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KIM EATON
EX OFFICIO CLERK OF
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. 2
(EASTON)

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.

I.

On June 20, 1994, the Referee, John E. Acord, filed with the Court a "Report of Referee Re: Subbasin No. 2 (Easton). Thereafter this Court set January 11, 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.

II.

On January 11, 1995, the Court held a hearing on exceptions to the Report of Referee. The Court, after reviewing the exceptions and other

12.206

1 materials filed and being fully advised, filed its Order on Exceptions;
2 Subbasin No. 2 (Easton) on October 12, 1995, which, among other matters,
3 ordered that the Referee schedule a remand hearing to further consider
4 certain claims as specified in the order.

5 III.

6 On January 31, February 1, 2 and March 14, 1996, Referee Douglas
7 Clausing conducted a remand hearing as directed by the Court. On May 23,
8 1996, the Referee filed the Supplemental Report of Referee Re: Subbasin
9 No. 2 (Easton). This Court set November 14, 1996, for a hearing on
10 exceptions to the supplemental report. Pursuant to direction of the court,
11 the Referee then served notice (together with a copy of the report) upon
12 all parties setting a time period for filing any exceptions to the
13 supplemental report and for the aforementioned hearing on exceptions.

14 The following exceptions were timely filed:

- 15 1. Dona L. Bogan, Claim No. 06044 - to the Referee not
16 recommending that a right be confirmed, asking for the opportunity to
17 submit notarized statements concerning use of the water in the 1960's
18 and reason for lack of a RCW 90.14 claim.
- 19 2. Big Creek Waterusers, Claim No. 00353, 00456, 00756, 00755,
20 00339 - asking that the word consumptive be added to the annual
21 quantities of water confirmed for winter stock watering so it is
22 clear that quantity does not reflect the total amount of water that
23 can be diverted. Ecology, in its reply to this exception, asked that
24 the period when water could be diverted for winter stock watering be
25 reduced.
- 26 3. Earl E. Gentry, Claim No. 00755 - to a right not being
27 confirmed for 18 acres within the $W\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$ of Section 28, T. 20 N.,
28 R. 14 E.W.M.
4. Theodore L. Leavitt, Claim No. 06322 - to a right not being
confirmed for use of a spring.
5. Dorothy R. and Robert H. Humber, Claim No. 01327 - asking that
they be allowed an opportunity to present evidence about their use of
creek water.

1 The Court held the exception hearing on November 14, 1996. The
2 exception of Big Creek Water Users, Claim No. 00353, 00456, 00756, 00755
3 and 00339 was granted by the Court and Ecology's exception was denied. The
4 supplemental report is modified as follows: The word "consumptive is added
5 before the words "stock water" on page 56, line 9½; page 57, line 9½; page
6 58, line 11; page 59 line 8½; page 60 line 9.

7 The exception of Earl E. Gentry, Claim No. 00755, was granted by the
8 Court. The supplemental report is modified as follows: Page 56, line 4½,
9 142 acres is changed to 160 acres; line 7, 2.84 cubic feet per second,
10 681.6 acre-feet per year is changed to 3.0 cubic feet per second, 768 acre-
11 feet per year; line 14.5 the words "except the NW¼NE¼NW¼" are removed, and
12 lines 18 and 18½ are changed to read "rights to the creek are being fully
13 satisfied, up to 6.0 cubic feet per second and an additional 166 acre-
14 feet".

15 The exceptions of Dona Bogan, Theodore L. Leavitt and Dorothy R. and
16 Robert H. Humber are denied. Mr. Leavitt is advised to continue with his
17 attempts to obtain a water right through the procedures of RCW 90.03 and
18 Ms. Bogan and the Humber are advised to contact Ecology about the
19 possibility of obtaining a water right permit for their water use.

20 Ecology brought to the Court's attention that three of the Referee's
21 recommendations in the narrative portion of the Supplemental Report of
22 Referee were not carried forward into the Findings of Fact. In the
23 Supplemental Report of Referee, the Referee modified several of the
24 original recommendations in the 1994 Report of Referee for Subbasin No. 2.
25 The Court modifies the Supplemental Report of Referee for Subbasin No. 2,
26 dated May 23, 1996, as follows:

On page 52, add to the list at line 18 the following:

Page 124, line 12, change Place of Use: The west 700 feet of Government Lot 3 and all of the east 356.16 feet lying south of the north 417.42 feet in Government Lot 4, all in Section 2, T. 19 N., R. 14 E.W.M.

On page 59 of the Supplemental Report of Referee, line 13½, delete the words "and the SE¼NE¼SE¼ of Section 29".

On page 62 of the Supplemental Report of Referee include the following:

Page 128, line 11 add:

CLAIMANT NAME:	Arthur & Helen Pieters	COURT CLAIM NO. 01068 (A)05149
Source:	An unnamed spring	
Use:	In-house single domestic supply	
Period of Use:	Continuously	
Quantity:	0.02 cubic foot per second, 1 acre-foot per year	
Priority Date:	September 30, 1915	
Point of Diversion:	1150 feet south and 1250 feet west from the center of Section 2, being within the NE¼SW¼ of Section 2, T. 19 N., R. 14 E.W.M.	
Place of Use:	That portion of the N¼SW¼ of Section 2, T. 19 N., R. 14 E.W.M. described as follows: Commencing at the west quarter corner of said seciton; thence east 850 feet; thence south 550 feet to the true point of beginning; thence east 522 feet; thence south 417 feet; thence west 522 feet; thence north 417 feet to the true point of beginning.	

VI.

The Court, having reviewed the filings, testimony, and Reports of Referee, and having heard argument and otherwise being fully advised, orders as follows:

1. The "Report of Referee Re: Subbasin No. 2 (Easton) filed with the Court on June 20, 1994, as amended by the "Supplemental Report of Referee Re: Subbasin No. 2 (Easton) filed with the Court on May 23, 1996, as further amended herein are entered as a Conditional Final Order confirming the rights recommended for confirmation in said reports and order as existing rights.

2. All claims to water rights before the Referee pertaining to Subbasin No. 2 not so confirmed, are denied.

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

DATED this 13th day of February, 1997.

Walter A. Stauffacher
JUDGE WALTER A. STAUFFACHER

bj