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**YAKIMA RIVER BASIN
WATER RIGHTS ADJUDICATION**

The State of Washington, Department of Ecology v.
James J. Acquavella, et al.
Yakima County Superior Court Cause No. 77-2-01484-5

**SECOND
SUPPLEMENTAL
REPORT OF REFEREE**

**Re: SUBBASIN NO. 4
(SWAUK)**

Submitted to:
The Honorable Walter A. Stauffacher
Yakima County Superior Court

SECOND SUPPLEMENTAL REPORT OF REFEREE - VOLUME 29B

15,109

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

3 IN THE MATTER OF THE DETERMINATION)
4 OF THE RIGHTS TO THE USE OF THE)
5 SURFACE WATERS OF THE YAKIMA RIVER)
6 DRAINAGE BASIN, IN ACCORDANCE WITH)
7 THE PROVISIONS OF CHAPTER 90.03,)
8)
9) No. 77-2-01484-5
10 THE STATE OF WASHINGTON,)
11 DEPARTMENT OF ECOLOGY,)
12 Plaintiff,)
13 v.)
14 James J. Acquavella, et al.,)
15 Defendants.)
16)

17 To the Honorable Judge of the above entitled Court, the following
18 report is respectfully submitted:

19 The Order issued by the Court on January 13, 2000, ruled upon several
20 exceptions to the Supplemental Report of Referee, Volume 29A, and remanded
21 certain exceptions to the Referee, with instructions, for further evaluation
22 and subsequent recommendations to the Court.

23 The following are the claims for which exceptions were filed:

1. Pat & Mary Burke, Claim No. 01475
2. Pat & Mary Burke, Claim No. 01475 (Exception filed by Kenneth J. Hartman)
3. Craig N. & Therese B. Dickison, Mark T. Dickison, Mary B. Shelton, Claim No. 00519
4. First Creek Water Users Association, Inc., Claim No. 00648
5. John J. & Lila A. Hanson, Claim Nos. 01789 and 01790
6. Bernard P. Knoll, Claim Nos. 12061 & 12062
7. Frederick L. & Dixie S. Knoll, Claim No. 12110
8. Timothy M. Knoll, Claim No. 00163

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- 1 9. Lavinal, Inc., Claim No. 06626
2 10. Steven A. & Karen R. Minalia, Claim No. 12137
3 11. Estate of William Siepmann, Elna Irene Siepmann, Claim
4 No. 01278

5 The Department of Ecology (Ecology) sought clarification of the
6 Supplemental Report of Referee for the following claims:

- 7 1. Pat & Mary Burke, Claim No. 01475
8 2. Gordon C. & Linda Tang, Claim No. 00970 (Now Swauk Valley
9 Ranch, LLC)
10 3. Wallace Ranch Limited Partnership, Claim No. 00267 (Formerly
11 M. Marvin Wallace)
12 4. The Estate of Paul P. Weaver & Mary B. Shelton, Claim
13 No. 00519

14 I. ORAL AND WRITTEN RULINGS OF THE COURT

15 The Court orally ruled on several exceptions at the Exception Hearing
16 held on November 12, 1998, and others via the Order on Exceptions, Subbasin
17 No. 4 (Swauk Creek), January 13, 2000. Following is a summary of those
18 rulings:

- 19 1. Pat & Mary Burke, Claim No. 01475 -- The Burke exception as
20 to inclusion of fire control as an additional beneficial use
21 was denied; however, the Court acknowledged that irrigation
22 around farmsteads and homes serves to prevent forest fire
23 damage as an incidental benefit. The Burke exception as to
24 inclusion of certain diversionary stock water improvements in
25 the riparian stock water stipulation was denied.
26 2. Estate of William Siepmann and Elna Irene Siepmann, Claim
27 No. 01278 -- the Court ruled that RCW 90.14.068(5) was not
28 unconstitutional. See Memorandum Opinion and Ruling RE:
 RCW 90.14.068(5) Constitutional Issue, November 8, 1999.

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- 1 3. John J. & Lila A. Hanson, Claim Nos. 01789 and 01790 -- the
2 Court advised the Hanson's to submit a motion for
3 substitution of parties to the Court to accomplish the
4 desired name changes for Claim Nos. 01789 and 01790. A water
right confirmation for on-farm use of natural precipitation
was denied; however, the Court acknowledged that farming
practices which enhance on-farm retention of water are not
precluded.
- 5 4. Mary B. Shelton, Claim No. 00519 -- the Court denied
6 confirmation of a domestic water right and advised
7 Ms. Shelton that she could file an application for change of
point of diversion and purpose of use with Ecology per
RCW 90.03.380.
- 8 5. Craig N. and Therese B. Dickison and Mark T. Dickison, Claim
9 No. 00519 -- the Court granted Dickison's exception as to
10 confirmation of 10 acres of irrigation with the understanding
11 that the quantification and priority date would be determined
based on evidence presented during the Referee's second
supplemental hearing.
- 12 6. Lavinal, Inc., Claim No. 06626 -- the Court ruled that the
recommendations of the Referee were within the the authority
13 and scope of the water laws.
- 14 7. Wallace Ranch Limited Partnership, Claim No. 02267 -- the
error in calculation for the annual water quantity on
15 Page 120 of the Supplemental Report of Referee shall be
corrected.

17 II. CLAIMS REMANDED

18 The following claims were remanded to the Referee to take additional
19 evidence and testimony in regard to the exceptions and Ecology's requests
20 for clarification:

- 21 1. Pat and Mary Burke, Claim No. 01475
2 2. Mary B. Shelton, Craig N. and Therese B. Dickison and
Mark T. Dickison, Claim No. 00519
3 3. First Creek Water Users Association, Claim No. 00648
4 4. Bernard P. Knoll, Claim Nos. 12061 and 12062
5 5. Timothy M. Knoll, Claim No. 00163
6 6. Frederick L. & Dixie S. Knoll, Claim No. 12110
7 7. Steven A. & Karen R. Minalia, Claim No. 12137

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- 1 8. Lavinal, Inc., Claim No. 06626
 2 9. Swauk Valley Ranch, LLC, Claim No. 00970
 2 10. Wallace Ranch Limited Partnership, Claim No. 02267

3 III. CLAIMANT LIST
 4

5 The following claims and claimants are addressed in this report, either in
 6 consideration of evidence presented at the second supplemental hearing or
 7 rights described in the Findings of Fact that begins on Page 96 of this
 8 report:
 9

| Court Claim No. | Name | Attorney | Page |
|---------------------------------|--|---|---------------------------------|
| 12140 | Richard H. Anderson & Judy Anderson 18874 Road 8.5 SE Warden, WA 98857 | Lawrence E. Martin Halverson & Applegate, PS P.O. Box 22730 Yakima, WA 98907 | 119 |
| 01479 | Mr. Marilyn Bateman (Address Unknown) | | 146 |
| 02206 (A) 03119 (A) 05238 | Boise Cascade Corporation Legal Department PO Box 50 Boise, ID 83707 | Dennis J. Dunphy, Attorney 1420 5th Avenue #3500 Seattle, WA 98101 | 129 |
| 05721 | Sheryle Bonnell & William E. Bonnell 1396 Madison Avenue Apt. 200 Loveland, CO 80537 | Jeff Slothower P.O. Box 1088 Ellensburg, WA 98926 | 113 |
| 01475 | Pat Burke & Mary Burke 980 Burke Road Cle Elum, WA 98922 | Lawrence E. Martin Halverson & Applegate, PS PO Box 27730 Yakima, WA 98907 | 2, 9, 98 99, 102 103, 117 |
| 05721 | Selma M. Burzenski 306 Seneca Avenue NW Renton, WA 98055 | John P. Gilreath PO Box 499 Ellensburg, WA 98926 | 114 |

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 27 Re: Subbasin No. 4 (Swauk Creek)

| | | | | |
|----|-------|---|---|---------------|
| 1 | 01685 | Daniel V. Byrne & Martha M. Wyckoff Byrne 1100 E. Norton Street Seattle, WA 98102 (See Martha M. Wyckoff) | | |
| 4 | 01423 | Fred Chapman & Delores Chapman 370 Burke Road Cle Elum, WA 98922 | 148 | |
| 6 | 01087 | Darrell Clark & Mabel Clark 12722 State Route 165 E. Buckley, WA 98321 (See Paul & Dianne De Faccio) | | |
| 9 | 01146 | Bruce Coe 3942 Hidden Valley Cle Elum, WA 98922 | 103, 104 139, 147 | |
| 11 | 01096 | Columbia Cascade Land Company, Inc. PO Box 597 Ellensburg, WA 98926 | 144 | |
| 14 | 01087 | Paul De Faccio & Dianne De Faccio PO Box 2 Thorp, WA 98946 | 138 | |
| 17 | 00519 | Craig N. Dickison & Therese B. Dickison 1235 - 238th Ave. SE Issaquah, WA 98029 | Lawrence E. Martin Halverson & Applegate, PS PO Box 22730 Yakima, WA 98907 | 3, 92 104 |
| 20 | 00519 | Mark T. Dickison | Lawrence E. Martin Halverson & Applegate, PS PO Box 22730 Yakima, WA 98907 | 3, 92 104 |
| 22 | 00648 | First Creek Water Users Association, Inc. 13332 SE 195th Street Renton, WA 98058 | Richard T. Cole PO Box 499 Ellensburg, WA 98926 | 17, 97 101 |

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| | | | |
|----|---------------------------------------|---|---|
| 1 | 01561 | Gold Placer, Inc. c/o Crown Resources Corporation 4251 Kipling Street Unit 390 Wheat Ridge, CO 80033 | 142 |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | 01789 | John J. Hanson & Lila A. Hanson 1302 Swauk Prairie Road Cle Elum, WA 98922 | 3 |
| 6 | | | |
| 7 | 00919 | Aubrey E. Hart & Blanche M. Hart PO Box 214 Cle Elum, WA 98922 (See James & Cathy Hooper) | |
| 8 | | | |
| 9 | | | |
| 10 | 01685 | Donald A. Hartman & Ruth D. Hartman 1000 Hartman Road PVT Cle Elum, WA 98922 | James E. Davis Talbott, Simpson, et al. PO 590 Yakima, WA 98907 |
| 11 | | | 100, 116 |
| 12 | | | |
| 13 | 01471 | Del L. Holter 1620 Liberty Road Cle Elum, WA 98922 | 112, 141 |
| 14 | | | |
| 15 | 00919 | James Hooper & Cathy Hooper 21716 - 49th Avenue, SE Bothell, WA 98926 | 126 |
| 16 | | | |
| 17 | 12143 | Mark K. Jones & Michele M. Jones 2310 McKinney Road Othello, WA 99344 | Lawrence E. Martin Halverson & Applegate, PS PO Box 22730 Yakima, WA 98907 |
| 18 | | | 123 |
| 19 | | | |
| 20 | 12061 | Bernard Paul Knoll | 62, 131 |
| 21 | 12062 | 2005 Dry Creek Road Ellensburg, WA 98926 | 140 |
| 22 | 12110 | Frederick L. Knoll & Dixie S. Knoll 27221 - 121st Avenue SE Kent, WA 98031 | Lawrence E. Martin Halverson & Applegate, PS PO Box 22730 Yakima, WA 98907 |
| 23 | | | 72, 108 |
| 24 | | | 109, 128 |
| 25 | | | 132 |
| 26 | SECOND SUPPLEMENTAL REPORT OF REFEREE | | |
| 27 | Re: Subbasin No. 4 (Swauk Creek) | | |
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| 1 | 00163 | Timothy M. Knoll 12054 - 59th Avenue S. Seattle, WA 98178 | Lawrence E. Martin Halverson & Applegate, PS PO Box 22730 Yakima, WA 98907 | 72, 110 111 |
| 3 | 06626 | Lavinal Corporation Gerald T. Sweeney, Pres. 900 Meridian E. Suite 19-411 Milton, WA 98354 | Lawrence E. Martin Halverson & Applegate, PS PO Box 22730 Yakima, WA 98907 | 3, 83 |
| 6 | 00747 | Linda L. Lewis, et al. Michelle L. Maillot Robert L. Vankirk 3210 - 36th Avenue S. Seattle, WA 98144 | | 145 |
| 9 | 01095 | Liberty Mt. Ownership Association, Inc. 2405 SW 151st Street Seahurst, WA 98166 | | 145 |
| 12 | 01738 | Liberty Townsite c/o Liberty Coalition 2820 Liberty Road Cle Elum, WA 98922 | Lawrence E. Martin Halverson & Applegate, PS PO Box 22730 Yakima, WA 98907 | 102 |
| 15 | 01479 | Lookout Mountain Associates 1107 N. Twickenham Drive Salt Lake City, UT 84103 | | 146 |
| 18 | 00348 | Dennis Mickens & Georgiana Mickens (Address Unknown) | | 143 |
| 21 | 12137 | Steven A. Minalia & Karen R. Minalia 23738 - 262nd PL SE Maple Valley, WA 98038 | Lawrence E. Martin Halverson & Applegate, PS PO Box 22730 Yakima, WA 98907 | 72, 134 |
| 24 | 05721 | Janis G. Newbury & Paul R. Newbury (Address Unknown) | Jeff Slothower Lathrop Firm PO Box 1088 Ellensburg, WA 98926 | 115 |
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| | | | | |
|----|---|--|---|----------------|
| 1 | 12310 | Gerald R. Peltola & Barbara J. Peltola 830 Rader Road Ellensburg, WA 98926 | Lawrence E. Martin Halverson & Applegate, PS PO Box 22730 Yakima, WA 98907 | 137 |
| 3 | 02050 | Wilma Preston | | 147 |
| 4 | 02051 | 14326 - 52nd Avenue W. #A Edmonds, WA 98026 | | |
| 5 | 02057 | Douglas F. Sanders & Marcia H. Sanders 13328 - 15th Avenue NE Seattle, WA 98125 | | 118 |
| 8 | 02057 | Estate of Lester F. Sanders & Dollie C. Sanders 35419 - 1st Avenue S., Apt. 211 Federal Way, WA 98003 | | 118 |
| 11 | 00519 | Mary B. Shelton 20120 Filbert Road Bothell, WA 98012 | | 3, 92 107 |
| 13 | 01278 | William Siepmann & Elda Irene Siepmann 20319 NE Inglewood Hill Road Redmond, WA 98053 | Lawrence E. Martin Halverson & Applegate, PS PO Box 22730 Yakima, WA 98907 | 2, 139 |
| 16 | 12104 | Larry A. Smith & Anna L. Smith 417 S. 32nd Avenue Yakima, WA 98902 | Lawrence E. Martin Halverson & Applegate, PS PO Box 22730 Yakima, WA 98907 | 121, 124 |
| 19 | 00970 | Swauk Valley Ranch, LLC c/o Michael Coe Gene Juarez Salons & Spas 1661 E. Olive Way Seattle, WA 98102 (Formerly Gordon C. & Linda Tang) | | 90, 105 122 |
| 24 | | | | |
| 25 | | | | |
| 26 | SECOND SUPPLEMENTAL REPORT OF REFEREE Re: Subbasin No. 4 (Swauk Creek) | | | |

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|---|-------|--|---|
| 1 | 02267 | Wallace Ranch Limited Partnership PO Box 4184 Bellevue, WA 98009 (Formerly M. Marvin Wallace) | 3, 91 105, 106 127 |
| 4 | 00519 | Paul P. Weaver 3090 Smithson Road Ellensburg, WA 98926 | Richard T. Cole PO Box 499 Ellensburg, WA 98926 |
| 6 | 01685 | Martha M. Wyckoff 1947 Broadway E. Seattle, WA 98102 (Formerly Martha M. Wycoff Byrne) | 116 |
| 9 | | | |

10 Hearings, for the purpose of opening the record for testimony and
11 evidence relating to the exceptions, were conducted by the Referee on
12 April 10 and April 11, 2000. Ecology was represented by Sam Bailey.

13

14 COURT CLAIM NO. 01475 -- Pat Burke
15 & Mary Burke

16 Pat and Mary Burke, through their attorney Lawrence E. Martin, filed
17 exceptions to the Supplemental Report of Referee, Subbasin No. 4 (Swauk
18 Creek), Vol. 29A dated July 6, 1998. A neighboring landowner, Ken Hartman,
19 also took exception to the Referee's recommendation for this claim.

20 The first two exceptions by the Burkes as to fire control and riparian
21 stock water rights were denied by the Court (see Page 2 of this report).

22 The third Burke exception relates to the Referee's recommendation to
23 confirm proportionate shares of the instantaneous flow in the Burke/Hartman
24 Ditch. The Burkes seek confirmation of the full ditch capacity of 6.0 cfs
25 for irrigation of their 39.6-acre field. The Referee recommended

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1 confirmation of 1.69 cfs plus 0.08 cfs for conveyance flow for irrigation of
2 39.6 acres via the Burke/Hartman Ditch (see Pages 29 through 30 of the
3 Report of Referee and Page 113 of the Supplemental Report of Referee).

4 Kenneth J. Hartman, Court Claim No. 01685, filed an exception to the
5 Burke claim, asserting that 39.6 acres were not irrigated on the Burke
6 property via the Burke/Hartman Ditch. In conjunction with that contention,
7 Mr. Hartman urged the Court to reduce the 1.69 cfs in proportion to the
8 acres irrigated. Mr. Hartman was represented by attorney James E. Davis.
9 Kenneth Hartman withdrew his exception as to the number of acres irrigated
10 during the second supplemental hearing. Although the Hartman challenge of
11 the irrigated acres was not pursued, Kenneth Hartman testified in support of
12 the Referee's recommendation to confirm proportionate shares of the 6.0 cfs
13 carried in the Burke/Hartman Ditch.

14 It is uncontroverted that for the past several decades, the joint
15 irrigation practice has resulted in use of the full 6.0 cfs on a rotational
16 basis instead of proportionate shares. The record reflects a rotation
17 schedule of a 10- to 12-day use by Burke and two 10- to 12-day periods of
18 use on Hartman land. This technique would appear to result in up to a month
19 between irrigations. Kenneth Hartman testified that new seedings were
20 unable to survive the long rotation, especially in gravelly areas of the
21 fields.

22 While acknowledging the long-standing rotation practice of the Burke
23 and Hartman families, the Referee notes the language in the James H. Kinney
24 to William L. Virden deed dated October 30, 1899. That deed specifically

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1 transferred 100 miner's inches (2 cfs) of Swauk Creek water with the E $\frac{1}{2}$ SW $\frac{1}{4}$
2 and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, the 120-acre Kinney homestead (see Page 96,
3 Lines 8 through 15 of the Report of Referee, Subbasin No. 4 (Swauk Creek),
4 Vol. 29. This deed clearly shows that in 1899 the landowners considered the
5 right to be apportioned between the lands owned by each. This deed (Kinney
6 to Virden) clearly confirms that the rights were perfected based on
7 proportionate shares. The Burkes contend that the irrigation practice of
8 the past 40 to 50 years establishes the parameters of the water rights.

9 The mix of priority dates for the water carried in the Burke/Hartman
10 Ditch; i.e., 59.6 acres of June 30, 1878, and 75 acres of September 20,
11 1889, support awarding proportionate shares of the right. The senior
12 priority date water accounts for about 44% of the ditch capacity, or
13 2.66 cfs, and is split with 39.6 acres on the Burke property and 20 acres
14 for the former Hartman land. The remaining 75-acre, 3.34 cfs, water right
15 is for Hartman land and has a priority date of September 20, 1889. At
16 times, water may only be available from Swauk Creek for the senior right.
17 Recent changes in the ownership of the Kenneth Hartman property and the
18 associated water rights introduces the possibility of revised water
19 management. On April 13, 2000, the Court granted substitution of parties
20 for Court Claim No. 01685 from Kenneth J. and Ruthie J. Hartman to Derald
21 and Margaret Martin. On May 22, 2000, Trendwest Resorts, Inc. was joined as
22 a party with interest in Court Claim No. 01685. Notwithstanding the
23 Referee's recommendation, the parties still can agree to rotate their water
24 use, as has been done in the past. Based on the record and analysis

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1 contained herein and in the earlier reports, the Court is urged to uphold
2 the Referee's recommendation in the Supplemental Report of Referee.

3 The Burkes' exception regarding McCallum Spring is the result of the
4 Referee's recommendation to deny confirmation of a water right for
5 subirrigation from this source, while recommending a right for diversionary
6 stock water with an 1884 priority date based on the Riparian Doctrine. The
7 thrust of this exception is the Referee's distinction between subirrigation
8 and diversionary irrigation.

9 An exception is also taken to the recommendation for Dunford Spring for
10 the same reasons as stated for McCallum Spring. Although the facts
11 regarding the source and physical improvements are different, the Referee
12 believes that the legal issues are identical for both McCallum and Dunford
13 Springs. A water right for irrigation of 5 acres and stock water was
14 recommended with an 1882 priority date based on the Prior Appropriation
15 Doctrine.

16 The record describes pastures (range land) lying on sloping land at the
17 base of substantial foothills. Springs emanate in the pastures forming seep
18 areas and dispersed drainage channels and associated subirrigation of the
19 pastures. The Burkes did not file an exception as to the Referee's
20 description of the physical settings, but rather seek clarification as to
21 the legal distinction, if any, between irrigation and subirrigation. Only
22 minor changes to the facts related to McCallum Spring were provided during
23 the second supplemental hearing. Pat Burke testified that only 10 acres now
24 benefit from subirrigation because the state highway constructed some

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1 15 years ago reduced the flow of McCallum Spring. He also testified that
2 the pipe under the highway was constructed at that time and discharges into
3 a natural drainage feature west of the highway in the vicinity of a group of
4 old fruit trees. The Burkes do not assert any current or historic
5 deliberate diversion or delivery of water from McCallum or Dunford Spring to
6 the areas which benefit from subirrigation. They do however contend that
7 the existence of pipes in each spring area should entitle the property
8 owners to irrigation rights, even though the pipes in McCallum spring are
9 for a stock tank and to direct natural flow to the state highway culvert.
10 The pipes installed and used to deliver irrigation water from Dunford Spring
11 to 5 acres and for stock tanks resulted in a recommendation for confirmation
12 of an 1882 priority water right.

13 The Burkes correctly bring to the Court's attention the lack of any
14 citation of law by the Referee regarding subirrigation. The Referee had
15 merely recommended that the Court not confirm diversionary water rights in
16 the few instances where Acquavella claimants have asserted water rights for
17 subirrigation. Invariably, the Referee has referred to the lack of a
18 diversion point and deliberate application of the water to beneficial use.
19 The Revised Code of Washington (RCW) 90.03.120 states in part ". . . a
20 summons shall thereupon be issued out of said Superior Court, . . . against
21 all known persons claiming the right to divert the water involved and all
22 those persons unknown claiming the right to divert the water involved, . .
23 ." (emphasis added). The Referee also finds support for that position in
24 Department of Ecology v. Clarence E. Grimes, et al., 121 Wn.2d 459, 466, 852

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1 P.2d 1044 (1993): "To confirm existing rights, the Referee must determine
2 two primary elements of a water right: (1) the amount of water that has
3 been put to beneficial use and (2) the priority of water rights relative to
4 each other." (emphasis added).

5 "'Beneficial Use' is a term of art in water law, and encompasses two
6 principal elements of a water right. First, it refers to the purposes, or
7 type of activities, . . . Second, beneficial use determines the measure of
8 a water right . . . To determine the amount of water necessary for a
9 beneficial use, Courts have developed the principle of 'reasonable use.'
10 Reasonable use of water is determined by analysis of the factors of water
11 duty and waste." Grimes at 468.

12 "(Water duty) that measure of water which, by careful management and
13 use, without wastage, is reasonably required to be applied to any given
14 tract of land for such period of time as may be adequate . . ." Grimes
15 at 469 (emphasis added).

16 "Those Courts held that the appropriator who diverted . . ." Grimes
17 at 471.

18 The Referee concludes from these passages from Grimes that this Court's
19 practice of not confirming a water right for non-diversionary subirrigation
20 use is supported by RCW 90.03 and by prior rulings of the Supreme Court.

21 The Burkes have expressed serious concerns regarding the potential for
22 future regulatory actions which might disrupt the natural character of the
23 spring areas. Due to the limited production of both Dunford and McCallum
24 Springs and the sources being located on the Burke property, that seems

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1 highly unlikely. The Referee brings to the claimants' attention the
2 riparian stock water stipulation (see Page 4, Lines 3 - 6½ of the Report of
3 Referee, Volume 29) where it states: "Waters in natural water courses in
4 the subbasin shall be retained when naturally available, in an amount not to
5 exceed 0.25 cubic feet per second (cfs) . . . Regulations of these water
6 courses by the plaintiff shall be consistent with such retention
7 requirements." (emphasis added).

8 Finally, the Burkes raise a prospective question as to the Referee's
9 reliance in the Supplemental Report of Referee for Subbasin No. 4 (Swauk
10 Creek) on May 24, 1884, for the priority date for riparian rights on all
11 former Northern Pacific Railroad (NPRR) land. This is not expressed as an
12 exception for Subbasin No. 4, but is merely a reservation to argue the issue
13 at a later time. Since no exception was made to a right recommended for
14 confirmation, the Referee will reserve responding until an actual exception
15 is made.

16 During review of the Report of Referee and Supplemental Report of
17 Referee, the following error was detected in the Supplemental Report of
18 Referee. The point of diversion is described on Page 127, Lines 17½
19 through 18½ as: "600 feet south and 1200 feet east of the west quarter
20 corner of Section 22, being within the NW¼NW¼ of Section 22, T. 20 N.,
21 R. 17 E.W.M." The dimensions described above would have placed the
22 diversion in the NW¼SW¼ not the NW¼NW¼. The May/Burke ditch and diversion
23 was formerly used to deliver water to the 20 acres of Burke land described
24 on Page 127. The record is not especially clear as to the location of the
25

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1 original diversion; however, it appears that it was on the east bank of
2 Swauk Creek above the confluence with First Creek. That location would
3 result in the diversion being located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T. 20 N.,
4 R. 17 E.W.M. Lacking a more definitive location, the Referee is
5 substituting the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T. 20 N., R. 17 E.W.M. for the
6 location described in the Supplemental Report of Referee on Page 127,
7 Lines 17 $\frac{1}{2}$ through 18 $\frac{1}{2}$. The Burkes are reminded that they need to seek
8 authorization through RCW 90.03.380 to change the point of diversion to the
9 presently used Burke Ditch diversion (see Page 11 of the Supplemental Report
10 of Referee).

11 A second error was identified in the Supplemental Report of Referee on
12 Page 113, Line 11 where the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28 inadvertently replaces the
13 SE $\frac{1}{4}$ of Section 28. This error was introduced in the analysis on Page 11,
14 Lines 15 $\frac{1}{2}$ and 23 $\frac{1}{2}$ where the SW $\frac{1}{4}$ NE $\frac{1}{4}$ is referenced. The original Report of
15 Referee correctly reflects the SE $\frac{1}{4}$ of Section 28; therefore, the
16 Supplemental Report of Referee is hereby amended to reflect the SE $\frac{1}{4}$ of
17 Section 28 on Pages 11 and 113, respectively.

18 Ecology requested clarification of the place of use for the Burke claim
19 referenced on Page 154, Line 15 of the Referee's initial report. Although
20 the SE $\frac{1}{4}$ NE $\frac{1}{4}$ is pointed out as the area in question, Line 15 actually
21 describes a portion of the SE $\frac{1}{4}$ of Section 28. In any case, the Referee
22 believes that the correction set forth above eliminates the error in the
23 Supplemental Report of Referee, Subbasin No. 4 (Swauk Creek), Vol. 29A.
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1 COURT CLAIM NO. 00648 -- First Creek Water Users Assoc., Inc
2 Trendwest Resorts, Inc.

3 Exceptions to the Supplemental Report of Referee for Subbasin No. 4
4 (Swauk Creek), Vol. 29A were filed by Attorney Richard T. Cole for the First
5 Creek Water Users Association (FCWUA). The exception document includes
6 17 pages and has attached supporting documents "A" through "CC." These
7 exceptions can be summarized as follows: (1) The recommended place of use
8 does not include all of the lands within the service area of the FCWUA; (2)
9 The Faulkner and Sanders (1877 priority date) portion of the former Alex A.
10 Munson water rights and Peter Wold 1881 rights were not recognized as being
11 appurtenant to FCWUA lands; (3) The historically and currently irrigated
12 acreage is far in excess of the Referee's recommendations; (4) The water
13 duty required for the FCWUA service area is 7 acre-feet per acre as opposed
14 to the 5 acre-feet recommended; (5) The service area of the FCWUA has been
15 irrigated with water from First Creek with the exclusion of all other lands
16 for at least 70 years uncontested by any other water user.

17 Organizing the multitude of exhibits which have been entered into the
18 record regarding Court Claim No. 00648, FCWUA, was difficult. To solve that
19 problem, a series of tables have been developed to allow easy reference to
20 the exhibit list. The list is presented in two forms sorted by:

21 (1) Exhibit Number and (2) Document Date (see Appendix A).

22 Before delving into the merits of the exceptions of FCWUA, it seems
23 appropriate to summarize the facts which will be relied upon and to set

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1 forth relevant sections of the Surface Water Code RCW 90.03 and the
2 Washington State Session Laws 1889 - 1890.

3 Upon reviewing the Washington State Session Laws 1889-90, the Referee
4 determined that county commissioners had the authority to appoint an
5 Irrigation District Commissioner (see Division III, Section 26 - Irrigation
6 Districts by Counties; Section 27 - Oath of Water Commissioner; Section 28 -
7 Duties of; Section 33 - Register of Rights. [It shall be the duty of the
8 water commissioner of each district to cause to be prepared a book to be
9 entitled "The Register of Priorities of Appropriation of Water Rights for
10 the Water Districts of the County of _____, State of Washington,"
11 within which he shall enter and preserve the priorities of all persons
12 taking water out of each particular stream or lake in his said district,
13 which said priority shall be determined by said commissioner from the
14 decrees of any Courts establishing such priorities, or where such priorities
15 are not established by decrees, from any other legal source from which he
16 can obtain the same, arranging and numbering the same, in consecutive order
17 according to the dates of each respective right]. The water commissioner's
18 role is also addressed in Division II, Sections 6, 9, 10, 12 and 13, wherein
19 the Judge of the Superior Court could authorize three commissioners of
20 irrigation to resolve regulatory disputes and apportion rights. The
21 commissioners operated as officers of the Court.

22 The final role of water commissioners set forth by the 1889-90
23 legislature is found in Division VIII - Adjudication of Rights. In
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1 particular see Sections 61 and 65. Section 61 - Record of Certificates, in
2 part states:

3 . . . commissioner shall keep a book in which shall be entered a
4 brief statement of the contents of such certificate, and which
5 shall be delivered to his successor, and said certificate, or
6 statement thereof in his book, shall be the warrant of authority
7 to said water commissioner for regulating the flow of water in
relation to such ditch or canal. . . . said certificate, or said
record thereof, or duly certified copy of such record, shall be
PRIMA FACIE evidence of so much of said decree as shall be recited
therein in any suit or proceeding in which the same may be
relevant.

8 Section 65 simply sets forth assignment of water rights in numeric sequence
9 in decrees based on the theory that first in time is first in right. This
10 listing is particularly intended to guide the water commissioner in his
11 regulatory duties.

12 A key document in analysis of the Wold-Munson Ditch water rights and
13 water use is Exhibit DE-357 (Superior Court Journal II, Page 74) for First
14 Creek. Exhibit DE-357 is similar to documents put in the record in the
15 Manastash and Reecer Creek subbasins, Subbasin Nos. 11 and 7, respectively.
16 Although the record does not identify the author or the exact date the
17 respective documents were created, the Referee has concluded that the
18 subject documents are records created by the Kittitas County Water
19 Commissioner as a function of his water management duties. The content of
20 DE-357 and the date of its origin will be discussed later in this analysis.

21 Adoption of the Surface Water Code (now RCW 90.03) in June of 1917
22 established a body of law which states in part:

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1 The power of the state to regulate and control the waters within
2 the state shall be exercised as hereinafter in this chapter
3 provided. Subject to existing rights, all waters within the state
4 belong to the public, and any right thereto, or to the use
5 thereof, shall be hereafter acquired only by appropriation for a
6 beneficial use and in the manner provided and not otherwise . . .
7 Nothing contained in this chapter shall be construed to lessen,
8 enlarge, or modify the existing rights of any riparian owner, or
9 any existing right acquired by appropriation, or otherwise
10 (RCW 90.03.010).

11 The water code further required that:

12 The right to the use of water which has been applied to a
13 beneficial use in the state shall be and remain appurtenant to the
14 land or place upon which the same is used: provided, however,
15 that the right may be transferred to another or to others and
16 become appurtenant to any other land or place of use without loss
17 of priority of right theretofore established if such change can be
18 made without detriment or injury to existing rights. . . .
19 Before any transfer of such right to use water . . ., any person
20 having an interest in the transfer or change shall file a written
21 application therefore with the department, . . .
22 (RCW 90.03.380(1)).

23 If a right was initiated under the Prior Appropriation Doctrine before
24 1917, how long after that date did the landowner have to perfect the right?
25 That question was answered for rights established under the Riparian
26 Doctrine in Department of Ecology v. Abbott, et al., 103 Wn.2d 686,
27 694 P.2d 1071 (1985). The Supreme Court determined that riparians whose
28 rights were unexercised at the time the water code was adopted had fifteen
29 years, or until December 31, 1932, to put their unused riparian rights to
30 beneficial use. In a footnote, the Court recognized that the finder of fact
31 must determine whether a right by prior appropriation was completed with due
32 diligence. "Appropriation of water consists in an intention to appropriate
33 followed by reasonable diligence in applying the water to a beneficial use"
34 Sander v. Bull, 76 Wash. 1, 4, 135 P. 489 (1913). A notice filed under the
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1 1891 law is only a statement of intention and not proof that what was
2 intended was, in fact, done. See Laws of 1891, Ch. 142, §3.p.328. While an
3 argument could be made that a landowner had until December 31, 1932, under
4 the Prior Appropriation Doctrine to complete perfection of the right, such a
5 conclusion is not supported by the facts presented in support of the FCWUA
6 claim.

7 Alex Munson and Peter Wold filed a series of Notices of Water
8 Appropriation and Affidavits of Water Right between 1881 and 1890 (DE-118,
9 DE-119 and DE-195), the aggregate of those notices claim a right to
10 1500 miner's inches from First Creek for irrigation of 1600 acres. The
11 Wold-Munson Ditch project and associated First Creek water rights were
12 exclusively developed by Wold and Munson until at least 1891. In 1891 Wold
13 sold 100% of his undivided one-half interest in the Wold-Munson Ditch and
14 First Creek water rights to Jacob Bowers along with 160 acres of land.

15 Munson died in the mid-1890s and thereafter the original project
16 proponents were out of the picture and by 1900 the water from First Creek
17 was no longer beneficially used on former Wold or Munson land, except
18 possibly in the SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M., which was land
19 Munson transferred in 1898 to Sullivan Savings and Loan, whose assignees
20 were Faulkner and Sanders. It appears that Wold retained some contract
21 interest in the water rights he sold until 1894 (Affidavit of Peter A. Wold
22 (DE-127)), but apparently had no interest in or control over use of the
23 water (see also Peter Wold and A. A. Munson vs. B. K. May, Decree No. 784,
24 November 27, 1893 (DE-121)).

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1 The Estate of Alex Munson was settled as to ownership of Wold-Munson
2 Ditch and First Creek water rights via Court Decree No. 2770 Francis C.
3 Faulkner and Henry C. Sanders vs. James Hamilton, et al., May 15, 1899
4 (DE-122). As a result of Decree No. 2770, we have a precise record of the
5 Munson land upon which his 1877 First Creek water right was put to
6 beneficial use and of the succeeding owners, including their proportionate
7 shares of that water right (Sallie Fellows 160 inches, Faulkner and Sanders
8 160 inches and James Hamilton 8 inches). The Court Decree makes no
9 reference to or allowance for conveyance loss, merely awarding one miner's
10 inch under 4-inch head pressure per acre. The 1877 water right of Munson
11 would therefore have been 328 miner's inches (6.56 cfs) for the irrigation
12 of 328 acres. The lands irrigated were the SE $\frac{1}{4}$ of Section 8
13 (Faulkner/Sanders), the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 17 (Sallie Fellows) and 8 acres in
14 the E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17 (James Hamilton), ALL in T. 18 N., R. 18 E.W.M.
15 While reviewing Page 70 of the Report of Referee, the Referee realized that
16 Line 18 describes the Faulkner-Sanders land as the E $\frac{1}{2}$ NE $\frac{1}{4}$ and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of
17 Section 17, T. 18 N., R. 18 E.W.M. The correct parcel of land for
18 Faulkner-Sanders is the SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M.

19 In 1899 Sallie Fellows deeded her 160 inches of 1877 water right in
20 fractional components (i.e., 35/160, etc) to Barthal Zwicker, Ida S.
21 Robbins, Charles Ollier Robbins, William Van Essen Robbins and Fanny Thomas
22 (sometimes referred to as "Fannie" Thomas) (DE-123). This deed did not
23 convey the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 17, T. 18 N., R. 18 E.W.M., only the 160-inch
24 water right. Each party acquired 35 miner's inches, except Charles Ollier

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1 Robbins who acquired 20 inches. The record is clear that each of the
2 property owners who were parties to the 1899 Sallie Fellows water right
3 transaction owned land within what is now the FCWUA service area (FCWUA was
4 not incorporated until 1954). Legal descriptions for each of the five
5 owners could be determined from the record, thus the Referee set forth
6 descriptions (based on 1899 ownership) in the original Report of Referee
7 (see Page 70, Lines 6 through 13) with the intent to recommend confirmation
8 of an 1877 water right to FCWUA for the irrigation of 160 acres. Due to an
9 oversight, the Referee neglected to include the 35 inches for the property
10 of Walter J. and Ida Robbins in the recommendations. FCWUA has filed an
11 exception to bring this omission to the Referee's attention (see Page 38 of
12 this report for the specific analysis of that exception).

13 The Court through Decree No. 2770 also confirmed to James Hamilton all
14 of the 1881 First Creek water right developed by Munson, but did not
15 quantify the right as to acres irrigated. Therefore, the Referee assumed
16 that the entire 400 acres of the former Munson land owned by Hamilton had
17 been irrigated and that 1 inch of water per acre was the appropriate water
18 duty. Eight acres of Hamilton land had 1877 water rights, thus, 392 acres
19 were determined to have 1881 water rights.

20 On October 27, 1900, about one year after Sallie Fellows sold her First
21 Creek water right, Ida and Walter Robbins deeded all the James Hamilton
22 water rights to the same five property owners who acquired the Fellows water
23 right (themselves included). There is no document in the record as to how
24 or when the Robbinses acquired the Hamilton rights. In this deed (DE-124),
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1 fractional values are also used, but were expressed as 7/32 or 4/32. The
2 same percent was used to apportion the Hamilton water rights as was used for
3 the Fellows rights. Decree No. 2770 clearly established that Hamilton
4 enjoyed only 8 acres of the 1877 water right, with the balance of his right
5 for 392 acres being an 1881 right. The Report of Referee on Pages 68
6 through 70 contains an explanation of the reasoning for quantification of
7 the Hamilton rights, the proportionate split and a tabular presentation of
8 the five owners and their interests in the Sally Fellows and James Hamilton
9 water rights. No exception has been taken to the Referee's interpretation
10 of these portions of the former Alex Munson water rights (see Table of
11 Rights, Page 69, Report of Referee).

12 A significant portion of the Alex Munson 1877 First Creek water right,
13 as confirmed by the Court in Decree No. 2770, was the 160 inches appurtenant
14 to the SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M. That land was owned or
15 represented in the Court case by Francis C. Faulkner and Henry C. Sanders
16 (assignees of Sullivan Savings and Loan), the Plaintiffs in Faulkner and
17 Sanders v. Hamilton. Sullivan Savings had acquired title to that 160 acres
18 and the appurtenant 160 inches of former Alex Munson water right by
19 Sheriff's Deed dated April 15, 1898 (DE-332). Sullivan Savings became
20 insolvent in 1900, at which time they deeded the SE $\frac{1}{4}$ of Section 8, T. 18 N.,
21 R. 18 E.W.M. and all appurtenant water rights to Elizabeth J. Dickson
22 (DE-333). Elizabeth Dickson controlled the SE $\frac{1}{4}$ of Section 8 and the
23 160-inch Faulkner-Sanders water right until she deeded that land and First
24 Creek water right to Cascal Investment Company (Cascal) on July 10, 1920
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Re: Subbasin No. 4 (Swauk Creek)

1 (DE-328). A notation on the Kittitas County Water Commissioner's Schedule
2 of First Creek Water Rights (DE-357) regarding this land and water right
3 reads: "The water right has for some time been leased year to year for use
4 on land in the Reecer Creek Basin." The First Creek water right was,
5 however, appurtenant to the SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M. on
6 July 10, 1920.

7 On May 1, 1891, Peter A. Wold sold the following 160 acres to Jacob
8 Bowers and his wife (DE-195[3]): All that portion of the NE $\frac{1}{4}$ of Section 20,
9 T. 18 N., R. 18 E.W.M. lying above the ditch of Ellensburg Water Company and
10 that portion of the NW $\frac{1}{4}$ of Section 21, T. 18 N., R. 18 E.W.M. lying above
11 said ditch and that portion of the SW $\frac{1}{4}$ of said Section 21 lying above said
12 Ellensburg Water Company Ditch. The property described was sold with all of
13 Wold's undivided half-interest in First Creek water rights as conveyed
14 through the Wold-Munson Ditch. In 1891 Jacob Bowers and his wife Ella also
15 owned a ranch of 2084 acres which included the following lands: Section 9,
16 the N $\frac{1}{2}$ of Section 8, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ and Government Lot 1 of
17 Section 4; the NE $\frac{1}{4}$ of Section 5 and the NW $\frac{1}{4}$ of Section 3, ALL in T. 18 N.,
18 R. 18 E.W.M.; also the E $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32, all of the SE $\frac{1}{4}$ of
19 Section 33 and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34, ALL in T. 19 N., R. 18 E.W.M. Jacob
20 and Ella Bowers entered into a contract July 1, 1909, whereby they sold the
21 above described 2084 acres to Henry Kleinberg.

22 Kleinberg filed a Notice of Appropriation May 26, 1909 (DE-110), for up
23 to 200 cfs from First Creek. His intent was to build a ditch parallel to
24 the Wold-Munson Ditch to a proposed reservoir to be located in Section 31,

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1 T. 20 N., R. 18 E.W.M., which would appear to be in Green Canyon. His
2 proposed use of the water was to be irrigation of the lands described as the
3 former Jacob Bowers ranch. There is no indication in the record that any of
4 this development was accomplished; therefore, the Referee maintains the
5 previous decision to discount the Kleinberg Notice of Appropriation (see
6 Report of Referee, Page 63).

7 On June 3, 1913, Ella Bowers, widow of Jacob Bowers, deeded to
8 W. W. Robinson the entire 2084-acre property as described above, which Henry
9 Kleinberg had previously contracted to buy. Robinson acquired the property
10 under the terms of the 1909 contract to Kleinberg including the former Peter
11 Wold undivided half-interest in Wold-Munson Ditch and First Creek water
12 rights. This water right being described as recorded for 1500 inches from
13 First Creek delivered via the Wold-Munson Ditch.

14 On December 24, 1913, W. W. Robinson via quit claim deed conveyed to
15 H. L. McIntyre, C. A. Morrison and F. J. McKeown, respectively, 100/1600,
16 73/1600 and 20/1600 interest in Wold-Munson Ditch and First Creek water
17 rights (DE-195[6]). The water rights acquired by the three owners were a
18 total of 193/1600 interest in Wold-Munson rights appurtenant to the
19 2084 acres W. W. Robinson acquired from Ella Bowers (see description
20 above). The deed states that W. W. Robinson had previously mortgaged all
21 the subject Wold-Munson First Creek water right and the 2084 acres to
22 several other individuals and/or companies. McIntyre, Morrison and McKeown
23 paid \$3,968.56 toward the principal on the total of the mortgages together
24 with the proportionate interest, receiving in exchange 193/1600 of the

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1 subject Wold-Munson water rights. The Referee concludes that the water
2 right transferred without any of the 2084 acres and there is nothing in the
3 record to identify the property owned by any of these individuals.

4 On December 26, 1913, W. W. Robinson transferred to George Albers by
5 quit claim deed 536/1600 interest in Wold-Munson Ditch and First Creek water
6 rights (DE-346). The acquired rights are described as being appurtenant to
7 the same 2084-acre W. W. Robinson ranch described above. The terms of the
8 transaction are parallel to the McIntyre, Morrison and McKeown deal with
9 Albers paying \$11,021.50 toward the mortgage. The one difference is that
10 Albers also acquired a parcel of land described simply as "the land
11 heretofore conveyed by C. W. Johnsone and wife to second party at the
12 instance of first parties, free from any other or further sum created by
13 said mortgagee." The Referee concludes that Albers acquired 536/1600
14 interest in Wold-Munson water rights together with some undefined parcel of
15 land. There is no record as to the lands owned by Albers in 1913.

16 On June 30, 1914, W. W. Robinson conveyed onto Bruce Bonny a mortgage
17 (DE-354) including as security the following lands and water rights: the N $\frac{1}{4}$
18 of Section 8, the N $\frac{1}{4}$ of Section 9, the E $\frac{1}{2}$ SE $\frac{1}{4}$, the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and Lot 1 of
19 Section 4, the NW $\frac{1}{4}$ of Section 3, ALL in T. 18 N., R. 18 E.W.M.; also the SE $\frac{1}{4}$
20 of Section 33 and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34, ALL in T. 19 N., R. 18 E.W.M.;
21 together with all of a one-half interest in the ditch and water rights known
22 as the Wold-Munson Ditch from First Creek, except such portion thereof as
23 has heretofore been conveyed by said parties of the first part hereto to
24 H. L. McIntyre, C. A. Morrison and F. J. McKeown and George Albers, by two

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1 deeds . . . (emphasis added). Other water rights and parcels of land are
2 included in this comprehensive mortgage which the Referee concludes have no
3 bearing on the First Creek water rights under consideration herein.
4 Foreclosure on the above described mortgage by Bruce Bonny resulted in the
5 W. W. Robinson Land Company deed (DE-330) to Bruce Bonny dated June 9,
6 1916. The Court in Cause No. 5335 rendered judgment in favor of Bruce Bonny
7 against the W. W. Robinson Land Company and W. W. Robinson and his wife
8 Jeffie regarding six separate mortgages. Bruce Bonny purchased all of the
9 subject land at a sheriff's sale which led to the deed herein described.
10 This deed under the Seventh Section thereof conveys to Bruce Bonny the
11 identical parcel of land (1200 acres) and Wold-Munson water rights as
12 described above in the discussion of the W. W. Robinson to Bruce Bonny
13 mortgage. All of the terms and conditions as defined in the mortgage are
14 included in the deed.

15 The Referee concludes from the statement on the face of the Water
16 Commissioner's Schedule of First Creek Water Rights (DE-357) regarding
17 foreclosure proceedings ongoing for the W. W. Robinson Ranch that the
18 schedule was prepared during the period June of 1915 to June of 1916. Bruce
19 Bonny filed the foreclosure action during June of 1915 and the deed was
20 signed in June of 1916. It is curious that McIntyre, Morrison, McKeown and
21 Albers do not appear in the Schedule of Rights (DE-357) even though in 1913
22 they acquired, collectively, 729/1600 interest in the Wold-Munson water
23 rights. The First Creek water rights conveyed by W. W. Robinson to
24 McIntyre, Morrison, McKeown, Albers and Bruce Bonny between 1913 and 1916

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1 were derived from the Peter Wold one-half interest in the First Creek water
2 rights as delivered through Wold-Munson Ditch.

3 The water commissioner describes the lands to which 750 inches are
4 appurtenant (DE-357) as the N $\frac{1}{2}$ of Section 8, N $\frac{1}{2}$ of Section 9, E $\frac{1}{2}$ E $\frac{1}{2}$ of
5 Section 4 and NW $\frac{1}{4}$ of Section 3, ALL in T. 18 N., R. 18 E.W.M.; also the SE $\frac{1}{4}$
6 of Section 33 and W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34 in T. 19 N., R. 18 E.W.M.
7 (1200 acres). He identifies the title as held by W. W. Robinson. The
8 750 inches referenced by the commissioner is clearly one-half of the
9 1500 inches recognized by the Court in Munson and Wold vs. May, et al.
10 Decree No. 784 (DE-121). This Court ruled that the water duty was 1 miner's
11 inch under 4-inch pressure per acre irrigated. Thus, the Referee concludes
12 that the Wold-Munson water rights were a total of 1500 inches for
13 1500 acres. Based on this relationship, the numerators in the various
14 fractional water rights are assumed to represent acres. The commissioner
15 explains that the 750 inches are considered to be 320 inches due to the
16 limitations of the available creek flow through Wold-Munson Ditch, except
17 during flood water periods. He also provided a note on DE-357 which
18 explains that all the former Wold-Munson water rights had been sold to
19 owners of land lying above the Cascade Canal and other ditches. The
20 commissioner relied upon the Finding of the Court Munson and Wold vs. May,
21 et al. Decree No. 784 (DE-121) where 1500 inches were recognized.

22 During that same time period, it is obvious that W. W. Robinson and
23 Bruce Bonny were relying on the Notice of Appropriation dated May 27, 1890
24 (DE-118), wherein Alex A. Munson and Peter A. Wold claimed a right for
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1 irrigation of 1600 acres. With this assumption, the deeds to McIntyre,
2 et al. and Albers where 100/1600, 73/1600, 20/1600 and 536/1600 define the
3 water right conveyed make some sense. Even so, use of 1600 is not
4 consistent with the prior Court decrees where 1500 inches and 1 inch per
5 acre is recognized. The Referee can only wonder what Bruce Bonny thought he
6 acquired in 1916 with 729/1600 previously conveyed. It would follow that no
7 more than 21/1600 may have remained of the Peter Wold one-half interest.

8 There are numerous deeds in the record which specifically convey
9 Wold-Munson water rights without the appurtenant land during the period
10 prior to 1917. As discussed above, the Water Commissioner's Schedule of
11 First Creek Water Rights (DE-357) deserves considerable weight in
12 deliberations as to which lands water was being delivered in 1915. Lacking
13 any document other than DE-357 which describes the land upon which Peter
14 Wold's portion of the Wold-Munson water rights were being used prior to
15 adoption of the water code, RCW 90.03, the Referee will consider the
16 1200 plus acres described above for W. W. Robinson as the place of use as of
17 June 30, 1916.

18 The Referee has previously concluded that the perfected water right
19 deriving from Peter Wold's one-half interest is only sufficient water for
20 the irrigation of 160 acres. After evaluating all of the preceding
21 documents, the Referee concludes that the developed First Creek water right
22 sold by Peter Wold to Jacob Bowers was not necessarily or even logically
23 limited to the 160-acre property conveyed (DE-195[3]). All of the deeds
24 granted between 1913 and 1916 are based upon Peter Wold's one-half interest

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1 in First Creek water rights as claimed by Wold and Munson. The County Water
2 Commissioner in DE-357 recognized 750 inches of water within the 1200-acre
3 portion of the W. W. Robinson Ranch he described. That 750 inches reflects
4 half the 1500 inches claimed by Wold and Munson jointly. Believing that
5 DE-357 deserves significant weight as to beneficial use in 1915, the Referee
6 finds that the previous finding of a 160-acre limit is in error and is
7 replaced by a limit of 750 miner's inches (750 acres). The Courts in Munson
8 and Wold vs. May, et al. Decree No. 784 (DE-121) and Faulkner and Sanders
9 vs. Hamilton, et al. Decree No. 2770 determined that each acre required
10 1 miner's inch under 4 inches head (0.02 cfs). The place of use in 1916 is
11 as described on the Water Commissioner's Schedule of First Creek Water
12 Rights (DE-357): the N $\frac{1}{4}$ of Section 8, N $\frac{1}{4}$ of Section 9, E $\frac{1}{2}E\frac{1}{4}$ of Section 4
13 and the NW $\frac{1}{4}$ of Section 3, ALL in T. 18 N., R. 18 E.W.M.; also the SE $\frac{1}{4}$ of
14 Section 33 and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34 in T. 19 N., R. 18 E.W.M.

15 The record does not establish which, if any, of this land was owned and
16 irrigated by McIntyre, Morrison, McKeown or George Albers. Any changes in
17 place of use as a result of the transactions with McIntyre, Morrison,
18 McKeown and Albers, if they actually took place, predate the Surface Water
19 Code and RCW 90.03.380 requirements. Even if the lands of the several
20 owners were described, some evidence of beneficial use, including acres
21 irrigated and quantities of water used by each, would be needed. These
22 factual matters are essential components because each of the named owners
23 subsequently transferred their interest in Wold-Munson Ditch and First Creek
24 water rights. That action in some cases began a long series of transfers,

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1 each contributing to the questions associated with chain of title and
2 quantification. As far as the Referee can determine, due to lack of
3 compliance with the change procedures in RCW 90.03.380, the Wold water right
4 is still appurtenant to the Robinson land described in DE-357, land not
5 served by FCWUA. The Referee declines to recommend confirmation of any
6 water right based on the former Peter Wold undivided one-half interest in
7 the Wold-Munson Ditch and First Creek water rights due to lack of evidence
8 of beneficial use of the water, quantification and chain of title questions.

9 Superior Court Journal II, Page 74 (DE-357) references no First Creek
10 water right associated with James Hamilton. This omission is particularly
11 striking because most of the owners listed in DE-357, other than
12 W. W. Robinson, are direct successors to the James Hamilton right and are
13 listed thereon as water users with their 1877 priority rights acquired from
14 Sallie Fellows. Regardless of the entries or lack thereof on DE-357, the
15 Referee would expect to find some reference throughout the chain of title
16 documents regarding James Hamilton water rights. Many of the deeds make
17 specific reference to the water rights acquired from Sallie Fellows, but do
18 not mention the Hamilton/Ida and Walter Robbins' right. The most graphic
19 example is the 1920 deed from Ida and W. J. Robbins to W. J. Stanhope
20 (DE-331) wherein only the 35 inches acquired from Sallie Fellows is included
21 with the sale of their ranch in the SE $\frac{1}{4}$ of Section 17 and the W $\frac{1}{2}$ E $\frac{1}{2}$ of
22 Section 20, T. 19 N. R. 18 E.W.M. Also included in this deed is specific,
23 detailed reference to Reecer Creek rights and ditch rights of way. The
24 significance of this deed is that Ida and W. J. Robbins had in October of
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1 1900 conveyed fractional portions of the James Hamilton rights to four other
2 property owners retaining for themselves 7/32 interest in the water rights
3 confirmed to James Hamilton by the Court in Decree No. 2770 (DE-124). This
4 deed and DE-357 would appear to suggest that for some reason undisclosed in
5 this proceeding, the James Hamilton rights (both the 1.75 inches of 1877
6 priority and 85.75 inches of 1881 priority) were not recognized by the water
7 commissioner in DE-357 or relied on by Ida and Walter Robbins when they sold
8 their property. There is no evidence in the record that Ida and Walter
9 Robbins owned other property for which the Hamilton rights might have been
10 retained.

11 A lease agreement between W. J. Robbins and J. L. Lambrix dated
12 October 29, 1919, also included reference only to 35 inches of Wold-Munson
13 Ditch rights. The land involved in both documents was the Robbins homestead
14 (the NW $\frac{1}{4}$ of Section 20, T. 19 N., R. 18 E.W.M.) and a quarter section of
15 former NPPR land owned by the W. J. Robbins family since the early 1880s
16 (the SE $\frac{1}{4}$ of Section 17, T. 19 N., R. 18 E.W.M.). Based on these documents,
17 the Referee finds that all the interest of Ida and Walter Robbins in and to
18 the 1877 and 1881 rights to First Creek water derived from James Hamilton
19 were abandoned by the year 1920.

20 Fanny O. Thomas acquired a portion of the James Hamilton rights (a
21 7/32 interest) and in 1916 leased her land to A. L. Rutledge with only
22 35 inches of Wold-Munson Ditch rights. That 35 inches is the Sallie Fellows
23 proportionate interest she acquired in 1899 (DE-123). Here again, the
24 Hamilton rights are not mentioned at all in DE-357.

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1 In contrast to the examples above, we have the former Barthal Zwicker
2 property. Zwicker was one of the five owners who are named in the Sallie
3 Fellows and James Hamilton water right deeds (DE-123 and DE-124). The Water
4 Commissioner's Schedule of First Creek Water Rights (DE-357) shows Zwicker
5 as having 35 inches, which would have been the Sallie Fellows right he
6 acquired via DE-123. Zwicker sold to Glesener in 1904, but unfortunately a
7 copy of that deed is not in the record. The Referee noted this property
8 transaction while reviewing the Chain of Title (DE-113). A deed from
9 Glesener to Harrie Harvey dated June 26, 1911, conveyed the W½W½ of
10 Section 20, T. 19 N., R. 18 E.W.M. with 29/129 interest in Wold-Munson Ditch
11 water rights (DE-344). These rights are specifically attributed to Sallie
12 Fellows and James Hamilton. The land conveyed to Harvey was part of the
13 Zwicker property. This parcel was repossessed in 1917 by Glesener and
14 immediately sold to C. M. Cahoon (DE-125). Another parcel Glesener sold to
15 Cahoon in 1917 was 557 acres lying in the SW¼ of Section 17, E½W½ of
16 Section 20 and the NE¼ and E¾NW¼ of Section 29, T. 19 N., R. 18 E.W.M.
17 together with 100/129 interest in Wold-Munson rights he had acquired from
18 Barthal Zwicker. In the initial Report of Referee at Pages 68 and 69, the
19 Referee concluded that Zwicker's rights totaled 122.5 inches; therefore, the
20 portion conveyed to Cahoon would be 94.96 inches. Further discussion of
21 these water rights appears on Page 46 in regard to FCWUA Exception No. 4.

22 On October 23, 1912, Charles Ollier Robbins and William Von Essen
23 Robbins sold their respective properties to John Shoudy (DE-356). This deed
24 conveyed to Shoudy First Creek water rights and Wold-Munson Ditch rights to
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1 the extent the Robbins brothers had acquired them. They describe,
2 collectively, 11/32 interest in Sallie Fellows 1877 right and 11/32 interest
3 in the James Hamilton rights. As has been discussed previously, Sallie
4 Fellows sold 35/160 inches to William Robbins and 20/160 inches to
5 Charles O. Robbins for a total of 55 inches. Thus, the reference to
6 11/32 interest is somewhat confusing; however, 11/32 is simply a reduction
7 of 55/160. This deed (DE-356) is for Wold-Munson water rights and ditches,
8 not for the land. The Robbins land was also acquired by Shoudy in 1912 via
9 a separate deed. That composite parcel included the NW $\frac{1}{4}$, SW $\frac{1}{4}$ and a narrow
10 strip of the west margin of the NE $\frac{1}{4}$, ALL in Section 21, T. 19 N.,
11 R. 18 E.W.M. The record also contains a November 3, 1919, lease of the
12 former C. O. Robbins and William Robbins land by Shoudy to Anderson with
13 unspecified Wold-Munson water rights (DE-341). Further discussion of the
14 Shoudy/Robbins land in Section 21 appears on Page 42 where FCWUA's second
15 exception is addressed.

16 In sum, during the time period of 1904 to 1920, the James Hamilton
17 water rights were not documented by two of the five owners, claimed in an
18 enlarged quantity by Glesener and combined with the Sallie Fellows rights
19 for the Robbins/Shoudy property. This latter property is the combined
20 C. O. Robbins and William Von Essen Robbins properties as acquired by John
21 Shoudy. As discussed above, the Water Commissioner's Schedule of First
22 Creek Water Rights (DE-357) reflects delivery of only 55 inches of water for
23 the Shoudy property which would be the 1877 Sallie Fellows right.

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1 The water commissioner states in DE-357 that only during spring runoff
2 was 1500 inches carried via the Wold-Munson Ditch. He further states
3 ". . . the half or 750 inches owned by the Robinson people is considered
4 only 320 inches and the amount set out above is the total amount running
5 through the ditch." Taking this statement at face value, we see that the
6 Wold-Munson Ditch did convey up to 1500 inches (30 cfs) of water during
7 spring runoff, but not otherwise. The source of the runoff water is
8 unknown, however, the Referee concludes that it is probable that it was in
9 large part from the Reecer Creek tributaries and Green Canyon. The primary
10 factor in that conclusion is the evidence that the First Creek ditch carries
11 no more than 13.9 cfs of which 50% is lost during conveyance to the current
12 places of use several miles above the W. W. Robinson ranch. The Referee
13 notes that addition of the water quantities on the face of DE-357 using
14 750 inches for W. W. Robinson yields a total of 1080 inches. It is assumed
15 however that the 45 inches listed for W. J. Robbins should have been
16 35 inches to reflect the 1877 right acquired from Sallie Fellows, which
17 would result in 1070 inches. It appears however that during the majority of
18 the irrigation season, 640 inches was delivered to the listed owners.

19 The record also contains many post-1920 chain of title documents as
20 depicted in Appendix 1 at the end of this report. The Referee believes that
21 several of these documents deserve some detailed discussion, while many of
22 the other post-1917 documents were adequately discussed in the Report of
23 Referee and the Supplemental Report of Referee.

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1 Cascal executed a Quit Claim Deed to John Bonny in 1929 (DE-329) which
2 conveyed "an undivided 334/640 of said ditch and of all waters conveyed
3 therein from said First Creek and all rights to divert waters from said
4 First Creek through said ditch; together with all waters or water rights
5 from said First Creek or said Wold-Munson Ditch to which said party of the
6 first part may be entitled." The 334/640 conveyed lacks foundation as the
7 record reflects only the 160 inches of First Creek water right conveyed to
8 Cascal from Elizabeth Dickson in 1920.

9 The record does not establish upon which land Cascal or John Bonny used
10 First Creek water during the period from 1920 until the early 1940s. It is
11 clear however that Bonny conveyed the 334/640 interest he acquired from
12 Cascal in three deeds: October 10, 1943, John Bonny to Clarence Robbins
13 93.5/640; August 11, 1944, John Bonny to Carl D. Robbins 147/640 and
14 September 5, 1944, John Bonny to Walter Serfess 93.5/640. The deeds are,
15 respectively, DE-327, DE-340[1] and DE-337. The only previous reference in
16 the record to 640 inches/acres is the notation on the face of DE-357 where
17 the water commissioner states that the total amount running through the
18 ditch is as set forth thereon. As can be seen from the earlier record,
19 references were to 160 inches (Sallie Fellows deed to Zwicker, et al.
20 DE-123), 1600 inches (W. W. Robinson deed to John Bonny (DE-330), 129 inches
21 (Glesener deed to Harrie Harvey (DE-344)).

22 The Referee concludes that a water right cannot be defined with the
23 current record nor can a post 1920 chain of title for the Faulkner-Sanders
24 160 inches of 1877 water right be ascertained. Neither Cascal nor John

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1 Bonny complied with the mandatory requirements of RCW 90.03.380 to seek
2 approval of changes to the water right in 1920, 1929 and during the 1940s.
3 That neglect and the lack of specific documents which would allow chain of
4 title analysis, quantification of the right and a record of continuing
5 beneficial use on a specified piece of property, leave the Referee no
6 alternative but to recommend denial of a water right based upon the former
7 Faulkner-Sanders 160 inches of 1877 First Creek water right.

8 To the extent that John Bonny enjoyed any portion of the former Peter
9 Wold undivided one-half interest in the Wold-Munson Ditch and water rights
10 (DE-330), the Referee concludes that the same deficiencies as set forth
11 above regarding the Faulkner-Sanders water right apply. Therefore, the
12 Referee cannot recommend confirmation of a water right based upon Peter Wold
13 rights through a chain of title including John Bonny.

14 Having addressed the Faulkner-Sanders portion of the former Alex Munson
15 water right and the Peter Wold undivided one-half interest in the
16 Wold-Munson Ditch and First Creek water rights, the remaining task is to
17 deal with the various specific issues raised in the FCWUA exceptions. The
18 exceptions will be discussed in the same sequence as presented in the
19 exception document.

20 FCWUA's first exception is five pages in length and the thrust of this
21 exception is that the Referee failed to recommend water rights for land
22 owned by J. P. Roan; namely, the W½E½ and SE¼SE½ of Section 20, the SE¼ of
23 Section 17 and a fractional portion of the NE¼ of Section 17, ALL in
24 T. 19 N., R. 18 E.W.M. FCWUA, as a component of their first exception,

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1 refers the Referee to the table on Page 69 of the Report of Referee, which
2 sets forth the Referee's conclusion as to proportionate shares of the Sallie
3 Fellows and James Hamilton portions of the former Alex Munson water rights;
4 i.e., 1877 and 1881 priorities. The Ida and Walter Robbins portions shown
5 add up to 122.5 inches, not 112.5 inches as indicated on Page 2, Line 5 of
6 FCWUA exceptions. FCWUA asserts that the entire 122.5 inches (35 inches of
7 Sallie Fellows 1877, 1.75 inches of James Hamilton 1877 and 85.75 inches of
8 James Hamilton 1881 First Creek rights) should be recommended for
9 confirmation for J. P. Roan land within the FCWUA service area, namely, the
10 SE $\frac{1}{4}$ and a small tract in the S $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17 and the E $\frac{1}{4}$ of Section 20,
11 T. 19 N., R. 18 E.W.M. However, the Referee has previously determined that
12 the Hamilton portion of the right appears to have been abandoned by the
13 Robbins in the early 1900's. FCWUA specifically refers to a lease agreement
14 between W. J. and Ida Robbins and J. L. Lambrix (DE-325[2]). This five-year
15 lease included unquantified water rights from First Creek and Reecer Creek
16 with the following provision: "The intention being that at the end of the
17 third year of this lease, all tillable land, at least 290 acres shall be
18 under cultivation." FCWUA maintains this language establishes that a
19 majority of the ground was irrigated with First Creek water. The Referee
20 does not reach the same conclusion. The wording suggests that the
21 cultivation was prospective, not continuation of an ongoing practice.
22 Cultivation is not synonymous with irrigation as either condition can exist
23 without the other as a prerequisite. Although FCWUA exception suggests that
24 the Robbins family continued to own this land until the mid-1940's the
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1 records show that in 1920, the year after the lease to Lambrix, Ida and
2 Walter Robbins transferred the W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 20 and the SE $\frac{1}{4}$ of Section 17
3 in T. 19 N., R. 18 E.W.M. to W. J. Stanhope on October 18, 1920 (DE-331),
4 with 35 inches of Wold-Munson First Creek water right as acquired from
5 Sallie Fellows (1877 priority). The record is silent as to the number of
6 irrigated acres on October 18, 1920; however, only 35 inches of First Creek
7 water right was transferred to Stanhope with the land. The Referee
8 concludes that in 1920, 35 inches of First Creek water (or 0.70 cfs) was
9 appurtenant to the Robbins land.

10 The Clarence Robbins family acquired the W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 20 and the SE $\frac{1}{4}$
11 of Section 17 in 1929 and continued to own in until 1945 when it was sold to
12 A. J. Reimer with 128.5/640 interest in the Wold-Munson water right. The
13 128.5/640 interest appears to the Referee to be the 35 inches that went with
14 the 1920 sale of the land to Stanhope and 93.5/640 interest that John Bonny
15 sold to Robbins in 1943. FCWUA suggest that the 93.5/640ths is a portion of
16 the 160 inch Faulkner/Sanders right that was appurtenant to the SE $\frac{1}{4}$ of
17 Section 8 and sold from Dickison to Cascal Investment. In 1929 Cascal
18 Investment sold the water right to John Bonny, however, there was no
19 compliance with the change procedures in RCW 90.03.380 to move the water
20 right from the SE $\frac{1}{4}$ of Section 8. Cascal sold the SE $\frac{1}{4}$ of Section 8 in two
21 80-acre parcels during 1934 without First Creek water rights; therefore, the
22 water right is in question.

23 In addition, FCWUA is claiming 93.5/640 interest in the Wold-Munson
24 Ditch and water rights through a deed (DE-337) from John Bonny to Walter

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1 Serfess in 1945. This deed also describes the property now owned by J. P.
2 Roan, specifically the SE $\frac{1}{4}$ of Section 17 and the E $\frac{1}{4}$ of Section 20, in
3 T. 19 N., R. 18 E.W.M. It is not clear what interest Serfess had in this
4 land, as it clearly was owned by the Robbins family at that time. FCWUA
5 speculates that Serfess might have been leasing the land. Later in 1945
6 Robbins sold all of his land to A. J. Reimer. The deed from Robbins to
7 Reimer does not mention the 93.5/640ths interest sold to Serfess. It is
8 clear that the sale and transfer of water rights occurred in 1943 and 1945
9 without compliance with the change procedures in the Surface Water Code, now
10 RCW 90.03.380. There is also nothing in the record to suggest that
11 beneficial use of these rights was being made prior to when they were sold.
12 Although FCWUA suggests that lack of compliance with RCW 90.03.380 should be
13 ignored, the Referee cannot and will not do so. The law is clear that after
14 1917 compliance with change procedures in the statute is necessary in order
15 to change the place of use of a water right.

16 In the exception FCWUA suggests that 338 acres are irrigated within the
17 former Robbins land. However, review of J. P. Roan's affidavit attached as
18 Exhibit N to the exception, states that 100 acres are irrigated in the SE $\frac{1}{4}$
19 of Section 17 and 80 acres are irrigated in the W $\frac{1}{4}$ E $\frac{1}{4}$ of Section 20 (an
20 additional 158 acres is irrigated in Section 21, but this is not part of the
21 former Clarence Robbins/Ida and Walter Robbins property). Mr. Roan does not
22 show any of the land in the E $\frac{1}{4}$ E $\frac{1}{4}$ of Section 20 being irrigated with water
23 from First Creek. Even though Mr. Roan states that 180 acres are being
24 irrigate in the SE $\frac{1}{4}$ of Section 17 and the W $\frac{1}{4}$ E $\frac{1}{4}$ of Section 20, based on the

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1 evidence in the record, a right to irrigate 35 acres is appurtenant to that
2 land.

3 In conclusion, the Referee cannot recommend confirmation of a right for
4 use of any water that was sold and transferred between 1929 and 1945 without
5 compliance with the change procedures in RCW 90.03.380, nor can the Referee
6 recommend confirmation of a right for the Roan land in the E½E½ of
7 Section 20. The Referee does recommend confirmation of a right with a
8 June 30, 1877, date of priority for the diversion of an additional 1.40 cfs
9 (0.70 cfs for irrigation and 0.70 cfs for conveyance loss); 134 acre-feet
10 per year for the irrigation of 35 acres (see Water Duty Discussion on
11 Page 51). The place of use for the 1877 water right shall be amended to
12 include the W½E½ of Section 20 and the SE¼ of Section 17.

13 The claimant's second exception asserts that all of the NE¼ of
14 Section 21, T. 19 N., R. 18 E.W.M. should be included in the place of use
15 for the 1877 and 1881 First Creek water rights. Section 21 is currently
16 owned by J. P. Roan who testified on April 11, 2000, (Pages 30 through 43 of
17 the transcript) that he irrigates 158 acres with First Creek water within
18 the NW¼ and S½ of Section 21, T. 19 N., R. 18 E.W.M. The right previously
19 recommended for confirmation with an 1881 date of priority included a right
20 to irrigate 192.5 acres within the S½ and NW¼ of Section 21. The evidence
21 is clear that since at least the early 1950s, beneficial use of water in
22 this area has been 158 acres of irrigation. The difference between the
23 actual irrigated acres and the earlier recommendation is 34.5 acres. The
24 Referee recommends that the right with the 1881 priority date be reduced by
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1 34.5 acres to 100.25 acres and the quantity of water be reduced
2 proportionately. FCWUA has consistently argued that its water users be
3 granted an "in gross" right that allows use of First Creek water to be
4 limited only by ditch capacity and shares of FCWUA. The Referee continues
5 to decline to make any recommendations not based upon historic and continued
6 beneficial use and compliance with applicable laws. If FCWUA maintains that
7 these 34.5 acres has been irrigated elsewhere, compliance with the change
8 procedures in RCW 90.03.380 would have been necessary.

9 There was no testimony regarding water use in the NE $\frac{1}{4}$ of Section 21.
10 Inclusion of the NE $\frac{1}{4}$ of Section 21 in the service area of the FCWUA was not
11 addressed at all during claimant's presentation at the supplemental
12 hearing. Page 5 of the exception offers a lease between John Shoudy and
13 Peter Anderson as support for the exception. However, the lease describes
14 the NW $\frac{1}{4}$ of Section 21, not the NE $\frac{1}{4}$. The reference to the NE $\frac{1}{4}$ in the
15 exception may have been in error with the intent to describe the NW $\frac{1}{4}$ of
16 Section 21. Since the currently recommended legal description already
17 includes the entire NW $\frac{1}{4}$, the Referee recommends no change. The 1877
18 priority right is for 57.75 acres and the 1881 priority right is for
19 100.25 acres. The recommended instantaneous quantities were calculated at
20 one miner's inch (0.02 cfs) per acre or, respectively, 1.155 cfs and
21 2.005 cfs. It should be noted that 50% conveyance loss quantities were
22 added to each of these rights via the Supplemental Report of Referee, Vol.
23 29A. The resulting quantities were 2.31 cfs and 4.01 cfs, respectively.
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1 FCWUA's third exception seeks to have the N $\frac{1}{2}$ of Section 27, T. 19 N.,
2 R. 18 E.W.M. included in the FCWUA place of use. The Referee is referred to
3 a lease dated July 17, 1916, via which Fanny O. Thomas leased to
4 A. L. Rutledge the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 28, the W $\frac{1}{2}$ of Section 22 and the NW $\frac{1}{4}$,
5 N $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, ALL lying in T. 19 N., R. 18 E.W.M.
6 (DE-342). This lease included all appurtenant water rights and ditches
7 including 35 inches of the waters of First Creek. The import of this lease
8 as represented by FCWUA is that it proves Wold-Munson water rights were
9 appurtenant to the entire area described in this 1916 lease. Fanny Thomas
10 did acquire 35 inches of 1877 Wold-Munson water right from Sallie Fellows in
11 1899 (DE-123) and 7/32 interest in the 1877 and 1881 rights of James
12 Hamilton in 1900 (DE-124). The 1916 lease (DE-342) identifies only the
13 35 inches of Wold-Munson water right acquired from Sallie Fellows in 1899
14 (DE-123). It makes no mention of the portion of the Hamilton right
15 (7/32 interest) Fanny Thomas acquired in 1900 from Ida and Walter Robbins
16 (DE-124). The County Water Commissioner records (DE-357) document delivery
17 of only 35 inches to Fanny Thomas.

18 Nothing more is in the record for the Fanny Thomas land and water
19 rights until September 5, 1944, when Floyd Minor transferred to Walter B.
20 Serfess the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 28, the NW $\frac{1}{4}$, N $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27,
21 T. 19 N., R. 18 E.W.M. The 1944 quit claim deed also assigns a state lease
22 for the W $\frac{1}{2}$ and W $\frac{1}{2}$ E $\frac{1}{2}$ in Section 22 in T. 19 N., R. 18 E.W.M. There is a
23 significant difference between the 1916 lease (DE-342) and the September 5,
24 1944, Quit Claim Deed (DE-338) regarding the transferred Wold-Munson

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1 rights. Only 35 inches was included in the 1916 lease, whereas 128.5/640
2 interest in the Wold-Munson rights is specified in the 1944 Quit Claim
3 Deed. The record does not address how or when the additional 93.5 inches
4 became appurtenant to the Fanny Thomas land. Walter Serfess did acquire
5 93.5/640 interest in the Wold-Munson right from John Bruce Bonny, but that
6 was not until February of 1945 and the deed says it was for use on the SE $\frac{1}{4}$
7 of Section 17 and E $\frac{1}{4}$ of Section 20.

8 The record available for evaluation from the original evidentiary
9 hearing led the Referee to confirm to the former Fanny Thomas lands
10 35 inches of 1877 (Sallie Fellows) water right, 1.75 inches of 1877 (James
11 Hamilton) water right and 85.75 inches of 1881 (James Hamilton) water
12 rights. The record as it now stands requires the Referee to make a contrary
13 recommendation. Fanny Thomas did acquire 7/32 interest in James Hamilton
14 rights; however, by 1915 to 1916 she was asserting no interest in those
15 particular water rights as shown by DE-357 and DE-342. There is no evidence
16 in the record that those rights were ever put to beneficial use on the N $\frac{1}{4}$ N $\frac{1}{4}$
17 of Section 28 or the N $\frac{1}{4}$ N $\frac{1}{4}$ and S $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27. It appears to
18 the Referee that Fanny Thomas had by 1915 to 1916 abandoned the 1.75 inches
19 of 1877 and 85.75 inches of 1881 former James Hamilton water rights.

20 After considering all of the above, the Referee can recommend
21 confirmation of only 35 inches of 1877 First Creek water right for a place
22 of use including the N $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28. Quantification of this
23 water right will be a total of 1.40 cfs, 0.70 cfs for irrigation of
24 35 acres; 134 acre feet per year from April 1 through October 15 and

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1 0.70 cfs for conveyance water during the irrigation season. The place of
2 use for this 35 inches was described in the Supplemental Report of Referee,
3 Vol. 29A to include only the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28. The record
4 shows Fanny Thomas in control of the entire NW $\frac{1}{4}$ N $\frac{1}{4}$ of Section 28 and the N $\frac{1}{2}$ of
5 Section 27, except the SE $\frac{1}{4}$ NE $\frac{1}{4}$ thereof in the year 1916. FCWUA urges
6 inclusion of this entire area in the place of use as it is in the service
7 area of FCWUA. The Referee acknowledges that the Fanny Thomas ownership
8 predates the adoption of RCW 90.03.380. The current recommendation includes
9 120 acres which is inclusive of far more than 35 acres of irrigated land.
10 Therefore, the Referee denies the exception to add additional land to the
11 place of use.

12 FCWUA asserts via their fourth exception that the place of use for the
13 First Creek water rights should be revised to include the W $\frac{1}{2}$ W $\frac{1}{2}$ of
14 Section 20, T. 19 N., R. 18 E.W.M. Evidence was presented at the second
15 supplemental hearing which supports that assertion. The chain of title
16 document (DE-112) shows Glesener acquired the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 20, T. 19 N.,
17 R. 18 E.W.M. by Quit Claim Deed and on June 28, 1911, sold that 160 acres to
18 Harrie Harvey. A United States patent issued to Harrie Harvey on August 19,
19 1912. Glesener transferred to Harrie Harvey 29/129 interest in Wold-Munson
20 water rights as acquired from Bartholomew Zwicker, based upon former rights of
21 Sallie Fellows and James Hamilton. The Referee had previously concluded
22 that the Zwicker/Glesener interest was 122.5 inches, not 129 inches as
23 suggested by the fractional interest reflected in the Glesener transfer,
24 with 30% having a priority date as 1877 and 70% an 1881 priority date (see
25

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1 Report of Referee, Pages 68 through 70). Based on that conclusion, Glesener
2 would have transferred 27.54 inches to Harvey for the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 20 or
3 8.26 inches of 1877 right and 19.28 inches of 1881 right. Although the
4 entire W $\frac{1}{2}$ of Section 20 is in a single ownership today (Olson ranch,
5 formerly White), the W $\frac{1}{2}$ W $\frac{1}{2}$ and E $\frac{1}{2}$ W $\frac{1}{2}$ were in separate ownerships before 1917
6 and for many years thereafter. For that reason and the lack of compliance
7 with RCW 90.03.380, the Referee will describe the water rights as they are
8 appurtenant to those separate parcels.

9 The Referee had previously recommended confirmation of 100 inches of
10 the Zwicker/Glesener right in the Report of Referee, Vol. 29. The chain of
11 title for the remaining 22.5 inches was not provided at the prior
12 evidentiary hearings. Based on the evidence in the record now, the Referee
13 amends the prior recommendation to reflect a total of 122.5 inches acquired
14 by Barthal Zwicker. A total of 94.96 inches can be recommended
15 (28.49 inches of 1877 and 66.47 inches of 1881) for the SW $\frac{1}{4}$ of Section 17,
16 the E $\frac{1}{2}$ W $\frac{1}{2}$ of Section 20 and the NE $\frac{1}{4}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 29, ALL in
17 T. 19 N., R. 18 E.W.M. This 560-acre parcel was sold by Glesener to
18 Cahoon. The W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 20, T. 19 N., R. 18 E.W.M. was sold by Glesener
19 to Harrie Harvey and has appurtenant 8.26 inches of 1877 and 19.28 inches of
20 1881 First Creek water rights (total of 27.40 inches).

21 FCWUA's fifth exception relates to water use within the portion of
22 Section 29, T. 19 N., R. 18 E.W.M. lying north of the KRD canal. This
23 parcel of land lies within the service area of the FCWUA and is a portion of
24 the Olson Ranch (formerly White). The chain of title for this portion of

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1 Section 29 appears to be comprised of at least three separate parts. The
2 NE $\frac{1}{4}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ were purchased from NPPR by Thornily on October 22, 1895,
3 who subsequently lost the land through Sheriff's sale in 1898. On
4 November 20, 1901, Barthal Zwicker was deeded this land by Land Bank
5 Mortgage Company (DE-112 Chain of Title). On Page 34, the Referee discussed
6 this property in relation to the Zwicker ownership and sale to Glesener
7 along with other land in the SW $\frac{1}{4}$ of Section 17 and the W $\frac{1}{2}$ of Section 20,
8 T. 19 N., R. 18 E.W.M. That preceding analysis adequately addresses the
9 Zwicker/Glesener interest in the Munson undivided one-half interest in the
10 Wold-Munson Ditch and First Creek water rights as formerly owned by Sallie
11 Fellows and James Hamilton.

12 The W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 29, T. 19 N., R. 18 E.W.M. was purchased from NPPR
13 on September 3, 1937, by Benjamin White. FCWUA asserts that a portion of
14 this 80 acres is and has been irrigated with First Creek water delivered
15 through the Wold-Munson Ditch. The Referee finds no legal basis for use of
16 First Creek water on the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 29, although that parcel lies
17 within the service area of FCWUA. Benjamin White did not seek authorization
18 to change the place of use of his water rights as required by RCW 90.03.380.

19 A lease from George Albers to J. O. Moen dated September 1, 1921
20 (Exhibit DE-345), is identified by FCWUA as foundation for First Creek water
21 rights for the S $\frac{1}{2}$ of Section 29, T. 19 N., R. 18 E.W.M. and is the first
22 document in the record for the S $\frac{1}{2}$ of Section 29, other than the chain of
23 title sheet. The lease for the S $\frac{1}{2}$ of Section 29 also includes the E $\frac{1}{2}$ E $\frac{1}{2}$ of
24 Section 32 in T. 19 N., R. 18 E.W.M., the NE $\frac{1}{4}$ of Section 5 and the S $\frac{1}{2}$ NW $\frac{1}{4}$ and

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28

1 W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4 in T. 18 N., R. 18 E.W.M. Included in the lease
2 agreement is the following language: "together with all irrigating ditches
3 and water rights appurtenant to the premises aforesaid . . ." Also
4 contained in the lease is language which refers to "repair work upon the
5 main canal, which supplies said land with water from First Creek, but any
6 expense for a ditch tender upon said main canal chargeable to the lessor's
7 interest in said ditch shall be borne by the lessee." This lease is the
8 first document in the record which suggests Albers owned the S $\frac{1}{4}$ of
9 Section 29. All of the land leased by Moen, except the S $\frac{1}{4}$ of Section 29, is
10 part of the former W. W. Robinson Ranch. The record shows that in the early
11 1900s a portion of the Wold-Munson rights were appurtenant to the Robinson
12 Ranch. As discussed earlier in this report on Page 27, the evidence shows
13 Albers was deeded 536/1600 interest in the Wold-Munson Ditch and First Creek
14 water rights by W. W. Robinson (DE-346). That deed was executed on
15 December 26, 1913. It did not explain the derivation of the 536/1600
16 conveyed or whether the water rights were transferred to other lands. It
17 does state the water rights were appurtenant to Section 9, N $\frac{1}{2}$ of Section 8,
18 the SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ and Lot 1 of Section 4, NE $\frac{1}{4}$ of Section 5 and
19 NW $\frac{1}{4}$ of Section 3, ALL in T. 18 N., R. 18 E.W.M. and E $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ of
20 Section 32, SE $\frac{1}{4}$ of Section 33, W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34, ALL in T. 19 N.,
21 R. 18 E.W.M. Judging from the 1921 Albers to Moen lease, Albers acquired
22 not only an interest in Wold-Munson water rights, but at least 480 acres
23 formerly owned by W. W. Robinson. Rather than concluding from the lease
24 that the First Creek water is appurtenant to the S $\frac{1}{4}$ of Section 29, it would
25
26

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1 be more reasonable to conclude the right was appurtenant to the other
2 described lands that were once owned by W. W. Robinson, who clearly had an
3 interest in the Wold-Munson rights. However, none of the land described in
4 the lease is described as having First Creek water rights on DE-357
5 (Commissioner's Schedule).

6 On June 16, 1939, Albers Brothers Milling Company deeded to Ben F.
7 White (DE-347) that portion of the S $\frac{1}{2}$ of Section 29, T. 19 N., R. 18 E.W.M.
8 lying north of the KRD canal together with 536/1600 interest in an undivided
9 one-half interest in Wold-Munson Ditch and First Creek water rights.

10 FCWUA urges the Referee as part of Exception No. 5 to recognize
11 operation of adverse possession due to the decades of use of the entire flow
12 in Wold-Munson Ditch by the FCWUA. They advise that no complaint has been
13 raised by any other property owner for 50 to 70 years. The Referee denied
14 FCWUA's adverse possession arguments in the Supplemental Report of Referee,
15 Vol. 29A. No new legal or factual argument has been provided therefore the
16 Referee declines to revisit the record. It appears to the Referee however
17 that the active water market documented by the many deeds in the record
18 precludes any argument regarding adverse possession. The real issue is the
19 long disregard of the mandatory change procedures of RCW 90.03.380
20 complicated by the hit or miss chain of title record. FCWUA acknowledges
21 the neglect of the owners while urging the Referee to somehow make them
22 whole cloth based on equity arguments. This the Referee cannot accomplish
23 and will not recommend a water right without clear evidence as to perfected
24 beneficial use, continued use without abandonment or relinquishment, chain

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1 of title for the water rights and a factual record as to acres irrigated and
2 quantities of water beneficially used.

3 FCWUA's sixth exception seeks revision from 5 acre-feet per year per
4 acre to 7 acre-feet per year per acre for the annual water duty assigned to
5 the rights confirmed. The exception is based on a letter report dated
6 March 2, 1997, by Richard C. Bain, Jr., a consulting engineer hired by FCWUA
7 (DE-176). The exception suggests that the letter report supports a
8 conclusion that 7 acre-feet per acre be awarded to the claimant. The
9 Referee does not reach that conclusion. Mr. Bain very clearly states in the
10 last paragraph on Page 2 that ". . . First Creek Ditch supplies about 2.14
11 acre-feet/acre on average and 4.20 acre-feet/acre in a year of plentiful
12 water (e.g. 1996)." This led the Referee to conclude that the original
13 recommendation was too generous and should be revised down from the
14 5 acre-feet per year per acre recommended originally. The claimants seem to
15 be relying on the last sentence on page two that states: "Based on other
16 evaluations in this general area of the Kittitas Valley (e.g. within the
17 KRD) I would expect irrigation water need to be about 7 acre-feet per acre
18 for pasture and hay crops . . ." Water need is not the issue here. The
19 quantity of water that has been put to beneficial use determines the
20 quantity of water for which a right can be confirmed. Mr. Bain, a
21 recognized expert witness in this adjudication, very clearly states that
22 4.20 acre-feet per year per acre irrigated is the maximum that can be
23 expected to be delivered through the First Creek Ditch. His analysis
24 assumed a water supply of 2688 acre-feet during a year of plentiful water, a
25

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1 20% conveyance loss and 640 irrigated acres. There is no evidence that
2 7 acre-feet per year per acre can be delivered or ever has been delivered to
3 the land served by the First Creek Ditch. The Referee recommends that the
4 annual quantity for each right be based on Mr. Bain's 2688 acre-feet with
5 the conveyance loss at 50% as recommended by the Referee in the Supplemental
6 Report of Referee and 350.5 acres of recommended water rights which
7 calculates to 3.83 acre-feet per year per acre irrigated. The table on
8 Page 61 presents the 1877 and 1881 water rights as revised to reflect the
9 recommendations in this report. The Schedule of Rights, Pages 97 and 101,
10 have also been amended as to acres irrigated, instantaneous quantity, annual
11 quantity and place of use.

12 It is important to note that due to the 13.90 cfs capacity of the
13 Wold-Munson Ditch, all of the 1881 water rights are being recommended with a
14 slightly reduced instantaneous quantity for both the irrigation and
15 conveyance (see table on Page 61 of this report). A reduction scenario was
16 also applied by the Referee in the Supplemental Report, Vol. 29A, but with a
17 larger correction factor (see table on Page 60 of this report). That
18 reduction calculation is simply comparison of the total calculated 1881
19 water right and the ditch capacity of 13.90 cfs, minus the total of the 1877
20 water right. With 6.58 cfs of 1877, there is 7.32 cfs available capacity in
21 the Wold-Munson Ditch to carry the 1881 right water. The 186 inches of 1881
22 water right with the conveyance allowance of 50% applied would yield a total
23 of 7.44 cfs. That quantity is only 0.12 cfs greater than the available
24 ditch capacity. In order to equitably balance the water rights for the
25
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1 recommendations, the Referee calculated that 98.38% of the 7.44 cfs could be
2 recommended. The resulting minor impact on the five segments of the former
3 James Hamilton water rights is displayed in the table on Page 61 of this
4 report.

5 FCWUA's seventh exception relates to the Referee not recommending water
6 rights for the Green Canyon shareholders who are Scuba, Morse, Hoff and
7 Clarke. The first record of any interest in the Wold-Munson Ditch and First
8 Creek water rights for the subject lands is a 1920 deed (DE-349) from
9 C. A. Morrison to Henry Washburn. That deed conveyed to Washburn 73/1600
10 interest in the former Peter Wold undivided one-half interest in the
11 Wold-Munson Ditch as acquired by Morrison from W. W. Robinson in 1913. Not
12 only is this deed three years after adoption of the Surface Water Code and
13 specifically RCW 90.03.380 (the change procedures), but the deficiencies in
14 the record as previously described for the Peter Wold water right prevent
15 quantification of a water right. The Referee discussed the record
16 associated with Green Canyon Ranch at length in the Supplemental Report of
17 Referee, Vol. 29, none of which FCWUA has seen fit to address. The Referee
18 continues to recommend denial of First Creek water rights for the 39 shares
19 of the Wold-Munson Ditch held by the Green Canyon claimants.

20 FCWUA's eighth exception also attempts to address the Peter Wold
21 rights. It makes reference to several deeds and a chain of title for the S $\frac{1}{4}$
22 of Section 8, T. 18 N., R. 18 E.W.M., which the Referee cannot find in the
23 record. The exception states that Peter Wold owned land in the S $\frac{1}{4}$ of
24 Section 8, but then goes on to state that the SW $\frac{1}{4}$ of Section 8 was purchased
25

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1 by Munson from J. H. Foss on April 9, 1890, and that Munson received a
2 patent for the SE $\frac{1}{4}$ of Section 8 in 1902. The Referee finds no document in
3 the file which shows the chain of title for the SW $\frac{1}{4}$ of Section 8, T. 18 N.,
4 R. 18 E.W.M. or any evidence that Peter Wold or W. W. Robinson owned that
5 property. Robinson did own the NW $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M.
6 which is included in Exhibit DE-195[6] submitted by Neil J. Hoff.

7 In essence, FCWUA looks to the Robinson deeds to McIntyre, Morrison,
8 McKeown and Albers for, respectively, 100/1600, 73/1600, 20/1600 and
9 536/1600 interest in the Peter Wold water right for Green Canyon claimants
10 and for Olson Ranch in the S $\frac{1}{4}$ of Section 29, T. 19 N., R. 18 E.W.M. As has
11 been discussed at length earlier in this report, water rights cannot be
12 recommended for confirmation based upon the former Peter Wold water right
13 (see Page 30 of this report for specifics).

14 Exhibit DI-358 was reserved for production of a copy of the water
15 rights purchase agreement between J. P. Roan and Trendwest. Questions posed
16 to counsel for FCWUA by the Referee and claimant Mary Burke, Court Claim
17 No. 01475, led to the commitment by FCWUA to not only produce the document,
18 but provide copies to Lawrence Martin, counsel for Pat and Mary Burke,
19 Ecology and the Attorney General's Office. The Burkes and Ecology reserved
20 the right to provide written responses upon production of the sale
21 agreement. However, FCWUA did not submit the document. Although the record
22 does not suggest that the separate agreement between Dr. E. James Nelson and
23 Trendwest was to be produced, the significance of that sale of water rights
24 is no less important factually. Lacking those documents and having been

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1 referred to the existing Court documents by Mr. Cole, the Referee looked to
2 Court Document No. 13,332 filed with the Court on August 26, 1998, which is
3 the Petition for Order Pendente Lite RE: First Creek Water Users Association
4 Water Rights, Claim No. 00648 Swauk Creek, Kittitas County. The petition
5 was filed with the Court by Trendwest Resorts, Inc. and First Creek Water
6 Users Association. Contained on Page 5 of Document No. 13,332 is a table
7 which sets forth the quantities of water rights purchased by Trendwest from
8 J. P. Roan and E. James Nelson. Rather than risking an error in creating a
9 summary of those facts, the Referee has taken the liberty to set forth the
10 table in its entirety.

11 TABLE 1:
12 **First Creek Water Users Association Water Rights**

| Name | FCWUA Shares | Irrigated Acres | Annual Quantity | Instantaneous Quantity |
|-----------------|---------------|-----------------|------------------|------------------------|
| J. P. Roan | 231.35 | 150 | 750.0 af | 5.02 cfs |
| E. James Nelson | 128.50 | 83 | 415.0 af | 2.78 cfs |
| Total | 359.85 | 233 | 1165.0 af | 7.80 cf |

| Priority Date | Priority | Total |
|------------------|--------------|------------|
| November 2, 1877 | June 1, 1881 | |
| Priority Date | Priority | |
| Annual Quantity | 348.6 a.f. | 813.4 a.f. |
| Instantaneous | | 1,162 a.f. |
| Quantity | 1.4 c.f.s. | 2.5 c.f.s. |
| Conveyance Loss | 1.4 c.f.s. | 2.5 c.f.s. |
| Total | 2.8 c.f.s. | 5.0 c.f.s. |
| Instantaneous | | 7.8 c.f.s. |
| Quantity | | |

23 The table presented above appears to be a presentation of the numeric
24 values calculated from a share based formulae; i.e., 231.5/640 for
25

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J. P. Roan and 128.5/640 for Dr. Nelson. The resulting percentage values of 36.2% for J. P. Roan and 20.1% for Dr. Nelson were then multiplied by the total instantaneous and annual quantities recommended by the Referee for 1877 and 1881 in the Supplemental Report of Referee, Vol. 29A. Those values are presented in a second table in Court Document No. 13,332 on Page 2 as set forth below.

TABLE 2:

| | November 2, 1877 <u>Priority Date</u> | June 1, 1881 <u>Priority</u> | Total |
|------------------------|--|---------------------------------|-------------|
| <u>Annual Quantity</u> | 642.5 a.f. | 1,452.5 a.f. | 2,075 a.f. |
| <u>Instantaneous</u> | | | |
| <u>Quantity</u> | 2.49 c.f.s. | 4.46 c.f.s. | 6.95 c.f.s. |
| <u>Conveyance Loss</u> | 2.49 c.f.s. | 4.46 c.f.s. | 6.95 c.f.s. |
| <u>Total</u> | 4.98 c.f.s. | 8.92 c.f.s. | 13.9 c.f.s. |
| <u>Instantaneous</u> | | | |
| <u>Quantity</u> | | | |

The Referee notes that there is a typographic error in the acre-feet for the 1877 priority water right where 642.5 should in fact read 622.5. No other error in the numbers in either table are apparent.

The final information in Document No. 13,332 which warrants specific mention is that the place of use described on Page 3, Lines 11½ through 15½ describes 150 acres of irrigation in Section 21, T. 19 N., R. 18 E.W.M. for J. P. Roan and 83 acres of irrigation in Section 28, T. 19 N., R. 18 E.W.M. for Dr. Nelson. Pages 97 and 101 describe the lands in those sections to which 1877 and 1881 water rights are appurtenant. There are significant changes in each of these water rights to reflect the preceding analysis.

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1 It is evident from the preceding that Dr. Nelson sold 100% of his
2 128.5 shares of FCWUA to Trendwest. It is anticipated that this sale of the
3 water rights appurtenant to the Section 28 land described above will result
4 in a change of place of use. That process is spelled out in RCW 90.03.380
5 and can be initiated at the discretion of an interested party.

6 J. P. Roan sold to Trendwest 70% of the 330.5 shares of FCWUA he owned
7 leaving him 99.15 shares. The place of use described above for the 1877 and
8 1881 water rights includes approximately three quarters of Section 21,
9 T. 19 N., R. 18 E.W.M. That area encompasses the NW $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$
10 and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said section within which J. P. Roan testified he irrigates
11 158 acres. Trendwest purchased the water rights for 150 of those irrigated
12 acres. The preceding discussion regarding transactions between Trendwest
13 and J. P. Roan and Dr. Nelson is presented to perpetuate the facts.

14 FCWUA urges the Referee to recommend a place of use inclusive of the
15 entire service area of the water users association and for confirmation of
16 13.90 cfs, 695 miner's inches. The place of use desired is the same as
17 asserted in Court Claim No. 00648 and the FCWUA Articles of Incorporation
18 (DE-200). The basis for this assertion is beneficial use on all of the
19 described land since at least the early 1920's. FCWUA asks the Referee and
20 the Court to ignore the requirements of RCW 90.03.380 and confirm the entire
21 service area. The Referee has explained at great length that not only is
22 RCW 90.03.380 a mandatory obligation, but the basis for confirmation of the
23 Peter Wold and Faulkner-Sanders portions of the Wold-Munson Ditch and First
24 Creek water rights have not been established.

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1 While counsel for FCWUA asserts that all of the currently irrigated
2 land within their service area has been irrigated with First Creek water
3 since at least the early 1920s, the record does not support that
4 contention. John Bonny deeded major water rights to land within the FCWUA
5 service area in the 1943 to 1945 period (DE-340[1], DE-340[2] and DE-337).
6 There is no evidence that any of these water rights were exercised for
7 irrigation of land in the FCWUA service area before the early 1940s and
8 certainly no legal basis for such use has been included in the record.

9 The 536/1600 interest in the Wold-Munson Ditch and First Creek water
10 rights conveyed by Albers Brothers Milling Company to Walter White in 1939
11 lacks sufficient chain of title evidence to establish continuous use before
12 that date. In addition, at least 80 acres of the Walter White ranch was
13 purchased from NPPR in the late 1930s without water rights. The Referee can
14 come to no other conclusion than the one relied on throughout the analysis
15 of Court Claim No. 00648: Any recommended water right must be based upon
16 proof of beneficial use by Peter Wold or Alex Munson and continued use on
17 specific lands with a documented chain of title. That conclusion precludes
18 confirmation of an in gross place of use description inclusive of the entire
19 FCWUA service area. If at the conclusion of deliberations and ideally
20 before entry of the Conditional Final Order for Swauk Creek, Subbasin No. 4,
21 FCWUA desires an amended place of use, they can utilize RCW 90.03.380 to
22 seek approval from Ecology. The shares of FCWUA cannot control which
23 portions of the service area are confirmed water rights or the
24 quantification of those rights.

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REPORT OF REFEREE
ALEX MUNSON UNDIVIDED ONE-HALF INTEREST

| PROPERTY OWNER | 1877 | | | 1881 | | | COMBINED ACRES | COMBINED Qi |
|---------------------------------|------------------|---------|----------|------------------|-------|----------------|-------------------|----------------|
| | ACRES/ INCHES | Qi | | ACRES/ INCHES | Qi | ADJUSTED Qi | | |
| IDA & WALTER ROBBINS | | | | | | | | |
| BARTHAL ZWICKER | 30.00 | 0.600 | | 70.00 | 1.400 | | 100.00 | 2.00 |
| WILLIAM VON ESSEN ROBBINS | 36.75 | 0.735 | | 85.75 | 1.715 | | 122.50 | 2.45 |
| CHARLES OLLIER ROBBINS | 21.00 | 0.420 | | 49.00 | 0.980 | | 70.00 | 1.40 |
| FANNY O. THOMAS | 36.75 | 0.735 | | 85.75 | 1.715 | | 122.50 | 2.45 |
| TOTALS | [124.50] | [2.490] | (290.50) | (5.810) | | | 415.00 | 8.30 |

NOTE: [] Brackets = Recommended quantities for 1877 water right.
() Parentheses = Recommended quantities for 1881 water right.

SUPPLEMENTAL REPORT OF REFEREE
ALEX MUNSON UNDIVIDED ONE-HALF INTEREST

| PROPERTY OWNER | 1877 | | | 1881 | | | | | 1877 & 1881 COMBINED ACRES ADJUSTED Qi | |
|--------------------------------|------------------|---------|-----------------------|------------------|-------|-----------------------|----------------|--------------------|---|---------|
| | ACRES/ INCHES | Qi | CONVEY- ACNE Qi | ACRES/ INCHES | Qi | CONVEY- ANCE Qi | ADJUSTED Qi | CONVEY- ANCE Qi | | |
| IDA & WALTER ROBBINS | | | | | | | | | | |
| BARTHAL ZWICKER | 30.00 | 0.600 | 0.600 | 70.00 | 1.400 | 1.400 | 1.075 | 1.075 | 100.00 | 3.350 |
| WILLIAM VON ESEN ROBBINS | 36.75 | 0.735 | 0.735 | 85.75 | 1.715 | 1.715 | 1.316 | 1.316 | 122.50 | 4.102 |
| CHARLES OLLIER ROBBINS | 21.00 | 0.420 | 0.420 | 49.00 | 0.980 | 0.980 | 0.752 | 0.752 | 70.00 | 2.344 |
| FANNY O. THOMAS | 36.75 | 0.735 | 0.735 | 85.75 | 1.715 | 1.715 | 1.316 | 1.316 | 122.50 | 4.102 |
| TOTALS | [124.50] | [2.490] | [2.490] | (290.5) | 5.810 | 5.810 | (4.460) | (4.460) | *415.00 | *13.900 |

NOTE: [] Brackets = Recommended quantities for 1877 water right.
() Parentheses = Recommended quantities for 1881 water right.
* Asterisk = Total of 1877 Qi, 1877 Conveyance Qi, 1881 adjusted Qi and
 1881 adjusted conveyance Qi.

SECOND SUPPLEMENTAL REPORT OF REFEREE
ALEX MUNSON UNDIVIDED ONE-HALF INTEREST

| PROPERTY OWNER | 1877 | | | 1881 | | | | | 1877 & 1881 COMBINED ADJUSTED ACRES Qi | |
|---------------------------|------------------|---------|--------------------|------------------|-------|--------------------|-------------|--------------------|--|---------|
| | ACRES/ INCHES | Qi | CONVEY- ACNE Qi | ACRES/ INCHES | Qi | CONVEY- ANCE QI | ADJUSTED Qi | CONVEY- ANCE Qi | | |
| IDA & WALTER ROBBINS | 35.00 | 0.700 | 0.700 | | | | | | 35.00 | 1.400 |
| BARTHAL ZWICKER | 36.75 | 0.735 | 0.735 | 85.75 | 1.715 | 1.715 | 1.423 | 1.423 | 122.50 | 4.316 |
| WILLIAM VON ESSEN ROBBINS | 36.75 | 0.735 | 0.735 | 63.80 | 1.276 | 1.276 | 1.423 | 1.423 | 100.55 | 4.316 |
| CHARLES OLLIER ROBBINS | 21.00 | 0.420 | 0.420 | 36.45 | 0.729 | 0.729 | 0.813 | 0.813 | 57.45 | 2.466 |
| FANNY O. THOMAS | 35.00 | 0.700 | 0.700 | | | | | | 35.00 | 1.400 |
| TOTALS | [164.50] | [3.290] | [3.290] | (186.0) | 3.720 | 3.720 | (3.659) | (3.659) | *350.50 | *13.900 |

NOTE: [] Brackets = Recommended quantities for 1877 water right.
() Parentheses = Recommended quantities for 1881 water right.
* Asterisk = Total of 1877 Qi, 1877 Conveyance Qi, 1881 adjusted Qi and 1881 adjusted conveyance Qi.

1 COURT CLAIM NO. 12061 -- Bernard Paul Knoll
2 12062

3 Bernard Paul Knoll filed a comprehensive set of exceptions with the
4 Court seeking revision of the Supplemental Report of Referee for Subbasin
5 No. 4 (Swauk Creek), Vol. 29A. The exception statements and assertions
6 consist of four pages and have forty pages of supporting documentation. On
7 March 10, 1997, Bernard Knoll represented himself at the Referee's Second
8 Supplemental Hearing and provided testimony. Exhibit No. DE-360 (the full
9 44-page Bernard Knoll exception document and supporting attachments) was
10 admitted.

11 As suggested by Bernard Knoll, the Referee will address the water right
12 claims sequentially by diversion; i.e., United States Forestry Service
13 (USFS) ditch (located above ditch "B"), ditch "B" and ditch "A." Due to the
14 extensive presentation of facts in the Supplemental Report of Referee on
15 Pages 54 through 62, the Referee will rely on those facts, unless it is
16 established that an error or omission needs to be corrected.

17 One such error in the Supplemental Report of Referee is on Page 55,
18 Line 5 where a statement is made indicating Lot 4 of Cromarty's Short
19 Plat 77-05 contains a portion of the Fourth of July mining claim. In fact,
20 Lot 4 contains portions of the Big Nugget and Gold Bar mining claims
21 totaling 12.09 acres. Also on Page 55 is an error as to acres irrigated.
22 Testimony of Bernard Knoll indicates a total of 10 acres are irrigated as
23 opposed to the 7 acres described by the Referee. Those errors on Page 55
24 are hereby corrected.

25
26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 The first exception to be addressed is related to use of a point of
2 diversion located north of the Knoll property on USFS property. It is
3 located 1700 feet north and 200 feet west of the south quarter corner of
4 Section 36. The Referee will refer to this diversion as "USFS ditch" for
5 convenience. The ditch is taken out of Williams Creek 900 to 1000 feet
6 upstream from diversion "B" at a point just below the confluence of Cougar
7 Gulch Creek and Williams Creek. The ditch passes through timber and brush
8 in a southerly direction entering the Bernard Knoll property from USFS land,
9 near the intersection of Williams Creek and the north line of the Big Nugget
10 claim. The ditch rejoins Williams Creek about 50 feet north of the
11 diversion serving ditch "B." The Referee inadvertently left analysis of
12 this ditch and associated claim of Bernard Knoll out of the supplemental
13 report, thus the following presentation is the first on this point of
14 diversion.

15 Bernard Knoll asserts water rights for the irrigation of 3 acres,
16 domestic supply, stock water, mining and fire control. The earliest record
17 of use of this ditch is testimony by Jack Kirsch wherein he recalled working
18 on the ditch for the property owner in 1928. His testimony did not indicate
19 the volume of water used; however, mention was made of using the water for
20 stock, irrigation and running sluice boxes in the area. This diversion and
21 ditch do not appear on Mineral Survey No. 910. Mr. Knoll believes this is
22 because the ditch goes through heavy brush and trees, making it difficult to
23 see. There was no evidence of water use from this ditch prior to 1928.
24
25

26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 The Referee concluded in the supplemental report that the Riparian
2 Doctrine could not be the basis for water rights on the mining claims for
3 which rights are being asserted herein. That conclusion was based on
4 evidence showing that W. A. Wells filed an application for a patent on this
5 land in 1918, after adoption of the Surface Water Code in 1917. Further
6 review of the record has lead the Referee to change his conclusion. The
7 priority date for water rights under the Riparian Doctrine is set when steps
8 are first taken to sever the land from federal ownership. In most cases,
9 filing the application for a homestead (or a patent) is that first step, but
10 not in this case. Documents that are part of Exhibit DE-279 entered by Fred
11 and Tim Knoll show that W. A. Wells was in possession of the land in
12 question by April of 1905 and Mineral Survey No. 910 was part of the
13 government's process required for Wells to obtain the patent and ownership
14 of the land. In September of 1909 Wells filed a declaration of his intent
15 to file an application for a patent. In October of 1909 Edmond Gray filed a
16 homestead entry for the same lands, which was protested by Wells. The
17 contest between Wells and Gray was not resolved until October 16, 1917,
18 preventing Wells from moving forward with his plans to apply for the
19 patent. Following the United States Land Department's ruling in Well's
20 favor, he filed his application and ultimately received a patent for the
21 land in 1919. It is clear that he first took steps to sever the land from
22 federal ownership when he filed his declaration of intent to file an
23 application for a patent.

24

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 The testimony provided by Jacob Kirsch establishes that Williams Creek
2 water was diverted through the USFS ditch prior to 1932 and no evidence of
3 five years of nonuse is evident. It is therefore concluded that a water
4 right based on the Riparian Doctrine was perfected and maintained up to the
5 present time. The remaining question before the Referee is the lack of an
6 RCW 90.14 claim which describes the point of diversion for this ditch. The
7 Referee concludes that the water right claims for these mining claims are
8 sufficiently inclusive to include the use of water for irrigation on the
9 3 acres asserted by Bernard Knoll and for stock water. Water uses for
10 mining and domestic supply will be discussed later in this analysis.

11 The Referee concludes that WRC Nos. 00599 and 097175 substantially
12 comply with RCW 90.14.041 in all respects as related to irrigation and stock
13 water except description of the point of diversion for the USFS ditch.
14 Evidence was not provided to allow evaluation of conveyance losses;
15 therefore, 0.10 cfs per acre has been applied. Lacking evidence to do
16 otherwise, the Referee recommends stock water flow of 0.30 cfs October 1
17 through April 30. With those deficiencies in mind, the Referee recommends
18 confirmation of a right to divert 0.30 cfs; 30 acre-feet per year from
19 Williams Creek for irrigation of 3 acres and 1 acre-foot for stock water
20 consistent with the historic use. The point of diversion shall be at ditch
21 "B." Bernard Knoll is therefore advised to comply with the change
22 procedures in RCW 90.03.380 to seek authorization for the diversion into the
23 USFS ditch. The water right priority date will be September 30, 1909, when
24 W. A. Wells filed a declaration of his intent to homestead. This date is

25
26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 acknowledged to be after the May 10, 1905, Federal withdrawal of the
2 unappropriated waters of the Yakima River and its tributaries (see Pages 8
3 through 10 of the Report of Referee, Subbasin No. 4 (Swauk Creek), Vol. 29
4 for a full discussion). In spite of the withdrawal, the Referee believes
5 that the long history of development of these mining claims prior to the
6 federal withdrawal warrants a decision to confirm for these 3 acres albeit
7 with a 1909 priority date. W. A. Wells took possession of these mining
8 claims during April of 1905.

9 During testimony regarding use of ditch "B," Bernard Knoll withdrew his
10 exception to the Referee recommending a right for 1 acre of irrigation. He
11 also concurs in the water duty of 0.10 cfs; 10 acre-feet per acre as
12 applied. The remaining exceptions for ditch "B" are the failure of the
13 Referee to recommend a water right for mining, domestic supply, wildlife and
14 fire control. The recommendation is for a total diversion of 0.11 cfs;
15 11 acre-feet per year for irrigation of 1 acre and stock water (see Page 140
16 of the Supplemental Report of Referee for details). The Court denied
17 Bernard Knoll's exception asking for confirmation of a water right for fire
18 control and did not remand that exception to the Referee, therefore, it will
19 not be discussed any further.

20 Mr. Knoll is asserting a right to use Williams Creek for domestic
21 supply. At the time of the second supplemental hearing, Bernard Knoll had
22 built or was building a log cabin on his property near the north line of the
23 Big Nugget claim, west of Williams Creek and is apparently seeking a water
24 right for the cabin. No house or cabin is shown on Mineral Survey No. 910

25
26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 in Big Nugget or on the portion of Gold Bar owned by Bernard Knoll, nor does
2 the record show that historically there was a cabin or home on the
3 property. There is no evidence in the record to show that water has been
4 diverted from Williams Creek for domestic supply on the Bernard Knoll
5 property. Additionally, it is clear that the home for which a domestic
6 right is being asserted was recently constructed. With no record to show
7 that it is a replacement for an existing home, the Referee cannot recommend
8 confirmation of a domestic water right under Court Claim No. 12062. In
9 order to obtain a water right for the recently constructed cabin from a
10 surface water source, Mr. Knoll needs to follow the process in RCW 90.03.250
11 for obtaining a water right permit.

12 The next exception regarding ditch "B" is to the Referee's not
13 recommending a water right for mining. As explained in the Supplemental
14 Report of Referee, Page 62, a record of quantifiable water rights for mining
15 was not established; therefore, the Referee was unable to progress further
16 with analysis of historic uses for mining. The ditch "B" diversion is
17 located on Bernard Knoll's property; however, use of water other than for
18 1 acre of irrigation and stock water on Lot 4 of Cromarty's Short Plat 77-05
19 has not been established by testimony or evidence. The general statements
20 regarding placer mining in the vicinity, or even on the Gold Bar claim, lack
21 sufficient detail to determine a quantifiable mining right was perfected on
22 the portion of Bernard Knoll's property lying west of Williams Creek. Even
23 assuming such use occurred, the record does not include instantaneous or
24 annual quantities of water used.

25
26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 During review of the record related to the RCW 90.14 claims, the
2 Referee discovered an error of some consequence in the Supplemental Report
3 of Referee discussion for WRC Nos. 00599, 00600 and 097175 (see Page 60,
4 Lines 1 through 7). The record is accurate in that none of the three claims
5 includes mining as a purpose of use. The Referee seems to have invented
6 (possibly due to wishful thinking) the following statement at Line 5:
7 ". . . although industrial use is claimed which could be considered to
8 include mining." This statement is without foundation as industrial use
9 does not appear on any of the three claim forms listed above. The Referee
10 finds no alternative but to correct the Supplemental Report of Referee on
11 Page 60 by striking that portion of Line 5 relating to industrial use. The
12 purpose(s) of use is a required component of each RCW 90.14.041 claim;
13 therefore, the listed uses represent limits to the claimed right and failure
14 to file results in waiver and relinquishment:

15 **RCW 90.14.071 Failure to file claim waives and relinquishes**
16 **right.** Except as provided in Section 5 of this act or as excepted
17 from filing by RCW 90.14.041, any person claiming the right to
18 divert or withdraw waters of the state as set forth in
19 RCW 90.14.041, who fails to file a statement of claim as provided
20 in RCW 90.14.041, 90.14.043, or 90.14.068 and in RCW 90.14.051 and
21 90.14.061, shall be conclusively deemed to have waived and
22 relinquished any right, title, or interest in said right.

23 There has been exhaustive argument and deliberation by numerous parties
24 to Acquavella as to RCW 90.14 and substantial compliance. In this
25 particular instance, the Referee believes the Court's Memorandum Opinion
26 Re: RCW 90.14 and Substantial Compliance, February 10, 1995, provides the
27 answer. "The Adsit court made clear that substantial compliance encompasses
28 only minor, technical variations from the established standard." Further,

26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 as set forth on Page 8, Lines 4 through 7½, the Supreme Court in Adsit makes
2 it clear that neglect of the owner causes the right to be lost resulting in
3 waiver and relinquishment of the unclaimed water rights. Thus, the Referee
4 concludes that omission of a purpose of use constitutes waiver and
5 relinquishment of any right that may have existed for that use.

6 The final point of the Bernard Knoll exception regarding ditch "B" is
7 the claimant's concern regarding protection of fish and wildlife. During
8 the second supplemental hearing, Ecology representative Sam Bailey referred
9 Bernard Knoll to the language contained in the stipulation in relation to
10 non-diversionary stock and wildlife watering. The Referee concluded from
11 the dialog between those parties that much of Bernard Knoll's concern was
12 alleviated by provisions contained in sections two and four of the
13 stipulation. In any case, general adjudications as a matter of law are
14 limited to determinations of water rights for beneficial use based upon
15 diversion and actual use, Department of Ecology v. Acquavella, 131 Wn.2d 746
16 (1997) (hereinafter Acquavella III). Therefore, the Referee cannot
17 recommend any right for fish and wildlife beyond the nondiversionary
18 wildlife right. A second error was noted during review of the Supplemental
19 Report of Referee on Page 59, Line 9 where May 17, 1886, is referenced as
20 the priority date. The correct date for the Gold Bar placer claim is
21 January 1, 1898, as properly reflected on Page 140, Line 9. The entry on
22 Page 59 is hereby corrected to read "January 1, 1898."

23 In conclusion, the Referee recommends that the Court affirm the earlier
24 recommendation that a right be confirmed with a January 1, 1898, date of
25

26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 priority for irrigating 1 acre and stock water and that a second right with
2 a September 30, 1909, date of priority be confirmed for the irrigation of an
3 additional 3 acres and stock water.

4 The final set of exceptions filed by Bernard Knoll relate to water
5 rights asserted from Williams Creek and delivered via ditch "A" and/or an
6 unnamed spring-fed stream tributary to Williams Creek. Claimant asserts a
7 right to irrigate 5 acres, including a 2-acre wetland. The Referee did not
8 recommend confirming a diversionary water right in the supplemental report
9 for either source. The evidence available for evaluation is essentially
10 unchanged, other than clarification regarding the small stream channel which
11 emanates from the so-called "muskrat pond" on Fred Knoll's property, thence
12 flowing across the feedlot paddock on Bernard Knoll's east property line and
13 into Williams Creek. Flow in that channel is seasonal and at times Fred
14 Knoll diverts ditch "A" flow through the pond for irrigation or mining
15 (sluice operation). Water flows unimpeded across a narrow strip of Bernard
16 Knoll's property into Williams Creek. No evidence has been presented that
17 any deliberate irrigation technique is employed by Bernard Knoll on the
18 1-acre paddock. The native grass and trees benefit from the water flowing
19 through the eroded channel apparently via subirrigation. The stock water
20 stipulation as previously discussed applies to this small channel to the
21 extent natural flow is present and return flow from Fred Knoll's property
22 collects in the channel. The Referee continues to recommend that a
23 diversionary right not be confirmed for use of ditch "A."

24

25

26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 There is one other ditch or remnant thereof located on Bernard Knoll's
2 property on which he asserts a water right. That old diversion and ditch
3 (pre-1909 vintage) formerly diverted Williams Creek at a point about
4 100 feet downstream from diversion "B" running thence southerly on the east
5 side of Williams Creek. The change in the Williams Creek channel described
6 by Bernard Knoll resulted in the current creek lying well east of the old
7 diversion. As noted by the Referee in the supplemental report, this old
8 ditch by its location would have served land south and east of Bernard
9 Knoll's. It was not clearly established by Bernard Knoll what water right
10 he is asserting from this long abandoned ditch.

11 None of the three RCW 90.14 claims discussed earlier in this report
12 identify this diversion and no historic or current water use data has been
13 included in the record. Lacking a record upon which to base a water right
14 or a registered water right claim, the Referee recommends that the Court
15 deny Bernard Knoll's claim to this long abandoned ditch which would be under
16 Court Claim No. 12062 as amended during testimony. As discussed in the
17 Supplemental Report of Referee, this diversion and ditch lie near the south
18 property line, at which location the place of use would have been south of
19 Bernard Knoll's Lot 4 of the Cromarty Short Plat.

20 Other than the clarifications and corrections and the additional
21 3 acres of irrigation and stock water associated with the USFS ditch set
22 forth above, the Referee recommends that the Court affirm the Supplemental
23 Report of Referee for Subbasin No. 4 (Swauk Creek), Vol. 29A in all respects
24 regarding Court Claim Nos. 12061 and 12062.

25
26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 COURT CLAIM NO. 00163 -- **Timothy M. Knoll**
2 COURT CLAIM NO. 12104 -- **Larry A. Smith**
3 & Anna L. Smith
4 COURT CLAIM NO. 12110 -- **Frederick L. Knoll**
5 & Dixie S. Knoll
6 COURT CLAIM NO. 12137 -- **Steven A. Minalia**
7 & Karen R. Minalia
8 COURT CLAIM NO. 12140 -- **Richard H. Anderson**
9 & Judy Anderson
10 COURT CLAIM NO. 12143 -- **Mark K. Jones**
11 & Michele M. Jones
12 COURT CLAIM NO. 12310 -- **Gerald R. Peltola**
13 & Barbara J. Peltola

14 Claimants Timothy M. Knoll, Claim No. 00163; Frederick L. & Dixie S.
15 Knoll, Claim No. 12110 and Steven A. and Karen R. Minalia, Claim No. 12137
16 jointly filed exceptions to the Supplemental Report of Referee, Subbasin
17 No. 4 (Swauk Creek), Vol. 29A through their attorney, Lawrence E. Martin.
18 In the supplemental report on Pages 62 through 77, the Referee presented a
19 consolidated analysis of these Court claims. Also included in that analysis
20 were: Court Claim Nos. 12104, Larry A. and Anna L. Smith; 12140, Richard H.
21 and Judy Anderson; 12143, Mark K. and Michele M. Jones and 12310, Gerald R.
22 and Barbara J. Peltola. The later group of claimants took no exception to
23 the Referee's recommendation for their claims and will therefore not be
24 individually addressed in this second supplemental report, except as may be
25 necessary to address conveyance loss or stock water instantaneous flows.
26 The Referee will apply any enhanced flow analysis to all these water users.

27 SECOND SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 4 (Swauk Creek)

1 Ecology filed a reply to the exceptions taken by Timothy M. Knoll,
2 Frederick L. and Dixie S. Knoll and Steven A. and Karen R. Minalia and those
3 claimants in turn filed a rebuttal to Ecology's reply. Discussion of the
4 details of the exceptions, reply and rebuttal will be developed topically
5 for matters of common interest to the three claimants and individually for
6 each claimant regarding factual matters. Since the Court ruled on some of
7 the exceptions, those matters will not be discussed in detail other than to
8 set forth the ruling.

9 Declarations of Timothy M. Knoll, Frederick L. Knoll and Steven A.
10 Minalia were attached to the exceptions to the Supplemental Report of
11 Referee and have been relied upon to augment their testimony.

12 The exceptions taken to the Supplemental Report of Referee include
13 the following: (1) The Referee overstepped his authority by going beyond
14 the evidence presented at the supplemental hearing; (2) The Referee failed
15 to recommend confirmation of water rights for mining, fire control and
16 domestic; (3) The water rights confirmed did not acknowledge continuous flow
17 of 2.2 cfs in ditches "A" and "B" based on historic practice. In
18 conjunction with the continuous flow, claimants assert water rights of
19 805 acre-feet during the 184-day irrigation season and 790 acre-feet from
20 November 1 through April 30; (4) The number of acres of irrigation
21 recommended for confirmation are insufficient.

22 Lawrence E. Martin, attorney, represented the claimants at the Second
23 Supplemental Hearing on April 10, 2000, during which testimony was presented
24 and exhibits were admitted.

25
26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 The Court via its Order on Exceptions, Subbasin No. 4 (Swauk), filed
2 on January 13, 2000, remanded Court Claim Nos. 00163 Timothy M. Knoll, 12110
3 Frederick L. and Dixie S. Knoll and 12137 Steven A. and Karen R. Minalia for
4 presentation of evidence on historical and continued beneficial use of
5 water, including instantaneous and annual quantities of water used. The
6 Court denied the exception concerning the limits of the Referee's authority
7 (see Page 4, Lines 10½ through 12 of the Court's Order on Exceptions,
8 Subbasin No. 4 (Swauk), January 13, 2000). Also denied by the Court on
9 Page 4, Lines 6 through 7½ was claimants' exception regarding failure of the
10 Referee to recommend confirmation of a water right for "fire control."
11 Thus, the Referee will address claimants' remaining exceptions regarding
12 lack of confirmation of water rights for mining and domestic supply, the
13 number of acres irrigated and instantaneous and annual quantities of water
14 for the respective uses. The right to continuous flow in ditch "A" will
15 also be addressed.

16 Since there was no objection to the bulk of the factual presentation
17 in the Supplemental Report of Referee, the Referee will rely upon that
18 record as supplemented at the second supplemental hearing on April 10, 2000.

19 Claimants refer the Referee to Water Right Claim (WRC) No. 00599
20 filed by George L. Johnson pursuant to RCW 90.14. Although this claim is
21 not discussed in the analysis associated with ditch "A," it is discussed in
22 detail on Pages 58 and 59 of the supplemental report as a component of the
23 analysis for ditch "B." Johnson filed WRC No. 00599 for the diversion and
24 use of Williams Creek water via ditch "B" which is not in any way used by

25
26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 claimants Timothy M. Knoll, Frederick L. Knoll and Steven A. Minalia.
2 Another of Johnson's claims, WRC No. 00600, and the Kelsey Pettigrew claim,
3 WRC No. 097175, cover the claimants' property and diversion from Williams
4 Creek.

5 The Referee recommended confirmation of a right for 5 acres of
6 irrigation for the Frederick Knoll property to which the claimant objects.
7 The original testimony indicates that 10 acres were irrigated whereas the
8 testimony during the second supplemental hearing establishes a total of
9 8 acres irrigated. The Referee had referred to the aerial photographs
10 DE-280 and the Mineral Survey Map No. 910 (DE-278) to arrive at 5 acres.
11 Evidence provided during the second supplemental hearing established that
12 3 acres are irrigated within the Louis Queitsch claim of which one is via
13 ditch "A(1)" and two are via ditch "A." Four acres are irrigated in the Big
14 Nugget claim and one in Gold Bar all via ditch "A." Fred Knoll testified
15 that he has personal knowledge since 1975 to confirm this historic
16 irrigation practice. Testimony of Jacob Kirsch confirmed irrigation of the
17 same fields as early as 1928. Based on the detailed description of the
18 irrigated fields, the Referee will recommend a right for a total of 8 acres
19 of irrigation within the Frederick Knoll property in the three mining claims.

20 While claimants had no objection to the water duty applied by the
21 Referee for irrigation, they did assert that conveyance loss was not
22 adequately recognized by the 0.10 cfs per acre. Their position is that
23 quantity is used to irrigate the land and additional water is diverted for
24 conveyance. The historic and current practice has been to divert 2.2 cfs

25
26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 during the irrigation season which was the quantity of water necessary to
2 ensure adequate irrigation water carried to the end of ditch "A." Based on
3 the current record, ditch "A" serves a total of 14 acres (as discussed in
4 detail below); therefore, 1.40 cfs will be confirmed for irrigation to the
5 various water users on ditch "A."

6 The ditch runs across creek bottom soils having relatively high
7 porosity which results in conveyance loss of 0.80 cfs in the 3600-foot
8 ditch. Lacking a detailed record of the loss applicable to any one of the
9 irrigators, the Referee will recommend confirmation of the 0.80 cfs as
10 conveyance water in common. This approach will be accomplished by means of
11 a provision on each water right. The "Limitation of Use" section of each
12 recommended water right will contain an identical conveyance water
13 provision. This approach will result in revisions to the water rights
14 recommended for Court Claim Nos. 12140, 12143, 12310 as well as 00163, 12110
15 and 12137 to include the following language: "Limitation of Use: During
16 periods when beneficial use of water for irrigation is occurring through
17 ditch "A," up to 0.80 cfs is authorized for conveyance loss. This quantity
18 is used in common for the partners on ditch "A," the point of diversion of
19 which is described above."

20 The Referee recommended in the supplemental report a diversionary
21 stock water right to be used year around through ditch "A." As is the case
22 with irrigation water, the ditch serves all the properties through which it
23 passes. The quantities of water recommended are 1 acre-foot per year during
24 irrigation season incidental to irrigation deliveries and 0.50 cfs;

25
26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 acre-foot per year from November 1 through April 30. The claimants only
2 contested the instantaneous quantity authorized during the nonirrigation
3 season. They testified that during severe winter weather, 2.2 cfs is
4 necessary to ensure that water flows to the end of ditch "A." The record is
5 clear that up to 2.2 cfs has historically and is currently being diverted
6 during the nonirrigation season for stock water. Based on the record, the
7 Referee will recommend the following provision be included for each
8 confirmed stock water right on ditch "A": "Limitation of Use: This stock
9 water right is shared in common by owners of land through which this ditch
10 passes; therefore, the total instantaneous and annual quantities for stock
11 water for the collective properties shall not exceed 1 acre-foot
12 consumptively May 1 through October 31 and 2.2 cfs; 1 acre-foot
13 consumptively November 1 through April 30."

Testimony provided by Fred Knoll clarifies that fences preclude his
livestock from drinking directly from Williams Creek. They do however have
access to and drink from a spring-fed stream and pond; therefore, the
riparian stock water stipulation is applicable to the Frederick L. and
Dixie S. Knoll property and their names are added to the list of owners so
situated.

Fred Knoll provided testimony during the April 10, 2000, evidentiary
hearing regarding use of Williams Creek water for mining purposes on his
property. He stated that periodic use for panning and sluice box operation
had been occurring on the Louis Queitsch claim since their purchase in
1975. Sluicing has been conducted about three to four times per year for up

SECOND SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4 (Swauk Creek)

1 to six hours each at an estimated flow of 1.50 cfs (about 90% of ditch "A"
2 flow at the pond site). An additional three to four times each year water
3 is diverted for a smaller sluice box for a few hours. This use requires a
4 4-inch pipe running full (estimated by the Referee to be 0.40 cfs). As
5 discussed in the Supplemental Report of Referee, the history of mining in
6 the Swauk District and on the five mining claims under consideration herein
7 dates well before 1900. Mining seems to have been at most a secondary
8 beneficial use on these five mining claims since around 1900 as evidenced by
9 Mineral Survey 910 (it describes the mining works as in serious disrepair in
10 1909). References in the record to water use for mining between 1900 and
11 1975 are very general and lack specific detail as to whether water was
12 diverted for mining and if so the quantities of water used, periods of use
13 and locations of individual mines or sluice operations.

14 Irrespective of the facts regarding beneficial use, the overriding
15 consideration requiring attention is the lack of an RCW 90.14 claim which
16 identifies water use for mining. WRC Nos. 00599, 00600 and 097175 are the
17 basis for water rights on the Bernard Knoll property (Court Claim Nos. 12061
18 and 12062), as well as the claimants addressed herein. None of those three
19 claims assert a right to use water for mining. As was set forth in the
20 claim of Bernard Knoll (see Page 78), the Referee has no alternative but to
21 recommend to the Court that no water right be confirmed under Court Claim
22 No. 12110 for mining based on waiver and relinquishment for failure to
23 include mining or industrial use on the claim (RCW 90.14.071).

24
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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 The record is clear that the current cabin on the Fred Knoll property
2 is located east and above ditch "A" and was built after 1975. Fred Knoll
3 testified that they have a domestic well; however, it is apparently only
4 used during late spring through fall to avoid frozen plumbing. The Referee
5 concluded from the record that any domestic water use from the ditch during
6 winter months is via buckets dipping from the ditch and any lawn and garden
7 irrigation is above the ditch and not within the area of historic irrigation
8 use.

9 The Knoll's claim to a domestic water right appears to be based upon
10 cabins or houses which were located on the mining claim in earlier times.
11 The testimony and exhibits indicate that the cabin sites throughout the
12 settlement history for the Louis Queitsch claim have been east of the ditch
13 and west of Fred Knoll's property. The location above the ditch precluded
14 gravity flow diversion to the easterly cabin; however, it is possible that
15 water was dipped from the ditch and carried to the cabin, although the
16 record contains no firm evidence of the water source used. Any home located
17 west of the Knoll property on the Louis Queitsch claim would have been west
18 of Williams Creek. That location would not have access to water diverted
19 into ditch "A."

20 Lacking proof (both historic and current) of diversionary beneficial
21 use of water from Williams Creek and quantification testimony, the Referee
22 continues to recommend that a right not be confirmed for domestic supply
23 under Court Claim No. 12110.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 Testimony provided by Tim Knoll during the second supplemental
2 hearing clarified the record as to historic irrigation on his portion of the
3 Louis Queitsch claim. He described two small ditches which can supply water
4 east and west of Williams Creek from diversions upstream of diversion "A."
5 For identification purposes, the Referee proposes to refer to the easterly
6 ditch as "A(2)" and the westerly ditch "A(3)." Although neither of these
7 ditches is specifically included in WRCs 00600 or 097175, the Referee
8 concludes there is substantial compliance for these small ditches. These
9 ditches are each capable of diverting 0.40 cfs according to testimony by Tim
10 Knoll. The Referee concludes from the testimony that only one ditch is used
11 at any particular time and that a total of 1 acre is irrigated. These
12 ditches are very short as the pastures lie in narrow strips adjacent to
13 Williams Creek and immediately below the diversions. The two ditches are
14 across the creek from each other, located at a point, about 200 yards
15 upstream from the point of diversion for ditch "A," 2180 feet north and
16 250 feet east of the south quarter corner of Section 36, being within the
17 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M. Tim Knoll's testimony is that
18 0.40 cfs is required during irrigation cycles due to the porous soil
19 adjacent to the creek. The record seems to indicate that he irrigates
20 either the west pasture area or east pasture, but not both simultaneously.
21 The water duty on farm as applied to properties served in this immediate
22 area adjacent to Williams Creek has been determined to be 0.10 cfs;
23 10 acre-feet per acre. An additional 0.30 cfs is needed for nonconsumptive
24 conveyance water. The Referee recommends confirmation of 0.40 cfs;

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 10 acre-feet per year for irrigation of 1 acre and incidental stock water.
2 The place of use is within that portion of the Louis Queitsch Placer Mining
3 Claim described as follows: Beginning at corner No. 4 of said location;
4 thence north along the west boundary line of said location 1150.13 feet to
5 corner No. 3; thence east along the north boundary line of said location
6 316.6 feet; thence southwesterly along a straight line to the point of
7 beginning being a portion of Section 36, T. 21 N., R. 17 E.W.M. This
8 recommendation is not for a continuous flow right since 50 days of
9 continuous use at 0.10 cfs would yield 10 acre-feet.

10 Tim Knoll testified that water for his home is supplied from a well,
11 but a right is being asserted for use of some undefined quantity of water
12 from Williams Creek for domestic supply. The house appears to be located
13 east of the point of diversion for ditch "A," downstream from the terminus
14 of the ditch system described above (ditch "A(2)"). The Referee finds no
15 beneficial use details in the record as to domestic supply for the Tim Knoll
16 home from ditch "A." The home is upgradient from the ditch; therefore, any
17 use during early settlement would have been in the nature of filling buckets
18 from the ditch. Although the record indicates a home and cabin were on the
19 Louis Queitsch claim before 1917, those dwellings do not appear to have been
20 on the property owned by Tim Knoll. With no evidence of a pre-1932 domestic
21 supply use from a diversion on the property nor evidence of continued use,
22 the Referee continues to recommend that a right not be confirmed for a
23 domestic supply under Court Claim No. 00163.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 Stock grazing the pasture area seem to have access to the channel of
2 Williams Creek as well as ditch "A" and the small ditches ("A(2)" and
3 "A(3)"). Since the stock grazing on Tim Knoll's property have access to
4 ditches "A," "A(2)" and "A(3)," the Referee concludes a right exists for
5 stock water. Stock watering from ditches "A(2)" and "A(3)" is incidental to
6 delivery of irrigation water and is therefore not authorized outside the
7 irrigation season or on days when irrigation water is not being delivered.
8 Stock water use during the winter through ditch "A" has the same terms and
9 conditions as reflected for the other claimants who utilize ditch "A" (see
10 the discussion on Page 72 for the Fred Knoll claim).

11 The facts as presented earlier in this analysis and for the Bernard
12 Knoll claim regarding mining water rights are also applicable to Court Claim
13 No. 00163 as the same RCW 90.14 claims are the foundation for any rights
14 which may be confirmed. Lacking specific filing of an RCW 90.14 claim for
15 mining resulted in waiver and relinquishment of that water right.

16 Steven A. Minalia presented testimony which established that 4 acres
17 on his property are irrigated by gravity flow from ditch "A," as opposed to
18 the 3½ acres recommended. The Referee therefore amends the acres to 4 acres
19 and the quantity of water authorized to 0.40 cfs; 40 acre-feet per year. As
20 was discussed previously, the 0.80 cfs for conveyance flow used in common by
21 all the claimants in ditch "A" will be included in the revised
22 recommendation for irrigation water. Taking into account the revised
23 recommendations for Fred Knoll and Steve Minalia and including the Smith,
24

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 Peltola and Anderson parcels, a total of 14 acres are irrigated via ditch
2 "A" for a total instantaneous flow of 1.40 cfs; 140 acre-feet per season.

3 As discussed previously, 0.80 cfs is being recommended for conveyance
4 flow in common during the irrigation season to serve Timothy M. Knoll,
5 Frederick L. and Dixie S. Knoll, Steven A. and Karen R. Minalia, Richard H.
6 and Judy Anderson, Gerald R. and Barbara J. Peltola and Larry A. and Anna L.
7 Smith. Although exceptions were not filed by Anderson, Peltola and Smith,
8 the Referee is amending their recommendations to reflect the conveyance
9 flows and nonirrigation season stock water flow.

10

11 **COURT CLAIM NO. 06626 -- Lavinal Corporation**

12 Exceptions to the Supplemental Report of Referee, Subbasin No. 4
13 (Swauk Creek), Vol. 29A were submitted for Lavinal, Inc. (Lavinal) by their
14 attorney, Lawrence E. Martin. Gerald Sweeney, a partner in Lavinal
15 Corporation, testified at the second supplemental hearing. The primary
16 issues addressed in Lavinal's exceptions or during their presentation at the
17 supplemental hearing are:

18 (1) Water Right Claim (WRC) No. 136707 and/or unregistered short
19 form claims prepared by Clifford W. Burcham substantially comply
with the claims registration requirements of RCW 90.14 for use of
water from Williams Creek and/or Swauk Creek.

20 (2) It is inappropriate for the Referee to apply the provisions
21 of the relinquishment statute RCW 90.14.130-180 to Lavinal's
22 property and use of water from Williams or Swauk Creek lacking an
assertion of relinquishment by another party.

23 (3) The law of the case in Acquavella precludes consideration of
24 nonuse except for the period 1967 through 1977.

25

26 **SECOND SUPPLEMENTAL REPORT OF REFEREE**

27 Re: Subbasin No. 4 (Swauk Creek)

1 (4) Lavinal asserts water rights granted by the United States at
2 the time the original mining claims were filed in 1899 by Frank
3 Kerstetter.

4 (5) That the Referee should recommend confirmation of a water
5 right from Williams Creek for 1.0 cfs nonconsumptive for mining.

6 Frank Kerstetter, who filed the original mining claims for this
7 property on November 28, 1899, also filed a Notice of Appropriation for a
8 point of diversion on Swauk Creek for use of water on the Pawnee claim (now
9 a part of the Lavinal property). Testimony of Del Holter and Jacob Kirsch,
10 for Court Claim No. 01471, provides partial descriptions of pre-1920 era
11 ditches constructed on the east and west sides of Swauk Creek beginning
12 upstream of Mineral Springs and Blue Creek. The Blue Creek confluence with
13 Swauk Creek is about three miles above Lavinal's property. It is clear from
14 the evidence offered by the various claimants that placer mining was common
15 throughout the Swauk mining district well before 1900 and water sources were
16 developed for most mining claims, often with ditches of considerable length.

17 The Lavinal property consists of mining claims which are located along
18 Swauk Creek above the confluence of Williams and Swauk Creeks. Remnants of
19 a gravity ditch emanate from a point on Williams Creek near the Townsite of
20 Liberty across the northeast corner of the Lavinal property about one mile
21 west and terminate in the Preston property to the north of Lavinal. This
22 ditch also crosses the Holter claims (formerly owned by Jacob Kirsch) and
23 other properties near Liberty. There is no evidence that water from this
24 ditch was conveyed by pipe or ditch to placer equipment on the Lavinal
25 property, although Gerald Sweeney assumes that water from some source was
26 used by Clifford Burcham, the prior owner.

27 SECOND SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 4 (Swauk Creek)

1 Three RCW 90.14 Water Right Claims (WRCs) have been identified by the
2 Referee--all of which appear to describe this Williams Creek ditch. They
3 are nearly identical in that each claims 1.0 cfs for mining, respectively,
4 on the Jacob Kirsch, Wilma Preston and Clifford Burcham (now Lavinal)
5 properties. Each of the claims (136706, Preston; 136707, Burcham and 95335,
6 Kirsch) reports use of 1.0 cfs during the year 1974. J. C. Pike filed a
7 Notice of Appropriation in 1886 for the Williams Creek Ditch. On each
8 claim, the year 1886 is identified as the year water was first used. There
9 is no record of water use on any particular property other than the
10 statements in the Ch. 90.14 RCW claims. In fact, Del Holter testified that
11 the ditch was essentially dysfunctional before 1982 when he first leased the
12 Kirsch claims. Wilma Preston recalled water in the ditch at some point
13 during her ownership, but no use of the water on her land. Mrs. Preston has
14 owned her land since 1960. There is no question that WRC Nos. 136707,
15 136706 and 95335 describe a common point of diversion on Williams Creek in
16 the Liberty Townsite and that the ditch leading from that diversion crossed
17 the eastern edge of the respective mining claims.

18 Jacob Kirsch moved to the Swauk mining district around 1928 and had
19 personal knowledge of the area because he had lived and mined there since
20 that time. The ditch upon which Preston, Burcham and Kirsch filed RCW 90.14
21 claims crosses more than one-half mile of former Kirsch property and was
22 maintained in this area by Jacob Kirsch and the U.S. Forest Service for many
23 years. Jacob testified that water had not been delivered west beyond the
24 USFS heliport for at least 15 years prior to 1991. The heliport is located

25
26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 west of the Kirsch claims and east of the Lavinal claims. In 1989, Jacob
2 Kirsch abandoned the upper ditch (above his claims) due to a 150-foot
3 section of wood flume collapsing and the ditch being covered over on the
4 D. Bunker property in the S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T. 20 N.,
5 R. 17 E.W.M. The record before the Referee confirms that a gravity ditch
6 originating near Liberty on Williams Creek ran south and west to terminate
7 on the Preston property in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T. 20 N., R. 17 E.W.M.
8 The ditch crossed the northeast corner of the Lavinal property a quarter
9 mile east of Swauk Creek. Although Burcham filed WRC No. 136707 on this
10 water source, no evidence of specific past or present beneficial use of any
11 water from Williams Creek on the former Burcham property has been identified
12 by Lavinal. Lavinal refers the Referee to RCW 90.14.081 which states in
13 part:

14 **RCW 90.14.081 Filing of claim not deemed adjudication of**
15 **right--Prima facie evidence.** ----A statement of claim filed
16 pursuant to RCW 90.14.061 shall be admissible in a general
17 adjudication of water rights as prima facie evidence of the times
18 of use and the quantity of water the claimant was withdrawing or
19 diverting as of the year of the filing, if, but only if, the
quantities of water in use and the time of use when a controversy
is mooted are substantially in accord with the times of use and
quantity of water claimed in the statement of claim. A statement
of claim shall not otherwise be evidence of the priority of the
claimed water right. (emphasis added).

20 The Referee reminds Lavinal that the statement of claim is prima facie
21 evidence only if the time of use and quantity of water used are
22 substantially the same at the time the controversy is mooted; i.e., at the
23 time of the adjudication. While WRC No. 136707 asserts a right to 1 cfs
24 from Williams Creek, there was no evidence that quantity is being used.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 Therefore, the claim is not *prima facie* evidence. Lavinal is asserting a
2 right to use Swauk Creek, which is a separate and distinct source of water
3 from Williams Creek. The latter being a tributary of Swauk Creek which
4 flows into Swauk Creek one-half mile downstream of the Lavinal property.
5 The point of diversion described in WRC No. 136707 filed by Burcham is at
6 least one mile east of the nearest point on Swauk Creek. Lavinal has
7 identified no RCW 90.14 claim with Swauk Creek as the source and their
8 property as the place of use, nor has the Referee identified one.
9 RCW 90.14.041 requires in part: "All persons using or claiming the right to
10 withdraw or divert and make beneficial use of public surface or ground
11 waters . . . , shall file with the Department of Ecology not later than
12 June 30, 1974, a statement of claim for each water right asserted on a form
13 provided by the department." (emphasis added). The consequences of not
14 filing claims results in waiver and relinquishment of any water right which
15 may have been perfected (RCW 90.14.071).

16 Lavinal asserts that Burcham changed from using Williams Creek water as
17 represented by WRC No. 136707 to using Swauk Creek without a 5-year period
18 of nonuse. The premise is that Burcham simply neglected to comply with
19 RCW 90.03.380 before changing sources of water. The Referee finds much
20 speculation and presumption in this hypothesis. There is no application for
21 change or approval of a change in the record as required by RCW 90.03.380,
22 although Lavinal seems to acknowledge that section of the water law is
23 applicable. The evidentiary record, summarized in the Report of Referee and
24 Supplemental Report of Referee, contains no specific water use facts for
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26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

either Williams or Swauk Creek for the period before 1917. In the Report of Referee at Page 115, Lines 21 through 24, the Referee concluded the following: "Lacking evidence upon which to evaluate any historic surface water use and the uncertainty surrounding an RCW 90.14 water right claim for Swauk Creek, the Referee cannot recommend confirmation of a water right as asserted under Court Claim No. 06626." Unfortunately, after repeated exceptions, a supplemental evidentiary hearing and a second supplemental hearing, there is little more than supposition regarding quantification of pre-1932 beneficial water use of Swauk Creek water on the Lavinal property.

As to Lavinal's assertion that the United States granted water rights for mining purposes either at the time the mining claims were filed or alternatively when the patent issued, the Referee concludes that no such rights were conferred by the United States. In fact, the language (Patent dated May 7, 1918) conveys the following: "----any vested and accrued water rights for mining, agriculture, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of the Courts." (emphasis added).

Lacking evidence or testimony of specific historic beneficial use of water from Williams Creek, the Referee cannot conclude that a water right was perfected for use on the Lavinal property. Under these circumstances, in-depth analysis of the applicability of the provisions of the relinquishment statute RCW 90.14.130-180 is not warranted.

SECOND SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4 (Swauk Creek)

1 The Referee does take note however of the emphatic testimony of Jacob
2 Kirsch wherein he states that it had been at least 15 years prior to 1991
3 since water flowed west of the USFS heliport. Mr. Kirsch also asserted that
4 in 1988 or 1989 he had abandoned all interest in the Williams Creek ditch
5 and that any right of way across his land had been terminated. He further
6 described major physical deficiencies in the ditch which made it
7 unserviceable (see also the previous discussion of testimony by Del Holter
8 which affirms the Kirsch testimony). These references to the history of the
9 ditch are not intended as a formal relinquishment determination, but rather
10 as information which may help alleviate lingering questions expressed in
11 Lavinal's exception document.

12 The Referee concludes that WRC No. 136707 does not substantially comply
13 with the requirements of RCW 90.14 to protect any perfected water right from
14 Swauk Creek. Lacking identification of a registered RCW 90.14 claim on
15 Swauk Creek, Lavinal has waived and relinquished any perfected water right,
16 RCW 90.14.071. Lacking a water right on Swauk Creek, the Referee has no
17 need to analyze Court Claim No. 06626 for applicability of the
18 relinquishment statute, RCW 90.14.130-.180. Lavinal did not assert a water
19 right from Williams Creek based upon WRC No. 136707, except via his
20 assertion that a previous owner, Clifford Burcham, had at some unspecified
21 prior date (pre-1990) changed water sources from Williams Creek to Swauk
22 Creek.

23 Finally, the Referee finds no basis to conclude that the federal
24 government granted water rights to Kerstetter who filed the original mining
25

26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 claims in 1899. To the contrary, the language on the face of the patent
2 dated May 7, 1918, refers to water rights which might have been " . . .
3 acknowledged by local laws, customs, and decisions of the Courts."

4 In sum, the Referee continues to recommend that a right not be
5 confirmed under Court Claim No. 06626.

6 **COURT CLAIM NO. 00970 -- Swauk Valley Ranch, LLC**
7 01063
8 01064
9 01065
01066

10 Subsequent to issuance of the Supplemental Report of Referee for
11 Subbasin No. 4 (Swauk Creek), Vol. 29A, Swauk Valley Ranch, LLC (Swauk
12 Valley) petitioned the Court seeking to be substituted for Gordon C. Tang
13 and Linda Tang on the referenced claims. On September 23, 1998, the Court
14 granted the substitution motion.

15 Ecology requested clarification of the annual quantities of water
16 recommended by the Referee in the Supplemental Report of Referee on
17 Pages 119 and 132, asserting that continuous pumping during the irrigation
18 season of 0.167 cfs will produce 65.6 acre-feet, not the 80 acre-feet
19 recommended. Lawrence E. Martin, attorney for Swauk Valley, filed a reply
20 to the Ecology request for clarification urging the Referee to affirm the
21 80 acre-feet and a total of 0.334 cfs for the two water rights. Ecology
22 filed a rebuttal to the Swauk Valley reply in which the mathematical error
23 is restated.

24 The Referee agrees with Ecology that 0.167 cfs will produce only
25 65.6 acre-feet during the 198-day irrigation season for each of the two

26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 separate water rights. The total instantaneous quantity authorized between
2 the two rights is 0.334 cfs as stated by both parties. Therefore, Page 91,
3 Line 20 $\frac{1}{2}$ and Page 119, Line 15 $\frac{1}{2}$ are amended to replace the 80 acre-feet per
4 year with the correct quantity of 65.6 acre-feet per year. Also, Page 92,
5 Line 3 and Page 132, Line 21 $\frac{1}{2}$ are amended to replace 80 acre-feet per year
6 with the correct 65.6 acre feet per year.

7 Swauk Valley is reminded that the provisions of RCW 90.03.380 must be
8 satisfied if the consolidated point of diversion and current place of use
9 are to be legally authorized.

10 **COURT CLAIM NO. 02267 -- Wallace Ranch Limited Partnership**

11 Ecology requested clarification of the annual quantity recommended by
12 the Referee on Page 120 of the Supplemental Report of Referee, Subbasin
13 No. 4 (Swauk Creek). Upon review of the analysis of this water right
14 presented on Page 98 at Line 11 $\frac{1}{2}$, it was discovered that the quantity is in
15 fact 0.0167 cfs (7 $\frac{1}{2}$ gallons per minute). The instantaneous quantity should
16 be 0.0167 cfs on Page 120, Line 18 and the 7 acre-feet per year will be
17 changed to 6.6 acre-feet per year to reflect that instantaneous quantity.
18 The reference to 7 acre-feet per season on Page 98, Line 11 $\frac{1}{2}$ likewise will
19 also be changed to 6.6 acre-feet per year.

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26 **SECOND SUPPLEMENTAL REPORT OF REFEREE**
27 Re: Subbasin No. 4 (Swauk Creek)

1 COURT CLAIM NO. 00519 -- The Estate of Paul P. Weaver
2 & Mary B. Shelton
3 Craig N. Dickison
4 & Therese B. Dickison
5 Mark T. Dickison

6 Exceptions to the Supplemental Report of Referee, Subbasin No. 4
7 (Swauk Creek) were filed in behalf of the Dickisons and Mary Shelton by
8 their attorney, Lawrence E. Martin. The Court ruled on Mary Shelton's
9 exception during the exception hearing (see Page 3) therefore that portion
10 of the claim was not remanded. The Dickison family asserts a water right
11 from Williams Creek in the quantity of 1.0 cfs; 117 acre-feet per year for
12 irrigation of 10 acres and stock water with a priority date of May 24,
13 1884. The Referee had declined to recommend a diversionary water right
14 based on the riparian doctrine due to the lack of evidence of beneficial use
15 before December 31, 1932. The appropriate priority date for any right
16 confirmed was uncertain due to questions concerning the relationship of the
17 Price homestead (the NE $\frac{1}{4}$ of Section 31, T. 21 N., R. 18 E.W.M.) and NPPR
18 ownership of Section 31.

19 The Court granted the Dickisons' exception awarding them a right to
20 irrigate 10 acres and remanded Court Claim No. 00519 to the Referee to
21 determine the priority date and quantity of water to be awarded.

22 The Dickisons own the N $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31 and Mary Shelton owns the
23 S $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31. The evidence presented at the second supplemental
24 hearing concerning the priority date for the Dickison property also would
25 apply to the Shelton land. The priority date of June 30, 1892, recommended
26 for the Shelton 20-acre irrigation water right on Page 105 and Page 132 of

SECOND SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4 (Swauk Creek)

1 the supplemental report was based upon the date the Price family first
2 occupied the NE $\frac{1}{4}$ of Section 31, T. 21 N., R. 18 E.W.M. for which they
3 ultimately received a land patent. Evidence presented at the second
4 supplemental hearing establishes that Section 31 was conveyed to the NPRR
5 and NPRR ultimately relinquished the NE $\frac{1}{4}$ to Anna Price. Prior to that
6 relinquishment, the map of definite location for the NPRR was filed May 24,
7 1884. NPRR relinquished all interest in the land to Anna Price under the
8 Federal Act of July 1, 1898. That relinquishment dated February 3, 1922,
9 allowed the patent to issue to Anna Price. Due to the original separation
10 of Section 31, T. 21 N., R. 18 E.W.M. from the Public Domain to NPRR on
11 May 24, 1884, the Referee concludes the appropriate priority date under the
12 Riparian Doctrine for both Dickison and Shelton should be May 24, 1884.
13 Therefore, the Referee amends the priority of the Mary B. Shelton water
14 right on Price Creek to reflect that date. The Supplemental Report of
15 Referee on Page 105, Lines 6 and 7 is revised to reflect the priority date
16 of May 24, 1884, based on the riparian doctrine and NPRR ownership. Also
17 revised is Page 132, Line 12 where the May 24, 1884, date shall be reflected.

18 Ecology requested clarification of the Mary B. Shelton Price Creek
19 point of diversion because the Referee describes the diversion in two
20 different quarter quarter sections; i.e., the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NE $\frac{1}{4}$. Upon
21 review of the described point, the Referee finds that Exhibit DE-13
22 indicates the diversion is located about 500 feet north and 1300 feet west
23 of the east quarter corner of Section 31, which is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 section. Ecology's Exhibit SE-2 shows a location 100 to 200 feet east of
2 that location, which would also be in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31.

3 The Referee recommends confirmation of the historic point of
4 diversion as reflected by DE-13. Thus, Page 105, Lines 9 $\frac{1}{2}$ through 10 $\frac{1}{2}$ of
5 the Supplemental Report of Referee and Page 132, Lines 13 $\frac{1}{2}$ through 14 $\frac{1}{2}$ shall
6 be amended to reflect the point of diversion as 500 feet north and 1300 feet
7 west of the east quarter of Section 31, T. 21 N., R. 18 E.W.M. being within
8 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 31. This point is some 200 feet upstream from
9 the location described in the RCW 90.14 claim and just into the adjacent
10 quarter quarter. The Referee concludes the claim substantially complies
11 with the requirements of RCW 90.14.051.

12 The record clearly shows that irrigation development on the Dickison
13 land in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 21 N., R. 18 E.W.M. was started shortly
14 after the Prices settled on the land in 1892. Up to 10 acres were irrigated
15 from Williams Creek before December 31, 1932. Several small meadows located
16 in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31 were irrigated. As discussed earlier in this
17 analysis, the Dickisons are claiming 10 acres of irrigation based upon the
18 Riparian Doctrine and NPPR ownership, which would have a priority date of
19 May 24, 1884. Beneficial use has been documented by the declaration of
20 Jacob Kirsch, a local resident with personal knowledge of the Price
21 homestead since 1928.

22 The method of irrigation, crop and soils on the Dickison 10 acres is
23 the same as the 20 acres irrigated on the Shelton half of the Price
24 homestead; therefore, the annual water duty will be 11.7 acre-feet per acre

25
26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 as was previously established. The recommended water right is 1.0 cfs;
2 117 acre-feet per year for irrigation of 10 acres and 1 acre-foot per year
3 for stock water from a point of diversion on Williams Creek described as
4 700 feet south and 1800 feet west from the northeast corner of Section 31,
5 T. 21 N., R. 18 E.W.M. being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 31. The
6 place of use is the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 21 N., R. 18 E.W.M. The season
7 of use is April 1 through October 15 and the priority date is May 24, 1884.

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SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 **FINDINGS OF FACT**

2 I, DOUGLAS CLAUSING, as Referee in this proceeding, having carefully
3 examined all the testimony and evidence from the original Evidentiary
4 Hearing; the Supplemental Hearing and the Second Supplemental Hearing,
5 including the exceptions to the Supplemental Report of Referee, do hereby
6 make the following Findings of Fact pursuant to the Order on Exceptions
7 entered by this court on January 13, 2000:

8 Based upon the testimony and evidence obtained, the name of the
9 claimant(s), court claim number(s), sources of water, uses for which rights
10 have been established, time periods when water may be used, amounts of water
11 designated in the right, priority of water right, location of points of
12 diversion, and description of lands to which water rights are appurtenant
13 within Subbasin No. 4 (Swauk Creek) are as follows:

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **First Creek Water** COURT CLAIM NO. 00648
2 **Users Assoc., Inc.**
3 Source: **First Creek, tributary to Swauk Creek.**
4 Use: **Irrigation of 164.5 acres and stock water.**
5 Period of Use: **April 1 through October 15 for irrigation;
continuous for stock watering.**
6 Quantity: **3.29 cfs; 630 acre-feet per year for irrigation
and stock watering during irrigation season;
3.29 cfs for conveyance loss; 6.58 cfs,
27 acre-feet per year (consumptive) for stock
watering from October 16 through March 31.**
7 Priority Date: **November 2, 1877**
8 Point of Diversion: **800 feet south and 100 feet east from the north
quarter corner of Section 30, being within
Government Lot 1, Section 30, T. 20 N.,
R. 18 E.W.M.**
9 Place of Use: **The S $\frac{1}{2}$ of Section 17; the W $\frac{1}{2}$ and W $\frac{1}{2}$ E $\frac{1}{2}$ of
Section 20, the W $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{2}$ SW $\frac{1}{4}$ and that
portion of the N $\frac{1}{2}$ of Section 21, which is
described as follows: A tract of land bounded by
a line beginning at a point on the west boundary
line of the NE $\frac{1}{4}$ of said Section, 66 feet north of
the southwest corner of said quarter section, and
running thence east 66 feet; thence north on a
line parallel with the west boundary line of said
quarter section 1650 feet; thence west 66 feet to
the west boundary line of said quarter section;
thence north to the north boundary line of said
quarter section; thence west to the northwest
corner of said section; thence south on the west
boundary line of said section to the southwest
corner of the NW $\frac{1}{4}$ of said section; thence east on
the south boundary line of said NW $\frac{1}{4}$ of said
section 990 feet; thence north 66 feet; and
thence east on a line parallel with the south
boundary line of said quarter section 1650 feet
to the point of beginning; the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$
of Section 28, and the NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ of
Section 29, ALL in T. 19 N., R. 18 E.W.M.**

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Pat Burke**
2 & **Mary Burke** COURT CLAIM NO. 01475
3 Source: Swauk Creek.
4 Use: Irrigation of 39.6 acres and stock water.
5 Period of Use: April 1 through October 31.
6 Quantity: 1.69 cfs; 297 acre-feet per year for irrigation;
7 1 acre-foot per year for stock water and 0.08 cfs
8 for conveyance loss.
9 Priority Date: **June 30, 1878**
10 Point of Diversion: 200 feet south and 1200 feet east from the
11 northwest corner of Section 27, being within the
NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T. 20 N., R. 17 E.W.M.
12 Place of Use: That portion of the SE $\frac{1}{4}$ of Section 28, T. 20 N.,
13 R. 17 E.W.M. lying north of Swauk Creek and south
14 of the Burke-Hartman Ditch.
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SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Pat Burke** COURT CLAIM NO. 01475
2 & **Mary Burke**
3 Source: Swauk Creek.
4 Use: Irrigation of 78.4 acres and stock water.
5 Period of Use: April 1 through October 31 for irrigation;
6 continuously for stock water (see instantaneous
7 flow limits).
8 Quantity: 2.00 cfs April 1 through October 31; 1.75 cfs,
9 588.6 acre-feet per year for irrigation of
10 78.4 acres and 1 acre-foot per year for stock
11 water; 0.25 cfs April 1 through October 31 for
12 conveyance loss; 0.25 cfs November 1 through
13 November 30 and February 1 through March 31,
14 1.0 cfs December 1 through January 31,
15 consumptive use of 8.5 acre-feet per year for
16 stock water.
17 Priority Date: **June 30, 1878**
18 Point of Diversion: 1000 feet south and 600 feet east of the
19 northwest corner of Section 27, being within the
NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T. 20 N., R. 17 E.W.M.
20 Place of Use: That portion of the N $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
21 Section 28, T. 20 N., R. 17 E.W.M. lying
22 southeast of Swauk Creek.
23 Limitations of Use: This water right is appurtenant to lands adjacent
24 to 20.0 acres with an October 31, 1889, priority
25 water right. Both tracts are irrigated via a
26 common point of diversion and ditch. The
capacity is 2.0 cfs; therefore, the 1878 and 1889
rights of 2.0 cfs each are not exercised
simultaneously, but rather in rotation.

26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Derald Martin**
2 & **Margaret Martin**
3 **Donald A. Hartman**
4 & **Ruth D. Hartman**
5 **Trendwest Resorts, Inc.**

6 COURT CLAIM NO. 01685

6 Source: **Swauk Creek.**

7 Use: **Irrigation of 20 acres.**

8 Period of Use: **April 1 through October 15.**

9 Quantity: **0.85 cfs; 150 acre-feet per year for irrigation,**
10 **0.04 cfs for conveyance loss.**

11 Priority Date: **June 30, 1878**

12 Point of Diversion: **200 feet south and 1200 feet east from the**
13 **northwest corner of Section 27, being within the**
14 **NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T. 20 N., R. 17 E.W.M.**

15 Place of Use: **That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28,**
16 **T. 20 N., R. 17 E.W.M. lying southeast of the**
17 **county road.**

26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **First Creek Water** COURT CLAIM NO. 00648
2 **Users Assoc., Inc.**
3 **Trendwest Resorts, Inc.**

4 Source: First Creek, tributary to Swauk Creek.

5 Use: Irrigation of 186 acres and stock watering.

6 Period of Use: April 1 through October 15 for irrigation;
7 continuously for stock watering.

8 Quantity: 3.660 cfs; 712.4 acre-feet per year for
9 irrigation and stock watering during irrigation
10 season, 3.660 cfs for conveyance loss.

11 Priority Date: **June 1, 1881**

12 Point of Diversion: 800 feet south and 100 feet east of the north
13 quarter corner of Section 30, being within
14 Government Lot 1, Section 30, T. 20 N.,
15 R. 18 E.W.M.

16 Place of Use: The SW $\frac{1}{4}$ of Section 17, the W $\frac{1}{4}$ of Section 20, the
17 W $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ and that portion of the NW $\frac{1}{4}$
18 of Section 21, which is described as follows: A
19 tract of land bounded by a line beginning at a
20 point on the west boundary line of the NE $\frac{1}{4}$ of
21 said section; 66 feet north of the southwest
22 corner of said quarter section, and running
23 thence east 66 feet; thence north on a line
24 parallel with the west boundary line of said
25 quarter section 1650 feet; thence west 66 feet to
26 the west boundary line of said quarter section;
27 thence north to the north boundary line of said
28 quarter section; thence west to the northwest
corner of said section; thence south on the west
boundary line of said section to the southwest
corner of the NW $\frac{1}{4}$ of said section; thence east on
the south boundary line of said NW $\frac{1}{4}$ of said
section 990 feet; thence north 66 feet; and
thence east on a line parallel with the south
boundary line of said quarter section 1650 feet
to the point of beginning and the NE $\frac{1}{4}$ and E $\frac{1}{4}$ NW $\frac{1}{4}$
of Section 29, ALL in T. 19 N., R. 18 E.W.M.

26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Pat Burke** & **Mary Burke** COURT CLAIM NO. 01475
2 Source: Dunford Spring.
3 Use: Irrigation of 5 acres and stock water.
4 Period of Use: April 1 through October 31 for irrigation;
5 continuously for stock water.
6 Quantity: 0.067 cfs, 28.25 acre-feet per year for
7 irrigation; 0.03 cfs, 8 acre-feet per year for
stock water.
8 Priority Date: **August 31, 1882**
9 Point of Diversion: 1100 feet south and 1100 feet west from the
center of Section 34, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
10 Section 34, T. 20 N., R. 17 E.W.M.
11 Place of Use: The W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
12 Section 34, T. 20 N., R. 17 E.W.M.
13 CLAIMANT NAME: **Liberty Townsite** COURT CLAIM NO. 01738
14 Source: Williams Creek.
15 Use: Irrigation, mining and fire suppression.
16 Period of Use: April 1 through October 31.
17 Quantity: 1.12 cfs; 14 acre-feet per year; 4 acre-feet per
18 year for irrigation and 2 acre-feet per year for
mining, and 8 acre-feet per year for
non-consumptive system flow.
19 Priority Date: **May 1, 1884**
20 Point of Diversion: 50 feet north and 1300 feet east of the west
quarter corner of Section 1, being within the
SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T. 20 N., R. 17 E.W.M.
21 Place of Use: Liberty Townsite being a total of 17.362 acres
22 lying within portions of the S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{4}$ SW $\frac{1}{4}$
23 of Section 1 and the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, all
24 being within T. 20 N., R. 17 E.W.M.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Pat Burke** & **Mary Burke** COURT CLAIM NO. 01475
2 Source: McCallum Spring.
3 Use: Stock water.
4 Period of Use: Continuously.
5 Quantity: 0.045 cfs; 3 acre-feet per year.
6 Priority Date: **May 24, 1884**
7 Point of Diversion: 1200 feet south and 1100 feet west of the north
8 quarter corner of Section 3, being within the
NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T. 19 N., R. 17 E.W.M.
9 Place of Use: That portion of the NW $\frac{1}{4}$ of Section 3, T. 19 N.,
10 R. 17 E.W.M. lying westerly of the state highway.

11 CLAIMANT NAME: **Bruce Coe** COURT CLAIM NO. 01146
12 Source: Swauk Creek.
13 Use: Irrigation of 15 acres.
14 Period of Use: April 1 through October 15.
15 Quantity: 1.5 cfs; 112.5 acre-feet per year.
16 Priority Date: **May 24, 1884**
17 Point of Diversion: 1100 feet south and 1000 feet west of the center
18 of Section 33, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 33, T. 20 N., R. 17 E.W.M.
19 Place of Use: W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 33, T. 20 N., R. 17 E.W.M.
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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)
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1 CLAIMANT NAME: **Bruce Coe** COURT CLAIM NO. 01146
2 Source: Swauk Creek.
3 Use: Irrigation of 35 acres.
4 Period of Use: April 1 through October 15.
5 Quantity: 1.79 cfs; 164 acre-feet per year (see
"Limitations of Use" below).
6 Priority Date: **May 24, 1884**
7 Point of Diversion: 600 feet north and 300 feet east of the south
quarter corner of Section 28, being within the
SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T. 20 N., R. 17 E.W.M.
8 Place of Use: E $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 33, T. 20 N.,
R. 17 E.W.M.
9 Limitations of Use: 23 acres are irrigated via a pump and sprinklers
at 4.0 acre-feet per acre; 12 acres are irrigated
via flood irrigation at 7.5 acre-feet per acre.
10
11 CLAIMANT NAME: **Craig N. Dickison** COURT CLAIM NO. 00519
12 & Therese B. Dickison
13 Mark T. Dickison
14 Source: Williams Creek.
15 Use: Irrigation of 10 acres and stock water.
16 Period of Use: April 1 through October 15.
17 Quantity: 1.0 cfs; 117 acre-feet per year for irrigation
and 1 acre-foot per year for stock water.
18 Priority Date: **May 24, 1884**
19 Point of Diversion: 700 feet south and 1800 feet west of the
northeast corner of Section 31, being within the
NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 21 N., R. 18 E.W.M.
20 Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 21 N., R. 18 E.W.M.
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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)
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1 CLAIMANT NAME: **Swauk Valley Ranch, LLC** COURT CLAIM NO. 00970

2 Source: Swauk Creek.

3 Use: Irrigation of 8 acres.

4 Period of Use: April 1 through October 15.

5 Quantity: 0.167 cfs; 65.6 acre-feet per year.

6 Priority Date: **May 24, 1884**

7 Point of Diversion: 1000 feet south and 2500 feet west of the
8 northeast corner of Section 17, being within the
NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T. 19 N., R. 17 E.W.M.

9 Place of Use: SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, ALL in Section 17,
10 T. 19 N., R. 17 E.W.M.

11 CLAIMANT NAME: **Wallace Ranch Limited Partnership** COURT CLAIM NO. 02267

12 Source: Yakima River.

13 Use: Irrigation of 92.2 acres.

14 Period of Use: April 15 through October 1.

15 Quantity: 3.35 cfs; 673.06 acre-feet per year.

16 Priority Date: **May 24, 1884**

17 Point of Diversion: 1000 feet north and 600 feet east of the
18 southwest corner of Section 2, being within the
SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 19 N., R. 16 E.W.M.

19 Place of Use: E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11, T. 19 N.,
20 R. 16 E.W.M.

21 Limitations of Use: The instantaneous quantity under both the 1894
22 and 1896 rights to Yakima River water is limited
to no more than 3.35 cfs.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

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1 CLAIMANT NAME: **Wallace Ranch Limited** COURT CLAIM NO. 02267
2 **Partnership**

3 Source: Unnamed spring.

4 Use: Irrigation of 3.5 acres.

5 Period of Use: April 1 through October 31.

6 Quantity: 0.0167 cfs, 6.6 acre-feet per year.

7 Priority Date: **May 24, 1884**

8 Point of Diversion: 1550 feet north and 1350 feet west from the
southeast corner of Section 11, being within the
 $SE\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$ of Section 11, T. 19 N., R. 16 E.W.M.

9 Place of Use: $SE\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$ of Section 11, T. 19 N., R. 16 E.W.M.

10
11 CLAIMANT NAME: **Wallace Ranch Limited** COURT CLAIM NO. 02267
12 **Partnership**

13 Source: Unnamed spring-fed stream (locally known as Hart
Creek).

14 Use: Irrigation of 10 acres.

15 Period of Use: June 1 through September 30.

16 Quantity: 0.16 cfs; 39 acre-feet per year.

17 Priority Date: **May 24, 1884**

18 Point of Diversion: 1550 north and 1350 feet west of the southeast
corner of Section 11, being within the $NW\frac{1}{4}SE\frac{1}{4}$ of
Section 11, T. 19 N., R. 16 E.W.M.

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20 Place of Use: $S\frac{1}{4}SE\frac{1}{4}$ of Section 11, T. 19 N., R. 16 E.W.M.
northeast of the highway

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **The Estate of Paul P. Weaver & Mary B. Shelton** COURT CLAIM NO. 00519
2
3 Source: Price Creek.
4 Use: Irrigation of 20 acres and stock water.
5 Period of Use: April 1 through October 15.
6 Quantity: 2.0 cfs; 234 acre-feet per year for irrigation and 1 acre-foot per year for stock water.
7 Priority Date: **May 24, 1884**
8 Point of Diversion: 500 feet north and 1300 feet west of the east quarter corner of Section 31, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 21 N., R. 18 E.W.M.
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10 Place of Use: SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 21 N., R. 18 E.W.M.
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SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Frederick L. Knoll** & Dixie S. Knoll COURT CLAIM NO. 12110
2 Source: Williams Creek.
3 Use: Irrigation of 1 acre and incidental stock water.
4 Period of Use: May 1 through October 31.
5 Quantity: 0.10 cfs; 10 acre-feet per year for irrigation,
6 0.30 cfs for conveyance loss during irrigation
cycles.
7 Priority Date: **May 17, 1886**
8 Point of Diversion: POD "A(1)": 1560 feet north and 70 feet east of
9 the south quarter corner of Section 36, being
within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N.,
R. 17 E.W.M.
10 Place of Use: That portion of the Louis Quietsch placer mining
11 claim lying east of Williams Creek and west of
the Old Williams Creek Road (Farm to Market
Road), being a portion of Section 36, T. 21 N.,
R. 17 E.W.M. EXCEPT: That portion of said Louis
12 Quietsch placer mining claim described as
follows: Beginning at corner No. 4 of said
location; thence along the west boundary line
13 1150.13 feet to corner No. 3; thence east along
the north boundary line 316.6 feet; thence
14 southwesterly along a straight line to the point
of beginning.
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SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Frederick L. Knoll** & Dixie S. Knoll COURT CLAIM NO. 12110
2
3 Source: Williams Creek.
4
5 Use: Irrigation of 2 acres and stock water.
6 Period of Use: May 1 through October 31 for irrigation and continuously for stock water.
7
8 Quantity: 0.20 cfs; 20 acre-feet per year for irrigation, 1 acre-foot consumptively for stock water May 1 through October 31 and 2.2 cfs; 1 acre-foot consumptively for stock water from November 1 through April 30 (see "Limitations of Use" provision below for stock water and conveyance loss for irrigation).
9
10 Priority Date: **May 17, 1886**
11 Point of Diversion: POD "A": 1580 feet north and 130 feet east of the south quarter corner of Section 36, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 19 E.W.M.
12
13 Place of Use: Beginning, for description Louis Quietsch placer claim, at corner No. 1, identical with Corner No. 2 of Big Nugget from whence said south quarter section bears S 35°04'20" W 1036.49 feet; thence north 1150.13 feet to corner No. 2; thence west 670 feet to corner No. 3; thence south 1150.13 feet to corner No. 4; thence east 670 feet to corner No. 1, point of beginning. EXCEPT: That portion of said Louis Quietsch placer mining claim location described as follows: Beginning at corner No. 4 of said location; thence north along the west boundary line of said location 1150.13 feet to corner No. 3; thence east along the north boundary line of said location 316.6 feet; thence southwesterly along a straight line to the point of beginning; EXCEPT that portion of the previous described Louis Quietsch placer mine lying northerly and easterly of U.S. Forest Service Road 2101-E and the existing roadway known as Snowshoe Road.
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SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 Limitations of Use: POD "A": During periods when beneficial use of
2 water for irrigation is occurring through ditch
3 "A" up to 0.80 cfs is authorized for conveyance
4 loss. This quantity is an in common use for the
5 partners in ditch "A," the point of diversion of
6 which is described above.

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This stock water right is shared in common by owners of land through which this ditch passes; therefore, the total instantaneous and annual quantities for stock water for the collective properties shall not exceed 1 acre-foot consumptively May 1 through October 31 and 2.2 cfs; 1 acre-foot consumptively November 1 through April 30.

CLAIMANT NAME: **Timothy M. Knoll** COURT CLAIM NO. 00163

Source: Williams Creek.

Use: Irrigation of 1 acre and stock water.

Period of Use: May 1 through October 31.

Quantity: 0.40 cfs, 0.10 cfs; 10 acre-feet per year for irrigation and consumptive stock water and 0.30 cfs for nonconsumptive conveyance loss.

Priority Date: **May 17, 1886**

Point of Diversion: PODs "A(2)" and "A(3": 2180 feet north and 250 feet east of the south quarter corner of Section 36, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.

Place of Use: That portion of the Louis Queitsch Placer Mining claim location described as follows: beginning at corner No. 4 of said location; thence north along the west boundary line of said location 1150.13 feet to corner No. 3; thence east along the north boundary line of said location 316.6 feet; thence southwesterly along a straight line to the point of beginning being a portion of Section 36, T. 21 N., R. 17 E.W.M.

Limitations of Use: This water right does not authorize continuous flow during the irrigation season.

SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Timothy M. Knoll** COURT CLAIM NO. 00163
2 Source: Williams Creek.
3 Use: Stock water.
4 Period of Use: Continuously.
5 Quantity: 2.2 cfs; 1 acre-foot per year (consumptive use).
6 Priority Date: **May 17, 1886**
7 Point of Diversion: POD "A": 1580 feet north and 130 feet east of
8 the south quarter corner of Section 36, being
within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N.,
R. 17 E.W.M.
9 Place of Use: That portion of the Louis Queitsch Placer Mining
10 claim location described as follows: beginning
11 at corner No. 4 of said location; thence north
12 along the west boundary line of said location
13 1150.13 feet to corner No. 3; thence east along
the north boundary line of said location
316.6 feet; thence southwesterly along a
straight line to the point of beginning being a
portion of Section 36, T. 21 N., R. 17 E.W.M.
14 Limitations of Use: This stock water right is shared in common by
15 owners of land through which this ditch passes;
therefore, the total instantaneous and annual
16 quantities for stock water for the collective
properties shall not exceed 1 acre-foot
17 consumptively May 1 through October 31 and
2.2 cfs; 1 acre-foot consumptively November 1
18 through April 30.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)
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1 CLAIMANT NAME: **Del L. Holter** COURT CLAIM NO. 01471
2 Source: Williams Creek.
3 Use: Mining and Domestic Supply (Irrigation of
gardens).
4 Period of Use: March 15 through November 15.
5 Quantity: 0.03 cfs; 6 acre-feet per year for mining and
1 acre-foot per year for domestic garden
irrigation of 0.5 acre or less.
6 Priority Date: **May 29, 1886**
7 Point of Diversion: 1730 feet north and 1660 feet west of the
southeast corner of Section 2, being within the
NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T. 20 N., R. 17 E.W.M.
8 Place of Use: All of that portion of Blackjack Placer Mine,
designated as Survey No. 1203, located in
Section 2, T. 20 N., R. 17 E.W.M. which is
described as follows: Commencing at Corner
No. 1, from which the south quarter corner of
said section bears S 46°29' E 421.22 feet
distant, and running thence N 16°25' W 599.5 feet
to corner No. 2; thence N 63°25' E 727.3 feet;
thence southerly to a point in the southerly
boundary line which is 702 feet northeasterly
from Corner No. 1, measured along said south
boundary line; and thence S 62°15' W, along said
south boundary line, 702 feet to the point of
beginning. EXCEPT: 1. Easement for right of
way for logging railway over a strip 75 feet in
width, conveyed to Cascade Lumber Company by
57 of Deeds, Page 11. 2. Easement for county
road as conveyed by 58 of Deeds, Page 384.

26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Sheryle Bonnell** & **William E. Bonnell** COURT CLAIM NO. 05721
2
3 Source: Williams Creek.
4
5 Use: Irrigation of 15 acres.
6
7 Period of Use: April 1 through October 31.
8
9 Quantity: 0.406 cfs; 173.8 acre-feet per year.
10
11 Priority Date: **June 30, 1886**
12
13 Point of Diversion: POD 1: 2145 feet east of the west quarter corner
14 of Section 31, being within the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ or the
15 E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31.
16
POD 2: 1980 feet east and 60 feet north of the
17 west quarter corner of Section 31, being within
18 the W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31.
19
POD 3: 1254 feet east and 100 feet south of the
20 west quarter corner of Section 31, being within
21 the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31.
22
POD 4: 990 feet east and 225 feet south of the
23 west quarter corner of Section 31, being within
24 the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31.
25
ALL being within T. 21 N., R. 18 E.W.M.
26
Place of Use: Parcel A of that certain survey as recorded
27 September 11, 1991, in Book 18 of Surveys at
28 Pages(s) 52-53, under Auditor's File No. 542839,
Records of Kittitas County, Washington; being a
portion of Homestead Entry Survey No. 161, dated
January 19, 1927; located in the E $\frac{1}{2}$ of
Section 36, T. 21 N., R. 17 E.W.M. and in the W $\frac{1}{2}$
of Section 31, T. 21 N., R. 18 E.W.M. and
Parcel B-2 of the Plat Flag Mountain; a portion
of Homestead Entry Survey No. 161 located in
Section 36, T. 21 N., R. 17 E.W.M. and
Section 31, T. 21 N., R. 18 E.W.M.

26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Selma M. Burzenski** COURT CLAIM NO. 05721
2 Source: Williams Creek.
3 Use: Irrigation of 24.5 acres.
4 Period of Use: April 1 through October 31.
5 Quantity: 0.813 cfs; 286.7 acre-feet per year.
6 Priority Date: **June 30, 1886**
7 Point of Diversion: POD 1: 2145 feet east of the west quarter corner
8 of Section 31, being within the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ or
POD 2: 1980 feet east and 60 feet north of the
9 west quarter corner of Section 31, being within
10 the W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31.
11 POD 3: 1254 feet east and 100 feet south of the
12 west quarter corner of Section 31, being within
the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31.
13 POD 4: 990 feet east and 225 feet south of the
14 west quarter corner of Section 31, being within
the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31. ALL being within
15 T. 21 N., R. 18 E.W.M.
16 Place of Use: Parcels C and D of that certain survey as
17 recorded September 11, 1991, in Book 18 of
18 Surveys at Page(s) 52-53 under Auditor's File
19 No. 542839, records of Kittitas County,
Washington; being a portion of Homestead Entry
Survey No. 161, dated January 19, 1927; located
in the W $\frac{1}{2}$ of Section 31, T. 21 N., R. 18 E.W.M.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Janis G. Newbury** & **Paul R. Newbury** COURT CLAIM NO. 05721
2
3 Source: Williams Creek.
4
5 Use: Irrigation of 17.49 acres.
6
7 Period of Use: April 1 through October 31.
8
9 Quantity: 0.406 cfs; 173.8 acre-feet per year.
10
11 Priority Date: **June 30, 1886**
12
13 Point of Diversion: POD 1: 2145 feet east of the west quarter corner
14 of Section 31, being within the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ or the
15 E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31.
16
POD 2: 1980 feet east and 60 feet north of the
17 west quarter corner of Section 31, being within
18 the W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31.
19
POD 3: 1254 feet east and 100 feet south of the
20 west quarter corner of Section 31, being within
21 the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31.
22
POD 4: 990 feet east and 225 feet south of the
23 west quarter corner of Section 31, being within
24 the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31.
25
ALL being within T. 21 N., R. 18 E.W.M.
26
Place of Use: Parcels B-1, B-3 and B-4 of the Plat Flag
27 Mountain; a portion of Homestead Entry Survey
28 No. 161 located in Section 36, T. 21 N.,
R. 18 E.W.M. and Section 31, T. 21 N.,
R. 18 E.W.M. and a parcel of land, containing
2 acres, more or less, located in Section 31,
T. 21 N. R. 18 E.W.M. and more specifically
described as follows: Beginning at a point which
bears S 69°40' E 733 feet from the quarter
section corner on the west side of Section 31,
T. 21 N., R. 18 E.W.M., running thence S 54°40' W
135.6 feet; thence S 35°20' E 200 feet; thence
N 54°40' E 435.6 feet; thence N 35°20' W
183 feet; thence S 76°5' W 46 feet, along side a
public road; running thence S 54°40' W 257 feet
to the point of beginning;

26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

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Also, a tract of land described as follows: A strip of land 20 feet in width, being 10 feet on each side of the middle line of the water ditch hereinafter mentioned, beginning on the westerly line of the tract above described, about 40 feet northerly from the southwesterly corner of said tract and south of the channel of Williams Creek, where said creek crosses the westerly line of said tract; and running thence in a southerly direction, a distance of 30 rods, more or less, and to the southerly side of said premises now owned by Grantor in Lot 3 of said Section; said strip of land following the course of a water ditch constructed during 1928 by Grantee through said premises.

9
CLAIMANT NAME: **Derald Martin** COURT CLAIM NO. 01685
10 **& Margaret Martin**
11 **Donald A. Hartman**
12 **& Ruth D. Hartman**
13 **Daniel V. Byrne**
14 **& Martha M. Wyckoff**
15 **Trendwest Resorts, Inc.**
16
17 Source: Swauk Creek.
18 Use: Irrigation of 75 acres.
19 Period of Use: April 1 through October 15.
20 Quantity: 3.20 cfs; 562.5 acre-feet per year for irrigation and 0.14 cfs for conveyance loss.
21 Priority Date: **September 20, 1889**
22 Point of Diversion: 200 feet south and 1200 feet east from the northwest corner of Section 27, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T. 20 N., R. 17 E.W.M.
23 Place of Use: E $\frac{1}{2}$ SW $\frac{1}{4}$ and that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ lying northwest of Swauk Creek and southeast of the county road, all in Section 28, T. 20 N., R. 17 E.W.M.
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SECOND SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Pat Burke**
2 & **Mary Burke** COURT CLAIM NO. 01475
3
4 Source: Swauk Creek.
5 Use: Irrigation of 20 acres.
6 Period of Use: April 1 through October 31.
7 Quantity: 2.00 cfs April 1 through October 31; 1.75 cfs,
8 150 acre-feet per year for irrigation of 20 acres
9 and 0.25 cfs for conveyance loss.
10 Priority Date: **October 31, 1889**
11 Point of Diversion: Being within the NE $\frac{1}{4}$ /SW $\frac{1}{4}$ of Section 22, T. 20 N.,
12 R. 17 E.W.M. (see "Limitations of Use" below.
13 This water right is exercised via the point of
14 diversion located in the NW $\frac{1}{4}$ /NW $\frac{1}{4}$ of Section 27,
15 T. 20 N., R. 17 E.W.M.).
16 Place of Use: That portion of the SE $\frac{1}{4}$ /SE $\frac{1}{4}$ of Section 28 and the
17 NW $\frac{1}{4}$ /NE $\frac{1}{4}$ of Section 33, T. 20 N., R. 17 E.W.M.
18 lying westerly of the May-Burke Ditch.
19 Limitations of Use: This water right is appurtenant to lands adjacent
20 to 78.4 acres with a June 30, 1878, priority
21 water right. Both tracts are irrigated via a
22 common point of diversion and ditch. The
23 capacity is 2.0 cfs; therefore, the 1878 and 1889
24 rights of 2.0 cfs each are not exercised
25 simultaneously, but rather in rotation.

26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: Douglas F. Sanders COURT CLAIM NO. 02057
2 & Marcia H. Sanders
3 Estate of Lester F. Sanders
4 & Dollie C. Sanders
5
6 Source: An unnamed spring-fed stream.
7
8 Use: Domestic supply and mining.
9
10 Period of Use: April 15 through October 15.
11
12 Quantity: 0.005 cfs; 0.5 acre-foot per year for domestic
13 and 0.02 cfs; 1.0 acre-foot per year for mining.
14
15 Priority Date: April 30, 1890
16
17 Point of Diversion: POD 1: 150 feet south and 1550 feet west of the
18 northeast corner of Section 24, being within the
19 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 21 N., R. 17 E.W.M.
20
21 POD 2: 200 feet south and 1625 feet west of the
22 northeast corner of Section 24, being within the
23 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 21 N., R. 17 E.W.M.
24
25 Place of Use: The Southern Star Mining claim lying within
26 portions of the SE $\frac{1}{4}$ of Section 13 and the NE $\frac{1}{4}$ of
27 Section 24, both in T. 21 N., R. 17 E.W.M.

28 SECOND SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Richard H. Anderson** & Judy Anderson COURT CLAIM NO. 12140
2 Source: Williams Creek.
3 Use: Irrigation of 2 acres and stock water.
4 Period of Use: May 1 through October 31 for irrigation and continuously for stock water.
5
6 Quantity: POD "A": 0.10 cfs; 10 acre-feet per year for irrigation, 1 acre-foot consumptively for stock water from May 1 through October 31 and 2.2 cfs; 1 acre-foot consumptively for stock water November 1 through April 30 (see "Limitations of Use POD A" provision below for stock water and conveyance loss for irrigation).
7
8 POD "B": 0.10 cfs; 10 acre-feet per year for irrigation, 1 acre-foot consumptively for stock water from May 1 through October 31 and 0.50 cfs; 1 acre-foot consumptively for stock water November 1 through April 30 (see "Limitations of Use POD B" provision below for stock water).
9
10 Priority Date: **July 3, 1891**
11
12 Point of Diversion: POD "A": 1580 feet north and 130 feet east of the south quarter corner of Section 36, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.
13
14 POD "B": 110 feet north and 450 feet west of the south quarter corner of Section 36, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.
15
16
17 Place of Use: Lot 1 of the Cromarty Short Plat, as described and delineated on Short Plat No. 77-05 recorded September 8, 1977, under Auditor's File No. 416218 and filed in Volume "A" of Short Plats, Page 18, Records of Kittitas County, being a portion of Section 36, T. 21 N., R. 17 E.W.M. and Section 1, T. 20 N., R. 17 E.W.M.
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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)
28

1 Limitations of Use: POD "A": During periods when beneficial use of
2 water for irrigation is occurring through ditch
3 "A" up to 0.80 cfs is authorized for conveyance
loss. This quantity is an in common use for the
partners in ditch "A," the point of diversion of
which is described above.

4

5 This stock water right is shared in common by
6 owners of land through which this ditch passes;
therefore, the total instantaneous and annual
7 quantities for stock water for the collective
properties shall not exceed 1 acre-foot
8 consumptively May 1 through October 31 and
2.2 cfs; 1 acre-foot consumptively November 1
through April 30.

9

10 POD "B": This stock water right is shared in
11 common by the owners of land through which this
ditch passes. The total instantaneous and annual
12 quantities for stock water for the collective
properties shall not exceed 0.50 cfs; 1 acre-foot
13 consumptively from November 1 through April 30
and 1 acre-foot consumptively for the period
May 1 through October 31.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

28

1 CLAIMANT NAME: Larry A. Smith & Anna L. Smith COURT CLAIM NO. 12104
2 Source: Williams Creek.
3 Use: Irrigation of 1 acre and stock water.
4 Period of Use: May 1 through October 31 for irrigation and
5 continuously for stock water.
6 Quantity: 0.10 cfs; 10 acre-feet per year for irrigation,
7 1 acre-foot consumptively for stock water from
8 May 1 through October 31 and 0.50 cfs;
1 acre-foot consumptively for stock water from
November 1 through April 30 (see "Limitations of
Use" provision below for stock water).
9 Priority Date: July 3, 1891
10 Point of Diversion: 110 feet north and 450 feet west of the south
11 quarter corner of Section 36, being within the
SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.
12 Place of Use: That portion of the following described parcel
13 lying within Fourth of July mining claim:
14 Portions of Jumbo and Fourth of July mining
claims located in Section 1, T. 20 N.,
R. 17 E.W.M. which are bounded by a line
15 described as follows: Beginning at the south
quarter corner of Section 36, thence
16 S 16°44'41" W 1434.09 feet; thence S 00°23'20" E
319.89 feet to the true point of beginning;
thence N 53°49'00" W 897.62 feet to the southeast
17 right of way/of Forest Service right of way dated
April 9, 1968, for Williams Creek Road #2102,
thence S 36°11'00" W along the southeast right of
way of Forest Service Road 10 feet; thence on a
18 curve to the right along the right of way a
radius of 330 feet an arc distance of 94.59 feet;
thence S 00°34'10" E 140.34 feet; thence
19 S 89°35'11" W 127.90 feet; thence S 00°44'08" E
20 247.07 feet; thence N 89°18'38" E 218.06 feet;
thence S 00°34'34" E 401.34 feet; thence
21 S 89°38'48" W 217.34 feet; thence S 00°14'22" E
199.83 feet; thence N 89°30'36" E 917.70 feet;
thence N 00°23'20" W 525.84 feet to the true
22 point of beginning.
23
24

26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 Limitations of Use: This stock water right is shared in common by
2 the owners of land through which this ditch
3 passes. The total instantaneous and annual
4 quantities for stock water for the collective
5 properties shall not exceed 0.50 cfs; 1 acre-foot
6 consumptively from November 1 through April 30
7 and 1 acre-foot consumptively for the period
8 May 1 through October 31.

9 CLAIMANT NAME: **Swauk Valley Ranch, LLC** COURT CLAIM NO. 00970

10 Source: Swauk Creek.

11 Use: Irrigation of 8 acres.

12 Period of Use: April 1 through October 15.

13 Quantity: 0.167 cfs; 65.6 acre-feet per year.

14 Priority Date: **September 21, 1892**

15 Point of Diversion: 600 feet south and 2000 feet west of the
16 northeast corner of Section 17, being within the
17 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T. 19 N., R. 17 E.W.M.

18 Place of Use: NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T. 19 N., R. 17 E.W.M.

19 SECOND SUPPLEMENTAL REPORT OF REFEREE

20 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Mark K. Jones** COURT CLAIM NO. 12143
2 & **Michele M. Jones**

3 Source: Williams Creek.

4 Use: Irrigation of one-half acre and stock water.

5 Period of Use: May 1 through October 31 for irrigation and
continuously for stock water.

6 Quantity: 0.05 cfs; 5 acre-feet per year for irrigation of
one-half acre, 1 acre-foot consumptively for
stock water May 1 through October 31 and
0.50 cfs; 1 acre-foot consumptively for stock
water November 1 through April 30 (see
"Limitations of Use" provision below for stock
water).

10 Priority Date: **July 3, 1893**

11 Point of Diversion: POD "B": 110 feet north and 450 feet west of the
12 south quarter corner of Section 36, being within
the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.

13 Place of Use: That portion of Section 1, T. 20 N., R. 17 E.W.M.
14 in the County of Kittitas, State of Washington,
which is a portion of "JUMBO" PLACER CLAIM and
which is bounded by a line described as follows:
15 Beginning at Corner No. 1 of "JUMBO" PLACER
CLAIM, from whence the standard south quarter of
16 Section 36, T. 21 N., R. 17 E.W.M. bears
N 16°44'41" E 1438.45 feet distant; thence south
17 846.51 feet to Corner No. 2; thence west 920 feet
to Corner No. 3; thence north 846.51 feet to
18 Corner No. 4; thence south along west line of
said "JUMBO" PLACER CLAIM 243.51 feet to point of
beginning; thence south 400 feet; thence east
218 feet; thence north 400 feet; thence west
218 feet to point of

26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

beginning. Limitations of Use: This stock water right is shared in common by the owners of land through which this ditch passes. The total instantaneous and annual quantities for stock water for the collective properties shall not exceed 0.50 cfs; 1 acre-foot consumptively from November 1 through April 30 and 1 acre-foot consumptively for the period May 1 through October 31.

CLAIMANT NAME: **Larry A. Smith** & **Anna L. Smith** COURT CLAIM NO. 12104

Source: Williams Creek.

Use: Irrigation of 3 acres and stock water.

Period of Use: May 1 through October 31 for irrigation and continuously for stock water.

Quantity: POD "A": 0.10 cfs; 10 acre-feet for irrigation of 1 acre, 1 acre-foot consumptively for stock water May 1 through October 31 and 2.2 cfs; 1 acre-foot consumptively for stock water November 1 through April 30 (see "Limitations of Use POD A" provision below for stock water and conveyance loss for irrigation).

POD "B": 0.20 cfs; 20 acre-feet for irrigation of 2 acres, 1 acre-foot consumptively for stock water May 1 through October 31 and 0.50 cfs; 1 acre-foot consumptively for stock water November 1 through April 30 (see "Limitations of Use POD B" provision below for stock water).

Priority Date: **July 3, 1893**

Point of Diversion: POD "A": 1580 feet north and 130 feet east of the south quarter corner of Section 36, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.

POD "B": 110 feet north and 450 feet west of the south quarter corner of Section 36, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.

SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 Place of Use: That portion of the following described parcel
2 lying within Jumbo mining claim: Portions of
3 Jumbo and Fourth of July mining claims located in
4 Section 1, T. 20 N., R. 17 E.W.M. which are
5 bounded by a line described as follows:
6 Beginning at the south quarter corner of
7 Section 36, thence S 16°44'41" W 1434.09 feet;
8 thence S 00°23'20" E 319.89 feet to the true
9 point of beginning; thence N 53°49'00" W
10 897.62 feet to the southeast right of way of
11 Forest Service right of way dated April 9, 1968,
12 for Williams Creek Road #2102, thence
13 S 36°11'00" W along the southeast right of way of
Forest Service Road 10 feet; thence on a curve to
the right along the right of way a radius of
330 feet an arc distance of 94.59 feet; thence
S 00°34'10" E 140.34 feet; thence S 89°35'11" W
127.90 feet; thence S 00°44'08" E 247.07 feet;
thence N 89°18'38" E 218.06 feet; thence
S 00°34'34" E 401.34 feet; thence S 89°38'48" W
217.34 feet; thence S 00°14'22" E 199.83 feet;
thence N 89°30'36" E 917.70 feet; thence
N 00°23'20" W 525.84 feet to the true point of
beginning.

14 Limitations of Use: POD "A": During periods when beneficial use of
water for irrigation is occurring through ditch
"A" up to 0.80 cfs is authorized for conveyance
loss. This quantity is an in common use for the
partners in ditch "A," the point of diversion of
which is described above.

17 This stock water right is shared in common by
18 owners of land through which this ditch passes;
therefore, the total instantaneous and annual
19 quantities for stock water for the collective
properties shall not exceed 1 acre-foot
consumptively May 1 through October 31 and
2.2 cfs; 1 acre-foot consumptively November 1
through April 30.

21 POD "B": This stock water right is shared in
common by the owners of land through which this
ditch passes. The total instantaneous and annual
22 quantities for stock water for the collective
properties shall not exceed 0.50 cfs; 1 acre-foot
consumptively from November 1 through April 30
23 and 1 acre-foot consumptively for the period
May 1 through October 31.

26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **James Hooper** & **Cathy Hooper** COURT CLAIM NO. 00919
2 Source: Two unnamed springs.
3 Use: Domestic supply, stock water and irrigation of
4 2 acres.
5 Period of Use: Continuously for domestic supply and stock water;
6 April 15 through October 15 for irrigation.
7 Quantity: 0.01 cfs; 1 acre-foot per year for domestic
8 supply and stock water; 0.03 cfs; 8 acre-feet per
9 year for irrigation.
10 Priority Date: **June 30, 1894**
11 Point of Diversion: 1200 feet south and 700 feet east from the north
12 quarter corner of Section 11, being within the
13 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 19 N., R. 16 E.W.M.
14 Place of Use: That portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11,
15 T. 19 N., R. 16 E.W.M. lying easterly of State
16 Highway No. 10.

26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Wallace Ranch Limited** COURT CLAIM NO. 02267
2 Partnership
3 Source: Yakima River.
4 Use: Irrigation of 38.2 acres.
5 Period of Use: April 15 through October 1.
6 Quantity: 3.35 cfs; 279.6 acre-feet per year.
7 Priority Date: **September 24, 1894**
8 Point of Diversion: 200 feet south and 200 feet east of the north
quarter corner of Section 14, being within the
NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T. 19 N., R. 16 E.W.M.
9 Place of Use: That portion of the NE $\frac{1}{4}$ of Section 14, T. 19 N.,
R. 16 E.W.M. lying between the railroad and the
Yakima River.
10 Limitations of Use: The instantaneous quantity under both the 1894
and 1896 rights to Yakima River water is limited
to no more than 3.35 cfs.
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14 CLAIMANT NAME: **Wallace Ranch Limited** COURT CLAIM NO. 02267
15 Partnership
16 Source: Unnamed spring.
17 Use: Single, in-house domestic supply.
18 Period of Use: Continuously.
19 Quantity: 0.01 cfs; 1 acre-foot per year.
20 Priority Date: **September 25, 1894**
21 Point of Diversion: 300 feet south and 600 feet west from the
northeast corner of Section 14, being within the
N $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T. 19 N., R. 16 E.W.M.
22 Place of Use: SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T. 19 N., R. 16 E.W.M.
23
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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek) 127
28

1 CLAIMANT NAME: **Frederick L. Knoll** & Dixie S. Knoll COURT CLAIM NO. 12110
2
3 Source: Williams Creek.
4
5 Use: Irrigation of 4 acres and stock water.
6 Period of Use: May 1 through October 31 for irrigation and continuously for stock water.
7
8 Quantity: 0.40 cfs; 40 acre-feet per year for irrigation, 1 acre-foot consumptively for stock water May 1 through October 31 and 2.2 cfs; 1 acre-foot consumptively from November 1 through April 30 for stock water (see "Limitations of Use" provision below for stock water and conveyance loss for irrigation).
9
10 Priority Date: **December 1, 1894**
11 Point of Diversion: POD "A": 1580 feet north and 130 feet east of the south quarter corner of Section 36, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.
12
13 Place of Use: That portion of Big Nugget and Gold Bar placer mining claim locations lying easterly of an existing roadway known as the Old Williams Creek Road and northerly of an existing road more fully described as follows: Beginning at the intersection of the centerline of an existing road and the east property boundary line of Gold Bar Placer claim, said point being S 61°49'48" E 304.59 feet from the south one quarter corner of Section 36, T. 21 N., R. 17 E.W.M.; thence N 58°21'25" W 115.27 feet; thence N 78°02'17" W 153.65 feet; thence N 16°03'16" W 100.98 feet; thence N 04°23'14" W 132.49 feet; thence N 25°38'56" W 91.50 feet; thence N 71°19'49" W 70.42 feet; to a point which point is the intersection of the centerline of the previously described road with the centerline of the Old Williams Creek Road. Less that portion of the preceding parcel lying within Gold Bar placer mining claim.
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SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 Limitations of Use: During periods when beneficial use of water for
2 irrigation is occurring through ditch "A" up to
3 0.80 cfs is authorized for conveyance loss. This
 quantity is an in common use for the partners in
 ditch "A," the point of diversion of which is
 described above.

This stock water right is shared in common by owners of land through which this ditch passes; therefore, the total instantaneous and annual quantities for stock water for the collective properties shall not exceed 1 acre-foot consumptively May 1 through October 31 and 2.2 cfs; 1 acre-foot consumptively November 1 through April 30.

10 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
U.S. Timberlands, LLC (A) 03119
11 (A) 05238

12 | Source: First Creek.

13 Use: Timber management (road watering).

14 | Period of Use: May 1 through December 1.

15 Quantity: 0.58 cfs; 1.84 acre-feet per year.

16 Priority Date: September 30, 1896

17 Point of Diversion: Various points of diversion for pump chances
18 between the east and west boundaries of
Section 23, being within the S $\frac{1}{2}$ of Section 23,
T. 20 N., R. 17 E.W.M.

Place of Use: The S $\frac{1}{2}$ of Section 23, T. 20 N., R. 17 E.W.M.

26 | SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Richard H. Anderson** & Judy Anderson COURT CLAIM NO. 12140
2
3 Source: Williams Creek.
4
5 Use: Irrigation of 1 acre and stock water.
6 Period of Use: May 1 through October 31 for irrigation and continuously for stock water.
7
8 Quantity: 0.10 cfs; 10 acre-feet per year for irrigation of 1 acre, 1 acre-foot consumptively for stock water from May 1 through October 31 and 0.50 cfs; 1 acre-foot consumptively from November 1 through April 30 for stock water (see "Limitations of Use" provision below for stock water).
9
10 Priority Date: **January 1, 1898**
11 Point of Diversion: POD "B": 110 feet north and 450 feet west of the south quarter corner of Section 36, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.
12
13 Place of Use: That portion of the following described parcel lying northeast of Williams Creek: Lot 1 of the Cromarty Short Plat, as described and delineated on Short Plat No. 77-05 recorded September 8, 1977, under Auditor's File No. 416218 and filed in Volume "A" of Short Plats, Page 18, Records of Kittitas County, being a portion of Section 36, T. 21 N., R. 17 E.W.M. and Section 1, T. 20 N., R. 17 E.W.M.
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17 Limitations of Use: This stock water right is shared in common by the owners of land through which this ditch passes. The total instantaneous and annual quantities for stock water for the collective properties shall not exceed 0.50 cfs; 1 acre-foot consumptively from November 1 through April 30 and 1 acre-foot consumptively for the period May 1 through October 31.
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SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Bernard Paul Knoll** COURT CLAIM NO. 12061
2 Source: Williams Creek.
3 Use: Irrigation of 1 acre and stock water.
4 Period of Use: May 1 through September 30 for irrigation and
continuously for stock water.
5 Quantity: 0.10 cfs; 10 acre-feet per year for irrigation,
0.01 cfs; 1 acre-foot consumptively for stock
water May 1 through September 31 and 0.50 cfs;
1 acre-foot consumptively October 1 through
April 30 (see "Limitations of Use" provision
below for stock water).
6 Priority Date: **January 1, 1898**
7 Point of Diversion: 110 feet north and 405 feet west of the south
quarter corner of Section 36, being within the
SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.
8 Place of Use: That portion of Lot 4 Cromarty Short Plat 77-05
lying westerly of Williams Creek and easterly of
the ditch served by point of diversion "B" (see
above) being a portion of Section 1, T. 20 N.,
R. 17 E.W.M.
9 Limitations of Use: This stock water right is shared in common by the
owners of land through which this ditch passes.
The total instantaneous and annual quantities for
stock water for the collective properties shall
not exceed 0.50 cfs; 1 acre-foot consumptively
from November 1 through April 30 and 1 acre-foot
consumptively for the period May 1 through
October 31.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Frederick L. Knoll** & Dixie S. Knoll COURT CLAIM NO. 12110
2 Source: Williams Creek.
3 Use: Irrigation of 1 acre and stock water.
4 Period of Use: May 1 through October 31 for irrigation and
5 continuously for stock water.
6 Quantity: 0.10 cfs; 10 acre-feet per year for irrigation,
7 1 acre-foot consumptively for stock water and
8 0.80 cfs for conveyance water May 1 through
October 31 and 2.2 cfs; 1 acre-foot consumptively
for stock water November 1 through April 30 (see
"Limitations of Use" provision below for stock
water and conveyance loss for irrigation).
9
10 Priority Date: **January 1, 1898**
11 Point of Diversion: POD "A": 1580 feet north and 130 feet east of
the south quarter corner of Section 36, being
within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N.,
R. 17 E.W.M.
12
13 Place of Use: That portion of Big Nugget and Gold Bar placer
mining claim locations lying easterly of an
existing roadway known as the Old Williams Creek
Road and northerly of an existing road more fully
described as follows: Beginning at the
intersection of the centerline of an existing
road and the east property boundary line of Gold
Bar placer claim, said point being S 61°49'48" E
304.59 feet from the south one quarter corner of
Section 36, T. 21 N., R. 17 E.W.M.; thence
N 58°21'25" W 115.27 feet; thence N 78°02'17" W
153.65 feet; thence N 16°03'16" W 100.98 feet;
thence N 04°23'14" W 132.49 feet; thence
N 25°38'56" W 91.50 feet; thence N 71°19'49" W
70.42 feet; to a point which point is the
intersection of the centerline of the previously
described road with the centerline of the Old
Williams Creek Road. Less that portion of the
preceding parcel lying within the Big Nugget
placer mining claim.
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SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 Limitations of Use: POD "A": During periods when beneficial use of
2 water for irrigation is occurring through ditch
3 "A" up to 0.80 cfs is authorized for conveyance
4 loss. This quantity is an in common use for the
5 partners in ditch "A," the point of diversion of
6 which is described above.

7
8 This stock water right is shared in common by
9 owners of land through which this ditch passes;
10 therefore, the total instantaneous and annual
11 quantities for stock water for the collective
12 properties shall not exceed 1 acre-foot
13 consumptively May 1 through October 31 and
14 2.2 cfs; 1 acre-foot consumptively November 1
15 through April 30.

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SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Steven A. Minalia** COURT CLAIM NO. 12137
2 & **Karen R. Minalia**

3 Source: Williams Creek.

4 Use: Irrigation of 4.0 acres and stock water.

5 Period of Use: May 1 through October 31 for irrigation and
continuously for stock water.

6 Quantity: 0.40 cfs; 40 acre-feet per year for irrigation of
4 acres, 1 acre-foot consumptively for stock
water May 1 through October 31 and 2.2 cfs;
1 acre-foot consumptively for stock water
November 1 through April 30 (see "Limitations of
Use" provision below for stock water and
conveyance loss for irrigation).

10 Priority Date: **January 1, 1898**

11 Point of Diversion: POD "A": 1580 feet north and 130 feet east of
the south quarter corner of Section 36, being
within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N.,
R. 17 E.W.M.

13 Place of Use: PARCEL A: That portion of Lot 3 of Cromarty
Short Plat, as described and delineated on
Kittitas County Short Plat No. 77-05, recorded
September 8, 1977, under Auditor's File
No. 416218, and filed in Volume "A" of Short
Plats, Page 18, Records of Kittitas County, State
of Washington, being a portion of Section 36,
T. 21 N., R. 17 E.W.M., and a portion of
Section 1, T. 20 N., R. 17 E.W.M., Kittitas
County, State of Washington, which is described
as follows: Commencing at the existing Iron Pin
Monument marking the southeast corner of the
patented mining claim known as Gold Bar Placer
Mine and the southeast corner of said Lot 3, said
point being the true point of beginning: Thence
N 32°49'59" W, a distance of 768.64 feet to the
westerly boundary line of said Lot 3; thence on
the following courses, and distances on the
boundary line of said Lot 3; (A) Northeasterly on
a 272.97 foot radius curve concave to the
northwest an arc distance of 1.37 feet, the long
chord of said curve being N 19°15'05" E, a
distance of 1.37 feet; (B) N 19°06'27" E, a

26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 distance of 67.63 feet; (C) Northeasterly on a
2 430.00 foot radius curve concave to the northwest
3 an arc distance of 108.30 feet, the long chord of
4 said curve being N 11°53'33" E, a distance of
5 108.01 feet; (D) N 04°40'39" E, a distance of
6 85.30 feet; (E) Northeasterly on a 10.00 foot
7 radius curve concave to the southeast an arc
8 distance of 18.15 feet, the long chord of said
9 curve being N 56°40'25" E, a distance of
10 15.76 feet; (F) Southeasterly on a 15.66 foot
11 radius curve concave to the southwest an arc
12 distance of 12.48 feet, the long chord of said
13 curve being S 48°29'23" E, a distance of
14 12.16 feet; (G) S 25°38'57" E, a distance of
15 25.34 feet; (H) Southeasterly on a 220.00 foot
16 radius curve concave to the southwest an arc
17 distance of 81.64 feet, the long chord of said
18 curve being S 15°01'05" E, a distance of
19 81.17 feet; (I) S 04°23'14" E, a distance of
20 73.30 feet; (J) Southeasterly on a 150.00 foot
21 radius curve concave to the northeast an arc
22 distance of 30.54 feet, the long chord of said
23 curve being S 10°13'15" E, a distance of
24 30.49 feet; (K) S 16°03'16" E, a distance of
25 16.64 feet; (L) Southeasterly on a 150.00 foot
radius curve concave to the northeast an arc
distance of 162.27 feet, the long chord of said
curve being S 47°02'47" E, a distance of
154.47 feet; (M) S 78°02'17" E, a distance of
46.88 feet; (N) Southeasterly on a 170.00 foot
radius curve concave to the southwest an arc
distance of 58.40 feet, the long chord of said
curve being S 68°11'51" E, a distance of
58.11 feet; (O) S 58°21'25" E, a distance of
93.39 feet; (P) S 00°18'31" E, a distance of
496.48 feet to the true point of beginning.

(Also known as Parcel 2 of survey filed in
Volume 13 of Surveys, Page 28).

PARCEL B: That portion of Lot 3, of Cromarty
Short Plat, as described and delineated on Short
Plat No. 77-05, recorded September 8, 1977, under
Auditor's File No. 416218, and filed in
Volume "A" of Short Plats, Page 18, being a
portion of Section 36, T. 21 N., R. 17 E.W.M.,
and Section 1, T. 20 N., R. 17 E.W.M., Kittitas
County, State of Washington, which is described
as follows: Commencing at the existing Iron Pin

SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

Monument marking the southeast quarter of the patented mining claim known as Gold Bar Placer Mine and the southeast corner of said Lot 3, said point being the true point of beginning: Thence on the following courses and distances on the boundary line of said Lot 3: (A) S $88^{\circ}47'44''$ W, a distance of 205.89 feet; (B) N $36^{\circ}49'57''$ W, a distance of 551.68 feet; (C) N $01^{\circ}18'42''$ E, a distance of 66.75 feet; (D) Northeasterly on a 210.00 foot radius curve concave to the northwest an arc distance of 59.80 feet, the long chord of said curve being N $54^{\circ}40'50''$ E, a distance of 59.60 feet; (E) Northeasterly on a 272.97 foot radius curve concave to the northwest an arc distance of 129.24 feet, the long chord of said curve being N $32^{\circ}57'31''$ E, a distance of 128.04 feet; (F) Thence S $32^{\circ}49'59''$ E, a distance of 768.64 feet to the true point of beginning.

(Also known as Parcel 1 of survey filed in Volume 13 of Surveys, Page 28).

Limitations of Use:

During periods when beneficial use of water for irrigation is occurring through ditch "A" up to 0.80 cfs is authorized for conveyance loss. This quantity is an in common use for the partners in ditch "A," the point of diversion of which is described above.

This stock water right is shared in common by owners of land through which this ditch passes; therefore, the total instantaneous and annual quantities for stock water for the collective properties shall not exceed 1 acre-foot consumptively May 1 through October 31 and 2.2 cfs; 1 acre-foot consumptively November 1 through April 30.

SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Gerald R. Peltola** COURT CLAIM NO. 12310
2 & **Barbara J. Peltola**

3 Source: Williams Creek.

4 Use: Irrigation of 2 acres and stock water.

5 Period of Use: May 1 through October 31 for irrigation and
continuously for stock water.

6 Quantity: POD "A": 0.10 cfs; 10 acre-feet per year for
irrigation of 1 acre, 1 acre-foot consumptively
for stock water from May 1 through October 31 and
2.2 cfs; 1 acre-foot consumptively for stock
water November 1 through April 30 (see
"Limitations of Use POD A" provision below for
stock water and conveyance loss for irrigation).

7 POD "B": 0.10 cfs; 10 acre-feet per year for
irrigation of 1 acre, 1 acre-foot consumptively
for stock water from May 1 through October 31,
0.50 cfs; 1 acre-foot consumptively for stock
water November 1 through April 30 (see
"Limitations of Use POD B" provision below for
stock water).

14 Priority Date: **January 1, 1898**

15 Point of Diversion: POD "A": 1580 feet north and 130 feet east of
the south quarter corner of Section 36, being
within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N.,
R. 17 E.W.M.

16 POD "B": 110 feet north and 450 feet west of the
south quarter corner of Section 36, being within
the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.

17 Place of Use: Lot 2 of the Cromarty Short Plat, as described
and delineated on Short Plat No. 77-05 recorded
September 8, 1977, under Auditor's File
No. 416218 and filed in Volume "A" of Short
Plats, Page 18, Records of Kittitas County, being
a portion of Section 36, T. 21 N., R. 17 E.W.M.

26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 and Section 1, T. 20 N., R. 17 E.W.M. Limitations
2 of Use: POD "A": During periods when
3 beneficial use of water for irrigation is
4 occurring through ditch "A" up to 0.80 cfs is
5 authorized for conveyance loss. This quantity is
6 an in common use for the partners in ditch "A,"
7 the point of diversion of which is described
8 above.

9
10 This stock water right is shared in common by
11 owners of land through which this ditch passes;
12 therefore, the total instantaneous and annual
13 quantities for stock water for the collective
14 properties shall not exceed 1 acre-foot
15 consumptively May 1 through October 31 and
16 2.2 cfs; 1 acre-foot consumptively November 1
17 through April 30.

18 POD "B": This stock water right is shared in
19 common by the owners of land through which this
20 ditch passes. The total instantaneous and annual
21 quantities for stock water for the collective
22 properties shall not exceed 0.50 cfs; 1 acre-foot
23 consumptively from November 1 through April 30
24 and 1 acre-foot consumptively for the period
May 1 through October 31.

25 CLAIMANT NAME: **Paul De Faccio** COURT CLAIM NO. 01087
26 & **Dianne De Faccio**

27 Source: Yakima River.

28 Use: Irrigation of 50 acres.

Period of Use: April 15 through October 15.

Quantity: 1 cfs; 250 acre-feet per year.

Priority Date: **July 27, 1899**

Point of Diversion: 220 feet north and 300 feet east from the center
of Section 28, within the SW^{1/4}NE^{1/4} of Section 28,
T. 19 N., R. 17 E.W.M.

Place of Use: The S^{1/2}NE^{1/4} of Section 33, T. 19 N., R. 17 E.W.M.

SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Bruce Coe** COURT CLAIM NO. 01146

2 Source: Swauk Creek.

3 Use: Irrigation of 5 acres.

4 Period of Use: April 1 through October 15.

5 Quantity: 0.375 cfs; 37.5 acre-feet per year.

6 Priority Date: **April 9, 1901**

7 Point of Diversion: 1100 feet south and 1000 feet west of the center
8 of Section 33, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 33, T. 20 N., R. 17 E.W.M.

9 Place of Use: SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 20 N., R. 17 E.W.M.

10 CLAIMANT NAME: **Elna Irene Siepmann** COURT CLAIM NO. 01278
11 & Estate of William Siepmann

12 Source: Wildcat Gulch.

13 Use: Irrigation of 0.5 acre and stock water.

14 Period of Use: April 15 through September 15.

15 Quantity: 0.03 cfs; 3 acre-feet per year.

16 Priority Date: **June 4, 1903**

17 Point of Diversion: 50 feet south and 1200 feet west of the north
18 quarter corner of Section 15, being within the
NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T. 20 N., R. 17 E.W.M.

19 Place of Use: W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T. 20 N.,
R. 17 E.W.M.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

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1 CLAIMANT NAME: **Bernard Paul Knoll** COURT CLAIM NO. 12062
2 Source: Williams Creek.
3 Use: Irrigation of 3 acres and stock water.
4 Period of Use: May 1 through September 30 for irrigation and
continuously for stock water.
5
6 Quantity: 0.30 cfs; 30 acre-feet per year for irrigation,
0.01 cfs; 1 acre-foot consumptively for stock
water May 1 through September 30 and 0.30 cfs;
1 acre-foot consumptively for stock water from
October 1 through April 30
7
8 Priority Date: **September 30, 1909**
9
10 Point of Diversion: 110 feet north and 405 feet west of the south
quarter corner of Section 36, being within the
SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.
11
12 Place of Use: That portion of Lot 4 Cromarty Short Plat 77-05
lying westerly of Williams Creek and easterly of
the United States Forest Service ditch being a
portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N.,
R. 17 E.W.M.
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SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Del L. Holter** COURT CLAIM NO. 01471
2 Source: Unnamed spring.
3 Use: Domestic supply and mining.
4 Period of Use: Continuously for domestic supply and March 15 through November 15 for mining.
5
6 Quantity: 0.01 cfs; 4 acre-feet per year for domestic supply and 0.03 cfs; 2 acre-feet per year for mining.
7
8 Priority Date: **June 19, 1960**
9 Point of Diversion: 200 feet west and 100 feet south of the center of Section 3, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 20 N., R. 17 E.W.M.
10
11 Place of Use: All of that portion of Blackjack Placer Mine, designated as Survey No. 1203, located in Section 2, T. 20 N., R. 17 E.W.M. which is described as follows: Commencing at corner No. 1, from which the south quarter corner of said section bears S 46°29' E 421.22 feet distant, and running thence N 16°25' W 599.5 feet to corner No. 2; thence N 63°25' E 727.3 feet, thence southerly to a point in the southerly boundary line which is 702 feet northeasterly from corner No. 1, measured along said south boundary line; and thence S 62°15' W, along said south boundary line, 702 feet to the point of beginning. EXCEPT: 1. Easement for right of way for logging railway over a strip 75 feet in width, conveyed to Cascade Lumber Company by 57 of Deeds, Page 11. 2. Easement for county road as conveyed by 58 of Deeds, Page 384.
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SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Gold Placers, Inc.** COURT CLAIM NO. 01561
2 Source: Boulder Creek and Williams Creek.
3 Use: Placer Mining.
4 Period of Use: March 1 through November 15.
5 Quantity: 1.5 cfs; 49 acre-feet per year.
6 Priority Date: **December 18, 1961**
7 Point of Diversion: Boulder Creek: At any point on the creek channel
8 within the west 2000 feet of the S $\frac{1}{4}$ SW $\frac{1}{4}$ of
9 Section 6, T. 20 N., R. 18 E.W.M. and the SE $\frac{1}{4}$,
NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T. 20 N.,
R. 17 E.W.M.
10 Williams Creek: At any point on the creek
11 channel within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1
12 and within the SE $\frac{1}{4}$ of Section 2, T. 20 N.,
R. 17 E.W.M.
13 Place of Use: The E $\frac{1}{2}$ of Blackjack; Mineral Survey No. 1203,
14 Discovery and Theresa; Mineral Survey No. 343,
Bigney; Mineral Survey No. 1206, Elliot; Mineral
Survey No. 1206, 1916; Mineral Survey No. 1159,
Little May; Mineral Survey No. 1159, Boulder
Creek; Mineral Survey No. 1159, Nugget and Gold
Bar, Mineral Survey No. 1204, New Discovery;
Mineral Survey No. 1205, Last Chance, Golden
Eagle, Snyder.
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SECOND SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Dennis Mickens** COURT CLAIM NO. 00348
2 & **Georgiana Mickens**

3 Source: Two unnamed springs.

4 Use: Continuous domestic supply for one home.

5 Period of Use: Continuous.

6 Quantity: 0.02 cfs; 1 acre-foot per year.

7 Priority Date: **July 24, 1963**

8 Point of Diversion: POD 1: 600 feet north and 400 feet east from the
9 southwest corner of Section 11, being within the
SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 20 N., R. 17 E.W.M.

10 POD 2: 100 feet north and 500 feet east of the
11 west quarter corner of Section 11, being within
the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 20 N., R. 17 E.W.M.

12 Place of Use: The S $\frac{1}{4}$ S $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 20 N.,
R. 17 E.W.M.

13 CLAIMANT NAME: **Dennis Mickens** COURT CLAIM NO. 00348
14 & **Georgiana Mickens**

15 Source: Deer Creek.

16 Use: Irrigation of 25 acres.

17 Period of Use: May 1 through June 15.

18 Quantity: 0.60 cfs; 25 acre-foot per year.

19 Priority Date: **July 24, 1963**

20 Point of Diversion: 1000 feet south and 800 feet east of the center
21 of Section 11, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 11, T. 20 N., R. 17 E.W.M.

22 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10 and the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
23 Section 11 in T. 20 N., R. 17 E.W.M.

26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Columbia Cascade Land** COURT CLAIM NO. 01096
2 **Company, Inc.**

3 Source: An unnamed stream.

4 Use: Fish propagation.

5 Period of Use: Continuously.

6 Quantity: 0.50 cfs.

7 Priority Date: **June 30, 1965**

8 Point of Diversion: 550 feet north and 650 feet east from the
9 southwest corner of Section 17, being within the
SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T. 21 N., R. 18 E.W.M.

10 Place of Use: The S $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T. 21 N., R. 18 E.W.M.

11 Limitations of Use: The diversion intake shall be tightly screened at
12 all times with wire having a mesh opening not
greater than 0.125 (1/8) inch.

13 CLAIMANT NAME: **Columbia Cascade Land** COURT CLAIM NO. 01096
14 **Company, Inc.**

15 Source: An unnamed spring.

16 Use: Group domestic supply.

17 Period of Use: Continuously.

18 Quantity: 0.006 cfs; 2 acre-feet per year.

19 Priority Date: **June 30, 1965**

20 Point of Diversion: 700 feet north and 100 feet east from the south
21 quarter corner of Section 18, being within the
SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T. 21 N., R. 18 E.W.M.

22 Place of Use: The Plat of Liberty Mountain No. 1; and Plat of
23 Liberty Mountain No. 2; and the unplatte portion
of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18; ALL within the S $\frac{1}{4}$ of
Section 18, T. 21 N., R. 18 E.W.M.

26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Liberty Mt. Ownership** COURT CLAIM NO. 01095
2 **Association, Inc.**

3 Source: Two unnamed springs.

4 Use: Group domestic supply.

5 Period of Use: Continuously.

6 Quantity: 0.014 cfs; 5 acre-feet per year

7 Priority Date: **June 30, 1965**

8 Point of Diversion: Spring Lot C; and Park Lot A; both within the
9 Plat of Liberty Mountain No. 1 of Section 18,
T. 21 N., R. 18 E.W.M.

10 Place of Use: Lands served by Liberty Mountain Ownership
11 Association, Inc., within the S $\frac{1}{2}$ of Section 18,
T. 21 N., R. 18 E.W.M.

12 CLAIMANT NAME: **Linda L. Lewis, et al.** COURT CLAIM NO. 00747
13 **Michelle L. Maillot**
14 **Robert L. Vankirk**

15 Source: An unnamed stream.

16 Use: Single domestic supply.

17 Period of Use: Continuously.

18 Quantity: 0.01 cfs; 2 acre-feet per year.

19 Priority Date: **July 21, 1966**

20 Point of Diversion: 1000 feet north and 1200 feet west from the south
quarter corner of Section 10, being within the
SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T. 20 N., R. 17 E.W.M.

21 Place of Use: SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T. 20 N., R. 17 E.W.M.

22 Limitations of Use: The diversion intake should be tightly screened
23 at all times with wire having a mesh opening not
greater than 0.125 (1/8) inch.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Mr. & Mrs. Marlyn Bateman** COURT CLAIM NO. 01479
2 **Lookout Mountain Associates**

3 Source: Pump House Spring.

4 Use: Domestic supply for two residences and stock
water.

5 Period of Use: Continuously.

6 Quantity: 0.00222 cfs (1 gallon per minute), 1.0 acre-foot
per year for domestic supply; 0.50 acre-foot per
year for stock water.

7 Priority Date: **August 16, 1969**

8 Point of Diversion: 700 feet south and 300 feet west from the
northeast corner of Section 11 being within the
NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 19 N., R. 16 E.W.M.

9 Place of Use: The following parcels in T. 19 N., R. 16 E.W.M.
in Kittitas County, Washington:

10 Beginning at the northwest corner of the NE $\frac{1}{4}$ of
Section 12, which is the true point of beginning;
thence southerly along the west line of the said
NE $\frac{1}{4}$ 890 feet; thence east 660 feet; thence south
175 feet; thence S 23°30' E 350 feet; thence
N 65°30' E 610 feet; thence in a
north-northwesterly direction to a point on the
north line of Section 12 which is 900 feet
easterly of the northwest corner of the NE $\frac{1}{4}$ of
Section 12; thence westerly along said north line
of Section 12 to the true point of beginning; AND
beginning at the southwest corner of Section 1,
thence northerly along the west line of
Section 1, 230 feet to the true point of
beginning; thence easterly along a line parallel
to the south line of Section One 1000 feet;
thence north 300 feet; thence in a northwesterly
direction to a point on the west line of
Section 1 which is 1230 feet north of the
southwest corner of Section 1; thence southerly
along the west line of Section 1 to the true
point of beginning.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE

27 Re: Subbasin No. 4 (Swauk Creek)

1 CLAIMANT NAME: **Bruce Coe** COURT CLAIM NO. 01146
2 Source: An unnamed spring.
3 Use: Group domestic supply and stock water.
4 Period of Use: Continuously.
5 Quantity: 0.06 cfs; 6 acre-feet per year for group domestic supply and 1 acre-foot per year for stock water.
6 Priority Date: **June 18, 1974**
7 Point of Diversion: 1200 feet south and 1200 feet west of the center of Section 33, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T. 20 N., R. 17 E.W.M.
8 Place of Use: The NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T. 20 N., R. 17 E.W.M.
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11 CLAIMANT NAME: **Wilma Preston** COURT CLAIM NO. 02050
12 Source: Unnamed spring.
13 Use: Domestic supply (single).
14 Period of Use: Continuously.
15 Quantity: 0.002 cfs; 0.5 acre-foot per year.
16 Priority Date: **June 26, 1974**
17 Point of Diversion: 1750 feet north and 990 feet west of the southeast corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T. 20 N., R. 17 E.W.M.
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19 Place of Use: NE $\frac{1}{4}$ SE $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T. 20 N., R. 17 E.W.M.
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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)
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1 CLAIMANT NAME: **Fred Chapman**
2 & **Delores Chapman** COURT CLAIM NO. 01423
3 Source: Swauk Creek.
4 Use: Single domestic supply.
5 Period of Use: Continuous.
6 Quantity: 0.01 cfs; 1 acre-foot per year.
7 Priority Date: **September 30, 1974**
8 Point of Diversion: 1100 feet north and 100 feet east from the west
9 quarter corner of Section 27, being within the
SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27, T. 20 N., R. 17 E.W.M.
10 Place of Use: NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27, T. 20 N., R. 17 E.W.M.
11 Limitations of Use: Use shall be limited to in-house domestic use and
not for irrigation of lawn and garden.

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26 SECOND SUPPLEMENTAL REPORT OF REFEREE
27 Re: Subbasin No. 4 (Swauk Creek)

1 The aforementioned findings of fact modifies the Report of Referee
2 dated March 25, 1996, and the Supplemental Report of Referee dated July 6,
3 1998.

4 SIGNED and DATED at Yakima, Washington, this 20th day of March,
5 2002.

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7 DOUGLAS CLAUSING, Referee
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SECOND SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4 (Swauk Creek)

APPENDIX A

SECOND SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4 (Swauk Creek)

SUBBASIN NO. 4 EXHIBITS SORTED BY EXHIBIT

| EXHIBIT # | DATE | DESCRIPTION | DOCUMENT | PARTIES |
|------------------------|-----------------|--|---------------------|---|
| DE-110 | 1909 (5/26) | Notice of Appropriation by Henry Kleinberg (Court Claim No. 04914A William J. Grueter) | Notice | Kleinberg |
| DE-112 | | Chain of Title, Jack White | Chain of Title | White |
| DE-113 | | Chain of Title, Jim Roan | Chain of Title | Roan |
| DE-114 | | Chain of Title, Dick Szuba | Chain of Title | Szuba |
| DE-115 | | Chain of Title, Neil J. Hoff | Chain of Title | Hoff |
| DE-116 | | Metsker Map, T. 19 & 20 N., R. 18 E.W.M. | Map, Metsker | |
| DE-117 | | Aerial Photo Map | Map, Aerial Photo | FCWUA |
| DE-118 | 1890 (5/26) | Affidavit of Water Right Peter A. Wold & Alex A. Munson | Affidavit | Wold & Munson |
| DE-119 [01] | 1881 (6/1) | Notice of Water Right, Peter Wold & Alex Munson | Notice, Water Right | Wold & Munson |
| DE-119 [02] | 1882 (6/12) | Notice of Water Right, Alex Munson & Peter Wold | Notice, Water Right | Munson & Wold |
| DE-119 [03] | 1886 (4/10) | Notice of Water Right, Peter Wold & Alex Munson | Notice, Water Right | Wold & Munson |
| DE-120 | 1891 (5/1) | Agreement of Sale Peter Wold to Jacob Bowers | Agreement of Sale | Wold to Bowers |
| DE-121 | 1893 (11/27) | Decree Peter A. Wold & A. A. Munson vs. B. K. May, Decree 784 | Decree | Wold & Munson vs. May |
| DE-122 | 1899 (5/15) | Decree 2770 Francis C. Faulkner & Henry C. Sanders vs. James Hamilton, et al. | Decree | Faulkner & Sanders vs. Hamilton |
| DE-123 | 1899 (10/25) | Deed Sallie Fellows to Barthal Zwicker, et al. | Deed | Fellows to Zwicker, et al. |
| DE-124 | 1900 (10/27) | Deed W. J. Robbins to Barthal Zwicker, et al. | Deed | Robbins, W.J. to Zwicker |
| DE-125 | 1917 (4/24) | Deed Peter Glesener to C.M. Cahoon | Deed | Glesener to Cahoon |
| DE-126 | 1920 (12/1) | Decree 6134 Cascal Investment Co. vs. Henry Washburn | Decree | Cascal vs. Washburn |
| DE-127 | 1920 (5/12) | Affidavit of Peter Wold RE: Decree 6134 | Affidavit | Wold |
| DE-128 [01] (Pg. 3) | 1912 (10/23) | Deed Charles Ollier Robbins & William Von Essen Robbins to John Shoudy | Deed | Robbins, C.O. & Robbins, W.V. to Shoudy |
| DE-128 [02] | 1920 (5/11) | Affidavit of C.O. Robbins RE: Decree 6134 | Affidavit | Robbins, C.O. |
| DE-128 [03] | 1920 (5/12) | Affidavit of Simeon Evans RE: Decree 6134 | Affidavit | Evans, Simeon |
| DE-129 | 1920 (5/10) | Affidavit of Emma Evans RE: Decree 6134 | Affidavit | Evans, Emma |
| DE-130 | 1977 | Aerial Photo, Section 7, T. 19 N., R. 18 E.W.M. | Photo, Aerial | |
| DE-131 | | FCWUA Shareholders | Shareholders, FCWUA | FCWUA |
| DE-132 | | Aerial Photo, Sections 20 & 21, T. 19 N., R. 18 E.W.M. | Photo, Aerial | |

SUBBASIN NO. 4 EXHIBITS SORTED BY EXHIBIT

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|----------------|-----------------|--|---------------------------|---------------------------|
| DE-133 | 1911 (6/15) | Notice of Appropriation of Water (Simeon Evans) | Notice of Appropriation | Evans |
| DE-134 [01] | 1935 (3/1) | Contract Hugo H. Muecke to Walter White | Contract | Muecke to White |
| DE-134 [02] | 1939 (6/16) | Deed Albers Bros. Milling Co. to Benjamin F. White | Deed | Albers to White |
| DE-134 [03] | 1942 (2/19) | Warranty Deed Henry Washburn, et al. to Frank C. Reed | Deed, Warranty | Washburn to Reed |
| DE-134 [04] | 1943 (10/10) | Special Warranty Deed John Bonny to Clarence S. Robbins | Deed, Special Warranty | Bonny to Robbins, C.S. |
| DE-134 [05] | 1944 (9/5) | Quit Claim Deed Floyd P. Minor to Walter B. Serfess | Deed, Quit Claim | Minor to Serfess |
| DE-134 [06] | 1944 (12/7) | Deed to Fannie Amelia Bowers, et al., to Walter B. Serfess | Deed | Thomas to Serfess |
| DE-134 [07] | 1945 (2/5) | Special Warranty Deed John Bonny to Walter B. Serfess | Deed, Special Warranty | Bonny to Serfess |
| DE-135 | 1895 (11/30) | Patent, Barthal Zwicker | Patent | Zwicker |
| DE-145 | 1967 (2/00) | Engineer Drawing, Site Plan, FCWUA | Drawing, Engineer | FCWUA |
| DE-146 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-147 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-148 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-149 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-150 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-151 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-152 | 1977 | Aerial Photo Map | Map, Aerial Photo | |
| DE-153 | 1977 | Aerial Photo Map | Map, Aerial Photo | |
| DE-154 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-155 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-156 | 1993 | Aerial Photo Map, Farm Plan | Map, Aerial Photo | Farm Plan |
| DE-157 | 1977 | Aerial Photo Map | Map, Aerial Photo | |
| DE-158 | 1977 | Aerial Photo Map | Map, Aerial Photo | |
| DE-159 | 1977 | Aerial Photo Map | Map, Aerial Photo | |

SUBBASIN NO. 4 EXHIBITS SORTED BY EXHIBIT

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|----------------|----------------|---|---------------------------------|-------------------|
| DE-160 | 1977 | Aerial Photo Map | Map, Aerial Photo | |
| DE-161 | 1964 | Aerial Photo Map | Map, Aerial Photo | |
| DE-162 | 1964 | Aerial Photo Map | Map, Aerial Photo | |
| DE-163 | 1964 | Aerial Photo Map | Map, Aerial Photo | |
| DE-164 | 1964 | Aerial Photo Map | Map, Aerial Photo | |
| DE-165 | 1964 | Aerial Photo Map | Map, Aerial Photo | |
| DE-166 | 1964 | Aerial Photo Mosaic Map | Map, Aerial Photo | |
| DE-167 | 1964 | Aerial Photo Mosaic Map | Map, Aerial Photo | |
| DE-168 | 1964 | Aerial Photo Mosaic Map | Map, Aerial Photo | |
| DE-169 | 1964 | Aerial Photo Mosaic Map | Map, Aerial Photo | |
| DE-170 | | Topographic Map | Map, Topographic | |
| DE-171 | | Aerial Photo Map, Farm Plan | Map, Aerial Photo | Farm Plan |
| DE-172 | | Water Use Summary, Jack White | Water Use Summary | White |
| DE-173 | 1967 (2/28) | Engineers Report, Carl W. Walker | Engineers Report | Walker |
| DE-174 | 1996 (7/19) | Engineers Report, Richard Bain | Engineers Report | Bain |
| DE-175 | 1997 (2/25) | Engineers Report, Richard Bain | Engineers Report | Bain |
| DE-176 | 1997 (3/2) | Engineers Report, Richard Bain | Engineers Report | Bain |
| DE-195 [01] | 1881 (6/1) | Notice of Water Right, Peter A. Wold & Alex A. Munson | Notice, Water Right | Wold & Munson |
| DE-195 [01] | 1882 (6/12) | Notice of Water Right, Alex A. Munson & Peter A. Wold | Notice, Water Right | Munson & Wold |
| DE-195 [01] | 1886 (4/10) | Notice of Water Right, Peter A. Wold & Alex A. Munson | Notice, Water Right | Wold & Munson |
| DE-195 [02] | 1890 (5/27) | Affidavit of Water Right, Alex A. Munson & Peter A. Wold | Affidavit | Munson & Wold |
| DE-195 [03] | 1891 (5/1) | Real Estate Agreement for Sale, Peter A. Wold to Jacob Bowers | Agreement for Sale, Real Estate | Wold to Bowers |
| DE-195 [04] | 1911 (6/15) | Notice of Appropriation of Water (Simeon Evans) | Notice of Appropriation | |
| DE-195 [05] | 1913 (6/3) | Deed Ella V. Bower to W.W. Robinson | Deed | Bower to Robinson |

SUBBASIN NO. 4 EXHIBITS SORTED BY EXHIBIT

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|----------------|-----------------|--|-----------------------|---|
| DE-195 [06] | 1913 (12/24) | Quit Claim Deed W.W. Robinson to H.L. McIntyre, C.A. Morrison, F.J. McKeown | Deed, Quit Claim | Robinson to McIntyre, Morrison, McKeown |
| DE-195 [07] | 1920 (10/13) | Warranty Deed C.A. Morrison, et ux to Henry Washburn | Deed, Warranty | Morrison, et ux to Washburn |
| DE-195 [08] | | Farm Plan Map | Map, Farm Plan | |
| DE-195 [09] | 1920 (5/10) | Affidavit Emma Evans | Affidavit | Evans, Emma |
| DE-195 [09] | 1920 (5/12) | Affidavit Peter A. Wold RE: Decree No. 6134 | Affidavit | Wold |
| DE-195 [09] | 1920 (5/15) | Affidavit of Henry Washburn RE: Decree 6134 | Affidavit | Washburn |
| DE-195 [09] | | Kittitas County Superior Court Decree No. 6134 Cascal Investment Co. vs Henry Washburn | Decree | Cascal vs. Washburn |
| DE-195 [09] | 1920 (5/10) | Affidavit Simeon Evans | Affidavit | Evans, Simeon |
| DE-195 [10] | 1926 (10/16) | Deed H.L. McIntyre, et ux to C.E. McCoy | Deed | McIntyre, et ux to McCoy |
| DE-195 [11] | 1933 (4/25) | Deed May L. McCoy to Henry Washburn | Deed | McCoy to Washburn |
| DE-195 [12] | | Photographs | Photographs | |
| DE-195 [13] | 1942 (2/19) | Deed Henry Washburn to Frank Reed | Deed | Washburn to Reed |
| DE-195 [14] | 1943 (2/24) | Executor's Deed The Reed Estate to Martha McClellan | Deed, Executor's | Reed to McClellan |
| DE-195 [15] | 1947 (7/8) | Deed McLelland to Harold L. Hull | Deed | McLelland to Hull |
| DE-195 [16] | 1948 (9/16) | Deed Harold L. Hull to Herring | Deed | Hull to Herring |
| DE-195 [17] | | Deed Herring to Smith & LaCroix | Deed | Herring to Smith & LaCroix |
| DE-195 [18] | 1950 (10/31) | Deed Harold H. Hull to Amos Brulotte | Deed | Hull to Brulotte |
| DE-195 [19] | 1961 (7/5) | Deed Smith & LaCroix to Jesse W. Reeves | Deed | Smith & LaCroix to Reeves |
| DE-195 [20] | 1962 | Aerial Photo Map | Map, Aerial Photo | |
| DE-195 [21] | 1965 (3/5) | Deed Jesse Reeves to Pronghorn Cattle Co. | Deed | Reeves to Pronghorn |
| DE-195 [22] | 1970 (1/29) | Deed Pronghorn Cattle Co. to Far West Industries, Inc. | Deed | Pronghorn to Far West |
| DE-195 [23] | 1920 (2/20) | Real Estate Contract Far West Industries, Inc. to A.S. Miller, et al. | Contract, Real Estate | Far West to Miller |
| DE-195 [24] | 1981 (8/21) | Quit Claim Deed Green Canyon Ranch & FCWUA to FCWUA | Deed, Quit Claim | Green Canyon Ranch to FCWUA |

SUBBASIN NO. 4 EXHIBITS SORTED BY EXHIBIT

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|----------------|-----------------|--|------------------------------|------------------------------|
| DE-195 [24] | 1981 (12/23) | Quit Claim Deed Joseph F. Rieble, et al. to Neil J. Hoff | Deed, Quit Claim | Rieble to Hoff |
| DE-195 [24] | 1981 (12/13) | Quit Claim Deed Neil J. Hoff to Joseph Rieble, et al. | Deed, Quit Claim | Hoff to Rieble |
| DE-195 [25] | | Operation Records | Records, Operation | FCWUA |
| DE-195 [26] | | Share Statement | Statement, Share | FCWUA |
| DE-195 [27] | 1996 (5/9) | Affidavit Dean Alden | Affidavit | Alden |
| DE-195 [30] | | Share Statement | Share Statement | FCWUA |
| DE-195 [31] | 1974 (6/26) | Water Right Claim RCW 90.14 Neil J. Hoff | Water Right Claim | Hoff |
| DE-195 [32] | | Minutes, FCWUA Meetings | Minutes | FCWUA |
| DE-195 [33] | | Photographs (color) | Photographs | |
| DE-195 [34] | 1918 (6/19) | Assessor Map | Map, Assessor | |
| DE-195 [35] | | Transcript Excerpt, Pgs. 84 – 87 | Excerpt, Transcript | |
| DE-195 [36] | | Investigation Report, FCWUA | Investigation Report | FCWUA |
| DE-197 | 1943 (10/10) | Special Warranty Deed John Bonny to Clarence S. Robbins | Deed, Special Warranty | Bonny to Robbins, C.S. |
| DE-198 | 1945 (2/5) | Special Warranty Deed John Bonny to Walter B. Serfess | Deed, Special Warranty | Bonny to Serfess |
| DE-199 | 1944 (9/5) | Quit Claim Deed Floyd P. Minor to Walter B. Serfess | Deed, Quit Claim | Minor to Serfess |
| DE-200 | 1954 (6/1) | FCWUA Articles of Incorporation | Articles of Incorporation | FCWUA |
| DE-201 | 1944 (12/7) | Deed Fannie Amelia Bowers, et al., to Walter B. Serfess | Deed | Thomas to Serfess |
| DE-325 [01] | 1899 (1/11) | Deed N.P.R.R. to Ida S. Robbins | Deed | N.P.R.R. to Robbins, I.S. |
| DE-325 [02] | 1919 (10/29) | Lease W.J. Robbins to J.L. Lambrix | Lease | Robbins, W.J. to Lambrix |
| DE-326 | 1945 (5/28) | Special Warranty Deed Clarence S. Robbins to A.J. Reimer | Deed, Special Warranty | Robbins, C.S. to Reimer |
| DE-327 | 1943 (10/10) | Special Warranty Deed John Bonny to Clarence S. Robbins | Deed, Special Warranty | Bonny to Robbins, C.S. |
| DE-328 | 1920 (7/10) | Deed Elizabeth J. Dickson to Cascal Investment Co. | Deed | Dickson to Cascal |
| DE-329 | 1929 (6/27) | Quit Claim Deed Cascal Investment Co. to John Bonny | Deed, Quit Claim | Cascal to Bonny |
| DE-330 | 1916 (6/9) | Deed W.W. Robinson to Bruce Bonny | Deed | Robinson to Bonny |

SUBBASIN NO. 4 EXHIBITS SORTED BY EXHIBIT

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|----------------|-----------------|---|------------------------------|--------------------------------------|
| DE-331 | 1920 (10/18) | Deed W.J. Robbins to W.J. Stanhope | Deed | Robbins, W.J. to Stanhope |
| DE-332 | 1898 (4/15) | Sheriff's Deed to Sullivan Savings & Loan | Deed, Sheriff's | Sheriff to Sullivan |
| DE-333 | 1900 (12/4) | Deed Sullivan Savings & Loan to Elizabeth Dickson | Deed | Sullivan to Dickson |
| DE-334 | 1934 (4/30) | Deed Cascal Investment Co. to Davidson | Deed | Cascal to Davidson |
| DE-336 | 1934 (3/5) | Deed Cascal Investment Co. to Waldrep | Deed | Cascal to Waldrep |
| DE-337 | 1945 (2/5) | Special Warranty Deed John Bonny to Walter B. Serfess | Deed, Special Warranty | Bonny to Serfess |
| DE-338 | 1944 (9/5) | Quit Claim Deed Floyd P. Minor to Walter B. Serfess | Deed, Quit Claim | Minor to Serfess |
| DE-339 | 1944 (9/20) | Deed Sophie Munson to Lloyd Robbins, et ux, et al. | Deed | Munson to Robbins, L., et ux, et al. |
| DE-340 [01] | 1944 (8/11) | Quit Claim Deed Bruce Bonny to Carl D. Robbins, et al. | Deed, Quit Claim | Bonny to Robbins, C.D., et al. |
| DE-340 [02] | 1943 (10/10) | Special Warranty Deed John Bonny to Clarence S. Robbins | Deed, Special Warranty | Bonny to Robbins, C.S. |
| DE-341 | 1919 (11/3) | Lease John Shoudy to Peter Anderson | Lease | Shoudy to Anderson |
| DE-342 | 1916 (7/17) | Lease Fanny O. Thomas to A. L. Rutledge | Lease | Thomas to Rutledge |
| DE-343 | 1917 (3/6) | Sheriff's Deed to Peter Glesener | Deed, Sheriff's | Sheriff to Glesener |
| DE-344 | 1911 (6/26) | Quit Claim Deed Peter Glesener to Harrie Harvey | Deed, Quit Claim | Glesener to Harvey |
| DE-345 | 1921 (9/1) | Lease George Albers to J.O. Moen | Lease | Albers to Moen |
| DE-346 | 1913 (12/26) | Quit Claim Deed W.W. Robinson to George Albers | Deed, Quit Claim | Robinson to Albers |
| DE-347 | 1939 (6/16) | Deed Albers Bros. Milling Co. to Benjamin F. White | Deed | Albers to White |
| DE-348 | 1954 (6/1) | FCWUA Articles of Incorporation | Articles of Incorporation | FCWUA |
| DE-349 | 1920 (10/13) | Deed C.A. Morrison to Henry Washburn | Deed | Morrison to Washburn |
| DE-350 | 1925 (12/7) | Deed Henry Washburn to Aubrey C. Goodwin | Deed | Washburn to Goodwin |
| DE-352 | 1950 (10/31) | Deed Harold H. Hull to Amos Brulotte | Deed | Hull to Brulotte |
| DE-353 | 1913 (6/21) | Deed Ella Bowers to W.W. Robinson | Deed | Bowers to Robinson |
| DE-354 | 1914 (6/30) | Mortgage W.W. Robinson to Bruce Bonny | Mortgage | Robinson to Bonny |
| DE-355 | 1916 (1/15) | Sheriff's Certificate of Sale W.W. Robinson to John Bonny | Certificate, Sheriff's | Robinson to Bonny |

SUBBASIN NO. 4 EXHIBITS SORTED BY EXHIBIT

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|--------|-----------------|---|-----------------------|---|
| DE-356 | 1912 (10/23) | Deed Charles Ollier Robbins & William Von Essen Robbins to John Shoudy | Deed | Robbins, C.O. & Robbins, W.V. to Shoudy |
| DE-357 | | Superior Court Journal II, page 74 | Schedule of Rights | |
| DI-335 | | Void | | |
| DI-351 | | Void | | |
| DI-358 | | Deed FCWUA Reserved for Roan to Trendwest Deed, etc. (Not Provided) | Deed | Roan to Trendwest |
| DI-359 | | Void | | |

SUBBASIN NO. 4 EXHIBITS SORTED BY DATE

| EXHIBIT # | DATE | DESCRIPTION | DOCUMENT | PARTIES |
|-------------|------------|---|----------------------|----------------------------|
| DE-112 | | Chain of Title, Jack White | Chain of Title | White |
| DE-113 | | Chain of Tile, Jim Roan | Chain of Title | Roan |
| DE-114 | | Chain of Title, Dick Szuba | Chain of Title | Szuba |
| DE-115 | | Chain of Title, Neil J. Hoff | Chain of Title | Hoff |
| DE-116 | | Metsker Map, T. 19 & 20 N., R. 18 E.W.M. | Map, Metsker | |
| DE-117 | | Aerial Photo Map | Map, Aerial Photo | FCWUA |
| DE-131 | | FCWUA Shareholders | Shareholders, FCWUA | FCWUA |
| DE-132 | | Aerial Photo, Sections 20 & 21, T. 19 N., R. 18 E.W.M. | Photo, Aerial | |
| DE-195 [36] | | Investigation Report, FCWUA | Investigation Report | FCWUA |
| DE-195 [35] | | Transcript Excerpt, Pgs. 84 – 87 | Excerpt, Transcript | |
| DE-195 [33] | | Photographs (color) | Photographs | |
| DE-195 [32] | | Minutes, FCWUA Meetings | Minutes | FCWUA |
| DE-195 [30] | | Share Statement | Share Statement | FCWUA |
| DE-195 [26] | | Share Statement | Statement, Share | FCWUA |
| DE-170 | | Topographic Map | Map, Topographic | |
| DE-195 [25] | | Operation Records | Records, Operation | FCWUA |
| DE-171 | | Aerial Photo Map, Farm Plan | Map, Aerial Photo | Farm Plan |
| DE-172 | | Water Use Summary, Jack White | Water Use Summary | White |
| DE-195 [17] | | Deed Herring to Smith & LaCroix | Deed | Herring to Smith & LaCroix |
| DE-195 [12] | | Photographs | Photographs | |
| DE-195 [09] | | Kittitas County Superior Court Decree No. 6134 Cascal Investment Co. vs Henry Washburn | Decree | Cascal vs. Washburn |
| DE-195 [08] | | Farm Plan Map | Map, Farm Plan | |
| DI-335 | | Void | | |
| DI-351 | | Void | | |
| DE-357 | | Superior Court Journal II, page 74 | Schedule of Rights | |
| DI-358 | | Deed FCWUA Reserved for Roan to Trendwest Deed, etc. (Not Provided) | Deed | Roan to Trendwest |
| DI-359 | | Void | | |
| DE-119 [01] | 1881 (6/1) | Notice of Water Right, Peter Wold & Alex Munson | Notice, Water Right | Wold & Munson |

SUBBASIN NO. 4 EXHIBITS SORTED BY DATE

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|---------------------------|-----------------|--|---------------------------------|---|
| DE-195 [01] | 1881 (6/1) | Notice of Water Right, Peter A. Wold & Alex A. Munson | Notice, Water Right | Wold & Munson |
| DE-119 [02] | 1882 (6/12) | Notice of Water Right, Alex Munson & Peter Wold | Notice, Water Right | Munson & Wold |
| DE-195 [01] | 1882 (6/12) | Notice of Water Right, Alex A. Munson & Peter A. Wold | Notice, Water Right | Munson & Wold |
| DE-119 [03] | 1886 (4/10) | Notice of Water Right, Peter Wold & Alex Munson | Notice, Water Right | Wold & Munson |
| DE-195 [01] | 1886 (4/10) | Notice of Water Right, Peter A. Wold & Alex A. Munson | Notice, Water Right | Wold & Munson |
| DE-118 | 1890 (5/26) | Affidavit of Water Right Peter A. Wold & Alex A. Munson | Affidavit | Wold & Munson |
| DE-195 [02] | 1890 (5/27) | Affidavit of Water Right, Alex A. Munson & Peter A. Wold | Affidavit | Munson & Wold |
| DE-120 | 1891 (5/1) | Agreement of Sale Peter Wold to Jacob Bowers | Agreement of Sale | Wold to Bowers |
| DE-195 [03] | 1891 (5/1) | Real Estate Agreement for Sale, Peter A. Wold to Jacob Bowers | Agreement for Sale, Real Estate | Wold to Bowers |
| DE-121 | 1893 (11/27) | Decree Peter A. Wold & A. A. Munson vs. B. K. May, Decree 784 | Decree | Wold & Munson vs. May |
| DE-135 | 1895 (11/30) | Patent, Barthal Zwicker | Patent | Zwicker |
| DE-332 | 1898 (4/15) | Sheriff's Deed to Sullivan Savings & Loan | Deed, Sheriff's | Sheriff to Sullivan |
| DE-325 [01] | 1899 (1/11) | Deed NPPR to Ida S. Robbins | Deed | NPPR to Robbins, I.S. |
| DE-123 | 1899 (10/25) | Deed Sallie Fellows to Barthal Zwicker, et al. | Deed | Fellows to Zwicker, et al. |
| DE-122 | 1899 (5/15) | Decree 2770 Francis C. Faulkner & Henry C. Sanders vs. James Hamilton, et al. | Decree | Faulker & Sanders vs. Hamilton |
| DE-124 | 1900 (10/27) | Deed W. J. Robbins to Barthal Zwicker, et al. | Deed | Robbins, W.J. to Zwicker |
| DE-333 | 1900 (12/4) | Deed Sullivan Savings & Loan to Elizabeth Dickson | Deed | Sullivan to Dickson |
| DE-110 | 1909 (5/26) | Notice of Appropriation by Henry Kleinberg (Court Claim No. 04914A William J. Grueter) | Notice | Kleinberg |
| DE-133 | 1911 (6/15) | Notice of Appropriation of Water (Simeon Evans) | Notice of Appropriation | Evans |
| DE-195 [04] | 1911 (6/15) | Notice of Appropriation of Water (Simeon Evans) | Notice of Appropriation | |
| DE-344 | 1911 (6/26) | Quit Claim Deed Peter Glesener to Harrie Harvey | Deed, Quit Claim | Glesener to Harvey |
| DE-128 [01] (Pg. 3) | 1912 (10/23) | Deed Charles Ollier Robbins & William Von Essen Robbins to John Shoudy | Deed | Robbins, C.O. & Robbins, W.V. to Shoudy |
| DE-356 | 1912 (10/23) | Deed Charles Ollier Robbins & William Von Essen Robbins to John Shoudy | Deed | Robbins, C.O. & Robbins, W.V. to Shoudy |

SUBBASIN NO. 4 EXHIBITS SORTED BY DATE

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| DE-195 [06] | 1913 (12/24) | Quit Claim Deed W.W. Robinson to H.L. McIntyre, C.A. Morrison, F.J. McKeown | Deed, Quit Claim | Robinson to McIntyre, Morrison, McKeown |
| DE-346 | 1913 (12/26) | Quit Claim Deed W.W. Robinson to George Albers | Deed, Quit Claim | Robinson to Albers |
| DE-353 | 1913 (6/21) | Deed Ella Bowers to W.W. Robinson | Deed | Bowers to Robinson |
| DE-195 [05] | 1913 (6/3) | Deed Ella V. Bower to W.W. Robinson | Deed | Bower to Robinson |
| DE-354 | 1914 (6/30) | Mortgage W.W. Robinson to Bruce Bonny | Mortgage | Robinson to Bonny |
| DE-355 | 1916 (1/15) | Sheriff's Certificate of Sale W.W. Robinson to John Bonny | Certificate, Sheriff's | Robinson to Bonny |
| DE-330 | 1916 (6/9) | Deed W.W. Robinson to Bruce Bonny | Deed | Robinson to Bonny |
| DE-342 | 1916 (7/17) | Lease Fanny O. Thomas to A. L. Rutledge | Lease | Thomas to Rutledge |
| DE-343 | 1917 (3/6) | Sheriff's Deed to Peter Glesener | Deed, Sheriff's | Sheriff to Glesener |
| DE-125 | 1917 (4/24) | Deed Peter Glesener to C.M. Cahoon | Deed | Glesener to Cahoom |
| DE-195 [34] | 1918 (6/19) | Assessor Map | Map, Assessor | |
| DE-325 [02] | 1919 (10/29) | Lease W.J. Robbins to J.L. Lambrix | Lease | Robbins, W.J. to Lambrix |
| DE-341 | 1919 (11/3) | Lease John Shoudy to Peter Anderson | Lease | Shoudy to Anderson |
| DE-195 [07] | 1920 (10/13) | Warranty Deed C.A. Morrison, et ux to Henry Washburn | Deed, Warranty | Morrison, et ux to Washburn |
| DE-349 | 1920 (10/13) | Deed C.A. Morrison to Henry Washburn | Deed | Morrison to Washburn |
| DE-331 | 1920 (10/18) | Deed W.J. Robbins to W.J. Stanhope | Deed | Robbins, W.J. to Stanhope |
| DE-126 | 1920 (12/1) | Decree 6134 Cascal Investment Co. vs. Henry Washburn | Decree | Cascal vs. Washburn |
| DE-195 [23] | 1920 (2/20) | Real Estate Contract Far West Industries, Inc. to A.S. Miller, et al. | Contract, Real Estate | Far West to Miller |
| DE-129 | 1920 (5/10) | Affidavit of Emma Evans RE: Decree 6134 | Affidavit | Evans, Emma |
| DE-195 [09] | 1920 (5/10) | Affidavit Emma Evans | Affidavit | Evans, Emma |
| DE-195 [09] | 1920 (5/10) | Affidavit Simeon Evans | Affidavit | Evans, Simeon |
| DE-128 [02] | 1920 (5/11) | Affidavit of C.O. Robbins RE: Decree 6134 | Affidavit | Robbins, C.O. |
| DE-128 [03] | 1920 (5/12) | Affidavit of Simeon Evans RE: Decree 6134 | Affidavit | Evans, Simeon |
| DE-127 | 1920 (5/12) | Affidavit of Peter Wold RE: Decree 6134 | Affidavit | Wold |

SUBBASIN NO. 4 EXHIBITS SORTED BY DATE

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|----------------|-----------------|--|------------------------|--------------------------------------|
| DE-195 [09] | 1920 (5/12) | Affidavit Peter A. Wold RE: Decree No. 6134 | Affidavit | Wold |
| DE-195 [09] | 1920 (5/15) | Affidavit of Henry Washburn RE: Decree 6134 | Affidavit | Washburn |
| DE-328 | 1920 (7/10) | Deed Elizabeth J. Dickson to Cascal Investment Co. | Deed | Dickson to Cascal |
| DE-345 | 1921 (9/1) | Lease George Albers to J.O. Moen | Lease | Albers to Moen |
| DE-350 | 1925 (12/7) | Deed Henry Washburn to Aubrey C. Goodwin | Deed | Washburn to Goodwin |
| DE-195 [10] | 1926 (10/16) | Deed H.L. McIntyre, et ux to C.E. McCoy | Deed | McIntyre, et ux to McCoy |
| DE-329 | 1929 (6/27) | Quit Claim Deed Cascal Investment Co. to John Bonny | Deed, Quit Claim | Cascal to Bonny |
| DE-195 [11] | 1933 (4/25) | Deed May L. McCoy to Henry Washburn | Deed | McCoy to Washburn |
| DE-336 | 1934 (3/5) | Deed Cascal Investment Co. to Waldrep | Deed | Cascal to Waldrep |
| DE-334 | 1934 (4/30) | Deed Cascal Investment Co. to Davidson | Deed | Cascal to Davidson |
| DE-134 [01] | 1935 (3/1) | Contract Hugo H. Muecke to Walter White | Contract | Muecke to White |
| DE-134 [02] | 1939 (6/16) | Deed Albers Bros. Milling Co. to Benjamin F. White | Deed | Albers to White |
| DE-347 | 1939 (6/16) | Deed Albers Bros. Milling Co. to Benjamin F. White | Deed | Albers to White |
| DE-134 [03] | 1942 (2/19) | Warranty Deed Henry Washburn, et al. to Frank C. Reed | Deed, Warranty | Washburn to Reed |
| DE-195 [13] | 1942 (2/19) | Deed Henry Washburn to Frank Reed | Deed | Washburn to Reed |
| DE-134 [04] | 1943 (10/10) | Special Warranty Deed John Bonny to Clarence S. Robbins | Deed, Special Warranty | Bonny to Robbins, C.S. |
| DE-197 | 1943 (10/10) | Special Warranty Deed John Bonny to Clarence S. Robbins | Deed, Special Warranty | Bonny to Robbins, C.S. |
| DE-327 | 1943 (10/10) | Special Warranty Deed John Bonny to Clarence S. Robbins | Deed, Special Warranty | Bonny to Robbins, C.S. |
| DE-340 [02] | 1943 (10/10) | Special Warranty Deed John Bonny to Clarence S. Robbins | Deed, Special Warranty | Bonny to Robbins, C.S. |
| DE-195 [14] | 1943 (2/24) | Executor's Deed The Reed Estate to Martha McClellan | Deed, Executor's | Reed to McClellan |
| DE-134 [06] | 1944 (12/7) | Deed to Fannie Amelia Bowers, et al., to Walter B. Serfess | Deed | Thomas to Serfess |
| DE-201 | 1944 (12/7) | Deed Fannie Amelia Bowers, et al., to Walter B. Serfess | Deed | Thomas to Serfess |
| DE-340 [01] | 1944 (8/11) | Quit Claim Deed Bruce Bonny to Carl D. Robbins, et al. | Deed, Quit Claim | Bonny to Robbins, C.D., et al. |
| DE-339 | 1944 (9/20) | Deed Sophie Munson to Lloyd Robbins, et ux, et al. | Deed | Munson to Robbins, L., et ux, et al. |

SUBBASIN NO. 4 EXHIBITS SORTED BY DATE

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|----------------|-----------------|--|---------------------------|---------------------------|
| DE-134 [05] | 1944 (9/5) | Quit Claim Deed Floyd P. Minor to Walter B. Serfess | Deed, Quit Claim | Minor to Serfess |
| DE-199 | 1944 (9/5) | Quit Claim Deed Floyd P. Minor to Walter B. Serfess | Deed, Quit Claim | Minor to Serfess |
| DE-338 | 1944 (9/5) | Quit Claim Deed Floyd P. Minor to Walter B. Serfess | Deed, Quit Claim | Minor to Serfess |
| DE-134 [07] | 1945 (2/5) | Special Warranty Deed John Bonny to Walter B. Serfess | Deed, Special Warranty | Bonny to Serfess |
| DE-198 | 1945 (2/5) | Special Warranty Deed John Bonny to Walter B. Serfess | Deed, Special Warranty | Bonny to Serfess |
| DE-337 | 1945 (2/5) | Special Warranty Deed John Bonny to Walter B. Serfess | Deed, Special Warranty | Bonny to Serfess |
| DE-326 | 1945 (5/28) | Special Warranty Deed Clarence S. Robbins to A.J. Reimer | Deed, Special Warranty | Robbins, C.S. to Reimer |
| DE-195 [15] | 1947 (7/8) | Deed McLlland to Harold L. Hull | Deed | McLlland to Hull |
| DE-195 [16] | 1948 (9/16) | Deed Harold L. Hull to Herring | Deed | Hull to Herring |
| DE-195 [18] | 1950 (10/31) | Deed Harold H. Hull to Amos Brulotte | Deed | Hull to Brulotte |
| DE-352 | 1950 (10/31) | Deed Harold H. Hull to Amos Brulotte | Deed | Hull to Brulotte |
| DE-200 | 1954 (6/1) | FCWUA Articles of Incorporation | Articles of Incorporation | FCWUA |
| DE-348 | 1954 (6/1) | FCWUA Articles of Incorporation | Articles of Incorporation | FCWUA |
| DE-195 [19] | 1961 (7/5) | Deed Smith & LaCroix to Jesse W. Reeves | Deed | Smith & LaCroix to Reeves |
| DE-195 [20] | 1962 | Aerial Photo Map | Map, Aerial Photo | |
| DE-161 | 1964 | Aerial Photo Map | Map, Aerial Photo | |
| DE-162 | 1964 | Aerial Photo Map | Map, Aerial Photo | |
| DE-163 | 1964 | Aerial Photo Map | Map, Aerial Photo | |
| DE-164 | 1964 | Aerial Photo Map | Map, Aerial Photo | |
| DE-165 | 1964 | Aerial Photo Map | Map, Aerial Photo | |
| DE-166 | 1964 | Aerial Photo Mosaic Map | Map, Aerial Photo | |
| DE-167 | 1964 | Aerial Photo Mosaic Map | Map, Aerial Photo | |
| DE-168 | 1964 | Aerial Photo Mosaic Map | Map, Aerial Photo | |
| DE-169 | 1964 | Aerial Photo Mosaic Map | Map, Aerial Photo | |
| DE-195 [21] | 1965 (3/5) | Deed Jesse Reeves to Pronghorn Cattle Co. | Deed | Reeves to Pronghorn |

SUBBASIN NO. 4 EXHIBITS SORTED BY DATE

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|----------------|-----------------|---|----------------------|--------------------------------|
| DE-145 | 1967 (2/00) | Engineer Drawing, Site Plan, FCWUA | Drawing, Engineer | FCWUA |
| DE-173 | 1967 (2/28) | Engineers Report, Carl W. Walker | Engineers Report | Walker |
| DE-195 [22] | 1970 (1/29) | Deed Pronghorn Cattle Co. to Far West Industries, Inc. | Deed | Pronghorn to Far West |
| DE-195 [31] | 1974 (6/26) | Water Right Claim RCW 90.14 Neil J. Hoff | Water Right Claim | Hoff |
| DE-130 | 1977 | Aerial Photo, Section 7, T. 19 N., R. 18 E.W.M. | Photo, Aerial | |
| DE-152 | 1977 | Aerial Photo Map | Map, Aerial Photo | |
| DE-153 | 1977 | Aerial Photo Map | Map, Aerial Photo | |
| DE-157 | 1977 | Aerial Photo Map | Map, Aerial Photo | |
| DE-158 | 1977 | Aerial Photo Map | Map, Aerial Photo | |
| DE-159 | 1977 | Aerial Photo Map | Map, Aerial Photo | |
| DE-160 | 1977 | Aerial Photo Map | Map, Aerial Photo | |
| DE-195 [24] | 1981 (12/13) | Quit Claim Deed Neil J. Hoff to Joseph Rieble, et al. | Deed, Quit Claim | Hoff to Rieble |
| DE-195 [24] | 1981 (12/23) | Quit Claim Deed Joseph F. Rieble, et al. to Neil J. Hoff | Deed, Quit Claim | Rieble to Hoff |
| DE-195 [24] | 1981 (8/21) | Quit Claim Deed Green Canyon Ranch & FCWUA to FCWUA | Deed, Quit Claim | Green Canyon Ranch to FCWUA |
| DE-146 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-147 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-148 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-149 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-150 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-151 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-154 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-155 | 1993 | Aerial Photo Map | Map, Aerial Photo | |
| DE-156 | 1993 | Aerial Photo Map, Farm Plan | Map, Aerial Photo | Farm Plan |
| DE-195 [27] | 1996 (5/9) | Affidavit Dean Alden | Affidavit | Alden |
| DE-174 | 1996 (7/19) | Engineers Report, Richard Bain | Engineers Report | Bain |

SUBBASIN NO. 4 EXHIBITS SORTED BY DATE

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|--------|----------------|--------------------------------|---------------------|------|
| DE-175 | 1997 (2/25) | Engineers Report, Richard Bain | Engineers Report | Bain |
| DE-176 | 1997 (3/2) | Engineers Report, Richard Bain | Engineers Report | Bain |

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SECOND SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4 (Swauk Creek)