on exceptions to the
16 supplemental report. Pursuant to direction of the Court, the
17 Referee then served notice (together with a copy of the
18 supplemental report) upon all parties, setting a time period for
19 filing any exceptions to the supplemental report and for the
20 aforementioned hearing on exceptions. The following exceptions
21 were timely filed:
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1. Central Pre-mix Concrete Co., Claim No. 00039 - identifying a typographical error in the certificate number cited on page 12, line 9 of the supplemental report.
2. Tom and Zeldia J. Worrell, Claim No. 00735 - to a right not being confirmed for use of a spring, asking the Court to apply its Dormaier Decision to use of the spring.
3. Department of Ecology requested clarification on three claims:
- A. Merrit C. Fine, John P., Gwen & Katheryn Hodkinson, Claim No. 00660 - the names on the two rights described on page 39 of the supplemental report appear to have been transposed.
- B. Franklin A. Weed, Claim No. 00742 - seeking clarification of the Limitation of Use language.
- C. Joseph H. Henne, Claim No. 0228 - clarification of the point of diversion location.

The Court held its exception hearing on February 11, 1999. The exception of Central Pre-mix Concrete Co., is granted and the

1 typographical error is acknowledged. The correct certificate
2 number is cited elsewhere on pages 12 and 13 of the supplemental
3 report. As identified by Ecology, the names on the two rights
4 described under Court Claim 00660 on page 39 of the supplemental
5 report were transposed and that is corrected. The right awarded
6 to Merritt C. Fines on page 39 is for the irrigation of 1.5 acres
7 and stock watering and the right awarded to the Hodkinsons on
8 page 39 is for the irrigation of 7.5 acres and stock water. The
9 point of diversion for the right awarded to Joseph H. Henne,
10 Court Claim No. 02228 shall be at the location described in the
11 original report of referee, on page 130, line 7.5 (within the
12 NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T. 12 N., R. 19 E.W.M. The limitation of
13 use language for the right awarded to Franklin A. Weed, Court
14 Claim No. 00742, on page 46 of the supplemental report is
15 intended to provide that a maximum of 149.5 acre-feet per year
16 can be used on the property from YVCC and Wide Hollow Creek, with
17 no more than 144 acre-feet of that coming from Wide Hollow Creek.
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23 The last exception considered by the Court was the Worrell
24 exception. The Court heard oral argument on the exception at the
25 exception hearing and then set a schedule for further briefing of
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1 the issues. The Court set May 13, 1999, for additional oral
2 arguments on this exception. The Court entered its Memorandum
3 Opinion and Ruling RE: Worrell Exceptions on November 8, 1999,
4 denying that exception.
5

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7 V.

8 The Court, having review the filings and Reports of Referee
9 and having heard argument and otherwise being fully advised
10 orders as follows:
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12 1. The Report of Referee for Subbasin No. 22 (Wide Hollow),
13 filed with the Court on May 23, 1996, as amended by the
14 Supplemental Report of Referee Re: Subbasin 22 (Wide Hollow)
15 filed with the Court on September 22, 1998, as further
16 amended herein, are entered as a Conditional Final Order
17 confirming the rights recommended for confirmation in said
18 reports as existing rights.
19

20
21 2. All claims to water rights before the Referee pertaining
22 to Subbasin No. 22 not so confirmed are denied.
23

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

7 DATED this 9th day of December, 1999.
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10 Walter Stauffacher
11 JUDGE WALTER A. STAUFFACHER
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