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YAKIMA RIVER BASIN
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YAKIMA COUNTY
WATER RIGHTS ADJUDICATION

F I L E D
OCT 23 2001

KIM M. EATON
YAKIMA COUNTY CLERK

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

REPORT OF REFEREE

**Re: SUBBASIN NO. 10
(KITTITAS)**

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

REPORT OF REFEREE - VOLUME 45, Part 1

15465

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

IN THE MATTER OF THE DETERMINATION)
OF THE RIGHTS TO THE USE OF THE)
SURFACE WATERS OF THE YAKIMA RIVER)
DRAINAGE BASIN, IN ACCORDANCE WITH) NO. 77-2-01484-5
THE PROVISIONS OF CHAPTER 90.03,)
THE STATE OF WASHINGTON,) REPORT OF REFEREE
DEPARTMENT OF ECOLOGY) Re: Subbasin No. 10
Plaintiff,) (Kittitas)
v.)
James J. Acquavella, et al.,)
Defendants.)

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

I. BACKGROUND

This report concerns the determination of the surface water rights of the Yakima River basin, specifically those rights located within Subbasin No. 10, the Kittitas 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 between October 7, 1991 and November 4, 1991.

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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. 10. 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, Kittitas Subbasin No. 10", 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 Kittitas Valley. 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. 10 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

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$\frac{1}{2}$ acre 0.02 cfs; 2 acre-feet per year
Stock Water 1 acre-foot per year
(diversion)

B. Irrigation Water -- In order to be consistent with the water duties awarded in many of the prior decrees addressing water rights in this area (see discussion of those decrees beginning on page 10 of this report), the Referee will use an annual water duty of 5 acre-feet per acre. The maximum rate of diversion or withdrawal for each irrigated acre shall be 0.02 cubic foot per second (9 gallons per minute). It is the Referee's opinion that the aforementioned duties of water are reasonable maximum application rates for the soil and topographic conditions in most of Subbasin No. 10.

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 7, 1991, may be utilized by any party in the proof of a claim or the contesting of a claim whenever relevant and material."

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1 The second stipulates to the description of properties identified
2 in the 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
5 lands for which the water right is claimed and that such claim will
constitute proof of the ownership thereof in the absence of a contest
as to such title."

6 In the third, the parties stipulated to the following in relation to
7 "non-diversionary" stock and wildlife watering use with regards to Subbasin
8 No. 10:

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

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

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

23 4. Waters in naturally occurring ponds and springs (with no surface
connection to a stream) in the subbasin shall be retained for wildlife
watering uses, when such ponds and springs are located on or adjacent
to lands which are now used as pasture or range for wildlife. Said

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1 uses embody entitlements to a level in the water bodies sufficient to
2 provide water for wildlife drinking directly therefrom while ranging on
3 riparian lands, and with the same priority as provided in paragraph 2.
Regulation of the ponds and springs by the plaintiff shall be
consistent with such retention requirements.

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

6

7 V. LAND DESCRIPTIONS

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

12

13 VI. WATER RIGHT PRIORITIES

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

19

20 VII. SPECIAL ISSUES

21 CREEK NAMES:

22 Following review of the record in Subbasin No. 10, the Referee has
23 found that creek names have changed over the years and there are multiple
24 streams that have the same name. This leads to the likelihood there will be

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1 confusion or misunderstanding when it comes to identifying the source of
2 water for which a right is being asserted. This confusion may result in the
3 RCW 90.14 claim not reflecting the same name for the creek as is shown on
4 the State's Map Exhibit, SE-2, and possibly not agreeing even with the
5 testimony offered at the hearing. The Referee intends to rely more on the
6 diversion location on the RCW 90.14 claim and testified to at the hearing if
7 there is confusion over the most accurate name.

8 The Referee notes that there are two streams identified on SE-2 named
9 Spring Creek. One is in the westerly part of Subbasin No. 10, in the
10 vicinity of Coleman Creek and the second is in the easterly part of Subbasin
11 No. 10, near Cooke Creek and Caribou Creek. When discussing these creeks,
12 the Referee will attempt to be very clear concerning the location of the
13 creek so the reader can identify which of the two streams is being
14 discussed. Additionally, testimony offered in support of claims to use
15 Schnebly Creek suggest that at one time Schnebly Creek was called Spring
16 Creek. Schnebly Creek has its origins in Schnebly Canyon and flows to the
17 south into Section 11, T. 18 N., R. 19 E.W.M. Spring Creek originates in
18 several springs in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 11 and flows south through the W $\frac{1}{2}$ NW $\frac{1}{4}$
19 of Section 11 to where it joins with Schnebly Creek near the west quarter
20 corner. The local custom is to refer to the creek below the confluence as
21 either Schnebly or Spring Creek. For purposes of clarity, the Referee will
22 refer to Spring Creek only as the channel in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 11 to
23 where it meets Schnebly Creek. Below the confluence, the Referee will refer
24 to the stream as Schnebly Creek.

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1 There are two Park(e) Creeks. One flows into Warm Springs Creek, which
2 then flows into Caribou Creek and is located primarily in T. 18 N., The
3 second flows parallel to Interstate-90, is in T. 17 N., and flows into
4 Caribou Creek directly. Unfortunately, the various documents in the record
5 for both of these creeks spell the name Park (without an "e") and as Parke
6 (with the "e"), so it is not possible to distinguish the creeks in that
7 manner. Again, the Referee will attempt to adequately describe the
8 location, so the reader can be clear which of the creeks is being
9 discussed. Caribou Creek has also been known by a variety of names over the
10 years, such as Warm Springs and Cherry Creek. SE-2 shows Caribou Creek
11 becoming Cherry Creek at the confluence of Caribou, Cooke and Park Creeks.
12 The Referee will refer to it in that manner. If an historical document
13 refers to a creek by a name different than what is noted on SE-2, the
14 Referee will refer to both the historical name and the name shown on SE-2.

15 **MAJOR CLAIMANTS:**

16 Within Subbasin No. 10, there are three water purveyors who deliver
17 water. These are the Kittitas Reclamation District (KRD), Cascade
18 Irrigation District (CID), and Ellensburg Water Company (EWC). These three
19 are major claimants in this proceeding, whose rights are being determined in
20 the Major Claimant Pathway. Rights to the use of water delivered by any of
21 these three will not be addressed in this report. If evidence is presented
22 to show that a claimant uses water delivered by one of these purveyors, the
23 Referee will acknowledge that information, but will not in any way try and
24 determine the quantity of water the claimant is entitled to from that major
25

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1 claimant. The water rights from the KRD were addressed in the Report of the
2 Court for the Kittitas Reclamation District and Supplemental Report of the
3 Court filed in June 1993 and April 1994 respectively and the Conditional
4 Final Order that was entered in June of 1994. Water rights for EWC were
5 addressed in the Report of the Court for Ellensburg Water Company and
6 Supplemental Report filed in June of 1997 and October of 1997 and the
7 Conditional Final Order that was entered on March 12, 1998. Water rights
8 for Cascade Irrigation District were addressed in the Report of the Court
9 that was filed on October 8, 1999. Neither a Supplemental Report or
10 Conditional Final Order has been prepared for CID.

11 **RETURN FLOW WATER:**

12 Some of the defendants in this subbasin are asserting rights to the use
13 of water that the Referee believes is return flow water. The Court has used
14 the definition of "Return Flows" contained in 2 Hutchins, Water Right Laws
15 in the Nineteen Western States (1974), page 568 as follows:

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

18 The Court considers return flow waters to include what has been characterized
19 in some cases as waste water and seepage water. The lands of many of the claimants
20 in this subbasin lie below the Kittitas Reclamation District, part of the Yakima
21 Irrigation Project. Additionally, the lands lower in the basin lie below the canal
22 for Cascade Irrigation District and Ellensburg Water Company's Town Ditch. All
23 three of these entities are major claimants whose rights are being determined
24

25

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1 through the Major Claimant Pathway. They divert water from the Yakima River several
2 miles upstream of Subbasin No. 10.

3 This Court in its Limiting Agreement Opinion dated June 16, 1993, Memorandum
4 Opinion Re: Motion For Reconsideration of Limiting Agreements, signed April 1, 1994,
5 and Memorandum Opinion Re: Subbasin No. 8, Exceptions of Ivan and Mildred
6 Hutchinson, Court Claim No. 0876; and Vernon G. and Ellen F. Meyer Court Claim No.
7 1875; Theiline Scheumann & Grousemont Farm, Claim No. 1335, found that rights could
8 not be confirmed for the use of return flows that are the result of the application
9 of Yakima Project waters and foreign return flows, but that rights could have been
10 established for return flows that originated from and return to a water course
11 within the same watershed. Foreign return flows are those that are the result of
12 the application of water imported into the watershed.

13 These rulings were based on three appellate court cases. The Washington State
14 Supreme Court in, State of Washington, D.O.E. v. U.S. Bureau of Reclamation, et al.,
15 118 Wn. 761, 827 P.2d 275 (1992), held that the appropriator of the water retains
16 its rights to use the water so long as the water remains within the boundaries of
17 the appropriator's property and that only Federal agencies and those entities with
18 whom they contract have authority to make decisions regarding the distribution of
19 water within a Federal irrigation project. The Supreme Court found that the Federal
20 government, through the Bureau of Reclamation, was the appropriator of water in a
21 Federal project and had control of the water until it left the project boundaries.
22 Earlier cases dealt with foreign return flows that were not governed by a Federal
23 project. The Washington State Court of Appeals held in the case Dodge v. Ellensburg
24 Water Co., 46 Wn App. 77, 82, 729 P.2d 631 (1986), that ". . . no water rights,

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1 prescriptive or otherwise, exist in these waters." In a much earlier case, Elgin v.
2 Weatherstone, 123 Wash. 429, 212 P. 562 (1923), the Washington Supreme Court ruled
3 that foreign waters are of a vagrant or fugitive nature and may be used by the first
4 person who can take them from the stream where they are found. The ruling also found
5 that the fact that a riparian owner was first to appropriate vagrant surplus waters
6 in a creek did not give him the exclusive right to take it the next year.

7 Return flow that naturally originates from, and returns to a water course
8 within the same watershed, is subject to a new appropriation as soon as the water
9 leaves the appropriator's land and is in, or destined for, the natural stream from
10 which it originated. An appropriator of such water must be able to demonstrate that
11 the water is naturally occurring return flow, rather than project or foreign return
12 flow and comply with the state requirements for appropriation by way of obtaining a
13 permit or certificate under RCW 90.03 or proving historic use under either the Prior
14 Appropriation or Riparian Doctrines and compliance with RCW 90.14.

15 **COOKE CREEK ADJUDICATION:**

16 Cooke Creek was previously adjudicated in the early 1920's in State of
17 Washington v. Ernest Anderson, (hereinafter Anderson). Decree No. 6222 was entered
18 by Kittitas County Superior Court on August 13, 1921. The decree lists those
19 parties who were entitled to divert water from Cooke Creek, the date of settlement
20 of their lands and the date the water right was initiated, the quantity of water
21 authorized for use, the number of acres being irrigated and the description of land
22 on which the right is located. The State of Washington subsequently issued
23 certificates for those rights. The Court in Anderson used a water duty of 0.02
24 cubic foot per second for each acre irrigated and limited the irrigation season to
25

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1 May 1 through September 15. If the authorized quantity of water is available for
2 use during the authorized irrigation season, a maximum of 5.46 acre-feet per acre
3 can be used under the rights confirmed in Anderson. When the right being confirmed
4 herein is based on a right previously confirmed in Anderson, the Referee will limit
5 the recommendation to 0.02 cubic foot per second and 5.46 acre-feet per year for
6 each acre irrigated and the irrigation season will be May 1 through September 15.

7 The Referee notes that there were only three water rights recognized in the
8 decree for lands that lie below the Cascade Canal and there were no rights awarded
9 for lands that lie below Ellensburg Water Company's Town Ditch. However, there are
10 several claimants in this proceeding who own land below either the Cascade Canal or
11 Town Ditch that are asserting rights to use Cooke Creek, land which was not awarded
12 a right in Anderson. Counsel for some of the claimants have off-handedly remarked
13 that the adjudication did not cover these lands, however, they offered nothing to
14 support this position. An adjudication is conducted under the provisions of RCW
15 90.03.110 - .245. RCW 90.03.245 addresses the scope of an adjudication: "Rights
16 subject to determination proceedings conducted under RCW 90.03.110 through 90.03.240
17 and 90.44.220 include all rights to the use of water, including all diversionary and
18 instream water rights, and include rights to the use of water claimed by the United
19 States." (emphasis added). A general adjudication is a special form of quiet title
20 action to determine all existing rights to the use of water from a specific body of
21 water. Department of Ecology v. Acquavella, 131 Wn.2d 746, 754, 935 P.2nd 595
22 (1997), quoting from Department of Ecology v. Grimes, 121 Wn.2d 459, 466, 852 P.2d
23 1044 (1993). An adjudication determines all existing rights to the use of a body of
24 water. The claimants have presented nothing to show that Anderson did not determine
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1 all existing rights to the use of Cooke Creek. The Referee brings the parties
2 attention to a footnote in Dodge v. Ellensburg Water Co., 46 Wn. App. 77, 83, 729
3 P.2d 631 (1986) that shows that the lower court, Kittitas County Superior Court, had
4 reached the conclusion that Mr. Dodge had no right to the natural flow of Cooke
5 Creek based on the Anderson case. The lower court also found that the natural flow
6 in the creek dried up by approximately mid-June of each year and what water was
7 available after that date was return flow of foreign water brought in by Cascade
8 Irrigation District and Kittitas Reclamation District, for which no right could be
9 established, Dodge at 79. A reasonable person could easily conclude that the reason
10 Anderson addressed so few rights below the Cascade Canal is because there was no
11 natural flow water available in the creek for which rights could have been
12 established. The Referee concludes that Anderson was a determination of all the
13 valid rights to Cooke Creek and no rights will be awarded in this proceeding unless
14 they were previously recognized in Anderson.

15 The Referee recommends that following entry of a decree in Acquavella that the
16 certificates from the prior adjudication be made null and void.

17 **MISCELLANEOUS DECREES FOR LANDS IN SUBBASIN NO. 10:**

18 In the early 1900's, several miscellaneous decrees were entered by Kittitas
19 County Superior Court addressing water rights to creeks within Subbasin No. 10. RCW
20 90.03.170 provides that any decree adjudicating rights or priorities entered in any
21 case decided prior to June 6, 1917, shall be conclusive among the parties thereto
22 and the extent of use so determined shall be prima facie evidence of rights to the
23 amount of water and priorities so fixed as against any person not a party to said
24 decree. If a claimant in the Acquavella proceeding is relying on one of these

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1 decrees as the basis for his/her right, the Referee will consider the award in that
2 decree to be the extent of the right, unless there is evidence that an additional
3 right was legally established. These decrees did not determine the rights of all
4 water users to these creeks, as they were not a general adjudication under RCW
5 90.03. If a claimant in Acquavella provides evidence that his/her predecessor was
6 not a party to any of the prior cases that resulted in decrees, then upon showing of
7 sufficient proof, a water right can be confirmed herein. Each decree will be
8 discussed briefly.

9 **Schnebly v Huss**

10 Water rights for use of Coleman Creek were addressed in the Schnebly v. Huss
11 decree, which was entered by Kittitas County Superior Court on February 1, 1915. P.
12 H. and Linda Schnebly and F. C. and Marguerite Schnebly were the Plaintiffs and
13 there were numerous named defendants. The Findings of Fact and Conclusions of Law
14 that preceded entry of the decree provided valuable information about the water
15 rights established for use of Coleman Creek and the Referee intends to use that
16 information when considering claims in this proceeding for use of Coleman Creek
17 water. The parties to the Schnebly v. Huss case stipulated that one-half inch of
18 water, or 0.01 cubic foot per second, was sufficient for the irrigation of each acre
19 of land for which a right is claimed in that proceeding. A continuous diversion of
20 0.01 cubic foot per second, over the irrigation season would result in 3.9 acre-feet
21 per acre being withdrawn from the creek. The Referee intends to use those
22 quantities of water when confirming rights to Coleman Creek for parties in this
23 adjudication whose predecessors were parties to the Schnebly v. Huss decree. The
24 Referee will also use those quantities of water for claimants whose predecessor was
25

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1 not a party to Schnebly v. Huss and do not provide evidence of the quantity of water
2 historically used from Coleman Creek.

3 The Findings of Fact generally discusses the lands owned by each of the parties
4 to the case and the history of when water was first used, including the number of
5 acres irrigated. The decree awarded rights segregated by class, often times with
6 each class having rights established in during a two year period. If the evidence
7 shows when water was first used or when the land was first settled under a riparian
8 ownership, the Referee will use that date for setting the priority date in this
9 proceeding. If that information is lacking, the Referee will use the earlier date
10 for the class of right being considered.

11 Most of the water rights addressed in the Schnebly v. Huss decree are for lands
12 that lie in T. 18 N., with only two rights confirmed for lands in T. 17 N. If a
13 claimant owns lands in the lower part of Coleman Creek, in T. 17 N., and the owner
14 at the time of the Schnebly v. Huss case was not a party to that action, a right can
15 be confirmed if there is sufficient evidence to show that a water right was
16 established under either the Prior Appropriation or Riparian Doctrines. Many of the
17 claimants who use Coleman Creek also have rights to use Naneum Creek, which is in
18 Subbasin No. 9 to the west. Rights to the use of Naneum Creek were addressed in the
19 Report of Referee for Subbasin No. 9, which was filed with the Court on June 29,
20 2000. However, the Referee will at times refer to an early 1900's case involving
21 use of Naneum Creek water, Ferguson v. U.S. National Bank of Portland, Oregon. The
22 Findings of Fact in that case provides useful information about settlement of the
23 land and first water use.

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1 || Walter A. Bull v. Martin Meehan, et. al. (1885)

This dispute also involved the use of waters from Coleman Creek, but involved
water users in the lower reach of Coleman Creek, below the area addressed in the
Schnebly v. Huss decree. Copies of the complaint and what appears to be a
settlement agreement were entered into the record by some claimants in this
proceeding who are asserting rights that they believe are supported by these
documents. The documents that are in the record will be discussed for each claimant
who is relying on them, as the Referee does not believe there is any broad
applicability within the subbasin in general.

10 J. D. Olmstead v. S. Hays, et al. (1892)

This dispute involved the use of waters from Brush Creek, Park Creek, and the creek formed by the junction of the these two creeks. The Decision that preceded the decree stated that what is called Brush Creek flowed through the defendant John Holtz's land in the W $\frac{1}{2}$ of Section 12, T. 17 N., R. 19 E.W.M. The only creek that flows through the W $\frac{1}{2}$ of Section 12 is called Caribou Creek on State's Map Exhibit SE-2. Based on the discussion in the Decision, the Referee concludes that Caribou Creek is the water source being discussed when Brush Creek is named. The Park Creek addressed in this decree flows through Section 13, T. 17 N., R. 19 E.W.M. and Section 18, T. 17 N., R. 20 E.W.M. The decree has limited applicability, only to the successors to the very limited named parties, therefore, it will be discussed in detail when the claims of those successors are addressed.

22 Mary A. Clerf v. Robert I. Scammon, et al. (1911)

Water rights for the use of Caribou Creek were addressed in this case, with the decree being entered April 27, 1911. In the Findings of Fact that preceded entry of

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1 the decree, the Court found that one-half inch of water (0.01 cfs) was sufficient to
2 irrigate each acre and that quantity was awarded to the parties found to have valid
3 water rights. The Findings of Fact mentions that Caribou Creek was sometimes
4 locally known as Cherry Creek, but that the Court would refer to it as Caribou
5 Creek. This Referee intends to do the same. The Findings of Fact identified the
6 lands owned by each of the parties to the case, along with the quantity of water
7 that had been diverted and applied to the land, and the date water was first used.
8 The decree set forth five classes of rights based on when water was first used and
9 identified how much water each party was entitled to divert. The decree did not
10 state the number of acres authorized to be irrigated, however, based on the Court's
11 findings that one-half inch of water was sufficient to irrigate the land, the
12 Referee will use that as a guide to establish how many acres were irrigated.

13 Subsequent to entry of the decree, one of the defendants, Charles Smith asked
14 the Court to modify the decree. The Court's Supplemental Findings and Decree was
15 entered on May 29, 1911, providing Smith the opportunity to use water during certain
16 conditions. Those will be discussed more fully when addressing the claim in this
17 proceeding of Smiths successor.

18 **August Nessalhaus v. Sophia Walker** (1907)

19 This case was involved the use of what is described as Dry Gulch Creek in the
20 Findings of Fact entered by the Court. The final decree was entered on December 21,
21 1907. The Findings of Fact has considerable information about the lands settled by
22 the plaintiff and defendant, along with Intervenor, Caroline B. Walker. However,
23 review of the Findings of Fact has lead the Referee to conclude that Dry Gulch Creek
24 referred to in this case is a branch of Cooke Creek. As previously mentioned, Cooke
25

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1 Creek was adjudicated in 1921, so any rights emanating from the Nessalhaus v. Walker
2 decree should have been addressed in that adjudication.

3 The following three cases have very limited scope and will be discussed when
4 the Referee addresses the claims filed by successors to parties to these cases:
5 Emmel Aitken v. Guy W. and Catherine Cook (1955); W. F. Burke, W. G. Davidson &
6 Ellen Davidson v. Allan Dunning, Nicholas Snow, Christian Christianson (1909); and
7 Izza J. and Walter N. Gilliam, Cody and Ethel Miller v. James McEwen and James
8 Ferguson (1912).

9

10 VIII. TESTIMONY AND REFEREE'S ANALYSES

11 Plaintiff Testimony

12 Kerry O'Hara, Assistant Attorneys General, represented the Plaintiff State
13 of Washington, Department of Ecology.

14 The State introduced into evidence the following generic exhibits:

15 Number Description

16 SE-1	Map of Subbasin No. 10 w/o insert
17 SE-2	Map of Subbasin No. 10 -- Insert A
18 SE-3	Irrigation Requirements for Washington & Estimages and Methodology
19 SE-4	Manual of Individual Water Supply Systems
20 SE-5	Supplemental Documentary Information -- Subbasin No. 10
21 SE-6	Conveyance Loss/Gain -- Subbasin No. 10
22 SE-7	Binders With Water Right Certificates, Permits, Claims and Federal Withdrawal Documents -- Subbasin No. 10

23 Additionally, oral testimony was given by Forrest Tevebaugh and
24 Ralph Nollner, Field Investigators, Ecology Adjudication Section.

25

26 Claimant Testimony

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1 185 defendants filed statements of claim or notices of appearance.

2 All claimants and their legal counsel, if so represented, are as follows:

Court	Claim	No.	Name	Attorney	Page(s)
		01958	A.C.X. Trading, Inc. 2350 W. 17th Street Long Beach, CA 90813	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg, WA 98926-1088	255 528 529
		02208	John O. Ahrnsbrak & Donna E. Ahrnsbrak 1954 Wildlife Acres Road #A Sedro Woolley, WA 98284		37 528 529
		02269	Donald R. Akehurst, et al.	Kenneth D. Beckley, Attorney Law Office of Ken Beckley 701 N Pine Street Ellensburg, WA 98926-2939	39 528 529
		02250	W. Stephen Alder 560 Fairview Road Ellensburg, WA 98926	Kenneth D. Beckley, Attorney Law Office of Ken Beckley 701 N Pine Street Ellensburg, WA 98926-2939	42 528 529
		00289	Gerald L. Allphin & Beverly J. Allphin PO Box 844 Kittitas, WA 98934		42 528 605
		00549	Melvin Anderson & Dorothy Anderson 3401 Sorenson RD Ellensburg, WA 98926		526 529
		01057	Clay Bacon & Lisa Bacon 6221 Cooke Canyon Road Ellensburg, WA 98926		526 529
		00688	Richard P. Bailes 3350 Number 81 Road Ellensburg, WA 98926-9535		526 529

26 REPORT OF REFEREE

27 Re: Subbasin No. 10

1	01149	Jack A. Baker & Becky R. Baker 6631 Cooke Canyon Road Ellensburg, WA 98926	44 528 573
2	00707	E. Eugene Barnhart, Jr.	
3	00708	& Hellen M. Barnhart 1850 Colockum Road Ellensburg, WA 98926	Hugh M. Spall, Attorney 47 PO Box 831 528 Ellensburg, WA 98926 578
4	00707	Kenneth E. Barnhart	Hugh M. Spall, Attorney 47 528
5	00708	& Susan Barnhart 2441 Schnebly Road Ellensburg, WA 98926	PO BOX 832 549, 550 Ellensbrug WA 98926 578, 579
6	00708	Estate of May S. Barnhart c/o E. Eugene Barnhart 1790 Colockum Road Ellensburg, WA 98926	47, 528 549, 550 579
7	00643	Ed Benner & Lavonne Benner 120 N Corriedale Road Yakima, WA 98901-9372	Richard T. Cole, Attorney 56 PO Box 499 528 Ellensburg, WA 98926-0499 529
8	02061	Donald D. Berger & Elizabeth J. Berger PO Box 896 Kittitas, WA 98934	526 529
9	02378	Oscar L. Berger & Beverly J. Berger 1271 Grindrod Road Ellensburg, WA 98926	527 529
10	02206	Boise Cascade Corporation	Dennis J. Dunphy, Attorney 57
11	(A) 03119	Legal Department	1420 5th Avenue #3500 528
12	(A) 05238	PO Box 50 Boise, ID 83707	Seattle, WA 98101 588-593
13	01464	Ian D. Buchan	John P. Gilreath, Attorney 64
14	(A) 02872	6491 Parke Creek Road Ellensburg, WA 98926	PO Box 499 528 Ellensburg, WA 98926 529

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27 Re: Subbasin No. 10

1	00886	Bull Canal Company, Inc.	Lawrence E. Martin	526	
	(A) 04207	1585 Tjossem Road	Halverson & Applegate	530	
2		Ellensburg, WA 98926	PO Box 22730		
			Yakima, WA 98907-2715		
3					
4	01051	Richard G. Busch & Linda L. Busch 821 Busch Road Ellensburg, WA 98926	Richard T. Cole, Attorney	67	
5			PO Box 499	528	
			Ellensburg, WA 98926	530	
6	06584	Ron Byers & Phyllis I. Byers PO Box 349 Poulsbo, WA 98370		70	
7				530	
8					
9	00981	Kenneth J. Cadwallader & Kathleen Cadwallader 1502 Bonnnie Ln Ellensburg, WA 98926-9580		526	
10				530	
11	00713	Estate of Milton D. Camozzy & Esther Camozzy c/o Pat Thomason 10240 SW Wasco Way Tualatin, OR 97062-7088	Richard T. Cole, Attorney	70	
12			PO Box 499	528	
13			Ellensburg, WA 98926-0499	530	
14	02146	John James Cannell		73	
15	02147	1011 Cascade Way Ellensburg, WA 98926-2326		528, 544	
16				601	
17	01716	Lloyd Carney & Glennis Carney 4680 Fourth Parallel Road Ellensburg, WA 98926	Richard T. Cole, Attorney	80	
18			PO Box 499	528	
			Ellensburg, WA 98926-0499	530	
19	00891	Cascade Irrigation District	Lawrence E. Martin	7	
	(A) 02800	8063 Highway 10	Halverson & Applegate, P.S.		
20	(A) 05446	Ellensburg, WA 98926-8573	PO Box 22730		
			Yakima, WA 98907-2715		
21	01842	Bruce E. Catton & Bonnie R. Catton 20822 102nd Ave. SE Kent, WA 98031-2059		83	
22				528	
23				530	
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26	REPORT OF REFEREE				
27	Re: Subbasin No. 10				

1	01067	Raymond Charlton (mail to agent)	Ralph Charlton, Agent 3151 Brick Mill Road Ellensburg, WA 98926	526 530	
2					
3	00467	City of Kittitas P.O. Box 719 Kittitas, WA 98934		351 530	
4					
5	01053	Helen J. Clerf PO Box 807 Kittitas, WA 98934	John P. Gilreath, PO Box 499 Ellensburg, WA 98926	86, 528 584 587	
6					
7	00844	Howard F. Clerf	John P. Gilreath	92, 528	
8	01443	& Vivian Clerf	PO Box 499	530, 535	
9	05330	PO Box 689 Kittitas, WA 98934	Ellensburg, WA 98926	604	
10					
11	02142	John R. Clerf (A) 05514 & Doris E. Clerf	John P. Gilreath PO Box 499 Ellensburg, WA 98926-0499	106, 528 530	
12	02143	Box 868			
13	(A) 05514	Kittitas, WA 98934			
14					
15	02141	John S. Clerf & Janet J. Clerf PO Box 635 Kittitas, WA 98934	John P. Gilreath, PO Box 499 Ellensburg, WA 98926-0499	109, 528 574	
16					
17	00407	Robert H. Clerf & Sherre A. Clerf 1231 Clerf RD Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg, WA 98926-0499	114 528 530	
18					
19	00476	Robert H. Clerf 1231 Clerf RD Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg, WA 98926-0499	114 528 530	
20					
21	00677	Robert H. Clerf & Sherre A. Clerf 1231 Clerf RD Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg, WA 98926-0499	114 528 530	
22					
23	00740	Gwendolyn Cooke & Robert Cooke 2281 Ferguson Road North Ellensburg, WA 98926		123 562	
24					
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26	REPORT OF REFEREE				
27	Re: Subbasin No. 10				
28					

1	01306	Doward Denning & Ida Denning 9492 Brick Mill Road Ellensburg, WA 98926	126 528 582
2	02048	Janeice A. Diefenbach & Robert G. Diefenbach 2462 Payne Ellensburg, WA 98926	129 530
3	01426	Kenneth G. Dimeo & Debbie L. Dimeo 8501 SE Grizzly Rd Madras, OR 97741	275 528 550
4	00190	Gerald Dodge	Jeff Slothower 131
5	(A) 06383	1641 Payne RD	Lathrop Law Firm 530
6	00191	Ellensburg, WA 98926	PO Box 1088
7	(A) 02101		Ellensburg WA 98926
8	(A) 02102		
9	(A) 06384		
10	01979	Steven Dowen, et al. (mail to attorney only)	Richard T. Cole, Attorney 141 PO Box 499 530 Ellensburg, WA 98926-0499
11	00858	Ray L. Duran & Doris Duran 10760 Brick Mill RD Ellensburg, WA 98926	Vernon E. Fowler, Jr., 143 Attorney 528 PO Box 160 535 Selah, WA 98942 536
12	00635	Timothy E. Eckert & Marcia Eckert 3451 Lyons RD Ellensburg, WA 98926	Jeff Slothower, Attorney 149 Lathrop Firm 528 PO Box 1088 53 Ellensburg, WA 98926-1088
13	00597	Anita Edgar 1210 Watson Road Ellensburg, WA 98926	151 569
14	00537	Roy Edson & June Edson 4970 Sorenson Road Ellensburg, WA 98926	155 528 530
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26	REPORT OF REFEREE		
27	Re: Subbasin No. 10		
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1	02085	Ellensburg; City of 109 E Third Suite 2 Ellensburg, WA 98926	Lawrence E. Martin Halverson & Applegate, PO Box 22730 Yakima, WA 98907-2715	156 530	
2					
3	01049	Loyal W. Erickson & Flora B. Erickson 8561 Brick Mill Road Ellensburg, WA 98926		157 530	
4					
5	00771	Virginia L. Erickson & Estate of Merle W. Erickson 802 E. Mountain View Ave. Apt. 235 Ellensburg, WA 98926-4805		163 530	
6					
7	00613	Keith R. Eslinger & Karen E. Eslinger 3530 Ferguson Road South Ellensburg, WA 98926	Vernon E. Fowler, Jr., Attorney PO Box 160 Selah, WA 98942	165 528 530	
8					
9	00844	Roy C. Fann (no address available)		526 530	
10					
11	01813	Thomas J. Fenz & Nancy L. Fenz PO Box 728 Snohomish, WA 98290	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926-0499	170 528 530	
12					
13	02263	James R. Finley & Barbara A. Finley 24721 SE 165th Street Issaquah, WA 98027-8473		179 528 530	
14					
15	00683	Norma M. Flach 1681 Colockum Road Ellensburg, WA 98926	Richard T. Cole, 171, 528, PO Box 499 545, 579, 597 Ellensburg, WA 98926 598, 605		
16					
17	02263	Michael Floan & Claire Floan 110 W. 6th Ave., #337 Ellensburg, WA 98926-3106	Kenneth D. Beckley, Law Office of Ken Beckley 701 N Pine Street Ellensburg, WA 98926-2939	179 528 530	
18					
19	00676	Gary Forgey 2610 Sorenson Road Ellensburg, WA 98926		202 530	
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26	REPORT OF REFEREE				
27	Re: Subbasin No. 10				
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1	01049	Steve K. Franchini & Diane M. Franchini 23855 SE 472nd Enumclaw, WA 98022	157 528 530
2			
3	00972	Donald L. Frye & Charlotte A. Frye 3970 Lyons RD Ellensburg, WA 98926	312 528 551
4			
5	00499	Clifford S. Gage & Phyllis R. Gage 9440 Manastash Road Ellensburg, WA 98926	182 528 563
6			
7	00605	Stephen K. German	185, 398, 528
8	(A) 01749	& Donna German	533, 546
9	01141	11040 Fairview Road Ellensburg, WA 98926-6936	552, 570 574, 586
10			
11	05522	Ronald Gibb	192, 528
12	(A) 06435	Douglas Gibb	530, 536
13	05523	4360 Denmark Road	547
14	(A) 06436	Ellensburg, WA 98926	
15			
16	01145	Max Golladay	198
17	(A) 06471	& Judy Golladay 1071 Colockum Road Ellensburg, WA 98926	530
18			
19	00676	Estate of Gerald O. Graaff & Addie L. Graaff 1171 Cleman RD Ellensburg, WA 98926	Richard T. Cole, Attorney 526 PO Box 499 Ellensburg, WA 98926-0499 530
20			
21	00501	Phillip George Graaff & Ella Graaff 3531 Denmark Road Ellensburg, WA 98926-8422	526 530
22			
23	01763	Gary H. Gray & Liljen M. Gray 1204 Vuecrest Ellensburg, WA 98926-9576	526 530
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26	REPORT OF REFEREE		
27	Re: Subbasin No. 10		
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1	01979	John Guyot 15390 Vantage Highway Ellensburg, WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926-0499	141 528 530
3	02273	Don Haley & Pat Haley 630 Fairview Road Ellensburg, WA 98926		527 530
5	00849	Stanley D. Hall 9220 152nd Street E Puyallup, WA 98373		478 608
7	01005	Arthur William Hanning & Margarette Hanning 424 - 3rd Ave. S., Apt. 305 Lynnwood, WA 98037-4256		206, 572
10	00564	William Arthur Hanning & Rea Jeanette Hanning 17211 North Foothills Drive Sun City, AZ 85373-2153		209 530
12	01941	Larry Hansen 23220 SE 47th Way Sammamish, WA 98075-6818	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926-0499	419 528 530
14	01217	Wayne L. Hanson		211
15	01218	& Lauren M. Hanson 10690 Vantage HWY Ellensburg, WA 98926		508 528 530
17	00647	Steven J. Hart P.O. Box 1019 Kittitas, WA 98934		416 528 530
19	02292	Lynn Henderson (mail to attorney)	Ted A. Roy, Attorney Roy Law Offices PO Box 2566 Yakima, WA 98907-2566	213 530
21	00503	John A. Hill & Karen Hill 6591 Kittitas Highway Ellensburg, WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926-0499	218 528 530

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 27 Re: Subbasin No. 10

1	02257	Joe Hobbs 110 Silica Road Ellensburg, WA 98926	220 528 530	
3	01321	Danny L. Hull & Betty J. Hull 1280 Grindrod Road Ellensburg, WA 98926	526 530	
5	00630	James M. Indermuhle PO Box 504 Kittitas, WA 98934	526 530	
7	00956	Don Jacobs & Judy Jacobs Joe & Doriene Jacobs 7420 Number 6 Road Ellensburg, WA 98926	222 528 530	
10	00900	Calvin Jansen & Rhonda Jansen 4761 Number 6 Road Ellensburg, WA 98926	226 528 530	
13	01058	Douglas Johnson & Nancy Johnson 3780 Road 3 NE Moses Lake, WA 98837-9679	230 528 537	
15	01962	Larry D. Johnson & Jan L. Johnson (no address available)	232 528 594	
17	02258	Gregory Jordan & Elizabeth Jordan 523 Valley Mall PKY #147 Wenatchee, WA 98802-4835	236 528 537	
20	01430	Alice C. Junkin 12501 Greenwood Ave N Apt. C113 Seattle, WA 98133-8079	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926-0499	239 528 530
22	01234	Sam Kayser	James K. Adams, Attorney	248
23	(A) 06380	& Lonni Kayser 12141 Fairview Road Ellensburg, WA 98926-6937	Wagner, Luloff & Adams 110 N. 5th Ave. Ste. 200 Yakima, WA 98902	528 530

25
26 REPORT OF REFEREE
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1	00991	Kayser Ranch, Inc. 12260 Fairview Road Ellensburg, WA 98926-6939	James K. Adams, Attorney Wagner, Luloff & Adams 110 N. 5th Ave. Ste. 200 Yakima, WA 98902	241 528 530	
3					
4	00927	Gaylord M. Kellogg	Jeff Slothower, Attorney	185	
4	01141	270 Lake Dell Avenue Seattle, WA 98122	Lathrop Firm PO Box 1088 Ellensburg, WA 98926-1088	324, 528 546, 555 574	
5					
6	01234	Michael Kooy		248	
7	(A) 06380	2421 Denmark Road Ellensburg, WA 98926-8799		531	
8	00849	Robert L. Krasean PO Box 2144 Belfair, WA 98528-2144		478 608	
9					
10	00618	Estate of Vincent J. Larson c/o Sandra Olson, Personal Rep. 3611 I St NE Unit 192 Auburn, WA 98002-1827		527 531	
11					
12	06564	Joan G. Laws 2700 N Wenas RD Selah, WA 98942-9524		250 528 564	
13					
14	00844	David Leaton & Mrs. David Leaton 411 Prater Road Ellensburg, WA 98926		526 531	
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16					
17	00421	Russell Longacre 540 Number 81 Rd Ellensburg, WA 98926-9089		422 528 531	
18					
19	01426	Todd D. Lopeman 200 Cook Canyon Road Ellensburg, WA 98926		275 528 557	
20					
21	05411	William K. Lowe & Marilyn Lowe 1030 Nicolai Road Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg, WA 98926-0499	253 531	
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26	REPORT OF REFEREE				
27	Re: Subbasin No. 10				27
28					Referee's Office 15 W. Yakima Ave Ste. 200 Yakima, WA 98902-3401

1	01965	Carl A. Magno 150 Melrose E. Suite 301 Seattle, WA 98102	526 531
2			
3	01958	Brian Maier & Sheila Maier (mail to attorney only)	Jeff Slothower, Attorney 255 Lathrop Firm 528 PO Box 1088 531 Ellensburg, WA 98926-1088 257
4			
5	05556	Carol Clerf Martinez 13391 State Route 24 Moxee, WA 98936-9768	531
6			
7	01049	Edgar Martinez & Holli Martinez 8401 Brick Mill Road Ellensburg, WA 98926	157 528 542
8			
9	01873	Michael C. Marvich 5611 Number 81 Road Ellensburg, WA 98926	Detta Marvich, Agent 260 8011 SE 56th 567 Mercer Island, WA 98040-4801
10			
11	00783	Maurice McGrath & Joanna M. McGrath 1520 260th ST E Spanaway, WA 98387-9418	John P. Gilreath, Attorney 262 PO Box 499 528 Ellensburg, WA 98926-0499 603
12			
13	02165	J. Wayne McMeans	Richard T. Cole, 265, 528
14	02166	& Cindy L. McMeans	PO Box 499 531, 552
15	02167	820 Colockum RD	Ellensburg, WA 98926-0499 564
16	(A) 05550	Ellensburg, WA 98926	
17	01426	Roger Mies & Bernadette Mies 341 Cooke Canyon Road Ellensburg, WA 98926	275 531
18			
19	01010	John L. Miller	John P. Gilreath, Attorney 279
20	02088	& Laura D. Miller 2813 Airport Road Ellensburg, WA 98926-9336	PO Box 499 528 Ellensburg, WA 98926-0499 531
21			
22	00422	Eric T. Moe c/o Thomas J. Nisbet 1311 Moe RD Ellensburg, WA 98926	John P. Gilreath, Attorney 282 PO Box 499 531 Ellensburg, WA 98926-0499
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1	00859	Clarence L. Moerike & Barbara J. Moerike 1050 Grindrod Road Ellensburg, WA 98926	526 531
2	02247	Harry E. Moore 10363 Vantage Highway Ellensburg, WA 98926	Kenneth D. Beckley, 290 Law Office of Ken Beckley 528 701 N Pine Street 607 Ellensburg, WA 98926-2939
3	01763	David F. Morgan PMB 10654 206 Rainbow Drive Livingston, TX 77399-2006	526 531
4	00550	Eric V. Morris & Sharon M. Simmons 6491 Tjossem Road Ellensburg, WA 98926	295 531
5	01897	Bill Moxley & Yvonne Moxley (mail to attorney only)	Richard T. Cole, Attorney 297 PO Box 499 531 Ellensburg, WA 98926-0499
6	01252	N. N. Eaton & Sons 12771 State Route 821 Ellensburg, WA 98926	299, 528 594, 595
7	01897	Leslie Nash & Shirley Nash 12800 Vantage Highway Ellensburg, WA 98926	Richard T. Cole, Attorney 297 PO Box 499 531 Ellensburg, WA 98926-0499
8	00927	Edwin Nestler & Jeannette Nestler 861 Cooke Canyon Road Ellensburg, WA 98926	324 531
9	01445	John Nylander 9311 SE 68th Mercer Island, WA 98040	Vernon E. Fowler, Jr., 301 Attorney 528 PO Box 160 Selah, WA 98942
10	01417	John Oleksy	307, 528
11	01418	& Kim Oleksy 10291 Fairview Road Ellensburg, WA 98926-6934	531, 603
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26	REPORT OF REFEREE		
27	Re: Subbasin No. 10		
28	29	Referee's Office 15 W. Yakima Ave Ste. 200 Yakima, WA 98902-3401	

1	02088	Leland Orcutt & Burniece Orcutt 1800 Fox Road Ellensburg, WA 98926	279 531
2	00929	Fred Palmiero & Francis Joy Palmiero 330 Number 81 Rd Ellensburg, WA 98926-9086	310 528 606
3	00723	John L. Paul & Muriel G. Paul 912 E. 2nd Avenue Ellensburg, WA 98926-3416	312 528 553
4	02091	Robert C. Paul	Jeff Slothower, Attorney 312
5	02092	& Margaret E. Paul P.O. Box 1278 Kittitas, WA 98934-1278	Lathrop Firm 528 PO Box 1088 554 Ellensburg, WA 98926-1088 568
6	01150	James J. Peterson & Carolyn B. Johnson 6633 Cooke Canyon Road Ellensburg, WA 98926	321 528 575
7	01952	Carol W. Phelps & Joy M. Turner 27637 43rd Place S Auburn, WA 98001	480 528 531
8	00927	Lloyd W. Powell	Jeff Slothower, 185, 324, 538
9	01141	P.O. Box 97070 Kirkland, WA 98083	Lathrop Firm 546, 552, 555 PO Box 1088 570, 574 Ellensburg, WA 98926-1088
10	02078	Richard L. Powers & Connie J. Powers PO Box 1052 Kotzebue, AK 99752	331 528 531
11	01329	Merton Purnell 7151 Brick Mill RD Ellensburg, WA 98926	332, 528 560, 598
12	01965	Patricia A. Rafter 5004 N. Winnifred St. Ruston, WA 98407-3126	526 531

26 REPORT OF REFEREE
 27 Re: Subbasin No. 10

1	01557	Scott Repp & Mary Jo Repp 1570 Robinson Canyon Road Ellensburg, WA 98926-8022	338 571
2	01047	Merle Ringer	Jeff Slothower, 342
3	01048	5971 Number 6 Road Ellensburg, WA 98926	Lathrop Law Firm 528 P.O. Box 1088 531 Ellensburg, WA 98926-1088
4	01744	Thomas J. Ringer 5750 Number 6 Road Ellensburg, WA 98926-6801	Jeff Slothower, 344 Lathrop Law Firm 531 P.O. Box 1088 Ellensburg, WA 98926-1088
5	02208	Ben Root 120 Kittitas Hiway Ellensburg, WA 98926-9642	37 528 531
6	00467	Steven C. Rosbach	Richard T. Cole, 348, 351
7	00506	& Christine Rosbach 2180 Ferguson Road South Ellensburg, WA 98926	PO Box 499 528, 531 Ellensburg, WA 98926-0499 565
8	01851	Alma M. Ross PO Box 193 Thorp, WA 98946-0193	361 531
9	01904	C. William Ross 12491 Upper Badger Pocket RD Ellensburg, WA 98926	James P. Hutton, Attorney 362 Velikanje, Moore & Shore 528 P.O. Box 22550 531 Yakima, WA 98907-2550
10	01530	Corneille Ross 2345 N 187TH ST Seattle, WA 98133-4239	364 528 566
11	01530	Robert W. Ross (mail to attorney only)	Hugh M. Spall, Attorney 364 PO Box 831 528 Ellensburg, WA 98926 566
12	02064	Craig P. Schnebly & Nancy L. Schnebly 2570 Schnebly RD Ellensburg, WA 98926	367 528 542 602
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28	31	Referee's Office 15 W. Yakima Ave Ste. 200 Yakima, WA 98902-3401	

1	01775	Dorse A. Schnebly & Margaret C. Schnebly 1061 Lester Road Ellensburg, WA 98926	372 528 531
2	00979	Fred Schnebly	375, 528, 534
3	(A) 04783	6451 Fairview Road	540, 541, 548
4	(A) 05073	Ellensburg, WA 98926	555, 600
5	00979	Henry J. Schnebly, et al.	375, 528, 534
6	(A) 04783	6281 Brick Mill RD	540, 541, 543
7	(A) 05073	Ellensburg, WA 98926	548, 555, 600
8	01097		
9	00979	Jim Schnebly	375, 528, 534
10	(A) 04783	4500 Brick Mill Road	540, 541, 548
11	(A) 05073	Ellensburg, WA 98926	555, 600
12	01942	Jess Schober 11080 Highway 970 Cle Elum, WA 98922	Richard T. Cole, Attorney 395 PO Box 499 528 Ellensburg, WA 98926-0499 531
13	00605	Albert F. Scott	Richard T. Cole, 398, 528, 533
14	(A) 01749	& Dorothy Scott PO Box 2085 North Bend, WA 98045-2085	PO Box 499 567, 580, 582 Ellensburg, WA 98926 586
15	01070	Elmer Seth & Estate of Gladys Seth 7631 Kittitas Highway Ellensburg, WA 98926	526 531
16	02196	Michael Joseph Shannon 7340 Cooke Canyon RD Ellensburg, WA 98926	406 529 576
17	01979	Scott Shelton & Kay Shelton Route 3, Box 1106 Ellensburg, WA 98926	Richard T. Cole, Attorney 529 PO Box 499 531 Ellensburg, WA 98926-0499
18	00887	William V. Shelton 8411 Lyons Road Ellensburg, WA 98926	John P. Gilreath, Attorney 410 PO Box 499 529, 581 Ellensburg, WA 98926 599
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26	REPORT OF REFEREE		
27	Re: Subbasin No. 10		

1	00647	E. Fenn Shrader & Mona Shrader PO Box 7 Sunnyside, WA 98944-0007	416 529 531
2	01941	Jack G. Sikes & Ada M. Sikes c/o Jack Sikes, Jr. 23233 East Settler Drive Liberty Lake, WA 99019-8524	419 529 531
3	00421	Gladys Morrison Sisk (no address available)	422, 529 531
4	01962	Richard A. Slyfield & Jane Gede Slyfield 1331 Grindrod RD Ellensburg, WA 98926-5020	232 529 594
5	01134	Danny R. Smith & Maria Smith PO Box 503 Kittitas, WA 98934	423 529 531
6	01448	Trust of Annine K. Sorenson c/o Emil Wilburt Sorenson, Trustee 118 - 11th Avenue Kirkland, WA 98033-5519	John P. Gilreath, Attorney 426 PO Box 499 Ellensburg, WA 98926 531
7	01334	Ellen Sorenson 2191 S Ferguson RD Ellensburg, WA 98926-9769	Vernon E. Fowler, Jr., 429 Attorney PO Box 160 Selah, WA 98942-9769 539
8	01307	Kenneth O. Sorenson & Carolyn Sorenson 850 Alkali Road Ellensburg, WA 98926	533 529 556
9	00180	Leroy Sorenson	Vernon E. Fowler, Jr., 440
10	00181	& Doris Sorenson	Attorney 529
11	00182	PMB 356 17112 SE Powell Blvd Portland, OR 97236-8701	PO Box 160 531 Selah, WA 98942 561
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1	01432	Paul J. Sorenson	Vernon E. Fowler, Jr.,	446	
	01433	& Virginia R. Sorenson	Attorney	453, 455	
2	01434	3500 Moe RD	PO Box 160	529, 531	
	01435	Ellensburg, WA 98926	Selah, WA 98942	558, 559	
3	01436				
4	01437				
5	01438				
	01439				
6	00462	Wallace M. Stampfly		459	
		2453 Charlton Road		529	
7		Ellensburg, WA 98926		595	
8	00355	Walter R. Stampfly		459, 529	
		& Thelma D. Stampfly		596	
9	00849	Dr. & Mrs. Kenneth R. Stillwell		478	
10		4537 South Yakima Avenue		608	
		Tacoma, WA 98408			
11	00486	Ralph R. Stingley		465	
12		P.O. Box 506		529	
		Kittitas, WA 98934-0506		531	
13	02120	Russell D. Stingley		465	
14	02121	& Marty S. Stingley		529	
	02122	6801 Lyons RD		531	
15		Ellensburg, WA 98926			
16	02254	Byron R. Strang	Kenneth D. Beckley,	469	
		1561 Gilbert Road	Law Office of Ken Beckley	531	
17		Ellensburg, WA 98926	701 N Pine Street		
			Ellensburg, WA 98926-2939		
18	01549	Ande R. Stritmatter		472	
19		12381 Vantage Highway		529	
		Ellensburg, WA 98926		531	
20	02066	John M. Stuber		527	
21		& Yvonne J. Stuber		531	
		PO Box 552			
22		Kittitas, WA 98934			
23	01041	Sweet Grass Investments, LLC		426, 474	
	01448	823 Carriage Hill Drive		529, 531	
24		Yakima, WA 98908			
25					
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28	34	Referee's Office 15 W. Yakima Ave Ste. 200 Yakima, WA 98902-3401			

1	00849	James B. Thomson & Wanda T. Pressley 7837 South 135th Street Seattle, WA 98178	478 608
2			
3	01426	Michael P. Tomich & Nancy Tomich 228 Union Avenue New Providence, NJ 07974	275 529 557
4			
5	00584	Beryl A. Trezise 4018 NE 125th Street Seattle, WA 98125	480 531
6			
7	01952	Estate of Glenn Turner (no address available)	480, 529 532
8			
9	01727	Joel B. Underhill & Rise T. Underhill 8690 Cooke Canyon RD Ellensburg, WA 98926	481 529 532
10			
11	02276	United States of America (A) 03074 (A) 05548 (A) 14495	Charles E. O'Connell, Jr. 484 United States Dept. of Justice Indian Resources Section 532 PO Box 44378 Washington, DC 20026-4378
12			
13	01049	William G. Viert 8931 Brick Mill Road Ellensburg, WA 98926-6916	Jeff Slothower, Attorney 157 Lathrop Firm 529 PO Box 1088 542 Ellensburg, WA 98926-1088
14			
15	02077	Jack W. Wallace & Monica A. Wallace 13580 Vantage Highway Ellensburg, WA 98926	490 529 532
16			
17	00261	Steve Wallace & Deborah L. Wallace 11011 Fairview RD Ellensburg, WA 98926	491 529 547 583
18			
19	01982	Gerald Waterman 9229 41st NE Seattle, WA 98115	526 532
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1	00720	Donald R. Weber & Barbara Weber 1251 Fox RD Ellensburg, WA 98926	John P. Gilreath, Attorney 496 PO Box 499 529 Ellensburg, WA 98926 604
2			
3			
4	01746	Willard A. Williams & Mildred Williams 9910 Fairview Road Ellensburg, WA 98926	500 529 583
5			
6	01470	Estate of Theodore M. Wood 7521 Tjossem RD Ellensburg, WA 98926	Richard T. Cole, Attorney 505 PO Box 499 529 Ellensburg, WA 98926-0499 583
7			
8	01218	Warren G. Wood & Laura A. Wood M. Leonard Wood Box 659 Kittitas, WA 98934	508 529 532
9			
10			
11	01689	W. Robert Wragge & Dorothy May Wragge 7701 Lyons Road Ellensburg, WA 98926	512 532
12			
13			
14	06080	Lonice Gay Wyrick	515
15	(A) 06397	& Jack H. Loftis 9810 Parke Creek Road Ellensburg, WA 98926-5004	529 532
16	00589	WA State Dept. of Natural Resources	Ms. Maryanne McGovern, 527
17	(A) 00590	Agricultural Resources P.O. Box 47061 Olympia, WA 98504-7061	Attorney General of 532 Washington PO Box 40100 Olympia, WA 98504-0100
18			
19	01600	WA State Parks and Rec. Commission Resources Development Division P.O. Box 42650 Olympia, WA 98504-2650	Joe Shorin, AAG 518 WA State Parks and Rec. 529 Commission 570 P.O. Box 40100 597 Olympia, WA 98504-0100
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21			
22	06343	Pamela Zupan 6011 Cooke Canyon Road Ellensburg, WA 98926	523 577
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24			
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1	06080 (A) 06397	Lonice Gay Wyrick & Jack H. Loftis 9810 Parke Creek Road Ellensburg, WA 98926-5004	515 529 532	
2				
3				
4	00589 (A) 00590	WA State Dept. of Natural Resources Agricultural Resources P.O. Box 47061 Olympia, WA 98504-7061	Ms. Maryanne McGovern, AAG Attorney General of Washington PO Box 40100 Olympia, WA 98504-0100	527 532
5				
6	01600	WA State Parks and Rec.Commission Resources Development Division P.O. Box 42650 Olympia, WA 98504-2650	Joe Shorin, AAG WA State Parks and Rec. Commission P.O. Box 40100 Olympia, WA 98504-0100	518 529 570 597
7				
8				
9				
10	06343	Pamela Zupan 6011 Cooke Canyon Road Ellensburg, WA 98926	523 577	

Specific elements of the proposed rights for the claimants are identified in the Findings of Fact commencing on page 529.

Based upon the testimony and evidence provided to the Referee, the analysis of all claims is as follows:

John O. and Donna E. Ahrnsbrak filed Court Claim No. 02208 asserting rights to use waters from Wippel Creek and Badger Creek. On April 10, 1991, Ben Root was joined to the claim. Mr. Root testified at the evidentiary hearing.

The property now owned by Mr. Root lies in the N $\frac{1}{2}$ of Section 5,
T. 16 N., R. 20 E.W.M. Badger Creek and Wipple Wasteway flow through the
property and water from both sources is used for stock watering when

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1 livestock are on the property and for irrigation. Water from Wipple
2 Wasteway is used to irrigate up to 52 acres and water from Badger Creek is
3 used to irrigate 15 acres. Livestock have been raised on the property and
4 when present drink directly from the water sources. This type of
5 non-diversionary stock watering is covered by the stock water stipulation
6 discussed on page 4 of this report. The claimants name is included on the
7 list of those who have a non-diversionary stock water right under the
8 stipulation.

9 Mr. Root characterized both water sources as wasteways and testimony by
10 other neighboring landowners was that most of the flow is the result of
11 wastewater and seepage from the Kittitas Reclamation District (KRD) Canal.
12 The claimant's land is assessed by KRD for 166 acres. John Ahrnsbrak filed
13 Water Right Claim No. 148068 pursuant to the requirements of RCW 90.14. It
14 claimed a right to divert water from an unknown source with a note that it
15 is from the Reclamation Project. The claim states that water is used when
16 reclamation turns on in the spring until they turn off in the fall. Mr.
17 Ahrnsbrak obviously considered the water he was using to be KRD water.

18 The information read into the record by Mr. Root concerning how the
19 land was developed, suggests it was developed at about the time KRD was
20 completed and began delivering water. The land was owned by the Northern
21 Pacific Railroad until 1931.

22 The Referee concludes that the source of water being used on the
23 claimant's land is from the Kittitas Reclamation District and the land is
24 being assessed by the district. Therefore, the Referee does not recommend

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1 that a right be confirmed under Court Claim No. 02208. KRD is a major
2 claimant in this proceeding whose rights were determined in the Major
3 Claimant pathway.

4 COURT CLAIM NO. 02269 -- Donald R. Akehurst, et al.
5

6 Donald R. Akehurst, Robert Case and Sidney DeBoer filed a claim with
7 the Court for use of waters from Cooke Creek and two unnamed springs. Mr.
8 Akehurst testified at the evidentiary hearing, where he was represented by
9 Attorney Michael Bauer.

10 The claim was filed for irrigation of 160 acres in the SW $\frac{1}{4}$ of
11 Section 36, T. 18 N., R. 19 E.W.M. with water diverted from Cooke Creek and
12 for stock watering from the two springs. According to Mr. Akehurst, the SW $\frac{1}{4}$
13 of Section 36 is now owned by Sidney DeBoer. The entire 160 acres are being
14 irrigated, however, only that portion of the SW $\frac{1}{4}$ lying southeast of the
15 delivery ditch from Cooke Creek is irrigated with creek water. The
16 remaining portion of the land is irrigated with water delivered by the
17 Kittitas Reclamation District (KRD). Mr. Akehurst estimated that 40 acres
18 were irrigated with Cooke Creek water, however, the State's Investigation
19 Report identified 90 acres being irrigated with creek water. The Referee
20 agrees that slightly more than half of the SW $\frac{1}{4}$ of Section 36 is below the
21 delivery ditch and is irrigated with water from Cooke Creek. The land is
22 rill irrigated and is planted to hay with a grain rotation and pasture.

23 Livestock drink from the irrigation ditches, Cooke Creek and the two
24 springs. Non-diversionary stock water is covered by the stock water

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1 stipulation discussed on page 4 of this report and the claimants names are
2 on the list of those who have a right under the stipulation.

3 Mr. Akehurst testified to his belief that the water rights were
4 initiated in 1886 and suggested that he had documents to support that date
5 when he completed water right claim forms pursuant to the requirements of
6 RCW 90.14. The documents were with the attorney that assisted with
7 preparation of those claims, Mr. Fraser. None of those documents were
8 offered as exhibits. Mr. Akehurst filed three water right claims (WRC) in
9 1973. WRC No. 036557 asserts a right to use 0.01 cfs, 1 acre-foot per year
10 from a spring for stock watering in the SW $\frac{1}{4}$ of Section 36. WRC No. 036558
11 asserts a right to use 6.4 cfs, 640 acre-feet per year for the irrigation of
12 160 acres in the SW $\frac{1}{4}$ of Section 36. The point of diversion described is at
13 the point where the current diversion is located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
14 Section 36. The claim notes that the legal doctrine for the right is Case
15 No. 6222, Kittitas County Superior Court filed August 1921 (which would be
16 the earlier adjudication of Cooke Creek). WRC No. 036560 asserts a right to
17 use 0.01 cfs, 1 acre-foot per year from a second spring for stock watering
18 in the SW $\frac{1}{4}$ of Section 36.

19 Although WRC No. 036558 mentions the prior adjudication, it is not
20 clear that a water right was awarded for the claimants' land in that case.
21 Counsel for the state asked Mr. Akehurst if Sherman Smith was a prior owner
22 of the land and when Mr. Akehurst answered affirmatively counsel suggested
23 that Certificate No. 198 from the earlier adjudication might be appurtenant
24 to the claimants' land. The Referee has reviewed the decree and finds that

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1 a Class 15 right, with an 1892 date of priority, was awarded to Sherman
2 Smith. However, the decree indicates that the right was appurtenant to the
3 SW $\frac{1}{4}$ of Section 36, T. 17 N., R. 19 E.W.M. The claimants' land is in
4 Section 36, T. 18 N., R. 19 E.W.M. The Referee notes that Section 36,
5 T. 17 N., R. 19 E.W.M. is a substantial distance from Cooke Creek and there
6 is no indication that water was carried from Cooke Creek to this land.
7 There has been no evidence presented to show that there was an error in the
8 decree or that Mr. Sherman Smith did own the claimants' land at the time of
9 the earlier adjudication. That adjudication determined all of the valid
10 water rights to Cooke Creek at that time. Lacking evidence to show that the
11 claimants' land was awarded a right in the adjudication, the Referee cannot
12 recommend that a water right be confirmed for use of Cooke Creek in the SW $\frac{1}{4}$
13 of Section 36.

14 Mr. Akehurst is also asserting a right for lands he owned in Section 2,
15 T. 17 N., R. 19 E.W.M., that were sold to Robert Case. According to the
16 testimony about 80 acres are irrigated with water diverted from a spring
17 and/or delivered from KRD. Court Claim No. 02269 does not describe any land
18 in Section 2, nor does any of the State's Investigation Reports. Mr.
19 Akehurst in his testimony did not indicate where in Section 2 the land is
20 located, nor did he provide a legal description for the land. There was no
21 evidence provided to show where the spring is located or when it was first
22 developed and used.

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1 The Referee has no evidence on which to base a decision on whether
2 there is a water right for the land; therefore, it is recommended that no
3 water right be confirmed.

4 COURT CLAIM NO. 02250 -- W. Stephen Alder

5 The referenced Court claim was filed asserting a right to use waters
6 from Cooke Creek for irrigation and stock water. Attorney Kenneth Beckley
7 appeared at the evidentiary hearing on behalf of Mr. Alder. Cooke Creek is
8 used to convey Cascade Irrigation District (CID) water that is used by Mr.
9 Alder to irrigate his property. As discussed on page 7 of this report, CID
10 is a major claimant whose rights are being determine through the Major
11 Claimant pathway. Mr. Alder is not asserting a right to divert water from
12 Cooke Creek, but is asserting a right for non-diversionary stock watering.
13 Livestock on his property drink directly from the creek the entire year and
14 undoubtedly use natural creek water. The stock water stipulation discussed
15 on page 4 of this report covers this type of use and Mr. Alder's name will
16 be placed on the list of claimants who have a stock water right under the
17 stipulation. A diversionary right will not be recommended for confirmation
18 under Court Claim No. 02250.

19 COURT CLAIM NO. 00289 -- Gerald L. Allphin
20 & Beverly J. Allphin

21 Court Claim No. 00289 was filed by the Allphins asserting a right to
22 use Cooke Creek for irrigation and stock water. Mr. Allphin testified at
23 the evidentiary hearing.

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1 The Allphins own 5.6 acres in a portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2,
2 T. 17 N., R. 19 E.W.M. lying below the Cascade Canal. They are irrigating 5
3 acres with water diverted from the creek. Water is diverted from the creek
4 just below the canal and used to fill a pond that is adjacent to the canal.
5 Water is let out of the pond to flood irrigate 4.5 acres. About one-half
6 acre east of the creek is sprinkler irrigated. A 2 HP electric pump is used
7 to divert water to the sprinkler system. The Allphins have owned the
8 property since 1964. When they purchased it, the entire parcel was being
9 sprinkler irrigated, but when the pump burned up, they converted to the
10 currently used flood system. They have had up to 12 head of livestock on
11 the property and the stock drink directly from the creek. This type of
12 non-diversionary stock water use is covered by the stock water stipulation
13 discussed on page 4 of this report.

14 The claimants did not submit any historical documents for their
15 property, although Mr. Allphin understood that the surrounding land to the
16 west was once owned by Scammon and thought his might also have been owned by
17 Mr. Scammon. Documents offered by Fred Palmiero indicate that the SE $\frac{1}{4}$ of
18 Section 2 was originally settled by George W. Snodgrass, who received a
19 patent on March 21, 1891. At the time of the first adjudication of Cooke
20 Creek, the SE $\frac{1}{4}$ of Section 2 was owned by Milwaukee Land Company.
21 Certificate No. 190, a Class 14 right with an 1893 date of priority, issued
22 to the land company authorizing the diversion of 1.80 cubic feet per second
23 for the irrigation of 90 acres in the SE $\frac{1}{4}$ of Section 2. The authorized
24 point of diversion is in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T. 17 N., R. 19 E.W.M.
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1 The certificate authorized use of water from May 1 through September 15.
2 The Palmieros are the only other claimants in this proceeding who own land
3 in the SE $\frac{1}{4}$ of Section 2.

4 The Referee recommends that a right be confirmed under Court Claim No.
5 00289 with a June 30, 1893, date of priority for the diversion of 0.10 cubic
6 foot per second, 25 acre-feet per year for the irrigation of 5 acres and
7 stock watering. The authorized point of diversion shall be as described on
8 Certificate No. 190. The claimants should contact Ecology's Central
9 Regional Office concerning the process for seeking authorization to change
10 the diversion to its current location pursuant to RCW 90.03.380.

11 COURT CLAIM NO. 01149 -- Jack A. Baker
12 & Becky R. Baker

13 The Bakers filed a Statement of Claim with the Court asserting a right
14 to use waters from Cooke Creek for irrigation and stock watering. Mr. Baker
15 testified at the evidentiary hearing.

16 The Bakers land lies in the S $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 19 N.,
17 R. 20 E.W.M. and is riparian to Cooke Creek. They irrigate 1.5 acres with
18 water diverted from Cooke Creek using a 1.5 HP portable pump. The pump is
19 moved to various points on the creek as the land is irrigated. The land
20 that is irrigated is the Baker's lawn, garden, and landscape. The rest of
21 the property is pasture that is not irrigated. Up to six horses graze on
22 the pasture at various times during the year and drink directly from Cooke
23 Creek. This type of non-diversionary stock water use is covered by the
24
25

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1 stock water stipulation discussed on page 4 of this report, and the Bakers
2 are on the list of those claimants who have a right under the stipulation.

3 When the Bakers bought the property in 1976 a ditch carried Cooke Creek
4 water by gravity flow onto the property. This is the same ditch that James
5 Peterson testified crossed the McGinty property to the north and was filled
6 in 1977. The Bakers have used the pump system for irrigating their land
7 since 1977.

8 Certificate No. 209 from the prior adjudication of Cooke Creek is
9 appurtenant to the claimants' property. With an 1879 date of priority, it
10 authorized the diversion of 1.80 cubic feet per second from Cooke Creek for
11 the irrigation of 90 acres. The authorized points of diversion are in the
12 NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 19 N., R. 20 E.W.M. The ditch that
13 previously served the property appeared to come from a diversion in the
14 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31. The legal description for the place of use on the
15 certificate is a strip of land that is mostly in the W $\frac{1}{4}$ E $\frac{1}{4}$ of Section 31, but
16 does extend slightly into the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31. All of the
17 Baker property is within the place of use on the certificate. Besides the
18 Bakers, the following claimants also own land that is within the place of
19 use on Certificate No. 209: Michael Joseph Shannon, William Arthur and Rea
20 Jeanette Hanning, Arthur W. and Margarette Hanning, Earl E. and Florene
21 McGinty, James J. Peterson/Carolyn B. Johnson, Bruce and Bonnie Catton, and
22 Pamela A. Zupan.

23 Additionally, Water Right Claim No. 120829 was filed by Jerome Miller,
24 who owned the property in 1974, under the provisions of RCW 90.14. However,
25

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1 since a certificate had been issued for the water use, filing a water right
2 claim was not required in order to protect the water right.

3 Besides requiring the filing of water right claims for uses of water
4 for which there are no certificates, RCW 90.14 also provides for the
5 relinquishment of unused water rights. RCW 90.14.170 provides that any
6 person entitled to divert waters of the state authorized by a general
7 adjudication (such as Cooke Creek) who voluntarily fails without sufficient
8 cause to beneficially use all or any part of the right for five successive
9 years shall relinquish said right or portion thereof. The sufficient causes
10 that prevent relinquishment are defined in RCW 90.14.140 and the Referee is
11 not aware of any sufficient cause that might to the Bakers.

12 The Bakers are only asserting a right to irrigate the 1.5 acres that
13 have continued to be irrigated. The Referee finds that the remainder of the
14 right appurtenant to their property in the S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31 has
15 relinquished due to the long period of nonuse.

16 The Referee recommends that a water right be confirmed under Court
17 Claim No. 01149 with a June 30, 1879, date of priority for the diversion of
18 0.03 cubic foot per second, 6 acre-feet per year for the irrigation of 1.5
19 acres. It is clear that in 1977 the Bakers changed the point of diversion
20 for their water right from the diversion into a gravity flow ditch to the
21 pump locations on their property. There is no evidence that they complied
22 with the provisions of RCW 90.03.380 for obtaining approval to change or add
23 a point of diversion. Therefore, the Referee must recommend the authorized
24 point of diversion be the historical point authorized in the certificate.

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1 The Bakers should contact Ecology's regional office concerning the procedure
2 for changing their point of diversion.

3 COURT CLAIM NO. 00707 -- E. Eugene Barnhart, Jr.
4 & Hellen M. Barnhart
5 Kenneth E. Barnhart
6 & Susan Barnhart

7 COURT CLAIM NO. 00708 -- Estate of May S. Barnhart
8 & E. Eugene Barnhart, Jr.
9 Kenneth E. Barnhart
10 & Susan Barnhart

11 May S. Barnhart and E. Eugene Barnhart Jr. filed Claim No. 708 with the
12 Court for the use of Coleman Creek for stock water and irrigation on their
13 ranch located in Sections 1, 2, and 11, T. 18 N., R. 19 E.W.M. In testimony,
14 Schnebly Creek and several springs were also identified as a source of water
15 for the above mentioned ranch. Court Claim No. 00707 was filed by the
16 Barnharts for use of Cooke Creek for irrigation and stock watering in
17 Section 8, T. 18 N., R. 20 E.W.M. Through testimony, Claim No. 00707 was
18 amended to include claims to use Caribou Creek, Clockum Creek (aka Dry
19 Creek) and an unnamed creek. On April 28, 1998, Kenneth and Susan Barnhart
20 were joined to both claims. The Barnharts were represented at the
21 evidentiary hearing by Attorney Hugh Spall. Kenneth and Eugene Barnhart
22 testified at the evidentiary hearing, along with neighboring land owner
23 Steve German.

24 The Barnharts have claimed Coleman Creek water for the irrigation of
25 295 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 2, and
26 the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11, all in T. 18 N., R. 19 E.W.M. These lands form one
27 contiguous property. The Barnharts have also claimed Coleman Creek water

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1 for use on the N $\frac{1}{2}$ SW $\frac{1}{4}$ of of Section 12, T. 18 N., R. 19 E.W.M. However,
2 based on the lack of testimony, and the State Map Exhibit SE-2 showing no
3 irrigation on the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 12, the Referee concludes that there is
4 no diversionary use of Coleman Creek water on this property. In his
5 post-hearing brief, Mr. Spall has stated that the Barnharts also use Coleman
6 Creek water on the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 1, T. 18 N., R. 19 E.W.M. Again, there
7 is no testimony to support this, and SE-2 does not show any irrigation of
8 this property with Coleman Creek water. Mr. Spall has cited the State's
9 investigation report SE-16 report number 3. This report states in part that
10 "this land (S $\frac{1}{2}$ NE $\frac{1}{4}$ of said Section 1) has not been irrigated for many years .
11 . . .", and "no works are employed for diverting water, stock drink directly
12 from the creek." Therefore, the Referee concludes that this property is not
13 irrigated with Coleman Creek water. Livestock drinking directly from the
14 creek is covered by the stock water stipulation discussed on page 4 of this
15 report. The Barnharts will be included on the list of claimants benefiting
16 from that stipulation.

17 The Barnharts use of Coleman Creek water appears to be confined to the
18 295 acres on the property in Sections 1, 2 and 11; this is the property that
19 will be the subject of further analysis. Kenneth Barnhart has testified
20 that he has had up to 250 cow calf pairs on this property the entire year.
21 Based on the testimony, the Referee concludes that 0.13 cubic foot per
22 second, 12.5 acre-feet per year would be needed for diversionary stock
23 watering.

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1 The subject property has been owned and irrigated by the Barnhart
2 family or relatives for at least 115 years. The property was purchased by
3 Ernest Barnhart in 1931. Prior to this the land was owned by C. P.
4 Schnebly. In the Schnebly v. Huss Decree, C. P. Schnebly was awarded 80
5 inches (1.6 cfs) of first class water and 60 inches (1.2 cfs) of fifth class
6 water rights to Coleman Creek. The decree awarded one-half inch of water
7 for each acre irrigated. Therefore, an award of 80 inches indicates that
8 160 acres were being irrigated and 60 inches indicates 120 acres were being
9 irrigated. The S $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 18 N., R. 19
10 E.W.M. received first class rights (prior to 1873). The W $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1,
11 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, and the N $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 18 N., R. 19
12 E.W.M. received only 60 inches of fifth class water rights (1879-1880) in
13 the above mentioned decree. There was nothing in the record for the
14 Schnebly v Huss decree to show which 120 acres in the described 200 acre
15 area was being irrigated under the class 5 right.

16 Water Right Claim No. 119573 was filed by Ernest Barnhart on June 20,
17 1974, pursuant to RCW 90.14 for the use of Coleman Creek water on 285 acres
18 within the SE $\frac{1}{4}$ of Section 2, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
19 Section 11, T. 18 N., R. 19 E.W.M. The claimed point of diversion is close
20 to a diversion on the state exhibit map SE-2, which has the diversion point
21 located at 1650 feet south and 1250 feet west of the NE corner of Section
22 12, T. 18 N., R. 19 E.W.M. The place of use on WRC No. 119573 does not
23 include the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, nor the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1. There are
24 approximately 45 acres irrigated in the portion of the claimants' land that

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1 was not described on the claim. The Court has dealt with the issue of
2 whether an RCW 90.14 claim can cover lands not described on the claim. The
3 Court has consistently ruled that if there is minor deviation between the
4 area irrigated and that described on the claim, the requirements of RCW
5 90.14 have substantially been complied with. The Referee believes that this
6 is the case for the five acres that lie in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1. That
7 area is obviously a small extension of a field that primarily lies within
8 the area described on the claim form. However, that same conclusion can not
9 be made for the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, all of which is being irrigated. A 40
10 acre area is not a minor deviation, but would be considered a substantial
11 part of the irrigated area. Failure to file a claim waives and relinquishes
12 any right that may have existed, see RCW 90.14.071. Therefore, the Referee
13 cannot recommend that a right be confirmed for that portion of the
14 claimants' property.

15 The Referee recommends that a right on Coleman Creek be confirmed to
16 the Barnharts with a June 30, 1872, priority date for the diversion of 1.6
17 cubic feet per second, 480 acre-feet for the irrigation of 120 acres from
18 April 1 through October 15; and 0.13 cfs and 12.5 acre-feet for stock water
19 as available throughout the year. The place of use is the W $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$
20 of Section 2, T. 18 N., R. 19 E.W.M. The point of diversion is located 1650
21 feet south and 1250 feet west of the NE corner of Section 12, being within
22 the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.

23 The Referee further recommends that a second right on Coleman Creek be
24 confirmed to the Barnharts with a June 30, 1880, priority date for the

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1 diversion of of 1.2 cfs, 468 acre-feet for the irrigation of 120 acres from
2 April 1 through October 15. The place of use is that portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$
3 of Section 1, lying southwest of an irrigation ditch, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
4 2, and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11, T. 18 N., R. 19 E.W.M. The point of
5 diversion is located 1650 feet south and 1250 feet west of the NE corner of
6 Section 12, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.

7 Mr. Barnhart has testified that he uses Schnebly Creek to irrigate 40
8 acres of land. Mr. Spall has identified this 40 acres in his post-hearing
9 brief as being the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T. 18 N., R. 19 E.W.M. Mr. Barnhart
10 testified that he believes the original settlers probably used Schnebly
11 Creek for irrigation, but there is no documentation of this early use in the
12 record that would support this belief. Furthermore, it does not appear that
13 a Ch.90.14 Water Right Claim for the use of Schnebly Creek was ever filed by
14 the Barnharts. Therefore, the Referee cannot confirm a water right for the
15 use of Schnebly Creek water, RCW 90.14.071.

16 Kenneth Barnhart testified that he uses the water from three springs.
17 Two of the springs are located about a quarter mile east of Mr. Barnharts
18 property in Sections 1 and 12. The water from these springs flows naturally
19 downhill to the Barnhart property where the cattle drink the water. This
20 non-diversionary use of the spring water is provided for in the
21 non-diversionary stock water stipulation which is discussed on page 4 of
22 this report. The Barnharts name is included in the list of claimants
23 entitled to a non-diversionary stock water right under the stock water
24 stipulation.

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1 A third spring is located just beyond the northeast corner of the
2 Barnhart property; about 1300 feet west of the center of Section 1, T. 18
3 N., R. 19 E.W.M. This spring supplies domestic water to a house which is
4 located about 3300 feet to the southwest of the spring. This house was the
5 site of the original homestead. Water is piped to the home, and during a
6 replacement of the old pipe, it was found that the pipe was made of wood,
7 suggesting that the pipe was installed around the turn of the century.
8 There is no testimony about how much water is used, but Mr. Spall has
9 suggested that a water right should be granted in an amount "standard for
10 household purposes". The referee will therefore rely upon the standard
11 water duty for domestic supply discussed on page 2 of this report, or 0.02
12 cubic foot per second, 1 acre-foot per year.

13 Ernest Barnhart filed an RCW Chapter 90.14 water right claim for the
14 use of this spring on June 20, 1974. The claimed location is 2740 feet
15 north and and 1370 feet east from the southwest corner of Section 1, being
16 within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T. 18 N., R. 19 E.W.M.

17 The Referee recommends that a right on an unnamed spring be confirmed
18 to the Barnharts with a June 30, 1872, priority date for the diversion of
19 0.02 cubic foot per second and 1.0 acre-foot per year for continuous
20 domestic supply. The place of use is a house located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
21 Section 2, T. 18 N., R. 19 E.W.M. The point of diversion is located 110
22 feet north and 1370 feet east of the west quarter corner of Section 1, T. 18
23 N., R. 19 E.W.M.

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The claimants use water from Cooke Creek to irrigate 110 acres and water stock in the SW $\frac{1}{4}$ of Section 8, T. 18 N., R. 20 E.W.M. The land is planted to pasture and hay and up to 150 cow/calf pairs are on the property. Water is diverted from Cooke Creek into the Trio Ditch in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T. 18 N., R. 20 E.W.M. Mr. Barnhart noted on Court Claim No. 00707 that the point of diversion was moved from its original location. Cooke Creek was adjudicated in 1921 and a Class 8 right with a priority of 1880 was awarded to Ernest Barnhart, the current claimant's grandfather. Certificate No. 171 issued to Mr. Barnhart authorizing the diversion of 2.20 cubic feet per second from May 1 through September 15 for the irrigation of 110 acres in the SW $\frac{1}{4}$ of Section 8. The authorized point of diversion was in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6. This use has continued to the present, except that the point of diversion was changed as acknowledged in the claim without compliance with the change procedures in RCW 90.03.380.

15 Based on the foregoing, the Referee recommends that a right be
16 confirmed under Court Claim No. 00707 with a June 30, 1880, date of priority
17 for the diversion from Cooke Creek of 2.20 cfs, 550 acre-feet per year from
18 May 1 through September 15 for the irrigation of 110 acres in the SW $\frac{1}{4}$ of
19 Section 8. The point of diversion shall be that authorized by Certificate
20 No. 171 and the claimants should contact Ecology about the change procedures
21 in RCW 90.03.380.

22 The claimants are also asserting a right to use water diverted from
23 Caribou Creek for the irrigation of 30 acres n the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8.
24 Water is diverted from the creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4 and carried in

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1 an open ditch to the claimant's land. Mr. Barnhart testified to diverting
2 2.5 cubic feet per second from the creek for about 60 days each year. The
3 time period when he can divert varies according to the precipitation
4 patterns. Mr. Barnhart testified that this source has been consistently
5 used by his family. He did not testify to diverting from Caribou Creek for
6 stock watering outside the normal irrigation season. Since water is not
7 always available from this creek, the Referee concludes that water is not
8 diverted for stock watering except when it is available for irrigation
9 purposes.

10 Water Right Claim No. 119570 was filed asserting a right to divert 1
11 cubic foot per second 600 acre-feet per year for the irrigation of 40 acres
12 and stock watering in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8. The point of diversion
13 claimed is 2900 feet north and 1510 feet west of the southeast corner of
14 Section 8. That is a different location than that identified in the State's
15 investigation report, but is near a diversion marked on SE-2. This
16 diversion is closer to the claimant's property and appears to divert into
17 the same ditch as the diversion described in the investigation report.
18 Although Mr. Barnhart testified to diverting 2.5 cfs, WRC No. 119570 asserts
19 a right to divert 1 cfs. One cfs diverted over a 60 day period would result
20 in 119 acre-feet per year being withdrawn from the creek.

21 The Referee recommends that a right be confirmed to the Barnharts with
22 a June 30, 1880, date of priority for the diversion from Caribou Creek of
23 1.0 cfs, 119 acre-feet per year for the irrigation of 30 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$
24 of Section 8. The point of diversion authorized shall be the diversion

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1 marked on SE-2 that is very close to the point described in WRC No. 119570,
2 approximately 100 feet north and 1500 feet west of the east quarter corner
3 of Section 8 in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8.

4 A right is also being asserted to use two streams that flow north to
5 south through the claimants' property in Section 8. The western most stream
6 is sometimes called Clockum or Dry Creek and is used for irrigation and
7 stock watering. Water is diverted from the stream approximately 600 feet
8 east of the west quarter corner of Section 8. Mr. Barnhart testified to
9 diverting about 2.5 cubic feet per second beginning in late March or early
10 April and continuing until the creek goes dry. Water is usually only
11 available about 21 days each year. The second stream is only used for
12 non-diversionary stock watering, which would be covered by the stipulation
13 discussed on page 4 of this report.

14 The Referee could find no RCW 90.14 claim for use of the stream from
15 which water is diverted for irrigation. The only other RCW 90.14 claim in
16 the record for Section 8, other than the one already discussed for use of
17 Caribou Creek, is WRC No. 119568, which was filed on unnamed springs,
18 located about 10 feet north of the south section line in Section 8. SE-2
19 shows a spring at the location described in WRC No. 119568. Failure to file
20 a claim waives and relinquishes any right that may have existed, see RCW
21 90.14.071. Therefore, the Referee cannot recommend that a right be
22 confirmed for use of the streams, other than non-diversionary stock
23 watering.

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1 COURT CLAIM NO. 00643 -- Ed Benner
2 & Lavonne Benner

3 The Benners filed Court Claim No. 00643 asserting a right to use an
4 unnamed spring. They were represented by Attorney Richard T. Cole at the
5 evidentiary hearing and Mr. Benner testified at that hearing.

6 The Benners own the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 17 N., R. 19 E.W.M. They
7 are claiming a right to use an unnamed spring for stock watering. The
8 spring is located approximately 600 feet south and 940 feet west of the
9 northeast corner of Section 24, in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24. The spring
10 flows into a small pond and then into a channel that runs south through the
11 southerly portion of the Benner property. When the claimants have livestock
12 on their land, the livestock drink directly from the channel into which the
13 spring drains. The number of and types of livestock on the property has
14 varied over the years and has included 30 horses and at another time 30 head
15 of cattle. Mr. Benner estimated that the flow from the spring was 0.50 to
16 0.75 cubic foot per second. He testified that the springs flow does not
17 fluctuate much over the year. The Benner land is irrigated with water
18 delivered by the Cascade Irrigation District and Kittitas Reclamation
19 District, both major claimants in this proceeding whose rights are being
20 determined in the Major Claimant pathway, see page 7.

21 Water Right Claim No. 152577 was filed by Ed Benner pursuant to RCW
22 90.14. It asserts a right to use 0.50 cfs, 365 acre-feet per year from a
23 spring for irrigation of 20 acres and stock watering in the S $\frac{1}{4}$ N $\frac{1}{4}$ E $\frac{1}{4}$ NE $\frac{1}{4}$ of
24 Section 24.

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1 The stock water use claimed is non-diversionary in nature, where the
2 livestock drink directly from the source with no diversion into stock
3 tanks. This type of use is covered by the stock water stipulation discussed
4 on page 4 of this report. The claimants' names are on the list of those who
5 enjoy a non-diversionary stock water right under the stipulation. Since
6 that is the only right being asserted in this proceeding, the Referee
7 recommends that a diversionary right not be confirmed under Court Claim No.
8 00643.

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

Boise Cascade filed Court Claim No. 02206 on numerous surface water sources in the Yakima River Basin, including many in Subbasin No. 10. Those water sources located in Subbasin No. 10 shall be addressed herein. Attorney J. J. Hutson represented Boise Cascade at the evidentiary hearing. John Hess, Boise Cascade's chief forester for this area, and Henry Schnebly, from whom Boise purchased some of its land, testified at the hearing. Additionally, written expert testimony was submitted by Robert E. Ficken, Ph.D., a professional historian.

Boise Cascade has extensive land holdings in the upper part of Subbasin No. 10, specifically in the headwaters of Schnebly Canyon, Coleman Canyon and Cooke Creek Canyon. Their claim asserts rights to use water for stock watering and timber harvesting and describes 74 sources of water. The stock watering use involves 61 of the water sources with the livestock either drinking directly from the source or a small development with the water

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1 piped to a stock tank that is situated within the banks of the water
2 source. Ecology and Boise Cascade have agreed that all of the stock water
3 uses fit within the parameters of the stock water stipulation discussed on
4 page 4 of this report. Therefore, Boise Cascade did not present any
5 specific testimony about the stock water sources, other than to summarize
6 the maximum annual quantity of water used from all sources at 3.6 acre-feet
7 per year.

8 Thirteen of the water sources are used for timber harvesting. This
9 water use involves filling 4,000 gallon tank trucks with water to be
10 sprinkled on road surfaces to maintain the integrity of the road and reduce
11 dust. Department of Natural Resources logging regulations also require that
12 where logging equipment is actively being used standby water be available
13 for fire protection. Mr. Hess testified that it takes 15 minutes to fill
14 the 4,000 gallon tanks, which would indicate that water is being withdrawn
15 from the sources at a rate of 266 gallons per minute, or 0.60 cubic foot per
16 second. A maximum of 16.41 acre-feet per year is claimed for timber
17 harvesting. That is the quantity of water that would be used if all 13
18 water sources were used each year. That normally does not happen. Each
19 year a portion of the sources are used and the next year a different portion
20 of the Boise Cascade land is logged, so different sources are used. Mr.
21 Hess testified that about a five year rotation is used. Boise uses between
22 a minimum of 0.22 acre-foot per year from Coleman Creek in Section 9,
23 T. 19 N., R. 20 E.W.M. to a maximum of 2.65 acre-feet per year from Coleman
24 Creek in Section 25, T. 19 N., R. 19 E.W.M.

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1 The past ownership of the land for which Boise Cascade is seeking
2 timber harvesting water rights falls into three different historical
3 patterns. Seven sections were originally conveyed by the United States to
4 Northern Pacific Railroad, who received a patent for the land on January 16,
5 1896. At an unknown time after that, the land was acquired by Hoosier Land
6 Company, who sold it on February 27, 1925, to Cascade Lumber Company,
7 predecessor to Boise Cascade. The sections with this history are:

8 Sections 1, 11 and 13, T. 19 N., R. 19 E.W.M., Sections 7, 9, and 15,
9 T. 19 N., R. 20 E.W.M., and Section 25, T. 20 N., R. 19 E.W.M. Mr. Hess
10 testified to his belief that Fredrick Leonard operated a sawmill beginning
11 in 1879 on land that Boise now owns in Section 9, T. 19 N., R. 20 E.W.M.

12 Three sections of land were also originally conveyed by the United
13 States to Northern Pacific Railroad, and then sold to the Schnebly family.
14 Those sections are Sections 23 and 25, T. 19 N., R. 19 E.W.M., and
15 Section 31, T. 20 N., R. 20 E.W.M. Section 31 was sold to Cascade Lumber
16 Company in 1947 and Sections 23 and 25 continued to be owned by the
17 Schneblys until 1970, when it was sold to Boise Cascade. Section 19,
18 T. 19 N., R. 20 E.W.M. was conveyed from the United States to Sayles on
19 February 7, 1928, and then from the Schnebly family to Cascade Lumber on
20 February 21, 1928. There is no document in the record showing the land being
21 conveyed from Sayles to the Schnebly family; however, with the Schnebly
22 family selling the land only two weeks after the patent issued to Sayles,
23 the Referee suspects that the Schneblys had interest in the land prior to
24 the patent issuing. Mr. Hess testified to the Coleman Creek Lumber Company

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1 sawmill being located on land in Section 19 in the late 1800's, apparently
2 while the United States still held title to the land. Mr. Schnebly
3 testified that while his family owned the land, they had timber harvesting
4 leases with Boise Cascade and/or Cascade Lumber. He recalls the land being
5 logged when he was a youth. He also recalled a large fire, called Schnebly
6 Canyon Burn, which consumed a large area of regrowth timber. The fact that
7 it was regrowth timber that was burned indicates that the land had been
8 logged years earlier.

9 Mr. Ficken, in his written testimony, went into the history of timber
10 harvesting in this area. It is clear that the upper part of the Schnebly
11 Canyon, Coleman Creek and Cooke Creek areas were recognized as a source for
12 timber harvesting from the late 1800's to the present. At least two mill
13 sites were identified on land that is now owned by Boise Cascade. Portable
14 saw mills also were commonly used, being moved as the timber supply in an
15 area was exhausted. These mills were powered by water diverted from nearby
16 streams. During the late 1800's and early 1900's timber harvesting was
17 conducted by individuals or small groups. In the early 1920's Cascade
18 Lumber Company began buying up much of the land, taking over the timber
19 harvesting operations. The use of portable saw mills ceased as timber began
20 being hauled to mills closer to town. As that transition occurred, use of
21 water changed from running the mills to maintaining roads that were being
22 constructed for hauling the logs. Initially, logs were hauled by wagons
23 drawn by livestock and then by logging trucks. Although the water now is

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1 used to maintain roads and keep the dust down, the ultimate use is still
2 timber harvesting.

3 Additionally, Boise Cascade is asserting a right to use the water for
4 fire protection. Many claimants in this proceeding have asserted rights to
5 use water for fire protection. Because that use is impossible to quantify
6 and it is recognized that if water is needed to fight a fire, whatever water
7 is available will be used irrespective of what the water rights might be,
8 the Court has been reluctant to grant rights specifically for fire
9 protection. In order to resolve this issue, the Court signed a stipulation
10 that was presented by the Department of Ecology. The stipulation defines
11 fire suppression and states that use of water for fire suppression is a
12 recognized emergency use and does not require a water right. The
13 stipulation was signed by the Court on December 12, 1996. Therefore, the
14 Referee does not propose to recommend that a right be awarded to Boise
15 Cascade specifically for fire protection or suppression.

16 Boise Cascade filed over 80 water right claims pursuant to RCW 90.14
17 for water sources within the Kittitas Subbasin. These claims assert rights
18 to divert between 3 and 5 gallons per minute and 2 to 4 acre-feet per year
19 for stock watering, fire protection, and road maintenance. Mr. Hess has
20 testified to diverting more than 260 gallons per minute when tanker trucks
21 are being filled, well above the quantity identified on the claim forms.
22 RCW 90.14.065 provides a mechanism to amend a water right claim,
23 particularly where an error was made in estimating the quantity of water
24 used. In order for the Referee to recommend that diversionary water rights

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1 be awarded in the quantity that is being used, Boise Cascade must go through
2 the process to amend those claims. The Referee notes that this same
3 situation occurred in Subbasin No. 4 and Boise Cascade successfully amended
4 its water right claims and rights were confirmed consistent with the
5 quantities being used.

6 Most of the land now owned by Boise Cascade was acquired by its
7 predecessor, Cascade Lumber Company in 1925 or was owned by the Schnebly
8 family at that time and the testimony indicates there were timber leases
9 that allowed for logging on those lands. It is reasonable to conclude that
10 water was being used for timber harvesting in the manner put into evidence
11 by Mr. Ficken and Mr. Hess prior to December 31, 1932, the time by which
12 water had to be used in order to establish a water right under the Riparian
13 Doctrine. The land is riparian to the water source being used, therefore,
14 the Riparian Doctrine is the proper basis for the water right. However, the
15 land in Section 4, T. 19 N., R. 20 E.W.M. was never owned by the Schneblys
16 and Cascade Lumber Company acquired the land in 1944, well after the 1932
17 date when water should have been used for timber harvesting in order to
18 establish a water right. Additionally, the source of water for Section 4 is
19 Cooke Creek. Cooke Creek has previously been adjudicated, with a decree
20 being entered by Kittitas County Superior Court on August 13, 1921. The
21 adjudication would have determined all of the valid water rights to Cooke
22 Creek. Since a water right was not awarded in that decree for Section 4,
23 the Referee must conclude that none exists. That is also the case for lands
24 in Section 19, T. 19 N., R. 20 E.W.M., for which a right is being asserted
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1 for use of Cooke Creek. Subsequent to entry of that decree, the only
2 mechanism by which a water right could be established is through the
3 permitting procedures in the Surface Water Code, RCW 90.03. There is no
4 evidence that occurred.

5 The Referee recommends that the following rights be confirmed for
6 timber harvesting under Court Claim No. 02206 to Boise Cascade Corporation.
7 All of the lands for which water rights are being awarded were originally
8 conveyed by the United States to Northern Pacific Railroad. Water rights
9 established under the Riparian Doctrine for former railroad land have a
10 priority date of the date the map of definite location was filed for the
11 railroad. In Kittitas County, that date is May 24, 1884. Although Boise
12 Cascade is asserting a priority date much later than that, the Referee
13 recommends that all rights bear the priority date of May 24, 1884.

- 14 1. A right to divert 0.0066 cubic foot per second, 1.77 acre-feet per
15 year from Coleman Creek for timber harvesting in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 1, T. 19 N., R. 19 E.W.M. (#335)
- 16 2. A right to divert 0.0111 cubic foot per second, 1.77 acre-feet per
year from an unnamed spring for timber harvesting in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 11, T. 19 N., R. 19 E.W.M. (#351)
- 17 3. A right to divert 0.0111 cubic foot per second, 1.77 acre-feet per
year from Coleman Creek for timber harvesting in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 13, T. 19 N., R. 19 E.W.M. (#353)
- 18 4. A right to divert 0.0089 cubic foot per second, 1.18 acre-feet per
year from an unnamed spring for timber harvesting in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 25, T. 20 N., R. 19 E.W.M. (#404)
- 19 5. A right to divert 0.0111 cubic foot per second, 0.88 acre-foot per
year from Coleman Creek for timber harvesting in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 7, T. 19 N., R. 20 E.W.M. (#419)
- 20 6. A right to divert 0.0111 cubic foot per second, 0.22 acre-foot per
year from Coleman Creek for timber harvesting in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 9, T. 19 N., R. 20 E.W.M. (#420)
- 21 7. A right to divert 0.0111 cubic foot per second, 0.88 acre-foot per
year from an unnamed spring for timber harvesting in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 15, T. 19 N., R. 20 E.W.M. (#427)

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- 1 8. A right to divert 0.0111 cubic foot per second, 0.88 acre-foot per
- 2 year from Schnebly Canyon Creek for timber harvesting in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T. 19 N., R. 19 E.W.M. (#359)
- 3 9. A right to divert 0.0111 cubic foot per second, 0.88 acre-foot per
- 4 year from an unnamed spring for timber harvesting in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T. 19 N., R. 19 E.W.M. (#360)
- 5 10. A right to divert 0.0111 cubic foot per second, 0.88 acre-foot per
- 6 year from Coleman Creek for timber harvesting in the N $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T. 19 N., R. 19 E.W.M. (#363)
- 7 11. A right to divert 0.00222 cubic foot per second, 1.0 acre-foot per
- 8 year from an unnamed spring for timber harvesting in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 20 N., R. 20 E.W.M. (#451)

COURT CLAIM NO. 01464 -- Ian D. Buchan
(A) 02872

Mr. Buchan filed a claim with the Court asserting a right to use unnamed springs for irrigation and stock watering. At the evidentiary hearing Mr. Buchan was represented by Attorney Hugh Spall, who has since withdrawn and John P. Gilreath has substituted as his attorney. Mr. Buchan and Keith Gibb, a prior owner of the property, testified at the evidentiary hearing. Richard C. Bain, Jr., a consultant hired by the claimant prepared an Engineering Report for Mr. Buchan's ranch and that report has been entered as direct expert testimony and marked Exhibit DE-1392.

Mr. Buchan owns the S $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4 and that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9 lying north of Park Creek Road, all in T. 17 N., R. 20 E.W.M. The ranch is 280 acres in size with 260 acres irrigated with water delivered by the Kittitas Reclamation District (KRD), and diverted from Park Creek and unnamed drains located within the property. Most of the land is planted in hay and pasture with a grain rotation. At the time of the hearing 360 head of cattle, three horses and two ponies were kept on the farm. These numbers vary over the years but are

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1 representative of the approximate number of livestock that are generally on
2 the property. The farm is rill irrigated using concrete lined ditches,
3 gated pipe and earthen ditches.

4 Mr. Buchan acquired the property in the late 1970's and Keith Gibb
5 owned it between 1948 and 1973. Mr. Gibb testified that the land was being
6 irrigated when he acquired it and he continued irrigating during his entire
7 ownership.

8 Water is diverted from Park Creek in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4 and used
9 to irrigate 10 acres in that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4
10 west of Park Creek. Although the State's Investigation Report identifies
11 three drains from which water is diverted, Mr. Bain's report shows four.
12 Three flow through the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4, one flows through the E $\frac{1}{2}$ SW $\frac{1}{4}$ of
13 Section 4 and the last flows through the N $\frac{1}{2}$ N $\frac{1}{4}$ of Section 9. The claimant is
14 irrigating 86 acres with water diverted from the drains. Both Mr. Spall's
15 opening statement and Mr. Buchan's testimony made it clear that these drains
16 do not carry water except during the irrigation season when the KRD canal is
17 delivering water. The claimant acknowledged that current case law is that
18 water rights cannot be established for foreign return flow (which is created
19 by the use of imported water), but that it can be used by the person to
20 capture it. The law was accurately summarized by the claimant's counsel.
21 Additionally, there were no claims filed pursuant to RCW 90.14 for use of
22 the drains. The Referee cannot recommend confirmation of water rights for
23 any of the drains due to the water being foreign return flow and lack of a
24 RCW 90.14 claim for the use.

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1 Water Right Claim No. 126013 was filed by William H. Peterson in 1974.
2 It was filed on a short form and claimed a right to use a spring for
3 domestic supply and stock watering in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4. There is a
4 water source in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4 that is used for lawn irrigation
5 around Mr. Buchan's house. The Referee presumes the intent of Water Right
6 Claim No. 126013 was for that use. However, there was not sufficient
7 information provided about current and historic use of this source to allow
8 the Referee to recommend that a water right be confirmed.

9 Mr. Buchan testified that Park Creek is also dry except when water is
10 being carried in the KRD canal, which would lead to a conclusion that
11 foreign return flow is also the source of water in that creek. Mr. Buchan
12 put on evidence of settlement of his land in the late 1800's and use of Park
13 Creek in the mid-1870's by George Parrish and William Sheldon, prior owners
14 of his land. Mr. Buchan also cited to the case Geddis v. Parrish, 1 Wash.
15 588 (1889) as evidence of early water use on his land. However, the Referee
16 is not convinced this case is for the land now owned by Mr. Buchan. A copy
17 of the lower court ruling on this case is not in the record and the Supreme
18 Court case does not describe the lands owned by the parties. The Referee is
19 aware that Parrish owned other land in Kittitas County and the documents in
20 the record show that in 1879 George Parrish sold the portion of the Buchan
21 land that he owned, long before the cited case.

22 Although the documents in the record would suggest that there might
23 have been a water right established for use of Park Creek, there was no
24 claim filed pursuant to RCW 90.14 for irrigation use of Park Creek or any
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1 other water source. Failure to file a claim waives and relinquishes any
2 right that may have existed, RCW 90.14.071. The Referee cannot recommend
3 that a diversionary water right be confirmed for use of Park Creek.

4 To the extent that livestock have access to water sources on the
5 claimant's land and drink directly from the source, that use is covered by
6 the non-diversionary stock water stipulation discussed on page 4 of this
7 report. Mr. Buchan's name shall be placed on the list of claimants that
8 have a right under that stipulation.

9

10 COURT CLAIM NO. 01051 -- Richard G. Busch
11 & Linda L. Busch

12 Court Claim No. 01051 asserts a right to use an unnamed spring for
13 irrigation and stock water. The claimants are represented by Attorney
14 Richard T. Cole and Richard Busch testified at the evidentiary hearing.

15 The claimants own the S $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 29, T. 17 N.,
16 R. 20 E.W.M. Although in the Court claim a right was asserted for
17 irrigating only the S $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, Mr. Busch testified that all of the
18 land could be irrigated with water from the spring. He indicated that the
19 spring water could be commingled with water delivered by the Kittitas
20 Reclamation District (KRD). The spring is located in the northeast corner
21 of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, where underground tiles collect the water. It
22 is discharged into a metal tub which empties into a cement ditch. The ditch
23 runs along the northerly line of the S $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29. Mr. Busch
24 testified that a distribution line that runs along the east section line

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1 only carries KRD water and that it is not possible to get the spring water
2 into that system. He did not describe the method for commingling the
3 water. He estimated the spring flow at about 0.75 cubic foot per second.

4 Pursuant to the requirements of RCW 90.14, Water Right Claim No. 156775
5 was filed by George Busch asserting a right to use 2 cfs, 350 acre-feet per
6 year from an unnamed spring for irrigation of 70 acres and stock watering in
7 part of the E½ of Section 29, T. 17 N., R. 20 E.W.M. The spring location
8 described is 1400 feet south and 200 feet west of the northeast corner of
9 Section 29, which is the location on the spring for which a right is being
10 asserted in this proceeding.

11 The spring is located about 700 feet below KRD's Highline Canal.
12 Although Mr. Busch did not testify about this, neighboring claimants who use
13 springs similarly located testified that the spring flows increase during
14 the time that water is being carried in the canal. The flows then diminish
15 after the canal shuts down in the fall. The springs do continue to flow
16 during the winter providing a necessary source for wintertime stock
17 watering, as they do not freeze. The Referee believes that the spring used
18 by the Busches is fed by seepage from the KRD canal and that during
19 irrigation season a significant portion of the water used is as a result of
20 the seepage. This seepage is both foreign, as it comes from outside this
21 basin, and is part of the Yakima Irrigation Project. In both instances
22 water rights cannot be confirmed for use of this type of water. See page 8
23 for a complete discussion of this issue.

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1 While the Referee has concluded that much of the water flowing from the
2 spring is the result of seepage from the KRD canal, there is some natural
3 flow water emanating from the spring for which a right could be confirmed
4 were there sufficient evidence to show that a right had been legally
5 established. Section 29 was originally conveyed to the Northern Pacific
6 Railroad and stayed in railroad ownership until 1935 when the land was sold
7 to John Sorenson. John Sorenson sold it to John Busch in 1943 and the land
8 has stayed in the Busch family since then. The claimant opined that it was
9 an educated guess that the land would have been put to beneficial use prior
10 to 1917. Putting the land to beneficial use does not necessarily mean that
11 the land was irrigated, and the Referee suggests that prior to construction
12 of the KRD canal, the spring flow would not have been sufficient to irrigate
13 much, if any, of the land. The most likely beneficial use that might have
14 been made of this land would have been for rangeland cattle grazing. The
15 spring may have been used for watering stock, but there is no evidence of
16 when it was developed for a diversionary use. Non-diversionary stock
17 watering is covered by the stock water stipulation discussed on page 4 of
18 this report and the claimants' names shall be placed on the list of those
19 who have a non-diversionary right under the stipulation.

20 The Referee does not recommend that a diversionary right be confirmed
21 under Court Claim No. 01051.

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1 COURT CLAIM NO. 06584 -- Ron Byers
2 & Phyllis I. Byers

3 Ron and Phyllis Byers filed Court Claim No. 06584 on October 2, 1991,
4 asserting a right to use waters from an unnamed spring. On November 14,
5 1991, the Court determined that the claim was appropriate for further
6 processing. However, at that time the evidentiary hearings for Subbasin No.
7 10 had been concluded. Therefore, when the supplemental hearings for
8 Subbasin No. 10 are scheduled after the Court's review of exceptions to this
9 report, the Byers will be scheduled to present evidence.

10 COURT CLAIM NO. 00713 -- Estate of Milton D. Camozzy
11 & Esther Camozzy

12 Court Claim No. 00713 was filed asserting a right to use waters from
13 Brush Creek and Parke Creek. The claimant is represented by Attorney
14 Richard T. Cole and Oliver Johnson, who leases the property in question,
15 testified at the evidentiary hearing.

16 The claimant's property lies in Government Lots 1 and 2, the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and
17 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T. 17 N., R. 20 E.W.M. They own approximately 164
18 acres and are claiming a right to irrigate 100 acres with water diverted out
19 of Parke Creek and Brush Creek. The land is also assessed by the Kittitas
20 Reclamation District (KRD), and district water is used in addition to the
21 creek water. Water is diverted from Parke Creek near the northeast corner
22 of Section 18 and from Brush Creek near the southeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$
23 of Section 18. The land is rill irrigated using concrete lined ditches and
24 gated pipe. Timothy hay is grown with a grain and corn rotation. In the
25

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1 fall, a herd of 2,000 to 3,000 head of sheep graze on the land. The sheep
2 drink directly from the creeks. This kind of non-diversionary stock
3 watering is covered by the stock water stipulation discussed on page 4 of
4 this report. The claimant is included on the list of those with a
5 non-diversionary stock water right. Mr. Johnson estimates that between 2
6 and 3 cubic feet per second is diverted from Parke Creek and about 0.5 cubic
7 foot per second is diverted from Brush Creek. He has leased the property
8 since 1968 and continued the farming practice that was in place at that
9 time.

10 Two water right claims (WRC) were filed by Milton Camozzy pursuant to
11 the requirements of RCW 90.14. WRC No. 110908 asserts a right to use 5 cfs,
12 1500 acre-feet per year from Parke Creek for the irrigation of 80 acres in
13 the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18. WRC No. 110909 asserts a right to use
14 2 cfs, 1500 acre-feet per year from Brush Creek for the irrigation of 40
15 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18. The Referee notes that neither of the
16 claims identify the NW $\frac{1}{4}$ NW $\frac{1}{4}$ (or Government Lot 1) as being part of the place
17 of use. The Referee estimates that approximately 30 acres are irrigated in
18 that area, with 70 acres being irrigated in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
19 Section 18.

20 Several historic documents were entered into the record in support of
21 the claim. One is a Quit Claim Deed dated November 21, 1907, DE-379, that
22 transfers from James Watson, George and Rebecca Donald, William and Geneva
23 Lee and The W. H. Reed Company, to William T. Sheldon, all of the water in
24 Parke Creek for irrigation, stock and domestic purposes, to be used upon any
25

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1 land which the second party (Sheldon) desire to use the same, east and north
2 of the southern and western boundaries of Lots 1 and 2 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and
3 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T. 17 N., R. 18 E.W.M., now held by the second party.
4 Also all the waters of Brush Creek, sometimes known as Warm Spring Creek on
5 any land east and north of the Holtz Ranch, described as the W $\frac{1}{2}$ of
6 Section 12, T. 17 N., R. 19 E.W.M. The Referee notes that the Camozzy
7 property does not lie east and north of the W $\frac{1}{2}$ of Section 12, but lies east
8 and south. The Referee is also aware of John Holtz having a right to use
9 Brush Creek, aka as Warm Springs Creek, as it flows through Sections 5 and
10 6, not Brush Creek flowing through Section 18. The Referee concludes that
11 the Brush Creek being used by the claimant is not the same Brush Creek
12 discussed in the Quit Claim Deed. Another agreement was entered in 1912,
13 DE-381, giving Sheldon the right to use all of the waters of Parke Creek
14 contained in the stream above the southern and western boundaries of the
15 Lots 1 and 2 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T. 17 N.,
16 R. 20 E.W.M. Also in 1912 Henry Kleinberg quit claimed to W. T. Sheldon the
17 right to construct an irrigating ditch across the portion of Lot 1 in
18 Section 18 lying west of the Cascade Canal, with the right of way extending
19 from the point of intersection of Parke Creek and the flume of Cascade
20 Canal, then in a southwesterly direction to the west line of said Lot 1
21 (DE-382). This appears to be an agreement to allow Sheldon to construct a
22 ditch from Parke Creek to the southwest leaving Section 18 and entering
23 Section 13. DE-383 is a deed that conveys Sheldons right to waters in Parke
24 Creek to Peter Sorensen, along with the ditch right of way conveyed by

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1 Kleinberg. The deed does not suggest that the land was conveyed to
2 Sorensen, just the water right. This leads the Referee to conclude that any
3 water right that the property now owned by Camozzy had to Parke Creek was
4 sold.

5 There is not sufficient evidence in the record for the Referee to
6 conclude that a water right was legally established for this land and that
7 if established, it is still appurtenant to the land. Therefore, the Referee
8 does not recommend that a diversionary right be confirmed under Court Claim
9 No. 00713.

10
11 COURT CLAIM NO. 02146 -- John James Cannell
12 02147

13 The two referenced Court claims were originally filed by Mary L. and
14 David M. Charlton. On February 1, 1990, John J. Cannell was substituted for
15 the Charltons. Mr. Cannell, who is represented by Attorney Kenneth Beckley,
16 testified at the evidentiary hearing. Additionally, Exhibit DE-1497 was
17 entered, which is a letter report prepared by Richard C. Bain, Jr., PE, an
18 engineer hired by the claimant to assess his irrigation use. This report
19 provides considerable information about the irrigation practice on the
claimant's land.

20 The two Court claims were filed asserting rights to use waters from
21 Spring Creek and Cooke Creek for the irrigation of a total of 280 acres in
22 the E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 30 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 31.
23 Mr. Cannell actually acquired from the Charltons Government Lots 3 and 4 and
24 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, Government Lots 1 and 4, the E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ west of

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1 Caribou Creek and the E&SW& of Section 30, Government Lots 1, 2, and that
2 portion of 3 lying west of Caribou Creek, all in Section 31, T. 18 N.,
3 R. 20 E.W.M. At the hearing he asserted a right to irrigate all of this
4 land with water diverted from Cooke Creek, Spring Creek and delivered by the
5 Kittitas Reclamation District (KRD). Within this area, which he refers to
6 as Parcel A, there is a total of 508 acres, of which 437.9 are irrigable.
7 Approximately 250 acres were being irrigated at the time of the evidentiary
8 hearing and an additional 170 acres or so have been irrigated in the past.
9 According to Mr. Cannell's testimony, the land that is not currently being
10 irrigated would be if there were sufficient water in the creeks. KRD
11 assesses for 381 acres and KRD water is mixed with creek water for
12 distribution to the fields. Most of the land is planted in timothy hay and
13 is rill irrigated. Livestock graze on the land after the hay is harvested.
14 Livestock drink from irrigation ditches and natural water sources on the
15 property. Mr. Cannell owns additional land, referred to as Parcel B, which
16 he acquired from Lynn Henderson. Court Claim No. 2292 was filed for the
17 Henderson property and will be addressed separately, see page 213 of this
18 report.

19 Mr. Cannell submitted exhibits that show how his land was originally
20 settled in the late 1800's. Portions of the property were settled by
21 several individuals, including Tillman Houser, Albion P. Scammon, E. W.
22 Lyen, and Sarah A. Meade. Normally, the Referee would discuss in greater
23 detail the history of the land and evidence of historic water use, however,
24 Cooke Creek has previously been adjudicated. That adjudication established

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1 the existing rights to Cooke Creek and its tributaries, which would include
2 Spring Creek, so it is not necessary to go beyond the decree that was
3 entered for considering the rights to Cooke Creek and Spring Creek for this
4 land.

5 Certificate No. 193, with a priority date of 1886, issued to R. I.
6 Scammon authorizing the diversion of 1.10 cubic feet per second for the
7 irrigation of 55 acres in Government Lots 2 and 3 of Section 31. The
8 claimant is irrigating approximately 55 acres within the authorized place of
9 use, so the current use is consistent with the certificate. There are three
10 points of diversion authorized, in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36,
11 T. 18 N., R. 19 E.W.M. and in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T. 18 N.,
12 R. 20 E.W.M. A diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36 is being used to serve
13 this land. Additionally, there is a diversion in Government Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$)
14 of Section 30 and one in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30. The diversion in the
15 NE $\frac{1}{4}$ SW $\frac{1}{4}$ is clearly not authorized by the certificate, and there is no
16 evidence that the claimant or his predecessor obtained authorization to add
17 or change the location of the point of diversion, see RCW 90.03.380. The
18 diversion in Government Lot 3 is just inside the southeast corner of that
19 lot according to State's Exhibit SE-2, in a stretch of the creek that
20 meanders. The Referee suspects that this is the second diversion authorized
21 by the certificate, as it is very close to the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of the section and
22 there are no diversions in the SW $\frac{1}{4}$ SW $\frac{1}{4}$.

23 The Referee recommends that a right be confirmed under Court Claim No.
24 2146 with a June 30, 1886, date of priority for the diversion of 1.10 cubic
25

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1 feet per second, 275 acre-feet per year from Cooke Creek for the irrigation
2 of 55 acres in that portion of Government Lots 2 and 3 northwest of Caribou
3 Creek in Section 31, T. 18 N., R. 20 E.W.M. The authorized points of
4 diversion shall be in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36 and Government Lot 3 of
5 Section 30. The diversion currently being used in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30
6 shall not be authorized and if the claimant wishes to continue using it, he
7 should contact Ecology's regional office about the process to seek
8 authorization to add or change the point of diversion.

9 Certificate No. 179, with a priority date of 1871, issued to Mary Clerf
10 authorizing the diversion of 1.0 cubic feet per second for the irrigation of
11 50 acres in Government Lot 1 of Section 31, Government Lot 4 and the E $\frac{1}{4}$ SW $\frac{1}{4}$
12 of Section 30. The authorized point of diversion is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
13 Section 30. There are two diversions in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30 that the
14 claimant uses to irrigate portions of the described land. Within the place
15 of water use described in Certificate No. 179, the claimant appears to be
16 irrigating approximately 145 acres, however, the certificate only authorizes
17 the irrigation of 50 acres. The Referee can only recommend a right
18 consistent with the certificate. The Referee does not believe it is in
19 anyone's interest to recommend confirmation of a water right to irrigate 50
20 acres within an 160-acre place of use. Therefore, the Referee recommend
21 that a right be confirmed and designate a place of use within the area being
22 irrigated within the area described on the certificate. If the claimants
23 want the right appurtenant to a different 50 acre tract, an exception can be
24 filed and a different legal provided. The Referee recommends that a right

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1 be confirmed with a priority date of June 30, 1871, for the diversion of 1.0
2 cubic foot per second, 273.24 acre-feet per year from Cooke Creek for the
3 irrigation of 50 acres in that portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 30, T. 18 N.,
4 R. 20 E.W.M. lying northwest of Caribou Creek. The point of diversion
5 authorized will be in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30.

6 The Referee notes that water rights from Caribou Creek were awarded to
7 this property in the Clerf v. Scammon decree that was entered in 1911. Mary
8 Clerf was found to have a right to 52 $\frac{1}{2}$ inches of water from Caribou Creek.
9 The deed that conveyed land from Mary Clerf to Rose Clerf Roberg stated that
10 the right to use 52 $\frac{1}{2}$ inches of Caribou Creek in Class 2 awarded to Mary
11 Clerf was conveyed with the land. The land that was conveyed in the deed
12 was Government Lots 1 and 4, the E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and that part of the SW $\frac{1}{4}$ NE $\frac{1}{4}$
13 lying west of Caribou Creek in Section 30 and Government Lot 1 of
14 Section 31. Mr. Cannell owns all of this land, however, he is not asserting
15 a right in this proceeding to use waters from Caribou Creek on any of this
16 land. Nor has there been any evidence entered to show that Caribou Creek
17 water has been used on the land in recent times. Clarence Moerike filed
18 Water Right Claim No. 119580 in 1974 pursuant to the requirements of RCW
19 90.14 asserting a right to use water from Caribou Creek for the irrigation
20 of 35 acres in the NW $\frac{1}{4}$ of Section 30. However, the claim shows that this
21 water was first used in 1958. Due to the lack of evidence of continued use
22 by Mr. Cannell, the Referee must conclude that any right to Caribou Creek
23 water that may have existed has been relinquished due to nonuse, see RCW
24 90.14.160.

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1 Certificate No. 192, with a priority date of 1871, issued to Rose C.
2 Roberg and authorized the diversion of 2.0 cubic feet per second from Cooke
3 Creek for the irrigation of 100 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$, Government Lot 1 and
4 SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30. The points of diversion authorized are in the SE $\frac{1}{4}$ NW $\frac{1}{4}$
5 and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, which is where diversion 9A is located. That
6 diversion is not currently being used. The claimant is irrigating
7 approximately 40 acres within the described place of use with water diverted
8 in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30. Based on Mr. Bain's letter report,
9 it appears that in the neighborhood of 145 acres have at one time been
10 irrigated within the described place of use, however, only 100 acres were
11 authorized. Government Lot 1 and that portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 30
12 lying northwest of Cooke Creek is part of the area that Mr. Cannell
13 testified was not being irrigated because there was insufficient water in
14 the creek.

15 RCW 90.14.160 provides that a right, or portion of a right, that is not
16 used for five or more successive years shall relinquish and revert back to
17 the state. However, one of the "sufficient causes" for nonuse provided in
18 the statute is drought or other unavailability of water, see RCW
19 90.14.140(1)(a). In spite of the claimant's testimony that there is not an
20 adequate supply of water to irrigate all of his lands, the Referee is not
21 inclined to conclude that there is a sufficient cause that would prevent
22 relinquishment. The claimant is irrigating more land in the SW $\frac{1}{4}$ of
23 Section 30 and Government Lot 1 of Section 31 than is authorized by his
24 certificate for that land. Were he to eliminate his unauthorized use of

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1 water, there might be sufficient water to irrigate all of the land
2 authorized by Certificate No. 192. The testimony indicates that at one time
3 more land was being irrigated in the place of use on Certificate No. 192
4 than is authorized by the certificate. Additionally, the claimant appears
5 to have continued to irrigate lands with a much junior priority date, those
6 in Government Lots 2 and 3 of Section 31, rather than exercise his senior
7 right. It may also be that Mr. Cannell has, without appropriate
8 authorization, temporarily changed the place of use for a portion of the
9 Certificate No. 192 from the NW $\frac{1}{4}$ of Section 30 to the SW $\frac{1}{4}$ of Section 30.
10 However, that assertion was not made by the claimant. Were that to be the
11 case, the right may not have relinquished. Clearly, additional information
12 is needed from the claimant.

13 Based on the current record, the Referee can recommend that a water
14 right be confirmed with an 1871 date of priority for the diversion of 0.80
15 cubic foot per second, 200 acre-feet per year for the irrigation of 40 acres
16 in that portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ lying southeast of Cooke Creek and that portion
17 of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying west of Caribou Creek, in Section 30, T. 18 N.,
18 R. 20 E.W.M. The point of diversion authorized by the certificate is in the
19 NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19 and that is the diversion that will be confirmed in
20 this proceeding.

21 Certificate No. 208, with an 1873 date of priority, authorized the
22 diversion of 0.74 cubic foot per second for the irrigation of 37 acres in
23 the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T. 18 N., R. 20 E.W.M. The point of diversion
24 authorized is in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19. The diversion that Mr. Cannell
25

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1 testified to using is just a few feet south of that described in the
2 certificate and is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19. The Referee believes it is
3 one and the same diversion. The SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19 is part of the land
4 that has not been irrigated since Mr. Cannell acquired the land in 1984 and
5 even prior to that. The Referee believes that the claimant needs to
6 specifically address the potential relinquishment of this water right and
7 will not recommend confirmation of a water right until that is done. It is
8 noted that the claimant is also asserting a right to irrigate Government
9 Lots 3 and 4 of Section 19. This is also part of the land that has not been
10 irrigated since before Mr. Cannell acquired the land. There are no
11 certificates for this land and no evidence that water rights were legally
12 established for it. Therefore, the Referee cannot recommend that a right be
13 confirmed.

14

15
16 COURT CLAIM NO. 01716 -- Lloyd Carney
17 & Glennis Carney

18 Court Claim No. 01716 was filed asserting a right to use waters from
19 Badger Creek. The claimants are represented by Attorney Richard T. Cole and
Mr. Carney testified at the evidentiary hearing.

20 Court Claim No. 01716 as it was filed asserted a right to use waters
21 from Badger Creek for the irrigation of 50 acres, stock watering and
22 domestic supply on lands within that portion of the NE $\frac{1}{4}$ of Section 6,
23 T. 16 N., R. 20 E.W.M. lying northeast of the county road. At the
24 evidentiary hearing the claim was amended to include lands owned by the

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1 Carneys in the NW $\frac{1}{4}$ of Section 6 and to assert a right to use two springs in
2 the NW $\frac{1}{4}$ of Section 6. A right was also asserted for use of a spring in the
3 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6.

4 According to Mr. Carney, the land in the NW $\frac{1}{4}$ of Section 6 is irrigated
5 only with water delivered by the Kittitas Reclamation District (KRD). The
6 two springs that were located on SE-1 are used for stock watering. The
7 spring in Government Lot 3 (or the NE $\frac{1}{4}$ NW $\frac{1}{4}$) is piped to a creek that goes
8 through the NW $\frac{1}{4}$. The testimony lead the Referee to conclude that the pipe
9 follows the natural drainage of the spring. The purpose of the piping is to
10 ensure that the spring's flow reaches the creek, where livestock drink from
11 the creek. Technically, piping the spring results in a diversionary use,
12 but the livestock drinking from the creek channel is a non-diversionary use
13 that is covered by the stock water stipulation discussed on page 4 of this
14 report. In order for a right to be confirmed for diversionary stock
15 watering, there would need to be evidence that the spring was developed and
16 piped prior to December 31, 1932, (date by which use had to begin under the
17 Riparian Doctrine) plus a water right claim filed under RCW 90.14 would be
18 needed. There is no evidence of historic use and there is no RCW 90.14
19 claim. Therefore, the Referee cannot recommend confirmation of a
20 diversionary stock water right. The Carney's name is on the list of
21 claimants with a non-diversionary stock water right under the stipulation.

22 Mr. Carney testified to irrigating 50 acres in the NE $\frac{1}{4}$ of Section 6
23 with water diverted from Badger Creek. Water delivered by KRD is also used
24 to irrigate this land. A 20 HP pump is placed in the creek near the
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1 northwest corner of the property and water is pumped into a pipeline that
2 delivers it to gated pipe that is used to rill irrigate the land. Mr.
3 Carney estimated that 1 cubic foot per second is pumped from the creek and
4 10 to 13 acre-feet per acre used to irrigate. Approximately 100 head of
5 livestock graze on this portion of the property and drink from the creek and
6 from the flow of a spring located in the SE~~NE~~%%. This is also a
7 non-diversionary stock water use covered by the stipulation.

8 Although not addressed by Mr. Carney in his testimony, many of the
9 other claimants along Badger Creek have testified to the creek carrying
10 water spilled by the KRD and seepage water from the KRD canals. Three of
11 KRD's ditches, the pump ditch, the gravity ditch and the turbine ditch all
12 cross Badger Creek and the creek begins flowing just below the most easterly
13 ditch. There is very little naturally occurring surface water in the area
14 where the flow begins and other claimants have testified to the creek being
15 dry during the winter. The need for Mr. Carney to pipe the spring in the
16 NE $\frac{1}{4}$ NW $\frac{1}{4}$ supports that information. Water rights cannot be awarded for flow
17 that is the result of imported water, which KRD spill and seepage water
18 would be. It can be used by the first taker, but a right cannot be
19 established for its use, nor can the original conveyer of the water be
20 compelled to continue operating in the manner causing the flow, see page 8
21 for further discussion of this issue.

If there were any natural creek flow in Badger Creek for which a water right could be established, there has been insufficient evidence presented to show that use of the water began prior to December 31, 1932.

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1 Additionally, RCW 90.14 required the filing of a water right claim for all
2 uses established prior to adoption of the Surface Water Code in 1917 or the
3 Ground Water Code in 1945. The only water right claim in the record is
4 Water Right Claim No. 027708 filed by Reardon Brothers. It asserts a right
5 to use 5 gallons per minute, 2 acre-feet per year from Badger Creek for
6 stock watering in the NE $\frac{1}{4}$ of Section 6. Failure to file a claim waives and
7 relinquishes any right that may have existed, RCW 90.14.071. Therefore, the
8 Referee cannot recommend confirmation of a water right under Court Claim No.
9 01716.

10
11 COURT CLAIM NO. 01842 -- Bruce E. Catton
12 & Bonnie R. Catton

13 The Cattons filed a claim with the Court asserting a right to use
14 waters from Cooke Creek for irrigation. Mrs. Catton testified at the
evidentiary hearing.

15 The claimants property lies in the the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
16 Section 31, T. 19 N., R. 20 E.W.M. and is 13 acres in size. It is riparian
17 to Cooke Creek. The Cattons purchased the land in 1977 and at the time of
18 the hearing had not lived on the property. They would visit several times
19 each year and stay in either a travel trailer or at Mrs. Catton's mothers
20 house on neighboring property. Mrs. Catton's sister lived in a mobile home
21 on the property for a few years. She planted a garden and watered the fruit
22 trees with water carried from Cooke Creek by buckets. Since the Cattons
23 acquired the land in 1979, water has not actually been diverted from Cooke
24 Creek for irrigation or stock watering. The Cattons have rented the pasture
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1 and both horses and cattle have grazed on the property. The livestock have
2 access to, and drink directly from, the creek. This type of
3 non-diversionary stock water use is covered by the stock water stipulation
4 discussed on page 4 of this report.

5 Mrs. Catton testified to a conversation she had with Donna Bacon, whose
6 parents, Lucy and John Hill reportedly homesteaded the land. Ms. Bacon told
7 Mrs. Catton the her parent's homesite was on what is now the Catton property
8 and the land was irrigated from ditches that carried water from Cooke
9 Creek. Evidence of the ditches remain.

10 Certificate No. 209 from the prior adjudication of Cooke Creek is
11 appurtenant to the claimants' property. With an 1879 date of priority, it
12 authorized the diversion of 1.80 cubic feet per second from Cooke Creek for
13 the irrigation of 90 acres. The authorized points of diversion are in the
14 NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 19 N., R. 20 E.W.M. The legal
15 description for the place of use on the certificate is a strip of land that
16 is mostly in the W $\frac{1}{4}$ E $\frac{1}{4}$ of Section 31, but does extend slightly into the
17 NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31. All of the Cattons property is within the
18 place of use on the certificate. Besides the Cattons, the following
19 claimants also own land that is within the place of use on Certificate No.
20 209: Michael Joseph Shannon, William Arthur and Rea Jeanette Hanning,
21 Arthur W. and Margarettte Hanning, Earl E. and Florene McGinty, James J.
22 Peterson/Carolyn B. Johnson, Jack A. and Becky R. Baker and Pamela A.
23 Zupan.

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1 RCW 90.14 was enacted by the legislature in 1967 and provides for the
2 relinquishment of unused water rights. RCW 90.14.170 provides that any
3 person entitled to divert waters of the state authorized by a general
4 adjudication (such as Cooke Creek) who voluntarily fails without sufficient
5 cause to beneficially use all or any part of the right for five successive
6 years shall relinquish said right or portion thereof. The sufficient causes
7 that prevent relinquishment are defined in RCW 90.14.140 and the Referee is
8 not aware of any sufficient cause that might apply to the Cattons. RCW
9 90.14.140 also provides that relinquishment will not occur if the right is
10 claimed for a determined future development to take place within 15 years of
11 the most recent beneficial use of the water right. Mrs. Catton's testimony
12 indicates that when they acquired the property in 1977, they intended to
13 resume irrigation of the land as soon as they moved onto the property.
14 However, that had not occurred by 1991 when the evidentiary hearing
15 occurred, which was 14 years after the claimants' acquired the land. It
16 also is not clear whether the water right was being exercised by the
17 individual from whom they purchased the property.

18 Based on the evidence in the record, the Referee must conclude that the
19 water right that had been appurtenant to the claimants' land has
20 relinquished due to more than five successive years of nonuse. Therefore,
21 the Referee cannot recommend that a water right be confirmed under Court
22 Claim No. 01842.

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1 COURT CLAIM NO. 01053 -- Helen J. Clerf

2 Helen Clerf filed a claim with the Court asserting a right to use
3 waters from Coleman and Cooke Creeks. Ms. Clerf is represented by Attorney
4 John P. Gilreath and her nephew, John S. Clerf, testified at the evidentiary
5 hearing. Additionally, Richard C. Bain, Jr. was hired by Ms. Clerf to
6 prepare an engineering report detailing the irrigation system and water use
7 on her land. That report was entered as written expert testimony and given
8 Exhibit No. DE-1394.

9 Ms. Clerf owns those portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4 and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
10 Section 3, lying southerly of Iron Horse Trail State Park and the E $\frac{1}{4}$ NE $\frac{1}{4}$ of
11 Section 9, the W $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 10, all in T. 17 N., R. 19 E.W.M.
12 Her nephew leases and farms the land. It is planted in timothy hay with a
13 grain rotation and livestock graze on it a portion of the year, drinking
14 from the irrigation ditches.

15 Water is diverted from Coleman Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, just
16 after Coleman Creek enters Section 33. The water is carried south in a
17 ditch that also serves John and Janet Clerf's property that lies just north
18 of the claimants. Lateral ditches parallel the southerly line of the state
19 park along Ms. Clerf's northerly property line. The area served by Coleman
20 Creek is 226 acres in size, with 222 acres irrigated with a combination of
21 creek water and water delivered by the Cascade Irrigation District (CID).
22 Although not addressed specifically in the report done for Helen Clerf's
23 claim, Mr. Bain did measure the flow in the ditch that carries water from
24 Coleman Creek. The report prepared for John and Janet Clerf's claim,

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1 DE-1381, shows that Mr. Bain measured the ditch in August of 1991 and 4.35
2 cubic feet per second was in the ditch. Ecology also measured the ditch in
3 April of 1991 at 4 cubic feet per second. There was no indication of
4 whether the ditch was near capacity when it was measured, so the Referee
5 does not know whether more water is at times carried in the ditch.

6 Water Right Claim No. 154217 was filed by John Clerf pursuant to the
7 requirements of RCW 90.14. It asserts a right to divert 5 cfs, 1500
8 acre-feet per year from Coleman Creek for the irrigation of 400 acres within
9 lands that include those of the claimants, along with additional land owned
10 by John and Janet Clerf in Sections 3 and 4.

11 Portions of the claimants' land was settled by three different
12 individuals. William Grim settled on the E $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4 and
13 received a patent for that land on January 18, 1887. Most of that land is
14 owned by John and Janet Clerf, but Helen Clerf owns that portion of the
15 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4 below the state park. Grim filed a statement of water
16 right claim on May 31, 1890, stating that in the spring of 1879 he
17 appropriated 60 inches of water from Coleman Creek and ran the water through
18 a ditch belonging to S. T. Sterling. In 1883 he constructed a second ditch
19 with a diversion upstream of the first and intersected a ditch already
20 constructed by J. S. Dysart. Dysart allowed him to use his ditch to carry
21 water. The waters appropriated were being used to irrigate the ranch he
22 owned, consisting of 120 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4. The
23 statement does not indicate how much water was appropriated in the second
24 ditch. The Clerfs are suggesting that an additional 60 inches were
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1 appropriated and the entire 120 acres irrigated and that the 120 inches
2 would be appurtenant to the portion of the Grim property that he now owns.
3 The Referee notes that John and Janet Clerf irrigate approximately 90 acres
4 of the 120 acres and Helen Clerf irrigates 30 acres. Therefore, the
5 claimant would be entitled to 30 inches or 0.60 cubic foot per second.

6 The Referee recommends that a right be confirmed with a June 30, 1883,
7 date of priority for the diversion of 0.60 cubic foot per second, 150
8 acre-feet per year for the irrigation of 30 acres and stock watering in that
9 portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4 lying south of the Iron Horse Trail State
10 Park.

11 The NE $\frac{1}{4}$ of Section 9 was part of land originally conveyed by the
12 Federal government to Northern Pacific Railroad. In 1887 N.P.R.R entered into
13 a contract with Martin Meehan to sell him the E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9. Prior to
14 the contract being fulfilled Meehan transferred his interest in the land to
15 Robert Gilliam who received the deed for the land in 1892. In 1890 Gilliam
16 filed an Affidavit of Water Right stating that the Meehan Ditch had been
17 constructed by his predecessor and diverted water from Coleman Creek in the
18 W $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4. The ditch had a capacity of 2.15 cubic feet per second
19 and was used to irrigate 80 acres in the E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9. Successor's to
20 Robert Gilliam were plaintiffs in Izza J. Gilliam et al. v. James W. McEwen,
21 et al., a conflict concerning use of the Meehan Ditch. The Findings and
22 Judgment stated that all of the plaintiff's lands above the Ellensburg
23 ditch, consisting of 50 acres, have been irrigated from the Meehan Ditch.
24 The Conclusions of Law gave them the right to an easement for the exclusive

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1 use of the ditch for the irrigation of all of their lands lying above the
2 Ellensburg ditch, being 50 acres. The inconsistency between what was
3 claimed in the Affidavit of Water Right versus the 1912 Court decision was
4 not addressed by the claimant. The Referee finds that the ruling of the
5 Court is more compelling than the affidavit filed in 1890. The Referee
6 concludes that the extent of the right is that which was being irrigated in
7 1912. By 1912 the Federal withdrawal of all surface waters in the Yakima
8 River Basin was in place, therefore, new rights could not be established.
9 There is no evidence of when the irrigation use was expanded beyond the 50
10 acres, however, almost 30 years would have passed from when the ditch was
11 originally constructed in 1884 and 1912, when 50 acres were being
12 irrigated. Due diligence under that right certainly would be an issue. It
13 is also noted that in 1912 the right was being exercised through a diversion
14 from the creek in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4. According to State's Exhibit
15 SE-2, that diversion is still in place and could serve a ditch that runs
16 south along the claimant's west property line. Presently, the claimant's
17 land receives Coleman Creek water delivered through the ditch with a
18 diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33. Obviously a change in point of
19 diversion occurred sometime after 1912. It is possible it occurred between
20 1912 and 1917, when the Surface Water Code was adopted requiring state
21 approval prior to changing a point of diversion (RCW 90.03.380). However,
22 there is not sufficient information in the record to reach that conclusion.

23 The Referee recommends that a right be confirmed with a May 1, 1884,
24 date of priority for the diversion of 2.15 cubic feet per second, 400

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1 acre-feet per year from Coleman Creek for the irrigation of 50 acres and
2 stock watering in that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 9 north of the
3 Ellensburg Water Company's Town Ditch. The point of diversion authorized
4 shall be in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4.

5 The land in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 10 was settled by William J.
6 McCaustland, who received a patent for the entire NW $\frac{1}{4}$. McCaustland was a
7 defendant in Walter Bull v. Martin Meehan, et al. and the claimant is
8 asserting that as a result of the stipulation that settled that case,
9 McCaustland was awarded a right to 160 inches of water from Coleman Creek
10 for his land. Three documents from that case are in the record as Exhibits
11 DE-643, 644, and 645. They are Walter Bull's Complaint, an agreement by the
12 parties to enter into a stipulation and a document titled "In Commissioners
13 Court as Appointed by the 4th Judicial Court of W.T. for Kittitas County."
14 The document appears to list what each of the parties are claiming in the
15 proceeding. The 28th claim is W. J. McCaustland, stating that he owns
16 one-half of a ditch constructed by himself and brother, that said ditch was
17 built in 1882 through which he has appropriated water for 160 acres of
18 land. It does not appear to the Referee that any of these documents show
19 the ultimate ruling of the Court in this case. The claimant asks the
20 Referee to conclude that a right was awarded equal to what was claimed. The
21 Referee declines to make that conclusion until a copy of the actual Court
22 order is entered into the record.

23 The SW $\frac{1}{4}$ of Section 3 was part of land that was conveyed by the Federal
24 government to Northern Pacific Railroad. On May 31, 1890, N.P.R.R. conveyed the
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1 SW% of Section 3 to John T. McDonald. That is the only historical
2 information in the record concerning this property. There are no documents
3 that mention establishment of a water right for this land. This land is not
4 riparian to Coleman Creek, so in order for their to be a water right
5 confirmed in this proceeding there must be evidence that a right was
6 established under the Prior Appropriation Doctrine. That evidence is
7 lacking.

8 The Referee concludes that additional information concerning the water
9 rights established for Sections 3 and 10 are necessary in order to recommend
10 confirmation of a water right. Specifically, for the land in the W%NW% of
11 Section 10, a copy of the final order in Bull v. Meehan would be very
12 helpful.

13 A right was also asserted in Court Claim No. 1053 for the use of waters
14 from Cooke Creek for irrigation in the SE% of Section 10. However, the
15 testimony was that Cooke Creek has not been used to irrigate any of the
16 claimant's land since sometime in the 1970's and a right is no longer being
17 claimed for that use. The only ongoing use of Cooke Creek is
18 non-diversionary stock watering for up to 150 head. Cooke Creek flows
19 through the SE% of Section 10 and livestock drink directly from the creek.
20 Non-diversionary stock watering is covered by the stock water stipulation
21 discussed on page 4 of this report and Ms. Clerf shall be placed on the list
22 of claimants covered by the stipulation.

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1 COURT CLAIM NO. 01443 -- Howard F. Clerf
2 05330 & Vivian Clerf

3 The Clerfs filed Court claims asserting rights to use several surface
4 water sources within Subbasin No. 10. They are represented by Attorney John
5 P. Gilreath and Mr. Clerf testified at the evidentiary hearing.
6 Additionally, Richard C. Bain, Jr., a consultant hired by the claimant
7 submitted as written expert testimony three engineering reports addressing
8 the claimants' property. The information contained in those reports will be
9 referenced herein as it is used in determining the water rights of the
10 claimants.

11 The Clerfs' property is in three distinct ranches and each will be
12 addressed individually. The Referee will first address the "Homeplace
13 Farm", which is in the W $\frac{1}{2}$ of Section 12, T. 17 N., R. 19 E.W.M. lying south
14 of the railroad tracks (now Iron Horse State Park) and north of I-90. The
15 farm consists of 194 acres, of which 89.5 acres are irrigated with water
16 diverted from Caribou Creek and 91.1 acres are irrigated with water
17 delivered by Cascade Irrigation District (CID) through TO-s 1-3 (27 acres
18 are irrigated with commingled creek and CID water). The land is primarily
19 used to produce timothy hay with a grain rotation, although other crops,
20 such as potatoes are occasionally grown. The fields are rill irrigated.

21 Water is diverted from Caribou Creek near the northwest corner of the
22 claimants' property, at TO-4 (takeout), located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
23 Section 12. Mr. Bain measured the flow at this takeout in 1990 at 1.39 cfs,
24 but his report indicates that 2.0 cfs can be diverted at TO-4. Additional

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1 water from Caribou Creek is delivered via a ditch that runs parallel to the
2 claimants' east property line. That ditch carries creek water diverted in
3 the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1 and carried to the John Clerf property in the NW $\frac{1}{4}$ of
4 Section 12. Any water that John Clerf does not use is flumed over the
5 Cascade Canal. Water withdrawn from the Cascade Canal at TO-1 for use on
6 the claimants' land is carried in the same ditch. Mr. Bain's report did not
7 indicate how much Caribou Creek water is generally carried in this ditch to
8 the claimants' property. The southerly 2/3 of field 1 in the W $\frac{1}{2}$ SW $\frac{1}{4}$, or
9 about 62.5 acres are irrigated with Caribou Creek water and 27 acres in the
10 southeast part of the farm (portions of fields 2 and 3). Although the
11 evidence was not specific, it appears that the 27 acres are in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
12 Section 12. According to the claim summary (DE-1489), the Clerfs are
13 asserting a right to use 2 cfs from Caribou Creek at the diversion in the
14 SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12 and an additioanl 3 cfs from the other takouts that
15 serve the property. TO-1 from the Cascade Canal supplies a ditch that also
16 carries Caribou Creek water off of the John Clerf property, but the evidence
17 does not indicate how much Caribou Creek water is in that ditch.

18 Water Right Claim (WRC) No. 154221 was filed by John R., Howard & Helen
19 Clerf pursuant to RCW 90.14. It asserts a right to use 3 cfs, 300 acre-feet
20 per year from Caribou Creek for the irrigation of 60 acres in the S $\frac{1}{4}$ NW $\frac{1}{4}$ of
21 Section 12 lying south of the Milw. RR and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of SESection 12, all
22 within T. 17 N., R. 19 E.W.M. The Referee could find no other 90.14 claim
23 for the Clerf's Homeplace Farm. The only are irrigated from Caribou Creek

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1 described in the claim is in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 12 and the point of
2 diversion described is T0-4.

3 Water rights for use of Caribou Creek water on the W $\frac{1}{2}$ of Section 12
4 were addressed in the decree in Clerf v. Scammon. According to the Findings
5 of Fact that preceded the decree, the SW $\frac{1}{4}$ of Section 12 was settled in 1870
6 by George G. Hull, who that same year appropriated water for irrigation of
7 his land. He increased with due diligence his appropriation and irrigation
8 until 80 inches of water from Caribou Creek were being applied to his land.
9 The NW $\frac{1}{4}$ of Section 12 was settled in 1874 by John Holtz, who appropriated
10 water from Caribou Creek for irrigation of his land, ultimately
11 appropriating 80 inches of water. The plaintiff in the case, Mary Clerf,
12 owned all of the W $\frac{1}{2}$ of Section 12 when the case was filed. The decree
13 awarded to Mary Clerf a Class 1 right for 80 inches and a Class 4 right also
14 for 80 inches. Howard and Vivian Clerf own all of the SW $\frac{1}{4}$ of Section 12 and
15 that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12 lying south of the railroad
16 tracks. Field 1 extends into the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, however, the
17 testimony was that only the southerly 2/3 of that field is irrigated with
18 water from Caribou Creek.

19 DE-600 is a Warranty Deed conveying two-thirds interest in the W $\frac{1}{2}$ of
20 Section 12, T. 17 N., R. 19 E.W.M. from Mary A. Clerf to John G. Clerf and
21 Anna L. Clerf along with two-thirds of her right to Caribou Creek in Class 1
22 and Class 4 awarded in Clerf v. Scammon. In DE-1489 the claimant appears to
23 be asserting a right to two-thirds of the 160 inches awarded to the W $\frac{1}{2}$ of
24 Section 12. The Referee does not believe that is appropriate. The claimant
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1 is not irrigating any land in the NW $\frac{1}{4}$ of Section 12 with water diverted from
2 Caribou Creek. The Referee concludes that the Class 4 right is appurtenant
3 to that portion of the NW $\frac{1}{4}$ of Section 12 not owned by the claimants, such as
4 the John Clerf land that is in the NW $\frac{1}{4}$ and is irrigated from Caribou Creek.
5 Therefore, the Referee concludes that only the 80 inches (or 1.6 cubic foot
6 per second) awarded to the SW $\frac{1}{4}$ of Section 12 is being exercised by the
7 claimant. The claimant in the summary also seems to have concluded that
8 they are entitled to only two-thirds of the water rights based on the
9 warranty deed previously discussed. The Referee again does not reach the
10 same conclusion. In that deed, Mary Clerf only conveyed two-thirds interest
11 in the W $\frac{1}{4}$ of Section 12, which is why only two-thirds of the water rights
12 were also conveyed. There is no evidence she transferred that one-third
13 interest off of the W $\frac{1}{4}$ of Section 12. Compliance with the change procedures
14 of RCW 90.03.380 would have been necessary, as the deed is dated October of
15 1917, after the effective date of the Surface Water Code (June 6, 1917).

16 A continuous diversion of 1.6 cubic feet per second during the
17 irrigation season (200 days) would result in 633.6 acre-feet being used from
18 the creek. Although the decree suggests that the flow in the creek declines
19 over the irrigation season, since this is the senior water right on the
20 creek, there may be years when the water is available most or all of the
21 season.

22 Due to the lack of RCW 90.14 coverage for the lands in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
23 Section 12, the Referee can only recommend that a right be confirmed for
24 that portion of the claimants property in the W $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12. Based on

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1 the foregoing, the Referee recommends that a right be confirmed under Court
2 Claim No. 01443 with a June 30, 1870, date of priority for the diversion of
3 1.60 cubic feet per second, 633.6 acre-feet per year for the irrigation of
4 62 acres and stock water in the W $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 17 N.,
5 R. 19 E.W.M.

6 The Park Creek Farm is comprised of portions of eight different
7 sections. The farm lies within Sections 8, 14, 15, 16, 17, 18, 21 and 22,
8 T. 17 N., R. 20 E.W.M. The total area of the farm is 1150 acres with 250
9 acres irrigated with water from Park Creek, Johnson Creek, unnamed springs
10 and ponds and the Kittitas Reclamation District (KRD). The irrigated lands
11 lie within the S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8, that portion of the N $\frac{1}{2}$ of Section 16
12 lying north of I-90, the N $\frac{1}{4}$ N $\frac{1}{4}$ of Section 17, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18.

13 Park Creek is used to irrigate fields 1, and a portion of 2, 4 and 5 in
14 the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17. Water is
15 diverted from Parke Creek in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8 and piped under I-90 to
16 fields 4 and 5 and then piped under Glover Road to the other fields. The
17 diversion from Parke Creek was measured twice in 1990, in June at 2.25 cfs
18 and in August at 3.22 cfs. Fields 1 and 2 are a total of 60 acres in size
19 and fields 4 and 5 east of Glover Road the Referee estimates are about 5
20 acres in size.

21 Water Right Claim (WRC) No. 048106 was filed for use of Parke Creek
22 pursuant to the requirements of RCW 90.14. It asserts a right to use 200
23 gallons per minute for the irrigation of 30 acres and stock water in the
24 N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 17 and part of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17. The point of
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1 diversion described is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8. There was no RCW 90.14
2 claim filed for irrigating lands in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18 with water
3 diverted from Parke Creek. The Referee estimates that approximately 30 of
4 the irrigated acres lie in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18 and 30 of the irrigated
5 acres lie in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17

6 This land was settled by William M. Johnston who received a patent on
7 February 20, 1882, for the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
8 Section 18, T. 17 N., R. 20 E.W.M. The patent was the only historical
9 document put into the record. The Referee notes that both the claimant's
10 testimony and the summary of the claim for this farm, indicate that the
11 NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18 is addressed in a different patent than the claimants'
12 land in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17. The confusion appears to come from page
13 two of "Water Right Certificate" from Kittitas County Title Company prepared
14 on August 7, 1981, where it states: "Patent dated November 4, 1895,
15 recorded January 16, 1896, in Book T of Deeds, page 338. (Affects North Half
16 of 17-17-20)" and "Copy Deed recorded May 11, 1904 in Book 9 of Deeds, page
17 344. (Affects NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of 18-17-20)." The only patent in the record is
18 the one recorded on May 11, 1904, which is Exhibit DE-584 and it clearly
19 issued for not only the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, but also the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$
20 of Section 17. Although the patent was recorded on May 11, 1904, it issued
21 on February 20, 1882. Therefore, all of this land would share a common
22 priority date under the riparian doctrine of February 20, 1882, the only
23 date in the record showing efforts to sever the land from Federal
24 ownership. Although the patent was the only historical document the Clerfs

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1 offered in support of their claim, the Referee notes that Exhibit DE-614,
2 which was filed by John and Laura Miller also describes lands owned by the
3 Clerfs in addition to lands owned by the Millers. DE-614 is a Quit Claim
4 Deed dated January 12, 1925, that transfers from J. D. Ross to Edwin Ross
5 the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8 and
6 the N $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, all in T. 17 N., R. 20 E.W.M. together
7 with all water rights in Park Creek and all other water rights appurtenant
8 to said land. This clearly shows that some or all of the described land had
9 a right to Parke Creek. However, the Referee does not believe this is
10 sufficient to prove a water right exists for the portion of the described
11 land that is now owned by the Clerfs, without more testimony about past use
12 of the land. The deed does not state that all of the land has rights to
13 Park Creek and the Clerfs provided no testimony about water use prior to
14 when they acquired the property, which was sometime after 1973.
15 Additionally, there is no RCW 90.14 claim in the record for using water from
16 Park Creek on the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18. Failure to file a claim waives and
17 relinquishes any right that may have existed, RCW 90.14.071. For the
18 reasons above stated, the Referee declines to recommend that a right be
19 confirmed for use of Park Creek.

20 A right is also being asserted under Court Claim No. 5330 to irrigate
21 45 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18 with water
22 from an unnamed spring located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17. The spring
23 feeds two excavated ponds from which water is diverted and used to irrigate
24 approximately 45 acres. Ponds in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17 serve a portion

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1 of field 2 and field 3, both of which are in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17. The
2 pond is located on land owned by David Leaton, a claimant in this proceeding
3 who did not appear at the evidentiary hearing as scheduled. Mr. Bain
4 measured the pond diversions at 4.5 cubic feet per second. There was no
5 evidence presented of when the ponds had been excavated and first used on
6 the property. WRC No. 052081 was filed under RCW 90.14 asserting a right to
7 use 300 acre-feet per year from springs for the irrigation of 40 acres in
8 the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18. The point of
9 diversion described for the spring locations is where the ponds are
10 located. Due to the lack of evidence to show when the springs were first
11 used, the Referee cannot recommend that a water right be confirmed in this
12 proceeding. The Referee notes that WRC No. 052081 indicates they were first
13 used in 1930. The Highline Canal crosses the valley just upstream of these
14 springs and the claimant receives KRD water for irrigating portions of his
15 land. The claimant should be prepared to address to what extent the springs
16 are influenced by the delivery of KRD water.

17 Water from Johnson Creek, which has also been known as Spring Creek and
18 flows through Sections 15, 16, and 8 of T. 17 N., R. 20 E.W.M., is used to
19 irrigate two fields in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8. Water is diverted from the
20 creek near the southeast corner of Section 8. Apparently there were no
21 measurements of the water diverted from Johnson Creek for use on this land.

22 This land was originally settled by Frank L. Ash who received a patent
23 dated December 28, 1893, after having made final payment on the land on
24 September 21, 1891. The land is riparian to Johnson Creek, so were it

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possible to recommend confirmation of a water right, the priority date would be September 21, 1891, the only date in the record showing efforts to sever the land from Federal ownership. Offered into evidence in support of the claim are copies of two Water Appropriation Notices filed by William H. Long. The first, DE-602, is dated November 5, 1913, and asserts a claim on the water flowing through the north half of Section 16, T. 17 N., R. 20 E.W.M., the water known as Spring Creek. The document states that the water is to be used for house and mill purposes on said land (presumably the NW $\frac{1}{4}$ of Section 16. The second document, DE-601, was filed on December 19, 1914, on all of the water flowing through the NE $\frac{1}{4}$ of Section 17, T. 17 N., R. 20 E.W.M., said water known as Spring Creek and to be used for stock watering purposes. The two documents would seem to be an effort by William Long to establish a right to use Spring Creek for domestic purposes, stock watering and milling. Both were filed long after the May 10, 1905, withdrawal of all unappropriated surface waters in the Yakima Basin by the Federal government. The claimant is also asserting a right to use Johnson Creek, aka Spring Creek, to irrigate lands in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8. There is no evidence that William Long owned that land. In fact based on the language in the documents, the Referee would conclude his land was in the NW $\frac{1}{4}$ of Section 16 and the NE $\frac{1}{4}$ of Section 17, land also owned by the claimant but for which a right is not being asserted for Johnson Creek water.

The Referee could find no claims filed pursuant to RCW 90.14 in the record for use of water from Johnson Creek or Spring Creek on the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8. As previously mentioned, failure to file a claim waives and

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1 relinquishes any right that may have existed. Based on all of the
2 foregoing, the Referee cannot recommend that a water right be confirmed for
3 use of Johnson Creek to irrigate the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8. In as much as
4 livestock have access to the creek and can drink directly from it, that use
5 is covered by the stock water stipulation on page 4 of this report and no
6 additional right is warranted.

7 The last farm to be addressed is called the Brady Place. It lies in
8 portions of Sections 27, 28 and 34, T. 18 N., R. 20 E.W.M. and consists of
9 963 acres. Of that 282.6 are irrigated with water from several sources. A
10 right is being asserted in this proceeding to irrigate 60.7 acres with water
11 diverted from Parke Creek. This is a different Park Creek than that used to
12 irrigate the Park Creek Farm near I-90. The land is planted in forage crops
13 (hay, pasture) with 28.7 acres east of the creek sprinkler irrigated and 32
14 acres west of the creek rill irrigated. Mr. Clerf testified to irrigating
15 as early as March 15 and generally irrigates until October 15. Although Mr.
16 Bain's report clearly indicates that a portion of the land being irrigated
17 lies in Section 34, the summary of the claim (DE-1494) indicates that a
18 right is being asserted only for the E $\frac{1}{2}$ of Section 27. Additionally, the
19 State's Investigation Report also shows the irrigated land as being in
20 Section 27.

21 Mr. Bain's report indicates that springs located in that portion of the
22 NE $\frac{1}{4}$ of Section 27 east of the creek, Parke Creek and an artesian well are
23 used to irrigate the land east of the creek. Two takeouts are indicated in
24 the report, one in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27 and the second near the south

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1 quarter corner of Section 27. The investigation report only shows the
2 diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27. The Referee could not find evidence
3 that the two takeouts on Parke Creek were measured, nor were there estimates
4 of the quantity of water produced by the springs. Mr. Bain in his report
5 estimated that the water duty for the farm would be 7.3 acre-feet per acre,
6 however, this appears to be based on evaluations on similarly irrigated
7 farms in the Kittitas Valley, rather than an evaluation of the irrigation
8 practices on this farm. There also was no description of the method used to
9 capture the flow from the springs and apply it to irrigate the fields.
10 There is mention that flow from the springs reach Parke Creek, leading the
11 Referee to surmise that the method of utilizing this water is through the
12 diversion near the south quarter corner of Section 27. However, that would
13 result in the spring water being used to irrigate the fields in Section 34,
14 rather than the ones in Section 27.

15 There are two water right claims (WRC) filed pursuant to RCW 90.14 that
16 describe use of water on a portion of the Brady Place. WRC No. 154224
17 asserts a right to use 1.5 cfs, 300 acre-feet per year from Parke Creek for
18 the irrigation of 60 acres and stock watering in parts of the NE $\frac{1}{4}$, SE $\frac{1}{4}$ and
19 SW $\frac{1}{4}$ of Section 27, T. 18 N., R. 20 E.W.M. The point of diversion is in the
20 NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, where TO-2 is located. WRC No. 154223 asserts a right
21 to use 1/8 of 5 cfs (or 0.625 cfs), 120 acre-feet per year from Tekison
22 Creek for the irrigation of 60 acres in the NE $\frac{1}{4}$, SE $\frac{1}{4}$, and SW $\frac{1}{4}$ of
23 Section 27. The point of diversion is in the S $\frac{1}{4}$ S $\frac{1}{4}$ E $\frac{1}{4}$ of Section 36, T. 20 N.,
24 R. 20 E.W.M. That diversion is several miles east of the claimants'

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1 property and also outside of Subbasin No. 10. A stream at that location
2 would be flowing toward the Columbia River, rather than the Yakima River
3 Basin. Therefore, rights to the use of that water cannot be considered in
4 this proceeding.

5 There were no documents put in the record showing the ownership history
6 of the land in Section 34. However, Section 27 was originally conveyed by
7 the United States to Northern Pacific Railroad, who between 1889 and 1902,
8 sold all of it except the NW $\frac{1}{4}$ to Christian Christansen. Christen
9 Christensen filed a Statement of Claim of Water Right in 1890, stating he
10 was the owner of an irrigating ditch located in the S $\frac{1}{4}$ of Section 27, said
11 ditch taking water out of Parke Creek near the north boundary of the S $\frac{1}{4}$ and
12 its general course is southeast. The ditch was a little less than one-half
13 mile long and about 12 inches wide at the bottom, 18 inches wide at the top
14 and ten inches deep. Water was appropriated by construction of the ditch on
15 April 20, 1886, and the present capacity of the ditch was 20 inches. Ten
16 acres of land lies under and is being irrigated from the ditch on land
17 belonging to him under contract with the railroad. A ditch diverting water
18 out of Parke Creek near the north line of the S $\frac{1}{4}$ of the section and
19 traveling in a southeasterly direction could only be used to irrigate lands
20 in the SE $\frac{1}{4}$ of that section. Mr. Clerf testified that Mr. Christansen
21 continued to develop his land to the full extend possible. In 1915
22 Christensen sold to Robert Henry, who then sold to George Cooke. All of
23 Section 27 was ultimately owned by the Cooke family and Guy Cooke by 1930.
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1 Guy Cooke was the defendant in a Kittitas County Superior Court Case,
2 Emmel Aitken v. Guy W. Cooke and Catherine Cooke, decided in 1935. The
3 Findings of Fact discuss Mountain Ditch, which was first constructed in 1888
4 by the plaintiff's predecessors in interest and used along with Parke Creek
5 for irrigation, stock and domestic purposes. Mountain Ditch was from the
6 headwaters of Tacyson and Brushy Creeks, which naturally flow into the
7 Columbia River (This Tacyson Creek may be the same as Tekison Creek
8 previously described in WRC No. 154223). It states that the plaintiff is
9 entitled to seven-eighths of the flow in Park Creek and Little Park Creek
10 until Mountain Ditch is dry and thereafter all of the waters of Park and
11 Little Park Creeks, together will all of the water from springs emptying and
12 flowing therein, except for the waters from the springs on Section 27 before
13 the water from the springs, run in said creek. The decree that was
14 ultimately entered awarded the plaintiff seven-eighths of all the waters of
15 Park Creek, its springs and tributaries, except for the springs in
16 Section 27 before they reach the creek and the plaintiff had the first right
17 for irrigation and domestic to all the waters of Park Creek when Mountain
18 Ditch ceases to divert water from Tacyson and Brushy Creeks. The defendant
19 was restrained from diverting any water from Park Creek to which they are
20 entitled except through one diversion point, their present one in the NW $\frac{1}{4}$ of
21 Section 27. It is noted that at this time Park Creek does not flow through
22 the NW $\frac{1}{4}$ of Section 27, but does flow through the NE $\frac{1}{4}$. Either the channel of
23 the creek has changed or there was an error made in describing the location
24 of the creek and the diversion. The decree did not define what the
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1 defendants rights were. The Clerf's are maintaining that the right is to
2 one-eighth of the flow in Parke Creek. Mr. Clerf estimated that one-eighth
3 of the flow would be 0.50 cubic foot per second.

4 The claimants also point to J. D. Olmstead v. S. Hays, et al. in
5 support of their claim. The decree, which was signed in 1892, awarded
6 four-fifths of the flow in Brush Creek and Park Creek to John Holtz. The
7 claimant contend they are successors to John Holtz and are entitled to the
8 water awarded in that case. They are successors to John Holtz, but not for
9 the land included in the Brady Place. The former Holtz property is in
10 Section 12 and water rights for that land have already been addressed
11 earlier under this claim. The Referee does not believe that the Brush Creek
12 mentioned in this decree is the same as Brushy Creek discussed in Aitken v.
13 Cooke and that different lands were being discussed. The Referee concludes
14 that the Olmstead v. Hays, et al. decree does not provide any basis for a
15 water right on the lands within the Brady Place.

16 The Referee concludes there is sufficient evidence to show that a water
17 right was established for a portion of the claimants property in
18 Section 27. The Referee recommends that a right be confirmed with a
19 June 30, 1890, date of priority for the diversion of 0.50 cubic foot per
20 second, 180 acre-feet per year from Parke Creek for the irrigation of 60
21 acres in that portion of the NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T. 18 N.,
22 R. 20 E.W.M. adjacent to the creek, both on the east and west. Livestock
23 are raised on the property and apparently have access to Parke Creek and

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1 springs on the property. The stock water stipulation discussed on page 4 of
2 this report covers livestock drinking directly from the water source.

3 COURT CLAIM NO. 02142 -- John R. Clerf
4 (A) 05514 & Doris E. Clerf
5 02143
(A) 05514

6 Mr. and Mrs. Clerf filed claims for the use of waters from Coleman
7 Creek and Caribou Creek. They are represented by Attorney John P. Gilreath
8 and Mr. Clerf testified at the evidentiary hearing. Richard C. Bain, Jr.,
9 was hired by the claimants to prepare an engineering report for their
10 claim. A copy of that report is Exhibit DE-1395, which was submitted as
11 written, expert testimony.

12 Court Claim No. 02142 was filed for use of Coleman Creek on lands in
13 the SW $\frac{1}{4}$ of Section 3, T. 17 N., R. 19 E.W.M. Mr. Clerf testified that this
14 land has been conveyed to his son, John S. Clerf, and any claim to a water
15 right would have been addressed through the Court Claim filed by his son.
16 John S. and Janet Clerf filed Court Claim No. 02141, which is discussed on
17 page 109 of this report and does include the land in the SW $\frac{1}{4}$ of Section 3.
18 Since Mr. Clerf did not present any evidence for Court Claim No. 02142 and
19 expressed his intent that any right for the land be addressed under his
20 son's claim, the Referee does not recommend confirmation of any right under
21 Court Claim No. 02142.

22 Court Claim No. 2143, as amended by (A) 5514, asserts a right to use
23 waters from Caribou Creek for the irrigation of 63 acres and stock watering
24 in a portion of the NW $\frac{1}{4}$ of Section 12, T. 17 N., R. 19 E.W.M. According to
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1 both Mr. Bain's report and the State's Investigation Report for the claim,
2 60 acres are actually being irrigated with water diverted from Caribou
3 Creek. The land is planted to timothy hay with a grain rotation and is used
4 to pasture livestock after the last cutting of hay. The land is riparian to
5 Caribou Creek and the livestock can drink from the creek itself and the
6 irrigation ditches. Water is diverted from Caribou Creek in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
7 Section 1 and carried in Clerf Ditch, which is an open, dirt ditch. The
8 dirt ditch carries the water through Section 1 and into Section 12 and
9 continues along the east property line. A 12 inch pipe carries the ditched
10 water over the Cascade Canal, which passes diagonally through the property.
11 Concrete head ditches distribute water along the north property line and
12 along the north side of the field that is south of Cascade Canal. The
13 fields are rill irrigated.

14 Mr. Bain measured the water carried in the ditch during the 1990
15 irrigation season. In July of that year, approximately 5.93 cfs was in the
16 ditch immediately below the diversion and at takeout (TO)-1 the flow was
17 5.56 cfs, indicating that the ditch lost 0.37 cfs in that half mile reach.
18 Ecology also measured the ditch in May of 1991, and at that time the flow in
19 the ditch about a quarter mile below the diversion was 4.25 cfs and the flow
20 near TO-1 was 4.88 cfs, showing a gain. However, since Ecology's initial
21 measurement was a quarter mile below the diversion, it is not possible to
22 reach a conclusion on how much water was being diverted and whether the
23 ditch might have lost water through the initial section. Mr. Bain's report
24 seems to indicate that only TO-1 delivers Caribou Creek water and TO-2

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1 through TO-5 deliver Cascade Irrigation District water. A portion of fields
2 1, 2 and all of field 8 are then irrigated with creek water. Mr. Bain's
3 report indicates that based on the landowners irrigation practice, 9.3
4 acre-feet per acre is needed and a diversion of 6.0 cubic feet per second
5 from Caribou Creek is utilized.

6 The NW $\frac{1}{4}$ of Section 12 was settled by John Holtz, who received a patent
7 on January 18, 1887. It was owned by Mary Clerf at the time of the Clerf v.
8 Scammon litigation. The Findings of Fact and Conclusions of Law that
9 preceded entry of the decree show that John Holtz had settled on the land in
10 1874 and that same year appropriated water from Caribou Creek for irrigation
11 of his land. The decree awarded Mary Clerf 80 inches of water, or 1.60
12 cubic feet per second from Caribou Creek for use on this land.

13 The claimants are asserting a right to divert 6.0 cubic feet per
14 second, but have provided no evidence to support there being a water right
15 for that quantity. Clearly in 1911 the Court found that a right existed for
16 the use of 1.60 cfs. Entry of this decree was after commencement of the
17 1905 Federal withdrawal of all unappropriated surface waters in the Yakima
18 River Basin. Additional water rights above the 1.60 cfs could not have been
19 established after 1911. Therefore, the Referee concludes that the limit of
20 the right for the claimants' land is 1.60 cfs.

21 Mr. Bain's report indicates that 9.3 acre-feet per acre is needed to
22 irrigate the claimants land. The portion of the land below the Cascade
23 Canal also receives water delivered from Cascade Irrigation District and the
24 lands above the canal are assessed by Kittitas Reclamation District (KRD).
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1 Mr. Bain's report did not indicate how much water is used on this property
2 from either of the two districts. It is not clear whether 9.3 acre-feet per
3 acre is actually used from the creek or whether that is the total use on the
4 land from all sources.

5 Were the Referee able to recommend that a water right be confirmed to
6 the Clerfs, it would be necessary to clarify the annual quantity of water
7 actually used from Caribou Creek. However, the Referee has reviewed the
8 record and cannot find a water right claim filed pursuant to RCW 90.14 for
9 this property. John R. Clerf filed several water right claims, including
10 Nos. 154219, 154220, 154221 and 15422 for use of Caribou Creek. Water Right
11 Claim No. 154221 includes the portion of the NW $\frac{1}{4}$ of Section 12 lying south
12 of the railroad, but the claimants' lands all lie north of the railroad.

13 Failure to file a claim waives and relinquishes any right that may have
14 existed, RCW 90.14.071. Therefore, the Referee cannot recommend
15 confirmation of any diversionary right under Court Claim No. 2143.
16 Livestock drinking directly from Caribou Creek is a non-diversionary use for
17 which a water right claim was not required, see RCW 90.14.041. The stock
18 water stipulation covers this type of water use and Clerfs shall be placed
19 on the list of those claimants covered by the stipulation.

20
21 COURT CLAIM NO. 02141 -- John S. Clerf
22 & Janet J. Clerf

23 John S. and Janet J. Clerf filed a claim with the Court for use of
24 waters from Coleman Creek. The Clerfs are represented by Attorney John P.
25 Gilreath and John Clerf testified at the evidentiary hearing. Additionally

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1 Richard C. Bain, Jr., a consultant hired by the claimants, prepared an
2 engineering report related to their claim. That report was entered as
3 expert testimony under Exhibit DE-1381 and will be referred to when
4 considering the claim.

The Clerfs own the E½E½ of Section 4 north of Iron Horse Trail State Park and the NW¼SW¼ and SW¼NW¼ of Section 3, in T. 17 N., R. 19 E.W.M. They are asserting a right to irrigate 155 acres and water up to 1,000 head of livestock with water diverted from Coleman Creek. Additionally, water is delivered by Cascade Irrigation District (CID) for use on the claimants' land. Mr. Clerf irrigates from March 15 to October 15. Both Mr. Clerf's testimony and Mr. Bain's report show a need for 9.9 acre-feet per year for each acre irrigated and an additional 10 acre-feet is needed for livestock watering. Water is diverted from Coleman Creek about 260 feet south of the east quarter corner of Section 33, T. 18 N., R. 19 E.W.M. and carried due south in an open dirt ditch. There is an undershot that carries the water under the Cascade canal and under the Old Vantage Highway. The open ditch continues to carry water south through the property, with concrete lined laterals carry water along the northerly line of each of the fields. The land is rill irrigated. The predominant crop is Timothy hay with a grain rotation. Most of the land that is irrigated lies in the E½E½ of Section 4. According to Mr. Clerf's testimony and a map he prepared, 125 acres are irrigated in Section 4. However, Mr. Bain's report indicates that 114.5 acres are irrigated. The major difference in acreage lies within field 1 in Government Lot 1 of Section 4. Mr. Bain's report indicates that

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1 30.4 acres are irrigated, while Mr. Clerf's map indicates that 40 acres are
2 irrigated. There was insufficient evidence presented for the Referee to
3 determine exactly how many acres are being irrigated in Government Lot 1 of
4 Section 4. An additional 30 acres are irrigated in the W $\frac{1}{4}$ W $\frac{1}{4}$ SW $\frac{1}{4}$ and
5 S $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3.

6 Ecology measured the ditch that serves the Clerf property in April of
7 1991 and found that approximately 4 cubic feet per second was being diverted
8 from Coleman Creek and that the ditch gained 0.40 cubic foot per second
9 between the diversion and the Cascade Canal undershot. Mr. Bain measured
10 the ditch in August 1991 and found that 4.35 cubic feet per second was being
11 diverted and there was 4.16 cubic feet per second at the Cascade undershot.
12 As Mr. Bain notes in his report, this ditch obviously is influenced by
13 return flows on adjacent fields and whether it gains or loses water is
14 based on the irrigation practice on those fields and whether there are
15 return flows leaving the fields.

16 Water Right Claim No. 154217 was filed by John Clerf pursuant to the
17 requirements of RCW 90.14. It asserts a right to divert 5 cfs, 1500
18 acre-feet per year from Coleman Creek for the irrigation of 400 acres within
19 lands that include those of the claimants, along with additional land in
20 Sections 9 and 10 that are owned by other members of the Clerf family.

21 Portions of the claimants' land were settled by three different
22 individuals. William Grim settled on the E $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4 and
23 received a patent for that land on January 18, 1887. He filed a statement
24 of water right claim on May 31, 1890, stating that in the spring of 1879 he
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1 appropriated 60 inches of water from Coleman Creek and ran the water through
2 a ditch belonging to S. T. Sterling. In 1883 he constructed a second ditch
3 with a diversion upstream of the first and intersected a ditch already
4 constructed by J. S. Dysart. Dysart allowed him to use his ditch to carry
5 water. The waters appropriated were being used to irrigate the ranch he
6 owned, consisting of 120 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4. The
7 statement does not indicate how much water was appropriated in the second
8 ditch. The claimant is suggesting that an additional 60 inches was
9 appropriated and the entire 120 acres irrigated and that the 120 inches
10 would be appurtenant to the portion of the Grim property that he now owns.
11 The Referee notes that John and Janet Clerf own approximately 90 acres (of
12 which 84 acres are irrigated) of the 120 acres and Helen Clerf owns about 30
13 acres of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4 lying south Iron Horse Trail State Park.
14 Therefore, John and Janet Clerf would be entitled to 90 inches or 1.80 cubic
15 feet per second.

16 The claimants' property in Government Lot 1 of Section 4 was settled by
17 James S. Dysart who received a patent for the N $\frac{1}{2}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
18 Section 4 (which includes Government Lot 1). On May 31, 1890, a claim of
19 water right was filed by J. S. Dysart stating that he owned the SE $\frac{1}{4}$ of
20 Section 33, the N $\frac{1}{2}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, which he had been in
21 possession of since 1871. About April 1, 1872, he constructed a ditch from
22 Coleman Creek with a capacity of 53 inches, which was used to irrigate 120
23 acres that were under the ditch. According to the claimants' written
24 summary, this right was addressed in the stipulation that settled Bull v.
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1 Meehan in 1886, which found that Dysart was entitled to 40 inches of water.
2 What the claimant did not mention was that this right was also addressed in
3 Schnebly v. Huss, a later case addressing conflicts with use of water from
4 Coleman Creek. In the Findings of Fact and Conclusions of Law signed on
5 February 1, 1915, the Court found that J. A. Mahan had 50 inches of water
6 from Coleman Creek, which was originally appropriated by James S. Dysart for
7 use on the N $\frac{1}{2}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33 and
8 that Mahan had purchased that water right from Dysart for use on his lands.
9 Mahan owned the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24, the NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of
10 Section 25, all in T. 19 N., R. 19 E.W.M. The Referee must conclude that
11 the Clerf property that was originally settled by Dysart no longer has a
12 right from Coleman Creek.

13 The SW $\frac{1}{4}$ of Section 3 was part of land that was conveyed by the Federal
14 government to Northern Pacific Railroad. On May 31, 1890, N.P.R.R. conveyed the
15 SW $\frac{1}{4}$ of Section 3 to John T. McDonald. That is the only historical
16 information in the record concerning this property. There are no documents
17 that mention establishment of a water right for this land.

18 Due to the lack of evidence to show that a water right was established
19 for the land in Section 3 and due to the water right that once was
20 appurtenant to Government Lot 1 of Section 4 having been sold prior to 1915,
21 the Referee cannot recommend that a water right be confirmed for that
22 portion of the claimants' property. The evidence does show that a water
23 right is appurtenant to the portion of the claimants property in the E $\frac{1}{2}$ SE $\frac{1}{4}$
24 and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4. Therefore, the Referee recommends that a right be

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1 confirmed with a June 30, 1879, date of priority for the diversion of 1.8
2 cubic feet per second, 759 acre-feet per year for the irrigation of 84 acres
3 and stock watering in the that portion of the E%SE% lying north of Iron
4 Horse Trail State Park and the SE%NE% of Section 4, T. 17 N., R. 19 E.W.M.
5 The annual quantity is based on a continuous diversion of 1.8 cubic feet per
6 second.

7 COURT CLAIM NO. 00407 -- Robert H. Clerf
8 00677 & Sherre A. Clerf

9 COURT CLAIM NO. 00476 -- Robert H. Clerf

10 The referenced Court claims assert rights for the use of waters from
11 Caribou Creek and Warm Springs Creek. The Clerfs are represented by
12 Attorney John P. Gilreath and Mr. Clerf testified at the evidentiary
13 hearing.

14 Court Claim No. 00407 asserts a right to use 4 cubic feet per second,
15 560 acre-feet per year from Caribou Creek for the irrigation of 80 acres and
16 stock watering in the E%SW% of Section 1, T. 17 N., R. 19 E.W.M. During the
17 presentation of the testimony and evidence it became obvious that the
18 claimant is now asserting a right to use 6 cubic feet per second from
19 Caribou Creek for the irrigation of a total of 110 acres in the E%SW% and
20 SW%SW% of Section 1. Likely because a right was not asserted for the SW%SW%
21 of Section 1 in the Court claim, Ecology did not investigate water use on
22 that portion of the claimants' land. The claimant diverts water from
23 Caribou Creek in the SE%SW%NE% of Section 1 and it is carried in a
24 combination earthen ditch and buried pipeline to the SW% of Section 1.

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1 Timothy hay is planted on the land, which is flood and rill irrigated with
2 gated pipe. Up to 1,000 head of cattle are on this land and other land that
3 is owned by the claimants after the hay is harvested. A right is being
4 asserted for 20 acre-feet per year for stock watering, however, the claimant
5 did not testify to the means for providing water for the stock or the time
6 period when they are on any particular piece of property. The claimants'
7 land is riparian to Caribou Creek and it may be that the livestock have
8 direct access to the creek. If that is the case the stock water stipulation
9 discussed on page 4 of this report would apply to the claimants.

10 The claimants appear to be basing their claim to Caribou Creek on the
11 decree in Clerf v. Scammon, which was entered by Kittitas County Superior
12 Court in 1911. That decree recognized that defendant Catherine Morrison
13 owned the W $\frac{1}{2}$ SW $\frac{1}{4}$ and Interveners Charles W. Morrison, Abe Morrison, et al.,
14 who owned the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1 at that time, and Class 5 rights for 10
15 inches of water, or 0.20 cubic foot per second, were awarded for each half
16 of the SW $\frac{1}{4}$ of Section 1. The decree found that "by economical distribution
17 and use of the waters of said creek, said lands can be made to produce
18 profitable agricultural crops by the application of one-half inch of water
19 per acre . . .". The quantities of water that were awarded were based on
20 that amount. Therefore, it is reasonable to conclude that 20 acres were
21 being irrigated in each half of the SW $\frac{1}{4}$ at the time the decree was entered.
22 The decree also found that after April of each year the creek did not carry
23 an amount in excess of that needed to satisfy the plaintiff and defendants
24 mentioned in Conclusion of Law No. 1, which includes the lands now owned by
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1 Robert and Sherre Clerf. The claimants are the only owners of the E $\frac{1}{4}$ SW $\frac{1}{4}$ of
2 Section 1 and based on this decree would have a right to 0.20 cubic foot per
3 second for the irrigation of 20 acres, a far cry from the 6 cfs they are
4 claiming for the irrigation of 80 acres. Other claimants in this proceeding
5 are asserting rights within the W $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1: Donald D. and Elizabeth
6 J. Berger, Gladys Morrison Sisk and George Johnson (their lands are
7 specifically within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1).

8 The only effort made by the claimant to explain the difference between
9 what was awarded in the Clerf v. Scammon decree and the claim being made in
10 this proceeding was a statement that the land had Cooke Creek water rights
11 which were "abandoned" and water from Caribou Creek used instead. The
12 claimant provided Exhibit DE-767, which is a partial copy of an adjudicated
13 certificate that issued to R. I. Scammon for a Class 16 water right. The
14 copy provided as Exhibit DE-767 does not include the place of water use or
15 the certificate number, so it is of little use to the Referee. The Referee
16 reviewed the Cooke Creek decree (Anderson) and found that a Class 16 right
17 was awarded to R. I. Scammon for irrigation of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and Lots 1
18 and 2 (which would be the NW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 1. The described land is not
19 owned by the claimants, so the Referee finds the certificate irrelevant.
20 Further review of the decree reveals that a Class 6 right issued to Lewis W.
21 Habel authorizing the diversion of 0.70 cubic foot per second from Cooke
22 Creek for the irrigation of 35 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 17 N.,
23 R. 19 E.W.M. Perhaps this is the water right which the claimant "abandoned"
24 in lieu of using water from Caribou Creek. The claimant has not entered
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1 into evidence a certificate of change issued pursuant to RCW 90.03.380
2 authorizing a change in the water right from use of Cooke Creek to use of
3 Caribou Creek, which is consistent with the claimant's testimony that
4 the Cooke Creek right was abandoned.

5 The Referee was not able to locate an RCW 90.14 claim that asserts a
6 right for the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1. Failure to file a claim waives and
7 relinquishes any right that may have existed, RCW 90.14.071. WRC No. 057037
8 describes a claim to a right for the diversion of 4 cfs, 560 acre-feet per
9 year from Cariboo (sic) Creek for the irrigation of 80 acres in the E $\frac{1}{4}$ SW $\frac{1}{4}$ of
10 Section 1, T. 17 N., R. 19 E.W.M.

11 Based on the evidence in the record, the Referee recommends that a
12 right be awarded under Court Claim No. 00407 with a June 30, 1876, date of
13 priority a right for the diversion of 0.20 cubic foot per second, 100
14 acre-feet per year for the irrigation of 20 acres in the S $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
15 Section 1. If the claimant wishes to irrigate a different 20 acre tract in
16 the E $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, that can be addressed during the exception phase for
17 this report.

18 The claimant is asserting rights under Claim No. 0677 and 0476 to use
19 waters from Warm Springs and Warm Springs Creek. The Court claims assert
20 rights to use 6 cubic feet per second, 2376 acre-feet per year from Warm
21 Springs for the irrigation of 205 acres in the E $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1,
22 T. 17 N., R. 19 E.W.M. and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6,
23 T. 17 N., R. 20 E.W.M. According to Mr. Clerf's testimony, the claimants
24 irrigate 195 acres of timothy hay and 20 acres of pasture with 6 cubic feet

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1 per second, 1161 acre-feet per year diverted from Warm Springs. Mr. Clerf
2 testified to irrigating his land in Government Lots 3 through 7 (the NW $\frac{1}{4}$
3 and NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 6 with water diverted from Warms Springs, however,
4 both the State's Investigation Report and summary of the Clerf claim
5 (DE-1486) state that the E $\frac{1}{4}$ SE $\frac{1}{4}$ and the E $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T. 17 N.,
6 R. 19 E.W.M. are irrigated with water diverted from Warm Springs. Water is
7 diverted from the creek in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6 and carried in a 10 foot
8 earthen canal with takeouts to the individual fields.

9 There is a varied ownership history for the lands now owned by the
10 Clerfs in Section 6 and the E $\frac{1}{4}$ of Section 1. John Brush received a patent
11 for Government Lots 1, 2, 3, and 4 of Section 6 in 1887 and John Clerf
12 acquired that land in 1889. It is riparian to Warm Springs Creek. John
13 Clerf received a patent for the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6 in
14 1906, but the claimant contends John Brush was in possession of the land
15 since 1898. The Referee was not able to locate any documents in the
16 exhibits to support that contention. The E $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1 was
17 part of the land conveyed by the United States to Northern Pacific Railroad
18 (NPRR). In 1900 NPRR sold to John Clerf the E $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1.
19 The Findings of Fact for Clerf v. Scammon indicate that at the time of that
20 dispute (1911) the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1 was owned by William Hays. However,
21 the chain sheet attached to the claimant's summary (DE-1486) does not show
22 any transactions in Section 1 involving William Hays.

23 John Clerf was Mary Clerf's husband, who apparently died around 1907.
24 The chain sheets all show conveyance of property from John Clerf to Mary

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1 Clerf in 1907 and the Findings of Fact in Clerf v. Scammon state that John
2 Clerf was deceased and Mary Clerf succeeded in his interest. In support of
3 the claim to a right for use of Warm Springs, Exhibit DE-778, which is a
4 Statutory Warranty Deed, was offered. It conveyed from Samuel J. Clerf to
5 Henry N. Clerf the W $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 17 N.,
6 R. 19 E.W.M. and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T. 17 N., R. 20 E.W.M. Excepted
7 from the conveyance and reserved for the grantor's (Samuel J. Clerf)
8 predecessor in interest were "all rights in, to and in respect of the waters
9 of Warm Springs and Warm Spring Creek; it being understood and agreed that
10 the predecessor in interest of the grantor is and remains the owner of all
11 of said waters . . ." The deed was dated November 27, 1929. Unfortunately,
12 it is not clear what lands Mary Clerf owned at the time of this deed and
13 what lands the rights to Warm Springs might be appurtenant. According to
14 the chain sheet, Mary Clerf sold to Mildred A. and Anna L. Clerf the N $\frac{1}{2}$ NW $\frac{1}{4}$
15 and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6. It may well be that the reserved water right was
16 appurtenant to these lands. The record does not include a copy of this deed
17 to see if there is any reference to water rights. It seems likely that if
18 Mary Clerf reserved rights when she sold a portion of her land, that the
19 deed conveying the land to which the rights were appurtenant would also
20 mention the water right. It is clear, however, that the deed from Samuel
21 Clerf to Henry Clerf withheld the right to use Warm Springs water on the
22 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, which the Referee believes is part of the land for
23 which Robert and Sherre Clerf are asserting a right. The chain sheet does
24 seem to indicate that Mary Clerf owned the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 1 until
25

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1 April 20, 1937, when it was conveyed to Mildred and Anna L. Clerf and the
2 chain sheet indicates that there was a "together with . . ." statement in
3 the deed. A copy of that deed is also not in the record.

4 At the hearing evidence and testimony were put into the record
5 asserting a right on behalf of Warm Springs Water Company, Inc., for use of
6 water from Warm Springs for municipal and domestic supply purposes in the
7 Town of Kittitas and adjacent lands in Sections 11, 12, and 2, T. 17 N.,
8 R. 19 E.W.M. The Referee notes that Exhibit No. DE-1488, which is a summary
9 of the Warm Springs Water Company, Inc., claim references Claim No. 0467,
10 which is in error; the correct number should be 0476. The Town of Kittitas
11 filed a motion to be joined as an additional party to Claim No. 0467 based
12 on Exhibit DE-1488 and the Court signed an order joining them to that
13 claim. The Referee believes their interest actually is in Claim No. 0476.

14 Because neither Court Claim No. 0476 or 0677 referenced a claim to use
15 water from Warm Springs for municipal supply in the Town of Kittitas, that
16 use was not investigated by Ecology. The investigation report only
17 addressed the Clerf's claim for a right to irrigate their land with water
18 from Warm Springs.

19 On February 17, 1953, the State of Washington Division of Water
20 Resources issued a Certificate of Change of Point of Diversion, Purpose and
21 Place of Use of Water, recorded in Vol. 1, page 377. It authorized the Warm
22 Springs Water Company, Inc., having complied with the requirements of RCW
23 90.28.090 (now 90.03.380), to change the point of diversion, place and
24 purpose of use of 1.444 second-feet (cfs) of waters of Warm Springs, being a

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1 portion of the amount claimed by use prior to 1917, from a point of
2 diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T. 17 N., R. 20 E.W.M., to a second
3 point in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, 385 feet east of the present point of
4 diversion. It stated that the water has been used for irrigation on the
5 following described lands: The E $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T. 17 N.,
6 R. 19 E.W.M., and the W $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, T. 17 N., R. 20 E.W.M. and will
7 henceforth be used for municipal and domestic purposes in the Town of
8 Kittitas and adjacent locality within Kittitas County. The certificate of
9 change did not identify an annual quantity of water, nor was there any
10 evidence offered to show the annual quantity of water used by the town. A
11 right is being asserted to use 1,054 acre-feet per year for municipal
12 supply. This quantity can only be delivered if 1.444 cubic feet per second
13 is diverted on a continuous basis. Municipal supply is the type of use
14 where a year around diversion is expected, however, a higher quantity of
15 water is generally used during the summer than in the winter. It would not
16 be appropriate to presume, without evidence to support that presumption,
17 that 1.444 cfs is continuously diverted and used by the town. In fact, Mr.
18 Clerf testified that the Warm Springs is used as a backup supply to artesian
19 wells that are also used by the town.

20 The Referee concludes that the Certificate of Change recorded in Vol.
21 1, page 377, changed the place of use of the water right from the E $\frac{1}{4}$ SE $\frac{1}{4}$ and
22 E $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1 and the W $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6 to the Town of Kittitas
23 (and some unidentified lands surrounding the town) and the purpose of use
24 from irrigation to municipal and domestic supply. Therefore, those lands no

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1 longer enjoy a right from Warm Springs. Since only a portion of the right
2 was changed, a portion is still appurtenant to lands not described in the
3 Certificate of Change. The conveyance from Samuel Clerf to Henry Clerf in
4 1929 conveyed the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6 specifically without water rights from
5 Warm Springs. The only land owned by the claimants and irrigated from Warm
6 Springs that might still enjoy a right to that source is in Government Lots
7 3, 4 and 6 of Section 6. Prior to the Referee recommending confirmation of
8 any water rights in Section 6, the claimant needs to identify how many acres
9 are being irrigated from Warm Springs in those three Government Lots and how
10 much water would be used to irrigate that acreage. In so doing, the Referee
11 suggests that the claimant be cognizant of the findings by Kittitas County
12 Superior Court in every decree entered in this area that one inch of water,
13 or in some cases one-half inch of water, is sufficient for the irrigation of
14 one acre. If that quantity is not sufficient, he should be prepared to
15 explain why not.

The Referee notes that Exhibit DE-759 was submitted in behalf of Warm
Springs Water Co. It is a Correction Quit Claim Deed that conveys from
several members of the Clerf family to Warm Springs Water Company 3 cubic
feet per second of water from Warm Springs and the two artesian wells in
close proximity thereto all located on Lot 1, Section 6, T. 17 N., R. 20
E.W.M., said water to be taken first from the wells and the balance, if any,
from the springs. This deed was not addressed at all by Mr. Clerf or his
attorney and it appears that the water company is only asserting a right to

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1 the 1.444 cfs in the certificate of change. No other water right documents
2 are in the record for use of Warm Springs by the water company.

3 The Referee is prepared to recommend that a right be confirmed under
4 Court Claim No. 0476 for the diversion of 1.444 cfs for municipal supply in
5 the Town of Kittitas. However, because there has been no evidence presented
6 that can be used to determine the annual quantity of water that has been put
7 to beneficial use, the Referee will not recommend confirmation of a right
8 until that information is provided. The Referee does not intend to include
9 the "surrounding area" referenced in the certificate of change, as there has
10 been no evidence presented to show what area around the town can be served
11 by the water system from Warm Springs. It is suggest that the Town of
12 Kittitas or Warm Springs Water Company be joined to this claim.

13
14 COURT CLAIM NO. 00740 -- Gwendolyn Cooke
15 & Robert Cooke

16 Court Claim No. 00740 was filed by the Cookes asserting rights to use
17 waters from Coleman Creek and Naneum Creek. Naneum Creek lies in Subbasin
18 No. 9 and rights to use that water were addressed in the Report of Referee
19 for Subbasin No. 9, which was filed on June 29, 2000. Only the claim for
20 Coleman Creek will be addressed herein. Mrs. Cooke testified at the
evidentiary hearing.

21 The Cookes' property is 12.90 acres in size lying in a portion of the
22 NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. The land is
23 planted in hay and pasture and up to 20 cow/calf pairs are raised each
24 year. Water is diverted from Coleman Creek approximately 500 feet east of

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1 the northeast corner of the Cooke property and carried in a ditch that
2 parallels the north property line. The point of diversion is in the
3 NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4. Mrs. Cooke did not testify to how much water is
4 actually used to irrigate the land, but is asserting a right to one-half
5 inch for each irrigated acre, or 6.45 inches (or 0.129 cfs) for the 12.90
6 acres. The land is irrigated four or five times during the irrigation
7 season, but Mrs. Cooke did not testify to how days are involved in each
8 irrigation. The land is flood and rill irrigated. The State's
9 Investigation Report indicates that livestock drink from natural occurring
10 water sources that are on the property. However, it did not identify what
11 those water sources are, nor did Mrs. Cooke testify to any water sources
12 being on her property. Therefore, the Referee will not place the Cookes'
13 name on the list of claimants covered by the stock water stipulation
14 discussed on page 4 of this report. Mrs. Cooke grew up on this land and
15 testified to memories of it being irrigated as far back as 1915.

16 Water Right Claim No. 062611 was filed by Ben Ferguson, Mrs. Cooke's
17 father, asserting a right to use 1 cfs, 700 acre-feet per year from Coleman
18 Creek for the irrigation of 13 acres and stock water in the N $\frac{1}{4}$ S $\frac{1}{4}$ of
19 Section 4, T. 17 N., R. 19 E.W.M. The point of diversion described is very
20 near where the current diversion is located.

21 The Cooke property is part of a larger piece on which James McEwen
22 settled in the 1870's. McEwen received a patent for the W $\frac{1}{4}$ SE $\frac{1}{4}$ and E $\frac{1}{4}$ SW $\frac{1}{4}$ of
23 Section 4, T. 17 N., R. 19 E.W.M. in September of 1878. McEwen owned the
24 property until it was conveyed to Elizabeth Ferguson in 1914. McEwen was
25

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1 not a defendant in the Schnebly v. Huss action and therefore, water rights
2 for his property were not addressed in that decree. The Schnebly v. Huss
3 decree appears to deal only with landowners who were using water by 1886.
4 The evidence shows that there was no water use on the McEwen property until
5 after 1900. James McEwen and Mr. and Mrs. James Ferguson were defendants in
6 an action brought by Izza J. and Walter N. Gilliam and Cody and Ethel
7 Miller. The Findings and Judgment in Gilliam & Miller v. McEwen & Ferguson
8 was entered in Kittitas County Superior Court on April 1, 1912. The Gilliams
9 owned the E½NE¼ of Section 9, T. 17 N., R. 19 E.W.M., having obtained the
10 land from Northern Pacific Railroad Company and the Millers leased the land
11 from the Gilliams and were farming it at the time of the action. The
12 Findings state that in 1884 a predecessor to Gilliam constructed a ditch
13 from Coleman Creek for irrigating his land and the ditch has continuously
14 been used to irrigate the Gilliam land. In the spring of 1907 James McEwen
15 obstructed the flow of water in the ditch and cut into its banks and diverted
16 water onto his lands. The Court ruled in favor of the plaintiffs,
17 restraining McEwen and Ferguson from claiming any right or interest in the
18 ditch and from obstructing or interfering with plaintiffs use of that ditch.
19 It is clear from the Findings and Judgment that the Cooke's land was not
20 irrigated until 1907, long after the rights addressed in the Schnebly v.
21 Huss decree were established and put to use. However, under the Riparian
22 Doctrine a water right is established with a priority date of when first
23 steps were taken to sever land from the public domain, if water is used
24 prior to December 31, 1932, see Department of Ecology v. Abbott, 103 Wn.2d
25

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1 686, 694 P.2d 1071 (1985). Mrs. Cooke's testimony clearly shows that the
2 water was being used prior to 1932.

3 Based on the foregoing, the Referee recommends that a right be
4 confirmed with a September 30, 1878, date of priority for the use of 0.129
5 cubic foot per second, 51.6 acre-feet per year from Coleman Creek for
6 irrigation of 12.95 acres and stock watering.

7 The right will carry a provision that brings forth the requirement in
8 the Gilliam and Miller v. McEwen and Ferguson decree that they not interfere
9 with the use of the ditch serving the Gilliam/Miller property (which is now
10 owned by claimant Howard Clerf).

11 COURT CLAIM NO. 01306 -- Doward Denning
12 & Ida Denning

13 The Dennings submitted a claim to the Court asserting a right to use
14 waters from Coleman Creek for irrigation and stock watering. Mr. Denning
15 appeared and testified at the evidentiary hearing.

16 The Dennings own the W½NE¼ of Section 24, T. 18 N., R. 19 E.W.M. and
17 are asserting a right to irrigate all of their land with water diverted from
18 Coleman Creek. Mr. Denning testified to owning and irrigating 85 acres
19 within the W½NE¼, even though one-half of a quarter section is generally
20 only 80 acres in size. Kittitas Reclamation District (KRD) water is also
21 used to irrigate much of their land and Mr. Denning believed they were
22 assessed by KRD for 85 acres. A portion of the irrigated land lies above
23 the point where the KRD lateral enters the property and that portion is
24 irrigated solely with Coleman Creek water. Ecology's investigation report

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1 for this property estimated that 45 acres lie north of the KRD lateral. Mr.
2 Denning did not identify in his testimony the point of diversion used to
3 deliver Coleman Creek water to his property. The investigation report
4 indicated it was in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.
5 Approximately 25 acres are planted in hay and the rest of the land is
6 pasture. The Dennings raise approximately 180 head of cattle and 30
7 horses. The livestock drink from the irrigation ditches during irrigation
8 season. The investigation report indicates that they also have access to
9 drink directly from water sources on the property, however, those sources
10 were not identified. Coleman Creek does not flow through the property.

11 The Dennings acquired the property from Reinhold J. and Lois M. Kraft
12 in 1975, and the land was being irrigated at that time. The Krafts filed
13 Water Right Claim (WRC) No. 054006 pursuant to the requirements of RCW
14 90.14. It asserts a right to use water from Spring Creek (Coleman Creek)
15 for the irrigation of 45 acres and stock water in the W $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24,
16 T. 18 N., R. 19 E.W.M. The quantity of water claimed is not clear. The
17 claim states that 32,005,710 cubic feet are used and 5 acre-feet per day for
18 120 days and 1/2 acre-foot per day for 245 days. The date of first water
19 use shown on the claim is December 1, 1971, but it is clear from reading a
20 letter attached to WRC 054006 that is the date the Krafts personally first
21 used water. The chain of title submitted as Exhibit DE-472 shows that the
22 Krafts obtained the land in November of 1971. Mr. Denning did not explain
23 the difference between the 45 acres for which Mr. Kraft asserted a right on
24

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1 WRC No. 054006 and the 85 acres to which he is asserting a right in this
2 proceeding. He testified that 85 acres have always been irrigated.

3 Mr. Denning provided very little testimony about water use on the land
4 prior to his purchase. The chain of title shows that at the time of the
5 Schnebly v. Huss decree all of the NE $\frac{1}{4}$ of Section 24 was held by G. E.
6 Cooper, Uriah White, William Corse and Bernard Desmond. The Findings of
7 Fact and Conclusion of Law that preceded the decree also shows that those
8 parties jointly owned the NE $\frac{1}{4}$ of Section 24 and had appropriated water for
9 irrigation in 1881 or 1882, which would be under Class 6. The Findings of
10 Fact also found that one-half inch of water, or 0.01 cfs, was sufficient to
11 irrigate each acre. The decree awarded a Class 6 right for 80 inches to
12 Cooper/White/Corse/Desmond. The Referee notes that these parties also owned
13 land in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M. and were awarded a
14 40 inch Class 8 right for that land.

15 The evidence shows that a water right was established for the
16 claimants' land and recognized in the Schnebly v. Huss decree. Evidence of
17 continued beneficial use of that water from the time of the decree until
18 1971 is lacking. However, the information on WRC No. 054006 would indicate
19 that the Krafts used water after they acquired the land in 1971 and Mr.
20 Denning's testimony shows that use of the water continued up to the time of
21 the evidentiary hearing. Although it appears that water rights were
22 established for all of the land now owned by the Dennings, WRC No. 054006
23 only asserts a right to irrigate 45 acres, which is the number of acres that
24 Ecology estimates lies above the KRD lateral that enters the property.

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1 There is no evidence that the claimant has attempted to amend WRC No. 054006
2 through the procedures provided in RCW 90.14.065. While the Court has given
3 the Referee some latitude in interpreting 90.14 claims, it would not be
4 appropriate to recommend confirmation of a water right for irrigating twice
5 the number of acres identified in WRC No. 054006.

6 Therefore, based on the foregoing, the Referee recommends that a right
7 be confirmed with a June 30, 1881, date of priority for the diversion of
8 0.45 cubic foot per second, 180 acre-feet per year for the irrigation of 45
9 acres and stock water in that portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 24, T. 18 N.,
10 R. 19 E.W.M. lying north of the KRD lateral.

11
12 COURT CLAIM NO. 02048 -- Janeice A. Diefenbach
13 & Robert G. Diefenbach

14 Court Claim No. 02048 was filed asserting a right to use an unnamed
15 spring for domestic supply. Janeice Diefenbach testified at the evidentiary
hearing.

16 The Diefenbachs own land in the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 3, T. 16 N.,
17 R. 19 E.W.M. The spring that they use is located just south of their
18 property, approximately 920 feet north and 1300 feet east of the southwest
19 corner of Section 3, in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3. The spring is piped
20 across a draw to a cistern and then piped to two houses and a potato shed.
21 There also are outside spigots on the line. The spring is used for domestic
22 supply in the two houses, stock watering, filling a tank sprayer and washing
23 potatoes before they are stored in the shed. Overflow from the spring goes
24 into a Kittitas Reclamation District (KRD) spillway. The KRD pump lateral
25

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1 forms the southerly border of their property. The Diefenbachs irrigate
2 their property with KRD water and are assessed for 32 acres. The home that
3 the Diefenbachs live in was built at least 60 years prior to the hearing and
4 perhaps as much as 90 to 100 years. Merrill Dodge, whose family used to own
5 the property, grew up on the property and returns to visit every year. The
6 testimony suggested Mr. Dodge was in his 60's. Mrs. Diefenbach did not
7 testify to when the second home was built. The home she lives in was
8 originally not much more than a one room shack and has been remodeled and
9 expanded over the years.

10 Prior owners of the Diefenbach's property obtained permission from N.
11 N. Eaton to use the spring in exchange for allowing Eaton access across
12 their land to a portion of the Eaton property. It is not clear when that
13 agreement was reached. The Diefenbachs have owned the property since 1955,
14 so it was sometime prior to that.

15 RCW 90.14 was passed by the legislature in 1967 and requires that any
16 one claiming a right to use water predating the water codes had to file a
17 claim documenting their water use. Failure to file a claim waived and
18 relinquished any right that may have existed, see RCW 90.14.071. If use of
19 this spring began prior to June 6, 1917, then a claim should have been filed
20 as required in RCW 90.14 in order for any right that was established to
21 continue to be valid. If the water use began after June 6, 1917, then the
22 permitting procedures in RCW 90.03 (the Surface Water Code) should have been
23 followed and a permit and certificate obtained for the water use. After
24 June 6, 1917, the only mechanism for establishing a water right was under
25

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1 the permitting procedures in RCW 90.03. The Referee could find no evidence
2 of either a claim filed by the Diefenbachs pursuant to RCW 90.14 or a
3 permit/certificate issued under RCW 90.03.

4 As a result of the foregoing, the Referee cannot recommend that a water
5 right be confirmed under Court Claim No. 02048.

6 COURT CLAIM NO. 00190 -- Gerald Dodge
7 (A) 06383
8 00191
9 (A) 02101
10 (A) 02102
11 (A) 06384

12 Gerald Dodge filed Court Claim No. 00190 asserting a right to use
13 waters from Cooke Creek for irrigation and stock watering. Court Claim No.
14 00191 was filed asserting a right to use water from Park(e) Creek (also
15 known as Cherry Creek). Mr. Dodge, represented by Attorney Jeff Slothower
16 testified at the evidentiary hearing. Additionally, Mr. Dodge hired Richard
17 C. Bain, Jr., a consulting engineer, to prepare engineering reports for his
18 land. Two reports were prepared and have been entered as direct expert
19 testimony and marked as Exhibit No. DE-1390 and DE-1391.

20 Mr. Dodge owns two non-contiguous parcels, one irrigated from Cooke
21 Creek and the other irrigated from Park(e) Creek. The land irrigated from
22 Cooke Creek lies in the NW $\frac{1}{4}$ of Section 21, T. 17 N., R. 19 E.W.M. lying
23 southwesterly of Ferguson Road and northwesterly of Cooke Creek. Mr. Dodge
24 has owned this property since 1960 and irrigates 114 acres with water
25 diverted from Cooke Creek. The diversion is located in the NW $\frac{1}{4}$,NE $\frac{1}{4}$ of
26 Section 21. Mr. Bain measured the quantity of water diverted from Cooke

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1 Creek in 1991 and an average of 6.05 cfs was diverted. Based on this
2 diversion quantity and irrigation practices of the claimant, Mr. Bain
3 determined that 15.0 acre-feet per acre was being used to irrigate the
4 land. The land is primarily planted in hay and is rill irrigated with
5 concrete ditches and gated pipe. The soil has a high pH level and Mr. Dodge
6 is seeking a right for sufficient water to flood the fields after the last
7 hay cutting to wash alkali from the soil. Livestock are also on the
8 property at various times during the year. A herd of up to 3,000 sheep
9 graze the hay stubble for several weeks in the fall. Additionally, 50
10 cow/calf pairs are on portions of the claimant's land all year. Mr. Dodge
11 diverts water for stock watering, as the banks of the creek are too steep in
12 places so the livestock are fenced from the creek.

13 Two water right claims were filed by Mr. Dodge pursuant to RCW 90.14
14 for use of Cooke Creek. Water Right Claim (WRC) No. 154330 asserts a right
15 to use 3 cubic feet per second, 460 acre-feet per year for the irrigation of
16 115 acres in part of the W½NE¼, NW¼ and N½SW¼ of Section 21, T. 17 N.,
17 R. 19 E.W.M. The point of diversion described is at the approximate
18 location of the diversion being used at the time of the evidentiary
19 hearing. WRC No. 200024 was filed by Mr. Dodge under the provisions of RCW
20 90.14.043 and 90.14.044. It claims a right to divert 5 cubic feet per
21 second, 6 acre-feet per year for irrigation of 115 acres and stock water.
22 The Referee believes that Mr. Dodge's intent was to claim a right to use 6
23 acre-feet per year for each irrigated acre, not a maximum of 6 acre-feet per
24 year. The place of use described on the claim is portions of the NE¼NW¼,
25

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1 NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T. 17 N.,
2 R. 19 E.W.M. The Referee notes that the land irrigated by Mr. Dodge with
3 Cooke Creek water is in Section 21 not Section 22. WRC No. 200024 was filed
4 during 1985, when RCW 90.14 was modified by the legislature to allow filing
5 of water right claims following certification by the pollution control
6 hearings board. RCW 90.14.044 provided that any claim filed pursuant to a
7 certification by the pollution control hearings board shall not affect or
8 impair in any respect whatsoever any water right existing prior to July 28,
9 1985. Therefore, any right that is confirmed based on a claim filed under
10 RCW 90.14.043 shall contain that provision.

11 The land owned by Mr. Dodge in Section 21 was settled by several
12 individuals. The land in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 is part of
13 land settled by J. D. Olmstead, who received a patent on August 20, 1889.
14 The land in the S $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 was settled by William
15 Montgomery, who received a patent on February 3, 1902. A deed is in the
16 record showing he sold this land to Margaret Montgomery on October 26, 1901,
17 before the patent issued. Mr. Dodge owns about ten acres in that portion of
18 the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 lying northwest of Cooke Creek. This is part of
19 the land for which Cornelius Hackshaw received a patent on June 5, 1873.
20 Lastly, Mr. Dodge owns 10 to 15 acres in that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
21 Section 21 lying northwest of Cooke Creek, which is part of the land for
22 which William Jordin received a patent on June 30, 1876.

23 Mr. Dodge points to a Notice of Water Right filed by J. D. Olmstead as
24 one of the basis for his claim to Cooke Creek water. The notice states that
25

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28

1 Olmstead was taking water from Dry Creek (which apparently was once the name
2 given to Cooke Creek) in the SW $\frac{1}{4}$ of Section 11 and carried it in a ditch
3 that runs southwesterly through Sections 10 and 16 to Section 21 and is used
4 to irrigate the NW $\frac{1}{4}$ of Section 21. The notice also states there are two
5 other ditches that take water out of Cherry Creek, which is the main
6 tributary of Dry Creek. The ditches take out in Section 15 and go in a
7 southerly direction to intersect Section 22. Reviewing State's Exhibit DE-2
8 leads the Referee to conclude that Cherry Creek described in the notice is
9 Caribou Creek, which is the only creek besides Cooke that flows through
10 Section 15. It is possible that in the late 1800's Park Creek flowed
11 through Section 15 and other claimants have used the name Cherry Creek to
12 describe Park Creek. According to Mr. Olmstead's notice, the ditches were
13 built in 1873 or 1874.

14 Although the Notice of Water Right states that water from Cooke Creek
15 is being used to irrigate the NW $\frac{1}{4}$ of Section 21, the evidence shows that
16 Olmstead actually owned the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21. There is nothing in the
17 record to allow the Referee to conclude that the Notice of Water Right was
18 intended to cover lands not owned by Mr. Olmstead. According to Mr. Dodge's
19 testimony, the Bain report (DE-1391) and Exhibit DE-1183 (an aerial photo on
20 which Mr. Dodge has indicated his irrigation system) the only land in the
21 NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21 that is irrigated with Cooke Creek water is that portion
22 lying below (south of) a cement ditch, which would be approximately 20
23 acres. The Dodge property in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21 north of the cement
24 ditch is irrigated with water delivered by the Ellensburg Water Company.
25

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1 The Olmstead Notice of Water Right does not cover any of the other lands
2 irrigated with Cooke Creek water.

3 Offered in support of the claim to a Cooke Creek water right for the
4 rest of the property are affidavits prepared by Leta Bates (formerly
5 Montgomery) and Andy E. Larsen and Martin Indermuhle. Mrs. Bates is the
6 daughter of William Montgomery who obtained a patent for most of the Dodge
7 property that is irrigated from Cooke Creek. Her affidavit states that she
8 lived on the property until 1911 and again in 1921 and that the farm was
9 irrigated with water from Cooke Creek. Her father specifically bought what
10 is called the Newland property because it had Cooke Creek water rights. The
11 Newland property is that portion of the Dodge property originally settled by
12 J. D. Olmstead. The Larsen/Indermuhle affidavit also recalls the Newland
13 place being irrigated from Cooke Creek.

14 Cooke Creek was previously adjudicated, State of Washington v.
15 Anderson, with a decree being entered by Kittitas County Superior Court in
16 1921. There were no rights awarded for the Dodge property in that decree.
17 Mr. Dodge points to Section 7 near the end of the decree to support his
18 claim to a water right. That section states:

19 That each of the parties to whom water is awarded under this decree,
20 and his or her successors, shall in no way prevent the waste and seepage
21 resulting from the irrigation of their said respective lands from returning
22 to the main stream of Cooke Creek for the benefit of those below.

23 This decree was entered in 1921, after adoption of the Surface Water
24 Code, and was a determination of all of the existing water rights for use of
25 Cooke Creek. Any rights not addressed in the decree could only have been
obtained through compliance with the application procedures of RCW 90.03.

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1 There is no evidence that Mr. Dodge, or his predecessor, complied with those
2 procedures. It may have been possible for a right to have been obtained for
3 use of the waters that returned to Cooke Creek under the provisions of
4 Section 7, however, that right could only have been obtained through
5 compliance with the permit procedures of RCW 90.03. Mr. Dodge is asserting
6 rights prior to 1900. Since the prior adjudication of Cooke Creek settled
7 all of the rights in existence at the time of that action, only those rights
8 reflected in the decree continued to exist after the decree was entered.
9 Attorneys for a few claimants have suggested that the adjudication only
10 addressed rights to Cooke Creek above the Cascade Canal. However, they have
11 provided no evidence to support that position. Additionally, the Referee
12 notes there are three or four water rights that were confirmed in the
13 adjudication for lands below the Cascade Canal.

14 Gerald Dodge was the appellant in the Court of Appeals case, Dodge v.
15 Ellensburg Water Co., 46 Wn. App. 77, 729 P.2d 631 (1986), which dealt
16 primarily with rights to use imported or foreign return flow waters. This
17 case is often cited by the Acquavella court when addressing issues related
18 to return flows. A footnote to the decision indicates that Kittitas County
19 Superior Court had concluded that Mr. Dodge had no right to the natural flow
20 of Cooke Creek based on the Anderson case. Mr. Dodge had challenged that
21 finding, however, the Court of Appeals did not reach a decision on that
22 issue, as they apparently concluded he was using foreign return flow, not
23 natural creek flow. Apparently Kittitas County Superior Court had also
24 concluded that there was no evidence Mr. Olmstead had ever used the water

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1 claimed in his 1882 notice and concluded Mr. Dodge had no rights through
2 Mr. Olmstead, Dodge v. Ellensburg Water Co., supra, at 82.

3 Neither Mr. Dodge nor his attorney addressed these findings of the
4 Court of Appeals and the Referee feels compelled to follow that direction.

5 Therefore, due to there being no right confirmed in Anderson for use of
6 Cooke Creek on the claimant's property, the Referee cannot recommend that a
7 water right be confirmed in this proceeding for use of Cooke Creek.
8 Following the direction of the Court of Appeals, any return flow or seepage
9 water that is in Cooke Creek as it flows by the Dodge property can be
10 diverted and used by Mr. Dodge. "Foreign water, once abandoned by its
11 developer, does not become part of the natural flow of the drainage area
12 where it is discharged and may be used by the first person who takes it,
13 Elgin v. Weatherstone, 123 Wash. 429, 433, 212 P. 562 (1923).

14 Mr. Dodge is asserting a right under Court Claim No. 00191 for the use
15 of waters from Park Creek. He irrigates the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23 and the
16 ENE $\frac{1}{4}$ of Section 22 with water diverted from Park Creek. Mr. Dodge has
17 owned the property since 1964. His brother's wife's grandfather, Louie
18 Larsen, owned it around 1900. Affidavits by Andy E. Larsen, Louie Larsen's
19 son, and Martin Indermuhle relate their memory of the land being irrigated
20 in the early 1900's. They both attended the Denmark School, which was near
21 the center of Section 23. They recall a dam being built each season to
22 allow water to be diverted from Park Creek for this property.

23 According to the Bain Report (DE-1390) water is diverted from Park
24 Creek at two locations on the Dodge property, one at the northeast corner
25

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1 and the other at the northwest corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23. Park
2 Creek flows along the north line of the NW $\frac{1}{4}$ of Section 23. Diversion 1 is
3 used to irrigate field 5, which appears to be the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23 and
4 would be 40 acres in size, and was measured at 3.44 cubic feet per second in
5 1991. Diversion 2 serves the rest of the irrigated land, about 112.4 acres,
6 and was measured at between 3.54 cfs and 3.84 cfs. Based on the measured
7 diversion rates and the claimant's irrigation practice, Mr. Bain estimated
8 that 13 acre-feet per acre per year is used to irrigate. The same livestock
9 figures were used for this part of the property as that irrigated from Cooke
10 Creek, leaving the Referee to conclude that whatever livestock the claimant
11 owns can be moved between the two farms. The Referee notes that the State's
12 investigation report of this part of the claim indicates that the diversions
13 are in Section 14, to the north of the claimant's property rather than on
14 the creek as it borders the property. There was no attempt at the hearing
15 to address the differences between the diversion locations described in the
16 Bain report and those described in the investigation report.

17 Water Right Claim No. 200023 was filed by Mr. Dodge asserting a right
18 to use 8 cubic feet per second, 6 acre-feet per year for the irrigation of
19 160 acres in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 23 and the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 22. The point
20 of diversion described is not legible. This claim was filed during 1985,
21 when RCW 90.14 was modified by the legislature to allow filing of water
22 right claims following certification by the pollution control hearings
23 board, RCW 90.14.043. RCW 90.14.044 provided that any claim filed pursuant
24 to a certification by the pollution control hearings board shall not affect

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1 or impair in any respect whatsoever any water right existing prior to
2 July 28, 1985. Therefore, any right that is confirmed based on a claim
3 filed under RCW 90.14.043 shall contain that provision.

4 Three individuals settled the land on which Park Creek water is used.
5 Daniel Wigle received a patent for lands that included the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
6 Section 23. The patent issued on November 25, 1879, and Mr. Wigle sold the
7 NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23 to Benjamin Lewis in 1880. Benjamin Lewis obtained a
8 patent on June 13, 1876, for lands that include the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23 and
9 the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22. Lewis sold the NE $\frac{1}{4}$ NE $\frac{1}{4}$ to E. D. Grewell in 1878.
10 E. D. Grewell received a patent on August 18, 1888, for lands that include
11 the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22. A receivers receipt dated June 23, 1886, is also
12 in the record for the land covered by the patent.

13 Mr. Dodge entered as exhibit DE-1190 a Notice of Appropriation of Water
14 filed by John W. Hayes, et al., filed on April 20, 1914. The document gives
15 notice that the signatories are appropriating and claiming all of the water
16 in the channel which constitutes the drainage channel of the flood waters of
17 what is known as the Johnson Canyon conveying said waters into the stream
18 known as Park Creek, including in the appropriation such flood waters and
19 all waste and seepage waters in said channel to the extent of 8 cfs for
20 irrigating the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23 and the E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22. Also in the
21 record is a copy of the decree in Olmstead v. Hays, et al., (1892), which
22 determined among other things, that J. D. Olmstead and John H. McEwen each
23 had one-half of all the waters of Park Creek. The lands on which Mr. Dodge
24 is using Park Creek water does not appear to have been owned by either

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1 Olmstead or McEwen at the time this case was decided. Clearly, any right
2 that would have been established in 1914 would have been subject to the
3 rights recognized in the 1892 decree, which may be why the Notice of Water
4 Right referenced the use of "flood waters". However, the United States on
5 May 10, 1905, withdrew all of the then unappropriated surface waters in the
6 Yakima River Basin, which would have included the waters of Park Creek or
7 Johnson Canyon. The Court in the Acquavella proceeding has ruled that the
8 only rights that could be established subsequent to 1905 are de minimus uses
9 that would not affect the Yakima Project. The Referee cannot determine that
10 the irrigation of over 150 acres is de minimus. The Referee also takes note
11 of the findings in Dodge v. Ellensburg Water Company concerning Cooke Creek
12 carrying only return flow and seepage water below the Town Ditch. Park
13 Creek is a much smaller creek whose headwaters are much lower in the
14 drainage than that of Cooke Creek. It is very likely that the only water
15 available in the creek after any rights reflected in the Olmstead v. Hays
16 decree are satisfied is return flow water for which a right cannot be
17 confirmed.

18 The evidence in the record leads to a conclusion that the only water
19 right that may have been established for use of Park Creek water on the
20 claimants land would have been after the Federal withdrawal of the
21 unappropriated waters of the Yakima River Basin. During the withdrawal
22 period, 1905 to 1951, only those waters released by the United States or
23 those whose use would not affect the Yakima Project, could be legally
24 appropriated. There is no evidence that the waters of Park Creek used by

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1 the claimant fit into either of those categories. Therefore, the Referee
2 cannot recommend that a right be confirmed for use of Park Creek. The
3 Referee also notes, that since the only RCW 90.14 claim on record for this
4 water was filed in 1985, any right that might issue would include a
5 provision that the use not affect any rights established prior to July 28,
6 1985.

7 COURT CLAIM NO. 01979 -- Steven Dowen, et al.
8 John Guyot
9 Scott Shelton
& Kay Shelton

10 Court Claim No. 01979 was filed asserting a right to use waters from
11 Park Creek for stock watering. On August 28, 1991, John and D. Kay Guyot
12 and Scott and Kay Shelton, all represented by Attorney Richard T. Cole,
13 were joined to the claim. Mr. Shelton and Mr. Guyot testified at the
14 evidentiary hearing.

15 The claim originally filed by Steven Dowen asserted a right to use Park
16 Creek for stock water in the Government Lots 1, 2, 3 and 4 of Section 4,
17 T. 17 N., R. 20 E.W.M. Government Lots 1 and 2 were subdivided in 1990 and
18 the Sheltons acquired Lot A of the survey recorded May 17, 1990, in Book 16
19 of Surveys at page 137, under Auditor's file No. 529256, which is all of
20 Government Lot 1 and a portion of Government Lot 2 of Section 4 and the
21 Guyots acquired Lots B and C of the same survey, which are in Government Lot
22 2 of Section 4.

23 Both parties receive water delivered by the Kittitas Reclamation
24 District (KRD) for irrigating their land and are not asserting a right to
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1 use any water out of Park Creek for irrigation. They raise cattle on their
2 land and the cattle, along with horses on the Shelton property, have access
3 to and drink from Park Creek. The livestock on the Shelton property also
4 drink from the KRD delivery ditches during irrigation season. Flow from a
5 spring enters Park Creek on the Guyot property and contributes to the water
6 available for stock watering. At the time of the hearing the Sheltons had
7 110 cow/calf pairs and seven horses and the Guyots had 42 head of cattle.
8 The number of livestock varies each year and the land can handle
9 considerable more than was on the property at the time of the hearing.

10 Several water right claims were filed pursuant to RCW 90.14 asserting a
11 right to use a stream and springs for stock watering.

12 Non-diversionary stock watering is covered by the stock water
13 stipulation discussed on page 4 of this report. Both the Sheltons and the
14 Guyots shall be placed on the list of claimants that enjoy stock water
15 rights under that stipulation. Rights held by the KRD for its patrons were
16 addressed in the Reports of the Court for KRD, Volumes 14 and 14A, and the
17 Conditional Final Order for KRD was entered in June of 1994.

18 There was no appearance at the hearing for any of the remaining land.
19 It is not clear whether Mr. Dowen continues to have an interest in any of
20 the land described in the claim, as Mr. Shelton testified that Gayle Redd
21 had received it all back from Mr. Dowen. Since there was no appearance in
22 support of the rest of the land described in the claim, the Referee can make
23 no recommendation concerning water rights for that land.

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1 COURT CLAIM NO. 00858 -- Ray L. Durgan
2 & Doris Durgan

3 Court Claim No. 00858 asserts a right to use waters from Cooke Creek,
4 Dry Gulch Creek and springs. The Durgans are represented by Attorney Vernon
5 E. Fowler. Ned Durgan, the claimants' son, testified at the evidentiary
6 hearing.

7 The Durgans own the NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19, T. 18 N., R. 20 E.W.M.
8 and are irrigating approximately 228 acres of crop land. The source of
9 their irrigation water is Cooke Creek, what they call Dry Gulch Creek (also
10 known as Trail Creek), springs and the Kittitas Reclamation District (KRD).
11 They are assessed by KRD for 225 acres. KRD is a major claimant in this
12 proceeding, whose rights were determined in the Major Claimant Pathway. The
13 claimants' submitted Exhibit DE-1467, which is a copy of a Conservation Plan
14 Map from 1976 on which they have marked the areas irrigated from each source
15 of water. According to the map, approximately 55 acres are irrigated from
16 Cooke Creek, 21 acres from Dry Gulch Creek, 18.2 acres from a spring area in
17 the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and 5 acres are irrigated from a spring near their home in the
18 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19. Water is currently diverted from Cooke Creek at a
19 point just north of Erickson Road, very close to the north quarter corner of
20 Section 19. However, both State's Exhibit SE-2 and Exhibit DE-70 entered by
21 the claimants show a second diversion from Cooke Creek about 1,000 feet
22 downstream within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19. Mr. Durgan testified that a
23 maximum of 3.5 cubic feet per second is diverted from Cooke Creek into an 18
24 inch steel piped that goes under Erickson Road and dumps into an open

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1 ditch. Water is diverted from Dry Gulch Creek in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19
2 at a maximum rate of 2.2 cubic feet per second and used to irrigate a 21
3 acre field. Three springs in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19 have been developed
4 with drain tile and piped to an excavated pond on which a 15 HP pump sits.
5 The pump feeds a pressurized sprinkler system that is used to irrigate 25
6 acres. Mr. Durgan estimates that the pump withdraws 0.50 cubic foot per
7 second from the pond and 131.5 acre-feet per year is used for irrigation. A
8 22 acre field in the northeast corner of the property is planted in timothy
9 hay and the rest of the cropland is pasture or grass hay that is pastured
10 after the first cutting. Livestock on the property drink from the variety
11 of water sources on the property, the irrigation ditches, directly from
12 Cooke Creek, Dry Gulch Creek, a spring and the pond, and from a watering
13 trough filled by the spring in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19 that is also used
14 for domestic supply and landscape irrigation. Livestock drinking directly
15 from the water sources, such as from the creeks and pond, is covered by the
16 stock water stipulation discussed on page 4 of this report. The Durgans
17 name is on the list of claimants entitled to a non-diversionary stock water
18 right under the stipulation.

19 The spring in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19 is developed with a 1 HP pump
20 that delivers water to an old barn, the house and a new shed. The spring
21 produces about 1.5 cfs, but only 0.50 cfs is actually used. About 5 acres
22 of lawn, garden and landscape area are irrigated from the spring. Mr.
23 Durgan estimated that 20 acre-feet per year is used for domestic supply and
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1 the landscape irrigation and 3.5 acre-feet per year is used for stock
2 watering.

3 Evidence of historical water use was limited to two court decrees put
4 into evidence by the claimants. The first, Exhibit DE-68, is a judgment and
5 decree in August Nesalhouse v. Sophia Walker and Caroline B. Walker dated
6 December 2, 1907. That decree resolved a dispute between the parties
7 concerning the use of waters from Dry Gulch Creek and found that their
8 rights were equal in both time and amount of water. The decree ordered that
9 the parties not interfere with each others use of water. Attached to the
10 decree was the first page of a Partial Findings of Fact, presumably issued
11 by the Court, although since the Referee only has the first page there is no
12 signature. The first three paragraphs describe the lands owned by each of
13 the parties. Caroline B. Walker owned the E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19,
14 T. 18 N., R. 20 E.W.M., which is now owned by the Dugans.

15 The second court decree resulted from the prior adjudication of Cooke
16 Creek, State of Washington v. Anderson. In that decree a Class 2 right,
17 with an 1870 date of priority was awarded to Cecil Johnson authorizing the
18 use of 2.3 cubic feet per second for the irrigation of 115 acres in the
19 E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19, T. 18 N., R. 20 E.W.M. Certificate No. 188
20 issued for this right authorizing diversions in the the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
21 Section 19, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, all in
22 T. 18 N., R. 20 E.W.M. The only diversion that apparently is still being
23 used in that in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, although the diversion being used
24 may actually be slightly north of the north section line of Section 19. The

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1 NE $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 7 is where Dry Gulch Creek/Trail Creek separates from
2 Cooke Creek. Having that point described as a diversion point would imply
3 that it is not a creek, but a ditch. However, all of the claimants have
4 referred to it as a creek, and the 1907 Nesalhouse v. Walker judgment also
5 named a creek, not a ditch. It is clear, however, that earlier adjudication
6 of Cooke Creek included water rights on Dry Gulch/Trail Creek. Many of the
7 certificates that issued authorized points of diversion on Trail Creek. The
8 Referee concludes that the claimant has a right to divert a maximum of 2.3
9 cubic feet per second from Cooke Creek and/or Dry Gulch Creek as long as the
10 total diversion from the two sources does not exceed 2.3 cfs. A maximum of
11 5 acre-feet per acre can be diverted during the irrigation season at that
12 rate. Mr. Durgan has testified to needing more water to irrigate the land,
13 however, it also appears that the diversions have exceeded the instantaneous
14 quantity authorized.

15 According to Mr. Durgan's testimony the three springs in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of
16 Section 19 were developed after his family acquired the land. The springs
17 existed as wet spots and subirrigated the area around the springs prior to
18 the development. There was no evidence presented on historic use of these
19 springs. The Referee does not have sufficient evidence to know whether the
20 springs existed prior to the surrounding area being irrigated and the KRD
21 canal being constructed less than half a mile above the springs. If the
22 springs are capturing return flow water from the Durgans irrigation
23 practice, no water right is needed to allow for the reuse of this water.
24 However, if the spring water is naturally occurring, a water right permit
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1 should have been acquired under the provisions of RCW 90.03, the Surface
2 Water Code. The Referee cannot recommend confirmation of a water right for
3 use of the springs, as there is no evidence to show that a right was legally
4 established for use of these waters.

5 A spring located near the Durgans' home is used for domestic supply,
6 lawn, garden and landscape irrigation and stock watering. There also was no
7 testimony about historic use of this water. It is not known whether the
8 Durgans' home is constructed where the original homestead would have been
9 located, which would be an indication of long time use. Mr. Durgan did
10 testify that the barn is very old, having been built with square nails.
11 There once was a windmill at the spring site, which may have been used to
12 withdraw water from the spring. Due to the age of the barn and the
13 testimony that a windmill had been at the spring site, it is reasonable to
14 conclude that the spring historically was used for stock watering. However,
15 more evidence concerning the location of the original homestead is necessary
16 in order to recommend that a right be confirmed for domestic supply.

17 Several water right claims (WRC) were filed pursuant to RCW 90.14, the
18 Claims Registration Act. WRC No. 002759 was filed on the spring that is
19 being used for domestic supply and stock watering. It asserts a right to
20 divert 3 cfs, 25 acre-feet per year for domestic supply, stock watering and
21 the irrigation of 5 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 19. WRC No. 002760 and
22 002761 were filed on the springs that have been developed and drain into the
23 pond. WRC No. 002761 asserts a right to use 1.25 cfs, 25 acre-feet per year
24 for stock water and the irrigation of 5 acres in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19 and
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1 WRC No. 002760 asserts a right to use 2.5 cubic feet per second, 50
2 acre-feet per year for the irrigation of 10 acres and stock water in the
3 SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19. Additionally, WRC No. 002763 was filed asserting a
4 right to use 3.75 cfs, 75 acre-feet per year from Dry Gulch Creek for the
5 irrigation of 15 acres and stock water in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19. Because
6 Certificate No. 188 issued for use of both Cooke and Dry Gulch Creek, filing
7 this claim was not necessary and cannot be considered to protect a right
8 beyond that contained in Certificate No. 188.

9 Based on the foregoing, the Referee recommends that a right be
10 confirmed for use of Cooke Creek/Dry Gulch Creek with a June 30, 1870, date
11 of priority for the diversion of 2.30 cubic feet per second, 575 acre-feet
12 per year for the irrigation of 115 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of
13 Section 19. The right will contain a provision that KRD water is also used
14 on the land. The Referee also recommends that a right be confirmed with a
15 June 30, 1870, date of priority for use of 0.05 cubic foot per second, 3.5
16 acre-feet per year from the unnamed spring in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19 for
17 continuous stock watering.

18 The Referee notes that the claimant also owns and irrigates lands in
19 Government Lots 1 and 2 of Section 19. There were no rights awarded in the
20 Anderson decree for this portion of the claimants' land. It appears that
21 only KRD water is being used on this land.

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1 COURT CLAIM NO. 00635 -- Timothy E. Eckert
2 & Marcia N. Eckert

3 Timothy E. and Marcia N. Eckert are successors to Court Claim No. 0635
4 which was originally filed by Eugene and Sally Jo Eckert on March 24, 1981,
5 and were represented by Attorney Hugh Spall at the evidentiary hearing. The
6 Court Claim asserts rights to use Naneum and Spring Creeks. Timothy Eckert
7 and his father Eugene testified at the hearing .

8 The Eckerts own the W½NW¼ of Section 27, T. 18 N., R. 19 E.W.M. They
9 irrigate this property with at least three sources of water. They assert
10 that the entire 80 acres was awarded 1.6 cfs of Naneum Creek water in the
11 Ferguson Decree No. 2607. Naneum Creek is in Subbasin No. 9 and the Eckers
12 participated in the Subbasin No. 9 hearing. Their claim to use Naneum Creek
13 water was addressed in the Report of Referee for Subbasin No. 9, which was
14 filed on June 29, 2000. Forty acres of this parcel are served water by the
15 Kittitas Reclamation District. Timothy Eckert testified that he also uses
16 water from a "channel" of Spring Creek (hereinafter referred to as Schnebly
17 Creek) to irrigate the eastern half of the said W½NW¼. This "channel"
18 traverses the claimant's property in a north-south manner. Mr. Eckert
19 mentioned that this was not the "main channel" of Schnebly Creek.

20 The evidence and testimony indicate that the "channel" of Schnebly
21 Creek on Mr. Eckert's property is not a natural creek channel, but instead a
22 ditch. Exhibit DE-1444 is an 1868 General Land Office survey map of T. 18
23 N., R. 19 E.W.M. The map shows the location of Schnebly Creek in 1868, and
24 it is clear that there was only one channel and it entered said Section 27
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1 about 1300 feet east of the Eckert property. It appears from testimony and
2 State exhibit map SE-2, that the origin of Mr. Eckert's Schnebly Creek ditch
3 water is from what Mr. Jim Schnebly has described in testimony as his
4 diversion #4 on Schnebly Creek. Diversion #4 is located near the southern
5 line of Section 15, T. 18 N., R. 19 E.W.M. Mr. Schnebly testified that he
6 diverts Schnebly Creek water at diversion #4 into an open ditch, and that
7 the upper part of the ditch is dry when he is not diverting water. SE-2
8 shows this ditch initially going west and then south to a point where it
9 enters the northeast corner of the Eckert property. Mr. Schnebly also
10 testified that due to return flows, water flows in the lower portion of Mr.
11 Eckert's ditch, even when water is not diverted from Schnebly Creek into the
12 ditch.

13 There is no RCW Chapter 90.14 Water Right Claim (WRC) in the record for
14 the use of Spring or Schnebly Creek water on the W½NW½ of Section 27, T. 18
15 N., R. 19 E.W.M. Mr. Eugene Eckert filed RCW 90.14 WRC No. 063562 on
16 January 17, 1974, for the use of Naneum Creek water on the said property.
17 Timothy Eckert testified that it was his opinion that his father intended to
18 cover both sources with this one claim. Eugene Eckert did not address this
19 issue when he testified. WRC No. 063562 clearly states Naneum Creek as the
20 source, and it includes only one point of diversion and it is not the
21 diversion #4 mentioned above. The 160 acre-feet claimed is much less than
22 the combined Naneum\Schnebly Creek use of 400 acre-feet mentioned in
23 testimony. There is no evidence on the face of the claim that would
24 persuasively indicate that Schnebly Creek was intended to be included as a

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1 source in addition to Naneum Creek. In addition, RCW Chapter 90.14 requires
2 a separate claim for each water source. Failure to file a claim waives and
3 relinquishes any right that may have existed, RCW 90.14.071.

4 Since there was no RCW Chapter 90.14 Water Right Claim filed to protect
5 any appropriative water right that may have existed on Schnebly Creek, the
6 Referee cannot recommend confirmation of a water right. The claimant's
7 stock may drink directly from any naturally occurring water source on their
8 property as provided for in the non-diversionary stock water stipulation on
9 page 4 of this report.

10 COURT CLAIM NO. 00597 -- Anita Edgar

11 Court Claim No. 00597 was originally filed by Joe M. and Sadie A.
12 Wright. On July 26, 1989, Clayton J. and Debbie G. Myers were substituted
13 for the Wrights. The Myers were represented by Attorney Jeff Slothower at
14 the hearing. Mr. Myers and Robert Paul, a neighboring landowner who farms
15 the land, testified at the hearing. On March 10, 1999, Anita Edgar was
16 substituted for the Myers.

17 The property consists of 67.10 acres and is described as the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and
18 the north 27.10 acres of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T. 18 N., R. 19 E.W.M. A
19 right is being asserted to irrigate and water livestock with water diverted
20 from Coleman Creek. There are two ditches that carry Coleman Creek water
21 for irrigating the land. Water is diverted from Coleman Creek near the
22 northeast corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M. and
23 carried in an open ditch to a slough in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34. Water is
24 then piped from the slough under Watson Road and carried through the

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1 claimant's property in an open ditch. Mr. Paul testified that approximately
2 2.5 cubic feet per second is used from this ditch a maximum of 60 days each
3 season for an annual use of 297 acre-feet per year. The easterly ditch will
4 carry water the entire year. The Referee's impression was that it continues
5 to capture return flow from neighboring fields into the winter months and
6 that maintains a flow for stock watering. The testimony did not lead the
7 Referee to conclude that Coleman Creek is actually diverted outside the
8 irrigation season. Coleman Creek water is used to irrigate 30 acres that
9 lie west of the most easterly ditch. Of the 30 acres irrigated with creek
10 water, 20 acres are in a hay and grain rotation and 10 acres are pasture.
11 The land lying east of that ditch is irrigated with water delivered by the
12 Kittitas Reclamation District (KRD). KRD is a major claimant in this
13 proceeding, whose water rights were determined by the Court through the
14 Major Claimant Pathway. The land irrigated with KRD water is also in
15 pasture. Livestock raised on the property drink from the irrigation
16 ditches. A minimum of 40 cow/calf pairs are raised kept year around, with
17 seasonal variations as high as 110 pairs.

18 Water is also diverted from a drain that has also been referred to as a
19 spring. The drain is on the Paul property in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34; it
20 is not clear whether the diversion from the drain is on the Paul property
21 north of Watson Road or on the claimant's property south of the road. The
22 testimony was that this drain captures return flow water from irrigation of
23 the Paul property with Coleman Creek water. During the presentation of the
24 testimony for the Paul claims, Court Claim No. 2091 and 2092, beginning on
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1 page 312, the testimony was the KRD water is also used on the property
2 around the drain. Undoubtedly the drain captures return flow that is the
3 result of application of Coleman Creek and KRD water. Mr. Paul testified
4 that 1.5 cubic feet per second is used from the drain for 60 days each
5 irrigations season, for an annual use of 178 acre-feet per year.

6 Water rights for this land were addressed in the Schnebly v. Huss
7 decree. At that time the land was owned by John E. Voice, who owned the
8 SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T. 18 N., R. 19 E.W.M. (160 acres
9 total). The decree awarded them a Class 4 right, which would have an 1877
10 date of priority, for the use of 80 inches of water from Coleman Creek. The
11 Findings of Fact that preceded the decree found that one-half inch of water
12 for each acre was sufficient. The claimants own 67 acres and one-half inch
13 for each acre would be 33.5 inches, or 0.67 cubic foot per second. Mr. Paul
14 testified to diverting considerably more water than this, however, in 1915
15 the extent of the right for this land was 0.67 cfs. There was no evidence
16 offered to show that additional water rights were transferred to this land.
17 Therefore, the Referee must conclude that the extent of the right is 0.67
18 cfs.

19 Pursuant to RCW 90.14, the Claims Registration Act, Joe M. Wright filed
20 two water right claims (WRC). WRC No. 031865 asserts a right to use 2 cubic
21 feet per second, 135 acre-feet per year from a spring for irrigation of 27
22 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and north 27.10 acres of the NE $\frac{1}{4}$ SW $\frac{1}{4}$. The section number
23 is not identified. The point of diversion is described as being in the
24 NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T. 18 N., R. 19 E.W.M., so the Referee concludes
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1 that is also the section number for the place of water use. The spring
2 location described is at the same approximate location as the diversion from
3 the drain to which Mr. Paul testified. WRC No. 031866 asserts a right to
4 use 2 cubic feet per second, 150 acre-feet per year from a slough for the
5 irrigation of 30 acres within the same place of use. The diversion is
6 located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, at the location where the pipe from
7 the slough enters the property. It is clear from the testimony that Mr.
8 Wright when completing WRC No. 031866 was describing the source of his water
9 as it enters the property, not the actual source of the water that fed the
10 slough. The Referee has often been faced with situations where the RCW
11 90.14 claim describes as the source of water the ditch being used and the
12 point of diversion as where the landowner withdraws water from the ditch,
13 rather than naming the actual creek and the point where water is diverted
14 from the creek into the ditch. The Referee believes this situation is very
15 similar and that RCW 90.14 has been substantially complied with.

16 The testimony by Mr. Paul was very clear that the spring being used is
17 actually a drain that captures at least in part Coleman Creek water. The
18 water right for use of Coleman Creek water on the claimants land is limited
19 to that which was awarded in the Schnебly v. Huss decree. That would
20 include the Coleman Creek water that is captured in the drain. The maximum
21 amount of water that can be used from the drain and/or the slough is 0.67
22 cubic foot per second. The Referee intends to confirm a right with a point
23 of diversion at the head of the ditch on Coleman Creek in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
24 Section 27.

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1 The Referee recommends that a right be confirmed under Court Claim No.
2 00597 with a June 30, 1877, date of priority for the diversion of 0.67 cubic
3 foot per second, 238 acre-feet per year for the irrigation of 30 acres and
4 stock watering from April 15 to October 15 in that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and
5 north 27.10 acres of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T. 18 N., R. 19 E.W.M. lying
6 west of the easterly lateral ditch.

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8 COURT CLAIM NO. 00537 -- Roy Edson
9 & June Edson

10 Court Claim No. 00537 was filed by the Edsons asserting a right to use
11 waters from an unnamed spring for irrigation of 3.2 acres and stock
12 watering. Mr. Edson testified at the evidentiary hearing.

13 The Edsons own about 3.5 acres in the northeast corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
14 Section 25, T. 17 N., R. 19 E.W.M. and a small sliver of land in the
15 NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T. 17 N., R. 20 E.W.M. They irrigate most the the
16 land from a drainage ditch that is fed by wastewater from neighboring land.
17 The neighboring land is irrigated with water delivered by Cascade Irrigation
18 District (CID). The Edsons are also assessed by CID. At one time the Edsons
19 owned considerably more land in Sections 25 and 30. Mr. Edson's parents
20 began leasing the land around 1920, ultimately purchasing it. Mr. Edson
21 testified that the land has been continuously irrigated since the Cascade
22 Canal was completed. He ultimately sold off all but the 3.5 acres they now
23 own. Rather than maintaining a ditch to his small parcel, he uses the
24 drainage ditch as his means of taking his Cascade water. The livestock on
25 his property drink directly from the drainage ditch. In so far as this

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1 ditch might carry any naturally occurring water, the non-diversionary stock
2 water use would be covered by the stock water stipulation discussed on page
3 4 of this report.

4 Water Right Claim No. 073522 was filed by Roy Edson for use of the
5 spring described in Court Claim No. 00537. Additionally, WRC No. 073521 was
6 filed for use of a second spring located 1120 feet south of the northeast
7 corner of Section 25.

8 The Referee concludes that the Edsons are using water delivered by the
9 CID and are utilizing drains off their neighbors land rather than a ditch
10 directly from the Cascade Canal. Since their land is assessed by Cascade,
11 no right beyond that awarded to Cascade Irrigation District in the Major
12 Claimant Pathway is needed. See Report of The Court for Cascade Irrigation
13 District, Volume 41, dated October 8, 1999.

14 Therefore, the Referee does not recommend that a right be confirmed
15 under Court Claim No. 00537.

16 COURT CLAIM NO. 02085 -- Ellensburg; City of

17 The City of Ellensburg filed Court Claim No. 02085 asserting the right
18 to use waters from several surface water sources in the Yakima River Basin.
19 The city was represented by Attorney Glenna Bradley-House and Thomas Chini,
20 the city's Public Works Director, testified at the Subbasin No. 10
21 evidentiary hearing.

22 The testimony offered at the Subbasin No. 10 hearing dealt exclusively
23 with the City of Ellensburg's contract with the U. S. Bureau of Reclamation
24 for 6,000 acre-feet per year from the Yakima River. The Referee notes that

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1 the City of Ellensburg appeared at the Subbasin No. 7 (Reecer Creek)
2 evidentiary hearing and presented testimony and evidence related to this
3 water right. The Report of Referee for Subbasin No. 7 (Reecer Creek),
4 Volume 23, which was filed on April 21, 1995, addressed the City of
5 Ellensburg claim beginning on page 87.

6 It does not appear that the city is pursuing an additional claim beyond
7 what was addressed in Subbasin No. 7 and the claim does not identify a
8 source of water or point of diversion located in Subbasin No. 10.
9 Therefore, the Referee does not recommend confirmation of a water right in
10 Subbasin No. 10.

11 COURT CLAIM NO. 01049 -- Loyal W. Erickson
12 & Flora B. Erickson
13 William G. Viert
14 Edgar Martinez
15 & Holli Martinez
Steve K. Franchini
& Diane M. Franchini

16 On August 20, 1981, Court Claim No. 1049 was filed by Loyal and Flora
17 Erickson for stock water and irrigation water from Coleman Creek. The
18 claimed place of use is the NE $\frac{1}{4}$ NW $\frac{1}{4}$, the S $\frac{1}{2}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$ of Section 13, all in
19 T. 18 N., R. 19 E.W.M. William Viert was joined as an additional party to
20 this claim on July 15, 1991. The Ericksons and Mr. Viert were represented
21 at the Subbasin 10 evidentiary hearing by their attorney Jeff Slothower.
22 Lee Fleury, the ranch manager, appeared and testified at the hearing on
23 behalf of both claimants, along with William Viert. Additionally, the
24 claimants hired Richard C. Bain, Jr., to prepare an engineering report for

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1 the property, which was entered as direct expert testimony and given Exhibit
2 No. DE-1389.

3 According to the paperwork filed to join William G. Viert, he purchased
4 the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and that portion of the E $\frac{1}{4}$ NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 13
5 lying north of the KRD Canal. On November 4, 1999, Edgar and Holli Martinez
6 were joined to the claim, having purchased the E $\frac{1}{4}$ NW $\frac{1}{4}$ and that portion of the
7 NE $\frac{1}{4}$ SW $\frac{1}{4}$ lying north of the canal and most of the land lying below the KRD
8 canal. On March 16, 2000, Steve K. and Diane M. Franchini were joined to
9 the claim, having purchased the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13. The Ericksons are
10 deceased and the paperwork filed with the Court suggests they sold all of
11 their land prior to their death. Their estate appears to have no interest
12 in the land or the claim.

13 Mr. Slothower requested that the Court Claim be amended to reflect the
14 testimony given by Mr. Fleury and Mr. Viert. An amendment that resulted
15 from this testimony is the identification of several springs that are
16 located on what is now the Viert property. The claim asserts a right to use
17 water from Coleman Creek for the irrigation of 280 acres in the the W $\frac{1}{4}$ SW $\frac{1}{4}$,
18 S $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13. Although the state's investigation report
19 indicates that water is diverted from Coleman Creek in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
20 Section 12, the Bain report and testimony, along with Map Exhibit SE-2
21 indicates that it actually is diverted in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12.
22 Approximately 30 acres in the W $\frac{1}{4}$ SW $\frac{1}{4}$ is irrigated with water diverted from
23 Coleman Creek and the rest of the land south of the canal is irrigated with
24 water delivered by KRD. Mr. Viert testified to irrigating 97.6 acres of

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1 land lying north of the KRD canal with creek water. The land is primarily
2 planted in hay and is rill irrigated. Mr. Bain's report indicates that 2
3 cubic feet per second is diverted from the creek and that 5.8 acre-feet per
4 acre is needed to irrigate the land. Mr. Viert testified that he has had
5 150 head of cattle on his property and the Bain report indicates that 8
6 acre-feet per year is needed for stock watering.

7 This land was part of four homesteads and all except the S $\frac{1}{4}$ SW $\frac{1}{4}$ of
8 Section 13 was owned by Henry Bryant and Elias Messerly by 1880. Most of
9 the claimant's property has been irrigated with Coleman Creek water using
10 the "Messerly and Bryant" ditch and diversion point. On April 7, 1871,
11 Henry Bryant and Elias Messerly dug a channel which connected Coleman Creek
12 with a dry, natural water course. This water course, known as the "Messerly
13 and Bryant Ditch" delivered Coleman Creek water to various properties
14 including the claimant's land. The point of diversion for this ditch is
15 located 1660 feet north and 267 feet east of the south quarter corner of
16 Section 12, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.

17 Water rights for most of the claimants' land were addressed in the
18 Schnebly vs Huss decree. The Findings of Fact that preceded the decree
19 shows that Coleman Creek water was first appropriated for the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$
20 and E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13 prior to 1873. This property was awarded 80 inches
21 (1.60 cfs) of first class water in the decree. The NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13
22 was awarded a Class 3 right, with a priority date of 1873 for 20 inches
23 (0.40 cfs) of water. About 4 acres in this 40 acre parcel are located above
24 the KRD Canal and continue to be irrigated with Coleman Creek water.

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1 Pursuant to the requirements of RCW 90.14, Water Right Claim No.
2 071431 was filed by L. W. Erickson for the diversion of 2 cfs from Coleman
3 Creek for the irrigation of 120 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13, and the
4 NW $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13, T. 18 N., R. 19 E.W.M. The point of diversion
5 described on the claim is 1490 feet north and 2730 feet west of the
6 southeast corner of Section 12. Although the described location is slightly
7 different than that in the Messerly and Bryant appropriation, the Referee
8 concludes the intent was to describe the same diversion. Neither the SW $\frac{1}{4}$ NW $\frac{1}{4}$
9 nor any of the land owned by the claimants below the KRD canal were
10 described on the claim. Failure to file a claim waives and relinquishes any
11 right that may have existed. Therefore, the only right that the Referee can
12 recommend is for the lands described in the 90.14 claim.

13 The Referee recommends that a right be confirmed on Coleman Creek to
14 William G. Viert and Edgar and Holli Martinez with an April 7, 1871,
15 priority date for the diversion of 0.80 cfs and 312 acre-feet for the
16 irrigation of 80 acres from April 1 through October 15. The place of use is
17 the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13, T. 18 N., R. 19 E.W.M. The point of diversion is
18 located 1660 feet north and 267 feet east of the south quarter corner of
19 Section 12, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.
20 The Referee cannot recommend confirmation of a right for the land lying in
21 the S $\frac{1}{2}$ of Section 13 because a 90.14 claim was not filed for that portion of
22 the former Erickson land, see RCW 90.14.071.

23 Mr. Viert asserted a right to use several springs on his property for
24 irrigation and stock water. These springs are located in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of

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1 Section 13; they are described in the state investigation report as "Spring
2 No. 1" and "Spring No. 2". The testimony indicates that the livestock drink
3 from the spring areas. The western most spring, "Spring No. 1", is located
4 1150 feet south and 800 feet west of the north quarter corner of Section 13,
5 being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, T. 18 N., R. 19 E.W.M. This
6 spring is used for domestic supply, irrigation and stock water. It was used
7 to fill buckets for domestic supply at the original Erickson homestead house
8 that was once located near the spring. That house has been moved to the
9 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13 and the spring was piped southward across the KRD where
10 it is used for domestic supply and stock water. The testimony did not
11 indicate when the house was moved and the spring piped. A limited right was
12 established for domestic supply when the spring was used to fill buckets for
13 domestic supply at the original location of the house. However, that was a
14 riparian right associated with the house's location at the spring site and
15 there was no diversion or delivery facilities. When the house was moved and
16 the spring piped over 3,000 feet an appropriation was initiated and
17 undoubtedly the amount of water used increased. In order for there to be a
18 water right for this use, it had to have been initiated prior to June 6,
19 1917, or a water right permit obtained under the provisions of the Surface
20 Water Code, RCW 90.03. There is no evidence either of those occurred.
21 Therefore, the Referee cannot recommend that a right be confirmed for
22 domestic supply from the spring.

23 Two distinct portions of the property are irrigated with water from
24 this spring. Mr. Fluery indicated a 20 acre area south of the KRD canal is
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1 irrigated with water from the spring. That area is in the E $\frac{1}{2}$ SW $\frac{1}{4}$ of
2 Section 13. It is piped across the KRD canal, but there was no testimony
3 about how much water is used to irrigate this land or when this use first
4 began. Spring water that is not piped across the KRD canal flows southerly
5 in a swale and ditches where it is used along with Coleman Creek water for
6 irrigation. Mr. Fluery's testimony was that land lying east of the pipe
7 from the spring is partially irrigated with spring water. The record does
8 not identify the number of acres irrigated from the spring, nor is the legal
9 description of the place of use clear in the testimony.

10 A second RCW Chapter 90.14 claim was filed by L. W. Erickson on
11 February 14, 1974. WRC No. 071432 was filed asserting a right to use an
12 unnamed spring described as being approximately where Spring No. 1 is
13 located. It asserts a right for the use of 0.5 cfs and 300 acre-feet for
14 irrigation of 40 acres, stock watering and domestic supply within the E $\frac{1}{2}$ NW $\frac{1}{4}$
15 of Section 13, T. 18 N., R. 19 E.W.M. The place of use describes where the
16 former homesite was located, but not where the current use is. It also only
17 describes the land above the KRD lateral.

18 Due to the lack of evidence on how many acres are being irrigated above
19 the KRD lateral with spring water and a specific legal description for those
20 acres and the need for more specific testimony about the method for
21 irrigating these lands and when the spring was developed, the Referee cannot
22 recommend that a right be confirmed for use of the spring for irrigation.

23 The eastern most spring, "spring No.2" is located 1150 feet north and
24 200 feet west from the center of Section 13, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of

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1 Section 13, T. 18 N., R. 19 E.W.M. The state investigation report notes
2 that water from this spring commingles with Coleman Creek water and is used
3 for irrigation and stock watering. However, in testimony this spring has
4 been described as being "kind of inactive", and it is not apparent that
5 water from this spring has been historically diverted for any particular use
6 or to any particular place. There was no RCW 90.14 claim filed for Spring
7 No. 2. Failure to file a claim waives and relinquishes any right that may
8 have existed, see RCW 90.14.071. Therefore, the only right that can be
9 confirmed for use of this spring is that covered by the stock water
10 stipulation discussed on page 4 of this report. The claimants' names are on
11 the list of those entitled to a non-diversionary stock water right under the
12 stipulation.

COURT CLAIM NO. 00771 -- Virginia L. Erickson
& Estate of Merle W. Erickson

15 A claim was filed with the Court asserting a right to use waters from a
16 natural drain for irrigation and stock water. Mrs. Erickson testified at
17 the evidentiary hearing.

Mrs. Erickson owns 4.27 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, T. 17 N., R. 19 E.W.M. Most of the land is irrigated with water delivered by Ellensburg Water Company (EWC). EWC is a major claimant in this proceeding, whose rights have been determined in the Major Claimant pathway, see page 7 of this report. Mrs. Erickson irrigates her lawn and garden area from a drain that flows along the western border of her property. A small pump delivers water into a sprinkler system. The drain

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1 has been enclosed by neighboring landowners, but is open through most of
2 her property. The drain that she uses collects waste water from
3 neighboring lands. Mrs. Erickson is the only claimant in the NW $\frac{1}{4}$ of
4 Section 16, so it is likely that the only water being used on the
5 neighboring land is that delivered by EWC. A note attached to the Court
6 claim states that a prior owner of the claimant's property constructed the
7 drain in 1965 to improve his farm ground. The farm was divided in 1972
8 into three small parcels and sold.

9 Water Right Claim No. 021624 was filed by the Ericksons pursuant to RCW
10 90.14 asserting a right to use 50 gallons per minute, 10 acre-feet per year
11 from the drain for irrigation of 5 acres. Mrs. Erickson testified that the
12 land had water rights dating back to 1910 when a document was recorded in
13 Book 3 of Water Rights, page 41, giving the land the right to waste and
14 seepage water. A copy of that document was not provided.

15 Mrs. Erickson's testimony indicates that the drain being used to
16 irrigate her lawn and garden area was first constructed in 1965. If
17 naturally occurring water was being diverted and used, a water right permit
18 should have been obtained under the permitting provisions of RCW 90.03.
19 However, the Referee concludes that the water in this drain is not
20 naturally occurring water. The drain most certainly captures return flow
21 water created through the delivery of EWC water to surrounding land. Water
22 rights cannot be established for the use of foreign return flow, which
23 return flow generated from use of EWC would be. See page 8 of this report
24 for a discussion on return flow water. Mrs. Erickson is at liberty to
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1 continue using the drain, but the Referee cannot recommend confirmation of
2 a water for that use. It may be that she is actually using the drain as a
3 method of delivery of her EWC water if she owns sufficient shares to
4 irrigate all of her property, including the lawn and garden.

5 COURT CLAIM NO. 00613 -- Keith R. Eslinger
6 & Karen E. Eslinger

7 The Eslingers filed a claim with the Court for use of waters from
8 Caribou Creek and Park/Brush Creek. The claimants are represented by
9 Attorney Vernon E. Fowler, Jr. Mr. Eslinger testified at the evidentiary
10 hearing. Richard C. Bain, Jr., an engineer hired by the claimants prepared
11 an engineering report for the property, which was entered as written expert
12 testimony and assigned exhibit number DE-1382.

13 The Eslingers own 202 acres in the W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and a
14 portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T. 17 N., R. 19 E.W.M. They are
15 asserting a right to irrigate 175.3 acres with water diverted from either
16 Caribou Creek or the combined flow of Park and Brush Creek. An additional
17 14.7 acres in the S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22 are irrigated with
18 water delivered by the Ellensburg Water Company (EWC). The Eslingers own 11
19 shares in EWC, which is a major claimant, whose rights were determined in
20 the Major Claimant Pathway (see page 7 of this report). All of the land is
21 planted to timothy hay with a grain rotation and is rill irrigated.
22 Livestock, generally a herd of 2,000 sheep, graze the stubble for a few
23 weeks in the fall. The sheep drink from the creek in places and also from
24 the irrigation ditches.

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1 Water is diverted from Park Creek about 550 feet west of the northeast
2 corner of Section 22. Initially the ditch from this diversion carries water
3 not only for the Eslinger property, but also for the neighboring Rosbach and
4 Paul Sorenson properties. Park Creek is used to irrigate 160.3 acres. Mr.
5 Bain measured the diversion on Park Creek in June of 1990 at 4.31 cubic feet
6 per second and estimated that in August of 1990 4.54 cubic feet per second
7 was diverted based on measurements of the two farm ditches. However, the
8 report also says that the two ditches were measured at 2.32 cfs and 4.19
9 cfs, which would total 6.51 cfs. Based on the claimants' irrigation
10 practice, Mr. Bain's report indicates that 12.6 acre-feet per acre is needed
11 to irrigate Timothy hay on the claimants' land. Water is diverted from
12 Caribou Creek in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22 and used to irrigate 15 acres in
13 the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and a small portion the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22. Mr. Bain's report
14 indicates that 2 cfs is diverted from this point, however, it does not
15 indicate the basis for this quantity. The diversion from the creek was not
16 measured.

Pursuant to the requirements of RCW 90.14 Keith Eslinger filed two water right claims (WRC) for his property. WRC No. 060683 asserts a right to use 4 cfs, 900 acre-feet per year from Park and Brush Creeks for the irrigation of 202 acres in the W $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and portions of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T. 17 N., R. 19 E.W.M. The described point of diversion is in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22. WRC No. 060685 asserts a right to use 2 cfs, 158 acre-feet per year from Caribou Creek for the irrigation

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1 of 35 acres in a portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22. The described point
2 of diversion is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22.

3 Most of the claimants' land has been in their family since the late
4 1800's. A patent issued on July 1, 1874, to Jennie Olmstead for the W $\frac{1}{4}$ NE $\frac{1}{4}$,
5 SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22. A patent issued on June 5, 1873, to J. D.
6 Olmstead for lands that included the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22. According to the
7 Court's Decision in Olmstead v. S. Hays, et al., J. D. Olmstead owned or
8 controlled land described in both patents at the time of that case in 1892.
9 J. D. Olmstead was awarded a right to use one-half of one-fifth of the flow
10 in Brush Creek and one-half of the flow in Park Creek above the confluence
11 of Brush and Park Creek. Neither the decision or the decree indicated how
12 much water was flowing in either of the creeks, so the right awarded to
13 Olmstead was not quantified. According to Mr. Eslinger's testimony, Mrs.
14 Eslinger's great-grandfather (Joseph Preece) acquired the land in 1899 from
15 Olmstead and it has been in her family since. Exhibit DE-54 is a copy of a
16 Notice of Appropriation filed by Joseph Preece on June 4, 1913, claiming a
17 right to all unappropriated water flowing in a certain slough intersecting
18 the county road near the southwest corner of Section 14, T. 17 N.,
19 R. 19 E.W.M. and all waste and seepage water flowing therein to the extent
20 of 2 cfs for the purpose of irrigating the W $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
21 Section 22. Park Creek flows near the southwest corner of Section 14. At
22 the time this notice was filed, the unappropriated surface waters in the
23 Yakima River Basin had already been withdrawn by the Federal government for
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1 the proposed Yakima Project, so it was not possible to initiate a new water
2 right at that time.

3 Not pointed to by the claimant is a complaint filed in 1919 against
4 Joseph Preece concerning his use of water, which was entered as Exhibit No.
5 DE-1372 by Paul Sorenson. The complaint was filed by George and Rebecca
6 Donald and George and Maymie Ferguson seeking a order against the defendants
7 use of water from Brush or Cherry Creek, (the Referee believes Park Creek).
8 Unfortunately, the resolution of this complaint is not in the record.
9 However, along with the complaint is Joseph Preece's answer and affidavits
10 in support and in defense of the complaint. The defendants were successor
11 owners of some of the land homesteaded by J. D. Olmstead and allege that
12 Preece constructed a dam that obstructed their use of Brush Creek. The
13 answer by Preece suggests that the only water to which he had a right to
14 use was that delivered by Town Ditch and that the only water in the creek
15 was water being placed in the creek from Town Ditch or seepage and return
16 flow water from that ditch and the Cascade Canal. Affidavits filed by
17 Intervenor George W. Reed and John O. Sorenson support that assertion. The
18 Referee concludes that the disposition of this case is very important to
19 determining whether the claimants' land has a right to use water from Park
20 Creek. If the only water being used on the claimant's land in 1919 was
21 water delivered from Town Ditch or seepage and return flow water from lands
22 irrigated with EWC or Cascade Irrigation District water, a right may not
23 exist for use of Park Creek.

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1 The claimant is also seeking a right to use Caribou Creek. A copy of
2 the Findings of Fact and Conclusions of Law in Mary A. Clerf v. Robert I.
3 Scammon, was entered as Exhibit DE-55, however, the Referee cannot find
4 where the claimants' predecessor was a party to that case or that the land
5 now owned by the claimants was awarded a right. The claimant cites to a
6 Notice of Water Right filed by J. D. Olmstead on June 13, 1882 (Exhibit
7 DE-49) as a basis for their right. However, that notice indicates that the
8 water is used on land owned by Olmstead in the N $\frac{1}{2}$ of Section 21, not in
9 Section 22. Other claimants in this proceeding have put into the record
10 documents that show that J. D. Olmstead did in fact own property in the N $\frac{1}{2}$
11 of Section 21. The notice does state that a ditch from Cherry Creek (the
12 record indicates that Caribou Creek was once locally called Cherry Creek)
13 does intersect Section 22, but it does not indicate that Olmstead is
14 claiming a right or using water in that section. The Referee concludes
15 there has been insufficient evidence presented to show that a right was
16 established for use of Caribou Creek.

17 Based on the foregoing, the Referee cannot recommend confirmation of
18 any diversionary water rights under Court Claim No. 00613. Livestock
19 drinking directly from Park Creek is covered by the stock water stipulation
20 discussed on page 4 of this report and the claimant's name shall be included
21 on the list of those holding a right under the stipulation. If the claimant
22 pursues an exception, information about the flow characteristics of Park
23 Creek and the influence of return flow on the creek would be important to
24 assessing the extent of any right that may exist.

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1 COURT CLAIM NO. 01813 -- Thomas J. Fenz
2 & Nancy L. Fenz

3 Court Claim No. 01813 was filed asserting a right to use an unnamed
4 spring, runoff and waste water for stock watering. The claimants are
5 represented by Attorney Richard T. Cole and Mr. Fenz testified at the
6 evidentiary hearing.

7 At the hearing the claim was amended to include irrigation of 40
8 acres. The claimants own the W $\frac{1}{4}$ SE $\frac{1}{4}$ lying west of a KRD turbine lateral, the
9 E $\frac{1}{4}$ SW $\frac{1}{4}$, Government Lot 2 (NW $\frac{1}{4}$ NE $\frac{1}{4}$) and the SW $\frac{1}{4}$ NE $\frac{1}{4}$, all in Section 1, T. 16 N.,
10 R. 19 E.W.M. They are claiming a right to irrigate 40 acres lying in the
11 W $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1. The spring area was developed in 1975 by digging a
12 trench in which the water collects and pumping to an irrigation system. The
13 land is irrigated with 2 wheel lines. Mr. Fenz estimated they were using
14 slightly more than 1 cubic foot per second and that the spring flows about 2
15 cubic feet per second. The livestock on the property, which has been as
16 much as 2,000 head of sheep or 200 cow/calf pairs, drink directly from the
17 trench. The land is planted in hay and grain. In addition to the 40 acres
18 that are irrigated from the spring/trench, 30 acres are irrigated with water
19 delivered by the Kittitas Reclamation District (KRD).

20 A priority date of 1914 is being asserted, based on the date that the
21 Federal government issued a patent to Northern Pacific Railroad for this
22 land. The railroad continued to own the land until between 1934 and 1936
23 when portions of it were sold to three different individuals. In 1973 the
24 claimants acquired the land. There are no RCW 90.14 claims in the record

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1 for use of the spring on the claimant's land. This is not surprising since
2 the period for filing claims under RCW 90.14 was from 1969 through June 30,
3 1974. Since the spring was not developed and put to use until 1975, the
4 only mechanism for establishing a water right, if one could be established,
5 was through the permit procedures in the Surface Water Code, RCW 90.03. It
6 does not appear that the Fenzes followed that procedure.

7 The Referee also believes that the water source is not a natural
8 spring. There are three KRD laterals that traverse the hillside above the
9 spring and the testimony of other claimants in this part of the subbasin is
10 that water seeps from the laterals recharging springs that did not flow
11 prior to construction of the KRD laterals. There was no testimony about the
12 history of this land, but since the spring was not developed until 1975 and
13 there is no water right permit or certificate, the history is not relevant.

14 As a result of there being no permit or certificate for use of this
15 water and the likelihood that it is KRD water, the Referee cannot recommend
16 that a right be confirmed. To the extent that livestock drink from the
17 spring source, that use is covered by the stock water stipulation discussed
18 on page 4 of this report.

19 COURT CLAIM NO. 00683 -- Norma M. Flach

20 Court Claim No. 00683 was filed asserting a right to use waters from
21 Cooke Creek and a small creek east of Cooke Creek -- that creek is known as
22 Sheep Creek or Trail Creek. At the evidentiary hearing the claim was
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1 amended to also assert rights to use several unnamed springs. Norma Flach
2 and her children, Lannett and Ron Flach, testified at the evidentiary
3 hearing. Mrs. Flach is represented by Attorney Richard T. Cole.

4 Mrs. Flach owns the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7,
5 and the E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, all in T. 18 N.,
6 R. 20 E.W.M. Approximately 170 acres, planted in hay and pasture, is
7 irrigated with water diverted from Cooke Creek, Trail Creek, Caribou
8 (Cherry) Creek and several ponds constructed at spring locations. The
9 Flachs acquired the land in 1960, however, Mrs. Flach was somewhat familiar
10 with the land since 1932 when her family began living a couple miles above
11 the property. She would frequently go by the land and was aware of it being
12 irrigated consistently over the years. The land is above KRD's Highline
13 Canal, so the only water available for use is naturally occurring water in
14 the creeks and springs.

15 Mrs. Flach's home is located in the southeast corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
16 Section 7. Water for in-house domestic supply comes from a spring that is
17 400 or 500 hundred feet northeast of the house. Water is conveyed to the
18 house by gravity flow, where a pump is used to pressurize the system.
19 Occasionally water from the spring is used to fill buckets to water plants
20 outside, but that is rarely done, as the spring supply is barely adequate
21 for the house during many months. Water for lawn and landscape irrigation
22 generally comes from Trail Creek, which flows approximately 100 feet west of
23 the house. Water is pumped from the creek with a 1 HP pump for about
24 one-quarter acre of irrigation around the house. The testimony indicates

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1 that the water systems were in place for the house and landscape irrigation
2 at the time the Flachs bought the land in 1960.

3 RCW 90.14 requires that a water right claim be filed for any use of
4 water initiated prior to adoption of the water codes for which a certificate
5 has not issued. Cooke Creek has been previously adjudicated and
6 certificates issued for the rights awarded in that adjudication. Commonly,
7 springs were not addressed in the adjudications conducted in the early
8 1920's and review of the decree confirms that there were no water rights
9 awarded for use of springs. Therefore, in order to protect any right that
10 may have existed for use of the spring, a water right claim had to have been
11 filed. Harold Flack, Mrs. Flack's late husband, filed three water right
12 claims for use of springs in Section 18, however, there was not a claim
13 filed for use of the spring in Section 7 that supplies the house. Failure
14 to file a claim waives and relinquishes any right that may have existed, RCW
15 90.14.071. Due to the failure to file an RCW 90.14 claim, the Referee must
16 find that any right that may have existed has relinquished and cannot
17 recommend that a right be confirmed in this proceeding.

18 There are six springs on the Flach property that have been developed
19 for use. Mrs. Flack testified that at the time she and her husband
20 purchased the property the springs were undeveloped and either formed a
21 marshy area or just drained back into the ground. In 1961 Mr. Flack
22 constructed ponds at each spring location. The water for these ponds is
23 pumped, using a portable 12 HP pump, into the irrigation system on the
24 property. Four-inch aluminum handlines with 15 sprinklers are used to

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1 irrigate from the ponds. Ron Flach does the irrigation on the property and
2 he did not testify to the quantity of water withdrawn from the ponds with
3 the 12 HP pump. The claimant put in the record Exhibit DE-1459 which is a
4 hand-drawn map of the portions of Sections 7 and 18 owned by the Flachs. On
5 the map is marked the spring locations. All of the springs, except No. 4,
6 are located in Section 7. Springs 1, 2, and 3 are in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 7
7 and springs 5 and 6 are in the N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7. Spring No. 4 is very
8 close to the section line between Sections 7 and 18, but appears to be in
9 the N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18.

10 WRC No. 135134, 135135, and 135136 were filed by Harold Flach. They
11 assert a right to use springs in the NE $\frac{1}{4}$ of Section 18, but none of the
12 springs locations described in the claims are near spring 4. The three
13 spring locations are in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18. As
14 previously mentioned, failure to file a claim relinquishes any right that
15 may have existed. However, the evidence leads the Referee to conclude that
16 water rights do not exist for using the springs/ponds. According to the
17 testimony, the springs were developed and first used for irrigation in
18 1961. At that time, and since 1917, the only way to obtain a water right
19 for use of a surface water source was through the permit process in RCW
20 90.03.260 et seq. There is no evidence that a permit was obtained for use
21 of these sources. As a result the Referee does not recommend that water
22 rights be confirmed for use of the unnamed springs.

23 The claimant is using Cooke Creek and Trail Creek, sometimes called Dry
24 Creek, for the bulk of her irrigation. Although counsel indicated that
25

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1 Trail Creek has not been adjudicated, the Referee concludes that Trail Creek
2 is a branch or connected to Cooke Creek, so the adjudication of Cooke Creek
3 and its tributaries includes Trail Creek. Since there were no RCW 90.14
4 claims filed by Mr. Flach for Trail Creek, the only possibility for
5 confirmation of a water right for use of that creek is by considering it to
6 be part of Cooke Creek. That determination would allow the Referee to
7 conclude that some of the certificates that issued for the claimant's land
8 from that adjudication could allow for use of Trail Creek and Cherry Creek.

The following certificates from the Cooke Creek adjudication are appurtenant to the claimant's land: Certificate No. 174, a Class 3 right with an 1871 date of priority, authorizes the diversion of 0.24 cubic foot per second for the irrigation of 12 acres in that part of the N $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T. 18 N., R. 20 E.W.M. not belonging to M. D. Cooke (specifcics of what is owned by M. D. Cooke to be discussed later in this report when Certificate No. 180 is described). The authorized point of diversion is in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T. 18 N., R. 20 E.W.M. Following review of the record, the Referee concludes that the claimant owns the land described in this certificate and is irrigating at least 12 acres within the place of use. The point of diversion described in the certificate is at a point where the Trio Ditch meets an unnamed stream that becomes part of Trail Creek. The Trio Ditch diverts from Cooke Creek in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, flows south and then east until it either crosses or intercepts this stream and then continues south parallel with the east line of Section 7. None of the testimony addressed the physical setting in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, nor

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1 was there any testimony that would allow the Referee to know if historically
2 the ditch system has been the same or if it has been changed over the
3 years.

4 Certificate No. 175 is a Class 8 right with an 1880 date of priority.
5 It authorizes the diversion of 0.64 cubic foot per second for the irrigation
6 of 32 acres in the W $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 18, T. 18 N., R. 20 E.W.M.
7 The point of diversion authorized is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7. The only
8 water course in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7 is the stream that ultimately flows
9 into Trail Creek. The exhibits in the record do not show a diversion in the
10 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7. The lands in Section 18 appear to be irrigated from
11 diversions in Section 18. It appears to the Referee that considerably more
12 than 32 acres are being irrigated within the claimant's land in Section 18.

13 Certificate No. 176 is a Class 10 right with an 1884 date of priority.
14 It authorizes the diversion of 0.16 cubic foot per second for the irrigation
15 of 8 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7. Two points of diversion are
16 described, one in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the second in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, both in
17 Section 7. There is a diversion in the N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, dam #1, that
18 appears to serve the land in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7. It appears to the
19 Referee that approximately 8 acres are being irrigated within the authorized
20 place of use.

21 Certificate No. 177 is also a Class 10 right and it authorizes the
22 diversion of 0.70 cubic foot per second for the irrigation of 35 acres in
23 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7. The authorized point of diversion is in the SW $\frac{1}{4}$ NE $\frac{1}{4}$
24 of Section 7. There is no diversion identified in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7,
25

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1 however, Trail Creek flows through that part of Section 7 and likely is the
2 source of water authorized by this certificate. Review of the exhibits
3 leads the Referee to conclude that only 30 acres, which includes the lawn
4 and landscape area around the home, are being irrigated within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
5 Section 7.

6 Certificate No. 178 is a Class 13 right with an 1890 date of priority.
7 It authorized the diversion of 0.20 cubic foot per second for the irrigation
8 of 10 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7. The authorized point of diversion
9 is in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7. Again, it appears that what is today called
10 Trail Creek is the likely source of water. It appears that 10 acres are
11 being irrigated within the place of use on the certificate.

12 The claimant also cited to Certificate No. 180 as potentially being
13 appurtenant to a small piece of her land in the N $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7. The
14 Referee has compared the place of use description on the certificate, which
15 describes the northerly 598 feet of the easterly 1440 feet of the N $\frac{1}{4}$ SE $\frac{1}{4}$ of
16 Section 7, with the legal description for the claimant's land. The legal
17 description for the claimant's land excludes the northerly 598 feet.
18 Therefore, the right is not appurtenant. The Referee notes that Certificate
19 No. 180 issued to M. D. Cook and the legal description for Certificate No.
20 174, which is appurtenant to the claimant's land, was all of the N $\frac{1}{4}$ SE $\frac{1}{4}$ of
21 Section 7, except that owned by M. D. Cook.

22 In addition to the certificates from Cooke Creek that clearly are
23 appurtenant to the claimant's land, a right is also being asserted for a
24 water right that was purchased by W. H. Bott in 1925. Exhibit DE-322 is a
25

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1 Warranty Deed by which Louis W. Habel and Martha Habel, sold to W. H. Bott
2 "All right to water of Cook Creek as granted by a decree of Kittitas County
3 Superior Court on the 13th day of August, 1921, and recorded in volume 25 of
4 the Superior Court Journal of said County on page 151, viz: Thirty Five (35)
5 inches in Class Six (6). Certificate No. 186 issued to Lewis W. Habel, a
6 Class 6 right authorizing the diversion of 0.70 cubic foot per second (which
7 would be 35 inches) for the irrigation of 35 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
8 Section 1, T. 17 N., R. 19 E.W.M. W. H. Bott owned the claimant's land in
9 1925. It is reasonable to conclude that the water right purchased was
10 intended to be used on what is now the Flach property. However, 1925 was
11 eight years after adoption of the Surface Water Code on June 6, 1917. After
12 that date, any changes to water rights could only be made following approval
13 of the State pursuant to RCW 90.03.380. There is no evidence that approval
14 was obtained. No certificate of change has been entered into the record for
15 this property. As a result, the water right embodied in Certificate No. 186
16 is still appurtenant to the original place of use in Section 1.

17 Based on the evidence in the record, the Referee can recommend that
18 water rights be confirmed for use of Cooke Creek and its branches as
19 evidenced by the certificates, except for Certificate No. 177 where it
20 appears to the Referee that 30 acres instead of the authorized 35 acres have
21 been irrigated. Therefore, it is recommended that the following rights be
22 confirmed:

23 1. With a June 30, 1871, date of priority, a right for the diversion of
24 0.24 cubic foot per second, 48 acre-feet per year for the irrigation of 12
25 acres in that part of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T. 18 N., R. 20 E.W.M. described
26 as follows: beginning at the SE corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$, thence north along the

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1 east boundary to a point that is 598.125 feet south of the northeast corner
2 thereof; thence west parallel with and 598.125 feet south of the north boundary
3 line of the N $\frac{1}{4}$ SE $\frac{1}{4}$ of said section 1454.5 feet; thence S 0°10' E to the south
4 boundary line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$; thence east along the south boundary line to the
5 point of beginning. The point of diversion shall be as authorized in
6 Certificate No. 174.

7
8 2. With a June 30, 1880, date of priority, a right for the diversion of
9 0.64 cubic foot per second, 128 acre-feet per year for the irrigation of 32
10 acres in the W $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, T. 18 N., R. 20 E.W.M. The point
11 of diversion authorized is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7. Since considerably more
12 than 32 acres are being irrigated in Section 18, the Referee requests that the
13 claimant provide a legal description for which 32 acres will be irrigated.

14
15 3. With a June 30, 1884, date of priority, a right for the diversion of
16 0.16 cubic foot per second, 32 acre-feet per year for the irrigation of 8 acres
17 in the that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7 lying west of Cooke Creek. The
18 authorized point of diversion shall be in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T. 18 N.,
19 R. 20 E.W.M.

20
21 4. Also with a June 30, 1884, date of priority, a right for the diversion of
22 0.70 cubic foot per second, 120 acre-feet per year for the irrigation of 30
23 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7. The authorized point of diversion is in the
24 SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T. 18 N., R. 20 E.W.M.

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26 5. With a June 30, 1890, date of priority, a right for the diversion of
27 0.20 cubic foot per second, 40 acre-feet per year for the irrigation of 10
28 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7. The authorized point of diversion is in the
29 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T. 18 N., R. 20 E.W.M.

30
31 COURT CLAIM NO. 02263 -- Michael Floan
32 & Claire Floan
33 James R. Finley
34 & Barbara A. Finley

35
36 The Floans filed Court Claim No. 02263 asserting a right to use waters
37 from two unnamed springs for irrigation and stock watering. They are
38 represented by Attorney Hugh Spall and Mr. Floan testified at the
39 evidentiary hearing. On June 11, 1991, James R. and Barbara A. Finley were
40 joined to the claim.

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1 The claimants property lies in the N $\frac{1}{2}$ NE $\frac{1}{4}$ and a portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
2 Section 29, T. 17 N., R. 20 E.W.M. Two springs arise on the portion of the
3 property in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, one near the southeast corner of the
4 NE $\frac{1}{4}$ NE $\frac{1}{4}$ and one near the northwest corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$. The testimony
5 indicates that the springs were improved around 1946. They are used as a
6 supplemental supply for irrigation and for stock watering. The primary
7 source of irrigation water is the Kittitas Reclamation District (KRD), whose
8 Highline Canal is less than half a mile east and uphill from the property
9 and the springs. Mr. Floan testified that the flow in the springs
10 substantially increases when water is being carried in the canal and
11 diminishes after the canal is shut off in the fall. There is some naturally
12 occurring water flowing from the spring, however, Mr. Floan has not measured
13 it and could not estimate the quantity. Both Mr. Floan and his counsel
14 acknowledged that most of the flow is the result of seepage from the KRD
15 canal. Entered into evidence was Exhibit DE-1574, which is an 1985 letter
16 from the Department of Ecology regarding an application filed by the Floans
17 to obtain a water right permit for use of the springs. The letter contains
18 Ecology's conclusion that the source of water in the springs is seepage from
19 KRD and their determination that because of that a permit could not be
20 issued.

21 Mr. Floan in his testimony surmised that the natural flow in those
22 springs would have been used when the land was first settled, establishing a
23 right for the natural flow in the springs. However, the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 29
24 was originally conveyed to the Northern Pacific Railroad and stayed in
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1 railroad ownership until 1934, when it was sold to Mogens Hansen. In order
2 for there to be a diversionary right under the Riparian Doctrine, use of the
3 water had to begin prior to December 31, 1932. Since the railroad owned the
4 property until 1934, there is no evidence use had been initiated prior to
5 that time. In fact, the record suggests that the springs were not developed
6 until 1946, at which time the owner should have applied for a permit under
7 the provisions of RCW 90.03, as the Floans attempted in the 1980's.

8 Mr. Floan testified that the springs are also used for stock watering.
9 Insofar as the stock drink directly from the springs or their natural
10 drainage, that use is covered by the stock water stipulation discussed on
11 page 4 of this report. The Floans name shall be added to the list of
12 claimants who enjoy a non-diversionary stock water right under the
13 stipulation.

14 Three water right claims (WRC) were filed pursuant to RCW 90.14 by
15 Hamilton Farms, apparent predecessors to the Floans. WRC 039601 and 039602
16 are short forms that claim rights to use ground water for domestic supply
17 and irrigation, one in the NW $\frac{1}{4}$ and one in the NE $\frac{1}{4}$ of Section 29. WRC
18 No. 039602 was also filed by Hamilton Farms asserting a right to use an
19 infiltration trench for the irrigation of 100 acres in the NW $\frac{1}{4}$ of
20 Section 29. It shows first water use in April of 1946. The described
21 location of the trench is at approximately the same location as the spring
22 described in Court Claim No. 02263.

23 Due to the source of water in the springs being primarily seepage water
24 from the KRD Highline Canal, the Referee cannot recommend that a right be
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1 confirmed in this proceeding. Use of the water can continue under the
2 holdings in Dodge v. Ellensburg Water Company and Elgin v. Weatherspoon, see
3 further discussion on page 8 of this report.

4 COURT CLAIM NO. 00499 -- Clifford S. Gage
5 & Phyllis R. Gage

6 The Gages filed a claim with the Court asserting a right to use waters
7 from Coleman Creek for irrigation and stock watering. The Gages are
8 represented by Attorney John P. Gilreath and Clifford Gage testified at the
9 evidentiary hearing.

10 The Gages own 24 acres of land in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 17 N.,
11 R. 19 E.W.M. The land is riparian to Coleman Creek. Water is diverted from
12 the creek at the north property line and carried in ditches both east and
13 west of the creek. The land is rill irrigated and planted in hay and
14 pasture. Mr. Gage testified to normally irrigating from mid-March until the
15 middle of October. Up to 100 head of cattle are raised on the land, drinking
16 directly from Coleman Creek. The stock water stipulation discussed on page
17 4 of this report covers this non-diversionary use and no additional water
18 right will be awarded for stock watering. Mr. Gage did not testify to how
19 much water is diverted from the creek or used to irrigate his land. He is
20 asserting a right to use 8 acre-feet per year for each acre irrigated, or
21 192 acre-feet per year for the 24 acres, based on the evidence presented by
22 U.S. Bureau of Reclamation concerning water duty in Kittitas County. A
23 continuous diversion of 0.45 cubic foot per second during the period of time
24 that the Gages are seeking an irrigation right would allow for the use of

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1 192 acre-feet per year. Mr. Gage did not provide any testimony or evidence
2 about the quantity of water actually being used on his property.

The quantity of water claimed is not unreasonable for the crops being irrigated. Many of the water rights on Coleman Creek were addressed in the Schnebly v. Huss decree, although the owner of the Gage property at the time of that case was not a party. The court in Schnebly v. Huss found that one-half inch of water, or 0.01 cubic foot per second, was sufficient for irrigating an acre. Mr. Gage asserts that since his predecessor was not a party to that decree, he is not bound by the restrictions contained in the decree. The Referee does not disagree with that position. However, the Referee concludes that in order to recommend that a water right be awarded in excess of the quantity of water found by the Court in 1915 to be necessary, the Gages need to show that the water right established exceeded one-half inch of water per acre. That evidence is lacking. In fact, Mr. Gage has not even provided evidence of how much water he is actually using. As discussed on page 13 of this Report, the Referee will use a water duty consistent with the Schnebly v. Huss decree for land irrigated from Coleman Creek, but not addressed in the decree, unless the evidence clearly shows that the water right established was for a greater quantity of water.

The Gage's property was part of a larger piece settled on by James McEwen in 1873. Mr. McEwen received a patent for the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. in September of 1878. Although Mr. McEwen was not a party to the Schnebly v. Huss decree, he and his immediate successors, Elizabeth and James Ferguson, were involved in litigation with

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1 neighboring landowners, Izza and Walter Gilliam and Cody and Ethel Miller.
2 That litigation primarily dealt with use of a ditch that diverted from
3 Coleman Creek about 100 feet north of what is now the Gage property and ran
4 on the east side of Coleman Creek south through the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and E $\frac{1}{4}$ SE $\frac{1}{4}$ of
5 Section 4 into the NE $\frac{1}{4}$ of Section 9. The Court restrained McEwen and the
6 Fergusons from interfering with the operation of that ditch. The decree did
7 not address the McEwen/Ferguson water rights in any manner, just the ditch.

8 Neighboring landowner, Gwendolyn Cooke, testified in support of her
9 claim on land immediately west of the Gage property, a portion of which is
10 also in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4. Mrs. Cooke is the granddaughter of James
11 and Elizabeth Ferguson and testified to her memory of the land, including
12 the Gage property, being irrigated as far back as 1915. The Findings and
13 Judgment in Gilliam and Miller v. McEwen and Ferguson indicate a water use
14 on the property even earlier than that. The priority date for a water right
15 established under the Riparian Doctrine is the date steps were first taken
16 to sever the land from Federal ownership, which generally is accomplished by
17 settling on the land. The landowner then had until the end of 1932 to put
18 the water to beneficial use. That clearly happened for the land now owned
19 by the Gages.

20 Water Right Claim (WRC) No. 017117 was filed by George Ferguson
21 pursuant to RCW 90.14. It asserts a right to divert 0.48 cfs, 120 acre-feet
22 per year from Coleman Creek for the irrigation of 24 acres on the land now
23 owned by the Gages.

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1 The Referee recommends that a right be confirmed under the Riparian
2 Doctrine with a June 30, 1873, date of priority for the diversion of 0.24
3 cubic foot per second, 100 acre-feet per year for the irrigation of 24
4 acres.

5 Should the claimant's file an exception asking for an opportunity to
6 put on evidence that they are using more water than has been awarded, they
7 should keep in mind the quantities of water in WRC No. 017117 and seek to
8 amend that claim if necessary to conform with the testimony they intend to
9 offer.

10 COURT CLAIM NO. 01141 -- Stephen K. German
11 & Donna German
12 Lloyd W. Powell
13 Gaylord M. Kellogg

14 Stephen K. and Donna German filed a claim with the Court for use of
15 waters from Coleman Creek, Cooke Creek, Dry Gulch Creek and an unnamed
16 spring. The Germans were represented by Attorney Hugh Spall at the
17 evidentiary hearing and Mr. German testified at the hearing. On March 11,
18 1996, Lloyd Powell was joined to the claim and on March 17, 2000, Gaylord M.
19 Kellogg was joined to the Powell portion of the claim.

20 At the time of the evidentiary hearing, the Germans owned the SE $\frac{1}{4}$ of
21 Section 1, T. 18 N., R. 19 E.W.M., Government Lots 6 and 7 of Section 6, the
22 E $\frac{1}{2}$ NE $\frac{1}{4}$, the north 600 feet of the NE $\frac{1}{4}$ SE $\frac{1}{4}$, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7,
23 that portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ east of Cooke Creek and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18,
24 all in T. 18 N., R. 20 E.W.M. Water is used from Coleman Creek, Cooke Creek
25 and Dry Gulch Creek (also known as Trail Creek) and two springs to irrigate

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1 portions of the property. All of the land is planted in a mixture of
2 timothy hay, grain and pasture and is irrigated from around March 15 until
3 October 15. The land is flood irrigated using a combination of open dirt
4 ditches, cement ditches and gated pipe. At the time of the hearing 250
5 cow/calf pairs were being raised, but in the past up to 500 cow/calf pairs
6 have been on the land. The livestock drink directly from the water sources
7 on the land, which is covered by the stock water stipulation discussed on
8 page 4 of this report, and from the irrigation ditches. The claimants'
9 names shall be placed on the list of claimants who are covered by the
10 stipulation.

11 Coleman Creek is used to irrigate 135 acres in that portion of the SE $\frac{1}{4}$
12 of Section 1 lying east of Coleman Creek and south of the upper delivery
13 ditch and that portion of Government Lots 6 and 7 of Section 6 lying
14 southwest of the delivery ditch. Mr. German testified to diverting 3 cubic
15 feet per second from Coleman Creek early in the season, but by July there is
16 only sufficient water for Class 1 rights. He generally starts irrigating in
17 March. The Germans purchased this property in 1977 from L. T. Dawes and it
18 was being irrigated at that time. The Germans have continuously irrigated
19 the land since they acquired it and believe that it has been irrigated since
20 the rights were established. Rights to this land were addressed in the
21 Schnebly v. Huss decree that was entered in 1915. A Class 5 right, which
22 would have a priority date of 1879, was awarded to Harvey and Dorcas J. Huss
23 for 50 inches to be used on 100 acres in the SE $\frac{1}{4}$ of Section 1 and the W $\frac{1}{2}$ SW $\frac{1}{4}$
24 of Section 6 (the W $\frac{1}{2}$ SW $\frac{1}{4}$ is the same as Government Lots 6 and 7). The
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1 claimants are irrigating 135 acres with water diverted from Coleman Creek.
2 However, the decree indicates that in 1915 rights existed for irrigating
3 only 100 acres. The claimant did not address the difference. The Referee
4 is compelled to only recommend confirmation of a water right consistent with
5 the existing decree.

6 Water Right Claim (WRC) No. 065951 was filed pursuant to the
7 requirements of RCW 90.14 asserting a right to use 2 cubic feet per second,
8 500 acre-feet per year from Coleman Creek for the irrigation of 100 acres in
9 the W $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6 and the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1. The described point of
10 diversion is in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1. The Referee notes that the place
11 of use on this claim only includes the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, while a portion
12 of the irrigated land lies in the W $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1. A relatively small
13 portion of the field is in the W $\frac{1}{4}$ SE $\frac{1}{4}$. Although it is possible that the
14 person completing the form mistakenly thought all of the land lying east of
15 Coleman Creek was in the E $\frac{1}{4}$ SE $\frac{1}{4}$, it is also possible that the additional
16 acreage above the 100 acres being irrigated in 1915 may lie in that area.
17 The Referee proposes to recommend that the place of use be consistent with
18 WRC No. 056951. WRC No. 065952 was also filed for use of Coleman Creek. It
19 asserts a right to use 1 cfs, 300 acre-feet per year for the irrigation of
20 20 acres in the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1. The point of diversion described is in
21 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, where no diversion currently exists.

22 The Referee recommends that a right be confirmed under Court Claim No.
23 1141 with a June 30, 1879, date of priority for the diversion of 1.0 cubic
24 foot per second, 300 acre-feet per year for the irrigation of 100 acres and
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1 stock watering in that portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 1, T. 18 N.,
2 R. 19 E.W.M. lying east of Cooke Creek and south of the northerly delivery
3 ditch and that portion of Government Lots 6 and 7 of Section 6, T. 18 N.,
4 R. 20 E.W.M. lying southwest of the delivery ditch.

5 Mr. German testified to irrigating approximately 200 acres with water
6 diverted from Cooke Creek. He did not identify the specific acreage in each
7 of the sections being irrigated. However, the State's Investigation Reports
8 did address the number of acres the investigator thought were being
9 irrigated and Mr. German testified that those reports were accurate.

10 The investigation reports indicate that there are 70 acres being
11 irrigated in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 7 with water diverted from Cooke Creek in
12 the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6 and from Dry Gulch Creek in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
13 Section 6; 42 acres are being irrigated in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
14 Section 7 with water diverted from Cooke Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6
15 and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7; 12 acres are irrigated in the portion of the
16 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7 owned by the Germans with water diverted from Cooke Creek
17 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6; and 85 acres are irrigated in the E $\frac{1}{2}$ SW $\frac{1}{4}$, west
18 of Cooke Creek, and the W $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 with water diverted from Cooke
19 Creek in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18. Based on the
20 investigation reports, there is a total of 209 acres being irrigated with
21 water diverted from Cooke Creek and/or Dry Gulch Creek.

22 Several certificates from the prior adjudication of Cooke Creek are
23 appurtenant to the claimant's lands. They are as follows: Certificate No.
24 180, a Class 3 right, with an 1871 date of priority authorized the diversion
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1 of 1.7 cubic feet per second for the irrigation of 85 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$,
2 NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the north 600 feet of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T. 18 N.,
3 R. 20 E.W.M. The authorized points of diversion are in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
4 Section 7 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6. Within this area the claimant is
5 irrigating 54 acres. Certificate No. 181, a Class 6 right with an 1878
6 date of priority authorized the diversion of 1.4 cubic feet per second for
7 the irrigation of 70 acres in the E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7. The authorized points
8 of diversion are the same as for Certificate No. 180. The claimant is
9 irrigating the authorized 70 acres. Certificate No. 205, a Class 4 right
10 with an 1872 date of priority authorized the diversion of 2 cubic feet per
11 second for the irrigation of 100 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{4}$ SE $\frac{1}{4}$ of
12 Section 18, T. 18 N., R. 20 E.W.M. The point of diversion that is
13 authorized is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18. The Referee is very
14 uncomfortable with the point of diversion that is authorized in this
15 certificate. The certificate includes within the place of use land in the
16 NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, yet the authorized point of diversion is in
17 the SW $\frac{1}{4}$ SE $\frac{1}{4}$, which is downstream for those quarter/quarter sections and could
18 not physically be irrigated by a gravity flow system from the authorized
19 diversion. One hundred acres is authorized for irrigation and there is less
20 than 100 acres downstream from the point of diversion.

21 Other claimants in this proceeding are asserting a right based on
22 Certificate No. 205. Court Claim No. 01426, which is now in the names of
23 Roger and Bernadette Mies, Michael and Nancy Tomich, Kenneth and Debbie
24 Dimeo and Todd Lopeman, includes that portion of the E $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18
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1 lying west of Cooke Creek. The parties to Court Claim No. 01426 are
2 asserting a right to irrigate 54 acres and the Germans are asserting a right
3 to 85 acres, for a total of 139 acres. The certificate only authorizes the
4 irrigation of 100 acres. The record is not adequate for the Referee to
5 determine exactly which 100 acres were being irrigated when the water right
6 was established. None of these parties addressed the issues during the
7 presentation of their case. The Germans own about 60 percent of the place
8 of use on the certificate, so the Referee intends to award them 60 percent
9 of the right, or a right to irrigate 60 acres. The parties to Claim No.
10 01426 will be recommended a right for 40 acres.

11 The Germans appear to be asserting a separate right to Dry Gulch, or
12 Trail Creek. The Referee has concluded the this creek is actually a branch
13 of Cooke Creek and any rights to use of the water would have been addressed
14 in the Cooke Creek adjudication. Some of the certificates that issued as a
15 result of that adjudication, including some appurtenant to lands owned by
16 the Germans, describe points of diversion on Dry Gulch Creek. The Referee
17 does not recommend confirmation of any rights on Dry Gulch Creek not
18 reflected in adjudicated certificates.

19 Based on the foregoing, the Referee recommends that the following
20 rights be confirmed under Court Claim No. 01141:

21 With a priority date of June 30, 1871, a right for the diversion of
22 1.08 cubic feet per second, 216 acre-feet per year from Cooke Creek for the
23 irrigation of 54 acres and stock watering in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and
24 northerly 600 feet of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T. 18 N., R. 20 E.W.M. The
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1 point of diversion shall be in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T. 18 N.,
2 R. 20 E.W.M. A second point of diversion, in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, is
3 being used, but that point is not authorized on Certificate No. 180, which
4 is the basis for this right.

5 With a priority date of June 30, 1872, a right for the diversion of
6 1.20 cubic feet per second, 240 acre-feet per year from Cooke Creek for the
7 irrigation of 60 acres and stock water in the W $\frac{1}{2}$ SE $\frac{1}{4}$ and that part of the
8 E $\frac{1}{2}$ SW $\frac{1}{4}$ lying east of Cooke Creek in Section 18, T. 18 N., R. 20 E.W.M. The
9 point of diversion described on the certificate is clearly in error, as it
10 could not serve by gravity flow most of the area authorized for irrigation.
11 Therefore, the Referee recommends that the authorized diversions be those
12 being used in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18.

13 With a priority date of June 30, 1878, a right for the diversion of
14 1.40 cubic feet per second, 280 acre-feet per year from Cooke Creek for the
15 irrigation of 70 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 7, T. 18 N., R. 20 E.W.M.
16 The point of diversion authorized in Certificate No. 181 in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
17 Section 6 on the branch of Cooke Creek known as Trail (or Dry Gulch) Creek
18 is still being exercised and will be authorized herein. The second diversion
19 being used is on Cooke Creek in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6 and is not
20 authorized by the certificate. A diversion on Cooke Creek in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
21 Section 7 is authorized by the certificate and the Referee recommends that
22 the right include this diversion. The claimant should contact Ecology
23 concerning the procedures for seeking changes in points of diversion under
24 the provisions of RCW 90.03.380.

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1 The claimant is also seeking confirmation of water rights for the use
2 of two springs that are located on the property, one in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of
3 Section 7 and one in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7. The testimony was that when
4 the Germans first acquired the land the springs were solely used for stock
5 watering and since that time were further developed to allow the outflow to
6 be commingled with the ditch water and used to augment the creek water being
7 used for irrigation. A hand pump was on the spring in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of
8 Section 7. Water rights for irrigation uses developed in the 1970's could
9 only be established by obtaining a permit through the procedures established
10 in RCW 90.03. There is no evidence those procedures were followed. The
11 springs can be used for non-diversionary stock watering under the stock
12 water stipulation, but the evidence does not allow for a conclusion that a
13 diversionary right exists.

14

15 COURT CLAIM NO. 05522 -- Ronald Gibb
16 (A) 06435 Douglas Gibb
17 05523
18 (A) 06436

19 Jesse L. and Shirley Gibb filed Court Claim No. 05522 asserting a right
20 to use water from Spring Creek and Court Claim No. 05523 asserting a right
21 to use waters from Caribou Creek. Both claims were filed on July 20, 1990,
22 well after the date by which claims were to have been filed in this
23 proceeding. On September 14, 1990, the Court entered an Order finding that
24 it was appropriate to accept the claims for further processing. Jesse Gibb
testified at the evidentiary hearing. On November 12, 1996, Ronald and
Douglas Gibb were substituted as claimants.

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1 The Gibbs appear to own that portion of the SE $\frac{1}{4}$ of Section 11 lying
2 southeast of Caribou Creek, and that portion of the NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ of
3 Section 14 lying northeast of the Town Ditch, in T. 17 N., R. 19 E.W.M.
4 According to Mr. Gibb's testimony Caribou Creek is used to irrigate 240
5 acres with water diverted from three points on the creek. Diversion No. 1
6 is located approximately 600 feet west of the east quarter corner of Section
7 11 and is used to irrigate the 60 acres lying north of Interstate 90. The
8 land is planted in timothy hay with a grain and potato rotation. Water is
9 carried in a 15 inch pipe from the headgate to cement ditches used to rill
10 irrigate the fields. Although Mr. Gibb did not testify to how much water is
11 being diverted, his exhibit indicates 5 cubic feet per second is diverted at
12 this point. Diversion No. 2 is located approximately 1650 feet north and
13 1320 feet west of the southeast corner of Section 11 and is used to irrigate
14 land lying south of Interstate 90. Mr. Gibb testified to irrigating 90
15 acres from this diversion, however, his exhibit indicates that 140 acres are
16 irrigated and 8 cubic feet per second diverted from the creek. The third
17 diversion is located 825 feet north and 1815 feet west from the southeast
18 corner of Section 11 and is also used to irrigate land south of the
19 interstate. Mr. Gibb testified to irrigating 90 acres from this diversion,
20 while the exhibit shows that 60 acres are irrigated and 5 cubic feet per
21 second diverted. The land south of the interstate is also planted in
22 Timothy hay with a grain and potato rotation and is rill irrigated with
23 cement ditches. A right is being claimed to divert a total of 18 cubic feet
24 per second from Caribou Creek for this land.

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1 Mr. Gibb pointed to the Clerf v. Scammon decree in support of his claim
2 to water rights. He indicated that his land was entitled to portions of
3 three Class 1 rights and one Class 2 right. The Class 1 rights were 25
4 inches to Sophia Walker, 26 inches to Jerry Vanderbilt, and 40 inches to
5 Henrietta Vanderbilt and the Class 2 right was 80 inches to Maria Wheeler.
6 The Referee concurs with Mr. Gibbs conclusion that the Vanderbilt rights and
7 the Wheeler right are at least proportionately appurtenant to his land.
8 However, the Referee could find no evidence that Sophia Walker owned the
9 Gibb property at the time of the Clerf v. Scammon proceeding. In fact, the
10 Findings of Fact and Conclusions of Law that preceded the decree indicates
11 that Sophia Walker owned the E $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 19, T. 18 N.,
12 R. 20 E.W.M. The Referee concludes that the right awarded to Sophia Walker
13 is not appurtenant to the claimant's land. The Findings of Fact show that
14 Jerry Vanderbilt owned the NW $\frac{1}{4}$ NE $\frac{1}{4}$, and 12-1/3 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
15 Section 14, for which he got a right for 26 inches and Henrietta Vanderbilt
16 owned the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 and received a right for 40
17 inches. The Referee also found in reading the Findings of Fact that
18 Catherine Morrison owned 27-2/3 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14 and
19 received a right for 14 inches. All three of these deraign their title from
20 Charles Wheeler, who settled on and initiated title to the land in 1870 and
21 began using water for irrigation in 1871. The Gibbs own all of the former
22 Morrison and Jerry Vanderbilt land and one-quarter of the Henrietta
23 Vanderbilt land. Maria Wheeler owned the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, the N $\frac{1}{2}$ SE $\frac{1}{4}$
24 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, and was awarded a right to 80 inches. The

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1 Gibbs own about two-thirds of that area. The Findings of Fact determined
2 that one-half inch of water was sufficient for the irrigation of lands in
3 this area. Therefore, based on the number of inches awarded, 52 acres were
4 being irrigate in the Jerry Vanderbilt property, 80 acres were being
5 irrigated in the Henrietta Vanderbilt property and 160 acres were being
6 irrigated within the Maria Wheeler property.

7 The Gibb property in the NW $\frac{1}{4}$ of Section 14 and the SE $\frac{1}{4}$ of Section 11 is
8 covered by water rights awarded in the Clerf v. Scammon decree. The Referee
9 concludes that the Gibbs have a right with an 1870 date of priority for 40
10 inches, or 0.80 cubic feet per second, for the irrigation of 80 acres in the
11 NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14 (from J. Vanderbilt and Morrison) and 10
12 inches, or 0.20 cubic foot per second, for the irrigation of 20 acres in
13 that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 lying southeast of Caribou Creek
14 (from H. Vanderbilt) and a right with an 1871 date of priority for 55
15 inches, or 1.1 cubic foot per second for the irrigation of 110 acres in the
16 NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 and that portion of the
17 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 lying southeast of Caribou Creek. The Gibb property
18 has a right to divert a total of 2.1 cubic feet per second from Caribou
19 Creek, while the claimant is asserting a right to diver 18 cubic feet per
20 second. Nothing has been offered into evidence to show that a right exists
21 for the additional quantity of water. The Clerf v. Scammon decree was
22 entered in 1911, six years after the Federal government withdrew all of the
23 unappropriated surface waters in the Yakima River Basin. In order for the
24 Gibbs to have a right beyond the 2.1 cfs, they would have to show that use
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1 of this water has no affect on the operation of the Yakima Project, or that
2 the prior owners obtained a release from the Federal government.

3 Additionally, they would have to show that the larger quantity of water was
4 being used prior to December 31, 1932. None of that has been shown.

5 Water Right Claim No. 143386 was filed by Jesse Gibb asserting a right
6 to use 4 cubic feet per second, 1200 acre-feet per year from Caribou Creek
7 for the irrigation of 300 acres in the N $\frac{1}{4}$ of Section 11 and the E $\frac{1}{4}$ SE $\frac{1}{4}$ of
8 Section 14, T. 17 N., R. 19 E.W.M. It is clear that Mr. Gibb transposed the
9 two section numbers. Additionally, a small portion of the field in the SE $\frac{1}{4}$
10 of Section 11 extends into the SW $\frac{1}{4}$ SE $\frac{1}{4}$; the Referee concludes that due to the
11 lay of the field along the creek channel, it was clear that a portion of the
12 field extended into the SW $\frac{1}{4}$ SE $\frac{1}{4}$. Based on the evidence in the record, the
13 Referee finds that the claimant substantially complied with the requirements
14 of RCW 90.14 to protect rights to irrigate the claimants land in Sections 11
15 and 14. The point of diversion described is 2540 feet north and 650 feet
16 west of the southeast corner of Section 11, which is the approximate
17 location of the northernmost diversion used by the claimant.

18 Therefore, the Referee recommends that two rights be confirmed under
19 Court Claim No. 05523 for the use of waters from Caribou Creek. The first
20 with a June 30, 1870, date of priority for the diversion of 1.0 cubic foot
21 per second, 500 acre-feet per year for the irrigation of 100 acres in the
22 NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14 and that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11
23 lying southeast of Caribou Creek, all in T. 17 N., R. 19 E.W.M. The second
24 right has a June 30, 1871, date of priority for the diversion of 1.10 cubic
25

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1 feet per second, 550 acre-feet per year for the irrigation of 110 acres in
2 the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and that portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
3 Section 11 lying southeast of Caribou Creek, all in T. 17 N., R. 19 E.W.M.
4 Since the only diversion described on Water Right Claim No. 143386 is the
5 northernmost diversion, it shall be authorized for use. If the claimant
6 intends to continue using the other diversions on Caribou Creek, contact
7 should be made with Ecology concerning the process under RCW 90.03.380 to
8 add points of diversion. According to Mr. Gibb's testimony, he does not
9 presently raise livestock, but has done so in the past. When livestock were
10 on the property, they drank directly from Caribou Creek. The
11 non-diversionary stock water stipulation would cover that use and the Gibbs
12 are included on the list of claimants with a non-diversionary stock water
13 right.

14 The Gibbs are asserting a right to irrigate 80 acres in the S $\frac{1}{4}$ NE $\frac{1}{4}$ of
15 Section 14 with water diverted from Spring Creek. Unlike Caribou Creek,
16 there is no existing decree that establishes the water rights for this
17 creek. In fact, the map shows the creek beginning just below the Cascade
18 Canal about one and a half miles east of the Gibb property. Mr. Gibb
19 testified that all of his land is assessed by Cascade Irrigation District
20 and that the irrigation district uses Spring Creek for delivery of his
21 water. He has owned the land since 1947 and his testimony suggests that
22 water from Spring Creek was being used when he acquired the land. There was
23 no evidence submitted showing when use of Spring Creek began or even if the
24 creek existed prior to construction of the Cascade Canal. Existence of the
25

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1 creek could be dependent on return flows and seepage from the Cascade
2 Canal.

3 Water Right Claim No. 143387 was filed by Jesse Gibb pursuant to RCW
4 90.14 asserting a right to divert 1 cfs, 300 acre-feet per year from Spring
5 Creek for the irrigation of 80 acres in the S%NE% of Section 14.

6 Due to the lack of evidence to show that the water in Spring Creek is
7 natural creek water as opposed to water derivative of the Cascade Canal and
8 lack of evidence to show that a right was established through beneficial use
9 prior to December 31, 1932, the Referee cannot recommend that a right be
10 confirmed under Court Claim No. 05522.

11 COURT CLAIM NO. 01145 -- Max Golladay
12 (A) 06471 & Judy Golladay

13 The Golladays filed a claim with the Court asserting a right for the
14 use of waters from Dry Creek and No Name Creek. Max Golladay testified at
15 the evidentiary hearing.

16 The Golladays own the SE%NE% of Section 18, T. 18 N., R. 20 E.W.M. At
17 the time of the hearing they were irrigating 15 to 17 acres of pasture.
18 When they purchased the property around 1979, 35 acres were being irrigated,
19 however, since the early 1980's there has only been sufficient water
20 available to irrigate the smaller acreage. The land is primarily flood
21 irrigated with open ditches, except the diversion from No Name Creek is into
22 a 12 inch PVC pipe that is used to flood irrigate a 6 acre field. The
23 Golladays board 40 to 60 thoroughbred horses, which drink from the
24 irrigation ditches during irrigation season. A spring was developed after
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1 the Golladays acquired the land to augment the flow in No Name Creek so that
2 there is sufficient water for the horses all summer. Another spring was
3 once used for domestic supply, but is now piped to a watering trough for the
4 horses. Mr. Golladay did not provide a location for either of the two
5 springs.

6 The Golladays are asserting a right with an 1876 priority date,
7 although the documents do not provide a basis for this date. The claimants'
8 land was settled by Joseph Tucker, who received a patent dated October 2,
9 1889, for the E $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T. 18 N., R. 20 E.W.M.
10 Several deeds were put in the record that conveyed all of the land
11 homesteaded by Tucker. The deeds mention that the land was conveyed along
12 with water rights and irrigation ditches. Since the deeds conveyed land in
13 addition to that now owned by the claimants, the mention of existing water
14 rights and irrigation ditches does not necessarily mean that they were
15 appurtenant to the claimants' land.

16 By 1910 the land was owned by Ernest Anderson, the first named
17 defendant in the 1921 adjudication of Cooke Creek. As far as the Referee
18 can determine, there were no water rights awarded for the claimants'
19 property. Although the claimants are not diverting from Cooke Creek itself,
20 the Referee has concluded that Dry Creek, which is also known as Trail
21 Creek, is a branch of Cooke Creek and some of the water rights awarded in
22 the adjudication describe points of diversion that are on Trail/Dry Creek.
23 In order for the claimants to have an existing water right for Trail/Dry
24 Creek, a right would have to have been confirmed in the adjudication and

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1 listed in the decree. Following entry of the decree it would have been
2 possible for a water right to have been obtained under the permitting
3 provisions of the Surface Water Code, RCW 90.03, however, there is no
4 evidence this occurred.

5 The nature of No Name Creek is less clear. Mr. Golladay testified that
6 it originates where springs emerge on the Barnhart property to the
7 northeast. It flows through irrigated fields on both the Barnhart and the
8 McMeans property, undoubtedly collecting return flows from those fields. It
9 is not clear to the Referee whether this source of water would have been
10 addressed in the 1921 adjudication. As previously mentioned, there were no
11 water rights awarded for the claimants' property in that adjudication.

12 If the rights to use No Name Creek were not considered in the 1921
13 adjudication, it would have been necessary for a water right claim to be
14 filed under the provisions of RCW 90.14, the Claims Registration Act. That
15 act was passed by the legislature in 1967 and required the filing of a claim
16 for all water uses initiated prior to adoption of the Surface Water Code in
17 1917 (and for which no certificate existed). There is no evidence in the
18 record that a claim was filed for use of No Name Creek. Section 90.14.071
19 provides that failure to file a claim waives and relinquishes any right that
20 may have existed.

21 Three water right claims were filed by a prior owner of the property.
22 Water Right Claim (WRC) No. 063443 asserts a right to use waters from Cooke
23 Creek for the irrigation of 40 acres in the SE¹/NE¹ of Section 18. As
24 previously mentioned, in order for there to be a valid right to Cooke Creek,
25

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1 the prior adjudication would have to have recognized the right in the final
2 decree.

3 WRC No. 103645 asserts a right to use 0.50 cubic foot per second, 36.5
4 acre-feet per year to irrigate 5 acres in the E½SE½SE¼NE¼ of Section 18 from
5 a spring located in the NE¼ of Section 18. This 5 acres would be in the
6 southeast corner of the property. The spring location described is very
7 near where No Name Creek crosses the southeast corner of the claimants'
8 property. There was no testimony about use of a spring for irrigation.

9 WRC No. 135136 asserts a right to use 150 gallons per minute, 80
10 acre-feet per year from a spring for irrigation of 46 acres in the SE¼NE¼ of
11 Section 18 (the Referee notes that the SE¼NE¼ is only 40 acres in size).
12 The spring location described is 1900 feet south and 880 feet west of the
13 northeast corner of Section 18. Again there was no testimony about use of a
14 spring for irrigation. It is not clear to the Referee if either of these
15 springs are the ones used by the claimant for stock watering.

16 The Referee cannot recommend that water rights be confirmed under Court
17 Claim No. 01145 due to there being no water right for Trail/Dry Creek
18 awarded in the 1921 adjudication, there being no water right claim for use
19 of No Name Creek, and the lack of specific information about the locations
20 of the springs being used for stock watering, and no apparent RCW 90.14
21 claim for either of those springs. Additionally, the only method for
22 establishing a water right for the spring developed after 1979 was through
23 the permit process of RCW 90.03 and there is no evidence a permit was
24 obtained.

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1 COURT CLAIM NO. 00676 -- Estate of Gerald O. Graaff
2 & Addie L. Graaff
3 Gary Forgey

4 The Graaffs filed Court Claim No. 00676 asserting a right to use Park
5 Creek. They are represented by Attorney Richard T. Cole. Ms. Addie Graaff
6 and Gary Forgey, who has leased the land since 1977, testified at the
7 evidentiary hearing. On January 22, 1992, Mr. Forgey was joined to the
8 claim.

9 The Graaffs property lies in the S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 13 and the
10 E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14, both in T. 17 N., R. 19 E.W.M. Court Claim No. 00676
11 asserts a right to irrigate 110 acres from Park Creek, although the
12 testimony indicates a claim is being made for around 180 acres. Mr.
13 Forgey's testimony was that all of the land is assessed by Cascade
14 Irrigation District (CID) and to some extent is irrigated with water
15 delivered by Cascade. Some of the land is irrigated solely with Cascade
16 water, while the fields close to the creek are partially irrigated with Park
17 Creek water. Delivery of Cascade water is not always consistent later in
18 the irrigation season, particularly after the first cutting of hay. Timothy
19 hay with a grain and corn rotation is the primary crop, and is being grown
20 on 111 acres, with 40 acres of pasture also irrigated with creek water.

21 The testimony was unclear about an additional 40 acres, that may be
22 irrigated with drain water. Mr. Forgey's testimony suggested that 25 acres
23 of cropland and a 15 acre pasture was being irrigated because of some action
24 with the drain. The implication was that this was land that had not
25 previously been irrigated. The testimony about the drain did not indicate

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1 the source of water in the drain. The State's Investigation Report
2 indicates a drain located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13 collects wastewater
3 from neighboring property to the east. Claims are not being asserted in
4 this proceeding for the neighboring property to the east, suggesting that
5 the land is irrigated with water delivered by CID. The wastewater,
6 therefore, would be considered foreign return flows, for which a water right
7 cannot be established (see discussion of return flows on page 8 of this
8 report). Use of this water can continue as long as it is available,
9 however, Cascade cannot be compelled to continue their operation in a manner
10 that generates the wastewater.

11 Water from Park Creek is diverted at two locations. A diversion dam in
12 the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13 feeds delivery systems on both the north and
13 south sides of the creek. Ecology's investigation reports suggest that
14 there are two diversion, about 10 feet apart, however, the Referee intends
15 to treat them as one diversion. A second diversion is located further
16 upstream on Park Creek, near the northeast corner of the property. At the
17 section line between Sections 13 and 14, Mr. Forgey testified there are two
18 pumps, and water is pumped into a headditch for rill irrigation on one side
19 of the creek and pumped into a sprinkler system on the other side of the
20 creek. It is not clear whether these pumps are on the creek or are on the
21 ditches that come from the lower diversion discussed above. Mr. Forgey then
22 testified to diverting 2.5 cfs to the south side of the creek and 3 cfs to
23 the north side, plus pumping 2.5 cfs between two pumps. He also testified
24 that he does not divert water to both sides of the creek at the same time,
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1 suggesting that at any given time he may be diverting around 4 cubic feet
2 per second.

3 Three water right claims (WRC) were filed describing the claimants'
4 land. WRC No. 112087 was filed by Gerald Graaff asserting a right to use 3
5 cfs, 900 acre-feet per year from Park Creek for the irrigation of 110 acres
6 in the N $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13 and the NW $\frac{1}{4}$ of Section 11. The
7 diversion is described as being 2590 feet north and 1240 feet east of the
8 southwest corner of Section 13. This is the lower diversion on Park Creek
9 that feeds both sides of the creek. WRC No. 112088 was also filed
10 asserting a right to divert 3 cfs, 900 acre-feet per year from Park Creek.
11 A right is claimed for the irrigation of 55 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ of
12 Section 13. The point of diversion described is 1870 feet south and 2840
13 feet east of the northwest corner of Section 13, which is the diversion at
14 the northeast corner of the property. WRC No. 093657 was filed by Robert S.
15 Dodge and asserts a right to divert .5 cfs, 200 acre-feet per year from
16 Cherry Creek for the irrigation of 30 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14. The
17 diversion is described as being 2370 feet north and 1240 feet west of the
18 southeast corner of Section 14. An unnamed stream flows through Section 14
19 northwest of the claimants' land, although it is not called Cherry Creek on
20 Exhibit SE-2. SE-2 shows Cherry Creek to be the name of the creek that
21 results from the confluence of Cooke, Caribou, and Park Creeks, about two
22 miles below Section 13; however, some historical documents indicate that
23 Caribou was once known as Cherry Creek. The Graaffs are not asserting a
24 right to use the creek described in WRC No. 093657, nor was there any

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1 testimony indicating that they ever used that creek. Park Creek was the
2 only creek for which there was any testimony. None of the RCW 90.14 claims
3 filed for Park Creek describe the land in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14 within
4 their place of water use.

5 Several documents were entered into the record concerning the
6 historical ownership of the land in Section 14. Michael Bridges originally
7 received the patent on May 5, 1893, for the S $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14
8 (the receiver's receipt for this land is dated July 14, 1891). Bridges sold
9 15 acres in the SE $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14 to J. W. Vanderbilt on October 4,
10 1907. J. W. Vanderbilt had received the rest of the E $\frac{1}{2}$ SE $\frac{1}{4}$ and the S $\frac{1}{2}$ NE $\frac{1}{4}$ of
11 Section 14 from a sheriff's sale on July 1, 1899. On August 31, 1927,
12 Vanderbilt sold the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14 to John O. Sorenson, together with
13 water of Warm Springs Creek, when water is not required on lands of
14 Vanderbilt lying north of the land conveyed. The Graaffs bought from
15 Sorenson in 1960. The Referee has seen documents that refer to what is now
16 known as Caribou Creek as Warm Springs Creek. This document suggests that
17 by 1927, water from Warm Springs Creek/Caribou Creek may have been used on
18 the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14, however, the claimant is not asserting a right in
19 this proceeding to use that creek. Jerry Vanderbilt was a defendant in
20 Clerf v. Scammon, which was decided in 1914. He was awarded rights to use
21 Caribou Creek for lands he owned in the N $\frac{1}{2}$ of Section 14, but as far as the
22 Referee can determine was not awarded any rights for the E $\frac{1}{2}$ SE $\frac{1}{4}$ of
23 Section 14, which suggests there was no right at that time to use water from
24
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1 Caribou Creek on that land. None of the documents in the record suggest
2 there was any water from Park Creek being used in the E½SE½ of Section 14.

3 There are fewer documents in the record for the land in Section 13. It
4 was originally conveyed by the Federal government to Northern Pacific
5 Railroad, who sold it to Sanford Hayes on June 16, 1890. The next document
6 in the record is dated December 30, 1949, and conveys the N $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ of
7 Section 13 to Oda and Fannie M. Johnson. Sanford Hayes was a defendant in
8 J. D. Olmstead v. S. Hays, et. al., a case decided on May 31, 1892,
9 concerning the use of Park and Brush Creeks. The claimant entered a copy of
10 the decree as Exhibit DE-409. The decree states that S. Hays and others are
11 perpetually enjoined and restrained from in any manner diverting, using, or
12 interfering with any of the waters of Brush Creek and Park Creek. This is a
13 very conclusive statement that S. Hays did not have any right to use Park
14 Creek in 1892 and was ordered not to divert or use any water from that
15 creek. Based on this, the Referee must conclude that there is no water
16 right on Park Creek appurtenant to the claimants' land in Section 13.

Based on the above, the Referee must recommend that a right not be confirmed under Court Claim No. 00676.

COURT CLAIM NO. 01005 -- Arthur William Hanning
20 & Margarette Hanning

Court Claim No. 01005 was filed asserting a right to use waters from Cooke Creek for irrigation. Margarette Hanning testified at the evidentiary hearing.

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The claimants' land lies within the S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 19 N., R. 20 E.W.M. Two parcels are described in their claim, the northerly parcel is 8.43 acres in size and has been sold to their son. The southerly parcel is 7.42 acres in size. The Hannings have a home on the parcel they retain and irrigate approximately one acre of lawn, garden and trees with water pumped from Cooke Creek. A 3/4 HP pump is on Cooke Creek, approximately 150 feet north of the claimants' southerly property line. Mrs. Hanning did not know how much water is being used to irrigate the one acre.

When the Hannings purchased the property in the 1960's the land was being irrigated with water diverted from Cooke Creek and carried in ditches. Since they acquired the land, one acre is the maximum they have irrigated. They did not irrigate for the first few years, but began irrigating the one acre in the early 1970's. It is not clear whether the pump location currently being used was also being used when they bought the land.

Certificate No. 209 from the earlier Cooke Creek adjudication is appurtenant to the claimants' property. It has an 1879 date of priority and authorized the diversion of 1.80 cubic feet per second from Cooke Creek for the irrigation of 90 acres. The authorized points of diversion are in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 19 N., R. 20 E.W.M. The legal description for the place of use on the certificate is a strip of land that is mostly in the W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 31, but does extend slightly into the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31. All of the Hanning property is within the

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1 place of use on the certificate. Besides the Hannings, the following
2 claimants also own land that is within the place of use on Certificate No.
3 209: Michael Joseph Shannon, William Arthur and Rea Jeanette Hanning, Earl
4 E. and Florene McGinty, James J. Peterson/Carolyn B. Johnson, Jack A. and
5 Becky R. Baker, Bruce and Bonnie Catton and Pamela A. Zupan.

6 Additionally, Water Right Claim No. 145150 was filed by Arthur W.
7 Hanning under the provisions of RCW 90.14. However, since a certificate had
8 been issued for the water use, filing a water right claim was not required
9 in order to protect the water right.

10 Besides requiring the filing of water right claims for uses of water
11 for which there are no certificates, RCW 90.14 also provides for the
12 relinquishment of unused water rights. RCW 90.14.170 provides that any
13 person entitled to divert waters of the state authorized by a general
14 adjudication (such as Cooke Creek) who voluntarily fails without sufficient
15 cause to beneficially use all or any part of the right for five successive
16 years shall relinquish said right or portion thereof. The sufficient causes
17 that prevent relinquishment are defined in RCW 90.14.140 and the Referee is
18 not aware of any sufficient cause that might prevent relinquishment of the
19 right. RCW 90.14.140 also provides that relinquishment will not occur if
20 the right is claimed for a determined future development to take place
21 within 15 years of the most recent beneficial use of the water right.
22 During the over 20 years that the Hannings owned the property prior to the
23 evidentiary hearing, one acre is the maximum that has been irrigated.
24 Therefore, the Referee finds that all of the water right appurtenant to the
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1 Hannings property, except for the irrigation of one acre, has relinquished
2 due to the long period of nonuse.

3 The Referee recommends that a water right be confirmed with a June 30,
4 1879, date of priority for the diversion of 0.02 cubic foot per second, 4
5 acre-feet per year for the irrigation of one acre for the claimants'
6 southerly parcel, which is a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31. The
7 point of diversion shall be in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31.

8 COURT CLAIM NO. 00564 -- William Arthur Hanning
9 & Rea Jeanette Hanning

10 The Hannings filed a claim with the Court asserting a right to use
11 waters from Cooke Creek for irrigation. Mr. Hanning testified at the
12 evidentiary hearing.

13 The claimants' property lies within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 19 N.,
14 R. 20 E.W.M. and is approximately 10 acres in size. The property is
15 riparian to Cooke Creek. The Hannings acquired the land in 1968 or 1969 and
16 at that time it was being flood irrigated with water from Cooke Creek. The
17 ground was used for pasture and raising livestock. The Hannings have not
18 lived on the property since they acquired it. They use it for recreational
19 purposes and visit around six times a year. Since they acquired the land
20 water from Cooke Creek has not been used for irrigation or stock watering.
21 The Hannings plan on retiring on the property and at that time they intend
22 to resume using water from Cooke Creek.

23 Certificate No. 209 from the prior adjudication of Cooke Creek is
24 appurtenant to the claimants' property. With an 1879 date of priority, it
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1 authorized the diversion of 1.80 cubic feet per second from Cooke Creek for
2 the irrigation of 90 acres. The authorized points of diversion are in the
3 NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 19 N., R. 20 E.W.M. The legal
4 description for the place of use on the certificate is a strip of land that
5 is mostly in the W $\frac{1}{4}$ E $\frac{1}{4}$ of Section 31, but does extend slightly into the
6 NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31. All of the Hanning property is within the
7 place of use on the certificate. Besides the Hannings, the following
8 claimants also own land that is within the place of use on Certificate No.
9 209: Michael Joseph Shannon, Arthur W. and Margarette Hanning, Earl E. and
10 Florene McGinty, James J. Peterson/Carolyn B. Johnson, Jack A. and Becky R.
11 Baker, Bruce E. and Bonnie R. Catton and Pamela A. Zupan.

12 Water Right Claim No. 145149 was filed by William A. Hanning under the
13 provisions of RCW 90.14. However, since a certificate had been issued for
14 the water use, filing a water right claim was not required in order to
15 protect the water right.

16 Besides requiring the filing of water right claims for uses of water
17 for which there are no certificates, RCW 90.14 also provides for the
18 relinquishment of unused water rights. RCW 90.14.170 provides that any
19 person entitled to divert waters of the state authorized by a general
20 adjudication (such as Cooke Creek) who voluntarily fails without sufficient
21 cause to beneficially use all or any part of the right for five successive
22 years shall relinquish said right or portion thereof. The sufficient causes
23 that prevent relinquishment are defined in RCW 90.14.140 and the Referee is
24 not aware of any sufficient cause that might have prevented relinquishment.

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1 RCW 90.14.140 also provides that relinquishment will not occur if the right
2 is claimed for a determined future development to take place within 15 years
3 of the most recent beneficial use of the water right. Mr. Hanning's
4 testimony indicates that when they acquired the property in 1969 and stopped
5 irrigating, they intended to resume irrigation of the land as soon as they
6 moved onto the property. The Referee believes that the original intent may
7 have been to move onto the land in less than 15 years after their purchase,
8 however, Mr. Hanning changed jobs and decided to defer his retirement. At
9 the time of the evidentiary hearing, 22 years had passed since water from
10 Cooke Creek had last been used to irrigate the land. The Referee must find
11 that the water right appurtenant to the Hanning property has relinquished
12 due to the long period of nonuse. Therefore, it is recommended that a right
13 not be confirmed under Court Claim No. 00564.

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15 COURT CLAIM NO. 01217 -- Wayne L. Hanson
16 & Lauren M. Hanson

17 Court Claim No. 01217 was filed by Wayne L. and Lauren M. Hanson
18 asserting a right to use waters from Caribou Creek for the irrigation of
19 four acres and stock watering. Mr. Hanson testified at the evidentiary
hearing.

20 The Hansons property lies in the center of the N½ of Government Lot 1
21 in Section 1, T. 17 N., R. 19 E.W.M. Mr. Hanson testified that within the
22 land they own, 2.5 acres of pasture have been irrigated with water diverted
23 from Caribou Creek. The creek flows through the property and the five to
24 seven head of cattle they raise drink directly from the creek. This type of
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1 non-diversionary stock watering is covered by the stock water stipulation
2 discussed on page 4 of this report and the Hansons name is on the list of
3 claimants with non-diversionary stock water rights. A 5 HP pump is on the
4 creek and diverts into a sprinkler system, where 11 sprinklers are
5 operated. The Hanson's purchased the property in 1974 from Mrs. Hanson's
6 father and continued the irrigation practice that was in place. Mr. Hanson
7 referred to the evidence put in the record by his father-in-law, Warren
8 Wood, who owns the rest of Government Lot 1 of Section 1.

9 Charles West received a patent on June 24, 1895, for the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$
10 and Lots 1 and 2 of Section 1, T. 17 N., R. 19 E.W.M. and in 1893 filed a
11 notice of water right. The notice stated that he owned the land for which
12 he received a patent and was claiming a right to 60 inches of water (or 1.2
13 cfs) from Cherry Creek, also known as Caribou Creek. Water was diverted
14 into two ditches, one diverting from the creek in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1
15 and the second in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1. 60 acres were being irrigated
16 from the first diversion and 4 acres from the second. The notice states
17 that water was first appropriated in the spring of 1875. In 1904 West sold
18 the land to Robert I. Scammon, who was a defendant in Mary A. Clerf v.
19 Robert I. Scammon et al., a 1911 Kittitas County Superior Court case
20 addressing rights to use Caribou Creek. The Court determined five classes
21 of water rights and found that the defendants, including Robert Scammon
22 "have no right, title or interest in and to the waters of said stream, . . .
23 .", see Findings of Fact XV. Based on this decree, the Referee must
24 conclude that as of 1911, the property that was then owned by Robert I.

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1 Scammon, which would include the Hanson land, had no right to use Caribou
2 Creek. Since the land is riparian to Caribou Creek, a right could still
3 have been established under the Riparian Doctrine with a priority date of
4 when steps were first taken to sever the land, if there is evidence that
5 water from Caribou Creek was used prior to December 31, 1932. That evidence
6 is lacking.

7 Water Right Claim No. 121940 was filed by Wayne Hanson pursuant to the
8 requirements of RCW 90.14 asserting a right to use waters from Caribou Creek
9 for the irrigation of 4 acres in the NE $\frac{1}{4}$ of Section 1, T. 17 N.,
10 R. 19 E.W.M. The Referee concludes that this claim was filed for the same
11 lands for which a right is being asserted in this proceeding.

12 Due to the lack of evidence to show that waters from Caribou Creek were
13 used on the Hansons' property prior to December 31, 1932, the Referee cannot
14 recommend that a diversionary right be confirmed under Court Claim No.
15 01217.

16 COURT CLAIM NO. 02292 -- Lynn Henderson

17 Court Claim No. 02292 was filed by Lynn Henderson asserting a right to
18 use surface waters for the irrigation of 320 acres and stock water in the
19 SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30 and the NE $\frac{1}{4}$ of Section 31, T. 18 N.,
20 R. 20 E.W.M. Lynn Henderson and John J. Cannell, both represented by
21 Kenneth Beckley, appeared and testified at the evidentiary hearing in
22 support of the claim. Mr. Cannell has reportedly purchased a portion of
23 the Henderson land, but has not been joined to the claim. Additionally,
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1 Robert Moe, who sold the property to Mr. Henderson, testified at the
2 hearing.

3 Mr. Cannell testified that he purchased the northerly half of the
4 Henderson property, consisting of 160 acres. This lead the Referee to
5 conclude that he owned the SE $\frac{1}{4}$ of Section 30. However, Mr. Henderson
6 testified that he sold the NE $\frac{1}{4}$ of Section 31 to Mr. Cannell. Neither Mr.
7 Cannell or Mr. Henderson provided any documentation to show what lands were
8 purchased by Mr. Cannell. One of the exhibits offered in support of Mr.
9 Cannell's own claims, No. 2146 and 2147, was DE-1497, which is a letter
10 report by Richard C. Bain, Jr., a consulting engineer. That letter report
11 shows the land Mr. Cannell acquired from Henderson being the NE $\frac{1}{4}$ of
12 Section 31. Based on Mr. Henderson's testimony, which is supported by the
13 Bain report, the Referee concludes that Mr. Cannell owns the NE $\frac{1}{4}$ of
14 Section 31 and Mr. Henderson continues to own the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
15 Section 30.

16 Mr. Henderson acquired the land in 1973 from Robert Moe and during his
17 ownership irrigated a mixture of grass hay and oats and raised an average of
18 600 head of cattle each year. He rill irrigates approximately 50 acres in
19 the SE $\frac{1}{4}$ of Section 30 from two ponds, one on his property and the second
20 just east of his property line. Mr. Henderson estimates that he uses
21 between 2.5 and 3 cubic feet per second from the ponds. He also diverts
22 from a stream that enters his property at the east quarter corner of
23 Section 30. He described the source of this water as runoff water from
24 springs and waste water. The land above his property that the stream flows

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1 through is irrigated with water delivered by Kittitas Reclamation District
2 (KRD). Water is diverted from the stream and carried in a ditch along the
3 north property line and used to irrigate an estimated 75 acres north of the
4 stream. Although he has about 130 shares of KRD water, that water is used
5 on lands (approximately 20 acres) other than those irrigated from the pond.
6 Mr. Henderson testified that the ponds are primarily fed by springs that
7 flow into the pond.

8 Mr. Moe testified that he bought the land in 1958 from Alfred Page and
9 it was his understanding that Mr. Page had owned it for a number of years.
10 Mr. Moe testified that he irrigated the land in the same manner as Mr.
11 Henderson. Mr. Moe expressed an opinion that the land had been irrigated
12 since before 1900, but there is nothing in the record to support that
13 opinion. There are no historical documents in the record for this land, so
14 there is no evidence of when it was first settled or who might have owned it
15 during the times of the various litigations concerning use of water in this
16 area.

17 Mr. Cannell testified to using creek water to irrigate approximately 50
18 acres of land with diversions located near the northeast corner of
19 Section 30 and approximately 300 feet east of the center of Section 30.
20 Apples are planted on 30 acres that are located on a hillside and water is
21 pumped from the creek to a sprinkler irrigation system in the orchard. The
22 remaining 20 acres is planted in timothy hay, which is rill irrigated. Mr.
23 Cannell expressed an intent to increase the size of the orchard on the
24 hillside. There is pasture on the top of the hill, which is irrigated with
25

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1 KRD water. Mr. Cannell testified that the creek he uses is pretty much dry
2 in the winter and primarily flows during the irrigation season.

3 Mr. Bain's report indicates that all of the land is irrigated with
4 water delivered by the Kittitas Reclamation District (KRD) or from return
5 flow water. Mr. Cannell's testimony that the creek has very little water in
6 the winter supports that position. There was no evidence put in the record
7 concerning the nature of this return flow water. If it is return flow from
8 use of water delivered from KRD, water rights cannot be confirmed for use of
9 this water, see the discussion of return flow on page 8 of this report.
10 Since much of the land is assessed by KRD, if the water is primarily seepage
11 and return flows from the district, use of that water may continue as a
12 mechanism for receiving KRD water.

13 Additionally, some of the land is irrigated by pumping the creek water
14 onto a hillside. Undoubtedly, this is a fairly new practice, as water uses
15 initiated in the late 1800's required delivery of water by gravity flow.
16 Mr. Cannell testified to there being a permit from Ecology and the Fish and
17 Wildlife Departments, however, no permit was offered into the record.

18 As with Mr. Henderson's portion of the property, there was no evidence
19 of historic water use on this land, nor was there any evidence of the
20 ownership history. Since this land is riparian to Caribou Creek, in order
21 for there to be a valid water right to use the creek, there must be evidence
22 that the land separated from Federal ownership prior to 1917 and that water
23 use was initiated prior to December 31, 1932. That evidence is lacking. If

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1 the water use was initiated after 1932, then a water permit or certificate
2 from Ecology or one of its predecessor agencies would be required.

3 Due to the lack of evidence to show that a water right was legally
4 established for any of the land, including evidence of use prior to 1932 and
5 evidence that the water being used is natural creek water rather than Yakima
6 Project generated return flow, and due to the uncertainty over exactly which
7 land is owned by Mr. Cannell, the Referee cannot recommend that a right be
8 confirmed.

9 Robert Moe filed several water right claims pursuant to RCW 90.14.
10 They are Water Right Claims No. 034376 - 034378, 034380, and 034381. Three
11 claim rights to use the unnamed creeks flowing through the SE% of Section 30
12 to irrigate a total of 71 acres in the SE% of Section 30 and two claim
13 rights to use an unnamed creek flowing through the NE% of Section 31 to
14 irrigate a total of 50 acres in the NE% of Section 31. The Referee suggests
15 that those claims be reviewed and any inconsistency between current use and
16 those claims be addressed if an exception is filed.

17 At the evidentiary hearing Mr. Cannell's attorney was advised of the
18 need to join him to Court Claim No. 02292. That has not yet occurred. In
19 order for Mr. Cannell to have standing to bring an exception and request an
20 opportunity to present more evidence in support of the claim, he must file
21 the necessary paperwork to be joined to the claim.

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1 COURT CLAIM NO. 00503 -- John A. Hill
2 & Karen Hill

3 John and Karen Hill filed a claim with the Court asserting a right to
4 use waters from an unnamed spring, an unnamed creek and an irrigation pond.
5 They are represented by Attorney Richard T. Cole and Mr. Hill testified at
6 the evidentiary hearing.

7 The Hills own the E $\frac{1}{2}$ of Section 3, T. 17 N., R. 19 E.W.M. lying south
8 of the Cascade Canal and north of Iron Horse Trail State Park. They own 269
9 acres and irrigate their entire acreage. Most of the land is irrigated with
10 water delivered by the Cascade Irrigation District (CID). The land is in
11 pasture and grass hay and livestock are raised on the property. They are
12 asserting a right to irrigate between 40 and 50 acres with water from a
13 spring-fed creek that flows through their property. The spring arises about
14 50 feet below the Cascade Canal and feeds a creek that traverses their
15 property. The land that is irrigated from the creek lies in that portion of
16 the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 lying west of the creek. Mr. Hill did not testify to
17 how much water he uses from the creek, but agreed with his attorneys
18 statement that he uses 1, 2 or 3 cubic feet per second, depending on how
19 much water is in the creek. According to Mr. Hill, the spring produces
20 water all year, but the flow increases when the Cascade Canal has water in
21 it.

22 The claimants are also asserting a right to irrigate about 10 acres
23 with water in a pond located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3. They sometimes
24 pump from the pond, but there is also a discharge out of the lower end of

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1 the pond. Livestock on the property also drink from the pond. Mr. Hill did
2 not testify to how much water is used from the pond.

3 A stock water right is asserted for use of a spring that arises near
4 the barns, which are near the southwest corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3.
5 There was no testimony about the mechanism for watering the stock, so it is
6 not known whether there is a diversion from the spring or whether the
7 livestock only drink directly from the source. None of the testimony
8 indicated how many head of livestock are raised on the property or whether
9 there are any diversionary stock water uses. Livestock drinking directly
10 from the water source is covered by the stock water stipulation discussed on
11 page 4 of this report. The claimants' name shall be put on the list of
12 claimants covered by the stipulation.

13 Four water right claims were filed by John Hill pursuant to the
14 requirements of RCW 90.14. Those claims numbers are 117816 through 117819
15 and the rights claimed mirror those described in the Court claim.

16 Section 3 was originally conveyed by the Federal government to Northern
17 Pacific Railroad (NP RR). In 1892 NP RR conveyed the SE $\frac{1}{4}$ of Section 3 to
18 Perry Wilkins and in 1893 the NE $\frac{1}{4}$ of Section 3 was conveyed to Clyde V.
19 Warner. The deed for the NE $\frac{1}{4}$ and the Certificate of Sale for the SE $\frac{1}{4}$ are
20 the only historical documents in the record for this land. Mr. Hill
21 testified to his belief that the land has been irrigated since it was
22 settled, but there was no evidence presented to support that belief. Since
23 most of the land is irrigated with water delivered by the Cascade Canal,
24 which was built in the early 1900's, the Referee needs evidence of when

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1 water use from the other sources might have occurred. Mr. Hill testified
2 that the spring immediately below the canal flows all year, but does
3 increase in flow when the canal is full. He did not testify to the quantity
4 of water produced by the spring when the canal is empty, which would be
5 useful in determining if there is sufficient natural flow for irrigation
6 purposes. Mr. Hill also testified that the pond has been on the property
7 for many years, which leads the Referee to conclude it is man-made. The
8 date of construction would be important in determining whether a water right
9 exists. If it was constructed after 1917, it would have been necessary for
10 the landowner at the time to obtain a water right permit under the
11 provisions of RCW 90.03, the State Surface Water Code. There is no evidence
12 that occurred.

13 Due to the lack of evidence to show that a water right was established
14 through historic beneficial use, the Referee cannot recommend confirmation
15 of a water right.

16 COURT CLAIM NO. 02257 -- Joe Hobbs
17

18 Court Claim No. 02257 was filed by Joe Hobbs asserting a right to use
19 two springs for stock watering and three springs for irrigation. Mr. Hobbs
20 testified at the evidentiary hearing.

21 According to Mr. Hobbs' testimony, he own that portion of the E½ of
22 Section 22, T. 16 N., R. 20 E.W.M. lying northeast of a draw that runs
23 through the section. He uses Badger Creek and two unnamed springs for
24 watering up to 174 cow/calf pairs. The livestock drink directly from the
25 creek and springs. Mr. Hobbs referred to the springs as "wet weather

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1 springs", as they only flow when they are being fed by Kittitas Reclamation
2 District (KRD) wastewater or when the weather is wet. The flow from the
3 springs diminishes after the KRD ends its water delivery in the fall, but
4 continue flowing until around February, when they go dry. Mr. Hobbs uses
5 his well for supplemental stock watering when the springs and Badger Creek
6 are dry. Non-diversionary stock watering, where the animals drink directly
7 from the water source with no diversion to a tank, is covered by the stock
8 water stipulation discussed on page 4 of this report. Mr. Hobbs name is on
9 the list of claimants with a non-diversionary stock water right under that
10 stipulation.

11 There are 134 acres that he irrigates solely with water delivered by
12 KRD. Three drains on the property collect wastewater from neighboring lands
13 that are being irrigated with water delivered by KRD. Mr. Hobbs uses this
14 water, in conjunction with water delivered directly by KRD to irrigate 51
15 acres. The water used by the claimant from these drains is KRD water for
16 which the Referee cannot award a water right. However, since Mr. Hobbs is a
17 patron of the reclamation district, that water can continue to be used on
18 his land as long as it is available. However, there is no obligation by the
19 upstream landowners to continue an irrigation practice that allows
20 wastewater to flow onto the claimant's property.

21 The Referee recommends that a water right not be confirmed under Court
22 Claim No. 02257, as the water he is using is KRD water.
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1 COURT CLAIM NO. 00956 -- Don Jacobs
2 & Judy Jacobs
3 Joe Jacobs
4 & Doriene Jacobs

5 Frank Everett, Jr. filed a claim with the Court asserting a right to
6 use waters from Cherry Creek for irrigation and stock watering. On
7 March 29, 1990, the Jacobs were substituted for Mr. Everett. Joe Jacobs and
8 Frank D. Everett, Jr., testified at the evidentiary hearing.

9 The Jacobs own approximately 300 acres of land lying in the W $\frac{1}{2}$ NW $\frac{1}{4}$,
10 SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ of Section 29, T. 17 N., R. 19 E.W.M.
11 and are asserting a right to irrigate 270 acres with water diverted from
12 Cherry Creek. Cherry Creek appears to be the name used to describe the
13 lower end of Park Creek. Water is diverted from the creek using a diversion
14 dam located near the northeast corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29. The dam
15 diverts water into two ditches, one on each side of the creek. The ditch on
16 the north side of the creek also delivers water to the neighboring Moe
17 property. There are 150 acres north of the creek, planted in pasture grass
18 and barley, that are irrigated. About 70 acres are rill irrigated and 80
19 acres are sprinkler irrigated. The northerly ditch carries water to
20 settling ponds before the water is piped to the lands that are sprinkler
21 irrigated. Two 30 HP pumps are used to feed two one-quarter mile wheel
22 lines and a number of handlines. Mr. Jacobs estimated that 100 sprinklers
23 are operated at one time. Mr. Everett testified that approximately 32 acres
24 in the area that is sprinkler irrigated is on top of a hill and the rest is
25 on a hill side. His testimony suggested to the Referee that the settling

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1 ponds and sprinkler irrigation were developed during his ownership. Mr.
2 Jacobs indicated the ponds were built in 1988. There are 120 acres of hay
3 flood or rill irrigated south of the creek. Mr. Jacobs testified to
4 diverting 1.5 cubic feet per second into each of the two ditches, for a
5 combined diversion of 3.0 cubic feet per second.

6 Water Right Claim (WRC) No. 007278 was filed by F. E. Everett, Jr.,
7 pursuant to the requirements of RCW 90.14. It asserts a right to divert 10
8 cfs, 3,000 acre-feet per year from Cherry Creek for the irrigation of 200
9 acres. The place of use is all of the SE $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ lying north of the
10 Badger Pocket Waste Way all of the NE $\frac{1}{4}$ SW $\frac{1}{4}$, and a portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ of
11 Section 29, T. 17 N., R. 19 E.W.M. None of the land in the NW $\frac{1}{4}$ of
12 Section 29 is described in the place of use and a right is being asserted
13 for the irrigation of 200 acres, rather than the 270 acres for which a claim
14 is being asserted in this adjudication. If, in fact, the ponds were
15 constructed in 1988 and that was the first year that water was pumped to
16 irrigate the area that is sprinkler irrigated, that would explain why that
17 area was not described on the claim filed in 1974 and why a right was
18 asserted for irrigating only 200 acres. In 1988, when the additionally
19 acreage was added, the only mechanism for establishing a water right was
20 through following the permit requirements of RCW 90.03. There is no
21 evidence that process was followed. However, if the lands irrigated with
22 sprinklers has been irrigated long enough for a right to have been
23 established under either the Riparian Doctrine or the Prior Appropriation

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1 Doctrine, any right that may have existed for the NW $\frac{1}{4}$ of Section 29 has been
2 waived and relinquished for failure to file a claim, see RCW 90.14.071.

3 Both Mr. Everett's and Mr. Jacob's testimony suggests that the land was
4 originally settled by Patrick Lynch. There are copies of two patents in the
5 record as Exhibits DE-552 and 554. The first is a patent that issued to
6 Patrick Lynch on July 1, 1874, for the E $\frac{1}{2}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29
7 ("among other lands") in T. 17 N., R. 19 E. The second issued on
8 November 20, 1879, for the E $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29 ("and other
9 lands") in T. 17 N., R. 19 E.W.M. Both of these patents are not in a form
10 that the Referee is familiar with for patent certificates. Previous patents
11 entered into evidence do not use the words "and other lands", but describe
12 specifically the lands for which the patent issued. The Referee does not
13 know what other lands were covered by the two patents. Much of the Jacobs'
14 land is not described in either of the two patents. Also in the record are
15 documents relating to the Northern Counties Investment Trust Limited
16 foreclosing on S. R. and Emily Geddis for the S $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, and S $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
17 Section 29 (and other lands), T. 17. N., R. 19 E.W.M. and then selling the
18 land to George and Emma Cooke. The documents suggest that this land stayed
19 in the Cooke ownership until sometime in the 1930's. All of the documents
20 dated in the late 1890's into the 1930's include the statement together with
21 all water rights and irrigation ditches appurtenant thereto. None of the
22 documents suggest what the source of water for the water rights and ditches
23 might be. Hiram Dyk owned the S $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 in the early
24 1950's and DE-577 is an Affidavit of Mr. Dyk made in 1952 stating he had

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1 owned the land for more than 10 years and that he had irrigated a large
2 portion of the land from Cherry Creek. He also stated that Chester Cooke
3 told him that the land had been irrigated from Cherry Creek for more than 50
4 years prior to his purchasing the land. Also in the record is a copy of
5 Ground Water Certificate No. 433-A, which issued in 1950 to Gordon Prentice
6 for part of the S $\frac{1}{2}$ and E $\frac{3}{4}$ NW $\frac{1}{4}$ of Section 29. This suggests that in 1950
7 Gordon Prentice owned the land described in the certificate, not Hiram Dyk.
8 Also in the record are numerous documents that deal with the establishment
9 of the Cascade Irrigation District (CID) and show that both Hiram Dyk and
10 the Cookes paid irrigation district assessments. The documents suggest that
11 the land owned by the Cookes and Mr. Dyk was irrigated with water delivered
12 by CID. CID is a major claimant in this adjudication, whose rights are
13 being addressed in the Major Claimant Pathway. The Report of the Court
14 Concerning the Water Rights for the Cascade Irrigation District, Volume 41,
15 was filed on October 8, 1999, and indicates that CID uses Park (aka Cherry)
16 Creek to deliver water. Mr. Jacobs testified that Cherry Creek is the only
17 source of water used on his land, however, if he is assessed by CID, it may
18 be that CID water is delivered through Cherry Creek.

19 Mr. Everett presented sufficient testimony and evidence to show that
20 water diverted from Cherry Creek has been used on the claimants' land since
21 prior to 1960 and Mr. Dyks affidavit suggests that water from the creek has
22 been used since around 1900. However, since the land was assessed by CID at
23 least until 1950, that water use does not necessarily mean that a water
24 right was established for using the natural flow available in Cherry Creek.

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1 There were no documents put in the record that show that Cherry Creek was
2 used to irrigate the claimants' land prior to construction of the Cascade
3 Canal. The Referee concludes that additional evidence is needed to show
4 that a water right was established through beneficial use of natural creek
5 water prior to 1932. Therefore, the Referee cannot recommend confirmation
6 of a diversionary water right.

7 The testimony indicated that livestock raised on the claimants'
8 property have access to Cherry Creek and drink directly from the creek.
9 This type of non-diversionary stock water use is covered by the stock water
10 stipulation discussed on page 4 of this report and the claimants' names
11 shall be included on the list of those entitled to a right under the
12 stipulation.

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14 COURT CLAIM NO. 00900 -- Calvin Jansen
15 & Rhonda Jansen

16 The Jansens filed Court Claim No. 00900 asserting a right to use waters
17 from Coleman Creek on land they own in Sections 17 and 20, T. 17 N.,
18 R. 19 E.W.M. The claim was also for use of water from Farrell Slough/Yakima
19 River on lands in Section 25, T. 17 R. 18 E.W.M. Those later lands and the
20 water source lie in Subbasin No. 9 and that portion of the claim was
21 addressed in the Subbasin No. 9 Report of Referee, which was filed on
22 June 30, 2000. Only the claim for use of Coleman Creek will be addressed
23 herein. Mr. Jansen testified at the evidentiary hearing.

24 The Jansens own the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17 and that portion of
25 the NW $\frac{1}{4}$ of Section 20 lying northwest of Coleman Creek, all in T. 17 N.,

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1 R. 19 E.W.M. Approximately 86 acres are irrigated with water diverted from
2 Coleman Creek. The point of diversion is approximately 460 feet north of
3 the southeast corner of Section 17. Water is diverted from the creek to a
4 water box where two separate delivery system serve the land. Both delivery
5 systems involve gated pipe used to rill irrigate the fields. At the time of
6 the hearing most of the land was used to grow hay, although in the past
7 corn, potatoes, grain and pasture have also been grown. Livestock are
8 occasionally on the land and drink directly from Coleman Creek, which is
9 adjacent to the property. Non-diversionary stock watering is covered by the
10 stock water stipulation discussed on page 4 of this report.

11 Mr. Jansen estimated that he diverts 3 cubic feet per second from the
12 creek and use 8 to 10 acre-feet per irrigated acre, or up to 860 acre-feet
13 per year. He irrigates from April 1 to October 31 each year. Most of the
14 irrigated land lies in the NW $\frac{1}{4}$ of Section 20; a small sliver of one field,
15 perhaps one or two acres, extends into the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17.

16 Water Right Claim No. 048980 was filed by Ed P. Clerf, a prior owner of
17 the land, pursuant to RCW 90.14. It asserted a right to use 2 cfs, 1000
18 acre-feet per year for the irrigation of 80 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
19 Section 17 and the NW $\frac{1}{4}$ and some other unreadable part of Section 20, all in
20 T. 17 N., R. 19 E.W.M. The point of diversion is described as being 440
21 feet north and 10 feet west of the southeast corner of Section 17, which is
22 the approximate location of the currently exercised diversion. The Referee
23 notes that from the described diversion, it would not be possible to serve
24 by gravity flow the land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17. Although a portion of
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1 the place of use description is not clear, the Referee believes that the NW $\frac{1}{4}$
2 and the NE $\frac{1}{4}$ of Section 20 were described and that RCW 90.14 has been
3 complied with. Although a small sliver of one of the fields extends into
4 the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, it is an insignificant portion of the area
5 irrigated and it would have been reasonable for Mr. Clerf to believe he had
6 accurately described the location of all of the irrigated land.

7 The historical evidence presented for this land is very limited. What
8 appears to be the second page of a title search by Kittitas County Title
9 Company is entered as Exhibit DE-1516. It shows that a patent issued on
10 February 22, 1883, to Walter A. Bull for the S $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
11 Section 20 and a second patent issued on January 9, 1889, to Asa W. June for
12 the N $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20. The documents state that all of Section 17 was
13 apparently conveyed to Northern Pacific Railroad. The page that is in the
14 record does not show the township and range for the lands described,
15 however, through evidence put in by other claimants, the Referee is aware
16 that Walter Bull owned land in this area. Exhibit DE-622 entered by Eric
17 Moe is a copy of a patent dated April 5, 1877 conveying to Walter Bull the
18 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, the N $\frac{1}{4}$ NE $\frac{1}{4}$, and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, all in
19 T. 17 N., R. 19 E.W.M. This suggests that the information on Exhibit
20 DE-1516 is not completely accurate.

21 Mr. Jansen testified to his belief that the land has been irrigated
22 from Coleman Creek since it was settled, however, there was nothing offered
23 by him to support that belief. Eric Moe also entered into the record
24 documents from a Kittitas County Superior Court case dealing with Coleman
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1 Creek. Walter A. Bull v. Martin Meehan et al., which was filed in 1885. The
2 complaint stated that Walter Bull owned all of Section 20, T. 17 N.,
3 R. 19 E.W.M., except the NW $\frac{1}{4}$ NW $\frac{1}{4}$, along with quite a bit of other land in the
4 area. The complaint stated that about 640 acres is what is called "meadow
5 land", which is situated on Coleman Creek and that he had cultivated and has
6 with irrigation raised valuable crops. DE-658 is a second document related
7 to that case. The document does not have a title and only four pages of
8 what is at least a 9 page document are available. It appears to give Walter
9 Bull a right to use one-tenth of the water of the creek measured above the
10 William Dennis ditch. The document is signed by at least some of the
11 parties to the dispute. It appears to be a settlement agreement to resolve
12 the case, however, no final decree is in the record to show that the
13 settlement was adopted, nor is it clear if all of the Bull land was
14 irrigated at the time of this case and entitled to a portion of the right.
15 In order for there to be a water right under the Riparian Doctrine, there
16 must be evidence that Coleman Creek water was used to irrigate the land
17 prior to December 31, 1932. More information is needed to show that this
18 portion of the Bull land was being irrigated. If it was, an effort needs to
19 be made to quantify the one-tenth of the flow awarded to Mr. Bull. Both
20 Mr. Jansen and Eric Moe are claiming that right is appurtenant to their
21 lands.

22 Until additional information is provided about historic water use the
23 Referee cannot recommend that a water right be confirmed to the Jansens
24 under Court Claim No. 0900.

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

3 The Johnsons filed Court Claim No. 01058 asserting a right to use two
4 unnamed springs for stock water and water delivered by Cascade Irrigation
5 District (CID). Mrs. Johnson testified at the evidentiary hearing.

6 The claimants own that portion of the NE $\frac{1}{4}$ of Section 10, T. 17 N.,
7 R. 19 E.W.M. lying south of Iron Horse Trail State Park. Approximately 150
8 acres are irrigated with water delivered by the CID. The district is a
9 major claimant in this proceeding and it's rights are being addressed in the
10 Major Claimant Pathway, see Report of the Court RE: Cascade Irrigation
11 District, Volume 41.

12 The two springs are located on the Johnsons' property. One is near the
13 northwest corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the second is near the center of the
14 SW $\frac{1}{4}$ NE $\frac{1}{4}$. They both surface at or very near drains that are constructed on
15 the property. Livestock have access to and can drink from the spring source
16 and the drains that the water flows into. At the time of the evidentiary
17 hearing 30 cow/calf pairs were being raised. Mrs. Johnson testified that
18 the property could carry as many as 100 head, and she thought that many
19 would have previously been on the property when it was a dairy farm.

20 The extent of the historical evidence presented was testimony that the
21 land was settled by a man named Walker around 1870. Mrs. Johnson believes
22 that the drains were constructed at the time of settlement. The springs
23 arise on the claimants' property, so the riparian doctrine would apply for
24 any water rights that would exist for the natural spring flow in the
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1 springs. Since Cascade Canal water is used for irrigation, it is reasonable
2 to conclude that the land was being farmed in the early 1900's when Cascade
3 Canal was constructed through this area. The extent of farming is not
4 known, but certainly there would have been livestock on the property since
5 the earliest date of settlement. The livestock drink both directly from the
6 spring sources and from the drainage ditches into which the springs flow.
7 The stock water stipulation discussed on page 4 of this report would cover
8 the non-diversionary use. Mrs. Johnson did not testify to how much water is
9 being used from either spring or their rate of water flow.

10 Water Right Claims No. 147654 and 147655 were filed pursuant to RCW
11 90.14 by W. O. Salter, from whom the Johnsons acquired the land. The claims
12 assert a right to use 1.3 acre-feet per year from each spring for stock
13 watering. The Referee believes this is a very reasonable quantity for the
14 level of stock watering on the property. An instantaneous diversion of 0.02
15 cubic foot per second for each spring would be sufficient to meet the stock
16 water needs.

17 The Referee recommends that a right under the Riparian Doctrine be
18 confirmed with a June 30, 1870, date of priority for the diversion of 0.02
19 cfs, 1.3 acre-feet per year from each spring for stock watering.

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1 COURT CLAIM NO. 01962 -- Larry D. Johnson
2 & Jan L. Johnson
3 Richard A. Slyfield
4 & Jane Gede Slyfield

5 Larry D. and Jan L. Johnson filed a claim with the Court for use of
6 Caribou Creek and waste water for irrigation and stock watering. On
7 November 2, 1988, Richard A. and Jane G. Slyfield were joined to the claim.
8 Mr. Slyfield testified at the evidentiary hearing.

9 The Slyfields now own the land described in the claim, having acquired
10 it in 1986. It is a parcel 9.07 acres in size, lying in that portion of the
W%SE%SE% of Section 19, T. 18 N., R. 20 E.W.M. lying east of Caribou Creek.
11 Although Mr. Slyfield testified to irrigating the entire parcel, there is a
12 home and two outbuildings on the land, so less than 9.07 acres are actually
13 being irrigated. The State's Investigation Report estimates that 8.5 acres
14 are being irrigated and Mr. Slyfield agreed with the information in that
15 report. The land is grass hay which is used as pasture after the second
16 cutting. Generally the claimants have 10 head of cattle and 6 horses on the
17 property.

18 Water has historically been diverted from Caribou Creek near the
19 northwest corner of the claimant's property and carried diagonally across
20 the property. About two-thirds of the property lies below this ditch, which
21 is called the Grinrod Ditch. Mr. Slyfield believes there was a second
22 diversion from Caribou Creek further upstream that would have served the
23 upper one-third of the property. There are remnants of that ditch, but it
24 had not been used for a long time prior to when the Slyfields acquired the
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1 land. The land is also assessed by the Kittitas Reclamation District. A
2 KRD lateral enters the northeast corner of the property and intersects with
3 the Grinrod Ditch near the center of the property and then continues south
4 and east through the land. After it intersects with the Grinrod Ditch, the
5 lateral carries commingled creek and KRD water, which is used to irrigate
6 the portion of the claimants' land below the Grinrod Ditch. The portion of
7 the claimants' land above the Grinrod Ditch is irrigated from the KRD
8 lateral before it intersects with the ditch. That portion of the property
9 is also irrigated with water pumped from a pond that is located near the
10 northwest corner of the claimants' land. A pipeline exits the creek at the
11 diversion into the Grinrod Ditch and feeds a pond that has been excavated in
12 the old oxbow creek channel. Mr. Slyfield believes that sometime in the
13 past the creek was straightened along their west property line. A 3 HP pump
14 is used to withdraw water from the pond to irrigate the land above the
15 ditch. The pond is also used for stock and wildlife watering. There is a
16 return pipe from the pond to Caribou Creek. The portion of the creek that
17 is bypassed is about 200 feet. Mr. Slyfield testified to not using creek
18 water, but his later testimony made it clear he was talking about the
19 old diversion from Grinrod Ditch to his property. The KRD lateral
20 intersects with the Grinrod Ditch about 100 feet above where there was a dam
21 for removing water from the ditch. Mr. Slyfield did not provide any
22 evidence of how much water was being used from Caribou Creek.

23 Most of the history for this land was documented in an attachment to
24 Court Claim No. 01962. A chain of title shows that the land was originally
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1 conveyed by the United States to Northern Pacific Railroad, who received a
2 patent for it in 1896. However, prior to the patent issuing, the railroad
3 sold it to Anthony Meade and it stayed in the Meade family until 1910 when
4 it was sold to A. J. Bailes. A. J. Bailes was a defendant in Mary A. Clerf
5 v. Robert I. Scammon, et al., a Kittitas County Superior Court case
6 concerning use of Caribou Creek. The decree was entered on April 25, 1911,
7 and awarded water rights in five classes. A Class 3 right was awarded to A.
8 J. and Carrie J. Bailes for the use of 20 inches of water. Although not
9 specifically stated in the decree, most other decrees of this era allowed
10 for the use of one inch of water for each acre irrigated. Lacking any
11 evidence to the contrary, that is the quantity the Referee intends to
12 award. There is nothing in the decree that would provide a priority date to
13 go along with each class of water right that was awarded. However, the SE%
14 of Section 19 is riparian to Caribou Creek and under the Riparian Doctrine,
15 former railroad lands would have a priority date of when the map of definite
16 location for the railroad was filed, which would be May 24, 1884, in
17 Kittitas County.

18 Pursuant to the requirements of RCW 90.14, Joseph Burt Turner,
19 apparently a prior owner of the claimants' property, filed Water Right Claim
20 No. 131277 asserting a right to use 0.02 cfs, 4 acre-feet per year for each
21 acre irrigated, for the irrigation of 8 acres and stock watering on the
22 claimants' land. The point of diversion described is at the current
23 diversion into the Grinrod Ditch.

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1 It is obvious that a diversion upstream of the claimants' property
2 would have been necessary in order to irrigate that portion of their land
3 north of the Grinrod Ditch. That diversion ceased to be used many years ago
4 and in recent times creek water has been diverted into a pond and then
5 pumped onto that land. The point of diversion of this land was obviously
6 changed without compliance with the change procedures in RCW 90.03.380.
7 Although we do not know when that change occurred it most certainly was
8 after adoption of the Surface Water Code in 1917 and compliance with RCW
9 90.03.380 would have been necessary. However, it appears that essentially
10 what occurred is eliminating one diversion, as the diversion into the
11 Grinrod Ditch has obviously been used since the right was originally
12 established. It is not clear that compliance with RCW 90.03.380 would have
13 been necessary when the right was established with two points of diversion.

14 The Referee recommends that a water right be confirmed under Court
15 Claim No. 01962 with a May 24, 1884, date of priority for the diversion of
16 0.17 cubic foot per second, 34 acre-feet per year for the irrigation of 8.5
17 acres in that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 18 N., R. 20 E.W.M.
18 lying east of Caribou Creek. The diversion into the Grinrod Ditch shall be
19 authorized.

20 Livestock drinking out of the water sources on the property is covered
21 by the stock water stipulation discussed on page 4 of this report.

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1 COURT CLAIM NO. 02258 -- Gregory Jordan
2 & Elizabeth Jordan

3 In 1981 Richard and Virginia Mack filed with the Court Statement of
4 Claim No. 2258. The Macks claimed 26 acre-feet of Schnebly Creek water for
5 irrigation and stock water use on five acres. On June 28, 1991, Gregory and
6 Elizabeth Jordan were substituted for the Macks as the successor to this
7 claim. Mr. Jordan represented himself and provided testimony during the
8 evidentiary hearing.

9 The claimant's property is located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.
10 18 N., R. 19 E.W.M. and is part of the original homestead of E. N. Cooke.
11 The homestead included the NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T. 18
12 N., R. 19 E.W.M. (DE-1438). Schnebly Creek runs through the E $\frac{1}{4}$ SE $\frac{1}{4}$ of this
13 homestead and forms the western boundary of the claimant's property. The
14 eastern side of the property is adjacent to Fairview Road. Based on the
15 1911 testimony of E. N. Cooke, it is clear that in the 1870's he was
16 familiar with the property and water use practices on land adjacent to where
17 his family established their homestead (DE-968). In a historical essay by
18 Elias Francis Cooke (daughter of Charles Cooke, and presumably sister to
19 E.N. Cooke) she describes how on first arriving in the Kittitas Valley in
20 1870 by wagon, her mother looked from a hill at what is now known as the
21 Fairview district and said this area is where she will live. She goes on to
22 describe the construction of their cabins and their first Thanksgiving
23 dinner in 1870. Considering this information, the Referee finds it likely
24 that in fact the Cookes had settled on their homestead land in 1870.

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1 The two points of withdrawal that are used by Mr. Jordan are located
2 down stream from the confluence of Spring Creek and Schnebly Creek; and
3 since the record indicates that Spring Creek is a perennial tributary to
4 Schnebly Creek it stands to reason that there is some water flowing past the
5 claimant's diversion year around. The most northerly of the two diversions
6 is located about 1300 feet north and 240 feet west of the southeast corner
7 of said Section 10. Water from this point is diverted into the Hanson Ditch
8 where it flows south through the claimant's property. Water from this
9 diversion is used to flood irrigate about three acres. The second point of
10 diversion is located (according to SE-2) about 400 feet north and 500 feet
11 west from the southeast corner of Section 10. Located at this point is a
12 1.5 HP pump which diverts water from Schnebly Creek to irrigate about one
13 acre of combined lawn, garden, pasture, and orchard. The State
14 investigation report says that up to 20 stock animals have been pastured on
15 this property at one time.

16 The Cooke Homestead was sold to Carl Gustafason on October 18, 1902.
17 His son Andy Gustafason was born that same year and grew up on this
18 homestead. The Jordan's property is the site of the Gustafason home
19 (DE-1020). Mr. Gustafason was deposed by attorneys Hugh Spall and William
20 Almon (DE-969) on March 15, 1990. In the deposition he discussed the use of
21 Spring (Schnebly) Creek water on his father's farm. He said that they
22 diverted the creek water into the Hanson Ditch and irrigated from three
23 diversions on the ditch. On June 26, 1991, Mr. Gustafason also signed a
24 statement regarding the use of Schnebly Creek water in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
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1 10, T. 18 N., R. 19 E.W.M. (DE-1443). Mr. Gustafason mentioned the use of
2 only one point of diversion from Schnebly Creek with respect to irrigation
3 on his father's farm. There was no discussion of the above mentioned lower
4 point of diversion where Mr. Jordan has his 1.5 HP pump in the creek.

5 On June 13, 1974, Merton Purnell filed Water Right Claim No. 117963.
6 The claim names Schnebly Creek as the source. From the claimed diversion
7 point and place of use it is clear that this claim was filed on the same
8 Hanson Ditch which the Jordans claim a right to use. The purpose is for
9 stock water and irrigation of 44 acres in Sections 10 and 15.

10 The Referee recommends that a right on Schnebly Creek be confirmed to
11 Gregory and Elizabeth Jordan with a June 30, 1870, priority date for the
12 diversion of 0.08 cfs, and 22.8 acre-feet for the irrigation of 4 acres from
13 April 1 through October 15. The place of use is four acres within the
14 SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T. 18 N., R. 19 E.W.M., lying east of Schnebly
15 Creek. The point of diversion is 1300 feet north and 240 feet west of the
16 southeast corner of said Section 10. The claimant's stock may drink
17 directly from any naturally occurring water source on his property as
18 provided for in the non-diversionary stock water stipulation on page 4 of
19 this report. The diversion at the pump location cannot be confirmed, as it
20 was not identified on WRC No. 117963. The evidence also was that this
21 diversion was not historically used. The Referee concludes that the
22 diversion at the pump location was added without compliance with RCW
23 90.03.380. The claimants should contact Ecology' Central Regional Office
24 about the process for adding a point of diversion to the right.

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1 COURT CLAIM NO. 01430 -- Alice C. Junkin

2 Court Claim No. 01430 asserts a right to use waters from Park Creek for
3 irrigation and stock water. Mrs. Junkin, who is represented by Attorney
4 Richard T. Cole testified at the evidentiary hearing.

5 Mrs. Junkin's property lies in a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9,
6 T. 17 N., R. 20 E.W.M. lying west of the county road. Her parcel is 15
7 acres in size and she is asserting a right to irrigate 6 acres of pasture
8 with water diverted from Park Creek and her lawn, garden and fruit trees
9 with water diverted from an unnamed spring. The unnamed spring feeds a
10 small pond near the southerly property line. A 1 $\frac{1}{2}$ HP pump is on the pond
11 and is used to withdraw water for irrigation of her lawn, garden and fruit
12 trees. She did not know how much water was being pumped from the pond.
13 When she has livestock, they have access to and drink from the pond. The
14 pond is fed by the spring all year and never freezes. Non-diversionsary
15 stock watering of this sort is covered by the stock water stipulation
16 discussed on page 4 of this report and Mrs. Junkins name is included on the
17 list of claimants with a non-diversionary stock water right.

18 Water is pumped from Park Creek for the irrigation of six acres of
19 pasture. A 5 HP pump is on the creek and water is piped under the county
20 road. Mrs. Junkin testified that 22 sprinklers are operated at one time and
21 estimates that between 0.75 and 1.0 cubic foot per second is used.

22 Mrs. Junkin testified that she and her husband acquired the property in
23 1979 and the irrigation system was in place at that time. She understood
24 that Mr. Long, from whom they bought, had installed the system in the early
25

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1 1970's. The chain of title indicates that Mr. Long owned the property from
2 1977 to 1979.

3 Several water right claims (WRC) were filed pursuant to RCW 90.14
4 describing lands that include the claimant's property. WRC No. 152498 was
5 filed by Willard Long asserting a right to use 450 gallons per minute from
6 Park Creek for the planned irrigation of 25 acres in a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$
7 of Section 9 that includes the Junkin property. WRC No. 142087 was filed by
8 John L. and Laura D. Miller claiming a right to divert 200 gallons per
9 minute from Park Creek for the irrigation of 150 acres in the E $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$,
10 E $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, that portion of the E $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ north of the railroad line in Section
11 8 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9. WRC No. 000321 was filed by Mrs.
12 John Miller claiming a right to use 20 gallons per minute form a spring for
13 irrigation of 7 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9. WRC No. 000271
14 filed by Mrs. John L. Miller asserts a right o use 50 gallons per minute
15 from a spring for domestic supply in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9. The
16 Millers also owned the property in 1977. Lastly, Steven Bare filed WRC No.
17 000320 asserting a right to use 50 gallons per minute from a spring for
18 domestic supply in that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9 lying west of the
19 county road. The chain of titled entered as exhibit DE-439 does not show
20 Steven Bare as a prior owner of the land.

21 All of Section 9, T. 17 N., R. 20 E.W.M. was conveyed by the Federal
22 Government to Northern Pacific Railroad, with a patent issuing in 1895. The
23 railroad continued to own at least the NW $\frac{1}{4}$ of Section 9 until 1942, when the
24 NW $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ was sold to Claude Sutherland. The claimant is asking the
25

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1 Referee to conclude that a water right was established prior to 1900,
2 without having provided any evidence that water was used prior to the
3 mid-1970's. There has been no evidence of historic water use. Since the
4 railroad continued to own the land until the 1940's, there may not have been
5 any water use until after it was sold into private ownership. Additionally,
6 Mrs. Junkin testified that the irrigation system she uses was installed in
7 the mid-1970's. There was no testimony that this system replaced an
8 existing gravity flow system. If first use of the water did occur in the
9 mid-1970's, compliance with the permitting requirements of RCW 90.03 was
10 required in order to establish a water right. There is no evidence that
11 occurred.

12 Due to the lack of evidence to show that a water right was legally
13 established for this land, the Referee cannot recommend that a right be
14 confirmed.

15 COURT CLAIM NO. 00991 -- Kayser Ranch, Inc.
16

17 Kayser Ranch Inc. filed with the Court Statement of Claim No. 0991.
18 Kayser Ranch was represented in the evidentiary hearing by Attorney William
19 Almon, and testimony was provided on behalf of Kayser Ranch by Mark Kayser,
20 Eugene Barnhart and Henry Schnebly.

21 It is not clear from the Court claim that Kayser Ranch is asserting a
22 right to the use of water originating in Subbasin No. 10; however, it is
23 apparent from testimony that Kayser Ranch is claiming an 1878 priority date
24 for the use of several springs and an 1881 priority date for water use from
25 Schnebly Creek; all lying in Subbasin No. 10.

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1 Kayser Ranch claims the use of Schnebly Creek water on the following
2 lands: 35 acres within the E $\frac{1}{4}$ of Section 34, and 30 acres within the S $\frac{1}{4}$ S $\frac{1}{4}$ of
3 Section 35, T. 19 N., R. 19 E.W.M. (hereinafter all reference to these
4 sections will simply be as Section 34 and 35); and 100 acres on the N $\frac{1}{4}$ of
5 Section 2, T. 18 N., R. 19 E.W.M. (hereinafter referred to as Section 2).
6 Schnebly Creek flows on a seasonal basis and usually runs with enough water
7 for irrigation from the middle of May through the first of June.

8 Exhibit DE-1429 describes a ditch (Kuchen Ditch) that was constructed
9 by Peter Kuchen in 1881 for the purpose of diverting Schnebly Creek water
10 from the SW $\frac{1}{4}$ of Section 26, T. 19 N., R 19 E.W.M. to his property in Section
11 34. Evidence and testimony show that the original Kuchen ranch consisted of
12 the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and N $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, and that this land was later
13 owned by P. H. Adams and is presently owned by Kayser Ranch. The original
14 point of diversion for the Kuchen ditch was located on Schnebly Creek about
15 a half mile north of Kayser Ranch. Approximately 25 years ago Kayser
16 re-located the point of diversion about one half mile south in order to
17 reduce conveyance loss. There is no evidence that the claimant complied
18 with the requirements of RCW 90.03.380 for authorization to change the point
19 of diversion. Mr. Kuchen described his ditch as terminating at the north
20 line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34. There is no evidence that the water
21 diverted into Kuchen Ditch was ever used outside of Section 34.

22 Additional water from Schnebly Creek is diverted at the intersection of
23 Schnebly Creek and the Adams ditch, which was constructed by P. H. Schnebly
24 and Peter Kuchen in 1887 to convey water from Naneum Creek (DE-968, P.
25

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1 167). This point of diversion is located 2000 feet north and 500 feet west
2 of the southeast corner of Section 34. The present practice on Kayser Ranch
3 is to divert water from Schnebly Creek into the Adams Ditch and thus convey
4 the water easterly from Section 34 onto the S $\frac{1}{4}$ S $\frac{1}{4}$ of Section 35. By this
5 means Kayser Ranch irrigates 30 acres in the southwest corner of Section 35,
6 and the 100 acres in the N $\frac{1}{4}$ of Section 2. Mr. Henry Schnebly (born 1918)
7 testified that he remembers as a youngster seeing the waters of Schnebly
8 Creek used on the Kayser Ranch lands in Sections 2 and 35 in the same
9 fashion that they are today.

The Kayser Ranch lands in Sections 2 and 35 are a conglomerate of portions of three separate homesteads. The W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 2 is part of the Eric Larson homestead (DE-970); the E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 2 comprised the 160-acre P. H. Schnebly homestead. The S $\frac{1}{2}$ S $\frac{1}{4}$ of Section 35 was also owned by P. H. Schnebly. It is not clear when Schnebly acquired this land or whom originally settled on it. The only document is the record is DE-980, which shows that on May 10, 1902, P. H. Schnebly sold his homestead and the additional parcel in Section 35 to P. H. Adams. The Schnebly homestead and the Larson property are also described in the findings and conclusions in Ferguson vs. U.S. National Bank of Portland, Oregon, et al, No. 2607.

The southwest corner of the S½S¾ of Section 35, is riparian to Schnebly Creek; however, the only history of title on this parcel is the 1902 deed mentioned previously. Odd number sections were normally conveyed by the United States to Burlington Northern Railroad for potential location of a

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1 railroad; however, that was not always the case. Without evidence to show
2 that this land was railroad land, the Referee will not make that
3 assumption. The 1887 Adams ditch traverses this parcel (DE-1252 and SE-1),
4 and it seems probable to the Referee that this ditch has delivered Schnebly
5 Creek waters from the early days of its completion.

6 The Larson piece is also riparian to Schnebly Creek; yet again, the
7 only history of title in the record is a 1913 deed of conveyance to Charles
8 Bull. It appears that Mr. Larson received a patent for his land on July 7,
9 1887 (DE-970). The Referee also takes note of the fact that together with
10 William Kiester, Larson constructed the Kiester Ditch from Naneum Creek to
11 his property in June of 1880 (DE-866).

12 The transcript for Sanders vs Bull, pages 167-168 (DE-968) indicates
13 that P. H. Schnebly filed his homestead claim in 1883 or 1884. The
14 transcript further indicates that P. H. Schnebly moved onto the property "a
15 little before" he filed for his homestead; how long before is unclear. The
16 Schnebly homestead is not riparian to Schnebly Creek and it does not appear
17 that the waters of Schnebly Creek were ever diverted onto this land prior to
18 the 1887 construction of the Adams Ditch.

19 Mark Kayser filed Water Right Claim No. 118060 pursuant to RCW 90.14
20 asserting a right to 100 gpm (0.22 cfs) and 160 acre-feet of Schnebly Creek
21 water for the irrigation of 80 acres and stock water within the S%S% of
22 Section 35 and the N% of of Section 2. The claim does not describe the
23 claimant's land that is irrigated in Section 34. The claimant's attorney
24 has requested that any inconsistencies between water right claims and
25

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1 testimony be amended to conform with testimony. WRC No. 118060 asserts a
2 right to use only 0.22 cubic foot per second from Schnebly Creek, yet the
3 testimony indicates that considerably more water is being diverted and has
4 historically been diverted. The Referee does not have the authority to
5 amend water right claims filed pursuant to RCW 90.14, and the addition of 35
6 acres in section 34 would be more than a matter of interpretation. The
7 authority for such an amendment resides with the Department of Ecology as
8 set forth by RCW 90.14.065.

9 The Referee concludes there is sufficient evidence in the record to
10 recommend confirmation of water rights on Schnebly Creek for the irrigation
11 of 80 acres. However, the extent of the right which could be recommended
12 based on the quantity of water stated in WRC No. 118060 is 0.22 cubic foot
13 per second, which would not be adequate for irrigating 80 acres. Kayser
14 needs to follow the procedures in RCW 90.14.065 to amend the quantity of
15 water claimed in WRC No. 118060. The Referee will not recommend
16 confirmation of the rights at this time to allow Kayser Ranch an opportunity
17 to pursue the amendments. The Referee finds that the following rights exist
18 and could be recommended following amendment of the water right claim:

19 A) For the S $\frac{1}{2}$ S% of Section 35, T. 19 N., R.19 E.W.M. the priority date is
20 June 30, 1887. The quantities that could be recommended are 0.60 cfs and
171 acre-feet for the irrigation of 30 acres within the said parcel.

21 B) For the E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 2, T. 18 N., R 19 E.W.M. the
22 priority date is June 30, 1887. The quantities that could be recommended
23 are 0.50 cfs and 142.5 acre-feet for the irrigation of 25 acres within the
24 said parcel.

25 C) For the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 2. T. 18 N., R. 19 E.W.M. the priority date is
26 June 30, 1880. The quantities that could be recommended are 0.50 cfs and
27 142.5 acre-feet for the irrigation of 25 acres within the said parcel.

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1 A common point of diversion at the intersection of Schnebly Creek and the
2 Adams ditch has historically been used and continues to be used. The season of
3 use is from April 1 through October 15 as water is available. The quantities of
4 0.01 cfs and 1 acre-foot can be recommended for the year around diversion and
5 use of stock water. The total amount of water to be diverted by Kayser Ranch
6 from Schnebly Creek would not exceed 1.61 cfs. The claimant's stock may drink
7 directly from any naturally occurring water source on Kayser Ranch as provided
8 for in the non-diversionary stock water stipulation on page 4 of this report.
9 Kayser Ranch is included on the list of claimants with non-diversionary stock
10 water rights under the stipulation.

11 The referee cannot recommend confirmation of a water right from Schnebly
12 Creek for the Kayser Ranch property in Section 34, T. 19 N., R. 19 E.W.M.
13 Although it is likely that water from Schnebly Creek was used on this land as
14 early as 1881, a right to irrigate this property was not claimed pursuant to RCW
15 90.14. Failure to file a claim waives and relinquishes any right that may have
16 existed, RCW 90.14.071. The claimant may want to attempt to amend the place of
17 water use on WRC No. 118060 to include the land in Section 34, although other
18 claimant's experience with this type of amendment has been unsuccessful.

19 Kayser Ranch also claims rights to use several springs for domestic use,
20 stock water and irrigation. One of the springs is located 50 feet south and
21 1100 feet west from the center of Section 1, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
22 Section 1, T. 18 N., R. 19 E.W.M. This spring supplies domestic water to the
23 neighboring home of Eugene Barnhart, and what water is left, that is the
24 "overflow", is conveyed westerly by means of an open ditch to the home of Mark

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1 Kayser for lawn irrigation and to his corrals for stock water. Kayser Ranch
2 typically pastures around 200 mature cattle, 350 yearlings and 5 horses on the
3 premises. The record shows that Mr. Kayser's home is located in Section 2 on
4 the same site as that of the original house of P. H. Schnebly who homesteaded
5 there. There was no testimony regarding the amount of water that is diverted
6 and used from this spring.

7 Mark Kayser filed Water Right Claim No. 118058 for 5 gpm (0.011 cfs) and
8 5.04 acre-feet of water from the above mentioned spring for one acre of
9 irrigation and livestock use within the N $\frac{1}{2}$ of Section 2, T. 18 N., R. 19 E.W.M.
10 The claim was filed in accordance with the requirements set forth by RCW Chapter
11 90.14.

12 The Referee recommends a right be confirmed on the "overflow" of this
13 spring for the diversion of 0.011 cfs and 5.04 acre feet for year around
14 diversionary stock water and seasonal lawn and garden irrigation of one acre.
15 The priority date, based upon the Prior Appropriation Doctrine, is June 30,
16 1883. The point of diversion is the same as the above mentioned spring
17 location. The place of use is within the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T. 18 N., R.
18 19 E.W.M.

19 The second spring is located 350 feet north and 1200 feet west from the
20 southeast corner of Section 35, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T. 19
21 N., R. 19 E.W.M. The primary use of this spring is to supply domestic water to
22 the old P. H. Schnebly home site which is now occupied by Mark Kayser. Water is
23 collected in a spring box and conveyed by means of steel pipe to his house. Mr.
24 Kayser testified that in the spring season the overflow from this spring

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1 provides irrigation for about one acre of his property. This occurs naturally
2 without any artificial means of diversion being employed. There was no
3 testimony regarding the amount of water that is diverted and used from this
4 spring.

5 Mark Kayser filed Water Right Claim No. 118059 for 20 gpm (0.044 cfs) and
6 32 acre-feet of water from the above mentioned spring for one acre of
7 irrigation, domestic supply and livestock use within the NW $\frac{1}{4}$ of Section 2, T. 18
8 N., R. 19 E.W.M. The claim was filed in accordance with the requirements set
9 forth by RCW Chapter 90.14.

10 The Referee recommends a right be confirmed on this spring with a priority
11 date of June 30, 1883, for the diversion of 0.04 cfs and 2.0 acre-feet per year
12 for single domestic supply. The point of diversion is the same as the above
13 mentioned location in Section 35. The place of use is within the E $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
14 Section 2, T. 18 N., R. 19 E.W.M.

15 COURT CLAIM NO. 01234 -- Sam Kayser
16 (A) 06380 & Lonni Kayser
17 Michael Kooy

18 On August 26, 1981, Margaret Kooy submitted a claim with the court for
19 the use of waters from Wilson and Naneum Creeks. An amended statement of
20 claim was filed on July 1, 1991, by Sam Kayser, the successor in title of
21 the Kooy property and claim. The amended statement added a claim to use the
22 waters of Schnebly Creek. The claimed place of use is the W $\frac{1}{4}$ SW $\frac{1}{4}$ and that
23 portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ which lies north of the North Branch Canal of Kittitas
24 Reclamation District, all in Section 2, T. 18 N., R 19 E.W.M. Mr. Kayser
25 was represented in the evidentiary hearing by his attorney William F.

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1 Almon. Mr. Almon stated in his opening presentation that a priority date of
2 1881 is sought by the claimant. The state did not submit an investigation
3 report for this claim.

4 On February 18, 1974, Jacob Kooy filed Water Right Claim No. 062731 as
5 prescribed by Chapter 90.14 RCW. The claim names Schnebly Creek as the
6 source of water for stock and irrigation of 16 acres in part of the SE $\frac{1}{4}$ SW $\frac{1}{4}$
7 of Section 2, T 18., R. 19 E.W.M. The date of first water use is claimed to
8 be April 1880.

9 Mr. Kayser's testimony regarding his place of use for Schnebly Creek
10 water was not clear, and subsequent to examination by his attorney he
11 sketched the location of his place of use on the exhibit map (SE-2).
12 Mr. Kayser's sketch identifies a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 2
13 as his place of use. This location is not the same as that claimed by Mr.
14 Kooy on the 90.14 RCW claim. There is no explanation in the record that
15 might resolve this difference. The location as identified by Mr. Kayser is
16 on a part of the original Eric Larson homestead (DE-970). The location
17 described by Mr. Kooy is on an adjacent piece of property that appears to
18 have originally been owned by Charles Bull (DE-1527). Schnebly Creek is
19 riparian to both parcels and undoubtedly each would have a unique priority
20 date.

21 The Referee can find little in the record that would suggest a historic
22 use of Schnebly Creek water on either of the claimed properties. Mr. Kayser
23 is relying on DE-1429, a description of the Kuchen Ditch, as the basis for
24 establishing his claimed priority date of 1881, and as representing a
25

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1 portrayal of the initial diversion of Schnебly Creek water onto his
2 property. However, this document describes the Kuchen Ditch as terminating
3 in Section 34, T. 19 N., R 19 E.W.M., and the Referee can find no evidence
4 to suggest that the water of the Kuchen Ditch was ever used outside of
5 Section 34.

6 Mr. Kayser also sketched the location of his sole point of diversion
7 from Schnебly Creek as being about 500 feet above the north boundary line of
8 his property. This point of diversion is not consistent with either the one
9 described in DE-1429 or the one described in the RCW 90.14 Water Right
10 Claim. Consequently, the historical foundation for this point of diversion
11 seems to be lacking.

12 The record does not contain the information necessary to resolve these
13 discrepancies and establish the historical foundation of this claim.
14 Additionally, there is no evidence that a claim was filed pursuant to RCW
15 90.14 for the property that Mr. Kayser is asserting a right. Failure to
16 file a claim waives and relinquishes any right that may have existed, RCW
17 90.14.071. Therefore, even if evidence of historic water use is found,
18 confirmation of a water right is not likely. The Referee does not recommend
19 confirmation of a water right under Court Claim No. 01234.

20 COURT CLAIM NO. 06564 -- Joan G. Laws

21 Court Claim No. 06564 was filed on September 27, 1991, and was accepted
22 by the Court for further processing by Order dated November 14, 1991. Joan
23 G. Laws testified at the evidentiary hearing.

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1 Ms. Laws property is that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14,
2 T. 18 N., R. 19 E.W.M. lying northwest of Coleman Creek. She is asserting a
3 right to irrigate 9 acres and water stock with water from Coleman Creek.
4 The quantity and type of livestock on her property varies over the years,
5 but the stock drink directly from the creek. This type of non-diversionary
6 stock watering is covered by the stock water stipulation discussed on page 4
7 of this report. Ms. Laws name is included on the list of those entitled to
8 a non-diversionary stock water right under the stipulation.

9 Water is diverted from the creek by means of a dam on the creek at the
10 northeast corner of the claimant's property. An open ditch carries water to
11 smaller ditches that are used to flood and rill irrigate most of the land.
12 A pump is used to irrigate the lawn and garden and some fruit trees. It was
13 not clear whether the pump is directly on the creek or on the ditch. At the
14 time of the hearing Ms. Laws property was in pasture, but had previously
15 been in hay.

16 Ms. Laws' property is part of the land for which Eric Erickson received
17 a patent on November 25, 1879. That patent issued for all of the SW $\frac{1}{4}$ of
18 Section 14. Ms. Laws late husband was part of the Erickson family. Carrie
19 Kregness, also part of that family, was a party to the Schnебly v. Huss
20 action in 1915. The Findings of Fact and Conclusions of Law that preceded
21 the decree found that the parties had stipulated to one-half inch of water
22 being sufficient for the irrigation of one acre. Carrie Kregness was found
23 to have appropriated water in either 1873 or 1874 for the irrigation of 360
24 acres she owned, including the SW $\frac{1}{4}$ of Section 14. The decree awarded her

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1 sufficient water to irrigate all of her property at the stipulated rate of
2 one-half inch per acre. She was awarded a Class 2 right in the decree. Ms.
3 Laws testified that she and her husband inherited the land in 1945 and it
4 was being irrigated at that time and has continued to be irrigated. She
5 also receives water delivered by the Kittitas Reclamation District (KRD),
6 which she uses when the creek goes dry.

7 Rex E. Laws filed Water Right Claim No. 012571 asserting a right to use
8 1 cfs, 300 acre-feet per year from Coleman Creek for the irrigation of 11
9 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M. The point of
10 diversion described is at the location of the dam in the creek.

11 The Referee recommends that a right be confirmed to Joan G. Laws under
12 Court Claim No. 06564 with a June 30, 1873, date of priority for the
13 diversion of 0.09 cfs, 36 acre-feet per year from Coleman Creek for the
14 irrigation of 9 acres and stock watering in that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
15 Section 14 lying northwest of Coleman Creek. The point of diversion that
16 shall be authorized shall be at the location of the dam, as that is the only
17 point described in the RCW 90.14 claim that was filed. If the pump being
18 used for irrigating the lawn and fruit trees is on the creek instead of the
19 ditch, the claimant should contact the Department of Ecology about the
20 process for adding a point of diversion to the right as set forth in RCW
21 90.03.380.

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1 COURT CLAIM NO. 05411 -- William K. Lowe
2 & Marilyn Lowe

3 Court Claim No. 05411 was filed by William K. and Marilyn Lowe on
4 June 21, 1990. The Court entered an order on September 14, 1990, finding
5 that the claim was appropriate for further processing by the Referee. The
6 Lowes were represented by Attorney John P. Gilreath at the evidentiary
7 hearing and Mr. Lowe testified at that hearing.

8 The Lowes property lies in Section 7, T. 16 N., R. 20 E.W.M. They are
9 asserting a right to use water from Sorenson Spring for domestic supply and
10 stock watering. The spring arises in Government Lot 2 of Section 18, and is
11 piped to the Lowes home in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 7. Water is used for
12 in-house domestic supply, lawn and garden irrigation as available and stock
13 watering. The spring at best flows half a gallon per minute, which quantity
14 is diverted on a continuous basis. A continuous diversion of one-half
15 gallon per minute (or 0.0001 cfs) would result in a diversion of 0.80
16 acre-foot in a one year period. During the summer, the flow will diminish
17 and the Lowes have to be conservative with their water use in order not to
18 run their cistern dry. Overflow from the spring is used to fill a stock
19 water trough. The claimants have up to 200 cow/calf pairs on their
20 property.

21 Water Right Claim No. 090254 was filed by Paul R. Sabin, a former owner
22 of the property, pursuant to RCW 90.14. It claims a right to divert
23 one-half gallon per minute, one acre-foot per year for domestic supply and

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1 stock water. The spring location described is the same as that described in
2 Court Claim No. 05411.

3 Section 7 was originally conveyed by the Federal government to Northern
4 Pacific Railroad. On May 3, 1901, the railroad entered into a contract with
5 Soren Sorenson for the sale of all of Section 7. The contract was fulfilled
6 in 1906 with the issuance of a warranty deed. Mr. Lowe did not provide any
7 testimony about whether Mr. Sorenson resided on this land and built a home.
8 In 1941 John O. and Flora Sorenson sold the E $\frac{1}{2}$ and E $\frac{1}{2}$ W $\frac{1}{2}$ of Section 7 lying
9 south of a gravity lateral of KRD to Arthur Nicolai together with water
10 rights and irrigating ditches appurtenant thereto, including pipeline from
11 spring in Section 18 running to said premises in Section 7 and through said
12 premises to certain lands lying north of the gravity lateral and south of
13 the turbine lateral. This seems to include the area where the Lowes home is
14 located. So, by 1941 the spring was piped to the area where the Lowes home
15 is built.

16 In order for the Referee to know if there was a right legally
17 established for use of the spring, there needs to be information about when
18 the spring was developed and piped to a homesite. This is not the only land
19 owned by the Sorensons, so it is not possible to conclude that because they
20 acquired the land, a home was built. Exhibits entered in support of claims
21 further north, in T. 17 N., R. 19 E.W.M. by various members of the Sorenson
22 family indicate that John O. Sorenson owned land in that area by 1919.

23 The Referee would be in a position to recommend confirmation of a right
24 to the extent the spring flows if the claimant could provide more

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1 information about when the home they own was built or whether it was a
2 replacement for an older home that might have been built around the turn of
3 the century. At this point, the Referee does not recommend confirmation of
4 a water right, as there was no evidence to show that the spring was
5 developed and put to beneficial use for domestic supply or diversionary
6 stock water prior to June 6, 1917.

7 COURT CLAIM NO. 01958 -- Brian Maier
8 & Sheila Maier
9 A.C.X. Trading, Inc.

10 Court Claim No. 01958 was originally filed by Egon R. and Pam Wegner,
11 asserting a right to use waters from Naneum Creek and Coleman Creek. Naneum
12 Creek is in Subbasin No. 9 and the portion of the claim related to those
13 waters was addressed in the Subbasin No. 9 Report of Referee. Brian and
14 Sheila Maier were substituted as claimants on May 4, 1991, and A.C.X.
15 Trading, Inc. was joined to the claim on August 20, 1998. Attorney Jeff
16 Slothower represented the Maiers at the evidentiary hearing. David Tollett,
17 Jr., who worked for the Maier, testified at the hearing.

18 The claimants property lies within the S $\frac{1}{2}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33,
19 T. 18 N., R. 19 E.W.M. lying south of the Cascade Irrigation District (CID)
20 Canal. The land is a horse ranch, where around 96 thoroughbred horses are
21 raised. The horses have access to, and drink directly from, Coleman Creek.
22 Non-diversionary stock watering, such as this, is covered by the stock water
23 stipulation discussed on page 4 of this report. There is a three acre
24 paddock that appears to be in the southeast corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
25 Section 33 that is irrigated with water diverted from Coleman Creek. Water

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1 is diverted into the ditch by a check dam. The ditch serves the neighboring
2 Larry Raap property and water is used on the claimant's land only when Mr.
3 Raap is diverting water to irrigate his land. Mr. Tollett testified that he
4 can cover the three acres in five days and irrigates twice a month. He was
5 not able to estimate how much water is used. Livestock can also drink from
6 the irrigation ditch.

7 Mr. Tollett did not testify to any historical water use on the
8 property. The exhibits offered by the claimant show that John S. Dysart
9 obtained a patent in 1875 for a portion of the property and obtained
10 additional land from the Northern Pacific Railroad in 1890. In 1890 J. S.
11 Dysart filed a statement of water right claim. The statement was that he
12 owned the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T. 18 N., R. 19 E.W.M., the N $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$
13 of Section 4, T. 17 N., R. 19 E.W.M. and had been in possession of the lands
14 since 1871. He also stated that around April 1, 1872, he constructed a
15 ditch from Coleman Creek for the purpose of irrigating those lands. The
16 capacity of the ditch was reported to be 53 cubic feet per second.

17 Water Rights on Coleman Creek were addressed in the Schnebly v. Huss
18 decree that was entered in 1915. The Findings of Fact and Conclusions of Law
19 that preceded the decree stated that defendant J. A. Mahan was irrigating
20 his land with water having been originally appropriated by James S. Dysart
21 for the lands described in the previous paragraph, that Mahan had purchased
22 them for use upon his 50 acres. As far as the Referee can determine, there
23 is no evidence of any other water right that may have been appurtenant to
24 the claimant's land. The decree awarded a Class 1 right to J. A. Mahan.

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1 The Referee's review of the record failed to reveal a water right claim
2 filed pursuant to RCW 90.14 for the claimant's property. Failure to file a
3 claim waives and relinquishes any water right that may have existed, see RCW
4 90.14.071.

5 Due to there being no evidence that a water right exists for the
6 property and the failure to file a claim pursuant to RCW 90.14, the Referee
7 cannot recommend that a water right be confirmed for the property. The
8 claimants' names will appear on the list of parties with non-diversionary
9 stock water rights covered by the stipulation. Most of the land is
10 irrigated with water delivered by Cascade, who is a major claimant in this
11 proceeding, whose rights are being determined through the Major Claimant
12 Pathway. This recommendation does not affect the claimants use of CID
13 water.

14 COURT CLAIM NO. 05556 -- Carol Clerf Martinez
15

16 Carol Clerf Martinez filed Court Claim No. 05556 on August 3, 1990,
17 well after the date established for filing claims in this proceeding. On
18 September 14, 1990, the Court entered an order determining that it was
19 appropriate to further process the claim. Therefore, the claim was included
20 in the Subbasin No. 10 schedule. Mrs. Martinez is represented by Attorney
21 John P. Gilreath. Her brother, Robert Clerf, testified at the hearing on
22 behalf of the claim.

23 Mrs. Martinez owns the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 12, T. 17 N.,
24 R. 19 E.W.M. She is asserting a right to irrigate 30 acres in the W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
25 and W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12 with water diverted from Caribou Creek. The rest

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1 of her land is also irrigated, however, not from Caribou Creek or any other
2 of the creeks flowing in Subbasin No. 10. The Referee notes that her
3 property does lie below the Kittitas Reclamation District Highline canal and
4 a portion of the land is below Cascade Canal. Water is diverted from
5 Caribou Creek in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T. 17 N., R. 19 E.W.M. and carried
6 in what is called the Clerf Ditch, which enters Section 12 near the north
7 quarter corner. This ditch is also used to irrigate the John Clerf property
8 in the NW $\frac{1}{4}$ of Section 12.

9 Robert Clerf testified that 3 cubic feet per second and 210 acre-feet
10 per year are used to irrigate the 30 acres. An additional 65 acre-feet per
11 year is diverted into the canal, but lost during conveyance in the half-mile
12 long ditch. The Referee was referred to the engineering report prepared by
13 Richard C. Bain related to the John Clerf property in the NW $\frac{1}{4}$ of Section 12
14 for information about water duty in the area and the diversion into and
15 conveyance loss from the ditch. According to Mr. Bain's report, 6 cubic
16 feet per second is diverted into the ditch. Mr. Clerf also testified that 4
17 acre-feet per year is needed for stock watering. At various times during
18 the year, up to 2,000 head of sheep or 200 head of cattle may be on the
19 property.

20 Water Right Claim No. 154222 was filed by John Clerf pursuant to the
21 requirements of RCW 90.14. It asserts a right to divert 3 cfs, 900 acre-feet
22 per year from Caribou Creek for the irrigation of 200 acres and stock water
23 in the E $\frac{1}{4}$ of Section 12. The point of diversion described is the point
24 currently being used.

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1 The claimants land was settled by E. Ward Cooke, who received a patent
2 for the W $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 17 N., R. 19 E.W.M. on
3 May 23, 1889. Also in the record is the receiver's receipt for the same
4 land dated December 10, 1887. This evidence shows that the land was
5 occupied at least by December of 1887. There was no evidence presented to
6 show that a water right was legally established for the property through
7 beneficial use of the water prior to adoption of the Surface Water Code in
8 1917 and prior to the Federal withdrawal of the surface waters in the Yakima
9 Basin on May 10, 1905. There was no evidence presented to show ownership of
10 the land after it was patented.

The Kittitas County Superior Court case, Mary A. Clerf v. Robert I. Scammon, et al. (1911) addressed rights to use Caribou Creek. A copy of the Findings of Fact that preceded the decree was entered by Ronald Gibb and given Exhibit No. DE-81. The Referee reviewed the Findings of Fact and there is no mention of the E $\frac{1}{2}$ of Section 12, T. 17 N., R. 19 E.W.M. Water rights were awarded for the W $\frac{1}{2}$ of Section 12. Without knowing who owned the claimant's land at the time of this case, it is not possible to determine if the owner was a named party.

19 Due to the lack of evidence to show that a water right was established
20 for the land, the Referee cannot recommend that a water right be confirmed
21 under Court Claim No. 05556.

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1 COURT CLAIM NO. 01873 -- Michael C. Marvich

2 A statement of claim was filed by Michael C. Marvich for the use of
3 waters from Coleman Creek for irrigation and stock water. The claimed place
4 of use is 100 acres within the E $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
5 Section 23, T. 18 N., R. 19 E.W.M. Mrs. Detta Marvich appeared and offered
6 testimony on behalf of her son, who was not able to attend the evidentiary
7 hearing. There no exhibits submitted in support of the claim.

8 Mrs. Marvich stated that she and her husband purchased the subject
9 property in the either 1967 or 1968, and the property was irrigated at that
10 time. The entire property is 150 acres and Mr. Marvich irrigates 147 acres
11 with water from the Kittitas Reclamation District (KRD). She stated that
12 Coleman Creek water is used to supplement the KRD water. Mrs. Marvich and
13 her husband Clarence typically had between 100-200 head of cattle on the
14 property.

15 Mrs. Marvich did not describe how Coleman Creek water is diverted and
16 delivered to the property, nor which lands were irrigated with Coleman Creek
17 water. The State investigation report notes that there are 78 acres of land
18 that are rill irrigated with Coleman Creek water. The point of diversion
19 described on the investigation report is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, which
20 is where water is diverted into a ditch that carries water to the Marvich
21 property. This diversion is on a channel that may be a natural unnamed
22 water course that separates from Coleman Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
23 or it may be a ditch. That is very difficult to discern.

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1 On June 24 1974, Clarence Marvich filed Water Right Claim (WRC) No.
2 153572 pursuant to RCW Chapter 90.14 for the use of 24 (neither cfs or gpm
3 are indicated), 300 acre-feet per year from Coleman Creek for the irrigation
4 of 100 acres within the E $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
5 23, T. 18 N., R. 19 E.W.M. The point of diversion claimed is in the NE $\frac{1}{4}$ of
6 Section 23, which is where Mr. Marvich withdraws water from the ditch. The
7 Referee concludes that WRC No. 153572 substantially complies with the
8 requirements of RCW 90.14.

Mrs. Marvich testified that she did not know anything about the history of Coleman Creek water use on the property prior to purchasing it in the late 1960's. The Referee reviewed the Schnebly v. Huss Findings of Fact and Conclusion of Law and Decree and found that a Class 2 right, which would have an 1874 date of priority, for 180 inches was awarded to Carrie Kregeness, who owned the SW $\frac{1}{4}$ of Section 14, the W $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T. 18 N., R. 19 E.W.M. The Referee estimates that 50 acres are irrigated by Mr. Marvich within the portion of his property that was awarded a right in the Schnebly v. Huss decree. The Court in that case awarded one-half inch of water, or 0.01 cfs, for each acre irrigated. Mr. Marvich would then be entitled to 0.50 cfs for those 50 acres. There was no evidence presented to show that a water right was established for the claimant's land in the E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23. Therefore, the Referee cannot recommend that a right be confirmed for that land.

23 Based on the foregoing, the Referee recommends that a right be
24 confirmed with a June 30, 1874, date of priority for the diversion of 0.50

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1 cubic foot per second, 150 acre-feet per year for the irrigation of 50 acres
2 and stock watering in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T. 18 N.,
3 R. 19 E.W.M.

4 COURT CLAIM NO. 00783 -- Maurice McGrath
5 & Joanna M. McGrath

6 The McGraths submitted a claim to the Court for use of waters from
7 Parkee Creek. They are represented by Attorney John P. Gilreath and Donald
8 Weber, a neighboring landowner, testified at the evidentiary hearing on
9 their behalf.

10 The McGraths own the W $\frac{1}{4}$ of Section 32, T. 18 N., R. 20 E.W.M. and
11 initially asserted a right in Court Claim No. 00783 to irrigate 50 acres
12 with water from Parke Creek. However, Mr. Weber testified that they are
13 irrigating 70 acres, leading the Referee to conclude they are in fact
14 asserting a right to irrigate those 70 acres. A right is also being
15 asserted for stock watering. Parke Creek flows through the claimants'
16 property and undoubtedly the livestock have access to and drink directly
17 from the creek. This type of nondiversionary stock water use is covered by
18 the stock water stipulation discussed on page 4 of this report. The
19 irrigated land lies in the SW $\frac{1}{4}$ of Section 32. At the time of the
20 evidentiary hearing, the McGraths were in the process of changing the
21 delivery system for their water from open, earthen ditches to concrete
22 ditches and gated pipe for rill irrigation. The land is planted in hay and
23 pasture with a grain rotation. Water delivered by the Kittitas Reclamation
24 District is also used on this land.

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Prior owners of the claimants' land were involved in litigation that addressed use of water from Parke Creek. The first, W. F. Burke, W. G. Davidson and Ellen Davidson v. Allan Dunning, Nicholas Snow, Christian Christianson, was decided on December 24, 1909. The decree in that case ruled that the plaintiffs were entitled to the entire flow of all the waters naturally flowing in Parke Creek, except waters received from the springs and Little Parke Creek situated upon the lands of defendant Allan Dunning (E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 22) and to the undivided fourteen-sixteenths of all waters conveyed by them into Parke Creek above the lands of said defendant, subject to the right of Allan Dunning to use such waters for the last ten days of the month of April of each year. W. F. Burke owned the SE $\frac{1}{4}$ of Section 29 and the N $\frac{1}{2}$ of Section 32 and W. D. Davidson owned the SW $\frac{1}{4}$ of Section 32.

The second case is Emmel Aitken v. Guy W. and Catherine Cooke, which was decided on February 15, 1935. The Findings of Fact that preceded the decree stated that the plaintiff owned the SE $\frac{1}{4}$ of Section 29, the N $\frac{1}{2}$ and the SW $\frac{1}{4}$ of Section 32. The predecessor to the plaintiff, in 1888, constructed a ditch (called Mountain Ditch) from the headwaters of Tacyson and Brushy Creeks to a junction with the channel of Parke Creek. Tacyson and Brushy Creeks naturally flow into the Columbia River and continuously since 1888 the plaintiff or his predecessor conveyed to his lands and used for irrigation, stock, and domestic purposes seven-eights of all of the waters of Parke Creek and Little Parke Creek and the waters diverted from Mountain Ditch. The decree then awarded Aitken seven-eighths of the waters from Parke Creek including seven-eighths of the waters from Tacyson and Brushy Creeks.

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1 Creeks put into Parke Creek. Neither the Findings of Fact nor the Decree
2 state how much water is being appropriated. Donald and Barbara Weber own
3 the SE $\frac{1}{4}$ of Section 29 and the NE $\frac{1}{4}$ of Section 32.

4 There was no testimony about how much water has been diverted by either
5 the claimants or their predecessors. Neither has there been any testimony
6 about the quantity of water flowing in Parke Creek. "In conducting a water
7 adjudication, the trial court generally considers two elements when
8 confirming existing rights: "(1) the amount of water that has been put to
9 beneficial use and (2) the priority of water rights relative to each other."

10 Department of Ecology v. Acquavella, 131 Wn.2d 746, 755, 935 P.2nd 595

(1997), quoting from Department of Ecology v. Grimes, 121 Wn.2d 459, 466-67, 852 P.2d 1044 (1993). Although Mr. Weber has testified to diverting water from Parke Creek and irrigating 70 acres, there was no testimony concerning the quantity of water actually being used. The Referee cannot and will not recommend a right for a percentage of the flow in the creek. Most of the other decrees that addressed water rights in this area entered by Kittitas County Superior Court in the late 1800's and early 1900's allowed for the use of either 0.01 or 0.02 cubic foot per second for each acre irrigated. Lacking any evidence on actual water use, the Referee intends to use 0.02 cfs per acre.

Water Right Claim (WRC) No. 072447 was filed by Harting and Weber pursuant to the requirements of RCW 90.14. It asserts a right to use 4 cfs, 1500 acre-feet per year from Parke Creek for the irrigation of 100 acres in the SE $\frac{1}{4}$ of Section 29, the NE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 32. The point of diversion

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1 described is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, where the currently exercised
2 point of diversion is located. An attachment to WRC No. 072447 states that
3 the intent of filing the water right claim was to claim not only the
4 naturally flowing waters in Parke Creek, but also the water of Tacyson and
5 Brushy Creeks awarded in the two previously mentioned court decrees.

6 WRC No. 072447 asserts a right to irrigate 100 acres, however, the
7 Webers and the McGraths are jointly claiming rights to irrigate 133 acres
8 (63 acres on the Webers' land and 70 acres on the McGraths' land). There
9 was no mention of the difference between the acreage claimed on WRC No.
10 072447 and the use testified to by Mr. Weber. The Referee concludes that
11 WRC No. 072447 protected a right to irrigate 100 acres and the 100 acres
12 should be divided equally between the Webers and the McGraths.

13 The Referee recommends that a right be confirmed under Court Claim No.
14 00783 with a June 30, 1888, date of priority for the diversion of 1.0 cubic
15 foot per second, 250 acre-feet per year from Parke Creek for the irrigation
16 of 50 acres in that portion of the SW $\frac{1}{4}$ of Section 32, T. 18 N., R. 20 E.W.M.
17 lying south of the most northerly delivery ditch.

18 COURT CLAIM NO. 02165 -- J. Wayne McMeans
19 02166 & Cindy L. McMeans
20 02167
(A) 05550

21 The McMeans filed the three referenced Court Claims asserting rights to
22 use Cooke Creek, Dry Gulch Creek and Caribou Creek. On August 1, 1990, they
23 filed Amended Claim (A) 05550 to include lands they had recently acquired.

24

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1 The McMeans were represented by Attorney Richard T. Cole at the evidentiary
2 hearing and Wayne McMeans testified at the hearing.

The McMeans own all of Section 8, except the SW%, Section 17, the E%SE%
and SE%NE% of Section 18, the E%NE% and N%SE% of Section 19, all in
T. 18 N., R. 20 E.W.M. They own approximately 1360 acres, some of which is
rangeland, but significant portions are irrigated with water diverted from
Caribou, Dry Gulch (aka Trail), and Cooke Creeks. The land in Section 17
and 19 and all of Section 8, except the SE%SE%, is riparian to Caribou
Creek. The claimants land was initially settled by ten different
individuals and the history of each homestead will be addressed separately
as it is necessary to do so in order to address the water rights for the
land.

The lands in Section 8 will be addressed first. An irrigation right is
not being asserted for the NW $\frac{1}{4}$ and that portion of the NE $\frac{1}{4}$ lying northwest
of Caribou Creek. Approximately 15 acres are irrigated in that portion of
the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8 lying southeast of Caribou Creek. William A. Smith
settled on the W $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, and the Receiver's Receipt for
final payment of the land was signed on June 9, 1894. On January 31, 1910,
the land was conveyed to Charles M. Smith and the deed transferred the land
together with water rights and irrigation ditches. The SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and
W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8 was settled by Elizabeth Grissom, with a Receiver's
Receipt dated November 5, 1887, in the record. Ms. Grissom sold the land to
Charles Smith on November 5, 1888. The Referee estimates that the McMeans
are irrigating approximately 110 acres in this area. Under the Riparian

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1 Doctrine, the land in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8 would have a priority date of
2 June 9, 1894, and the land in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ would have a
3 priority date of November 5, 1887. The Referee does not believe that a
4 right would exist for the land in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8. This land is not
5 riparian to Caribou Creek and there has been no evidence presented to show
6 that it was irrigated prior to when the McMeans acquired it. The record
7 does not indicate when they acquired the land, but the patent issued in 1942
8 to Charles Smith, therefore, the McMeans obviously acquired it after that
9 date. With the patent not issuing until 1942, it is likely that the land
10 was not developed until well after 1917, that by which use of water had to
11 have been initiated under the Prior Appropriation Doctrine. After that
12 date, the only way to acquire a water right was through the permitting
13 process in the Surface Water Code, RCW 90.03.

14 Charles Smith was a party to Mary A. Clerf v R. I. Scammon, et al., an
15 1911 action in Kittitas County Superior Court addressing water rights to
16 Caribou Creek. The initial decree entered by the Court did not award any
17 water rights to Smith. Following a Motion for Reconsideration, additional
18 findings were entered and the decree was modified. The additional findings
19 were that during extreme low stages of water, Caribou Creek where it flows
20 across the Smith property in the E $\frac{1}{4}$ of Section 8 and the NW $\frac{1}{4}$ of Section 17,
21 sinks and does not flow beyond the lower boundaries of the land. The Court
22 found that Smith would be allowed to use the water at those times that such
23 conditions exist. The decree was modified to allow Smith to use water of
24 Caribou Creek when the creek does not flow beyond the lower boundaries of

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1 their land. Apparently, Caribou Creek looses water during the one and a
2 quarter miles that it flows across the former Smith property. The Court
3 found that when under natural conditions, the creek channel was dry as it
4 left his property, Smith could use what water was in the creek without
5 detriment to senior, downstream water users. The initial decree restrained
6 Smith and other defendants from diverting any water from Caribou Creek,
7 except during the flood stages when there is sufficient water in the creek
8 to supply the parties awarded specific rights. The Referee concludes that
9 based on the Clerf v. Scammon decree as amended, water from Caribou Creek
10 could be used on the land then owned by Charles Smith during the spring
11 flood periods and late in the season when, and if, Caribou Creek goes dry as
12 it flows across the E $\frac{1}{2}$ of Section 8 and the NW $\frac{1}{4}$ of Section 17.

13 This ruling concerning use of Caribou Creek on the Smith property also
14 covered the land then owned by Smith in the NW $\frac{1}{4}$ of Section 17. That land is
15 now owned by the McMeans. The McMeans are irrigating land in that portion
16 of the W $\frac{1}{2}$ of Section 17 lying west of Caribou Creek. Section 17 was
17 originally conveyed by the United States to Northern Pacific Railroad
18 (NPRR). NPPR sold the N $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17 to Evans and Newland on
19 February 14, 1890, who sold to Charles Smith on December 29, 1904. The
20 S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 17 was sold directly to Charles Smith on April 19, 1892.
21 The Referee estimates that the McMeans are irrigating approximately 130
22 acres in the NW $\frac{1}{4}$ of Section 17. Under the Riparian Doctrine, the land in
23 Section 17 would have a priority date of when the map of definite location
24 for the railroad was filed in Kittitas County, which is May 24, 1884.

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1 During testimony, Mr. McMeans did not provide information on how much
2 water is being used to irrigate the land. Although the Clerf v. Scammon
3 decree did not do so, most of the decrees in this part of Kittitas County
4 awarded one inch of water for each acre irrigated. It is clear from the
5 Supplemental Findings and Decree that the McMeans predecessor was using
6 water from Caribou Creek for irrigation of lands in Sections 8 and 17.
7 However, since a specific quantity of water was not awarded in the decree,
8 there is no evidence of how many acres were being irrigated. The claimant
9 has not produced any evidence in that regard either. While the Referee
10 concludes that it is apparent that water from Caribou Creek was being used
11 on what is now the McMean property in the E $\frac{1}{2}$ of Section 8 and the NW $\frac{1}{4}$ of
12 Section 17, there is not sufficient evidence to determine the extent of the
13 right being put to beneficial use in the early 1900's. Therefore, the
14 Referee cannot recommend that a right be confirmed until that evidence is
15 presented. The Referee notes that WRC No. 149923 was filed pursuant to RCW
16 90.14 asserting a right to use 10 cfs, 2000 acre-feet per year from Caribou
17 Creek for the irrigation of 240 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 18 and the NW $\frac{1}{4}$
18 of Section 17. There is no evidence that a statement of claim form was
19 filed for the E $\frac{1}{2}$ of Section 8.

20 The SW $\frac{1}{4}$ of Section 17 is also being irrigated with water diverted from
21 Caribou Creek. That land was not owned by Charles Smith and the claimant
22 made the assertion that it was not addressed in the Clerf v. Scammon decree,
23 as the landowner at that time, Charles Manners was not a named party.
24 However, the Referee in reviewing the claimants' exhibits, specifically
25

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1 Exhibit DE-210, DE-220, and DE-221, has concluded that Mr. Manners was not
2 the owner of the land at the time of the Clerf v. Scammon action. The
3 Decree was entered on April 25, 1911, and in 1911 the SW $\frac{1}{4}$ of Section 17 was
4 owned by William A. Craig, who was a defendant in that case. A water right
5 was not awarded to Mr. Craig and he was enjoined from diverting water from
6 Caribou Creek or interfering with the flow of water in the creek. The
7 decree did allow for the use of flood water by the defendants who were not
8 awarded a right in the decree. However, the decree does not provide any
9 evidence that a water right existed for the SW $\frac{1}{4}$ of Section 17, nor does it
10 indicate that water was being used on that land. Additionally, the Referee
11 can find no evidence that a claim was filed pursuant to the requirements of
12 RCW 90.14. Due to the lack of evidence to show that a water right was
13 established through beneficial use of water prior to December 31, 1932, and
14 lack of a water right claim filed pursuant to RCW 90.14, the Referee cannot
15 recommend that a water right be confirmed.

16 The McMeans own the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 and irrigates that portion
17 lying west of an unnamed stream that flows north to south through their
18 property and that portion of the S $\frac{1}{4}$ S $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ lying east of the stream. This
19 land was originally settled by Joseph R. Tucker who received a patent on
20 October 2, 1889. A Receiver's Receipt is also in the record showing final
21 payment for the land on January 16, 1888. This land is irrigated with
22 commingled water from Cooke Creek and Dry Gulch Creek. Dry Gulch Creek is
23 also known as Trail Creek. Dry Gulch/Trail Creek is a branch of Cooke Creek
24 and the Referee has determined that the earlier adjudication of Cooke Creek
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1 also addressed rights to use Dry Gulch/Trail Creek. At the time of the first
2 adjudication, the McMean land in the E½SE¼ of Section 18 was owned by Ernest
3 Anderson, the first named defendant in the earlier adjudication. The
4 Referee has reviewed the decree and can find no mention of a water right
5 being confirmed either in Anderson's name or for the E½SE¼ of Section 18.
6 That adjudication was a final determination of the valid water rights on
7 Cooke Creek and its tributaries and branches. Therefore, the Referee in
8 this proceeding must conclude that there are no valid rights to Cooke Creek
9 appurtenant to the E½SE¼ of Section 18 and recommends that no right be
10 confirmed. The Referee notes that WRC No. 102478 was filed pursuant to the
11 requirements of RCW 90.14 asserting a right to use 3 cfs, 450 acre-feet per
12 year from Cooke Creek for the irrigation of 27 acres in the SE¼ of
13 Section 18. However, since Cooke Creek was previously adjudicated, any
14 valid water rights must be described in the decree and would be reflected in
15 the certificates that issued subsequent entry of the decree.

16 The final area to be addressed is the claimants' lands in the E½NE¼ and
17 N½SE¼ of Section 19. A patent issued to Sophia Walker for this land on
18 April 14, 1894, however, the property had a long history prior to the patent
19 issuing. According to the Findings of Fact and Conclusions of Law in August
20 Nessalhaus v. Sophia Walker, a Kittitas County Superior Court case decided in
21 1907, Thomas Haley settled on the E½NE¼ and N½SE¼ of Section 19 in 1870 and
22 filed his homestead application. In 1873 he conveyed his interest in the
23 lands and improvements to Charles Walker and cancelled his homestead
24 application. Walker settled on the land, intent on "entering the land under

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1 the homestead laws". However, the officers of the local land office refused
2 him the right to enter the lands under the homestead laws. Walker remained
3 on the land until his death in 1876, at which time his wife, Caroline Walker
4 succeeded him. She remained in possession of the land with the intent to
5 acquire title. In 1884 she sold the land to her daughter, Sophia Walker,
6 who went into possession of the land and made application under the
7 homestead laws. Her application was granted on March 21, 1885, and as
8 previously mentioned a patent issued in her name.

9 In 1874, Charles Walker appropriated 40 inches of Dry Gulch Creek water
10 and applied it to irrigate his land. The Court found that Sophia Walker was
11 entitled to 40 inches of water prior to any use by the plaintiff, August
12 Nessalhaus. The decree in State of Washington v. Anderson, the prior
13 adjudication of Cooke Creek, awarded a right to Sophia Walker with an 1873
14 date of priority for the use of 0.80 cubic foot per second for the
15 irrigation of 40 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 19, T. 18 N.,
16 R. 19 E.W.M. The Referee believes that the range number is in error and
17 should be R. 20 E.W.M. Were the range number correct, the land would be six
18 miles west of Cooke Creek, rather than half a mile and there is no evidence
19 in the record of a ditch carrying Cooke Creek water that distance. It is
20 clear from the evidence put in the record by the claimant that Sophia Walker
21 owned land in Section 19, T. 18 N., R. 20 E.W.M. and irrigated the same with
22 water diverted from Cooke Creek and/or one of its branches. The Referee
23 concludes that the right awarded in the decree is intended to be for the
24 land now owned by the McMeans. Certificate No. 201 issued with the same
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1 error in describing the range number. The Referee notes that the copy of
2 Certificate No. 201 that is in the record has Range 19 circled and 20
3 written with a question mark. The points of diversion authorized are in the
4 NE $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M. and Cooke Creek does
5 not flow through range 19. Cooke Creek and Dry Gulch/Trail Creek flows
6 through the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T. 18 N., R. 20 E.W.M. Neither
7 the decree nor Certificate No. 201 describe which 40 acres in the 160 acres
8 owned is irrigated from Cooke Creek. Exhibit DE-233 is a transcript of
9 testimony in support of the claim of Sophia Walker. It does not describe to
10 what case the testimony relates. The testimony is clear that 40 acres in
11 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19 is irrigated with water from Cooke Creek. The
12 testimony was that water is diverted from Cooke Creek and then put into Dry
13 Gulch Creek and rediverted.

14 The Referee recommends that a right be confirmed to the McMeans with a
15 June 30, 1873, date of priority for the diversion of 0.80 cubic foot per
16 second, 200 acre-feet per year from Cooke Creek/Dry Gulch Creek for the
17 irrigation of 40 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19.

18 The claimant also uses water from Caribou Creek on the land in
19 Section 19. Rights to Caribou Creek were addressed in Grinrod v. Prigmore,
20 with a decree being entered on March 30, 1903. Sophia Walker was an
21 intervener in this case and was awarded a right to 50 inches of water equal
22 to the right of the plaintiff to 10 inches of water. The decree does not
23 specify which lands are being irrigated from Caribou Creek.

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1 One water right claim was filed pursuant to RCW 90.14 for use of waters
2 from Caribou Creek in Section 19. WRC No. 102479 asserts a right to use 1
3 cubic foot per second, 730 acre-feet per year for the irrigation of 20 acres
4 in the NE $\frac{1}{4}$ of Section 19, T. 18 N., R. 20 E.W.M. The point of diversion is
5 described as being 1600 feet south and 10 feet west of the northeast corner
6 of Section 19, being in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19. Although the decree in
7 Grinrod v. Prigmore indicates that a right existed at that time for 50
8 inches, which would suggest 50 acres were being irrigated, it appears that
9 only a right to irrigate 20 acres has been maintained and protected through
10 the procedures in RCW 90.14.

11 The Referee recommends that a right be confirmed with a June 30, 1872,
12 date of priority for the diversion of 1.0 cubic foot per second, 100
13 acre-feet per year from Caribou Creek for the irrigation of 20 acres in that
14 portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19 lying southeast of Caribou Creek.

15 In addition to claiming rights to use the various creeks that have been
16 discussed, the claimants are also asserting rights to use numerous springs
17 that arise on the property. However, very little information was provided
18 by the claimant about the springs and there was not sufficient evidence
19 presented to allow for a conclusion that rights were established for springs
20 through beneficial use prior to December 31, 1932. Pursuant to RCW 90.14,
21 five water right claims were filed asserting rights to use springs on the
22 claimant's lands. The claimants are urged to review these claims and be
23 prepared to address any discrepancies between the claims and actual water
24 usage. Due to the lack of evidence to show that rights were established
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1 for use of the spring, the Referee cannot recommend confirmation of
2 diversionary water rights for their use.

3 The claimants raise livestock on their property and the various creeks,
4 streams, and springs that are on or flow through the land can be accessed by
5 the livestock. Non-diversionary stock water is covered by the stock water
6 stipulation discussed on page 4 of this report and the McMeans will be
7 included on the list of claimants who have rights under the stipulation.

8 COURT CLAIM NO. 01426 -- Roger Mies
9 & Bernadette Mies
10 Michael P. Tomich
11 & Nancy Tomich
Kenneth G. Dimeo
& Debbie L. Dimeo
Todd D. Lopeman

12 Court Claim No. 01426 was originally filed by Thomas and Margaret Beven
13 asserting a right to use waters from Cooke Creek and a spring. On August 2,
14 1990, Michael and Nancy Tomich were joined to the claim and on August 20,
15 1990, Roger and Bernadette Mies were substituted for the Bevens. Kenneth
16 and Debbie Dimeo were joined to the Tomich portion of the claim on March 18,
17 1992, and Todd D. Lopeman was joined to the Tomich claim on April 7, 2000.
18 James Swayze appeared at the evidentiary hearing on behalf of Michael and
19 Nancy Tomich and Kenneth and Debbie Dimeo. There was no appearance on
20 behalf of Robert and Bernadette Mies.

21 When the Bevens filed Court Claim No. 01426, they owned those portions
22 of the E $\frac{1}{2}$ SW $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ lying west of Cooke Creek and Government Lot 4 of
23 Section 18, T. 18 N., R. 20 E.W.M. The Mies purchased Government Lot 4 and
24 the Tomiches purchased the rest of the land. Kenneth and Debbie Dimeo

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1 purchased from the Tomiches the portion lying north of the Kittitas
2 Reclamation District canal. The Tomiches retained ownership of the land
3 south of the canal. Todd Lopeman later purchased a portion of the land
4 lying south of the canal.

5 Mr. Swayze estimated that the Dimeo's own approximately 39 acres with 28
6 acres being irrigated with water diverted from Cooke Creek. However, the
7 Dimeo's only own that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18 lying west of Cooke
8 Creek and upon reviewing State's Exhibit SE-2, the Referee has concluded
9 that only about 34 acres lie west of Cooke Creek. The land retained by the
10 Tomiches is 25 acres, all of which is irrigated with water diverted from
11 Cooke Creek. Additionally, the Tomich land is assessed by KRD and district
12 water is also used. Water is diverted from Cooke Creek at two points: one
13 is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 and the second in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
14 Section 18. The northerly diversion serves the Dimeo property and the
15 southerly one, which is below the KRD canal, serves the Tomich property.
16 Both pieces of property are flood irrigated with gated pipe. Mr. Swayze
17 testified to his understanding that the land has always been used for hay
18 and/or cattle production and has been irrigated since the water rights were
19 established in the late 1800's. Cooke Creek forms the easterly boundary of
20 the property. Up to 30 head of cattle graze on the property and drink from
21 irrigation ditches and directly from Cooke Creek. Livestock drinking from
22 Cooke Creek is a nondiversionary use covered by the stock water stipulation
23 discussed on page 4 of this report. Mr. Swayze did not testify to the
24 quantity of water being diverted and used on either piece of property.

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1 Water rights for the property owned by Mr. Dimeo and the Tomicches were
2 addressed in the earlier Cooke Creek adjudication. Certificate No. 205,
3 which is a Class 4 right with an 1872 date of priority, authorized the
4 diversion of 2.0 cubic feet per second for the irrigation of 100 acres in
5 the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18, T. 18 N., R. 20 E.W.M. Steve and Donna
6 German own the portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18 lying east
7 of Cooke Creek and is asserting a right for those lands under the same
8 certificate. The Germans are asserting a right to 85 acres and the parties
9 to Claim No. 01426 are asserting a right to 54 acres, for a total of 139
10 acres. The certificate only authorizes the irrigation of 100 acres. The
11 record is not adequate for the Referee to determine exactly which 100 acres
12 were being irrigated when the water right was established. None of the
13 parties addressed the issue during the presentation of their case. The
14 Germans own about 60 percent of the place of use on the certificate, so the
15 Referee intends to award them 60 percent of the right, or a right to
16 irrigate 60 acres. The parties to Claim No. 01426 will be recommended a
17 right for 40 acres.

18 Certificate No. 205 authorized a diversion from Cooke Creek in the
19 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, which is puzzling to the Referee. The certificate
20 authorizes the irrigation of 100 acres and half of that acreage would lie
21 upstream from the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18. There currently is a diversion near
22 the northeast corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 that serves the land lying
23 below the KRD canal. A second diversion near the northwest corner of the
24 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 serves the land north KRD canal. It is not clear to
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1 the Referee how a diversion in the lower half of the irrigated land could
2 serve, by gravity flow, the land upstream. There is less than 100 acres
3 lying below the authorized diversion, so obviously some of the land
4 authorized for irrigation lies upstream of the diversion.

5 Certificate No. 203 issued for the land that is now owned by Roger and
6 Bernadette Mies. It is a Class 8 right, with an 1880 date of priority, and
7 authorizes the diversion of 0.60 cubic foot per second for the irrigation of
8 30 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18 (which is Government Lot 4). Since the
9 Mies did not appear at the evidentiary hearing in support of the claim, the
10 Referee has no evidence that beneficial use of this water right has
11 continued. Therefore, it is recommended that a water right not be confirmed
12 for the portion of Claim No. 01426 owned by the Mies.

13 It is recommended that a right be confirmed to Kenneth and Debra Dimeo
14 with a June 30, 1872, date of priority for the diversion of 0.40 cubic foot
15 per second, 80 acre-feet per year for the irrigation of 20 acres in that
16 portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 18, T. 18 N., R. 20 E.W.M. lying west of
17 Cooke Creek and north of the KRD canal. It is recommended that a right be
18 confirmed to Michael and Nancy Tomich and Todd D. Lopeman a right with the
19 same date of priority for the diversion of 0.40 cubic foot per second, 80
20 acre-feet per year for the irrigation of 20 acres in that portion of the
21 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18 lying west of Cooke Creek and south of the KRD canal.

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1 COURT CLAIM NO. 01010 -- John L. Miller
2 & Laura D. Miller

3 COURT CLAIM NO. 02088 -- Leland Orcutt
4 & Burniece Orcutt
John L. Miller
& Laura D. Miller

5 John L. and Laura D. Miller filed Court Claim No. 01010 asserting
6 rights to use Park Creek and unnamed springs. The Orcutts filed Court Claim
7 No. 2088 asserting a right to use water from Park Creek. On May 14, 1990,
8 the Millers were joined to Claim No. 2088. The Millers are represented by
9 Attorney John P. Gilreath. Mr. Miller testified at the evidentiary
10 hearing.

11 Court Claim No. 01010 was filed for use of water on the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and
12 that portion of the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ lying north of the railroad tracks in Section 8
13 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9. Court Claim No. 2088 was filed for
14 the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8. All of the land lies in T. 17 N., R. 20 E.W.M. At
15 the hearing Mr. Miller amended the claim to include the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 8.
16 He is asserting a right to irrigate 35 acres in the N $\frac{1}{2}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ of
17 Section 8 with water diverted from Park Creek. Water is pumped from Park
18 Creek using a 10 HP pump, which feeds a sprinkler system on the south side
19 of Park Creek. There is 800 feet of 4 inch mainline and 2400 feet of 4 inch
20 wheel lines with 60 sprinklers and an additional 680 feet of 3 inch
21 handlines. The pump also feeds a 6 inch mainline north of the creek that
22 leads to 3700 feet of gated pipe, which is used to rill irrigate the portion
23 of the land north of Park Creek. Mr. Miller testified that the springs are
24 also used for irrigation, but did not describe the method by which the
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1 spring water is used. Two of the springs are very close to Park Creek above
2 the point where the pump is located. It may be that the use of spring water
3 is through its flow contributing to the flow in Park Creek above the pump.
4 The portion of the land north of Park Creek Road is irrigated with water
5 delivered by the Kittitas Reclamation District. Mr. Miller did not testify
6 to how much water is being used to irrigate his land. Rather he referred to
7 the engineering report done by Richard C. Bain for the Howard Clerf property
8 lying south of the Miller land. The engineering report is useful for
9 determiningg the amount of water that might be necessary for irrigation in
10 this area, however, it does not provide the Referee any information about
11 how much the Millers are diverting from Park Creek. Since they are using a
12 pump to withdraw the water, that information should be easily obtained. The
13 Millers are also asserting a right to use water for stock watering. They
14 have up to 50 cow/calf pairs on the land. Mr. Miller did not testify about
15 how the stock are watered; i.e. whether there is a diversion to stock tanks
16 or the stock drink directly for the creek and springs. Non-diversionary
17 stock watering, where the livestock drink directly from the water source is
18 covered by the stock water stipulation discussed on page 4 of this report.
19 The Miller's name shall be included on the list of claimants who have a
20 non-diversionary stock water right under the stipulation.

Water Right Claim No. 142087 was filed by John Miller asserting a right to use 300 gallons per minute (0.668 cfs), 300 acre-feet per year Park Creek on the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9 and Leland Orcutt filed Water Right Claim No. 152574 asserting a

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1 right to use 1 cfs, 360 acre-feet per year from Park Creek for the
2 irrigation of 34 acres in the N $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8. Neither claim describe a
3 point of diversion where Mr. Miller is pumping from Park Creek.
4 Additionally, neither claims a right to irrigate any land in the E $\frac{1}{4}$ SW $\frac{1}{4}$ of
5 Section 8.

6 The land for which a right is being asserted was settled by two
7 individuals. Frank L. Ash received a patent on Decemeber 8, 1893, for the
8 E $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8. The receiver's receipt for this
9 property was dated November 11, 1891. A patent issued to Socrates T.
10 McElfech on October 2, 1889, for the E $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8.
11 The receiver's receipt is dated June 6, 1888. The date of the receiver's
12 receipt is the earliest date in the record that can be used to set the
13 priority date under the Riparian Doctrine. However, the claimant did not
14 provide any evidence of when water was first used on this land. In order
15 for there to be a water right, there must be evidence that water was first
16 used prior to December 31, 1932. Exhibit DE-614 is a Quit Claim Deed dated
17 January 12, 1925, that conveyed from J. D. Ross to Edwin Ross the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
18 Section 18, the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, the N $\frac{1}{4}$ NW $\frac{1}{4}$ and the
19 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T. 17 N., R. 20 E.W.M. together with water rights in
20 Park Creek. Because considerably more land than is owned by the claimant is
21 described in this deed, the Referee cannot conclude that this deed
22 establishes that the land in the E $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8 was being
23 irrigated with water from Park Creek. Additionally, the claimant provided
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1 no testimony or evidence to show that water from Park Creek was used on
2 their land prior to their ownership.

3 The claimants did put into the record a copy of the J. D. Olmstead v.
4 S. Hays, et al., decree. In that decree, J. D. Olmstead was awarded a right
5 to use water from Park Creek. However, the evidence presented by other
6 claimants shows that Olmstead owned several different pieces of land that
7 could have been irrigated from Park Creek. J. D. Olmstead did purchase
8 NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9 from the Northern Pacific Railroad in January
9 of 1881. However, there is no evidence he still owned the land at the time
10 the decree was entered in 1892. Additionally, the Millers did not testify
11 to using water from Park Creek on the land in Section 9. The Referee
12 concludes they are no longer asserting a right for that land.

13 Based on the foregoing, the Referee cannot recommend that a right be
14 confirmed under either Court Claim No. 01010 or 02088.

15 COURT CLAIM NO. 00422 -- Eric T. Moe
16

17 Eric T. Moe submitted a claim to the Court for use of waters from
18 Coleman Creek, Cherry Creek and Parke Creek. Mr. Moe is represented by
19 Attorney Richard T. Cole. Mr. Moe and his son, Eric Stephen Moe, testified
20 at the evidentiary hearing. In addition, Richard C. Bain, Jr., a consulting
21 engineer hired by the claimant, prepared an engineering report for the
22 property, which was entered as direct expert testimony and given Exhibit No.
23 DE-1393.

24 Mr. Moe owns that portion of the E $\frac{1}{4}$ lying southeast of Coleman Creek
25 and the SW $\frac{1}{4}$, except for a portion of the W $\frac{1}{4}$ SW $\frac{1}{4}$ west of a delivery ditch all

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1 in Section 20; the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
2 Section 29, all in T. 17 N., R. 19 E.W.M. Approximately 460 acres are
3 owned, with 440 acres being irrigated from the three creeks and water
4 delivered by Ellensburg Water Company (EWC) through the Town Ditch. Town
5 Ditch water is used to irrigate the 40 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21 and
6 36 acres in the E $\frac{1}{4}$ E $\frac{1}{4}$ of Section 20 (fields 5 and 23). Town Ditch water is
7 solely used to irrigate these 76 acres. There is an additional 95 acres
8 that may be served by Town Ditch in some years. Mr. Moe has 119 shares of
9 Town Ditch water. EWC is a major claimant in this proceeding, whose water
10 rights have been determined by the Court in the Major Claimant Pathway (see
11 Report of the Court, Supplemental Report of the Court and CFO dated February
12 1997, October 1997, and March 12, 1998, respectively).

13 Water is diverted from Coleman Creek using a 30 HP electric pump, near
14 the southwest corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20. Water is pumped to the
15 top of a hill on the property and then through a common pipeline that serves
16 much of the property. Although Mr. Bain measured the diversion at 2.87
17 cubic feet per second, his report states that it is capable of diverting 4.0
18 cfs. This statement was confusing to the Referee, as generally when a pump
19 is turned on it will withdraw a certain quantity of water and the only
20 fluctuation is based on the elevation change in the system. The water is
21 then distributed in buried pipelines to fields that are irrigated. A
22 total of 303.5 acres are irrigated with water diverted from Coleman Creek.

23 The same 303.5 acres is also irrigated with water diverted from Cherry
24 Creek. The diversion from Cherry Creek is near the southeast corner of the
25

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1 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29. A diversion dam backs the water up and a 40 HP pump
2 delivers the water into the same buried pipeline that carries Coleman Creek
3 water.

4 Park Creek is used to irrigate 19.5 acres that are in a triangular
5 shaped field in the southeast corner of Section 20. Water is diverted from
6 Park Creek just downstream from its confluence with Caribou Creek. A
7 diversion dam diverts into an open ditch that runs west through the SW $\frac{1}{4}$ of
8 Section 21. A delivery lateral runs along the east section line for
9 Section 20 and siphon tubes withdraw water from the ditch for rill
10 irrigation. The unused water continues south to the A. Sorenson Trust land
11 in Section 29.

12 The irrigation system is used to water 250 head of cattle that are
13 raised on the land. The water conveyed in the pipelines is used to fill
14 stock tanks, the location of which were not identified.

15 Mr. Eric T. Moe's familiarity with the property extends back to 1910.
16 Portions of the land first came into the Moe ownership in 1898 when Erick
17 Moe acquired the SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
18 Section 29. Additional land was acquired in 1907, 1913 and 1923. According
19 to Mr. Moe's testimony, only about half of the land being irrigated at
20 present was being irrigated in 1910. Between 1938 and 1942 they began
21 putting in a new delivery system that was more efficient and enabled them to
22 irrigate more lands. The new system involved converting from open ditches
23 to buried pipelines and using pumps on the property rather than diversions
24 several hundred feet upstream of the property. The testimony indicates that

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1 water is pumped to the top of hills on the property. It is very likely that
2 when a gravity flow system was used the hills could not be irrigated. The
3 testimony lead the Referee to conclude that a consistent number of acres
4 were irrigated between 1910 and 1938.

5 The claimant is to be commended for having the foresight to install an
6 efficient delivery system so many years ago. However, at the time that
7 additional acreage was being put in production, the only mechanism for
8 obtaining additional water rights, which would be need for the added acres,
9 was through the permitting procedures of RCW 90.03. There is no evidence
10 that occurred. The Referee can only recommend confirmation of water rights
11 for the lands that were being irrigated in the early 1900's. Under the
12 Riparian Doctrine, if the land is riparian to the water source being used, a
13 landowner had until 1932 to put water to beneficial use. The right would
14 then relate back to the date when steps were first taken to sever the land
15 from Federal ownership. Several different patents issued for the land that
16 is now under the Moe ownership. Only the land that was riparian to the
17 water sources at the time the patent issued can be considered under the
18 Riparian Doctrine. For all the other land, a water right could be
19 established under the Prior Appropriation Doctrine if water was first used
20 prior to June 6, 1917. However, in 1905 the Federal government withdrew all
21 of the unappropriated surface waters in the Yakima River Basin and no
22 further water rights could be established without the express approval of
23 the United States. The Court in this proceeding has held that certain di
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1 minimus uses could have been established after May 10, 1905, if it is
2 apparent the use would not have impacted the Yakima Project.

3 The portion of the claimants property in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{4}$ NE $\frac{1}{4}$ of
4 Section 20 was and is riparian to Coleman Creek. Based on the maps in the
5 record, that is the only land owned by Mr. Moe that is riparian to Coleman
6 Creek. The rest of the land in Section 20 and the land in Section 29 is not
7 riparian, therefore, there must be evidence of water use prior to 1905.

8 In support of the claim for Coleman Creek, the Referee was directed to
9 Walter A. Bull v. Martin Mehan, et al., a complaint filed in 1885 concerning
10 use of "Smith's Creek" or "Dry Creek". The complaint stated that Walter A.
11 Bull owned all of the Moe land in Section 20. The Referee believes that it
12 is the position of the claimant that Coleman Creek is the same as Smith's
13 Creek/Dry Creek. In addition to the complaint that was filed by Bull, a
14 second document from this case is also in the record, but it is not clear
15 what the document is. It does state that the controversy relates to the
16 waters of Coleman Creek, but only a portion of the document is in the
17 record. It states that Walter A. Bull is entitled to one-tenth of the flow
18 of Coleman Creek to be measured at the above William Dennis' irrigating
19 ditch. The document appears to be signed on October 7, 1886, by the parties
20 to the dispute. The concluding paragraph indicates the document is an
21 agreement between the parties in order to settle the dispute and the
22 district court is asked to enter a decree in conformity with the agreement.
23 A copy of the decree was not provided, so there is no evidence the Court
24 adopted the agreement. Mr. Moe owns a portion of the land Walter Bull owned

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1 at the time of this dispute. The quantity of water to which Bull held a
2 right was not specifically defined in the agreement, which stated he had a
3 right to 10 percent of the water from Coleman Creek. Additionally, the
4 evidence does not allow the Referee to determine which of the former Bull
5 land was being irrigated in 1910.

6 Two other documents were entered into the record in support of the
7 claim. Exhibit DE-669 is a Notice of Water Right filed by J. D. Olmstead.
8 However, the Referee has concluded that this notice is specifically for
9 lands owned by Olmstead in the NW $\frac{1}{4}$ of Section 21 and the NW $\frac{1}{4}$ of Section 22,
10 T. 17 N., R. 19 E.W.M. Mr. Moe owns the NW $\frac{1}{4}$,NW $\frac{1}{4}$ of Section 21, but is not
11 asserting a right to irrigate this land with water from any of the creeks.
12 It is irrigated with water delivered from Town Ditch. Exhibits DE-670 and
13 DE-671 are agreements between Martin Holm and J. A. Grim (670) and Eric and
14 Torena Moe (671). The earliest agreement was with J. A. Grim, which was
15 made in 1901. Grim owned the NW $\frac{1}{4}$,NW $\frac{1}{4}$ of Section 21 and the agreement allowed
16 for Grim to convey in a ditch owned by Holm 30 inches of water to be used in
17 the NW $\frac{1}{4}$,NW $\frac{1}{4}$ of Section 21. The ditch was to be enlarged to carry the 30
18 inches. The agreement between Holm and Moe was dated 1911 was for conveying
19 water to lands owned by Moe, including high ground in the NW $\frac{1}{4}$,NW $\frac{1}{4}$ of
20 Section 21 not covered by the previous agreement, and also the SE $\frac{1}{4}$,NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$
21 of Section 20 and the NW $\frac{1}{4}$,NW $\frac{1}{4}$ of Section 29. The 1911 agreement made null
22 and void the 1901 agreement. The language of the agreement leads the
23 Referee to conclude that the ditches to serve the Moe land were intended to
24 be constructed in the future. Normally, this agreement would serve as

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1 notice of an intent to appropriate water and if development was pursued with
2 diligence would result in an appropriative right with a 1911 date of
3 priority. However, since the Federal government withdrew all of the
4 unappropriated surface waters in the Yakima Basin in 1905, there was no
5 water available for appropriation in 1911. The agreement also would lead to
6 a conclusion that there was no water usage from Coleman Creek at the time of
7 the agreement. Yet, this is part of the land that was owned by Walter Bull
8 at the time of the dispute in 1885.

9 None of the historical documents put in the record address use of water
10 from Cherry Creek or Park Creek. A gravity flow system delivers water from
11 Park Creek to the claimant's property, so that use may have been developed
12 at a time when water rights could legally be established for the use.
13 However, there is no evidence to allow for that determination. That is not
14 the case for much of the land where Cherry Creek water is being used. The
15 testimony was that Cherry Creek water is pumped to the top of a hill that
16 appears to be in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29. That could not have
17 been accomplished prior to the improvements to the distribution system that
18 were made between 1938 and 1942. The evidence would lead the Referee to
19 conclude that this use was not developed until that time. There is no
20 permit or certificate issued pursuant to RCW 90.03 that has been identified
21 for this land.

22 The claimant is also asserting a right to divert water from Coleman
23 Creek during the months when water is not used for irrigation. That water
24 would continue to be used to fill stock water troughs and for fire
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1 protection. According to the testimony, water is continuously diverted to
2 keep the pipe full so that it can be used for firefighting purposes if
3 necessary. Approximately 200 acre-feet per year is diverted for this
4 purpose. The unused water is returned to Coleman Creek at a point that has
5 not been identified. Clearly this use of water was developed after the
6 claimant installed the buried pipeline system. Again a water right permit
7 should have been obtained for this use.

8 Several water right claims (WRC) were filed by Eric T. Moe pursuant to
9 the requirements of RCW 90.14. WRC No. 002662 asserts a right to use 1600
10 gallons per minute, 1065 acre-feet per year from Coleman Creek for the
11 irrigation of 160 acres. The place of use is described is those portions of
12 Section 20 and 29 shown in red on the map attached to the claim. The map
13 appears to be fairly consistent with the area mapped on SE-2. The point of
14 diversion is described as being 1320 feet south and 1255 feet west of the
15 northeast corner of Section 20, which would place it near the center of the
16 NE $\frac{1}{4}$ of Section 20, which is where the currently exercised diversion is
17 located. WRC No. 002663 asserts a right to use 1500 gallons per minute,
18 1000 acre-feet per year from Cherry Creek for the irrigation of 160 acres.
19 The place of use is the same as on WRC No. 002662. The point of diversion
20 is described as being 1155 feet south and 1320 feet west of the northeast
21 corner of Section 29, which would place it near the center of the NE $\frac{1}{4}$ of
22 Section 29, which is where the currently exercised diversion is located.
23 WRC No. 002665 asserts a right to use 200 gallons per minute, 200 acre-feet
24 per year from Coleman Creek from September 15 to April 15 for stock

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1 watering, fire protection and pipeline testing in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
2 Section 20. WRC No. 002666 asserts a right to use 675 gallons per minute,
3 130 acre-feet per year from Park Creek for the irrigation of 20 acres in the
4 SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, portions of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sections
5 20, shown in red on the map attached to the claim. The map roughly shows
6 the same area in the SE $\frac{1}{4}$ of Section 20 that the claimant was irrigating from
7 Park Creek at the time of the hearing. The point of diversion is described
8 as 3960 feet south and 2560 feet east of the northwest corner of
9 Section 21. That location is about 1800 feet west of the diversion marked
10 on SE-2 during the evidentiary hearing. The water right claims that were
11 filed would protect any water rights that may exist for use of these
12 creeks.

13 At this time, the Referee cannot recommend that water rights be
14 confirmed under Court Claim No. 0422 due to the record not being adequate to
15 determine the extent of beneficial use of the water prior to the delivery
16 system being upgraded. Since the documents filed by the claimant suggest
17 that some of the land was not developed and irrigated until after 1911, the
18 claimant should address as clearly as possible the history of the land and
19 what area was irrigated prior to 1905.

20 COURT CLAIM NO. 02247 -- Harry E. Moore

21 Harry E. Moore filed Court Claim No. 02247 asserting a right to use
22 waters from Cooke Creek and an unnamed spring. Mr. Moore, who is
23 represented by Attorney Kenneth Beckley, testified at the evidentiary
24 hearing along with his son, Mark Moore.

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1 Mr. Moore owns and farms the E $\frac{1}{2}$ of Section 36, T. 18 N., R. 19 E.W.M.
2 He acquired the land in 1957 and has continued the farming practice that was
3 in place. Both he and his son understood that 1915 is when the Scammon
4 family acquired the land and began farming and irrigating it. A variety of
5 crops are raised, including row crops, hay, grain, and some pasture.
6 Livestock graze on portions of the land at various times during the year.
7 The livestock include 250 cow/calf pairs and a herd of about 2,000 sheep
8 that graze the field stubble for a few weeks in the fall. Most of the land
9 is rill irrigated with gated pipe, although 25 acres are sprinkler
10 irrigated. Mr. Moore is assessed by the Kittitas Reclamation District (KRD)
11 for 208 acres. Mark Moore testified that 100 acres were being irrigated
12 with water diverted from Cooke Creek, although in the past 200 acres had
13 been irrigated. It is not clear why less acres are being irrigated, but the
14 testimony suggests that sprinklers are being used to irrigate the land being
15 served with KRD water and because of the rolling nature of the ground, Cooke
16 Creek could not serve that system by gravity. The testimony did not
17 indicate when the acreage irrigated from Cooke Creek was reduced, but it was
18 a "number of years" prior to the hearing in 1991. The Referee impression is
19 that a right is only being asserted for irrigating 100 acres. Mark Moore
20 estimated that 2 cfs is being diverted from Cooke Creek during April, May
21 and June and in July and in August creek flow is low and the amount they are
22 able to divert varies considerably. KRD water is relied on during that
23 time.

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1 Certificate No. 195 from the earlier adjudication of Cooke Creek is
2 appurtenant to the claimant's land. It is a Class 17 right with a 1915 date
3 of priority and authorizes the diversion of 4 cubic feet per second for the
4 irrigation of 200 acres in the E $\frac{1}{4}$ of Section 36, T. 18 N., R. 20 E.W.M. The
5 points of diversion authorized are in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36,
6 T. 18 N., R. 19 E.W.M. and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T. 18 N., R. 20 E.W.M.
7 The diversion used to serve the Moore farm in recent years is in the
8 SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25. According to the State's Investigation Report, the
9 diversion is only 10 feet inside the southeast corner of Section 25, which
10 would also put it only 10 feet outside the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30. The
11 Referee believes that the diversion being used by the Moores is one of the
12 diversions authorized in the certificate and either the creek channel has
13 meandered slightly into the SE $\frac{1}{4}$ of Section 25 or there was a measuring error
14 made in the 1920's. Irrespective of the reason, the Referee believes that
15 the diversion has not changed and there is no need for the claimants to
16 comply with the change procedures in RCW 90.03.380.

17 The Referee notes that the priority date for this right is 1915, which
18 is 10 years after the Federal government withdrew all of the unappropriated
19 waters of the Yakima River Basin for construction of the Yakima Project.
20 Except for di minimus uses, the Referee has not recommended confirmation of
21 a water right if the right was initiated after the withdrawal, EXCEPT when
22 there has been a prior adjudication that awarded the right. In the Report
23 of Referee for Subbasin No. 3 (Teanaway River) the Referee recommended
24 confirmation of water rights based on a prior decree if there was adequate

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1 evidence of continued beneficial use. The Court addressed exceptions to
2 that recommendation and ruled that the doctrine of res judicata applies to
3 claimants who were awarded rights in a prior adjudication and upheld the
4 Referee's recommendation.

5 The Referee recommends that a right be confirmed under Court Claim No.
6 02247 with a June 30, 1915, date of priority for the diversion of 2 cubic
7 feet per second, 500 acre-feet per year from Cooke Creek for the irrigation
8 of 100 acres and stock watering in that portion of the NE $\frac{1}{4}$ of Section 36
9 lying east of Cooke Creek and that portion of 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
10 Section 36 lying west of Cooke Creek, in T. 18 N., R. 19 E.W.M.

11 The claimant is also asserting a right to use waters from an unnamed
12 spring for domestic supply for two homes, lawn and garden irrigation for one
13 of the homes and stock watering. The spring is located near the southeast
14 corner of the NE $\frac{1}{4}$ of Section 36, just above Harry Moore's house. It is used
15 for domestic supply and lawn and garden irrigation at Harry Moore's house
16 and is piped about three-quarters of a mile to Mark Moore's house, where it
17 is used only for domestic supply. There is a corral near the spring and
18 when livestock are in the corral they are also watered from the spring. The
19 Moores testified that they believe the spring was first used in 1915,
20 however, they did not provide any information to support that belief. There
21 was no testimony to indicate how the spring was developed and piped to each
22 of the homes or how old the structures, both the homes and spring
23 development, are. That information would be useful in providing evidence of
24 when the spring was developed.

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1 Harry Moore filed two water right claims pursuant to the requirements
2 of RCW 90.14. One claim was filed for use of Cooke Creek. Since that creek
3 was adjudicated and certificates have issued as a result of that
4 adjudication, it was not necessary to file a claim for use of that water
5 source. Water Right Claim (WRC) No. 005954 was filed for use of an unnamed
6 spring. The spring is located 2110 feet south and 180 feet west of the
7 northeast corner of Section 36, which is the approximate location of the
8 spring being used for domestic supply and stock watering. The use claimed
9 is irrigation of 65 acres, domestic supply and livestock. The Moores are
10 not pursing a right to use the spring for irrigation, beyond lawn and garden
11 irrigation at one of the homes. The place of water use on the claim is the
12 W% of Section 36. The Moores property lies in the E% of Section 36.
13 Neither the claimant, nor his attorney, addressed the difference between the
14 place of use on WRC No. 005955 and where the water is actually being used.
15 If the claimant believes an error was made in completing WRC No. 005955,
16 there is a process spelled out in RCW 90.14.065 for amending water right
17 claims. The claimants may want to consider pursuing that option. As it
18 stands now there is no RCW 90.14 claim for use of a spring in the E% of
19 Section 36. Failure to file a claim waives and relinquishes any right that
20 may have existed, RCW 90.14.071.

21 Due to the lack of evidence to show that a right was established
22 through beneficial use of the water prior to 1917, and lack of a RCW 90.14
23 claim that adequately describes use of the spring on the claimant's land,
24 the Referee cannot recommend that a right be confirmed for the spring.
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1 Livestock on the claimant's land have access to natural water sources
2 from which they drink, therefore, the claimant's name shall be added to the
3 list of claimants with non-diversionary stock water rights under the stock
4 water stipulation discussed on page 4 of this report.

5 COURT CLAIM NO. 00550 -- Eric V. Morris
6 & Sharon M. Simmons

7 Steven D. and Mary S. Nelson filed Court Claim No. 00550 asserting a
8 right to use water from Cooke Creek. The Nelsons were represented by
9 Attorney Richard T. Cole at the evidentiary hearing and Mary Nelson
10 testified at the hearing. On May 6, 1994, Eric V. Morris and Sharon M.
11 Simmons were substituted for the Nelsons.

12 The property described in Court Claim No. 00550 is that portion of the
13 E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 15, T. 17 N., R. 19 E.W.M. lying southeast of Cooke Creek.
14 The parcel is approximately 29.5 acres in size. Water is diverted from
15 Cooke Creek at a point approximately 1300 feet north and 300 feet west of
16 the center of Section 15, in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15. Water is carried
17 in an open ditch to a stock pond and over flow from the pond returns to the
18 creek. Water from the ditch is also used to flood irrigate about one acre
19 of pasture. Livestock on the property drink from the stock pond. The
20 Nelsons had 34 cow/calf pairs and a bull. Mrs. Nelson estimated that
21 between 0.75 and 1 cubic foot per second was diverted into the ditch. She
22 did not indicate what the discharge rate was back to the creek. The Nelsons
23 fenced their property so that the livestock do not have access to the
24 creek. Prior to their ownership of the land the livestock could drink
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1 directly from the creek. Mrs. Nelson testified that the stock pond and
2 ditch were constructed in 1953 or 1954 by Tom Watson, who owned the land at
3 that time. In addition to the one acre that the Nelsons irrigate from the
4 ditch, an additional five acres can be irrigated from that ditch. They have
5 irrigated the five acres from the ditch during their ownership. Generally,
6 all but the one acre is irrigated with water delivered by the Ellensburg
7 Water Company (EWC). Mrs. Nelson testified that they own 22 shares of EWC
8 shares.

9 Water Right Claim (WRC) No. 113055 was filed pursuant to the
10 requirements of RCW 90.14 by Maynard Worst. It was a short form that
11 claimed a right to use water from Cooke Creek for irrigation of pasture in
12 the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 15. RCW 90.14.051 allowed for the use of a short form
13 to claim rights for use of up to 5,000 gallons per day for domestic supply,
14 stock watering and the irrigation of up to one-half acre of lawn and
15 non-commercial garden. Mr. Worst did not claim a right for stock watering.

16 The purpose of filing a claim under RCW 90.14 was to document water
17 uses that began prior to adoption of the Surface Water Code in 1917 or the
18 Ground Water Code in 1945. Because the pond was not constructed until 1953
19 or 1954, filing a RCW 90.14 claim was not appropriate. The owner at the
20 time should have filed an application to obtain a water right permit and
21 certificate as provided for in the Surface Water Code, RCW 90.03. There is
22 no evidence that has occurred.

23 As a result of there being no water right permit or certificate for the
24 use claimed, the Referee cannot recommend that a water right be confirmed.
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1 EWC is a major claimant in this proceeding, whose water rights were
2 determined in the Major Claimant Pathway. Use of EWC water is not affected
3 by this recommendation.

4 COURT CLAIM NO. 01897 -- Bill Moxley
5 & Yvonne Moxley
6 Leslie Nash
7 & Shirley Nash

Bill and Yvonne Moxley filed a claim with the Court for use of an unnamed spring, waste and runoff water and Warm Springs Creek. Leslie and Shirley Nash were joined to the claim on September 8, 1991. The Nashes are represented by Attorney Richard T. Cole and Mr. Nash testified at the evidentiary hearing.

Mr. and Mrs. Nash acquired the land herein discussed from the Moxleys in 1982. They own that portion of Government Lots 3 and 4 south of the state highway, the SE $\frac{1}{4}$ SW $\frac{1}{4}$, the S $\frac{1}{2}$ SE $\frac{1}{4}$, that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ lying southeast of the Kittitas Reclamation District (KRD) lateral, that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ lying north of the KRD lateral in Section 5, T. 17 N., R. 20 E.W.M. They are asserting a right to irrigate 43 acres in Government Lots 3 and 4 and a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ with water diverted from Warm Springs Creek and an unnamed creek that flow through the property. Water is pumped from Warm Springs Creek with a 30 HP pump and the land is irrigated with 80 to 100 sprinklers on handlines. Water from the unnamed creek is piped underground to the pump location on Warm Springs Creek. The pump is located on the creek in Government Lot 4 and the underground pipe runs from the unnamed creek to the pump, also in Government Lot 4. Mr. Nash testified

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1 that the pump capacity is 500 gallons per minute, or 1.11 cubic feet per
2 second. The Nashes changed the irrigation system when they acquired the
3 land. There were three gravity flow diversions from the creek used to rill
4 irrigate the fields. Mr. Nash believes he is using less water than was
5 being used prior to changing the system.

6 Section 5 was initially conveyed by the Federal government to Northern
7 Pacific Railroad in the late 1800's. On May 24, 1906, Kittitas Land and
8 Irrigation Company acquired the land by warranty deed. The deed referenced
9 that it was in fulfillment of a contract entered into on September 24, 1900,
10 by a predecessor to Kittitas Land and Irrigation Company. This is the only
11 historical information provided for the land, except for a chain sheet that
12 lists the recorded documents relating to Section 5. There was no evidence
13 presented to show beneficial use of water prior to December 31, 1932, which
14 is the date by which water must be used in order to establish a right under
15 the Riparian Doctrine.

16 Additionally, there is no evidence that a claim was filed pursuant to
17 the requirements of RCW 90.14. Mr. Nash testified that his research showed
18 that during the claims registration period the land was owned by Irene
19 Strain, who died in October 1971. Her daughter inherited the land, but was
20 an absentee owner, with a renter living on the property until around 1976.
21 The claimant suggested that Mrs. Strain would have been too ill to take care
22 of the filing and her daughter may not have known of the requirements.

23 While the illness and death of the landowner may seem to be a
24 compelling reason for failure to file a claim, the statute does not provide
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1 for any latitude in addressing this issue. Failure to file a water right
2 claim waives and relinquishes any right that may have existed, RCW
3 90.14.071. It is not clear that a right exists for the property, and if one
4 had existed, it was relinquished due to failure to file a claim pursuant to
5 RCW 90.14. Therefore, the Referee cannot recommend that a right be
6 confirmed under Court Claim No. 01897.

7 COURT CLAIM NO. 01252 -- N. N. Eaton & Sons

8 Court Claim No. 01252 was filed by N. N. Eaton & Sons asserting rights
9 to use several surface water sources in the Yakima River Basin, including
10 use of several springs that lie in Subbasin No. 10. Jack W. Eaton testified
11 at the evidentiary hearing.

12 The claimant owns land in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, all of Section 4,
13 the S $\frac{1}{2}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
14 Section 11, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14 and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13, all in
15 T. 16 N., R. 19 E.W.M. This land all lies within Subbasin No. 10 and is
16 used as rangeland for cattle owned by the claimant. Up to 1,000 head of
17 cattle have grazed this land, although at the time of the hearing there were
18 only about 200 head. Several springs arise on the land and the cattle drink
19 directly from the spring or the stream that flows from the spring. Many of
20 the springs are ephemeral, only flowing during the wetter seasons of the
21 year. This land is generally only used for livestock grazing in the fall
22 and spring, although occasionally it is used the entire year.

23 Non-diversionary stock water use is covered by the stock water stipulation
24 discussed on page 4 of this report and no additional right is needed.

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1 Two of the springs have been developed with water piped to stock tanks
2 or troughs. One is located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9 and is piped to a
3 12,000 gallon tank. There was a pipeline and tank in place when the Eatons
4 acquired the land in 1949, but they have since replaced the old equipment.
5 Mr. Eaton believes that the system would have been developed around the turn
6 of the century when the land first went into private ownership. Attached to
7 the claim is information that shows that Section 9 was originally conveyed
8 to Northern Pacific Railroad who in turn sold the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9 (and
9 perhaps other land in Section 9) to Angus McPherson. Water Right Claim No.
10 120709 was filed pursuant to RCW 90.14 asserting a right to use 5 gallons
11 per minute, 8 acre-feet per year from the spring for stock watering.

The second developed spring is located near the southeast corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, but actually is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3. Water is piped from the spring under the Highline Canal to troughs, which are located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3. This system was also in place when the Eatons acquired the land in 1949 and they have made no changes. Water Right Claim No. 120680 was filed asserting a right o use 5 gallons per minute, 8 acre-feet per year for stock watering. This land has the same ownership history as the land in Section 9.

20 Although both of the claims that were submitted pursuant to RCW 90.14
21 assert that 5 gallons per minute and 8 acre-feet per year were being used, a
22 continuous diversion of 5 gallons per minute the entire year would only
23 produce 7.2 acre-feet. The testimony indicates that water from the springs
24 would not be used all year. The Referee intends to recommend rights only

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1 for 3.5 acre-feet per year from each spring, which would reflect use of each
2 spring about six months each year.

3 The Referee recommends that two rights be confirmed under Court Claim
4 No. 01252 under the Riparian Doctrine, both with a priority date of May 24,
5 1884, the date when the map of definite location was filed for construction
6 of the railroad in Kittitas County. Each water right will allow for the use
7 of 0.01 cubic foot per second, 3.5 acre-feet per year for stock watering.
8 The point of diversion and place of use for the spring in Section 9 shall be
9 530 feet east and 265 feet south of the northwest corner of Section 9, in
10 the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T. 16 N., R. 19 E.W.M. The point of diversion
11 in Section 3 shall be 1050 feet north and 700 feet east of the southwest
12 corner of Section 3 being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and the place of use shall
13 be the S $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3.

14 COURT CLAIM NO. 01445 -- John Nylander

15 John Nylander filed a claim with the Court asserting a right to use
16 waters from Cooke Creek, Park Creek and Badger Pocket Creek. Mr. Nylander,
17 who testified at the evidentiary hearing, is represented by Attorney Vernon
18 E. Fowler, Jr. Additional Richard C. Bain, Jr., prepared an engineering
19 report for the property that was entered as direct expert testimony and
20 given exhibit number DE-1387. Information from that report will be used in
21 considering the claim.

22 Mr. Nylander owns 115 acres in that portion of the N $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21
23 west of Cooke Creek, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28,
24 all in T. 17 N., R. 19 E.W.M. Within that area he is irrigating 100.4 acres

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1 with water diverted from several water sources. He irrigates fields 1, 2,
2 and 4 consisting of a total of 48.5 acres with water diverted from Cooke
3 Creek near the center of Section 21. Water diverted from Park Creek near
4 the southeast corner of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 is used to irrigate 29.4
5 acres in field 3 and Badger Pocket Creek is used to irrigate 22.5 acres in
6 field 5. Mr. Bain's report indicates that the claimant is seeking a right
7 to divert 4.5 cfs from Cooke Creek through TO's-1 and 2, 4.0 cfs from Park
8 Creek at TO-3 and 3.0 cfs from Badger Pocket Creek at TO-4. The only
9 takeout that appears to have been measured is TO-1, which was measured at
10 1.57 cfs. This takeout is also used to irrigate the Ken Sorenson land to
11 the east of the claimant's property. Mr. Bain's report suggests that he
12 estimated the quantity of water that could be diverted at each of the other
13 takeouts. Using the measured diversion at TO-1 and considering the
14 irrigation practice on the claimant's land, Mr. Bain's report indicates that
15 15 acre-feet per year for each acre irrigated is used. The land is planted
16 to Timothy hay with a small grain rotation. After harvest about 2,000 head
17 of sheep graze the stubble. The sheep drink from the creeks in some fields,
18 but water is diverted for stock watering also. The testimony did not
19 indicate the instantaneous quantity diverted for stock watering or the
20 fields which require the diversion. The Referee believes that the source of
21 irrigation water for the field would also be the source for stock watering.
22 Water is conveyed from the various diversion to the irrigated fields in
23 lined ditches or in underground pipelines and the fields are rill irrigated
24 with gated pipe.

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1 The land has been in Mr. Nylander's family since 1942 when his mother
2 purchased all of the land, except the portion in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21.
3 That field was acquired in 1946. According to Mr. Nylander's testimony, it
4 was a productive farm when his mother acquired it. He and his mother lived
5 in Seattle and the land was farmed by his uncle, J. O. Sorenson. His uncle
6 and cousin farmed the land until 1981 and since then Ken Sorenson has farmed
7 it.

Water right claims (WRC) were filed by Dorthea Nylander in 1974 pursuant to the requirements of RCW 90.14. WRC No. 062722 asserts a right to use 2.5 cfs, 155 acre-feet per year from Cooke Creek for the irrigation of 31 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 21. The point of diversion is described as being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21. The currently used diversion is very close to the corner that would be common to the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21. Field 4, which is also irrigated from Cooke Creek, is not included in the place of use description on this claim. WRC No. 062725 asserts a right to use 2 cfs, 110 acre-feet per year from Badger Pocket Creek for the irrigation of 21 acres and stock watering in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28. The point of diversion is described as being in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, which is where the currently exercised diversion is located. WRC No. 062729 asserts a right to divert 2 cfs, 205 acre-feet per year from Parke and Brush Creek for the irrigation of 41 acres and stock watering in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28. The point of diversion that is described is in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, which is the same location as the currently used diversion.

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The only historical information provided about the land was related to settlement. The claimant's land was settled by four different individuals. The NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 was settled by William Jordin, who received a patent on June 13, 1876, for the E $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28. This land was then conveyed to John McEwen, who apparently owned at least the portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 now owned by Mr. Nylander until his mother purchased it. The NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 was part of land settled by William Montgomery, who received a patent on February 3, 1902. The chain of title submitted indicates that Montgomery sold a portion of his property in 1913, but it does not indicate which portion. The NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 is irrigated from Cooke Creek, but is not riparian to Cooke Creek, so in order for there to be a water right for this portion of the claimant's land, there would need to be evidence of when Cooke Creek was first used on the land. The SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 was originally conveyed by the Federal Government to Northern Pacific Railroad, who sold it to S. R. Geddis in 1881. This land is irrigated from Park Creek, but is not riparian to Park Creek, so evidence of when water was first used from Park Creek to irrigate this land is important. The NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 was settled by Patrick Lynch, who received a patent on July 1, 1874, for lands that included the NW $\frac{1}{4}$ NW $\frac{1}{4}$. He sold this land to S. R. Geddis in 1887. The NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 is riparian to Badger Pocket Creek, so in order for there to be a water right, the evidence needs to show that water was first used prior to December 31, 1932.

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1 Neighboring landowner, Paul Sorenson entered Exhibit DE-1374, which is
2 a copy of a Summons and Complaint from 1924. W. T. Montgomery, who owned
3 the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 was a defendant in this case. The plaintiffs
4 sought a restraining order against the defendants to prevent the defendants
5 use of water from Cooke Creek. The resolution of this case is not in the
6 record, but would be useful in determining whether the claimant might have a
7 valid right to use Cooke Creek water. An additional concern is that Cooke
8 Creek was previously adjudicated with a decree being entered in 1921, State
9 of Washington v. Anderson. Water rights were not awarded for the claimant's
10 land in that case. The Referee considers that adjudication to have
11 determined all of the valid rights to use Cooke Creek water. Based on that
12 conclusion, the Referee cannot recommend that rights be confirmed under
13 Court Claim No. 01445 for use of Cooke Creek.

14 Also entered by Paul Sorenson was exhibit DE-1367 and DE-1368, which
15 was the complaint and decree in Olmstead v. Hays, et al.. This case involved
16 several parties that were using Park and Brushy Creek. The decree awarded
17 4/5 of the flow in Brush Creek to John Holtz and the remaining flow to J. D.
18 Olmstead and John H. McEwen for lands in Section 22 and the E $\frac{1}{4}$ of
19 Section 21. It also gave half of the flow in Park Creek to Olmstead and
20 half to McEwen for the same lands. It is not clear who owned the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
21 Section 21 at the time of this dispute, so the Referee cannot determine
22 whether he was a party to that action. Without that information and
23 additional information about when water from Park Creek was first used on

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1 the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, the Referee cannot recommend that a right be
2 confirmed.

3 The Referee has found no historical information about Badger Pocket
4 Creek, which is also called Johnson Drain. In light of it being known as
5 Johnson Drain, the Referee must consider whether it is a naturally occurring
6 creek or a drain that captures return flow water from neighboring lands.
7 Unfortunately, there is not enough evidence in the record to allow for that
8 determination. Additionally, there is no evidence of when this water was
9 first used on the claimant's land. Although Mr. Nylander testified that all
10 of the land was an operating farm at the time his mother acquired it in
11 1942, that does not establish when any one water source was first used or
12 the legal basis for that use. Additional information is needed in that
13 regard.

14 The Referee does not recommend that any diversionary water rights be
15 confirmed under Court Claim No. 01445 until additional information is
16 submitted into evidence. Livestock drinking directly from any water source
17 is covered by the stock water stipulation discussed on page 4 of this report
18 and the claimant's name shall be included on the list of those who enjoy a
19 right under the stipulation.

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KIM M. EATON
YAKIMA COUNTY CLERK
YAKIMA COUNTY
WASHINGTON

YAKIMA RIVER BASIN

WATER RIGHTS ADJUDICATION

F I L E D

OCT 23 2001

**KIM M. EATON
YAKIMA COUNTY CLERK**

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

REPORT OF REFEREE

**Re: SUBBASIN NO. 10
(KITTITAS)**

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

1 COURT CLAIM NO. 01417 -- John Olexsy
2 01418 & Kim Olexsy

3 On August 27, 1981 Douglass and Carol Evenson filed Court Claims No.
4 1417 and 1418 for the use of 1.0 cubic feet per second (cfs) and 15
5 acre-feet per year from an unnamed creek for irrigation of 3.6 acres and
6 stock water in Section 10, T. 18 N., R. 19 E.W.M. The Evenson property was
7 eventually purchased by David and Victoria Mitchell, and the Mitchells
8 became successors to claim No. 1417 and 1418. Mr. Mitchell testified at the
9 evidentiary hearing. On April 18, 2001, John and Kim Olexsy were
10 substituted for the Mitchells.

11 Mr. Mitchell testified that his property receives water from the
12 Kittitas Reclamation District (KRD) and is assessed for four acres; other
13 sources of water used on the property are from Kiester Ditch and Schnebly
14 Creek. State exhibit SE-2 shows two diversion points on the claimant's
15 property, one on Schnebly Creek and one that is on what is a southern branch
16 of the Kiester Ditch (SE-2 Subbasin 9). The record shows that the Kiester
17 Ditch carries water from Naneum Creek, which is located in Subbasin 9, to
18 the claimant's property. Rights to the use of Naneum Creek were addressed
19 in the Report of Referee for Subbasin No. 9, which was filed on June 29,
20 2000. Neither of the two claims discussed herein identified Naneum Creek as
21 a source of water for which a right was being asserted, so the claims were
22 not considered in the Subbasin No. 9 Report of Referee. If the claimant
23 intends to assert a right for use of Naneum Creek water, a request should be
24 filed with the Court to amend the claim and file a late exception to the
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1 Subbasin No. 9 Report of Referee. Schnebly Creek is the only water source
2 that will be considered herein.

3 The Claimant's property was originally a part of the homestead of E. N.
4 Cook (DE-1438). A patent issued on August 18, 1888, to E. N. Cooke for the
5 NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T. 18 N., R. 19 E.W.M. The
6 Receiver's Receipt is dated May 10, 1887. The land is riparian to Schnebly
7 Creek and a right under the riparian doctrine would have a priority date of
8 when steps were first taken to sever the land, which in this case is the
9 date on the Receiver's Receipt. Mr. Cook leased this land out to be farmed
10 during the years of 1896-1901. The terms of the lease specify that the land
11 was to be farmed in order to produce hay and grain which implies the need
12 for irrigation. The E. N. Cooke homestead was sold to Carl Gustafason on
13 October 18, 1902. His son, Andy Gustafason, was born the same year and he
14 grew up on this homestead. Andy was deposed by attorneys Hugh Spall and
15 William Almon (DE-969) on March 15, 1990. Mr. Gustafason discussed the use
16 of Spring (Schnebly) Creek water on his father's farm, where it was diverted,
17 used etc. His testimony was very general, but indicated that 80 acres were
18 being irrigated in the portion of his father's property that was in
19 Section 11. Mr. Gustafason testified to diverting water from Schnebly Creek
20 from a point just north of the claimant's property, near where diversions
21 are shown on SE-2. Mr. Gustafson's deposition suggests that the land was
22 irrigated from Schnebly Creek at least by the early 1900's.

23 At the time the state conducted a field investigation of the property
24 two acres were being irrigated from a diversion dam on the creek. A pump
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1 had apparently been used some time in the past. Mr. Mitchell testified that
2 he had not used the pump since he owned the property. There was no
3 testimony about the quantity of water being used to irrigate the land.
4 Mr. Mitchell indicates that the parcel is 7 acres in size and all of it is
5 irrigated from either Schnebly Creek or with KRD/Kiester Ditch water.

6 Water Right Claim No. 113521 was filed on June 3, 1974 by Richard K.
7 Best, pursuant to the requirements of RCW 90.14. This claim names an
8 unnamed creek as the source of water for irrigation of 3.6 acres and stock
9 water. The place of use and point of diversion closely correspond to those
10 identified on State exhibit SE-2. Since a right was only asserted for the
11 irrigation of 3.6 acres in both Court Claims 1417 and 1418 and in WRC No.
12 113521, the Referee concludes that is the extent of the right being sought
13 from Schnebly Creek.

14 The Referee recommends that a right be confirmed with a priority date
15 of May 10, 1887, for the diversion of 0.072 cubic foot per second, 14.4
16 acre-feet per year from Schnebly Creek for the irrigation of 3.6 acres in
17 the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T. 19 N., R. 19 E.W.M. The claimant's stock
18 drink directly from any naturally occurring water source on his property,
19 which is covered by the non-diversionary stock water stipulation on page 4
20 of this report. The claimant's names are included on the list of those
21 having a non-diversionary stock water right under the stipulation.

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1 COURT CLAIM NO. 00929 -- Fred Palmiero
2 & Francis Joy Palmiero

3 The Palmieros submitted a claim to the Court for use of waters from
4 Cooke Creek. Mr. Palmiero testified at the evidentiary hearing.

5 The claimants own approximately 9 acres in that portion of the E%SE% of
6 Section 2, T. 17 N., R. 19 E.W.M. lying east of Cooke Creek. They irrigate
7 8 acres with water diverted from the creek. The water that is diverted is a
8 mixture of creek water and water delivered by the Kittitas Reclamation
9 District (KRD). A KRD lateral dumps water into Cooke Creek near the east
10 quarter corner of Section 2 and the claimants withdraw water from the creek
11 near the northeast corner of their property. They are assessed by KRD for 9
12 acres. The land is in hay and pasture and is rill irrigated. Horses are
13 raised on the property and can drink from the creek and from the irrigation
14 ditches. The Palmieros have owned the land since 1947 and have continually
15 irrigated since that time. Mr. Palmiero testified that during irrigation
16 season, most of the water in the creek when it reaches his property was KRD
17 water and he was not certain he was using any creek water. He estimates
18 that he diverts approximately 1.5 cfs. A small pond was built on the
19 property in 1983 and creek water is diverted into the pond with an outflow
20 back to the creek.

21 The chain of title documents indicate that the claimants' land was part
22 of what was homesteaded by George W. Snodgrass, who received a patent on
23 March 21, 1891. At the time of the first adjudication of Cooke Creek, the
24 SE% of Section 2 was owned by Milwaukee Land Company. Certificate No. 190,
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1 a Class 14 right with an 1893 date of priority, issued to the land company
2 authorizing the diversion of 1.80 cubic feet per second for the irrigation
3 of 90 acres in the SE $\frac{1}{4}$ of Section 2. The authorized point of diversion is
4 in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T. 17 N., R. 19 E.W.M. The certificate
5 authorized use of water from May 1 through September 15. In addition to the
6 Palmieros, Gerald and Beverly Allphin are asserting a right within the SE $\frac{1}{4}$
7 of Section 2. The rights being asserted are considerably less than the 90
8 acres authorized for irrigation by Certificate No. 190.

9 Although Mr. Palmiero was uncertain about the nature of the water he is
10 diverting, it is clear that water rights were established for irrigating 90
11 acres in the SE $\frac{1}{4}$ of Section 2 with water from Cooke Creek. At the time the
12 rights were established and the first adjudication occurred, KRD was not
13 delivering water in this area, so only natural creek water was available.
14 Undoubtedly, creek water is now augmented by KRD water, but the right still
15 exists for whatever creek water is available for and used by the claimants.
16 The certificate authorized a diversion in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1. Warren
17 Wood, who owns most of the NW $\frac{1}{4}$ of Section 1 testified that the channel of
18 Cooke Creek through the NW $\frac{1}{4}$ of Section 1 was changed by a prior owner of his
19 land. It is likely that when the channel was changed, the Palmieros or
20 their predecessor had to change the diversion to their property. There is
21 no evidence that the change provisions of RCW 90.03.380 were complied with
22 to obtain authorization to change the diversion authorized in Certificate
23 No. 190.

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1 It is recommended that a right be confirmed under Court Claim No. 00929
2 with a June 30, 1893, date of priority for the diversion of 0.16 cubic foot
3 per second, 40 acre-feet per year for the irrigation of 8 acres and stock
4 water. The point of diversion authorized shall be that described on
5 Certificate No. 190. The claimants should contact Ecology's Central
6 Regional Office about the process set forth in RCW 90.03.380 to seek
7 authorization to use their current diversion.

COURT CLAIM NO. 00972 -- Donald L. Frye
& Charlotte A. Frye

COURT CLAIM NO. 02091 -- Robert C. Paul
02092 & Margaret E. Paul

The three referenced Court claims are for lands in the S½ of

the Referee will address the three claims in the same analysis.

Donald and Charlotte Frye submitted a statement of claim to the Court asserting a right to use Coleman Creek and Spring Creek (shown as Schnebly Creek on SE-2) water for the irrigation of 40 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M. Mr. Frye represented himself in the evidentiary hearing. In his testimony Mr. Frye requested that his court claim be amended to include stock water, a priority date of 1873 instead of 1974, and to include his lawn and garden areas as part of his total irrigation claim from creek water. Mr. Frye's property is riparian to Coleman Creek

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1 (DE-1448), and is assessed by the Kittitas Reclamation District (KRD) for 22
2 acres.

3 On his Court Claim Mr. Frye named both Spring Creek and Coleman Creek
4 as water sources. However, in testimony Mr. Frye made it clear that he does
5 not divert water from Spring Creek, nor does it flow along the west boundary
6 of his property as stated in the State investigation report. He stated that
7 he diverts water from what he understands to be Coleman Creek, and from East
8 Coleman Creek.

9 The claimant uses two diversions to bring water to his property for
10 irrigation and stock water. One diversion is located 240 feet west and 40
11 feet south of the center of Section 27 on what the claimant considers to be
12 Coleman Creek. The second of his diversions is located 337 feet east and
13 145 feet north of the center of Section 27 on what the claimant understands
14 to be "East branch Coleman Creek". Mr. Frye testified that he uses these
15 waters to irrigate 38 acres of hay, pasture, lawn and orchard. He also
16 stated that he usually pastures about 50 cow-calf pairs on his property.

17 More than one water course traverses north-south across Section 27, and
18 Mr. Frye indicated that there has been some confusion and inconsistency with
19 respect to the identification of these water courses. The Referee agrees.
20 Water Right Claim (WRC) No. 116782, filed pursuant to RCW 90.14, names
21 Spring Creek as the source of water at the west diversion, however, this
22 diversion is in fact located on Coleman Creek. WRC No. 116783 (also filed
23 pursuant to RCW 90.14), names the source at the east diversion as Coleman
24 Creek, while Mr. Frye testified that this diversion is on "East branch

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1 Coleman Creek". However, according to the evidence in the record, the
2 Referee has concluded that this "diversion" is in fact a turnout located on
3 a ditch that carries Coleman Creek water from what Jim Schnebly has
4 identified as "diversion number 21", located 1000 feet north and 15 feet
5 west from the southeast corner of Section 15, T. 18 N., R. 19 E.W.M. Jean
6 Paul filed WRC Nos. 116782 and 116783 on June 17, 1974, and both of these
7 claims identify the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M.
8 as the place of use. WRC No. 116782 states that 3 cfs, 120 acre-feet is
9 used for the irrigation of 30 acres and WRC No. 116783 states that 2 cfs, 80
10 acre-feet is used for the irrigation of 20 acres. Water Right Claim No.
11 116783 substantially complies with the requirements of RCW 90.14 for Coleman
12 Creek.

13 The two water right claims jointly claim a right to irrigate 50 acres
14 with water diverted from Coleman Creek within an 80 acre place of use, half
15 of which is owned by the Fryes and half is owned by Robert Paul. Based on
16 State's Exhibits SE-2 and SE-108 it appears that the majority of the water
17 use associated with these claims is on the Frye property.

18 Mr. Frye's 40 acres is part of an original 160 acre land parcel that
19 was granted by the United States to Harben M. Cooper under the 1820
20 Congressional act "An Act making further provision for the sale of the
21 public lands". Mr. Frye noted that the date of this transaction as shown on
22 the patent (DE-1447) was July 1, 1824. However, the Referee also notes on
23 DE-1447 that the president of the United States at the time of patent was
24 Ulysses S. Grant, and it is a matter of history that U. S. Grant was

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1 president from 1869-1877. Therefore, the Referee believes the 1824 date to
2 be a mistake.

3 Although the exact date that Mr. Cooper received a patent is not
4 evident from the record, it is clear that his successor to the subject
5 property, A. T. Borst, was awarded a first class water right to Coleman
6 Creek in the 1915 Schnebly vs Huss decree. In this decree Mr. Borst was
7 awarded 80 inches of first class water from Coleman Creek for irrigation of
8 the E $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34 (160
9 acres), all in T. 18 N., R. 19 E.W.M. The only information about the early
10 use of Coleman Creek irrigation water on the Cooper Homestead is contained
11 in the said decree which states, "appropriations initiated prior to 1873
12 shall be placed in the first class. . ."

The Referee recommends a water right be confirmed on Coleman Creek to Donald and Charlotte Frye under Court Claim No. 0972, with a June 30, 1872, priority date for the diversion of 0.40 cfs and 148.2 acre-feet for the irrigation of 38 acres from April 1, through October 15; and year around diversion of 0.025 cfs and 2.5 acre-feet for stock water. The place of use is within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M. This right contains two points of diversion on Coleman Creek: 1) 240 feet west and 40 feet south of the center of Section 27; and 2) 1000 feet north and 15 feet west from the southeast corner of Section 15, T. 18 N., R. 19 E.W.M. These diversions may be used in conjunction with each other, but the total amount of Coleman Creek water diverted may not exceed the above quantities.

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1 Robert C. and Margaret E. Paul submitted a statement of claim to the
2 court (No. 2091) asserting a right to use Coleman Creek water for the
3 irrigation of 80 acres within the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 34, and both Coleman
4 Creek and Spring Creek for the 80 acres within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 and
5 the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, all in T. 18 N., R. 19 E.W.M. Mr. Robert Paul Sr.
6 and Robert Paul Jr. appeared and testified at the evidentiary hearing, the
7 Pauls were represented by attorney Jeff Slothower.

8 Mr. R. Paul Sr. testified that in addition to irrigation, these waters
9 have historically been used for stock watering up to 130 cow/calf pairs.
10 The claimant's property is riparian to Coleman Creek, but it is not riparian
11 to Spring Creek, which discharges into Coleman Creek north of his property.
12 However, Mr. Robert Paul Sr. has testified that the water source that he has
13 referred to as Spring Creek is in fact Coleman Creek.

14 Mr. Paul Sr. owns and irrigates the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, and the
15 NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34 with Coleman Creek water. This 80 acre parcel was
16 originally part of the Harben M. Cooper Homestead, and was awarded 40 inches
17 (0.80 cfs) of class one Coleman Creek water in the Schnebly vs Huss Decree.
18 The class one water rights were those where the appropriations were
19 initiated prior to 1873. Mr. Paul Sr. testified that this property is also
20 assessed by the KRD for 43 acres of water, and that when necessary the KRD
21 water is used as well. Mr. R. Paul Jr. has stated that two diversion points
22 (No. 1 and No. 2, DE-1455) are used to deliver Coleman Creek water to the
23 parcel. Diversion No. 1 is located near the northeast corner of this parcel
24 on what Mr. Paul described as "east fork of Coleman Creek". As previously
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1 discussed, the record indicates that this "east fork" is a ditch from
2 Coleman Creek. Therefore, Mr. Paul's "Diversion" No. 1 is a ditch turn out,
3 with the diversion point being the same as Jim Schnebly's Coleman Creek
4 Diversion No. 21 referenced earlier. The ditch discharges into Coleman
5 Creek at about the middle point across the northern boundary of Mr. Paul's
6 Property. From this point Coleman Creek flows southwesterly across
7 Mr. Paul's property. The second diversion point is located on Coleman Creek
8 near the middle of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27.

9 Water right claims (WRC) No. 116782, 116783 and 008195 are appurtenant
10 to Mr. Paul's property. The first two have been described earlier. WRC No.
11 008195 was filed by Robert C. Paul on February 21, 1972, and claims a right
12 to divert 2.0 cfs, 400 acre-feet from Coleman Creek "east branch" for stock
13 water and irrigation water for 145 acres in the SW $\frac{1}{4}$ of Section 27 and NW $\frac{1}{4}$ of
14 Section 34, T. 18 N., R. 19 E.W.M. The claimed point of diversion is
15 located on the said ditch, and appears to be the same point as Mr. Paul's
16 "Diversion" (turn out) No. 1.

17 Report No. 2 of State Exhibit SE-108 describes Mr. Paul's use of the
18 diversion point on Coleman Creek that he shares with claimant Donald Frye.
19 This is the point of diversion that is described on WRC No. 116782. This
20 diversion is used to convey water south to 9.5 acres of Mr. Paul's property
21 in that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 which lies west of Coleman
22 Creek. Mr. Robert Paul Jr. testified that their property located west of
23 Coleman Creek in Sections 34 and 33 are served with KRD water only. Using
24 DE-1455 as a reference, Mr. Paul also testified that he uses Coleman Creek

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1 water to irrigate 75 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section
2 34, and 25 acres in that portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 34 which lies east
3 of Coleman Creek. That portion of the Paul property was awarded 12.5 inches
4 (0.25 cfs) of class 4 Coleman Creek water in the Schnebly vs Huss Decree.
5 In this decree class 4 waters are appropriations which were initiated during
6 the years 1877 and 1878. DE-1044 is a claim of water right that was filed
7 with Kittitas County in 1890 by Mr. David Wheaton. In this document
8 Mr. Wheaton states that in February of 1877 he first constructed a ditch
9 from Coleman Creek in order to convey water for the irrigation of the W $\frac{1}{2}$ NW $\frac{1}{4}$
10 of Section 34, T. 18 N., R. 19 E.W.M. The point of diversion described by
11 Mr. Wheaton is down stream from the W $\frac{1}{2}$ NW $\frac{1}{4}$ and thus appears to be in error.

12 The Referee recommends a water right be confirmed under Court Claim No.
13 2091 to Robert C. and Margaret E. Paul with a June 30, 1872, priority date
14 for the diversion of 0.80 cfs and 292.5 acre-feet for the irrigation of 75
15 acres from April 1 through October 15; and year around diversion of 0.065
16 cfs and 6.5 acre-feet for stock water. The place of use is within the
17 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T. 18 N., R. 19 E.W.M.
18 This right contains two points of diversion on Coleman Creek: 1) 240 feet
19 west and and 40 feet south of the center of said Section 27, and 2) 1000
20 feet north and 15 feet west from the southeast corner of Section 15, T. 18
21 N., R. 19 E.W.M. These diversions may be used in conjunction with each
22 other, but the total amount of Coleman Creek water diverted may not exceed
23 the above quantities. If the claimant wishes to use other points of
24 diversion on Coleman Creek he is advised to submit an application for change

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1 consistent with RCW 90.03.380 to add or change the location of a point of
2 diversion.

3 The Referee also recommends that a water right be confirmed on Coleman
4 Creek to Robert C. and Margaret E. Paul with a February 28, 1877, priority
5 date for the diversion of 0.25 cfs and 97.5 acre-feet for the irrigation of
6 25 acres and stock water from April 1 through October 15. The place of use
7 is 25 acres within that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T. 18 N., R. 19
8 E.W.M. which lies east of Coleman Creek. The point of diversion is located
9 1000 feet north and 15 feet west from the southeast corner of Section 15, T.
10 18 N., R. 19 E.W.M.

11 John L. and Muriel G. Paul filed with the Court Statement of Claim No.
12 0723, asserting a right to the use of water from Coleman Creek for the
13 irrigation of 40 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of section 27, T. 18 N., R 19 E.W.M.
14 Mr. Paul appeared and testified on his own behalf at the Subbasin 10
15 evidentiary hearing. In testimony Mr. Paul amended his claim to include
16 only 8 acres of irrigation with Coleman Creek water. Mr. Paul's property is
17 not riparian to Coleman Creek.

18 According to his testimony and State Exhibit SE-107, Mr. Paul only
19 irrigates 8 acres with Coleman Creek water. This 8 acres is described in
20 SE-107 as the east 1050 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T. 18 N., R.
21 19 E.W.M. The rest of his property is irrigated with KRD water. Mr. Paul
22 stated that he has two diversions on what he believes to be Coleman Creek.
23 The water course that runs through his property is what other claimants have
24 referred to as the "east branch" of Coleman Creek; but what the Referee has

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1 identified as a ditch which originates from Coleman Creek, with it's
2 headgate at Jim Schnebly's Diversion No. 21 (see above). The two diversions
3 used by Mr. Paul are therefore, ditch turnouts, and not diversions on a
4 natural water course. Mr. Paul stated that he receives his KRD water
5 through this ditch as well.

6 Mr. Paul's property was originally part of the Harben M. Cooper
7 Homestead and which was granted Class one Coleman Creek water in the
8 Schnebly vs Huss Decree. Typically, the claimant has about 60 animal units
9 on his property, which is inclusive of the said eight acres. However, from
10 the record it does not appear that Mr. Paul is making a claim to a
11 diversionary right on Coleman Creek for stock water.

12 Mr. Paul filed RCW Chapter 90.14 Water Right Claims No. 113711 and No.
13 137640 in June of 1974. Curiously, the two claims are identical in all
14 respects. These claims name 40 acre-feet of Coleman Creek water as the
15 source for the irrigation of 10 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
16 27, T. 18 N., R. 19 E.W.M.

17 The Referee recommends that a water right be confirmed on Coleman Creek
18 under Court Claim No. 0723 to John L. and Muriel G. Paul with a June 30,
19 1872, priority date for the diversion of 0.08 cfs and 31.2 acre-feet for the
20 irrigation of 8 acres from April 1 through October 15. The place of use is
21 the east 1050 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M.
22 The point of diversion is located 1000 feet north and 15 feet west from the
23 southeast corner of Section 15, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.
24 18 N., R. 19 E.W.M. The claimant's stock drink directly from any naturally
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1 occurring water source on his property. This use is covered by the
2 non-diversionary stock water stipulation discussed on page 4 of this
3 report. The claimants' names are included on the list of those who have
4 non-diversionary stock water rights under the stipulation.

5 COURT CLAIM NO. 01150 -- James J. Peterson
6 & Carolyn B. Johnson

7 Court Claim No. 01150 was filed asserting a right to use waters from
8 Cooke Creek for irrigation and stock watering. Mr. Peterson testified at
9 the evidentiary hearing.

10 The claimants own 7.47 acres within the SW^{1/4}NE^{1/4} of Section 31, T. 19 N.,
11 R. 20 E.W.M. They are irrigating approximately three acres of lawn and
12 landscape with water pumped from Cooke Creek. A one-half horsepower pump is
13 on the creek and feeds a sprinkler irrigation system. When the claimants
14 acquired the property in 1976, a ditch entered their property from the
15 McGinty property to the north, carrying Cooke Creek water. In 1977 Mr.
16 McGinty closed off the ditch and the claimants put the pump on the creek.
17 They believe that prior to their purchasing the property most of the seven
18 acres was irrigated with water conveyed in the ditch. Since 1977, three
19 acres is the maximum that has been irrigated. The rest of the land is in
20 pasture, but is not irrigated. They allow a neighbor to graze 4 or 5 horses
21 on the property. The horses drink directly from Cooke Creek. This type of
22 non-diversionary stock water use is covered by the stock water stipulation
23 discussed on page 4 of this report.

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Certificate No. 209 from the prior adjudication of Cooke Creek is appurtenant to the claimants' property. With an 1879 date of priority, it authorized the diversion of 1.80 cubic feet per second from Cooke Creek for the irrigation of 90 acres. The authorized points of diversion are in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 19 N., R. 20 E.W.M. The legal description for the place of use on the certificate is a strip of land that is mostly in the W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 31, but does extend slightly into the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31. All of the claimants property is within the place of use on the certificate. Besides the claimants, the following claimants also own land that is within the place of use on Certificate No. 209: Michael Joseph Shannon, William Arthur and Rea Jeanette Hanning, Arthur W. and Margarette Hanning, Earl E. and Florene McGinty, Jack A. and Becky R. Baker, Bruce and Bonnie Catton and Pamela A. Zupan.

14 Additionally, Water Right Claim No. 120829 was filed by Jerome K.
15 Miller, from whom the property was purchased, under the provisions of RCW
16 90.14. However, since a certificate had been issued for the water use,
17 filing a water right claim was not required in order to protect the water
18 right.

19 Besides requiring the filing of water right claims for uses of water
20 for which there are no certificates, RCW 90.14 also provides for the
21 relinquishment of unused water rights. RCW 90.14.170 provides that any
22 person entitled to divert waters of the state authorized by a general
23 adjudication (such as Cooke Creek) who voluntarily fails without sufficient
24 cause to beneficially use all or any part of the right for five successive

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1 years shall relinquish said right or portion thereof. The sufficient causes
2 that prevent relinquishment are defined in RCW 90.14.140 and the Referee is
3 not aware of any sufficient cause that might apply to the claimants.

4 The Referee concludes that evidence supports a finding that there is a
5 water right for the three acres that have continued to be irrigated with
6 water from Cooke Creek. However, any water right that may be appurtenant to
7 the four acres that have not been irrigated since at least 1977 has
8 relinquished due to more than five years of nonuse.

9 It is recommended that a water right be confirmed with a June 30, 1879,
10 date of priority for the diversion of 0.06 cubic foot per second, 12
11 acre-feet per year from Cooke Creek for the irrigation of 3 acres. It is
12 clear the after the claimants acquired the property the point of diversion
13 from the creek was changed from the diversion into a gravity flow ditch to a
14 pump location on the property. There is no evidence that they complied with
15 the provisions of RCW 90.03.380 to obtain approval for changing or adding a
16 point of withdrawal to Certificate No. 209. Therefore, the point of
17 diversion that will be authorized is the location of the diversion into the
18 ditch that formerly served the property. The claimants should contact
19 Ecology's regional office concerning the process pursuant to RCW 90.03.380
20 to obtain approval for the currently used diversion.

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1 COURT CLAIM NO. 00927 -- Lloyd W. Powell
2 Gaylord M. Kellogg
3 Edwin Nestler
4 & Jeannette Nestler

5 Court Claim No. 00927 was originally filed by Kirk and Beverly German,
6 who were represented by Attorney Hugh Spall. On March 11, 1996, Lloyd
7 Powell was substituted for the Germans as claimant. On March 17, 2000,
8 Gaylord M. Kellogg and on April 17, 2001, Edwin and Jeannette Nestler were
9 joined to the claim. Kirk German and his son, Steve German, testified at
the evidentiary hearing.

10 The Germans owned the E $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{4}$ NE $\frac{1}{4}$, Government Lots 1 and 2 of
11 Section 7, and Government Lots 1 and 2 and a portion of Government Lot 3 of
12 Section 18, both in T. 18 N., R. 20 E.W.M., the NE $\frac{1}{4}$ of Section 12, the
13 E $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 18 N., R. 19 E.W.M. At the time of
14 the evidentiary hearing, they had sold the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13 and the
15 NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, but the new owners had not been joined to the claim.
16 Mr. German testified that Mike McArthur owned the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13,
17 Edwin Nestler owned Government Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) and Jack Sansaver owned the
18 NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18. The Nestlers just recently were joined to the claim
19 and the other two parties have not yet been joined.

20 Kirk German's mother was raised on the land in the E $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{4}$ NE $\frac{1}{4}$ of
21 Section 7 and Mr. German was born on that land. This portion of the land is
22 irrigated with water diverted from Cooke Creek. The diversion from the
23 creek appears to be approximately 800 feet north of the center of Section 6,
24 which would put it in the S $\frac{1}{4}$ N $\frac{1}{4}$ of Section 6, although the State's

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1 investigation report puts it about 100 feet west of the center, in the
2 NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6. Water is diverted from the creek and carried in an
3 open ditch down to the claimant's property. Steven German testified that 3
4 cubic feet per second is diverted when it is available and that about
5 one-third of the quantity diverted is lost from the ditch, leaving about 2
6 cubic feet per second available for actually irrigating the land. The land
7 is planted in timothy hay, grain and pasture. Cattle are raised and graze
8 on the land, drinking from the irrigation ditches and Cooke Creek as it
9 flows through the property. At the time of the hearing 250 cow/calf pairs
10 were being raised, but as many as 450 pair have been raised in the past and
11 could be again. The testimony was that the cattle are on the land all year,
12 but it is not clear whether water is diverted into the irrigation ditches
13 outside of the irrigation season for stock watering. The livestock would
14 have access to Cooke Creek and branches of the creek that flow through the
15 property. Non-diversionary stock watering is covered by the stock water
16 stipulation discussed on page 4 of this report, and no other right is
17 necessary for that type of use.

18 A prior owner of this land was a party to the earlier adjudication of
19 Cooke Creek. Certificate No. 204 ultimately issued to Rufus Cooke.
20 Certificate No. 204 is a Class 1 right with an 1870 date of priority,
21 authorizing the diversion of 3.12 cubic feet per second from Cooke Creek for
22 the irrigation of 156 acres in the E $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T. 18 N.,
23 R. 20 E.W.M. The point of diversion location authorized in the certificate
24 is in the SW $\frac{1}{4}$ of Section 6, T. 18 N., R. 20 E.W.M. As previously mentioned,
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1 the diversion currently being used is 800 feet north of the center of
2 Section 6, placing it in the NW $\frac{1}{4}$ of the section, rather than the SW $\frac{1}{4}$ of the
3 section. There was no testimony about the diversion being moved.
4 Additionally, there was no testimony about compliance with the procedures of
5 RCW 90.03.380 for seeking approval for changing a point of diversion.
6 Therefore, the Referee can only recommend confirmation of a right with the
7 point of diversion authorized in the certificate. The German family has
8 been involved with this property since before the certificate issued and
9 testified that it has continually been irrigated. Steve German testified
10 that irrigation begins in either March or April and continues until
11 mid-October. However, Certificate No. 204, and all the other certificates
12 that issued as a result of the earlier adjudication of Cooke Creek,
13 authorize irrigation from May 1 through September 15. That is the season of
14 use that shall be authorized herein.

15 Three springs were marked on Exhibit SE-2, one in Section 1 and two in
16 Section 7, that are used for stock watering and comingle with Cooke Creek
17 water for irrigation. They flow about 1 cubic foot per second in the spring
18 and then diminish as the season progresses to just providing sufficient
19 water for stock watering. There was no RCW 90.14 claim filed for the spring
20 in Section 1. The springs in Section 7 are located near the north property
21 line and WRC No. 115877 was filed for the one in the NW $\frac{1}{4}$ of Section 7. WRC
22 No. 115877 asserts a right to use the spring for stock watering only. The
23 springs are located such that it appears that the outflow would contribute
24 to Cooke Creek or one of its branches. To the extent the spring flows into

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1 the creek above diversions used by the claimants, the rights confirmed for
2 use of Cooke Creek would allow for use of any of the spring flow in the
3 creeks. Livestock drinking directly from the spring outflow is covered by
4 the stock water stipulation discussed on page 4 of this report.

5 Based on the foregoing, it is recommended that a water right be
6 confirmed with a June 1, 1870, date of priority for the diversion of 3.12
7 cubic feet per second, 780 acre-feet per year from Cooke Creek for the
8 irrigation of 156 acres and stock watering in the E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of
9 Section 7, T. 18 N., R. 20 E.W.M. The point of diversion shall be in the
10 SW $\frac{1}{4}$ of Section 6.

11 The claimants also own the NE $\frac{1}{4}$ of Section 12, the E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
12 Section 13, T. 18 N., R. 19 E.W.M., Government Lots 1 and 2 of Section 7 and
13 Government Lots 1, 2 and a portion of 3 in Section 18, T. 18 N.,
14 R. 20 E.W.M. which is irrigated with water diverted from Coleman Creek. A
15 diversion in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1 is used to provide water for the
16 irrigation of 160 acres in that portion of the NE $\frac{1}{4}$ of Section 12 west of
17 Coleman Creek and Government Lots 1 and 2 of Section 7. This land is also
18 planted in timothy hay, grain and pasture. The same cattle that are on the
19 land irrigated from Cooke Creek are at times on this property and drink from
20 the creek and irrigation ditches. The original diversion for this land was
21 damaged by flooding in the late 1980's and a second diversion, which is the
22 one being used at the time of the hearing, was built. The original
23 diversion was not eliminated and the intent is to use it again. The water
24 diverted from the creek is carried in an open ditch and used to flood

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1 irrigate the land. The claimant begins irrigating around the first of April
2 and irrigates continuously until mid-October. When it is available, 3 cubic
3 feet per second is diverted from the creek. Approximately one-third of the
4 diverted water is lost during carriage to the irrigated land. Mr. German
5 identified a spring in Section 12 that is used for stock watering only. The
6 livestock drink directly from the spring outflow, which is covered by the
7 stock water stipulation.

8 Water rights for this land were addressed in the Schnebly v. Huss
9 decree. A Class 1 right, which would have a priority date of prior to 1873,
10 was awarded to Harrison and Catherine Houser for the use of 90 inches of
11 water, or 1.80 cubic feet per second. The Court in that decree ruled that
12 one-half inch of water was sufficient for the irrigation of one acre, so 90
13 inches would have been sufficient for the irrigation of 180 acres. The
14 testimony indicates that the claimants are irrigating 160 acres. A
15 continuous diversion of 1.80 cubic feet per second during the irrigation
16 season will result in 712.80 acre-feet per year being used.

17 Water Right Claim No. 115875 was filed by Kirk German pursuant to the
18 requirements of RCW 90.14. It asserts a right to divert 4 cubic feet per
19 second, 1200 acre-feet per year from Coleman Creek for the irrigation of 160
20 acres and stock watering in the E½NE½ of Section 12, T. 18 N., R. 19 E.W.M.
21 and the W½NW½ (which is Government Lots 1 & 2) of Section 7, T. 18 N.,
22 R. 20 E.W.M. The description of the point of diversion location on the
23 claim form is in the NW½SE½ of Section 1, T. 18 N., R. 19 E.W.M.

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1 The Schnebly v. Huss decree did not set a definite priority date for
2 the Class 1 rights, just that they were established prior to 1873. Lacking
3 any definitive information, the Referee proposes to use June 30, 1872, as
4 the priority date for those Class 1 rights.

The Referee recommends that a right be confirmed under Court Claim No. 00927 with a June 30, 1872, date of priority for the diversion of 1.80 cubic feet per second, 712.80 acre-feet per year for the irrigation of 160 acres in that portion of the NE% of Section 12, T. 18 N., R. 19 E.W.M. lying east of Coleman Creek and Government Lots 1 and 2 of Section 7, T. 18 N., R. 20 E.W.M.

The claimants are irrigating 80 acres within the land owned in Sections 13 and 18. Water is diverted from Coleman Creek in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13 and carried in an open ditch. The land is planted in timothy hay, grain, and pasture and is flood irrigated with gated pipe. Although Court Claim No. 00927 asserted a right to use both Coleman Creek and Cooke Creek water on this land, the testimony was that only Coleman Creek is used.

Certificates issued from the Cooke Creek adjudication (No. 183, 184, 185) for the claimants' land in Section 18. However, since the testimony was that only Coleman Creek water is used, the Referee cannot recommend confirmation of the rights reflected in those certificates. The portion of the land in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13 and Government Lot 3 of Section 18 was addressed in the Schnebly v. Huss decree. A Class 3 right was awarded to William and Pernina German for the use of 40 inches on those lands. Class 3 was given to those appropriations made in 1875 or 1876. Although there was

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1 a water right awarded in the decree, the Referee can find no evidence that a
2 claim was filed for this land pursuant to the requirements of RCW 90.14.
3 Section 90.14.071 provided that failure to file a claim waives and
4 relinquishes any right that may have existed. The Referee must conclude
5 that any right that may have existed for the land in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
6 Section 13 and Government Lot 3 of Section 18 has been relinquished due to
7 failure to file a claim.

8 On the other hand, the lands in Government Lots 1 and 2 of Section 18
9 and the E $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13 were not mentioned in the Schnebly v. Huss
10 decree. The Referee has reviewed the decree and the property descriptions
11 in the Findings of Fact that preceded the decree and found no mention of
12 those lands. There is no evidence in the record of who might have owned
13 these lands at the time of the decree, so the Referee cannot determine if
14 that person was a party to the action. Likely because most of the
15 claimants' land is addressed in one of the decrees, there was no historical
16 evidence presented to show that a water right was established for this
17 land. The exhibits that were entered deal with other lands, some of which
18 are not owned by the claimants. This land is not riparian to Coleman Creek,
19 so in order for the Referee to conclude that water rights had been
20 established, it would be necessary to have evidence that water was used
21 prior to June 6, 1917. Water Right Claim No. 115878 was filed by Kirk German
22 pursuant to RCW 90.14 asserting a right to use waters from Coleman Creek to
23 irrigate the W $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, which is basically the same as Government
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1 Lots 1 and 2. If evidence is found to show that water rights were legally
2 established, they were protected through filing of the claim.

3 In the post-hearing brief filed on behalf of the Germans, it is
4 asserted that the claimants have a right to 1.6 cubic feet per second in
5 Class 3 rights under the Schnebly v. Huss decree. The Referee does not
6 reach the same conclusion. The only Class 3 right appurtenant to the
7 claimants land is the one previously discussed herein. Two other Class 3
8 rights were awarded in the decree, but they are for the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
9 Section 13, lands that are not owned by the claimants. Therefore, the
10 Referee must conclude that the claimants rights under the Schnebly v. Huss
11 decree are limited to those previously recognized.

12 The claimants name will be placed on the list of those who have
13 non-diversionary stock water rights under the stipulation.

14 COURT CLAIM NO. 02078 -- Richard L. Powers
15 & Connie J. Powers

16 The Powers filed a claim with the Court asserting a right to use water
17 from unnamed springs and the KRD for irrigation and stock watering. At the
18 time of the evidentiary hearing, the Powers were living in Alaska and Jack
19 Wallace, who owns the neighboring parcel to the east, testified in their
20 behalf.

21 The Powers own what would appear to be the W $\frac{1}{2}$ W $\frac{1}{2}$ of Government Lot 2 in
22 Section 5, T. 17 N., R. 20 E.W.M., which would be a parcel approximately 10
23 acres in size. Mr. Wallace testified that the only right the Powers were
24 seeking was for stock watering. An unnamed creek flows through the

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1 claimants' property. The livestock drink directly from the creek. This
2 type of non-diversionary stock water use is covered by the stock water
3 stipulation discussed on page 4 of this report. The Powers' name is on the
4 list of claimants with a non-diversionary stock water right.

5 COURT CLAIM NO. 01329 -- Merton Purnell

6 The statement of claim submitted to the Court by Merton and Janice
7 Purnell asserts a right to use two sources of water which originate within
8 Subbasin 10, these are Coleman Creek and Schnebly Creek. Mr. Purnell
9 appeared and testified at the evidentiary hearing, and additional testimony
10 was given by Pat Jenkins. Mr. Purnell testified that he also irrigates with
11 water from an unnamed drain. Mr. Purnell was represented by attorney Hugh
12 Spall. In this analysis of the Purnell's claim, each of the three water
13 sources will be dealt with separately.

14 In his claim with the Court, Mr. Purnell has asserted a right to the
15 use of Coleman Creek water for irrigation within the SW $\frac{1}{4}$ of Section 14, T.
16 18 N., R. 19 E.W.M. Mr. Purnell testified that he irrigates 145 acres with
17 Coleman Creek water. Coleman Creek flows through the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14;
18 there are 9 acres northwest of the creek neither owned nor irrigated by the
19 claimant. That land is owned by Joan Laws, who is asserting a right to
20 irrigate those nine acres. See page 250 for a discussion of her claim.
21 Mr. Purnell diverts stock water year around and has pastured up to 200
22 cow-calf pairs on this property.

23 Mr. Spall noted that the Purnells predecessor in interest (Carrie
24 Kregness) was awarded a water right to Coleman Creek in the Schnebly vs Huss
25

26 REPORT OF REFEREE

27 Re: Subbasin No. 10

1 Decree. The SW $\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M. was awarded in this
2 decree a right for 80 inches (1.60 cfs) of second class water for the
3 irrigation of the 160 acres. The class 2 water includes rights that were
4 established in either 1873 or 1874. An 1890 affidavit by Erick Erickson
5 states that he constructed a ditch from Coleman Creek in the spring of 1873
6 in order to irrigate the subject property.

7 In June of 1974 Mr. Purnell filed two RCW Chapter 90.14 Water Right
8 Claims (WRC) on Coleman Creek. WRC No. 117950 was for the diversion of 2
9 cfs, 100 acre-feet per year for irrigation of 35 acres and stock water in
10 the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 14. The claimed point of diversion is the same as
11 diversion "D4" which was identified by Mr. Purnell in testimony and located
12 on State map Exhibit SE-2. This diversion point is also used by claimant
13 William Shelton and is identified as diversion "No. 4" by the Referee in the
14 right confirmed to Mr. Shelton, see page 410 for the Shelton claim. The
15 second claim, WRC No. 117952, is for the use of 2 cfs, 32 acre-feet per year
16 for the irrigation of 16 acres and stock water within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section
17 14. The claimed point of diversion is the same as diversion "D1" which was
18 also identified by Mr. Purnell in testimony and located on State map exhibit
19 SE-2.

20 Although Mr. Purnell testified to irrigating 145 acres from Coleman
21 Creek and the evidence shows that at the time of the Schnebly v. Huss decree
22 there was a right to irrigate 160 acres in the SW $\frac{1}{4}$ of Section 14, the RCW
23 90.14 claims filed by Mr. Purnell only assert rights to irrigate 51 acres
24 and only in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 14. The Referee is constrained to only

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1 confirm rights to the extent they have been documented in the RCW 90.14
2 claims. Failure to file a claim waives and relinquishes any right that may
3 have existed, RCW 90.14.071. Therefore, the Referee must conclude the
4 extent of the right is for the irrigation of 51 acres. Mr. Purnell
5 testified to diverting 2.0 cfs from Coleman Creek, however, the right
6 awarded for the SW $\frac{1}{4}$ of Section 14 is 1.60 cfs, of which Ms. Laws was awarded
7 a right to use 0.09 cfs, leaving 1.51 cfs appurtenant to the portion of the
8 land owned by the Purnells.

The Referee recommends that a right be confirmed on Coleman Creek to
Merton and Janice Purnell with an April 1, 1873, priority date for the
diversion of 1.51 cfs and 276.9 acre-feet for the irrigation of 51 acres
from April 1 through October 15; and 0.10 cfs and 10 acre-feet for
stockwater as available throughout the year. The place of use is that
portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M. which lies south
and east of Coleman Creek. Two points of diversion are confirmed. The first
is located 1300 feet north and 150 feet west from the center of Section
14, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14. The second point of
diversion is located 1320 feet north and 144 feet east of the southwest
corner of Section 14 being within the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 14; all in
T. 18 N., R 19 E.W.M.

21 Mr. Purnell also testified that he uses drain water for the irrigation
22 of about 30 acres. However, the claimant did not identify the source of
23 this drain water, nor a specific date of first use. Mr. Purnell stated that
24 he believes that the drain was constructed sometime in the 1930's. WRC No.

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1 117953 was filed by Mr. Purnell for use of water from a drain located in the
2 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, asserting a right to use 1 cfs, 110 acre-feet from the
3 drain for the irrigation of 22 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14.
4 The Referee notes that the SW $\frac{1}{4}$ SW $\frac{1}{4}$ is described twice, suggesting that an
5 error was made in describing the place of water use. This was not addressed
6 at all by the claimant. The claim states that water was first used in
7 1940. To the extent that the drain captures KRD water, since Mr. Purnell is
8 assessed by KRD, it can be used without benefit of a separate water right.
9 That is also true of the Coleman Creek water, if it is used on land to which
10 he has a right from Coleman Creek. It is important to note that the
11 claimant's property is located below the Kittitas Reclamation District (KRD)
12 Canal, and that Mr. Purnell estimates that he is assessed for about 150
13 acres of KRD water in addition to the Coleman Creek water that he uses.
14 Thus, it seems likely that the drain water is composed of water that has
15 originated from both the KRD and Coleman Creek. Lacking any delineation of
16 how much of the drain water might originate from Coleman Creek, and more
17 specific information regarding the historical use of this water, the Referee
18 can not confirm a right on this water source. If the drain was constructed
19 in the 1930's and captures water that originates in Coleman Creek,
20 compliance with the permitting requirements of RCW 90.03 would have been
21 necessary if the water is used on lands other than those for which a Coleman
22 Creek right has been awarded.

23 Mr. Purnell also asserts a right to use water from Schnebly Creek for
24 irrigation in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, both in

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28

1 T. 18 N., R. 19 E.W.M. Based in part on the Referee's analysis of the claim
2 of Gregory and Elizabeth Jordan, see page 236, it would appear that these
3 two parcels were not part of the same homestead. The SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10
4 was part of the E. N. Cook homestead (all of which was in said Section 10)
5 which appears to have been settled as early as 1870. The NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
6 Section 15 was owned by Ole Hanson in the spring of 1885 (Affidavit of Ole
7 Hanson). Schnebly Creek is riparian to both parcels of property, and
8 traverses them in a northeast to southwesterly direction.

9 In the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10 Mr. Purnell irrigates some unspecified
10 amount of land located west of Schnebly Creek. He uses a diversion on
11 Schnebly Creek that is located near the northern boundary of his property.
12 According to the affidavit of Mr. Andy Gustafason (DE-937), property in
13 Section 10 was at one time owned and irrigated by his family using the same
14 diversion point as claimed by Mr. Purnell. However, the portion of Section
15 10 that Mr. Gustafason identifies as being historically irrigated with
16 Schnebly Creek water is the portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10 that is
17 located to the east of Schnebly Creek. This land is now owned by claimants
18 Gregory and Elizabeth Jordan. The record does not contain any evidence
19 which shows a historical use of Schnebly Creek west of the creek; nor is the
20 location and number of acres irrigated clear. Therefore, the Referee cannot
21 confirm to the claimant a right for the use of Schnebly Creek water in
22 Section 10.

23 The claimant also uses water from Schnebly Creek to irrigate land east
24 of the creek in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M. In the
25

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1 affidavit of Mr. Andy Gustafson, he notes that about 30 acres were irrigated
2 in a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15 that is located east of Spring
3 (Schnebly) Creek. He recalls the land being irrigated before 1908. Mr.
4 Gustafason stated that the land was irrigated by Ole Hanson, and that he
5 used two points of diversion from Schnebly Creek to irrigate his property.
6 These are the same two diversion points that Mr. Purnell uses, and has
7 claimed for irrigating the 30 acres in Section 15. The location of these
8 points of diversion are 1) 1300 feet north and 240 feet west of the
9 southeast corner of Section 10, and 2) 856 feet west and 35 feet south of
10 the northeast corner of Section 15. The state investigator has described the
11 place of use as being that portion of the N $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T. 18., R. 19
12 E.W.M. which lies east of Schnebly Creek and west of a sage covered ridge.
13 Mr. Purnell testified that he has up to 200 cow\calf pairs on the Section 10
14 and Section 15 property at a time. The water is diverted year around for
15 stock use.

16 As required by RCW 90.14, Merton Purnell filed WRC No. 117963 and No.
17 117966 for stockwater and irrigation water from Schnebly Creek. WRC No.
18 117963 names the N $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M. as part of the
19 place of use; and the claimed point of diversion is the same as diversion
20 No. 1 noted above. WRC No. 117966 also has the N $\frac{1}{4}$ NE $\frac{1}{4}$ as the place of use,
21 and the claimed point of diversion is the same as diversion No 2. noted
22 above. Collectively, the two documents claim 54 irrigated acres and 5 cfs of
23 diverted water.

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28

1 The Referee recommends that a right on Schnebly Creek be confirmed to
2 Merton and Janice Purnell with an April 1, 1885, priority date for the
3 diversion of 0.60 cfs and 171 acre-feet for the irrigation of 30 acres from
4 April 1 through October 15; and 0.10 cfs and 10 acre-feet for stockwater as
5 available throughout the year. The place of use is that portion of the
6 N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M. that lies east of Schnebly Creek
7 and west of a sage covered ridge. The points of diversion are: 1) 1300 feet
8 north and 240 feet west of the southeast corner of Section 10, and 2) 856
9 feet west and 35 feet south of the northeast corner of Section 15, T. 18 N.,
10 R. 19 E.W.M.

11 COURT CLAIM NO. 01557 -- Scott Repp
12 & Mary Jo Repp

13 Court Claim No. 01557 was filed by Dale and Dorothy Jaques on August
14 27, 1981. The claim names Spring Creek as a source of irrigation water for
15 82 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M. Mr. Jaques
16 testified at the evidentiary hearing and was represented by Attorney Mike
17 Bauer. The property was subsequently sold to Scott and Mary Jo Repp and on
18 February 9, 1996, all interest in Court Claim No. 01577 was transferred to
19 the Repps.

20 Mr. Jaques testified to using what he called Spring Creek (hereinafter
21 referred to as Schnebly Creek) to irrigate 76 acres, and Kittitas
22 Reclamation District (KRD) water to irrigate 4 acres. He also mentioned
23 that two acres are not irrigated due to buildings. The subject property is
24 assessed by KRD for 50 acres, but Mr. Jaques stated that he does not use
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1 more than 4 acres of KRD water because he does not need it. The state
2 investigation report notes that the KRD water is occasionally mixed with the
3 other source as needed. Mr. Jaques also testified that he has about 100
4 head of stock on the property.

5 According to the state investigation report and the testimony of
6 Mr. Jaques, Schnebly Creek traverses from north to south through his
7 property. However, based on testimony and evidence elsewhere in the record,
8 this does not appear to be the case. It is clear from exhibit SE-2 that the
9 water channel on the Repp's property is the same one that flows through
10 claimant Eckert's property immediately to the north. Claimant Jim Schnebly
11 testified that the Eckert water channel is in fact not a creek but a ditch
12 that originates on his property in Section 15, T 18 N., R. 19 E.W.M. This
13 testimony is consistent with exhibit DE-1444 which is an 1868 General Land
14 Office survey map of T. 18 N., R. 19 E.W.M. This map shows that neither
15 Schnebly Creek nor any other creek ran through the W $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27,
16 T. 18 N., R. 19 E.W.M. in 1868.

17 On occasion, Mr. Schnebly diverts water from Schnebly Creek into the
18 said ditch for his own needs and to accommodate others as he is able, but
19 when he is not diverting water into the ditch it is dry below his diversion
20 in Section 15. Mr. Schnebly also stated that the lower portion of this
21 ditch (presumably the portion on the properties of the Eckerts and the
22 Repps) flows with water even when he is not diverting Schnebly Creek water
23 into it. The source being return flow waters from various locations.
24
25

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1 RCW Chapter 90.14 Water Right Claim No. 131294 was filed on June 27,
2 1974, by Dale Jaques. Mr. Jaques claimed a right to 4 cfs and 1600
3 acre-feet of water from an "unnamed creek - known as Spring or Cooper" for
4 the irrigation of 82 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27, T. 18 N., R 19
5 E.W.M. The claimed point of diversion is 435 feet east and 45 feet south
6 from the NW corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27. This is a turnout point on
7 the said ditch just below the northern boundary of the Repp's property.
8 Although the point of diversion described on the claim form is where water
9 is taken from the ditch, the Referee concludes that RCW 90.14 was
10 substantially complied with.

11 The W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27, T. 18 N., R 19 E.W.M. was sold by the Northern
12 Pacific Railroad to Mr. David Wheaton on June 24, 1889. On May 26, 1894,
13 Mr. Wheaton filed a notice of water appropriation (DE-76). The notice
14 states that in the spring of 1879 Mr. Wheaton appropriated 200 inches (4.0
15 cfs) of water from Cooper Creek for irrigating the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27, and
16 the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33, all in T. 18 N., R. 19 E.W.M. The notice does not
17 describe the location of the ditch or the point of diversion.

18 The Referee is inclined to believe that Mr. Wheaton did make an
19 appropriation of water, however, according to the record, this appropriation
20 has always been made from the ditch that enters at the north boundary of the
21 W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27; the same ditch which Mr. Jaques has referred to as
22 Spring/Schnebly Creek. Mr. Jaques stated that his personal knowledge of the
23 property went back to 1926 when he lived there as a boy. He testified that
24 the irrigation practices have changed some, but that the same ditch and
25

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1 outlet structure originally installed and used by David Wheaton are the same
2 as those present and used today. According to the record it appears that
3 the actual point of diversion for what might well be termed the Wheaton
4 Ditch is Jim Schnebly's diversion #4, located on Schnebly Creek. The
5 location of this diversion point is 70 feet east and 10 feet south of the
6 north quarter corner of Section 22, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
7 Section 22, T. 18 N., R 19 E.W.M.

8 The claimant hired Richard Bain, Jr., a consulting engineer, to
9 estimate the water requirements for his property. Mr. Bain measured the
10 amount of water the claimant was diverting in August of 1991, with this and
11 other information he estimated an annual irrigation requirement of 705
12 acre-feet and that 4.0 cubic feet per second (cfs) is being diverted.
13 However, based on DE-1388 it is clear that Mr. Bain did not measure the
14 amount of water being diverted from Schnebly Creek, but the amount being
15 turned out from the "Wheaton Ditch", just north of the claimant's property.
16 Mr. Bain did not determine what portion of the flow was return flow water
17 and what portion was delivered from Schnebly Creek. Furthermore, based on
18 the information contained in DE-76, it appears that Mr. Wheaton applied
19 about 0.025 cfs of Schnebly Creek water to each acre of his 160 acres. It
20 is clear from the testimony of other claimants that prior to construction of
21 the KRD canal, the flow in Schnebly Creek was limited, with the creek often
22 going dry after June. Although the claimant testified to irrigating only 4
23 acres with KRD water, it is very likely that the water diverted is a
24 combination of creek water and KRD water.

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1 The Referee recommends that a right be confirmed on Schnebly Creek to
2 Scott and Mary Jo Repp with an April 1, 1879, priority date for the
3 diversion of 2.0 cfs and 705 acre-feet for the irrigation of 76 acres from
4 April 1 through October 15; and a year around diversion of 0.05 cfs and 5.0
5 acre-feet for stock water. The place of use is the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27, T.
6 18 N., R. 19 E.W.M. The point of diversion on Schnebly Creek is located 70
7 feet east and 10 feet south of the north quarter corner of Section 22, T. 18
8 N., R. 19 E.W.M.

9
10 COURT CLAIM NO. 01047 -- Merle Ringer

11 Merle Ringer filed a Statement of Claim asserting a right to use waters
12 from Coleman Creek for irrigation. Mrs. Ringer is represented by Attorney
13 Jeff Slothower and she testified at the evidentiary hearing, along with her
14 son, Thomas Ringer, and Calvin Jansen, who leases the property.

15 Mrs. Ringer owns the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 19, T. 17 N., R. 19 E.W.M. and
16 irrigates 16 acres in that portion of her land lying south and east of
17 Coleman Creek with water diverted from the creek. Water is diverted from
18 Coleman Creek in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T. 17 N., R. 19 E.W.M. and
19 carried in Bull Canal to her property. Other fields on Mrs. Ringer's
20 property are irrigated from Bull Canal and Naneum Creek, which lie in
21 Subbasin No. 9 (Wilson-Naneum). Mrs. Ringer and Bull Canal Company are both
22 asserting rights in Subbasin No. 9, and those claims were addressed in the
23 Subbasin No. 9 Report of Referee, which was filed on June 29, 2000. Mrs.
24 Ringer first became acquainted with the property in the 1930's, when she
25 began seeing her late husband. At that time the land was owned by her

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27 Re: Subbasin No. 10

1 husband's parents. Mrs. Ringer recalls the land being irrigated, but did
2 not testify to any specifics about the water source used. During her
3 testimony at the Subbasin No. 9 evidentiary hearing she did provide specific
4 testimony about a flume from Naneum Creek that carried water to the
5 property, but there was no mention of the water system from Coleman Creek.
6 She and her husband acquired the land in 1951.

7 Considerable evidence was put in the record concerning the ownership
8 history for the property up until the time Mrs. Ringer's in-laws acquired
9 the land. Thomas Haley received a patent on August 1, 1872, for the S $\frac{1}{4}$ SE $\frac{1}{4}$,
10 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20. Prior to receiving the
11 patent, Haley sold all of the land to Walter A. Bull (in November of 1870),
12 clearly an indication that Haley was in possession of the land and taking
13 steps to sever the land from Federal ownership at least by 1870. The
14 ownership of this land between 1897 and 1907 is very cloudy. There are what
15 appear to be conflicting documents in the record, some would indicate that
16 the land continued to be in the Bull family this entire time, while others
17 seem to indicate that Nicholas Younger and John Killmore owned the land
18 between 1898 and 1907. That time period is not significant in determining
19 the existence of a water right, except to note that the conveyances
20 involving John Killmore do mention the existence of irrigation ditches and
21 shares of stock in Bull Ditch. The SE $\frac{1}{4}$ of Section 19 was owned by Walter A.
22 Bull in 1885 when the complaint was filed in Walter A. Bull v. Martin
23 Meehan, et al.. In the stipulation that was entered to resolve this case
24 Walter A. Bull was awarded one-tenth of the flow in Coleman Creek, measured
25

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1 above the William Dennis irrigating ditch. Nothing in any of the documents
2 related to the complaint indicate the flow in Coleman Creek, which of course
3 fluctuates during the year. Mr. Jansen testified at the Subbasin No. 9
4 hearing that he diverts 1 cfs from Coleman Creek for irrigating the
5 claimant's land. The 16 acres are divided into two fields, one 7 acres in
6 size which is irrigated a total of 35 days each season, and the second is 9
7 acres in size and is irrigated a total of 40 days each season. Based that
8 irrigation pattern, a total of 148.5 acre-feet per year is used to irrigate
9 the 16 acres.

10 Although it appears that water rights were established for this
11 property in the late 1800's, the Referee can find no evidence in the record
12 that a water right claim was filed pursuant to RCW 90.14. The land was
13 owned by the Ringer family during the time frame when claims should have
14 been filed and the only claim in the Ringer name for irrigation of lands in
15 Section 19 is for use of waters from Naneum Creek. RCW 90.14.071 provides
16 that failure to file a claim waives and relinquishes any right that may have
17 existed. Therefore, the Referee cannot recommend that a water right be
18 confirmed under Court Claim No. 01047.

19 COURT CLAIM NO. 01744 -- Thomas J. Ringer

20 Thomas J. Ringer filed a claim with the Court asserting rights to the
21 use of waters from Coleman Creek. Mr. Ringer is represented by Attorney
22 Jeff Slothower and Mr. Ringer and Calvin Jansen, who leases the property,
23 testified at the evidentiary hearing.

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1 Mr. Ringer owns that portion of the SW $\frac{1}{4}$ of Section 20, T. 17 N.,
2 R. 19 E.W.M. lying west of Coleman Creek. He owns and irrigates 72 acres
3 with water diverted from Coleman Creek. Water is diverted from the creek in
4 the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20 and is carried in an open ditch that parallels the
5 north property line and in a second ditch that parallels Coleman Creek.
6 Water delivered by Bull Canal Company is also used on this land. Bull Canal
7 ends at Coleman Creek at the claimant's point of diversion. Water carried
8 in the Bull Canal originates in Subbasin No. 9 (Wilson-Naneum) and Bull
9 Canal Company filed a claim that was addressed in the Report of Referee for
10 Subbasin No. 9 filed on June 29, 2000.

11 The 72 irrigated acres are divided into three fields with each field
12 rill irrigated. Mr. Jansen testified to using 1 cfs to irrigate the
13 smallest field and that field is irrigated a total of 70 days each season.
14 Two cubic feet per second is used to irrigate the other two fields, each of
15 which is irrigated 70 days each season. It was not clear from the testimony
16 how much water is diverted from the creek at any one time, that is whether
17 more than one field is irrigated at a time. Based on Mr. Jansen's
18 testimony, 692 acre-feet per year is used to irrigate the claimant's
19 property. Mr. Jansen testified to this quantity being from Coleman Creek,
20 but then testified that Coleman Creek water and water delivered by Bull
21 Canal Company are mixed and then applied to the land. This last statement
22 raises a question as to whether the quantity of water to which Mr. Jansen
23 testified is strictly Coleman Creek water or is also Bull Canal water.

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The SW $\frac{1}{4}$ of Section 20 was settled by three different individuals. The
NW $\frac{1}{4}$ SW $\frac{1}{4}$ was originally settled by Thomas Haley who received a patent on
August 1, 1872, for this 40 acres along with land in Section 19. In
November of 1870, prior to the patent issuing, the land was sold to Walter
A. Bull. The SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20 was settled by James Coates who received
a patent on September 10, 1885, for that quarter/quarter section along with
other land. In 1893 Coates sold the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20 to Ed Forgarty,
who immediately sold it to Walter Bull. A patent for the E $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 20 issued to William F. Beers on August 15, 1888, however, in 1884
he sold the land to Walter Bull.

11 It is clear from the documents in the record that Walter Bull owned all
12 of the SW $\frac{1}{4}$ of Section 20, except the SW $\frac{1}{4}$ SW $\frac{1}{4}$, at the time of the Bull v.
13 Meehan dispute in 1885. In the complaint Mr. Bull stated he owned all of
14 Section 20, except the NW $\frac{1}{4}$ NW $\frac{1}{4}$, along with land in Sections 19 and 30,
15 T. 17 N., R. 19 E.W.M. The complaint stated that there were about 400 acres
16 that were dry and will not produce a crop without artificial irrigation.
17 The complaint describes 1180 acres that are owned by Bull, and the 400
18 irrigated acres are not identified. The stipulated settlement listed the
19 claims of each of the parties. Claim No. 8 was by Walter Bull and claimed a
20 right for 160 acres purchased from T. Hauser in 1871 and 40 acres purchased
21 of H.M. Bryant, water for which was appropriated in 1871. Initially the
22 Court Commissioner did not accept the Bull claim, as it involved water
23 rights for land not included in the suit. The Bull claim was to be referred
24 to the Judge for resolution. The settlement agreement was signed in March

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1 of 1887, and in September of 1887, the Bull claim was allowed with no other
2 comments in the record. The settlement agreement provided that Mr. Bull had
3 the right to one-tenth of the flow of Coleman Creek. It seems that the
4 one-tenth was for the land described in claim No. 8 in the settlement
5 agreement, which would not be the lands owned by Mr. Ringer. However, that
6 is not entirely clear. There is no evidence of the flow in Coleman Creek,
7 so it is not possible to determine or even estimate, what one-tenth of the
8 flow would be. Obviously, a portion of that would be appurtenant to former
9 Bull land owned by others. The Referee recognizes that the flow will
10 fluctuate seasonally, however, information about the average flow and the
11 creeks characteristics would be very useful in estimating the right held by
12 Mr. Bull.

13 Water Right Claim (WRC) No. 110351 was filed by Harold Ringer pursuant
14 to the requirements of RCW 90.14. It asserts a right to use 3 cubic feet
15 per second, 1080 acre-feet per year from Coleman Creek for the irrigation of
16 80 acres and stock water in that portion of the SW $\frac{1}{4}$ of Section 2, T. 17 N.,
17 R. 19 E.W.M. lying west of the Bull Canal, as the same now runs across said
18 section. Mr. Ringer testified that the lateral paralleling Coleman Creek
19 also carries Bull Canal Company water and he believes that is what his
20 father was referring to when he said "lying west of Bull Canal", as Bull
21 Canal does not flow across his property. Mr. Ringer did not address the
22 legal description describing lands in Section 2, rather than lands in
23 Section 20. Additionally, the claim describes a point of diversion in the
24 SE $\frac{1}{4}$ of Section 18, T. 17 N., R. 19 E.W.M. Bull Ditch flows through
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Section 18, as does Naneum Creek. Section 18 is not in what has been designated as Subbasin No. 10, so a copy of WRC No. 110351 is not in the State's exhibits for Subbasin No. 10. Since the described point of diversion is in Subbasin No. 9, a copy of the water right claim is in the State's exhibits for that subbasin.

Due to the identified deficiencies in WRC No. 110351 and the need for further clarification of the right recognized for the Walter Bull property in the settlement agreement for Bull v. Meehan, the Referee cannot recommend that a water right be confirmed under Court Claim No. 01744.

COURT CLAIM NO. 00506 -- Steven C. Rosbach
& Christine Rosbach

Steven and Christine Rosbach filed a claim with the Court asserting a right to use waters from Caribou Creek for irrigation. The claimant's are represented by Attorney Richard T. Cole and Mr. Rosbach testified at the evidentiary hearing. Additionally, Richard C. Bain, Jr., a professional engineer hired by the claimants prepared an engineering report that was entered as direct expert testimony and marked as Exhibit DE-1401. The claimants also entered Exhibit DE-1527, which is a detailed report prepared by Mr. Rosbach of the irrigation practices on the farm described in Claim No. 00506 and that owned at the time of the hearing by his father-in-law and described in Court Claim No. 00467.

The Rosbachs under Court Claim No. 00506 own that portion of the E%SE% of Section 15 lying southeast of Caribou Creek. They irrigate 40.7 acres with water diverted from Caribou Creek and water provided by the Ellensburg

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1 Water Company. Water is diverted from Caribou Creek at the northeast corner
2 of the property, in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15 and carried in a cement
3 ditch along the east property line. Water is withdrawn from the cement
4 ditch into dirt ditches used to rill irrigate the field. Exhibit DE-1527
5 indicates that 3.7 cubic feet per second and 410.67 acre-feet per year is
6 used to irrigate this land. It takes seven days to cover the field and it
7 is irrigated 8 times during the irrigation season, which begins in early
8 April and ends in late October. The land is planted in timothy hay. After
9 the hay is harvested livestock may be grazed on the land and would drink
10 directly from Caribou Creek. Non-diversionary stock water use is covered by
11 the stock water stipulation discussed on page 4 of this report and the
12 Rosbachs name will be included in the list of claimants who have a right
13 under the stipulation.

14 The SE $\frac{1}{4}$ of Section 15 was originally conveyed by the Federal government
15 to Northern Pacific Railroad. In 1889 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ was sold to Elwood Dixon
16 and in 1887 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ was sold to Elijah Grewell. By 1911, the SW $\frac{1}{4}$ SE $\frac{1}{4}$ was
17 owned by James H. Kregge, who on May 30, 1913, filed a Notice of
18 Appropriation of Water, stating that he had appropriated all the waste water
19 flowing from the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T. 17 N., R. 19 E.W.M. and waste
20 water from underground drains to the extent of 10 miner inches under 3 inch
21 pressure for irrigating the SE $\frac{1}{4}$ of Section 15 and for stock water and
22 domestic supply. The water is diverted at the southwest corner of the
23 NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14.

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1 This notice is the first indication in the record of water use on the
2 SE% of Section 15. The Referee notes that Kregge is claiming a right to use
3 waste water. There is no indication what the source of this waste water
4 might be. The land in the SE% of Section 15 lies below both the Town Ditch
5 and Cascade Canal, which divert water from the Yakima River several miles
6 upstream, clearly outside this subbasin. It is a well settled law that
7 water rights cannot be established for use of foreign return flow, i.e.
8 return flows that are the result of the use of water that is imported into
9 the basin. See Dodge v. Ellensburg Water Company, 46 Wn. App. 77, 729 P.2d
10 631 (1986) and Elgin v. Weatherstone, 123 Wash. 429, 212 P. 562 (1923). See
11 also discussion of this issue on page 8 of this report. If there were any
12 natural creek waters available, Kregge's notice of appropriation was filed
13 in 1913, several years after the Federal government withdrew all of the
14 unappropriated surface waters in the Yakima River Basin.

15 The Rosbachs acquired this land in 1976 from Wayne Hurt. There is no
16 evidence that Mr. Hurt filed a water right claim pursuant to the
17 requirements of RCW 90.14. Mr. Rosbach in his testimony acknowledges that a
18 claim was not filed by his predecessor, but appears to not recognize the
19 significance of one not having been filed. RCW 90.14.071 states that
20 failure to file a claim waives and relinquishes any right that may have
21 existed. Were the claimant able to find evidence to show that in the early
22 1900's natural creek water was appropriated and used and this use was begun
23 prior to the Federal withdrawal, the Referee could still not recommend

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1 confirmation of a water right due to there not being a claim filed pursuant
2 to RCW 90.14.

3 The Referee recommends that a right not be confirmed under Court Claim
4 No. 00506.

5 COURT CLAIM NO. 00467 -- Steven C. Rosbach
6 & Christine Rosbach
7 City of Kittitas

8 Andrew and Evelyn Sorenson filed Court Claim No. 00467 asserting rights
9 to use Cooke Creek, Caribou Creek, Park Creek and an unnamed creek. The
10 Sorensons were represented by Attorney Richard T. Cole at the evidentiary
11 hearing and Steve Rosbach, the Sorenson's son-in-law testified at the
12 evidentiary hearing. Additionally, Richard C. Bain, Jr., a professional
13 engineer hired by the claimants prepared an engineering report that was
14 entered as direct expert testimony and marked as Exhibit DE-1401. The
15 claimants also entered Exhibit DE-1527, which is a detailed report prepared
16 by Mr. Rosbach of the irrigation practices on both the Sorenson property and
17 his own. On February 3, 1994, Steve and Christine Rosbach were substituted
18 for the Sorensons. On October 6, 1999, the City of Kittitas filed a Motion
19 to be Joined as an Additional Party to Court Claim No. 00467 and an Order
20 Granting the Motion was signed by the Court on October 11, 1999. The
21 Referee, however, believes that the motion and subsequent order reference
22 the wrong claim number. The Affidavit of Lawrence E. Martin, Attorney for
23 the City of Kittitas, in support of the motion states that the claim
24 involves water use by the Warm Springs Water Company (who is not a claimant
25 in this proceeding). Attached to the motion is a copy of Exhibit DE-1488

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1 entered as part of the Subbasin No. 10 proceeding. That exhibit references
2 Court Claim No. 00467, however, the exhibit sticker placed on the document
3 by the Court Clerk references Court Claim No. 00476. Court Claim No. 00476
4 was filed by Robert Clerf and asserts a right on behalf of the Warm Springs
5 Water Company, which delivers water to the Town of Kittitas. The City of
6 Kittitas or its counsel are urged to investigate this further and insure
7 that the city is joined to the proper claim.

8 The Sorenson/Rosbach property is in the SE $\frac{1}{4}$ of Section 16, the SW $\frac{1}{4}$ of
9 Section 15, the S $\frac{1}{2}$ SW $\frac{1}{4}$ and NE $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 14, the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 21 and
10 the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 22, all in T. 17 N., R. 19 E.W.M. All of the land in
11 Section 16 and the NE $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 14 is irrigated with water delivered by
12 the Ellensburg Water Company (EWC) and the claimant is not asserting a right
13 to use water from any of the creeks for this property. Therefore, the
14 Referee will not address that land any further. The rest of the land is
15 irrigated with both creek water (from several different creeks) and water
16 delivered by EWC. EWC is a major claimant in this proceeding, whose rights
17 have been determined in the Major Claimant Pathway, see Reports of the Court
18 filed in 1997 and the Conditional Final Order for EWC that were entered on
19 October 12, 1998.

20 The claimants grow timothy hay on their property, which is rill
21 irrigated. Livestock are pastured some years after the hay is harvested and
22 have access to and drink from Cooke Creek, Caribou Creek, and what the
23 claimant refers to as Cherry/Sow Creek (which appears on SE-2 as an unnamed
24 water course that joins Park Creek near the southwest corner of

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1 Section 14). Non-diversionary stock watering is covered by the stock water
2 stipulation discussed on page 4 of this report and the claimants name has
3 been placed on the list of those with rights under the stipulation.

4 The SW $\frac{1}{4}$ of Section 15 was originally conveyed by the Federal government
5 to Northern Pacific Railroad, who in 1887 sold it to Daniel Wiggle. That
6 portion of the SW $\frac{1}{4}$ of Section 15 lying northwest of Cooke Creek is irrigated
7 with both Cooke Creek and EWC water. A diversion from Cooke Creek is
8 located approximately 1150 feet east of the west quarter corner of
9 Section 15. This diversion was historically used to irrigate all the land
10 west of Cooke Creek. After Mr. Rosbach began farming the land in the late
11 1970's, he made improvements to the irrigation system, which included adding
12 a second diversion on Cooke Creek, about 800 feet downstream from the
13 original diversion. Mr. Rosbach testified that 2.8 cfs and 222.22 acre-feet
14 per year is used from the upper diversion (D-1) to irrigate 16.2 acres and
15 2.3 cfs, 112 acre-feet per year is used from the lower diversion (D-2) to
16 irrigate 8.8 acres. Although Mr. Rosbach indicated that he talked with
17 someone with Ecology when he added the diversion, there is no evidence that
18 he complied with the requirements of RCW 90.03.380 to gain approval to add
19 the second diversion.

20 The claimants also divert water from Cooke Creek to irrigate 19.3 acres
21 in that portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 lying west of Cooke Creek. The
22 diversion is located approximately 100 feet west of the northeast corner of
23 Section 21 (D-3). Mr. Rosbach testified to diverting 2.5 cfs and 240
24 acre-feet per year from Cooke Creek at this diversion. This land was

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1 originally settled by John D. Olmstead, who received a patent in 1882 for
2 the NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 21 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22. On June 13,
3 1882, J. D. Olmstead filed a Notice of Water Right stating that a ditch was
4 constructed and used since May of 1877 from Dry Creek, which is today called
5 Cooke Creek, with the diversion in the SW $\frac{1}{4}$ of Section 11 and running
6 southwesterly through Section 10 and 16 to Section 21 and used to irrigate
7 the N $\frac{1}{2}$ of Section 21. Only the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 21 owned by the claimants
8 is not irrigated with Cooke Creek water.

9 Water Right Claim (WRC) No. 002502 was filed by Andrew Sorenson
10 pursuant to the requirements of RCW 90.14 for use of Cooke Creek. It
11 asserts a right to use 2.5 cfs, 150 acre-feet per year (which is based on
12 irrigating 60 days during the irrigation season) for the irrigation of 30
13 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15. The point of diversion is described as
14 the location of D-1. The claim says that water was first used in April
15 1926. WRC No. 002503 was also filed by Mr. Sorenson for use of Cooke
16 Creek. It asserts a right to use 2 cfs, 180 acre-feet per year (based on
17 using water 48 days during the irrigation season) for the irrigation of 36
18 acres in the northeast portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 21. The point of
19 diversion is described as being at D-3. The claim says that water was first
20 used in May of 1932.

21 Cooke Creek was earlier adjudicated in State of Washington v. Anderson
22 with the final decree being entered on August 13, 1921. Both the claimant
23 and his counsel acknowledge that the land herein described was not awarded a
24 water right in that general adjudication. However, beyond that
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1 acknowledgment, there was no argument made as to how this land could have a
2 right to use Cooke Creek water when no water right was awarded. "A general
3 adjudication is a special form of quiet title action to determine all
4 existing rights to the use of water from a specific body of water.

5 "Department of Ecology v. Acquavella, 131 Wn.2d 746, 754, 935 P.2nd 595
6 (1997) quoting from Department of Ecology v. Grimes, 121 Wn.2d 459, 466, 852
7 P.2d 1044 (1993) (Emphasis added). RCW 90.03.245 addresses the scope of an
8 adjudication: "Rights subject to determination proceedings conducted under
9 RCW 90.03.110 through 90.03.240 and 90.44.220 include all rights to the use
10 of water, including all diversionary and instream water rights, and include
11 rights to the use of water claimed by the United States." (Emphasis added).

12 The evidence appears to show that J. D. Olmstead took steps to establish
13 water rights to Cooke Creek in the late-1800's for the land in Sections 21
14 and 22, however, a right was not awarded for this land in the earlier
15 adjudication. The RCW 90.14 claims filed by Mr. Sorenson indicate that
16 water was not used until 1926 and 1932, which under the Riparian Doctrine
17 may have been early enough to establish a water right. However, if that
18 right was not defended in the earlier adjudication, it would appear to no
19 longer exist, even though beneficial use of the water has continued.

20 Obviously, in 1921 the Supreme Court had not addressed the time frame within
21 which a riparian right had to be exercised (that case, Department of Ecology
22 v. Abbott, 103 Wn.2d 686, 694 P.2d 1071 (1985) was decided over 60 years
23 later). The Referee notes that the J. D. Olmstead claim to a water right
24 was addressed in Dodge v. Ellensbrug Water Co., 46 Wn. App. 77, 82, 729 P.2d

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1 631 (1986). Mr. Dodge owns a portion of the land owned by J. D. Olmstead
2 when the claim was filed. The Court of Appeals stated that ". . . there was
3 no evidence Mr. Olmstead ever used the water claimed in his 1882 notice.
4 Hence, the court properly concluded Mr. Dodge had no rights through Mr.
5 Olmstead." Although this particular statement was made in regard to Mr.
6 Dodge's portion of the former Olmstead property, it clearly states there is
7 no evidence Mr. Olmstead used the water claimed. This statement would
8 appear to also apply to the Rosbach land.

9 The Referee does not recommend confirmation of a right to use Cooke
10 Creek under Court Claim No. 00467 due to a right not having been awarded in
11 the earlier adjudication. If the claimant pursues this claim during the
12 exception phase, he should also be prepared to address the significant
13 difference between the quantity of water Mr. Sorenson stated was being used
14 in 1974 and the quantity of water for which a right is being asserted. In
15 contrast to what is being asserted, the rights awarded in the earlier
16 adjudication were limited to 0.02 cfs for each irrigated acre.

17 A right is being asserted to irrigate 100 acres with water diverted
18 from Caribou Creek. Water is diverted from the creek at the north quarter
19 corner of Section 22 (D-4) to irrigate the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 east of
20 Cooke Creek and that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21 lying north and west
21 of Caribou Creek. Mr. Rosbach testified to diverting 4.2 cfs, 944 acre-feet
22 per year to irrigate this land. Water is carried in a cement ditch along the
23 north line of Section 22 to gated pipe along the north line of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
24 Section 21. The claimants are also irrigating 21.2 acres in that portion of

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1 the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22 lying south of Caribou Creek. Water for this field
2 is diverted approximately 650 feet south of the north quarter corner of
3 Section 22 (D-5). Mr. Rosbach testified to diverting 6 cfs, 192 acre-feet
4 per year at this diversion. 6 cfs is an extremely large quantity of water
5 for irrigating only 21.2 acres. There was no explanation of why this field
6 in particular might need such an excessive quantity of water. The NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
7 Section 21 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22 is part of the land that was
8 homesteaded by J. D. Olmstead. The Notice of Water Right filed in 1882 also
9 asserts a right to divert out of Cherry Creek in Section 15. Besides Cooke
10 Creek, the only other creek flowing through Section 15 is Caribou. Mr.
11 Sorenson and Mr. Rosbach call a creek that flows through Section 14 Cherry
12 or Sow Creek (this creek is unnamed on SE-2). The Notice states that Mr.
13 Olmstead diverted from the creek at two different locations, one to serve
14 the N $\frac{1}{2}$ of Section 21 and one to serve the N $\frac{1}{2}$ of Section 22. The ditches
15 were constructed in 1873 and 1874 and were known as the J. D. Olmstead
16 Ditches. According to Mr. Rosbach, the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22 was originally
17 homesteaded by someone named Coates who in 1885 sold to J. D. Olmstead.
18 Mr. Rosbach in his testimony indicated that this land has been in the
19 Sorenson family since the early 1900's and that Andrew Sorenson began
20 farming and irrigating it in the 1920's. This is supported by Exhibit
21 DE-721, an Affidavit of Andrew Sorenson.

22 Two RCW 90.14 water right claims were filed by Mr. Sorenson for use of
23 Caribou Creek. WRC No. 002504 asserts a right to divert 3.5 cfs, 420
24 acre-feet per year (based on irrigate 60 days each season) for the

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1 irrigation of 84 acres in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 21 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ of
2 Section 22. The point of diversion is described as being at the location of
3 D-4. This claim appears to describe the water use north of Caribou Creek.
4 WRC No. 002505 asserts a right to divert 3 cfs, 120 acre-feet (based on
5 irrigating 20 days each irrigation season) per year from Caribou Creek for
6 the irrigation of 24 acres in the southeast portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ of
7 Section 22. The point of diversion described is at the location of D-5.
8 The Referee believes this claim is intended to cover the land south of
9 Caribou Creek.

10 The Referee concludes that there has been sufficient evidence entered
11 to show that rights exist for use of Caribou Creek on the the claimant's
12 land. However, the quantities of water used as documented by Mr. Rosbach
13 are in excess of that claimed by Mr. Sorenson. In that Mr. Sorenson
14 provided information on the number of days of irrigation using the diversion
15 quantities identified on the water right claims, the Referee is inclined to
16 believe they are an accurate representation of what was being used in the
17 early 1970's when Mr. Sorenson was actively farming the land.

18 The Referee recommends that a right be confirmed with a priority date
19 of June 30, 1873 for the diversion of 3.5 cfs, 420 acre-feet per year at
20 diversion D-4 for the irrigation of 78.7 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21
21 east of Cooke Creek and the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 22 north of Caribou Creek and
22 the diversion of 3 cfs, 120 acre-feet per year from Caribou Creek at
23 diversion D-5 for the irrigation of 21.2 acres in that portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$
24 of Section 22 south of Caribou Creek.

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A right is also being asserted to irrigate from Park Creek the same lands as are being irrigated from Caribou Creek. In support of that claim, counsel for the claimants refer the Court to J. D. Olmstead v. S. Hays, et al., which was decided in 1892. Unfortunately, a copy of that decree was not put in the record by the claimants. However, upon reviewing the exhibits entered by Gerald and Betty Dodge, the Referee located DE-1209, which is a copy of the decree. The decree awarded J. D. Olmstead one-half of all the waters in Park Creek and J. H. McEwen, an intervenor in that action, was awarded the remaining flow in Park Creek. The lands owned by Mr. Olmstead were not identified, however, it is not unreasonable to conclude the claimants land in the N $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 and N $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22 were at least a portion of the lands being irrigated from Park Creek. Mr. Rosbach testified that Park Creek is used to supplement the flow in Caribou Creek and is only used in late summer when the flow in Caribou Creek declines.

16 The Referee was not able to find a water right claim filed pursuant to
17 RCW 90.14 for use of Park Creek and the claimant acknowledges that Mr.
18 Sorenson apparently failed to file such a claim. Failure to file a claim
19 waives and relinquishes any right that may have existed, see RCW 90.14.071.
20 Therefore, the Referee cannot recommend confirmation of a right to use Park
21 Creek.

Lastly, a right is being asserted to irrigate 47.3 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 14 northwest of what the claimant calls Cherry/Sow Creek with water diverted from that creek. Water is diverted from the creek in the

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1 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14 (D-7) and carried in a cement ditch along the north
2 property line. According to Mr. Rosbach, 6.7 cfs and 640 acre-feet per year
3 is diverted from the creek to irrigate 47.3 acres. WRC No. 002506 was filed
4 by Mr. Sorenson and asserts a right to divert 3 cfs, 320 acre-feet per year
5 from Spring Creek for the irrigation of 64 acres in the S $\frac{1}{4}$ SW $\frac{1}{4}$ of
6 Section 14. The diversion described on the claim is at diversion D-7, which
7 leads the Referee to conclude that Cherry/Sow Creek and the Spring Creek
8 referred to on WRC No. 002506 are the same stream.

9 The S $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14 was settled by Ben Lewis, who received a patent
10 on June 3, 1876. There was no other historical evidence put in the record
11 for this land. Mr. Sorenson's affidavit states that he irrigates 64 acres
12 out of Sow/Cherry Creek, but it does not say when this use began. The
13 affidavit states that his father began farming in 1894, but it is clear from
14 the chain of title documents that were put in the record that the Sorensons
15 did not acquire all of the land that is the subject of the claim in 1894.
16 In fact, the Referee cannot find on any of the chains of title any entries
17 that show when the Sorenson family acquired the land.

18 As a result of there being insufficient evidence to support a
19 conclusion that beneficial use of Sow/Cherry Creek water began prior to
20 December 31, 1932, the Referee cannot recommend that water rights be
21 confirmed for use of that creek. The Referee also notes that this creek
22 begins immediately below the Cascade Canal, which suggests that the source
23 of water may be seepage from that canal. Should the claimant take exception
24 to the recommendation to not confirm a right for use of this creek,
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1 additional evidence should be presented to establish whether the water in
2 the creek is naturally occurring water or imported water from the Cascade
3 Canal.

4 COURT CLAIM NO. 01851 -- Alma M. Ross

5 Alma M. Ross filed a claim with the Court for use of waters from
6 Coleman and Cooke Creeks. By the time the evidentiary hearing was held, Ms.
7 Ross was deceased and her son, Leo Ross, owned the land. Mr. Ross was
8 represented by Attorney Hugh Spall, who has since withdrawn as his
9 attorney. Mr. Ross' nephew, Donald Ross, and Pat Jenkins, who farms the
10 land, testified at the hearing.

11 Ms. Ross owned the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M. and
12 Government Lots 3 and 4 of Section 7, T. 18 N., R. 20 E.W.M. A total of 167
13 acres are owned and 140 acres are irrigated with water diverted from Coleman
14 Creek and Cooke Creek. The easterly land, in Government Lots 3 and 4 of
15 Section 7 are irrigated from Cooke Creek and the westerly land in the E $\frac{1}{2}$ SE $\frac{1}{4}$
16 of Section 12 is irrigated from Coleman Creek. The diversion from Cooke
17 Creek is on the Steve German property in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7 and the
18 diversion from Coleman Creek is on the Kirk German property in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
19 Section 12. Water is conveyed in open ditches from both creeks and the land
20 is flood irrigated with ditches and gated pipe. The land is planted to hay
21 and pasture for 50 cow/calf pairs. The Ross family has owned the land in
22 Section 7 since 1933 and the land in Section 12 since 1945. It has
23 continuously been irrigated during their ownership.

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Water rights for this land were addressed in the Schnebly v. Huss
decree. A Class 6 right was awarded to Verna and Myrtle Churchill for the
use of 40 inches in the E½SE¼ of Section 12 and a Class 6 right was awarded
to J. H. and Anna Middendorf for the use of 40 inches in Government Lots 3
and 4 of Section 7. This, along with the testimony that the land has
continuously been irrigated during the Ross' ownership of the land leads the
Referee to conclude that water rights were established for use of water from
Coleman Creek on this land. However, in 1967, the State legislature passed
the Claims Registration Act, which required that water right claims be filed
for all water uses for which a certificate had not issued. Failure to file
a claim waived and relinquished any right that may have existed. RCW
90.14.0671. The Referee has reviewed the record and can find no evidence
that a water right claim was filed for this property pursuant to RCW 90.14.

14 Cooke Creek was previously adjudication in 1921. Any rights that
15 existed for use of Cooke Creek were addressed in the decree that issued as a
16 result of that adjudication. The Referee has review the decree and can find
17 no water right that was awarded for any of the Ross property. Therefore,
18 the Referee must conclude that there is no legally established water right
19 for use of Cooke Creek.

20 Based on the foregoing, the Referee cannot recommend that water rights
21 be confirmed for use of either Coleman Creek or Cooke Creek.

COURT CLAIM NO. 01904 -- C. William Ross

Court Claim No. 01904 was originally filed only for use of Kittitas
24 Reclamation District water. However, at the evidentiary hearing it was

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1 amended to include a claim for use of unnamed springs, creek and pond for
2 stock watering. The claimant is represented by Attorney J. Jay Carroll.
3 Lewis Powers, who had managed the ranch for nine years at the time of the
4 hearing, and Chris Buchanan, Mr. Ross' daughter, testified at the
5 evidentiary hearing.

6 During Mr. Carroll's opening remarks he suggested that the only claim
7 they would be making would be covered under the stock water stipulation.
8 The testimony presented by Mr. Powers leads the Referee to conclude that is
9 not the case. The stock water stipulation requires that a flow of at least
10 0.25 cubic foot per second be maintained in naturally occurring streams,
11 creeks, and springs and that there is a right for livestock or wildlife to
12 drink from the streams, creeks, rivers, and springs in the basin. This is a
13 non-diversionary right, where there is no diversion from the water source.
14 The livestock drink from the source as it naturally occurs. Mr. Ross is
15 entitled to a right under the stipulation to the extent his livestock drink
16 directly from the creek that flows through the property, the four springs
17 that arise on the property and the pond. However, Mr. Powers testified that
18 at least two of the springs are piped to stock tanks. That is a
19 diversionary use that would require a water right. Ms. Buchanan testified
20 that the springs have appeared on the property since she left sometime in
21 the 1970's. She testified that drains were put in to control wet spots. In
22 order to obtain a water right for a water source developed and put to
23 beneficial use in the mid-1970's, compliance with the permit process in RCW
24 90.03 would be necessary. There is no evidence that has occurred.
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1 Therefore, the Referee must conclude there is no diversionary right and
2 cannot recommend that one be confirmed. As previously mentioned, Mr. Ross
3 will be included on the list of claimants that have a non-diversionary stock
4 water right under the stipulation.

5 There also was testimony about an artesian well on the property. This
6 proceeding is not determining the rights to use ground waters in the basin,
7 so that source will not be considered.

COURT CLAIM NO. 01530 -- Corneille Ross
9 & Robert W. Ross

10 Corneille and Robert W. Ross filed a claim with the Court asserting a
11 right to use waters from Cooke and Spring Creeks for irrigation and stock
12 watering. The claimants were represented by Attorney Hugh Spall at the time
13 of the hearing. Corneille Ross and Pat Jenkins, who was irrigating the land
14 for the claimants, testified at the evidentiary hearing.

15 Mr. and Mrs. Ross own the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T. 18 N.,
16 R. 20 E.W.M. and in their Court claim assert a right to irrigate the entire
17 80 acres that they own. At the time of the hearing, Mr. Jenkins had been
18 irrigating the land for seven years and during that time 3 to 5 acres in the
19 NE $\frac{1}{4}$ SW $\frac{1}{4}$ were being irrigated and the entire 40 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
20 Section 19 were being irrigated. Water is diverted from Cooke Creek at two
21 points, one on the creek as it cuts across the northeast portion of the
22 NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the second near the northwest corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, both in
23 Section 19. The diversion on Spring Creek is located just inside the
24 claimant's property line in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$. The land is planted primarily in

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1 hay with a grain rotation, with some pasture and is flood irrigated. The
2 quantity of livestock varies each year with a maximum of 60 pair of cattle
3 and a minimum of 15 pair. The livestock drink directly from Cooke Creek and
4 Spring Creek. This type of non-diversionary stock watering is covered by
5 the stock water stipulation discussed on page 4 of this report.

6 Mr. Jenkins testified that 1 cfs is diverted from Cooke Creek to
7 irrigate the land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19. It takes five days to
8 irrigate that field, and it is irrigated 4 times each year. A total of 39.6
9 acre-feet would be used to irrigate that field based on the that irrigation
10 pattern. On the lower piece, 2 cfs is diverted from Cooke Creek and it
11 takes 13 days to irrigate the entire 40 acres. It is irrigated 6 to 7 times
12 each year. With that irrigation pattern, a maximum of 360.36 acre-feet per
13 year is used. Spring Creek is also used to irrigate 12 of the 40 acres in
14 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19. Mr. Jenkins testified to diverting 1 cfs from
15 Spring Creek.

16 Mrs. Ross' familiarity with the property extends back to 1937 when she
17 and her first husband, Francis Eugene Edwards, purchased the land. It was
18 being irrigated at the time they acquired it and she and her husband
19 continued that irrigation practice. Mr. Edwards was the grandson of A. J.
20 Bailes, one of the defendants in State of Washington v. Anderson. A Class 5
21 right, with an 1872 date of priority was awarded to Andrew J. Bailes
22 authorizing the use of 2.40 cubic feet per second for the irrigation of 120
23 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30,
24 T. 18 N., R. 20 E.W.M. The proportionate share of that right appurtenant to
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1 the Ross property was 1.60 cubic feet per second for the irrigation of 80
2 acres. Apparently Mr. Bailes did not pay the fees required for issuance of
3 a certificate following completion of the adjudication. State's Exhibit
4 SE-7 contains the adjudication certificates that issued and Mr. Bailes'
5 certificate is not included. His name, however, is on a list in the same
6 exhibit of certificates that did not issue. As part of the post-hearing
7 briefing in this proceeding, Mrs. Ross paid the necessary fee and
8 Certificate No. 207 was issued on December 21, 1991, and authorized the same
9 use as identified in the decree for Mr. Bailes.

10 It is clear from the evidence that a water right was established for
11 irrigating the 80 acres owned by the Rosses. However, since at least 1984,
12 only 43 acres have continued to be irrigated. RCW 90.14.160 provides that
13 any right, or portion of a right, that is not exercised for five or more
14 successive years without a sufficient cause is relinquished. There has been
15 no evidence of a sufficient cause for nonuse presented to the Referee, see
16 RCW 90.14.140 for definition of the sufficient causes that prevent
17 relinquishment. The Referee concludes that the extent of the beneficial use
18 that has continued in recent years is irrigation of no more than 45 acres.
19 The Anderson decree allowed for the use of 0.02 cubic foot per second for
20 each acre irrigated, or 0.90 cfs for 45 acres. Although Mr. Jenkin's
21 testimony indicates that more water has been used based on the irrigation
22 pattern, a maximum of 5 acre-feet per year per irrigated acre can be used
23 with an instantaneous quantity of 0.02 cfs per acre.

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The nature of Spring Creek has not been specifically addressed in the evidence presented. Review of the maps in the record has lead the Referee to conclude that this Spring Creek is a branch of Cooke Creek or a ditch that carries water diverted from Cooke Creek. In either case, rights to its use would have been addressed in the prior adjudication. The certificate that issued for the claimants property authorizes two points of diversion, one in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and one in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, both in Section 19. There is no diversion authorized where Spring Creek separates from Cooke Creek or where the claimant diverts from Spring Creek. The Referee intends to recommend use of the points of diversion authorized by the certificate. The claimant should contact Ecology's regional office to determine the process to change or add a point of diversion if there is an intent to continue using Spring Creek, see RCW 90.03.380.

14 Based on the foregoing, the Referee recommends that a right be
15 confirmed to the claimants with a June 30, 1873 date of priority for the
16 diversion of 0.90 cubic foot per second, 225 acre-feet per year for the
17 irrigation of 45 acres and stock water in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and that portion of the
18 S $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T. 18 N., R. 20 E.W.M. lying southwest of Cooke
19 Creek.

COURT CLAIM NO. 02064 -- Craig P. Schnebly
21 & Nancy L. Schnebly

22 Craig P. and Nancy L. Schnebly submitted a Statement of claim with the
23 Court for the use of waters from Coleman Creek for irrigation and stock water.
24 Mr. Schnebly appeared and testified at the Subbasin 10 evidentiary hearing.

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1 The Schnebly's claimed an 1863 water right on Coleman Creek for stock water
2 and the irrigation of 240 acres. However, in testimony Mr. Schnebly asked
3 that the claimed priority date be changed to 1868. Mr. Schnebly also requested
4 the place of use for the Coleman Creek water be amended to read as the SE $\frac{1}{4}$ SE $\frac{1}{4}$
5 of Section 11; the S $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12; the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13; and the E $\frac{1}{4}$ NE $\frac{1}{4}$
6 of Section 14, T. 18 N., R. 19 E.W.M. The described property is adjacent to
7 Coleman Creek, and the claimant has pastured up to 250 head of cattle on it.

8 A portion of Mr. Schnebly's property is the homestead that was patented to
9 Tillman Houser on February 22, 1883. Mr. Houser settled on the land as early
10 as June 1868. The 160 acre homestead included the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11; the
11 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12; the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14; and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13,
12 all in T. 18 N., R. 19 E.W.M. The Houser Homestead was awarded class 8 water
13 rights (priority dates 1885 and 1886) in the 1915 Schnebly vs. Huss Decree.
14 The court found that the above described lands ". . . were originally settled
15 upon by one Tillman Houser in the year 1868, and a small amount of water was
16 appropriated and used thereon in the year 1870, but said cultivation was not
17 followed up promptly by increased cultivation and nothing whatever was done
18 toward the farming of said lands until about the years 1885 and 1886".

19 The claimants also own the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section
20 14. The SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12 was awarded 10 inches (0.20 cfs) of class 8
21 Coleman Creek water in the Schnebly vs. Huss Decree. The SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14
22 was awarded 10 inches of first class water in the said decree. The SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
23 Section 14 is a part of the Henry M. Bryant Homestead. Mr. Bryant first
24 settled on this property on the 4th day of December 1870, and he and Elias

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1 Messerly first appropriated water from Coleman Creek on April 7, 1871 (DE-1326,
2 affidavit of Elias Messerly and Henry M. Bryant). Henry Bryant and Elias
3 Messerly dug a channel which connected Coleman Creek with a dry and natural
4 water course. This water course, known as the "Messerly and Bryant Ditch",
5 delivered Coleman Creek water to various properties including the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
6 Section 14. It seems likely that the irrigated areas in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section
7 12 have received class 8 Coleman Creek water by means of the "Messerly and
8 Bryant ditch" and diversion as well. This is because of the location of the
9 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12 with respect to the said ditch and diversion point.

10 The "Messerly and Bryant" point of diversion (as noted in DE-1326) is 1660
11 feet north and 267 feet east of the south quarter corner of Section 12, being
12 within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M. State Exhibits SE-2
13 (Subbasin 10 map) and SE-119 (State investigation report) locate this diversion
14 point in the same location as noted on exhibit DE-1326 (affidavit by Messerly
15 and Bryant). The historic evidence in the record indicates that the "Messerly
16 and Bryant ditch" and diversion point were not used to serve the Tillman Houser
17 homestead.

18 Mr. Schnebly has identified seven diversion points on his air photo map
19 (DE-1336), that he uses to irrigate 182.3 acres within his 240 acre property
20 described above. In this exhibit Mr. Schnebly notes that diversions #1, #2,
21 #3, and #4 are located on Coleman Creek. The others capture and reuse water
22 from drains and/or springs. However, from this information it is apparent that
23 what is marked as diversion #1 is not located on Coleman Creek, but instead, is

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1 a turnout located on the Messerly and Bryant Ditch" a short distance below the
2 headgate.

3 The claimant has submitted into evidence two RCW Chapter 90.14 Water Right
4 Claims for the use of Coleman Creek water. On June 28, 1974, Don E. Schnebly
5 filed Water Right Claim (WRC) No. 152024. He claimed a right to use Coleman
6 Creek water for the irrigation of 110 acres within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12;
7 the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11; the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13; and the E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section
8 14, T 18 N., R. 19 E.W.M. The location of the claimed point of diversion is
9 2640 east and 1600 feet north of the southwest corner of Section 12. This
10 claimed location is the same point that Craig Schnebly has noted on his map
11 DE-1336 as diversion #2. The Schnebly's appear to have mislocated this
12 diversion point (by about 300 to 400 feet). The Referee believes that the
13 diversion point being claimed here is the historic diversion point established
14 by Messerly and Bryant. In fact, the state investigator's note in their report
15 (SE-119) that Mr. Schnebly is diverting water at this historic point of
16 diversion, and they make no mention of water being diverted at the location
17 (diversion #2) that has been identified in DE-1336 and claimed here on WRC No.
18 152024. The Referee finds that RCW 90.14 was substantially complied with for
19 identifying the point of diversion.

20 A second WRC, No. 152025, was also submitted into evidence by the claimant.
21 This claim for the use of Coleman Creek water was filed by Don E. Schnebly on
22 June 28, 1974. The claim is for the irrigation of 80 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
23 Section 11; the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12; the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13; the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
24 Section 14; and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, all in T. 18 N., R. 19 E.W.M. The

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1 claimed point of diversion is 2000 feet east and 1300 feet north of from the
2 southwest corner of Section 12, T. 18 N., R. 19 E.W.M. This point of diversion
3 is located on the claimant's exhibit DE-1336 as diversion #3. This claimed
4 diversion point and associated ditch ("ditch No. 2" SE-119) appears to be the
5 system that has historically delivered the class 8 water to the Tillman Houser
6 Homestead property as defined above.

7 Stock water is not claimed on either of the RCW Chapter 90.14 Water Right
8 Claims filed by Don Schnebly. Mr. Craig Schnebly has testified that his cattle
9 drink year around from the springs and drains on his property, but it does not
10 appear that a right to diversionary stock water from Coleman Creek exists.

11 The Referee recommends that a water right be confirmed on Coleman Creek to
12 Craig P. and Nancy L. Schnebly with an April 7 1871, priority date for the
13 diversion of 0.40 cfs and 136.5 acre-feet for the irrigation of 35 acres
14 from April 1 through October 15. The place of use is 35 acres within the
15 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M. The point of diversion is 900
16 feet south and 450 feet east from the center of Section 12, being within the
17 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.

18 The referee recommends that a second water right be confirmed to Craig P.
19 and Nancy L. Schnebly with a priority date of June 30 1886, for the diversion
20 of 0.34 cfs and 127.53 acre-feet for the irrigation of 32.7 acres from April 1
21 through October 15. The place of use is the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T.18 N.,
22 R.19 E.W.M., EXCEPT that portion which lies north of Coleman Creek. The point
23 of diversion is 900 feet south and 450 feet east from the center of Section 12,
24 being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.

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The Referee recommends a third water right be confirmed to Craig P. and Nancy L. Schnebly with a priority date of June 30 1886, for the diversion of 1.66 cfs and 447 acre-feet for the irrigation of 114.6 acres from April 1 through October 15. The place of use is 111.6 acres within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14; and 3 acres in that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12 which lies north of Coleman Creek, all in T. 18 N., R. 19 E.W.M. The point of diversion is located 690 feet west and and 1300 feet north from the from the south quarter corner of Section 12, T. 18 N. R. 19 E.W.M.

10 The claimant's stock may drink directly from any naturally occurring water
11 source on his property as provided for in the non-diversionary stock water
12 stipulation on page 4 of this report. The claimants are included in the list
13 of those that have non-diversionary stock water rights under the stipulation.

If the claimant wish to use other points of diversion from Coleman Creek he
is advised to submit an application for change consistent with RCW 90.03.380 to
add or change the location of a point of diversion.

17 COURT CLAIM NO. 01775 -- Dorse A. Schnebly
18 & Margaret C. Schnebly

19 Dorse and Margaret Schnebly filed a claim with the Court for use of
20 waters from Coleman Creek. Mr. Schnebly testified at the evidentiary
21 hearing.

22 The claimants own the NW&E% and SE&NE% of Section 13, T. 18 N.,
23 R. 19 E.W.M. They own a total of 200 acres and irrigate about 170 acres
24 with water diverted from Coleman Creek or delivered by Kittitas Reclamation

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1 District (KRD). KRD assesses them for 50 acres. Water is diverted from
2 Coleman Creek near the center of the NE $\frac{1}{4}$ of Section 12 and carried south in
3 an open ditch. The Schnebly's land is pasture, and hay, with a grain
4 rotation, and it is rill or flood irrigated. The testimony did not indicate
5 how much water is diverted into the ditch. Mr. Schnebly suggested in his
6 testimony that during the hotter months, there is quite a bit of evaporation
7 from the open ditch.

8 The Schneblys prepared a statement that summarized the history of their
9 property. Much of the information in the statement is supported by exhibits
10 entered by Lonice Wyrick in support of her claim. DE-3 is an affidavit by
11 Elias Messerly and Henry M. Bryant that shows that Messerly settled on the
12 S $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, along with other land and that Bryant acquired on
13 December 26, 1874, the N $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13. The affidavit goes on to state
14 that in 1871 they appropriated from Coleman Creek 288 cubic inches of water
15 for use on Messerly's land and in 1875 enlarged the ditch to carry an
16 additional 144 cubic inches of water for Bryant's property. As mentioned in
17 the Schnebly's summary, water rights for this land were addressed in the
18 Schnebly v. Huss decree. A Class 1 right was awarded to Alta Mullen and
19 Howard Cook for use of 40 inches of water in the S $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, a
20 Class 3 right was also awarded to Mullen and Cooke for the use of 20 inches
21 in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13 and lastly a Class 5 right for the use of 40
22 inches in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13 was awarded to the same
23 individuals. The total rights awarded were 100 inches, which according to
24 the Findings of Fact that preceded the decree, was sufficient for the
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1 irrigation of 200 acres. The 200 acres owned by the Schneblys is the land
2 to which the rights are appurtenant. Mr. Schnebly's testimony indicates
3 that use of this water has continued to the present.

4 A spring located on the property, in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13 is used
5 for stock watering. The livestock drink directly from the spring. This
6 non-diversionary stock water use is covered by the stock water stipulation
7 discussed on page 4 of this report. The Schnebly's name is included on the
8 list of those claimants with a non-diversionary stock water right under the
9 stipulation.

10 The Referee can find no RCW 90.14 claims that were filed for this
11 property. The Schneblys have owned the land since 1959 and any claim should
12 be in their name. Neither the claimants nor Ecology brought a claim to the
13 Referee's attention and review of Ecology's Exhibit SE-3 by the Referee has
14 lead the Referee to conclude a claim was not filed. RCW 90.14 required the
15 filing of a water right claim between 1969 and 1974 for any use of water
16 that was initiated prior to adoption of the State Surface Water Code in 1917
17 and the State Ground Water Code in 1945. Failure to file a claim waives and
18 relinquishes any right that may have existed, see RCW 90.14.071. Clearly
19 the Schneblys are claiming a right that was initiated prior to 1917 and for
20 which a water right claim should have been filed.

21 The Referee cannot recommend that a right be confirmed under Court
22 Claim No. 01775 due to there not being an RCW 90.14 claim for the water
23 use.

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1 COURT CLAIM NO. 00979 -- Henry J. Schnebly, et al.
2 (A) 04783 Fred Schnebly
3 (A) 05073 Jim Schnebly

4 On August 17, 1981, Henry J. Schnebly et al. filed Court Claim No.
5 00979 for the use of Coleman Creek water on 560 acres. On October 27, 1989,
6 the claimants filed amended statement of claim #4783 which added Naneum and
7 Spring (Schnebly) Creeks as additional water sources. Court Claim No. 1097
8 was filed by Stanley and Elizabeth McCune on August 21, 1981. This claim
9 and property was later acquired by Henry J. Schnebly et al. On February 1,
10 1990, the claimant filed another amended statement of claim (#5073). This
11 amendment increased the total acres claimed to 1160 which reflects the
12 McCune property as well as other properties not originally claimed. In
13 addition, this amendment provided more details on the claimed waters and
14 their use. The claimants were represented in the evidentiary hearing by
15 Attorney William Almon, and testimony was provided by Henry and Jim
16 Schnebly. Henry Schnebly was born in 1918, and his son Jim is now actively
17 managing the water on the property.

18 The 1160 acre Schnebly ranch is an aggregation of all or a portion of
19 no less than eight individual homesteads and land acquired from the Northern
20 Pacific Railroad. All of the ranch land is located in Sections 15, 22, 23,
21 and 27, of T. 18 N., R. 19 E.W.M. The majority of the Schnebly Ranch land
22 is composed of the homesteads that made up the Smith Ranch. The Smith Ranch
23 originally consisted of the two homesteads of George and Jefferson Smith.
24 Later on, the Smiths had their employees and others homestead nearby lands.
25 Eventually, the Smiths bought these properties from the homesteaders until

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1 they had 1160 acres (DE-146). The lands of the Smith Ranch were homesteaded
2 in the early 1870's.

3 Henry Schnebly's grandfather, P. H. Schnebly, purchased 640 acres of
4 the Smith Ranch on February 25, 1899 (DE-128). By 1955 the size of the
5 Schnebly Ranch holdings had been reduced to 520 acres (DE-146). The present
6 1160 acre Schnebly Ranch does not include all of the lands that made up the
7 original 1160 acre Smith Ranch. Other lands acquired by the Schneblys,
8 subsequent to 1955, include the 1896 homestead of Andrew (Arnt) Erickson,
9 and 80 acres of land originally purchased from the Northern Pacific Railroad
10 by said Erickson.

11 Henry Schnebly testified that the sources of water, diversions and
12 lands to which the water is applied are essentially the same as he remembers
13 as a young boy. The Referee recognizes that today the ranch and its water
14 is managed as a single integrated unit, however, given the historical manner
15 in which the Schnebly ranch has been assembled, and the complex nature of
16 this claim, the Referee has opted to analyze separately each of the
17 historical units which make up this claim.

18 In their Court Claim the Schneblys have claimed a year around use for
19 stock water on all 1160 acres. Historically the Smith Ranch, and
20 subsequently the Schnebly Ranch, have frequently had herds of livestock on
21 the property (DE-146 & 148). The record indicates that it was, and still
22 is, common for the farmers and ranchers of this area to maintain stock on
23 their lands. Jim Schnebly testified that about 1860 animals have
24 traditionally been pastured on the 1160 acre ranch. This is about 1.6
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1 animals per acre. To the extent that rights for stock water exist from the
2 various sources claimed, the Referee will attempt to divide the diversionary
3 stock rights among the various parcels which make up the ranch. The
4 claimant's stock may drink from any of the naturally occurring creeks or
5 other naturally occurring water sources on the property as provided for in
6 the non-diversionary stock water stipulation on page 4 of this report.

7 In most cases the water diverted from the natural sources on these
8 properties are mixed with return flow waters originating both from within
9 and outside of Subbasin 10. The claimant has made no attempt to quantify
10 the use of that portion of these waters originating within Subbasin 10, and
11 there are no RCW Chapter 90.14 claims that identify return flow waters as a
12 source. Therefore, the Referee will not confirm any rights to these waters,
13 or describe their use except to the extent it is useful for the purpose of
14 clarity. In order to understand the nature of these return flow waters and
15 their availability for use by the claimant the readers attention is directed
16 to the discussion beginning on page 8 of this report.

17 Jim Schnebly testified that he was not able to accurately determine a
18 water duty for their land. Mr. Almon asked if 7 acre-feet per acre (which
19 includes return flow waters from within Subbasin 10 and from Subbasin 9, but
20 excluding KRD return flow) would represent what is used, and Jim Schnebly
21 said he thought it was close. However, there is no testimony in the record
22 that would allow for a calculation of what portion of the 7 acre-feet is
23 natural creek water, and how much is return flow (either local or foreign).
24 Therefore, the Referee proposes to recommend the natural component of the
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1 water duty that is consistent with the total quantities awarded by the
2 Ferguson Decree No. 2607 for Schnebly Creek, and the 1915 decree P. H.
3 Schnebly et al. vs Harvey Huss et al. decree for Coleman Creek. In the
4 Schnebly vs Huss case all of the participants agreed to the allotment of
5 one-half inch of water under a 4 inch pressure (0.01 cfs) for each acre
6 claimed. By taking the 0.01 cfs per acre of Coleman Creek water awarded in
7 the decree, and, considering a continuous flow over an irrigation season of
8 April 1 to October 15, results in 3.9 acre-feet per acre being available for
9 use. For lands with rights to Schnebly Creek a water duty based upon
10 allocation quantities in the Ferguson vs U.S. National Bank of Portland
11 Oregon Decree will be used; this amount is 0.02 cfs and 5.7 acre-feet per
12 acre.

13 The Andrew (Arnt) Erickson homestead is at the northern end of the
14 Schnebly Ranch. The homestead is composed of the S $\frac{1}{4}$ NE $\frac{1}{4}$, and N $\frac{1}{4}$ SE $\frac{1}{4}$ of
15 Section 15, T. 18 N., R. 19 E.W.M. The property is riparian to Schnebly
16 Creek but not to Coleman Creek. In April of 1887 Mr. Erickson constructed
17 a ditch from Coleman Creek for the purpose of irrigating a portion of his
18 land. The portion he irrigated with Coleman Creek water was the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and
19 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15. Mr. Erickson first settled on his homestead land in
20 the year 1886 and filed for a homestead on March 6, 1886 (DE-135). He
21 received his patent on December 26, 1896.

22 According to the testimony of Jim Schnebly the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
23 Section 15 receive water from Schnebly Creek, but not from Coleman Creek.
24 Mr. Erickson diverted water from Spring (Schnebly) Creek in the quantity 80
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1 inches (or 1.6 cfs) on his homestead (DE-135). Mr. Schnebly identified
2 diversion #1 on DE-1444 as the point on Schnebly Creek where water is
3 diverted for irrigation of land within the Erickson Homestead. Diversion #1
4 is located 1370 feet south and 1510 feet west from the northeast corner of
5 Section 15, T 18 N., R. 19 E.W.M. According to the State Exhibits SE-2 and
6 the state investigation report, Schnebly Creek water from this diversion can
7 be diverted east, west, and south, the implication being that it can be
8 applied to most of the Erickson Homestead. However, the testimony from Jim
9 Schnebly indicates that within the Erickson Homestead, water from diversion
10 #1 is only applied to "field 18" as identified on DE-1444. Field 18 is
11 about 43 acres and extends north-south through the middle of the homestead.

12 There is one water right claim (WRC) filed pursuant to RCW 90.14 that
13 is appurtenant to the Erickson Homestead. WRC No. 096463 was filed on
14 November 1, 1973, by Robert Edwards, for 4.0 cfs and 250 acre-feet from
15 Spring Creek for stock water and irrigation of 50 acres in the S $\frac{1}{2}$ NE $\frac{1}{4}$ of
16 Section 15. The claimed point of diversion is in about the same location as
17 "diversion #1" mentioned above. The portion of "field 18" (DE-1444) that is
18 located in the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15 is about 14 acres and is within the area
19 described in WRC No. 096463. The Referee cannot find any RCW 90.14 claim in
20 the record that describes the southern half of the Erickson Homestead (N $\frac{1}{2}$ SE $\frac{1}{4}$
21 of Section 15) in the place of use. The Referee cannot recommend that a
22 right be confirmed for the rest of field 18 due to the lack of an RCW 90.14
23 claim. Failure to file a claim waives and relinquishes any right that may
24 have existed, RCW 90.14.071. Field 17 is also located within the Erickson
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1 Homestead and is planted to timothy hay. However, the testimony and
2 exhibits did not indicate the source of water being used to irrigate this
3 field. There is a turnout for delivery of water from the Kittitas
4 Reclamation District (KRD) near the northeast corner of this field, leading
5 the Referee to conclude that KRD water is used on this land.

6 The Referee recommends that a right be confirmed on Schnebly Creek to
7 Henry J. Schnebly et al. with a March 6, 1886, priority date for the
8 diversion of 0.28 cfs, and 79.8 acre-feet for the irrigation of 14 acres
9 from April 1 through October 15, and a year around diversion of 0.01 cfs and
10 1.0 acre-foot for stock water (based on approximately 22 animals). The
11 place of use is 14 acres located in that portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and
12 W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, lying east of Schnebly Creek. The location of the
13 point of diversion is 1370 feet south and 1510 feet west from the northeast
14 corner of Section 15, T 18 N., R. 19 E.W.M.

15 On October 5, 1892, Andrew Erickson acquired the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 15,
16 T. 18 N., R.19 E.W.M. from the Northern Pacific Railroad (DE-92). It is not
17 clear exactly what source of water is being used on this parcel, but it is
18 part of the 1160 acres described in the amended Court Claim and identified
19 on State Exhibit SE-2. This property is riparian to Schnebly Creek, but not
20 to Coleman Creek. There is no RCW Chapter 90.14 water right claim for this
21 property. Therefore, the Referee cannot recommend a water right for this
22 parcel. This property may have rights to waters originating outside of
23 Subbasin 10, such as from KRD.

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1 On June 5, 1873, George Smith was granted a patent for the S $\frac{1}{2}$ SE $\frac{1}{4}$ of
2 Section 15, and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 22, all in T. 18 N., R. 19 E.W.M.
3 (DE-85). Mr. Smith settled on the property as early as July of 1869
4 (DE-138). It is the Referee's conclusion that the first use of Coleman
5 Creek water for irrigation was in April of 1870. This homestead is riparian
6 to Schnebly Creek, but not riparian to Coleman Creek as the creek flowed in
7 the late 1800's (DE-138 & DE-1448). In the 1915 decree, Schnebly vs Huss
8 No. 4762 (Coleman Creek), the Court awarded 80 inches (1.6 cfs) of class 1
9 water rights to the 160 acres in the George Smith Homestead. In his
10 testimony Jim Schnebly identified diversion #21 as the point where Coleman
11 Creek water is diverted onto the subject land. This diversion point is
12 located 1000 feet north and 15 feet west from the southeast corner of
13 Section 15, T. 18 N., R. 19 E.W.M. All but 10 acres of the 160 acres
14 appears to be irrigated (DE-1444 & DE-150).

15 Coleman Creek approaches Diversion #20 (in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14
16 within a channel that is now located about 2200 feet north of it's original
17 position (DE-1448, DE-138, and SE-2). At diversion #20 the water of Coleman
18 Creek is divided, some of the water is diverted south into the KRD lateral,
19 while the rest remains in the creek channel and flows to the southwest, into
20 Section 15. It is the Referee's conclusion that the water course that trends
21 southwest from Diversion #20 represents the natural flow and channel of
22 Coleman Creek; and that the water flowing south from Diversion #20 is ditch
23 water. All of the ensuing decisions made with respect to whether or not

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1 diversions are from a natural water course or a ditch will be based on this
2 conclusion.

3 WRC No. 110750 was filed in accordance with RCW Chapter 90.14 by Henry
4 Schnebly for the use of water from "a branch of Coleman Creek".

5 Mr. Schnebly claimed a right to divert 8 cfs and 1300 acre-feet for
6 irrigation of 260 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15 and E3/4 of Section 22.
7 The location of the claimed point of diversion is the same as that of
8 diversion #20. Although the point of diversion is slightly different than
9 that currently used, the Referee finds that WRC No. 110750 substantially
10 complies with the requirements of RCW 90.14.

The referee recommends that a right be confirmed on Coleman Creek to Henry J. Schnebly et al. with an April 1, 1870, priority date for the diversion of 1.6 cfs, and 585 acre-feet from April 1 through October 15 for the irrigation of 150 acres, and a year around diversion of 0.12 cfs and 12.0 acre-feet for stock water (based on 230 animals). The place of use is within the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15 and N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 22, T. 18 N., R. 19 E.W.M. The location of the point of diversion is 1000 feet north and 15 feet west from the southeast corner of Section 15, T. 18 N., R. 19 E.W.M.

The Schneblys have also claimed a right to divert Schnebly Creek water onto a portion of the George Smith homestead land for irrigation and stock water. Their Court Claim states that 17 acres within the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15 receive irrigation water from Schnebly Creek. The claimed point

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1 of diversion is POD #3 (DE-1444) on Schnebly Creek. This information is
2 consistent with testimony given by Jim Schnebly.

3 RCW Chapter 90.14 WRC No. 110749 was filed on May 8, 1974, by Henry
4 Schnebly for the use of water from Spring (Schnebly) Creek. The location of
5 the claimed point of diversion is the same as that of Diversion #3. The
6 claim is for a right to divert 6 cfs and 420 acre-feet for the irrigation of
7 70 acres. The described place of use is "part of the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15,
8 and part of the NE $\frac{1}{4}$ of Section 22 . . ."

9 The Referee recommends that a right be confirmed under the Riparian
10 Doctrine on Schnebly Creek to Henry J. Schnebly et al. with a July 30,
11 1869, priority date for the diversion of 0.34 cfs, and 96.9 acre-feet from
12 April 1 through October 15 for the irrigation of 17 acres, and a year around
13 diversion of 0.015 cfs and 1.5 acre-feet for stock water (based on 26
14 animals). The place of use is within the W $\frac{1}{2}$ SW $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15, T. 18 N.,
15 R. 19 E.W.M. The location of point of diversion #3 is 600 feet east and 1320
16 feet north of the south quarter corner of Section 15, beint within the W $\frac{1}{2}$ SE $\frac{1}{4}$
17 of Section 15, T. 18 N., R. 19 E.W.M.

18 Immediately south of the George Smith homestead is the land that
19 comprised the Edward C. Gilmore homestead. This homestead parcel includes
20 the E $\frac{1}{2}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 22, T. 18 N., R. 19 E.W.M. Mr. Gilmore
21 settled on the property as early as the spring of 1871 (DE-131).
22 Mr. Gilmore acquired a patent from the United States on December 20, 1872
23 (DE-97). The Gilmore homestead is riparian to both Schnebly and Coleman
24 Creeks. In the 1915 decree, Schnebly vs Huss No. 4762, the Court awarded

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1 80 inches (1.6 cubic feet per second) of class 1 water from Coleman Creek to
2 the 160 acres of the Edward Gilmore Homestead.

3 As previously mentioned, WRC No. 110750 was filed for the use of water
4 from "a branch of Coleman Creek". The location of the claimed point of
5 diversion is the same as that of diversion #20. Mr. Schnebly claimed a
6 right to divert 8 cfs and 1300 acre-feet for the irrigation of 260 acres in
7 the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15 and E3/4 of Section 22. This differs from the Court
8 Claim which claims a right to irrigate 320 acres. There was no testimony
9 offered that might explain this difference. Since the Referee has already
10 recommended confirmation of a right to irrigate 150 acres in the area
11 described on WRC No. 110750, a right for an additional 110 acres is the
12 maximum that can be recommended.

13 In his amended Court Claim, the claimant has identified diversion #20
14 (DE-1444) as the point where Coleman Creek water is diverted onto the
15 subject land. However, it is not clear from the record that Coleman Creek
16 water is in fact being delivered and used on the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 22, nor is
17 it clear that this is even possible given the intervening location of
18 Schnebly Creek. Considering this, along with the fact that RCW 90.14 WRC
19 No. 110750 only claims 260 total acres for irrigation, it appears that
20 within the Gilmore Homestead only the 80 acres in the S $\frac{1}{2}$ NE $\frac{1}{4}$, and that
21 portion (about 10 acres) of the E $\frac{1}{2}$ NW $\frac{1}{4}$ lying east of Schnebly Creek, is
22 irrigated from Coleman Creek.

23 The referee recommends that a right be confirmed on Coleman Creek to
24 Henry J. Schnebly et al. with an April 1, 1871 priority date for the

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1 diversion of 0.90 cfs, and 351 acre-feet from April 1 through October 15,
2 for the irrigation of 90 acres and a year around diversion of 0.07 cfs and
3 7.0 acre-feet for stock water (based on 144 animals). The place of use is
4 within the S $\frac{1}{2}$ NE $\frac{1}{4}$ and that portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ lying east of Schnebly Creek,
5 all in Section 22, T. 18 N., R. 19 E.W.M. The location of point of
6 diversion #20 is 1240 feet north and 140 feet east from the southwest corner
7 of Section 14, T. 18 N., R. 19 E.W.M.

8 The Schneblys have also claimed a right to divert Schnebly Creek water
9 onto a portion of the E. Gilmore homestead land for irrigation and stock
10 water. Testimony by Jim Schnebly indicates that Schnebly Creek water from
11 Diversion #1 (DE-1444) can be discharged to Coleman Creek and then conveyed
12 to lands below. According to map Exhibit SE-2, which shows the locations of
13 the ditches, drains and pipelines on the Schnebly ranch, Schnebly Creek
14 water can be conveyed in various ways from Diversion #1 to the lands of the
15 Gilmore Homestead.

16 Further testimony by Mr. Schnebly reveals that diversion #4 on Schnebly
17 Creek is the primary diversion point used to irrigate about 65 acres in the
18 E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 22, all of which are located west of Schnebly Creek. In
19 order to irrigate this land, water is applied in the area of the Diversion
20 #4 location, and it is also conveyed through ditches and applied at turnouts
21 #5 and #6. The location of Diversion #4 is about 2570 feet west and 10 feet
22 south of the northeast corner of Section 22, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
23 Section 22, T. 18 N., R. 19 E.W.M.

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1 RCW Chapter 90.14 WRC No. 110745 was filed by Henry Schnebly for the
2 use of water from Spring (Schnebly) Creek. Mr. Schnebly has claimed water
3 in the quantities of 4.0 cfs and 1300 acre-feet for the irrigation of 260
4 acres in the E3/4 of Section 22. The claimed point of diversion is
5 consistent with the location of the above mentioned Diversion #1. Diversion
6 #4 is not claimed on any of the claimant's other RCW 90.14 Water Right
7 Claims.

The Referee recommends that a right under the riparian doctrine be confirmed on Schnebly Creek to Henry J. Schnebly et al. with an April 1, 1871, priority date for the diversion of 1.3 cfs, and 370.5 acre-feet from April 1 through October 15, for the irrigation of 65 acres and a year around diversion of 0.05 cfs and 5.0 acre-feet for stock-water (based on 104 animals). The place of use is the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 22, T. 18 N., R. 19 E.W.M. The location of the point of diversion (#1) is 1370 feet south and 1510 feet west from the northeast corner of Section 15, T 18 N., R. 19 E.W.M. The Referee cannot confirm the use of POD #4 because it was not claimed on any RCW 90.14 water right claim. The claimant may wish to contact the Department of Ecology and pursue the use of this diversion through RCW 90.03.380.

20 Immediately east of the Edward C. Gilmore homestead is the land that
21 comprised the William C. Smith homestead. This homestead parcel includes
22 the W $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 23, T. 18 N., R. 19 E.W.M. The NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
23 Section 23 is not a part of the Schnebly Ranch. Mr. Smith settled on the
24 property as early as the spring of 1872 (DE-131), receiving the patent from

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1 the United States on June 5, 1873 (DE-128). The W. Smith homestead was
2 originally riparian to Coleman Creek, but not to Schnebly Creek (DE-1448 &
3 DE-138). The record does not indicate that a right is being asserted to use
4 Schnebly Creek water on this homestead parcel. In the 1915 decree, Schnebly
5 vs Huss No. 4762, the Court awarded 80 inches (1.6 cubic feet per second) of
6 class 1 Coleman Creek water rights to the 160 acres of the William C. Smith
7 Homestead.

8 Jim Schnebly has identified Diversion #24 (DE-1444) as the point where
9 runoff water originating from Coleman Creek and the KRD canal are diverted
10 onto this property. This point is also on a ditch that carries water
11 diverted from Coleman Creek. Mr. Schnebly testified that field #19
12 (DE-1444) is the recipient of water from Diversion #24. Field #19 is the 40
13 acres located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T. 18 N., R. 19 E.W.M.
14 Diversion #24 is located 950 feet east and 10 feet south of the northwest
15 corner of Section 23.

16 RCW Chapter 90.14 Water Right Claim No. 110748 was filed by Henry
17 Schnebly for the use of water from a "branch of Coleman Creek".
18 Mr. Schnebly claimed a right to divert 4.0 cfs and 400 acre-feet for the
19 irrigation of 80 acres within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23 and the SE $\frac{1}{4}$ of
20 Section 22. The NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23 is the only portion of the W. Smith
21 Homestead that is described in the place of use for any of the RCW 90.14
22 claims filed for the Schnebly land. The claimed point of diversion is close
23 to the location of above mentioned Diversion #24. However, Diversion #24 is
24 not located on "a branch of Coleman Creek", but on a ditch that flows from

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1 Coleman Creek and diversion No. 20. The Referee finds that WRC No. 110748
2 substantially complies with the filing requirements of RCW 90.14 for water
3 diverted from Coleman Creek.

4 The Referee recommends that a right be confirmed under the Riparian
5 Doctrine with a June 30, 1872, date of priority for the diversion from
6 Coleman Creek of 0.40 cubic foot per second, 156 acre-feet per year from
7 April 1 through October 15 for the irrigation of 40 acres and 0.04 cubic
8 foot per second, 4 acre-feet per year for continuous stock watering in the
9 NW~~ANW~~% of Section 23. The point of diversion shall be at diversion #20 in
10 Section 14.

11 Immediately south of the Edward C. Gilmore homestead is the land that
12 comprised the Jefferson Smith homestead. This homestead parcel is the SE%
13 of Section 22, T. 18 N., R. 19 E.W.M. Mr. J. Smith settled on the property
14 as early as January 4, 1871 (DE-131) received the patent from the United
15 States on August 20, 1878 (DE-128). The J. Smith homestead is riparian to
16 both Coleman Creek and Schnebly Creek. In the 1915 decree, Schnebly vs Huss
17 No. 4762, the Court awarded 80 inches (1.6 cubic feet per second) of class 1
18 water rights to the 160 acres of the Jefferson Smith Homestead.

19 RCW Chapter 90.14 WRC No. 110748 was filed by Henry Schnebly for the
20 use of Coleman Creek water on the SE% of said Section 22. The claimed point
21 of diversion appears to be the same as Diversion #24. According to
22 testimony by Mr. Jim Schnebly, Diversion #24 serves the NW~~ANW~~% of Section 23
23 (field #19 in DE-1444), he did not mention this diversion point being used
24 to divert water to the SE% of Section 22. The Referee has earlier noted
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1 that diversion #24 not only captures return flow water, but is also on a
2 ditch that runs from Diversion #20, and that WRC No. 110748 substantially
3 complies with the filing requirements for a right to divert from Coleman
4 Creek. The Referee has recommended confirmation of a water right for 40
5 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23 based on this 90.14 claim, leaving an
6 additional 40 acres that could be confirmed in the SE $\frac{1}{4}$ of Section 22.

7 Water Right Claim No. 110750, which has been discussed as it relates to
8 a portion of other homesteads, also includes the J. Smith homestead. The
9 point of diversion claimed is the same as the location of diversion #20.
10 WRC No. 110750 claimed water a right to 8 cfs and 1300 acre-feet for
11 irrigation of 260 acres. Water from Diversion #20 flows south in a ditch
12 and eventually enters the SE $\frac{1}{4}$ of Section 22. Thus far, with WRC No. 110750
13 as a foundation, the Referee has recommended 240 acres within the G. Smith
14 and Gilmore homesteads, leaving 20 acres that have not been awarded.

15 The Referee finds there is sufficient RCW 90.14 coverage for the J.
16 Smith homestead to recommend that a right be confirmed with a priority date
17 of January 4, 1871, for the diversion from Coleman Creek of 0.60 cfs, and
18 234 acre-feet from April 1 through October 15, for the irrigation of 60
19 acres and a year around diversion of 0.015 cfs and 1.5 acre-feet for stock
20 water (based on 32 animals). The place of use is within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
21 Section 22, T. 18 N., R.19 E.W.M. The location of the point of diversion is
22 1240 feet north and 140 feet east from the southwest corner of Section 14,
23 T. 18 N., R. 19 E.W.M.

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1 Jim Schnebly testified that he diverts Schnebly Creek water from
2 Diversion #7 to irrigate field #10 (DE-1444), which is 50 acres in size and
3 located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 22. WRC No. 110745 was filed
4 asserting a right to use 4 cfs, 1300 acre-feet per year from Schnebly Creek
5 to irrigate 260 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15 and the E3/4 of
6 Section 22. The point of diversion described is near the center of the NE $\frac{1}{4}$
7 of Section 15 and is not at the location of diversion No. 7. The only WRC
8 that describes diversion No. 7 was filed for land in the SW $\frac{1}{4}$ of Section 22.
9 The Referee cannot recommend confirmation of a right for a diversion not
10 claimed in a RCW 90.14 claim. The claimant should contact Ecology for the
11 procedure to add or change a point of diversion pursuant to RCW 90.03.380.

12 The Referee recommends that a right be confirmed with a January 4,
13 1871, date of priority for the diversion from Schnebly Creek of 1.0 cubic
14 foot per second, 195 acre-feet per year from April 1 through October 15 for
15 the irrigation of 50 acres and 0.03 cfs, 3.0 acre-feet per year for stock
16 water (based on 50 animals) in that portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying south of
17 Fred Schnebly Road and west of Coleman Creek and that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$
18 lying west of Coleman Creek, all in Section 22, T. 18 N., R. 19 E.W.M. The
19 point of diversion will be that described in WRC No. 110745, which is within
20 the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15.

21 Immediately west of the Jefferson Smith homestead is the land that
22 comprised the Alex Huggins homestead, in the SW $\frac{1}{4}$ of Section 22, T. 18 N., R.
23 19 E.W.M. The E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 22 is part of the Schnebly Ranch.
24 Mr. Huggins settled on the property as early as spring of 1872 (DE-131) and
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1 received a patent from the United States on September 5, 1873 (DE-98). The
2 Huggins homestead is riparian to Schnebly Creek, but not to Coleman Creek.
3 It does not appear that the Schneblys are asserting a right to the use of
4 Coleman Creek water on this land, nor does it appear that it was awarded any
5 water in the Schnebly vs Huss Decree, No. 4762.

6 RCW Chapter 90.14 WRC No. 110747 was filed by Henry Schnebly for the
7 use of water from "an unnamed creek". The location of the claimed point of
8 diversion is the same as that of diversion #7 (DE-1444), which is located on
9 Schnebly Creek. Mr. Schnebly claimed a right to use 6.0 cfs and 325
10 acre-feet for irrigation of 65 acres and stock water in the E½SW¼ of Section
11 22. Jim Schnebly testified that he irrigates the portion of the E½SW¼ of
12 Section 22 lying west of Schnebly Creek field (#11) with water he diverts
13 from that creek through Diversions #4, #7 and #8.

14 The referee recommends that a right be confirmed under the Riparian
15 Doctrine on Schnebly Creek to Henry J. Schnebly et al. with an April 1,
16 1872, priority date for the diversion of 1.10 cfs, and 313.5 acre-feet for
17 the irrigation of 55 acres from April 1 through October 15, and a year
18 around diversion of 0.04 cfs and 4.0 acre-feet for stock water (based on 88
19 animals). The place of use is that portion of the E½SW¼ of Section 22, T.
20 18 N., R.19 E.W.M. which lies west of Schnebly Creek. The location of the
21 point of diversion is 200 feet west and 380 feet north from the center of
22 Section 22, T. 18 N., R. 19 E.W.M. Mr. Schnebly did not claim Diversions #4
23 and #5 when he filed Claim No 110747. The claimants may pursue the
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1 authorization to use these points of diversion through an application to the
2 Department of Ecology to add two points of diversion (RCW 90.03.380).

Immediately south of the Alex Huggins homestead is the land that comprised the B. F. Whitson homestead. This homestead parcel includes the E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M. Mr. Whitson settled on the property as early as May 18, 1871 (DE-131) and received a patent from the United States on September 5, 1873 (DE-108). The Whitson homestead is riparian to both Schnebly Creek, and Coleman Creek (DE-1448). In the 1915 decree, Schnebly vs Huss No. 4762, the Court awarded 40 inches (0.80 cubic feet per second) of class 1 water rights to the W $\frac{1}{2}$ NE $\frac{1}{4}$ (80 acres) of the Whitson Homestead.

12 RCW Chapter 90.14 WRC No. 062345 was filed on February 18, 1974 by
13 Kenneth Oliphant for the use of water from Spring Creek. Mr. Oliphant
14 claimed a right to divert 3.0 cfs and 1800 acre-feet for the irrigation of
15 38 acres and stock water in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 27. The location of the
16 claimed point of diversion is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, where diversion
17 #14 (DE-1444) is located on Coleman Creek. Jim Schnebly testified that he
18 turns out water at Diversion #14 to irrigate field #3, which is 38 acres
19 lying in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 27. Based on the foregoing, the Referee
20 concludes that the named source was indeed a mistake, and the intended
21 source was Coleman Creek. The claim substantially complies with RCW 90.14.

22 The referee recommends that a right under the riparian doctrine be
23 confirmed on Coleman Creek to Henry J. Schnebly et al. under Court Claim No.
24 01097 with a May 18, 1871, priority date for the diversion of 0.38 cfs, and

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1 148.2 acre-feet from April 1 through October 15, for the irrigation of 38
2 acres and a year around diversion of 0.03 cfs and 3.0 acre-feet for stock
3 water (based on 60 animals). The place of use is that portion of the W $\frac{1}{2}$ N $\frac{1}{4}$
4 of Section 27, T. 18 N., R. 19 E.W.M. located between Coleman Creek and an
5 unnamed ditch. The recommended point of diversion is #14, 360 feet east and
6 120 feet north from the south quarter corner of Section 22, T. 18 N.,
7 R. 19 E.W.M.

8 The claimants also assert a right to use Schnebly Creek water on the
9 E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27, also part of the Whitson Homestead for irrigation and
10 stock water. Jim Schnebly testified that Schnebly Creek water is applied to
11 field #4 (DE-1444) in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27 (D-1444). Field #4 is about
12 65 acres which extends across the entire length of the said parcel
13 (DE-152). Water is diverted from Schnebly Creek at Diversion #8 to irrigate
14 33 acres in the north half of field #4 and through Diversion #9 to irrigate
15 the southern half of field #4.

16 RCW Chapter 90.14 WRC No. 062346 was filed on February 18, 1974, by
17 Kenneth Oliphant for the use of water from Coleman Creek. Again, an error
18 was made in naming the water source. The location of the claimed point of
19 diversion is the same as that of diversion #8 (DE-1444), which is located on
20 Schnebly Creek. It seems clear that when Mr. Oliphant filed WRC numbers
21 062345 and 062346 he mistakenly switched the sources.. On claim No. 062346
22 Mr. Oliphant claimed a right to use 3.0 cfs and 1800 acre-feet for stock
23 water and the irrigation of 65 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27. The
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1 Referee finds that the claim as filed substantially complies with RCW
2
3 90.14.

4 The referee recommends that a right under the Riparian Doctrine be
5 confirmed on Schnebly Creek to Henry J. Schnebly et al. under Court Claim
6 No. 01097 with a May 18, 1871, priority date for the diversion of 1.3 cfs,
7 and 148.2 acre-feet from April 1 through October 15 for the irrigation of 65
8 acres and a year around diversion of 0.05 cfs and 5.0 acre-feet for stock
9 water (based on 104 animals). The place of use is 65 acres within the E $\frac{1}{2}$ NW $\frac{1}{4}$
10 of Section 27, T. 18 N., R. 19 E.W.M. The location of the diversion is 200
11 feet west and 730 feet north from the south quarter corner of Section 22,
12 T. 18 N., R. 19 E.W.M. (diversion #8). Mr. Oliphant did not include
13 Diversion #9 when he filed his 90.14 claim, therefore, the right recommended
14 for confirmation cannot include that diversion. The claimants may pursue
15 approval for use of this point of diversion through an application to the
Department of Ecology to add a point of diversion.

16 Immediately east of the B. F. Whitson homestead is the land that
17 comprised the William J. Taylor homestead. This homestead parcel includes
18 the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
19 Section 27, all in T. 18 N., R. 19 E.W.M. Only the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27 is
20 part of the Schnebly Ranch. Mr. Taylor settled on the property as early as
21 August 23, 1871 (DE-131), and received a patent on July 1, 1874 (DE-107).
22 The Taylor homestead is not riparian to either Schnebly Creek or Coleman
23 Creek (DE-1448). In the 1915 decree, Schnebly vs Huss No. 4762, the Court
24 awarded 80 inches (1.6 cubic feet per second) of class 1 water rights to the
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1 160 acres in the Taylor Homestead. However, the Referee is unable to find
2 an RCW 90.14 Water Right Claim that includes the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27 in the
3 place of use for either Coleman Creek or Schnebly Creek. Failure to file a
4 claim results in relinquishment or forfeiture of any right that may have
5 existed, RCW 90.14.071. Therefore, the Referee cannot confirm a water right
6 for this parcel.

7 Finally, there is the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27 which was awarded Class 5
8 water rights in the Schnebly vs Huss case. The water was awarded to Jerry
9 Pattenau. There is little information in the record with respect to this
10 parcel. Jim Schnebly testified that this property is irrigated with drain
11 waters. It does not appear that an RCW 90.14 Water Right Claim was ever
12 filed for this property either. Therefore, the Referee cannot confirm a
13 right on this parcel.

14 Mr. Schnebly's testimony made it clear that there are numerous drains
15 on the ranch that capture return flow water resulting from the irrigation of
16 the claimant's property. While the Referee cannot recommend separate water
17 rights for use of the return flow water, this water can continue to be used
18 on the ranch within the area where rights have been awarded in this
19 proceeding or on lands that are assessed by KRD.

20 COURT CLAIM NO. 01942 -- Jess Schober
21

22 Court Claim No. 01942 was filed by Schober Brothers Partnership
23 asserting a right to use water from several water sources in the Yakima
24 River Basin, including springs located within Subbasin No. 10. Only those
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1 sources lying within Subbasin No. 10 will be addressed in this report. One
2 of the exhibits submitted in support of Claim No. 01942 was DE-354, which
3 dissolved the Schober Brothers Partnership and divided the real property.
4 The land lying in Subbasin No. 10 was conveyed to Jess and Barbara Schober.
5 Attorney Richard T. Cole represented the Schobers at the Subbasin No. 10
6 evidentiary hearing and Mr. Schober testified at the hearing.

7 The Schobers own over 10,000 acres of rangeland in Subbasin No. 10.
8 Following is a rough description of the land they own: The E $\frac{1}{2}$ E $\frac{1}{2}$ of Section
9 24 and all of Sections 33, 34, and 35 in T. 19 N., R. 20 E.W.M. and portions
10 of Sections 1, 2, 3, 4, 5, 9, 11, 15 and 21 in T. 18 N., R. 20 E.W.M. The
11 only right that is being asserted is for use of unnamed springs for stock
12 watering. The springs have been developed and piped to stock tanks,
13 watering troughs or ponds have been excavated at the spring sites. There
14 are a total of 11 springs for which water rights are asserted. Caribou
15 Creek also flows through some of the lands and cattle drink directly from
16 the creek when they are grazing the lands near the creek channel. Between
17 300 and 500 cow/calf pairs are grazed on the land each year. Mr. Schober
18 estimated that he needs between 0.50 and 0.75 cubic foot per second for his
19 stock water needs.

20 The developed springs are located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section
21 1, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and near the center of the SE $\frac{1}{4}$ of Section 2, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and
22 S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
23 9, the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, all of these in T.
24 18 N. R. 20 E.W.M. and in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of

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1 Section 34, T. 19 N., R. 20 E.W.M. Additional spring locations on the
2 property have not been developed. Most of the springs only flow a portion
3 of the year, however spring #4 in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, spring #9 in the
4 NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33 and spring #10 in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34 flow all
5 year. Mr. Schober did not testify to the quantity of water flowing from
6 each spring, however, the Referee's impression is that the flow was very
7 small. There are also two ponds that are used for stock watering, but they
8 had been dry for the three years prior to the hearing.

9 RCW 90.14, the Claims Registration Act, was passed by the legislature
10 in 1967. One provision of the act was a requirement that statements of
11 claim be filed for all rights that were initiated prior to adoption of the
12 State Water Codes and for which there were no certificates. The Schobers
13 are asserting a priority date of 1885 to 1895 for use of the springs.
14 However, no one has identified any claims filed pursuant to RCW 90.14 for
15 use of any of the springs for which the Schobers are asserting a water
16 right. Failure to file a claim relinquishes any right that may have
17 existed, RCW 90.14.071.

18 Mr. Schober's testimony was that some of the springs appear to have
19 been in use for over 80 years at the time of the hearing. Were there RCW
20 90.14 claims for those springs, water rights may have existed for those
21 springs. However, some of the springs were developed after the Schobers
22 acquired the land. At the time the Schobers acquired the land, the only
23 mechanism for establishing a surface water right was through the permit

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provisions of RCW 90.03. There is no evidence that permits were obtained
for use of any of the springs.

Offered into evidence were chain of title documents for many of the
sections owned by the Schobers. The Referee will not go into a detailed
description of those documents at this time due to the lack of RCW 90.14
claims for the property. If Mr. Schober is able to locate statements of
claim filed pursuant to RCW 90.14 and elects to pursue an exception, those
documents will be evaluated further. Mr. Schober should be prepared to
identify which springs were developed and in use prior to his acquiring the
land, as those are the only springs for which water rights could be
recommended for confirmation if 90.14 claims are located.

Livestock drinking directly from the creeks that flow through the
claimant's property and from excavations at the spring site are
non-diversionary in nature and are covered by the stock water stipulation
discussed on page 4 of this report. Mr. Schober's name is on the list of
claimants having a non-diversionary stock water right under the
stipulation.

COURT CLAIM NO. 00605 -- Albert F. Scott
(A) 01749 & Dorothy Scott
Stephen K. German
& Donna German

On August 28, 1981, Albert and Dorothy Scott filed with the Court
Statement of Claim No. 00605 for the use of water for irrigation and stock
water from various sources on their property in Sections 2 and 11 of T. 18

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1 N., R. 19 E.W.M. The claimed sources within Subbasin No. 10 are Coleman
2 Creek, Schnebly Creek and eight springs. The Scotts were represented in the
3 evidentiary hearing by Attorney Richard T. Cole, and testimony was provided
4 by Mr. Scott and Jay Steven Paul, who had leased a portion of the Scott
5 property for 11 years prior to the hearing. On June 23, 1998, Steve and
6 Donna German were joined to the claim. The information attached to the
7 Motion to be Joined leads the Referee to conclude that the portion of the
8 property acquired by the Germans is that irrigated with water diverted from
9 Schnebly Creek.

10 At the time of the hearing, the Scotts owned about 440 acres in Section
11 and about 25 acres in Section 2. The claimants pasture up to 200
12 cow/calf pairs on their property. The testimony indicated that the
13 livestock are watered from the irrigation facilities, however, it did not
14 indicate whether water is diverted from the creeks for stock watering after
15 the end of the irrigation season. There are several springs that will be
16 discussed further that may be the source of stock water outside the
17 irrigation season. According to exhibits placed in the record by the
18 claimant and State's Exhibit SE-2, the Scotts property is that portion of
19 the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2 lying southerly of the KRD canal, the
20 NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, all in T. 18 N.,
21 R. 19 E.W.M. The Scott property was originally settled by four individuals,
22 W. M. Kiester, F. B. Schnebly, D. A. Holbrook and E. N. Cooke, resulting in
23 different water use histories.

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1 The Scotts claim the use of Schnebly Creek water on a portion of their
2 property which roughly corresponds to the location of the old Kiester
3 Preemption land, which was the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$
4 of Section 11. Mr. Kiester arrived in the Kittitas valley in 1868 and first
5 "settled" on his preemption land in 1869 (DE-968). The priority date under
6 the Riparian Doctrine is established when steps are first taken to sever the
7 land from Federal ownership, which generally occurs when the land is
8 settled.

9 The claimants land that is part of the Kiester preemption land is
10 riparian to Schnebly Creek. The creek traverses the property in a generally
11 north-south manner and exits near the southeast corner. The Kiester Ditch
12 discharges water from Naneum Creek into Schnebly Creek just north of the
13 Scott property . Early in the irrigation season the co-mingled waters of
14 both Naneum Creek and Schnebly Creek are diverted from the Schnebly Creek
15 channel onto this (the Kiester) property. The Report of Referee for
16 Subbasin No. 9 recommended that a right be confirmed for diverting up to 1.4
17 cfs and 350 acre-feet per year from Naneum Creek for irrigating 70 acres in
18 the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11. This irrigation
19 practice was first established by Mr. Kiester in 1880 when he and Eric
20 Larson constructed the Kiester ditch. A right is asserted in Court Claim
21 00605 for the irrigation of 138 acres of hay, grain, and pasture with water
22 diverted from Schnebly Creek. Mr. Scott did not testify to how much water
23 is diverted from Schnebly Creek, however, the summary of claim filed by his
24 attorney indicates a claim for 1 cubic foot per second.
25

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1 Mr. Scott filed Water Right Claim (WRC) No. 097152 as prescribed by
2 Chapter 90.14 RCW. The claim states that 2 cfs and 150 acre-feet of water
3 are used from Schnebly Creek for stock water and irrigation of 138 acres.
4 The stated place of use includes all of the land for which a right to
5 Schnebly Creek is being asserted. Seven points of diversion are identified
6 on an attachment to WRC No. 097152. Those same seven points of diversion
7 are described in Court Claim No. 00605. Mr. Scott did not testify about the
8 specific diversions used on Schnebly Creek. The State's Investigation
9 Report only indicates use of two diversions, which appear to be diversions 1
10 & 6 on the 90.14 claims. The Referee notes that diversion 6 on WRC No.
11 097152 is described as being 1500 feet east and 1320 feet south of the
12 northwest corner of Section 11 in the NE $\frac{1}{4}$ NW $\frac{1}{4}$. The state's investigation
13 report puts the diversion about 1350 feet south of the northwest corner of
14 Section 11, which would place it in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11. The
15 Referee believes that the same diversion point was being described in both
16 documents. Diversion 1 is approximately 750 feet north and 800 feet west
17 from the south quarter corner of Section 2, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$.

18 The Referee recommends that a right be confirmed to Albert F. and
19 Dorothy Scott and Steve and Donna German under Court Claim No. 00605 with a
20 priority date of June 30, 1869 for the diversion of 1.0 cubic feet per
21 second (cfs), and 150 acre-feet per year from Schnebly Creek for the
22 irrigation of 138 acres and stock watering from April 1 through October 15.
23 The place of use is 138 acres within the following described parcel: the
24 NW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11 and that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2

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1 lying south of the KRD Canal, all in T. 18 N., R. 19 E.W.M. The points of
2 diversion authorized for use shall be: 1) 750 feet north and and 800 feet
3 west of the south quarter corner of Section 2, being within the the
4 NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 18 N., R. 19 E.W.M.; and 2) 1300 feet north 1250
5 feet west from the center of Section 11, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section
6 11 of said township and range.

7 In addition to the claim filed for Schnebly Creek water, Mr. Scott
8 filed eight RCW 90.14 Water Right Claims on springs, and Court Claim #605
9 asserts a right for use of those springs. The eight springs are located on
10 State's Exhibit SE-2, and five of them appear to be within what was the
11 Kiester Preemption land. There was no testimony given regarding the
12 quantity of water used from any of the springs, the place of water use, or
13 historical use. Additionally, although there are eight 90.14 claims filed
14 for use of springs, four of the five springs on the former Kiester land do
15 not appear to be described on claims. Mr. Scott testified that with one
16 exception, the springs were accurately located on SE-2. Although Mr. Scott
17 testified that to a small extent water from the springs is used for
18 irrigation, the Referee's impression is that stock watering is the primary
19 use of this water. The testimony indicates that livestock have access to
20 the springs and small channels into which the springs flow and drink
21 directly from the source without water being diverted. The only right that
22 the Referee can recommend for these springs is that covered by the stock
23 water stipulation discussed on page 4 of this report. The claimants are on
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1 the list of those with a non-diversionary stock water right under the
2 stipulation.

3 The remaining three parcels which makeup the Scott property form what
4 Mr. Scott termed the "Schnebly Part". This portion of his property receives
5 water from Coleman Creek. Water rights were awarded for this property in
6 the Schnebly v. Huss Decree(DE-137). By the time this case was initiated,
7 P. H. Schnebly owned all three parcels. In the findings of the above
8 mentioned litigation a water duty of one-half inch of water (0.01 cfs) was
9 allotted for each acre claimed (DE-132), therefore, the Referee proposes to
10 continue using this water duty in the present case; doing so will result in
11 a annual water duty of 3.9 acre-feet per acre, if that quantity were
12 availabe for use the entire irrigation season.

13 Mr. Scott filed Water Right Claim No. 097154 as prescribed by Chapter
14 90.14 RCW for the lands that are within the "Schnebly Part". The claim
15 states that 5.1 cfs and 1200 acre-feet of water are are used from Coleman
16 Creek for stock water and irrigation of 225 acres. The claimed place of use
17 includes all the land in the three parcels which constitute the "Schnebly
18 part". The described location for the point of diversion, in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
19 Section 12, T. 18 N., R. 19 E.W.M., is similar to the location in the state's
20 investigation report. Although Mr. Paul's testimony also was that about 225
21 acres were being irrigated with water diverted from Coleman Creek, the
22 Referee's review of the aerial photo lead to a conclusion that there was 240
23 acres being irrigated.

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1 The D. A. Holbrook parcel was composed of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and N $\frac{1}{4}$ SE $\frac{1}{4}$
2 of Section 11. A Class 1 water right, with a priority date prior to 1873,
3 was awarded in the Schnebly v. Huss decree for 10 acres within this area. A
4 Class 7 right, with a priority date of 1883 or 1884, was also awarded for
5 150 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11. It is impossible
6 to know which 10 acres had the Class 1 right. It is clear that rights were
7 awarded for the entire 160 described acres. Review of the aerial photograph
8 put into evidence by the claimant leads the Referee to conclude that
9 approximately 140 acres continue to be irrigated within this area. In order
10 to confirm a right, the Referee will designate a 10 acre parcel to receive
11 the Class 1 water and the remainder of the property will have the Class 7
12 right. The claimants can take exception if a different 10 acre parcel is
13 desired for the Class 1 right.

14 The Referee recommends that rights be confirmed to Albert F. and
15 Dorothy Scott under Court Claim No. 00605 as follows: With a priority date
16 of April 1, 1873, for the diversion of 0.10 cubic foot per second, 39
17 acre-feet per year from Coleman Creek for irrigation of 10 acres and stock
18 water from April 1 through October 15 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11. With
19 a priority date of June 30, 1883, a right to 1.5 cubic feet per second, 507
20 acre-feet per year from Coleman Creek for the irrigation of 130 acres and
21 stock watering in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11,
22 T. 18 N., R. 19 E.W.M.. The point of diversion is located 1000 feet north
23 and 1300 feet east from the center of Section 12, being within the the
24 NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.

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1 The P. H. Schnebly parcel is the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11. This property
2 was awarded a Class 5 water right for the use of 20 inches of water (0.40
3 cfs). Class 5 rights in the Schnebly-Huss decree were rights established in
4 1879 and 1880 (DE-132). P. H. Schnebly settled on this property in the year
5 1879 under an agreement with the Northern Pacific Railway who was the owner
6 of the parcel at the time of the decree. Again, review of the aerial
7 photograph suggests that the Scotts are irrigating approximately 20 acres in
8 that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11 lying below the KRD canal.

9 It is recommended that a right be confirmed with a priority date of
10 June 30, 1880, for the diverions of 0.40 cfs, 117 acre-feet per year from
11 Coleman Creek for the irrigation of 20 acres and stock watering from April 1
12 through October 15 in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 18 N., R. 19 E.W.M. The
13 point of diversion is located 1000 feet north and 1300 feet east from the
14 center of Section 12, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T. 18
15 N., R. 19 E.W.M.

16 The E. N. Cooke parcel was composed of the E $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
17 11. This property was awarded a Class 6 water right for 60 inches of water
18 (1.20 cfs). Class 6 rights in the Schnebly v. Huss decree were established
19 in 1881 and 1882. E. N. Cooke settled on this property in the year 1879
20 under an agreement with the Northern Pacific Railway who was the owner of
21 the parcel at that time and began irrigating his lands in this area in 1880
22 or 1881 (DE-968). There appears to be approximately 80 acres irrigated
23 within the former Cooke parcel.

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1 The Referee recommends that a right be confirmed with a priority date
2 of June 30, 1881, for the diversion of 1.2 cfs, 468 acre-feet per year from
3 Coleman Creek for the irrigation of 80 acres and stock watering from April 1
4 through October 15 in the E $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 18 N., R. 19
5 E.W.M. The point of diversion is located 1000 feet north and 1300 feet east
6 from the center of Section 12, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12,
7 T. 18 N., R. 19 E.W.M.

8 In addition to Coleman Creek water, there are two springs on the former
9 P. H. Schnebly parcel for which a right is asserted in Court Claim No.
10 00605. The claimant filed WRC No. 097155 and 097156 pursuant to RCW 90.14
11 which may be appurtenant to these springs. There is one spring on the
12 former E. N. Cooke parcel to which Mr. Scott has made claim. WRC No. 097151
13 and 097158 were filed for this spring. There was no testimony given
14 regarding the quantity of spring flow for either of the springs or the place
15 of use, quantity of use, historical use or season of use. As with the
16 springs on the Keister property, the Referee impression is that the primary
17 use of this spring is non-diversionary stock watering covered by the stock
18 water stipulation, which is discussed on page 4 of this report.

19

20 COURT CLAIM NO. 02196 -- Michael Joseph Shannon

21 Michael J. Shannon filed a claim with the Court asserting a right to
22 use waters from Cooke Creek for irrigation, stock water and domestic
23 supply. Mr. Shannon testified at the evidentiary hearing.

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When Mr. Shannon filed the claim form, he owned a three acre parcel of land in that portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 19 N., R. 20 E.W.M. lying east of Cooke Canyon Road. Subsequent to filing the claim, he purchased an additional eight acres in the northerly 368 feet of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31 lying west of Cooke Canyon Road and approximately 20 acres in what appears to be the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30. A legal description for the lands in Section 30 was not provided.

Mr. Shannon has, since his acquisition of the land, consistently irrigated about four acres in Section 31. Water is diverted from Cooke Creek into a ditch near the north line of Section 31. The state's investigation report identifies the diversion as being in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, while Mr. Shannon believes that the diversion is a little further south in the the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31. The certificate that is appurtenant to the claimant's land (Certificate No. 209 further discussed below) authorizes a diversion in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31 and Mr. Shannon believes that the diversion on his land is the historic diversion that has always served his land and additional land to the south. Mr. Shannon also has a 1 HP pump that he places on the creek to withdraw water for a portion of his property. Mr. Shannon testified that his land in Section 31 was being irrigated or recently had been irrigated when he purchased it. Livestock have consistently been raised on the land and drink directly from Cooke Creek. This type of non-diversionary stock watering is covered by the stock water stipulation discussed on page 4 of this report.

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1 Certificate No. 209 from the prior adjudication of Cooke Creek is
2 appurtenant to the claimants' property. With an 1879 date of priority, it
3 authorized the diversion of 1.80 cubic feet per second from Cooke Creek for
4 the irrigation of 90 acres. The authorized points of diversion are in the
5 NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 19 N., R. 20 E.W.M. The legal
6 description for the place of use on the certificate is a strip of land that
7 is mostly in the W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 31, but does extend slightly into the
8 NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31. All of Mr. Shannon's property is within
9 the place of use on the certificate. Besides Mr. Shannon, the following
10 claimants also own land that is within the place of use on Certificate No.
11 209: William Arthur and Rea Jeanette Hanning, Arthur W. and Margarette
12 Hanning, Earl E. and Florene McGinty, James J. Peterson/Carolyn B. Johnson,
13 Jack A. and Becky R. Baker, Bruce E. and Bonnie R. Catton and Pamela A.
14 Zupan. In addition to Certificate No. 209, Water Right Claim (WRC) No.
15 145148 was filed by Vincent J. Larson pursuant to the requirements of RCW
16 90.14. It asserts a right to use water from Cooke Creek on the land in
17 Section 31 east of Cooke Canyon Road. Since a certificate exists for the
18 property, filing of the water right claim was not necessary.

19 The land in the S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30 was not being irrigated when Mr.
20 Shannon acquired it in 1983, nor has he irrigated it. Livestock have grazed
21 on the land, also drinking directly from Cooke Creek, so the stock water
22 stipulation would apply to this parcel also. Certificate No. 172, which is
23 a Class 8 right with an 1880 date of priority includes the claimant's land
24 in Section 30 within the place of water use. It authorized the diversion of
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1 0.50 cubic foot per second for the irrigation of 25 acres in the E½SE¼ and
2 E½NE¼ of Section 30, T. 19 N., R. 20 E.W.M. Besides Mr. Shannon, the estate
3 of Vincent J. Larson and E. C. and Beth W. Underhill own land within the
4 place of use on Certificate No. 172.

5 Besides requiring that water right claims be filed for water uses not
6 described by a certificate, RCW 90.14 also provided for the relinquishment
7 of unused water rights. RCW 90.14.160 provides that any person entitled to
8 divert waters of the state authorized by a general adjudication (such as
9 Cooke Creek) who voluntarily fails without sufficient cause to beneficially
10 use all or any part of the right for five successive years shall relinquish
11 said right or portion thereof. The sufficient causes that prevent
12 relinquishment are defined in RCW 90.14.140 and the Referee is not aware of
13 any sufficient cause that might apply to the claimant. Based on the
14 evidence presented, the Referee concludes that any right that may have been
15 appurtenant to the claimant's land in Section 30 has relinquished due to
16 more than five successive years of nonuse.

17 The Referee does recommend that a right be confirmed under Court Claim
18 No. 02196 with a June 30, 1879, date of priority for the diversion of 0.08
19 cubic foot per second, 20 acre-feet per year for the irrigation of 4 acres
20 in the North 368.71 feet of the East 1580 feet of Section 31, T. 19 N.,
21 R. 20 E.W.M. lying east of Cooke Creek. The ditch diversion being used by
22 the claimant appears to be the one authorized by Certificate No. 209, so
23 that will be authorized for use in this right. However, the pump diversion
24 obviously has been added in more recent years, likely during Mr. Shannon's

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1 ownership. There is no evidence that he complied with the requirements of
2 RCW 90.03.380 to obtain approval from the state prior to adding the point of
3 diversion. It is suggested that Mr. Shannon contact Ecology's regional
4 office to inquire of that process.

5 COURT CLAIM NO. 00887 -- William V. Shelton

6 Mr. William Shelton filed Court Claim No. 00887 for the use of water on
7 two ranches. The "home place" is located in Sections 25 and 30 of T. 18 N.,
8 R. 19 E.W.M., where water from Cooke Creek is applied for irrigation. The
9 "Coleman Ranch" is located along Coleman Creek in Section 14, T. 18 N.,
10 R. 19 E.W.M. Mr. Shelton appeared and testified at the evidentiary hearing
11 and was represented by Attorney Richard T. Cole. The claimant hired Richard
12 C. Bain, Jr., a consultant, to prepare engineering reports for his
13 property. Those reports were entered as direct expert testimony as Exhibits
14 DE-1399 and DE-1400.

15 The first part of this analysis will deal with the claim for the use of
16 water on the Coleman Ranch. The Coleman Ranch was owned by Mr. Shelton's
17 grandfather in the early 1900's and consists of the NW $\frac{1}{4}$, the W $\frac{1}{2}$ NE $\frac{1}{4}$, and the
18 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M. There are a total of 280 acres
19 with 244.6 under irrigation. In addition to the use of Coleman Creek water,
20 214 acres on the ranch are assessed by the Kittitas Reclamation District
21 (KRD). When available, the claimant uses Coleman Creek water to irrigate
22 120.2 acres within the S $\frac{1}{2}$ NW $\frac{1}{4}$, and that portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 14
23 which lies south of Coleman Creek. Water is diverted at three points in the
24 W $\frac{1}{2}$ NE $\frac{1}{4}$ and two points in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 14. The claimant has pastured
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1 up to 600 head of cattle on his property. The cattle drink directly from
2 Coleman Creek, which is non-diversionary stock water use covered by the
3 stock water stipulation discussed on page 4 of this report. The claimant's
4 name is on the list of those who have a non-diversionary stock water right
5 under the stipulation.

6 In 1915 the Kittitas County Superior Court issued the Schnebly v. Huss
7 decree addressing water rights on Coleman Creek, including the area where
8 the claimant's Coleman Ranch is located. Two Class 5 rights, which would
9 have a priority date of 1879 or 1880, were awarded for lands that include
10 the Coleman Ranch. A right was awarded to C. H. and Clara Hartman for the
11 use of 40 inches (0.80 cfs) for the irrigation of 80 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and
12 SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14. A right was awarded to Bertha Hansen for 40 inches to
13 be used to irrigate 80 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14. The
14 second 80 acre right is appurtenant to an area that is 120 acres in size, so
15 there are 40 acres for which there is not a water right. However, there is
16 no one in this proceeding that is asserting a right for the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
17 Section 14; since the claimant is irrigating 40 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, the
18 Referee will conclude that land has historically been irrigated and will
19 consider 20 inches of the right appurtenant to this area. As far as the
20 Referee can determine, there was no right awarded for the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
21 Section 14. Rights were established for the use of 60 inches of water (1.20
22 cfs) for the irrigation of 120 acres in the S $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14.
23 However, of the 120 acres being irrigated by the Sheltons, approximately 7
24 acres appears to be in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, for which there is no evidence a right
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1 was established. Therefore, the Referee concludes that as of 1911, rights
2 existed for the irrigation of 113 acres in the area now owned and irrigated
3 by Mr. Shelton on the Coleman Ranch.

4 On June 26, 1974, William V. Shelton filed RCW Chapter 90.14 Water
5 Right Claim (WRC) No. 122684 for the Coleman Ranch. In that claim,
6 Mr. Shelton asserted an 1885 priority date for the use of 3.2 cfs and 1,120
7 acre-feet from five points of diversion on Coleman Creek for irrigation and
8 stock use on 280 acres. The claimed points of diversion appear to be the
9 same as those identified in the state investigation report and on DE-1452
10 (an aerial photo). The claimed place of use is the W½NE½, the NW¼, and the
11 NW¼SE½ of Section 14, T. 18 N., R. 19 E.W.M.

12 Although Mr. Bain's report suggests that as much as 2225.9 acre-feet
13 per year is needed to irrigate the land, the decree on which Mr. Shelton's
14 right is based does not allow for the use of that much water. The decree
15 limited the water use of one-half inch of water per acre, or 0.01 cfs per
16 acre. If that quantity is available to be diverted the entire irrigation
17 season, only 4 acre-feet per acre could be used, or 452 acre-feet for the
18 113 acres for which there is a right. Mr. Shelton's testimony suggests that
19 prior to KRD coming on line, the portion of Coleman Creek that runs through
20 his property would go dry late in the irrigation season. It is likely that
21 some of the water he diverts toward the end of the irrigation season is
22 return flow from the use of KRD water.

23 The Referee recommends that a right be confirmed on Coleman Creek to
24 Mr. William V. Shelton with a June 30, 1880, priority date for the diversion

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1 of 1.20 cfs and 452 acre-feet for the irrigation of 113 acres and stock
2 watering from April 1 through October 15. The place of use is the S $\frac{1}{4}$ NW $\frac{1}{4}$,
3 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T 18 N., R. 19 E.W.M. The five points of
4 diversion are as follows: No.1: 800 feet south and 1280 feet east from the
5 north quarter corner of Section 14, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section
6 14. No.2: 1100 feet south and 750 feet east from the north quarter corner of
7 Section 14, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14. No.3: 1350 feet north
8 and 200 feet east from the center of Section 14, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$
9 of Section 14. No.4: 1150 feet north and 150 feet west from the center of
10 Section 14, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14. No.5: 650 feet north
11 and 1400 feet east from the west quarter corner of Section 14, being within
12 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14. ALL IN T. 18 N., R. 19 E.W.M.

13 Mr. Shelton identified a spring on the Coleman Ranch that is used for
14 stock water. It is located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T. 18 N., R. 19
15 E.W.M. There is nothing in the record that indicates that there is a
16 diversionary use of the spring. Therefore, the use of this spring is also
17 covered by the non-diversionary stock water stipulation discussed on page 4
18 of this report.

19 The "home place" on Cooke Creek is within the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25,
20 T. 18 N., R. 19 E.W.M. and Government Lots 2 and 3 of Section 30, T. 18 N.,
21 R. 20 E.W.M. It is 160 acres in size with 151 acres irrigated from either
22 Cooke Creek or KRD. Mr. Shelton testified that 151 acres are irrigated from
23 Cooke Creek, however, Mr. Bain's report indicates otherwise. The Bain
24 report states that half of field 2, which is 38.5 acres in size is irrigated
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1 from Cooke Creek and that Cooke Creek provides supplemental water to field
2 3, which is 79.9 acres. Takeout-3 delivers Cooke Creek water and that
3 diversion is located near the northwest corner of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30.
4 This diversion is downstream from Government Lot 2 of Section 30 and could
5 not be used to deliver water by gravity flow to that portion of the
6 claimant's property. Mr. Bain's report indicates that the flow in the
7 channel of Cooke Creek from which Mr. Shelton diverts declines over the
8 summer, with a springtime high of slightly more than 1.0 cubic foot per
9 second. He measured the diversion in June of 1990 at 0.6 cfs and in August
10 at 0.20 cfs. On page 4 of the report, Mr. Bain references a field 4, but
11 the map in the report only shows three fields. Based on Mr. Bain's report,
12 the Referee concludes that 100 acres are being irrigated with water diverted
13 from Cooke Creek. KRD water is also applied to these lands. The land is
14 rill irrigated and has been planted in timothy hay, mixed hay, grain and
15 pasture. Mr. Shelton has livestock on this part of his property and the
16 number varies up to a maximum of 450 head of cattle.

17 Two water rights were awarded for this property in the Anderson decree
18 that resulted from the prior adjudication of Cooke Creek. Certificate No.
19 196, with a priority date of 1885, authorized the diversion of 1.60 cubic
20 feet per second for the irrigation of 80 acres in the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25,
21 T. 18 N., R. 19 E.W.M. The authorized points of diversion include a point
22 in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30. Certificate No. 197, also with a priority date
23 of 1885, authorized the diversion of 1.42 cubic feet per second for the
24 irrigation of 71 acres in Government Lots 2 and 3 of Section 30, T. 18 N.,

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1 R. 20 E.W.M. This certificate also authorizes a diversion in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
2 Section 30. The diversion currently used is very near the line between the
3 NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 30. The Referee concludes that the diversion
4 currently being used is the same diversion authorized in the certificates.

5 Although the two certificates jointly authorize the diversion of 3.02
6 cubic feet per second and the irrigation of 151 acres, it is clear from
7 Mr. Bain's report that the continued beneficial use under these rights is
8 less than that. The Referee concludes that the beneficial use, which is the
9 extent and measure of a water right, that has continued is 1.25 cubic feet
10 per second for the irrigation of 100 acres in the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 and
11 Government Lot 3 of Section 30. That is the extent of the right that can be
12 confirmed. Mr. Bain's report indicates that 10 acre-feet per year per acre
13 would be needed to grow commercial timothy hay on this property. Much of
14 the water used on this property comes from KRD. The Referee can only
15 consider the amount of water that has been used from Cooke Creek in
16 determining the maximum annual quantity of water. Noting that the
17 certificates authorize water use from May 1 through September 15, if 1.25
18 cfs is available that entire time, no more than 341.55 acre-feet can be
19 diverted from Cooke Creek.

20 Therefore, the Referee recommends that a right be confirmed with a
21 June 30, 1885, date of priority for the diversion of 1.25 cubic feet per
22 second, 341.55 acre-feet per year from Cooke Creek for the irrigation of 100
23 acres and stock watering in the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 and Government Lot 3 of
24 Section 30.

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1 Mr. Shelton's testimony was that the livestock drink directly from
2 Cooke Creek and that use is also covered by the stock water stipulation on
3 page 4 of this report.

4 COURT CLAIM NO. 00647 -- E. Fenn Shrader
5 & Mona Shrader
6 Steven J. Hart

7 Court Claim No. 00647 asserts a right to use water from two unnamed
8 springs for irrigation and stock watering. E. Fenn Shrader testified at the
9 evidentiary hearing and Attorney Richard T. Cole appeared on behalf of Ahmed
10 Shaar, who has an interest in the land.

11 The property described in the claim lies in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and a portion of
12 the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, T. 17 N., R. 20 E.W.M. A right is being asserted
13 to irrigate approximately 50 acres and water livestock. Mr. Shrader
14 suggested that there are four springs in the southeast corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$
15 of Section 29 that flow in a channel to his property. Two springs are
16 indicated on SE-2, one on the Floan property and the second on the Busch
17 property near the northeast corner of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29. Mr. Shrader
18 did not provide any specifics about the spring characteristics, but
19 estimated that they flow about 1 cubic foot per second. The primary source
20 of irrigation water for the property is Kittitas Reclamation District (KRD),
21 whose Highline canal is less than half mile east of Section 29. Mr. Shrader
22 acknowledged that the flow in the springs increases when the Highline canal
23 is carrying water, but stressed the wintertime flow from the springs as
24 being a necessity for stock watering. The outflow from the springs is
25 carried in a channel due west and is then flumed immediately before it

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1 reaches the Shrader property. SE-2 indicates that a ditch continues along
2 the Shrader's south property line, while a natural drainage runs to the
3 northwest forming the easterly property line. That suggests that as the
4 spring water enters the Shrader's property it is conveyed outside the
5 natural channel. The Shrader's property is rill irrigated.

6 Mr. Shrader conveyed in his testimony conversations he had with the
7 prior owner of the property, Andrew Hamilton. The information Mr. Shrader
8 shared during the hearing suggests that the Hamiltons homesteaded the
9 property that is now owned by Mr. Shrader. That, however is not the case.
10 The land was originally conveyed by the Federal government to Northern
11 Pacific Railroad, who sold it to Frank Wilkins. The land changed hands many
12 times between 1892 and 1930, when it was acquired by Leon Hamilton. The
13 Hamilton family also acquired land in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 29 in 1939.
14 Andrew Hamilton told Mr. Shrader that the easterly 80 acres, which would be
15 the N $\frac{1}{2}$ NE $\frac{1}{4}$, was in sagebrush when his family acquired it. Mr. Shrader
16 believed that the land he owns was not in sagebrush when the Hamiltons
17 acquired it, however, the record is not clear in that regard. The Hamilton
18 family did not acquire the land until 1930 and due to the numerous times the
19 land changed hands prior to their owning it, the Referee will not conclude
20 without evidence otherwise that the land was irrigated from the springs
21 prior to when the Hamiltons acquired it. In fact, the RCW 90.14 claim filed
22 by Andrew Hamilton for the spring(s) in the southeast corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$
23 (Water Right Claim No. 039603) states that 1946 was the first year the
24 spring was used. Although the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 29 is riparian to the spring

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1 and when the land first separated from Federal ownership all of the N½N½ was
2 under one ownership, that changed in 1892. At that time the railroad sold
3 the N½NW½ to Frank Wilkins, severing it from the lands on which the spring
4 is located. In order for there to be a right under the Riparian Doctrine,
5 use of the spring had to have been initiated prior to the lands separating
6 in 1892. There is no evidence that occurred. A right could have been
7 established under the Prior Appropriation Doctrine if there is evidence to
8 show that water was first used prior to June 6, 1917. That evidence is also
9 lacking.

10 Additionally, during irrigation season much of the water in the springs
11 and resultant stream is seepage water from the KRD canal. Water rights
12 cannot be established for use of this water, see discussion of imported
13 water on page 8 of this report. The Referee concludes that a diversionary
14 water right cannot be confirmed for use of the spring(s). The claimant can
15 continue to use intercepted seepage water, but KRD cannot be compelled to
16 continue to allow the seepage from its canal. To the extent there is
17 natural water emanating from the spring, livestock can drink directly from
18 the spring and/or stream that is fed by the stream. The non-diversionary
19 stock water stipulation discussed on page 4 of this report would apply and
20 the Shraders are on the list of claimants with a non-diversionary stock
21 water right.

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1 COURT CLAIM NO. 01941 -- Jack G. Sikes
2 & Ada M. Sikes
3 Larry Hansen

4 Court Claim No. 01941 was filed asserting a right to use waters from
5 Naneum Creek and Coleman Creek. Naneum Creek lies in Subbasin No. 9 and the
6 claim for use of that water was addressed in the Report of Referee for
7 Subbasin No. 9 that was filed on June 30, 2000. Only the claim to waters
8 from Coleman Creek will be addressed herein. On February 2, 1989, Larry
9 Hansen was joined to the claim. Mr. Hansen, who is represented by Attorney
10 Richard T. Cole, testified at the evidentiary hearing. Ron Poulsen, who
11 leases and farms the land also testified at the hearing.

12 The land that is irrigated from Coleman Creek is the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
13 Section 17, T. 17 N., R. 19 E.W.M. Water is diverted from Coleman Creek
14 approximately 500 feet north of the east quarter corner of Section 17 and
15 carried in an underground pipe to the center of the claimant's north
16 property line. From there open ditches carry the water along the north
17 property line and southerly into the center of the land. The land is
18 planted in hay with a grain rotation and sheep are sometimes pastured in the
19 fall to eat the stubble. The sheep drink directly from Coleman Creek or a
20 drain that runs through the property. Non-diversionary stock watering is
21 covered by the stock water stipulation discussed on page 4 of this report.
22 Mr. Poulsen estimated that 2 cubic feet per second is diverted from the
23 creek and between 9 and 10 acre-feet per year is used to irrigate the land.
24 He did not testify specifically about his irrigation practice or
25 measuring the diversion.

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1 Water Right Claim No. 065525 was filed by Jack Sikes pursuant to the
2 requirements of RCW 90.14. It asserts a right to divert 0.02 cubic foot per
3 second, 4 acre-feet per acre for the irrigation of 40 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
4 Section 17. The Referee concludes that the intent of Mr. Sikes was to
5 preserve a right to divert 0.80 cfs, 160 acre-feet per year and that he
6 substantially complied with the requirements of RCW 90.14. The described
7 point of diversion is approximately the same location as the currently
8 exercised diversion.

9 The claimant is asserting a priority date of 1881. This assertion
10 appears to be based on a Receiver's Receipt that issued to James W.
11 Montgomery on November 11, 1886. The claimant is suggesting that a date
12 five years prior to the Receiver's Receipt would reflect when Mr. Montgomery
13 settled on the land, which would be the first steps to sever the land from
14 Federal ownership. The Court has ruled that there needs to be some evidence
15 of when that settlement occurred in order to use that as the priority date
16 for a Riparian water right. More significantly, James W. Montgomery did not
17 settle on the lands for which a right to use Coleman Creek water is
18 asserted. He settled on the N $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, land also owned by Mr.
19 Hansen, but on which Naneum Creek water is used. The Receiver's Receipt
20 that is in the record is for the N $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, not the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
21 Section 17. According to Court Claim No. 01941 and the Claim Summary
22 entered as Exhibit DE-1513, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17 was part of land
23 conveyed by the Federal government to Northern Pacific Railroad. DE-420 is
24 a copy of a portion of the patent that issued to Northern Pacific Railroad,
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1 however, the pages provided are for T. 17 N., R. 17 E.W.M., T. 18 N.,
2 R. 17 E.W.M., T. 21 N., R. 21 E.W.M. and T. 24 N., R. 21 E.W.M., which, of
3 course, do not include the claimant's land. Northern Pacific Railroad
4 conveyed the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17 to Walter Bull in 1887 and a copy of that
5 deed is in the record as DE-417. Sasie F. Montgomery acquired the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
6 Section 17 from the Scottish American Mortgage Co. in 1900. There is no
7 mention of water rights in either the deed to Sasie F. Montgomery or the
8 deed to Walter Bull.

9 Mr. Poulsen testified that he grew up near this property and recalls
10 that it always has been irrigated. Mr. Poulsen did not indicate how far
11 back in time his memory of the land goes. He also testified that Mr. Hansen
12 owns shares of Ellensburg Water Company (EWC) for the 40 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$
13 of Section 17, although he did not testify to using EWC water on the
14 property. That question was not asked.

15 In order for there to be a water right for the property under the
16 Riparian Doctrine, there must be evidence that water from Coleman Creek was
17 first used prior to December 31, 1932. Since the land has shares from EWC,
18 the evidence must be sufficient to show that Coleman Creek water was being
19 used, not just that the land was being irrigated. Additional information
20 about the quantity of water actually used to irrigate the land is also
21 needed. Mr. Poulsen testified generally about how much he thinks he uses,
22 but there was no indication that he had actually measured the quantity of
23 water diverted from the creek. Testimony about his irrigation practice
24 would also be helpful.

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1 Due to the lack of evidence to show that a water right was established
2 through beneficial use of Coleman Creek water prior to December 31, 1932,
3 the Referee cannot recommend that a water right be confirmed.

COURT CLAIM NO. 00421 -- Gladys Morrison Sisk
Russell Longacre

Court Claim No. 00421 was filed by Gladys Morrison Sisk. On October 9, 1991, George and Maxine Johnston were joined to the claim and on April 9, 1998, Russell Longacre was substituted for the Johnstons. George Johnston testified at the evidentiary hearing.

Court Claim No. 00421 asserted a right to irrigate and provide stock water from Cooke Creek. The claim indicated that the original right was for 40 acres, but Ms. Sisk was claiming a right to irrigate 3 acres in a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 17 N., R. 19 E.W.M. Mr. Johnston testified that he has owned 18 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1 since 1972 and has never diverted water from Cooke Creek. His irrigation water is provided by the Kittitas Reclamation District and that water comes into his property at its northeast corner. Cooke Creek flows along the westerly boundary of the property. Mr. Johnston did assert a right to use Cooke Creek for non-diversionary stock watering. He has up to 30 head of cattle that drink directly from Cooke Creek. This type of water use is covered by the stock water stipulation discussed on page 4 of this report. As successor to Mr. Johnston, Russell Longacre is on the list of those claimants that have a non-diversionary stock water right under the stipulation.

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1 The Referee notes that Certificate No. 191 issued as a result of the
2 earlier adjudication of Cooke Creek. With a priority date of 1878, it
3 authorized the diversion of 0.70 cfs from Cooke Creek for the irrigation of
4 35 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1. Since water has not been diverted from
5 Cooke Creek since 1972, the Referee finds that any portion of this right
6 that may have been appurtenant to the Johnston/Longacre land has
7 relinquished as a result of more than five successive years of nonuse, see
8 RCW 90.14.160.

9 COURT CLAIM NO. 01134 -- Danny R. Smith
10 & Maria Smith

11 Willard and Donna Long originally filed Court Claim No. 01134 asserting
12 a right to use Park Creek. On October 8, 1991, Danny R. and Maria Smith were
13 substituted for the Longs. Mr. Smith testified at the evidentiary hearing.

14 The Smiths own approximately five acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9,
15 T. 17 N., R. 20 E.W.M. that they acquired in 1982. They are asserting a
16 right to irrigate their land with water diverted from Park Creek. At the
17 time of the hearing none of their land was being irrigated, although a one
18 acre garden had been irrigated by the previous owners. Mr. Smith testified
19 to his intent to clear sagebrush off of the land and seed it for pasture to
20 raise livestock. Mr. Smith referred to the testimony and evidence presented
21 by Alice Junkin, who owns adjoining land that was also acquired from the
22 Longs. A common irrigation system will be used on the two properties.

23 Mrs. Junkin testified that she and her husband acquired their property
24 in 1979 and the irrigation system was in place at that time. She understood
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1 that Mr. Long, from whom they bought, had installed the system in the early
2 1970's. The record indicates that Mr. Long owned the property from 1977 to
3 1979.

4 Several water right claims (WRC) were filed pursuant to RCW 90.14
5 describing lands that include the claimant's property. WRC No. 152498 was
6 filed by Willard Long asserting a right to use 450 gallons per minute from
7 Park Creek for the planned irrigation of 25 acres in a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$
8 of Section 9 that includes the Smith property. WRC No. 142087 was filed by
9 John L. and Laura D. Miller claiming a right to divert 200 gallons per
10 minute from Park Creek for the irrigation of 150 acres in the E $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$,
11 E $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, that portion of the E $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ lying north of the railroad line in
12 Section 8 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9. The Miller also owned the
13 NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9.

14 All of Section 9, T. 17 N., R. 20 E.W.M. was conveyed by the Federal
15 Government to Northern Pacific Railroad, with a patent issuing in 1895. The
16 railroad continued to own at least the NW $\frac{1}{4}$ of Section 9 until 1942, when the
17 NW $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{4}$ NW $\frac{1}{4}$ was sold to Claude Sutherland. The NW $\frac{1}{4}$ of Section 9 is
18 riparian to Park Creek. There has been no evidence of historic water use.
19 Since the railroad continued to own the land until the 1940's, there may not
20 have been any water use until after it was sold into private ownership.
21 Additionally, Mrs. Junkin testified that the irrigation system she uses was
22 installed in the mid-1970's. There was no testimony that this system
23 replaced an existing gravity flow system that might have been constructed

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1 prior to December 31, 1932, thereby potentially establishing a right under
2 the Riparian Doctrine.

3 Mr. Smith suggests that the paperwork submitted as exhibit DE-1570
4 shows that his land has a water right, which he intends to maintain.
5 However, the Referee does not reach the same conclusion upon reading the
6 paperwork. The Referee suspects Mr. Smith is relying on his statutory
7 warranty deed that says "together with any and all water rights, if any, and
8 irrigation ditches appurtenant thereto." This language is standard on many
9 deeds and the key words are "if any". The deed does not say that the water
10 rights exist, just that if they do, they are conveyed with the land. Most
11 of the Smith property had not even been cleared at the time of the
12 evidentiary hearing, so it was impossible for there to be a water right,
13 unless Mr. Smith had obtain a water right permit under the process set forth
14 in RCW 90.03. There is no indication that occurred. If evidence is
15 produced to show that the one acre that had been irrigated was first
16 irrigated prior to December 31, 1932, then there might be an existing water
17 right under the Riparian Doctrine.

18 Due to the lack of evidence to show that a water right was legally
19 established for this land, the Referee cannot recommend that a right be
20 confirmed.

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1 COURT CLAIM NO. 01448 -- Trust of Annine K. Sorenson
2 Sweet Grass Investments, LLC

3 The Trust of Annine K. Sorenson filed Court Claim No. 01448 asserting a
4 right to use waters from Park Creek and Badger Pocket Creek. The trust is
5 represented by Attorney John P. Gilreath, and Emil Sorenson, Annine K.
6 Sorenson's son, testified at the evidentiary hearing. On November 30, 1993,
7 Paul and Ursula Tueffers were joined to the claim and on January 15, 1999,
8 Sweet Grass Investments, LLC was substituted for the Tueffers.

9 The claimants' property lies in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 29, T. 17 N.,
10 R. 19 E.W.M. and is riparian to what is identified as Cherry Creek on SE-2
11 (the state's map exhibit). Cherry Creek is the name shown below the
12 confluence of Cooke, Park and Caribou Creeks. One of the diversions used by
13 the claimants is on the portion of the creek described on SE-2 as Cherry
14 Creek. That diversion is described as TO-3, and is located about 500 feet
15 south of the northeast corner of Section 29. This diversion is used to
16 irrigate a 32 acre hay field and an 11 acre pasture that lie in that portion
17 of the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 29 southeast of Cherry Creek. TO-1 is located on
18 Park Creek, in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, below the confluence with Caribou
19 Creek. It is used to irrigate 7 acres of pasture and an 11 acre hay field
20 lying northwest of Cherry Creek. A third diversion (TO-2) is on Badger
21 Pocket Creek, approximately 750 feet west of the southeast corner of
22 Section 21 and is used to irrigate 13 acres of pasture in the southeast
23 corner of the claimant's property. All of the land is rill irrigated,
24 primarily with gated pipe. A combination of open dirt and concrete lined

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1 ditches and buried pipeline carry the diverted water to the property. Mr.
2 Sorenson did not testify to how much water is diverted at each point of
3 diversion. He asked the Referee to refer to the engineering report prepared
4 by Richard C. Bain for the neighboring Eric Moe property to determine the
5 appropriate water duty for the property. That report indicates that 8.9
6 acre-feet per year for each irrigated acre is necessary. A herd of between
7 2,000 to 3,000 head of sheep graze on the property at certain times during
8 the year. Mr. Sorenson testified that 20 acre-feet per year is sufficient
9 for stock watering. However, he did not testify concerning the nature of
10 the stock watering. The land is riparian to Cherry Creek and the livestock
11 could drink directly from the creek, which would be a non-diversionary stock
12 water use covered by the stock water stipulation. The Referee suspects that
13 during irrigation season the sheep also have access to the open irrigation
14 ditches and drink from the ditches when water is available. There was no
15 testimony that would indicate that water is diverted outside of the
16 irrigation season for stock watering. Mr. Sorenson testified that he
17 irrigates from March 15 through October 15.

18 Three water right claims (WRC) were filed pursuant to RCW 90.14 for
19 this property. WRC No. 144976 asserts a right to use Wipple Creek for the
20 irrigation of 13 acres in the E½NE¼ of Section 29. The point of diversion
21 that is described is on the west boundary line of the NE½NW¼ of Section 28,
22 which is where the water diverted from Badger Pocket Creek is taken from an
23 open ditch and piped to the claimant's property. Although the claim
24 described where water is taken from the ditch, rather than from the creek,

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1 the Referee concludes that the claim substantially complies with the
2 requirements of RCW 90.14. WRC No. 144977 asserts a right to use water from
3 Park Creek for the irrigation of 50 acres in the E½NE½ of Section 29. The
4 point of diversion described is in the E½NE½ of Section 29, with no specific
5 point being described. WRC No. 144978 asserts a right to use Park Creek for
6 the irrigation of 11 acres in the E½NE½ of Section 29. The point of
7 diversion is described as being within Section 21, near the center. None of
8 the claims describe the quantity of water being diverted in a meaningful
9 way. The Referee concludes that WRC No. 144977 and 144978 substantially
10 comply with RCW 90.14 for the claims on Park Creek.

11 The only information in the record about the history of this land is
12 that Patrick Lynch received a patent for the land on July 1, 1874. The copy
13 of the patent that is in the record states that other lands were included in
14 the patent, but they were not described. Counsel asserts that the priority
15 date should be at least 1869, as Mr. Lynch had to settle on the land three
16 to five years prior to receiving the patent. The Court in this proceeding
17 has consistently ruled that the Referee must use the evidence in the record
18 and not presume that the land was settled a certain number of years prior to
19 the patent issuing, see Court's Memorandum Opinion Re: Priority Date -- Date
20 of Patent or Date of Entry, filed January 19, 1995.

21 The claimant has not provided any information or evidence to show when
22 this land was first irrigated. All of the testimony was concerning the
23 irrigation practice at the time of the hearing. In order to recommend that
24 a water right be confirmed for Park/Cherry Creek there must be evidence that
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1 water was first used prior to December 31, 1932, which is when water use had
2 to have begun in order for there to be a right under the Riparian Doctrine.
3 The same evidence of historic water use is lacking for Badger Pocket Creek.
4 Additionally, the characteristics of the water in Badger Pocket Creek needs
5 to be addressed. The Referee notes that SE-2 shows this creek beginning
6 immediately below the Cascade Canal, about three miles east of the
7 claimant's diversion. This creek does not have its headwaters in the
8 mountainous area of Kittitas County, where melting snowpack and spring rains
9 provide natural creek flow. This creek solely flows in the more arid
10 portion of the county, completely below the Cascade Canal and Town Ditch.
11 In order to confirm a water right for this source, the Referee needs
12 evidence that the flow in the creek is not simply return flows and seepage
13 water from those two canals and/or the Kittitas Reclamation District.

14 The Referee at this time cannot recommend that water rights be
15 confirmed under Court Claim No. 01448.

16 COURT CLAIM NO. 01334 -- Ellen Sorenson
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18 Mrs. Sorenson filed a claim with the Court asserting a right to use
19 water from Caribou Creek. Mrs. Sorenson, who is represented by Attorney
20 Vernon E. Fowler, Jr., testified at the evidentiary hearing, along with her
21 son Kenneth Sorenson. Additionally, an engineering report prepared by
22 Richard C. Bain, Jr., a consulting engineer hired by Mrs. Sorenson, was
23 entered as written expert testimony and given exhibit No. DE-1386.

24 Mrs. Sorenson's land lies in the E½SW¼ and that portion of the SE¼
25 lying north and west of Caribou Creek in Section 11, T. 17 N., R. 19 E.W.M.

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1 There are 131 acres irrigated with water diverted from Caribou Creek. The
2 main diversion is at the northeast corner of the property and feeds a
3 concrete ditch that follows the north line of the fields. Mr. Bain measured
4 this diversion at 6.28 cubic feet per second. Gated cross pipe is used to
5 rill irrigate the fields. The crops that are grown are timothy hay for five
6 years, then one year of wheat followed by two years of corn and then the
7 rotation is repeated. When hay and corn are being grown only the previously
8 mentioned diversion and delivery system are used. When the hay is being
9 reseeded and when wheat is grown, a second diversion about 1,000 feet
10 downstream of the first is also used along with a cross ditch. Mr. Bain's
11 report indicates that 2 cubic feet per second is diverted at this point.
12 Based on the irrigation practice, Mr. Bain concluded that 16.9 acre-feet per
13 acre irrigated is used from the creek for a total of 2124 acre-feet per
14 year. Mr. Sorenson testified that water delivered by Cascade Irrigation
15 District (CID) is also used on the farm. Mr. Bain's report did not mention
16 the use of CID water. A herd of between 2,000 and 3,000 sheep graze the
17 stubble in the fall and winter. They generally drink directly from the
18 creek. Non-diversionary stock watering is covered by the stock water
19 stipulation discussed on page 4 of this report and the claimant's name shall
20 be placed on the list of those who have a right under the stipulation.

21 Three water right claims (WRC) were filed by John R. Clerf, who owned
22 the property during the registration period set forth in RCW 90.14. WRC No.
23 154219 asserted a right to use 3 cfs, 200 acre-feet per year from Caribou
24 Creek for the irrigation of 40 acres in the portion of the SE $\frac{1}{4}$ of Section 11

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1 north of Caribou Creek. The point of diversion described is the location of
2 the upper most diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11. WRC No. 154220 also
3 asserts a right to divert 3 cfs, 200 acre-feet per year from Caribou Creek
4 for the irrigation of 40 acres in the portion of the SE $\frac{1}{4}$ of Section 11 north
5 of Caribou Creek. The lower diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 is
6 described. Each claim asserts a right to irrigate 40 acres. Review of
7 State's Map Exhibit SE-2 leads the Referee to conclude that there is a total
8 of 40 acres being irrigated in that portion of the SE $\frac{1}{4}$ of Section 11 lying
9 north of Caribou Creek. WRC No. 154218 asserts a right to use 3 cfs, 350
10 acre-feet per year from Cooke Creek for the irrigation of 70 acres in the
11 E $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11. The point of diversion is described as being in the N $\frac{1}{4}$
12 of Section 11, at the approximate location of a diversion to a ditch that
13 could have carried Cooke Creek water to the claimant's land.

14 Additionally, Certificate No. 206 from the previous adjudication of
15 Cooke Creek authorized use of water on land that includes a portion of the
16 claimant's property. With an 1872 date of priority, it authorized the
17 diversion of 2.40 cubic feet per second from Cooke Creek for the irrigation
18 of 120 acres in the N $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11. The authorized
19 diversion was described as being in the NE $\frac{1}{4}$ of Section 11. Mrs. Sorenson is
20 not asserting a right to use waters from Cooke Creek and there was no
21 testimony of past use of water from Cooke Creek on her property. The
22 Referee notes that the claims filed pursuant to RCW 90.14 only assert a
23 right to irrigate land in the SE $\frac{1}{4}$ of Section 11 north of Caribou Creek.
24 There was no claim filed asserting a right to use water from Caribou Creek

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1 in the E $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11. Failure to file a claim waives and relinquishes
2 any right that may have existed, RCW 90.14.071.

3 Mrs. Sorenson grew up near this farm and passed it on her way to school
4 in the 1930's. She recalls it being farmed at that time with hay, pasture
5 and grain crops being grown. She and her husband bought it in the
6 mid-1970's. According to the documents in the record, much of the land was
7 originally settled by Charles Wheeler in the early 1870's. The claimants
8 cite to Mary Clerf v. Robert I. Scammon in support of their claim. The
9 Findings of Fact that preceded the decree show that Charles Wheeler settled
10 on the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 in 1870 and eventually received a
11 patent for the land. He also settled on the N $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11
12 in 1871. The Court in Clerf v. Scammon found that a right for the use of 40
13 inches was appurtenant to the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 and that a
14 right to 80 inches was appurtenant to the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, the N $\frac{1}{4}$ SE $\frac{1}{4}$
15 and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11. It appears that the Court awarded rights to
16 one-half inch of water for each acre. Since Mrs. Sorenson owns and is
17 irrigating 40 acres in the portion of the SE $\frac{1}{4}$ of Section 11 that she owns, a
18 right for 20 inches of water, or 0.40 cubic foot per second would be
19 appurtenant to her land. Although it is apparent that an additional 20
20 inches of water was awarded for the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, since no RCW 90.14
21 claim was filed for this land, any right that may have existed was waived
22 and relinquished. The claimant also owns and is irrigating most of the
23 NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11. This land was not identified as having a right in the
24 Clerf v. Scammon decree and the documents filed do not show that water

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1 rights were established for use of Caribou Creek water through beneficial
2 use of water prior to June 6, 1917 (this particular piece is not riparian to
3 the creek nor has there been any evidence presented to show that it once was
4 part of a larger piece that was riparian).

5 Although Mr. Bain's report indicates that over 8 cfs is currently being
6 used to irrigate the land, the evidence in the record only supports a
7 conclusion that rights were established for use of 0.40 cfs. A maximum of
8 158.4 acre-feet per year can be used during the irrigation season if 0.40
9 cfs is diverted continuously.

10 The Referee recommends that a right be confirmed with a June 30, 1871,
11 date of priority for the diversion of 0.40 cubic foot per second 158.4
12 acre-feet per year from Caribou Creek for the irrigation of 40 acres in that
13 portion of the SE $\frac{1}{4}$ of Section 11 lying northwest of Caribou Creek.

14 COURT CLAIM NO. 01307 -- Kenneth O. Sorenson
15 & Carolyn Sorenson

16 The Sorensens are asserting rights to use water from the combined flow
17 of Brush and Park Creeks and Badger Pocket Creek for irrigation and stock
18 watering. They are represented by Attorney Vernon E. Fowler, Jr., and Mr.
19 Sorenson testified at the evidentiary hearing. An engineering report
20 prepared by Richard C. Bain, Jr., was entered as direct expert testimony and
21 marked as exhibit DE-1385.

22 The Sorensens own slightly more than 200 acres in the S $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
23 Section 21, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, all in T. 17 N., R. 19 E.W.M.
24 and irrigate approximately 182 acres with water diverted from three creeks.

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1 The primary crop grown is timothy hay, which is rill irrigated using cement
2 ditches and gated pipe. After the final cutting of hay in the fall, a large
3 herd of sheep, around 2,000 animals in size, graze the stubble. Although
4 the sheep have access to the creeks that flow through the claimants'
5 property, they generally divert water for the stock in order to keep most of
6 the sheep out of the creeks. There was no indication of what instantaneous
7 quantity is diverted from the creek for stock watering, just that 5
8 acre-feet per year is needed for that purpose.

9 Two diversions from Park Creek are used to irrigate the claimants'
10 land. TO-1 is located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 and is used to irrigate
11 62.3 acres in the S $\frac{1}{2}$ of Section 21. Mr. Bain measured this diversion at
12 3.17 cubic feet per second in August of 1990. TO-4 on Park Creek, located
13 in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, is used to irrigate 35 acres, in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of
14 Section 21 (Mr. Bain's report indicated 24.4 acres were irrigated from TO-4,
15 but Mr. Sorenson testified to 35 acres, which is also indicated in the
16 State's Investigation Report). Mr. Bain measured this diversion at 1.59 cfs
17 in August of 1990 and a right is being asserted for using 2.0 cfs. A two
18 acre field in the northwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 is also
19 irrigated from Park Creek. TO-6, which is located in the northeast corner
20 of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 serves this field. Mr. Bain's report indicates
21 that a right is asserted to divert 3.7 cfs from this point, which appears to
22 the Referee to be an unreasonably high quantity for 2 acres. There was no
23 explanation of the basis for using this quantity of water to irrigate the 2
24 acres.

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1 Badger Pocket Creek, which Mr. Bain refers to as Johnson Drain, is used
2 to irrigate 80.5 acres in the N $\frac{1}{4}$ of Section 28. TO-2 is located north of
3 Badger Pocket Creek in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, just north of the south
4 section line of Section 21. It is used to irrigate 25.7 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$
5 and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 lying north of Badger Pocket Creek. Mr. Bain
6 measured TO-2 at 2.69 cfs in August of 1990. TO-3 is located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$
7 of Section 28, on the south side of Badger Pocket Creek and is used to
8 irrigate 54.8 acres lying south of the creek in the W $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and
9 NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28. Mr. Bain measured TO-3 at 5.40 cfs in August of
10 1990.

11 Although not described in Court Claim No. 01307, the Sorensons are also
12 asserting a right to irrigate 14.2 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 with
13 water diverted from Cooke Creek. The diversion is TO-5 located near the
14 center of Section 21. Mr. Bain measured this diversion at 1.57 cfs in
15 August of 1990.

16 Based on the measurements he took in 1990 and the Sorensons' irrigation
17 practice, Mr. Bain determined that between 16.1 and 16.8 acre-feet per year
18 was used to irrigate the various fields, with an average use of 16.6
19 acre-feet per year per acre irrigated. A right is being asserted to use
20 16.6 acre-feet per acre per year.

21 Several water right claims were filed pursuant to RCW 90.14 asserting
22 rights for the Sorenson property. Water Right Claim (WRC) No. 062723 was
23 filed by Mrs. Jo. O. Sorenson and asserts a right to use 4 cfs, 500
24 acre-feet per year from the combined flow of Park and Brush Creek for the

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1 irrigation of 100 acres in part of the S $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, part of the
2 NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28. The point of diversion described is in the
3 NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21. TO-1 (takeout) is located near the northeast
4 corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21. WRC No. 062718 was also filed on the
5 combined flow of Park and Brush Creek. It asserts a right to divert 2 cfs,
6 75 acre-feet per year for the irrigation of 15 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
7 Section 21. The point of diversion described is in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
8 Section 22, which is the location of TO-4. WRC No. 062724 asserts a right
9 to divert 6 cfs, 500 acre-feet per year from Badger Pocket Creek for the
10 irrigation of 100 acres in part of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, the
11 NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28. The point of diversion is
12 described as being in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21. TO-2 and TO-3 are both
13 located at this point, one diverts into a ditch on the north side of the
14 creek and the other diverts into a ditch on the south side of the creek.
15 The Referee concludes that the water right claim was intended to cover
16 diversions into both ditches.

17 There was no water right claim found asserting a right to Cooke Creek.
18 However, Cooke Creek was adjudicated in 1921 with the existing rights
19 summarized in the decree that was entered on August 13, 1921, (State of
20 Washington v. Anderson, et. al.). Certificates were issued for the rights
21 contained in the decree. The decree did not award any rights for the
22 claimant's property. The Referee considers that adjudication to have
23 determined all of the valid rights to use Cooke Creek water. Therefore, the
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1 Referee cannot recommend that a water right be confirmed under Court Claim
2 No. 01307 for use of Cooke Creek.

3 The land described in Court Claim No. 01307 was homesteaded by three
4 individuals. Cornelius Hackshaw received a patent dated June 5, 1873, for
5 the S $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T. 17 N., R. 19 E.W.M. He sold
6 all of this land, including other land he owned to John McEwen in 1872,
7 prior to the patent issuing. A patent issued to William Jordin on June 13,
8 1876, for the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 21, the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28.
9 This land was then conveyed to John McEwen. Edwin B. Emerson received a
10 patent on June 30, 1892, for lands that included the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28.
11 The NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28 stayed in the Emerson family until 1921, when it
12 was sold to Jens and Sina Sorenson. Kenneth Sorenson appears to own between
13 6 and 7 acres in that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28 lying northwest of
14 an irrigation ditch.

15 Neighboring landowner, Paul Sorenson, entered into the record exhibits
16 DE-1367 and DE-1368, which was the complaint and decree in Olmstead v. Hays,
17 et al.. This case involved several parties that were using Park and Brushy
18 Creek. The decree awarded 4/5 of the flow in Brush Creek to John Holtz and
19 the remaining flow to J. D. Olmstead and John H. McEwen for lands in
20 Section 22 and the E $\frac{1}{2}$ of Section 21. It also gave half of the flow in Park
21 Creek to Olmstead and half to McEwen for the same lands. At the time of
22 this case, John McEwen owned the Sorenson land in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 21.
23 It would be reasonable to conclude that this land would enjoy a portion of
24 the right awarded to McEwen in that decree. However, the decree does not

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1 quantify that right. There is no discussion of how much water McEwen had a
2 right to use or how many acres were being irrigated. The decree awards
3 McEwen a percentage of the flow in the creeks, but there is no evidence of
4 the quantity of water flowing in the creeks at that time. The Referee
5 believes that the flow in Park Creek today is greatly influenced by return
6 flow waters that are the result of irrigation with water delivered by the
7 Kittitas Reclamation District, Cascade Irrigation District, and Ellensburg
8 Water Company. This belief is supported by an exhibit also put in the
9 record by Paul Sorenson, Exhibit No. DE-1372, which is a complaint filed in
10 1919 against Joseph Preece concerning his use of water. Joseph Preece was a
11 successor to J. D. Olmstead for lands in Section 22. The complaint was
12 filed by George and Rebecca Donald and George and Maymie Ferguson seeking a
13 order against the defendants use of water from Brush or Cherry Creek.
14 Unfortunately, the resolution of this complaint is not in the record.
15 However, along with the complaint is Joseph Preece's answer and affidavits
16 in support and in defense of the complaint. The answer by Preece suggests
17 that the only water to which he had a right to use was that delivered by
18 Town Ditch and that the only water in the creek was water being placed in
19 the creek from Town Ditch or seepage and return flow water from that ditch
20 and the Cascade Canal. Affidavits filed by Intervenor George W. Reed and
21 John O. Sorenson support that assertion.

22 Most of the decrees addressing water rights established in the late
23 1800's for this area awarded either one-half or one inch of water for each
24 acre irrigated (0.01 to 0.02 cfs). The claimant is asserting a right to use
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1 considerably more water than that. Since the claimant did not provide any
2 evidence to show how much water was being used when the water right was
3 established, nor is there any information in the record to allow for a
4 determination of the return flow contribution to the creek, the Referee will
5 recommend that a quantity of water consistent with the prior decrees be
6 awarded. Water rights cannot be established for use of return flow water
7 that is the result of the use of imported or foreign water, see page 8 for a
8 further discussion of this issue.

9 The Referee recommends that a right be confirmed under Court Claim No.
10 01307 with a June 30, 1872, date of priority for the diversion of 1.5 cubic
11 feet per second, 300 acre-feet per year for the irrigation of 75 acres in
12 the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 21. Two points of diversion shall be authorized, one
13 in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 and one in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22.

14 The Referee has found no historical information about Badger Pocket
15 Creek, which is also called Johnson Drain. In light of it being known as
16 Johnson Drain, the Referee must consider whether it is a naturally occurring
17 creek or a drain that captures return flow water from neighboring lands.
18 Unfortunately, there is no evidence in the record to allow for that
19 determination. Additionally, there is no evidence of when this water was
20 first used on the claimant's land.

21 Based on the foregoing discussion, the Referee cannot recommend that
22 any rights be confirmed for use of Badger Pocket Creek under Court Claim No.
23 01307.

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1 COURT CLAIM NO. 00180 -- Leroy Sorenson
2 00181 & Doris Sorenson
3 00182

4 The Sorensons filed three claims with the Court asserting two rights to
5 use an unnamed creek and one right to use Park Creek. The claimants are
6 represented by Attorney Vernon E. Fowler, Jr., and their son, Leroy Joseph
7 Sorenson testified at the evidentiary. Richard C. Bain, a consultant hired
8 by the claimants prepared an engineering report for the property which was
9 entered as direct expert testimony and assigned Exhibit No. DE-1384.

10 The claimants own 230 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, the
11 W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27 and a portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28, all in
12 T. 17 N., R. 19 E.W.M. All of the claimants' land is planted to timothy hay
13 with a rotation of grain, corn, and potatoes. Approximately 100 acres in
14 Section 28, the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27 are irrigated solely with
15 water delivered by the Ellensburg Water Company (EWC). EWC is a major
16 claimant whose rights have been determined in the Major Claimant Pathway.
17 The lands irrigated with EWC water will not be addressed further in this
18 report.

19 The portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22 lying north of Badger Pocket
20 Creek, which is a 9.1 acre field is irrigated with water diverted from Park
21 Creek. The map in the Bain report shows the diversion from Park Creek is at
22 the northeast corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22. However, the State's
23 Investigation Report and map SE-2 show the diversion as being northeast of
24 the claimant's land in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22. Water is diverted into
25 a buried pipe to a cement ditch where siphons are used to rill irrigate the

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1 field. Mr. Bain measured this diversion at between 1.45 cfs and 1.7 cfs and
2 based on the irrigation practice determined that 6.8 acre-feet per acre is
3 used to irrigate this field, or 61.88 acre-feet per year.

4 Pursuant to the requirements of RCW 90.14, Water Right Claim (WRC) No.
5 052829 was filed asserting a right to divert 5 acre-feet per acre, 50
6 acre-feet per year for the irrigation of 10 acres in a portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$
7 of Section 22. No instantaneous quantity was identified. The point of
8 diversion described is at the point described in the State's Investigation
9 Report and on map SE-2.

10 The remaining lands are irrigated from two diversions from Badger
11 Pocket Creek. Takeout (TO)-1 is located about 200 feet east of the
12 southeast corner of the claimant's property. A diversion dam diverts water
13 into a buried pipeline then a wooden flume carries the water across the
14 creek onto the claimants' property. Fields 1 and 2 are rill irrigated with
15 siphons and gated pipe with water from TO-1. Mr. Bain did not measure this
16 diversion, but his report states that it should be able to provide 3.0 cfs.
17 He did not indicate the basis for this conclusion. Fields 1 and 2 are 60.3
18 acres in size and are in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ lying
19 northeast of Badger Pocket Creek, in Section 22. TO-2 is located on Badger
20 Pocket Creek just east of the south quarter corner of Section 22. This
21 diversion serves Fields 3, 5, and 6, which are 52.6 acres in size. These
22 fields are also rill irrigated with siphons and gated pipe. TO-2 was
23 measured by Mr. Bain at between, 1.83 and 1.89 cfs. Based on these
24 measurements and the irrigation practice on the land, Mr. Bain determined

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1 that 13.2 acre-feet per acre was being used to irrigate these three fields.
2 Although the takeout was measured at 1.89 cfs, Mr. Bain's report suggests
3 that a right should be awarded for 3.0 cfs and that the diversion should be
4 able to provide that quantity. There was nothing in the report to explain
5 the difference.

6 Pursuant to RCW 90.14 two water right claims were filed for an unnamed
7 creek with diversions on what is called Badger Pocket Creek. WRC No. 052827
8 asserts a right to use 5 cfs, 335 acre-feet per year for the irrigation of
9 67 acres and stock water in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22. The
10 diversion described is the approximate location of TO-1. WRC No. 052828
11 asserts a right to divert 5 acre-feet per acre and 265 acre-feet per year
12 for the irrigation of 53 acres and stock watering in a portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$
13 and a portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ both in Section 22 and the NW $\frac{1}{4}$ of Section 27.
14 The point of diversion described is TO-2 on Badger Pocket Creek.

15 Most of the claimant's land that is irrigated from the creeks was
16 settled by J. D. Olmstead, who received a patent on June 5, 1873, for the
17 S $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T. 17 N., R. 19 E.W.M. The NW $\frac{1}{4}$ of
18 Section 27 was originally conveyed by the Federal government to Northern
19 Pacific Railroad, who sold it to Andrew O'Brien. By 1897 it was owned by
20 Jens Sorenson, the father of claimant Leroy Sorenson.

21 In support of the claims to water rights for Badger Pocket Creek,
22 Exhibit SE-57 was put in the record, which is an affidavit made in 1979 by
23 Andy E. Larsen and Martin Indermuhle. According to the affidavit, they were
24 both born in 1891 and lived all of their lives in the Denmark district of

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1 Kittitas County. The Referee is familiar with maps that show this general
2 area as being marked Denmark. They recall the claimants' land in Section 22
3 being irrigated in the early 1900's from Park Creek, with one diversion
4 serving the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and a second diversion used to irrigate the rest of the
5 land. The affidavit also states that an unnamed creek that is parallel to
6 Sorenson Road has been there since about 1900 and there are two diversions
7 on the creek used to furnish water to the land in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
8 Section 22.

9 J. D. Olmstead was the plaintiff in Olmstead v. S. Hays, et al. and was
10 awarded a right to use one-half of one-fifth of the flow in Brush Creek and
11 one-half of the flow in Park Creek above the confluence of Brush and Park
12 Creek. Neither the decision or the decree indicated how much water was
13 flowing in either of the creeks, so the right awarded to Olmstead was not
14 quantified. The decision in this case and the affidavit of Larsen and
15 Indermuhle suggest that Park Creek was being used to irrigate the land in
16 the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22. Use of Badger Pocket Creek is not
17 mentioned in any of the historical documents related to the Olmstead
18 property.

19 Not pointed to by the claimant is a complaint filed in 1919 against
20 Joseph Preece concerning his use of water, which was entered as Exhibit No.
21 DE-1372 by Paul Sorenson. The complaint was filed by George and Rebecca
22 Donald and George and Maymie Ferguson seeking an order against the
23 defendants use of water from Brush or Cherry Creek. The Donalds owned the
24 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22 at the time the complaint was filed and the complaint

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1 suggests that Cherry or Brush Creek was being used to irrigate that land.
2 Along with the complaint is Joseph Preece's answer and affidavits in support
3 and in defense of the complaint. The plaintiffs were successor owners of
4 some of the land homesteaded by J. D. Olmstead and allege that Preece, who
5 also owned a portion of the Olmstead property, constructed a dam that
6 obstructed their use of Brush Creek. The answer by Preece suggests that the
7 only water to which he had a right to use was that delivered by Town Ditch
8 and that the only water in the creek was water being placed in the creek
9 from Town Ditch or seepage and return flow water from that ditch and the
10 Cascade Canal. Affidavits filed by Intervenor George W. Reed and John O.
11 Sorenson support that assertion. Unfortunately, the resolution of this
12 complaint is not in the record. The documents filed suggest that the flow
13 in Park Creek in 1919 was influenced by imported water and they also suggest
14 that the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22 was being irrigated from Park Creek, not
15 Badger Pocket Creek.

16 The various court decrees addressing water rights established in the
17 late 1800's found that one-half to one inch of water was sufficient for
18 irrigating the land in this area. Mr. Bain's report shows that
19 considerably more water is being diverted from Park Creek. Given the
20 information in Exhibit DE-1372, the Referee concludes that the additional
21 water being used is return flow or seepage water that is the result of water
22 imported in either the Cascade Canal or Town Ditch. Water rights cannot be
23 awarded for use of this water, see page 8 of this report.

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1 The Referee recommends confirmation of a water right under Court Claim
2 No. 00182 for use of Park Creek with a June 5, 1873, date of priority for
3 the diversion of 0.20 cubic foot per second, 36.4 acre-feet per year for the
4 irrigation of 9.1 acres in that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22 lying
5 north of Badger Pocket Creek.

6 The Referee is also concerned about the nature of Badger Pocket Creek.
7 This creek, which is not named on the State's Map Exhibit, SE-2, begins just
8 below the Cascade Canal in Sections 19 and 30, T. 17 N., R. 20 E.W.M. This
9 is a dry area in the Kittitas Valley, where one would not expect a stream to
10 naturally begin flowing. It's headwaters is not in the higher elevations
11 where high snowpack is retained into the spring to support a stream.
12 Although the affidavits of Larsen and Indermuhle mention the existence of
13 the stream in the early 1900's, the Town Ditch and Cascade Canal were
14 constructed by then and seepage from the canals and return flow waters from
15 the use of waters from those canals could be the source of water for this
16 creek. The Referee needs more information about the nature of this creek
17 before a right can be considered for confirmation. If in fact the water in
18 Badger Pocket Creek is the result of return flows from the use of imported
19 water or seepage loss from the canals of this imported water, a water right
20 cannot be established for its use, but it may be used by the first person
21 who takes it, see Dodge v. Ellensburg Water Co., 46 Wn.App. 77, 729 P.2d 631
22 (1986). Given that the factual setting is almost identical to that in the
23 Dodge case, the Referee must have the claimants address the nature of this
24 water.

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1 Badger Pocket Creek has also been referred to by Mr. Bain as Johnson
2 Drain. During the presentation of its case in the Major Claimant Pathway,
3 EWC presented evidence that Johnson Drain is used to deliver its water, see
4 "Report of the Court Concerning the water Rights for the Ellensburg Water
5 Company", Volume 37. EWC excepted to the language used by the Court to
6 describe Johnson Drain and the United States in a reply to the exception
7 suggested language that was adopted by the Court. That language is:
8 "Johnson Drain is used to divert water for irrigation and to deliver water.
9 EWC asserts that these waters are non-project waters and tailwaters from
10 Cascade Irrigation District (CID). The Bureau of Reclamation asserts that
11 these are project waters and tailwaters from Cascade Irrigation District."
12 These statements lead the Referee to conclude that the water in Badger
13 Pocket Creek or Johnson Drain are waters for which rights cannot be
14 awarded.

15 The Referee does not recommend confirmation of a water right to Badger
16 Pocket Creek under Court Claim No. 00180 and 00181 until the claimant
17 addresses the nature of the water that is in the creek.

18 COURT CLAIM NO. 01432 -- Paul J. Sorenson
19 01433 & Virginia R. Sorenson
20 01434

21 The Sorensens filed Court Claim No. 01432 asserting a right to use
22 waters from Brush Creek and Park Creek and Court Claims No. 01433 and 01434
23 asserting rights to use water from Caribou Creek. The Sorensens are
24 represented by Attorney Vernon E. Fowler, Jr., and Mr. Sorenson testified at
25 the evidentiary hearing. Additionally, Richard C. Bain, Jr., prepared an

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1 engineering report for the Sorenson farm, which was entered as written
2 expert testimony as Exhibit No. De-1383.

3 The Sorenson ranch lies in the N $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{4}$ NE $\frac{1}{4}$ and a six acre parcel in
4 the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, all in
5 T. 17 N., R. 19 E.W.M. They are asserting a right to irrigate 100 acres
6 under the three claims with water diverted from Park Creek and/or Caribou
7 Creek. The 100 acres lies in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 and the
8 SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22. Timothy hay, with a rotation of potatoes,
9 corn and grain, is the crop grown and the fields are rill irrigated. The
10 quantity of water flowing in each creek and the irrigation practices of
11 neighboring landowners influence which creek is used or the contributions
12 from each creek when both are being used. The Sorensen's are asserting a
13 right to use 4.5 cubic feet per second, 1056.5 acre-feet per year to
14 irrigate the 80 acres that lie in what they identify as fields 3 and 4 and
15 2.1 cfs, 265.3 acre-feet per year to irrigate field 5. When Park Creek is
16 used, water is diverted from that creek in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22 for
17 fields 3 and 4 and carried in earthen and cement ditches and a pipeline onto
18 the Sorenson property. Park Creek is also diverted in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
19 Section 22 to irrigate field 5. When Caribou Creek is used, water is
20 diverted from that creek in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22. The ditches from the
21 two diversions in the NE $\frac{1}{4}$ of Section 22 feed the same on-farm delivery
22 system. Livestock are periodically on the property for short periods. Most
23 recently herds of 2,000 to 3,000 sheep have grazed in the fields for a month
24 or so in the fall. An alternative to the sheep is 200 head of cattle. The
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1 livestock drink from both the creeks as they flow through the land and the
2 irrigation ditches. Mr. Bain's report and Mr. Sorenson's testimony was that
3 10 acre-feet per year is needed for stock watering. However, the Referee
4 believes this estimate is high since the livestock are only on the land for
5 a few weeks and only a portion of the stock watering is diversionary in
6 nature. The estimate likely includes the quantity of water that the
7 livestock would drink directly from the water source. Non-diversionary
8 stock watering is covered by the stock water stipulation discussed on page 4
9 of this report which covers livestock drinking directly from the water
10 source.

11 Pursuant to the requirements of RCW 90.14, Jack Sorenson filed three
12 water right claims (WRC) for use of Park or Caribou Creek. WRC No. 062716
13 asserts a right to use 4 cfs, 600 acre-feet per year from Park Creek and
14 Brush Creek for the irrigation of 120 acres and stock water in the SE $\frac{1}{4}$ NE $\frac{1}{4}$,
15 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22. The described point of
16 diversion is in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22 at approximately the same
17 location as the currently used diversion. WRC No. 062719 asserts a right to
18 divert 100 cubic inches, 200 acre-feet per year from Park and Brushy Creeks
19 for the irrigation of 40 acres and stock water in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22
20 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21. The point of diversion that is described is
21 in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22. This diversion is being used to provide
22 water to field 5. WRC No. 062717 asserts a right to use 600 acre-feet per
23 year from Caribou Creek for the irrigation of 120 acres and stock watering
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1 in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, part of the SE $\frac{1}{4}$ NE $\frac{1}{4}$, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21.

2 There was no instantaneous quantity identified on the claim.

3 The Referee concludes that the water right claims filed for use of Park
4 Creek describe the lands currently being irrigated from that water source.
5 However, WRC NO. 062717 filed for use of Caribou Creek does not describe any
6 of the land being irrigated in Section 22, which is about half of the acres
7 irrigated from the two creeks.

8 All of the land for which rights are sought under these three Court
9 claims were originally settled by Charles B. Reed who received a patent on
10 August 1, 1872, for the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and
11 NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T. 17 N., R. 19 E.W.M. By 1892 the land was owned by
12 John H. McEwen, one of the defendants in J.D. Olmstead v. S. Hayes, et al..
13 The decision in that case found that McEwen's predecessor had settled on the
14 land by 1872 and had appropriated and applied to beneficial use waters from
15 the three creeks addressed in the case (Brushy Creek, Park Creek, and the
16 combined flow of the two creeks). The decision found that the rights of
17 McEwen and the plaintiff (Olmstead) were equal, but junior to those of John
18 Holtz. Holtz was awarded four-fifths of the flow in Brush Creek and
19 Olmstead and McEwen were each awarded half of the remaining flow. Olmstead
20 and McEwen also each got half of the flow in Park Creek. The flow in the
21 creek was not indicated, so the decision does not provide any evidence of
22 how much water McEwen had a right to divert.

23 Brush Creek is not identified on the State's Map Exhibit, SE-2.
24 However, the Referee believes from the description of the location of Brush

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1 Creek and the lands owned by Holtz, which were riparian to the creek,
2 described in the Olmstead v. Hayes decision, the Referee concludes that what
3 was called Brush Creek in that case is what is presently called Caribou
4 Creek.

5 The claimants entered Exhibit DE-1372, which is a set of documents
6 relating to a suit filed in 1919 concerning use of Brush or Cherry Creek
7 (claimants in Acquavella in some instances have called Caribou Creek by the
8 name Cherry Creek), George and Rebecca Donald and George and Maymie Ferguson
9 v. Joseph Preece, John Sorenson and Chris Sorenson. George Ferguson owned
10 the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22. The rest of the land described in
11 Court Claim No. 01432 and 01433 apparently was not owned by any of the
12 parties to this case. The documents include the complaint, Joseph Preece's
13 Answer, and several affidavits. Some of the affidavits are in support of
14 the complaint and some are in support of the defendants. Several of the
15 affidavits allege that the creek in question is dry above the Kittitas
16 Reclamation District (KRD) Highline Canal and the only water in the creek
17 where the defendants are diverting water is return flow and seepage water
18 generated by Cascade Irrigating District (CID) and Ellensburg Water Company
19 (EWC), both of which have canals that cross the creek above the party's land
20 the their diversions from the creek. At least two of the affidavits also
21 suggest that Park Creek and Brush Creek are one and the same and describe a
22 diversion location that would be on Park Creek, very near where the
23 Sorensons currently divert their water. Copies of the Court's decision and
24 order in this case were not entered into the record, so the Referee does not
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1 know how the case was resolved. The documents certainly raise the question
2 of the nature of the water in the creek at the claimants' diversion. The
3 evidence presented concerning the quantity of water being diverted and used
4 suggests that considerably more water is being used to irrigate the Sorenson
5 land than was commonly used when many of the water rights in this area were
6 established in the late 1800's. See the Findings of Fact that preceded the
7 decrees in Schnebly v. Huss, Nessalhaus v. Walker, and State of Washington
8 v. Anderson. Most of the decrees entered from the late 1800's to the early
9 1900's awarded either one-half or one inch of water for each acre irrigated
10 (0.01 or 0.02 cfs per acre), while the Sorensons evidence was that 0.05 cfs
11 per acre is being used. Clearly the documents in the record related to
12 Donald and Ferguson v. Preece and Sorenson suggest that water imported by
13 Cascade Canal and the Town Ditch were contributing to the flow in Caribou
14 and Park Creek. Water rights cannot be awarded for use of return flow
15 generated from the use of imported water or the seepage of the imported
16 water from the canals, see page 8 of this report. The claimant did not
17 provide the Referee with the Court's ruling in that case, which would be
18 very helpful in understanding that Court's view of the creeks in the early
19 1900's.

20 The Referee recommends that a right be confirmed under Court Claim No.
21 01433 with a August 1, 1872, date of priority for the diversion of 1.0 cubic
22 foot per second, 200 acre-feet per year from Caribou Creek for the
23 irrigation of 50 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, T. 17 N.,
24 R. 19 E.W.M. The point of diversion is in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22. This

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1 right will also carry a provision that water from Park Creek is also used on
2 this land. The Referee recommends that a right be confirmed under Court
3 Claim No. 01432 with an August 1, 1872, date of priority for the diversion
4 of 2.0 cubic feet per second, 400 acre-feet per year from Park Creek for the
5 irrigation of 100 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 and the
6 SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22. The point of diversion is in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
7 Section 22. This right will also carry a provision that water from Caribou
8 Creek may also be used on the land in Section 21.

9 Under Court Claim No. 01432, the claimant is also asserting a right to
10 irrigate approximately 4 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 with water
11 diverted from Badger Pocket Creek. This field is farmed along with the
12 Doris Sorenson property that is leased by the claimant. According to
13 Mr. Sorenson's testimony, the source of water used to irrigate this field
14 was changed to Badger Pocket Creek in 1960. He did not identify what the
15 original source of water or the basis for their being a right for that
16 source. Changing the source of water being used would have required that a
17 new water right be obtained under RCW 90.03 or compliance with the change
18 procedures in RCW 90.03.380 to change the point of diversion of water. There
19 is no evidence either of those occurred. There also is no water right claim
20 filed pursuant to RCW 90.14 for use of Badger Pocket Creek. The Referee
21 cannot recommend that a right be confirmed for use of Badger Pocket Creek or
22 any other water source for this field, as there is no evidence that a valid
23 right exists.

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1 COURT CLAIM NO. 01435 -- Paul J. Sorenson
2 01436 & Virginia R. Sorenson

3 These two Court claims filed by Paul and Virginia Sorenson seek rights
4 to use waters from Caribou Creek. The Sorensen are represented by Attorney
5 Vernon E. Fowler, Jr., and Mr. Sorenson testified at the evidentiary
6 hearing.

7 The claimants are asserting a right to irrigate 68 acres with water
8 diverted from Caribou Creek. The irrigated acres are portions of fields 1,
9 2, which are in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 and fields 3, and 4
10 which are in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, T. 17 N., R. 19E.W.M.
11 Water is diverted from Caribou Creek in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, just
12 south of Ferguson Road for irrigating 40 acres in fields 3 and 4 and water
13 is diverted from the creek in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, just north of
14 Ferguson Road for irrigating portions of fields 1 and 2. Mr. Sorenson
15 estimates that he diverts 3 cfs, 528 acre-feet per year to irrigate the 40
16 acres in fields 3 and 4 and 3.5 cfs, 369.6 acre-feet per year for irrigating
17 28 acres in fields 1 and 2.

18 The portion of the irrigated lands in fields 3 and 4 have the same
19 history as the portions of field 3 and 4 addressed under Court Claim No.
20 01433. See the discussion beginning on page 446 of this report for the
21 history of the settlement of the land and prior litigation concerning water
22 rights. Fields 1 and 2 are part of lands that were settled by Cornelius
23 Hacksaw, who received a patent on June 5, 1873, for the SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{4}$ SE $\frac{1}{4}$ and
24 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21. Prior to obtaining the patent Hacksaw sold this land,

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1 along with land in Section 22 to John H. McEwen. In 1892 John H. McEwen
2 owned the SE $\frac{1}{4}$ of Section 21, the SW $\frac{1}{4}$, NW $\frac{1}{4}$ and NW $\frac{1}{4}$,SW $\frac{1}{4}$ of Section 22 and was a
3 party to J. D. Olmstead v. S. Hayes et al., a case involving use of water
4 from Park and Brush Creek. McEwen was awarded the right to use half of
5 one-fifth of the flow in Brush Creek. Although Brush Creek is not
6 identified on the State's Map Exhibit SE-2, the Referee believes that Brush
7 Creek referred to in Olmstead v. Hayes is what is Caribou Creek. Use of
8 these creeks again became an issue in 1919 in the case George and Rebecca
9 Donald and George and Maymie Ferguson v. Joseph Preece, John Sorenson and
10 Chris Sorenson. Although the owner of the land in Section 21 was not a
11 party, owner of the former McEwen land in Section 22 was one of the
12 defendants. This case raised the question of whether the water in Caribou
13 Creek below the KRD Highline Canal, Cascade Canal and Town Ditch was
14 actually creek water or return flow and seepage water from the three
15 ditches. A copy of the Court's Decision and Order were not entered as
16 exhibits. In 1924 the owners of the SW $\frac{1}{4}$,NE $\frac{1}{4}$ of Section 21 were T. J. and
17 Lily Morrison and the owner of the NW $\frac{1}{4}$,SE $\frac{1}{4}$ of Section 21 was Elizabeth
18 Ferguson. They were the plaintiffs, along with Etta Gore, in Elizabeth
19 Ferguson, T. J. Morrison and Lily Morrison, and Etta Gore, v. J. S. Sterling
20 and W. T. Montgomery seeking a restraining order to prevent the defendants
21 from using water from Cooke Creek. Again the Court's Decision and Order are
22 not part of the record, but the complaint leads the Referee to conclude
23 that Cooke Creek, not Caribou Creek was being used on this land in 1924.
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1 Water Right Claim No. 062717 was filed by Jack Sorenson pursuant to the
2 requirements of RCW 90.14. It asserts a right to use 600 acre-feet per year
3 from Caribou Creek for the irrigation of 120 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, part of
4 the SE $\frac{1}{4}$ NE $\frac{1}{4}$, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21. There was no
5 instantaneous quantity indicated on the form. The point of diversion
6 described is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, which is not the diversion used
7 by the claimant for this land.

8 Although the evidence suggests that water rights for use of Caribou
9 Creek were established by the Sorensens' predecessor, documents submitted by
10 the claimants raise questions about whether those rights were used on the
11 lands for which a water right is being asserted. As a result of those
12 questions, the Referee does not recommend confirmation of a water right
13 under Court Claim No. 01435 and 01436. If these claims are pursued during
14 the exception phase, copies of the Court's decisions and orders would be
15 very helpful.

COURT CLAIM NO. 01437 -- Paul J. Sorenson
01438 & Virginia R. Sorenson
01439

19 The Sorensons filed Court Claims No. 01437 and 01439 asserting rights
20 to use Cooke Creek and Court Claim No. 01438 for use of an unnamed drain.
21 The Sorensons are represented by Attorney Vernon E. Fowler, Jr., and Mr.
22 Sorenson testified at the evidentiary hearing. Additionally, Richard C.
23 Bain, Jr., prepared an engineering report for the Sorenson farm, which was
entered as written expert testimony as Exhibit No. De-1383.

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1 The Sorenson ranch lies in the N $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and a six acre
2 parcel in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22,
3 T. 17 N., R. 19 E.W.M. They are irrigating 11 acres in that portion of the
4 NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 lying southeast of Cooke Creek and 22 acres in the
5 NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21. The 11 acres are irrigated from a
6 diversion (TO-5) that is near the center of Section 21. Mr. Sorenson
7 estimates that 2 cubic feet per second and 143.9 acre-feet per year is used
8 to irrigate this field. The 22 acres are irrigated with water diverted in
9 near the north line of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21. Mr. Sorenson estimated
10 that 3.5 cubic feet per second, 528 acre-feet per year is being diverted to
11 irrigate this field. As with the other Sorenson property, Timothy hay is
12 the main crop with a rotation of grain, corn and potatoes.

13 Two water right claims were filed pursuant to RCW 90.14 for use of
14 Cooke Creek. WRC No. 062721 asserts a right to divert 2 cfs, 100 acre-feet
15 per year for the irrigation of 20 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21. WRC
16 No. 062722 asserts a right to use 2.5 cfs, 155 acre-feet per year for the
17 irrigation of 31 acres in the N $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21.

18 The 11 acre field is part of land that was settled by William Jordan,
19 who received a patent on June 13, 1876, for the E $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, the
20 NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 17 N., R. 19 E.W.M. Prior to the patent
21 issuing, Jordan sold the land to John H. McEwen. The 22 acres are part of
22 lands that were settled by Cornelius Hacksaw, who received a patent on
23 June 5, 1873, for the SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21. Prior to
24 obtaining the patent Hacksaw sold this land, along with land in Section 22

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1 to John H. McEwen. By 1924 the owners of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 were T.
2 J. and Lily Morrison and the owner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 was Elizabeth
3 Ferguson. They were the plaintiffs, along with Etta Gore, in Elizabeth
4 Ferguson, T. J. Morrison and Lily Morrison, and Etta Gore, v. J. S. Sterling
5 and W. T. Montgomery seeking a restraining order to prevent the defendants
6 from using water from Cooke Creek. The Court's decision in this case is not
7 in the record, so the Referee does not know how this case was resolved. The
8 complaint does provide evidence that waters from Cooke Creek were being used
9 on what is now the Sorenson property in 1924. Cooke Creek was previously
10 adjudication in the case of State of Washington v. Anderson with the final
11 decree being entered in 1921. If the plaintiffs in the Ferguson, et al. v.
12 Sterling et al. case had a right to use Cooke Creek, it seems that they
13 should have been parties to that adjudication. As far as the Referee can
14 determine, they were not named parties and were not awarded a water right.
15 It would be very interesting to see how the Kittitas County Court dealt with
16 a dispute over Cooke Creek water immediately after the adjudication,
17 involving landowners who were not parties to the adjudication. As discussed
18 on page 10 of this report, the Referee believes that the adjudication
19 settled all rights to the use of Cooke Creek. Therefore, since Sorensons'
20 land was not awarded a water right in that adjudication, the Referee does
21 not recommend that a right be confirmed in this proceeding for use of Cooke
22 Creek. Since Cooke Creek flows through the property, livestock in the
23 fields adjacent to the creek have access to it and drink directly from the
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1 creek. This type of stock water is covered by the stock water stipulation
2 discussed on page 4 of this report and no additional right is necessary.

3 A right is being asserted under Court Claim No. 01438 for use of a
4 drain for irrigating much of the same lands that are also irrigated from
5 Caribou Creek, as described in Court Claims No. 01435 and 01436, see page
6 453. The drain is located north and east of the Sorenson property and
7 collects water draining portions of the SE $\frac{1}{4}$ of Section 15 and the SW $\frac{1}{4}$ of
8 Section 14, lands not owned by the claimants. The drain was constructed in
9 1977 and the water collected is put into Caribou Creek and diverted and used
10 on the claimants' land. Since the drain was first constructed in 1977 that
11 is when the water was first used. Since the drain is located below Town
12 Ditch and the Cascade Canal, it undoubtedly captures water from those two
13 ditches, which would be imported or foreign water, for which water rights
14 cannot be established. Water rights could be established for any drain
15 water which is the result of the application of naturally occurring creek
16 water. However, in order to establish a right compliance with the
17 permitting procedures of RCW 90.03 is required. There is no evidence that
18 occurred. As a result, the Referee cannot recommend confirmation of a right
19 under Court Claim No. 01438.

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1 COURT CLAIM NO. 00355 -- Walter R. Stampfly
2 & Thelma D. Stampfly

3 COURT CLAIM NO. 00462 -- Wallace M. Stampfly

4 On January 7, 1981, Wallace M. Stampfly filed with the Court Statement
5 of Claim No. 00462, asserting a right to use water from Coleman Creek and
6 Cave Canyon Creek. Court Claim No. 00355 was filed by Walter R. and Thelma
7 D. Stampfly asserting a right to use waters from Cave Canyon Creek. The
8 Stampflys also assert rights in these Court claims for use of waters
9 diverted from Naneum Creek and Wilson Creek, which are within Subbasin No. 9
10 (Wilson-Naneum). Rights to use of those creeks was addressed in the
11 Subbasin No. 9 Report of Referee, which was filed on June 29, 2000.
12 Mr. Wallace Stampfly appeared at the evidentiary hearing and testified on
13 behalf of both claims. He was represented by Attorney Richard T. Cole
14 at the hearing.

15 The Stampflys own the SE $\frac{1}{4}$ of Section 28, the SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
16 Section 27, the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, and the NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30,
17 all in T. 19 N., R. 19 E.W.M. and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, T. 18 N.,
18 R. 19 E.W.M. According to the testimony, the area that is irrigated with
19 water diverted from Coleman Creek is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, T. 18 N.,
20 R. 19 E.W.M. Within the claimed place of use, Mr. Stampfly owns 28 acres,
21 and 25 of which are assessed by the Kittitas Reclamation District (KRD). He
22 also testified that he generally uses Coleman Creek water to irrigate 7
23 acres of hay and pasture up until the middle of July, and then as available
24 thereafter. Up to 150 cow/calf pairs are raised on the land. The water is
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1 diverted from a point on Coleman Creek which is located 1700 feet north and
2 2400 feet west of the southeast corner of Section 12, within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
3 Section 12, T. 18 N., R. 19 E.W.M. Mr. Stampfly stated that he is claiming
4 a water duty of 5 acre-feet per acre for a total of 35 acre-feet. The 7
5 acres of irrigated land are located south of the delivery ditch within the
6 E $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M.

7 Water Right Claim No. 048537 was filed by the previous owner of the
8 property Conrad Kraft, in accordance with the requirements set forth by RCW
9 Chapter 90.14. Mr. Kraft claimed Coleman Creek water for 8 acres of
10 irrigation and stockwater. The claimed place of use is the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
11 Section 14, T. 18 N., R. 19 E.W.M. A right is also being asserted within
12 the S $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14 by Lonice Gay Wyrick and Jack H. Loftis, who own
13 the portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ not owned by Mr. Stampfly. That claim is
14 addressed beginning on page 515 of this report. Between the two claimants,
15 rights are being asserted for the irrigation of 11.5 acres.

16 Mr. Stampfly noted that it is his understanding that the property has
17 been settled since April 7, 1871, and that the patent date for the land is
18 May 29, 1883. The court claim lists an initiation date of "spring 1917".
19 No historical documentation has been provided by the claimant to support
20 any of the potential priority dates. However, exhibits entered by Wyrick
21 and Loftis also are appropriate for consideration for the claimant's land.
22 The land is part of a larger parcel that Henry Bryant received a patent for
23 on January 2, 1874. On May 29, 1890, Henry Bryant and Elias Messerly filed
24 an affidavit stating that on December 4, 1870, they entered and occupied

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1 land in Sections 13 and 14, T. 18 N., R. 19 E.W.M., including the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
2 Section 14. They also state that on April 7, 1871, they appropriated waters
3 from Coleman Creek (288 cubic inches of water) in a sufficient quantity for
4 domestic purposes and irrigation of the lands previously mentioned, except
5 the 157 53/100 acres belonging to Bryant. That on May 15, 1875, they
6 enlarged the head of the ditch and appropriated an additional 144 inches of
7 water for domestic and irrigation purpose to cover all of the lands
8 described, for a total appropriation of 432 cubic inches of water.

9 In 1911 water rights for use of Coleman Creek were addressed in the
10 case of P. H. Schnebly v. Harvey Huss, et al.. Numerous parties were named
11 in the case, however, it is not clear whether the owners of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
12 Section 14 were parties to the case. The chain of title that is Exhibit
13 DE-4 shows that there were several contracts or deeds relating to this
14 portion of Section 14. The land was owned by E. A. Erickson, who was a
15 party to the case; however, there are entries that suggest the land may have
16 been sold to W. B. Lull, Otis Pfeifle and W. R. Taylor during the time frame
17 when this case was being argued. None of these names appear in the list of
18 defendants to the case. The Referee has reviewed the decree that was
19 entered and the only part of Section 14 that was not awarded a water right
20 was the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, the land now owned by the claimants. The
21 claimant may want to clarify the ownership of his land at the time of the
22 Schnebly v. Huss decree to determine whether the owner was a named party.

23 Although the affidavit of Messerly and Bryant suggests that water
24 rights were established for this land around 1875, all of the other land
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1 described in the affidavit was awarded a right in the Schnebly v. Huss
2 decree. This suggests to the Referee that perhaps this particular portion
3 of the former Bryant homestead was not being irrigated from Coleman Creek at
4 the time the case was being decided. The claimant testified that he may have
5 class 1 water rights on Coleman Creek, but he was uncertain as to the
6 factual basis for this.

7 The Referee cannot recommend that a right be confirmed on Coleman Creek
8 for the subject property until there is additional evidence presented to
9 show that the land was irrigated prior to December 31, 1932, the date by
10 which beneficial use had to be made under the Riparian Doctrine. The
11 claimant's stock may drink directly from any naturally occurring water
12 source on his property as provided for in the non-diversionary stock water
13 stipulation on page 4 of this report.

14 Cave Canyon Creek is a seasonal creek which runs north-south through
15 the claimant's property in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T. 19 N., R. 19 E.W.M.
16 It is used as available for the irrigation of 30 acres and stock watering.
17 Mr. Stampfly testified that the creek is normally available for irrigation
18 up until the middle of June, and then as available thereafter. Stock, up to
19 200 cow-calf pairs, drink directly from both Cave Canyon Creek and the
20 irrigation water delivery ditch as they traverse the claimant's property.
21 The non-diversionary stock water use is also covered by the stock water
22 stipulation. The investigation report submitted by the State identifies the
23 point of diversion as being located 1050 feet south and 10 feet east from
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1 the northwest corner of Section 27, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section
2 27, T. 19 N., R. 19 E.W.M.

3 Water Right Claim (WRC) No. 023635 was filed by Mr. Stampfly in
4 accordance with the requirements set forth by RCW Chapter 90.14. It claims
5 a right to irrigate 30 acres as does. The State's investigation report also
6 indicates that 30 acres are being irrigated, yet the described place of use
7 on the state report does not appear to represent 30 acres. The State's
8 investigation report identifies the the place of use as "that portion of the
9 SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, . . . lying west of Cave Canyon Creek". Comparing
10 this description to State's exhibit SE-1 (the subbasin map) it is clear that
11 the described place of use is not 30 acres, but closer to 15 acres. After
12 having considered the state investigation report and Mr. Stampfly's
13 testimony regarding his Cave Canyon Creek claim in both the Subbasins 9 & 10
14 evidentiary hearings, it appears to the Referee that the total number of
15 irrigated acres for which a claim is asserted between Court Claims No. 462
16 and 355 is 30. Each one asserts a right to irrigate 15 acres.

17 Mr. Stampfly testified that the property has been used and occupied
18 since spring of 1883, but no historical documentation was submitted in
19 support of this date. In the evidentiary hearing for Subbasin 9 the
20 claimant entered exhibits DE-1009 and DE-1008. DE-1008 is a chain of title
21 document for the W $\frac{1}{4}$ of Section 27, T. 19, R.19 E.W.M., showing that it was
22 sold by the Northern Pacific Railroad to Charles W. Dibble on August 2,
23 1890. The railroad later received the patent from the United States on
24 January 16, 1896.

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1 DE-1009 is a Statement of Claim of Water Right that was filed on
2 May 29, 1890 by George C. Charlton, Robert Fleming, and C.W. Dibble. In the
3 statement Mr. Dibble declares that with the others he commenced construction
4 of a ditch on November 1, 1886, in order to bring water from Nanum Creek to
5 irrigate his 100 acres in the W $\frac{1}{2}$ of Section 27, T. 19., R. 19 E. W. M. The
6 ditch was completed in April 1888. It seems reasonable to the Referee to
7 conclude that Mr. Dibble had settled on the subject property since at least
8 November of 1886, and that in conjunction with using the waters from Naneum
9 Creek, which required the construction of a long ditch, he would have also
10 used what water was available from Cave Canyon Creek as it flows through his
11 property.

12 The Referee recommends a right be confirmed under Court Claim No.
13 00462 with a priority date, under the Riparian Doctrine, of May 24, 1884.
14 The recommended quantities, based upon 1 inch and 5.5 acre-feet per acre,
15 are 0.30 cfs and 82.5 acre-feet for irrigation of 15 acres, and 0.10 cfs and
16 10 acre-feet for stock water.

17 Mr. Stampfly also appeared and testified with regard to Court Claim No.
18 0355 which was filed by his now deceased parents Walter and Thelma
19 Stampfly. The claim asserts a right from Cave Canyon Creek for irrigation
20 and stock water on 20 acres within the SW $\frac{1}{4}$ of Section 27, T. 19 N., R. 19
21 E.W.M. The property immediately to the north is the land previously
22 described in the analysis of Court Claim No. 00462. Mr. Stampfly now owns
23 both parcels and farms them as a single unit with irrigation water from Cave
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1 Canyon Creek. Irrigation and stock water are diverted from the same point
2 of diversion as previously named.

3 The testimony indicates that most of the facts material to the Cave
4 Canyon Creek property identified in Court Claim No. 00462 are the same
5 here. The only difference being the location, number of acres, and only 20
6 cow-calf units.

7 Water Right Claim No. 023629 was filed by Mr. Walter R. Stampfly in
8 accordance with the requirements set forth by RCW Chapter 90.14. It asserts
9 a right to irrigate 15 acres, rather than the 20 identified in the Court
10 Claim. The State investigation report defines a place of use described as
11 "that portion of the W3/4N $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 . . . lying north of the
12 Charlton-Fleming Ditch". In comparing this description to the State's
13 exhibit No.1 (map of claims), it is apparent that the State's investigation
14 report describes no more than 15 acres. The Referee can find no evidence in
15 the record which might resolve this discrepancy.

16 The Referee recommends a right be confirmed under Court Claim No. 00355
17 for the use of Cave Canyon Creek with a priority date, under the Riparian
18 Doctrine, of May 24, 1884. The recommended quantities are 0.30 cfs and 82.5
19 acre-feet for irrigation of 15 acres, and 0.01 cfs and 1.0 acre-feet for
20 stock water in the W3/4N $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, lying north of the
21 Charlton-Fleming Ditch.

22 COURT CLAIM NO. 00486 -- Ralph R. Stingley

23 Katie F. Brozovich filed Court Claim No. 00486 asserting a right to use
24 an unnamed spring. She was represented by Attorney Richard T. Cole at the
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1 evidentiary hearing and testified at the hearing. On June 19, 1997, Ralph
2 R. Stingley was substituted for Ms. Brozovich.

3 Ms. Brozovich claimed a right to use a spring for stock watering. Her
4 property is located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T. 17 N., R. 19 E.W.M.
5 Up to 200 head of cattle are on the property and watered during the
6 wintertime. The rest of the year, the number varies. She was not sure how
7 much water flows from the spring, but testified that the flow is consistent
8 all year. She did not provide any information about the spring or how the
9 water is used. However, the State's Investigation Report, indicates that
10 the spring, which is located near the north property line, flows into a
11 drain that runs along the north property line. The livestock have access to
12 the drain and drink directly from it. According to State's Map Exhibit
13 SE-2, the drain begins east of the spring and continues westerly past the
14 spring and then flows off the property. The investigation report does not
15 reflect any diversion from the spring. Based on the information that is in
16 the record, the Referee concludes this is a non-diversionary stock water use
17 that is covered by the stock water stipulation discussed on page 4 of this
18 report. The claimant's name shall be included on the list of those entitled
19 to a non-diversionary stock water right under that stipulation.

20 Water Right Claim No. 162512 was filed by Fred Stingley pursuant to the
21 requirements of RCW 90.14. It asserts a right to use an unnamed spring for
22 irrigation of 10 acres and stock watering in the S $\frac{1}{2}$ S $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25.
23 Ms. Brozovich testified that her irrigation water is supplied by Cascade
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1 Irrigation District (CID) and that the spring is only used for stock
2 watering.

3 Based on the foregoing, the Referee recommends that diversionary rights
4 not be confirmed under Court Claim No. 00486. As previously mentioned, the
5 stock water stipulation covers the stock water use claimed.

6 COURT CLAIM NO. 02120 -- Russell D. Stingley
7 02121 & Marty S. Stingley
8 02122

9 The Stingleys filed three claims with the Court, each asserting a right
10 to use an unnamed spring for irrigation and stock watering. Mrs. Marty
11 Stingley testified at the evidentiary hearing.

12 The Stingleys own most of the NW $\frac{1}{4}$ of Section 25, T. 18 N.,
13 R. 19 E.W.M. A copy of the legal description for their property was not
14 entered into the record, so the Referee is not clear on how much of the NW $\frac{1}{4}$
15 they do own. Mrs. Stingley testified that the Kittitas Reclamation District
16 (KRD) assesses them for 153 acres, which leads the Referee to conclude they
17 own most of the NW $\frac{1}{4}$. Water rights for the KRD were addressed in the Major
18 Claimant Pathway and will not be considered further herein. There are three
19 springs on the Stingleys' property that have been developed and are used for
20 irrigation and stock watering. Mrs. Stingley agreed with the information in
21 the State's Investigation Reports for the three claims. The reports
22 indicate different levels of development at each spring site, but in each
23 case the spring water is carried in open ditches and used to rill and flood
24 irrigate discrete portions of the claimants' land. All of the irrigated
25 land is pasture with 350 cow/calf pairs, 25 bulls and 15 horses being raised

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1 on the property. The livestock have access to drink from the springs and
2 the irrigation ditches. KRD water is commingled with the spring water.

3 Mrs. Stingley had some knowledge of the history of the land. It was
4 originally conveyed by the United States to Northern Pacific Railroad, who
5 then sold it to John Edwards and Peter Edwards. They farmed the land
6 together. A school house was built in the early 1900's in the southwest
7 corner of the property. The claimants do not own the land where the school
8 house was located. It is Mrs. Stingley's understanding that prior to KRD
9 water being available for the land, it had water rights for Naneum Creek
10 water delivered through the Wilkins Ditch. Those water rights were sold off
11 long ago. The claimants are asserting a priority date of April 18, 1890,
12 but Mrs. Stingley was not able to provide any foundation for that date.
13 They begin irrigating when KRD turns on in April and continue to irrigate
14 until mid-October. Mrs. Stingley did not provide any testimony or evidence
15 about when the springs might first have been developed and put to use or how
16 much water is being used from them. In order for their to be a valid water
17 right for use of the springs under the Riparian Doctrine, there must be
18 evidence that they were developed and put to beneficial use prior to
19 December 31, 1932. This evidence is lacking.

20 RCW 90.14, the Claims Registration Act, required that water right
21 claims be filed for all uses initiated prior to adoption of the surface
22 water code and for which no certificates have issued. The only water right
23 claim that has been identified that might be appurtenant to the claimants'
24 property is Water Right Claim (WRC) No. 152447, which was filed by Mrs. Dora

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1 Emerson Cissen. The Referee does not know if Mrs. Cissen was a prior owner
2 of the claimants' property. WRC No. 152447 asserts a right to divert 28
3 gallons per minute from a spring for the irrigation of 2 acres in the
4 SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T. 18 N., R. 19 E.W.M. The spring location
5 described on the claim is 40 feet north of the center of Section 25, which
6 is not where any of the three springs being used by the claimant are
7 located. Therefore, it is not clear that this water right claim was filed
8 for either one of the springs being used by the claimants or for their
9 land.

10 Due to the lack of evidence to show that the springs were used prior to
11 1932 and the apparent lack of a RCW 90.14 claim for their use, the Referee
12 cannot recommend that a right be confirmed for diversion and use of the
13 springs. Livestock drinking from the springs is covered by the stock water
14 stipulation discussed on page 4 of this report and no other water right is
15 necessary. This recommendation does not affect in any manner the claimants'
16 use of KRD water.

17 COURT CLAIM NO. 02254 -- Byron R. Strang

18 Byron R. Strang filed a claim with the Court asserting a right to use
19 an unnamed spring for irrigation and stock watering. Mr. Strang testified
20 at the evidentiary hearing, where he was represented by Attorney Michael
21 Bauer, who appeared for Attorney Ken Beckley.

22 Mr. Strang owns the SE $\frac{1}{4}$ of Section 24, the E $\frac{1}{4}$ NE $\frac{1}{4}$ and a portion of the
23 E $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, both in T. 18 N., R. 19 E.W.M. The location of the
24 spring for which a right is being asserted was not identified on Exhibit
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1 SE-2, nor was it identified in the State's Investigation Report or the Court
2 claim. Mr. Strang testified that the spring goes underground for 1500 to
3 1600 feet and SE-2 shows an underground pipeline of that length going
4 diagonally from northeast to southwest across the SE $\frac{1}{4}$ of Section 24. It is
5 not clear whether the natural spring occurrence is at the head of the
6 pipeline in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24 or at the end of the pipeline in the
7 SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24. The exhibit shows the pipeline feeding an
8 intermittent stream that flows through Section 25. Mr. Strang testified to
9 irrigating 30 acres of pasture with water from the spring, however, he did
10 not identify where those 30 acres would be located. Ecology's investigators
11 did not observe any irrigation at the time of their site visit in 1990. Mr.
12 Strang testified that he uses about 60 acre-feet per year from the spring,
13 but did not address the instantaneous quantity that is diverted from the
14 spring. The land is also assessed by the Kittitas Reclamation District
15 (KRD) and water from the district is used to irrigate most of the land.

16 Mr. Strang testified that he had talked with some of the prior owners,
17 who included Bud Wragge, a Mr. Abercrombie and Doc Hashagen. Doc Hashagen
18 owned the ranch for a long time and he was the one that developed the spring
19 and the diversion system. Mr. Strang did not testify to when Doc Hashagen
20 owned the land and there were no documents offered into the record in
21 support of the claim. The claimant is asserting a priority date of "prior
22 to 1900", but did not put anything into evidence to support that date.

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1 Water Right Claim No. 137447 was filed by Byron R. Strang asserting a
2 right to use a spring located in Section 24 for irrigation of 40 acres and
3 stock water. The place of use is the land owned by Mr. Strang.

4 The evidence offered in support of this claim does not allow for a
5 conclusion that a water right exists for the land. There was no evidence
6 presented to show when water was first used on the land. In order for there
7 to be a valid right under the Riparian Doctrine, which would be appropriate
8 if the spring is located on the claimant's land, water had to be first used
9 prior to December 31, 1932, and the land had to separate from Federal
10 ownership prior to June 6, 1917. Additionally, more information is needed
11 about the nature of the water being used. The Referee must be able to
12 conclude that there is natural spring water in the source for which a water
13 right is being asserted. The claimant testified about the spring being
14 associated with a drain. With much of the surrounding land being irrigated
15 with both Cooke Creek and KRD water, it is not clear that the water for
16 which a right is being asserted is natural water. A water right cannot be
17 awarded for use of return flow that is the result of application of KRD
18 water, which is Yakima Project water.

19 There is an indication in the investigation report that the livestock
20 have access to the spring and can drink directly from the source. This
21 non-diversionary stock water use is covered by the stock water stipulation
22 discussed on page 4 of this report.

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1 COURT CLAIM NO. 01549 -- Ande R. Stritmutter

2 Court Claim No. 01549 asserts a right to use waters from Parke Creek
3 for irrigation of 8 acres and stock watering. Mr. Stritmutter testified at
4 the evidentiary hearing.

5 Ande Stritmutter owns 9.3 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T. 18 N.,
6 R. 20 E.W.M. and is asserting a right to irrigate 8 acres with water
7 diverted from Parke Creek. He also owns six shares of Kittitas Reclamation
8 District (KRD) water. Water is diverted from Parke Creek at two points, one
9 1200 feet north and the second 800 feet north of the southeast corner of
10 Section 31, both in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31. These diversions serve an
11 open ditch system used to rill and flood irrigate pasture and hay fields. A
12 3/4 horsepower electric pump is placed on the creek near the house to
13 irrigate the lawn and garden area. Occasionally the claimant also uses a 1
14 HP electric pump to irrigate four acres in the middle of the property. A
15 pond used for fish propagation was constructed on the property in 1981.
16 According to the investigation report, the pond is on the stream channel,
17 which leads the Referee to conclude there is no diversion to the pond.
18 Livestock are raised on the property and drink from the irrigation ditches
19 and directly from the creek and other water sources, such as a spring area
20 north of the pond. Stock drinking directly from the water sources are
21 covered by the stock water stipulation discussed on page 4 of this report.

22 Water Right Claim No. 083086 was filed pursuant to RCW 90.14 by a prior
23 owner of the property. It asserts a right to use 2 cubic feet per second,
24 56 acre-feet per year from Parke Creek for the irrigation of 14 acres and
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1 stock water in the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T. 18 N., R. 20 E.W.M. The point
2 of diversion described is 1300 feet north of the southeast corner of
3 Section 31. The date of first water use shown on the claim is April 1880.

4 According to the documents in the record, the E $\frac{1}{2}$ of Section 31 was
5 conveyed to Northern Pacific Railroad, with a patent issuing in 1895. In
6 1902 N.P.R.R. conveyed to J. M. Coughlin the E $\frac{1}{2}$ and the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 31.
7 The chain of title sheet (DE-335) shows the land being sold periodically,
8 but there is no mention of water rights. Mr. Stritmutter testified to his
9 belief that the house on the property was the original homestead and was
10 built around the turn of the century (1900).

11 Although Mr. Stritmutter testified that he believed that the land had
12 been irrigated since it was first settled, there was no evidence offered to
13 support that belief. There are no water right documents in the record, nor
14 is there any testimony of water use prior to when Mr. Stritmutter acquired
15 the property.

16 The land is riparian to Parke Creek and in order to show that there was
17 a water right established under the Riparian Doctrine, there needs to be
18 evidence that the land was first irrigated with water from Parke Creek prior
19 to December 31, 1932. Because the land is also served by KRD, it is
20 important to be able to distinguish from water delivered by KRD.

21 Due to the lack of evidence to show that a water right was legally
22 established through beneficial use prior to 1932, the Referee cannot
23 recommend that a water right be confirmed under Court Claim No. 01549.

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1 COURT CLAIM NO. 01041 -- Sweet Grass Investments, LLC

2 Court Claim No. 01041 was originally filed by Robert Riddle asserting a
3 right to use water from Wipple Creek for irrigation. On May 28, 1991, Paul
4 M. Tueffers was substituted for Mr. Riddle. Dr. Tueffers, who was
5 represented by Attorney Richard T. Cole, testified at the evidentiary
6 hearing, along with Mike Benavides, who managed the farm. On January 15,
7 1999, Sweet Grass Investments, LLC, was substituted as claimant.

8 The land described in Court Claim No. 01041 lies in the SE $\frac{1}{4}$ of
9 Section 29 and that portion of the SW $\frac{1}{4}$ of Section 29 lying south of Wipple
10 Creek. A right is being asserted to irrigate 141 acres and water stock.
11 The variety of evidence in the record has served to raise a great deal of
12 confusion over the source of water used at the time of the hearing and
13 historically used on the property. Court Claim No. 1041 and Water Right
14 Claim No. 137444 filed pursuant to RCW 90.14 describe Wipple Creek as the
15 source of water, as does the State's Investigation Report. However, Court
16 Claim No. 01041 and the investigation report both state that the point of
17 diversion is in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21. Wipple Creek does not flow
18 through that section. The point of diversion described in the investigation
19 report and on Court Claim No. 01041 is on a water course that is not labeled
20 on SE-2, but that has been called Badger Pocket Creek by other claimants in
21 this proceeding. Dr. Tueffer's testimony suggests that Cherry Creek is the
22 source of water and testifies to two diversions, one on the Paul Sorenson
23 property and one on the Ken Sorenson property. The diversion from Badger
24 Pocket Creek in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 is on Paul Sorenson's property.

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1 There is a diversion on Cherry Creek in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 that is on
2 the Annine Sorenson property that feeds a ditch that goes south along the
3 east line of Section 29 and appears on SE-3 to enter the claimant's property
4 and go into a pipeline. Richard C. Bain prepared a letter report for Dr.
5 Tueffers concerning irrigation practices on the property. TO-1 described in
6 the letter is near the northeast corner of the property, where the ditch
7 just mentioned enters the claimant's land. However, SE-2 also shows a
8 pipeline crossing unnamed property in the S $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, coming from a
9 ditch that carries water diverted from Badger Pocket Creek in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
10 Section 21. Mr. Bain's report suggests that Cherry Creek, Badger Pocket
11 Creek and Wipple Creek (or wasteway) are all sources of water, along with
12 Cascade Irrigation District.

13 Mr. Bains report indicates that 4.0 cfs is the instantaneous flow at
14 TO-1, which is fed by Cherry Creek and Badger Pocket Creek. This leads the
15 Referee to conclude that both creeks are used and pipeline/ditches from both
16 diversions are used. Mr. Bain's report also indicates that TO-2 and 3 on
17 the claimant's property is supplied strictly by Cascade Irrigation
18 District. Both the report and Dr. Tueffer's testimony indicated that 44.63
19 acres are assessed by Cascade. Mr. Benavides testified that only Cascade
20 water is used on the land that is sprinkler irrigated. Mr. Bain's report
21 states that 68.8 acres are rill irrigated using gated pipe or earthen
22 ditches and 72.5 acres are sprinkler irrigated.

23 As previously mentioned, Water Right Claim No. 137444 was filed by
24 Robert Riddle asserting a right to use Wipple Creek. The claim does not
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1 specify a quantity of water or point of diversion, but states that the water
2 has been used since 1926 to irrigate 80 acres and is used on the land his
3 owns in Section 29, T. 17 N., R. 19 E.W.M. Although the claim is lacking
4 much of information required by RCW 90.14, Ecology accepted the claim and
5 registered it, leading the Referee to conclude that it substantially
6 complies with the filing requirements. The Referee notes that the claim
7 indicates that water was first used in 1926.

8 Numerous historical documents were entered into the record to support
9 the claim. Exhibits DE-478 and 479 are not legible, so the Referee will not
10 consider them. The documents that are legible show that the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$
11 of Section 29 was originally conveyed to Northern Pacific Railroad, who sold
12 it to S. R. Geddes on November 9, 1889. The land was foreclosed and sold,
13 along with other land, at a sheriffs sale on March 10, 1896, to Northern
14 Counties Investment Trust, Limited. Although a copy of the deed or sales
15 contract is not in the record, the chain of title that is Exhibit DE-477
16 indicates that Northern Counties Investment Trust sold at least the SE $\frac{1}{4}$ and
17 S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 29 to George Cooke, who owned it until 1939, when it was
18 sold to Hiram Dyk. Mr. Dyk sold it to Bert Riddle and it stayed in the
19 Riddle family until Dr. Tueffers bought in 1990.

20 Exhibit DE-484 is a Affidavit by Hiram Dyk stating that at that time he
21 owned the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ of Section 29, T. 17 N., R. 19 E.W.M., formerly
22 known as the Cooke place. He had owned it for 10 years at that time and
23 irrigated a large portion from a creek called Cherry Creek or Park Creek.
24 He was claiming a right adverse to all the world to use said water for
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1 irrigation and no one had interfered with his use. He also stated that
2 Chester Cooke, the former owner of the property, informed him that a large
3 portion of the land had been irrigated from Cherry Creek for more than 50
4 years. DE-485 is an agreement for a ditch right of way dated August 28,
5 1961. The agreement is between Flora V. Sorenson, Emil and Annine Sorenson
6 and Robert and Joan Riddle. It states that Emil and Annine Sorenson and the
7 Riddles had for many years irrigated their property from what is formerly
8 known as Wipple Creek and have a restricted water right in the waters
9 flowing through that creek. Flora V. Sorenson had filled a portion of
10 Wipple Creek running through her property and the parties had agreed that
11 she would construct and maintain the ditches necessary to deliver water to
12 the existing diversion point of the other parties on the west boundary line
13 of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28. Flora Sorenson's property was in the S $\frac{1}{4}$ SW $\frac{1}{4}$ of
14 Section 21 and the N $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28.

15 Although the record is not entirely clear, there is sufficient evidence
16 to convince the Referee that a right was established for use of water from
17 Cherry Creek for irrigating a portion of the claimant's property. It is
18 clear that over the years the diversions have been changed, with portions of
19 the creeks being buried and piped. The Referee has not confirmed any rights
20 to use Badger Pocket Creek because of the lack of evidence to show that it
21 carries any natural flow. The creek originates just below the Cascade Canal
22 in an area where the precipitation is too low to form a creek except during
23 storm events. The record submitted in support of this claim does not
24 convince the Referee to change that position. If the claimants are

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1 diverting any water from what is labeled Wipple Wasteway on SE-2, a right
2 cannot be confirmed for use of that source, as it is clear the Kittitas
3 Reclamation District, Cascade Irrigation District and Ellensburg Water
4 Company all spill into the wasteway. The name itself makes it clear that
5 naturally occurring water is not being carried.

6 The Referee will recommend that a right be confirmed under the Riparian
7 Doctrine with a May 24, 1884, date of priority, which is the date the map of
8 definite location was filed in Kittitas County for the railroad. Although
9 Mr. Bain's report states that 4.0 cfs is used at T0-1, a portion of that
10 water comes from Badger Pocket Creek. Therefore, the Referee will confirm a
11 right to divert 2 cubic feet per second, 412.8 acre-feet per year from
12 Cherry Creek for the irrigation of 68.8 acres in the S $\frac{1}{2}$ S $\frac{1}{2}$ W $\frac{1}{4}$ lying south of
13 Wipple Wasteway and the SE $\frac{1}{4}$ of Section 29, T. 17 N., R. 19 E.W.M.
14

15 COURT CLAIM NO. 00849 -- James B. Thomson
16 & Wanda T. Pressley
17 Robert L. Krasean
18 Stanley D. Hall
19 Dr. Kenneth R. Stillwell
20 & Mrs. Kenneth R. Stillwell
21

22 Court Claim No. 00849 was originally filed by Montauk Properties
23 asserting a right to use an unnamed spring for domestic supply and stock
24 water. Over the years some of the land has changed hands several times and
25 the current owners are identified in the heading. At the time of the
evidentiary hearing, the land was owned by Stanley D. Hall, Lee R.
McLaughlin, George C. Marsters, Scott Land Investment Co./Diversified
Investments. Robert L. Krasean sold his portion of the property to Scott

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1 Land Investment/Diversified Investments, but did not transfer his interest
2 in the claim, therefore, he is still associated with the claim. Lee
3 McLaughlin and Steven Demarest, representing Scott Land Investment and
4 Diversified Investments testified at the evidentiary hearing. The Referee
5 recommends that Scott Land Investments join themselves to the claim.

6 The land for which a water right is being asserted lies in the SW $\frac{1}{4}$ NE $\frac{1}{4}$
7 of Section 21, T. 19 N., R. 20 E.W.M. That 40 acre tract has been divided
8 into four parcels, each ten acres in size. A right is being asserted to use
9 an unnamed spring located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 for domestic supply
10 on each lot and stock watering. The spring area is developed and piped
11 about 300 feet to at least two faucets. The owners of the land fill buckets
12 or other containers with water at the faucets and haul them to their
13 parcels. The land is used for recreation purposes and there are two cabins
14 that are used intermittently during the year. The other parcels do not have
15 permanent structures, but water is used for domestic supply in travel
16 trailers or tents when the landowners visit the property. One of the
17 faucets is also used to fill a hand-dug pool for wildlife and stock
18 watering. The area is used for livestock grazing, so cattle will wander
19 onto the property and drink from the pool, as will wildlife in the area.

20 Surface Water Certificate No. 11618 issued to a prior owner of the
21 property with a February 2, 1970, date of priority authorizing the diversion
22 of 0.007 cubic foot per second, 1 acre-foot per year for domestic supply and
23 stock watering. It is evident that beneficial use of the water has
24 continued as authorized by the certificate. Therefore, the Referee

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1 recommends that a right be confirmed to the claimants as described in the
2 certificate.

3 COURT CLAIM NO. 00584 -- Beryl A. Trezise

4 Court Claim No. 00584 was filed by Mrs. Beryl A. Trezise making her a
5 party to this adjudication. However, the claim did not assert a right to
6 use water within the Yakima River Basin. Mrs. Trezise sent a letter to the
7 Referee stating that she owns over 300 acres in Kittitas County, but that it
8 has no water. Springtime rains allows grass to grow sufficient for grazing
9 cattle, but that is the only water on the property. She did not appear at
10 the evidentiary hearing. Based on the letter and lack of appearance at the
11 hearing, the Referee concludes there is no water right appurtenant to the
12 property owned by Mrs. Trezise in Kittitas County and does not recommend
13 confirmation of one under Court Claim No. 00584.
14

15 COURT CLAIM NO. 01952 -- Estate of Glenn Turner
16 Carol W. Phelps
17 & Joy M. Turner

18 Claim No. 1952 for the use of water from Coleman Creek was filed with
19 the Court by Glenn Turner in August of 1981. Mr. Turner is now deceased and
20 Carol W. Phelps and Joy M. Turner were joined as additional parties to the
21 claim on January 19, 1989. Mr. Turner had claimed the use of Coleman Creek
22 for the irrigation of 33 acres within the SE%SE% of Section 14, T. 18. N.,
23 R. 19 E.W.M.; and stock water.

24 Neither of the claimants appeared at the Subbasin 10 evidentiary
25 hearing for this claim which was scheduled on October 14, 1991. Their
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1 attorney, Kenneth Beckley, informed the Referee that the only claim they are
2 making in Subbasin No. 10 is for non-diversionary stock watering as provided
3 for in the stock water stipulation. Their land is irrigated with water
4 delivered by Kittitas Reclamation District and water sources in Subbasin No.
5 9 (Wilson-Naneum).

6 Therefore, no diversionary irrigation or stock water right is confirmed
7 for this above noted property, however, the claimant's are covered by the
8 non-diversionary stock water stipulation on page 4 of this report and their
9 name is on the list of claimants who have a right under the stipulation.

10 COURT CLAIM NO. 01727 -- Joel B. Underhill
11 & Rose T. Underhill

12 The Underhills filed a Statement of Claim with the Court asserting a
13 right to use waters from Cooke Creek. At the time of the evidentiary
14 hearing the Underhills were represented by Attorney Hugh Spall. On
15 February 2, 1998, Mr. Spall withdrew as their attorney. Mr. E. C. Underhill
16 testified at the evidentiary hearing.

17 The Underhills own approximately 40 acres along Cooke Creek in the
18 S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 19 N., R. 20 E.W.M. that they
19 purchased in 1976. When they purchased the property there was evidence that
20 about nine acres had been planted to alfalfa and there are old irrigation
21 ditches on the property. The Underhills have not irrigated the land since
22 they acquired it. They intend to develop the property into a wildlife
23 preserve and encourage the return of natural vegetation for wildlife
24 habitat. Mr. Underhill testified to an intention to eventually develop some

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1 type of irrigation system to facilitate the growth of the vegetation.
2 Wildlife on the property drink from Cooke Creek and that use is covered by
3 the stock and wildlife stipulation discussed beginning on page 4 of this
4 report.

5 Although not identified by Ecology in its Investigation Report,
6 Certificate No. 172 from the Cooke Creek adjudication includes the
7 claimants' land within its place of use. Certificate No. 172 is a Class 8
8 right with an 1880 date of priority. It authorized the diversion of 0.50
9 cubic foot per second for the irrigation of 25 acres in the E½SE¼ and E½NE¼
10 of Section 30, T. 19 N., R. 20 E.W.M. Besides the Underhills, the estate of
11 Vincent J. Larson and Michael J. Shannon own land within the place of use on
12 Certificate No. 172.

13 In addition to Certificate No. 172, Water Right Claims (WRC) No. 48993
14 and 48994 were filed by Allen Faltus pursuant to the requirements of RCW
15 90.14. They both assert a right to use 0.001 cubic foot per second, 1
16 acre-foot per year from Cooke Creek for stock watering. WRC No. 43883
17 describes the N½SE¼NE¼ of Section 30 as the place of water use and WRC No.
18 43884 describes the S½SE¾NE¼ of Section 30 as the place of water use.
19 Besides requiring that water right claims be filed for water uses not
20 described by a certificate, RCW 90.14 also provided for the relinquishment
21 of unused water rights. RCW 90.14.160 provides that any person entitled to
22 divert waters of the state authorized by a general adjudication (such as
23 Cooke Creek) who voluntarily fails without sufficient cause to beneficially
24 use all or any part of the right for five successive years shall relinquish

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1 said right or portion thereof. The sufficient causes that prevent
2 relinquishment are defined in RCW 90.14.140 and the Referee is not aware of
3 any sufficient cause that might to the Underhills. RCW 90.14.140 also
4 provides that relinquishment will not occur if the right is claimed for a
5 determined future development to take place within 15 years of the most
6 recent beneficial use of the water right. Mr. Underhill's testimony
7 indicates that they intend to use water in the future, but 15 years had
8 passed from the time they acquired the property and the evidentiary
9 hearing. Water was still not being diverted for irrigation at the time of
10 the hearing. Additionally, it is not clear that water was being diverted
11 and used for irrigation at the time the Underhills acquired the property.

12 Based on the testimony presented, the Referee must conclude that any
13 water right appurtenant to the property under Certificate No. 172 has
14 relinquished due to over five successive years of nonuse. Therefore, the
15 Referee cannot recommend that a diversionary water right be confirmed under
16 Court Claim No. 01727. The Underhills will be included in the list of
17 claimants who have non-diversionary stock watering/wildlife watering
18 rights.

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1 COURT CLAIM NO. 02276 -- United States of America
2 (A) 03074
3 (A) 05548
4 (A) 14495

5 Court Claim No. 02276 was filed by the United States of America on
6 behalf of the Yakama Indian Nation and its members for surface waters within
7 the Yakima River Basin, including Cooke Creek lying in Subbasin No. 10. The
8 claim has been amended several times, however, none of the amendments
9 pertain to the land in Subbasin No. 10. The United States was represented
10 by Charles E. O'Connell, Jr., Assistant U. S. Attorney, Department of
11 Justice, at the evidentiary hearing. The United States offered no witnesses
12 at the hearing, directing the Referee to the written, expert testimony of
13 Mr. Ross Waples, Mr. Gary Elwell, Mr. Joseph DeMaggio and Mr. James
14 Merchant, all of which had been presubmitted according to Referee's
15 Scheduling Order for Subbasin No. 10. Mr. O'Connell also offered several
16 exhibits at the hearing, all of which were initially objected to by counsel
17 for Subbasin No. 10 claimants. The objections were based on the exhibits
18 not having been presubmitted as required by the Referee's Scheduling Order
19 and the counsel not having the opportunity to review the exhibits. The
20 presubmitted documents were due June 28, 1991. In response to those
21 objections, Mr. O'Connell pointed out that until March of 1991, the United
22 States intended to present evidence of water rights for the trust allotments
23 as part of the its case in the pathway established for Federal Reserved
24 Rights for Indian Claims. The Court and the Referee informed the United
25 States in March of 1991 that claims for off-reservation allotments for which

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1 a reserved right is being asserted should be addressed in the subbasin in
2 which the land lies. Pre-trial Order No. 8 had to be amended to allow for
3 inclusion of these claims in the subbasin pathway, which happened on
4 April 11, 1991. The United States then had to redirect its efforts to
5 prepare for the hearing. Mr. O'Connell admits that as a result the one
6 historical document offered, the trust patent, was overlooked and the
7 documents that support the written testimony of the expert witnesses were
8 not ready until September. The Referee has in many instances allowed
9 historical documents in during the presentation of testimony with less cause
10 being shown than that provided by the United States. The Referee during the
11 presentation of the claim admitted the documents. The Referee did point out
12 that counsel could review the documents that were admitted and during the
13 post-hearing briefing period further address the documents. Post-hearing
14 briefs were submitted by the United States, Hugh Spall, John P. Gilreath,
15 and Donald Bond and will be considered herein.

16 The land in question has been designated by the United States as
17 Allotment No. SS-18811, which lies in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of
18 Section 6, T. 18 N., R. 20 E.W.M. The land is riparian to Cooke Creek and
19 has never been irrigated. Three irrigation ditches that serve other lands
20 south of the allotment cross the property from north to south. At the time
21 of the evidentiary hearing the allotment was being leased to Edgar J.
22 McDowell. According to the State's Investigation Report, the land was being
23 used for cattle grazing, with the livestock having access to Cooke Creek and
24 the irrigation ditches that traverse the property. Livestock drinking

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1 directly from Cooke Creek have a right covered by the stock water
2 stipulation discussed on page 4 of this report.

3 The United States asserts that the practicably irrigable acres (PIA)
4 standard be applied to this land. Most of the written expert testimony
5 addressed that concept and resulted in a conclusion that there are 135.3
6 irrigable acres on the allotment and a diversion of 4.6 cubic feet per
7 second, 551.8 acre-feet per year would be necessary to irrigate this land.
8 The Referee notes that Cooke Creek was previously adjudicated in 1921 and at
9 that time it was determined that 0.02 cubic foot per second per irrigated
10 acre, or 2.7 cubic feet per second for 135 acres, was sufficient to irrigate
11 the lands for which Cooke Creek water rights were asserted. The written
12 testimony is also asserting a right to use 2.10 acre-feet per year for
13 domestic supply and stock watering. It was estimated that the carrying
14 capacity of the land is 75 animal unit months and that at some time a
15 domicile will be placed on the land and water used for domestic supply. The
16 Referee finds it unlikely that if a home is placed on the allotment that
17 Cooke Creek will be the source of domestic water.

18 The United States is asserting a Federal reserved right for this land
19 based on the June 9, 1855, treaty between the United States and the
20 Confederated Tribes and Bands of Indians, known as the Yakamas. In Winters
21 v. United States, 207 U.S. 546 (1908), the Court ruled that, when
22 establishing an Indian reservation, there was an implied federal intent to
23 reserve an adequate supply of water from the watercourses running through,
24 bordering on, or rising on the reserved area to make the reservation lands

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1 productive. The Court in Arizona v. California, 373 U.S. 546 (1963),
2 further found that the right is to include sufficient "water . . . to
3 irrigate all practicably irrigable acreage on the reservations . . ." 373
4 U.S. at 600. The United States is asking the Referee to extend these
5 rulings to Allotment No. SS-18811, which was established under the Indian
6 Homestead Act of July 4, 1884. Exhibit No. DE-1409 is a copy of a
7 Certificate issued by the United States under the Indian Homestead Act
8 holding the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6 in trust for Billy Peters
9 (or Haup). Although the Certificate states that the United States will hold
10 the land in trust for a period of 25 years and then convey the land by
11 patent to Billy Peters (Haup) at the end of that period, the land is still
12 being held in trust by the United States. The Certificate was signed on
13 May 24, 1950. There is no evidence in the record about the status of the
14 land prior to 1950. Was the land still in the public domain? Was Bill
15 Peters and his predecessors occupying the land? Had it always been occupied
16 by an Indian? The Referee believes that this information is vital to
17 determining whether a Reserved Right exists for the land.

18 The United States cites two cases in support of its contention that a
19 Reserved right exists for this land, Skeem v. United States, 273 F. 93 (9th
20 Cir.), (1921) and United States v. Hibner, 27 F.2d 909 (D.Idaho) (1928).
21 However, the Referee agrees with opposing counsel that these cases are
22 distinguishable. Both cases address federally reserved rights on Indian
23 Allotments that are part of lands ceded to the United States. However, in
24 both cases the ceded lands were once part of the Indian Reservation. The
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1 lands being addressed herein were never part of the reservation created as a
2 result of the Treaty of 1855. They are part of the lands ceded to the
3 United States by the tribes at the time the reservation was created. The
4 Referee considers this to be an important distinction that was not addressed
5 by the United States. The ruling by the 9th Circuit in Skeem v. Unites
6 States, supra, might be more compelling if the evidence showed that the
7 allotment was created in the late 1800's when efforts were being made to
8 transform Indian allottees to a pastoral and civilized people, see United
9 States post-hearing brief at page 29, lines 8 - 11.

10 The purpose of the government (in authorizing allotments in the ceded area)
11 was to induce the Indians to relinquish their nomadic habits and to till
12 the soil, and the treaties should be construed in light of that purpose and
such meaning should be given them as will enable the Indians to cultivate
eventually the whole of their lands so reserved for their use.
13 Skeem, at 95.

14 The Referee has reviewed Title 25 of the United States Code,
15 specifically Chapter 9, which relates to Allotment of Indian Lands. Section
16 331 addresses Allotments on reservations and authorizes each Indian located
17 on the reservation to receive an allotment not to exceed 80 acres of
18 agricultural land or 160 acres of grazing land. The section also provided
19 that if the land had been or might be brought within any irrigation project,
20 allotments of irrigable land were to be made to the Indians not to exceed 40
21 acres of irrigable land, and the irrigable land would be equal to twice the
22 number of nonirrigable agricultural land and four times the number of acres
23 of nonirrigable grazing land. Section 334 addressed Allotments to Indians
24 not residing on reservations and provided that an Indian settling on land
25 outside the reservation was entitled to have the same allotted to him or her

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1 in quantities and manner as provided in this act for Indians residing on the
2 reservation.

3 These two sections of the United States Code raise questions that the
4 Referee believes must be answered prior to a recommendation being made on
5 whether a valid water right exists for this land. Section 331 is clear that
6 each Indian is entitled to only 40 acres of irrigable land if the land may
7 be brought within an irrigation project. Does "irrigation project" mean
8 development of any system to allow for irrigation of the land? Is it
9 referring only to a Federal irrigation project? This certainly is not
10 clear. Does the 40 acres of irrigable land limitation apply to this
11 allotment? If so, that is the maximum number of acres that should be
12 authorized under this claim. Section 334 provides that allotments not on a
13 reservation are made "in quantities and manner as provided in this act for
14 Indians residing upon reservations;". That suggests to the Referee that if
15 an allotment on the reservation would enjoy a reserved right for use of
16 water, then the allotment not on the reservation would also enjoy a reserved
17 right, but for no more than 40 acres.

18 The concept of a reserved right for irrigation of 40 acres would not be
19 troubling at all for the Referee based on the language in the U.S. Code if
20 the evidence were to show that the Federal government held this land in
21 trust for an Indian since the late 1800's when the Allotment Acts were
22 passed and efforts were being made to provide homes for Indians and convert
23 them from a nomadic people to farmers and ranchers. However, the

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1 certificate did not issue until 1950 and there has been no explanation
2 offered by the United States about the status of the land up to that time.

3 The Referee will not recommend that a water right be confirmed in
4 Subbasin No. 10 under Court Claim No. 02276 until the questions raised
5 herein are addressed.

6 COURT CLAIM NO. 02077 -- Jack W. Wallace
7 & Monica A. Wallace

8 The Wallaces filed Court Claim No. 02077 asserting a right to use water
9 from an unnamed spring and KRD for irrigation and stock watering. Mr.
10 Wallace testified at the evidentiary hearing.

11 The Wallace property lies in the W $\frac{1}{2}$ of Government Lot 2 in Section 5,
12 T. 17 N., R. 20 E.W.M. The Court claim asserts a right to irrigate 10
13 acres, however, Mr. Wallace testified that 4 acres are being irrigated. The
14 Kittitas Reclamation District assesses the land for 10.1 acres, which is the
15 size of the parcel. Mr. Wallace testified that he has occasionally
16 irrigated from the unnamed creek that flows through his property. The creek
17 is fed by springs. A 3 HP pump is set on the creek and deliverss water in a
18 two-inch pipe. The land, which is in pasture, is then rill irrigated. The
19 Wallaces raise horses, cows and sheep and the livestock have access to and
20 drink directly from the creek. This type of non-diversionary stock watering
21 is covered by the stock water stipulation discussed on page 4 of this report
22 and their name is included on the list of claimants with non-diversionary
23 stock watering rights.

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1 Mr. Wallace testified that in 1977, which is the year they purchased
2 the property, was the first time it had been irrigated with water withdrawn
3 from the creek. In 1977, the only way to obtain a water right for use of
4 the creek was through compliance with the permitting procedures in RCW
5 90.03. There is no evidence that occurred. Neither the Wallaces nor
6 Ecology entered into evidence a permit or certificate that would be
7 appurtenant to the land. Mr. Wallace's testimony indicates that the natural
8 creek flow is insufficient for irrigation purposes, but waste water from the
9 neighbors increases the flow.

10 The Referee finds that a water right was not legally established for
11 the land and, therefore, cannot recommend that a right be confirmed under
12 Court Claim No. 02077. This determination does not affect water delivered
13 to the claimants land by the Kittitas Reclamation District, whose rights
14 were determined through the Major Claimant pathway.

COURT CLAIM NO. 00261 -- Steve Wallace
& Deborah L. Wallace

Court Claim No. 00261 was originally filed by Frank M. and Kathryn E. Wallace. On July 8, 1991, Steve and Deborah L. Wallace were substituted as claimants. At the time of the evidentiary hearing, the Wallaces were represented by Attorney William Almon, who has since withdrawn as their attorney. Steve Wallace and William Shelton, who at one time lived near the Wallace property, testified at the hearing.

The Wallaces own the E $\frac{1}{2}$ NE $\frac{1}{4}$ and that portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 18 N., R. 20 E.W.M. lying east of Caribou Creek. They are

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1 asserting a right to irrigate 60 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ and 10 acres in the
2 SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30. The land is planted in hay, pasture and grain
3 rotation. It is rill irrigated through a system of concrete and dirt
4 ditches and gated pipe. Livestock raised on the property have access to
5 Caribou Creek and drink directly from the creek. This type of
6 non-diversionary stock water use is covered by the stock water stipulation
7 discussed on page 4 of this report. Water is diverted from Caribou Creek
8 and carried in the Grindrod Ditch. The point of diversion is in the
9 NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 18 N., R. 20 E.W.M. Formerly a separate
10 diversion served the ten acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, but that
11 diversion was abandoned around 1985 and all of the land is now irrigated
12 from the same diversion and ditch system. Mr. Wallace should contact
13 Ecology's Central Regional Office to determine if compliance with the change
14 procedures in RCW 90.03.380 is needed. The claimants purchased the land
15 from Mr. Wallace's parents, who had owned it since around 1963. The land was
16 being irrigated in much the same manner when Mr. Wallace's parent acquired
17 it, except for use of the second diversion. The land is also assessed by
18 the Kittitas Reclamation District (KRD) and portions of the property are
19 irrigated with water delivered by KRD.

20 William Shelton lived near the property in the 1920's and 1930's.
21 Although he did not provide any specific information about the irrigation
22 practice on the land, he does recall it being irrigated when he was a child,
23 as he would fish Caribou Creek as it flowed through the property. He
24 recalls when the Kittitas Reclamation District (KRD) canal was finished and

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1 water first carried in it. The Wallace property was being irrigated prior
2 to the canal being finished. At the time of Mr. Shelton's earliest memories
3 of the land it was owned by the Grindrod family.

4 The Wallaces' claim to a water right for this land is based on two
5 Kittitas County Superior Court cases. The first was Grindrod v. Prigmore,
6 Cause No. 3123. The Findings of Fact relate that E. W. Lyon settled on a 20
7 acre tract in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30 lying east of Caribou Creek in 1871,
8 receiving a patent for that land in 1875. E. G. Grindrod acquired this land
9 in 1888. At the time that Lyon settled on the land, he appropriated 10
10 inches of water, which continued to be used. In June of 1882 E. G. Grindrod
11 settled on the E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, ultimately receiving a patent for the
12 land on May 23, 1889. Ever since the land was settled, Grindrod continued
13 to cultivate the land and to irrigate it with water from Cariboo (sic)
14 Creek. At the time the case was being decided in 1903, Grindrod was
15 irrigating 60 acres. The decree that ultimately issued found that the
16 Grindrods had first right to 10 inches of water, along with Sophia Walker
17 for land she owned, with those rights being equal. The defendants then had
18 a right to 40 inches and lastly the Grindrods had a right to 50 inches of
19 water. It is clear that the Court found two separate rights for the
20 Grindrods, based on when the land was settled and water first used.

21 The second case is Mary A. Clerf v. Robert I. Scammon, et al., Cause
22 No. 3534, which was decided in 1911. This case involved considerably more
23 parties than did the 1903 case. The Findings of Fact again found that the
24 Grindrods owned the E $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, called the Lyon tract, that Lyon

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1 settled on and appropriated water from Caribou Creek in 1871. It found that
2 there was a right to 10 inches of water on that portion of the property east
3 of Caribou Creek. The Findings of Fact also acknowledged that the Grindrods
4 owned the E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30. However, it also stated that the only right
5 that the Grindrods had to use Caribou Creek was for the amount awarded to
6 them in Finding of Fact VIII, which is where the 10 inches for the Lyon
7 Tract was discussed. It goes on to say that the rights of the defendants
8 and any diversion they have made were made after the rights of the other
9 parties in this action, as previously mentioned and are subject to those
10 rights. The decree awarded to Grindrod a Class 2 right for 10 inches. All
11 of the parties to the case that were specifically awarded rights had settled
12 on their land and appropriated water in the 1870's. The land in the E $\frac{1}{4}$ NE $\frac{1}{4}$
13 of Section 30 was settled by Grindrod in 1882, well after the other rights
14 had been established. The Referee concludes that while the decree did not
15 specifically award a right for the E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, it did not preclude
16 there being a right on that land, junior to the rights awarded in the
17 decree. Taken in conjunction with the Grindrod v. Prigmore case, the
18 Referee concludes that a water right was established for the E $\frac{1}{4}$ NE $\frac{1}{4}$ of
19 Section 30 through beneficial use beginning in 1882.

20 Pursuant to the requirements of RCW 90.14, Frank Wallace filed two
21 water right claim (WRC) forms. WRC No. 026706 asserts a right to use 1.5
22 cubic feet per second, 80 acre-feet per year from a creek for the irrigation
23 of 20 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30. The point of diversion is
24 described as in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, which is where the abandoned
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1 diversion testified to by Mr. Wallace was located. WRC No. 026707 asserts a
2 right to use 2 cubic feet per second, 160 acre-feet per year from a creek
3 for the irrigation of 40 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 30. The described
4 point of diversion is in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, which is approximately
5 where the currently exercised diversion is located. Although neither water
6 right claim identifies the creek as Caribou Creek, the point of diversion
7 locations are clearly on Caribou Creek.

8 Although Mr. Wallace testified to irrigating 60 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of
9 Section 30, and the decree in Grindrod v. Prigmore indicated that 60 acres
10 were being irrigated, WRC No. 026707 asserts a right to irrigate 40 acres.
11 There was no explanation offered of the difference. Mr. Wallace did not
12 testify to the quantity of water being used to irrigate the land. However,
13 the decrees stated that one inch of water was sufficient for the irrigation
14 of one acre. The Referee in this proceeding shall use that quantity.

15 The Referee recommends that two water rights be confirmed under Court
16 Claim No. 00261 as follows: With a June 30, 1871, date of priority, a right
17 for the use of 0.20 cubic foot per second, 40 acre-feet per year for the
18 irrigation of 10 acres in that portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30 lying
19 east of Caribou Creek and with a June 30, 1882, date of priority, a right
20 for the diversion of 0.80 cubic foot per second, 160 acre-feet per year for
21 the irrigation of 40 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 30 east of Caribou
22 Creek.

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1 COURT CLAIM NO. 00720 -- Donald R. Weber
2 & Barbara Weber

3 Donald R. and Barbara Weber filed a claim with the Court asserting a
4 right to use water from Parke Creek for irrigation and stock water. The
5 claimants are represented by Attorney John P. Gilreath and Mr. Weber
6 testified at the evidentiary hearing.

7 The claimants own the SE $\frac{1}{4}$ of Section 29 and the NE $\frac{1}{4}$ of Section 32,
8 T. 18 N., R. 20 E.W.M. and are asserting a right to irrigate 63 acres in the
9 NE $\frac{1}{4}$ of Section 32 with water diverted from Parke Creek. Water is diverted
10 from the creek in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 and carried in an open ditch
11 to the property. Most of the land is irrigated with a gravity flow system
12 consisting of concrete and earthen ditches and gated pipe for rill
13 irrigation. Mr. Weber testified that a 7 $\frac{1}{2}$ HP pump is used to lift water to
14 a hill west of his house and an electric pump is used to irrigate the lawn
15 and garden area. Hay crops and pasture are grown on the land and up to 250
16 cow/calf pairs drink from the irrigation ditches, streams and springs on the
17 property. Livestock drinking directly from the streams and springs on the
18 property is non-diversionary and covered by the stock water stipulation
19 discussed on page 4 of this report. The claimants' names are included on
20 the list of those who are entitled to a non-diversionary stock water right
21 under the stipulation.

22 Prior owners of the land were involved in litigation that addressed use
23 of water from Parke Creek. The first, W. F. Burke, W. G. Davidson and Ellen
24 Davidson v. Allan Dunning, Nicholas Snow, Christian Christianson, was

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1 decided on December 24, 1909. The decree in that case ruled that the
2 plaintiffs were entitled to the entire flow of all the waters naturally
3 flowing in Parke Creek, except waters received from the springs and Little
4 Parke Creek situated upon the lands of defendant Allan Dunning (E $\frac{1}{2}$ E $\frac{1}{2}$ of
5 Section 22) and to the undivided fourteen-sixteenths of all waters conveyed
6 by them into Parke Creek above the lands of said defendant, subject to the
7 right of Allan Dunning to use such waters for the last ten days of the month
8 of April of each year. W. F. Burke owned the SE $\frac{1}{4}$ of Section 29 and the N $\frac{1}{2}$
9 of Section 32 and W. D. Davidson owned the SW $\frac{1}{4}$ of Section 32. The Webers
10 are asserting a right to one-half of the fourteen-sixteenths, or
11 seven-sixteenths of the flow in Parkee Creek.

12 The second case is Emmel Aitken v. Guy W. and Catherine Cooke, which
13 was decided on February 15, 1935. The Findings of Fact that preceded the
14 decree stated that the plaintiff owned the SE $\frac{1}{4}$ of Section 29, the N $\frac{1}{2}$ and the
15 SW $\frac{1}{4}$ of Section 32. The predecessor to the plaintiff, in 1888, constructed a
16 ditch (called Mountain Ditch) from the headwaters of Tacyson and Brushy
17 Creeks to a junction with the channel of Parke Creek. Tacyson and Brushy
18 Creeks naturally flow into the Columbia River and continuously since 1888
19 the plaintiff or his predecessor conveyed to his lands and used for
20 irrigation, stock, and domestic purposes seven-eights of all of the waters
21 of Parke Creek and Little Parke Creek and the waters diverted from Mountain
22 Ditch. The decree then awarded Aitken seven-eighths of the waters from
23 Parke Creek including seven-eighths of the waters from Tacyson and Brush
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1 Creeks put into Parke Creek. Neither the Findings of Fact nor the Decree
2 state how much water is being appropriated.

3 Although not testified to by the claimant, Exhibit DE-1495 asserts a
4 right to the water diverted into Parke Creek from Tacyson and Brush Creeks.
5 Both Tacyson and Brush Creeks flow directly to the Columbia River and are
6 not part of the Yakima River Basin. Therefore, the right to waters from
7 those two creeks cannot be determined in this proceeding. If the diversion
8 from those two creeks into Mountain Ditch to Parke Creek has continued, and
9 there is no evidence one way or the other, the Referee cannot recommend
10 confirmation of a water right for that water.

11 The claimant is asserting a priority date of 1884 based on a Statement
12 of Claim of Water Right From Parke Creek filed by W. F. Burke on May 31,
13 1890. In that statement, Mr. Burke indicates that construction of the ditch
14 began around June 1, 1884. However, the Findings of Fact in Aiken v. Cooke
15 stated that water from Parke Creek was first appropriated in 1888. This
16 date appears during discussion of the construction of the Mountain Ditch,
17 however, it also states that 1888 is when water from Parke Creek was first
18 appropriated.

19 As previously mentioned, the claimant is asserting a right to
20 seven-sixteenths of the flow in Parke Creek. There was no testimony about
21 how much water has been diverted by either the claimants or their
22 predecessors. Neither has there been any testimony about the quantity of
23 water flowing in Parke Creek. "In conducting a water adjudication, the
24 trial court generally considers two elements when confirming existing
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1 rights: "(1)the amount of water that has been put to beneficial use and
2 (2)the priority of water rights relative to each other.", Department of
3 Ecology v. Acquavella, 131 Wn.2d 746, 755, 935 P.2nd 595 (1997), quoting
4 from Department of Ecology v. Grimes, 121 Wn.2d 459, 466-67, 852 P.2d 1044
5 (1993). Although Mr. Weber has testified to diverting water from Parke
6 Creek and irrigating 63 acres, there was no testimony concerning the
7 quantity of water actually being used. The Referee cannot and will not
8 recommend a right for a percentage of the flow in the creek. Most of the
9 other decrees that were entered by Kittitas County Superior Court in the
10 late 1800's and early 1900's allowed for the use of 0.02 cubic foot per
11 second for each acre irrigated. Lacking any evidence on actual water use,
12 the Referee intends to use that figure.

13 Water Right Claim (WRC) No. 072447 was filed by Harting and Weber
14 pursuant to the requirements of RCW 90.14. It asserts a right to use 4 cfs,
15 1500 acre-feet per year from Parke Creek for the irrigation of 100 acres in
16 the SE $\frac{1}{4}$ of Section 29, the N $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 32. The point of diversion
17 described is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, where the currently exercised
18 point of diversion is located. An attachment to WRC No. 072447 states that
19 the intent of filing the water right claim was to claim not only the
20 naturally flowing waters in Parke Creek, but also the water of Tacyson and
21 Brushy Creeks awarded in the two previously mentioned court decrees.

22 WRC No. 072447 asserts a right to irrigate 100 acres, however, the
23 Webers and the McGraths, who own the SW $\frac{1}{4}$ of Section 32 are claiming rights
24 to irrigate 133 acres (63 acres on the Webers' land and 70 acres on the

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1 McGraths' land). There was no mention of the difference between the acreage
2 claimed on WRC No. 072447 and the use testified to by Mr. Weber. The
3 Referee concludes that WRC No. 072447 protected a right to irrigate 100
4 acres and the 100 acres should be divided equally between the Webers and the
5 McGraths.

6 The Referee recommends that a right be confirmed under Court Claim No.
7 00720 with a June 30, 1888, date of priority for the diversion of 1.0 cubic
8 foot per second, 250 acre-feet per year from Parke Creek for the irrigation
9 of 50 acres in that portion of the NE $\frac{1}{4}$ of Section 32, T. 18 N., R. 20 E.W.M.
10 lying south of an open drain and north of the delivery ditch.

11 COURT CLAIM NO. 01746 -- Willard A. Williams
12 & Mildred Williams

13 On August 28, 1981 Willard and Mildred Williams filed with the Court
14 Statement of Claim No. 1746 for the use of water from an unnamed source on
15 30 acres in Section 11, T. 18 N., R. 19 E.W.M. An amended statement of
16 claim was filed on November 10, 1989, to include an additional 6.25 acres in
17 Section 10, adjacent to the 30 acres mentioned above. The claimed source of
18 water for the additional six acres is Spring Creek. The Williams were
19 represented in the evidentiary hearing by Attorney William F. Almon, and
20 testimony was provided by Steve Wallace, Willard Williams, and Henry
21 Schnebly.

22 The Court Claim does not mention use of springs, however, in testimony
23 Mr. Williams and Mr. Wallace mention the existence of several springs and a
24 drain. Specific testimony regarding these waters is scant, and despite Mr.
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1 Williams having filed two RCW 90.14 Water Right Claims, one on a spring, and
2 one on a drain, the Referee is uncertain as to whether or not either of
3 these sources are being claimed in this adjudication.

4 Mr. Almon stated that the names Schnebly Creek and Spring Creek appear
5 to be the same creek. The evidence indicates that this is true to some
6 extent, however, for the sake of a clear understanding in the analysis of
7 this claim, the Referee proposes to examine this issue a bit further. Mr.
8 Almon has directed the Referee's attention to exhibits DE-134, 135, 136 and
9 138. These, together with States Exhibits SE-1, #2, DE-968, and the
10 testimony of Mr. Williams and other claimants, reveal the following
11 information. Schnebly Creek is a seasonal north-south flowing creek with
12 it's origin in the headwaters of Schnebly Canyon. Schnebly Creek typically
13 flows from the middle of May to the first of June (Kayser Ranch testimony).
14 The creek channel winds its way southward to a point near the north line of
15 the claimant's property in Section 11, T. 18 N., R. 19 E.W.M.; about 400
16 feet east of the west quarter corner of said Section 11. This is the point
17 where Spring Creek joins Schnebly Creek and the two then flow southerly in
18 the same channel. This channel continues south through Sections 11, 10, 15,
19 22 and 27 of said township and range, where it feeds into Coleman Creek.

20 Spring Creek has as it's natural origin several springs which arise on
21 part of the old Kiester preemption land in the W $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 11.
22 Spring Creek; also known as Kiester Creek, is a perennial creek which flows
23 southerly across the W $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11 to the above described point where
24 it is tributary to the channel of Schnebly Creek. Spring Creek originally

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only flowed a few inches of water, but when the surrounding area was put under irrigation the springs were enlarged, increasing the flow of the stream.

4 The Referee recognizes that south of Section 11, the local custom is to
5 refer to the creek as either Spring Creek or Schnebly Creek. However, for
6 the purposes of the analysis of this claim and other claims on this creek
7 the Referee shall define the creeks in the following manner: Spring Creek is
8 that creek channel which originates in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 11 and
9 traverses southerly to the point where it meets the channel of Schnebly
10 Creek in the same section; Schnebly Creek is that creek channel which has
11 it's origin in Schnebly Canyon and continues southerly through the above
12 mentioned sections to the point in Section 27 where it joins and discharges
13 to Coleman Creek. Schnebly Creek becomes a perennial creek after the point
14 where Spring Creek feeds into it.

15 The state investigation report indicates that the claimant uses
16 Schnebly Creek water for a total of 38 acres of irrigation and stock water
17 for up to 50 cow/calf units. Approximately 32 acres are located in the
18 NW $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 and about 6 acres are in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
19 Section 10. This is consistent with state map exhibit SE-2, which shows
20 about 32 acres of Section 11 land irrigated with Schnebly Creek water.
21 Testimony indicates that the 6 acres in Section 10 are subirrigated by
22 Schnebly Creek without any special diversion of water necessary for this
23 parcel. Furthermore the testimony was that this parcel is low and stays wet

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1 to the point of being somewhat troublesome. Both parcels of property are
2 riparian to Schnebly Creek.

3 Mr. Williams filed Water Right Claim No. 144908 as prescribed by
4 Chapter 90.14 RCW. The claim simply states "creek" as the source of water,
5 but the stated point of diversion on the claim is the same as on the State
6 Investigation Report, therefore, it is clear that Schnebly Creek is the
7 source. The location is 1320 feet south and 1470 feet east from the
8 northwest corner of Section 11, being within the SW $\frac{1}{4}$, NE $\frac{1}{4}$, NW $\frac{1}{4}$ of Section 11, T.
9 18 N., R. 19 E.W.M. The claimed place of use is 30 acres within the W $\frac{1}{2}$, SW $\frac{1}{4}$
10 of Section 11, T. 18 N., R. 19 E.W.M. The purpose of use is for irrigation
11 and stock water. There does not appear to have been an RCW 90.14 Water
12 Right Claim filed for the claimant's 6 acres in Section 10.

13 Schnebly Creek water is diverted into a pipe and then an earthen ditch
14 conveyance system where it flows about one-quarter mile south and enters the
15 northeast corner of the claimant's property. About 1 $\frac{1}{4}$ miles above Mr.
16 Williams north property line the Kiester Ditch delivers Naneum Creek water
17 into Schnebly Creek. Imported water from Naneum Creek is commingled with
18 Schnebly Creek water and undoubtedly is taken out at the William's diversion
19 point, but Mr. Williams is making no claim to water from Naneum Creek.

20 The history of ownership of the W $\frac{1}{2}$, SW $\frac{1}{4}$ of Section 11 is a bit unclear.
21 Section 11 was originally designated by the Federal Government as a Railroad
22 Section (DE-968). It was first occupied by a man named Miller in 1870, who
23 then moved to Wenatchee and the property was still considered to be railroad
24 land. After Miller, Ed Cooke occupied the land and first irrigated the

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1 place in 1880 or 1881. Mr. Cooke extended what is the present day delivery
2 ditch from the Kiester property above him onto the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11. In
3 so doing, Mr. Cook had hoped to hold the land through the railroad company.
4 However, the land was claimed by Thomas Garrett and Mr. Garret took
5 possession of the land somewhere around 1883-1886. Mr. Garrett seems to
6 have homesteaded on the land and received title from the U.S. Government in
7 1888; how this happened is not apparent. According to exhibits entered by
8 neighboring claimants, J. David and Victoria L. Mitchell (DE-1438) the
9 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10 was part of the land for which E. N. Cooke received a
10 patent on August 18, 1888. This may be the same Cooke who occupied the
11 W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11.

12 Mr. William's diversion point is not located on his property, but on
13 property that was originally part of the Kiester Preemption land. Mr.
14 Kiester established this diversion in order to irrigate his property with
15 Naneum Creek water. However, it is probable that during the early part of
16 the irrigation season both natural Schnebly Creek water, together with
17 Naneum Creek water, were diverted for irrigation. Mr Cooke did not jointly
18 construct the diversion and delivery ditch with Mr. Kiester, but rather
19 extended the ditch onto the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11 in order to take advantage
20 of the "overflow" from other peoples' (Kiester's) ditches (DE-968).

21 The Referee recommends that a right be confirmed to Willard A. and
22 Mildred Williams with a June 30, 1881, priority date for the diversion of
23 0.64 cubic foot per second (cfs), and 182.4 acre-feet per year from Schnebly
24 Creek for irrigation of 32 acres from April 1 through October 15, and 0.03

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1 cfs and 2.5 acre-feet for stock water as available through the year. The
2 place of use is that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T.
3 18 N., R. 19 E.W.M. which lies north of an irrigation ditch. The claimant's
4 stock may drink directly from any naturally occurring water source on his
5 property as provided for in the non-diversionary stock water stipulation on
6 page 4 of this report.

7 The Referee cannot recommend confirmation of a right for the six acres
8 in Section 10 for two reasons. The testimony indicates that water is not
9 diverted from Schnebly Creek to irrigate this acreage. The land is
10 subirrigated. Even more significant is the lack of an RCW 90.14 claim for
11 this land. Failure to file a claim waives and relinquishes any right that
12 may have existed, RCW 90.14.071.

13 COURT CLAIM NO. 01470 -- Estate of Theodore M. Wood
14

15 Theodore M. Wood filed a claim with the Court asserting a right to use
16 waters from Caribou Creek for irrigation and stock watering. Mr. Wood's
17 widow, Geraldine Wood, and John Gibb, who has leased the land since 1987,
18 testified at the evidentiary hearing. The claimant was represented by
19 Attorney Richard T. Cole.

20 The claimant's land lies in that portion of the NW $\frac{1}{4}$ of Section 14,
21 T. 17 N., R. 19 E.W.M. lying below the Ellensburg Water Company's (EWC) Town
22 Ditch. Between 30 and 35 acres are irrigated with water diverted from
23 Caribou Creek. The diversion is located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14,
24 approximately 600 feet below the Town Ditch. Gated pipe extends both east
25 and west from the diversion along the northerly line of the fields, which

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1 are rill irrigated. Mr. Gibb estimated that he diverts between 1 and 1.5
2 cubic feet per second. He did not testify to his irrigation practice, but
3 indicated that 9 to 12 acre-feet per acre might be used on the land, based
4 on counsel's assertion that the land in this area generally uses that
5 quantity of water. There was evidence presented to show that this quantity
6 of water is actually used on the alnd. Mr. Gibb grows timothy hay and corn
7 on the property and runs about 30 head of cattle that drink directly from
8 Caribou Creek. Mrs. Wood testified that she and her husband operated a
9 dairy on the property and at that time it was mostly pasture and up to 160
10 dairy cows also drank from the creek. Livestock drinking directly from the
11 water source is covered by the stock water stipulation discussed on page 4
12 of this report and the claimant's name shall be placed on the list of those
13 who enjoy non-diversionsary stock water rights under the stipulation. The
14 claimant is assessed by EWC for 61 shares. The testimony was that EWC water
15 is used on different land. The Woods own an additional 30 to 35 acres
16 beyond what is irrigated from the creek.

17 The Woods acquired the land in April of 1966 and it was being irrigated
18 at that time. There are two diversion structures on the creek, the
19 southerly one is the oldest and is no longer being used. The second
20 structure is about 200 feet upstream and is actively being used to provide
21 water for irrigation on the property. The testimony did not indicate when
22 the "new" diversion was constructed. Water Right Claims (WRC) No. 003545
23 and 026855 were filed by Theodore Wood pursuant to the requirements of RCW
24 90.14. They both claim a right to divert 1 cubic foot per second, 150
25

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1 acre-feet per year year from Caribou Creek for the irrigation of 30 acres in
2 the W $\frac{1}{2}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14, T. 17 N., R. 19 E.W.M. (WRC No. 026855
3 states that the land being irrigated lies below the EWC canal). WRC No.
4 003545 states that water was first used in 1971, while WRC No. 026855 states
5 it was first used in 1885. The Referee suspects that 1971 may be when the
6 "new" diversion was built.

7 There was no testimony about historic water use on the property. The
8 claimant put in the record exhibits that show that a patent issued to John
9 B. Brush on February 10, 1875, for the S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
10 Section 14, T. 17 N., R. 19 E.W.M., and that his estate sold it to Samuel
11 Packwood in 1888. Court Claim No. 01470 references an April 27, 1911,
12 Kittitas County Superior Court case as the basis for the right. Exhibits
13 DE-497 and 498 are copies of the Findings of Fact and Conclusions of Law and
14 Decree in the case of Mary A. Clerf v. Robert I. Scammon et al., and the
15 decree was entered on April 27, 1911, leading the Referee to conclude this
16 is the case referenced. However, the Referee can find no reference to the
17 claimant's land in either of the documents. Land in the NE $\frac{1}{4}$ and the
18 E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14 was addressed, but not land in the S $\frac{1}{2}$ NW $\frac{1}{4}$ or NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
19 Section 14. There is no evidence in the record to show that water from
20 Caribou Creek was beneficially used on the claimant's land prior to
21 December 31, 1932, which is the date by which water had to be used in order
22 to establish a right under the Riparian Doctrine, see Department of Ecology
23 v. Abbott, 103 Wn.2d 686, 694 P.2d 1071.

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1 As a result of the lack of evidence to show that a right was
2 established under the Riparian Doctrine through beneficial use of water
3 prior to December 31, 1932, the Referee cannot recommend that a right be
4 confirmed under Court Claim No. 01470.

5 COURT CLAIM NO. 01218 -- Warren G. Wood
6 & Laura A. Wood
7 M. Leonard Wood
8 Wayne L. Hanson
9 & Lauren M. Hanson

10 The Woods filed Court Claim No. 01218 asserting a right to use waters
11 from Caribou Creek, Cooke Creek and Warm Springs Creek. The claimants are
12 represented by Attorney John P. Gilreath and Warren Wood testified at the
13 evidentiary hearing. Wayne L. and Lauren M. Hanson were joined to the claim
14 on July 22, 1994.

15 The land described in Court Claim No. 01218 consists of most of the NW
16 of Section 1, T. 17 N., R. 19 E.W.M., except for two five acre squares of
17 land in the NE $\frac{1}{4}$ of Section 1. During the presentation of testimony at the
18 evidentiary hearing, it became apparent that the Woods also owned and
19 irrigated approximately 72 acres in the SE $\frac{1}{4}$ of Section 1 that was not
20 described in the court claim. Therefore, that land was not addressed in the
21 investigation report prepared by Ecology. The land in the E $\frac{1}{4}$ of Section 1
22 is irrigated with water diverted from Caribou Creek near the southeast
23 corner of Section 36, T. 18 N., R. 19 E.W.M. A total of 97 acres are
24 irrigated from that creek, with 82 acres being in the NE $\frac{1}{4}$ and 15 acres in
25 the SE $\frac{1}{4}$ of Section 1. The NW $\frac{1}{4}$ of Section 1 is primarily irrigated with
26 water delivered by the Kittitas Reclamation District and Cooke Creek is used

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1 to supplement that supply. There are 125 acres irrigated in the NW $\frac{1}{4}$ of
2 Section 1. The diversion from Cooke Creek is located approximately 1400
3 feet east of the northwest corner of Section 1. The land is planted in
4 Timothy hay with a grain rotation and is rill irrigated with gated pipe and
5 cement ditches. Cattle also graze after the final cutting of hay.
6 Livestock on the land have access to Cooke Creek, Caribou Creek and Warm
7 Springs Creek, drinking directly from the creeks. Non-diversionsary stock
8 watering is covered by the stock water stipulation discussed on page 4 of
9 this report and no other right is necessary. The claimants name is on the
10 list of claimants who have stock water rights under the stipulation. Mr.
11 Wood did not testify to how much water is being diverted from either Caribou
12 Creek or Cooke Creek when it is used to supplement KRD. He testified that
13 he is relying on the Bain report for the John Clerf property that is about
14 half a mile south. Based on that study, Mr. Wood testified to needing 9.3
15 acre-feet per year for each irrigated acre. He is claiming a right to
16 divert 1.2 cubic feet per second from Caribou Creek based on a Water Right
17 Claim filed by Charles A. West in 1893.

18 Charles West received a patent on June 24, 1895, for the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$
19 and Lots 1 and 2 of Section 1, T. 17 N., R. 19 E.W.M. and in 1893 filed a
20 notice of water right. The notice stated that he owned the land for which
21 he received a patent and was claiming a right to 60 inches of water (or 1.2
22 cfs) from Cherry Creek, also known as Caribou Creek. Water was diverted
23 into two ditches, one diverting from the creek in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1
24 and the second in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1. 60 acres were being irrigated
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1 from the first diversion and 4 acres from the second. The notice states
2 that water was first appropriated in the spring of 1875. In 1904 West sold
3 the land to Robert I. Scammon, who was a defendant in Mary A. Clerf v.
4 Robert I. Scammon et al., a 1911 Kittitas County Superior Court case
5 addressing rights to use Caribou Creek. The Court determined five classes
6 of water rights and found that the defendants, including Robert Scammon
7 "have no right, title or interest in and to the waters of said stream, . .
8 .", see Findings of Fact XV. Based on this decree, the Referee must
9 conclude that as of 1911, the Woods property that was then owned by Robert
10 I. Scammon had no right to use Caribou Creek. Under the Riparian Doctrine,
11 a right could have been established if waters from Caribou Creek were used
12 to irrigate the land prior to December 31, 1932. However, there is no
13 evidence in the record to show that occurred.

14 Robert I. Scammon was a party to the first adjudication of Cooke
15 Creek. Certificate No. 194 issued to R. I. Scammon with a 1905 date of
16 priority, authorizing the diversion of 1.4 cubic feet per second from Cooke
17 Creek for the irrigation of 70 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and Government
18 Lots 1 and 2 of Section 1. The place of use on the certificate describes
19 160 acres, but only 40 of those acres are within the area where Cooke Creek
20 water has continued to be used. The record does not indicate how many acres
21 are irrigated in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, so the Referee cannot determine to
22 what limited extent Certificate No. 194 has continued to be exercised.
23 Certificate No. 194 is the only certificate from the earlier adjudication
24 that has been identified as being appurtenant to the claimant's land in the

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1 NW% of Section 1. Most of the claimant's land in the NW% of Section 1 is
2 not authorized for irrigation under that certificate. There is no evidence
3 that a water right was legally established for use of Cooke Creek water on
4 any other part of the NW% of Section 1.

5 The testimony indicates there are 15 acres being irrigated in the W%SE%
6 of Section 1 with water diverted from Caribou Creek. However, there has
7 been no evidence presented to show that a water right was established for
8 this land. The historical evidence put in the record addresses only the land
9 in the N% of Section 1. There is no evidence of when the W%SE% of Section 1
10 was settled or by whom. Review of documents entered by surrounding
11 landowners did not provide any information on this part of Section 1.

12 Several water right claims (WRC) were filed pursuant to RCW 90.14 that
13 include portions of the claimants' land. WRC No. 18950 asserts a right to
14 use 2 cfs, 240 acre-feet per year from Cooke Creek for the irrigation of 60
15 acres in the NW% of Section 1. However, since Cooke Creek was previously
16 adjudicated, all of the rights to that creek were determined and addressed
17 in the decree. WRC No. 118951 asserts a right to use 4 cfs, 380 acre-feet
18 per year from Caribou Creek for the irrigation of 95 acres and stock water
19 in the NE% of Section 1. The date of first use is 1914. WRC No. 121940
20 asserts a right to use 1 cfs, 16 acre-feet per year from Caribou Creek for
21 the irrigation of 4 acres in the NE% of Section 1. The date of first water
22 use is also 1914.

23 Due to the lack of evidence to show how many acres are being irrigated
24 in the SE%NW% of Section 1 with water diverted from Cooke Creek and the lack
25

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1 of a water right confirmed in the first adjudication for the rest of the NW $\frac{1}{4}$
2 of Section 1, the Referee cannot recommend that a diversionary water right
3 be confirmed under Court Claim No. 1218 for use of Cooke Creek. As a result
4 of the findings by Kittitas County Superior Court that the claimants'
5 predecessor for the NE $\frac{1}{4}$ of Section 1 did not have a valid right to use
6 Caribou Creek, and the lack of evidence to show that water was used between
7 1911 and 1932, the Referee cannot recommend that a water right be confirmed
8 for use of Caribou Creek in the NE $\frac{1}{4}$ of Section 1. Due to the lack of
9 historical evidence of any sort for the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 1, the Referee
10 cannot recommend that a water right be confirmed for use of Caribou Creek in
11 the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 1.

12

13 COURT CLAIM NO. 01689 -- W. Robert Wragge
14 & Dorothy May Wragge

15 Court Claim No. 01689 was filed by the Wragges asserting a right to use
16 an unnamed spring for irrigation and stock watering. Byron Strang, a
17 neighboring landowner who is leasing the land testified at the evidentiary
18 hearing. The Wragges were represented at the hearing by Attorney Michael
19 Bauer.

20 The Wragges own most of the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 25, T. 18 N.,
21 R. 19 E.W.M., totalling about 75 acres. They are asserting a right to
22 irrigate the land with water diverted from a spring located near the
23 northeast corner of their property. The Wragges' son owns 20 acres and Mr.
24 Strang is leasing the remaining land, which he farms in conjunction with his
25 adjoining property. According to Mr. Strang, the source of water is the

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1 same spring as is used to irrigate his land. It appears from State's
2 Exhibit SE-2 that the spring on the Strang property feeds a stream that
3 flows through the Wragge land. The land is planted in hay and pasture and
4 is rill irrigated. Water from the Kittitas Reclamation District (KRD) is
5 also used on the land. Mr. Strang estimated that 2 acre-feet per year from
6 the spring is used on each irrigated acre.

7 Mr. Strang testified that his land and the Wragge land was once one
8 large ranch. When Mr. Strang presented his claim, he provided the names of
9 prior owners, but did not provide specifics of the timeframe when it was
10 owned by the others. He testified that the spring was developed by Doc
11 Hashagen, but did not say when Doc Hashagen owned the land. In order for
12 there to be a valid right under the Riparian Doctrine, which would be
13 appropriate if the spring/stream is located on the claimant's land, water
14 had to be first used prior to December 31, 1932, and the land had to
15 separate from Federal ownership prior to June 6, 1917.

16 Additionally, more information is needed about the nature of the water
17 being used. The Referee must be able to conclude that there is natural
18 spring water in the source for which a water right is being asserted. Mr.
19 Strang testified about the spring being associated with a drain. With much
20 of the surrounding land being irrigated with both Cooke Creek and KRD water,
21 it is not clear that the water for which a right is being asserted is
22 natural water. A water right cannot be awarded for use of return flow that
23 is the result of application of KRD water, which is Yakima Project water.

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1 Water Right Claim No. 095612 was filed by W. Robert Wragge asserting a
2 right to use 2 cfs, 160 acre-feet per year from an unnamed spring for
3 irrigation of 40 acres and stock watering in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 25.
4 Additionally, Certificate No. 200 from the earlier adjudication of Cooke
5 Creek includes the claimant's land in the area authorized for irrigation.
6 Certificate No. 200 is a Class 12 right with an 1886 date of priority which
7 authorized the diversion of 4.80 cubic feet per second from Cooke Creek for
8 the irrigation of 240 acres in the NE $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 25. The
9 described place of use is 240 acres, which would suggest that the entire
10 parcel was being irrigated with Cooke Creek water at the time of the earlier
11 adjudication. The certificate issued to George W. Snodgrass, a name that
12 was not in the ownership history recounted by Mr. Strang. Mr. Snodgrass
13 apparently owned the NE $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 25 in the early 1920's, but it
14 is not clear that he would have owned the Strang property in the SE $\frac{1}{4}$ of
15 Section 24. This suggests that the ownership history for the Strang
16 property in Section 24 may be different than that of the Wragge property.
17 There was no testimony to indicate that Cooke Creek water has continued to
18 be used on the Wragge property, unless there is a mechanism for getting
19 creek water into the stream that was not mentioned.

20 Due to the lack of evidence to show that a water right was established
21 for use of the spring by beneficial use prior to December 31, 1932, the
22 Referee cannot recommend confirmation of a water right.

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1
2 COURT CLAIM NO. 06080 -- Lonice Gay Wyrick
3 (A) 06397 & Jack H. Loftis

4 Court Claim No. 06080 was filed by Lonice Gay Wyrick and Lydia Clare
5 Woolley on March 8, 1991. On April 12, 1991, the Court ordered that it was
6 appropriate for the Referee to further process the claim. Lydia C. Woolley
7 appeared and testified at the evidentiary hearing. On September 12, 1995,
8 Ms. Woolley's interest in the claim was transferred to Lonice Gay Wyrick and
9 Jack H. Loftis.

10 The claimants property lies in the S $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, T. 18 N.,
11 R. 19 E.W.M. A right is being asserted for the irrigation of 4 to 4.5 acres
12 with water diverted from Coleman Creek. An additional 3.5 acres are
13 irrigated with water delivered by the Kittitas Reclamation District. Water
14 is diverted from Coleman Creek near the east quarter corner of Section 14
15 and carried in a ditch through the neighboring Mert Stampfly property. Ms.
16 Woolley testified that she does not actually call for diversions from the
17 creek, but instead uses tail water off of the Stampfly property. The
18 testimony indicates the claimants used this arrangement to get water in
19 recognition of their neighbor's greater need for water due to the number of
20 livestock raised on his land. Nevertheless, the water being used on the
21 claimants' property is Coleman Creek water, even though it is coming off of
22 the neighboring land. They use 4 inch buried pvc pipe to convey the water
23 onto their property and rill irrigate pasture. The prior owner of their
24 property, Conrad Kraft, used a 7 HP pump which has not been used by the
25 claimants. Livestock are raised on the property and drink either from the

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1 creek or a pond that is on the land. This type of non-diversionary stock
2 watering is covered by the stock water stipulation discussed on page 4 of
3 this report. The claimant's names are on the list of those entitled to a
4 non-diversionary stock water right under the stipulation.

5 Water Right Claim No. 048537 was filed in 1973 by Conrad Kraft pursuant
6 to the requirements of RCW 90.14. It asserts a right to divert 1 acre-foot,
7 1,045,440 cubic feet from Coleman Creek for the irrigation of 8 acres and
8 stock watering in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14. The point of diversion
9 described is at approximately the point where water is currently diverted
10 from Coleman Creek. Clearly Mr. Kraft did not understand the methods of
11 measuring water when he completed this form. The Referee finds that the
12 claim substantially complies with RCW 90.14, even though the quantities of
13 water claimed are not reasonable for the uses identified. Ms. Woolley's
14 testimony and documents entered as exhibits suggest that a right is being
15 claimed for 3.5 acre-feet per acre and that 0.1215 cubic foot per second is
16 being used.

17 The land is part of a larger parcel that Henry Bryant received a patent
18 for on January 2, 1874. On May 29, 1890, Henry Bryant and Elias Messerly
19 filed an affidavit stating that on December 4, 1870, they entered and
20 occupied land in Sections 13 and 14, T. 18 N., R. 19 E.W.M., including the
21 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14. They also state that on April 7, 1871, they
22 appropriated waters from Coleman Creek (288 cubic inches of water) in a
23 sufficient quantity for domestic purposes and irrigation of the lands
24 previously mentioned, except the 157-53/100 acres belonging to Bryant. That

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1 on May 15, 1875, they enlarged the head of the ditch and appropriated an
2 additional 144 inches of water for domestic and irrigation purpose to cover
3 all of the lands described, for a total appropriation of 432 cubic inches of
4 water.

5 In 1911 water rights for use of Coleman Creek were addressed in the
6 case of P. H. Schnebly v. Harvey Huss, et al.. Numerous parties were named
7 in the case, however, it is not clear whether the owners of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
8 Section 14 were parties to the case. The chain of title that is Exhibit
9 DE-4 shows that there were several contracts or deeds relating to this
10 portion of Section 14. The land was owned by E. A. Erickson, who was a
11 party to the case; however, there are entries that suggest the land may have
12 been sold to W. B. Lull, Otis Pfeifle and W. R. Taylor during the time frame
13 when this case was being argued. None of these names appear in the list of
14 defendants to the case. The Referee has reviewed the decree that was
15 entered and the only part of Section 14 that was not awarded a water right
16 was the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, the land now owned by the claimants.

17 Although the affidavit of Messerly and Bryant suggests that water
18 rights were established for this land around 1875, all of the other land
19 described in the affidavit was awarded a right in the Schnebly v. Huss
20 decree. This suggests to the Referee that perhaps this particular portion
21 of the former Bryant homestead was not being irrigated from Coleman Creek at
22 the time the case was being decided. The Referee notes that Mert Stampfly
23 owns the rest of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14 and this same issue needs to be
24 resolved for his claim, see page 459 of this report.

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1 At this point, the Referee cannot recommend that a right be confirmed
2 until there is further evidence to show that a right was established through
3 beneficial use of the water prior to December 31, 1932, which is the date by
4 which rights under the Riparian Doctrine had to be exercised.

5 COURT CLAIM NO. 01600 -- WA State Parks and Rec.Commission

6 Statement of Claim No. 1600 was filed with the Court on August 28,
7 1981 by the Washington State Parks and Recreation Commission (Parks)
8 asserting rights to use several water sources in the Yakima River Basin. The
9 claim asserts a riparian right to use 5.8 cubic feet per second from Coleman
10 Creek, which is located in Subbasin No. 10, for domestic, stock water, and
11 irrigation on the entire property of Olmstead State Park. Parks was
12 represented in the evidentiary hearing by Assistant Attorney General Shirley
13 Battan and testimony was provided by Kris Kauffman, Bob Poulson, Steve Wang,
14 and Bruce Beyeral.

15 The property that is now Olmstead State Park was originally a part of
16 the Olmstead family farm in Section 9, T, 17 N., R. 19 E.W.M. In 1968, Leta
17 May Smith and Clareta Olmstead Smith deeded 217.8 acres of land to
18 Washington State as a park. The park's 217 acres are located within that
19 portion of the SW $\frac{1}{4}$ located north of Interstate 90, and that portion of the
20 E $\frac{1}{2}$ NW $\frac{1}{4}$ which lies south of the Town Ditch, all in said Section 9. In
21 September of 1875 the Smith's grandfather, Samuel Olmstead, settled on the
22 land that would later become the family homestead, and began construction of
23 a cabin. The homestead patent was eventually awarded to Samuel's wife Sara
24 on August 18, 1888. The 160 acre homestead was comprised of the W $\frac{1}{2}$ SE $\frac{1}{4}$ and
25

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1 the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 9; only the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 9 is part of Olmstead
2 State Park (DE-1237). The park land in the W $\frac{1}{2}$ SW $\frac{1}{4}$, and E $\frac{1}{4}$ NW $\frac{1}{4}$ are not a part
3 of the original Olmstead Homestead.

4 The W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 9 was acquired by the Olmstead family from the
5 Northern Pacific Railroad on November 1, 1892. The Northern Pacific Railroad
6 published it's map of definite location on May 24, 1884, which establishes
7 the priority date under the Riparian Doctrine for this land. The E $\frac{1}{4}$ NW $\frac{1}{4}$ of
8 Section 9 was originally a part of the Harvey McEwen homestead for which a
9 patent issued on August 18, 1888, and was obtained by Clareta Olmstead Smith
10 on March 29, 1939. There is no information in the record with respect to
11 any historical use of Coleman Creek on this property between the patent date
12 and 1939. Coleman Creek flows through these parcels in a northeast to
13 southwest manner.

14 Most of the exhibits and testimony provided by Parks appears to deal
15 with the homestead property which the Olmsteads settled in 1875. Defendants
16 exhibits 1238 and 1242 contain historical information about the homestead
17 that was obtained through conversations between Clareta Smith Olmstead and
18 and State Interpretive Specialist Jack Casselberry in 1977 (Mrs. Smith was
19 around 91 years old at the time). The information reveals that Samuel
20 Olmstead first used Coleman Creek water on the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 9 in the
21 summer of 1878. The creek was used only for irrigation and stock water.
22 Mr. Steve Wang (chief of interpretive services for Parks) testified that
23 initially 15-25 acres were irrigated, and eventually, over time, this
24 progressed to encompass the "whole place".

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1 Mr. Poulson, who farms the park land under a lease agreement, testified
2 that he personally has used water from Coleman Creek to irrigate the park
3 since 1962. He leases 196 acres and presently uses Coleman Creek water to
4 irrigate about 120 acres. The State Map Exhibit SE-2 and the State
5 Investigation Report both locate the said 120 acres within the SW $\frac{1}{4}$ of
6 Section 9. Mr. Poulson stated that years ago, Parks constructed various
7 buildings which prevent him from using Coleman Creek water to irrigate as
8 many acres within the said E $\frac{1}{2}$ SW $\frac{1}{4}$ as he once did. The map (SE-2) shows that
9 Mr. Poulson uses Coleman Creek to irrigate about 45 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$, and
10 about 75 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 9. Mr. Wang testified that in 1892
11 the "whole place" was under cultivation and dedicated to dairy farming. The
12 Referee interprets the term "whole place" to mean the entire ownership of
13 the Olmsteads at that time, which would include the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 9. The
14 State Investigation Report states that only irrigation water is diverted
15 from Coleman Creek.

In addition to water from Coleman Creek, Olmstead Park has 174 shares of water from the Town Ditch, which was constructed in the late 1880's. The State Map Exhibit SE-2 does not show any of the acreage irrigated with Coleman Creek to be located in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9, nor does Mr. Poulson's testimony. Parks presently uses two points of diversion that are located 550 and 560 feet west from the center of Section 9, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 17 N., R. 19 E.W.M. This location is down slope, at the south end of the E $\frac{1}{2}$ NW $\frac{1}{4}$, and therefore, the Referee concludes that Coleman Creek water could not have been used on that land. The

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1 evidence presented has not been sufficient to show that water rights were
2 established to use Coleman Creek water in the E&NW& of Section 9.

3 The findings of the Schnebly v. Huss Decree No. 4762 were submitted as
4 Exhibit DE-1258. This 1915 decree defined the water rights of many Coleman
5 Creek water users. However, this decree was not a general adjudication of
6 the rights on Coleman Creek, and therefore, the Referee does not view this
7 decree as binding on those who were not a party. None of the former owners
8 of the Olmstead State Park property are named in this decree.

9 Parks filed Water Right Claim (WRC) No. 000042 as prescribed by Chapter
10 90.14 RCW. The claim asserts a right to Coleman Creek in the amount of 0.40
11 cfs and 120 acre-feet for the irrigation of all 217.8 acres in the park. A
12 priority date of July 1, 1875, has been claimed. WRC No. 000042 names only
13 one point of diversion, and it is located considerably south (2500 feet) of
14 the diversion locations testified to by Parks. Parks made no mention of
15 this southern most diversion point, nor was any explanation offered as to
16 why the two northern diversion points were not claimed. Mr. Kauffman
17 (Park's chief engineer) did testify that this claim contains errors with
18 regard to the quantity of water used, failure to claim stock water, and
19 incorrectly naming the Schnebly-Huss decree as it's foundation.
20 Mr. Kauffman stated that he felt the reason for these errors was because
21 Park's staff relied on information from the Schnebly-Huss Decree when, in
22 fact, no Park's land from Section 9 was considered in the decree. There
23 was no evidence that Parks has complied with RCW 90.14.065 to seek to amend
24 WRC No. 000042 and correct the errors.

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1 Mr. Kauffman testified that given the soil types and assuming an
2 efficiency of 33 percent for rill irrigation, a water duty of 10.5 to 12
3 acre-feet per acre is more appropriate. However, Dick Bain Jr. (Consulting
4 Engineer) reports in DE-1381 that the maximum water using crop is timothy
5 hay, and that the annual water consumption of timothy is about 3 acre-feet.
6 Using Mr. Kauffman's proposed efficiency of 33 percent it would appear that
7 the annual water duty is closer to 9.1 acre-feet per acre.

8 The two points of diversion used by Parks are not described in the RCW
9 Chapter 90.14 water right claim filed for the park. Park's has offered no
10 information or testimony that would suggest that the one point of diversion
11 that is claimed is or ever has been used. In their Court Claim, Parks does
12 mention that the point of diversion location claimed in their RCW 90.14
13 claim is in error. Since the claimant has not sought an amendment to WRC
14 No. 000042, the Referee is constrained by that document and can only
15 recommend confirmation of a water right consistent with WRC No. 000042.

16 Of the 120 acres irrigated within the SW $\frac{1}{4}$ of Section 9, approximately
17 75 acres are within the W $\frac{1}{4}$ SW $\frac{1}{4}$ and would have a right under the Riparian
18 Doctrine with a priority date of May 24, 1884. The remaining 45 acres are
19 in the E $\frac{1}{4}$ SW $\frac{1}{4}$ and would have a right under the Prior Appropriation Doctrine
20 with a priority date of June 30, 1878. The Referee recommends that a right
21 be confirmed with a May 24, 1884, date of priority for the diversion of
22 0.2475 cubic foot per second, 75 acre-feet per year from Coleman Creek for
23 the irrigation of 75 acres in the W $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9 and a right with a June
24 20, 1878, date of priority for the diversion of 0.1485 cubic foot per

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1 second, 45 acre-feet per year for the irrigation of 45 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$ of
2 Section 9. The point of diversion for both rights shall be located 200 feet
3 north and 800 feet east of the southwest corner of Section 9, being within
4 the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 17 N., R. 19 E.W.M.

5 Recognizing that both the quantity of water and point of diversion
6 confirmed are not consistent with the testimony, the claimant should seek to
7 amend WRC No. 000042 under the provisions of RCW 90.14.065 and/or seek to
8 change the point of diversion under the change provisions of RCW 90.03.380.
9

10 COURT CLAIM NO. 06343 -- Pamela Zupan

11 Pamela Zupan filed a Claim with the Court on June 25, 1991, and the
12 Court ordered that it be accepted for further processing on August 8, 1991.
13 Because the claim was accepted by the Court only two months prior to the
14 evidentiary hearing, Ecology did not conduct an investigation of the
15 property and prepare an investigation report. Ms. Zupan testified at the
16 evidentiary hearing.

17 The claimant's property lies in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31,
18 T. 19 N., R. 20 E.W.M. and is 24.11 acres in size. It is riparian to Cooke
19 Creek. Ms. Zupan talked with the family who owned the property in the
20 1950's and was told that her parcel is part of a larger ranch that was being
21 irrigated from Cooke Creek. When Ms. Zupan bought the land in 1977 there
22 was a gravity flow ditch that carried Cooke Creek water onto her property
23 and she believed that was the source of irrigation water. That ditch was
24 cut off from her property that year and she then began using a pump to
25 withdraw water from the creek. The capacity of the pump she uses is 61

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1 gallons per minute, or 0.14 cubic foot per second. Initially she irrigated
2 about 16 acres. However, in 1986 a neighbor told her she did not have water
3 rights for all of her land and she stopped irrigating the fields west of
4 Cooke Creek. She has continued irrigating ten acres. Six acres are pasture
5 and the rest is lawn, garden and landscape. She has 3 to 6 horses, pigs and
6 chickens that are raised and watered from Cooke Creek. The horses can drink
7 from the creek, but she also fills a watering trough through her irrigation
8 system.

9 Certificate No. 209 from the prior adjudication of Cooke Creek is
10 appurtenant to the claimants' property. With an 1879 date of priority, it
11 authorized the diversion of 1.80 cubic feet per second from Cooke Creek for
12 the irrigation of 90 acres. The authorized points of diversion are in the
13 NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 19 N., R. 20 E.W.M. The legal
14 description for the place of use on the certificate is a strip of land that
15 is mostly in the W $\frac{1}{4}$ E $\frac{1}{4}$ of Section 31, but does extend slightly into the
16 NE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{4}$ E $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31. All of the Zupan property is within the
17 place of use on the certificate. Besides Ms. Zupan, the following claimants
18 also own land that is within the place of use on Certificate No. 209:
19 Michael Joseph Shannon, William Arthur and Rea Jeanette Hanning, Arthur W.
20 and Margarette Hanning, Earl E. and Florene McGinty, James J.
21 Peterson/Carolyn B. Johnson, and Jack A. and Becky R. Baker.

22 RCW 90.14 was passed by the legislature in 1967 and provides for the
23 relinquishment of unused water rights. RCW 90.14.160 provides that any
24 person entitled to divert waters of the state authorized by a general

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27 Re: Subbasin No. 10

1 adjudication (such as Cooke Creek) who voluntarily fails without sufficient
2 cause to beneficially use all or any part of the right for five successive
3 years shall relinquish said right or portion thereof. The sufficient causes
4 that prevent relinquishment are defined in RCW 90.14.140 and the Referee is
5 not aware of any sufficient cause that might apply to Ms. Zupan. Ms. Zupan
6 testified that she wanted to irrigate all of her property but was uncertain
7 about whether she legally could, so she chose to only irrigate the field
8 east of Cooke Creek. There is no evidence that she inquired of anyone with
9 authority to regulate her water use. She appears to have relied on the
10 representations of the neighbor. The Referee does not believe this fits
11 into any of the sufficient causes that prevent relinquishment. Based on the
12 foregoing, the Referee concludes that the portion of Certificate No. 209
13 appurtenant to all but ten acres of her land has relinquished due to more
14 than five years of nonuse.

15 It is recommended that a water right be confirmed under Court Claim No.
16 06343 with a June 30, 1879, date of priority for the diversion of 0.14 cubic
17 foot per second, 37 acre-feet per year for irrigation and 1 acre-foot per
18 year for stock watering. The annual quantity authorized is based on
19 diverting 0.14 cfs during the irrigation season authorized by Certificate
20 No. 209. The point of diversion that will be authorized is that described
21 in Certificate No. 209. Ms. Zupan should contact Ecology's regional office
22 about the process for changing her point of diversion, as provided in RCW
23 90.03.380.

24
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1 COURT CLAIM NO. 00501 -- Phillip George Graaff
2 & Ella Graaff
3 COURT CLAIM NO. 00549 -- Melvin Anderson
4 & Dorothy Anderson
5 COURT CLAIM NO. 00618 -- Estate of Vincent J. Larson
6 COURT CLAIM NO. 00630 -- James M. Indermuhle
7 COURT CLAIM NO. 00688 -- Richard P. Bailes
8 COURT CLAIM NO. 00844 -- Roy C. Fann
9 David Leaton
10 & Mrs. David Leaton
11 COURT CLAIM NO. 00859 -- Clarence L. Moerike
12 & Barbara J. Moerike
13 COURT CLAIM NO. 00886 -- Bull Canal Company, Inc.
14 (A) 04207
15 COURT CLAIM NO. 00981 -- Kenneth J. Cadwallader
16 & Kathleen Cadwallader
17 COURT CLAIM NO. 01057 -- Lisa Bacon
18 & Clay Bacon
19 COURT CLAIM NO. 01067 -- Raymond Charlton
20 COURT CLAIM NO. 01070 -- Elmer Seth
21 & Estate of Gladys Seth
22 COURT CLAIM NO. 01321 -- Danny L. Hull
23 & Betty J. Hull
24 COURT CLAIM NO. 01763 -- Gary H. Gray
25 & Liljen M. Gray
David F. Morgan
26 COURT CLAIM NO. 01965 -- Carl A. Magno
27 Patricia A. Rafter
28 COURT CLAIM NO. 01982 -- Gerald Waterman
COURT CLAIM NO. 02061 -- Donald D. Berger
& Elizabeth J. Berger

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Re: Subbasin No. 10

1 COURT CLAIM NO. 02066 -- John M. Stuber
2 & Yvonne J. Stuber

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

5 COURT CLAIM NO. 02378 -- Oscar L. Berger
6 & Beverly J. Berger

7 COURT CLAIM NO. 00681 -- Estate of Vincent J. Larson

8 COURT CLAIM NO. 00589 -- Washington State Dept. of Natural Resources

9 The above listed claims were filed asserting rights to use waters
10 originating in Subbasin No. 10. They were scheduled to be heard during the
11 Subbasin No. 10 evidentiary hearing, however, there was no appearance in
12 support of the listed claims. Therefore, the Referee cannot recommend that
water rights be confirmed for any of the above listed claims.

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Claimants With Recommended Non-Diversionary Stock Water And Wildlife Rights

2	A.C.X. Trading, Inc.	John O. & Donna E. Ahrnsbrak
3	W. Stephen Alder	Gerald L. & Beverly J. Allphin
4	Donald R. Akehurst, et al.	Jack A. & Becky R. Baker
5	E. Eugene Barnhart, Jr. & Hellen M. Barnhart	
6	Kenneth E. & Susan Barnhart	
7	Estate of May S. Barnhart & E. Eugene Barnhart, Jr.	
8	Ed & Lavonne Benner	Boise Cascade Corporation
9	Richard G. & Linda L. Busch	Ian D. Buchan
10	Estate of Milton D. Camozzy & Esther Camozzy	Camozzy
11	Lloyd & Glennis Carney	John James Cannell
12	Bruce E. & Bonnie R. Catton	Helen J. Clerf
13	Howard F. & Vivian Clerf	John R. & Doris E. Clerf
14	John S. & Janet J. Clerf	Robert H. & Sherre A. Clerf
15	Doward & Ida Denning	Kenneth G. & Debbie L. Dimeo
16	Ray L. & Doris Durgan	Timothy E. & Marcia N. Eckert
17	Roy & June Edson	Keith R. & Karen E. Eslinger
18	Thomas J. & Nancy L. Fenz	James R. & Barbara A. Finley
19	Michael & Claire Floan	Norma M. Flach
20	Steve K. & Diane M. Franchini	Donald L. & Charlotte A. Frye
21	Clifford S. & Phyllis R. Gage	Stephen K. & Donna German
22	Douglas Gibb	Ronald Gibb
23	John Guyot	Larry Hansen
24	Wayne L. & Lauren M. Hanson	Steven J. Hart
25	John A. & Karen Hill	Joe Hobbs
26	Don & Judy Jacobs	Joe & Doriene Jacobs
27	Calvin & Rhonda Jansen	Douglas & Nancy Johnson
28	Larry D. & Jan L. Johnson	Gregory & Elizabeth Jordan
29	Alice C. Junkin	Sam & Lonni Kayser
30	Kayser Ranch, Inc.	Gaylord M. Kellogg
31	Joan G. Laws	Russell Longacre
32	Todd D. Lopeman	Brian & Sheila Maier
33	Edgar & Holli Martinez	Maurice & Joanna M. McGrath
34	J. Wayne & Cindy L. McMeans	John L. & Laura D. Miller
35	Harry E. Moore	N. N. Eaton & Sons
36	John Nylander	John & Kim Oleksy
37	Fred & Francis Joy Palmiero	John L. & Muriel G. Paul
38	Robert C. & Margaret E. Paul	Lloyd W. Powell
39	James J. Peterson and Carolyn B. Johnson	
40	Carol W. Phelps and Joy M. Turner	
41	Richard L. & Connie J. Powers	Merton Purnell
42	Merle Ringer	Ben Root
43	Steven C. & Christine Rosbach	Corneille & Robert W. Ross
44	C. William Ross	Craig P. & Nancy L. Schnebly
45	Dorse A. & Margaret C. Schnebly	Fred Schnebly
46	Henry J. Schnebly, et al.	Jim Schnebly
47	Jess Schober	Albert F. & Dorothy Scott

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1	Michael Joseph Shannon	Scott & Kay Shelton
	William V. Shelton	E. Fenn & Mona Shrader
2	Jack G. & Ada M. Sikes	Gladys Morrison Sisk
	Richard A. & Jane Gede Slyfield	Danny R. & Maria Smith
3	Trust of Annine K. Sorenson	Ellen Sorenson
	Kenneth O. & Carolyn Sorenson	Leroy & Doris Sorenson
4	Paul J. & Virginia R. Sorenson	Wallace M. Stampfly
	Walter R. & Thelma D. Stampfly	Ralph R. Stingley
5	Russell D. & Marty S. Stingley	Ande R. Stritmatter
	Sweet Grass Investments, LLC	Michael P. & Nancy Tomich
6	Estate of Glenn Turner	Joel B. & Rise T. Underhill
	William G. Viert	Jack W. & Monica A. Wallace
7	Steve & Deborah L. Wallace	Donald R. & Barbara Weber
	Willard A. & Mildred Williams	Estate of Theodore M. Wood
8	M. Leonard Wood	Warren G. & Laura A. Wood
	Lonice Gay Wyrick and Jack H. Loftis	
9	WA State Parks and Rec. Commission	

VIII. FINDINGS OF FACT

I, DOUGLAS CLAUSING, as Referee in this proceeding, having carefully examined the testimony and evidence and having investigated Subbasin No. 10, do hereby make the following Findings of Fact:

1. That the waters of Subbasin No. 10 and lands irrigated or waters otherwise utilized therefrom are situated in Kittitas County.

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

A.C.X. Trading, Inc.
John O. Ahrnsbrak and Donna E. Ahrnsbrak
Donald R. Akehurst, et al.
W. Stephen Alder
Melvin Anderson and Dorothy Anderson
Lisa Bacon and Clay Bacon
Richard P. Baines
Ed Benner and Lavonne Benner
Donald D. Berger and Elizabeth J. Berger
Oscar L. Berger and Beverly J. Berger
Ian D. Buchan

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1 Bull Canal Company, Inc.
2 Richard G. Busch and Linda L. Busch
3 Ron Byers and Phyllis I. Byers
4 Kenneth J. Cadwallader and Kathleen Cadwallader
5 Estate of Milton D. Camozzy and Esther Camozzy
6 Lloyd Carney and Glennis Carney
7 Bruce E. Catton and Bonnie R. Catton
8 Raymond Charlton
9 City of Kittitas
10 Howard F. Clerf and Vivian Clerf (00844 & 05330)
11 John R. Clerf and Doris E. Clerf (02142 & 02143)
12 Robert H. Clerf and Sherre A. Clerf (00407, 00476, 00677)
13 Janeice A. Diefenbach and Robert G. Diefenbach
14 Gerald Dodge (00190 & 00191)
15 Steven Dowen, et al.
16 Timothy E. Eckert and Marcia N. Eckert
17 Roy Edson and June Edson
18 Ellensburg; City of
19 Loyal W. Erickson and Flora B. Erickson
20 Virginia L. Erickson and Estate of Merle W. Erickson
21 Keith R. Eslinger and Karen E. Eslinger
22 Roy C. Fann
23 Thomas J. Fenz and Nancy L. Fenz
24 James R. Finley and Barbara A. Finley
25 Michael Floan and Claire Floan
26 Gary Forgey
27 Steve K. Franchini and Diane M. Franchini
28 Douglas Gibb and Ronald Gibb (05522)
29 Max Golladay and Judy Golladay
30 Estate of Gerald O. Graaff and Addie L. Graaff
31 Phillip George Graaff and Ella Graaff
32 Gary H. Gray and Liljen M. Gray
33 John Guyot
34 Don Haley and Pat Haley
35 William Arthur Hanning and Rea Jeanette Hanning
36 Larry Hansen
37 Wayne L. Hanson and Lauren M. Hanson (01217 & 01218)
38 Steven J. Hart
39 Lynn Henderson
40 John A. Hill and Karen Hill
41 Joe Hobbs
42 Danny L. Hull and Betty J. Hull
43 James M. Indermuhle
44 Don Jacobs and Judy Jacobs
45 Joe Jacobs and Doriene Jacobs
46 Calvin Jansen and Rhonda Jansen
47 Alice C. Junkin
48 Sam Kayser and Lonni Kayser

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1 Michael Kooy
2 Estate of Vincent J. Larson
3 David Leaton and Mrs. David Leaton
4 Russell Longacre
5 William K. Lowe and Marilyn Lowe
6 Carl A. Magno
7 Brian Maier and Sheila Maier
8 Carol Clerf Martinez
9 J. Wayne McMeans and Cindy L. McMeans (02166)
10 Roger Mies and Bernadette Mies
11 John L. Miller and Laura D. Miller (01010 & 02088)
12 Eric T. Moe
13 Clarence L. Moerike and Barbara J. Moerike
14 David F. Morgan
15 Eric V. Morris and Sharon M. Simmons
16 Bill Moxley and Yvonne Moxley
17 Leslie Nash and Shirley Nash
18 Edwin Nestler and Jeannette Nestler
19 John Nylander
20 John Olexsy and Kim Olexsy (01418)
21 Leland Orcutt and Burniece Orcutt
22 Carol W. Phelps and Joy M. Turner
23 Richard L. Powers and Connie J. Powers
24 Patricia A. Rafter
25 Merle Ringer (01047 & 01048)
26 Thomas J. Ringer
27 Ben Root
28 Steven C. Rosbach and Christine Rosbach (00506)
29 Alma M. Ross
30 C. William Ross
31 Dorse A. Schnebly and Margaret C. Schnebly
32 Jess Schober
33 Elmer Seth and Estate of Gladys Seth
34 Scott Shelton and Kay Shelton
35 E. Fenn Shrader and Mona Shrader
36 Jack G. Sikes and Ada M. Sikes
37 Gladys Morrison Sisk
38 Danny R. Smith and Maria Smith
39 Trust of Annine K. Sorenson
40 Leroy Sorenson and Doris Sorenson (00180 & 00181)
41 Paul J. Sorenson and Virginia R. Sorenson (01434 - 01439)
42 Ralph R. Stingley
43 Russell D. Stingley and Marty S. Stingley (02120, 02121, 02122)
44 Byron R. Strang
45 Ande R. Stritmatter
46 John M. Stuber and Yvonne J. Stuber
47 Sweet Grass Investments, LLC (01041 & 01448)
48 Beryl A. Trezise

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1 Estate of Glenn Turner
2 United States of America
3 Joel B. Underhill and Rise T. Underhill
4 Jack W. Wallace and Monica A. Wallace
5 Gerald Waterman
6 Estate of Theodore M. Wood
7 M. Leonard Wood
8 Warren G. Wood and Laura A. Wood
9 W. Robert Wragge and Dorothy May Wragge
10 Lonice Gay Wyrick and Jack H. Loftis
11 WA State Dept. of Natural Resources

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

REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: **Albert F. Scott** COURT CLAIM NO. 00605
2 & Dorothy Scott
3 Stephen K. German
4 & Donna German (A) 01749

5 Source: Schnebly Creek

6 Use: Irrigation of 138 acres and stock water

7 Period of Use: April 1 through October 15

8 Quantity: 1.0 cubic foot per second, 150 acre-feet per year

9 Priority Date: **June 30, 1869**

10 Point of Diversion: 1) 750 feet north and 800 feet west from the
11 south quarter corner of Section 2, being within
12 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 18 N.,
R. 19 E.W.M.
2) 1300 feet north and 1250 feet west from the
center of Section 11, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$
of Section 11, T. 18 N., R. 19 E.W.M.

13 Place of Use: That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, lying
14 south of the Kittitas Reclamation District Canal;
the N $\frac{1}{2}$ NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, all
within T. 18 N., R. 19 E.W.M.

15 Limitations of Use: This land may also receive water delivered by the
16 Kittitas Reclamation District and Naneum Creek
water carried in the Kiester Ditch to Schnebly
17 Creek.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: **Henry J. Schnebly, et al.** COURT CLAIM NO. 00979
2 **Fred Schnebly**
3 **Jim Schnebly** (A) 04783
4 Source: Schnebly Creek (A) 05073
5 Use: Irrigation of 17 acres and stock watering
6 Period of Use: April 1 through October 15 for irrigation;
continuously for stock watering
7 Quantity: 0.34 cubic foot per second, 96.9 acre-feet per
year for irrigation; 0.015 cubic foot per second,
1.5 acre-feet per year for stock watering
8
9 Priority Date: **July 30, 1869**
10 Point of Diversion: 600 feet east and 1320 feet north of the south
quarter corner of Section 15, being within the
W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M.
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12 Place of Use: W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M.
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14 CLAIMANT NAME: **Henry J. Schnebly, et al.** COURT CLAIM NO. 00979
15 **Fred Schnebly**
16 **Jim Schnebly** (A) 04783
17 Source: Coleman Creek (A) 05073
18 Use: Irrigation of 150 acres and stock watering
19 Period of Use: April 1 through October 15 for irrigation;
continuous for stock watering
20 Quantity: 1.6 cubic feet per second, 585 acre-feet per year
for irrigation; 0.12 cubic foot per second, 12.0
acre-feet per year for stock watering
21 Priority Date: **April 1, 1870**
22 Point of Diversion: 1000 feet north and 15 feet west of the southeast
corner of Section 15, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$
of Section 15, T. 18 N., R. 19 E.W.M.
23
24 Place of Use: The S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15 and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of
Section 22, both in T. 18 N., R. 19 E.W.M.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
28

1 CLAIMANT NAME: **Howard F. Clerf** & Vivian Clerf COURT CLAIM NO. 01443
2 Source: Caribou Creek
3 Use: Irrigation of 62 acres
4 Period of Use: April 1 through October 15
5 Quantity: 1.6 cubic feet per second, 633.6 acre-feet per year
6 Priority Date: **June 30, 1870**
7 Point of Diversion: 860 feet north and 230 feet east from the west quarter corner of Section 12, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T. 17 N., R. 19 E.W.M.
8 Place of Use: The W $\frac{1}{2}$ SW $\frac{1}{2}$ of Section 12, T. 17 N., R. 19 E.W.M.
9
10 CLAIMANT NAME: **Ray L. Durgan** & Doris Durgan COURT CLAIM NO. 00858
11
12 Source: Unnamed spring No.2
13 Use: Stockwatering
14 Period of Use: Continuously
15 Quantity: 0.05 cubic foot per second, 3.5 acre-feet per year
16 Priority Date: **June 30, 1870**
17 Point of Diversion: 1200 feet south and 200 feet west from the north quarter corner of Section 19, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T. 18 N., R. 20 E.W.M.
18 Place of Use: SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T. 18 N., R. 20 E.W.M.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: **Ray L. Durgan** COURT CLAIM NO. 00858
2 & Doris Durgan

3 Source: Cooke Creek

4 Use: Irrigation of 115 acres and stock water

5 Period of Use: May 1 through September 15

6 Quantity: 2.30 cubic feet per second, 575 acre-feet per
year

7 Priority Date: **June 30, 1870**

8 Point of Diversion: 30 feet south and 300 feet west from the north
quarter corner of Section 19, being within the
NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T. 18 N., R. 20 E.W.M.

9 Place of Use: The E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19, T. 18 N.,
R. 20 E.W.M.

10 Limitations of Use: This land may also be irrigated with water
delivered by the Kittitas Reclamation District.

11 CLAIMANT NAME: **Ronald Gibb** COURT CLAIM NO. 05523
12 **Douglas Gibb** (A) 06436

13 Source: Caribou Creek

14 Use: Irrigation of 100 acres

15 Period of Use: April 1 through October 15

16 Quantity: 1.0 cubic foot per second, 500 acre-feet per year

17 Priority Date: **June 30, 1870**

18 Point of Diversion: 100 feet south and 400 feet west of the east
quarter corner of Section 11, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 17 N., R. 19 E.W.M.

19 Place of Use: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 lying
southeast of Caribou Creek, the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the
NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14, T. 17 N., R. 19 E.W.M.

20 REPORT OF REFEREE
21 Re: Subbasin No. 10

1 CLAIMANT NAME: **Douglas Johnson** COURT CLAIM NO. 01058
2 & **Nancy Johnson**

3 Source: Two unnamed springs

4 Use: Continuous stock water.

5 Period of Use: Continuously

6 Quantity: 0.02 cubic foot per second, 1.3 acre-feet per
year from each spring

7 Priority Date: **June 30, 1870**

8 Point of Diversion: Spring #1--375 feet north and 510 feet east from
the center of Section 10, being within the
SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T. 17 N., R. 19 E.W.M.
Spring #2--1160 feet north and 40 feet east from
the center of Section 10, being within the
NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T. 17 N., R. 19 E.W.M.

9 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T. 17 N., R. 19 E.W.M.

10 Limitations of Use: Irrigation water for this land is delivered by
the Cascade Irrigation District

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12 CLAIMANT NAME: **Gregory Jordan** COURT CLAIM NO. 02258
13 & **Elizabeth Jordan**

14 Source: Schnebly Creek

15 Use: Irrigation of 4 acres and stock water.

16 Period of Use: April 1 through October 15

17 Quantity: 0.08 cubic foot per second, 22.8 acre-feet per
year

18 Priority Date: **June 30, 1870**

19 Point of Diversion: 1300 feet north and 240 feet west from the
southeast corner of Section 10, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T. 18 N., R. 19 E.W.M.

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21 Place of Use: That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.
18 N., R. 19 E.W.M., lying east of Schnebly
Creek.

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24 REPORT OF REFEREE
25 Re: Subbasin No. 10

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1 CLAIMANT NAME: **Lloyd W. Powell** COURT CLAIM NO. 00927
2 Source: Cooke Creek
3 Use: Irrigation of 156 acres and stock water
4 Period of Use: May 1 through September 15
5 Quantity: 3.12 cubic feet per second, 780 acre-feet per year
6 Priority Date: **June 30, 1870**
7 Point of Diversion: An unknown point within the SW $\frac{1}{4}$ of Section 6, T.
8 18 N., R. 20 E.W.M.
9 Place of Use: The W $\frac{1}{2}$ NE $\frac{1}{4}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 7, T. 18 N.,
10 R. 20 E.W.M.; EXCEPT that portion of the
11 NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ described as follows: Beginning at a
12 point 22 feet south and 333 feet west of the
13 north quarter corner of said Section; Thence
S1°25'E 466 feet; thence west 160 feet; Thence
N1°25'W 180 feet; Thence east 115 feet; Thence
N1°25'W 286 feet; Thence east 45 feet to the
point of beginning.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Ellen Sorenson** COURT CLAIM NO. 01334
2 Source: Caribou Creek
3 Use: Irrigation of 40 acres and stockwater.
4 Period of Use: April 1 through October 31
5 Quantity: 0.40 cubic foot per second, 158.4 acre-feet per
6 year
7 Priority Date: **June 30, 1870**
8 Point of Diversion: POD #1--20 feet south and 700 feet west from the
9 east quarter corner of Section 11, being within
the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 17 N.,
R. 19 E.W.M.
10 POD #2--950 feet south and 1260 feet west from
the east quarter corner of Section 11, being
within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 17 N.,
R. 19 E.W.M.
11 Place of Use: That portion of the SE $\frac{1}{4}$ of Section 11, T. 17 N.,
R. 19 E.W.M., lying northwest of Caribou Creek
and north of Interstate 90.
12 Limitations of Use: This land may also receive water delivered by
13 Cascade Irrigation District.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: **Henry J. Schnebly, et al.** COURT CLAIM NO. 00979
2 **Fred Schnebly**
3 **Jim Schnebly** (A) 04783
4 (A) 05073
5 Source: Coleman Creek
6 Use: Irrigation of 60 acres and stock watering
7 Period of Use: April 1 through October 15 for irrigation;
8 continuously for stock watering
9 Quantity: 0.60 cubic foot per second, 234 acre-feet per
10 year for irrigation; 0.015 cubic foot per second,
11 1.5 acre-feet per year for stock water
12 Priority Date: **January 4, 1871**
13 Point of Diversion: 1240 feet north and 140 feet east from the
14 southwest corner of Section 14, being within the
15 NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M.
16 Place of Use: The W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 22, T. 18 N., R. 19 E.W.M.
17 CLAIMANT NAME: **Henry J. Schnebly, et al.** COURT CLAIM NO. 00979
18 **Fred Schnebly**
19 **Jim Schnebly** (A) 04783
20 (A) 05073
21 Source: Schnebly Creek
22 Use: Irrigation of 50 acres and stock water
23 Period of Use: April 1 through October 15 for irrigation;
24 continuous for stock watering
25 Quantity: 1.0 cubic foot per second, 195 acre-feet per year
26 for irrigation and 0.03 cubic foot per second,
27 3.0 acre-feet per year for stock watering
28 Priority Date: **January 4, 1871**
Place of Use: That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying south of Fred
Schnебly Road and west of Coleman Creek and that
portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ lying west of Coleman Creek,
in Section 22, T. 18 N., R. 19 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: **Henry J. Schnebly, et al.** COURT CLAIM NO. 00979
2 **Fred Schnebly** (A) 04783
3 **Jim Schnebly** (A) 05073

4 Source: Coleman Creek

5 Use: Irrigation of 90 acres and stock watering

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

7 Quantity: 0.90 cubic foot per second, 351 acre-feet per
year for irrigation; 0.07 cubic foot per second,
7.0 acre-feet per year for stock watering

8 Priority Date: **April 1, 1871**

9 Point of Diversion: 1240 feet north and 140 feet east from the
southwest corner of Section 14, being within the
 $\text{NW}\frac{1}{4}\text{SW}\frac{1}{4}\text{SW}\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M.

10 Place of Use: The $\text{S}\frac{1}{2}\text{NE}\frac{1}{4}$ and that portion of the $\text{E}\frac{1}{2}\text{NW}\frac{1}{4}$ lying
east of Schnebly Creek in Section 22, T. 18 N.,
R. 19 E.W.M.

11 CLAIMANT NAME: **Henry J. Schnebly, et al.** COURT CLAIM NO. 00979
12 **Fred Schnebly** (A) 04783
13 **Jim Schnebly** (A) 05073

14 Source: Schnebly Creek

15 Use: Irrigation of 65 acres and stock watering

16 Period of Use: April 1 through October 15 for irrigation;
continuously for stock watering

17 Quantity: 1.3 cubic foot per second, 370.5 acre-feet per
year for irrigation; 0.05 cubic foot per second,
5.0 acre-feet per year for stock watering

18 Priority Date: **April 1, 1871**

19 Point of Diversion: 1370 feet south and 1510 feet west from the
northeast corner of Section 15, being within the
 $\text{NE}\frac{1}{4}\text{SW}\frac{1}{4}\text{NE}\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M.

20 Place of Use: The $\text{E}\frac{1}{2}\text{NW}\frac{1}{4}$ of Section 22, T. 18 N., R. 19 E.W.M.

21 REPORT OF REFEREE
22 Re: Subbasin No. 10

1 CLAIMANT NAME: **Craig P. Schnebly** COURT CLAIM NO. 02064
2 & **Nancy L. Schnebly**

3 Source: Coleman Creek

4 Use: Irrigation of 35 acres

5 Period of Use: April 1 through October 15

6 Quantity: 0.40 cubic foot per second, 136.5 acre-feet per
year

7 Priority Date: **April 7, 1871**

8 Point of Diversion: 900 feet south and 450 feet east from the center
9 of Section 12, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 12, T. 18 N., R. 19 E.W.M.

10 Place of Use: The SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M.
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12 CLAIMANT NAME: **William G. Viert** COURT CLAIM NO. 01049
13 **Edgar Martinez**
14 & **Holli Martinez**

15 Source: Coleman Creek

16 Use: Irrigation of 80 acres and stock water

17 Period of Use: April 1 through October 15

18 Quantity: 0.80 cubic foot per second, 312 acre-feet per year

19 Priority Date: **April 7, 1871**

20 Point of Diversion: 1660 north and 267 feet east from the south
21 quarter corner of Section 12, being within the
NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.

22 Place of Use: The E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13, T. 18 N., R. 19 E.W.M.
23

24 REPORT OF REFEREE

25 Re: Subbasin No. 10

1 CLAIMANT NAME: **Henry J. Schnebly, et al.** COURT CLAIM NO. 01097

2 Source: Schnebly Creek

3 Use: Irrigation of 65 acres and stock water

4 Period of Use: April 1 through October 15 for irrigation;
5 continuously for stock watering

6 Quantity: 1.3 cubic feet per second, 148.2 acre-feet per
7 year for irrigation; 0.05 cubic foot per second,
5 acre-feet per year for stock watering.

8 Priority Date: **May 18, 1871**

9 Point of Diversion: 730 feet north and 200 feet west from the south
10 quarter corner of Section 22, being within the
SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T. 18 N., R 19 E.W.M.

11 Place of Use: The E $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M.

12 CLAIMANT NAME: **Henry J. Schnebly, et al.** COURT CLAIM NO. 01097

13 Source: Coleman Creek

14 Use: Irrigation of 38 acres and stock water

15 Period of Use: April 1 through October 31 for irrigation and
16 continuously for stock watering

17 Quantity: 0.38 cubic foot per second, 148.2 acre-feet per
18 year for irrigation; 0.03 cubic foot per second,
3.0 acre-feet per year for stock watering.

19 Priority Date: **May 18, 1871**

20 Point of Diversion: 120 feet north and 360 feet east from the south
21 quarter corner of Section 22, being within the
SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, T. 18 N., R 19 E.W.M.

22 Place of Use: That portion of the W $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, T. 18
23 N., R. 19 E.W.M., lying between Coleman Creek and
an unnamed ditch

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26 REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: **John James Cannell** COURT CLAIM NO. 02146
2 Source: Cooke Creek
3 Use: Irrigation of 40 acres and stock water.
4 Period of Use: May 1 through September 15
5 Quantity: 0.80 cubic foot per second, 200 acre-feet per year
6 Priority Date: **June 30, 1871**
7 Point of Diversion: 20 feet south and 400 feet west of the center of
8 Section 19, in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T. 18
N., R. 20 E.W.M.
9 Place of Use: That portion of the E $\frac{1}{4}$ NW $\frac{1}{4}$ lying east of Cooke
10 Creek and that portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying west
11 of Caribou Creek in Section 30, T. 18 N.,
R. 20 E.W.M.
12 Limitations of Use: This land may also receive water delivered by the
Kittitas Reclamation District.
13
14 CLAIMANT NAME: **John James Cannell** COURT CLAIM NO. 02147
15 Source: Cooke Creek
16 Use: Irrigation of 50 acres and stock water.
17 Period of Use: May 1 through September 15
18 Quantity: 1.0 cubic foot per second, 272.32 acre-feet per
19 year
20 Priority Date: **June 30, 1871**
21 Point of Diversion: 30 feet south and 1200 feet west from the center
22 of Section 30, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
23 Section 30, T. 18 N., R. 20 E.W.M.
24 Place of Use: That portion of the E $\frac{1}{4}$ SW $\frac{1}{4}$ lying west of Caribou
25 Creek in Section 30, T. 18 N., R. 20 E.W.M.
26 REPORT OF REFEREE
27 Re: Subbasin No. 10
28

1 CLAIMANT NAME: **Norma M. Flach** COURT CLAIM NO. 00683
2 Source: Cooke Creek or one of its branches
3 Use: Irrigation of 12 acres and stock water.
4 Period of Use: May 1 through September 15
5 Quantity: 0.24 cubic foot per second, 48 acre-feet per year
6 Priority Date: **June 30, 1871**
7 Point of Diversion: Within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T. 18 N., R. 20
8 E.W.M.
9 Place of Use: That part of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T. 18 N.,
10 R. 20 E.W.M. described as follows: Beginning at
11 the SE corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$, thence north along
12 the east boundary to a point that is 598.125 feet
13 south of the northeast corner thereof; thence
14 west parallel with and 598.125 feet south of the
15 north boundary line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said section
16 1454.5 feet; thence S 0°10' E to the south
17 boundary line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$; thence east along
18 the south boundary line to the point of beginning.
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REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: **Stephen K. German** COURT CLAIM NO. 01141
2 & Donna German
3 Lloyd W. Powell
4 Gaylord M. Kellogg
5 Source: Cooke Creek
6 Use: Irrigation of 54 acres and stock water
7 Period of Use: May 1 through September 15
8 Quantity: 1.08 cubic feet per second, 216 acre-feet per year
9 Priority Date: **June 30, 1871**
10 Point of Diversion: 10 feet north and 750 feet west from the center
11 of Section 7, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
12 Section 7, T. 18 N., R. 20 E.W.M.
13 Place of Use: Those portions of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
14 Section 7, T. 18 N., R. 20 E.W.M., lying east of
15 Cooke Creek; EXCLUDING the east 200 feet thereof,
16 and the north 600 feet of the N $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7,
17 T. 18 N., R. 20 E.W.M.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Ronald Gibb** COURT CLAIM NO. 05523
2 **Douglas Gibb** (A) 06436

3 Source: Caribou Creek

4 Use: Irrigation of 110 acres

5 Period of Use: April 1 through October 15

6 Quantity: 1.10 cubic feet per second, 550 acre-feet per year

7 Priority Date: **June 30, 1871**

8 Point of Diversion: 100 feet south and 400 feet west of the east quarter corner of Section 11, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 17 N., R. 19 E.W.M.

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10 Place of Use: The NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and that portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ lying southeast of Caribou Creek, in Section 11, T. 17 N., R. 19 E.W.M.

11

12 CLAIMANT NAME: **Steve Wallace** COURT CLAIM NO. 00261
13 & **Deborah L. Wallace**

14 Source: Caribou Creek

15 Use: Irrigation of 10 acres and stock water

16 Period of Use: April 1 through October 15

17 Quantity: 0.20 cubic foot per second, 40 acre-feet per year

18 Priority Date: **June 30, 1871**

19 Point of Diversion: 1280 feet south and 1380 feet west of the northeast corner of Section 30, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 18 N., R. 20 E.W.M.

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21 Place of Use: That portion of the E $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 18 N., R. 20 E.W.M. lying east of Caribou Creek

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23 Limitations of Use: Water delivered by the Kittitas Reclamation District may also be used on this land.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

28

1 CLAIMANT NAME: **Henry J. Schnebly, et al.** COURT CLAIM NO. 00979
2 **Fred Schnebly**
3 **Jim Schnebly** (A) 04783
4 Source: Schnebly Creek (A) 05073
5 Use: Irrigation of 55 acres and stock watering
6 Period of Use: April 1 through October 15 for irrigation;
continuous for stock watering
7 Quantity: 1.10 cubic feet per second, 313.5 acre-feet per
year for irrigation; 0.04 cubic foot per second,
4.0 acre-feet per year for stock watering
8 Priority Date: **April 1, 1872**
9 Point of Diversion: 340 feet north and 200 feet west from the center
10 of Section 22, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
11 Section 22, T. 18 N., R. 19 E.W.M.
12 Place of Use: That portion of the E $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22,
13 T. 18 N., R. 19 E.W.M. lying west of Schnebly
14 Creek.
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REPORT OF REFEREE
Re: Subbasin No. 10

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2 CLAIMANT NAME: Estate of May S. Barnhart COURT CLAIM NO. 00708
3 & E. Eugene Barnhart, Jr.
4 Kenneth E. Barnhart
5 & Susan Barnhart
6
7 Source: Coleman Creek
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9 Use: Irrigation of 120 acres and stock water
10 Period of Use: April 1 through October 15 for irrigation,
11 continuously for stock watering
12
13 Quantity: 1.6 cubic feet per second, 480 acre-feet per year
for irrigation; 0.13 cubic foot per second, 12.5
14 acre-feet per for stock watering
15 Priority Date: June 30, 1872
16 Point of Diversion: 1650 feet south and 1250 feet west from the
17 northeast corner of Section 12, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.
18 Place of Use: The W $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T. 18 N., R.
19 E.W.M.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: **Estate of May S. Barnhart
& E. Eugene Barnhart, Jr.
Kenneth E. Barnhart
& Susan Barnhart** COURT CLAIM NO. 00708
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4 Source: Unnamed spring
5 Use: Single domestic supply
6 Period of Use: Continuous
7 Quantity: 0.02 cubic foot per second, 1 acre-foot per year
8 Priority Date: **June 30, 1872**
9 Point of Diversion: 110 feet north and 1370 feet east of the west
10 quarter corner of Section 1, being within the
S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 1, T. 18 N., R. 19 E.W.M.
11 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T. 18 N., R. 19 E.W.M.
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13 CLAIMANT NAME: **Kenneth G. Dimeo
& Debbie L. Dimeo** COURT CLAIM NO. 01426
14
15 Source: Cooke Creek
16 Use: Irrigation of 20 acres and stock water.
17 Period of Use: May 1 through September 15
18 Quantity: 0.40 cubic foot per second, 80 acre-feet per year
19 Priority Date: **June 30, 1872**
20 Point of Diversion: 200 feet south and 100 feet east from the center
21 of Section 18, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 18, T. 18 N., R. 20 E.W.M.
22 Place of Use: That portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 18, T. 18
23 N., R. 20 E.W.M., lying west of Cooke Creek and
north of the KRD Canal.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
28

1 CLAIMANT NAME: Donald L. Frye COURT CLAIM NO. 00972
2 & Charlotte A. Frye

3 Source: Coleman Creek

4 Use: Irrigation of 38 acres and stock water.

5 Period of Use: April 1 through October 15 for irrigation;
continuously for stock watering

6 Quantity: 0.40 cubic foot per second, 148.2 acre-feet per
year for irrigation; 0.025 cfs, 2.5 acre-feet per
year for stock watering.

7 Priority Date: June 30, 1872

8 Point of Diversion: 1) 40 feet south and 240 feet west from the
center of Section 27, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$
of Section 27, T. 18 N., R. 19 E.W.M.
2) 1000 feet north and 15 feet west from the
southeast corner of Section 15, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M.

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10 Place of Use: That portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T. 18
N., R. 19 E.W.M., lying south of the right of way
for Fred Schnebly Road.

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12 Limitations of Use: Both of the authorized diversions can be used in
conjunction with each other, but the total amount
of Coleman Creek water diverted cannot exceed the
above quantities. Water delivered by the
Kittitas Reclamation District may also be used on
this land.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Stephen K. German** COURT CLAIM NO. 01141
2 & **Donna German**
3 **Lloyd W. Powell**

4 Source: Cooke Creek

5 Use: Irrigation of 60 acres and stock water

6 Period of Use: May 1 through September 15

7 Quantity: 1.20 cubic feet per second, 240 acre-feet per year

8 Priority Date: **June 30, 1872**

9 Point of Diversion: 600 feet south and 200 feet east from the north
10 quarter corner of Section 18, being within the
11 NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18; AND, 1200 feet north and
12 450 feet west from the south quarter corner of
13 Section 18, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section
14 18, BOTH WITHIN T. 18 N., R. 20 E.W.M.

15 Place of Use: Those portions of the E $\frac{1}{2}$ SW $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of
16 Section 18, T. 18 N., R. 20 E.W.M., lying east of
17 Cooke Creek.

18 CLAIMANT NAME: **J. Wayne McMeans** COURT CLAIM NO. 02167
19 & **Cindy L. McMeans** (A) 05550

20 Source: Caribou Creek

21 Use: Irrigation of 20 acres and stock water

22 Period of Use: April 1 through October 15

23 Quantity: 1.0 cubic foot per second, 100 acre-feet per year

24 Priority Date: **June 30, 1872**

25 Point of Diversion: 1600 feet south and 10 feet west of the northeast
26 corner of Section 19, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
27 Section 19, T. 18 N., R. 20 E.W.M.

28 Place of Use: That portion of NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 18 N.,
R. 20 E.W.M., lying southeast of Caribou Creek

REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: John L. Paul COURT CLAIM NO. 00723
2 & Muriel G. Paul
3 Source: Coleman Creek
4 Use: Irrigation of 8 acres and stock water.
5 Period of Use: April 1 through October 15
6 Quantity: 0.08 cubic foot per second, 31.2 acre-feet per
7 year
8 Priority Date: June 30, 1872
9 Point of Diversion: 1000 feet north and 15 feet west from the
10 southeast corner of Section 15, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M.
11 Place of Use: The east 1050 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
12 27, T. 18 N., R. 19 E.W.M.
13 Limitations of Use: This land may also receive water delivered by the
14 Kittitas Reclamation District
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: Robert C. Paul COURT CLAIM NO. 02091
2 & Margaret E. Paul

3 Source: Coleman Creek

4 Use: Irrigation of 75 acres and stock water.

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

7 Quantity: 0.80 cubic foot per second, 292.5 acre-feet per
8 year for irrigation; 0.065 cubic foot per second,
9 6.5 acre-feet per year for stock watering

10 Priority Date: June 30, 1872

11 Point of Diversion: 1) 40 feet south and 240 feet west from the
12 center of Section 27, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M.
2) 1000 feet north and 15 feet west of the
southeast corner of Section 15, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M.

13 Place of Use: SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section
14 34, T. 18 N., R. 19 E.W.M.

15 Limitations of Use: Both diversions are used in conjunction with each
16 other; however, the total amount diverted from
Coleman Creek shall not exceed the above
17 quantities. Water delivered by the Kittitas
Reclamation District may also be used on this
land.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Lloyd W. Powell** COURT CLAIM NO. 00927
2 **Gaylord M. Kellogg**

3 Source: **Coleman Creek**

4 Use: **Irrigation of 160 acres and stock water**

5 Period of Use: **April 1 through October 15**

6 Quantity: **1.8 cubic feet per second, 712.80 acre-feet per year**

7 Priority Date: **June 30, 1872**

8 Point of Diversion: **600 feet north and 800 feet east from the center of Section 1, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T. 18 N., R. 19 E.W.M.**

9 Place of Use: **NE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.; lying east of Coleman Creek and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T. 18 N., R. 20 E.W.M.**

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13 CLAIMANT NAME: **Henry J. Schnebly, et al.** COURT CLAIM NO. 00979
14 **Fred Schnebly** (A) 04783
15 **Jim Schnebly** (A) 05073

16 Source: **Coleman Creek**

17 Use: **Irrigation of 40 acres and stock watering**

18 Period of Use: **April 1 through October 15 for irrigation; continuously for stock watering**

19 Quantity: **0.40 cubic foot per second, 156 acre-feet per year for irrigation; 0.04 cubic foot per second, 4 acre-feet per year for stock watering**

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21 Priority Date: **June 30, 1872**

22 Point of Diversion: **1240 feet north and 140 feet east of the southwest corner of Section 14, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M.**

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24 Place of Use: **NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T. 18 N., R. 19 E.W.M.**

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

28

1 CLAIMANT NAME: Kenneth O. Sorenson COURT CLAIM NO. 01307
2 & Carolyn Sorenson

3 Source: Parke Creek

4 Use: Irrigation of 75 acres and stockwater.

5 Period of Use: April 1 through October 15

6 Quantity: 1.5 cubic foot per second, 300 acre-feet per year

7 Priority Date: June 30, 1872

8 Point of Diversion: No. 1. 860 feet south and 1120 feet west from the
center of Section 22, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$
of Section 22, T. 17 N., R. 19 E.W.M.
No. 2. 1315 feet north and 30 feet west from the
southeast corner of Section 21, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, T. 17 N., R. 19 E.W.M.

11 Place of Use: That portion of the S $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21,
T. 17 N., R. 19 E.W.M., lying southeast of Cooke
Creek and northwest of Park Creek.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: Michael P. Tomich COURT CLAIM NO. 01426
2 & Nancy Tomich
3 Todd D. Lopeman
4 Source: Cooke Creek
5 Use: Irrigation of 20 acres and stock water
6 Period of Use: May 1 through September 15
7 Quantity: 0.40 cubic foot per second, 80 acre-feet per year
8 Priority Date: June 30, 1872
9 Point of Diversion: 1200 feet north and 450 feet west of the south
quarter corner of Section 18, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T. 18 N., R. 20 E.W.M.
10 Place of Use: That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18,
T. 18 N., R. 20 E.W.M. lying below the KRD canal
and west of Cooke Creek
11 Limitations of Use: This land may also receive water delivered by the
Kittitas Reclamation District.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Paul J. Sorenson** COURT CLAIM NO. 01432
2 & **Virginia R. Sorenson**

3 Source: Park Creek

4 Use: Irrigation of 100 acres and stock water

5 Period of Use: April 1 through October 15

6 Quantity: 2.0 cubic feet per second, 400 acre-feet per year

7 Priority Date: **August 1, 1872**

8 Point of Diversion: 50 feet south and 550 feet west from the
9 northeast corner of Section 22, being within the
NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T. 17 N., R. 19 E.W.M.

10 Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 and the
11 NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, BOTH in
T. 17 N., R. 19 E.W.M.

12 Limitations of Use: Water diverted from Caribou Creek is also used to
13 irrigate that portion of the described lands
lying in Section 21, T. 17 N., R. 19 E.W.M.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Paul J. Sorenson** COURT CLAIM NO. 01433
2 & **Virginia R. Sorenson**
3 Source: Caribou Creek
4 Use: Irrigation of 50 acres and stock water
5 Period of Use: April 1 through October 15
6 Quantity: 1.0 cubic foot per second, 200 acre-feet per year
7 Priority Date: **August 1, 1872**
8 Point of Diversion: 540 feet south and 10 feet east from the north
9 quarter corner of Section 22, being within the
NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T. 17 N., R. 19 E.W.M.
10 Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T. 17 N.,
R. 19 E.W.M.
11 Limitations of Use: This land is also irrigated with water diverted
from Park Creek.
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REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: **Merton Purnell** COURT CLAIM NO. 01329
2 Source: Coleman Creek
3 Use: Irrigation of 51 acres and stock watering
4 Period of Use: April 1 through October 15 for irrigation;
5 continuously for stock watering
6 Quantity: 1.51 cubic feet per second, 276.9 acre-feet per
7 year for irrigation; 0.10 cubic foot per second,
8 10 acre-feet per year for stock watering
9 Priority Date: **April 1, 1873**
10 Point of Diversion: 1) 1300 feet north and 150 feet west from the
center of Section 14, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$
of Section 14, T. 18 N., R. 19 E.W.M.
2) 1320 feet north and 144 feet east of the
southwest corner of Section 14, in the W $\frac{1}{4}$ W $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 14, T. 18 N., R. 19 E.W.M.
11 Place of Use: That portion of the W $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14,
T. 18 N., R. 19 E.W.M. lying south and east of
Coleman Creek.
12 Limitations of Use: This land also receives water delivered by the
Kittitas Reclamation District.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: Leroy Sorenson COURT CLAIM NO. 00182
2 & Doris Sorenson

3 Source: Parke Creek

4 Use: Irrigation of 9.1 acres and stockwater

5 Period of Use: April 1 through October 15

6 Quantity: 0.20 cubic foot per second, 36.4 acre-feet per year

7 Priority Date: June 5, 1873

8 Point of Diversion: 880 feet south and 1120 feet west from the center
9 of Section 22, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 22, T. 17 N., R. 19 E.W.M.

10 Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22,
11 T. 17 N., R. 19 E.W.M., lying north of Badger
12 Pocket Creek, south of Parke Creek, and west of
Ferguson Road.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Gwendolyn Cooke**
2 & **Robert Cooke** COURT CLAIM NO. 00740
3 Source: Coleman Creek
4 Use: Irrigation of 12.95 acres and stock water.
5 Period of Use: April 1 through October 15
6 Quantity: 0.129 cubic foot per second, 51.6 acre-feet per
7 year
8 Priority Date: **June 30, 1873**
9 Point of Diversion: 5 feet south and 900 feet east from the center of
10 Section 4, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
11 4, T. 17 N., R. 19 E.W.M.
12 Place of Use: That portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
13 Section 4, T. 17 N., R. 19 E.W.M. described as
14 follows: Beginning at the center of Section 4;
15 thence N 86°55'43" E 30 feet to the true point of
beginning; thence N 86°55'43" E 365.82 feet;
thence N 7°47'30" E 12.90 feet; thence N
88°24'45" E 384.30 feet; S 6°27'10" W 913.33
feet; thence N 77°00'50" W 642.15 feet; thence N
1°50' W 726.70 feet to the point of beginning.
16 Limitations of Use: The holders of this right shall not interfere with
17 or obstruct the use of the ditch that serves
lands in the E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T. 17 N.,
R. 19 E.W.M.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: Clifford S. Gage COURT CLAIM NO. 00499
2 & Phyllis R. Gage
3 Source: Coleman Creek
4 Use: Irrigation of 24 acres
5 Period of Use: March 15 to October 15
6 Quantity: 0.24 cubic foot per second, 100 acre-feet per year
7 Priority Date: June 30, 1873
8 Point of Diversion: 30 feet south and 1030 feet east from the center
9 of Section 4, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 4, T. 17 N., R. 19 E.W.M.
10 Place of Use: That portion of the SE $\frac{1}{4}$ of Section 4, T. 17 N.,
R. 19 E.W.M., described as follows: Beginning at
the south quarter corner of said section; thence
N 1°50' W along the centerline of the county road
2637.43 feet; thence N 88°24'45" E 784.04 feet to
the true point of beginning; thence N 88°24'25"
E 1003.16 feet; thence S 5°21'30" W 1170.17 feet;
thence N 77°00'50" W 1022.28 feet; thence
N 6°27'10" E 913.33 feet; to the true point of
beginning.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: **Joan G. Laws** COURT CLAIM NO. 06564
2 Source: Coleman Creek
3 Use: Irrigation of 9 acres and stock water
4 Period of Use: April 1 through October 15
5 Quantity: 0.09 cubic foot per second, 36 acre-feet per year
6 Priority Date: **June 30, 1873**
7 Point of Diversion: 10 feet south and 880 feet east of the west
8 quarter corner of Section 14, being within the
NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M.
9 Place of Use: That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T. 18
10 N., R. 19 E.W.M. lying northwesterly of Coleman
Creek
11 Limitations of Use: Water delivered by the Kittitas Reclamation
12 District is also used on this land.

13 CLAIMANT NAME: **J. Wayne McMeans** COURT CLAIM NO. 02165
14 & **Cindy L. McMeans**
15 Source: Cooke Creek and Trail (Dry Gulch) Creek
16 Use: Irrigation of 40 acres and stock water.
17 Period of Use: May 1 through September 15
18 Quantity: 0.80 cubic foot per second, 200 acre-feet per year
19 Priority Date: **June 30, 1873**
20 Point of Diversion: Cooke Creek: 600 feet south and 200 feet east
from the north quarter corner of Section 18,
being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18.
21
Trail Creek: 1250 feet north and 1000 feet east
from the center of Section 18, being within the
NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, ALL IN T. 18 N., R. 20
E.W.M.
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24 Place of Use: The NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T. 18 N., R. 20 E.W.M.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
28

1 CLAIMANT NAME: **Steven C. Rosbach** COURT CLAIM NO. 00467
2 & **Christine Rosbach**

3 Source: Caribou Creek

4 Use: Irrigation of 99.9 acres and stockwater.

5 Period of Use: April 1 through October 15

6 Quantity: POD #1 - 3.5 cubic feet per second, 420 acre-feet
per year;
POD #2 - 3 cubic feet per second, 120 acre-feet
per year

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9 Priority Date: **June 30, 1873**

10 Point of Diversion: POD #1 (D-4)--10 feet south and 10 feet west from
the north quarter corner of Section 22, being
within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T. 17 N.,
R. 19 E.W.M.

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12 POD #2 (D-5)--550 feet south and 10 feet west
from the north quarter corner of Section 22,
being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22,
T. 17 N., R. 19 E.W.M.

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15 Place of Use: POD #1 (D-4)--that portion of the NW $\frac{1}{4}$ of
Section 22, T. 17 N., R. 19 E.W.M., lying north
and west of Caribou Creek and north of Ferguson
Road; AND that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 21, T. 17 N., R. 19 E.W.M., lying east of
Cooke Creek and north of Ferguson Road;

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18 POD #2 (D-5)--that portion of the NW $\frac{1}{4}$ of
Section 22, T. 17 N., R. 19 E.W.M., lying south
of Caribou Creek and northwest of a line
described as follows: Beginning at a point
1000 feet south, more or less, from the north
quarter corner of said section; thence southwest
630 feet, more or less, to a point of terminus on
the south line of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said section.

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23 Limitations of Use: This land may also receive water delivered by the
Ellensburg Water Company.

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26 REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: **Corneille Ross** COURT CLAIM NO. 01530
2 & **Robert W. Ross**
3 Source: Cooke Creek
4 Use: Irrigation of 45 acres and stock water.
5 Period of Use: May 1 through September 15
6 Quantity: 0.90 cubic foot per second, 225 acre-feet per year
7 Priority Date: **June 30, 1873**
8 Point of Diversion: No. 1 - 20 feet north and 530 feet west from the
9 center of Section 19, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$
Section 19, and
10 No. 2 - 10 feet south and 400 feet west from the
center of Section 19, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$
of Section 19, both in T.18 N., R. 20 E.W.M.
11 Place of Use: The SW $\frac{1}{4}$ SE $\frac{1}{4}$ and that portion of the S $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ lying
12 southwest of Cooke Creek in Section 19, T. 18 N.,
R. 20 E.W.M.
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14 Limitations of Use: A portion of this land may also receive water
delivered by the Kittitas Reclamation District
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: **Albert F. Scott** & **Dorothy Scott** COURT CLAIM NO. 00605
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3 Source: Coleman Creek
4 Use: Irrigation of 10 acres and stock watering
5 Period of Use: April 1 through October 15
6 Quantity: 0.10 cubic foot per second, 39 acre-feet per year
7 Priority Date: **June 30, 1873**
8 Point of Diversion: 1000 feet north and 1300 feet east from the center of Section 12, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.
9
10 Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 18 N., R. 19 E.W.M.
11 Limitations of Use: Water delivered by the Kittitas Reclamation District may also be used on this land.
12
13 CLAIMANT NAME: **Michael C. Marvich** COURT CLAIM NO. 01873
14
15 Source: Unnamed branch of Coleman Creek
16 Use: Irrigation of 50 acres and stock water.
17 Period of Use: April 1 through October 15
18 Quantity: 0.50 cubic foot per second, 150 acre-feet per year
19 Priority Date: **June 30, 1874**
20 Point of Diversion: 150 feet south and 10 feet west from the east quarter corner of Section 14, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, T. 18 N., R. 19 E.W.M.
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22 Place of Use: The SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$, ALL WITHIN Section 23, T. 18 N., R. 19 E.W.M.
23 Limitations of Use: Water delivered by the Kittitas Reclamation District may also be used on this land.
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26 REPORT OF REFEREE
Re: Subbasin No. 10
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1 CLAIMANT NAME: **Robert C. Paul** COURT CLAIM NO. 02092
2 & **Margaret E. Paul**

3 Source: Coleman Creek

4 Use: Irrigation of 25 acres and stock water.

5 Period of Use: April 1 through October 15

6 Quantity: 0.25 cubic foot per second, 97.5 acre-feet per year

7 Priority Date: **February 28, 1877**

8 Point of Diversion: 1000 feet north and 15 feet west from the southeast corner of Section 15, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M.

9 Place of Use: That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T. 18 N., R. 19 E.W.M. lying east of Coleman Creek.

10 Limitations of Use: This land may also receive water delivered by the Kittitas Reclamation District.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: Anita Edgar COURT CLAIM NO. 00597
2 Source: Coleman Creek
3 Use: Irrigation of 30 acres and stock water
4 Period of Use: April 15 through October 15
5 Quantity: 0.67 cubic foot per second, 238 acre-feet per year
6 Priority Date: June 30, 1877
7 Point of Diversion: 1310 feet north and 10 feet west from the south
8 quarter corner of Section 27, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M.
9 Place of Use: Those portions of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the north 900
10 feet of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T. 18 N., R. 19
11 E.W.M., lying south and east from the right of
12 way for the county road and west of the most
easterly lateral ditch that runs through the
property.
13 Limitations of Use: Secondary diversions of this water occur on the
14 claimants property through diversions from a
15 pipeline exiting a drain on the Paul property and
a pipeline from a slough also on the Paul
property, which is in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Stephen K. German** COURT CLAIM NO. 01141
2 & **Donna German**
3 **Lloyd W. Powell**

4 Source: Cooke Creek
5 Use: Irrigation of 70 acres and stock water
6 Period of Use: May 1 through September 15
7 Quantity: 1.40 cubic feet per second, 280 acre-feet per year
8 Priority Date: **June 30, 1878**
9 Point of Diversion: Cooke Creek: 10 feet north and 750 feet west of
10 the center of Section 7, being within the
11 SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7;
Dry Gulch (Trail) Creek: 300 feet north and 350
feet west from the southeast corner of Section 6,
being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, BOTH
WITHIN T. 18 N., R. 20 E.W.M.
12 Place of Use: E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T. 18 N., R. 20 E.W.M.

13 CLAIMANT NAME: **WA State Parks and Rec.Commission** COURT CLAIM NO. 01600
14

15 Source: Coleman Creek
16 Use: Irrigation of 45 acres and stock water
17 Period of Use: April 1 through October 15
18 Quantity: 0.1485 cubic foot per second, 45 acre-feet per
year
19 Priority Date: **June 30, 1878**
20 Point of Diversion: 200 feet north and 800 feet east of the southwest
corner of Section 9, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$
of Section 9, T. 17 N., R. 19 E.W.M.
21 Place of Use: The E $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 17 N., R. 19 E.W.M.
22 Limitations of Use: Water delivered by the Ellensburg Water Company
is also used on this land.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: Scott Repp COURT CLAIM NO. 01557
2 & Mary Jo Repp

3 Source: Schnebly Creek

4 Use: Irrigation of 76 acres and stock water

5 Period of Use: April 1 through October 15

6 Quantity: 2.0 cubic feet per second, 705 acre-feet per year
7 for irrigation; 0.05 cubic foot per second, 5.0
8 acre-feet per year for stock water

9 Priority Date: April 1, 1879

10 Point of Diversion: 10 feet south and 70 feet east from the north
quarter corner of Section 22, being within the
NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T. 18 N., R. 19 E.W.M.

11 Place of Use: W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M.

12 Limitations of Use: This land may also receive water delivered by the
Kittitas Reclamation District.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Arthur William Hanning** & **Margarette Hanning** COURT CLAIM NO. 01005
2
3 Source: Cooke Creek
4 Use: Irrigation of one acre
5 Period of Use: May 1 through September 15
6 Quantity: 0.02 cubic foot per second, 4 acre-feet per year
7 Priority Date: **June 30, 1879**
8 Point of Diversion: 1150 feet north and 500 feet east from the center
9 of Section 31, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 31, T. 19 N., R. 20 E.W.M.
10 Place of Use: That portion of the following described parcel in
the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 19 N., R. 20 E.W.M.
11 lying east of Cooke Creek: Beginning at the
12 north quarter corner of Section 31, thence S
5°24' W 1325.88 feet to the true point of
beginning; thence east 1046.65 feet; thence S
26°30' W 368.74 feet; thence west 913.31 feet;
thence N 5°24' E 331.47 feet to the point of
beginning.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: **Jack A. Baker** COURT CLAIM NO. 01149
2 & **Becky R. Baker**

3 Source: Cooke Creek

4 Use: Irrigation of 1.5 acres

5 Period of Use: May 1 through September 15

6 Quantity: 0.03 cubic foot per second, 6 acre-feet per year

7 Priority Date: **June 30, 1879**

8 Point of Diversion: 1000 feet north and 500 feet east from the center
9 of Section 31, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 31, T. 19 N., R. 20 E.W.M.

10 Place of Use: That portion of the following described parcel
11 lying east of Cooke Creek and west of Cooke
Canyon Road. Beginning at the north quarter of
12 Section 31, T. 19 N., R. 20 E.W.M.; thence S
5°24' W 1708 feet; thence S 6°40' W 613.71 feet
13 to the true point of beginning; thence east
1019.80 feet; thence S 4°58' E 331.24 feet;
thence W 1087.05 feet; thence N 6°40' E 332.24
14 feet to the true point of beginning, EXCEPT the
right of way for Cooke Creek Road.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **John S. Clerf** & **Janet J. Clerf** COURT CLAIM NO. 02141
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3 Source: Coleman Creek
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5 Use: Irrigation of 84 acres and stockwater.
6
7 Period of Use: March 15 through October 15
8
9 Quantity: 1.8 cubic feet per second, 759 acre-feet per year
10
11 Priority Date: **June 30, 1879**
12
13 Point of Diversion: 260 feet south and 1 foot west from the east quarter corner of Section 33, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T. 18 N., R. 19 E.W.M.
14
15 Place of Use: That portion of the E $\frac{1}{4}$ E $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M., lying north of said state park and south of the Vantage Highway.
16
17 Limitations of Use: This land may also receive water delivered by the Kittitas Reclamation District.
18
19 CLAIMANT NAME: **Stephen K. German** & **Donna German** **Lloyd W. Powell** **Gaylord M. Kellogg** COURT CLAIM NO. 01141
20
21 Source: Coleman Creek
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23 Use: Irrigation of 100 acres and stock water
24
25 Period of Use: March 15 through October 15
26
27 Quantity: 1.0 cubic foot per second, 300 acre-feet per year
28 Priority Date: **June 30, 1879**
29
30 Point of Diversion: 600 feet north and 800 feet east from the center of Section 1, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T. 18 N., R. 19 E.W.M.
31
32 Place of Use: That portion of the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T. 18 N., R. 19 E.W.M., lying east of Coleman Creek AND Government Lots 6 & 7 of Section 6, T. 18 N., R. 20 E.W.M., lying south of the diversion ditch.
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35 REPORT OF REFEREE
36 Re: Subbasin No. 10
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1 CLAIMANT NAME: **James J. Peterson** COURT CLAIM NO. 01150
2 & **Carolyn B. Johnson**

3 Source: Cooke Creek

4 Use: Irrigation of 3 acres

5 Period of Use: May 1 through September 15

6 Quantity: 0.06 cubic foot per second, 12 acre-feet per year

7 Priority Date: **June 30, 1879**

8 Point of Diversion: 1000 feet north and 500 feet east from the center
9 of Section 31, being within the the SW $\frac{1}{4}$ NE $\frac{1}{4}$,
Section 31, T. 19 N., R. 20 E.W.M.

10 Place of Use: That portion of the following described parcel
11 lying east of Cooke Creek and west of Cooke
Canyon Road. Beginning at the north quarter of
12 Section 31, T. 19 N., R. 20 E.W.M.; thence S
5°24' W, 1708.00 feet; thence S 6°40' W 281.47
13 feet to the true point of beginning; thence east
952.56 feet; thence S 4°58' E 331.24 feet; thence
14 west 1019.80 feet; thence N 6°40' E 332.24 feet
to the true point of beginning, EXCEPT the right
of way for Cooke Canyon Road.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Michael Joseph Shannon** COURT CLAIM NO. 02196
2 Source: Cooke Creek
3 Use: Irrigation of 4 acres
4 Period of Use: May 1 through September 15
5 Quantity: 0.08 cubic foot per second, 20 acre-feet per year
6 Priority Date: **June 30, 1879**
7 Point of Diversion: 50 feet south and 1300 feet east from the north
8 quarter corner of Section 31, within the N $\frac{1}{2}$ N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 31, T. 19 N., R. 20 E.W.M.
9 Place of Use: That portion of the following described parcel
10 lying east of Cooke Creek. Beginning at the north
11 quarter corner of Section 31, T. 19 N., R. 20
12 E.W.M.; thence east 1580 feet; thence S 26°30' W
13 368.74 feet; thence west 1446.66 feet; thence N
14 5°24' E 331.47 feet to the point of beginning,
15 EXCEPT for Cooke Canyon Road right of way.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: **Pamela Zupan** COURT CLAIM NO. 06343
2 Source: Cooke Creek
3 Use: Irrigation of 10 acres
4 Period of Use: May 1 through September 15
5 Quantity: 0.14 cubic foot per second, 37 acre-feet per year
6 Priority Date: **June 30, 1879**
7 Point of Diversion: 1000 feet north and 500 feet east from the center
8 of Section 31, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
9 Section 31, T. 19 N., R. 20 E.W.M.
10 Place of Use: That portion of Section 31, T. 19 N.,
11 R. 20 E.W.M. bounded by a line described as
12 follows: Beginning at a point on the south
13 boundary of said Section 31, said point S
14 89°36'36" W 3280 feet from the southeast corner
15 of Section 31; thence N 89°36'36" 1800 feet;
16 thence N 4°58'07" W 257.10 feet to the true point
17 of beginning; thence N 4°48'07" W 721.52 feet;
18 thence S 89°59'53" W 1368.55 feet; thence S
19 6°39'53" W 582.89 feet; thence S 34°36'36" W
20 183.33 feet; thence N 89°36'36" E 1600.74 feet to
21 the true point of beginning; lying west of Cooke
22 Canyon Road and east of Cooke Creek.
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REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: **E. Eugene Barnhart, Jr.** COURT CLAIM NO. 00707
2 & **Hellen M. Barnhart**
3 **Kenneth E. Barnhart**
4 & **Susan Barnhart**

5 Source: Cooke Creek

6 Use: Irrigation of 110 acres and stock water.

7 Period of Use: May 1 through September 15

8 Quantity: 2.20 cubic feet per second, 550 acre-feet per
9 year

10 Priority Date: **June 30, 1880**

11 Point of Diversion: 200 feet north and 200 feet west from the
12 southeast corner of Section 6, being within the
13 SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T. 18 N., R. 20 E.W.M.

14 Place of Use: That portion of the SW $\frac{1}{4}$ of Section 8, T. 18 N.,
15 R. 20 E.W.M., lying southerly of the irrigation
16 ditch system.

17 CLAIMANT NAME: **E. Eugene Barnhart, Jr.** COURT CLAIM NO. 00707
18 & **Hellen M. Barnhart**
19 **Kenneth E. Barnhart**
20 & **Susan Barnhart**

21 Source: Caribou Creek.

22 Use: Irrigation of 30 acres and stock water.

23 Period of Use: April 1 through October 15

24 Quantity: 1.0 cubic foot per second, 119 acre-feet per year

25 Priority Date: **June 30, 1880**

26 Point of Diversion: 100 feet north and 1500 feet west from the east
27 quarter corner of Section 8, being within the
28 SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T. 18 N., R. 20 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: **Estate of May S. Barnhart** COURT CLAIM NO. 00708
2 & **E. Eugene Barnhart, Jr.**
3 **Kenneth E. Barnhart**
4 & **Susan Barnhart**

5 Source: Coleman Creek

6 Use: Irrigation of 120 acres and stockwater.

7 Period of Use: April 1 through October 15

8 Quantity: 1.20 cubic feet per second, 468 acre-feet per year

9 Priority Date: **June 30, 1880**

10 Point of Diversion: 1650 feet south and 1250 feet west from the
11 northeast corner of Section 12, being within the
12 NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.

13 Place of Use: That portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1, T. 18 N.,
14 R.19 E.W.M. lying southwest of the irrigation
15 ditch, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2 and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of
16 Section 11, T. 18 N., R. 19 E.W.M.

17 CLAIMANT NAME: **Norma M. Flach** COURT CLAIM NO. 00683

18 Source: Cooke Creek or one of its branches

19 Use: Irrigation of 32 acres and stock water

20 Period of Use: May 1 through September 15

21 Quantity: 0.64 cubic foot per second, 128 acre-feet per year

22 Priority Date: **June 30, 1880**

23 Point of Diversion: Within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T. 18 N., R. 20
24 E.W.M.

25 Place of Use: The E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 18, T. 18 N., R.
26 20 E.W.M., lying west of Cooke Creek and
27 excluding a sagebrush covered ridge, T. 18 N., R.
28 20 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: **Albert F. Scott** COURT CLAIM NO. 00605
2 & **Dorothy Scott** (A) 01749
3 Source: Coleman Creek
4 Use: Irrigation of 20 acres and stock water
5 Period of Use: April 1 through October 15
6 Quantity: 0.40 cubic foot per second, 117 acre-feet per year
7 Priority Date: **June 30, 1880**
8 Point of Diversion: 1000 feet north and 1300 feet east from the
9 center of Section 12, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$
of Section 12, T. 18 N., R. 19 E.W.M.
10 Place of Use: The SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 18 N., R. 19 E.W.M.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: **William V. Shelton** COURT CLAIM NO. 00887
2 Source: Coleman Creek
3 Use: Irrigation of 113 acres and stock water
4 Period of Use: April 1 through October 15
5 Quantity: 1.20 cubic feet per second, 452 acre-feet per year
6 Priority Date: **June 30, 1880**
7 Point of Diversion: No.1: 800 feet south and 1280 feet east from the
8 north quarter corner of Section 14, being within
9 the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14.
10 No.2: 1100 feet south and 750 feet east from the
11 north quarter corner of Section 14, being within
the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14. No.3: 1300 feet
12 north and 200 feet east from the center of
13 Section 14, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section
14.
14 No.4: 1150 feet north and 150 feet west from the
15 center of Section 14, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$
16 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, of Section 14, T.
17 Limitations of Use: Water delivered by the Kittitas Reclamation
18 District is also used on this land.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Doward Denning** & **Ida Denning** COURT CLAIM NO. 01306
2
3 Source: Coleman Creek
4 Use: Irrigation of 45 acres and stock water
5 Period of Use: April 1 through October 31
6 Quantity: 0.45 cubic foot per second, 180 acre-feet per year
7
8 Priority Date: **June 30, 1881**
9
10 Point of Diversion: 800 feet south and 800 feet west from the northeast corner of Section 12, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 12, T. 18 N., R. 19 E.W.M.
11
12 Place of Use: That portion of the W $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 18 N., R. 19 E.W.M., lying north of the Kittitas Reclamation District service lateral.
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CLAIMANT NAME: **Albert F. Scott** & **Dorothy Scott** COURT CLAIM NO. 00605
14 (A) 01749
15 Source: Coleman Creek
16 Use: Irrigation of 80 acres and stock water
17 Period of Use: April 1 through October 15
18 Quantity: 1.20 cubic feet per second, 468 acre-feet per year
19
20 Priority Date: **June 30, 1881**
21 Point of Diversion: 1000 feet north and 1300 feet east from the center of Section 12, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.
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23 Place of Use: The E $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 18 N., R. 19 E.W.M.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: **Willard A. Williams** COURT CLAIM NO. 01746
2 & **Mildred Williams**

3 Source: Schnebly Creek

4 Use: Irrigation of 32 acres and stock water.

5 Period of Use: April 1 through October 15 for irrigation;
continuously for stock watering

6 Quantity: 0.64 cubic foot per second, 182.4 acre-feet per
year for irrigation; 0.03 cubic foot per second,
2.5 acre-feet per year for stock watering.

7 Priority Date: **June 30, 1881**

8 Point of Diversion: 1320 feet south and 1470 feet east from the
northwest corner of Section 11, being within the
 $\text{SW} \frac{1}{4} \text{NE} \frac{1}{4} \text{NW} \frac{1}{4}$ of Section 11, T. 18 N., R. 19 E.W.M.

9 Place of Use: That portion of the $\text{NW} \frac{1}{4} \text{SW} \frac{1}{4}$ and $\text{NW} \frac{1}{4} \text{SW} \frac{1}{4} \text{SW} \frac{1}{4}$ of
Section 11, T. 18 N., R. 19 E.W.M., lying north
of an irrigation ditch.

10 CLAIMANT NAME: **Steve Wallace** COURT CLAIM NO. 00261
11 & **Deborah L. Wallace**

12 Source: Caribou Creek

13 Use: Irrigation of 40 acres and stockwater.

14 Period of Use: April 1 through October 15

15 Quantity: 0.80 cubic foot per second, 160 acre-feet per year

16 Priority Date: **June 30, 1882**

17 Point of Diversion: 1310 feet north and 900 feet west from the
southeast corner of Section 19, being within the
 $\text{NW} \frac{1}{4} \text{SE} \frac{1}{4} \text{SE} \frac{1}{4}$, Section 19, T. 18 N., R. 20 E.W.M.

18 Place of Use: That portion of the $\text{E} \frac{1}{4} \text{NE} \frac{1}{4}$ of Section 30, T. 18
N., R. 20 E.W.M., lying east of Caribou Creek and
excluding buildings and county road rights of way.

19 Limitations of Use: This land may also receive water from the
Kittitas Reclamation District.

20 REPORT OF REFEREE
21 Re: Subbasin No. 10

1 CLAIMANT NAME: **Helen J. Clerf** COURT CLAIM NO. 01053
2 Source: Coleman Creek
3 Use: Irrigation 30 acres and stockwater.
4 Period of Use: March 15 to October 15
5 Quantity: 0.60 cubic foot per second, 150 acre-feet per year
6 Priority Date: **June 30, 1883**
7 Point of Diversion: 10 feet west and 260 feet south from the east
8 quarter corner of Section 33, being within the
NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T. 18 N., R. 19 E.W.M.
9
10 Place of Use: That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4,
T. 17 N., R. 19 E.W.M., lying south of Iron Horse
Trail State Park.
11 Limitations of Use: Water delivered by the Cascade Irrigation
12 District may also be used on this land.
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26 REPORT OF REFEREE
Re: Subbasin No. 10
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1 CLAIMANT NAME: **Kayser Ranch, Inc.** COURT CLAIM NO. 00991
2 Source: Two unnamed springs
3 Use: Spring No.1: Single domestic supply
Spring No.2: Irrigation of 1 acre and
stockwater.
4
5 Period of Use: April 1 through October 15 for irrigation;
continuously for domestic supply and stock
watering.
6
7 Quantity: Spring No. 1: 0.04 cubic foot per second, 2
acre-feet per year;
Spring No. 2: 0.011 cubic foot per second, 5.04
acre-feet per year
8
9
10 Priority Date: **June 30, 1883**
11 Point of Diversion: Spring No.1: 350 feet north and 1200 feet west
from the southeast corner of Section 35, being
within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T. 19 N., R.
19 E.W.M.
Spring No.2: 50 feet south and 1100 feet west
from the center of Section 1, being within the
NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T. 18 N., R. 19 E.W.M.
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16 Place of Use: Spring No.1: The E $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T. 18
N., R. 19 E.W.M.;
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Spring No. 2: E $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T. 18 N.,
R. 19 E.W.M.
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26 REPORT OF REFEREE
Re: Subbasin No. 10
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26 REPORT OF REFEREE
Re: Subbasin No. 10

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2 CLAIMANT NAME: **Helen J. Clerf** COURT CLAIM NO. 01053
3 Source: Coleman Creek
4 Use: Irrigation of 50 acres and stockwater
5 Period of Use: March 15 through October 15
6 Quantity: 2.15 cubic feet per second, 400 acre-feet per year
7 Priority Date: **May 1, 1884**
8 Point of Diversion: 10 feet south and 540 feet east from the center
9 of Section 4, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 4, T. 17 N., R. 19 E.W.M.
10 Place of Use: That portion of the E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4,
11 T. 17 N., R. 19 E.W.M., lying northeast of the
Ellensburg Water Co. canal known as the Town
Ditch.
12 Limitations of Use: Water delivered by Cascade Irrigation District
13 may also be used on this land.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
2 (A) 03119
3 (A) 05238

4 Source: Coleman Creek

5 Use: Timber harvesting

6 Period of Use: April 1 through October 31

7 Quantity: 0.0066 cubic foot per second, 1.77 acre-feet per
8 year

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

10 Point of Diversion: 660 feet north and 740 feet east of the south
11 quarter corner of Section 1, being within the
NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T. 19 N., R. 19 E.W.M.

12 Place of Use: The NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T. 19 N.,
R. 19 E.W.M.

13 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
14 (A) 03119
15 (A) 05238

16 Source: An unnamed spring

17 Use: Timber harvesting

18 Period of Use: April 1 through October 31

19 Quantity: 0.0111 cubic foot per second, 1.77 acre-feet per
year

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

21 Point of Diversion: 990 feet south and 260 feet west of the center of
22 Section 11, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 11, T. 19 N., R. 19 E.W.M.

23 Place of Use: The SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 19 N.,
R. 19 E.W.M.

26 REPORT OF REFEREE

27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
2 (A) 03119
3 (A) 05238

4 Source: Coleman Creek

5 Use: Timber harvesting

6 Period of Use: April 1 through October 31

7 Quantity: 0.0111 cubic foot per second, 1.77 acre-feet per
year

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

9 Point of Diversion: 990 feet south and 430 feet west of the northeast
corner of Section 13, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T. 19 N., R. 19 E.W.M.

10 Place of Use: The SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T. 19 N.,
R. 19 E.W.M.

11 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
12 (A) 03119
13 (A) 05238

14 Source: An unnamed spring

15 Use: Timber harvesting

16 Period of Use: April 1 through October 31

17 Quantity: 0.0089 cubic foot per second, 1.18 acre-feet per
year

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

19 Point of Diversion: 790 feet north and 550 feet west of the east
quarter corner of Section 25, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T. 20 N., R. 19 E.W.M.

20 Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T. 20 N.,
R. 19 E.W.M.

21 REPORT OF REFEREE

22 Re: Subbasin No. 10

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
2 (A) 03119
3 (A) 05238

4 Source: Coleman Creek

5 Use: Timber harvesting

6 Period of Use: April 1 through October 31

7 Quantity: 0.0111 cubic foot per second, 0.88 acre-foot per
year

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

9 Point of Diversion: 500 feet south and 780 feet west of the northeast
corner of Section 7, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$
10 of Section 7, T. 19 N., R. 20 E.W.M.

11 Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T. 19 N.,
R. 20 E.W.M.

13 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
14 (A) 03119
15 (A) 05238

16 Source: Coleman Creek

17 Use: Timber harvesting

18 Period of Use: April 1 through October 31

19 Quantity: 0.0111 cubic foot per second, 0.22 acre-foot per
year

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

21 Point of Diversion: 1250 feet north and 1690 feet east of the west
quarter corner of Section 9, being within the
SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T. 19 N., R. 20 E.W.M.

23 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T. 19 N.,
R. 20 E.W.M.

26 REPORT OF REFEREE

Re: Subbasin No. 10

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
2 (A) 03119
3 (A) 05238

4 Source: An unnamed spring

5 Use: Timber harvesting

6 Period of Use: April 1 through October 31

7 Quantity: 0.0111 cubic foot per second, 0.88 acre-foot per
year

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

9 Point of Diversion: 160 feet north and 240 feet west of the center of
10 Section 15, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 15, T. 19 N., R. 20 E.W.M.

11 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T. 19 N.,
R. 20 E.W.M.

13 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
14 (A) 03119
15 (A) 05238

16 Source: Schnebly Canyon Creek

17 Use: Timber harvesting

18 Period of Use: April 1 through October 31

19 Quantity: 0.0111 cubic foot per second, 0.88 acre-foot per
year

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

21 Point of Diversion: 300 feet south and 1450 feet east of the
22 northwest corner of Section 23, being within the
NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T. 19 N., R. 19 E.W.M.

23 Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T. 19 N.,
R. 19 E.W.M.

26 REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
2 (A) 03119
3 (A) 05238
4 Source: An unnamed spring
5 Use: Timber harvesting
6 Period of Use: April 1 through October 31
7 Quantity: 0.0111 cubic foot per second, 0.88 acre-foot per
8 year
9 Priority Date: **May 24, 1884**
10 Point of Diversion: 1500 feet north and 140 feet east of the south
quarter corner of Section 23, being within the
SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T. 19 N., R. 19 E.W.M.
11 Place of Use: The SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T. 19 N.,
R. 19 E.W.M.

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14 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
15 (A) 03119
16 (A) 05238
17 Source: Coleman Creek
18 Use: Timber harvesting
19 Period of Use: April 1 through October 31
20 Quantity: 0.0111 cubic foot per second, 0.88 acre-foot per
year
21 Priority Date: **May 24, 1884**
22 Point of Diversion: 600 feet south and 550 feet west of the northeast
corner of Section 25, being within the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$
of Section 25, T. 19 N., R. 19 E.W.M.
23 Place of Use: The N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T. 19 N.,
R. 19 E.W.M.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME:

Boise Cascade Corporation

COURT CLAIM NO. 02206

(A) 03119

(A) 05238

3 Source:

An unnamed spring

4 Use:

Timber harvesting

5 Period of Use:

April 1 through October 31

6 Quantity:

0.00222 cubic foot per second, 1 acre-foot per
year

8 Priority Date:

May 24, 1884

9 Point of Diversion:

570 feet south and 2100 feet west of the
northeast corner of Section 31, being within the
NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 20 N., R. 20 E.W.M.

11 Place of Use:

The NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 20 N.,
R. 20 E.W.M.

26 REPORT OF REFEREE

Re: Subbasin No. 10

1 CLAIMANT NAME: **Larry D. Johnson** COURT CLAIM NO. 01962
2 & **Jan L. Johnson**
3 **Richard A. Slyfield**
4 & **Jane Gede Slyfield**

5 Source: Caribou Creek

6 Use: Irrigation of 8.5 acres and stock water

7 Period of Use: April 1 through October 15

8 Quantity: 0.17 cubic foot per second, 34 acre-feet per year

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

10 Point of Diversion: 1300 feet north and 1000 feet west from the
11 southeast corner of Section 19, being within the
12 NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T. 18 N., R. 20 E.W.M.

13 Place of Use: That portion of the W $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 18
14 N., R. 20 E.W.M., lying east of Caribou Creek,
15 EXCEPT the south 20 feet thereof. ALSO the south
16 117 feet of the west 98 feet of the E $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
17 said section, EXCEPT the south 20 feet thereof.

18 Limitations of Use: Water delivered by the Kittitas Reclamation
19 District may also be used on this land.

20 CLAIMANT NAME: **N. N. Eaton & Sons** COURT CLAIM NO. 01252
21 Source: An unnamed springs.

22 Use: Stockwatering

23 Period of Use: Continuous

24 Quantity: 0.01 cubic foot per second, 3.5 acre-feet per year

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

26 Point of Diversion: 1050 feet north and 700 feet east from the
27 southwest corner of Section 3, being within the
NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T. 16 N., R. 19 E.W.M.

28 Place of Use: S $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T. 16 N., R. 19 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: **N. N. Eaton & Sons** COURT CLAIM NO. 01252
2 Source: An unnamed spring
3 Use: Stock watering
4 Period of Use: Continuous
5 Quantity: 0.01 cubic foot per second, 3.5 acre-feet per year
6 Priority Date: **May 24, 1884**
7 Point of Diversion: 530 feet east and 265 feet south of the northwest
8 corner of Section 9, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T. 16 N., R. 19 E.W.M.
9 Place of Use: The NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T. 16 N.,
10 R. 19 E.W.M.

11 CLAIMANT NAME: **Wallace M. Stampfly** COURT CLAIM NO. 00462
12 Source: Cave Canyon Creek
13 Use: Irrigation of 15 acres and stock water.
14 Period of Use: April 1 through October 15
15 Quantity: 0.30 cubic foot per second, 82.5 acre-feet per
16 year for irrigation; 0.10 cubic foot per second,
17 10 acre-feet per year for stock water
18 Priority Date: **May 24, 1884**
19 Point of Diversion: 1050 feet south and 10 feet east from the
20 northwest corner of Section 27, being within the
21 SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T. 19 N., R. 19 E.W.M.
22 Place of Use: That portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T. 19
23 N., R. 19 E.W.M., lying west of Cave Canyon
24 Creek.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
28

1 CLAIMANT NAME: **Walter R. Stampfly** COURT CLAIM NO. 00355
2 & **Thelma D. Stampfly**

3 Source: Cave Canyon Creek

4 Use: Irrigation of 15 acres and stock water

5 Period of Use: April 1 through October 15

6 Quantity: 0.30 cubic foot per second, 82.5 acre-feet per
7 year for irrigation; 0.01 cubic foot per second,
1.0 acre-foot per year for stock watering.

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

9 Point of Diversion: 1050 feet south and 10 feet east from the
10 northwest corner of Section 27, being within the
SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T. 19 N., R. 19 E.W.M.

11 Place of Use: That portion of the W3/4NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27,
12 T. 19 N., R. 19 E.W.M., lying north of the
Charlton-Fleming Ditch.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **WA State Parks & Rec.** COURT CLAIM NO. 01600
2 **Rec. Commission**

3 Source: Coleman Creek

4 Use: Irrigation of 75 acres and stockwater.

5 Period of Use: April 1 through October 15

6 Quantity: 0.2475 cubic foot per second, 75 acre-feet per year

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

8 Point of Diversion: 200 feet north and 800 feet east of the southwest corner of Section 9, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 17 N., R. 19 E.W.M.

9 Place of Use: The W $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 17 N., R. 19 E.W.M.

10 Limitations of Use: This land may also receive water delivered by Ellensburg Water Company

11

12 CLAIMANT NAME: **Norma M. Flach** COURT CLAIM NO. 00683

13 Source: Cooke Creek

14 Use: Irrigation of 8 acres and stock water.

15 Period of Use: May 1 through September 15

16 Quantity: 0.16 cubic foot per second, 32 acre-feet per year

17 Priority Date: **June 30, 1884**

18 Point of Diversion: 50 feet south and 1300 feet west from the center of Section 7, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T. 18 N., R. 20 E.W.M.

19 Place of Use: That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T. 18 N., R. 20 E.W.M., lying west of Cooke Creek.

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26 REPORT OF REFEREE
Re: Subbasin No. 10

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1 CLAIMANT NAME: **Norma M. Flach** COURT CLAIM NO. 00683
2 Source: Cooke Creek and its branches.
3 Use: Irrigation of 30 acres and stock water.
4 Period of Use: May 1 through September 15
5 Quantity: 0.70 cubic foot per second, 120 acre-feet per year
6 Priority Date: **June 30, 1884**
7 Point of Diversion: Within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T. 18 N., R. 20
E.W.M.
8 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T. 18 N., R. 20 E.W.M.
9 CLAIMANT NAME: **Merton Purnell** COURT CLAIM NO. 01329
10 Source: Schnebly Creek
11 Use: Irrigation of 30 acres and stock water
12 Period of Use: April 1 through October 15 for irrigation;
continuously for stock watering
13 Quantity: 0.60 cubic foot per second, 171 acre-feet per
year for irrigation; 0.10 cubic foot per second,
10 acre-feet per year for stock watering
14 Priority Date: **April 1, 1885**
15 Point of Diversion: 1) 1300 feet north and 250 feet west of the
southeast corner of Section 10, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T. 18 N., R. 19 E.W.M.,
2) 35 feet south and 856 feet west of the
northeast corner of Section 15, being within the
NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15., T. 18 N., R. 19 E.W.M.
16 Place of Use: That portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T. 18
N., R. 19 E.W.M., lying east of Schnebly Creek
and west of a sage covered ridge.
17 Limitations of Use: This land also receives water delivered by the
Kittitas Reclamation District.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **William V. Shelton** COURT CLAIM NO. 00887
2 Source: Cooke Creek
3 Use: Irrigation of 100 acres and stock water
4 Period of Use: May 1 through September 15
5 Quantity: 1.25 cubic feet per second, 341.55 acre-feet per
6 year
7 Priority Date: **June 30, 1885**
8 Point of Diversion: 30 feet south and 1300 feet west from the center
9 of Section 30, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 30, T. 18 N., R. 20 E.W.M.
10 Place of Use: That portion of Government Lot 3 of Section 30,
T. 18 N., R. 20 E.W.M., lying south of the
unnamed service ditch and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of
Section 25, T. 18 N., R. 19 E.W.M.
11 Limitations of Use: This land also receives water delivered by the
Kittitas Reclamation District.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: **Henry J. Schnebly, et al.** COURT CLAIM NO. 00979
2 **Fred Schnebly** (A) 04783
3 **Jim Schnebly** (A) 05073

4 Source: Schnebly Creek

5 Use: Irrigation of 14 acres and stock water

6 Period of Use: April 1 through October 15 for irrigation,
continuous for stock watering.

7 Quantity: 0.28 cubic foot per second, 79.8 acre-feet per
year for irrigation; 0.01 cubic foot per second,
1.0 acre-foot per year for stock watering.

8 Priority Date: **March 6, 1886**

9 Point of Diversion: 1370 feet south and 1510 feet west from the
northeast corner of Section 15, being within the
NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M.

10 Place of Use: That portion of the E $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 15, T. 18 N., R. 19 E.W.M. lying east of
Schnebly Creek.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **John James Cannell** COURT CLAIM NO. 02146
2 Source: Cooke Creek
3 Use: Irrigation of 55 acres and stock water
4 Period of Use: May 1 through September 15
5 Quantity: 1.10 cubic feet per second, 275 acre-feet per year
6 Priority Date: **June 30, 1886**
7 Point of Diversion: #1 - 10 feet south and 200 feet west from the
8 northeast corner of Section 36, being within the
NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T. 18 N., R. 19 E.W.M.
9 #2 - 1400 feet north and 1200 feet east of the
southwest corner of Section 30, being within
Government Lot 3 of Section 30, T. 18 N.,
R. 20 E.W.M.
10
11 Place of Use: That portion of Government Lots 2 and 3 of
12 Section 31, T. 18 N., R. 20 E.W.M. lying
northwest of Caribou Creek
13 Limitations of Use: This land may also receive water delivered by the
14 Kittitas Reclamation District.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10 601
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1 CLAIMANT NAME: **Craig P. Schnebly** COURT CLAIM NO. 02064
2 & **Nancy L. Schnebly**

3 Source: Coleman Creek

4 Use: Irrigation of 32.7 acres

5 Period of Use: April 1 through October 15

6 Quantity: 0.34 cubic foot per second, 127.53 acre-feet per year

7 Priority Date: **June 30, 1886**

8 Point of Diversion: 900 feet south and 450 feet east from the center
9 of Section 12, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 12, T. 18 N., R. 19 E.W.M.

10 Place of Use: The SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.,
11 except that portion which lies north of Coleman
Creek.

12 CLAIMANT NAME: **Craig P. Schnebly** COURT CLAIM NO. 02064
13 & **Nancy L. Schnebly**

14 Source: Coleman Creek

15 Use: Irrigation of 114.6 acres

16 Period of Use: April 1 through October 15

17 Quantity: 1.66 cubic foot per second, 447 acre-feet per year

18 Priority Date: **June 30, 1886**

19 Point of Diversion: 1300 feet north and 640 feet west of the south
20 quarter corner of Section 12, being within the
SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 18 N., R. 19 E.W.M.

21 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and that
portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ lying north of Coleman
Creek in Section 12, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13,
the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, all in T. 18 N.,
R. 19 E.W.M.

26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 CLAIMANT NAME: **John Oleksy** COURT CLAIM NO. 01417
2 & **Kim Oleksy**

3 Source: Schnebly Creek

4 Use: Irrigation of 3.6 acres and stock water.

5 Period of Use: April 1 through October 15

6 Quantity: 0.072 cubic foot per second, 14.4 acre-feet per year

7 Priority Date: **May 10, 1887**

8 Point of Diversion: 700 feet south and 200 feet west from the east quarter corner of Section 10, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T. 19 N., R. 19 E.W.M.

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10 Place of Use: The NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T. 18 N., R. 19 E.W.M.

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12 CLAIMANT NAME: **Maurice McGrath** COURT CLAIM NO. 00783
13 & **Joanna M. McGrath**

14 Source: Parke Creek

15 Use: Irrigation of 50 acres and stock water

16 Period of Use: April 1 through October 15

17 Quantity: 1.0 cubic foot per second, 250 acre-feet per year

18 Priority Date: **June 30, 1888**

19 Point of Diversion: 100 feet north and 200 feet west from the south quarter corner of Section 27, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T. 18 N., R. 20 E.W.M.

20 Place of Use: That portion of the SW $\frac{1}{4}$ of Section 32, T. 18 N., R. 20 E.W.M., lying south of the northerly delivery ditch.

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22 Limitations of Use: Water delivered by the Kittitas Reclamation District may also be used on this land.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

28

1 CLAIMANT NAME: **Donald R. Weber** & **Barbara Weber** COURT CLAIM NO. 00720
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3 Source: Parke Creek
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5 Use: Irrigation of 50 acres and stock water
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7 Period of Use: April 1 through October 15
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9 Quantity: 1.0 cubic foot per second, 250 acre-feet per year
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11 Priority Date: **June 30, 1888**
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13 Point of Diversion: 100 feet north and 200 feet west from the south quarter corner of Section 27, being within the $SE\frac{1}{4}SE\frac{1}{4}SW\frac{1}{4}$ of Section 27, T. 18 N., R. 20 E.W.M.
14
15 Place of Use: That portion of the $NE\frac{1}{4}$ of Section 32, T. 18 N., R. 20. E.W.M., lying south of an open drain and north of the delivery ditch EXCLUDING the high ground lying above the 2 service ditches.
16
17 Limitations of Use: This land may also receive water delivered by the Kittitas Reclamation District (KRD)
18
19 CLAIMANT NAME: **Howard F. Clerf** & **Vivian Clerf** COURT CLAIM NO. 01443
20
21 Source: Parke Creek
22
23 Use: Irrigation of 60 acres and stockwater.
24
25 Period of Use: March 15 through October 15
26
27 Quantity: 0.50 cubic foot per second, 180 acre-feet per year
28
Priority Date: **June 30, 1890**
Point of Diversion: 50 feet south and 1100 feet west from the northeast corner of Section 27, being within the $NW\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$ of Section 27, T. 18 N., R. 20 E.W.M.
Place of Use: That portion of the $NE\frac{1}{4}$ and $NW\frac{1}{4}SE\frac{1}{4}$ of Section 27, T. 18 N., R. 20 E.W.M. lying adjacent to Parke Creek, both east and west of the creek.

REPORT OF REFEREE
Re: Subbasin No. 10

1 CLAIMANT NAME: **Norma M. Flach** COURT CLAIM NO. 00683
2 Source: Cooke Creek or one of its branches
3 Use: Irrigation of 10 acres and stock water
4 Period of Use: May 1 through September 15
5 Quantity: 0.20 cubic foot per second, 40 acre-feet per year
6 Priority Date: **June 30, 1890**
7 Point of Diversion: Within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T. 18 N., R. 20
E.W.M.
8 Place of Use: SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T. 18 N., R. 20 E.W.M.
9
10 CLAIMANT NAME: **Gerald L. Allphin** COURT CLAIM NO. 00289
11 & **Beverly J. Allphin**
12 Source: Cooke Creek
13 Use: Irrigation of 5 acres and stock water.
14 Period of Use: May 1 through September 15
15 Quantity: 0.10 cubic foot per second, 25 acre-feet per year
16 Priority Date: **June 30, 1893**
17 Point of Diversion: Within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1,
T. 17 N., R. 19 E.W.M.
18 Place of Use: That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2,
T. 17 N., R. 19 E.W.M., described as follows:
Beginning at a point 30 feet north and 1200 feet
west, more or less, from the southeast corner of
said section; thence north 680 feet, more or
less, to the south bank of the Cascade Canal;
thence southeasterly along said ditch bank
700 feet, more or less; thence south 400 feet,
more or less; thence west 550 feet, more or less,
to the point of beginning.
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23 Limitations of Use: This land may also be irrigated with water
delivered by the Kittitas Reclamation District.
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26 REPORT OF REFEREE
Re: Subbasin No. 10
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28

1 CLAIMANT NAME: **Fred Palmiero** COURT CLAIM NO. 00929
2 & **Francis Joy Palmiero**

3 Source: Cooke Creek

4 Use: Irrigation of 8 acres and stockwater.

5 Period of Use: May 1 through September 15

6 Quantity: 0.16 cubic foot per second, 40 acre-feet per year

7 Priority Date: **June 30, 1893**

8 Point of Diversion: Within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T. 17 N., R. 19
E.W.M.

9 Place of Use: That portion of the E $\frac{1}{2}$ SE $\frac{1}{2}$ of Section 2, T. 17 N.,
R. 19 E.W.M., lying east of Cooke Creek and west
of No. 81 Road, EXCEPT the south 550 feet
thereof.

10 Limitations of Use: Water delivered by the Kittitas Reclamation
District is also used on this land.

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26 REPORT OF REFEREE

27 Re: Subbasin No. 10

1 CLAIMANT NAME: **Harry E. Moore** COURT CLAIM NO. 02247
2 Source: Cooke Creek
3 Use: Irrigation of 100 acres and stock water
4 Period of Use: May 1 to September 15
5 Quantity: 2.0 cubic feet per second, 500 acre-feet per year
6 Priority Date: **June 30, 1915**
7 Point of Diversion: 50 feet north and 50 feet west from the southeast corner of Section 25, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, T. 18 N., R. 19 E.W.M.
8 Place of Use: That portion of the NE $\frac{1}{4}$ of Section 36, lying east of Cooke Creek and those portions of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, lying west of Cooke Creek, ALL IN T. 18 N., R. 19 E.W.M.
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10 Limitations of Use: Water delivered by the Kittitas Reclamation District may also be used on this land.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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1 CLAIMANT NAME: James B. Thomson COURT CLAIM NO. 00849
2 & Wanda T. Pressley
3 Robert L. Krasean
4 Stanley D. Hall
Dr. Kenneth R. Stillwell
& Mrs. Kenneth R. Stillwell

5 Source: An unnamed spring

6 Use: Domestic water supply for 4 recreational sites
and stock and wildlife watering.

7 Period of Use: Continuously

8 Quantity: 0.007 cubic foot per second, 1 acre-foot per year

9 Priority Date: February 2, 1970

10 Point of Diversion: 500 feet north and 550 feet east from the center
11 of Section 21, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, of
Section 21, T. 19 N., R. 20 E.W.M.

12 Place of Use: SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 21, T. 19 N., R. 20 E.W.M.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 4. All prior claims to rights for surface water from Subbasin No. 10,
2 including those claims filed under the provisions of Chapter 90.14 RCW, are
3 denied, unless expressly provided for herein. The "Water Rights Claims
4 Registry" directed by RCW 90.14.111 should be supplemented with appropriate
5 notations to the records of those claims specifically identified in the
6 "Water Right Claims" section of Plaintiff's Exhibit No. SE-3.

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

10 Certificates of Surface Water Right

11 Adjudication Certificates 170 - 202 from the Cooke Creek
12 Adjudication
13 11618 11673 11602
14 S4-01232C

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

18 IX. CONCLUSIONS OF LAW

19 Confirmation of Rights

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

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26 REPORT OF REFEREE
27 Re: Subbasin No. 10

1 Duty of Water

2 Unless otherwise specified, the diversion of water from sources of
3 water contained within Subbasin No. 10 for irrigation purposes shall be
4 limited, at a maximum, to 1.0 cubic-foot per second for each 50 acres
5 irrigated, not to exceed during each irrigation season, a total of 5
6 acre-feet per acre for orchards and 6 acre-feet per acre for alfalfa/pasture.

7 Irrigation Season

8 Unless otherwise identified within a specific water right, the
9 irrigation season shall be defined as that period from April 1 to and
10 including October 31 of each year. The Referee recognizes that
11 extraordinary circumstances may dictate the application of water prior to or
12 subsequent to the defined irrigation season, and, in that event, express
13 approval from the Department of Ecology must be obtained annually prior to
14 such deviation.

16 Certificates of Adjudicated Water Right

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

22 Administration of Water

23 The use of Subbasin No. 10 waters should be regulated by the Department
24 of Ecology on the basis of Certificates of Adjudicated Water Rights issued
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26 REPORT OF REFEREE

27 Re: Subbasin No. 10

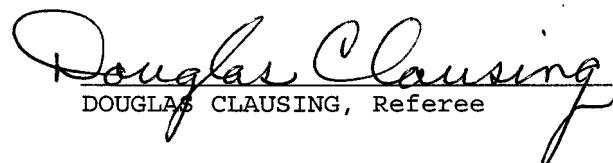
1 as a result of this proceeding, and on the basis of any permits and
2 certificates that may have issued outside of this proceeding under
3 appropriation procedures of Chapter 90.03 RCW. When available water in
4 Subbasin No. 10 is insufficient to supply all rights, and upon a finding
5 that regulation is required, the Department may regulate junior water rights
6 in the interest of satisfying senior water rights.

7 Whenever regulation of junior water rights is necessary, the Department
8 may enter at reasonable times upon the lands of any and all parties having
9 rights and shall regulate diversion facilities so as to apportion the waters
10 as herein adjudicated.

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

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

19 SIGNED and DATED at Yakima, Washington this 23RD day of
20 October, 2001.

21 
22 Douglas Clausing
23 DOUGLAS CLAUSING, Referee
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26 REPORT OF REFEREE
27 Re: Subbasin No. 10
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