

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF YAKIMA

JAN 25 1996

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, )

No. 77-2-01484-5

THE STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )

REPORT OF REFEREE

Re: Subbasin No. 3  
(Teanaway River)

Plaintiff, )

v. )

James J. Acquavella, et al., )

Defendants. )

To the Honorable Judge of the above-entitled Court, the following report is

respectfully submitted:

I. BACKGROUND

This report concerns the determination of the surface water rights of the Yakima River basin, specifically those rights located within Subbasin No. 3, the Teanaway River drainage basin. The criteria consisting of applicable law and bases for water right determinations used by the Referee in the evaluation of claims can be found in the Report of the Referee to the Court, Preface to Subbasin and Major Category Reports, Volume 2, dated May 18, 1988.

The Referee conducted evidentiary hearings on August 5 - 9, August 12 and August 23, 1991.

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1                   II. FIELD INVESTIGATIONS

2       Field surveys were conducted by Department of Ecology (DOE) staff during  
3       1990, to obtain information regarding existing water use patterns in Subbasin No.  
4       3. Aerial photographs, topographic maps, county assessor's plats, and on-site  
5       field investigations were used to prepare map exhibits showing the location of  
6       ditches, pipelines, pumps, wells and other pertinent features of the water systems.

7

8                   III. WATER DUTY

9       The Plaintiff State of Washington submitted an exhibit entitled "Supplemental  
10      Documentary Information, Teanaway River Subbasin No. 3", which included information  
11      on soils, climate, irrigation and farming practices, and plant needs, meant to aid  
12      the Referee in determining irrigation water requirements within the subbasin. In  
13      addition, two expert witnesses for the U.S. Bureau of Reclamation testified to  
14      provide general information regarding crop irrigation requirements for water  
15      delivered to farms in the upper Yakima basin during a hearing held on Decmeber 12,  
16      1990. In the absence of definitive testimony or other evidence, the Referee  
17      proposes to rely upon such expert testimony, and will calculate the maximum duty of  
18      water for the various uses in Subbasin No. 3 according to the following formulae:

19       A.     Domestic Supply (in-house)

20               and Stock Water ..... 0.01 cfs; 1 acre-foot per  
21               year per residence

22               Domestic supply (with small  
23               lawn and garden) ..... 0.01 cfs; 1 acre-foot per  
24               year

25               Domestic supply and large  
26               lawn and garden up to  
27               ½ acre ..... 0.02 cfs; 2 acre-feet per  
28               year

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1       B. Irrigation Water -- The Report of Referee for the 1921 Teanaway River  
2 Adjudication, which was adopted by the Court in Decree No. 6221, established a  
3 water duty of 0.02 cubic foot per second for each acre irrigated, irrespective of  
4 the type of crop. The use of this quantity of water during the irrigation season  
5 adopted by the Court would result in 5.4 acre-feet per year per acre being applied.

6       The Referee in this proceeding is limited to making recommendations within  
7 the limits established in 1921. Therefore, for each irrigated acre, the Referee  
8 has applied the maximum instantaneous rate of diversion of 0.02 cubic foot per  
9 second (9 gallons per minute) and 5.4 acre-feet per year, unless the evidence shows  
10 that a smaller quantity of water has historically been used. It is the Referee's  
11 opinion that the aforementioned duties of water are reasonable maximum application  
12 rates for the soil and topographic conditions in Subbasin No. 3.

13      It should be noted that the use of water under all irrigation rights is  
14 limited to the amount of water that can be beneficially applied to the number of  
15 acres identified in the water right. The number of irrigated acres cannot be  
16 increased in the future without obtaining an additional water right.

17

18                          IV. STIPULATIONS

19      Three stipulations were adopted during the hearing, as among all claimants  
20 and their counsel. The first stipulation, concerning the use of exhibits and  
21 testimony, reads as follows:

22      "It is hereby stipulated by all claimants in the above-entitled cause that  
23 all exhibits entered and all testimony taken at the hearing on claims held  
beginning August 5, 1991, may be utilized by any party in the proof of a  
claim or the contesting of a claim whenever relevant and material."

24

25      The second stipulates to the description of properties identified in the  
claims of the defendants to this action, as follows:

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1 "It is hereby stipulated that the description of lands set forth in the  
2 claims of the respective claimants is the correct description of the lands  
3 for which the water right is claimed and that such claim will constitute  
proof of the ownership thereof in the absence of a contest as to such title."

4 In the third, the parties stipulated to the following in relation to  
5 "non-diversionary" stock and wildlife watering use with regards to Subbasin No. 3:

6 1. Waters in natural watercourses in the subbasin shall be retained when  
7 naturally available, in an amount not to exceed 0.25 cubic feet per second  
(cfs), for stock water uses in such watercourses as they flow across or are  
8 adjacent to lands, which are now used as pasture or range for livestock.  
Retention of such water shall be deemed senior (or first) in priority,  
9 regardless of other rights confirmed in this cause. Regulations of these  
watercourses by the plaintiff shall be consistent with such retention  
requirements.

10 2. Waters in natural watercourses in the subbasin shall be retained when  
11 naturally available, in an amount not to exceed 0.25 cubic feet per second  
(cfs), for wildlife watering uses in such watercourses as they flow across or  
12 are adjacent to lands, which are now used as pasture or range for wildlife.  
Retention of such water shall be deemed senior (or first) in priority,  
13 regardless of other rights confirmed in this cause. Regulations of these  
watercourses by the plaintiff shall be consistent with such retention  
requirements.

14 3. Waters in naturally occurring ponds and springs (with no surface  
connection to a stream) in the subbasin shall be retained for stock water  
uses, when such ponds and springs are located on or adjacent to lands which  
are now used as pasture or range for livestock. Said uses embody  
entitlements to a level in the water bodies sufficient to provide water for  
17 animals drinking directly therefrom while ranging on riparian lands, and with  
the same priority as provided in paragraph 1. Regulation of the ponds and  
springs by the plaintiff shall be consistent with such retention  
requirements.

20 4. Waters in naturally occurring ponds and springs (with no surface  
connection to a stream) in the subbasin shall be retained for wildlife  
watering uses, when such ponds and springs are located on or adjacent to  
lands which are now used as pasture or range for wildlife. Said uses embody  
entitlements to a level in the water bodies sufficient to provide water for  
wildlife drinking directly therefrom while ranging on riparian lands, and  
with the same priority as provided in paragraph 2. Regulation of the ponds  
and springs by the plaintiff shall be consistent with such retention  
requirements.

25 5. Nothing in this stipulation mandates that any lands, associated with  
water rights or water retention as provided herein, shall be reserved for  
wildlife purposes."

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1                   V. LAND DESCRIPTIONS

2       In the interest of minimizing future controversy and confusion relating to  
3 confirmed rights, the Referee has chosen to reduce legal descriptions of properties  
4 to the smallest reasonable legal subdivision in which are contained the actual  
5 places of use.

6                   VI. WATER RIGHT PRIORITIES

7       When the testimony and evidence leading to a confirmed right are no more  
8 specific with respect to the priority date than the year, the Referee has elected  
9 to use the 30th of June to represent the midpoint of that particular year. In  
10 those instances when the priority to be confirmed only specifies the month, the  
11 last day of that month has been used.

12                   VII. SPECIAL ISSUES

13       The rights to the use of waters of the Teanaway River and its tributaries  
14 have previously been determined in the case of State of Washington v. Frank Amosso  
15 and Minnie Amosso, his wife; et al. (hereinafter Amosso), with a decree entered in  
16 Kittitas County Superior Court on June 16, 1921. The Report of Referee, which was  
17 adopted by the Court, established a water duty and irrigation season for the  
18 Teanaway Valley. The irrigation season was May 1 to September 15 and the water  
19 duty was 0.02 cubic foot per second and 14.4 acre-inches per 30 day period, or 5.4  
20 acre-feet per acre during the irrigation season. The certificates that issued as a  
21 result of the Amosso decree authorized the diversion of 0.02 cubic foot per second

1 for each acre irrigated and limited the diversions to a period from May 1 to  
2 September 15.

3 Since the Court adopted the entire Report of Referee in it's decree, the  
4 water duty and irrigation season established by the Referee was also adopted by the  
5 Court, Wilson v. Angelo, 176 Wash. 157, 28 P.(2d) 276 (1934), and shall be binding  
6 on the holders of those rights. The Referee considers the authorizations contained  
7 in the decree and the resultant certificates to be the limits of the water right.

8 The decree and certificates did provide that when surplus water was available  
9 above the needs of all existing water rights, each right holder could divert up to  
10 100 percent more water than was authorized. There was no testimony to allow the  
11 Referee to determine specifically when the surplus water might be available in the  
12 Teanaway River and its tributaries; however, based on testimony in other subbasins,  
13 the Referee believes that surplus water generally is available during the early  
14 season snow melt. Therefore, the Referee will consider that surplus water might be  
15 available for use during a 30 day period early in the irrigation season, which  
16 would be during the months of May and June. When a claimant testifies to diverting  
17 a higher instantaneous quantity than was authorized in the certificate, the Referee  
18 shall recommend that the right be confirmed for the authorized quantity, with a  
19 provision that surplus water, up to an 100 percent increase over the instantaneous  
20 quantity in the certificates, may be used for a 30 day period and the annual  
21 quantity recommended shall include that additional quantity. If a claimant uses  
22 the surplus water allowed, 6.5 acre-feet per acre may be applied during the  
23 irrigation season. If a claimant did not testify to using surplus water, the right  
24 recommended will be limited to the water duty contained in the Amosso Report of  
25 Referee and certificates.

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1       The irrigation certificates that issued as a result of the Amosso decree  
2 also authorized the use of water for domestic supply and stock watering. The  
3 evidence presented at the evidentiary hearing was that springs often were developed  
4 for those purposes rather than using the river. None of the certificates  
5 specifically identified springs as the source of water being used for domestic  
6 supply and stock water; however, the evidence shows that was the case. Since the  
7 certificates authorize the use of water for domestic supply and stock water and the  
8 evidence shows those uses were occurring at the time of the 1921 adjudication, the  
9 Referee will recommend confirmation of water right for those claimants who present  
10 sufficient evidence to support the existence of a water right prior to enactment of  
11 the Surface Water Code in 1917, if RCW 90.14 has been complied with through the  
12 filing of a water right claim.

13       It has become apparent during the presentation of testimony in this subbasin  
14 that the points of diversion for several of the water rights have been changed  
15 without compliance with the procedures in RCW 90.03.380 that require filing an  
16 application and having the Department of Ecology (or one of its predecessor  
17 agencies) determine that the proposed change will not be detrimental to existing  
18 rights. The Court has previously ruled in connection with the Wenatchee Creek  
19 Subbasin, No. 15, that compliance with the statute is required. Where the evidence  
20 is clear that a point of diversion has been changed, but all other elements of the  
21 water right have been proven, the Referee will recommend confirmation of the water  
22 right with the point of diversion being the point described on the certificate.

23       In some instances the points of diversion have been moved a short distance as  
24 a result of Teanaway River flooding that damaged the diversion and made it not  
25 feasible to reconstruct at the same location. Because the original point of

1 diversion was very close to a section line, or a quarter section line, relocating  
2 the diversion has resulted in the diversion being in a different section or quarter  
3 section than originally authorized. For instance, in the case of the Three M  
4 Ditch, according to the map prepared for the 1921 adjudication, the original  
5 diversion was at the section corner common to Sections 10, 11, 14 and 15, T. 20 N.,  
6 R. 16 E.W.M.. The resulting certificates have described the diversion in both the  
7 NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15 and/or the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14. The diversion now is in the  
8 SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10. The certificates that issued for water rights associated  
9 with the Seaton Ditch describe points of diversion in both the NE $\frac{1}{4}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
10 Section 26, T. 20 N., R. 16 E.W.M.. The diversion is actually located in the  
11 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26. The Referee does not believe that point of diversion  
12 relocations to accommodate changes in the river channel as a result of flooding or  
13 simply to correct errors in the certificate should require compliance with RCW  
14 90.03.380.

15 RCW 90.03.380 allows for changes the point of diversion for water rights that  
16 have been put to beneficial use, provided such change can be made without detriment  
17 to existing water rights. It established a procedure requiring that an application  
18 for change be filed with the Department of Ecology and a determination made that  
19 the change will not impair existing rights. At least one of the Teanaway River  
20 adjudicated certificates, No. 129, was amended by a predecessor to Ecology to show  
21 the point of diversion was at a different location as a result of damage caused by  
22 flooding. As far as the Referee can determine, there was no compliance with RCW  
23 90.03.380. In similar instances before the Referee, the move was a short distance  
24 and there were no intervening diversions. Therefore, potential detriment to other  
25 water rights is not an issue.

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1       The Referee believes since Ecology's predecessor amended certificates to  
2 accommodate this relocation, compliance with RCW 90.03.380 is not necessary and the  
3 rights herein recommended for confirmation will be at the currently used points of  
4 diversion. This only applies when it is clear to the Referee that the same ditch  
5 and delivery system is being used and there has been only a minor, ministerial  
6 change in diversion location.

7       Several claimants in this proceeding are asserting water rights based on the  
8 Amosso decree, for which there are no certificates in the record. The decree  
9 identifies a water right that the claimant is relying on for the basis of their  
10 claim, however, the Department of Ecology exhibit containing the adjudicated  
11 certificates does not include a certificate for the right. The exhibit contains a  
12 list of certificates for which fees had not been paid, resulting in certificates  
13 not issuing. In some cases that claimants have pointed the Referee to this list  
14 contending one of the certificates listed would be for their property.

15       Curiously, Ecology did not address this issue, however, it was addressed by  
16 several claimants, through their attorneys. The claimants contend that in spite of  
17 the lack of a certificate, the rights confirmed in the Amosso decree do exist and  
18 should be reconfirmed in this proceeding. An assertion has been made that RCW  
19 90.03 requires that Ecology issue certificates to all persons entitled to divert  
20 water upon a final determination of the water rights. That assertion is correct as  
21 RCW 90.03 is currently written. However, at the time of the Teanaway River  
22 Adjudication, the statute that is now codified as RCW 90.03, required that prior to  
23 issuance of a certificate, each person entitled to divert water pay his  
24 proportionate share of the costs of the adjudication. This gave Ecology's

1 predecessor no choice but to withhold issuance of the certificate until the fee was  
2 paid.

3 Another claimant has put forth the proposition that if a certificate has not  
4 issued, then a water right claim should have been filed pursuant to the  
5 requirements of RCW 90.14. RCW 90.14.041 does provide that all persons claiming  
6 the right to withdraw or divert and make beneficial use of public surface or ground  
7 water, except as hereinafter provided in that section, shall file with the  
8 Department of Ecology not later than June 30, 1974, a statement of claim for each  
9 water right asserted. This section shall not apply to any water rights based on  
10 the authority of a permit or certificate issued by the department of ecology or one  
11 of its predecessor agencies (emphasis added). It is considered that the holders of  
12 adjudicated rights normally need not comply with RCW 90.14. However, certificates  
13 generally have issued to persons holding adjudicated water rights, therefore, the  
14 exception contained in Section 90.14.041 would have negated the need to file a  
15 water right claim. Lacking an adjudicated certificate, an assertion has been made  
16 that compliance with RCW 90.14 would be necessary. There has been no response to  
17 this assertion from Ecology or other claimants. The language in RCW 90.14 is very  
18 clear that lacking a permit or certificate issued by Ecology or its predecessors, a  
19 water right claim must be filed in order to preserve the water right. This Court  
20 has consistently upheld that requirement.

21 If the right has been preserved through filing of a RCW 90.14 water right  
22 claim and the lack of certificate can be resolved through the payment of a small  
23 fee, payment of the fee by the current landowners would bring a quick resolution to  
24 this problem. The Referee is not prepared at this time to recommend confirmation of  
25 water rights to those claimants who own land that was confirmed a right in the  
26

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1      Amosso decree, but certificates have not issued. The claimants and Ecology are  
2      directed to address this issue during the exception phase for this report.  
3  
4

5      VII. TESTIMONY AND REFEREE'S ANALYSES

6      Plaintiff Testimony

7      Kerry O'Hara, Assistant Attorney General, represented the Plaintiff State of  
8      Washington, Department of Ecology.

9      The State introduced into evidence the following generic exhibits:

10     Number      Description

11	SE-1	Map of Subbasin No. 3 With Inset B
12	SE-2	Map, West Portion of Inset A
13	SE-3	Map, East Portion of Inset A
14	SE-4	Water Right Certificates, Permits, Registration Claims, and Relinquishments
15	SE-5	Manual of Individual Water Supply Systems
	SE-6	Conveyance Loss/Gain Report
	SE-7	Supplemental Documentary Information
	SE-8	Irrigation Requirements for Washington - Estimates and Methodology

16      Additionally, oral testimony was given by Richard Carter, Field Investigator,  
17      Ecology Adjudication Section.

19      Claimant Testimony

20      Eighty-nine defendants filed statements of claim or notices of appearance.

21      All claimants and their legal counsel, if so represented, are as follows:  
22  
23  
24  
25  
26  
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1 Court

2 Claim

3	4	<u>No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
5	6	00914	Robert J. Badda & Cecilia A. Badda 4620 Teanaway Road Cle Elum, WA 98922	Richard T. Cole, Attorney PO BOX 499 Ellensburg, WA 98926	51, 164 181
7	8	01683	Charles C. Ballard HC61 Box 1230 Cle Elum, WA 98922	Michael R. Bauer, Attorney 9291 Wilson Creek Road Ellensburg, WA 98926	21, 165
9	10	01281	Donald L. Bark		25, 27,
11	12	01282	HC 61 Box 995 Cle Elum, WA 98922		165
13	14	00790	David Bennett & Diana Bennett 13620 Teanaway RD NE Cle Elum, WA 98922		112, 165
15	16	01143	George L. Blackburn	Michael R. Bauer,	28, 159,
17	18	01466	& Glory E. Blackburn Flying Horseshoe Ranch HC61 Box 340 Cle Elum, WA 98922	Attorney 9291 Wilson Creek Road Ellensburg, WA 98926	164, 165 188
19	20	01477	George L. Blackburn, Jr. & Penny L. Blackburn		106, 130 165, 189
(A)04465	Flying Horseshoe Ranch				
(A)04493	HC61 Box 340 Cle Elum, WA 98922				
21	22	02206	Boise Cascade Corporation	Dennis J. Dunphy,	31, 164,
(A)03119	Legal Department		Attorney		170, 172,
(A)05238	PO Box 50 Boise, ID 83707		1420 5th Avenue #3400 Seattle, WA 98101-2339		182, 192,
24	25	00553	Bruno Bonetto & Elma Bonetto 301 East 3rd Street Cle Elum, WA 98922		43, 164, 166, 170

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1	01566	Ted Bugni	47, 164
	01847	& Agnes Bugni	165, 173
2		HC61 Box 3050	
		Cle Elum, WA 98922	
3	01706	Robert W. Burke	49, 165
4		& Amy J. Seeman Burke	
5		407 N Red Bud Lane	
		Muncie, IN 47304	
6	00104	Burlington Northern Railroad Co.	Elizabeth Hill, Attorney 49, 165
7		3800 Continental Plaza 777 Main St	
		Fort Worth, TX 76102	
8	01283	Daniel V. Byrne	Michael R. Bauer, 49, 165
9		& Martha Wyckoff Byrne	
		1100 E Newton Street	
10		Seattle, WA 98102	
11	01850	C & H Trucking & Construction	55, 165
(A)06063	PO Box 250		
	Cle Elum, WA 98922		
13	00914	Albeno G. Carollo	Richard T. Cole, Attorney 51, 164
	& Violet Carollo	PO BOX 499 183, 200	
14		4850 Teanaway Road	
	Cle Elum, WA 98922		
15	01332	Josephine Chelinsky	Michael R. Bauer, 102, 193
	3706 Wood Lawn Avenue	Attorney 199	
16		Los Angeles, CA 90011	
17	01850	Robert L. Clements	9291 Wilson Creek Road 55, 180
(A)06063	PO Box 490		
	Cle Elum, WA 98922		
20	00746	John E. Conner	Jeff Slothower, Attorney 57, 164
(A)06336	HC61 Box 710	Lathrop Firm 179, 196	
	Cle Elum, WA 98922		
22	01868	John O. Crandall	PO Box 1088 61, 165
	& Janet L. Crandall		
23		1521 Highway 25 S	
24		Kettle Falls, WA 99141-9630	

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1	01863	Norman J. Cromarty & Shirley B. Cromarty PO Box 82362 Kenmore, WA 98026-0362	62, 164, 197
2			
3	00383	Charles F. Crosetto	67, 164,
4	(A)05635	& D. J. Crosetto HC61 Box 635 Cle Elum, WA 98922	Attorney PO Box 499 Ellensburg, WA 98926 180, 183
5			
6	00383	John B. Crosetto, Jr.	67, 164,
7	(A)05635	& Dorothy Crosetto 14809 SE 54th Bellevue, WA 98006	Attorney PO Box 499 Ellensburg, WA 98926 180, 183
8			
9	05593	Betty Darrow & Walter J. Darrow HC61 Box 760 Cle Elum, WA 98922	71, 165
10			
11	01556	James Davis HC61 Box 974 Cle Elum, WA 98922	Richard T. Cole, Attorney 72, 165
12			
13	00953	Dean Decker 11520 - 42nd S Seattle, WA 98168	Darrel Ellis, Attorney 74, 164
14			165
15			
16	00777	Milton and	Jeff Slothower, Attorney 77, 164
17	(A)05114	Geraldine Downs 3380 Teanaway RD Cle Elum, WA 98922	Lathrop Firm 173 PO BOX 1088 Ellensburg, WA 98926
18			
19	00518	Robert Duke Rt 3 Box 95FD Santa Fe, NM 87505	86, 164 165
20			
21	01042	Ralph V. Dulin & Marlene C. Dulin PO Box 22157 Juneau, AK 99802-2157	87, 165
22			
23	00790	Timothy Dyko 11910 28th PL NE Lake Stevens, WA 98258-9158	112, 165
24			
25			
26			
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1	01328	Geraldine C. Elich 861 Pebble Beach Drive Cle Elum, WA 98922	91, 171
2	01947	Wesley I. Ellison 30316 37th S Auburn, WA 98001	94, 164
3	00777	William A. Evenden	Jeff Slothower, Attorney 77, 164
4	(A)05114	& Karen Evenden 2460 Westlake N #F Seattle, WA 98109	Lathrop Firm 174, 184 PO Box 1088 Ellensburg, WA 98926
5	00960	Gerald Dale Faris & Mamie Faris HC61 Box 3005 Cle Elum, WA 98922	Michael R. Bauer, 96, 165 Attorney 9291 Wilson Creek Road Ellensburg, WA 98926
6	00310	Elmore M. Ferris & Margaret Ferris 7507 Forest Drive NE Seattle, WA 98115	Thomas R. Dreiling, 97, 165 Attorney Grand Central on the Park, Ste. 200 216 First Avenue South Seattle, WA 98104
7	02145	Joreen A. Florenzen 13005 NE 109th Place Kirkland, WA 98033	49, 165
8	00344	Francis B. Forderhase & Barbara J. Forderhase 10702 14th Avenue NE Seattle, WA 98125	21, 202
9	01142	James Fruhling & Sheryl Fruhling HC61 Box 620 Cle Elum, WA 98922	95, 164 200
10	01170	Larry T. Fudacz	Richard T. Cole, Attorney 99, 164
11	01331	211 Garden Street Cle Elum, WA 98922	PO Box 499 198 Ellensburg, WA 98926
12	02206	Ted Fudacz	Richard T. Cole, Attorney 31, 164
13	(A)03119	& Lena Fudacz	PO Box 499 195 Ellensburg, WA 98926
14	(A)05238	211 Garden Street Cle Elum, WA 98922	

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1	01332	Florence C. Furford 9015 Dibble Ave NW Seattle, WA 98117	102, 165
2			
3	01477	Frank Geiger & Ada Geiger HC61 Box 335 Cle Elum, WA 98922	106, 165
4			
5	01980	Bernard W. Grywacz 235 SW 139th Seattle, WA 98166	Richard T. Cole, 107, 164 Attorney 199 PO Box 499 Ellensburg, WA 98926
6			
7	02138	David A. Hofeditz & Judith Hofeditz 4922 214th St SE Woodinville, WA 98072-8389	49, 164 165
8			
9	02138	David Z. Hofeditz & Cecilia P. Hofeditz 13005 NE 109th Place Kirkland, WA 98033	49, 164 165
10			
11	01281	William Hunt	Richard T. Cole, Attorney 25, 148
12	01550	13626 - 231st Place SE Issaquah, WA 98027	PO Box 499 164, 165 Ellensburg, WA 98926
13			
14	01850	Barbara Istvan Trust and	55, 185
15	(A)06063	Edwin J. Istvan Trustee of Barbara Istvan Trust 1216 Swan Harbour Circle Fort Washington, MD 20744	
16			
17	00591	Randolph C. Jasper 966 Sterk Lane Bellingham, WA 98226	21, 164 203
18			
19	00790	Nancy Joerns 23313 100th SE Kent, WA 98031	Richard T. Cole, Attorney 112, 165 PO Box 499 Ellensburg, WA 98926
20			
21	01033	Estate of Victor Josendal c/o Virgil Josendal 10733 Portobelo Drive San Diego, CA 92124	49, 165
22			
23			
24			
25			
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1	00790	Wayne Larrabee, Jr. 2120 40TH AVE E Seattle, WA 98112-2404	112, 165
2			
3	00790	Leavitt Brothers Corporation 929 - 135th AVE SE Snohomish, WA 98290	112, 165
4			
5	01674	Estella Leopold 5608 17th Avenue NE Seattle, WA 98105	49, 165
6			
7	00557	Robin Knox Little	115, 164
8	(A)02338	& Carol Michon Little	165, 175
9	00558	18937 8th Avenue SW	194
10	(A)02338	Seattle, WA 98166	
11	00559		
12	(A)02339		
13	00560		
14	(A)02339		
15	01467	Harry James Masterson & Mary Lou Masterson 381 Masterson RD Cle Elum, WA 98922	Michael R. Bauer, Attorney 9291 Wilson Creek Rd. Ellensburg, WA 98926
16			120, 164
17	(A)03296		168
18	00790	Gary Maxfield & Marlain Maxfield 10310 123rd Avenue NE Lake Stevens, WA 98258	Richard T. Cole, Attorney
19			112, 165
20			PO Box 499
21			Ellensburg, WA 98926
22	02255	Michael McCoy	130, 165
23	(A)04465	& Teresa McCoy	
24	(A)04493	PO Box 715 Roslyn, WA 98941	
25	02226	Beverly Miller 541 Seaton Road Cle Elum, WA 98922	124, 164
26			172, 190
27	01845	Ronald B. Miller & Judy E. Miller 425 221st Avenue NE Redmond, WA 98053	127, 165
28			
29	01850	Gary Monroe	55, 186
30	(A)06063	& Vicki Monroe PO Box 349 Roslyn, WA 98941-0349	
31			
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1	01286	Ronald J. Montgomery & Becky Montgomery HC61 Box 250 Cle Elum, WA 98922	127, 176
2			
3			
4	02255	Robert E. Mundy	130, 165
	(A)04465	5011 S Thorp Hwy	
5	(A)04493	Ellensburg, WA 98926-9705	
6			
7	01947	Jul M. Nickerson & Barbara J. Nickerson 13341 Teanaway River RD NE Cle Elum, WA 98922	94, 165
8			
9	00741	Carl A. Niese & Rosemary Niese 8533 4th Avenue NE Seattle, WA 98115-2915	John P. Gilreath, Attorney PO Box 499 Ellensburg, WA 98926
10			138, 165
11	00344	James E. Nunn & Susan T. Nunn 10003 NE 28th Place Bellevue, WA 98004	21, 202
12			
13	00466	Don Osmonovich & Jo Anne Osmonovich PO Box 76 Roslyn, WA 98941	21, 164 202
14			
15	01284	Donald L. Osmonovich & Janice C. Osmonovich HC61 Box 3040 Cle Elum, WA 98922	143, 191
16			
17			
18	01286	Ivan J. Osmonovich	Michael R. Bauer,
19	01692	& Davene A. Osmonovich 501 E 1st Street Cle Elum, WA 98922	127, 144 167, 176 9291 Wilson Creek Rd. Ellensburg, WA 98926
20			
21	01450	Harold Pedersen & Louis Pedersen 4700 SW Wildwood Place Seattle, WA 98136	Richard T. Cole, Attorney 146, 165 PO Box 499 Ellensburg, WA 98926
22			
23	01286	Tommy Pratt & Genine Pratt HC61 Box 230 Cle Elum, WA 98922	127, 177
24			
25			
26			
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1	00344	Ronald L. Pyeatt & Patricia A. Pyeatt 44624 SE 159th ST North Bend, WA 98045	21, 202
2	00790	Tracey Rooney 2540 98th Avenue NE Seattle, WA 98115	Richard T. Cole, Attorney 112, 165 PO Box 499 Ellensburg, WA 98926
3	01550	Richard Rowe & Karen Rowe HCR 60 Box 7202 Cle Elum, WA 98922-9715	148, 165
4	01942	Jess Schober & Barbara Schober HC61 Box 3020 Cle Elum, WA 98922	Richard T. Cole, Attorney 150, 164 PO Box 499 165 Ellensburg, WA 98926
5	01942	Keith and Geraldine Schober 507 East Third Street Cle Elum, WA 98922	Richard T. Cole, Attorney 150, 164 PO Box 499 178, 194 Ellensburg, WA 98926
6	01867	Jane Shaw HC61 Box 780 Cle Elum, WA 98922	61, 164 201
7	01332	James R. Sleeth & Susan M. Sleeth PO Box 31404 Seattle, WA 98103-1404	Michael R. Bauer, Attorney 9291 Wilson Creek Rd. Ellensburg, WA 98926
8	01942	William F. Sparks & Sandra N. Sparks 801 NW 165th Seattle, WA 98177	150, 164 178, 194
9	01201	Daryle Thomas Starkovich PO Box 125 Ronald, WA 98940	158, 191
10	00295	Rollen F. Stewart (no address available)	49, 165
11	01042	Teanaway Ranch, Inc. 620 Kirkland Way Ste 102 Kirkland, WA 98033-6021	F. Steven Lathrop, Attorney PO Box 1088 Ellensburg, WA 98926
12			87, 164 186
13			
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1	00777	Teanaway Valley Farms, Inc.	Jeff Slothower, Attorney	77, 164
	(A)05114	10040 E Happy Valley RD Unit 519	Lathrop Firm	178, 187
2		Scottsdale, AZ 85255-2394	PO Box 1088	
3			Ellensburg, WA 98926	
4	01143	Carla L. Thomas	Jeff Slothower, Attorney	159, 164
		Z Bar Ranch	Lathrop Firm	165
5		911 Robbins RD	PO Box 1088	
		Ellensburg, WA 98926	Ellensburg, WA 98926	
6	00914	Don Tidwell	Richard T. Cole, Attorney	51, 164
		PO Box 110	PO Box 499	165
7		Issaquah, WA 98027-0110	Ellensburg, WA 98926	
8	02255	Donald W. Walker	Michael R. Bauer,	130, 164
	(A)04465	& Gloria Walker	Attorney	169, 190
9	(A)04493	HC61 Box 380	9291 Wilson Creek Rd.	195, 196
		Cle Elum, WA 98922	Ellensburg, WA 98926	
10	02486	Orene L. Ward		160, 166
		HC61 Box 980		
11		Cle Elum, WA 98922		
12	01100	Stanley D. Williams		161, 166
	(A)03282	106 Britton Creek Ct		
13		Hendersonville, NC 28739		
14	00790	David A. Wiseman		112, 166
		PO Box 404		
15		Saipan, MP 96950		
16	00589	WA State Dept. of Natural Resources	Paul Silver, AAG	51, 166
	(A)00590	Agricultural Resources	DNR	
17		P.O. Box 47061	PO Box 40100	
18		Olympia, WA 98504-7061	Olympia, WA 98504-0100	

The following claimants are the ones whose claims, either in whole or in part, were recommended for confirmation (See pages 10, 11, and 12 in the Plaintiff's Report to the Referee), and to which no exceptions were taken.

<u>Name</u>	<u>Court Claim No.</u>
-------------	------------------------

Francis B. Forderhase and Barbara J. Forderhase (James E. and Susan T. Nunn, Ronald L. & Patricia A. Pyeatt)	00344
Randolph C. Jasper	00591
Don Osmonovich and Jo Anne Osmonovich	00466

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1        Specific elements of the proposed rights for the claimants are identified in  
2 the Findings of Fact commencing on page 164.

3        The remaining claims (consisting of those claims for which no recommendation  
4 for confirmation was made) were scheduled to be heard during the evidentiary trial  
5 which commenced on August 5, 1991. Based upon the testimony and evidence provided  
6 to the Referee, the analysis of all remaining claims is as follows:

7

8        COURT CLAIM NO. 01683     -- Charles C. Ballard

9        Charles C. Ballard submitted a Statement of Claim to the Court for use of  
10 waters from the Teanaway River for irrigation and stock water. He is represented  
11 by Attorney Michael Bauer. Mr. Ballard testified at the evidentiary hearing.

12        Mr. Ballard owns approximately 1200 acres in Sections 18, 19 and 30, T. 20 N.,  
13 R. 17 E.W.M. and Section 25, T. 20 N., R. 16 E.W.M. According to Mr. Ballard's  
14 testimony, a portion of the land in Section 30, T. 20 N., R. 17 E.W.M. has  
15 historically been irrigated with water diverted from the Teanaway River. Water  
16 originally was diverted in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 into the Ballard Ditch, which  
17 extended down stream approximately six miles to the Ballard property. That ditch  
18 now terminates in Section 10, approximately four miles above the Ballard property.

19        Mr. Ballard testified that 1942 was the last time water was diverted from the  
20 Teanaway River to irrigate his land. At that time the land was owned by his  
21 father, who then joined the armed services. When he returned after the war, the  
22 ditch was in such disrepair he decided to dryland farm. That practice continues.

23        There are five certificates from the 1921 adjudication of the Teanaway River  
24 that are appurtenant to lands owned by Mr. Ballard. Two of the certificates, No.  
25 143 and 144 are appurtenant to lands Mr. Ballard indicated had not been  
26

27        REPORT OF REFEREE  
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1 historically irrigated. Certificate No. 143 is appurtenant to the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
2 Section 19, T. 20 N., R. 17 E.W.M. and Certificate No. 144 is appurtenant to the  
3 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25, T. 20 N., R. 16 E.W.M..

4 Certificate No. 142 is a Class 17 right with a 1902 date of priority. It  
5 authorized the diversion of 2.86 cubic feet per second for the irrigation of 143  
6 acres in the W $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30. The originally authorized  
7 points of diversion were in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 13.  
8 Certificate of Change recorded in Volume 1-4, Page 145, which issued on  
9 November 30, 1976, authorized Mr. Ballard to change the point of diversion to the  
10 SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25.

11 Certificate No. 145 is a Class 20 right with a 1910 date of priority. It  
12 authorized the diversion of 1.02 cubic feet per second for the irrigation of 51  
13 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30. The originally authorized  
14 points of diversion were in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 13.  
15 Certificate of Change recorded in Volume 1-4, Page 147, which issued on  
16 November 30, 1976, authorized Mr. Ballard to change the point of diversion to the  
17 SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25.

18 Certificate No. 146 is also a Class 20 right with a 1910 date of priority. It  
19 authorized the diversion of 0.12 cubic foot per second for the irrigation of 6  
20 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30. The originally authorized points of  
21 diversion were in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 13.  
22 Certificate of Change recorded in Volume 1-4, Page 148, which issued on  
23 November 30, 1976, authorized Mr. Ballard to change the point of diversion to the  
24 SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25.

25  
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1       The three water right certificates appurtenant to Section 30 authorize the  
2 diversion of 4 cubic feet per second for the irrigation of 200 acres. According to  
3 Mr. Ballard, he never constructed the new point of diversion in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
4 Section 25.

5       RCW 90.14.160 provides that a water right holder who voluntarily, without  
6 sufficient cause, fails to beneficially use all or any part of a right to divert  
7 water for five successive years after the effective date of the act (July 1, 1967)  
8 shall relinquish such right or unused portion thereof. Since Certificates No. 142,  
9 145, and 146 have not been exercised since 1942, those rights relinquished in 1972.  
10 The Referee finds it curious that in 1976 the Department of Ecology issued  
11 certificates of change on those certificates, when they had relinquished four years  
12 earlier due to the long period of nonuse. The claimant asserted during testimony  
13 that Ecology adjudicated the water rights in 1976 when the certificates of change  
14 issued. However, the State does not have the authority to unilaterally adjudicate  
15 water rights. That authority is vested in the Court through RCW 90.03.110 through  
16 90.03.245. RCW 90.03.380 provides for the process through which points of  
17 diversion can be changed for water rights that have been put to beneficial use. A  
18 written application must be filed with the Department of Ecology and the Department  
19 of Ecology is charged with issuing a certificate of change if the change may be  
20 made without injury or detriment to existing rights. However, at the time the  
21 applications for change were filed and approved through issuance of the  
22 certificates of change, the water rights had not been put to beneficial use for  
23 over 30 years and, in fact, had already relinquished for nonuse. The record is  
24 silent concerning the investigation conducted prior to issuance of the certificates  
25 of change, so the Referee does not know whether Ecology was aware of the long  
26

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1 period of nonuse. While the claimant might assert that he relied on the  
2 certificates of change as confirmation of the existence of water rights addressed  
3 in those certificates, the claimant took no action to reinitiate use of the water  
4 based on the certificates of change that issued in 1976, and still has not done so.  
5 RCW 90.03.380 does not place an obligation on the Department of Ecology to  
6 determine the validity of the right proposed for change, only whether the proposed  
7 change would impair existing rights. In fact, a recent Washington State Supreme  
8 Court Case, Rettkowski, et al., v. Department of Ecology, 122 Wn.2d 219, 858 P.2d  
9 232 (1993) specifically stated that it was beyond the authority of Ecology to  
10 determine the validity of a water right outside of a general adjudication. In any  
11 case, due to the relinquishment of the water rights in 1972 for nonuse, the Referee  
12 cannot recommend confirmation of a right to the use of waters from the Teanaway  
13 River.

14 Mr. Ballard is asserting rights to use unnamed springs streams and ponds on  
15 his property. Most of the use is nondiversionary stock watering, where livestock  
16 drink directly from the water sources. This use is covered by the stock water  
17 stipulation discussed on Page 4 of this report and no additional water right is  
18 necessary. A right is also being asserted under the Riparian Doctrine for use of  
19 an unnamed spring located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30 for domestic supply for one  
20 home and a grange hall. Mr. Ballard did not provide any information about historic  
21 use of this spring or the quantity of water being used. In order for there to be a  
22 water right for use of the spring, the evidence would have to show that it was  
23 first used prior to 1932 on the Ballard property. Robert Ballard filed Water Right  
24 Claim No. 001029 in compliance with RCW 90.14 which protected any right that may  
25 exist for this spring being used for domestic supply.

26  
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1 Due to the lack of evidence to show that a water right was established through  
2 beneficial use prior to 1932, the Referee cannot recommend confirmation of a water  
3 right to Mr. Ballard for use of the spring in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30.

4

5 COURT CLAIM NO. 01281 -- Donald L. Bark  
6 William Hunt

7 Robert W. Bark submitted a Statement of Claim to the Court for the use of  
8 waters from the Teanaway River for irrigation and stock water. On February 20,  
9 1991, William Hunt was joined to the claim and on April 1, 1991, Donald L. Bark was  
10 joined to the Claim. William Hunt, represented by Attorney Richard T. Cole, and  
11 Hilda Bark, Robert and Donald's mother, testified at the evidentiary hearing.

12 According to the testimony, Robert Bark no longer has any interest in the land  
13 described in Court Claim No. 01281, and on October 13, 1995, in response to a  
14 motion filed by Mr. Bark, the Court signed an order dismissing Robert Bark from  
15 this case. William Hunt owns Lot 6 of the Plat of Logan's Acres and Donald Bark  
16 owns Lot 9 of the Plat of Logan's Acres. Water is diverted from the Middle Fork of  
17 the Teanaway River in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, T. 21 N., R. 15 E.W.M. and carried  
18 in an open ditch into the NW $\frac{1}{4}$  of Section 36. Approximately 4 acres within Lot 6  
19 and 3 acres within Lot 9 are irrigated. Mr. Hunt estimated that he uses between  
20 0.25 cubic foot per second and 0.50 cubic foot per second to irrigate Lot 6 and the  
21 adjoining Lot 7. Rights to the use of water on Lot 7 are being asserted by William  
22 Hunt under Court Claim No. 01550 and will be addressed separately. Mrs. Bark did  
23 not know how much water is used to irrigate Lot 9. According to the testimony both  
24 lots were being irrigated in much the same manner when Donald Bark purchased the  
25 land in the 1970's.

26

27 REPORT OF REFEREE  
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1       Mr. Hunt cites to State of Washington v. Amosso, the Teanaway River  
2 Adjudication of 1921, as the basis for his water right. A priority date of 1890 is  
3 being asserted. Review of that decree reveals that a right was confirmed to Joseph  
4 Contratto, who owned the NW $\frac{1}{4}$  of Section 36 at the time of the adjudication, for the  
5 diversion of 1.10 cubic feet per second for the irrigation of 55 acres in the NW $\frac{1}{4}$   
6 of Section 36. However, upon review of the State's Exhibit No. SE-4, copies of  
7 Water Right Certificates, Permits and Claims, the Referee was not able to locate a  
8 surface water certificate for that property. Donald Bark, under Court Claim No.  
9 01282, is asserting a right for Lot 10 of The Plat of Logan's Acres based on the  
10 same 1921 confirmation to Joseph Contratto.

11     Pursuant to the requirements of RCW 90.14 Earl R. and Grace Logan filed Water  
12 Right Claim No. 112092 asserting a right to divert 0.32 cubic foot per second, 64  
13 acre-feet per year from the Middle Fork of the Teanaway River for the irrigation of  
14 16.1 acres in the NW $\frac{1}{4}$  of Section 36. Fay Turner also submitted Water Right Claims  
15 No. 146916, 146917, and 146918 asserting rights to use three unnamed springs for  
16 the irrigation of 40 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 36. These filings may have  
17 preserved the water rights confirmed in the 1921 adjudication.

18     While it is apparent that a right was confirmed in 1921 and water is  
19 continuing to be put to beneficial use, the Referee cannot recommend confirmation  
20 of a water right until the questions surrounding the missing certificate are  
21 resolved. See Page 5 of this report. It is suggested that the parties, including  
22 the Department of Ecology, investigate this issue and be prepared to address it  
23 during the exception and remand phase of the proceeding for this subbasin.  
24 Therefore, at this time, the Referee does not recommend confirmation of a water  
25 right to Donald Bark or William Hunt.

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1  
2 COURT CLAIM NO. 01282 -- Donald L. Bark

3 A Statement of Claim was submitted by Donald L. Bark for the use of waters  
4 from the Teanaway River for irrigation. Hilda Bark, his mother, testified at the  
5 evidentiary hearing.

6 Mr. Bark owns Lot 10 of the Plat of Logan's Acres in the  $\text{N}\frac{1}{2}\text{NW}\frac{1}{4}$  of Section 36,  
7 T. 21 N., R. 15 E.W.M. Approximately 4 acres are irrigated with water diverted  
8 from the Middle Fork Teanaway River in the  $\text{SE}\frac{1}{4}\text{SE}\frac{1}{4}$  of Section 26. Water is carried  
9 in an open ditch into the  $\text{NW}\frac{1}{4}$  of Section 36. Mrs. Bark did not know how much water  
10 was used to irrigate the land or any particulars about the irrigation system.

11 A neighboring claimant, William Hunt, directed the Referee to State of  
12 Washington v. Amosso, as the basis for a water right for the  $\text{NW}\frac{1}{4}$  of Section 36.  
13 Review of that decree reveals that a right was confirmed to Joseph Contratto, who  
14 owned the  $\text{NW}\frac{1}{4}$  of Section 36 at the time of the adjudication, with an 1890 date of  
15 priority for the diversion of 1.10 cubic feet per second for the irrigation of 55  
16 acres in the  $\text{NW}\frac{1}{4}$  of Section 36. However, upon review of the State's Exhibit No.  
17 SE-4, copies of Water Right Certificates, Permits and Claims, the Referee was not  
18 able to locate a surface water certificate for that property.

19 Pursuant to the requirements of RCW 90.14 Earl R. and Grace Logan filed Water  
20 Right Claim No. 112092 asserting a right to divert 0.32 cubic foot per second, 64  
21 acre-feet per year from the Middle Fork of the Teanaway River for the irrigation of  
22 16.1 acres in the  $\text{NW}\frac{1}{4}$  of Section 36. Fay Turner also submitted Water Right Claims  
23 No. 146916, 146917, and 146918 asserting rights to use three unnamed springs for  
24 the irrigation of 40 acres in the  $\text{E}\frac{1}{2}\text{NW}\frac{1}{4}$  of Section 36. These filings may have  
25 preserved the water rights confirmed in the 1921 adjudication.

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1 As discussed on Page 5 of this report, this may be a case where the landowner  
2 in 1921 did not pay the fees associated with issuance of the certificate, resulting  
3 in the certificate not being issued. While it is apparent that a right was  
4 confirmed in 1921 and water is continuing to be put to beneficial use, the Referee  
5 cannot recommend confirmation of a water right until the questions surrounding the  
6 missing certificate are resolved. It is suggested that the parties, including the  
7 Department of Ecology, investigate this issue and be prepared to address it during  
8 the exception and remand phase of the proceeding for this subbasin. Therefore, at  
9 this time, the Referee does not recommend confirmation of a water right to Donald  
10 Bark under Court Claim No. 01281.

11

12 COURT CLAIM NO. 01466 -- George L. Blackburn  
13 & Glory E. Blackburn

14 George and Glory Blackburn filed a Statement of Claim with the Court for the  
15 use of waters from the Teanaway River and an unnamed spring for irrigation and  
16 stock watering. The Blackbourns are represented by Attorney Michael Bauer. George  
17 Blackburn and Richard C. Bain, Jr., a consultant hired by the claimants, testified  
18 at the evidentiary hearing.

19 The Blackbourns filed Court Claim No. 01466 for that portion of the SE $\frac{1}{4}$  of  
20 Section 27, T. 20 N., R. 16 E.W.M. lying south of the East Masterson Road. Claims  
21 filed for other lands now owned by the Blackbourns are discussed under Claim No.  
22 01143 on Pages 159 of this report. Within the SE $\frac{1}{4}$  of Section 27, the Blackbourns  
23 are irrigating 44 acres with water diverted from the Teanaway River. One small  
24 field near the southeast corner of the property is also irrigated with water from a  
25 spring that emerges on the section line between Sections 26 and 27. Water is  
26 diverted from the Teanaway River in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26 into the Seaton Ditch.

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1 That ditch parallels the East Masterson Road along the northerly border of the  
2 Blackburn property in the SE $\frac{1}{4}$  of Section 27. There are three takeouts on the ditch  
3 that deliver water to the Blackburn's fields in Section 27. Mr. Bain testified  
4 that those three takouts should deliver 5 cubic feet per second and water is  
5 delivered through those takeouts approximately 54 days during the irrigation  
6 season. Up to 50 head of cattle are on the property and drink from the irrigation  
7 ditches. Mr. Bain testified to a need of 2 acre-feet per year for the livestock.

8 The only certificate from the 1921 Teanaway River Adjudication that is  
9 appurtenant to the claimants' property is Certificate No. 123, which authorized the  
10 diversion of 0.07 cubic foot per second for the irrigation of 3.5 acres within a  
11 small portion of the SE $\frac{1}{4}$  of Section 27 now owned by the Blackburns. Certificate  
12 No. 123 is a Class 9 right with an 1890 date of priority. The location of the  
13 point of diversion identified in the certificate is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26.  
14 The Blackburns do not utilize a diversion at this location, but divert from the  
15 river in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26. There apparently has been a point of diversion  
16 change without compliance with RCW 90.03.380. The Referee can only recommend  
17 confirming a right at the authorized point of diversion. The claimants should  
18 contact the Department of Ecology about obtaining authorization to legally change  
19 their point of diversion.

20 Although no other certificates were identified as being appurtenant to the  
21 Blackburn property, another water right was confirmed in the Amosso decree. A  
22 second Class 9 right, also with an 1890 date of priority, was confirmed to J. B.  
23 Ross for the diversion of 1.2 cubic feet per second for the irrigation of 60 acres  
24 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  and S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 27. However, having reviewed Ecology's exhibit  
25 containing copies of the adjudicated certificates, the Referee was not able to  
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1 locate a certificate for this right. The Referee believes this is another case  
2 where the certificate has not issued due to the failure of the landowner in 1921 to  
3 pay his proportionate share of the cost of the adjudication. See Page 5 of this  
4 report concerning the Referee's position when a certificate has not issued.

5       The Blackburns are also asserting a right to use an unnamed spring for  
6 supplemental irrigation of 9 acres. Although there was testimony about current use  
7 of the spring, there was no testimony about historic use. In order for there to be  
8 a water right for use of this spring, use must have begun prior to June 6, 1917.  
9 Additionally, there was no right confirmed in the Amosso decree for use of the  
10 spring. A water right claim was filed pursuant to RCW 90.14 for use of the spring,  
11 however, the 1921 adjudication determined all the rights to the Teanaway River and  
12 its tributaries in existence at that time. The Referee has recommended  
13 confirmation of water rights for the use of *di minimus* quantities of water for  
14 domestic supply and stock watering from springs because the decree did not  
15 specifically address those uses. The decree did address situations where tributary  
16 water sources were being used for irrigation and rights were confirmed in some  
17 circumstances.

18       The only right that the Referee is able to recommend for confirmation at this  
19 time under Court Claim No. 01466 is a right with a June 30, 1890, date of priority  
20 for the diversion of 0.07 cubic foot per second, 18.9 acre-feet per year for the  
21 irrigation of 3.5 acres and 1 acre-foot per year for stock water in that portion of  
22 the SE $\frac{1}{4}$  of Section 27 described as follows: Commencing at a point where the  
23 section line between Section 27 and Section 34 intersects the north line of the  
24 right of way of the Teanaway Logging Railway through said section; thence west  
25 along said section line to a point where the section line intersects the south line

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1 of the county road; thence northeasterly along the fence on the south boundary of  
2 the county road 246 feet; thence northeasterly along the fence another 96 feet and  
3 6 inches; thence southeasterly in a straight line to the place of beginning.

4

5 COURT CLAIM NO. 02206 -- Boise Cascade Corporation  
6 (A)03119 Ted Fudacz  
6 (A)05238 & Lena Fudacz

7 A Statement of Claim was filed with the Court by Boise Cascade Corporation for  
8 use of numerous surface water sources within the Yakima River Basin. Ted and Lena  
9 Fudacz were joined to the claim on April 10, 1990, for the portion of the claim  
10 related to use of waters from the Middle Fork Teanaway River on lands in  
11 Section 36, T. 21 N., R. 15 E.W.M.. The Fudacz's are represented by attorney  
12 Richard T. Cole. Gary J. Fudacz, the claimants' son, and Andrew Chicklinsky, a  
13 prior owner of neighboring land, testified at the evidentiary hearing. Boise  
14 Cascade is also asserting rights for water sources in the Teanaway Basin and was  
15 represented by Attorney J. J. Hutson. Robert E. Ficken, a professional historian,  
16 and John P. Hess, Regional Forester for the Central Washington Region, testified at  
17 the evidentiary hearing for Boise Cascade's portion of the claim.

18 The Fudacz's own approximately 30 acres lying in a portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
19 SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 36, T. 21 N., R. 15 E.W.M. northeast of the Middle  
20 Fork of Teanaway River and southwest of the county road. They are asserting a  
21 right to divert up to 1 cubic foot per second from the Teanaway River for the  
22 irrigation of 25 acres and stock watering. The land is currently pasture with up  
23 to 85 head of cattle raised. The livestock drink directly from the river and from  
24 the irrigation ditches. The claimants are also asserting a right to divert 0.25  
25 cubic foot per second for stock watering during the winter months. A herd of 85  
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1 cattle would need 2 acre-feet per year. Additionally, they are asserting a right  
2 to use an unnamed spring for stock watering and domestic supply. Water from the  
3 spring is piped to the house and to corrals.

4 The Fudacz's are basing their claim to a right to the Middle Fork of Teanaway  
5 River on Amosso, supra. A priority date of 1890 is being asserted. Review of that  
6 decree reveals that the Court confirmed a right to Joseph Contratto, who owned the  
7 NW $\frac{1}{4}$  of Section 36 at the time of the adjudication, for the diversion of 1.10 cubic  
8 feet per second for the irrigation of 55 acres in the NW $\frac{1}{4}$  of Section 36. The map  
9 prepared for the 1921 adjudication shows that the irrigated land was below a ditch  
10 that would have been at approximately the same location as the present county road  
11 through the N $\frac{1}{2}$  of Section 36. However, upon review of the State's Exhibit No.  
12 SE-4, copies of Water Right Certificates, Permits and Claims, the Referee was not  
13 able to locate a surface water certificate for that property. It is likely the  
14 certificate has not issued as a result of the landowner in 1921 not paying the  
15 costs associated with the adjudication.

16 Pursuant to the requirements of RCW 90.14 Earl R. and Grace Logan filed  
17 Water Right Claim No. 112092 asserting a right to divert 0.32 cubic foot per  
18 second, 64 acre-feet per year from the Middle Fork of the Teanaway River for the  
19 irrigation of 16.1 acres in the NW $\frac{1}{4}$  of Section 36. Fay Turner also submitted Water  
20 Right Claims No. 146916, 146917, and 146918 asserting rights to use three unnamed  
21 springs for the irrigation of 40 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 36. These filings  
22 may have preserved the water rights confirmed in the 1921 adjudication.

23 While it is apparent that a right was confirmed in 1921 and water is  
24 continuing to be put to beneficial use within the NW $\frac{1}{4}$  of Section 36, the Referee  
25 cannot recommend confirmation of a water right until the missing certificate is  
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1 addressed. It is suggested that the parties, including the Department of Ecology,  
2 investigate this issue and be prepared to address it during the exception and  
3 remand phase of the proceeding for this subbasin. See Page 5 for a further  
4 discussion of this issue.

5 Review of the Amosso decree failed to reveal any water rights confirmed for  
6 the SE $\frac{1}{4}$  of Section 36. The decree did state that Cascade Lumber Company could  
7 secure a permit from the State Supervisor of Hydraulics (now the Department of  
8 Ecology) in accordance with the provisions of the State Surface Water Code, RCW  
9 90.03, to irrigate several tracts of land, including 25 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
10 Section 36. There is nothing in the record to show that Cascade Lumber Company, or  
11 any of its successors, secured a permit. At the time the exhibit map was prepared  
12 for the 1921 adjudication, there was no land being irrigated in the SE $\frac{1}{4}$  of Section  
13 36.

14 Surface Water Certificate No. 102 from the Amosso decree is appurtenant to a  
15 portion of the Fudacz property. It issued to Peter Banchi with an 1897 date of  
16 priority, authorizing the diversion of 0.60 cubic foot per second from the Middle  
17 Fork of the Teanaway River for the irrigation of 30 acres in the NE $\frac{1}{4}$  of Section 36.  
18 The Fudaczes are irrigating approximately 10 acres within the NE $\frac{1}{4}$  of Section 36.  
19 The point of diversion authorized in Certificate No. 102 is at a point in the  
20 SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25, T. 21 N., R. 15 E.W.M., which is approximately 1,000 feet  
21 upstream of the point where water is currently being diverted to serve the Fudacz  
22 property. Apparently the point of diversion has been changed subsequent to  
23 issuance of the certificate. There is no indication that the provisions of RCW  
24 90.03.380 for obtaining authorization to change the point of diversion have been  
25 complied with.

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1       The proportionate share of Certificate No. 102 that would be appurtenant to  
2 the 10 acres irrigated by the Fudacz's in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 36 would be 0.20  
3 cubic foot per second.

4       Although there was testimony of historic irrigation on the Fudacz property,  
5 there was no testimony of historic use of the unnamed springs that are piped to the  
6 house and corrals. There was no indication of when the house and corrals were  
7 built. In order for them to be an historic water right for use of these springs,  
8 there must be evidence or testimony that water use began prior to June 6, 1917.  
9 That evidence is lacking.

10      Pursuant to the requirements of RCW 90.14 Boise Cascade filed a water right  
11 claim that appears to be appurtenant to the Fudacz property. Water Right Claim No.  
12 1300010 asserted a right to divert 15 gallons per minute, 20 acre-feet per year from  
13 Bossoli Spring for domestic and stock water in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 36. This  
14 water right claim would protect any right that may exist for use of that spring for  
15 domestic supply and stock watering if there was sufficient proof to show that a  
16 right was established prior to 1917.

17      Due to the factors previously identified, the Referee finds that a  
18 recommendation cannot be made to confirm water rights for use of the spring or use  
19 of the Middle Fork Teanaway River for irrigation in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
20 Section 36. The Referee does recommend that a right be confirmed to Ted and Lena  
21 Fudacz with a June 30, 1897, date of priority for the diversion of 0.20 cubic foot  
22 per second, 50 acre-feet per year from the Middle Fork Teanaway River for the  
23 irrigation of 10 acres and 2 acre-feet per year for stock watering in that part of  
24 the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 36 lying northeast of the Middle Fork Teanaway River and

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1 southwest of the county road. The point of diversion shall be in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
2 Section 25, as authorized in the adjudicated certificate.

3 Boise Cascade is asserting rights to use numerous water sources for stock  
4 watering, domestic supply, irrigation and timber harvesting. Most of the stock  
5 watering use is associated with grazing leases in Boise Cascade timberland where  
6 the livestock drink directly from the water sources. As asserted by Boise Cascade,  
7 this type of use is covered by the stock water stipulation discussed on Page 4 and  
8 contained in the Plaintiff's Report to the Referee for Subbasin No. 3. The right  
9 encompassed in the stipulation is the only right necessary for nondivisionary  
10 stock watering.

11 A right is being asserted to use an unnamed spring in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6,  
12 T. 20 N., R. 16 E.W.M. for domestic supply in a farmhouse near the spring.  
13 According to the evidence in the record, this farmhouse was part of the Contratto  
14 homestead and was built around the turn of the century. The record shows that the  
15 NE $\frac{1}{4}$  of Section 6 was settled by the Contratto family in 1885 and stayed in that  
16 family until 1956 when the land was sold to Cascade Lumber Company, a predecessor  
17 to Boise Cascade. The house is currently occupied by a Boise Cascade employee.  
18 The spring was the original source of supply for the farmhouse. Water Right Claim  
19 No. 085834 was filed by Boise Cascade pursuant to the requirements of RCW 90.14,  
20 asserting a right to use a well for domestic supply. According to Mr. Hess'  
21 testimony, it would be easy to mistakenly believe the water source was a well  
22 rather than a developed spring. However, after seeing the development, he is  
23 convinced it is a spring.

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1       The Referee recommends that a water right be confirmed to Boise Cascade under  
2 the Riparian Doctrine with a June 30, 1885, date of priority for 0.02 cubic foot  
3 per second, 1 acre-foot per year from an unnamed spring for domestic supply.

4       Boise Cascade is asserting several rights for irrigation. A right is being  
5 asserted for the irrigation of 55 acres in the E $\frac{1}{2}$ E $\frac{1}{2}$  of Section 8 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
6 Section 17, T. 21 N., R. 16 E.W.M.. Water is diverted from the North Fork of the  
7 Teanaway River at a point in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 and 55 acres are flood  
8 irrigated. The land is in pasture and livestock can drink directly from the  
9 Teanaway River and from the irrigation ditches. Boise Cascade is asserting a right  
10 to 220 acre-feet per year to irrigate this land. Cascade Lumber Company, a  
11 predecessor to Boise Cascade, acquired this land in 1916. According to the State's  
12 Investigation Report, the current condition of the diversion works allows water to  
13 be diverted only during the early part of the irrigation season when the river  
14 flows are high. Boise Cascade may wish to address this problem so they are not  
15 faced with relinquishment of the portion of the water right that is not exercised  
16 late in the irrigation season.

17       Certificate No. 125 from the 1921 adjudication is appurtenant to this land.  
18 It is a Class 3 right with an 1884 date or priority authorizing the diversion of  
19 1.30 cubic feet per second from the North Fork Teanaway River for the irrigation of  
20 65 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$  and E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 8 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17,  
21 T. 21 N., R. 16 E.W.M..

22       It is recommended that a right be confirmed to Boise Cascade with a June 30,  
23 1884, date of priority for the diversion of 1.10 cubic feet per second, 220  
24 acre-feet per year for the irrigation of 55 acres and 1 acre-foot per year for  
25 stock watering from the North Fork Teanaway River for use in the E $\frac{1}{2}$ E $\frac{1}{2}$  of Section 8

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1 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, T. 21 N., R. 16 E.W.M. lying east of the North Fork  
2 of the Teanaway River and west of the county road.

3 A right is being asserted for the irrigation of 22 acres in the SE $\frac{1}{4}$  of  
4 Section 30, T. 21 N., R. 16 E.W.M.. Water is diverted from the North Fork of the  
5 Teanaway River in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29, T. 21 N., R. 16 E.W.M. and delivered to  
6 the property through an open ditch. Twenty-two acres are in pasture and flood  
7 irrigated. In addition to being able to drink directly from the Teanaway River,  
8 livestock can drink from the irrigation ditches. Boise Cascade is asserting a  
9 right for 88 acre-feet per year for irrigation.

10 Certificate No. 106, a Class 11 right with an 1893 priority date, is  
11 appurtenant to the land. It authorizes the diversion of 1.40 cubic feet per second  
12 for the irrigation of 70 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29 and the SE $\frac{1}{4}$  of  
13 Section 30, T. 21 N., R. 16 E.W.M.. The authorized point of diversion is on the  
14 North Fork Teanaway River in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29, which is in agreement with  
15 the point of diversion presently used. A right is not being asserted by Boise  
16 Cascade, or anyone else, for a right to irrigate in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29.

17 It is recommended that a right be confirmed to Boise Cascade for the diversion  
18 of 0.44 cubic foot per second, 88 acre-feet per year for the irrigation of 22 acres  
19 and 1 acre-foot per year for stock watering from the North Fork Teanaway River for  
20 use in that portion of the SE $\frac{1}{4}$  of Section 30, T. 21 N., R. 16 E.W.M. lying  
21 southeast of the Teanaway Road and northwest of the North Fork of the Teanaway  
22 River.

23 Boise Cascade is asserting a right to irrigate 26 acres in the N $\frac{1}{2}$  of  
24 Section 29, T. 21 N., R. 16 E.W.M. lying between the Teanaway Road and the North  
25 Fork of the Teanaway River. Water is diverted from the river in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of

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1 Section 20 and conveyed to the land by gravity flow in an open ditch. The land is  
2 planted to pasture and livestock can drink directly from the river and from the  
3 irrigation ditches. According to the testimony, 26 acres are flood irrigated with  
4 water diverted from the river.

5 Certificate No. 141, a Class 8 right with an 1889 date of priority, authorizes  
6 the diversion of 1.70 cubic feet per second for the irrigation of 85 acres in the  
7 SE $\frac{1}{4}$  of Section 20 and the W $\frac{1}{2}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 29. The authorized point of  
8 diversion is in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 20. A right is not being asserted for the  
9 irrigation of any land in the SE $\frac{1}{4}$  of Section 20. The point of diversion has  
10 apparently been changed in the past without compliance with RCW 90.03.380. It is  
11 not apparent that the change in point of diversion would have been the result of  
12 trying to accommodate damage caused by flooding as discussed on Page 7 of this  
13 report; therefore, compliance with RCW 90.03.380 is necessary. Boise Cascade  
14 should contact the Department of Ecology for the appropriate procedures.

15 It is recommended that a right be confirmed to Boise Cascade with a June 30,  
16 1889, date of priority for the diversion of 0.52 cubic foot per second, 104  
17 acre-feet per year for the irrigation of 26 acres and 1 acre-foot per year for  
18 stock watering from the Teanaway River for that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ NE $\frac{1}{4}$  of  
19 Section 29, T. 21 N., R. 16 E.W.M. lying southeast of the Teanaway Road and  
20 northwest of the Teanaway River.

21 A right is being asserted for the irrigation of 30 acres in the S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$  of  
22 Section 10 and the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 15, T. 21 N., R. 16 E.W.M.. Water is diverted  
23 from Indian Creek at a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 21 N., R. 16 E.W.M.  
24 and delivered to 30 acres of pasture by gravity flow in an open ditch. Livestock

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1 can drink directly from the creek and the irrigation ditches. Boise Cascade is  
2 asserting a right for 120 acre-feet per year for irrigation.

3 Certificate No. 124, a Class 8 right with an 1889 date of priority, authorizes  
4 the diversion of 0.90 cubic foot per second for the irrigation of 45 acres in the  
5 NE $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 10; the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 15 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
6 Section 16, T. 21 N., R. 16 E.W.M.. The authorized point of diversion is from  
7 Indian Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10.

8 It is recommended that a right be confirmed to Boise Cascade with a June 30,  
9 1889, date of priority for the diversion of 0.60 cubic foot per second, 120  
10 acre-feet per year for the irrigation of 30 acres and 1 acre-foot per year for  
11 stock watering from Indian Creek for use in the S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 10 and the N $\frac{1}{2}$ NW $\frac{1}{4}$   
12 of Section 15, T. 21 N., R. 16 E.W.M.. The Referee recognizes this is a fairly  
13 large place of use description, however, this is the description provided by both  
14 the claimant and the State and the maps provided do not show any land features that  
15 could be used to narrow the description.

16 Boise Cascade is asserting a right to irrigate 12 acres in the N $\frac{1}{2}$ NE $\frac{1}{4}$  of  
17 Section 20, T. 21 N., R. 16 E.W.M. with water diverted from Indian Creek. The  
18 irrigated land lies south of Indian Creek, east of the North Fork of the Teanaway  
19 River and west of the road. The diversion is located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 20  
20 and a gravity flow open ditch delivers water to the land. It is planted to pasture  
21 and livestock can drink from the creek and the irrigation ditches. A right is  
22 being sought for the use of 48 acre-feet per year.

23 A certificate from the 1921 adjudication was not identified for this land.  
24 However, Boise Cascade did direct the Referee to the Amosso decree where a Class 10  
25 right, with an 1891 date of priority, was confirmed to Cascade Lumber Company for  
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1 the diversion of 1.20 cubic feet per second from the North Fork of the Teanaway  
2 River for the irrigation of 60 acres in the NE $\frac{1}{4}$  of Section 20, T. 21 N.,  
3 R. 16 E.W.M.. Boise Cascade currently is diverting water from Indian Creek and the  
4 decree confirmed a right out of the North Fork of the Teanaway River. The point of  
5 diversion has been changed and there is no evidence of compliance with RCW  
6 90.03.380. This apparently is another instance where the landowner chose not to  
7 pay the fees associated with the adjudication resulting in a certificate not  
8 issuing, see page 9 of this report.

9       Boise Cascade filed Water Right Claim No. 085862 pursuant to the requirements  
10 of RCW 90.14 asserting a right to divert 5 gallons per minute, 4 acre-feet per year  
11 from Indian Creek for stock water, fire protection and road maintenance in  
12 Section 20, T. 21 N., R. 16 E.W.M.. However, there was no water right claim filed  
13 that would protect a right for irrigation.

14       Boise Cascade is also asserting a right to irrigate 55 acres in the NE $\frac{1}{4}$  of  
15 Section 6, T. 20 N., R. 16 E.W.M.. Water is diverted from the North Fork of the  
16 Teanaway River in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 31 and delivered by gravity flow to the  
17 property in an open ditch. This diversion also serves the Cromarty property in the  
18 S $\frac{1}{2}$  of Section 31. The land is planted to pasture and livestock can drink from the  
19 Middle and West Forks of the Teanaway River and from the irrigation ditches.

20       Again there was no certificate from the 1921 adjudication cited as being  
21 appurtenant to this land. Boise Cascade directed the Referee to the Amosso decree  
22 where a Class 4 right with an 1885 date of priority was confirmed to Joseph  
23 Contratto for the diversion of 1.9 cubic feet per second from the Middle Fork of  
24 the Teanaway River for the irrigation of 95 acres in Lots 1 and 2 and the S $\frac{1}{2}$ NE $\frac{1}{4}$  of  
25 Section 6, T. 20 N., R. 16 E.W.M.

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1        Boise Cascade filed Water Right Claims No. 085744 and 085745 each asserting a  
2 right to divert water from the North Fork Teanaway River and Middle Fork Teanaway  
3 River respectively for stock water, fire protection and road maintenance in  
4 Sectdion 6, T. 20 N., R. 16 E.W.M.. There were no claims filed that would preserve  
5 a right for irrigation.

6        Although it is evident that a water right existed for this land in 1921, as  
7 discussed on Page 9, the Referee will not recommend confirmation of a water right  
8 for uses that are based on the Amosso decree, but for which certificates have not  
9 issued. The parties are directed to address this issue at the exception hearing.

10      Boise Cascade is also asserting water rights for the use of water for timber  
11 harvesting. The evidence shows that the Teanaway Region was utilized for timber  
12 harvesting since approximately 1886. Water initially was used in timber harvesting  
13 to operate sawmills constructed in the area. Beginning in 1891, creeks and rivers  
14 were used to float the logs to the mill sites in the area and eventually down the  
15 Yakima River to a mill near the City of Yakima. Beginning in 1913 log drives in  
16 the river systems were replaced by railroads that were constructed into the areas  
17 being logged. The evidence shows that these railroads were constructed up many of  
18 the Teanaway River tributaries. Rather than using water to float logs down the  
19 rivers to mill sites, water was used to run the steam engines and for firefighting  
20 when logging activities or sparks from the engines started fires. Water also was  
21 used for domestic purposes in logging camps. Around 1930 Cascade Lumber ceased its  
22 logging operations in the Teanaway Region because the original growth had been  
23 logged off. By the time the second growth was ready to harvest and Cascade Lumber  
24 Company's successor, Boise Cascade, began logging in the area again, the method of  
25 transporting the logs had changed from railroads to logging trucks. Roads were

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1 constructed into the areas being logged and water is necessary to maintain those  
2 roads. Again the use of water for timber harvesting changed. Now rather than  
3 filling steam engines, water was diverted to fill water trucks used to sprinkle the  
4 road bed to settle the fines, reducing dust and maintaining the integrity of the  
5 road.

6 The water trucks hold 4,000 gallons of water and water is withdrawn at a rate  
7 of 260 gallons per minute, requiring approximately 15 minutes to fill the trucks.  
8 Between 5 and 8 loads are used each day, three to four days a week when an area is  
9 being logged. An area is logged from six to eight weeks. Some areas are logged  
10 each year and others on a three to five year rotation. A minimum of 1.1 acre-feet  
11 per year and a maximum of 3.14 cubic feet per second is needed in each area. Boise  
12 Cascade also must have access to water for firefighting should the need arise when  
13 they are logging in an area.

14 Boise Cascade identified ten water sources used for road maintenance. Those  
15 sources are various points on the forks of the Teanaway River, an unnamed spring  
16 immediately adjacent to Indian Creek and Stafford Creek, directly above where it  
17 joins the North Fork of the Teanaway River. Water Right Claims were filed pursuant  
18 to RCW 90.14 for use of those sources for stock water, fire protection and road  
19 maintenance. Review of the Amosso decree from the 1921 adjudication does not  
20 reveal any rights confirmed to Boise Cascade's predecessor for diversions at these  
21 locations or any water rights confirmed for timber harvesting. Boise Cascade did  
22 not, in either the presentation of its claim or in post-hearing briefing, address  
23 the lack of water rights confirmed in the prior adjudication. The 1921  
24 adjudication was a determination of the existing water rights for the Teanaway  
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1 River and its tributaries at the time of the adjudication. The land on which  
2 diversions for timber harvesting exist was owned by parties to the 1921  
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1 adjudication and much of the land was owned by Cascade Lumber Company at that time.  
2 Except for di minimus stock watering and domestic supply uses, which which were  
3 addressed only generally in the prior adjudication, the Referee has not recommended  
4 that water rights be confirmed in this proceeding, if there is not a specific right  
5 from the 1921 adjudication. In spite of the fact that the evidence clearly  
6 supports that water use for timber harvesting dates back to the late 1800's and  
7 early 1900's, the Referee is compelled to not recommend confirmation of a water  
8 right to Boise Cascade for this use.

Water for firefighting is an emergency use that cannot be quantified and obviously has a priority over other water uses when needed. The Referee recognizes that water will be used as needed for this purpose.

A Statement of Claim was submitted by Bruno and Elma Bonetto for the use of waters from the Teanaway River. Mr. Bonetto testified at the evidentiary hearing.

The Bonettos are asserting water rights for the irrigation of 33 acres on the land they own in the W $\frac{1}{2}$  of Section 34, T. 20 N., R. 16 E.W.M. lying north of the Teanaway River and south of the East Masterson Road. They are also asserting a right to irrigate seven acres that lie north of State Route 970 and south of East Masterson Road. According to Mr. Bonetto's testimony, this seven acres was irrigated until the 1930's or 1940's and has not been irrigated since. He intends to again irrigate that land sometime in the future. RCW 90.14.160 provides that any person entitled to divert water who voluntarily fails without sufficient cause to beneficially use all or any part of said right for any period of five successive

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1 years after the effective date of the act (July 1, 1967) shall relinquish such  
2 right or unused portion. Any right that may have existed for irrigating those  
3 seven acres relinquished in 1972.

4 The Bonettos irrigate their land with handlines and sprinklers. A 10 BHP pump  
5 has been placed on the river in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34 and withdraws water from  
6 the river into their irrigation system. The State's investigation report indicates  
7 that water is used at a rate of 200 gallons per minute. Mr. Bonetto testified that  
8 he irrigates continuously from the beginning of the irrigation season until the  
9 end. Livestock have been raised on the property in the past and drink directly  
10 from the Teanaway River or are watered from the Bonettos' well. Livestock drinking  
11 directly from the water source with no diversion is covered by the stock water  
12 stipulation discussed on Page 4 of this report.

13 There are three certificates from the 1921 adjudication of the Teanaway River  
14 that are appurtenant to portions of the Bonetto property. Certificate No. 118 is a  
15 Class 3 right with an 1884 date of priority. It authorized the diversion of 1.6  
16 cubic feet per second for the irrigation of 80 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
17 Section 34. The authorized point of diversion is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34. The  
18 Bonettos are irrigating approximately 8 acres in that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
19 Section 34 lying north of the Teanaway River. Geraldine Elich is asserting a right  
20 for her property in the SW $\frac{1}{4}$  of Section 34 under this certificate. See Page 91 for  
21 a discussion of her claim.

22 Certificate No. 120 is a Class 3 right with an 1884 date of priority. It  
23 authorized the diversion of 1.5 cubic feet per second for the irrigation of 75  
24 acres in the NW $\frac{1}{4}$  of Section 34. In 1982, the Bonettos relinquished that portion of  
25 the water right in excess of 0.72 cubic foot per second, 108 acre-feet per year for

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1 the irrigation of 36 acres and a superseding certificate issued reflecting that  
2 relinquishment. At that time the authorized point of diversion was located in the  
3 NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 34. The relinquishment purports to relinquish all of Certificate  
4 No. 120 except that portion described in the superseding certificate. However, the  
5 Bonettos did not own all of the NW $\frac{1}{4}$  of Section 34 and could only relinquish that  
6 portion of the right that was appurtenant to property they own. Ivan and Davene  
7 Osmonovich are asserting a right to irrigate approximately 2 acres in the NW $\frac{1}{4}$  of  
8 Section 34 based on Certificate No. 120. See Page 144 for a discussion of their  
9 claim. In 1983, Bruno Bonetto was issued Certificate of Change Recorded in Volume  
10 1-4, Page 232, which authorized him to change the point of diversion for the  
11 diversion of 0.44 cubic foot per second, 66 acre-feet per year for the irrigation  
12 of 22 acres. The point of diversion described in the certificate of change is  
13 located 150 feet south and 1100 feet west of the center of Section 34, being in the  
14 NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34. The dimensions described on the certificate of change would  
15 put the diversion in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, however, Mr. Bonetto testified, and  
16 the State's Investigation Report, show the diversion as being in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
17 Section 34. The Bonettos appear to be irrigating approximately 22 acres in the NW $\frac{1}{4}$   
18 of Section 34, so the Referee shall consider that to be the extent of their right  
19 under Certificate No. 120.

20 Certificate No. 129 is a Class 1 right with an 1882 date of priority. It  
21 authorized the diversion of 0.32 cubic foot per second for the irrigation of 16  
22 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34. The point of diversion described in the  
23 certificate is in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 34. In 1982, the Bonettos relinquished all  
24 of that certificate except 0.09 cubic foot per second, 13.8 acre-feet per year for  
25 the irrigation of 4.6 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34. A superseding

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1 certificate issued reflecting that relinquishment. Again, the Bonettos could only  
2 relinquish the portion of that certificate that was appurtenant to lands they own.  
3 Bette Rowe owns a small portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34 and is asserting a  
4 right to irrigate approximately 1 acre under Certificate No. 129. In 1983, Bruno  
5 Bonetto was issued Certificate of Change Recorded in Volume 1-4, Page 233, which  
6 authorized him to change the point of diversion for the portion of Certificate No.  
7 129 reflected in the superseding certificate that had issued the previous year.  
8 The new point of diversion is described in the certificate of change as being 150  
9 feet south and 1100 feet west of the center of Section 34, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$   
10 of Section 34. However, the dimensions put the location in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
11 Section 34 and Mr. Bonetto's testimony and the State's Investigation Report show  
12 the diversion as being in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34. This supposedly is the same  
13 diversion described in Certificate of Change Recorded in Volume 1-4, Page 232. The  
14 same dimensions are used, but a different quarter/quarter is designated in each  
15 certificate of change. Mr. Bonetto testified that the diversion he is using in the  
16 NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34 is the one constructed as a result of the certificates of  
17 changes. The Referee is not clear on what location was intended to be authorized  
18 by the certificates of change, because of the inconsistencies between the two  
19 certificates of change and with the actual diversion location.

20 The Bonettos relinquished their interest in Certificate No. 129, except for a  
21 right to irrigate 4.6 acres. The State's Exhibit map, SE-3, shows more than 4.6  
22 acres being irrigated within the Bonetto ownership in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34,  
23 however, since they have relinquished the rest of their interest in the  
24 certificate, the Referee will recommend confirmation of a right commensurate with  
25 that relinquishment and the certificate of change.

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1       It is recommended that rights be confirmed to the Bonettos under Court Claim  
2 No. 00553 for use of the Teanaway River as follows:

3       With a June 30, 1882, date of priority, 0.09 cubic foot per second, 13.8  
4 acre-feet per year for the irrigation of 4.6 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34.

5       With a June 30, 1884, date of priority, 0.44 cubic foot per second, 66  
6 acre-feet per year for the irrigation of 22 acres in that portion of the NW $\frac{1}{4}$  of  
7 Section 34 lying south of State Route 970.

8       With a June 30, 1884, date of priority, 0.16 cubic foot per second, 24  
9 acre-feet per year for the irrigation of 8 acres in that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
10 Section 34 lying north and west of the Teanaway River.

11  
12      COURT CLAIM NO. 01566     -- Ted Bugni  
13                                  01847     & Agnes Bugni

14       Ted and Agnes Bugni filed Court Claims for the use of waters from the Teanaway  
15 River and an unnamed spring. Mr. Bugni testified at the evidentiary hearing.

16       According to the testimony, the Bugnis are irrigating 76 acres in the NW $\frac{1}{4}$  of  
17 Section 3 with water diverted from the Teanaway River. Their diversion lies in the  
18 NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34. In the past the land was flood irrigated, but presently is a  
19 combination of flood and sprinkler irrigation. Water is conveyed from the river to  
20 a pond on the Bugni property. Three pumps are used to distribute the water, one 5  
21 BHP and two 1.5 BHP pumps.

22       According to Mr. Bugni's testimony, the land has been in his family since  
23 around 1920 and in his personal ownership since 1946. The land has continuously  
24 been irrigated during his family's ownership. At one time livestock were raised on  
25 the land, but there have not been any stock since the mid-1950's.

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1        Certificate No. 103 from the 1921 adjudication issued to Giovanna Bugni, Ted  
2        Bugni's mother, and is appurtenant to the Bugni's property. It is a Class 4 right  
3        with an 1885 date of priority and authorized the diversion of 2.0 cubic feet per  
4        second for the irrigation of 100 acres in the N $\frac{1}{2}$  of Section 3, T. 19 N.,  
5        R. 16 E.W.M.. The authorized point of diversion is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34,  
6        T. 20 N., R. 16 E.W.M., which is the location of the diversion currently being  
7        exercised.

8        The Bugnis are also asserting a right to use an unnamed spring for domestic  
9        supply. The spring is located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 3 and is piped to the Bugni  
10      home in the northwest corner of Government Lot 4 of Section 3. According to Mr.  
11      Bugni's testimony, this spring has been used for domestic supply on his property  
12      since around 1916, when Cascade Lumber Company's superintendent lived on the  
13      property. The spring supplied his home until 1930. At one time Mr. Bugni's home  
14      was supplied water from a well, but that was discontinued in favor of using the  
15      spring. The Referee is not clear whether use of the spring began in 1930 when the  
16      lumber company no longer was using the spring or at some later time.

17      Mr. Bugni filed two water right claims pursuant to RCW 90.14. Both of these  
18      claims, No. 153417 and 153418, were filed for use of waters from the Teanaway River  
19      for irrigation. There is no evidence that a water right claim was filed for use of  
20      the spring. The purpose of the registration act was to document uses of water  
21      begun prior to adoption of the water codes, except for those uses for which the  
22      state had issued water right certificates. Claims did not need to be registered  
23      for the Bugnis' use of water from the Teanaway River because certificates had issued  
24      following the 1921 adjudication. However, a certificate did not issue for the  
25      spring. Therefore, a claim should have been filed pursuant to RCW 90.14 for use of  
26

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1 the spring. Failure to file a claim waives or relinquishes any right that may have  
2 existed, RCW 90.14.071. Therefore, the Referee cannot recommend confirmation of a  
3 water right for use of the spring.

4 It is recommended that a right be confirmed under Court Claim No. 01566 to Ted  
5 and Agnes Bugni with a June 30, 1885, date of priority for the diversion of 1.52  
6 cubic feet per second, 410.4 acre-feet per year for the irrigation of 76 acres in  
7 the NW $\frac{1}{4}$  of Section 3.

8

9 COURT CLAIM NO. 00104 -- Burlington Northern Railroad Co.

10

11 COURT CLAIM NO. 00295 -- Rollen F. Stewart

12 COURT CLAIM NO. 00589 -- WA State Dept. of Natural Resources  
13 (A)00590

14 COURT CLAIM NO. 01033 -- Estate of Victor Josendal

15 COURT CLAIM NO. 01674 -- Estella Leopold

16 COURT CLAIM NO. 01706 -- Robert W. Burke  
17 & Amy J. Seeman Burke

18 COURT CLAIM NO. 02138 -- David Z. Hofeditz  
19 & Cecilia P. Hofeditz  
David A. Hofeditz  
& Judith Hofeditz

20 COURT CLAIM NO. 02145 -- Joreen A. Florenzen

21 Statements of Claim were submitted by the above named claimants for the use of  
22 waters in the Teanaway Basin. However, none of the claimants appeared at the  
23 evidentiary hearing in support of their claims. Therefore, the Referee cannot  
24 recommend confirmation of a water right under any of these Court Claims. The  
25 Plaintiff's Report to the Referee identified that David A. and Judith Hofeditz,  
26 David Z. and Cecilia P. Hofeditz, the Washington State Department of Natural

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1 Resources, and Joreen A. Florenzen have nondiversionary stock water uses covered by  
2 the stock water stipulation discussed on Page 4 of this report.

3

4 COURT CLAIM NO. 01283 -- Daniel V. Byrne  
5 & Martha Wyckoff Byrne

6 A Statement of Claim was submitted to the Court by Irv Pratt, Jr., and Arleen  
7 Pratt. On September 13, 1990, Daniel V. Byrne and Martha Wyckoff Byrne were  
8 substituted as claimants. They are presented by Attorney Michael Bauer. Martha  
9 Wyckoff Byrne testified at the evidentiary hearing.

10 The claimants own the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 19, T. 20 N., R. 17 E.W.M. and raise  
11 hay on approximately 20 acres. They dryland farm and do not irrigate the hay  
12 field. A right is being asserted for stock watering from Mack Creek and two ponds  
13 that are in natural drainages on the property. The livestock drink directly from  
14 the ponds and the creek and there is no diversion being used. The claimants note  
15 that there are remnants of a diversion dam in Mack Creek, near the northwest corner  
16 of their property, however, they do not know how or when it was used. There is no  
17 evidence that a water right had been established for a diversionary use from Mack  
18 Creek for their property.

19 Water Right Claim No. 040509 was filed by Irv Pratt pursuant to RCW 90.14  
20 asserting a right to divert 15 gallons per minute, 6 acre-feet per year from an  
21 unnamed creek for stock watering on 22 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 19. A 1973  
22 date of first water use is on the claim and it states that no water was being used  
23 on September 20, 1973, when the claim was filed.

24 Nondiversionary stock watering is covered by the stock water stipulation  
25 discussed on Page 4 of this report and additional rights are not necessary.

26

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1 Therefore, the Referee does not recommend confirmation of a water right under Court  
2 Claim No. 01282 beyond that provided in the stipulation.  
3  
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5 COURT CLAIM NO. 00914 -- Albeno G. Carollo  
6 & Violet Carollo  
7 Robert J. Badda  
8 & Cecilia A. Badda  
9 Don Tidwell  
10  
11

12 Albano and Violet Carollo submitted a Statement of Claim to the Court for the  
13 use of waters from the Teanaway River. On May 17, 1989, Robert J. and Cecelia  
14 Badda were joined to the claim and on May 21, 1991, Donald Tidwell was joined to  
15 the claim. All parties associated with this claim were represented by Attorney  
16 Richard T. Cole and Mr. Tidwell, Violet Crandall, Robert Badda and Cecilia Badda  
17 testified at the evidentiary hearing.  
18

19 Albano and Violet Carollo owned those portions of the NW $\frac{1}{4}$ , the W $\frac{1}{2}$ NE $\frac{1}{4}$  and the  
20 NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, T. 20 N., R. 16 E.W.M. lying north of the Teanaway River.  
21 The land was subdivided and a portion, referred to as Parcel B of survey recorded  
22 September 19, 1988 in Book 15 of Surveys at Page 179, was sold to Robert and  
23 Cecilia Badda. Parcel B consists of 19.19 acres, of which 12 acres are irrigated  
24 with water diverted from the Teanaway River. The Baddas have timothy and grass hay  
25 on their land and pasture up to 50 head of cattle outside of the irrigation season.

26 Parcel A of the survey was first sold to John O. and Janet L. Crandall and  
27 then to Donald I. Tidwell. Parcel A is also 19.19 acres in size, with 15 acres  
28 being irrigated with water diverted from the Teanaway River. Approximately 2.5  
acres are planted in orchard, a small area in berries and the rest is hay.  
Livestock also graze on the Tidwell property outside of the irrigation season.  
Parcels A and B lie in that portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$  lying south of the Teanaway River

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1 Road and that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  lying north of the Teanaway River, in  
2 Section 14.

3 Mrs. Carollo still owns the NW $\frac{1}{4}$  of Section 14, that portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$  of  
4 Section 14 lying north of the Teanaway River Road, and the west 30 feet of the  
5 W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 14 lying south of the Teanaway River Road. She irrigates 12 acres  
6 of hay and grain and also winters 50 head of cattle.

7 Mrs. Carollo testified that she and her husband acquired the land described in  
8 the Court Claim between 1942 and 1952. The land is irrigated today in the same  
9 manner as when it was purchased. Water is diverted from the Teanaway River into  
10 the Three M Ditch to serve the irrigated land.

11 Three certificates from the 1921 Teanaway River Adjudication are appurtenant  
12 to the lands described in Court Claim No. 00914. Certificate No. 138 is a Class 8  
13 right with an 1889 date of priority, authorizing the diversion of 0.46 cubic foot  
14 per second for the irrigation of 23 acres in that portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$  of  
15 Section 14 lying under the Three M Ditch. The authorized points of diversions are  
16 in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  and the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 14. Certificate No. 139 is also a Class 8  
17 right with an 1889 date of priority. It authorizes the diversion of 0.18 cubic  
18 foot per second for the irrigation of 9 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14. The  
19 authorized points of diversion are the same as for Certificate No. 138. These two  
20 certificates are appurtenant to the lands now owned by Donald Tidwell and Robert  
21 and Cecilia Badda and the west 30 feet of the W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 14 lying south of  
22 the Teanaway River Road, still owned by Mrs. Carollo. They jointly authorize the  
23 diversion of 0.64 cubic foot per second for the irrigation of 32 acres and the  
24 claimants are irrigating a total of 27.7 acres within the place of use described on  
25 the certificates.

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1        Certificate No. 126 would also appear to be appurtenant to a portion of the  
2 Tidwell and Badda property. It authorized the diversion of 0.46 cubic foot per  
3 second for the irrigation of 23 acres in a portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
4 Section 14 lying under the Three M Ditch. However, the evidence presented in  
5 support of the Milton Downs claim, see Page 77 of this report, caused the Referee  
6 to conclude Certificate No. 126 is appurtenant to the neighboring Downs property.

7        Certificate No. 140, a Class 20 right with a 1910 date of priority, is  
8 appurtenant to the land owned by Mrs. Carollo in the NW $\frac{1}{4}$  of Section 14. It  
9 authorized the diversion of 0.50 cubic foot per second for the irrigation of 25  
10 acres in the NW $\frac{1}{4}$  of Section 14. The authorized point of diversion is in the NE $\frac{1}{4}$ NE $\frac{1}{4}$   
11 of Section 15, T. 20 N., R. 16 E.W.M.. Mrs. Carollo is irrigating 11.3 acres south  
12 of the Teanaway Road within the NW $\frac{1}{4}$  of Section 14.

13       Mr. Tidwell and Mr. Badda testified that they use between 0.50 and 0.75 cubic  
14 foot per second to irrigate their land, and they share this quantity by rotating  
15 their irrigation. The Amosso decree allowed for the use of 0.02 cubic foot per  
16 second per acre irrigated, or 0.54 cubic foot per second for the 27 acres irrigated  
17 on the Tidwell and Badda property. Mrs. Carollo did not testify to the quantity of  
18 water being used to irrigate her land, but is asserting a right to between 0.50 and  
19 0.75 cubic foot per second. The proportionate share of the certificates that would  
20 be appurtenant to her irrigated land is 0.24 cubic foot per second.

21       The Amosso decree did allow for the use of surplus water when it is available  
22 in the spring and the Referee has recognized this provision when recommending  
23 confirmation of water rights, if the claimant has testified to diverting and using  
24 more water than is authorized in the appropriate certificate. However, Mrs.  
25 Carollo did not testify about the quantity of water actually used on the land,

1 therefore, the Referee will limit his recommendation to the water duty adopted by  
2 the decree.

3 The claimants testified to having livestock in their fields after the  
4 irrigation season, however, there was no testimony about the source of water or  
5 method used to water the stock. The land owned by each claimant extends to the  
6 Teanaway River and the testimony did not indicate whether the livestock have access  
7 to drink directly from the river. If they do, that type of stock watering would be  
8 covered by the stock water stipulation discussed on Page 4 of this report.

9 It is recommended that rights be confirmed under Court Claim No. 00914 as  
10 follows:

11 To Violet Carollo, with a June 30, 1910, date of priority 0.226 cubic foot per  
12 second, 61.02 acre-feet per year for the irrigation of 11.3 acres in the NW $\frac{1}{4}$  of  
13 Section 14 and with a June 30, 1889, date of priority, 0.014 cubic foot per second,  
14 3.78 acre-feet per year for the irrigation of 0.70 acres in the west 30 feet of  
15 that portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 14 lying south of the Teanaway River Road.

16 To Donald Tidwell, with a June 30, 1889, date of priority, 0.30 cubic foot per  
17 second, 81 acre-feet per year for the irrigation of 15 acres in a portion of the  
18 W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14.

19 To Robert and Cecelia Badda, with a June 30, 1889, date of priority, 0.24  
20 cubic foot per second, 64.8 acre-feet per year for the irrigation of 12 acres in  
21 the E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14.

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2 COURT CLAIM NO. 01850 -- Robert L. Clements  
3 (A)06063 C & H Trucking & Construction  
4 Gary Monroe  
5 & Vicki Monroe  
6 Trust of Barbara Istvan  
7 & Edwin J. Istvan

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28 The Statement of Claim was originally filed by Pat C. Bunger and Joan L. Hart.  
On September 22, 1983, Robert L. Clements was substituted for the original  
claimants. On June 27, 1990, Mr. Clements joined to the claim C & H Trucking and  
Construction, Gary and Vicki Monroe, and the Trust of Barbara Istvan and Edwin J.  
Istvan. Robert Clements appeared at the evidentiary hearing and testified on  
behalf of the Monroes, the Istvans and the portion of the claim he has retained.  
C and H Trucking and Construction did not make an appearance at the hearing.  
Therefore, their portion of Court Claim No. 01850 is denied.

Court Claim No. 01850 was filed for that portion of the NE $\frac{1}{4}$  of Section 4,  
T. 19 N., R. 20 E.W.M. lying north of State Highway 10. The Monroes, the Istvans,  
and Mr. Clements each own approximately 20 acres of land, with a portion of each  
acreage irrigated with Teanaway River water carried in the Seaton and Masterson  
Ditches and with water diverted from the Yakima River and carried in the Younger  
Ditch. The Younger Ditch diverts from the Yakima River in Subbasin No. 5 and  
rights to the use of that water will be addressed in the Report of Referee for  
Subbasin No. 5.

The testimony was a little unclear about whether the land was being irrigated  
at the time of the hearing. Eventually Mr. Clements testified he was irrigating  
approximately 10 acres, the Monroes approximately 10 acres and the Istvans  
approximately 12 acres. The Teanaway River water used to irrigate the land comes  
from a drainage that captures tailwaters from the Masterson Ditch and return flows

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1 from lands irrigated with water from the Masterson Ditch and from a ditch that  
2 carries tailwaters from the Seaton Ditch and return flows from lands irrigated with  
3 water from the Seaton Ditch. The Masterson Ditch diverts from the Teanaway River  
4 in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25 and the Seaton Ditch diverts from the Teanaway River in  
5 the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26. The land is flood irrigated with small ditches that  
6 traverse the property and at the time of the hearing the ditches needed to be  
7 cleaned and reworked.

8 Certificate No. 104 from the 1921 adjudication is appurtenant to the property.  
9 It is a Class 8 right with an 1889 date of priority authorizing the diversion of  
10 0.60 cubic foot per second for the irrigation of 30 acres in the NE $\frac{1}{4}$  of Section 4.  
11 The claimants discussed herein are the only landowners who asserted a right in the  
12 NE $\frac{1}{4}$  of Section 4. The authorized point of diversion is described in the  
13 certificate as being in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 33, T. 20 N., R. 16 E.W.M.. However,  
14 the Teanaway River does not flow through the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 33. Obviously, an  
15 error was made and the Referee is left with no evidence of where the original point  
16 of diversion was located.

17 The three claimants who were defended under this claim are asserting rights to  
18 irrigate 32 acres. The certificate only authorizes the irrigation of 30 acres  
19 within the NE $\frac{1}{4}$  of Section 4. Since there are more acres being irrigated than is  
20 authorized by the certificate, the Referee is faced with dividing the authorized 30  
21 acres between the three sets of claimants that appeared to defend the claim. The  
22 Referee proposes to confirm 10 acres of irrigation to each of the parties.

23 Therefore, the Referee recommends that Robert L. Clements, Gary and Vicki  
24 Monroe, and Edwin J. Istvan, trustee for Barbara Istvan Trust each be confirmed a  
25 right with a June 30, 1889, date of priority for the diversion of 0.20 cubic foot

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1 per second, 54 acre-feet per year for the irrigation of 10 acres. It is  
2 recommended that the right be authorized with two points of diversion, one into the  
3 Seaton Ditch in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26 and one into the Masterson Ditch in the  
4 NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25.

5

6 COURT CLAIM NO. 00746 -- John E. Conner  
7 (A)06336

8 John E. Conner submitted a Claim to the Court for the use of waters from the  
9 Teanaway River for the irrigation of 50 acres in the NW $\frac{1}{4}$  of Section 10, T. 20 N.,  
10 R. 16 E.W.M. In 1991 he submitted an amended claim for land he had recently  
11 purchased in the NE $\frac{1}{4}$  of Section 9, T. 20 N., R. 16 E.W.M.. John Conner,  
12 represented by Attorney Jeff Slothower, testified at the evidentiary hearing, along  
13 with Tom Conner and Richard C. Bain, Jr., a consultant hired by the claimant.

14 According to John Conner's testimony, he acquired the NW $\frac{1}{4}$  of Section 10 in  
15 1965. At that time the land was being flood irrigated with water diverted from the  
16 Teanaway River and carried to the property in the Ballard Ditch. In the 1970's he  
17 improved the irrigation system to use sprinklers on much of the land and gated pipe  
18 on the rest. In 1986 he purchased a portion of the NE $\frac{1}{4}$  of Section 9 lying south of  
19 the Teanaway Road and north of the Teanaway River. That land was also being  
20 irrigated with water diverted from the Teanaway River and carried through the  
21 Ballard Ditch.

22 Water is diverted into the ditch in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 20 N.,  
23 R. 16 E.W.M.. After the ditch passes into the NW $\frac{1}{4}$  of Section 10, water can be  
24 withdrawn from the ditch and an open ditch carries water south along the west  
25 section line to an excavated pond located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10. That open  
26 ditch is also used to rill irrigate a field immediately east of the ditch. A 25

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1 BHP pump on the pond is used to supply hand and wheel lines used to irrigate most  
2 of the fields in both the NE $\frac{1}{4}$  of Section 9 and the NW $\frac{1}{4}$  of Section 10. A 2 BHP pump  
3 is also on the pond and is used to irrigate a one acre garden area. A 20 BHP pump  
4 directly on Ballard Ditch is used to irrigate an area five acres in size.

5 Mr. Bain testified to having measured the takeouts that serve the Connor  
6 property and testified that based on the measurements and the current irrigation  
7 practice, 900 acre-feet per year is needed to irrigate the fields. He also  
8 testified that three takeouts that are used could diverted up to 5 cubic feet per  
9 second from the ditch. The Referee was uncertain from the testimony and Mr. Bain's  
10 report whether more than one takeout would be used at any given time. Mr. Bain and  
11 the Department of Ecology measured the Ballard Ditch at various points in efforts  
12 to determine conveyance loss in the ditch. Mr. Bain concluded that approximately  
13 1,119 acre-feet per year is lost from the ditch during the irrigation season. Mr.  
14 Bain urged that instantaneous flows be viewed as flexible due to changes in crop  
15 patterns and natural variations in the water source feeding the ditch. The Referee  
16 recognizes that the quantity of water diverted expressed as an instantaneous rate  
17 will vary depending on the soil conditions, weather patterns and river flows during  
18 the summer. However, water rights must be expressed in a maximum instantaneous  
19 quantity that can be diverted at any given time and the rights confirmed in the  
20 Amosso decree limited the instantaneous rate of diversion.

21 Two water right certificates from the previous adjudication of the Teanaway  
22 River are appurtenant to the Connor property. Certificate No. 115, with an 1888  
23 date of priority, authorized the diversion of 1 cubic foot per second from the  
24 Teanaway River for the irrigation of 50 acres in the NW $\frac{1}{4}$  of Section 10.  
25 Certificate No. 137, with a 1899, date of priority, authorized the diversion of 1.5

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1 cubic foot per second from the Teanaway River for the irrigation of 75 acres in the  
2  $N\frac{1}{2}NE\frac{1}{4}$  and  $SE\frac{1}{4}NE\frac{1}{4}$  of Section 9.

3 Although Certificate No. 137 authorized the irrigation of 75 acres, only 40  
4 acres are being irrigated within the authorized place of use on the certificate.  
5 Given the water duty specified in the Report of Referee that preceded the Amosso  
6 decree, an instantaneous quantity of 0.80 cubic foot per second would represent the  
7 portion of the authorized quantity for 40 acres. Certificate No. 137 authorized  
8 use of a diversion in the  $NE\frac{1}{4}NW\frac{1}{4}$  of Section 9. Mr. Connor testified that when he  
9 acquired the property it had been irrigated from a ditch that diverted from the  
10 Teanaway River in Section 9. He ceased using that ditch and irrigates the  $NE\frac{1}{4}$  of  
11 Section 9 with water carried in the Ballard Ditch and placed in his pond. There is  
12 nothing in the record to show that Mr. Connor complied with the requirements of RCW  
13 90.03.380 and sought authorization from the Department of Ecology to change his  
14 point of diversion. Therefore, the point of diversion for any right the Referee  
15 recommends for the Connor land in the  $NE\frac{1}{4}$  of Section 9 shall be in the  $NE\frac{1}{4}NW\frac{1}{4}$  of  
16 Section 9.

17 Mr. Connor is claiming a right to divert significantly more water than was  
18 confirmed for his property through the Amosso decree. The Referee notes that Mr.  
19 Connor testified that his modifications to the irrigation system have resulted in  
20 less water being needed to irrigate the land, yet he seems to be diverting more  
21 water than was being used in 1921. The Amosso decree allowed for the use of  
22 additional water if it was available in excess of that needed to satisfy all  
23 existing rights. The Referee will presume the claimant is exercising that  
24 provision since he has been diverting more water than was specifically authorized  
25 in the certificates.

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1 Mr. Connor is also asserting rights to the use two springs and an intermittent  
2 stream. The springs are used for nondiversionsary stock watering and this use is  
3 covered by the stock water stipulation discussed on Page 4 of this report. The  
4 intermittent stream, when it is flowing, enters the Ballard Ditch above the pump  
5 that is placed on the ditch. As far as the Referee can determine, a water right  
6 was not confirmed for use of this water in the Amosso decree. Lack of a  
7 certificate from the previous adjudication prevents the Referee from confirming a  
8 right in this proceeding.

9 Based on the forgoing, the Referee recommends that rights be confirmed under  
10 Court Claim No. 00746 for use of the Teanaway River consistent with the existing  
11 certificates as follows:

12 With a June 30, 1888 date of priority, 1 cubic foot per second, 325 acre-feet  
13 per year for irrigation of 50 acres and 2 acre-feet per year for stock watering in  
14 that portion of the NW $\frac{1}{4}$  of Section 10 lying south of the Teanaway Road and north of  
15 the Teanaway River; with a June 30, 1899, date of priority, 0.80 cubic foot per  
16 second, 260 acre-feet per year for the irrigation of 40 acres and 2 acre-feet per  
17 year for stock watering in that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 9 lying south of  
18 the Teanaway Road. The rights shall each carry a provision that allows for a 100  
19 percent increase in the rate of diversion when surplus water is available in excess  
20 of that needed to supply existing rights.

1  
2 COURT CLAIM NO. 01867 -- Jane Shaw  
3 Lenora M. Kelly

4 COURT CLAIM NO. 01868 -- John O. Crandall  
5 & Janet L. Crandall

6 Two Statements of Claim were submitted to the Court by Lenora M. Kelly, one  
7 for the use of waters from an unnamed spring and one for the use of waters from  
8 Storey Creek, a tributary of the North Fork Teanaway River. On August 20, 1990,  
9 Jane Shaw was joined to Claim No. 1867, which was filed for use of the spring and  
10 on February 13, 1992, Janet L. and John O. Crandall were substituted for Ms. Kelly  
11 on Claim No. 1868 for Storey Creek. Jane Shaw testified at the evidentiary  
hearing.

12 According to the testimony, the Crandalls purchased the property described in  
13 the two Court claims from Lenora Kelly and in 1989, Ms. Shaw purchased the land  
14 from the Crandalls. Ms. Shaw has not been joined to Claim No. 1868, however, that  
15 is not material for this particular claim. The right being asserted by Ms. Shaw to  
16 waters in Storey Creek is non-diversionary stock watering. This use is covered by  
17 the stock water stipulation discussed on Page 4 of this report, and no other water  
18 right is necessary.

19 The unnamed spring is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32, T. 21 N.,  
20 R. 16 E.W.M.. A gravity flow pipeline leads from the spring to the south into the  
21 NW $\frac{1}{4}$  of Section 5, T. 20 N., R. 16 E.W.M.. A "T" is in the line, one branch leading  
22 west to the Shaw property and the other line leading east to property owned by  
23 Betty and Walter Darrow. Ms. Shaw uses the water for domestic supply and landscape  
24 irrigation. The spring reportedly has been used since the early 1900's when Ms.  
25 Shaw's home was used as a school house. Ms. Shaw did not testify to the quantity

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1 of water used; however, 0.02 cubic foot per second, 2 acre-feet per year is  
2 considered adequate for the uses to which the water is put.

3 Pursuant to the requirements of RCW 90.14, Rex E. Kelly, as a prior owner of  
4 the property, filed Water Right Claim No. 074240 asserting a right to use an  
5 unnamed spring for domestic supply and lawn and garden irrigation. A "short form"  
6 was used resulting in there being no information about the water right claimed,  
7 including quantity of water used.

8 Part of the information submitted with the claim of Betty and Walter Darrow is  
9 a copy of a Notice of Water Appropriation filed by Joe Contratto stating he had  
10 appropriated two inches per second of waters flowing from Taylor Spring in  
11 Section 32, T. 21 N., R. 16 E.W.M. for household, stock and irrigating purposes.  
12 The date of this notice is May 1, 1914. Joe Contratto owned the Shaw property,  
13 along with other land in Section 5, in 1914. Mrs. Darrow testified that Taylor  
14 Spring is the same spring identified in both the Darrow and Shaw Court Claims.

15 Based on the foregoing, the Referee recommends that a right be confirmed with  
16 a May 1, 1914, date of priority for the diversion of 0.02 cubic foot per second, 2  
17 acre-feet per year from an unnamed spring for continuous single domestic supply.

19 COURT CLAIM NO. 01863 -- Norman J. Cromarty  
20 & Shirley B. Cromarty

21 A Statement of Claim was submitted by Norman J. and Shirley B. Cromarty for  
22 the use of waters from the North Fork Teanaway River and Storey Creek.  
23 Mr. Cromarty testified at the evidentiary hearing.

24 The Cromartys have extensive land holdings in the Teanaway River basin and  
25 irrigate land in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 31, T. 21 N., R. 16 E.W.M. and  
26 the S $\frac{1}{2}$  of Section 5, T. 20 N., R. 16 E.W.M. lying south of the county road and

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1 north of the Teanaway River. Water is diverted from the North Fork Teanaway River  
2 and Storey Creek.

3 Diversion 1 is located on the North Fork Teanaway River, approximately 1400  
4 feet west of the northeast corner of Section 31. It is used to irrigate 50 acres  
5 in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 31 lying east of the North Fork Teanaway River.  
6 Mr. Cromarty testified that he is entitled to divert 1 cubic foot per second for  
7 this land and uses 200 acre-feet per year to irrigate the 50 acres. The Cromarty's  
8 purchased this land in 1964 and continued the irrigation practice in place at that  
9 time. According to Mr. Cromarty, Class 17 rights confirmed to Fred and Frank  
10 Amosso and the Guistetti Brothers are appurtenant to this land. Review of the  
11 Decree from the 1921 adjudication of the Teanaway River reveals that a Class 17  
12 right was confirmed to Fred and Frank Amosso for the diversion of 1.24 cubic feet  
13 per second for the irrigation of 62 acres in the W $\frac{1}{2}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 31,  
14 T. 21 N., R. 16 E.W.M.. However, upon review of Ecology's Exhibit No. SE-4 the  
15 Referee was unable to locate a certificate that issued for this property. This  
16 apparently is another situation where the certificate has not issued due to the  
17 landowner in 1921 not paying the required fee. The Cromartys also did not protect  
18 the right by filing a water right claim pursuant to RCW 90.14 As discussed on Page  
19 9, the Referee will not recommend confirmation of a water right until the lack of a  
20 certificate has been resolved.

21 Certificate No. 167 issued to the Guistetti Brothers authorizing the diversion  
22 of 1.40 cubic feet per second for the irrigation of 70 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$   
23 of Section 31, T. 21 N., R. 16 E.W.M.. This is a Class 17 right with a 1902 date  
24 of priority. The Cromartys are irrigating approximately 30 acres in the W $\frac{1}{2}$ SE $\frac{1}{4}$  of  
25 Section 31 from Diversion No. 1. Approximately 40 head of cattle are raised on

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1 this field and drink from the irrigation ditches. The certificate authorized two  
2 diversions, one in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29 and one in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 31,  
3 T. 21 N., R. 16 E.W.M.. The Cromartys do not use diversions at either of these  
4 locations.

5 Diversion No. 2 is located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 31, approximately 325 feet  
6 north and 75 feet west of the center of Section 31. This diversion serves 21 acres  
7 lying in that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 31 west of the county road and the  
8 E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 31. The Cromartys are asserting a right to divert 0.43 cubic  
9 foot per second, 85 acre-feet per year from Diversion No. 2. Approximately 30 head  
10 of cattle are raised in this field and drink from the irrigation ditches.

11 Certificate No. 167, previously discussed, is also appurtenant to this land. A  
12 total of 51 acres are being irrigated within the place of use authorized by  
13 Certificate No. 167; however, none of the diversions being used are presently  
14 authorized by the certificate. It appears that sometime in the past the points of  
15 diversion were changed without compliance with RCW 90.03.380. The Court has ruled  
16 during the exception hearing for Subbasin No. 15 (Wenas Creek) that statutory  
17 procedures for obtaining authorization to change a water right cannot be ignored  
18 and only authorized points of diversion can be confirmed in this proceeding.

19 Diversion 3 is from the North Fork Teanaway River in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6,  
20 T. 20 N., R. 16 E.W.M., immediately above where the North Fork joins the West Fork.  
21 This diversion is used to irrigate 91 acres lying in the S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$   
22 of Section 5, T. 20 N., R. 16 E.W.M. lying south of the county road and north of  
23 the Teanaway River. A right is being asserted for the diversion of 2.83 cubic  
24 feet per second, 365 acre-feet per year. Approximately 240 head of cattle are  
25 raised on this field and drink from the irrigation ditches. According to

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1 Mr. Cromarty, Class 5 and 6 rights confirmed to Joseph Contratto are appurtenant to  
2 this land. Review of the decree confirms this assertion. The decree confirmed a  
3 Class 5 right with an 1886 date of priority for the diversion of 1.30 cubic feet  
4 per second for the irrigation of 65 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5 and  
5 a Class 6 right with an 1887 date of priority for the diversion of 1.70 cubic feet  
6 per second for the irrigation of 85 acres in the W $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
7 Section 5. However, again, there are no certificates in the record for the right,  
8 nor were water right claims filed pursuant to RCW 90.14.

9 Due to the lack of certificates for the land in Section 5 and in the N $\frac{1}{2}$  of  
10 Section 31, the Referee does not recommend confirmation of a water right for that  
11 land. The claimant and Ecology are directed to investigation this situation and be  
12 prepared to address it at the exception and remand phase of this proceeding. The  
13 Referee does recommend that a right be confirmed under Court Claim No. 1863 with a  
14 June 30, 1902, date of priority for the diversion of 1.02 cubic feet per second,  
15 204 acre-feet per year for the irrigation of 51 acres in the E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  of  
16 Section 31, T. 21 N., R. 16 E.W.M. The diversion location shall remain as  
17 authorized in Certificate No. 167 and the claimants are directed to contact the  
18 Department of Ecology about the procedures for obtaining authorization to change  
19 the points of diversion.

20 The Cromarty's are also asserting a right to use Storey Creek for supplemental  
21 irrigation for the lands lying in Section 5. Upon review of the decree, the  
22 Referee was unable to locate any rights confirmed for use of Storey Creek and the  
23 claimant did not direct the Referee's attention to a specific right in the decree.  
24 Therefore, the Referee cannot recommend that a right be confirmed for this source.

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1       A right is being asserted for the use of four springs on the Cromarty  
2 property. The first spring is located in the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31. The spring  
3 originally was used to serve the Amosso home. However, after the Amossos sold in  
4 1933 the spring was used for stock watering and lawn and garden irrigation. Water  
5 Right Claim No. 152381 was filed by Mr. Cromarty pursuant to the requirements of  
6 RCW 90.14 for use of this spring. The spring is used for lawn and garden  
7 irrigation of a small area, which is generally considered part of a domestic use.  
8 There was no testimony about continued use of the spring for stock watering. The  
9 Amossos settled on the land in 1902 and likely built their home at that time.  
10 Therefore, the Referee recommends that a right be confirmed with a June 30, 1902,  
11 date of priority for the diversion of 0.02 cubic foot per second, 2 acre-feet per  
12 year for domestic irrigation.

13       The second spring is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 31 and is used for  
14 stock watering and supplemental irrigation. Runoff from the spring flows into the  
15 irrigation ditch. The testimony indicates the stock drink directly from the  
16 source. The stock water stipulation discussed on page 4 of this report covers  
17 non-diversionary stock watering. According to the testimony, the spring was first  
18 used for irrigation in 1983. In order for there to be a water right for uses  
19 initiated in 1983, compliance with the permitting requirements of RCW 90.03 is  
20 necessary. There is no indication that occurred.

21       The third spring is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 31 and is used for stock  
22 water and supplemental irrigation. Runoff from the spring enters the irrigation  
23 ditch. According to the testimony, the Giustetti brothers used the spring for  
24 stock water and irrigation, but the diversion has not been kept up. In recent  
25  
26

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1 years it has been diverted into the irrigation ditch. There are no certificates or  
2 RCW 90.14 claims filed for this spring.

3 The fourth spring is located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 31 and is undeveloped  
4 and would be used primarily for stock water. It is not clear that the spring is  
5 currently being used for this purpose, if it is, the stock drink directly from the  
6 source, which is covered by the stock water stipulation.

7 Due to the failure to comply with either RCW 90.03 or RCW 90.14 for use beyond  
8 that covered by the stock water stipulation, the Referee does not recommend  
9 confirmation of water rights for spring 2 through 4.

10  
11 COURT CLAIM NO. 00383 -- John B. Crosetto, Jr.  
12 (A)05635 & Dorothy Crosetto  
13 Charles F. Crosetto  
& D. J. Crosetto

14 John B. Crosetto, Sr. filed a Statement of Claim with the Court for the use of  
15 waters from the Teanaway River and an unnamed creek. On March 31, 1986, Charles F.  
16 and Dorothy Crosetto were joined to the claim for a portion of the claimed right.  
17 On June 17, 1987, John B. Crosetto, Jr. and Charles F. Crosetto were substituted  
18 for John B. Crosetto, Sr. on the remainder of the claim. Charles F. Crosetto is  
19 now deceased and his wife, Dorothy, succeeded to his interest in the claim. John  
20 B. Crosetto, Jr. testified at the evidentiary hearing.

21 The Crosettos own the E $\frac{1}{2}$  and most of the SW $\frac{1}{4}$  of Section 10, T. 20 N.,  
22 R. 16 E.W.M.. They are asserting a right to irrigate 110 acres with water diverted  
23 from the Teanaway River and an additional 15 acres with water diverted from two  
24 unnamed creeks and an unnamed spring. For purposes of this proceeding, Mr.  
25 Crosetto has referred to one creek as John's Creek and one as Fred's Creek.

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1       The lands irrigated with water from the Teanaway River lie south of the  
2 Teanaway Road and north of the Teanaway River. Water is diverted from the river in  
3 the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 20 N., R. 16 E.W.M. and carried to the property through  
4 the Ballard Ditch. This same ditch serves the neighboring Connor property.  
5 Timothy hay is the predominate crop on the Crosetto land. After the second cutting  
6 of hay up to 200 head of cattle are grazed in the fields. The cattle have access  
7 to the Teanaway River. It is not apparent from the testimony that water is  
8 diverted into Ballard Ditch outside of the irrigation season for stock watering.  
9 Nondiversionary stock watering is covered by the stock water stipulation discussed  
10 on Page 4 of this report. Approximately 30 acres are being irrigated in the NE $\frac{1}{4}$ SW $\frac{1}{4}$   
11 of Section 10 and the remaining 80 acres of irrigated land lies in the E $\frac{1}{2}$  of  
12 Section 10.

13       Two certificates stemming from the Amosso decree are appurtenant to the  
14 Crosetto land. Certificate No. 116, with an 1889 date of priority, authorized the  
15 diversion of 0.80 cubic foot per second from the Teanaway River for the irrigation  
16 of 40 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M..  
17 Within the authorized place of use on Certificate No. 116, 30 acres are currently  
18 being irrigated. It is not clear whether an additional 10 acres have ever been  
19 irrigated in that area. The proportionate share of the certificate that would be  
20 appurtenant to 30 acres is 0.60 cubic foot per second.

21       Certificate No. 131, with an 1888 date of priority, authorized the diversion  
22 of 1.4 cubic feet per second from the Teanaway River for the irrigation of 70 acres  
23 in the E $\frac{1}{2}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M.. According  
24 to Mr. Crosetto's testimony, approximately 80 acres are being irrigated in the E $\frac{1}{2}$   
25 of Section 10, however, the certificate only authorizes the irrigation of 70 acres.

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1 Both of the certificates describe the point of diversion for the water as  
2 being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, T. 20 N., R. 16 E.W.M.. However, the diversion  
3 into the Ballard Ditch is in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8. The testimony did not  
4 address whether the point of diversion has been changed or if an error was made in  
5 describing the location of the diversion. However, review of the map exhibit for  
6 the 1921 adjudication shows the diversion being in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, rather  
7 than the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9 as described in the certificates. Other certificates  
8 that issued for lands served by the Ballard Ditch describe the point of diversion  
9 as being in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8. This would lead the Referee to conclude that  
10 the diversion has not changed, but an error was made on the certificates.

11 The Crosettos are asserting a right to use two creeks and a spring that feeds  
12 one of the creeks for irrigation. According to the testimony, water from Fred's  
13 Creek, which flows through the W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 10 is used as a supplemental supply  
14 of water for a portion of the fields irrigated from the Teanaway River. John's  
15 Creek is used to irrigate approximately 15 acres lying along the creek channel in  
16 the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 10. According to Mr. Crosetto, the creeks have always been  
17 used for irrigation. However, as far as the Referee can determine, rights were not  
18 confirmed during the 1921 adjudication for use of these creeks. John Crosetto  
19 filed Water Right Claim No. 000141 pursuant to the requirements of RCW 90.14  
20 asserting a right to divert 150 gallons per minute, 60 acre-feet per year from an  
21 unnamed creek in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, which likely is John's Creek. The water  
22 right claim form indicates that the creek was being used to irrigate 15 acres in  
23 the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10 and had been used since 1920. The 1921 adjudication  
24 determined the rights to use waters of the Teanaway River and its tributaries.  
25 These creeks are tributary to the Teanaway River and should have been addressed in

1 that decree, if water rights existed at that time. Lacking certificates for those  
2 creeks, the Referee cannot recommend that confirmation of a water right for those  
3 sources.

4       The spring located in Section 11 originally was developed and used for  
5 domestic supply in the home now owned by John Crosetto, Jr.. In the early 1950's a  
6 well was drilled for domestic supply and subsequent to that the spring water was  
7 used for stock watering and irrigation. Any right that may have existed for  
8 domestic supply has relinquished due to more than five successive years of nonuse,  
9 RCW 90.14.160. There is nothing in the record to show that a water right was  
10 obtained pursuant to the provisions of RCW 90.03 in the 1950's for use of the  
11 spring water for irrigation and stock watering. The only method for establishing a  
12 water right in the 1950's was through compliance with the permitting requirements  
13 of RCW 90.03.

14       Based on the foregoing, the Referee recommends that water rights be confirmed  
15 under Court Claim No. 00383 as follows: With a June 30, 1888, date of priority,  
16 1.4 cubic feet per second, 455 acre-feet per year from the Teanaway River for the  
17 irrigation of 70 acres and 1 acre-foot per year for stock water in that portion of  
18 the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and that portion of the SE $\frac{1}{4}$  of Section 10 lying south of the Teanaway  
19 Road and north of the Teanaway River. With a June 30, 1889, date of priority, 0.60  
20 cubic foot per second, 195 acre-feet per year from the Teanaway River for the  
21 irrigation of 30 acres and 2 acre-feet per year for stock watering in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
22 Section 10.

23       The Amosso decree and the resultant certificates authorized the diversion of  
24 surplus water, when available, up to an 100 percent increase over the quantities

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1 authorized under each right. Mr. Crosetto testified to taking advantage of that  
2 provision; therefore, the provision will carry forward to this recommendation.  
3

4 COURT CLAIM NO. 05593 -- Betty Darrow  
5 & Walter J. Darrow

6 A Statement of Claim was submitted by Betty Contratto Darrow and Walter Darrow  
7 for the use of waters from Taylor Spring for domestic supply, stock water and  
8 irrigation of two acres. Mrs. Darrow testified at the evidentiary hearing.  
9

10 A portion of the lands described in Court Claim No. 05593 are now owned by  
11 Jane Shaw, who pursued her own claim under Court Claim No. 01867. Water rights for  
12 her property will not be considered here, see Page 61 for discussion of Court Claim  
13 No. 01867. The Darrows own a parcel in the southeast corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
14 Section 5 and that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 north of the Teanaway Road.  
15 They are asserting a right to use water from Taylor Spring (which is the same as  
16 the unnamed spring identified in Court Claim No. 01867, Jane Shaw) for domestic  
17 supply for two homes and a grocery store, stock watering and irrigation of 2 acres.  
18 The domestic use is within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5 and 2 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  have  
19 in the past been irrigated with water from the spring. The irrigation ceased in  
1981.

20 According to Mrs. Darrow, when the spring was first developed it was piped to  
21 barns and a house on the property described in her Court Claim. At some later  
22 time, another house and the store were built and hooked up to the spring. There is  
23 not sufficient water to serve the Shaw home, the two homes on the Darrow property,  
24 the store and irrigate 2 acres. That is the reason the irrigation ceased in 1981.

25 The Darrows are basing their claim on a Notice of Water Appropriation filed by  
26 Joe Contratto on May 1, 1914. The Notice stated that he had appropriated two  
27

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1       inches per second of time of water flowing in Taylor Spring to be used for  
2       household, stock and irrigating purposes. The Notice identified that the spring  
3       was 5000 feet above Mr. Contratto's home. Mrs. Darrow is part of the Contratto  
4       family.

5       Based on the testimony, it appears that a water right was established in 1914  
6       for domestic supply for the Contratto home, stock water and irrigation. However,  
7       there is no evidence in the record of when the second home and store were  
8       constructed and hooked up to the spring. In order for there to be a water right  
9       for that use it must have begun prior to June 6, 1917. Otherwise, compliance with  
10      the provisions of RCW 90.03 for obtaining a permit from the State would have been  
11      necessary.

12      Although the Referee believes that a water right was established in 1914 as  
13      mentioned above, there is no evidence that a water right claim was filed pursuant  
14      to RCW 90.14. That act required the filing of a water right claim to document any  
15      uses of water begun prior to adoption of the Surface and Ground Water Codes, for  
16      which permits or certificates had not been issued by the State. Failure to file a  
17      claim relinquishes any right that may have existed. RCW 90.14.071. Therefore, the  
18      Referee cannot recommend confirmation of a water right to Betty and Walter Darrow  
19      under Court Claim No. 05593.

20

21      COURT CLAIM NO. 01556       -- James Davis

22

23      Earl Logan filed a Statement of Claim with the Court for the use of waters  
24      from the Middle Fork Teanaway River for irrigation and domestic. On December 7,  
25      1990, James M. Davis was substituted for Mr. Logan. Mr. Davis, represented by  
26      Attorney Richard T. Cole, testified at the evidentiary hearing.

27

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1 Mr. Davis owns Lots 4 and 8 of the Plat of Logan's Acres, being within the NW $\frac{1}{4}$   
2 of Section 36, T. 21 N., R. 15 E.W.M. northeast of the Middle Fork Teanaway River.  
3 He is asserting a right to irrigate one acre with water diverted from the river,  
4 piped to a pond partially on Lot 8, and pumped from the pond using a one-half  
5 horsepower pump. Water is diverted from the river in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26 and  
6 carried through an open ditch into the NW $\frac{1}{4}$  of Section 36. This same ditch serves  
7 property owned by William Hunt and Donald Bark. Mr. Davis was not sure how much  
8 water he pumps from the pond, but estimated it could be 0.25 cubic foot per second.  
9 It is not reasonable to expect that a one-half horsepower pump could withdraw that  
10 quantity of water from the pond into a pressurized sprinkler system. A withdrawal  
11 of 0.04 cubic foot per second would be a more reasonable expectation.

12 Mr. Davis believes that the one acre he is currently irrigating has  
13 historically been irrigated with water diverted from the river. He is basing his  
14 claim to a water right on State of Washington v. Amosso, the Teanaway River  
15 Adjudication of 1921. A priority date of 1890 is being asserted. Review of that  
16 decree reveals that a right was confirmed in 1921 to Joseph Contratto, who owned  
17 the NW $\frac{1}{4}$  of Section 36 at the time of the adjudication, for the diversion of 1.10  
18 cubic feet per second for the irrigation of 55 acres in the NW $\frac{1}{4}$  of Section 36.  
19 This is the same right, for which a certificate has not issued, that is the basis  
20 for the claims of William Hunt, Donald Bark, Orene Ward and a portion of the land  
21 owned by Ted Fudacz.

22 Pursuant to the requirements of RCW 90.14 Earl R. and Grace Logan filed Water  
23 Right Claim No. 112092 asserting a right to divert 0.32 cubic foot per second, 64  
24 acre-feet per year from the Middle Fork of the Teanaway River for the irrigation of  
25 16.1 acres in the NW $\frac{1}{4}$  of Section 36. This filing may have preserved the water

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1 rights confirmed in the 1921 adjudication to the extent of 16.1 acres of  
2 irrigation. However, rights are being asserted by the Logans' successors for the  
3 irrigation of a total of 21 acres.

4 While it is apparent that a right was confirmed in 1921 and water is  
5 continuing to be put to beneficial use, the Referee cannot recommend confirmation  
6 of a water right until the questions surrounding the missing certificate are  
7 resolved and the consequence of the RCW 90.14 water right claim asserting a right  
8 for the irrigation of only 16 acres is addressed. It is suggested that the  
9 parties, including the Department of Ecology, investigate this issue and be  
10 prepared to address it during the exception and remand phase of the proceeding for  
11 this subbasin. Therefore, at this time, the Referee does not recommend  
12 confirmation of a water right to James M. Davis under Court Claim No. 01556.  
13

14 COURT CLAIM NO. 00953 -- Dean Decker

15 Shirley Chicklinsky (formerly Bednar) filed a Statement of Claim with the  
16 Court for the use of waters from Mason Creek for irrigation, stock water and  
17 domestic supply. On August 4, 1989, Dean Decker was substituted for Ms.  
18 Chicklinsky on the claim. Mr. Decker testified at the evidentiary hearing.

19 Mr. Decker owns approximately 4.5 acres in a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
20 Section 13, T. 20 N., R. 16 E.W.M. lying north of the Teanaway Road and west of  
21 Mason Creek. According to Mr. Decker's testimony, he irrigates approximately 2.5  
22 acres of lawn, garden and fruit trees with water diverted from Mason Creek. Water  
23 is diverted from the creek onto his property at two points. The first is in the  
24 NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13 into an open gravity flow ditch to an excavated pond on the  
25 Decker property. Water is piped from this pond to the Grywacz property to the  
26

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1 southwest and to a smaller pond to the east. Discharge from the smaller pond is to  
2 Mason Creek. When livestock are on the property they drink from the open ditch and  
3 pond and directly from Mason Creek. At the present time Mr. Decker does not have  
4 livestock, but they have been present in the past. A second diversion is also  
5 located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13. A gravity flow pipeline delivers water to the  
6 Decker property for his irrigation use.

7 Mr. Decker is basing his claim to a water right on the Amosso, supra decree  
8 from the 1921 adjudication of the Teanaway River.' A Class 18 right, which would  
9 have a 1903 priority date, was confirmed to August Zanola for the diversion of 0.74  
10 cubic foot per second from Mason Creek for the irrigation of 37 acres in the NW $\frac{1}{4}$  of  
11 Section 13, T. 20 N., R. 16 E.W.M.. Although a water right was confirmed in the  
12 decree, an adjudicated certificate is not in the record for this right. Included  
13 in State's Exhibit SE-4 is a list of adjudicated certificates for which fees have  
14 not been paid. Evidence presented as part of the Carl A. and Rosemary Niese claim  
15 and the Bernard Grywacz claims lead the Referee to conclude that Certificate No.  
16 168 on the State's list would be for the Zanola right.

17 Two certificates of change issued by the Department of Ecology and a  
18 predecessor agency for the Zanola right (Certificate No. 168). In 1969 Certificate  
19 of Change recorded in Volume 3, Page 1089 issued to Shirley Danko Bednar  
20 authorizing her to change the place of use for a portion of the right granted in  
21 Certificate No. 168 and correct the point of diversion location for that portion of  
22 the right. The point of diversion was changed to a point approximately 400 feet  
23 south and 550 feet east of the northwest corner of Section 13. The place of use  
24 for a portion of the right equaling 0.14 cubic foot per second for the irrigation  
25 of 7 acres was changed to land in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14 (land now owned by

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1 claimant Bernard Grywacz), leaving 0.60 cubic foot per second for 30 acres still  
2 appurtenant to the NW $\frac{1}{4}$  of Section 13. The certificate of change states that the  
3 point of diversion was identified in the certificate as being in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
4 Section 8, T. 20 N., R. 16 E.W.M., on the Teanaway River and this location was in  
5 error.

6 In 1974 the Department of Ecology issued to C. A. Niese Certificate of Change  
7 recorded in Volume 1-3, Page 65 granting a right to change the point of diversion  
8 for 0.23 cubic foot per second to a point located 140 feet north and 140 feet east  
9 of the southwest corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12. This  
10 point is the diversion that feeds the open ditch that flows through Section 13.  
11 The certificate of change states that the point of diversion originally authorized  
12 was from the Teanaway River in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 20 N., R. 16 E.W.M..  
13 None of the certificates of change specifically address the Decker land, nor was a  
14 water right claim filed for the land pursuant to RCW 90.14.

15 Presented as part of the Bernard Grywacz claim was a copy of a sales agreement  
16 executed in December of 1969 between Shirley Danko Bednar and Bernard Grywacz  
17 transferring that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13 south of the Teanaway Road,  
18 along with 0.15 cubic foot per second of irrigation water, which would be  
19 sufficient water for 7.5 acres. Carl and Rosemary Niese are claiming all of the  
20 Zanola right that was not transferred to the Grywacz property in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
21 Section 14, or 0.60 cubic foot per second for the irrigation of 30 acres. Neither  
22 Mr. Decker or the Nieses presented any documentation to show whether water rights  
23 were specifically addressed when they purchased their land. A water right is  
24 appurtenant to the historic place of water use as authorized by the certificate,  
25 unless changed through compliance with RCW 90.03.380. When a water right

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1 authorizes the irrigation of 37 acres within an 160 acre place of use, it is  
2 important to know exactly where the water has historically been used. Particularly  
3 in a situation such as this where apparently up to 46 acres have been irrigated  
4 within an area where only 37 acres have a water right.

5 The two certificates of change only changed the point of diversion for 0.37  
6 cubic foot per second, rather than the entire 0.74 cubic foot per second. It is  
7 not clear, and the testimony did not address, why the points of diversion were  
8 changed for only a portion of the water right.

9 Mr. Decker did not provide any testimony of historic water use on his specific  
10 portion of the NW $\frac{1}{4}$  of Section 13. Due to the uncertainty concerning the location  
11 of the lands within the NW $\frac{1}{4}$  of Section 13 that were historically irrigated with  
12 water diverted from Mason Creek under the Zanola right, and the lack of any type of  
13 certificate or RCW 90.14 claim, the Referee cannot recommend confirmation of a  
14 water right to Mr. Decker.

15  
16 COURT CLAIM NO. 00777 -- Milton F. Downs  
17 (A)05114 & Geraldine Downs  
18 Teanaway Valley Farms, Inc.  
William A. Evenden  
& Karen Evenden

19 Milton F. and Geraldine Downs submitted a Statement of Claim to the Court for  
20 the use of waters from the Teanaway River and its tributaries. On March 4, 1990,  
21 Teanaway Valley Farms, Inc. and William A. and Karen Evenden were joined to the  
22 claim. Milton F. and Geraldine Downs, William Evenden, Kathleen Randall,  
23 Secretary-Treasurer of Teanaway Valley Farms, Inc., and Richard C. Bain, a  
24 consultant hired by the claimants, testified at the evidentiary hearing. The  
25 claimants are represented by Attorney Jeff Slothower.

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1       Mr. and Mrs. Downs originally owned all of the land described in Court Claim  
2 No. 00777, consisting of most of the S $\frac{1}{2}$  of Section 13 and a portion of the E $\frac{3}{4}$ E $\frac{1}{2}$  of  
3 Section 14 lying south of the Three M Ditch and north of the Teanaway River, all in  
4 T. 20 N., R. 16 E.W.M.. They have sold the land in the S $\frac{1}{2}$  of Section 13 southwest  
5 of the Teanaway Road and approximately 3 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14 to the  
6 Evendens and Teanaway Valley Farms, Inc., but provided testimony about water use on  
7 all the land.

8       According to the Downs' testimony, the land described in Court Claim No. 00777  
9 has historically been irrigated with water diverted from the Teanaway River, Mason  
10 Creek and Musser Creek. Approximately 22 acres in the E $\frac{1}{2}$  of Section 14 lying south  
11 of the Three M Ditch and north of the Teanaway River, still owned by the Downs, is  
12 irrigated solely with water diverted from the Teanaway River and carried in the  
13 Three M Ditch. Approximately 30.7 acres, owned by Teanaway Valley Farms, Inc., in  
14 that portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14 lying east of Mason Creek and a portion of  
15 the S $\frac{1}{2}$  of Section 13, known as Parcels 1 and 2 of that survey recorded in Book 16  
16 of Surveys, pages 61 and 62, records of Kittitas County, is irrigated with  
17 comingled Mason Creek and Teanaway River water. Mrs. Downs testified that 29 acres  
18 had historically been irrigated, but that Teanaway Valley Farms had worked the land  
19 and increased the irrigated acreage to 30.7 acres. The ASCS map put in the record  
20 as Exhibit DE-148, shows 29 acres irrigated. Approximately 11.5 acres in that  
21 portion of Parcels 1 and 2 lying northeast of the Three M Ditch is irrigated with  
22 Mason Creek water comingled with Teanaway River water. Approximately 25 acres  
23 owned by the Evendens in Parcel 3 and 4 of that survey recorded in Book 16 of  
24 Surveys, Pages 61 and 62, records of Kittitas County is irrigated with Teanaway  
25 River water carried in the Three M Ditch comingled with Mason Creek water. The

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1      Downs also own that portion of the S $\frac{1}{2}$  of Section 13 northeast of the Teanaway Road  
2      and irrigate 8.6 acres just northeast of the road with water diverted from Musser  
3      Creek. In the past 8 acres have been irrigated, but that has recently been  
4      increased to 8.6 acres.

5      It is apparent from the testimony that recently the number of acres being  
6      irrigated by the Downs and Teanaway Valley Farms has increased. The water rights  
7      appurtenant to these lands are limited by the number of acres historically  
8      irrigated and cannot be increased without complying with the permitting provisions  
9      of RCW 90.03. The Referee is constrained to recommend confirmation of water rights  
10     only for the number of acres historically irrigated within the limits on the  
11     certificates issued as a result of the 1921 adjudication.

12     Four certificates from the 1921 adjudication are appurtenant to portions of  
13     the land described in Court Claim No. 00777. Certificate No. 148 is a Class 4  
14     right with an 1885 date of priority. It authorized the diversion of 2.36 cubic  
15     feet per second from the Teanaway River for the irrigation of 118 acres in the SW $\frac{1}{4}$   
16     of Section 13. The authorized points of diversion are in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8,  
17     the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 14 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 13. Under Court Claim No.  
18     00777, a right is being asserted for the irrigation of 67 acres. Keith and  
19     Geraldine Schober, under Court Claim No. 01942, are also asserting a right under  
20     this certificate for lands owned in the SW $\frac{1}{4}$  of Section 13, see Page 150.

21     The Downs are contending that this certificate also authorizes the use of  
22     water from Mason Creek and Musser Creek due to the points of diversion described on  
23     the certificate. The Referee is not persuaded this is a correct conclusion. In  
24     cases where the right being confirmed is for a tributary source rather than the  
25     Teanaway River, the 1921 decree specifically stated the name of the tributary being

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1 used. Additionally, two of the points of diversion described on Certificate No.  
2 148, the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 14, are only on the Teanaway  
3 River. The third point, the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 13 could be either a diversion from  
4 the Teanaway River or a diversion from Musser Creek. However, the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
5 Section 13 is below and lower in elevation than the lands irrigated from Musser  
6 Creek. The map prepared for the 1921 adjudication show diversions from the  
7 Teanaway River in each of the locations described on the certificate and show the  
8 diversion in Section 8 being to a ditch that ran from Section 8 through Sections 9,  
9 10, 11, 14 and the W $\frac{1}{2}$  of Section 13. That ditch would have been capable of serving  
10 the lands in the SW $\frac{1}{4}$  of Section 13 northeast of the Teanaway Road. There still is  
11 a diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 that is used for the Ballard Ditch, which  
12 now terminates in Section 10. The lower portion of this ditch, which could have  
13 served Section 13, has apparently been abandoned.

14 Mr. and Mrs. Downs testified to there being remnants of a ditch from both  
15 Musser Creek and Mason Creek that previously served their lands. Currently creek  
16 water flows into the Three M Ditch and is pumped to the irrigated lands. The Downs  
17 cite two Notices of Appropriation as the basis for their right to use creek water.  
18 Fred Musser filed a Notice of Appropriation on February 2, 1916, claiming a right  
19 to divert 50 inches, being all the water flowing in McClellan Creek (now known as  
20 Musser Creek) for irrigating lands in the S $\frac{1}{2}$  of Section 13. A second Notice of  
21 Appropriation was filed by Fred Musser and August Zanola on February 2, 1916,  
22 claiming a right to divert 50 inches of water from Maison (sic) Creek for  
23 irrigation and domestic use in the W $\frac{1}{2}$  of Section 13. Water Right Claim No. 070282  
24 was filed pursuant to the requirements of RCW 90.14 by Gerald Thomas, predecessor  
25 to the Downs for the lands they own in the SW $\frac{1}{4}$  of Section 13. It claimed a right

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1 to divert 10 gallons per minute from Musser Creek for irrigation and stock water in  
2 the SW $\frac{1}{4}$  of Section 10. The number of acres were not specified, however, 10 gallons  
3 per minute would only irrigate a few acres, perhaps 3 or 4.

4       Entered into the record on behalf of the Downs is an excerpt from the  
5 transcript of testimony from the 1921 adjudication. The excerpt includes testimony  
6 of Fred Musser and August Zanola in which they both testified to using Mason Creek  
7 and McClelland Creek to irrigate their lands in the W $\frac{1}{2}$  of Section 13. The  
8 testimony supports the assertion that rights had been established for those two  
9 creeks. The Report of Referee that issued did not recommend confirmation of a  
10 right to either Mr. Musser or Mr. Zanola for use of Mason Creek and/or McClelland  
11 Creek. However, the decree that was signed on June 16, 1921, confirmed a water  
12 right to August Zanola for 0.74 cubic foot per second from Mason Creek for the  
13 irrigation of 37 acres in the NW $\frac{1}{4}$  of Section 13. There was no right confirmed for  
14 Mr. Musser for either Mason Creek or McClelland Creek. It would appear that when  
15 the Report of Referee did not recommend confirmation of a water right to Mr.  
16 Zanola, he took exception resulting in a right being confirmed. The opportunity to  
17 have a right confirmed for those creeks was in 1921, and this Referee cannot go  
18 beyond the rights that were confirmed at that time.

19       Certificate No. 155, a Class 8 right with an 1889 date of priority, authorized  
20 the diversion of 0.52 cubic foot per second for the irrigation of 26 acres in that  
21 portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, lying under the Three M Ditch  
22 containing 26 acres and embraced in the property described in Book 26 at page 463  
23 of the records of deeds in the office of the auditor of Kittitas County. The  
24 authorized point of diversion is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 14.

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1        Certificate No. 126, also a Class 8 right with an 1889 date of priority,  
2        authorized the diversion of 0.46 cubic foot per second for the irrigation of 23  
3        acres in that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14 lying under the Three  
4        M Ditch containing 23 acres and embraced in the property described in Book 24 at  
5        Page 465 of the records of deeds in the office of the auditor of Kittitas County.  
6        Mrs. Downs testified that she researched the deeds described in both certificates  
7        and discovered that the deed cited in Certificate No. 126 as recorded in Book 24 at  
8        Page 465 described property in the town of Cle Elum rather than property along the  
9        Teanaway River. The deed recorded in Book 26 at Page 465, however, does describe  
10      property along the Teanaway River in Section 14. The Downs and neighboring  
11      claimant Bernard W. Grywacz are each asserting that these certificates are  
12      appurtenant to the land they irrigate. The Downs argue that the deeds referenced  
13      in the place of use description for each of the certificates describe only land  
14      lying south of the Three M Ditch in Section 14. However, they are mistaken. Each  
15      deed describes two parcels, one lying south of the ditch and one lying north of the  
16      ditch. Portions of the parcels lying north of the ditch are now owned by Bernard  
17      Grywacz.

18        There was much discussion between counsel for Mr. Grywacz and counsel for the  
19      Downs about the meaning of the language "under the Three M Ditch." In looking at  
20      the definition of "under" in Webster's New World Dictionary, the definition that  
21      seems to be more appropriate when referring to a ditch is: "in, at, or to a  
22      position down from; lower than; below." In the Referee's experience the terms  
23      "under a ditch" are used to refer to lands that are lower in elevation and below  
24      the ditch such that they could be served by gravity flow. Mr. Grywacz must pump  
25      from the ditch in order to irrigate his land. Generally, irrigation systems

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1 constructed in the late 1800's, such as the Three M Ditch, were gravity flow  
2 systems and pumps were rarely used. There is nothing in the 1921 Referee's Report  
3 to indicate that pumps were being utilized at that time. The maps from the 1921  
4 adjudication show a ditch diverting from the Teanaway River in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
5 Section 8 that crossed the NE $\frac{1}{4}$  of Section 14 above the Grywacz property and could  
6 have delivered water to his land. However, the certificates did not authorize use  
7 of a diversion in Section 8. The Referee concludes that Certificates No. 126 and  
8 155 are appurtenant to the lands described in Court Claim No. 00777 lying in  
9 Section 14, which are mostly owned by the Downs. Teanaway Valley Farms, Inc. owns  
10 and irrigates 2.75 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, which would be covered by  
11 Certificate No. 155.

12 Certificate No. 162, a Class 12 right with an 1894 date of priority,  
13 authorized the diversion of 0.26 cubic foot per second from the Teanaway River for  
14 the irrigation of 13 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13. The authorized point of  
15 diversion is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 14. A small portion of the Evenden irrigated  
16 land extends into the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13, approximately one-quarter acre in size,  
17 and would be covered by this certificate.

18 The Downs also mentioned Certificate No. 164, which is a Class 8 right with an  
19 1889 date of priority. However, that certificate is appurtenant to 1.5 acres in  
20 the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14 lying north and east of the Teanaway River. There was no  
21 evidence presented to show that any land is irrigated in that area.

22 The Certificates that are appurtenant to the lands described in Court Claim  
23 No. 00777 all authorize a diversion in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 14. Currently the  
24 diversion into the Three M Ditch is located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10. Review of  
25 the 1921 map shows the diversion at that time was very near the section corner that

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1 is common to Sections 10, 11, 14, and 15. The testimony indicates that due to  
2 periodic flooding diversions will be repaired and relocated slightly. The  
3 relocation is due to the effects of the flooding and will vary by the river  
4 conditions. When the original diversion is located so close to a section corner,  
5 such as in this situation, repairing and relocating the diversion to avoid debris  
6 from the flood may necessitate moving to a different quarter section than described  
7 in the certificate

8       Richard Bain testified concerning his investigations into the irrigation  
9 practices on all three of the farms and engineering reports were entered into the  
10 record for the Evenden and Teanaway Valley Farms property. Mr. Bain's reports and  
11 his testimony were that between 15 and 18 acre-feet per acre would be needed on  
12 lands that were flood irrigated and 6 acre-feet per acre would be needed on lands  
13 that were sprinkler irrigated. Mr. Bain measured a take out serving the Teanaway  
14 Valley Farms land and one serving the Evenden land. Each take out was measured at  
15 slightly more than 3 cubic feet per second. The certificates that issued as a  
16 result of the 1921 adjudication authorized the diversion of 0.02 cubic foot per  
17 second per acre irrigated, which would provide 5.4 acre-feet per acre during the  
18 May 1 through September 15 irrigation season authorized. Based on those  
19 certificates, the Evendens would have a right to divert 0.50 cubic foot per second  
20 from the Teanaway River and Teanaway Valley Farms would have a right to divert 0.81  
21 cubic foot per second. Mr. Bain also testified to conveyance loss in the Three M  
22 Ditch. However, the certificates limit the total quantity of water that can be  
23 diverted from the river, including conveyance loss, if there is any. The Amosso  
24 decree did allow for the use of additional water when there is surplus water in the  
25 river in excess of that needed to satisfy all existing water rights. The Referee  
26

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1 believes that surplus water would only be available about 30 days during the  
2 irrigation season. See Page 5 for a discussion of this issue. Based on Mr. Bain's  
3 testimony, it appears that the diversion of water into the Three M Ditch for use on  
4 the lands described in Court Claim No. 00777 has far exceeded that which is  
5 authorized by the appurtenant certificates.

6 The testimony was that up to 100 cow/calf pairs graze on each farm and water  
7 from the ditches during irrigation season. An additional 2 acre-feet would,  
8 therefore, be used on each farm for stock watering.

9 In spite of the testimony of Mr. Bain concerning the quantity of water needed  
10 to irrigate the fields, the Referee is constrained to recommend confirmation of  
11 water rights only within the limits imposed by the 1921 adjudication.

12 The Referee, therefore, recommends that water rights be confirmed under Court  
13 Claim No. 00777 as follows:

14 To Milton and Geraldine Downs, with a June 30, 1889, date of priority, 0.44  
15 cubic foot per second, 143 acre-feet per year for irrigation; 2 acre-feet per year  
16 for stock watering in the E $\frac{1}{2}$  of Section 14.

17 To Teanaway Valley Farms, Inc., with a June 30, 1885, date of priority, 0.755  
18 cubic foot per second, 245.375 acre-feet per year for the irrigation of 37.75 acres  
19 and 2 acre-feet per year for stock watering in the SW $\frac{1}{4}$  of Section 13 and with a  
20 June 30, 1889, date of priority, 0.055 cubic foot per second, 17.8755 acre-feet per  
21 year for the irrigation of 2.75 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14.

22 To William and Karen Evenden, with a June 30, 1885, date of priority, 0.495  
23 cubic foot per second, 160.87 acre-feet per year for the irrigation of 24.75 acres  
24 and 2 acre-feet per year for stock watering in the SW $\frac{1}{4}$  of Section 13 and with a

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1 June 30, 1889, date of priority 0.005 cubic foot per second, 1.625 acre-feet per  
2 year for the irrigation of 0.25 acre in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13.

3 Each of the rights shall carry a provision that allows for the diversion of an  
4 additional 100 percent of the recommended instantaneous quantity when that water is  
5 available in excess of that needed to satisfy all existing rights. The Referee  
6 finds that a recommendation cannot be made to confirm water rights for the use of  
7 Mason Creek or Musser Creek due to the lack of certificates from the prior  
8 adjudication.

9  
10 COURT CLAIM NO. 00518 -- Robert Duke

11 A Statement of Claim was submitted by Robert Duke for the use of runoff water  
12 in the Teanaway Basin. Mr. Duke was residing in New Mexico at the time of the  
13 evidentiary hearing and Mark Makela, his caretaker, testified.

14 Mr. Duke is asserting a right for nondiversionary stock watering for lands in  
15 E $\frac{1}{2}$ W $\frac{1}{2}$  of Section 17 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20, T. 20 N., R. 21 E.W.M.. Prior  
16 to the evidentiary hearing he had sold all of the land in Section 17, except part  
17 of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ . Livestock drink from an ephemeral stream that flows through the  
18 SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 17 into the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20, where it flows into a small  
19 pond. Livestock and wildlife drink from the stream during the winter and early  
20 spring until the stream is dry and then from the pond. Some water is hand dipped  
21 from the pond to water plants around the Duke house.

22 Nondiversionary stock watering is covered by the stock water stipulation  
23 discussed on Page 4 of this report and an additional right is not necessary.  
24 Therefore, the Referee does not recommend confirmation of a water right under Court  
25 Claim No. 00518.

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2 COURT CLAIM NO. 01042 -- Ralph V. Dulin  
3 & Marlene C. Dulin  
Teanaway Ranch, Inc.

4 A Statement of Claim was submitted by Ralph V. and Marlene C. Dulin for the  
5 use of waters from the Teanaway River and Mack Creek. On December 18, 1990,  
6 Teanaway Ranch, Inc., was joined to the claim. Attorney Jeff Slothower represents  
7 Teanaway Ranch, Inc.. Bert Quicksall, manager of the ranch; Carl Ferguson, a prior  
8 owner of the land described in Court Claim No. 01042; and Richard Bain, a  
9 consultant hired by Teanaway Ranch, Inc., testified at the evidentiary hearing.

10 According to the testimony and evidence presented at the hearing, Teanaway  
11 Ranch, Inc., is now the sole owner of the lands described in Court Claim No. 01042.  
12 The land lies in the NW $\frac{1}{4}$  of Section 30 and the E $\frac{1}{2}$ SW $\frac{1}{4}$  and Government Lot 4 of  
13 Section 19, T. 20 N., R. 17 E.W.M.. The testimony indicates that the Teanaway  
14 River is the primary source of irrigation water on the ranch. Water is diverted  
15 from the river into the Three M Ditch at a point in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10,  
16 T. 20 N., R. 16 E.W.M. and transported southeast to the property. Water from Mack  
17 Creek enters the Three M Ditch near the south quarter corner of Section 19 and is  
18 used to irrigate a portion of the land in the NW $\frac{1}{4}$  of Section 30.

19 According to the testimony, 191.4 acres are being irrigated within the  
20 Teanaway Ranch, Inc., ownership. The testimony did not indicate how that acreage  
21 was divided between the sections, except that 38 acres are being irrigated in  
22 Government Lot 4 of Section 19.

23 There are three certificates from the 1921 Teanaway River Adjudication  
24 appurtenant to the claimant's land. Certificate No. 135 is a Class 8 right with an  
25 1889 date of priority, authorizing the diversion of 1.72 cubic feet per second from

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1 the Teanaway River for the irrigation of 86 acres in the S $\frac{1}{2}$ NW $\frac{1}{4}$  and that portion of  
2 the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 30 lying south of the county road (now known as West Ballard  
3 Road). It appears that the claimants are irrigating all of this parcel. The  
4 authorized point of diversion is in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T. 20 N.,  
5 R. 16 E.W.M..

6 Certificate No. 156 is also a Class 8 right with an 1889 date of priority,  
7 authorizing the diversion of 0.40 cubic foot per second for the irrigation of 20  
8 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 19. The authorized points of diversion are in the  
9 NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 14, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 13,  
10 T. 20 N., R. 16 E.W.M.. It appears that the claimant is irrigating approximately  
11 10 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19. The proportionate share of the certificate  
12 that would be appurtenant to the 10 acres is 0.20 cubic foot per second.

13 Certificate No. 157 is also a Class 8 right with an 1889 date of priority,  
14 authorizing the diversion of 1.48 cubic feet per second for the irrigation of 74  
15 acres in that portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 30 lying north of the county road.  
16 An aerial photograph entered by Keith Schober, a neighboring landowner, shows the W $\frac{1}{2}$   
17 of Section 30 and from the photograph, it appears there is approximately 4 acres of  
18 land on which buildings are constructed that is not being irrigated, leaving 70  
19 irrigated acres. The proportionate share of the certificate that would be  
20 appurtenant to 70 acres is 1.40 cubic feet per second.

21 Thirty-eight acres are being irrigated in Government Lot 4 of Section 19.  
22 However, the claimant has not brought to the Referee's attention any water rights  
23 that are appurtenant to this land. The Referee's review of the Amosso decree fails  
24 to reveal a water right confirmed for this land. Additionally, Mr. Ferguson  
25 testified that this land was first irrigated in 1960 when drains were installed to

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1 capture irrigation return flows. In order for a right to have been established for  
2 a water use that first began in 1960, it would have been necessary to comply with  
3 the permitting requirements of RCW 90.03. There is no evidence this occurred.  
4 Therefore, the Referee cannot recommend confirmation of a water right for the lands  
5 in Government Lot 4 of Section 19.

6 Mr. Bain testified to the annual quantity of water needed to irrigate the  
7 crops being raised on the claimant's property. However, that analysis seemed to be  
8 based on an irrigation season longer than that authorized by the certificates that  
9 issued in 1921 and assumed the diversion of more water than is authorized by the  
10 certificates. The Referee can only recommend confirmation of a right within the  
11 limits of the original certificate, including authorized instantaneous quantity and  
12 irrigation season. The Referee in 1921 determined that the irrigation season in  
13 this area is May 1 to September 15 and that the water duty would be 0.02 cubic foot  
14 per second per acre irrigated, or 5.4 acre-feet per year per acre irrigated. In  
15 spite of Mr. Bain's testimony, that is the maximum that can be recommended herein.  
16 The decree allowed for the use of surplus water when it was available in excess of  
17 that needed to satisfy existing rights. Since there was testimony that the  
18 claimants divert a larger instantaneous quantity than was authorized by the  
19 certificate, the Referee shall consider they are using surplus water as provided in  
20 the decree. However, surplus water is only available a short period of time early  
21 in the irrigation season.

22 Teanaway Ranch, Inc., is also asserting a right to use waters from Mack Creek.  
23 Again, there is lack of evidence to show that a water right was established for use  
24 of this creek. Water Right Claim No. 070281 was filed by Gerald Thomas pursuant to  
25 RCW 90.14 asserting a right to use 3 cubic feet per second, 300 acre-feet per year

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1 from Mack Creek for the irrigation of 90 acres in the NW $\frac{1}{4}$  of Section 30. However,  
2 the purpose of RCW 90.14 was to document claims to water rights based on uses began  
3 prior to adoption of the State Surface Water Code in 1917 and the State Ground  
4 Water Code in 1945. The adjudication of the Teanaway River and its tributaries in  
5 1921 settled all claims to water rights from the Teanaway River and its tributaries  
6 and rights were confirmed in the Amosso decree to those parties holding valid water  
7 rights. There were no water rights confirmed for the claimant's property  
8 authorizing the use of waters from Mack Creek. Therefore, the Referee cannot  
9 recommend confirmation of a water right for use of that source.

10 The three certificates that are appurtenant to the claimant's land authorize  
11 diversions from the Teanaway River at several points, none of which are being used  
12 today. However, it appears that historically the land has been served by the same  
13 ditch. The points described in the certificates and the current diversion from the  
14 river all lie within a few hundred feet of the section corner that is common to  
15 Sections 10, 11, 14 and 15, T. 20 N., R. 16 E.W.M.. Review of the certificates  
16 that issued for the lands of other claimants in this proceeding reveals that those  
17 certificates authorized a point of diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15 or the  
18 NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 14. The map prepared for the 1921 adjudication shows only one  
19 diversion from the river at this approximate location and that diversion is shown  
20 as being very near the common section corner. All of the claimants testified to  
21 being served by the Three M Ditch.

22 Testimony by other claimants leads the Referee to believe that when the  
23 Teanaway River experiences a flooding incident, the damage caused can make it  
24 necessary to move a point of diversion to avoid debris and bank damage. The move  
25 is generally a small distance, but may involve moving into a different section if

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1 the original point was near a section line, which appears to be the case for the  
2 Three M Ditch diversion. The Referee does not believe this type of diversion  
3 change is the kind envisioned when RCW 90.03.380 was drafted requiring  
4 authorization to change a point of diversion and does not believe that compliance  
5 with those requirements is necessary when an ongoing adjudication can correct the  
6 location.

7 The Referee recommends that a water right be confirmed to Teanaway Ranch,  
8 Inc., with a June 30, 1889, date of priority for the diversion of 3.32 cubic feet  
9 per second, 913 acre-feet per year for the irrigation of 166 acres in that portion  
10 of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19 lying below and south of the Three M Ditch and the NW $\frac{1}{4}$   
11 of Section 30, T. 20 N., R. 17 E.W.M.. The right shall carry the provision that  
12 when surplus water is available in excess of that needed to satisfy all existing  
13 rights an additional 100 percent of the instantaneous quantity can be diverted.  
14

15 COURT CLAIM NO. 01328 -- Geraldine C. Elich

16 A Statement of Claim was submitted by Geraldine C. Elich for the use of waters  
17 from the Teanaway River and two springs. Ms. Elich testified at the evidentiary  
18 hearing.

19 Ms. Elich had erroneously described her property in the Court Claim as being  
20 in Section 24, T. 20 N., R. 16 E.W.M., when in fact the land is located in  
21 Section 34, T. 20 N., R. 16 E.W.M.. Therefore, the field investigation and  
22 resulting investigation report prepared by the state were for the wrong property.  
23 Ms. Elich owns that portion of Section 34 lying south and east of the Teanaway  
24 River and is claiming a right to irrigate 80 acres in that portion of the SW $\frac{1}{4}$  of  
25 Section 34 lying south and east of the Teanaway River. Ms. Elich obtained the  
26

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1 property in 1980 from her aunt and has not irrigated the land since that time.  
2 Water previously was diverted from the river at a point near the center of  
3 Section 34 and carried by gravity flow in an open ditch to the south and west.  
4 Alfalfa was planted on the land, which was flood irrigated.

5 Two certificates from the 1921 adjudication of the Teanaway River are  
6 appurtenant to the Elich property. Certificate No. 118 is a Class 3 right with an  
7 1884 date of priority authorizing the diversion of 1.60 cubic feet per second for  
8 the irrigation of 80 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34. The authorized  
9 point of diversion is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34. Bruno Bonetto, who owns that  
10 portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34 north of the Teanaway River is also asserting a  
11 right under this certificate. There appears to be approximately 70 acres in the  
12 place of use on the certificate that is within the area Ms. Elich testified had  
13 historically been irrigated.

14 Certificate No. 120 is also a Class 3 right with an 1884 date of priority. It  
15 authorizes the diversion of 0.32 cubic foot per second for the irrigation of 16  
16 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34. The authorized point of diversion is in the  
17 NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 34. However, according to the State's Map Exhibit, SE-3, the  
18 Teanaway River does not flow through the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 34. Bruno Bonetto and  
19 Bette Rowe each own a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34 lying west of the  
20 Teanaway River and are asserting rights under this certificate. There is  
21 approximately 10 acres within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34 within the area Ms. Elich  
22 testified had historically been irrigated.

23 Ms. Elich is also asserting a right to use two springs. One spring is located  
24 in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 34 and is used for stock watering. Up to 100 pair of  
25 cattle have grazed in the area and use this spring. Ms. Elich did not testify to

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1 this spring being developed and piped to a stock tank, so the Referee must assume  
2 that the use is nondiversionary in nature. That type of stock water use is covered  
3 by the stock water stipulation discussed on Page 4 of this report and no additional  
4 right is necessary. The second spring is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34. The  
5 spring had been used for domestic supply for a home near the spring. However, that  
6 home has not been occupied for a number of years and is in disrepair. According to  
7 Ms. Elich when that area was logged in the past, the pipeline from the spring to  
8 the house was bulldozed up and not replaced. She did not know when the house was  
9 originally constructed or when the spring was first developed and used. There was  
10 insufficient evidence for the Referee to conclude that a water right had been  
11 established for the property under the Riparian Doctrine by use prior to  
12 December 31, 1932. Therefore, the Referee cannot recommend confirmation of a water  
13 right for use of the spring.

14 The Referee does recommend confirmation of a water right with a June 30, 1884,  
15 date of priority for the diversion of 1.60 cubic feet per second, 432 acre-feet per  
16 year from the Teanaway River for the irrigation of 80 acres in that portion of the  
17 SW $\frac{1}{4}$  of Section 34 lying south and east of the Teanaway River.

18  
19  
20 COURT CLAIM NO. 01947 -- Wesley I. Ellison  
21 Jul M. Nickerson  
22 & Barbara J. Nickerson

23 Wesley I. Ellison filed a Statement of Claim with the Court for the use of  
24 waters from an unnamed spring, tributary to Teanaway River. On March 7, 1991, Jul  
25 and Barbara Nickerson were joined to the claim. Jul Nickerson and Norman Cromarty,  
26 a prior owner of the land described in the claim, testified at the evidentiary  
hearing.

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1       According to Mr. Nickerson's testimony, the land described in the Court Claim,  
2 being that portion of the north 500 feet of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 31, T. 21 N.,  
3 R. 16 E.W.M. lying west of the county road, is now owned by the Nickersons. They  
4 are asserting a right to use the unnamed spring for domestic supply and lawn  
5 irrigation. According to the testimony, the spring was first developed by Mr.  
6 Ellison and used for these purposes in 1973. Mr. Cromarty testified that during  
7 his ownership of the land, which ended in 1968 when he sold to Wesley Ellison, the  
8 spring was undeveloped and not used.

9       Mr. Ellison filed Water Right Claim No. 046206 pursuant to the requirements of  
10 RCW 90.14 asserting a right to use a spring for domestic supply and lawn  
11 irrigation. However, the intent of the filing requirements under RCW 90.14 was to  
12 document and protect uses of water initiated prior to adoption of the Surface  
13 Water Code in 1917 and the Ground Water Code in 1945. In order for a water right  
14 to exist for a water use initiated in 1973, compliance with the permitting  
15 procedures of RCW 90.03 would have been necessary. There is nothing in the record  
16 to show that Mr. Ellison obtained a permit from the Department of Ecology for this  
17 use.

18       Based on the foregoing, the Referee cannot recommend confirmation of a water  
19 right under Court Claim No. 01947.

21       COURT CLAIM NO. 01142      -- James Fruhling  
22                                  & Sheryl Fruhling  
23                                  Inez Engstrom

24       A Statement of Claim was filed by Inez Engstrom for the use of waters from the  
25 Teanaway River. On July 18, 1991, James and Sheryl Fruhling were joined to the  
26 claim. Sheryl Fruhling testified at the evidentiary hearing.

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1       According to Mrs. Fruhling's testimony, she and her husband purchased the land  
2 described in the Court Claim from Mrs. Engstrom. They own 25 acres in that portion  
3 of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, T. 20 N., R. 16 E.W.M. lying southwest of the Teanaway  
4 Road. Of the 25 acres owned, 20 acres are irrigated with runoff water from the  
5 neighboring Crosetto property. A head ditch parallels the west line of Section 11  
6 and captures runoff water from the Crosetto property. The Crosetto property is  
7 irrigated with water diverted from the Teanaway River in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8,  
8 T. 20 N., R. 16 E.W.M. and carried in the Ballard Ditch. Return flows and carriage  
9 water is then captured by the Fruhlings and used to irrigate their fields. The  
10 Fruhlings are indirectly using Teanaway River water.

11       Certificate No. 169 from the 1921 adjudication of the Teanaway River is  
12 appurtenant to the Fruhling property. It authorized the diversion of 0.60 cubic  
13 foot per second from the Teanaway River for the irrigation of 30 acres in the  
14 SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, T. 20 N., R. 16 E.W.M.. The authorized point of diversion is  
15 in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 20 N., R. 16 E.W.M.

16       At times 9 horses and up to 50 head of cattle graze on the Fruhling property.  
17 During irrigation season they drink from the irrigation ditches and from a  
18 spring-fed pond. In the winter they continue to drink from the pond until it  
19 freezes and then are supplied water from the domestic well. Livestock drinking  
20 from the pond is a nondiversionary use that is covered by the stock water  
21 stipulation discussed on Page 4 of this report.

22       The Referee recommends that a right be confirmed to James and Sheryl Fruhling  
23 under Court Claim No. 1142 for the diversion of 0.40 cubic foot per second, 110  
24 acre-feet per year from the Teanaway River for the irrigation of 20 acres and 1  
25 acre-foot per year for stock watering. The right shall carry a provision that this

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1 water may be supplied through the use of return flow water emanating from the  
2 neighboring lands to the west.

3

4 COURT CLAIM NO. 00960 -- Gerald Dale Faris  
5 & Mamie Faris

6 A Statement of Claim was submitted by Gerald D. and Mamie Faris for the use of  
7 waters from Thompson Springs. Mamie Faris testified at the evidentiary hearing.

8 Mr. and Mrs. Faris are asserting a right to use water diverted from Thompson  
9 Springs for domestic supply, stock watering of one horse and the irrigation of  
10 slightly more than three acres. The Farises own four acres within the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
11 Section 25, T. 20 N., R. 16 E.W.M. and a portion of the W $\frac{1}{2}$  of Government Lot 3 of  
12 Section 30, T. 20 N., R. 17 E.W.M.. Thompson Springs lie in the W $\frac{1}{2}$  of Government  
13 Lot 4, Section 30, near the southwest section corner of Section 30. Water is piped  
14 to the Faris property.

15 According to Mrs. Faris' testimony, the spring was first developed and put to  
16 use after Richard Shea purchased the property they now own from M. C. Ballard. The  
17 deed conveying the property to Mr. Shea included the right to use water from  
18 Thompson Springs for domestic purposes. The deed was dated June 16, 1941. During  
19 the 1960's the property was used as a mink farm and water diverted from the  
20 Thompson Spring for cooling the mink sheds.

21 Water Right Claim No. 038254 was filed by Gerald Faris pursuant to RCW 90.14  
22 asserting a right to divert 30 gallons per minute, 12 acre-feet per year for the  
23 irrigation of 4.5 acres, domestic supply and stock watering. The source of water  
24 identified is a spring located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30 (which would be  
25 Government Lot 4, where Thompson Springs are located). The described place of use  
26 is the Faris property.

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RCW 90.14 was intended as a method to document claims to water rights for use that began prior to adoption of the Surface Water Code in 1917 and the Ground Water Code in 1945. Subsequent to adoption of the water codes, the only way to acquire a water right was through the permitting process identified in the codes. In order for there to be a water right for a use began in 1941, when Thompson Springs were first developed and used, it would have been necessary to comply with the permitting requirements of RCW 90.03. There is no evidence in the record that this compliance occurred.

A priority date of 1900 is being asserted based on the date the land separated from Federal ownership and an assumption that a water right was established at that time. However, the evidence does not support that assumption. Therefore, the Referee cannot recommend that a water right be confirmed to Gerald D. and Mamie Faris under Court Claim No. 00960.

COURT CLAIM NO. 00310 -- Elmore M. Ferris  
& Margaret Ferris

Elmore M. and Margaret Ferris submitted a claim to the Court for the use of waters from an unnamed creek for a recreational home and irrigation of one acre. The Ferrises are represented by Attorney Thomas R. Dreiling. Elmore Ferris testified at the evidentiary hearing.

The Ferrises lease Lot 4 of Teanaway Summer Home Tracts within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32, T. 22 N., R. 16 E.W.M. from the U. S. Forest Service. A recreational home is on the property and they sporadically irrigate approximately one-half of an acre around the home with water diverted from an unnamed creek in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 22 R. 16 E.W.M.. According to the testimony the cabin was built in 1929 by a family named Paulson. At that time the unnamed creek was piped to the

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1 cabin. During the early 1930's the cabin and water system was used by the Civil  
2 Conservation Corp (CCC). Mr. Ferris replaced the old iron pipe with PVC after he  
3 acquired the lease.

4 Pursuant to the requirements of RCW 90.14, Mr. Ferris filed Water Right Claim  
5 No. 009188 asserting a right to divert 8 gallons per minute, 6 acre-feet per year  
6 from an unnamed creek for recreational home use and irrigation of one acre. During  
7 testimony Mr. Ferris revised the quantity of water claimed to 2 acre-feet per year.

8 Mr. Ferris is asserting a right under the Riparian Doctrine. The State  
9 Supreme Court held in Department of Ecology v. Abbott, 103 Wn.2d 686, 694 P.2d 1071  
10 (1985) that a riparian landowner had until 1932 to put water to beneficial use in  
11 order for a water right to exist under the Riparian Doctrine. However, rights can  
12 only be established under the Riparian Doctrine for lands that have separated from  
13 Federal ownership. The land on which the Ferris cabin is located is U.S. Forest  
14 Service land to which the Ferrises hold a lease. Neither the Ferrises or their  
15 predecessors were riparian owners of the land, therefore, a right could not have  
16 been established under the Riparian Doctrine.

17 In order for there to be a water right under the Prior Appropriation Doctrine,  
18 water use had to be initiated prior to June 6, 1917, when the State Surface Water  
19 Code was adopted. The only other mechanism to obtain a water right is compliance  
20 with the water code, RCW 90.03, through application for a permit and certificate  
21 from the State. The record shows that the U. S. Forest Service was issued Surface  
22 Water Certificate No. 8300, with a priority date of August 20, 1958, for the  
23 diversion of 0.005 cubic foot per second from an unnamed spring in Section 32 for  
24 group domestic supply. The quality of the copy provided the Referee to very poor,  
25 but it appears the spring cited in the certificate is located in the NE<sup>1</sup>NE<sup>1</sup>SE<sup>1</sup> of

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1      Section 32. The place of water use is Teanaway Summer Home Tracts in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
2      Section 32, T. 22 N., R. 16 E.W.M. The Ferrises lot lies within this area.

3            The certificate does not identify how many houses are served, nor does it  
4      specifically describe the location of those homes. The Referee cannot determine,  
5      based on the record, whether this certificate might be appurtenant to the claimants  
6      property. They have not made that assertion. The water sources used by Mr. and  
7      Mrs. Ferris does not appear to be the one authorized for use by Surface Water  
8      Certificate No. 8300.

9            As a result of the record not being adequate for the Referee to determine  
10     whether Surface Water Certificate No. 8300 is appurtenant to the Ferris lot, it is  
11     recommended that a water right not be confirmed under Court Claim No. 00310.

13     COURT CLAIM NO. 01170      -- Larry T. Fudacz  
14                                01331

15     Shirley Larimer filed Statement of Claim No. 01170 with the Court for the use  
16     of waters from the Teanaway River for irrigation and stock water within the SE $\frac{1}{4}$  of  
17     Section 34, T. 21 N., R. 15 E.W.M.. On November 1, 1990, Larry T. Fudacz was  
18     substituted for Ms. Larimer. Andrew Chicklinsky filed Statement of Claim No. 01331  
19     with the Court for the use of waters from the Teanaway River for irrigation and  
20     stock water within the SW $\frac{1}{4}$  of Section 34, T. 21 N., R. 15 E.W.M.. Larry T. Fudacz,  
21     represented by attorney Richard T. Cole, and Andrew Chicklinsky testified in  
22     support of the claims. During testimony Mr. Chicklinsky requested that Larry  
23     Fudacz be substituted on Claim No. 01331, since he was the owner of the SW $\frac{1}{4}$  of  
24     Section 34 since early in 1990.

25     According to Mr. Chicklinsky's testimony, fields in both the SE $\frac{1}{4}$  and SW $\frac{1}{4}$  of  
26     Section 34 have historically been irrigated with water diverted from the West Fork

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1 Teanaway River. He has owned property and lived in this area since the 1920's and  
2 recalls the land being irrigated since at least that time. In 1977 a flood washed  
3 out the diversion headgate in Section 33 and it has not been replaced. It had  
4 always been Mr. Chicklinsky's intent to replace the headgate, but he was  
5 financially unable to do so.

6 Certificate No. 117 from the 1921 Teanaway River Adjudication, with a priority  
7 date of 1902, authorized the diversion of 0.90 cubic foot per second for the  
8 irrigation of 45 acres in the SE $\frac{1}{4}$  of Section 34. The authorized point of diversion  
9 is within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, T. 21 N., R. 15 E.W.M.. This point of  
10 diversion location appears to be in error, unless the Teanaway River has  
11 significantly changed course. The river flows through the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 34. A  
12 diversion in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34 has historically been used. According to Mr.  
13 Chicklinsky, only 25 acres have been irrigated within the SE $\frac{1}{4}$  of Section 34.  
14 Certificate No. 130, with a priority date of 1903, authorized the diversion of 0.60  
15 cubic foot per second from the Teanaway River for the irrigation of 30 acres in the  
16 SW $\frac{1}{4}$  of Section 34. The authorized point of diversion is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
17 Section 33. Mr. Chicklinksy testified that until the diversion was damaged in  
18 1977, 30 acres had continued to be irrigated in the SW $\frac{1}{4}$  of Section 34.

19 Mr. Chicklinsky testified that livestock have been raised on the property in  
20 the past and would drink directly from the river and from the irrigation ditches.  
21 It is not clear whether water is diverted into the irrigation ditches during the  
22 winter months. Up to 40 head of cattle have been raised on the property.

23 Mr. Fudacz testified about springs flowing into the irrigation ditches and  
24 contributing to the water used to irrigate the fields. The testimony would  
25 indicate that the springs naturally drain into the ditches and there is no manmade

1 diversion or delivery system. The flow from the springs was not quantified. Water  
2 Right Claims No. 089051, 089060 and 069051 were filed pursuant to the requirements  
3 of RCW 90.14 for use of three springs in Section 34. The claims asserted a right  
4 to use the springs for domestic supply and stock watering and were filed on a short  
5 form. Since the short form was used, there is no information about the quantity of  
6 water being claimed, the location of the springs, or date of first use. None of  
7 the witnesses testified about historic water use of these springs. Additionally,  
8 the claimant did not address whether the 1921 adjudication of the Teanaway River  
9 and its tributaries would have addressed use of the springs if rights had been  
10 established and asserted at that time. Therefore, the Referee does not recommend  
11 confirmation of any water rights to use of the springs.

12 It is recommended that rights be confirmed under Court Claim No. 01331 with a  
13 June 30, 1903, date of priority for the diversion of 0.60 cubic foot per second,  
14 150 acre-feet per year from the West Fork Teanaway River for the irrigation of 30  
15 acres and stock watering in that portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 34 lying north of  
16 the West Fork Teanaway River. It is also recommended that a right be confirmed  
17 under Court Claim No. 01170 with a June 30, 1902, date of priority for the  
18 diversion of 0.50 cubic foot per second, 125 acre-feet per year from the West Fork  
19 Teanaway River for the irrigation of 25 acres and stock watering in that portion of  
20 the SE $\frac{1}{4}$  of Section 34 lying north of the West Fork Teanaway River and south of the  
21 West Fork Teanaway Road.

1  
2 COURT CLAIM NO. 01332 -- Florence C. Furford  
3 James R. Sleeth  
4 & Susan M. Sleeth  
Josephine Chelinsky

5 A Statement of Claim was submitted to the Court by John Chieklinsky for the  
use of waters from the Teanaway River and an unnamed spring. On October 16, 1990,  
6 Florence C. Furford was substituted as claimant by the administrator of Mr.  
7 Chieklinsky's estate. On October 26, 1990, the Court granted James R. and Susan M.  
8 Sleeth's Motion to be Joined as Additional Party Defendants and on June 17, 1991,  
9 the Court granted Josephine Chelinsky's Motion to be Joined as an Additional Party  
10 Defendant. Harry Furford testified in behalf of his wife at the evidentiary  
11 hearing. Ms. Chelinsky and Mr. Sleeth, represented by Attorney Michael Bauer,  
12 testified at the hearing along with Andrew Chicklinsky, John Chieklinsky's brother.  
13

14 According to the evidence in the record, Mrs. Furford owns that portion of the  
W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 26, T. 21 N., R. 15 E.W.M. lying north of U.S.F.S. Road No. 2110.  
15 She is asserting a right to use water from an unnamed spring, located near the  
center of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 26, for domestic supply. Since the mid-1980's  
16 water has been piped from the spring to a trailer the Furfords have placed on their  
17 property. The spring had historically provided water for domestic supply and stock  
18 watering to the farmhouse and barns on land now owned by Josephine Chelensky. It  
19 is believed that the spring was originally developed when the farmhouse was  
20 constructed in the early 1900's. A patent issued on July 31, 1903, to John  
21 Crosetto for the NW $\frac{1}{4}$  of Section 26. The spring and house are both located in the  
22 NW $\frac{1}{4}$  of Section 26.

23 Josephine Chelensky owns Parcel 2D described in that certain survey dated  
January 12, 1984, recorded under Kittitas County Auditor's Receiving No. 476397 at

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1 Volume 12 of Surveys, Pages 58 and 59. Parcel 2D is located in the E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and  
2 E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26 and the house is located in the E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , near the north  
3 property line of the parcel. Ms. Chelensky is also asserting a right to use the  
4 spring. The spring had continuously been used to provide water for domestic supply  
5 to the farmhouse and stock watering at a barn near the house since the early  
6 1900's. In the mid-1980's the supply to the house and barn was interrupted for  
7 reasons not entirely clear to the Referee. Ms. Chelensky had a well drilled, but  
8 the water in the well has not been satisfactory for use in the house.

9 John Chieklinsky filed Water Right Claim No. 089061 pursuant to the  
10 requirements of RCW 90.14 asserting a right to use an unnamed spring for domestic  
11 supply and stock watering in the W $\frac{1}{2}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 26, T. 21 N.,  
12 R. 15 E.W.M.. This filing protected any right that may exist for the use of the  
13 spring for those purposes.

14 Based on the evidence presented, the Referee concludes that a right was  
15 established under the Riparian Doctrine with a July 31, 1903, date of priority for  
16 use of the spring for domestic supply and stock watering. The right is appurtenant  
17 to the land now owned by Josephine Chelensky and there is nothing in the record to  
18 show the right was transferred off that land. Water rights for use initiated in  
19 the 1980's, such as is the case with the Furfords, can only be obtained by  
20 complying with the procedures of RCW 90.03, the State Surface Water Code. There is  
21 nothing in the record to show that the Furfords complied with those procedures.

22 Therefore, the Referee recommends that a right be confirmed to Josephine  
23 Chelensky under Court Claim No. 01332 with a July 31, 1903, date of priority for  
24 the diversion of 0.02 cubic foot per second, 2 acre-feet per year for single

1 domestic supply and stock watering on Parcel 2D of Survey recorded at Volume 12 of  
2 Surveys, pages 58 and 59, records of Kittitas County.

3 Ms. Chelensky and the Sleeths are asserting rights to use water from the  
4 Teanaway River for irrigation. The Sleeths own Parcel 2A of the Survey recorded at  
5 Volume 12 of Surveys, pages 58 and 59, also described as the West 333 feet of the  
6 SW $\frac{1}{4}$ NW $\frac{1}{4}$  and of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 21 N., R. 15 E.W.M. lying south of  
7 U.S.F.S. Road No. 2110 and north of the Middle Fork Teanaway River. The parcels  
8 owned by Ms. Chelensky and the Sleeths are each 10 acres in size. Water is  
9 diverted from the Middle Fork Teanaway River at a point in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
10 Section 27, T. 21 N., R. 15 E.W.M..

11 Ms. Chelensky and the Sleeths are basing their claim to a water right on  
12 Certificate No. 121 which issued as a result of the 1921 Teanaway River  
13 Adjudication. Certificate No. 121 bears a priority date of 1894 and authorizes the  
14 diversion of 0.80 cubic foot per second from the Middle Fork Teanaway River for the  
15 irrigation of 40 acres in the SW $\frac{1}{4}$  of Section 26, T. 21 N., R. 15 E.W.M. The  
16 authorized point of diversion is in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 27, T. 21 N.,  
17 R. 15 E.W.M.. The testimony shows that all of the land irrigated under this  
18 certificate lies north of the Middle Fork Teanaway River.

19 Only a small portion of the land owned by Ms. Chelensky and the Sleeths lies  
20 within the SW $\frac{1}{4}$  of Section 26, approximately 2 acres in the Sleeth parcel and 2.5  
21 acres in the Chelensky parcel. The rest of their land is outside of the authorized  
22 place of use on the certificate. Each of the parties is asserting a right for  
23 one-fourth of the water right described in Certificate No. 121. However, the place  
24 of water use described on the certificate included lands outside of those described  
25  
26  
27

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1 in Court Claim No. 01332. The owners of the rest of the SW $\frac{1}{4}$  of Section 26 have not  
2 filed claims in this proceeding.

3 A map from the 1921 adjudication shows a ditch diverting from the river in the  
4 SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 27 serving fields that appear to be 40 acres in size in the SW $\frac{1}{4}$   
5 of Section 26 north of the river. The ditch is lower in elevation than the one  
6 shown on the State's Exhibit Map, S-2, and on the defendant's exhibits. The map  
7 does not show any fields being irrigated in the NW $\frac{1}{4}$  of Section 26. Based on the  
8 evidence in the record, the Referee has concluded that the Sleeths and Ms.  
9 Chelensky hold the portion of the certificate that is appurtenant to their land in  
10 the SW $\frac{1}{4}$  of Section 26, but a right does not exist for the portion of their land in  
11 the NW $\frac{1}{4}$  of Section 26. Subsequent to issuance of Certificate No. 121 in 1921, the  
12 point of diversion serving this property was moved approximately one-half mile  
13 upstream. There is nothing in the record to show that the claimants or their  
14 predecessor complied with the requirements of RCW 90.03.380 to seek authorization  
15 from the Department of Ecology or its predecessor agency to make the change. The  
16 Referee recommends that the right be confirmed at the originally authorized point  
17 of diversion and the claimants contact the Department of Ecology concerning the  
18 proper procedures under RCW 90.03.380.

19 Based on the foregoing, the Referee recommends that a right be confirmed to  
20 Josephine Chelensky with a June 30, 1894, date of priority for the diversion of  
21 0.05 cubic foot per second, 13.5 acre-feet per year from the Middle Fork Teanaway  
22 River for the irrigation of 2.5 acres within that portion of Parcel 2D of Survey  
23 dated January 12, 1984, recorded under Kittitas County Auditor's Receiving No.  
24 476397 at Volume 12 of Surveys, pages 58 and 59 lying in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
25 Section 26 lying north of the Middle Fork Teanaway River, T. 21 N., R. 15 E.W.M.;

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1 and that a right be confirmed to James R. and Susan M. Sleeth with a June 30, 1894,  
2 date of priority for the diversion of 0.04 cubic foot per second, 10 acre-feet per  
3 year from the Middle Fork Teanaway River for the irrigation of 2 acres within the  
4 West 333 feet of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 21 N., R. 15 E.W.M. lying north of  
5 the Middle Fork Teanaway River.

6

7 COURT CLAIM NO. 01477 -- Frank Geiger  
8 & Ada Geiger  
9 George L. Blackburn, Jr.  
10 & Penny L. Blackburn

11 A Statement of Claim was submitted by Frank and Ada Geiger for the use of  
12 waters from the Teanaway River and a spring. The Geigers did not appear at the  
13 evidentiary hearing to testify in support of their claim; therefore, the Referee  
14 cannot recommend confirmation of a water right under Court Claim No. 01477.  
15 Subsequent to the evidentiary hearing, on May 15, 1992, George Blackburn, Jr. and  
16 Penny Blackburn were joined to the claim. If the Blackburns wish to pursue this  
17 claim, they should file an exception to the Report of Referee and ask that the  
claim be remanded to the Referee to take testimony.

18

19 COURT CLAIM NO. 01980 -- Bernard W. Grywacz

20 A Statement of Claim was submitted by Bernard W. and Ollibeth Grywacz for the  
21 use of water from the Teanaway River and Mason Creek. Ollibeth Grywacz has since  
22 passed away and the property is solely owned by Bernard Grywacz. Attorney Richard  
23 T. Cole represented Bernard Grywacz, who testified at the evidentiary hearing.  
24 Attorney Jeff Slothower appeared on behalf of his clients, Milton Downs and  
25 Teanaway Valley Farms to contest a portion of the Grywacz claim and Mr. Downs  
26 testified in that regard.

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1 Mr. Grywacz owns slightly more than 14 acres lying in that portion of the  
2 SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14 and that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13 lying between the  
3 Teanaway Road and the 3M Ditch (south of the road and north of the ditch), in  
4 T. 20 N., R. 16 E.W.M.. Mr. Grywacz irrigates about 13.5 acres with waters  
5 diverted from the Teanaway River and Mason Creek. Water is diverted from the  
6 Teanaway River into the Three M Ditch near the section corner common to  
7 Sections 10, 11, 14 and 15, T. 20 N., R. 16 E.W.M.. Water is pumped from the ditch  
8 to a pond located adjacent to the ditch, from which it is distributed to the  
9 fields.

10 Mr. Grywacz is basing his claim to a right to use the Teanaway River on two  
11 certificates, No. 126 and 155, that issued as a result of the 1921 adjudication of  
12 the Teanaway River and its tributaries. Certificate No. 126 is a Class 8 right  
13 with an 1889 date of priority authorizing the diversion of 0.46 cubic foot per  
14 second from the Teanaway River for the irrigation of 23 acres in that portion of  
15 the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 20 N., R. 16 E.W.M. lying under the Three  
16 "M" Ditch, containing 23 acres and embraced in the property described in Book 24 at  
17 page 465 of the records of deeds in the office of the auditor of Kittitas County.  
18 Certificate No. 155 is also a Class 8 right authorizing the diversion of 0.52 cubic  
19 foot per second for the irrigation of 26 acres in that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and  
20 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, T. 20 N., R. 16 E.W.M. lying under the Three "M" Ditch  
21 containing 26 acres and embraced in the property described in Book 26 at Page 463,  
22 records of deeds in the office of the auditor of Kittitas County.

23 During the presentation of the Milton Downs claim, copies of the documents  
24 referenced in each of the certificates were presented into evidence. Mr. Downs  
25 contends that the documents describe only the property he now owns. However,  
26

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1 review of the documents by the Referee reveals that each of the documents describe  
2 two parcels, one now owned by Mr. Downs and one now owned by Mr. Grywacz.  
3 Therefore, the documents themselves are not instructive in determining the lands to  
4 which the certificates are appurtenant.

5 There was much discussion between counsel for Mr. Grywacz and counsel for  
6 Morris Downs about the meaning of the language "under the Three "M" Ditch." In  
7 looking at the definition of "under" in Webster's New World Dictionary, the  
8 definition that seems to be most appropriate when referring to a ditch is: "in,  
9 at, or to a position down from; lower than; below ." In the Referee's experience  
10 the term "under a ditch" is used to refer to lands that are lower in elevation and  
11 below the ditch such that they could be served by gravity flow. Mr. Grywacz's land  
12 lies above the ditch and could not be served by gravity flow from the 3M Ditch.

13 It is the Referee's conclusion that Certificates No. 126 and 155 are not  
14 appurtenant to the Grywacz property, and are instead appurtenant to the Downs'  
15 property. There has been nothing presented to show that a water right to use  
16 waters from the Teanaway River had been established for the Grywacz land,  
17 therefore, the Referee cannot recommend that a water right be confirmed for use of  
18 the Teanaway River.

19 Mr. Grywacz is also asserting a right to use waters from Mason Creek. Water  
20 is diverted from Mason Creek from two points in the NW<sup>1</sup>NE<sup>1</sup> of Section 13. One  
21 diversion feeds a gravity flow pipeline that is used to irrigate the fields east of  
22 the creek. The second diversion conveys water in an open ditch through an  
23 excavated pond to a pipeline that is used to flood irrigate the fields. Livestock  
24 can water from the open ditch and the pond. An average of 12 head are raised on  
25 the property. Approximately half of his irrigated acreage lies in the SE<sup>1</sup>NE<sup>1</sup> of  
26

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1 Section 14 and the other half in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13. Mr. Grywacz purchased  
2 his property from Shirley Danko Bednar (now Chicklinsky), who prior to his  
3 purchase, was authorized to change the place of use and point of diversion of a  
4 portion of the water right to Mason Creek that was appurtenant to her property in  
5 the NW $\frac{1}{4}$  of Section 13.

6 The Amosso decree confirmed a right to August Zanola with a 1903 priority date  
7 for the diversion of 0.74 cubic foot per second for the irrigation of 37 acres in  
8 the NW $\frac{1}{4}$  of Section 13, T. 20 N., R. 16 E.W.M.. However, there is no adjudicated  
9 certificate in the record for this right. See Page 9 of this report for a further  
10 discussion of this issue. A predecessor to the Department of Ecology issued  
11 Certificate of Change recorded in Volume 3, Page 1089 authorizing the transfer of  
12 0.14 cubic foot per second under Certificate No. 168, decreed right, State of  
13 Washington vs. Frank Amosso and Minnie Amosso, et al., for the irrigation of 7  
14 acres, to the land now owned by Mr. Grywacz in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14.  
15 Certificate No. 168 is listed by Ecology in its exhibit SE-4 as a certificate from  
16 the Amosso decree that has not issued. The Certificate of Change describes the  
17 contents of Certificate No. 168, that it authorized the diversion of 0.74 c.f.s.  
18 for the irrigation of 37 acres in the NW $\frac{1}{4}$  of Section 13, and that the certificate  
19 erroneously described the point of diversion as being from the Teanaway River in  
20 the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, rather than from Mason Creek. In spite of the certificate  
21 not being in the record and being listed as one that has not issued, the language  
22 in the certificate of change leads the Referee to believe that it actually has  
23 issued. Certainly, Ecology would not have issued a certificate of change if the  
24 certificate had not previously issued.

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1       A sales agreement executed in December of 1969 also conveyed the land now  
2 owned by Mr. Grywacz in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13 and stated that 0.15 cubic foot  
3 per second of irrigation water was also conveyed with the land in Section 13. The  
4 only water right Ms. Bednar had for irrigation water was the right to Mason Creek,  
5 so the Referee must conclude she was referring to a portion of the Zanola  
6 adjudicated right to Mason Creek. A 1971 aerial photograph entered into evidence  
7 clearly shows that all of the Grywacz land in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13 was being  
8 irrigated.

9       Portions of the Zanola right to Mason Creek are being claimed in this  
10 proceeding by C. A. Niese, Dean Decker, and Bernard Grywacz. The right is limited  
11 to 0.74 cubic foot per second for the irrigation of 37 acres. Certificate of  
12 Change recorded in Volume 3, Page 1089 authorized the transfer of 0.14 cubic foot  
13 per second for 7 acres in the Grywacz land in Section 14. The sales agreement  
14 between Ms. Bednar and the Grywaczs also conveyed 0.15 cubic foot per second with  
15 the land they bought in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13. This is within the place of use  
16 described in the decree. There is documentation to support the conclusion that  
17 0.29 cubic foot per second for the irrigation of 14.5 acres is appurtenant to the  
18 lands now owned by Mr. Grywacz. However, he is only irrigating 13.5 acres

19       C. A. Niese is asserting a right for 0.60 cubic foot per second for irrigation  
20 of 30 acres, which would be the remaining portion not transferred by Certificate of  
21 Change recorded in Volume 3, Page 1089. Certificate of Change recorded in Volume  
22 1-3, Page 65 issued to Mr. Niese authorizing him to change the point of diversion  
23 for 0.23 cubic foot per second, being a portion of the Zanola right. Dean Decker  
24 is also asserting that a portion of the Zanola right is appurtenant to 2.5 acres  
25 that he is irrigating with waters diverted from Mason Creek. His land also lies

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1 within the place of use for that right. Clearly Mr. Niese cannot have 30 acres of  
2 the right if a portion is appurtenant to Mr. Grywacz's land in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
3 Section 13 and to the Decker property. The only documentation that clearly  
4 identifies the land to which a portion of the water right is appurtenant is the  
5 Certificate of Change that issued to Ms. Bednar and the sales agreement between her  
6 and Mr. Grywacz.

7 The Referee concludes that a portion of the right is appurtenant to the  
8 Grywacz irrigated land. Mr. Grywacz testified to diverting 0.25 cubic foot per  
9 second and to irrigating 13.5 acres. Therefore, the Referee recommends that a  
10 right be confirmed under Court Claim No. 1980 with a June 30, 1903, date of  
11 priority for the diversion of 0.25 cubic foot per second, 67.5 acre-feet per year  
12 from Mason Creek for the irrigation of 13.5 acres and 1 acre-foot per year for  
13 stock watering.

14

15 COURT CLAIM NO. 00790 -- Leavitt Brothers Corporation  
16                             Timothy Dyko  
17                             David A. Wiseman  
18                             Gary Maxfield  
19                             & Marlain Maxfield  
20                             David Bennett  
21                             & Diana Bennett  
22                             Tracey Rooney  
23                             Nancy Joerns  
24                             Wayne Larrabee, Jr.

25 Court Claim No. 00790 was filed by F. R. and Charles Sutherland, Wanda  
26 Whitson, and David and Phyllis Sims. On July 18, 1991, Leavitt Brothers  
27 Corporation were substituted for the original claimants. On August 8, 1991,  
28 Timothy Dyko, David A. Wiseman, Gary and Marlain Maxfield, Tracey Rooney, Nancy  
Joerns, David and Diana Bennett, and Wayne Larrabee, Jr. were joined to the claim.  
Attorney Richard T. Cole represents David and Diana Bennett, Gary and Marlain

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1 Maxfield, Tracey Rooney, and Nancy Joerns. David Bennett appeared and testified at  
2 the evidentiary hearing on behalf of the claimants represented by Mr. Cole.  
3 Leavitt Brothers Corporation, Timothy Dyko, David Wiseman and Wayne Larrabee, Jr.  
4 did not appear and testify in support of their portion of the claim.

5 Court Claim No. 00790 was originally filed for the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
6 Section 31, T. 21 N., R. 16 E.W.M.. That land separated from Federal ownership to  
7 different individuals. Gabriel Randolph received a patent on September 16, 1904,  
8 for the E $\frac{1}{2}$ NW $\frac{1}{4}$  and E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 31 and Frank Amosso received a patent on  
9 July 13, 1904, for the W $\frac{1}{2}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 31. Shortly thereafter Frank and  
10 Fred Amosso owned the land described in both patents.

11 The claimants who were represented at the evidentiary hearing own that portion  
12 of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 31 lying west of the North Fork Teanaway River  
13 and east of the Teanaway Road and are asserting a right to divert 1.24 cubic feet  
14 per second from the North Fork Teanaway River and Lick Creek to irrigate all of  
15 their land. A total of 30.45 acres are owned by the the parties represented by  
16 Mr. Cole. The river forms the easterly boundary for the property and Lick Creek  
17 flows through the land. The Referee was directed to the Amosso decree as the basis  
18 for the water right behind this claim. A Class 17 right, with a 1902 date of  
19 priority, was confirmed to Fred and Frank Amosso for the diversion of 1.24 cubic  
20 feet per second from the North Fork Teanaway River for the irrigation of 62 acres  
21 in the W $\frac{1}{2}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 31. A certificate is not in the record for this  
22 right.

23 Apparently this is another case where the landowners failed to pay the fees at  
24 the conclusion of the adjudication in 1921 and were not issued a certificate.  
25 According to Mr. Bennett, a prior owner of the land, Mr. Sims, was told in the

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1 mid-1960's by the State to stop irrigating because he did not have a certificate.  
2 He apparently complied with that direction and the land has not been irrigated  
3 since that time. The claimants appearing at the hearing own 30.45 acres of the 160  
4 acres described as the place of use for the right confirmed in the Amosso decree.  
5 There was no evidence presented to show what land now owned by the claimants was  
6 historically irrigated. Norman and Shirley Cromarty are asserting a right to  
7 irrigate 20 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31 based on the same Class 17 right  
8 confirmed in the Amosso decree.

9 Mr. Cole has asserted that the State had no basis for not issuing certificates  
10 for all the water rights confirmed in the Amosso decree; however, at the time of  
11 that adjudication the statute did require that the parties who were confirmed water  
12 rights pay a portion of the cost of the adjudication, and the costs were to be paid  
13 prior to issuing the certificate. Mr. Cole has also asserted that in spite of the  
14 right not having been exercised for close to 30 years, it has not relinquished due  
15 to the State telling the prior owner he could not irrigate without a certificate.  
16 Mr. Cole did not direct the Referee to any of the sufficient causes for nonuse  
17 identified in RCW 90.14.140, that would have prevented relinquishment. The Referee  
18 also does not know exactly what was told to the prior owner or if he attempted to  
19 resolve the lack of certificate through payment of the fees. Counsel for other  
20 claimants have also suggested that if a certificate had not issued for a right  
21 confirmed in the 1921 adjudication, then compliance with RCW 90.14 through filing  
22 of a water right claim would be necessary. RCW 90.14.041 required any person  
23 claiming the right to withdraw or divert and make beneficial use of public surface  
24 or ground waters shall file a statement of claim, except the section will not apply  
25 to any water rights which are based on the authority of a permit or certificate

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1 issued by Ecology or one of its predecessors. There is no evidence that a water  
2 right claim was filed pursuant to RCW 90.14 for the claimant's lands. The Referee  
3 has never before been faced with this interpretation of RCW 90.14 and none of the  
4 other counsel responded to this position.

5 The Referee does not recommend confirmation of a water right under Court Claim  
6 No. 00790 at this time. The claimants and Ecology are invited to address the  
7 potential relinquishment of the right and the effect on relinquishment of any  
8 contact the landowner had with Ecology's predecessor. It is suggested that the  
9 landowner at the time be made available for testimony. Additionally, the Referee  
10 requests that the lack of both a certificate and RCW 90.14 be addressed.  
11

12 COURT CLAIM NO. 00557 -- Robin Knox Little  
13 (A)02338 & Carol Michon Little  
14 00558  
15 (A)02338  
16 00559  
17 (A)02339  
18 00560  
19 (A)02339

20 The Littles filed four Statements of Claim with the Court for use of water  
21 from a spring and unnamed creeks tributary to the Teanaway River. Mr. Little  
22 testified at the evidentiary hearing.

23 The Littles own the E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 17, and the E $\frac{1}{2}$ SW $\frac{1}{4}$  and  
24 SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20, T. 20 N., R. 17 E.W.M., which is in an area locally called  
25 Swauk Prairie. The land in Section 20 was originally settled by George and Rose  
26 Koch in the late 1800's, with a patent issuing on February 2, 1900. A Kittitas  
County Centennial publication indicates the Koch family settled in Swauk Prairie  
around 1885. The S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 17 was purchased from Northern Pacific Railroad  
Company by George Koch's son, Martin, in 1901 and Cascade Lumber Company purchased

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1 the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 17 from the same railroad company in 1907. The patent issued  
2 to Northern Pacific Railroad Company in 1896. In 1916 the Koch land was sold to  
3 Joe Ley and in 1937 he purchased the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 17. The Leys had farmed the  
4 N $\frac{1}{2}$ SE $\frac{1}{4}$  along with their own land in the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 17 since they first  
5 acquired the land. The Littles bought from Mr. Ley's stepson. According to  
6 Mr. Little the land has been farmed in much the same manner since the Kochs settled  
7 on it. There is evidence of an orchard, hay field and pasture on different  
8 portions of the land. The existing barn was built in the early 1900's and has a  
9 sizeable milking parlor.

10 As pointed out by Mr. Little, there were no rights confirmed for this land in  
11 the 1921 Teanaway River Adjudication. Upon reviewing the 1921 Report of Referee,  
12 this Referee took note of a "Map Showing Lands and Ditches Involved in the  
13 Determination of Water Rights from The Teanaway River, Kittitas Co. Wash., Compiled  
14 by the State Supervisor of Hydraulics From Field Notes and Maps Used in This  
15 Adjudication." The map does not include either Sections 20 or 17, T. 20 N.,  
16 R. 17 E.W.M.; in fact the only lands included in R. 17 E.W.M. are Sections 19 and  
17 30, T. 20 N.. It is clear from that map that the lands now owned by the Littles  
18 were not addressed in the 1921 adjudication and lack of a certificate from that  
19 adjudication will not be considered a defect in proving their water rights.  
20 Compliance with RCW 90.14 through filing of water right claims, however, was  
21 necessary to preserve any water rights.

22 Claim No. 0557 was filed for use of a spring and unnamed creek to irrigate  
23 lands in the E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 17, T. 20 N., R. 17 E.W.M.. A right is  
24 being asserted for the irrigation of 20 acres in the valley floor adjacent to the  
25 creek. However, the testimony indicates that approximately 4 acres are being  
26

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1 irrigated with water diverted by dams in the creek and distributed through manmade  
2 ditches. The rest of the area is naturally subirrigated. Mr. Little estimates  
3 that 2 acre-feet per acre is needed to irrigate the area. He is very concerned  
4 that the natural irrigation of the valley continue. The period of time over which  
5 the creek flows varies according to the precipitation each year, but averages a  
6 four month period. Multiple points of diversion are used as the creek traverses  
7 the SE $\frac{1}{4}$  of Section 17. Between 0.005 and 0.01 cubic foot per second is diverted  
8 from the creek at each diversion. It was not clear how many diversions are  
9 exercised at once, but based on Mr. Little's testimony, an estimate of 0.05 cubic  
10 foot per second seems reasonable.

11 Pursuant to the requirements of RCW 90.14, Water Right Claim No. 001782 was  
12 filed by La Verne Seherette, a prior owner of the property, asserting a right to  
13 divert 40 gallons per minute, 40 acre-feet per year from an unnamed spring for the  
14 irrigation of 20 acres and stock water in the E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 17.  
15 Although Water Right Claim No. 001782 describes the source of water as a spring,  
16 the Referee believes it is the same source asserted under Court Claim No. 00557. A  
17 large spring feeds the unnamed creek used by Mr. Little above his diversions. Mr.  
18 Little also filed Water Right Claim No. 029701 asserting the same right as  
19 described in Water Right Claim No. 001782.

20 It is recommended that a right be confirmed under Court Claim No. 00557 under  
21 the Riparian Doctrine with a May 5, 1896, date of priority for the diversion of  
22 0.05 cubic foot per second, 8 acre-feet per year from an unnamed creek for the  
23 irrigation of 4 acres in the E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 17 along the valley  
24 floor of the creek.

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1 Court Claim No. 0558 was filed for the use of water from a unnamed creek for  
2 irrigation in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20. Water from the unnamed creek is impounded  
3 in a pond constructed in 1977 to replace dirt ditches previously used to distribute  
4 the water. A 2.5 BHP pump is placed on the pond to distribute the water to  
5 handlines. The total area irrigated is approximately 29 acres, but there is  
6 insufficient water to irrigate 29 acres each season. The water is used to  
7 spot-irrigate new seedlings or to water hay fields before the first cutting and in  
8 the fall when the weather is warm and dry. Approximately 5 acres are irrigated  
9 each year within the 29 acre area. Inflow to the pond generally ends by mid-April  
10 unless there is a heavy rain. Mr. Little estimates he will use approximately five  
11 acre-feet each year from the pond. The pond also provides wildlife habitat for  
12 bald eagles, Canadian Geese and ducks.

13 Pursuant to the requirements of RCW 90.14, Robin Little filed Water Right  
14 Claim No. 097724 asserting a right to divert 50 gallons per minute from a part-time  
15 creek for the irrigation of 10 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20. The claim states  
16 that at the time it was filed 10 gallons per minute was being used to irrigate 5  
17 acres.

18 It is recommended that a right be confirmed under Court Claim No. 00558 under  
19 the Riparian Doctrine with a June 30, 1885, date of priority for the diversion of  
20 0.10 cubic foot per second, 5 acre-feet per year for the irrigation of 5 acres in  
21 the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20. The recommendation will contain a provision that in any  
22 given year only five acres can be irrigated any season, but a different five acres  
23 within the place of use may be irrigated each year.

24 Court Claim No. 00559 was filed for use of the same unnamed creek as described  
25 in Court Claim No. 00557, as that creek traverses the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20. At one

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time water was diverted from the creek in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  for domestic supply, stock watering and irrigation. The original homestead on the property was very near the north side of the creek. The homestead burned in the 1920's and was replaced with the house currently on the property. A shallow well was constructed adjacent to the creek and is now used for domestic supply. The well is very dependent on the flow in the creek and when the creek dries up, generally, in mid-August, the quantity of water in the well also declines substantially and Mr. Little has had to augment the supply with water from two drilled wells elsewhere on the property. Although it is clear that there is a direct relationship between the creek and the dug well, the well is considered a ground water source and, therefore, is not subject to a determination in this proceeding. The State's Ground Water Code, RCW 90.44, recognizes the interrelationship between ground and surface waters and the effects on one source of appropriating water from the other.

When there is water in the creek, November into August of most years, livestock grazing along the creek water from the creek. This type of nondiversionary stock watering is covered by the stock water stipulation discussed on Page 4 of this report. Mr. Little testified to evidence of diversions from the unnamed creek for irrigation prior to his purchase of the land and to his belief that the prior owner had irrigated from the creek. Use of this source for irrigation has been sporadic over the years since the Littles purchased the land. Water has been diverted by the Littles to irrigate a pasture along the creek channel and lawn and garden area around the home. Mr. Little believes this is the source of water used to irrigate an orchard the Kochs planted in the late 1800's. Some of the fruit trees are still on the property. Court Claim No. 00560 was filed for this same water source and use, with the addition of an instream farm pond to

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1 store the water for more efficient use. Mr. Little filed an application for water  
2 right permit in 1981 in the hopes of obtaining a permit through the procedures in  
3 RCW 90.03. The Department of Ecology returned his application, explaining that the  
4 Teanaway Basin was closed to additional appropriations and new permits could not be  
5 issued. Pursuant to RCW 90.14, Water Right Claim No. 001781 was filed by La Verne  
6 Scherette asserting a right to use 100 gallons per minute from a part-time creek  
7 with a diversion in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20, for the irrigation of 30 acres and  
8 stock water in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20. Robin Little filed Water Right  
9 Claim No. 029702, which is a duplicate of Claim No. 001781. It appears to the  
10 Referee, based on Mr. Little's presentation in this proceeding, that his intention,  
11 as described in Court Claim No. 00560 and the returned water right application, is  
12 to change the method of distribution under an existing water right, rather than  
13 proposing an additional appropriation. His plan is to construct a small pond that  
14 will store 9 acre-feet of water. Mr. Little believes he could irrigate  
15 approximately 10 acres with the water that is available in the creek, although he  
16 believes that historically more acres than that were irrigated.

17 It is recommended that a water right be confirmed under Court Claim No. 00559  
18 under the Riparian Doctrine with a June 30, 1885, date of priority for the  
19 diversion of 0.05 cubic foot per second, 9 acre-feet per year for the irrigation of  
20 10 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20.

21 The Referee recognizes that the place of use described under each claim is  
22 rather large in relation to the number of acres to be irrigated. However, this is  
23 necessary due to the method of irrigation employed by the claimants where the  
24 irrigated acres is at various locations within the parcel.

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2 COURT CLAIM NO. 01467 -- Harry James Masterson  
3 (A)03296 & Mary Lou Masterson

4 A Statement of Claim was filed with the Court for use of waters from the  
5 Teanaway River, two unnamed springs and runoff and waste water. The Mastersons are  
6 represented by Attorney Michael Bauer. Harry Masterson and Richard C. Bain, Jr., a  
7 consultant hired by the claimants, testified at the evidentiary hearing.

8 The Masterson own over 2,000 acres in Sections 20, 21, 28, W $\frac{1}{2}$  of Section 27,  
9 E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 32 and N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 33, all in T. 20 N., R. 16 E.W.M.. They  
10 are asserting rights to irrigate 348 acres with water diverted from the Teanaway  
11 River, and runoff or waste water. They also are asserting rights for stock water  
12 from those sources, along with springs in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 20 and the SW $\frac{1}{4}$ NW $\frac{1}{4}$   
13 of Section 21. Each of those springs are developed and piped to stock tanks.  
14 Mr. Masterson testified to up to 150 cow/calf pairs that would have access to these  
15 two sources. Mr. Bain testified that 5 acre-feet per year would be needed for that  
16 many head of cattle. The springs flow at a rate of 1 and 1.25 gallons per minute,  
17 respectively. Livestock that range in Sections 20, 21, the W $\frac{1}{2}$  of Section 27 and  
18 the N $\frac{3}{4}$  of Section 28 also drink directly from natural springs and drainages that  
19 surface throughout the property. Rights to use of this water for nondiversionary  
20 stock watering is covered by the stock water stipulation discussed on Page 4 of  
21 this report.

22 Water Right Claims No. 001053 and 001054 were filed by the Mastersons pursuant  
23 to RCW 90.14 for use of two springs, one in the NE $\frac{1}{4}$  of Section 20 and one in the  
24 NW $\frac{1}{4}$  of Section 21.

25 The land in the S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 28 and the N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 33 is irrigated  
26 with water diverted from the Teanaway River in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25, which is

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1 the point of diversion for the Masterson Ditch. Water is withdrawn from the  
2 Masterson Ditch from several points as it crosses the S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 28.  
3 According to Mr. Bain's testimony, 262 acres are irrigated within the S $\frac{1}{2}$ S $\frac{1}{2}$  of  
4 Section 28 and the N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 33. Mr. Bain measured the flow in the Masterson  
5 Ditch east of the claimants' property at 6.34 cubic feet per second and the  
6 quantity taken out of the ditch to irrigate these fields at 5.12 cubic feet per  
7 second. Mr. Masterson irrigates these fields four times between early April and  
8 October, using 9 acre-feet per acre. He has only been able to get one hay cutting  
9 off with this schedule. He would like to irrigate five times during the season in  
10 order to get a second hay cutting. If he were to do that he would need 10.3  
11 acre-feet per acre, and is asserting a water right for that quantity.

12 Two certificates from the 1921 adjudication are appurtenant to the Masterson  
13 land. Certificate No. 135 is a Class 2 right with an 1883 date of priority. It  
14 authorized the diversion of 2.90 cubic feet per second for the irrigation of 145  
15 acres in the S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 28. Certificate No. 136 is also a Class 2 right  
16 authorizing the diversion of 3.10 cubic feet per second for the irrigation of 155  
17 acres in the N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 33. The point of diversion authorized in both  
18 certificates is located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25. The currently exercised point  
19 is located just outside of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25. The same ditch is being used  
20 today as historically. The Referee believes the diversion has been moved as a  
21 result of damage caused by the river flooding and compliance with RCW 90.03.380 is  
22 not necessary. Both of the certificates authorize use of water for irrigation from  
23 May 1 to September 15. At the diversion rate authorized in the certificates, a  
24 maximum of 5.4 acre-feet per year per acre can be applied during the authorized  
25 irrigation season. Mr. Bain has testified to more water being applied, but has  
26

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1 also testified to irrigating outside of the authorized season. Livestock are also  
2 at times pastured in the irrigated fields and can drink from the ditches. Five  
3 acre-feet per year would be sufficient for their needs.

4       Although the two certificates authorize the irrigation of 300 acres, Mr.  
5 Bain's report and his testimony were that 262 acres are being irrigated within the  
6 area described on the certificates. In spite of what is authorized in the  
7 certificates, the water right is limited by the historic and current beneficial  
8 use. The testimony did not indicate that additional acreage had been irrigate in  
9 the recent past. The Referee believes that the water right under Certificates No.  
10 135 and 136 is, therefore, limited to 262 acres.

11       Mr. Masterson is irrigating approximately 86 acres located in the S $\frac{1}{2}$ NW $\frac{1}{4}$  and  
12 SW $\frac{1}{4}$  of Section 33 with what the Referee would characterize as return flow water  
13 coming from the fields in the S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 28 and the N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 33. The  
14 return flow is the result of the application of Teanaway River water. Mr.  
15 Masterson has not brought to the Referee's attention any certificates from the 1921  
16 adjudication that would be appurtenant to this land nor has he identified any  
17 rights that were established for use of the water subsequent to the adjudication  
18 through compliance with RCW 90.03.380. It is recognized that a landowner has the  
19 right to capture and reuse return flow water generated from the irrigation of his  
20 land. However, that water must be applied to lands to which he holds a water  
21 right. Normally a landowner captures the water and reapplies it to the land from  
22 which it flowed, thereby reducing the need for water from the original source or  
23 using it to make up any deficit in the supply. The return flow water cannot be  
24 used on additional land without a legally recognized right.

1       The Mastersons filed Water Right Claims No. 000030 and 000031 pursuant to the  
2 requirements of RCW 90.14. That act was adopted as a mechanism to account for  
3 claims to water rights that preceded the State's Water Codes. In order for a water  
4 right claim filed for surface water to represent a valid water right, the water use  
5 had to begin prior to June 6, 1917. If a water right was established through use  
6 prior to June 6, 1917, that right should have been addressed during the 1921  
7 Teanaway River adjudication and a right confirmed in the Amosso decree. The  
8 Referee notes that Water Right Claim No. 000031 is for water use on lands in the  
9 E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 32. Water Right Claim No. 000030 does not describe the source of  
10 water, the point of diversion or the legal description for the lands on which water  
11 is used, instead referencing the reader to attachments that are not in the record.  
12 There is no way to determine the lands covered by Claim No. 000030 with the  
13 documents currently before the Referee.

14       The State's Map, Exhibit SE-2 shows irrigated land in the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 32  
15 which is irrigated with water from the Masterson Ditch along with water that  
16 appears to come from Subbasin No. 5 (Elk Heights) to the west. There was reference  
17 to runoff water from Subbasin No. 5 being used, but no specific testimony about  
18 irrigating land in the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 32. Water Right Claim No. 000031 discussed  
19 previously is for this land.

20       It is recommended that a water right be confirmed under Court Claim No. 01467  
21 with a June 30, 1883, date of priority for the diversion of 5.24 cubic feet per  
22 second, 1414.8 acre-feet per year from the Teanaway River for the irrigation of 262  
23 acres and 5 acre-feet per year for stock watering on the S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 28 and the  
24 N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 33 lying south and west of the Masterson Ditch. The Referee does

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1 not recommend confirmation of a right for the lands lying in the S $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$  of  
2 Section 33 or the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 32.

3

4 COURT CLAIM NO. 02226 -- Beverly Miller

5 A Statement of Claim was submitted by Melvin D. and Inez T. Oakes for the use  
6 of waters from the Teanaway River. On July 16, 1990, Beverly A. Rowe (now Miller)  
7 was joined to the claim. Ms. Miller testified at the evidentiary hearing.

8 Ms. Miller owns approximately 10 acres in a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
9 Section 34 lying west of the county road and south of State Route 970 and a portion  
10 of the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 33, in T. 20 N., R. 16 E.W.M.. She is asserting a right to  
11 irrigate her land with water from the Teanaway River. The land in the past had  
12 been flood irrigated with water from the Seaton Ditch. In recent years it has been  
13 sprinkler irrigated with water that originates from the Seaton Ditch. A drainage  
14 ditch carries Seaton Ditch water and tail waters from the Seaton and Masterson  
15 Ditches and feeds a small pond on the Miller property. A 2 BHP pump delivers water  
16 from the pond to the sprinkler system. Ms. Miller testified that approximately 9  
17 of the 10 acres have historically been irrigated. In her testimony, Ms. Miller  
18 referred to an upper pasture, which she continues to irrigate with what water is  
19 available to her, and a lower pasture, which she does not receive sufficient water  
20 to irrigate. The lower pasture had been irrigated before Ms. Miller's purchase in  
21 1989. According to the testimony, some time prior to her purchase a neighboring  
22 landowner covered over ditches across his fields reducing the quantity of water  
23 that entered the Miller property. The supply she currently receives is not  
24 adequate to irrigate all of the property. Up to four head of livestock are raised  
25 on the property, drinking from the drainage ditch and the pond. Water generally is  
26

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1 in the pond over the winter. One-half acre-foot per year would be adequate for  
2 that number of livestock.

3 Two certificates from the 1921 Teanaway River adjudication are appurtenant to  
4 the Miller property. Certificate No. 133 is a Class 10 right with an 1891 date of  
5 priority. It authorized the diversion of 1.4 cubic feet per second for the  
6 irrigation of 70 acres in the SE $\frac{1}{4}$  of Section 33. The authorized point of diversion  
7 is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26. Most of Ms. Miller's land lies in the SE $\frac{1}{4}$  of  
8 Section 33 and 8 of the 9 irrigated acres are in this area.

9 Certificate No. 120 is a Class 3 right with an 1884 date of priority. It  
10 authorized the diversion of 0.32 cubic foot per second for the irrigation of 16  
11 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34. The authorized point of diversion is in the  
12 NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 34. However, the Teanaway River does not flow through the NE $\frac{1}{4}$ NW $\frac{1}{4}$   
13 of Section 34, so it is not clear where the historic point of diversion was  
14 located. Approximately one acre is irrigated within the Miller ownership in the  
15 NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34.

16 In 1982 Bruno Bonetto, who also owns land in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34,  
17 voluntarily relinquished all of Certificate No. 120 in excess of that needed to  
18 irrigate 4.6 acres. A superseding certificate issued to him for 0.09 cubic foot  
19 per second, 13.8 acre-feet per year for the irrigation of 4.6 acres. Subsequent to  
20 that Certificate of Change recorded in Volume 1-4, Page 233 issued to Mr. Bonetto  
21 authorizing him to change the point of diversion for Superseding Certificate No.  
22 120 to a point in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 34.

23 Although Mr. Bonetto relinquished all of Certificate No. 120 except for that  
24 needed for his land, he had no standing to relinquish that portion of the

1 certificate appurtenant to lands he does not own. The Referee will disregard the  
2 relinquishment as it relates to lands not owned by Mr. Bonetto.

3 The Referee recommends that rights be confirmed under Court Claim No. 02226 to  
4 Beverly Miller as follows:

5 With a June 30, 1884, date of priority, 0.02 cubic foot per second, 5.4  
6 acre-feet per year for the irrigation of one acre in that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
7 Section 34 lying south of State Route 970 and west of the county road.

8 With a June 30, 1891, date of priority, 0.16 cubic foot per second, 43.2  
9 acre-feet per year for the irrigation of 8 acres and 0.5 acre-foot per year for  
10 stock water in a portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 33.

12 COURT CLAIM NO. 01845 -- Ronald B. Miller  
13 & Judy E. Miller

14 A Statement of Claim was submitted by William J. and Kathryn H. Young and  
15 Gregory Bjordal. On April 17, 1989, Ronald B. and Judy E. Miller were substituted  
16 as claimants. Mr. Miller testified at the evidentiary hearing.

17 According to Mr. Miller's testimony there is no current or past surface water  
18 use on the property. The land was not confirmed a right in the 1921 adjudication.  
19 Mr. Miller did not seem to be asserting a surface water right for any purpose.  
20 Therefore, the Referee recommends that water rights not be confirmed under Court  
21 Claim No. 01845.

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2 COURT CLAIM NO. 01286 -- Ronald J. Montgomery  
3 & Becky Montgomery  
4 Ivan J. Osmonovich  
5 & Davene A. Osmonovich  
6 Tommy Pratt  
7 & Genine Pratt

8  
9 A Statement of Claim was submitted to the Court by Ronald J. and Becky  
10 Montgomery for the use of waters from the Teanaway River. On September 17, 1987,  
11 Tommy and Genine Pratt and Ivan J. and Davene A. Osmonovich were joined to the  
12 claim. Attorney Michael Bauer represented Ivan J. and Davene A. Osmonovich.  
13 Ronald Montgomery, Genine Pratt, Ivan Osmonovich and Richard C. Bain, Jr., a  
14 consultant hired by the Osmonoviches, testified at the evidentiary hearing.

15 At the time the Court Claim was filed the Montgomerys owned the S $\frac{1}{2}$ NE $\frac{1}{4}$  of  
16 Section 33, T. 20 N., R. 16 E.W.M., except that portion lying northeast of the  
17 county road. The court claim asserted a right to divert 1.2 cubic feet per second,  
18 300 acre-feet from the Teanaway River for the irrigation of 69 acres. The land is  
19 planted to hay with a grain and pasture rotation. It is irrigated with water  
20 diverted from the Teanaway River into the Seaton Ditch. The diversion is in the  
21 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26. In the mid-1980's the land was subdivided and a portion  
22 sold. The Pratts purchased 12 acres and are irrigating 11 acres. The Osmonoviches  
23 purchased 25 acres and are irrigating 24. The Montgomerys retained approximately  
24 40 acres and are irrigating 34 acres.

25 Certificate No. 149 from the 1921 Teanaway River Adjudication, a Class 4 right  
26 with an 1885 date of priority, is appurtenant to the claimants' land. It  
27 authorized the diversion of 1.20 cubic feet per second from the Teanaway River for  
28 the irrigation of 60 acres in the S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 33. The authorized point of  
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1 However, the Referee believes the point of diversion used today is essentially the  
2 one authorized in the certificate. The diversion is physically located in the  
3 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, but is very near the quarter section line between the NE $\frac{1}{4}$ SE $\frac{1}{4}$   
4 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of the section. The map from the 1921 adjudication shows the  
5 diversion being right on the quarter section line.

6 Certificate No. 149 authorizes the irrigation of a maximum of 60 acres within  
7 the S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 33, however, the testimony was that a total of 69 acres are  
8 being irrigated and were irrigated at the time the Montgomerys subdivided and sold  
9 the land. The Referee can recommend confirmation of water rights in this  
10 proceeding only within the limits of the rights confirmed in 1921, unless there is  
11 evidence that additional water rights were secured after the adjudication through  
12 compliance with the permitting requirements of RCW 90.03. There is no evidence  
13 that occurred. Consequently the Referee can only confirm water rights for the  
14 irrigation of 60 acres in an area within which 69 acres are now being irrigated.

15 The claimants did not address this issue and it is not possible for the  
16 Referee to determine, based on the evidence currently in the record, where the 60  
17 acres historically irrigated were located. The Referee can either recommend that  
18 rights not be confirmed at all under this claim or dividing the 60 acres up as he  
19 sees fit. The Referee chooses to do the later. The claimants have the opportunity  
20 to take exception to this recommendation and provide additional evidence on how the  
21 right should be divided. Since the Motions to Join parties to the claim identified  
22 the total number of acres sold to each of the parties joined and did not  
23 specifically limit the number of irrigated acres, the Referee will recommend that  
24 water rights be confirmed for all the acres being irrigated by the Pratts and the

1 Osmonoviches. The recommendation is that rights be confirmed to the Montgomerys  
2 for the irrigation of 25 acres.

3 The engineering report prepared by Mr. Bain presented information regarding  
4 the quantity of water used to irrigate the Osmonovich property. According to that  
5 document, up to 1.59 cubic feet per second is used to irrigate that property, which  
6 results in 9 acre-feet per acre per year being applied to the land. The takeout  
7 used to serve the land described in this court claim delivers 1.49 cubic feet per  
8 second. This far exceeds the quantity of water to which the land is entitled. The  
9 proportionate share of the certificate that would be appurtenant to the 24 acres  
10 owned by the Osmonoviches is 0.48 cubic foot per second. The decree provides that  
11 when surplus water is available in excess of all of the existing rights, an  
12 additional 100 percent of the authorized quantity can be diverted. That would  
13 allow for the diversion of 0.96 cubic foot per second, when available. This  
14 additional water would only be available during the peak runoff period, which would  
15 likely only last 30 days. Therefore, the maximum annual water quantity that could  
16 legally be diverted and used on the Osmonovich property is 158.3 acre-feet per  
17 year.

18 None of the other claimants under Court Claim No. 01286 testified to using  
19 water above the quantity authorized by the certificate.

20 The Referee recommends that water rights be confirmed under Court Claim No.  
21 01286 for use of waters from the Teanaway River with a June 30, 1885, date of  
22 priority as follows:

23 Tommy and Genine Pratt: 0.22 cubic foot per second, 59.4 acre-feet per year  
24 for the irrigation of 11 acres.

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1 Ivan J. and Davene A. Osmonovich: 0.48 cubic foot per second, 158.7 acre-feet  
2 per year for the irrigation of 24 acres (with a provision that an additional 0.48  
3 cubic foot per second may be diverted when surplus water is available)

4 Ronald J. and Becky Montgomery: 0.50 cubic foot per second, 135 acre-feet per  
5 year for the irrigation of 25 acres.

6

7 COURT CLAIM NO. 02255 -- Robert E. Mundy  
8 (A)04465 George L. Blackburn  
9 (A)04493 & Penny L. Blackburn  
Donald W. Walker  
& Gloria Walker  
Michael McCoy  
& Teresa McCoy

10

11 Court Claim No. 02255 was filed by Robert E. Mundy for use of waters from the  
12 Teanaway River and three unnamed springs. On June 12, 1989, George L. and Penny L.  
13 Blackburn and Donald W. and Gloria Walker were joined to the claim. On June 20,  
14 1989, Michael and Teresa McCoy were joined to the claim. Mr. Mundy filed an  
15 amended statement of claim on June 19, 1989, adding two unnamed ponds as sources of  
16 water for the land he still owned. The Walkers and the Blackburns were represented  
17 by Attorney Michael Bauer. Robert Mundy, Gloria Walker, George Blackburn and  
18 Richard C. Bain, Jr., a consultant hired by the Blackburns, testified at the  
19 evidentiary hearing.

20 At the time of the evidentiary hearing, Robert Mundy owned the S $\frac{1}{2}$ SW $\frac{1}{4}$  of  
21 Section 23 and the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 26, T. 20 N., R. 16 E.W.M. He is asserting a  
22 right for nondiversionary stockwatering from two ponds located on the property.  
23 When he raises cattle, which at times number up to 150 cow/calf pairs, they drink  
24 directly from the ponds. One pond is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 23 and the  
25 second is in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 26. The pond in Section 26 was constructed

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1 where an undeveloped spring had previously emerged. Prior to construction of the  
2 pond, cattle had access to drink from the spring.

3 This type of nondiversionary stock water use is covered by the stock water  
4 stipulation discussed on Page 4 of this report. No additional right will be  
5 confirmed to Mr. Mundy under this claim.

6 The Walkers own that portion of Section 25 lying west of the Teanaway River,  
7 north of State Route 970 and south of East Masterson Road, and that portion of  
8 Section 26 lying north of State Route 970 and south of East Masterson Road, in  
9 T. 20 N., R. 16 E.W.M. They are asserting a right to irrigate approximately 200  
10 acres with water diverted from the Teanaway River. Two diversions are used to  
11 serve the land. One is located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25, diverting into the  
12 Masterson Ditch which parallels the county road and a second ditch that flows to  
13 the south and then west; the second diversion is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
14 Section 26 and diverts into the Seaton Ditch. Timothy hay is the predominant crop,  
15 with cattle being grazed after the second cutting in the fall. Cattle drink from  
16 the irrigation ditches in the fields. It is not clear whether water is diverted  
17 from the Teanaway River after the end of the irrigation season for the cattle or is  
18 provided from another source.

19 Several certificates from the 1921 adjudication of the Teanaway River are  
20 appurtenant to the Walker property. Certificate No. 110 is a Class 2 right with an  
21 1883 date of priority, authorizing the diversion of 2.0 cubic feet per second for  
22 the irrigation of 99.8 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$   
23 of Section 26, T. 20 N., R. 16 E.W.M.. The authorized point of diversion is in the  
24 SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26. Both the Masterson and Seaton

1 Ditches are used to serve these lands. Approximately 63 acres are being irrigated  
2 by the Walkers within the place of use on the certificate.

3 Certificate No. 111 is a Class 14 right with an 1898 date of priority,  
4 authorizing the diversion of 0.26 cubic foot per second for the irrigation of 12.8  
5 acres in the  $W\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$  and  $W\frac{1}{2}E\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$  of Section 26. The authorized points of  
6 diversion are in the  $SW\frac{1}{4}NE\frac{1}{4}$  of Section 25 and the  $NE\frac{1}{4}SE\frac{1}{4}$  of Section 26. This land  
7 is irrigated with water diverted in the  $NW\frac{1}{4}NE\frac{1}{4}$  of Section 25. The Walkers own the  
8 portion of the authorized place of use lying south of East Masterson Road and  
9 irrigate approximately 12.8 acres. Michael and Teresa McCoy own that portion of  
10 the place of use north of East Masterson Road, and there is a strip of land between  
11 the Masterson Ditch and the East Masterson Road that could have been irrigated from  
12 the ditch. However, the McCoys did not appear at the evidentiary hearing to defend  
13 their portion of the claim.

14 Certificate No. 112 is a Class 2 right with an 1883 date of priority  
15 authorizing the diversion of 1.50 cubic feet per second for the irrigation of 75  
16 acres in the  $S\frac{1}{2}NW\frac{1}{4}$  and  $N\frac{1}{2}SW\frac{1}{4}$  of Section 25. The authorized point of diversion is  
17 in the  $SW\frac{1}{4}NE\frac{1}{4}$  of Section 25. This land is irrigated with water diverted in the  
18  $NW\frac{1}{4}NE\frac{1}{4}$  of Section 25. The Walkers own that portion of the authorized place of use  
19 lying south of the East Masterson Road and north of State Route 970, consisting of  
20 approximately 70 acres. That portion of the  $S\frac{1}{2}NW\frac{1}{4}$  of Section 25 lying north of the  
21 East Masterson Road is owned by Michael and Teresa McCoy. There is a strip of land  
22 between the road and Masterson Ditch that could have been irrigated from the ditch.

23 Certificate No. 113 is a Class 2 right with an 1883 date of priority which  
24 authorizes the diversion of 0.20 cubic foot per second for the irrigation of 10  
25 acres in the  $E\frac{1}{2}E\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$  of Section 26. The authorized point of diversion is in the

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1 SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25. This land is irrigated with water diverted in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
2 Section 25 and from a spring located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25. The Walkers own  
3 and irrigate the portion of E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25 lying south of the East  
4 Masterson Road, which is approximately 4 acres. The McCoys own that portion of the  
5 place of use lying north of the road. Since the McCoys did not appear at the  
6 hearing, there was no evidence offered related to their land.

7 Certificate No. 114 is a Class 14 right with an 1898 date of priority  
8 authorizing the diversion of 0.14 cubic foot per second for the irrigation of 6.7  
9 acres in the E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26. The authorized point of diversion is in the  
10 SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25. The Walkers own and irrigate the portion of that subdivision  
11 lying north of State Route 970, which is approximately 4 acres. A right is not  
12 being asserted in this proceeding for that portion of the subdivision lying south  
13 of State Route 970.

14 A portion of Certificate No. 161 is also appurtenant to the Walker property.  
15 That certificate is a Class 9 right with an 1890 date of priority. It authorizes  
16 the diversion of 1.0 cubic foot per second for the irrigation of 50 acres in the  
17 SW $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 26. The authorized point of diversion is in the SW $\frac{1}{4}$ NE $\frac{1}{4}$   
18 of Section 25 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26. Both the Walkers and the Blackburns  
19 own irrigated land within the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 26. The Walkers are irrigating  
20 approximately 47 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 26 and the Blackburns are irrigating  
21 approximately 21 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26. Water is diverted from both  
22 the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26 to irrigate this land.

23 Certificate No. 161 authorizes the irrigation of 50 acres. Within the  
24 authorized place of use there currently is close to 68 acres being irrigated. The  
25 testimony was not adequate for the Referee to determine where the 50 acres

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1 historically irrigated under this right was located. The Referee can only  
2 recommend to the Court that rights be confirmed commensurate with the existing  
3 water right. Since there was no testimony to assist the Referee in dividing the 50  
4 acres between the two landowners, the division will be made according to the  
5 proportionate ownership of the irrigated acreage. That would result in the Walkers  
6 being recommended for a water right for the irrigation of 34 acres and the  
7 Blackburns for 16 acres.

8 In addition to the lands owned in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, the Blackburns  
9 also purchased from Robert Mundy that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 35 lying  
10 north of the Teanaway River and a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 34 lying north  
11 of the Teanaway River and south of State Route 970, and were joined to the claim  
12 for those lands. They own property that is covered by another claim to which they  
13 were joined, which is discussed on Page 106 of this report.

14 The Blackburns are irrigating approximately two acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
15 Section 35 and another two acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 34, both being north of  
16 the Teanaway River. This land is irrigated with water diverted and carried in the  
17 Seaton Ditch and then through laterals from the SE $\frac{1}{4}$  of Section 27 and the SW $\frac{1}{4}$  of  
18 Section 28. A portion of Certificate No. 122, a Class 9 right with an 1890 date of  
19 priority appears to be appurtenant to the Blackburn land in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
20 Section 34. It authorized the diversion of 0.72 cubic foot per second for the  
21 irrigation of 36 acres in that part of the NE $\frac{1}{4}$  of Section 34 lying north and west  
22 of the Teanaway River. The authorized point of diversion is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
23 Section 26. There is no diversion currently exercised in that quarter-quarter  
24 section. The proportionate share of this right that would be appurtenant to the  
25 Blackburn land is 0.04 cubic foot per second for the irrigation of two acres.

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1       Review of the Amosso decree by the Referee failed to reveal any water rights  
2 for the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 35. To the contrary, the last entry in the schedule of  
3 rights is a listing of lands, perhaps owned by Cascade Lumber) for which water  
4 could be diverted by securing a permit from the State Supervisors of Hydraulics (now  
5 Ecology) in accordance with Chapter 117 Session Laws of 1917 and 1919 amendments  
6 (now referred to as RCW 90.03). Included in the list is the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 35.  
7 There is no evidence that compliance with RCW 90.03 ever occurred. Therefore, the  
8 Referee cannot recommend confirmation of a water right for that land.

9       The location of the points of diversion authorized by Certificates No. 110,  
10 111, 112, 113 and 114 discussed herein are described on the certificate as being in  
11 the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25. The diversion being exercised is in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
12 Section 25, approximately 800 feet upstream from the location shown on the map from  
13 the 1921 adjudication for the only diversion in the NE $\frac{1}{4}$  of Section 25. The  
14 difference between the authorized diversion and that currently being exercised was  
15 not addressed during the hearing. The Referee does not know whether the current  
16 diversion is also the historic diversion and errors were made on the certificates  
17 or whether the diversion was changed sometime in the past. There is no evidence  
18 that compliance with RCW 90.03.380 occurred if the diversion was changed.  
19 Consequently, the Referee must recommend confirmation of the water rights with the  
20 diversion locations authorized on the certificates and shown on the 1921 map. The  
21 claimants should contact the Department of Ecology concerning changing those  
22 locations. Certificate No. 110 also authorized a diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
23 Section 26, and this diversion is still exercised.

24       Certificate No. 161 authorized points of diversion located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
25 Section 25 and in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26. The Referee believes that the location

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1 in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26 is in error. There is only one diversion in the SE $\frac{1}{4}$  of  
2 Section 26 shown on the 1921 map and that diversion is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26,  
3 very close to the quarter section line between the NE $\frac{1}{4}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

4 Based on the above analysis, the Referee recommends that rights be confirmed  
5 to Donald W. and Gloria Walker for use of the Teanaway River as follows:

6 With a June 30, 1883, date of priority, 1.26 cubic feet per second, 340.2  
7 acre-feet per year for the irrigation of 63 acres and 1 acre-foot for stock  
8 watering in that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , and W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
9 Section 26, T. 20 N., R. 16 E.W.M. lying north of State Route 970 and south of the  
10 East Masterson Road. It is recommended that two points of diversion be confirmed,  
11 one in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25 and one in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26.

12 With a June 30, 1883, date of priority, 1.40 cubic feet per second, 378  
13 acre-feet per year for the irrigation of 70 acres and 1 acre-foot per year for  
14 stock watering in that portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 25, T. 20 N.,  
15 R. 16 E.W.M. lying north of State Route 970 and south of the East Masterson Road.  
16 It is recommended that the point of diversion for this right be in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
17 Section 25.

18 With a June 30, 1883, date of priority, 0.08 cubic foot per second, 21.6  
19 acre-feet per year for the irrigation of 4 acres in that portion of the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$   
20 of Section 26, T. 20 N., R. 16 E.W.M. lying north of State Route 970 and south of  
21 the East Masterson Road. It is recommended that the point of diversion for this  
22 right be in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25.

23 With a June 30, 1890, date of priority, 0.68 cubic foot per second, 183.6  
24 acre-feet per year for the irrigation of 34 acres in that portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$  of  
25 Section 26, T. 20 N., R. 16 E.W.M. lying north of State Route 970 and south of the

1 East Masterson Road. It is recommended that two points of diversion be confirmed,  
2 one in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25 and one in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26.

3 With a June 30, 1898, date of priority, 0.26 cubic foot per second, 69.12  
4 acre-feet per year for the irrigation of 12.8 acres in that portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$   
5 and W $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, T. 20 N., R. 16 E.W.M. lying north of State Route 970  
6 and south of the East Masterson Road. It is recommended that two points of  
7 diversion be confirmed, one in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25 and one in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
8 Section 26.

9 With a June 30, 1898, date of priority, 0.08 cubic foot per second, 21.6  
10 acre-feet per year for the irrigation of 4 acres in that portion of the E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$   
11 of Section 26, T. 20 N., R. 16 E.W.M. lying north of State Route 970 and south of  
12 the East Masterson Road. It is recommended that the point of diversion be in the  
13 SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25.

14 It is recommended that George L. and Penny L. Blackburn be confirmed rights to  
15 divert from the Teanaway River as follows:

16 With a June 30, 1890, date of priority, 0.32 cubic foot per second, 86.4  
17 acre-feet per year for the irrigation of 16 acres and 1 acre-foot per year for  
18 stock water in that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 20 N., R. 16 E.W.M.  
19 lying south of the East Masterson Road. It is recommended that two points of  
20 diversion be confirmed, one in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25 and one in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
21 Section 26.

22 With a June 30, 1890, date of priority, 0.04 cubic foot per second, 10.8  
23 acre-feet per year for the irrigation of 2 acres in that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
24 Section 34, T. 20 N., R. 16 E.W.M. lying north of the Teanaway River and south of

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1 State Route 970. It is recommended that the point of diversion be in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
2 Section 26.

3 Since the points of diversion in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
4 Section 26 are not currently being used, the claimants should contact Ecology's  
5 Central Regional Office in order to initiate the procedures under RCW 90.03.380 for  
6 changing points of diversion.

7

8

9 COURT CLAIM NO. 00741 -- Carl A. Niese  
& Rosemary Niese

10 Carl A. and Rosemary Niese submitted a claim to the Court for the use of  
11 waters from Mason Creek for irrigation. Through testimony the claimants are also  
12 asserting a right for use of an unnamed spring for domestic supply and stock water.  
13 The Nieses are represented by Attorney John P. Gilreath. Carl Niese testified at  
14 the evidentiary hearing.

15 The Niese property lies in a portion of the NW $\frac{1}{4}$  of Section 13, T. 20 N.,  
16 R. 16 E.W.M.. The land is riparian to Mason Creek. The claimants are currently  
17 irrigating approximately four acres of lawn/golf course with water diverted from  
18 Mason Creek. However, they are asserting a right to irrigate 30 acres. According  
19 to Mr. Niese's testimony, logging along Mason Creek, upstream from his property,  
20 has resulted in a change in the runoff characteristics within the drainage and  
21 consequently, Mason Creek does not carry sufficient water at this time to irrigate  
22 30 acres. The logged area has been replanted and Mr. Niese believes that as the  
23 vegetation returns, Mason Creek will again experience its historic flow patterns  
24 that would provide sufficient water to irrigate 30 acres. Two points of diversion  
25 have been used to serve the property. One diversion is located approximately 150  
26

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1 feet north and east of the southwest corner of Section 12 and diverts into an open  
2 ditch that flows through the Niese property and into the SW $\frac{1}{4}$  of Section 13. The  
3 second diversion is approximately 400 feet south and 450 feet east of the northwest  
4 corner of Section 13. Water is piped to a pond and then pumped from the pond for  
5 irrigating approximately 2 of the 4 acres currently being irrigated.

6 The Nieses are basing their claim to a water right on the Amosso, supra decree  
7 from the 1921 adjudication of the Teanaway River. A Class 18 right, which would  
8 have a 1903 priority date, was confirmed to August Zanola for the diversion of 0.74  
9 cubic foot per second from Mason Creek for the irrigation of 37 acres in the NW $\frac{1}{4}$  of  
10 Section 13, T. 20 N., R. 16 E.W.M.. The Nieses are asserting a right for the  
11 proportionate share of the right that would be appropriate for 30 acres, or a right  
12 to divert 0.60 cubic foot per second for the irrigation of 30 acres. Although a  
13 water right was confirmed in the decree, an adjudicated certificate is not in the  
14 record for this right. Included in State's Exhibit SE-4 is a list of adjudicated  
15 certificates for which fees have not been paid. Counsel for the claimants contends  
16 that certificate No. 168 is the appropriate certificate for the Zanola right and  
17 that certificate number is on the list of certificates for which fees have not been  
18 paid.

19 In 1969 Certificate of Change recorded in Volume 3, Page 1089 issued to  
20 Shirley Danko Bednar authorizing her to change the place of use for a portion of  
21 the right granted in Certificate No. 168 and correct the point of diversion  
22 location for that portion of the right. The certificate of change described  
23 Certificate No. 168 in detail and identified that the certificate had erroneously  
24 identified the source of water as being the Teanaway River, rather than Mason  
25 Creek. The point of diversion was changed to a point approximately 400 feet south

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1 and 550 feet east of the northwest corner of Section 13. The place of use for a  
2 portion of the right equaling 0.14 cubic foot per second for the irrigation of 7  
3 acres was changed to land in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14 (land now owned by claimant  
4 Bernard Grywacz), leaving 0.60 cubic foot per second for 30 acres still appurtenant  
5 to the NW $\frac{1}{4}$  of Section 13.

6 In 1974 the Department of Ecology issued to C. A. Niese, Certificate of Change  
7 recorded in Volume 1-3, Page 65, granting a right to change the point of diversion  
8 for a portion of the right under Certificate No. 168 from the Teanaway  
9 Adjudication. The point of diversion for 0.23 cubic foot per second was changed to  
10 a point located 140 feet north and 140 feet east of the southwest corner of  
11 Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12. This point is the diversion  
12 that feeds the open ditch that flows through Section 13. The certificate of change  
13 states that the point of diversion originally authorized was from the Teanaway  
14 River in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 20 N., R. 16 E.W.M.. Mr. Niese did not  
15 explain why he sought a certificate of change for 0.23 cubic foot per second when  
16 he is now claiming a right to 0.60 cubic foot per second.

17 The certificates of change support the claimants contention that Certificate  
18 No. 168 results from the Zanola right confirmed in the decree. It is not clear why  
19 the certificate is not in the record. The language in the certificates of change  
20 suggest the certificate has issued, yet Ecology's Exhibit SE-4 lists it as a  
21 certificate that has not issued due to failure to pay the fees from the 1921  
22 adjudication. The Referee has been reluctant to recommend confirmation of any  
23 right for which the certificate did not issued. However, since certificates of  
24 change were issued by Ecology and a predecessor agency, if all other aspects of the

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1 right are adequately proven, the Referee will recommend confirmation of rights to  
2 claims based on the Zanola right.

3 Besides the Nieses, claimants Bernard Grywacz and Dean Decker own and irrigate  
4 land in the NW $\frac{1}{4}$  of Section 13 and are asserting that a portion of the Zanola right  
5 is appurtenant to their property (See Pages 74 and 107). Presented as part of the  
6 Grywacz claim was a copy of a sales agreement executed in December of 1969 between  
7 Shirley Danko Bednar and Bernard Grywacz transferring that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
8 Section 13 south of the Teanaway Road, along with 0.15 cubic foot per second of  
9 irrigation water. Dean Decker bought from Shirley Bednar Chicklinsky that portion  
10 of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13 lying north of the Teanaway Road and west of Mason  
11 Creek. He is claiming a right to irrigate 2.5 acres.

12 Neither Mr. Decker or the Nieses presented any documentation to show whether  
13 water rights were specifically addressed when they purchased their land. A water  
14 right is appurtenant to the historic place of water use as authorized by the  
15 certificate, unless changed through compliance with RCW 90.03.380. When a water  
16 right authorizes the irrigation of 37 acres within an 160 acre place of use, it is  
17 important to know exactly where the water has historically been used. Particularly  
18 in a situation such as this where rights are being asserted for the irrigation of  
19 up to 46 acres within an area where only 37 acres have a water right.

20 The two certificates of change only changed the point of diversion for 0.37  
21 cubic foot per second, rather than the entire 0.74 cubic foot per second. It is  
22 not clear, and the testimony did not address, why the points of diversion were  
23 changed for only a portion of the water right.

24 Due to the uncertainty concerning the location of the lands within the NW $\frac{1}{4}$  of  
25 Section 13 that were historically irrigated with water diverted from Mason Creek,  
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1 the Referee cannot recommend confirmation of a water right to Carl A. and Rosemary  
2 Niese.

3       The claimants are also asserting a right for use of an unnamed spring for  
4 domestic supply and stock watering. The spring is located near Mason Creek, just  
5 north of the pond. A 1/3 BHP pump capable of withdrawing 6.5 gallons per minute  
6 has been placed on the spring. It serves two residences, the family lodge and the  
7 caretakers modular home. A September 3, 1901, date of priority is being asserted  
8 for the spring based on the date that the property was conveyed from Northern  
9 Pacific Railway to Benjamin Strickney. However, there was no testimony of historic  
10 use of this spring. Water is pumped from the spring to serve these two residences  
11 and it was uncommon, but not unheard of, for pumps to be used in 1901. Generally  
12 gravity flow systems were employed. Neither the testimony or the exhibits  
13 presented by the claimants show where the residences are located. One exhibit is  
14 an aerial photo that appears to bear a 1971 date. The Referee could not detect any  
15 structures on the Niese property in that aerial photograph. Since the property was  
16 originally conveyed from the Federal government to Northern Pacific Railway and  
17 then into private ownership, there was no requirement that a residence be  
18 established in order for the patent to issue. The Referee cannot assume that one  
19 or more residences were constructed and a domestic supply use initiated prior to  
20 1917 without evidence to support that contention. Evidence of the specific source  
21 used is also necessary. That evidence is lacking. Lacking that proof, the Referee  
22 cannot recommend confirmation of a water right for use of the spring under Court  
23 Claim No. 00741.

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1  
2 COURT CLAIM NO. 01284 -- Donald L. Osmonovich  
3 & Janice C. Osmonovich

4 Donald and Janice Osmonovich submitted a Statement of Claim to the Court for  
5 the use of waters from the Teanaway River. Donald Osmonovich testified at the  
6 evidentiary hearing.

7 According to Mr. Osmonovich's testimony, they are irrigating two acres with  
8 waters diverted from the Teanaway River and carried in the Seaton Ditch. Their  
9 land lies in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 33, west of Seaton Road. Seaton Ditch ends in  
10 the NE $\frac{1}{4}$  of Section 33, and laterals from that ditch cross land to the north prior  
11 to entering the Osmonovich property. Livestock, consisting of 10 to 12 horses and  
12 mules drink from the irrigation ditches. The two acres are flood irrigated.

13 Mr. Osmonovich was not familiar with the history of the property prior to his  
14 purchase. However, Ecology identified that Certificate No. 133 from the 1921  
15 adjudication of the Teanaway River, a Class 10 right with an 1891 date of priority,  
16 is appurtenant to the Osmonovich land. It authorized the diversion of 1.4 cubic  
17 feet per second from the Teanaway River for the irrigation of 70 acres in the SE $\frac{1}{4}$   
18 of Section 33. The authorized point of diversion is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26,  
19 which is where the Seaton Ditch diverts from the river.

20 Based on the foregoing, it is recommended that a right be confirmed under  
21 Court Claim No. 01284 with a June 30, 1891, date of priority for the diversion of  
22 0.04 cubic foot per second, 10.8 acre-feet per year for the irrigation of 2 acres  
23 and 1 acre-foot per year for stock watering in that portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
24 Section 33 lying west of Seaton Road.

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1  
2 COURT CLAIM NO. 01692 -- Ivan J. Osmonovich  
3 & Davene A. Osmonovich

4 A Statement of Claim was submitted by Ivan J. and Davene A. Osmonovich for the  
5 use of waters from the Teanaway River. Mr. and Mrs. Osmonovich are represented by  
6 Attorney Michael Bauer. Mr. Osmonovich and Richard C. Bain, Jr., a consultant  
7 hired by the claimants, testified at the evidentiary hearing.

8 The Court Claim asserts a right to divert 0.08 cubic foot per second, 24  
9 acre-feet per year for the irrigation of 3.3 acres in Lot 1 of Short Plat 78-03,  
10 located in the NW $\frac{1}{4}$  of Section 34, T. 20 N., R. 16 E.W.M.. Although a right is  
11 being asserted for the irrigation of the entire 3.3 acres in Lot 1, the testimony  
12 was that a home is located on the property and a picture of the property located in  
13 Mr. Bain's report shows other outbuildings on the property. The State's  
14 investigation report identified 2 acres as being irrigated within Lot 1 and  
15 Mr. Osmonovich testified that was accurate.

16 Certificate No. 129 from the Teanaway River adjudication in 1921 is  
17 appurtenant to the NW $\frac{1}{4}$  of Section 34. It is a Class 1 right with an 1882 date of  
18 priority. It authorizes the diversion of 1.5 cubic feet per second for the  
19 irrigation of 75 acres in the NW $\frac{1}{4}$  of Section 34. The authorized points of  
20 diversion are in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 34 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26. On October  
21 1, 1982, Mr. and Mrs. Bruno Bonetto signed a voluntary relinquishment, apparently  
22 prepared by the Department of Ecology, relinquishing a portion of the right being  
23 0.78 cubic foot per second for the irrigation of 39 acres. A superseding  
24 certificate issued to the Bonettos authorizing the diversion of 0.72 cubic foot per  
25 second, 108 acre-feet per year for the irrigation of 36 acres within the NW $\frac{1}{4}$  of  
26 Section 34. Subsequently, on March 9, 1983, Certificate of Change recorded in

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1 Volume 1-4, Page 232 issued to Bruno Bonetto authorizing him to change the point of  
2 diversion for a portion of Certificate No. 129 (0.44 cubic foot per second, 66  
3 acre-feet per year for 22 acres) to a point 1100 feet west and 150 feet south of  
4 the center of Section 34, being in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34.

5 The relinquishment and superseding certificate would imply that the Bonettos  
6 owned all of the land described in the certificate and had the standing to  
7 relinquish any of the right they were not exercising. That does not appear to be  
8 the case. The relinquishment will not be considered binding on any land not owned  
9 by the Bonettos at the time it was signed. The Osmonoviches are asserting a right  
10 under this certificate and the map exhibit from the 1921 adjudication shows the  
11 portion of the NW $\frac{1}{4}$  they now own irrigated. The proportionate share of the  
12 certificate that is appurtenant to the Osmonovich land is 0.04 cubic foot per  
13 second for the irrigation of 2 acres.

14 The information presented in Mr. Bain's report shows that the Osmonoviches are  
15 using more water than they have a right to use. According to Mr. Bain's report,  
16 the takout that serves this area delivers 0.50 cubic foot per second and up to 9  
17 acre-feet per acre is used to irrigate the land. The decree did provide that each  
18 right holder could use up to 100 percent more than the instantaneous quantity  
19 authorized if surplus water was available in the river in excess of that needed to  
20 satisfy all existng rights. That would allow up 0.08 cubic foot per second to be  
21 used on the Osmonovich land during periods of high runoff, which is the maximum  
22 they should be withdrawing for use on their land.

23 It is recommended that a right be confirmed under Court Claim No. 01692 to  
24 Ivan and Davene Osmonovich with a June 30, 1882, date of priority for the diversion  
25 of 0.04 cubic foot per second, 13 acre-feet per year for the irrigation of 2 acres.  
26

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1 The recommendation will contain a provision that they may withdraw up to 100  
2 percent more than the instantaneous quantity if it is available.  
3

4 COURT CLAIM NO. 01450 -- Harold Pedersen  
5 & Lois Pedersen

6 A Statement of Claim was submitted by Harold and Lois Pederson for the use of  
7 waters from unnamed springs and the Teanaway River. Mr. Pederson is deceased and  
8 the property is now owned by Lois Pederson. Mrs. Pederson, who is represented by  
9 Richard T. Cole, and her son, Craig Pederson, testified at the evidentiary hearing.

10 Mrs. Pederson owns land lying in the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 9 and the S $\frac{1}{2}$ SW $\frac{1}{4}$  of  
11 Section 4, T. 20 N., R. 16 E.W.M.. Two certificates from the 1921 adjudication of  
12 the Teanaway River are appurtenant to the property. Certificate No. 108, with a  
13 1905 date of priority, authorized the diversion of 1.2 cubic feet per second from  
14 the Teanaway River for the irrigation of 60 acres in the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 9.  
15 Certificate No. 109, with a 1911 date of priority, authorized the diversion of 0.40  
16 cubic foot per second from the Teanaway River for the irrigation of 20 acres in the  
17 SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4.

18 The Pedersons acquired the land in 1958 and have never diverted water from the  
19 Teanaway River to irrigate their land. An irrigation ditch crosses their property  
20 carrying water to lands in the E $\frac{1}{2}$  of Section 9 and the Pedersons's horses drink  
21 from the ditch. RCW 90.14.160 provides that a right acquired through adjudication  
22 is relinquished if the right is not exercised for five or more successive years.  
23 Any right that the Pedersons may have held to divert water from the Teanaway River  
24 for irrigation has relinquished for nonuse.

25 The Pedersons are also asserting a right to use an unnamed spring located in  
26 the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4 to irrigate approximately 2 acres of lawn, garden and

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1 pasture. Mr. Pederson testified to using 0.25 cubic foot per second for this  
2 purpose. This practice was ongoing at the time the Pedersons acquired the land in  
3 1958, but there was no testimony about when the spring was first developed and  
4 used. In order for their to be a water right under the Prior Appropriation  
5 Doctrine, use had to begin prior to June 6, 1917, otherwise it would be necessary  
6 to obtain a permit from the State through the procedures specified in RCW 90.03.

7 Even if the Pedersons were to have provided proof of water use prior to 1917,  
8 it does not appear that a water right claim was filed pursuant to RCW 90.14.  
9 Failure to file such a claim relinquishes any right that may have existed for water  
10 uses initiated prior to adoption of RCW 90.03 (the State Surface Water Code), RCW  
11 90.14.071.

12 Based on the foregoing, the only right that the Referee can recommend for  
13 confirmation to Mrs. Pederson under Court Claim No. 01450 is for diversionary stock  
14 watering. The Referee recommends that a right be confirmed with a June 30, 1905,  
15 date of priority for the diversion of 0.02 cubic foot per second, 2 acre-feet per  
16 year from the Teanaway River for stock watering.

17  
18  
19 COURT CLAIM NO. 01550 -- Richard Rowe  
20 & Karen Rowe  
William Hunt

21 Richard and Karen Rowe submitted a Claim to the Court for the use of waters  
22 from the Middle Fork Teanaway River. On February 20, 1991, William Hunt was joined  
23 to the claim. Mr. Hunt, represented by Attorney Richard T. Cole, testified at the  
evidentiary hearing.

24 According to the evidence presented at the hearing, Mr. Hunt is now the owner  
25 of Lots 5 and 7 of the Plat of Logan's Acres in the NW $\frac{1}{4}$  of Section 36, T. 21 N.,

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1 R. 15 E.W.M. Approximately 3 acres are irrigated within Lot 7. Water is diverted  
2 from the Teanaway River in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26 and carried in an open ditch  
3 into the NW $\frac{1}{4}$  of Section 36. Water from the ditch is piped to a manmade reservoir  
4 on the Hunt property and then pumped from the reservoir to irrigate Lot 7. Mr.  
5 Hunt is not sure when the reservoir was constructed. Besides being a part of the  
6 irrigation system serving Lot 7, the reservoir also provides habitat for wildlife  
7 in the area and is stocked with fish. It is not clear whether a right is being  
8 asserted for this purpose. The reservoir was excavated at a site where a beaver  
9 pond had previously been located and captures natural occurring shallow ground  
10 water in addition to the river water that is piped from the ditch. The testimony  
11 was not adequate for the Referee to determine whether the river water is necessary  
12 in order for the reservoir to maintain the desirable level.

13 Although Mr. Hunt was not clear on when the reservoir was constructed, the  
14 implication was that it was constructed in fairly modern times and would not date  
15 to the early 1900's, prior to the first adjudication of the Teanaway River. In  
16 order for there to be a distinct right for water to fill the reservoir for wildlife  
17 or fish habitat the reservoir would have to have been constructed prior to June 6,  
18 1917, and a right for a diversion to fill it confirmed in the 1921 adjudication.  
19 The evidence does not support a conclusion that that is the case.

20 Mr. Hunt cites to State of Washington v. Amosso, Teanaway River Adjudication  
21 of 1921, as the basis for his irrigation water right. A priority date of 1890 is  
22 being asserted. Review of that decree reveals that the Court confirmed a right to  
23 Joseph Contratto, who owned the NW $\frac{1}{4}$  of Section 36 at the time of the adjudication,  
24 a right for the diversion of 1.10 cubic foot per second for the irrigation of 55  
25 acres in the NW $\frac{1}{4}$  of Section 36. However, upon review of the State's Exhibit No.  
26

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1 SE-4, copies of Water Right Certificates, Permits and Claim, the Referee was not  
2 able to locate a surface water certificates for that property. Mr. Hunt did not  
3 submit a copy of the certificate.

4 There was no explanation offered as to the reason a certificate was not in  
5 the record for a right confirmed in the 1921 Decree. The Referee is aware that in  
6 the past parties to an adjudication were responsible for the costs associated with  
7 the adjudication and certificates were not issued until the appropriate fees were  
8 paid by the parties. It may be that a certificate was not issued for this right in  
9 1921 due to failure to pay the fees. Pursuant to the requirements of RCW 90.14  
10 Earl R. and Grace Logan filed Water Right Claim No. 112092 asserting a right to  
11 divert 0.32 cubic foot per second, 64 acre-feet per year from the Middle Fork of  
12 the Teanaway River for the irrigation of 16.1 acres in the NW $\frac{1}{4}$  of Section 36. In  
13 addition to Mr. Hunt, Donald Park, James Davis and Orene Ward are asserting rights  
14 to irrigate land previously owned by the Logans in the NW $\frac{1}{4}$  of Section 36. Rights  
15 are being asserted for the irrigation of a total of 21 acres. The water right  
16 claim filed by the Logans may have protected a right for the irrigaiton of 16.1  
17 acres.

18 While it is apparent that a right was confirmed in 1921 and water is  
19 continuing to be put to beneficial use, the Referee cannot recommend confirmation  
20 of a water right until the questions surrounding the missing certificate are  
21 resolved and the consequence of a water right claim filed for only 16 acres is  
22 addressed. It is suggested that the parties, including the Department of Ecology,  
23 investigate these issues and be prepared to address them during the exception and  
24 remand phase of the proceeding for this subbasin. Therefore, at this time, the  
25  
26

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1 Referee does not recommend confirmation of a water right to William Hunt under  
2 Court Claim No. 01550.

3

4 COURT CLAIM NO. 01942 -- Jess Schober  
5 & Barbara Schober  
6 Keith Schober  
7 & Geraldine Schober  
8 William F. Sparks  
9 & Sandra N. Sparks

10 A Statement of Claim was filed by Schober Brothers for the use of several  
11 surface water sources within the Yakima River Basin, including several in Subbasin  
12 No. 3. Only the claims to use of waters within Subbasin No. 3 will be addressed in  
13 this report. Keith Schober, Jess Schober and Richard T. Bain testified at the  
14 evidentiary hearing on behalf of the claim. On September 15, 1993, William and  
15 Sandra Sparks were joined to the claim for lands in the SE $\frac{1}{4}$  of Section 24.

16 In 1986 the Schober Brothers partnership was dissolved and the decree  
17 dissolving the partnership divided the partnership's assets between Keith and  
18 Geraldine Schober and Jess and Barbara Schober. Keith and Geraldine Schober  
19 received all of the land owned by Schober Brothers in the Teanaway River Basin, and  
20 described in Court Claim No. 01947, except that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
21 Section 25, T. 20 N., R. 16 E.W.M. lying south of State Highway 970. Keith and  
22 Geraldine Schober were represented by Attorney Richard T. Cole.

23 The NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 lying south of State Highway 970 is owned by Jess and  
24 Barbara Schober. They are asserting a right to use an unnamed spring for domestic  
25 supply and stock watering. When livestock are on the property, they drink directly  
26 from the spring runoff. This type of nondiversionary stock water use is covered by  
the stock water stipulation discussed on Page 4 of this report. Water from the  
spring is also piped to the Schober home in the northeast corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of

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1 Section 25. Their home was constructed in the early 1950's and the spring piped to  
2 the house at that time. Prior to that the spring was only used for stock watering.  
3 In order to establish a water right in the 1950's, compliance with the permitting  
4 requirements of RCW 90.03 was necessary. There is nothing in the record to show  
5 that Jess and Barabra Schober complied with those requirements. Therefore, the  
6 Referee cannot recommend confirmation of a water right for use of the spring.

7 Keith and Geraldine Schober own approximately 25 acres in the S $\frac{1}{2}$  of  
8 Section 13, plus over 400 acres in that portion of the E $\frac{1}{2}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 24  
9 east of the Teanaway River and that portion of the NE $\frac{1}{4}$  of Section 25 lying east of  
10 the Teanaway River and north of State Highway 970. They own a total of about 500  
11 acres and irrigate 350 acres primarily with water diverted from the Teanaway River.  
12 Their primary crop is timothy hay with grain rotation. After the last hay cutting  
13 livestock graze the fields. Up to 2,000 cattle and 3,000 sheep are kept during the  
14 fall through winter months. Livestock drink from the Teanaway River and the  
15 irrigation ditches in the fields. It is not clear to the Referee whether water is  
16 diverted into the irrigation ditches for stock watering after the end of the  
17 irrigation season. The livestock are placed in the fields after the second hay  
18 cutting. Although Mr. Bain testified to a water need of 20 acre-feet per year for  
19 stock watering, this figure would include the water drank directly from the river.  
20 If the irrigation ditches are not operated for stock watering after the end of  
21 irrigation season on September 15, considerably less water would be consumed  
22 through a diversionary use. If the cows were in the field for 30 days during  
23 irrigation season, 3 acre-feet of water would likely be consumed.

24 Water is diverted from the river into the Haida-Peterson Ditch near the center  
25 of the SE $\frac{1}{4}$  of Section 14, T. 20 N., R. 16 E.W.M.. This ditch lies to the north and  
26

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1 east of the irrigated lands. Some of the land has been in the Schober family since  
2 the turn of the century. Two of the certificates from the 1921 adjudication that  
3 are appurtenant to the Schober property issued to Jess Peterson, Mr. Schober'  
4 grandfather.

5 The following certificates from the 1921 adjudication are appurtenant to the  
6 Schober property, either in their entirety or a portion thereof. Certificate No.  
7 148, a Class 4 right with an 1885 date of priority, authorized the diversion of  
8 2.36 cubic feet per second for the irrigation of 118 acres in the SW $\frac{1}{4}$  of  
9 Section 13. The Schobers are irrigating approximately 22 acres in the SW $\frac{1}{4}$  of  
10 Section 13 south of the Haida-Peterson Ditch. Several points of diversion are  
11 authorized by the certificate as follows: the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
12 Section 14 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 13, none of which are currently being used.  
13 The proportionate share of the instantaneous quantity authorized by this  
14 certificate that would be appurtenant to the Schober 22 acres is 0.44 cubic foot  
15 per second.

16 Certificate No. 162, a Class 12 right with an 1894 date of priority,  
17 authorized the diversion of 0.26 cubic foot per second for the irrigation of 13  
18 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13. The Schobers are irrigating 3 acres in the  
19 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13 and the proportionate instantaneous quantity would be 0.06  
20 cubic foot per second. The authorized point of diversion is the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
21 Section 14, which is the original location of the diversion into the Three M Ditch.  
22 The Three M Ditch is not presently used to carry water for this land, but according  
23 to Mr. Schober's testimony had been used in the past. At some time, the point of  
24 diversion for the portion of Certificate No. 162 appurtenant to the Schober land

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1 was transferred to the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14. There is nothing in the record to  
2 show compliance with the change procedures in RCW 90.03.380.

3 Certificate No. 150, a Class 4 right with an 1885 date of priority, authorized  
4 the diversion of 2.40 cubic feet per second for the irrigation of 120 acres in the  
5 S $\frac{1}{2}$ NE $\frac{1}{4}$ ; NW $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 24. The authorized point of diversion is in  
6 the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 13. The Schobers own all of the irrigated lands within the  
7 authorized place of use and are irrigating the authorized 120 acres.

8 Certificate No. 151, a Class 4 right with an 1885 date of priority, authorized  
9 the diversion of 1.52 cubic feet per second for the irrigation of 76 acres in the  
10 SE $\frac{1}{4}$  of Section 24. The authorized point of diversion is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
11 Section 13. At the time of the evidentiary hearing the Schobers owned all of the  
12 irrigated land in the SE $\frac{1}{4}$  of Section 24 and were irrigating the authorized 76  
13 acres. The land that the Sparks purchased lies in the SE $\frac{1}{4}$  of Section 24 and,  
14 according to a map attached to their motion to be joined to the claim, a portion of  
15 their land has been irrigated and was being irrigated at the time of the  
16 evidentiary hearing. The Referee believes their land is part of the 76 acres  
17 historically irrigated.

18 Certificate No. 152, a Class 4 right with an 1885 date of priority, authorized  
19 the diversion of 2.48 cubic feet per second for the irrigation of 124 acres in the  
20 NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25. The authorized point of diversion is the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
21 Section 13. The Schobers are irrigating at least 124 acres within the place of use  
22 on the certificate. Review of the ASCS map submitted into the record show that 153  
23 acres are being irrigated within the place of use on the certificate.

24 Certificate No. 144, a Class 20 right with an 1910 priority date, has also  
25 been identified as potentially being appurtenant to Schober land. It authorized

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1 the diversion of 0.60 cubic foot per second for the irrigation of 30 acres in the  
2 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25. However, it is not clear to the Referee that any of the  
3 Schober land in Section 25 extends into the NE $\frac{1}{4}$ SE $\frac{1}{4}$ .

4 Mr. Schober testified that in recent years some land has been cleared and  
5 irrigated that had not previously been irrigated, which is evidenced by 153 acres  
6 being irrigated in the NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25, when the certificate only  
7 authorized the irrigation of 124 acres. There is nothing in the record to show  
8 that the claimants complied with the permitting requirements of RCW 90.03 in order  
9 to obtain a water right for the additional acres. Water rights documented by  
10 certificates from the 1921 adjudication are limited to the number of acres  
11 historically irrigated within the limits placed on the certificate. The Referee  
12 cannot recommend confirmation of a water right beyond what was confirmed in 1921  
13 and historically irrigated.

14 The point of diversion authorized in Certificates No. 148, 150, 151, and 152  
15 is within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 13. Currently water is diverted into the  
16 Haida-Peterson Ditch in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, approximately 1400 feet north and  
17 1000 feet west of the SE corner of Section 14. The map prepared for the 1921  
18 adjudication shows a diversion in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 13 into what is now called  
19 the Haida-Peterson Ditch. It is obvious that the diversion has been changed,  
20 apparently without compliance with the change provisions of RCW 90.03.380. The  
21 Court has previously ruled that compliance with that statute is necessary and the  
22 Court cannot confirm rights at the changed points of diversion, only at those  
23 locations authorized by the certificates.

24 Mr. Bain testified about the irrigation practices on the farm and the water  
25 duty necessary based on those practices. According to Mr. Bain, 11.2 acre-feet per

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1 year per acre irrigated is needed to irrigate timothy hay, the predominate crop.  
2 Mr. Bain also testified that instantaneous quantity should not be used for  
3 establishing water rights because of the seasonal fluctuations. However,  
4 instantaneous quantity is a significant part of a water right and the court in 1921  
5 established a maximum instantaneous quantity and annual water duty based on that  
6 instantaneous quantity and the irrigation season. The testimony about water duty  
7 assumed an irrigation season of April through September. However, the Report of  
8 Referee in 1921 established May 1 to September 15 as the irrigation season and the  
9 Court adopted that findings in the final decree. The certificates limit water use  
10 for irrigation to those periods. The annual water duty, based on a diversion of  
11 0.02 cubic foot per second and an irrigation season of May 1 to September 15 is 5.4  
12 acre-feet per acre.

13 The decree did allow for the diversion of surplus water, up to a 100 percent  
14 increase over the authorized instantaneous quantity, when water was available in  
15 excess of that needed to satisfy all existing water rights. The Referee has  
16 carried that provision forward in this proceeding if the testimony is sufficient to  
17 conclude that a claimant has taken advantage of that provision. While there was  
18 testimony about the water duty needed to irrigate the Schober property, this was  
19 expressed as an annual quantity of water. There was no evidence presented about  
20 the instantaneous quantity of water diverted into the ditch for use on the Schober  
21 property. Mr. Bain's report did identify the instantaneous quantity of water that  
22 each takeout should be able to supply; however, there was no testimony about the  
23 number of takeouts operated at one time or whether they actually do supply that  
24 quantity. Therefore, the Referee will not carry forward that provision that the  
25  
26  
27

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1 claimant can use an additional 100 percent of the authorized instantaneous quantity  
2 when it is available.

3 Mr. Bain also testified to conveyance loss. Again, the Referee is limited to  
4 recommending confirmation in the quantities previously confirmed and cannot  
5 consider conveyance loss in addition to those quantities.

6 The Schobers are asserting rights to use waters from Mason Creek and Musser  
7 Creek. The flow in both of these creeks is captured in the Haida-Peterson Ditch  
8 rather than the creeks being allowed to flow into the Teanaway River. The Schobers  
9 did not provide any evidence to show that water rights had been established for use  
10 of these two creeks. Review of the 1921 Amosso decree does not reveal the  
11 existence of any rights for use of those creeks on the Schober property.  
12 Therefore, the Referee cannot recommend confirmation of any water rights to the  
13 Schobers for the use of either Mason or Musser Creek.

14 There are several springs that break out on the claimants' property. Most of  
15 the springs do not appear until after the onset of irrigation and Mr. Schober  
16 believes they are fed by irrigation return flow from his irrigated fields and  
17 neighboring landowners to the east. To a large extent it appears they are  
18 capturing and reusing their own return flows, a practice that does not require an  
19 additional water right beyond the right to use the water originally applied to the  
20 land, i.e., the Teanaway River. Two springs located in the NE $\frac{1}{4}$  of Section 24 flow  
21 the entire year. However, Mr. Schober did not testify to the rate of flow from the  
22 springs, what use is being made of that water, or where the water is being used.  
23 He did indicate the water was not being used for irrigation of any land.  
24 Therefore, the Referee cannot recommend confirmation of a water right for these  
25 springs. If water from the springs is being used for nondiversionary stock

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1      watering, that use is covered by the stock water stipulation discussed on Page 4 of  
2      this report and an additional right is not necessary.

3                Based on the above information, it is recommended that the following water  
4      rights be confirmed under Court Claim No. 01942 to Keith and Geraldine Schober and  
5      William and Sandra Spark:

6                With a June 30, 1885, date of priority a right for the diversion of 6.9 cubic  
7      feet per second 1863 acre-feet per year from the Teanaway River for irrigation of  
8      345 acres and 3 acre-feet per year for stock water in that portion of the SW $\frac{1}{4}$  of  
9      Section 13 south of the Haida-Peterson Ditch; the S $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$  and SE $\frac{1}{4}$  of  
10     Section 14 east of the Teanaway River and west of the Haida-Peterson Ditch; and  
11     that portion of the NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 lying south of Masterson Road,  
12     east of the Teanaway River and north of State Highway 970; all in T. 20 N.,  
13     R. 16 E.W.M..

14               With a June 30, 1894, date of priority, a right for the diversion of 0.04  
15      cubic foot per second, 10.8 acre-feet per year for the irrigation of 2 acres in  
16      that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13 lying southwest of the Haida-Peterson  
17      Ditch, T. 20 N., R. 16 E.W.M..

19               COURT CLAIM NO. 01201      -- Daryle Thomas Starkovich

20               Daryle T. Starkovich filed a Statement of Claim with the Court for the use of  
21      waters from the Teanaway River. Mr. Starkovich testified at the evidentiary  
22      hearing.

23               Mr. Starkovich's land lies predominately in the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 33, T. 20 N.,  
24      R. 16 E.W.M., with perhaps an acre extending into the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, north  
25      of State Route 970. All of the irrigated land lies in the SE $\frac{1}{4}$  of Section 33.

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1 Mr. Starkovich testified that he owns a total of 40 acres, but is irrigating 33  
2 acres. His principal crop is a hay/grain rotation, with 2 acres of pasture. Water  
3 is diverted into the Seaton Ditch in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26. At the time  
4 Mr. Starkovich purchased the property in 1973, it was being flood irrigated. He  
5 ceased that practice, plowed over the distribution ditches and installed mainlines  
6 for a sprinkler system. An in-ditch pond has been constructed near the north end  
7 of his property. A 10 BHP pump is on the pond. Mr. Starkovich did not testify to  
8 the quantity of water withdrawn using the pump, however, that size pump could  
9 withdraw up to 300 gallons per minute, or 0.66 cubic foot per second depending on  
10 the system pressure and elevation change in the fields. The claimant believes he  
11 is using less water than was being used when he purchased the property.

12 Certificate No. 133 from the 1921 Teanaway River adjudication is appurtenant  
13 to the property. It is a Class 10 right, with an 1891 date of priority, which  
14 authorized the diversion of 1.4 cubic feet per second for the irrigation of 70  
15 acres in the SE $\frac{1}{4}$  of Section 33. The proportionate share of that certificate that  
16 would be appurtenant to the 33 acres the claimant is irrigating is 0.66 cubic foot  
17 per second. The authorized point of diversion is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26,  
18 which is where the Seaton Ditch currently diverts.

19 A small number of stock are also raised on the claimants property, in varying  
20 numbers. An additional 1 acre-foot per year is adequate for their needs.

21 Based on the foregoing, the Referee recommends that a right be confirmed to  
22 Daryle T. Starkovich with a June 30, 1891, date of priority for the diversion of  
23 0.66 cubic foot per second, 178.2 acre-feet per year for the irrigation of 33 acres  
24 and 1 acre-foot per year for stock watering.

25

26

27 REPORT OF REFEREE  
28 Re: Subbasin No. 3

1  
2 COURT CLAIM NO. 01143 -- Carla L. Thomas  
3 George L. Blackburn  
4 & Glory E. Blackburn

5 A Statement of Claim was submitted by Carla L. Thomas for use of unnamed  
6 springs for stock watering. On April 17, 1991, George L. and Glory E. Blackburn  
7 were joined to the claim. Ms. Thomas and George Blackburn testified at the  
hearing.

8 At the time Ms. Thomas filed the Court Claim, she owned the NE $\frac{1}{4}$  of Section 27  
9 and that portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 26 lying west of Wiehl Road, T. 20 N.,  
10 R. 16 E.W.M.. She sold the property to the Blackburns, who have since sold the  
11 S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 26 to an undisclosed party. The only right that is being asserted  
12 under this claim is for nondiversionary stock watering from two springs in  
13 Section 26 and a pond in Section 27. The livestock drink directly from the water  
14 sources. This type of nondiversionary stock watering is covered by the stock water  
15 stipulation discussed on Page 4 and no additional water right will be confirmed.  
16

17 COURT CLAIM NO. 02486 -- Orene L. Ward

18 A Statement of Claim was submitted by Orene L. Ward for the use of waters from  
19 the Middle Fork of the Teanaway River for irrigation of nine acres and stock  
20 watering. Ms. Ward testified at the evidentiary hearing.

21 According to Ms. Ward's testimony, she owns Lots 1 and 11 of the Plat of  
22 Logan's Acres, which lies in a portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 36, T. 21 N.,  
23 R. 16 E.W.M., lying southwest of the Teanaway Road. She owns approximately nine  
24 acres and irrigates seven with water diverted from the Middle Fork of the Teanaway  
25 River at a point in the SE $\frac{1}{4}$  of Section 26, T. 21 N., R. 16 E.W.M.. The seven  
26

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1 irrigated acres lie north of the Middle Fork of the Teanaway River. She also  
2 raises five horses and up to 30 head of cattle which graze on the land and drink  
3 from the irrigation ditches. Ms. Ward acquired the property in two purchases, one  
4 in 1972 and one in 1976. The land was being irrigated at the time of her purchase.

5 Court Claim No. 02486 cites the 1921 adjudication of the Teanaway River as the  
6 basis for the claim, however, there is no certificate from that adjudication in the  
7 record for her land. Ms. Ward provided no information about the lack of a  
8 certificate. However, a neighboring claimant, William Hunt, directed the Referee  
9 to the Amosso decree and review of the decree reveals that a water right was  
10 confirmed to Joseph Contratto, who owned the NW $\frac{1}{4}$  of Section 36 at the time of the  
11 adjudication. The confirmed right had an 1890 date of priority and authorized the  
12 diversion of 1.10 cubic feet per second for the irrigation of 55 acres in the NW $\frac{1}{4}$   
13 of Section 36.

14 Pursuant to the requirements of RCW 90.14 Earl R. and Grace Logan filed Water  
15 Right Claim No. 112092 asserting a right to divert 0.32 cubic foot per second, 64  
16 acre-feet per year from the Middle Fork of the Teanaway River for the irrigation of  
17 16.1 acres in the NW $\frac{1}{4}$  of Section 36. Fay Turner also submitted Water Right Claims  
18 No. 146916, 146917, and 146918 asserting rights to use three unnamed springs for  
19 the irrigation of 40 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 36. These filings may have  
20 preserved the water rights confirmed in the 1921 adjudication.

21 Donald Bark, under Court Claim No. 01282 and 01281, William Hunt, under Court  
22 Claim No. 01281 and 01550, and James Davis, under Court Claim No. 01556 are  
23 asserting rights to irrigate a total of 15 acres within the property once owned by  
24 the Logans in the NW $\frac{1}{4}$  of Section 36, based on the right confirmed to Joseph  
25 Contratto. The Referee has recommended that water rights not be confirmed under  
26

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1 those claims due to the uncertainty about the underlying water right as a result of  
2 the certificate not issuing. The Referee makes the same recommendation concerning  
3 the claim of Orene L. Ward. Ms. Ward and the Department of Ecology are directed  
4 to, prior to the exception phase of this proceeding, research and be prepared to  
5 address the Court concerning the status of the certificate. An additional concern  
6 is the difference between the number of acres identified in the RCW 90.14 claim as  
7 being irrigated is less than the number of acres for which rights are being  
8 asserted.

9

10 COURT CLAIM NO. 01100 -- Stanley D. Williams  
11 (A)03282

12 A Statement of Claim was submitted by Stanley D. Williams for the use of  
13 waters from the North Fork of the Teanaway River for domestic supply for a  
14 recreational cabin. Mrs. Terry Rose, Mr. Williams daughter, testified at the  
15 evidentiary hearing.

16 According to the testimony, Mr. Williams acquired the property, described as  
17 Lot 7 of Teanaway Recreation Residence Tract in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29,  
18 T. 22 N., R. 16 E.W.M., in 1971. At that time a cabin was on the property and  
19 water was piped from the North Fork of the Teanaway River to the cabin. Water was  
20 withdrawn from the river using a hand pump. The cabin was constructed in 1948 and  
21 the water system from the river installed at that time. The Teanaway Recreation  
22 Residence Tracts is on U.S. Forest Service land and Mr. Williams holds a lease for  
23 Lot 7.

24 In 1985, Mr. Williams decided to cease using water from the North Fork of the  
25 Teanaway River. He had contracted a giardia infection, which he felt could have  
26 come from the river, and upgraded the plumbing in the cabin to include a bathroom.

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28 Re: Subbasin No. 3

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1 At that time a system was developed from a stream to serve the Williams on Lot 7  
2 and also Lot 2, owned by H. J. Enrico; Lot 4, owned by E. Grant and M. Rust, and  
3 Lot 8, owned by W. Dalsing, all within the Teanaway Recreation Residence Tracts.  
4 The owners of the four lots formed the WEDG Water Association to handle their water  
5 needs. None of the other lot owners using this system have filed claims in this  
6 proceeding.

7 The record shows that the stream serving the four lots was originally  
8 developed in 1952 to serve the cabin now owned by E. Grant and M. Rust. There is  
9 nothing in the record to show that any of the water users complied with the  
10 requirements of RCW 90.03 to obtain a water right permit from the Department of  
11 Ecology or one of its predecessor owners for use of the stream. Letters in the  
12 record do show that Mr. Williams was notified by the U. S. Forest Service of the  
13 need to obtain a permit from the State.

14 Both Mr. Williams and Robert Clark, Jr., a prior owner of Lot 4 (now owned by  
15 Grant and Rust) filed water right claims pursuant to RCW 90.14. However, these  
16 claims would only protect water rights developed under either the Prior  
17 Appropriation or Riparian Doctrines. Since the Williams property is not riparian  
18 to the source and has not separated from Federal ownership, a right could not have  
19 been established under the Riparian Doctrine. In order for there to be a water  
20 right that could have been protected by filing of a water right claim under RCW  
21 90.14, initiation of the right by use of water must have occurred prior to June 6,  
22 1917.

23 Based on the forgoing, the Referee cannot recommend that a water right be  
24 confirmed under Court Claim No. 01100 to Stanley D. Williams.

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1      Claimants With Recommended Non-Diversionary Stock Water And Wildlife Rights

2      Robert J. Badda and Cecilia A. Badda  
3      George L. Blackburn and Glory E. Blackburn  
4      Boise Cascade Corporation  
5      Bruno Bonetto and Elma Bonetto  
6      Ted Bugni and Agnes Bugni  
7      Albeno G. Carollo and Violet Carollo  
8      John E. Conner  
9      Norman J. Cromarty and Shirley B. Cromarty  
10     Charles F. Crosetto and D. J. Crosetto  
11     John B. Crosetto, Jr. and Dorothy Crosetto  
12     Dean Decker  
13     Milton F. Downs and Geraldine Downs  
14     Robert Duke  
15     William A. Evenden and Karen Evenden  
16     James Fruhling and Sheryl Fruhling  
17     Larry T. Fudacz  
18     Ted Fudacz and Lena Fudacz  
19     Bernard W. Grywacz  
20     David A. Hofeditz and Judith Hofeditz  
21     David Z. Hofeditz and Cecilia P. Hofeditz  
22     William Hunt  
23     Randolph C. Jasper  
24     Robin Knox Little and Carol Michon Little  
25     Harry James Masterson and Mary Lou Masterson  
26     Beverly Miller  
27     Don Osmonovich and Jo Anne Osmonovich  
28     Jess Schober and Barbara Schober  
29     Keith Schober and Geraldine Schober  
30     Jane Shaw  
31     William F. Sparks and Sandra N. Sparks  
32     Teanaway Ranch, Inc.  
33     Teanaway Valley Farms, Inc.  
34     Carla L. Thomas  
35     Don Tidwell  
36     Donald W. Walker and Gloria Walker

37      VIII. FINDINGS OF FACT

38      I, DOUGLAS CLAUSING, as Referee in this proceeding, having carefully examined  
39      the testimony and evidence and having investigated Subbasin No. 3, do hereby make  
40      the following Findings of Fact:

41      1. That the waters of Subbasin No. 3 and lands irrigated or waters otherwise  
42      utilized therefrom are situated in Kittitas County.

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44  
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1       2. That the claims to any diversionary or withdrawal rights within Subbasin  
2 No. 3 of the following named claimants are denied in their entirety for reason set  
3 forth in the body of this report:

4       Charles C. Ballard  
5       Donald L. Bark (01281 & 01282)  
6       David Bennett and Diana Bennett  
7       George L. Blackburn and Penny L. Blackburn (01143 & 01477)  
8       Ted Bugni and Agnes Bugni (01847)  
9       Robert W. Burke and Amy J. Seeman Burke  
10      Burlington Northern Railroad Co.  
11      Daniel V. Byrne and Martha Wyckoff Byrne  
12      C & H Trucking & Construction  
13      John O. Crandall and Janet L. Crandall  
14      Betty Darrow and Walter J. Darrow  
15      James Davis  
16      Dean Decker  
17      Robert Duke  
18      Ralph V. Dulin and Marlene C. Dulin  
19      Timothy Dyko  
20      Wesley I. Ellison  
21      Gerald Dale Faris and Mamie Faris  
22      Elmore M. Ferris and Margaret Ferris  
23      Joreen A. Florenzen  
24      Florence C. Furford  
25      Frank Geiger and Ada Geiger  
26      David A. Hofeditz and Judith Hofeditz  
27      David Z. Hofeditz and Cecilia P. Hofeditz  
28      William Hunt (01281 & 01550)  
29      Nancy Joerns  
30      Estate of Victor Josendal  
31      Wayne Larrabee, Jr.  
32      Leavitt Brothers Corporation  
33      Estella Leopold  
34      Robin Knox Little and Carol Michon Little (00560)  
35      Gary Maxfield and Marlain Maxfield  
36      Michael McCoy and Teresa McCoy  
37      Ronald B. Miller and Judy E. Miller  
38      Robert E. Mundy  
39      Jul M. Nickerson and Barbara J. Nickerson  
40      Carl A. Niese and Rosemary Niese  
41      Harold Pedersen and Louis Pedersen  
42      Plum Creek Timber Co. L.P.  
43      Tracey Rooney  
44      Richard Rowe and Karen Rowe  
45      Jess Schober and Barbara Schober  
46      Rollen F. Stewart  
47      Carla L. Thomas

48      REPORT OF REFEREE  
49      Re: Subbasin No. 3

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1 || Orene L. Ward  
2 || Stanley D. Williams  
2 || David A. Wiseman  
WA State Dept. of Natural Resources

3. That the name of the claimant(s), court claim number(s), sources of water, uses for which rights have been established, time periods when water may be used, amounts of water designated in the right, priority of water right, location of points of diversion, and description of lands to which water rights are appurtenant are as follows:

CLAIMANT NAME: **Bruno Bonetto  
& Elma Bonetto** COURT CLAIM NO. 00553

Source: Teanaway River

Use: Irrigation of 4.6 acres

Period of Use: May 1 to September 15

Quantity: 0.09 cubic foot per second, 13.8 acre-feet per year

Priority Date: **June 30, 1882**

Point of Diversion: 350 feet south and 800 feet east from the west quarter corner of Section 34, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, T. 20 N., R. 16 E.W.M.

Place of Use: The NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, T. 20 N., R. 16 E.W.M.

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Re: Subbasin No. 3

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1 CLAIMANT NAME: **Ivan J. Osmonovich** COURT CLAIM NO. 01692  
2 & **Davene A. Osmonovich**

3 Source: Teanaway River

4 Use: Irrigation of 2 acres

5 Period of Use: May 1 to September 15

6 Quantity: 0.04 cubic foot per second, 13 acre-feet per year

7 Priority Date: **June 30, 1882**

8 Point of Diversion: 1200 feet south and 600 feet west from the east quarter  
9 corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 26, T. 20 N., R. 16 E.W.M.

10 Place of Use: Lot 1 of Hutchins Short Plat No. 78-03 within the SW $\frac{1}{4}$ NW $\frac{1}{4}$   
11 of Section 34, T. 20 N., R. 16 E.W.M. described as  
12 follows: Commencing at the west quarter corner of said  
13 section; thence north 260 feet to the true point of  
beginning; thence north approximately 750 feet to the  
southerly boundary of West Masterson Road; thence  
southeasterly 535 feet along said road; thence southwest  
520 feet to the true point of beginning.

14 Limitations of Use: When surplus water is available in the river in excess of  
15 that needed to satisfy all existing water rights, an  
16 additional 0.04 cubic foot per second may be diverted.  
17 This water is normally only available for a 30 day period  
in May and June.

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28 Re: Subbasin No. 3

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1 CLAIMANT NAME: **Harry James Masterson** & **Mary Lou Masterson** COURT CLAIM NO. 01467  
2 (A)03296

3 Source: Teanaway River

4 Use: Irrigation of 262 acres and stock water

5 Period of Use: May 1 to September 15

6 Quantity: 5.24 cubic feet per second, 1414.8 acre-feet per year for irrigation; 5 acre-feet per year for stock water

7 Priority Date: **June 30, 1883**

8 Point of Diversion: 900 feet south and 350 feet east from the north quarter corner of Section 25, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25, T. 20 N., R. 16 E.W.M.

9 Place of Use: Those portions of S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 28, and N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 33 lying southerly and westerly of Masterson Ditch, ALL being within T. 20 N., R. 16 E.W.M.

10

11 CLAIMANT NAME: **Donald W. Walker** & **Gloria Walker** COURT CLAIM NO. 02255  
12 (A)04465  
13 (A)04493

14

15 Source: Teanaway River

16 Use: Irrigation of 63 acres and stock water.

17 Period of Use: May 1 to September 15

18 Quantity: 1.26 cubic feet per second, 340.2 acre-feet per year for irrigation; 1 acre-foot per year for stock water

19

20 Priority Date: **June 30, 1883**

21 Point of Diversion: 1. 600 feet north and 200 feet east from the center of Section 25, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25, T. 20 N., R. 16 E.W.M.  
22 2. 1200 feet south and 600 feet west of the east quarter corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, T. 20 N., R. 16 E.W.M.

23

24 Place of Use: Those portions of the following described parcels lying south of East Masterson Road and north of State Route 970: The NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 26, T. 20 N., R. 16 E.W.M.

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1 CLAIMANT NAME: **Donald W. Walker  
& Gloria Walker** COURT CLAIM NO. 02255  
2 (A)04465  
(A)04493

3 Source: Teanaway River  
4 Use: Irrigation of 70 acres and stock water  
5 Period of Use: May 1 to September 15  
6 Quantity: 1.4 cubic feet per second, 378 acre-feet per year for  
7 irrigation; 1 acre-foot per year for stock watering  
8 Priority Date: **June 30, 1883**  
9 Point of Diversion: 600 feet north and 200 feet east from the center of  
10 Section 26, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25,  
T. 20 N., R. 16 E.W.M.  
11 Place of Use: That portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 25,  
12 T. 20 N., R. 16 E.W.M. lying southerly of East Masterson  
Road and northerly of State Highway 970.

13 CLAIMANT NAME: **Donald W. Walker  
& Gloria Walker** COURT CLAIM NO. 02255  
14 (A)04465  
(A)04493

15 Source: Teanaway River  
16 Use: Irrigation of 4 acres  
17 Period of Use: May 1 to September 15  
18 Quantity: 0.08 cubic foot per second, 21.6 acre-feet per year  
19 Priority Date: **June 30, 1883**  
20 Point of Diversion: 600 feet north and 200 feet east from the center of  
21 Section 25, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25,  
T. 20 N., R. 16 E.W.M.  
22 Place of Use: That portion of the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 26, T. 20 N.,  
23 R. 16 E.W.M., lying southerly of East Masterson Road and  
northerly of State Highway 970.

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1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
2 (A)03119  
3 (A)05238  
4 Source: North Fork Teanaway River  
5 Use: Irrigation of 55 acres and stock water  
6 Period of Use: May 1 to September 15  
7 Quantity: 1.10 cubic feet per second, 220 acre-feet per year for  
irrigation; 1 acre-foot per year for stock water  
8 Priority Date: **June 30, 1884**  
9 Point of Diversion: 1,250 feet north and 1,050 west from the east quarter  
corner of Section 8, being within the  $SE\frac{1}{4}NE\frac{1}{4}$  of Section 8,  
T. 21 N., R. 16 E.W.M.  
10  
11 Place of Use: That portion of the  $E\frac{1}{2}E\frac{1}{2}$  of Section 8 and the  $NE\frac{1}{4}NE\frac{1}{4}$  of  
Section 17, lying west of the North Fork Teanaway Road,  
and east of the North Fork Teanaway River; ALL being  
within T. 21 N., R. 16 E.W.M.  
12  
13  
14 CLAIMANT NAME: **Bruno Bonetto & Elma Bonetto** COURT CLAIM NO. 00553  
15  
16 Source: Teanaway River  
17 Use: Irrigation of 22 acres.  
18 Period of Use: May 1 to September 15  
19 Quantity: 0.44 cubic foot per second, 66 acre-feet per year  
20 Priority Date: **June 30, 1884**  
21 Point of Diversion: 350 feet south and 800 feet east from the west quarter  
corner of Section 34, being within the  $NW\frac{1}{4}SW\frac{1}{4}$  of  
Section 34, T. 20 N., R. 16 E.W.M.  
22  
23 Place of Use: That portion of the  $NW\frac{1}{4}$  of Section 34 T. 20 N.,  
R. 16 E.W.M. lying south of State Route 970.  
24  
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27 REPORT OF REFEREE  
28 Re: Subbasin No. 3

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1 CLAIMANT NAME: **Bruno Bonetto** & **Elma Bonetto** COURT CLAIM NO. 00553  
2

3 Source: Teanaway River

4 Use: Irrigation of 8 acres

5 Period of Use: May 1 to September 15

6 Quantity: 0.16 cubic foot per second, 24 acre-feet per year

7 Priority Date: **June 30, 1884**

8 Point of Diversion: 350 feet south and 800 feet east from the west quarter corner of Section 34, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, T. 20 N., R. 16 E.W.M.

10 Place of Use: That portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, T. 20 N., R. 16 E.W.M. lying north and west of the Teanaway River

12 CLAIMANT NAME: **Geraldine C. Elich** COURT CLAIM NO. 01328  
13

14 Source: The Teanaway River

15 Use: Irrigation of 80 acres

16 Period of Use: May 1 to September 15

17 Quantity: 1.60 cubic feet per second, 432 acre-feet per year

18 Priority Date: **June 30, 1884**

19 Point of Diversion: 2640 feet south and 2640 feet west of the NE corner of Section 34, being at the center of Section 34, T. 20 N., R. 16 E.W.M.

21 Place of Use: That portion of the SW $\frac{1}{4}$  of Section 34, T. 20 N., R. 16 E.W.M. lying south and east of the Teanaway River and west of the Bugni Ditch

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1 CLAIMANT NAME: **Beverly Miller** COURT CLAIM NO. 02226  
2 Source: Teanaway River  
3 Use: Irrigation of 1 acre  
4 Period of Use: May 1 to September 15  
5 Quantity: 0.02 cubic foot per second, 5.4 acre-feet per year  
6 Priority Date: **June 30, 1884**  
7 Point of Diversion: 1200 feet south and 600 feet west of the east quarter  
8 corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
9 Section 26, T. 20 N., R. 16 E.W.M.  
10 Place of Use: That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, T. 20 N.,  
11 R. 16 E.W.M. lying south of State Route 970 and west of  
12 the county road

13 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
14 (A)03119  
15 (A)05238  
16 Source: An unnamed spring  
17 Use: Single domestic supply  
18 Period of Use: Continuous  
19 Quantity: 0.02 cubic foot per second, 1 acre-foot per year  
20 Priority Date: **June 30, 1885**  
21 Point of Diversion: 900 feet south and 700 feet east from the north quarter  
22 corner of Section 6, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6,  
23 T. 20 N., R. 16 E.W.M.  
24 Place of Use: That portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6, T. 20 N.,  
25 R. 16 E.W.M. lying north of the West Fork Teanaway Road.

26  
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1 CLAIMANT NAME: **Ted Bugni**  
2 & **Agnes Bugni** COURT CLAIM NO. 01566

3 Source: Teanaway River

4 Use: Irrigation of 76 acres

5 Period of Use: May 1 to September 15

6 Quantity: 1.52 cubic feet per second, 410.4 acre-feet per year

7 Priority Date: **June 30, 1885**

8 Point of Diversion: 600 feet south and 500 feet west from the center of  
9 Section 34, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34,  
T. 20 N., R. 16 E.W.M.

10 Place of Use: That portion of the west 2200 feet of the NW $\frac{1}{4}$  of  
11 Section 3, T. 19 N., R. 16 E.W.M. lying easterly of the  
Teanaway River and north of State Highway 10

12

13 CLAIMANT NAME: **Milton F. Downs**  
14 & **Geraldine Downs** COURT CLAIM NO. 00777  
15 (A)05114

16 Source: Teanaway River

17 Use: Irrigation of 22 acres and stock water.

18 Period of Use: May 1 to September 15

19 Quantity: 0.44 cubic foot per second, 143 acre-feet per year for  
irrigation; 2 acre-feet per year for stock water

20 Priority Date: **June 30, 1885**

21 Point of Diversion: 150 feet north and 800 feet west from the southeast corner  
of Section 10, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10,  
T. 20 N., R. 16 E.W.M.

22 Place of Use: That portion of the E $\frac{1}{2}$  of Section 14, T. 20 N.,  
R. 16 E.W.M., described as follows: Commencing at the  
east quarter corner of said section; thence north to the  
south right of way of the Teanaway Road; thence  
northwesterly to the intersection of said road and 3M  
Ditch, being the point of beginning; thence northwesterly  
along said right of way 700 feet, more or less; thence  
southerly 90 feet, more or less, to the old railroad right

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of way; thence southeasterly along the said right of way 2,000 feet, more or less; thence easterly 80 feet, more or less, to Mason Creek; thence northeasterly along the west bank of said creek to the 3M Ditch; thence northwesterly along the south bank of said ditch to the point of beginning.

#### **Limitations of Use:**

When surplus water is available in the river in excess of that needed to satisfy all existing rights, an additional 0.44 cubic foot per second can be diverted. This water will normally only be available for a 30 day period in May and June.

**CLAIMANT NAME:**

William A. Evenden  
& Karen Evenden

COURT CLAIM NO. 00777  
(A)05114

Source:

## Teanaway River

### Use:

Irrigation of 24.75 acres and stock water.

**Period of Use:**

May 1 to September 15

**Quantity:**

0.495 cubic foot per second, 160.875 acre-feet per year  
for irrigation; 2 acre-feet per year for stock water

Priority Date:

June 30, 1885

### **Point of Diversion:**

150 feet north and 800 feet west from the southeast corner of Section 10, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 20 N., R. 16 E.W.M.

Place of Use:

That portion of the following described parcel lying in the SW $\frac{1}{4}$  of Section 13, T. 20 N., R. 16 E.W.M.: Beginning at a point on the south line of said section on the westerly right of way of the Teanaway Road; thence northwesterly along said right of way to Musser Creek; thence southwesterly along said creek to the Giles-Castor Ditch; thence easterly along the north bank of said ditch to the south line of said section; thence east to the point of beginning; also known as Parcels 3 and 4 of that survey recorded in Book 16 of Surveys, at Pages 61 and 62, records of Kittitas County

#### **Limitations of Use:**

When surplus water is available in the river in excess of that needed to satisfy all existing water rights, an additional 0.495 cubic foot per second can be diverted. This water will normally only be available for a 30 day period in May and June.

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1 CLAIMANT NAME: **Robin Knox Little**  
2 & **Carol Michon Little** COURT CLAIM NO. 00558  
3 Source: An unnamed creek (A)02338  
4 Use: Irrigation of 5 acres  
5 Period of Use: May 1 to September 30  
6 Quantity: 0.10 cubic foot per second, 5 acre-feet per year  
7 Priority Date: **June 30, 1885**  
8 Point of Diversion: 1000 feet north and 400 feet west from the center of  
9 Section 20, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 20, T. 20 N.,  
R. 17 E.W.M.  
10 Place of Use: SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20, T. 20 N., R. 17 E.W.M.  
11 Limitations of Use: A maximum of five acres are authorized to be irrigated;  
12 however, due to the landowners irrigation practices and  
13 cropping, a different part of the described tract may be  
irrigated. A total area of 29 acres has been irrigated,  
but under this right, no more than five acres may be  
irrigated in any given irrigation season.  
14

15 CLAIMANT NAME: **Robin Knox Little** COURT CLAIM NO. 00559  
16 & **Carol Michon Little** (A)02339  
17 Source: An unnamed creek  
18 Use: Irrigation of 10 acres  
19 Period of Use: May 1 to September 30  
20 Quantity: 0.05 cubic foot per second, 9 acre-feet per year  
21 Priority Date: **June 30, 1885**  
22 Point of Diversion: 600 feet south and 50 feet west of the center of  
23 Section 20, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20,  
T. 20 N., R. 17 E.W.M.  
24 Place of Use: N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20, T. 20 N., R. 17 E.W.M.  
25  
26

27 REPORT OF REFEREE  
28 Re: Subbasin No. 3

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1 CLAIMANT NAME: **Ronald J. Montgomery** & **Becky Montgomery** COURT CLAIM NO. 01286  
2  
3 Source: The Teanaway River  
4 Use: Irrigation of 25 acres  
5 Period of Use: May 1 to September 15  
6 Quantity: 0.50 cubic foot per second, 135 acre-feet per year  
7 Priority Date: **June 30, 1885**  
8 Point of Diversion: 1200 feet south and 600 feet west of the east quarter corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, T. 20 N., R. 16 E.W.M.  
9  
10 Place of Use: That portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 33, T. 20 N., R. 16 E.W.M. described as follows: Commencing at the east quarter corner of said section; thence west 840 feet more or less to the point of beginning; thence N 6° W 1320 feet more or less to the south boundary of West Masterson Road; thence west 1690 feet more or less; thence south 700 feet more or less; thence east 913 feet more or less; thence south 568 feet more or less; thence east 940 feet more or less to the point of beginning.  
11  
12  
13  
14  
15 CLAIMANT NAME: **Ivan J. Osmonovich** & **Davene A. Osmonovich** COURT CLAIM NO. 01286  
16  
17 Source: Teanaway River  
18 Use: Irrigation of 24 acres  
19 Period of Use: May 1 to September 15  
20 Quantity: 0.48 cubic feet per second, 158.7 acre-feet per year  
21 Priority Date: **June 30, 1885**  
22 Point of Diversion: 1200 feet south and 600 feet west of the east quarter corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, T. 20 N., R. 16 E.W.M.  
23  
24 Place of Use: That portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 33, T. 20 N., R. 16 E.W.M. described as follows: Beginning at the east quarter corner; thence north 1050 feet to the southerly boundary of West Masterson Road; thence northwesterly 420  
25  
26  
27 REPORT OF REFEREE  
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1                   feet, more or less, along said road; thence west 640 feet  
2                   more or less; thence S 6° E 1320 feet more or less; thence  
3                   east 840 feet, more or less, to the point of beginning.

4                   Limitations of Use:                   If there is surplus water in the river in excess of that  
5                   needed to satisfy all existing water rights, an additional  
6                   0.48 cubic foot per second may be diverted. This water  
7                   will normally only be available for a 30 day period in May  
8                   and June.

9                   CLAIMANT NAME:                   **Tommy Pratt**                   COURT CLAIM NO. 01286  
10                  & **Genine Pratt**

11                  Source:                           Teanaway River

12                  Use:                              Irrigation of 11 acres

13                  Period of Use:                   May 1 to September 15

14                  Quantity:                        0.22 cubic foot per second, 59.4 acre-feet per year

15                  Priority Date:                   **June 30, 1885**

16                  Point of Diversion:             1200 feet south and 600 feet west of the east quarter  
17   corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
18   Section 26, T. 20 N., R. 16 E.W.M.

19                  Place of Use:                   That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 33, T. 20 N.,  
20   R. 16 E.W.M. described as follows: Commencing at the  
21   center of said section, thence north 40 feet to the point  
22   of beginning; thence continuing north 577.45 feet; thence  
23   east 912.64 feet; thence south 568.36 feet; thence  
24   westerly 900.13 feet to the point of beginning.

25                  REPORT OF REFEREE  
26                  Re: Subbasin No. 3

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1 CLAIMANT NAME: **William F. Sparks** COURT CLAIM NO. 01942  
2 & Sandra N. Sparks  
3 Keith & Geraldine Schober  
4 Source: Teanaway River  
5 Use: Irrigation of 345 acres and stock water.  
6 Period of Use: May 1 to September 15  
7 Quantity: 6.9 cubic feet per second, 1863 acre-feet per year for  
irrigation; 5 acre-feet per year for stock water  
8 Priority Date: **June 30, 1885**  
9  
10 Point of Diversion: 800 feet north and 800 feet east from the southwest corner  
of Section 13, being within of SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 13,  
T. 20 N., R. 16 E.W.M.  
11 Place of Use: That portion of the SW $\frac{1}{4}$  of Section 13 lying east of the  
Teanaway River and west of the Teanaway Road and southerly  
of a line described as follows: Beginning at a point on  
the south boundary of Section 13 that is 1,100 feet east  
from the southwest corner of said section; thence N 35° E  
1,200 feet; thence S 60° E 1,400 feet to a terminus on the  
south boundary of Section 13. AND that portion of  
Section 24 lying east of the Teanaway River and west of  
the Teanaway Road. AND that portion of the NE $\frac{1}{4}$  of  
Section 25 lying north of Highway 970, east of the  
Teanaway River and west of the Teanaway Road. ALL being  
within T. 20 N., R. 16 E.W.M.  
12  
13  
14  
15  
16  
17  
18 CLAIMANT NAME: **Teanaway Valley Farms, Inc.** COURT CLAIM NO. 00777  
19 (A)05114  
20 Source: Teanaway River  
21 Use: Irrigation of 37.75 acres and stock water.  
22 Period of Use: May 1 to September 15  
23 Quantity: 0.755 cubic foot per second, 245.375 acre-feet per year  
for irrigation; 2 acre-feet per year for stock water  
24 Priority Date: **June 30, 1885**  
25  
26  
27 REPORT OF REFEREE  
28 Re: Subbasin No. 3

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1 Point of Diversion: 150 feet north and 800 feet west from the southeast corner  
2 of Section 10, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10,  
T. 20 N., R. 16 E.W.M.

3 Place of Use: That portion of the SW $\frac{1}{4}$  of Section 13, T. 20 N.,  
4 R. 16 E.W.M. described as follows: Beginning at the west  
5 quarter corner of said section; thence east approximately  
6 1000 feet, more or less, to the west right of way of the  
7 Teanaway Road; thence southeasterly, along said right of  
8 way, to Musser Creek; thence southwesterly along the said  
9 creek to the Teanaway River; thence northwesterly along  
10 the north bank of said river to the west line of said  
11 section; thence north along said line approximately 2300  
12 feet, more or less, to the point of beginning; also known  
13 as Parcels 1 and 2 of that survey recorded in Book 16 of  
14 Surveys, Pages 61 and 62, records of Kittitas County

15 Limitations of Use: When surplus water is available in excess of that needed  
16 to satisfy all existing water rights, an additional 0.755  
17 cubic foot per second can be diverted. This water will  
18 normally only be available for a 30 day period in May and  
19 June.

20 CLAIMANT NAME: John E. Conner COURT CLAIM NO. 00746  
21 (A)06336

22 Source: Teanaway River

23 Use: Irrigation of 50 acres and stock water

24 Period of Use: May 1 to September 15

25 Quantity: 1.0 cubic foot per second, 325 acre-feet per year for  
irrigation; 2 acre-feet per year for stock water

26 Priority Date: June 30, 1888

27 Point of Diversion: 475 feet south and 200 feet west of the northeast corner  
28 of Section 8, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8,  
T. 20 N., R. 16 E.W.M.

Place of Use: That portion of the NW $\frac{1}{4}$  of Section 10, T. 20 N.,  
R. 16 E.W.M. lying south of the Teanaway Road and north of  
the Teanaway River

Limitations of Use: When sufficient water is available in excess of that  
needed to satisfy all existing water rights, an additional  
1.0 cubic foot per second may be diverted from the river.  
This water will normally be available for approximately 30  
days in May or June

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1 CLAIMANT NAME: John B. Crosetto, Jr.  
2 & Dorothy Crosetto  
3 Charles F. Crosetto  
4 & D. J. Crosetto

COURT CLAIM NO. 00383  
(A)05635

4 Source: Teanaway River

5 Use: Irrigation of 70 acres and stockwater.

6 Period of Use: May 1 to September 15

7 Quantity: 1.4 cubic feet per second, 455 acre-feet per year for  
irrigation; 2 acre-feet per year for stock watering

8 Priority Date: June 30, 1888

9 Point of Diversion: 475 feet south and 200 feet west from the northeast corner  
of Section 8, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8,  
T. 20 N., R. 16 E.W.M.

10 Place of Use: Those portions of the SE $\frac{1}{4}$ , and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  lying northerly  
of the Teanaway River and southerly of the Teanaway Road  
in Section 10, T. 20 N., R. 16 E.W.M.

11 Limitations of Use: When there is surplus water in the Teanaway River after  
all existing rights are satisfied, up to an additional 1.4  
cubic feet per second may be diverted. This water will  
normally only be available for a 30 day period in May and  
June.

12 CLAIMANT NAME: Robert L. Clements

COURT CLAIM NO. 01850  
(A)06063

13 Source: Teanaway River

14 Use: Irrigation of 10 acres

15 Period of Use: May 1 to September 15

16 Quantity: 0.20 cubic foot per second, 54 acre-feet per year

17 Priority Date: June 20, 1889

18 Point of Diversion: 1. 1200 feet south and 600 feet west of the east quarter  
corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 26, T. 20 N., R. 16 E.W.M.

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2. 900 feet south and 350 feet east from the north quarter corner of Section 25, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 24, T. 20 N., R. 16 E.W.M.

Place of Use: That portion of the NE $\frac{1}{4}$  of Section 4, T. 19 N., R. 16 E.W.M. described as follows: Beginning at the northeast corner of Section 4, thence S 01°52'03" W 933.38 feet to the true point of beginning; thence continuing S 01°52'03" W 1092.82 feet to a point on the northerly edge of State Highway Route 10; thence N 66°59'51" W along the northerly edge of State Highway Route 10 1003.79 feet; thence N 02°00'30" 711.26 feet; thence S 89°20'08" E 934.72 feet to the true point of beginning.

CLAIMANT NAME: **Robert J. Badda**  
**& Cecilia A. Badda** COURT CLAIM NO. 00914

Source: Teanaway River

COURT CLAIM NO. 00914

**Use:** Irrigation of

**Use:** Irrigation of

Use: Irrigation of 12 acres

Period of Use: May 1 to September 15

Quantity: 0.24 cubic foot per second, 64.8 acre-feet per year for irrigation;

Priority Date: June 30, 1889

Point of Diversion: 150 feet north and 800 feet west from the southeast corner  
of Section 10, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 10,  
T. 20 N., R. 16 E.W.M.

Place of Use: That portion of the west 795 of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 20 N., R. 16 E.W.M. lying south of Teanaway Road,  
EXCEPT the west 460 feet thereof

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1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
2 (A)03119  
3 (A)05238  
4 Source: Indian Creek  
5 Use: Irrigation of 30 acres and stock water  
6 Period of Use: May 1 to September 15  
7 Quantity: 0.60 cubic foot per second, 120 acre-feet per year for  
irrigation; 1 acre-foot per year for stock water  
8 Priority Date: **June 30, 1889**  
9 Point of Diversion: 600 feet north and 560 feet west of the south quarter  
corner of Section 10, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 10, T. 21 N., R. 16 E.W.M.  
10 Place of Use: The S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 10 and the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 15,  
T. 21 N., R. 16 E.W.M.  
11  
12  
13 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
14 (A)03119  
15 (A)05238  
16 Source: North Fork Teanaway River  
17 Use: Irrigation of 26 acres and stock water  
18 Period of Use: May 1 to September 15  
19 Quantity: 0.52 cubic foot per second, 104 acre-feet per year for  
irrigation; 1 acre-foot per year for stock water  
20 Priority Date: **June 30, 1889**  
21 Point of Diversion: 400 feet south and 400 feet east from the center of  
Section 20, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 20,  
T. 21 N., R. 16 E.W.M.  
22 Place of Use: That portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 29,  
T. 21 N., R. 16 E.W.M., lying southeast of the Teanaway  
Road, west of the Teanaway River and east of the primary  
irrigation ditch.  
23  
24  
25  
26  
27 REPORT OF REFEREE Referee's Office  
28 Re: Subbasin No. 3 15 W. Yakima Ave Ste. 200  
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1 CLAIMANT NAME: **Albeno G. Carollo** & **Violet Carollo** COURT CLAIM NO. 00914  
2 Source: Teanaway River  
3 Use: Irrigation of 0.70 acres  
4 Period of Use: May 1 to September 15  
5 Quantity: 0.014 cubic foot per second, 3.78 acre-feet per year  
6 Priority Date: **June 30, 1889**  
7 Point of Diversion: 150 feet north and 800 feet west from the southeast corner  
8 of Section 10, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10,  
T. 20 N., R. 16 E.W.M.  
9 Place of Use: That portion of the west 30 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
10 Section 14, T. 20 N., R. 16 E.W.M. lying south of the  
Teanaway River Road  
11  
12 CLAIMANT NAME: **John B. Crosetto, Jr.** & **Dorothy Crosetto** COURT CLAIM NO. 00383  
13 **Charles F. Crosetto** & **D. J. Crosetto** (A)05635  
14 Source: The Teanaway River  
15 Use: Irrigation of 30 acres and stockwater  
16 Period of Use: May 1 to September 15  
17 Quantity: 0.60 cubic foot per second, 195 acre-feet per year for  
irrigation; 2 acre-feet per year for stock watering  
18 Priority Date: **June 30, 1889**  
19 Point of Diversion: 475 feet south and 200 feet west from the northeast corner  
20 of Section 8, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8,  
T. 20 N., R. 16 E.W.M.  
21 Place of Use: That portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 20 N.,  
R. 16 E.W.M. northeast of the Teanaway River  
22 Limitations of Use: When surplus water is available in excess of that needed  
23 to satisfy all the existing rights to the Teanaway River,  
up to an additional 0.60 cubic foot per second may be  
diverted. This water is normally available only for a 30  
day period during May and June.  
24  
25  
26

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1 CLAIMANT NAME:

William A. Evenden  
& Karen Evenden

COURT CLAIM NO. 00777  
(A)05114

2 Source: Teanaway River

3 Use: Irrigation of 0.25 acre.

4 Period of Use: May 1 to September 15

5 Quantity: 0.005 cubic foot per second; 1.625 acre-feet per year

6 Priority Date: June 30, 1889

7 Point of Diversion: 150 feet north and 800 feet west from the southeast corner  
of Section 10, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 10,  
T. 20 N., R. 16 E.W.M.

8 Place of Use: That portion of the following described parcel lying in  
the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13, T. 20 N., R. 16 E.W.M.,  
described: Beginning at a point on the south line of said  
section on the westerly right of way of the Teanaway Road;  
thence northwesterly along said right of way to Musser  
Creek; thence southwesterly along said creek to the  
Giles-Castor Ditch; thence easterly along the north bank  
of said ditch to the south line of said section; thence  
east to the point of beginning; also known as Parcels 3  
and 4 of that survey recorded in Book 16 of Surveys, at  
Pages 61 and 62, records of Kittitas County

9 Limitations of Use: When surplus water is available in the river in excess of  
that needed to satisfy all existing water rights, an  
additional 0.005 cubic foot per second can be diverted.  
This water will normally only be available for a 30 day  
period in May and June.

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28 Re: Subbasin No. 3

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1 CLAIMANT NAME: **Trust of Barbara Istvan** & **Edwin J. Istvan** COURT CLAIM NO. 01850  
2  
3 Source: Teanaway River  
4 Use: Irrigation of 10 acres  
5 Period of Use: May 1 to September 15  
6 Quantity: 0.20 cubic foot per second, 54 acre-feet per year  
7 Priority Date: **June 30, 1889**  
8 Point of Diversion: 1. 1200 feet south and 600 feet west of the east quarter  
9 corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
10 Section 26, T. 20 N., R. 16 E.W.M.  
11 2. 900 feet south and 350 feet east from the north  
12 quarter corner of Section 25, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
13 Section 24, T. 20 N., R. 16 E.W.M.  
14 Place of Use: That portion of the NE $\frac{1}{4}$  of Section 4, T. 19 N.,  
15 R. 16 E.W.M., described as follows: Beginning at the  
16 northwest corner of Government Lot 2; thence S 02°17'42" W  
17 along the west line of said subdivision 30.01 feet to a  
18 point on the southerly edge of the right-of-way for  
19 Lambert Road; thence S 89°17'03" E along the edge of said  
20 right-of-way 1114.35 feet to the true point of beginning;  
21 thence continuing S 89°17'03" E along the edge of said  
22 right-of-way 568.93 feet; thence S 02°00'30" W 934.25  
23 feet; thence continuing S 02°00'30" W 711.26 feet to a  
24 point on the northerly edge of State Highway 10; thence N  
25 66°59'51" W, parallel with and 73.38 feet distance  
26 northeasterly from said centerline of said highway for a  
27 distance of 612.36 feet; thence N 02°07'37" E 1413.27 feet  
28 to the true point of beginning.

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1 CLAIMANT NAME: **Gary Monroe  
& Vicki Monroe** COURT CLAIM NO. 01850  
2 (A)06063

3 Source: Teanaway River

4 Use: Irrigation of 10 acres

5 Period of Use: May 1 to September 15

6 Quantity: 0.20 cubic foot per second, 54 acre-feet per year

7 Priority Date: **June 30, 1889**

8 Point of Diversion: 1. 1200 feet south and 600 feet west of the east quarter  
corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 26, T. 20 N., R. 16 E.W.M.  
2. 900 feet south and 350 feet east from the north  
quarter corner of Section 25, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 24, T. 20 N., R. 16 E.W.M.

9 Place of Use: That portion of the NE $\frac{1}{4}$  of Section 4, T. 19 N.,  
R. 20 E.W.M. described as follows: Beginning at the  
northeast corner of said section; thence S 01°52'03" W  
along the east line of said subdivision 30.01 feet to the  
southerly edge of the Lambert Road right-of-way and the  
true point of beginning; thence continuing S 01°52'03" W  
along the east line of said subdivision 933.38 feet;  
thence N 89°20'08" W, 934.72 feet; thence N 02°00'30" E  
934.25 feet to the southerly right- of-way for Lambert  
Road; thence S 89°17'08" E along the southerly edge of  
said right-of-way 932.40 feet to the true point of  
beginning.

10

11 CLAIMANT NAME: **Teanaway Ranch, Inc.** COURT CLAIM NO. 01042

12 Source: Teanaway River

13 Use: Irrigation of 166 acres and stock water.

14 Period of Use: May 1 to September 15

15 Quantity: 3.32 cubic feet per second, 913 acre-feet per year

16 Priority Date: **June 30, 1889**

17 Point of Diversion: 200 feet north and 800 feet west from southeast corner of  
Section 10, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10,  
T. 20 N., R. 16 E.W.M.

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27 REPORT OF REFEREE Referee's Office  
Re: Subbasin No. 3 15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

28

1 Place of Use: That part of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19 lying southwesterly  
2 of the Three M Ditch and the NW $\frac{1}{4}$  of Section 30, ALL within  
T. 20 N., R. 17 E.W.M.

3 Limitations of Use: When surplus water is available in excess of that needed  
4 to satisfy all existing rights, an additional 3.32 cubic  
5 feet per second may be diverted. This water will normally  
only be available for a 30 day period in May and June.

6 CLAIMANT NAME: Teanaway Valley Farms, Inc. COURT CLAIM NO. 00777  
7 (A)05114

8 Source: Teanaway River

9 Use: Irrigation of 2.75 acres.

10 Period of Use: May 1 to September 15

11 Quantity: 0.055 cubic foot per second, 17.875 acre-feet per year

12 Priority Date: June 30, 1889

13 Point of Diversion: 150 feet north and 800 feet west from the southeast  
quarter corner of Section 10, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 10, T. 20 N., R. 16 E.W.M.

14 Place of Use: That portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, T. 20 N.,  
R. 16 E.W.M., lying east of Mason Creek

15 Limitations of Use: When surplus water is available in the river in excess of  
that needed to satisfy all existing rights, an additional  
0.055 cubic foot per second can be diverted. This water  
will normally only be available for a 30 day period in May  
and June.

27 REPORT OF REFEREE  
28 Re: Subbasin No. 3

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Don Tidwell** COURT CLAIM NO. 00914  
2 Source: Teanaway River  
3 Use: Irrigation of 15 acres  
4 Period of Use: May 1 to September 15  
5 Quantity: 0.30 cubic foot per second, 81 acre-feet per year  
6 Priority Date: **June 30, 1889**  
7 Point of Diversion: 150 feet north and 800 feet west from the southeast corner  
8 of Section 10, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 10,  
T. 20 N., R. 16 E.W.M.  
9 Place of Use: That portion of the westerly 460 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$   
10 Section 14, T. 20 N., R. 16 E.W.M., lying south of  
Teanaway Road, EXCEPT the east 30 feet thereof  
  
11 CLAIMANT NAME: **George L. Blackburn** COURT CLAIM NO. 01466  
12 & Glory E. Blackburn  
  
13 Source: The Teanaway River  
14 Use: Irrigation of 3.5 acres and stock water  
15 Period of Use: May 1 to September 15  
16 Quantity: 0.07 cubic foot per second, 18.9 acre-feet per year for  
irrigation; 1 acre-foot per year for stock water  
17 Priority Date: **June 30, 1890**  
18 Point of Diversion: 600 feet north and 200 feet east from the southwest corner  
19 of Section 26, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 26,  
T. 20 N., R. 16 E.W.M.  
20 Place of Use: That portion of the SE $\frac{1}{4}$  of Section 27 described as  
21 follows: Commencing at a point where the section line  
22 between Section 27 and Section 34 intersects the north  
23 line of the right of way of the Teanaway Logging Railway  
24 through said section; thence west along said section line  
25 to a point where the section line intersects the south  
26 line of the county road; thence northeasterly along the  
fence on the south boundary of the county road 246 feet;  
thence northeasterly along the fence another 96 feet and 6  
inches; thence southeasterly in a straight line to the  
place of beginning.

27 REPORT OF REFEREE  
28 Re: Subbasin No. 3

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **George L. Blackburn**  
2 & **Penny L. Blackburn** COURT CLAIM NO. 02255  
3 Source: Teanaway River (A)04465  
4 Use: Irrigation of 16 acres and stock watering (A)04493  
5 Period of Use: May 1 to September 15  
6 Quantity: 0.32 cubic foot per second, 86.4 acre-feet per year for  
7 irrigation; 1 acre-foot per year for stock watering  
8 Priority Date: **June 30, 1890**  
9 Point of Diversion: 1200 feet south and 600 feet west from the east quarter  
10 corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
11 Section 26, T. 20 N., R. 16 E.W.M.  
12 Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 20 N.,  
13 R. 16 E.W.M. lying south of State Route 970  
14 CLAIMANT NAME: **George L. Blackburn** COURT CLAIM NO. 02255  
15 & **Penny L. Blackburn** (A)04465  
16 Source: Teanaway River (A)04493  
17 Use: Irrigation of 2 acres.  
18 Period of Use: May 1 to September 15  
19 Quantity: 0.04 cubic foot per second, 10.8 acre-feet per year  
20 Priority Date: **June 30, 1890**  
21 Point of Diversion: 300 feet north and 300 feet east from the southwest corner  
22 of Section 26, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26,  
23 T. 20 N., R. 16 E.W.M.  
24 Place of Use: That portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 34, T. 20 N.,  
25 R. 16 E.W.M., lying northerly of the Teanaway River and  
26 northerly of a pond located on the property.  
27 REPORT OF REFEREE  
28 Re: Subbasin No. 3

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Donald W. Walker  
& Gloria Walker** COURT CLAIM NO. 02255  
2 (A) 04465  
(A) 04493

3 Source: Teanaway River

4 Use: Irrigation of 34 acres

5 Period of Use: May 1 to September 15

6 Quantity: 0.68 cubic foot per second, 183.6 acre-feet per year

7 Priority Date: **June 30, 1890**

8 Point of Diversion: 1200 feet south and 600 feet west of the east quarter corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, T. 20 N., R. 16 E.W.M.

9

10 Place of Use: That portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 26, T. 20 N., R. 16 E.W.M. lying south of the East Masterson Road and north of State Route 970.

11

12 CLAIMANT NAME: **Beverly Miller** COURT CLAIM NO. 02226

13

14 Source: Teanaway River

15 Use: Irrigation of 8 acres and stock water

16 Period of Use: May 1 to September 15

17 Quantity: 0.16 cubic foot per second, 43.2 acre-feet per year for irrigation; 0.5 acre-foot per year for stock water

18 Priority Date: **June 30, 1891**

19 Point of Diversion: 1200 feet south and 600 feet west of the east quarter of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, T. 20 N., R. 16 E.W.M.

20

21 Place of Use: That portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 33 T. 20 N., R. 16 E.W.M. beginning at a point lying at the intersection of the east line of Section 33 and State Highway 970; thence south 1060 feet; thence west 320 feet; thence N 8°08'21" W 720.54 feet; thence N 57°39'21" E 157.13 feet; thence N 32°20'03" E 30 feet to the southerly right of way of said highway; thence northeasterly along said right of way 425.57 feet to the point of beginning.

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27 REPORT OF REFEREE  
28 Re: Subbasin No. 3

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Donald L. Osmonovich** & **Janice C. Osmonovich** COURT CLAIM NO. 01284  
2  
3 Source: Teanaway River  
4 Use: Irrigation of 2 acres and stock water  
5 Period of Use: May 1 to September 15  
6 Quantity: 0.04 cubic foot per second, 10.8 acre-feet per year  
7 Priority Date: **June 30, 1891**  
8 Point of Diversion: 1200 feet south and 600 feet west from the east quarter corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, T. 20 N., R. 16 E.W..  
9  
10 Place of Use: That portion of the east 940 feet of the south 990 feet of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 33, T. 20 N., R. 16 E.W.M., lying west of Seaton Road  
11  
12 CLAIMANT NAME: **Daryle Thomas Starkovich** COURT CLAIM NO. 01201  
13  
14 Source: Teanaway River  
15 Use: Irrigation of 33 acres and stock water  
16 Period of Use: May 1 to September 15  
17 Quantity: 0.66 cubic foot per second, 178.2 acre-feet per year for irrigation; 1 acre-foot per year for stock watering  
18 Priority Date: **June 30, 1891**  
19 Point of Diversion: 1100 feet south and 650 feet west from the east quarter corner of Section 26, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, T. 20 N., R. 16 E.W.M.  
20  
21 Place of Use: That portion of the SE $\frac{1}{4}$  of Section 33 lying northwesterly of State Highway 970 described as follow: Beginning at the northeast corner of said southeast quarter; thence west 1520 feet, more or less; thence S 4°02'47" N 1199.47 feet; thence N 57°15'24" E 65.15 feet; thence S 32°44'36" E 75 feet, to the northwesterly right-of-way of said highway; thence northeasterly along said right-of-way to the east line of said southeast quarter; thence north to the east line of said southeast quarter; thence north to the point of beginning. AND that portion  
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27 REPORT OF REFEREE  
28 Re: Subbasin No. 3

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15 W. Yakima Ave Ste. 200  
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of said southeast quarter lying southeasterly of said highway described as follows: Commencing at the northeast corner of said southeast quarter; thence south 565 feet, more or less, to a point on the southeasterly right-of-way of said highway; thence southwesterly 582 feet, more or less, along said right-of-way to the point of beginning; thence S 8°8'21" E 720.54 feet; thence S 79°0'44" W 586.65 feet; thence N 51°6'4" W 420.94 feet to the said right-of-way; thence northeasterly along said right-of-way to the point of beginning.

**CLAIMANT NAME:**

## **Boise Cascade Corporation**

COURT CLAIM NO. 02206

(A) 03119

(A) 05238

Source:

## North Fork of Teanaway River

### Use:

### Irrigation of 22 acres and stock water

11 | Period of Use:

May 1 to September 15

12 | Quantity:

0.44 cubic foot per second, 88 acre-feet per year for irrigation; 1 acre-foot per year for stock water

Priority Date:

June 30, 1893

### Point of Diversion:

300 feet south and 1200 feet west from the center of Section 29, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29, T. 21 N., R. 16 E.W.M.

Place of Use:

That portion of the SE $\frac{1}{4}$  of Section 30, T. 21 N., R. 16 E.W.M. lying west of the Teanaway River, southeast of the Teanaway Road and east of the primary irrigation ditch.

## REPORT OF REFEREE

Re: Subbasin No. 3

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Josephine Chelinsky** COURT CLAIM NO. 01332  
2 Source: Middle Fork Teanaway River  
3 Use: Irrigation of 2.5 acres  
4 Period of Use: May 1 to September 15  
5 Quantity: 0.05 cubic foot per second, 13.5 acre-feet per year  
6 Priority Date: **June 30, 1894**  
7 Point of Diversion: 10 feet north and 50 feet east of the east quarter corner  
8 of Section 27, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 27,  
T. 21 N., R. 15 E.W.M.  
9 Place of Use: That portion of Parcel 2D of the Survey dated January 12,  
10 1984, recorded under Kittitas County Auditor's Receiving  
11 No. 476397 at Volume 12 of Surveys, Pages 58 and 59 lying  
12 in that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 21 N.,  
R. 15 E.W.M. north of the Middle Fork Teanaway River.

13 CLAIMANT NAME: **James R. Sleeth** COURT CLAIM NO. 01332  
14 & Susan M. Sleeth  
15 Source: Middle Fork Teanaway River  
16 Use: Irrigation of 2 acres  
17 Period of Use: May 1 to September 15  
18 Quantity: 0.04 cubic foot per second, 10.8 acre-feet per year  
19 Priority Date: **June 30, 1894**  
20 Point of Diversion: 20 feet north and 50 feet east of the east quarter corner  
21 of Section 27, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 27,  
T. 21 N., R. 15 E.W.M.  
22 Place of Use: The West 333 feet of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 21 N.,  
R. 15 E.W.M. lying north of the Middle Fork Teanaway River

27 REPORT OF REFEREE  
28 Re: Subbasin No. 3

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **William F. Sparks** COURT CLAIM NO. 01942  
2 & Sandra N. Sparks  
3 Keith and Geraldine Schober

4 Source: Teanaway River

5 Use: Irrigation of 2 acres.

6 Period of Use: May 1 to September 15

7 Quantity: 0.04 cubic foot per second, 10.8 acre-feet per year

8 Priority Date: **June 30, 1894**

9 Point of Diversion: 800 feet north and 800 feet west from the southwest corner  
of Section 13, being within the SW<sub>4</sub><sup>1</sup>SW<sub>4</sub><sup>1</sup> of Section 13,  
T. 20 N., R. 16 E.W.M.

10 Place of Use: That portion of the SW<sub>4</sub><sup>1</sup>SE<sub>4</sub><sup>1</sup> of Section 13 lying west of the  
Teanaway Road in T. 20 N., R. 16 E.W.M.

11

12 CLAIMANT NAME: **Robin Knox Little** COURT CLAIM NO. 00557  
13 & Carol Michon Little (A)02338

14 Source: An unnamed spring and creek

15 Use: Irrigation of 4 acres

16 Period of Use: May 1 to September 30

17 Quantity: 0.05 cubic foot per second, 8 acre-feet per year

18 Priority Date: **May 5, 1896**

19 Point of Diversion: Multiple points of diversion within the E<sub>2</sub><sup>1</sup>W<sub>2</sub><sup>1</sup>SE<sub>4</sub><sup>1</sup> and the  
W<sub>2</sub><sup>1</sup>E<sub>2</sub><sup>1</sup>SE<sub>4</sub><sup>1</sup> of Section 17, T. 20 N., R. 17 E.W.M.

20 Place of Use: E<sub>2</sub><sup>1</sup>W<sub>2</sub><sup>1</sup>SE<sub>4</sub><sup>1</sup> and W<sub>2</sub><sup>1</sup>E<sub>2</sub><sup>1</sup>SE<sub>4</sub><sup>1</sup> of Section 17, T. 20 N., R. 16 E.W.M.

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27 REPORT OF REFEREE Referee's Office  
28 Re: Subbasin No. 3 15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Ted Fudacz** & **Lena Fudacz** COURT CLAIM NO. 02206  
2  
3 Source: Middle Fork Teanaway River  
4 Use: Irrigation of 10 acres and stockwater  
5 Period of Use: May 1 to September 15 for irrigation; continuous for stock  
water  
6  
7 Quantity: 0.20 cubic foot per second, 50 acre-feet per year for  
irrigation; 0.20 cubic foot per second, 2 acre-feet per  
year for stock watering  
8  
9 Priority Date: **June 30, 1897**  
10  
11 Point of Diversion: 10 feet north and 1000 feet east from the southwest corner  
of Section 25, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25,  
T. 21 N., R. 15 E.W.M.  
12  
13 Place of Use: That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 36 lying south and  
west of the county road and north and east of the Middle  
Fork Teanaway River, in T. 21 N., R. 15 E.W.M.  
14  
15 CLAIMANT NAME: **Donald W. Walker** & **Gloria Walker** COURT CLAIM NO. 02255  
16 (A)04465  
17 (A)04493  
18 Source: Teanaway River  
19 Use: Irrigation of 12.8 acres  
20 Period of Use: May 1 to September 15  
21  
22 Quantity: 0.26 cubic foot per second, 69.12 acre-feet per year  
Priority Date: **June 30, 1898**  
Point of Diversion: 600 feet north and 200 feet east of the center of  
Section 25, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25,  
T. 20 N., R. 16 E.W.M.  
Place of Use: That portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26,  
T. 20 N., R. 16 E.W.M. lying south of the East Masterson  
Road and north of State Route 970

27 REPORT OF REFEREE  
28 Re: Subbasin No. 3

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Donald W. Walker** & **Gloria Walker** COURT CLAIM NO. 02255  
2 (A)04465  
3 (A)04493

3 Source: Teanaway River

4 Use: Irrigation of 4 acres

5 Period of Use: May 1 to September 15

6 Quantity: 0.08 cubic foot per second, 21.6 acre-feet per year

7 Priority Date: **June 30, 1898**

8 Point of Diversion: 600 feet north and 200 feet east of the center of  
9 Section 25, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25,  
T. 20 N., R. 16 E.W.M.

10 Place of Use: That portion of the E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, T. 20 N.,  
11 R. 16 E.W.M. lying south of the East Masterson Road and  
north of State Route 970.

12 CLAIMANT NAME: **John E. Conner** COURT CLAIM NO. 00746  
13 (A)06336

14 Source: Teanaway River

15 Use: Irrigation of 40 acres and stock water

16 Period of Use: May 1 to September 15

17 Quantity: 0.80 cubic foot per second, 260 acre-feet per year for  
irrigation; 2 acre-feet per year for stock water

18 Priority Date: **June 30, 1899**

19 Point of Diversion: 475 feet south and 200 feet west from the northeast corner  
20 of Section 8, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8,  
T. 20 N., R. 16 E.W.M.

21 Place of Use: That portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 9, T. 20 N.,  
22 R. 16 E.W.M. lying south of the Teanaway Road

23 Limitations of Use: When sufficient water is available in excess of that  
needed to satisfy all existing rights, an additional .80  
cubic foot per second can be diverted from the river.  
This water will normally only be available for a 30 day  
period in May and June.

27 REPORT OF REFEREE  
28 Re: Subbasin No. 3

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Norman J. Cromarty** & Shirley B. Cromarty COURT CLAIM NO. 01863  
2 Source: An unnamed spring  
3 Use: Domestic irrigation of one-half acre.  
4 Period of Use: May 1 to September 15  
5 Quantity: 0.02 cubic foot per second, 2 acre-feet per year  
6 Priority Date: **June 30, 1902**  
7 Point of Diversion: 1000 feet north and 1500 feet west from the east quarter corner of Section 31, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 31, T. 21 N., R. 16 E.W.M.  
8 Place of Use: The NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31, T. 21 N., R. 16 E.W.M.  
9  
11 CLAIMANT NAME: **Norman J. Cromarty** & Shirley B. Cromarty COURT CLAIM NO. 01863  
12 Source: North Fork Teanaway River  
13 Use: Irrigation of 51 acres and continuous stock water.  
14 Period of Use: May 1 to September 15  
15 Quantity: 1.02 cubic feet per second, 204 acre-feet per year  
16 Priority Date: **June 30, 1902**  
17 Point of Diversion: Within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 31, T. 21 N., R. 16 E.W.M.  
18 Place of Use: That portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$  lying west of the primary irrigation ditch and that portion of the E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$  lying east of the primary irrigation ditch in Section 31, T. 21 N., R. 16 E.W.M..  
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27 REPORT OF REFEREE Referee's Office  
28 Re: Subbasin No. 3 15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Larry T. Fudacz** COURT CLAIM NO. 01170

2 Source: West Fork Teanaway River

3 Use: Irrigation of 25 acres and stock water

4 Period of Use: May 1 to September 15

5 Quantity: 0.50 cubic foot per second, 125 acre-feet per year for irrigation; 2 acre-feet per year for stock water

6 Priority Date: **June 30, 1902**

7 Point of Diversion: Within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, T. 21 N., R. 15 E.W.M.

8 Place of Use: That portion of the SE $\frac{1}{4}$  of Section 34, T. 21 N., R. 15 E.W.M. lying south of the West Fork Teanaway Road and north of the West Fork Teanaway River

10

11 CLAIMANT NAME: **Larry T. Fudacz** COURT CLAIM NO. 01331

12 Source: West Fork Teanaway River

13 Use: Irrigation of 30 acres

14 Period of Use: May 1 to September 15

15 Quantity: 0.60 cubic foot per second, 150 acre-feet per year

16 Priority Date: **June 30, 1903**

17 Point of Diversion: 1300 feet south and 150 feet west of the east quarter corner of Section 33, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 33, T. 21 N., R. 15 E.W.M.

18

19 Place of Use: That portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 34, T. 21 N., R. 15 E.W.M. lying north of the West Fork Teanaway River

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27 REPORT OF REFEREE

28 Re: Subbasin No. 3

Referee's Office  
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Yakima, WA 98902-3401

1 CLAIMANT NAME: **Bernard W. Grywacz** COURT CLAIM NO. 01980  
2 Source: Mason Creek  
3 Use: Irrigation of 13.5 acres and stock water.  
4 Period of Use: May 1 to September 15  
5 Quantity: 0.25 cubic foot per second, 67.5 acre-feet per year for  
irrigation 0.01 cubic foot per second, 1 acre-foot per  
year for stock water  
6  
7 Priority Date: **June 30, 1903**  
8 Point of Diversion: (1) 800 feet south and 400 feet east from the northwest  
corner of Section 13, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 13, T. 20 N., R. 16 E.W.M.  
9  
(2) 1,000 feet south and 450 feet east from the northwest  
corner of Section 13, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 13, T. 20 N., R. 16 E.W.M.  
10  
11 Place of Use: Those portions of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14 and the SW $\frac{1}{4}$ NW $\frac{1}{4}$   
of Section 13, T. 20 N., R. 16 E.W.M. lying south of the  
Teanaway Road and north of the Three M Ditch  
12  
13  
14  
15 CLAIMANT NAME: **Josephine Chelinsky** COURT CLAIM NO. 01332  
16 Source: An unnamed spring  
17 Use: Single domestic supply and stockwater  
18 Period of Use: Continuous  
19 Quantity: 0.02 cubic foot per second, 2 acre-feet per year  
20 Priority Date: **July 31, 1903**  
21 Point of Diversion: 950 feet south and 800 feet east from the northwest corner  
of Section 26, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 26,  
T. 21 N., R. 15 E.W.M.  
22  
23 Place of Use: That portion of Parcel 2D of that Survey dated January 12,  
1984, recorded under Kittitas County Auditor's Receiving  
No. 476397 at Volume 12 of Surveys, pages 58 and 59, lying  
in the E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 26, T. 21 N., R. 15 E.W.M.  
south of U.S.F.S. Road No. 2110  
24  
25  
26  
27 REPORT OF REFEREE Referee's Office  
Re: Subbasin No. 3 15 W. Yakima Ave Ste. 200  
28 Yakima, WA 98902-3401

1 CLAIMANT NAME: **James Fruhling** & **Sheryl Fruhling** COURT CLAIM NO. 01142  
2  
3 Source: Teanaway River  
4 Use: Irrigation of 20 acres and stock water  
5 Period of Use: May 1 to September 15  
6 Quantity: 0.40 cubic foot per second, 110 acre-feet per year  
7 Priority Date: **June 30, 1905**  
8 Point of Diversion: 475 feet south and 200 feet west from the northeast corner  
9 of Section 8, being within NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 20 N.,  
R. 16 E.W.M.  
10 Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, T. 20 N.,  
11 R. 16 E.W.M., lying southwesterly of the Teanaway River  
Road  
12 Limitations of Use: This right may be satisfied through the use of return  
13 flow water emanating from neighboring lands to the west.  
  
14 CLAIMANT NAME: **Albeno G. Carollo** & **Violet Carollo** COURT CLAIM NO. 00914  
15  
16 Source: Teanaway River  
17 Use: Irrigation of 11.3 acres  
18 Period of Use: May 1 to September 15  
19 Quantity: 0.226 cubic foot per second, 61.02 acre-feet per year  
20 Priority Date: **June 30, 1910**  
21 Point of Diversion: 150 feet north and 800 feet west from the southeast corner  
22 of Section 10, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 10,  
T. 20 N., R. 16 E.W.M.  
23 Place of Use: That portion of E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 14, T. 20 N.,  
24 R. 16 E.W.M. lying south of the Teanaway Road and  
northerly of a line described approximately as follows:  
Beginning at the northwest corner of the said E $\frac{1}{2}$ NW $\frac{1}{4}$ ;  
thence S 37° E 1400 feet more or less; thence S 14° E 875  
feet, more or less; thence east 325 feet more or less to a

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1 terminus 30 feet east of the north/south center line of  
2 the said section

3 CLAIMANT NAME: **Jane Shaw** COURT CLAIM NO. 01867

4 Source: An unnamed spring

5 Use: Continuous single domestic supply.

6 Period of Use: Continuous

7 Quantity: 0.02 cubic foot per second, 2 acre-feet per year

8 Priority Date: **May 1, 1914**

9 Point of Diversion: 1200 feet south and 400 feet east from the west quarter  
10 corner of Section 32, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 32, T. 21 N., R. 16 E.W.M.

11 Place of Use: That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5, T. 20 N.,  
R. 16 E.W.M. described as follows: Commencing at the west  
quarter corner of said Section 5; thence north  
approximately 290 feet along the west boundary of said  
section to the northerly right of way of Teanaway Road;  
thence easterly approximately 720 feet along said right of  
way to the point of beginning; thence north 108.6 feet;  
thence N 42° E 104.0 feet; thence west 7.5 feet; thence  
north 61.5 feet; thence S 68° E 32.5 feet; thence south  
45.0 feet; thence S 17°12' E 197.5 feet to the northerly  
right of way of the Teanaway Road; thence westerly 159.0  
feet along said right of way to the point of beginning.

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28 Re: Subbasin No. 3

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1 CLAIMANT NAME: **Don Osmonovich** & **Jo Anne Osmonovich** COURT CLAIM NO. 00466  
2  
3 Source: An unnamed spring  
4 Use: Domestic supply for one recreational cabin and continuous  
5 stock water  
6 Period of Use: Continuous  
7 Quantity: 0.01 cubic foot per second, 1 acre-foot per year for  
8 domestic supply; 0.01 cubic foot per second, 1 acre-foot  
9 per year for stock watering  
10 Priority Date: **May 19, 1970**  
11 Point of Diversion: 1175 feet north and 1250 west from the southeast corner of  
12 Section 2, being within SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 2, T. 20 N.,  
13 R. 16 E.W.M.  
14 Place of Use: E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  Section 2, T. 20 N., R. 16 E.W.M.  
15 Limitations of Use: This authorization to make use of public waters of the  
16 state is subject to existing rights, including any  
17 existing rights held by the United States for the benefit  
18 of Indians under treaty or otherwise.  
19 CLAIMANT NAME: **Francis B. Forderhase** & **Barbara J. Forderhase** COURT CLAIM NO. 00344  
20 **James E. Nunn**  
21 & **Susan T. Nunn**  
22 **Ronald L. Pyeatt**  
23 & **Patricia A. Pyeatt**  
24 Source: An unnamed creek  
25 Use: Group domestic supply for three recreational residences  
26 Period of Use: Continuous  
27 Quantity: 0.005 cubic foot per second, 1.5 acre-feet per year  
28 Priority Date: **June 28, 1973**  
29 Point of Diversion: 650 feet south and 200 feet west from the east quarter  
30 corner of Section 32, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
31 Section 32, T. 22 N., R. 16 E.W.M.

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1 Place of Use: Lots 1, 2 and 3 of Teanaway Recreational Residence Tract  
2 lying within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
3 Section 32, T. 22 N., R. 16 E.W.M.

4 Limitations of Use: Diversion intake shall be tightly screened at all times  
5 with wire having a mesh opening not greater than .125  
6 (1/8) inch.

7 CLAIMANT NAME: Randolph C. Jasper COURT CLAIM NO. 00591

8 Source: An unnamed spring and/or an unnamed stream

9 Use: Stock water

10 Period of Use: Continuously

11 Quantity: 0.01 cubic foot per second, 0.25 acre-foot per year

12 Priority Date: June 28, 1973

13 Point of Diversion: 200 feet north and 800 feet west from the southeast corner  
14 of Section 18, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18,  
T. 20 N., R. 17 E.W.M.

15 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18, T. 20 N., R. 17 E.W.M.

16 Limitations of Use: The entire opening of the diversion intake shall be  
17 tightly screened at all times with wire mesh having  
18 openings with dimensions not greater than 0.125 (1/8)  
inch. Water approach velocity to the screen shall be less  
than 1 foot per second and approaching 0.5 foot per  
second, as measures one (1) foot in front of the screen.

1       4. All prior claims to rights for surface water from Subbasin No. 3,  
2 including those claims filed under the provisions of Chapter 90.14 RCW, are denied,  
3 unless expressly provided for herein. The "Water Rights Claims Registry" directed  
4 by RCW 90.14.111 should be supplemented with appropriate notations to the records  
5 of those claims specifically identified in the "Water Right Claims" section of  
6 Plaintiff's Exhibit No. SE-3.

7       5. The following Certificates of Water Right and Certificates of Change,  
8 issued by the Department of Ecology or its predecessor agencies of the State of  
9 Washington, will be made null and void:

10      Certificates of Surface Water Right

11      3497            8300            10096  
12      S3-01072C     S3-21344C

13      Certificates of Adjudicated Surface Water Rights

14      102            103            104            105  
15      106            107            108            109  
16      110            111            112            113  
17      114            114            116            117  
18      118            119            121            122  
19      123            124            125            126  
20      127            128            130            131  
21      132            133            134            135  
22      136            137            138            139  
23      140            141            144            148  
24      149            150            151            152  
25      155            156            157            159  
26      161            162            163            164  
27      167            169

28      Certificate No. 120 & Certificate of Change recorded in Vol. 1-4, Page 233  
29      Certificate No. 129 & Certificate of Change recorded in Vol. 1-4, Page 232  
30      Certificate No. 142 & Certificate of Change recorded in Vol. 1-4, Page 145  
31      Certificate No. 143 & Certificate of Change recorded in Vol. 1-4, Page 146  
32      Certificate No. 145 & Certificate of Change recorded in Vol. 1-4, Page 147  
33      Certificate No. 146 & Certificate of Change recorded in Vol. 1-4, Page 148  
34      Certificate of Change recorded in Vol. 1-3, Page 65  
35      Certificate of Change recorded in Vol. 3, Page 1089

In conformance with RCW 90.03.240, Certificates of Adjudicated Water Right will be issued to those parties for whom rights were confirmed through this proceeding.

## IX. CONCLUSIONS OF LAW

## 6 Confirmation of Rights

The priority date, source, point of diversion, location, maximum instantaneous diversion rate, annual quantity, period of use, nature of beneficial use, and place of use which are shown in the foregoing Findings of Fact for each claimant therein referred are recommended to be confirmed as water rights of those claimants.

## 13 | Duty of Water

Unless otherwise specified, the diversion of water from sources of water contained within Subbasin No. 3 for irrigation purposes shall be limited, at a maximum, to 1.0 cubic-foot per second for each 50 acres irrigated, not to exceed during each irrigation season, a total of 5.4 acre-feet per acre for all crops.

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1      Irrigation Season

2           Unless otherwise identified within a specific water right, the irrigation  
3        season shall be defined as that period from May 1 to and including September 15 of  
4        each year. The Referee recognizes that extraordinary circumstances may dictate the  
5        application of water prior to or subsequent to the defined irrigation season, and,  
6        in that event, express approval from the Department of Ecology must be obtained  
7        annually prior to such deviation.

8

9      Certificates of Adjudicated Water Right

10       Upon entry of the final decree in this action, and upon payment of the  
11       statutory fee prescribed in RCW 90.03.470(11), together with the appropriate county  
12       auditor recording fee, the Director of the Department of Ecology is required to  
13       issue Certificates of Adjudicated Water Right in accordance with the provisions of  
14       RCW 90.03.240.

15

16      Administration of Water

17       The use of Subbasin No. 3 waters should be regulated by the Department of  
18       Ecology on the basis of Certificates of Adjudicated Water Rights issued as a result  
19       of this proceeding, and on the basis of any permits and certificates that may have  
20       issued outside of this proceeding under appropriation procedures of Chapter 90.03  
21       RCW. When available water in Subbasin No. 3 is insufficient to supply all rights,  
22       and upon a finding that regulation is required, the Department may regulate junior  
23       water rights in the interest of satisfying senior water rights.

24       Whenever regulation of junior water rights is necessary, the Department may  
25       enter at reasonable times upon the lands of any and all parties having rights and

1 shall regulate diversion facilities so as to apportion the waters as herein  
2 adjudicated.

3 Confirmation of a water right does not guarantee nor imply that right-of-way  
4 or trespass rights exist upon private or public lands for the diversion and/or  
5 distribution system of that water.

6 As provided by Chapter 90.03.360 RCW and Chapter 508-64 WAC, any person  
7 authorized to use surface water from Subbasin No. 3 may be required to provide and  
8 maintain, at the water user's expense, proper diversion works and/or measuring  
9 devices. Design, installation, maintenance, and operation of such works and  
10 measuring devices will be as prescribed by the Department.

11 SIGNED and DATED at Yakima, Washington this 25<sup>th</sup> day of January, 1996.

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14 DOUGLAS CLAUSING, Referee  
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