

RECEIVED

'01 FEB 8 AM 11 01

FILED

FEB 8 2001

KIM M. EATON  
EX OFFICIO CLERK OF  
SUPERIOR COURT  
YAKIMA, WASHINGTON

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, )  
Plaintiff, )

CONDITIONAL FINAL ORDER  
SUBBASIN NO. 5  
(ELK HEIGHTS)

v. )

JAMES J. ACQUAVELLA, et al., )  
Defendants. )

I.

On July 7, 1997, the Referee, Douglas Clausing, filed with the Court the Report of Referee Re: Subbasin No. 5 (Elk Heights). Thereafter, this Court set November 13, 1997, 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

14900

1 exceptions to the report and for the aforementioned hearing on  
2 exceptions.

3 II.

4 On November 13, 1997, the Court held a hearing on exceptions  
5 to the Report of Referee. The Court, after reviewing the  
6 exceptions and other materials and being fully advised, filed its  
7 Order On Exceptions RE: Subbasin 5 (Elk Heights) on February 12,  
8 1998, which, among other matters, ordered that the Referee  
9 schedule a supplemental hearing to further consider certain  
10 claims as specified by the order.

11 III.

12 On April 21 and 22, 1998, Referee Douglas Clausing conducted  
13 a supplemental hearing as directed by the Court. On May 10,  
14 1999, the Referee filed the Supplemental Report of Referee Re:  
15 Subbasin No. 5 (Elk Heights). This Court set September 9, 1999,  
16 for a hearing on exceptions to the supplemental report. Pursuant  
17 to direction of the Court, the Referee then served notice  
18 (together with a copy of the supplemental report) upon all  
19 parties, setting a time period for filing any exceptions to the  
20 supplemental report and for the aforementioned hearing on  
21 exceptions.  
22  
23  
24  
25  
26

1  
2 IV.

3 On September 16, 1999<sup>1</sup>, the Court held a hearing on  
4 exceptions to the Supplemental Report of Referee Re: Subbasin No.  
5 5 (Elk Heights). On June 8, 2000, the Court held a second  
6 hearing to allow claimants Carl and Kay Drake to present evidence  
7 in support of a late exception. The Court ruled on the  
8 exceptions in its Report of The Court Re: Exceptions to  
9 Supplemental Report of Referee Subbasin 5 (Elk Heights), dated  
10 August 3, 2000. The Court set November 9, 2000, for hearing  
11 exceptions to the Report of the Court and served notice (together  
12 with a copy of the report) upon all parties, setting a time  
13 period for filing any exceptions to the report and for the  
14 aforementioned hearing on exceptions.  
15

16 Exceptions were filed by Jerry and Marclyn McLane, Claim No.  
17 01678 and Harold and Joann Iverson, Claim No. 01137. The Court  
18 held its exception hearing on November 9, 2000, and denied both  
19 exceptions.  
20

21 On December 22, 2000, Ecology filed an Amended Notice of  
22 Presentation of Proposed Conditional Final Order: Subbasin No. 5  
23 (Elk Heights) identifying a typographical error in the legal  
24 description of the place of use for one of the water rights  
25

---

26 <sup>1</sup> The hearing was changed from September 9, 1999, to September 16, 1999, by  
27 Order of the Court dated June 15, 1999.

1 awarded to Sherry Bertino and Margaret V. Peckinino. The range  
2 number on page 84 of the Supplemental Report of Referee, at line  
3 22.5 should be "15 E.W.M." rather than 16 E.W.M.". The claim was  
4 reviewed and that correction shall be made.

5 V.

6 The Court orders as follows:

- 7 1. The Report of Referee for Subbasin No. 5 (Elk Heights),  
8 filed with the Court on July 7, 1997, as amended by the  
9 Supplemental Report of Referee Re: Subbasin 5 (Elk Heights)  
10 filed with the Court on May 10, 1999, as amended by the  
11 Report of the Court on August 3, 2000, and further amended  
12 herein are entered as a Conditional Final Order confirming  
13 the rights recommended for confirmation in said reports as  
14 existing rights.  
15
- 16 2. All claims to water rights before the Referee pertaining  
17 to Subbasin No. 5 not so confirmed are denied.  
18
- 19 3. The rights within Subbasin No. 5 (Elk Heights) shall be  
20 administered according to this Conditional Final Order.  
21
- 22 4. This Conditional Final Order, relating to the  
23 confirmation of rights and denial of claims of water rights,  
24 constitutes a final order for purposes of appeal (see RAP  
25  
26  
27

1 2.2(d)), except for purposes of final integration of all  
2 confirmed rights as provided in Section XII of Pretrial  
3 Order No. 8 (Procedures for Claim Evaluation, dated March 3,  
4 1989) of this Court.

5  
6 DATED this 8<sup>th</sup> day of February, 2001.

7  
8 Walter Stauffer  
9 JUDGE WALTER A. STAUFFER