

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

3 IN THE MATTER OF THE DETERMINATION)
4 OF THE RIGHTS TO THE USE OF THE)
5 SURFACE WATERS OF THE YAKIMA RIVER)
6 DRAINAGE BASIN, IN ACCORDANCE WITH)
7 THE PROVISIONS OF CHAPTER 90.03,)
8)
9 THE STATE OF WASHINGTON,)
10 DEPARTMENT OF ECOLOGY,)
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No. 77-2-01484-5
REPORT OF REFEREE
Re: Subbasin No. 7
(Reecer Creek)

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

I. BACKGROUND

This report concerns the determination of the surface water rights of the Yakima River basin, specifically those rights located within Subbasin No. 7, the Reecer Creek drainage basin. The criteria consisting of applicable law and bases for water right determinations used by the Referee in the evaluation of claims can be found in the Report of the Referee to the Court, Preface to Subbasin and Major Category Reports, Volume 2, dated May 18, 1988.

The Referee conducted evidentiary hearings on October 15 to October 24, 1990.

REPORT OF REFEREE
Re: Subbasin No. 7

II. FIELD INVESTIGATIONS

Field surveys were conducted by Department of Ecology (DOE) staff during 1989 and 1990, to obtain information regarding existing water use patterns in Subbasin No. 7. 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, Reecer Creek Subbasin No. 7", 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. 7 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

REPORT OF REFEREE
Re: Subbasin No. 7

Stock Water 1 acre-foot per year
(diversion)

B. Irrigation Water -- In most cases the claimants provided testimony about the quantity of water used for irrigation. When the testimony is insufficient to allow the Referee to determine with certainty the quantity of water being diverted, the Referee shall use testimony of water use on neighboring lands, quantities of water claimed in both the Court claim and the water right claims filed pursuant to RCW 90.14, historic documents, and any other information in the record that would assist in establishing an appropriate water duty. Because the soil and topographic conditions vary significantly within Subbasin No. 7, no standard water duty for irrigation will apply for the entire subbasin.

It should be noted that the use of water under all irrigation rights is limited to the amount of water that can be beneficially applied to the 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.

IV. STIPULATIONS

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

"It is hereby stipulated by all claimants in the above-entitled cause that all exhibits entered and all testimony taken at the hearing on claims held beginning October 15, 1990, may be utilized by any party in the proof of a claim or the contesting of a claim whenever relevant and material."

REPORT OF REFEREE
Re: Subbasin No. 7

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

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

7 In the third, the parties stipulated to the following in relation to
8 "non-diversionary" stock and wildlife watering use with regards to Subbasin No. 7:

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

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

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

34 4. Waters in naturally occurring ponds and springs (with no surface
35 connection to a stream) in the subbasin shall be retained for wildlife
36 watering uses, when such ponds and springs are located on or adjacent to
37 lands which are now used as pasture or range for wildlife. Said uses embody
38 entitlements to a level in the water bodies sufficient to provide water for
39 wildlife drinking directly therefrom while ranging on riparian lands, and

40 REPORT OF REFEREE
41 Re: Subbasin No. 7

1 with the same priority as provided in paragraph 2. Regulation of the ponds
2 and springs by the plaintiff shall be consistent with such retention
3 requirements.

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

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V. LAND DESCRIPTIONS

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

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VI. WATER RIGHT PRIORITIES

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

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VII. SPECIAL ISSUES

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PRIOR DECREE

41 Many of the claimants who are asserting rights to the use of waters from
42 Reecer Creek cite the case of Bernard Hanson v. David McIntire, et al., Kittitas
43 County Superior Court Cause No. 3451 (1906) as the basis for their water rights.
44 This was a case to settle disputes between the named parties over the use of waters

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REPORT OF REFEREE

51 Re: Subbasin No. 7

1 from Reecer Creek. The Findings of Fact that preceded the decree contained
2 information about the characteristics of the creek and settlement history for the
3 lands owned by the parties. At that time the creek flowed between 6.25 and 7.5
4 cubic feet per second in the spring, until early June and then the flow declined
5 rapidly until the creek was almost, if not entirely dry, by the end of September.
6 An individual by the name of "Indian Charlie" was the first settler in the area and
7 first appropriator of water from Reecer Creek. He settled in the NE $\frac{1}{4}$ of Section 17
8 in the early 1870's, prior to 1873.

9 The Findings of Fact identified the number of acres being irrigated by each
10 of the parties awarded a water right and the quantity of water that was sufficient
11 to irrigate the land. The quantities of water awarded were stated in miner's inch
12 measured under 6-inch pressure. One miner's inch under 6-inch pressure equals
13 0.025 cubic foot per second. One-half miner's inch was considered sufficient to
14 irrigate one acre. The Referee considers the Court to have determined that to be
15 the appropriate measure of water diverted from Reecer Creek and unless a document
16 states otherwise, the conversion from miner's inch to cubic feet per second for
17 diversions from Reecer Creek shall assume 6-inch pressure, or 0.025 cubic foot per
18 miners inch. In Kittitas County, miner's inches were commonly under 4-inch
19 pressure and for all other sources in this subbasin, the conversion shall assume
20 the measure was under 4-inch pressure, unless otherwise noted.

21 The Findings of Fact and Decree contain the best information available to the
22 Referee of the extent of water use on the lands described as of 1906. In order for
23 a right to be confirmed to a claimant in this proceeding who is a successor to a
24 party in Hanson v. McIntire, for a quantity of water in excess of that awarded in

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Hanson, decree or for the irrigation of more acres than was identified in the
2 Findings of Fact, the claimant herein would have to present sufficient evidence for
3 the Referee to conclude that an additional right was established after 1906.
4 Otherwise, the Referee considers the awards in Hanson to be the extent of the
5 right. As with any other right established prior to June 6, 1917, filing of a
6 water right claim pursuant to the requirements of RCW 90.14 is necessary to protect
7 the rights awarded in Hanson.
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9 RETURN FLOW WATER

10 Many of the defendants in this subbasin are asserting rights to the use of
11 return flow waters. The Court has used the definition of "return flows" contained
12 in 2 Hutchins, Water Right Laws in the Nineteen Western States (1974), page 568 as
13 follows:

14 "'Return flow' is water diverted for irrigation or other use that returns to
15 the stream from which it is diverted, or to some other stream, or that would
16 do so if not intercepted by some obstacle."

17 The Court considers return flow waters to include what has been characterized
18 as waste water and seepage water. Many of the defendants who are claiming return
19 flow waters lie below the Kittitas Reclamation District canal. The contract
20 between the United States and the Kittitas Reclamation District specifically
21 addresses return flow waters within the reclamation district boundaries as follows:

22 34. (a) The United States does not abandon or relinquish any of the waste,
23 seepage or return flow-waters attributable to the irrigation of the lands to which
24 water is supplied under this contract. All such waters are reserved and intended
25 to be retained for the use and benefit of the United States as a source of supply
26 for the project.

27 REPORT OF REFEREE
28 Re: Subbasin No. 7

1 (b). If suitable drainage or return-flow water from any part of the project shall
2 at any time be or become available at points where it can be used on lands within
3 the District, the United States may supply such water as a part of the supply to
4 which the lands in the District are entitled.

5 Therefore, return flow waters that originate from the Kittitas Reclamation
6 District (KRD) system may be considered by the United States to be part of the
7 water to which district lands are entitled, or part of the four acre-feet per acre
8 that is delivered by KRD to district patrons.

9 This Court in its Limiting Agreement opinion and order and a recent
10 memorandum opinion related to an exception in Subbasin No. 8, Thorp, found that
11 rights could not be confirmed for the use of return flows that are the result of
12 the application of Yakima Project waters and foreign return flows, but that rights
13 could have been established for return flows that originated from and return to a
water course within the same watershed.

14 These rulings were based on a recent Washington State Supreme Court case,
15 State of Washington, D.O.E. v. U.S. Bureau of Reclamation, et al., 118 Wn. 761, 827
16 P.2d 275 (1992), where the Supreme Court held that the appropriator of the water
17 retains its rights to use the water so long as the water remains within the
18 boundaries of the appropriator's property and that only Federal agencies and those
19 entities with whom they contract have authority to make decisions regarding the
20 distribution of water within a Federal irrigation project. The Supreme Court found
21 that the Federal government, through the Bureau of Reclamation, was the
22 appropriator of water in a Federal project and had control of the water until it
23 left the project boundaries.

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Some of the claimants asserting a right to use return flows lie below land
2 irrigated with water diverted from First Creek, which is in the Swauk Creek
3 subbasin (Subbasin No. 4). Return flow resulting from the application of First
4 Creek water would be considered foreign return flows. The Washington State Court
5 of Appeals has held in the case of Dodge v. Ellensburg Water Co., 46 Wn App. 77,
6 82, 729 P.2d 631 (1986), that ". . . no water rights, prescriptive or otherwise,
7 exist in these waters." In a much earlier case, Elgin v. Weatherstone, 123 Wash.
8 429, 212 P. 562 (1923), the Washington State Supreme Court ruled that foreign
9 waters are of a vagrant or fugitive nature and may be used by the first person who
10 can take them from the stream where they are found. The ruling also found that the
11 fact that a riparian owner was first to appropriate vagrant surplus waters in a
12 creek did not give him the exclusive right to take it the next year.

13 Return flow that naturally originates from, and returns to a water course
14 within the same watershed, is subject to a new appropriation as soon as the water
15 leaves the appropriator's land and is in, or destined for, the natural stream from
16 which it originated. An appropriator of such water must comply with the state
17 requirements for appropriation by way of obtaining a permit or certificate under
18 RCW 90.03 or proving historic use under either the Prior Appropriation or Riparian
19 Doctrines and compliance with RCW 90.14.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

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2 VIII. TESTIMONY AND REFEREE'S ANALYSES

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5 Plaintiff Testimony

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

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11 The State introduced into evidence the following generic exhibits:

12

13 Number Description

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15 SE-1 Map of Subbasin No. 7
16 SE-2 Inset A of Map for Subbasin No. 7
17 SE-3 Binder of Water Right Permits, Certificates and Claims
18 SE-4 Report on Conveyance Loss/Gain, Subbasin No. 7
19 SE-5 Supplemental Documentary Information Report

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21 Additionally, oral testimony was given by Clay Keown and Tammy Hall, Field
22 Investigators, Ecology Adjudication Section.

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24 Claimant Testimony

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26 132 defendants filed statements of claim or notices of appearance. All
27 claimants and their legal counsel, if so represented, are as follows:

28

29 Court

30

31 Claim

32

Court	Claim	No.	Name	Attorney	Page(s)
		01767	William J. Allenbaugh		57, 264
		01768	& Beverly M. Allenbaugh Route 4 Box 242 Ellensburg, WA 98926		
		02253	Alfred Anderson 2208 Judge Ronald Road Ellensburg, WA 98926		260, 264

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34 REPORT OF REFEREE
35 Re: Subbasin No. 7

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1	02253	Lawrence Anderson & Arlein Anderson Route 6 Box 685 Ellensburg, WA 98926	F. Steven Lathrop, Attorney PO Box 1088 Ellensburg, WA 98926	260, 264
2				
3				
4	00636	Mark T. Anderson Anderson Hay and Grain PO Box 99 Ellensburg, WA 98926		195, 264
5				
6	00296	Ronald T. Anderson	John P. Gilreath,	35, 42, 59
7	00636	& Robin L. Anderson	Attorney	195, 264
8	00637	1501 N Pott Road	PO Box 499	
9	05259	Ellensburg, WA 98926	Ellensburg, WA 98926	
10				
11	02253	Anderville Farms, Inc. Route 6 Box 685 Ellensburg, WA 98926	F. Steven Lathrop, Attorney PO Box 1088 Ellensburg, WA 98926	260, 264
12	00781	Jim Anspach Route 4 Box 190 Ellensburg, WA 98926	Ken Beckley 701 N. Pine Street Ellensburg WA 98926-2939	169, 263 164
13	00774	Dean P. Auve', Sr.	Hugh M. Spall, Attorney	62, 264
14	(A)05078	& Rose Marie Auve' PO Box 1037 Ellensburg, WA 98926	PO Box 831 Ellensburg, WA 98926	
15				
16	01207	Richard C. Bain & Jeri L. Bain 3462 McManamy Road Ellensburg, WA 98926		66, 278 295
17				
18	00910	Jerry Barton & Diane Barton 1501 W Dollarway Ellensburg, WA 98926		37, 264
19				
20	02206	Boise Cascade Corporation	Dennis J. Dunphy,	69, 264
21	(A)03119	Legal Department	Attorney	
22	(A)05238	PO Box 50 Boise, ID 83707	1420 5th Avenue #3400 Seattle, WA 98101-2339	
23				
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REPORT OF REFEREE
Re: Subbasin No. 7

1	01835	John F. Brown	Kenneth D. Beckley	71, 26
2	02253	& Priscilla J. Brown	701 N. Pine Street	264
		Route 4 Box 300	Ellensburg WA 98926-2939	
3	01838	John Bugni		195, 264
4		& Karen Bugni		
5		Route 1 Box 692		
		Ellensburg, WA 98926		
6	00886	Bull Canal Company, Inc.	Donald Bond, Attorney	74, 264
7	(A)04207	1360 Berry RD	Halverson & Applegate Inc.	
		Ellensburg, WA 98926	PO Box 27730	
			Yakima, WA 98907-2715	
8	01469	Pat Burke	Donald Bond, Attorney	74, 263
9	(A)05408	& Mary Burke	Halverson & Applegate Inc.	265
10		980 Burke RD	PO Box 27730	
		Cle Elum, WA 98922	Yakima, WA 98907-2715	
11	01483	James Shane Cadigan	Richard T. Cole	258, 263
12		777 108th Avenue NE #1800	Attorney	265
		Bellevue, WA 98004	PO Box 499	
			Ellensburg, WA 98926	
13	01720	Calaway Pacific	Jeff Slothower,	83, 263
14		Route 3, Box 1852	Attorney	298
15		Ellensburg, WA 98926	PO Box 1088	
			Ellensburg, WA 98926	
16	00303	Central Washington University	Teresa Kulik, AAG	76, 265
17		Assistant Attorney General	Central Washington	
		Ellensburg, WA 98926	University	
			Ellensburg, WA 98926	
18	01565	Donald E. Clapper	Kenneth D. Beckley,	77, 263
19		& Lois Clapper	Attorney	293
20		430 Klocke RD	701 N. Pine Street	
		Ellensburg, WA 98926	Ellensburg WA 98926-2939	
21	01565	James D. Clapper		77
22		& Debbie K. Clapper		
23		800 Klocke RD		
		Ellensburg, WA 98926-8318		
24				
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26	REPORT OF REFEREE			
	Re: Subbasin No. 7			
27				

1	01767	Terance Clarke Rt 4 Box 254 Ellensburg, WA 98926	57, 265
2	00197	Francis Edward Clerf & Jeanne M. Clerf Route 6 Box 280 Ellensburg, WA 98926	80, 265
3	00198	Patrick Clerf & Linda Clerf Route 6 Box 35 Ellensburg, WA 98926-9642	81, 265
4	00253	Dick Colasurdo	107, 263
5	(A)02103	& Anna Colasurdo	265
6	(A)02104	15440 SE May Valley Road Renton, WA 98055	
7	00622	Jesse B. Days & Susan B. Days Route 4 Box 292-A Ellensburg, WA 98926	207, 265
8	01207	Carl Donovan 10016 43rd Place NE Seattle, WA 98125	66, 278 295
9	02251	William F. Duncalf PO Box 364 Ellensburg, WA 98926-0364	195, 263 265
10	01963	Jim Eattock	Richard T. Cole, Attorney 81,
11	(A)02441	& Claudia Eattock Route 4 Box 268 Ellensburg, WA 98926	265
12	00259	Glen E. Elfers & Della L. Elfers 2211 W Dry Creek Road Ellensburg, WA 98926	195, 265
13			
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26	REPORT OF REFEREE Re: Subbasin No. 7		
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1	02085	Ellensburg; City of 109 E Third Suite 2 Ellensburg, WA 98926	Paul E. Sullivan, Jr. 87, 303 Ellensburg City Attorney 420 N Pearl Street Ellensburg, WA 98926-3112
2			
3			
4	01636	Ernest Everett	92, 265
5	(A)02106	3630 Dry Creek RD Ellensburg, WA 98926	
6	01525	Milton M. Femrite	94, 263
7	01526	& Tracy S. Femrite	274, 296
8	01527	9231 Smithson RD	
9	01528	Ellensburg, WA 98926	
10	01871	Arthur L. Fiala & Patricia A. Fiala 5207 135th Avenue NE Bellevue, WA 98005	98, 263 265
11	05175	Jon Fitterer 7261 HWY 10 Ellensburg, WA 98926	John P. Gilreath, 101, 279 Attorney PO Box 499 Ellensburg, WA 98926
12			
13	00402	Irene Pott Flint 205 West Bender Road Ellensburg, WA 98926	Kenneth D. Beckley 104, 265 Attorney 701 N. Pine Street Ellensburg, WA 98926
14			
15	00253	Jay Gorman	107, 263
16	(A)02103	& Diane Gorman	265
17	(A)02104	104 S Pearl Ellensburg, WA 98926	
18			
19	01945	Jeff Gorman & Sheryl Gorman Route 2 Box 685 Ellensburg, WA 98926	195, 263 265
20			
21	00447	Wesley D. Gray & JoAnne Gray Route 5 Box 2200 Ellensburg, WA 98926	109, 265
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26	REPORT OF REFEREE Re: Subbasin No. 7		
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1	01663	William J. Grueter	Richard T. Cole, Attorney	109,
2	(A)04913	& Patricia M. Grueter	PO Box 499	265
2	(A)04914	2491 Robbins RD	Ellensburg, WA	98926
3		Ellensburg, WA 98926		
4	01983	Don Guy		116, 298
4		& Lu Guy		
5		PO Box 181		
5		Ellensburg, WA 98926		
6	02268	Bill Haberman	Hugh M. Spall, Attorney	118, 263
7		& Bill Haberman, Jr.	PO Box 831	289
7		2730 Hungry Junction RD	Ellensburg, WA	98926
8		Ellensburg, WA 98926		
9	02273	Don Haley		122, 265
9		Route 5 Box 2473		
10		Ellensburg, WA 98926		
11	02273	Pat Haley		122, 265
11		Route 5 Box 2473		
12		Ellensburg, WA 98926		
13	00692	James E. Hand	Richard T. Cole, Attorney	123,
13		Cathy J. Heathman	PO Box 499	263, 265
14		9144 45th Avenue SW #7	Ellensburg, WA	98926
14		Seattle, WA 98136		
15	00692	Patrick J. Hand, et al.		123, 263,
16	00719	4529 44th Avenue SW Apt 402		265
16		Seattle, WA 98116-4100		
17	01816	Ervin Harder		241, 265
18		PO Box 357		
18		Duvall, WA 98019		
19	01816	Josephine Harder		241, 265
20	00487	Laroy D. Holmes	John P. Gilreath,	127, 263
21		& Lorie Holmes	Attorney	265
21		2117 SW 114th	PO Box 499	
22		Seattle, WA 98146	Ellensburg, WA	98926
23	01008	Michael Hosker, et al.		129, 263
23		Route 4 Box 216-B		292
24		Ellensburg, WA 98926		

REPORT OF REFEREE
Re: Subbasin No. 7

1	02294	Mary Hundley HC60 Box 5630 Cle Elum, WA 98922	Kenneth D. Beckley, 195, 265 Attorney Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926-2939
2	05284	Peggy E. Hunt Route 4 Box 232 Ellensburg, WA 98926	135, 263 271
3	05301	Wayne Charles Hunt & Martha Lee Hunt and the Estate of Gerald Hunt 706 N Poplar Ellensburg, WA 98926	138, 263 265
4	00876	Ivan Hutchinson	John P. Gilreath, 141, 304,
5	(A)02389	& Mildred Hutchinson PO Box 101 Thorp, WA 98946	Attorney 305 PO Box 499 Ellensburg, WA 98926
6	00140	John G. Jewett	Jeff Slothower, 146, 299
7	(A)02098	& Nancy A. Jewett	Attorney
8	(A)02105		PO Box 1088 Ellensburg, WA 98926
9	01058	Douglas Johnson & Nancy Johnson 3780 Road 3 NE Moses Lake, WA 98837-9679	150, 265
10	00296	Estate of James Jollo & Mary C. Jollo Route 5 Box 565 Ellensburg, WA 98926	35, 265
11	00910	Gaylord Kastning & Georgia Kastning c/o Owen Kastning 448 SE Maple Drive North Bend, WA 98045	37, 265
12	01232	Bobby F. Kennedy 802133 Crooked River Highway Prineville, OR 97754	150, 263 265
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26		REPORT OF REFEREE Re: Subbasin No. 7	
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1	01696	Henry John Klocke, Jr. & Beverly Lee Klocke Route 4 Box 271 Ellensburg, WA 98926	151, 280
2			
3	00256	Les S. Knudsen & Barbara J. Knudsen 1003 E 11th Ellensburg, WA 98926	James P. Hutton, Attorney 154, Velikanje, Moore & 265 Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901
4			
5	00908	Harold F. Lamb, et al. & Roberta D. Lamb Frank C. Lamb Randy H. Lamb Claudia J. Lofstrom 2350 Woodhouse Loop Ellensburg, WA 98926	John P. Gilreath, 39, 265 Attorney PO Box 499 Ellensburg, WA 98926
6			
7	01966	Charles F. Lathrop & Elizabeth D. Lathrop PO Box 309 Ellensburg, WA 98926	154, 265
8			
9	00637	Albert J. Lentz & Glena M. Lentz 2106 W Dollar Way Road Ellensburg, WA 98926	42, 265
10			
11	06041	Dana R. Lind & Elizabeth Lind Route 4, Box 209 Ellensburg, WA 98926	226, 263, 265
12			
13	01305	Kurt A. Linder & Lillian I. Linder Route 4 Box 214-B Ellensburg, WA 98926-9804	Michael Bauer, Attorney 155, 263, 701 N. Pine Street 305 Ellensburg WA 98926-2939
14			
15	00334	Russ Longacre 540 Number 81 RD Ellensburg, WA 98926-9089	Kenneth D. Beckley 156, 263 Attorney 305 701 N. Pine Street Ellensburg WA 98926-2939
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26	REPORT OF REFEREE Re: Subbasin No. 7		
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1	02261	Charles Lyon	J. Eric Gustafson,	196, 263,
2	(A)03072	222 N 3rd Street	Attorney	276, 277
3	(A)05691	Yakima, WA 98901	Lyon, Weigand, Suko &	
4			Gustafson, PS	
5			PO Box 1689	
6			Yakima, WA 98907	
7	01834	Gordon E. Mackner		159, 263
8		& Utana Mackner		265
9		4764 Dry Creek RD		
10		Ellensburg, WA 98926		
11	01558	Bruce Magnotti		160
12		& Aloa G. Mitchell		
13		Route 2 Box 830		
14		Ellensburg, WA 98926		
15	01840	Orvil L. Magruder		195, 265
16		& Lola E. Magruder		
17		Route 4 Box 217		
18		Ellensburg, WA 98926		
19	00774	Mr. Larry Matheson	Richard T. Cole, Attorney	62,
20	(A)05078	& Mrs. Matheson	PO Box 499	265
21		3505 Russell Road	Ellensburg, WA 98926	
22		Centralia, WA 98531		
23	00521	Mary McManamy	John P. Gilreath,	163, 287
24		& Mary Patricia Seubert	Attorney	
25		Route 4 Box 265	PO Box 499	
26		Ellensburg, WA 98926	Ellensburg, WA 98926	
27	00576	Mary McManamy	John P. Gilreath,	176, 302
28		Route 4 Box 265	Attorney	
29		Ellensburg, WA 98926	PO Box 499	
30			Ellensburg, WA 98926	
31	02248	Donald Michaud	Kenneth D. Beckley,	165, 263,
32		Route 4 Box 276-C	Attorney	265
33		Ellensburg, WA 98926	Law Office of Ken Beckley	
34			701 N Pine Street	
35			Ellensburg WA 98926-2939	
36	00626	Mill Ditch Company, Inc.	John P. Gilreath,	25, 27,
37		Route 2 Box 100	PO Box 499	283, 285,
38		Ellensburg, WA 98926	Ellensburg, WA 98926	300

REPORT OF REFEREE
Re: Subbasin No. 7

1	01585	Richard Howard Mitchell & Leottie Mitchell 371 Howard RD Ellensburg, WA 98926	166, 263, 265
2	02358	Daniel O. Molnar 27705 NE 1st Street Redmond, WA 98053	168, 265
3	00781	Nelson - Gelbvieh Ranch	169, 214,
4	01447	E. James Nelson 7556 15th NW Seattle, WA 98117	263, 265, 267, 269, 269, 270 273
5	00672	Leonard L. Newman & Loree Newman Route 6 Box 385 Ellensburg, WA 98926	172, 265
6	00866	Sarah Nickel 406 Oak Street Ellensburg, WA 98926	200, 265
7	02391	Gladys O'Neill & Estate of Leo O'Neill c/o Neil O'Neill 1107 E 3rd AVE Ellensburg, WA 98926-3524	Kenneth D. Beckley, 173, 263, Attorney 266 Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926-2939
8	00576	Frank Oechsner Mary Patricia Seubert 302 Pacific Ellensburg, WA 98926	John P. Gilreath, 176, 302 Attorney PO Box 499 Ellensburg, WA 98926
9	00576A	Frank Oechsner 302 Pacific Ellensburg, WA 98926	John P. Gilreath, 174, 266 PO Box 499 Ellensburg, WA 98926
10	05318	Carolyn Ann Olson 5160 Lower Green Canyon RD Ellensburg, WA 98926	192, 263 266
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26		REPORT OF REFEREE Re: Subbasin No. 7	
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1	00169	Olson Ditch Route 4 Box 303 Ellensburg, WA 98926	Kenneth D. Beckley 180, 268, Attorney 286, 290 701 N. Pine Street 294 Ellensburg WA 98926-2939
2			
3			
4	02029	Don Ozanich & Theresa Ozanich 1706 W Dry Creek Road Ellensburg, WA 98926	194, 266
5			
6	00199	Joseph Panattoni & Marilyn Panattoni 2132 W Dry Creek Road Ellensburg, WA 98926	195, 266
7			
8			
9	01320	William Pappas 714 W Locust Centralia, WA 98531	194, 263 266
10			
11	01724	Pautzke Bait Company, Inc.	John P. Gilreath, 45, 195
12	02294	PO Box 36 Ellensburg, WA 98926	Attorney 263, 284 PO Box 499 Ellensburg, WA 98926
13	02253	Dale E. Payne PO Box 174 Orderville, UT 84758	260, 266
14			
15	01836	David T. Pearson & Marguerite L. Pearson 2110 N Reecer Creek Road Ellensburg, WA 98926	196, 266
16			
17			
18	01144	Peoples National Bank of Washington U.S. Bank Trust Real Estate PO Box 3588 WSR781 Spokane, WA 99220	James P. Hutton, Attorney 239 Velikanje, Moore & Shore, Inc., PS 301 405 E Lincoln Avenue Yakima, WA 98901
19			
20			
21	02261	David Pethia	J. Eric Gustafson, 196, 263
22	(A)03072	4154 Cooper Point Road	Attorney 276, 277
23	(A)05691	Olympia, WA 98502	Lyon, Weigand, Suko & Gustafson, PS PO Box 1689 Yakima, WA 98907
24			
25			
26	REPORT OF REFEREE Re: Subbasin No. 7		
27			

1	00866	Gerald E. Platt, et al. 306 Oak Street Ellensburg, WA 98926	200, 266
2			
3	04857	Johanna Rawson PO Box 1095 Kittitas, WA 98934-1095	James Hurson, Attorney 201, 263 Kittitas Co. Prosecutor 266 5th and Main Ellensburg, WA 98926
4			
5	01236	Gayle V. Redd & Karen K. Redd Route 6 Box 320 Ellensburg, WA 98926	202, 266
6			
7	01419	James E. Roan & Lucille M. Roan Route 4 Box 224 Ellensburg, WA 98926	Richard T. Cole, 203, 263, Attorney 272 PO Box 499 Ellensburg WA 98926
8			
9	00296	Roy D. Rockwell & Virginia L. Rockwell 1515 W Dollarway Road Ellensburg, WA 98926	35, 266
10			
11	00515	Arnulfo Rodriguez & Gloria Rodriguez 2019 Quartz MT DR Ellensburg, WA 98926	207, 266
12			
13	01330	George Rominger P.O. Box 822 Ellensburg, WA 98926	Kenneth D. Beckley, 210, 263 Attorney 266 701 N. Pine Street Ellensburg WA 98926-2939
14			
15	01719	Jack C. Sanders & Isabelle M. Sanders 12800 NW 39th Avenue Vancouver, WA 98685-2155	44, 266
16			
17	01444	Schaake Packing Company PO Box 128 Ellensburg, WA 98926	John P. Gilreath, 211, 266 Attorney PO Box 499 Ellensburg, WA 98926
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26	REPORT OF REFEREE Re: Subbasin No. 7		
27			

1	01447	Nicholas Schmitt, Jr. & Janet C. Schmitt 5723 Seaview Avenue NW #5 Seattle, WA 98107	214, 263, 267, 269, 270
2	01942	Jess Schober & Barbara Schober HC61 Box 3020 Cle Elum, WA 98922	Richard T. Cole, Attorney 219, PO Box 499 263, 266 Ellensburg, WA 98926
3	01942	Schober Brothers PO Box 72 Cle Elum, WA 98922	219, 263, 266
4	01496	Norman Dean Schwartz & Waleeta Teme Schwartz Route 4 Box 253 Ellensburg, WA 98926	194, 263, 266
5	02140 (A)05733	Arloha M. Scott 1608 Glen Drive Ellensburg, WA 98926	Richard T. Cole, Attorney 221, PO Box 499 263, 281 Ellensburg, WA 98926
6	05722	Thomas C. Scott PO Box 934 Ellensburg, WA 98926	Richard T. Cole, Attorney 224, PO Box 499 266 Ellensburg, WA 98926
7	01320	Ross P. Shamley & Connie R. Shamley	195, 263, 266
8	06041	John Hardy Shore & Donna Shore Route 3 Box 395 Ellensburg, WA 98926-9513	226, 263, 266
9	00706 (A)05228	Karla E. Smith & Richard L. Hall PO Box 83 Thorp, WA 98946	Jeff Slothower, Attorney PO Box 1088 Ellensburg, WA 98926
10	05284	Wallace M. Stampfly Phyllis J. Stampfly Randall J. Stampfly 2453 Charlton Road Ellensburg, WA 98926	226, 266 135, 263, 271

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1	01887	Arthur E. Strand & Elva Strand 610 W Bender Road Ellensburg, WA 98926	227, 263, 266
2			
3			
4	00170	Patrick J. Taylor	Kenneth D. Beckley, 229, 263
5	00171	& Susan A. Taylor	Attorney 293
6	01745	3012 HWY 10	701 N. Pine Street
7	01745A	Ellensburg, WA 98926	Ellensburg WA 98926-2939
8			
9	01144	Carla L. Thomas	Jeff Slothower, Attorney 235, 239,
10	01959	Route 4 Box 210	Lathrop Firm 263, 297
11		Ellensburg, WA 98926	PO Box 1088 301
12			Ellensburg, WA 98926
13	01816	Harold Trump & Dorothy Trump 29836 - 1st Avenue S	Richard T. Cole, Attorney 241,
14		Federal Way, WA 98003	PO Box 499 266
15			Ellensburg, WA 98926
16	01816	Lawrence A. Trump Route 4 Box 215-A	Richard T. Cole, Attorney 241,
17		Ellensburg, WA 98926	PO Box 499 266
18			Ellensburg, WA 98926
19	00748	Twinmasters Corporation 146 Red Schoolhouse Road	Richard T. Cole, Attorney 244,
20		Spring Valley, NY 10977	PO Box 499 263, 266
21	01520	Dick Van de Graaf, Jr. & Maxine Van de Graaf 1695 Midvale Road	Ellensburg, WA 98926
22		Sunnyside, WA 98944	Donald Bond, Attorney 245, 263
23	01503	Van de Graaf Ranches, Inc. 1695 Midvale Road	Halverson & Applegate Inc. 291
24		Sunnyside, WA 98944	PO Box 27730
25			Yakima, WA 98907-2715
26	00881	Ventures, Inc. 10A Eagles Nest Drive	Donald Bond, Attorney 245
27		LaConner, WA 98257	Halverson & Applegate Inc.
28	00866	Ron Voshall PO Box 1018	PO Box 27730
29		Ellensburg, WA 98926	Yakima, WA 98907-2715
30			249, 266
31			200, 266

REPORT OF REFEREE
Re: Subbasin No. 7

1	00576	Paul Weaver & Florence A. Weaver Route 4 Ellensburg, WA 98926	176, 302
2	02391	Eldon C. Weidenbach Route 4 Box 252B Ellensburg, WA 98926	173, 263 266
3	01316	Jack Richard White & Christine M. White 13332 SE 195th Renton, WA 98058	249, 263 266
4	00515	Ronald Wilcox & Carolyn Wilcox Route 4, Box 292 Ellensburg, WA 98926	207, 266
5	00750	Joe Wilkening & Myrtle Wilkening 73 Klocke RD Ellensburg, WA 98926	Kenneth D. Beckley, Attorney 701 N. Pine Street Ellensburg WA 98926-2939
6	01637	Mike Williams	250, 263
7	(A)02107	& Debbie Williams Route 4 Box 294A Ellensburg, WA 98926	266
8	00520	Willowbrook Farms Ltd. Partnership	253, 263
9	(A)05669	371 Thorp Cemetery Road Ellensburg, WA 98926	266
10	01871	David Woodcock & Caroline Woodcock 4261 Robbins RD Ellensburg, WA 98926	256, 263, 266
11	01483	Robert L. Woodworth & Sue T. Woodworth PO Box 134 Alpine, WY 83128	263, 266
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26	REPORT OF REFEREE Re: Subbasin No. 7		
27			

1	01558	Paul Wyatt & Brenda Wyatt Route 6 Box 495 Ellensburg, WA 98926	Kenneth D. Beckley, Attorney 701 N. Pine Street Ellensburg WA 98926-2939	160, 282
2	00589	WA State Dept. of Natural Resources	Paul Silver, AAG	260, 263,
3	(A)00590	Agricultural Resources P.O. Box 47061 Olympia, WA 98504-7061	DNR PO Box 40100 Olympia, WA 98504-0100	266
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7 There were no claimants recommended for confirmation in the Plaintiff's
8 Report to the Referee. All claims were scheduled to be heard during the
9 evidentiary trial which commenced on October 15, 1990. The claimants will be
10 predominately addressed in alphabetical order; however, the claim for Mill Ditch
11 Company and the individual claims submitted by the ditch company patrons will be
12 considered first for better continuity and understanding. The Mill Ditch Company
13 submitted Court Claim No. 00626 in behalf of its patrons. The ditch company was
14 incorporated in 1965 and, according to its Articles of Incorporation, its purpose
15 was ". . . the orderly maintenance of the Mill Irrigation Ditch and to promote an
16 orderly distribution of water in the ditch; to acquire, own, hold, sell . . . water
17 and water rights; to conduct and deliver water for irrigation, stock and domestic
18 purposes."

19 According to the information in the record, what is now called the Mill Ditch
20 was known as the "Reed and Ramm" Ditch originally constructed in May of 1885.
21 Sometime after August of 1887, John A. Shoudy and R. P. Tjossem enlarged the Reed
22 and Ramm Ditch and apparently extended it to their lands. Henry and Sophronia Ramm
23 sold to Shoudy and Tjossem land for a right of way for the ditch. There may have
24 been a period of time that at least the extension was referred to as the Shoudy or
25

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Tjossem Ditch. There is no information in the record of where the Shoudy and
2 Tjossem land was located.

3 A second ditch served lands now served by the Mill Ditch. The Becker Ditch
4 was constructed in 1893 and originally diverted from a slough adjacent to the
5 Yakima River in Section 33, T. 18 N., R. 18 E.W.M. In 1968 Certificate of Change
6 recorded in Volume 2, Page 969, issued authorizing the point of diversion to be
7 changed to the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 18 N., R. 18 E.W.M., which is where the
8 Mill Ditch diversion is located. Since that time, water originally appropriated and
9 delivered through the Becker Ditch has been carried in the Mill Ditch. Presently
10 the Mill Ditch represents a consolidation of the Becker Ditch and the Reed and Ramm
11 Ditch (which also could have been known as the Shoudy/Tjossem Ditch).

12 Several of the Mill Ditch Company patrons have filed individual Court Claims
13 and presented testimony and evidence to show that a water right had been
14 established for their land irrigated with water delivered through the Mill Ditch.
15 These claimants did not ask that water rights be confirmed to them individually,
16 rather than to the ditch company. Many of the ditch company patrons did not file
17 Court Claims, choosing to rely on the claim filed by the ditch company. In order
18 to treat all patrons of the ditch company equally, the Referee intends to recommend
19 confirmation of a water right to the ditch company for those lands to which the
20 evidence supports the existence of a water right.

21 Immediately following are the claims filed by the ditch company and claims
22 filed by patrons of Mill Ditch Company.

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26 REPORT OF REFEREE
Re: Subbasin No. 7

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3 COURT CLAIM NO. 00626 -- Mill Ditch Company, Inc.

4 The Mill Ditch Company, Inc. submitted a Statement of Claim to the Court for
5 the diversion of waters from the Yakima River. On December 6, 1991, Ronald T.
6 Anderson and Robin Anderson were joined to the claim for lands previously owned by
7 Hugh Cannon and H. J. Merrick. Attorney John P. Gilreath represents the Mill Ditch
8 Company, Inc.. Appearing at the evidentiary hearing to testify in support of the
9 claim was Richard C. Bain, a consultant hired by the ditch company.

10 The Mill Ditch Company, Inc. is asserting a right to divert 36.5 cubic feet
11 per second, 12,160 acre-feet per year from the Yakima River for the irrigation of
12 531.5 acres and stock water. The ditch company identified an additional 213 acres
13 being irrigated with water carried through the Mill Ditch, but outside the assessed
14 area for the ditch company. This land is owned by Pautzke Bait Company, Schaake
15 Packing Company and Ronald Anderson, who have filed individual claims for the land.
16 Those claims are addressed on Pages 45, 211, and 42, respectively, of this report.
17 Additionally, claimants Don and Lu Guy, John G. and Nancy A. Jewett and Calaway
18 Pacific are also irrigating with waters diverted and carried through Mill Ditch.
19 They are being recommended for confirmation of water rights for a total of 19.5
20 acres. See pages 116, 146, and 83 respectively for discussion of their claims.
21 The Referee has recommended that rights be confirmed authorizing the diversion of
22 a total of 10.117 cubic feet per second, 1,041.61 acre-feet per year into Mill
23 Ditch for delivery to lands not within the Mill Ditch Company service area.

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Water is diverted from the Yakima River in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29. The Mill
2 Ditch Company service area is the W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ east of Desmond Road in Section 33, the
3 SW $\frac{1}{4}$ lying east of Interstate 90 and the SE $\frac{1}{4}$ of Section 34 lying southwest of the
4 Burlington Northern Railroad right of way, all in T. 18 N., R. 18 E.W.M.; a portion
5 of the N $\frac{3}{4}$ of Section 3, T. 17 N., R. 18 E.W.M. lying east of the West Channel of
6 Reecer Creek.

The individual patrons of the Mill Ditch Company hold the water rights.
Testimony was presented by the patrons who have filed their own Court Claims in this proceeding, as well as by Mr. Bain in behalf of the ditch company patrons. The record reflects that on May 31, 1890, J. H. Ramm and J. H. Reed each filed a Claim of Interest in Water Right. The documents stated that beginning on May 20, 1885, Ramm and Hatfield (predecessor to Reed) began construction of a water ditch and completed the ditch on June 20, 1885. The ditch, known as the Reed and Ramm Ditch was three miles long and its capacity was 8 cubic feet per second. Reed and Ramm each claimed half of the water. At that time Reed owned the E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33 and Ramm owned the N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T. 18 N., R. 18 E.W.M. The claims also state that in 1888 John A. Shoudy and R. P. Tjossem enlarged the ditch, but neither Ramm or Reed claimed an increased amount of water from that enlargement. The Reed and Ramm rights were established under the Prior Appropriation Doctrine and would enjoy a priority date of May 20, 1885. The Ramm and Reed appropriation is appurtenant to the lands now owned by Harold Lamb (50 acres), Jacob Papst (14 acres), Jerry Barton (25.5 acres), Ronald Anderson (9 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 40 acres in the E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34), and Dave Caraway (10 acres). Mr. Anderson is irrigating an additional 11 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of

REPORT OF REFEREE

Re: Subbasin No. 7

1 Section 34 that was not owned by either Reed or Ramm at the time of the
2 appropriation. This parcel is within the service area of the Mill Ditch Company.

On May 6, 1893, Josephine Becker initiated an appropriation of 16 cubic feet per second from a slough adjacent to the Yakima River. At the time of the appropriation Ms. Becker owned Government Lot 1, the S $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M. Shortly thereafter, she sold the land to Charles Suver, who also owned Government Lots 2, 3, and 4 of Section 3 and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34, T. 18 N., R. 18 E.W.M. The record shows that the Becker appropriation ultimately was used to irrigate the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34 lying south of Dolarway Road, the N $\frac{1}{2}$ and SW $\frac{1}{4}$ of Section 3, T. 17 N. R. 18 E.W.M. lying east of the Yakima River. Two Mill Ditch Company patrons are irrigating lands within this area: Pautzke Bait Company (146 acres), see discussion below regarding additional Pautzke lands, and Albert Lentz (39 acres). The claims filed in this proceeding by John and Nancy Jewett, Don and Lu Guy and Calaway Pacific are also asserting rights under the Becker appropriation. A total of 2.97 cubic feet per second has been recommended by the Referee for confirmation to those three parties. The water is diverted and carried by the Mill Ditch, but is not part of the water rights held by its patrons. The rights associated with the Becker Appropriation enjoy a priority date of May 6, 1893.

20 In 1968, Roy T. Carey, a former owner of much of Section 3, T. 17 N., R. 18 E.W.M.
21 obtained Certificate of Change recorded in Volume 2, Page 969, authorizing him to
22 change the point of diversion of 16.0 cubic feet per second diverted from the
23 Yakima River through the Becker Ditch as claimed by use since 1893. The

26 REPORT OF REFEREE
Re: Subbasin No. 7

1 certificate of change authorized him to change the diversion to the Mill Ditch
2 diversion in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 18 N., R. 18 E.W.M.

3 An additional 78 acres owned by Pautzke Bait Company within the N $\frac{1}{2}$ SE $\frac{1}{4}$ of
4 Section 3 are irrigated with waters carried in the Mill Ditch. This land was never
5 owned by either Becker or Suver, the only individuals who clearly benefited from
6 Becker's appropriation. Water rights for this land appear to stem from the October
7 1884 appropriation by Klein, Castle, and Coble. Under that appropriation 100 cubic
8 feet per second was claimed for the irrigation of lands owned by Kline, Castle,
9 Coble and Hagel. Hagel owned the SE $\frac{1}{4}$ of Section 3. It is not clear how many acres
10 were ultimately irrigated under this appropriation, which prevents the Referee from
11 determining the proportionate share of that appropriation that would be appurtenant
12 to the 78 acres owned by Pautzke Bait Co.. In the presentation of the Pautzke Bait
13 Co. claim the evidence was that 12.3 cubic feet per second was diverted from a
14 takeout that served fields lying in the N $\frac{1}{2}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 3. The Referee
15 determined that half of that quantity would be appurtenant to the 78 irrigated
16 acres in the N $\frac{1}{2}$ SE $\frac{1}{4}$, with a priority date of October 30, 1884, and the other half
17 would be appurtenant to the irrigated acres in the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 3, with a
18 priority date of May 6, 1893.

19 In 1990 the Court signed an Order Pendente Lite allowing the water formerly
20 diverted into the Klein, Castle, and Coble Ditch to be diverted at the Mill Ditch.
21 The Court also directed that an application for change of point of diversion be
22 filed with the Department of Ecology for a determination of whether the point of
23 diversion should be permanently changed. The point of diversion for the portion of
24 the Pautzke Bait water right stemming from the Klein, Castle, and Coble Ditch, in

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3, would be in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, rather than the Mill
2 Ditch diversion. Compliance with RCW 90.03.380 should be pursued by either Mill
3 Ditch Company or Pautzke Bait Company.

4 The Mill Ditch Company also serves lands owned by Rick Allemand, Hugh Cannon
5 and H. J. Merrick (now Ron Anderson), Leonard Doyle, Charles Kuchenbuch, Tom
6 Morrison, John A. Bugni, Paul Shinn and Arnold Yost that appear to lie in the SE $\frac{1}{4}$
7 of Section 33 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34 north of Dolarway. There has been
8 nothing entered into the record to show that water rights were established for this
9 land. None of the appropriations previously discussed appear to be appurtenant.
10 The ditch company is claiming water based on the enlargement of the Reed - Ramm
11 Ditch by Shoudy and Tjossem in 1887. However, there has been nothing entered in
12 the record to show that any of the ditch company patrons are successors to Shoudy
13 and/or Tjossem. Additionally, documents submitted by Albert Lentz lead the Referee
14 to believe that this additional appropriation was for the operation of a mill
15 rather than irrigation and that when the mill was closed in 1941, the water right
16 was transferred to the City of Ellensburg for power generation. There also was no
17 testimony about water use on the land owned by these individuals. It is not clear
18 that the land has historically been or is currently being irrigated. In Mr. Bain's
19 report and his testimony reference was made to assessed acres rather than irrigated
20 acres. In particular there was an indication that the Cannon and Merrick property
21 has not recently been farmed.

22 Pursuant to the requirements of RCW 90.14, Mill Ditch Company filed Water
23 Right Claim No. 026224 asserting a right to divert 26 cubic feet per second,
24 "about" 7,970 acre-feet per year from the Yakima River for the irrigation of 538

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 acres and stock water. Attached to the claim was several pages with legal
2 descriptions for the land served by the company. The date of first water used
3 claimed was April 1885.

4 The ditch company is now claiming a right to appropriate 12,160 acre-feet per year
5 for stock watering and irrigation. This quantity is based on Mr. Bain's estimation
6 of the quantity of water needed to irrigate the land, along with diversion records
7 compiled by the U. S. Bureau of Reclamation. However, the diversion records do not
8 support the existence of a water right to this quantity. The diversion records
9 show that after the mill closed in 1941 and until 1977, diversions into Mill Ditch
10 during irrigation season ranged from 3,370 acre-feet per year in 1948 to a high of
11 6,480 acre-feet per year in 1952. In 1967 the Washington Legislature adopted RCW
12 90.14, which among other things contained a provision for relinquishment of unused
13 water rights. RCW 90.14.160 states:

14 Any person (for the purpose of this chapter "person" means individual,
15 partnership, association, public or private corporation) entitled to
16 divert or withdraw waters of the state through any appropriation
17 authorized by enactments of the legislature prior to enactment of Chapter
18 117, Laws of 1917, or by custom, or by general adjudication, who abandons
19 the same, or who voluntarily fails, without sufficient cause, to
20 beneficially use all or any part of said right to divert or withdraw for
21 any period of five successive years after the effective date of this act
22 (July 1, 1967), shall relinquish such right or portion thereof, and said
23 right or portion thereof shall revert to the state, and the waters
24 affected by said right shall become available for appropriation in
25 accordance with RCW 90.03.250.

26 The diversion records show that between 1967 and 1973 the highest diversion was
27 5,820 acre-feet per year. This figure is consistent with the irrigation season
28 diversions after the mill closed in 1941 until 1977. In 1977 the ditch company
29 diverted 10,770 acre-feet and subsequently has diverted in excess of 7,000

30 REPORT OF REFEREE
31 Re: Subbasin No. 7

1 acre-feet during the irrigation season. There was no explanation as to why
2 the diversions have increased since 1977, although at some point subsequent to
3 1977 waters originally diverted into the Klein, Castle and Coble Ditch have been
4 diverted into Mill Ditch. The Referee believes that any right held by Mill Ditch
5 Company that may have existed for the diversion of more than 5,820 acre-feet during
6 the irrigation season has relinquished due to nonuse. The diversion records do not
7 reflect the water that is now diverted and delivered to Schaake Meat Company and
8 the lower Anderson property, but it does reflect the water delivered to the Pautzke
9 Bait Company land in the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 and the Guy, Jewett and Calaway property
10 in Section 3. It also may reflect the diversion of water to irrigate the land in
11 the SE $\frac{1}{4}$ of Section 33 and W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34 for which the Referee finds there was
12 insufficient evidence to conclude a right exists.

13 Mr. Bain measured applied irrigation water on selected farm takeouts to
14 determine water use on some of the fields within the Mill Ditch Company service
15 area. Using these figures he determined that 11,628.7 acre-feet per year needs to
16 be diverted during irrigation season for irrigation of the 531.5 acres that are
17 assessed. There was no explanation offered as to why the estimated water need during
18 irrigation season is significantly different than the Bureau of Reclamation
19 diversion records for this ditch, or the annual quantity identified in the RCW 90.14
20 water right claim. According to Mr. Bain's report, an additional 740 acre-feet per
21 year would need to be diverted outside the irrigation season for stock watering.
22 Neither the report or the testimony addressed the instantaneous quantity that is
23 diverted for stock watering in the winter months. A continuous diversion of 2.28
24 cubic feet per second between October 16 and March 31 would result in 750 acre-feet

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 being diverted into the canal. Since no other information is available on which to
2 base a recommendation, the Referee will use that quantity.

3 The Referee recommends that rights be confirmed for the diversion of water from
4 the Yakima River under Court Claim No. 00626 as follows:

5 With a May 20, 1885, date of priority (under the Reed and Ramm appropriation)
6 8 cubic feet per second, 2,196.32 acre-feet per year from April 1 to October 15 for
7 the irrigation of 148.5 acres and 2.28 cubic feet per second, 750 acre-feet per year
8 from October 16 to March 31 for stock watering in the E $\frac{1}{2}$ NW $\frac{1}{4}$ east of Desmond Road and
9 W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33 and the NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34 north of
10 Dolarway Road and southwest of the railroad tracks, all in T. 18 N., R. 18 E.W.M.

11 With a May 6, 1893, date of priority (under the Becker Appropriation) 8.75
12 cubic feet per second, 2,547.45 acre-feet per year from April 1 to October 15 for
13 the irrigation of 185 acres and 2.28 cubic feet per second, 750 acre-feet per year
14 for stock watering in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34 south of Dolarway Road, T. 18 N.,
15 R. 18 E.W.M. and that portion of the N $\frac{1}{2}$ of Section 3 lying east of the West
16 Channel of Reecer Creek in T. 17 N., R. 18 E.W.M., except the lands owned by Guy
17 and Jewett.

18 With an October 30, 1884, date of priority (under the Klein, Castle and Coble
19 Appropriation) 6.15 cubic feet per second, 1,074.61 acre-feet per year for the
20 irrigation of 78 acres in the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M.

21 The rights herein confirmed shall each carry a provision that states that for
22 stock watering purposes the two rights are not additive and 2.28 cubic feet per
23 second, 750 acre-feet per year is the maximum that can be diverted into the Mill
24 Ditch for stock watering under the Mill Ditch rights. An additional 0.50 cubic feet

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 per second, 12 acre-feet per year can be diverted from October 16 to March 31 for
2 stock watering on the Pautzke Bait Company-Hundley Ranch (see Page 45). In
3 addition to the quantities authorized in the Mill Ditch Company water rights,
4 10.117 cubic feet per second, 1,041.61 acre-feet per year can be diverted into Mill
5 Ditch during the irrigation season for delivery to Pautzke Bait Company for the
6 Hundley Ranch, Schaake Packing, Don and Lu Guy, John and Nancy Jewett and Calaway
7 Pacific under their individual rights.

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9 COURT CLAIM NO. 00296 -- Estate of James Jollo
10 & Mary C. Jollo
11 Ronald T. Anderson
12 & Robin L. Anderson
13 Roy D. Rockwell
14 & Virginia L. Rockwell

15 A Statement of Claim was filed by James and Mary C. Jollo for the use of
16 waters from the Yakima River. On April 23, 1990, Ronald T. and Robin L. Anderson
17 were joined to the claim and on February 20, 1991, Roy and Virginia Rockwell were
18 joined to the claim. According to the documents filed, the Andersons acquired most
19 of the land described in the Court claim, specifically the E $\frac{1}{4}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
20 Section 34 and the Rockwells acquired a two acre parcel lying in the southwest
21 corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T. 18 N., R. 18 E.W.M. It appears that the
22 Jollos no longer have any interest in the land. The Andersons are represented by
23 Attorney John P. Gilreath. Richard C. Bain, a consultant hired by the Andersons,
24 and Ronald Anderson testified at the evidentiary hearing. The Rockwells were
25 joined to the claim after the evidentiary hearing and there was no testimony about
26 water use on the portion of the land they purchased.

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REPORT OF REFEREE
Re: Subbasin No. 7

1 The Andersons own 60 acres of pasture irrigated with water diverted from the
2 Yakima River and carried in the Mill Ditch. Mr. Bain measured the takeouts used to
3 irrigate some of the fields and determined that 6.7 cubic feet per second is being
4 used to irrigate fields totalling 54 of the 60 acres. Based on this flow and the
5 frequency of irrigation of the fields, he estimated that 1,170 acre-feet per year
6 is being used to irrigate the entire 60 acres. Approximately 100 head of cattle
7 and several horses are raised, requiring an additional 5 acre-feet per year for
8 stock watering.

The land described in Court Claim No. 00296 was part of a larger parcel to which Sophronia E. Pollington, also known as Sophronia Ramm, obtained a patent from the Federal government on August 16, 1889. On May 31, 1890, J. H. Ramm filed a Claim of Interest in Water Right stating that on May 20, 1885, he and one Hatfield began construction of a water ditch known as the Reed and Ramm Ditch for the purpose of irrigating his land and the land then owned by Reed. The document stated that the capacity of the ditch was 8 cubic feet per second and Ramm owned one-half interest in the ditch and the water conveyed in the ditch. His one-half interest, or 4 cubic feet per second, was used to irrigate the land he owned in the N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34. The document also stated that in 1888 John A. Shoudy and R. P. Tjossem enlarged the ditch, but Ramm claimed no increased amount of water by reason of the enlargement. The proportionate share of this right that would be appurtenant to the claimant's land is 1.5 cubic feet per second for the irrigation of 60 acres.

23 The claimant is asserting that in addition to this quantity, the land enjoys a
24 right for additional water as a result of a right of way granted by Sophrania and

26 | REPORT OF REFEREE
Re: Subbasin No. 7

1 Henry Ramm to John A. Shoudy and R. P. Tjossem for enlarging the ditch. The right-
2 of-way does state that the Ramms have a right to use water from the ditch to
3 irrigate their land. However, the Claim of Interest in Water Right filed by J. H.
4 Ramm clearly states that his claim is to half of the eight cubic feet per second
5 appropriated in 1885 when the ditch was originally constructed and that he claims
6 no increased amount of water by reason of said enlargement. There is no evidence
7 that a subsequent claim for additional water was made by Ramm. The Claim of
8 Interest of Water Right was filed two years after the right-of-way document.
9 Certainly if Ramm was intending to claim additional water by virtue of the
10 enlargement he would have done so at that time. Based on this language, the
11 Referee must conclude that the Ramm right is limited to 4 cubic feet per second,
12 and the proportionate share that the Anderson land would enjoy is 1.5 cubic feet
13 per second for 60 acres. See the Mill Ditch Company claim for the Referee's
14 recommendation for confirmation of a water right to Mill Ditch Company.

15
16 COURT CLAIM NO. 00910 -- Gaylord Kastning
17 & Georgia Kastning
Jerry Barton
18 & Diane Barton

19 A Statement of Claim was filed with the Court by Gaylor and Georgia Kastning
20 for use of waters from the Yakima River. On March 19, 1990, Jerry D. and Diane M.
21 Barton were joined to the claim. Mr. Barton testified at the evidentiary hearing.

22 The land described in this Court claim consists of approximately 18 acres
23 lying within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T. 18 N., R. 18 E.W.M., with 17.5 acres
24 irrigated with water diverted from the Yakima River and conveyed through the Mill

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26 REPORT OF REFEREE
Re: Subbasin No. 7

1 Ditch. The land is planted in pasture grass and up to 50 head of cattle have been
2 raised on the property. The livestock drink from the irrigation ditches. The land
3 is flood irrigated and Mr. Barton testified that he irrigates every six to eight
4 weeks and lets the water run 24 hours at a time when they are irrigating. He did
5 not testify to how many days it takes to get over the entire 17.5 acres. It was
6 Mr. Barton's belief that this land has been irrigated since the late 1800's.

7 The land owned by the Bartons was part of a larger parcel to which Sophronia
8 E. Pollington, also known as Sophronia Ramm, obtained a patent from the Federal
9 government on August 16, 1889. On May 31, 1890, J. H. Ramm filed a Claim of
10 Interest in Water Right stating that on May 20, 1885, he and one Hatfield began
11 construction of a water ditch known as the Reed and Ramm Ditch for the purpose of
12 irrigating his land and the land then owned by Reed. The document stated that the
13 capacity of the ditch was 8 cubic feet per second and Ramm owned one-half interest
14 in the ditch and the water conveyed in the ditch. His one-half interest, or 4
15 cubic feet per second, was used to irrigate the land he owned in the N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$
16 and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34. The document also stated that in 1888 John A. Shoudy and
17 R. P. Tjossem enlarged the ditch, but Ramm claimed no increased amount of water by
18 reason of the enlargement. The proportionate share of this right that would be
19 appurtenant to the claimant's land is 0.44 cubic foot per second for the irrigation
20 of 17.5 acres. See the Mill Ditch Company claim for the Referees recommendation
21 for confirmation of a composite right to Mill Ditch Company.

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26 REPORT OF REFEREE
Re: Subbasin No. 7

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2 COURT CLAIM NO. 00908 -- Harold F. Lamb, et al.
3 & Roberta D. Lamb
4 Frank C. Lamb
Randy H. Lamb
Claudia J. Lofstrom

5 A Statement of Claim was submitted to the Court by the Lambs and Ms. Lofstrom
6 for the diversion of waters from the Yakima River. The claimants are represented
7 by Attorney John P. Gilreath. Harold Lamb and Richard C. Bain, a consultant hired
8 by the claimants, testified at the evidentiary hearing.

9 The claimants' property lies in the W $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ lying east of the county
10 road that goes north and south through the section, all in Section 33, T. 18 N.,
11 R. 18 E.W.M.. They own 100 acres, of which 85 are irrigated pasture for raising 70
12 cow/calf pairs. Water is diverted from the Yakima River into Mill Ditch, which
13 flows through the property. A lateral, called Reed Ditch, is used to convey water
14 to the northerly portion of the property. Mr. Bain testified that 2.56 cubic feet
15 per second is withdrawn directly from Mill Ditch within the farm itself and 3.32
16 cubic feet per second is diverted into Reed Ditch. He estimated that Reed Ditch
17 loses approximately 40.3 acre-feet during the irrigation season. This estimate was
18 not based on actual measurements of the ditch, but standards contained in Abbott
19 American Civil Engineering Practice, p. 17-31. The claimants are asserting a right
20 to the diversion of 5.88 cubic feet per second, 2,462.8 acre-feet per year based on
21 Mr. Bain's analysis of the irrigation practices on the farm and 7 acre-feet per
22 year for stock watering.

23 According to the record, this land was originally conveyed by the Federal
24 government to Northern Pacific Railroad Company. In 1881, the railroad sold the

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 W $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 34 to James H. Reed. On May 31, 1890, J. H. Reed filed
2 a Claim to Interest in Water Ditch, stated that he is the owner of one half
3 interest in the Reed and Ramm water ditch. The ditch is three miles long and its
4 capacity is about 8 cubic feet per second. Work on the ditch was begun about
5 May 20, 1885. The claim also states that 50 acres of Reed's land lies under said
6 ditch and are irrigated and proposed to be irrigated from said Reed and Ramm Ditch.
7 The claim identified the Reed property as being the E $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33.
8 The other information in the record shows that Reed owned the W $\frac{1}{2}$ NE $\frac{1}{4}$ rather than the
9 N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33. Council for the claimant has pointed out in the exhibits that
10 this appropriation specifically stated that 50 acres were being irrigated or
11 proposed for irrigation from that ditch. There was no explanation of when the
12 additional 35 acres now being irrigated by the claimant were first irrigated or how
13 a right was established for the additional acres.

14 The claimant is asserting a right to water in excess of the 4 cubic feet per
15 second that was Reed's share of the previously discussed appropriation. This
16 additional water is purportedly from the Shoudy and Tjossem appropriation and
17 enlargement of the Reed and Ramm Ditch, which is referred to in the May 31, 1890,
18 Claim of Interest. However, the Claim to Interest in Water Ditch filed by Reed
19 identified that John A. Shoudy and R. P. Tjossem enlarged the ditch, but Reed
20 claimed no increased amount of water by reason of the enlargement. Included in the
21 record are copies of deeds transferring the portions of the land and referencing
22 the Reed water rights. However, there is nothing in the record to support this
23 claim for additional water.

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 In the record is a copy of a deed transferring from Kleinberg to Gates half of
2 the property now owned by the Lambs and a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33,
3 which is not owned by the Lambs. That deed also transfers one-half interest in the
4 amount claimed by Reed and 12.5 inches out of Shoudy Ditch. However, the 12.5
5 inches from Shoudy Ditch are identified as being specifically with the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
6 Section 33, not for the lands now owned by the Lambs.

7 Pursuant to the requirements of RCW 90.14, Mill Ditch Company filed Water
8 Right Claim No. 026224 for the diversion of 26 cubic feet per second from the
9 Yakima River for the irrigation of 538 acres. Attached to the claim is the legal
10 descriptions for the lands served by the ditch, including the Lamb property. The
11 Referee notes that next to Harold Lamb's name is 49 acres, which may indicate that
12 is the extent of the right recognized by the ditch company at that time.

13 Based on the information in the record, the Referee concludes that the Lamb
14 property has a right to 4 cubic feet per second, from the Yakima River through Mill
15 Ditch for the irrigation of 50 acres and stock water in that portion of the E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$
16 and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33 lying south of Reed Ditch. See the Mill Ditch Company
17 claim for the Referee's recommendation for confirmation of a composite right for
18 Mill Ditch Company.

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26 REPORT OF REFEREE
 Re: Subbasin No. 7
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2 COURT CLAIM NO. 00637 -- Albert J. Lentz
3 & Glena M. Lentz
4 Ronald T. Anderson
5 & Robin L. Anderson

6 Albert J. Lentz and Glena M. Lentz filed Statements of Claim with the Court
7 for the use of waters from the Yakima River on two separate parcels. On
8 February 17, 1994, Ronald T. and Robin Anderson and Mark T. Anderson were joined to
9 the Court Claim. Albert Lentz testified at the evidentiary hearing.

10 Ronald T. and Robin L. Anderson have purchased the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34,
11 T. 18 N., R. 18 E.W.M. Within that ten acre parcel, nine acres are irrigated with
12 waters diverted from the Yakima River and carried in the Mill Ditch. The claim to
13 a water right for this property is based on a Claim of Water Right filed on May 31,
14 1890, by J. H. Ramm. That document stated that on May 20, 1885, Ramm and Hatfield
15 began construction of a ditch for irrigation their lands. The ditch is known as
16 the Reed and Ramm Ditch. The capacity of the ditch was 8 cubic feet per second and
17 Ramm claimed half interest in the ditch and Reed (successor to Hatfield) had the
18 remaining half interest. The lands owned by Ramm were the N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$
19 of Section 34 and all of that land was irrigated from the ditch. The notice also
20 stated that John Shoudy and R. P. Tjossem enlarged the ditch, but that Ramm claimed
21 no interest in the additional water diverted as a result of that enlargement.
22 Ramm's share of the original appropriation would be 4 cubic feet per second for the
23 irrigation of 160 acres, or 0.025 cubic foot per second per acre irrigated.

24 This water is now delivered through the Mill Ditch. Pursuant to the
25 requirements of RCW 90.14, Water Right Claim No. 026224 was filed by the Mill Ditch

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Company for the diversion of 26 cubic feet per second from the Yakima River for the
2 irrigation of 538 acres. The lands described in Court Claim No. 00637 are included
3 within the place of water use on the claim.

4 Mr. and Mrs. Lentz are the owners of that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
5 Section 34, T. 18 N., R. 18 E.W.M. lying southwest of the county road, most of
6 Government Lot 4 of Section 3, T. 17 N., R. 18 E.W.M. lying northeast of Interstate
7 90 and the northwest corner of Government Lot 3 of Section 3. According to Mr.
8 Lentz's testimony, they irrigate 39 acres within this area with water diverted from
9 the Yakima River. Their claim to a water right is based on a Notice of Water Right
10 filed by Josephine Becker asserting a right from May 6, 1893, for the diversion of
11 16 cubic feet per second from the Yakima River. The ditch diverted from a slough
12 adjacent to the river in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33 and terminated in the NE $\frac{1}{4}$
13 Section 3. Shortly after this notice was filed, Ms. Becker sold her property to
14 C.W. Suver, who developed much of Section 3, irrigating with the ditch constructed
15 by Ms. Becker. In 1910 Charles Suver sold to Charles Gordon the land now owned by
16 the claimants in Section 34, along with 1/16 of the water in the Becker Ditch, or 1
17 cubic foot per second. In 1968 Roy T. Carey obtained Certificate of Change
18 recorded in Volume 2, Page 969 authorizing a change of point of diversion from the
19 SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33 to the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, which is the location of the
20 diversion used by the Mill Ditch. The testimony was that for many years Mill Ditch
21 has carried the Becker water. Mr. Lentz did not testify to the quantity of water
22 he is claiming, however, Court Claim No. 00637 appears to be asserting a right for
23 1 cubic foot per second for the land he still owns.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

Based on the evidence presented, the Referee concludes that a water right was established under the Prior Appropriation Doctrine for the land now owned by the Andersons with a May 20, 1885, date of priority for the diversion of 0.225 cubic foot per second for the irrigation of 9 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34. The Referee also concludes that a water right was established under the Prior Appropriation Doctrine for the land retained by Mr. and Mrs. Lentz with a May 6, 1893, date of priority for the diversion of 1 cubic foot per second for the irrigation of 39 acres in that portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34 southwest of the county road and a portion of Government Lot 4, Section 3 lying northeast of Interstate 90. See the Mill Ditch Company claim for the Referee's recommendation for confirmation of a composite right to Mill Ditch Company.

COURT CLAIM NO. 01719 -- Jack C. Sanders
& Isabelle M. Sanders

A Statement of Claim was filed by Jack C. and Isabelle M. Sanders for the use
of waters from the Yakima River via Mill Ditch. Jerry Barton testified at the
evidentiary hearing in support of this claim. Mr. Barton testified that he and his
wife have purchased the land described in this claim, but there was been no
paperwork filed to formally substituted the Bartons in place of the Sanders.

The land described in this claim consists of nine acres within the $W\frac{1}{2}E\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$
of Section 34, T. 18 N., R. 18 E.W.M., of which eight acres are irrigated with
water delivered by the Mill Ditch. The land is planted in pasture grass and flood
irrigated. It was Mr. Barton's belief that the land has been irrigated since the
late 1800's.

26 REPORT OF REFEREE
Re: Subbasin No. 7

1 The land described in Court Claim No. 01719 was part of a larger parcel to
2 which Sophronia E. Pollington, also known as Sophronia Ramm, obtained a patent from
3 the Federal government on August 16, 1889. On May 31, 1890, J. H. Ramm filed a
4 Claim of Interest in Water Right stating that on May 20, 1885, he and one Hatfield
5 began construction of a water ditch known as the Reed and Ramm Ditch for the
6 purpose of irrigating his land and the land then owned by Reed. The document
7 stated that the capacity of the ditch was 8 cubic feet per second and Ramm owned
8 one-half interest in the ditch and the water conveyed in the ditch. His one-half
9 interest, or 4 cubic feet per second, was used to irrigate the land he owned in the
10 N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34. The document also stated that in 1888 John
11 A. Shoudy and R. P. Tjossem enlarged the ditch, but Ramm claimed no increased
12 amount of water by reason of the enlargement. The claim of four cubic feet per
13 second to irrigate 160 acres provides for the use of 0.025 cubic foot per second
14 for each acre irrigated. The proportionate share of this right that would be
15 appurtenant to the land described in this claim is 0.2 cubic foot per second for
16 the irrigation of 8 acres. See the Mill Ditch Company claim for the Referee's
17 recommendation for confirmation of a composite right for diversion Mill Ditch
18 Company.

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20 COURT CLAIM NO. 01724 -- Pautzke Bait Company, Inc.

21 Pautzke Bait Company, Inc. filed a Statement of Claim with the Court for the
22 use of waters diverted from the Yakima River, Reecer Creek and Mercer or Wilson
23

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Creek. Mercer and Wilson Creek are located in Subbasin No. 9 and consideration of
2 that portion of the claim will be made in the Report of Referee for Subbasin No. 9.
3 The claimant is represented by Attorney John P. Gilreath. Richard C. Bain, a
4 consultant hired by the claimant, and Darrel Eason, leasee of the land, testified
5 at the evidentiary hearing.

6 Pautzke Bait Company, Inc. owns three ranches that were settled and developed
7 under separate ownership. The first ranch to be addressed is referred to as the
8 Hundley Ranch. It lies in the NE $\frac{1}{4}$ of Section 10 lying east of Dike Road and north
9 of Damman Road, the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 east of Dike Road, and the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
10 Section 2 west of Mercer Creek, all in T. 17 N., R. 18 E.W.M. The ranch is 148
11 acres in size with 130 acres being irrigated. The primary crop is timothy hay with
12 grain rotation and some pasture. Water diverted from the Yakima River is used to
13 irrigate 117 acres and water diverted from Mercer Creek is used to irrigate 13
14 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2. A right is being asserted for the use of 8
15 cubic feet per second, 2,363 acre-feet per year from the Yakima River. The
16 quantity of water claimed is based on monitoring two takeouts that are used to
17 irrigate two fields totaling 22 acres. There was no testimony about the quantity
18 of water diverted into the Klein, Castle, and Coble Ditch, which serves the land or
19 conveyance loss or gain. Mr. Bain's engineering report identified eight takeouts
20 on the ditch used to irrigate the land. Neither the claimant nor Mr. Bain
21 testified to how many takeouts are used at one time. The Referee does not believe
22 that an analysis of the water use on 22 acres out of 130 irrigated acres is
23 sufficient to determine water use on the entire ranch, particularly without
24 specific evidence of the instantaneous quantity of water being diverted. Up to 250

25 REPORT OF REFEREE

26 Re: Subbasin No. 7

1 head of cattle are raised on this ranch, needing 12 acre-feet per year of water,
2 which is provided through the irrigation ditches. There was no testimony about the
3 instantaneous rate needed in the winter for stock watering.

4 The claimants are basing their claim to a water right on a Notice of Water
5 Right filed by N. Klein, O. B. Castle and Daniel Coble on July 3, 1885. This
6 notice stated that in October of 1884, they began construction of a water ditch to
7 be used for irrigation purposes and appropriated 5,000 inches of water (100 cubic
8 feet per second). The ditch began 10 rods (165 feet) south of the northwest corner
9 of Section 3 and ran in a southeasterly direction through the John Hagle Ranch in
10 the SE $\frac{1}{4}$ of Section 3, through the NE corner of the N. Klein ranch in the NE $\frac{1}{4}$ of
11 Section 10, through the Oren Castle ranch and terminating in the middle of the
12 Daniel Coble ranch in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11, all in T. 17 N., R. 18 E.W.M. Mr.
13 Bain's report states that interviews by a now deceased lease holder with prior
14 owners confirmed that the land has been irrigated for over 100 years. The chain of
15 titles entered into evidence confirms that John Hagel owned land in Section 3 and
16 Nicholas Klein owned a portion of Section 10. The chain of title for Section 2
17 does not show ownership by any of the parties to the Notice of Water Right. There
18 is nothing in the record to show that a water right was established from the Yakima
19 River for the irrigation of the Pautzke Bait land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2. It
20 also is not clear to the Referee whether any of that land is irrigated with Yakima
21 River water. Mr. Bain's report and testimony indicates that the land in Section 2
22 is irrigated with water from Mercer Creek; however the State's Map, SE-2, appears
23 to show a lateral coming from the Klein, Castle, Coble ditch to Section 2.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Apparently a flood damaged the intake for the Klein, Castle, and Coble Ditch
2 several years ago. On May 11, 1990, the Court signed an Order Pendente Lite
3 authorizing Pautzke Bait Company, Inc. to change the point of diversion to the Mill
4 Ditch diversion in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29. Water formerly diverted into the
5 Klein, Castle, and Coble Ditch is carried in Mill Ditch to Reecer Creek and
6 released into the creek for diversion into the lower reach of the Klein, Castle,
7 Coble Ditch. The State's Map, Exhibit SE-2 shows a diversion in the vicinity of
8 the Klein, Castle, and Coble Ditch and very near the Yakima River in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
9 Section 3, but there was no testimony about this diversion. The order signed by
10 the Court directed Pautzke Bait Company to file with the Department of Ecology an
11 application for change in point of diversion pursuant to the requirements of RCW
12 90.03.380.

13 Mary Elizabeth Hundley, as a prior owner of the property, filed Water Right
14 Claim No. 120032 pursuant to the requirements of RCW 90.14 asserting a right to
15 divert 9 cubic feet per second, 1400 acre-feet per year from the Yakima River for
16 the irrigation of 172 acres and stock watering. Subsequently, Interstate 90 was
17 constructed through her lands. The lands on which water is used includes the
18 Pautzke Bait Company land in the N $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 and
19 the NE $\frac{1}{4}$ of Section 10. The water right claim has a note to the effect that the
20 diversion and upper portion of the Klein, Castle, and Coble Ditch was destroyed by
21 a flood and the diversion was to be reestablished.

22 Although Pautzke Bait Company is asserting a right to 8 cubic feet per second,
23 2,363 acre-feet per year, this is based on an evaluation of only 22 of the 130
24 acres irrigated. The RCW 90.14 water right claim filed by Ms. Hundley asserts a

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

right to approximately 0.05 cubic foot per second, 8.13 acre-feet per year per irrigated acre and states that is the quantity being used at that time. An additional 0.50 cubic foot per second will be authorized during the winter months for stock watering. This quantity, along with that diverted by Mill Ditch Company for its patrons, should be sufficient to get 12 acre-feet through the ditch to the Hundley Ranch for winter stock water. The Referee recommends that a right be confirmed under the Prior Appropriation Doctrine with an October 30, 1884, date of priority for the diversion of 6.5 cubic feet per second, 1,056.90 acre-feet per year for the irrigation of 117 acres and 12 acre-feet per year for stock water.

The next ranch to be considered is the Wade Place located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28 and the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33, T. 18 N., R. 18 E.W.M. This ranch is 82 acres in size of which 73 are irrigated by Darrell Eason, who leases the land. The land is irrigated with diversions from Reecer Creek, Currier Creek and water delivered by the Ellensburg Water Company through the Town Ditch. The water rights of the Ellensburg Water Company are being determined through the major claimant pathway identified in Pre-Trial Order No. 8.

Water is diverted from Reecer Creek near the center of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28 and from Currier Creek in the NE $\frac{1}{4}$ of Section 33, approximately 1300 feet south of the northeast corner of Section 33. According to Mr. Bain's report, the ranch is divided into two fields. Field 2 is 49 acres in size and is irrigated with water diverted from Reecer Creek at a rate of 5.64 cubic feet per second and from Currier Creek at a rate of 6.32 cubic feet per second. Based on Mr. Eason's irrigation practice, Mr. Bain determined that a total of 627.2 acre-feet per year or 12.8 acre-feet per acre irrigated is used to irrigate this timothy hay field.

REPORT OF REFEREE

Re: Subbasin No. 7

1 Field 1 is 23 acres in size and lies immediately west of Field 2. The Referee
2 notes that although the report states that 73 acres are irrigated, the acreage
3 provided for fields 1 and 2 totals 72 acres. Field 2 is irrigated with water
4 diverted from Reecer Creek at two points. Takeout 1 was measured at 3.32 cubic
5 feet per second and Takeout 3 was measured at 6.67 cubic feet per second. Based on
6 Mr. Eason's information about his irrigation practice, Mr. Bain calculated that
7 750.6 acre-feet per year is used to irrigate this field, or 31.3 acre-feet per acre
8 irrigated. Mr. Bain explained that this field is generally porous, with field
9 drains, to justify the use of this extremely high quantity of water. The Referee
10 does not believe that this brief explanation is sufficient to justify the use of
11 such a high quantity of water, when a neighboring field uses only 12.8 acre-feet
12 per acre.

13 The record includes chains of title for the Section 28 and Section 33 that
14 reflect that David Fisher received a patent for the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28 and the
15 E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33 dated April 10, 1882. However, there is nothing in the record
16 to show that a water right was established for this property. There was no
17 testimony of historic water use on the land. Since the land is riparian to both of
18 the creeks water rights could have been established under the Riparian Doctrine.
19 In order for the Referee to determine that a water right was established it would
20 be necessary to show that water was used from Reecer Creek and Currier Creek for
21 the irrigation of this land by December 31, 1932. The summary of the Pautzke Bait
22 Company claim also identifies the existence of a source that may be known as Spring
23 Creek located in the northwesterly portion of the property. It is not clear

24
25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 whether this was an attempt to establish a water right for use of this source.
2 There was no testimony of water use from Spring Creek.

3 As a prior owner of the property, Gene Wade filed two water right claims in
4 compliance with the requirements of RCW 90.14. Water Right Claim No. 008348
5 asserts a right to divert 4 cubic feet per second, 960 acre-feet per year from
6 Spring Creek for the irrigation of 85 acres in the NE $\frac{1}{4}$ of Section 33 and part of
7 the SE $\frac{1}{4}$ of Section 28, T. 18 N., R. 18 E.W.M. The diversion from this Spring Creek
8 was identified as being within the NE $\frac{1}{4}$ of Section 29, approximately one mile
9 northwest of the property. Water Right Claim No. 008349 asserts a right to divert
10 2 cubic feet per second, 480 acre-feet per year from Reeser Creek for the
11 irrigation of 38 acres in the NE $\frac{1}{4}$ of Section 33, T. 18 N., R. 18 E.W.M. The
12 diversion location on the claim appears to be on what has been identified as
13 Currier Creek. Other claimants in this proceeding have referred to Currier Creek
14 as Reecer Creek.

15 Due to the lack of evidence to show that a water right was established for
16 this property by irrigation of the land prior to December 31, 1932, the Referee
17 cannot recommend confirmation of a water right for the lands described as the Wade
18 Place. The Referee notes that should this evidence be presented during the
19 exception phase of this proceedings, the recommendation may be constrained by
20 deficiencies in the RCW 90.14 filings by the previous owner. Notably there is no
21 filing for the water source now known as Reecer Creek. The Referee believes, based
22 on the point of diversion information on the claim, that the water right claim
23 filed citing Reecer Creek as the source was intended to be for what is identified
24 on SE-2 as Currier Creek.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

The third ranch is known as the Riverside Farm, which lies in the N $\frac{1}{2}$ of Section 3 east of the West Channel of Reecer Creek and the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M. The farm is 231 acres in size, of which 224 acres are irrigated with water diverted from the Yakima River, carried in the Mill Ditch, discharged into Reecer Creek and rediverted onto the farm. Hay and pasture grass is grown on the land. Richard Bain's report indicates he monitored the irrigation of several fields totaling 250 acres, however, it also states that 224 acres are being irrigated on this farm. There was no explanation for this inconsistency.

Takeouts 1 through 4 serving field 1, which is 69 acres in size, were monitored by Mr. Bain, but the instantaneous flows were not provided either through testimony or in his report. Mr. Bain determined that 579.7 acre-feet per year was being diverted to irrigate that field. He also determined that to some extent the field was subirrigated by nearby Reecer Creek. He estimated that a total of 21.1 acre-feet per acre was being used to irrigate this field if you also considered the contribution from subirrigation. In order for there to be a water right for irrigation there must be a physical diversion of water for that purpose. According to the testimony, the actual appropriation for irrigation on field 1 has been 579.7

REPORT OF REFEREE
Re: Subbasin No. 7

1 acre-feet, or 8.4 acre-feet per acre. There was no testimony about the
2 instantaneous rate of diversion. Therefore, in order to recommend confirmation of
3 a water right, the Referee must recommend an instantaneous quantity based on the
4 annual water use. A continuous diversion of 1.6 cubic feet per second over an 180
5 day irrigation season would result in 579.7 acre-feet being diverted.

6 Four hundred head of livestock are raised on the land requiring 20 acre-feet
7 per year.

8 Pautzke Bait Company is basing its claim to a water right for this property on
9 a Notice of Water Right filed by Josephine Becker on May 6, 1893, claiming a right
10 from the Yakima River for 16 cubic feet per second. Attached to the notice was a
11 map showing the ditch diverting from a slough adjacent to the river in the SE $\frac{1}{4}$ NW $\frac{1}{4}$
12 of Section 33 and terminating near the center of the NE $\frac{1}{4}$ of Section 3. The record
13 shows that at the time of this filing Ms. Becker owned Government Lot 1, the S $\frac{1}{2}$ NE $\frac{1}{4}$
14 and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M.. Shortly after the appropriation,
15 Ms. Becker conveyed this land to Charles Suver, who already owned Government Lots
16 2, 3 and 4 of Section 3. By the early 1900's the record shows that Mr. Suver owned
17 all of the NE $\frac{1}{4}$ of Section 3 and that portion of the W $\frac{1}{2}$ of Section 3 east of the
18 Yakima River. He also owned a portion of the SW $\frac{1}{4}$ of Section 34, T. 18 N.,
19 R. 18 E.W.M. southwest of the county road. On October 24, 1904, Charles W. Suver
20 filed a Notice of Water Right claiming a right since 1890 for 4 cubic feet per
21 second from Reecer Creek as it flows through Section 3 for the irrigation of the
22 E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3.

23 Pautzke Bait Company is claiming all of the water rights identified in the
24 Becker and Suver filings. However, other claimants in this proceeding are also

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 asserting water rights based on these filings. The Referee has recommended that
2 rights be confirmed to Jeff and Valerie and Bret and Barbara Calaway for the
3 diversion of 1.8 cubic feet per second for the irrigation of 16 acres, see Page 83
4 of this report; Don and Lu Guy for the diversion of 0.067 cubic foot per second for
5 the irrigation of 1.5 acres, see Page 116, of this report; John G. and Nancy A.
6 Jewett for the diversion of 0.50 cubic foot per second for the irrigation of 2
7 acres; and to Albert J. and Glena M. Lentz for the diversion of 1 cubic foot per
8 second for the irrigation of 39 acres. A total of 3.367 cubic feet per second has
9 been recommended for confirmation to other claimants. That would leave 12.63 cubic
10 feet per second available under the Becker appropriation.

11 The claimant is also contending that rights resulting from the Becker
12 appropriation would be appurtenant to the lands irrigated in the $N\frac{1}{2}SE\frac{1}{4}$ of
13 Section 3. However, there is nothing in the record to show that either Josephine
14 Becker or Charles Suver ever owned this land or that water was historically
15 conveyed through the Becker/Suver ditch to this area. The record does show that
16 the entire $SE\frac{1}{4}$ of Section 3 was owned by John Hegle at the time the Kline, Castle,
17 and Coble Ditch was constructed and that Hegle was one of the appropriators of the
18 water carried through that ditch. It appears to the Referee that 78 acres are
19 being irrigated within the $N\frac{1}{2}SE\frac{1}{4}$ of Section 3 northeast of Interstate 90. The
20 $S\frac{1}{2}SE\frac{1}{4}$ of Section 3 is part of the Hundley Ranch addressed earlier in this report.
21 Rights established for that ditch bear a priority of October 1884, which is when
22 the ditch was constructed.

23 The portion of Riverside Ranch that is within the area previously owned by
24 Josephine Becker or Charles Suver is within the $N\frac{1}{2}$ of Section 3 east of the West
25

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Channel of Reecer Creek. With 78 acres being irrigated within the N $\frac{1}{2}$ SE $\frac{1}{4}$ of
2 Section 3, that would leave 146 acres being irrigated in the N $\frac{1}{2}$ of Section 3. The
3 Becker appropriation enjoys a priority date of May 6, 1893.

4 The claimants have attempted to assert priority dates for this land based on
5 the date the land would have been settled prior to obtaining patents. That
6 rationale would not have been appropriate for the Klein, Castle, and Coble
7 appropriation and the Becker appropriation because the land owned by the
8 appropriators was not riparian to the Yakima River. They were developed under the
9 Prior Appropriation Doctrine, where the date of priority is established when notice
10 of the intent to appropriate is made or construction is began for the
11 appropriation.

12 Pautzke Bait Company is asserting water rights for diversion of water from
13 both the Yakima River and Reecer Creek. The water diverted from the Yakima River
14 is carried by Mill Ditch to Reecer Creek, discharged into Reecer Creek and
15 rediverted onto the ranch. The testimony did not address the quantity of water
16 that is discharged into Reecer Creek or the quantity diverted from Reecer Creek.
17 It is not clear to the Referee that Reecer Creek water is being used to irrigate
18 the land. Therefore, the Referee does not recommend confirmation of a water right
19 for that source.

20 Roy T. Carey, a prior owner of this property filed Water Right Claims No.
21 015489, 015490, and 015491 pursuant to the requirements of RCW 90.14. The first
22 claim was for use of waters from the Yakima River and the second two, which are
23 identical claims, were for use of waters from Reecer Creek. Rights under these
24 water right claims were being asserted for irrigation, stock water, domestic and

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 manufacturing. Water Right Claim No. 026224 was filed by the Mill Ditch Company
2 for its patrons and included Roy Carey's land in that claim.

3 The claimant did not provide sufficient information to allow the Referee to
4 determine the total instantaneous rate of diversion for the Riverside Farm. It is
5 clear that 12.3 cubic feet per second is diverted at takeout 5 for use on this farm
6 and based on the annual quantity of water used on Field 1, the Referee has
7 concluded that a minimum of 1.6 cubic feet per second is being diverted at T0 1.
8 The quantity diverted at T0 1 could be larger. Although the Referee believes that
9 additional water may be diverted at T0's 2, 3, and 4, that information is not in
10 the record. The rights that are appurtenant to this property could allow for the
11 diversion of in excess of the 13.9 cubic feet per second that is in the record.
12 However, the Referee needs testimony about the instantaneous quantity diverted at
13 T0's 2, 3, and 4, the number of takeouts used at one time, and additional
14 information about the Klein, Coble and Castle appropriation in order to recommend
15 confirmation of a water right for a higher instantaneous quantity.

16 The evidence has established that Pautzke Bait has rights based on two
17 appropriations for its land. Since the 12.3 cubic feet per second diverted at T0-5
18 is used equally on lands covered by both appropriations, that quantity will be
19 divided between the two rights. Pautzke Bait has a right under the Prior
20 Appropriation Doctrine with a May 6, 1893, date of priority for the diversion of
21 7.75 cubic feet per second, for the irrigation of 146 acres and stock water and a
22 second right under the Prior Appropriation Doctrine with an October 30, 1884, date
23 of priority for the diversion of 6.15 cubic feet per second, for the irrigation of
24 78 acres and stock water.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Riverside Ranch is within the service area identified for the Mill Ditch
2 Company. The Mill Ditch Company has filed Court Claim No. 00626 on behalf of its
3 patrons. The Mill Ditch Company claim identifies the 224 irrigated acres in
4 Riverside Ranch as part of the lands within the company's service area.

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7 COURT CLAIM NO. 01767 -- William J. Allenbaugh
8 & Beverly M. Allenbaugh
9 Terance Clarke

10 COURT CLAIM NO. 01768 -- William J. Allenbaugh
11 & Beverly M. Allenbaugh

12 The Allenbaughs filed two Statements of Claim with the Court for the use of
13 waters from Dry Creek and other "waste water" and an unnamed spring forming a pond.
14 On June 22, 1992, Terance Clarke was joined to the claim for lands lying in
15 Section 17, T. 18 N., R. 18 E.W.M. William Allenbaugh testified at the evidentiary
16 hearing.

17 Court Claim No. 01768 describes use of water on lands lying in the SE $\frac{1}{4}$ of
18 Section 6, T. 18 N., R. 18 E.W.M. Approximately 17.5 acres are irrigated with
19 waters diverted from Dry Creek and a drainage ditch that collects return flow from
20 the application of water from the Kittitas Reclamation District (KRD) on irrigated
21 lands in the E $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6. According to Mr. Allenbaugh's
22 testimony and that of Richard Mitchell, a neighboring claimant who testified in
23 support of his own claim for land he irrigates northwest of the Allenbaugh
24 property, the water diverted out of Dry Creek is partly return flow that results
25 from the application of water from the KRD. As discussed on Page 7 of this report,

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 the Referee cannot recommend that rights be confirmed for the use of return flow
2 waters resulting from the application of water delivered by the KRD.

The Allenbaughs irrigate approximately 100 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 8 lying west of State Route 97 and the N $\frac{1}{2}$ of Section 17 lying east of the Cascade Canal and west of the county road. Approximately 60 acres are irrigated with waters delivered by the Cascade Irrigation District or the KRD. Both of these districts are major claimants identified in Pre-trial Order No. 8 whose claims are being addressed through the Major Claimant Pathway. The remaining 40 acres are irrigated with waters diverted from Dry Creek or a unnamed pond located in the SW $\frac{1}{4}$ of Section 8. Although Mr. Allenbaugh did not testify that the water diverted is return flow, there is nothing in the record to indicate that this water originates differently than the water diverted upstream in Section 6. The State's Investigation Report indicates that the pond is the result of excavation for gravel by the Washington State Department of Transportation for the construction of local roads. It is likely that this source of water was created subsequent to June 6, 1917, when the State's Surface Water Code was adopted, thereby requiring issuance of a water right permit or certificate for any naturally occurring waters. As previously mentioned, a right cannot be recommended for the use of any waters that are the result of the application of water delivered by the KRD.

20 Water Right Claims No. 151656, 151657, 151658, 151659, 151660, 151661, 151662,
21 151663, 151664, 151665, were filed by Andrew and Beverly Clarke, previous owners of
22 the property for use of water from Dry Creek, drain water and unnamed springs.
23 These claims were filed in 1974 pursuant to the requirements of RCW 90.14.
24 Although these identify a date of first water use as prior to 1917, the claims

REPORT OF REFEREE
Re: Subbasin No. 7

1 filed with the Court state that water was first used around 1943. There was no
2 testimony to establish that water was first used on any of the Allenbaugh land
3 prior to 1917. The testimony would support 1943 as being the more probable date of
4 first water use on the land.

5 Based on the forgoing testimony and evidence, the Referee cannot recommend the
6 confirmation of any water rights under Court Claims No. 01767 or 01768.
7

8 COURT CLAIM NO. 05259 -- Ronald T. Anderson
9 & Robin L. Anderson

10 A Statement of Claim was filed by the Andersons for the use of waters from the
11 Yakima River and a spring. The lands described in the claim are two separate
12 parcels, one served by Mill Ditch and one served by the Klein, Castle, and Coble
13 Ditch. Subsequent to filing the claim, it was discovered that James Jollo, as a
14 prior owner of the property served by Mill Ditch, had filed Court Claim No. 00296.
15 Consideration of water rights for that land will be made under that claim rather
16 than Claim No. 05259. The Andersons are represented by Attorney John P. Gilreath.
17 Ronald Anderson testified at the evidentiary hearing.

18 The land herein addressed lies in the S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$
19 of Section 11, T. 17 N., R. 18 E.W.M. Approximately 28 acres are irrigated with
20 water diverted from the Yakima River, initially carried in Mill Ditch and then in
21 the Klein, Castle, and Coble Ditch. An additional 2 acres are irrigated with water
22 pumped from a slough that is fed by what the claimant has characterized as an
23 artesian spring located in the southeast corner of the S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2. The
24 claimants are asserting a right for 5.4 cubic feet per second, 747.6 acre-feet per

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 year from the Yakima River. The annual quantity of water claimed is based on an
2 analysis made by consultant Richard C. Bain for the neighboring Pautzke Bait
3 Company land.

4 The basis for the claim to a water right is a Notice of Water Right filed by
5 N. Klein, O. B. Castle and Daniel Coble stating that in October 1884 they
6 constructed a water ditch to be used for irrigation. The amount claimed was 5,000
7 inches, or 100 cubic feet per second. The notice stated that the ditch passed
8 through the John Hegle ranch in the SE $\frac{1}{4}$ of Section 3, the N. Klein ranch in the NE $\frac{1}{4}$
9 of Section 10, the Oren Castle ranch, without giving a location, and terminating in
10 the middle of the Daniel Coble ranch in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11. The claimant
11 believes his land is within what was the Oren Castle ranch. The record shows that
12 the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 11 was conveyed to Frederick Ludi through a patent from the
13 United States dated March 30, 1881, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 was conveyed to
14 William S. Merrill by patent that issued on August 15, 1888. The record includes a
15 chain of title sheet for the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 11 showing F. Ludi receiving a patent
16 and conveying the property to George Smith. The chain also shows a conveyance from
17 Northern Pacific Railroad Company to Orin Castle in 1887. There is nothing in the
18 record to show which land was conveyed from Northern Pacific Railroad to Castle.
19 The claimant apparently wants the Referee to conclude that the land conveyed to
20 Castle included the land now owned by the Andersons. There is not adquate
21 information in the record to allow the Referee to reach that conclusion. It is
22 clear that Frederick Ludi and William S. Merrill originally received a patent for
23 the land now owned by the Andersons. The reference in the chain to Orin Castle is
24 a conveyance from Northern Pacific Railroad Company. There is no evidence that

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Northern Pacific owned the Anderson land. The Referee must have evidence to show
2 that Orin Castle owned the the W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11 and the S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2
3 at the time of the Klein, Castle, and Coble appropriation, or evidence of water use
4 from the ditch prior to June 6, 1917, in order to conclude that appropriation
5 applies to the claimant's land. A copy of the document conveying land to Castle
6 would be helpful.

7 The Referee also notes that there was no testimony about historic water use on
8 this land, in spite the Anderson family having owned land in this area since the
9 early 1900's. There was no evidence presented to show that a water right was
10 established through use prior to June 6, 1917, of the spring-fed slough in the
11 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2.

12 The Andersons acquired this property through three different purchases. There
13 was no testimony concerning the immediate prior owners of this property. The
14 Department of Ecology, in its investigation of the claim, identified a claim filed
15 pursuant to RCW 90.14 that might be appurtenant to this property. The Referee has
16 reviewed the legal description attached to the claim and has determined that it
17 does not describe the lands now owned by the Andersons. No other RCW 90.14 claims
18 have been identified as being appurtenant to this land and without knowing who
19 owned the property during the filing period between 1969 and 1974, the Referee
20 cannot examine the exhibit containing RCW 90.14 claims to determine if a claim was
21 filed for this land.

22 As a result of the lack of evidence to show that a RCW 90.14 claim was filed
23 for the land, that this land was part of the Castle ownership or historic water use

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 prior to June 6, 1917, for all of the claimed water sources, the Referee cannot
2 recommend confirmation of a water right under Court Claim No. 05259.

3 See Page 27 of this report for the recommendation of the Referee on the claim
4 filed by the Mill Ditch Company.

5
6 COURT CLAIM NO. 00774 -- Dean P. Auve', Sr.
7 (A)05078 & Rose Marie Auve'
8 Mr. Larry Matheson
& Mrs. Matheson

9 A Statement of Claim was filed by James E. and Gennean K. Janaszah and
10 Kinglsey E. and Sharon A. Johnson for the use of waters from three unnamed ponds
11 supplied by intermittent creeks and Reecer Creek. On May 31, 1988, Dean P. and
12 Rose Marie Auve', Sr. were substituted for the original claimants for the portion
13 of the claim covering the NE $\frac{1}{4}$ of Section 17, T. 19 N., R. 18 E.W.M. On March 6,
14 1992, John D. and Carol V. Penny, dba M.A.P. Associates, were joined to the claim
15 for the SE $\frac{1}{4}$ of Section 4, the S $\frac{1}{2}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$ of Section 8, all of Section 9 and the
16 NW $\frac{1}{4}$ of Section 17, except the NW $\frac{1}{4}$ NW $\frac{1}{4}$, all in T. 19 N., R. 18 E.W.M. On August 2,
17 1992, Mr. and Mrs. Larry Matheson were substituted for the Pennys on the claim.
18 Richard Cole represented the Pennys and Mathesons and Hugh Spall represented the
19 Auve's. Roger Weaver in behalf of the Pennys, Dean Auve' and Jack White, whose
20 family settled in the area in the early 1900's, testified at the evidentiary
21 hearing. Pat and Mary Burke, represented by Attorney Lawrence Martin, purchased a
22 portion of the land originally owned by Janaszah and Johnson, but have filed their
23 own claim in this proceeding.

24
25 REPORT OF REFEREE
26 Re: Subbasin No. 7
27

1 According to the presentation made by Mr. Cole and the testimony of Mr.
2 Weaver, most of the land that is now owned by the Mathesons is used as rangeland
3 for livestock. A claim was made for sufficient water for the livestock, but there
4 was no testimony about the location of the sources of water being used, nor was
5 there any indication that water was diverted from any source for stock watering.
6 Based on this lack of testimony and evidence, the Referee must conclude that the
7 stock water is non-diversionary in nature. The stock water stipulation discussed
8 on Page 4 of this report covers non-divisionary stock watering and no additional
9 right will be recommended for confirmation.

10 The Mathesons, through their predecessor, are also claiming a right to
11 irrigate with waters from Reecer Creek. Mr. Weaver testified to his belief that
12 prior to the Pennys' ownership, the land in the NW $\frac{1}{4}$ of Section 17 had been
13 irrigated with water diverted from Reecer Creek. There was no evidence of the
14 number of acres irrigated, the location of the irrigated lands within the NW $\frac{1}{4}$ of
15 Section 17, or the quantity of water that might have been used. The Pennys
16 identified Bernard Hanson v. David McIntire, et al., Kittitas County Superior Court
17 (1906) as the basis for their assertion of a right to use water from Reecer Creek.
18 That case confirmed a right to Lydia Brothers for the use of 50 inches of water,
19 1.25 cubic feet per second, for the irrigation of 100 acres in the NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of
20 Section 17, T. 19 N., R. 18 E.W.M. However, there was no testimony about where the
21 100 irrigated acres within the 320 described acres are located. Additionally,
22 there was no testimony about continued beneficial use of the water. The testimony
23 was insufficient for the Referee to determine whether the Pennys/Mathesons enjoy a
24 portion of this right.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

Even if there had been sufficient testimony to allow the Referee to conclude that a water right did exist for their property, there is nothing in the record to show that a water right claim was filed pursuant to RCW 90.14. RCW 90.14 required the filing of a water right claim for all rights based on water usage began prior to adoption of the water codes for which permits or certificates had not issued. Failure to file a claim waived and relinquished any right that may have existed. RCW 90.14.071.

Based on the foregoing, the Referee cannot recommend that a right be confirmed under Court Claim No. 00774 to Mr. and Mrs. Larry Matheson.

Dean and Rose Marie Auve' have purchased the NE $\frac{1}{4}$ of Section 17, T. 19 N., R. 18 E.W.M. They are claiming a right to use waters from Reecer Creek and five unnamed springs for the irrigation of 85 to 105 acres. According to the testimony, the Auve's irrigate 100 acres with water diverted from Reecer Creek at a point in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8. Livestock is raised on the land and they plan to have up to 25 head of cattle and 25 sheep. The land is riparian to Reecer Creek and the livestock have access to the creek and can drink directly from the creek. This type of non-diversionary stock water use is also covered by the stock water stipulation. The testimony indicates that a portion of their land has been irrigated since at least the early 1920's and likely before that. The testimony on historic use was not specific concerning the number of acres irrigated in the past.

The Auve's are basing their claim to a water right on Hanson v. McIntire, et al., supra. They, as with the Mathesons, own half of the land that was owned by Lydia Brothers at the time that case was decided. The decree confirmed a right for the use of 50 inches of water (1.25 cubic feet per second) from Reecer Creek for

REPORT OF REFEREE
Re: Subbasin No. 7

1 the irrigation of 100 acres in the NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of Section 17. Although it is not
2 clear from the historical record where the 100 irrigated acres was located, the
3 Auve's contend that any portion of the water right that might have been appurtenant
4 to the NW $\frac{1}{4}$ of Section 17 was transferred to their land in September of 1986 at the
5 time of their purchase. Each of the two deeds conveying a portion of the NE $\frac{1}{4}$ of
6 Section 17 to the Auves states that the the real estate is transferred together
7 with ". . . water and water rights on the NW $\frac{1}{4}$ of Section 17, T. 19 N.,
8 R. 18 E.W.M." The Auve's purchased the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 17 from Tok C. In and the
9 S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 17 from Kenneth Clark. Both deeds were signed on September 9,
10 1986, but according to the chain of title submitted for the Matheson property,
11 Clark and In did not own the NW $\frac{1}{4}$ of Section 17 in September of 1986. The chain of
12 title indicates they may have purchased a portion of the NW $\frac{1}{4}$ of Section 17 in
13 October of 1986, but it does not appear title rested with them for very long. It
14 is not clear to the Referee that Clark and In had the appropriate interest in the
15 land to allow for the transfer of the water right. Additionally, there is nothing
16 in the record to show that either party to the transaction complied with the
17 requirements of RCW 90.03.380 for tranferring a water right from one piece of
18 property to another. There is not enough in the record to allow the Referee to
19 conclude the water right was legally transferred if in fact there had been a water
20 right for the NW $\frac{1}{4}$ of Section 17.

21 An equally serious deficiency in the Auve's efforts to show that a water right
22 exists for their property is the lack of a water right claim filed pursuant to RCW
23 90.14. As is the case for the Mathesons, there is nothing in the record to show
24 that such a claim was filed. Failure to file a claim relinquishes or waives any

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 right that may have existed, RCW 90.14.071. Therefore, the Referee cannot
2 recommend that a water right be confirmed to the Auve's under Court Claim No.
3 00774.

4

5 COURT CLAIM NO. 01207 -- Richard C. Bain
6 & Jeri L. Bain
Carl Donovan

7 A Statement of Claim was filed by Tony G. and Edith I. Klocke for the use of
8 waters from the Yakima River. On March 23, 1989, Richard C. and Jeri L. Bain were
9 joined to the claim and on December 6, 1994, Carl Donovan was joined to the claim.
10 Mr. Bain testified at the evidentiary hearing.

11 According to the testimony and evidence, Mr. and Mrs. Bain were the sole
12 owners of the land described in Court Claim No. 01207, until they sold 19.2 acres
13 to Mr. Donovan in 1994. The land described in the claim lies in that portion of
14 the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T. 18 N., R. 17 E.W.M. lying northeast of the Yakima
15 River and that portion of Government Lots 1, 2, and 3, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
16 Section 18, T. 18 N., R. 18 E.W.M. lying east of the Yakima River and southwest of
17 State Highway No. 10. Mr. Donovan purchased a parcel that is a portion of
18 Government Lots 2 and 3, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18. According to Mr.
19 Bain's testimony, 60 acres of primarily pasture and hay are irrigated with waters
20 from the Yakima River diverted and initially carried by the Ellensburg Water
21 Company's Town Ditch. The water is diverted into the Olson Ditch and then into the
22 Wold and what is now called the Klocke Ditch. Livestock raised on the property
23 drink from the irrigation ditches and Mr. Bain estimated that 5 acre-feet per year
24 is used for this purpose. Mr. Bain testified that 44.4 acres are rill irrigated

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 and 15.6 acres are sprinkler irrigated. The irrigated lands in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
2 Section 13 are irrigated from a pond that is fed by the Wold Ditch. The pond was
3 constructed in the 1930's when Highway 10 was constructed. Field No. 9, which is
4 ten acres in size lying in Government Lots 2 and 3 of Section 18 had not been
5 irrigated prior to the Bains acquiring the property in 1988. Mr. Bain testified to
6 using 23.7 acre-feet per acre to rill irrigate the 44.4 acres and 7.6 acre-feet per
7 acre for the 15.6 acres that are sprinkled. Water is withdrawn from the Klocke
8 Ditch at a rate of 3.49 cubic feet per second and from the Wold Ditch at a rate of
9 2 cubic feet per second. It is not clear whether he irrigates from both ditches at
10 the same time. There was no testimony of the rate of diversion in the winter for
11 stock watering. Therefore, the Referee must determine a reasonable quantity. In
12 light of the quantity that is diverted into Olson Ditch to serve its patrons, an
13 additional 0.50 cubic foot per second should be adequate for the Bain property.

14 The claimants are asserting that two water rights initiated in the late 1800's
15 are the basis for their right to use water. Alexander A. Munson filed a Notice on
16 Interest in Water Ditch on April 15, 1885, stating that on December 21, 1882, he
17 had purchased the Thomson and Wold Ditch and was claiming a right to enlarge the
18 ditch and extend it to his homestead entry in Section 18, T. 18 N., R. 18 E.W.M.
19 The notice stated that in each of the prior years he had worked and spent money to
20 extend and enlarge the ditch. Mr. Munson received a patent on January 18, 1887,
21 for the E $\frac{1}{2}$ NW $\frac{1}{4}$, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and Government Lot 1 of Section 18, T. 18 N.,
22 R. 18 E.W.M. It is reasonable to assume this is the land referred to in the notice
23 filed in 1885.

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7
27

A Notice of Water Right dated April 25, 1891, was filed by A. A. Munson, C.E. Stevens, Hiram Ames and William D. Killmore claiming a right to divert 40 cubic feet per second from a channel to the northwest corner of Section 18 where a lake had formed then through a flume to the southwest side of the N.P.R.R. Mr. Killmore appears to have been the owner of the Bain property in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13 and the SW $\frac{1}{4}$ and Government Lot 2 of Section 18 at the time this notice was filed. A map created in 1912 was filed by the United States as an exhibit and shows a ditch across the Bain property called the Stevens/Stein Ditch and individuals named Stevens and Stein owned portions of the Bain property in 1912.

Mr. Bain testified to his belief that all of his irrigated land has been irrigated since the turn of the century, except the 10 acre field No. 9. As a prior owner of the property, Tony Klocke filed Water Right Claim No. 131320 in response to the requirements of RCW 90.14. It claimed a right to divert 40 cubic feet per second from the Yakima River for the irrigation of 160 acres, but stated that 3 cubic feet per second were being diverted to irrigate 60 acres.

A right is being asserted under the Riparian Doctrine, which would date from the time that steps were first taken to sever the land from Federal ownership. The land is riparian to the Yakima River. The record shows that a right was established under the Prior Appropriation Doctrine on December 21, 1882, for the land homesteaded by Mr. Munson, which is prior to the date in the record for the first steps to sever the land from Federal ownership, May 9, 1885, the date of the Receiver's Receipt. It is not clear when steps were taken to sever Government Lot 2 of Section 18 and the only date in the record for the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13 is the

REPORT OF REFEREE
Re: Subbasin No. 7

1 patent date of January 16, 1896. The Notice of Appropriation filed April 25,
2 1891, predates that document.

3 Based on the foregoing, the Referee recommends confirmation of a right under
4 the Prior Appropriation Doctrine for the Bain property with a December 21, 1882,
5 date of priority for the diversion of 3.49 cubic feet per second, 1086.12 acre-feet
6 per year from the Yakima River for irrigation of 49.7 acres and stock watering on
7 that portion of Government Lot 1, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 lying
8 southwest of State Highway No. 10; and with an April 24, 1891, date of priority
9 3.49 cubic feet per second, 227 acre-feet per year for the irrigation of 10.4 acres
10 and stock watering in Government Lot 2 of Section 18 lying northeast of the Yakima
11 River. It is recommended that the rights carry a provision that the instantaneous
12 quantities are not in addition to each other. The maximum that can be diverted is
13 3.49 cubic feet per second under both rights.

14

15 COURT CLAIM NO. 02206 -- Boise Cascade Corporation
16 (A)03119
17 (A)05238

18 A Statement of Claim was filed by Boise Cascade Corporation for the use of
19 numerous surface water sources in the Yakima River Basin, including an unnamed
20 spring located in Subbasin No. 7. Attorney Dennis Dunphy represents the claimant
21 and James Rowles, silviculturist forester for Boise Cascade, testified at the
evidentiary hearing.

22 Boise Cascade's claim originally identified a spring in Section 34, T. 20 N.,
23 R. 17 E.W.M. as the only surface water source used in Subbasin No. 7. However, at
24 the evidentiary hearing the Court claim was amended to include a spring and lands

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 in the N $\frac{1}{2}$ of Section 2, T. 19 N., R. 18 E.W.M. Boise Cascade is asserting a right
2 to use waters from the two springs for stock watering and fire protection.
3 Approximately 200 acres within Subbasin No. 7 are leased for livestock grazing and
4 the stock have access to these two springs. There was no testimony concerning
5 whether the springs have been developed and piped to stock tanks. The State's
6 Investigation Report states that the spring in Section 34 is undeveloped and the
7 livestock drink directly from the source. Although Mr. Dunphy objected to Mr.
8 Rowles being asked if the investigation report contained any factual errors, Mr.
9 Rowles indicated it did not. Therefore, the Referee must conclude that there is no
10 diversion from the spring to stock tanks. Mr. Dunphy in his opening remarks
11 several times referenced the non-diversionary stock water stipulation, causing the
12 Referee to believe that there is also no diversion from the spring in Section 2.
13 Water Right Claim No. 085724 was filed by Boise Cascade pursuant to the
14 requirements of RCW 90.14 for the use of the spring in Section 34 for stock
15 watering, fire protection and road maintenance. There is nothing in the record to
16 show that a claim was filed pursuant to RCW 90.14 for the spring in Section 2.
17 However, such a filing would not be necessary for a non-diversionary stock water
18 use. Non-diversionary stock water is covered by the stock water stipulation, see
19 Page 4 of this report, and no additional right will be confirmed for this use.

20 The claimant is also asserting a right to use waters from the springs for fire
21 protection. A tank 1,000 gallons or less in size is filled with water for standby
22 fire protection. This water is not used unless there is a fire. This type of
23 water use is emergent in nature and impossible to quantify. It certainly is in the
24 public interest to have this water available, however, the quantity of water used

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 and needed is so sporadic that it cannot be accurately estimated or measured. In
2 many other subbasins the Referee has held that this water can be used as needed,
3 however, rights cannot be confirmed for its use. Generally it is not possible to
4 prove use of the water for this purpose prior to 1917, nor is there consistent use.

5 Based on the foregoing, the Referee does not recommend confirmation of a water
6 right under Court Claim No. 02206.

7

8 COURT CLAIM NO. 01835 -- Priscilla J. Brown
9 & John F. Brown

10 A Statement of Claim was submitted to the Court by Priscilla J. and John F.
11 Brown for the use of waters from an unnamed stream. The Browns are represented by
12 Attorney Ken Beckley. Mr. Brown testified at the evidentiary hearing.

13 The Browns own approximately 80 acres of land lying in the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 20
14 and the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 21, T. 18 N., R. 18 E.W.M. The primary source of
15 irrigation water is Ellensburg Water Company's Town Ditch. Ellensburg Water
16 Company is a major claimant in this proceeding, whose rights will be determined
17 through the Major Claimant Pathway.

18 In addition to the water delivered through the Town Ditch, the Browns utilize
19 three other sources of water. Source No. 1 is a spring located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
20 Section 21. Water is diverted from the spring through a one inch pipe to a trough
21 in the Brown's barn. A maximum of 250 head of cattle are kept in this area and
22 have access to the trough. Source No. 2 is an unnamed spring located just north of
23 the Town Ditch, in the southeast corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21. Flow from the
24 spring is piped under the Town Ditch to two seven acre fields. The pipe under the

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 ditch was recently replaced due to damage and Mr. Brown believes it was the
2 original pipe that was installed when the Town Ditch was constructed in the late
3 1800's. The third source is an unnamed stream in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21.
4 During irrigation season the water from the stream is captured by the Town Ditch
5 and Mr. Brown believes it is part of the irrigation water delivered to his
6 property. After the irrigation season ends, the water continues to be captured in
7 the ditch and Mr. Brown opens his gate on the ditch and the water then is used for
8 stock watering. This method of delivering the water causes a small pasture to be
9 flooded.

10 In order for there to be a right under the Prior Appropriation Doctrine for
11 use of these sources, there must be evidence of use prior to June 6, 1917. A right
12 could have been established under the Riparian Doctrine if the land on which the
13 springs and streams are located separated from Federal ownership prior to June 6,
14 1917, and water was first used prior to December 31, 1932. The Browns provided a
15 chain of title for the portion of the land they own in the E $\frac{1}{2}$ of Section 20, but
16 not for their land in the W $\frac{1}{2}$ of Section 21, which is where the water sources are
17 located. The existence of a pipe for source No. 2 under the Town Ditch that
18 appears to have been installed when the ditch was originally constructed is
19 evidence of water use that had begun at least by the time the ditch was built,
20 showing the existence of a water right established under the Prior Appropriation
21 Doctrine. Mr. Brown testified to his belief that Source No. 2 was the historic
22 water supply for the home on the property, which he believes was constructed around
23 the turn of the century. He did not testify to the quantity of water diverted from
24 this source. The lack of piping to convey water from Source No. 3, under the

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 ditch, leads the Referee to question whether a water right had been established by
2 use of that source prior to June 6, 1917. There was no evidence presented to show
3 that a water right was established nor was there testimony of historic use.

4 There is no evidence that a water right claim was filed for any of these water
5 sources pursuant to the requirements of RCW 90.14. Review of the State's exhibit
6 that includes the RCW 90.14 claims, along with the chain of title information
7 presented by the Browns fails to unearth a claim for this land. However, as
8 previously noted, the chain of title does not include all of the Brown property.
9 Failure to file a claim waives and relinquishes any right that may have been
10 established, RCW 90.14.071. Therefore, the Referee cannot recommend confirmation
11 of a water right for any of the three claimed sources under Court Claim No. 01835.

26 | REPORT OF REFEREE
Re: Subbasin No. 7

1
2 COURT CLAIM NO. 00886 -- Bull Canal Company, Inc.
3 (A)04207

4 The Bull Canal Company, Inc., submitted a Statement of Claim to the Court for
5 the use of waters diverted from the Yakima River, Wilson Creek, Nanum Creek I,
6 Nanum Creek II, and Coleman Creek. The canal company's diversion from the Yakima
7 River lies in Subbasin No. 7. However, the lands served by the company and the
8 other sources for which the company is asserting a right lie outside of Subbasin
9 No. 7. It was determined that Subbasin No. 9 is the most appropriate subbasin for
10 the company to present their claim. Therefore, there is no recommendation to
11 confirm a right in Subbasin No. 7.

12 COURT CLAIM NO. 01469 -- Pat Burke
13 (A)05408 & Mary Burke

14 A Statement of Claim was submitted by Pat and Mary Burke for the use of
15 numerous unnamed springs and the Kittitas Reclamation District (KRD). The Court
16 claim was amended in 1990 to include Dry Creek, an additional spring and a pond as
17 claimed sources of water. The Burkes are represented by Attorney Lawrence Martin
18 and Mr. Burke testified at the evidentiary hearing.

19 The Burkes have owned most of the land described in the Court Claim since the
20 early 1950's. The land in Section 19 and a portion of Section 30, T. 19 N.,
21 R. 18 E.W.M. was acquired in 1986 and may have been described in Court Claim No.
22 00774 filed by Janaszah and Johnson. The Burkes are asserting rights to this
23 property through Court Claim No. 01469, rather than being joined to the Janaszah
24 and Johnson claim. The Burke ownership encompasses all of Section 25, T. 19 N.,

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 R. 17 E.W.M.; all of Section 19; the N $\frac{1}{2}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, and
2 most of the NW $\frac{1}{4}$ of Section 31; all being in T. 19 N., R. 18 E.W.M. The land is
3 used to raise cattle, with approximately 750 head of cattle being rotated between
4 the various fields. The claimants submitted considerable information showing the
5 history of the Kittitas Valley as an area for raising cattle. The record shows
6 that Native Americans residing in the area were raising cattle in the early 1800's.
7 It is apparent that raising cattle was one of the earliest activities associated
8 with settling the valley.

9 The Burkes are claiming a right for non-diversionary stock water from several
10 springs, Dry Creek and an unnamed pond. Some of the springs have been excavated
11 forming ponds from which the livestock drink. There is no diversion to stock
12 tanks. This type of non-diversionary stock watering is covered by the stock water
13 stipulation discussed on page 4 of this report. The Referee does not recommend
14 that an additional right be confirmed for stock watering.

15 Water from the Kittitas Reclamation District is used to irrigate the fields
16 owned by the Burkes. The Kittitas Reclamation District is a major claimant whose
17 rights were determined through the Major Claimant Pathway identified in Pre-trial
18 Order No. 8.

19 The Burkes also asserted a right to use water from one of the springs or a
20 pond for domestic irrigation. However, there was no testimony about the location
21 of the water source to be used for this purpose, the location of the area being
22 irrigated or the quantity of water being used. Additionally, there is nothing in
23 the record to show that a right was established for this use. The evidence would
24 have to show that the water use had been established prior to June 6, 1917, and

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 that the use had continued in order for there to be a right under the Prior
2 Appropriation Doctrine. A right could have been established under the Riparian
3 Doctrine if the water source is riparian to the land on which water is used and the
4 use was initiated prior to December 31, 1932. Pat Burke filed Water Right Claims
5 No. 097557, 097558, 097559, and 097560, pursuant to the requirements of RCW 90.14
6 claiming rights to use unnamed springs for irrigation and stock water. It is not
7 known if any of these water right claims are for the water source being used for
8 domestic irrigation.

9 Based on the foregoing, the Referee cannot recommend that a right be confirmed
10 under Court Claim No. 01469.

11
12 COURT CLAIM NO. 00303 -- Central Washington University

13 Central Washington University submitted a Statement of Claim to the Court for
14 the use of waters delivered by the Cascade Irrigation District and Ellensburg Water
15 Company. Both of these entities are major claimants in this proceedings whose
16 rights are being determined through the Major Claimant Pathway identified in
17 Pretrial Order No. 8. Water use related to these entities will not be addressed
18 through the subbasin pathway. Therefore, the Referee does not recommend
19 confirmation of a water right under Court Claim No. 00303.

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7
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2 COURT CLAIM NO. 01565 -- Donald E. Clapper
3 & Lois Clapper
4 James D. Clapper
5 & Debbie K. Clapper

6 A Statement of Claim was submitted by Donald E. and Lois Clapper for the use
7 of waters from the Yakima River for irrigation and stock water. On April 29, 1994,
8 James D. and Debbie K. Clapper were joined to the claim. Donald and Lois Clapper
9 are represented by Attorney Ken Beckley. Donald Clapper testified at the
evidentiary hearing.

10 The Clapper property lies in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T. 18 N., R. 18 E.W.M.
11 They are claiming a right to irrigate 20 acres of hay with waters from the Yakima
12 River through the Peter Wold Ditch and 6 acres of pasture with water pumped from
13 Cabin Creek. An additional 11 acres lying east of Cabin Creek are subirrigated.
14 Water is withdrawn from Cabin Creek using a 5 BHP pump and the pasture is irrigated
15 with handlines. The hay field is rill irrigated through gravity flow ditches.
16 Cabin Creek originates near the Clapper's north property line. Mr. Clapper
17 believes the origin of the creek is spring water emerging from a swamp or marsh in
18 the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20 and "waste water" coming from neighboring irrigated
19 fields. Cabin Creek flows the entire year. The Clappers raise 20 cow/calf pairs
20 on their pasture and the livestock drink from Cabin Creek the entire year. This
21 type of non-diversionary stock watering is covered by the stock water stipulation
22 discussed on Page 4 of this report.

23 The SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20 was originally owned by Peter A. Wold. According to
24 the claimant's exhibit, Mr. Wold purchased the land by making full payment to the

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Land Office of Walla Walla, Washington Territory on April 24, 1880. He received
2 the patent for the land, along with an additional 120 acres in Section 20 on
3 October 3, 1883. Prior to receiving the patent, Mr. Wold sold the land on
4 April 18, 1879, to Andrew Erickson. Mr. Erickson sold the land on May 16, 1882, to
5 Augustin Cleman. Upon his death the land became the possession of Jacob and Nara
6 Cleman. Subsequent to that the land was subdivided and frequently sold until 1940
7 when Lee M. and Leona J. Klocke purchased the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20. The Klockes
8 are Mrs. Clapper's parents and they sold to the Clappers on August 24, 1960. The
9 ownership in the late 1800's is important to note, as several water appropriations
10 were recorded at that time.

11 Mr. Clapper testified they are basing their claim to a water right on a right
12 of way granted by Peter and Samantha Wold to Farnsworth, Depart and Shoudy for a
13 ditch to run sufficient water to drive a water wheel to run a flour and saw mill.
14 Shortly before the right-of-away agreement was made, Farnsworth, et al. filed a
15 Notice of Appropriation to divert water from the Yakima River in Section 13 through
16 the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 18 and then into the NW $\frac{1}{4}$ of Section 20 to the north property
17 line of Peter Wold property in Section 20. These documents were signed in 1876 and
18 Mr. Clapper is claiming an 1876 date of priority. However, there is nothing in
19 these documents to lead the Referee to conclude that the appropriation was intended
20 to serve the Peter Wold property. The notice of appropriation did not include the
21 Wolds and the ditch was to end at the Wold property line. The Referee believes the
22 purpose of the right-of-way agreement was for a ditch to transport the water used
23 to operate the mill back to the river. There is no indication the water was used
24 on the Wold property.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 On April 7, 1891, a Notice of Water Appropriation and a separate Agreement
2 were filed by Martin Mason, Jacob Cleman, Christian Holm and Pete Wold for the
3 appropriation of 100 cubic feet per second from the Yakima River. The agreement
4 stated that the four were to each have one-fourth interest in the ditch and would
5 share and share alike in the construction and maintenance of the ditch. At the
6 time this Agreement and Notice of Appropriation were filed the claimants land was
7 owned by Jacob Cleman. Mr. Clapper testified that based on information provided by
8 his father-in-law, he believes the land has been irrigated since prior to 1900.

9 Water Right Claim No. 031097 was filed by Donald Clapper pursuant to the
10 requirements of RCW 90.14 claiming a right to divert 2 cubic feet per second, 200
11 acre-feet per year from the Yakima River for the irrigation of 40 acres and stock
12 watering. Mr. Clapper testified that stock water is not provided from the Wold
13 Ditch, but comes from Cabin Creek. There is nothing in the record to show that a
14 claim was filed pursuant to RCW 90.14 for the use of waters from Cabin Creek.
15 Failure to file a claim waives and relinquishes any right that may have existed,
16 RCW 90.14.071.

17 In addition to the lack of a RCW 90.14 claim for use of waters from Cabin
18 Creek, there is nothing in the record to indicate the establishment of a right to
19 use waters from Cabin Creek. Mr. Clapper testified that he believed his irrigation
20 practice using Cabin Creek was a continuation of an historic practice, however, the
21 water right claim filed in 1974 indicates all the land is irrigated from the Peter
22 Wold Ditch. It may be that the land enjoys a right from the Yakima River through
23 the Wold Ditch, but this was not asserted by the claimants.

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25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Mr. Clapper did not testify to the quantity of water being used to irrigate
2 his land, but asked that the Referee adopt the testimony of Richard Bain presented
3 during the presentation of the Olson Ditch Company claim concerning water needs for
4 the area. The RCW 90.14 water right claim filed by Mr. Clapper asserted a right
5 for a quantity of water that is reasonable for the number of acres irrigated,
6 although less than what many of the Olson Ditch Company patrons use.

7 The Referee recommends that a right be confirmed to Donald E. and Lois Clapper
8 and James D. and Debbie K. Clapper with an April 7, 1891, date of priority for the
9 diversion of 1 cubic foot per second, 100 acre-feet per year for the irrigation of
10 20 acres in that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T. 18 N., R. 18 E.W.M. lying
11 west of Cabin Creek.

12
13 COURT CLAIM NO. 00197 -- Francis Edward Clerf
14 & Jeanne M. Clerf

15 Francis Edward and Jeanne M. Clerf submitted a Statement of Claim to the Court
16 for the use of waters delivered by the Ellensburg Water Company, which is a major
17 claimant in this proceedings whose rights are being determined through the Major
18 Claimant Pathway identified in Pretrial Order No. 8. Water use related to the
19 Ellensburg Water Company will not be addressed through the subbasin pathway.
20 Therefore, the Referee does not recommend confirmation of a water right under Court
21 Claim No. 00197.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

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2 COURT CLAIM NO. 00198 -- Patrick Clerf
3 & Linda Clerf

4 Claude and Ethel Sutherland submitted a Statement of Claim to the Court
5 for the use of waters delivered by the Ellensburg Water Company, which is a major
6 claimant in this proceedings whose rights are being determined through the Major
7 Claimant Pathway identified in Pretrial Order No. 8. On June 26, 1990, Patrick and
8 Linda Clerf were substituted for the Sutherlands. Water use related to the
9 Ellensburg Water Company will not be addressed through the subbasin pathway.
10 Therefore, the Referee does not recommend confirmation of a water right under Court
11 Claim No. 00198.

12 COURT CLAIM NO. 01963 -- Jim Eattock
13 (A)02441 & Claudia Eattock

14 The Eattocks filed a Statement of Claim with the Court for the use of waters
15 from the Yakima River and an unnamed spring. Mrs. Eattock is now the sole owner of
16 the property. Claudia Eattock, who is represented by Attorney Richard Cole,
17 testified at the evidentiary hearing.

18 The water used from the Yakima River is diverted and carried in the Olson
19 Ditch. Olson Ditch Company has filed a separate claim in this proceeding and the
20 rights of its patrons to use water transported in the Olson Ditch shall be
21 addressed as part of the ditch company claim rather than individually. Mrs.
22 Eattock testified that she uses an unnamed spring located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
23 Section 18, T. 18 N., R. 18 E.W.M. The spring is northeast of her property and is
24 piped under the Cascade Irrigation District canal and the county road. She

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

estimates that the spring flows approximately 5 gallons per minute. Water from the spring is used year around for stock watering. A maximum of 25 head of livestock are kept on the property.

Mrs. Eattock is claiming a 1923 date of priority for the use of the spring water based on Water Right Claim No. 151060 filed by Stanley Leroy Archer, a previous owner of the property. The claim filed pursuant to RCW 90.14 claims a right to use 5 gallons per minute, 1 acre-foot per year for stock water, domestic supply and irrigation of one acre. Mrs. Eattock did not know when the spring was developed and first used or any of the history of water use from the spring.

The right to use the spring is being asserted under the Prior Appropriation Doctrine. However, under that doctrine water had to appropriated and put to beneficial use prior to June 6, 1917, and would bear the priority date of the date water was first used or attempts were first made to use the water. The claimant is asserting a 1923 date of priority. If there had been testimony and evidence to support 1923 as being the date water was first used on the property from this spring, that date is six years too late for the establishment of a right under the Prior Appropriation Doctrine.

A right could have been established under the Riparian Doctrine with a date of first water use of 1923 if the land separated from Federal ownership prior to June 6, 1917, and the spring was riparian to the land. The spring is not now riparian to the Eattock property. The record is not clear on whether the land now owned by Mrs. Eattock once was attached to the land on which the spring is located. If the land was once joined, additional testimony would be necessary to determine whether the water use began prior to when the land was subdivided.

REPORT OF REFEREE
Re: Subbasin No. 7

Based on the foregoing, the Referee cannot recommend that a right be confirmed under Court Claim No. 01963.

COURT CLAIM NO. 01720 -- Calaway Pacific

A Statement of Claim was filed by Ellensburg Cement Products, Inc. for the use of waters from Reecer Creek. On February 21, 1989, Jeff and Valerie Calaway and Bret and Barbara Calaway were substituted for Ellensburg Cement Products, Inc. Attorney Jeff Slothower represents the Calaways. A copy of the deed transferring the land from the Calaways to Calaway Pacific was presented at the evidentiary hearing. Jeff Calaway and Albert Lentz, a neighboring landowner, testified in support of the claim at the evidentiary hearing. Darrell Eason, who farms the neighboring property for Pautzke Bait Company, testified in opposition of the claim. Pautzke Bait Company was represented by Attorney John P. Gilreath.

Calaway Pacific owns approximately 36 acres lying in portions of Government Lots 3 and 4 and the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 3 lying east of Interstate 90 and west of the west channel of Reecer Creek. The testimony of Albert Lentz and exhibits entered as part of his claim show that all of the land has been historically irrigated with water diverted from either the Yakima River or Reecer Creek. Mr. Eason testified to his belief that the land had not been irrigated since his association with the neighboring Pautzke Bait Company land in 1980. RCW 90.14.160 - .170 provides that a right acquired through appropriation or due to ownership of land abutting a stream that is not exercised for five successive years is relinquished and said right reverts to the state. However, RCW 90.14.140 provides several sufficient causes for nonuse that prevent relinquishment. One of these is the operation of

REPORT OF REFEREE
Re: Subbasin No.

1 legal proceedings. This adjudication is a legal proceeding and since its inception
2 in 1977, surface water rights in the Yakima River Basin could not be forfeited for
3 nonuse. Therefore, nonuse since 1980 is immaterial to confirmation of a water
4 right.

5 Calaway Pacific is basing its claim to a water right on two historic
6 documents. A Notice of Water Right was filed by Josephine Becker asserting a right
7 from May 6, 1893, for the diversion of 16 cubic feet per second from the Yakima
8 River via a slough adjacent to the river. Attached to the notice was a map showing
9 the location of the ditch that was constructed to carry this water. The ditch
10 diverted in the $SE\frac{1}{4}NW\frac{1}{4}$ of Section 33, T. 18 N., R. 18 E.W.M. and terminated in the
11 $NE\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M. The record shows that Josephine Becker
12 received a patent for the portion of the Calaway Pacific land lying in the $SE\frac{1}{4}NW\frac{1}{4}$
13 of Section 3 on January 12, 1897. On December 3, 1898, she conveyed to C. W. Suver
14 most of the land for which she received a patent, including the $SE\frac{1}{4}NW\frac{1}{4}$ of
15 Section 3. Suver purchased from Northern Pacific Railroad Government Lots 2, 3,
16 and 4 of Section 3 in 1893. He also at some point acquired the $SW\frac{1}{4}NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}$ and
17 $N\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of Section 3 lying east of the Yakima River. In 1903 he filed a Notice of
18 Appropriation of Water that stated that he claims the water in Reeser Creek through
19 Section 3 to the extent of 4 cubic feet per second because of an appropriation in
20 1890 and continued use since that year for irrigation, stock and domestic purposes.
21 He stated that the water is for the purpose of irrigating the $E\frac{1}{2}NE\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$,
22 $N\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$ of Section 3.

23 Although Josephine Becker did not own Government Lots 3 and 4 at the time the
24 Notice of Appropriation was filed for the Yakima River, C. W. Suver acquired most

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 of her land shortly after the notice was filed and already owned Government Lots 3
2 and 4. The ditch flowed along the north line of Government Lots 3 and 4 west of
3 the West Channel of Reecer Creek. It is reasonable to assume that, given the
4 testimony on historic irrigation on this land, Becker Ditch was the source of water
5 for this irrigation.

6 Two Certificates of Change issued relative to the Becker Appropriation. On
7 April 26, 1954, Certificate of Change recorded in Volume 1, Page 424 issued to T.
8 S. Kirk, Ida S. Kirk, G. A. Mead and Hazel S. Mead authorizing them to change the
9 point of diversion of waters of the Yakima River in the amount of 2.0 cubic feet
10 per second, being a portion of the right claimed by use since May 6, 1893. The
11 certificate of change authorized changing the diversion from a point near the
12 center of the NW $\frac{1}{4}$ of Section 33 to where seepage from the river enters a slough at
13 a point situated in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3 and also portable pumping along the
14 river in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3. There is no evidence in the record that
15 diversions were developed at these points. Certificate of Change recorded in
16 Volume 2, Page 969 authorized Roy T. Carey to change the point of diversion of 16.0
17 cubic feet per second of the waters of the Yakima River through the Becker Ditch as
18 claimed by use since 1893. The new point of diversion authorized is in the SW $\frac{1}{4}$ NE $\frac{1}{4}$
19 of Section 29, which is the location of the diversion into the Mill Ditch. During
20 the presentation of the Pautzke Bait Company claim the testimony was the Yakima
21 River water previously carried through Becker Ditch is diverted and carried in the
22 Mill Ditch, discharged into Reecer Creek, and then diverted from Reecer Creek at
23 various points. The diversion from Reecer Creek used on the Calaway property is

24
25 REPORT OF REFEREE
26 Re: Subbasin No. 7
27

1 located in Government Lot 3 of Section 3, approximately 800 feet south of the north
2 section line.

3 In addition to the certificates of change, Ellensburg Cement Products filed a
4 water right claim pursuant to the requirements of RCW 90.14. Water Right Claim No.
5 115691 asserted a right to divert 4 cubic feet per second, 210 acre-feet per year
6 from the Yakima River for the irrigation of 35 acres and stock water on the lands
7 now owned by Calaway Pacific.

8 Calaway Pacific purchased the land in 1988 and has developed a commercial
9 haying facility on the property. The claimants intend to continue irrigating 16
10 acres of pasture in the southeasterly portion of the property. Livestock will be
11 raised and will have access to the west channel of Reecer Creek and an undeveloped
12 spring. Both of these non-diversionary stock water uses are covered by the stock
13 water stipulation discussed on Page 4 of this report. The claimants may also be
14 asserting a diversionary right for this spring. However, the testimony indicates
15 that the spring has not been developed and there has been no historic use. There
16 is no evidence that a right exists for the use of the spring beyond
17 non-diversionary stock watering.

18 The testimony was confusing concerning the quantity of water being claimed,
19 and there was no testimony about the quantity of water that has historically been
20 used to irrigate the 16 acres that the claimants intends to continue irrigating.
21 Referee believes a proportionate share of the quantities identified in the RCW
22 90.14 claim would be reasonable for the 16 acres to be irrigated. That would
23 amount to 1.8 cubic feet per second, 96 acre-feet per year.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

Therefore, the Referee recommends that a right be confirmed under Court Claim No. 01720 under the Prior Appropriation Doctrine with a May 6, 1893, date of priority for the diversion of 1.8 cubic feet per second, 96 acre-feet per year for the irrigation of 16 acres.

COURT CLAIM NO. 02085 -- Ellensburg; City of

The City of Ellensburg filed a Statement of Claim with the Court for the use of several surface water sources in the Yakima River Basin, including diversion of water from the Yakima River within Subbasin No. 7. The city was represented by Attorney Glenna Bradley-House. Tom Chini, City Engineer testified at the evidentiary hearing.

The city is claiming two distinct water rights for diverting water from the Yakima River. The first to be discussed is under a contract dated December 21, 1971, between the city, the Kittitas Reclamation District (KRD) and the U. S. Bureau of Reclamation. The contract called for KRD to transfer 6,000 acre-feet of its entitlement to the City of Ellensburg in return for the city transferring to KRD a portion of a power right established in 1903 at what is known as the Packwood Canal. The water transferred to the city was part of the perfected right authorized by Surface Water Certificate (SWC) No. 4498, which bore a priority date of May 10, 1905. Certificate of Change recorded in Volume 1-3, Page 3, issued to the United States of America, Department of the Interior, Bureau of Reclamation modifying SWC No. 4498. It authorized a change in point of diversion, place of use and purpose of use for 23.33 cubic feet per second, 6,000 acre-feet per year. The point of diversion was changed to the easterly bank of the Yakima River within the

REPORT OF REFEREE
Re: Subbasin No. 7

1 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3 and the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 10, T. 17 N., R. 18 E.W.M. The
2 purpose of use was changed to municipal water for the City of Ellensburg and the
3 place of use was changed to land served by the Ellensburg municipal water system in
4 the Ellensburg urban area. The contract signed in 1971 specified a monthly
5 schedule for water deliveries to the city. The schedule is as follows:

6 April 20 to 30 - 120 acre-feet
7 May - 1,020 acre-feet
8 June - 1,260 acre-feet
9 July - 1,260 acre-feet
August - 1,200 acre-feet
September - 780 acre-feet
October 1 to 15 - 360 acre-feet

10 During the evidentiary hearing there was very little testimony about use of
11 this water. The city seemed uncertain as to whether the right should be addressed
12 through the subbasin pathway as part of its claim or through the Major Claimant
13 Pathway as part of the KRD claim. The Conditional Final Order has issued for the
14 Kittitas Reclamation District and the right to use the 6,000 acre-feet was not
15 addressed in that proceeding. Since the right was transferred to the City of
16 Ellensburg, the subbasin pathway would be the appropriate route to consider the
17 claim. The testimony does indicate that a small portion of this water is pumped
18 from two ponds located adjacent to the Yakima River and used to irrigate five acres
19 in the Irene Rinehart Park. The testimony did not indicate where this park was
20 located, except that it is adjacent to the Yakima River. The city has owned the
21 land on which the park is located since 1972 and began irrigating the park in 1986.
22 Irrigation of a city park is compatible with an authorized use of municipal supply.
23 However, the point of diversion for serving this park has obviously changed from a
24 direct diversion from the Yakima River to pumping from ponds next to the river.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 There is nothing in the record to indicate that the city complied with the
2 requirements of RCW 90.03.380 and obtained authorization from the Department of
3 Ecology to change the point of diversion.

4 Although there was very little testimony about use of this water, the Referee
5 believes that a recommendation can be made to confirm the right described in the
6 certificate of change. RCW 90.14.140 provides that rights claimed for municipal
7 supply cannot be relinquished for nonuse. Therefore, use of the water subsequent
8 to the transfer is not required confirmation of a municipal water right.

9 Consequently, the Referee recommends that a right be confirmed with a May 10, 1905,
10 date of priority for the diversion of 23.33 cubic feet per second, 6,000 acre-feet
11 per year for municipal supply. The recommendation shall contain a limitation of
12 use provision that contains the schedule for delivery of water identified in the
13 contract. The place of use and point of diversion shall remain as authorized on
14 the certificate of change.

15 The City of Ellensburg is also asserting to have a portion of the water right
16 established for the Klein-Coble Ditch. According to Mr. Chini's testimony, in 1967
17 the city purchased land lying in Sections 13 and 14, T. 17 N., R. 18 E.W.M.. The
18 land was being irrigated from the Klein-Coble Ditch at the time of the purchase.
19 In 1968 the city installed an underground pipeline to carry water diverted from the
20 Yakima River at a point near the Ellensburg Water Company diversion in Section 12,
21 T. 18 N., R. 17 E.W.M. south and east to the Ellensburg municipal service area.
22 Water is delivered to municipal customers and then used for industrial purposes in
23 Twin City Foods. Wastewater from Twin City Foods is used to irrigate the land
24 in Sections 13 and 14 that the city purchased in 1967.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

The city filed Water Right Claim No. 116737 pursuant to the requirements of RCW 90.14 asserting a right to divert 8 cubic feet per second, 1600 acre-feet per year from the Yakima River for the irrigation of 196 acres and stock water. The point of diversion identified was in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M. and the place of use is several parcels in Sections 13 and 14, T. 17 N., R. 18 E.W.M.

A Notice of Water Right was filed on July 3, 1885, by N. Klein, O.B. Castle and Daniel Coble for the diversion of water from the Yakima River at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M. The notice stated that the ditch capacity was 5,000 miners inches. Five thousand miners inches measured under four inch pressure would be 100 cubic feet per second. The notice also identified the course of the ditch and the lands that it traversed. The ditch terminated in the middle of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M. The middle of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11 is over half a mile from the city land that is purported to have a right to use water from the Klein-Coble Ditch. There is nothing in the record to show that the city land was once owned by any of the individuals who filed the Notice of Water Right, nor is there any evidence to show if, and/or when, the ditch was extended to serve the land in Sections 13 and 14. In order for there to be a water for this land, the ditch would have had to have been extended and water put to use prior to June 6, 1917.

Had the city provided evidence to support the existence of a water right for the lands in Sections 13 and 14, it would not be possible to recommend confirmation of a water right that authorizes the use of water currently being made. The diversion being used is several miles upstream of the original diversion into the

REPORT OF REFEREE
Re: Subbasin No.

1 Klein-Coble Ditch, water is now being used for municipal supply, which is a change
2 in purpose of use from irrigation, water is being used extensively outside of
3 Sections 13 and 14, so the place of use has been enlarged. All of this was done
4 without complying with the requirements of RCW 90.03.380.

5 Due to the lack of evidence to show that a water right had been established
6 for the lands in Sections 13 and 14 and the numerous changes that have occurred to
7 the claimed right, the Referee cannot recommend that a water right be confirmed.

8 The City of Ellensburg also entered into evidence a copy of Surface Water
9 Permit No. S3-00128P, which issued to the city pursuant to the provisions of RCW
10 90.03.250 -.290. This permit bears a priority date of February 11, 1972, and
11 authorizes the city to divert 10 cubic feet per second, 1,000 acre-feet per year
12 from the Yakima River for municipal supply. The authorized points of diversion are
13 multiple intakes located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3 and the NE $\frac{1}{4}$ of Section 10,
14 T. 17 N., R. 18 E.W.M. The legal description of lands upon which the water is to
15 be used is "City of Ellensburg". The permit contains the following provision:
16 "Rights established under this appropriation shall be considered to be fully
17 supplemental to existing rights held by the City of Ellensburg for municipal supply
18 purposes." The City did not provide any testimony concerning the status of
19 development under this permit, nor did the Department of Ecology provide any
20 information about whether the water authorized for use had been put to full use.
21 Therefore, the Referee shall not consider this permit and final resolution of any
22 right it may reflect shall rest with the Department of Ecology.

23 The City of Ellensburg may want to explore with the Department of Ecology the
24 options for seeking a change of the right herein recommended or the authorization

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 under Surface Water Permit No. S3-00128P for the diversion in Section 12, T. 18 N.,
2 R. 17 E.W.M.

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4 COURT CLAIM NO. 01636 -- Ernest Everett
5 (A)02106

6 A Statement of Claim was submitted by Ernest Everett for the use of waters
7 from an unnamed spring for domestic use. Rena Everett appeared at the evidentiary
8 hearing to testified in support of the claim.

9 The Everett property is a portion of the $\frac{1}{2}N\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$ of Section 20, T. 18 N.,
10 R. 18 E.W.M.. An exact legal description has not been provided the Court.
11 According to Mrs. Everett's testimony a spring had been used to supply water for
12 domestic and garden irrigation. However, many years ago the spring went dry and a
13 sandpoint well was installed. They eventually had problems with this well and a
14 drilled well was constructed in 1989 or 1990. The drilled well is now their source
15 of domestic water. It is not clear how long it has been since the spring went dry.

16 The Peter Wold Ditch, which enters the $SW\frac{1}{4}$ of Section 20 immediately south of
17 the her property line is used to irrigate approximately one acre. Mrs. Everett
18 asked that the testimony of her neighbors about the Wold Ditch be incorporated for
19 her claim. The rest of the $W\frac{1}{2}SW\frac{1}{4}$ of Section 20 south of the Everett property is
20 owned by Mrs. Everett's grandson and his wife, Mike and Debbie Williams. The
21 Williams irrigate some of their land from the Peter Wold Ditch. Their claim to a
22 water right is based on a Deed of Right of Way Recorded in Book A of Miscellaneous
23 Records at Page 40. This document is a right of way from Peter A. and Samantha M.
24 Wold to Levi Farnsworth, James Dysart, and John A. Shoudy for a ditch to carry

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 water away from a flour and saw mill. The deed is dated March 13, 1876, and shows
2 the right of way was through a portion of Section 20. Other claimants in this
3 proceeding have put documents in the record to show that the Wolds owned other
4 portions of Section 20, but not the land now owned by Mrs. Everett. Additionally,
5 the Right of Way Deed does not indicate an intent for the Wolds to use water
6 conveyed in that ditch.

7 An amendment to the Court claim indicates that Christina Brownfield received a
8 patent on December 3, 1882, that included the lands owned by Mrs. Everett.
9 However, there is no other historical ownership information. There are several
10 notices of appropriation that have been put in the record by other claimants, but
11 it is not apparent that any of them are applicable to the Everett property.

12 Mr. Everett filed Water Right Claim No. 074516 pursuant to RCW 90.14 asserting
13 a right to use a spring for domestic supply with a March of 1876 date of first use.
14 However, there is nothing in the record to show that he filed a claim for use of
15 waters from the Yakima River. Failure to file a claim relinquishes any right that
16 may have existed, RCW 90.14.071.

17 Based on the foregoing, the Referee cannot recommend that a right be confirmed
18 under Court Claim No. 06136.

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26 REPORT OF REFEREE
Re: Subbasin No. 7

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2 COURT CLAIM NO. 01525 -- Milton M. Femrite
3 01526 & Tracy S. Femrite
4 01527
01528

5 Statements of Claim were submitted to the Court by Milton and Tracy Femrite
6 for the use of waters from Currier Creek, unnamed springs and the High Line Canal.
7 Milton Femrite testified at the evidentiary hearing.

8 Court Claim No. 01526 was filed for use of waters from the High Line Canal,
9 which is part of the Kittitas Reclamation District (KRD) delivery system. KRD is a
10 major claimant in this proceeding whose claim was determined through the Major
11 Claimant pathway and the Femrite's use of water from KRD will not be addressed as
12 part of his subbasin claim.

13 The Femrites own Section 26, T. 19 N., R. 18 E.W.M. They are claiming rights
14 to irrigate a portion of the land with water diverted from Currier Creek and
15 provide domestic supply, including lawn and garden irrigation, and water stock from
16 unnamed springs. According to the record, several patents were issued by the
17 Federal government between 1892 and 1906 for various portions of Section 26. Henry
18 Maxey received the first patent on August 20, 1892, for the NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$
19 and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26. The Femrites homesite is located near the center of
20 Section 26, in the area originally homesteaded by Henry Maxey. Mr. Femrite
21 testified that a cabin on the property, located approximately 300 feet from their
22 homesite, had been identified by neighbors as the original homestead and it has
23 been donated to the local Fair Board. A spring located approximately 500 feet
24 north of the current home has been developed and piped to the home. Mr. Femrite

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 believes this is the spring that served the homestead. Eugene A. Palmer, a prior
2 owner of the property, filed Water Right Claim No. 137674 pursuant to the
3 requirements of RCW 90.14 for use of a spring for domestic supply, stock watering
4 and lawn and garden irrigation.

5 The Femrites are also asserting a right to use springs located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$
6 of Section 26 for stock watering. According to the testimony livestock grazing in
7 the area drink directly from the stream that emanates from the spring. This type
8 of non-diversionary stock water use is covered under the stock water stipulation
9 discussed on Page 4 of this report. No additional stock water right shall be
10 confirmed.

11 The Femrites are claiming a right to irrigate a portion of their land with
12 water diverted from Currier Creek. Water is pumped from the creek at two locations
13 in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26. The northerly pump location irrigates a field
14 approximately 11 acres in size lying in that portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$
15 of Sec. 26 west of an unnamed tributary of Currier Creek and north of Currier
16 Creek. A second pump is located on Currier Creek near the center of the section
17 and is used to irrigate a ten acre field lying east of Currier Creek in the
18 SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26. A gravity flow diversion in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
19 Section 26 is used to irrigate a field approximately 1.5 acres in size located in
20 the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 26. These fields are irrigated most of the irrigation
21 season, as water is available in the creek. Both of the pumps are 5 BHP electric
22 pumps and three inch handlines are used to irrigate the fields. The Court Claim
23 identifies that 150 gallons per minute, or .22 cubic foot per second, can be
24 withdrawn from the creek with each of the pumps.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 The Femrites also irrigate approximately 80 acres lying in the S $\frac{1}{2}$ NW $\frac{1}{4}$ and that
2 portion of the SW $\frac{1}{4}$ of Section 26 lying north of the KRD canal. Water is diverted
3 from a branch of Currier Creek in the NW $\frac{1}{4}$ of Section 23 and carried by ditch into a
4 pond near the center of the NW $\frac{1}{4}$ of Section 26. The water is then diverted from the
5 pond and used to irrigate the 80 acres. Water is only available at this diversion
6 early in the irrigation season and generally only allows for one or two irrigations
7 of the field. The field is sprinkler irrigated with three inch handlines. Mr.
8 Femrite testified that he uses one acre-foot per day to irrigate this area and will
9 irrigate approximately three weeks in the spring before the creek is dry. The
10 application of 0.50 cubic foot per second for 24 hours results in the use of one
11 acre-foot per day. Undoubtedly, a ditch over half a mile in length has conveyance
12 loss, but Mr. Femrite did not testify to the amount diverted into the ditch at the
13 headworks or to the amount of conveyance loss. Although Mr. Femrite testified to
14 only irrigating three weeks in the spring, the Referee gathered that this period
15 varies each year and could be for a shorter or longer period of time.

16 Two water right claims were filed by Eugene A. Palmer pursuant to RCW 90.14
17 for use of waters from Currier Creek. Water Right Claim No. 137678 asserts a right
18 to divert 1 cubic foot per second, 225 acre-feet per year for the irrigation of 20
19 acres and stock water in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26. The point of
20 diversion described on the claim is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26. Water
21 Right Claim No. 137677 asserts a right to divert 1 cubic foot per second, 300
22 acre-feet per year from Currier Creek for the irrigation of 10 acres in the
23 NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26. The point of diversion described is in the NW $\frac{1}{4}$ of
24 Section 23.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 The Femrites are basing their claim on a Statement of Claim filed by Henry N.
2 Maxey on May 31, 1890. It states that Maxey is the owner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$,
3 SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26 (which is the land for which he
4 received a patent) and all ditches and water rights used to irrigate the same. The
5 ditch was constructed in April and May of 1882 by J. L. Williams and W. J. Parker,
6 who had equal shares in the ditch. Mr. Maxey acquired J. L. William's interest in
7 the ditch. The ditch was approximately 2640 feet long where it entered Maxey's
8 property and the head of the ditch was in Williams Creek in or near the SW $\frac{1}{4}$ of
9 Section 23. Mr. Femrite testified that Williams Creek is an earlier name for what
10 is now known as Currier Creek. The ditch capacity was over 100 inches of water (2
11 cubic feet per second).

12 Henry Maxey's filing in 1890 documents a water right established in April of
13 1882 appurtenant to the NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
14 Section 26. His half interest in the ditch would enable the use of half of the
15 water carried in the ditch, which would be approximately 1 cubic foot per second.
16 The Femrites are irrigating approximately 56 acres within that area. However, only
17 the irrigated land in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26 is
18 included on the RCW 90.14 claims filed by Eugene Palmer. Approximately ten acres
19 are irrigated in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, which is the number of acres for which a right is
20 asserted on Water Right Claim No. 137677. Another ten acres is irrigated in the
21 SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, which is the place of use described on Water
22 Right Claim No. 137678. The testimony indicated considerably more irrigation than
23 was reflected in the RCW 90.14 claims and there was no explanation of the
24 discrepancy.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Based on the record presented, the Referee recommends that a right be
2 confirmed under the Prior Appropriation Doctrine for Court Claim No. 01527 with an
3 April 30, 1882, date of priority for the diversion of 1.0 cubic foot per second, 30
4 acre-feet per year from Currier Creek at a point in the NW $\frac{1}{4}$ of Section 23 for the
5 irrigation of ten acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26. It is recommended that a
6 right be confirmed under the Prior Appropriation Doctrine for Claim No. 01525 with
7 an April 30, 1882, date of priority for the diversion of 0.22 cubic foot per
8 second, 40 acre-feet per year from Currier Creek at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
9 Section 26 for the irrigation of ten acres in that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and
10 W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26 lying east of Currier Creek and north of the KRD Canal. It
11 is also recommended that a right be confirmed under the Riparian Doctrine with an
12 August 20, 1892, date of priority for the diversion of 0.02 cubic foot per second,
13 2 acre-feet per year from a spring for single domestic supply.

A Statement of Claim was filed with the Court by Arthur L. and Patricia A.
18 Fiala for the use of waters from springs and drainage. On August 24, 1990, David
19 and Caroline Woodcock were joined to the claim. According to the documents in the
20 record, the Woodcocks purchased a portion of the land described in Court Claim No.
21 01871 from Kurt and Lillian Linder, who had acquired the land from the Fialas. The
22 Fialas no longer have any interest in the lands described in the Court Claim.
23 David Woodcock testified at the evidentiary hearing.

26 REPORT OF REFEREE
Re: Subbasin No. 7

1 The Woodcocks own the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T. 19 N.,
2 R. 18 E.W.M. According to the testimony and evidence, a series of seeps and
3 springs are located approximately 400 feet north and between 200 and 500 feet west
4 of the east quarter corner of Section 27. They drain into ditches that feed a pond
5 that is located approximately 400 feet west of the east quarter corner of
6 Section 27. Water is diverted from the pond to irrigate approximately 3.5 acres of
7 pasture in the N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, lying east of an unnamed stream. Water is
8 also pumped from a smaller pond to irrigate approximately one-half acre of lawn and
9 garden. Livestock can drink from the ditches and larger pond. Ten head of cattle
10 is the maximum that are raised on the property. Mr. Woodcock estimated that they
11 use 0.044 cubic feet per second for irrigation and 0.25 acre-feet per year for
12 stock watering.

13 The Woodcock property is part of the land conveyed by the United States
14 Government to Northern Pacific Railroad by patent dated November 14, 1895. Prior
15 to N.P.R.R. receiving the patent, it sold the E $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27 to Marcus
16 Cahoon. The mortgage for that sale was executed on January 1, 1881. As the basis
17 for their water right, Mr. Woodcock cited a water right filing by Parish A. Dickey
18 dated March 31, 1886. That filing stated that Mr. Dickey was the successor to John
19 Cobel in possessory ownership of the railroad land claim described as S $\frac{1}{2}$ SE $\frac{1}{4}$,
20 NE $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, T. 19 N., R. 18 E.W.M. and also the water right
21 and ditch leading therefrom to Section 34 and claimed the right to continue in
22 enjoyment of said water privilege for the purpose of irrigation. Documents
23 submitted by a neighboring landowner show that Mr. Dickey was also the owner of

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 lands in Section 34. The water right filing appears to describe a right to divert
2 water from Section 27 for use in Section 34.

3 Mr. Woodcock is claiming a March 31, 1886, date of priority based on the water
4 right filing of Parish Dickey. However, based on the information in the record,
5 the Referee cannot conclude that filing was for the lands now owned by the
6 Woodcocks, since it states the ditches lead to Section 34 and Marcus Cahoon, not
7 Parish Dickey owned the land. There is no evidence that Parish Dickey owned the
8 Woodcock land in 1886 when the appropriation was made. The evidence would support
9 the conclusion that the appropriation was intended for use in Section 34, not
10 Section 27. Although Mr. Woodcock testified to his belief that water was used on
11 the land prior to 1890 and the land had been flood irrigated at that time, there is
12 no evidence to support that belief.

13 As a prior owner of the Woodcock property, William R. Zuppe filed four water
14 right claims pursuant to the requirements of RCW 90.14. Water Right Claims No.
15 068935 through 068938 claim rights to divert 45 gallons per minute, 72 acre-feet
16 per year for the irrigation of five acres in the NE $\frac{1}{4}$, SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27.
17 Each claim describes a spring source at approximately the location identified on
18 the State's map exhibit. The date of first water use shown on the claims is 1880.

19 There is nothing in the record to show that a right was established for the
20 land now owned by the Woodcocks. Therefore, the Referee cannot recommend
21 confirmation of a water right under Court Claim No. 01871.

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26 REPORT OF REFEREE
Re: Subbasin No. 7

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2 COURT CLAIM NO. 05175 -- Jon Fitterer

3 Jon Fitterer submitted a Statement of Claim to the Court for the use of waters
4 from the Yakima River for irrigation, stock water and domestic. Mr. Fitterer was
5 represented by Attorney John P. Gilreath. Richard C. Bain, Jr., a consultant hired
6 by Mr. Fitterer, testified at the evidentiary hearing.

7 Court Claim No. 05175 includes a 20.2 acre parcel owned by Mr. Fitterer
8 (Parcel A) and an 8.3 acre parcel that Mr. Fitterer sold to Gregory Willette in
9 1988 (Parcel B). Parcel A lies predominantly in the NW $\frac{1}{4}$ of Section 18, but also
10 extends into the SW $\frac{1}{4}$ of Section 7, both in T. 18 N., R. 18 E.W.M.. Parcel B is
11 solely in the NW $\frac{1}{4}$ of Section 18. Parcel A is planted to timothy hay and Parcel B
12 is in pasture. Both parcels are irrigated with water from the Yakima River
13 diverted by the Ellensburg Water Company into the Town Ditch. The water is
14 released from the Town Ditch into the Klocke Ditch. A lateral diverts from the
15 Klocke Ditch and parallels Highway 10, which forms the southwesterly boundary of
16 both of the parcels. This lateral is used to irrigate the two parcels. The lawn
17 and garden area around the Fitterer home is irrigated with water pumped directly
18 from Olson Ditch. Mr. Bain measured the flow in the lateral that serves the two
19 parcels and found that it carries 2.37 cubic feet per second. Based on that
20 instantaneous quantity and the irrigation practices of the landowners, he testified
21 that 417.6 acre-feet per year is used to irrigate the 28 acres, or 14.9 acre-feet
22 per acre irrigated.

23 Up to 105 head of livestock are kept on the property for short periods of
24 time. Mr. Bain testified that using the Department of Ecology's figures for stock

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

watering, an additional 5 acre-feet per year would be needed. However, the Department of Ecology figure was based on the livestock being on the property the entire year. The testimony was that the livestock are on the Fitterer property for a "short period of time". Although the testimony did not indicate what the period of time would be, it clearly is not the entire year.

The land within the NW $\frac{1}{4}$ of Section 18 was part of a larger parcel for which Alexander Munson received a patent on January 18, 1887. Prior to receiving the patent, on April 15, 1885, Mr. Munson filed a Notice of Purchase of Interest in Water Ditch. The notice stated he had purchased a ditch on December 21, 1882, and claimed a right to enlarge and extend the ditch to a capacity of 12,000 inches (or 240 cubic feet per second) for his homestead entry in Section 18. The ditch he purchased is now known as the Klocke Ditch. On April 25, 1891, A. A. Munson, along with C. E. Stevens, Hiram Ames and William D. Killmore filed a Notice of Water Right claiming a right to divert 40 cubic feet per second from a channel to a lake in the northwest corner of the NW $\frac{1}{4}$ of Section 18 and then convey that water in a flume to the southwest side of the N.P.R.R. Mr. Fitterer contends this notice of appropriation establishes a water right for his property; however, the Referee notes that the Fitterer land lies northeast of the N.P.R.R., rather than to the southwest.

A neighboring claimant in this proceeding, Henry J. Klocke, Jr. presented to the Court a copy of an agreement between the Ellensburg Water Company and previous owners of his property, Avery and Pearl Stevens dated October of 1944. The agreement conveyed to the Ellensburg Water Company lands adjoining the Town Ditch that were owned by the Stevens and in return the water company agreed to carry and

REPORT OF REFEREE
Re: Subbasin No. 7

1 deliver 50 inches of water (1 cubic foot per second) to the Stevens. The agreement
2 stated that the water was appurtenant to the Stevens property and not part of the
3 Ellensburg Water Company appropriation. Mr. Fitterer did not submit a chain of
4 title for his land that would show whether the Stevens also owned the land
5 described in the Fitterer Court Claim. However, pursuant to RCW 90.14 Avery
6 Stevens filed Water Right Claim No. 112116 claiming a right to divert 8 cubic feet
7 per second, 320 acre-feet per year from the Yakima River for the irrigation of 80
8 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, all of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and that part of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and
9 of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18 lying northeast of the right of way of the NPPR; all of
10 the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and that part of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ lying north and east of
11 the Town Ditch in Section 18, T. 18 N., R. 18 E.W.M. This description does include
12 the Fitterer land, and would indicate Mr. Stevens had some interest in that land.
13 Mr. Fitterer also filed Water Right Claim No. 143643 claiming 0.03 cubic foot per
14 second and 6 acre-feet per year per acre for the irrigation of 40 acres. The legal
15 description attached to the claim is illegible.

16 There is nothing in the record concerning establishment of a water right for
17 the lands lying in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7. There was information provided as to
18 when the land was settled, but the water right filings all reference use of water
19 in Section 18 only. The first mention of Section 7 in any historical document is
20 the 1944 agreement between Ellensburg Water Company and the Stevens. The agreement
21 is insufficient to show that a right was established under either the Prior
22 Appropriation or Riparian Doctrines for use of water in Section 7.

23 Based on the foregoing, it appears that a right was established under the
24 Riparian Doctrine for the irrigation of the lands lying in Section 18. The

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 testimony did not indicate how many acres of land are owned in Section 7, leaving
2 the Referee in a position of having to estimate the number of irrigated acres that
3 are in Section 18, for which a water right can be recommended.

4 The Referee recommends that a right be confirmed with a December 21, 1882,
5 date of priority for the diversion of 2.32 cubic feet per second, 342.7 acre-feet
6 per year from the Yakima River for the irrigation of 23 acres and 0.05 cubic feet
7 per second, 5 acre-feet per year for stock watering within that portion of Parcel A
8 lying in Section 18 and Parcel B of that survey recorded January 20, 1988, in
9 Book 15 of Surveys, at page 126, under Auditor's File No. 510259, records of
10 Kittitas County.

11

12 COURT CLAIM NO. 00402 -- Irene Pott Flint

13 A Statement of Claim was submitted by Irene M. Pott for the use of waters from
14 Currier Creek and Spring Creek. Ms. Pott has married since the claim was filed and
15 is now Irene M. Flint. Mrs. Flint was represented by Attorney Ken Beckley. Mrs.
16 Flint and her son, Richard Pott, testified at the evidentiary hearing.

17 According to the testimony, Mrs. Flint owns between 72 and 80 acres of land in
18 the NW $\frac{1}{4}$ of Section 34, T. 18 N., R. 18 E.W.M. and irrigates 72 acres primarily with
19 water diverted from Currier Creek. Cascade Way bisects the property, with 21 acres
20 irrigated north of Cascade Way and 51 acres irrigated south of Cascade Way. Two
21 diversions from Currier Creek are utilized, one near the northwest corner of the
22 property and the other south of Cascade Way on the west property line. Mr. Pott
23 testified that 12 acre-feet per acre is used to irrigate the land, or 864 acre-feet
24 per year for 72 acres; however, he did not testify to the instantaneous rate of

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 diversion from the creek. The diversion of 2.42 cubic feet per second over a
2 standard 180 day irrigation season would result in the withdrawal of 864 acre-feet
3 per year. Livestock, including cattle and sheep are periodically raised on the
4 property and drink directly from Currier Creek. This type of non-diversionary
5 stock watering is covered by the stock water stipulation discussed on Page 4 of
6 this report.

7 According to Mrs. Flint's testimony, her former in-laws purchased the property
8 in 1918 and at that time the land was being irrigated in much the same manner as
9 today. Mrs. Flint became personally familiar with the land in the early 1940's
10 when she and her former husband acquired the land. The record shows that a
11 homestead application was filed for the NW $\frac{1}{4}$ of Section 34 by Robert Wallace on
12 April 30, 1875, and the patent was recorded on October 23, 1883. The land is
13 riparian to Currier Creek and water rights established under the Riparian Doctrine
14 enjoy a priority date of the date when steps were first taken to sever the land
15 from Federal ownership. Filing of the homestead application on April 30, 1875, is
16 the earliest date in the record of steps being taken to sever this land from
17 Federal ownership.

18 Mr. Pott also testified to the use of water from Spring Creek diverted on the
19 Pautzke Bait Company property to the west. However, the only water source
20 identified on the map in that area is Reecer Creek. There was no testimony about
21 the quantity of water diverted from Spring Creek or the history of use of this
22 source. The diversion is located on neighboring property and therefore it appears
23 that if a water right does exist, it would have been established under the Prior
24 Appropriation Doctrine, under which use must have begun prior to June 6, 1917. A

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 right under this doctrine enjoys a priority date of the date water is first
2 appropriated or notice given of the intent to appropriate water.

3 Mrs. Flint filed Water Right Claim No. 025124 pursuant to the provisions of
4 RCW 90.14, the Claims Registration Act, claiming a right to divert 4 cubic feet per
5 second, 1,200 acre-feet per year from Reecer Creek for the irrigation of 80 acres.
6 The place of use identified on the claim is the NE $\frac{1}{4}$ of Section 34, T. 18 N.,
7 R. 18 E.W.M., not the NW $\frac{1}{4}$ of Section 34, the land to which a right is being
8 asserted under Court Claim No. 00402. This is the only water right claim in the
9 record filed by Mrs. Flint (under her prior name). There is no claim filed
10 pursuant to RCW 90.14 identifying Currier Creek or Spring Creek as the water source
11 or describing the NW $\frac{1}{4}$ of Section 34 as the place of use. It is not clear whether
12 Mrs. Flint owned the NE $\frac{1}{4}$ of Section 34 at the time this water right claim was
13 filed, but it appears other claimants who now own portions of the NE $\frac{1}{4}$ of Section 34
14 may be relying on this RCW 90.14 claim to protect their claim to a water right.
15 Mrs. Flint has made no assertion that errors were made in describing the source of
16 water and place of use.

17 If an error was made, RCW 90.14.065 provides a mechanism to amend a claim to
18 correct certain types of errors, including errors ministerial in nature. There is
19 no definition of "ministerial in nature", so the Referee has no ability to judge
20 whether an error in describing the source or place of use would be ministerial in
21 nature; however, if in fact an error has occurred, the claimant is directed to the
22 Department of Ecology to inquire into the possibility of amending Water Right Claim
23 No. 025124.

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7
27

Due to the lack of a RCW 90.14 claim for use of waters from Currier Creek and Spring Creek, and the lack of testimony of historic use and uncertainty of the identify of the source described as Spring Creek, the Referee cannot recommend confirmation of a water right under Court Claim No. 00402. The non-diversionary stock water stipulation covers the stock watering from Currier Creek.

COURT CLAIM NO. 00253 -- Jay Gorman
(A)02103 & Diane Gorman
(A)02104 Dick Colasurdo
 & Anna Colasurdo

Jay and Diane Gorman submitted a Statement of Claim to the Court, which as amended, claims right to use water from Currier Creek, Reecer Creek, Whiskey Creek unnamed springs and drainage water. Whiskey Creek is in Subbasin No. 9 and rights to the use of that water will be addressed in the Report of Referee for Subbasin No. 9. On September 5, 1990, Dick and Anna Colasurdo were joined to the claim. Don Ozanich, who leases the land now owned by the Colasurdos, testified on their behalf at the evidentiary hearing. The Gormans did not appear to testify.

According to the testimony the Colasurdos own that portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27 lying west of the Dry Creek Road and approximately one acre lying in that portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28 east of Currier Creek, all in T. 18 N., R. 18 E.W.M.. This property consists of approximately 57 acres, of which 34 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 and the one acre in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28 are irrigated. Water is diverted from Currier Creek at two points and from a drainage ditch to irrigate the land. The drainage ditch captures runoff from neighboring lands to the northeast. There was no testimony about the quantity of water

REPORT OF REFEREE
Re: Subbasin No. 7

1 diverted from either of the two sources. Hay is the crop currently grown on the
2 property.

3 Melvin Whipple, as a prior owner of the Colasurdo property, filed a water
4 right claim pursuant to the requirements of RCW 90.14. Water Right Claim No.
5 023889 asserted a right to divert 0.50 cubic foot per second, 100 acre-feet per
6 year from Currier Creek for the irrigation of 25 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27.
7 The date of first water use shown was prior to 1911.

8 Mr. Ozanich was not able to provide any testimony about the historic water use
9 on this property. Attached to the Court Claim is a copy of the chain of title for
10 Sections 27 and 28, but the chain appears to be for all of Section 27, so without
11 testimony it is not possible for the Referee to determine which entries pertain to
12 the SW $\frac{1}{4}$ of Section 27. Also attached to the Court Claim are historical documents
13 that may be related to the property. Most of them deal with a right of way for a
14 ditch across the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28; however, one appears to relate to
15 Section 27. The copy is of such poor quality that the Referee is not able to read
16 most of the document.

17 There is insufficient information in the record for the Referee to determine
18 that a water right has been established for this property under either the Riparian
19 or Prior Appropriation Doctrines. Therefore, the Referee cannot recommend that a
20 water right be confirmed to Dick and Anna Colasurdo.

21 Jay and Diane Gorman own that portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 27
22 northeast of the Dry Creek Road. They did not appear at the evidentiary hearing in
23 support of their claim, therefore, the Referee cannot recommend confirmation of a
24 right to the Gormans.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

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2 COURT CLAIM NO. 00447 -- Wesley D. Gray
3 & JoAnne Gray
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5 Wesley D. and JoAnne Gray submitted a Statement of Claim to the Court for the
6 use of waters delivered by the Cascade Irrigation District, which is a major
7 claimants in this proceedings whose rights are being determined through the Major
8 Claimant Pathway identified in Pretrial Order No. 8. Water use related to the
9 irrigation district will not be addressed through the subbasin pathway. Therefore,
00447.
10 the Referee does not recommend confirmation of a water right under Court Claim No.

11 COURT CLAIM NO. 01663 -- William J. Grueter
12 (A)04913 & Patricia M. Grueter
13 (A)04914

14 A Statement of Claim was submitted to the Court by William J. and Patricia M.
15 Grueter. Amended Court claims were submitted in December of 1989 for use of
16 additional sources, including First Creek, which lies in Subbasin No. 4, Swauk
17 Creek. The rights to use of that water will be determined through the Subbasin No.
18 4 hearing and Report of Referee. The Grueters are represented by Attorney Richard
19 T. Cole. Mr. Grueter testified at the evidentiary hearing. The Referee notes that
20 there appears to be confusion and inconsistency between the Court claims, claims
21 filed pursuant to RCW 90.14 and the testimony concerning the names associated with
22 the different creeks in this area. As much as possible, the Referee shall attempt
23 to identify diversion locations so the source of water being discussed is clear.
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26 REPORT OF REFEREE
Re: Subbasin No. 7
27

The Grueters own the W $\frac{1}{2}$ of Section 35 and the E $\frac{1}{2}$ E $\frac{1}{2}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, T. 19 N., R. 18 E.W.M. They are asserting a right to irrigate 18 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34 and 76 acres in Section 35. The land in Section 34 is irrigated through two diversions from an unnamed creek that appears to be tributary to Jones Creek, which in turn is tributary to Currier Creek. Diversion one is located approximately 650 feet south of the north quarter corner of Section 34 and diversion two is located near the southeast corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34. During the irrigation season 200 head of cattle are pastured in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34 and drink from the unnamed creek and the irrigation ditch. The livestock would need approximately 10 acre-feet per year from all the sources. Mr. Grueter also maintains a stock yard for wintering cattle. Up to 1,200 head of cattle are kept during the winter and would need approximately 24 acre-feet during that limited period. Water for the cattle is provided through diversion two. Mr. Grueter testified that the creek often is dry in the winter. When that is the case, Kurt Linder, who owns the NW $\frac{1}{4}$ of Section 34, diverts water from Jones Creek and drops it into the unnamed creek.

In Section 35 the Grueters irrigate 16 acres east of Currier Creek and 60 acres west of Currier Creek and east of an unnamed tributary to Currier Creek. Approximately half of the irrigated land appears to be in the NW $\frac{1}{4}$ and half in the SW $\frac{1}{4}$ of the section. They have four diversions from Currier Creek and one from the unnamed tributary. Diversion one from Currier Creek serves the irrigated land east of the creek. Diversions two, three and four from Currier Creek each serve a portion of the land irrigated west of Currier Creek, as does the diversion from the unnamed tributary. The diversion from the tributary is located along the north

REPORT OF REFEREE

1 section line for Section 35, approximately 900 feet east of the northwest corner.
2 Approximately 450 head of cattle are raised on the property and drink from the
3 creeks and the irrigation ditches. The livestock would need 20 acre-feet of water
4 during the year from all sources.

5 Non-diversionary stock watering, where the livestock drink directly from
6 natural water sources, such as the creeks used by the cattle, is covered by the
7 stock water stipulation discussed on Page 4 of this report and no additional rights
8 are awarded for this type of use.

9 Mr. Grueter filed several water right claims pursuant to the requirements of
10 RCW 90.14. He testified to his belief that he misnamed the water sources described
11 in some of the claims and the diversion location should be relied on to determine
12 the actual source used. Claim No. 008511 claimed a right to divert 2 cubic feet
13 per second, 600 acre-feet per year from a point in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, which
14 would be the northernmost diversion on the unnamed creek that is tributary to Jones
15 Creek, for the irrigation of 30 acres and stock water in the E $\frac{1}{2}$ of Section 34.
16 Claim No. 008512 claimed a right to divert 2 cubic feet per second, 600 acre-feet
17 per year from a point located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, which would be diversion
18 two from Currier Creek for the irrigation of 60 acres and stock water in the W $\frac{1}{2}$ of
19 Section 35. Claim No. 008513 claimed a right to divert 1.5 cubic feet per second,
20 400 acre-feet per year from a point located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, which
21 would be diversion three or four from Currier Creek for the irrigation of 30 acres
22 and stock water in the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 35. Claim No. 008514 claimed a right to
23 divert 3 cubic feet per second, 900 acre-feet per year from a point located in the
24 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, which would be diversion one from Currier Creek, for the

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 irrigation of 60 acres and stock watering in the W $\frac{1}{2}$ of Section 35. Claim No.
2 008515 claimed a right to divert 3 cubic feet per second, 900 acre-feet per year
3 from a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, which would be the diversion from the
4 unnamed tributary to Currier Creek, for the irrigation of 120 acres and stock
5 watering in the W $\frac{1}{2}$ of Section 35.

6 Three other claims, No. 008507, 008508 and 008509 were filed pursuant to RCW
7 90.14 claiming rights to divert water from drains located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$
8 of Section 34 to irrigate lands in the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 34. There was no testimony
9 about use of these drains, and the only testimony about irrigation in Section 34
10 related to the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of the section, which is outside the place of use on the
11 water right claims.

12 Mr. Grueter was questioned about the quantity of water he uses from the
13 various sources and diversions. He testified that 2.5 to 3 cubic feet per second
14 is diverted from Currier Creek, but did not testify to annual quantity of water
15 used on the land. His attorney presented wide ranges, between 700 and 900
16 acre-feet per year from Currier Creek and between 200 and 400 acre-feet per year
17 from each of the other sources. Mr. Grueter responded affirmatively to these
18 estimates, but there was no evidence presented or direct testimony about the
19 quantity of water actually used. There was no testimony of ditch capacity or of
20 diversion measurements.

21 Additionally, there is uncertainty about the nature of the water being
22 diverted by the Grueters. The testimony indicates that after the early spring
23 months, the two unnamed creeks are dry above the High Line Canal, which is operated
24 by the Kittitas Reclamation District (KRD). The creek channels below the canal

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 capture water seeping from the canal and runoff from the irrigated lands above the
2 Grueters property. Evidence presented by other subbasin claimants show that the
3 land between the High Line Canal and the Grueter property is irrigated with waters
4 from the High Line Canal, which carries Yakima Project water to KRD patrons. Based
5 on this it appears that after early spring, much of the water in the two unnamed
6 creeks is Yakima Project return flow or seepage water. Water rights cannot be
7 confirmed through this proceeding for use of this water. See Page 7 of this report
8 for a discussion of return flow water.

9 The Grueters are basing their claims to water rights on two water right
10 filings. On May 15, 1890, William J. Parker filed a Statement of Claim stating he
11 was in possession under contract of purchase of the NW $\frac{1}{4}$ of Section 35, T. 19 N.,
12 R. 18 E.W.M.. It went on to state that he was the owner of the Parker Ditch that
13 commenced at a point on Williams Creek about 200 yards north of the south boundary
14 line of the NW $\frac{1}{4}$ of Section 23, T. 19 N., R. 18 E.W.M. and ran through Sections 23,
15 26 and 35 to the NW $\frac{1}{4}$ of Section 35. Since the ditch ended in the NW $\frac{1}{4}$ of
16 Section 35, the Referee does not believe the document supports the contention that
17 a right was established for the SW $\frac{1}{4}$ of Section 35. The document also stated that
18 on May 1, 1882, 50 inches of water had been appropriated and the present capacity
19 of the ditch was 50 inches. The number of acres being or proposed to be irrigated
20 was 150 acres. According to the States Exhibit No. DE-1 and 2, there is a
21 diversion from Currier Creek (once known as Williams Creek) near the center of the
22 NW $\frac{1}{4}$ of Section 23. It runs southerly into Section 26 ending on the Femrite
23 property. This diversion is not used by the Grueters.

24
25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 The Parker statement of claim does support the existence of a water right for
2 the portion of the NW $\frac{1}{4}$ that is currently being irrigated; to the extent of 50
3 inches of water, or 1.0 cubic foot per second from Currier Creek. There is nothing
4 in the record to show that a right was established for the use of the unnamed creek
5 that is tributary to Currier Creek. It is apparent that the point of diversion has
6 been changed since this right was established, however, there is nothing in the
7 record to indicate when that change occurred. Since gravity flow diversions are
8 still being used, the change could have occurred prior to adoption of RCW 90.03
9 making compliance with the change procedures in RCW 90.03.380 unnecessary. The
10 points of diversion being currently used shortens the length of the earthen ditch
11 by over two miles.

12 The claim for a right to irrigate lands in Section 34 is based on an Affidavit
13 of Water Right filed on May 31, 1890, by C. S. Garrison. The affidavit stated that
14 Garrison was the owner of the NE $\frac{1}{4}$ of Section 34 and that he had a valid right to
15 the use of 50 inches (1 cubic foot per second) of water from what is known as the
16 east prong of Reecer Creek. Said water was appropriated in the spring of 1885 and
17 carried to the farm by two ditches, one commencing in Section 27 and running
18 southeasterly to the farm and the second ditch constructed in spring of 1886
19 commencing in the SE $\frac{1}{4}$ of Section 28 and also flowing in a southeasterly direction.
20 Other claimants to this proceeding have presented evidence that supports a
21 conclusion that Jones Creek is the east prong of Reecer Creek. Review of the maps
22 in evidence show that Jones Creek flows through the SE $\frac{1}{4}$ of Section 28 and then into
23 Section 27. The Grueters are not asserting a right to use waters from Jones Creek
24 for irrigation. However, as previously noted, when the unnamed creek tributary to

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Jones Creek is dry during the winter, Kurt Linder diverts water from Jones Creek
2 into the unnamed creek for stock watering. This water is then diverted to the
3 stock yard operated by the Grueters. None of the water right claims filed by Mr.
4 Grueter pursuant to RCW 90.14 assert a right to divert water from a creek in the W $\frac{1}{2}$
5 of Section 34.

6 The evidence presented does support the assertion that a water right was
7 established in 1890 for use of what appears to be Jones Creek. However, use of
8 that source for irrigation has not continued, nor was there an RCW 90.14 claim
9 filed for this source. Additionally, there has been insufficient evidence
10 presented to allow the Referee to conclude that a right was established for the
11 unnamed creek currently being used. The water in the unnamed creek appears to be
12 predominantly return flow and seepage water originating from the Yakima Irrigation
13 Project. Water rights cannot be confirmed for use of that water. If the claimant
14 could provide an estimate of the natural flow available from the creek in the early
15 spring before KRD return flow enters the creek, it might be possible to recommend
16 confirmation of a water right if the historical information on use is also
17 provided. Based on the foregoing, the Referee cannot recommend that a right be
18 confirmed for the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34.

19 The Referee recommends confirmation of a water right under the Prior
20 Appropriation Doctrine with a May 1, 1882, date of priority for the diversion of 1
21 cubic foot per second, 300 acre-feet per year from Currier Creek for the irrigation
22 of 38 acres and 10 acre-feet per year for stock watering in the NW $\frac{1}{4}$ of Section 35
23 east of an unnamed stream flowing through that section. Due to the lack of
24 evidence that a water right was established for the irrigation of the SW $\frac{1}{4}$ of

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

Section 35, the Referee does not recommend confirmation of a water right for that land.

COURT CLAIM NO. 01983 -- Don Guy
& Lu Guy

The Guys filed a Statement of Claim with the Court for the use of water from the Yakima River through the Mill Ditch. The Guys were represented by Attorney John Gilreath and Darrel Eason, who farms the neighboring Pautzke Bait Company land, testified in support of the claim.

The claimants own two acres in the southwest corner of Government Lot 1 of Section 3, T. 17 N., R. 18 E.W.M. They irrigate approximately 1.5 acres of lawn, garden and orchard with water diverted from the Yakima River and carried in the Mill Ditch. Their water is discharged from Mill Ditch into Reecer Creek and rediverted from Reecer Creek on the Pautzke Bait property about 200 feet northwest of their property. The ditch from Reecer Creek also serves the neighboring Jewett property.

The Guy's property is part of a once larger parcel to which Josephine Becker received a patent in 1897. The Guys are basing their claim to water on a Notice of Water Right filed by Josephine Becker asserting a right from May 6, 1893, for the diversion of 16 cubic feet per second from the Yakima River via a slough adjacent to the river. Attached to the notice was a map showing the location of the ditch that was constructed to carry this water. The ditch diverted in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T. 18 N., R. 18 E.W.M. and terminated in the NE $\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M. The land for which Ms. Becker received a patent was

REPORT OF REFEREE
Re: Subbasin No. 7

1 conveyed to C. W. Suver on December 3, 1898. Documents submitted by Albert Lentz
2 in support of his own claim and his testimony show that the land owned by Mr. Suver
3 in Section 3 has historically been irrigated. The record shows that in 1909 Mr.
4 Suver conveyed 1 cubic foot per second of the 16 cubic feet per second in the
5 Becker appropriation to Charles Gordon for use in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34. Albert
6 Lentz is asserting a right for this water.

7 Two Certificates of Change issued relative to the Becker Appropriation. On
8 April 26, 1954, Certificate of Change recorded in Volume 1, Page 424 issued to T.
9 S. Kirk, Ida S. Kirk, G. A. Mead and Hazel S. Mead authorizing them to change the
10 point of diversion of waters of the Yakima River in the amount of 2.0 cubic feet
11 per second, being a portion of the right claimed by use since May 6, 1893. The
12 certificate of change authorized changing the diversion from a point near the
13 center of the NW $\frac{1}{4}$ of Section 33 to where seepage from the river enters a slough at
14 a point situated in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3 and also portable pumping along the
15 river in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3. There is no evidence in the record that
16 diversions were developed at these points. Certificate of Change recorded in
17 Volume 2, Page 969 authorized Roy T. Carey to change the point of diversion of 16.0
18 cubic feet per second of the waters of the Yakima River through the Becker Ditch as
19 claimed by use since 1893. The new point of diversion authorized is in the SW $\frac{1}{4}$ NE $\frac{1}{4}$
20 of Section 29, which is the location of the diversion into the Mill Ditch. During
21 the presentation of the Pautzke Bait Company claim the testimony was the Yakima
22 River water previously carried through Becker Ditch is diverted and carried in the
23 Mill Ditch and then discharged into Reecer Creek and diverted from Reecer Creek at
24 various points.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

Roy Carey filed Water Right Claim No. 015489 pursuant to the requirements of RCW 90.14. It asserted a right to divert 16 cubic feet per second, 6673 acre-feet per year for the irrigation of 245 acres. The place of use includes the land now owned by the Guys and Pautzke Bait Company.

There was no testimony of the quantity of water being used to irrigate the Guy property. The claim filed with the Court was for the use of 30 gallons per minute, or 0.067 cubic foot per second, 3 acre-feet per year. This would not be an unreasonable quantity for the irrigation of 1.5 acres in this area.

Based on the foregoing, the Referee recommends that a right be confirmed under the Prior Appropriation Doctrine with a May 6, 1893, date of priority for the diversion of 0.067 cubic foot per second, 3 acre-feet per year for the irrigation of 1.5 acres.

COURT CLAIM NO. 02268 -- Bill Haberman
& Bill Haberman, Jr.

A Statement of Claim was filed with the Court by Bill Haberman and Bill Haberman, Jr. for use of waters from Whiskey Creek, Reecer Creek and Pat Creek. The Habermans are represented by Attorney Hugh Spall. Both of the Habermans testified at the evidentiary hearing, along with Richard C. Bain, a consultant hired by the claimants, and Willis Strange, who lived on the property as a child. On February 28, 1989, Kevin and Becky McDowell were joined to the claim. The land they purchased from the Habermans is irrigated with water diverted from Whiskey Creek, which lies in Subbasin No. 9. Any rights they may have will be determined through the Report of Referee for that subbasin.

REPORT OF REFEREE
Re: Subbasin No. 7

The creeks as they flow through this area have been locally known by a variety of names that could cause confusion. The Reecer Creek described in the Court Claim is identified as Currier Creek on the State's Map Exhibit SE-2 and the Referee shall refer to it as Currier Creek. Pat Creek is identified as Reecer Creek on Exhibit SE-2. The Habermans have extensive land holdings in this area. The lands that are the subject of Court Claim No. 02268 are known as Number 9 Ranch and lie in the E $\frac{1}{2}$ of Section 21 north of the Town Ditch, the NW $\frac{1}{4}$ of Section 22, the E $\frac{1}{2}$ of Section 16 and the W $\frac{1}{2}$ of Section 15, all in T. 18 N., R. 18 E.W.M. This land is irrigated with water delivered by the Kittitas Reclamation District and the Cascade Irrigation District, and with water diverted from Reecer Creek, Currier Creek and two drains. The Kittitas Reclamation District and the Cascade Irrigation District are both major claimants whose claims are being addressed through the Major Claimant Pathway. The two drains lie in the interior of the irrigated fields and appear to be mechanisms for the claimants to capture and reuse the return flows generated by the irrigation of updrainage fields with waters from KRD and Cascade. Additional water rights beyond what the purveyors hold is not necessary for the capture and reuse of the water. A large number of livestock are raised on the ranch and the evidence indicates they water from the drains, rather than the natural creeks to which rights are being asserted.

20 The testimony and evidence indicates that approximately 106.5 acres within the
21 $E\frac{1}{2}$ of Section 21 are irrigated with water diverted from Reecer Creek. The
22 diversion is located in the $NW\frac{1}{4}SW\frac{1}{4}NE\frac{1}{4}$ of Section 21. Mr. Bain measured the
23 diversion at 5.45 cubic feet per second and based on the irrigation schedule for
24 these fields determined that 1,294.9 acre-feet per year is used. Although the

26 | REPORT OF REFEREE
Re: Subbasin No. 7

1 evidence is not precise in this regard, the Referee believes that Reecer Creek
2 water is only used a portion of the season and that Cascade water is used when
3 sufficient creek water is not available.

4 Approximately 33 acres in the NW $\frac{1}{4}$ of Section 22 are irrigated with waters
5 diverted from Currier Creek. The diversion is located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
6 Section 22. The irrigated land lies in those portions of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the
7 NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying west of the water supply ditch and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and that portion
8 of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ lying east of Currier Creek all in Section 22. Mr. Bain did not
9 provide any information about the rate of diversion from Currier Creek. He did
10 estimate that based on his analysis of the diversion from Reecer Creek and several
11 diversions from the Cascade Canal that an average of 15.9 acre-feet per year per
12 acre irrigated would be needed on this farm. However, much of the analysis was
13 based on use of water delivered by the Cascade Canal and this is not particularly
14 helpful in determining current or historic use from Currier Creek.

15 The Haberman family has owned much of the land since around 1930. The land
16 was being irrigated at the time they acquired it and Mr. Strange testified to crops
17 being grown when he lived there in the early 1920's. The land is riparian to both
18 Reecer Creek and Currier Creek. Rights under the Riparian Doctrine date to when
19 steps were first taken to sever the land from Federal ownership, if water was used
20 prior to December 31, 1932. The evidence supports the conclusion that rights were
21 established to the use of Reecer Creek and Currier Creek. A patent issued for the
22 NW $\frac{1}{4}$ of Section 22 on August 18, 1888, for the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 on May 6, 1886.
23 A copy of the patent for the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 was entered, but the full
24 document was not provided and the date of the patent is missing. A portion of a

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 fourth patent was entered in the record. It is a very poor copy and the Referee is
2 not able to determine that it covers any of the land owned by the claimants.
3 Therefore, it is not possible to determine the appropriate priority date for the
4 lands irrigated from Reecer Creek in the rest of Section 21.

5 Bill Haberman filed several water right claims pursuant to the requirements of
6 RCW 90.14. Water Right Claim No. 003382 identified the sources of water as Reeser
7 Creek, but describes a diversion on what is called Currier Creek on SE-2. It
8 asserted a right to divert 2 cubic feet per second, 1400 acre-feet per year for the
9 irrigation of 40 acres in the NW $\frac{1}{4}$ of Section 22. Water Right Claims No. 003387 and
10 003388 were filed for the use of drains to irrigate in the NW $\frac{1}{4}$ of Section 22. As
11 far as the Referee can determine, there were no RCW 90.14 claims filed for the use
12 of water in Section 21. Failure to file a claim waives or relinquishes any right
13 that may have existed, RCW 90.14.071.

14 It is apparent from the record that a right was established under the Riparian
15 Doctrine with a priority date of August 18, 1888, for the irrigation of 33 acres in
16 the NW $\frac{1}{4}$ of Section 22 with waters from Currier Creek and this right has been
17 protected by the filing of a claim pursuant to RCW 90.14. The best information
18 available to the Referee for quantification of the right are the measurements taken
19 by Mr. Bain of diversions from Reecer Creek to irrigate the fields in Section 21.
20 Those measurements reflect a use of 0.05 cubic foot per second, 12.2 acre-feet per
21 year for each acre irrigated, or 1.65 cubic feet per second, 402.5 acre-feet per
22 year for the 33 acres irrigated. Lacking any better information, the Referee
23 intends to use those figures.

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25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

The Referee recommends that a right be confirmed under the Riparian Doctrine with an August 18, 1888, date of priority for the diversion of 1.65 cubic feet per second, 402.5 acre-feet per year from Currier Creek for the irrigation of 33 acres in the NW $\frac{1}{4}$ of Section 22. Due to the lack of an RCW 90.14 claim for the land in Section 21, a right cannot be recommended for use of waters from Reecer Creek.

COURT CLAIM NO. 02273 -- Don Haley
& Pat Haley

Richard and Christine Fevergeon submitted a Statement of Claim to the Court for the use of waters from Cooke Creek, which is in Subbasin No. 9 and waters delivered by the Cascade Irrigation District. On July 31, 1990, Don and Pat Haley were substituted for the Fevergeons. Cascade Irrigation District is a major claimants in this proceedings whose rights are being determined through the Major Claimant Pathway identified in Pretrial Order No. 8. Water use related to the irrigation district will not be addressed through the subbasin pathway. Rights to the use of waters from Cooke Creek will be addressed in the Report of Referee for Subbasin No. 9. Therefore, the Referee does not recommend confirmation of a water right in Subbasin No. 7 under Court Claim No. 02273.

REPORT OF REFEREE
Re: Subbasin No. 7

COURT CLAIM NO. 00692 -- James E. Hand
Patrick J. Hand, et al.
Cathy J. Heathman

COURT CLAIM NO. 00719 -- Patrick J. Hand
James E. Hand
Catherine Heathman

Statements of Claim were filed by James E. Hand, Cathy J. Heathman and Patrick J. Hand for the use of waters from Olson Ditch, Dry Creek and unnamed springs. Richard Cole represents the claimants and James E. Hand and Patrick J. Hand testified at the evidentiary hearing.

The lands described in Court Claim No. 00719 are in Section 5 and the lands described in Court Claim No. 00692 are within Sections 17 and 20 all in T. 18 N., R. 18 E.W.M. and are part of a farm, portions of which have been in the Hand family since the late 1800's. Ownership of the land is divided between the three claimants. The first claim to be addressed is for the lands lying in Section 5. Jim Hand currently irrigates 63.6 acres lying in the $W\frac{1}{2}W\frac{1}{2}$ of Section 5 lying west of a natural occurring north-south drainage and Cathy Hand irrigates 56 to 60 acres in a portion of the $SW\frac{1}{4}$ lying east of the drainage. A dam has been constructed across the drainage in Government Lot 4 of Section 5 impounding water that flows down the drainage. The dam is approximately 80 feet high, 200 feet across and creates a pond that is at least 30 feet deep and 1000 to 1200 feet long. The dam was designed by the Soil Conservation Service, but there was no testimony about when the dam was constructed. According to the testimony that water impounded behind the dam is from a spring located in the drainage above the dam and tailwaters from the Kittitas Reclamation District (KRD). The districts North

REPORT OF REFEREE
Re: Subbasin No. 7

Branch Canal is located slightly more than a mile north of Section 5 and serves lands between the canal and the Hand property. Both Jim Hand and Cathy Hand are assessed by KRD and receive district water. There was no testimony of how much water is delivered by KRD or how many acres are assessed by the district. Neither of the witnesses testifying were able to estimate how much of the water diverted from behind the dam was the result of natural occurring spring water and how much was from KRD. The Court has determined that rights to the use of return flow waters, or tailwaters, resulting from the application of water from the Yakima Project, such as from KRD, cannot be confirmed. See Page 7 of this report. There was also no estimate of the total quantity of water diverted and used, either in an annual quantity or instantaneous quantity. The claimants are claiming a right for the use of 2 cubic feet per second, 200 acre-feet per year, but there was no testimony that this quantity is actually used. Additionally, there was no testimony about the historic use of this water. The claimants are asserting an 1890 date of priority, but the basis for that was not made clear. The claimants brought to the Referee's attention a Notice of Appropriation of Water filed by Henry Kleinberg on May 26, 1909, for the appropriation of 200 cubic feet per second from First Creek for use in Sections 3, 4, 5, 8 and 9, T. 18 N., R. 18 E.W.M. and Sections 27, 32, 33 and 34, T. 19 N., R. 18 E.W.M. It is not apparent that the claimants are asserting a right to the use of waters from First Creek, as that source was not identified on their Court Claim. First Creek lies in Subbasin No. 4, Swauk Creek, and a claim for use of that water should be presented during the evidentiary hearing for Subbasin No. 4. Water Right Claim No. 121033 was filed pursuant to the requirements of RCW 90.14 claiming a right to use 2 cubic feet per

REPORT OF REFEREE
Re: Subbasin No. 7

1 second, 200 acre-feet per year from a spring for stock water and the irrigation of
2 40 acres in the NW $\frac{1}{4}$ of Section 5, T. 18 N., R. 18 E.W.M.

3 Jim Hand owns the W $\frac{1}{2}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ lying below the Cascade Irrigation District
4 canal in Section 17, T. 18 N., R. 18 E.W.M. Approximately 140 acres are irrigated
5 with waters from the Cascade Canal and Dry Creek. The lands irrigated with water
6 from Dry Creek are located in the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 17. Water is diverted directly
7 from the creek in three locations and delivered by gravity flow through earthen
8 ditches to the fields. Jim Hand estimated that 40 acres are irrigated with
9 diversions from Dry Creek. This includes an area that appears to be approximately
10 15 acres in size currently irrigated from a pond located on the Allenbaugh property
11 in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17. The irrigated land is a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
12 Section 17 lying between the Dry Creek Road and Green Canyon Road. The land had
13 historically been irrigated with water from Dry Creek until Highway 97 was
14 constructed separating the land from the creek. Mr. Hand testified that water from
15 Dry Creek migrates into the pond. The claimants are asserting a right to use 2
16 cubic feet per second, 200 acre-feet per year from Dry Creek for this purpose with
17 an 1890 date of priority. November 5, 1890, is the date the land was conveyed from
18 N.P.R.R. Co. to Alex Munson, however, there is nothing in the record to show water was
19 used from Dry Creek at that time.

20 Water Right Claims No. 121034, 121035, 121036 and 121037 were filed by James
21 E. Hand pursuant to the requirements of RCW 90.14 asserting a right to use waters
22 from Dry Creek for irrigation and stock water. Each claimed a right to divert 2
23 cubic feet per second, 200 acre-feet per year from Dry Creek for the irrigation of
24 40 acres in portions of Section 17, including the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 17, which is

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 where the irrigated lands lay, and in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19. The date of first
2 water use shown on all the claims was 1930. Patrick Hand testified that his family
3 has farmed the land since they acquired it in 1901. The land is riparian to Dry
4 Creek and a water right could have been established under the Riparian Doctrine if
5 the water use began prior to December 31, 1932. The testimony indicates that the
6 flow in Dry Creek increases upon the application of water delivered by KRD on lands
7 updrainage from the creek indicating the contribution of return flow waters from
8 the use of Yakima Project waters. Neither of the witnesses were able to estimate
9 the quantity of water being diverted from the creek nor what percentage of the
10 diverted water would be the result of natural flow from Dry Creek as distinguished
11 from return flow waters. As previously mentioned, the Referee cannot recommend
12 confirmation of water rights for the use of return flows generated from the
13 application of waters delivered by KRD.

14 Jim Hand owns that portion of the N $\frac{1}{2}$ of Section 20 lying northeast of the
15 county road. That area is approximately 20 acres, which according to his testimony
16 is also irrigated with water from Dry Creek. As previously mentioned, there is
17 nothing in the record that would allow the Referee to determine the amount of
18 natural flow water from Dry Creek being diverted and used on this land.
19 Additionally, there does not appear to be a RCW 90.14 claim filed for use of waters
20 from Dry Creek on this land. Failure to file a claim waives or relinquishes any
21 right that may have existed, RCW 90.14.071.

22 The remaining land in Section 20 is owned by Patrick Hand and is irrigated
23 with waters diverted from the Yakima River and delivered through the Olson Ditch.
24 Peter Wold received a patent on October 3, 1883 for lands that included what is now

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 owned by Patrick Hand in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20. The chain of title
2 is less clear for Patrick Hand's property in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20. However, it
3 appears that in the late 1800's Peter Wold and Martin Mason had an interest in the
4 land. Both Wold and Mason appropriated water in the late 1800's, which
5 appropriations are now carried by the Olson Ditch. A separate claim has been filed
6 by the Olson Ditch for the water delivered to the patrons. Rights to the ditch
7 will not be addressed through the individual claims.

8 Based on the foregoing, the Referee finds that a right cannot be recommended
9 for confirmation under Court Claims No. 00692 and 00719 due to the inability of the
10 claimants to quantify the amount of natural flow water being used from either the
11 unnamed drainage/pond in Section 5 or Dry Creek in Sections 17 and 20.

12
13 COURT CLAIM NO. 00487 -- Laroy D. Holmes
14 & Lorie Holmes

15 A Statement of Claim was submitted by Laroy D. Holmes and Lorie Holmes for the
16 use of waters from the Yakima River and an unnamed slough. The Holmes are
17 represented by Attorney John P. Gilreath. Mr. Holmes and Richard C. Bain, Jr., a
18 consultant hired by the claimants testified at the evidentiary hearing.

19 The Holmes property lies within the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19, T. 18 N.,
20 R. 18 E.W.M. lying northeast of Interstate 90. They are claiming a right to
21 irrigate 37 acres with waters diverted from the Yakima River and from an unnamed
22 slough that at one time was a channel of the river. The river water is diverted by
23 the Ellensburg Water Company into the Town Canal and ultimately carried through the
24 Wold Ditch. Water from the Wold Ditch is spilled into the slough and is also

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 carried through a lateral that comes off of the neighboring McManamy property in
2 Section 18. Mr. Bain testified that 7 cubic feet per second and an average of 25.2
3 acre-feet per year per acre irrigated is used to irrigate the land. Seventeen
4 acres are planted to hay crops and the remainder is in pasture. Up to 50 head of
5 livestock have been raised on the property. The livestock can drink from either
6 the slough or the irrigation ditches. The non-diversionary stock water stipulation
7 discussed on Page 4 of this report covers the livestock watering from a natural
8 source, such as the slough.

9 Although in the summary presented by Mr. Gilreath and through Mr. Bain's
10 testimony a claim for irrigation of 37 acres was made, Mr. Holmes testified to the
11 number of acres being irrigated in each field and those numbers totaled 33.19
12 acres. Mr. Holmes used his records from fertilizer purchases and applications and
13 Mr. Bain was referring to ASCS maps in estimating number of acres.

14 The record shows that the land was originally patented to Northern Pacific
15 Railroad, however, the date of that patent is not in the record. On September 15,
16 1892, the railroad sold all of Section 19 to William McCutcheon. This is the only
17 information in the record concerning historic ownership of the land. The Holmes
18 are basing their claim to a water right on an Agreement between Martin Mason, Jacob
19 Cleman, Christian Holm and Peter Wold dated April 7, 1891. This agreement stated
20 the parties to the agreement were about to construct an irrigating ditch and each
21 of the parties were to have equal interest in the ditch and share in the costs and
22 expenses of the ditch. Each of the parties were to have one-fourth of the waters
23 conveyed in the ditch. There is nothing in the record to show that any of the four
24 parties to the agreement were predecessor owners of the Holmes property or sold

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 interest in the ditch to a predecessor owner of the Holmes property. Without this
2 evidence the Referee is unable to determine that any water right established by the
3 appropriation intended by the parties to the agreement could be appurtenant to the
4 claimant's property. The Referee notes that an exhibit entered by the Holmes is a
5 copy of a portion of a map. The United States entered a copy of the entire map as
6 an exhibit. The map was dated 1912 and does not show any irrigation ditches in the
7 vicinity of the Holmes property. That leads the Referee to believe that the ditch
8 constructed by the parties to the 1891 agreement did not serve the Holmes property.

9 Pursuant to the requirements of RCW 90.14 Laroy Holmes filed Water Right Claim
10 No. 064731 asserting a right to divert 2 cubic feet per second, 220 acre-feet per
11 year from the Yakima River (Peter Wold Ditch) for the irrigation of 55 acres in the
12 $N\frac{1}{2}NE\frac{1}{4}$ of Section 19. The date of first water use shown on this claim is January of
13 1933. Also filed was Water Right Claim No. 064730 asserting a right to divert 0.01
14 cubic foot per second, 1 acre-foot per year from a slough for stock watering in the
15 $N\frac{1}{2}NE\frac{1}{4}$ of Section 19 with a date of first water use of April 1878.

16 Due to the lack of evidence to show that a water right was established for the
17 Holmes property, the Referee cannot recommend confirmation of a water right to
18 Laroy D. and Lorie Holmes under Court Claim No. 00487.
19

20 COURT CLAIM NO. 01008 -- Michael Hosker, et al.

21 A Statement of Claim was submitted by Michael Hosker, et al. for the use of
22 waters from an unnamed water source maybe called Jones Creek and an unnamed creek.
23 According to the testimony at the evidentiary hearing, Dick and Maxine Van de Graaf
24 acquired the property in April of 1990. However, the Van de Graafs have not been
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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 joined to the claim or substituted for Mr. Hosker and they did not provide a deed
2 for the land or sales contract to show their purchase. Consequently, the claim
3 will remain in Michael Hosker's name. The Van de Graafs were represented by
4 Attorney Mark Marsing. Mr. Van de Graaf and Richard C. Bain, a consultant hired by
5 the Van de Graafs, testified at the evidentiary hearing.

6 The Statement of Claim filed by Mr. Hosker asserted a right to divert 2.8
7 cubic feet per second, 560 acre-feet per year from Jones Creek for the irrigation
8 of 140 acres in Government Lots 1 and 2, the S $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3,
9 T. 18 N., R. 18 E.W.M. Mr. Hosker also asserted a right for stock watering from an
10 unnamed creek in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3. C. E. Lippencott, Jr., as a prior owner
11 of the property filed Water Right Claim No. 113341 pursuant to the requirements of
12 RCW 90.14. The information in Claim No. 113341 mirrors that in the portion of the
13 Court Claim asserting a right to Jones Creek, but also identifies an unnamed
14 tributary of Jones Creek originating in Sections 27 and 34 as a source of water.
15 The State's Exhibit SE-2, shows an unnamed tributary originating in Section 27 and
16 joining Jones Creek on the south section line of Section 34.

17 According to the testimony presented at the hearing, the land described in
18 Court Claim No. 01008 is called Reecer Creek Ranch and consists of 400 acres, of
19 which 350 acres are irrigated pasture. Besides the lands in Section 3 described in
20 the Court Claim, Reecer Creek Ranch also includes the NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and Government
21 Lot 4 of Section 2. Approximately 17 acres in Section 2 east of Jones Creek and
22 west of Currier Creek are irrigated with waters diverted from Currier Creek. There
23 is no evidence that a claim was filed pursuant to RCW 90.14 for the use of waters
24 from Currier Creek or for the irrigation of any land in Section 2. An additional

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 120 acres in Sections 2 and 3 west of Jones Creek are irrigated with waters
2 diverted from Jones Creek. The remaining land is irrigated with water delivered by
3 the Kittitas Reclamation District.

The diversion on Jones Creek is located approximately 1290 feet west of the northeast corner of Section 3 and a gravity flow ditch carries the water to the south to flood and rill irrigate the fields. A second diversion from Jones Creek is located in the NW₄SW₄ of Section 2 and is used to fill a pond from which livestock drink. Up to 3,000 head of cattle are pastured on this ranch, drinking from the creeks and the pond. The RCW 90.14 claim filed for Jones Creek does not include stock water as an identified use, nor does it describe a diversion in Section 2.

12 Richard Bain investigated the water use on this ranch and through his
13 testimony and his engineering report the results of his investigation were entered
14 into the record. According to Mr. Bain, the diversion from Jones Creek was
15 measured at 4.62 cubic feet per second and this quantity is diverted throughout the
16 entire irrigation season to irrigate four fields consisting of 87 acres. This
17 results in 1646.6 acre-feet being withdrawn from the creek during the irrigation
18 season. If this quantity was used to irrigate 87 acres, that would result in 18.9
19 acre-feet per acre being used. Mr. Bain used this per acre figure to determine the
20 water need for the entire ranch.

21 However, the Referee finds this method flawed. According to the other
22 testimony and evidence submitted, this takeout is used to irrigate the entire 120
23 acres that are irrigated from Jones Creek. A continuous diversion of 4.62 cubic
24 feet per second during the irrigation season does result in 1646.6 acre-feet being

REPORT OF REFEREE
Re: Subbasin No. 7

1 withdrawn from the creek, however, when that is used to irrigate 120 acres, the
2 result is 13.72 acre-feet per acre being applied to the land. The record also does
3 not support the position that 4.62 cubic feet per second would be available from
4 Jones Creek the entire irrigation season. Testimony of other claimants who are
5 asserting rights to Jones Creek was that the flow in the creek above the Kittitas
6 Reclamation District (KRD) canal declines significantly over the summer and the
7 creek may in fact be dry before the end of many irrigation seasons. The diversion
8 used by Reecer Creek Ranch lies below the KRD and Jones Creek flows through lands
9 that are irrigated with KRD water. Mr. Bain's report acknowledges that return
10 flows are used to irrigate this property. The Referee believes it is very likely
11 that some of the water diverted from Jones Creek, particularly later in the
12 irrigation season is the result of the application of KRD water updrainage and
13 seepage or spills from the KRD canal. This water would be considered Yakima
14 Project return flows and water rights cannot be confirmed for the use of this
15 water.

16 Mr. Van de Graaf testified to his belief that the land had been irrigated
17 since prior to 1900. The land was originally settled by Bernard Hanson, who
18 acquired the land in Section 3 from the Northern Pacific Railroad Company on
19 November 19, 1890, and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and Government Lot 4 of Section 2 directly from
20 the United States through a patent that issued on May 13, 1891. The Referee notes
21 that the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 did not separate from Federal ownership until
22 April 23, 1958, when an Arley Cheadle acquired a patent. Entered into evidence are
23 excerpts from "An Illustrated History of Klickitat, Yakima and Kittitas Counties,"
24 published in 1904. The excerpt contains a biography of Bernard Hanson. The

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 biography states in pertinent part that Hanson purchased 437 acres of railroad land
2 and that his land was in a high state of cultivation, a select orchard, 40 acres of
3 alfalfa and 25 acres of timothy. The remainder of his land is in grain and native
4 grass. The source of water used is not mentioned. The chain of title shows that
5 the lands owned by Hanson in 1904 are those described herein, except the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
6 Section 2.

7 Mr. Van de Graaf has not offered any county records, such as notices of
8 appropriation, to support the assertion of a water right for the property. Bernard
9 Hanson was the plaintiff in a complaint filed in 1905 pertaining to the waters of
10 Reecer Creek. That case, Hanson v. McIntire, et al., supra., resulted in a decree
11 in which the Court recognized the existence of water rights for use of Reecer Creek
12 by many of the defendants. The Findings of Fact that preceded the decree stated
13 that Hanson Channel is a small channel which comes out of the East Fork of Reecer
14 Creek in the F. O. Thomas tract in Section 28 (which would be in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of
15 Section 28); that Hanson Channel carries water only during high water, going dry
16 about May 1; that the lands owned by Hanson are situated on Hanson Channel of
17 Reecer Creek and that there was sufficient water in said channel to irrigate lands
18 of the plaintiff (Hanson) and three of the defendants in early spring.

19 Jones Creek flows through the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28 and through the lands
20 previously owned by Hanson. It would appear that Jones Creek is the same water
21 sources as the Hanson Channel or East Branch of Reecer Creek mentioned in the
22 Findings of Fact. The information in the records supports the conclusion that a
23 right was established under the Riparian Doctrine to irrigate the 65 acres that
24 were being irrigated in 1904. Subsequent to that date there has been expansion to

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 the 140 acres being irrigated at this time. The record does not reflect when this
2 expansion occurred. If it was prior to December 31, 1932, a Riparian right could
3 also exist for the remaining acres being irrigated from Jones Creek, except the
4 land in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2. Since that land did not separate from Federal
5 ownership until 1958, a right could not have been established under the Riparian
6 Doctrine. There would have to be evidence of irrigation prior to June 6, 1917, in
7 order for a right to exist under the Prior Appropriation Doctrine.

8 Although Mr. Bain testified that more water is being diverted for irrigation
9 than was asserted in either the Court Claim or Water Right Claim No. 113341, the
10 Referee is reluctant to recommend confirmation of a right beyond those quantities
11 without an explanation for the difference. RCW 90.14.065 provides a mechanism to
12 amend a water right claim if an error was made in the quantity of water claimed.
13 This procedure has not been followed. The Referee is also concerned that both the
14 water right claim and Court claim may reflect the water use of prior owners and Mr.
15 Bain's testimony may reflect the quantity of water used by the new owners. The
16 documents in the record reflect a claim to 4 acre-feet per acre irrigated, which
17 the Referee intends to use in his recommendation.

18 Since the land in Section 3 is riparian to Jones Creek, the priority date for
19 water rights appurtenant to the land would be the date steps were first taken to
20 sever the land from Federal ownership. The only date in the record is November 19,
21 1890, when Northern Pacific Railroad Co. sold the land to Hanson. The Referee
22 recommends that a right be confirmed under the Riparian Doctrine with a
23 November 19, 1890, date of priority for the diversion of 2.8 cubic feet per second,
24 260 acre-feet per year for the irrigation of 65 acres in that portion of Government

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 | Lot 1 and the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 3 lying west of Jones Creek and east of the
2 | irrigation ditch.

COURT CLAIM NO. 05284 -- Peggy E. Hunt
Wallace M. Stampfly
Phyllis J. Stampfly
Randall J. Stampfly

A Statement of Claim was submitted by Peggy E. Hunt for the use of waters from Reecer Creek and First Creek. First Creek lies in Subbasin No. 4, Swauk, and rights to use that water will be addressed in the Report of Referee for Subbasin No. 4. Wayne Hunt, Peggy Hunt's son, testified at the evidentiary hearing. On November 22, 1994, Phyllis J. Stampfly, Wallace M. Stampfly and Randall J. Stampfly were joined to the claim. The Motion to Join Parties did not include a legal description for the lands that the Stampflies acquired from Ms. Hunt.

Peggy Hunt owns the NE $\frac{1}{4}$ of Section 33, T. 19 N., R. 18 E.W.M. and irrigates approximately 81.5 acres of hay with water diverted from Reecer Creek. Two diversions from the creek are used. One is located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, approximately 850 feet south of the north section line. That diversion is used to irrigate 31.5 acres lying between Reecer Creek and the irrigation ditch that leads from the diversion and runs southeasterly into the SE $\frac{1}{4}$ of Section 33. This field is irrigated each year, although the extent of the irrigation is dependent on the quantity of water available in the creek. Mr. Hunt estimated that up to four acre-feet per year per acre irrigated, or 126 acre-feet per year, of creek water is used on this land. Mr. Hunt did not testify to the instantaneous rate of withdrawal at this diversion. The land also receives water from the Kittitas

26 REPORT OF REFEREE
Re: Subbasin No. 7

1 Reclamation District and an additional four acre-feet per acre is delivered from
2 the district.

3 A second diversion is located on Reecer Creek immediately south of the north
4 section line of Section 33. This diversion is used to irrigate approximately 50
5 acres in the NE $\frac{1}{4}$ of Section 33 lying north and east of the irrigation ditch
6 described in the preceding paragraph. This area is irrigated sporadically
7 depending on the water availability. Only when there is water in the creek in
8 addition to that needed to irrigate the 31.5 acre field discussed earlier is this
9 field irrigated. Mr. Hunt estimated that is perhaps 30 percent of the time. He
10 also testified that he only irrigates this field in April. Mr. Hunt did not
11 testify to the quantity of water used to irrigate this field.

12 Mr. Hunt testified that he believed the land had been irrigated since 1900,
13 but offered nothing in support of that contention. Other claimants in this
14 proceeding have entered into evidence a copy of Hanson v. McIntire, et al., supra.,
15 which was an action involving use of water from Reecer Creek. W. J. Cahoon, a
16 prior owner of the Hunt property was a defendant in that case. The Court
17 determined that the NE $\frac{1}{4}$ of Section 33 was entitled to a right for the diversion of
18 0.95 cubic foot per second from Reecer Creek for the irrigation of 75 acres. The
19 Findings of Fact that preceded the decree stated that Mr. Cahoon took possession of
20 the land in 1878, receiving a deed from the Northern Pacific Railroad (NPR) on
21 July 7, 1887. The Hunts have entered a copy of this deed into the record. The
22 findings further stated that in April 1879, Mr. Cahoon constructed a ditch from
23 Reecer Creek and appropriated 38 inches of water and began to cultivate and
24 irrigate the land. By 1905 the 75 acres were under cultivation and 38 inches was

25 REPORT OF REFEREE

26 Re: Subbasin No. 7

1 sufficient to irrigate those acres. There is nothing in the record to allow the
2 Referee to determine that another water right was established for the 6 additional
3 acres that Mr. Hunt testified were being irrigated at this time.

4 Pursuant to the requirements of RCW 90.14, Gerald Hunt filed Water Right Claim
5 No. 131522 asserting a right to divert 0.75 cubic foot per second, 540 acre-feet
6 per year from Reecer Creek for the irrigation of 280 acres in the E $\frac{1}{2}$ E $\frac{1}{2}$ of
7 Section 33, T. 19 N., R. 18 E.W.M. A portion of the field being irrigated from the
8 lower diversion lies in the W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 33. Reecer Creek flows from the north
9 to south through Section 33 very close to the center of the NE $\frac{1}{4}$. The Referee
10 believes it would have been reasonable to erroneously believe that the entire field
11 was in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33 and this represents an error in the legal
12 description rather than a change in place of use.

13 Mr. Hunt did not testify to the rate of diversion from Reecer Creek. Both the
14 Court Claim and the claim filed pursuant to RCW 90.14 state 0.75 cubic foot per
15 second is being diverted. Lacking testimony to the contrary, the Referee will
16 adopt that figure. There was no information provided concerning the amount of
17 water applied to the field that is sporadically irrigated northeast of the
18 irrigation ditch. Mr. Hunt testified that it is only irrigated in April and a
19 continuous diversion of 0.75 cubic foot per second for 30 days would provide 46
20 acre-feet.

21 The Hunt property is riparian to Reecer Creek. Under the Riparian Doctrine
22 the priority of a water right is the date steps were first taken to sever the land
23 from Federal ownership. That date is not clearly in the record. However, we do
24 know that by 1878 W. J. Cahoon occupied the land and began diverting water in 1879,

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 eventually purchasing the property from NPR. Occupation of the land is one of the
2 first steps to sever the land from Federal ownership. The railroad company likely
3 began the steps necessary to sever the land prior to Mr. Cahoon's occupying the
4 land, but that is not in the record. Therefore, the Referee will adopt 1878 as the
5 date for first taking steps to sever the land.

6 A water right is also being asserted for watering up to 300 head of livestock.
7 There was no testimony of a diversion to stock tanks, which leads the Referee to
8 conclude the stock have access to Reecer Creek and drink directly from the creek.
9 This type of non-diversionary stock water use is covered by the stock water
10 stipulation, so no additional right will be confirmed.

11 Based on the foregoing, it is recommended that a right be confirmed with a
12 June 30, 1878, date of priority for the diversion of 0.75 cubic foot per second,
13 172 acre-feet per year for the irrigation of 75 acres; 126 acre-feet per year to be
14 used on the 31.5 acres lying west of the irrigation ditch and 46 acre-feet per year
15 for 43.5 acres lying east of the irrigation ditch.

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17 COURT CLAIM NO. 05301 -- Wayne Charles Hunt
18 & Martha Lee Hunt

19 A Statement of Claim was submitted to the Court by Wayne C. and Martha L. Hunt
20 for the use of waters from Reecer Creek. Wayne Hunt testified at the evidentiary
21 hearing in support of the claim.

22 According to the testimony, the Hunts own the SE $\frac{1}{4}$ of Section 33, T. 19 N.,
23 R. 18 E.W.M. and irrigate 81 acres lying east of Reecer Creek. Water is diverted
24 from Reecer Creek approximately 850 feet south of the north section line of

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Section 33. The land is planted to hay and pasture and is rill irrigated. Mr.
2 Hunt did not testify to the quantity of water used to irrigate his land, but did
3 state that the method of irrigation is the same as for his mother, Peggy Hunt's,
4 property. Approximately four acre-feet per acre irrigated is used on that
5 property. Three hundred head of cattle are raised on the land owned by the
6 claimants and that of Peggy Hunt and a right is being asserted for stock watering.
7 There was no testimony of a diversion from the creek to stock tanks, so the Referee
8 must conclude that the stock drink directly from Reecer Creek. This type of
9 non-diversionary stock watering is covered by the stipulation discussed on Page 4
10 of this report.

11 In response to questioning, Mr. Hunt testified to his belief that the land has
12 been continually irrigated since 1900; however, there was nothing presented to show
13 that a water right was established for this property. The record shows that the
14 original patentee was the Northern Pacific Railroad, who conveyed the property to
15 Daniel Curley on March 21, 1890. Daniel Curley, on September 1, 1896, conveyed the
16 property to H. L. Finn and the mortgage dated September 22, 1900, was in the names
17 of H. L. Finn and Leona B. Finn. The deed from Curley to Finn reference that the
18 sale includes all rights for the use of any water, irrigating ditches, canals or
19 facilities and all riparian rights belonging or inuring to the use or benefit of
20 the lands conveyed.

21 Leona Bell Finn was a party to Hanson v. McIntire, et al., supra., but was not
22 awarded a water right to use waters from Reecer Creek. The Findings of Fact that
23 preceded the decree stated that "The lands owned by defendants Finn, Harry Robbins,
24 Meadows, and plaintiff, Hanson, are situated on Hanson Channel of Reecer Creek;

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 that there is sufficient water in said channel to irrigate lands of plaintiff and
2 said defendants in early spring; that the other defendants are not interferring
3 with any rights of said defendants and plaintiff to the use of said waters nor are
4 they plaintiff and said defendants in any way interferring the one with the other."
5 Based on this findings it appears that there was water being used on the lands now
6 owned by the Hunts, but not from the main Reecer Creek. Hanson Channel is not a
7 water source named on the State's Exhibit SE-1. Dick Van de Graaf, during the
8 presentation of his claim, offered evidence that allowed the Referee to conclude
9 that Jones Creek likely is what was called Hanson Channel (also called the East
10 Branch or Fork of Reecer Creek) in the Findings of Fact. However, Jones Creek does
11 not flow through the Hunt property.

12 Pursuant to the requirements of RCW 90.14, Gerald Hunt filed Water Right Claim
13 No. 131522 asserting a right to divert 0.75 cubic foot per second, 540 acre-feet
14 per year from Reecer Creek for the irrigation of 280 acres in the E $\frac{1}{2}$ E $\frac{1}{2}$ of
15 Section 33, T. 19 N., R. 18 E.W.M. The irrigated land owned by the claimants
16 predominantly lies in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 33.

17 Due to the lack of information about establishment of a water right under
18 either the Riparian or Prior Appropriation Doctrines, the Referee cannot recommend
19 that a water right be confirmed to Wayne C. and Martha L. Hunt under Court Claim
20 No. 5301.

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REPORT OF REFEREE
26 Re: Subbasin No. 7

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2 COURT CLAIM NO. 00876 -- Ivan Hutchinson
3 (A)02389 & Mildred Hutchinson
4

Ivan and Mildred Hutchinson submitted a Statement of Claim to the Court for
the use of several surface water sources in Kittitas County, including diversions
from Dry Creek and the Yakima River located within Subbasin No. 7. The Hutchinsons
are represented by Attorney John P. Gilreath. Dorain Dexter, an engineer employed
by Ellensburg Cement Products, Inc., which is owned by the Hutchinsons, testified
at the evidentiary hearing.

Court Claim No. 00876 asserts a right to irrigate 28.25 acres with waters
diverted from the Yakima River and 75 acres with waters diverted from Dry Creek.
Stock water use from Dry Creek is also claimed. There was no testimony about the
the number of stock raised or whether the use was diversionary or non-diversionary.
The claim identifies the lands on which the water is used as being in the E $\frac{1}{2}$ of
Section 29 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 33, T. 18 N., R. 18 E.W.M. According to the
testimony and evidence in the record, Ellensburg Cement Products, Inc., now
operates a gravel mining and washing operation within the E $\frac{1}{2}$ of Section 29 and the
NW $\frac{1}{4}$ of Section 33. This use began in either 1946 or 1947 and has steadily expanded
over the years. The Hutchinsons assert that the land previously had been irrigated
with waters diverted from Dry Creek and the Yakima River and are claiming an 1898
priority date for that use. Irrigation of the land ceased as the gravel operation
was developed. It is not clear from the record whether the irrigation practice
stopped in 1947 or was gradually reduced and then eliminated.

REPORT OF REFEREE
Re: Subbasin No. 7

1 There is nothing in the record to show that a water right was established for
2 use of either the Yakima River or Dry Creek to irrigate the land. The record shows
3 that Northern Pacific Railroad acquired the land from the Federal Government on
4 January 16, 1896, and subsequently sold the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29 to John
5 C. Ellison. The land was riparian to the Yakima River during the early 1900's,
6 however, changes in the river channel and construction of Interstate 90 has caused
7 the land to be separated from the river. There was no testimony to indicate when
8 the land was first irrigated. In order for a right to have been established under
9 the Riparian Doctrine for irrigating the land, that use would have to have been
10 initiated prior to December 31, 1932.

11 Water Right Claim No. 103952 was filed by Mr. Hutchinson pursuant to the
12 requirements of RCW 90.14 claiming a right to divert 3 cubic feet per second, 240
13 acre-feet per year from Dry Creek for the irrigation of 30 acres. However, the
14 legal description of the lands on which the water is used is lands within Sections
15 2 and 11, T. 17 N., R. 18 E.W.M. and there was no testimony about water use on
16 those lands. There is nothing in the record to show that a claim was filed
17 pursuant to RCW 90.14 for use of water from Dry Creek on the lands in Sections 29
18 and 33, nor was there a claim filed for the use of waters from the Yakima River.
19 Failure to file a claim waives or relinquishes any right that may have existed, RCW
20 90.14.071. Additionally, any right that may have existed for irrigation would also
21 have been relinquished due to more than five successive years of nonuse since RCW
22 90.14 was adopted on July 1, 1967, see RCW 90.14.160.

23 The Hutchinsons argue that the right has not been abandoned under RCW 90.14
24 because they have maintained diversion facilities on the creek and may need to use
25

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 the water in the future when the gravel operation ends. RCW 90.14.140 does allow
2 for the retention of an unused water right if the right is claimed for a determined
3 future development to take place either within fifteen years of July 1, 1967, or
4 the most recent beneficial use, which ever is later. There is nothing in the
5 record to show that at the time use of water for irrigation ceased or by July 1,
6 1967, there was a determined future use for the water. In fact, council for the
7 claimant stated the claimants still have not determined what use of the water will
8 be made when the gravel mining operation ends.

9 Water from an unnamed pond is utilized in the gravel mining and washing
10 operation. The gravel washing operation is primarily non-consumptive. After being
11 used to wash the gravel, the water goes into a series of three settling ponds to
12 allow the sediment to settle out so that clean water remains. There is evaporation
13 loss from the ponds and some of the water is used for dust control resulting in a
14 consumptive use of 87 acre-feet per year. Water is pumped from the pond at a rate
15 of 3 cubic feet per second. Two surface water certificates (SWC) issued to
16 Ellensburg Cement Products pursuant to the requirements of RCW 90.03. SWC No.
17 S4-01176C, with a priority date of April 16, 1971, authorized the diversion of 3.0
18 cubic feet per second from an unnamed pond to be used from April 15 to October 1
19 for non-consumptive washing and production of gravel and sand. SWC No. S4-24040C,
20 with a priority date of May 12, 1975, authorized the diversion of 3.0 cubic feet
21 per second from an unnamed pond from October 1 to April 15 for non-consumptive
22 washing and production of gravel and sand. The place of use authorized on the
23 certificates is the $S\frac{1}{2}NE\frac{1}{4}$ and $NE\frac{1}{4}SE\frac{1}{4}$ of Section 29, T. 18 N., R. 18 E.W.M.
24 Although the Ellensburg Cement Products operation does extend into the $NW\frac{1}{4}$ of

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Section 33, the non-consumptive use of water from the pond is located within the
2 area described on the certificates. There does not appear to be any authorization
3 for the consumptive use of water. The point of diversion described in the
4 certificates is in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29. The pond extends into the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
5 Section 29 and that is the current location of the pumping station. This involves
6 a minor change in location on the pond of approximately 500 feet.

7 The Hutchinsons assert that the pond being used is not surface water subject
8 to adjudication in this case. They maintain that the source of water is
9 percolating ground water and subject to regulation under RCW 90.44.035. There was
10 no evidence presented by the claimants to support this contention. Mr. Dexter
11 testified that it was his understanding that the source of water being used for the
12 gravel operation was surface water.

13 The Referee believes that the Hutchinsons are estopped from asserting that the
14 source of water is not surface water. They submitted applications for surface
15 water rights and obtained those rights in the early 1970's. The Department of
16 Ecology conducted investigations prior to issuing the permits and certificates and
17 the apparently the findings of those investigations were not challenged. Those
18 investigations resulted in the issuance of surface water permits and certificates
19 leading the Referee to conclude that a determination was made that the source of
20 water is surface water. There is nothing in the record to show that determination
21 was in error. Were the Referee to conclude that the source of water was ground
22 water that would likely result in there being no legal authorization to use the
23 water. At the direction of the Court and as a result of this adjudication, all
24 existing surface water certificates in the basin, including SWC No. S4-01176C and

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 S4-24040C, will be made null and void by the Department of Ecology. It is unlikely
2 that ground water certificates were obtained in the early 1970's by the claimants
3 at the same time the surface water certificates issued. Therefore, the use of the
4 ponds would be without benefit of any authorized water right.

5 Based on the foregoing, the Referee finds that a right cannot be confirmed for
6 use of waters from the Yakima River or Dry Creek for irrigation and stock water due
7 to the lack of testimony of historic use, lack of RCW 90.14 claims, and probable
8 relinquishment of any right that may have existed due to five or more successive
9 years of nonuse. The Referee does recommend that rights be confirmed to Ivan and
10 Mildred Hutchinson for use of an unnamed pond as follows:

11 1. With an April 16, 1971, date of priority, 3.0 cubic feet per second for
12 nonconsumptive washing and production of sand and gravel from April 15 to
13 October 1 for use in the S $\frac{1}{2}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 18 N.,
14 R. 18 E.W.M. lying northeast of Interstate 90.

15 2. With a May 12, 1975, date of priority, 3.0 cubic feet per second for
16 nonconsumptive washing and production of sand and gravel from October 1 to
17 April 15 for use in the S $\frac{1}{2}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 18 N.,
18 R. 18 E.W.M. lying northeast of Interstate 90.

19 The point of diversion for both rights shall be located approximately 150 feet
20 south and 1050 feet west from the east quarter corner of Section 29, being within
21 the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 18 N., R. 18 E.W.M.

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26 REPORT OF REFEREE
Re: Subbasin No. 7

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2 COURT CLAIM NO. 00140 -- John G. Jewett
3 (A)02098 & Nancy A. Jewett
4 (A)02105

5 A Statement of Claim was filed with the Court by the Estate of Ida Suver Kirk
6 for the use of waters from Reecer Creek and the Yakima River. On February 10,
7 1989, John G. and Nancy A. Jewett were substituted as claimants. Attorney Jeff
8 Slothower represents the Jewetts. John and Nancy Jewett and Darrel Eason, who
9 farms the neighboring Pautzke Bait Company land, testified at the evidentiary
hearing.

10 The Jewetts are asserting a right to divert 2 cubic feet per second from the
11 Yakima River and Reecer Creek for the irrigation of 2.07 acres in the southwest
12 quarter of Government Lot 1 of Section 3, T. 17 N., R. 18 E.W.M.. They flood
13 irrigate most of their land on which lawn, garden, trees and pasture grass is
14 planted. It was estimated that 1 cubic foot per second is used to irrigate the
15 land and the land is irrigated every two weeks.

16 The Jewetts are basing their water rights on two historical documents. A
17 Notice of Water Right was filed by Josephine Becker asserting a right from May 6,
18 1893, for the diversion of 16 cubic feet per second from the Yakima River via a
19 slough adjacent to the river. Attached to the notice was a map showing the
20 location of the ditch that was constructed to carry this water. The ditch diverted
21 in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T. 18 N., R. 18 E.W.M. and terminated in the NE $\frac{1}{4}$ of
22 Section 3, T. 17 N., R. 18 E.W.M. The record shows that Josephine Becker received
23 a patent for lands in Section 3 on January 12, 1897, including Government Lot
24 1, within which the Jewett land is located. On December 3, 1898, she conveyed to

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 C. W. Suver most of the land for which she received a patent, including Government
2 Lot 1 of Section 3. Suver purchased from Northern Pacific Railroad Government Lots
3 2, 3, and 4 of Section 3 in 1893. He also at some point acquired the SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$
4 and N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3 lying east of the Yakima River. In 1903 he filed a
5 Notice of Appropriation of Water stating he claimed the water in Reeser Creek
6 through Section 3 to the extent of 4 cubic feet per second because of an
7 appropriation in 1890 and continued use since that year for irrigation, stock and
8 domestic purposes. He stated that the water is for the purpose of irrigating the
9 E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3. Government Lot 1 is
10 within the E $\frac{1}{2}$ NE $\frac{1}{4}$.

11 Two Certificates of Change issued relative to the Becker Appropriation. On
12 April 26, 1954, Certificate of Change recorded in Volume 1, Page 424 issued to T.
13 S. Kirk, Ida S. Kirk, G. A. Mead and Hazel S. Mead authorizing them to change the
14 point of diversion of waters of the Yakima River in the amount of 2.0 cubic feet
15 per second, being a portion of the right claimed by use since May 6, 1893. The
16 certificate of changed authorized changing the diversion from a point near the
17 center of the NW $\frac{1}{4}$ of Section 33 to where seepage from the river enters a slough in
18 the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3 and also portable pumping along the river in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
19 Section 3. There is no evidence in the record that diversions were developed at
20 these points. Certificate of Change recorded in Volume 2, Page 969 authorized Roy
21 T. Carey to change the point of diversion of 16.0 cubic feet per second of the
22 waters of the Yakima River through the Becker Ditch as claimed by use since 1893.
23 The new point of diversion authorized is in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, which is the
24 location of the diversion into the Mill Ditch. During the presentation of the

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Pautzke Bait Company claim the testimony was the Yakima River water previously
2 carried through Becker Ditch is diverted and carried in the Mill Ditch, discharged
3 into Reecer Creek and diverted from Reecer Creek at various points. An old channel
4 of Reecer Creek is used to convey water diverted from Reecer Creek onto the Pautzke
5 Bait Company property. This channel also conveys water to the Jewett and
6 neighboring Guy property.

7 According to Mr. Eason, the water used on the Jewett property could be either
8 Yakima River water conveyed by the Mill Ditch Company and discharged into Reecer
9 Creek, or Reecer Creek water. The quantity of water discharged from the Mill Ditch
10 into Reecer Creek has not been measured, nor has the quantity of water diverted
11 from Reecer Creek to the lands owned by the successors to the Becker appropriation.

12 Several water right claims were filed pursuant to RCW 90.14 that include the
13 Jewett property within the described place of water use. Claim No. 005422 was
14 filed by Ida Suver Kirk asserting a right to divert 0.50 cubic foot per second, 180
15 acre-feet per year from Reecer Creek for the irrigation of 2 acres. The claim
16 specifically describes the Jewett property and the estate of Ms. Kirk sold the
17 property to the Jewetts. Roy Carey, who purchased most of the land previously
18 owned by C.W. Suver, filed claims pursuant to RCW 90.14 for use of waters from
19 Reecer Creek and the Yakima River and the Jewett property is included within the
20 place of use described on the claims. Roy Carey purchased most of the Suver
21 property in 1966 and the sale of the property reserved one second foot of water
22 from Reecer Creek for the premises of Ida Suver Kirk and included an easement for
23 an irrigation ditch to her property.

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7
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1 A copy of a letter dated March 29, 1971, from Mrs. Kirk to the predecessor
2 agency of the Department of Ecology seeking information about filing for a permit
3 for a well was entered into evidence. In that letter, Mrs. Kirk summarizes the
4 history of her property, indicating that her grandparents settled there in 1872 and
5 registered water rights in the late 1800's and on Reecer Creek in 1903. She stated
6 she sold most of the ranch to Dr. and Mrs. Roy Carey, but kept 2.10 acres and hopes
7 to buy three acres from her sister's estate. She goes on to state that in the deed
8 to Carey asked for one foot of water in case she needs more water to develop
9 recreational areas. This would indicate that she was not using 1 cubic foot per
10 second at that time. This, along with the RCW 90.14 claim asserting a right for
11 0.50 cubic foot per second leads the Referee to believe that 0.50 cubic foot per
12 second was the extent of use at that time. There was no testimony about the annual
13 quantity of water used to irrigate this land and the RCW 90.14 claim is of no
14 assistance. The Court Claim identifies that 8 acre-feet per year is being used and
15 lacking any better information, the Referee intends to adopt that quantity.

16 Based on the foregoing, it is recommended that a right be confirmed under the
17 Prior Appropriation Doctrine to John G. and Nancy A. Jewett with a May 6, 1893,
18 date of priority for the diversion 0.50 cubic foot per second, 8 acre-feet per year
19 for the irrigation of 2 acres.

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REPORT OF REFEREE
26 Re: Subbasin No. 7

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2 COURT CLAIM NO. 01058 -- Douglas Johnson
3 & Nancy Johnson

4 W. O. and Hilda Salter submitted a Statement of Claim to the Court for
5 the use of waters from two unnamed springs located in Subbasin No. 10 and waters
6 delivered by the Cascade Irrigation District. On December 5, 1989, Douglas and
7 Nancy Johnson were substituted for the Salters. Cascade Irrigation District is a
8 major claimants in this proceedings whose rights are being determined through the
9 Major Claimant Pathway identified in Pretrial Order No. 8. Water use related to
10 the irrigation district will not be addressed through the subbasin pathway. Rights
11 to the use of waters from the unnamed springs will be addressed in the Report of
12 Referee for Subbasin No. 10. Therefore, the Referee does not recommend
13 confirmation of a water right in Subbasin No. 7 under Court Claim No. 01058.

14 COURT CLAIM NO. 01232 -- Bobby F. Kennedy

15 A Statement of Claim was submitted to the Court by Dippel Brothers/Ellensburg
16 Livestock Association for the use of various water sources, including Stinkin
17 Springs and Jones Creek located in Subbasin No. 7. The claimants were represented
18 by Attorney Hugh M. Spall. Jill Perry, ranch manager, and Les Sperline, a Dippel
19 Brothers employee, testified at the evidentiary hearing. On April 21, 1994, Bobby
20 F. Kennedy was substituted for Dippel Brothers/Ellensburg Livestock Association.

21 The claimants are asserting a right for non-diversionary stock watering from
22 undeveloped springs and Currier Creek within Sections 1 and 2 of T. 18 N.,
23 R. 18 E.W.M. Approximately 400 cow/calf pairs graze in these sections from
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25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 approximately April 1 to June 15 and again from early fall until December. During
2 the summer they are moved to other lands owned by Dippel Brothers. The land is
3 riparian to the sources being used. Various portions of the sections separated
4 from Federal ownership between 1870 and 1909.

5 The non-diversionary stock water use described by the testimony is covered by
6 the stock water stipulation discussed on Page 4 of this report. No additional
7 rights are needed for this use, therefore, the Referee recommends that no other
8 rights be confirmed under Court Claim No. 01232.

9
10 COURT CLAIM NO. 01696 -- Henry John Klocke, Jr.
11 & Beverly Lee Klocke

12 A Statement of Claim was submitted by the Klockes for the use of waters
13 delivered through the Town Ditch operated by the Ellensburg Water Company. Mr.
14 Klocke testified at the evidentiary hearing.

15 According to the testimony, the Klockes own approximately 10 acres lying in a
16 portion of Government Lot 1 of Section 18 lying north of Highway 10 and a portion
17 of Government Lot 4 of Section 7 lying south of the Town Ditch, both in T. 18 N.,
18 R. 18 E.W.M.. The land in Section 18 was part of a larger parcel for which
19 Alexander Munson received a patent on January 18, 1887. Prior to that, on
20 April 15, 1885, Mr. Munson filed a Notice of Purchase of Interest in Water Ditch,
21 which stated he had purchased a ditch on December 21, 1882, and claimed a right to
22 enlarge and extend the ditch to a capacity of 12,000 inches (or 24 cubic feet per
23 second) for his homestead entry in Section 18. There is no historical information
24 in the record for the land owned by the Klockes in Section 7.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 In October of 1944 predecessors of the Klockes, Avery and Pearl Stevens,
2 conveyed to the Ellensburg Water Company a tract of land adjoining the Town Ditch
3 in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7. In return, Ellensburg Water Company agreed to carry in
4 the Town Ditch and deliver to the Stevens 50 inches of water (1 cubic foot per
5 second) during irrigation season. The agreement specifically stated that the water
6 delivered to the Stevens was water appurtenant to their land and not part of the
7 Ellensburg Water Company appropriation.

8 According to Mr. Klocke's testimony and the State's Investigation Report, 1.5
9 acres of pasture are irrigated with water diverted from the Town Ditch into Klocke
10 Ditch. This land lies in Government Lot 1 of Section 18. A 2 BHP pump is placed
11 on the ditch and used to withdraw water into the Klockes' sprinkler system. Ten
12 sprinklers with 5/32 inch nozzles are used. Mr. Klocke briefly mentioned in his
13 testimony flood irrigating 2.5 acres from Klocke Ditch, but it is not clear to the
14 Referee whether this use was continuing or where that 2.5 acres were located. Mr.
15 Klocke testified that the remainder of his land was irrigated with Ellensburg Water
16 Company water. The Ellensburg Water Company is a Major Claimant in this proceeding
17 whose right will be addressed through the Major Claimant Pathway.

18 Two water right claims were filed pursuant to RCW 90.14 for the Klocke
19 property. Avery Stevens filed Water Right Claim No. 112116 asserting a right to
20 divert 8 cubic feet per second from the Yakima River for the irrigation of 80 acres
21 in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and that part of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ (Government Lot
22 1) and of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying north and east of the right of way of the N.P. Railway
23 Co.; all of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and that part of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ lying north
24 and east of the Town Ditch, of Section 18, T. 18 N., R. 18 E.W.M. The Stevens

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 claim included the land he had previously sold to the Klockes. Henry Klocke filed
2 Water Right Claim No. 125746 asserting a right to divert 0.40 cubic foot per
3 second, 50 acre-feet per year from the Yakima River via Ellensburg Water Co. Canal
4 for the irrigation of 10 acres. The legal description attached to the claim is for
5 the most part illegible, but appears to describe a portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
6 Section 7 and a portion of Government Lot 1 of Section 18.

7 During testimony, Mr. Klocke did not specify the quantity of water he was
8 using to irrigate the 1.5 acres. The quantity of water identified as being used on
9 Water Right Claim No. 125746 was 0.04 cubic foot per second and 5 acre-feet per
10 year per acre irrigated, which is not unreasonable for irrigation in this area and
11 lacking any better information the Referee proposes to use that quantity for any
12 right confirmed to the Klockes.

13 A right is also being asserted for stock watering. A maximum of 9 head of
14 cattle are raised by the Klockes and water delivered through the Town Ditch for
15 that stock watering.

16 Based on the foregoing, the Referee recommends that a right be confirmed under
17 the Prior Appropriation Doctrine to Henry J. and Beverly Klocke with a December 21,
18 1882, date of priority for the diversion of 0.06 cubic foot per second, 7.5
19 acre-feet per year for the irrigation of 1.5 acres and 0.01 cubic foot per second,
20 1 acre-foot per year for stock watering on a portion of Government Lot 1 of
21 Section 18 lying northeast of the Burlington Northern Railroad right of way.

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26 REPORT OF REFEREE
Re: Subbasin No. 7

1
2 COURT CLAIM NO. 00256 -- Les S. Knudsen
3 & Barbara J. Knudsen

4 Les S. and Barbara J. Knudsen submitted a Statement of Claim to the Court for
5 the use of waters from Wilson and Naneum Creeks and an unnamed drain in Subbasin
6 No. 9 and waters delivered by the Cascade Irrigation District. Cascade Irrigation
7 District is a major claimants in this proceedings whose rights are being determined
8 through the Major Claimant Pathway identified in Pretrial Order No. 8. Water use
9 related to the irrigation district will not be addressed through the subbasin
10 pathway. Rights to the use of waters from Wilson and Naneum Creeks and the unnamed
11 drain will be addressed in the Report of Referee for Subbasin No. 9. Therefore,
12 the Referee does not recommend confirmation of a water right in Subbasin No. 7
13 under Court Claim No. 00256.

14
15 COURT CLAIM NO. 01966 -- Charles F. Lathrop
16 & Elizabeth D. Lathrop

17 Charles and Elizabeth D. Lathrop submitted a Statement of Claim to the Court
18 for the use of waters delivered by the Cascade Irrigation District and Ellensburg
19 Water Company. Both of these entities are major claimants in this proceedings
20 whose rights are being determined through the Major Claimant Pathway identified in
21 Pretrial Order No. 8. Water use related to these entities will not be addressed
22 through the subbasin pathway. Therefore, the Referee does not recommend
23 confirmation of a water right under Court Claim No. 01966.

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7

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2 COURT CLAIM NO. 01305 -- Kurt A. Linder
3 & Lillian I. Linder

4 A Statement of Claim was filed with the Court by Kurt A. and Lillian I. Linder
5 for the use of waters from an unnamed creek. The Linders are represented by
6 Attorney Michael Bauer and Mr. Linder testified at the evidentiary hearing.

7 The Linders own the NW $\frac{1}{4}$ of Section 34, the E $\frac{1}{2}$ of Section 35 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and
8 the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, all in T. 19 N., R. 18 E.W.M. A right is being
9 asserted for non-diversionary stock watering for the land owned in Section 27 and
10 Section 35. Up to 40 cow/calf pairs are raised in the SE $\frac{1}{4}$ of Section 27 and drink
11 runoff water from a spring located on the property immediately north. Up to 100
12 cow/calf pairs are raised in the E $\frac{1}{2}$ of Section 35 and drink directly from Currier
13 Creek or channels that carry runoff from the Highline Canal. These
14 non-diversionary stock water uses are covered by the stock water stipulation
15 discussed on Page 4 of this report.

16 The Linders are also asserting a right to irrigate a portion of the land they
17 own in the NW $\frac{1}{4}$ of Section 34. According to the record, approximately 65 acres in
18 the NW $\frac{1}{4}$ of Section 34 lying east of Jones Creek is irrigated from a diversion in
19 the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27. An additional 17 acres are irrigated from a diversion
20 on the section line between Sections 27 and 34, approximately 550 east of the
21 northwest corner of Section 34. Hay and pasture grass are planted in these two
22 areas. An additional 55 acres are irrigated with seepage and runoff water from the
23 Kittitas Reclamation District Canal and irrigated farm land north of the Linder
24 property.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 The Linders have owned the property since 1957 and have continued the
2 irrigation practice in place at the time of their purchase. Mr. Linder testified
3 to his belief that the land has been irrigated since 1890, but was not able to
4 provide any proof to support his belief. There is nothing in the record to show
5 that a claim was filed pursuant to the requirements of RCW 90.14. Failure to file
6 a claim waives or relinquishes any right that may have existed, RCW 90.14.071.

7 Due to the lack of evidence that a right was established under either the
8 Prior Appropriation or Riparian Doctrines and lack of a claim filed pursuant to RCW
9 90.14, the Referee cannot recommend that a right be confirmed under Court Claim No.
10 01305 to Kurt A. and Lillian I. Linder.

11
12 COURT CLAIM NO. 00334 -- Russ Longacre

13 A Statement of Claim was submitted by Carl and Clara Vandenberg for the use of
14 waters from Reecer Creek. On December 17, 1991, Russ Longacre was substituted for
15 the Vandenburgs. Attorney Ken Beckley represented the claimants. Richard Bain, a
16 consultant hired by the claimants, and Russ Longacre testified at the evidentiary
17 hearing.

18 At the time of the hearing Mr. Longacre was leasing the land with an option to
19 buy. He has since purchased the land, which is the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2,
20 T. 17 N., R. 18 E.W.M.. Of the 20 acres in that parcel, 19 are irrigated with
21 water diverted from Reecer Creek. Pasture is planted on most of the land, with a
22 small amount of lawn and garden area around the home. Livestock are raised on the
23 property and drink from the irrigation ditches and from an unnamed spring in the

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7
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1 southwest portion of the property. Livestock drink from the spring itself and from
2 a ditch that carries the spring flow to nearby Mercer Creek.

3 Mr. Bain measured the takout that serves this property at 3.1 cubic feet per
4 second. Assuming this quantity is diverted whenever the fields are irrigated
5 results in an annual diversion of 469.5 acre-feet per year. Mr. Bain estimated
6 that 20.3 acre-feet per year is conveyance loss, resulting in 449.2 acre-feet being
7 applied to the ground.

8 According to documents presented by Pautzke Bait Company for neighboring land,
9 a patent issued to William Dennis on June 30, 1876, for the $\text{W}_{\frac{1}{2}}\text{NW}_{\frac{1}{4}}$ and $\text{NW}_{\frac{1}{4}}\text{SW}_{\frac{1}{4}}$ of
10 Section 2 and the $\text{NE}_{\frac{1}{4}}\text{NE}_{\frac{1}{4}}$ of Section 3, T. 17 N., R. 18 E.W.M. The claimants
11 submitted other chain of title information that they thought was for this property;
12 however, upon review, most of it is for Section 20, T. 20 N., R. 18 E.W.M., not for
13 Section 2, T. 17 N., R. 18 E.W.M. One document that is applicable, however, is a
14 deed dated May 6, 1909, from Minnie A. Zehner to George Vandenberg, conveying the
15 $\text{W}_{\frac{1}{2}}\text{NW}_{\frac{1}{4}}\text{SW}_{\frac{1}{4}}$ of Section 2, along with an undivided one half interest in all water,
16 water appropriations and water rights out of Reeser Creek owned by Ms. Zehner with
17 an undivided one half interest in the water ditch as then constructed. The deed
18 does not indicate a quantity associated with the one half interest in the water.

19 Carl Vandenberg, in compliance with the provisions of RCW 90.14, filed Water
20 Right Claim No. 0011159 asserting a right to divert 0.40 cubic feet per second, 60
21 acre-feet per year from Reecer Creek for the irrigation of 20 acres and stock water
22 for use in the $\text{W}_{\frac{1}{2}}\text{NW}_{\frac{1}{4}}\text{SW}_{\frac{1}{4}}$ of Section 2. The date of first putting water to use shown
23 on this claim is April 1909.

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7
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1 There is a significant difference between the quantity of water identified as
2 being used on the RCW 90.14 claim and the quantity testified to by Mr. Bain. The
3 quantity currently being used according to the testimony is extremely high for the
4 number of acres involved. If the prior owners were in fact using 0.40 cubic foot
5 per second, 60 acre-feet per year, that would be the limit of the right. This land
6 is not riparian to Reecer Creek, so any right established would be under the Prior
7 Appropriation Doctrine with the priority date being the date water was first
8 appropriated. The only thing in the record to establish a priority date is the
9 deed dated May 6, 1909, indicating that water had been appropriated and the water
10 right claim which says water was first used in April 1909. Lacking any information
11 to provide an earlier date, the Referee finds that the priority date shall be
12 April 30, 1909.

13 Based on the foregoing, the Referee recommends that a right be confirmed under
14 the Prior Appropriation Doctrine with an April 30, 1909, date of priority for the
15 diversion of 0.40 cubic foot per second, 60 acre-feet per year from Reecer Creek
16 for the irrigation of 19 acres and 0.02 cubic foot per second, 2 acre-feet per year
17 for stock watering.

18 The claimants are also asserting a right to use a spring for stock watering.
19 There was no testimony to show that a historic diversionary right was established
20 for this spring, nor is there a filing under RCW 90.14 for this source. Livestock
21 do drink directly from the spring and this nondivisionary stock watering is
22 covered by the stock water stipulation.

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26 REPORT OF REFEREE
Re: Subbasin No. 7

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2 COURT CLAIM NO. 01834 -- Gordon E. Mackner
3 & Utana Mackner

4 A Statement of Claim was submitted by Gordon E. and Utana Mackner for the use
5 of waters from Mackner Spring for stock water. Utana Mackner testified at the
6 evidentiary hearing in support of the claim.

7 The Mackner property lies predominantly in the $E\frac{1}{2}E\frac{1}{2}$ of Section 20, T. 18 N.,
8 R. 18 E.W.M. lying south of the Dry Creek Road and north of the Burlington Northern
9 Railroad right-of-way. They own a fraction of an acre extending into the $NW\frac{1}{4}SW\frac{1}{4}$ of
10 Section 21. The property in Section 20 was settled by Peter Wold who received
11 Homestead Certificate No. 37 dated August 1, 1883, for the $E\frac{1}{2}NE\frac{1}{4}$ and $E\frac{1}{2}SE\frac{1}{4}$ of
12 Section 20. Mrs. Mackner submitted documents relating to the establishment by
13 Peter Wold of a water right to use waters from First Creek on this property. First
14 Creek is tributary to Swauk Creek, which is in Subbasin No. 4, and any claim of a
15 right to use First Creek water would be addressed in that subbasin. According to
16 Mrs. Mackner the land has been farmed since it was settled by Mr. Wold.

17 There is nothing in the record to indicate the location of the spring for
18 which a right is being claimed for stock watering except that it is on the Mackner
19 property. The State's Exhibit SE-2 shows a pond on the portion of the Mackner
20 property north of Olson Ditch and that may be the spring location. The record
21 seems to indicate that the stock watering is non-diversionary with the stock
22 drinking from the source. This type of use is covered by the stock water
23 stipulation mentioned on Page 4 of this report and the Plaintiff's Report to the

24
25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Referee states that the stipulation relates to the claimants property. There will
2 be no additional right confirmed for non-diversionary stock watering.

3 The claimants land is irrigated with water from the Olson Ditch and Ellensburg
4 Water Company. The Olson Ditch submitted a claim on behalf of its patrons and is
5 considered on Page 180 of this report. Ellensburg Water Company is a Major
6 Claimant whose rights will be addressed in the Major Claimant Pathway.

7

8 COURT CLAIM NO. 01558 -- Bruce Magnotti
9 & Aloa G. Mitchell
Paul Wyatt
10 & Brenda Wyatt

11 A Statement of Claim was submitted to the Court by June V. Herrick for use of
waters from Spring Creek and Doughty Ditch. On February 6, 1986, Aloa G. Mitchell
12 and Bruce Magnotti were substituted for Ms. Herrick. On October 24, 1990. Paul and
13 Brenda Wyatt were joined to the claim. The Wyatts are represented by Attorney Ken
14 Beckley. Mrs. Wyatt testified at the evidentiary hearing.

15 According to the record, the Wyatts purchased the property from Ms. Herrick in
16 1990, after she had acquired the property back from Ms. Mitchell and Mr. Magnotti.
The Wyatts are the legal owners of the land. Mrs. Wyatt testified that a ditch
17 forms the south property line for their land, a second ditch borders their land for
18 a short distance on the east side and Spring Creek flows through the land. Water
19 is diverted from one of the ditches, which they call Doughty Ditch, to flood
20 irrigate two acres lying east of the house. Although she refers to the ditch as
21 Doughty Ditch, the State's Exhibit shows the Bull Canal flowing along the Wyatt's
22 east property line and the Klein Coble Castle Ditch forming their south property
23

24
25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 line. During the presentation of the Schaake Packing Company claim for neighboring
2 land in Section 11, deeds were presented for the portion of Section 11 now owned by
3 Schaake Packing Company. Those deeds show that W. F. Doughty owned part of the SW $\frac{1}{4}$
4 and SE $\frac{1}{4}$ of Section 11 and may have used water out of the Klein, Castle and Coble
5 Ditch. Based on this information, the Referee believes that the Doughty Ditch is
6 the same as the Klein, Castle and Coble Ditch.

7 Mrs. Wyatt testified that the home they live in is over 80 years old and
8 neighbors have indicated their land was once part of a larger agricultural tract.
9 The prior owner of the land, Ms. Herrick, irrigated in the same manner as the
10 Wyatts. The Wyatts raise between five and ten steers, which drink from Spring
11 Creek. This non-diversionary stock water use is covered by the Stock Water
12 Stipulation discussed on Page 4 of this report.

13 The Wyatts do not divert water from Spring Creek. At times Spring Creek will
14 overflow its banks and flood irrigate the land adjacent to it, and the rest of the
15 time the land is subirrigated. In order for a right to have been established for
16 use of waters from Spring Creek, there would have to been a diversion and
17 appropriation. There is nothing in the record to show this has occurred.

18 The Wyatts provided a chain of title for the NW $\frac{1}{4}$ of Section 11, showing that
19 the Northern Pacific Railroad received a patent of the land on January 16, 1896.
20 Prior to that, in either 1887 or 1888, N.P.R.R. conveyed the land to Orin B.
21 Castle, who in turn sold it to A. H. H. Cowgar in 1889. In the record is a Notice
22 of Water Right filed by Daniel Coble, N. Klein, John Kegle and Oren Castle stating
23 that in October 1884 they constructed a water ditch to be used for irrigating
24 purposes and appropriated 5,000 inches of water from the Yakima River. The lands

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 owned by Oren Castle were not described in the document. For a short period of
2 time Oren Castle owned the land now owned by the Wyatts. Although the deed does
3 not indicate Castle owned the land at the time of appropriation, it is likely he
4 occupied the land prior to the deed being signed. It is not unreasonable to
5 conclude that the Wyatt land was irrigated under the Klein, Castle, Coble
6 appropriation.

7 Pursuant to the requirements of RCW 90.14, two water right claims were filed
8 by June Herrick. Claim No. 080876 claimed a right to use waters from Doughty Ditch
9 for irrigation (lawn and garden) on the lands now owned by the Wyatts. Claim No.
10 080877 claimed a right to use waters from Spring Creek for stock water and
11 irrigation (lawn and garden), also on the lands now owned by the Wyatts. Both of
12 these were on "short forms" specifically allowed under RCW 90.14.051. That section
13 described the contents of the statement of claim to be filed under RCW 90.14,
14 allowing an exception for claims for those uses described in the exemption from the
15 permit requirements of RCW 90.44.050 (use of up to 5,000 gallons per day for stock
16 watering, domestic supply, irrigation of up to one-half acre, industrial supply).
17 Filing of a claim for on a short form can only protect a water right for those
18 limited uses.

19 The Referee finds that a recommendation to confirm a water right cannot be
20 made for use of waters from Spring Creek due to the lack of appropriation and proof
21 of establishment of a water right from that source. The Referee does recommend
22 that a right be confirmed under the Prior Appropriation Doctrine with an
23 October 30, 1884, date of priority for the diversion of 0.02 cubic foot per second,
24 2.76 acre-feet per year for the irrigation of one-half acre. This is the extent of

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 the right that can be confirmed when only a short form claim was filed pursuant to
2 RCW 90.14.

3

4 COURT CLAIM NO. 00521 -- Mary McManamy
5 & Mary Patricia Seubert

6 Joe McManamy filed a Statement of Claim with the Court for the use of waters
7 from the Yakima River via Olson Ditch and an unnamed spring. On April 13, 1989,
8 Mary McManamy and Mary Patricia Seubert were substituted for Mr. McManamy on the
9 claim. Attorney John P. Gilreath represents Mrs. McManamy and Ms. Seubert. Mary
10 McManamy and Richard C. Bain, a consultant hired by the claimants, testified at the
11 evidentiary hearing.

12 The claimants property lies in the E $\frac{1}{2}$ of Section 18, T. 18 N., R. 18 E.W.M.
13 north of the old CMSP&P railroad tracks and south of the Ellensburg Water Company's
14 Town Ditch and that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T. 18 N., R. 18 E.W.M.
15 lying south of the Town Ditch. Approximately 378 acres are owned with 121.8 acres
16 irrigated with water diverted from the Yakima River and delivered through the
17 Ellensburg Water Company Town Ditch, Olson Ditch and Wold Ditch.

18 David W. Abbott received a patent for the E $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
19 Section 18 on January 11, 1892, and also acquired the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17.
20 According to the record, the Abbott & Crandall Ditch was constructed in July of
21 1885 to serve this land owned by H. Crandall. Mr. Abbott conveyed a portion of
22 the land to Kittitas County prior to obtaining the patent and the land was locally
23 known as the "County Poor Farm". The portion of the McManamy property lying
24 northeast of the Burlington Northern Railroad right of way and south of the Olson

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Ditch is served by Olson Ditch. Olson Ditch is a claimant in this proceeding
2 asserting a right on behalf of its patrons. The determination of water rights
3 associated with the Olson Ditch will be addressed through the ditch company's claim
4 rather than the claims filed by the individual landowners within the ditch
5 company's service area. Approximately 12 acres located northeast of the Olson
6 Ditch is irrigated with water delivered by Ellensburg Water Company, for which the
7 claimant owns 15 shares. Ellensburg Water Company is a major claimant in this
8 proceeding, whose rights will be determined through the Major Claimant Pathway.

9 Approximately 38 acres lying southwest of Highway 10 are irrigated with water
10 delivered through the Wold Ditch. The evidence supports a conclusion that this is
11 part of the Abbott/Crandall appropriation in 1885. Mr. Bain measured a flow of
12 7.21 cubic feet per second from the takeout that serves this area. According to
13 the irrigation practice of the claimant, the field is watered 34 days during the
14 irrigation season, resulting in a use of 485.4 acre-feet per year.

15 The spring described in the court claim serves the land owned by Claudia
16 Eattock and is not used on the McManamy property. Mrs. Eattock has filed her own
17 claim asserting a right to use that spring. A separate right for the McManamy
18 property is not being asserted.

19 Water Right Claim No. 121029 was filed by Joe McManamy pursuant to the
20 requirements of RCW 90.14 for the use of waters from the Yakima River for the
21 irrigation of the McManamy property. The acreage and place of use on the claim
22 covers the entire McManamy property, including that served by the Olson Ditch. The
23 instantaneous quantity of water claimed in the water right claim is substantially
24 less than was measured by Mr. Bain. The Referee does not intend to recommend

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 confirmation of a water right in excess of the quantity identified on the RCW 90.14
2 claims unless it is clear an error. RCW 90.14.065 provides a mechanism for
3 amending water right claims if an error was made in the estimation of the quantity
4 of water used. It does not appear that the claimant availed herself of this
5 opportunity.

6 The Referee recommends that a right be confirmed under the Prior Appropriation
7 Doctrine with a July 30, 1885, date of priority for the diversion of 4 cubic feet
8 per second, 485.4 acre-feet per year for the irrigation of 38.2 acres in that
9 portion of the E $\frac{1}{2}$ of Section 18, T. 18 N., R. 18 E.W.M. lying south of the
10 Burlington Northern Railroad right of way and north of the Chicago, Milwaukee, St.
11 Paul and Pacific Railroad Co.'s right of way.

12
13 COURT CLAIM NO. 02248 -- Donald Michaud

14 A Statement of Claim was filed with the Court by Donald Michaud claiming a
15 right to use an unnamed spring for irrigation. Mr. Michaud testified at the
16 evidentiary hearing.

17 Mr. Michaud owns 67 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 35, T. 19 N., R. 17 E.W.M.
18 and Government Lots 1 and 2 of Section 2, T. 18 N., R. 17 E.W.M. He is claiming a
19 right to irrigate one acre with water diverted from an unnamed spring located on
20 his property. Runoff from the spring also feeds a pond on the property. Livestock
21 grazing on the land drink directly from the spring runoff, a non-diversionary use
22 that is covered by the stock water stipulation, see Page 4 of this report.
23 According to Mr. Michaud's testimony, he acquired the property in October of 1977
24 and prior to his purchase the land had only been used for livestock grazing. He

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 only testified to water use since the time he acquired the property and could not
2 testify about past water use.

3 If use of the spring for irrigation did begin after Mr. Michaud purchased the
4 property in 1977, he should have complied with the requirements of RCW 90.03 and
5 obtained a permit from the Department of Ecology. There is nothing in the record
6 to indicate this occurred. If this water use has historically occurred back to the
7 early 1900's, there would have to be testimony to that effect and it would have
8 been necessary for a claim to have been filed pursuant to RCW 90.14. It does not
9 appear that such a claim was filed.

10 Therefore, based on the foregoing, the Referee cannot recommend that a water
11 right be confirmed under Court Claim No. 2248 to Donald Michaud.

12
13 COURT CLAIM NO. 01585 -- Richard Howard Mitchell
14 & Leottie Mitchell

15 A Statement of Claim was submitted by the Mitchells for the use of waters from
16 Dry Creek for irrigation and stock watering. Mr. Mitchell testified at the
17 evidentiary hearing.

18 The Mitchell's property lies in Section 6, T. 18 N., R. 18 E.W.M. They farm
19 approximately 200 acres and irrigates 83 of those acres. Mr. Mitchell's father
20 filed an application for homestead entry for the property in 1933 and received a
21 patent in 1936. According to the testimony, the land was undeveloped at the time
22 Mr. Mitchell's parents acquired the property. The only usable water source was a
23 spring that was developed for domestic supply and stock watering. After the
24 Kittitas Reclamation District (KRD) began delivering water, runoff water from the

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 KRD began flowing in Dry Creek. Since 1935 this runoff water has been used to
2 irrigate the Mitchell property. Flood irrigation was the method of application
3 using approximately 900 acre-feet per year. In 1980 Mr. Mitchell replaced that
4 method with a pump on the creek and a sprinkler system. A 25 BHP pump is on the
5 creek and withdraws 0.55 cubic foot per second. At that diversion rate, during the
6 normal 180 day irrigation season 198 acre-feet is withdrawn from the creek. An
7 additional 99 acre-feet is withdrawn from a drainage ditch on the property.
8 According to Mr. Mitchell's testimony the source of all their irrigation and stock
9 water is the KRD. Livestock raised on the property drink directly from Dry Creek.
10 This is a non-diversionary use that is covered by the stock water stipulation
11 discussed on Page 4 of this report and no other right is required.

12 It is not clear from the testimony whether the Mitchells are assessed by the
13 KRD and are patrons of the district or are making a separate claim for use of KRD's
14 runoff water. KRD is a major claimant in this adjudication and whose rights were
15 addressed through the Major Claimant Pathway established in Pre-trial Order No. 8.
16 Run off, or return flow waters, that originate from the KRD system may be
17 considered by the United States to be part of the water to which district lands are
18 entitled. The KRD is part of the Yakima Project of the Bureau of Reclamation. In
19 a recent Washington State Supreme Court case, State of Washington, D.O.E. v. U. S.
20 Bureau of Reclamation, et al., 118 Wn.2d 761, 827 P.2d 275 (1992), the Supreme
21 Court held that the appropriator of the water retains the rights to use the water
22 so long as the water remains within the boundaries of the appropriator's property
23 and that only Federal agencies and those entities with whom they contract have
24 authority to make decisions regarding the distribution of water within a Federal

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 irrigation project. The Supreme Court found that the Federal government, through
2 the Bureau of Reclamation, was the appropriator of water in a Federal project and
3 had control of the water until it left the project boundaries. The Mitchell
4 property is within the boundaries of the KRD and, therefore, the Yakima Project.

5 Additionally, the return flow water derived from the delivery or application
6 of water from the KRD would be considered to be foreign return flows as the water
7 is diverted from the Yakima River outside of Subbasin No. 7. The Washington State
8 Court of Appeals has held in the case of Dodge v. Ellensburg Water Co., 46 Wn App.
9 77, 82, 729 P.2d 631 (1986), that ". . . no water rights, prescriptive or
10 otherwise, exist in these waters." Based on these previous rulings, the Referee
11 cannot recommend confirmation of a water right for the use of runoff or return flow
12 waters originating from the KRD system.

13 The record shows that there has been no appropriation of natural occurring
14 surface waters and the appropriation that has occurred began long after the June 6,
15 1917, date for establishing a right under the Prior Appropriation Doctrine. A
16 right could have been established under the Riparian Doctrine only if the land had
17 separated from Federal ownership prior to June 6, 1917. This did not occur.
18 Therefore, based on the foregoing, the Referee cannot recommend confirmation of a
19 water right under Court Claim No. 01585.

20
21 COURT CLAIM NO. 02358 -- Daniel O. Molnar

22 A Statement of Claim was submitted by Daniel O. Molnar for the use of waters
23 from Garrisons Springs for home and garden use. Mr. Molnar sent a letter to the
24
25

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Referee prior to the evidentiary hearing advising that he would not be appearing at
2 the hearing. The letter stated Mr. Molnar did not want to forfeit any claim he
3 might be entitled to by not appearing. However, since Mr. Molnar did not appear
4 and testify in support of the claim, the Referee does not have any information
5 concerning establishment of a water right for the use claimed. Therefore, the
6 Referee cannot recommend confirmation of a water right under Court Claim No. 01258.
7 Should Mr. Molnar wish to pursue this claim during the exception phase of this
8 proceeding, he should be prepared to present evidence that a water right was
9 established by use prior to June 6, 1917, with said use documented by the filing of
10 a water right claim between 1969 and 1974 pursuant to RCW 90.14, or a permit or
11 certificate issued by the Department of Ecology or a predecessor agency.

12
13 COURT CLAIM NO. 00781 -- E. James Nelson
14 Jim Anspach

15 A Statement of Claim was submitted to the Court by E. James Nelson for the use
16 of waters from First Creek. On August 30, 1990, James Anspach was joined to the
17 claim. Mr. Anspach, who testified at the evidentiary hearing, is represented by
18 Attorney Ken Beckley.

19 According to the testimony and evidence, Mr. Anspach is now the owner of the
20 lands described in Court Claim No. 00781, which is all of Section 9, T. 18 N.,
21 R. 18 E.W.M.. Mr. Anspach irrigates 170 acres with water diverted from Reecer
22 Creek. The primary diversion point is at the north section line, approximately 500
23 feet west of the northeast corner of Section 9. Two other diversion points are
24 located further south on the creek, but it is not clear how those two diversions

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 are utilized. Water can be diverted to either the east or west side of the creek
2 at the northerly diversion into ditches that carry the water southerly through the
3 property. Approximately 150 acres are irrigated with creek water east of the creek
4 and 20 acres west of the creek. The land is flood irrigated.

5 Three ponds are located on the property. One is located just south of the
6 north quarter corner of Section 9 and a second is located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
7 Section 9. Both of these are used only for non-diversionary stock watering. Up to
8 500 cow/calf pairs and 30 horses are raised on the property and drink from the
9 ponds and Reecer Creek. This type of non-diversionary stock water use is covered
10 by the stock water stipulation (see Page 4), and no additional right will be
11 confirmed. The third pond is located near the center of the SE $\frac{1}{4}$ of Section 9.
12 This pond is also used for non-diversionary stock watering. In the past, water has
13 been pumped from the pond to irrigate a 35 acre field that lies immediately east of
14 the pond. A diesel pump is placed on the pond and wheel lines used to irrigate the
15 35 acres. The pond was last used for irrigation in 1975. Mr. Anspach intends to
16 resume this use in the future. Since 1975 creek water has been used on this field.
17 Mr. Anspach testified that the pond was built to be used for stock water and
18 irrigation, but he did not testify to when the pond was constructed.

19 Mr. Anspach is assessed by the Kittitas Reclamation District for 329 acres and
20 the water delivered by the district is used to irrigate the land in Section 9 west
21 of the lands irrigated from Reecer Creek. The Kittitas Reclamation District is a
22 major claimant in this proceeding whose rights were determined through the Major
23 Claimant Pathway.

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25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Mr. Anspach testified that in his opinion after the early part of the
2 irrigation season the water he is diverting from the creek is the result of
3 drainage from neighboring lands and runoff from the Kittitas Reclamation District.
4 The Referee notes that the neighboring landowners updrainage from the Anspach
5 property are not claimants in this proceeding. That leads the Referee to believe
6 that the irrigation water being applied to the neighboring lands must be delivered
7 by the Kittitas Reclamation District. The return flow water migrating to the creek
8 channel from this land would be Yakima Project return flows for which the Referee
9 cannot recommend that rights be confirmed. See the discussion of return flows on
10 Page 7 of this report.

Pursuant to the requirements of RCW 90.14, Gary Sulenes, a prior owner of the property, filed Water Right Claim No. 117143 asserting a right to divert 500 gallons per minute, 82 acre-feet per year from an unnamed creek for the irrigation of 42 acres in the E $\frac{1}{2}$ of Section 9, T. 18 N., R. 18 E.W.M. This is the only RCW 90.14 claim in the record for this property.

16 Mr. Anspach testified that a neighbor to the south has been familiar with the
17 property since the late 1950's and the current irrigation practice is consistent
18 with what was occurring at that time. There was no testimony about historic water
19 use on this land prior to the 1950's. This land is riparian to Reecer Creek. In
20 order for there to be a water right on this property under the Riparian Doctrine,
21 there must be evidence that the land was irrigated prior to December 31, 1932.
22 That evidence is not currently in the record. Attached to the Court Claim is a
23 copy of a Notice of Appropriation filed by Henry Kleinberg for waters from First
24 Creek for use in several sections of land, including Section 9. Also attached are

REPORT OF REFEREE
Re: Subbasin No.

1 several agreements and deeds that transfer land, including Section 9, along with a
2 share in the First Creek water. Court Claim No. 00781 described the source of
3 water being claimed as First Creek, but all the testimony centered around use of
4 Reecer Creek water. First Creek is within Subbasin No. 4 and rights to use that
5 water will be addressed in the Report of Referee for that subbasin. None of the
6 documents included with the Court Claim indicate that water from First Creek was
7 actually used on the claimants land, nor has Mr. Anspach testified to using any
8 water from First Creek.

9 Due to the lack of testimony on historic use sufficient to show that a right
10 was established by 1932, the Referee cannot recommend confirmation of a water
11 right. Should that information be presented during the exception phase of the
12 proceeding, the claimant should be prepared to quantify the natural flow water
13 being used versus return flow water resulting from the irrigation of neighboring
14 lands with KRD water. The RCW 90.14 claim filed for this property limits the right
15 that could ultimately be confirmed to 42 acres.

16

17 COURT CLAIM NO. 00672 -- Leonard L. Newman
18 & Loree Newman

19 A Statement of Claim was filed with the Court by the Newmans for the use of
20 waters from the Yakima River and Wilson Creek via the Bull Ditch. Mr. Newman
21 testified at the evidentiary hearing.

22 According to Mr. Newman's testimony, his claim is entirely for use of waters
23 carried in the Bull Ditch, which is part of the Bull Canal Company conveyance
24 system. The Bull Canal Company has filed a claim in the proceeding and since all
25

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 of the land served by the canal company lie in Subbasin No. 9, Wilson-Naneum, it
2 was determined that was the appropriate subbasin for presentation of the claim.
3 The Newman's claim will also be presented in that subbasin. Therefore, the Referee
4 does not recommend that a right be confirmed in this subbasin under Court Claim No.
5 00672. A final determination of the claim will be made in Subbasin No. 9.

6

7 COURT CLAIM NO. 02391 -- Gladys O'Neill
8 & Estate of Leo O'Neill
9 Eldon C. Weidenbach

10 A Statement of Claim was filed by Leo O'Neill for the use of waters from
several unnamed springs and an unnamed creek. Mr. O'Neill has passed away and
11 Gladys O'Neill succeeded him in ownership of the land. On January 10, 1990, Eldon
12 C. Weidenbach was joined to the claim. Mrs. O'Neill is represented by Attorney
13 James Hurson. Gladys O'Neill, her son, Neil O'Neill, and Eldon Weidenbach
14 testified at the evidentiary hearing.

15 According to the testimony, the predominate water use on the property
described in the claim is non-diversionary stock watering. Approximately 200 head
16 of cattle graze on the property and drink directly from the springs that arise on
the land. This use is covered by the stock water stipulation discussed on Page 4
17 of this report. The Plaintiff's Report to the Referee specifically identified the
18 the stock water stipulation applied to Court Claim No. 2391.

19 A right is also being asserted for subirrigation of 7 acres with waters from
an unnamed spring. Again, this source is not developed and the runoff from the
20 spring naturally subirrigates the land with no intervention from man. The Referee
does not believe this to be an appropriation of water for which a right has been
21

22 REPORT OF REFEREE
23 Re: Subbasin No. 7

1 established. Instead the land benefits from the existence of the natural water
2 source which allows for the growth of hay and pasture.

3 Based on the foregoing, the Referee cannot recommend confirmation of a water
4 right to either Gladys N. O'Neill or Eldon C. Weidenbach.

5 The property described in Court Claim No. 2391 lies immediately below the
6 Olson Ditch and the records of the ditch company show the O'Neills irrigating 16
7 acres with water from Olson Ditch. According to Neil O'Neill, water from Olson
8 Ditch has not been used on their property for at least 30 years. There is evidence
9 of an abandoned lateral leading from the ditch, but it hasn't been used since he
10 has been familiar with the property. Any right that the property would have
11 enjoyed from Olson Ditch has relinquished for nonuse. RCW 90.14.160.

12

13 COURT CLAIM NO. 00576A -- Frank Oechsner

14 A Statement of Claim was submitted to the Court by Frank Oechsner for the use
15 of surface water from unknown sources for irrigation of 4 acres and stock water.
16 Mr. Oechsner was represented by Attorney John P. Gilreath and testified at the
17 evidentiary hearing.

18 According to his testimony, Mr. Oechsner is amending his Court claim to only
19 be for stock watering of almost 400 head of livestock. Water is diverted from an
20 unnamed stream near the southeast corner of Section 29, T. 19 N., R. 18 E.W.M. and
21 piped to up to four stock tanks. The number of stock tanks utilized varies
22 according to the stream flow. Mr. Oechsner did not testify to the source of water
23 flowing in the stream. The Referee notes that the diversion from the stream lies
24 below the Kittitas Reclamation District (KRD) canal and may capture water seeping

25

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 from the KRD canal. This seepage and return flow water would be considered foreign
2 and the result of the application of Yakima Project water. As discussed on Page 7
3 of this report, water rights cannot be established for the use of these return
4 flows. Additionally, the State's Investigation Report stated that the field
5 investigation determined that the water was return flow water originating from
6 irrigated lands lying in the SE $\frac{1}{4}$ of Section 29, which is to the north of the
7 claimant's land. The land in Section 29 is irrigated with water delivered by the
8 First Creek Water Users Association. The association diverts water from First
9 Creek, which is a tributary of Swauk Creek, and the right to use that water will be
10 addressed in the Report of Referee for Subbasin No. 4, Swauk. Return flows
11 resulting from the application of water diverted from First Creek would also be
12 considered foreign.

13 Pursuant to the requirements of RCW 90.14, Frank Oechsner filed Water Right
14 Claim No. 125769 asserting a right to divert 1 cubic foot per second, 20 acre-feet
15 per year of "waste water" for the irrigation of 4 acres and stock watering in the
16 NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, T. 19 N., R. 18 E.W.M. The point of diversion described is
17 in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 19 N., R. 18 E.W.M., at the point where Mr.
18 Oechsner currently diverts water from the unnamed stream. The claimants
19 characterization of this water as "waste water" supports the Referee's belief that
20 this water is return flow or seepage water resulting from KRD or the use of water
21 delivered by the First Creek Water Users Association.

22 There also was no testimony of historic use of the water. If evidence were
23 presented to show the stream carried naturally occurring surface water, there must
24 be sufficient evidence in the record for the Referee to determine a water right was

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 established under the Riparian Doctrine through use prior to December 31, 1932.
2 That evidence is presently lacking. Therefore, the Referee cannot recommend that a
3 water right be confirmed to Frank Oechsner under Court Claim No. 00576A.

4

5 COURT CLAIM NO. 00576 -- Frank Oechsner
6 Mary McManamy
7 Mary Patricia Seubert
8 Paul Weaver
9 & Florence A. Weaver

10 A Statement of Claim was submitted for the use of waters from a spring and a
11 spring-fed creek for irrigation and stock water. The claimants were represented by
12 Attorney John P. Gilreath. Richard C. Bain, Jr., a consultant hired by the
13 claimants, and Frank Oechsner testified at the evidentiary hearing. On October 12,
14 1994, Paul and Florence A. Weaver were joined to the claim.

15 According to the testimony and evidence, the claimants are asserting a right
16 to irrigate 58 acres and provide water for livestock from Reecer Creek and an
17 artesian spring or well. The lands on which water is being used lie within the
18 SW $\frac{1}{4}$ SE $\frac{1}{4}$ and that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ lying east of Desmond Road and a portion of
19 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ all in Section 28, T. 18 N., R. 18 E.W.M. Water from Reecer Creek is
20 diverted at a point where it crosses under the Dry Creek Road in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
21 Section 28 and is piped to the irrigated land. Mr. Bain testified that his
22 measurements show that 4.33 cubic feet per second is diverted to the farm and 633.3
23 acre-feet per year is used to irrigate the land. Mr. Bain also testified that if
24 timothy hay were grown, 1,116.5 acre-feet would be needed. The rights being
25 confirmed herein are based on historic use, not potential future needs. Mr.
26 Oechsner testified that timothy hay had once been grown on the land, but he did not

27 REPORT OF REFEREE
28 Re: Subbasin No. 7

state when that was nor was there any testimony of how much water was used when timothy was planted.

Approximately 60 cow/calf pairs are raised on the property each year. The claimants are claiming a right for 3 acre-feet per year for stock watering. There was no testimony concerning the method for providing water to the livestock. Since the fields are rill irrigated and open ditches used on the edges of the fields, the Referee will presume the stock drink from the ditches. Although claiming a right to irrigate 58 acres, Mr. Oechsner testified that the entire parcel is 58 acres in size. When SR 97 was widened, two acres were taken by the highway and there is a five acre marsh in the southwest corner of the property that is not farmable. Mr. Oechsner testified that it had been irrigated in the past, but in order to again farm that land he would have to install drains to reclaim the land. He did not testify to when the land was last irrigated or to any intent to install the drains and again irrigate those five acres. Based on his testimony, it appears that 51 acres are being irrigated. That is consistent with the State's map exhibit, the court claim and RCW 90.14 claim filed for the property.

A right to use of waters from an artesian spring or well arising in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 is also being claimed. The testimony was not adequate to allow the Referee to determine whether the source is a spring or a well. The documents submitted by the claimants describe the source as an artesian well, however, at one place well was crossed off and spring inserted. Water from the spring/well is conveyed through open ditch and pipeline to the claimants' land.

Two claims were submitted pursuant to RCW 90.14 by Frank Oechsner. Claim No. 125768 asserts a right to divert 5.0 cubic feet per second from Spring Creek for

REPORT OF REFEREE
Re: Subbasin No. 7

1 irrigation of 50 acres and stock water. The place of use is the SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$,
2 and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28. The point of diversion claimed is approximately at
3 the point on Reecer Creek that water is currently diverted. A date of 1900 is
4 claimed for first use of water.

5 Water Right Claim No. 125770 asserts a right to use "waste water" for the
6 irrigation of 10 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28. The point
7 of diversion is located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28. There was no testimony
8 presented about use of a source of water at this location. The only ditch that
9 runs through the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 serves the neighboring Scott property. There
10 was no water right claim filed under RCW 90.14 for use of a spring in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
11 Section 21. Failure to file a claim waives and relinquishes any right that may
12 have existed, RCW 90.14.071.

13 There was little information provided about historic use of the land. Copies
14 of patent documents were submitted showing when the land was first occupied. The
15 Referee recognizes that the homestead laws required occupation of the land,
16 cultivation and improvement of the land. However, the assumption cannot be made
17 that cultivation and improvement is the same as irrigation of the land. Mr.
18 Oechsner testified that red clay pipe used in the system to deliver water to his
19 land was commonly used in the early 1900's. The claimants are asserting that the
20 priority date for their rights should be the date the evidence reflects efforts
21 were first made to sever the land from Federal ownership. However, the claimants'
22 land is not riparian to any of the water sources being claimed. Only under the
23 Riparian Doctrine does the priority date of the water right relate to the date
24 steps were taken to sever the land from Federal ownership. Under the Prior

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Appropriation Doctrine, the priority date is established by the date notice is
2 given of an intent to appropriate water or steps are taken to actually appropriate
3 the water. Therefore, the dates for settling the land are of little assistance in
4 establishing the priority date of a Prior Appropriation water right. The Court in
5 a Memorandum Opinion Re: Priority Date - Date of Patent or Date of Entry, signed
6 January 19, 1995, addressed this very issue and found that there must be some
7 evidence, regardless of how scant, to support a finding of actual appropriation or
8 diversion in order to establish a priority date.

9 Although there was no testimony that the appropriation from Reecer Creek began
10 in 1900, the claim filed pursuant to RCW 90.14 identifies 1900 as the date water
11 was first used and Mr. Oechsner testified that the red clay pipe was commonly used
12 in the early 1900's. Based on that information, the Referee believes it would be
13 reasonable to conclude that the appropriation from Reecer Creek was initiated in
14 1900. Therefore, the Referee recommends that a right be confirmed under the Prior
15 Appropriation Doctrine with a June 30, 1900, date of priority for the diversion
16 from Reecer Creek of 4.33 cubic feet per second, 633 acre-feet per year for the
17 irrigation of 51 acres and 0.03 cubic feet per second, 3 acre-feet per year for
18 stock watering.

19 Due to the uncertainty about the nature of the water source in Section 21
20 being claimed and the lack of an RCW 90.14 claim for that source, the Referee
21 cannot recommend that a right be confirmed for use of waters from the unnamed
22 artesian spring/well.

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25
26 REPORT OF REFEREE
Re: Subbasin No. 7

1
2 COURT CLAIM NO. 00169 -- Olson Ditch

3 A Statement of Claim was submitted by Olson Ditch for the use of waters from
4 the Yakima River. Olson Ditch is represented by Attorney Ken Beckley. Pat Taylor,
5 Secretary/Manager for the ditch, and Richard C. Bain, Jr., a consultant hired by
6 the claimant, testified at the evidentiary hearing.

7 The Olson Ditch is asserting a right on behalf of its water users for the
8 diversion of up to 52.6 cubic feet per second, 12,269.5 acre-feet per year for the
9 irrigation of 607.4 acres and stock watering. The lands served by the ditch lie in
10 Sections 17, 18, 20, 21, 27, 28 and 29, T. 18 N., R. 18 E.W.M.. According to the
11 records provided by Olson Ditch, the owners of the land with the ditch's service
12 area at the time of the evidentiary hearing and the number of acres served were:

13 McManamy - 67 acres	Kelley - 3 acres
14 Eattock - 8 acres	O'Neil - 16 acres
15 Hand - 67 acres	Macner - 32 acres
16 Salter - 20 acres	Johnson - 10 acres
17 Thomas - 16.5 acres	Rominger/Linder - 38.6 acres
18 Hanson - 1 acre	Greene/Pethia - 115.5 acres
19 Taylor - 172.04 acres	Willet - 8.5 acres
20 Small holdings totaling 35.8 acres	

21 Although the claimant is asserting a right to irrigate 607.4 acres, the acres
22 attributed to each landowner by the claimant totals 610.94 acres. Water from the
23 Yakima River is initially diverted by the Ellensburg Water Company into the Town
24 Ditch and carried over half a mile. The Olson Ditch then diverts from the Town
25 Ditch water for its patrons and two smaller ditches, the Klocke Ditch and the Wold
26 Ditch. Rights are not being asserted under Court Claim No. 00169 for the Klocke
27 Ditch and the Wold Ditch. The individual water users of those ditches were

REPORT OF REFEREE
Re: Subbasin No. 7

1 responsible for filing their own claims in this proceeding. Olson Ditch is
2 asserting a priority date of either 1870 or 1876. The 1870 date is based on a
3 statement in the C. R. Lentz Review, Yakima Project Water Rights and Related Data,
4 (December 1974), but there has been nothing entered into the record to support that
5 date and the claimant does not know the origin of that date in the Lentz Review.
6 However, there is evidence to support the 1876 date for a portion of the lands
7 served by Olson Ditch.

8 On February 21, 1876, A Notice of Appropriation was filed by Shoudy, Dysart
9 and Farnsworth stating they had located a water ditch for milling purposes under
10 the name of the Standard Mill Company. The ditch began in Section 13, T. 18 N.
11 R. 17 E.W.M., went through the $\text{N}_{\frac{1}{2}}\text{NW}_{\frac{1}{4}}$ of Section 20, T. 18 N., R. 18 E.W.M. and
12 terminated on the north line of Peter Wold's land in Section 20. At that time
13 Peter Wold had possession of the $\text{S}_{\frac{1}{2}}\text{NW}_{\frac{1}{4}}$, $\text{NE}_{\frac{1}{4}}\text{SW}_{\frac{1}{4}}$ and $\text{E}_{\frac{1}{2}}\text{E}_{\frac{1}{2}}$ of Section 20. In that
14 same year a Deed of Right of Way was signed, in which Peter A. and Samantha M. Wold
15 gave Farnsworth, Dysart and Shoudy a right of way to run a sufficient quantity of
16 water to drive a water wheel to run a flour and saw mill, not to exceed 500 inches
17 under a ten or 12 foot head. The right of way was to extend from the wheel across
18 the Wold property, but did not indicate the path of the ditch. This apparently was
19 the ditch conveying the water away from the flour and saw mill after its use. At
20 the time of the 1876 appropriation, Farnworth owned the $\text{N}_{\frac{1}{2}}\text{NW}_{\frac{1}{4}}$ of Section 20. There
21 is nothing in the record to indicate the location of the property owned by Dysart
22 and Shoudy.

23 In 1882 Farnsworth, et al., conveyed the water right and right of way
24 agreement to Geritt d'Ablaing. In 1894 Geritt d'Ablaing Von Giesenborg gave

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Kittitas County the right to take 75 inches of water (1.5 cubic feet per second)
2 from the ditch for use during irrigation season and in 1898 gave the county an
3 additional 25 inches of water (0.50 cfs) during irrigation season for a total of 2
4 cubic feet per second. The county owned what has been referred to as the "County
5 Poor Farm," which was located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17 and the NE $\frac{1}{4}$ of
6 Section 18, T. 18 N., R. 18 E.W.M. (the part irrigated from Olson Ditch is owned by
7 McManamy). The ditch and water rights were sold to James and Edward Hand 1899, who
8 in turn immediately sold them to Andrew Olson, Christian Holm, Sarah Wold and
9 Septimus Nivin. The Hands reserved 100 inches for use in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17
10 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 20, T. 18 N., R. 18 E.W.M. (now owned by Hand and O'Neill).
11 An agreement was filed stating that Olson, Holm, Wold and Nivin owned the Wold and
12 d'Ablaing Ditch and that the ownership was divided, subject to the conveyance to
13 the county and the Hand reservation, as follows: Olson - 5/20; Holm - 6/20; Wold -
14 4/20 and Nivin - 5/20. This agreement indicates that in 1899, these four
15 individuals had complete control of the Wold and d'Ablaing Ditches. At that time
16 Holm owned the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 28 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
17 Section 29, T. 18 N., R. 18 E.W.M.. Wold owned the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 20, but sold it
18 to John Robinson in October of that year. Nivin owned the S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of
19 Section 28. The record does not show Andrew Olson's ownership at that time, nor
20 does it contain sufficient information to quantify the capacity of the ditches or
21 the quantity of water appropriated.

22 The water originally appropriated in 1876 was intended to be used for
23 operating a flour and saw mill. Between 1876 and 1905 the use of the water changed
24 to include irrigation. Prior to 1917 the law was clear that once an appropriation

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 has been perfected by the diversion and use of water, that use can be changed
2 without loss of the priority of the right, In Re Alpowa Creek, 129 Wash. 9, 224, P.
3 29 (1924).

4 There were other water appropriations in the late 1800's that were made by
5 predecessor owners of land now served by the Olson Ditch.

6 On April 17, 1891, Martin Mason, Jacob Cleman, Christian Holm and Peter Wold
7 filed an agreement and notice of water right stating their intent to construct an
8 irrigation ditch four miles long with each party to have equal interest. The claim
9 was for the appropriation of 100 cubic feet per second from the Yakima River. In
10 1891, the parties to the appropriation owned lands now owned by Salter, Johnson,
11 Thomas, and Taylor lying in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, the
12 NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, the NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, all in
13 T. 18 N. R. 18 E.W.M.

14 The Referee believes, based on the numerous historical documents in the
15 record, that portions of the land lying in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
16 Section 21, the W $\frac{1}{2}$ of Section 28 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, could have been
17 developed and irrigated under the 1876 Farnsworth, et al., appropriation and under
18 the 1891 Mason, et al., appropriation. The land was owned by either Mason, Cleman,
19 Holm or Wold in 1891 and subsequent deeds reference that appropriation. In 1899,
20 the land was owned by three of the four individuals who purchased the ditch and
21 water right under the Farnsworth appropriation. The claimant has not made an
22 assertion as to how much of the water they divert would enjoy an 1876 date of
23 priority based on the Farnsworth appropriation.

24
25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

In July of 1885 the Abbott-Crandall Ditch was constructed from the Yakima River, beginning at a point in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12 and terminating in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18. Both Abbott and Crandall owned land that is now served by the Olson Ditch, along with land now served by the Wold Ditch. The land owned by McManamy in Section 18 was owned by Abbott or Crandall. A portion of the Abbott property now owned by McManamy was conveyed to Kittitas County for a "poor farm" and 2 cubic feet per second from the 1876 Farnsworth, et al., appropriation was transferred to that land. Only a small portion of the McManamy property served from Olson Ditch would have a right with the 1885 date of priority under the Abbott/Crandall appropriation.

According to a Notice of Water Right entered as an exhibit, Charles Kull appropriated 50 inches of water (1 cfs) carried in the Abbott Crandall Ditch to his ranch in the SE $\frac{1}{4}$ of Section 18 beginning on July 1, 1889. The exhibit is a typed version of the notice filed in 1890 and the Referee believes an error was made copying the land description. The patent that issued to Charles Kull showed he owned the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 18, not the SE $\frac{1}{4}$ of Section 18 at the time of the appropriation and notice. The only lands irrigated through Olson Ditch within the Kull ownership is that owned by Eattock, of which 8 acres are irrigated.

19 The record reflects that the land now served by the Olson Ditch was developed
20 and irrigated in stages by the different individuals who owned the land in the late
21 1800's. Apparently there were up to three separate ditches constructed that have
22 been consolidated into the Olson Ditch. A 1912 map shows only the Olson Ditch in
23 this immediate area indicating that the consolidation occurred prior to June 6,
24 1917, when the Surface Water Code was adopted. Therefore, compliance with RCW

REPORT OF REFEREE
Re: Subbasin No. 7

1 90.03.380 for changing the points of diversion was not necessary. Sometime after
2 1912, Olson Ditch changed its diversion to that utilized by the Ellensburg Water
3 Company's Town Ditch. This may have happened after adoption of the Surface Water
4 Code, however, compliance with RCW 90.03.380 is not required because the point of
5 diversion was only changed slightly. Olson Ditch previously had diverted
6 immediately below the Town Ditch diversion.

7 Due to the history of development of the lands served by Olson Ditch, it is
8 important to identify the appropriation made for the individual lands served by the
9 ditch. In most cases sufficient information has been provided for the Referee to
10 do so; however, for a few of the small users, that was not possible. In that case
11 the Referee intends to use the junior date in the record, which seems to be the
12 common date for the lands immediately surrounding the small holdings. Following
13 are the patrons served by the ditch company at the time of the hearing, the number
14 of acres the district shows as being irrigated and the date of appropriation for
15 that land, which will become the priority date for the water right.

16 O'Neil, 16 acres - 1876
17 Macner, 32 acres - 1891
18 Greene/Pethia, 115.5 acres - 1891
19 McManamy, 67 acres - 1876 for 51 acres and 1885 for 16 acres
20 Eattock, 8 acres - 1889
21 Hand, 67 acres - 1891
22 Salter, 20 acres - 1891¹
23 Johnson, 10 acres - 1891*

24 ¹The right for a portion of this land may have an 1876 date, however,
25 sufficient information has not been submitted to make that determination.

26 *See footnote 1

1 Thomas, 16.5 acres - 1891*
2 Taylor, 172. acres - 1891*
3 Kelley - 3 acres - 1891²
4 Rominger/Linder, 38.6 acres - 1891#
5 Hanson, 1 acre - 1891#
6 Willett, 8.5 acres - 1891#
7 Small Holdings, 35.8 acres - 1891*

8 On October 30, 1905, Andrew Olsen, John Robinson, B. H. Robertson, and Christ
9 Anderson, by Charles J. Anderson as Guardian, signed an agreement with the United
10 States Reclamation Service. This agreement, known as a limiting agreement, was one
11 of 52 agreements signed by diverters in the Yakima River Basin. The limiting
12 agreements were sought in order for the Reclamation Service to determine the
13 quantity of water each appropriator in the Yakima Basin was entitled to in order
14 for the United States to decide whether the Yakima Project could be developed.
15 Andrew Olsen, et al., agreed to limit their diversion from the Yakima River to 24
16 cubic feet per second from April to August, 16 cubic feet per second in September
17 and 8 cubic feet per second in October. Olson Ditch has objected to the
18 admissibility of the Limiting Agreement, which was submitted by the Bureau of
19 Reclamation, and consideration of it by the Referee. Their objection is based on
20 the position that the agreement could only be binding on the individuals that signed
21 the agreement and not on all of the users of the ditch; it did not contain in its
22 body a statement that it is binding on any successors in interest; there was no
23

24 ²It was not possible to determine under which appropriation these lands lie;
25 however, the surrounding land was developed under the 1891 appropriation by Mason,
26 Cleman, Holm and Wold.

27 #See footnote 2

1 legal description of the lands affected by the agreement; and the Bureau of
2 Reclamation has failed to provide proof that the conditions of the agreement have
3 been met by the United States. The United States responded to these contentions in
4 a post-hearing brief.

5 On January 3, 1994, the Court entered an Amended Order RE: Limiting
6 Agreements ordering that limiting agreements are binding on the respective
7 successors-in-interest and they restrict diversions of the successors-in-interest
8 from all sources of water during the months stated in each respective agreement.
9 The remaining issue to be resolved herein is to what extent the Limiting Agreement
10 signed by Olson, et al. is binding on the patrons of the Olson Ditch. The claimant
11 appears to be contending that the users of the ditch are not all successors to the
12 signators of the limiting agreement. During the presentation of its claim, Olson
13 Ditch did not provide the Referee anything that would clearly show which lands now
14 served were owned by the limiting agreement signators. The Referee has reviewed
15 the numerous historical documents and chains of title entered in the record in
16 support of the Olson Ditch claim and the claims filed individually by landowners
17 within the Olson Ditch service area. These documents show the majority of the
18 Olson Ditch water users are either basing their claim on the 1876 appropriation
19 that was sold to Olson, et al., or their lands were owned by one of the limiting
20 agreement signators in 1905. Portions of the land owned by McManamy and Taylor may
21 not have been under the 1876 appropriation or owned by a signator. However, if all
22 the ditches were consolidated prior to 1905, the Referee believes that as owners of
23 the ditch, Olson, et al., had the ability to limit the diversion into their ditch
24 and that limitation applied to all of the lands irrigated from the ditch at that

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 time. If the consolidation happened after 1905, then rights could be confirmed in
2 excess of the limiting agreement quantities. The burden is on Olson Ditch to make
3 this proof.

4 A right is being asserted under this claim for irrigating 16 acres on the
5 O'Neil land from Olson Ditch. However, during the presentation of the O'Neill
6 claim, see Page 173 of this report, Mr. O'Neill testified that it had been over 30
7 years since water from Olson Ditch had been used. RCW 90.14.160 provides that any
8 right that goes unexercised for five or more consecutive years is waived or
9 relinquishes to the state. The Referee finds that any right through the Olson
10 Ditch that may have been appurtenant to the O'Neill property has been relinquished.

11 Water has historically been diverted down Olson Ditch for stock watering
12 during the winter months. According to the Bureau of Reclamation records, November
13 diversions average around 800 acre-feet. Mr. Bain indicates in his report that
14 this quantity is needed to form ice bridges in the canal. The flows for the
15 remainder of the winter have been lower; December, 140 acre-feet; January 40
16 acre-feet; February 70 acre-feet and March, 91 acre-feet. These flows would
17 indicate a diversion of 13 cubic feet per second in November, and 2.35 cubic feet
18 per second the rest of the winter. Mr. Bain estimated that 70 percent of this
19 remains in Olson Ditch and 30 percent would be diverted down the Wold or Klocke
20 Ditches.

21 Although Mr. Bain's report indicates that the water requirements for the
22 Olson Ditch service area is 12,269.5 acre-feet during irrigation season, this
23 annual quantity cannot be diverted if Olson Ditch stays within the quantities in
24 the Limiting Agreement. At the instantaneous rate of 24 cubic feet per second from

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 April 1 to August 31, 16 cubic feet per second for September and 8 cubic feet per
2 second for October, 8,712 acre-feet can be withdrawn from the river. Mr. Bain
3 evaluated the ditch for conveyance loss and determined that the upper reach of the
4 ditch did not experience a loss due to seepage water from the Town Ditch entering
5 the canal, but the lower reach lost approximately 3 cubic feet per second. Since
6 Olson Ditch has been diverting more water than allowed in their limiting agreement,
7 when they reduce their diversion to the limiting agreement quantity, the conveyance
8 loss may change. However, the Referee does not have adequate information to allow
9 a determination as to whether another conveyance loss figure would be appropriate.

10 Pursuant to the requirements of RCW 90.14, Water Right Claim No. 060872 was
11 filed by Olson Ditch for the diversion of 26 cubic feet per second, 3170 acre-feet
12 per year for the irrigation of 634 acres and stock water. In spite of the Olson
13 Ditch asserting a right for over 50 cubic feet per second and apparently diverting
14 that quantity in recent years, a right for 26 cubic feet per second was claimed in
15 1974.

16 Since the water rights associated with Olson Ditch have four different
17 priority dates, the quantity of water diverted and number of acres irrigated must
18 be apportioned among the priorities. As much as possible, the Referee shall use
19 the documents in the record to accomplish this. There has been no position
20 offered on the appropriate priority date for stock watering; however, it appears
21 that the rights for this use should be apportioned the same as the irrigation
22 rights.

23 The facts surrounding development of the lands served by Olson Ditch, the
24 limiting agreement with three different quantities of water, and wintertime stock

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 water diversions result in the Referee recommending that four rights be confirmed,
2 each with a different date of priority, and each with five water quantities based
3 on the period the water is diverted. Unfortunately the schedule of rights for the
4 ditch will be rather complicated, but an alternative is not apparent to the
5 Referee.

6 The Referee recommends that rights be confirmed to Olson Ditch under Court
7 Claim No. 00169 for use of waters from the Yakima River as follows:

8 With a priority date of February 21, 1876, 2.06 cubic feet per second, 626
9 acre-feet per year from April 1 to August 31; 1.37 cubic feet per second, 82
10 acre-feet per year in September and 0.69 cubic feet per second, 43 acre-feet per
11 year in October for irrigation of 51 acres and stock water; 1.12 cubic feet per
12 second, 68.8 acre-feet per year in November and 0.20 cubic foot per second, 12.5
13 acre-feet per year from December 1 to March 31 for stock water.

14 With a priority date of June 30, 1885, 0.65 cubic foot per second, 197
15 acre-feet per year from April 1 to August 31; 0.43 cubic feet per second, 26
16 acre-feet per year in September and 0.21 cubic foot per second, 13.5 acre-feet per
17 year in October for the irrigation of 16 acres and stock water; 0.35 cubic foot per
18 second, 21.6 acre-feet per year in November and 0.063 cubic foot per second, 6.75
19 acre-feet per year from December 1 to March 31 for stock water.

20 With a priority date of July 1, 1889, 0.312 cubic foot per second, 87
21 acre-feet per year from April 1 to August 31; 0.21 cubic foot per second, 10
22 acre-feet per year in September and 0.10 cubic foot per second, 4.2 acre-feet per
23 year in October for the irrigation of 8 acres and stock water; 0.169 cubic foot per

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 second 10.4 acre-feet per year in November and 0.031 cubic foot per second, 3.25
2 acre-feet per year from December 1 to March 31 for stock water.

3 With a priority date of April 7, 1891, 20.97 cubic feet per second, 6358
4 acre-feet per year from April 1 to August 31; 13 cubic feet per second, 831
5 acre-feet per year in September; 7 cubic feet per second, 430 acre-feet per year in
6 October for the irrigation of 519.94 acres and stock water; 11.36 cubic feet per
7 second, 699.2 acre-feet per year in November and 2.05 cubic feet per second, 218.5
8 acre-feet per year from December 1 to March 31 for stock water.

9 The Referee recognizes that the 1876 date of priority may be appropriate for
10 more than the 51 acres herein recommended. If the claimant can produce evidence
11 that would allow that date to be recommended for more of the land served by the
12 ditch, that could be addressed during the exception phase of this proceeding.
13 Under the varying priorities, this schedule allows Olson Ditch to divert its
14 limiting agreement quantities from April 1 to October 31 for irrigation and stock
15 watering and the quantity testified to by Mr. Bain for stock watering from
16 November 1 to March 31. The annual quantity recommended for confirmation is the
17 quantity of water that can be diverted from the Yakima River through a continuous
18 diversion of the instantaneous quantities provided in the limiting agreement.
19 Based on the foregoing recommendations, the lands with an 1876 priority account for
20 8.6% of the irrigated acres; those with an 1885 priority account for 2.7% of the
21 irrigated acres; those with an 1889 priority account for 1.3% of the irrigated
22 acres; and those with an 1891 priority account for 87.4% of the irrigated acres.
23 The acres and quantity of water recommended to Olson Ditch are based on these
24 percentages.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Water can be diverted in excess of the quantity recommended for Olson Ditch
2 for delivery to the water users on the Wold and Klocke Ditches that are confirmed
3 rights in this proceeding. Those water users are Bain, McManamy, Wilkening,
4 Clapper, Williams and Fitterer. It is noted by the Referee that there are water
5 users under both the Wold and Klocke Ditches that have not filed claims in this
6 proceeding and, therefore, rights are not being recommended for their lands.
7 Additionally, rights are not being recommended for claimants Holmes and Days who
8 are served by the Wold Ditch.

9
10 COURT CLAIM NO. 05318 -- Carolyn Ann Olson

11 A Statement of Claim was submitted to the Court by Carolyn Ann Hunt (now
12 Olson) and the Estate of Gerald Hunt for the use of waters from Reecer Creek,
13 First Creek and unnamed ponds. Ms. Hunt testified at the evidentiary hearing.

14 According to Ms. Hunt's testimony, she is no longer asserting a right for the
15 use of waters from Reecer Creek. First Creek lies in Subbasin No. 4 and use of
16 that water will be addressed in the Report of Referee for Subbasin No. 4. Ms. Hunt
17 is pursuing a right for stock watering from four ponds located in the W $\frac{1}{2}$ of
18 Section 33, T. 19 N., R. 18 E.W.M. According to the testimony 300 head of cattle
19 water from these ponds. There was little testimony about use of these ponds,
20 however, Ms. Hunt did submit an exhibit that describes the ponds, their location
21 and the quantity of water flowing from each pond.

22 The Lower Smithson Pond is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33. The pond
23 is spring fed, approximately 60 feet wide and 100 feet long, with an outflow of
24 approximately 0.75 gallons per minute. Livestock drink directly from the pond.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 The East Cow Pond is located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33 and is 28 feet wide by
2 31 feet long. Water is piped from a spring 150 feet to the north into the pond.
3 Water discharges from the pond at a rate of 0.75 gallons per minute. South Cow
4 Pond is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33 and is 20 feet wide and 43 feet
5 long. The pond is spring fed with the discharge rate being approximately 4 gallons
6 per minute. There was no testimony of when these three ponds were constructed.
7 The fourth pond is the Upper Smithson Pond located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33.
8 It is 20 feet wide by 28 feet long and is also spring fed. The discharge rate from
9 the pond is approximately 2.25 gallons per minute. This pond was constructed in
10 1990 over a boggy, spring fed area.

11 The cows drink directly from the ponds, which would be a non-diversionary use
12 for the spring-fed ponds that do not involve a diversion. Water for the East Cow
13 Pond is diverted from a spring to the north of the pond. This would be considered
14 a diversionary use. There is nothing in the record to show that a claim was filed
15 pursuant to RCW 90.14 for the spring that is being diverted to East Cow Pond. The
16 only 90.14 claim in the record for Hunt property is for the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 33 and
17 asserts a right to divert water from Reecer Creek. Failure to file a water right
18 claim pursuant to RCW 90.14 waives and relinquishes any right that may have
19 existed, RCW 90.14.071. Additionally, there was no testimony of historic use of
20 the spring.

21 Based on the foregoing the Referee cannot recommend confirmation of a right
22 for diversionary stock watering. The non-diversionary stock water stipulation
23 would cover livestock drinking directly from the other three ponds.

24
25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1
2 COURT CLAIM NO. 02029 -- Don Ozanich
3 & Theresa Ozanich

4 A Statement of Claim was filed with the Court by the Ozaniches for the use of
5 drainage water. Mr. Ozanich testified at the evidentiary hearing.

6 The claimants own 11 acres in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 34, T. 18 N., R. 18 E.W.M.
7 and irrigate 10 of those acres with drainage water pumped from a ditch near the
8 southeast corner of their property. A 7.5 BHP is on the ditch. The land is
9 irrigated with three inch handlines using a maximum of 20 impact sprinklers. Hay
10 and grain crops are usually grown.

11 According to the testimony the claimants have owned the property since 1981
12 and it was their understanding that the land did not have water rights, but could
13 use "free" water. "Free" water is a term some use to describe drainage water or
14 return flows. The water drains from the Dick Colasurdo property to the north. The
15 Ozanich land was once part of the Melvin Whipple property and may have been
16 irrigated when it was owned by the Whipples. There is no evidence that a water
17 right claim was filed pursuant to RCW 90.14 by any of the prior owners. Failure to
18 file a claim waives and relinquishes any right that may have existed, RCW
19 90.14.071.

20 Mr. Ozanich was not able to present any evidence that a water right was
21 established for this property under either the Riparian or Prior Appropriation
22 Doctrines. Additionally, rights can only be confirmed for the use of return flow
23 waters if it can be established that the return flows are the result of the
24 application of naturally occurring waters, not water imported from another area or

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 water delivered as part of the Yakima Irrigation Project (Kittitas Reclamation
2 District), see Page 7 of this report. Therefore, the Referee cannot recommend that
3 a water right be confirmed under Court Claim No. 02029 to Don and Theresa Ozanich.
4

5 COURT CLAIM NO. 00199 -- Joseph Panattoni
6 & Marilyn Panattoni

7 COURT CLAIM NO. 00259 -- Glen E. Elfers
8 & Della L. Elfers

9 COURT CLAIM NO. 00636 -- Ronald T. Anderson
10 & Robin L. Anderson
11 Mark T. Anderson

12 COURT CLAIM NO. 01320 -- Ross P. Shamley
13 & Connie R. Shamley
14 William Pappas

15 COURT CLAIM NO. 01496 -- Norman Dean Schwartz
16 & Waleeta Teme Schwartz

17 COURT CLAIM NO. 01838 -- John Bugni
18 & Karen Bugni

19 COURT CLAIM NO. 01840 -- Orvil L. Magruder
20 & Lola E. Magruder

21 COURT CLAIM NO. 01945 -- Jeff Gorman
22 & Sheryl Gorman

23 COURT CLAIM NO. 02251 -- William F. Duncalf

24 COURT CLAIM NO. 02294 -- Mary Hundley
25 & Pautzke Bait Company

26 The above listed claims were filed with the Court asserting rights to use
27 waters within Subbasin No. 7. The claimants did not make an appearance at the
evidentiary hearing in support of their respective claims, therefore, the Referee
cannot recommend confirmation of a water right under any of the claims.

REPORT OF REFEREE

Re: Subbasin No. 7

1
2
3 COURT CLAIM NO. 01836 -- David T. Pearson
4 & Marguerite L. Pearson

5 David T. and Marguerite L. Pearson submitted a Statement of Claim to the Court
6 for the use of waters from Whiskey Creek, which is in Subbasin No. 9 and waters
7 delivered by the Ellensburg Water Company. Ellensburg Water Company is a major
8 claimants in this proceedings whose rights are being determined through the Major
9 Claimant Pathway identified in Pretrial Order No. 8. Water use related to the
10 water company will not be addressed through the subbasin pathway. Rights to the
11 use of waters from Whiskey Creek will be addressed in the Report of Referee for
12 Subbasin No. 9. Therefore, the Referee does not recommend confirmation of a water
13 right in Subbasin No. 7 under Court Claim No. 01836.

14 COURT CLAIM NO. 02261 -- David Pethia
15 (A)03072 Charles Lyon
16 (A)05691

17 A Statement of Claim was filed by David Pethia for the use of several water
18 sources originating in Subbasin No. 7. On October 8, 1990, Charles Lyon was joined
19 as an additional party to this claim. The claimants were represented by the late
20 Randall Ommen, attorney. Testifying at the evidentiary hearing were Charles Lyon,
21 trustee for a prior owner of the land; David Pethia, the current landowner; Mark
22 Greene, who leases the property; and Richard C. Bain, a consultant hired by the
23 claimants.

24 The claimant's property lies in the E $\frac{1}{2}$ of Section 28, T. 18 N., R. 18 E.W.M.
25 lying north of Highway 10. Of the 243 total acres owned, 213.8 acres are irrigated

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 with waters delivered by the Ellensburg Water Company and Olson Ditch or diverted
2 from Reecer Creek, Currier Creek, an unnamed spring and field drains. The
3 predominant crop is timothy hay. Ellensburg Water Company is a major claimant in
4 this proceedings, whose rights will be determined through the major claimant
5 pathway. Olson Ditch Company has filed a separate claim in Subbasin No. 7 and the
6 claimants are relying on that claim to protect any rights they may have through the
7 ditch company. Therefore, the only rights that will be addressed under this claim
8 is to waters diverted from Reecer Creek, Currier Creek, the unnamed spring and the
9 field drains.

10 According to Mr. Greene's testimony, fields 6 and 7, totaling 56 acres, are
11 partly irrigated with water diverted from Reecer Creek. Water from the Olson Ditch
12 is discharged into Reecer Creek and diverted to irrigate these two fields. Mr.
13 Bain testified that 2.98 cubic feet per second is diverted to irrigate field 6 and
14 that 9.9 acre-feet per year per acre is used to irrigate this field. These
15 quantities include the water delivered from Olson Ditch. None of the witnesses
16 were able to testify to how much Reecer Creek water is used. Fields 6 and 7 lie in
17 that portion of the E $\frac{1}{2}$ of Section 28 west of Reecer Creek, north of State Highway
18 10 and south of Dry Creek Road. Mr. Bain presented evidence of average water use
19 on the entire farm from all the sources utilized; however, the only evidence
20 specific to Reecer Creek and the fields irrigated from Reecer Creek was that
21 presented for Field 6.

22 There are several drains located in the fields that capture return flows from
23 the fields and discharge the flows into Reecer Creek. They can then be diverted
24 and used on Fields 6 and 7. The flows in these drains were not quantified. The

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 testimony leads the Referee to conclude that the landowner is capturing and reusing
2 his own water, which does not require a right beyond that established for the
3 original diversion, as long as the water is not being used to irrigate additional
4 acreage beyond that irrigated under the original appropriation.

5 Water diverted from Currier Creek is used to irrigate field 8, which is 45
6 acres in size. Field 8 lies in that part of the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 28 lying east of
7 Reecer Creek, north of State Highway 10 and south of Dry Creek Road. Mr. Bain
8 testified that 2.22 cubic feet per second is used from Currier Creek and the Town
9 Ditch to irrigate this field and that 14.4 acre-feet per year per acre irrigated is
10 used. Again there was no testimony to distinguish between water delivered from the
11 Town Ditch and water diverted from Currier Creek.

12 The testimony indicates that livestock raised on the property drink directly
13 from Reecer Creek, Currier Creek and the field drains. This type of
14 non-diversionary stock watering is covered by the stock water stipulation discussed
15 on Page 4 of this report and no additional right will be recommended. The only
16 diversionary stock watering is from an unnamed spring to stock pens located near
17 the farmstead. A maximum of 20 head can be kept in the pens, which would require
18 approximately one acre-foot per year.

19 Two claims were filed by Grant Monfort a prior owner of the property pursuant
20 to RCW 90.14. Water Right Claim No. 096873 claimed a right to divert 4 cubic feet
21 per second, 200 acre-feet per year from Spring Creek for the irrigation of 50 acres
22 and stock water in the S $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28, T. 18 N., R. 18 E.W.M. The
23 testimony indicates that the Spring Creek referred to is Reecer Creek. The
24 diversion locations described on the water right claim are near the points where

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 the claimants currently divert from Reecer Creek. Water Right Claim No. 096872
2 describes a right to divert 0.02 cubic foot per second, 2 acre-feet per year from a
3 spring for domestic supply for two houses and stock watering in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
4 Section 28, T. 18 N., R. 18 E.W.M. According to the testimony, this spring is used
5 for domestic lawn irrigation and water stock kept in a pen at the homestead. It
6 was the witnesses belief that this spring has been used for this purpose since the
7 land was settled in the 1880's. There is nothing in the record to show that a
8 claim was filed pursuant to RCW 90.14 for use of waters diverted from Currier
9 Creek. Failure to file a claim waives and relinquishes any right that may have
10 existed, RCW 90.14.071.

11 The record shows that this land was settled prior to May 16, 1882, by Daniel
12 F. Shaser and Samuel Snyder. On May 16, 1882, Daniel F. Shaser conveyed to A.
13 Clemen the W $\frac{1}{2}$ NE $\frac{1}{4}$, the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and a portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 and Samuel
14 Snyder conveyed to A. Clements the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 18. Patents issued for the
15 land on July 28, 1891, but the land had been occupied at least nine years at the
16 time the patents issued. Reecer Creek, Currier Creek and the unnamed spring are
17 all riparian to the E $\frac{1}{2}$ of Section 28. Riparian rights are initiated at the time
18 steps are first taken to separate land from Federal ownership, which generally is
19 occupation of the land. In order for a right to exist under the Riparian Doctrine,
20 water must be used prior to December 31, 1932. The witnesses testified to their
21 belief that the land had been irrigated since it was settled. An affidavit
22 submitted by Spencer D. Short attests to his knowledge of the land being irrigated
23 at the time his father acquired joint interest in the property in 1931. The State
24 objected to the evidence being submitted in affidavit form, primarily due to other
25

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 claimants not having access to the witness. The information presented in the
2 affidavit is the only definitive evidence of irrigation during the time period
3 necessary for establishment of a water right.

4 Based on the testimony and evidence presented at the hearing, the Referee
5 recommends that a right be confirmed under Court Claim No. 02261 under the Riparian
6 Doctrine with a May 16, 1882, date of priority for the diversion of 2.98 cubic feet
7 per second, 554.4 acre-feet per year from Reecer Creek for the irrigation of 56
8 acres and the diversion of 0.02 cubic foot per second, 2 acre-feet per year from an
9 unnamed spring for domestic irrigation of one-half acre and stock watering. The
10 right for Reecer Creek shall carry the provision that this is the maximum quantity
11 that can be used on this land under this right and any right the land may enjoy
12 through the Olson Ditch Company.

13
14 COURT CLAIM NO. 00866 -- Gerald E. Platt, et al.
15 Ron Voshall
Sarah Nickel

16 A Statement of Claim was filed by Edith Courson for the use of waters from the
17 Ellensburg Water Company Town Ditch, Lyle Creek, and an unnamed spring. On
18 January 10, 1989, Sarah Nickel, Ronald Voshall and Jerry Platt were substituted for
19 Ms. Courson. Lyle Creek and the unnamed spring lie in Subbasin No. 9,
20 Wilson-Naneum, and a determination of the rights to use that water will be made
21 through the hearing and Report of Referee for that subbasin. Ellensburg Water
22 Company is a major claimant in this proceeding, whose rights will be determined
23 through the Major Claimant Pathway identified in Pre-trial Order No. 8. Therefore,

24
25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 the Referee does not recommend confirmation of any water rights under Court Claim
2 No. 00866 in this subbasin.
3

4 COURT CLAIM NO. 04857 -- Johanna Rawson

5 A Statement of Claim was submitted to the Court by Donald R. and Maydee M.
6 Erickson. On October 10, 1990, Johanna Rawson was substituted for the Ericksons on
7 the claim. Ms. Rawson is represented by Attorney James Hurson. Donald Erickson
8 and Ms. Rawson testified at the evidentiary hearings in support of the claim.

9 Ms. Rawson is asserting a right to use waters from Dry Creek and two streams
10 emanating from an unnamed spring for irrigation of 22 acres and stock water. Since
11 the Ericksons acquired the property in 1980 it has been flood irrigated solely from
12 the spring fed streams. Prior to that, water had been pumped from Dry Creek to
13 irrigate the fields. The land is used for pasture to raise livestock. Between 50
14 and 100 head of cattle are raised and drink directly from the streams, which is a
15 non-diversionary stock water use covered by the stock water stipulation discussed
16 on Page 4 of this report.

17 As a previous owner of this property, William T. Dikeman filed four water
18 right claims pursuant to the requirements of RCW 90.14. These claims assert right
19 to divert water from Dry Creek, an unnamed creek and two springs for irrigation and
20 stock watering. The claimed date of first water use is April of 1890. Both Mr.
21 Erickson and Ms. Rawson testified that they believe this is the date that the area
22 was settled and farming began. They believe the subject land would have been
23 settled and farmed at about that time. Conversations with Mr. Dikeman and other

24
25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 neighboring landowners lead to the understanding that the land has been used in the
2 past for raising sheep.

3 Ms. Rawson submitted into the record a chain of title for the property and a
4 copy of the patent that issued to Mae Inez Smith on September 26, 1949. In light
5 of the fact that this land did not leave Federal ownership until 1949, the Referee
6 does not believe that one can assume that development and irrigation of land
7 occurred in 1890 as asserted by the claimant without some evidence to support that
8 assertion. In order to confirm a water right under the Prior Appropriation
9 Doctrine there must be evidence to show that water was appropriated and used to
10 irrigate this property prior to June 6, 1917, when the State's Surface Water Code
11 was adopted.

12 Based on the foregoing, the Referee cannot recommend that a right be confirmed
13 to Johanna Rawson under Court Claim No. 04857.

14
15 COURT CLAIM NO. 01236 -- Gayle V. Redd
16 & Karen K. Redd

17 A Statement of Claim was submitted by N. N. Eaton and Sons for the use of
18 waters from Naneum Creek, an unnamed drain ditch, Bull Ditch, and an unnamed
19 spring. On March 1, 1991, Gayle V. and Karen K. Redd were substituted for N. N.
20 Eaton and Sons. The diversions for all of the claimed sources, except Bull Ditch,
21 lie in Subbasin No. 9, Wilson-Naneum. Bull Ditch diverts from the Yakima River in
22 Subbasin No. 7, but the place of use for the lands served by the ditch all lie in
23 Subbasin No. 9. It was determined claims for the use of water delivered by Bull
24 Ditch would be made in that subbasin. Bull Ditch Company has filed a claim on

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 behalf of its patrons. The determination of rights to use those waters will be
2 made through the hearing and Report of Referee for Subbasin No. 9. Therefore, a
3 right is not recommended for confirmation in this subbasin.

4

5 COURT CLAIM NO. 01419 -- James E. Roan
6 & Lucille M. Roan

7 James E. and Lucille M. Roan submitted a Statement of Claim to the Court. Mr.
8 Roan is now deceased and at the time of the evidentiary hearing the Roan's son, J.
9 P. Roan was in the process of obtaining title to the land owned by his parents.
10 There has been no paperwork filed substituting J. P. Roan for his parents on the
11 claim. The Roans are represented by Attorney Richard T. Cole. J. P. Roan and Jack
12 White, whose family has lived in the area since the 1920's, testified at the
13 hearing.

14 The Roans are claiming rights to divert water from Reecer Creek and Jones
15 Creek for irrigation and stock watering. They are also claiming a right to use
16 waters from First Creek, which is located in Subbasin No. 4, Swauk. The rights to
17 the use of that water will be determined through the hearing and Report of Referee
18 for Subbasin No. 4. According to the testimony, approximately 800 acres are
19 irrigated from the claimed sources.

20 The Roans' property lies in the SE $\frac{1}{4}$ of Section 17, the NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of
21 Section 20 and all of Section 21, T. 19 N., R. 18 E.W.M. They are claiming a right
22 to irrigate between 110 and 200 acres with waters diverted from Reecer Creek. The
23 number of acres irrigated from Reecer Creek varies depending on the quantity of
24 water available in the creek. Water is diverted from the creek near the southeast

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, near the northwest corner of Section 21, and in
2 three other locations as Reecer Creek traverses Section 21. Livestock grazing on
3 the land drink directly from Reecer Creek and an unnamed, undeveloped spring in the
4 NW $\frac{1}{4}$ of Section 21. Approximately 150 cow/calf pairs are raised each year. Water
5 from both First Creek and Reecer Creek is used to fill a pond located in the W $\frac{1}{2}$ NE $\frac{1}{4}$
6 of Section 20. Water is then pumped from the pond for irrigation and stock water
7 on lands in the SE $\frac{1}{4}$ of Section 20.

8 Mr. Roan is basing his claim to rights from Reecer Creek on two Affidavit of
9 Water Rights filed by Walter J. Robbins and the decree entered in the case of
10 Hanson v. McIntire, et al., supra. The affidavits claimed rights to divert water
11 from Reecer Creek for use in the SE $\frac{1}{4}$ of Section 17 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of
12 Section 20. According to the Robbins' affidavits, a ditch was constructed
13 beginning in the spring of 1879 and used to irrigate 50 acres of land in the SE $\frac{1}{4}$ of
14 Section 17. That ditch was replaced in 1886. In 1884 a ditch was constructed from
15 a branch of the West Fork of Reecer Creek, also known as W. J. Robbins Creek to
16 irrigate his land in Sections 17 and 20. A predecessor owner of the Roan property,
17 W. J. and Ida S. Robbins, were parties to Hanson v. McIntire, et al., supra. and
18 the decree confirmed a right to the Robbins for the use of 30 inches of water from
19 Reecer Creek (0.75 cubic foot per second) for the irrigation of 60 acres in the
20 W $\frac{1}{2}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20, T. 19 N., R. 18 E.W.M.

21 Although the State's Map, Exhibit SE-1, only shows irrigation within the Roan
22 property in Section 21 along Reecer Creek, an aerial photograph entered as an
23 exhibit shows irrigated land in Section 20 lying in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$. The
24 Referee concludes the extent of the water right from Reecer Creek in 1906 was 0.75

25 REPORT OF REFEREE

26 Re: Subbasin No. 7

1 cubic foot per second for the irrigation of 60 acres in the W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 20. The
2 claimants have not presented anything to show that additional rights were
3 established after 1906. It appears that approximately 60 acres are irrigated in
4 that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20 lying west of the ditch that exits the
5 pond. The claimants are asserting a priority date of May 7, 1878, which apparently
6 is based on the date they settled on land in the SE $\frac{1}{4}$ of Section 17. The land in
7 Section 20 is not riparian to Reecer Creek; therefore, the date of priority would
8 be the day of first water appropriation. The record shows that they first began
9 appropriating water from Reecer Creek for use in the SE $\frac{1}{4}$ of Section 17 in 1879 and
10 that right transferred to Section 20 prior to entry of the Hanson decree in 1906.
11 The right recognized in the Hanson, decree would bear a priority date of 1879.

12 Water Right Claim No. 144595 was filed by James E. Roan asserting a right to
13 divert 0.75 cubic foot per second, 90 acre-feet per year from Reecer Creek to
14 irrigate lands in the W $\frac{1}{2}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20.

15 Mr. Roan did not testify to the annual quantity of water he uses to raise his
16 crops. He asserted a right to use 800 acre-feet per year from Reecer Creek and
17 Jones Creek. The 1906 decree awarded 0.75 cubic foot per second for use on 60
18 acres. Assuming that the 0.75 cubic foot per second is diverted continuously
19 during a normal 180 day irrigation season, 267.3 acre-feet per year could be
20 withdrawn. The Findings of Fact that preceded the decree in Hanson stated the flow
21 in Reecer Creek declines after July 1. Several water rights stemming from that
22 decree are senior to the one awarded for the Roan property, which would contribute
23 to water potentially not being available the entire irrigation season. However,
24 the availability of water from the creek will vary each year according to the

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 weather patterns. The Referee intends to authorize a full season of water use,
2 recognizing that in many years water will not be available to the claimant the
3 entire season.

4 Water from Jones Creek is used to irrigate 55 to 60 acres in the S $\frac{1}{2}$ of
5 Section 21. According to Mr. Roan's testimony, water from Jones Creek is diverted
6 from the creek at two points in the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 9 and the NE $\frac{1}{4}$ of Section 16 and
7 carried in a ditch into Section 21 where it is dumped into the ditch coming from
8 First Creek. A third diversion from Jones Creek is located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
9 Section 21. Water is only available from Jones Creek approximately 90 days early
10 in the irrigation season before the creek is essentially dry. Mr. Roan did not
11 know when water from Jones Creek was first used for irrigation. Jack White also
12 was not familiar with historical water use from Jones Creek. Use of this water is
13 not clearly mentioned in the Hanson v. McIntire. The Affidavits of Water Right
14 filed by Robbins in 1890 also did not mention use of water from Jones Creek. The
15 Hanson Findings of Fact did mention that some of the Robbins land was served by an
16 East Branch of Reecer Creek, but those rights were not quantified. Another
17 claimant in this proceeding, Dick Van de Graaf, presented evidence that lead the
18 Referee to believe that this East Branch might be what is now referred to as Jones
19 Creek.

20 Water Right Claim No. 144596 was filed by James E. Roan pursuant to RCW 90.14
21 asserting a right to use the Robbins Branch of Reecer Creek through the SW $\frac{1}{4}$ of 21
22 and Section 9 to irrigate lands in the N $\frac{1}{2}$ of Section 21 and provide stock water.
23 The place of water use identified on the water right claim is different than where
24 Jones Creek water is being used. If this water right claim was intended to assert

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 a right for Jones Creek, that discrepancy must be explained. Additionally, the
2 Referee needs additional information in order to conclude there has been historic
3 water use from Jones Creek. Mr. White, who has lived in the area for a number of
4 years was not aware of water use from Jones Creek.

5 Due to the deficiencies identified, the Referee cannot recommend confirmation
6 of a water right for use of Jones Creek. However, it is recommended that a right
7 be confirmed under the Prior Appropriation Doctrine with a June 30, 1879, date of
8 priority for the diversion of 0.75 cubic foot per second, 267.3 acre-feet per year
9 for the irrigation of 60 acres. The authorized place of use shall be that portion
10 of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20 lying west of the ditch that exits the pond lying in the
11 SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20. The non-diversionary stock water use testified to by Mr.
12 Roan is covered by the stock water stipulation discussed on Page 4 of this report
13 and no additional right will be confirmed for that use.

14 Due to the intermixing of the water diverted from First Creek and that
15 diverted from Reecer Creek, some of the irrigation not herein authorized may be
16 with waters diverted from First Creek. The claimants attention is directed to the
17 Report of Referee for Subbasin No. 4 when it issues.

18
19 COURT CLAIM NO. 00515 -- Arnulfo Rodriguez
20 & Gloria Rodriguez
21 Ronald Wilcox
22 & Carilyn Wilcox

23 COURT CLAIM NO. 00622 -- Jesse B. Days
24 & Susan B. Days

25 Court Claim No. 00515 was originally filed by Edythe Days asserting a right to
26 use waters from the Yakima River for irrigation and stock water. On February 10,
27

REPORT OF REFEREE
Re: Subbasin No. 7

1 1994, Arnulfo and Gloria Rodriguez were substituted for Ms. Days on the claim and
2 on April 7, 1994, Ronald and Carolyn Wilcox were joined to the claim. Court Claim
3 No. 00622 was filed by Jesse B. and Susan B. Days for the use of waters from the
4 Yakima River for irrigation and stock water. Jesse Days, Edythe Days' son,
5 testified at the evidentiary hearing in support of both claims.

6 At the time of the evidentiary hearing, the property described in the two
7 court claims was farmed together and consisted of that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
8 Section 19, T. 18 N., R. 18 E.W.M. lying east of Interstate 90. Jesse and Susan
9 Days own the south 300 feet of that subdivision and Edythe Days owned the
10 remainder. She has since sold 5.97 acres of land to Arnulfo and Gloria Rodriguez
11 and 7.26 acres and her residence to Ronald and Carolyn Wilcox.

12 According to Mr. Days testimony, approximately ten acres of the property
13 previously owned by his mother and 2.5 acres he and his wife own is irrigated with
14 waters from the Yakima River carried through the Peter Wold Ditch. Up to 13 head
15 of livestock have been raised on the property and drink from the Wold Ditch during
16 irrigation season. Stock water in the winter is provided by their domestic wells.
17 A 2 BHP pump withdraws water from the ditch into a sprinkler system that is used to
18 irrigate both parcels. A 1 BHP pump is used to withdraw water to irrigate the lawn
19 around Edythe Days' house.

20 The Northern Pacific Railroad Company received a patent from the Federal
21 Government that included the land described in both claims. On February 11, 1893,
22 the railroad sold the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, along with other land, to William
23 McCutcheon. The Days submitted a chain of title for the property through 1937.

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25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Mr. Days testified that he is aware of the land being farmed since 1935 or 1940
2 when his grandfather owned land in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19.

3 The Days are basing their claim to a water right on three historical
4 documents. The first is a Deed of Right of Way between Peter A. and Samantha M.
5 Wold and Levi Farnsworth, James Dysart, and John A. Shoudy. The deed gave
6 Farnsworth, et al. a right-of-way for the construction of a ditch to carry water
7 away from a flour and saw mill. The right-of-way was over land owned by Peter and
8 Samantha Wold in Section 20, T. 18 N., R. 18 E.W.M. The deed does not indicate
9 where the ditch would run other than across the Wold property and it does not
10 indicate the Wolds have a right to use, or are using, any water from the ditch.
11 Olson Ditch Company is claiming the right established by the Notice of
12 Appropriation filed by Levi Farnsworth, et al. is the genesis of the ditch
13 company's water right. The documents submitted by the ditch company support this
14 assertion. The Days also submitted an Agreement and a Notice of Appropriation
15 dated April 7, 1891, between Martin Mason, Jacob Cleman, Christian Holm and Peter
16 Wold for the construction of an irrigation canal to be owned and maintained by
17 those four individuals. Each would be entitled to one-fourth of the water diverted
18 into the canal for irrigation purposes.

19 There is nothing in the record to show that the Days property was once owned
20 by any of the parties to the Agreement and Notice of Appropriation. Documents
21 submitted by other parties have lead the Referee to conclude that the ditch
22 currently referred to as the Peter Wold Ditch was once called the Abbott Crandall
23 Ditch, which was constructed to serve lands in Section 18 T. 18 N., R. 18 E.W.M.
24 There has been nothing entered in the record to show when the ditch was extended

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 into Section 19 and those lands first irrigated. In order for there to a water
2 right under the Prior Appropriation Doctrine associated with this land, there must
3 be evidence that water was appropriated prior to June 6, 1917. Prior to
4 construction of Interstate 90 it appears this land was riparian to the Yakima
5 River. Since the land separated from Federal ownership prior to June 6, 1917, a
6 right could have been established under the Riparian Doctrine if water was used
7 prior to December 31, 1932.

8 Lloyd Days filed Water Right Claim No. 143458 pursuant to the requirements of
9 RCW 90.14 claiming a right to irrigate 16.18 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19 with
10 waters from the Yakima River.

11 Due to the lack of evidence to show that a water right was established for the
12 Days property under either the Prior Appropriation Doctrine or the Riparian
13 Doctrine, the Referee cannot recommend that a water right be confirmed under Court
14 Claims No. 00622 and 00515.

15
16 COURT CLAIM NO. 01330 -- George Rominger

17 Maynard and Deloris Linder filed a Statement of Claim with the Court for use
18 of waters from the Yakima River via Olson Ditch and three unnamed springs. The
19 Linders were represented by Attorney Ken Beckley, who at the evidentiary hearing
20 stated they intend to rely on the presentation of the claim filed by Olson Ditch
21 Company. The Linders did not appear and present testimony in support of this
22 claim. The Olson Ditch Company claim would cover the Linders claim to water from
23 the Yakima River, but not the unnamed springs. However, review of the claim leads
24 the Referee to suspect the use of water from the springs is for non-diversionary

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 stock watering, which is covered by the stock water stipulation discussed on Page 4
2 of this report. On October 13, 1994, George Rominger was substituted for the
3 Linders on this claim. The Referee does not recommend confirmation of a water
4 right under Court Claim No. 01330. Mr. Rominger should refer to the Olson Ditch
5 Company claim on Page 180 of this report.

6

7 COURT CLAIM NO. 01444 -- Schaake Packing Company

8 Schaake Packing Company submitted a Claim to the Court for the use of waters
9 from the Yakima River, Mercer Creek and Wilson Creek. Mercer Creek and Wilson
10 Creek are located in Subbasin No. 9, Wilson-Naneum, and claims for that water will
11 be addressed in the Report of Referee for Subbasin No. 9. The claimant is
12 represented by Attorney John P. Gilreath and Paul J. Weaver, a Schaake Packing
13 Company employee, testified at the evidentiary hearing.

14 The claimant is asserting a right to divert 4 cubic feet per second from the
15 Yakima River for the irrigation of 55 acres and stock water for 250 head of cattle.
16 The cattle drink from the irrigation laterals during the irrigation season.
17 According to the testimony, irrigation season is from April 1 to October 15 and
18 based on the irrigation pattern 600 acre-feet is used during the season. The
19 assertion was made that if timothy hay was grown on the land, such as on
20 neighboring lands, 1,034 acre-feet per year would be needed to irrigate the land.
21 However, there was no testimony that quantity has historically been used on this
22 property. An additional 2.5 acre-feet per year is needed for stock watering. The
23 irrigated land lies in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ lying southwest of Interstate 90; the NW $\frac{1}{4}$ SE $\frac{1}{4}$

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7
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1 lying south of Interstate 90; the SE $\frac{1}{4}$ lying southwest of the irrigation ditch, all
2 in Section 11 and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 14, all in T. 17 N., R. 18 E.W.M.

3 Yakima River water is delivered to this property through a lateral from the
4 Klein, Castle, and Coble Ditch. Historically, water was diverted from the Yakima
5 River into the Klein, Castle, and Coble Ditch in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T. 17 N.,
6 R. 18 E.W.M.. However, a flood in the early 1970's damaged the headgate and
7 diversion works. In recent years Yakima River water has been diverted into the
8 Mill Ditch, spilled into Reecer Creek and rediverted into the lower reaches of the
9 Klein, Castle, and Coble Ditch. In 1990, the Court signed an Order Pendente Lite
10 allowing the diversion point for the Klein, Castle, and Coble Ditch to be changed
11 to the Mill Ditch diversion. The Court also directed that an application for
12 change be filed with the Department of Ecology in compliance with RCW 90.03.380.

13 The claimants are asserting their water rights stem from the appropriation by
14 Klein, Castle, and Coble in 1884. There is no evidence in the record that the land
15 now owned by Schaake Packing Company was owned by any of the parties to that
16 appropriation. Two deeds in the record appear to document conveyance of land along
17 with a portion of the water right established by that appropriation. In 1902, J.
18 Kinney conveyed to W. F. Doughty the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M.
19 together with water rights and water ditches appurtenant to the described land,
20 said water right being 832 inches of water out of the Klein, Castle and Coble
21 Ditch. In 1919, Doughty conveyed to Park B. Hanks the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and the
22 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, together will 832 inches of water from the Klein, Castle and
23 Coble Ditch. However, the claimant has presented nothing to show that J. Kinney
24 acquired any interest in the Klein, Castle and Coble water right.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 It appears that a right is being asserted under the Riparian Doctrine for this
2 land. It is true that the Schaake Packing Company land is now riparian to the
3 Yakima River, this was not the case when title passed to private ownership. The
4 record shows that the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11, which is riparian to the Yakima River,
5 was not owned by the same person as the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11. Land cannot acquire
6 riparian rights simply by joining with a riparian parcel. The land must be
7 riparian at the time it separates from Federal ownership.

8 Pursuant to the requirements of RCW 90.14, Schaake Packing Company filed Water
9 Right Claim No. 119373 asserting a right to divert 8 cubic feet per second from the
10 Yakima River for the irrigation of 213 acres, stock water and feedlot operations.
11 The water right claim appears to describe the entire Schaake Packing Company
12 ownership. According to the testimony, a claim is not being asserted in this
13 proceeding for a right to use water for the feedlot operations. Wells are used for
14 this purpose.

15 The Referee concludes that there has been insufficient evidence presented to
16 show that a right was established under the Prior Appropriation Doctrine for the
17 Schaake land. Evidence of the transfer of a portion of the Klein, Castle, Coble
18 water right to the Schaake property, or some other basis for establishment of a
19 water right is needed in order to recommend confirmation of a water right.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

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2 COURT CLAIM NO. 01447 -- Nicholas Schmitt, Jr.
3 & Janet C. Schmitt
4 Nelson - Gelbvieh Ranch

5 A Statement of Claim was filed with the Court by Nicholas Schmitt, Jr. and
6 Janet C. Schmitt for the use of waters from Reecer Creek and Jones/Thomas Creek.
7 On August 6, 1990, Nelson Gelbvieh Ranch was joined to the claim. Nelson Gelbvieh
8 Ranch is represented by Attorney Richard T. Cole and Chuck Martin, an employee of
9 the ranch, testified at the evidentiary hearing.

10 Nelson Gelbvieh Ranch owns approximately 700 acres in Sections 27 and 28,
11 T. 19 N., R. 18 E.W.M. Within that area, 150 acres of hay and 167 acres of pasture
12 are irrigated with waters diverted from Reecer Creek and Jones Creek, for a total
13 of 317 acres. Water is diverted from Reecer Creek in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 and
14 the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28 and from Jones Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 and
15 the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28 into earthen ditches and the land is flood irrigated.
16 Livestock raised on the land drink directly from the creeks and the irrigation
17 ditches. Four hundred cow/calf pairs and 100 yearlings are kept on the property.
18 Mr. Martin estimated an annual water need of 50 acre-feet per year for stock
19 watering. This estimate would include the non-diversionary stock watering from the
20 creeks, which is covered by the stock water stipulation discussed on Page 4 of this
21 report. The record does not reflect whether livestock are kept in both sections.
22 The Referee, therefore, will allocate half of the claimed quantity for stock
23 watering to each section. Additionally, both Jones Creek and Reecer Creek flow
24 through Section 28, and the livestock would have access to those creeks. Of the 25
25

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 acre-feet per year that might be used for stock watering in Section 28, half of
2 that, or 12.5 acre-feet per year, will be assumed to be non-diversionary in nature.

3 According to the State's Investigation Report, an earthen ditch beginning in
4 the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 connects Reecer Creek to Jones Creek above the claimants
5 diversions from Jones Creek. The claimant is asserting a right to water from Jones
6 Creek, however, the water diverted is a mix of Reecer Creek water discharged from
7 the ditch into Jones Creek and Jones Creek water.

8 The claimants are basing their right on a Statement of Claim of Water Right
9 filed by William Thomas on June 1, 1890. That statement indicates that William
10 Thomas owned the N $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 28, T. 19 N., R. 18 E.W.M. and that he
11 claimed all the water flowing in a ditch diverting from Reecer Creek from a point
12 in Section 21 and running southeasterly through the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28 into
13 Thomas Creek. He stated that he appropriated the water on May 1, 1874, and that he
14 diverts 200 inches of water and proposes to irrigate 100 acres.

15 The Kittitas County Superior Court case Hanson v. McIntire, et.al., confirms
16 much of the information contained in the Thomas Statement of Claim. That case
17 resulted in the determination of the relative rights of the parties to use water
18 from Reecer Creek. William Thomas' widow, F. O. Thomas, was a party to that case,
19 as were other predecessor owners to portions of the claimant's land. The findings
20 of fact that preceded the decree identified the number of acres being irrigated at
21 that time and the quantity of water being diverted to irrigate those acres. That
22 quantity of water carried forward into the decree, and although the acreage did not
23 also carry forward to the decree, it is apparent to the Referee that acreage

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 represents the extent of development at that time. The following rights of use of
2 water from Reecer Creek were awarded to lands now owned by Nelson Gelbvieh Ranch:

3 A Class B right, which would have a priority date of 1873, for 33 inches of
4 water, or 0.825 cubic foot per second, for the irrigation of 60 acres in the N $\frac{1}{2}$ NE $\frac{1}{4}$
5 of Section 28. A Class C right, which would have a priority date of 1877 for 30
6 inches, or 0.75 cubic foot per second, for the irrigation of 60 acres in the S $\frac{1}{2}$ NE $\frac{1}{4}$
7 of Section 28. (There is a ten acre parcel in the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28 that is not
8 owned by the claimant; the owner of that land is not a defendant in this
9 proceeding.) A Class D right, which would have a priority date of May 1, 1878, for
10 the diversion of 40 inches, or 1.0 cubic foot per second, for the irrigation of 80
11 acres in the SE $\frac{1}{4}$ of Section 28. A Class F right, which would have a priority date
12 of 1881, for the diversion of 33 inches, or 0.825 cubic foot per second, for the
13 irrigation of 65 acres in the NW $\frac{1}{4}$ of Section 27. A total of 3.40 cubic feet per
14 second was awarded for the irrigation of 265 acres within the area now owned by
15 Nelson Gelbvieh Ranch.

16 The Findings of Fact discusses the existence of an East Fork and West Fork of
17 Reecer Creek and side channel tributaries to each of the forks. The information in
18 the findings of fact and documents in the record from the presentation of Dick Van
19 de Graaf's claim downstream on Jones Creek, leads the Referee to believe Jones
20 Creek may be what was referred to as the East Fork of Reecer Creek. The Findings
21 of Fact lists several defendants in Hanson v. McIntire who are using water from the
22 East Fork of Reecer Creek, but Thomas is not listed.

23 Three water right claims were filed pursuant to RCW 90.14 by prior owners of
24 the claimant's property. Water Right Claim No. 026110 asserted a right to divert

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 0.875 cubic foot per second, 220 acre-feet per year from Reecer Creek for the
2 irrigation of 250 acres in the N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ of Section 27; NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$,
3 N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, all in T. 19 N., R. 18 E.W.M. Water Right Claim
4 No. 026111 asserted a right to divert 0.825 cubic foot per second, 185 acre-feet
5 per year from Reecer Creek for the irrigation of 250 acres in the area as described
6 on Claim No. 026110. Water Right Claim No. 119872 asserted a right to divert 1
7 cubic foot per second, 630 acre-feet per year from Reecer Creek for the irrigation
8 of 80 acres in the SE $\frac{1}{4}$ of Section 28, T. 19 N., R. 18 E.W.M. The quantities of
9 water claimed are consistent with the quantities awarded to F. O. Thomas in the
10 1905 decree. The points of diversion identified on the RCW 90.14 claims are all on
11 Reecer Creek itself and two of the points are currently being used. As far as the
12 Referee can determine, there were no RCW 90.14 claims filed for Jones Creek.

13 The evidence in the record supports the establishment of water rights to use
14 water from Reecer Creek, but there is no evidence of the establishment of rights to
15 use water from Jones Creek, nor is there a RCW 90.14 claim filed for Jones Creek.

16 Review of the State's Exhibit Map, SE-2, shows that the current irrigation
17 practice has changed from that occurring in 1905. Within the N $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$ of
18 Section 28, 60 acres were being irrigated in 1905, presently approximately 70 acres
19 are irrigated within the N $\frac{1}{2}$ NE $\frac{1}{4}$; within the SE $\frac{1}{4}$ of Section 28, 80 acres were being
20 irrigated in 1905, presently approximately 60 acres are irrigated; in 1905 60 acres
21 were being irrigated in the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28 and that reflects the current
22 practice; within the NW $\frac{1}{4}$ of Section 27, 65 acres were being irrigated in 1905 and
23 approximately 127 acres are being irrigated today. Within Section 28 there seems
24 to have been some transfer of the water right, so more land is being irrigated in

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 the NE $\frac{1}{4}$. The record does not reflect when this occurred. Since there is no
2 evidence the transfer occurred after 1917, the Referee will assume compliance with
3 RCW 90.03.380 was not necessary. There are ten acres irrigated in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of
4 Section 28 that are in excess of the 1905 use and there are 20 less acres irrigated
5 in the SE $\frac{1}{4}$ of Section 28 than in 1905. The 10 additional acres in the N $\frac{1}{2}$ NE $\frac{1}{4}$ shall
6 bear the same date of priority, May 1, 1878, as the lands in the SE $\frac{1}{4}$ of Section 28.
7 Since there is nothing in the record to distinguish those ten acres, the Referee
8 will identify them as being the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ and if that is not acceptable to the
9 claimant, exception can be taken. There also is nothing in the record to indicate
10 that additional rights were established for the NW $\frac{1}{4}$ of Section 27 after the 1905
11 decree was entered.

12 The claimants are asserting a right to divert 2 cubic feet per second, 750
13 acre-feet per year. In order to withdraw 750 acre-feet from the creek at the
14 instantaneous rate of 2 cubic feet per second, that quantity would have to be
15 diverted for 190 continuous days during the irrigation season. Mr. Martin
16 testified that creek water generally is not available after July and irrigation
17 begins late in March or early April depending on the weather. The Referee
18 recognizes that the prevailing weather conditions will govern how late into the
19 irrigation season creek water is available. A right has been established and there
20 has been continued beneficial use of 2 cubic feet per second whenever that quantity
21 is available in Reecer Creek during irrigation season. The claimant must realize
22 that although a right may exist for the diversion of up to 750 acre-feet per year,
23 that quantity will rarely be available.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

The Referee recommends confirmation of water rights for the use of water from Reecer Creek as follows:

Under the Riparian Doctrine, with a priority date of June 30, 1873, 0.825 cubic foot per second, 169.8 acre-feet per year for the irrigation of 60 acres and 4 acre-feet per year for stock water in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28, T. 19 N., R. 18 E.W.M.; under the Riparian Doctrine, with a priority date of June 14, 1877, a right to divert 0.75 cubic foot per second, 169.8 acre-feet per year for the irrigation of 60 acres and 4 acre-feet per year for stock water in the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28, T. 19 N., R. 18 E.W.M.; under the Riparian Doctrine, with a priority date of May 1, 1878, 1 cubic foot per second, 198.1 acre-feet per year for the irrigation of 60 acres and 4 acre-feet per year for stock water in that portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28 lying north of the Kittitas Reclamation District canal and east of Reecer Creek and 10 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 19 N., R. 18 E.W.M.; under the Prior Appropriation Doctrine, with a June 30, 1881, date of priority, 0.825 cubic foot per second, 183.95 acre-feet per year for the irrigation of 65 acres and 25 acre-feet per year for stock water in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27, T. 19 N., R. 18 E.W.M.

COURT CLAIM NO. 01942 -- Schober Brothers
Jess Schober
& Barbara Schober

A Statement of Claim was filed by Schober Brothers for the use of several surface water sources in the Yakima River Basin, including use of waters from spring-fed ponds and unnamed springs within Subbasin No. 7. Keith Schober, who is represented by Attorney Richard T. Cole, testified in support of the claim.

REPORT OF REFEREE
Re: Subbasin No. 7

1 According to Mr. Schober, the partnership has dissolved and he is now the owner of
2 the lands described in Court Claim No. 01942, however, the necessary paperwork has
3 not been filed to transfer the claim to Mr. Schober.

4 A right is being asserted for non-diversionary stock water supply from three
5 ponds on the claimant's land. The property lies in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, & E $\frac{1}{2}$ SW $\frac{1}{4}$ of
6 Section 22; the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28 east of the Highline Canal; the E $\frac{1}{2}$ and that
7 portion of the W $\frac{1}{2}$ of Section 27 east of the Highline Canal, and that portion of the
8 NE $\frac{1}{4}$ of Section 34 lying east of the Yakima River, all in T. 19 N., R. 17 E.W.M.

9 Two ponds in Section 22 accumulate water from Hayward Canyon and are fed by an
10 unnamed spring and the ephemeral creek located in the canyon. A priority date of
11 1911 is being claimed for these sources. Livestock grazing on the adjoining
12 rangeland drink directly from the ponds. The Schobers acquired the land in
13 Section 22 in 1953 and it was Mr. Schober's understanding that the ponds were
14 constructed a couple years prior to that.

15 A third pond is located in the NE $\frac{1}{4}$ of Section 27. There is no defined stream
16 channel either entering or leaving the pond. Livestock drink directly from this
17 pond as well. The pond in Section 27 was constructed in 1965. A priority date of
18 1895 is claimed for this source. Approximately 150 pair of cattle graze on the
19 land adjoining the ponds.

20 The claimants are asserting a right to use these sources of water under the
21 non-diversionary stock water stipulation. However, the stock water stipulation was
22 intended to provide a right for the non-diversionary use of naturally occurring
23 surface water sources in the subbasin. The three sources being used by the
24 Schobers are not naturally occurring sources, as they were constructed in the

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1950's and 1960's. While the Referee recognizes that as a practical manner the livestock cannot be prevented from drinking from these sources, it would not be appropriate to confirm a right under the stock water stipulation for use of these man made sources. Therefore, the Referee does not recommend that a right be confirmed under Court Claim No. 01942.

COURT CLAIM NO. 02140 -- Arloha M. Scott
(A)05733

A Statement of Claim was submitted to the Court by Arloha M. Scott for the use of waters from Dry Creek for irrigation and stock water. On October 22, 1990, the claim was amended to add use of water from a small pond for fish propagation, irrigation and stock water. Ms. Scott is represented by Attorney Richard T. Cole. Ms. Scott, Frank Oechsner, who leases her pasture, and Richard C. Bain, Jr., a consultant hired by Ms. Scott, testified at the evidentiary hearing.

Ms. Scott owns approximately 58 acres in a portion of the SW $\frac{1}{4}$ of Section 28 lying west of State Route 97 (also known as Desmond Road). According to the testimony, approximately 40 acres are directly irrigated with water diverted from Dry Creek and carried through the Willow Ditch. Approximately 5 acres are irrigated with water carried through a spring-fed ditch to a small unnamed pond. The pond was constructed in 1967 by J. J. Wilkin. The rest of the land is subirrigated. Approximately 40 head of cow/calf pairs owned by Mr. Oechsner are raised on the property from May 1 to November 1. The livestock drink from the irrigation ditch and the unnamed pond. Mr. Bain testified that approximately 1 acre-foot would be needed for 20 head, or approximately 4 acre-feet is needed for

REPORT OF REFEREE
Re: Subbasin No. 7

1 80 head normally raised. Mr. Bain testified as to the need to divert additional
2 water in the winter to prevent icing problems in the ditch. However, the testimony
3 indicates that since at least 1965 livestock have only been raised on the property
4 during the months of May through the first of November. Use of water for stock
5 ceases before icing becomes a problem.

6 Ms. Scott is basing her claim to a water right on a Notice filed on
7 September 15, 1884, by P. Desmond claiming a right and locating a two mile ditch
8 containing 150 inches of water (3 cubic feet per second) from Indian Jim Creek
9 running southwesterly for two miles. The notice stated the ditch was to be known
10 as Willow Ditch. According to the record, Indian Jim Creek is now known as Dry
11 Creek. The record also shows that Patrick Desmond paid the balance owed for entry
12 into the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T. 18 N., R. 18 E.W.M. on November 7,
13 1887, and received a patent for that land on August 18, 1888. Ms. Scott is
14 claiming the date of priority for her right should date to at least three years
15 prior to the date in record showing Mr. Desmond paid the balance owed on the land.
16 She is assuming that Mr. Desmond would have had to occupy the land at least three
17 years prior to completing payment. While not conceding that assumption would be
18 reasonable, it would only be an appropriate means to determine the priority of a
19 water right being asserted under the Riparian Doctrine. Ms. Scott's land is not
20 riparian to Dry Creek, therefore, the Riparian Doctrine is not applicable. A right
21 was established by the filing of the notice by Mr. Desmond and the priority date of
22 that right would be September 15, 1884, the date the notice was filed. During Ms.
23 Scott's testimony she corrected the state's map exhibit to show the correct
24 location of the point of diversion from Dry Creek.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Mr. Bain measured the quantity of water diverted into Willow Ditch at 5.43
2 cubic feet per second and the quantity of water withdrawn from the ditch and used
3 to irrigate at 1.58 cubic feet per second. This indicates a 70 percent ditch loss.
4 In spite of the measurements taken by Mr. Bain, the appropriation and water right
5 established by Mr. Desmond in 1884 and documented in the notice was for 3 cubic
6 feet per second. There has been nothing entered into the record to show that an
7 additional appropriation was legally established. If 70 percent of the 3 cubic
8 feet per second is loss during conveyance, then 0.90 cubic foot per second would
9 reach the farm for use on the land. During a 210 day irrigation season, continuous
10 use of 0.90 cubic foot per second would result in the application of 374 acre-feet
11 per year. This is the maximum quantity of water that can be diverted under the
12 right established by Mr. Desmond and any stock water from the irrigation ditches
13 must come from that quantity.

14 Water Right Claim No. 121571 was filed by Thomas Scott pursuant to the
15 requirements of RCW 90.14. It stated a claim for a right to divert 3 cubic feet
16 per second from Dry Creek (Indian Jim Creek) for the irrigation of 73 acres, but
17 stated that 6 cubic feet per second were being used to irrigate 61 acres.

18 Ms. Scott is also asserting a water right to irrigate 5 acres from the unnamed
19 pond on her property. The record shows that the pond was constructed in an area
20 that once was a slough. It was constructed in 1967. There is nothing in the
21 record to show that a water right was established for this use. Compliance with
22 the provisions of RCW 90.03 would have been necessary in 1967 and there is nothing
23 in the record to show this occurred. Water Right Claim No. 121573 was filed
24 pursuant to RCW 90.14 for this use of water. However, filing of such a claim

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 cannot protect a water use initiated in 1967. Therefore, the Referee cannot
2 recommend that a right be confirmed for use of the pond.

3 A claim is also being made for a water right to cover the land that is being
4 subirrigated. However, there is no evidence that there has been an appropriation
5 to beneficial use for this land. The land benefits from naturally occurring
6 shallow ground water or return flow waters migrating to the Yakima River. There is
7 no diversion that exists for this land. Therefore, the Referee cannot recommend
8 that a water right be confirmed for this land.

9 Based on the foregoing, the Referee recommends that a water right be confirmed
10 with a September 15, 1884, date of priority for the diversion of 0.90 cubic foot
11 per second, 374 acre-feet per year for irrigation of 40 acres and stock water and
12 2.10 cubic feet per second for conveyance loss. The point of diversion shall be
13 approximately 320 feet north and 350 feet east of the south quarter corner of
14 Section 20, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20.

15
16 COURT CLAIM NO. 05722 -- Thomas C. Scott

17 Thomas C. Scott submitted a Statement of Claim to the Court for the use of
18 waters from an unnamed pond for stock water and fish propagation and wildlife
19 habitat. The claimant was represented by Attorney Richard T. Cole. Mr. Scott
20 testified at the evidentiary hearing.

21 According to the testimony and evidence Mr. Scott's property lies in a portion
22 of the W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 18 N., R. 18 E.W.M. He is claiming a right to
23 use an unnamed pond for stock and wildlife watering and fish propagation. Mr.
24 Scott testified that the pond was constructed where a slough previously had been.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Livestock previously on the property and wildlife drink directly from the pond.
2 Wildlife also inhabit the vegetation surrounding the pond. Mr. Scott did not
3 testify to when the pond was constructed, but indicated it was somehow in
4 conjunction with the gravel mining operations on the neighboring Hutchinson lands
5 in Section 29. That gravel mining operation began in 1946 or 1947, so it is
6 reasonable to believe the pond was constructed subsequent to those dates. In 1966
7 Mr. Scott received permission from the Washington State Department of Game to plant
8 trout in the pond.

9 It is apparent from the evidence in the record that construction and use of
10 the pond began subsequent to adoption of the State Surface Water Code on June 6,
11 1917. There is nothing in the record to show that Mr. Scott complied with the
12 provisions of RCW 90.03 and obtained a permit to use the pond for fish propagation.
13 The stock water stipulation discussed on Page 4 of this report allows for
14 non-diversionary stock and wildlife watering from surface water sources.

15 Based on the foregoing, the Referee cannot recommend that a right be confirmed
16 to Thomas C. Scott under Court Claim No. 05722.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1
2 COURT CLAIM NO. 06041 -- John Hardy Shore
3 & Donna Shore
4 Dana R. Lind
5 & Elizabeth Lind

6 A Statement of Claim was submitted by John Hardy and Donna Shore for the use
7 of waters from Reecer Creek. On December 2, 1993, Dana R. and Elizabeth Lind were
8 joined to the claim. The claim was accepted by the Court on March 8, 1991, after
9 the evidentiary hearing for this subbasin. As a result, there was no testimony in
10 support of the claim and the Referee cannot recommend confirmation of a water
11 right. The claimants should file an exception to this recommendation and ask for
12 an opportunity to present evidence in support of their claim during the exception
13 phase of this proceeding.

14 COURT CLAIM NO. 00706 -- Karla E. Smith
15 (A)05228 & Richard L. Hall

16 A Statement of Claim was submitted to the Court by Karla E. Smith initially
17 claiming a right to use waters from the Cascade Canal Company (now Cascade
18 Irrigation District) for irrigation. The claim was amended adding Richard L. Hall
19 to the claim and identifying the sources of water as the Yakima River and an
20 unnamed spring. The claimants are represented by Attorney Jeff Slothower and Ms.
21 Smith and Donald Knoke, a neighboring landowner, testified at the evidentiary
hearing.

22 Although this claimant was scheduled to appear at the Subbasin No. 7
23 evidentiary hearing, the property described in the claim and the points of
24 diversion being utilized all lay outside this subbasin. The land and the spring

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 being used lie in Subbasin No. 4, the Swauk Subbasin and the waters from the Yakima
2 River used on the property are carried in the Cascade Irrigation District's canal.
3 Cascade Irrigation District is a Major Claimant in this proceedings, whose rights
4 will be addressed in the Major Claimant Pathway. There is nothing before the
5 Referee to indicate where Cascade Irrigation District diverts from the Yakima
6 River, but it is upstream from the Smith property and would, therefore, also not be
7 in Subbasin No. 7. The claimant was scheduled to appear in the Subbasin No. 7
8 hearing due to her claim being listed in the Plaintiff's Report to the Referee for
9 this subbasin. It is not clear why this claimant was listed in Subbasin No. 7.

10 Ms. Smith also appeared at the Subbasin No. 4 evidentiary hearing and asked
11 that her testimony from the Subbasin No. 7 hearing be incorporated and used in
12 support of her claim in that subbasin. The Referee intends to do that and a
13 determination of any rights under Court Claim No. 00706 will be made in the Report
14 of Referee for Subbasin No. 4. Therefore, the Referee does not recommend that a
15 right be confirmed under Court Claim No. 00706 in this subbasin.

16

17 COURT CLAIM NO. 01887 -- Arthur E. Strand
18 & Elva Strand

19 Arthur E. and Elva Strand submitted a Statement of Claim to the Court for the
20 use of waters from Reecer Creek and Whiskey Creek. Whiskey Creek is located in
21 Subbasin No. 9 and the determination of rights to that water will be made in the
22 Report of Referee for that subbasin. Mr. Strand testified at the evidentiary
23 hearing.

24

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

The Strands are asserting a right to irrigate 7.5 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T. 18 N., R. 18 E.W.M. with water diverted from Currier Creek. Currier Creek seems to part into two branches as it flows through Sections 15 and 22, and the Strands irrigated land lies between the two branches. Water is pumped from the creek with a 3 BHP pump to sprinkle irrigate hay and pasture. The Strands raise approximately 50 head of cattle that drink directly from the creek. This non-diversionary stock water use is covered by the stock water stipulation discussed on Page 4 of this report.

Water Right Claim No. 125146 was filed by Arthur Strand pursuant to the requirements of RCW 90.14. It claimed a right to divert 0.02 cubic foot per second, 4 acre-feet per year per acre for the irrigation of 5 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22. It identified 1892 as the date of first water use. Mr. Strand is currently asserting that date for establishment of a water right for his land. However, he was not able to provide any information to substantiate that assertion. He did not provide any testimony of historic water use on the land. He referred to research at the county courthouse into the history of the land, but that information was not entered into the record.

Lacking any information to show historical water use and that a right was established under either the Riparian or Prior Appropriation Doctrines, the Referee must recommend that a right not be confirmed under Court Claim No. 01887.

REPORT OF REFEREE
Re: Subbasin No. 7

1
2 COURT CLAIM NO. 00170 -- Patrick J. Taylor
3 00171 & Susan A. Taylor
4 01745
01745A

5 Statements of Claim were filed with the Court by the Taylors for the use of
6 waters from an unnamed creek, Mackner Spring, Dago Creek and Dry Creek. The
7 Taylors are represented by Attorney Ken Beckley and Mr. Taylor and Richard Bain, a
8 consultant hired by the claimants, testified at the evidentiary hearing.

9 The Taylors own 397 acres lying in portions of Sections 20, 28 and 29 of
10 T. 18 N., R. 18 E.W.M. They irrigate a total of 306 acres of timothy/alfalfa hay
11 or pasture. Water delivered through the Olson Ditch is used to irrigate 172 acres.
12 Olson Ditch has filed a separate claim on behalf of its patrons. See Page 180 for
13 the analysis of that claim. The land irrigated from Olson Ditch lies in that
14 portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 lying southwest of the Burlington Northern
15 Railroad right of way, that portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28 lying
16 southwest of the Burlington Northern Railroad right-of-way and northeast of Scott
17 Ditch and that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 29 lying northeast of Scott Ditch.
18 Scott Ditch is the name shown on one of the claimant's exhibits for a ditch that
19 diverts from Dry Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20. The State's Map Exhibit, SE-2
20 shows this ditch as being Willow Ditch.

21 The Taylors irrigate 52 acres with waters diverted from Dry Creek. The land
22 lies in that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 lying southwest of the Burlington
23 Northern Railroad right-of-way, that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 lying east
24 of Dry Creek that portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 lying southwest of Scott
25

26 REPORT OF REFEREE
Re: Subbasin No. 7

1 Ditch and east of Dry Creek. Mr. Bain measured the diversions from Dry Creek to
2 those fields at 5.50 cubic feet per second.

3 A prior owner of this portion of the Taylor Property, Hilda Hoffman, filed
4 Water Right Claim No. 060873 pursuant to RCW 90.14 asserting a right to divert 2
5 cubic feet per second, 300 acre-feet per year from a creek for the irrigation of 60
6 acres and stock watering in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20. The point of diversion
7 described is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20. The only creek that flows through the
8 NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 is Dry Creek.

9 Cabin Creek (the unnamed creek on Court Claim No. 00171) is used to irrigate
10 37 acres lying in that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20 and that portion of the
11 N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 29 lying west of Dry Creek. Mr. Bain measured the diversion from
12 Cabin Creek at 8.83 cubic feet per second. Hilda Hoffman filed Water Right Claim
13 No. 060875 pursuant to RCW 90.14 claiming a right to divert 2 cubic feet per
14 second, 400 acre-feet per year from an unnamed creek to irrigate 90 acres in the
15 SW $\frac{1}{4}$ of Section 20. The point of diversion from the creek is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
16 Section 20, through which Cabin Creek flows. The place of use description on the
17 claim does not include lands in Section 29 and there is nothing in the record to
18 show that a separate water right claim was filed for the lands in Section 29.

19 Mr. Taylor testified that the portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28
20 lying west of Scott Ditch/Willow Ditch had historically been irrigated with waters
21 from Olson Ditch. In the early 1980's the adjacent gravel quarry was enlarged
22 making it difficult to adequately irrigate the land from Olson Ditch. At that time
23 an arrangement was made with the owners of the quarry to allow the Taylors to pump
24 water from the quarry to irrigate their 45 acre field. However, this land lies

25 REPORT OF REFEREE

26 Re: Subbasin No. 7

1 outside of the Olson Ditch Comapny service area and below the Scott or Willow
2 Ditch. It does not seem likely that water was conveyed from Olson Ditch over the
3 Willow Ditch. According to Mr. Taylor the water they are pumping indirectly comes
4 from Olson Ditch. When the Taylors are not irrigating their fields which are to
5 the north and east of the quarry, one pump is adequate to keep the water drained
6 from the quarry. However, when the Taylors begin irrigating their fields with
7 Olson Ditch water, four to five pumps must be used to remove the water. It is not
8 clear whether the Taylors are asserting that pumping from the quarry is a change
9 in point of diversion for Olson Ditch water or that they are capturing and reusing
10 Olson Ditch water. The record does not reflect compliance with the provisions of
11 RCW 90.03.380 for changing the point of diversion of the water right.

12 Additionally, the Referee would need additional evidence of historic use from Olson
13 Ditch.

14 Water from Mackner Spring, which is located in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 20 is also
15 used on the Taylor property for stock watering and for the irrigation of about
16 three acres in the southwest corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20. The three acres
17 are part of a field that is primarily irrigated with water from Olson Ditch. The
18 Taylors raise up to 300 head of cattle on their property and the stock can drink
19 water from Mackner Spring when they are in the field to which the spring is piped
20 or they drink from the creeks and ditches that traverse the property. An
21 additional six bulls and four horses are owned. A total of 15 acre-feet per year
22 is needed for stock watering from the various sources. Livestock drinking directly
23 from the water sources, such as Dry Creek or Cabin Creek, is covered by the
24 non-diversionary stock water stipulation and the Plaintiff's Report to the Referee

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 stated that the stipulation related to the Taylor's claims. There is no indication
2 that a water right claim was filed pursuant to RCW 90.14 for the use of Mackner
3 Spring. The Mackners, on whose property the spring is located, filed a water right
4 claim, but it applies only to their use of water from the spring. Failure to file
5 a claim waives or relinquishes any right that may have existed, RCW 90.14.071.

6 Based on the measurements taken during the 1989 and 1990 irrigation seasons,
7 Mr. Bain has estimated that the average annual irrigation water use on the Taylor
8 Ranch is 23.9 acre-feet per year per acre irrigated. Mr. Bain attributes this
9 extremely high water need to the porous soils that are underlaid by river rock and
10 gravels. He points to the neighboring gravel quarry as affirmation of the
11 conditions that exist on the Taylor property.

12 The Taylor Ranch was homesteaded and owned by several different individuals in
13 the late 1800's. John M. Park received Homestead Certificate No. 1153 dated
14 March 17, 1892 for the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, T. 18 N., R. 18 E.W.M..
15 Also in the record is a copy of the Final Receivers Receipt showing final payment
16 for the land was received on December 5, 1890. Homestead Certificate No. 16 issued
17 to Theodore Hess dated August 18, 1888, and included the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 28,
18 T. 18 N., R. 18 E.M.. The Final Receivers Receipt for that property was dated
19 June 29, 1881. Peter Wold received Homestead Certificate No. 37 dated August 1,
20 1883, for lands that included the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20. Norris N. Bell received
21 Homestead Certificate No. 236 dated January 15, 1878, for the S $\frac{1}{2}$ NW $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$
22 of Section 28. The N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 29 is part of the land conveyed by the United
23 States to Northern Pacific Railroad Co. However, the date that land separated from
24 Federal ownership is unclear. The portion of the patent in the record does not

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 contain the date it was executed and date on the chain of titled entered into
2 evidence is the date of the act that allowed the Federal government to convey lands
3 for the construction of railroads, not the actual date the land was transferred to
4 the railroad. It is in the record that NPPR conveyed the land to John Park on
5 January 30, 1889. There is nothing in the record to show when the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
6 Section 20 was conveyed from Federal ownership or to whom it was conveyed.

7 Mr. Taylor testified that the land has been farmed and irrigated since it left
8 Federal control in the late 1800's. Affidavits were submitted by individuals who
9 were familiar with the property from the 1920's and 1930's stating it had
10 continuously been irrigated from the sources claimed. Documents filed for the
11 Olson Ditch claim show that the owners of the land in the late 1800's were active
12 in developing what would become Olson Ditch and documented the appropriations
13 through the filing of Notices of Water Rights, Claims to Water Rights, etc.. These
14 types of documents have not been offered to prove the establishment of rights to
15 use water from Dry Creek and Cabin Creek. The lands that are irrigated with water
16 from Dry Creek and Cabin Creek are riparian to the creeks. Rights are established
17 under the Riparian Doctrine if water is first used prior to December 31, 1932. The
18 Affidavits submitted on behalf of the Taylors' claim show that water was used from
19 Dry Creek and Cabin Creek prior to that date.

20 A field drain has been constructed in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$
21 of Section 28 to collect return flow water. This water is also used for stock
22 watering and is added to the water pumped from the quarry for irrigation of the 45
23 acre field southwest of Scott Ditch in Section 28. It is not clear when this field
24 drain was constructed. If it is capturing return flows that result from the

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Taylors own irrigation practice, they have the right to capture and reuse their own
2 return flows. They may also be capturing return flows that are the result of the
3 application of Olson Ditch water on adjacent fields. That is not clear. There has
4 not been sufficient information provided to allow the Referee to conclude that a
5 right has been established for this water, or that a right is needed in order to
6 legally use the water.

7 The Referee concludes that sufficient evidence has been presented to allow
8 recommendation that a right be confirmed for use of waters from Dry Creek and Cabin
9 Creek. However, the claimants have testified to using considerably more water than
10 was documented in the RCW 90.14 claims filed by a prior owner. This may represent
11 an increase beyond the right that was originally established for the property. The
12 Referee intends to recommend rights commensurate with the water right claims. The
13 land irrigated from Dry Creek did not separate from Federal ownership at the same
14 time. The testimony and the irregular field contours makes it difficult for the
15 Referee to segregate the irrigated acres by date, so the Referee proposes to use
16 the latest date as the priority for the rights.

17 Therefore, the Referee recommends that a right be confirmed under the Riparian
18 Doctrine with a December 5, 1890, date of priority for the diversion of 2 cubic
19 feet per second, 300 acre-feet per year for the irrigation of 41 acres and stock
20 watering in that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 lying southwest of the
21 Burlington Northern Railroad right-of-way and that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
22 Section 20 lying east of Dry Creek. The Referee cannot recommend confirmation of a
23 water right for the 11 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 that are irrigated from
24 Dry Creek due to the lack of a RCW 90.14 water right claim for that area.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 The Referee recommends that a right be confirmed under the Riparian Doctrine
2 with a December 5, 1890, date of priority for the diversion of 2 cubic feet per
3 second, 400 acre-feet per year for the irrigation of 30 acres and stock watering in
4 the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 lying west of Dry Creek.
5 Again, due to the lack of a RCW 90.14 water right claim for Section 29, the Referee
6 cannot recommend confirmation of a water right for approximately 7 irrigated acres
7 in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29.

8 The Referee also does not recommend confirmation of a water right for the
9 field that is irrigated with water pumped from the quarry. This is a fairly recent
10 practice and the claimant has not stated the basis for this water use, nor has it
11 been documented through compliance with RCW 90.03.380.

13 COURT CLAIM NO. 1959 -- Carla L. Thomas

14 A Statement of Claim was submitted to the Court by Henry Weidenbach for the
15 use of waters from Nanum Creek, First Creek and Thomas Creek. Nanum Creek is
16 located in Subbasin No. 9 and First Creek is located in Subbasin No. 4. Rights to
17 the use of that water will be determined through the hearing and Report of Referee
18 for those two subbasins. On July 14, 1984, Carla L. Thomas was substituted for Mr.
19 Weidenbach. Ms. Thomas, who is represented by Attorney Jeff Slothower, testified
20 at the evidentiary hearing.

21 Ms. Thomas owns the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 34, T. 19 N., R. 18 E.W.M.
22 According to the testimony, 17 acres in the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 34 lying east of an
23 unnamed creek are irrigated with water diverted from the creek, which Ms. Thomas
24 refers to as Thomas Creek. She diverts at a rate of 1.5 cubic feet per second and

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 irrigates that field 40 to 70 days between April 1 and October 15, which would
2 result in a maximum of 208 acre-feet per year being applied to the land.
3 Approximately 24 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34 are irrigated with water
4 diverted from Jones Creek. Ms. Thomas testified that she diverts 1 to 1.5 cubic
5 feet per second from the creek to irrigate a 10 acre pasture east of Jones Creek.
6 The field is irrigated 80 to 100 days between April 1 and October 15, resulting in
7 between 80 and 208 acre-feet per year being applied. The 14 acre field lying west
8 of Jones Creek is irrigated at a diversion rate of 2 cubic feet per second for
9 between 63 and 100 days between April 1 and October 15, which would result in a
10 maximum of 396 acre-feet per year being applied to this field.

11 Livestock are raised on the property and drink directly from the two creeks or
12 from ponds. This type of non-diversionary stock watering is covered by the
13 stipulation discussed on Page 4 of this report.

14 Pursuant to the requirements of RCW 90.14, two water right claims were filed
15 by L. H. Stewart, a previous owner of the Thomas property. Water Right Claim No.
16 010281 asserted a right to divert 2 cubic feet per second, 600 acre-feet per year
17 from an unnamed creek for the irrigation of 30 acres within the E $\frac{1}{2}$ W $\frac{1}{2}$ of
18 Section 34, T. 19 N., R. 18 E.W.M. The diversion location identified is
19 approximately the point where Ms. Thomas testified to diverting from Thomas Creek.
20 Water Right Claim No. 010282 asserted a right to divert 2 cubic feet per second,
21 600 acre-feet per year from an unnamed tributary to Jones Creek for the irrigation
22 of 30 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T. 19 N., R. 18 E.W.M. Although the
23 water right claim describes the source as a tributary to Jones Creek, the diversion
24 location is on Jones Creek. The Referee has found that over the years creeks in

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

this area have been known by different names and there has been confusion over the names. If the evidence supports a recommendation to confirm a water right, confusion over the correct name of the water source will not be a factor.

Ms. Thomas is basing her water rights, in part, on an Affidavit of Water Right filed by James N. Huffman on December 10, 1918, in which he states that he has owns the Thomas land and has occupied and farmed the land for 11 years. The affidavit also states that Thomas Creek flows across the land, in the early spring the stream carries considerable water, and he has used flood waters up to 100 inches (2 cubic feet per second) to mature one crop of alfalfa. He also stated in the affidavit that after June 1 water from First Creek is rented from G. E. Dickson. While this does show that a water right was established for the land by 1907, it also indicates that water was available only in the spring, not the entire irrigation season.

Ms. Thomas did not provide any information to support the establishment of a water right from Jones Creek. However, other claimants have entered in the record a copy of Hanson v. McIntire, supra., which is a Kittitas County Superior Court action related to use of waters from Reecer Creek. The owner of the Thomas property at the time of this action was Elijah Meadows. A "Meadows" was a defendant in this action, although the first name was not given. The Findings of Fact that preceded the decree stated that the East Prong of Reecer Creek, also called Hanson Channel, flowed through the Meadows property and there was sufficient water in the channel during the early spring to irrigate the lands of the plaintiff and defendants Finn, Harry Robbins, and Meadows. Evidence submitted by other claimants in this adjudication has led the Referee to conclude that Jones Creek is

REPORT OF REFEREE
Re: Subbasin No. 7

1 the water source referred to in the Findings of Fact as Hanson Channel and East
2 Prong of Reecer Creek. This would indicate that at least by February 12, 1905, the
3 date the action was filed, a water right had been established for what is now the
4 Thomas property.

5 The land is riparian to both Jones Creek and Thomas Creek. The priority date
6 for right established under the Riparian Doctrine is the date steps were first
7 taken to sever the land from Federal ownership. That date is not in the record.
8 The record does reflect that a patent issued to Perry A. Meadows on October 15,
9 1892, which is the only date in the record that the Referee can use for a priority
10 date.

11 The claimant testified to irrigating from April 1 until October 15, however,
12 the historic documents in the record show that in the early 1900's when the rights
13 were first exercised, water was only available in the spring. The diversions from
14 both of the creeks is located below the Kittitas Reclamation District's (KRD)
15 Highline Canal and fields irrigated with water provided by KRD. Water seeping from
16 the canal and return flows from irrigated fields contribute to the flow in Jones
17 and Thomas Creeks. The KRD is part of the Yakima Irrigation Project and water
18 rights for the use of project return flows, which would include seepage from the
19 canal, cannot be confirmed. See Page 7 of this report. Ms. Thomas testified that
20 she is assessed by KRD for the land irrigated from Jones Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
21 Section 34, but has not put a system in that would allow use of that water. It may
22 be that she, like other KRD patrons, is using Jones Creek to convey KRD water.

23 The Referee can only recommend confirmation of a water right for the natural
24 creek flow that might reasonably be available and, where the evidence is clear that

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 water is only available in the spring, will not confirm a full duty of water.
2 Water availability will vary according to the prevailing conditions and in order to
3 not be too restrictive, the Referee will recommend that the authorized quantity of
4 water be sufficient for half the irrigations testified to by the claimant.

5 The Referee recommends that rights be confirmed under the Riparian Doctrine
6 with a October 15, 1892, date of priority for the diversion of 1.5 cubic feet per
7 second, 104 acre-feet per year from Thomas Creek for the irrigation of 17 acres
8 lying in the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 34 lying east of Thomas Creek; and 2 cubic feet per
9 second, 348 acre-feet per year from Jones Creek for the irrigation of 24 acres in
10 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34 lying west of Thomas Creek.

11

12 COURT CLAIM NO. 01144 -- Carla L. Thomas
13 Peoples National Bank of Washington

14 A Statement of Claim was submitted to the Court by Dorothy Thomas and Peoples
15 National Bank. On December 26, 1989, Carla L. Thomas was substituted for Dorothy
16 Thomas on the claim. Ms. Thomas testified at the evidentiary hearing and was
17 represented by Attorney Richard Cole.

18 Ms. Thomas is asserting a right to divert water from Dry Creek for stock
19 watering in the SE $\frac{1}{4}$ of Section 15, T. 19 N., R. 17 E.W.M. Water is diverted from
20 the creek at a point approximately 1900 feet north and 400 feet west of the
21 southeast corner of Section 15 to a nearby pond. The livestock drink from the
22 pond, but also have access to drink from the creek itself. Ms. Thomas did not
23 testify to the instantaneous quantity that is diverted from the creek, but
24 estimated that between 25 and 30 acre-feet per year is put in the pond. One

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 hundred and fifty head of livestock are raised on the land she owns in Section 15
2 and adjacent lands in Section 9.

3 Section 15, and other property in the area, was originally conveyed from the
4 Federal government to the Northern Pacific Railway by patent that issued April 28,
5 1897. The record shows that on March 13, 1903, the railroad company sold
6 Section 15 to John Smithson. The land is riparian to Dry Creek and water rights
7 established for this property under the Riparian Doctrine enjoy a priority date of
8 April 28, 1897, which is the earliest date in the record showing severance of the
9 land from Federal ownership.

10 Water Right Claim No. 044548 was filed Ms. Thomas' father pursuant to the
11 requirements of RCW 90.14 asserting a right to divert 15 gallons per minute, 24
12 acre-feet per year from an unnamed spring for stock watering. Although the source
13 is described as a unnamed spring, the point of diversion described in on Dry Creek,
14 very near to where the current diversion is located. Ms. Thomas is asserting that
15 this claim was in intended to be for use of waters from Dry Creek. There is no
16 evidence of another water source at this location, so the Referee believes it would
17 be reasonable to accept this assertion.

18 Both the water right claim filed by Mr. Thomas and the Court Claim filed by
19 his wife state that 15 gallons per minute, or 0.03 cubic foot per second, is being
20 diverted from the creek. In light of Ms. Thomas' failure to testify to
21 instantaneous quantity, the Referee shall adopt the quantity in both the RCW 90.14
22 claim and the Court Claim. This instantaneous quantity is very reasonable for
23 stock watering. Ms. Thomas testified the flow in the creek declines and that
24 affects the diversion into the pond. A continuous diversion of 0.03 cubic foot per

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 second would allow for 21.68 acre-feet per year to be diverted into the pond.
2 Based on Ms. Thomas' testimony it may well be that this quantity is not available
3 every year.

4 Ms. Thomas is also asserting a right to use an unnamed spring located in
5 Section 9, T. 19 N., R. 17 E.W.M. for non-diversionary stock watering. The spring
6 is located just west of the boundary line between Subbasins No. 7 and 4, placing it
7 in Subbasin No. 4. She sought leave, which the Referee granted, to present
8 testimony on this use at the Subbasin No. 7 hearing. If a challenge is made to
9 this testimony, she would need to appear in Subbasin No. 4 and respond. According
10 to the testimony this is a non-diversionary stock watering use, which is covered by
11 the standard stock watering stipulation that is incorporated into each subbasin
12 Plaintiff's Report and Report of Referee. Ms. Thomas should refer to the
13 Plaintiff's Report and Report of Referee for Subbasin No. 4 to insure her claim is
14 listed under the stipulation.

15 The Referee recommends that a right be confirmed to Ms. Thomas under Court
16 Claim No. 01144 with a April 28, 1897, date of priority under the Riparian Doctrine
17 for the diversion of 0.03 cubic foot per second. 21.68 acre-feet per year from Dry
18 Creek for continuous stock watering.

19
20 COURT CLAIM NO. 01816 -- Lawrence A. Trump
21 Harold Trump
22 & Dorothy Trump
Ervin Harder
& Josephine Harder

23 A Statement of Claim was filed by Robert H. and Rhio Baker for the use of
24 waters from Currier Creek and/or West Canyon Creek. On August 31, 1990, Lawrence

25
26 REPORT OF REFEREE
Re: Subbasin No. 7

1 Trump, and Harold and Dorothy Trump were substituted for the Bakers on the claim.
2 On April 11, 1994, Ervin and Josephine Harder were joined to the claim. The Trumps
3 were represented by Attorney Richard T. Cole. Lawrence Trump testified at the
4 evidentiary hearing.

5 The Trumps are claiming a right to irrigate six acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
6 Section 23, T. 19 N., R. 18 E.W.M. and water livestock with waters diverted from
7 Currier Creek. Water has in the past been diverted from the creek near the north
8 section line of Section 23, T. 19 N., R. 18 E.W.M. and carried via gravity flow in
9 a ditch to the Trumps property. In approximately 1987 the owner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
10 Section 14, T. 19 N., R. 18 E.W.M. constructed an earthen dam across the creek and
11 prevented the creek's flow from continuing down the drainage to the Trumps
12 property. That was the last time water from Currier Creek was used on the
13 property.

14 The Trumps are basing their claim to a water right on two historical
15 documents. A Statement of Claim for Water was filed on May 31, 1890, by A. F.
16 Currier claiming a right to divert 200 inches from Williams Creek. The document
17 stated that Mr. Currier had on May 24, 1888, acquired from A. J. Cobel the right
18 Cobel had established in March of 1882 to irrigate the E $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ of
19 Section 22, T. 19 N., R. 18 E.W.M. Mr. Currier named the ditch Currier Ditch No. 1
20 and stated it carried 120 inches of water. The ditch diverted from the creek in
21 Section 14 and ran across the northwest corner of Section 23 into the northeast
22 corner of Section 22. The water continued to be used to irrigate the E $\frac{1}{2}$ NE $\frac{1}{4}$ and
23 E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 22. The Trumps are asserting that this notice shows development
24 of the area for agricultural purposes.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 The second document is a Notice of Water Right dated April 21, 1888, filed by
2 Gideon Currier, claiming a right to all the water that flows in West Canyon Creek
3 for use in Sections 2, 11 and 23, T. 19 N., R. 18 E.W.M. Currier Creek flows
4 through Sections 2, 11 and 23. There was no testimony or evidence presented to
5 show water use under this notice was on the Trump property.

6 Robert H. Baker, Sr. and R. H. Renge filed Water Right Claim No. 023117
7 pursuant to the requirements of RCW 90.14 claiming a right to divert 0.02 cubic
8 foot per second, 4 acre-feet per year from a creek for the irrigation of 10 acres.
9 The claim states that water was first used in April of 1972.

10 The Trumps are also asserting a right for the use of an unnamed spring for
11 domestic supply and stock watering. The spring is located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
12 Section 23. A concrete cistern collects the spring water and a one-inch hose
13 delivers water to the house. A second one-inch hose fills a water trough located
14 in a chicken coup. As far as the Referee can determine, there was no RCW 90.14
15 water right claim filed for use of the unnamed spring. Failure to file a claim
16 pursuant to RCW 90.14 relinquishes any right that may have existed, RCW 90.14.071.

17 There was no testimony offered about historic use of either Currier Creek or
18 the unnamed spring. The land is riparian to both the spring and Currier Creek. In
19 order for there to have been a right established under the Riparian Doctrine for
20 use of either water source the use had to have begun prior to December 31, 1932,
21 and continued. Additionally, between July 1, 1967, and October of 1977, there
22 could be no period of five successive years of nonuse.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Based on the lack of information about historical water use and the lack of an
2 RCW 90.14 claim for the spring, the Referee cannot recommend that a water right be
3 confirmed under Court Claim No. 01816.

4

5 COURT CLAIM NO. 00748 -- Twinmasters Corporation

6 A Statement of Claim was submitted by C. E. and Marjorie Dolman for the use of
7 waters from unnamed springs for irrigation and stock water. On April 9, 1990,
8 Hisao Takashasi was substituted for the Dolmans as claimants. At the evidentiary
9 hearing Attorney Richard T. Cole presented a deed that showed the land actually had
10 been sold to Twinmaster Corporation, of which Mr. Takahashi is an officer and
11 director. Mr. Cole, who represents Twinmaster Corporation, asked that Twinmaster
12 Corporation be shown as the actual claimants. Mr. Cole presented the claim at the
13 hearing, but no witnesses testified.

14 According to Mr. Cole, Twinmaster Corporation is claiming a right to use 0.25
15 cubic foot per second, 10 acre-feet per year from unnamed springs and Dry Creek for
16 a small amount of irrigation and stock watering. He did not identify the number of
17 acres irrigated, the location of the land being irrigated, the number of livestock
18 raised on the property, or the point of diversion. An unnamed stream flows through
19 the property, which lies in the W $\frac{1}{2}$ of Section 16, T. 18 N., R. 18 E.W.M. An 1889
20 priority date is being claimed. This apparently is based on the date that the
21 Northern Pacific Railroad Company conveyed land to Alexander A. Munson. Mr. Cole
22 stated that one could assume water use began at that time. However, the land
23 conveyed to Alexander A. Munson, according to an exhibit entered by Mr. Cole, is
24 land in the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 17, T. 18 N., R. 18 E.W.M., not the land described in

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Court Claim No. 0748. The land described in the court claim was conveyed by the
2 United States to the Northern Pacific Railroad in 1896, however, there is no
3 information in the record to show when Northern Pacific Railroad sold the land.
4 The chain of title entered into the record references a right of way agreement in
5 1908, but that document is not in the record. By 1921 the State of Washington
6 owned the land, but there is no information on ownership prior to that year.
7 Additionally, the Referee has no intention of assuming that water use began when
8 land was privately owned without additional evidence of actual use.

9 Freta Olds filed Water Right Claim No. 154348 claiming a right to use waters
10 from a spring for the irrigation of 10 acres and stock water. The spring location
11 and the description of lands on which water is used is stated as Section 16,
12 T. 18 N., R. 18 E.W.M. This claim was filed pursuant to the provisions of RCW
13 90.14. It does not contain adequate information to allow the Referee to conclude
14 it is applicable to the claimant's property.

15 Due to the lack of evidence to support an assertion of any type of water right
16 for this property, the Referee recommends that a right not be confirmed under Court
17 Claim No. 00748.

19 COURT CLAIM NO. 01503 -- Van de Graaf Ranches, Inc.

20 COURT CLAIM NO. 01520 -- Dick Van de Graaf, Jr.
21 & Maxine Van de Graaf

22 Statements of Claim were submitted to the Court by Van de Graaf Ranches, Inc.
23 and Dick Van de Graaf, Jr. and Maxine Van de Graaf for the use of waters from

26 REPORT OF REFEREE
Re: Subbasin No. 7

1 Whiskey Creek, Reecer Creek, also known as Currier Creek, and unnamed springs.
2 Whiskey Creek is located in Subbasin No. 9, and rights to the use of that water
3 will be considered in the Subbasin No. 9 Report of Referee. The Van de Graafs and
4 Van de Graaf Ranches were represented by Attorney Mark Marsing. Mr. Van de Graaf
5 and Richard C. Bain, a consultant hired by the claimants, testified at the
6 evidentiary hearing.

7 Van de Graaf Ranches owns and irrigates lands within the SE $\frac{1}{4}$ of Section 10,
8 T. 18 N., R. 18 E.W.M. and Dick and Maxine Van de Graaf own considerable acreage,
9 including irrigated lands in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, the
10 E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 10, the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 11, the NE $\frac{1}{4}$ and the N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15,
11 all in T. 18 N., R. 18 E.W.M.. A portion of the irrigated land in Section 15 lies
12 below the Cascade Irrigation District canal and is irrigated from that canal. A
13 right is not being asserted for that land through these claims. The Kittitas
14 Reclamation District assesses the Van de Graafs for 351 acres. An additional
15 source of irrigation water is drainage ditches that capture return flow water from
16 neighboring fields that are irrigated with water delivered by the KRD. Both the
17 Cascade Irrigation District and Kittitas Reclamation District are major claimants
18 in this proceeding whose rights are being determined through the Major Claimant
19 Pathway identified in Pretrial Order No. 8.

20 According to Mr. Van de Graaf's testimony and the State's Investigation
21 Reports, 337 acres are irrigated with water diverted from Currier Creek and 23.5
22 acres are irrigated with water diverted from Jones Creek, just above its confluence
23 with Currier Creek. The land is planted to pasture and is predominantly rill

24
25 REPORT OF REFEREE
26 Re: Subbasin No. 7
27

1 irrigated from gravity flow ditches. Up to 2300 head of cattle and five horses are
2 raised on the property and drink from Currier Creek, irrigation ditches and a pond.

3 Pursuant to the requirements of RCW 90.14, Dick Van de Graaf, Jr. filed Water
4 Claims No. 098461, 098462, 098463 and 098464 all asserting rights to divert from
5 Currier Creek to irrigate the Van de Graaf lands. They document claims for the
6 diversion of up to 12 cubic feet per second from Currier Creek for the irrigation
7 of 600 acres if the quantities of water and number of acres on each claim are
8 additive. The places of use identified on the claims are: The NW $\frac{1}{4}$ of Section 11,
9 the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, the W $\frac{1}{2}$ of Section 11, the E $\frac{1}{2}$ of Section 10, the NW $\frac{1}{4}$ of
10 Section 11 and the NW $\frac{1}{4}$ of Section 10, all in T. 18 N., R. 18 E.W.M. The Referee
11 believes that the last location may be in error and should have been the NE $\frac{1}{4}$ of
12 Section 10, however, that was not clarified by the claimants. There are no RCW
13 90.14 claims filed for the land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3 or in Section 15. The
14 State's Investigation Report notes that because the diversion from Jones Creek and
15 the land irrigated lie close to Currier Creek, Jones Creek is often referred to as
16 Currier Creek. The point of diversion described on Water Right Claim No. 098462 is
17 on Jones Creek, rather than Currier Creek, in spite of the claim stating the source
18 of water as Currier Creek. The Referee has noted in the presentation of other
19 claims that there often is confusion over the proper name of many of the creeks in
20 this area.

21 The claimants cite as the basis for their claim a "Statement of Claim of Water
22 Right from Reeser Creek" filed by Howard Ebert on May 31, 1890. Mr. Ebert stated
23 that he was the owner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 18 N., R. 18 E.W.M. and all
24 ditches and water rights used to irrigate the same. On April 1, 1890, Mr. Ebert

25 REPORT OF REFEREE

26 Re: Subbasin No. 7

1 made a ditch for carrying water onto the described tract of land for the irrigation
2 of the same. The statement describes the source of water as Reeser Creek, however,
3 the location of the diversion is on what is now called Currier Creek. Mr. Ebert
4 states the ditches capacity is about 40 inches that he has appropriated that
5 quantity. Forty inches of water is the equivalent of 0.80 cubic foot per second.

6 The Referee is satisfied that this document indicates that a water right was
7 established on April 1, 1890, for the diversion of 0.80 cubic foot per second from
8 Currier Creek for the irrigation of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2. It appears to the
9 Referee that approximately 20 acres are irrigated within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2
10 and Mr. Bain indicated that 9.1 acre-feet per year per acre was used to irrigate
11 that field. The claimant has not offered anything that would allow the Referee to
12 conclude that this claim was expanded to include the extensive farming operation
13 ongoing at this time. Mr. Van de Graaf testified to his belief that the land was
14 irrigated beginning in 1890, but that is not sufficient to allow the Referee to
15 determine that water rights were established at that time for the entire ranch.

16 The Referee recommends that a right be confirmed with an April 1, 1890, date
17 of priority for the diversion of 0.80 cubic foot per second, 182 acre-feet per year
18 from Currier Creek and Jones Creek for the irrigation of 20 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
19 Section 2, T. 18 N., R. 18 E.W.M.

20 Should the claimants intend to pursue these claims through the exception phase
21 in order to try and establish the existence of a water right for the remaining
22 land, they should be aware that the Referee found the testimony and evidence
23 concerning the quantity of water used to irrigate the remaining lands inadequate.
24 Much of the information provided was based on total water use from a variety of

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 sources, some of which are not being considered in these claims, such as the
2 Kittitas Reclamation District, and use of return flow waters.
3

4 COURT CLAIM NO. 00881 -- Ventures, Inc.

5 Ventures, Inc., submitted a Statement of Claim to the Court for the use of
6 waters delivered by the Cascade Irrigation District and Ellensburg Water Company.
7 Both of these entities are major claimants in this proceedings whose rights are
8 being determined through the Major Claimant Pathway identified in Pretrial Order
9 No. 8. Water use related to these entities will not be addressed through the
10 subbasin pathway. Therefore, the Referee does not recommend confirmation of a
11 water right under Court Claim No. 00801.

12

13 COURT CLAIM NO. 01316 -- Jack Richard White
14 & Christine M. White

15 A Statement of Claim was submitted to the Court by the Whites for the use of
16 water from three unnamed springs for stock watering. Mr. White appeared at the
17 evidentiary hearing and testified in support of the claim.

18 According to Mr. White's testimony, there are three undeveloped springs
19 located on his property in the SW¹ NW¹ and NW¹ SW¹ of Section 34, T. 20 N.,
20 R. 18 E.W.M. Cattle raised on the property drink directly from these springs. The
21 Whites raise two head of cattle and Mr. White believes that is the extent of the
22 lands carrying capacity.

23

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Pursuant to the requirements of RCW 90.14, Mr. White Water Right Claims No.
2 152283, 152284 and 152285, each for the use of an unnamed spring for stock
3 watering.

4 The non-diversionary stock water use being claimed by the Whites is covered by
5 the stock water stipulation that has been adopted in this case. No additional
6 right is needed to protect this use. Therefore, the Referee does not recommend
7 that an additional right be confirmed under Court Claim No. 01316.

8

9

10 COURT CLAIM NO. 00750 -- Joe Wilkening
11 & Myrtle Wilkening

12 A Statement of Claim was submitted by the Wilkenings for the use of waters
13 from the Yakima River for irrigation. They are represented by Attorney Kenneth
14 Beckley. Richard C. Bain, Jr., a consultant hired by the claimants and Mrs.
15 Wilkening testified at the evidentiary hearing.

16 The claimants own approximately 20 acres being the west 1630 feet of the
17 SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T. 18 N., R. 18 E.W.M. lying north of the
18 Chicago Milwaukee Railroad and that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 lying south
19 of the Chicago Milwaukee Railroad and west of a slough that runs through that
20 section. They irrigate 10 acres in the parcel lying north of the railroad and
21 one-half acre in the parcel south of the railroad. The water used to irrigate the
22 land is diverted by the Ellensburg Water Company into the Town Ditch. It is then
23 conveyed through the Olson Ditch to the Wold Ditch. Two separate systems can be
24 used to deliver water from the Wold Ditch to the Wilkening property. A lateral
25 from the neighboring McManamy property enters the northeast corner of the land and

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

is used to irrigate the area around the Wilkening's home. Water from this lateral can also be piped over the slough that flows through the property and used to irrigate a small orchard and pasture. Water from the Wold Ditch is also spilled into this slough and the Wilkenings pump from the slough using a 1.5 BHP pump to irrigate the orchard and pasture and a half acre meadow that lies south of the railroad. Livestock of varying numbers have been raised on the property in the past and drink directly from the slough. This type of non-diversionary stock watering is covered by the stock water stipulation discussed on Page 4 of this report and no additional right will be confirmed for this use.

Due to Mr. Wilkenings declining health, the irrigation practice in recent years has been inconsistent, but some irrigation has continued each year. Mr. Bain measured the lateral coming from the McManamy property and determined that 0.5 cubic foot per second is carried in that ditch to the Wilkening property. Using that figure, he calculated that 180 acre-feet per year would be used to irrigate this property.

The claimants are basing their claim to a water right on an appropriation made by Horton Crandall and T. W. Abbott. The record reflects through an Affidavit of Water of Water Right filed by J. N. Hatfield on June 1, 1890, that the Abbott Crandall Ditch was constructed in July of 1885 with a capacity of 8 cubic feet per second. The ditch was used to irrigate the lands then owned by Crandall and Abbott consisting of 280 acres. Horton Crandall owned 80 of the 280 acres irrigated from the ditch. Based on the testimony of Mr. Bain and other claimants in the immediate area, it is reasonable to conclude that the Abbott Crandall Ditch is now called the Wold Ditch.

REPORT OF REFEREE

Re: Subbasin No. 7

1 Horton Crandall received a patent for Lot No. 4, the SE $\frac{1}{4}$ SW $\frac{1}{4}$, and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
2 Section 18, T. 18 N., R. 18 E.W.M. dated June 25, 1892. The Wilkenings own a
3 portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18. In November of 1892, Mr. Crandall
4 sold the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18 to L. G. Thomas, including "all my right,
5 title and interest in a certain water ditch which is known as the Abbott & Crandall
6 ditch which said ditch brings water from the Yakima River to the above described
7 land."

8 Although Mr. Bain testified that 0.50 cubic foot per second is used on the
9 Wilkening property, the record shows that the appropriation made by Abbott and
10 Crandall was for the use of 0.028 cubic foot per second per acre irrigated, which
11 would be 0.30 cubic foot per second for 10.5 acres. There is nothing in the record
12 to show that an additional appropriation was made. Therefore, the right that this
13 property would enjoy is limited to 0.028 cubic foot per second per acre irrigated.
14 A continuous diversion of 0.30 cubic foot per second would result in 124.7
15 acre-feet per year being withdrawn during the normal irrigation season.

16 Pursuant to the requirements of RCW 90.14, Joe Wilkening filed Water Right
17 Claim No. 048538 claiming a right to divert 0.50 cubic foot per second, 180
18 acre-feet per year from the Yakima River for the irrigation of 16 acres. The place
19 of use described on the claim is the portion of the Wilkening property that lies
20 north of the Chicago Milwaukee Railroad. However, a prior owner of the property,
21 Freda M. Hayes filed Water Right Claim No. 002074 claiming a right to irrigate the
22 entire SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18 with waters from the Yakima River. This
23 claim would cover the land owned by the Wilkenings south of the railroad tracks.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 Based on the foregoing, it is recommended that a right be confirmed to Joe and
2 Myrtle Wilkening with a July 30, 1885, date of priority for the diversion of 0.30
3 cubic foot per second, 124.7 acre-feet per year for the irrigation of 10.5 acres.
4 The right shall carry a provision that recognizes they have a secondary point of
5 diversion from the slough through their property.

6

7 COURT CLAIM NO. 01637 -- Mike Williams
8 (A)02107 & Debbie Williams

9 A Statement of Claim to the Court was filed by Don and Alene Williams for the
10 use of waters from the Yakima River via the Peter Wold Ditch. On October 4, 1990,
11 Mike and Debbie Williams were substituted for Don and Alene Williams. Debbie
12 Williams testified at the evidentiary hearing.

13 The Williams own most of the $\text{W}_\frac{1}{2}\text{SW}_\frac{1}{4}$ of Section 20, T. 18 N., R. 18 E.W.M. lying
14 northeast of Interstate 90. According to Mrs. Williams's testimony they irrigate
15 24 or 25 acres from the Peter Wold Ditch, approximately 5 to 6 acres are
16 subirrigated, 10 acres are irrigated from Cabin Creek and four acres are irrigated
17 with waters from the Yakima River diverted in the $\text{SE}_\frac{1}{4}$ of Section 19 and carried
18 through a ditch that discharges into a pond in the southerly portion of their
19 property. A pump is situated on the pond to withdraw the water. A pump is also
20 used to withdraw water from Cabin Creek. Mrs. Williams thought the pump on Cabin
21 Creek was a 3 BHP and is used to operate 10 sprinklers. According to Mrs. Williams
22 the acreage that is irrigated with waters from Cabin Creek had prior to 1980 been
23 flood irrigated from the Peter Wold Ditch. Cabin Creek originates from a spring
24 that surfaces at the north line of the $\text{SW}_\frac{1}{4}\text{NW}_\frac{1}{4}$ of Section 20 and flows south through

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 property owned by Donald Clapper and the Williams property. The Williams have 25
2 head of cattle and 12 horses that are watered from Cabin Creek and the Peter Wold
3 Ditch. The livestock drink directly from the creek and the ditch. The stock water
4 stipulation discussed on Page 4 of this report would cover the non-diversionary
5 stock water use from Cabin Creek.

6 Mrs. Williams presented ownership information for the property dating back to
7 1946 when Robert W. Wilcox sold the land to Henry Trosky. The land has been owned
8 by a member of the Williams family since 1950. Don Williams filed three water
9 right claims pursuant to the requirements of RCW 90.14, The Claims Registration
10 Act. Claim No. 129856 asserted a right to divert 2 cubic feet per second, 40
11 acre-feet per year from a spring for the irrigation of 10 acres and stock water.
12 The date of first water use shown is March 1876. Mrs. Williams stated that the
13 spring referred to is the one that creates Cabin Creek. Claim No. 129858 claimed a
14 right to divert 2 cubic feet per second, 16 acre-feet per year from the Yakima
15 River for the irrigation of 4 acres. This claim is for the diversion in the SE $\frac{1}{4}$ of
16 Section 19. The claim form states that water was first used in April of 1968.
17 Water Right Claim No. 129859 claimed a right to divert 2 cubic feet per second, 120
18 acre-feet per year from the Peter Wold Ditch for the irrigation of 30 acres and
19 stock water. The date of first water use on this form is March 1876.

20 The water right claims filed for the spring and Peter Wold Ditch reference as
21 the basis for the right a Deed of Right of Way Recorded in Book A of Miscellaneous
22 Records at Page 40. This document was put in the record by the Olson Ditch
23 Company. The document is a Deed of Right-of-Way from Peter A. and Samantha M. Wold
24 to Levi Farnsworth, James Dysart, and John A. Shoudy for the construction of a

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 ditch to carry water from a flour and saw mill. It states that the right-of-way is
2 in Section 20, T. 18 N., R. 18 E.W.M. The deed is dated March 13, 1876. The Olson
3 Ditch Company and other claimants in this proceeding put into the record documents
4 that show that Peter Wold owned portions of Section 20 not now owned by the
5 Williams and appropriated water to irrigate those other lands. The right-of-way
6 deed does not indicate an intent for the Wolds to use water conveyed in that ditch.

7 There is nothing in the record to show that Peter Wold ever owned the $W\frac{1}{2}SW\frac{1}{4}$ of
8 Section 20. There are numerous water right filings by other individuals that have
9 been put in the record by other claimants, but it is not apparent that they pertain
10 to the lands now owned by the Williams. The record does not reflect the owner of
11 the Williams property in the late 1800's or early 1900's when these other water
12 right documents were filed. If that information was available to the Referee, it
13 might be possible to ascertain whether the Williams property enjoys any of the
14 rights established in this area. The Referee also notes that although Mrs.
15 Williams stated they irrigate 24 or 25 acres from the Peter Wold Ditch, the records
16 of the Olson Ditch Company, which carries the Wold Ditch water a short distance,
17 show that 15 acres are irrigated from the Peter Wold Ditch.

18 Due to the lack of historic information to allow the Referee to relate the
19 Williams property to any of the historic water right documents in the record and
20 the lack of testimony about historic water use, the Referee cannot recommend that a
21 right be confirmed to Mike and Debbie Williams. Their livestock drinking directly
22 from Cabin Creek is a use that is covered by the non-diversionary stock water
23 stipulation discussed on Page 4 of this report.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1
2 COURT CLAIM NO. 00520 -- Willowbrook Farms Ltd. Partnership
3 (A)05669

4 A Statement of Claim was submitted to the Court by Paul and Marjorie Harrel
5 and as amended asserted a right to use waters from an unnamed creek located in
6 Subbasin No. 7. The Harrels were represented by Attorney Jeff Slothower. Mr.
7 Harrel testified at the evidentiary hearing. On June 8, 1994, Willowbrook Farms,
8 Limited Partnership, also represented by Mr. Slothower, was substituted for the
9 Harrels.

10 The above referenced court claims assert a right to divert 2 cubic feet per
11 second from an unnamed creek for the irrigation of 65 acres and stock watering in
12 the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M. Timothy hay is currently planted
13 and flood irrigated with water diverted from the stream that flows through the SE $\frac{1}{4}$
14 of Section 8.

15 According to the evidence, Alexander Munson began occupying the SE $\frac{1}{4}$ of
16 Section 8 in 1883 and obtained a patent to the land in 1892. The evidence also
17 shows that by that time Munson was the owner of one-half interest in the Wold &
18 Munson Ditch leading from First Creek to lands owned by Munson, including the SE $\frac{1}{4}$
19 of Section 8, and water from First Creek was used to irrigate the SE $\frac{1}{4}$ of Section 8.
20 Two Kittitas County Court Decrees dealt with the First Creek water. The first
21 decree, No. 784, entered on November 27, 1893, stated that no other water was
22 available to the Munson land.

23 Mr. Harrel inherited a portion of the land in 1941 and purchased the remainder
24 in 1945. Prior to that, he had assisted in irrigating the lands. He testified to

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 his belief that the land had been irrigated since it was first settled. The
2 evidence supports that belief, however, the evidence also supports the conclusion
3 that when the land was first settled and irrigated the only water source was First
4 Creek. Mr. Harrel did not testify to when the unnamed creek was first used. Mr.
5 Harrel testified that the creek carries natural flow water early in the spring and
6 then carries return flows. The land through which the creek flows is irrigated
7 with water delivered by the Kittitas Reclamation District (KRD) and that is also
8 the primary source of irrigation water in the SE $\frac{1}{4}$ of Section 8.

9 Water Right Claim No. 024269 was filed by Mr. Harrel as a result of the
10 adoption of RCW 90.14, the Claims Registration Act. It asserts a right to divert 2
11 cubic feet per second, 1300 acre-feet per year from a drain for the irrigation of
12 30 acres in the SE $\frac{1}{4}$ of Section 8. Although the document identifies the sources as
13 ground water, it was intended to be for the unnamed creek for which a right is
14 herein asserted. The water right claim form states that water was first used in
15 the spring of 1932.

16 Due to the location of the stream through lands being irrigated with water
17 delivered by the KRD and the testimony that after early spring the creek carries
18 KRD return flows, the Referee is not able to recommend that a water right be
19 confirmed under this claim. Return flows that result from the application of water
20 delivered through the Yakima Irrigation Project, such as KRD, are not available for
21 appropriation. See Page 7 of this report for a thorough discussion of return
22 flows. If there is natural flow in the creek that is available prior to KRD
23 turning on, a right could be confirmed if the claimant can present testimony that

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

this water was in fact used by 1932 and can quantify the amount of natural flow water used.

The Court claim does not assert a right for use of waters from First Creek, even though it is apparent that a right was established for this land from that source. First Creek lies in Subbasin No. 4, Swauk Creek, and rights to use of waters from First Creek will be addressed in the Report of Referee for Subbasin No. 4.

COURT CLAIM NO. 01483 -- Robert L. Woodworth
 & Sue T. Woodworth
 James Shane Cadigan

A Statement of Claim was submitted to the Court by Robert L. and Sue T. Woodworth for the use of waters from Little Reecer Creek, Big Reecer Creek and an unnamed spring. On September 7, 1990, James Shane Cadigan was joined to the claim. Mr. Cadigan is represented by Attorney Richard T. Cole. Ruby Rosenberg, an employee of Mr. Cadigan, testified at the evidentiary hearing.

According to the record, Mr. Cadigan is now the legal owner of the lands described in the claim, which consists of that portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ and the S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15, T. 18 N., R. 18 E.W.M. lying west of the Cascade Irrigation District canal. According to the testimony there is approximately 30 acres irrigated with water diverted from Currier Creek and 40 acres with water from an unnamed spring and water delivered by the Cascade Canal. A right is being asserted for 1,000 acre-feet per year from Currier Creek and 1 cubic foot per second, 100 acre-feet per year from the unnamed spring. The spring is located in the northeast corner of the claimant's property, immediately below the Cascade Canal. The spring

REPORT OF REFEREE
Re: Subbasin No. 7

1 reportedly flows a consistent quantity the entire year, irrespective of whether the
2 Cascade Canal is carrying water.

3 A priority date of 1884 is being claimed for this property. Thomas Haley
4 purchased the land from the Northern Pacific Railway Company and received the deed
5 for the land on January 30, 1892. It is being asserted that appropriation and use
6 of water began prior to that date. However, there is nothing in the record to
7 support that assertion. Ruby Rosenberg was able to testify to knowledge of the
8 property back to 1954, but nothing earlier. A chain of title was submitted into
9 evidence for the SE $\frac{1}{4}$ of Section 15. The Referee notes that the chain references a
10 decree dated March 5, 1914, in Sanders v. Bull. A copy of that decree was entered
11 by the State in case-in-chief. Thomas Haley was one of the named plaintiffs in
12 that case and was awarded water from Wilson Creek. The Referee needs evidence of
13 water use from Currier Creek prior to 1917 in order to conclude that a water right
14 was established for the property.

15 The State's Investigation Report indicates that three water right claims filed
16 pursuant to RCW 90.14 may be appurtenant to the claimant's land. Water Right Claim
17 No. 154319 claims a right to use waters from a spring for stock watering and lawn
18 and garden irrigation in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15. The claimant has not asserted a
19 right for this use. Water Right Claim No. 154321 claims a right to divert 3 cubic
20 feet per second, 1080 acre-feet per year from Reecer Creek for the irrigation of 25
21 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 15. Water Right Claim No. 154322 claims a right to
22 divert 3 cubic feet per second, 1080 acre-feet per year for the irrigation of 25
23 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 15. The place of use on both of the later two claims
24 is in the SW $\frac{1}{4}$ of Section 15, which is not owned by the claimants. The claims were
25

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 filed by Mrs. Robert Dean. The chain of title shows that Deans acquired portions
2 of the SE $\frac{1}{4}$ of Section 15 in 1978, four years after these water right claims were
3 filed. It may be that an error was made in describing the place of use on the
4 water right claims, however, that assertion was not made, nor was there any
5 evidence to support that position.

6 Based on the lack of evidence of historic use that would show that a water
7 right was established under the Riparian or Prior Appropriation Doctrines and the
8 apparent lack of a RCW 90.14 claim for this property, the Referee cannot recommend
9 confirmation of a water right under Court Claim No. 01483.

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

13 COURT CLAIM NO. 02253 -- Anderville Farms, Inc.
14 Lawrence Anderson
14 & Arlein Anderson
15 Alfred Anderson
John F. Brown
Dale E. Payne

16 A Statement of Claim was filed with the Court by the Washington State
17 Department of Natural Resources (DNR) for the use of waters from numerous surface
18 water sources in the Yakima River Basin, including sources used on lands lying
19 within Subbasin No. 7. Miriam Laukers, with DNR's Lands and Minerals Division,
20 appeared at the evidentiary hearing on behalf of the department and asked that the
21 State's Investigation Report be entered into evidence. She did not provide any
22 additional testimony or evidence in support of the claim. Later in the hearing,
23 John F. Brown, Jr., who leases the land described in the investigation report from

24
25 REPORT OF REFEREE
26 Re: Subbasin No. 7
27

1 DNR appeared and testified concerning water use on the land. Attorney Kenneth
2 Beckley represents Mr. Brown.

3 Court Claim No. 02253 was filed by Clay McMechan, Jr. claiming a right to use
4 several surface water sources in the Yakima Basin. It included a claim to use
5 waters from Dry Creek on lands owned by DNR and leased by Mr. McMechan. These are
6 the same lands described in the State's Investigation Report for Court Claim No.
7 00589, which are now leased by John F. Brown, Jr. Mr. McMechan did not appear at
8 the evidentiary hearing to testify in support of this claim. On September 22,
9 1992, Anderville Farms, Inc.; Lawrence A. Anderson and L. Arlein Anderson; and
10 Alfred J. Anderson were substituted for Clay McMechan, Jr. on Claim No. 02253.

11 Mr. Brown testified that he irrigates approximately 100 acres of pasture on
12 that portion of Section 36, T. 19 N., R. 17 E.W.M. lying east of Highway 97 and
13 lying adjacent to Dry Creek. The State's Investigation Report shows only 40 acres
14 being irrigated. The State's Map Exhibit, SE-2, also shows only approximately 40
15 acres being irrigated. Neither Ms. Laukers or Mr. Brown identified the information
16 in the investigation report as being inaccurate. Water is diverted from Dry Creek
17 at several locations as Dry Creek traverses the land. Plastic dams are placed in
18 the creek causing the water to overflow the creek banks and flood irrigate the
19 adjacent fields. Mr. Brown estimated that he uses 4 acre-feet per year per acre
20 irrigated. An additional 150 acres are irrigated with water delivered by the
21 Kittitas Reclamation District (KRD). KRD is a Major Claimant in this proceedings,
22 whose rights were addressed through the Major Claimant Pathway.

23 Clay McMechan, Jr., filed Water Right Claim No. 112753 pursuant to RCW 90.14,
24 claiming a right to divert from Dry Creek for the irrigation of approximately 100

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 acres lying in Section 36, T. 19 N., R. 17 E.W.M. east of State Highway 131 (which
2 the Referee believes is the same as SR 97). That claim showed that water was first
3 put to use on April 15, 1960.

4 Mr. Brown did not provide any testimony of historical water use on this
5 property. The land is riparian to Dry Creek and in order for there to be a right
6 under the Riparian Doctrine, the land had to leave Federal government ownership
7 prior to June 6, 1917, and water had to have been first used prior to December 31,
8 1932. If the land did not leave Federal ownership prior to June 6, 1917, a right
9 could have been established under the Prior Appropriation Doctrine if water from
10 Dry Creek was first used on the land prior to June 6, 1917. There is nothing in
11 the record that would allow the Referee to conclude that water rights were
12 established under either the Riparian or Prior Appropriation Doctrines.
13 Attachments to the Court Claim filed by DNR shows that the land was first irrigated
14 in 1933 with waters from the Kittitas Reclamation District.

15 Based on the foregoing, the Referee does not recommend confirmation of a water
16 under either Court Claim No. 00589 or 02253.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

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

2 Jim Anspach
3 Pat and Mary Burke
4 James Shane Cadigan
5 Calaway Pacific
6 Donald E. Clapper and Lois Clapper
7 Dick Colasurdo and Anna Colasurdo
8 William F. Duncalf
9 Milton M. Femrite and Tracy S. Femrite
10 Arthur L. Fiala and Patricia A. Fiala
11 Jay Gorman and Diane Gorman
12 Jeff Gorman and Sheryl Gorman
13 William J. Grueter and Patricia M. Grueter
14 Bill Haberman and Bill Haberman, Jr.
15 James E. Hand
16 Patrick J. Hand, et al.
17 Cathy J. Heathman
18 Laroy D. Holmes and Lorie Holmes
19 Michael Hosker, et al.
20 Peggy E. Hunt
21 Wayne Charles Hunt and Martha Lee Hunt
22 Bobby F. Kennedy
23 Dana R. Lind and Elizabeth Lind
24 Kurt A. Linder and Lillian I. Linder
25 Russ Longacre
26 Charles Lyon
27 Gordon E. Mackner and Utana Mackner
28 Donald Michaud
29 Richard Howard Mitchell and Leottie Mitchell
30 Nelson - Gelbvieh Ranch
31 Gladys O'Neill and Estate of Leo O'Neill
32 Carolyn Ann Olson
33 William Pappas
34 Pautzke Bait Company, Inc.
35 Peoples National Bank of Washington
36 David Pethia
37 Johanna Rawson
38 James E. Roan and Lucille M. Roan
39 George Rominger
40 Nicholas Schmitt, Jr. and Janet C. Schmitt
41 Jess Schober and Barbara Schober
42 Schober Brothers
43 Norman Dean Schwartz and Waleeta Teme Schwartz
44 Arloha M. Scott
45 Ross P. Shamley and Connie R. Shamley
46 John Hardy Shore and Donna Shore

47 REPORT OF REFEREE

48 Re: Subbasin No. 7

1 Phyllis J. Stampfly
2 Randall J. Stampfly
3 Wallace M. Stampfly
4 Arthur E. Strand and Elva Strand
5 Patrick J. Taylor and Susan A. Taylor
6 Carla L. Thomas
7 Twinmasters Corporation
8 Dick Van de Graaf, Jr. and Maxine Van de Graaf
9 Eldon C. Weidenbach
10 Jack Richard White and Christine M. White
11 Joe Wilkening and Myrtle Wilkening
12 Mike Williams and Debbie Williams
13 Willowbrook Farms Ltd. Partnership
14 David Woodcock and Caroline Woodcock
15 Robert L. Woodworth and Sue T. Woodworth
16 WA State Dept. of Natural Resources

17 VIII. FINDINGS OF FACT

18 I, DOUGLAS S. CLAUSING, as Referee in this proceeding, do hereby make the
19 following Findings of Fact:

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

22 2. That the claims, or specific claim cited, to any diversionary or
23 withdrawal rights within Subbasin No. 7 of the following named claimants are denied
24 in their entirety, for reason set forth in the body of this report:

25 William J. Allenbaugh and Beverly M. Allenbaugh (01767 & 01768)
26 Alfred Anderson
27 Lawrence Anderson and Arlein Anderson
28 Mark T. Anderson
29 Ronald T. Anderson and Robin L. Anderson (00296, 00636, 00637, 05259)
30 Anderville Farms, Inc.
31 Jim Anspach
32 Dean P. Auve', Sr. and Rose Marie Auve'
33 Jerry Barton and Diane Barton
34 Boise Cascade Corporation
35 Priscilla J. Brown and John F. Brown
36 John Bugni and Karen Bugni
37 Bull Canal Company, Inc.

38 REPORT OF REFEREE
39 Re: Subbasin No. 7

1 Pat Burke and Mary Burke
2 James Shane Cadigan
3 Central Washington University
4 Terance Clarke
5 Francis Edward Clerf and Jeanne M. Clerf
6 Patrick Clerf and Linda Clerf
7 Dick Colasurdo and Anna Colasurdo
8 Jesse B. Days and Susan B. Days
9 William F. Duncalf
10 Jim Eattock and Claudia Eattock
11 Glen E. Elfers and Della L. Elfers
12 Ernest Everett
13 Arthur L. Fiala and Patricia A. Fiala
14 Irene Pott Flint
15 Jay Gorman and Diane Gorman
16 Jeff Gorman and Sheryl Gorman
17 Wesley D. Gray and JoAnne Gray
18 Don Haley and Pat Haley
19 James E. Hand
20 Patrick J. Hand, et al. (00692 & 00719)
21 Ervin Harder and Josephine Harder
22 Cathy J. Heathman
23 Laroy D. Holmes and Lorie Holmes
24 Mary Hundley
25 Wayne Charles Hunt and Martha Lee Hunt
26 Douglas Johnson and Nancy Johnson
27 Estate of James Jollo and Mary C. Jollo
28 Gaylord Kastning and Georgia Kastning
29 Bobby F. Kennedy
30 Les S. Knudsen and Barbara J. Knudsen
31 Frank C. Lamb
32 Harold F. Lamb, et al. and Roberta D. Lamb
33 Randy H. Lamb
34 Charles F. Lathrop and Elizabeth D. Lathrop
35 Albert J. Lentz and Glena M. Lentz
36 Dana R. Lind and Elizabeth Lind
37 Kurt A. Linder and Lillian I. Linder
38 Claudia J. Lofstrom
39 Gordon E. Mackner and Utana Mackner
40 Orvil L. Magruder and Lola E. Magruder
41 Mr. Larry Matheson and Mrs. Matheson
42 Donald Michaud
43 Richard Howard Mitchell and Leottie Mitchell
44 Daniel O. Molnar
45 E. James Nelson (00781)
46 Leonard L. Newman and Loree Newman
47 Sarah Nickel

48 REPORT OF REFEREE
49 Re: Subbasin No. 7

1 Gladys O'Neill and Estate of Leo O'Neill
2 Frank Oechsner (00576A)
3 Carolyn Ann Olson
4 Don Ozanich and Theresa Ozanich
5 Joseph Panattoni and Marilyn Panattoni
6 William Pappas
7 Pautzke Bait Company, Inc. (02294)
8 Dale E. Payne
9 David T. Pearson and Marguerite L. Pearson
10 Gerald E. Platt, et al.
11 Johanna Rawson
12 Gayle V. Redd and Karen K. Redd
13 Roy D. Rockwell and Virginia L. Rockwell
14 Arnulfo Rodriguez and Gloria Rodriguez
15 George Rominger
16 Jack C. Sanders and Isabelle M. Sanders
17 Schaake Packing Company
18 Jess Schober and Barbara Schober
19 Schober Brothers
20 Norman Dean Schwartz and Waleeta Teme Schwartz
21 Thomas C. Scott
22 Ross P. Shamley and Connie R. Shamley
23 John Hardy Shore and Donna Shore
24 Karla E. Smith and Richard L. Hall
25 Arthur E. Strand and Elva Strand
26 Patrick J. Taylor and Susan A. Taylor (00171 & 01745)
27 Harold Trump and Dorothy Trump
28 Lawrence A. Trump
29 Twinmasters Corporation
30 Ventures, Inc.
31 Ron Voshall
32 Eldon C. Weidenbach
33 Jack Richard White and Christine M. White
34 Ronald Wilcox and Carolyn Wilcox
35 Mike Williams and Debbie Williams
36 Willowbrook Farms Ltd. Partnership
37 David Woodcock and Caroline Woodcock
38 Robert L. Woodworth and Sue T. Woodworth
39 WA State Dept. of Natural Resources

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

3

4 CLAIMANT NAME: **Nicholas Schmitt, Jr.** COURT CLAIM NO. 01447
5 & Janet C. Schmitt
6 Nelson - Gelbvieh Ranch

7 Source: Reecer Creek

8 Use: Irrigation of 60 acres and stock water

9 Period of Use: March 25 to October 15

10 Quantity: 0.825 cubic foot per second, 169.8 acre-feet per year for
11 irrigation; 4 acre-feet per year for stock water

12 Priority Date: **June 30, 1873**

13 Point of Diversion: 15 feet south and 75 feet east of the north quarter corner
14 of Section 28; being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 28,
15 T. 19 N., R. 18 E.W.M.

16 Place of Use: The N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28, T. 19 N., R. 18 E.W.M. .

17 Limitations of Use: The total instantaneous diversion shall not exceed 2.0
18 cubic feet per second under this right and all other
19 rights confirmed under Court Claim No. 01447.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

1 CLAIMANT NAME: **Olson Ditch** COURT CLAIM NO. 00169
2 Source: **Yakima River**
3 Use: **Irrigation of 51 acres and stock water**
4 Period of Use: **April 1 to October 31 for irrigation; continuous for stock
water**
5
6 Quantity: **2.06 cubic feet per second, 626 acre-feet per year from
April 1 to August 31; 1.37 cubic feet per second, 82
acre-feet per year in September and 0.69 cubic feet per
second, 43 acre-feet per year in October for the
irrigation of 158 acres and stock water; 1.12 cubic feet
per second, 68.8 acre-feet per year in November and 0.20
cubic feet per second, 12.5 acre-feet per year from
December 1 to March 31 for stock water**
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10 Priority Date: **February 21, 1876**
11 Point of Diversion: **500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12,
T. 18 N., R. 17 E.W.M.**
12
13 Place of Use: **McManamy - That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, lying
southwest of Olson Ditch, and that portion of the E $\frac{1}{2}$ of
Section 18 lying north of the Burlington Northern Railroad
right of way and south of Olson Ditch, except the SE $\frac{1}{4}$ NE $\frac{1}{4}$
of Section 18, all in T. 18 N., R. 18 E.W.M.**
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26 REPORT OF REFEREE
Re: Subbasin No. 7
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1
2 CLAIMANT NAME: **Nicholas Schmitt, Jr.** COURT CLAIM NO. 01447
3 & Janet C. Schmitt
4 Nelson - Gelbvieh Ranch
5
6 Source: Reecer Creek
7 Use: Irrigation of 60 acres and stock water
8 Period of Use: March 25 to October 15
9 Quantity: 0.75 cubic foot per second, 169.8 acre-feet per year for
10 irrigation; 4 acre-feet per year for stock water
11 Priority Date: **June 14, 1877**
12 Point of Diversion: 15 feet south and 75 feet east of the north quarter corner
13 of Section 28; being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28,
T. 19 N., R. 18 E.W.M.
14
15 Place of Use: The S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28, T. 19 N., R. 18 E.W.M.
16 Limitations of Use: The total instantaneous diversion shall not exceed 2 cubic
17 feet per second under this right and all other rights
18 confirmed under Court Claim No. 01447
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26 REPORT OF REFEREE
Re: Subbasin No. 7
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1 CLAIMANT NAME: **Nicholas Schmitt, Jr.** COURT CLAIM NO. 01447
2 & Janet C. Schmitt
3 Nelson - Gelbvieh Ranch

4 Source: Reecer Creek

5 Use: Irrigation of 70 acres and stock water

6 Period of Use: March 25 to October 15

7 Quantity: 1 cubic foot per second, 198.1 acre-feet per year for irrigation; 4 acre-feet per year for stock water

8 Priority Date: **May 1, 1878**

9 Point of Diversion: 15 feet south and 75 feet east of the north quarter corner of Section 28, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 19 N., R. 18 E.W.M.

10 Place of Use: 60 acres in that portion of the SE $\frac{1}{4}$ of Section 28 lying north of the Kittitas Reclamation District canal and east of Reecer Creek and 10 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 19 N., R. 18 E.W.M.

11 Limitations of Use: The total instantaneous diversion shall not exceed 2 cubic feet per second under this right and all other rights confirmed under Court Claim No. 01447

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 CLAIMANT NAME: **Peggy E. Hunt** COURT CLAIM NO. 05284
2 **Wallace M. Stampfly**
3 **Phyllis J. Stampfly**
4 **Randall J. Stampfly**

5 Source: Reecer Creek

6 Use: Irrigation of 75 acres

7 Period of Use: April 1 to October 15

8 Quantity: 0.75 cubic foot per second, 172 acre-feet per year

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

10 Point of Diversion: 1. 850 feet south and 975 feet east of the north quarter
11 corner of Section 33, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
12 Section 33, T. 19 N., R. 18 E.W.M. 2. 10 feet south and
975 feet east of the north quarter corner of Section 33,
being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, T. 19 N.,
R. 18 E.W.M.

13 Place of Use: That portion of the NE $\frac{1}{4}$ Section 33, T. 19 N., R. 18 E.W.M.
lying east of Reecer Creek

14 Limitations of Use: Of the annual quantity authorized for use, 126 acre-feet
15 per year is authorized for the irrigation of 31.5 acres
16 lying west of an irrigation ditch that flows through the
17 property from the first described diversion. The
18 remaining 46 acre-feet per year is to be used on the 43.5
19 acre field lying east of the irrigation ditch.

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21 REPORT OF REFEREE
22 Re: Subbasin No. 7
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2 CLAIMANT NAME: **James E. Roan** & **Lucille M. Roan** COURT CLAIM NO. 01419
3
4 Source: Reecer Creek
5 Use: Irrigation of 60 acres
6 Period of Use: April 1 to October 15
7 Quantity: 0.75 cubic foot per second, 267.3 acre-feet per year
8 Priority Date: **June 30, 1879**
9 Point of Diversion: 100 feet north and 500 feet west of the east quarter
corner of Section 17, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 17,
T. 19 N., R. 18 E.W.M.
10 Place of Use: That portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20, T. 19 N.,
R. 18 E.W.M. lying west of the ditch that exits the pond
located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20.
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12 Limitations of Use: This land may also receive water from First Creek.
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26 REPORT OF REFEREE
Re: Subbasin No. 7
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1 CLAIMANT NAME: **Nelson - Gelbvieh Ranch** COURT CLAIM NO. 01447
2 Source: Reecer Creek
3 Use: Irrigation of 65 acres and stock water
4 Period of Use: March 25 to October 15
5 Quantity: 0.825 cubic foot per second, 183.95 acre-feet per year for
irrigation; 25 acre-feet per year for stock water
6 Priority Date: **June 30, 1881**
7 Point of Diversion: 540 feet south and 650 feet west of the center of
Section 21, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21,
T. 19 N., R. 18 E.W.M.
8 Place of Use: The W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27, T. 19 N., R. 18 E.W.M. lying
north of the Kittitas Reclamation District canal
9 Limitations of Use: The water authorized to be diverted herein is diverted
from Reecer Creek, dumped into Jones Creek and then
redistributed from Jones Creek. The diversion from Jones
Creek shall not exceed the quantity that is dumped into
Jones Creek from Reecer. The total instantaneous
diversion under this right and all other rights confirmed
under Court Claim No. 01447 shall not exceed 2 cubic feet
per second.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1
2 CLAIMANT NAME: **Milton M. Femrite**
3 & **Tracy S. Femrite** COURT CLAIM NO. 01525
4 Source: Currier Creek
5 Use: Irrigation of 10 acres
6 Period of Use: April 1 to October 31
7 Quantity: 0.22 cubic foot per second, 40 acre-feet per year
8 Priority Date: **April 30, 1882**
9 Point of Diversion: 550 feet north and 300 feet east from the south quarter
corner of Section 26, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$
Section 26, T. 19 N., R. 18 E.W.M.
10 Place of Use: Those portions of Section 26, T. 18 N., R. 18 E.W.M.
described as follows: the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying east of Currier
Creek; and the W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ lying north of the Kittitas
Reclamation District Canal.
11
12
13 CLAIMANT NAME: **Milton M. Femrite**
14 & **Tracy S. Femrite** COURT CLAIM NO. 01527
15 Source: Currier Creek
16 Use: Irrigation of 10 acres
17 Period of Use: April 1 to October 31
18 Quantity: 1.0 cubic foot per second, 30 acre-feet per year
19 Priority Date: **April 30, 1882**
20 Point of Diversion: 1150 feet north and 650 feet east from the west quarter
corner of Section 23, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 23, T. 19 N. R. 18 E.W.M.
21 Place of Use: NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T. 19 N., R. 18 E.W.M.
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26 REPORT OF REFEREE
Re: Subbasin No. 7
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REPORT OF REFEREE
Re: Subbasin No. 7

1
2 CLAIMANT NAME: **David Pethia**
3 **Charles Lyon** COURT CLAIM NO. 02261
4
5 Source: Reecer Creek
6 Use: Irrigation of 56 acres
7 Period of Use: April 1 to October 31
8 Quantity: 2.98 cubic feet per second, 554.4 acre-feet per year
9 Priority Date: **May 16, 1882**
10 Point of Diversion:
11 (1) 150 feet south and 700 feet west from the northeast
12 corner of Section 28, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$
13 Section 28, T. 18 N., R. 18 E.W.M.
14 (2) 800 feet north and 1100 feet west from the east
15 quarter corner of Section 28, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$
16 Section 28, T. 18 N., R. 18 E.W.M.
17 Place of Use: That portion of the E $\frac{1}{2}$ of Section 28, T. 18 N.,
18 R. 18 E.W.M. lying north of State Highway 10, south of the
19 Dry Creek Road and west of Reecer Creek
20 Limitations of Use: This is the maximum quantity of water that can be used on
21 this land with water diverted under this right or any
22 right that may exist from the Olson Ditch Company
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REPORT OF REFEREE
Re: Subbasin No. 7

1 CLAIMANT NAME: **David Pethia** COURT CLAIM NO. 02261
2 **Charles Lyon** (A)03072
3 (A)05691
4 Source: An unnamed spring
5 Use: Irrigation of one-half acre and stock water
6 Period of Use: April 1 to October 31 for irrigation; continuous for stock
watering
7 Quantity: 0.02 cubic foot per second, 2 acre-feet per year
8 Priority Date: **May 16, 1882**
9 Point of Diversion: 800 feet north and 1000 feet east from the center of
10 Section 28, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 28,
T. 18 N., R. 18 E.W.M.
11 Place of Use: That portion of NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 28, T. 18 N.,
12 R. 18 E.W.M. described as follows: Commencing at the
13 north quarter corner of said section, thence south to the
14 south right of way of Dry Creek Road; thence southeast
15 along said right of way 800 feet, more or less, to the
point of beginning; thence continuing along said right of
way 375 feet, more or less; thence S 30°W 300 feet more or
less; thence west 300 feet more or less; thence N 7°E 400
feet, more or less to the point of beginning.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 CLAIMANT NAME: Richard C. Bain
2 & Jeri L. Bain
3 Carl Donovan

4 Source: Yakima River

5 Use: Irrigation of 49.7 acres and stock water

6 Period of Use: April 1 to October 15 for irrigation; continuous for stock
watering

7 Quantity: 3.49 cubic feet per second, 1086.12 acre-feet per year for
irrigation; 0.5 cubic foot per second, 5 acre-feet per
year for stock watering

8 Priority Date: December 21, 1882

9 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12,
T. 18 N., R. 17 E.W.M.

10 Place of Use: Those portions of Section 18, T. 18 N., R. 18 E.W.M.
described as follows: the E $\frac{3}{4}$ of Government Lot 1 lying
southwest of the Burlington Northern Railroad
right-of-way; Government Lot 2 lying northeast of the
Yakima River and north of the Cascade Irrigation District
Canal; the SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying southwest of the Burlington
Northern Railroad right-of-way and the N $\frac{3}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 CLAIMANT NAME: **Jon Fitterer** COURT CLAIM NO. 05175
2 Source: Yakima River
3 Use: Irrigation of 23 acres and stock water
4 Period of Use: April 1 to October 15
5 Quantity: 2.32 cubic feet per second, 342.7 acre-feet per year for
irrigation; 0.05 cubic foot per second, 5 acre-feet per
year for stock water
6 Priority Date: **December 21, 1882**
7 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12,
T. 18 N., R. 17 E.W.M.
8 Place of Use: That portion of Parcel A lying in Section 18 and Parcel B
of that survey recorded January 20, 1988, in Book 15 of
Surveys, at page 126, under Auditor's File No. 510259,
records of Kittitas County, being a portion of Government
Lot 1 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, T. 18 N.,
R. 18 E.W.M. lying northeast of Highway 10.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 CLAIMANT NAME: **Henry John Klocke, Jr.** & **Beverly Lee Klocke** COURT CLAIM NO. 01696
2
3 Source: **Yakima River**
4 Use: **Irrigation of 1.5 acres and stock water**
5 Period of Use: **April 1 to October 31**
6 Quantity: **0.06 cubic foot per second, 7.5 acre-feet per year for irrigation; 0.01 cubic foot per second, 1 acre-foot per year for stock water**
7
8 Priority Date: **December 21, 1882**
9 Point of Diversion: **500 feet south and 850 feet east from the center of Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, T. 18 N., R. 17 E.W.M.**
10
11 Place of Use: **That portion of Government Lot 1 Section 18, T. 18 N., R. 18 E.W.M. described as follows: Commencing at the northwest corner of said Lot; thence east 100 feet, more or less, to a point on the north right-of-way of S.R. 10; the point of beginning; thence east 300 feet, more or less to Klocke Ditch; thence southeast along said ditch to the north right-of-way of S.R. 10; thence northwest along said right-of-way to the point of beginning.**
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REPORT OF REFEREE
Re: Subbasin No. 7

1 CLAIMANT NAME: **Arloha M. Scott** COURT CLAIM NO. 02140
2 (A)05733

3 Source: Dry Creek

4 Use: Irrigation of 40 acres and stock water

5 Period of Use: April 1 to October 31

6 Quantity: 0.90 cubic foot per second, 374 acre-feet per year for the
7 irrigation of 40 acres and stock water; 2.1 cubic feet per
year for conveyance loss

8 Priority Date: **September 15, 1884**

9 Point of Diversion: 320 feet north and 350 feet east from the south quarter
10 corner of Section 20, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20,
T. 18 N., R. 18 E.W.M.

11 Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, which lies east
12 of a line beginning at the southeast corner of the
W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 28 and ending at a point lying
310 feet east along the north boundary line from the
northwest corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said section. Also that
portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28 lying west of State
Route 97. All of the above in T. 18 N., R. 18 E.W.M.

16 CLAIMANT NAME: **Paul and Brenda Wyatt** COURT CLAIM NO. 01558

17 Source: Yakima River

18 Use: Irrigation of one-half acre

19 Period of Use: April 1 to October 31

20 Quantity: 0.02 cubic foot per second, 2.76 acre-feet per year

21 Priority Date: **October 30, 1884**

22 Point of Diversion: 1500 feet south and 700 feet east of the northwest corner
23 of Section 3, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3,
T. 17 N., R. 18 E.W.M.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Place of Use:

That portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 17 N.,
R. 18 E.W.M. described as follows: A tract of land
bounded by a line beginning at the northeast corner of
said quarter/quarter section and running thence west,
along the north boundary line thereof, 720 feet; thence
south 260 feet to a point in the middle of Doughty Ditch;
thence southeasterly, along the center line of said ditch
to its intersection with the east boundary line of said
quarter/quarter section; thence north, along said east
boundary line, 455 feet to the point of beginning.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 CLAIMANT NAME: **Mill Ditch Company, Inc.** COURT CLAIM NO. 00626
2 Source: **Yakima River**
3 Use: **Irrigation of 78 acres**
4 Period of Use: **April 1 to October 15**
5 Quantity: **6.15 cubic feet per second, 1,074.06 acre-feet per year**
6 Priority Date: **October 30, 1884**
7 Point of Diversion: **1500 feet south and 700 feet east from the northwest corner of Section 3, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M.**
8 Place of Use: **The N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M.**
9 Limitations of Use: **In addition to the quantities authorized for Mill Ditch Company, 10.117 cubic feet per second, 1,041.61 acre-feet per year can be diverted into Mill Ditch for delivery to Pautzke Bait Company for the Hundley Ranch, Schaake Packing, Don and Lu Guy, John and Nancy Jewett, and Calaway Pacific under their individual rights.**
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REPORT OF REFEREE
Re: Subbasin No. 7

1 CLAIMANT NAME: **Pautzke Bait Company, Inc.** COURT CLAIM NO. 01724
2 Source: Yakima River
3 Use: Irrigation of 117 acres and stock water
4 Period of Use: April 1 to October 15 for irrigation; continuous for stock
5 watering
6 Quantity: 5.85 cubic feet per second, 951.21 acre-feet per year for
irrigation; 0.5 cubic foot per second, 12 acre-feet per
7 year for stock water
8 Priority Date: **October 30, 1884**
9 Point of Diversion: 1500 feet south and 700 feet east from the northwest
10 corner of Section 3, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section
3, T. 17 N., R. 18 E.W.M.
11 Place of Use: That portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 lying east of the
12 Dike Road, EXCEPT the Interstate 90 right-of-way. And that
portion of the NE $\frac{1}{4}$ of Section 10 lying east of the Dike
Road and north of Damman Road, EXCEPT the Interstate 90
right-of-way, All in T. 17 N., R. 18 E.W.M.
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26 REPORT OF REFEREE
Re: Subbasin No. 7
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2 CLAIMANT NAME: **Mill Ditch Company, Inc.** COURT CLAIM NO. 00626
3
4 Source: **Yakima River**
5
6 Use: **Irrigation of 168.5 acres and stock water**
7
8 Period of Use: **April 1 to October 15 for irrigation, continuous for stock
water**
9
10 Quantity: **8 cubic feet per second, 2,196.32 acre-feet per year from
April 1 to October 15 for irrigation and stock water; 2.28
cubic feet per second, 750 acre-feet per year from
October 16 to March 31 for stock water**
11
12 Priority Date: **May 20, 1885**
13
14 Point of Diversion: **300 feet north and 1200 feet east from the center of
Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29,
T. 18 N., R. 18 E.W.M.**
15
16 Place of Use: **That portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ lying east of Desmond Road and
the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33, the NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$
Section 34 lying north of Dolarway Road and southwesterly
of the Burlington Northern Railroad right of way, ALL in
T. 18 N., R. 18 E.W.M.**
17
18 Limitations of Use: **For winter stock watering only, the quantity of water
herein confirmed is not in addition to the quantity for
the same purpose authorized in the right for Mill Ditch
Company carrying a priority date of May 6, 1893. The
maximum quantity of water that can be diverted between
October 16 and March 31 under both Mill Ditch Company
rights is 2.28 cubic feet per second, 750 acre-feet per
year. An additional 0.50 cubic foot per second, 12
acre-feet per year can be diverted for delivery to Pautzke
Bait Company for the Hundley Ranch. Also, in addition
to the quantities authorized for diversion under the Mill
Ditch Company rights, 10.117 cubic feet per second,
1,041.61 acre-feet per year can be diverted into Mill
Ditch during irrigation season for delivery to Pautzke
Bait Company for the Hundley Ranch, Schaake Packing, Don
and Lu Guy, John and Nancy Jewett and Calaway Pacific
under their individual rights.**
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REPORT OF REFEREE
Re: Subbasin No. 7

1 CLAIMANT NAME: **Olson Ditch** COURT CLAIM NO. 00169
2 Source: The Yakima River
3 Use: Irrigation of 16 acres and stock water
4 Period of Use: April 1 to October 31 for irrigation; continuous for stock
water
5
6 Quantity: 0.65 cubic foot per second, 197 acre-feet per year from
April 1 to August 31; 0.43 cubic foot per second, 26
acre-feet per year in September; 0.21 cubic foot per
second, 13.5 acre-feet per year in October for irrigation;
0.35 cubic foot per second, 21.6 acre-feet in November and
0.063 cubic foot per second, 6.75 acre-feet per year from
December 1 to March 31 for stock water;
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10 Priority Date: **July 30, 1885**
11 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
12
13 Place of Use: McManamy - That portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18,
T. 18 N., R. 18 E.W.M. lying southwest of Olson Ditch.
14
15
16 CLAIMANT NAME: **Mary McManamy & Mary P. Seubert** COURT CLAIM NO. 00521
17 Source: Yakima River
18 Use: Irrigation of 38.2 acres
19 Period of Use: April 1 to October 31
20 Quantity: 4 cubic feet per second, 485.4 acre-feet per year
21 Priority Date: **July 30, 1885**
22 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
23
24 Place of Use: That portion of the E $\frac{1}{2}$ of Section 18, T. 18 N.,
R. 18 E.W.M. lying southwest of the Burlington Northern
25
26 REPORT OF REFEREE
Re: Subbasin No. 7
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1 Railroad right of way and northeast of the Chicago,
2 Milwaukee, St. Paul and Pacific Railroad right of way
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REPORT OF REFEREE
Re: Subbasin No. 7

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2 CLAIMANT NAME: Joe Wilkening & Myrtle Wilkening COURT CLAIM NO. 00750
3 Source: Yakima River
4 Use: Irrigation of 10.5 acres
5 Period of Use: April 1 to October 15
6 Quantity: 0.30 cubic foot per second, 124.7 acre-feet per year
7 Priority Date: July 30, 1885
8 Point of Diversion: 500 feet south and 850 feet east from the center of
9 Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12,
T. 18 N., R. 17 E.W.M.
10 Place of Use: The west 1680 feet of that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and
11 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T. 18 N., R. 18 E.W.M. lying north
12 of the C.M. St. P and P Railroad right-of-way and that
13 portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T. 18 N.,
R. 18 E.W.M. lying south of the C.M. St. P and P Railroad
right-of-way and west of an unnamed slough running through
that subdivision.
14 Limitation on Use: A secondary point of diversion is located on an unnamed
15 slough, approximately 950 feet north and 200 feet west of
the south quarter corner of Section 18, being within the
SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T. 18 N., R. 18 E.W.M.
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26 REPORT OF REFEREE
Re: Subbasin No. 7
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1 CLAIMANT NAME: Bill Haberman
2 & Bill Haberman, Jr. COURT CLAIM NO. 02268

3 Source: Currier Creek

4 Use: Irrigation of 33 acres

5 Period of Use: April 1 to October 15

6 Quantity: 1.65 cubic feet per second, 402.5 acre-feet per year

7 Priority Date: August 18, 1888

8 Point of Diversion: 700 feet south and 140 feet west from the north quarter
9 corner of Section 22, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$
Section 22, T. 18 N., R. 18 E.W.M.

10 Place of Use: That portion of the NW $\frac{1}{4}$ lying east of an unnamed stream or
11 drain that runs north to south through the NW $\frac{1}{4}$, in
Section 22, T. 18 N., R. 18 E.W.M.

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REPORT OF REFEREE
26 Re: Subbasin No. 7

1 CLAIMANT NAME: **Olson Ditch** COURT CLAIM NO. 00169
2 Source: The Yakima River
3 Use: Irrigation of 8 acres and stock water
4 Period of Use: April 1 to October 31 for irrigation; continuous for stock
water
5
6 Quantity: 0.312 cubic foot per second, 86.34 acre-feet per year from
April 1 to August 31; 0.21 cubic foot per second, 10.1
acre-feet per year in September; 0.10 cubic foot per
second, 4.11 acre-feet per year in October for irrigation;
0.169 cubic foot per second, 10.4 acre-feet per year in
November; 0.031 cubic foot per second, 3.25 acre-feet per
year from December 1 to March 31 for stock water;
7
8 Priority Date: **July 1, 1889**
9
10 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
11
12 Place of Use: Eattock - that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18,
T. 18 N., R. 18 E.W.M. lying southwest of the Dry Creek
Road
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26 REPORT OF REFEREE
Re: Subbasin No. 7
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1 CLAIMANT NAME: **Dick Van de Graaf, Jr.** & Maxine Van de Graaf COURT CLAIM NO. 01520
2
3 Source: Jones Creek and Currier Creek
4 Use: Irrigation of 20 acres
5 Period of Use: April 1 to October 15
6 Quantity: 0.80 cubic foot per second, 182 acre-feet per year
7 Priority Date: **April 1, 1890**
8 Point of Diversion: 1. 1260 feet south and 500 feet east from the west
9 quarter corner of Section 2, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 2, T. 18 N., R. 18 E.W.M.
10 2. 1050 feet north and 650 feet east from the southwest
11 corner of Section 2, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 2, T. 18 N., R. 18 E.W.M.
12 Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, T. 18 N.,
13 R. 18 E.W.M., lying west of a water delivery ditch.
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26 REPORT OF REFEREE
Re: Subbasin No. 7
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2 CLAIMANT NAME: **Michael Hosker, et al.** COURT CLAIM NO. 01008
3
4 Source: Jones Creek
5
6 Use: Irrigation of 65 acres
7
8 Period of Use: April 1 to October 15
9
10 Quantity: 2.8 cubic feet per second, 303 acre-feet per year
11 Priority Date: **November 19, 1890**
12 Point of Diversion: 1290 feet west and 20 feet south from the northeast corner
13 of Section 3, being within the Government Lot 2 of
14 Section 3, T. 18 N., R. 18 E.W.M.
15 Place of Use: That portion of Government Lot 1 and the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section
16 3 west of Jones Creek and east of delivery ditch,
17 T. 18 N., R. 18 E.W.M.
18
19 CLAIMANT NAME: **Patrick J. Taylor** COURT CLAIM NO. 00170
20 & Susan A. Taylor
21
22 Source: Dry Creek
23
24 Use: Irrigation of 41 acres and stock water
25
26 Period of Use: April 1 to October 15
27
28 Quantity: 2 cubic feet per second, 300 acre-feet per year
29 Priority Date: **December 5, 1890**
30
31 Point of Diversion: 5 feet south and 5 feet east from the center of
32 Section 20, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20,
33 T. 18 N., R. 18 E.W.M.
34
35 Place of Use: That portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 20 lying south of the
36 Northern Pacific Railroad right-of-way and east of Dry
37 Creek, T. 18 N., R. 18 E.W.M.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1
2 CLAIMANT NAME: **Patrick J. Taylor** & **Susan A. Taylor** COURT CLAIM NO. 01745A
3
4 Source: Cabin Creek
5 Use: Irrigation of 30 acres and stock water
6 Period of Use: April 1 to October 15
7 Quantity: 2 cubic feet per second, 400 acre-feet per year
8 Priority Date: **December 5, 1890**
9 Point of Diversion: 1300 feet north and 1125 west from the south quarter corner of Section 20, being NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20, T. 18 N., R. 18 E.W.M.
10 Place of Use: The SE $\frac{1}{4}$ SW $\frac{1}{4}$ and that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 lying west of Dry Creek, T. 18 N., R. 18 E.W.M.
11
12 CLAIMANT NAME: **Donald E. Clapper** & **Lois Clapper** COURT CLAIM NO. 01565
13
14 Source: Yakima River
15 Use: Irrigation of 20 acres
16 Period of Use: April 1 to October 15
17 Quantity: 1 cubic foot per second, 100 acre-feet per year
18 Priority Date: **April 7, 1891**
19 Point of Diversion: 500 feet south and 850 feet east from the center of Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, T. 18 N., R. 17 E.W.M.
20 Place of Use: That portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20, T. 18 N., R. 18 E.W.M. lying west of Cabin Creek.

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25 REPORT OF REFEREE
26 Re: Subbasin No. 7
27

1 CLAIMANT NAME: **Olson Ditch** COURT CLAIM NO. 00169
2
3 Source: The Yakima River
4
5 Use: Irrigation of 519.94 acres and stock water
6 Period of Use: April 1 to October 31 for irrigation; continuous for stock
water
7
8 Quantity: 20.97 cubic feet per second, 6358 acre-feet per year from
April 1 to August 31; 13 cubic feet per second, 831
acre-feet per year in September; 7 cubic feet per second,
430 acre-feet per year in October for irrigation; 11.36
cubic feet per second, 699.2 acre-feet per year in
November and 2.05 cubic feet per second, 218.5 acre-feet
per year from December 1 to March 31 for stock water;
9
10 Priority Date: **April 7, 1891**
11 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
12
13 Place of Use: Hand - That portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ lying southwest of Olson
Ditch; that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying south of the
Burlington Northern Railroad tracks and the NE $\frac{1}{4}$ SW $\frac{1}{4}$, all in
Section 20, T. 18 N., R. 18 E.W.M.
14
15 Salter and Thomas - That portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of
Section 20, T. 18 N., R. 18 E.W.M. lying southwest of the
Dry Creek Road.
16
17 Rominger/Linder - That portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 21
lying south of the Olson Ditch and that portion of the
NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 lying northeast of the Dry Creek
Road, all in T. 18 N., R. 18 E.W.M.
18
19 Johnson - That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21,
T. 18 N., R. 18 E.W.M. lying north of the Dry Creek Road
20
21 Taylor - That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of
Section 20 lying southwest of the Burlington Northern
Railroad tracks and that portion of the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 29
lying east of Interstate 90 and that portion of the NW $\frac{1}{4}$
and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28 lying southwest of Burlington

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 Northern Railroad tracks and northeast of Willow Ditch,
2 all in T. 18 N., R. 18 E.W.M..

3 Willett - That portion of the $W\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$ of Section 28,
4 T. 18 N., R. 18 E.W.M. lying southwest of Burlington
5 Northern Railroad Tracks.

6 Small holdings - That portion of the $E\frac{1}{2}NW\frac{1}{4}$ of Section 28,
7 T. 18 N., R. 18 E.W.M. lying south of the Dry Creek Road
8 and north of Highway 10.

9 Macner - That portion of the $E\frac{1}{2}SE\frac{1}{4}$ of Section 20,
10 T. 18 N., R. 18 E.W.M. lying southwest of Olson Ditch and
11 northeast of the Burlington Northern Railroad right of
12 way.

13 CLAIMANT NAME: **Richard C. Bain** COURT CLAIM NO. 01207
14 & Jeri L. Bain
15 Carl Donovan

16 Source: Yakima River

17 Use: Irrigation of 10.4 acres and stock water

18 Period of Use: April 1 to October 15

19 Quantity: 3.49 cubic feet per second, 227 acre-feet per year for
irrigation; 0.02 cubic feet per second, 1 acre-foot per
year for stock water

20 Priority Date: **April 25, 1891**

21 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the $NE\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$ Section 12,
T. 18 N., R. 17 E.W.M.

22 Place of Use: That portion of Government Lot 2 of Section 18, T. 18 N.,
R. 18 E.W.M. lying northeast of the Yakima River and north
of the Cascade Irrigation District canal.

23 Limitation on Use: The instantaneous quantity herein authorized is not in
addition to that quantity for the right recommended under
this claim with a December 21, 1882, date of priority.

24 REPORT OF REFEREE

25 Re: Subbasin No. 7

1 CLAIMANT NAME: **Milton M. Femrite**
2 & **Tracy S. Femrite** COURT CLAIM NO. 01528
3 Source: An unnamed spring
4 Use: Single domestic supply, including irrigation of 0.5 acre
5 Period of Use: Continuous
6 Quantity: 0.02 cubic foot per second, 2 acre-feet per year
7 Priority Date: **August 20, 1892**
8 Point of Diversion: 150 feet north and 50 feet west from the center of Section
9 26, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, T. 19 N.,
R. 18 E.W.M.
10 Place of Use: The NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, T. 19 N., R. 18 E.W.M.

25 REPORT OF REFEREE
26 Re: Subbasin No. 7

1 CLAIMANT NAME: **Carla L. Thomas** COURT CLAIM NO. 01959
2 Source: Thomas Creek
3 Use: Irrigation of 17 acres
4 Period of Use: April 1 to July 30
5 Quantity: 1.5 cubic feet per second, 104 acre-feet per year
6 Priority Date: **October 15, 1892**
7 Point of Diversin: 10 feet south and 600 feet east from the center of
8 Section 34, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34
T. 19 N., R. 18 E.W.M.
9 Place of Use: That portin of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 34, T. 19 N.,
R. 18 E.W.M. lying east of Thomas Creek
10
11 CLAIMANT NAME: **Carla L. Thomas** COURT CLAIM NO. 01959
12 Source: Jones Creek
13 Use: Irrigation of 24 acres
14 Period of Use: April 1 to July 30
15 Quantity: 2 cubic feet per second, 348 acre-feet per year
16 Priority Date: **October 15, 1892**
17 Point of Diversion: 1275 feet north and 50 feet east from the south quarter
18 corner of Section 34, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
19 Section 34, T. 19 N., R. 18 E.W.M.
20 Place of Use: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T. 19 N.,
R. 18 E.W.M. lying west of Thomas Creek
21 Limitation of Use: This land may also receive water from the Kittitas
Reclamation District
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26 REPORT OF REFEREE
Re: Subbasin No. 7
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1 CLAIMANT NAME: **Calaway Pacific** COURT CLAIM NO. 01720
2 Source: **Yakima River**
3
4 Use: **Irrigation of 16 acres**
5 Period of Use: **April 1 to October 31**
6 Quantity: **1.8 cubic feet per second, 96 acre-feet per year**
7 Priority Date: **May 6, 1893**
8 Point of Diversion: **300 feet north and 1200 feet east of the center of
Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
T. 18 N., R. 18 E.W.M.**
9
10 Place of Use: **That portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 3, T. 17 N.,
R. 18 E.W.M. lying northeast of Interstate 90 and
southwest of the West Channel of Reecer Creek.**
11
12 CLAIMANT NAME: **Don Guy
& Lu Guy** COURT CLAIM NO. 01983
13 Source: **Yakima River**
14 Use: **Irrigation of 1.5 acres**
15 Period of Use: **April 1 to October 15**
16 Quantity: **0.067 cubic foot per second, 3 acre-feet per year**
17 Priority Date: **May 6, 1893**
18 Point of Diversion: **300 feet north and 1200 feet east from the center of
Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
T. 18 N., R. 18 E.W.M.**
19
20 Place of Use: **That portion of Government Lot 1, Section 3, T. 17 N.,
R. 18 E.W.M. described as follows: Beginning 1645 feet
north and 1076 feet west of the east quarter corner of
Section 3; thence west 300 feet; thence south 300 feet;
thence east 300 feet; thence north 300 feet to the point
of beginning.**
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26 REPORT OF REFEREE
Re: Subbasin No. 7
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1 CLAIMANT NAME: John G. Jewett COURT CLAIM NO. 00140
2 & Nancy A. Jewett (A)02098
3
4 Source: Yakima River
5 Use: Irrigation of 2 acres
6 Period of Use: April 1 to October 15
7 Quantity: 0.50 cubic foot per second, 8 acre-feet per year
8 Priority Date: May 6, 1893
9 Point of Diversion: 300 feet north and 1200 feet east from the center of
10 Section 29, being within SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
11 T. 18 N., R. 18 E.W.M.
12 Place of Use: That portion of Government Lot 1, Section 3, T. 17 N.,
13 R. 18 E.W.M. described as follows: Beginning at a point
14 1645 feet north and 776 feet west of the east quarter
15 corner of said section; thence west 300 feet; thence north
16 300 feet; thence east 300 feet; thence south 300 feet to
17 the point of beginning.

21 REPORT OF REFEREE
22 Re: Subbasin No. 7
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1 CLAIMANT NAME: **Mill Ditch Company, Inc.** COURT CLAIM NO. 00626
2 Source: **Yakima River**
3 Use: **Irrigation of 185 acres and stock watering**
4 Period of Use: **April 1 to October 15 for irrigation; continuous for stock
watering**
5 Quantity: **13.63 cubic feet per second, 2,547.45 acre-feet per year
from April 1 to October 15 for irrigation and stock
watering; 2.28 cubic feet per second, 750 acre-feet per
year from October 16 to March 31 for stock watering**
6 Priority Date: **May 6, 1893**
7 Point of Diversion: **300 feet north and 1200 feet east from the center of
Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
T. 18 N., R. 18 E.W.M.**
8 Place of Use: **That portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34, T. 18 N.,
R. 18 E.W.M. lying south of Dolarway Road and the N $\frac{1}{2}$ of
Section 3, T. 17 N., R. 18 E.W.M. lying east of the West
Channel of Reecer Creek, EXCEPT that portion described as
follows: Beginning at the northeast corner of said
section; thence west 1000 feet, more or less; thence south
380 feet; thence east 200 feet; thence south 480 feet;
thence east 470 feet; thence south 1564 feet; thence S 28°
E, 427.68 feet; thence east 137.45 feet; thence north 2760
feet to the point of beginning; ALSO EXCEPT the following
two parcels: 1) Beginning at a point 1645 feet north and
776 feet west of the east quarter corner of said section;
thence west 300 feet; thence north 300 feet; thence east
300 feet; thence south 300 feet to the point of beginning;
2) Beginning 1645 feet north and 1076 feet west of the
east quarter corner of Section 3; thence west 300 feet;
thence south 300 feet; thence east 300 feet; thence north
300 feet to the point of beginning.**
9 Limitations of Use: **For winter stock watering only, the quantity of water
herein confirmed is not in addition to the quantity for
the same purpose authorized in the right for Mill Ditch
Company carrying a priority date of May 20, 1885. The
maximum quantity of water that can be diverted between
October 16 and March 31 under both Mill Ditch Company
rights is 2.28 cubic feet per second, 750 acre-feet per**

26 REPORT OF REFEREE
27 Re: Subbasin No. 7

year. An additional 0.50 cubic foot per second, 12 acre-feet per year can be diverted between October 16 and March 31 for stock watering on the Pautzke Bait Company Hundley Ranch. Also, in addition to the quantities authorized in the Mill Ditch Company rights, 10.117 cubic feet per second, 1,041.61 acre-feet per year can be diverted into Mill Ditch during irrigation season for delivery to the Pautzke Bait Company Hundley Ranch, Schaake Packing, Don and Lu Guy, John and Nancy Jewett and Calaway Pacific under their individual rights.

CLAIMANT NAME: **Carla L. Thomas** COURT CLAIM NO. 01144
Peoples National Bank of Washington

Source: Dry Creek

Use: Stock water

Period of Use: Continuous

Quantity: 0.03 cubic foot per second, 21.68 acre-feet per year

Priority Date: **April 28, 1897**

Point of Diversion: 650 feet south and 400 feet west from the east quarter corner of Section 15, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 15, T. 19 N., R. 17 E.W.M.

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

REPORT OF REFEREE
Re: Subbasin No. 7

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2 CLAIMANT NAME: **Frank Oechsner** COURT CLAIM NO. 00576
3 **Mary McManamy**
4 **Mary Patricia Seubert**
5 **Paul Weaver**
6 **& Florence A. Weaver**
7
8 Source: Reecer Creek
9
10 Use: Irrigation of 51 acres and stock water
11 Period of Use: April 1 to October 15 for irrigation; February 1 to
12 November 31 for stock water
13 Quantity: 4.33 cubic feet per second, 633.5 acre-feet per year for
14 irrigation; 0.03 cubic foot per second, 3 acre-feet per
15 year for stock water
16 Priority Date: June 30, 1900
17 Point of Diversion: 900 feet north and 1100 feet west from the east quarter
18 corner Section 28, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 28,
19 T. 18 N., R. 18 E.W.M.
20 Place of Use: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T. 18 N.,
21 R. 18 E.W.M. lying southwesterly of the Burlington
22 Northern R.R. right-of-way, and that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$
23 of said section described as follows: Commencing at the
24 southwest corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$; thence east 300 feet,
25 more or less, to the point of beginning; thence east 850
26 feet, more or less, to the Burlington Northern R.R.
27 right-of-way; thence northwesterly 1030 feet, more or
 less, along said right-of-way; thence southwesterly 720
 feet, more or less, to the point of beginning; and that
 portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said section lying east of
 Desmond Road.

REPORT OF REFEREE
Re: Subbasin No. 7

1 CLAIMANT NAME: **Ellensburg; City of** COURT CLAIM NO. 02085
2 Source: **Yakima River**
3 Use: **Municipal supply**
4 Period of Use: **April 20 through October 15**
5 Quantity: **23.33 cubic feet per second, 6,000 acre-feet per year**
6 Priority Date: **May 10, 1905**
7 Point of Diversion: **The SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3 and the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 10,
T. 17 N., R. 18 E.W.M.**
8 Place of Use: **Land served by the Ellensburg Municipal Water System in
the Ellensburg urban area.**
9 Limitations of Use: **Water use under this right shall be consistent with the
contract signed between the City of Ellensburg, Kittitas
Reclamation District and United States, Department of
Interior, Bureau of Reclamation, on December 21, 1971, and
specifically the schedule of water delivery on page 11 of
that contract**
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REPORT OF REFEREE
Re: Subbasin No. 7

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2 CLAIMANT NAME: **Russ Longacre** COURT CLAIM NO. 00334
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4 Source: Reecer Creek
5 Use: Irrigation of 19 acres and stock water
6 Period of Use: April 1 to October 31
7 Quantity: 0.40 cubic foot per second, 60 acre-feet per year for
8 irrigation; 0.02 cubic foot per second, 2 acre-feet per
9 year for stock watering
10 Priority Date: **April 30, 1909**
11 Point of Diversion: 1315 feet north and 1315 feet west from the east quarter
12 corner of Section 3, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3,
13 T. 17 N., R. 18 E.W.M.
14 Place of Use: The W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 2, T. 17 N., R. 18 E.W.M.
15
16 CLAIMANT NAME: **Ivan Hutchinson** COURT CLAIM NO. 00876
17 & **Mildred Hutchinson** (A)02389
18 Source: An unnamed pond
19 Use: Nonconsumptive washing and production of gravel and sand
20 Period of Use: April 15 to October 1
21 Quantity: 3 cubic feet per second (nonconsumptive)
22 Priority Date: **April 14, 1971**
23 Point of Diversion: 150 feet south and 1050 feet west from the west quarter
24 corner of Section 29, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$
25 Section 29, T. 18 N., R. 18 E.W.M.
26 Place of Use: Those portions of S $\frac{1}{2}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29,
27 T. 18 N., R. 18 E.W.M. lying northeast of Interstate 90.

REPORT OF REFEREE
Re: Subbasin No. 7

1 CLAIMANT NAME: **Ivan Hutchinson
& Mildred Hutchinson** COURT CLAIM NO. 00876
2 (A)02389

3 Source: An unnamed pond

4 Use: Nonconsumptive washing and production of gravel and sand

5 Period of Use: October 1 to April 15

6 Quantity: 3 cubic feet per second (nonconsumptive)

7 Priority Date: **May 12, 1975**

8 Point of Diversion: 150 feet south and 1050 feet west from the east quarter
9 corner of Section 29, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 29, T. 18 N., R. 18 E.W.M.

10 Place of Use: Those portions of the S $\frac{1}{2}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29,
11 T. 18 N., R. 18 E.W.M. lying northeast of Interstate 90.

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26 REPORT OF REFEREE
Re: Subbasin No. 7

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1 4. All prior claims to rights for surface water from Subbasin No. 7,
2 including those claims filed under the provisions of Chapter 90.14 RCW, are denied,
3 unless expressly provided for herein. The "Water Rights Claims Registry" directed
4 by RCW 90.14.111 should be supplemented with appropriate notations to the records
5 of those claims specifically identified in the "Water Right Claims" section of
6 Plaintiff's Exhibit No. SE-3.

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

10 Certificates of Surface Water Right

11 S4-01176C

12 S4-24040C

13 S4-26125C

14 Certificate of Change recorded in Volume 1, Page 424

15 Certificate of Change recorded in Volume 2, Page 969

16 Certificate of Change recorded in Volume 1-3, Page 3

17 Certificate of Change recorded in Volume 1-3, Page 43

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

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7

IX. CONCLUSIONS OF LAW

Confirmation of Rights

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

Duty of Water

The duty of water needed for irrigation in Subbasin No. 7 varies considerably by location. The Referee has chosen not to recommend a specific water duty for the entire subbasin and each claimant shall be entitled to divert the quantity specified in their recommendation if it is available and can be put to beneficial use.

Irrigation Season

Unless otherwise identified within a specific water right, the irrigation season shall be defined as that period from April 1 to and including October 15 of each year. The Referee recognizes that extraordinary circumstances may dictate the application of water prior to or subsequent to the defined irrigation season, and, in that event, express approval from the Department of Ecology must be obtained annually prior to such deviation.

REPORT OF REFEREE
Re: Subbasin No. 7

1 Certificates of Adjudicated Water Right

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

7

8 Administration of Water

9 The use of Subbasin No. 7 waters should be regulated by the Department of
10 Ecology on the basis of Certificates of Adjudicated Water Rights issued as a result
11 of this proceeding, and on the basis of any permits and certificates that may have
12 issued outside of this proceeding under appropriation procedures of Chapter 90.03
13 RCW. When available water in Subbasin No. 7 is insufficient to supply all rights,
14 and upon a finding that regulation is required, the Department may regulate junior
15 water rights in the interest of satisfying senior water rights.

16 Whenever regulation of junior water rights is necessary, the Department may
17 enter at reasonable times upon the lands of any and all parties having rights and
18 shall regulate diversion facilities so as to apportion the waters as herein
19 adjudicated.

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

23

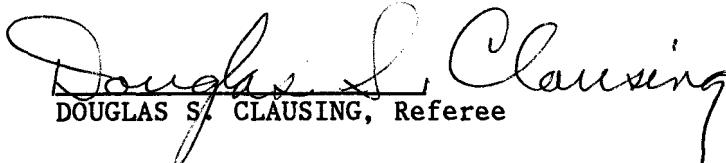
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26 REPORT OF REFEREE
 Re: Subbasin No. 7

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

6 SIGNED and DATED at Yakima, Washington
7 this 21 st day of April, 1995.

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10 DOUGLAS S. CLAUSING, Referee
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REPORT OF REFEREE
Re: Subbasin No. 7

1 There is a significant difference between the quantity of water identified as
2 being used on the RCW 90.14 claim and the quantity testified to by Mr. Bain. The
3 quantity currently being used according to the testimony is extremely high for the
4 number of acres involved. If the prior owners were in fact using 0.40 cubic foot
5 per second, 60 acre-feet per year, that would be the limit of the right. This land
6 is not riparian to Reecer Creek, so any right established would be under the Prior
7 Appropriation Doctrine with the priority date being the date water was first
8 appropriated. The only thing in the record to establish a priority date is the
9 deed dated May 6, 1909, indicating that water had been appropriated and the water
10 right claim which says water was first used in April 1909. Lacking any information
11 to provide an earlier date, the Referee finds that the priority date shall be
12 April 30, 1909.

13 Based on the foregoing, the Referee recommends that a right be confirmed under
14 the Prior Appropriation Doctrine with an April 30, 1909, date of priority for the
15 diversion of 0.40 cubic foot per second, 60 acre-feet per year from Reecer Creek
16 for the irrigation of 19 acres and 0.02 cubic foot per second, 2 acre-feet per year
17 for stock watering.

18 The claimants are also asserting a right to use a spring for stock watering.
19 There was no testimony to show that a historic diversionary right was established
20 for this spring, nor is there a filing under RCW 90.14 for this source. Livestock
21 do drink directly from the spring and this nondivisionary stock watering is
22 covered by the stock water stipulation.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 7