

YAKIMA RIVER BASIN

WATER RIGHTS ADJUDICATION

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. 5
(ELK HEIGHTS)**

FILED
JUL 8 1997

KIM M. EATON, YAKIMA COUNTY CLERK

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

REPORT OF REFEREE - VOLUME 38

12,522

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

4 IN THE MATTER OF THE DETERMINATION)
5 OF THE RIGHTS TO THE USE OF THE)
6 SURFACE WATERS OF THE YAKIMA RIVER)
7 DRAINAGE BASIN, IN ACCORDANCE WITH) No. 77-2-01484-5
8 THE PROVISIONS OF CHAPTER 90.03,)
9) REPORT OF REFEREE
10) Re: Subbasin No. 5
11) (Elk Heights)
12 Plaintiff,)
13) v.
14) James J. Acquavella, et al.,
15) Defendants.
16)

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

19 I. BACKGROUND

20 This report concerns the determination of the surface water rights of the
21 Yakima River basin, specifically those rights located within Subbasin No. 5, the
22 Elk Heights drainage basin. The criteria consisting of applicable law and bases
23 for water right determinations used by the Referee in the evaluation of claims can
24 be found in the Report of the Referee to the Court, Preface to Subbasin and Major
25 Category Reports, Volume 2, dated May 18, 1988.

26 The Referee conducted evidentiary hearings on April 29 and 30, May 1, 2, 3,
27 and 6, 1991.

1

2 II. FIELD INVESTIGATIONS

3

4 Field surveys were conducted by Department of Ecology (Ecology) staff during
5 1990, to obtain information regarding claimants' existing water use patterns in
6 Subbasin No. 5. Aerial photographs, topographic maps, county assessor's plats,
7 and on-site field investigations were used to prepare map exhibits showing the
8 irrigated fields, location of ditches, pipelines, pumps, wells and other pertinent
9 features of the water systems.

10 III. WATER DUTY

11 The Plaintiff State of Washington submitted an exhibit (SE-6) entitled
12 "Supplemental Documentary Information, Elk Heights Subbasin No. 5", which includes
13 information on soils, climate, irrigation and farming practices, and plant needs,
14 meant to aid the Referee in determining irrigation water requirements within the
15 subbasin. In addition, two expert witnesses for the U.S. Bureau of Reclamation
16 (USBR) testified at a hearing held December 12, 1990, to take evidence on crop
17 water requirements in the Upper Yakima River Basin and provide general information
18 regarding crop irrigation requirements for water delivered to farms in the
19 subbasins. In the absence of definitive testimony or other evidence, the Referee
20 proposes to rely upon such expert testimony, and will calculate the maximum duty
21 of water for the various uses in Subbasin No. 5 according to the following
22 quantities:

- 23
- 24 A. Domestic Supply (in-house)
25 and Stock Water 0.01 cfs; 1 acre-foot per
26 year per residence
- 27

1
2 Domestic supply (with small
3 lawn and garden) 0.01 cfs; 1 acre-foot per
4 year
5 Domestic supply and large
6 lawn and garden up to
7 ½ acre 0.02 cfs; 2 acre-feet per year
8 Stock Water 1 acre-foot per year for an average
9 small (diversionary) herd (40 animals); 0.50 acre-foot per year for 1
10 to 10 animals.

11
12 B. Irrigation Water -- In order to be reasonably lenient about irrigation
13 cropping patterns, the Referee will use an annual water duty of 6 acre-feet per
14 acre for irrigation of pasture/alfalfa. Such duty represents a maximum annual
15 water volume for prevalent irrigation uses in this area and is approximately
16 commensurate with duties utilized by Ecology in quantity allocations under the
17 water right permit system.

18 For each acre irrigated by sprinklers, the Referee has calculated the
19 maximum instantaneous rate of diversion to be 0.02 cfs (9 gallons per minute).
20 For flood or rill irrigation, the duty shall be 0.03 cfs (13.5 gallons per minute)
21 per acre irrigated. It is the Referee's opinion that the aforementioned duties of
22 water are reasonable maximum application rates for the soil and topographic
23 conditions in Subbasin 5.

24 It should be noted that the use of water under all irrigation rights is
25 limited to the amount of water that can be beneficially applied to the number of
26 acres identified in the water right. In accordance with state water law, the
27 number of irrigated acres cannot be increased in the future without obtaining an
28 additional water right.

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1 Water for agricultural purposes in this subbasin is, in some instances,
2 delivered to individual users by means of gravity flow ditches. The Plaintiff's
3 exhibit SE-5 demonstrates ditch loss characteristics in the Younger Ditch. In
4 addition, expert testimony was entered into the record during the evidentiary
5 hearing.

6 The Referee will use this criteria, where appropriate, when definitive
7 testimony regarding these factors is absent. The amounts of water necessary to
8 supplement the on-farm water duty will be parenthetically reflected in the
9 instantaneous rate of diversion (cubic feet per second) identified and allocated
10 to each water right recommended for confirmation. No annual volumetric rate
11 (acre-feet per year) will be allocated for ditch or transportation loss, since
12 such water has only the discrete purpose of physically supporting irrigation water
13 delivered to the farm for beneficial use, and is not "lost" to the river system.
14 In most circumstances, "ditch loss" water returns to its source within a
15 relatively short time period, ranging from a few minutes to several days or weeks.

17 IV. STIPULATIONS

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

21 "It is hereby stipulated by all claimants in the above-entitled cause that
22 all exhibits entered and all testimony taken at the hearing on claims held
23 beginning April 29, 1991, may be utilized by any party in the proof of a
claim or the contesting of a claim whenever relevant and material."

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

1
2 "It is hereby stipulated that the description of lands set forth in the
3 claims of the respective claimants is the correct description of the 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."

4 In the third, the parties stipulated to the following in relation to
5 "non-diversionary" stock and wildlife watering use with regards to Subbasin No. 5:

6 "1. Waters in natural watercourses in the subbasin shall be retained when
7 naturally available, in an amount not to exceed 0.25 cubic feet per second
(cfs), for stock water uses in such watercourses as they flow across or are
8 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,
9 regardless of other rights confirmed in this cause. Regulations of these
watercourses by the plaintiff shall be consistent with such retention
requirements.

10
11 2. Waters in natural watercourses in the subbasin shall be retained when
naturally available, in an amount not to exceed 0.25 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.

12
13 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.

14
15 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 uses embody
entitlements to a level in the water bodies sufficient to provide water for
wildlife drinking directly therefrom while ranging on 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.

16
17 5. Nothing in this stipulation mandates that any lands, associated with
water rights or water retention as provided herein, shall be reserved for
wildlife purposes."

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3 V. LAND DESCRIPTIONS

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

8

9 VI. RETURN FLOW WATER

10

11

12

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

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

The Court considers return flow waters to include what has been characterized as waste water and seepage water. Return flow that naturally originates from, and returns to a water course within the same watershed, is subject to a new appropriation as soon as the water leaves the appropriator's land and is in, or destined for, the natural stream from which it originated. An appropriator of such water must comply with the state requirements for appropriation by way of obtaining a permit or certificate under RCW 90.03 or proving historic use under either the Prior Appropriation or Riparian Doctrines and compliance with RCW 90.14 (Water Right Claim Registration Act).

This Court in its Limiting Agreement Memorandum Opinion dated June 16, 1993, Memorandum Opinion Re: Motion For Reconsideration of Limiting Agreements, signed April 1, 1994, and Memorandum Opinion Re: Subbasin No. 8, Exceptions of Ivan and

1 Mildred Hutchinson, Court Claim No. 0876, and Vernon G. and Ellen F. Meyer Court
2 Claim No. 1875; Theiline Scheumann & Grousemont Farm, Claim No. 1335 found that
3 rights could not be confirmed for the use of return flows that are the result of
4 the application of Yakima Project waters and foreign return flows, but that rights
5 could have been established for return flows that originated from and return to a
6 water course within the same watershed.
7

8 These rulings were based on a Washington State Supreme Court case, State of
9 Washington, D.O.E. v. Bureau of Reclamation, et al., 118 Wn. 761, 827 P. 2d 275
10 (1992), where the Supreme Court held that the appropriator of the water retains
11 its rights to use the water so long as the water remains within the boundaries of
12 the appropriator's property and that only Federal agencies and those entities with
13 whom they contract have authority to make decisions regarding the distribution of
14 water within a Federal irrigation project. The Supreme Court found that the
15 Federal government, through the Bureau of Reclamation, was the appropriator of
16 water in a Federal project and had control of the water until it left the project
17 boundaries.
18

VII. YOUNGER DITCH CLAIMS

19 Several claimants in Subbasin No. 5 are asserting water rights either
20 delivered through the Younger Ditch or based on notices of water right filed by
21 Nick Younger and other owners of the Younger Ditch in the late 1800's. In order
22 to avoid repetition throughout the report and facilitate understanding the
23 relationship between the various claimants and Younger Ditch, the historical
24 evidence presented by the claimants will be presented at this point in the report
25
26
27

1 and specifics concerning the individual claimants will be presented later in the
2 report under each claim analysis.
3

4 Nick Younger filed a Notice of Water Right on June 17, 1886, asserting a
5 right to 1,000 inches of water from the Yakima River for irrigation purposes to be
6 carried through a ditch beginning near the center of Section 36, running north
7 through Section 25 into the SW $\frac{1}{4}$ of Section 30. Construction of the ditch started
8 on June 6, 1886. On July 14, 1904, an agreement was signed between Peter Younger,
9 Herman Tagge, August Hasse and Edmund Taylor stating that in the year 1898 the
10 parties jointly constructed a ditch with its intake in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35,
11 said ditch running northeasterly through Section 25, then east through
12 Sections 31, 32, and 33, T. 20 N., R. 16 E.W.M., then running south through
13 Section 4, T. 19 R. 16 E.W.M. The agreement identified that Younger had 2/5 of
14 the water carried in the ditch, and each of the other parties to the agreement had
15 1/5 of the water. Also in the record are two 1909 statements from landowners
16 along the ditch stating that the ditch had been constructed and used to irrigated
17 the lands described in the agreement.

18 On March 15, 1909, Alice Taylor entered into an agreement with the Union
19 Gap Irrigation Company to transfer her one-fifth interest in the Younger Ditch
20 right, or 200 inches, to the irrigation company. The United States brough suit
21 against the irrigation district to prevent the transfer due to the negative impact
22 on the proposed Yakima Project. The Court ruled that the transfer would impact
23 the project after July 1, see United States v. Union Gap Irrigation District, 109
24 Fed. 274, 277-278 (1913). The United States and Union Gap Irrigation District
25 subsequently entered into an agreement that allowed for the transfer of one cfs
26 from Alice Taylor.

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2 On October 16, 1913, Peter Younger, Albert Hayden, L. W. Taylor and John
3 Fraser signed an agreement with the United States (an agreement commonly referred
4 to in this proceeding as a limiting agreement). The agreement identified that the
5 named individuals (called contractors) were the joint owners of the Younger Ditch
6 and that the original appropriation for the ditch was 1000 inches. The
7 contractors agreed to limit their combined right to 800 inches or 20 cfs; 600
8 inches to be measured at the headgate of the Younger Ditch to serve all of the
9 parties except Fraser and 200 inches to be diverted at the headgate to Fraser's
10 own ditch in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31. The water could only be diverted and used
11 during the irrigation season of April 20 to September 30. The limiting agreement
12 further identified that 400 inches (10 cfs) were to be used in the SW $\frac{1}{4}$ of
13 Section 30 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31.

14 Earlier in this adjudication, the Court was presented with questions
15 concerning the limiting agreements, their meaning and how they were to be
16 interpreted when considering claims for lands and ditches for which limiting
17 agreements were signed. This Court in its January 3, 1994, Amended Order Re:
18 Limiting Agreements ruled that "The limiting agreements, being free from
19 ambiguity, are binding on the respective successors-in-interest to the original
20 signatories, . . ." The Referee intends to apply that ruling when considering
21 claims for which limiting agreements apply, including claims to water diverted
22 through the Younger Ditch. The claimant who are asserting rights through the
23 Younger Ditch based on the original appropriation are: Steven C. and Elsie Bator,
24 Theodore and Marion Bronkema, GRM Ranches, Gary J. and Jo Anne Fudacz, Bernard
25 Henshaw, Frank L. and Doris M. Talerico, Cecil F. and Jo Ann B. Carveth, Loyd and
26 Shirley Garrett, Richard and Jean Haas/Sharon Winslow, Pat and Carolyn Merritt,

1 Jacqueline Baker and Bonita P. Morgan. Many of the water right claims filed
2 pursuant to RCW 90.14, the Claims Registration Act, to protect Younger Ditch water
3 rights describe a water use of 0.02 cubic foot per second and 4 acre-feet per year
4 per acre irrigated. Ecology has taken the position that the water right claim
5 represents the maximum water right that can be confirmed through this adjudication
6 proceeding. The Court has ruled that the Referee has latitude in interpreting the
7 water right claims, which may result in a right be recommended in excess of what
8 was described in the claim form. The Referee is aware of landowners having been
9 given guidance by Ecology that if they did not know how much water was being used
10 to irrigate the land, put 0.02 cfs and 4 acre-feet per year per acre irrigated.
11 In many areas that quantity is sufficient to irrigate most crops, whoever, in
12 Kittitas County, where diversion ditches and flood or rill irrigation is common,
13 that quantity is not adequate. If the testimony indicates that in excess of 0.02
14 cfs and 4 acre-feet per acre has historically been, and is still, used and
15 the quantity being used is reasonable for the crop and irrigation method, the
16 Referee will not be bound by the quantity in the RCW 90.14 claim.
17

18 Subsequent to the limiting agreement being executed, an additional water
19 right was transferred to the Younger Ditch. Certificate of Change recorded in
20 Volume 1, Page 278, changed the point of diversion for Certificate No. 132 from
21 the Teanaway River Adjudication to the Yakima River at the Younger Ditch
22 diversion. See page 107 of this report for a discussion of this water right under
23 Court Claim No. 01676. The parties who receive water through the Younger Ditch as
24 a result of the Certificate of Change are: Brian and Elizabeth Frederick, Mack D.
25 and Susan R. Richey, Real Estate Investment Group, Jon L. and Cindy L. Newton and
26 Sandra Fredericksen.

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VIII. FEDERAL WITHDRAWAL OF UNAPPROPRIATED WATERS

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3 The State of Washington adopted Chapter 90.40 of the Revised Code of
4 Washington (RCW) on March 4, 1905, titled "Water Rights of the United States." The
5 intent of the State Legislature was to facilitate acquisition of water rights and
6 property necessary for construction and operation of Federal irrigation projects
7 proposed under authority of the act of Congress approved June 17, 1902, called the
8 "Reclamation Act."

9 The legislature provided a procedure via Section 90.40.030 RCW, whereby the
10 United States could notify the Commissioner of Public Lands for the State of
11 Washington that the United States intended to make examinations and surveys for
12 utilization of certain specified waters for a reclamation project, as provided by
13 the 1902 Reclamation Act. On May 10, 1905, the United States filed with the
14 Commissioner of Public Lands a notice withdrawing all of the unappropriated waters
15 of the Yakima River and it's tributaries from further appropriation under any law
16 of the State of Washington. The withdrawal, with subsequent extensions, remained
17 in effect until December 31, 1951.

18 There were two exceptions to the otherwise all inclusive withdrawal. The
19 first was: "Such notice shall not in any wise affect the appropriation of any
20 water theretofore in good faith initiated under any law of this state, but such
21 appropriation may be completed in accordance with the law in the same manner and
22 to the same extent as though such notice had not been given." The second
23 exception was: "No adverse claim to any of such waters initiated subsequent to the
24 receipt by the commissioner of public lands of such notice shall be recognized,
25 under the laws of this state, except as to such amount of the waters described in

1 such notice or certificate hereinafter provided as may be formally released in
2 writing by a duly authorized officer of the United States."

3 For purposes of evaluating the potential impact on aspiring appropriators in
4 the Yakima River basin the key words in RCW 90.40.030 seem to be "theretofore in
5 good faith initiated under any law of the state." Initiation of a right under the
6 Prior Appropriation Doctrine could have been accomplished by posting and/or filing
7 a Notice of Appropriation or actual construction of the diversion works and
8 delivery system. If such notice was filed or construction begun on the diversion
9 facilities prior to May 10, 1905, and diligently pursued through development and
10 beneficial use of the water, the right would not be constrained by the Federal
11 withdrawal and would bear a priority date prior to the date of the withdrawal.
12 Under the Riparian Doctrine, if steps were first taken to separate the land from
13 the public domain prior to May 10, 1905, and beneficial use of the water was made
14 prior to December 31, 1932, the right was "in good faith initiated" and would
15 bear a priority date prior to the withdrawal.

16 In considering exceptions filed to the Reports of Referee for Subbasin No. 3
17 and 22, the Court made the determination that rights could have been established
18 for de minimus uses of water that would not conflict with the Yakima Project water
19 rights. It is the intent of the Referee to apply the guidance given by the Court,
20 as applicable, in evaluating the various claims in Subbasin No. 5.

22 IX. WARREN ACT CONTRACTS

23 Several claimants in this subbasin may be successors in interest to a single
24 Warren Act Contract, a copy of which has been offered into the record as DE-87 by
25 the U. S. Bureau of Reclamation. The Court in its Memorandum Opinion RE: Warren
26 Act Contract Issues entered March 8, 1996, and subsequent Order RE: Warren Act

Contract Issues entered September 18, 1996, provides guidance for evaluation of subbasin claims which rely upon Warren Act contracts. In particular, Item 10 of that order is applicable: "Under the provisions of R.C.W. 90.14.041 and .061 and the filings made by the United States and the permits and certificates issued by the State of Washington to the United States as trustee, any entity with a Warren Act or storage contract with the United States does have a legal water right on proof of beneficial use of water supplied pursuant to the contract, whether such contract was entered into either prior to or subsequent to 1917." Such proof may be provided by testimony from either the claimant or the Bureau of Reclamation.

X. WATER RIGHT PRIORITIES

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

XI. TESTIMONY AND REFEREE'S ANALYSES

Plaintiff Testimony

Ms. Kerry O'Hara, Assistant Attorney General, represented the Plaintiff State of Washington, Department of Ecology.

The State introduced into evidence the following generic exhibits:

Number Description

- | | |
|----------|--|
| SE-1 & 2 | Maps of Subbasin No. 5 |
| SE-3 | Water Right Certificates, Permits, Registration Claims and Relinquishments |
| SE-4 | Mannual of Individual Water Supply Systems |
| SE-5 | Conveyance Loss/Gain Report |

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2 SE-6 Supplemental Documentary Information, Subbasin No. 5
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4 Additionally, oral testimony was given by Ron Effland and Clay Keown, Field
5 Investigators, Ecology Adjudication Section.
6

7 Claimant Testimony
8

9 Eighty-two defendants filed statements of claim or notices of appearance.
10

11 All claimants and their legal counsel, if so represented, are as follows:
12

13 Court
14 Claim
15 No. Name

16 Attorney

17 Page(s)

18 02238	Randy L. Abbott & Chris Abbott 91 Harrier Ave Vallejo, CA 94590-3709	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg, WA 98926	120, 139 145
19 00281	Ronald B. Anger & Patricia S. Anger PO Box 37 South Cle Elum, WA 98943		26, 139 140
20 01402	Robert L. Bailey 4201 Highway 970 Cle Elum, WA 98922		27, 140
21 01453	Jesse Baird 625 Okanogan Avenue Wenatchee, WA 98801-3407		138, 140
22 01688	Jacqueline Baker & Bonita P. Morgan 1481 Airport Road Cle Elum, WA 98922	Brian Frederick, Attorney 604 N Main Street Ellensburg WA 98926-3110	28, 146
23 01288	Goldie M. Ballard PO Box 42 Cle Elum, WA 98922		30, 139

1
2 02256 Steven Bator, Jr. 30, 139
& Deanna Bator
3 PO Box 520
Roslyn, WA 98941 140
4 02230 Steven C. Bator, Sr. Brian Frederick, Attorney 31, 147
& Elsie Bator
5 1990 Airport Road
Cle Elum, WA 98922 Ellensburg, WA 98926-3110
6
7 02216 Richard R. Baxter 33, 140
& Phylis L. Baxter
8 1814 7th Street SW
Puyallup, WA 98371
9 00394 Sherry Bertino 36, 139
(A) 06098 c/o John Bertino 155
10 401 Alcazar Avenue
Arlington, WA 98223
11
12 00895 Victor Biava 39, 139
& Fern Biava 140
13 1207 S 40TH Ave
Yakima, WA 98908-3961
14 02206 Boise Cascade Corporation Dennis J. Dunphy, 39, 139
(A) 03119 Legal Department Attorney 140
(A) 05238 PO Box 50 1420 5th Avenue #3400
Boise, ID 83707 Seattle, WA 98101-2339
16
17 01185 Wayne C. Booth, Jr., et al. 41, 140
& Mary Ann Booth
1201 - 3rd Avenue
40th Floor
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18
19 01276 Robert M. Boyle Darrel Ellis, Attorney 138, 140
& Mary J. Boyle
PO Box 1190
Mukilteo, WA 98275 Cle Elum, WA 98922
20
21
22 01268 Theodore Bronkema 42, 148
02225 & Marion Bronkema
309 W 3rd
Cle Elum, WA 98922
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1	05216	George Burchak & Diane Burchak 1941 Mohar Road Cle Elum, WA 98922	John P. Gilreath, Attorney PO Box 499 Ellensburg, WA 98926	44, 139 142, 160
2	00103	Burlington Northern Railroad Co.	Elizabeth Hill, Attorney	50, 139
3	00104	3800 Continental Plaza 777 Main St Fort Worth, TX 76102		140
4	01424	Albert D. Burnett, Jr. 4251 Highway 970 Cle Elum, WA 98922		27, 140
5	01422	John M. Butkovich & Jean M. Butkovich Box 44 Roslyn, WA 98941		51, 159
6	01850	C & H Trucking & Construction		59, 140
7	(A) 06063	PO Box 250 Cle Elum, WA 98922		
8	01678	Cecil Frank Carveth & Jo Ann Beverly Carveth PO Box 310 Cle Elum, WA 98922-0310	Brian Frederick, Attorney	54, 148 604 N Main Street Ellensburg WA 98926-3110
9	01782	Adolph Cavallini & Ruth Cavallini PO Box 184 Cle Elum, WA 98922		138, 140
10	02148	Robert M. Cernick & Debbie Lee Cernick 5900 Highway 970 Cle Elum, WA 98922		56, 139 140
11	00985	Robert C. Clark, Jr. & Shirley M. Clark 2424 Boyer Avenue East Seattle, WA 98112		26, 163
12	01293	City of Cle Elum 301 Pennsylvania Avenue Cle Elum, WA 98922	Darrel Ellis, Attorney	58, 140 PO Box 337 Cle Elum, WA 98922
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1	01850	The Estate of Robert L. Clements	John P. Gilreath,	59, 140
2	(A) 06063	C/O Karlyn Clements 171 Stadler Rd Tonasket, WA 98855-9720	Attorney PO Box 499 Ellensburg, WA 98926	
4	01472	Mike Cordner & Margo Cordner 390 Carroll RD Ellensburg, WA 98926		95, 139 140
7	01564	Harry O. Covey & Rosa M. Covey 4991 Airport RD Cle Elum, WA 98922		61, 139 140
9	01563	Joseph O. Covey & Virginia Covey 12040 SE 209th Kent, WA 98031		61, 139 140
12	02156	Alec N. Craig & Sylvia P. Craig 5900 64th Street NE TRLR 70 Marysville, WA 98270-4837		138, 140
14	06198	James J. Crestanello 404 Grandey Way NE Renton, WA 98056-3627		63, 140
17	01940	Domnic Cresto & May Cresto 318 E 1st Street Cle Elum, WA 98922		138, 140
20	01679	Nellie G. Curry Douglas D. Curry & Lois A. Curry 3032 Upper Peoh Pt Rd Cle Elum, WA 98922		64, 139 153
22	02187	Emil S. Danishek & successors c/o Gary Guzzie Real Estate PO Box 160 Cle Elum, WA 98922		67, 139 140
25	00281	Dana R. Dinius & Paula D. Dinius 6111 E Birkdale Street Long Beach, CA 90815-1412		120, 139 145

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1
2 02216 Raymond Drebaum 33, 140
3 PO Box 391
4 South Cle Elum, WA 98943
5
6 01080 Lee Duncan 68, 140
7 970 Aspen Springs Road
8 Cle Elum, WA 98922
9
10 01184 Walter W. Eyer 41, 69
11 01185 & Valorie G. Eyer
12 1201 3rd Avenue
13 40th Floor
14 Seattle, WA 98101
15
16 02093 Terence L. Firman 71, 140
17 & Jeanette K. Firman
18 4014 240th SE
19 Bothell, WA 98021
20
21 01532 Charles W. Forcier Michael Bauer 99, 140
22 & Judith A. Forcier
23 630 Alice Road
24 Cle Elum, WA 98922
25
26 00689 John Forenpohar 72, 162
27 & Margaret E. Forenpohar
28 1530 Mohar RD
29 Cle Elum, WA 98922
30
31 01676 Brian Frederick 107, 156
32 02222 & Elizabeth Frederick
33 2491 Airport Road
34 Cle Elum, WA 98922
35
36 01676 Sandra Fredericksen 107, 156
37 3491 Airport Road
38 Cle Elum, WA 98922
39
40 02224 Gary J. Fudacz 74, 139
41 & Joanne Fudacz
42 1309 E 1st
43 Cle Elum, WA 98922
44
45 01279 Loyd Garrett 78, 150
46 & Shirley Garrett
47 808 E. 1st Street
48 Cle Elum, WA 98922

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1	02139	Ernest C. Glondo	76, 140
2	(A) 06106	431 W 1st Cle Elum, WA 98922	
3			
4	02139	Ernest C. Glondo, Jr.	76, 140
5	(A) 06106	431 W 1st Cle Elum, WA 98922	
6			
7	01279	Walter H. Goenner, Sr. & Dixie M. Goenner 1456 S 302nd Federal Way, WA 98083	78, 141
8	00926	Ralph Griffin 13305 Chain Lake Monroe, WA 98272	138, 141
9			
10	01277	Estate of Gary G. Guzzie & Floyd Rogalski PO Box 160 Cle Elum, WA 98922	Darrel Ellis, Attorney PO Box 337 Cle Elum, WA 98922
11			138, 141
12			
13	01279	GRM Ranch PO Box 280 Cle Elum, WA 98922	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926
14			78, 141
15	01279	Richard Haas & Jean Haas 370 First Avenue Northwest Issaquah, WA 98027	78, 150
16			
17	02345	Greg Harris & Linda Harris 3828 - 48th Ave NE Seattle, WA 98105	138, 141
18			
19			
20	00365	Bernard I. Henshaw The Estate of Hazel Henshaw PO Box 234 Cle Elum, WA 98922	Brian Frederick 604 N Main Street Ellensburg WA 98926-3110
21			85, 151
22	01850	Edwin J. Istvan	59, 141
23	(A) 06063	Trustee of Barbara Istvan Trust 1216 Swan Harbour Circle Fort Washington, MD 20744	
24			
25			
26			
27			
28	REPORT OF REFEREE Re: Subbasin No. 5	Referee's Office 15 W. Yakima Ave Ste. 200 Yakima, WA 98902-3401	

1
2 01137 Harold B. Iverson 88, 139
 & Joann Iverson
 2850 Lower Peah Point RD
 Cle Elum, WA 98922
 141
3
4 02227 Skip Kauzlarich 90, 141
 & Beverly Kauzlarich
 40 River Ranch Lane
 Cle Elum, WA 98922
5
6
7 00281 Kenneth B. Kerchner 120, 139
 & Heather D. Kerchner
 9885 North County Road #600 E
 Sunman, IN 47041
 145
8
9 01781 Steven King 139, 141
 10002 Aurora Avenue, #3375
 Seattle, WA 98133
10
11 00284 E.L. Knudson, Jr. Grant D. Parker, General 26, 139
12 (A) 04191 & Necia Knudson Counsel 162
 Hart "K" Ranch
 6130 Taneum Canyon W
 Ellensburg, WA 98926
 Rocky Mountain Elk Foundation
 PO Box 8249
 Missoula, MT 59807-8249
13
14 00463 Frederick E. Krueger 91, 164
 & Linda R. Krueger
 7460 Lower Peah Point Road
 Cle Elum, WA 98922
15
16
17 00307 Otto H. Lehmann 93, 139
 & Gisela R. Lehmann
 Ingrid H. Lehmann
 Bert O. Lehmann
 1905 NE 29th Court
 Renton, WA 98056
 141
18
19
20 02281 Otto H. Lehmann 93, 139
 1905 NE 29th Court
 Renton, WA 98056
 141
21
22
23 01678 Frank J. Maglietti 54, 141
 PO Box 33
 Cle Elum WA 98922-0033
24
25
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1	02239	Stephan M. Mason & Janice L. Mason 521 Elk Pond Road Cle Elum, WA 98922	95, 139 141
2	01472	Louis Massucco & Blanche Massucco 7151 Lower Peoh Point RD Cle Elum, WA 98922	95, 139 141
3	01467 (A) 03296	Harry James Masterson & Mary Lou Masterson 381 Masterson RD Cle Elum, WA 98922	Lawrence E. Martin Halverson & Applegate, P. O. Box 22730 Yakima, WA 98907-2715
4	01279	Pat Merritt & Carolyn Merritt 1360 Airport Road Cle Elum, WA 98922	78, 151
5	01781	Queenie M. Miller & Ethel T. Guzzie PO Box 280 Cle Elum, WA 98922	Darrel Ellis, Attorney PO Box 337 Cle Elum, WA 98922
6	01532	Robert E. Monahan & Adele F. Monahan Box 6171 Kent, WA 98064-6171	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926
7	01290	Stanley E. Moore 102 Lambert RD Cle Elum, WA 98922	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926
8	02189	James E. Murphy 860 Bar 14 Road Ellensburg WA 98926	103, 161
9	01676	Jon L. Newton & Cindy L. Newton PO Box 994 Renton, WA 98057	107, 156
10	01860	Dean E. Ostheller & Sandra Ostheller HC 66, Box 56 Warsaw, MO 65355-8005	138, 141

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1	01824	Richard W. Owens & Bernice A. Owens 411 Floral Avenue Cle Elum, WA 98922	138, 141
2	01822	Owens and Sons, Inc. 502 E 1st Cle Elum, WA 98922	John P. Gilreath, Attorney PO Box 499 Ellensburg, WA 98926 105, 139 141
3	00394	Margaret V. Peckinino	36, 139
4	(A) 06098	8720 Phinney Avenue N #31 Seattle, WA 98103	155
5	01287	Irma Peterson PO Box 42 Cle Elum, WA 98922	105, 139 140
6	00104	Plum Creek Timber Co. L.P. PO Box 51 Roslyn, WA 98941	William A. Carlton, Attorney Cairncross & Hempelmann, 70th Floor, Columbia Center 701 5th Seattle, WA 98104-7016 50, 139 141
7	01152	Ronald M. Punton PO Box 5 Cle Elum, WA 98922-0005	106, 141
8	01297	Jeanne Purple	114, 154
9	01298	32021 - 176th Southeast Auburn, WA 98002	161
10	01676	Real Estate Investment Group PO Box 193 Cle Elum, WA 98922	107, 156
11	01676	Mack D. Richey & Susan R. Richey 3616 Evergreen Point Road Bellevue, WA 98004	107, 156
12	01457	Ira C. Roberson	111, 139
13	01458	& Betty J. Roberson Box 111 South Cle Elum, WA 98943	141
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1	00284 (A) 04191	Rocky Mountain Elk Foundation	Grant D. Parker, General Counsel	26, 139 162
2			Rocky Mountain Elk Foundation PO BOX 8249 Missoula, MT 59807-8249	
3				
4	01280	Robert R. Roseburg & Enid Roseburg 1021 Upper Peoh Point Road Cle Elum, WA 98922	Richard T. Cole, Attorney	111, 143
5			PO Box 499	
6			Ellensburg WA 98926	
7	01296	Estate of John E. Rothlisberger	Richard T. Cole, Attorney	114, 152
8	01297	321 Broadway St	PO Box 499	154, 161
9	01298	Cle Elum, WA 98922-9656	Ellensburg, WA 98926	
10	00281	Theodore V. Ryan & Mildred E. Ryan 1281 W Calle Serrano Green Valley, AZ 85614		120, 139 145
11				
12	01140	John William Schaumburg 2174 Upper Peoh Point Road Cle Elum, WA 98922	Richard T. Cole, Attorney	122, 139
13			PO Box 499	141
14	01290	Del Simpson 280 Lambert Road Cle Elum, WA 98922	Ellensburg WA 98926	
15				100, 141
16	00281	Thomas W. Singleton & Judy L. Singleton 9016 159th Place NE Redmond, WA 98052-7518		120, 141 145
17				
18	05636	Sky Meadows Ranch Country Club PO Box 117 Cle Elum, WA 98922-0117	Jeff Slothower, Attorney Lathrop Firm PO Box 1088	125, 164
19			Ellensburg WA 98926	
20				
21	01551	David W. Smith & Myrna Smith 3851 Highway 970 Cle Elum, WA 98922		27, 141
22				
23	01294 (A) 05347	South Cle Elum; Town of PO Box 160 South Cle Elum, WA 98943	Darrel Ellis, Attorney PO Box 337 Cle Elum, WA 98922	26, 160
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26				
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1	02152	Springwood Ranch Corporation PO Box 100 Thorp, WA 98946	Jeff Slothower, Attorney 128, 154 Lathrop Firm PO Box 1088 Ellensburg, WA 98926
4	01472	Vera M. Stefanac, MD & Martin J. Stefanac, II HC60 Box 10226 Cle Elum, WA 98922	95, 139 141
7	01850	Judith Torgeson PO Box 1495 Duvall WA 98019	59, 141
10	05671	Frank Lewis Talerico & Doris Marie Talerico 1490 Airport Road Cle Elum, WA 98922	Michael R. Bauer, Attorney P.O. Box 11734 Blacksburg, VA 24062-1734
12	02276	United States of America ¹	Charles E. O'Connell United States Dept. of Justice Indian Resources Section PO Box 44378 Washington, DC 20026-4378
13	(A) 03074		
14	(A) 05548		
15	01424	Joseph W. Vallone 4371 Highway 970 Cle Elum, WA 98922	27, 141
17	01140	Robert J. Walker & Dorothy D. Walker 770 Mohar RD Cle Elum, WA 98922-8975	Richard T. Cole, Attorney 122, 139 PO Box 499 141 Ellensburg, WA 98926
20	02267	M. Marvin Wallace c/o Wallace Properties Group PO Box 161 Bellevue, WA 98009	Thomas M. Pors, Attorney 131, 141 Foster Pepper & Shefelman 1111 Third Ave., Suite 3400 Seattle WA 98101

24 -----
25 ¹ The United States is a Major Claimant whose rights are being determined
26 through the Major Claimant pathway

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1	01296	Lonny White 280 Tron Mountain Road Cle Elum, WA 98922	114, 152
2	01296	Michael White 661 Godava Lane Cle Elum, WA 98922	114, 152
3	01296	Pete White & Christa White 321 Broadway Cle Elum, WA 98922	114, 152
4	01297	Richard White	114, 154
5	01298	19733 Northeast 146th Street Woodenville, WA 98072	161
6	01140	Leslie M. Williamson & Judy L. Williamson PO Box 692 Roslyn, WA 98941	122, 139 141
7	00281	Richard J. Willoughby PO Box 112632 Anchorage, AK 99511-2632	120, 139 145
8	11351	Scott DeWolf Wilson Jeanne Laurel O'Brien 459 Crockett Street Seattle, WA 98109	134, 141
9	11352	Scott DeWolf Wilson 459 Crockett Street Seattle, WA 98109	134, 141
10	01279	Sharon Winslow 15725 - 62nd Avenue Northeast Bothell, WA 98011	78, 150
11	01468	WA Dist. United Pentecostal Church PO Box 6335 Vancouver, WA 98668-6335	Michael Bauer 134, 141,
12	02109	WA State Dept of Fish and Wildlife PO Box 43200 Olympia, WA 98504-3200	Matthew A. Love, AAG Attorney General's Office PO Box 40100 Olympia, WA 98504-0100 136, 139 141

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1
2 00589 WA State Dept. of Natural Resources Maryanne McGovern, AAG 137, 139
2 (A) 00590 Agricultural Resources Attorney General of 141
3 P.O. Box 47061 Washington
3 Olympia, WA 98504-7061 PO Box 40100
4 Olympia WA 98504-0100

5
6 The following claimants are the ones whose claims, either in whole or in part,
7 were recommended for confirmation (See pages 10 - 12 in the Plaintiff's Report to
8 the Referee), and to which no exceptions were taken.

<u>Name</u>	<u>Court Claim No.</u>
Town of South Cle Elum	01294 & (A) 5347
E. L. & Necia Knudson & Rocky Mt. Elk Foundation	04191
Robert C. & Shirley M. Clark, Jr.	00985

12 Specific elements of the proposed rights for the claimants are identified in
13 the Findings of Fact commencing on page 140. The remaining claims (consisting of
14 those claims for which no recommendation for confirmation was made) were scheduled
15 to be heard during the evidentiary trial which commenced on April 29, 1991. Based
16 upon the testimony and evidence provided to the Referee, the analysis of all
17 remaining claims is as follows:

18
19 COURT CLAIM NO. 02238 -- Randy L. Abbott
20 & Chris Abbott

21 The Abbotts' statement of claim asserts rights to the use of the waters of
22 an unnamed spring and stream for the irrigation of 14 acres, stock water and
23 domestic supply. These defendants made no appearance during the evidentiary
24 hearing to either present or defend this claim. Consequently, the Referee
25 recommends no diversionary water rights relating to this claim be confirmed. The
26 Plaintiffs' Report to the Referee states that these claimants are asserting a

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1 non-diversionary stock water right. The use of water by livestock drinking from
2 natural sources is covered by the stock water stipulation discussed on page 5 of
3 this report.
4

5
6 COURT CLAIM NO. 01402 -- Robert L. Bailey

7 COURT CLAIM NO. 01424 -- Albert D. Burnett, Jr.
8 Joseph W. Vallone

9 COURT CLAIM NO. 01551 -- David W. Smith
& Myrna Smith

10 The Bailey claim asserts water rights on the Yakima River through the
11 O'Connor ditch for the irrigation of 2.5 acres. The Smith claim also asserts
12 rights to the use of the waters of the Yakima River through the O'Connor ditch for
13 the irrigation of 9.5 acres and stock water. The Burnett and Vallone claim again
14 asserts rights to the use of waters of the Yakima River through the O'Connor ditch
15 for the irrigation of 2.5 acres. The Burnett/Vallone claim was originally filed
16 by Steven Oravetz.

17 During the evidentiary hearing, Mr. James Esgot of the United States Bureau
18 of Reclamation entered Exhibit Number DE-87 into the record, containing documents
19 regarding a Warren Act contract which may relate to at least one of the above
20 claimants (see discussion of Warren Act Contracts on page 12 of this Report).

21 The O'Connor ditch has a point of diversion in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31,
22 T. 20 N., R. 16 E.W.M. and trends generally in a southeasterly direction for one
23 to two miles. Based upon the information contained in the record, the Referee
24 speculates that the O'Connor ditch may, at one time, have had a pre-1917 water
25 right associated with it, as well as a Warren Act contract for additional water.
26 In any event, this speculation is moot due to the fact that none of the above
27

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1 claimants made an appearance during the evidentiary hearing to provide testimony
2 and evidence in support of their respective claims.
3

4 Therefore, due to a lack of evidence, the Referee recommends that no water
5 rights be confirmed to the above referenced claimants.
6

7 COURT CLAIM NO. 01688 -- Jacqueline Baker
8 & Bonita P. Morgan

9 The above referenced statement of claim was filed with the Court by C. A. and
10 Grace G. Grosgebauer. Jacqueline Baker and Bonita P. Morgan were substituted for
11 the Grosgebauers by Order of this Court dated July 15, 1994. The claim asserted
12 rights to the use of the waters of the Yakima River through the Younger Ditch for
13 the irrigation of 15 acres under a priority date of June 5, 1886.

14 During the evidentiary hearing, the Grosgebauer interests were represented by
15 Attorney Brian Frederick. Appearing as witnesses in behalf of this claim were
16 Jacqueline Baker Fuchs and neighbors Theodore Bronkema and Bernard Henshaw.
17 Additionally, the testimony of Richard Bain and Exhibits DE-104 and 109 were
18 incorporated as evidence for these claimants.

19 Younger Ditch conveys water in an easterly direction from the Yakima River
20 through the adjacent Henshaw property to the claimants' land. Several laterals
21 divert water from the north fork of the Younger Ditch to supply water for rill and
22 flood irrigation of hay and pasture lands. Mr. Bain testified that the water duty
23 for the Grosgebauer property is 12.2 acre-feet per acre and that the typical turn
24 out on this farm is equivalent to 0.10 cfs per acre. Additionally, some small
25 ponds located on the claimants' property are filled with the water from Younger
26 Ditch.

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1 Water Right Claim (WRC) Registration No. 124072 was filed by Mr. Grosgebauer
2 in 1974 pursuant to the provisions of Chapter 90.14 RCW. It asserts a right to
3 divert from the Yakima River 0.02 cfs and 4 acre-feet per year per acre for the
4 irrigation of 15 acres in Section 30, T. 20 N., R. 16 E.W.M. The point of
5 diversion described is the intake to the Younger Ditch.
6

7 Mr. Bronkema testified he does the irrigation on the Grosgebauer property and
8 has done so for many years. He stated he flood irrigates about 15 acres total
9 with 7.5 acres being in hay and 7.5 acres in pasture. Ms. Fuchs testified
10 Mr. Grosgebauer purchased this land in about 1951 and the land has been farmed and
11 irrigated since it was originally homesteaded in the late 1800s. She also
12 testified that several head of livestock are quartered on this land and obtain
13 their drinking water from water diverted from Younger Ditch.

14 The history of development of the Younger Ditch is discussed in detail on
15 page 7 of this report and will not be repeated here, except to restate the
16 priority date for the ditch -- June 5, 1886. The evidence in the record shows
17 that a patent was issued to Nick Younger on April 21, 1891, for the SW $\frac{1}{4}$ and the
18 SE $\frac{1}{4}$ of Section 30, T. 20 N., R. 16 E.W.M. However, all of the historical
19 documents in the record concerning the actual ditch, suggest that only the SW $\frac{1}{4}$ of
20 Section 30 was served by the ditch (see the Younger Notice of Appropriation, the
21 1904 agreement and the 1913 limiting agreement that are part of the GRM Ranch and
22 Henshaw exhibits. The record would indicate that at least in 1913, the SE $\frac{1}{4}$ of
23 Section 30 was not being irrigated with water delivered through the Younger
24 Ditch. Additionally, the RCW 90.14 claim filed by Mr. Grosgebauer only describes
25 the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30 as the land on which water is used (the Referee makes
26
27

1
2 note of the discrepancy between asserting a right for the irrigation of 15 acres
3 within a described area only 10 acres in size).
4

5 Based on the evidence in the record, the Referee can only recommend
6 confirmation of a water right for the 7.5 acres irrigated in the SE^{1/4}SE^{1/4}SW^{1/4} of
7 Section 30. Therefore, it is recommended that a right be confirmed to Jacqueline
8 Baker and Bonita Morgan in the amounts of 0.75 cfs; 91.5 acre-feet per year for
9 the irrigation of 7.5 acres. An additional 0.01 cfs; 1 acre-foot per year is
10 allowed for stock water and an additional 0.15 cfs may be diverted at the Younger
11 Ditch headgate to satisfy the conveyance loss.
12

13 COURT CLAIM NO. 01288 -- Goldie M. Ballard
14

15 The Ballard statement of claim submitted to the Court claims rights to the
16 use of the waters of an unnamed stream for stock water and the irrigation of 27
17 acres. The defendant did not make an appearance during the evidentiary hearing to
18 provide testimony concerning this claim. Therefore, the Referee finds no
19 diversionary water rights regarding this claim can be recommended for
20 confirmation. The Plaintiff's Report to the Referee identified a claim to a
21 non-diversionary stock water right for this property and such use is covered by
22 the stock water stipulation discussed on page 5 of this report.
23

24 COURT CLAIM NO. 02256 -- Steven Bator, Jr.
25 & Deanna Bator
26

27 The above numbered statement of claim was filed with the Court for the use of
28 water from an unnamed stream for irrigation and stock water. The defendants did
not make an appearance during the evidentiary hearing to offer testimony or

1 evidence in support of this claim. As a result, the Referee finds no diversionary
2 water rights relating to the Bator Claim can be recommended for confirmation. The
3 Plaintiffs' Report to the Referee stated that a non-diversionary stock water right
4 was being asserted for this property. Such use is covered by the stock water
5 stipulation may be found on page 5 of this report.
6

7
8 COURT CLAIM NO. 02230 -- Steven C. Bator, Sr.
9 & Elsie Bator

10 The statement of claim submitted by these defendants claims rights to the use
11 of the waters of the Yakima River and an unnamed slough for the irrigation of
12 9.5 acres, stock water and domestic supply. The claim identifies the Younger
13 Ditch as the source of water for one of the diversion points. During the
14 evidentiary hearing, the Bator interests were represented by Brian Frederick,
15 Attorney. Mr. Bator was unable to appear at the hearing; however, Gary Fudacz, an
16 adjacent neighbor to the west of the Bator property, was present to provide
17 testimony with respect to this claim. In addition, the Referee shall rely on
18 testimony on behalf of other claimants on Younger Ditch, specifically Theodore
19 Bronkema, see page 42 and Richard C. Bain, Jr., see Henshaw, page 86. Mr. Bain's
20 testimony shall specifically be used to assist the Referee in determining water
21 duty and conveyance loss figures for this property.

22 Mr. Fudacz stated that Mr. Bator had been irrigating between 9 and 10 acres
23 of his land by flood irrigation. He indicated the source of water for the Bator
24 property was a drainage ditch which accepted return flow waters from lands
25 irrigated from the north branch of Younger Ditch. This waste water principally
26 comes from the Grosgebauer and Henshaw properties located to the north and west of

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1 the Bator lands. Mr. Fudacz said this property at one time was irrigated directly
2 from the south branch of Younger Ditch, however, since a flume was removed to the
3 west or upstream of the Bator property in the early 1980s, water from Younger
4 Ditch was no longer directly available to the Bator property. The Bator property
5 is located on the south branch of the Younger Ditch, slightly more than 4,000 feet
6 below the point where the ditch bifurcates. If the claimant continues to rely on
7 water delivered via the north branch of Younger Ditch, the ditch loss would be
8 0.19 cfs instead of the recommended 0.95 cfs for the south branch of Younger Ditch.
9

10 The history of development and use of the Younger Ditch is presented in
11 detail as part on page 7 of this report and will not be repeated here. The Bator
12 property is part of the land formerly owned by L. W. Taylor, one of the owners of
13 the Younger Ditch in 1913 when the ditch owners signed a limiting agreement with
14 the United States.

15 Water Right Claim No. 130077 was filed pursuant to the provisions of
16 Chapter 90.14 RCW by Mr. Bator in 1974. That claim asserted a right to the Yakima
17 River for the irrigation of 9.5 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 20 N.,
18 R. 15 E.W.M., which is where the Bator property is located.

19 Based upon the testimony and evidence in the record, the Referee believes a
20 water right perfected on the Younger Ditch is appurtenant to the Bator lands.
21 Since Mr. Bator flood irrigates, it is felt that an instantaneous diversion rate
22 of 0.10 cfs; 12.2 acre-feet per acre is reflective of current and historic water
23 use. The Referee, therefore, proposes a right be confirmed to these claimants
24 with a June 5, 1886, priority date in the amounts of 0.95 cfs; 116 acre-feet for
25 the irrigation of 9.5 acres. An additional 0.01 cfs; 0.5 acre-foot per year
26 should be adequate to accommodate the needs for the watering of livestock on the

1 Bator lands. An additional 0.95 cfs should be adequate to satisfy the conveyance
2 loss in Younger Ditch from the diversion point on the Yakima River to the point at
3 which the flume was removed.
4

5 COURT CLAIM NO. 02216 -- Richard R. Baxter
6 & Phylis L. Baxter
7 Raymond Drebaum

8 The statement of claim originally filed in this proceeding was submitted by
9 Richard and Phylis Baxter. Raymond Drebaum was substituted as a party defendant
10 for the Baxters through Order of the Court dated February 7, 1991. The claim
11 asserts rights on numerous springs and streams under an August 18, 1887, priority
12 date. During the evidentiary hearing, Raymond Drebaum appeared pro se to offer
13 testimony with respect to this claim.

14 Mr. Drebaum owns the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T. 19 N., R. 15 E.W.M. He is
15 asserting a right to use water from a spring and its resultant stream for domestic
16 supply and irrigation. There is an old 3 acre orchard in the northeast corner of
17 his property that is not actively being irrigated at this time. There is also a
18 field of pasture that Mr. Drebaum believes was once irrigated.

19 This land, along with the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9 and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4
20 (same township and range) were owned by the Conservative Baptist Association of
21 Washington from at least 1965 through 1977. They constructed a church camp on the
22 land and obtained Surface Water Certificate (SWC) No. 11609. That certificate
23 authorized the use of 0.04 cfs, 22 acre-feet per year from an unnamed spring and
24 stream with a point of diversion located in SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T. 19 N.,
25 R. 15 E.W.M., for community domestic supply. This is not the source for which
26 Mr. Drebaum is asserting a water right. However, it appears to the Referee that

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1 his land enjoys a water right to the spring and stream in Section 10. Attached to
2 Court Claim No. 02189, which was filed by Gerald Monahan who bought the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
3 Section 9 from the Conservative Baptist Association, is a copy of the Real Estate
4 Contract conveying the land purchased by Mr. Monahan. The contract includes a
5 condition by which the purchaser acknowledges an easement for a pipeline from the
6 spring in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10 to the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9. The purchaser also
7 acknowledges that her property is entitled to 50 percent of the existing water
8 rights on file for this and other property owned by the Conservative Baptist
9 Association. The Referee believes that the water right mentioned is SWC No. 11609.

10 Mr. Drebaum has also suggested there may be older water rights associated
11 with his property. A notice of appropriation of water filed by G. W. Faudree was
12 posted on June 24, 1911. Such notice was entered into evidence as defendant's
13 Exhibit DE-67. The notice of water right appropriation claims a right to 100
14 cubic inches of water per second from Willard Springs for domestic, stock and
15 irrigating purposes in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ or Section 9. There is nothing in
16 the document that identifies the location of Willard Springs nor is there evidence
17 water was actually diverted and used from said spring. Mr. Drebaum could not
18 provide any definitive evidence of historic water use for the period prior to when
19 the Conservative Baptist Association owned the land.

20 Water Right Claim No. 024431 was filed in 1973 by the Conservative Baptist
21 Association of Washington. That claim asserted a date of August 1887 for the
22 first use of water from springs and streams located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
23 Section 9, T. 19 N., R. 15 E.W.M. The aforementioned location appears to be in
24 the vicinity of the springs identified in Mr. Drebaum's testimony and are located
25 about 1000 feet south of the Drebaum property. Although that water right claim is

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1 in evidence, the document indicates no land was being irrigated in 1973 when the
2 claim was registered. Additionally, there is no evidence in the record that water
3 was ever beneficially used from this source on the Drebaum property. There was
4 also nothing in the record that would indicate the basis of the August 1887 date.
5 The Referee, therefore, feels there is insufficient evidence in the record to
6 allow recommending a water right associated with this water right claim.
7

8 It appears to the Referee that the Drebaum property may enjoy a water right
9 for domestic supply as a result of SWC No. 11609; however, the source of water
10 authorized for use by that certificate is not the source for which Mr. Drebaum is
11 seeking a right through this proceeding. Based on the evidence in the record
12 there appears to be a water delivery system from the spring authorized for use in
13 SWC No. 11609 that Mr. Drebaum may want to investigate. The Referee cannot
14 recommend that a right be confirmed under Court Claim No. 02216 due to the
15 deficiencies of the record noted above. James E. Murphy, who is a successor to
16 Gerald Monahan, is also asserting a right to the spring in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
17 Section 10 and his claim is discussed on page 104 of this report.

18 As an aside, the Referee notes that on May 3, 1994, Certification of Louie
19 Bohannan RE: Court Claim No. 5216 was filed with the Court on behalf of George
20 Burchak, a neighboring landowner and claimant (see page 45 for a discussion of the
21 Burchak claim). The Referee is not clear what the intended purpose of the
22 certification was or whether Mr. Drebaum was provided a copy, however, it does
23 confirm the Referee's conclusion that water rights were probably established for
24 the Drebaum property from the spring in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10.

1
2
3 COURT CLAIM NO. 00394 -- Sherry Bertino
4 (A) 06098 Margaret V. Peckinino

5 The above referenced statement of claim was originally filed with the Court
6 by Edward Skougstad. That document asserts rights to the use of the waters of
7 Rabbitt Creek for the irrigation of 40 acres and stock water. Dorothy Hawkins and
8 Margaret Peckinino, Mr. Skougstad's daughters, were substituted as party
9 defendants by order of this Court dated August 21, 1987. On March 8, 1991,
10 Ms. Peckinino and Ms. Hawkins filed an amended statement of claim in order to add
11 the use of water for domestic supply to the original claim. Following
12 Ms. Hawkins' death, Sherry Bertino, was substituted for her mother by an order of
13 the Court dated May 4, 1992. John Bertino, Sherry Bertino's brother, testified
14 during the evidentiary hearing with respect to this claim.

15 Ecology's investigation report states a 2 inch pipeline conveys water from
16 the stream to irrigate approximately 27 acres of land in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
17 T. 19 N., R. 15 E.W.M. Distribution of water is effected by means of a sprinkler
18 system. The system operates from gravity pressure. Additionally, Ecology's
19 report describes a 4 feet diameter concrete catch basin collecting water from an
20 unnamed spring. A 1 inch buried pipeline conveys water from the catch basin
21 approximately 1,000 feet northeasterly to a single residence.

22 During his testimony, Mr. Bertino offered into evidence a land patent
23 document, which indicates the SE $\frac{1}{4}$ of Section 12, T. 19 N., R. 15 E.W.M. was
24 severed from Federal ownership on May 1, 1899. In addition, two notices of
25 appropriation of water were also entered into the record. Defendants' Exhibit
26 DE-26 is a Notice of Appropriation dated April 21, 1899, filed by John Groger.

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1 That notice asserts rights for domestic purposes from a source described as being
2 within the SE $\frac{1}{4}$ of the aforementioned Section 12. The second notice of water
3 appropriation filed on May 20, 1899, was also filed by John Groger. That notice
4 asserted rights to the use of 30 inches (0.60 cfs) of water for irrigation
5 purposes from the stream flowing through the SE $\frac{1}{4}$ of said Section 12. The
6 defendant's Exhibit DE-28 is a deed transferring the property from the Groger to
7 Stephen Markovich. According to Mr. Bertino, the Bertinos are descendants of
8 Stephen Markovich and the land has been in his family, actively farmed and
9 irrigated since 1901.

10
11 Mr. Bertino testified a well is integrated into the irrigation system, but
12 water from the well is not sufficient to supply both domestic water and sustained
13 irrigation. He further stated approximately 18 acres of land is irrigated
14 exclusively from the stream and another 20 acres irrigated from both the well and
15 the stream, however, neither source has a sufficient supply to irrigate the lands
16 by itself. Mr. Bertino stated he doubts the stream would flow more than the 30
17 inches of water identified in the Groger notice of appropriation. Water from the
18 spring is piped into the house, but is generally used only as a backup or
19 supplemental source to the well supply. He also stated stock, consisting of up to
20 500 sheep or 25 cattle, are pastured on this land and have access to the unnamed
21 stream and obtain their water supply therefrom.

22 Water Right Claim (WRC) No. 060970 was filed by Mr. Skougstad in 1974
23 pursuant to RCW 90.14. That document indicates the amount of water being claimed
24 is 0.18 cfs from Rabbitt creek for the irrigation of 9 acres. The claim asserts a
25 priority date of 1901. In addition, WRC No. 060969 was filed by Mr. Skougstad for

1 the use of water from the unnamed spring for domestic supply. The amount of water
2 claimed under a 1901 priority date is 0.01 cfs.
3

4 The Referee notes there is a significant difference between the right
5 asserted in WRC No. 060970 and the right being asserted in this proceeding.
6 Edward Skougstad filed both WRC No. 060970 and Court Claim No. 00394. The
7 quantity of water for which a right is being asserted in Court Claim No. 00394
8 mirrors WRC No. 060970, however, the acreage is much larger (40 acres versus 9
9 acres). The Referee must question whether there has been an increase in the
10 number of acres irrigated subsequent to 1974 when WRC No. 060970 was filed. The
11 inconsistency between the two documents was not addressed by the witness. In
12 order to confirm a water right in excess of what was claimed in WRC No. 060970,
13 the Referee must have more definitive information about the extent of historical
14 irrigation. If the claimant believes an error was made when WRC No. 060970 was
15 completed, an amendment to that claim can be made through Ecology, see RCW
16 90.14.065.

17 Therefore, the Referee recommends confirmation of an irrigation right under
18 the Riparian Doctrine from the unnamed stream (Rabbit Creek) with a priority date
19 of May 1, 1899, in the amounts of 0.18 cfs; 45 acre-feet per year for the
20 irrigation of 9 acres.

21 The Referee also proposes confirmation of a right in the amount of 0.01 cfs;
22 1 acre feet per year for domestic supply from the unnamed spring. The priority
23 date of that right shall be fixed as April 21, 1899, the date of filing of the
24 other Groger appropriation notice. Water is not actually diverted from the stream
25 or spring for the watering of livestock, therefore, the needs of such stock should
26
27

1
2 be covered by the stock water stipulation which can be found on page 5 of this
3 report.
4

5 COURT CLAIM NO. 00895 -- Victor Biava
6 & Fern Biava

7 These claimants forwarded a statement of claim to the Court, which asserts
8 rights to the use of the waters of Tillman Creek for irrigation of 8 acres. They
9 did not make an appearance at the evidentiary hearing to present or defend this
10 claim. The Referee consequently proposes no diversionary water rights regarding
11 this claim be confirmed. Ecology's report to the Referee identified a
12 non-diversionary stock water claim on these lands. This use can be accommodated
13 through the stock water stipulation, which can be found on page 5 of this report.

14

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

18 The Boise Cascade Corporation, through the above referenced statement of
19 claim, has claimed water rights to the use of many sources of water throughout the
20 Yakima River drainage basin. The claim, as it relates to sources of water in
21 Subbasin 5, specifically refers to two springs, one of which is located in
22 Government Lot 4 of Section 7, T. 19 N., R. 16 E.W.M. and the second spring
23 located in Government Lot 3 of Section 18, T. 19 N., R. 16 E.W.M. The Boise
24 Cascade Corporation was represented during the evidentiary hearing by Dennis
25 Dunphy, Attorney. John Hess, Chief Forester for Boise Cascade Corporation,
26 offered testimony with respect to the character of the springs and the general use
of water in the subbasin.

27

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1 According to Mr. Hess' testimony, the springs are small sources of water and
2 probably do not flow very far from their area of origin. The springs at the
3 present time are undeveloped; however, Mr. Hess indicated there is evidence the
4 spring located in Section 18 may have been developed at one time for domestic use
5 in a camp located near a sawmill. He speculated the sawmill may have been in use
6 into the 1940's. Any water use associated with the sawmill appears to have ended
7 in the 1940's. Water rights that may have been associated with operation of the
8 mill have relinquished due to in excess of five successive years of nonuse, RCW
9 90.14.160.

10 Water Right Claims Nos. 085759 and 085836 were filed on the sources by the
11 Boise Cascade Corporation in 1974. The uses identified for water from the springs
12 were stock water, fire protection and road maintenance.

13 From the contents of Mr. Dunphy's opening statement and the thrust of
14 Mr. Hess' testimony, it would appear the principal use of water from these springs
15 is for stock watering, especially since these lands are leased to private
16 landowners for grazing purposes. A secondary use may be for fire protection if
17 the quantities of water produced are sufficient for that purpose. The principal
18 use of water, non-diversionary stock water, is adequately covered by the stock
19 water stipulation identified on page 5 of this report.

20 With respect to the use of water for fire protection and in the case of
21 emergent conditions precipitated by fires, no water right would be required for
22 such use since any available source of supply would be and should be utilized.
23 The Court signed a fire suppression order on December 12, 1996, that provides for
24 use of water for emergency fire suppression.

1
2
3 COURT CLAIM NO. 01185 -- Wayne C. Booth, Jr., et al.
4 & Mary Ann Booth
5 Walter W. Eyer
6 & Valorie G. Eyer
7

8 The statement of claim of the above defendants asserts rights to an unnamed
9 stream for domestic supply. Walter Eyer, part owner of this property, offered
10 testimony in relation to this claim.

11 During his testimony, Mr. Eyer stated he and Mrs. Eyer own this property
12 jointly with the Booths who are currently in Alaska. The property was purchased
13 by these defendants in 1967 from Ike and Irene Markovich. Mr. Eyer stated no
14 permanent diversion facility has been installed, but a temporary hose from the
15 unnamed stream over to the property in question has been used in the past. The
16 water was used for domestic supply and a small flower garden. When the hose was
17 not in use, water was occasionally carried to this property by buckets.

18 The Referee notes this claim is based upon Certificate of Surface Water Right
19 No. 10243, which was originally issued to Frank Markovich. That certificate, with
20 a priority date of August 15, 1966, authorizes the diversion of 0.01 cfs; 2
21 acre-feet per year for domestic supply. The property to which the aforementioned
22 certificate is appurtenant, however, is not the lands owned by the Booths and
23 Eyers. It is appurtenant to property owned solely by the Eyers and this
24 certificate was the basis for the recommendation of the Referee that a right be
25 confirmed under Court Claim No. 1184. In the opinion of the Referee, there is no
26 evidence that water rights are appurtenant to the property jointly held by the
27 Booths and Eyers, therefore, the Referee recommends no rights be confirmed under
28 this court claim.

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1
2
3 COURT CLAIM NO. 01268 -- Theodore Bronkema
4 02225 & Marion Bronkema
5

6 Claim No. 1268 submitted by these defendants asserts rights to the use of the
7 Yakima River delivered through Younger Ditch for irrigation, stock watering and
8 domestic uses. Claim No. 2225 is essentially a duplicate of the first statement
9 of claim, except it is modified by adding a second point of diversion on an
10 unnamed spring or slough. During the evidentiary hearing, Mr. Bronkema appeared
11 pro se and offered testimony with respect to these claims. The testimony of
12 Richard C. Bain, Jr., a consultant hired by other water users on the Younger
13 Ditch, will be used to address water duty and conveyance loss for the ditch.

14 The Bronkema property consists of the E¹NE¹NE⁴ of Section 31, T. 20 N.,
15 R. 16 E.W.M. Mr. Bronkema indicated during his testimony that he irrigates
16 approximately 6 acres of pasture grass and a lawn and garden area. He believes
17 the property was originally irrigated from the south branch of Younger Ditch;
18 however, since that ditch now fails to directly convey water to his property, he
19 is using water from a slough which courses through his land from west to east. He
20 believes the water in this slough is derived from the water contained in the
21 remnants of Younger Ditch and return flow from lands irrigated with north branch
22 Younger Ditch water. It was Mr. Bronkema's understanding that his property was
23 formerly part of the GRM Ranch which had an extensive history of irrigated farm
24 land. The diversion works presently utilized by Mr. Bronkema consists of a 1¹/₂
25 horsepower (bhp) pump which delivers water to a portable sprinkler system using
26 approximately 10 sprinkler heads. Mr. Bronkema has stock on his property
27

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1 consisting of about 5 horses, but these animals are generally watered from the
2 well on Mr. Bronkema's property, not from surface water sources.
3

4 The history of the Younger Ditch is addressed in detail on page 7 of this
5 report and will not be repeated here. The Bronkema land is part of the land owned
6 by Albert Hayden, one of the owners of the Younger Ditch at the time that the
7 ditch owners signed a limiting agreement with the United States in 1913. The land
8 is located on the south branch of the ditch, approximately 5000 feet below where
9 the ditch bifurcates.

10 Water Right Claims (WRC) Nos. 126189 and 139480 relate to the Bronkema
11 property. These water right claim registrations were filed in accordance with the
12 registration provisions of Chapter 90.14 RCW. WRC No. 126189 was filed by
13 Theodore Bronkema asserting a right to divert water from the Yakima River for the
14 irrigation of 15 acres in the E^{1/4}NE^{1/4}NE^{1/4} of Section 31, T. 20 N., R. 16 E.W.M. A
15 right was asserted for the diversion of 0.02 cfs, 4 acre-feet per year for each
16 acre irrigated. The point of diversion described is the intake of the Younger
17 ditch in the NE^{1/4}NE^{1/4} of Section 35. WRC No. 139480 was filed by Robert A. Johnson
18 for use of a well and the Yakima River for irrigation of 35 acres in the NE^{1/4}NE^{1/4}
19 and SE^{1/4}NE^{1/4} Section 31. It is noted that rights to the use of ground water are not
20 being considered in this proceeding.

21 In the opinion of the Referee, the Bronkema property does enjoy a water
22 right; however, that water right is associated with the Younger Ditch diversion
23 from the Yakima River and, even though Younger Ditch does not directly contribute
24 water to his land, the indirect nature of the current ditch/slough configuration
25 does lead the Referee to believe the water currently being utilized is in fact
26 obtained initially from Younger Ditch. Therefore, the Referee proposes

1 confirmation of a right with a June 6, 1886, date of priority to these claimants
2 in the amounts of 0.12 cfs; 36 acre-feet per year for the irrigation of 6 acres.
3 An additional 0.18 cfs is allowed to satisfy the conveyance loss associated with
4 both the main branch of Younger Ditch and the south fork. As provided in the
5 limiting agreement the period of water use shall be April 20 through
6 September 30.
7

8

9 COURT CLAIM NO. 05216 -- George Burchak
10 & Diane Burchak

11 The statement of claim filed with the Court by the Burchak's claims rights to
12 the use of the waters of Iron Mountain Creek (aka Summit Creek) for domestic
13 supply, stock water for the production of mink and the irrigation of 60 acres.
14 During the evidentiary hearing, the claimant was represented by John P. Gilreath,
15 Attorney. George Burchak appeared as a witness to provide testimony regarding
16 this claim. Raymond Drebaum also offered testimony regarding the source of water
17 for the Burchak claim.

18 According to the record, the property owned by Mr. Burchak generally consists
19 of the SE $\frac{1}{4}$ NE $\frac{1}{4}$, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4, T. 19 N., R. 15 E.W.M.
20 Mr. Burchak stated that he is claiming rights on Iron Mountain Creek which
21 originates in Section 9, T. 19 N., R. 15 E.W.M. and flows generally in a northerly
22 direction to his property. He also asserted rights to the use of water from a
23 spring located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4. Since the two sources claimed are
24 discrete and the origins of any rights dissimilar, the Referee has elected to
25 discuss each source separately.

26

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1 According to the testimony and evidence in the record, a 300 gallon
2 galvanized steel tank is located in what has been called Iron Mountain Creek at a
3 point situated within the NE $\frac{1}{4}$, Section 9, T. 19 N., R. 15 E.W.M. A 6-inch plastic
4 pipe conveys water from the tank approximately one quarter of a mile to a valve
5 box. Three plastic pipes leave the valve box; two are 2-inch pipelines conveying
6 water for domestic purposes to two residences located south of Mohar Road. The
7 third 2-inch pipeline conveys water to the north side of Mohar Road to an
8 additional residence and for cooling water for a mink shed and stock water for
9 mink and other animals. The 6-inch pipe also conveys water to an earthen ditch
10 presently used to irrigate 50 to 60 acres of barley and oats.

11 Defendant's Exhibit DE-68 contains documents relating to the origin of water
12 rights from Iron Mountain Creek. The pertinent documents are: (1) A receiver's
13 receipt dated June 8, 1888, documenting receipt of payment from William Twoney for
14 the lands in the SE $\frac{1}{4}$ of Section 4; (2) A land patent document dated September 6,
15 1889, to Mr. Twoney from the United States for the SE $\frac{1}{4}$ of Section 4; (3) Notice of
16 water appropriation dated August 1, 1887, by Mr. Twoney asserting rights to 100
17 inches (2.0 cfs) of the waters of Iron Mountain Creek for use in the SE $\frac{1}{4}$ of
18 Section 4; and (4) A notice of water appropriation by William Stevens dated
19 December 20, 1892, for 100 inches of water from Summit Creek to be taken out in
20 the NW $\frac{1}{4}$ of Section 16, T. 19 N., R. 15 E.W.M. Although an assertion is made that
21 William Stevens is a predecessor owner of the Burchak lands, there is no evidence
22 to support that conclusion. The Stevens notice of water appropriation does not
23 describe the lands on which the water is to be used or the lands then owned by
24 Mr. Stevens. The other documents put into evidence by Mr. Burchak show his lands
25 having been owned by William Twoney in 1887 and J. and Clara Whiteman in 1916, but

1 there is no information about any intervening owners. There is no evidence that
2 would allow the Referee to conclude that the Stevens appropriation was for use on
3 the Burchak property.
4

5 There are no water right permits or certificates issued pursuant to
6 Chapter 90.03 RCW in the record for the Burchak property, however, two water right
7 claims (wrc) were registered in accordance with the Water Rights Claims
8 Registration Act (Chapter 90.14 RCW). WRC No. 068270 was filed in June 1974 by
9 the Cle Elum Cattle Company. That claim asserted rights to the use of waters of
10 Iron Mountain Creek in the amount of 2 cfs, 250 acre-feet per year for the
11 irrigation of 60 acres located within the $\frac{1}{4}$ SE $\frac{1}{4}$ and the $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4,
12 T. 19 N., R. 15 E.W.M. The second registration was filed by George Burchak in
13 June of 1974, also identifying Iron Mountain Creek as the source of water and the
14 amount was identified as 90 gallons per minute (0.2 cfs) for the irrigation of
15 3 1/2 acres and mink farm operation. The place of use was described as being the
16 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, T. 19 N., R. 15 E.W.M.

17 The record presents conflicting testimony regarding the location of Iron
18 Mountain Creek and the actual point of diversion for this claim. Mr. Burchak's
19 testimony indicates that Iron Mountain Creek flows from south to north from
20 Section 9 into Section 4. Mr. Drebaum stated that the water course that the
21 claimant is calling a creek is actually a ditch which diverts from a natural
22 stream near the center of Section 9. Other than the conflicting theories, the
23 record discloses no factual evidence to resolve this matter other than the
24 investigation report prepared by Ecology. That report places the point of
25 diversion at a location described as being within the $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9,
26 T. 19 N., R. 15 E.W.M. The Referee has elected to place reliance in the Ecology

1 Report and will identify the diversion point in accordance with that report. Due
2 to the controversy about the nature of the channel that crosses the SE $\frac{1}{4}$ of
3 Section 4, it is not clear whether the Riparian Doctrine would apply. Since the
4 earliest date in the record that could be used to assign a priority date is
5 August 1, 1887, the date of the Twoney notice of appropriation, the Referee does
6 not have to resolve the question of whether the Riparian Doctrine would apply.
7

8 The claim of Mr. Burchak to waters of Iron Mountain Creek has several use
9 elements: irrigation, domestic supply, stock water and mink production. It is
10 evident from the record that the property described as being the W $\frac{1}{4}$ SE $\frac{1}{4}$ and the
11 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4 has a water right appurtenant thereto. Although the claimant
12 is asserting a right to 4 cfs based on the two notices of appropriation, each
13 filed for 100 inches (2 cfs), there is no evidence that the Stevens appropriation
14 was intended for the Burchak property. That question, however, is mooted by the
15 fact that a right for only 2 cfs was asserted by the Cle Elum Cattle Company in
16 WRC No. 068270. There was nothing offered by the claimant in explanation of the
17 discrepancy between what they are asserting in this proceeding and the water right
18 claim. The Referee notes that the gravity mainline is 6 inch diameter, pvc pipe
19 which will not convey 2.0 cfs, but might convey close to 1.0 cfs. Mr. Burchak is
20 also claiming a right to 720 acre-feet per year, which he believes is the quantity
21 necessary to irrigate his 60 acre field. With a diversion of 1.0 cfs for a full
22 7-month irrigation season, only 426 acre-feet would be delivered to the fields.
23 The record also indicates seasonal decline of the water flow from the source. The
24 claimant did not testify to continuous diversion during the irrigation season.
25 Due to the seasonal decline of the water source and lack of testimony about
26 continuous diversion, the Referee does not believe it would be appropriate to
27

1 recommend a water right for 426 acre-feet per year. Six acre-feet per acre
2 irrigated, or 360 acre-feet per year is likely more reflective of actual use.
3

4 The claim of the Burchaks for waters from Iron Mountain Creek for irrigation
5 and mink farm operation within the SE^{1/4}NE^{1/4} of Section 4 is another matter. There
6 is no evidence that either Mr. Twoney or Mr. Stevens owned the aforementioned
7 tract at the time the notices were filed or, for that matter, at any time.
8 Furthermore, Mr. Burchack's testimony was that the mink farming activity had been
9 in existence for "50 years" which places the first use of water for mink farming
10 no earlier than 1940, considerably later than the 1917 date under the prior
11 appropriation doctrine. As a consequence, the Referee cannot find any basis for
12 recommending that a water right be confirmed for the SE^{1/4}NE^{1/4} of Section 4. It is
13 recommended that a right be confirmed with a priority date of August 1, 1877, in
14 the amounts of 0.97 cfs; 360 acre-feet per year for the irrigation of 60 acres,
15 0.01 cfs; 2 acre-feet per year for stock water and 0.02 cfs; 2 acre-feet per year
16 for domestic supply for two residences. The place of use shall be limited to the
17 W^{1/2}SE^{1/4} and NE^{1/4}SE^{1/4} of Section 4, T. 19 N., R. 15 E.W.M.

18 The spring upon which a right has been asserted is located within the SE^{1/4}SE^{1/4}
19 of Section 4, T. 19 N., R. 15 E.W.M. Ecology did not investigate this spring
20 since rights to this source were not described in the statement of claim filed
21 with the Court by the Burchaks.

22 According to Mr. Burchak's testimony, the spring flows approximately 15 gpm
23 on an average and is piped to a residence located in the NW^{1/4}SE^{1/4} of Section 4 south
24 of Mohar Road and a residence and mink farm in the SE^{1/4}NE^{1/4} of Section 4, T. 19 N.,
25 R. 15 E.W.M. The pipeline from the spring also is connected to the irrigation
26 system. Mr. Burchak testified to using 20 acre-feet per year from the spring for

1 the identified uses. The earliest evidence of use of water from this spring is
2 contained in defendant's Exhibit DE-68 and in the form of a pipeline easement
3 agreement dated December 15, 1916. The agreement identified the location of the
4 spring in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4 and a portion of the pipeline route across the
5 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4 to the north line of the SE $\frac{1}{4}$ SE $\frac{1}{4}$, but does not specifically
6 describe the lands where water has been used. The Referee believes it is
7 reasonable to assume that since the pipeline easement was described to the north
8 line of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4 the water use was occurring in the N $\frac{1}{4}$ SE $\frac{1}{4}$ of
9 Section 4, which is part of the land owned by the Burchaks.
10

11 No permits or certificates obtained in accordance with the appropriation
12 procedure specified in Chapter 90.03 RCW are in evidence. However, WRC No. 68268,
13 a "short form," was filed by the Cle Elum Cattle Company in June 1974. The
14 registration accomplished three objectives: to a limited extent, preserved a
15 water right to be used in the W $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 19 N.,
16 R. 15 E.W.M. and limited the scope of the right to a de minimis use for domestic
17 supply and stock water. The filer of the registration apparently elected to use
18 the "short form" which by definition only covered uses identified in RCW 90.44.050
19 (use of up to 5,000 gallons of water per day for domestic supply, stock water and
20 irrigation of up to 1/2 acre). As a consequence, the Referee can only recommend
21 confirmation of a water right for those uses. Additionally, as previously
22 indicated the evidence shows that the mink farming operation was first development
23 in the 1940's when it would have been necessary for the landowner to have obtained
24 a water right permit from one of Ecology's predecessor agencies.

25 The Referee recommends confirmation of a right to the Burchaks with a
26 December 15, 1916, priority date in the amounts of 0.03 cfs; 3 acre-feet per year
27

1 for single domestic supply and stock water. The place of use shall be identified
2 as the E¹SW¹SE¹, Section 4, T. 19 N., R. 15 E.W.M. The aforementioned place of
3 use is consistent with the location of the residence situated south of Mohar
4 Road. Since the right recommended is for a de minimis use, the Referee does not
5 believe it conflicts with the 1905 Federal withdrawal in the Yakima
6 Basin.

7 Ecology's investigation identified several ponds located on the claimant's
8 property used for non-diversionary stock watering. The stipulation regarding the
9 use of water for live stock (see page 5) should satisfy any additional needs for
10 stock water upon the claimants' property.

11
12
13 COURT CLAIM NO. 00104 -- Burlington Northern Railroad Co.
14 Plum Creek Timber Co. L.P.

15 The above referenced statement of claim was originally filed by Burlington
16 Northern Inc. Plum Creek Timber Company was added as a party defendant through a
17 motion filed with the Court on November 21, 1990. During the evidentiary hearing,
18 Larry Brown, Forest Hydrologist for Plum Creek Company, offered testimony
19 regarding this claim.

20 Mr. Brown stated during his opening remarks that Plum Creek Timber Company
21 had acquired all property in Subbasin No. 5 that had previously been identified
22 under Burlington Northern Inc. ownership. Mr. Brown further indicated most of the
23 claims of Plum Creek Timber Company related to stock water use for stock drinking
24 directly from streams coursing through grazing land. He further stated there was
25 some use of water by summer cabins with the water sources being described as an
26 infiltration gallery. Additionally, some of the coal mines in the vicinity of

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1 Rosyln have wells driven into coal seams, a method of development that is also the
2 source of water for a chip plant located in Cle Elum. These sources are typically
3 developed by wells being drilled into mined out coal seams within the mining
4 complex. He also stated the water is necessary on a sporadic basis for fire
5 protection.

6 The Referee has ascertained from Mr. Brown's testimony that the principal use
7 of surface water by Plum Creek Timber Company is for the watering of livestock on
8 riparian land. The other consumptive uses (i.e., domestic supply and
9 manufacturing purposes) appear to be derived from ground water sources, the rights
10 to which are not being addressed in this adjudication. The other use of water
11 identified is fire protection, which is recognized as being of great concern to
12 this claimant. On December 12, 1996, the Court signed a Stipulation RE: Water Use
13 For Fire Suppression, which states that use of water for fire suppression is a
14 recognized emergency use and does not require a water right.

15 In summary, the Referee recommends the only use of water by these claimants
16 requiring confirmation to be stock watering use and such use would be satisfied
17 through the stock water stipulation, which can be found on page 5 in this report.
18

19
20 COURT CLAIM NO. 01422 -- John M. Butkovich
21 & Jean M. Butkovich

22 The statement of claim offered to the Court by the above named defendants
23 claim rights to the use of water from Rosyln Creek for the irrigation of 30
24 acres. John Butkovich appeared pro se to present evidence and testimony relative
25 to this claim.
26

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1 The report of investigation submitted by Ecology indicates the Butkovich's
2 employ two points of diversion for their irrigation project. One point of
3 diversion is on an unnamed stream from which an 8 inch PVC pipe located in a
4 concrete culvert intercepts water and conveys it into an earthen ditch.
5 Distribution of this water into the irrigated area is effected by means of rill
6 irrigation.

7 The second point of diversion is located on Roslyn Creek, at which point a
8 15 bhp pump conveys water into the claimants' property for sprinkler irrigation of
9 hay and pasture lands. Ecology's report states approximately 2.5 acres are
10 irrigated from the unnamed stream and 23.5 acres are irrigated from Roslyn
11 Creek.

12 Water Right Claim Nos. 103405, 103406 and 103407 were filed pursuant to the
13 provisions of RCW 90.14 by Mr. Butkovich in 1974. Two of these claims
14 (WRC Nos. 103405 and 103407) appear to relate to the Roslyn Creek diversion.
15 WRC No. 103406, although identifying Roslyn Creek as the source of water, appears
16 to relate to the diversions from both Roslyn Creek and the unnamed stream. Two
17 points of diversion are described, including one point at the approximate location
18 of the diversion from the unnamed stream.

19 During his testimony, Mr. Butkovich indicated the land associated with this
20 claim was patented to the Northern Pacific Railroad (NPRR) prior to 1886; however,
21 no patent documents were offered into the record. Mr. Butkovich did offer
22 Exhibits DE-80 & DE-81, which are affidavits executed by former residents of this
23 property. The affidavit of Rose Wargo stated water was used from Roslyn Creek to
24 irrigate hay and pasture prior to 1910. The affidavit of John Venera, who is a
25 former owner of a portion of the Butkovich property, stated a dairy farm operated

1 by George Wightman was started in 1904. This statement was a verification of
2 defendants' Exhibit DE-79, which is a facsimile of a newspaper article stating the
3 Wightmans began dairy operations in 1904.
4

5 As part of Mr. Butkovich's testimony, he essentially agreed with the states'
6 investigation report saying 2.5 acres are being irrigated from an unnamed stream
7 by gravity and rill irrigation from a point of diversion located 600 feet west and
8 200 feet south from the northeast corner of Section 20 and 23.5 acres of hay and
9 pasture are being irrigated from Rosyln Creek. The 15 bhp pump at the Roslyn
10 Creek diversion is located 1700 feet south and 600 feet east of the northwest
11 corner of Section 21 has a capacity of 300 gpm and the distribution of water on
12 these lands is by means of portable irrigation pipes and sprinklers.

13 Considering the evidence and testimony contained in the record, the Referee
14 is satisfied these claimants enjoy a valid water right for irrigation purposes.
15 The Referee proposes the priority date of the recommended right be fixed as of
16 June 30, 1904, since 1904 is the earliest date in the record water had been put to
17 beneficial use. Although Mr. Butkovich speculated the land was severed from
18 United States ownership prior to 1886, no evidence exists in the record which is
19 supportive of that contention. The proposed water right will consist of separate
20 diversions from two sources of water -- the unnamed stream and Rosyln Creek. The
21 record does not establish the amount of water being used from the unnamed stream;
22 therefore, the Referee proposes a right be confirmed from this source in the
23 amounts of 0.075 cfs; 15.0 acre-foot per year for the irrigation of 2.5 acres.
24 There is sufficient evidence to quantify the instantaneous diversion rate from
25 Rosyln Creek since that rate was identified as 300 gpm. It is therefore
26

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1 recommended that a right be confirmed to the use of the water from Roslyn Creek in
2 the amounts of 0.67 cfs; 117.5 acre-feet per year for the irrigation of 23.5 acres.
3

4

5 COURT CLAIM NO. 01678 -- Cecil Frank Carveth
6 & Jo Ann Beverly Carveth

7 Frank James Maglietti
8 & Nancy M. Maglietti

9 This statement of claim was originally filed with the Court by the Magliettis
10 asserting rights to the use of the waters of the Yakima River through Younger
11 Ditch and an unnamed slough. They asserted a right for the irrigation of 35 acres
12 of land, stock water and domestic supply. The Carveths were joined as additional
13 parties defendant through order of this Court dated May 6, 1991. During the
14 evidentiary hearing, the Carveths were represented by Brian Frederick, Attorney at
15 Law. Offering testimony in behalf of the Carveth portion of the claim was Jo Ann
16 Carveth. The Referee intends to also rely on testimony submitted by Richard C.
17 Bain, a consultant hired by other claimants served by the Younger Ditch.

18 The Maglietti/Carveth property, is located in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 31,
19 T. 20 N., R. 16 E.W.M., WRC No. 139480 filed by Robert Johnson, a predecessor in
20 interest, has been entered into the record. It asserted a right to both a well
21 and the Yakima River for the irrigation of 35 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ and a
22 portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M. At the time the
WRC No. 139480 was filed there apparently was no water use on the property.

23 Ms. Carveth testified she and Mr. Carveth purchased approximately 10 acres
24 from the Magliettis in 1985 and her observation and understanding was this land
25 was being irrigated at that time. She further stated the Carveths do not now
26 irrigate, but they intend to irrigate approximately 10 acres, principally of

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1 pasture and yard area. The land they bought from the Magliettis is the northerly
2 656.21 feet, as measured at right angles, of the W¹NE¹NE¹ of Section 31.
3 Ecology's investigation report states that remnants of Younger Ditch cross the
4 claimants' property; however, their observation was that Younger Ditch had not
5 been maintained and was incapable of delivering water to the claimants' property.
6 The Carveth property lies about 6,000 feet below the split of Younger Ditch on the
7 south channel. Evidence of livestock was observed on the premises.
8
9 The history of the development of the Younger Ditch is discussed in detail on page
10 7 of this report. The Carveth property was owned by Albert Hayden in 1913 when
11 the owners of the Younger Ditch signed the limiting agreement with the United
12 States.

13 There was no testimony by this claimant about the quantity of water needed to
14 irrigate their land or conveyance loss in the ditch. Therefore, the Referee
15 intends to use the testimony and evidence submitted by Richard C. Bain as part of
16 the presentation for other claimants on the Younger Ditch, see page 86 of this
17 report.

18 Based upon the testimony in the record for several claimants in this action,
19 it would appear the property now owned by the Carveths had been irrigated in the
20 past and originally from the Younger Ditch. However, Younger Ditch immediately to
21 the west of the claimants property and across the Carveth's land has fallen into a
22 state of disrepair. Water from the Younger Ditch and return flows from the
23 adjacent properties irrigated with water from Younger Ditch contribute to the
24 water existing in the unnamed slough from which the Carveths intend to irrigate.
25 This slough has been characterized by other claimants in this proceeding as an
26 extension of Younger Ditch which the Referee believes to be essentially the case.

1 Based upon the record, the Referee believes a valid water right is
2 appurtenant to the Carveth's land and, therefore, proposes a right be confirmed to
3 these defendants with a priority date of June 5, 1886, which is the date of
4 inception of the Younger Ditch rights. This right shall be quantified in the
5 amounts of 0.20 cfs; 60 acre-feet per year for the irrigation of 10 acres. An
6 additional 0.01 cfs; 0.50 acre-foot per year should be adequate to supply the
7 stock watering needs on the claimants' property. An additional 0.285 cfs is
8 allowed to accommodate the conveyance loss from the point of diversion on the
9 Younger Ditch to the claimants property. The period of water use shall be from
10 April 20 through September 30 as provided in the 1913 limiting agreement.
11

12 It should be noted that the confirmation of rights is limited to that portion
13 of the former Maglietti property that is now being purchased by the Carveths.
14 There was no testimony regarding the remainder of the Maglietti land and the
15 Referee has no record upon which to base any water rights for these additional
16 lands.
17

18 COURT CLAIM NO. 02148 -- Robert M. Cernick
19 & Debbie Lee Cernick

20 The statement of claim submitted to the Court by the Cernicks asserts rights
21 to the use of the waters of the Teanaway River for the irrigation of approximately
22 32 acres. The statement of claim indicates the right is based upon a portion of
23 Certificate No. 133 of the Teanaway River Adjudication which was confirmed to
24 Anton Vittone.

25 The report of investigation prepared by Ecology states the claim being
26 asserted on the Teanaway River will be addressed during the evidentiary hearings
27

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1 for Subbasin No. 3 (Teanaway River). The report also indicates rights are being
2 asserted on an unnamed drainage which originates within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33,
3 T. 20 N., R. 16 E.W.M. and such drainage is only being used for the watering of
4 livestock.
5

6 During the evidentiary hearing, Debbie Cernick appeared pro se and offered
7 testimony with respect to this claim. Ms. Cernick testified that in addition to
8 utilizing water which originated in the Teanaway River, there may be water which
9 originates in Subbasin No. 5, which had been used to irrigate a portion of the
10 Cernick lands. The evidence indicates the Cernick property has had a long history
11 of irrigation, however, it was unclear as to the source of water being used for
12 these activities. The evidence does not indicate any underlying water right for
13 the use of waters within Subbasin No. 5 for irrigation purposes.

14 Water Right Claims Nos. 072968 and 072970 relate to the claimants' property,
15 however, the source identified in these two claims is the Teanaway River.
16 No claims registered pursuant to Chapter 90.14 RCW are in the record, nor are
17 there any permits or certificates issued pursuant to Chapter 90.03 RCW, for water
18 sources that occur in Subbasin No. 5. As a consequence, the Referee cannot
19 recommend confirmation of any water rights pertaining to naturally occurring
20 waters within Subbasin No. 5.

21 Ms. Cernick was advised by the Attorney General representing Ecology that
22 they should appear during the evidentiary hearing for Subbasin No. 3 to assert any
23 claim to water rights from the Teanaway River. The Cernicks were scheduled for
24 appearance during that evidentiary hearing, however, they made no appearance to
25 either present or defend their claim. As a consequence, the Referee did not
26
27

1 recommend confirmation of any water rights from the Teanaway River for the benefit
2 of these claimants.
3

4 The Referee notes livestock are pastured on the claimant's property and such
5 stock can drink from naturally occurring sources contained within the claimants'
6 property. Water rights for non-diversionary stock watering purposes are
7 authorized through the stock water stipulation identified on page 5 of this
report.
8

9 COURT CLAIM NO. 01293 -- City of Cle Elum
10

11 The claim filed by the City of Cle Elum is essentially a claim for an
12 alternate diversion point to water rights they hold on the Cle Elum River. The
13 city was represented during the evidentiary hearing by Darrel Ellis, Attorney at
14 Law. Jim Leonhard, Superintendent of Public Works for the City of Cle Elum,
offered testimony.
15

16 According to Mr. Leonhard's testimony, the diversion point is situated on the
17 Yakima River within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T. 20 N., R. 15 E.W.M. Two
18 10 bhp pumps are located at the diversion point and water is then conveyed through
19 the city system to two 500,000 gallon storage tanks. Two 40 bhp booster pumps are
also utilized.
20

21 During his testimony before the Referee, Mr. Ellis stated the diversion from
22 the Yakima River is an alternate diversion point to the Cle Elum River diversion
23 and is only utilized when there is insufficient water in the Cle Elum River to
24 reach the city's intake structure. At that point, water is removed from the
25 Yakima River to make up any deficit in the Cle Elum River supply. As a result of
26 a previous subbasin hearing, the Referee recommended confirmation of a right to
27

1
2 the City of Cle Elum with a June 30, 1896, priority date (see the Report of
3 Referee for Subbasin No. 1, Volume 3). The point of diversion for that right is
4 on the Cle Elum River and within the SW¹SE⁴ of Section 11, T. 20 N., R. 14 E.W.M.
5 The water diverted under this right is in the amounts 3.0 cfs; 1,100 acre-feet per
6 year to be used for municipal supply within the City of Cle Elum.

7 As nearly as the Referee can ascertain from the record, the Yakima River
8 Pumping Plant was constructed in about 1972. Examination of Ecology Exhibit SE-3
9 disclosed there are no certificates of change in the record relative to the City
10 of Cle Elum. RCW 90.03.380 provides a mechanism where a diversion point can be
11 changed and or alternate points of diversion authorized. It is apparent when the
12 alternate point of diversion was added in 1972, the city did not follow the
13 statutory process for effecting such change. In light of this, the Referee cannot
14 recommend confirmation of this alternate diversion point since there exists no
15 legal basis for such additional point.

16 The City of Cle Elum is also asserting a right through the Major Claimant
17 pathway for Yakima project water delivered by the United States Bureau of
18 Reclamation pursuant to a contract between the city and the United States. The
19 Court has not yet issued a report addressing that claim.

20
21 COURT CLAIM NO. 01850 -- The Estate of Robert L. Clements
22 (A) 06063 C & H Trucking & Construction
23 Judith Torgeson
 Trust of Barbara Istvan
 & Edwin J. Istvan

24 The above referenced statements of claim were originally filed with the Court
25 by Pat C. Bunger and Joan L. Hart. On September 22, 1983, Robert L. Clements was
26
27

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1 substituted for the original claimants. On June 27, 1990, joined to the claim by
2 Mr. Clements was C & H Trucking and Construction, Gary and Vicki Monroe, and the
3 Trust of Barbara Istvan and Edwin J. Istvan. On May 5, 1997, Judith Torgeson was
4 substituted for the Monroes. C & H Trucking and Construction did not make an
5 appearance at the evidentiary hearing and, as a consequence, their portion of
6 Court Claim No. 1850 is denied.
7

8 During the evidentiary hearing, Robert Clements offered testimony and
9 evidence on behalf of himself, the Monroes and the Istvans. During his testimony,
10 Mr. Clements clarified that all of the water sources identified as streams, creeks
11 and sloughs from which irrigation water was derived were actually ditches which
12 had their source in the Teanaway River, a discrete subbasin in this adjudication.

13 Mr. Clements stated that it was his intention to appear and to provide
14 testimony during the Subbasin No. 3 (Teanaway River) evidentiary hearings, which
15 he did during August of 1991. As a result of the testimony and evidence presented
16 during the Subbasin No. 3 hearings, the Referee recommended in the Subbasin No. 3
17 Report of Referee that Robert L. Clements, Judith Torgeson and Edwin J. Istvan,
18 Trustee for Barbara Istvan Trust, each be confirmed a right with a June 30, 1889,
19 priority date for the diversion of 0.20 cfs; 54 acre-feet per year for the
20 irrigation of 10 acres (see Page 56, Report of Referee Subbasin No. 3). As a
21 consequence of the foregoing, the Referee does not propose any additional rights
22 be confirmed to these defendants.
23
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25
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2
3 COURT CLAIM NO. 01563 -- Joseph O. Covey
4 & Virginia Covey

5 COURT CLAIM NO. 01564 -- Harry O. Covey
6 & Rosa M. Covey

7 The above referenced statements of claim relate to the same piece of
8 property. Therefore, the Referee has elected to discuss these claims together.
9 The statements of claim are essentially duplicates of each other in that rights
10 are asserted to the use of the waters of an unnamed stream for the irrigation of
11 37.96 acres and livestock watering. Joseph O. Covey and Rosa M. Covey appeared
12 pro se to offer testimony relative to these claims.

13 The property covered by these claims is generally described as being the
14 NE^{1/4}SE^{1/4} of Section 32, T. 20 N., R. 16 E.W.M. This property was formerly owned by
15 Harry O. and Rosa M. Covey, however, with the exception of 1 acre retained by Rosa
16 Covey, all of the land was sold to Joseph Covey. According to Joseph Covey's
17 testimony, during years past, water had been pumped from a stream which traversed
18 the property to irrigate approximately 8 acres in the south portion of the land.
19 The northern portion of the land historically did not receive irrigation water
20 from a surface water source. Mr. Covey indicated that the 8 acres in the south
21 portion was last irrigated in the late 1960's or early 1970's. He further
22 indicated that at times water from the O'Connor ditch had reached the stream on
23 the Covey property, but that is no longer the case. He further indicated that
24 there were several springs situated on this land and these springs have been used
for the watering of livestock.

25 There are no permits or certificates of water right issued pursuant to
26 Chapter 90.03 RCW in the record; however, there are several water right claim

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(WRC) registrations which relate directly to this land. WRC No. 032625, which is a "short form," describes a spring on this land used for stock watering purposes. WRC No. 032626 also relates to a separate spring again utilized for stock watering purposes. WRC No. 064381, which was filed by Harry Covey in 1974, indicates that approximately 10 acres of land were being irrigated at that time from waste water. That registration form further indicates that water was first used in 1948. Additionally, WRC No. 056617, which was filed by the United States Bureau of Reclamation (USBR), indicates that some water may have been appurtenant to the Covey property by virtue of diversion of water through the O'Connor ditch and the Wightman ditch.

Based upon the evidence in the record, the Referee does not believe that a water right from the unnamed stream in question exists for the benefit of the Covey property. If the 1948 first use date as indicated in WRC No. 064381 is correct, that date places the time of first use considerably later than the 1917 cutoff date for the establishment of rights under the prior appropriation doctrine. Furthermore, due to the fact that the use of water had ceased in the late 1960's or early 1970's, whatever right may have existed would have been relinquished pursuant to the water right relinquishment statute found in Section 90.14.160 RCW. That statute states that if water has not been used without sufficient cause for 5 consecutive years that the water right, if such existed, would have been extinguished. As a result, the Referee cannot recommend confirmation of any diversionary surface water rights to these defendants.

It was noted that several springs exist on the Covey property which are used for the watering of livestock. The stock water stipulation identified on page 5 of this report should satisfy the need for stock water.

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2
3 COURT CLAIM NO. 06198 -- James J. Crestanello

4 The above referenced statement of claim was originally filed with the Court
5 on May 6, 1991, by Eliza Crestanello. Such claim asserted rights to the use of
6 water from an unnamed spring for stock water and the irrigation of 4 acres. James
7 Crestanello, the claimant's son, was substituted as a party defendant through
8 order of this Court dated October 11, 1995. During the evidentiary hearing, Tim
9 Crestanello, also a son of Eliza Crestanello, appeared pro se and provided
10 testimony and exhibits relative to this claim.

11 No report of investigation by Ecology was entered into the record. The
12 Crestanello claim evidently was filed too late to provide the department
13 opportunity to conduct the customary investigation. Water Right Claim No. 000764
14 was filed by Mrs. Crestanello in 1970. That registered claim indicated water had
15 been used since 1932 and according to the documents the 1970 use was for stock
16 water and the irrigation of 2 acres of garden area.

17 According to Mr. Crestanello's testimony, his parents purchased the property
18 upon which the water had been used in 1935. It was Mr. Crestanello's
19 understanding this property had been used for a dairy operation by a previous
20 occupant, perhaps as early as 1920. He stated water had been used for livestock
21 up until about 1950 and approximately 2 acres had historically been irrigated up
22 until about 1945. Mr. Crestanello also indicated water had been used from a
23 discrete spring for irrigation in the past, but has not been used for many years.

24 Based upon the testimony and the evidence in this matter, the Referee cannot
25 recommend confirmation of a water right to this claimant. The evidentiary record
26 regarding early use of water on this property is sketchy at best. In any event,

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1
2 there is no indication water had been used on this property prior to 1917, which
3 would be necessary in order to recommend confirmation of an appropriative right.
4
5 Even if this deficiency did not exist, the Referee believes there is ample
6 evidence to indicate whatever right had existed had been forfeited due to an
7 extended period during which water had not been placed to beneficial use (see
Section 90.14.160 RCW).
8
9

COURT CLAIM NO. 01679 -- Nellie G. Curry
10 Douglas D. Curry
& Lois A. Curry

11 The Curry statement of claim asserts rights to the use of the waters of two
12 sources, an unnamed spring and Pressy Creek. The claim states the spring is used
13 for domestic supply, stock watering and irrigation. According to the claim, the
14 stream has been used to irrigate up to 75 acres. Douglas Curry and Patrick Curry
15 appeared pro se to offer testimony and evidence relating to this claim.

16 According to the record, two sources of water are being used on the Curry
17 property -- water from a spring and water from a stream locally known as Pressy
18 Creek. The spring is located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 19 N.,
19 R. 15 E.W.M. and has been developed by means of a concrete tile at the spring site
20 with a 2 inch buried pipeline conveying water by gravity from the spring site
21 northerly almost one-half mile to a residence. The spring is situated on property
22 now owned by Judith Forcier who is also a claimant in these proceedings. No
23 permits or certificates of water right relating to this spring are in the record;
24 however, Water Right Claim No. 100084 (a short form) was filed on the spring by
25 Darrell Curry in 1974, thus preserving limited water rights relating to the
26 spring. The Currys testified the spring has been in use for domestic supply for
27

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1 many years and the first use of water from this spring relates to a notice of
2 appropriation (Exhibit DE-38) filed on October 19, 1910, by Mike Padovich. The
3 Referee's analysis of this notice of appropriation indicates it may relate to the
4 spring, but there are uncertainties due to a location discrepancy. The notice of
5 appropriation does not describe the spring as presently located.
6

7 The diversion of water from Pressy Creek consists of a bathtub located in or
8 adjacent to the stream channel with a 2 inch pipeline conveying water from the tub
9 northerly, approximately 1600 feet to the area of use. The State's investigation
10 report indicates, at the time of the investigation, a $\frac{1}{2}$ acre lawn and garden area
11 were sprinkle irrigated with the use of 4 lawn type sprinklers. A stock tank is
12 also supplied water from this source. According to the Curry's testimony, a pond
13 is located on the stream and this pond was originally constructed in about 1935
14 and rebuilt in 1970 or 1972. Further testimony indicates from 15 to 20 head of
15 stock have been quartered on this property. In addition to the stock tank, the
16 stock have access to both the unnamed stream and the pond. The Currys stated the
17 land is not now being irrigated, but had been in the past. Douglas Curry's
18 understanding was the land was last irrigated to any great extent in the 1920's or
19 1930's. The 55 to 60 acres of cropland is now dry. Patrick Curry stated his
20 father irrigated about 6 acres in the vicinity of the Curry residence and such
21 irrigation was terminated in about 1972. The present status of irrigation is
22 approximately $\frac{1}{2}$ acre of lawn and garden. Again, no permits or certificates of
23 water rights issued pursuant to Chapter 90.03 RCW are in the record, however,
24 WRC No. 100085 (short form) is in the record and such claim relates to the
25 diversion of water from the stream. The Referee notes, at the time this form was
26
27

1 executed by Darrell Curry in 1974, stock water and lawn and garden irrigation were
2 indicated as being the uses to which the water was being placed.
3

4 Defendants Exhibit DE-35 is a land patent document dated November 4, 1895,
5 which transferred interest in what is now the Curry property from the United
6 States over to the NPPR. Any rights confirmed under the Riparian Doctrine would
7 relate to the date the land was severed from the United States.

8 Based upon the record, the Referee is of the opinion there has been an
9 adequate showing that water rights to the unnamed spring have been perfected. As
10 a consequence, the Referee recommends a right be confirmed to the Currys for use
11 of the water from the unnamed spring with a priority date of November 4, 1895, in
12 the amounts of 0.01 cfs; 1 acre-foot per year for domestic supply.

13 Similarly, the Referee believes rights were initiated and perfected for the
14 use of waters of Pressy Creek. Under the Riparian Doctrine, evidence must show
15 the water had been put to beneficial use prior to 1932 and such was indicated
16 through testimony. Additionally, it must be shown the land was severed from the
17 public domain prior to 1917, which the land patent document clearly demonstrates.
18 However, much of the originally initiated water right has been relinquished due to
19 extensive periods of nonuse, see RCW 90.14.160. In addition, certain constraints
20 were placed upon the limits of this right due to the water right claim
21 registration which was filed on this source, the form that was used by Darrell
22 Curry severely limited the extent of this right. As was previously stated, a
23 water right claim "short form" was used, which allowed registrants the opportunity
24 to file their claims with a minimum of information. However, by filing such short
25 form claim, the extent of any claimed right preserved was limited to those
26 quantities and purposes identified in Section 90.44.050 RCW, which are essentially

1 de minimis uses such as domestic supply, lawn and garden irrigation and stock
2 watering. Based upon this, the Referee must also limit this recommendation to the
3 Court. It is, therefore, recommended that a water right be confirmed to these
4 claimants for the use of water of Pressy Creek for stock water and lawn and garden
5 irrigation of $\frac{1}{2}$ acre only. The right will bear a priority date of November 4,
6 1895, in the amounts of 0.02 cfs; 4.0 acre-feet per year.
7

8 In addition to the diversionary right for stock watering purposes, the
9 Referee notes testimony shows stock pastured on this land have access to the pond
10 and to Pressy Creek. The stock water stipulation identified on page 5 of this
11 report would cover the non-diversionary stock water use on the claimants' property.
12

13 COURT CLAIM NO. 02187 -- Emil S. Danishek, et al.

14 A statement of claim was filed with the court by Emil S. Danishek and his
15 successors, listed as Gary Guzzie, G. L. Monahan, Rudy Hein, and Gerry Gotch,
16 regarding use of the waters from an unnamed stream and spring for irrigation and
17 stock water. These defendants made no appearance during the evidentiary hearing
18 to either present evidence or defend this claim. As a result, the Referee cannot
19 recommend that a diversionary water right relating to this claim be confirmed.
20 The Plaintiff's Report to the Referee identifies a claim to a non-diversionary
21 stock water right on the claimants' property. This type of use is covered by the
22 stock water stipulation discussed further on page 5 in this report.
23
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28 REPORT OF REFEREE
Re: Subbasin No. 5

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1
2
3 COURT CLAIM NO. 01080 -- Lee Duncan

4 The statement of claim submitted to the Court in this proceeding was
5 originally filed by Peoh Point Grange No. 882, asserting rights to the use of the
6 waters of an unnamed spring for domestic supply under priority date of "prior to
7 1914." The amount claimed was 0.002 cfs. Lee Duncan was substituted as a party
8 defendant for the Grange by order of the Court dated April 3, 1990. Mr. Duncan
9 appeared during the evidentiary hearing and offered testimony in behalf of this
10 claim.

11 The report of investigation conducted by Ecology indicates a series of 3 inch
12 diameter PVC pipes are placed in the spring area conveying water approximately 20
13 feet to a concrete collection box. The box is located in the bottom of a stream
14 channel and from that point a 1½ inch diameter PVC pipe conveys water northerly,
15 approximately 600 feet to a pond of about ¼ acre in area. The pond is used for
16 fish propagation by Mr. Duncan.

17 During his testimony, Mr. Duncan stated he purchased the spring from the
18 Grange in 1988 and had a pond constructed in the stream channel presumably about
19 the same point in time. He further stated about 30 fish presently inhabit the
20 pond, but it is his intent to place as many 1,000 fish in this pond.

21 No permits or certificates issued pursuant to Chapter 90.03 RCW are in
22 evidence regarding this use of water, nor are any water right claim registrations
23 filed pursuant to Chapter 90.14 RCW in evidence.

24 Although the spring in question may have been developed and used "prior to
25 1914," the Referee notes whatever rights may have been associated with this spring
26 for domestic supply have been forfeited due to the fact that no water right claim

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1 registration was made on this source during the period provided for registering
2 such claims. Chapter 90.14 RCW specifically provides for the forfeiture of any
3 claimed right through failure to comply with the provisions of this act.
4 Additionally, due to the absence of valid permits or certificates and given the
5 spring was not used for fish propagation until the late 1980's, the Referee is of
6 the opinion water rights were not properly established at the time water was put
7 to beneficial use on the Duncan property. An application for permit should have
8 been secured from Ecology at the time this development was initiated.
9

10 The Referee therefore proposes no confirmation of surface water rights be
11 made under the claim of this defendant.
12

13 COURT CLAIM NO. 01184 -- Walter W. Eyer
14 & Valorie G. Eyer

15 The statement of claim provided to the Court in this proceeding by the Eyers
16 asserts rights to the use of the waters of an unnamed stream for domestic supply
17 and the irrigation of 2 acres. The claim is based upon the existence of
18 Certificate of Surface Water Right No. 10243. During the evidentiary hearing,
19 Walter Eyer appeared pro se, and along with his neighbor, Robert Clark, testified
20 in support of this claim.

21 The report of investigation prepared by Ecology states the diversion of water
22 is effected by means of a rock dam across the unnamed stream. From the small dam,
23 a 1 inch PVC pipe diverts water into an earthen ditch which conveys water into an
24 excavated 40 feet by 20 feet reservoir impounded by an earthen dam. Water from
25 the reservoir is conveyed to the claimants' property through a 1 inch PVC pipe.
26 The diversion facilities are located on lands of adjacent landowners, Robert and
27

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1 Shirley Clark. The Clarks also use the reservoir for domestic supply and
2 irrigation.
3

4 Mr. Clark testified the diversion facility had been installed by a previous
5 owner, Frank Markovich, in 1966 and the Eyers acquired ownership of this property
6 in 1976. The water being used from the unnamed stream by the Eyers is principally
7 for a residence which they occupy on a part-time basis. In addition, water is
8 used to irrigate lawn and garden areas and a small alfalfa field in the vicinity
9 of the dwelling.

10 Certificate of Surface Water Right No. 10243 with a priority date of
11 August 15, 1966, authorizes the diversion of 0.01 cfs; 2 acre-feet per year for
12 domestic supply. The legal description contained in the certificate which
13 describes the land to which the water right is appurtenant, identifies the
14 property now owned by the Eyers plus a small tract of land located on what is now
15 the Clark property. The Referee believes, however, that the historic use of water
16 under this right has been confined to the land now owned by claimants Eyer. The
17 adjacent neighbors, the Clarks, have been recommended for a confirmation of a
18 water right under Court Claim No. 0985 in the plaintiffs' report to the Referee.
19 The basis for that recommendation was Certificate of Water Right No. 10875, which
20 was originally issued to John Bardessomo.

21 In the opinion of the Referee, the Eyers have a valid water right appurtenant
22 to their land based upon the perfection of a water right under Certificate of
23 Surface Water Right No. 10243. Therefore, the Referee recommends that the Court
24 confirm the right to the Eyers in consonance with the aforementioned certificate
25 with a priority date of August 15, 1966, for the appropriation of 0.01 cfs;
26 2 acre-feet per year to be used for domestic supply. The Referee recognizes that

1
2 the irrigation use by these claimants may be in excess of what has been
3 recommended; however, the Referee cannot expand a water right beyond its
4 authorized limits. There was no evidence of establishment of a water right for
5 irrigation of more than lawn and garden.

6 Upon confirmation of the right herein proposed, the Referee recommends that
7 the Director of the Department of Ecology cancel, rescind or otherwise make null
8 and void Certificate of Surface Water Right No. 10243.

9
10 COURT CLAIM NO. 02093 -- Terence L. Firman
11 & Jeanette K. Firman

12 The statement of claim submitted by the Firmans asserts rights to the use of
13 the waters of an unnamed spring for domestic supply. During the evidentiary
14 hearing, Terence Firman appeared pro se and offered testimony on behalf of this
15 claim.

16 Mr. Firman stated he purchased his property from Elmer Jones in 1976, at
17 which time the water system serving his property was in use. The unnamed spring
18 in question is located approximately 1400 feet north of the southeast corner of
19 Section 8, T. 19 N., R. 15 E.W.M. The spring is developed by means of a
20 sandpoint; water is conveyed from this location by gravity into a plastic pipeline
21 that crosses the Daniel Bowens property into the Alec Craig property, at which
22 point the line bifurcates and one line serves two mobile homes on the Craig
23 property and the second line, serves the Firman property's cabin. There are no
24 other water users on this system.

25 Mr. Firman could offer no testimony with respect to use of water on his
26 property prior to his 1976 purchase. Additionally, there have been no permits or

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certificates of water rights issued pursuant to RCW 90.03, nor have there been introduced any registered water right claims filed pursuant to Chapter 90.14 RCW (the Water Rights Claims Registration Act).

Based upon the forgoing, it is the belief of the Referee there is insufficient evidence contained in the record upon which to recommend confirmation of a water right to these defendants. The Referee also believes a permit from Ecology, or a predecessor agency, should have been obtained prior to the development of this source, which probably occurred well after the enactment of the 1917 Surface Water Code.

COURT CLAIM NO. 00689 -- John Forenpohar
& Margaret E. Forenpohar

The statement of claim filed with the Court by these defendants claims rights to the use of waters of an unnamed spring and stream for domestic supply, mink propagation and stock water. The claimed rights are based upon two certificates of surface water right issued by the State of Washington. Margaret Forenpohar appeared pro se and offered testimony on behalf of this claim.

According to the report of investigation conducted by Ecology, a 4 foot diameter concrete cistern collects spring water at the point of diversion and a 1 $\frac{1}{4}$ inch buried pipeline conveys water from the system in a northerly direction approximately 4,000 feet to the place of use. The main pipeline has three connections, each serving a different purpose. One connection supplies domestic water for a single family residence and a small garden area, a second line feeds a metal stock tank located south of the residence and a third line supplies water to a commercial mink operation.

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1 Based upon the record in this case, the Referee has attempted to determine
2 the history of this property as it relates to the use of water. The Forenpohars
3 acquired interest in this property in 1949 and about the same time constructed a
4 residence on their land. Water for domestic supply for the residence was obtained
5 from a spring located in the NW¹/NW¹ of Section 10, T. 19 N., R. 15 E.W.M. An
6 application for water rights was filed on this spring in 1950 and such application
7 ripened into Surface Water Certificate No. 5349, which allows for the
8 appropriation of 0.01 cfs for domestic supply. This spring was used until the mid
9 1960's, at which time the spring ceased to produce sufficient water for the
10 Forenpohar home. In about 1965, the Forenpohars developed a second source of
11 water consisting of two unnamed springs located approximately 1100 feet south of
12 the original spring. Again, an application was made to an Ecology predecessor
13 agency for water rights on this spring. That application resulted in the issuance
14 of Surface Water Certificate No. S4-01240C which, under priority date of July 1,
15 1965, allows the appropriation of 0.02 cfs; 4 acre-feet per year to be used for
16 domestic supply, stock water and mink propagation. It is this source and under
17 this certificate that the Forenpohars are currently using water.
18

19 Based upon the evidence and testimony before the Referee, it is recommended
20 to the Court a right be confirmed to the Forenpohars, basically consistent with
21 the parameters of Certificate of Surface Water Right No. S4-01240C.

22 The Forenpohars are not presently using water from these springs for mink
23 propagation which was terminated in 1979. Mrs. Forenpohar stated they have no
24 immediate plans to resume mink propagation, but she could not discount the
25 reestablishment of this activity. The Referee therefore feels such use has not
26
27

1 been relinquished (pursuant to RCW 90.14.140(1)(d)) and mink propagation should be
2 included in this recommendation.
3

4 The Referee also recommends that the Director of the Department of Ecology
5 cancel, rescind or otherwise make null and void Certificates of Surface Water
6 Nos. 5349 and S4-01240C.
7

8 COURT CLAIM NO. 02224 -- Gary J. Fudacz
9 & Joanne Fudacz

10 Gary and Jo Anne Fudacz submitted a statement of claim to the Court asserting
11 rights to the use of the waters of the Yakima River through the Younger Ditch for
12 irrigation and stock water. During the evidentiary hearing, testimony was given
13 by Gary Fudacz, appearing pro se, and assisted by his brother, Larry Fudacz. The
14 generic testimony of Richard Bain regarding the Younger Ditch also will be used by
15 the Referee to address water duty and conveyance loss in the ditch, see the
16 Henshaw claim on page 86 of this report.

17 According to Mr. Fudacz's testimony, he purchased 10 acres in the W¹NE¹ of
18 Section 31, T. 20 N., R. 16 E.W.M. from Rudy Hein in 1978. Of the 10 acres,
19 Mr. Fudacz stated 9 acres are under irrigation, principally in pasture land. In
20 1990 an additional 14.5 acre tract, also in the W¹NE¹ of Section 31, was purchased
21 from the GRM Ranch on which about 2 acres of land are being irrigated. The owners
22 of this 14.5 acre tract are the Fudacz brothers. Their testimony indicates from
23 40 - 50 head of stock are pastured on these lands. The Fudacz land lies on the
24 south branch of the Younger Ditch, approximately 4000 feet below the point where
25 the ditch bifurcates.
26
27

1
2 The history of development of the Younger Ditch is discussed in detail on
3 page 7 of this report. The W^{1/4}NE^{1/4} of Section 31 is part of the land owned by L. W.
4 Taylor, one of the owners of the ditch at the time that the 1913 limiting
5 agreement was signed between the owners of the Younger Ditch and the United
6 States.
7

8 According to the testimony, water directly from the Younger Ditch was used on
9 this property up until about 1980, at which time a flume was removed that severely
10 curtailed the amount of Younger Ditch water available. However, there does exist
11 a drainage ditch from adjacent properties to the north which carries return flow
12 water, originating in the Younger Ditch, down to and through the Fudacz land. In
13 lieu of the direct Younger Ditch diversion, they have elected, at times, to use
14 this other source. According to the record, Mr. Fudacz utilizes a 5 bhp pump
15 which has a capacity of approximately 150 gpm, and irrigates using a portable
16 sprinkler system. Mr. Fudacz stated that this property had been irrigated prior
17 to his purchase and all of it was part of the former GRM Ranch on which extensive
irrigation occurred.

18 Water Right Claim (WRC) No. 033846, filed by the GRM Ranch, and
19 WRC No. 098278, filed by Rudy Hein, describe lands that include the Fudacz
20 property. The Heins and GRM Ranch were former owners of what is now the Fudacz
21 and Fudacz brothers' property. WRC No. 098278 describes a claim to divert 0.20
22 cfs; 40 acre-feet per year from the Yakima River for the irrigation of 10 acres on
23 the parcel bought from Mr. Hein in 1978. The point of diversion described is at
24 the Younger Ditch intake. WRC No. 033848 describes a claim to 3.0 cfs; 600
25 acre-feet per year from the Yakima River for the irrigation of 150 acres.

1
2 It is the opinion of the Referee that, although water from the Younger Ditch
3 is not directly used on this property all of the time, rights associated with the
4 Younger Ditch are still appurtenant to the Fudacz property. The, Referee,
5 therefore proposes a right be confirmed to Gary and Jo Anne Fudacz and the Fudacz
6 brothers under a priority date of June 5, 1886, the date of the Younger Ditch
7 water right, in the amount of 0.33 cfs; 66 acre-feet per year for the irrigation
8 of 11 acres. An additional 0.01 cfs; 1 acre-foot per year is allowed to satisfy
9 the demand for stock water. A conveyance loss of 0.33 cfs is allowed, with the
10 understanding that the measuring point for this conveyance loss is at the Younger
11 Ditch intake.
12

13 Ecology's investigation report indicated stock pastured on these claimants'
14 property also had access to natural sources of drinking water. This use is
15 covered adequately by the stock water stipulation identified on Page 5 of this
16 report.
17

18 COURT CLAIM NO. 02139 -- Ernest C. Glondo
19 (A) 06106 Ernest C. Glondo, Jr.
20

21 The above referenced statement of claim and amended statement of claim
22 submitted by Ernest C. Glondo claims rights to the use of waters from a spring and
23 stream (Crystal Creek or Roslyn Ditch) for domestic supply and irrigation.
24 Ernest C. Glondo, Jr. appeared pro se to offer testimony in behalf of this claim.
25

26 The Glondo land is generally described as being Lots 1 - 9, 12, 13 and 14 of
27 Block 4 and all of Block 5 of Steiner's subdivision to Block 1 Roslyn Addition,
28 located near the center of the SE $\frac{1}{4}$ of Section 27, T. 20 N., R. 15 E.W.M.
Mr. Glondo's testimony was very detailed and specific concerning the development

1 of water sources for this property and the present use of water on these lands.
2 According to the record, Mr. Glondo's grandparents purchased this property in
3 1922, at which time they cleared the land, drained the property and began raising
4 hay and potatoes as well as livestock. Ditches were constructed for drainage and
5 to irrigate the cleared land. A spring located near Lots 10 and 11 of Block 4 was
6 used by Mr. Glondo's grandparents for domestic supply. The ditches constructed on
7 the property were used to irrigate lands and supply water for livestock. Crystal
8 or Roslyn Creek is located near the easterly boundary of the Glondo property. In
9 about 1934, the City of Cle Elum modified the location of that stream and, in the
10 process thereof, secured an easement from Mr. Glondo's grandparents to excavate
11 and widen the channel (Exhibit DE-84). In exchange for that easement, the city
12 apparently gave the Glondos' permission to use water from this stream. The record
13 indicates that a dam was constructed in the stream and water was diverted into
14 wooden flumes and ditches where the water was used for irrigation purposes.
15

16 At the present time, three pumps are utilized to divert water into the
17 irrigated area where water is distributed by means of hoses and plastic pipelines.
18

19 Due to the fact that the use of water from Roslyn Creek did not commence
20 until 1934, there is serious question as to whether water rights to this source
21 can be recommended for confirmation. In order for there to be a water right for a
22 use initiated in 1934, compliance with the permitting procedures of Chapter 90.03
23 RCW is necessary. There may have been water rights associated with the spring
24 since the use of that water, according to the record, commenced in 1922. However,
25 in order to preserve any water rights such as these claimed by the defendant, the
26 Water Rights Claims Registration Act of 1967 (Chapter 90.14 RCW) required that a
27 claim be registered on all uses of surface water that were not covered by a permit
28

1 or certificate issued by the State of Washington pursuant to the provisions of
2 Chapter 90.03 RCW. There has not been entered into evidence any permits or
3 certificates that relate to these sources on the Glondo property nor have there
4 been introduced into evidence any registered water right claims regarding the
5 Glondo lands. Absent valid permits, certificates or water right claims registered
6 pursuant to Chapter 90.14 RCW, the Referee can only conclude that whatever rights
7 that may have existed were forfeited due to failure to comply with the Water
8 Rights Claims Registration Act.

9
10 The Referee consequently finds that water rights relating to the above
11 referenced claims are not confirmable.
12

13 COURT CLAIM NO. 01279 -- GRM Ranch
14 Pat Merritt
15 & Carolyn Merritt
16 Loyd Garrett
17 & Shirley Garrett
18 Walter H. Goenner, Sr.
19 & Dixie M. Goenner
20 Richard Haas
21 & Jean Haas
22 Sharon Winslow

23 The above referenced statement of claim was submitted by the GRM Ranch
24 asserting rights to the use of the waters of the Yakima River through the Younger
25 Ditch for stock water and the irrigation of 80 acres. On August 9, 1990, Pat and
26 Carolyn Merritt were joined as additional party defendants to the GRM Ranch
27 Claim. On February 7, 1991, Loyd and Shirley Garret were joined to the claim as
28 additional party defendants. Betty Danubio was joined to the claim on
February 20, 1991; Richard and Jean Haas and Sharon Winslow were substituted for
Ms. Danubio on February 28, 1996. Lastly, on April 12, 1991, Walter H. Goenner,

1 Sr. and Dixie M. Goenner were joined to Court Claim No. 01279. Appearing to
2 testify at the evidentiary hearing in support of their portions of the claim were
3 Loyd Garrett, Betty Danubio, and Carolyn Merritt. Richard C.Bain, Jr., a
4 consultant hired by neighboring claimant, Hazel Henshaw, who also is asserting a
5 right to water carried in the Younger Ditch, testified and provided evidence of
6 conveyance loss in Younger Ditch and water duty needs for the area. His testimony
7 and evidence will be applied to these claimants as appropriate.
8

9 There is extensive information in the record concerning the history of the
10 Younger Ditch submitted by these claimants, along with Hazel Henshaw and Brian
11 Frederick, et al., who are other landowners on the Younger Ditch. The history and
12 development of the Younger Ditch is discussed in detail on page 7 near the
13 beginning of this report.

14 Water Right Claim (WRC) No. 033846 was filed by the GRM Ranch in conformance
15 with the provisions of the Water Rights Claims Registration Act
16 (Chapter 90.14 RCW). It asserted a right to divert 3 cfs from the Yakima River
17 for the irrigation of 150 acres. The described point of diversion is 700 feet
18 south and 1320 feet east of the northeast corner of Section 35, T. 20 N.,
19 R. 15 E.W.M., which is the approximate location of the diversion into the Younger
20 Ditch, if the point of diversion was correctly described as being west of the
21 northeast section corner.

22 The defendants joined to Court Claim No. 01279 who appeared at the
23 evidentiary hearing did not provide any testimony about the quantity of water used
24 to irrigate their respective parcels. When GRM Ranch submitted WRC No. 033846
25 they asserted a right to divert 3 cfs or 0.02 cfs for each acre being irrigated.
26 Lacking any other information regarding instantaneous quantities, the Referee
27

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1 intends to use .02 cfs per acre for any rights recommended for confirmation to
2 successors of GRM Ranch for sprinkler irrigation and 0.03 cfs for flood
3 irrigation. Mr. Bain testified that lands in this area that are sprinkler
4 irrigated need approximately 6 acre-feet per year for each acre irrigated and
5 lands that are rill or flood irrigated needed 12.2 acre-feet per year for each
6 irrigated acre (except in Section 29). The Referee shall use these figures for
7 assigning an annual quantity of water. Ecology conducted measurements of the
8 Younger Ditch to assist in assessing conveyance loss in the ditch and Mr. Bain, in
9 Exhibit No. DE-109 submitted on behalf of Hazel Henshaw, also addresses conveyance
10 loss. It was Mr. Bain's conclusion that a 20 percent per mile conveyance loss for
11 the first mile of the Younger Ditch was appropriate. This figure, along with each
12 properties location along the ditch, will be used in computing conveyance loss.
13 The ditch losses in the south branch of the ditch are extremely high being 22.65%
14 per 1,000 feet.

15 Mr. Bain provided some testimony about documented diversions into the Younger
16 Ditch, indicating diversions around 20 cfs in the early 1900's and 6 to 10 cfs in
17 more recent years. However, the documents were not submitted into the record, so
18 the Referee does not have a clear picture of what the diversion records reflect.

19 During the evidentiary hearing, Betty Danubio appeared pro se to offer
20 testimony with respect to her claim. According to Ms. Danubio's testimony, she
21 purchased Tract 3, Airport Road Tracts which is a portion of property formerly
22 owned by the GRM Ranch. Ms. Danubio indicated the property is used for the
23 pasture of horses and 4.5 acres of pasture land are irrigated. Ms. Danubio stated
24 she uses two pumps to irrigate this property, a 3 bhp pump on the south fork of
25 Younger Ditch and a second 3 bhp pump on an excavated pond. Water is distributed

1 from these pumps by means of hoses and sprinklers. She further indicated the
2 former owners of this property used ditches and rill methods of irrigation and the
3 evidence of such ditches still exist on the property. Tract 3 lies approximately
4 3500 feet below the split from the main branch of the Younger Ditch.
5

6 In the opinion of the Referee, there has been a satisfactory showing that
7 water rights are properly established and perfected for use on the property in
8 question; however, such rights only extend to the Younger Ditch diversion and not
9 the unnamed pond. The rights associated with Younger Ditch clearly are related to
10 the original appropriation of water through the Younger Ditch which has a priority
11 date of June 5, 1886. According to Ms. Danubio's testimony, the diversion of
12 water from the unnamed pond was initiated subsequent to construction of Interstate
13 90 which was in the late 1960's or early 1970's. In order for there to be a water
14 right for use of this source, compliance with the permitting requirements of RCW
15 90.03 are required. There is no evidence this occurred. Although the record is
16 silent as to possible capture and reuse of Younger Ditch water, the pump on the
17 excavated pond is in the appropriate location to do so. Ms. Danubio testified
18 that 4.5 acres are being irrigated, however, the Referee has ascertained that the
19 total acreage contained in Tract 3 is approximately 5 acres, of which about 1 acre
20 is inundated by the excavated pond. Therefore, the Referee has determined the
21 maximum acreage which can be and has been irrigated within Tract 3 is 4 acres.

22 The Referee therefore proposes a right be confirmed to Richard and Jean Haas
23 and Sharon Winslow with a priority date of June 5, 1886, in the amounts of 0.09
24 cfs; 24.5 acre-feet per year for the sprinkler irrigation of 4 acres and stock
25 water from April 20 to September 30. An additional 0.09 cfs from the Younger
26
27

1 Ditch intake is allocated to satisfy the conveyance loss from the intake to the
2 property of these claimants.
3

4 Loyd Garrett appeared pro se to offer testimony with respect to his portion
5 of the claim. Mr. Garrett stated during his testimony that he purchased Tracts 2
6 and 4 from the GRM Ranch in 1977 and 1978. The crop previously grown on Tract 4
7 was Douglas fir trees, however, he indicated the trees had been destroyed and he
8 will probably be putting in hay on that land. He also stated stock had been
9 pastured on this land and he anticipates having several horses in the future.
10 This land is irrigated from Younger Ditch by means of an 8 bhp gasoline engine
11 with a sprinkler system. Mr. Garrett speculated this property had been
12 extensively irrigated in the past since there was evidence of ditches on the land
13 and it had been in pasture land prior to his purchase. Mr. Garrett stated that he
14 irrigates about 5 acres of hay on Tract 4 from both the Younger Ditch and the pond
15 located in the vicinity of his south property line.

16 Tract 2 is irrigated by means of a 2½ bhp pump and sprinkler system with the
17 pump alternately being moved between Younger Ditch and the pond. He stated that
18 similar to the situation on Tract 4, Tract 2 also has old ditches which apparently
19 have been used by previous owners. The pond used to irrigate the Garrett lands is
20 the same pond that has been used to irrigate the Danubio property, Tract 3. As
21 previously discussed, a right cannot be confirmed for use of the pond due to the
22 lack of a water right permit issued pursuant to RCW 90.03; however, capture and
23 reuse may be applicable.

24 Although Mr. Garrett indicated 5 acres were being irrigated, the Referee
25 believes that of the 5 acre tract, approximately 1 acre is covered with water by
26 the unnamed pond, leaving 4 irrigable acres. Based upon the evidence and
27

1 testimony in the record, the Referee believes a valid water right is appurtenant
2 to both tracts owned by the Garretts.
3

4 The Garrett property lies on the south branch of Younger Ditch, approximately
5 3000 to 3500 feet below the split from the main ditch.
6

7 It is the Referee's recommendation a right be confirmed to the Garretts with
8 a priority date of June 5, 1886, in the amounts of 0.15 cfs; 45 acre-feet per year
9 for the irrigation of 7.5 acres within Tracts 2 and 4. An additional 0.01 cfs;
10 0.5 acre-foot per year is allowed to satisfy the requirement for the watering of
11 livestock. Furthermore, an allowance of 0.16 cfs shall be attached to this right
12 for conveyance loss, both in the main stem of the Younger Ditch and the south fork
13 of Younger Ditch. The period of water use shall be from April 20 to September 30
as provided in the 1913 limiting agreement.
14

15 During the evidentiary hearing, Carolyn Merritt appeared pro se to offer
16 testimony in behalf of the Merritt portion of the claim. Mrs. Merritt testified
17 they purchased Tract 1 in 1977 and the previous owners of that land had pasture
18 and cattle on the property. She clarified that in addition to the 1.5 acres of
19 lawn and garden identified on the State's investigation report, pasture land is
also irrigated making a total of approximately 4 acres of irrigation within
20 Tract 1. She further stated that Younger Ditch is the sole source of irrigation
21 water for this land and two 1 bhp pumps are used with approximately five sprinkler
22 heads per pump. Except for the difference in number of acres irrigated, the
23 State's investigation report mirrors her testimony. Tract 1 is on the south
24 branch of Younger Ditch, approximately 4000 feet below the split from the main
ditch.
25

1 The Referee believes there has been an adequacy of testimony and evidence
2 presented to recommend a water right be confirmed to these defendants. The
3 Referee recommends a right be confirmed with a June 5, 1886, priority date in the
4 amounts of 0.08 cfs; 24 acre-feet per year for the irrigation of 4 acres. An
5 additional 0.01 cfs; 0.5 acre-foot per year should be adequate to satisfy the
6 requirements of watering livestock which Ms. Merritt indicated totaled two
7 horses. The conveyance loss should be satisfied by the additional diversion at
8 the Younger Ditch intake of 0.10 cfs. Again, the period of water use shall be
9 April 20 through September 30 of each year.

10 The investigation report prepared by Ecology states the Goenners are
11 successors in interest to Tract 5 of the Airport Road Tracts located within
12 Government Lot 1 of Section 31, T. 20 N., R. 16 E.W.M. According to that report,
13 this 5 acre tract consists of pasture lands and no diversion structures or recent
14 signs of irrigation were observed on this property. Neither the Goenners nor a
15 person representing their interests were present during the evidentiary hearing to
16 offer testimony in support of this claim. As a consequence, the Referee cannot
17 recommend any water rights be confirmed to these defendants.

18 Attorney Richard T. Cole represented the GRM Ranch during the evidentiary
19 hearing. Mr. Cole offered into evidence a chain of title (DE-156) and an aerial
20 photograph (DE-157) outlining the property now owned by GRM Ranch. Mr. Cole
21 stated it was his understanding that the remaining GRM property had a history of
22 irrigation and stock water use, but could not offer personal or first-hand
23 testimony.

24 Mr. Cole stated the present owners of the GRM Ranch are all widows of their
25 husbands and the estate managers. He further stated Mr. Guzzie's widow,
26

27
28 REPORT OF REFEREE
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1
2 Mr. Rigalski's widow and Mr. Mus' widow had no experience or knowledge of the GRM
3 property. The current operator of the property was not available to give
4 testimony.
5

5 The investigation report prepared by the State of Washington indicates the
6 Younger Ditch flows through the GRM Ranch property; however, there were no recent
7 signs of irrigation observed on this land. Several head of stock were observed on
8 the property and such stock can obtain water by drinking directly from Younger
9 Ditch.
10

10 The Referee believes there has been an insufficient amount of testimony upon
11 which to base an affirmative recommendation to the Court regarding water rights
12 for the lands still owned by GRM Ranch. There has been no evidence regarding
13 historical use of water, the amount of water being used on the land and the number
14 of acres being irrigated. The claim pertaining to the remainder of the GRM Ranch
15 lands is therefore denied.
16

17 COURT CLAIM NO. 00365 -- The Estate of Hazel Henshaw
18 Bernard I. Henshaw

19 The above numbered statement of claim was originally submitted to the Court
20 by Hazel Henshaw. This document claims rights to the use of the waters of the
21 Yakima River through the Younger Ditch for the irrigation of 148 acres under a
22 priority date of 1886. Bernard I. Henshaw, Hazel Henshaw's son, was joined as an
23 additional party defendant through order of this Court dated April 2, 1996.
24 During the evidentiary hearing, the Henshaws were represented by Brian Frederick,
25 Attorney at Law. Appearing as witnesses in behalf of this claim were Bernard
26 Henshaw and Richard C. Bain, Jr., Civil Engineer.
27

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1 The investigation report prepared by Ecology states the Henshaw property,
2 which is in the SW $\frac{1}{4}$ of Section 30, T. 20 N., R. 16 E.W.M., is supplied water
3 through the Younger Ditch which flows approximately one mile from the Yakima River
4 to the Henshaw property. A 15 bhp pump located in the western portion of the
5 claimants' property diverts water directly from Younger Ditch. This pump supplies
6 water to a wheel line irrigation system. As the Younger Ditch flows across the
7 claimants' property, water is further diverted from the ditch into a pond. A
8 10 bhp pump diverts water from this pond to supply additional wheel line sprinkler
9 systems. Additionally, large nozzle diameter sprinkler guns are used on these
10 lands. Neither the claimant nor Ecology addressed the capacity of the pumps or
11 the sprinkler system used by the claimant, so again the Referee is faced with
12 using a standard water duty for assigning an instantaneous quantity of water.
13

14 Bernard Henshaw, during his testimony, stated he had lived on this property
15 since about 1944, at which time his parents acquired interest in this land. He
16 observed structures on the property which he estimated dated back to the late
17 1800s. Mr. Henshaw stated he is irrigating about 75 acres with the principal crop
18 being Timothy hay. He further stated this property has been consistently
19 irrigated throughout the years. Mr. Henshaw stated he is basing his claim to
20 water right on a Notice of Appropriation (DE-104) which was executed on June 5,
21 1886, which documents Mr. Younger's intent to appropriate water from the Yakima
22 River through the Younger Ditch to serve lands to the east of the Cle Elum area.
23 The history of the development of the Younger Ditch is discussed in detail on page
24 7 of this report and will not be repeated. The Henshaw property is part of the
25 land owned by Peter Younger during the late 1800's and early 1900's.
26
27

1 Water Right Claim (WRC) No. 042813 was filed pursuant to the Water Rights
2 Claims Registration Act (Chapter 90.14 RCW) in 1973 by Hazel Henshaw asserting a
3 right to divert 2.96 cfs; 592 acre-feet per year from the Yakima River (Younger
4 Ditch) for the irrigation of 145 acres in the SW $\frac{1}{4}$ of Section 30, T. 20 N.,
5 R. 16 E.W.M. The point of diversion is identified as being in Section 35,
6 T. 20 N., R. 15 E.W.M., which is the section where the Younger Ditch diverts from
7 the Yakima River.

8 Mr. Bain's testimony was generic in scope in that his testimony and his
9 report (DE-109) speaks to the characteristics of the Younger Ditch, soil types,
10 crop types grown in the area, water use and duty, and irrigation methods employed
11 by farmers using the Younger Ditch water, and conveyance loss in the Younger
12 Ditch. The Referee will use the water duty and conveyance loss figures to which
13 Mr. Bain testified and offered evidence.

14 According to the record, water is diverted into the Younger Ditch from the
15 Yakima River from a slough or side channel located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
16 Section 35, T. 20 N., R. 15 E.W.M. The ditch intake consists of a concrete
17 headgate and fish screening facilities. The ditch is an unlined canal which leads
18 easterly and northerly to the Cle Elum Airport Road, at which point it bifurcates
19 into a north fork and south fork. The north fork serves the Henshaw and
20 Grosgebauer properties and additional irrigated farmland located easterly of the
21 Cle Elum Airport within the S $\frac{1}{2}$ of Section 29, T. 20 N., R. 16 E.W.M. The south
22 fork of this ditch system serves smaller land holdings within Section 31 and
23 possibly Section 32, T. 20 N., R. 16 E.W.M.

24 Based upon the record in this case, the Referee believes a valid water right
25 was perfected for the benefit of the Henshaw property. The Referee, as a
26

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1 consequence, recommends a right be confirmed to these defendants under a priority
2 date of June 5, 1886, in the amounts of 1.50 cfs; 450 acre-feet per year for the
3 irrigation of 75 acres. An additional 0.02 cfs; 3 acre-feet per year is allowed
4 for stock water and 0.30 cfs is authorized to accommodate the conveyance loss in
5 the Younger Ditch. As provided in the 1913 limiting agreement, the period of
6 water use shall be April 20 through September 30.
7

8

9 COURT CLAIM NO. 01137 -- Harold B. Iverson
10 & Joann Iverson

11 The Iverson's statement of claim asserts rights to the use of the waters of
12 an unnamed stream for the irrigation of 45 acres. At the time of the evidentiary
13 hearing, Harold Iverson appeared pro se to offer testimony relative to this
14 claim. Additionally, Doris Iverson, Mr. Iverson's mother, also testified.

15 Ecology prepared a report of investigation regarding the above referenced
16 claim. Ecology's findings indicated four points of diversion are located on the
17 unnamed stream. Two of the diversion points are equipped with a $\frac{1}{2}$ bhp pump, which
18 divert water to irrigate about $\frac{1}{2}$ acre of lawn and garden. The other two diversion
19 points are gravity diversions utilizing a concrete headgate and open earthen head
20 ditches. From the head ditches, water is distributed by means of rill
21 irrigation. The department found about 41 of the claimed 45 acres being
22 irrigated. The report also indicates that in the past livestock have been
23 pastured on this land and such stock have access to the unnamed stream.

24 Water Right Claim (WRC) No. 121051 was filed by Mr. Iverson pursuant to
25 Chapter 90.14 RCW in 1974 and such claim related to the irrigation practices on
26 the Iverson property.

27

28 REPORT OF REFEREE
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1 During his testimony, Mr. Iverson stated his parents purchased this farm in
2 1941. He further stated he has farmed this land since 1971 and the principal
3 crops raised are hay and grain. He stated 45 acres are irrigated in two separate
4 parcels and livestock customarily use water from the stream. Mr. Iverson offered
5 detailed testimony regarding his irrigation practices, including methodology and
6 times of use. In addition to the 45 acres irrigated from the unnamed stream,
7 Mr. Iverson indicated the remainder of his crop land is irrigated with water
8 obtained from the Kittitas Reclamation District (KRD). During the hearing,
9 Mr. Iverson offered a map (DE-34) which depicts his crop land being irrigated from
10 the unnamed stream. No other exhibits were offered at that time, however, the
11 record was held open for additional documents the Iversons have in their
12 possession. Mr. Iverson stated these would be forwarded to the Referee. Such
13 documents were received by the Referee and have been identified as Exhibit DE-110,
14 which for the most part consists of chains of title for some of the Iverson
15 property.

16 The items furnished as part of Exhibit DE-110 were adequate to demonstrate
17 part of the Iverson holdings were separated from the public domain in at least
18 1900 or 1902, and other documents provided indicate some of the lands were
19 farmed. However, these documents do not establish that all of the lands presently
20 irrigated were severed from the public domain prior to 1917, or any of these lands
21 were irrigated prior to the Iverson's ownership of the farmland.

22 Based upon the record, it is the Referee's opinion the evidence and testimony
23 are not adequate to recommend confirmation of irrigation water rights to these
24 claimants. In order for the Referee to recommend confirmation of diversionary
25 water rights under the prior appropriation doctrine, the record would have to show

1 these lands were irrigated prior to 1917. That is not supported by evidence or
2 testimony. In order for the Referee to recommend confirmation of diversionary
3 rights under the Riparian Doctrine, the record would have to reflect all of the
4 lands irrigated were severed from federal ownership prior to 1917 and water had
5 been put to beneficial use prior to 1932. Again, neither of these criteria are
6 satisfied by the record.

7 The Referee does, however, recommend stock watering rights be confirmed to
8 these claimants pursuant to the stock water stipulation discussed on page 5 of in
9 this report.

10
11
12 COURT CLAIM NO. 02227 -- Skip Kauzlarich
13 & Beverly Kauzlarich

14 The above referenced statement of claim was originally submitted to the Court
15 by Charles and Mary E. Simpson. Interest in this claim was transferred through an
16 order of the Court dated March 26, 1993, from Mary Simpson to the Kauzlarichs.
17 During the evidentiary hearing, Mary Simpson offered testimony in behalf of this
18 claim and Michael R. Bauer, Attorney at Law represented Ms. Simpson.

19 The claim filed by the Simpsons asserts rights to the use of the waters of an
20 unnamed stream for irrigation, stock watering and domestic purposes. The property
21 upon which the water is used is generally described as being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
22 Section 31, T. 20 N., R. 16 E.W.M. and is riparian to the unnamed stream.

23 The investigation report prepared by Ecology indicates a $\frac{3}{4}$ bhp pump diverts
24 water from the unnamed stream to irrigate approximately 2 acres of pasture land.
25 The pasture land is fenced off from the creek, thus stock do not have access to
26 the stream in question.

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28 REPORT OF REFEREE
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1 According to Ms. Simpson's testimony, she purchased the property in question
2 in the mid 1970's from the Kelleys. A statutory deed from the Kelleys to the
3 Simpsons was entered into the record as defendant's Exhibit DE-19. Also offered
4 into evidence was Exhibit DE-20, which is a Kittitas County title company report
5 regarding chain of title and certain water right instruments. Examination of
6 Exhibit DE-20, however, discloses the chain of title and water right instruments
7 do not pertain to the Simpson land located in Section 31, but in fact describes
8 lands located over 1½ miles to the east in the SE¹SE¹SE¹ of Section 32, T. 20 N.,
9 R. 16 E.W.M.

10 Water Right Claim (WRC) No. 019365 was filed by Ralph Brady in 1972 and the
11 intent of such claim was to preserve rights associated with what is now the
12 Kauzlarich property. The Referee notes the water right claim form indicates a
13 date of April of 1972 as being the date water was first put to beneficial use on
14 the Simpson property. If in fact 1972 was the first date water was applied to the
15 Simpson land, a water right permit should have been secured from Ecology
16 authorizing such use. No such document can be found in the record.

17 In the opinion of the Referee, there has been insufficient evidence offered
18 to recommend confirmation of water rights regarding the lands of these defendants.
19
20

21 COURT CLAIM NO. 00463 -- Frederick E. Krueger
22 & Linda R. Krueger

23 The statement of claim provided to the Court by the Kruegers asserts a right
24 to the use of water from Indian John Springs for domestic supply and agricultural
25 purposes. Frederick Krueger appeared pro se during the evidentiary hearing to
26 provide testimony relative to this claim.

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28 REPORT OF REFEREE
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1
2 According to the record, the spring for which this claim is being made is
3 located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 19 N., R. 16 E.W.M. A 3-inch
4 diameter pipe collects and conveys water from this spring to an exterior hose bib
5 for irrigation of approximately $\frac{1}{2}$ acre of lawn and garden. The source of water
6 for in-house use is obtained from a domestic well. Water is also utilized for
7 livestock purposes.
8

9 The Referee notes that the Kruegers are in part relying upon Surface Water
10 Certificate No. S3-21352C in support of their claim. That certificate under
11 priority date of May 4, 1973, authorizes the diversion of 0.01 cfs; 2 acre-feet
12 per year for domestic supply and stock watering. The place of use on the
13 certificate is the Krueger property. During his testimony, Mr. Krueger also
14 mentioned that he may enjoy "Moccasin Rights" by virtue of apparent prior
15 ownership of his lands by Native American John Quititit, after whom Indian John
16 Hill and Indian John Springs were named. Mr. Krueger further testified to the
17 historical significance of lands in the vicinity of the spring (i.e., during the
18 later part of this century, Native Americans used these waters to water their
19 livestock). Additionally, Mr. Krueger stated that he had observed a long abandoned
20 ditch leading from the spring area to a garden and orchard area. He attributed
21 that development to the activities of Indian John.
22

23 The Referee has examined the record as it relates to the contention that
24 "Moccasin Rights" may be involved. The Referee believes that there is
25 insufficient evidence in the record to demonstrate that such rights may have
26 devolved to the present owner. Generally, there would have to be documentary
27 evidence substantiating Indian ownership of the lands and the extent of irrigation
28 by the Indian allottee at the time property was first transferred into non-Indian

1 ownership. The only evidence in the file is contained in defendant's
2 Exhibit DE-74, which is a quit claim deed from the heirs of Indian John Quititit
3 to Thomas D. Thomas dated April 28, 1897. However, that deed does not describe
4 property owned by the Kruegers. It describes property located about one quarter
5 to one half mile to the north in a different section of land. As a consequence,
6 the Referee must reject the contention that "Moccasin Rights" are appurtenant to
7 these claimants' lands.
8

9 However, the Referee does believe water rights were initiated and perfected
10 pursuant to Certificate of Surface Water Right No. S3-21352C. The Referee
11 therefore proposes that a right be confirmed under priority date of May 4, 1973,
12 to these defendants, for the use of 0.01 cfs, 2.0 acre-feet per year from Indian
13 John Spring for domestic supply/lawn and garden irrigation and stock water. It is
14 further recommended that the Director of the Department of Ecology, cancel,
15 rescind or otherwise make null and void Surface Water Certificate No. S3-21352C.
16

17 COURT CLAIM NO. 00307 -- Otto H. Lehmann
18 & Gisela R. Lehmann
19 Ingrid H. Lehmann
Bert O. Lehmann

20 COURT CLAIM NO. 02281 -- Otto H. Lehmann

21 These two statements of claim submitted to the Court by these defendants
22 assert rights to the use of the waters of Thornton Creek for irrigation.
23 Statement of Claim No. 02281 is a duplicate of the previously filed Statement of
24 Claim No. 00307, therefore, this Referee will consider them as one. Bert Lehmann
25 appeared pro se to offer testimony at the evidentiary hearing.
26

27 REPORT OF REFEREE
28 Re: Subbasin No. 5

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1 The land to which these claims pertain is described as being the West 764.76
2 feet of the East 1283.76 feet of the SE $\frac{1}{4}$ of Section 5, T. 19 N., R. 16 E.W.M.,
3 lying southerly of lower Peoh Point Road and northerly of Interstate Highway 90.
4 Thornton Creek traverses this property from south to north and according to
5 Mr. Lehmann's testimony, an undeveloped spring is located near the southern margin
6 of the property. Mr. Lehmann testified 18 acres are being irrigated, principally
7 in the northerly portion of the property, by waters supplied from the KRD and he
8 is assessed for those 18 acres by the district. Approximately 9 acres are
9 irrigated directly from the water delivered by the KRD and the remaining 9 acres
10 west of Thornton Creek are irrigated with reclamation district water, which is
11 allowed to run into Thornton Creek on the Lehmann property and is subsequently
12 pumped out of Thornton Creek. Stock that are pastured on this land have access
13 both to Thornton Creek and the unnamed spring. Mr. Lehmann stated no use is being
14 made of water for domestic supply; however, that is a use that may be contemplated
15 in the future.

16 Based upon the testimony of Mr. Lehmann, it is apparent the rights associated
17 with this land have devolved through the KRD and the district's rights have been
18 determined in the major claimant pathway, (Reports of the Court, Volume 14 and 14A
19 and the Conditional Final Order). Since a right is notd being asserted for the
20 naturally occurring water in Thornton Creek, other than stock watering, the
21 Referee does not recommend irrigation rights be confirmed to these defendants.
22 Their use of water is already being accommodated as a patron of the KRD.

23 No water rights are recommended for confirmation for domestic supply since
24 this is a use which may take place in the future and the adjudication proceedings

1 only determine existing and not prospective rights. Surface water rights for a
2 future use can only be acquired through the permitting procedures of RCW 90.03.
3

4 The use of water for stock watering purposes from both Thornton Creek and the
5 unnamed spring shall be recognized pursuant to the stock water stipulation
6 identified on page 5 of this report.
7

8 COURT CLAIM NO. 02239 -- Stephan M. Mason
9 & Janice L. Mason

10 The Masons are claiming rights to the use of water from an unnamed stream and
11 pond for the irrigation of 15 acres and stock water. The defendants did not make
12 an appearance during the evidentiary hearing to offer testimony or evidence for
13 this claim. As a result, the Referee finds no diversionary water rights relating
14 to this claim are confirmable. The Plaintiff's Report to the Referee identified
15 that a right to non-diversionary stock watering was being asserted by this
16 claimants. This use is covered by the stock water stipulation discussed on page 5
17 of this report and no other right is necessary.
18

19 COURT CLAIM NO. 01472 -- Louis Massucco
20 & Blanche Massucco
21 Mike Cordner
22 & Margo Cordner
23 Vera M. Stefanac, MD
24 & Martin J. Stefanac, II

25 The original statement of claim was filed with the Court by the Massuccos,
26 asserting rights to the use of the waters of Thornton Creek for stock watering.
The Cordners were added as a party defendant through order of this Court dated
March 28, 1989. The Stefanacs were also added as a party defendant through an

27 REPORT OF REFEREE
28 Re: Subbasin No. 5

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1
2 order granting motion to join additional parties dated August 6, 1990. Blanche
3 Massucco appeared pro se during the evidentiary hearing to offer testimony with
4 respect to this claim.

5 During her testimony, Ms. Massucco explained their property had been short
6 platted in 1987 and two 3 acre tracts taken out of the east end of their property.
7 One of these 3 acre tracts was sold to the Cordners who constructed a residence
8 thereon and subsequently sold that tract to the Stefanacs. Ms. Massucco explained
9 there are two 3 acre tracts of irrigation water supplied by the KRD that are not
10 associated with the rights they are asserting from Thornton Creek. Her further
11 testimony was their property was purchased in 1965 from Bruce McDonald, and she
12 had no knowledge of the history of this property or irrigation activities prior to
13 that date. Approximately 1 acre of lawn is being irrigated from Thornton Creek by
14 means of a 1½ bhp pump, hose and six sprinklers. The domestic supply for the
15 Massucco residence is obtained from a deep well.

16 No permits or certificates issued pursuant to Chapter 90.03 RCW or water
17 right claim registrations filed pursuant to Chapter 90.14 RCW were entered into
18 evidence.

19 It is the opinion of the Referee there is insufficient testimony and evidence
20 to recommend confirmation of an irrigation water right to these defendants. The
21 record would indicate there was no use of water on this property prior to 1965, in
22 which case the only way rights could have been established is through the
23 appropriation procedure identified in Chapter 90.03 RCW. That involves filing an
24 application with Ecology and subsequent issuance of permit. That evidently was
25 not done. As a consequence, the Referee rejects the claim of these defendants to
26 any diversionary rights to the use of water from Thornton Creek. However, these

1 claimants most certainly are entitled to the continued watering of their livestock
2 from Thornton Creek pursuant to the stipulation regarding stock water identified
3 on page 5 of this report.
4

5

6 COURT CLAIM NO. 01467 -- Harry James Masterson
7 (A) 03296 & Mary Lou Masterson

8 The above referenced statements of claim were submitted to the Court by
9 B. L. Masterson, et al. Through order of the Court dated May 6, 1991, interest in
10 this claim was transferred to Harry James Masterson and Mary Lou Masterson. These
11 statements of claim reference several sources of water, only two of which relate
12 to waters contained within Subbasin No. 5. The remaining sources are within
13 Subbasin No. 3, the Teanaway River Subbasin. The two sources in Subbasin No. 5
14 are an unnamed spring located in Section 20, T. 20 N., R. 16 E.W.M. and runoff and
15 return flow irrigation water originating to the west and north of the Masterson
16 property located in Sections 32 and 33, T. 20 N., R. 16 E.W.M.

17 During the evidentiary hearing, Mr. Masterson was represented by Brian
18 Frederick, Attorney at Law. Mr. Frederick requested of the Referee that the
19 Masterson claim be heard during the evidentiary hearing regarding the Teanaway
20 River Subbasin since most of the Masterson claims and the bulk of the irrigated
21 land are located within that subbasin. Hearing no objection to that request, the
22 Referee granted permission to hear the Masterson claim during the evidentiary
23 hearing for the Teanaway River. In addition, Mr. Frederick stated the Mastersons
24 were withdrawing their claim to return flow and runoff water originating within
25 Subbasin No. 5.

26

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1 In his report to the court regarding Subbasin No. 3 (Teanaway River) dated
2 January 25, 1996, the Referee recommended that water rights be confirmed to these
3 defendants from the Teanaway River for use in the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 28 and in the
4 N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 33, all in T. 20 N., R. 16 E.W.M. The Referee did not recommend
5 confirmation of water rights in the S $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 33 or the E $\frac{1}{2}$ NE $\frac{1}{4}$ of
6 Section 32 from the Teanaway River. There was some question, however, about these
7 lands being served at least in part from waters originating within
8 Subbasin No. 5. This question is mooted since the Mastersons have withdrawn their
9 assertion of a water right for these waters.

10 The assertion of these claimants regarding water rights to a spring located
11 in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, T. 20 N., R. 16 E.W.M. does have merit regarding the
12 use of that spring for the watering of livestock. Water Right Claim
13 (WRC) No. 001054 assisted in the preservation of that right. According to
14 Mr. Masterson's testimony, the spring provides about 2 gpm flow and is mainly used
15 for stock water for 30 - 40 pair of livestock, generally pastured from April
16 through October.

17 Based upon the record, the Referee recommends confirmation of a right with a
18 June 30, 1884, priority date in the amounts of 0.005 cfs; 2 acre feet per year for
19 the purposes of watering livestock from April 1 to October 31.

1
2
3 COURT CLAIM NO. 01532 -- Robert E. Monahan
4 & Adele F. Monahan
5 Charles W. Forcier
6 & Judith A. Forcier

7 The above referenced statement of claim was originally filed by the Monahans
8 in 1981. This statement of claim covered parcels of land located within several
9 subbasins within the Yakima River basin drainage. One of the parcels covered in
10 this claim is located in Subbasin No. 5 and is generally described as being within
11 the N½ of Section 11, T. 19 N., R. 15 E.W.M. Charles and Judith Forcier were
12 joined as additional party defendants through an order of this Court dated
13 April 1, 1991. During the evidentiary hearing, Judith Forcier appeared as a
14 witness relative to this claim. She was represented by Michael Bauer, Attorney at
Law.

15 During her testimony, Ms. Forcier stated she and her husband are purchasing
16 the land located in said Section 11 through a real estate contract from Adele
17 Monahan. Her testimony with respect to the sources of water was four (4) springs
18 exist upon this property, and one of these springs has been developed and is in
19 use for domestic supply upon the Curry property which is situated to the north of
20 the Monahan/Forcier property. The Currys are also claimants in this proceeding
21 and the rights to the use of the waters of the spring used by the Currys have been
22 addressed elsewhere in this report. Ms. Forcier stated the remaining three (3)
23 springs have not been developed and to the best of her knowledge, with the
24 exception of the spring used by the Currys, no other use of water has taken place
25 upon her property.

26
27 REPORT OF REFEREE
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1
2 The Forciers plan to construct a residence and use water from one of these
3 three remaining springs for domestic purposes. The other two springs may at some
4 future date be developed for the watering of livestock.
5

6 The water right adjudication proceeding is for the purpose of identifying,
7 confirming and quantifying existing rights to the use of water based upon
8 statutory and case law. An adjudication proceeding cannot address rights for the
9 future use of water. Contemplated uses are addressed through the administrative
10 appropriation procedure identified in Chapter 90.03 RCW and are initiated by the
11 filing of an application to make beneficial use of water with Ecology.
12

13 As a consequence of the above, the Referee does not propose to confirm any
14 diversionary water rights to these defendants.
15

16 COURT CLAIM NO. 01290 -- Stanley E. Moore
17 Del Simpson
18

19 The above referenced statement of claim was originally submitted to the Court
20 by Stanley E. Moore asserting rights to the use of the waters of an unnamed stream
21 tributary of the Yakima River for stock watering purposes. Through order of the
22 Court dated May 6, 1991, Del Simpson was joined as an additional party defendant
23 regarding this claim. The claimants were represented during the evidentiary
24 hearing by Attorney Richard T. Cole. Hazel Moore provided testimony regarding the
25 use of water on the Moore property.
26

27 Although the Court claim asserts a right only for stock watering, Ms. Moore
28 testified that rights are being asserted for the irrigation of 1 acre of lawn and
garden and approximately 4 acres of pasture land. She indicated a 1½ bhp pump was
installed on the drainage which courses through their property. Shortly before
29

1
2 the evidentiary hearing she learned that the drainage from which they divert is
3 known as Ballard Slough. Ms. Moore stated this stream has a much greater volume
4 during the irrigation season than in other portions of the year and it was her
5 understanding this drainage obtains much of its flow from the Younger Ditch
6 System. According to her further testimony, the stock pastured on the Moore
7 property drink directly from the slough and no specific diversion is made for
8 stock water.

9 According to the evidence, the diversion point under this claim is within
10 Government Lot 3 of Section 4, T. 19 N., R. 16 E.W.M. and the lands owned by the
11 Moores is also in Government Lot 3 of Section 4. At the time of their
12 investigation, Ecology staff observed only the lawn and garden irrigation.

13 Water Right Claim (WRC) Nos. 118937, 118938 and 130081 were entered into the
14 record. These claims were submitted by Jean B. Mayta, a former owner of the Moore
15 property. Although the water right claims asserted rights to three surface water
16 sources for irrigation purposes, all three claims indicated no irrigation was
17 taking place at the time the claims were submitted. The points of diversion were
18 all described as being in Section 4, T. 19 N., R. 16 E.W.M.

19 The Moores put into evidence documents that show that August Hasse obtained a
20 patent from the United States for the S¹NW¹ and Government Lot 3 of Section 4,
21 T. 19 N., R. 16 E.W.M., on September 27, 1889. August Hasse was one of the
22 developers of the Younger Ditch and the Moores are asserting that the source of
23 water they use has its origins in the Younger Ditch. The history of the Younger
24 Ditch as shown by documents in the record is described in detail on page 7 of this
25 report. An agreement between Peter Younger, Herman Tagge, August Hasse and Edmund
26 Taylor was signed on July 14, 1904, detailing the management and control of the

1
2 ditch now called the Younger Ditch. The agreement described the ditch as
3 beginning in the NE¹₄NE¹₄ of Section 35, running across Section 25, through Sections
4 31, 32, and 33 and the southerly through Section 4, T. 19 N., R. 16 E.W.M. The
5 agreement did not specify the lands then irrigated from the ditch. Three years
6 after the agreement was signed August Hasse sold his land in Section 4 to Thomas
7 Mayta. On October 16, 1913, the owners of the Younger Ditch, Peter Younger,
8 Albert Hayden, L. W. Taylor and John Fraser signed a limiting agreement with the
9 United States. Thomas Mayta was not identified as one of the owners of the
10 Younger Ditch. The agreement also identified the lands that were being irrigated
11 from the Younger Ditch. All of the lands being irrigated were in Sections 30, 31
12 or 32 of T. 20 N., R. 16 E.W.M. There were no lands in Section 4 identified as
13 being irrigated with water delivered through the Younger Ditch.

14 The claimant also cite a Notice of Water Location filed by G. Wallace Seaton
15 and Theron Stafford on August 28, 1885, in support of their claim to a water
16 right. However, it is not apparent to the Referee that this notice supports a
17 conclusion that a water right exists for the Moore property. Neither Stafford or
18 Seaton were predecessors to the Moores. The notice states that Stafford and
19 Seaton have located and claim a water ditch beginning on the Teanaway Creek in the
20 SE¹₄SW¹₄ of Section 26, T. 20 N., R. 16 E.W.M. to carry water for agricultural or
21 irrigation purposes for all or portions of Section 26, 27, 34, 33, and 32,
22 T. 20 N., R. 16 E.W.M. and also in Sections 3 and 4, T. 19 N., R. 16 E.W.M. The
23 Teanaway River was the subject of a 1921 adjudication and a water right was
24 awarded for the irrigation of the NE¹₄ of Section 4, T. 19 N., R. 16 E.W.M. with
25 waters diverted from the Teanaway River. There was no right awarded for

1
2 Government Lot 3 of Section 4 and the Moores do not appear to be asserting a right
3 to waters from the Teanaway River.
4

5 There is insufficient evidence in the record to allow the Referee to conclude
6 that water rights had been established for the Moore property. Therefore, the
7 Referee cannot recommend that a water right be confirmed in this proceeding.
8

9 COURT CLAIM NO. 02189 -- James E. Murphy
10

11 The original statement of claim submitted to the Court in this proceeding was
12 filed by Gerald L. and Marie C. Monahan. By order of the Court dated February 26,
13 1991, James E. Murphy was substituted by the Monahans as claimant of record.
14 During the evidentiary hearing, James Murphy appeared pro se and offered testimony
15 with respect to this claim.

16 The statement of claim asserts rights to the use of the waters of an unnamed
17 spring for domestic supply, irrigation and stock water in the NE^{1/4}NE^{1/4} of Section 9,
18 T. 19 N., R. 15 E.W.M. Rights being claimed are based upon Certificate of Surface
19 Water Right No. 11609, with a priority date of May 24, 1965, which authorized the
20 diversion of 0.04 cfs; 22 acre-feet per year for community domestic supply. This
21 certificate issued to the Conservative Baptist Association of Washington for use
22 in a church camp. In addition to being offered into evidence by the defendant,
23 that certificate is also found in the plaintiff's Exhibit SE-3 together with Water
24 Right Claim (WRC) No. 002637. That registration claimed rights to the use of
25 waters of springs and a stream for domestic supply and irrigation with a 1931 date
26 of first water use. There was no evidence of water use prior to the mid-1960's
27 when the association sought a permit through the procedures of RCW 90.03.
28

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1 According to the evidence and testimony, in 1965 the Baptist Church obtained
2 a permit from a predecessor agency to Ecology to develop and use waters from a
3 certain spring located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T. 19 N., R. 15 E.W.M. The
4 spring was subsequently developed and water was transported by means of a gravity,
5 plastic pipeline approximately 1300 feet to the west, where it was used in a
6 campground on property in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, a portion of which is now owned
7 by the claimant. The water was apparently used from the mid-60's up until about
8 1977, at which time the church group sold the property to the Monahans. The
9 record is silent as to the use of water by the Monahans during their ownership;
10 however, Mr. Murphy is now using the water for a single domestic residence and for
11 livestock. The livestock drink from a stock tank located adjacent to the Murphy
12 residence. The claimant recognizes the amount of water granted in the certificate
13 is in excess of his present needs and his stated intent is to use the water only
14 for the single domestic use and stock water.
15

16 Neighboring claimant, Raymond Drebaum, also owns a portion of the place of
17 use described on SWC No. 11609. The Referee has declined recommendation of a
18 right. See page 33 of this report for the discussion of the Drebaum claim.
19

20 Based upon the record, the Referee believes a water right is appurtenant to
21 the Murphy property and such right has its origin in the aforementioned water
22 right certificate obtained by the Baptist Church. The Referee further believes
23 there has not been relinquishment of a portion of this water right based upon the
24 lack of beneficial use of water as identified in Chapter 90.14 RCW. However, the
25 opinion of the Referee is that it would not be prudent to recommend confirmation
26 of a right identifying the full extent of the original water right certificate
since the intended future use is limited to domestic supply and stock water.
27

1
Therefore, the Referee recommends a water right under a May 24, 1965, priority
2 date be confirmed to Mr. Murphy in the amounts of 0.02 cfs; 2 acre-feet per year
3 for domestic supply and stock water.
4

5 Upon confirmation of the rights herein proposed, the Referee recommends the
6 Director of the Department of Ecology cancel, rescind or otherwise make null and
7 void Certificate of Surface Water Right No. 11609.
8

9 COURT CLAIM NO. 01822 -- Owens and Sons, Inc.

10 The statement of claim submitted to the Court by Owens and Sons, Inc.,
11 asserts rights to the use of waters from runoff waste water and an unnamed spring
12 for the irrigation of approximately 30 acres, stock water and cooling use. This
13 defendant made no appearance during the evidentiary hearing to present or defend
14 this claim. As a result of the failure to appear, the Referee finds no
15 diversionary water rights relating to this claim are confirmable. The Plaintiffs'
16 Report to the Referee identified a spring located upon the claimants' property
17 from which a small stream issues. Stock pastured on this land can drink directly
18 from the spring or stream. Non-diversionary stock water use from naturally
19 occurring sources is covered by the stock water stipulation which can be found on
20 page 5 of this report.
21

22 COURT CLAIM NO. 01287 -- Irma Peterson
23

24 The Peterson claim is for rights to the use of the water of an unnamed spring
25 for stock water purposes. Ms. Peterson made no appearance during the evidentiary
26

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1 hearing to present or defend this claim. Consequently, the Referee finds no
2 diversionary water rights relating to the Peterson claim are confirmable. The
3 Plaintiff's Report to the Referee identified a claim to nondiversionary stock
4 watering on the Peterson Property. This type of use is covered by the stock water
5 stipulation discussed on page 5 of this report.
6

7

8 COURT CLAIM NO. 01152 -- Ronald M. Punton

9 The above referenced statement of claim was originally filed with the Court
10 by Tillie Bresko. The statement of claim asserts rights to the use of waters of
11 an unnamed stream for the irrigation of 1.5 acres and domestic supply. The
12 statement of claim indicates the first use was on May 29, 1946. Ronald M. Punton
13 was substituted as a party defendant for Ms. Bresko by order of the Court dated
14 November 8, 1993. During the evidentiary hearing, Marjorie Michael, Ms. Bresko's
15 daughter, testified on behalf of this claim.

16 According to Ms. Michael's testimony, her parents purchased this property
17 situated within the city limits of Cle Elum in the early 1940's and her father
18 installed the irrigation system a few years after the property was purchased. The
19 system consisted of a pipe gravity diversion from the unnamed stream onto the
20 Bresko property where it was used to irrigate garden areas. The system and water
21 from the stream continued to be used until 1982 when the system was destroyed by
22 vandals. The system has not been rehabilitated.

23 Ms. Bresko offered into evidence defendant's Exhibit DE-71, which consists of
24 a land patent document and a chain of title of the property. Water Right
25 Claim No. 130399 was filed on a short form pursuant to the provisions of
26 Chapter 90.14 RCW by John Bresko in 1974.

27

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1
2 Considering the evidence and testimony before the Referee, the right as
3 claimed by this defendant cannot be confirmed. The first use of water which took
4 place on the claimant's property was in 1946 after the effective date of the
5 Surface Water Code of 1917, Chapter 90.03 RCW. In the case of riparian lands, any
6 confirmable right must have been exercised by 1932 and such was not the case. The
7 only way in which rights could have been established for this diversion was
8 through the issuance of a permit or certificate under the provisions of
9 Chapter 90.03 RCW. No such documents have been entered into the record. The
10 Referee has no alternative but to reject the claim of this defendant.
11
12

13 COURT CLAIM NO. 01676 -- Mack D. Richey
14 & Susan R. Richey
15 Brian Frederick
16 & Elizabeth Frederick
17 Real Estate Investment Group
18 Jon L. Newton
19 & Cindy L. Newton
20 Sandra Fredericksen
21
22

23 COURT CLAIM NO. 02222 -- Brian Frederick
24 & Elizabeth Frederick
25
26

27 Statement of Claim No. 1676 was originally filed with the Court by Mack D.
28 and Susan Richey. The water rights asserted therein were based upon a certificate
of water right issued in connection with the water right adjudication, Kittitas
County Superior Court Cause No. 6221, on the Teanaway River. By order of this
Court dated March 9, 1987, the Real Estate Investment Group was made an additional
party defendant to this claim. By a second order of the Court dated June 20,
1989, Sandra Fredericksen was made a party defendant to this action in connection
with this claim. A third order of the Court, also dated June 20, 1989,

27
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1 transferred a portion of the Richey claim to Brian and Elizabeth Frederick, Sandra
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transferred a portion of the Richey claim to Brian and Elizabeth Frederick, Sandra
Fredericksen and John L. and Cindy L. Newton.

A separate statement of claim to the Court, No. 2222, was filed by Brian and
Elizabeth Frederick. This statement of claim was also based upon the Teanaway
River water right identified in Statement of Claim No. 1676.

During the evidentiary hearing, all of the above claimants were represented
by Brian Frederick, Attorney at Law. Appearing as witnesses to offer testimony
regarding these claims were Richard Bain, Consulting Engineer, Brian Frederick, as
a claimant, and Gary Wivag, lessee of a portion of the property and operator of
the irrigation system which serves the properties of all the aforementioned
claimants. All of these claimants own lands in the south half of Section 29,
T. 20 N., R. 16 E.W.M. According to the record, these lands were originally
served by a diversion from the Teanaway River, however, this diversion was changed
in about 1949 such that the source of water is now the Yakima River with a point
of diversion in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, T. 20 N., R. 15 E.W.M. That
diversion point coincides with the intake of the Younger Ditch which now serves
this property. Water is pumped from the Younger Ditch from a point in Section 30
by means of a 100 bhp centrifugal pump and lifted to a ditch located at a higher
elevation. Several smaller horsepower pumps are also utilized in this system.

The origin of the claimed water right is Certificate of Surface Water Right
No. 132, which issued to David L. Thomas with a 1900 priority date for the
diversion of 5.8 cfs from the Teanaway River for the irrigation of 290 acres from
May 1 to September 30 within the S $\frac{1}{2}$ of Section 29, T. 20 N., R. 16 E.W.M. That
certificate was modified by a Certificate of Change in Point of Diversion of Water
issued by the State Supervisor of Hydraulics (Exhibit DE-128). That certificate

1 of change, recorded in Volume 1, Page 278 of Records of Change of Point of
2 Diversion, authorized the diversion point under the aforementioned certificate to
3 be changed from a point on the Teanaway River in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24,
4 T. 20 N., R. 16 E.W.M. to a point on the Yakima River at the intake of the Younger
5 Ditch. In recognition of the frequent regulation of Teanaway water rights with
6 priorities of 1900, the Certificate of Change contains the provision that approved
7 the transfer from the Teanaway River to the Yakima River ". . . for periods only
8 during the irrigation season when waters, or any part of it is available in the
9 Teanaway River to fill Class 16 Right hereinabove referred to."

10 Richard Bain testified as to the technical aspects of the use of water on the
11 property of the claimants. Mr. Bain indicated there was a total of 270 acres
12 irrigated on this land and, of that, 110 acres were irrigated by surface or rill
13 methods and 160 acres were sprinkler irrigated. Mr. Bain testified that for rill
14 irrigation in the S $\frac{1}{2}$ of Section 29, a water duty of 10.4 acre-feet per acre is
15 needed, which is slightly lower than that needed on other lands served by the
16 Younger Ditch. The duty of water for the sprinkler system was calculated to be 6
17 acre-feet per acre.

18 Mr. Wivag gave extensive testimony regarding his method of irrigating the
19 lands of these claimants. One of the more pertinent aspects of his testimony was
20 the sprinkler irrigated land and the rill irrigated land are not discrete, in that
21 some of the land is sprinkle irrigated early in the season, rill irrigated in
22 mid-season and then sprinkle irrigated thereafter. Mr. Wivag also stated up to 80
23 head of cattle, 12 horses, goats, chickens and pigs are afforded livestock water
24 from the irrigation system. Brian Frederick testified at the present time he has
25

1 three horses on his property, but there has been as much as 600 head of sheep in
2 this area.
3

4 Based upon the testimony and evidence contained in the record, the Referee
5 believes water is and has been utilized to the extent of 270 acres of irrigation
6 in conformance with the Teanaway River Water Rights Certificate and Certificate of
7 Change. There is no way in which the Referee can allocate water to each parcel
8 under separate ownership since all parcels are integrated into a common irrigation
9 system, are served under a single water right, and the system is operated using a
10 mix of sprinkler and flood irrigation, which to a large part is dependent on the
11 growth pattern of the crops, especially Timothy hay.

12 Although Mr. Bain testified to an average water duty of 7.79 acre-feet per
13 year per irrigated acre, Certificate No. 132 authorized the diversion of 5.8 cfs,
14 which if diverted the entire 138 day irrigation season, would result in 1,585
15 acre-feet being withdrawn during the the authorized season. The right reflected
16 in the original Teanaway River Certificate No. 132 and Certificate of Change
17 recorded in Volume 1, Page 278, including the instantaneous quantity, irrigation
18 season and the limiting provision contained in the Certificate of Change, define
19 the extent of the right that can be recommended for confirmation. No additional
20 instantaneous quantity shall be allocated for conveyance loss. Any ditch losses
21 must, of necessity, come from the 5.8 cfs maximum instantaneous rate as measured
22 at the point of diversion. It is anticipated that approximately 1.16 cfs loss
23 will occur when 5.8 cfs is diverted. Claimants should anticipate periods of
24 interrupted supply during most water years because of the limiting provision. The
25 appurtenant lands will be described and identified by ownership.

1
2 It is recommended that a right be confirmed under Court Claim No. 01676 from
3 the Yakima River with a June 30, 1900, date of priority for the diversion from
4 May 1 to September 15 of 5.8 cfs; 1,585 acre-feet per year for irrigation of 270
5 acres; and 4 acre-feet stock watering within the S $\frac{1}{2}$ of Section 29.
6

7 Upon confirmation of the right herein proposed, the Director of the
8 Department of Ecology shall cancel, rescind or otherwise make null and void the
9 Teanaway River Adjudication Certificate No. 132 and Certificate of Change,
10 Volume 1, Page 278.
11

12 COURT CLAIM NO. 01457 -- Ira C. Roberson
13 01458 & Betty J. Roberson
14

15 These defendants have submitted two statements of claim to the Court
16 asserting rights to the use of the waters from two unnamed drainages for the
17 irrigation of 16 acres of land and stock water. The defendants made no appearance
18 during the evidentiary hearing to present testimony or provide defense for this
19 claim. As a result, the Referee cannot confirm diversionary water rights relating
20 to these claims. If the stock water use asserted in the claim is non-diversionary
21 in nature, the stock water stipulation described on page 5 of this report covers
22 the use.
23

24 COURT CLAIM NO. 01280 -- Robert R. Roseburg
25 & Enid Roseburg
26

27 The Roseburgs provided to the Court a statement of claim asserting rights to
28 the use of the waters of an unnamed spring for the irrigation of 40 acres and
stock water. During the evidentiary hearing, Richard T. Cole, Attorney at Law,
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1 represented the Roseburgs. Robert Roseburg testified with respect to this claim.
2

3 The investigation report entered into evidence by Ecology states a metal pipe
4 diverts water from an unnamed stream which is fed by a series of springs. The
5 diversion is located approximately 1300 feet south and 5 feet east of the
6 northwest corner of Section 2, T. 19 N., R. 15 E.W.M. That pipe supplies water
7 into an earthen head ditch which rill irrigates a 40 acre hay field. KRD water is
8 also delivered through this head ditch. Additionally, a buried pipeline supplies
9 water to a 2 acre oat field and stock tanks located in the vicinity of the
10 Roseburg residence. A 2 bhp booster pump supplies pressure to a portable
11 sprinkler system used to irrigate the 2 acre field.

12 Water Right Claim No. 072027 filed pursuant to the provisions of
13 Chapter 90.14 RCW was also entered into evidence. Such claim assisted in the
14 preservation of any water rights held by the defendants for irrigation and
15 diversionary stock watering.

16 During Mr. Roseburg's testimony, he indicated the property covered by this
17 claim, which is in the NW $\frac{1}{4}$ of Section 2, T. 19 N., R. 15 E.W.M., has been in his
18 family since the late 1800's. He offered into evidence Exhibit DE-46, a patent
19 from the United States to Nathan Preston, dated June 5, 1884; Exhibit DE-44, a
20 warranty deed from Preston to Smith, dated December 21, 1882; and Exhibit DE-45, a
21 Notice of Appropriation of Water executed by Breta Roseburg, dated March 8, 1897.
22 The Notice of Appropriation describes the place of use as being within the NE $\frac{1}{4}$ of
23 Section 3, T. 19 N., R. 15 E.W.M., which is not part of the Roseburg's ownership.

24 Mr. Roseburg stated he rill irrigates a 40 acre hay field by gravity flow
25 with the overall predominate crops being Timothy hay and wheat; however, he also
26 sprinkle irrigates a 2 acre oat field in the northeast corner of the property,

1 east of the farmstead. Mr. Roseburg estimates that the ditch carries 1 cfs and,
2 due to the fact that the method of water application is rill, about 9 acre-feet
3 per year are required to successfully irrigate this land. Mr. Roseburg's personal
4 recollection regarding the history of this property is this land has consistently
5 been irrigated prior to 1929. The cattle pastured on the Roseburg property have
6 access to the springs and stream, in addition to the open earthen ditch, which is
7 part of his irrigation system, and to stock tanks near the farmstead.
8

9 Although the Notice of Appropriation filed by Bretta Roseburg is appurtenant
10 to lands not currently owned by the Roseburgs, the Referee is satisfied a valid
11 water right has been established and perfected for the Roseburg property. The
12 testimony has shown water was put to beneficial use prior to 1932 and the land was
13 separated from the public domain prior to 1917, which satisfies requirements for
14 confirmation of a right under the Riparian Doctrine. Although the land patent was
15 dated June 5, 1884, the warranty deed in 1882 clearly demonstrates the land was in
16 private ownership at that time. The Referee has selected the earlier date as the
17 appropriate priority date for this right. The 9 acre-feet per year testified to
18 by Mr. Roseburg seems to be somewhat high for this area; however, Mr. Roseburg has
19 been farming this land for many years and should have the best knowledge regarding
20 the water needs for irrigation of his land. The Referee therefore will utilize 9
21 acre-feet per year for the rill irrigated hay field, but the 2 acres of sprinkler
22 irrigated oats will have the standard 5 acre-feet per year.

23 Based on the foregoing, the Referee recommends confirmation of a right to
24 these defendants with a December 21, 1882, priority date in the amounts of 1.0
25 cfs; 370 acre-feet per year (360 acre-feet for the 40 acre hay field and 10
26 acre-feet for the 2 acre oat field) for the irrigation of 42 acres and 2 acre-feet

1 per year for diversionary stock water. It is also noted cattle on this property,
2 in addition to having access to the irrigation system, also have access to springs
3 and a stream on this property. The stock water stipulation identified on page 5
4 of this report should be adequate to take care of the that use.
5

6 Special mention should be made of the fact that, according to Mr. Roseburg's
7 testimony, the hay field is also supplied irrigation water from another source,
8 namely the KRD. The annual quantity identified for the hay field, 360 acre-feet
9 per year, was represented to be a maximum duty of water, therefore, water applied
10 from any other source should be used only to make up any deficit in water supply
11 under this proposed right.
12

13 COURT CLAIM NO. 01296 -- The Estate of John E. Rothlisberger
14 Pete White
15 & Christa White
16 Lonny White
17 Michael White

18 COURT CLAIM NO. 01297 -- The Estate of John E. Rothlisberger
19 01298 Richard White
20 Jeanne Purple

21 Three claims filed with this Court were originally submitted by John
22 Rothlisberger. Through Orders of this Court dated March 6, 1996, Jeanne Marie
23 Purple and Larry and Richard White were joined as additional parties defendant to
24 Mr. Rothlisberger for Claim Nos. 01297 and 01298. Richard T. Cole, Attorney at
25 Law, represented the claimants during the evidentiary hearing. John Rothlisberger
26 appeared as a witness to provide testimony regarding these claims. Each of the
claims cover a discrete parcel of land served by a separate source of water with
different historical facts. The Referee, therefore, has elected to treat each
claim separately.

27 REPORT OF REFEREE
28 Re: Subbasin No. 5

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1
2 Claim No. 01296 relates to lands identified as being Government Lots 2, 3 and
3 4 in Section 1, T. 19 N., R. 15 E.W.M. According to the investigation report
4 prepared by Ecology, two sources of water serve the aforementioned lands. The
5 first source, the more easterly, is a stream, also called Rabbit Creek during
6 testimony of other neighboring claimants, which courses generally northeasterly
7 in the east half of said Section 1. The investigation report states that a point
8 of diversion is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T. 19 N., R. 15 E.W.M.,
9 with a concrete headgate diverting water from Rabbit Creek into a metal conduit.
10 This conduit feeds into an open, earthen ditch which flows northerly approximately
11 1350 feet to the place of use. Concrete head ditches and rill irrigation methods
12 have been employed to irrigate a hay field. Thirty-six acres of land within
13 Government Lot 2 of Section 1 are irrigated from this source. Livestock are
14 raised on the property and have access to the irrigation ditches.
15 Mr. Rothlisberger's family has owned land in the general area since the 1920's and
16 he testified that this land in Section 1 has been irrigated for as long as he can
17 remember.

18 NPRR obtained a patent from the United States on November 4, 1895, for lands
19 including all of Section 1, T. 19 N., R. 15 E.W.M. The railroad sold Government
20 Lots 3, 4 and the S $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1 to Felecun Pays on November 8, 1900, and
21 Government Lot 2 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1 to Joseph Godawa on March 31, 1934.
22 The NPRR contracted with the KRD in 1925 to receive KRD water for 134.25 acres
23 within the NE $\frac{1}{4}$ (which includes Government Lot 2) of Section 1, T. 19 N.,
24 R. 15 E.W.M.

25 No water right permits or certificates are in evidence regarding this source;
26 however, Water Right Claim No. 136670 was filed on this source by

1
2 Mr. Rothlisberger in 1974. It asserted a right to 0.80 cfs; 160 acre-feet per
3 year for the irrigation of 40 acres in Government Lot 2 of Section 1, T. 19 N.,
4 R. 15 E.W.M. Although WRC No. 136670 identified the source of water as "waste or
5 seepage water", the point of diversion described is on the stream locally known as
6 Rabbitt Creek.

7 Defendant's Exhibit DE-54, which was offered in support of this claim,
8 includes a document that may explain the term "waste water" used by
9 Mr. Rothlisberger when he completed the water right claim. The document is a copy
10 of a water right notice filed by Ole Elliason on June 10, 1886, stating that
11 Mr. Elliason is in possession of Section 1, T. 19 N., R. 15 E.W.M. and he had
12 appropriated 100 inches of water from the creek that runs in a northerly direction
13 through the section. The notice states that the water claimed is the "waste
14 water" flowing in said creek after A. Peostore, E. Hartle and Don Pressy have
15 taken their water. Although the link between Elliason and the Rothlisberger land
16 is tenuous at best, no one else is asserting a right based on the Elliason notice
17 of appropriation nor has there been presented evidence of historical irrigation
18 from this stream elsewhere in the section.

19 Based upon the record, the Referee believes that there has been a
20 satisfactory showing that a water right has been perfected from this stream on a
21 portion of these defendants' lands. Therefore, the Referee proposes that a right
22 be confirmed under a June 10, 1886, priority date in the amounts of 0.80 cfs; 160
23 acre-feet per year for the irrigation of 36 acres and an additional 2 acre-feet
24 per year for stock watering. The priority date recommended relates to the filing
25 of the notice of appropriation by Mr. Elliason and the instantaneous quantity and
26 annual quantities of water are based upon WRC No. 136670.

Court Claim No. 01296 also asserts rights to an unnamed stream located in the NW $\frac{1}{4}$ of Section 1, T. 19 N., R. 15 E.W.M. The stream originates in an area below the Highline Canal (Kittitas Reclamation District) and flows in a northerly direction into Government Lot 4 of said Section 1. The investigation report prepared by Ecology states that a wooden check dam diverts water from this stream into an open, earthen ditch. The ditch flows northerly and enters two separate concrete head ditches which can rill irrigate the defendant's fields.

Mr. Rothlisberger's testimony indicates that the flow of this stream is much greater during the summer months than in the winter, and, according to the statement of claim he has characterized these waters as "waste or seepage water from Highline Canal." Mr. Rothlisberger implied through his testimony that he is a KRD patron and the deed conveying Government Lots 3 and 4 to him in 1955 references a contract with the KRD.

No water right permits or certificates are in the record relating to this source, however, WRC No. 136668 was filed on the source by Mr. Rothlisberger. This claim registration states that the source is "waste or seepage water." Notwithstanding the use of water being made on this property, the Referee believes that most of the water being used is a result of losses from the KRD Canal, which by virtue of their character as Yakima Project Waters are not subject to appropriation by individual landowners (see Return Flow Water, page 6). As a consequence, the Referee cannot recommend that rights be confirmed to these claimants regarding this source of water.

Court Claim No. 01297 asserts water rights on an unnamed spring for stock watering. This spring is located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T. 19 N.,

R. 15 E.W.M. and is the same spring utilized by Mr. Schaumburg, an adjacent landowner and a claimant in this proceeding.

The investigation report entered by Ecology states that a 4 foot diameter concrete cistern captures water from a spring. An overflow pipe from the cistern allows this water to flow into an open creek channel which flows in a northeasterly direction. Stock are able to drink freely from the channel.

A land patent document (DE-54) dated November 4, 1895, demonstrates that the defendant's property was separated from the public domain on that date. In addition, the claimant offered two court decrees as evidence of early use of water. Defendant's Exhibit DE-55, Kittitas County Superior Court Decree No. 7173 in the case Britta Justin Roseburg and Norah Carr Carpenter, v. Tony Mohar and Annie Rothlisberg, husband and wife, Ella May Rothlisberg and John Emil Rothlisberg, minors, and Bessie Grinstead, guardian for said minors, (1925) does not speak to the use of water upon the Rothlisberger property, but does address the right of the plaintiff to clean a water ditch or channel that flows across the W¹/SE¹/4 of Section 3, T. 19 N., R. 15 E.W.M. In the second Kittitas County Superior Decree, No. 8074, in Hartvig Roseburg and Ida M. Roseburg, v. Tony Mohar and Annie Mohar, the defendants are restrained from interfering with the use by the plaintiffs of the spring located in the W¹/SE¹/4 of Section 3 and ordered that the defendants pipeline then connected with the spring be discontinued and removed. It did require the plaintiffs to permit water to flow through the ditch leading from the spring for stock watering by the defendants and that the defendants could use the spring overflow to fill buckets for their domestic use.

1 WRC No. 136669 was filed by Mr. Rothlisberger on this spring in 1974 pursuant
2 to RCW 90.14 asserting a right to 1.5 gpm, 2.4 acre-feet per year for stock
3 watering in the E¹E²W¹S²E¹ of Section 3.

4 Based upon the above, the Referee believes that under the Riparian Doctrine,
5 a right has been perfected for this source of water and the Referee accordingly
6 recommends that a right be confirmed with a November 4, 1895, priority date in the
7 amounts of 0.01 cfs; 2 acre-feet per year for stock watering purposes.
8

9 Court Claim No. 01298 refers to a spring located within the S¹E¹S²E² of
10 Section 3, T. 19 N., R. 15 E.W.M. During Mr. Rothlisberger's testimony, it was
11 learned that the spring upon which this claim is being asserted is actually
12 located within the SW¹NW² of Section 10, T. 19 N., R. 15 E.W.M. Mr. Rothlisberger
13 further stated that his claim to water right is based upon Surface Water
14 Certificate No. 11655, with a priority date of May 12, 1965, which was issued by
15 the State of Washington for the appropriation of 0.02 cfs; 3 acre-feet per year
16 for domestic supply and stock water. The defendant testified that the only use
17 being made of this water at the present time is for stock watering purposes. The
18 record indicates that at one time the spring was being used for domestic supply,
19 however, the source of domestic water is now being obtained from a well.

20 Based on the above, the Referee is of the opinion that a valid water right
21 has been perfected under the appropriation procedure identified in
22 Chapter 90.03 RCW and herein recommends that a water right be confirmed under a
23 priority date of May 12, 1965, in the amounts of 0.01 cfs; 1 acre-foot per year
24 for continuous stock water.
25
26
27

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1
2 Upon confirmation of the right herein proposed, it is recommended that the
3 Director of the Department of Ecology cancel, rescind or otherwise make null and
4 void SWC No. 11655.
5

6 COURT CLAIM NO. 00281 -- Theodore V. Ryan
7 & Mildred E. Ryan
8 Richard J. Willoughby
9 Ronald B. Anger
10 & Patricia S. Anger
11 Thomas W. Singleton
12 & Judy L. Singleton
13 Dana R. Dinius
14 & Paula D. Dinius
15 Kenneth B. Kerchner
16 & Heather D. Kerchner

17 This statement of claim was originally filed with the court by Theodore and
18 Mildred Ryan and asserted rights with an 1886 priority date for the use of 2.0
19 cfs; 150 acre-feet per year from an unnamed stream for the irrigation of 42 to 60
20 acres. Richard Willoughby was joined as an additional party defendant to this
21 claim through an order of this Court dated September 4, 1990. On October 22,
22 1993, Ronald B. and Patricia S. Anger were joined to the claim by Mr. Willoughby
23 and on December 27, 1995, the Angers joined Dana R. and Paula E. Dinius,
24 Kenneth B. and Heather D. Kerchner, and Thomas W. and Judy L. Singleton to the
25 claim. Mr. Ryan appeared pro se to offer testimony and evidence relative to this
26 claim. Richard Willoughby also offered supplemental testimony as a witness.

27 According to Mr. Ryan, he purchased his land, which lies in the NE^{1/4} of
28 Section 2, T. 19 N., R. 15 E.W.M., in 1968 from Howard Denning, and he is now in
the process of selling approximately two-thirds of this land to Mr. Willoughby.
Mr. Ryan was extremely meticulous in describing his irrigation practices,
especially with reference to the acreage contained in the several fields

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1 throughout his property. Although Ecology's investigation report indicates 23
2 acres as having been irrigated, Mr. Ryan's testimony clearly shows that
3 approximately 31 acres have in fact been irrigated. It was Mr. Ryan's
4 understanding that all previous owners had irrigated these lands since W. F. Lewis
5 owned it in 1886. Mr. Lewis filed a Notice of Water Appropriation on May 4,
6 1886. That notice identifies the point of diversion from an unnamed stream and
7 further specifies what is now the Ryan property as the place of use.
8

9 The record discloses that no water right permits or certificates issued
10 pursuant to Chapter 90.03 RCW are entered into evidence. Water Right
11 Claim No. 161894 was, however, entered into the record and that claim, filed by
12 Mr. Ryan in June of 1974, asserted a right to 12 cfs; 240 acre-feet per year for
13 the irrigation of 60 acres in the NE $\frac{1}{4}$ of Section 2, T. 19 N., R. 15 E.W.M.

14 Considering the evidence and testimony in the record, the Referee believes
15 that these claimants have made a satisfactory showing that water rights had been
16 established and perfected for the benefit of their lands. There was no testimony
17 with respect to the amount of water being used either on an annual or
18 instantaneous basis and lacking those data, the Referee has applied a per acre
19 duty of water of 0.03 cfs on an instantaneous basis and 6 acre-feet per year on an
20 annual basis. Based upon the above, the Referee recommends confirmation of a
21 water right with a May 4, 1886, priority date in the amounts of 0.93 cfs; 186
22 acre-feet per year for the irrigation of 31 acres. An additional 0.02 cfs; 2
23 acre-feet per year is allowed to satisfy the requirement for livestock water on
24 this property.

25 In addition to the water diverted through the Lewis ditch, stock also have
26 access to the stream which runs through the defendant's property and such watering

1 of livestock from natural water sources is covered by the stock water stipulation
2 identified on page 5 of this report.
3

4

5 COURT CLAIM NO. 01140 -- John William Schaumburg
6 Leslie M. Williamson
7 & Judy L. Williamson
Robert J. Walker
& Dorothy D. Walker

8 The statement of claim originally filed by Mr. Schaumburg in 1981 asserted
9 rights to the use of the waters of an unnamed spring for domestic supply and the
10 irrigation of 10 acres. By order of this Court dated December 26, 1991,
11 Leslie M. and Judy L. Williamson were joined as additional parties defendant. The
12 joining was due to the Williamsons having purchased a portion of the Schaumburg
13 lands. Mr. Schaumburg also sold a portion of his land to Robert D. and Dorothy D.
14 Walker. The Walkers were made parties through an order of the Court dated
15 March 23, 1992. The record further indicates that Mr. Schaumburg sold a third
16 tract of land to Con and Tamara Butenko; however, the Butenkos were not made
17 parties to this action.

18 During the evidentiary hearing, Mr. Schaumburg was represented by Richard T.
19 Cole, Attorney at Law. Mr. Schaumburg and Robert Walker offered testimony with
20 respect to this claim.

21 The report of investigation prepared by Ecology states that domestic supply
22 for three residences is obtained from a spring located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
23 Section 3, T. 10 N., R. 15 E.W.M. From the spring, which is enclosed in a
24 concrete cistern, a pipeline conveys water approximately 4,000 feet to the
25 northeast where three single residences receive domestic water. Additionally, the
26 Ecology report states that irrigation of approximately 33 acres is occurring on
27

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1 the Schaumburg land. Irrigation water is obtained from an unnamed spring located
2 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, T. 19 N., R. 15 E.W.M. and such spring supplies water to
3 an open, earthen ditch which subsequently flood irrigates approximately 33 acres.
4

5 During his testimony, Mr. Schaumburg stated that, since filing this claim, he
6 has sold three parcels of land from the northern part of his property. The buyers
7 were Williamson, Walker and Butenko. The spring located in the S $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
8 Section 3, T. 19 N., R. 15 E.W.M., on property owned by John Rothlisberger, serves
9 domestic water to three residences located on land retained by Mr. Schaumburg.

10 The water diverted from the spring is also used to water livestock and
11 Mr. Schaumburg estimated the flow from this spring at approximately 50 gpm.
12 Although Mr. Schaumburg could not offer personal testimony regarding early,
13 historical use of water since he had owned this property for only about 18 years,
14 he did offer into evidence two court decrees (DE-55 and DE-56) which indicate
15 water was in use from this spring on what is now the Schaumburg property as early
16 as 1905. No permits, certificates or claims registered pursuant to
17 Chapter 90.14 RCW were found in the record relating to the use of water from the
18 spring.

19 Use of water for irrigation relates to property formerly owned by
20 Mr. Schaumburg and now owned by Mr. Walker. Mr. Schaumburg stated that irrigation
21 water is derived from two springs located on the Walker property. The specific
22 locations of these springs are identified on Exhibit DE-52. He further testified
23 that the springs were developed with concrete tiles and irrigation was effected by
24 flood irrigation. He stated that Mr. Walker was irrigating approximately 20 acres.
25
26
27

1
2 During Robert Walker's testimony, it was evident that in addition to
3 irrigation from the two springs, water was also used by livestock, principally
4 sheep, which have access to the springs and irrigation ditches.

5 Neither Mr. Schaumburg nor Mr. Walker offered any testimony regarding
6 long-term historic use of water from these springs for irrigation.

7 No water right permits, certificates or claims registered in accordance with
8 Chapter 90.14 RCW were entered into evidence regarding the springs used for
9 irrigation.

10 The Referee notes that two land patent documents were entered into the record
11 in support of the Schaumburg claim. Defendant's Exhibit DE-49 is a land patent
12 document issued to Nathan Preston in 1884 for the NW $\frac{1}{4}$ of Section 2, T. 19 N.,
13 R. 15 E.W.M. The second document, Exhibit DE-50, was issued to the N.P.R.R. in 1901
14 and describe Government Lots 1 and 2 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, T. 19 N.,
15 R. 15 E.W.M. The descriptions in these land patent documents do not relate to all
16 the defendant's holdings, but only to about 30 acres of land in the extreme
17 northern portion of what were once exclusively the Schaumburg holdings.

18 In order to preserve water rights such as those claimed by the above
19 referenced defendants, the Water Rights Claims Registration Act of 1967 required
20 that a claim be registered on all uses of surface water that were not benefited by
21 a permit or certificate issued by the State of Washington. There has not been
22 entered into evidence any permits or certificates that relate to the subject
23 property, nor have there been introduced any registered water right claims by the
24 defendants in this action or by the Plaintiff State of Washington. Absent valid
25 permits, certificates or water right claims registered pursuant to
26 Chapter 90.14 RCW, the Referee can only conclude that whatever rights may have

1 existed from any of these identified sources have been forfeited due to failure to
2 comply with the Water Rights Claims Registration Act, RCW 90.14. The Referee
3 believes that a right may have existed for the spring used for domestic supply,
4 however, the record does not support any valid water right related to irrigation
5 activities on this land from the identified sources.

6 The Referee, therefore, finds that water rights relating to these defendant's
7 lands are not confirmable.

8 During the testimony, both Mr. Schaumburg and Mr. Walker testified that
9 livestock are pastured on this property, principally sheep during the later
10 years. The Referee believes that the riparian watering needs of livestock will be
11 satisfied through the stock water stipulation identified on page 5 of this report.
12

13
14 COURT CLAIM NO. 05636 -- Sky Meadows Ranch Country Club

15 The statement of claim submitted to the Court by Sky Meadows Ranch Country
16 Club asserted rights to the use of the waters of an unnamed spring for community
17 domestic supply. During the evidentiary hearing, the country club was represented
18 by Jeffrey Slothhower, Attorney at Law, and Harley Healey, member of the Sky
19 Meadows water committee, presented testimony in behalf of the claim.

20 The investigation report prepared by Ecology states a concrete tile collects
21 water at the spring site and a $\frac{1}{4}$ bhp pump supplies this water to a chlorination
22 tank and then to a 140,000 gallon reservoir. The water distribution system
23 provides domestic water by means of a buried delivery system to both permanent and
24 seasonal residences.

25 Mr. Healey testified the country club was established in about 1970 and prior
26 to that time the spring in question supplied water to a dude ranch. Presently,

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1 the system is serving 163 homes of a potential 377 lots. Some of the homes are
2 permanent residences and some are recreational use dwellings. Mr. Healey further
3 stated water is used only for in-house domestic use and there is no irrigation or
4 agricultural use of the water diverted from the spring. In addition to the
5 spring, the country club has four wells, which also supply water into the
6 distribution system.

7 According to the record in this case, the basis for water rights associated
8 with the spring relate to three events. The first was a Notice of Water
9 Appropriation filed October 8, 1904, by Humes McCormick. Such notice indicated
10 Mr. McCormick was appropriating 25 inches of water from the spring in question to
11 be used for irrigation purposes on land which is now owned by the Sky Meadows
12 Ranch Country Club.

13 The second basis on which a right is being asserted is a Notice of Water
14 Right Appropriation filed by Joseph Bedenhower on June 5, 1908. The Bedenhower
15 notice states water is to be used for domestic use in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8,
16 T. 19 N., R. 16 E.W.M.

17 The third basis of water right is Certificate of Surface Water (SWC)
18 No. S3-22411C issued by the State of Washington. That certificate was issued to
19 Sky Meadows Ranch Country Club with a priority date of January 22, 1974, and
20 authorized the diversion of 0.018 cfs; 13 acre-feet per year to be used for
21 community domestic supply for 213 units. In addition, Water Right Claim
22 (WRC) No. 117848 was filed by Sky Meadows in 1974. WRC No. 117848 asserted a
23 right to 70 gpm; 100 acre-feet per year for a public water supply.

24 In accessing the claim of these defendants, the Referee notes the 1904
25 McCormick notice specifically identifies the use of water to be for irrigation.
26

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1 The record is silent as to whether there was an actual perfection of use under
2 this notice. Even if the original irrigation right were perfected, there is
3 nothing in the record indicating a statutory authorization for a change in purpose
4 of use as contemplated in Section 90.03.380 RCW. In view of these facts, the
5 Referee is not convinced the present use of water (community domestic supply) is a
6 logical extension of the original use contemplated by Mr. McCormick and, as a
7 consequence, the Referee cannot recommend confirmation of a right based upon the
8 McCormick claim.

9 The 1908 Bedenhower notice, although specifically intended for domestic
10 supply, states that water was to be used on property to the west of the Sky
11 Meadows Ranch complex and the Referee believes it was not the intent of the
12 original appropriator to use water on what is now Sky Meadows Ranch. Therefore,
13 the Referee also discounts the Bedenhower notice as a genesis for Sky Meadows
14 Ranch water rights. Additionally, the defendants Exhibit DE-14 states Bedhower
15 Spring is not the same spring used by Sky Meadows as Bedenhower Spring is dry and
16 was abandoned many years prior to 1964.

17 The third basis for water rights under this claim is SWC No. S3-22411C. That
18 water right certificate, originating from an application made with Ecology in
19 1974, addresses the only valid water right the Referee can determine was perfected
20 in the manner prescribed by law for the Sky Meadows Ranch property. The
21 instantaneous quantity of water allocated in that certificate does generally
22 correspond with the amount of water taken from the spring as reflected by records
23 maintained by the Sky Meadows Ranch Country Club.

24 As a consequence of the above, the Referee recommends confirmation of a water
25 right with a January 22, 1974, priority in the amounts of 0.018 cfs; 13.0

1 acre-feet per year to be used for community domestic supply for 213 units within
2 the area served by the Sky Meadows Ranch Country Club.
3

4 The use of water from the wells integrated into the community domestic system
5 is not an issue in this proceeding and no further comment will be made thereon.
6 It is recommended upon confirmation of the right herein proposed that the Director
7 of the Department of Ecology cancel, rescind or otherwise make null and void
8 Certificate of Surface Water Right No. S3-22411C.

9

10 COURT CLAIM NO. 02152 -- Springwood Ranch Corporation

11 The above numbered statement of claim was offered to the Court by Stuart
12 Anderson and Helen Ranta claiming rights to the use of the waters of an unnamed
13 spring for stock water and domestic supply. The claim was subsequently
14 transferred to the Springwood Ranch Corporation through order of this Court dated
15 April 25, 1991. During the evidentiary hearing, the claimant was represented by
16 Jeffrey Slothower, Attorney at Law. William Chan, Vice-president of Springwood
17 Ranch Corporation, Tracey Christi, Property Manager, and Earl Paulsen, former
18 owner of the property, appeared as witnesses for the claimant.

19 Springwood Ranch lies in those portions of the S $\frac{1}{2}$ of Section 20, the W $\frac{1}{2}$ SW $\frac{1}{4}$ of
20 Section 21 and Sectiodn 28 lying south and west of the Yakima River and all of
21 Section 29, all lying in T. 19 N., R. 17 E.W.M. The investigation report prepared
22 by Ecology states the spring is located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
23 T. 19 N., R. 17 E.W.M. A buried pipeline conveys water from the spring in a
24 northeasterly direction approximately 1500 feet to the place of use. The pipeline
25 supplies domestic water to a single residence and to stock watering tanks. Water
26 Right Claim No. 055526 is registered with the State of Washington pursuant to

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1 Chapter 90.14 RCW. That claim was submitted by Earl Paulsen in 1973 and the
2 location described in the registered claim compares favorably with the location
3 identified in Ecology's investigation report.
4

5 Through testimony offered by William Chan, certain documents were entered
6 into the record, among them Exhibits DE-9 and DE-12, the Karl Huhn patent dated
7 December 26, 1896, for lands within Section 28, T. 19 N., R. 17 E.W.M. and a
8 patent from the United States to the NPPR dated April 28, 1897, which covers,
9 among other things, land in Section 29, T. 19 N., R. 17 E.W.M.

10 Mr. Christi testified the spring is used to supply water for a residence and
11 livestock. He indicated a 2 inch galvanized pipe has been installed from the
12 spring to the house at which point a 200 gallon cistern is located for storage
13 purposes. The cistern has overflow through a pipe to a stock tank and about 300
14 animal units are customarily quartered on this land. Mr. Christi also indicated
15 there are other sources of stock water on the property, namely five ponds. Two of
16 these ponds utilize natural flow on the property and three of the ponds are fed by
17 KRD water return flow. Irrigation water for the lands owned by Springwood Ranch
18 Corporation is provided by the KRD.

19 Mr. Paulsen testified he owned this property beginning in 1956 and has
20 knowledge of the previous owner using the spring for domestic supply in 1932.
21 Furthermore, it is Mr. Paulsen's understanding this property had been continuously
22 occupied since about the turn of the century.

23 Based upon the evidence, testimony and record, it is believed by the Referee
24 a valid water right exists for the benefit of this property. As a consequence,
25 the Referee recommends a right be confirmed to this claimant in the amounts of
26 0.01 cfs; 1 acre-feet per year for domestic supply and 4 acre-feet per year for

1 stock water. The right will bear a priority date of December 26, 1896. The
2 instantaneous quantity recommended is commensurate with Mr. Paulsen's recollection
3 of the flow of the spring during his ownership of this property.
4

5

6 COURT CLAIM NO. 05671 -- Frank Lewis Talerico
7 & Doris Marie Talerico

8 The Talericos' statement of claim asserts rights to the use of the waters of
9 the Yakima River via the Younger Ditch for irrigation purposes. Doris Talerico
10 appeared pro se to offer testimony with respect to this claim. In addition,
11 testimony given by Richard Bain, a consultant hired by other water users on the
12 Younger Ditch, regarding conveyance losses in the Younger Ditch and water duty was
13 considered by the Referee with respect to these claimants.

14 The Talerico property lies in the NE^{1/4}NE^{1/4}NW^{1/4} of Section 31, T. 20 N.,
15 R. 15 E.W.M., which is part of the land owned by Peter Younger when the Younger
16 Ditch was first constructed. Their property is located approximately 4000 feet
17 below the point where the Younger Ditch splits on the south branch. The history
18 of the Younger Ditch is discussed in detail on page 7 of this report and will not
19 be repeated here. Water Right Claim No. 033846 filed by the GRM Ranch in
20 accordance with the provisions of RCW 90.14, covers the Talericos property along
21 with the land described in the GRM Ranch claim.

22 Ms. Talerico indicated during her testimony that this land was purchased in
23 1975 and was indeed part of the GRM Ranch at one time. Ms. Talerico testified
24 that 1.5 acres of lawn and garden area are irrigated with a 2 BHP pump and they
25 flood irrigate 2.5 acres of alfalfa. Stock are also pastured on this property.
26 Ms. Talerico offered into evidence Exhibit DE-95 which was a right-of-way

1 agreement relating to the O'Connor Ditch. However, the right-of-way agreement
2 regarding the O'Connor Ditch does not appear to have any direct relationship to
3 either the Talerico property or the water right being asserted. The O'Connor
4 Ditch has its point of diversion from the Yakima River about one half mile to the
5 south of the Talerico property and trends in an easterly direction paralleling the
6 Yakima River. In the Referee's opinion, the waters in the O'Connor Ditch could
7 not benefit the Talerico property.

8 Based on the testimony and evidence offered into the record, the Referee
9 believes a valid water right does exist for the benefit of the Talerico property.
10 The Referee believes the source of water rights regarding these claimants property
11 has its origin in the Younger Ditch and the waters appropriated therein have a
12 priority date of June 5, 1886. The Referee recommends a right be confirmed to
13 these defendants with the 1886 priority date in the amounts of 0.105 cfs; 22.5
14 acre-feet per year for the irrigation of 4 acres. The 4 acres consists of the 1.5
15 acres of lawn and garden that are sprinkle irrigated and the 2.5 acres of alfalfa
16 which are rill irrigated. An additional 0.01 cfs; 0.5 acre-foot per year is
17 allowed to satisfy the requirement for drinking water for livestock pastured on
18 the land. An additional 0.125 cfs is allocated at the Younger Ditch intake for
19 conveyance losses calculated to be occurring between the Younger Ditch intake and
20 the claimants' property. As provided in the 1913 limiting agreement for the
21 Younger Ditch, the period of water use shall be April 20 through September 30.
22

23
24 COURT CLAIM NO. 02267 -- M. Marvin Wallace

25 The statement of claim submitted by Mr. Wallace asserts rights to the use of
26 several surface water sources in Subbasin No. 4, Swauk Creek, and the waters of an

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1 unnamed spring located in Subbasin No. 5. Only rights to the use of waters
2 located in Subbasin No. 5 will be addressed in this report. See the Report of
3 Referee for Subbasin No. 4 for the portion of the claim to waters in that
4 subbasin. The spring and the described place of use for the water is located in
5 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T. 20. N., R. 15 E.W.M. During the evidentiary hearing,
6 Mr. Wallace was represented by Michael Bauer, Attorney at Law. Mr. Bauer
7 requested of the Referee that testimony concerning the Wallace claim in the Elk
8 Heights Subbasin be presented during the evidentiary hearing regarding the Swauk
9 Creek Subbasin (Subbasin No. 4). The request was based on the contention that
10 since Mr. Wallace had extensive holdings in both subbasins, it would be more
11 convenient that all the testimony be heard during the Swauk Creek hearing.
12 Hearing no objection, the Referee granted the request.

13 During the evidentiary hearing for the Swauk Creek Subbasin, the Wallaces'
14 interests were again represented by Michael Bauer. Robert Wallace and Marvin L.
15 Wallace, M. Marvin Wallace's sons, offered testimony with respect to this claim.
16 In addition, Richard Bain, Consulting Engineer, also testified and offered a
17 letter report concerning the Wallace holdings in the Elk Heights Subbasin.

18 The report of investigation conducted by the State of Washington states the
19 spring was not being used for irrigation and no diversion or irrigation equipment
20 was present on the property.

21 A review of the record in this case indicates that none of the testimony or
22 exhibits relates to the property and source of water identified in the Wallace
23 statement of claim. All of the testimony, including the consultant's report,
24 relates to property located in Sections 3, 10 and 11 of T. 19 N., R. 16 E.W.M.,
25 which area is generally located about 6 - 7 miles east of the property identified

1 in the statement of claim. Notwithstanding that anomaly, the Referee was prepared
2 to evaluate the testimony and evidence in the record concerning the assertion of
3 water rights on the properties in Sections 3, 10 and 11. However, examination of
4 the record discloses serious deficiencies which prevent the Referee from making
5 any affirmative recommendations concerning water rights for this claimant.
6

7 The inadequacies include, but are not limited to, lack of fairly precise
8 testimony with respect to historical use of water on these lands, especially as it
9 relates to the several sources of water identified; the points of diversion of
10 water were neither identified in the statement of claim, the testimony or
11 evidence, nor in Ecology's Investigation Report; the sources of water were not
12 identified, except for the testimony of Mr. Bain who stated the sources are:
13 "Intermittent creeks that flow into the property that are not always flowing,
14 seepage from the KRD Canal and springs." There is a total lack of specificity
15 throughout the testimony.

16 Additionally, the Referee has not been able to identify any water right claim
17 registrations filed pursuant to Chapter 90.14 RCW as part of the record.
18 Therefore, the Referee does not recommend that any rights be confirmed to the
19 Wallaces.

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3 COURT CLAIM NO. 11351 -- Scott DeWolf Wilson
4 Jeanne Laurel O'Breen
5

COURT CLAIM NO. 11352 -- Scott Dewolf Wilson

6 The above numbered statements of claim were filed with the Court on
7 February 2, 1996, approximately five years after the evidentiary hearings were
8 held regarding the claims in Subbasin No. 5. On April 11, 1996, the Court held a
9 hearing to determine whether these statements of claim shall be allowed to be
10 further processed in this case. Upon hearing the defendant's motion, the Court
11 determined it would be proper for these claims to be further processed and ordered
12 the Referee to take evidence and testimony relative to these claims at a
13 supplemental hearing to be conducted by the Referee at a later date. The
14 defendants shall be notified of the time and place of the supplemental hearing.
15

16 COURT CLAIM NO. 01468 -- WA Dist. United Pentecostal Church
17

The above referenced statement of claim was originally submitted to the Court
by Denney A. E. and Margaret E. Renando in 1981. The Washington District of
United Pentecostal Church was substituted as a party defendant in this action
through order of the Court dated March 9, 1987. The claim asserted a water right
from the Yakima River with a point of diversion located in Section 4, T. 19 N.,
R. 16 E.W.M. The claim further asserted a priority date of 1898 and was for the
purpose of irrigating 50 acres. During the evidentiary hearing, the claimant was
represented by Michael Bauer, Attorney at Law. Appearing as a witness and
offering testimony relative to this claim was Reverend Ron Joseph, District
Secretary of the Washington District Pentecostal Church.

27 REPORT OF REFEREE
28 Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1 The report of investigation prepared by Ecology indicated the property in
2 question had not been irrigated in recent years, but there were signs of remnant
3 ditches and rills on the property. There was further indication of past
4 irrigation because of a remnant power pole located in the vicinity of the claimed
5 diversion point.

6 Water Right Claim No. 130081 was filed in 1974 by Jean Mayta, a previous
7 owner of this defendant's property. That claim, filed pursuant to the Water
8 Rights Claims Registration Act, RCW 90.14, indicated the point of diversion was
9 located in Section 4, T. 19 N., R. 16 E.W.M. At the time the claim was filed, no
10 water was being used and no land was being irrigated.

11 Reverend Joseph testified that the Church purchased the land from the
12 Renandos in 1986 and it was the intent of the Church to construct a church camp
13 and, in connection therewith, irrigate the grounds and associated landscaping.
14 Reverend Joseph indicated at the time of acquisition old ditches were observed on
15 the property, however, it was the Church's plan to convert the mode of irrigation
16 from ditches and rills to a pressurized sprinkler system to irrigate about 55
17 acres. Reverend Joseph stated that the stream from which diversions took place
18 starts on this property and, in addition to irrigating from the stream, the Church
19 intends to develop shallow wells to supplement the supply of water from the stream.

20 Through both Reverend Joseph's testimony and Exhibit DE-151, it was alleged
21 the water rights appurtenant to this land may have their origins in the Younger
22 Ditch which diverts water from the Yakima River at a point in the NW^{1/4}NE^{1/4} of
23 Section 35, T. 20 N., R. 15 E.W.M.

24 It is the opinion of the Referee that if the Younger Ditch was the source of
25 appropriation for water rights appurtenant to the defendant's property, then the

1 point of diversion identified in the statement of claim to the Court and the
2 registered claim submitted pursuant to Chapter 90.14 RCW should have referred to
3 the Younger Ditch diversion location in Section 35, not a diversion point in
4 Section 4, some four miles east of the Younger Ditch diversion. Additionally,
5 there was no evidence or testimony that the property does, or ever did, receive
6 Younger Ditch water. Several documents relating to the historical development of
7 water rights conveyed through the Younger Ditch were entered into the record by
8 claimants on that ditch. None of the documents show any intent to serve lands in
9 Section 4 (see Younger Ditch discussion on page 7 of this report). In fact, all
10 of the testimony was directed to diversions from the stream on the claimant's
11 property in Section 4 and anticipated development of shallow wells for
12 irrigation. Furthermore, there was no testimony or evidence of historical use of
13 water on these lands, in fact, to the contrary, there was evidence that water was
14 not being used on these lands in 1974.
15

16 Based upon the record, the Referee does not believe there has been sufficient
17 evidence offered to recommend confirmation of a water right to this claimant.
18

19 COURT CLAIM NO. 02109 -- WA State Dept of Fish and Wildlife
20

21 The Washington State Department of Fish and Wildlife filed a claim in this
22 action claiming rights from an unnamed spring for stock water and wildlife
23 watering. This spring is located within the boundaries of the L. T. Murray State
24 Wildlife Recreation Area, within the NW^{1/4}SE^{1/4} of Section 27, T. 19 N., R 16 E.W.M.
25 No appearance was made by representatives of WSDFW during the evidentiary hearing
26 to provide testimony in support of this claim. Consequently, the Referee cannot
recommend confirmation of any diversionary water rights for this claimant.

27
28 REPORT OF REFEREE
Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

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2 If the livestock and wildlife watering is non-diversionary in nature, the
3 stock water stipulation discussed on page 5 in this report would cover that type
4 of use.
5

6 COURT CLAIM NO. 00589 -- WA State Dept. of Natural Resources
7 (A) 00590

8 The Washington State Department of Natural Resources (DNR) filed a claim in
9 this proceeding asserting rights to various springs and other surface water
10 sources situated within the Elks Heights Basin. Two springs are located within
11 Section 10, T. 19 N., R. 15 E.W.M. and two additional springs are located within
12 Section 16, T. 19 N., R. 16 E.W.M. During the evidentiary hearing, no appearance
13 was made by a representative of that department to provide testimony in support of
14 the claim. Consequently, the Referee cannot recommend confirmation of any
15 diversionary water rights for DNR.

16 The Referee recognizes that DNR land is commonly leased to ranchers for
17 livestock grazing. The stock water stipulation discussed on page 5 of this report
18 would satisfy the watering needs of both livestock and wildlife drinking directly
19 from water sources on DNR property.
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3 COURT CLAIM NO. 00926 -- Ralph Griffin
4 COURT CLAIM NO. 01276 -- Robert M. Boyle
5 & Mary J. Boyle
6 COURT CLAIM NO. 01277 -- Estate of Gary G. Guzzie
7 & Floyd Rogalski
8 COURT CLAIM NO. 01453 -- Jesse Baird
9 COURT CLAIM NO. 01781 -- Queenie M. Miller
10 & Ethel T. Guzzie
11 Steven King
12 COURT CLAIM NO. 01782 -- Adolph Cavallini
13 & Ruth Cavallini
14 COURT CLAIM NO. 01824 -- Richard W. Owens
15 & Bernice A. Owens
16 COURT CLAIM NO. 01860 -- Dean E. Ostheller
17 & Sandra Ostheller
18 COURT CLAIM NO. 01940 -- Domnic Cresto
19 & May Cresto
20 COURT CLAIM NO. 02156 -- Alec N. Craig
21 & Sylvia P. Craig
22 COURT CLAIM NO. 02345 -- Greg Harris
23 & Linda Harris

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28 The above claimants did not appear at the evidentiary hearing to present
testimony in support of their claims. Therefore, the Referee recommends that no
rights be confirmed.

1 Claimants With Recommended Non-Diversionary Stock Water And Wildlife Rights

2 Randy L. Abbott and Chris Abbott

3 Ronald B. Anger and Patricia S. Anger

4 Jesse Baird

5 Goldie M. Ballard

6 Steven Bator, Jr. and Deanna Bator

7 Sherry Bertino

8 Victor Biava and Fern Biava

9 Boise Cascade Corporation

10 George Burchak and Diane Burchak

11 Burlington Northern Railroad Co.

12 Robert M. Cernick and Debbie Lee Cernick

13 Mike Cordner and Margo Cordner

14 Harry O. Covey and Rosa M. Covey

15 Joseph O. Covey and Virginia Covey

16 Douglas D. Curry and Lois A. Curry

17 Nellie G. Curry

18 Emil S. Danishek, et al.

19 Dana R. Dinius and Paula D. Dinius

20 Gary J. Fudacz and Joanne Fudacz

21 Harold B. Iverson and Joann Iverson

22 Kenneth B. Kerchner and Heather D. Kerchner

23 E.L. Knudson, Jr. and Necia Knudson

24 Bert O. Lehmann

25 Ingrid H. Lehmann

26 Otto H. Lehmann and Gisela R. Lehmann

27 Stephan M. Mason and Janice L. Mason

28 Louis Massucco and Blanche Massucco

29 Owens and Sons, Inc.

30 Margaret V. Peckinino

31 Irma Peterson

32 Plum Creek Timber Co. L.P.

33 Ira C. Roberson and Betty J. Roberson

34 Rocky Mountain Elk Foundation

35 Robert R. Roseburg and Enid Roseburg

36 Theodore V. Ryan and Mildred E. Ryan

37 John William Schaumburg

38 Thomas W. Singleton and Judy L. Singleton

39 Vera M. Stefanac, MD and Martin J. Stefanac, II

40 Robert J. Walker and Dorothy D. Walker

41 Leslie M. Williamson and Judy L. Williamson

42 Richard J. Willoughby

43 WA State Dept of Fish and Wildlife

44 WA State Dept. of Natural Resources

1
2 VIII. FINDINGS OF FACT
3

4 I, DOUGLAS CLAUSING, as Referee in this proceeding, having carefully
5 examined the testimony and evidence and having investigated Subbasin No. 5, do
6 hereby make the following Findings of Fact:
7

- 8 1. That the waters of Subbasin No. 5 and lands irrigated or waters
9 otherwise utilized therefrom are situated in Kittitas County.
10
11 2. That the claims to any diversionary or withdrawal rights within
12 Subbasin No. 5 of the following named claimants are denied in their entirety for
13 reason set forth in the body of this report:
14

15 Randy L. Abbott and Chris Abbott
16 Robert L. Bailey
17 Jesse Baird
18 Goldie M. Ballard
19 Steven Bator, Jr. and Deanna Bator
20 Richard R. Baxter and Phylis L. Baxter and Raymond Dreybaum
21 Victor Biava and Fern Biava
22 Boise Cascade Corporation
23 Wayne C. Booth, Jr., et al. and Mary Ann Booth
24 Robert M. Boyle and Mary J. Boyle
25 Burlington Northern Railroad Co. (00103 & 00104)
26 Albert D. Burnett, Jr.
27 C & H Trucking & Construction
28 Adolph Cavallini and Ruth Cavallini
29 Robert M. Cernick and Debbie Lee Cernick
30 City of Cle Elum
31 The Estate of Robert L. Clements
32 Mike Cordner and Margo Cordner
33 Harry O. Covey and Rosa M. Covey
34 Joseph O. Covey and Virginia Covey
35 Alec N. Craig and Sylvia P. Craig
36 James J. Crestanello
37 Dominic Cresto and May Cresto
38 Emil S. Danishek, et al.
39 Lee Duncan
40 Terence L. Firman and Jeanette K. Firman
41 Charles W. Forcier and Judith A. Forcier
42 Ernest C. Glondo
43 Ernest C. Glondo, Jr.
44 Walter H. Goenner, Sr. and Dixie M. Goenner

45
46 REPORT OF REFEREE
47 Re: Subbasin No. 5

48 Referee's Office
49 15 W. Yakima Ave Ste. 200
50 Yakima, WA 98902-3401

1 Ralph Griffin
2 Estate of Gary G. Guzzie and Floyd Rogalski
3 GRM Ranch
4 Greg Harris and Linda Harris
5 Trust of Barbara Istvan and Edwin J. Istvan
6 Harold B. Iverson and Joann Iverson
7 Skip Kauzlarich and Beverly Kauzlarich
8 Steven King
9 Bert O. Lehmann
10 Ingrid H. Lehmann
11 Otto H. Lehmann (00307 & 02281)
12 Frank Maglietti
13 Stephan M. Mason and Janice L. Mason
14 Louis Massucco and Blanche Massucco
15 Queenie M. Miller and Ethel T. Guzzie
16 Robert E. Monahan and Adele F. Monahan
17 Stanley E. Moore
18 Dean E. Ostheller and Sandra Ostheller
19 Richard W. Owens and Bernice A. Owens
20 Owens and Sons, Inc.
21 Irma Peterson
22 Plum Creek Timber Co. L.P.
23 Ronald M. Punton
24 Ira C. Roberson and Betty J. Roberson (01457 & 01458)
25 John William Schaumburg
26 Del Simpson
27 David W. Smith and Myrna Smith
28 Vera M. Stefanac, MD and Martin J. Stefanac, II
29 Judith Torgeson
30 Joseph W. Vallone
31 Robert J. Walker and Dorothy D. Walker
32 M. Marvin Wallace
33 Leslie M. Williamson and Judy L. Williamson
34 Scott DeWolf Wilson and Jeanne Laurel O'Brien
35 WA Dist. United Pentecostal Church
36 WA State Dept of Fish and Wildlife
37 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. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **George Burchak** COURT CLAIM NO. 05216
3 & Diane Burchak
4 Source: Iron Mountain Creek.
5 Use: Irrigation of 60 acres, stock water and domestic supply
for two residences.
6 Period of Use: April 1 through October 31 for irrigation and
continuously for domestic supply and stock water.
7 Quantity: 0.97 cfs, 360 acre-feet per year for irrigation; 0.02
cfs; 2 acre-feet per year for 2 domestic supplies and
0.01 cfs; 2 acre-feet per year for stock water.
8 Priority Date: **August 1, 1877**
9 Point of Diversion: 1300 feet south and 1300 feet east from the north quarter
of Section 9, being within the NE $\frac{1}{4}$ of Section 9, T. 19 N,
R. 15 E.W.M.
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13 Place of Use: W $\frac{1}{2}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 19 N., R. 25 E.W.M.
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28 REPORT OF REFEREE Referee's Office
Re: Subbasin No. 5 15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **Robert R. Roseburg** & **Enid Roseburg** COURT CLAIM NO. 01280
3
4 Source: An unnamed stream.
5
6 Use: Irrigation of 42 acres and stock water.
7 Period of Use: April 1 through October 31 for irrigation and continuously for stock water.
8 Quantity: 1.0 cfs, 370 acre-feet per year for irrigation; 0.02 cfs, 2 acre-feet per year for stock watering.
9 Priority Date: **December 21, 1882**
10 Point of Diversion: 1300 feet south and 5 feet east of the northwest corner of Section 2, being within the Government Lot 4, of Section 2, T. 19 N., R. 15 E.W.M.
11 Place of Use: The 40 acre hay field: Those portions of Government Lots 3 and 4 lying west of Upper Peoh Point Road, and that portion of the $\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$ lying north of an unnamed stream and west of Upper Peoh Point Road, less the easterly 400 feet thereof, ALL in Section 2, T. 19 N., R. 15 E.W.M.
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15 The 2 acre oat field: The easterly 400 feet of the following described land: Those portions of Government Lots 3 and 4 lying west of Upper Peoh Point Road, and that portion of the $\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$ lying north of an unnamed stream and west of Upper Peoh Point Road, in Section 2, T. 19 N., R. 15 E.W.M.
16
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18 Limitations of Use: This land also receives water from the Kittitas Reclamation District. A maximum of 370 acre-feet per year can be used from all sources for irrigation of 42 acres.
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2 CLAIMANT NAME: **Harry James Masterson**
3 & **Mary Lou Masterson** COURT CLAIM NO. 01467
4 Source: An unnamed spring.
5 Use: Stock water.
6 Period of Use: April 1 to October 31
7 Quantity: 0.005 cfs, 2 acre-feet per year.
8 Priority Date: **June 30, 1884**
9 Point of Diversion: 800 feet north and 750 feet east of the center of
10 Section 20, being within the NE^{1/4}SW^{1/4}NE^{1/4} of Section 20,
T. 20 N., R. 16 E.W.M.
11 Place of Use: SW^{1/4}NE^{1/4}SW^{1/4}NE^{1/4} of Section 20, T. 20 N., R. 16 E.W.M.
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REPORT OF REFEREE
Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME:

Theodore V. Ryan
& Mildred E. Ryan
Richard J. Willoughby
Ronald B. Anger
& Patricia S. Anger
Thomas W. Singleton
& Judy L. Singleton
Dana R. Dinius
& Paula D. Dinius
Kenneth B. Kerchner
& Heather D. Kerchner

COURT CLAIM NO. 00281

3
4 Source:

An unnamed stream.

5 Use:

Irrigation of 31 acres and stock water.

6 Period of Use:

April 1 through October 31 for irrigation and
continuously for stock water.

7 Quantity:

0.93 cfs, 186 acre-feet per year for irrigation; 0.02
cfs, 2 acre-feet per year for stock water.

8 Priority Date:

May 4, 1886

9 Point of Diversion:

600 feet east from the center of Section 2, being within
the NW¹/4 SW¹/4 SE¹/4 or S¹/2 SW¹/4 NE¹/4 of Section 2, T. 19 N.,
R. 15 E.W.M.

10 Place of Use:

Government Lot 1, the east 300 feet of the south 650 feet
of Government Lot 2, the north 300 feet of the east 450
feet of the NE¹/4 SW¹/4 NE¹/4, AND the north 300 feet of the
SE¹/4 NE¹/4, ALL in Section 2, T. 19 N., R. 15 E.W.M.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **Jacqueline Baker** COURT CLAIM NO. 01688
3 & Bonita P. Morgan
4 Source: Yakima River.
5 Use: Irrigation of 7.5 acres and stock water.
6 Period of Use: April 20 through September 30 for irrigation and stock
water.
7 Quantity: 0.75 cfs, 91.5 acre-feet per year for irrigation;
0.01 cfs, 1 acre-foot per year for stock water;
0.15 cfs for conveyance loss.
8 Priority Date: **June 5, 1886**
9 Point of Diversion: 750 feet south and 1150 feet east from the north quarter
corner of Section 35, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
10 Section 35, T. 20 N., R. 15 E.W.M.
11 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 30, T. 20 N., R. 16 E.W.M.
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28 REPORT OF REFEREE
Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **Steven C. Bator, Sr.** & **Elsie Bator** COURT CLAIM NO. 02230
3
4 Source: Yakima River.
5 Use: Irrigation of 9.5 acres and stock water.
6 Period of Use: April 20 through September 30 for irrigation and stock
water.
7 Quantity: 0.95 cfs, 116 acre-feet per year for irrigation;
0.01 cfs; 0.5 acre-foot per year for stock water;
0.95 cfs for conveyance loss.
8 Priority Date: **June 5, 1886**
9 Point of Diversion: 750 feet south and 1150 feet east of the north quarter
corner of Section 35, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 35, T. 20 N., R. 15 E.W.M.
10 Place of Use: That portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 20 N.,
R. 16 E.W.M. which is described as follows: A tract of
land bounded by a line beginning at the intersection of
the south boundary line of the County Road with the east
boundary line of said quarter of quarter section and
running thence S 0°43' E along said east boundary line
1193.4 feet; thence west 365 feet; thence N 0°43' W,
1193.4 feet to a point on the south boundary line of the
County Road; thence east along said boundary line of said
County Road, 365 feet to the point of beginning.
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2 CLAIMANT NAME: **Theodore Bronkema** COURT CLAIM NO. 01268
3 & Marion Bronkema 02255
4 Source: Yakima River.
5 Use: Irrigation of 6 acres.
6 Period of Use: April 20 through September 30 for irrigation.
7 Quantity: 0.12 cfs, 36 acre-feet per year; 0.18 cfs for conveyance
8 loss
Priority Date: **June 5, 1886**
Point of Diversion: 750 feet south and 1150 feet east of the north quarter
corner of Section 35, being within the SE^{1/4}NW^{1/4}NE^{1/4} of
Section 35, T. 20 N., R. 15 E.W.M.
Place of Use: E^{1/2}NE^{1/2}NE^{1/4} of Section 31, T. 20 N., R. 16 E.W.M.

13 CLAIMANT NAME: **Cecil Frank Carveth** COURT CLAIM NO. 01678
14 & Jo Ann Beverly Carveth
15 Source: Yakima River.
16 Use: Irrigation of 10 acres and stock water.
17 Period of Use: April 20 through September 30 for irrigation and stock
water.
18 Quantity: 0.20 cfs, 60 acre-feet per year for irrigation;
0.01 cfs, 0.50 acre-foot per year for stock water;
0.285 cfs for conveyance loss.
Priority Date: **June 5, 1886**
Point of Diversion: 750 feet south and 1150 feet east of the north quarter
corner of Section 35 being within the SE^{1/4}NW^{1/4}NE^{1/4} of
Section 35, T. 20 N., R. 15 E.W.M.
Place of Use: The northerly 656.21 feet of the W^{1/2}NE^{1/2}NE^{1/4} of Section 31,
T. 20 N., R. 16 E.W.M.

1
2 CLAIMANT NAME: **Gary J. Fudacz** COURT CLAIM NO. 02224
3 & Joanne Fudacz
4
5 Source: Yakima River.
6
7 Use: Irrigation of 11 acres and stock water.
8
9 Period of Use: April 20 through September 30 for irrigation and stock
water.
10
11 Quantity: 0.33 cfs, 66 acre-feet per year for irrigation;
0.01 cfs, 1 acre-foot per year for stock water;
0.33 cfs for conveyance loss.
12 Priority Date: **June 5, 1886**
13 Point of Diversion: 750 feet south and 1150 feet east from the north quarter
corner of Section 35, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
14 Section 35, T. 20 N., R. 15 E.W.M.
15
16 Place of Use: Gary J. and Jo Anne Fudacz
17 That portion of the W $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 20 N.,
18 R. 16 E.W.M., which is bounded by a line described as
19 follows: Beginning at the intersection of the south
boundary line of the County Road with the east boundary
line of said W $\frac{1}{4}$ NE $\frac{1}{4}$ and running thence S 0°43' E, along
the east boundary of said W $\frac{1}{4}$ NE $\frac{1}{4}$, 1193.4 feet; thence
west, 365 feet; thence N 0°43' W, 379.4 feet to the true
point of beginning; thence N 0°43' W, 814.00 feet to the
south right-of-way boundary of the County Road; thence
west along said south right-of-way boundary, 567.23 feet;
thence S 0°43' E, 814.00 feet; thence east, 567.23 feet
to the true point of beginning.
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28 REPORT OF REFEREE Referee's Office
Re: Subbasin No. 5 15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: Loyd Garrett & Shirley Garrett COURT CLAIM NO. 01279
3
4 Source: Yakima River.
5 Use: Irrigation of 7.5 acres and stock water.
6 Period of Use: April 20 through September 30 for irrigation and stock water.
7 Quantity: 0.16 cfs, 45 acre-feet per year for irrigation;
8 0.01 cfs, 0.5 acre-foot per year for stock water;
0.16 cfs for conveyance loss.
9 Priority Date: June 5, 1886
10 Point of Diversion: 750 feet south and 1150 feet east from the north quarter corner of Section 35, being within the SE¹NE¹NE¹ of Section 35, T. 20 N., R. 15 E.W.M.
11
12 Place of Use: Tracts 2 and 4 of Airport Road Tracts, located within Government Lot 1 and the N¹NE¹NW¹ of Section 31, T. 20 N., R. 16 E.W.M.
13
14
15 CLAIMANT NAME: Richard Haas & Jean Haas Sharon Winslow COURT CLAIM NO. 01279
16
17 Source: Yakima River.
18 Use: Irrigation of 4 acres and stock water.
19 Period of Use: April 20 through September 30 for irrigation and stock water.
20 Quantity: 0.08 cfs, 24 acre-feet per year for irrigation;
0.01 cfs, 0.5 acre foot per year for stock water;
0.09 cfs conveyance loss.
21
22 Priority Date: June 5, 1886
23 Point of Diversion: 750 feet south and 1150 feet east of the north quarter corner of Section 35, being within the SE¹NE¹NE¹ of Section 35, T. 20 N., R. 15 E.W.M.
24
25 Place of Use: Tract 3 of Airport Road Tracts, located within the N¹NE¹NW¹ of Section 31, T. 20 N., R. 16 E.W.M.
26
27
28 REPORT OF REFEREE Referee's Office
Re: Subbasin No. 5 15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **The Estate of Hazel Henshaw** COURT CLAIM NO. 00365
3 **Bernard I. Henshaw**
4
5 Source: Yakima River.
6
7 Use: Irrigation of 75 acres and stock water.
8
9 Period of Use: April 20 through September 30 for irrigation and stock
water.
10
11 Quantity: 1.5 cfs, 450 acre-feet per year for irrigation;
0.02 cfs, 3 acre-feet per year for stock water;
0.30 cfs for conveyance loss.
12
13 Priority Date: **June 5, 1886**
14
15 Point of Diversion: 750 feet south and 1150 feet east of the north quarter
corner of Section 35, being within the SE^{1/4}NW^{1/4}NE^{1/4} of
Section 35, T. 20 N., R. 15 E.W.M.
16
17 Place of Use: S^{1/2}S^{1/2} of Government Lot 3, Government Lot 4 and the SE^{1/4}SW^{1/4}
EXCEPT the SE^{1/4}SE^{1/4}SW^{1/4}, ALL in Section 30, T. 20 N.,
R. 16 E.W.M.
18
19

20 CLAIMANT NAME: **Pat Merritt** COURT CLAIM NO. 01279
21 & **Carolyn Merritt**
22
23 Source: Yakima River.
24
25 Use: Irrigation of 4 acres and stock water.
26
27 Period of Use: April 20 through September 30 for irrigation and stock
water.
28
29 Quantity: 0.08 cfs, 24 acre-feet per year for irrigation;
0.01 cfs, 0.5 acre foot per year for stock water;
0.10 cfs for conveyance loss.
30
31 Priority Date: **June 5, 1886**
32
33 Point of Diversion: 750 feet south and 1150 feet east from the north quarter
corner of Section 35, being within the SE^{1/4}NW^{1/4}NE^{1/4} of
Section 35, T. 20 N., R. 15 E.W.M.
34
35 Place of Use: Tract 1 of Airport Road Tracts, located within the
N^{1/2}NE^{1/4}NW^{1/4} of Section 31, T. 20 N., R. 16 E.W.M.
36
37

38 REPORT OF REFEREE
Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **Frank Lewis Talerico** COURT CLAIM NO. 05671
3 & Doris Marie Talerico
4 Source: Yakima River.
5 Use: Irrigation of 4 acres and stock water.
6 Period of Use: April 20 through September 30 for irrigation and stock
water.
7 Quantity: 0.105 cfs, 22.5 acre-feet per year for irrigation;
0.01 cfs, 0.5 acre-feet per year for stock water;
0.125 cfs for conveyance loss.
8 Priority Date: **June 5, 1886**
9 Point of Diversion: 750 feet south and 1150 feet east of the north quarter
corner of Section 35, being within the SE¹NE¹NE¹ of
10 Section 35, T. 20 N., R. 15 E.W.M.
11 Place of Use: The west 200 feet of the east 487.79 feet of the
12 NE¹NE¹NW¹ of Section 31, T. 20 N., R. 16 E.W.M.
13
14 CLAIMANT NAME: **The Estate of John E. Rothlisberger** COURT CLAIM NO. 01296
15 **Pete White**
16 & **Christa White**
17 **Lonny White**
18 **Michael White**
19 Source: Rabbit Creek.
20 Use: Irrigation of 36 acres and stock watering
21 Period of Use: April 1 through October 31.
22 Quantity: 0.80 cfs; 160 acre-feet per year for irrigation and 2
acre-feet per year for stock watering.
23 Priority Date: **June 10, 1886**
24 Point of Diversion: 50 feet north and 400 feet east from the center of
Section 1, being within the SW¹SW¹NE¹ of Section 1,
T. 19 N., R. 15 E.W.M.
25 Place of Use: Government Lot 2 of Section 1, T. 19 N., R. 15 E.W.M.
26
27
28 REPORT OF REFEREE
Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **Nellie G. Curry** COURT CLAIM NO. 01679
3 **Douglas D. Curry**
4 **& Lois A. Curry**

5 Source: An unnamed stream.

6 Use: Domestic supply.

7 Period of Use: Continuously.

8 Quantity: 0.01 cfs; 1 acre-foot per year.

9 Priority Date: **November 4, 1895**

10 Point of Diversion: 375 feet north and 1200 feet east of the center of
11 Section 11, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11,
12 T. 19 N., R. 15 E.W.M.

13 Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 19 N., R. 15 E.W.M.

14 CLAIMANT NAME: **Nellie G. Curry** COURT CLAIM NO. 01679
15 **Douglas D. Curry**
16 **& Lois A. Curry**

17 Source: Pressy Creek.

18 Use: Stock water and lawn and garden irrigation for $\frac{1}{2}$ acre.

19 Period of Use: Continuously for stock water; April 1 through October 31
20 for irrigation.

21 Quantity: 0.02 cfs; 4 acre-feet per year.

22 Priority Date: **November 4, 1895**

23 Point of Diversion: 875 feet north and 700 feet east of the center of
24 Section 11, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11,
25 T. 19 N., R. 15 E.W.M.

26 Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 19 N., R. 15 E.W.M.

27 REPORT OF REFEREE
28 Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **The Estate of John E. Rothlisberger** COURT CLAIM NO. 01297
3 Richard White
Jeanne Purple
4 Source: An unnamed spring.
5 Use: Stock water.
6 Period of Use: Continuously.
7 Quantity: 0.01 cfs; 2 acre-feet per year
8 Priority Date: **November 4, 1895**
9 Point of Diversion: 150 feet north and 900 feet east from the south quarter
10 corner of Section 3, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 3, T. 19 N., R. 15 E.W.M.
11 Place of Use: The SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T. 19 N., R. 15 E.W.M.
12
13

14 CLAIMANT NAME: **Springwood Ranch Corporation** COURT CLAIM NO. 02152
15 Source: An unnamed spring.
16 Use: Domestic supply and stock water.
17 Period of Use: Continuously.
18 Quantity: 0.01 cfs; 1 acre-feet per year for domestic and
4 acre-feet per year for stock water.
19 Priority Date: **December 26, 1896**
20 Point of Diversion: 1275 feet north and 300 feet west of the east quarter
21 corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 29, T. 19 N., R. 17 E.W.M.
22 Place of Use: S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 lying west of the Yakima River
23 and the W $\frac{1}{2}$ NW $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 28, lying west of the Yakima
River, ALL in T. 19 N., R. 17 E.W.M.
24
25
26
27

28 REPORT OF REFEREE
Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **Sherry Bertino** COURT CLAIM NO. 00394
3 **Margaret V. Peckinino** (A) 06098
4

Source: An unnamed spring.

Use: Domestic supply.

Period of Use: Continuously.

Quantity: 0.01 cfs; 1.0 acre-foot per year.

Priority Date: **April 21, 1899**

Point of Diversion: 650 feet south and 775 feet west from the east quarter corner of Section 12, being within the $\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$ of Section 12, T. 19 N., R. 15 E.W.M.

Place of Use: $\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$ of Section 12, T. 19 N., R. 15 E.W.M.

12
13 CLAIMANT NAME: **Sherry Bertino** COURT CLAIM NO. 00394
14 **Margaret V. Peckinino** (A) 06098
15

Source: An unnamed stream (Rabbitt Creek).

Use: Irrigation of 9 acres.

Period of Use: April 1 through October 31.

Quantity: 0.18 cfs; 45 acre-feet per year.

Priority Date: **May 20, 1899**

Point of Diversion: 950 feet south and 775 feet west from the east quarter corner of Section 12, being within the $\frac{1}{4}SW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$ of Section 12, T. 19 N., R. 15 E.W.M.

Place of Use: $NE\frac{1}{4}SE\frac{1}{4}$ and $E\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$ of Section 12, T. 19 N., R. 16 E.W.M.

27
28 REPORT OF REFEREE
Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: Brian Frederick & Elizabeth Frederick COURT CLAIM NO. 02222
3 CLAIMANT NAME: Mack D. Richey & Susan R. Richey COURT CLAIM NO. 01676
4 Brian Frederick & Elizabeth Frederick
5 Real Estate Investment Group
6 Jon L. Newton & Cindy L. Newton
7 Sandra Fredericksen

8 Source: Yakima River.

9 Use: Irrigation of 270 acres and stock water.

10 Period of Use: May 1 through September 15.

11 Quantity: 5.8 cfs; 1585 acre-feet per year for irrigation and 4 acre-feet per year for stock water.

12 Priority Date: June 30, 1900.

13 Point of Diversion: 750 feet south and 1150 feet east of the north quarter corner of Section 35, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, T. 20 N., R. 15 E.W.M.

14 Place of Use: Brian and Elizabeth Frederick
A rectangular area commencing at the southwest corner of Section 29, T. 20 N., R. 16 E.W.M., thence north along the west boundary of said Section, 1210.00 feet; thence east perpendicularly along the south edge of an existing irrigation and drainage ditch, 1440.00 feet; thence south perpendicularly to the south boundary of said Section, 1210.00 feet; thence west along the south boundary of said Section, 1440.00 feet to the said southwest corner, the point and place of beginning, EXCEPT the SW $\frac{1}{4}$ SW $\frac{1}{4}$ W $\frac{1}{2}$ of said Section, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T. 20 N., R. 16 E.W.M.

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28 Place of Use: Real Estate Investment Group
The west 1470.00 feet of the SW $\frac{1}{4}$ of Section 29, T. 20 N., R. 16 E.W.M., EXCEPT that portion thereof bounded by a line described as follows: Beginning at the southwest corner of said Section 29, the true point of beginning; thence N 1°03'17" E, 1222.00 feet along the west line of said Section; thence S 88°56'47" E, 1440.00 feet; thence S 1°03'17" W, 1212.00 feet to the south line of said Section; thence N 89°20'39" W, 1440.04 feet along said south line to the true point of beginning. Also, EXCEPT

1
2 the following described tract: That portion of the west
3 1470.00 feet of the SW $\frac{1}{4}$ of Section 29, T. 20 N.,
4 R. 16 E.W.M., lying northerly of an existing ditch
5 bounded by a line described as follows: Beginning at the
6 northwest corner of said southwest quarter, the true
7 point of beginning; thence S 1°03'17" W, 481.94 feet
8 along the west line thereof to the centerline of said
9 ditch; thence S 87°39'20" E, 96.00 feet along said ditch
10 centerline; thence S 76°49'30" E, 329.00 feet along said
11 ditch centerline; thence N 77°51'30" E, 378.00 feet along
12 said ditch centerline; thence N 77°09'00" E, 705.00 feet
13 along said ditch centerline to the east line of said west
14 1470.00 feet of the southwest quarter; thence
15 N 1°03'17" E, 303.69 feet along said line to the north
16 line of said southwest quarter; thence N 89°11'17" W,
17 1470.01 feet along said north line to the true point of
18 beginning.
19

20 Jon L. and Cindy L. Newton

21 That portion of the west 1,470.00 feet of the SW $\frac{1}{4}$ of
22 Section 29, T. 20 N., R. 16 E.W.M., Kittitas County,
23 State of Washington, lying northerly of an existing ditch
24 bounded by a line described as follows: Beginning at the
25 northwest corner of said southwest quarter, the true
26 point of beginning; thence S 1°03'17" W, 481.94 feet
27 along the west line thereof to the centerline of said
28 ditch; thence S 87°39'20" E, 96.00 feet along said ditch
centerline; thence S 76°49'30" E, 329.00 feet along said
ditch centerline; thence N 77°51'30" E, 378.00 feet along
said ditch centerline; thence N 77°09'00" E, 705.00 feet
long said ditch centerline to the east line of said west
1,470.00 feet of the southwest quarter; thence
N 1°03'17" E, 303.69 feet along said line to the north
line of said southwest quarter; thence N 89°11'17" W,
1,460.01 feet along said north line to the true point of
beginning.

20 Sandra L. Frederickson

21 That portion of the E $\frac{1}{4}$ of Section 29, T. 20 N.,
22 R. 16 E.W.M., which is bounded by a line described as
23 follows: Beginning at the southeast corner of the E $\frac{1}{4}$ of
24 said Section which is the true point of beginning; thence
25 N 89°20'30" W, 1753.13 feet; thence N 0°46'28" E, 1422.66
feet; thence S 89°11'17" E, 1744.50 feet; thence
S 0°25'33" W, 1417.98 feet, more or less to the true
point of beginning, EXCEPT right of way for Airport
County Road along the south boundary thereof.

26 That portion of the E $\frac{1}{4}$ of Section 29, T. 20 N.,
27 R. 16 E.W.M., bounded by a line described as follows:

Beginning at the northeast corner of said SE $\frac{1}{4}$, the true point of beginning; thence S 0°25'33" W, 1261.12 feet along the east line of said southeast quarter; thence N 89°11'17" W, 1744.50 feet to Point A; thence N 0°46'28" E, 273.44 feet; thence N 4°12'52" E, 381.54 feet; thence N 0°25'33" E, 606.79 feet to the north line of said southeast quarter; thence S 89°11'17" E, 1717.63 feet along said north line to the true point of beginning, containing 50 acres, more or less, and including the range, refrigerator, dishwasher, washer, dryer, wood stove and all lighting fixtures presently located on the premises.

Brian and Elizabeth Frederick, Jon L. and Cindy L. Newton and Sandra Fredericksen

The S $\frac{1}{2}$ of Section 29, T. 20 N., R. 16 E.W.M., EXCEPT: The west 1470.00 feet thereof; and that portion of the SE $\frac{1}{4}$ of said Section 29, which is described as follows: Beginning at the northeast corner of said SE $\frac{1}{4}$; the true point of beginning; thence S 0°25'33" W, along the east line of said SE $\frac{1}{4}$ to the southeast corner of the SE $\frac{1}{4}$; thence N 89°20'30" W, 1753.13 feet; thence N 0°46'23" E, 1422.66 feet to Point A; thence N 0°46'28" E, 273.44 feet; thence N 4°12'52" E, 381.54 feet; thence N 0°25'33" E, 606.79 feet to the north line of said SE $\frac{1}{4}$; thence S 89°11'17" E, 1717.63 feet along said north line to the true point of beginning.

Limitations of Use:

This water right authorizes diversion of Yakima River water for periods only during irrigation season when water is available in the Teanaway River to fulfill the Class 16 right (June 30, 1900).

1
2 CLAIMANT NAME: John M. Butkovich COURT CLAIM NO. 01422
3 & Jean M. Butkovich
4 Source: (1) An unnamed stream;
5 (2) Roslyn Creek.
6 Use: Irrigation of 26 acres:
7 (1) Unnamed stream: 2.5 acres;
8 (2) Roslyn Creek: 23.5 acres.
9 Period of Use: April 1 through October 31.
10 Quantity: (1) Unnamed stream: 0.075 cfs, 15.0 acre-feet per year;
11 (2) Roslyn Creek: 0.67 cfs; 117.5 acre-feet per year.
12 Priority Date: June 30, 1904
13 Point of Diversion: (1) Unnamed stream: 600 feet west and 200 feet south
14 from the northeast corner of Section 20, being within the
NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, T. 20 N., R. 15 E.W.M.
15 (2) Roslyn Creek: 1700 feet south and 600 feet east
16 from the northwest corner of Section 21, being within the
SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21, T. 20 N., R. 15 E.W.M.
17 Place of Use: Those portions of the NW $\frac{1}{4}$ of Section 21, T. 20 N.,
18 R. 15 E.W.M. described as follows:
19 (1) All of Block 16 of the SOUTH ADDITION TO ROSLYN.
20 (2) Lots 13 to 24, inclusive, and vacated "B" Street of
21 Block 17 of the SOUTH ADDITION TO ROSLYN, and that
portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said section described as
22 follows: Beginning at the point of intersection of the
south line of South Avenue with the southerly production
of the east line of South "B" Street, as shown on the
plat of Northwestern Improvement Company's South Addition
23 to the City of Roslyn; thence S 22°30' E, 297.56 feet;
thence S 26°39' E, 924.75 feet; thence N 63°20' E, 542.97
feet; thence northwesterly 1259.15 feet, more or less,
along the Burlington Northern Railroad right-of-way;
thence S 64°57' W, 310.34 feet to the point of beginning,
and that portion of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ described as follows:
24 Commencing at the west quarter corner of said section,
thence east 390 feet, more or less, to the point of
beginning; thence N 26°39' W, 490 feet, more or less;
thence N 63°21' E, 45 feet, more or less;; thence
25 N 26°39' W, 345 feet, more or less; thence N 63°21' E,
26

347 feet, more or less; thence southeasterly 96 feet, along the southwesterly right of way of Shaft Street; thence S 26°39' E, 839 feet, more or less; thence S 63°21' W, 460 feet, more or less; thence N 26°39' W, 120 feet, more or less; to the point of beginning.

CLAIMANT NAME: **George Burchak** & **Diane Burchak** COURT CLAIM NO. 05216

Source: An unnamed stream.

COURT CLAIM NO. 05216

Use: Domestic supply and demand

Use: Domestic supply and stock water

Period of Use: Continuously.

Quantity: 0.02 cfs; 3 acre-feet per year.

Priority Date: December 15, 1916

Point of Diversion: 500 feet north and 700 feet west of the southeast corner of Section 4, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 19 N., R. 15 E.W.M.

Place of Use: E¹NW¹SE¹ of Section 4, T. 19 N., R. 15 E.W.M.

CLAIMANT NAME: South Cle Elum; Town of

COURT CLAIM NO. 01294
(A) 05347

Source: An unnamed spring.

Use: Municipal supply.

Period of Use: Continuously

Quantity: 1.0 cfs: 168 acre-feet per year

Priority Date: June 12, 1957

Point of Diversion: 200 feet north and 650 feet west from the east quarter corner of Section 5, being within the SE^{1/4}SE^{1/4}NE^{1/4} of Section 5, T. 19 N., R. 15 E.W.M.

Place of Use: The service area of the Town of South Cle Elum.

REPORT OF REFEREE
Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **The Estate of John E. Rothlisberger** COURT CLAIM NO. 01298
3 Richard White
Jeanne Purple

4 Source: An unnamed spring.

5 Use: Stock water.

6 Period of Use: Continuously.

7 Quantity: 0.01 cfs; 1 acre-foot per year.

8 Priority Date: **May 12, 1965**

9 Point of Diversion: 950 feet north and 1200 feet east of the west quarter
10 corner of Section 10, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 10, T. 19 N., R. 15 E.W.M.

11 Place of Use: NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, and the east 1000 feet of the
12 W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3, lying south of the Kittitas
Reclamation District Canal, ALL in T. 19 N., R. 15 E.W..

14 CLAIMANT NAME: **James E. Murphy** COURT CLAIM NO. 02189

15 Source: Unnamed spring and stream.

16 Use: Domestic supply and stock water.

17 Period of Use: Continuously.

18 Quantity: 0.02 cfs; 2 acre-feet per year.

19 Priority Date: **May 24, 1965**

20 Point of Diversion: 1000 feet north and 1000 feet east of the west quarter
21 corner of Section 10, being within the E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 10, T. 19 N., R. 15 E.W.M.

22 Place of Use: NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T. 19 N., R. 15 E.W.M.

27 REPORT OF REFEREE
28 Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **John Forenpohar** COURT CLAIM NO. 00689
3 & **Margaret E. Forenpohar**

4 Source: Two unnamed springs.

5 Use: Domestic supply, stock water and mink propagation.

6 Period of Use: Continuously.

7 Quantity: 0.02 cfs; 4 acre-feet per year.

8 Priority Date: **July 1, 1965**

9 Point of Diversion: 1250 feet north and 1095 feet east of the west quarter
corner of Section 10, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 10, T. 19 N., R. 15 E.W.M.

10 Place of Use: NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T. 19 N., R. 15 E.W.M.

11
12 CLAIMANT NAME: **E.L. Knudson, Jr.** COURT CLAIM NO. 00284
13 & **Necia Knudson** (A) 04191
14 **Rocky Mountain Elk Foundation**

15 Source: An unnamed intermittent stream.

16 Use: Storage for continuous stock water, fish propagation and
recreation.

17 Period of Use: Continuously.

18 Quantity: 7.0 acre-feet per year.

19 Priority Date: **January 13, 1966**

20 Point of Diversion: 800 feet north and 950 feet east from the west quarter
corner of Section 31, being within Government Lot 2 of
Section 31, T. 19 N., R. 17 E.W.M.

21 Place of Use: Government Lot 2 of Section 31, T. 19 N., R. 17 E.W.M.

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26
27 REPORT OF REFEREE
28 Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **Walter W. Eyer** COURT CLAIM NO. 01184
3 & **Valorie G. Eyer**
4 Source: An unnamed stream.
5 Use: Domestic supply.
6 Period of Use: Continuously.
7 Quantity: 0.01 cfs; 2 acre-feet per year.
8 Priority Date: **August 15, 1966**
9 Point of Diversion: 1300 feet south and 700 feet east from the west quarter
10 corner of Section 7, being within Government Lot 3 of
Section 7, T. 19 N., R. 16 E.W.M.
11 Place of Use: The west 308.26 feet of the north 330 feet of Government
12 Lot 3 of Section 7, T. 19 N., R. 16 E.W.M.
13
14 CLAIMANT NAME: **Robert C. Clark, Jr.** COURT CLAIM NO. 00985
15 & **Shirley M. Clark**
16 Source: An unnamed stream.
17 Use: Single domestic supply and irrigation of 2 acres.
18 Period of Use: (1) Continuously for domestic supply and (2) April 1 to
19 October 1 for irrigation.
20 Quantity: 0.01 cfs, 2.0 acre-feet per year for domestic use;
0.01 cfs, 2.0 acre-feet per year for irrigation.
21 Priority Date: **February 29, 1968**
22 Point of Diversion: 1300 feet south and 700 feet east from the west quarter
23 corner of Section 7, being within Government Lot 3 of
Section 7, T. 19 N., R. 16 E.W.M.
24 Place of Use: The east 305 feet of the west 640.26 feet of the north
25 660 feet of Government Lot 3 of Section 7, T. 19 N.,
R. 16 E.W.M.
26
27
28 REPORT OF REFEREE Referee's Office
Re: Subbasin No. 5 15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 CLAIMANT NAME: **Frederick E. Krueger** COURT CLAIM NO. 00463
3 & Linda R. Krueger

4 Source: Indian John Spring.

5 Use: Domestic supply and stock water.

6 Period of Use: Continuously.

7 Quantity: 0.01 cfs; 2 acre-feet per year.

8 Priority Date: **May 4, 1973**

9 Point of Diversion: 1300 feet north and 500 feet east of the southwest corner
10 of Section 4, being within the $\text{W} \frac{1}{4} \text{SW} \frac{1}{4} \text{SW} \frac{1}{4}$ of Section 4,
T. 19 N., R. 16 E.W.M.

11 Place of Use: The west 104 feet of the south 208 feet of the $\text{NW} \frac{1}{4} \text{SW} \frac{1}{4}$ of
12 Section 4, T. 19 N., R. 16 E.W.M.

13 CLAIMANT NAME: **Sky Meadows Ranch Country Club** COURT CLAIM NO. 05636

14 Source: An unnamed spring.

15 Use: Community domestic supply.

16 Period of Use: Continuously.

17 Quantity: 0.018 cfs; 13.0 acre-feet per year.

18 Priority Date: **January 22, 1974**

19 Point of Diversion: 1000 feet north and 1150 feet north of the west quarter
20 corner of Section 17, being within the $\text{NE} \frac{1}{4} \text{SW} \frac{1}{4} \text{NW} \frac{1}{4}$ of
Section 17, T. 19 N., R. 16 E.W.M

21 Place of Use: The $\text{SE} \frac{1}{4} \text{SE} \frac{1}{4}$ of Section 8, the $\text{N} \frac{1}{2}$ of Section 17, EXCEPT the
22 $\text{NE} \frac{1}{4} \text{NW} \frac{1}{4}$ thereof; and the $\text{NE} \frac{1}{4}$ of Section 18, ALL in
T. 19 N., R. 16 E.W.M

23
24
25
26
27 REPORT OF REFEREE
28 Re: Subbasin No. 5

Referee's Office
15 W. Yakima Ave Ste. 200
Yakima, WA 98902-3401

1
2 4. All prior claims to rights for surface water from Subbasin No. 5,
3 including those claims filed under the provisions of Chapter 90.14 RCW, are
4 denied, unless expressly provided for herein. The "Water Rights Claims Registry"
5 directed by RCW 90.14.111 should be supplemented with appropriate notations to the
6 records of those claims specifically identified in the "Water Right Claims"
7 section of Plaintiff's Exhibit No. SE-3.
8

9
10 5. The following Certificates of Water Right and Certificates of Change,
11 issued by the Department of Ecology or its predecessor agencies of the State of
12 Washington, will be made null and void:
13

14 Certificates of Surface Water Right (SWC)
15

16 SWC 00433 SWC 00587 SWC 01529 SWC 05349
17 SWC 07334 SWC 10243 SWC 10351 SWC 10875
18 SWC 10989 SWC 11609 SWC 11655 S4-01240C
19 S3-21352C S3-22411C

20 Adjudicated Certificate No. 132 as changed by Certificate of
21 Change recorded in Volume 1, Page 278
22 Certificate of Change recorded in Volume 1, Page 471

23 In conformance with RCW 90.03.240, Certificates of Adjudicated Water Right
24 will be issued to those parties for whom rights were confirmed through this
25 proceeding.
26

27 XII. CONCLUSIONS OF LAW
28

29 Confirmation of Rights
30

31 The priority date, source, point of diversion, location, maximum
32 instantaneous diversion rate, annual quantity, period of use, nature of beneficial
33

1 use, and place of use which are shown in the foregoing Findings of Fact for each
2 claimant therein referred are recommended to be confirmed as water rights of those
3 claimants.
4

5 Duty of Water

6 Unless otherwise specified, the diversion from sources of water contained
7 within Subbasin No. 5 for irrigation purposes shall be limited to 1.0 cfs for each
8 50 acres irrigated, not to exceed 6 acre-feet per acre during the irrigation
9 season.

10 Irrigation Season

11 Unless otherwise identified within a specific water right, the irrigation
12 season shall be defined as that period from April 1 to and including October 31 of
13 each year. The Referee recognizes that extraordinary circumstances may dictate
14 the application of water prior to or subsequent to the defined irrigation season,
15 and, in that event, express approval from the Department of Ecology must be
16 obtained annually prior to such deviation.

17 Certificates of Adjudicated Water Right

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

1 Administration of Water

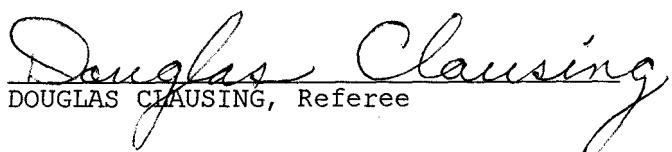
2
3 The use of Subbasin No. 5 waters should be regulated by the Department of
4 Ecology on the basis of Certificates of Adjudicated Water Rights issued as a
5 result of this proceeding, and on the basis of any permits and certificates that
6 may have issued outside of this proceeding under appropriation procedures of
7 Chapter 90.03 RCW. When available water in Subbasin No. 5 is insufficient to
8 supply all rights, and upon a finding that regulation is required, the Department
9 may regulate junior water rights in the interest of satisfying senior water rights.

10 Whenever regulation of junior water rights is necessary, the Department may
11 enter at reasonable times upon the lands of any and all parties having rights and
12 shall regulate diversion facilities so as to apportion the waters as herein
13 adjudicated.

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

17 As provided by Chapter 90.03.360 RCW and Chapter 508-64 WAC, any person
18 authorized to use surface water from Subbasin No. 5 may be required to provide and
19 maintain, at the water user's expense, proper diversion works and/or measuring
20 devices. Design, installation, maintenance, and operation of such works and
21 measuring devices will be as prescribed by the Department.

22 SIGNED and DATED at Yakima, Washington, this 1st day of July, 1997.

23
24 
25 DOUGLAS CLAUSING, Referee