

YAKIMA RIVER BASIN
WATER RIGHTS ADJUDICATION

APR 30 1945

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

REPORT OF REFEREE
Re: Subbasin No. 13
(Umtanum Creek)

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SUPERIOR COURT
YAKIMA COUNTY, WASHINGTON

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ISSUED

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

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

IN THE MATTER OF THE DETERMINATION)
OF THE RIGHTS TO THE USE OF THE)
SURFACE WATERS OF THE YAKIMA RIVER)
DRAINAGE BASIN, IN ACCORDANCE WITH)
THE PROVISIONS OF CHAPTER 90.03,)
REVISED CODE OF WASHINGTON,)

No. 77-2-01484-5

THE STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)

REPORT OF REFEREE
Re: Subbasin No. 13
(Umtanum Creek)

Plaintiff,)

v.)

JAMES J. ACQUAVELLA, et al.,)

Defendants.)

To the Honorable Judge of the above-entitled Court, the
following Report is respectfully submitted:

I. BACKGROUND

This Report concerns the determination of a portion of the
surface water rights of the Yakima River drainage basin,
specifically those rights located within Subbasin No. 13, which
is the Umtanum Creek drainage basin. The criteria consisting of
applicable laws and bases for water right determinations used by
the Referee in the evaluation of claims in this subbasin can be
found in the Report of the Referee to the Court, Preface to
Subbasin and Major Category Reports, Volume 2, dated May 18,
1988.

1 An Evidentiary Hearing was conducted by the Referee on
2 November 14, 1988.

3
4 II. FIELD INVESTIGATIONS

5 Field surveys were conducted by the Department of Ecology
6 staff during September of 1987 to obtain information on existing
7 water use patterns in Subbasin No. 13 for use in the adjudication
8 proceedings. Points of diversion, pipelines, and springs were
9 located and mapped. Map exhibits were prepared to show all
10 pertinent features. Aerial photographs and topographic maps of
11 the area in addition to county assessor's plats were utilized in
12 conjunction with on-site field investigation.

13 To gain a general familiarity with the drainage basin, the
14 Referee made a brief reconnaissance tour of the area immediately
15 prior to the hearing.

16
17 III. WATER DUTY

18 The volumes of water required for the purposes of domestic
19 supply and watering livestock were set forth during testimony by
20 an expert witness for the Plaintiff. The Referee proposes to
21 rely upon such expert testimony. The maximum duty of water for
22 the various uses in Subbasin No. 13 will be calculated by the
23 Referee according to the following formulae:

- These water duties are approximately commensurate with the duties utilized by the Department of Ecology in its quantity allocations in this geographic area under the water right permit system. Such volumes and rates of water use will be employed by the Referee when quantitative evidence of the rate and volume of a right was neither submitted nor made clear during testimony.

No formal stipulations were adopted during the hearing; however, the Referee has incorporated certain guidelines into this proceeding as follows:

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Re: Subbasin No. 13

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When the testimony and evidence leading to a confirmed right is no more specific with respect to the priority date than the year, the Referee has elected to use the 30th of June as representing a midpoint of that particular year. In those cases when the priority to be confirmed is no more specific than the month, the last day of that month will be used. This has been done in the interest of consistency and compatibility with other rights.

VII. TESTIMONY AND REFEREE'S ANALYSES

The Plaintiff State of Washington, Department of Ecology,
was represented by Peter Anderson, Assistant Attorney General.

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Re: Subbasin No. 13

NUMBER DESCRIPTION

SE-1 Map -- Subbasin No. 13
SE-2 Bound Book of 90.14 Surface Water Claims Re:
 Subbasin No. 13

Additionally, oral testimony was given by Forrest Tevebaugh,
Field Investigator, Ecology Adjudication Section.

Claimant Testimony

Five defendants filed Statements of Claim or Notices of
Appearance. All claimants and their legal counsel, if so
represented, are as follows:

Court
Claim

| <u>No.</u> | <u>Name</u> | <u>Attorney</u> | <u>Page(s)</u> |
|------------|---|--|---------------------------|
| 2206 | Boise Cascade Corporation | Dennis J. Dunphy 1420 Fifth Avenue Suite 3400 Seattle, WA 98101-2339 | 6, 13, 16, 18 |
| 2290 | Jack Parker | | 6, 10, 15, 16, 18 |
| 2417 | United States of America ^{1/} | Charles E. O'Connell Dept. of Justice Land & Natural Resources Division P.O. Box 44378 Washington, D.C. 20026 | See foot- note 1 |
| 2109 | Washington State Dept. of Wildlife | William C. Frymire Asst. Atty. General 600 North Capitol Way GJ-11 Olympia, WA 98504 | 11, 13, 16, 17, 18, 19 |

^{1/} Claims to be addressed in the Major Claimant Pathway. See
Pretrial Order No. 8

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Court
Claim

| <u>No.</u> | <u>Name</u> | <u>Attorney</u> | <u>Page(s)</u> |
|------------|--|--|-------------------|
| 0589 | Washington State Department of Natural Resources | Paul Silver Asst. Atty. General Public Lands Bldg. Mail Stop QW-21 Olympia, WA 98504 | 12, 13, 16, 18 |

The following Defendant's claim, in part, was recommended for confirmance (See page 5 in the Plaintiff's Report to Referee). No exception to that recommendation was taken.

| <u>Name</u> | <u>Court Claim No.</u> |
|-------------|------------------------|
| Jack Parker | 2290 |

Specific elements of the proposed rights for each claimant are identified in the Findings of Fact commencing on page 12.

The remaining claims (consisting of those claims for which no recommendation for confirmance was made) were scheduled to be heard during the Evidentiary Trial held on November 14, 1988. Based upon the testimony and evidence provided to the Referee, the analysis of all remaining claims is as follows:

COURT CLAIM NO. 2206 -- Boise Cascade Corporation

Rights for the diversion of water from 11 springs within the Umtanum Creek subbasin were claimed for the present and future purposes of industrial, domestic, stockwatering, road construction, dust abatement and fire suppression by the Boise Cascade Corporation with use commencing prior to 1917.

1 During the Evidentiary Hearing, the Defendant was
2 represented by Dennis J. Dunphy, Attorney at Law. John P. Hess
3 testified on behalf of the Defendant's claim. Four exhibits --
4 a map, a calculation of livestock water requirements, a portion
5 of Appendix A of the Defendant's Statement of Claim, and a
6 modified listing of diversions extracted from Appendix A --
7 were submitted into evidence.

8 According to the testimony and evidence, the Defendant
9 diverts water from 7 of 11 springs identified within their
10 claim and further identified by the State's Investigation
11 Report (State's Exhibit No. 3) and Map (State's Exhibit No. 1).
12 Water is used exclusively for the purpose of stockwatering.
13 Springs numbered upon those exhibits as Nos. 1, 2, 3, and 4
14 each have diversions consisting of a perforated collector pipe
15 and a buried pipeline that conveys water to a concrete stock
16 tank which is within 50 feet of each diversion. If the stock
17 tank overflows, the released water enters the spring drainage.
18 Spring No. 5 is a similar diversion system, but the stock tank
19 is constructed from a log.

20 All diversions are probably continuous, but testimony
21 indicated that stock are actually kept upon the property from
22 April 1 to October 31. Diversions from area springs are
23 believed to have commenced during April 1880.

24 Springs numbered 10 and 11 discharge to depressions which
25 have been excavated within the stream course of each spring.
26

1 These are actually instream storage reservoirs that in many
2 years remain dry and are probably partially silted in. The
3 Referee concludes they have capacities of only a small fraction
4 of an acre-foot of storage.

5 Springs numbered 6,7,8, and 9 are apparently undeveloped,
6 but, when flowing, are relied upon for non-diversionary stock
7 watering purposes. Non-diversionary stockwatering has occurred
8 within the Umtanum Creek subbasin since about 1870 according to
9 the testimony of Mr. Tevebaugh, the State's Field Investigator.

10 The Defendant's points of diversion and property are used
11 for grazing by an adjacent landowner through a permit program
12 administered by the Defendant.

13 The Boise Cascade Corporation property within the Umtanum
14 Creek subbasin consists of 2120 acres of land occurring in
15 several separate parcels. These holdings have been evaluated
16 as having a carrying capacity of 325 animal units. ^{2/}

17 No testimony or evidence as to the precise instantaneous
18 water quantity or annual water quantity actually available at
19 each spring or the degree to which each spring is actually
20 relied upon for stockwatering was provided during the hearing.

21 Additionally, no testimony was provided as to the carrying
22 capacity of the separate land holdings of the Defendant that
23 surround the various points of diversion, although Mr. Hess
24

25 ^{2/}One animal unit is equivalent to one cow and one calf.
26

1 testified that vegetation and soils vary considerably within
2 the property.

3 The Referee is, therefore, unable to determine the extent
4 of use, or the diverted quantities related to the separate
5 stockwatering diversions, and will treat the Defendant's
6 springs collectively in recommending confirmation of a water
7 right.

8 Mr. Tevebaugh testified that a herd of cattle equivalent
9 to 30 to 40 animal units would require an instantaneous water
10 quantity of 0.01 cubic foot per second and an annual water
11 quantity of 1.0 acre-foot. The Referee proposes to adopt these
12 quantities in recommending confirmation of a water right for
13 the Defendant since these amounts are more generous than the
14 quantities proposed by the Defendant's own testimony and are
15 consistent with the standards used by the Plaintiff in making
16 recommendations to the Referee in the Plaintiff's Report to the
17 Referee.

18 Therefore, an instantaneous quantity of 0.1 cubic foot per
19 second and 10 acre-feet per year is believed to be a sufficient
20 total diversion from the 7 developed springs for a herd
21 equivalent to 325 animal units.

22 Water Right Claims were filed to document each of the 7
23 diversions pursuant to the claims filing requirements of
24 Chapter 90.14 RCW and were assigned Water Rights Claims
25 Registry Nos. 084302 through 084305 and 084343 through 084345.
26

1 Water Right Claims Registry Nos. 082650, 084306, 084307, and
2 084342 claim rights for the remaining 4 springs where no
3 development has occurred.

4 The Referee concludes that the Defendant does own water
5 rights for the diversion of water from 5 developed springs and
6 2 instream storage ponds in the instantaneous water quantity of
7 0.1 cubic foot per second; 10.0 acre-feet annually for
8 stockwatering for a herd equivalent to 325 animal units. The
9 right is appurtenant to the lands in the immediate vicinity of
10 each spring and has a priority date of April 30, 1880. The
11 Defendant also enjoys non-diversionary stockwatering rights
12 from 4 undeveloped springs and other available water sources as
13 described at pages 16 and 18 of this report.

14
15 COURT CLAIM NO. 2290 -- Jack Parker

16 The claim filed with the court by Mr. Parker asserts the
17 right to use waters from seven springs and refers to the Water
18 Right Claims filed under the Water Rights Claims Registration
19 Act established by Chapter 90.14 RCW. A review of those claims
20 reveals filings for six springs and one impoundment to capture
21 early spring runoff. This is supported by the Plaintiff's
22 Investigation Report.

23 In the Plaintiff's Report to Referee, it was recommended
24 that a water right be confirmed to Jack Parker for four unnamed
25 springs tributary to Umtanum Creek. For Spring No. 1, the
26

1 purposes are continuous single domestic supply and stock water
2 at a rate of 0.03 cubic foot per second for a total of 3.0
3 acre-feet per year. Springs No. 2, 3, and 4 are recommended
4 for continuous stock water only, each with an instantaneous use
5 of 0.01 cubic foot per second and an annual volume of 1.0
6 acre-foot. There were no exceptions filed to this
7 recommendation.

8 Mr. Parker did not make an appearance during the
9 Evidentiary Hearing, thus providing no testimony to the Referee
10 upon which to base an affirmative finding regarding the
11 remaining two springs and the impoundment. Therefore, the
12 Referee has no alternative but to recommend that no rights be
13 confirmed for these three claimed rights.

14
15 COURT CLAIM NO. 2109 --Washington State Department of Wildlife

16 The Department of Wildlife (formerly the Department of
17 Game) submitted claims for the watering of livestock and
18 wildlife at 39 intermittent springs tributary to Umtanum Creek.
19 That Department was not represented at the Evidentiary Hearing
20 relative to these claims. In addition, the Plaintiff's
21 Investigation Report indicated that there were no serviceable
22 developments associated with these claims found during the
23 field investigation. Consequently, the Referee concludes that
24 all claims of the Department of Wildlife in Subbasin 13 are
25 addressed in the Plaintiff's Report to Referee.

1 COURT CLAIM NO. 0589 -- Washington State Department of
2 Natural Resources

3 The Statement of Claim submitted to the Court by the
4 Department of Natural Resources, as interpreted by the
5 Plaintiff's Investigation Report, asserts rights to the use of
6 water from eleven unnamed intermittent springs, two tributaries
7 to Umtanum Creek, and to the mainstream of Umtanum Creek. No
8 one representing the Department of Natural Resources appeared
9 during the Evidentiary Hearing to provide testimony relative to
10 these claims. As was the case with the Department of Wildlife,
11 the Referee concludes that all claims of the Department of
12 Natural Resources in Subbasin No. 13 are addressed in the
13 Plaintiff's Report to Referee.

14 VIII. FINDINGS OF FACT

15 I, WILLIAM R. SMITH, as Referee in this proceeding, having
16 carefully examined the testimony and evidence and having
17 investigated Subbasin No. 13, do hereby make the following
18 Findings of Fact:

19 1. That the waters of Subbasin No. 13 and lands
20 benefitted or waters otherwise utilized therefrom are situated
21 in Kittitas and Yakima Counties.

22 2. That the claims to any diversionary or withdrawal
23 rights within Subbasin No. 13 of the following named claimants
24 are denied in their entirety for reasons set forth in the body
25 of this report:
26

Washington State Department of Wildlife
Washington State Department of Natural Resources

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

CLAIMANT NAME: Boise Cascade Corporation

COURT CLAIM NO. 2206

Source: Seven unnamed springs

Use: Stock watering and instream storage for stock watering purposes

Period of Use: April 1 through October 31

Quantity: 0.1 cfs; 10.0 acre-feet per year

Priority Date: April 30, 1880

Point of Diversion: Spring No. 1: 750 feet north and 600 feet east from the center of Section 33, located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, T. 17 N., R. 17 E.W.M.

Spring No. 2: 300 feet south and 300 feet east from the northwest corner of Section 29, located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, T. 17 N., R. 17 E.W.M.

Spring No. 3: 1200 feet south and 80 feet west from the north quarter corner of Section 29, located within the

COURT CLAIM NO. 2206
(Continued)

Spring No. 3: SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29,
(continued) T. 17 N., R. 17 E.W.M.

Spring No. 4: 450 feet south and 800 feet
east from the center of
Section 29, located within
the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29,
T. 17 N., R. 17 E.W.M.

Spring No. 5: 1150 feet north and 1100
feet west from the southeast
corner of Section 29,
located within the
NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29,
T. 17 N., R. 17 E.W.M.

Instream Storage: 700 feet north and 1040
feet west from the south
quarter corner of
Section 33, located within
the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33,
T. 17 N., R. 17 E.W.M.

Instream Storage: 600 feet south and 1140
feet east from the north
quarter corner of
Section 31, located within
the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31,
T. 17 N., R. 17 E.W.M.

Place of Use:

Spring No. 1: NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33,
T. 17 N., R. 17 E.W.M.

Spring No. 2: NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29,
T. 17 N., R. 17 E.W.M.

Spring No. 3: SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29,
T. 17 N., R. 17 E.W.M.

Spring No. 4: NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29,
T. 17 N., R. 17 E.W.M.

Spring No. 5: NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29,
T. 17 N., R. 17 E.W.M.

1 COURT CLAIM NO. 2206
2 (Continued)

3 Place of Use: Instream storage within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$
4 (Continued) of Section 33, T. 17 N., R. 17 E.W.M.

5 Instream storage within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
6 of Section 31, T. 17 N., R. 17 E.W.M.

7 CLAIMANT NAME: Jack Parker

COURT CLAIM NO. 2290

8 Source: Four unnamed springs

9 Use: Spring No. 1: Domestic and stock water
10 Springs No. 2, 3, and 4: Stock water

11 Period of Use: Continuous

12 Quantity: Spring No. 1: 0.02 cfs; 2.0 acre-feet per year
13 for domestic use
14 0.01 cfs; 1.0 acre-foot per year
15 for stock water
16 Springs No. 2, 3, and 4: 0.01 cfs each; 1.0
17 acre-foot each for stock water

18 Priority Date: April 30, 1880

19 Point of Diversion: Spring No. 1: 450 feet north and 600 feet
20 east from the center of
21 Section 33, located within
22 the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33,
23 T. 17 N., R. 17 E.W.M.

24 Spring No. 2: 1200 feet north and 1000
25 feet west from the south
26 quarter corner of Section
27 34, located within the
NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 34,
T. 17 N., R. 17 E.W.M.

Spring No. 3: 700 feet south and 750 feet
west from the east quarter
corner of Section 33,
located within the
SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33,
T. 17 N., R. 17 E.W.M.

1 COURT CLAIM NO. 2290
2 (Continued)

3 Point of Diversion: Spring No. 4: 400 feet south and 100 feet
4 (continued) east from the west quarter
5 corner of Section 27,
6 located within the
7 NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27,
8 T. 17 N., R. 17 E.W.M.

9 Place of Use: Springs No. 1, 2, 3, and 4 are used for
10 stock water in direct proximity to their
11 respective points of diversion .

12 Spring No. 1 also used for domestic supply
13 and stock in Government Lot No. 1, Section
14 4, T. 16 N., R. 17 E.W.M.

15 4. The following de minimus water uses pertaining to
16 stock and wildlife watering are recognized as confirmed water
17 rights.

18 A. As to the rights claimed for instream
19 stockwatering relating to Subbasin 13, such rights are
20 confirmed as senior (or first) in priority, regardless of the
21 priority of other rights confirmed in this cause. This
22 confirmation relates to claimants and claim numbers as follows:

| <u>Claimants</u> | <u>Court Claim Numbers</u> |
|---|----------------------------|
| BOISE CASCADE CORPORATION | 2206 |
| PARKER, JACK | 2290 |
| WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES | 0589 |
| WASHINGTON STATE DEPARTMENT OF WILDLIFE | 2109 |

1 Said confirmed rights embody entitlements to continuous stream
2 flows in natural watercourses, when available naturally, not to
3 exceed 0.25 cubic-foot per second, as are necessary to satisfy
4 the watering needs of livestock when they drink directly from
5 streams while grazing on adjacent lands.

6 B. As to the rights claimed for instream wildlife
7 uses in Subbasin No. 13, such rights are also confirmed as
8 senior (or first) in priority, regardless of the priority of
9 other rights confirmed in this cause. This confirmation refers
10 to claimants and claim numbers as follows:

| 11 | <u>Claimants</u> | <u>Court Claim Numbers</u> |
|----|-----------------------------|----------------------------|
| 12 | WASHINGTON STATE DEPARTMENT | 2109 |
| 13 | OF WILDLIFE | |

14 Said confirmed rights embody entitlements to continuous stream
15 flows in natural watercourses, when available naturally, not to
16 exceed 0.25 cubic-foot per second, as are necessary to satisfy
17 needs of wildlife when they drink directly from the
18 watercourses while grazing on adjacent state-owned pasture
19 lands.

20 C. Waters in natural watercourses in the subbasin
21 shall be retained for stockwatering in such watercourses as
22 they flow across or are adjacent to lands, which are now used
23 as pasture or range for livestock, in the same amount and with
24 the same priority as provided in Section 4. A. Regulation of
25
26

1 these watercourses by the Plaintiff shall be consistent with
2 such retention requirements.

3 D. Water in natural watercourses in the subbasin
4 shall be retained for wildlife watering uses in such
5 watercourses as they flow across or are adjacent to public
6 lands, which are now used as pasture or range for wildlife, in
7 the amount of 0.25 cubic foot per second and with a priority of
8 senior (or first). Regulation of these watercourses by the
9 Plaintiff shall be consistent with such retention requirements.

10 E. As to rights claimed for stockwater uses from
11 naturally occurring springs or ponds relating to Subbasin No.
12 13, such rights are confirmed as senior (or first) in priority,
13 regardless of other rights confirmed in this cause. This
14 confirmation relates to claimants and claim numbers as follows:

| <u>Claimants</u> | <u>Court Claim Numbers</u> |
|---|----------------------------|
| BOISE CASCADE CORPORATION | 2206 |
| PARKER, JACK | 2290 |
| WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES | 0589 |
| WASHINGTON STATE DEPARTMENT OF WILDLIFE | 2109 |

22 Said confirmed rights embody entitlements to amounts in the
23 water bodies, when available naturally, as are necessary to
24 satisfy the watering needs of livestock when they drink
25 directly therefrom.

1 F. As to rights claimed for wildlife watering uses
2 from naturally occurring springs or ponds relating to Subbasin
3 No. 13, such rights are confirmed as senior (or first) in
4 priority, regardless of other rights confirmed in this cause.
5 This confirmation relates to claimants and claim numbers as
6 follows:

| <u>Claimants</u> | <u>Court Claim Numbers</u> |
|--|----------------------------|
| WASHINGTON STATE DEPARTMENT OF WILDLIFE | 2109 |

7
8
9 Said confirmed rights embody entitlements to amounts in the
10 water bodies, when available naturally, as are necessary to
11 satisfy watering needs of wildlife when they drink directly
12 therefrom while grazing on adjacent state-owned lands.
13

14 G. Water in naturally occurring ponds and springs in
15 the subbasin shall be retained for "in-spring" stock water
16 uses, when such ponds and springs are located on or adjacent to
17 lands which are now used as pasture or range for livestock, in
18 the same amount and with the same priority as provided in
19 Section 4. A. Regulation of the ponds and springs by the
20 Plaintiff shall be consistent with such retention requirements.

21 H. Waters in naturally occurring ponds and springs
22 in the subbasin shall be retained for "in-spring" wildlife
23 uses, when such ponds and springs are located on or adjacent to
24 lands which are now used as pasture or range for wildlife, in
25 the same amount and with the same priority as provided in
26

1 Section 4. B. Regulation of the ponds and springs by the
2 Plaintiff shall be consistent with such retention requirements.

3 I. Nothing in Section 4. mandates that any lands,
4 associated with water rights or water retention as provided
5 herein, shall be reserved for wildlife purposes.

6 5. All prior claims for rights to surface water including
7 those claims filed under the provisions of Chapter 90.14 RCW
8 from Subbasin No. 13 not expressly provided for herein are
9 denied. As a supplement to the "Water Rights Claims Register"
10 identified in RCW 90.14.111, the Director of the Department of
11 Ecology should specifically identify and make appropriate
12 notation in the records of surface Water Right Claims
13 registered pursuant to Chapter 90.14 RCW specifically
14 identified in the "Water Right Claims" section of Plaintiff's
15 Exhibit No. SE-2.

16
17 IX. CONCLUSIONS OF LAW

18 Confirmation of Rights

19 The priority date, source, point of diversion, location,
20 maximum instantaneous diversion rate, annual quantity, period
21 of use, nature of beneficial use, and place of use which are
22 shown in the foregoing Findings of Fact for each claimant
23 therein referred are recommended to be confirmed as water
24 rights of those claimants.

1 Certificates of Adjudicated Water Right

2 Upon entry of the final decree in this action, the
3 Director of the Department of Ecology is required to issue
4 Certificates of Adjudicated Water Right in accordance with the
5 provisions of RCW 90.03.240 upon payment of the statutory fee
6 as prescribed in RCW 90.03.470 (11), together with the
7 appropriate county auditor recording fee.

8
9 Administration of Water

10 The Director of the Department of Ecology should, through
11 Department administrative staff, regulate the use of Subbasin
12 No. 13 waters on the basis of Certificates of Adjudicated Water
13 Rights issued under this proceeding, and under appropriation
14 permits in effect prior to, and appropriation permits and
15 certificates issued subsequent to October 12, 1977, under the
16 appropriation procedures of Chapter 90.03 RCW. When available
17 water in Subbasin No. 13 is insufficient to supply all rights,
18 regulation of subordinate rights should be effected only when
19 the Director determines that regulation is required in the
20 interests of satisfying superior priority rights.

21 Whenever it has been determined that regulation of
22 subordinate priority rights is necessary, the Director of the
23 Department of Ecology or the Director's authorized
24 representative shall regulate diversion facilities including
25 headgates, ditches, pumps and other works, so as to apportion
26

1 the waters as herein provided, and for that purpose may enter
2 at reasonable times upon the lands of any and all parties
3 having rights adjudicated herein.

4 Confirmation of water rights in this proceeding does not
5 in any way guarantee or imply that a right-of-way or trespass
6 right exists upon private or public lands for the diversion
7 and/or transport of any water awarded to such rights.

8 At the discretion of the Director, and consistent with RCW
9 90.03.360 and Chapter 508-64 WAC, any person taking surface
10 waters from Subbasin No. 13 may be required to provide and
11 maintain, at the water user's expense, proper diversion works
12 and/or measuring devices. Approval of design, installation,
13 maintenance, and operation of such works and measuring devices
14 will be as prescribed by the Director.

15
16 SIGNED and DATED at Olympia
17 this 24 day of April, 1990.

18
19
20 William R. Smith
21 WILLIAM R. SMITH, Referee
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