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5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SNOHOMISH COUNTY

6 In the Matter of Fixing the Level) No. 81-2-04228-5
7 of Lake McAleer, also known and)
8 being the same as Lake Ballinger,) O R D E R
9 Snohomish County, Washington.)
)
)
)

10 There having come on regularly for hearing the Petition of
11 The State of Washington, Departments of Ecology, Fisheries and
12 Game, King County, Washington, and the Cities of Edmonds and
13 Mountlake Terrace, Washington, together with certain abutting
14 property owners who constitute ten or more owners of real property
15 abutting on Lake McAleer (also known and being the same as Lake
16 Ballinger), Snohomish County, Washington, and the Court having
17 heard testimony in support of the aforesaid Petition and testimony
18 of other interested parties who offered evidence in support of
19 their position with respect to the said Petition, and the Court
20 being in all things fully advised, now, therefore, the Court finds
21 the following facts:

22 1. The Court has jurisdiction to hear this Petition under
23 Chapter 90.24 of the Revised Code of Washington.

24 2. This Court heard a previous petition to fix the water
25 level of Lake Ballinger in 1942. In the Matter of Fixing the Level
26 of Lake McAleer, also known and being the same as Lake Ballinger,
27 Snohomish County Superior Court No. 39542. Under the Final Order
28 signed December 17, 1942, by the Hon. Charles R. Denny, Judge, the
29 water level (maximum) of Lake Ballinger was fixed at an elevation
30 of 278.5 feet United States Geological Survey datum. The Court
31 ordered that the decreed lake level be maintained by means of a dam
32 and adjustable weir built at the lake's outlet with a deck elevation

1 of 276.5 feet United States Geological Survey datum.

2 3. The Supervisor of Hydraulics of the State of Washington
3 was directed by the Court in the 1942 Final Order to regulate the
4 outflows from Lake Ballinger to control the maximum lake level as
5 fixed by the Court and to maintain the outlet stream (McAleer Creek)
6 for a distance of 2,550 feet downstream from the dam. The cost of
7 said maintenance and lake level regulation was ordered to be paid
8 by persons owning property abutting Lake Ballinger. The duties of
9 the Supervisor of Hydraulics are now the duties of the Department of
10 Ecology.

11 4. The volume of water draining into Lake Ballinger and the
12 rate at which water drains from the land in the basin into the
13 lake, have increased since 1942 due to urban development in the
14 area. These characteristics, and gradual obstruction of the outlet
15 channel, have caused the lake water level to rise above the court-
16 ordered maximum, primarily occurring during the months of November
17 through March of each year.

18 5. The occasional increase of lake water level above the
19 court ordered elevation has been shown to contribute to bank
20 erosion and water quality degradation in Lake Ballinger.

21 6. Riparian interests downstream from Lake Ballinger may be
22 damaged if the rate of discharge of the outlet stream (McAleer
23 Creek) increases above the existing range of values.

24 7. Construction of Interstate Highway 5 which intersects
25 McAleer Creek approximately 1700 feet below the lake outlet has
26 shortened the length of stream channel which requires maintenance.

27 8. The relief sought under this Petition will not interfere
28 with the navigability of Lake Ballinger nor with fish or game fish
29 residing therein. Lake Ballinger is not used for storage of water
30 for irrigation. The optimum level of Lake Ballinger for the use
31 of the abutting property owners and the public during the period
32 commencing June 15th through September 15th of each year (normally

1 non-flooding months) varies from approximately 277.8 feet to
2 277.5 feet United States Geological Survey datum.

3 9. The cost of rehabilitation and regrade proposed under
4 this Order will, if constructed, be paid with public funds; the
5 cost of future maintenance will be financed in accordance with the
6 terms of the 1942 adjudication.

7 From the foregoing Findings of Fact, the Court concludes as
8 a matter of law and Orders and Decrees as follows:

9 1. That those of the petitioners who are public entities or
10 bodies are hereby authorized to rehabilitate and modify the flow
11 control apparatus in place on the outlet of Lake Ballinger and
12 regrade of the outlet stream channel for 1300 feet downstream from
13 the flow control apparatus and 400 feet upstream from said apparatus,
14 said rehabilitation and regrade to be performed by those public
15 body governmental petitioners exclusive of King County, Washington,
16 or their delegates.

17 2. That the order of the above entitled Court heretofore
18 entered on December 17, 1942 is hereby modified so as to allow the
19 level of the aforesaid lake to exceed the previously authorized
20 maximum level of 278.5 feet during approximately one year out of
21 every five years on the average, or until further order of this
22 Court, and

23 3. That the modifications of the flow control apparatus
24 herein authorized shall provide that the peak flow capacity of the
25 outlet stream should not be increased above the existing maximum
26 estimated to be 60 cubic feet per second, until further order of
27 this Court, and

28 4. That the aforesaid order of the above entitled Court is
29 further modified so as to provide that the Department of Ecology of
30 the State of Washington shall appoint a suitable person or agency
31 to perform normal, continuing maintenance on the outlet stream
32 channel from the lake for a distance of 1700 feet downstream, and

1 5. That the modification of the flow control apparatus herein
2 authorized be so designated and operated so as to maintain the
3 lake level within a range of 277.5 feet to 277.8 feet, United
4 States Geological Survey datum from June 15th through September 15th
5 of each year and that during other months of each year, the public
6 bodies charged with the responsibility of maintaining said lake
7 level will maintain it at a maximum of 277.8 feet and a minimum of
8 276.8 feet, subject only to the right to exceed the previously
9 authorized maximum on the average of one year out of five, as
10 previously described hereinabove. That, notwithstanding the fore-
11 going, said public bodies shall maintain the lake level within a
12 range of 277.0 feet minimum to 277.8 feet maximum from April 1st to
13 June 15th and from September 15th to October 31st of each year.


14 6. The cost of rehabilitation and regrade as authorized
15 herein will, when constructed, be paid for by application of a
16 combination of Federal, State and local funds, presently anticipated
17 to be available, ^{There shall be no} ~~without~~ assessment against adjacent property
18 owners. In the event construction of the aforesaid improvements
19 does not occur as above described prior to December 31, 1983, this
20 Order will terminate, and all parties will have those rights and
21 obligations provided in the Court Order of December 17, 1942.

22 7. That, pursuant to statute, the Court will retain jurisdic-
23 tion in order to make such other, further and additional orders
24 and decrees as may be necessary from time to time.

25 DONE IN OPEN COURT on March 10, 1982.

26
27 
28 J U D G E

29 Presented by:

30 
31 William F. Hennessey
32 City Attorney, City of
Mountlake Terrace, Washington