

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

2006 APR 17 AM 10 05

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)

EXCISE TAX
SUBBASIN NO. 9
NO. 77-2-0148445

THE STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)

CONDITIONAL FINAL ORDER
SUBBASIN NO. 9
(WILSON-NANEUM)

Plaintiff,)

v.)

JAMES J. ACQUAVELLA, et al.,)

Defendants.)

I.

On June 29, 2000, Referee Douglas Clausing filed with the Court the Report of Referee Re: Subbasin No. 9 (Wilson-Naneum Creeks). Thereafter, this Court set March 8, 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 March 8, 2001, the Court held a hearing on exceptions to the Report of Referee. The Court orally ruled on several exceptions during the exception hearing and in its Memorandum Opinion and Order Re: Morrison's Exceptions to Report of Referee (Subbasin No. 9 Wilson-Naneum), filed on May 24, 2001. On August 9, 2001, the Court filed its Order On Exceptions Subbasin 9 (Wilson-Naneum), which summarized the Court's rulings at the exception hearing and Ordered that the Referee schedule a

1 supplemental hearing to further consider certain claims as
2 specified by the Order.

3 III.

4 On October 29 through November 2, November 5 through 7, and
5 November 13, 2001, Referee Douglas Clausing conducted a
6 supplemental hearing as directed by the Court. On October 16,
7 2002, the Referee filed the Supplemental Report of Referee Re:
8 Subbasin No. 9 (Wilson-Naneum). This Court set March 13, 2003,
9 for a hearing on exceptions to the supplemental report. Pursuant
10 to direction of the Court, the Referee served notice (together
11 with a copy of the supplemental report) upon all parties, setting
12 a time period for filing any exceptions to the supplemental report
13 and for the aforementioned hearing on exceptions.

14 IV.

15 On March 13, 2003, the Court held a hearing on exceptions to
16 the Supplemental Report of Referee RE: Subbasin No. 9 (Wilson-
17 Naneum). The hearing was continued on May 8, 2003. On August 15,
18 2003, the Court entered its Order on Exceptions Subbasin No. 9
19 (Wilson-Naneum), which summarized the Court's rulings at the
20 exception hearing and ordered that the Referee schedule a second
21 supplemental hearing to further consider certain claims as
22 specified by the Order.

23 V.

24 On September 24 through 26, 2003, Referee Douglas Clausing
25 conducted a second supplemental hearing as directed by the Court.
26 Referee Clausing retired from state service prior to completing a
27 Second Supplemental Report of Referee for Subbasin No. 9. As a
28 result, the Court took up the exceptions that were remanded to the
Referee. The Court filed its Memorandum Opinion and Order Re:
Exceptions to Supplemental Report of Referee, Subbasin No. 9
(Wilson-Naneum) on May 20, 2004, addressing the exceptions
remanded to the Referee, as well as those the Court took under
advisement.

VI.

The Court held a hearing for entry of the Conditional Final Order on September 9, 2004. The Court allowed parties to file objections to the Proposed Conditional Final Order. A number of parties filed objections, resulting in an additional hearing being held on October 27, 2004. The Court filed its Memorandum Opinion and Order Re: Objections to Proposed Conditional Final Order on June 15, 2005. The Court allowed objections to be filed and set September 8, 2005 to hear those objections. The Court filed two letter orders dated September 19 and December 19, 2005 and its Memorandum Opinion and Order Re: Second Objections to Proposed Conditional Final Order on April 17, 2006.

The Court ORDERS as follows:

1. The Report of Referee for Subbasin No. 9 (Wilson-Naneum), filed with the Court on June 29, 2000, as modified by the following:

a. The Court's August 9, 2001, Order on Exceptions Subbasin No. 9 (Wilson-Naneum);

b. The Supplemental Report of Referee for Subbasin No. 9 (Wilson-Naneum), filed with the Court on October 12, 2002;

c. The Court's August 15, 2003, Order on Exceptions Subbasin No. 9 (Wilson-Naneum);

d. The Court's May 20, 2004, Memorandum Opinion and Order Re: Exceptions to Supplemental Report of Referee, Subbasin No. 9 (Wilson-Naneum);

e. The Court's June 15, 2005, Memorandum Opinion and Order Re: Objections to Proposed Conditional Final Order, Subbasin No. 9 (Wilson-Naneum); and

f. The Court's Memorandum Opinion and Order Re: Second Objections to Proposed Conditional Final Order dated April 17, 2006,

1 are entered as a Conditional Final Order confirming the rights
2 recommended in said reports as existing rights.

3 2. All claims to water rights before the Court pertaining to
4 Subbasin No. 9 not so confirmed are denied.

5 3. The rights within Subbasin No. 9 (Wilson-Naneum) shall be
6 administered according to this Conditional Final Order.

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

13 DATED this 17th day of April, 2006.

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SIDNEY P. OTTEM, COURT COMMISSIONER
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