

MAR 16 1992

DEPARTMENT OF ECOLOGY  
ADJUDICATION

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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, )

STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )

Plaintiff, )

v. )

JAMES J. ACQUAVELLA, et al., )

Defendants. )

No. 77-2-01484-5

**CONDITIONAL FINAL  
ORDER: SUBBASIN 30  
(HANFORD)**

On April 30, 1990, the Referee, William R. Smith, filed with the Court a "Report of Referee Re: Subbasin No. 30 (Hanford)," dated April 24, 1990. Thereafter, this Court set October 1, 1990 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.

**CONDITIONAL FINAL ORDER:  
SUBBASIN 30 (HANFORD)**

1           Written exceptions were received from the following  
2 claimants:

- 3           1.    David and Laura Diehl, Claim No. 0671;
- 4           2.    Dee and Annette Meek, Claim No. 0873;
- 5           3.    David McDonald for the Claim of Robert McDonald,  
6           Claim No. 2233;
- 7           4.    Department of Wildlife, Claim No. 2109;
- 8           5.    Department of Fisheries, Claim No. 1757;
- 9           6.    Department of Natural Resources, Claim No. 0589.

10           Appearing at the October 1, 1990 hearing on exceptions  
11 were Charles Douthwaite, representing Defendants David and  
12 Laura Diehl; David McDonald appearing pro se; William Frymire,  
13 Assistant Attorney General, representing the Defendants,  
14 Departments of Natural Resources, Fisheries, and Wildlife;  
15 Kerry O'Hara, Assistant Attorney General, representing  
16 Plaintiff Department of Ecology; and the Honorable William R.  
17 Smith, Referee. Exceptions were also filed by Peter Moore and  
18 Thomas Cowan on behalf of Dee and Annette Meek, who were  
19 unable to be present.

20           The Court, after reviewing the briefs and exceptions  
21 filed, and after having heard argument and being fully  
22 advised, ordered that the exceptions of Dee and Annette Meek,  
23 David and Laura Diehl and David McDonald be remanded to the  
24 Referee for additional evidence and that the exception of the

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26           **CONDITIONAL FINAL ORDER:**  
          **SUBBASIN 30 (HANFORD)**

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1 Department of Fisheries was denied. A supplemental report of  
2 referee was to be prepared, which would contain the Referee's  
3 recommendations as to the remanded claims and, pursuant to the  
4 exceptions of Natural Resources and Wildlife, would include  
5 the language of the stockwater stipulation agreed to and  
6 adopted in the Report of Referee for Subbasin 17 (Tieton) in  
7 place of that originally proposed in Subbasin 30.

8 On March 6, 1991, a remand hearing was conducted in  
9 Yakima County Superior Court. Appearing at this hearing were  
10 Charles Douthwaite, for Defendants David and Laura Diehl, and  
11 Kerry O'Hara, Assistant Attorney General for Plaintiff  
12 Ecology. Dee and Annette Meek did not appear. Due to his  
13 unavailability on March 6, 1991, Mr. McDonald's claim was  
14 continued to April 11, 1991. At that hearing, David McDonald  
15 appeared pro se and the Department of Ecology was represented  
16 by Ceil Buddeke, Assistant Attorney General.

17 On May 31, 1991, Referee Smith filed with the Court a  
18 "Supplemental Report of Referee Re: Subbasin No. 30  
19 (Hanford)," dated May 28, 1991. Thereafter, this Court set  
20 December 19, 1991 at 9:30 a.m. as the time for a hearing on  
21 exceptions to said report. Pursuant to the direction of the  
22 Court, the Referee then served a notice (together with a copy  
23 of the report) upon all claimants in subbasin 30, setting a  
24 time period for filing any exceptions to the report and for  
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26 **CONDITIONAL FINAL ORDER:**  
**SUBBASIN 30 (HANFORD)**

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1 the aforementioned hearing on exceptions. Pursuant to the  
2 Court's Order of August 8, 1991, amending Pre-trial Orders No.  
3 5 and 8, notification of the report's filing was sent to all  
4 parties, providing an opportunity for them to request a copy  
5 of the Supplemental Report and advising of the dates for  
6 filing exceptions and of the hearing on exceptions.

7 Written exceptions were received as follows:

- 8 1. David McDonald for the claim of Robert McDonald,  
9 Claim No. 2233, taking exception to the priority  
10 date recommended in the Supplemental Report;
- 11 2. Department of Ecology, relating to Motion to Dismiss  
12 Claim No. 1877, L. W. Vail Co. (a division of Eucon  
13 Corp.);
- 14 3. Department of Ecology, relating to Motion to Dismiss  
15 Claim No. 0418, Fountain of Life, Inc.

16 Appearing at the December 19, 1991 hearing were David  
17 McDonald for the claim of Robert McDonald, Claim No. 2233;  
18 Kerry O'Hara, Assistant Attorney General for Plaintiff  
19 Ecology; and the Honorable William R. Smith, Referee.  
20 Representatives of L. W. Vail Co. (a division of Eucon Corp.)  
21 and Fountain of Life, Inc. did not appear.

22 The Court, after reviewing the exceptions and motions  
23 filed, and having heard argument and otherwise being fully  
24 advised, ordered that the exception of David McDonald was

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26 **CONDITIONAL FINAL ORDER:**  
**SUBBASIN 30 (HANFORD)**

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1 denied. The Court further granted Ecology's Motions to  
2 Dismiss Claimants L. W. Vail Co. (a division of Eucon Corp.)  
3 and Fountain of Life, Inc. In its written order of December  
4 19, 1991 dismissing Claim 1877 (L. W. Vail Co. (a division of  
5 Eucon Corp.)), the Court ordered the cancellation of the water  
6 right confirmed on pages 43 and 97 of the April 1990 Report of  
7 Referee and that a superseding certificate of Water Right  
8 10678 shall be issued identifying the source of water as the  
9 McNary Pool. In its written amended order of January 15, 1992  
10 dismissing Claim 0418 (Fountain of Life, Inc.), the Court  
11 ordered the cancellation of the water right confirmed on pages  
12 27 and 96 of the April 1990 Report of Referee and ordered that  
13 a superseding certificate of Water Right 10311 shall be issued  
14 identifying the source of water as the McNary Pool.

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

18 1. The "Report of Referee Re: Subbasin No. 30" as  
19 filed with the Court on April 30, 1990 and the "Supplemental  
20 Report of Referee re: Subbasin No. 30" as filed with the  
21 Court on May 31, 1991, and as amended by the Order of  
22 Dismissal of Claim 1877, and the Amended Order of Dismissal of  
23 Claim 0418 (as described, supra.), are entered as a

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26 **CONDITIONAL FINAL ORDER:**  
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1 Conditional Final Order confirming claimed rights recommended  
2 for confirmation in said reports as existing rights.

3 2. All claims to water rights before the Referee  
4 pertaining to Subbasin 30, not so confirmed, are denied.

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

12 DATED this 12<sup>th</sup> day of March, 1992.

13  
14 Walter Stauffacher  
15 JUDGE WALTER STAUFFACHER

16 Presented by:

17 Kerry O'Hara  
18 KERRY O'HARA, WSBA #17268  
19 Assistant Attorney General  
20 State of Washington  
21 Department of Ecology

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26 **CONDITIONAL FINAL ORDER:  
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