

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,)

No. 77-2-01484-5

8 THE STATE OF WASHINGTON,)
9 DEPARTMENT OF ECOLOGY,)

REPORT OF REFEREE
Re: Subbasin No. 2
(Easton)

10 Plaintiff,)

11 v.)

12 James J. Acquavella, et al.,)

13 Defendants.)
14

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

18 I. BACKGROUND

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

25 The Referee conducted evidentiary hearings on May 31, June 1, June 5, June 7,
26 June 14, 1989, and July 31, 1990.

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II. FIELD INVESTIGATIONS

Field surveys were conducted by Department of Ecology (DOE) staff during 1989 to obtain information regarding existing water use patterns in Subbasin No. 2. Aerial photographs, topographic maps, county assessor's plats, and on-site field investigations were used to prepare map exhibits showing the location of ditches, pipelines, pumps, wells and other pertinent features of the water systems.

III. WATER DUTY

The Plaintiff State of Washington submitted an exhibit entitled "Supplemental Documentary Information, Easton Subbasin No. 2", which included information on soils, climate, irrigation and farming practices, and plant needs, meant to aid the Referee in determining irrigation water requirements within the subbasin. In addition, two expert witnesses for the U.S. Bureau of Reclamation testified to provide general information regarding crop irrigation requirements for water delivered to farms in the subbasin. In the absence of definitive testimony or other evidence, the Referee proposes to rely upon such expert testimony, and will calculate the maximum duty of water for the various uses in Subbasin No. 2 according to the following formulae:

- A. Domestic Supply (in-house)
and Stock Water 0.01 cfs; 1 acre-foot per
year per residence
- Domestic supply (with small
lawn and garden) 0.01 cfs; 1 acre-foot per
year
- Domestic supply and large
lawn and garden up to
 $\frac{1}{2}$ acre 0.02 cfs; 2 acre-feet per
year
- Stock Water 0.01 cfs; 1 acre-foot per year
(diversion)

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1 B. Irrigation Water -- The testimony shows that the water duty for
2 irrigation in this subbasin varies considerably based on location. The upper part
3 of the basin, due to its shorter growing season, higher elevation and
4 precipitation, has a lower water duty than the lower basin. Therefore, the Referee
5 will use a range of 2 acre-feet to 5 acre-feet per acre irrigated, depending on
6 location.

7 Those claimants who are basing their water rights on certificates that issued
8 as a result of the 1924 Big Creek Adjudication, will be limited to the 4.8
9 acre-feet per acre confirmed in that decree.

10 The maximum rate of diversion or withdrawal will be calculated on the basis
11 of 1.0 cubic foot per second (449 gallons per minute) for each 50 acres of
12 irrigation, irrespective of the type of crop. For each irrigated acre, the Referee
13 has calculated the maximum instantaneous rate of diversion to be 0.02 cubic foot
14 per second (9 gallons per minute). It is the Referee's opinion that the
15 aforementioned duties of water are reasonable maximum application rates for the
16 soil and topographic conditions in Subbasin No. 2.

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

21 22 IV. STIPULATIONS

23 Three stipulations were adopted during the hearing, as among all claimants
24 and their counsel. The first stipulation, concerning the use of exhibits and
25 testimony, reads as follows:
26

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1 "It is hereby stipulated by all claimants in the above-entitled cause that
2 all exhibits entered and all testimony taken at the hearing on claims held
3 beginning May 31, 1989, may be utilized by any party in the proof of a claim
4 or the contesting of a claim whenever relevant and material."

5
6 The second stipulates to the description of properties identified in the
7 claims of the defendants to this action, as follows:

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

12
13 In the third, the parties stipulated to the following in relation to
14 "non-diversionary" stock and wildlife watering use with regards to Subbasin No. 2:

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

23 2. Waters in natural watercourses in the subbasin shall be retained when
24 naturally available, in an amount not to exceed 0.25 cubic feet per second
25 (cfs), for wildlife watering uses in such watercourses as they flow across or
26

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1 are adjacent to lands, which are now used as pasture or range for wildlife.
2 Retention of such water shall be deemed senior (or first) in priority,
3 regardless of other rights confirmed in this cause. Regulations of these
4 watercourses by the plaintiff shall be consistent with such retention
5 requirements.

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

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

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

4
5 V. LAND DESCRIPTIONS

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

10
11 VI. WATER RIGHT PRIORITIES

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

17
18 VII. SPECIAL ISSUES

19
20 BIG CREEK ADJUDICATION - DECREE NO. 6759

21
22 Big Creek, located near the southeast end of Subbasin No. 2 has previously
23 been adjudicated. In State of Washington v. K. O. Lund, et al. (hereinafter Lund),
24 Kittitas County Superior Court (1924), resulting in Decree No. 6759, the court
25 established the rights to use waters of Big Creek and ten certificates of water

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1 right issued. The Report of Referee which preceded the decree established that the
2 water duty required to irrigate the lands in the Big Creek Valley was one cubic
3 foot per second for each fifty acres of land irrigated, or 0.02 cubic foot per
4 second per acre. In light of the soil conditions, climate and method of irrigation
5 practiced in the valley, 4.8 acre-feet per year per acre was required to adequately
6 irrigate the lands. The Referee also found that the normal irrigation season
7 extends from May 1 to September 1.

8 The findings adopted by the Court were reflected in the decree and
9 certificates that ultimately issued, thereby serving as a limitation on the rights
10 that were confirmed in Decree No. 6759. At the Subbasin evidentiary hearing some
11 of the claimants who are relying on Decree No. 6759 and the certificates that
12 issued as a foundation for their water right have expressed displeasure with either
13 the quantity of water authorized in the certificates or with the duration of the
14 irrigation season. They have asked to be confirmed a right for water in excess of
15 the quantity that was contained in the certificate or for a longer irrigation
16 season. The Referee can only do that if the claimant, through testimony and
17 evidence, establishes that a water right authorizing the additional water or longer
18 season was obtained beyond the adjudicated certificate. Lacking that, the Referee
19 intends to recommend confirmation of rights strictly within the limits contained in
20 the certificates.

21 The Report of Referee recommended to the Lund Court confirmation for lands
22 that were in the process of being developed. The Referee found that:

23 Practically all of the lands involved in this determination are in process of
24 development. While progress made in these improvements has been slow, it
25 probably has been as rapid as means and circumstances would permit. We,
26 therefore, believe that the claimants are entitled to water for their entire
irrigable acreage, provided improvements of the land continue with proper
diligence.

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1 Therefore, it may be that if development did not continue, certificates
2 issued in 1925 for more land than has historically been irrigated. If the
3 testimony during the Subbasin evidentiary hearing shows this to be the case, the
4 Referee will recommend confirmation of a right for the number of acres that have
5 historically been irrigated and for a commensurate quantity of water.

6 Decree No. 6759 also carried the following provision:

7 That the parties to this proceeding may, during the irrigation season, use
8 such surplus water as remains in said stream after the quantities of water
9 hereinbefore apportioned, to an extent not to exceed a 100 per cent increase
over the apportionments hereinbefore made to each respectively and in the
order of priority as hereinbefore provided.

10 The Referee intends to carry this provision forward to water rights herein
11 confirmed if the claimant testifies to having taken advantage of the opportunity to
12 divert the surplus water.

13 14 15 VIII. TESTIMONY AND REFEREE'S ANALYSES

16 Plaintiff Testimony

17 Ms. Ceil Buddeke and Ms. Kerry O'Hara, Assistant Attorneys General,
18 represented the Plaintiff State of Washington, Department of Ecology.

19 The State introduced into evidence the following generic exhibits:

20	<u>Number</u>	<u>Description</u>
21	SE-1	Map -- Subbasin No. 2
22	SE-2	Water Right Certificates, Permits, Registration Claims and Relinquishments, Volume 1
23	SE-3	Water Right Certificates, Permits, Registration Claims and Relinquishments, Volume 2
24	SE-4	Manual of Individual Water Supply Systems
25	SE-5	Conveyance Loss/Gain, Subbasin No. 2
26	SE-6	Supplemental Documentary Information, Subbasin No. 2

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1 Additionally, oral testimony was given by Dick Carter and Tammy Hall, Field
2 Investigators, Ecology Adjudication Section.

3 Claimant Testimony

4 121 defendants filed statements of claim or notices of appearance. All
5 claimants and their legal counsel, if so represented, are as follows:

6 Court

7 Claim

8	<u>No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
9	02208	John O. Ahrnsbrak & Donna E. Ahrnsbrak 1954 Wildlife Acres Road #A Sedro Woolley, WA 98284		106, 107
10				
11	00104	Keith Anderson, et al. 9303 232nd SW Edmonds, WA 98020		33, 107
12				
13	01879	Dimitri Bader & Lenora Bader 2602 Judge Ronald Road Ellensburg, WA 98926-9393		106, 107
14				
15	00688	Richard P. Bailes Route 3 Box 820 Ellensburg, WA 98926		106, 107
16				
17	00714	Carl B. Benson, et al. c/o Newton W. Galley, Partner 3809 224th NE Redmond, WA 98052	James E. Hurson, Attorney Kittitas County Prosecutor's Office 5th and Main Ellensburg, WA 98926	22, 105, 120
18				
19	02378	Oscar L. Berger & Beverly J. Berger Route 3 Box 935 Ellensburg, WA 98926		106, 107
20				
21	05499	Edward J. Bogachus & Marcia J. Bogachus HC60 Box 6850 Cle Elum, WA 98922	Darrel Ellis, Attorney PO Box 337 Cle Elum, WA 98922	25, 107
22				
23				
24				
25				
26				

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1	06044	Dona Lee Bogan & James Harris Dobbs HC60 Box 7500 Cle Elum, WA 98922	25, 107
2			
3	02206	Boise Cascade Corporation	Dennis J. Dunphy, Attorney 26, 122
4	(A)03119	Legal Department	Schwabe, Williamson,
5		PO Box 50	Ferguson & Burdell
6		Boise, ID 83707	1420 5th Avenue #3400 Seattle, WA 98101-2339
7	00832	Stillman D. Brooks HC60 Box 7515 Cle Elum, WA 98922	28, 107
8			
9	01068	Warren G. Bunger	86, 105
10	(A)05149	& Sharon I. Bunger	107, 125
11	01302	HC60 Box 7510	
12	(A)05132	Cle Elum, WA 98922	
13	00888	Dennis Burchak	30, 105,
14	00889	& Diana Burchak	107, 124
15	00890	Box 45 South Cle Elum, WA 98943	
16	00888	Estate of Michael Burchak	30, 105,
17	00889	& Marie Burchak	107, 124
18	00890	711 W Walnut Street A #104 Yakima, WA 98902-3383	
19	01469	Pat Burke	Donald Bond, Attorney 106, 107
20	(A)05408	& Mary Burke	Halverson & Applegate, Inc.
21		HC61 Box 1410	PO Box 526
22		Cle Elum, WA 98922	Yakima, WA 98907
23	00103	Burlington Northern Railroad Co.	Anne M. Little, 33, 105,
24	00104	3800 Continental Plaza 777 Main St	Asst. General Counsel 107
25	02396	Fort Worth, TX 76102	
26	00273	Selma M. Burzenski	105, 107
27		306 Seneca Avenue NW Renton, WA 98055	
28	02162	Camp Koinonia	22, 35,
29	02163	Church of the Brethren	107, 132
	02164	HC60 Box 7155 Cle Elum, WA 98922	

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REFEREE'S OFFICE
1600 SW Perry St., Suite F.
Yakima, WA 98902-5713
(509) 454-7221

1	01151	Leon Carlson PO Box E Easton, WA 98925	36, 129
2			
3	01808	Estate of Robley P. Carr & Dorothy H. Carr 12915 Des Moines Memorial Drive Seattle, WA 98163	Dwight A. Halstead, Attorney PO Box 511 Prosser, WA 99350
4			105, 108
5	01476	Estate of John Caveglia	105, 108
6	01843	Paul L. Charlton & Norma N. Charlton Route 5 Box 860 Ellensburg, WA 98926	106, 108
7			
8			
9	04355	Church of Jesus Christ L.D.S. Ensign Ranch HC60 Box 5980 Cle Elum, WA 98922	Jeff Slothower, Attorney Lathrop Firm 201 W 7th PO Box 1088 Ellensburg, WA 98926
10			38, 105, 127
11			
12	01151	Clear Water Builders & Supply PO Box E Easton, WA 98925	36, 129
13			
14	00384	Jacqueline J. Evett Crume PO Box 726 Kamiah, ID 83536	83, 105, 121
15			
16	00176	C. Frederick Darling HC60 Box 6340 Cle Elum, WA 98922	40, 14, 118
17			
18	00920	David C. Darling & Lavwane R. Darling 6304 E Berkshire Drive Everett, WA 98203	43, 114
19			
20			
21	01680	Pat Deneen & Nancy Harcus HC60 Box 7040 Cle Elum, WA 98922	69, 105, 112
22			
23			
24	01731	DeGramps Enterprises, Inc. HC60 Box 7550 Cle Elum, WA 98922	96, 106, 108
25			
26			
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1	00343	James A. Douvier & Norma L. Douvier 29808 180th Avenue SE Kent, WA 98042	89, 108
2			
3	05331	Rodney T. Dunn & Marianne Dunn HC60 Box 10940 Cle Elum, WA 98922-9735	John P. Gilreath, Attorney PO Box 499 Ellensburg, WA 98926
4			45, 108
5			
6	02361	Merritt D. Dupuis HC60 Box 11190 Cle Elum, WA 98922	106, 108
7			
8	02030	Gerald Eaton HCR60 Box 7136 Cle Elum, WA 98922	60, 106, 113
9			
10	00803	Ellensburg; City of c/o Glenna Bradley-House 420 N Pearl Street Ellensburg, WA 98926	Glenna Bradley-House City Attorney 420 North Pearl Ellensburg, WA 98926
11			94
12	04426	Wallace Enger Route 1 Box 1092B Ellensburg, WA 98926	107, 108
13			
14			
15	02074	Audrey Irene Evans Box 560 DD Route 1 Ellensburg, WA 98926	James E. Hurson, Attorney Kittitas County Prosecutor's Office 5th and Main Ellensburg, WA 98926
16			107, 108
17			
18	01526	Milton M. Femrite & Tracy S. Femrite Route 4 Box 214 Ellensburg, WA 98926	107, 108
19			
20	01069	Frank Fennerty Route 5 Box 2320 Ellensburg, WA 98926	107, 108
21			
22	00833	Thomas L. Ferguson, Jr. & Sandra J. Ferguson HC 60 Box 6386 Cle Elum, WA 98922	46, 108
23			
24			
25			
26			
27			

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1	01452	Jack Floyd		105, 106,
2		& Shawn Floyd		108
3		BC 60 Box 6640		
		Cle Elum, WA 98922		
4	00755	Earl E. Gentry		47, 49,
5	00756	& Valerie K. Gentry		106, 115,
		Ray Johnson		119
		HC 60 Box 6660		
6		Cle Elum, WA 98922		
7	01027	Wayne Graber		52, 106
8		& Margo Graber		108
		HC60 Box 7520		
		Cle Elum, WA 98922		
9	02042	Thomas Greiner		105, 108
10		& Theresa Greiner		
11		55 W Washington Avenue #27		
		Yakima, WA 98903		
12	02351	Kathleen Lynette Griffin		47, 105,
13		16486 111th Avenue SE		108
		Renton, WA 98055		
14	00756	Gerald J. Griffith		106, 108,
15		HC60, Box 6521		119
		Cle Elum, WA 98922		
16	01274	Estate of Gary G. Guzzie	Darrel Ellis, Attorney	53, 106,
17	01275	& Clyde Parlova	PO Box 337	108
		PO Box 160	Cle Elum, WA 98922	
		Cle Elum, WA 98922		
18	01680	Keven K. Hart		69, 106,
19		& Deborah S. Hart		108
20		HC60 Box 7030		
		Cle Elum, WA 98922		
21	01327	Robert H. Humber		105, 108
22		& Dorothy R. Humber		
23		2017 Fairview East		
		Houseboat B		
		Seattle, WA 98102		
24	02294	Mary Hundley	Kenneth D. Beckley,	55, 106,
25		HC60 Box 5630	Attorney	110
26		Cle Elum, WA 98922	PO Box 858	
			Ellensburg, WA 98926	

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1	00756	Ray Johnson	106, 108,
2		HC60, Box 6660	110
3		Cle Elum, WA 98922	
4	02352	Kenneth Kent	105, 108
5		6081 E Lake Sammamish Road NE	
6		Redmond, WA 98052	
7	00453	Raymond H. Kirlin	57, 108
8		6981 Seaview Terrace SW	
9		Seattle, WA 98136	
10	00465	Kittitas Reclamation District ¹	
11		PO Box 276	John P. Gilreath,
12		Ellensburg, WA 98926	Attorney
13			PO Box 499
14			Ellensburg, WA 98926
15	00256	Les S. Knudsen	James P. Hutton, Attorney 107, 108
16		& Barbara J. Knudsen	Velikanje, Moore &
17		1003 E 11th	405 E Lincoln Avenue
18		Ellensburg, WA 98926	Yakima, WA 98901
19	00897	Mildred Korfus Giovenale	58, 106,
20		& Jacob Korfus, deceased	108
21		HC60 Box 6545	
22		Cle Elum, WA 98922	
23	02030	C. Ronald Lamb	60, 106,
24		& Judy I. Lamb	108
25		HC 60 Box 7120	
26		Cle Elum, WA 98922	
27	06322	Theodore L. Leavitt	62, 108
28		4243 S 280th	
29		Auburn, WA 98001	
30	1465	Little Creek, et al.	63, 106,
31		7702 Cirque Drive W	121
32		Tacoma, WA 98467	

¹Claim to be addressed in the Major Claimant Pathway. See Pretrial Order No. 8, Page 29

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1	00456	David L. Lund	65, 116
2		& Marilyn E. Lund	
3		HC60 Box 6605	
		Cle Elum, WA 98922	
4	00353	Lee L. Lund	65, 117
5		& Jane E. Lund	
		HC60 Box 6615	
		Cle Elum, WA 98922	
6	02008	Carolyn Watts Madden	105, 108
7		19837 183rd Place NE	
		Woodinville, WA 98072	
8	01965	Carl A. Magno	107, 108
9	00479	Charles S. Malcomson	22, 129
10		c/o William J. Bowlan	
11		2355 SE Lund Avenue	
		Port Orchard, WA 98366	
12	01395	Raymond Markley	105, 108
13		& Vicki Markley	
		25710 212th SE	
		Maple Valley, WA 98038	
14	0104	Joseph Maybo	Richard T. Cole, Attorney 33, 108
15		& Cecelia Maybo	PO Box 499
16		413 E 2nd	Ellensburg, WA 98926
		Cle Elum, WA 98922	
17	01675	William E. McCormick	105, 108
18		112 W 2nd	
		Cle Elum, WA 98922	
19	00315	Francis W. McIntosh	68, 108
20		& Marlys McIntosh	
		HC60 Box 5800	
		Cle Elum, WA 98922	
21	01101	Thomas McTighe	68, 108
22		& Judith McTighe	
23		10244 Occidental Avenue S	
		Seattle, WA 98168	
24	01680	Arthur C. Mills, Sr.	69, 108
25		& Wanda Lea Mills	
		10300 Roza Hill Drive	
26		Yakima, WA 98901	

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1	01534	Gerald L. Monahan	73, 75,
2	02185	& Marie C. Monahan	106, 108,
	02186	5814 Frances Avenue NE	128
3	02188	Tacoma, WA 98422	
4	01533	Matthew H. Monahan	77, 106,
		& Mary Alice Monahan	108
5		c/o Adele F. Monahan, Trustee	
		22222 6th S #5	
6		Des Moines, WA 98188	
7	01532	Robert E. Monahan	75, 77,
	01534	& Adele F. Monahan	108, 128
8		Box 6171	
		Kent, WA 98064-6171	
9	01533	Adele F. Monahan, Trustee	77, 108
10		22222 6th S #5	
		Des Moines, WA 98188	
11	01714	The Mountaineers, Inc.	78, 79,
12	01714A	300 3rd Avenue W	108, 119
		Seattle, WA 98119	
13	01317	Michael R. Myers	105, 108
14		& Kathleen B. Myers	
		10132 NE 112th Place	
15		Kirkland, WA 98033	
16	00104	Roland Nelson and	33, 107
		Margaret Nelson	
17		c/o Keith Anderson	
		9303 - 232nd SW	
18		Edmonds, WA 98020	
19	02362	Vincent H. Nelson	80, 108
		& A. Marion Nelson	
20		518 NE 88th	
		Seattle, WA 98115	
21	00539	Matt Ozbolt	81, 108
22		& Florence Ozbolt	
		HC60 Box 6535	
23		Cle Elum, WA 98922	
24	01465	Charles K. Parsons	63, 106,
		8812 - 20th Avenue NE Apt. 304	120
25		Seattle, WA 98115	

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1	02223	Emil Pasco	82, 106,
2		HC60 Box 7521	125
3		Cle Elum, WA 98922	
4	02294	Pautzke Bait Company, Inc.	55, 106,
5		PO Box 36	125
6		Ellensburg, WA 98926	
7		John P. Gilreath,	
8		Attorney	
9		PO Box 499	
10		Ellensburg, WA 98926	
11	01247	Jill M. Perry	107, 108
12		PO Box 443	
13		Ravalli, MT 59863	
14		Hugh M. Spall, Attorney	
15		PO Box 831	
16		Ellensburg, WA 98926	
17	00384	Jeannette Austin Peterson	83, 106,
18		HC 60 Box 6010	108
19		Cle Elum, WA 98922	
20	00384	Michael L. Peterson	83, 106,
21		PO Box 222	108
22		Cle Elum, WA 98922	
23	01068	Arthur G. Pieters	86, 108
24	(A)05149	& Helen P. Pieters	
25		HC60 Box 7511	
26		Cle Elum, WA 98922	
27	0104	Plum Creek Manufacturing, Inc.	33, 105,
28		999 Third Avenue, Suite 2300	107
29		Seattle, WA 98104	
30		William A. Carlton	
31		Cairncross & Hempelman, P.S.	
32		70th Floor, Columbia Center	
33		701 Fifth Avenue	
34		Seattle, WA 98104-7016	
35	00343	James C. Prichard	89, 108
36		& Margaret R. Prichard	
37		PO Box 1668	
38		Fernlay, NY 89408	
39	01965	Patricia A. Rafter	107, 108
40		428 Linden Street SE	
41		Othello, WA 99344	
42	00339	Ranch Properties, Inc.	90, 118
43		15669 State Highway #3 NW	
44		Poulsbo, WA 98370	
45	07856	Charles Ross Randall	92, 108
46		& Doris Randall	
47		283 W Lake Samish Drive	
48		Bellingham, WA 98226	

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1	00104	Othel R. Reeves & Lynora E. Reeves c/o Keith Anderson 9303 - 232nd SW Edmonds, WA 98020	108
2			
3			
4	02241	Reintree Corporation	James P. McGowan 105, 108 Suite 2100 Fourth & Blanchard Building 2121 Fourth Ave. Seattle, WA 98121
5			
6			
7	00442	Claude B. Renfro & Karen J. Renfro HC60 Box 7125 Cle Elum, WA 98922	92, 108
8			
9			
10	01127	Eldon R. Richardson & James L. Kualvik PO Box 1440 Wenatchee, WA 98801	105, 108
11			
12	00801	Roaring Creek Property Owners Assn.	Darrel Ellis, Attorney 93, 131 PO Box 337 Cle Elum, WA 98922
13			
14	01456	Ira C. Roberson & Betty J. Roberson Box 111 South Cle Elum, WA 98943	105, 108
15			
16			
17	02208	Ben Root Route 2 Box 770 Ellensburg, WA 98926	107, 108
18			
19	01904	C. William Ross Route 2 Box 825 Ellensburg, WA 98926	James P. Hutton, Attorney 107, 108 Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901
20			
21			
22	01296	John E. Rothlisberger HC60 Box 10715 Cle Elum, WA 98922	Richard T. Cole, Attorney 107, 108 PO Box 499 Ellensburg, WA 98926
23			
24			
25			
26			
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1	00803	Roza Irrigation District ² PO Box 810 Sunnyside, WA 98944	Thomas A. Cowan, Attorney 94 Cowan, Walker, Jonson & Moore PO Box 927 Richland, WA 99352
2			
3			
4	01942	Jess Schober & Barbara Schober HC61 Box 3020 Cle Elum, WA 98922	Richard T. Cole, Attorney 107, 108 PO Box 499 Ellensburg, WA 98926
5			
6	01942	Schober Brothers PO Box 72 Cle Elum, WA 98922	107, 108
7			
8	05119	Silver Creek Road Maintenance Assn. PO Box 432 Easton, WA 98925	Darrel Ellis, Attorney 95, 108 PO Box 337 Cle Elum, WA 98922
9			
10	01872	Ski Acres, Inc. 7900 SE 28th Street #200 Mercer Island, WA 98040-2970	105, 108
11			
12	02240	Ski Tur Valley Maintenance Company 211 Summit Avenue E Apt 407 Seattle, WA 98102-5664	22, 105, 132
13			
14	00150	John R. Smith & Susanna S. Smith HC60 Box 7550 Cle Elum, WA 98922	96, 108
15			
16			
17	00302	South First Kachess Summer Homes	Harold Whitham, Agent 22, 131 Box 162 Roslyn, WA 98941
18			
19	01462	Jay Sprouse & Betty Sprouse 2038 Bing Court NW Olympia, WA 98502-3107	107, 108
20			
21			
22			
23			

²Claim to be addressed in the Major Claimant Pathway. See Pretrial Order No. 8, Page 29

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1	01275	Otto Staheli & Olga Staheli 12711 Beverly Park Road Lynnwood, WA 98037	106, 108
2			
3	01476	Mitchell Starkovich 1211 E 3rd Cle Elum, WA 98922	105, 108
4			
5	02370	Summerside Property Owners HC60 Box 7570 Cle Elum, WA 98922	105, 108
6			
7	01874	Summit Sewer District PO Box 1068 Snoqualmie Pass, WA 98068	105, 108
8			
9	00274	Sun Island Corporation PO Box 495 Easton, WA 98925	105, 108
10			
11	00254	Reidar Tanner & Virginia Tanner 2363 W Viewmont Way Seattle, WA 98199	105, 108
12			
13			
14	00158	Sigmund D. Thompson P. O. Box 127 Skykomish, WA 98288	97, 108
15			
16	00795	Sigmund D. Thompson P. O. Box 127 Skykomish, WA 98288	97, 108
17			
18	02276	United States of America ³	Charles E. O'Connell, Jr. U.S. Dept. of Justice Indian Resources Section PO Box 44378 Washington, DC 20026-4378
19			
20			
21			
22			
23			

³ Claim to be addressed in the Major Claimant Pathway. See Pretrial Order No. 8, Page 29

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1	00451	Warren F. Vaupel & Versie Vaupel PO Box 755 Renton, WA 98057	105, 108
2			
3	01682	H.C. Wallick & Laverne Wallick 802 N 40th Avenue #66 Yakima, WA 98908	69, 106, 113
4			
5			
6	00619	Whitaker Land Company 1505 NW Gilman Boulevard Issaquah, WA 98027	98, 126, 130
7			
8	01428	John G. Williams & Mary L. Williams PO Box 11218 Bainbridge Island, WA 98110	105, 108
9			
10			
11	00604	Cecile B. Woods HC60 Box 7805 Cle Elum, WA 98922	100, 106, 108
12			
13	02109	WA State Department of Wildlife 600 N Capitol Way Olympia, WA 98504	William Frymire, AAG Department of Wildlife Mail Stop PB-53 Olympia, WA 98504 22, 130
14			
15			
16	00589	WA State Dept. of Natural Resources Division of Lands and Minerals PO Box 47014 Olympia, WA 98504-7014	Paul Silver, AAG Department of Natural Resources PO Box 40100 Olympia, WA 98504-0100 103, 106, 108
17			
18			
19	00104 01600	WA State Parks & Rec. Commission 7150 Cleanwater Lane P O Box 42669 Olympia, WA 98504-2650	Shirley W. Battan, AAG Parks & Rec. Commission PO Box 40100 Olympia, WA 98504-0100 33, 103, 106, 108
20			
21			
22	01473	Ivan Zamora & Bonnie Zamora 4550 E Mercer Way Mercer Island, WA 98040	105, 108
23			
24			

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

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REFEREE'S OFFICE
1600 SW Perry St., Suite F.
Yakima, WA 98902-5713
(509) 454-7221

<u>Name</u>	<u>Court Claim No.</u>
Camp Koinonia	02162
Charles S. Malcomson	00479
Ski Tur Valley Maintenance Company	02240
South First Kachess Summer Homes	00302
WA State Department of Wildlife	02109

Specific elements of the proposed rights for the claimants are identified in the Findings of Fact commencing on page 107.

The remaining claims (consisting of those claims for which no recommendation for confirmation was made) were scheduled to be heard during the evidentiary hearing which commenced on May 31, 1989. Based upon the testimony and evidence provided to the Referee, the analysis of all remaining claims is as follows:

COURT CLAIM NO. 00714 -- Carl B. Benson, et al.

Carl B. and Lorraine E. Benson and Newton W. and Kathryn B. Galley submitted a Statement of Claim to the Court for the use of waters from Fowler or Peterson Creek for irrigation and stock water. Carl Benson and Dennis Burchak, who farms the property, testified at the evidentiary hearing. The defendants were represented by James Hurson, attorney at law.

The property owned by the defendants in the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 2, T. 19 N., R. 14 E.W.M. was homesteaded by Nicholas Lichter, who received a patent from the United States dated March 26, 1904. The remaining property owned by the defendants, the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and Government Lots 1, 2, and a portion of 3, Section 2, T. 19 N., R. 14 E.W.M. was homesteaded by Louis Peterson, who received a patent dated July 31, 1903. The claim to a water right is based on a Notice of Water Right filed on October 9, 1893, by Louie Peterson and Peter N. Wise claiming a right to

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1 divert 12 cubic feet per second from Fowler Creek for irrigating the N $\frac{1}{2}$ N $\frac{1}{2}$ of
2 Section 2, T. 19 N., R. 14 E.W.M. and the SE $\frac{1}{4}$ of Section 35, T. 20 N., R. 14 E.W.M.

3 According to the testimony ten acres of pasture and hay are irrigated in
4 Government Lots 2 and 3, in the N $\frac{1}{2}$ N $\frac{1}{2}$, of Section 2 with waters from Fowler Creek.
5 The water is diverted from the creek on the neighboring Burchak property and
6 carried in an earthen ditch that runs through Government Lot 3 and terminates near
7 the easterly end of Government Lot 2. The diversion dam and ditch were reportedly
8 constructed in the late 1890's, presumedly at the time the notice of appropriation
9 was filed.

10 Mr. Burchak testified that following consultation with an irrigation supply
11 company he was able to determine that 1.5 cubic feet per second is diverted from
12 the creek into the irrigation ditch. He has estimated that between 90 and 120
13 acre-feet per year are diverted from the creek during the irrigation season, with
14 approximately 30 acre-feet being required by the crop and the remaining being
15 conveyance loss through the ditch. In past reports, the Referee has not allocated
16 an annual quantity of water (acre-feet per year) for conveyance loss, since such
17 water is diverted to deliver irrigation water to the farm for beneficial use and is
18 not loss to the river system. Water lost from the ditch returns to its source
19 within a very short time period, particularly in this situation where the ditch
20 parallels the creek much of its length and is within a few hundred feet of the
21 creek.

22 Although not identified in the Court Claim, a right is being asserted for use
23 of an unnamed spring located in Government Lot 3, Section 2, for stock water. The
24 testimony indicates that up to 30 head of stock at times receive water from this
25 source. However, the testimony did not reflect whether there is a diversion from
26

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1 the spring into a stock tank or whether the stock drink directly from the spring.
2 Lacking testimony concerning a diversionary use, the Referee concludes that there
3 is no actual diversion. Stock drinking directly from a water source is covered in
4 the non-diversionary stock water stipulation discussed on Page 4 of this report and
5 the Plaintiff's Report to the Referee recommended confirmation of a right under the
6 stipulation. Additionally, there was no RCW 90.14 claim filed for use of a spring
7 for stock watering.

8 There also was no RCW 90.14 claim filed for the use of waters from Fowler
9 Creek. Mr. Benson testified that in 1974 he became aware of requirements to file
10 for water rights and visited an Ecology office in Bellevue. In 1974 there was no
11 Ecology office in Bellvue, but there was one in Redmond, which is the office he
12 must have visited. He received an instruction sheet for registration of water
13 right claims and some forms. According to the record, Mr. Benson completed an
14 Application for a Water Right Permit, which was received on June 26, 1974, in the
15 Water Right Claim office of the Department of Ecology along with a check for \$2.00,
16 the fee for registering claims. The Referee notes that in June of 1974, the last
17 month of a five year period for filing water right claims, the Department of
18 Ecology recieved hundreds of claim forms, which exceeded the manpower available to
19 complete the registration process. Several months passed before all the claims
20 were registered. On January 6, 1975, Mr. Benson received a letter from the Yakima
21 Office of the Department of Ecology returning the application and the \$2.00 check.
22 The letter informed Mr. Benson that the Yakima River and all its tributaries have
23 been closed to consumptive appropriation for many years. It provided him the
24 opportunity to resubmit the application and receive a formal decision. The letter
25 also stated that the application fee was \$10.00 not the \$2.00 he had submitted.

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1 According to Mr. Benson, by filing the application form received on June 26,
2 1974, he was attempting to comply with the terms of RCW 90.14 and either was given
3 or mistakenly filled out the wrong form. This very issue has been dealt with by
4 the Washington State Supreme Court in State of Washington v. Adsit, et al., 103
5 Wn.2d 698, 694 P.2d 1065 (1985). In that case the court ruled that Circle C Ranch
6 had substantially complied with the provisions of RCW 90.14 when they filed an
7 Application for a Water Right Permit, rather than the Water Right Claim form
8 contemplated in RCW 90.14. The facts in Adsit mirror the Benson situation,
9 therefor, the Referee finds that Mr. Benson substantially complied with the
10 requirements of RCW 90.14.

11 Based on the foregoing, it is recommended that a right under the Prior
12 Appropriation Doctrine be confirmed under Court Claim No. 00714 with an October 9,
13 1893, date of priority for the use of 0.20 cubic foot per second (plus 1.3 cubic
14 feet per second for conveyance), 30 acre-feet per year from Fowler Creek for the
15 irrigation of ten acres.

16 COURT CLAIM NO. 05499 -- Edward J. Bogachus
17 & Marcia J. Bogachus

18 On July 13, 1990, a Statement of Claim was filed with the Court for the use of
19 waters from Little Creek and four unnamed springs. On September 14, 1990, the
20 Court ruled that the late filed claim would be held until the exception hearing for
21 this report and at that time the Court would rule on allowing the late claim.

22 COURT CLAIM NO. 06044 -- Dona Lee Bogan
23 & James Harris Dobbs

24 On February 22, 1991, Dona Lee Bogan and James Harris Dobbs filed a Statement
25 of Claim with the Court for the use of waters from an unnamed spring in Subbasin
26

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1 No. 2. Because the claim was filed after the Subbasin evidentiary hearings were
2 held, its processing is governed by Pretrial Order No. 9. This requires the
3 Referee to note the late-filed claim in his report to the Court, and, further, to
4 notify the claimants that the Court will consider their claim during the exceptions
5 hearing for this report.

6 COURT CLAIM NO. 02206 -- Boise Cascade Corporation
7 (A)03119

8 A Statement of Claim was filed with the Court by Boise Cascade Corporation for
9 the use of numerous surface water sources within the Yakima River Basin, including
10 several within Subbasin No. 2, for stock water, irrigation, domestic, and timber
11 harvesting. The defendant was represented by attorney Dennis Dunphy. John P.
12 Hess, Chief Regional Forester for Boise Cascade Corporation, testified at the
13 evidentiary hearing.

14 Boise Cascade Corporation is asserting a right to the use of 23 surface water
15 sources in Subbasin No. 2, including unnamed springs and streams, several named
16 creeks, and the Yakima River. According to the testimony there have been no leases
17 of land for livestock within the subbasin for over 25 years and no intent to lease
18 in the future; therefore, the only diversionary use of water by the defendant is
19 for timber harvesting. The water used for timber harvesting is pumped from the
20 water sources at a rate of 260 gallons per minute into tank trucks that are used
21 for sprinkling logging roads to maintain compaction. Mr. Hess estimated that a
22 maximum of 8 acre-feet per year would be used for this purpose from all the
23 sources. Use of the different sources rotated with two to ten years passing
24 between those uses.

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1 According to the record the harvest of timber from lands in the Easton
2 Subbasin began in 1903. At that time water was diverted and used to operate
3 portable sawmills that were moved from site to site as necessary. Use of these
4 portable sawmills ceased many years ago when it became more effective to transport
5 the logs to permanent mill sites. Several methods of transporting the logs were
6 utilized until the modern practice of using logging trucks was undertaken. Today
7 water is used for dust abatement and to maintain the roads used by the trucks. The
8 water sources are spread throughout the subbasin and the source nearest to the area
9 being logged is used for filling the tank trucks.

10 Boise Cascade has identified 23 RCW 90.14 claims that it maintains are for the
11 23 sources used within Subbasin No. 2. However, during the evidentiary hearing
12 Boise Cascade attempted to amend ten of the 90.14 claims to describe water sources
13 being used within the subbasin instead of sources for which they are not asserting
14 a water right. RCW 90.14.065 provides specific procedures and conditions under
15 which a claim can be amended. Neither this section nor RCW 90.03, instill in the
16 Referee the authority to amend 90.14 claims. RCW 90.03.380 provides a procedure to
17 change the point of diversion and place of use of a water right; however, Boise
18 Cascade has not asserted that a change actually occurred, nor have they complied
19 with the procedures of RCW 90.03.380. Following are the RCW 90.14 claims that
20 Boise attempted to amend and in parentheses are the Boise Cascade numbers
21 associated with the water source:

22 085727 (A-100), 085729 (A-102), 085778 (A-108), 085774 (A-110), 085775
23 (A-111), 085781 (A-112), 085783 (A-114), 085779 (A-115), 085731 (A-117), 085733
24 (A-120).

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1 Water Right Claim forms were filed for 13 of the water sources used by Boise
2 Cascade. Those claims and the Boise Cascade numbers associated with the water
3 sources are:

4 085773 (A-97), 085725 (A-98), 085726 (A-99), 085728 (A-101), 085730 (A-103),
5 085776 (A-104), 085777 (A-107), 085782 (A-113), 085735 (A-118), 085732 (A-119),
6 014601 (DNR), 018923 (DNR), and 018924 (DNR).

7 It is the opinion of the Referee that the specific use of water for road
8 maintenance is a relatively minor change in use from the original sawmill operation
9 when both are considered in the context of timber harvesting and management.
10 Therefore, it is recommended that a right be confirmed with a June 30, 1903, date
11 of priority for the diversion of 0.58 cubic foot per second, 8 acre-feet per year
12 from the 13 water sources with 90.14 claims for timber harvesting. The Referee
13 cannot recommend confirmation of water rights for the ten sources for which 90.14
14 claims were not filed. The Plaintiff's Report to the Referee recommended
15 confirmation of a non-diversionary stock water right under the stipulation
16 discussed on Page 4 of this report.

17
18 COURT CLAIM NO. 00832 -- Stillman D. Brooks

19 Stillman D. Brooks submitted a Statement of Claim to the Court for the use of
20 waters from Peterson Creek and a well. This case only involves rights to the use
21 of surface waters, therefore, water rights associated with use of the well will not
22 be considered. Mr. Brooks testified at the evidentiary hearing in support of the
23 claim.

24 Mr. Brooks owns approximately eight acres of land lying in that portion of the
25 SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T. 20 N., R. 14 E.W.M. lying south of Peterson
26

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1 Creek and north of the county road. He acquired the property in 1963 and at that
2 time there was no evidence of prior development of the land. Past owners had
3 logged the property and allowed the timber to grow back. After he purchased the
4 land, Mr. Brooks installed a pipeline in the creek and pumped water for domestic
5 supply and some irrigation around the home he constructed. In 1979 a well was
6 drilled to provide domestic water for the house. The well was not very productive
7 and had silt problems, so Mr. Brooks continued to pump from the creek and used the
8 creek water to recharge the well ensuring an adequate supply. Mr. Brooks grew
9 tired of boiling the water for sanitary reasons and installed filters and ceased
10 pumping from the creek. He has maintained the system as a backup in case he should
11 encounter problems in the future with the well.

12 Mr. Brooks plans to irrigate two acres of land from the creek if he is
13 confirmed a water right for that purpose and is also requesting that a right be
14 confirmed for a backup domestic water supply. Mr. Brooks filed Water Right Claim
15 No. 158325 pursuant to the requirements of RCW 90.14, for the use of waters from
16 Peterson Creek, claiming a right for domestic supply and irrigation of 2 acres.
17 The form indicated that 0.10 acre was being irrigated at the time.

18 Mr. Brooks is basing his claim to a right on his land being riparian to the
19 water source. In order for there to be a right under the Riparian Doctrine, the
20 land must have severed from Federal ownership prior to June 6, 1917, and water use
21 must have been initiated prior to December 31, 1932. According to Mr. Brooks
22 testimony, prior to his ownership there had not been any use of waters from
23 Peterson Creek for irrigation of his land. Therefore, a water right could not have
24 been established for that purpose under the Riparian Doctrine. Mr. Brooks
25 testified that the land was owned by an individual named Peterson at the turn of
26

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1 the century and that the neighbors told him Mr. Peterson had a log cabin on the
2 land and used water out of Peterson Creek in the cabin. However, Mr. Brooks
3 testified that the only evidence of an old diversion from the creek was immediately
4 below beaver ponds to the west of his property. That abandoned diversion and ditch
5 appeared to have been to a nearby meadow. According to evidence submitted by
6 neighboring landowners and claimants, Louis Peterson owned quite a bit of land
7 adjoining Mr. Brook's property. The testimony and evidence were not adequate for
8 the Referee to determine that a water right had been established for the use of
9 Peterson Creek for domestic supply on Mr. Brook's property.

10 Based on the foregoing, the Referee cannot recommend that a water right be
11 confirmed to Stillman D. Brooks under Court Claim No. 00832.

COURT CLAIM NO. 00888	-- Estate of Michael Burchak
00889	& Marie Burchak
00890	Dennis Burchak
	& Diana Burchak

15 Statements of Claim were filed with the Court by Michael and Marie Burchak for
16 the use of waters from two unnamed springs and Fowler Creek. On May 7, 1990,
17 Dennis and Diana Burchak were joined as additional parties to all three claims.
18 Dennis Burchak testified at the evidentiary hearing.

19 The Burchaks are the owners of the West 700 feet of Government Lot 3 and
20 Government Lot 4 of Section 2, T. 19 N., R. 14 E.W.M. On July 31, 1903, Matts
21 Anderson received a Homestead Certificate for Lot No. 4 of Section 2 and Lots 1, 2,
22 and 3 of Section 3, T. 19 N., R. 14 E.W.M. On September 6, 1910, Louis Peterson,
23 et al, conveyed to K. O. Lund, Lot 4 of Section 2 and Lots 1, 2, and 3 of Section
24 3, T. 19 N., R. 14 E.W.M., together with one-half interest in and the right to
25 forever use one-half of the waters of Fowler Creek. The land was then conveyed to
26 Paul Burchak on April 21, 1917. Paul Burchak was the father of Michael Burchak and

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1 grandfather of Dennis Burchak. The land in Section 3 is no longer owned by the
2 Burchak family. The only evidence in the record concerning the ownership history
3 for the West 700 feet of Government Lot 2 (or the NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 3 is a
4 Warranty Deed dated July 10, 1939, conveying that land from Swen Anderson and
5 Charlie Anderson to Michael Burchak. Contained in the deed was a right of way for
6 an irrigation ditch across the property. The deed provided for the right of
7 Michael Burchak to convey and use from the irrigation ditch water for the
8 irrigation of about three acres adjacent to the ditch.

9 According to Mr. Burchak's testimony ten acres of land are irrigated from
10 Fowler Creek. The irrigated lands lie along Fowler Creek, which traverses the
11 property from west to east. Hay is planted on approximately seven acres and
12 pasture and Christmas trees on the remaining three. Mr. Burchak testified that the
13 land historically has been used for farming. Affidavits submitted by Marie Burchak
14 and Valery Zrebiac attest to the land being irrigated prior to 1936 and 1918
15 respectively. Both affidavits state the historic use is the same as current
16 practices. A maximum of 30 head of livestock on the property can drink either from
17 Fowler Creek or the irrigation ditches.

18 Water Right Claim No. 031837 was filed by Mr. and Mrs. Michael Burchak
19 pursuant to the provisions of RCW 90.14 and claims a right to use 0.21 cubic foot
20 per second, 40 acre-feet per year from Fowler Creek for the irrigation of ten
21 acres. At the hearing Dennis Burchak stated that 0.21 cubic foot per second is not
22 adequate and he would like a right for one cubic foot per second to adequately
23 irrigate the ten acres. He stated he needed to divert that quantity in order to
24 have enough head to flood irrigate the fields; however, he did not testify that
25 this was the quantity of water historically diverted from the creek. There also
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1 was no testimony about capacity of the ditches he uses or how many acres are
2 irrigated at one time. This type of information is essential for the Referee to
3 consider recommending that a water right be confirmed for a withdrawal rate that is
4 significantly higher than the normal practice for the area.

5 The Burchaks are also claiming rights to use two unnamed springs for domestic
6 supply. According to the testimony one spring was developed and served a log cabin
7 that was built prior to the Burchaks acquiring the property in 1917. The second
8 spring was developed with a diversion and pipeline in the early 1950's. The second
9 spring is a backup supply and is only used when the flow of water from the first
10 spring is inadequate. Water Right Claims No. 031835 and 031836 were filed by Mr.
11 and Mrs. Michael Burchak pursuant to RCW 90.14 for use of the springs. The spring
12 that is the primary source of domestic supply is located on the Burchak property
13 and the other spring is located in Section 3.

14 A right can be established under the Riparian Doctrine if the land is riparian
15 to the water source, the land has separated from Federal ownership, and water was
16 first used prior to December 31, 1932. A right can be established under the Prior
17 Appropriation Doctrine if water was first used prior to June 6, 1917. After that
18 date, the only mechanism for establishing a water right is through the permitting
19 procedures of RCW 90.03.

20 Based on the testimony and evidence it is apparent that rights were
21 established under the Riparian Doctrine for use of Fowler Creek for irrigation of
22 ten acres and use of waters from the spring on the Burchak property for domestic
23 supply. However, the evidence does not indicate the establishment of a water right
24 for use of the second spring developed in the 1950's.

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1 It is recommended that a right be confirmed for Court Claim No. 00888 under
2 the Riparian Doctrine with a July 31, 1903, date of priority for the use of 0.21
3 cubic foot per second, 40 acre-feet per year from Fowler Creek for the irrigation
4 of ten acres and 0.01 cubic foot per second, 0.5 acre-foot per year for stock
5 water.

6 It is recommended that a right be confirmed for Court Claim No. 00889 under
7 the Riparian Doctrine with a July 31, 1903, date of priority for the use of 0.02
8 cubic foot per second, 2 acre-feet per year from an unnamed spring for single
9 domestic supply. The spring is located in Government Lot 4 of Section 2, T. 19 N.,
10 R. 14 E.W.M.

11 The Referee does not recommend that a right be confirmed under Court Claim No.
12 00890 due to the date of first use being many years after a right could have been
13 established under either the Riparian or Prior Appropriation Doctrines. There is
14 no evidence that a permit was obtained through the state Surface Water Code, RCW
15 90.03.

16 COURT CLAIM NO. 00103 -- Burlington Northern Railroad Co.
17 02396

18 COURT CLAIM NO. 00104 -- Burlington Northern Railroad Co.
19 Keith Anderson, et al.
20 Joseph Maybo
21 & Cecelia Maybo
22 WA State Park & Rec. Commission
23 Plum Creek Manufacturing Co.

24 Burlington Northern Railroad Company filed Statements of Claim with the Court
25 for the use of multiple surface water sources in the Yakima River Basin, including
26 several in Subbasin No. 2. On March 30, 1987, Roland and Margaret Nelson; Keith C.
27 and Anna H. Anderson, Joseph and Cecelia V. Maybo; and Othel R. and Lynora E.
28 Reeves were joined to the portion of Claim No. 00104 pertaining to use of an
29

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1 unnamed spring in Section 21, T. 21 N. R. 13 E.W.M. None of those parties appeared
2 at the evidentiary hearing to testify in support of the claim. However, following
3 a motion by Joseph and Cecelia Maybo, the Court entered an order allowing the
4 Maybos to present testimony concerning their portion of the claim at the exception
5 hearing that will be held following issuance of this Report of Referee. On
6 November 7, 1990, the Washington Parks and Recreation Commission were joined to the
7 portion of the claim pertaining to use of the Yakima River for fire suppression.
8 Assistant Attorney General Shirley Battan represented the commission and Kris
9 Kauffman, Chief of Engineering and Tim Schmidt, Park Manager for Lake Easton State
10 Park, testified at the evidentiary hearing. On November 29, 1990, Plum Creek
11 Manufacturing Co. was joined to the claim for a log chipping plant in Section 31,
12 T. 20 N., R. 15 E.W.M. There was no appearance separately by a representative of
13 Burlington Northern Railroad Company for any of the claims or by Plum Creek
14 Manufacturing Co. The Plaintiff's Report to the Referee recommended that a right
15 be confirmed for non-diversionary stock watering under the stipulation mentioned on
16 Page 4 of this report.

17 The State Parks Commission is asserting a right to use waters from the Yakima
18 River for fire suppression as necessary on land they acquired from Burlington
19 Northern for the Iron Horse State Park, which is a corridor running the length of
20 the subbasin intended for use as a recreational trail. The testimony indicated
21 that since railroads first were constructed across the state, fire along the
22 railway has been an ongoing threat and water for fire suppression an ongoing need.
23 In the State of Washington, water rights have historically not been granted for
24 water diverted or withdrawn for fire suppression. This is an emergency use that
25 cannot be predicted or quantified. It would be impossible to establish a fixed
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1 diversion point or annual quantity of water, which are dictated by the location,
2 frequency and magnitude of the fire. The State has recognized the need of water
3 for fire suppression as a high priority and does not require the existence of a
4 water right for this emergency use.

5 Therefore, the Referee does not recommend that a right be confirmed to the
6 Washington Parks and Recreation Commission under Court Claim No. 00104, but does
7 recognize this use will continue as needed. The Referee also does not recommend
8 that a water right be confirmed to Burlington Northern Railroad Company, Plum Creek
9 Manufacturing Co., Roland and Margaret Nelson, Keith C. and Anna H. Anderson,
10 Joseph and Cecelia V. Maybo and Othel R. and Lynora E. Reeves due to their failure
11 to appear at the evidentiary hearing.

12 COURT CLAIM NO. 02162 -- Camp Koinonia
13 02163
14 02164

15 Three Statements of Claim were filed with the Court by Camp Koinonia
16 (Oregon-Washington District, Church of the Brethren). Attorney Lowell D. Sperline
17 represented the camp. The Plaintiff's Report to the Referee recommended that a
18 right be confirmed under Court Claim No. 2162 for the use of 0.01 cubic foot per
19 second from an unnamed spring for continuous non-consumptive recreational use and
20 fire suppression as needed. The defendant did not take exception to this
21 recommendation and it is adopted by the Referee. Court Claims No. 2163 and 2164
22 were filed for use of ground water from two wells. This adjudication does not
23 include a determination of the rights to use ground water, therefore, there was no
24 testimony at the evidentiary hearing and the Referee does not recommend that rights
25 be confirmed under Court Claims No. 2163 and 2164.

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A Statement of Claim to the Court was submitted by Don G. Taylor for the use of Tucker Creek for the irrigation of 50 acres. On March 8, 1990, Leon Carlson and Clear Water Builders and Supply, Inc., were substituted for Mr. Taylor. Leon Carlson appeared and testified at the evidentiary hearing.

Mr. Carlson owns lands in Section 13, T. 20 N., R. 13 E.W.M., however, the extent of his ownership and the lands he is claiming a water right for are not clear. The Court Claim states that the place of use for the water is the SE $\frac{1}{4}$, SW $\frac{1}{4}$ Section 13, T. 20 N., R. 13 E.W.M., or 320 acres. Mr. Carlson told the State's field investigator that he owned more than the 40 acres described in his court claim. Mr. Carlson provided an aerial photograph on which it appears he outlined his property in yellow highlighter. The area he outlined was the W $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, and that portion of the NW $\frac{1}{4}$ lying south of the railroad tracts, all in Section 13, T. 20 N., R. 13 E.W.M.

According to Mr. Carlson's testimony, Julius Jovanovich purchased the property from Northern Pacific Railway Company in 1908 and the property was subsequently cleared, probably for cultivation. Mr. Carlson had no information about the land being irrigated immediately following Mr. Jovanovich's purchase. On August 25, 1933, Mr. Jovanovich filed an application with one of the Department of Ecology's predecessor agencies and ultimately received Surface Water Certificate No. 1040. The certificate authorized the diversion of 0.30 cubic foot per second from Tucker Creek with a priority of August 25, 1933. The place of use described on the certificate is the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 13, T. 20 N., R. 13 E.W.M. The certificate states that 50 acres are within the described area and 18 acres were irrigated. The extent of a water right is limited by the beneficial use at the time the

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1 certificate issues. Review of the aerial photo reveals there is one field of
2 approximately ten acres that lies predominately in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13. Since
3 the Referee does not have the scale for the photograph it is not possible to
4 determine with certainty whether any of the irrigated field lies outside of the SE $\frac{1}{4}$
5 of Section 13. Mr. Carlson also provided a written statement from Anne T. Taylor,
6 Don Taylor's widow, certifying that Tucker Creek was used to irrigate the NW $\frac{1}{4}$ and
7 the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 13, T. 20 N., R. 13 E.W.M. in 1985. However, the
8 aerial photo shows that the irrigated land lies within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$
9 south of the railroad line. Besides Tucker Creek, water is used from the Kittitas
10 Reclamation District system. Mr. Carlson did not provide any testimony about the
11 number of shares he owns or the extent of water usage from the canal.

12 Don G. Taylor filed Water Right Claim No. 150170 pursuant to the requirements
13 of RCW 90.14 claiming a right to divert 0.30 cubic foot per second, 126 acre-feet
14 per year from Tucker Creek for the irrigation of 50 acres in the SE $\frac{1}{4}$, SW $\frac{1}{4}$ of
15 Section 31 (the numbers were transposed, should be Section 13), T. 20 N., R. 13
16 E.W.M. The date of first water use on the claim is August 1933, which is the date
17 on Certificate No. 1040.

18 There has been insufficient testimony to establish that water was used on the
19 Carlson property prior to June 6, 1917, which would be necessary for there to be a
20 water right under the Prior Appropriation Doctrine. Due to the uncertainty about
21 the extent of Mr. Carlson's ownership, the Referee was unable to determine whether
22 the Carlson land is riparian to Tucker Creek. Even if the land is riparian, there
23 has been no testimony that would allow the Referee to conclude that a right had
24 been established under the Riparian Doctrine as a result of water use from Tucker
25 Creek prior to December 31, 1932.

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1 Based on the testimony and evidence, the Referee recommends that a right under
2 the Surface Water Code be confirmed under Claim No. 1151 with an August 25, 1933,
3 date of priority for the diversion of 0.30 cubic foot per second, 20 acre-feet per
4 year from Tucker Creek for the irrigation of 10 acres, which represents the extent
5 of beneficial use on the lands described on the certificate.

6 The Kittitas Reclamation District is a Major Claimant whose rights will be
7 determined through the Major Claimant pathway established in Pre-trial Order No. 8.
8 The right being recommended for Mr. Carlson will contain a provision that the land
9 may enjoy a supplemental right through the Kittitas Reclamation District.

10 It is recommended that the Director of the Department of Ecology cancel,
11 rescind, or otherwise make null and void Certificate of Surface Water Right No.
12 1040.

13
14 COURT CLAIM NO. 04355 -- Church of Jesus Christ L.D.S.

15 A Statement of Claim to the Court was filed by the Church of Jesus Christ
16 L.D.S. for the use of Big Creek and two unnamed ponds for irrigation of 85 acres,
17 fish propagation, and recreation. Attorney Jeffrey Slothower represented the
18 church . Jonathan Katz, ranch manager and director, and Kevin Hart, former manager
19 and director, testified at the evidentiary hearing.

20 The church property known as Ensign Ranch lies within Section 21, T. 20 N., R.
21 14 E.W.M, bounded on the north by the Yakima River and the south by Interstate 90.
22 Ensign Ranch is a multi-purpose recreational facility with water used for
23 irrigation of 85 acres, stock water, fish propagation and recreation. In recent
24 years 17 to 19 head of livestock have been kept on the property, but the population
25 has been as high as 40 during the church's ownership. Two spring-fed ponds are the
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1 primary source of irrigation water at this time. A ten horsepower pump capable of
2 withdrawing 250 gallons per minute (0.56 cubic foot per second) is on a small pond
3 located immediately north of the lodge and irrigates the field south of the lodge.
4 A spring area near the easterly property line feeds a large pond used to flood
5 irrigate a field adjacent to and south of the pond. A third irrigated area north
6 of the large pond has been flood irrigated in the past from the pond, but a
7 sprinkler system was being installed at the time of the hearing. The large pond is
8 fed both by a nearby spring area and diversions from Big Creek. In addition to
9 irrigation, the large pond is used for stock water, fish propagation, and
10 recreation.

11 A prior owner of the property, Matt Venera, was a party to Lund and
12 Certificate No. 247 issued with a 1906 priority for the diversion of 3.52 cubic
13 feet per second from Big Creek for the irrigation of 176 acres. In 1983 Ensign
14 Ranch filed with the Department of Ecology an application to change and add points
15 of diversion to Certificate No. 247. The Department approved the request, but
16 found that either a portion of the certificate had not been perfected or had
17 relinquished due to nonuse. Superseding Certificate No. 247 issued to Ensign Ranch
18 authorizing the diversion of 1.7 cubic feet per second from Big Creek and two
19 unnamed ponds for the irrigation of 85 acres.

20 Although the original claim filed with the Court did not specify stock water
21 as a use, the evidence and testimony show that water was used for livestock when
22 the original certificate issued and that use has continued to the present time.
23 The fish propagation and recreation uses stated in the claim are new water uses
24 developed after the church purchased the property in the late 1960's. The ranch
25 received a temporary permit, No. S4-28215T, from the Department of Ecology pursuant
26

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1 to the provisions of RCW 90.03 for these uses. The temporary permit also included
2 stock water as an authorized use. Temporary permits do not establish water rights;
3 therefore, unless the testimony shows that a prior right exists, uses authorized in
4 a temporary permit will not be confirmed through this adjudication. Water use may
5 continue as authorized by the temporary permit.

6 It is recommended that a right be confirmed to the Church of Jesus Christ,
7 L.D.S. with a June 30, 1906, date of priority for the use of Big Creek and two
8 unnamed spring-fed ponds from May 1 to September 1 of 1.7 cubic feet per second,
9 408 acre-feet per year for irrigation of 85 acres; and 0.02 cubic foot per second,
10 0.5 acre-foot per year for stock water.

11 Upon confirmation of the proposed rights, it is recommended that the Director
12 of the Department of Ecology cancel, rescind or otherwise make null and void
13 Adjudicated Certificate No. 247.

14 COURT CLAIM NO. 00176 -- C. Frederick Darling

15 A Statement of Claim was filed with the Court by C. Frederick Darling for the
16 use of waters from Big Creek for irrigation and stock watering. Mr. Darling
17 appeared at the evidentiary hearing and testified regarding his claim.

18 Mr. Darling owns the SE $\frac{1}{4}$ of Section 20, except for a four acre parcel owned by
19 his brother, David, and a portion of the NE $\frac{1}{4}$ of Section 19, all in T. 20 N., R. 14
20 E.W.M. This land was homesteaded by his grandfather, Christopher Diener, in the
21 late 1800's. Mr. Diener was a party to Lund, and Certificate No. 241 resulting
22 from that decree, bearing 1887 as the date of priority, authorized Mr. Diener to
23 divert 3.0 cubic feet per second from the creek for the irrigation of 150 acres and
24 stock water. The authorized place of use was the SE $\frac{1}{4}$ of Section 20, T. 20 N., R.
25 14 E.W.M. Certificate of Change recorded in Volume No. 2, Page 849, authorized
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1 Maude Smith and Christopher Darling in 1965 to change the point of diversion
2 described in that certificate to a point located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 20
3 N., R. 14 E.W.M., which is where water currently is being diverted by Mr. Darling.

4 Mr. Darling testified that he irrigates 75 acres within the SE $\frac{1}{4}$ of Section 20,
5 which is consistent with the information in the State's investigation report.

6 Additionally, he testified that there are approximately two acres irrigated in the
7 NE $\frac{1}{4}$ of Section 29, near a pond constructed in the channel of the ditch that serves
8 his property. Mr. Darling was not very specific about the location of the
9 irrigated acres, however, review of an aerial photograph submitted by Gerald
10 Griffith, a neighboring landowner, shows that there are two small cleared areas
11 immediately north and east of the pond, within the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29.

12 Certificate No. 244, resulting from Decree No. 6759, issued to Christopher F.
13 Diener with a priority date of 1889 and authorized the diversion of 2.7 cubic feet
14 per second from Big Creek for the irrigation of 135 acres in the NE $\frac{1}{4}$ of Section 29,
15 T. 20 N., R. 14 E.W.M. Other defendants in this adjudication are claiming to have
16 a portion of this certificate.

17 Mr. Darling irrigates primarily forage crops, pasture or oat hay, by flooding
18 his fields. There was no testimony about the quantity of water diverted. He
19 diverts from Big Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29 into a ditch that carries the
20 water through Section 29 into Section 20. Mr. Darling testified that there once
21 were three branches of Big Creek, but that changed when the Kittitas Reclamation
22 District Canal was constructed and the creek was rechanneled so there would only
23 need to be one siphon under the canal. It was not clear from Mr. Darling's
24 testimony whether he carries his water in what once was one of the branches of Big
25 Creek or through what always has been a ditch. He did not object to the Department
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1 of Ecology's identification that his point of diversion was from Big Creek in the
2 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29.

3 During the winter months, Mr. Darling has livestock that are kept on his land
4 in the SE $\frac{1}{4}$ of Section 20 and watered from his ditch. According to his testimony,
5 during 1988 and 1989, the Department of Ecology had him reduce his diversion from
6 Big Creek in the fall to 2 cubic feet per second resulting in the ditch freezing
7 and an inadequate supply of water for the livestock. He implied through his
8 testimony that ditch conveyance losses contributed to the problem. However, the
9 Department of Ecology measured his ditch twice during the 1989 irrigation season
10 and the ditch gained, rather than lost water. Those measurements were during the
11 irrigation season, and the ditch may exhibit different characteristics during the
12 winter months; however, there was no testimony to support that conclusion. Mr.
13 Darling did not present any testimony about how much water he felt was needed for
14 his stock outside the irrigation season. He testified that the maximum number of
15 stock on his property would be 45 head and that he needs 12 gallons of water per
16 day per head, or 540 gallons per day, which would be 0.40 acre-feet during the
17 eight months outside of the irrigation season authorized in the certificates. Due
18 to the lack of testimony concerning the instantaneous quantity actually needed for
19 stock water, the Referee cannot recommend that a right be confirmed for that use.

20 As discussed on page 6 of this report, some of the certificates that issued
21 following the entry of Decree No. 6759 were for inchoate rights that had to be
22 diligently perfected. Certificates No. 241 and 244 were such rights. Although
23 Certificate No. 241 authorized the irrigation of 150 acres, the testimony shows
24 that on Fred Darling's property, only 75 acres have historically been irrigated;
25 therefore, the extent of his right is limited to 75 acres.

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1 It is recommended that a right be confirmed to C. Frederick Darling with a
2 June 30, 1887, date of priority for the use of 1.5 cubic feet per second, 360
3 acre-feet per year from Big Creek for the irrigation of 75 acres within the SE $\frac{1}{4}$ of
4 Section 20, T. 20 N., R. 14 E.W.M.

5 It is also recommended that a right be confirmed to C. Frederick Darling with
6 a June 30, 1889, date of priority for the use of 0.04 cubic foot per second, 9.6
7 acre-feet per year from Big Creek for the irrigation of 2 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
8 Section 29, T. 20 N., R. 14 E.W.M.

9 Upon confirmation of the proposed rights, it is recommended that the Director
10 of the Department of Ecology cancel, rescind or otherwise make null and void
11 Adjudicated Certificates No. 241 and 244 and Certificate of Change Recorded in
12 Volume 2, Page 849.

13 COURT CLAIM NO. 00920 -- David C. Darling
14 & Lavwane R. Darling

15 A Statement of Claim was filed with the Court by David C. and Lavwane R.
16 Darling for the use of Big Creek for irrigation. David Darling and his brother,
17 Fred Darling, testified at the evidentiary hearing.

18 The defendants own a four acre parcel of land in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, T.
19 20 N., R. 14 E.W.M. According to the testimony one and a half acres have
20 historically been irrigated from Big Creek. The diversion and ditch that serves
21 the Fred Darling property, also serves this land, which is flood irrigated. Mr.
22 David Darling testified that he intends to eventually irrigate the entire four
23 acres.

24 Certificate No. 241, resulting from the 1924 adjudication of Big Creek, as
25 changed by Certificate of Change Recorded in Volume 2, Page 849, is appurtenant to
26

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1 lands that include the Darling property. The certificate allowed for the
2 irrigation of more acres than have historically been irrigated within the place of
3 use described on the certificate. As discussed on page 6 of this report, rights
4 will only be confirmed based on historical use. Mr. Darling did not testify about
5 the quantity of water used to irrigate the land, however, the decree and
6 certificate authorized the use of 0.02 cubic foot per second and 4.8 acre-feet per
7 year for each acre irrigated.

8 Mr. Darling indicated through testimony his dissatisfaction with the
9 irrigation season provided in the certificate and requested that it be extended.
10 The Referee cannot extend the period of use for a water right beyond that contained
11 on the certificate or evidenced by historical use if a certificate does not exist.

12 Based on the foregoing, the Referee recommends that a right be confirmed for
13 David C. and Lavwane R. Darling with a June 30, 1887, date of priority for the use
14 of 0.03 cubic foot per second, 7.2 acre-feet per year from Big Creek for the
15 irrigation of 1.5 acres from May 1 to September 1.

16 Compliance with the permitting requirements of RCW 90.03, including obtaining
17 a permit from the Department of Ecology, would be necessary to irrigate additional
18 acres.

19 Upon confirmation of the proposed rights, it is recommended that the Director
20 of the Department of Ecology cancel, rescind or otherwise make null and void
21 Adjudicated Certificate No. 241 and Certificate of Change Recorded in Volume 2,
22 Page 849.

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A Statement of Claim was filed by Rodney T. Dunn and Marianne Dunn for the use of waters from a spring/percolating ground water. The Dunns are represented by Attorney John P. Gilreath. Rodney Dunn and Patrick Deneen, of Spring Tree Ranch, a potential purchaser, testified at the evidentiary hearing.

According to the testimony, the land owned by the Dunns, Government Lots 1 and 2 of Section 3, T. 19 N., R. 14 E.W.M., is part of a larger parcel for which Matts Anderson received a patent on July 31, 1903. The land reportedly has been used for agricultural purposes since 1902 and in the past has been used for pasture, raising hay and operation of a mink farm. Presently, approximately 38 acres have been planted in Christmas trees and 12 acres planted in pasture, with the remaining 36 acres undeveloped.

When the Dunns purchased the property in 1968 a ditch had been constructed through the property to provide irrigation water. The ditch does not divert from a water source but apparently captures spring water or shallow ground water. There was no testimony concerning the condition of the area prior to construction of the ditch to enable the Referee to determine whether the ditch likely captures surface or ground water. Approximately 110 gallons per minute is withdrawn from one end of the ditch and 250 gallons per minute from the other end.

At the time of hearing Spring Creek Ranch had earnest money on the property, intending to purchase it for a horse breeding operation. They would have up to 75 head of horses on the property and were considering a Planned Unit Development on a portion of the land for up to 20 home sites.

No RCW 90.14 claim was filed for the ditch, either as a surface water source or a ground water source. Lacking of a 90.14 claim, in sufficient evidence to

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determine whether a surface water source was being used, and lacking of testimony about historic use of the water source, the Referee does not recommend that a water right be confirmed to Rodney T. Dunn and Marianne Dunn.

COURT CLAIM NO. 00833 -- Thomas L. Ferguson, Jr.
 & Sandra J. Ferguson

Thomas L. Ferguson, Jr. and Sandra J. Ferguson submitted a Claim to the Court for the use of waters from Big Creek for the future irrigation of 5.5 acres. Thomas Ferguson testified at the evidentiary hearing.

The Ferguson property, which is in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, was part of the Darling family holdings until 1974 when this parcel was sold to people by the name of Ballantine. There is conflicting testimony and evidence about the extent of historical development and water use on the property. Mr. Ferguson testified that the Ballantines cleared the land, but had not diverted any water or further developed the land. The Fergusons constructed two recreation homes on the land after they purchased, and had a well drilled to provide water for domestic supply and landscape irrigation. Fred Darling testified that his grandparents pastured cattle on the Ferguson property and a portion of it was irrigated. However, claimant Gerald Griffith, a neighboring landowner, submitted as an exhibit, a 1977 aerial photograph of Section 29, which clearly shows the Ferguson property being heavily forested with no indication of the land having been irrigated.

The Ferguson property is within the place of use described on Certificate No. 244 of the Big Creek Adjudication, however, since there is insufficient evidence for the Referee to conclude that there has been beneficial use of water on the land, it is recommended that a right not be confirmed to Thomas L. Ferguson, Jr., and Sandra J. Ferguson.

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2 COURT CLAIM NO. 00756

-- Earl E. Gentry
& Valerie K. Gentry
Ray Johnson
Gerald J. Griffith

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4 A Statement of Claim was filed by Earl E. and Valerie K. Gentry and Ray
5 Johnson for the use of waters from Big Creek for irrigation. On September 20,
6 1988, Gerald J. Griffith was joined to the claim. Gerald Griffith, represented by
7 Attorney Darrel Ellis, and Earl Gentry testified at the evidentiary hearing.

8 The land described in Claim No. 00756 is the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 29 lying east of
9 Big Creek. Presently that portion lying south of the Kittitas Reclamation District
10 Canal is owned by Gerald J. Griffith and the portion lying north of the canal is
11 owned by Ray Johnson. The Gentrys do not have ownership interest in any of the
12 land; however, Ray Johnson was unable to appear at the hearing, so he asked Mr.
13 Gentry to testify in his place. The Plaintiff's Report to the Referee recommended
14 confirmation of a non-diversionary stock water right under the stipulation
15 described on Page 4 of this report.

16 The Griffiths own 22.78 acres and flood irrigate 17 acres of timothy and
17 alfalfa hay with water from Big Creek. According to the testimony this land has
18 continuously been irrigated since Big Creek was adjudicated in 1924. The land
19 enjoys a portion of Certificate No. 244, as amended by Certificates of Change
20 Recorded in Volume 1, Page 51 and Volume 2, Page 848. The certificates authorized
21 the diversion of 0.02 cubic foot per second per acre irrigated and the decree
22 determined that the appropriate water duty was 4.8 acre-feet per year per acre
23 irrigated. Mr. Griffiths proportionate share of the certificate would be 0.34
24 cubic foot per second, 81.6 acre-feet per year. The decree provided for the water
25 right holders to divert an additional 100 percent of their water right when surplus
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1 waters are available. Mr. Griffith testified that he takes advantage of this
2 provision and diverts in excess of the certificated water when it is available. He
3 also testified that he uses 6 acre-feet per year per acre irrigated. The testimony
4 was insufficient to determine whether he uses in excess of the water duty
5 identified in the decree because of the additional water diverted early in the
6 irrigation season when surplus water is available or because he has routinely
7 irrigated into the first of October, which is more than 30 days past the end of the
8 authorized period of use on the certificate. Mr. Griffith testified that he
9 normally diverts 0.40 cubic foot per second, and if he were to divert that quantity
10 the entire authorized irrigation season he would withdraw 97 acre-feet or 5.7
11 acre-feet per acre irrigated. However, testimony of other claimants leads the
12 Referee to conclude that the flow in Big Creek during the later couple months of
13 the irrigation season declines such that the irrigators would be limited to
14 diverting no more than the quantities on the certificates.

15 Mr. Griffith testified about conveyance loss in his ditch, but did not provide
16 any specifics about the loss. Even if he had, the Referee is limited to confirming
17 water rights based on the certificates that issued following the 1924 adjudication
18 and cannot increase the instantaneous quantity without a showing that additional
19 water rights were acquired subsequent to the entry of the decree.

20 Therefore, it is recommended that a right be confirmed to Gerald J. Griffith
21 under Court Claim No. 0756 with a June 30, 1889, date of priority for the use of
22 0.34 cubic foot per second, 81.60 acre-feet per year from Big Creek for the
23 irrigation of 17 acres. The right shall carry a provision that when there is
24 surplus water in the creek and all existing rights are being satisfied up to 0.68
25 cubic foot per second may be diverted.

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1 The land described in Court Claim No. 0756 lying north of the Kittitas
2 Reclamation District Canal is owned by Ray Johnson. According to Mr. Gentry's
3 testimony, he and Mr. Johnson bought all the property described in the claim in
4 1980 from Maxine and Duane Madsen and in 1984 it was split, Johnson getting the
5 portion north of the canal and Gentry the portion south of the canal. The Johnson
6 property is wooded, except for an area where a cabin and corral have been
7 constructed, as confirmed by the aerial photograph submitted by Mr. Griffith.
8 There was no testimony of any surface water use on the land.

9 Based on the foregoing, the Referee cannot recommend that a water right be
10 confirmed to Ray Johnson under Court Claim No. 0756.

11 Upon confirmation of the proposed rights, it is recommended that the Director
12 of the Department of Ecology cancel, rescind or otherwise make null and void
13 Adjudicated Certificate No. 244 and Certificates of Change Recorded in Volume 1,
14 Page 51 and Volume 2, Page 848.

15 COURT CLAIM NO. 00755 -- Earl E. Gentry
16 & Valerie K. Gentry

17 The Gentrys filed a Statement of Claim with the Court for the use of Big Creek
18 for irrigation and stock water. They were represented by Attorney Darrel Ellis and
19 Mr. Gentry testified at the evidentiary hearing.

20 The Gentrys own approximately 160 acres in Section 28, T. 20 N., R. 14 E.W.M.
21 The portion of the property in the SE $\frac{1}{4}$ of Section 28 north of the Kittitas
22 Reclamation District Canal is part of the Lund homestead for which Certificate No.
23 240 issued. The proportionate share of this certificate that the Gentry property
24 enjoys is 0.60 cubic foot per second for the irrigation of 30 acres of hay and
25 grain. The remainder of the property lies in the W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
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1 Section 28 and is part of the Richards homestead. Certificate No. 243 issued to
2 Sylvia Richards and authorized the diversion of 0.20 cubic foot per second from Big
3 Creek for the irrigation of 10 acres in the $NE\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$ of Section 28. The entire
4 ten acre parcel is irrigated. Certificate No. 242 issued to H. A. Richards and
5 authorized the diversion of 2.4 cubic feet per second from Big Creek for the
6 irrigation of 120 acres in the $W\frac{1}{2}NE\frac{1}{4}$ and $NE\frac{1}{4}NW\frac{1}{4}$ of Section 28. It is not clear
7 whether the entire 120 acres have historically been irrigated. Most of the twenty
8 acres in the $W\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$ of Section 28 have not recently been irrigated. Mr. Gentry
9 testified about efforts to clear the land. An aerial photograph submitted by Mr.
10 Gentry confirms those efforts. However, the 1977 aerial photograph shows only a
11 small field of about two acres in the southeast corner of that subdivision actually
12 irrigated. The remainder of the land has been partially cleared and perhaps used
13 to pasture livestock, but there is no evidence that water has been applied to the
14 land for irrigation. Although the Big Creek Adjudication and Decree in 1924 did
15 confirm in-choate rights, the Referee cannot assume that the entire acreage
16 described in the certificate was irrigated when evidence to support that is
17 lacking. The testimony and evidence show that a total of 142 acres within the
18 Gentrys ownership have historically been irrigated with waters from Big Creek and
19 this use has continued to the present.

20 Mr. Gentry testified that he has historically irrigated from May 1 into the
21 first couple weeks of October and that in so doing has used six acre-feet per year
22 per acre irrigated. In spite of that use, the certificates that issued as a result
23 of the Big Creek Adjudication only authorized the use of water for irrigation from
24 May 1 to September 1 and within that time period only 4.8 acre-feet per year can be
25 used on each acre irrigated, as that is the water duty contained in the original
26

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1 Big Creek decree. The annual quantity of water used apparently is the result of
2 irrigating an additional 30 to 45 days beyond the authorized season.

3 Mr. Gentry testified that he raises livestock on his property and the animals
4 kept on the fields north of the Nelson Siding Road are watered from ditches
5 carrying Big Creek water. Up to 50 cow/calf pairs have been kept on the property.
6 Approximately 0.02 cubic foot per second, 1.0 acre-foot per year would be adequate
7 for the stock watering needs, however, there was no testimony concerning how much
8 water would need to be diverted into the ditch during the winter in order to
9 deliver this quantity to the Gentry fields. Mr. Gentry testified that there was
10 conveyance loss, but could not quantify the loss. The Department of Ecology's
11 conveyance measurements were taken in the summer when the irrigators were diverting
12 as much water as was available within the limits of their water rights. The
13 measurements for the Lund ditch, which serves the Gentry property, indicates a 5.6
14 percent loss per 1000 feet of ditch or 28 percent for the length of the ditch to
15 the Gentry property. A diversion of 0.03 cubic foot per second would deliver 0.02
16 cubic foot per second to the property if the loss actually was 28 percent. It does
17 not seem reasonable to expect that to happen, however, lacking any specific
18 testimony, the Referee must conclude that loss estimate is accurate.

19 Based on the foregoing, it is recommended that a right be confirmed with a
20 June 30, 1887, date of priority for the diversion of 2.84 cubic feet per second,
21 681.6 acre-feet per year from May 1 to September 1 for the irrigation of 142 acres
22 and 0.03 cubic foot per second, 1 acre-foot per year for stock water.

23 Mr. Gentry testified to having taken advantage of a provision of the
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Big Creek Decree that allowed for the use of up to an additional 100 percent of the awarded quantity when surplus water was available in the creek. Therefore, this right will carry a provision that allow for that practice to continue.

Upon confirmation of the proposed rights, it is recommended that the Director of the Department of Ecology cancel, rescind or otherwise make null and void Adjudicated Certificates No. 240, 242 and 243.

COURT CLAIM NO. 01027

A Statement of Claim was filed by Ruth Kittelson for the use of an unnamed spring for domestic supply. On February 22, 1990, Wayne and Margo Graber were substituted for Ms. Kittelson. Margo Graber testified at the evidentiary hearing in support of the claim.

According to Mrs. Graber's testimony she and her husband acquired the property in August of 1988. A well has been dug near their mobile home and is used for domestic supply and landscape irrigation. Fowler Creek had been used by the previous owners for landscape irrigation, however, Mrs. Graber did not express an intent to resume that use and did not claim to have a water right to use Fowler Creek. Livestock on the property drink directly from the creek and this use is covered by the non-diversionary stock water stipulation.

A developed spring on the property is piped to one of the Grabers neighbors and a second undeveloped spring also on the property. Mrs. Graber did not express an intent to use either of the springs nor claim a right existed to use the springs. The previous owners of the property filed Water Right Claim No. 040704 pursuant to the requirements of RCW 90.14 for use of a spring for domestic supply. However, the claim stated that water was not being used at the time it was filed.

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1 Based on the foregoing, the Referee does not recommend that a water right be
2 confirmed to Wayne and Margo Graber under Court Claim No. 01027.

3
4 COURT CLAIM NO. 01274 -- Estate of Gary G. Guzzie
& Clyde Parlova

5 COURT CLAIM NO. 01275 -- Estate of Gary G. Guzzie
6 & Clyde Parlova
7 Otto Staheli
& Olga Staheli

8 Court Claims No. 1274 and 1275 were filed by Gary C. Guzzie and Ethel T.
9 Guzzie. On January 16, 1990, Otto Staheli and Olga Staheli were joined to Claim
10 No. 1275. Attorney Darrel Ellis appeared at the evidentiary hearing for the
11 Guzzies and stated they received their water from the Kittitas Reclamation District
12 and would not be pursuing a claim for any other source of water. Otto Staheli
13 testified at the evidentiary hearing in support of the claim for the land acquired
14 from the Guzzies. Lee Lund and Fred Darling, neighboring landowners, also
15 testified about their knowledge of historic water use on both the Guzzie and
16 Staheli property.

17 According to the record, the Stahelis own approximately 12 acres in that
18 portion of the SW $\frac{1}{4}$ of Section 20, T. 20 N., R. 14 E.W.M. lying north and east of
19 Nelson Siding Road. The land currently is not being irrigated, although Mr.
20 Staheli intends to retire in the near future, build a home and move onto and farm
21 the property.

22 The Stahelis were joined to the Court Claim that asserts a right to irrigate
23 from an unnamed spring supposedly located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20. There was
24 no testimony about use of this spring. There was testimony about past use of an
25 unnamed stream described in Court Claim No. 1274. This stream flows through the
26

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1 northwest corner of the Stahelis' property and apparently has been used in the past
2 to irrigate both the land now owned by the Stahelis and the Guzzie/Parlova land.
3 Mr. Staheli was aware that a dairy was once located on the property, but had no
4 knowledge about historic water usage. Lee Lund once leased the Guzzie/Parlova
5 property and indicated that it was irrigated since the mid-1940's from the stream,
6 which he believed is fed by seepage from the Kittitas Reclamation District canal
7 located above the stream. He did not remember the land being irrigated prior to
8 the mid-1940's, and his memory goes back to the early 1920's.

9 Fred Darling testified that a Mr. and Mrs. Estrem homesteaded the property in
10 1893 and obtained water rights in 1902. The land was confirmed a water right in
11 the Big Creek Adjudication. Certificate No. 245, a Class 3 right with an 1902 date
12 of priority, authorized the use of 2.0 cubic feet per second from Big Creek for the
13 irrigation of 100 acres, plus domestic and stock water in the SW $\frac{1}{4}$ of Section 20, T.
14 20 N., R. 14 E.W.M. Mr. Darling could remember Bert Malm, who owned the property
15 beginning in the early 1940's, irrigating for three or four years from a ditch that
16 carried water from Big Creek. There was no testimony that this use continued and
17 Mr. Staheli had no knowledge of a water right from Big Creek.

18 Water Right Claims No. 160141 and 034935 were filed pursuant to RCW 90.14
19 asserting a right to use the spring and stream described in the Court Claims.

20 Insufficient evidence was presented to persuade the Referee that use of the
21 unnamed spring or stream was initiated early enough to establish a water right
22 under either the Prior Appropriation or Riparian Doctrines. Although some of the
23 lands described in Court Claims No. 1274 and 1275 at one time enjoyed a right to
24 waters from Big Creek, it is apparent that the right has relinquished due to five
25 or more successive years of nonuse, RCW 90.14.160. Therefore, the Referee cannot
26

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1 recommend that a right be confirmed under Court Claims No. 1274 and 1275 to Otto
2 Staheli and Olga Staheli or Gary C. Guzzie and Clyde Parlova.

3 The Plaintiff's Report to the Referee recommended confirmation of a
4 non-diversionary stock water right under the stipulation described on Page 4 of
5 this report. There has been testimony that the property may enjoy a right through
6 the Kittitas Reclamation District, a Major Claimant in this case, whose rights will
7 be considered during the Major Claimant Pathway identified in Pretrial Order No. 8.

8
9 COURT CLAIM NO. 02294 -- Mary Hundley
Pautzke Bait Company, Inc.

10 A Statement of Claim was filed with the Court for the use of waters from
11 Little Creek and Nelson Creek for irrigation and stock water. Ms. Hundley was
12 represented by Attorney Kenneth Beckley and she testified at the evidentiary
13 hearing.

14 Ms. Hundley is the owner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25 and the N $\frac{1}{2}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$
15 of Section 26, T. 20 N., R. 14 E.W.W.M. At the time of hearing she was irrigating
16 30 acres and stated that an additional 20 acres had been irrigated in the past.
17 There was no testimony concerning how long it had been since the other 20 acres had
18 been irrigated. She acquired the property in 1954 and initially operated a cattle
19 ranch. In the early 1960's, when Interstate 90 was constructed, much of the
20 irrigated land was taken for the highway. Until the mid-1970's the primary crop
21 was hay, but since then pasture grass has been irrigated. The fields are flood
22 irrigated. Ms. Hundley did not know how much water she used to irrigate. She is
23 at the end of the ditch from Little Creek and uses whatever water gets to her.
24 Although there were up to 600 head of cattle on the property when it was a cattle
25 ranch, seven head of stock is the maximum that have recently been kept. Livestock
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1 can drink from any of the natural water courses and ditches that traverse the
2 property.

3 The land she owns in the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 26 was owned by Hans Nelson in 1897
4 when the case of Peter Nelson, Hans Nelson and Henry Nelson v. Hiram Stewart and M.
5 Erickson, Kittitas County Superior Court Cause No. 2452 (1897) was decided. That
6 case settled a dispute concerning rights to use the waters of Little Creek. The
7 Court determined that the Nelsons had a right to use 678 inches of water under four
8 inch pressure to irrigate the S $\frac{1}{2}$ of Section 26 and the SE $\frac{1}{4}$ of Section 27, with a
9 priority of 1881. That allowed for the use of 0.028 cubic foot per second for each
10 acre.

11 Ms. Hundley testified that the owners of the land between Nelson and herself
12 operated a dairy farm, but she did not know what use Nelson made of the land. The
13 State's investigation report shows that some of the irrigated land lies in the
14 S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 26. That portion of Section 26 was not awarded a water right in
15 Decree No. 2452, nor has there been any testimony that a portion of the right was
16 transferred. It is likely a transfer occurred since some of the irrigated land was
17 taken with the construction of I-90, but that assertion was not made.

18 No testimony or evidence were presented about historic use of waters from
19 Nelson Creek, nor was there any testimony about the basis for the use of that
20 water. Water Right Claim No. 120034 was filed for Little Creek and 120033 was
21 filed for use of Nelson Creek pursuant to the requirements of RCW 90.14.

22 Based on the foregoing it is recommended that a right under the Prior
23 Appropriation Doctrine be confirmed to Mary Hundley with a priority date of June
24 30, 1881, for the use of 1.4 cubic feet per second, 100 acre-feet per year from
25 Little Creek for the irrigation of 50 acres within the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 26, T. 20
26

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1 N., R. 14 E.W.M. and 0.01 cubic foot per second, 0.5 acre-foot per year for stock
2 water. Lacking evidence to establish historic water use from Nelson Creek, the
3 Referee cannot recommend that a right be confirmed for that source.

4
5 COURT CLAIM NO. 00453 -- Raymond H. Kirlin

6 Raymond H. Kirlin submitted a Claim to the Court for the use of an unnamed
7 spring for group domestic supply. Mr. Kirlin testified at the evidentiary hearing.

8 The claim filed by Mr. Kirlin asserts a right to divert 3.5 gallons per
9 minute, 5.68 acre-feet per year from an unnamed spring for domestic supply for four
10 homes. The place of use described on the claim is Lots 66, 67 and 68 of Lake
11 Kachess Summer Home Sites in Section 21, T. 21 N., R. 13 E.W.M. According to Mr.
12 Kirlin's testimony there are three homes currently constructed, but a fourth is
13 planned. Mr. Kirlin began leasing the property in 1968 from Northern Pacific
14 Railway and subsequently built at least one of the homes and constructed the water
15 diversion and delivery system.

16 Northern Pacific Railway acquired the property in 1916 from the United States.
17 Mr. Kirlin had no knowledge of water usage on the property prior to the initiation
18 of his lease. He submitted as an exhibit a title report for the property that
19 purported to show the existence of water rights for his and neighboring lots. The
20 title report had an entry for water rights in the name of Northern Pacific Railway
21 Co. for Lot 65 dated September 24, 1969 and for Lots 65-73 and 90-101 in the name
22 Burlington Northern dated June 6, 1974. In the record are copies of water right
23 documents recorded with the Department of Ecology. Surface Water Certificate No.
24 10848 issued to Northern Pacific Railway Co. on September 24, 1969 for Tract 65 of
25 Lake Kachess Summer Home Sites. The State's Investigation Report states this
26

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1 certificate might be appurtenant to the Kirlin property; however, that is not the
2 case, since Mr. Kirlin leases Lots 66 through 68.

3 On June 6, 1974, Burlington Northern, Inc. filed Water Right Claim No. 125585
4 asserting a right to use a spring, tributary to Lake Kachess for domestic supply
5 for Tracts 65-73, 90-101 Lake Kachess Summer Home Sites. This likely is the second
6 water right document referenced in the title report. Mr. Kirlin also filed Water
7 Right Claim No. 008190 pursuant to the requirements of RCW 90.14 for domestic
8 supply from a spring for four summer homes on Lots 66-68 Lake Kachess Summer Home
9 Sites.

10 In order for either of the water right claims to represent a water right, the
11 use of water described in the claim had to begin prior to June 6, 1917, if the
12 right was asserted under the Prior Appropriation Doctrine, or before December 31,
13 1932, if the right were asserted under the Riparian Doctrine. After those dates,
14 in order to establish a surface water right, a permit had to have been obtained
15 under the provisions of RCW 90.03. There is no evidence this occurred.

16 Based on the foregoing, the Referee cannot recommend that a water right be
17 confirmed to Raymond H. Kirlin.

18 COURT CLAIM NO. 00897 -- Mildred Korfus Giovenale
19 & Jacob Korfus, deceased

20 Jacob Korfus and Mildred Korfus filed a Statement of Claim with the Court for
21 the use of waters from an unnamed tributary of the Highline Canal for irrigation
22 and stock water. Jacob Korfus passed away several years ago. Mildred Korfus
23 Giovenale and Peter Giovenale testified at the evidentiary hearing.

24 The claimants own approximately 36 acres in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 29, T. 20 N.,
25 R. 14 E.W.M. They purchased the land in 1936 from George and Maudie Darling. The
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1 land was undeveloped and not being used at the time it was purchased and was
2 subsequently cleared. A pond was constructed to capture water from springs located
3 near the southwest corner of the Korfus property and used to irrigate a tree farm
4 and pasture. The springs have since dried up and Kittitas Reclamation District
5 water has been purchased in order to continue irrigating the land.

6 Certificate No. 244 from the 1924 Big Creek Adjudication, as changed by
7 Certificates of Change Recorded in Volume 1, Page 51 and Volume 2, Page 848,
8 authorized the irrigation of 135 acres within the NE $\frac{1}{4}$ of Section 29. However, the
9 claimants land has never been irrigated from Big Creek and Ms. Giovenale testified
10 that they have no right to use Big Creek.

11 Peter Giovenale was questioned about Surface Water Certificate No. 1291, with
12 a priority date of October 13, 1936, which authorized the diversion of 0.01 cubic
13 foot per second from Big Creek for domestic irrigation of one-half acre of lawn and
14 garden in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29. Mr. Giovenale testified that his uncle did put
15 a pipeline in Big Creek and diverted water for his garden on a one and a half acre
16 parcel of land. He has not diverted from the creek for quite some time because the
17 flow has been too low for his diversion to correctly operate. The testimony was
18 very unclear about the location of Mr. Giovenale's property and whether it was
19 intended to be covered by the Korfus claim. The State's exhibit map shows all of
20 the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 owned by the Korfuses. Mr. Giovenale did not file a
21 separate claim with the Court.

22 Based on the foregoing testimony and evidence the Referee cannot recommend
23 that water rights be confirmed under Court Claim No. 0897. Water use on the Korfus
24 property from the springs and pond was initiated after the dates necessary to
25 establish a water right under either the Prior Appropriation or Riparian Doctrines.

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1 It is apparent that the land does not enjoy any of the right described in
2 Certificate No. 244 from the Big Creek Adjudication. The testimony also was not
3 sufficient for the Referee to recommend confirmation of any right based on Surface
4 Water Certificate No. 1291. The Plaintiff's Report to the Referee recommended that
5 a right be confirmed under the stock water stipulation for non-diversionary stock
6 watering.

7 The Kittitas Reclamation District is a Major Claimant whose rights shall be
8 addressed through the Major Claimant Pathway described in Pre-trial Order No. 8.
9 It is recommended that Surface Water Certificate No. 1291 be made null and void by
10 the Department of Ecology.

11 COURT CLAIM NO. 02030 -- C. Ronald Lamb
12 & Judy I. Lamb
13 Gerald Eaton

14 A Statement of Claim was filed by C. Ronald and Judy I. Lamb for the use of
15 waters from Nelson Creek and Little Creek. On July 5, 1990, Gerald Eaton was
16 joined to the claim as an additional party. Judy Lamb and Gerald Eaton testified
17 at the evidentiary hearing.

18 The land described in the court claim lies within the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27 and
19 the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 26 north of the Nelson Siding Road. Mr. Eaton has purchased
20 Lots 25 and 26 of Timber Valley III, as per the plat thereof recorded in Volume 6
21 of Plats, Pages 52 and 53, Records of Kittitas County. The land is part of the
22 Nelson homestead and was awarded water rights in 1897 in the case of Nelson, supra.
23 The Court awarded the Nelsons 678 miners inches under four inch pressure for
24 mining, milling, irrigation, stock and domestic purposes on lands within the S $\frac{1}{2}$ of
25 Section 26 and the SE $\frac{1}{4}$ of Section 27, T. 20 N., R. 14 E.W.M. This allowed for the
26 use of 0.035 cubic foot per second for each acre of land. The Findings of Fact

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1 established that the Nelsons' appropriation of water from Little Creek began in
2 1886. According to the testimony of Mrs. Lamb, use of water from Little Creek for
3 irrigation and stock water has continued to the present time on 17 acres owned by
4 the Lambs and 10 acres owned by Mr. Eaton. Mr. Eaton testified that he is building
5 a home on the land and 8.5 acres will continue to be irrigated. There are
6 approximately 12 head of stock on the Lamb property and 5 on the Eaton land.

7 There is also a claim for the use of waters from Nelson Creek. However, no
8 testimony or evidence were presented to establish the foundation for a legal right
9 to use waters from Nelson Creek.

10 Ronald Lamb filed Water Right Claims No. 154395 and 154396 pursuant to the
11 requirements of RCW 90.14 for use of waters from Little Creek and Nelson Creek.

12 The Referee is not clear about the legal description for the lands currently
13 owned by the Lambs. Mrs. Lamb testified that the land now owned by Mr. Eaton was
14 not part of their land nor was it originally described in their claim. The State's
15 Investigation Report reaches the same conclusion. However, review of the Court
16 Claim and the claims filed pursuant to RCW 90.14 show otherwise. Mr. Eaton
17 submitted a deed showing he owns Lots 25 and 26 of Timber Valley III. The Court
18 Claim and 90.14 Claims, (No. 154395 and 154396) filed by Ronald Lamb both contain
19 the following legal description: Lots 21, 24, 25 Division No. III, Timber Valley,
20 also that portion of the $W\frac{1}{2}SW\frac{1}{4}$ of Section 26 and the $E\frac{1}{2}SW\frac{1}{4}$ of Section 27, T. 20 N.,
21 R. 14 E.W.M. It is noted that the legal description appears to be incomplete. The
22 State's investigation report describes the place of use for the water as a portion
23 of Lots 25 and 26 of Division No. 3 of Timber Valley and portions of the $NW\frac{1}{4}SW\frac{1}{4}$ and
24 the $SW\frac{1}{4}SW\frac{1}{4}$ of Section 26 and a portion of the $NE\frac{1}{4}SE\frac{1}{4}$ of Section 27. The report
25
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1 states this land is owned by the Lambs and does not include the land now owned by
2 Mr. Eaton.

3 Although the evidence has been adequate to establish the existence of a water
4 right for the use of waters from Little Creek on the Lamb property, the Referee
5 cannot recommend that a water right be confirmed to the Lambs. A water right is
6 appurtenant to the property on which it is used. Without a proper legal
7 description the Referee cannot recommend confirmation of a water right.

8 The Referee does recommend that a right under the Prior Appropriation Doctrine
9 be confirmed to Gerald Eaton with a June 30, 1886, date of priority for the use of
10 0.35 cubic foot per second, 50 acre-feet per year from Little Creek for the
11 irrigation of 10 acres and 0.01 cubic foot per second, 1 acre-foot per year for
12 stock water.

13 Lacking evidence to establish a legal foundation for the use of waters from
14 Nelson Creek, the Referee does not recommend confirmation of a water right to
15 either the Lambs or Mr. Eaton for the use of Nelson Creek.

16 COURT CLAIM NO. 06322 -- Theodore L. Leavitt

17 On June 14, 1991, Theodore L. Leavitt filed a Statement of Claim with the
18 Court for the use of waters from an unnamed spring in Subbasin No. 2. Because the
19 claim was filed after the Subbasin evidentiary hearings were held, its processing
20 is governed by Pretrial Order No. 9. This requires the Referee to note the
21 late-filed claim in his report to the Court, and, further, to notify the claimants
22 that the Court will consider their claim during the exceptions hearing for this
23 report.
24

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Charles K. Parsons

A Statement of Claim was submitted by Little Creek, a Joint Venture, for the use of waters from Little Creek. On May 12, 1989, Charles K. Parsons was joined as an additional party to Claim No. 01465. Charles K. Parsons and Kevin O'Brien, who purchased property from Little Creek, testified at the evidentiary hearing. They were represented by Vernon Fowler. There was no other appearance in behalf of this claim.

In the late 1880's, the property described in Claim No. 01465 was owned by Hiram Stewart and M. Erickson, who were defendants in a law suit filed in Kittitas County Superior Court to determine the relative rights to use waters from Little Creek. The Court ruled that Stewart and Erickson were entitled to use 240 inches of water from Little Creek to irrigate lands in the SE $\frac{1}{4}$ and E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28, T. 20 N., R. 14 E.W.M. The records show that Stewart and Erickson began construction of a ditch to serve their lands in 1895. According to Mr. Parson's testimony, Stewart and Erickson owned the land until the late 1930's when it was sold to Richard Storie, who owned it until the late 1970's. The land historically has been used as pasture for livestock.

Mr. Parson owns approximately 8 $\frac{1}{2}$ acres and flood irrigates 7 acres. He testified that he diverts 0.50 cubic foot per second from the creek from April 15 until the creek goes dry, usually in mid-August. He uses Kittitas Reclamation District Water after the creek is dry. Mr. Parsons usually has about ten head of stock on his property that drink from the irrigation ditch.

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1 Mr. O'Brien owns and flood irrigates ten acres of pasture. He normally has 11
2 head of livestock on his property that drink from the irrigation ditch. Mr.
3 Parsons testified that approximately 0.75 cubic foot per second is diverted to
4 irrigate the O'Brien property.

5 Water Right Claim No. 145804 was filed by Richard Storie pursuant to the
6 requirements of RCW 90.14 for use of waters from Little Creek on lands described in
7 Court Claim No. 1465.

8 Kittitas County Superior Court in 1897 awarded to this property one inch of
9 water, or 0.02 cubic foot per second, for each acre of land. The proportionate
10 share for the Parson land would be 0.17 cubic foot per second and for the O'Brien
11 land 0.2 cubic foot per second. Although the testimony indicates more water than
12 that is being used today, there was not sufficient testimony for the Referee to
13 conclude that that quantity has historically been used. Both are basing their
14 claim to a water right on the 1897 court award and the record does not reflect that
15 there was additional water rights established after that date. Since this land is
16 adjacent to land irrigated from Big Creek, where the Court had previously
17 determined 4.8 acre-feet per year per acre to be an adequate water duty, that
18 annual quantity will be adopted.

19 There is nothing in the record to allow the Referee to determine when first
20 steps were taken to sever the land from Federal ownership. It appears from
21 reviewing the 1897 Court Decree that the rights awarded were established under the
22 Prior Appropriation Doctrine rather than the Riparian Doctrine.

23 Based on the foregoing, it is recommended that a right under the Prior
24 Appropriation Doctrine be confirmed under Court Claim No. 01465 to Charles Parsons,
25 with a priority date of June 30, 1895, 0.17 cubic foot per second, 33.6 acre-feet
26

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1 per year for irrigation of 7 acres; 0.01 cubic foot per second, 1 acre-foot for
2 stock water.

3 Since Kevin O'Brien has not been joined to the claim, and did not provide
4 proof of land ownership at the hearing, the right being recommended for his land
5 shall be jointly in his name and that of Little Creek, a Joint Venture. It is
6 recommended that a right under the Prior Appropriation Doctrine be confirmed with a
7 June 30, 1895, date of priority for the use of 0.20 cubic foot per second, 48
8 acre-feet per year for the irrigation of 10 acres and 0.01 cubic foot per second, 1
9 acre-foot per year for stock water.

10 COURT CLAIM NO. 00353 -- Lee L. Lund
11 & Jane E. Lund

12 COURT CLAIM NO. 00456 -- David L. Lund
13 & Marilyn E. Lund

14 Statements of Claim were filed with the Court by the Lunds for use of waters
15 from Big Creek for irrigation and stock water. They were represented by Attorney
16 Darrel Ellis. David L. Lund and Lee L. Lund testified at the evidentiary hearing.

17 The Lunds own portions of the S $\frac{1}{2}$ NW $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28, T. 20 N., R.
18 14 E.W.M. Their property is part of the K. O. Lund homestead, for which
19 Certificate No. 240 from the Big Creek Adjudication, as amended by Certificate of
20 Change Recorded in Volume 1, Page 138, is appurtenant. That certificate authorized
21 the diversion of 4.6 cubic feet per second from Big Creek for the irrigation of 230
22 acres within the N $\frac{1}{2}$ SW $\frac{1}{4}$, the S $\frac{1}{2}$ NW $\frac{1}{4}$, except the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section
23 28, T. 20 N., R. 14 E.W.M. Besides the Lunds, portions of the K. O. Lund homestead
24 are now owned by Ranch Properties, Inc. and Earl and Valerie Gentry. Their claims
25 to water rights are discussed on pages 90 and 49, respectively.

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1 Lee and Jane Lund own approximately 140 acres total and irrigate 80 acres of
2 hay, grain, and pasture with waters from Big Creek. Their land was flood irrigated
3 until the 1960's, when a sprinkler system was installed. Water is diverted from
4 Big Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29 and ditched to a pond on their property where
5 it is withdrawn using a 30 BHP pump. Although the period of use identified on the
6 certificate is May 1 to September 1, the Lunds routinely use water until October 1
7 to 15. They are claiming a right to use 1.6 cubic feet per second, 6 acre-feet per
8 year per acre irrigated. Their proportionate share of the right based on the
9 number of acres they have irrigated would be 1.6 cubic feet per second; however,
10 the decree limited the annual water duty to 4.8 acre-feet per year per acres
11 irrigated, which is the maximum that could be withdrawn during the May 1 to
12 September 1 irrigation season. The Lunds may have used an additional 1.2 acre-feet
13 per year by irrigating beyond the authorized irrigation season. However, the
14 Referee does not intend to recommend that rights be confirmed for use outside the
15 irrigation season authorized in the certificates.

16 Lee Lund testified that his property has varying number of livestock depending
17 on the year, and that water for the stock is provided from Big Creek. At the time
18 of the hearing he had a few head of beef steers, but has had up to 120 head of
19 dairy cows and once raised 1300 pigs.

20 David and Marlyn Lund own approximately ten acres and irrigate eight acres
21 with waters from Big Creek. Their water is diverted and carried through the
22 ditches that serve Lee Lund's property. They also are claiming a right based on
23 Certificate No. 240 from the Big Creek Adjudication. Their proportionate share of
24 the right would be 0.16 cubic foot per second, 38.4 acre-feet per year.

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1 Lee Lund testified that a water source located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32
2 provides domestic supply for his home, David's home, two other homes, and the
3 buildings on Ranch Properties. The water source has been referred to by witnesses
4 at the evidentiary hearing as an unnamed spring and an artesian well. If the
5 source truly is a spring, the rights to use it would be a matter to be determined
6 through this adjudication; however, if the source is an artesian well, that would
7 not be the case. The testimony was insufficient for the Referee to determine the
8 nature of the water source and the State did not investigate or provide any
9 information about the source. There also was insufficient testimony to allow the
10 Referee to recommend that a water right be confirmed for the spring. Water Right
11 Claim No. 001275, filed by Lee Lund, called the water source a spring.

12 It is recommended that a water right be confirmed to Lee L. Lund and Jane E.
13 Lund with a June 30, 1887, date of priority for the use of Big Creek in the amounts
14 of 1.6 cubic feet per second, 384 acre-feet per year for the irrigation of 80
15 acres; 0.25 cubic foot per second, 2 acre-feet per year for stock water.

16 It is further recommended that a water right be confirmed to David L. and
17 Marilyn E. Lund, with a June 30, 1887, date of priority, for the use of 0.16 cubic
18 foot per second, 38.4 acre-feet per year from Big Creek for the irrigation of 8
19 acres.

20 Upon confirmation of the proposed rights, it is recommended that the Director
21 of the Department of Ecology cancel, rescind or otherwise make null and void
22 Adjudicated Certificate No. 240 and Certificate of Change Recorded in Volume 1,
23 Page 138.

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1 COURT CLAIM NO. 00315

 -- Francis W. McIntosh
 & Marlys McIntosh

2 This Statement of Claim was filed with the Court for the use of waters from
3 Beaver Lake for irrigation. Francis McIntosh testified at the evidentiary hearing.

4 According to the record, Beaver Lake was developed in the 1960's during
5 construction of Interstate 90. The McIntoshes purchased their property in 1971 and
6 there was no water use on the land prior to their acquisition. They irrigate
7 between one-quarter and one-half acre of lawn and garden area. Water is pumped
8 from the lake using a one-half horsepower pump and three or four sprinklers are
9 used. Water Right Claim No. 036611 was filed by Mr. McIntosh pursuant to the
10 requirements of RCW 90.14.

11 In order to establish a water right under the Prior Appropriation Doctrine or
12 the Riparian Doctrine, water has to be put to the claimed beneficial use prior to
13 June 6, 1917, and December 31, 1932, respectively. That obviously did not occur.
14 Compliance with the permitting procedures of RCW 90.03 is necessary to establish a
15 right for water use initiated in 1971. Nothing in the record reflects that a
16 permit was obtained from the Department of Ecology or one of its predecessor
17 agencies. Therefore, the Referee cannot recommend that a right be confirmed to
18 Francis W. McIntosh and Marlys McIntosh.

19
20 COURT CLAIM NO. 01101

 -- Thomas McTighe
 & Judith McTighe

21 A Statement of Claim was submitted to the Court by Thomas and Judith McTighe
22 for the use of waters from Wild Duck Lake for irrigation of one-quarter acre of
23 lawn and garden. Mr. McTighe testified at the evidentiary hearing.

24 The McTighes own a portion of the W $\frac{1}{2}$ of Lot 20, Block A of Elk Meadows Park
25 No. 1 in the SW $\frac{1}{4}$ of Section 22, T. 20 N., R. 14 E.W.M. Their property is adjacent
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1 to Wild Duck Lake, which was created around 1962 when Interstate 90 was
2 constructed. They purchased the property in 1977 and since that time have
3 irrigated it from Wild Duck Lake using a 1 BHP pump and an underground system.
4 Mr. McTighe was not aware of any water use on the land prior to their purchase.

5 The only means for acquiring a water right in 1977, when the McTighes first
6 used water was to obtain a permit from Department of Ecology, as required in RCW
7 90.03. There is nothing in the record to show this occurred. Therefore, the
8 Referee cannot recommend that a right be confirmed under Court Claim No. 1101 to
9 Thomas and Judith McTighe.

10 COURT CLAIM NO. 01680 -- Arthur C. Mills, Sr.
11 & Wanda Lea Mills
12 Keven K. Hart
13 & Deborah S. Hart
14 Pat Deneen
15 & Nancy Harcus

16 COURT CLAIM NO. 01682 -- H.C. Wallick
17 & Laverne Wallick

18 A Statement of Claim to the Court was filed by Arthur C. Mills, Sr. and Wanda
19 Lea Mills for the use of waters of Little Creek and unnamed springs. On January 9,
20 1990, Keven K. and Deborah S. Hart were joined to the claim and on May 17, 1990,
21 Pat Deneen and Nancy Harcus were joined. Court Claim No. 01682 was filed by H. C.
22 Wallick and Laverne Wallick and on January 9, 1990, Keven K. and Deborah S. Hart
23 were also joined to that claim. Keven Hart and Pat Deneen testified at the
24 evidentiary hearing.

25 The claim filed by the Mills describes approximately the west 714 feet of the
26 $W\frac{1}{2}SE\frac{1}{4}$ of Section 27, T. 20 N., R. 14 E.W.M., lying south of the Nelson Siding Road,
27 except for a three-acre parcel that was owned by the Wallicks. The Wallicks claim

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1 describes the remainder of the $W\frac{1}{2}SE\frac{1}{4}$ of Section 27, along with the previously
2 mentioned three-acre parcel. A second three acre parcel was described on both
3 claims. According to the testimony, the Harts own the two three-acre parcels, Pat
4 Deneen owns the rest of the land described in the Mills Claim, and John Nyberg owns
5 the rest of the land described in the Wallick claim. The Harts are irrigating five
6 acres, Mr. Deneen is irrigating ten acres, and Mr. Nyberg is irrigating 14 acres,
7 for a total of 29 irrigated acres. The rest of the land is forested or covered
8 with buildings. Approximately 80 head of livestock are watered from the irrigation
9 ditches that carry the diversions from Little Creek. Mr. Nyberg has not been
10 joined to the Wallick claim.

11 The property was occupied and cultivated by Henry Nelson in 1897 when the
12 Kittitas County Superior Court entered a ruling in the case of Nelson, supra. The
13 Court awarded the Nelsons 678 miners inches under four-inch pressure for mining,
14 milling, irrigation, stock and domestic purposes on lands within the $S\frac{1}{2}$ of Section
15 26 and the $SE\frac{1}{4}$ of Section 27, T. 20 N., R. 14 E.W.M. This allowed for the use of
16 0.035 cubic foot per second for each acre of land. The Findings of Fact
17 established that the Nelsons' appropriation of water from Little Creek began in
18 1886.

19 A subsequent owner of the $W\frac{1}{2}SE\frac{1}{4}$ of Section 27, John Ashley, filed on July 10,
20 1914, a Notice of Appropriation claiming the right to divert 100 miners inches
21 under six inch pressure, or 2.0 cubic feet per second, from Little Creek for use on
22 the $W\frac{1}{2}SE\frac{1}{4}$ of Section 27. It is not clear whether this is in addition to the water
23 awarded in the 1897 decree.

24 Mr. Deneen and Mr. Hart testified that they divert 2.0 cubic feet per second
25 from Little Creek for use on 29 of the 47.8 acres owned by them and John Nyberg.
26

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1 They are requesting a right to use 773.5 acre-feet per year for irrigation, based
2 on Mr. Deneen's calculations of water use, if they diverted 1.0 cfs from April 1 to
3 June 14 and September 16 to October 15, and 2.0 cfs from June 15 to September 15.
4 This would result in a water duty of 26.67 acre-feet per acre. When the Referee
5 made similar calculations using Mr. Deneen's methodology for the same time periods,
6 the results were nearly one-third less: 565.3 acre-feet per year, or 19.49
7 acre-feet per acre.

8 Mr. Deneen justified his request on his belief that, since neither the court
9 decree nor the notice of appropriation specified a maximum annual quantity of
10 water that could be used, the water could be diverted 24 hours a day during the
11 irrigation season. However, the limit and measure of the right is the amount of
12 water actually put to beneficial use. Mr. Deneen asserted that they might be using
13 more water than other claimants because they were flood irrigating, but their soils
14 range from very good to poor, and wouldn't seem to require that much more water.
15 The irrigation of pasture of mixed grasses including timothy, alfalfa, and other
16 grasses, would also not seem to require the amount of water requested. After
17 considering all the evidence in the record, the Referee is inclined to rely on the
18 RCW 90.14 Water Right Claim (No. 124020) filed by H. C. Wallick and Arthur C.
19 Mills, Sr. for their use of Little Creek. That would allow five acre-feet per acre
20 irrigated, coupled with the proportionate instantaneous rate from the 1897 decree,
21 plus a conveyance loss of 0.80 cubic foot per second for probable loss in their
22 ditch of about 3600 feet.

23 It is recommended that a right under the Prior Appropriation Doctrine be
24 confirmed to Keven K. and Deborah S. Hart, with a June 30, 1886, date of priority
25 for the use of Little Creek in the quantity of 0.175 cubic foot per second (plus
26

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1 0.135 cubic foot per second for conveyance), 25 acre-feet per year for the
2 irrigation of five acres; 0.01 cubic foot per second, 0.5 acre-foot per year for
3 stock water.

4 It is recommended that a right under the Prior Appropriation Doctrine be
5 confirmed to Pat Deneen with a June 30, 1886, date of priority for the use of
6 Little Creek in the quantity of 0.35 cubic foot per second (plus 0.27 cubic foot
7 per second for conveyance), 50 acre-feet per year for the irrigation of ten acres;
8 0.01 cubic foot per second, 0.5 acre-foot per year for stock water.

9 Since John Nyberg has not been joined to the Wallick claim, it is recommended
10 that a right under the Prior Appropriation Doctrine be confirmed to H. C. and
11 Laverne Wallick with a June 30, 1886, date of priority for the use of Little Creek
12 in the quantity of 0.49 cubic foot per second (plus 0.378 cubic foot per second for
13 conveyance), 70 acre-feet per year for the irrigation of 14 acres.

14 A claim is also being asserted for the use of unnamed springs. Most of the
15 springs are undeveloped and used only for non-diversionary stock watering, which is
16 covered by the stock water stipulation and the Plaintiff's Report to the Referee
17 recommended that a right be confirmed under the stipulation. One spring located in
18 the southeast corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 has been developed and is piped to
19 three homes, two on the Hart property and one on the Deneen property. The spring
20 has been used to supply domestic water to the two homes on the Hart property.
21 Around 1980 wells were drilled for the homes, however, the well water has a high
22 mineral level, so the spring has continued to be used. A third house on the Deneen
23 property, which also receives some of its domestic water from a well, was
24 subsequently hooked up to the spring. Water from the spring is also used to
25 irrigate a field that lies at a higher elevation than the ditch from Little Creek.
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1 Water Right Claims No. 124021 through 124025 were filed by Arthur C. Mills,
2 Sr. and H. C. Wallick pursuant to RCW 90.14 for use of waters from five unnamed
3 springs. Mr. Deneen asserted that he and Mr. Hart have a right to use 1.5 cubic
4 feet per second, 580 acre-feet per year from the spring for domestic supply,
5 irrigation, and stock water. The record shows that by 1915 a pipeline was in place
6 from the spring and easements were contained in deeds transferring title to the land
7 in the SW $\frac{1}{4}$ of Section 27. However, there was no testimony to allow the Referee to
8 determine the extent of use being made of the waters from the spring. Flow from
9 the spring has been measured at 1.5 cubic feet per second, but that may not reflect
10 actual water use. There was no testimony about the age of the homes on the Hart
11 and Deneen property or historical use of the spring for irrigation. In order for
12 there to be a water right for the use of the spring, the evidence must establish
13 that water use began prior to June 6, 1917, or a permit was obtained pursuant to
14 the procedures in RCW 90.03. The evidence was not sufficient to allow the Referee
15 to reach those conclusions. Due to this the Referee cannot recommend that rights
16 be confirmed for use of the spring.

17 COURT CLAIM NO. 02185 -- Gerald L. Monahan
18 02186 & Marie C. Monahan
19 02188

20 Gerald L. and Marie Monahan filed three Statements of Claim with the Court for
21 the use of unnamed springs and streams located in Subbasin No. 2. They were
22 represented by Attorney Darrel Ellis, who stated that the Monahans intended to
23 present evidence only on Claim No. 2186. Victor Monahan, their son, testified at
24 the hearing.

25 Claim No. 2186 asserts a right to use an unnamed spring for domestic supply,
26 irrigation and stock watering. The spring is located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30,

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1 T. 20 N., R. 14 E.W.M. The Monahans own the entire NE $\frac{1}{4}$ of Section 30. Carl
2 Gustafsen received the 160 acre tract from the Federal government via a patent
3 issued on August 1, 1912. The spring is the only developed water source on the
4 property and the Monahans have assumed that it was used to supply domestic water to
5 the original home that probably was constructed around the time the patent issued.
6 Currently the spring is used to provide domestic water to a campsite located near
7 what appears to be the foundation for a home. They felt that when the land was
8 patented water was probably also provided for stock, however, there was no
9 testimony about this use continuing and there was no testimony about use of the
10 water for irrigation. Mr. Monahan testified that between three and four gallons
11 per minute is currently used and would be sufficient for the future should they
12 elect to construct a house at the campsite location.

13 Water Right Claim No. 164341 was filed by the Monahans pursuant to RCW 90.14.
14 The claim did not identify the source of water or the quantity of water being
15 claimed, but did state the location of the source and the place of use were in
16 Section 30, T. 20 N., R. 14 E.W.M. and water was used for domestic and stock. In
17 spite of the form containing very little information about the water use, the
18 Referee believes they substantially complied with the requirements of RCW 90.14.

19 Based on the foregoing, the Referee recommends that a right under the Riparian
20 Doctrine be confirmed to Gerald L. and Marie Monahan, Court Claim No. 2186, with an
21 August 1, 1912, date of priority for the use of 0.01 cubic foot per second, 1
22 acre-foot per year from an unnamed spring for single domestic supply. The
23 Plaintiff's Report to the Referee recommended that a right be confirmed for
24 non-diversionary stock watering under the stipulation discussed on Page 4 of this
25 report.

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1 Lacking testimony for Court Claims No. 2185 and 2188, the Referee recommends
2 that rights be denied for those claims.

3 COURT CLAIM NO. 01534 -- Robert E. Monahan
4 & Adele F. Monahan
5 Gerald L. Monahan
6 & Marie C. Monahan

7 Court Claim No. 01534 was submitted by the Monahans for use of waters from
8 Cabin Creek for filling a log pond and fire protection and use of waters from an
9 unnamed stream for domestic supply, irrigation of six acres, stock water and
10 recreation. The Monahans were represented by Attorney Darrel Ellis. Victor
11 Monahan, son of Gerald L. and Marie C. and nephew of Robert E. and Adele F.
12 Monahan, testified at the evidentiary hearing.

13 The Monahans own the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying south of the
14 Burlington Northern right of way, Section 9, T. 20 N., R. 13 E.W.M.. According to
15 the record Northern Pacific Railway received a patent for the land from the Federal
16 government on June 11, 1902. By 1916, it was owned by Cabin Creek Lumber Company
17 and a sawmill had been constructed, along with cabins for workers employed at the
18 mill. The sawmill continued to be operated on the site until 1974 or 1975, and
19 burned in 1979. Thirty-two of the cabins are now used for recreational purposes.

20 Water for the cabins comes from a spring-fed stream in the NE $\frac{1}{4}$ of Section 8,
21 T. 20 N., R. 13 E.W.M. Water is impounded behind a wooden dam and diverted from
22 the resulting reservoir through an 8-inch wood stave pipe approximately 3,000 feet
23 to the cabins. Three of the cabins are occupied year around and the rest are
24 strictly recreational. In addition to domestic supply inside the 32 cabins, water
25 is used for lawn and garden sprinkling, and stock watering for a few horses. There
26 are between five and eight outside hydrants for fire fighting. The Court Claim

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1 describes water use for irrigation of six acres; however, there was no testimony
2 concerning this use. Mr. Monahan stated that although the pipeline from the
3 reservoir could carry in excess of 200 gallons per minute, they only use and need
4 0.02 cubic foot per second (the equivalent of 9 gallons per minute), which is
5 substantially less water than would normally be used by 32 homes.

6 The Monahans also assert a right to use Cabin Creek for filling a log storage
7 pond. The property is riparian to Cabin Creek. From 1916 until the mill closed,
8 water was diverted from Cabin Creek to fill a log storage pond located on the
9 property. This use ceased when the mill closed. The diversion from Cabin Creek
10 has periodically been moved due to damage caused by flooding. The Monahans stated
11 that they may repair the damaged diversion and divert into the pond for
12 recreational purposes. RCW 90.14.160 - .180 provides that a holder of a right who
13 voluntarily fails, without sufficient cause, to use all or any part of a right for
14 a period of five successive years, relinquishes the right or portion thereof.
15 However, one of the sufficient causes for nonuse identified in RCW 90.14.140 is the
16 operation of legal proceedings, and the Referee considers this adjudication to be
17 such a legal proceedings. Therefore, since only two or three years passed between
18 the last date of use and the filing of this case in Yakima County Superior Court,
19 the Referee does not find that the right relinquished. However, the claimant did
20 not present any testimony about the amount of water that has been diverted from
21 Cabin Creek to fill the pond.

22 Water Right Claims No. 003304 and 003305 were filed by the Monahans pursuant
23 to the requirements of RCW 90.14 for their use of the unnamed stream and Cabin
24 Creek.

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1 It is recommended that a right under the Prior Appropriation Doctrine be
2 confirmed to the Monahans with a June 30, 1916, for the diversion of 0.02 cubic
3 foot per second, 14 acre-feet per year from an unnamed stream for continuous group
4 domestic supply for 32 cabins, including landscape irrigation and stock water.
5 Water will not be allocated specifically for fire protection. This is an emergent
6 use that cannot be planned and any available water supply can be utilized for
7 dousing fires as they occur. The Plaintiff's Report to the Referee recommended
8 that a right be confirmed for non-diversionary stock watering under the stipulation
9 discussed on Page 4 of this report.

10 Although it is apparent that a right exists under the Riparian Doctrine for
11 the use of Cabin Creek for filling a log storage pond, there was no testimony to
12 allow the Referee to quantify the right. Unless quantitative information is
13 presented, the Referee cannot recommend that a right be confirmed for this use.

14 COURT CLAIM NO. 01532 -- Robert E. Monahan
15 & Adele F. Monahan

16 Court Claim No. 01532 was filed for the use of several surface water sources
17 in Subbasin No. 2, along with one water source in Subbasin No. 5. Although
18 appearance was made and testimony given on other Court claims filed by the
19 Monahans, there was no testimony related to Court Claim No. 01532. Therefore, the
20 Referee cannot recommend confirmation of a right.

21 COURT CLAIM NO. 01533 -- Adele F. Monahan, Trustee
22 Matthew H. Monahan
23 & Mary Alice Monahan

24 A Statement of Claim was submitted to the Court by Adele F. Monahan as trustee
25 for Matthew H. Monahan and Mary Alice Monahan. Although there was an appearance
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1 related to a claim filed by Robert and Adele Monahan and Gerald and Marie Monahan,
2 there was no testimony concerning Claim No. 01533. Therefore, the Referee cannot
3 recommend that a right be confirmed.

4 COURT CLAIM NO. 01714 -- The Mountaineers, Inc.

5 The Mountaineers, Inc. submitted the above Claim to the Court for the use of
6 an unnamed creek, locally known as Tombstone Creek, for continuous domestic supply.
7 Virginia Felton, Executive Director of The Mountaineers, Inc., testified at the
8 evidentiary hearing.

9 According to the testimony and evidence, The Mountaineers, Inc. acquired the
10 property described in the Court claim from the Northern Pacific Railway Company on
11 October 11, 1928. Shortly thereafter, the Mountaineers built a lodge and a water
12 system to serve the lodge. The system consists of a dam to divert the water from
13 the creek and a two inch pipeline to the lodge. The lodge is primarily used during
14 the winter months as a ski lodge with minimal use outside the ski season. There
15 was no testimony concerning the size of the lodge or how many people can be housed
16 there at one time.

17 The claimant is asserting a right to use 16 gallons per minute or 0.04 cubic
18 foot per second and 18 acre-feet per year for domestic supply. However 18
19 acre-feet per year seems excessive for a lodge that is primarily only used on
20 weekends during the winter months.

21 Water Right Claim No. 098246 was filed by The Mountaineers, Inc. pursuant to
22 the requirements of RCW 90.14 claiming a right to use Tombstone Creek for domestic
23 supply.

24 Tombstone Creek is riparian to the claimant's property. Based on the
25 testimony and evidence it is apparent that a right was established under the
26

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1 Riparian Doctrine for the use of waters from Tombstone Creek for domestic supply.
2 The specific date that the land severed from Federal ownership is not in the
3 record. However, the evidence does reflect that by 1889 the land was owned by
4 Northern Pacific Railway. Therefore the Referee recommends that a right be
5 confirmed with a June 30, 1889, date of priority to The Mountaineers for the use of
6 0.04 cubic foot per second, 2 acre-feet per year from Tombstone Creek for
7 continuous community domestic supply. Although the claimant is asserting a right
8 to use 18 acre-feet per year, it is recommended that the right be confirmed for 2
9 acre-feet per year without testimony to establish a need for such a large annual
10 quantity of water.

11 COURT CLAIM NO. 01714A -- The Mountaineers, Inc.

12 The Mountaineers, Inc., submitted the above Claim to the Court for the use of
13 an unnamed stream for domestic supply. Virginia Felton, Executive Director of The
14 Mountaineers, Inc. testified at the evidentiary hearing.

15 The Mountaineers, Inc., own property near the summit of Snoqualmie Pass on
16 which a lodge has been constructed. The property was acquired on October 10, 1945,
17 from Northern Pacific Railroad Company, and subsequently a lodge was constructed
18 and water system developed to serve the lodge. Ms. Felton had no knowledge of any
19 structure or water system prior to 1945. The stream is currently utilized only as
20 a backup domestic supply and occassionally is used for nonpotable purposes in the
21 summer. The primary source of supply is the Snoqualmie Pass water system operated
22 by Kittitas County Sewer District Number 1.

23 Water Right Claim No. 098243 was filed by The Mountaineers, Inc. in compliance
24 with the requirements of RCW 90.14. There is nothing in the record to show that
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1 the claimants obtained a water right permit pursuant to the requirements of RCW
2 90.03.

3 No evidence was presented to establish that water was first used prior to the
4 significant dates of June 6, 1917, and December 31, 1932, for establishing a water
5 right under the Prior Appropriation or Riparian Doctrines. In fact the evidence
6 shows that the water use was initiated no earlier than 1945, at a time when
7 compliance with the procedures of RCW 90.03 would have been necessary. Therefore,
8 the Referee recommends that a water right be denied under Court Claim No. 1714A.

9
10 COURT CLAIM NO. 02362 -- Vincent H. Nelson
11 & A. Marion Nelson

12 A Statement of Claim was filed with the Court by Vincent H. Nelson and A.
13 Marion Nelson for the use of the waters from the Yakima River for domestic use.
14 Mr. Nelson testified at the evidentiary hearing.

15 The Nelsons bought their property, located in the SE $\frac{1}{4}$ of Section 22, T. 20 N.,
16 R. 14 E.W.M. in 1966. At that time the land was undeveloped and there was no water
17 system. They began pumping out of the Yakima River for their personal use and this
18 practice continued until 1974 or 1975 when the Elk Meadows community water system
19 was installed. The Nelsons would like to have the right to pump from the river
20 because water restrictions are sometimes necessary under the community system.

21 The Nelsons filed Water Right Claim No. 159882 pursuant to the requirements of
22 RCW 90.14 for their use of waters from the Yakima River. The filing of a water
23 right claim only serves to protect a water right that was established under either
24 the Prior Appropriation or Riparian Doctrines. In order to have a right under
25 these doctrines, water had to be put to use by June 6, 1917, (Prior Appropriation)
26 or December 31, 1932 (Riparian Doctrine).

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1 The only means for acquiring a water right in 1966, when the Nelsons first
2 used water, was to obtain a permit from a predecessor agency of the Department of
3 Ecology, as required in RCW 90.03. There is nothing in the record to show this
4 occurred. Therefore, the Referee cannot recommend that a right be confirmed under
5 Court Claim No. 2362 to Vincent H. Nelson and A. Marion Nelson.

6 COURT CLAIM NO. 00539 -- Matt Ozbolt
7 & Florence Ozbolt

8 A Statement of Claim was submitted to the Court by Matt Ozbolt and Florence
9 Ozbolt for the use of Big Creek for irrigation. Mrs. Ozbolt appeared at the
10 evidentiary hearing and testified in behalf of the claim.

11 Mr. and Mrs. Ozbolt own 24.89 acres within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 20 N.,
12 R. 14. E.W.M. The land they own was part of a larger parcel homesteaded by Mrs.
13 Ozbolt's father, Peter Giovanale in 1917. Mr. Giovanale was a party to the 1924
14 adjudication of Big Creek and received Certificate No. 249, with a priority date of
15 1923, which authorized the diversion of 0.80 cubic feet per second from Big Creek
16 for the irrigation of 40 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 20 N., R. 14 E.W.M.
17 According to Mrs. Ozbolt, only six acres actually were irrigated, with the
18 remaining land being un-irrigated pasture. Mrs. Ozbolt did not testify as to where
19 the six irrigated acres were located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28. The six
20 acres have not been irrigated for some time, however, Mrs. Ozbolt was unclear how
21 long it had been. She thought they had filed something in 1971 and the land was
22 still being irrigated at that time.

23 Although the Claim filed with the Court indicates they own the entire NW $\frac{1}{4}$ NW $\frac{1}{4}$
24 of Section 28, Mrs. Ozbolt testified they only own that portion lying south of the
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1 Nelson Siding Road. The owners of the portion lying north of the road did not file
2 a claim with the Court and, therefore, are not parties to this case.

3 It is apparent that a water right stemming from the 1924 adjudication exists
4 for six acres within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, however, it is not clear whether the
5 six acres lies within land now owned by the Ozbolts or the land north of road owned
6 by other individuals. Additionally, it is unclear how long it has been since the
7 right was exercised raising the question of possible relinquishment. With these
8 uncertainties, the Referee cannot recommend that a water right be confirmed to Matt
9 Ozbolt and Florence Ozbolt under Court Claim No. 0529.

10 COURT CLAIM NO. 02223 -- Emil Pasco

11 A Statement of Claim was submitted to the Court by Tony Pasco for the use of
12 an unnamed spring for domestic supply, irrigation and stock water. On March 9,
13 1987, Emil Pasco was substituted for Tony Pasco under this claim. Lillian Pasco
14 appeared at the evidentiary hearing and testified in support of the claim.

15 The defendant owns the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1, the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
16 Section 12, T. 19 N., R. 14 E.W.M. Homestead Certificate No. 1043 issued to Magnus
17 Roseberg for this land on July 31, 1903, and passed to the Pasco family in 1942.
18 At the time the Pasco family acquired the property it was a goat farm and
19 approximately 60 acres were being irrigated from the spring via a gravity flow
20 ditch system. Stock on the property drink directly from the irrigation ditches.
21 Ms. Pasco believes that the property was farmed from the time the homestead
22 certificate issued in 1903. Currently 49 acres of hay and pasture are flood
23 irrigated from the spring and up to 25 head of cattle are raised. The irrigated
24 land lies within the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 12.

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1 In 1956 a wood crib cistern was placed in the spring and pipeline installed to
2 serve a house being constructed by the Pasco family. Prior to that the spring had
3 not been used for domestic supply.

4 There was no testimony concerning the quantity of water used to irrigate the
5 property or the need for additional water for conveyance loss in the ditch.
6 Therefore, the Referee must rely on the testimony of witnesses for the Department
7 of Ecology and the Bureau of Reclamation concerning water needs in this area.

8 Based on the foregoing information, the Referee recommends that a right be
9 confirmed to Emil Pasco under the Prior Appropriation Doctrine with a July 31,
10 1903, date of priority for the use of 0.98 cubic foot per second, 98 acre-feet per
11 year from an unnamed spring for the irrigation of 49 acres from April 15 to October
12 15 and 0.01 cubic foot per second, 1 acre-foot per year for stock water. The
13 Plaintiff's Report to the Referee also recommended that a right be confirmed for
14 non-diversionary stock watering under the stipulation discussed on Page 4 of this
15 report.

16 Use of water from the spring for domestic supply was initiated in 1956, long
17 after the significant date of June 6, 1917, by which time water had to be used in
18 order to establish a right under the Prior Appropriation Doctrine. By 1956, the
19 only means for acquiring a surface water right was through the procedures contained
20 in RCW 90.03. There is no evidence those procedures were followed, therefore, the
21 Referee cannot recommend confirmation of a right for domestic supply.

22 COURT CLAIM NO. 00384 -- Michael L. Peterson
23 Jeannette Austin Peterson
24 Jacqueline J. Evett Crume

25 A Statement of Claim to the Court was submitted by Lewis Austin for the use of
26 unnamed surface water sources for domestic supply, stock watering and irrigation.

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1 On July 3, 1989, the claim was substituted to Michael L. Peterson, Jeannette Austin
2 Peterson and Jacqueline J. Evett Crume. Jeannette Austin Peterson appeared at the
3 evidentiary hearing and testified in behalf of all the parties under this claim.

4 Each of the named parties owns a portion of the land described in the Court
5 Claim. Jacqueline J. Evett Crume is the owner of Government Lot 2, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and
6 the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T. 20 N., R. 14 E.W.M.; Jeannette Austin Peterson owns
7 that portion of the NW $\frac{1}{4}$ of Section 20, T. 20 N., R. 14 E.W.M. lying south of the
8 Milwaukee, St. Paul and Pacific Railway right-of-way, east of the Nelson Siding
9 Road and west of the unnamed creek running through the above-named subdivision;
10 Michael L. Peterson owns that portion of the NW $\frac{1}{4}$ of Section 20, T. 20 N., R. 14
11 E.W.M. lying south of the Milwaukee, St. Paul and Pacific Railway right-of-way and
12 east of the unnamed creek running through the above-named subdivision.

13 The land owned by Ms. Crume in Section 19 separated from Federal ownership
14 prior to 1902, when county records show a transfer of ownership. Sometime in 1911
15 the Snow White Dairy was established on the land and continued until Lewis Austin
16 purchased it in 1952. The dairy had a capacity of 80 to 100 cows. A portion of
17 the land was planted to alfalfa and pasture grass and flood irrigated from seven
18 springs and a creek emanating from the springs. Ms. Peterson testified that the
19 fields planted in hay and pasture were irrigated as part of the dairy operation.
20 The diversion and irrigation system were in place when Mr. Austin bought in 1952.
21 According to the testimony, a maximum of 46 acres have historically been irrigated.
22 There was no testimony about the quantity of water that had been used to irrigate
23 the land. The irrigation use ceased in 1978 or 1979 when a portion of the property
24 was logged. The logging destroyed some of the ditches and the resulting brush was
25 not cleaned up, making it difficult to irrigate the area. At that time Mr. Austin,
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1 due to age and declining health, was not able to keep the land up. Approximately 6
2 horses and up to 12 calves are raised on the property and receive water from the
3 creek. The land is assessed by the Kittitas Reclamation District, but is not
4 provided any water from that system.

5 Water Right Claims No. 096627 and 096628 were filed by Lewis and Jennie Austin
6 in compliance with the requirements of RCW 90.14. These claims assert a right to
7 use two unnamed creeks and associated springs for irrigation and stock water.

8 The land in Section 19 is riparian to the creeks from which water is diverted.
9 Based on the foregoing testimony and evidence, the Referee concludes that a right
10 was established under the Riparian Doctrine for the use of two unnamed streams.
11 The record does not reflect when steps were first taken to sever the land from
12 Federal ownership. The first date in the record for private ownership is 1902.
13 Therefore, the Referee recommends that a right be confirmed to Jacqueline J. Evett
14 Crume with a June 30, 1902, date of priority for the use of two unnamed streams in
15 the amount of 0.92 cubic foot per second, 92 acre-feet per year for the irrigation
16 of 46 acres and 0.01 cubic foot per second, 1 acre-foot per year for stock water.

17 Michael and Jeannette Peterson each own a portion of the NW $\frac{1}{4}$ of Section 20
18 lying south of the railway right-of-way. First steps to homestead the property,
19 which was part of a much larger parcel, were taken in 1898, however, those
20 individuals were not able to "prove up" on the application and the homestead
21 certificate did not issue until 1913. The land now owned by the Petersons was
22 owned by Jessie Adams Johnson and during testimony it was not clear whether this
23 portion was historically irrigated. Ms. Johnson received a certificate as a result
24 of the adjudication of Big Creek in 1925. However, this certificate was for the
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1 irrigation of lands in the SW $\frac{1}{4}$ of Section 20 and there was no evidence of historic
2 water use in the NW $\frac{1}{4}$ of Section 20.

3 Ms. Peterson testified that Mr. Austin acquired the land in the NW $\frac{1}{4}$ of Section
4 20 in 1955, that he built a house, barns, and cow sheds, cleared the land and grew
5 alfalfa. She also testified that he installed the diversion from the creek to
6 irrigate the land he cleared. Approximately 46 acres of the land now owned by
7 Jeannette Peterson and that owned by Michael Peterson have been irrigated. Twelve
8 acres have been irrigated on Michael's piece, leaving 34 acres that have been
9 irrigated on the other piece. Water Right Claim No. 096625 was filed by Lewis and
10 Jennie Austin pursuant to the requirements of RCW 90.14.

11 The Petersons' land is riparian to the unnamed creek they are using. However,
12 there is nothing in the record to show that water was diverted from the creek for
13 irrigation purposes on their land prior to December 31, 1932, which is required in
14 order to establish a water right under the Riparian Doctrine. Therefore, the
15 Referee cannot recommend that a water right be confirmed to either Jeannette Austin
16 Peterson or Michael Peterson. The Plaintiff's Report to the Referee recommended
17 that a non-diversionary stock water right be confirmed under the stock water
18 stipulation discussed on Page 4 of this report.

19
20 COURT CLAIM NO. 01068
(A)05149

-- Arthur G. Pieters
& Helen P. Pieters
Warren G. Bunger
& Sharon I. Bunger

22 COURT CLAIM NO. 01302
(A)05132

-- Warren G. Bunger
& Sharon I. Bunger

23
24 Statements of Claim were filed by Arthur G. Pieters and Helen P. Pieters for
25 the use of waters from an unnamed spring and Fowler Creek. On December 5, 1989,
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1 Warren G. and Sharon I. Bunger were joined to the claims. On March 8, 1990, the
2 Pieterses filed an amendment to Claim No. 1068 and on March 2, 1990, the Bungers
3 filed an amendment to Claim No. 1302. The purpose of both amendments was to
4 correct the township number on the place of use and point of diversion from T. 18
5 N., to T. 19 N. Arthur Pieters and Warren Bunger testified at the evidentiary
6 hearing.

7 The Pieterses and Bungers each own half of the land described in Court Claims
8 1068 and 1302. The land lies in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 19
9 N., R. 14 E.W.M. The land is part of a larger parcel consisting of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of
10 Section 2 and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3, for which Andrew Anderson received a
11 Homestead Certificate on July 31, 1903. They are claiming a right for domestic
12 supply from an unnamed spring and irrigation from Fowler Creek. Water from the
13 spring is collected in a cistern atop the spring and a gravity flow pipeline
14 carries the water to each of the homesites where a 1 BHP pump supplies the homes.
15 The Pieters home was built in 1984 and the Bunger home in 1988. There apparently
16 was a log cabin on the property that was served by the spring. The cabin burned,
17 but there was uncertainty about the date. Mr. Pieters believed it was in the
18 mid-1970's and Mr. Bunger thought it was in the mid-1950's. It also is not clear
19 when the log cabin was built and began using water from the spring or whether one
20 of the two homes could be considered a replacement for the log cabin.

21 Larry J. Dawson, a previous owner of the Pieters and Bunger properties, filed
22 Water Right Claim No. 124763 pursuant to the requirements of RCW 90.14., asserting
23 a right to use an unnamed spring. The township numbers written on the claim form
24 were T. 18 N., rather than T. 19 N.. On May 3, 1990, Mr. Bunger was notified by
25 the Department of Ecology that the claim had been amended to correct the error.
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1 In order for there to be a water right for use of water from the spring for
2 domestic supply, the evidence must be sufficient to establish that the use began
3 prior to June 6, 1917, or that a permit and certificate was obtained from the State
4 of Washington pursuant to the provisions of RCW 90.03. Additionally, the water use
5 had to continue without five successive years of nonuse after July 1, 1967 and
6 before October 12, 1977, RCW 90.14.130 - .180. The evidence has not been
7 sufficient for the Referee to reach that conclusion; therefore, it is recommended
8 that a right not be confirmed to either Arthur G. and Helen P. Pieters or Warren G.
9 and Sharon I. Bunger for the use of the unnamed spring.

10 A right is also being asserted for the use of Fowler Creek for irrigation.
11 The Pieterses irrigate approximately two acres and the Bungers three. The
12 Pieterses pump directly from the creek using a 1 BHP pump to irrigate Christmas
13 trees, garden and lawn, using 22.8 inches per acre irrigated. The Bungers pump
14 from an instream pond using a 3 BHP pump and also use 22.8 inches per acre
15 irrigated. In addition to irrigation, the pond is used for fish propagation, water
16 fowl habitat, recreation, and is available for fire fighting as necessary. The
17 Plaintiff's Report to the Referee recommended confirmation of a right for
18 non-diversionary stock watering under the stock water stipulation discussed on Page
19 4 of this report.

20 The land irrigated by the Pieterses was forested until the mid-1980's when
21 they cleared it, constructed the diversion and began irrigating. The land
22 irrigated by the Bungers was cleared and being irrigated when the Pieters acquired
23 it in 1977. Mr. Pieters talked with a member of the Anderson family, who had
24 homesteaded the land, and was told that they diverted from Fowler Creek and surface
25 irrigated the lands now owned by the Bungers. Fowler Creek is riparian to both the
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1 Bunger and Pieters land. Water rights may be established under the Riparian
2 Doctrine if water was first used prior to December 31, 1932. The date of priority
3 for those rights would be the date that steps were first taken to sever the land
4 from Federal ownership. The only date in the record for this action is the date of
5 July 31, 1903, on the Homestead Certificate that issued to Andrew Anderson.
6 Although there was no specific testimony that water was first used from Fowler
7 Creek prior to December 31, 1932, the Anderson family did develop that use and it
8 is reasonable to believe that occurred during the ensuing 29 years after the
9 certificate issued.

10 Larry J. Dawson filed Water Right Claim No. 124762 pursuant to the
11 requirements of RCW 90.14 for the use of Fowler Creek. This claim also contained
12 the incorrect township numbers for the place of use and point of diversion
13 locations.

14 The testimony and evidence is sufficient for the Referee to conclude that a
15 right was established under the Riparian Doctrine and to recommend confirmation of
16 that right to Warren G. and Sharon I. Bunger, with a July 31, 1903, date of
17 priority for the use of Fowler Creek in the amount of 0.06 cubic foot per second,
18 5.7 acre-feet per year for the irrigation of 3 acres.

19 COURT CLAIM NO. 00343 -- James C. Prichard
20 & Margaret R. Prichard
21 James A. Douvier
 & Norma L. Douvier

22 James C. and Margaret R. Prichard submitted a Claim to the Court for the use
23 of waters from Beaver Lake. On June 8, 1990, James A. Douvier and Norma L. Douvier
24 were joined to the claim. James A. Douvier testified at the evidentiary hearing.

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1 According to Mr. Douvier's testimony, he and his wife have acquired the
2 property described in Claim No. 0343. The land is adjacent to Beaver Lake, which
3 was built in 1962 when Interstate 90 was constructed. They are claiming a right to
4 irrigate one acre of land with waters from Beaver Lake. It is not clear whether
5 they actually have irrigated the land since they purchased it in 1987.

6 James Prichard filed Water Right Claim No. 052634 pursuant to the requirements
7 of RCW 90.14 for use of waters from Beaver Lake. The filing of a water right claim
8 only serves to protect a water right that was established under either the Prior
9 Appropriation or Riparian Doctrines. In order to have a right under these
10 doctrines, water had to be put to use by June 6, 1917, (Prior Appropriation) or
11 December 31, 1932 (Riparian Doctrine).

12 The only means for acquiring a water right in 1962, when Beaver Lake was built
13 was to obtain a permit from a predecessor agency of the Department of Ecology, as
14 required in RCW 90.03. There is nothing in the record to show this occurred.
15 Therefore, the Referee cannot recommend that a right be confirmed under Court Claim
16 No. 0343 to James C. and Margaret R. Prichard and James A. Douvier and Norma L.
17 Douvier.

18 COURT CLAIM NO. 00339 -- Ranch Properties, Inc.

19 A Statement of Claim to the Court was submitted by Ranch Properties, Inc. for
20 the use of waters of Big Creek. The defendant was represented by Attorney Darrel
21 Ellis. John Moran, Vice President of Ranch Properties, Inc., testified at the
22 evidentiary hearing.

23 The defendant owns a portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28, T. 20 N., R. 14
24 E.W.M. The property is part of the K. O. Lund homestead for which Certificate No.
25 240, as amended by Certificate of Change recorded in Volume 1, Page 138, of the Big
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1 Creek Adjudication issued. Ranch Properties, Inc., is a recreational facility
2 encompassing 72 acres in size. The land was purchased from Lee Lund on June 21,
3 1971. At that time there were two man-made lakes constructed by Mr. Lund and fed
4 by a ditch that carries water from Big Creek. The defendants use the lakes for
5 fish propagation and recreational purposes associated with a campground.
6 Approximately 19 acres of pasture have historically been flood irrigated and five
7 acres of lawn area irrigated with waters from Big Creek. There is the potential
8 for irrigating an additional five acres of lawn and the defendant plans to do that
9 in the future.

10 Based on the foregoing, the Referee recommends that a right be confirmed to
11 Ranch Properties, Inc., with a June 30, 1887, date of priority for the use of
12 waters of Big Creek in the amount of 0.48 cubic foot per second, 115.2 acre-feet
13 per year for the irrigation of 24 acres. Since this adjudication is an action to
14 confirm existing water rights, the Referee cannot recommend that the confirmation
15 include the five acres that are planned to be irrigated in the future.

16 A water source in the NE $\frac{1}{4}$ of Section 32 is used for domestic supply. It has
17 been referred to as both an unnamed spring and an artesian well. insufficient
18 testimony to determine the nature of the source or whether a right has been
19 established for its use, the Referee cannot recommend that a right be confirmed for
20 that source.

21 Upon confirmation of the proposed rights, it is recommended that the Director
22 of the Department of Ecology cancel, rescind or otherwise make null and void
23 Adjudicated Certificate No. 240 and Certificate of Change Recorded in Volume 1,
24 Page 138.

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1 COURT CLAIM NO. 07856 -- Charles Ross Randall
2 & Doris Randall

3 On October 26, 1992, Charles R. and Doris Randall filed a Statement of Claim
4 with the Court for the use of waters from Telephone Creek in Subbasin No. 2.
5 Because the claim was filed after the Subbasin evidentiary hearings were held, its
6 processing is governed by Pretrial Order No. 9. This requires the Referee to note
7 the late-filed claim in his report to the Court, and, further, to notify the
8 claimants that the Court will consider their claim during the exceptions hearing
9 for this report.

10 COURT CLAIM NO. 00442 -- Claude B. Renfro
11 & Karen J. Renfro

12 A Statement of Claim was filed by Claude B. Renfro and Karen J. Renfro for the
13 use of an unnamed creek, possibly Nelson Creek, for wildlife and fire protection.
14 Karen J. Renfro testified at the evidentiary hearing.

15 The Renfros own property that is within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 and the
16 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, T. 20 N., R. 14 E.W.M.. Water is diverted from Nelson Creek
17 near the southwest corner of their property and piped to a pond. Return flow from
18 the pond is piped back to the creek. The Renfros make no consumptive use of the
19 water in the pond. It is used for wildlife and water fowl habitat and can be used
20 in an emergency by the local fire district for firefighting. The Renfros purchased
21 the property in 1972 and the pond and diversion system were in place. Ms. Renfro
22 believes that the house on the property was constructed in 1966 and that the pond
23 was built at the same time.

24 Water Right Claim No. 119831 was filed by the Renfros pursuant to the
25 requirement of RCW 90.14. However, a diversion initiated in 1966 would have

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1 required a permit to be issued through the procedures established in RCW 90.03.
2 Nothing in the record shows that that occurred.

3 Based on the foregoing, the Referee cannot recommend that a water right be
4 confirmed to Claude B. Renfro and Karen J. Renfro.

5
6 COURT CLAIM NO. 00801 -- Roaring Creek Property Owners Assn.

7 A Statement of Claim was submitted to the Court by the Roaring Creek Property
8 Owners Association for use of Roaring Creek for community domestic supply. The
9 association was represented by Attorney Darrel Ellis. Ms. Helen Wolke, President
10 of the Roaring Creek Property Owners Association testified at the evidentiary
11 hearing.

12 The claimant is an association whose members own lots within the Plat of
13 Roaring Creek in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 21 N., R. 11 E.W.M. Domestic supply
14 for the lots is from Roaring Creek via a water system that diverts from the creek
15 and carries the water to a reservoir from which water is pumped to the lots. The
16 plat consists of 62 lots. The water system was constructed and put to use in the
17 mid-1970's.

18 Surface Water Certificate No. S4-01297C, with a priority date of February 17,
19 1969, issued to the Roaring Creek Property Owners authorizing the diversion of
20 0.065 cubic foot per second, 10 acre-feet per year from Roaring Creek for community
21 domestic supply. The claimant is asking for confirmation of a right to that
22 quantity of water.

23 There was no testimony concerning the number of lots served by the system.
24 The State's investigation report stated that it appears most of the lots were
25 undeveloped, but water lines appear to be installed throughout the development. It
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apparently has been the practice of the Department of Ecology and its predecessor agencies to issue inchoate water rights for community domestic and municipal water supplies when the distribution system has been constructed and a number of the homes have been constructed and served by the system.

Therefore, the Referee recommends that a right established under the Surface Water Code be confirmed with a February 17, 1969, date of priority, to the Roaring Creek Property Owners Association for the use of 0.065 cubic foot per second, 10 acre-feet per year from Roaring Creek for continuous community domestic supply for 62 lots. It is recommended that the Director of the Department of Ecology cancel, rescind or otherwise make null and void Certificate of Surface Water Right No. S4-01297C.

COURT CLAIM NO. 00803 -- Roza Irrigation District
Ellensburg, City of

A Statement of Claim was submitted by Roza Irrigation District and the City of Ellensburg for use of waters from Swauk Creek and the Yakima River. Swauk Creek is in Subbasin No. 4, but the point of diversion from the Yakima River identified in the claim is in Subbasin No. 2. However, the Yakima River is not at the location shown on the Claim, namely Section 11, T. 19 N., R. 14 E.W.M. Roza Irrigation District is a Major Claimant whose rights will be considered through the Major Claimant pathway identified in Pre-trial Order No. 8. The City of Ellensburg is not a Major Claimant, but did not appear at the evidentiary hearing to present testimony on this claim. Therefore, the Referee will defer to the Major Claimant Pathway and not make a recommendation on this claim.

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The Silver Creek Road Maintenance Association represents owners of lots within the Plats of Silver Creek and Silver Creek II. The Plat of Silver Creek II, which consists of 19 lots, has been in existence since the mid-1970's and the Plat of Silver Creek for an unknown period of time prior to that. The plats lie within the E $\frac{1}{2}$ of Section 2, T. 20 N., R. 13 E.W.M. and consists of 26 lots ranging in size from 5 to 8.8 acres, with 30 separate landowners. Fifteen of the lots have been improved with permanent dwellings. Water for domestic supply and landscape irrigation is provided from Silver Creek through a gravity flow system that diverts from a point in the E $\frac{1}{2}$ of Section 35, T. 21 N., R. 13 E.W.M. The water is provided through the Kittitas County Water District No. 3. According to the testimony, the water district intends to cease using Silver Creek for in-house domestic water. The testimony did not reflect the source to which they would be changing. The maintenance association will continue using Silver Creek water for landscape irrigation on the lots and that is the purpose for which they are seeking confirmation of a water right.

The association is basing its claim to a water right on a Notice of Water Right filed on February 25, 1908 by Sarah S. Beattie. Ms. Beattie claimed a right to divert 15 cubic feet per second from Silver Creek for irrigation, domestic, municipal, power and manufacturing in Section 2, T. 20 N., R. 13 E.W.M. and "other land and other premises in said Township 20 no., R. 13 E.W.M.". There was no

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1 testimony or evidence to show historic water use on the land now owned by members
2 of the maintenance association. In addition to the filing of a Notice of Water
3 Right, the claimed use had to be perfected through beneficial use. There is no
4 testimony to show that occurred. Since the land is riparian to the Silver Creek,
5 in order for the association to enjoy a water right there must be evidence to show
6 the land severed from Federal ownership by June 6, 1917, and water use began prior
7 to December 31, 1932. The water use must be similar in quantity and extent to the
8 use being made today. The evidence also does not show that a claim was filed
9 between 1969 and 1974 pursuant to the requirements of RCW 90.14. Even if the
10 evidence supported the existence of a water right, failure to file a claim
11 relinquishes any right that may have existed.

12 The only other mechanism for establishing a water right is to obtain a permit
13 or certificate through the procedures provided for in RCW 90.03. Neither the State
14 or the defendant introduced a permit or certificate for this land.

15 Based on the foregoing, the Referee cannot recommend that a water right be
16 confirmed for Silver Creek Road Maintenance Association.

17 COURT CLAIM NO. 00150 -- John R. Smith
18 & Susanna S. Smith

19 COURT CLAIM NO. 01731 -- DeGramps Enterprises, Inc.

20 Statements of Claim were filed with the Court by DeGramps Enterprises, Inc.
21 and John R. Smith and Susanna S. Smith for the use of Peterson Creek and various
22 springs. Mr. Smith testified at the evidentiary hearing. According to Mr. Smith's
23 testimony, the land described in both claims is owned by DeGramps Enterprises, Inc.
24 and Claim No. 00150 is not necessary.

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1 According to Mr. Smith, the only apparent use of water on the property is
2 non-diversionary stock watering. The land has not been developed and there is no
3 evidence of a diversion from the creek or any of the springs. Past owners of the
4 property have used the land for livestock grazing with the stock drinking directly
5 from the creek. The non-diversionary stock water stipulation covers this use of
6 water and the claimant is not asserting a water right for any other water use.
7 Therefore, the Referee does not recommend that a right be confirmed beyond the
8 non-diversionary stock water stipulation under either Court Claim No. 01731 and
9 00150.

10
11 COURT CLAIM NO. 00158 -- Sigmund D. Thompson

12 COURT CLAIM NO. 00795 -- Sigmund D. Thompson

13 Dean Thompson and Shirley Thompson submitted Claim No. 00158 to the Court on
14 July 20, 1979, and Dean Thompson submitted Claim No. 00795 on July 15, 1981. Claim
15 No. 00795 appears to be a duplicate of the first claim filed. On March 21, 1993,
16 Sigmund D. Thompson was substituted as claimant on both claims. Mr. Thompson
17 appeared at the evidentiary hearing to testify and Raymond H. Kirlin, who owns
18 neighboring land, testified about his knowledge of historic ownership of the land.

19 The Thompsons own Lot 100, Tract A, Lake Kachess Summer Homes, in Government
20 Lot 1 of Section 21, T. 21 N., R. 13 E.W.M. A recreational home on the lot is used
21 approximately 30 days per year. According to Mr. Thompson they purchased the
22 property from William Eithier who built the cabin and installed the water system in
23 1967 or 1968. Mr. Kirlin provided exhibits that established that Northern Pacific
24 Railway acquired the property from the Federal government by patent issued on April
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1 24, 1916. Mr. Thompson had no knowledge of water use on the property prior to his
2 cabin being constructed.

3 Water Right Claim No. 036822 was filed by Mr. Thompson, in response to the
4 requirements of RCW 90.14, claiming a right to use an unnamed spring for domestic
5 supply. There is no evidence that a water right permit was obtained pursuant to
6 the provisions of RCW 90.03, the State Surface Water Code. Such a permit is
7 necessary in order to establish a surface water right after December 31, 1932.

8 Since the water use was initiated many years after the dates by which rights
9 could be established under either the Prior Appropriation or Riparian Doctrines
10 (June 6, 1917, and December 31, 1932, respectively) and there is no evidence that a
11 permit was obtained through the provisions of RCW 90.03, the Referee cannot
12 recommend that a water right be confirmed to Sigmund D. Thompson.

13
14 COURT CLAIM NO. 00619 -- Whitaker Land Company

15 A Statement of Claim was submitted to the Court by Whitaker Land Company for
16 the use of Fowler Creek and unnamed springs for domestic supply and irrigation.
17 John Whitaker testified at the evidentiary hearing in support of the claim.

18 Whitaker Land Company is a partnership of John Whitaker's children. The
19 partnership owns the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 and all but ten acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of
20 Section 2. The land was homesteaded by Andrew Anderson who received a patent for
21 the land on July 31, 1903. On June 11, 1914, Andrew Anderson filed a Notice of
22 Water Appropriation for all the waters flowing in Beaver Spring, a stream of water
23 arising on the southwest corner of the SE $\frac{1}{4}$ of Section 3, T. 19 N., R. 14 E.W.M.
24 Water from Beaver Spring creates a stream that flows to the north and is a
25 tributary to Fowler Creek.

26
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1 According to Mr. Whitaker's testimony, Andrew Anderson constructed a diversion
2 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3 and a berm and flume to carry the water to the east for
3 irrigating the land. The Whitakers now use PVC pipe laid in the ditch to carry the
4 water. There was some uncertainty about whether 30 or 40 acres were being
5 irrigated, however, most of the documentation indicates 30 irrigated acres. The
6 Andersons reportedly grew grain and raised milk cows and chickens on the property.
7 Whitaker Land Company grows hay, fruit trees and garden on the irrigated land and
8 raises up to 30 head of cattle. There was no testimony concerning the
9 instantaneous quantity diverted from the stream, however the court claim stated the
10 flume capacities were 0.45 cubic foot per second, which would be a reasonable
11 quantity for the irrigation of 30 acres. Four acre-feet per acre irrigated is
12 used.

13 Whitaker Land Company is also asserting a right to use an unnamed spring for
14 domestic supply. According to the testimony, Andrew Anderson developed the spring
15 and a gravity flow system using wood stave pipe, some of which is still at the
16 site. A log cabin built in 1904 is still near the current home. The cabin is now
17 used for storage purposes. The Whitakers have replaced the wood stave pipeline
18 with PVC pipe.

19 Water Right Claim No. 128135 was filed by John Whitaker pursuant to the
20 requirements of RCW 90.14. It claims a right to use springs and Fowler Creek for
21 domestic supply and irrigation. It is not clear whether at the time the claim was
22 filed Mr. Whitaker thought the stream being used was Fowler Creek. The stream is
23 not named on any local maps and is a tributary to Fowler Creek. Additionally,
24 Surface Water Certificate No. 7671, with a priority date of March 18, 1955, issued
25 to George Francis and Lee F. Williams. It authorized the diversion of 0.41 cubic
26

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29

1 foot per second for domestic supply and fish propagation and 0.30 cubic foot per
2 second, 120 acre-feet per year for irrigation of 30 acres. The source of water is
3 an unnamed spring in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3, T. 19 N., R. 14 E.W.M. There are two
4 ponds on the Whitaker property. Water from the stream is diverted through the
5 ponds and back into Fowler Creek. The ponds are not stocked with fish, nor was
6 there an expressed intent by Mr. Whitaker for that use to again occur. However,
7 incidental to the fish propagation use, the ponds have provided habitat for local
8 wildlife and water fowl and the diversion has continued uninterrupted since 1955.
9 This may represent a minor change in purpose of use from fish propagation, but
10 would not involve any different use of water than what was perfected under the
11 certificate.

12 Based on the foregoing, it is recommended that water rights be confirmed to
13 Whitaker Land Company as follows:

14 Under the Riparian Doctrine, with a July 31, 1903, date of priority from an
15 unnamed stream (aka Beaver Creek), 0.45 cubic foot per second, 120 acre-feet per
16 year for irrigation; 0.01 cubic foot per second, 1.0 acre-foot per year for stock
17 water.

18 Under the Riparian Doctrine, with a July 31, 1903, date of priority from an
19 unnamed spring, 0.02 cubic foot per second, 1 acre-foot per year for single
20 domestic supply.

21 Under the Surface Water Code, with a March 18, 1955, date of priority 0.41
22 cubic foot per second from an unnamed stream for non-consumptive pond maintenance
23 for wildlife habitat.

24
25
26
27
28 REPORT OF REFEREE
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Cecile B. Woods filed a Statement of Claim for the use of waters from an unnamed spring for irrigation, stock water, domestic, and fire protection and for use of waters from a spring known as Bandy Creek for irrigation, stock and domestic. Ms. Woods testified at the evidentiary hearing.

Ms. Woods owns the SE $\frac{1}{4}$ and the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 12, T. 19 N., R. 14 E.W.M. and the NW $\frac{1}{4}$ of Government Lot 1 in Section 7, T. 19 N., R. 15 E.W.M. The record reflects that Andrew Roseberg obtained title to the lands in Section 12 by Homestead Certificate issued on March 8, 1907, and that Northern Pacific Railroad Company received a patent from the United States on November 4, 1895, for the land in Section 7. Ms. Woods' father acquired the property in 1929 and operated a fox and mink farm.

A prior owner of the Woods property, Andrew Biros, was the plaintiff in a Kittitas County Superior Court Action related to the use of waters from Bandy Creek, also known as Spexarth Creek. The decree that resulted from Andrew Biros v. Herman Spexarth, Louis Belmeyer and Mrs. Louis Belmeyer, Kittitas County Superior Court (1919) awarded the defendant Spexarth 35 inches of water from Bandy Creek and to the plaintiff, Biros, the remainder of the creek flow with a priority junior to that of Spexarth. The decree stated that both parties had begun using water ten years previously and that Biros was using the water on the lands in Section 12 now owned by Ms. Woods.

Certificate No. 1474, with a priority date of November 12, 1932, issued to Ralph H. Steele and Robert J. Woods for the diversion of 0.50 cubic foot per second from a unnamed stream for irrigation of 40 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 12, and domestic supply and fire protection in the SE $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 12. The permit that

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1 preceded the certificate identified the point of diversion as being approximately
2 1,620 feet west and 150 feet south of the southeast corner of Section 12, being
3 within Government Lot 2 of Section 13, T. 19 N., R. 14 E.W.M.

4 According to Ms. Woods, a flume once carried the diverted water from that
5 point onto her property for use in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 12. The flumes were
6 abandoned several years ago. Ms. Wood's testimony was that the unnamed stream
7 described in the certificate goes underground and then resurfaces in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
8 Section 12 as a spring. Her father built a box where the spring emerges and water
9 is piped from the box to two homes on the property, one built in the early 1900's
10 and one built in 1936, to the mink sheds and to an irrigated pasture. The pasture
11 is approximately 16 acres in size, but 40 acres have been irrigated in the past.
12 There was no testimony concerning how long it has been since the entire 40 acres
13 were irrigated.

14 Ms. Woods is asserting that she is continuing to use the same source of water
15 as authorized in the certificate. However, no evidence was submitted to support
16 this contention, nor any evidence of compliance with the requirements of RCW
17 90.03.380, which established procedures for changing the point of diversion
18 authorized by a certificate.

19 Failure to comply with the requirements of RCW 90.03.380 is usually not fatal
20 to a recommendation to confirm a water right, however, due to the lack of evidence
21 to support Ms. Woods position that the two sources are the same, the Referee cannot
22 recommend that a water right be confirmed for the use of the unnamed spring.

23 Ms. Woods is also claiming a right to use Bandy Creek or Spexarth Creek for
24 domestic supply for a mobile home and the irrigation of approximately 1.5 acres
25 around the mobile home. The mobile home is located in the NW $\frac{1}{4}$ of Government Lot 1
26

27 REPORT OF REFEREE
28 Re: Subbasin No. 2

1 of Section 7, T. 19 N., R. 15 E.W.M. Ms. Woods is relying on the previously
2 discussed decree as the basis for a water right to the creek. However, the decree
3 acknowledged the existence of a water right for lands in Section 12, T. 19 N., R.
4 14 E.W.M., not Section 7, and Mrs. Woods testified that water was first used at the
5 mobile home in the 1960's, more than 40 years after entry of that decree. The
6 decree referenced water uses implemented in 1909. Ms. Woods provided no evidence
7 that the permitting requirements of RCW 90.03 had been met for this water use.
8 Therefore, the Referee cannot recommend that a right be confirmed for use of Bandy
9 or Spexarth Creek. The Plaintiff's Report to the Referee recommended that a right
10 be confirmed for non-diversionary stock watering under the stipulation discussed on
11 Page 4 of this report.

12 COURT CLAIM NO. 00589 -- WA State Dept. of Natural Resources

13 A Statement of Claim was submitted to the Court by the Washington State
14 Department of Natural Resources. There was no appearance at the evidentiary
15 hearing in support of the claim, therefore, the Referee cannot recommend that a
16 right be confirmed to the department under Court Claim No. 00589. The Plaintiff's
17 Report to the Referee identified the Department of Natural Resources as a claimant
18 with a stock water use covered by the Non-diversionary Stock Water Stipulation and
19 that stipulation will be sufficient for any non-diversionary stock water use on the
20 department's property.

21
22 COURT CLAIM NO. 01600 -- WA State Parks & Recreation Commission

23 The Washington State Parks and Recreation Commission submitted a Statement of
24 Claim to the Court for the non-consumptive use of waters from Silver Creek and an
25 unnamed stream. Assistant Attorney General Shirley Batton represents the defendant
26

27 REPORT OF REFEREE
28 Re: Subbasin No. 2
29

1 and the following individuals testified at the evidentiary hearing: Kris Kauffman,
2 Chief of Engineering for the commission; Tim Schmidt, Park Manager, Lake Easton
3 State Park; Ted Clausing, Regional Habitat Biologist for the Yakima Office of the
4 Department of Wildlife.

5 The commission operates Lake Easton State Park on state owned land in Sections
6 2, 3, 10, and 11, T. 20 N., R. 13 E.W.M.. It is asserting a riparian right to the
7 continued flow of water in Silver Creek and the unnamed stream for non-consumptive
8 recreational, educational and aesthetic purposes. There is no diversion of water
9 from either the creek or stream. Park patrons utilize trails and paths through the
10 park that bring them along the creek and stream allowing them to observe and enjoy
11 the wildlife and aquatic life along and in the water. The testimony indicates that
12 both the creek and stream generally flow from October to July when the flow
13 diminishes and eventually disappears. They both flow through approximately 500
14 feet of the park property before entering the Yakima River, which is the southerly
15 border of the park property.

16 There is no evidence that a RCW 90.14 claim was filed for either Silver Creek
17 or the unnamed stream. However, filing a claim was only required for those who
18 were diverting or withdrawing water, and the use at Lake Easton State Park does not
19 involve a diversion.

20 Since there has been no diversion of water out of either Silver Creek or the
21 unnamed stream and the park is merely enjoying the natural characteristics of both
22 streams the Referee does not find that a water right exists and, therefore, cannot
23 recommend that a right be confirmed under Court Claim No. 01600. The Referee
24 believes that the commission is attempting to protect the flow in the streams and
25 refers the commission to RCW 90.22, a law specifically intended for that purpose.
26

27 REPORT OF REFEREE
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29

1 That law contains procedures for establishing minimum water flows for streams,
2 lakes or other public waters for the purposes of protecting fish, game, birds or
3 other wildlife resources, or recreational or aesthetic values.

4
5 Claimants Who Did Not Appear At The Evidentiary Hearing

6 There was no appearance at the evidentiary hearing in support of the
7 following listed claims. Therefore, the Referee recommends that the claims be
8 denied in their entirety:

9 Court Claim No. 00273 - Selma M. Burzenski
10 Court Claim No. 01808 - Estate of Robley P. Carr & Dorothy H. Carr
11 Court Claim No. 01476 - Estate of John Caveglia & Mitchell Starkovich
12 Court Claim No. 01452 - Jack & Shawn Floyd
13 Court Claim No. 02042 - Thomas & Therersa Greiner
14 Court Claim No. 02351 - Kathleen Lynette Griffin
15 Court Claim No. 01327 - Robert H. & Dorothy R. Humber
16 Court Claim No. 02352 - Kenneth Kent
17 Court Claim No. 02008 - Carolyn Watts Madden
18 Court Claim No. 01395 - Raymond & Vicki Markley
19 Court Claim No. 01675 - William E. McCormick
20 Court Claim No. 01317 - Michael R. & Kathleen B. Myers
21 Court Claim No. 02241 - Reintree Corporation
22 Court Claim No. 01127 - Eldon R. Richardson & James L. Kualvik
23 Court Claim No. 01456 - Ira C. & Betty J. Roberson
24 Court Claim No. 02370 - Summerside Property Owners
25 Court Claim No. 01874 - Summit Sewer District
26 Court Claim No. 00274 - Sun Island Corporation
27 Court Claim No. 00254 - Reidar & Virginia Tanner
28 Court Claim No. 01872 - Ski Acres, Inc.
29 Court Claim No. 00451 - Warren F. & Versie Vaupel
Court Claim No. 01428 - John G. & Mary L. Williams
Court Claim No. 01473 - Ivan & Bonnie Zamora

21 Claimants With Recommended Non-Diversiory Stock Water And Wildlife Rights

22 Carl B. Benson, et al.
23 Warren G. Bunger and Sharon I. Bunger
24 Dennis Burchak and Diana Burchak
25 Estate of Michael Burchak and Marie Burchak
26 Burlington Northern Railroad Co.
27 Church of Jesus Christ LDS
28 Jacqueline J. Evett Crume
29 Pat Deneen and Nancy Harcus

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1 DeGramps Enterprises, Inc.
Gerald Eaton
2 Jack Floyd and Shawn Floyd
Earl E. Gentry and Valerie K. Gentry
3 Wayne Graber and Margo Graber
Gerald J. Griffith
4 Estate of Gary G. Guzzie and Clyde Parlova
Keven K. Hart and Deborah S. Hart
5 Mary Hundley
Ray Johnson
6 Jacob Korfus and Mildred Korfus
C. Ronald Lamb and Judy I. Lamb
7 Little Creek, et al.
Gerald L. Monahan and Marie C. Monahan
8 Robert E. Monahan and Adele F. Monahan
Charles K. Parsons
9 Emil Pasco
Pautzke Bait Company, Inc.
10 Jeannette Austin Peterson
Michael L. Peterson
11 Otto Staheli and Olga Staheli
H.C. Wallick and Laverne Wallick
12 Cecile B. Woods
WA State Dept. of Natural Resources
13 WA State Parks & Recreation Commission

14 Claimants Located Outside of Subbasin No. 2
15

16 The following claimants filed Court Claims which identified their point of
17 diversion as that of the Kittitas Reclamation District, a Major Claimant in this
18 proceeding. The claimants did not appear to testify at the evidentiary hearing
19 and review of their claims show their properties all lie outside of Subbasin No. 2
20 and are served by the reclamation district.
21

22 John O. Ahrnsbrak and Donna E. Ahrnsbrak
23 Dimitri Bader and Lenora Bader
Richard P. Bailes
24 Oscar Berger and Beverly J. Berger
Pat Burke and Mary Burke
25 Paul L. Charlton and Norma N. Charlton
Merritt D. Dupuis
26

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1 Wallace L. Enger and Geraldine J. Enger
Aydrey Irene Evans
2 Milton M. Femrite and Tracy S. Femrite
Francis E. Fennerty and Phyllis C. Fennerty
3 Les S. Knudsen and Barbara J. Knudsen
Carl A. Magno and Patricia Rafter
4 Jill Perry
Ben Root
5 C. William Ross
John E. Rothlisberger
6 Jess Schober and Barbara Schober
Schober Brothers
7 Jay Sprouse and Betty Sprouse

8
9 VIII. FINDINGS OF FACT

10 I, JOHN E. ACORD, as Referee in this proceeding, having carefully examined
11 the testimony and evidence and having investigated Subbasin No. 2, do hereby make
12 the following Findings of Fact:

13 1. That the waters of Subbasin No. 2 and lands irrigated or waters
14 otherwise utilized therefrom are situated in Kittitas County.

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

18 John O. Ahrnsbrak and Donna E. Ahrnsbrak
19 Keith Anderson, et al.
Dimitri Bader and Lenora Bader
20 Richard P. Bailes
Oscar L. Berger and Beverly J. Berger
21 Edward J. Bogachus and Marcia J. Bogachus
Dona Lee Bogan and James Harris Dobbs
22 Stillman D. Brooks
Warren G. Bunger and Sharon I. Bunger (01068)
23 Dennis Burchak and Diana Burchak (00890)
Estate of Michael Burchak and Marie Burchak (00890)
24 Pat Burke and Mary Burke
Burlington Northern Railroad Co. (00103, 00104, 02396)
25 Selma M. Burzenski
Camp Koinonia (02163 & 02164)
26

27 REPORT OF REFEREE
28 Re: Subbasin No. 2
29

1 Estate of Robley P. Carr and Dorothy H. Carr
Estate of John Caveglia
2 Paul L. Charlton and Norma N. Charlton
DeGramps Enterprises, Inc.
3 James A. Duvier and Norma L. Duvier
Rodney T. Dunn and Marianne Dunn
4 Merritt D. Dupuis
Wallace Enger
5 Audrey Irene Evans
Milton M. Femrite and Tracy S. Femrite
6 Frank Fennerty
Thomas L. Ferguson, Jr. and Sandra J. Ferguson
7 Jack Floyd and Shawn Floyd
Wayne Graber and Margo Graber
8 Thomas Greiner and Theresa Greiner
Kathleen Lynette Griffin
9 Gerald J. Griffith
Estate of Gary G. Guzzie and Clyde Parlova (01274 & 01275)
10 Robert H. Humber and Dorothy R. Humber
Ray Johnson
11 Kenneth Kent
Raymond H. Kirlin
12 Les S. Knudsen and Barbara J. Knudsen
Jacob Korfus and Mildred Korfus
13 C. Ronald Lamb and Judy I. Lamb
Theodore L. Leavitt
14 Carolyn Watts Madden
Carl A. Magno
15 Raymond Markley and Vicki Markley
Joseph Maybo and Cecelia Maybo
16 William E. McCormick
Francis W. McIntosh and Marlys McIntosh
17 Thomas McTighe and Judith McTighe
Arthur C. Mills, Sr. and Wanda Lea Mills
18 Gerald L. Monahan and Marie C. Monahan (02185 & 02188)
Matthew H. Monahan and Mary Alice Monahan
19 Robert E. Monahan and Adele F. Monahan (01532)
Adele F. Monahan, Trustee
20 The Mountaineers, Inc. (01714A)
Michael R. Myers and Kathleen B. Myers
21 Vincent H. Nelson and A. Marion Nelson
Matt Ozbolt and Florence Ozbolt
22 Jill M. Perry
Jeannette Austin Peterson
23 Michael L. Peterson
Arthur G. Pieters and Helen P. Pieters
24 James C. Prichard and Margaret R. Prichard
Patricia A. Rafter
25 Charles Ross Randall and Doris Randall
Othel R. Reeves and Lynora E. Reeves
26

27 REPORT OF REFEREE

28 Re: Subbasin No. 2

1 Reintree Corporation
Claude B. Renfro and Karen J. Renfro
2 Eldon R. Richardson and James L. Kualvik
Ira C. Roberson and Betty J. Roberson
3 Ben Root
C. William Ross
4 John E. Rothlisberger
Jess Schober and Barbara Schober
5 Schober Brothers
Silver Creek Road Maintenance Assoc
6 Ski Acres, Inc.
John R. Smith and Susanna S. Smith
7 Jay Sprouse and Betty Sprouse
Otto Staheli and Olga Staheli
8 Mitchell Starkovich
Summerside Property Owners
9 Summit Sewer District
Sun Island Corporation
10 Reidar Tanner and Virginia Tanner
Sigmund D. Thompson (00158 & 00795)
11 Warren F. Vaupel and Versie Vaupel
John G. Williams and Mary L. Williams
12 Cecile B. Woods
WA State Dept. of Natural Resources
13 WA State Parks & Recreation Commission (00104 & 01600)
Ivan Zamora and Bonnie Zamora

14 3. That the name of the claimant(s), court claim number(s), sources of
15 water, uses for which rights have been established, time periods when water may be
16 used, amounts of water designated in the right, priority of water right, location
17 of points of diversion, and description of lands to which water rights are
18 appurtenant are as follows:
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27 REPORT OF REFEREE
28 Re: Subbasin No. 2
29

1 CLAIMANT NAME: Mary Hundley COURT CLAIM NO. 02294
2 Pautzke Bait Company, Inc.
3 Source: Little Creek
4 Use: Irrigation of 50 acres and stock water.
5 Period of Use: April 15 to September 30
6 Quantity: 1.4 cubic feet per second, 100 acre-feet per year for
7 irrigation; 0.01 cubic foot per second, 0.5 acre-foot per
8 year for stock water
9 Priority Date: June 30, 1881
10 Point of Diversion: 1150 feet north and 1100 feet west from the southeast
11 corner of Section 28, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28,
12 T. 20 N., R. 14 E.W.M.
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14 Place of Use: The N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 26, T. 20 N., R. 14 E.W.M.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 2
29

CLAIMANT NAME: **Keven K. Hart** COURT CLAIM NO. 01680
& Deborah S. Hart

Source: Little Creek

Use: Irrigation of 5 acres and stock water

Period of Use: April 15 to September 30

Quantity: 0.175 cubic foot per second (plus 0.135 cubic foot per second for conveyance), 25 acre-feet per year for the irrigation of 5 acres; 0.01 cubic foot per second, 0.5 acre-foot per year for stock water

Priority Date: **June 30, 1886**

Point of Diversion: 1150 feet north and 1100 feet west from the southeast corner of Section 28, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 28, T. 20 N., R. 14 E.W.M.

Place of Use: That portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27, T. 20 N., R. 14 E.W.M. described as follows: Commencing at the southwest corner of said subdivision; thence N 1°28'20" W 1883.67 feet to the true point of beginning; thence S 73°38'58" E 356.84 feet; thence S 25°43'25" W 135.30 feet; thence S 69°27'03" W 83.02 feet; thence S 25°43'25" W 120.20 feet; thence S 1°48'05" W 408.30 feet; thence S 86°06'57" W 65.19 feet; thence S 86°48'20" W 55.03 feet to the west line of said SE $\frac{1}{4}$; thence N 1°28'20" W 775.10 feet to the true point of beginning.
 ALSO that part of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27, T. 20 N., R. 14 E.W.M. described as follows: Beginning at the southwest corner of the SE $\frac{1}{4}$; thence N 1°28'20" W 1883.67 feet to the southerly right of way line of the Nelson Siding County Road; thence S 73°38'58" E 356.84 feet along the right of way to the true point of beginning; thence S 25°43'25" W 135.30 feet; thence S 69°27'03" W 83.02 feet; thence S 25°43'25" W 120.20 feet; thence S 1°48'05" W 408.30 feet; thence S 82°59'00" E, 18.54 feet; thence N 78°23'55" E 75.50 feet; thence N 75°00'14" E 76.98 feet; thence N 16°21'02" E, 618.51 feet to the southerly right of way of the Nelson Siding County Road; thence N 73°38'58" W 144.14 feet along said right of way to the true point of beginning.

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CLAIMANT NAME:

Pat Deneen
& Nancy Harcus

COURT CLAIM NO. 01680

Source:

Little Creek

Use:

Irrigation of 10 acres and stock water

Period of Use:

April 15 to September 30

Quantity:

0.35 cubic foot per second (plus 0.27 cubic foot per second for conveyance), 50 acre-feet per year for the irrigation of 10 acres; 0.01 cubic foot per second, 0.50 acre-foot per year for stock water

Priority Date:

June 30, 1886

Point of Diversion:

1150 feet north and 1100 feet west from the southeast corner of Section 28, being within the $SE\frac{1}{4}SE\frac{1}{4}$, Section 28, T. 20 N., R. 14 E.W.M.

Place of Use:

The west 714.12 feet of the $W\frac{1}{2}SE\frac{1}{4}$ of Section 27 T. 20 N., R. 14 E.W.M. lying south of the Nelson Siding County Road, EXCEPT, the south 500 feet thereof, also EXCEPT that portion which lies north and west of the following described line: Beginning at a point on the west line of the said $SE\frac{1}{4}$; which point lies N $1^{\circ}20'20''$ W 1108.57 feet from the southwest corner of said $SE\frac{1}{4}$; thence N $86^{\circ}40'2''$ E 55.03 feet; thence N $86^{\circ}06'57''$ E 65.19 feet; thence S $82^{\circ}59'$ E 18.54 feet; thence N $78^{\circ}23'55''$ E 75.50 feet; thence N $75^{\circ}00'15''$ E 76.98 feet; thence N $16^{\circ}21'02''$ E 618.15 feet to the terminus on the right of way for the said county road.

REPORT OF REFEREE

Re: Subbasin No. 2

1 CLAIMANT NAME: **Gerald Eaton** COURT CLAIM NO. 02030
2 Source: Little Creek
3 Use: Irrigation of 10 acres and stock water
4 Period of Use: May 1 to October 15 for irrigation, continuous for stock
5 water
6 Quantity: 0.35 cubic foot per second, 50 acre-feet per year for
7 irrigation; 0.01 cubic foot per second, 1 acre-foot per
8 year for stock water
9 Priority Date: **June 30, 1886**
10 Point of Diversion: 1150 feet north and 1100 feet west from the southeast
11 corner of Section 28, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
12 28, T. 20 N., R. 14 E.W.M.
13 Place of Use: Lots 25 and 26 of Timber Valley III, as per plat thereof
14 recorded in Volume 6 of Plats, pages 52 and 53, Records of
15 Kittitas County.

16 CLAIMANT NAME: **H.C. Wallick** COURT CLAIM NO. 01682
17 & **Laverne Wallick**
18 Source: Little Creek
19 Use: Irrigation of 14 acres
20 Period of Use: April 15 to September 30
21 Quantity: 0.49 cubic foot per second (plus 0.378 cubic foot per
22 second for conveyance), 70 acre-feet per year for the
23 irrigation of 14 acres
24 Priority Date: **June 30, 1886**
25 Point of Diversion: 1150 feet north and 1100 feet west from the southeast
26 corner of Section 28, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 28,
27 T. 20 N., R. 14 E.W.M.
28 Place of Use: The east 628.58 feet of that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of
29 Section 27, T. 20 N., R. 14 E.W.M. lying south of the
Nelson Siding Road; EXCEPT, the south 600 feet thereof.

REPORT OF REFEREE
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1 CLAIMANT NAME: C. Frederick Darling COURT CLAIM NO. 00176
2 Source: Big Creek
3 Use: Irrigation of 75 acres
4 Period of Use: May 1 to September 1
5 Quantity: 1.5 cubic feet per second, 360 acre-feet per year
6 Priority Date: June 30, 1887
7 Point of Diversion: 1150 feet south and 800 feet east from the center of
8 Section 29, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29, T. 20 N.,
9 R. 14 E.W.M.
10 Place of Use: The SE $\frac{1}{4}$ of Section 20 lying north of Nelson Siding Road,
11 EXCEPT, the north 1200 feet of west 700 feet and the east
12 400 feet thereof. ALSO, the northerly 300 feet of the
13 westerly 1700 feet of that portion of the SE $\frac{1}{4}$ of Section
14 20 lying parallel to and southerly of the Nelson Siding
15 Road; ALL being within Section 20, T. 20 N., R. 14 E.W.M.

13 CLAIMANT NAME: David C. Darling COURT CLAIM NO. 00920
14 & Lavwane R. Darling
15 Source: Big Creek
16 Use: Irrigation of 1.5 acres.
17 Period of Use: May 1 to September 1
18 Quantity: 0.03 cubic foot per second, 7.2 acre-feet per year
19 Priority Date: June 30, 1887
20 Point of Diversion: 1150 feet south and 800 feet east from the center of
21 Section 29, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29,
22 T. 20 N., R. 14 E.W.M.
23 Place of Use: That portion of the SE $\frac{1}{4}$ of Section 20, T. 20 N.,
24 R. 14 E.W.M. described as follows: Commencing at the
25 southeast corner of said section; thence west 715 feet to
26 the true point of beginning; thence continuing west 300
27 feet; thence north 350 feet; thence southeasterly 350 feet
28 along the southerly boundary of the Nelson Siding Road;
29 thence southerly 180 feet to the true point of beginning.

27 REPORT OF REFEREE
28 Re: Subbasin No. 2

CLAIMANT NAME:

Earl E. Gentry
& Valerie K. Gentry

COURT CLAIM NO. 00755

Source:

Big Creek

Use:

Irrigation of 142 acres and stock water

Period of Use:

May 1 to September 1 for irrigation, continuous for stock water

Quantity:

2.84 cubic feet per second, 681.6 acre-feet per year for irrigation, 0.03 cubic foot per second, 1 acre-foot per year for stock water

Priority Date:

June 30, 1887

Point of Diversion:

1100 feet north and 750 feet east from the south quarter corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29, T. 20 N., R. 14 E.W.M.

Place of Use:

That part of the W $\frac{1}{2}$ E $\frac{1}{2}$ Section 28 lying north of the Kittitas Reclamation District Canal, the NE $\frac{1}{4}$ NW $\frac{1}{4}$, except the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28, ALL within T. 20 N., R. 14 E.W.M.

Limitations of Use:

When there is a surplus of water in the creek and all of the rights to the creek are being fully satisfied, up to 5.68 cubic feet per second can be diverted under this right.

REPORT OF REFEREE

Re: Subbasin No. 2

CLAIMANT NAME:

David L. Lund
& Marilyn E. Lund

COURT CLAIM NO. 00456

Source:

Big Creek

Use:

Irrigation of 8 acres

Period of Use:

May 1 to September 1

Quantity:

0.16 cubic foot per second, 38.4 acre-feet per year

Priority Date:

June 30, 1887

Point of Diversion:

1100 feet north and 750 feet east from the south quarter corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 20 N., R. 14 E.W.M.

Place of Use:

Those portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 28, T. 20 N., R. 14 E.W.M. lying north of the Kittitas Reclamation District Canal and southeast of the private road connecting the Kittitas Reclamation District bridge crossing with the Nelson Siding Road.

REPORT OF REFEREE

Re: Subbasin No. 2

CLAIMANT NAME: Lee L. Lund COURT CLAIM NO. 00353
& Jane E. Lund

Source: Big Creek

Use: Irrigation of 80 acres and stock water

Period of Use: May 1 to September 1 for irrigation, continuous for stock water

Quantity: 1.6 cubic feet per second, 384 acre-feet per year for irrigation; 0.25 cubic foot per second, 2 acre-feet per year for stock water

Priority Date: June 30, 1887

Point of Diversion: 1100 feet north and 750 feet east from the south quarter corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 20 N., R. 14 E.W.M.

Place of Use: Those portions of the S $\frac{1}{2}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 28, T. 20 N., R. 14 E.W.M. lying north of the Kittitas Reclamation District Canal; EXCEPT the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and EXCEPT those portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ lying southeast of the private road connecting the canal bridge crossing and the Nelson Siding Road.

REPORT OF REFEREE
Re: Subbasin No. 2

CLAIMANT NAME: **Ranch Properties, Inc.** COURT CLAIM NO. 00339
Source: Big Creek
Use: Irrigation of 24 acres
Period of Use: May 1 to September 1
Quantity: 0.48 cubic foot per second, 115.2 acre-feet per year
Priority Date: **June 30, 1887**
Point of Diversion: 1100 feet north and 750 feet east from the south quarter corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 20 N., R. 14 E.W.M.
Place of Use: The NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, lying south of the Kittitas Reclamation District Canal, AND the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, ALL within T. 20 N., R. 14 E.W.M.

CLAIMANT NAME: **C. Frederick Darling** COURT CLAIM NO. 00176
Source: Big Creek
Use: Irrigation of 2 acres
Period of Use: May 1 to September 1
Quantity: 0.04 cubic foot per second, 9.6 acre-feet per year
Priority Date: **June 30, 1889**
Point of Diversion: 1150 feet south and 800 feet east from the center of Section 29, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 20 N., R. 14 E.W.M.
Place of Use: The N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 20 N., R. 14 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 2

CLAIMANT NAME: Earl E. Gentry COURT CLAIM NO. 00756
& Valerie K. Gentry
Ray Johnson
Gerald J. Griffith

Source: Big Creek

Use: Irrigation of 17 acres

Period of Use: May 1 to September 1

Quantity: 0.34 cubic foot per second, 81.60 acre-feet per year

Priority Date: June 30, 1889

Point of Diversion: 1100 feet north and 750 feet east from the south quarter corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29, T. 20 N., R. 14 E.W.M.

Place of Use: That part of the S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 29, T. 20 N., R. 14 E.W.M. lying south of the Kittitas Reclamation District Canal and easterly of Big Creek, EXCEPT the east 400 feet thereof.

Limitations of Use: When there is a surplus of water in the creek and all existing rights are being satisfied, up to 0.68 cubic foot per second may be diverted.

CLAIMANT NAME: The Mountaineers, Inc. COURT CLAIM NO. 01714

Source: Tombstone Creek

Use: Continuous community domestic supply for a lodge.

Period of Use: Continuous

Quantity: 0.04 cubic foot per second, 2 acre-feet per year

Priority Date: June 30, 1889

Point of Diversion: 70 feet north and 700 feet west from the southeast corner of Section 27, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T. 21 N., R. 12 E.W.M.

Place of Use: That part of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T. 21 N., R. 12 E.W.M. lying south of the abandoned Burlington Northern Railroad Stampede Tunnel route.

REPORT OF REFEREE
Re: Subbasin No. 2

1 CLAIMANT NAME: Carl B. Benson, et al. COURT CLAIM NO. 00714
2 Source: Fowler Creek
3 Use: Irrigation of 10 acres
4 Period of Use: April 15 to September 30
5 Quantity: 0.20 cubic foot per second (plus 1.3 cubic feet per second
6 for conveyance), 30 acre-feet per year for irrigation
7 Priority Date: October 9, 1893
8 Point of Diversion: 375 feet south and 1400 feet east from the northwest
9 corner of Section 2, being within Government Lot 4,
10 Section 2, T. 19 N., R. 14 E.W.M.
11 Place of Use: The north 400 feet of Government Lots 2 and 3 Section 2,
T. 19 N., R. 14 E.W.M.; EXCEPT the west 700 feet of
Government Lot 3.

12 CLAIMANT NAME: Charles K. Parsons COURT CLAIM NO. 01465
13 Source: Little Creek
14 Use: Irrigation of 7 acres and stock water.
15 Period of Use: April 15 to September 30
16 Quantity: 0.17 cubic foot per second, 33.6 acre-feet per year for
17 irrigation; 0.01 cubic foot per second, 1 acre-foot per
year for stock water
18 Priority Date: June 30, 1895
19 Point of Diversion: 1100 feet south and 900 feet west from the east quarter
20 corner of Section 28, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28,
T. 20 N., R. 14 E.W.M.
21 Place of Use: The east 425 feet of that part of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 28,
22 T. 20 N., R. 14 E.W.M. lying southerly of the Nelson
Siding Road.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 2
29

1 CLAIMANT NAME: **Little Creek, et al.** COURT CLAIM NO. 01465
2 **Kevin O'Brien**
3 Source: Little Creek
4 Use: Irrigation of 10 acres and stock water
5 Period of Use: April 15 to September 30
6 Quantity: 0.20 cubic foot per second, 48 acre-feet per year for
7 irrigation; 0.01 cubic foot per second, 1 acre-foot per
8 year for stock water
9 Priority Date: **June 30, 1895**
10 Point of Diversion: 1100 feet south and 900 feet west from the east quarter
11 corner of Section 28, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28,
12 T. 20 N., R. 14 E.W.M.
13 Place of Use: The west 600 feet of that part of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 28,
14 T. 20 N., R. 14 E.W.M. lying northerly of the Nelson
15 Siding Road.

16 CLAIMANT NAME: **Jacqueline J. Evett Crume** COURT CLAIM NO. 00384
17 Source: Two unnamed streams
18 Use: Irrigation of 46 acres and stock water
19 Period of Use: April 15 to September 30
20 Quantity: 0.92 cubic foot per second, 92 acre-feet per year for
21 irrigation; 0.01 cubic foot per second, 1 acre-foot per
22 year for stock water
23 Priority Date: **June 30, 1902**
24 Point of Diversion: #1: 600 feet north and 1200 feet west from the center of
25 Section 19;
26 #2: 300 feet north and 50 feet west from the center of
27 Section 19, ALL within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 19, T. 20 N.,
28 R. 14 E.W.M.
29 Place of Use: Government Lot 2 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T. 20 N.,
R. 14 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 2

CLAIMANT NAME:

Boise Cascade Corporation

COURT CLAIM NO. 02206
(A)03119

Source:

- 1) Unnamed stream (A-98)
- 2) Price Creek (A-99)
- 3) Unnamed stream (A-101)
- 4) Unnamed spring (A-103)
- 5) Unnamed stream (A-118)
- 6) Unnamed spring (A-119)
- 7) Unnamed stream (A-97)
- 8) Yakima River (A-104)
- 9) Unnamed stream (A-107)
- 10) Unnamed stream (DNR)
- 11) Unnamed stream (A-113)
- 12) Unnamed stream (DNR)
- 13) Unnamed stream (DNR)

Use:

Timber harvesting

Period of Use:

Continuously

Quantity:

0.58 cubic foot per second, 8 acre-feet per year

Priority Date:

June 30, 1903

Point of Diversion:

- 1) 980 feet south and 1955 feet east of the northwest corner of Section 3, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T. 21 N., R. 12 E.W.M.
- 2) 100 feet north and 590 feet west of the south quarter corner of Section 3, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T. 21 N., R. 12 E.W.M.
- 3) 500 feet south and 600 feet east of the north quarter corner of Section 11, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 21 N., R. 12 E.W.M.
- 4) 650 feet north and 320 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. 12 E.W.M.
- 5) 460 feet south and 780 feet west of the northeast corner of Section 29, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 21 N., R. 13 E.W.M.
- 6) 860 feet south and 100 feet east of the north quarter corner of Section 29, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 21 N., R. 13 E.W.M.
- 7) 780 feet north and 600 feet west of the east quarter corner of Section 1, being within Government Lot 5 of Section 1, T. 20 N., R. 12 E.W.M.
- 8) 25 feet north and 350 feet east of the southwest corner of Section 4, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 20 N., R. 13 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 2

- 9) 980 feet south and 740 feet west of the center of Section 6 being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T. 20 N., R. 13 E.W.M.
- 10) 950 feet north and 1050 feet west of the east quarter corner of Section 8, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T. 20 N., R. 13 E.W.M.
- 11) 200 feet north and 1300 feet west of the east quarter corner of Section 18, being within the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 18, T. 20 N., R. 13 E.W.M.
- 12) 10 feet south and 800 feet east of the northwest corner of Section 28, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 20 N., R. 13 E.W.M.
- 13) 300 feet north and 10 feet east of the west quarter corner of Section 28, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 20 N., R. 13 E.W.M.

Place of Use:

- 1) NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T. 21 N., R. 12 E.W.M.
- 2) SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T. 21 N., R. 12 E.W.M.
- 3) NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 21 N., R. 12 E.W.M.
- 4) SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N., R. 12 E.W.M.
- 5) NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 21 N., R. 13 E.W.M.
- 6) NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 21 N., R. 13 E.W.M.
- 7) Government Lot 5, Section 1, T. 20 N., R. 12 E.W.M.
- 8) SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 20 N., R. 13 E.W.M.
- 9) NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T. 20 N., R. 13 E.W.M.
- 10) SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T. 20 N., R. 13 E.W.M.
- 11) S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 18, T. 20 N., R. 13 E.W.M.
- 12) NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 20 N., R. 13 E.W.M.
- 13) SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 20 N., R. 13 E.W.M.

Limitations of Use:

8 acre-feet is the maximum annual quantity that can be withdrawn from any combination of the 13 authorized sources.

REPORT OF REFEREE
Re: Subbasin No. 2

1 CLAIMANT NAME: Estate of Michael Burchak COURT CLAIM NO. 00888
2 & Marie Burchak
3 Dennis Burchak
4 & Diana Burchak
5 Source: Fowler Creek
6 Use: Irrigation of 10 acres and stock water.
7 Period of Use: April 15 to September 30
8 Quantity: 0.21 cubic foot per second, 40 acre-feet per year for
9 irrigation; 0.01 cubic foot per second, 0.50 acre-feet per
10 year for stock water
11 Priority Date: July 31, 1903
12 Point of Diversion: 800 feet south and 300 feet east from the northwest corner
13 of Section 2, being within Government Lot 4, Section 2,
14 T. 19 N., R. 14 E.W.M.
15 Place of Use: The north 800 feet of the west 2200 feet of Government
16 Lots 3 and 4, Section 2, T. 19 N., R. 14 E.W.M., EXCEPT,
17 that portion lying northerly of the county road.

18 CLAIMANT NAME: Estate of Michael Burchak COURT CLAIM NO. 00889
19 & Marie Burchak
20 Dennis Burchak
21 & Diana Burchak
22 Source: An unnamed spring
23 Use: Single domestic supply.
24 Period of Use: Continuous
25 Quantity: 0.02 cubic foot per second, 2 acre-feet per year
26 Priority Date: July 31, 1903
27 Point of Diversion: 350 feet south and 350 feet east from the northwest corner
28 of Section 2, being within Government Lot 4, Section 2,
29 T. 19 N., R. 14 E.W.M.
30 Place of Use: The E $\frac{1}{2}$ E $\frac{1}{2}$ N $\frac{1}{2}$ of Government Lot 4 Section 2, T. 19 N.,
31 R. 14 E.W.M., EXCEPT, that portion lying north of the
32 county road.

33 REPORT OF REFEREE
34 Re: Subbasin No. 2

1 CLAIMANT NAME: Emil Pasco COURT CLAIM NO. 02223
2 Source: An unnamed spring
3 Use: Irrigation of 49 acres and stock water
4 Period of Use: April 15 to September 30
5 Quantity: 0.98 cubic foot per second, 98 acre-feet per year for
6 irrigation; 0.01 cubic foot per second, 1 acre-foot per
7 year for stock water
8 Priority Date: July 31, 1903
9 Point of Diversion: 800 feet north and 100 feet west from the southeast corner
10 of Section 2, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2,
11 T. 19 N., R. 14 E.W.M.
12 Place of Use: The S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1, T. 19 N., R. 14 E.W.M.

12 CLAIMANT NAME: Warren G. Bunger COURT CLAIM NO. 01302
& Sharon I. Bunger (A)05132
13 Source: Fowler Creek
14 Use: Irrigation of 3 acres
15 Period of Use: April 15 to September 30
16 Quantity: 0.06 cubic foot per second, 5.7 acre-feet per year
17 Priority Date: July 31, 1903
18 Point of Diversion: 1110 feet south and 1170 feet east from the west quarter
19 corner of Section 2, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2,
20 T. 19 N., R. 14 E.W.M.
21 Place of Use: That portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2, T. 19 N.,
22 R. 14 E.W.M. described as follows: Beginning at a point
23 1,111 feet north of the southeast corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
24 said section; thence west 522 feet; thence north 417.5
25 feet; thence east 522 feet to the east boundary line of
26 said W $\frac{1}{2}$ SW $\frac{1}{4}$ of said section; thence south along the east
27 boundary line 417.5 feet to the point of beginning.

27 REPORT OF REFEREE
28 Re: Subbasin No. 2
29

1 CLAIMANT NAME: Whitaker Land Company COURT CLAIM NO. 00619
2 Source: An unnamed spring
3 Use: Single domestic supply
4 Period of Use: Continuous
5 Quantity: 0.02 cubic foot per second, 1 acre-foot per year
6 Priority Date: July 31, 1903
7 Point of Diversion: 900 feet north and 900 feet west from the southeast corner
8 of Section 3, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3,
9 T. 19 N., R. 14 E.W.M.
10 Place of Use: The S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T. 19 N., R. 14 E.W.M.

11 CLAIMANT NAME: Whitaker Land Company COURT CLAIM NO. 00619
12 Source: An unnamed spring area and stream
13 Use: Irrigation of 30 acres and stock water.
14 Period of Use: April 15 to September 30
15 Quantity: 0.45 cubic foot per second, 120 acre-feet per year for
16 irrigation; 0.01 cubic foot per second, 1 acre-foot per
17 year for stock water
18 Priority Date: July 31, 1903
19 Point of Diversion: 900 feet south and 1200 feet west from the east quarter
20 corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3,
21 T. 19 N., R. 14 E.W.M.
22 Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, and the west 700 feet of the NW $\frac{1}{4}$ SW $\frac{1}{4}$
23 Section 2; ALL being within T. 19 N., R. 14 E.W.M.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 2
29

1 CLAIMANT NAME: Church of Jesus Christ L.D.S. COURT CLAIM NO. 04355
2 Source: Big Creek and two unnamed ponds
3 Use: Irrigation of 85 acres and stock water
4 Period of Use: May 1 to September 1 for irrigation; continuous for stock
5 water
6 Quantity: 1.7 cubic feet per second, 408 acre-feet per year for
7 irrigation; 0.02 cubic foot per second, 1 acre-foot per
8 year for stock water
9 Priority Date: June 30, 1906
10 Point of Diversion: 1. 150 feet north and 500 feet west from the center of
11 Section 21, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21,
12 T. 20 N., R. 14 E.W.M.
13 2. 200 feet south and 700 feet west of the east quarter
14 corner of Section 21, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
15 21, T. 20 N., R. 14 E.W.M.
16 3. 100 feet north and 1700 feet west of the east quarter
17 corner of Section 21, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section
18 21, T. 20 N., R. 14 E.W.M.
19 Place of Use: That part of Section 21, T. 20 N., R. 14 E.W.M. lying
20 northeasterly of Interstate Highway 90, south of the
21 Yakima River and east of Big Creek, EXCEPT the east 650
22 feet thereof.
23 Limitations of Use: The use of the spring-fed ponds is limited to periods when
24 the same quantity could be diverted from Big Creek.
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REPORT OF REFEREE
Re: Subbasin No. 2

1 CLAIMANT NAME: **Gerald L. Monahan** COURT CLAIM NO. 02186
2 & **Marie C. Monahan**
3 Source: An unnamed spring
4 Use: Single domestic supply
5 Period of Use: Continuous
6 Quantity: 0.01 cubic foot per second, 1 acre-foot per year
7 Priority Date: **August 1, 1912**
8 Point of Diversion: 1000 feet south and 600 feet east from the north quarter
9 corner of Section 30, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 30,
10 T. 20 N., R. 14 E.W.M.
11 Place of Use: The E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 20 N., R. 14 E.W.M.

11 CLAIMANT NAME: **Robert E. Monahan** COURT CLAIM NO. 01534
12 & **Adele F. Monahan**
13 **Gerald L. Monahan**
14 & **Marie C. Monahan**
15 Source: An unnamed spring and resulting stream.
16 Use: Community domestic supply of 32 services, including
17 landscape irrigation, and stock water
18 Period of Use: Continuous
19 Quantity: 0.02 cubic foot per second, 14 acre-feet per year
20 Priority Date: **June 30, 1916**
21 Point of Diversion: 900 feet north and 1200 feet west from the east quarter
22 corner of Section 8, being within SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8,
23 T. 20 N., R. 13 E.W.M.
24 Place of Use: The NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T. 20 N., R. 13 E.W.M. EXCEPT the
25 west 400 feet thereof; AND the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 9,
26 EXCEPT the west 300 feet thereof.

27 REPORT OF REFEREE
28 Re: Subbasin No. 2

CLAIMANT NAME: **Charles S. Malcomson** Court Claim No. 00479

Source: An unnamed spring

Use: Single domestic supply

Period of Use: Continuous

Quantity: 0.01 cubic foot per second, 0.50 acre foot per year

Priority Date: **July 22, 1933**

Point of Diversion: 500 feet south and 400 feet east from the north quarter corner of Section 26, being within NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 26, T. 22 N., R. 11 E.W.M.

Place of Use: Lot 12 of the unrecorded plat of Rocky Run Summer Homes within Government Lot 1, Section 26, T. 22 N., R. 11 E.W.M.

CLAIMANT NAME: **Leon Carlson** COURT CLAIM NO. 01151
Clear Water Builders & Supply

Source: Tucker Creek

Use: Irrigation of 10 acres

Period of Use: April 15 to September 30

Quantity: 0.30 cubic foot per second, 20 acre-feet per year

Priority Date: **August 25, 1933**

Point of Diversion: 240 feet north and 60 feet west of the south quarter corner of Section 13, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T. 20 N., R. 13 E.W.M.

Place of Use: That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 20 N., R. 13 E.W.M. lying south of the railroad tracks.

REPORT OF REFEREE
Re: Subbasin No. 2

1 CLAIMANT NAME: WA State Department of Wildlife Court Claim No. 02109
2
3 Source: An unnamed stream
4 Use: Nonconsumptive fish propagation
5 Period of Use: Continuous
6 Quantity: 1.94 cubic feet per second
7 Priority Date: October 11, 1941
8 Point of Diversion: 500 feet south and 650 feet west from the east quarter
9 corner of Section 21, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 21,
10 T. 20 N., R. 14 E.W.M.
11 Place of Use: That part of the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 21, T. 20 N.,
12 R. 14 E.W.M. lying north of Interstate 90 and the
13 associated frontage road.

12 CLAIMANT NAME: Whitaker Land Company Court Claim No. 00619
13 Source: Unnamed spring area and stream
14 Use: Non-Consumptive pond maintenance for wildlife habitat
15 Period of Use: Continuous
16 Priority Date: March 18, 1955
17 Point of Diversion: 900 feet south and 1200 feet west from the east quarter
18 corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3,
19 T. 19 N., R. 14 E.W.M.
20 Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T. 19 N., R. 14 E.W.M.
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28 REPORT OF REFEREE
29 Re: Subbasin No. 2

1 CLAIMANT NAME: South First Kachess Summer Homes Court Claim No. 0302
2 Source: Thetis Creek
3 Use: Group domestic supply for six recreational homes
4 Period of Use: Continuous
5 Priority Date: May 19, 1958
6 Point of Diversion: 500 feet north and 200 feet west from the southeast corner
7 of Section 31, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31,
8 T. 22 N., R. 13 E.W.M.
9 Place of Use: That portion of Government Lot 2, Section 5, T. 21 N.,
10 R. 13 E.W.M. described as follows: Commencing at the
11 northwest corner of said section; thence south 375 feet,
12 more or less, to the point of beginning; thence south 550
feet, more or less; thence northeasterly 690 feet, more or
less, along the highwater line of Lake Kachess; thence N
75° W 263 feet, more or less, to the point of beginning.

13 CLAIMANT: Roaring Creek Property Owners Assn. Court Claim No. 00801
14 Source: Roaring Creek
15 Use: Community domestic supply for 62 lots
16 Period of Use: Continuous
17 Quantity: 0.065 cubic foot per second, 10 acre-feet per year
18 Priority Date: February 17, 1969
19 Point of Diversion: 435 feet south and 1225 feet west from the north quarter
20 corner of Section 11, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 11, T. 21 N., R. 11 E.W.M.
21 Place of Use: The NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 21 N., R. 11 E.W.M.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 2
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1 CLAIMANT: **Camp Koinonia, Oregon-WA Dist. Court Claim No. 02162**
2 **Church of the Brethren**
3 Source: An unnamed spring
4 Use: Nonconsumptive recreational use and fire suppression
5 Period of Use: Continuous for recreational use and as needed for fire
6 suppression
7 Quantity: 0.01 cubic foot per second
8 Priority Date: **July 6, 1973**
9 Point of Diversin: 800 feet south and 200 feet west from the north quarter
10 corner of Section 34, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
11 Section 34, T. 20 N., R. 14 E.W.M.
12 Place of Use: The SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34,
T. 20 N., R. 14 E.W.M.

12 CLAIMANT NAME: **Ski Tur Valley Maintenance Co. Court Claim No. 2240**
13 Source: An unnamed spring
14 Use: Community domestic supply for 101 recreational services
15 Period of Use: Continuous
16 Quantity: 0.06 cubic foot per second, 43.5 acre-feet per year
17 Priority Date: **December 17, 1973**
18 Point of Diversion: 1000 feet south and 350 feet east from the center of
19 Section 11, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11,
T. 22 N., R. 11 E.W.M.
20 Place of Use: The Plat of Ski Tur Valley, Vikingdal Division, in
21 Section 11, T. 22 N., R. 11 E.W.M.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 2
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4. All prior claims to rights for surface water from Subbasin No. 2, including those claims filed under the provisions of Chapter 90.14 RCW, are denied, unless expressly provided for herein. The "Water Rights Claims Registry" directed by RCW 90.14.111 should be supplemented with appropriate notations to the records of those claims specifically identified in the "Water Right Claims" section of Plaintiff's Exhibits No. SE-2 and SE-3.

5. The following Certificates of Water Right, issued by the Department of Ecology or its predecessor agencies of the State of Washington, will be made null and void:

Certificates of Surface Water Right

00342	01915	10848
00508	01936	11712
00693	06183	S3-00358C
00789	07018	S4-01297C
01040	07671	S3-21347C
01291	07678	S3-22384C
01421	09967	S4-23225C

01474

02424 and Certificate of Change recorded in Volume 1, Page 48
01050 and Certificate of Change recorded in Volume 1, Page 232
07396 and Certificate of Change recorded in Volume 1-4, Page 204
Certificates of Change recorded in Volume 1, Page 80 and Page 136

Big Creek Adjudicated Certificates

240 and Certificate of Change recorded in Volume 1, Page 138
241 and Certificate of Change recorded in Volume 2, Page 849
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244 and Certificate of Change recorded in Volume 1, Page 51 and Volume 2, Page 848
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247 and Certificates of Change Recorded in Volume 1, Page 25 and Page 41-A
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REPORT OF REFEREE
Re: Subbasin No. 2

1 Surface Water Certificates Issued to Major Claimants

2 The following surface water certificates have issued to the United States, a
3 Major Claimant in this proceedings, whose water rights will be addressed
4 through the Major Claimant Pathway identified in Pretrial Order No. 8 issued
5 by this Court. The disposition of these certificates will be addressed
6 through that pathway.

7 00967 01808
8 01367 08810
9 01807 08811

10 04498 and Certificate of Change recorded in Volume 1-3, Page 3

11 In conformance with RCW 90.03.240, Certificates of Adjudicated Water Right
12 will be issued to those parties for whom rights were confirmed through this
13 proceeding.

14 IX. CONCLUSIONS OF LAW

15 Confirmation of Rights

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

21 Duty of Water

22 Unless otherwise specified, the diversion of water from sources of water
23 contained within Subbasin No. 2 for irrigation purposes shall be limited, at a
24 maximum, to 1.0 cubic-foot per second for each 50 acres irrigated, not to exceed
25 during each irrigation season a maximum of 5 acre-feet per acre.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 2

1 Irrigation Season

2 Unless otherwise identified within a specific water right, the irrigation
3 season shall be defined as that period from April 15 to and including October 15 of
4 each year. The Referee recognizes that extraordinary circumstances may dictate the
5 application of water prior to or subsequent to the defined irrigation season, and,
6 in that event, express approval from the Department of Ecology must be obtained
7 annually prior to such deviation.

8
9 Certificates of Adjudicated Water Right

10 Upon entry of the final decree in this action, and upon payment of the
11 statutory fee prescribed in RCW 90.03.470(11), together with the appropriate county
12 auditor recording fee, the Director of the Department of Ecology is required to
13 issue Certificates of Adjudicated Water Right in accordance with the provisions of
14 RCW 90.03.240.

15
16 Administration of Water

17 The use of Subbasin No. 2 waters should be regulated by the Department of
18 Ecology on the basis of Certificates of Adjudicated Water Rights issued as a result
19 of this proceeding, and on the basis of any permits and certificates that may have
20 issued outside of this proceeding under appropriation procedures of Chapter 90.03
21 RCW. When available water in Subbasin No. 2 is insufficient to supply all rights,
22 and upon a finding that regulation is required, the Department may regulate junior
23 water rights in the interest of satisfying senior water rights.

24 Whenever regulation of junior water rights is necessary, the Department may
25 enter at reasonable times upon the lands of any and all parties having rights and
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27 REPORT OF REFEREE
28 Re: Subbasin No. 2

1 shall regulate diversion facilities so as to apportion the waters as herein
2 adjudicated.

3 Confirmation of a water right does not guarantee nor imply that right-of-way
4 or trespass rights exist upon private or public lands for the diversion and/or
5 distribution system of that water.

6 As provided by Chapter 90.03.360 RCW and Chapter 508-64 WAC, any person
7 authorized to use surface water from Subbasin No. 2 may be required to provide and
8 maintain, at the water user's expense, proper diversion works and/or measuring
9 devices. Design, installation, maintenance, and operation of such works and
10 measuring devices will be as prescribed by the Department.

11 SIGNED and DATED at Yakima
12 this 20th day of June, 1994.

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15 JOHN E. ACORD, Referee

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27 REPORT OF REFEREE
28 Re: Subbasin No. 2
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