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# YAKIMA RIVER BASIN

## WATER RIGHTS ADJUDICATION

9116131

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FN

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

### REPORT OF REFEREE

Re: Subbasin No. 12  
(Shushuskin Canyon)

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

DEPT. OF ECOLOGY  
EX OFFICIO CLERK OF  
SUPERIOR COURT  
YAKIMA COUNTY  
WASHINGTON  
30 APR 30 AM 10 45

ISSUED

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

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

No. 77-2-01484-5

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

REPORT OF REFEREE

Re: Subbasin No. 12  
(Shushuskin Canyon)

11                                   Plaintiff, )

12                                   v. )

13 JAMES J. ACQUAVELLA, et al., )

14                                   Defendants. )  
15 \_\_\_\_\_ )

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

19                                   I. BACKGROUND

20                   This Report concerns the determination of a portion of the  
21 surface water rights of the Yakima River drainage basin,  
22 specifically those rights located within Subbasin No. 12, which  
23 is the Shushuskin Canyon drainage basin. The criteria consisting  
24 of applicable law and bases for water right determinations used  
25 by the Referee in the evaluation of claims in this subbasin can  
26 be found in the Report of the Referee to the Court, Preface to  
27 Subbasin and Major Category Reports, Volume 2, dated May 18,  
1988.

28                   Evidentiary hearings were conducted by the Referee on  
29 October 31, and November 1 and 2, 1988.

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1                                    II. FIELD INVESTIGATIONS

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

10           To gain a general familiarity with the drainage basin, the  
11 Referee made a brief reconnaissance tour of the area immediately  
12 prior to the hearing.

13  
14                                    III. WATER DUTY

15           The volumes of water required for the purposes of domestic  
16 supply and irrigation were set forth during testimony by an  
17 expert witness for the Plaintiff. The Referee proposes to rely  
18 upon such expert testimony, and the volume of water allocated to  
19 each irrigation right confirmed will be calculated on the basis  
20 of the number of acres associated with the proposed right. In  
21 the absence of specific information to the contrary, the Referee  
22 proposes to confirm irrigation rights to satisfy cropping demand  
23 on an annual basis as a maximum allowance. This is quantified  
24 under Paragraph B following. The use of water under all  
25 irrigation rights is, however, limited to the amount of water  
26 that can be beneficially applied to that number of acres

identified in the water right. The number of irrigated acres cannot be increased in the future without obtaining an additional water right.

The maximum duty of water for the various uses in Subbasin No. 12 will be calculated by the Referee, in the absence of definitive testimony or other evidence, according to the following formulae:

A. Domestic supply (with lawn and garden up to 1/2 acre) .....0.02 cfs; 2 acre-feet per year

Stock water .....0.01 cfs; 1 acre-foot per year (diversion)

B. Irrigation Water -- In order not to be unreasonably restrictive to irrigation cropping patterns, the Referee will use an annual water duty range of 3.1 to 5.2 acre-feet per acre for all irrigation confirmations, depending upon the type of irrigation, the crops irrigated, and the location of the irrigated lands within the subbasin, as follows:

1. Water requirements for lands located WEST of the Fogarty Ditch which are RILL irrigated.

Crop	Total Crop Need (on farm use) Acre-feet per Acre
Alfalfa	4.3
Pasture	5.1

2. Water requirements for lands located WEST of the Fogarty Ditch which are SPRINKLER irrigated.

Crop	Total Crop Need (on farm use) Acre-feet per Acre
Alfalfa	3.1
Pasture	3.6

3. Water requirements for lands located EAST of Fogarty Ditch which are RILL irrigated.

Total Crop Need (on farm use)	
Crop	Acre-feet per Acre
Alfalfa	4.7
Pasture	5.2

4. Water requirements for lands located EAST of the Fogarty Ditch which are SPRINKLER irrigated.

Total Crop Need (on farm use)	
Crop	Acre-feet per Acre
Alfalfa	3.3
Pasture	3.7

These water duties are also approximately commensurate with the duties utilized by the Department of Ecology in its quantity allocations in this geographic area under the water right permit system.

The maximum rate of diversion or withdrawal will be calculated on the basis of 1.0 to 2.0 cubic feet per second (449-898 gallons per minute) for each 50 acres of irrigation, depending upon location, but irrespective of the type of crop. Therefore, for each irrigated acre west of the Fogarty Ditch, the Referee calculates the maximum instantaneous rate of diversion to be 0.02 cubic foot per second (9 gallons per minute); for each irrigated acre east of the Fogarty Ditch, the calculated maximum is 0.04 cubic foot per second (18 gallons per minute). It is the opinion of the Referee that the aforementioned duties of water are reasonable maximum application rates for the soil and topographic conditions in

1 Subbasin No. 12. These volumes and rates of water application  
2 will be employed by the Referee when quantitative evidence of  
3 the rate and volume of a right was neither submitted nor made  
4 clear during testimony.

5 Testimony and Statements of Claim have demonstrated that  
6 the predominant period during which irrigation water is applied  
7 is from April 1 through October 31 of each year.

8  
9 IV. STIPULATIONS

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

- 13 1. All exhibits entered and all testimony taken at the  
14 hearing on claims held beginning October 31, 1988, may  
15 be utilized by any party in the proof of a claim or the  
16 contesting of a claim whenever relevant and material.
- 17 2. The description of lands set forth in the claims of the  
18 respective claimants is the correct description of the  
19 lands for which the water right is claimed. Such claim  
20 will constitute proof of the ownership thereof in the  
21 absence of a contest as to such title.
- 22 3. In relation to "nondiversionary" stock and wildlife  
23 watering use with regards to Subbasin No. 12: '
  - 24 a. Waters in natural watercourses in the subbasin shall  
25 be retained when naturally available, an amount not  
26 to exceed 0.25 cubic foot per second (cfs), for  
27 stock water uses in such watercourses as they flow  
across or are adjacent to lands, which are now used  
as pasture or range for livestock. Retention of  
such water shall be deemed senior (or first) in  
priority, regardless of other rights confirmed in  
this cause. Regulations of these watercourses by  
the plaintiff shall be consistent with such  
retention requirements.

- 1           b. Waters in natural watercourses in the subbasin shall  
2           be retained when naturally available, an amount not  
3           to exceed 0.25 cubic foot per second, (cfs), for  
4           wildlife watering uses in such watercourses as they  
5           flow across or are adjacent to lands, which are now  
6           used as pasture or range for wildlife. Retention of  
7           such water shall be deemed senior (or first) in  
8           priority, regardless of other rights confirmed in  
9           this cause. Regulations of these watercourses by  
10          the plaintiff shall be consistent with such  
11          retention requirements.
- 12          c. Waters in naturally occurring ponds and springs  
13          (with no surface connection to a stream) in the  
14          subbasin shall be retained for stock water uses,  
15          when such ponds and springs are located on or  
16          adjacent to lands which are now used as pasture or  
17          range for livestock. Said uses embody entitlements  
18          to a level in the water bodies sufficient to provide  
19          water for animals drinking directly therefrom while  
20          ranging on riparian lands, and with the same  
21          priority as provided in paragraph a. Regulation of  
22          the ponds and springs by the plaintiff shall be  
23          consistent with such retention requirements.
- 24          d. Waters in naturally occurring ponds and springs  
25          (with no surface connection to a stream) in the  
26          subbasin shall be retained for wildlife watering  
27          uses, when such ponds and springs are located on or  
28          adjacent to lands which are now used as pasture or  
29          range for wildlife. Said uses embody entitlements  
30          to a level in the water bodies sufficient to provide  
31          water for wildlife drinking directly therefrom while  
32          ranging on riparian lands, and with the same  
33          priority as provided in paragraph b. Regulation of  
34          the ponds and springs by the plaintiff shall be  
35          consistent with such retention requirements.
- 36          e. Nothing in this guideline mandates that any lands,  
37          associated with water rights or water retention as  
38          provided herein, shall be reserved for wildlife  
39          purposes."

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

## VII. SPECIAL ISSUES

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1 to divert water from the Yakima River. Neither the Department  
2 of Fisheries nor the Department of Wildlife is a claimant of a  
3 water right in this subbasin; however, appearances by these two  
4 agencies have been made in other subbasin hearings and the  
5 Department of Wildlife is a claimant of a water right not  
6 related to "bypass" flows in at least one of the other  
7 subbasins.

8 The posture of the Department of Fisheries and the  
9 Department of Wildlife was to urge the Referee to confirm  
10 rights to water for fish bypass flows, even though no claims to  
11 such rights were expressly made. The Referee was further  
12 encouraged to adopt a "fish bypass flow" water duty similar to  
13 the "conveyance loss" duty assigned to certain recommendations  
14 for confirmation of water rights in this and other subbasins.

15 Argument of the two Departments is based in part upon RCW  
16 75.020.040 which requires installation of fish screens on  
17 diversion headworks to prevent the fisheries resource from  
18 migrating into irrigation canals and ditches where such  
19 resource would be destroyed. Often, fish screens cannot be  
20 installed at the ditch headworks necessitating their  
21 installation some distance down the ditch or canal which  
22 further requires that an amount of water be continuously  
23 released back to the river from the ditch at a point located  
24 above the fish screen.

25 The Referee is not aware of any existing right to divert  
26 water for a fish bypass flow. RCW 75.20.040 and other portions

1 of Chapter 75.20 RCW, on their face, do not establish water  
2 rights or provide the base for establishing the same. (Indeed,  
3 as previously noted, the two Departments do not claim that  
4 rights exist.) <sup>1/</sup>

5 Counsel for the Departments suggested that the fish  
6 passage flow should be considered much in the same light as  
7 conveyance losses regarding irrigation diversions. Although  
8 there may be some similarities between the two in that all of  
9 the water diverted at the headgate is not applied to the crop  
10 lands in the case of irrigation, the historical origins of  
11 these "uses" are quite different. Conveyance loss usually is a  
12 volume of water initially diverted from the river and generally  
13 serves to support the actual volume of water put to beneficial  
14 use on the crop lands; indeed, reasonable conveyance loss is a  
15 part and parcel of the water right itself. Such losses  
16 generally have occurred since the date water was first  
17 transported in the particular ditch or other means of  
18 conveyance. Water used for fish bypass flows appears to be a  
19 recent development, having taken place since World War II, long  
20 after the 1932 or 1917 cut-off. There is no way a priority  
21

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22 <sup>1/</sup> It is noted that the establishment of water rights on  
23 "flows or levels" for the purpose of preservation and/or  
24 enhancement of a fisheries resource has been dealt with directly  
25 by the Legislature. See RCW 90.03.345. A water right  
26 adjudication is a process leading to the confirmation or  
extinguishing of claims to existing water rights; an adjudication  
cannot create new rights, which would be the case if "fish bypass  
flow" rights were confirmed.

1 date similar to that which may be confirmed to some irrigation  
2 diversions could be attached to an amount of water used to  
3 transport fish.

4 The Referee also notes that at no time have there been  
5 entered into the record any water rights for fish bypass flow  
6 established under the permit procedure identified in Chapter  
7 90.03 RCW. Furthermore, no registered water right claims filed  
8 pursuant to Chapter 90.14 RCW have been filed by the  
9 Departments of Fisheries or Wildlife or any other Claimant in  
10 this subbasin which relate to the diversion and use of water  
11 for fish passage facilities. If any rights for this purpose  
12 did exist, regardless of origin, such rights would have been  
13 extinguished through relinquishment as provided in RCW  
14 90.14.071. See Department of Ecology v. Adsit 103 Wn.2nd 698  
15 (1985).

16 Based upon the foregoing, the Referee cannot recommend  
17 that amounts of water related to fish bypass flows be confirmed  
18 to this Claimant or any other either by itself or in concert  
19 with another water right. As counsel for the Departments of  
20 Fisheries and Wildlife had indicated, the water used for the  
21 fish bypass flows is largely nonconsumptive and in all  
22 probability would not, under most of the usual circumstances,  
23 cause a deleterious impact upon existing water rights. In this  
24 light, it may be that new rights can be established under the  
25 water right permit system of Chapter 90.03 RCW.

1 VIII. TESTIMONY AND REFEREE'S ANALYSES

2 Plaintiff Testimony

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

5 The State introduced into evidence the following generic  
6 exhibits:

7	<u>NUMBER</u>	<u>DESCRIPTION</u>
8	SE-1	Map -- Subbasin No. 12
9	SE-2	Water Right Certificates, Permits, Claims, Federal Withdrawals, and Relinquishments Re: Subbasin No. 12

10 Additionally, oral testimony was given by Todd Kirk, Field  
11 Investigator, Ecology Adjudication Section.

12 Claimant Testimony

13 Twenty-two defendants filed Statements of Claim or Notices  
14 of Appearance. All claimants and their legal counsel, if so  
15 represented, are as follows:

16	Court			
17	Claim			
	<u>No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
18	0346,	Robert S., Jr. and	Hugh M. Spall	14, 38,
19	3618A	Louise Acheson	P.O. Box 831	45, 47
20		Route 6, Box 1635	Ellensburg, WA 98926	
21	1797	George Arthur		17, 36
22		Route 6, Box 1680		
23		Ellensburg, WA 98926		
24	1304	Dan H., Jr. and		17, 37,
25		Georgia Brunson		45
26		Route 6, Box 1700		
27		Ellensburg, WA 98926		

Court  
Claim

<u>No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
2300	Mal DeWitte P.O. Box 486 Ellensburg, WA 98926	Kenneth D. Beckley 701 North Pine P.O. Box 858 Ellensburg, WA 98926	19, 36
2299	William T. Dikeman Route 6, Box 1705 Ellensburg, WA 98926	Kenneth D. Beckley 701 North Pine P.O. Box 858 Ellensburg, WA 98926	19, 36
2274	Glenn Gregory Route 6, Box 1265 Ellensburg, WA 98926	Kenneth D. Beckley 701 North Pine P.O. Box 858 Ellensburg, WA 98926	20, 39, 45
1403	Pauline Gregory Route 6, Box 1260 Ellensburg, WA 98926		22, 36
2126	Marvin L. and Doris R. Harmon Route 6, Box 1685 Ellensburg, WA 98926		22, 36
1333	Jim E. and Janet J. Kennard 1022 1st Street Kirkland, WA 98033		23, 36, 46
1817	Tracy D. and Jeffrey Chris Merrick c/O Gerald Connolly, Trustee 8765 Battle Pt. Dr. NE Bainbridge Island, WA 98110	Richard T. Cole P.O. Box 499 Ellensburg, WA 98926	23, 36, 46, 47
1180	Anthony W., Jr. and Terry L. Mynar Route 6, Box 1665 Ellensburg, WA 98926	Hugh M. Spall P.O. Box 831 Ellensburg, WA 98926	24, 41
2360	P.M.B. Partnership Frank W. Payne, Nominee 30640 Pacific Hwy South Federal Way, WA 98003		25, 36

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Court  
Claim

<u>No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
0554	Arthur G. and Dorothy J. Powell Route 6, Box 1530 Ellensburg, WA 98926		27, 45, 46
1797	Gay and Val Raaum (See George Arthur)		17
0478	Richard and Jolanda M. Riegel Route 6, Box 1270 Ellensburg, WA 98926		28, 43, 44, 46
2284	Rebecca M. Smith Route 6, Box 1675 Ellensburg, WA 98926	Kenneth D. Beckley 701 North Pine P.O. Box 858 Ellensburg, WA 98926	29, 36
0187	Harold Edward and Theresa Ann Stroh Route 6, Box 1660 Ellensburg, WA 98926	Hugh M. Spall P.O. Box 831 Ellensburg, WA 98926	29, 42
1672	Burdette C. Thayer c/O Marie P. Thayer (Siltman), Agent Route 6, Box 1600 Ellensburg, WA 98926		31, 36
1673	Marie P. Thayer (Siltman) Route 6, Box 1600 Ellensburg, WA 98926	Michael E. Cooper P.O. Box 858 Ellensburg, WA 98926	33, 40, 46
2417	United States of America <sup>2/</sup>	Charles E. O'Connell Dept. of Justice Land & Natural Resources Division P.O. Box 44378 Washington, D.C. 20026	See foot- note 2

<sup>2/</sup> Claims to be addressed in the Major Claimant Pathway. See  
Pretrial Order No. 8, page 29

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Court  
Claim

<u>No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
0589	Washington State Dept. of Natural Resources Public Lands Building Olympia, WA 98504	Paul Silver Asst. Atty. General Public Lands Bldg. Mail Stop QW-21 Olympia, WA 98504	34, 46, 47
1054	Brent and Jeanette Whiteman Route 6, Box 1618 Ellensburg, WA 98926		35, 36, 46
2246	Clarence Wines 44 Darlene Drive Missoula, Montana 59801	Kenneth D. Beckley 701 North Pine P.O. Box 858 Ellensburg, WA 98926	35, 36 46

Specific elements of the proposed rights for each claimant are identified in the Findings of Fact commencing on page 36.

The remaining claims (consisting of those claims for which no recommendation for confirmance was made or claims to which exception was taken) were scheduled to be heard during the evidentiary trial which commenced on October 31, 1988. Based upon the testimony and evidence provided to the Referee, the analysis of all remaining claims is as follows:

COURT CLAIM NOS. 0346 & 3618A -- Robert S., Jr. and Louise Acheson

The Statements of Claim submitted to the Court by the Achesons assert rights to the use of waters from the Yakima River and from Sorenson Creek with a priority date of September 16, 1889. These Claimants were represented during the

1 Evidentiary Hearing by Hugh M. Spall, Attorney at Law. Mr.  
2 Acheson testified in support of these claims.

3 Mr. Spall also called Ron Peyton, Soil Conservationist  
4 with the U.S. Soil Conservation Service to testify in support  
5 of the claims of Robert Acheson, Jr., Anthony Mynar, Jr., and  
6 Harold Edward Stroh.

7 Based upon the evidence presented and testimony given, the  
8 Referee concludes that the total scope of the Acheson right  
9 comes from the Yakima River through Fogarty Ditch, and that  
10 Sorenson Creek is used only as a conduit for water diverted  
11 through the Fogarty Ditch. While Sorenson Creek appears to  
12 collect some seepage and waste water from neighboring lands to  
13 the north, nothing in the record demonstrates a right to those  
14 waters in terms of quantity or priority date.

15 Although the Referee believes that these Claimants have  
16 adequately demonstrated that a water right exists,  
17 quantification of that right in terms of amount of water  
18 presents a more difficult task.

19 According to Mr. Acheson's testimony, he irrigates about  
20 358 acres of pasture and hay. This figure is generally  
21 consistent with the testimony of Mr. Peyton and the State's  
22 Investigation Report. Mr. Peyton further testified that due to  
23 the soil type, crop, and method of irrigation used on the  
24 Acheson property, approximately ten acre-feet per irrigated  
25 acre would be needed on these lands in order to effectively  
26 grow these crops. This testimony was not refuted, and although



1 in excess of general standards, does not seem to be  
2 unreasonable. Testimony regarding the instantaneous rate of  
3 diversion needed to irrigate the Acheson lands was considerably  
4 more imprecise, however. Mr. Peyton estimated that 55 cubic  
5 feet per second could be diverted into the Fogarty Ditch  
6 intake; however, no measurements or estimates of actual use  
7 were made. Mr. Peyton did state that he believed that an "on  
8 farm" rate of 25 acre-feet per day during the peak use period  
9 during July would be needed to sustain crop irrigation. The  
10 Referee believes that in the absence of definitive testimony,  
11 application of the standard 0.04 cubic foot per second per  
12 acre, or 14.32 cubic feet per second should be sufficient to  
13 irrigate these lands. This amount would provide approximately  
14 28 acre-feet per day to satisfy peak demand periods. No  
15 transportation loss for Fogarty Ditch will be provided since  
16 testimony shows that this ditch gains, rather than loses water  
17 throughout its length.

18 Consequently, the Referee recommends confirmation of a  
19 water right with a September 16, 1889 priority date in the  
20 amount of 14.32 cubic feet per second; 3,580 acre-feet per year  
21 for the irrigation of 358 acres.

22 Although this Claimant has several different points at  
23 which water is diverted, only one diversion point relates to  
24 the basic water right. The other diversion points, such as the  
25 several pumping stations and flow into Sorenson Creek, can be  
26 simply classified as redistribution points in the Claimant's

1 irrigation system. Also, the Defendant's stock may continue to  
2 drink from a natural water source as recommended in the  
3 Plaintiff's Report to the Referee.  
4

5 COURT CLAIM NO. 1797 -- George Arthur

6 A Statement of Claim for this property was submitted by  
7 Gay and Val Raaum, who subsequently sold to George Arthur. Mr.  
8 Arthur testified in regard to this claim.

9 In his testimony, Mr. Arthur could offer no evidence  
10 regarding the use of water on this property any earlier than  
11 his acquired ownership in 1983. A previous owner, Dan  
12 Schoessler, in the Water Right Claims (Nos. 020339 and 096398)  
13 submitted under Chapter 90.14 RCW indicated a "first use date"  
14 of August 1968.

15 There is insufficient evidence in the record to indicate  
16 to the Referee that water was used prior to 1917 in the case of  
17 an appropriative right, or 1932 under the riparian doctrine.  
18 Accordingly, the Referee cannot recommend confirmation of a  
19 water right to this Claimant.  
20

21 COURT CLAIM NO. 1304 -- Dan H., Jr. and Georgia Brunson

22 The Statement of Claim provided to the Court by these  
23 Defendants refers to the use of waters from the Yakima River,  
24 McCarl Creek, and unnamed springs. Dan Brunson, Jr. testified  
25 in behalf of their claim.  
26

1 According to the testimony and evidence, water is diverted  
2 from two points, one on the Yakima River purported to have been  
3 built for the Dammon Mill Race (now known as the Fogarty  
4 Ditch), and the second at the confluence of McCarl Creek and  
5 the Fogarty Ditch. Water is pumped from a pumphouse on the  
6 ditch bank, through an underground mainline to a sprinkler  
7 system that irrigates about 58 acres. The sprinkler system has  
8 a maximum of 70 sprinkler heads that would discharge about 560  
9 gallons per minute, or about 1.25 cfs.

10 A smaller pump moves water from the Fogarty Ditch into a  
11 stock tank. In addition, livestock use water from ponds that  
12 apparently were excavated for gravel and appear to be  
13 hydraulically connected to the Yakima River.

14 Mr. Brunson testified that his irrigation season extended  
15 from May until October and that the crop was mostly hay. He  
16 believed the first use of water was prior to 1887, a fact  
17 confirmed by Glenn Gregory who testified that the Dammon Ditch  
18 was built about the same time that the railroad went into  
19 Ellensburg in 1886. Water Right Claim Registry Nos. 071358,  
20 071359 and 071360 were filed serving to preserve the claimed  
21 rights.

22 Based on the testimony and evidence, the Referee  
23 recommends confirmation of a water right with a priority date  
24 of June 30, 1886 in the amounts of 1.25 cubic feet per second;  
25 191 acre-feet per year for the irrigation of 58 acres; and 0.01  
26 cubic foot per second, 2 acre-feet per year for stockwater.

27 REPORT OF REFEREE  
Re: Subbasin No. 12

1     COURT CLAIM NO. 2300 -- Mal DeWitte

2             A Statement of Claim was filed on behalf of Mal DeWitte  
3     asserting an appropriative right to the use of waters from an  
4     unnamed spring for the purposes of irrigation and stockwater.  
5     Neither Mr. DeWitte nor his attorney appeared during the  
6     Evidentiary Hearing in support of this water right claim.  
7     Therefore, the Referee cannot recommend that a right be  
8     confirmed to this defendant.

9  
10    COURT CLAIM NO. 2299 -- William T. Dikeman

11            The Statement of Claim filed by Attorney Kenneth Beckley  
12    on behalf of William Dikeman asserts rights to the use of  
13    waters from (1) an unknown source, possibly waste water, and  
14    (2) the Yakima River, through Fogarty Ditch, and possibly waste  
15    water. Sharon Dikeman appeared pro se and gave testimony  
16    regarding this claim.

17            Mrs. Dikeman's testimony corroborated a comment in the  
18    State's Investigation Report to the effect that the Dikeman  
19    property east of the Fogarty Ditch can be irrigated by pumping  
20    from the Fogarty Ditch with a portable 5 B.H.P. pump or by  
21    using water which originates outside of Subbasin 12 (namely  
22    water from the West Side Irrigation Company). In fact, Mrs.  
23    Dikeman stated that West Side water provides 90 per cent of the  
24    water used on that property, while the Fogarty Ditch is used  
25    mainly for stockwater.

1 No evidence was presented to indicate any use of water for  
2 irrigation prior to the 1940's. Either a Certificate of  
3 Surface Water Right pertaining to the use of water claimed  
4 after 1917, or a Water Right Claim registered under Chapter  
5 90.14 RCW for water use prior to 1917 would be required to  
6 substantiate the water rights claimed by this Defendant. In  
7 the absence of both, the Referee must deny this claim for  
8 irrigation and diversionary stockwater use. However, the  
9 Referee would note that (1) irrigation rights may still be  
10 enjoyed by virtue of the Defendant's participation in the West  
11 Side Irrigation Company (holding 25 shares), and (2) stock may  
12 still be watered from customary natural sources located on and  
13 adjacent to the Claimant's property.

14  
15 COURT CLAIM NO. 2274 -- Glenn Gregory

16 A Statement of Claim asserting two pre-1890 rights to the  
17 use of water from two separate water sources (unnamed springs)  
18 was filed with the Court on behalf of Glenn Gregory who made an  
19 appearance to testify during the Evidentiary Hearing.

20 Mr. Gregory presented a chronology of water use on his  
21 property from the 1890's, when it was owned by the Colemans,  
22 through his family's acquisition of the land in 1909, up to the  
23 present time. This use was supplied by a spring that rises  
24 very close to the center of Section 15 and is piped through the  
25 Pauline Gregory property onto Mr. Gregory's property where it  
26 is used for stockwater (and the irrigation of one acre).

1 Although the 45 shares he owns of the West Side Irrigation  
2 Company entitle him to irrigate 90 acres of his property, Mr.  
3 Gregory testified that he also uses drainage water that comes  
4 into his ditch from above. At times, the drainage water has to  
5 be used because there is no way to control it, whereas they  
6 have total control over the West Side Canal. However, the  
7 drain water only supplements the irrigation of about 18 acres  
8 of the total 90 acres irrigated.

9 Based on the evidence and testimony presented, the Referee  
10 recommends confirmation of a water right with a priority date  
11 of June 30, 1890 in the amounts of 0.01 cubic foot per second;  
12 two acre-feet per year for stockwater diverted by pipeline from  
13 the spring. This right was preserved by the filing of Water  
14 Right Claim Registry No. 002241. Irrigation was not identified  
15 as a use in such claim, consequently no affirmative  
16 recommendation is made for that use. In this instance,  
17 irrigation of a small area is made through use of overflow  
18 water from the stock tank. Also, the Defendant's stock may  
19 continue to drink from a natural water source as recommended in  
20 the Plaintiff's Report to the Referee.

21 Notwithstanding the 45 shares of the West Side Irrigation  
22 Company that would provide water for the total acreage  
23 irrigated by Mr. Gregory, the Referee believes there is a  
24 historical use of drainage water with a priority date of June  
25 30, 1890, in the amounts of 0.36 cubic foot per second and 77  
26 acre-feet per year to serve the 18 acres of hay identified in

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1 the Plaintiff's Investigation Report. He would therefore  
2 confirm this as a supplemental right in the sense that it is  
3 not additive to the 90 acres of total irrigation. It should  
4 also be noted that rights to the waters of the West Side  
5 Irrigation Company will be considered during the Major Claimant  
6 portion of the adjudication proceedings.  
7

8 COURT CLAIM NO. 1403 -- Pauline Gregory

9 The Statement of Claim submitted to the Court by Pauline  
10 Gregory asserts a right to the use of water from an unnamed  
11 spring for stock watering with a priority date of September 9,  
12 1882.

13 Mrs. Gregory did not appear during the Evidentiary Hearing  
14 to testify in support of her claim. Therefore, the Referee  
15 cannot make an affirmative finding regarding this claim.  
16

17 COURT CLAIM NO. 2126 -- Marvin L. and Doris R. Harmon

18 Mr. Harmon filed a Statement of Claim with the Court  
19 expressing a right to use water from Virtue Creek or Slough  
20 based upon usage of that right since 1892 for irrigation and  
21 stockwater.

22 Neither of these Defendants made an appearance during the  
23 Evidentiary Hearing to present testimony in regard to this  
24 claim. Consequently, the Referee has no basis upon which to  
25 recommend confirmation of a water right as claimed.  
26

1     COURT CLAIM NO. 1333 -- Jim E. and Janet J. Kennard

2             The Kennard's Statement of Claim asserts two rights to the  
3     use of water in the Shushuskin Canyon subbasin: one from an  
4     unnamed creek for stockwater and the irrigation of 22 acres;  
5     the other from an unnamed spring for year around stockwater.  
6     Both allege a 1895 priority date.

7             Failure of the Kennards to appear and testify during the  
8     Evidentiary Hearing leaves the Referee no alternative but to  
9     recommend that any claimed diversionary rights be denied.  
10    However, the Defendant's stock may continue to drink from a  
11    natural source as recommended in the Plaintiff's Report to the  
12    Referee.

13  
14    COURT CLAIM NO. 1817 -- Tracy D. and Jeffrey Chris Merrick

15            The Statement of Claim filed with the Court by Gerald  
16    Connolly as Trustee for Tracy D. Merrick and Jeffrey Chris  
17    Merrick asserts rights to the use of water from an unnamed  
18    creek, runoff and waste water, a spring and two unnamed ponds  
19    for stockwater and irrigation of 40 acres.

20            No one appeared during the Evidentiary Hearing to present  
21    testimony on behalf of Mr. Connolly or the Merricks to  
22    substantiate the alleged rights. Consequently, the Referee  
23    cannot recommend that any diversionary rights exist. However,  
24    the Defendant's stock may continue to drink from a natural  
25    water source as recommended in the Plaintiff's Report to the  
26    Referee.

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1 COURT CLAIM NO. 1180 -- Anthony W., Jr. and Terry L. Mynar

2 Anthony W. Mynar, Jr. submitted to the Court a Statement  
3 of Claim for the rights to use water from the Yakima River and  
4 from an unnamed pond for the purpose of irrigating 80 acres and  
5 providing water for livestock. Hugh M. Spall, Attorney at Law,  
6 represented the Claimants in this proceeding. Anthony W.  
7 Mynar, Jr. testified regarding this claim.

8 Although the Plaintiff had recommended confirmance of a  
9 water right for the Mynars, Mr. Mynar took exception to the  
10 recommendation on the basis that the recommended instantaneous  
11 use was inadequate to provide full service irrigation to his  
12 land. In support of this contention, Mr. Spall also called Ron  
13 Peyton of the U.S. Soil Conservation Service to testify.  
14 However, Mr. Peyton's testimony was more specifically directed  
15 to the work he had done in evaluating the Fogarty Ditch as it  
16 relates to the irrigation system of Robert Acheson. Mr. Peyton  
17 could not offer personal knowledge of the diversion and ditch  
18 that supplies Mr. Mynar's property, but he did state that in  
19 view of the type of soil and crops grown on the Mynar property,  
20 that 10 acre-feet per acre annually would be required to  
21 sustain irrigated agriculture.

22 In view of the evidence and testimony presented, the  
23 Referee recommends that water rights be confirmed with a June  
24 30, 1896 priority date in the amounts of 2.16 cubic feet per  
25 second; 540 acre-feet per year for irrigating 54 acres; and  
26 0.02 cubic foot per second, one acre-foot per year for watering

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1 stock. An additional 0.18 cubic foot per second is allowed to  
2 satisfy losses through conveyance facilities.

3 Mr. Mynar testified that he pumps from a pond to sprinkle  
4 irrigate his lands at those times during the irrigation season  
5 when the Bureau of Reclamation manipulates Yakima River flows  
6 to enhance fisheries, a practice he termed the "flip-flop".  
7 During such times, the main stem of the Yakima River is  
8 controlled to lower the level so that fish will nest at a lower  
9 level. When that happens, Mr. Mynar indicated that his intake  
10 is dry and if he is prevented from pumping from the pond, he  
11 would not be able to irrigate at all, resulting in a crop loss.  
12 According to his testimony, the level of his pond rises and  
13 falls with the level of the river. Because of this apparent  
14 hydraulic connection to the river, and notwithstanding that the  
15 pond construction was a relatively recent development that  
16 probably was not anticipated when the water right was  
17 originally established, the Referee believes an alternate point  
18 of diversion at the unnamed pond should be confirmed to this  
19 right to accommodate the change in flow level caused by this  
20 manipulation.

21  
22 COURT CLAIM NO. 2360 -- P.M.B. Partnership

23 Frank W. Payne, Nominee for P.M.B. Partnership, filed a  
24 Statement of Claim with the Court asserting a right to the use  
25 of waters from the Yakima River to irrigate 120 acres. Mr.  
26 Payne appeared pro se and gave testimony regarding this claim.

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1 In addition to his oral testimony, Mr. Payne submitted  
2 evidentiary exhibits during and following the Evidentiary  
3 Hearing to indicate that a riparian right may have been  
4 established as early as August 18, 1888 and an appropriative  
5 right as early as September 16, 1889. Notwithstanding the  
6 merits of the evidence, RCW 90.14.041 states in pertinent part  
7 that all persons using or claiming the right to use public  
8 waters shall file with the Department of Water Resources  
9 (predecessor to the Department of Ecology) not later than June  
10 30, 1974, a Statement of Claim for each water right asserted.  
11 Failure to record such claims shall result in a waiver and  
12 relinquishment of any claimed rights (RCW 90.14.071). The  
13 Partnership had no claim filed under Chapter 90.14 RCW relating  
14 to the 1888 or 1889 priority dates. Consequently, the Referee  
15 concludes that such rights as may have been perfected and  
16 enjoyed by the Defendant or its predecessors have been  
17 forfeited.

18 However, a claim was filed in this proceeding by the  
19 United States <sup>3/</sup> for water stored in Yakima Project reservoirs.  
20 According to testimony, the Partnership annually receives 160  
21 acre-feet of this stored water under the terms of a contract  
22 with the Bureau of Reclamation. It is this water that is  
23 relied upon for irrigation of the Defendant's lands. By virtue  
24  
25

26 <sup>3/</sup>See footnote, page 13, supra

1 of the said contract, the Defendants may continue to receive  
2 stored water for their irrigation needs.

3  
4 COURT CLAIM NO. 0554 -- Arthur G. and Dorothy J. Powell

5 The Statement of Claim filed with the Court by Arthur G.  
6 Powell asserts a right to the use of water from an unnamed  
7 creek for the purposes of irrigation and stockwater. Dorothy  
8 Powell testified during the Evidentiary Hearing in behalf of  
9 this claim.

10 Mrs. Powell indicated that the property they own had been  
11 a stage coach stop prior to 1900 and she had heard her  
12 grandfather tell about stopping there with his horse and buggy  
13 when travelling from the Yakima Valley to Seattle. After the  
14 Powells bought the place in the mid-1950's, they started  
15 irrigating. No permit or certificate of water right exists for  
16 this use; however, Water Right Claim Registry No. 007217 was  
17 filed regarding the Powell property.

18 The Referee, therefore, recommends that a right for  
19 irrigation be denied since such use did not start until well  
20 after both 1932 and 1917. However, the Referee does recommend  
21 that a right be confirmed for diversion and the use of water  
22 from an unnamed spring in the amounts of 0.02 cubic foot per  
23 second; 2 acre-feet per year for domestic and stockwater use  
24 with a priority date of June 30, 1900. Also, the Defendant's  
25 stock may continue to drink from a natural source as  
26 recommended in the Plaintiff's Report to the Referee.

1 COURT CLAIM NO. 0478 -- Richard and Jolanda M. Riegel

2 Richard Riegel filed two Statements of Claim with the  
3 Court asserting rights to the use of waters from unnamed drains  
4 for irrigation and stockwater. Mr. Riegel testified in support  
5 of these claims.

6 Mr. Riegel described two widely separated parcels of his  
7 land that he irrigates with drainage waters that come from his  
8 neighbors' lands. He indicated this irrigation had been  
9 occurring for as long as he could remember and by his mother's  
10 recollection since about 1898. Water Right Claim Registry Nos.  
11 002284 and 002286 were filed in connection with the rights  
12 being asserted.

13 It is the Referee's recommendation that water rights be  
14 confirmed to Mr. Riegel in the following amounts: 0.10 cubic  
15 foot per second, 26 acre-feet per year for irrigating five  
16 acres of pasture; and 0.24 cubic foot per second, 61 acre-feet  
17 per year to irrigate 12 acres of another pasture. Both would  
18 have a priority date of June 30, 1898. However, the Referee  
19 further notes that the Riegels have shares in the West Side  
20 Irrigation Company and are assessed for all their irrigated  
21 lands. In addition, Mr. Riegel acknowledged that all the  
22 drainage water he uses may be coming from West Side water.  
23 Also, the Defendant's stock may continue to drink from a  
24 natural water source as recommended in the Plaintiff's Report  
25 to the Referee.

26  
27 REPORT OF REFEREE  
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1     COURT CLAIM NO. 2284 -- Rebecca M. Smith

2             A Statement of Claim asserting a right to the use of water  
3     from the Yakima River for irrigation and stockwater was  
4     submitted to the Court by Kenneth Beckley as attorney and agent  
5     for Rebecca Smith. The Defendant failed to make an appearance  
6     during the Evidentiary Hearing to provide testimony regarding  
7     her claim. Consequently, the Referee cannot recommend  
8     confirmation of the claimed right.

9  
10    COURT CLAIM NO. 0187 -- Harold Edward and Theresa Ann Stroh

11            The Statement of Claim provided to the Court by these  
12    Claimants asserts a right to the use of waters from the Yakima  
13    River for irrigation. The Strohs were represented during these  
14    proceedings by Hugh M. Spall, Attorney at Law. Harold Stroh  
15    testified in behalf of this claim.

16            As was the case with Anthony and Terry Mynar (Court Claim  
17    No. 1180), the Plaintiff had recommended confirmance of a water  
18    right for the Strohs. Mr. Stroh also took exception to the  
19    State's recommendation on the basis that the recommended  
20    instantaneous use was inadequate to provide full service  
21    irrigation to his land. In this instance also, Mr. Peyton of  
22    the U.S. Soil Conservation Service could not offer personal  
23    knowledge of the diversion and ditch that supplies Mr. Stroh's  
24    property, but he did indicate that the annual irrigation  
25    requirement approximated 10 acre-feet per acre.

1       The amount of water recommended presents some problems in  
2 that there appears to be substantial losses occurring in the  
3 ditch that transports water from the point of diversion on the  
4 Yakima River to the Stroh lands. Testimony of the State's  
5 expert has shown that there was an 18.5% ditch loss for about  
6 one-third (1000 feet) the length of the ditch, but there was no  
7 estimate as to what the losses may have been in the other  
8 two-thirds (2000 feet) of the ditch before it reached the Stroh  
9 property. Assuming that the losses in the second two-thirds  
10 were neither greater nor less than the first one-third, that  
11 would mean about a 55% loss from the point of diversion to the  
12 Stroh property. Assuming further, that the duty of water of  
13 0.04 cubic foot per second per acre as applied to the land is  
14 adequate for rill irrigation, and probably more than adequate  
15 for sprinkler irrigation, irrigating 38 acres would translate  
16 into needing 3.38 cubic feet per second at the point of  
17 diversion to theoretically deliver 1.52 cubic feet per second  
18 at the lands to be irrigated. On an annual basis, the  
19 requirement of the crop under rill irrigation is probably no  
20 greater than 10 acre-feet per acre.

21       Based on the testimony and evidence before him, the  
22 Referee recommends that a water right be confirmed with a  
23 priority date of June 30, 1896, in the amounts of 3.38 cubic  
24 feet per second, 380 acre-feet per year for the irrigation of  
25 38 acres. While Mr. Stroh testified that he had been  
26 irrigating an additional 10 acres, his testimony indicated that

1 he had cleared those 10 acres after purchasing the property  
2 about ten years ago. Therefore, the Referee believes those ten  
3 acres are clearly beyond the scope of the original water right.

4 Mr. Stroh also testified that during some periods of the  
5 year he pumped out of a pond on his property, because of the  
6 fact that annually during the irrigation season, the Bureau of  
7 Reclamation manipulates flow levels of the Yakima River to  
8 ensure that there is no detrimental effect on fish habitat,  
9 specifically salmon nests (redds). At those times, Mr. Stroh  
10 is unable to get a sufficient amount of water because of the  
11 physical limitations of the diversion works, and feels that his  
12 pond is an alternate point of diversion during those periods  
13 when the primary intake is unusable. The Referee recommends an  
14 alternate point of diversion be confirmed to this right to  
15 accommodate that change in flow level.

16  
17 COURT CLAIM NO. 1672 -- Burdette C. Thayer

18 The Statement of Claim filed with the Court by Marie P.  
19 Thayer in behalf of Burdette Thayer asserts a right to the use  
20 of water from the Yakima River for the purpose of irrigating 32  
21 acres and for stockwater, and further asserts an 1891 priority  
22 date for that use. Marie Thayer Siltman gave testimony  
23 regarding this claim.

24 While the Statement of Claim names the Dammon Mill Race as  
25 the delivery system for water from the Yakima River to the  
26 Burdette Thayer property, the Department of Ecology's

27 REPORT OF REFEREE  
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1 Investigation Report states that there does not appear to be  
2 any way that water from this ditch could be used to irrigate  
3 the subject property. This seems to be substantiated by the  
4 testimony of Mrs. Siltman who indicated that water was  
5 delivered from the Yakima River via the Vertrees No. 1 Ditch to  
6 her father's land and thence to her own. There is no evidence  
7 to indicate when such irrigation may have started. However,  
8 there may be a discrepancy in the Statement of Claim which  
9 cites the Dammon Mill Race as filed in the Kittitas County  
10 Auditor's Office, Recording No. 16461, Book 2 of Water Rights,  
11 page 332 on September 1, 1906, but then gives a legal  
12 description for the point of diversion that coincides with the  
13 legal description stated in the State's Investigation Report  
14 and was identified by Marie Thayer Siltman as Vertrees No. 1  
15 Ditch.

16 In order to shed some light onto this matter, the Referee  
17 examined the Notice of Water Right dated May 31, 1890, under  
18 Kittitas County Auditor No. 33618, Book 3 of Water Rights, page  
19 100, filed November 15, 1912, referred to in the Statement of  
20 Claim submitted to the Court by Marie P. Thayer. That document  
21 is part of the record, having been offered on behalf of  
22 Claimants Stroh, Acheson, and Mynar (DE No. 6). Examination of  
23 that document, the Fogarty Water Right Affidavit, discloses  
24 that it does not pertain to lands under Mrs. Siltman's  
25 ownership. Therefore, based upon insufficient evidence, the  
26 Referee cannot recommend confirmation of a right to Mr. Thayer.

27 REPORT OF REFEREE  
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1 COURT CLAIM NO. 1673 -- Marie P. Thayer (Siltman)

2 Marie P. Thayer Siltman submitted a Statement of Claim to  
3 the Court asserting two different rights to the use of waters  
4 from the Yakima River for the purposes of irrigation and stock  
5 watering. Mrs. Siltman offered testimony at the Evidentiary  
6 Hearing in behalf of herself and her father, Burdette Thayer.

7 Testimony given by Mrs. Siltman indicated that she relied  
8 on two points of diversion from the Yakima River: one via the  
9 Vertrees No. 1 Ditch that comes through her father's property,  
10 irrigating his land, as his only source; the other via the  
11 Fogarty Ditch. She also testified to using drain water on a  
12 northern portion of her property that the State's Investigation  
13 Report estimated to be about five acres.

14 Evidence submitted for the record contains a copy of  
15 Kittitas County Auditor's Recording No. 16461 submitted by C.  
16 R. Pease and H. W. Pease supports Marie Thayer's claim to the  
17 right to use water through Fogarty Ditch and indicates a first  
18 use in 1891. Water Right Claim Registry No. 163357 assisted in  
19 the preservation of this right. The Referee, therefore,  
20 recommends that a water right be confirmed with a priority date  
21 of June 30, 1891, in amounts of 1.68 cubic feet per second, 218  
22 acre-feet per year for the irrigation of 42 acres. An  
23 additional 0.01 cubic foot per second; 2 acre-feet per year is  
24 recommended for the watering of livestock. Also, the  
25 Defendant's stock may continue to drink from a natural source  
26 as recommended in the Plaintiff's Report to the Referee.

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1 Having determined in the case of Burdette Thayer that  
2 there was no evidence in the record to substantiate the claim  
3 to waters diverted through Vertrees No. 1 Ditch, the Referee in  
4 regard to the claim of Marie P. Thayer Siltman must also  
5 conclude that confirmation of a right be denied.

6 As to Mrs. Siltman's testimony regarding the use of  
7 drainage waters from her neighbors to the north, the Referee  
8 can find no evidence in the record to suggest that a right  
9 exists for this purpose. No such right was claimed either in  
10 the Statement of Claim filed with the Court or in the claim  
11 filed under Chapter 90.14 RCW. Consequently, the Referee  
12 cannot recommend confirmation of a right to use drainage  
13 waters.

14  
15 COURT CLAIM NO. 0589 -- Washington State Department of  
16 Natural Resources

17 The Department of Natural Resources submitted claims for  
18 the watering of stock on lands generally leased for stock  
19 ranging purposes. No one appeared during the Evidentiary  
20 Hearing to provide testimony relative to these claims. The  
21 Plaintiff's Investigation Report indicated that this agency has  
22 claimed rights to eight surface water sources, none of which  
23 appear to be diversionary rights. Consequently, the Referee  
24 concludes that all claims of this Department in Subbasin 12 are  
25 contained in those recommended for confirmance in the  
26 Plaintiff's Report to the Referee.

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1 COURT CLAIM NO. 1054 -- Brent and Jeanette Whiteman

2 The Statement of Claim submitted to the Court by these  
3 Claimants asserts rights to the use of waters from an unnamed  
4 spring and from Shushuskin Creek for seasonal irrigation and  
5 year around stockwater. During the Evidentiary Hearing, no  
6 appearance was made by the Whitemans to provide testimony in  
7 support of their Statement of Claim. The Referee, therefore,  
8 cannot recommend that an irrigation right be confirmed to these  
9 defendants. However, the Defendant's stock may continue to  
10 drink from a natural water source as recommended in the  
11 Plaintiff's Report to the Referee.  
12

13 COURT CLAIM NO. 2246 -- Clarence Wines

14 Mr. Wines filed a Statement of Claim with the Court to  
15 assert rights to the use of waters from Sorenson Creek and from  
16 Fogarty Ditch for irrigation and stockwater. Mr. Wines did not  
17 make an appearance during the Evidentiary Hearing to provide  
18 testimony regarding his claim. The Referee has no alternative  
19 but to recommend that an irrigation right for Clarence Wines be  
20 denied in this proceeding. However, the Defendant's stock may  
21 continue to drink from a natural water source as recommended in  
22 the Plaintiff's Report to the Referee.  
23  
24  
25  
26

1 VIII. FINDINGS OF FACT

2 I, WILLIAM R. SMITH, as Referee in this proceeding, having  
3 carefully examined the testimony and evidence and having  
4 investigated Subbasin No. 12, do hereby make the following  
5 Findings of Fact:

6 1. That the waters of Subbasin No. 12 and lands  
7 irrigated or waters otherwise utilized therefrom are situated  
8 in Kittitas County.

9 2. That the claims to any diversionary or withdrawal  
10 rights within Subbasin No. 12 of the following named claimants  
11 are denied in their entirety for reasons set forth in the body  
12 of this report:

13 George Arthur  
14 Mal DeWitte  
15 William T. Dikeman  
16 Pauline Gregory  
17 Marvin L. and Doris R. Harmon  
18 Jim E. and Janet J. Kennard  
19 Tracy D. and Jeffrey Chris Merrick  
20 P.M.B. Partnership  
21 Rebecca M. Smith  
22 Burdette C. Thayer  
23 Brent and Jeanette Whiteman  
24 Clarence Wines

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

CLAIMANT NAME: Dan H., Jr. and COURT CLAIM NO. 1304  
Georgia Brunson

Source: Yakima River and McCarl Creek

Use: Irrigation of 58 acres (1.25 cfs; 191 acre-  
feet per year) and stock water (0.01 cfs;  
2 acre-feet per year)

Period of Use: April 1 through October 31 for irrigation,  
continuously for stockwater

Quantity: 1.26 cfs; 193 acre-feet per year

Priority Date: June 30, 1886

Point of Diversion: (Yakima River) 50 feet south and 1030 feet  
east of the center of Section 10 being  
within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10,  
T. 17 N., R. 18 E.W.M.

(McCarl Creek) 650 feet south and 1060 feet  
east of the center of Section 10, being  
within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 17 N.,  
R. 18 E.W.M.

Place of Use: That portion of the SE $\frac{1}{4}$  of Section 10,  
which lies east of the Fogarty Ditch and  
south and west of the Yakima River, and  
that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11,  
which lies west of Vertrees Ditch No. 1,  
all in T. 17 N., R. 18 E.W.M.

CLAIMANT NAME: Robert S., Jr. and  
Louise Acheson

COURT CLAIM NO. 0346  
& 3618A

Source: Yakima River

Use: Irrigation of 358 acres

Period of Use: April 1 to October 31

Quantity: 14.32 cfs; 3580 acre-feet per year

Priority Date: September 16, 1889

Point of Diversion: 50 feet south and 1030 feet east of the  
center of Section 10, being within the  
NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 17 N.,  
R. 18 E.W.M.

Place of Use: That portion of the SE $\frac{1}{4}$  and the S $\frac{1}{2}$ NE $\frac{1}{4}$   
of Section 23 lying south of Sorenson  
Creek and west of the Yakima River; that  
portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$  and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
said Section lying north of the West Side  
Canal; that portion of the NW $\frac{1}{4}$  of  
Section 25 lying west of the Yakima River;  
that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 26  
lying north of the West Side Canal; all  
in T. 17 N., R. 18 E.W.M.

1 CLAIMANT NAME: Glenn Gregory COURT CLAIM NO. 2274  
2 Source: Unnamed drainage ditch  
3 Use: Irrigation of 18 acres  
4 Period of Use: April 1 through October 31  
5 Quantity: 0.36 cfs; 77 acre-feet per year  
6 Priority Date: June 30, 1890  
7 Point of Diversion: 1120 feet north and 20 feet east of the  
8 south quarter corner of Section 15, being  
9 within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  Section 15, T. 17 N.,  
R. 18 E.W.M.  
10 Place of Use: That portion of the SE $\frac{1}{4}$  of Section 15,  
11 T. 17 N., R. 18 E.W.M., described as  
12 follows: Beginning at a point 1118 feet  
13 north of the southeast corner of said  
14 Section 15; thence northwesterly about  
15 850 feet along the western margin of the  
Fogarty Ditch; thence S 59° W about 500  
feet; thence W about 650 feet; thence S  
about 550 feet; thence E about 1370 feet  
to the point of beginning.

16 CLAIMANT NAME: Glenn Gregory COURT CLAIM NO. 2274  
17 Source: Unnamed spring  
18 Use: Stockwater  
19 Period of Use: Continuously  
20 Quantity: 0.01 cfs; 2 acre-feet per year  
21 Priority Date: June 30, 1890  
22 Point of Diversion: 250 feet north and 300 feet west of the  
23 center of Section 15, being within the  
24 SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 15, T. 17 N.,  
R. 18 E.W.M.  
25 Place of Use: SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  Section 15, T. 17 N.,  
26 R. 18 E.W.M.



1 CLAIMANT NAME: Marie P. Thayer (Siltman) COURT CLAIM NO. 1673

2 Source: Yakima River

3 Use: Irrigation of 42 acres (1.68 cfs; 218 acre-feet  
4 per year) and stockwater (0.01 cfs; 2 acre-feet  
per year)

5 Period of Use: April 1 to October 31 for irrigation,  
6 continuously for stockwater

7 Quantity: 1.69 cfs; 220 acre-feet per year

8 Priority Date: June 30, 1891

9 Point of Diversion: 50 feet south and 1030 feet east of the  
center of Section 10, being within the  
10 NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 17 N.,  
R. 18 E.W.M.

11 Place of Use: That portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 14  
12 which lies east of Fogarty Ditch, west of  
Sorenson Creek and south of the Fogarty  
13 Ditch Extension; and that portion of the  
NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 23 which lies east of  
14 Fogarty Ditch and west of Sorenson Creek,  
all being within T. 17 N., R. 18 E.W.M.

CLAIMANT NAME: Anthony W. Jr., and COURT CLAIM NO. 1180  
Terry L. Mynar

Source: Yakima River and unnamed pond

Use: Irrigation of 54 acres (2.16 cfs; 540 acre-feet per year) and stockwater (0.02 cfs; 1 acre-foot per year) (conveyance loss - 0.18 cubic foot per second)

Period of Use: April 1 to October 31 for irrigation, continuously for stockwater

Quantity: 2.36 cfs; 541 acre-feet per year

Priority Date: June 30, 1896

Point of Diversion: (Yakima River) 140 feet north and 500 feet west of the center of Section 14, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 14, T. 17 N., R. 18 E.W.M.

(Unnamed pond) 350 feet north and 175 feet east of the south quarter corner of Section 14, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, T. 17 N., R. 18 E.W.M.

Place of Use: That portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 14, T. 17 N., R. 18 E.W.M., lying south of the Vertrees No. 2 Ditch and Wasteway

CLAIMANT NAME: Harold Edward and Theresa Ann Stroh COURT CLAIM NO. 0187

Source: Yakima River

Use: Irrigation of 38 acres (1.52 cfs; 380 acre-feet per year) (conveyance loss - 1.86 cfs)

Period of Use: April 1 to October 31

Quantity: 3.38 cfs; 380 acre-feet per year

Priority Date: June 30, 1896

Point of Diversion: (Yakima River) 140 feet north and 500 feet west of the center of Section 14, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 14, T. 17 N., R. 18 E.W.M.

(Unnamed pond) 450 feet south and 250 feet east of the north quarter corner of Section 23, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 23, T. 17 N., R. 18 E.W.M.

Place of Use: Those portions of the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 23, T. 17 N., R. 18 E.W.M., described as follows: The north 511 feet of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  lying southerly and westerly of the western most channel of the Yakima River.

CLAIMANT NAME: Richard and Jolanda M. Riegel COURT CLAIM NO. 0478

Source: Unnamed drains

Use: Irrigation of 12 acres

Period of Use: April 1 to October 31

Quantity: 0.24 cfs; 61 acre-feet per year

Priority Date: June 30, 1898

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

Place of Use: That portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 15, T. 17 N., R. 18 E.W.M., described as follows: Beginning at the center of Section 15; thence southerly along the west margin of Umptanum County Road about 985 feet; thence 190 feet W; thence W 43° N about 1050 feet to the south bank of an unnamed ditch; thence easterly along said ditch to the point of beginning; EXCEPT for 1.6 acres of home and barn area located in the northeastern most portion of said property.

CLAIMANT NAME: Richard and Jolanda M.  
Riegel

COURT CLAIM NO. 0478

Source: Unnamed drains

Use: Irrigation of 5 acres

Period of Use: April 1 to October 31

Quantity: 0.10 cfs; 26 acre-feet per year

Priority Date: June 30, 1898

Point of Diversion: 1120 feet north and 20 feet east of the  
south quarter corner of Section 15, being  
within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 15,  
T. 17 N., R. 18 E.W.M.

Place of Use: That portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 15,  
T. 17 N., R. 18 E.W.M., described as  
follows: Beginning at a point 1118 feet  
N of the southeast corner of said Section  
15; thence W about 475 feet; thence  
S about 450 feet; thence E about 475 feet;  
thence N about 450 feet to the point of  
beginning.

CLAIMANT NAME: Arthur G. and Dorothy J. COURT CLAIM NO. 0554  
Powell

Source: Unnamed spring

Use: Stockwater and domestic supply

Period of Use: Continuously for domestic supply and stockwater

Quantity: 0.02 cfs; 2 acre-feet per year

Priority Date: June 30, 1900

Point of Diversion: 1190 feet south and 430 feet west of the  
center of Section 22, being within the  
NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 22, T. 17 N.,  
R. 18 E.W.M.

Place of Use: That portion of the S $\frac{1}{2}$  of Section 22,  
T. 17 N., R. 18 E.W.M., described as  
follows: Beginning at a point 450 feet  
south from the center of said Section;  
thence S 39° W 650 feet; thence S 51° E  
200 feet; thence N 39° E 650 feet; thence  
N 51° W 200 feet to the point of beginning.

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

A. As to the rights claimed for instream stockwater  
uses relating to Subbasin No. 12, such rights are confirmed as  
senior (or first) in priority, regardless of the priority of  
other rights confirmed in this cause. This confirmation  
relates to Claimants and claim numbers as follows:

<u>Claimants</u>	<u>Court Claim Numbers</u>
ACHESON, ROBERT S., JR. & LOUISE ACHESON	3618A
BRUNSON, DAN H., JR. & GEORGIA BRUNSON	1304
GREGORY, GLENN	2274

REPORT OF REFEREE  
Re: Subbasin No. 12

<u>Claimants</u>	<u>Court Claim Numbers</u>
KENNARD, JIM E. & JANET J. KENNARD	1333
MERRICK, TRACY D. & JEFFREY CHRIS MERRICK	1817
POWELL, ARTHUR G. & DOROTHY J. POWELL	0554
RIEGEL, RICHARD & JOLANDA M. RIEGEL	0478
THAYER, MARIE P. (SILTMAN)	1673
WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES	0589
WHITEMAN, BRENT & JEANETTE WHITEMAN	1054
WINES, CLARENCE	2246

Said confirmed rights embody entitlements to a continuous stream flow in natural watercourses, when available naturally, not to exceed 0.25 cubic-foot per second, as are necessary to satisfy the watering needs of livestock when they drink directly from a stream.

B. Water in natural watercourses in the subbasin shall be retained for stockwater uses in such watercourses as they flow across or are adjacent to lands, which are now used as pasture or range for livestock, in the same amount and with the same priority as provided in Section IV. A. Regulations of these watercourses by the Plaintiff shall be consistent with such retention requirements.

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

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

<u>Claimants</u>	<u>Court Claim Numbers</u>
ACHESON, ROBERT S., JR. & LOUISE ACHESON	3618A
MERRICK, TRACY D. & JEFFREY CHRIS MERRICK	1817
WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES	0589

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

23 E. Water in naturally occurring ponds and springs in  
24 the subbasin shall be retained for "in-spring" stock water  
25 uses, when such ponds and springs are located on or adjacent to  
26



1 lands which are now used as pasture or range for livestock, in  
2 the same amount and with the same priority as provided in  
3 Section IV. D. Regulation of the ponds and springs by the  
4 Plaintiff shall be consistent with such retention requirements.

5 F. Waters in naturally occurring ponds and springs  
6 in the subbasin shall be retained for "in-spring" wildlife  
7 uses, when such ponds and springs are located on or adjacent to  
8 lands which are now used as pasture or range for wildlife, in  
9 the same amount and with the same priority as provided in  
10 Section IV. C. Regulation of the ponds and springs by the  
11 Plaintiff shall be consistent with such retention requirements.

12 G. Nothing in Section IV. mandates that any lands,  
13 associated with water rights or water retention as provided  
14 herein, shall be reserved for wildlife purposes.

15 5. All prior claims for rights to surface water including  
16 those claims filed under the provisions of Chapter 90.14 RCW  
17 from Subbasin No. 12 not expressly provided for herein are  
18 denied. As a supplement to the "Water Rights Claims Register"  
19 identified in RCW 90.14.111, the Director of the Department of  
20 Ecology should specifically identify and make appropriate  
21 notation in the records of surface Water Right Claims  
22 registered pursuant to Chapter 90.14 RCW specifically  
23 identified in the "Water Right Claims" section of Plaintiff's  
24 Exhibit No. SE-2.

1 IX. CONCLUSIONS OF LAW

2 Confirmation of Rights

3 The priority date, source, point of diversion, location,  
4 maximum instantaneous diversion rate, annual quantity, period  
5 of use, nature of beneficial use, and place of use which are  
6 shown in the foregoing Findings of Fact for each Claimant  
7 therein referred are recommended to be confirmed as water  
8 rights of those Claimants.

9  
10 Duty of Water

11 The diversion of water from sources of water contained  
12 within Subbasin No. 12 for irrigation purposes shall, unless  
13 otherwise specified, be limited at a maximum to 1.0 cubic-foot  
14 per second for each 50 acres irrigated and not to exceed a  
15 total of 2.0 acre-feet per acre during each irrigation season.

16  
17 Irrigation Season

18 Unless otherwise identified within a specific water right,  
19 the irrigation season shall be defined as that duration from  
20 April 1 to and including October 31 of each year. The Referee  
21 recognizes that extraordinary circumstances may dictate the  
22 application of water prior to or subsequent to the defined  
23 irrigation season, and, in that event, express approval from  
24 the Department of Ecology must be obtained annually prior to  
25 such deviation.

1     Certificates of Adjudicated Water Right

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

8  
9     Administration of Water

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

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

1 at reasonable times upon the lands of any and all parties  
2 having rights adjudicated herein.

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

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

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

16  
17  
18   
19 WILLIAM R. SMITH, Referee  
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21  
22  
23  
24  
25  
26