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CLERK OF  
THE SUPERIOR COURT  
YAKIMA, 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. 6  
(TANEUM CREEK)

Plaintiff, )

v. )

JAMES J. ACQUAVELLA, et al., )

Defendants. )

**FILED**  
OCT 08 1998

KIM M. EATON, YAKIMA COUNTY CLERK

I.

On May 9, 1994, the Referee, John E. Acord, filed with the Court a "Report of Referee Re: Subbasin No. 6 (Taneum)". Thereafter, this Court set September 8, 1994, 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 September 8, 1994, 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 6 (Taneum) Exceptions Hearing on October 12, 1995, which, among other matters, ordered that the Referee schedule a supplemental hearing to further consider certain claims as specified by the order. On January 25, 1996, Level Best, Inc., filed a Motion to Reopen Court Claim No. 00284 (Rocky Mountain Elk Foundation). The Court denied that motion by Memorandum Opinion and Order filed February 28, 1996. On March 12, 1996, Level Best, Inc., filed a Motion for Reconsideration.

III.

On January 30, 1996, Referee Douglas Clausing conducted a supplemental hearing as directed by the Court. On March 18, 1996, the Referee filed the Supplemental Report of Referee Re: Subbasin No. 6 (Taneum). This Court set September 12, 1996, 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.

The following exceptions were filed:

1 1. Taneum Canal Company, Claim No. 00411 - to the period of  
2 water use for irrigation and to the right recommended for  
3 confirmation distinguishing between irrigation and  
4 conveyance water. Taneum Canal Company also sought guidance  
5 from the Court on administration of the rights, primarily in  
6 respect to the proportional split, following entry of the  
7 Conditional Final Order.

8  
9 2. Level Best, Inc., Claim No. 01295 - took exception to the  
10 claimants identified in the Report of Referee as being  
11 successors to parties in the Taneum I decree and therefore  
12 enjoying a portion of the 1/3 creek flow decreed to those  
13 parties.

14 IV.

15 On September 12, 1996, the Court held a hearing on  
16 exceptions to the Supplemental Report of Referee Re: Subbasin No.  
17 6 (Taneum). On July 23, 1998, the Court entered its Memorandum  
18 Opinion Re: Subbasin No. 6: Level Best Inc. Motion for  
19 Reconsideration & Exceptions of Level Best Inc. and Taneum Canal  
20 Company to Supplemental Report of Referee, ruling on all  
21 exceptions to the Supplemental Report of Referee and Level Best,  
22 Inc.'s Motion for Reconsideration.

23 The Court denied Level Best, Inc.'s exceptions and Motion  
24 for Reconsideration ruling that Taneum II awarded one-third of  
25 the flow of Taneum Creek to Splawn and Bruton without restriction  
26 as to place of use and that all parties claiming a water right  
27 based on the Taneum decrees share the same priority date of  
28 June 30, 1873. The Court denied Taneum Canal Company's exception  
to part of its right being characterized as conveyance water and  
grants the extension of the canal company's irrigation season to

1 November 15. Page 44, line 5½ of the Report of Referee is  
2 amended to reflect this ruling. During times of water shortage  
3 when not all of the rights can be fully met, all water users  
4 deriving a right from the Taneum decrees shall receive a pro-rata  
5 share of the water, <sup>per the July 23, 1998 Memorandum Opinion,</sup> Additionally, on October 1, 1997, Ernest and WOS  
6 Lucy Patty were joined as additional parties with Mike Emerick on  
7 Court Claim Nos. 00195 and (A)03177.

8 V.

9 The Court orders as follows:

10  
11 1. The Report of Referee for Subbasin No. 6 (Taneum), filed  
12 with the Court on May 9, 1994, as amended by the  
13 Supplemental Report of Referee Re: Subbasin 6 (Taneum) filed  
14 with the Court on March 18, 1996, and as further amended  
15 herein, are entered as a Conditional Final Order confirming  
16 the rights recommended for confirmation in said reports as  
17 existing rights.

18  
19 2. All claims to water rights before the Referee pertaining  
20 to Subbasin No. 6 not so confirmed are denied.

21  
22 3. 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 2.2(d)), except for purposes of final integration of all  
26 confirmed rights as provided in Section XII of Pretrial

1 Order No. 8 (Procedures for Claim Evaluation, dated March 3,  
2 1989) of this Court.

3 DATED this 8<sup>th</sup> day of October, 1998.  
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5 Walter Stauffer  
6 JUDGE WALTER A. STAUFFACHER  
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