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

**FILED**

MAY - 9 2002

**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 )

NO. 77-2-01484-5

THE STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )

PROPOSED  
CONDITIONAL FINAL ORDER  
SUBBASIN NO. 24  
(MOXEE)

Plaintiff, )

v. )

JAMES J. ACQUAVELLA, et al., )

Defendants. )

I.

On February 13, 2001, Referee Douglas Clausing filed with the Court the Report of Referee Re: Subbasin No. 24 (Moxee). Thereafter, this Court set June 14, 2001 for a hearing on exceptions to this report. The Court directed the Referee to serve 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 June 14, 2001, the Court held a hearing on exceptions to the Report of Referee. The hearing was continued until July 12, 2001 and continued again until August 9, 2001. The Court, after

15,925

1 reviewing the exceptions and other materials and being fully  
2 advised, filed its Report of the Court Re: Exceptions to Report of  
3 Referee Subbasin 24 (Moxee) on October 23, 2001 addressing all  
4 exceptions.

5 III.

6 On February 14, 2002, the Court held a hearing on exceptions  
7 to the Report of the Court Re: Exceptions to Report of Referee  
8 Subbasin No. 24 (Moxee). The four claimants that filed exceptions  
9 to the Report of the Court were Joseph and Yvonne Dorais (Court  
10 Claim Nos. 00992 and (A)06338), Jesse A. and Paula M. Heaverlo  
11 (Claim No. 15166), S. Martinez Livestock, Inc. (Claim No. 01826  
12 and (A)06830) and James R. Siebol (Claim No. 01203). The  
13 Department of Ecology responded to the exceptions of the Heaverlos  
14 and S. Martinez Livestock, Inc. Ecology also requested  
15 clarification regarding the rights of S. Martinez Livestock and  
16 Anthony J. Pavlick & Luella M. Pavlick and Jim Pavlick (Court  
17 Claim No. 00792). The Court orally ruled on most of the  
18 exceptions/requests for clarification at the February 14, 2002  
19 hearing. However, a ruling on two exception by S. Martinez  
20 Livestock were delayed to provide the claimant an opportunity to  
21 submit to the Court a supplemental declaration. The Supplemental  
22 Declaration of Carol Martinez dated March 5, 2002, was supplied to  
23 the Court as requested.  
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V.

The Court ORDERS as follows:

1. The Court GRANTS the requests for clarification and exceptions filed by Joseph and Yvonne Dorais (Court Claim Nos. 00992 and (A)06338), Jesse A. and Paula M. Heaverlo (Claim No. 15166), and S. Martinez Livestock, Inc. (Claim No. 01826 and (A)06830). The rights of those parties are as follows:

A. Joseph G. & Yvonne C. Dorais (Claim Nos. 00992 and (A)06338)

The Court requested a copy of the patent showing when the property now owned by the Dorais family separated from public ownership. The patent was provided to the Court and established the title to the Dorais property was issued to Bayless B. Thorp by the federal government on March 7, 1891. A priority date for the Dorais water right is now established and the Court confirms the following right that shall be inserted at line 1, page 171 of the Referee's Schedule of Rights.

Claimant Name:	Joseph G. Dorais & Yvonne C. Dorais	Claim Nos.00992, (A)06338
Source:	Moxee Slough	
Use:	Irrigation of 18 acres	
Period of Use:	April 1 though October 15	
Quantity:	0.20 cfs; 72 acre-feet per year	

1 Priority Date: March 7, 1891  
2  
3 Point of Diversion: 1000 feet east and 50 feet north  
4 from the southwest corner of Section  
5 27, being within the SW1/4SW1/4 of  
6 Section 27, T. 13 N., R. 19 E.W.M.  
7 Place of Use: That portion of the NW1/4NW1/4 of  
8 Section 34, T. 13 N., R. 19 E.W.M.  
9 lying westerly of Moxee Slough and  
10 south of State Route 24.

11 B. Jesse A. and Paula M. Heaverlo (Claim No. 15166)

12 The Heaverlos supplied the Court with patent documents to  
13 establish a priority date and also asked the Court for  
14 clarification on the parcels found by the Court to carry a water  
15 right. The Court determined that Parcel Nos. 19132813033-34 and  
16 19132824002 would be confirmed a water right and Parcel No.  
17 19132812009 would not be confirmed a water right for lack of  
18 compliance with RCW 90.14. The following right shall be inserted  
19 at line 1, page 158 of the Referee's Schedule of rights.

20 Claimant Name: Jesse A. Heaverlo  
21 & Paula M. Heaverlo Claim No. 15166  
22 Source: Yakima River/Blue Slough  
23 Use: Irrigation of 11 acres  
24 Period of Use: April 1 though October 15  
25 Quantity: 0.22 cfs; 66 acre-feet per year  
26 Priority Date: December 1, 1869  
27  
28

1 Point of Diversion: Yakima River: 400 feet south and  
2 1,000 feet west of the north quarter  
3 corner of Section 28, being within  
4 the NE1/4NW1/4 of Section 28, T. 13  
5 N., R. 19 E.W.M.

6 Ditch From Blue Slough: A point  
7 within the NW1/4SW1/4NE1/4 of  
8 Section 28, T. 13 N., R. 19 E.W.M.

9 Place of Use: That portion of the NW1/4SW1/4NE1/4  
10 and E1/2SE1/4NW1/4 of Section 28, T.  
11 13 N., R. 19 E.W.M. lying between  
12 Blue Slough and Keys Road (Parcel  
13 Nos. 19132813033-34, 19132824002).

14 The remainder of the Heaverlo's exceptions are DENIED.

15 S. Martinez Livestock, Inc., Court Claim Nos. 01826,  
16 (A) 06830

17 S. Martinez Livestock, Inc., filed three exceptions to the  
18 Court's Report. It asked the Court to confirm rights to two  
19 springs (presented to the Court as Spring Nos. 5 and 9). Further,  
20 it asked the Court to change the period of use for all the springs  
21 to which it sought a right to be year round. It submitted the  
22 Declaration of Carol Martinez and Dr. Rod Mackintosh, Supplemental  
23 Declaration of Carol Martinez in support. The Court Granted the  
24 exception regarding Spring No. 9 at the February 14, 2002 hearing.  
25 After submission of the Supplemental Declaration of Carol  
26 Martinez, filed with the Court on March 5, 2002, the Court GRANTS  
27 the remaining two exceptions. The following two rights shall be  
28 inserted beginning at page 171, line 1 of the Referee's Schedule  
of Rights for Subbasin 24.

1 CLAIMANT NAME: Martinez Livestock, Inc., Court  
2 Claim No. 01826, (A)06830  
3 Source: Unnamed spring  
4 Use: Stock water  
5 Period of Use: Continuously  
6 Quantity: 0.04 cfs; 24 acre-feet from  
7 September 1 through May 31; 1  
8 acre-foot June 1 through August  
9 31.  
10 Priority Date: June 30, 1899  
11 Point of Diversion: 100 feet north and 550 feet  
12 west from the east quarter  
13 corner of Section 2, being  
14 within the SE1/4SE1/4NE1/4 of  
15 Section 2, T. 12 N., R. 21  
16 E.W.M.  
17 Place of Use: SE1/4SE1/4NE1/4 of Section 2,  
18 T. 12 N., R. 21 E.W.M.  
19 CLAIMANT NAME: Martinez Livestock, Inc., Court  
20 Claim No. 01826, (A)06830  
21 Source: Unnamed spring  
22 Use: Stock water  
23 Period of Use: Continuously  
24 Quantity: 0.02 cfs; 12 acre-feet from  
25 September 1 through May 31, 1  
26 acre-foot June 1 - August 31.  
27 Priority Date: May 24, 1884  
28 Point of Diversion: 500 feet north and 1150 feet  
west from the center of Section  
31, being within the  
SW1/4SE1/4NW1/4 of Section 31,  
T. 13 N., R. 21 E.W.M.

1 Place of Use: SW1/4SE1/4NW1/4 of Section 31,  
2 T. 13 N., R. 21 E.W.M.

3 In addition, the remainder of the Martinez rights, set forth  
4 at pages 23-27 of the Report of the Court for Subbasin 24 shall be  
5 modified to change the Period of Use sections from September 1  
6 through May 31 to "Continuously." In addition the Quantity  
7 section shall be modified to include the following in regard to  
8 use during the months of June through August: "1 acre-foot June 1  
9 - August 31." That use shall be in addition to the quantity  
10 confirmed for September 1 through May 31.

11 3. The Court also GRANTS the Plaintiff, Department of Ecology's  
12 requests for clarification of the Report of the Court Re:  
13 Exceptions to Report of Referee Subbasin 24 (Moxee). Pursuant  
14 thereto, page 19, line 20 shall be modified to describe the place  
15 of use as the NW1/4SE1/4NW1/4 of Section 15, T. 12 N., R. 21  
16 E.W.M. Page 26, line 23 and page 27, line 2 shall be modified to  
17 describe the place of use and point of diversion as being located  
18 in Section 33, T. 13 N., R. 21 E.W.M. Page 38, lines 11.5-13.5  
19 and lines 23-25 shall be changed to "600 feet north and 170 feet  
20 east from the west quarter corner of Section 34 being within the  
21 SW1/4SW1/4NW1/4 of Section 34, T. 13 N., R. 19 E.W.M."  
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1 4. The Court DENIES the exceptions of James K. Siebol, Claim No.  
2 01203. Mr. Seibol failed to appear or otherwise present any  
3 evidence in support of his exception.

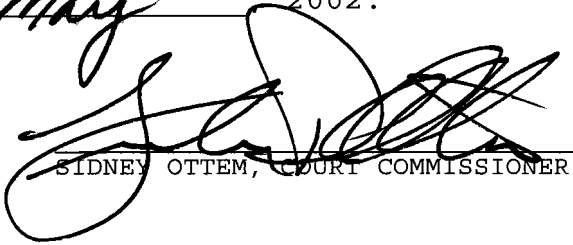
4 5. The Report of Referee for Subbasin No. 24 (Moxee), filed with  
5 the Court on February 13, 2001, as amended by the Report of the  
6 Court Re: Exceptions to Report of Referee Subbasin 24 (Moxee)  
7 filed by the Court on October 23, 2001, and as amended herein, are  
8 entered as a Conditional Final Order confirming the rights  
9 recommended for confirmation in said reports as existing rights.

10 6. All claims to water rights before the Referee pertaining to  
11 Subbasin No. 24 not so confirmed are denied.

12 7. The rights within Subbasin No. 24 (Moxee) shall be administered  
13 according to this Conditional Final Order.

14 8. This Conditional Final Order, relating to the confirmation of  
15 rights and denial of claims of water rights, constitutes a final  
16 order for purposes of appeal (see RAP 2.2(d)), except for purposes  
17 of final integration of all confirmed rights as provided in  
18 Section XII of Pretrial Order No. 8 (Procedures for Claim  
19 Evaluation, dated March 3, 1989) of this Court.  
20

21 DATED this 9<sup>th</sup> day of May 2002.

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25 SIDNEY OTTEM, COURT COMMISSIONER  
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