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CLERK OF
SUPERIOR COURT
YAKIMA COUNTY WASHINGTON

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. 15
(WENAS CREEK)

Plaintiff,)

v.)

JAMES J. ACQUAVELLA, et al.,)

Defendants.)

FILED
NOV 12 1998

KIM M. EATON, YAKIMA COUNTY CLERK

I.

On June 6, 1994, the Referee, John E. Acord, filed with the Court a "Report of Referee Re: Subbasin No. 15 (Wenas Creek)". Thereafter, this Court set March 14, 1995, 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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II.

On March 14, 1995, 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 RE: Subbasin 15 (Wenas Creek) Exceptions Hearing on April 11, 1996, which, among other matters, ordered that the Referee schedule a supplemental hearing to further consider certain claims as specified by the order.

III.

On September 23 - 26, 1996, Referee Douglas Clausing conducted a supplemental hearing as directed by the Court. On February 14, 1997, the Referee filed the Supplemental Report of Referee Re: Subbasin No. 15 (Wenas Creek). This Court set June 12, 1997, 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 June 12, 1997, the Court held a hearing on exceptions to the Supplemental Report of Referee Re: Subbasin No. 15 (Wenas Creek). The Court orally ruled on several exceptions during the hearing and ruled on the remaining exceptions in its Memorandum

1 Opinion Re: Exceptions to Supplemental Report of Referee and
2 Motions, Subbasin No. 15 (Wenas). The Court's rulings were
3 included in the Second Supplemental Report of Referee for
4 Subbasin No. 15 (Wenas Creek), which was signed by the Referee on
5 August 31, 1998. The Second Supplemental Report of Referee
6 includes the Schedule of Rights for Wenas Creek, as amended by
7 the Court's rulings. The following changes are made to the Second
8 Supplemental Report of Referee:

- 9 1. Page 47, line 4, change the number of acres from 35.5
10 to 12.
- 11 2. Page 21, line 10, changed to read: That portion of the
12 NE $\frac{1}{4}$ of Section 24 lying west of the South Fork of Wenas
13 Creek, the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 24, the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 25 lying
14 east of Purdin Ditch, in T. 15 N., R. 17 E.W.M.; Government
15 Lots 3 and 4 of Section 19, the W $\frac{1}{2}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
16 Section 30 lying southwest of the South Fork of Wenas Creek
17 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, in T. 15 N., R. 18 E.W.M. For
18 non-diversionary use only from Purdin Ditch, the thread of
19 the ditch as it goes through Sections 24 and 25, T. 15 N.,
20 R. 17 E.W.M. and Sections 30 and 31, T. 15 N., R. 18 E.W.M.
- 21 3. Page 43, line 11 is changed to read: The E $\frac{1}{2}$ SW $\frac{1}{4}$ of
22 Section 30, the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ lying
23 northeast of the South Wenas Road, both in Section 31, all
24 in T. 15 N., R. 18 E.W.M. and for stock water only in that
25

1 portion of the NE¹/₄NW¹/₄ of Section 31 lying west of the South
2 Wenas Road adjacent to the Purdin Ditch.

3 4. On page 42, line 1¹/₂ the names of Donald F. and Alvera
4 A. Cox are removed from Court Claim No. 00423.

5 5. On page 49, line 1¹/₂ the names of Scott Baird, et al., &
6 Jerri Baird, David Jones & Patricia Jones are removed from
7 Court Claim No. 00702.

8 6. On page 50, line 2, the names of Mr. and Mrs. Thomas F.
9 Colligan, Jr. are removed from Court claim No. 00448.

10 V.

11 The Court orders as follows:

12 1. The Report of Referee for Subbasin No. 15 (Wenas Creek),
13 filed with the Court on June 6, 1994, as amended by the
14 Supplemental Report of Referee Re: Subbasin 15 (Wenas Creek)
15 filed with the Court on February 14, 1997, and by the Second
16 Supplemental Report of Referee filed with the Court on
17 August 31, 1998, which incorporated the Court's rulings on
18 exceptions to the Supplemental Report of Referee, and as
19 further amended herein, are entered as a Conditional Final
20 Order confirming the rights recommended for confirmation in
21 said reports as existing rights.
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23 2. All claims to water rights before the Referee pertaining
24 to Subbasin No. 15 not so confirmed are denied.
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1 3. The rights within Subbasin No. 15 (Wenas Creek) shall be
2 administered according to this Conditional Final Order.
3 This Conditional Final Order adopts the previous orders of
4 the Court contained in the Pendente Lite Orders as follows:
5 The Court will continue to require that the Wenas Irrigation
6 District release sufficient water to attempt to maintain a
7 live flowing stream in all reaches of the North and South
8 Channels of Wenas Creek with a target flow of 0.25 cfs, when
9 water is naturally available. At no time will the district
10 be required to release more water than what is measured at
11 the inflow into Wenas Reservoir. The permanent measuring
12 devices installed at Fletcher Lane shall continue to be
13 maintained in good working order and any costs associated
14 with maintenance shall be shared by all natural flow water
15 users (50% paid by those with priority dates of June 30,
16 1865 to June 30, 1870 [formerly First Priority Users], 25%
17 by the Wenas Irrigation District, and 25% by all other
18 natural flow users). Measuring devices shall continue to be
19 installed and maintained at all diversions. The assessment
20 schedules for stream patrolman, both irrigation season and
21 wintertime, shall remain in place and the assessments paid
22 in order to receive water as previously ordered.
23

24 4. 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.
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7 DATED this 12th day of November, 1998.
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9 Walter A. Stauffacher
10 JUDGE WALTER A. STAUFFACHER
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