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KIM M. EATON
CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

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JAN - 9 2003

KIM M. EATON
YAKIMA COUNTY CLERK

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. 4
(SWAUK CREEK)

Plaintiff,)

v.)

JAMES J. ACQUAVELLA, et al.,)

Defendants.)

I.

On March 25, 1996, the Referee, Douglas Clausing, filed with the Court the Report of Referee Re: Subbasin No. 4 (Swauk Creek). This Court set July 11, 1996, for a hearing on exceptions to this report. At the direction of the Court, the Referee 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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II.

On September 12, 1996, the Court held a hearing on exceptions to the Report of Referee. The Court, after reviewing the exceptions and other materials and being fully advised, filed its Order On Exceptions RE: Subbasin 4 (Swauk) on December 12, 1996, which, among other matters, ordered that the Referee schedule a supplemental hearing to further consider certain claims as specified by the order.

III.

Beginning February 25, 1997, Referee Douglas Clausing conducted a supplemental hearing as directed by the Court. On July 6, 1998, the Referee filed the Supplemental Report of Referee Re: Subbasin No. 4 (Swauk Creek). This Court set November 12, 1998, for a hearing on exceptions to the supplemental report. Pursuant to direction of the Court, the Referee then served notice (together with a copy of the supplemental report) upon all parties, setting a time period for filing any exceptions to the supplemental report and for the aforementioned hearing on exceptions.

IV.

On November 12, 1998, the Court held a hearing on exceptions to the Supplemental Report of Referee Re: Subbasin No. 4 (Swauk Creek). The Court, after reviewing the exceptions and other materials and being fully advised, filed its Order On Exceptions to Supplemental Report of Referee RE: Subbasin 4 (Swauk) on

1 January 13, 2000, which, among other matters, ordered that the
2 Referee schedule a second supplemental hearing to further
3 consider certain claims as specified by the order.

4 V.

5 On April 10 and 11, 2000, Referee Douglas Clausing conducted
6 a supplemental hearing as directed by the Court. On March 20,
7 2002, the Referee filed the Second Supplemental Report of Referee
8 Re: Subbasin No. 4 (Swauk Creek). This Court set August 8, 2002,
9 for a hearing on exceptions to the second supplemental report.
10 Pursuant to direction of the Court, the Referee then served
11 notice (together with a copy of the supplemental report) upon all
12 parties, setting a time period for filing any exceptions to the
13 second supplemental report and for the aforementioned hearing on
14 exceptions. Exceptions were filed by the following claimants:

- 15 1. Pat and Mary Burke, Claim No. 01475
- 16 2. First Creek Water Users Association, Claim No. 00648
- 17 3. Bernard P. Knoll, Claim Nos. 12061, 12062
- 18 4. Lavinal Corporation, Claim No. 06626
- 19 5. Liberty Mountain Ownership Association, Claim No. 01095
- 20 6. Trendwest Investments, Inc., Court Claim No. 01685

21 On October 8, 2002, the Court ruled on those exceptions in
22 its Memorandum Opinion and Order RE: Exceptions to the Second
23 Supplemental Report of Referee, Subbasin No. 4. The Court
24 subsequently amended that decision on December 12, 2002 pursuant
25

1 to the Order Modifying Memorandum Opinion and Order Re:
2 Exceptions To Second Supplemental Report of Referee Subbasin 4.

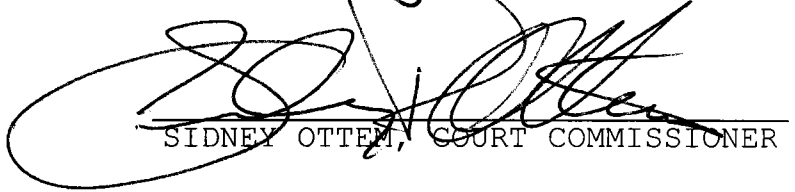
3 VI.

4 The Court ORDERS as follows:

- 5 1. The Report of Referee for Subbasin No. 4 (Swauk Creek),
6 filed with the Court on March 25, 1996, as amended by the
7 Supplemental Report of Referee Re: Subbasin 4 (Swauk Creek)
8 filed with the Court on July 6, 1998, and the Second
9 Supplemental Report of Referee Re: Subbasin 4 (Swauk Creek)
10 filed with the Court on March 20, 2002, and as further
11 amended by the Memorandum Opinion and Order filed on October
12 8, 2002, and the Order entered December 12, 2002, are
13 entered as a Conditional Final Order confirming the rights
14 recommended for confirmation in said reports and orders as
15 existing rights.
16
- 17 2. All claims to water rights before the Referee pertaining
18 to Subbasin No. 4 not so confirmed are denied.
- 19 3. The rights within Subbasin No. 4 (Swauk Creek) shall be
20 administered according to this Conditional Final Order.
- 21 4. This Conditional Final Order, relating to the
22 confirmation of rights and denial of claims of water rights,
23 constitutes a final order for purposes of appeal (see RAP
24 2.2(d)), except for purposes of final integration of all
25 confirmed rights as provided in Section XII of Pretrial
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1 Order No. 8 (Procedures for Claim Evaluation, dated March 3,
2 1989) of this Court.

3 DATED this 9th day of January, 2003.

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SIDNEY OTTEN, COURT COMMISSIONER