

9-1-1998

## Hubbard v. State, 936 P.2d 27 (Wash. Ct. App. 1997)

Darrell Brown

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>

---

### Custom Citation

Darrell Brown, Court Report, Hubbard v. State, 936 P.2d 27 (Wash. Ct. App. 1997), 2 U. Denv. Water L. Rev. 164 (1998).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

**Hubbard v. State, 936 P.2d 27 (Wash. Ct. App. 1997)** (holding that "significant hydraulic continuity" between aquifer and stream, not significant effect on stream, requires conditions on groundwater permits to protect instream flows).

In 1976, the State of Washington established minimum instream flows for the Okanogan River. Between 1979 and 1988, the Hubbard brothers dug two wells 4,000 and 5,700 feet from the Okanogan River for the purpose of irrigation and frost protection of orchards. The wells drew from the Wagonroad Coulee aquifer, which supplied the Okanogan aquifer, tributary to the Okanogan River. The State Department of Ecology found water available for appropriation, and issued permits conditioned upon the maintenance of minimum instream flow levels. State statute required that Ecology impose conditions where a "significant hydraulic continuity" exists between an aquifer and surface water. Hubbard's hydrologist calculated the effect of the wells on the river during low flow as a .004% reduction of the surface flow.

The Hubbards appealed the Pollution Control Hearings Board's approval of Ecology's permit conditions based on the contention that their wells held rights senior to the instream flow appropriation and that their wells would not significantly affect the flow of the river. The court held that statutorily created minimum flow appropriations hold "priority dates as of the effective dates of their establishment." The State, thus, held the instream flow rights senior to Hubbards' rights.

The court further held that "significant" as used in the applicable state statute applied to the degree of physical connection between the aquifer and the river, not whether the pumping would exert a significant impact on the river's flow. Since the Wagonroad Coulee aquifer drained entirely into the Okanogan River or its aquifer, the court held Ecology's finding of "significant hydraulic continuity" not manifestly unreasonable.

*Darrell Brown*