

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

3
IN THE MATTER OF THE DETERMINATION)
4
OF THE RIGHTS TO THE USE OF THE)
5
SURFACE WATERS OF THE YAKIMA RIVER)
6
DRAINAGE BASIN, IN ACCORDANCE WITH)
7
THE PROVISIONS OF CHAPTER 90.03,)
8
) No. 77-2-01484-5
9
THE STATE OF WASHINGTON,)
10
DEPARTMENT OF ECOLOGY,)
11
) REPORT OF REFEREE
12
Plaintiff,)
13
) PURSUANT TO ORDER ON
14
v.)
15
) EXCEPTIONS OF
16
James J. Acquavella, et al.,)
17
) NOVEMBER 14, 1996
18
Defendants.)
19

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

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The Order issued by the Court on November 14, 1996, ruled upon several
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exceptions to the Report of Referee and remanded certain exceptions to the
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Referee, with instructions, for further evaluation and subsequent recommendations
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to the Court.

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The Court denied the exception of Robert Michaud, Claim No. 02248 and the
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exceptions filed by Ecology to the season of use recommended for Peggy Hunt, et
al., Claim No. 05284 and Milton Femrite, Claim No. 01527. The Court granted the
exceptions of Don Clapper, Claim No. 01565, Washington State Department of Natural
Resources, Claim No. 00589, and Paul and Annie Weaver, Claim No. 00576, 00576(A).
Those claims were not remanded to the Referee, but the Court's rulings are
summarized on pages 23, 144, and 75 respectively of this report.

The following claims were remanded to the Referee to consider either the claimant's or Ecology exceptions and are addressed on the indicated pages of this report:

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9	Priscilla J. Brown and John F. Brown, Claim No. 01835	18
10	Pat Burke and Mary Burke, Claim No. 01469	20
11	Terance Clarke, Claim No. 01767	8, 167
12	Lorne T. Dunning and Jeanne M. Dunning, Claim No. 00166	23, 167, 203
13	Jim Eattock and Claudia Eattock, Claim No. 01963	16, 184
14	Milton M. Femrite and Tracy S. Femrite, Claim No. 01527	28, 157, 158, 195
15	Arthur L. Fiala and Patricia A. Fiala and David Woodcock and Caroline Woodcock, Claim No. 01871	33
16	First Creek Water Users Assoc., Inc, Claim No. 00648	33
17	Jon Fitterer, Claim No. 05175	35, 165, 168
18	Jay Gorman and Dick Colasurdo and Anna Colasurdo, Claim No. 00253	37
19	William J. Grueter and Patricia M. Grueter and Jeffrey A. Strole and Cindy Strole and Mike Stanavich and Debra Stanavich, 169, 190 Claim No. 01663	37, 159,
20	James E. Hand and Patrick J. Hand, et al. and Cathy J. Heathman, Claim No. 00692	41, 170
21	Laroy D. Holmes and Lorie Holmes, Claim No. 00487	51, 170
22	Michael Hosker, et al. and Dick Van de Graaf, Jr. and Maxine Van de Graaf, Claim No. 01008	131, 171

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2	John G. Jewett and Nancy A. Jewett, Claim No. 00140	61, 198
3	Robert D. Lamb and Estate of Harold F. Lamb and Randy H. Lamb, et al. and Frank C. Lamb and Claudia J. Lamb Lofstrom, Claim No. 00908	61, 180
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6	Mary McManamy and Mary Patricia Seubert, Claim No. 00521	65, 183
7	Mill Ditch Company, Inc. and Ronald T. Anderson and Robin L. Anderson, Claim No. 00626	69, 179, 181, 199
8	Frank Oechsner and Mary McManamy and Mary Patricia Seubert, Claim No. 00576	75, 182
9	Olson Ditch, Claim No. 00169	79, 148, 150, 169, 186, 192
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11	Pautzke Bait Company, Inc., Claim No. 01724	93, 177, 189, 200
12	David Pethia and Charles Lyon, Claim No. 02261	102, 160, 161
13	J. P. Roan and Jan Roan, Claim No. 01419	105, 152, 154
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15	Nicholas Schmitt, Jr. and Janet C. Schmitt and Nelson - Gelbvieh Ranch, Claim No. 01447	111, 146, 152, 156
16	Keith Schober, Claim No. 01942	124
17	Arloha M. Scott, Claim No. 02140	112, 175
18	Thomas C. Scott, Claim No. 05722	115
19	John Hardy Shore and Donna Shore and Dana R. Lind and Elizabeth Lind, Claim No. 06041	116, 154, 155
20	Patrick J. Taylor and Susan A. Taylor, Claim Nos. 00170, 00171, and 01745	120, 151, 155 171, 172, 190, 191
21		
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27	SUPPLEMENTAL REPORT OF REFEREE	Referee's Office
28	Re: Subbasin No. 7	15 W. Yakima Ave Ste. 200 Yakima, WA 98902-3401

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2 Claim No. 01144 and 01959 196, 201

3 Twinmasters Corporation and Robert Haberman and Susie 129, 185
4 Haberman, Claim No. 00748

5 Van de Graaf Ranches, Inc., Claim No. 01503 135, 163
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7 Claim No. 01520 175, 187, 188, 195

8 Willowbrook Farms Ltd. Partnership, Claim No. 00520 141, 162

9 WA State Dept. of Natural Resources, Claim No. 00589 144

10 Additionally, on May 8, 1997, the Court issued an order accepting a late
11 claim filed by Neil J. Hoff, Court Claim No. 12341. That claim was heard at the
12 supplemental hearing and is addressed on page 44 of this report.

13 SPECIAL ISSUES

14 **RCW 90.14 INTERPRETATION:**

15 During preparation of the initial Report of Referee for Subbasin No. 7, the
16 Referee was frequently faced with the situation where the water right claim that
17 was filed pursuant to RCW 90.14 described a somewhat different water use than was
18 being testified to at the evidentiary hearing. While considering the evidence
19 that was presented, the Referee was very cognizant, and still is, of RCW
20 90.14.010, the purpose statement, which in part states . . . "The purpose of this
21 chapter is to provide adequate records for efficient administration of the state's
22 waters, . . ." The Legislative declaration contained in RCW 90.14.020 states
23 that "The legislature finds that: (1) Extensive uncertainty exists regarding the
24 volume of private claims to water in the state; (2) Such uncertainty seriously
25 retards the efficient utilization and administration of the state's water
26 resources, and impedes the fullest beneficial use thereof . . ."

With that language in mind, the Referee in many cases did not recommend confirmation of a water right for quantities of water in excess of, or for lands not described on, the water right claim form filed pursuant to RCW 90.14. However, in instances where the Referee felt there was adequate explanation of the difference or an obvious error made, the Referee did recommend confirmation of a water right somewhat different than was described in the water right claim.

As a result of this position, many claimants filed exceptions when the Referee limited the right recommended to that which was claimed in the water right claim form and conversely Ecology filed exceptions in those instances where the Referee recommended confirmation of a water right different than what was claimed in the RCW 90.14 water right claim.

The Court addressed those exceptions at the Hearing on Exceptions to the Report of Referee for Subbasin No. 7 held on October 12, 1995, and subsequent Order on Exceptions signed November 14, 1996. The Court concluded that the intent of the statute was for landowners to come as close as they could when completing the claim forms. The Court ruled that the amounts of water claimed in the 90.14 claim do not necessarily constitute the limit of the water that may be adjudicated in this case, but that the descriptions of the property in the claim should substantially match where the water is being used. The Referee will have the latitude to consider the testimony and evidence presented, along with the information contained in the RCW 90.14 claims and each claim will be judged on its own merits.

The Referee believes in applying the Court's ruling that it is very important for claimants to address the difference between the RCW 90.14 claim and the current use so that it is clear why they are different. This will allow the

1 Referee to consider all the evidence and apply the Court's ruling to the best of
2 his ability. It must be very clear to the Referee when considering a claim to
3 more water than was stated on the 90.14 claim that the water diversion and
4 delivery system has not changed and that the historic water use is consistent with
5 the current use. Bearing in mind the Court's statement that the intent of the
6 statute was for landowners to "come as close as possible", the Referee will give
7 much thought to claimants who are asserting rights to many times the quantity of
8 water stated in the claim.

9 The Referee has frequently stated in reports that he is aware of Ecology
10 staff advising claimants who did not know how much water they were using to claim
11 a right for 0.02 cfs and 4 acre-feet per year per acre irrigated. That is the
12 quantity that is commonly used by Ecology when issuing new water right permits in
13 the central part of the state. That quantity of water is adequate for most areas
14 using pumps to withdraw the water and sprinklers for irrigation. However, in
15 Kittitas County, where most of the water is delivered through gravity flow
16 ditches, and rill and flood irrigation is still the most common method of
17 irrigation, those quantities are woefully inadequate in most cases. While the
18 advice likely was well intended, it was inappropriate for this area. If a water
19 right claim filed pursuant to RCW 90.14 asserts a right for 0.02 cfs and 4
20 acre-feet per year per acre irrigated, the Referee will recognize those quantities
21 are likely in error and will rely on the claimant's testimony and evidence.

22
23 PRIORITY DATE FOR RAILROAD LANDS:

24 Water rights established under the Riparian Doctrine for land that is
25 riparian to the water source being used, have as their priority the date steps
26 were first taken to sever the land from Federal ownership. Frequently when

1 claimants own land that was conveyed from the United States to a railroad company
2 there has been little evidence offered to show when the railroad first took steps
3 to acquire the land. Frequently the only date in the record is when the railroad
4 conveyed the land to an individual or the date the patent issued. The Referee has
5 often used that as the priority date for riparian lands initially held by the
6 railroad.

7 Recently the Referee has become familiar with the case Sander v. Bull, 76
8 Wash. 1, 135 Pac. 489 (1913), in which the Supreme Court ruled that the filing of
9 the map of definite location by the railroad set the priority date of riparian
10 rights established for railroad land. Some claimants in Subbasin No. 7 who filed
11 exceptions to the Report of Referee also cited to that case to support the
12 priority date they are asserting. The map of definite location for Kittitas
13 County was filed by the railroad on May 24, 1884. That is the appropriate
14 priority date for riparian rights established on lands that were held by the
15 railroad at that time and subsequently sold.

16 The Referee intends to use that date for rights being addressed in the
17 supplemental report for which exceptions were filed. However, there undoubtedly
18 are other claimants who are successors to the railroad for whom rights have been
19 recommended for confirmation, who should have their priority dates adjusted.
20 Claimants can bring this to the Courts attention during the exception phase for
21 this supplemental report by filing an exception by the date designated in the
22 Notice of Hearing on Exceptions that accompanies this report. Their exception
23 should clearly state that their lands were originally held by the railroad and
24 they are seeking an adjustment on their priority date to reflect the date the map
25 of definite location was filed.

1

2 CLAIM EVALUATION:

3

4 Hearings, for the purpose of opening the record for testimony and evidence
5 relating to the exceptions, were conducted by the Referee beginning on
6 February 25, 1997. The Department of Ecology was represented by Carol Knudson.

7

8 COURT CLAIM NO. 01767 -- Terance Clarke

9 COURT CLAIM NO. 01768 -- Beverly M. Allenbaugh

10 Beverly M. Allenbaugh and Terance Clarke filed an exception to the
11 recommendation in the Report of Referee that water rights not be confirmed under
12 Court Claims No. 01767 and 01768. The claimants are represented by Attorney
13 Lawrence E. Martin. Beverly Allenbaugh, Terance Clarke, and Richard C. Bain, Jr.,
14 a consultant hired by the claimants, testified at the supplemental hearing.

15 The Referee declined to recommend confirmation of a water right due to the
16 lack of evidence of historical water use needed to establish a valid water right
17 and uncertainty about the nature of the water being used, i.e. natural creek flow
18 vs. foreign or Yakima Project return flow. Mr. Bain testified at length about the
19 irrigation systems being used to irrigate both the Allenbaugh land and the Clarke
20 lands. He also analyzed the Dry Creek watershed, compared it to other neighboring
21 watersheds, and provided an estimate of the natural flow that might be available
22 during an average water year.

23 Mrs. Allenbaugh owns land in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 6, T. 18 N., R. 18 E.W.M.,
24 north of Dry Creek Road and irrigates approximately 49 acres with water diverted
25 from Dry Creek. A field 6.82 acres in size is irrigated with water delivered by
26 the Kittitas Reclamation District (KRD). KRD is a Major Claimant in this

1 proceedings, whose rights were determined through the Major Claimant Pathway (see
2 Report of the Court, KRD, Volume 14, the Supplemental Report of the Court, Volume
3 14A, and the Conditional Final Order). Mr. Bain testified that based on Mrs.
4 Allenbaugh's irrigation system and method of application approximately 29.9
5 acre-feet per year per acre irrigated was used. He further estimated that half of
6 that would come from natural creek flow and the remaining would come from
7 irrigation return flows. Natural creek flow generally is available early in the
8 irrigation season, supplying virtually all of the water used for irrigation. As
9 the season progresses, more and more of the water diverted from Dry Creek would be
10 return flows, until by late July all of the water in Dry Creek would be the result
11 of return flows, except during occasional periods of precipitation. Four takeouts
12 (TO) are used on the Allenbaugh property, two on Dry Creek and two on unnamed
13 springs. TO-1 in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6 was measured at 0.7 cfs; TO-2 in the
14 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6 was measured at 2.1 cfs (both of these are on Dry Creek); TO-3
15 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6 (a spring) was measured at 0.62 cfs and TO-4 near the
16 house in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6 (also a spring) was measured at 0.67 cfs. The
17 measurements were taken on July 10, 1995, and Mrs. Allenbaugh testified that they
18 were typical of her normal use. It is not clear whether all of the takeouts are
19 operated at one time.

20 Several water right claims were filed pursuant to RCW 90.14 for Beverly
21 Allenbaugh's property. Water Right Claim (WRC) No. 151659 asserted a right to
22 divert 1 cubic foot per second (cfs), 60 acre-feet per year of drain water for the
23 irrigation of 15 acres in portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6. The point of
24 diversion described is not consistent with any of the takeouts used on the
25 Allenbaugh property. WRC No. 151661 asserted a right to divert 2 cfs, 100

1 acre-feet per year from an unnamed spring for the irrigation of 25 acres within
2 portions of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6. The spring location is described as being
3 1100 feet west and 2140 feet north of the southeast corner of Section 6. WRC No.
4 151657 asserted a right to divert 1 cfs, 60 acre-feet per year from "drain water
5 from Dry Creek" for the irrigation of 4 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6. Several
6 other claims were filed pursuant to RCW 90.14 by Mrs. Allenbaugh and her first
7 husband for lands no longer owned by Mrs. Allenbaugh.

8 Mrs. Allenbaugh did not provide any historical information on ownership of
9 the land, indicating that the patent issued "late", but not providing the date
10 when the patent actually issued. She provided statements from people familiar
11 with the Dry Creek area indicating that since the early 1900's the area was used
12 for pasturing cattle, sheep and milk cows. Pasturing livestock on land does not
13 necessarily mean the land was irrigated. One statement was that waste water was
14 used in the Dry Creek area of Sections 8 and 17, T. 18 N., R. 18 E.W.M. and
15 another statement was that water was distributed on the ground that could be used
16 for pasture and farming. The term "waste water" implies water not naturally
17 available, being there as a result of runoff from irrigated lands. If that "waste
18 water" is the result of use of KRD water, it is project return flows for which a
19 right cannot be confirmed. These statements are all very general and rather
20 vague, not providing the Referee with a clear picture that water had been used on
21 the Allenbaugh property during the time period necessary to establish a water
22 right. Therefore, the Referee cannot recommend that a water right be confirmed
23 for the Allenbaugh property in the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6.

24 Terance Clarke owns a portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 8 east of Dry Creek
25 Road, a small portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8 and a portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$ and

E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 17. He is asserting a right to irrigate 104.4 acres with water diverted from Dry Creek, along with water deliveries from Cascade Irrigation District (CID) and KRD. The CID is also a Major Claimant in this proceeding, whose rights are being asserted through the Major Claimant Pathway. Mr. Bain estimated that 23.5 acre-feet per year is needed to irrigate the Clarke fields, with 50 percent of that quantity coming from diversions from Dry Creek and the rest coming from the major claimant irrigation districts. Of the water diverted from Dry Creek, it is estimated that half of that quantity is natural flow and the rest is project or foreign return flow, for which a water right cannot be obtained. Mr. Clarke testified to irrigating 61.9 acres with water diverted from either Dry Creek or a pond near the Dry Creek channel. Therefore, Mr. Clarke is asserting a water right for 5.89 acre-feet per year per acre irrigated, or 364.6 acre-feet per year.

Five takeouts are used to irrigate the Clarke property. T0-1 and 2 are located on a pond near the north end of the farm. Two pumps are on the pond and are used to irrigate fields 1 and 2 with a total acreage of 21.9 acres. The pond is on land that was formerly owned by Mr. Clarke, but was condemned by the state in the early 1970's. The state extracted gravel from the site, creating the pond. Prior to the condemnation, the land was irrigated. T0-3 and 4 are located at the same point on Dry Creek, one on each side of the creek, near the north quarter corner of Section 17. The last takeout is located 700 feet further down Dry Creek. T0-1 has a capacity of 0.20 cfs; T0-2 has a capacity of 0.40 cfs; T0-3 has a capacity of 1 cfs; T0-4 has a capacity of 0.90 cfs. The capacity of T0-5 was not identified. T0-3, 4 and 5 are used to irrigate 40 acres in the N $\frac{1}{4}$ of Section 17. Approximately 150 head of cattle are raised on the land, drinking

1 from the creek and irrigation ditches. Five acre-feet per year is needed for
2 stock watering.

3 The following water right claims were filed pursuant to RCW 90.14 for the
4 lands now owned by Mr. Clarke: WRC No. 151660 asserted a right to 2 cfs, 240
5 acre-feet per year for the irrigation of 60 acres and stock watering in portions
6 of the NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17. The described diversion is at T0-3 and 4. WRC
7 No. 151664 asserts a right to divert 135 gallons per minute (gpm), 80 acre-feet
8 per year from a pond for the irrigation of 20 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8.
9 WRC No. 151656 asserts a right to 0.5 cfs, 180 acre-feet per year from drain
10 water for the irrigation of 4 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8. The point of
11 diversion described is near the northeast corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, which
12 is near or at the pond. WRC No. 151658 asserts a right to divert 1 gpm, 1.6
13 acre-feet per year from Dry Creek for stock watering in portions of the SE $\frac{1}{4}$ and
14 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8.

15 Mr. Clarke entered into evidence a copy of the patent that issued on
16 September 18, 1891, to Joseph Foss for the SW $\frac{1}{4}$ of Section 8, T. 18 N.,
17 R. 18 E.W.M. Also offered was a copy of foreclosure deed dated June 7, 1899, for
18 the SE $\frac{1}{4}$ of Section 8. The deed referenced existing water rights and ditches,
19 however, the existence of water rights and ditches on the SE $\frac{1}{4}$ of Section 8 does
20 not imply the existence of the same for the SW $\frac{1}{4}$. The patent for the SW $\frac{1}{4}$ of Section
21 8 did not mention water rights, nor was there anything else offered that would
22 show that water rights were established for the SW $\frac{1}{4}$ of Section 8. The Clarke land
23 in Section 17 was originally conveyed from the United States to Northern Pacific
24 Railroad and then to Alex Munson. At one time during the early 1900's it was held
25 by the Hand Brothers, whose descendants, James and Patrick Hand, continue to own
26

1 some land in Section 17 and are parties to this adjudication. James Hand
2 testified that the land in Section 17 had been irrigated since the Hand family
3 acquired it in 1901. There was no testimony of historic water use for the Clarke
4 land located in Section 8.

5 The Referee believes there has been adequate proof presented to recommend
6 that a water right be confirmed for the Clarke lands lying in Section 17; however,
7 there has not been sufficient evidence presented to allow for a recommendation to
8 confirm a right for the lands in Section 8. As mentioned at the beginning of this
9 report on page 6, riparian rights on former railroad land enjoy a priority date of
10 May 24, 1884. Therefore, the Referee recommends that a right be confirmed under
11 the Riparian Doctrine to Terance Clarke with a May 24, 1884, date of priority for
12 the diversion of 1.90 cubic feet per second, 235 acre-feet per year for the
13 irrigation of 40 acres and 5 acre-feet per year for stock watering in that portion
14 of the W $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 17, T. 18 N., R. 18 E.W.M. lying east of Dry
15 Creek Road and west of Clarke Road.

16
17 COURT CLAIM NO. 00296 -- Ronald T. Anderson
18 & Robin L. Anderson

19 Due to the exception filed by Mill Ditch Company, asking that the water
20 rights delivered through the Mill Ditch be confirmed to the individual claimants,
21 the following recommendation is made. See the discussion of the Mill Ditch
22 Company claim on page 69 of this report for details on the exception.

23 With a May 20, 1885, date of priority to Ronald T. and Robin L. Anderson, a
24 right to divert 1.5 cfs, 744 acre-feet per year for the irrigation of 60 acres
25 within the E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ lying southwest of
the Northern Pacific railroad, all in Section 34, T. 18 N., R. 18 E.W.M.

1
2 COURT CLAIM NO. 05259 -- Ronald T. Anderson
3 & Robin L. Anderson

4 The Referee did not recommend confirmation of a water right for the land
5 described in Court claim No. 05259 due to lack of evidence to show that a water
6 right had been established through use prior to adoption of the Surface Water Code
7 in 1917. The claimant took exception to this and the claim was remanded to take
8 additional testimony and evidence. The claimant is represented by Attorney John
9 P. Gilreath. Richard C. Bain, Jr., a consultant hired by the claimant, testified
at the supplemental hearing.

10 The claimant is asserting a right to irrigate a portion of the S $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
11 Section 2 west of Anderson Road and a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11 west of
12 a slough, both in T. 17 N., R. 18 E.W.M. with water diverted from the Yakima River
13 and carried in the Klein Coble Ditch. A right is also asserted for use of the
14 slough. The basis for the claim to Yakima River water through the Klein Coble
15 Ditch is the Notice of Water Right filed by N. Klein, O. B. Castle and Daniel
16 Coble stating that in October 1884 they had began construction of a ditch to be
17 used for irrigation. The notice identified the lands owned by Klein and Coble,
18 but did not identify the lands owned by Castle. The claimant believed that his
19 lands were part of the lands owned by O. B. Castle. However, entered into
20 evidence were patents issued to William S. Merrill in 1888 for the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
21 Section 2 and in 1881 to Frederick Ludi for the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 11. There is
22 nothing in the record to show that Oren Castle ever owned the Anderson property.
23 The record does show by a Certificate of Sale dated 1887 that Oren Castle bought
24 from the Northern Pacific Railroad the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11. The
25 Referee has reviewed the numerous documents submitted by the various claimants

1 that are asserting water rights based on the Klein, Coble and Castle appropriation
2 and can find no evidence that any of those individuals owned what is now the
3 Anderson property.

4 The Referee was specifically directed to a warranty deed which conveyed from
5 John H. Gibson, et ux to Jesse C. Poland the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 and all of that
6 portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 within a described tract and a portion of the
7 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2. There are three tracts excluded from the portion of the
8 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, and those exclusions include the Anderson property in the
9 S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2. The Referee does recognize the conveyance does include all
10 interest of the grantors in the Klein, Coble, Castle & Hagle Ditch from the Yakima
11 River. It is clear that the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 enjoyed rights to that ditch. It
12 is not clear that the lands in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2 enjoyed such a right.
13 Additionally, since the deed excluded the Anderson lands any reference to a right
14 to the ditch would not be relevant to the Anderson claim. The Referee again must
15 conclude that there is insufficient evidence to conclude that any portion of the
16 Klein, Castle, Coble appropriation is appurtenant to the Anderson land.

17 Initially, the Referee was also not able to conclude that there was a RCW
18 90.14 claim for the property. The claimant identified that a prior owner of his
19 property was Alice Hiner and offered as an exhibit Water Right Claim No. 120942,
20 which was filed by Alice Hiner asserting a right to 1.5 cfs, 180 acre-feet per
21 year from the Yakima River for the irrigation of 30 acres within the south 440
22 feet of the west 956 feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$
23 of Section 11 west of a slough. The claim also states that diversions from the
24 Yakima River have been through the Klein-Coble Ditch, a portion of which was
25 destroyed in a flood. WRC No. 120942 only asserts a right to use the Yakima River

1 with a diversion remote from the property. There is no indication on the claim
2 that a right was being asserted for use of the slough, nor is the slough
3 mentioned, except as part of the legal description of the property. There was no
4 other water right claim identified as being appurtenant to the property.

5 In the initial Report of Referee, the Referee noted that there was no
6 testimony of historic water use on the land. Lacking any other evidence to show
7 that a water right had been legally established for the land, testimony of
8 historic water use is essential to a recommendation that a right be confirmed.
9 There was no testimony of historic water use of either the Yakima River or the
10 slough presented at the supplemental hearing.

11 Due to the lack of evidence to show that a water right was legally
12 established for the land, the Referee must again recommend that a water right not
13 be confirmed under Court Claim No. 05259.

14
15 COURT CLAIM NO. 01207 -- Richard C. Bain
16 & Jeri L. Bain
Carl Donovan

17 Richard C. and Jeri L. Bain filed an exception to the Referee's
18 recommendations for their claim and Carl Donovan joined in that exception.
19 Mr. Donovan is represented by Attorney Lawrence E. Martin. Richard Bain and Carl
20 Donovan testified at the supplemental hearing.

21 The exceptions filed relate to three issues: the place of use for the
22 confirmed water rights; the quantity of water for stock watering; and the quantity
23 of water for irrigation. The Referee will first address the place of use issue.
24 Two rights were recommended for confirmation, one with a December 21, 1882, date
25 of priority for the irrigation of 49.7 acres. The place of use described on page
26 69 for this right was Government Lot 1, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18 lying

1 southwest of State Highway No. 10. However, the Referee inadvertently included in
2 the recommendation 10 acres that lies within Government Lot 2 within the acreage
3 calculation and then on page 278 included a portion of Government Lot 2 of
4 Section 18 lying northeast of the Yakima River and north of Cascade Irrigation
5 District Canal within the place of use. The second right, which was confirmed
6 with an April 23, 1891, date of priority was for Government Lot 2 of Section 18.
7 The place of use description was limited to that part of the government lot lying
8 northeast of the Cascade Canal, however, Mr. Martin pointed out at the
9 supplemental hearing that 1942 and 1969 aerial photographs show irrigated land
10 lying south of where the canal is now located. That Government Lot 2 of
11 Section 18 was historically under different ownership and water rights were
12 established separately. Government Lot 2 of Section 18 shall be deleted from the
13 right confirmed with an 1882 date of priority. All of the rights confirmed for
14 Government Lot 2 should have been under the 1891 date of priority. The Referee
15 will correct that error, which will result in the 1882 right being reduced by 10
16 acres and the 1891 right increasing by 10 acres, with commensurate changes in the
17 quantity of water awarded.

18 Carl Donovan purchased that part of Government 3 lying east of the Yakima
19 River and that part of Government Lot 2 and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ lying south of the Cascade
20 Canal, all in Section 18. He purchased a total of 55 acres, of which 19.2 are
21 irrigated. The irrigated lands consist of fields 7, 8 and 9. Field 9 lies in
22 Government Lot 2 and the right with the 1891 date of priority would be appurtenant
23 to the land now owned by Mr. Donovan. Of the 49.7 acres originally awarded to the
24 Bains, 9.2 acres are within the area now owned by Mr. Donovan.

At the initial evidentiary hearing, Mr. Bain had testified to withdrawing an average of 3.49 cubic feet per second from the Klocke Ditch for irrigation of fields 1 - 5 and 2.0 cubic feet per second from the Wold Ditch for irrigating fields 6 - 8. It was not clear whether withdrawals are made from both ditches simultaneously, so the Referee recommended that water rights be confirmed for a maximum diversion of 3.49 cfs. At the supplemental hearing, Mr. Bain clarified that at times withdrawals are made from both ditches, so the instantaneous quantities should be additive. He also reiterated that 3.49 and 2.0 cfs were averages and do not reflect the maximum quantity of water withdrawn from the canal. It is his belief that 4.0 cfs from the Klocke Ditch and 2.5 cfs from the Wold Ditch is more reflective of his maximum diversion and asked that the rights be confirmed for those quantities. The land irrigated by the 1891 right is all irrigated from the Wold Ditch, so that recommendation is amended to 2.5 cubic feet per second. The 1882 right is also amended to 4.0 cfs.

Lastly, Mr. Bain testified to a need for a diversion of 1.5 cfs into the Wold Ditch for wintertime stock watering. This amount of water is needed for carriage water and creation of ice bridges during cold periods. The recommendation for stock watering in the wintertime will be amended to allow for the diversion of 1.5 cfs total between the two rights. Wintertime stock watering is only delivered through the Wold Ditch.

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

John F. and Priscilla J. Brown took exception to the Referee not recommending that water rights be confirmed for use of water from three springs. The Browns are represented by Attorney Jeff Slothower. John Brown testified at the

1 supplemental hearing.

2 At the supplemental hearing Mr. Brown testified about the use characteristics
3 of two of the water sources for which rights are being asserted. One source, the
4 most northerly of the springs is located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21 and is piped
5 under the Town Ditch. The original piping was a wooden, wire wrapped culvert that
6 appears to have been placed under Town Ditch when it was first constructed. The
7 culvert was replaced when it was crushed while Ellensburg Water Company was doing
8 work on Town Ditch. The spring water mixes with water delivered from the Town
9 Ditch and is used for irrigation. At one point the water is in an open ditch
10 across a portion of the Brown's property and livestock can drink from the open
11 ditch.

12 The second source is a spring that has been developed with a concrete box,
13 from which a pipeline runs to the Brown's barn. It is Mr. Brown's understanding
14 that the spring was used for domestic supply until the City of Ellensburg extended
15 its water lines to the area. Now the spring is used for stock watering. Some
16 water from Town Ditch also mixes with the spring water. A maximum of 200 cow/calf
17 pairs are raised on the Brown property.

18 The Referee did not recommend confirmation of a water right to the Browns due
19 to the lack of RCW 90.14 water right claims for the water sources. The exception
20 filed by the Browns states they are attempting to determine whether any exist.
21 Apparently their search was unsuccessful, as none was offered. The Referee has
22 also reviewed the State's Exhibit (SE-3) and failed to find a claim for the Brown
23 property. The Browns object to the Referee not confirming a right based on their
24 not being a water right claim for their water sources and their land. However,
25 RCW 90.14.071 is very explicit that any person claiming the right to divert or
26

1 withdraw waters of the state who fails to file a statement of claim shall be
2 conclusively deemed to have waived and relinquished any right, title, or interest
3 in said right. The Referee is bound by that statute. Therefore, the Referee
4 continues to recommend that a right not be confirmed under Court Claim No. 01835.

5 During Mr. Brown's testimony he alluded to the need to convey the water from
6 the northernmost spring to prevent flooding of neighboring lands. It may be
7 necessary to pipe or channel the water to prevent flooding of neighboring lands,
8 however, the Referee cannot recommend confirmation of a right to use the water.
9

10 COURT CLAIM NO. 01469 -- Pat Burke
11 (A)05408 & Mary Burke

12 Pat and Mary Burke filed exceptions to the Report of Referee for Subbasin No.

13 7. The Burkes are represented by Attorney Lawrence E. Martin. Pat Burke
14 testified at the supplemental hearing.

15 The Burkes excepted to the language used by the Referee to describe their
16 non-diversionary stock watering rights. On page 75, after discussing the nature
17 of the stock watering and stating on line 12 that "This type of non-diversionary
18 stock watering is covered by the stock water stipulation.", the report went on to
19 state that "The Referee does not recommend that an additional right be confirmed
20 for stock watering." The claimants found that the language "no additional right"
21 to be misleading and confusing and asked that it be changed. The Referee makes
22 the following changes to lines 13 through 14 on page 75 of the Report of Referee:

23 The Referee recommends that a non-diversionary stock water right be confirmed
24 to the Burkes for use of the various springs, Dry Creek and the unnamed pond.
25 This right is covered by the stock water stipulation discussed on page 4 of this
26 report.

27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 7

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

1 The Burkes in their exception asked that when this adjudication is complete
2 certificates issue for the non-diversionary stock water rights recognized in each
3 Report of Referee. This issue was brought up in other subbasins as well. In an
4 effort to resolve this issue, Ecology made a motion to have the Court enter an
5 order on the stock water stipulation. After hearing and considering argument, the
6 Court on October 9, 1997, entered Amended Order Re: Non-diversionary Stock Water
7 Rights, recognizing historic rights for non-diversionary stock water use upon
8 riparian lands in the Yakima Basin. The Referee believes the intent of the Court
9 in entering this order was to address the exceptions that had been filed seeking
10 issuance of certificates.

11 The Burkes also took exception to a right not being confirmed for fire
12 control. Their exception noted that in the Federal Reserved Non-Indian Pathway, a
13 right for fire control was agreed and stipulated to between the parties for the
14 Forest Service. To address that exception, Ecology filed a motion seeking a
15 stipulation on water use for fire suppression. The Court signed the stipulation
16 on December 12, 1996, which stated that 1) For purposes of this stipulation, fire
17 suppression is defined as the act of extinguishing a fire, or protecting property
18 in the vicinity of a fire, which poses an imminent threat to safety or property;
19 and 2) Use of water for fire suppression is a recognized emergency use and does
20 not require a water right. Again, the Referee believes that the Court's intent
21 was to resolve the Burkes and any other exceptions to a specific right not being
22 confirmed for use of water to fight fires.

23 The last exception raised by the Burkes was to a right not being confirmed
24 for use of a spring located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T. 19 N., R. 18 E.W.M.
25 The spring is developed and piped to a house about 200 yards below the spring and

1 to corrals around the house. It is also used to irrigate a field approximately 5
2 to 10 acres in size located between the house and the spring. Mr. Burke estimated
3 that the spring flowed a maximum of 1 cfs, which occurred during the irrigation
4 season. Comparing the irrigation season flow with the non-irrigation season flow
5 lead Mr. Burke to believe that approximately half of the flow during irrigation
6 season is from seepage from the Kittitas Reclamation District Highline Canal,
7 which is above the spring, and from irrigation return flows. Water is used for
8 irrigation March through October and all year for domestic and stock watering. A
9 maximum of 50 head of livestock are watered from the spring.

10 Mr. Burke testified to his belief that the spring was developed and has been
11 used since the land was settled. However, the date for settlement of the SW $\frac{1}{4}$ SW $\frac{1}{4}$
12 of Section 30 is not in the record. The Burkes placed in the record at the
13 initial evidentiary hearing considerable evidence about settlement of the NE $\frac{1}{4}$ of
14 Section 30, but nothing about the SW $\frac{1}{4}$ of Section 30. At the initial hearing
15 Mr. Burke had testified to his belief that the land was settled in the early
16 1900's, but nothing was offered to support that belief. Water Right Claim No.
17 097559 was filed by Mr. Burke asserting a right to use an unnamed spring in the
18 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30 for irrigation of 10 acres and stock water. The claim did
19 not assert a right for using the spring for domestic supply.

20 The Referee cannot recommend confirmation of a water right for use of the
21 spring due to the lack of evidence of when the use would have begun and lack of a
22 RCW 90.14 claim for domestic supply. The Court has allowed confirmation of a
23 water right for uses not described on a 90.14 claim, but thus far the unclaimed
24 uses have been incidental to the claimed use, i.e. stock watering from an
25 irrigation ditch, where irrigation is a claimed use, but stock watering is not.

1 Stock watering is a use commonly associated with irrigation, so it is
2 understandable that identifying stock watering as a separate use might not have
3 been considered. However, it does not always follow that when there is
4 irrigation, there is a domestic use.

5
6 COURT CLAIM NO. 01565 -- Donald E. Clapper
7 & Lois Clapper
James D. Clapper
8 & Debbie K. Clapper

9 The Clappers filed an exception to the Report of Referee in order to clarify
10 the record concerning the placement of their pump. The report stated that their
11 pump was on Cabin Creek, but it actually is on a drain ditch that was constructed
12 in the 1950's to drain water from a portion of the property on which there had
13 been standing water. The drain ditch runs into Cabin Creek. That clarification
14 is noted for the record.

15 COURT CLAIM NO. 00166 -- Lorne T. Dunning
16 (A)12208(A) & Jeanne M. Dunning

17 Court Claim No. 00166 was filed with the Court by the Dunnings asserting
18 rights to water sources located in Subbasin No. 9, Wilson-Naneum. On February 18,
1997, the claim was amended to add as a source of water an unnamed spring located
19 in Subbasin No. 7. The Court allowed the amendment and directed the Referee to
20 take testimony on the additional source of water at the Subbasin No. 7
21 supplemental hearing. Mr. Dunning appeared at the supplemental hearing and
22 testified.

23 The Dunnings own the SW $\frac{1}{4}$ of Section 1, T. 19 N., R. 18 E.W.M. and are
24 asserting a right to use an unnamed spring for domestic supply and diversionary
25 stock watering. In addition to the spring that is developed and piped to a cabin

1 and stock tanks, there are several springs on the Dunning property where livestock
2 drink directly from the spring source. This type of non-diversionary stock water
3 use is covered by the stock water stipulation discussed on page 4 of the Subbasin
4 No. 7 Report of Referee and no additional right is needed. The Dunnings name is
5 hereby added to the list of claimants with non-diversionary stock water rights
6 appearing on page 263 of the Report of Referee for Subbasin No. 7. The Court also
7 on October 9, 1997, signed Amended Order Re: Non-diversionary Stock Water Rights
8 which elevated the stipulation to an order of the Court.

9 The Dunnings acquired the land in the early 1970's and built a cabin in
10 1973. At that time they redeveloped the spring and piped it to the cabin and
11 stock tanks. When installing the pipeline remnants of an old system that had
12 previously been used were found. A cabin had been on the property earlier, but
13 burned and was not replaced by the prior owners. Mr. Dunning believed that the
14 cabin was on the property prior to 1930. It is not clear what use of water had
15 been made by the Dunnings predecessor on the land. Livestock have been raised on
16 the property by both the Dunnings and their predecessor. The Dunnings have about
17 100 pair of cattle that graze this area and have access to the springs in
18 Section 1. Livestock are on the land at various times during the year. Overflow
19 from the pipeline to the cabin feeds a stock tank.

20 Mr. Dunnings use of water is covered by Surface Water Certificate No.
21 S4-26125C, with a priority date of February 1, 1979, which issued to Lorne T.
22 Dunning, Jr., authorizing the diversion of 0.01 cubic foot per second, 1 acre-foot
23 per year for single domestic supply. In addition to the certificate, Gil and Lily
24 Pope, from whom the Dunnings bought, filed several water right claims pursuant to
25 RCW 90.14. Water Right Claims No. 002142, 002143, 002145, 002147, 002151 and
26

1 002155 were filed by the Popes, asserting rights to use various springs in
2 Section 1 for stock watering. None of the spring locations precisely match the
3 location of the spring identified by Mr. Dunning as being the source for his home
4 and stock water tank. However, the Referee recognizes that determining a spring
5 location on a hillside in range country can be very difficult and at least two of
6 the spring locations are reasonably close to the location described by
7 Mr. Dunning.

8 During the supplemental hearing there was discussion about the possibility of
9 there being an existing right for the property that predated the issuance of SWC
10 No. S4-26125C. In an effort to support that possibility, Mr. Dunning entered
11 Exhibit No. DE-371, which is a copy of a deed from Northern Pacific Railway
12 Corporation to Toby H. Thomas, dated January 2, 1900. The deed conveys to
13 Mr. Thomas the S $\frac{1}{2}$ NW $\frac{1}{4}$ and Lots 3 and 4 of Section 1, T. 19 N., R. 18 E.W.M.
14 Government Lots 3 and 4 of Section 1 are basically the NW $\frac{1}{4}$ of Section 1.
15 Unfortunately, the Dunning property lies in the SW $\frac{1}{4}$ of Section 1, so this deed is
16 not relevant. However, the Referee's experience has been that the railroad
17 acquired title to the odd number sections for possible construction of a railway
18 and with the evidence that they owned the NW $\frac{1}{4}$ of Section 1 and then sold it, it is
19 reasonable to presume that they also owned the SW $\frac{1}{4}$ of Section 1. Since a railroad
20 was not constructed through Section 1, the SW $\frac{1}{4}$ was also sold to a private party.
21 With the testimony of the existence of a cabin on the property prior to 1930, it
22 is reasonable to conclude that there was a stock water use associated with the
23 cabin. The Referee believes that there may have been a right established under
24 the Riparian Doctrine for stock watering and domestic supply with a priority date
25 of 1884 when the map of definite location was filed for construction of the

1 railroad. Although it is not precisely in the record, the Referee has the
2 impression that the original cabin burned in the 1930's or 1940's. That extensive
3 period of nonuse for domestic supply raises the question of whether the domestic
4 right had been abandoned. Additionally, the only right that was protected through
5 filing of a water right claim pursuant to RCW 90.14 was for stock watering.
6 Apparently because the Popes were not using the spring for domestic supply, they
7 failed to assert a right for that use when they filed the claims in 1971. Failure
8 to file a claim relinquishes any right that may have existed, RCW 90.14.071.

9 The Referee does find that a recommendation can be made to confirm a right to
10 use the spring for continuous stock watering with a May 24, 1884, date of
11 priority, in the amount of 0.01 cfs, 0.5 acre-foot per year. A right can also be
12 recommended with a February 1, 1979, date of priority for the use of 0.01 cfs, 1
13 acre-foot per year for continuous single domestic supply.

14 Upon confirmation of the proposed rights, it is recommended that the Director
15 of the Department of Ecology cancel, rescind or otherwise make null and void
16 Surface Water Certificate No. S4-26125C.

17
18 COURT CLAIM NO. 01963 -- Jim Eattock
19 (A)02441 & Claudia Eattock

20 Claudia Eattock filed an exception to the Referee not recommending that a
21 right be confirmed for using water from an unnamed spring. Mrs. Eattock is
22 represented by Attorney Richard T. Cole. Patrick Taylor testified at the
23 supplemental hearing about his knowledge of the spring and Mr. Cole offered
24 exhibits in support of the claim.

25 The claim to which Mrs. Eattock is asserting a right is located in the
26 SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T. 18 N., R. 18 E.W.M. on land now owned by Mary McManamy

1 and Mary Patricia Seubert. Water from the spring, which flows at about 5 gallons
2 per minute, is used for stock watering of up to 25 head of livestock. A 1923
3 priority date is being asserted, based primarily on a date of first water use
4 shown on the RCW 90.14 claim filed for the spring (Water Right Claim No. 060872).
5 However, there was no evidence presented at the initial hearing to support that
6 date.

7 Water from the spring is piped under Ellensburg Water Company's Town Ditch
8 (not Cascade Canal as identified in the Report of Referee), to a stock tank.
9 Within the last five years the pipeline that goes under the canal was crushed
10 while work was being done on Town Ditch and had to be replaced. The old pipeline
11 was wooden, like was commonly used in the early 1900's. The Kittitas County
12 Assessor's Records for 1916 - 1918 shows improvements with a value of \$485 on the
13 portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18 owned by Harry Franklin. Harry Franklin was a
14 predecessor owner of the land now owned by Mrs. Eattock. Mr. Cole suggests that
15 in 1916 it is very likely that the only thing that could have been on the property
16 with that value was a house and that it is reasonable to conclude that since the
17 piping was in place to carry the spring water onto the property when the Town
18 Ditch was constructed, that spring water was used in the vicinity of the house,
19 likely for domestic supply and stock watering. The Town Ditch was constructed
20 between 1885 and 1895.

21 Prior to March 4, 1913, the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18 were owned by
22 Cyrenus E. Stevens. Therefore, the Riparian Doctrine would apply to rights
23 established on the spring for use on the Eattock property. Although the Eattocks
24 did not submit a copy of the patent for the property, DE-155, an exhibit offered
25 by Packwood Canal Company for the Subbasin No. 8 hearing, lists when patents were
26

1 recorded for lands in Kittitas County. A patent was recorded on May 21, 1887, to
2 Daniel W. Abbott for the E $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T. 18 N.,
3 R. 18 E.W.M.

4 As previously noted by the Referee, Water Right Claim No. 151060 was filed
5 pursuant to RCW 90.14 asserting a right to use the spring for stock water,
6 domestic supply and irrigation of one acre.

7 The Referee recommends that a right be confirmed to Claudia Eattock under the
8 Riparian Doctrine with a May 21, 1887, date of priority for the use of 0.01 cubic
9 foot per second, 1 acre-foot per year for continuous stock watering in the
10 SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T. 18 N., R. 18 E.W.M.

11 During testimony by Mary P. Seubert in support of an exception filed for the
12 McManamy property, Ms. Seubert asserted that use of the spring should be covered
13 by the Court's Dormaier decision (Opinion Re: Exception of Dwayne and Alvina
14 Dormaier (Claim No. 4706 Re Subbasin No. 21 (Burbank Creek)), dated September 16,
15 1993) and that use of the spring should be left between the McManamys and the
16 Eattocks. Ms. Seubert implied that would be the position also taken by the
17 Eattocks. The Referee does not agree that the Dormaier decision should be applied
18 in this case. There are sufficient facts in the record to show that a valid water
19 right does exist for this use and the Eattocks have continued to assert that
20 right.

22 COURT CLAIM NO. 01525 -- Milton M. Femrite
23 01527 & Tracy S. Femrite

24 Milton Femrite filed an exception to the Referee's failure to recommend
25 confirmation of a water right for 80 acres irrigated in the W $\frac{1}{2}$ of Section 26

T. 19 N., R. 18 E.W.M. and to the instantaneous quantity of water in the water rights recommended for his lands in the E $\frac{1}{2}$ of Section 26. Ecology excepted to the period of use and instantaneous quantity in the water rights that were recommended for confirmation. The Court denied Ecology's exception to the period of use and remanded the claim for the Referee to take additional testimony concerning the lands in the W $\frac{1}{2}$ of Section 26 and the instantaneous quantity of water used.

Mr. Femrite appeared at the supplemental hearing and testified.

The Femrites irrigate 80 acres that lie in that portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 26 lying north of the Kittitas Reclamation District (KRD) canal. The Referee did not recommend confirmation of a water right for this land in the initial Report of Referee because the water right claims which were filed pursuant to RCW 90.14 for the Femrite property did not include most of the irrigated lands in the W $\frac{1}{2}$ of Section 26. Two water right claims asserting a right to Currier Creek for irrigation were filed in 1974 by Eugene A. Palmer, a prior owner of the Femrite property. WRC No. 137678 asserted a right to divert 1 cfs from Currier Creek for the irrigation of 20 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26. The testimony at the initial evidentiary hearing indicated that only ten acres is irrigated in this area. Therefore, the Referee recommended confirmation of a water right for those ten acres. WRC No. 137677 asserted a right to divert 1 cfs from Currier Creek for the irrigation of 10 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26. The Referee also recommended that a right be confirmed for this ten acre parcel. There was no RCW 90.14 claim filed for the remainder of the lands irrigated by the Femrites in Section 26. The Referee inquired of Mr. Femrite whether he had any idea why Mr. Palmer did not file a RCW 90.14 claim for the rest of the 70 acres in the W $\frac{1}{2}$ of Section 26 which he irrigates from

1 Currier Creek. When Mr. Femrite bought the property in 1976, the land in the W $\frac{1}{2}$
2 of Section 26 north of the KRD lateral was being irrigated with "excess water"
3 pumped from the KRD lateral. Mr. Femrite understood that it had been Mr. Palmer's
4 practice for some time to irrigate the land with the excess water. Mr. Femrite
5 attempted to get the land north of the lateral assessed by KRD, but as a result of
6 subsequent water shortages, the use of excess water was discontinued. Mr. Femrite
7 believes Mr. Palmer did not file a claim pursuant to RCW 90.14 for the rest of the
8 lands in the W $\frac{1}{2}$ of Section 26 because he was not at that time irrigating them from
9 Currier Creek. When KRD water was no longer available for those lands,
10 Mr. Femrite again began using Currier Creek. It is his belief that a water right
11 was established for this land in 1882 by Henry Maxey. This right was fully
12 discussed in the initial Report of Referee. The Referee agrees with Mr. Femrites
13 assertion that a right was established for his irrigated land in the W $\frac{1}{2}$ of
14 Section 26. However, failure to file a claim pursuant to RCW 90.14 relinquishes
15 any right that may have existed, RCW 90.14.071. Mr. Palmer apparently filed water
16 right claims that reflected his irrigation practice at that time, but did not
17 protect the then unused water right for Currier Creek. It is also very possible
18 that if Currier Creek was not being used to irrigate the land in the W $\frac{1}{2}$ of
19 Section 26 during the period of time when claims were to filed pursuant to RCW
20 90.14, the right may also have relinquished for nonuse. RCW 90.14.160 states that
21 any person who voluntarily fails to beneficially use all or any part of a water
22 right for five or more successive years after June 6, 1967, relinquishes the
23 unused portion of the right. It is not clear how long the right was not
24 exercised. The Referee, therefore, cannot recommend that a water right be
25 confirmed for any additional land in the W $\frac{1}{2}$ of Section 26.

1 Mr. Femrite also excepted to the instantaneous quantity for the rights that
2 were recommended for confirmation, as did the Department of Ecology. Ecology
3 contends that since the Referee used 0.50 cubic foot per second to compute the
4 annual quantity of water that might be used based on Mr. Femrite's irrigation
5 pattern, the recommended water rights should be limited to 0.50 cubic foot per
6 second, rather than 1 cubic foot per second. The Referee used the 0.50 cubic foot
7 per second figure in calculating annual water quantities in recognition of the
8 probable conveyance loss in the Femrite ditch and the varying creek flows over the
9 irrigation season. One cubic foot per second would not be available the entire
10 irrigation season. Mr. Femrite believes that both rights that were recommended
11 for confirmation should allow for the use of 1 cubic foot per second, for a total
12 of 2 cubic feet per second. This is based on the Henry Maxey filing that stated
13 the ditch capacity was 2 cubic feet per second and his testimony that each of the
14 two pumps he uses can divert 1 cubic foot per second. The capacity of the pumps
15 was not available to the Referee at the time of the initial evidentiary hearing.
16 The recommendation to confirm a right for use of 0.22 cubic foot per second was
17 based on a statement on Court Claim No. 01527 that each pump's capacity was 150
18 gallons per minute (or 0.22 cfs).

19 The Referee is not convinced that the Femrite property enjoys a right for the
20 use of 2 cubic feet per second. The documents in the record show that the
21 Femrites predecessor, Henry Maxey had one-half interest in the ditch, which
22 logically would include one-half interest in the water carried in the ditch.
23 William and Patricia Grueter, who own the W $\frac{1}{2}$ of Section 35, T. 19 N., R. 18 E.W.M.
24 are successors to William J. Parker, who owned the other one-half interest in the
25 ditch. The Grueters are asserting a right to Currier Creek based on that one-half
26

1 interest. The Referee will recommend that the instantaneous quantity for the
2 right recommended for Femrites' use in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26
3 be changed to 1 cfs, but both rights contain a provision that a maximum of 1 cfs
4 can be used at any one time between the two rights.

5 The annual quantity of water recommended for the two rights was based on
6 Mr. Femrite's testimony about water frequently not being available. He has
7 clarified that water is not available due to recent actions by landowners
8 upstream. In the past he has been able to routinely irrigate into August.
9 Mr. Femrite did not provide any additional evidence about the annual quantity of
10 water used, however, evidence presented in support of other claims in this
11 subbasin leads the Referee to believe that 7 acre-feet per acre is more reflective
12 of what would be used were water available into August or September.

13 The Referee recommends that the following changes be made to the right
14 described on page 274 of the Report of Referee: line 6 change quantity to 1 cubic
15 foot per second and 70 acre-feet per year; line 12 add the following: A total of
16 1 cfs can be diverted at any time under this right and the right for the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$
17 of Section 26; line 17 $\frac{1}{2}$ change the acre-feet per year to 70; line 23 add: A total
18 of 1 cfs can be diverted at any time under this right and the right for the
19 SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26 lying north of the KRD canal.

20 In reviewing the record, it is apparent that an error was made in describing
21 the Section 26 point of diversion on Page 274, line 8 of the original Report of
22 Referee. The diversion should have been described as being in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
23 Section 26. That correction shall be made in this report. The Referee recognizes
24 that this location is different than that described in the Maxey filing. There
25 was no evidence presented of when the change occurred or whether compliance with

1 RCW 90.03.380 should have been made. Therefore, the Referee will recommend that
2 the right be confirmed at the currently used point of diversion, which is also the
3 location identified on the water right claim filed pursuant to RCW 90.14.
4

5 COURT CLAIM NO. 01871 -- Arthur L. Fiala
6 & Patricia A. Fiala
7 David Woodcock
8 & Caroline Woodcock

9 The Woodcock's filed an exception to the Report of Referee for Subbasin No.
10 and asked that their claim be remanded for the Referee to take additional
11 evidence. They elected not to pursue their exception and did not appear at the
12 supplemental hearing.

13 COURT CLAIM NO. 00648 -- First Creek Water Users Assoc., Inc

14 The First Creek Water Users Association, Inc. (FCWUA), initially did not
15 assert rights to use of any water originating in Subbasin No. 7 (Reecer Creek).
16 Therefore, the initial Report of Referee did not include any discussion or
17 recommendations for the association. The association filed an exception to the
18 Report of Referee for Subbasin No. 7, that is in essence a late claim for streams
19 originating in Subbasin No. 7 and intercepted by the Wold-Munson Ditch. The Court
20 remanded Claim No. 00648 to the Referee in both Subbasins No. 7 and 4 (Swauk
21 Creek) for the taking of additional testimony and evidence. The supplemental
22 hearing for both subbasins were scheduled over consecutive days, allowing the
23 association, and other claimants asserting rights in both subbasins, to make one
24 appearance. Attorney Richard T. Cole represented FCWUA. Testimony was provided
25 by Richard C. Bain, Jr., a consultant hired by the claimants, J. P. Roan, Mark
Swanberg, William Haberman, William Washburn, Everett Olson and James Colleary.

26
27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 7

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

The Referee in this report will only address the FCWUA's claims to water originating in Subbasin No. 7. See the Supplemental Report of Referee for Subbasin No. 4 for consideration of the exceptions and additional evidence presented for claims for waters originating in Subbasin No. 4. Additionally, see page 44 of this report of consideration for a late claim filed by Neil Hoff, an association member, who is asserting an independent right for Subbasin No. 7 waters that may be carried through the association ditch(es).

8 Mr. Bain testified regarding the capacity of the Wold-Munson Ditch in the
9 upper several hundred yards and the turnout capacities for the four principal
10 water users. Each of the witnesses verified the descriptions provided by
11 Mr. Bain. There was no testimony offered of additional capacity in the Wold-Munson
12 Ditch or through any of the turnouts. From the testimony provided, it is
13 abundantly clear that each of the ranches served by the FCWUA, via the Wold-Munson
14 Ditch, relies on spring runoff water to a very high degree. The reported
15 long-standing practice is to have one or maybe two irrigations of the less
16 productive pastures in the spring when water supply is more abundant and continue
17 use of First Creek water throughout the irrigation season on the best fields.
18 Testimony also establishes that the runoff from local sources is very early in the
19 spring, or even late winter, and of very short duration. Collectively the
20 testimony presented asserts a right for no specific stream, named or unnamed,
21 except Green Canyon. The Referee recognizes that the ditch as it flows
22 southeasterly to the ranches it serves captures water in the spring from the
23 drainages it crosses. However, there was no effort by FCWUA to identify where
24 those drainages are located or the quantity of water that might be expected to
25 enter the canal during the spring. The quantity of water that might be

SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 7

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

1 intercepted by the canal is highly variable and greatly influenced by the
2 precipitation patterns. In order to consider recommending that a right be
3 confirmed, the Referee must have basic facts. Based on what little information
4 was presented at the supplemental hearing, the Referee has an insufficient factual
5 record to identify sources of water, quantities of water (both instantaneous and
6 annual), and beneficial use on any of the ranches. FCWUA patrons, J. P. Roan,
7 William Grueter, Neil Hoff and Nelson-Gelbvieh Ranch each have claims asserting
8 rights to waters in Subbasin No. 7 for which exceptions were filed. See pages
9 105, 37, 44, and 111 respectively for consideration of those exceptions.

10 The claimant also did not address the adequacy of the RCW 90.14 claim(s) that
11 may have been filed by FCWUA. As far as the Referee can determine, there were no
12 claims filed by FCWUA asserting rights to use of waters in Subbasin No. 7. The
13 claimant did not address whether it was their position that Water Right Claim No.
14 118926, which was filed on First Creek, should protect their claim to water from
15 Reecer Creek tributaries. It may be that some of FCWUA's patrons filed RCW 90.14
16 claims for these sources, but if that is the case, it was not brought to the
17 Referee's attention.

18 The Referee cannot recommend confirmation of any water rights for use of
19 water sources originating in Subbasin No. 7 due to the lack of a factual record on
20 sources of water used, quantity of water used, place of use and potential
21 inadequate compliance with RCW 90.14.

22 COURT CLAIM NO. 05175 -- Jon Fitterer

23 The Referee recommended that a right be confirmed to Mr. Fitterer for the
24 irrigation of the portion of his lands lying in the NW $\frac{1}{4}$ of Section 18, T. 18 N.,

R. 18 E.W.M., but not for his lands lying in Government Lot 4 of Section 7,
T. 18 N., R. 18 E.W.M. Mr. Fitterer, represented by Attorney John P. Gilreath,
excepted to a right not being confirmed for the lands in Section 7. Jon Fitterer
testified at the supplemental hearing.

The basis for the Referee not recommending a right for Government Lot 4 of
Section 7 was lack of historical evidence for that section. Mr. Fitterer had
expected an adjacent landowner to provide that information. Section 7 was
originally conveyed from the United States to Northern Pacific Railroad Co. The
railroad conveyed to John Frost on January 28, 1905, considerable land, including
Government Lot 4 of Section 7. In June of that same year John Frost sold
Government Lot 4 of Section 7 to C. E. Stevens. There is ample evidence in the
record to show that water rights were established by Mr. Stevens, including a 1905
agreement to extend a lateral from Olson Ditch for a portion of his property.

Mr. Fitterer is asserting a right under the Riparian Doctrine. At the time
his land severed from Federal ownership, it was riparian to a slough that was fed
by the Yakima River. Rights under the riparian doctrine for railroad land date
from the filing of the map of definite location, which was May 24, 1884, in
Kittitas County. Mr. Fitterer is irrigating two acres of lawn and garden in
Government Lot 4 of Section 7 with water withdrawn from Olson Ditch using a small
pump placed on the ditch. There are remnants of the old ditches that were used
prior to the pump. Mr. Fitterer asked for a right to 2 acre-feet per year, but
the Referee believes he must have meant per acre. Sprinkler irrigation of lawn
and garden is much more efficient than rill irrigation of the fields on the
remainder of the Fitterer property, but 2 acre-feet per year for 2 acres is very
conservative. Mr. Fitterer did not testify to the instantaneous quantity used, but

1 considering the small annual quantity requested, 0.04 cfs, which is a common
2 quantity for sprinkler irrigation (0.02 cfs/acre) should be sufficient.

3 Mr. Fitterer also testified to watering stock from Olson Ditch and a need for 1
4 acre-foot per year for that purpose.

5 Based on the foregoing, in addition to the right previously recommended under
6 Court Claim No. 05175, the Referee recommends that a right be confirmed with a
7 May 24, 1884, date of priority for the diversion of 0.04 cfs, 4 acre-feet per year
8 for the irrigation of 2 acres and 0.02 cfs, 1 acre-foot per year for stock
9 watering on that portion of Parcel A of that survey recorded January 20, 1988, in
10 Book 15 of Surveys at page 126, under Auditor's file No. 510259, lying within
11 Government Lot 4 of Section 7, T. 18 N., R. 18 E.W.M.

12
13 COURT CLAIM NO. 00253 -- Jay Gorman
14 (A)02103 Dick Colasurdo
14 (A)02104 & Anna Colasurdo

15 Dick Colsaurdo filed an exception to the Referee not recommending that a
16 water right be confirmed for use of Currier Creek. The claim was remanded to the
17 Referee to take additional evidence and testimony at the supplemental hearing.
18 However, there was no appearance at the supplemental hearing in support of the
19 claim. Therefore, the Referee must continue with the original recommendation that
20 a water right not be confirmed for the property.

21
22 COURT CLAIM NO. 01663 -- William J. Grueter
23 (A)04913 & Patricia M. Grueter
23 (A)04914 Jeffrey A. Strole
24 & Cindy Strole
24 Mike Stanavich
24 & Debra Stanavich

25 William J. and Patricia M. Grueter filed exception to the Referee's
26 recommendations that a right only be confirmed for a portion of their property.

1 Subsequent to issuance of the initial Report of Referee, the Grueters sold the NW $\frac{1}{4}$
2 of Section 35 to Jeffrey A. and Cindy Strole and Mike and Debra Stanavich, joining
3 them to the claim on June 18, 1996. The Grueters are continuing to defend the
4 entire claim in the proceeding. They are represented by Attorney Richard T.
5 Cole. William Grueter testified at the supplemental hearing.

6 The Grueters own, or did own, the W $\frac{1}{2}$ of Section 35, the E $\frac{1}{2}$ E $\frac{1}{2}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
7 Section 34, T. 19 N., R. 18 E.W.M. Although the acreage testified to at the
8 original evidentiary hearing was slightly different, they are now asserting a
9 right to irrigate 19 acres in Section 34 with water diverted from an unnamed
10 creek, tributary to Jones Creek and 60 acres in the W $\frac{1}{2}$ of Section 35 from Currier
11 Creek. The initial recommendation of the Referee was to confirm a right for the
12 irrigation of 38 acres in the NW $\frac{1}{4}$ of Section 35.

13 Mr. Grueter provided considerable testimony about his irrigation practice and
14 the diversion works and delivery system. Diversion No. 1 on Currier Creek is
15 located on the neighboring Linder property and is used to irrigation 16 acres
16 lying east of Currier Creek and the northerly portion of the field west of Currier
17 Creek. Return flows generated from the application of this water return to the
18 creek, contributing to the flow that is available at diversion No. 2, which also
19 is used to irrigate the field west of Currier Creek. Again, return flows from
20 this diversion contribute to the flow in the creek at diversion No. 3.
21 Mr. Grueter testified that he diverts about 3 cubic feet per second (cfs) at
22 diversion 1 and about 1 cfs at each of diversions 2 and 3.

23 The Referee previously did not recommend confirmation of a water right for
24 the SW $\frac{1}{4}$ of Section 35 due to the lack of evidence to show that a water right was
25 established for the land. All of Section 35 was conveyed by the United States to

1 the Northern Pacific Railroad. The chain of title shows that the SW $\frac{1}{4}$ was conveyed
2 to Bernard Hanson by deed recorded on June 19, 1905. In 1909 Hanson conveyed the
3 land to Thomas Cody, who then conveyed it to Henry Kleinberg. Both of the deeds
4 transferring the land to Cody and Kleinberg contain the language that the land was
5 transferred with "water rights and irrigation ditches appurtenant thereto".

6 Bernard Hanson was the plaintiff in Hanson v. McIntire, et. al.. The Findings of
7 Fact that preceded the decree stated that the land owned by Bernard Hanson was on
8 the East Fork of Reeser Creek, or Hanson Channel. The record suggests to the
9 Referee that what is now known as Jones Creek was previously called Hanson Channel
10 (or the East Fork of Reeser Creek). Dick and Maxine Van De Graaf, who own the NE $\frac{1}{4}$
11 of Section 3 and E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 2, T. 18 N., R. 18 E.W.M. maintain that their
12 land, which also was owned by Bernard Hanson at the time of the Hanson decree is
13 the land referenced in the findings of fact. Jones Creek does flow through their
14 land, but it does not flow through the SW $\frac{1}{4}$ of Section 35. The Referee believes
15 there is merit to the Van De Graaf position and has recommended confirmation of a
16 water right. Bernard Hanson had extensive land holdings in the Reecer Creek
17 drainage and, according to a biography put in the record by the Van De Graafs, was
18 an accomplished rancher. In light of the statement in the deeds transferring the
19 land that there were water rights and irrigation ditches on the land, the
20 proximity of Currier Creek and the long time use of Currier Creek to irrigate a
21 portion of the SW $\frac{1}{4}$ of Section 35, the Referee does not believe it is unreasonable
22 to conclude that use of Currier Creek was initiated by Mr. Hanson.

23 Mr. Grueter testified to irrigating 60 acres from Currier Creek. The Referee
24 in the initial report had estimated that 38 of those 60 acres lie in the NW $\frac{1}{4}$ of
25 Section 35, leaving 22 acres irrigated in the SW $\frac{1}{4}$ of Section 35 east of Currier

1 Creek. A maximum of 3 cfs is diverted from the creek at any of the diversions.
2 Although the record is less than clear, it appears that all of the diversions are
3 used by Mr. Grueter to irrigate the portion of land in the SW $\frac{1}{4}$ of Section 35. At
4 the initial hearing, Mr. Grueter had testified to using between 700 and 900
5 acre-feet per year to irrigate the lands in Section 35. The Referee had felt this
6 was very imprecise. Mr. Grueter explained that range was due to the fluctuation
7 in the creek flows commonly experienced. Some years he had diverted up to 900
8 acre-feet during the irrigation season, other years only 700 acre-feet is
9 available. The Referee finds this to be a reasonable explanation. The annual
10 quantity of water in the original recommendation is amended from 300 acre-feet per
11 year to 570 acre-feet per year.

12 The Referee recommends that a right with a May 24, 1884, date of priority be
13 confirmed to the Grueters for the irrigation of 22 acres in that part of the SW $\frac{1}{4}$
14 of Section 35 lying east of Currier Creek. The quantity of water shall be 2 cfs
15 in recognition of Mr. Grueter's testimony that up to 3 cfs is diverted (1 cfs has
16 already been recommended for confirmation for the NW $\frac{1}{4}$ of Section 35), 330
17 acre-feet per year. The three points of diversion being used shall be included in
18 the recommendation.

19 The Referee also did not recommend confirmation of a water right for
20 irrigation of the the Grueter land in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34. Although the
21 evidence did indicate that a water right had been established, the Referee was not
22 able to conclude that the water right was for the source of water currently being
23 used, nor was there a RCW 90.14 claim identified. Upon review of all of the
24 evidence now in the record, the Referee believes that a recommendation can be made
25 to confirm a water right. It is clear that there has been much uncertainty over

1 the years concerning names for the various creeks and streams in this area.
2 Although the Notice of Water Right by C. S. Garrison for the NE $\frac{1}{4}$ of Section 34
3 references the east prong of Reecer Creek, which many believe is Jones Creek, it
4 is not unreasonable to believe that use of the unnamed tributary to Jones Creek
5 was also contemplated. It is apparent that Water Right Claim No. 008511 filed
6 pursuant to RCW 90.14 is for that tributary and describes a diversion very close
7 to that used by the Grueters. A second diversion further down the creek is not
8 described on the claim and may have been added in more recent years. The
9 claimants should contact Ecology's Central Regional Office about the procedures
10 for seeking a change to add a point of diversion to their right, see RCW
11 90.03.380.

12 It is recommended that a right be confirmed with a May 31, 1890, for the
13 diversion of 1 cfs, 285 acre-feet per year from an unnamed tributary of Jones
14 Creek for the irrigation of 19 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34. The point of
15 diversion authorized will be the diversion in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34.

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

19 COURT CLAIM NO. 00719 -- Patrick J. Hand, et al.

20 The Hands took exception to the Referee's inability to recommend that water
21 rights be confirmed under the two Court claims. The Hands are represented by
22 Attorney Richard T. Cole. James Hand and Don Rinehart, who leases some of the
23 Hand property testified at the supplemental hearing.

24 Mr. Rinehart testified about his knowledge of the irrigation system on the
25 Hand property, the method of irrigating the land and the various sources of water
26 used for irrigation. According to the evidence presented at the initial

1 evidentiary hearing, a total of 140 acres are irrigated in the W $\frac{1}{2}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of
2 Section 17, T. 18 N., R. 18 E.W.M. Cascade Irrigation District (CID) assesses the
3 Hands for 140 acres in the W $\frac{1}{2}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 17. Of that, approximately
4 40 acres are also irrigated with diversions from Dry Creek. Those 40 acres are in
5 three separate fields along the creek and are served by two diversions from Dry
6 Creek.

7 Diversion No. 1 is located approximately 950 feet south and 420 feet east of
8 the north quarter corner of Section 17 and is used on the two fields that lie east
9 of Dry Creek. Diversion No. 2 is located approximately 1400 feet north and 2000
10 feet west of the southeast corner of Section 17 and is used to irrigate the field
11 west of the creek. Mr. Rinehart estimated that 3 cubic feet per second (cfs) is
12 diverted at Diversion No. 1 and between 2 and 2.5 cfs is diverted at Diversion No.

13 2. Mr. Rinehart estimated that half of the water used to irrigate the 40 acres
14 comes from CID deliveries and half is from diversions from Dry Creek. Of the
15 quantity diverted from Dry Creek, he agreed with the assessment of Richard C.
16 Bain, Jr., testifying in behalf of the Clarke and Allenbaugh property immediately
17 north, that half of the total water diverted from the creek during irrigation
18 season would be natural flow and half would be return flow. Natural creek water
19 is available earlier in the irrigation season, decreasing in availability until by
20 late summer the flow in the creek is almost entirely return flow.

21 James Hand testified about the history of the property. His grandfather came
22 to this country in the early 1890's and settled on this land, farming it with his
23 brother. James Hand's father and uncle, Joe McManamy, continued farming the
24 land. The land in Section 17 has continuously been farmed and irrigated along
25 with the Hand property in Section 20. A priority date of 1890 is asserted for

1 this land, which is the year that the land was conveyed to Alex Munson from the
2 Northern Pacific Railroad Company. The land is riparian to Dry Creek and under
3 the Riparian Doctrine would have a priority date of May 24, 1884 (see page 6,
4 priority date for riparian lands owned by the railroad).

5 At the initial evidentiary hearing, the Hands asserted a right to 2 cfs, 200
6 acre-feet per year from Dry Creek for the irrigation of the 40 acres. Based on
7 the assessment of natural flow versus return flow and irrigation district water,
8 that quantity seems very reasonable. Therefore, the Referee recommends that a
9 right be confirmed under Court Claim No. 00692 with a May 24, 1884, date of
10 priority for the diversion of 2 cfs, 200 acre-feet per year from Dry Creek for the
11 irrigation of 40 acres in that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ lying east of Dry Creek and
12 west of Highway 97 and that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ lying west of Dry Creek, all in
13 Section 17, T. 18 N., R. 18 E.W.M.

14 The Referee will recommend that the point of diversion under this right be as
15 described on the water right claims that were filed for the property. It is
16 recognized that due to road construction, one diversion is no longer used and that
17 as an alternative water, is diverted on the Clarke property to a pond and then
18 withdrawn for irrigation. However, when this change was made, there was no
19 compliance with the procedures for changing a point of diversion provided in RCW
20 90.03.380. The Court has consistently held that statutory procedure must be
21 followed.

22 The Hands are also asserting a right under Court Claim No. 00692 for the
23 irrigation of 20 acres in that portion of the N $\frac{1}{2}$ of Section 20 lying north of the
24 county road. The Referee did not recommend confirmation of a water right for this
25 field, primarily due to there not being a water right claim filed pursuant to RCW

1 90.14 asserting a right to use Dry Creek on lands in Section 20. The Hands took
2 exception to this, arguing that filing a Court claim in this proceeding
3 "substantially complied" with the intent of RCW 90.14. The Court has previously
4 ruled on this issue in its Memorandum Opinion Re: RCW 90.14 and Substantial
5 Compliance, dated February 10, 1995. In that opinion the Court clearly stated
6 that filing a Court claim in this proceeding does not substantially comply with
7 RCW 90.14. Therefore, the Referee affirms the original recommendation that a
8 right not be confirmed on the land lying in the N½ of Section 20.

9 A right is also being asserted under Court Claim No. 00719 for the use of an
10 unnamed spring for irrigation in Section 5. The Referee declined to recommend
11 that a right be confirmed due to lack of evidence of historical beneficial use and
12 lack of evidence of the quantity of water available from the spring as natural
13 flow. There was no additional evidence offered at the supplemental hearing in
14 support of this claim; therefore, the Referee affirms the original
15 recommendation.

16
17 COURT CLAIM NO. 12341 -- Neil J. Hoff

18 Subsequent to the supplemental hearing for Subbasin No. 7 (Reecer Creek),
19 Neil J. Hoff filed Court Claim No. 12341, which asserts water rights for use of
20 four springs, a creek and a large pond for domestic supply, stock water and
21 irrigation of 150 acres. The Court accepted Court Claim No. 12341 for further
22 processing in Subbasin No. 7. Mr. Hoff, a patron of First Creek Water Users
23 Association (FCWUA), also timely filed an exception to the Report of Referee for
24 Subbasin No. 4 (Swauk Creek) regarding Court Claim No. 00648, FCWUA. That
25 exception relates exclusively to diversion and beneficial use of waters of First
26 Creek tributary of Swauk Creek.

The supplemental hearings for Subbasin Nos. 4 and 7 were consolidated in
recognition of the interest of several claimants in water sources in both basins.
Mr. Hoff and FCWUA are among those parties with multiple sources across the
subbasin boundaries. Mr. Hoff presented testimony regarding his exception to the
Swauk Creek Report of Referee for Court Claim No. 00648, FCWUA. Hoff introduced
numerous exhibits into the record at the supplemental hearing regarding historic
water use from First Creek and, to a limited degree, sources which originate
within Subbasin No. 7. The Referee admitted the evidence pertaining to Subbasin
No. 7 and suggested that filing a late claim with the Court for those sources
would be appropriate.

11 Although Mr. Hoff does not currently own all of Green Canyon Ranch, it will
12 be most efficient to include here a full legal description of that property due to
13 the historic chain of title references to the property. In addition, the Referee
14 will set forth the Hoff legal description so that by reference to Green Canyon
15 Ranch or Hoff Ranch, the respective properties are properly identified. Green
16 Canyon Ranch, as it is described in many of the chain of title exhibits (see
17 DE-195-1-36), is as follows:

That portion of the SW $\frac{1}{4}$ of Section 31, T. 20 N. R. 18 E.W.M., which is described as follows:

A tract of land bounded by a line beginning at the southwest corner of said section and running thence north along the west boundary line of said section 2640 feet to the northwest corner of said quarter section; thence east along the north boundary line of said quarter section 1125 feet to the western bank of the creek running through said quarter section; thence southeasterly along said western bank of said creek to the western bank of the "Bowers Ditch," running through said quarter section; thence southeasterly along said western bank of said ditch to the south boundary line of said section; and thence west along said south boundary line of said section 1893 feet to the point of beginning. Subject to the reservations contained in the deed from the Northern Pacific Railway Company, a corporation, to B. F. Reed, dated April 4, 1907, and filed for record April 30, 1907, and recorded in Book 14 of Deeds, Page 563, records of said county.

1 Lots 1, 2, 4, 5, 6 and 7 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$, the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of
2 Section 6, T. 19 N., R. 18 E.W.M.;

3 Lot 3, Section 6, T. 19 N., R. 18 E.W.M., EXCEPT: A tract of land
4 bounded by a line beginning at the northeast corner thereof and running
5 thence west along the north boundary line of said section 791 feet;
6 thence south 395 feet; thence southeasterly parallel with and 20 feet
7 southwest of the "Bowers Ditch" 1244 feet to the east boundary line of
8 said lot; and thence north along said east boundary line of said lot
9 1298 feet to the point of beginning;

10 The W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 7, T. 19 N., R. 18 E.W.M., EXCEPT: A tract of
11 land bounded by a line beginning at the northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$
12 of said section and running thence south along the east boundary line of
13 said quarter of quarter section to the north boundary line of the right
14 of way of the "Green Canyon" country road; thence northwesterly along
15 said north boundary line of said right of way to the north boundary line
16 of said section; and thence east along said north boundary line of said
17 section to the point of beginning;

18 The E $\frac{1}{2}$ W $\frac{1}{2}$ of Section 7, T. 19 N., R. 18 E.W.M.; and That portion
19 of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 7, T. 19 N., R. 18 E.W.M., which is described as
20 follows:

21 A tract of land bounded by a line beginning at the southeast
22 corner of said section and running thence west along the south boundary
23 line of said section 1320 feet to the southwest corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
24 said section; thence north on the west boundary line of said E $\frac{1}{2}$ SE $\frac{1}{4}$ of
25 said section to the south boundary line of the right of way of the
26 "Green Canyon" country road; thence southeasterly along said boundary
27 line of said right of way to the east boundary line of said section; and
28 thence south along said east boundary line of said section to the point
 of beginning. Subject to the reservations contained in the deed from
 the Northern Pacific Railway Company, a corporation, to Ed LeQuatte,
 dated November 3, 1906, filed for record January 3, 1907, and recorded
 in Book 14 of Deeds, Page 296, records of said county.

1 The E $\frac{1}{2}$ of Section 1, T. 19 N., R. 17 E.W.M.; and

2 The E $\frac{1}{2}$ of Section 12, T. 19 N., R. 17 E.W.M. Subject to the
3 reservations provided for by Section 3, Chapter 256, Laws of
4 Washington, 1907; and

5 The W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 7, T. 19 N., R. 18 E.W.M.

6 The Hoff property is described as follows: Lots 2, 4 and 5 of the Survey of
7 Section 6, T. 19 N., R. 18 E.W.M. comprised of 139.02 acres, being portions of the
8 NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ of said Section 6. Mr. Hoff mentioned that additional
9 land had been added, but no description was offered.

10 It should be noted that included in Exhibit DE-195 is a three-page summary
11 sheet which lists the 36 component documents; i.e., DE-195-1-36. The composite

1 exhibit, as entered into the record, does not contain Document Nos. 28 and 29.
2 Those were to have been the affidavits of Bill Haberman and Lewis Driver,
3 respectively. Exhibit DE-195-31 is a copy of Water Right Claim No. 200548 to
4 which testimony refers. The claim was registered by Ecology, although there is no
5 registration number stamped in the lower left corner of the claim form. The
6 sources of water claimed appear to be a well and "First Creek via Wold-Munson
7 claim." No water right claim has been identified which would specifically cover
8 the springs on Green Canyon Ranch, the pond or Green Canyon Creek, nor for that
9 matter a claim to First Creek for a right other than the Wold-Munson right.

10 Water Right Claim No. 118926 was filed by FCWUA in behalf of its members
11 including Neil Hoff. That claim identifies only one water source, First Creek;
12 however, the Wold-Munson Ditch, through which First Creek water is carried, is
13 reported to intercept numerous small drainages as it traverses Subbasin No. 7,
14 including Green Canyon. There are only fleeting references in the record as to
15 the quantities of water contributed by these unnamed sources.

16 Simeon Evans filed a Notice of Appropriation on First Creek in 1911 in the
17 amount of 4.0 cubic feet per second (cfs). Construction of the dam and ditch is
18 established as begun October 1, 1907. In November 1917 Evans sold to Henry
19 Washburn the E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and part of Lot 3, All in Section 6, T. 19 N.,
20 R. 18 E.W.M. to which the First Creek water was to be appurtenant.

21 During 1920, litigation was initiated in Kittitas County Superior Court,
22 Cascal Investment Company vs Henry Washburn, et al., resulting in Decree No.
23 6134. Cascal Investment Company, et al. sought relief from interference with
24 their use of the Wold-Munson Ditch. During the ensuing litigation, Henry Washburn
25 disclaimed all interest in water diverted from First Creek via the Wold-Munson

1 Ditch. Washburn did assert a right to all the local runoff into Green Canyon and
2 to First Creek water diverted into Green Canyon via the Simeon Evans Ditch. The
3 natural local water and First Creek water from the Wold-Munson and Evans Ditches
4 co-mingled in Green Canyon, from which creek channel Evans and Washburn diverted
5 their irrigation water for many years preceding 1920 for some 60 to 70 acres.
6 Decree No. 6134, Cascal, sets forth the Court's ruling which acknowledges
7 Washburn's right to carry First Creek water into Green Canyon and ultimately the
8 Wold-Munson Ditch to two points of turnout where an equal quantity to the
9 introduced amount could be diverted. Spring water collected at a point north of
10 the Wold-Munson Ditch junction with Green Canyon was also to be carried to the
11 Washburn home and garden area in the Wold-Munson Ditch where it could be diverted
12 through a one-inch pipe for domestic and garden irrigation. It seems especially
13 noteworthy that, although Washburn had acquired from C. A. Morrison and his wife,
14 during the pendency of the Cascal Investment litigation, 73/1600 interest in the
15 Wold undivided half interest in the Wold-Munson Ditch, the Court conferred upon
16 Washburn no right to divert water from the Wold-Munson Ditch for Green Canyon
17 Ranch under the Peter Wold right.

18 The Referee must now determine what right, if any, remains based on the
19 Simeon Evans appropriation of 1907 (See DE-195-4). Simeon Evans' affidavit
20 DE-195-9 states that his ownership of the E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and part of Government
21 Lot 3, all in Section 6, T. 19 N., R. 18 E.W.M. dates from May 29, 1901, and
22 continued until November 24, 1917, when Henry Washburn acquired the property.
23 Washburn's affidavit (in the same exhibit) suggests that Simeon Evans began
24 construction of the First Creek Ditch shortly after 1901. This assertion appears
25 to be misguided as the Simeon Evans Notice of Appropriation (DE-195-4) clearly

1 indicates 1907 as the date. The Court, via Decree No. 6134, acknowledged that
2 Washburn imported water from First Creek in 1920 via the ditch Simeon Evans
3 constructed; however, no quantity is referenced in the Decree or any other
4 document except the Evans Notice of Appropriation where 4.0 cfs is claimed. The
5 only Green Canyon water used by Washburn and discussed in Decree No. 6134, is that
6 emanating from a certain spring long used by Simeon Evans for his home and garden
7 irrigation. That long standing use resulted in approval of a one-inch pipe from
8 the Wold-Munson Ditch to the Washburn farmstead. Thus, in spite of considerable
9 evidence that Lawson, Simeon Evans and Washburn all used the natural runoff from
10 Green Canyon from the date of settlement, the Court did not recognize a right in
11 that water for Washburn. In fact, it appears that Decree No. 6134 contemplates
12 for Wold-Munson plaintiffs "waters of First Creek to the extent of fifteen hundred
13 (1500) miner's inches under a four-inch pressure, and all waters naturally flowing
14 into said ditch throughout its course." This recognition by the Court suggests
15 that a water right might be appropriate for successors to the plaintiff, Cascal
16 Investment, if compliance with Ch. 90.14 RCW claims registration and factual
17 quantification records had been established.

18 The record is silent as to the history of the Simeon Evans ditch after 1920
19 and use of First Creek water on Green Canyon Ranch, other than as a patron in the
20 FCWUA (39 shares of the total 640 shares). These 39 shares first appear in the
21 record in a 1948 deed transferring the land from Hull to Earl Herring.

22 As discussed previously, Water Right Claim No. 200548 (DE-195-31) is a
23 registered claim as required by RCW 90.14 to protect rights from relinquishment.
24 This claim asserts only a right to a well and First Creek water under the
25 Wold-Munson claim. The Referee must conclude that any right to surface water

1 diverted from First Creek (other than via the Wold-Munson Ditch) and/or any spring
2 or stream contributing to Green Canyon has been relinquished due to failure to
3 file a claim as specified by Ch. 90.14.071 RCW. The Kittitas County Court in
4 Decree No. 6134 recognized only the domestic spring and associated one-inch pipe
5 from Wold-Munson Ditch.

6 Water Right Claim No. 118926 filed by the FCWUA includes the legal
7 description of all the association members, including Neil Hoff and others owning
8 property within the former Green Canyon Ranch. Evaluation of the water rights of
9 the FCWUA are addressed on Pages 33 of this report and in the Subbasin No. 4
10 Supplemental Report of Referee.

11 Although not argued by Neil Hoff, a possibility was raised by Richard T.
12 Cole, attorney for FCWUA, as to applicability to Neil Hoff's domestic spring of
13 the Court's Dormaier Opinion (filed September 16, 1993). That spring was
14 recognized by the Kittitas County Court in Decree No. 6134 to make a contribution
15 to the Wold-Munson Ditch sufficient to fill a one-inch pipe. The Dormaier
16 decision only relates to de minimus flows from springs that do not contribute to
17 other water sources. The Referee concludes that Dormaier does not apply since the
18 water discharged from the spring flows to the Wold-Munson Ditch and down that
19 ditch to the Henry Washburn, diversion pipe. If the flow is sufficient to reach
20 the Wold-Munson Ditch, it was no doubt also sufficient to reach Green Canyon
21 Creek, if it were not intercepted. Mr. Hoff described for the record a spring
22 area of no real consequence on the hillside which does not produce flow into the
23 Wold-Munson Ditch. If indeed the original Washburn domestic spring and the source
24 described by the claimant are the same source, significant changes in the flow
25 characteristics have occurred. In any case, water rights cannot be recommended

1 for this claimant due to lack of Ch. 90.14 RCW claims and lack of sufficient facts
2 for quantification of a right. Claimant does graze livestock on the fields and
3 range land riparian to the several springs, Green Canyon Creek and a pond. The
4 stock water stipulation is applicable to this property and Neil J. Hoff is hereby
5 added to the list of claimants with non-diversionary stock water rights on page
6 263 of the Report of Referee for Subbasin No. 7.

7
8 COURT CLAIM NO. 00487 -- Laroy D. Holmes
9 & Lorie Holmes

10 The Referee did not recommend confirmation of a water right to these
11 claimants in the initial Report of Referee due to the lack of evidence to show
12 that a water right was established for the property. The Holmes, represented by
13 Attorney Jeff Slothower, took exception to that recommendation. Laroy Holmes
14 testified at the supplemental hearing.

15 At both the initial evidentiary hearing and the supplemental hearing, the
16 Holmes offered into evidence an Agreement and Notice of Water Appropriation dated
17 and filed April 7, 1891, between Martin Mason, Jacob Cleman, Christian Holm and
18 Peter Wold, in support of a water right for the Holmes property. Although the
19 Notice of Water Appropriation states the appropriation is made for irrigation of
20 arid lands east of the Yakima River in Kittitas County, the Referee does not
21 believe the appropriation was intended for all lands east of the Yakima River
22 below the described point of diversion, as has been asserted by the claimants.
23 Although the notice did not contain a legal description of the lands for which it
24 was intended, an agreement dated the same day specifically states that each of the
25 parties to the agreement will have equal interest in the ditch when constructed.
26 It is clear from the language in the agreement the intent of the parties was to

1 use the water conveyed in the ditch on their own property. The Holmes are not
2 successors to any of the parties to the agreement. The claimants also make the
3 assertion that the ditch crossed their property. However, that is not supported
4 by the evidence. In 1891 the Holmes property was owned by the Northern Pacific
5 Railroad Company, although William McCutcheon, who acquired it in 1892, may have
6 been physically on the land in 1891. The aforementioned agreement listed the
7 landowners through whose lands the ditch would cross. Neither Northern Pacific
8 Railroad or William McCutcheon is listed. The Referee must conclude that the
9 Mason, Cleman, Holm and Wold appropriation did not cover the Holmes land, nor did
10 the ditch as proposed when the agreement was signed cross their land. This
11 conclusion does not necessarily mean that other rights were not established for
12 the Holmes land.

13 A right is being asserted by the Holmes under the Riparian Doctrine. They
14 have entered into evidence aerial photographs taken in 1942 and 1962 that show
15 that the Yakima River has changed its course over the years. In 1942 the Holmes
16 land was clearly riparian to the Yakima River. Over the years the river changed
17 its course such that what once was an oxbow in the river is now a slough, with the
18 river channel being southwest of its original channel. Additionally, in the
19 mid-1960's Interstate 90 was constructed which further separated the Holmes land
20 from the river. The slough remained on the Holmes property. The two aerial
21 photographs clearly show that land north and east of the oxbow and slough were
22 being irrigated. However, there are no signs of irrigation on the portion of the
23 land south and west of the oxbow and slough. The Holmes are now irrigating about
24 seven acres in the area southwest of the slough that appears to have been in
25 native vegetation in the 1942 and 1962 photos. A right is being asserted for the

1 irrigation of an additional 26.8 acres within the area that was obviously being
2 irrigated in both 1942 and 1962.

3 In order to legally establish a water right under the Riparian Doctrine,
4 steps must have been taken to sever the land from Federal ownership prior to
5 June 6, 1917, and beneficial use of the water had to occur prior to December 31,
6 1932. The Holmes property is that portion of the $\text{N}\frac{1}{2}\text{NE}\frac{1}{4}$ of Section 29, T. 18 N.,
7 R. 18 E.W.M. lying northeast of the Yakima River. All of the $\text{NE}\frac{1}{4}$ of Section 29,
8 except the $\text{NE}\frac{1}{4}\text{NE}\frac{1}{4}$ was conveyed to the Northern Pacific Railroad, with the patent
9 issuing on January 16, 1896. The patent for the $\text{NE}\frac{1}{4}\text{NE}\frac{1}{4}$ of Section 29 issued to
10 the railroad on May 18, 1901. However, on September 16, 1892, the railroad sold
11 all of the $\text{NE}\frac{1}{4}$ of Section 29, except the $\text{SW}\frac{1}{4}\text{NE}\frac{1}{4}$, to William McCutcheon. Evidence
12 submitted in support of other claims in Subbasin No. 7 shows that the map of
13 definite location for the Northern Pacific Railroad was filed on May 24, 1884.
14 The filing of that map is generally considered to be the definitive step taken by
15 the railroad to sever the land from Federal ownership, thereby setting the
16 priority date of rights established under the Riparian Doctrine.

17 The claimants have submitted a chain of title for the property and copies of
18 several of the documents cited in the chain. A deed conveying the $\text{NW}\frac{1}{4}\text{NE}\frac{1}{4}\text{NE}\frac{1}{4}$, the
19 $\text{S}\frac{1}{2}\text{NE}\frac{1}{4}\text{NE}\frac{1}{4}$ and the $\text{SE}\frac{1}{4}\text{NE}\frac{1}{4}$ of Section 19 from William McCutcheon to Henry Noel on
20 May 23, 1898, states the land is sold "together with all water rights and
21 facilities appurtenant to said land." Also, a contract between Frank Fitterer,
22 et ux, and H. J. Welsch dated August 20, 1919, conveyed the $\text{E}\frac{1}{2}\text{NE}\frac{1}{4}$ of Section 19,
23 together with appurtenances, water rights and irrigating ditches. The contract
24 also places a prior lien on the crops grown upon the premises during each year of
25 the contract.

1 The Holmes have owned the property since 1967. The condition of the home,
2 outbuildings and irrigation system lead them to believe it was developed around
3 the turn of the century. The Referee believes there has been sufficient evidence
4 presented to conclude a riparian right exists for the 26.8 acres that were being
5 irrigated at the time of the aerial photographs. There clearly has been
6 additional land cleared and irrigated since 1962 for which a water right was not
7 obtained through the permit procedures of RCW 90.03.

8 Two ditches enter the property. One is the Wold Ditch and a diversion
9 directly from the ditch is used to irrigate fields 1, 2, 3 and 4. A second ditch
10 comes across the neighboring Bain and Wilkening properties, which are irrigated
11 with water carried through the Wold Ditch. The second ditch carries runoff water
12 and any unused Wold Ditch water from the Bain and Wilkening lands and is used to
13 irrigate fields 5 and 6 prior to emptying into the slough previously discussed.
14 The takeout used to irrigate fields 5 and 6 was measured at 3.31 cubic feet per
15 second. There was no evidence presented to show the flow diverted at the takeout
16 on the Wold Ditch or the capacity of the pump that withdraws water from the
17 slough. The Holmes are asserting a right to 25.2 acre-feet per acre irrigated.
18 Livestock are raised and drink from the irrigation ditches. An additional 2
19 acre-feet per year is needed for stock watering.

20 Water Right Claim No. 064731 was filed by Laroy D. Holmes pursuant to the
21 requirements of RCW 90.14. It asserted a right to divert 2 cubic feet per second,
22 220 acre-feet per year from the Yakima River for the irrigation of 55 acres and
23 stock watering in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19, T. 18 N., R. 18 E.W.M.

24 Through documents presented at the initial evidentiary hearing, the claimants
25 are asserting a right to an instantaneous quantity of 7 cubic feet per second.

1 However, in both the claim filed with the Court for this proceeding and the RCW
2 90.14 claim, a right was asserted for use of 2 cubic feet per second. The Court
3 has clearly given the Referee the latitude to consider evidence of historic water
4 use along with the information contained in the RCW 90.14 claims, when determining
5 the extent of an existing water right, see page 4 of this report. The only
6 evidence of the quantity of water being used is the one takeout that was measured
7 at 3.31 cfs.

8 Based on the evidence that has been presented and the records before the
9 Referee, it is recommended that a right be confirmed with a May 24, 1884, date of
10 priority for the diversion of 3.31 cubic feet per second, 675 acre-feet per year
11 for the irrigation of 26.8 acres and 2 acre-feet per year for stock water to be
12 used in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ lying north of I-90 and that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ lying north
13 and east of the slough in Section 19, T. 18 N., R. 18 E.W.M.
14

15 COURT CLAIM NO. 00876 -- Ivan Hutchinson
16 (A)02389 & Mildred Hutchinson

17 The Referee did not recommend confirmation of a water right under this claim
18 for use of waters from the Yakima River and Dry Creek for irrigation due to lack
19 of evidence of historic water use, probable relinquishment of the irrigation
20 rights and deficiencies in the RCW 90.14 claims filed. An exception was filed to
21 the recommendation that rights not be confirmed. The claimants are represented by
22 Attorney John P. Gilreath. Dorain Dexter, who works for Ellensburg Cement
23 Products, testified at the supplemental hearing. Ellensburg Cement Products is
24 owned by the claimants and operates a gravel and sand mining operation on the
25 lands described in the Court Claim. Pat Taylor, a neighboring landowner who
26 testified on behalf of the Olson Ditch claim and his own claim, also testified

1 about his knowledge of historic water use on the land. The Referee did recommend
2 that water rights be granted for the sand and gravel operation, and although there
3 was some colloquy as to whether it is surface or ground water that is being
4 withdrawn and used, there was no exception to that recommendation.

5 The record from the initial evidentiary hearing established that the land for
6 which a right is asserted lies within the E $\frac{1}{2}$ of Section 29 and the NW $\frac{1}{4}$ of
7 Section 33, T. 18 N., R. 18 E.W.M. A right is asserted for the irrigation of
8 28.25 acres with water diverted from the Yakima River and 75 acres with water
9 diverted from Dry Creek. Use of the land for gravel and sand mining began around
10 1947 and that use expanded over the years, with considerable growth when
11 Interstate-90 was being constructed. Irrigation of the land was reduced as the
12 gravel operation increased.

13 The Hutchinson land was originally owned by Northern Pacific Railroad
14 Company. The SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29 was conveyed to John C. Ellison on
15 May 14, 1890. The SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 33 were conveyed
16 to John E. Frost on January 28, 1905. The claimant has correctly identified that
17 water rights for former railroad land established under the Riparian Doctrine
18 enjoy a priority date of May 24, 1884, which is when the map of definite location
19 was filed. However, in order to enjoy a riparian water right there must be
20 evidence of historical water use prior to December 31, 1932. That evidence is
21 lacking. It seems that a right is being asserted to waters from the Yakima River
22 delivered through the Mill Ditch and Reed Ditch for irrigating 28.25 acres in that
23 part of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 29 lying northeast of I-90 and below the Mill Ditch
24 and a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33. Extensive evidence was put in the
25 record by Mill Ditch Company and its patrons about establishment of the water

1 rights delivered through Mill Ditch. There was no evidence of a water right for
2 the lands now owned by the Hutchinsons. Additionally, the claimant did not put
3 into evidence any testimony about water use on the land, except to state that
4 prior to 1947 the land was planted to hay and pasture and irrigated. Mr. Taylor
5 testified to his belief, based on his research for Olson Ditch Company, that the
6 Ellensburg Cement Products land has historically been irrigated. However, Mr.
7 Taylor's personal knowledge of the land began in the early 1960's and as far as
8 the Referee can determine, there is nothing in the record that would show that Mr.
9 Taylor's research would have pertained to the Ellensburg Cement Products land.

10 A right is also asserted for use of Dry Creek delivered through Willow Ditch.
11 Diversion works have been maintained near the northeast corner of Section 29,
12 which is where Willow Ditch crosses the Taylor property. Willow Ditch diverts
13 from Dry Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, T. 18 N., R. 17 E.W.M. Ms. Arloha
14 Scott appeared at the supplemental hearing and offered testimony in opposition to
15 the Hutchinsons claim to a water right to Dry Creek delivered through Willow
16 Ditch. Ms. Scott was confirmed a right to Dry Creek through Willow Ditch. She
17 testified to her understanding that a predecessor to Hutchinson had a right to
18 irrigate only a garden with water delivered through Willow Ditch and other than
19 that, her property had the sole right to Dry Creek water carried in the ditch.
20 Mr. Gilreath objected to Ms. Scott's appearance to contest the claim, as she did
21 not file an exception to the recommendation for the claim. The Referee believes
22 this objection is without merit. The Referee did not recommend confirmation of a
23 water right, to which Ms. Scott does not object. In response to the claimant's
24 exception, Ms. Scott appeared at the exception hearing and asked if she would have
25 the opportunity to appear and offer testimony about an exception being remanded.

26
27
28 SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 7

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

1 The Court informed her that would be the case. The claimants did not enter any
2 evidence to show that a right had been established for use of Dry Creek. The
3 Referee also does not believe that the claimants' land is riparian to Dry Creek,
4 therefore, evidence is needed to show use of water for irrigation prior to June 6,
5 1917.

6 At the supplemental hearing, the claimant almost exclusively addressed the
7 other two areas identified by the Referee for not recommending that rights be
8 confirmed, i.e., possible relinquishment and deficiencies in the RCW 90.14
9 claims. The Referee will address the evidence and testimony presented on these
10 two issues. However, due to the lack of evidence to show use prior to
11 December 30, 1932, the Referee continues to recommend that a water right not be
12 confirmed for irrigation.

13 In the initial Report of Referee, the Referee concluded that the RCW 90.14
14 claim filed for use of waters from Dry Creek did not include the lands for which
15 an irrigation right is being asserted in this proceeding. The claim in question,
16 WRC No. 103952 did not on its face describe the lands on which water was used,
17 stating instead "See Attached". The attachment to the claim in States Exhibit No.
18 SE-3 described lands owned by Ellensburg Cement Products/Hutchinson in Sections 2
19 and 11, T. 18 N., R. 17 E.W.M., which is quite removed from the property described
20 in Court Claim No. 00876. Counsel for the claimant submitted Exhibit No. DE-307,
21 which is a copy of WRC No. 103952, with a different legal description attached.
22 This legal description does describe the same lands as described in the Court
23 claim. The Referee is left with a dilemma -- which attachment is correct? If the
24 other identified deficiencies are resolved during the exception phase for this
25

1 supplemental report, the Referee requests that Ecology submit a certified copy of
2 Water Right Claim No. 103952 from its official records.

3 The last issue to be resolved is the possible relinquishment of the water
4 right for irrigation due to a significant period of nonuse. As was previously
5 identified, irrigation of the land was redirected as the gravel and sand operation
6 increased. Although the testimony was not very specific in this regard, the
7 Referee believes that irrigation of crop land had ceased by 1967 when the
8 legislature passed RCW 90.14, which includes provisions for relinquishment of
9 unused water rights, RCW 90.14.130 - .180. The testimony does indicate there was
10 some level of landscape irrigation that continued until around 1990, but the
11 testimony did not indicate the extent of that irrigation.

12 RCW 90.14.160 states that:

13 "Any person entitled to divert or withdraw waters of the state
14 through . . . custom or general adjudication, who abandons the same,
15 or who voluntarily fails, without sufficient cause, to beneficially
16 use all or any part of said right to divert or withdraw for any
17 period of five successive years after the effective date of this act,
18 shall relinquish such right or portion thereof, and said right or
19 portion thereof shall revert to the state . . ."

20 RCW 90.14.140 provides for instances where rights are exempt from
21 relinquishment. One instance is "If such right is claimed for a determined future
22 development to take place either within fifteen years of July 1, 1967, or the most
23 recent beneficial use of the water right, whichever date is later." The claimant
24 asserts that this exemption from relinquishment applies to their right. They
25 assert that when the gravel mining operation is complete they intend to resume use
26 of Dry Creek and Yakima River water for irrigation. The specific use of the water
27 is uncertain and cannot be defined until the mining operation ceases. The water
28 may again be used for crop irrigation, or a housing or industrial development may

result, with water needed for landscape irrigation. Although the claimant cannot define the extent or exact nature of the use of the land after the gravel operation ceases, it is clear that the intent is to use the water for irrigation. The Referee believes that is sufficient definition to prevent relinquishment of the water right. RCW 90.14.140 requires that the intended future development take place within 15 years of the last use of water or July 1, 1967, whichever comes later. The Referee believes that most of irrigation use on the claimants land had ceased by 1967, thereby requiring that the future use of water begin within 15 years of July 1, 1967, which normally would be 1992. The law of this case is that since the filing of the case in October of 1977, water rights could not be relinquished for nonuse due to the operation of legal proceedings, see RCW 90.14.140(1)(d). The Referee believes that it is reasonable to extend that same philosophy to the determined future use provision in that same section. Since 1977, the 15 years has also been tolled. In the case of Ellensburg Cement Products, 10 of the 15 years had passed when this case was filed. Upon the completion of this adjudication, there will be five years remaining on the time period for resuming use of the water. This conclusion, of course, presumes that the claimant is able during the exception phase for this supplemental report submit evidence of historic water use from the Yakima River prior to December 31, 1932, and use of Dry Creek water prior to June 6, 1917, which would show that a water right was legally established for the land and the question of the appropriate attachment to WRC No. 103952 is adequately resolved.

1
2 COURT CLAIM NO. 00140 -- John G. Jewett
3 (A)02098 & Nancy A. Jewett
4 (A)02105

5 John G. and Nancy A. Jewett filed an exception to the annual quantity of
6 water that was recommended by the Referee. The Jewetts are represented by
7 Attorney Jeff Slothower. Mr. Jewett testified at the supplemental hearing.

8 Mr. Jewett testified about his irrigation practices in order to demonstrate
9 that 20 acre-feet per year is used to irrigate their two acres. According to the
10 testimony, it takes three days to irrigate the two acres and they irrigate a
11 minimum of five times each season. Depending on the precipitation, they may
12 irrigate once or twice more. Based on this testimony, the Referee amends the
13 recommendation on page 149, line 18 and page 299, line 6½, of the Report of
14 Referee to recommend that a right be confirmed for 0.50 cubic foot per second, 20
acre-feet per year for the irrigation of 2 acres.

15 COURT CLAIM NO. 00908 -- Roberta D. Lamb
16 & Estate of Harold F. Lamb
17 Randy H. Lamb, et al
18 Frank C. Lamb
19 Claudia J. Lamb Lofstrom

20 The Lambs filed two exceptions to the Referee's recommendation related to
21 this claim. The first exception was to the Referee recommending that the right
22 for their property be confirmed to Mill Ditch Company, rather than in their name,
23 and the second exception was to a right not being confirmed for the irrigation of
24 an additional 35 acres that lies north of Mill Ditch. The issue of whether the
25 water right(s) for lands served by the Mill Ditch should be confirmed to the ditch
company or to the individual landowners will be address as part of the Mill Ditch
Company exception, see page 69 of this report. The other exception, to the number

1 of acres for which a right can be confirmed, will be addressed here. The
2 claimants are represented by Attorney John P. Gilreath. Roberta Lamb testified at
3 the supplemental hearing, specifically addressing the second exception.
4

5 The Referee concluded in the initial Report of Referee that a right was
6 established in 1885 for the irrigation of 50 acres below what is now called the
7 Mill Ditch (previously Reed-Ramm Ditch) and that the J. H. Reed "Claim to Interest
8 in Water Ditch" filed May 31, 1890, was the basis for that right. The 1890 claim
9 clearly states that a right is being claimed for the irrigation of 50 acres. The
10 Lambs are also asserting a right for the irrigation of 35 acres north of the Mill
Ditch with an 1888 date of priority.

11 The Lamb family first acquired this land in 1954. At that time the land
12 north of Mill Ditch was being irrigated and there was an old house, well house,
13 and barns on that part of the farm. Mrs. Lamb testified to having been actively
14 involved in burning and cleaning out both the Mill Ditch and the lateral that
15 served the acreage north of Mill Ditch. The crops grown on the fields north of
16 the ditch are the same as on the land south of the ditch, mixed hay and pasture
17 for cattle.

18 All of the Lamb property was originally railroad land that was sold by a
19 contract dated April 3, 1889, to James H. Reed. There is clear documentation that
20 a water right was established for the portion of the Reed property described in
21 the 1890 filing. However, there is no document to show that a right was
22 established in 1888 for the rest of the Lamb property. The Referee is directed to
23 an excerpt of a map that shows a Reed Ditch as a lateral off of Mill Ditch running
24 into the north part of Section 33. This ditch could have delivered water to the
25 35 acres in question. Mr. Gilreath states that the map was created in 1902.
26

1 However, the Bureau of Reclamation entered a portion of the map to address the
2 claim of the Olson Ditch Company and that portion of the map contained the date of
3 1912, leading the Referee to believe that the map was created in 1912. It is the
4 Referee's understand that the map was created as part of the United States
5 investigations into the feasibility of the Yakima Irrigation Project, which is
6 consistent with the 1912 date.

7 The map clearly shows that a lateral had been constructed that could at that
8 time be used, and currently is being used, to irrigate the 35 acres lying north of
9 the Mill Ditch. However, there is no evidence of when this use was initiated.
10 The claimants are asserting that it began in 1888, however, there is nothing in
11 the record to support that date, or suggest another date that would have been
12 prior to establishment of the Surface Water Code. If the use was initiated in
13 1888 as has been asserted, why was it not described in the document filed by Reed
14 in 1890? The Reed-Ramm Ditch described in the 1890 document is the same ditch
15 that carries the water to the lateral that is used to irrigate the 35 acres in
16 question.

17 The only evidence of a water right being established in 1888 for the
18 Reed-Ramm Ditch (now Mill Ditch) was by John A. Shoudy and R. P. Tjossem. Reed
19 very clearly did not claim any interest in that water.

20 There has been insufficient evidence presented to change the initial
21 recommendation that a right be confirmed for the irrigation of 50 acres. The
22 Referee will confirm the right conveyed through Mill Ditch to the individual
23 landowners as requested by those landowners and Mill Ditch. The diversion records
24 presented on behalf of Mill Ditch resulted in the Referee concluding that a right
25 exists for the diversion of 23 cfs, 5820 acre-feet per year for all of the Mill

1 Ditch patrons. The Lamb's are the only successor to the Reed lands covered by the
2 Reed and Ramm appropriation and his lands specifically were identified as having a
3 right to 4 cfs. Therefore, the Referee recommends that a right be confirmed to
4 the Lambs with a May 20, 1885, date of priority and quantities of 4 cfs, 620
5 acre-feet per year for the irrigation of 50 acres.

6
7 COURT CLAIM NO. 00637 -- Albert J. Lentz
8 & Glena M. Lentz
9 Ronald T. Anderson
10 & Robin L. Anderson

11 Due to the exception filed by Mill Ditch Company, asking that the water
12 rights delivered through Mill Ditch be confirmed to the individual landowners, the
13 following recommendation is made for rights appurtenant to the lands described in
14 Court Claim No. 00637. See the discussion related to Mill Ditch Company on page
15 69 of this report of the basis for the quantity of water recommended:

16 With a May 6, 1893, date of priority, a right to Albert J. and Glena M. Lentz
17 for the diversion of 1 cfs, 483.6 acre-feet per year for the irrigation of 39
18 acres in that portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34 lying southwest of Dolarway Road
19 and that portion of Government Lots 3 and 4 of Section 3 lying west of Reecer
20 Creek and east of Interstate 90.

21 With a May 20, 1885, date of priority, to Ronald and Robin Anderson, a right
22 to 0.225 cfs, 111.6 acre-feet per year for the irrigation of 9 acres in the
23 SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34.

24 COURT CLAIM NO. 01834 -- Utana Mackner

25 Utana Mackner, represented by Attorney Jeff Slothower, filed an exception to
26 the Report of Referee for Subbasin No. 7 in order to have an opportunity to clear
27 up uncertainty about the location of a spring used for stock watering and a pond

1 on her property. Ms. Mackner is now deceased and her son-in-law, Eric L. Dicken,
2 testified at the supplemental hearing.

3 The spring for which a stock water right is being asserted is located in the
4 SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, T. 18 N., R. 18 E.W.M. Livestock drink directly from the
5 spring and a non-diversionary stock water right, which is covered by the stock
6 water stipulation discussed on page 4 of the Report of Referee, adequately covers
7 this type of use.

8 Due to lack of testimony about the location of the spring at the initial
9 evidentiary hearing, the Referee in the Report of Referee had speculated that the
10 spring might be located near or in a pond that is on the Mackner property.
11 Mr. Dicken clarified that the pond is part of their irrigation system and is dry
12 outside the irrigation season. Water from the Town Ditch (delivered by the
13 Ellensburg Water Company) is fed into the pond during the irrigation season.

14 The Referee recommends that a non-diversionary stock water right from the
15 spring under the stipulation be recognized under Court Claim No. 01834. The
16 Mackners name already is on the list of claimants with non-diversionary stock
17 water rights that is on page 263 of the Report of Referee for Subbasin No. 7.

19 COURT CLAIM NO. 00521 -- Mary McManamy
20 & Mary Patricia Seubert

21 The claimants filed exceptions to the quantity of water for which the right
22 was confirmed and the conclusion by the Referee that the 1905 Limiting Agreement
23 was binding on the claimant's land served by Olson Ditch. The claimants are
24 represented by Attorney John P. Gilreath. Mary P. Seubert and Richard C. Bain,
25 Jr., a consultant hired by the claimants, testified at the supplemental hearing.

1 In order to address the exceptions, the Referee believes that a review of
2 historical documents that apply to the claimants' land is helpful. The McManamy
3 property was owned by three individuals at the time the water rights were being
4 established. Charles Kull owned the E $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T. 18 N.,
5 R. 18 E.W.M. Water rights were established by Kull for 66 inches of water from
6 the Yakima River. The record shows that the portion of the McManamy property
7 previously owned by Kull is irrigated only with water delivered by Ellensburg
8 Water Company and the claimant owns shares in that company. There is no evidence
9 that there has been continued beneficial use of the water rights established by
10 Charles Kull.

11 The portion of the McManamy property in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ of
12 Section 18 and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, both in T. 18 N., R. 18 E.W.M., was owned by
13 T. W. Abbot, who acquired it by either patent (Sec. 18 land) or through purchase
14 from the Northern Pacific Railroad Company (Sec. 17 land). Horton Crandall owned
15 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18; the McManamys own most of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
16 Section 18. In 1885, Abbot and Crandall appropriated 400 inches of water for use
17 on 280 acres of land they owned. Abbot owned 200 acres and Horton Crandall owned
18 80 acres. The proportionate share of the Abbot and Crandall appropriation that
19 would be appurtenant to the McManamy land is 6.7 cfs.

20 The McManamys irrigate 110.1 acres total with water delivered through the
21 Olson and Wold Ditches. The proportionate share of the Abbot-Crandall
22 appropriation appurtenant to the land lying north of the railroad right-of-way,
23 which is 69 irrigated acres, is 4.3 cfs, which is delivered through the Olson
24 Ditch. A right is being recommended for this land under the Olson Ditch claim.
25 The part lying south of the railroad right of way receives its water from the Wold

1 Ditch, is 38.2 irrigated acres, and the proportionate share of the Abbot-Crandall
2 appropriation would be 2.29 cfs.

3 As the record reflects, T. W. Abbot conveyed the portion of his property in
4 the N $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18 to Kittitas County for operation of a "poor
5 farm". The record is not entirely clear, but that conveyance may also have
6 included the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17. The county acquired 100 inches (or 2 cfs) of
7 the 1876 Farnsworth appropriation for use on the "poor farm" land. The McManamys
8 now own the poor farm. The 1876, 2 cfs water right is appurtenant only to the
9 McManamy land that was previously owned by the county, which is part of the land
10 served water from Olson Ditch. As previously discussed, the portion of the 1885
11 Abbot/Crandall appropriation that is appurtenant to the lands served from Olson
12 Ditch is 4.3 cfs. Mr. Bain's measurements indicate this is the quantity of water
13 being used on that land, and for which a right is being asserted. It is,
14 therefore, apparent that the two rights are not additive and the Referee will
15 recommend that a right be confirmed under the Olson Ditch with an 1876 date of
16 priority for 2 cfs and with an 1885 date of priority 2.3 cfs (total of 4.3 cfs).

17 The claimants are asserting a right to 7.21 cfs for the portion of their
18 property lying south of the Northern Pacific Railroad right of way. However, the
19 record does not support the existence of a right for this quantity. As previously
20 discussed, the portion of the Abbot-Crandall water right that would be appurtenant
21 to the land served from the Peter Wold Ditch is 2.29 cfs. An argument could be
22 made that the 2 cfs that was appurtenant to the lands north of the right of way,
23 but no longer used after the purchase of the 1876 water right is now being used on
24 the lands south of the railroad. That additional 2 cfs would allow for the use of
25 4.29 cfs, which is very close to the quantity that was originally recommended by

1 the Referee and claimed in the RCW 90.14 claim (4 cfs). The claimant has asserted
2 that the Kull water right is still being exercised, however, as was previously
3 discussed, the lands that were owned by Charles Kull are only irrigated with water
4 delivered by Ellensburg Water Company. There is no evidence of continued
5 beneficial use of the Kull water right on the land previously owned by Mr. Kull.

6 Mr. Bain has testified to a need for the claimed 7.21 cfs in order to
7 irrigate the land in 34 days during the irrigation season. The Referee notes that
8 the larger field north of the right of way is twice the number of acres, has
9 approximately the same annual quantity of water need, but uses almost half the
10 instantaneous quantity, being irrigated in over four times as many days. The
11 claimant argues that if they are limited to 4 cfs, they will be forced to irrigate
12 for a longer period of time during the irrigation season. Based on the evidence
13 presented, the current irrigation practice cannot be accommodated by the existing
14 water rights. Based on the foregoing analysis, the Referee recommends that the
15 instantaneous quantity recommended for the lands south of the railroad right of
16 way be increased to 4.29 cfs, but the rest of the recommendation remains
17 unchanged.

18 Ms. Seubert also testified briefly about the nature of a spring that is
19 located on the McManamy property in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18 northeast of
20 Ellensburg Water Company's Town Ditch. At the initial evidentiary hearing, Jim
21 and Claudia Eattock asserted a right to use that spring for stock watering on the
22 land they own in that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18 lying southwest of the
23 Town Ditch (and southwest of the county road and Olson Ditch). The Referee did
24 not recommend confirmation of a water right for this use due to lack of evidence

1 of historical water use. The Eattocks filed an exception to that recommendation
2 and their exception is addressed on page 26 of this report.

3 The McManamys are asserting that the use of this spring should be covered by
4 the Dormaier decision issued by this court on September 16, 1993, and that this is
5 the position that would be taken by the Eattocks. The claimants believe that any
6 arrangement for use of the spring is between the McManamys and the Eattocks and
7 should not be addressed in this proceeding. However, that is not the position
8 that was taken by the Eattocks at the supplemental hearing, as they presented
9 sufficient information to allow the Referee to recommend confirmation of a water
10 right. Any easement or right-of-way issues is a matter to be addressed by the two
11 parties.

12 COURT CLAIM NO. 00626 -- MILL DITCH COMPANY, INC.

13 Ronald T. Anderson
14 & Robin L. Anderson

15 Mill Ditch Company, Inc., represented by Attorney John P. Gilreath, filed two
16 exceptions to the Referee's recommendations in the Report of Referee for Subbasin
17 No. 7. One exception was to the annual quantity of water that was confirmed and
18 the second exception was to a right being recommended for the ditch company rather
19 than the individual landowners served by the ditch company. Some of those
20 individual landowners had exceptions related to the conclusion reached by the
21 Referee as to the extent of the water right for their own lands. Ecology also
22 excepted to the method used by the Referee in confirming a water right to the
23 ditch company. Ecology's position was that the individual landowners hold the
24 water right and if the right were to be confirmed to the ditch company, it should
25 identify specifically the owners of the land served and how much of the right was
26 awarded to each landowner, i.e. a parcel by parcel approach. Ecology did not

1 object to the ditch company's position that the water right should be confirmed to
2 the individual landowners instead of the ditch company, therefore, the Referee's
3 recommendation shall be amended to award rights to the individual patrons rather
4 than the ditch company. There are a few patrons that are not claimants in this
5 proceeding. If the Referee finds that a right can be recommended for those lands,
6 the recommendation will be in the name of Mill Ditch Company, but will
7 specifically identify the names of the landowners involved and their lands.

8 The Referee first must address the appropriate quantity of water to be
9 awarded for diversion into Mill Ditch. Richard C. Bain, Jr., a consultant hired
10 by the ditch company testified at the supplemental hearing on this issue.
11 Mr. Bain's testimony centered on presenting evidence of diversions into the Mill
12 Ditch during the past 10 to 15 years in order to support confirmation of a water
13 right in excess of that which was originally recommended. The Referee believes
14 that the claimant missed the point which was made in the original Report of
15 Referee. Mill Ditch Company presented diversion records from the United States
16 Bureau of Reclamation dating from 1924 until 1984. The Referee chose to discount
17 the records from 1924 until 1941 because there was a mill in operation during that
18 time receiving water from Mill Ditch. Operation of the mill ceased in 1941 and
19 the water right associated with the mill was transferred. While the mill was in
20 operation, diversions into Mill Ditch ranged from 11,000 to 18,000 acre-feet per
21 year. To the Referee's knowledge, since 1942, the only water diverted into the
22 ditch has been used for irrigation and stock watering. The records show that
23 diversions into Mill Ditch have generally been between 4,000 and 6,000 acre-feet
24 per year, but diversions were in the range of 5,000 to 5,800 from 1960 through
25 1976. It is clear that the diversions in the 1990's increased due to the point of
26

1 diversion for the Kline, Coble and Castle Ditch being moved to the same diversion
2 as that for Mill Ditch. However, separate water rights are being recommended for
3 the portion of the Kline, Coble and Castle water appropriation that had
4 historically been diverted from its original point of diversion. The evidence
5 does show that Mill Ditch gains water, as more water is withdrawn from the ditch
6 than is diverted from the Yakima River. However, there has been no effort to
7 quantify that gain or show that there is a separate source of water or right for
8 the quantity gained. The quantity of water that is being recommended is based on
9 the records of diversion from the Yakima River from 1960 until 1976. The Referee
10 concluded that the maximum right that has continued to be put to beneficial use
11 has been for 5,820 acre-feet per year. The claimant put in testimony of a need
12 for over 14,000 acre-feet per year, however, that need is not reflected in the
13 diversion records. There has been nothing entered into the record that would
14 convince the Referee that the recommendation to confirm a right for 5,820
15 acre-feet per year should be altered. Since 1977, the diversions have exceeded
16 that quantity in most years. However, the parameters of water rights established
17 in the late 1800's cannot be increased due to taking of additional water in the
18 1980's and 1990's. The limit of the right is that which has historically been put
19 to beneficial use over time. The instantaneous quantity that was recommend was
20 not excepted to by either the claimant or Ecology, however, the Referee in
21 reevaluating the historical documents believes that the appropriate quantity
22 should be 24 cubic feet per second (rather than 23 cfs), based on the sum of the
23 Reed-Ramm appropriation and the Becker appropriation, both of which have
24 historically been delivered through this ditch. The Referee does not alter the
25 original recommendation that a right be confirmed for the diversion of 5,820
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1 acre-feet per year, but does amend the recommendation for the instantaneous
2 quantity to 24 cfs. Through review of the individual claims and the evidence
3 submitted in support of those claims, along with that presented by Mill Ditch
4 Company, the Referee has recommended that rights be confirmed for the irrigation
5 of a total of 468.5 acres within the Mill Ditch company service area. Since the
6 company has asked that the rights be confirmed to the individual landowners, the
7 annual quantity of 5,820 will be divided proportionately between the users,
8 resulting in 12.4 acre-feet per acre irrigated being confirmed, unless the
9 evidence shows that less water is used on a particular piece of property. The
10 lands covered by the Reed-Ramm appropriation are entitled to 8 cfs, half
11 appurtenant to the Reed land and half for the Ramm land. That instantaneous
12 quantity will be split proportionately amongst the claimants who are successors to
13 to Reed and/or Ramm. The remaining 16 cfs will be divided amongst the claimants
14 who are successors to Becker. See the Pautzke Bait claim on page 93 for a
15 discussion of how that quantity should be split.

16 A significant consequence of having the water rights confirmed to each
17 individual, is that when an individual is not irrigating, that person's diversion
18 from the river should cease. The company and the individuals must be aware of the
19 need to be able to control the headgate so that when an individual landowner is
20 not irrigating, the quantity of water to which he has a right is not diverted, but
21 is left in the river. Had the right continued to be in the name of Mill Ditch
22 Company, the right would exist for the diversion of the entire authorized quantity
23 of water, irrespective of whether all of the landowners within the service area
24 were irrigating.

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1 The water for three separate water rights established in the late 1800's are
2 now diverted and carried through the Mill Ditch. They are the Becker
3 Appropriation with a May 6, 1893, date of priority, for lands now owned by Pautzke
4 Bait and Albert Lentz (and other claimants who are not part of the Mill Ditch
5 Company); the Ramm & Reed Appropriation with a May 20, 1885, date of priority, for
6 lands now owned by Harold Lamb, Ronald and Robin Anderson and Mark Anderson
7 (formerly Papst, Lentz), Jerry Barton, Ronald Anderson and Dave Caraway; and
8 Kline, Castle, Coble & Hagle Appropriation, with a October 30, 1884, date of
9 priority for lands now owned by Pautzke Bait Company. The quantity of water for
10 which the Referee believes a right can be confirmed will be divided
11 proportionately between the landowners.

12 There are several Mill Ditch patrons who did not file individual court claims
13 in this proceeding or filed court claims, but did not appear at the Subbasin No. 7
14 evidentiary hearing, apparently choosing to rely on Mill Ditch Company to defend
15 their water rights. Ronald Anderson purchased land from H. J. Merrick and Hugh
16 Cannon, who did not file a Court Claim. Mr. Anderson was joined to the Mill Ditch
17 Company Claim No. 00626 and is asserting a right to irrigate 47.5 acres of the
18 former Merrick/Cannon land in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34 and in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
19 Section 33 all lying north and east of Dolarway Road. The portion of the
20 Merrick/Cannon lands now owned by Anderson and marked on Exhibit SE-2 all lie
21 northeast of a lake, which would exclude most of the land in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
22 Section 33. The evidence offered indicates that the Merrick/Cannon lands have
23 historically been irrigated from the Mill Ditch. Those lands that lie in the SW $\frac{1}{4}$
24 of Section 34 are part of the lands owned by Sophronia Ramm at the time of the
25 Reed-Ramm appropriation. The Referee concludes that there is sufficient evidence

1 to conclude that a right exists under the Reed-Ramm appropriation for the lands
2 owned by Anderson in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34 and recommends that a right be
3 confirmed for the diversion of 0.97 cubic foot per second, 500 acre-feet per year
4 for the irrigation of 40 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34. There has been no
5 evidence entered into the record to show that a water right was established for
6 lands lying in the SE $\frac{1}{4}$ of Section 33. Therefore, the Referee cannot recommend
7 confirmation of a water right for the small portion of the Anderson lands that
8 extend into the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33.

9 The Mill Ditch Company service area map shows lands owned by Charles
10 Kuchenbuch and "small holdings" also in the SE $\frac{1}{4}$ of Section 33. John Bugni, one of
11 the landowners in the area marked "small holdings" filed Court Claim No. 01838,
12 however, he did not make an appearance to offer testimony. There is no evidence
13 in the record about water use on these lands, nor is there any evidence to show
14 that a water right was established. They are outside of the area owned by Reed
15 and Ramm at the time of their appropriation and there is no evidence that the SE $\frac{1}{4}$
16 of Section 33 was owned by any of the other appropriators in the area, such as
17 Josephine Becker or Charles Suver. Lacking that evidence, the Referee cannot
18 recommend confirmation of a water right for these lands, which includes John
19 Bugni's land.

20 Dave Caraway is also a patron of the Mill Ditch Company and did not file an
21 individual Court Claim. His lands lie in the E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, which is
22 within the area owned by Sophronia Ramm at the time of the Reed and Ramm
23 appropriation. The evidence shows that 8.5 acres have continued to be irrigated
24 within this area. The Referee recommends that a right be confirmed under the Mill

1 Ditch Company claim for Dave Caraway for use of 0.2125 cfs, 105.4 acre-feet per
2 year for the irrigation of 8.5 acres in the E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34.

3 Water is diverted for stock watering all year. Because of the reduced
4 quantity of water that is diverted during the winter months, the entire authorized
5 quantity needs to be diverted in order to carry the water the entire distance of
6 the ditch. If the right was divided up amongst the individual landowners, and one
7 of the larger landowners chose not to divert water, it would affect the ability of
8 the others to receive stock water in the winter. Therefore, the Referee has
9 chosen to recommend that the stock water right be confirmed to Mill Ditch
10 Company. A right is recommended with a May 20, 1885, date of priority for the
11 diversion of 1.14 cfs, 375 acre-feet per year for stock watering in the SW $\frac{1}{4}$ and
12 W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 34, T. 18 N., R. 18 E.W.M. and with a May 6, 1893, date of
13 priority for the diversion of 1.14 cfs, 375 acre-feet per year for stock watering
14 in Section 3, T. 18 N., R. 18 E.W.M.

16 COURT CLAIM NO. 00576 -- Frank Oechsner

17 Mary McManamy

Mary Patricia Seubert

18 An exception was made to the quantity of water, priority date and number of
19 acres for which a right was recommended for confirmation under Court Claim No.
20 00576 and to a right not being confirmed for use of an unnamed spring on the
21 property. The claimants are represented by Attorney John P. Gilreath and Mary P.
22 Seubert and Richard C. Bain, Jr., testified at the supplemental hearing. The
23 Report of Referee also erroneously identified Paul and Florence A. Weaver as
24 having been joined to this claim. This is incorrect and the Weavers filed an
exception to insure that the record correctly shows them joined to Court Claim

1 00576A, not Court Claim No. 00576. The records have been corrected to show the
2 appropriate relationship.

3 The Referee recommended that a right be confirmed for the irrigation of 51
4 acres based on the testimony at the initial evidentiary hearing. That testimony
5 showed that the parcel owned by the claimants was 58 acres in size, two acres were
6 taken when SR 97 was widened and five acres in the southwest corner of the
7 property were too wet to irrigate. According to Ms. Seubert, that five acres
8 became too wet to irrigate when the widening of SR 97 changed the drainage
9 characteristics on the land. Since the 1991 hearing, neighboring landowners have
10 constructed ditches to drain the water and the five acres is again being
11 irrigated. The Referee will recommend that a right be confirmed for the
12 irrigation of 56 acres.

13 The delivery system that brings water from Reecer Creek to the claimant's
14 land includes red tile pipe that undershoots the Northern Pacific Railroad along
15 the northeasterly part of the claimants property. Testimony by Mrs. Seubert and
16 neighboring landowners who also border the railroad was that the existing tile
17 pipe has been there since the railroad was constructed. That would indicate that
18 water from Reecer Creek was being diverted and piped to the claimants property at
19 the time the railroad was being constructed. The exact date of the railroad
20 construction is not in the record. We do know that the map of definite location
21 for construction of the railroad was filed on May 24, 1884. Ms. Seubert testified
22 to her understanding that the railroad was constructed in 1885 or 1886. Lacking a
23 definitive date, the Referee will use June 30, 1885, since it is apparent that
24 there must have been some type of delivery system in place prior to construction
25 of the railroad.

1 The claimants are asking that the annual quantity of water awarded for the
2 property be based on the amount of water needed to irrigate timothy hay, which is
3 a common crop in this area. Mr. Oechsner had testified to the land being used to
4 grow timothy prior to he and Joe McManamy acquiring the land and using it to raise
5 cattle. The record is not clear when Mr. Oechsner and Mr. McManamy acquired the
6 land, except that they owned it by 1974 when Mr. Oechsner complied with the
7 requirements of RCW 90.14 by filing WRC No. 125768 and 235770. A document in the
8 record shows that a portion of the land that was homesteaded by Patrick Desmond
9 (the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 28) was given by his widow to St. Martins' College in 1944,
10 but that is the most recent document in the record for the claimants' land.

11 Mrs. Seubert testified that Mr. Oechsner is now deceased, as is Joe McManamy,
12 and consequently the land will no longer be used for cattle production. The most
13 likely future use for the land is raising timothy hay. There is the possibility
14 that if a higher quantity of water was once being used to grow timothy hay and the
15 landowners voluntarily reduced their water use to that necessary to grow forage
16 crops for raising cattle, the difference between the two quantities of water would
17 relinquish if the lesser quantity of water was used for five or more consecutive
18 years. The reduced water usage would have had to start prior to 1972 in order for
19 the right to have been relinquished by the time this proceeding was initiated in
20 1977 (legal proceeding such as this case is a sufficient cause that stops the
21 relinquishment clock and prevents relinquishment, RCW 90.14.140(1)(d)). It is
22 also possible that the right would not have relinquished if Mr. McManamy and
23 Mr. Oechsner had intended to resume timothy hay production within 15 years of when
24 they reduced their water use (determined future use prevents relinquishment, RCW
25 90.14.140(2)). Since the record is not clear as to when the crop change and

1 resultant reduction in water usage occurred, the Referee cannot make a finding of
2 relinquishment. Therefore, it will be recommended that a right be confirmed with
3 a water duty based on growing timothy hay, which would be 19.2 acre-feet per year
4 per acre irrigated. The high water duty being recommended is in recognition of
5 the porous nature of the soils, the lands proximity to the Yakima River and the
6 nature of the irrigation system needed to grow timothy hay.

7 The last issue to be addressed is a flowing spring that is piped to the
8 claimants' land. Mrs. Seubert testified that like Reecer Creek water, the spring
9 water is piped to their property through red tile pipe. The Referee did not
10 recommend confirmation of a water right due to lack of testimony on historic water
11 use of the spring, uncertainty about the nature of the water, in some instances it
12 is called a spring and in other an artesian well, and lack of a RCW 90.14 claim.
13 The testimony about the red tile pipe could be an indication that the spring water
14 was piped at about the same time as the Reecer Creek water. The spring or well is
15 located in the SW $\frac{1}{4}$ of Section 21 and had been used to irrigate about five acres in
16 the southwesterly part of the property. The claimant did not address the other
17 concerns of the Referee, i.e. lack of RCW 90.14 claim and nature of the water
18 being used. The exception filed by the claimants on page 2 at line 17 addresses
19 this source of water, calling it an artesian spring. The exception states that
20 since the spring rises on the claimant's property and does not form a water course
21 that leads off of the claimant's property, the claimant has a right to use the
22 spring. The Referee believes that the claimant is suggesting that the Referee
23 apply the Court's Dormaier ruling. However, that is not appropriate in this
24 circumstance. The spring does not arise on the claimants' property, it is located
25 over half a mile away. The Referee also believes that if the spring flows a

1 sufficient quantity of water to be piped half a mile and irrigate five acres, it
2 would likely contribute to one of the nearby surface water sources if the water
3 went unused. The Referee believes that the Dormaier decision does not apply and
4 lack of an RCW 90.14 claim waives and relinquishes any right that may have
5 existed, RCW 90.14.071. Of course, if the source is an artesian well, the Court
6 does not have the jurisdiction to determine the existence of a water right, as
7 this proceeding is to determine only the surface water rights in the Yakima River
8 Basin.

9 The Referee amends the original recommendation under Court Claim No. 00576 to
10 recommend that a right be confirmed with a June 30, 1885, date of priority, a
11 right to the diversion of 4.33 cfs, 1075.2 acre-feet per year from Reecer Creek
12 for the irrigation of 56 acres and 0.03 cfs, 3 acre-feet per year for stock
13 watering.

14
15 COURT CLAIM NO. 00169 -- Olson Ditch

16 Olson Ditch Company filed exceptions to the Referee's recommendations in the
17 Subbasin No. 7 Report of Referee. Olson Ditch Company is represented by Attorney
18 Jeff Slothower; Patrick J. Taylor and Mark Greene testified at the supplemental
19 hearing. The exceptions filed by Olson Ditch Company relate to the priority date
20 for the water right(s) and who is covered by the limiting agreement, which also
21 will influence the quantity of water for which a right can be confirmed, and
22 finally the place of use for the water right.

23 The first issue the Referee will address is priority date(s). Initially, the
24 Referee recommended that rights be confirmed to Olson Ditch Company with four
25 different priority dates, based on the various water right documents entered in
26 the record. Olson Ditch Company asserts that there should only be one priority

date, February 21, 1876, for all of the Olson Ditch service area. The claimant relies on a Washington State case, Hunter Land Co. v. Laugenour, 140 Wash. 558, 250 Pac. 41 (1926), to support this assertion. The claimant apparently believes that this case supports the conclusion that when a person(s) acquires or has more than one water right, the rights are somehow merged and all the rights enjoy the priority date of the oldest right. The Referee does not believe Hunter Land Co. v. Laugenour stands for that proposition, nor does any other case. The claimant in Summary of Olson Ditch Evidence and Position at Remand Hearing, at page 7 line 8 states "When an individual sells a water right the purchaser of the water right has the right to claim the water from the date of the initial appropriation," and then cites to page 566 of Hunter Land Co., supra. The case clearly states that when a water right is sold or transferred to another individual, the water right retains the original date of priority. The Referee agrees that is the case (see also RCW 90.03.380). However, the Referee does not agree that if a person holds a water right with a certain date of priority and then subsequently acquires a second water right, the second water right would acquire the date of priority of the first appropriation. Hunter Land Co. does not address that situation at all.

As was identified in the original Report of Referee, Farnsworth, Shoudy and Dysart established a right in 1876 for use of waters from the Yakima River for operating a mill. In 1882 the right was sold to Gerit d'Ablaing (Van Giessenburg), who in 1899 sold it to James and Edward Hand, reserving 100 inches that had already been conveyed to the county poor farm. On November 29, 1899, the Hands sold the ditch and water right to Andrew Olson, Christian Holm, Sarah M. Wold and Septimus E. Nivin, reserving 100 inches for their land and the 100 inches that had already been conveyed to the county. The Referee believes that 100

1 inches of the 1876 right is appurtenant to the lands then owned by the county (now
2 owned by McManamy and Kelley) and 100 inches would be appurtenant to the lands
3 then owned by the Hands (a portion is owned by O'Neill, who no longer uses or is
4 seeking a right for Olson Ditch water, and a portion is still in the Hand family,
5 but also not irrigated from Olson Ditch, and no right is asserted for this land).
6 The rest of the right would be appurtenant to the lands owned by Olson, Holm, Wold
7 and Nivin at the time of the purchase. The Referee agrees that the 200 inches
8 that were reserved are not subject to the limiting agreement. However, since the
9 O'Neill and Hand land to which 100 inches is appurtenant is not being irrigated
10 from Olson Ditch, and no right is being asserted for that land, that 100 inches,
11 or 2 cfs has not continued to be exercised. The Referee believes the balance of
12 the 1876 right would be appurtenant to the lands owned by Olson, Holm, Wold and
13 Nivin at the time they purchased the right, along with the land now owned by
14 McManamy and Kelley. The owner of the McManamy land prior to it being conveyed to
15 the county for the poor farm, T. W. Abbot, had established a right for his land
16 with an 1885 date of priority, see discussion of the McManamy claim on page 65 of
17 this report for specifics. The portion of the 1885 right that the Referee has
18 concluded is appurtenant to the McManamy lands irrigated from Olson Ditch is 2.3
19 cfs.

20 In 1891, Mason, Cleman, Holm and Wold filed an agreement for construction of
21 a ditch and notice of water right. The Referee believes that it would be
22 reasonable to presume that the water right established under that notice would be
23 appurtenant to the lands owned by those parties at that time. Mason owned the
24 S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28; Cleman owned the NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28, the
25 NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, the S $\frac{1}{2}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20; Holm owned the

1 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 29, the SW $\frac{1}{4}$ SE $\frac{1}{4}$
2 and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20. Wold owned the E $\frac{1}{2}$ NE $\frac{1}{4}$ and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20, the
3 NW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 21. In 1894 Cleman sold the S $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
4 Section 20 to John Farwell, with rights to the Cleman, Holm, Wold Ditch. In
5 October 1899, Wold sold the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 to
6 John Robinson together with the 1891 water right to the Mason, Cleman, Holm and
7 Wold Ditch. On November 30, 1899, Wold and successors to Holm and Mason (Anderson
8 and Nivin), along with Andrew Olson purchased the 1876 water rights initially
9 established by Farnsworth and Shoudy (except for 200 inches held by the County
10 Poor Farm and the Hands). The Referee believes that the 1876 water right would be
11 appurtenant to the lands that Wold still owned on November 20, 1899, and to the
12 lands owned by Andrew Olson, Anderson and Nivin (owners of the land owned by Mason
13 and Holms in 1891). It is not unreasonable to believe that although Anderson and
14 Nivin had water rights with an 1891 priority date for their land, they acquired
15 the 1876 water right for the same lands in order to have a better water right.
16 There is no evidence that they owned lands other than that acquired from Mason and
17 Holms. Nivin sold his land to Archibald Holding, who in turn sold it to C. H.
18 Stewart, neither signators on the limiting agreement. In November of 1899, Andrew
19 Olson owned the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, however, that land lies above Olson Ditch,
20 is not presently irrigated from the ditch, nor is there any evidence it ever has
21 been irrigated from Olson Ditch. It is still not clear what lands Olson would
22 have owned in 1899 when he acquired a portion of the 1876 water right. He may
23 have been leasing land previously owned by Jacob Cleman. In the record is a copy
24 of a lease agreement between The New England Mortgage Security Company and Andrew
25 Olson, whereby Andrew Olson leased the NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28 and the
26

1 NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27 from April 1, 1897 until April 1, 1898. It is not clear
2 whether Olson leased the land in subsequent years, however, in 1902, he purchased
3 from the mortgage company the NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
4 Section 27, with appurtenant water rights, including the interest in the Cleman,
5 Wold, Holm and Mason irrigating ditch. In the record as Exhibit DE-279 is a copy
6 of the Order of Confirmation dated September 8, 1903, which mentions the
7 irrigation ditch constructed by Mason, Cleman, Holm and Wold, and states that by
8 1903, the diversion for the Mason, Cleman, Holm and Wold 1891 right was being made
9 into the d'Ablaing ditch (the ditch constructed under the 1876 appropriation).

10 The 1902 conveyance to Andrew Olson only references the 1891 water right, and
11 Olson did not own the land when he acquired his interest in the 1876 water right.
12 It is still not clear to the Referee for what lands Andrew Olson would have
13 acquired that right. Based on the Referee's analysis of the water right
14 documents, it is his conclusion that the following lands would have a portion of
15 the 1876 water right: the S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28; the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
16 Section 21, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28; the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 29; the N $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$
17 of Section 20; the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17 below Poor Farm Road; the E $\frac{1}{2}$ Section 18
18 north of the Burlington Northern Railroad right of way.

19 The following land would have an 1891 date of priority: The E $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$
20 and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20; the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 southwest of county road; the
21 NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27.

22 There are additional lands served by Olson Ditch that apparently were not
23 owned by any of the individuals associated with either the 1876 or 1891
24 appropriation. Claudia Eattock owns that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18
25 lying south of the Poor Farm Road and irrigates 8 acres. According to the record

1 established at the initial hearing, this land was owned by Charles Kull, who
2 appropriated water on July 1, 1889, for use on his farm through the Abbot-Crandall
3 Ditch. The water right for the Eattock property would have a July 1, 1889, date
4 of priority. George Rominger, an Olson Ditch user, owns that portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$
5 of Section 28 lying north and east of Dry Creek Road, that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$
6 of Section 21 south and west of Ellensburg Water Company's Town Ditch and north
7 and east of Dry Creek Road; that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 lying south
8 and west of the Town Ditch; that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 lying south
9 and west of the Chicago, Milwaukee, St. Paul and Pacific Railway Company right of
10 way. The only evidence in the record related to his land is that a patent issued
11 to Theodore Hess for the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 28 and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 21, within
12 which portions of his property lie. There has been no connection made between the
13 Rominger land and any of the various water appropriations and deeds that are in
14 the record. Many of the "small holdings" within the Olson Ditch service area lie
15 in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 (Watts, Butterfield, Taylor, Barnhart, Burvee,
16 Anthony, Kopczynski), where again we do not have a record to show who would have
17 owned the property after it was homesteaded by Theodore Hess. The legal
18 description for Kenneth Sauby is a lot number within a short plat that lies within
19 the W $\frac{1}{2}$ of Section 28. A copy of the short plat is not in the record, so the exact
20 location within the W $\frac{1}{2}$ of Section 28 is not known. Additionally, Douglas R.
21 Erickson is listed as one of the "small holdings"; however, the legal description
22 that was part of DE-284 lists only lands in Section 15, T. 18 N., R. 19 E.W.M.,
23 which is quite removed from the Olson Ditch service area.

24 Although the record does not show that the Rominger and "small holdings" land
25 discussed above was owned by any of the water appropriators in the late 1800's and
26

1 early 1900's, because of the lands location in the heart of the Olson Ditch
2 service area near the ditch itself, the Referee believes it is reasonable to
3 conclude that the land has historically been irrigated from Olson Ditch. The
4 Referee does not believe that where the information is lacking a right should be
5 confirmed with the most senior priority date and without the limiting agreement
6 restrictions. Therefore, those lands within E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 21 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
7 Section 28, will have an 1891 date of priority and will be considered to have been
8 restricted by the limiting agreement.

9 In summary, the Referee believes that evidence shows that the following lands
10 were not subject to the limiting agreement and the water right appurtenant has an
11 1876 date of priority: The McManamy and Kelley land in the E $\frac{1}{2}$ of Section 18 north
12 of the railroad tracks and south of the county road and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17
13 south of the county road; the Taylor and "small holdings" (J. Johnson, K. Mohan,
14 and the Keatings) within the S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28. The following lands
15 have a water right with an 1976 date of priority, but are subject to the limiting
16 agreement: Taylor land in NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 north of Willow/Scott Ditch and
17 NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 south of NPPR right of way; Thomas land in NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
18 Section 28 north of the NPPR right of way; Saltar land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21
19 southwest of Dry Creek Road; M. Johnson land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 northeast
20 of Dry Creek Road. The following lands enjoy a right with an 1891 date of
21 priority and are subject to the limiting agreement: Greene/Pethia land in the E $\frac{1}{2}$
22 of Section 28, northeast of NPPR right of way; the Willett land in a portion of
23 the W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, southwest of NPPR right of way; the Mackner land in
24 the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 20 southwest of Dry Creek Road and northeast of NPPR right of
25 way; the Hand property in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20 southwest of the

NPRR right of way; and the Rominger and "small holding" lands in the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 21 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28.

The claimant has provided a legal description for all of the landowners within the Olson Ditch service area. For the larger landowners, and a few of the smaller landowners, the record identifies how many acres are being irrigated. However, the "small users" (excluding Kelley and Betassa) are just shown as jointly irrigating 35.8 acres; of which the portion in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 would have an 1876 date of priority and not be covered by the limiting agreement and a portion is in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, one of the areas where the Referee does not have sufficient information and, therefore, must assign the 1891 date. The Referee attempted to divide the irrigated acres as accurately as possible based on the aerial photograph the claimant put into the record. It is recognized that assigning the 1891 date and determining the appropriate acres is based on a lack of facts rather than being able to make a thoroughly informed decision, however, the Referee felt this was preferable to denying the claim for this land due to an inadequate record, when it seems apparent there is a valid right.

The claimant appears to be asserting a right to 52 cubic feet per second and 13,569.5 acre-feet per year. The Referee has concluded that the limiting agreement applies to much of the land within the Olson Ditch service area. That agreement limited the quantity that could be diverted to 24 cfs April through August, 16 cfs in September and 8 cfs in October. However, the Referee did find that 4.3 cfs appurtenant to the McManamy and Kelley land and the lands in the S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28 was not subject to the limiting agreement. The record is not clear about how much water would be used on the Section 28 land; however, the Taylor's presented evidence of using 3.77 cfs on their portion of

1 that land. The remainder is fairly small, so the Referee will use a total of 4.0
2 cfs as being in addition to the limiting agreement for the S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of
3 Section 28. Therefore, the total instantaneous quantity that will be allocated
4 for Olson Ditch will be 32.3 cfs from April 1 through August 30; 24.3 cfs in
5 September and 16.3 cfs in October. Although this is significantly less than what
6 Olson Ditch is asserting a right for, it is very close to the quantity of water
7 that has historically been diverted through the ditch. The recommended quantity
8 is just for the Olson Ditch users. Other claimants in this proceeding who receive
9 water from the Wold and Klocke Ditches have been confirmed rights to 17.21 cfs.
10 The measuring device on Olson Ditch is before water is diverted from the ditch
11 into the Wold/Klocke Ditches. Between the three ditches, a total of 49.51 cfs is
12 being recommended for confirmation. The diversion records show that in most years
13 the quantity diverted does not exceed 49 cfs. The Referee acknowledges that in
14 some years the diversions have exceeded those quantities, but they are infrequent
15 and began occurring many years after the rights were established. The ditches
16 have consistently diverted more water in September and October than is being
17 recommended. It does not appear to the Referee that any efforts have been made to
18 reduce the quantity of water diverted during those months, as is required by the
19 limiting agreement.

20 Ecology excepted to a right being confirmed for a quantity in excess of that
21 which was identified in WRC No. 060872. The Court has ruled that the quantity of
22 water identified in the claims filed pursuant to RCW 90.14 is not a limit to the
23 water right, that historical use and the evidence presented at hearing must also
24 be considered, see page 4 of this report. It appears to the Referee that whomever
25 completed the 90.14 claim merely mirrored the limiting agreement, without any

1 regard to actual diversion records. Additionally, the quantity that is being
2 recommended for confirmation to Olson Ditch is only slightly more than what was
3 claimed.

4 Richard Bain analyzed the various fields being irrigated with water diverted
5 from Olson Ditch, including the fields that are within lands not subject to the
6 limiting agreement. Mr. Bain's report indicates a water need of 18.1 acre-feet
7 per year per acre irrigated, or 1267 acre-feet per year for the McManamy and
8 Kelley land. Since two rights are being confirmed for the McManamy land irrigated
9 from Olson Ditch, the annual quantity will be divided between the two rights. The
10 Taylor land that is not subject to the limiting agreement is irrigated with a
11 takeout that delivers 3.77 cfs to the field. Mr. Bain's report indicates that the
12 Taylor land all needs 23.9 acre-feet per acre, or 2318.5 acre-feet per year for
13 the 97 acres that are irrigated within the lands not subject to the limiting
14 agreement. However 3.77 cfs diverted continuously during the irrigation season
15 will only deliver 1567.56 acre-feet. Therefore, the right for the Taylor land is
16 limited to 3.77 cfs and 1567.56 acre-feet per year.

17 Mr. Bain analyzed other fields in the Olson Ditch area and concluded that
18 within the Olson Ditch service area, an average of 20.2 acre-feet per year is
19 needed to irrigate the land. For the lands that are covered by the limiting
20 agreements, which total 405 acres, that would require 8179 acre-feet per year.
21 That annual quantity is deliverable based on the limiting agreement instantaneous
22 quantities. Therefore, the Referee will recommend confirmation of a water right
23 for that annual quantity. Mr. Bain also addressed conveyance loss in the ditch,
24 finding that the ditch lost an average of 12 percent per mile, so that is the

1 figure used by the Referee for calculating the conveyance loss quantities in the
2 recommendations.

3 In conclusion, the Referee makes the following recommendations for
4 confirmation to Olson Ditch:

5 That a right be confirmed with a February 21, 1876, date of priority for the
6 diversion of 2 cfs, 633.5 acre-feet per year for the irrigation of 70 acres and
7 stock watering within that portion of the E $\frac{1}{2}$ of Section 18, lying south of the
8 county road and north of the Burlington Northern Railroad right-of-way, except the
9 Eattock land in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ southwest of Poor Farm Road, and that portion of the
10 NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17 lying south of the county road, all in T. 18 N.,
11 R. 18 E.W.M.; and that a right be confirmed with the same date of priority for the
12 diversion of 4.0 cfs, 1567.56 acre-feet per year for the irrigation of 104 acres
13 and stock watering in the N $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 28, T. 18 N., R. 18 E.W.M.
14 and an additional 0.5 cfs for conveyance loss. These two rights are not subject
15 to the limiting agreement.

16 That a right be confirmed with a February 21, 1876, date of priority for the
17 diversion of a total of 7.0 cfs from April 1 to August 31 - 6.15 cfs, for the
18 irrigation of 121.5 acres and stock watering and 0.85 cfs for conveyance loss;
19 4.64 cfs in September - 4.08 cfs for irrigation/stock watering and 0.56 cfs for
20 conveyance loss; 2.32 cfs in October - 2.04 cfs for irrigation/stock watering and
21 0.28 cfs for conveyance loss; 2444.20 acre-feet per year. The place of use is
22 that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 north of Willow/Scott Ditch; that portion
23 of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 south of NPPR right-of-way (Taylor); that portion of
24 the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 north of NPPR right-of-way (Thomas and Saltar); that

1 portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 southwest of Dry Creek Road (Saltar). This
2 right is subject to the limiting agreement.

3 That a right be confirmed with a July 30, 1885, date of priority for the
4 diversion of 2.3 cubic feet per second, 633.5 acre-feet per year for the
5 irrigation of 70 acres and stock water in that portion of the E $\frac{1}{2}$ of Section 18,
6 lying south of the county road and north of the Burlington Northern Railroad
7 right-of-way, except the Eattock lands in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ southwest of the Poor Farm
8 Road and that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17 lying south of the county road,
9 all in T. 18 N., R. 18 E.W.M.

10 That a right be confirmed with a July 1, 1889, date of priority for the
11 diversion of 0.312 cubic foot per second, 100.5 acre-feet per year for the
12 irrigation of 8 acres and stock water for that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18
13 lying southwest of the Poor Farm Road (Eattock).

14 That a right be confirmed with a April 7, 1891, date of priority for the
15 diversion of a total of 17 cfs from April 1 through August 31 - 15 cfs for the
16 irrigation of 283.4 acres and stock watering, 2.0 cfs for conveyance loss; 11.36
17 cfs in September - 10 cfs for irrigation/stock watering and 1.36 cfs for
18 irrigation; and 5.68 cfs in October - 5 cfs for irrigation/stock watering and 0.68
19 for conveyance loss; 5724.68 acre-feet per year . The place of use is the E $\frac{1}{2}$ of
20 Section 28 northeast of NPRR right-of-way (Greene/Pethia); portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$
21 of Section 28 southwest of NPRR right-of-way (Willett); the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28
22 (Rominger and small holdings); that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21 southwest
23 of EWC canal and northeast of Dry Creek Road; the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 southwest
24 of NPRR right of way (Rominger); the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 20 southwest of Dry Creek
25 Road and northeast of NPRR right-of-way (Mackner); the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21

1 southwest of Dry Creek Road (Mackner and Betassa); the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
2 Section 20 southwest of NPPR right-of-way, ALL in T. 18 N., R. 18 E.W.M. This
3 right is also subject to the limiting agreement.

4 There was no exception to the rights that were confirmed for wintertime stock
5 watering, so that recommendation stands. However, since more lands are being
6 recommended a right with an 1876 date of priority, the division of the stock water
7 right amongst the different priority dates must be adjusted. The total quantity
8 will not change.

9
10 COURT CLAIM NO. 00402 -- P. L. P.

11 Claim No. 00402 was initially filed by Irene Pott Flint. On February 6,
12 1997, P. L. P. was substituted for Ms. Flint as claimant. The initial Report of
13 Referee did not recommend confirmation of a water right under this claim due to
14 deficiencies in the RCW 90.14 filing. An exception was filed to the
15 recommendation. Richard Pott, representing P. L. P. appeared at the supplemental
16 hearing.

17 The evidence submitted at the supplemental hearing was sufficient for the
18 Referee to conclude that a water right had been established for use of waters from
19 Currier Creek for the irrigation of 72 acres within that portion of the NW $\frac{1}{4}$ of
20 Section 34, T. 18 N., R. 18 E.W.M. lying southwest of the railroad tracks. The
21 record shows that April 30, 1875, was the date when steps were first taken to
22 sever the land from Federal ownership, establishing a priority date under the
23 Riparian Doctrine. Mr. Pott had testified to use of 864 acre-feet per year to
24 irrigate the land. A continuous diversion of 2.42 cubic feet per second would
25 deliver that quantity of water over a normal irrigation season. However, it is
26 common that water is not diverted and applied continuously over the irrigation

1 season. The Referee proposes to recommend an instantaneous quantity of 3.0 cubic
2 feet per second.

3 A deficiency in the RCW 90.14 claim filed by Irene Pott Flint prevented the
4 Referee from recommending that a right be confirmed. Water Right Claim No. 025124
5 was filed by Mrs. Flint asserting a right to divert 4 cubic feet per second, 1,200
6 acre-feet per year from Reecer Creek for the irrigation of 80 acres. However, the
7 claim identified the point of diversion and place of use of the water as being in
8 the NE $\frac{1}{4}$ of Section 34, rather than the NW $\frac{1}{4}$ of Section 34. The dimensional
9 location of the point of diversion was a point 60 feet east and 40 feet south of
10 the northeast corner of Section 34, being within the NE $\frac{1}{4}$ of Section 34. Of
11 course, if you go east from the northeast corner of Section 34, you will no longer
12 be in the NE $\frac{1}{4}$ of Section 34, so it was apparent that an error had been made in at
13 least describing the point of diversion. Richard Pott, representing P. L. P.,
14 filed a request to amend Water Right Claim No. 025124 as provided in RCW
15 90.14.065. This amendment identified that a clerical error had occurred when the
16 form was completed, with NE $\frac{1}{4}$ being written instead of NW $\frac{1}{4}$. The amendment states
17 that Mrs. Flint never owned land in the NE $\frac{1}{4}$ and that an error was made in
18 completing the form. On February 23, 1997, Ecology approved the amendment and
19 that approval was offered as an exhibit by the claimant. Although the water right
20 claim identifies Reecer Creek as the source of water when the claimant actually
21 diverts from Currier Creek, the Referee is not particularly concerned. It is very
22 apparent to the Referee that over the years there has been uncertainty and
23 confusion over the appropriate name for the creeks in this area. The point of
24 diversion as amended clearly is on Currier Creek and has not changed from the
25 historical practice.

1 The Referee recommends that a right be confirmed to P. L. P. with an
2 April 30, 1875, date of priority for the diversion of 3.0 cubic feet per second,
3 864 acre-feet per year from Currier Creek for the irrigation of 72 acres in that
4 part of the NW $\frac{1}{4}$ of Section 34, T. 18 N., R. 18 E.W.M. lying southwest of the
5 Burlington Northern Railroad right of way. The point of diversion shall be in the
6 NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34.

7 The claimant is also asserting a right to use Spring Creek with a diversion
8 on the Pautzke Bait property to the west in Section 33. However, there was not
9 sufficient evidence presented at the initial evidentiary hearing to allow for the
10 Referee to determine that a water right existed, nor was there a RCW 90.14 claim
11 submitted for a water source in Section 33. A right for this source of water was
12 not pursued at the supplemental hearing. Therefore, the Referee does not alter
13 his recommendation that a water right not be confirmed for use of Spring Creek.
14

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

16 Pautzke Bait Company, Inc., filed several exceptions to the Referee's
17 recommendations concerning their claim. The Referee will address separately each
18 ranch within the Pautzke Bait ownership and the exceptions related to each ranch.
19 Pautzke Bait Company is represented by Attorney John P. Gilreath. Richard C.
20 Bain, Jr., a consultant hired by the claimant, testified at the supplemental
21 hearing.

22 The first ranch to be addressed is the Hundley Ranch. It is located in the
23 NE $\frac{1}{4}$ of Section 10 lying east of Dike Road and north of Damman Road; the S $\frac{1}{2}$ SE $\frac{1}{4}$ of
24 Section 3 east of Dike Road; and the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 west of Mercer Creek,
25 all in T. 17 N., R. 18 E.W.M. Irrigation water for this ranch has historically
been delivered through the Kline, Castle, Coble Ditch, however, flood water

damaged the intake for this ditch several years ago. In 1990, the Court approved a motion to change the point of diversion to the Mill Ditch. Since that time irrigation water has been delivered through the Mill Ditch. At the initial evidentiary hearing a right was asserted for the diversion of 8 cubic feet per second and 2,363 acre-feet per year for the irrigation of 117 acres. The Referee concluded that there was insufficient evidence to support confirmation of a water right for this quantity, based on only one field being monitored, therefore, it was recommended that a right be confirmed for the diversion of 6.5 cfs, 1,056.9 acre-feet per year, which was based on the information contained in Water Right Claim No. 120032 filed pursuant to RCW 90.14, the Claims Registration Act, by Mary Elizabeth Hundley, a prior owner of the property.

Mr. Bain testified that he monitored additional fields, totalling 51.9 acres which included the 22 acre field he had monitored before the first hearing, and measured the flow in the lateral serving the fields at 11.5 cfs. Based on monitoring the irrigation on an additional 30 acres, Mr. Bain concluded that 24 acre-feet per acre irrigated is needed, or 2808 acre-feet per year for the 117 acres. The need for this quantity of water is due to the characteristics of the soil, the crop being raised and the method of irrigation. The testimony indicates that the irrigation system and diversion works have not materially changed over the years. The Referee notes that due to the soil characteristics and the proximity to the Yakima River, the water used in excess of that consumed by the crops would return to the river in a relatively short time.

There is a significant difference between the annual quantity of water claimed in Water Right Claim No. 120032, 1,400 acre-feet per year, and that for which a right is now being asserted, 2,808 acre-feet per year. However, the Court

1 ruled at the Subbasin No. 7 Exception Hearing that the amount of water claimed in
2 the 90.14 claim does not constitute the limit of water that may be adjudicated in
3 this case, but that the Referee shall have the latitude to consider the testimony
4 and evidence presented, along with the information contained in the RCW 90.14
5 claims (see page 4 for further discussion of RCW 90.14 claim interpretation).

6 The Referee amends the original recommendation for the Hundley Ranch to
7 recommend confirmation of a water right for the diversion of 11.5 cubic feet per
8 second, 2,808 acre-feet per year from the Yakima River for the irrigation of 117
9 acres.

10 The next ranch to be addressed is Riverside Ranch. It is generally located
11 in that portion of Section 3, T. 18 N., R. 18 E.W.M. lying east of Reecer Creek,
12 except the S $\frac{1}{2}$ S $\frac{1}{2}$, the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and much of the NE $\frac{1}{4}$ NE $\frac{1}{4}$. The exceptions related to
13 this ranch clarified that 224 acres are in fact irrigated within the ranch, took
14 exception to the instantaneous quantity in the rights that were recommended for
15 confirmation, to the Referee's statement that the claimant is attempting to base
16 the water rights on occupancy dates rather than appropriation dates, to the
17 perceived confusion of the Referee to quantity of water being diverted from Reecer
18 Creek and to the differing methods used by the Referee to distribute water rights
19 under the Becker or Mill Ditch, specifically the quantity of water awarded to
20 Calaway Pacific.

21 The record was adequately clarified to show that 224 acres are being
22 irrigated within the Riverside Ranch. The initial recommendation by the Referee
23 was to confirm a right for the irrigation of 146 acres under the Becker
24 Appropriation and 78 acres under the Kline, Castle, Coble appropriation. This
25 division was not excepted to and will, therefore, stand. Water is diverted from

1 the Yakima River into Mill Ditch and carried to the property. The 78 acres are
2 part of Field 5 (108 acres total), which is served by Takeout (TO) 5. The flow
3 from TO-5 was monitored several times and the measurements varied from 19.8 to
4 27.9 cubic feet per second. These measurements included the quantity of water
5 that was being delivered from that takeout to the neighboring Longacre land (1.55
6 cfs), resulting in a maximum of 26.35 cfs being used on Riverside Ranch's field
7 5. Mr. Bain testified about the quantity of water being delivered to and used on
8 the property from Mill Ditch, which would indicate that over 26 cfs was being
9 used. The diversion records for Mill Ditch show 24 cfs and 5,820 acre-feet per
10 year being diverted for all of the patrons served by Mill Ditch. Therefore, the
11 right that can be confirmed for the Pautzke Bait property through the Mill Ditch
12 is only their proportionate share of what has historically been diverted. The
13 proportionate share of the water diverted into Mill Ditch for the Riverside Ranch
14 under the Kline, Castle, Coble appropriation would be 3.9 cfs, 967.2 acre-feet per
15 year for the irrigation of 78 acres in the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3. The Bain Report
16 entered at the initial evidentiary hearing indicated that Reecer Creek and Mill
17 Ditch water are commingled on Riverside Ranch. Although there was evidence
18 presented of a water right from Reecer Creek for the former Becker/Suver property
19 (see discussion below), there was no evidence of a water right to Reecer Creek
20 being established for the lands in the SE $\frac{1}{4}$ of Section 3.

21 The remaining land in Section 3 is covered by the Becker appropriation. Mr.
22 Bain indicates that the takeouts that serve fields 1, 2, 3 and 4 were measured at
23 13.3 cfs, which when added to the water diverted to irrigate the portion of field
24 5 in the NE $\frac{1}{4}$, would result in a claim to 20.65 cfs. The entire Becker
25 appropriation was 16 cfs. The claimant initially asserted a right to the entire
26

1 16 cfs under the Becker appropriation, but has acknowledged that other claimants
2 own land that is irrigated under the Becker appropriation. Rights were
3 recommended for confirmation under the claims of Calaway Pacific for 1.8 cfs for
4 the irrigation of 16 acres; Don and Lu Guy for 0.067 cfs for the irrigation of 1.5
5 acres; John G. and Nancy Jewett for 0.50 cfs for the irrigation of 2 acres and
6 Albert J. and Glenna M. Lentz for 1 cfs for the irrigation of 39 acres.

7 Pautzke Bait excepted to the award of a water right to the Calaway Pacific
8 property, asserting it was not part of the Becker patent and that the
9 instantaneous quantity awarded was inappropriate. This exception must be
10 addressed in order to determine the portion of the Becker Appropriation that can
11 be recommended for confirmation to Pautzke Bait. The Calaway Pacific land for
12 which a right was recommended is that portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 3 lying west
13 of the west channel of Reecer Creek. Almost all of the land lies in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
14 Section 3, land which was included in the patent issued to Josephine Becker in
15 1897. Pautzke Bait points out that the original Becker Ditch did not cross the
16 lands now owned by Calaway. That is true, however, it is very common for lateral
17 ditches to be used to convey water from a main ditch to the irrigated lands. The
18 fact that a ditch does not cross the land does not necessarily have a bearing on
19 whether the ditch was used to deliver water to that land. The Referee finds no
20 foundation in Pautzke Bait's argument that the Calaway land for which a water
21 right is being recommended was not owned by Becker or could not have been served
22 by the Becker Ditch. Pautzke Bait also excepted to the instantaneous quantity
23 awarded to Calaway. The evidence presented at the initial hearing on
24 instantaneous quantity was inconclusive, so the Referee recommended a quantity
25 based on the RCW 90.14 claim that was filed for the property. Another option

would be to divide the 16 cfs by the number of acres for which a right is recommended, which would result in 0.065 cfs per acre being awarded. There are three claimants, Guy, Lentz, and Jewett, whose lands are part of the Becker Appropriation, but no exception was made to the instantaneous quantity. Guy and Lentz were awarded less than 0.065 cfs (Lentz recommendation was based on the quantity in a certificate of change that issued) and Jewett's was for more than 0.065 cfs per acre. If that proration is used, Calaway Pacific would receive 0.90 cfs and Pautzke Bait would receive 12.5 cfs. As a result of the instantaneous recommendations for Jewett, Guy and Lentz, for which exceptions were not made, there is 0.81 cfs from the Becker appropriation that has not been awarded to any of the claimants. That quantity will be divided between Calaway Pacific and Pautzke Bait, resulting in a recommendation that Calaway Pacific be awarded 1.3 cfs and Pautzke Bait 12.9 cfs under the Becker appropriation.

Pautzke Bait presented evidence of using at least 20.65 cfs and 21.1 acre-feet per year per acre (3,080.6 acre-feet per year total) to irrigate the 146 acres it owns within the area covered by the Becker appropriation. However, this water is delivered through the Mill Ditch. The diversion records for Mill Ditch lead the Referee to conclude that based on the historical diversion records, a right could be confirmed for a total diversion of 24 cfs and 5820 acre-feet per year into the Mill Ditch for all of the Mill Ditch patrons, or 12.5 acre-feet per acre. The evidence in the record shows that Mill Ditch gains water as it conveys Yakima River water through the service area and Reecer Creek water may be diverted into the ditch. The result is more water is withdrawn from the ditch than is actually diverted from the Yakima River.

1 Pautzke Bait is also asserting a right to use water from Reecer Creek. Very
2 little direct evidence was put in the record concerning use of Reecer Creek. The
3 right to use of Reecer Creek water is based on a Notice of Water Right filed by
4 Charles W. Suver on October 24, 1904, claiming a right since 1890 for use of 4 cfs
5 from Reecer Creek for the irrigation of the E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$,
6 E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3. Mill Ditch water is dumped into Reecer Creek
7 above the Riverside Ranch and then rediverted from the creek at Takeouts (TO) 1
8 and 4. TO-1 diverts water into an old channel of Reecer Creek, where the
9 remaining 10 takeouts on the ranch remove water. Although there was very little
10 evidence on the use of Reecer Creek water, the Referee believes that it is
11 reasonable to conclude that a portion of the water diverted from TO-1 and 4 is
12 Reecer Creek water, for which a right exists under the Suver appropriation. This
13 conclusion is based on the diversion information indicating that more water is
14 diverted and used than is represented by diversions from the Yakima River.

15 Based on the foregoing, it is recommended that a right be confirmed to
16 Pautzke Bait with a June 30, 1890, date of priority for the diversion of 4 cubic
17 feet per second, 1,270 acre-feet per year from Reecer Creek for the irrigation of
18 146 acres in the N $\frac{1}{2}$ of Section 3 east of Reecer Creek. It is also recommended
19 that a right be confirmed with a May 6, 1893, date of priority for the diversion
20 of 12.9 cfs, 1,825 acre-feet per year from the Yakima River for the irrigation of
21 146 acres in the N $\frac{1}{2}$ of Section 3 east of Reecer Creek. In summary, the rights
22 that are recommended for confirmation for the Riverside Ranch conveyed through
23 Mill Ditch are for a total of 16.8 cfs and 2,792 acre-feet per year for the
24 irrigation of 224 acres. Two separate recommendations were made due to the
25 different priority dates for the appropriations on which the rights are based.

1 The last ranch to be addressed for the Pautzke Bait Company claim is the
2 Wade-Jarmin property. The Referee did not recommend confirmation of a water right
3 for this ranch, and this was excepted to by the claimant. Three main issues need
4 to be addressed in order for the Referee to recommend confirmation of a water
5 right. At the first evidentiary hearing there was no testimony about historical
6 water use on the property. Patent documents were placed in the record, but no
7 evidence of use prior to the 1990's was offered. Additionally, Mr. Bain testified
8 to a water use of 12.8 acre-feet per acre on one field and 31.3 acre-feet per acre
9 on the adjoining field to the west with minimal explanation of why there would be
10 such a dramatic difference. Both Reecer Creek and Currier Creek are sources of
11 water used to irrigate the land and it is not apparent that a water right claim
12 pursuant to RCW 90.14 was filed for use of Reecer Creek. The exception filed by
13 the claimant stated that additional evidence in each area would be provided.

14 Mr. Bain testified about the soil characteristics on the fields within the
15 Wade-Jarmin property. He consulted with the Natural Resources Conservation
16 Service (formerly the SCS). The westerly field, the one that requires 31.3
17 acre-feet per acre, is part of an ancestral river channel of the Yakima River with
18 older channeled clay alluvial deposits and other sandy alluvial deposits that
19 would make the ground more permeable. Part of the exhibit entered was a copy of
20 the soils map for the area. However, it is a very poor quality copy so that it is
21 difficult to distinguish land features and the property in question is not
22 highlighted on the map. The Referee found the map to be less than helpful in
23 identifying differences between the two fields, but will defer to Mr. Bain's
24 expertise.

1 Although it was suggested in the exception filed with the Court that evidence
2 of historic water use would be provided at the supplemental hearing, none was
3 offered. The exception filed with the Court also suggests that because the
4 Homestead Laws required occupation and cultivation of the land prior to issuance
5 of a patent, that since the land is riparian to Reecer Creek it "raises the
6 irrebuttal inference that the only water available for cultivation of this
7 property was obtained from this stream." (exception, page 8, line 12). However,
8 the claimant fails to recognize that cultivation does not necessarily mean
9 irrigation. Dryland farming is not uncommon in the Kittitas Valley. The Court
10 has recognized in its Memorandum Opinion Re: Priority Date - Date of Patent or
11 Date of Entry, dated January 19, 1995, at page 3, the difference between
12 cultivation and irrigation of land. At page 4 the Court suggest it would
13 "likewise be reluctant to award a priority date without some scintilla of
14 evidence, regardless of how scant, to support a particular finding of an actual
15 appropriation or diversion in order to establish that priority date." The
16 claimant is asking that a water right be confirmed with an 1872 or 1873 date of
17 priority with absolutely no evidence of water use on the land prior to the
18 1970's.

19 The third issue raised by the Referee in the initial report concerns Water
20 Right Claim No. 008348 filed by Gene Wade, a prior owner of the property. The
21 claim asserts a right to divert 4 cubic feet per second, 960 acre-feet per year
22 from Spring Creek for the irrigation of 85 acres in the NE $\frac{1}{4}$ of Section 33 and part
23 of the SE $\frac{1}{4}$ of Section 28, T. 18 N., R. 18 E.W.M. The point of diversion described
24 is in the NE $\frac{1}{4}$ of Section 29, approximately one mile northwest of the property.
25 The only water source in this area is Dry Creek. There was no testimony of use of
26

1 a water source in that area and although it was identified as a constraint to
2 confirming a water right for the property, was not addressed at the supplemental
3 hearing. A second water right claim was filed by Gene Wade, No. 008349, which
4 asserted a right to divert from Reeser Creek 2 cubic feet per second, 480
5 acre-feet per year for the irrigation of 38 acres in the NE $\frac{1}{4}$ of Section 33. The
6 point of diversion is on what is now known as Currier Creek. Other land owners in
7 the vicinity have confused the proper names for Currier and Reecer Creeks and the
8 Referee has been inclined to give more credibility to the point of diversion
9 location than the actual creek name if the two are not consistent and the claimant
10 does not address the inconsistency.

11 If there had been testimony about historical water use on the property, the
12 Referee believes a recommendation could be made to confirm a right for use of
13 Currier Creek to irrigate that part of field 2 in the NE $\frac{1}{4}$ of Section 33.
14

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

18 Although Court Claim No. 02261 is still in the name of David Pethia, Mark
19 Greene filed an exception to the Report of Referee for Subbasin No. 7.
20 Mr. Greene, who is represented by Attorney Jeff Slothower, testified at the
21 supplemental hearing. The testimony indicates that Mr. Greene is now the owner of
22 the land, however, there was no documentation submitted to show Mr. Greene is the
23 owner, nor has he been joined to the claim. The Referee strongly recommends that
the proper paperwork be filed to transfer the claim into Mr. Greene's name.

24 The exception filed by Mr. Greene was only to the Referee recommending that a
25 water right not be confirmed for use of Currier Creek due to the lack of a RCW
26 90.14 claim for that water source. However, during the supplemental hearing,
27

1 Mr. Greene also excepted to language used by the Referee that stated that the
2 quantity of water awarded was the maximum quantity that could be used under the
3 Reecer Creek right and any right that may exist from the Olson Ditch Company. It
4 is Mr. Greene's contention that the quantity of water awarded by the Referee
5 reflects only the water he is diverting from Reecer Creek and the water he
6 receives from Olson Ditch is in addition to that quantity.

7 The recommendation by the Referee in the Report of Referee was based on the
8 engineering report prepared by Richard C. Bain, Jr. in support of the
9 Pethia/Greene claim. That report on, pages 4 and 5, states that T0-1 and T0-6
10 serve a concrete lined ditch that is used to irrigate most of field 6. The flow
11 in the ditch was measured at 2.98 cfs. This suggests to the Referee that the
12 combined diversion from T0-1 and T0-6, which went into the ditch, was 2.98 cfs.
13 T0-1 is on Olson Ditch and T0-6 is on Reecer Creek. There is no evidence in the
14 record of how much water is diverted from T0-5, which is also on Reecer Creek, a
15 short distance below T0-6. Although Mr. Greene testified that the quantity of
16 water he uses to irrigate are significantly higher than was awarded because the
17 Olson Ditch water is on top of what was awarded, there has been no testimony about
18 how much water is diverted from Reecer Creek (on an instantaneous basis) to
19 irrigate his fields. The only evidence we have is that the combined diversion
20 from T0-1 (Olson Ditch) and T0-2 (Reecer Creek) is 2.98 cfs, which is the basis
21 for the recommendation that the right confirmed reflects the quantity of water
22 used from both Reecer Creek and the Olson Ditch. Were the claimant to provide
23 specific information about the quantity of water diverted from Reecer Creek
24 through T0-5 and T0-6, this recommendation could be altered to accurately reflect
25 the irrigation practice.

1 Mr. Greene asserts that Water Right Claim No. 096873 filed by a previous
2 owner of the property was intended to also cover rights to Currier Creek. The
3 source of water described on the document is "Spring Creek". There is no creek
4 called "Spring Creek" in the area, however, the Referee recognizes there was
5 confusion about the proper name of the some of the creeks in this area. The
6 points of diversion described on the document are on Reecer Creek, which leads the
7 Referee to conclude that what was described as "Spring Creek" on WRC No. 096873
8 really is Reecer Creek. The takeout on Currier Creek is not described on WRC No.
9 096873, some of the fields irrigated with water from Currier Creek are not within
10 the place of use described on the claim form, and the claim states that 50 acres
11 are being irrigated, which is consistent with the 56 acres for which a right was
12 confirmed from Reecer Creek. An additional 45 acres are being irrigated from
13 Currier Creek, which is almost double the number of acres for which a right was
14 asserted in WRC No. 096873. The inconsistencies between the information on WRC
15 No. 096873 and the use of water from Currier Creek lead the Referee to conclude
16 that the claim was not intended to assert a right to use of Currier Creek.

17 Ecology took exception to the annual quantity of water awarded under Court
18 Claim No. 02261. It is Ecology's position that the information contained in the
19 RCW 90.14 claim is the limit of the right that can be confirmed. The Referee does
20 not accept that position. The evidence presented must be weighed against the
21 information contained in the RCW 90.14 claim. In this particular case, the annual
22 quantity of water on the claim form was 200 acre-feet per year. Ecology believes
23 that should be the limit of the water right. The claim form identified that 50
24 acres were being irrigated, so 4 acre-feet per acre was claimed. The Referee is
25 aware that during the claims registration period guidance was given by Ecology

1 that if an individual did not know the annual quantity of water they were using, 4
2 acre-feet per year per acre irrigated was a reasonable number to use. The
3 tendency of the Referee will be, whenever 4 acre-feet per acre is claimed, to
4 consider whether that quantity reflects historic use based on the testimony, see
5 page of this report for a further discussion of RCW 90.14 claim interpretation.
6 The Referee does not believe that 200 acre-feet per year is the limit of the right
7 that should be awarded under this claim and stands by the original
8 recommendation.

9 Ecology also correctly noted in their exception a typographical error on page
10 199, lines 13 - 14, where Section 18 is mentioned, rather than the correct
11 section, which is Section 28.

12
13 COURT CLAIM NO. 01419 -- J. P. Roan
14 & Jan Roan

15 The Roans took exception to a right not being confirmed for use of Jones
16 Creek in the initial Report of Referee. The Department of Ecology took exception
17 to the annual quantity of water awarded in the right that was recommended for
18 confirmation for use of Reecer Creek Water. The Roans are represented by Attorney
19 Richard T. Cole. J. P. Roan and Richard C. Bain, Jr., testified at the
20 supplemental hearing.

21 The Referee did not recommend confirmation of a water right for use of Jones
22 Creek water due to the lack of evidence of historic water use needed to show that
23 a water right had been legally established. Mr. Roan had presented testimony
24 about recent use of Jones Creek, but was not able to address historic use. To
25 address that deficiency, a water right document filed by John Robbins on May 19,
26 1885, was offered into evidence. The document states that Robbins settled the E½

1 of Section 21, T. 19 N., R. 18 E.W.M. on May 1, 1878, and in 1881 he improved the
2 branch and ditch known as Robbins Branch and Ditch, running out of a creek known
3 as Robbins or Thomas Creek in Section 9, the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16 and through the
4 southeast corner of Section 9 in a south-southwest direction, then through the E $\frac{1}{2}$
5 of Section 16 in a south-southwest, southwest and south direction onto Section 21,
6 east of the northwest corner. He claimed 100 inches of water (or 2 cfs) from the
7 branch and ditch for irrigation.

8 Testimony by several claimants in this proceeding has been that Jones Creek
9 has in the past been known as Robbins and Thomas Creek. It is clear that the
10 source of water described in the Robbins water right document is what is now
11 called Jones Creek. Jones Creek seems to split into two branches in the NE $\frac{1}{4}$ of
12 Section 9 and the Roans use the westerly branch. The water right document would
13 imply that a natural channel had been modified to take on the characteristics of a
14 ditch. The Referee periodically has been faced with situations where a natural
15 channel has been modified somewhat, so that it now appears to be a ditch. The
16 Referee has generally found that Riparian rights could attach for the use of
17 natural source and points of diversion could either be at the branching point or
18 at the delivery point to a ranch, depending on the factual setting.

19 Water Right Claim No. 144596 was filed pursuant to RCW 90.14 asserting a
20 right to use Robbins Branch of Reeser Creek that runs through Section 9 and
21 Section 21. A right was asserted for the use of 2 cfs, 600 acre-feet per year for
22 the irrigation of 200 acres in the N $\frac{1}{2}$ of Section 21.

23 Mr. Roan roughly marked on Exhibit SE-1 the area that is irrigated with water
24 diverted from Jones Creek. The area he marked is about 124 acres in the W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$.

1 the E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ and about 30 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ lying
2 northeast of Reecer Creek, all in Section 21, T. 19 N., R. 18 E.W.M.

3 Ecology and many of the claimants took exception to the position taken by the
4 Referee when the current water use is not consistent with the RCW 90.14 claim that
5 was filed. The Court, at the hearing on exceptions and in its Order on Exceptions
6 for Subbasin No. 7, provided direction to the Referee on this issue, see page 4 of
7 this report for specifics.

8 Based on the testimony that has been presented, the Referee believes that the
9 annual quantity in WRC No. 144596 was representative of the quantity of water that
10 is often available at the beginning of the irrigation season, but does not reflect
11 water that is available during years of above normal precipitation and does not
12 include water that may be available if there is heavy precipitation later in the
13 irrigation season that recharges the creek. Therefore, the Referee believes it is
14 consistent with the Court's rulings to stand by the original recommendation, which
15 reflects the actual practice of the landowner.

16 The place of use on WRC No. 144596 is the N $\frac{1}{2}$ of Section 21. A portion of the
17 field that is predominantly in the N $\frac{1}{2}$ of Section 21 extends into the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ and
18 NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of that section. It would have been very easy when completing the form
19 to not recognize that the irrigated lands in that field extended slightly into the
20 S $\frac{1}{2}$ of Section 21, and confirming a right for the entire field is consistent with
21 the Court's ruling on this issue. However, the second field that is irrigated
22 from Jones Creek is completely separated from the first field, being in the
23 southeast corner of the claimant's property. It would not be consistent with the
24 Court's ruling that the property descriptions on the RCW 90.14 claim substantially
25 match the current place of use were the Referee to recommend confirmation of a

1 water right for this field. Therefore, the Referee will only recommend that a
2 right be confirmed for the 124 acre field in the northerly part of the section.
3

4 It is recommended that a right be confirmed under Court Claim No. 01419 with
5 a May 1, 1878, date of priority for the diversion of 2 cubic feet per second, 372
6 acre-feet per year for the irrigation of 124 acres in the E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$
NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, T. 19 N., R. 18 E.W.M.

7
8 COURT CLAIM NO. 01444 -- Schaake Packing Company

9 Schaake Packing Company is asserting a right to irrigate lands in portions of
10 the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 11 and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 14, T. 17 N.,
11 R. 18 E.W.M. from the Kline, Castle and Coble Ditch, based on the Kline, Castle,
12 Coble Notice of Water Right filed on July 3, 1885. The Referee did not recommend
13 confirmation of a water based on the lack of evidence to show that Schaake Packing
14 Company was a successor to Kline, Castle or Coble for the irrigated lands. The
15 claimant excepted to that recommendation. Attorney John P. Gilreath appeared on
16 behalf of Schaake Packing Company at the supplemental hearing and offered Exhibit
17 DE-367 in support of the exception. No testimony or other evidence was offered.

18 The claimant asserts that the evidence submitted at the initial evidentiary
19 hearing adequately shows that Schaake Packing Company is a successor to Daniel
20 Coble and, therefore, enjoys a portion of the Kline, Castle and Coble water
21 right. The Referee respectfully disagrees with this assertion.

22 As is pointed out in Exhibit No. DE-367, Frederick Ludi received a patent for
23 the NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11. Of that land, only the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
24 Section 11 is irrigated by Schaake. There is nothing in the record to show a
25 connection between Frederick Ludi and Daniel Coble (or Kline and Castle). The
26 Kline, Castle, Coble water right of July 3, 1885, states that Daniel Coble owned

1 the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11, which is where the ditch reportedly terminated, but the
2 record also shows that O. P. Castle owned the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11
3 (the Referee recognizes this may represent an inconsistency, as both Castle and
4 Coble are shown as owning the NW $\frac{1}{4}$ SW $\frac{1}{4}$, but that was not addressed by the
5 claimant). In determining the water rights for Schaake, we are not concerned with
6 the SW $\frac{1}{4}$ NW $\frac{1}{4}$ or W $\frac{1}{2}$ SW $\frac{1}{4}$, as the Schaake irrigated land is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of
7 Section 11. There is ample evidence of the Kline, Castle, and Coble water right
8 being appurtenant to W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11 and Schaake does own the W $\frac{1}{2}$ SW $\frac{1}{4}$ of
9 Section 11, however, they do not irrigate that portion of their land, nor have
10 they asserted a right to do so. It is mentioned that the claimant is a successor
11 to the Grinrod Section 11 property; however, the claimant did not identify the
12 Grinrod property. The chain sheet does list a November 28, 1899, warranty deed
13 from R. Palmer to Miss Jane Grinrod, but does not identify what property was
14 involved. Following the chain sheet back from that transaction would lead the
15 Referee to believe that Grinrod was a successor to O. B. Castle, who owned the
16 SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, land not now irrigated by Schaake Packing. A
17 deed is also in the record transferring the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 from Northern
18 Pacific Railway to Ione Grinrod, which was also at one time owned by Daniel
19 Coble. It is clear that Grinrod owned property in Section 11 that Coble and
20 Castle had an interest in, land that is not irrigated by Schaake. Schaake's
21 ownership in Section 11 includes the land previously owned by Grinrod, but not the
22 irrigated land.

23 Mill Ditch Company entered into evidence numerous exhibits concerning
24 ownership of lands in this area around the turn of the century. One set of
25 exhibits includes a series of deeds that transferred the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 from
26

1 Northern Pacific Railroad to Richard Mudd; then from Richard Mudd to Dan Coble and
2 from Dan Coble to James Kinney. The Referee notes that Dan Coble acquired this
3 land 15 years after the Klein, Coble, Castle appropriation in 1885. The transfer
4 of the land from Coble to Kinney does not reference any water rights, in
5 particular no mention is made of rights to the Klein, Coble, Castle Ditch.
6 However, in 1902, Kinney sold the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 to William Doughty, with
7 832 inches of water from the Klein, Castle, Coble Ditch. This is the first
8 mention of water rights for this land and there is no indication of how this 40
9 acre tract would have acquired 832 inches from a ditch that terminated before it
10 got to the land. Schaake appears to be asserting a right to a portion of this 832
11 inches. A very small corner of the Schaake irrigated land extends in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
12 Section 11. In 1919 Doughty sold to John Hanks the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$
13 of Section 11, together with water rights including 832 inches from the Klein,
14 Castle, Coble Ditch.

15 Copies of a map created in either 1902 or 1912 show the Klein, Castle, Coble
16 Ditch, but the name on the map is the Grinrod and Doughty Ditch, which the
17 claimant asserts means that the ditch was being used to irrigate the Grinrod and
18 Doughty property at that time. Not an unreasonable conclusion. However, there is
19 no evidence to lead the Referee to conclude that it was the Schaake irrigated land
20 that was owned and irrigated by either Grinrod or Doughty.

21 The Referee is unclear whether Schaake is asserting a right to irrigate any
22 of its lands in the N $\frac{1}{2}$ of Section 14. The irrigated land does not appear to
23 extend into Section 14, however, a chain sheet for the N $\frac{1}{2}$ of Section 14 was
24 entered into evidence. Review of the chain sheet for the N $\frac{1}{2}$ of Section 14 does

1 not show any names that the Referee can conclude bear a relationship to the Kline,
2 Castle, Coble water rights.

3 Due to the claimant not submitting significant additional evidence and the
4 record still lacking any evidence to show that a portion of the Kline, Castle,
5 Coble water right is appurtenant to the Schaake Packing Company land, the Referee
6 again recommends that no water rights be confirmed.
7
8

9 COURT CLAIM NO. 01447 -- Nicholas Schmitt, Jr.
10 & Janet C. Schmitt
11 Nelson - Gelbvieh Ranch

12 The Department of Ecology took exception to the period of water use included
13 in the rights that were recommended for confirmation under Court Claim No. 01447
14 and to having stock water as an authorized use. Ecology's position was that the
15 right that is confirmed should be limited by the RCW 90.14 claims filed for the
16 land. Mr. Jim Colleary, ranch manager, testified at the supplemental hearing.

17 Many of the exceptions raised in Subbasin No. 7 related to the relationship
18 between the RCW 90.14 water right claims and any right that may be confirmed in
19 this adjudication. See page 4 of this report for the Court's rulings on this
issue.

20 The RCW 90.14 claims that were filed for the claimants' property describe the
21 period when water is generally available for use from the various water sources.
22 However, the Referee has consistently not limited the season of use based on
23 creeks and streams generally going dry before the end of the irrigation season.
24 The testimony has been fairly consistent that even streams that routinely are dry
25 part of the irrigation season will again carry water if there is a rain occurrence
26 and the availability of water is dependent on precipitation patterns and upstream
27

1 water usage. The Referee, therefore, does not believe it is appropriate to
2 constrain a right to the period of use that may have been reflected in the RCW
3 90.14 claim if the evidence shows that water has historically been used outside
4 that period. Mr. Colleary clarified as part of his testimony that the only stock
5 watering use is non-diversionary in nature, with the livestock drinking directly
6 from Reecer Creek. This type of use is covered by the stock water stipulation
7 discussed on page 4 of the original Report of Referee. No additional water right
8 is needed.

9 The Referee recommends that the original recommendation on the period of
10 water use be affirmed, but that the stock water use be deleted, since there is no
11 diversionary stock water use on the land.

12
13 COURT CLAIM NO. 02140 -- Arloha M. Scott
14 (A)05733

15 Ms. Scott filed an exception to the conveyance loss figure used by the
16 Referee in the recommendation that a water right be confirmed to the Scott
17 property. She also filed an exception to the Referee not recommending that a
18 water right be confirmed for an 18 acre field that is subirrigated. Ms. Scott
19 appeared at the supplemental hearing in support of her exception.

20 At the initial evidentiary hearing, Ms. Scott provided testimony and evidence
21 to show that a water right had been established for the diversion of 3.0 cubic
22 feet per second from Dry Creek for the irrigation of 40 acres. The testimony
23 indicated that the ditch being used to irrigate the Scott property had a 70
24 percent conveyance loss, which caused the Referee to state in his recommendation
25 that of the 3.0 cubic feet per second (cfs), 2.1 cfs was conveyance loss and only
26 0.90 cfs would be applied to the land. This conclusion lead to a recommendation

27
28 SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 7

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

1 that only 374 acre-feet per year be confirmed because that is the maximum annual
2 quantity that could be applied to the land at a rate of 0.90 cfs.
3

4 At the supplemental hearing, Ms. Scott testified that the ditch that serves
5 her property, Willow Ditch, has been moved in recent years due to activities on
6 neighboring lands. Moving the ditch has caused the conveyance loss in the ditch
7 to increase over what it historically has been. According to Ms. Scott testimony,
8 historically 3 cfs has been diverted into the ditch and 1.58 cfs has been in the
9 ditch when it reached her property and used to irrigate the land. At the time
10 evidence was being gathered for the initial evidentiary hearing, it was necessary
11 to divert 5.43 cfs in order to deliver 1.58 cfs to the land. According to
12 Ms. Scott's testimony the conveyance loss has historically been in the
13 neighborhood of 50 percent. She would like the Referee's recommendation to
14 reflect that, as she has continued to work with her neighbors to try and reduce
15 the conveyance loss in her ditch. She testified to needing 1.58 cfs in order to
adequately irrigate the 40 acres.

16 The Referee finds this request to be very reasonable. If the historic ditch
17 loss has been 50 percent, then that is appropriate for the right being recommended
18 for confirmation. However, if Ms. Scott's efforts to reduce her conveyance loss
19 are not successful, the quantity of water that she will be able to apply to her
20 land will be less than what is being recommended and there may be a relinquishment
21 issue to be concerned with after this adjudication is finalized.

22 The Referee amends the original recommendation for Court Claim No. 02140 to
23 recommend that a right be confirmed for a total diversion of 3.0 cubic feet per
24 second, with 1.58 cubic feet per second, 619 acre-feet per year for the irrigation
25 of 40 acres and stock water; 1.42 cubic feet per second for conveyance loss.

1 Ms. Scott took exception to the point of diversion location that the Referee
2 recommended. She had stated at the initial evidentiary hearing that the diversion
3 was at a location different than was shown on the State's map exhibit, SE-2. She
4 then proceeded to mark the correct location on the map. That is the location used
5 by the Referee. At the supplemental hearing, Ms. Scott again marked the location
6 on a aerial photograph that was marked Exhibit DE-320. However, the line marking
7 the section line between Sections 20 and 29 appears to be in error. The Referee
8 believes that the south line of Section 20 runs through the Patrick Taylor
9 property, near their home and outbuildings. Exhibit DE-320 has the south line of
10 Section 20 approximately 1300 feet further south, near what appears to be an old
11 oxbow channel of the river. The Referee continues to believe that the point of
12 diversion shown on the aerial photograph and on States Exhibit SE-2 is 320 feet
13 north of the south section line of Section 20. The Referee had indicated that the
14 diversion was 350 feet west of the south quarter corner, which is the same
15 distance as Ms. Scott indicated, but she measured it from the southeast corner of
16 Section 20. She stated it was between 2,275 and 2,300 feet west of the southeast
17 corner. The distance between the southeast corner and the south quarter corner is
18 2640 feet. Subtract the 350 feet from it that the Referee used and you have 2,290
19 feet. Basically, the same location. Consequently, the Referee will not alter the
20 point of diversion location.

21 Ms. Scott also took exception to a right not being confirmed for lands that
22 are subirrigated. However, she did not present any additional evidence that would
23 lead the Referee to alter the original recommendation. Her exception stated that
24 the only return flow water in the area is that generated on her own fields and
25 that flows south. However, that is not the case. There undoubtedly are return

1 flows from the adjacent Taylor property that flow under her property. She states
2 in the exception that there was once a pipe under the land from the north field to
3 the south field and that activities on neighboring lands have caused water to back
4 up on her field so that it could not be irrigated. There was no evidence
5 presented of when this pipe was used to irrigate her field, the source of water
6 for this pipe, the quantity of water that had been used, or the legal basis of a
7 right for this land (is it the same as for the rest of her land or might there be
8 a different right). Therefore, the Referee does not alter his recommendation that
9 a water right not be confirmed for this land that is subirrigated.

10
11 COURT CLAIM NO. 05722 -- Thomas C. Scott

12 Mr. Scott took exception to the Referee's recommendation relative to this
13 claim in the Report of Referee for Subbasin No. 7. Mr. Scott appeared and
14 testified at the supplemental hearing in support of his exception.

15 Mr. Scott owns a portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 18 N.,
16 R. 18 E.W.M. He is asserting a right to use an unnamed pond for stock and
17 wildlife watering and fish propagation. During evaluation of the evidence
18 presented at the initial evidentiary hearing, the Referee had reached the
19 conclusion that the pond had been constructed as a result of gravel mining
20 operations and that Mr. Scott was asserting a diversionary right for the pond.

21 During the supplemental hearing, Mr. Scott clarified those issues. According
22 to Mr. Scott's testimony there has always been a pond on the property. As a
23 result of gravel mining operations the pond was deepened and reconfigured
24 somewhat. He believes that the pond was always been used for stock and wildlife
25 watering, with the animals simply drinking directly from the pond. Scrap fish
26 were always present in the pond. In 1966, Mr. Scott received permission from the

1 Washington State Department of Game to plant trout. Although the record is not
2 entirely clear, it appears that the pond is fed from shallow ground water and
3 seepage from neighboring irrigation ditches. Mr. Scott controls the outflow from
4 the lake for water quality purposes.

5 The evidence that has been presented leads the Referee to conclude that there
6 is a non-diversionary, riparian stock and wildlife watering and fish propagation
7 right that will be recognized. However, since there is no diversion, a water
8 right to divert and use a specific quantity of water cannot be confirmed in the
9 adjudication. The Referee does recognize the existing riparian use.
10

11 COURT CLAIM NO. 06041 -- John Hardy Shore
12 & Donna Shore
13 Dana R. Lind
14 & Elizabeth Lind

15 Court Claim No. 06041 was submitted to the Court by John Hardy and Donna
16 Shore in 1991, after the evidentiary hearing for Subbasin No. 7 had been held,
17 therefore, the claimants did not have an opportunity to present evidence at that
18 hearing. In 1993, Dana R. and Elizabeth Lind were joined to the claim. The
19 claimants are represented by Attorney Richard T. Cole. Donna Shore and Elizabeth
20 Lind testified at the supplemental hearing.

21 According to the record, the Shores acquired the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 4, T. 18 N.,
22 R. 18 E.W.M. in 1958. This parcel includes Government Lot 1 of Section 4, which
23 is a large government lot, consisting of 50 acres, rather than the 40 acres
24 normally associated with a quarter-quarter section. Therefore, their ownership
25 consisted of 90 acres in the NE $\frac{1}{4}$ and 80 acres in the SE $\frac{1}{4}$ of Section 4, for a total
26 of 170 acres. The Referee notes that during Mrs. Shore's testimony, she thought
27 that Government Lot 1 was 60 acres, however, it is 50 acres in size. The Shores
28

1 sold a portion of the land, the E $\frac{1}{2}$ SE $\frac{1}{4}$ and the S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, to the Linds
2 in 1993. A right is being asserted to irrigate 80 to 100 acres owned by the Linds
3 with water diverted from Reecer Creek. The claimants also are assessed by the
4 Kittitas Reclamation District (KRD) and irrigate the land with water delivered by
5 the district. The Linds have 60 shares for the 100 acres they own and the Shores
6 have 60 shares for the 70 acres they retained. KRD is a Major Claimant in this
7 proceeding whose rights have been determined in the Major Claimant pathway, see
8 Reports of the Court Volumes 14 and 14A and the KRD Conditional Final Order.

9 The claimants' land is part of the Jacob Bower homestead, for which he
10 received a patent on August 18, 1888, having made final payment for the land on
11 July 12, 1887, (Exhibit DE-360). Mrs. Shore testified that the original Bower
12 home burned in 1943 and a replacement house was built at the same location. The
13 home is on the land that is now owned by the Linds. Entered into the record are
14 photographs dated 1898 showing the Bower Homestead, including barns, fields and
15 livestock. Also in the record is an excerpt from a journal or diary kept by one
16 of Jacob Bower's daughters. According to the journal, Jacob Bowers came to
17 Ellensburg from Sacramento, California in 1879 and settled on the land for which
18 he obtained a homestead patent. The journal contains a wealth of information
19 about life on the homestead, with very little mention of farming or irrigation of
20 the land. However, it does mention that the land was irrigated, raising hay,
21 pasture for up to 200 horses, a large orchard and garden. Although the water
22 source is not mentioned, since the land is riparian to Reecer Creek, it is very
23 reasonable to presume that the source of water is Reecer Creek.

24 There currently are two diversions that are used. One is located
25 approximately 50 feet south and 1150 feet west of the northeast corner of
26

1 Section 4 and is used to irrigate the Shore property that lies east of the creek.
2 Mrs. Shore estimated that 2 cubic feet per second (cfs) is diverted at this
3 point. A second diversion is located approximately 1900 feet south and 1100 feet
4 west of the northeast corner of Section 4, on the quarter-section line between
5 Government Lot 1 and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4. This diversion is used to irrigate
6 the Lind property lying west of Reecer Creek and a small portion of the Shore
7 property also west of the creek. It was estimated that 2 cfs is also diverted at
8 this point. The testimony indicates that during some years, irrigation starts as
9 early as March 15 and continues until the end of October.

10 Mrs. Lind testified to irrigating 20 acres with water from Reecer Creek. The
11 aerial photographs show additional irrigated land within the Lind ownership, but
12 since a right is not being asserted to irrigate that land from Reecer Creek, the
13 Referee must assume it is being irrigated with water provided from the reclamation
14 district. The record is a little unclear about the location of the 20 acres that
15 are being irrigated from Reecer Creek. Exhibit DE-353 shows fields in the SE $\frac{1}{4}$ NE $\frac{1}{4}$
16 and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4 lying west of Reecer Creek being irrigated from the lower
17 creek diversion and the testimony indicated that diversion was being used to
18 irrigate lands west of the creek. However, Mrs. Lind also testified to a hay
19 field south of the homestead being irrigated with creek water. This field lies
20 east of the creek and it is not clear that there is a method of delivering water
21 from the lower diversion to fields east of the creek. Review of the aerial
22 photographs show that within the 70 acres owned by the Shores, approximately 50
23 acres lying mostly east of the creek and are being irrigated. A small area within
24 the Shores ownership west of the creek is also being irrigated.

1 Water Right Claim No. 143421 was filed by J. Hardy Shore pursuant to the
2 requirements of RCW 90.14. It asserts a right to divert 2 cfs, 700 acre-feet per
3 year from Reecer Creek for the irrigation of 80 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 4,
4 T. 18 N., R. 18 E.W.M. The point of diversion described on the claim is 1720 feet
5 south and 1030 feet west from the northeast corner of Section 4, placing it very
6 near the lower diversion that is being used to irrigate the Lind portion of the
7 property.

8 The Referee notes a discrepancy between the place of use on Water Right Claim
9 No. 143421 and the location of a portion of the Lind land that appears to be
10 irrigated with water diverted from the creek. The fields begin in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
11 Section 4 and extend into the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4. It is very reasonable to
12 believe that when the claim was being filled out it was not recognized that the
13 field extended into the SE $\frac{1}{4}$ of Section 4 and a simple error was made. That
14 position would support a conclusion that the land being irrigated from Reecer
15 Creek on the Lind property does all lie west of the creek. The hay field west of
16 the creek that was mentioned previously is clearly in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4, does
17 not start in the NE $\frac{1}{4}$ and is not even contiguous with any field in the NE $\frac{1}{4}$ of
18 Section 4, being separated by the homestead. While the Referee could presume that
19 the intent of Mr. Shore was to include the portion of the field that extends into
20 the SE $\frac{1}{4}$, there is nothing in the record that could explain why the E $\frac{1}{2}$ SE $\frac{1}{4}$ was not
21 described if the intent was to include the hay field south of the homestead.

22 There are two other discrepancies between WRC No. 143421 and the practice
23 testified to by the witnesses. The claim only asserts a right to use one
24 diversion from Reecer Creek, the one in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4. The diversion in
25 Government Lot 1 is not described in the claim and there was no attempt to explain

1 the difference. Clearly the diversion in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4 could not have
2 been used to irrigate the lands in Government Lot 1, because the diversion is
3 downstream of the irrigated lands. Court Claim No. 06041 also only describes the
4 one diversion. The other discrepancy is in the quantity of water for which a
5 right is asserted. The witnesses testified that 2 cfs is diverted at each point
6 and both diversions are operated at the same time. The Court has ruled that the
7 quantity of water claimed in water right claims filed pursuant to RCW 90.14 are
8 not necessarily the limit to the right and that the Referee can consider the
9 evidence presented in recommending confirmation of a water right.

10 Therefore, the Referee recommends that a water right be confirmed to the
11 Shores under Court Claim No. 06041 with a June 30, 1879, date of priority for the
12 diversion of 2 cubic feet per second, 500 acre-feet per year from March 15 through
13 October 31 for the irrigation of 50 acres and stock watering, and to the Linds 2
14 cubic feet per second, 200 acre-feet per year from March 15 through October 31 for
15 the irrigation of 20 acres. The point of diversion that shall be on the rights
16 will be the diversion described in WRC No. 143421, recognizing that the Shores
17 should file an application with Ecology's Central Regional Office to add a point
18 of diversion for their portion of the water right.

19
20 COURT CLAIM NO. 00170 -- Patrick J. Taylor
21 00171 & Susan A. Taylor
22 01745
23 01745A

24 Patrick J. and Susan A. Taylor filed exceptions to the Referee's
25 recommendations for their claims. Their exceptions primarily addressed the
26 Referee's reliance on the information contained in water right claims filed pursuant
27 to RCW 90.14 for determining place of use and quantities of water for which rights

1 could be confirmed. At the supplemental hearing the claimants also addressed
2 priority dates. The claimants are represented by Attorney Jeff Slothower and
3 Patrick Taylor and Hilda Saltar, a prior owner of some of the Taylor, land
4 testified at the supplemental hearing.

5 Field A marked on exhibit DE-257 lies within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20 and the
6 NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, T. 18 N., R. 18 E.W.M. and is irrigated with water diverted
7 from Cabin Creek. The field is 37 acres in size (at the supplemental hearing
8 Mr. Taylor first testified that this field was 37 acres, then corrected himself
9 during questioning by counsel, stating it was 52 acres. Review of Exhibit DE-66,
10 the Bain Report for the Taylor property, confirms the 37 acre figure). Water is
11 diverted from Cabin Creek at the northwest corner of the property. Mr. Bain
12 testified to having measured the diversion at 8.83 cfs and that based on the
13 irrigation practice, 524.5 acre-feet per year is being used to irrigate this
14 field. Water Right Claim No. 060875 was filed by Mrs. Hilda Hoffman (now Hilda
15 Saltar) pursuant to RCW 90.14, asserting a right to 2 cfs, 400 acre-feet per year
16 for the irrigation of 90 acres in the SW $\frac{1}{4}$ of Section 20. The Referee recommended
17 confirmation of a 30 acre water right consistent with the place of use on WRC No.
18 060875 due to the lack of testimony to explain the discrepancy between the claim
19 and current use.

20 Mrs. Saltar and Mr. Taylor both testified that until the Referee's Report was
21 issued, they did not realize that field A extended into the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29.
22 Mrs. Saltar testified that her intent in filing the claim was to cover the entire
23 field. Due to the configuration of the field, the Referee can understand it not
24 being apparent that the field continued into Section 29. Mrs. Saltar also
25 testified that she did not measure the quantity of water that was being used to

1 irrigate her fields, relying on the advise given to her by an individual that was
2 assisting with completion of the form.

3 Fields B and B1 marked on exhibit DE-257 lie within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20
4 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 and are irrigated with water diverted from Dry Creek
5 in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 southwesterly of the railroad tracks. According to
6 the Bain report there are 52 acres irrigated. Mr. Bain measured the diversions at
7 a total of 5.5 cfs. As with field A, Ms. Saltar and Mr. Taylor did not realize
8 that the fields extended into Section 29, as a consequence when Ms. Saltar
9 completed WRC No. 060873, she stated the place of use was the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20
10 and did not include any of Section 29. Again, considering the shape of the field,
11 the Referee understands how such a mistake could be made. WRC No. 060873 asserts
12 a right to use 2 cfs, 300 acre-feet per year for the irrigation of 60 acres, which
13 is also based on the advise of the individual assisting with the form, rather than
14 from actual measurements of the diversion.

15 The Court has ruled during the Subbasin No. 7 exception hearing that the
16 quantities of water on water right claims filed pursuant to RCW 90.14 do not
17 represent the limit of the water that may be confirmed in this case and the
18 Referee shall have the latitude to consider the testimony and evidence presented,
19 along with the information contained in the 90.14 claim, and each claim will be
20 judged on its merits. The Referee is cognizant of the fact that many of the farms
21 near the Yakima River require substantially more water to irrigate than is
22 normally required due to the gravelly and rocky characteristics of the land. An
23 individual completing a water right claim to satisfy the requirements of RCW 90.14
24 might not realize the high quantity of water needed if measurements were not
25 taken. This is particularly true of the Taylor property, since it is adjacent to

1 a gravel mining operation and the Yakima River. Much of the water applied to the
2 ground will immediately return to the Yakima River. Since the testimony has shown
3 that the irrigation system and diversion facilities have not changed over the past
4 40+ years, the Referee will recommend confirmation of rights based on the
5 quantities in the record.

6 One challenge facing the Referee was not adequately addressed by the
7 claimant, and that is assigning appropriate priority dates for the rights to be
8 confirmed for use of Dry Creek and Cabin Creek. The fields being irrigated from
9 Dry Creek separated from Federal ownership through three separate actions, which
10 would result in three different priority dates under the Riparian Doctrine, 1876
11 for the portion of the field in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, 1890 for the portion in
12 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 and 1884 for the portion in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29.
13 The Referee knows that a total of 52 acres are being irrigated between those three
14 subdivisions, however, because of the field shape, it is very difficult for the
15 Referee to know how many irrigated acres are in each. The same is true for the
16 lands irrigated from Cabin Creek. The SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20 separated from Federal
17 ownership under a different set of circumstances than did the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
18 Section 29, therefore, there should be two rights with different priority dates
19 for Field A.

20 Because the claimant did not address this issue, the Referee will attempt to
21 divide up the irrigated acreage. If the claimant disagrees with the figures, that
22 can be addressed at the exception hearing. The instantaneous quantity will be
23 divided proportionate to the number of acres irrigated, except that takeout 1,
24 which is used to irrigate the field in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 was measured at
25 0.92 cfs, so that is the quantity that will be recommended for that field.

1 It is recommended that a right be confirmed with a May 15, 1876, date of
2 priority for the diversion of 0.92 cfs, 294.4 acre-feet per year from Dry Creek
3 for the irrigation of 17 acres in that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 lying
4 southwest of the Northern Pacific Railroad right of way.

5 It is recommended that a right be confirmed with a December 5, 1890, date of
6 priority for the diversion of 3.7 cfs, 603.2 acre-feet per year from Dry Creek for
7 the irrigation of 26 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20.

8 It is recommended that a right be confirmed with a May 24, 1884, date of
9 priority for the diversion of 1.287 cfs, 208.8 acre-feet per year from Dry Creek
10 for the irrigation of 9 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 lying east of
11 Willow/Scott Ditch and north of the pond.

12 With a priority date of December 5, 1890, a right to divert 7.2 cfs, 348
13 acre-feet per year from Cabin Creek for the irrigation of 30 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$
14 and that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ lying west of Dry Creek in Section 20.

15 With a priority date of May 24, 1884, a right to divert 1.68 cfs, 81.2
16 acre-feet per year from Cabin Creek for the irrigation of 7 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
17 Section 29 west of Dry Creek and north of a stream or slough through the
18 property.

19 Mr. Taylor offered additional testimony about use of Olson Ditch water on his
20 lands in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 and Section 28, which will be considered as part
21 of the Olson Ditch claim on page 79 of this report.

22 COURT CLAIM NO. 01942 -- Keith Schober

23 Keith Schober is asserting a right for non-diversionary stock watering from
24 three ponds located on rangeland. The Referee declined to recommend that a
25

1 non-diversionary stock water right be confirmed because the ponds were constructed
2 in the mid-1960's. Mr. Schober excepted to this. Mr. Schober, who is represented
3 by Attorney Richard T. Cole, testified at the supplemental hearing.

4 Mr. Schober marked the location of the ponds on an exhibit he submitted.
5 According to his testimony the excavated ponds capture snow melt and rain water
6 that would not be usable if the ponds were not there to capture the water. Up to
7 200 head of cattle have access to these ponds for stock watering. The ponds
8 generally go dry between mid-July and August. It is Mr. Schober's position that
9 the waters that feed the ponds is created on his property and do not leave.
10 Mr. Cole, on behalf of Mr. Schober, made the assertion that the Courts Dormaier
11 decision, entered on September 16, 1993, applies to this situation. In that order
12 the Court ruled that ". . . when water arises from springs and seeps back into the
13 ground without forming a stream or leaving the owner's property, then that water
14 is the exclusive private property of that landowner. This ruling should not be
15 read expansively. It only applies to appropriations of springs prior to the 1917
16 amendments because the water code specifically provides for existing rights
17 whether acquired through prior appropriation, by a riparian owner or otherwise."
18 (emphasis added). The Referee has no intention to extend this ruling to uses of
19 water developed after adoption of the Surface Water Code (RCW 90.03) in June of
20 1917. RCW 90.03.010 specifically states "Subject to existing rights all waters
21 within the state belong to the public, and any right thereto, or to the use
22 thereof, shall be hereafter acquired only by appropriation for a beneficial use
23 and in the manner provided and not otherwise; . . ." A water use developed in the
24 1960's (or even in the 1950's, as indicated in Mr. Schober's testimony at the
25

1 supplemental hearing) can only have a water right pursuant to the permitting
2 requirements of RCW 90.03.

3 However, Mr. Schober is not asserting a diversionary right in this
4 proceeding, therefore, the need for a permit under RCW 90.03 is not clear. In the
5 initial Report of Referee, the Referee was reluctant to recommend that a
6 non-diversionary stock water right be awarded. These rights are recognized as
7 being the senior rights in the basin and it would seem inappropriate to place in
8 that category a use that was begun in the 1950's or 1960's when the ponds in
9 question were constructed. However, with the additional evidence presented, it is
10 apparent to the Referee that these ponds are very remote and the water that feeds
11 the ponds could not contribute to a water source utilized by any other party in
12 this case. Recognizing a non-diversionary stock water right for these ponds
13 should not pose a threat to any other water rights in the area.

14 Therefore, the Referee does recommend that the non-diversionary stock water
15 stipulation discussed on Page 4 of the initial Report of Referee shall apply to
16 the ponds on the Schober property.

17
18 COURT CLAIM NO. 01959 -- Carla L. Thomas

19 Ms. Thomas excepted to the period of water use that was recommended for water
20 rights for her property from Thomas and Jones Creeks and the annual quantity that
21 was recommended as a result of the irrigation season. She also excepted to a
22 diversionary stock water right not being confirmed for Jones Creek. Ms. Thomas,
23 who is represented by Attorney Jeff Slothower, testified at the supplemental
24 hearing.

1 The Referee relied on historical documents that indicated that Jones and
2 Thomas Creeks both go dry before the end of the irrigation season to conclude that
3 by the end of summer the only water that would reasonably be available in the
4 creeks would be water from the Kittitas Reclamation District's (KRD) Highline
5 Canal. Water rights cannot be confirmed for use of water that is either released
6 from the canal or is return flow resulting from the application of KRD water, see
7 page 7 of the Subbasin No. 7 Report of Referee. Ms. Thomas testified to her
8 knowledge of the creek characteristics in the late summer and fall. Specifically
9 she had observed the creek flows during drought years when the KRD turns off
10 before the end of the irrigation season. The creeks have continued to flow
11 sufficient for her to irrigate her fields. She also noted that the availability
12 of creek water has been greatly influenced by development of land above the KRD
13 canal. It is her belief that creek water is being used on lands above the canal
14 for which there is no right.

15 The flows that Ms. Thomas observed during the drought years could have been
16 influenced by KRD return flows that would have migrated to the creek after the
17 canal was shut down. However, the Referee recognizes that it is very difficult to
18 establish whether return flows would have been contributing to the creeks.
19 Ms. Thomas has made a reasonable effort to determine whether natural creek flow is
20 available late in the irrigation season.

21 Based on the evidence presented at the supplemental hearing, the Referee
22 amends the original recommendations to include an irrigation season of April 1 to
23 October 15, which is the period which Ms. Thomas originally testified as her
24 irrigation season. As a result of the change in irrigation season, the annual

1 quantities will be increased to 208 acre-feet per year from Thomas Creek and 604
2 acre-feet per year from Jones Creek.

3 The right that was confirmed for Jones Creek was for the irrigation of 24
4 acres; a 10 acre field east of the creek and a 14 acre field west of the creek. It
5 was not clear to the Referee until the supplemental hearing that two separate
6 diversions are used to irrigate these fields. The diversion described on page 297
7 of the Report of Referee is used to irrigate the field east of the creek. A
8 another diversion, a little further downstream is used to irrigate the field west
9 of the creek. Although the RCW 90.14 claim that was filed for the property only
10 seems to describe one diversion, since they are very close together, the intent
11 could have been to describe them both. Since they are so close together, the
12 Referee does not believe that compliance with the change procedures in RCW
13 90.03.380 is necessary and will add the second point of diversion to the
14 recommendation.

15 Ms. Thomas also excepted to a right not being confirmed for diversionary
16 stock watering. Ms. Thomas clarified during the supplemental hearing that she
17 continuously diverts water from Jones Creek to a pond that is used for watering
18 livestock. A ditch exits the pond and returns the unused water to the creek. The
19 diversion to the pond is located just south of Ms. Thomas northerly property
20 line. To Ms. Thomas's knowledge, this diversion and pond have been on the
21 property for many years, but it is not clear to the Referee that it has been there
22 long enough to recommend confirmation of a water right. Water Right Claim No.
23 010282 does assert a right to use Jones Creek for livestock watering; however,
24 as previously mentioned, it only described one diversion point, that being near
25 the center of the property in the SW $\frac{1}{4}$ SE $\frac{1}{4}$. The place of use on the claim is also

within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34. Both the point of diversion and the pond are located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34. Ms. Thomas estimated that 2 cubic feet per second is diverted on a continuous basis to the pond. The Referee does not believe there has been sufficient evidence presented to allow for a conclusion that a right exists for this practice or that the RCW 90.14 claim filed protects any right that might have been created. The Referee, therefore, does not recommend confirmation of a diversionary stock water right.

COURT CLAIM NO. 01144 -- Carla L. Thomas
Peoples National Bank of Washington

Ms. Thomas appeared at the supplemental hearing to reaffirm that the spring described in this court claim, which is very near the boundary line between Subbasins No. 4 and 7 is only used for non-diversionary stock watering, as was recognized in the initial Subbasin No. 7 Report of Referee.

COURT CLAIM NO. 00748 -- Twinmasters Corporation
Robert Haberman
& Susie Haberman

Court Claim No. 00748 was originally filed by C. E. and Margorie G. Dolman. They transferred the claim to Hisao Takahasi in 1990. However, it was clarified at the initial evidentiary hearing for Subbasin No. 7 that Mr. Takahasi was an officer in Twinmasters Corporation and Twinmasters was the actual owner of the property. The Referee did not recommend confirmation of a water right to Twinmasters Corporation due to the lack of evidence that a water right had ever been established for the property, including no evidence of historic beneficial use. Robert and Susie Haberman filed an exception to the Referee's recommendation and the claim was remanded for the taking of additional evidence. The Habermans

1 are represented by Attorney Richard T. Cole. The Referee notes that at this time
2 the Habermans have no standing in relation to this claim, as they have not been
3 joined to the claim or substituted for Twinmasters Corporation, nor have they
4 presented any evidence, such as a deed, to show ownership of the land. The
5 Referee shall, however, consider the evidence submitted at the supplemental
6 hearing and evaluate whether sufficient evidence has been presented to recommend
7 confirmation of a water right. It is strongly suggested they file a motion to
8 substitute or be joined to the claim.

9 Court Claim No. 00748 as filed asserts a right to use unnamed springs arising
10 on the property for stock water and irrigation within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16,
11 T. 18 N., R. 18 E.W.M. At the evidentiary hearing, Twinmasters Corporation
12 asserted a right for the use of 0.25 cubic foot per second from Dry Creek and
13 springs for irrigation and stock water, identifying the place of use for the water
14 as being the W $\frac{1}{2}$ of Section 16. The Habermans appear to be only asserting a right
15 for non-diversionary stock watering from Reecer Creek and any other natural water
16 sources that arise or cross the property. According to the testimony, Mr. and
17 Mrs. Haberman own 10 acres in the SW $\frac{1}{4}$ of Section 16, however, the exact location
18 of that land is not in the record. Mr. Haberman and his brothers in partnership
19 own an additional 200 acres in the W $\frac{1}{2}$ of Section 16. Again the location of the
20 200 acres they own within the W $\frac{1}{2}$ of Section 16 is not known (the W $\frac{1}{2}$ of Section 16
21 consists of 320 acres). The lands owned by the Haberman family are used to
22 pasture livestock and there is not active irrigation occurring on the land. Mr.
23 Haberman testified to his belief that in the past there may have been efforts to
24 irrigate the land, but he does not appear to be asserting a right for irrigation.

1 Contrary to the assertion made at the supplemental hearing, the Referee
2 recognized that a non-diversionary stock water right existed for Twinmasters
3 Corporation, as described in the stock water stipulation, see page 264 of the
4 initial Report of Referee. No additional recommendation is needed for this
5 claim.

6
7 COURT CLAIM NO. 01008 -- Dick Van de Graaf, Jr.
8 Maxine Van de Graaf
9 Michael Hosker, et al.

10 Dick and Maxine Van de Graaf filed an exception to the Referee's
11 recommendations under Court Claim No. 01008. Although the Van de Graafs have not
12 been formally substituted for the original claimants, they did provide proof at
13 the supplemental hearing that they have acquired the land. Therefore, any rights
14 that are recommended for confirmation will be in the Van de Graaf name. The
15 claimants are represented by Attorney Lawrence E. Martin and Dick Van de Graaf
16 testified at the supplemental hearing.

17 The Van de Graafs excepted to the number of acres and quantity of water for
18 which a water right was recommended. The Referee recommended that a water right
19 be confirmed for the use of 2.8 cfs, 303 acre-feet per year for the irrigation of
20 65 acres. The 65 acre figure was derived from a 1904 publication that contained a
21 biography on Bernard Hanson, who owned the property in the early 1900's. That
22 biography identified that Mr. Hanson was irrigating 25 acres of timothy and 40
23 acres of alfalfa, and a select orchard, and the remainder of the land was in grain
24 and native grasses. The Van de Graafs contend that the orchard and irrigated
25 grain consisted of an additional 22 acres that were being irrigated above the
26 acreage recommended by the Referee. Mr. Van de Graaf has talked with neighbors
27 who have lived in the area for many years and the lay of the fields lead him to

believe that his current irrigation practice mirrors the historic use. Upon rereading the 1904 biography, the Referee agrees that it is clear that more than 65 acres were being irrigated at that time. Considering the way the fields lie and Mr. Van de Graaf's testimony, it is not unreasonable to conclude the 87 acres that are being irrigated today have also historically been irrigated.

The Van de Graafs also excepted to the instantaneous quantity that was recommended. Richard C. Bain, Jr., a consultant hired by the Van de Graafs, testified that 4.62 cfs was being diverted from the creek. However, the RCW 90.14 claim that was filed by a prior owner in 1974 asserted a right to 2.8 cfs and 380 acre-feet per year for the irrigation of 140 acres. The Referee chose not to recommend confirmation of a right to use the higher quantities of water due to the lack of an explanation of the difference. There was concern that the method of irrigation might have changed, resulting in a higher quantity of water being used. Mr. Van de Graaf testified that the diversion works and method of irrigation have remained unchanged and he suspects that Mr. Lippencot, who filed the claim, may have put down the average quantity of water diverted from the creek. The Referee has a different opinion of the basis for the quantity of water claimed. A right to the irrigation of 140 acres was being asserted by Mr. Lippencot. The quantity of water asserted is 0.02 cfs and 4 acre-feet per year per acre for which a right is asserted. That is a standard water duty that is commonly used by Ecology when issuing permits. The Referee is also aware that during the claims registration period, if a landowner was uncertain about the quantity of water being used, Ecology advised using 0.02 cfs and 4 acre-feet per year per acre (see page 4 of this report for a discussion of this issue). This Referee will not limit a claimant to that quantity if there is sufficient evidence

1 to show that the current water use is commensurate with historic use. Mr. Bain
2 had presented evidence that lead the Referee to conclude that 13.9 acre-feet per
3 acre was being applied to the claimants' irrigated land. However, it was clear
4 that a portion of this was return flow from lands irrigated with imported water.
5 Pursuant to this Court's prior rulings, the Referee cannot confirm rights for the
6 use of foreign return flow. Mr. Bain appeared at the supplemental hearing and
7 testified he estimates 4 acre-feet per acre would represent the natural creek flow
8 component, which is the annual quantity that was originally recommended by the
9 Referee.

10 Another inconsistency between the RCW 90.14 claim and current use is with the
11 place of water use. WRC No. 113341 described a place of use as within portions of
12 the NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3. The irrigated area extends into the W $\frac{1}{2}$ W $\frac{1}{2}$ of
13 Section 2, which is not described in WRC No. 113341. However, because of the lay
14 of the county road and the angle at which the field extends into Section 2, it
15 would be very easy for the fact that the field does extend into Section 2 to be
16 overlooked. The Referee does not find the omission of Section 2 from the place of
17 use description to be a fatal flaw to confirming a right for the entire field.
18 Additionally, the claim did not on its face assert a right to stock watering. The
19 Court has held in other subbasins that failure to include stock watering as a use
20 does not prevent confirmation of a right when stock watering is incidental to
21 delivery of water for irrigation and the livestock simply drink from the ditches
22 as they traverse the fields. Stock water will be added as a use.

23 The last issue raised by the Van de Graafs was the priority date for the
24 right recommended for confirmation. The original recommendation was November 19,
25 1890, based on a deed from the Northern Pacific Railroad to Bernard Hanson for the

1 lands in Section 3. The Referee now knows through evidence presented by other
2 claimants that the map of definite location for the railroad was filed on May 24,
3 1884, which the Courts have held established the priority date for water rights on
4 railroad land established under the Riparian Doctrine. That date would only apply
5 to the Section 3 lands, as the railroad did not own land in Section 2. Bernard
6 Hanson received a patent on May 13, 1891, for the land in Section 2. That is the
7 only date in the record available for the Referee to use for assigning a priority
8 date, so that date will be used for the lands in Section 2. The Referee estimates
9 that 17 of the irrigated acres lie in Section 2, with the remaining 70 being in
10 Section 3.

The report prepared by Mr. Bain for this ranch states that the land is irrigated until the middle of October. Therefore, the irrigation season will be April 1 through October 15. The Referee amends the original recommendation and recommends that a right be confirmed under Court Claim No. 01008 to Dick and Maxine Van de Graff with a May 24, 1884, date of priority for the diversion of 3.50 cubic feet per second, 280 acre-feet per year from Jones Creek for the irrigation of 70 acres in that portion of Government Lot 1, S $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3 lying east of the irrigation ditch and west of the county road and with a May 13, 1891, date of priority a right to 0.85 cubic foot per second, 68 acre-feet per year from Jones Creek for the irrigation of 17 acres in that portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2 lying west of the county road, all in T. 18 N., R. 18 E.W.M.

The Van de Graafs are also asserting a non-diversionary stock water right for a spring-fed stream that enters their property near the center of Section 3. The livestock drink directly from the stream. This type of use is covered by the

1 stock water stipulation that is discussed on page 4 of the original Report of
2 Referee. Additionally, in response to exceptions that were filed by claimants in
3 Subbasins No. 7 and 4 related to the desire to have certificates issue for
4 non-diversionary stock water uses, the Court entered on October 9, 1997, Amended
5 Order Re: Non-diversionary Stock Water Rights, which put in the form of a Court
6 Order the language of the stipulation.

7 COURT CLAIM NO. 01503 -- Van de Graaf Ranches, Inc.

8 COURT CLAIM NO. 01520 -- Dick Van de Graaf, Jr.
9 & Maxine Van de Graaf

10 The Claimants took exception to the Referee not recommending that rights be
11 confirmed for all of the land they are irrigating within the area described in
12 these two Court Claims. The Van de Graafs are represented by Attorney Lawrence E.
13 Martin. Mr. Van de Graaf and Richard C. Bain, Jr., a consultant hired by the
14 claimants, testified at the supplemental hearing.

15 Upon considering the evidence presented at the initial evidentiary hearing,
16 the Referee found that there had been sufficient proof offered to show existence
17 of a water right only for the lands owned by the claimants in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
18 Section 2. Therefore, it was recommended that water rights not be confirmed for
19 the rest of the Van de Graaf property described in Court Claims No. 01503 and
20 01520 and lying in Sections 3, 10, 11 and 15. DE-229 offered at the initial
21 evidentiary hearing is a Statement of Claim of Water Right from Reeser Creek filed
22 by Howard Ebert on May 31, 1890, stating that he owned the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2,
23 T. 18 N., R. 18 E.W.M. and all ditches irrigating that land. The statement
24 described the ditch he had constructed from what he called Reeser Creek (now known
25 as Currier Creek) and that he had appropriated 40 inches. Exhibits offered at the

1 supplemental hearing show that Howard Ebert also owned the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3,
2 the NE $\frac{1}{4}$ of Section 10 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 11. Mr. Ebert acquired the
3 additional land at about the time he filed the Statement of Claim of Water Right.
4 He received a patent for the NE $\frac{1}{4}$ of Section 10 in 1894 from the United States and
5 the rest of the land was bought from the Northern Pacific Railroad. Although the
6 Ebert Statement of Claim did not address use of water outside of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
7 Section 2, it is not unreasonable to conclude that he would have continued to
8 develop and irrigate the remaining land. Within the area formerly owned by Ebert,
9 it appears to the Referee that 84 acres have been irrigated. Of that, 23.5 acres
10 are irrigated from Jones Creek with a diversion in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and the
11 rest is irrigated from Currier Creek with diversions in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2
12 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11. The priority date for riparian railroad lands is
13 set when the map of definite location is filed, which in Kittitas County was
14 May 24, 1884. That priority date would be appropriate for the lands in Section 3
15 and 11. The priority date for the lands in Sections 2 and 10 would be the date
16 steps were first taken to sever the land from Federal ownership, however, that
17 date is not in the record. Mr. Ebert received a patent in 1894 for the NE $\frac{1}{4}$ of
18 Section 10 and there is no evidence of how and when he acquired the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
19 Section 2. The Referee proposes to use the date of water appropriation identified
20 in the 1890 Statement of Water Claim as the priority date for Sections 2 and 10,
21 which would be April 1, 1890. The Referee had initially noted that there was no
22 RCW 90.14 claim for Section 3. That is the case; however, upon further review of
23 the map and taking into consideration the Courts rulings on RCW 90.14
24 interpretation, the Referee believes that, due to the small amount of land in the
25 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3 that is irrigated and the nearness of the irrigation ditch to

1 the section line between Sections 2 and 3, WRC No. 98462 was intended for the
2 entire field, including the portion in Section 3. The claim asserted a right to
3 irrigate 50 acres within a 40 acre place of use, clearly showing that an error was
4 made during completion of the form.

5 The rest of the Van de Graaf land was under different ownership in the late
6 1800's and early 1900's. Henry Read received a patent for the SE $\frac{1}{4}$ of Section 10
7 in 1889. The claimant put into the record most of the documents related to
8 homesteading the property, clearly showing that Mr. Read settled on the land on
9 August 15, 1882, which would be the priority date for any lands in the SE $\frac{1}{4}$ of
10 Section 10 for which a right is recommended. The statements of witnesses
11 necessary for issuance of the patent show that as of May 18, 1888, 8 acres were in
12 crops and 8 to 10 acres were broken. There is no mention of actual irrigation,
13 but it is reasonable to believe that in this area the crops would have been
14 irrigated. The chain of title sheet shows that Harry Read sold to W. M. F. Beers,
15 who in turn sold to Thomas Haley. Thomas Haley also bought from the Northern
16 Pacific Railroad in 1892 the NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 15. A 1904 publication,
17 titled Illustrated History of Klickitat, Yakima and Kittitas Counties, contains a
18 biography of Thomas Haley. It states at that time Mr. Haley owned 680 acres (he
19 also owned land in Section 19, T. 18 N., R. 19 E.W.M.), had 250 head of horses and
20 operated an up-to-date creamery with an output of 3,000 lbs. per month. The
21 claimants also irrigate the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11, but there is no information in
22 the record about historical ownership of this land.

23 Mr. Van de Graaf talked with a neighboring landowner, now deceased, who told
24 him the land has been continuously irrigated since prior to 1940. An old
25

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

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

1 creamery, milking sheds and other very old buildings were on portions of the
2 property, along with evidence of an old orchard.

The Referee believes there is sufficient information in the record to conclude that the lands in the SE $\frac{1}{4}$ of Section 10 and the NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15 also have been irrigated for a sufficient period of time to establish rights under the Riparian Doctrine (use prior to December 31, 1932). Although under different situations, the land in both Section 10 and 15 separated from Federal ownership in the early 1880's. However, there is still an unanswered question about the ownership history for the SW $\frac{1}{4}$ of Section 11. The Referee suspects that the Northern Pacific Railroad owned the SW $\frac{1}{4}$ of Section 11, as they did the NW $\frac{1}{4}$ of Section 11. It is important for the Referee to know when and to whom the railroad sold the SW $\frac{1}{4}$ of Section 11. It is doubtful that there was any development and water use on the land until the railroad sold it to a private party. During presentation of exhibits at the supplemental hearing, it was implied that the various documents that were part of exhibit DE-384 also addressed the SW $\frac{1}{4}$ of Section 11. However, that is not the case. The documents are specific to the NW $\frac{1}{4}$ of Section 11. Therefore, the Referee cannot recommend confirmation of a water right for the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11.

19 Although the Referee has concluded that rights can be recommended for
20 confirmation for the rest of the Van de Graaf ranch, quantifying those rights
21 presents a challenge. Due to the history of ownership and the method by which
22 water rights attached to the land, there are three different priority dates the
23 Referee must assign. The water rights for lands that were held by Northern
24 Pacific Railroad (Sections 3, 11, and 15) would have a priority date under the
25 Riparian Doctrine of May 24, 1884, which is the date the map of definite location

1 was filed. The SE $\frac{1}{4}$ of Section 10 was settled on August 15, 1882, which is the
2 date riparian rights would attach. The earliest date in the record that could be
3 used as the priority date for the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and the NE $\frac{1}{4}$ of Section 10 is
4 April 1, 1890, when Howard Ebert began construction of his irrigation ditch. As a
5 result of this varied history, the number of acres irrigated and quantity of water
6 must be portioned amongst the different priority rights. Mr. Bain provided
7 measurements of the different diversions used by the ranch. The measurements were
8 taken early in April of 1997 and were adjusted upward slightly due to a cold spell
9 that had reduced snow melt and the resultant creek flow. The diversions he
10 measured were not at capacity and could have carried more water were it
11 available. The Referee feels it is, therefore, acceptable, to use Mr. Bain's
12 adjustment recommendation. Mr. Bain had testified that 4 acre-feet per acre was a
13 reasonable estimate of the natural creek flow that would be used from Jones
14 Creek. He testified that the natural flow from Currier Creek would be higher, but
15 did not testify to how much higher. It was the Referee's understanding that when
16 the diversion measurements were provided, an estimate of the annual quantity of
17 water from Currier Creek that could be attributed to natural creek flow would also
18 be provided. However, that was not done. Mr. Bain had previously provided an
19 estimate average monthly flow for Currier Creek. Were the claimants able to
20 divert the entire flow shown on the table, they would be diverting 8 acre-feet per
21 acre. The Referee does not believe it would be reasonable to expect that level of
22 diversion. Lacking any better information, the Referee recommends that 6
23 acre-feet per acre be awarded. The Referee recognizes that considerably more
24 water than that is actually used to irrigate the land, on some fields in excess of
25 20 acre-feet per acre is used. However, it is clear from Mr. Bain's testimony
26

1 that KRD, Cascade Irrigation Company and return flows from the use of those waters
2 contribute greatly to the water used on the ranch. In addition to the need for
3 irrigation water, the claimants also raise up to 2500 head of livestock on the
4 land herein discussed. The livestock drink directly from the creek and from the
5 irrigation ditches that traverse the property. Approximately 100 acre-feet per
6 year of water is needed for this use, some of which is non-diversionary in
7 nature. The stock water stipulation and the Court's October 9, 1997, Amended
8 Order Re: Non-diversionary Stock Water Rights cover that use. Although the Referee
9 cannot recommend that an irrigation right be confirmed for the SW $\frac{1}{4}$ of Section 11,
10 since livestock do graze on that land a non-diversionary stock water right will be
11 recommended.

12 Based on Mr. Bain's measurements of the diversion works, the facilities are
13 in place to divert 19.5 cubic feet per second from Currier Creek, or 0.06 cfs per
14 acre irrigated. Because of the need to segregate the irrigated acreage according
15 to the various priority dates, the Referee will award the instantaneous quantity
16 on the basis of 0.06 cfs per irrigated acre. The rights for Jones Creek are
17 limited to the Notice of Water Right filed by Howard Ebert in 1890, therefore,
18 0.80 cfs is awarded for each of those rights, with the recognition that the
19 instantaneous quantity is not additive and no more than 0.80 cfs can be diverted
20 at any time from Jones Creek. The Referee will also split the stock water need
21 proportionately between the different rights. The report prepared by Mr. Bain
22 stated that the claimant irrigates until mid-October, so the Referee recommends an
23 irrigation season of April 1 through October 15. The Referee, therefore,
24 recommends that the following water rights be confirmed under Court Claim No.
25 01520 and 01503

With a priority date of May 24, 1884, 0.80 cfs, 24 acre-feet per year from Jones Creek for the irrigation of 6 acres and 1.66 acre-feet per year for stock water in that portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T. 18 N., R. 18 E.W.M. lying east of the irrigation ditch.

With a priority date of April 1, 1890, 0.80 cfs, 70 acre-feet per year from Jones Creek for the irrigation of 17.5 acres and 4.85 acre-feet per year for stock water in that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 lying west of Currier Creek, both in T. 18 N., R. 18 E.W.M.

With a priority date of August 15, 1882, 6.3 cfs, 630 acre-feet per year from Currier Creek for the irrigation of 105 acres and 29 acre-feet per year for stock water in the SE $\frac{1}{4}$ of Section 10, T. 18 N., R. 18 E.W.M.

With a priority date of May 24, 1884, 10.5 cfs, 1047 acre-feet per year from Currier Creek for the irrigation of 174.5 acres and 48.4 acre-feet per year for stock water in the W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 11; the NE $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15 lying west of Currier Creek, T. 18 N., R. 18 E.W.M.

With a priority date of May 24, 1884, 0.10 cfs, 9 acre-feet per year from Currier Creek for stock water in the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11, T. 18 N., R. 18 E.W.M.

With a priority date of April 1, 1890, 1.56 cfs, 156 acre-feet per year from Currier Creek for the irrigation of 26 acres and 7.2 acre-feet per year for stock water in that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and the E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 10 both lying east of Currier Creek in T. 18., R. 18 E.W.M.

COURT CLAIM NO. 00520 -- Willowbrook Farms Ltd. Partnership
(A)05669

Willowbrook Farms Limited Partnership filed an exception to the Referee's finding that a right could not be recommended for confirmation for use of an

1 unnamed stream for irrigation in the SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M. The
2 claimant is represented by Attorney Jeff Slothower and Paul Harrel testified at
3 the supplemental hearing.

4 Willowbrook Farms is asserting a right to divert 2 cubic feet per second from
5 the unnamed stream for the irrigation of 65 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8,
6 T. 18 N., R. 18 E.W.M. The stream is in a natural drainage that originates above
7 the KRD canal in Section 29, T. 19 N., R. 18 E.W.M. and flows south through
8 Sections 32, and into Sections 5, 4, 9 and 8 of T. 18 N., R. 18 E.W.M. During
9 preparation for this hearing Mr. Harrel discovered that this stream was probably
10 used to carry First Creek water which was originally appropriated by a prior owner
11 of the Willowbrook property (A. A. Munson). Mr. Harrel had heard that First Creek
12 water had been used on the property, but was unaware that the stream he used
13 delivered that water. Besides making a claim for First Creek water as part of the
14 Subbasin No. 4 proceeding, a right is also being asserted for any natural creek
15 water that originates in Subbasin No. 7 and is carried in the creek. See the
16 Supplemental Report of Referee for Subbasin No. 4 for consideration of the claim
17 to First Creek water.

18 The record is clear the the unnamed creek to which Willowbrook is asserting a
19 right has been delivering water to the SE $\frac{1}{4}$ of Section 8 since the late 1800's.
20 Mr. Harrel had previously testified to his knowledge of irrigation practices on
21 the property during the 1930's when he visited the property and since he acquired
22 it in the 1940's. The only uncertainty that prevented confirmation of a water
23 right was consideration of whether the water being used is natural creek flow or
24 foreign return flow from the application of KRD water or imported First Creek
25 water applied to updrainage lands. Mr. Harrel observed the flow in the creek

1 prior to the KRD turning on their canal and estimated the flow at 2 cubic feet per
2 second. It is his belief that quantity of natural flow is available early in the
3 irrigation season and tapers off as the season progresses. As the natural flow
4 tapers off, it is replaced by return flows generated by use of KRD water.

5 Two water right claim (WRC) forms were filed for this property pursuant to
6 RCW 90.14. WRC No. 024268 asserted a right to divert 1 cfs, 200 acre-feet per
7 year for the irrigation of 20 acres in the SE $\frac{1}{4}$ of Section 8 and WRC No. 024269
8 asserted a right to divert 2 cfs, 1300 acre-feet per year for the irrigation of 30
9 acres in the SE $\frac{1}{4}$ of Section 8. Both claims were filed as ground water claims with
10 the source of water identified as a drain. A different diversion from the creek
11 is described on each of the water right claims, consistent with two of the three
12 diversions used by the claimant. If the third diversion is still used, it appears
13 that it was added after the claims were filed. Mr. Harrel has testified to
14 irrigating 65 acres, although the two water right claims assert rights to irrigate
15 only 50 acres. The Referee believes that an error must have been made in
16 estimating the number of acres irrigated and the error is fairly minor. In
17 consideration of the Court's rulings on interpreting water right claims, the
18 Referee believes there is the latitude to recommend that a right be confirmed for
19 the 65 acres being irrigated. Mr. Harrel did not testify to the annual quantity
20 of water being used to irrigate. The Referee recognizes that only a portion of
21 the water comes from natural flow in the creek. Richard C. Bain, Jr., is a
22 consultant hired by other landowners in this area to estimate the amount of
23 natural flow that might be available from creeks flowing in Subbasin No. 7. He
24 has estimated that for the smaller creeks in this immediate area, 4 acre-feet per
25 acre irrigated would be a reasonable figure to use. The Referee intends to use
26

1 that figure. If Mr. Harrel has evidence of a different quantity of natural flow
2 being used, he may file an exception and present it to the Court at the exception
3 hearing.

4 Alexander A. Munson received a patent for the SE $\frac{1}{4}$ of Section 8 on October 26,
5 1892. However, due to several court cases dealing with his right to use First
6 Creek, it is apparent that he had settled on this property by 1882. Settlement
7 with the intent to homestead a piece of property is considered the first steps in
8 severing land from the Federal government and establishes the priority date for
9 Riparian Rights.

10 The Referee recommends that a right be confirmed under the Riparian Doctrine
11 to Willowbrook Farms with a June 30, 1882, date of priority, a right to divert 2
12 cubic feet per second, 260 acre-feet per year from an unnamed creek for the
13 irrigation of 65 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8. The Referee will recommend that
14 the points of diversion on the two RCW 90.14 claims be included in the rights. If
15 a third diversion continues to be used, the claimant should contact Ecology about
16 obtaining authorization to add a point of diversion.

17
18 COURT CLAIM NO. 00589 -- WA State Dept. of Natural Resources
19 (A)00590

20 The Washington State Department of Natural Resources filed an exception
21 because the narrative in the Report of Referee did not state they had
22 non-diversionary stock water rights, however, they were on the list of claimants
23 with those rights on page 264. The Department wants to insure the record was
24 clear that they do have non-diversionary stock water rights. The Department of
25 Natural Resources does enjoy non-diversionary stock water rights on it's land.
26
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FINDINGS OF FACT

I, DOUGLAS CLAUSING, as Referee in this proceeding, having carefully examined the testimony and evidence, do hereby make the following Findings of Fact pursuant to the Order on Exceptions entered by this court on November 14, 1996:

Based upon the additional testimony and evidence obtained at either the exception hearing or the supplemental hearing, the Report of Referee - Subbasin No. 7, dated April 21, 1995, is modified as herein provided. The following claimants are added to the list of claimants with non-diversionary stock water rights appearing on pages 179 and 180 of the Report of Referee:

Lorne T. and Jeanne M. Dunning; Robert and Susie Haberman; Neil J. Hoff; Keith Schober; Thomas C. Scott

Pages 267 through 305 of the Report of Referee are replaced with the following:

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SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 7

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

1
2 CLAIMANT NAME: Nicholas Schmitt, Jr. COURT CLAIM NO. 01447
3 & Janet C. Schmitt
Nelson - Gelbvieh Ranch
4 Source: Reecer Creek
5 Use: Irrigation of 60 acres
6 Period of Use: March 25 to October 15
7 Quantity: 0.875 cubic foot per second, 169.8 acre-feet per year for
irrigation
8 Priority Date: June 30, 1873
9 Point of Diversion: 15 feet south and 75 feet east of the north quarter
corner of Section 28; being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 28, T. 19 N., R. 18 E.W.M.
10 Place of Use: The N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28, T. 19 N., R. 18 E.W.M. .
11 Limitations of Use: The total instantaneous diversion shall not exceed 2.0
cubic feet per second under this right and all other
rights confirmed under Court Claim No. 01447.
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SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 7

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

1
2 CLAIMANT NAME: P. L. P. COURT CLAIM NO. 00402
3
4 Source: Currier Creek
5 Use: Irrigation of 72 acres
6 Period of Use: April 1 to October 15
7 Quantity: 3.0 cubic feet per second, 864 acre-feet per year
8 Priority Date: April 30, 1875
9 Point of Diversion: 100 feet south and 50 feet east of the northwest corner
of Section 34, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34,
T. 18 N., R. 18 E.W.M.
10 Place of Use: That portion of the NW $\frac{1}{4}$ of Section 34, T. 18 N.,
R. 18 E.W.M. lying southwesterly of the Burlington
Northern R.R. right-of-way. Except the county road
(Cascade Way) right-of-way; ALSO EXCEPT that portion
described as follows: Commencing at the west quarter
corner of said section; thence east 795 feet, more or
less, to the point of beginning; thence east 570 feet,
more or less; thence north 107.08 feet; thence
northwesterly 40 feet, more or less; thence west 30 feet,
more or less; thence N 60° 30' W 127.05 feet; thence N
34° W 90.35 feet; thence west 130.63 feet; thence
southwesterly 9.75 feet; thence south 85 feet, more or
less; thence west 195.35 feet; thence south 161 feet to
the point of beginning.
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2 CLAIMANT NAME: Olson Ditch COURT CLAIM NO. 00169
3
4 Source: Yakima River
5
6 Use: Irrigation of 121.5 acres and stock water
7
8 Period of Use: April 1 to October 31 for irrigation; continuous for
9 stock water
10
11 Quantity: 6.15 cubic feet per second for irrigation/stock water and
12 0.85 cubic foot per second for conveyance from April 1 to
13 August 31; 4.08 cubic feet per second for irrigation and
14 stock water, 0.56 cubic foot per second for conveyance in
15 September and 2.04 cubic feet per second for irrigation
16 and 0.28 cubic foot per second for conveyance in October,
17 2444.20 acre-feet per year for the irrigation of 120
18 acres and stock water; 2.73 cubic feet per second, 168
19 acre-feet per year in November and 0.70 cubic feet per
20 second, 72.3 acre-feet per year from December 1 to
21 March 31 for stock water;
22 Priority Date: February 21, 1876
23
24 Point of Diversion: 500 feet south and 850 feet east from the center of
25 Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
26
27 Place of Use: Taylor (75 ac.) - That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
28 Section 29 lying north of Willow/Scott Ditch and that
portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 south of BNRR
right-of-way, T. 18 N., R. 18 E.W.M.
29
30 Thomas (15 ac.) - That portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
31 Section 28 and that portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
32 Section 21, T. 18 N., R. 18 E.W.M. described as follows:
33 A tract of land bounded by a line beginning at the
34 southwest corner of Section 21; thence S 88°55'51" E
35 along the southerly boundary line of the SW $\frac{1}{4}$ of said
36 section 312.13 feet to the northeasterly right-of-way of
37 SR 10; thence S 44°48'07" E along the northeasterly
38 right-of-way of said highway 507.83 feet to the easterly
39 boundary line of the W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 and the true
40 point of beginning; thence N 03°00'18" 1,240.63 feet to
41 the southwesterly right-of-way of SR 97; thence S
42 40°42'44" E along the southwesterly right-of-way of SR 97
43 718.41 feet to the northwesterly boundary line of Tax
44 Parcel #18; thence S 49°17'16" W along the northwesterly
45 boundary line of said tax parcel 329.97 feet; thence S

1
2 40°42'44" E along the southwesterly boundary line of said
3 tax parcel, 175.41 feet to the southwesterly corner of
4 said tax parcel and the southerly boundary line of the
5 E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21; thence N 88°55'51" W along the
6 southerly boundary line of the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, 4.70 feet to the
7 northwest corner of Tax Parcel #6; thence S 40°42'44" E
8 along the southwesterly boundary line of said tax parcel
9 418.44 feet to the easterly boundary line of the E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$
10 of Section 28; thence S 00°27'24" E along the easterly
11 boundary line of the E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, 704.36 feet
12 to the northeasterly right-of-way of SR-10; thence N
13 44°48'07" W along the northeasterly right-of-way of
14 SR-10, 951.99 feet to the westerly boundary line of the
15 E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 and to the point of beginning.

16
17 Salter (20 ac.) - that portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
18 Section 21 lying southwest of Dry Creek Road and that
19 portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 lying northeast of
20 the NPRR right-of-way in T. 18 N., R. 18 E.W.M.

21
22 M. Johnson (10 ac.) - that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
23 Section 21, T. 18 N., R. 18 E.W.M. lying northeast of Dry
24 Creek Road.

25 Limitations of Use: This right is subject to the Olson, et al. limiting
26 agreement and the total diversion under this right and
27 the 1891 right that is subject to the limiting agreement
28 will not exceed 24 cfs April 1 through August 31; 16 cfs
in September; and 8 cfs in October.

1
2 CLAIMANT NAME: Olson Ditch COURT CLAIM NO. 00169
3
4 Source: The Yakima River
5
6 Use: Irrigation of 174 acres and stock water
7
8 Period of Use: April 1 to October 31 for irrigation; continuous for
9 stock water
10
11 Quantity: 3.12 cubic feet per second, 1567.56 acre-feet per year
12 for irrigation of 104 acres in Section 28 and 0.88 cfs
13 for conveyance loss; 2 cfs and 633.5 acre-feet per year
14 for the irrigation of 70 acres in Sections 17 and 18; 3.9
15 cubic feet per second, 240 acre-feet in November and 0.70
16 cubic foot per second, 72.3 acre-feet per year from
17 December 1 to March 31 for stock water;
18
19 Priority Date: February 21, 1876
20
21 Point of Diversion: 500 feet south and 850 feet east from the center of
22 Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
23 T. 18 N., R. 17 E.W.M.
24
25 Place of Use: McManamy (69 ac.) and Kelley (1 ac.) - That portion of
26 the E $\frac{1}{2}$ of Section 18, T. 18 N., R. 18 E.W.M. lying
27 northeast of the BNRR right-of-way and that portion of
28 the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T. 18 N., R. 18 E.W.M. lying
southwest of the Dry Creek Road
29
30 Taylor and small holdings (104 ac.) - The S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$
31 of Section 28, T. 18 N., R. 18 E.W.M.
32
33 Limitations of Use: This right is not subject to the Olson et al. limiting
34 agreement. A total of 70 acres is irrigated in the E $\frac{1}{2}$ of
35 Section 18 north of BNRR right-of-way and south of the
36 county road under this right and the right confirmed to
37 Olson Ditch with a July 30, 1885, date of priority.

1
2 CLAIMANT NAME: Patrick J. Taylor COURT CLAIM NO. 00170
3 & Susan A. Taylor
4 Source: Dry Creek
5 Use: Irrigation of 17 acres and stock water
6 Period of Use: April 1 to October 15
7 Quantity: 0.92 cubic foot per second, 294.4 acre-feet per year
8 Priority Date: May 15, 1876
9 Point of Diversion: 5 feet south and 5 feet east from the center of
Section 20, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20,
T. 18 N., R. 18 E.W.M.
10 Place of Use: That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 lying south of
the Northern Pacific Railroad right-of-way, T. 18 N.,
R. 18 E.W.M.
11
12
13 CLAIMANT NAME: Nicholas Schmitt, Jr. COURT CLAIM NO. 01447
14 & Janet C. Schmitt
Nelson - Gelbvieh Ranch
15 Source: Reecer Creek
16 Use: Irrigation of 60 acres
17 Period of Use: March 25 to October 15
18 Quantity: 0.75 cubic foot per second, 169.8 acre-feet per year for
irrigation
19 Priority Date: June 14, 1877
20 Point of Diversion: 15 feet south and 75 feet east of the north quarter
corner of Section 28; being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 28, T. 19 N., R. 18 E.W.M.
21 Place of Use: The S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28, T. 19 N., R. 18 E.W.M.
22 Limitations of Use: The total instantaneous diversion shall not exceed 2
cubic feet per second under this right and all other
rights confirmed under Court Claim No. 01447.
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2 CLAIMANT NAME: J. P. Roan & Jan Roan COURT CLAIM NO. 01419
3
4 Source: Jones Creek
5 Use: Irrigation of 124 acres
6 Period of Use: April 1 through October 15
7 Quantity: 2 cubic feet per second, 372 acre-feet per year
8 Priority Date: May 1, 1878
9 Point of Diversion: 50 feet north and 50 feet east of the southwest corner of
Section 19, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19,
T. 19 N., R. 18 E.W.M.
10 Place of Use: The W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 21, T. 19 N., R. 18 E.W.M.
11
12 CLAIMANT NAME: Nicholas Schmitt, Jr. & Janet C. Schmitt Nelson - Gelbvieh Ranch COURT CLAIM NO. 01447
13
14 Source: Reecer Creek
15 Use: Irrigation of 70 acres
16 Period of Use: March 25 to October 15
17 Quantity: 1 cubic foot per second, 198.1 acre-feet per year for
irrigation
18
19 Priority Date: May 1, 1878
20 Point of Diversion: 15 feet south and 75 feet east of the north quarter
corner of Section 28, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 28, T. 19 N., R. 18 E.W.M.
21
22 Place of Use: 60 acres in that portion of the SE $\frac{1}{4}$ of Section 28 lying
north of the Kittitas Reclamation District canal and east
of Reecer Creek and 10 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 28, T. 19 N., R. 18 E.W.M.
23
24 Limitations of Use: The total instantaneous diversion shall not exceed 2
cubic feet per second under this right and all other
rights confirmed under Court Claim No. 01447.
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1
2 CLAIMANT NAME: Peggy E. Hunt COURT CLAIM NO. 05284
3 Wallace M. Stampfly
4 Phyllis J. Stampfly
5 Randall J. Stampfly
6
7 Source: Reecer Creek
8 Use: Irrigation of 75 acres
9 Period of Use: April 1 to October 15
10 Quantity: 0.75 cubic foot per second, 172 acre-feet per year
11 Priority Date: June 30, 1878
12 Point of Diversion: 1. 850 feet south and 975 feet east of the north
quarter corner of Section 33, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
Section 33, T. 19 N., R. 18 E.W.M.
2. 10 feet south and 975 feet east of the north
quarter corner of Section 33, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
of Section 33, T. 19 N., R. 18 E.W.M.
13 Place of Use: That portion of the NE $\frac{1}{4}$ of Section 33, T. 19 N.,
R. 18 E.W.M. lying east of Reecer Creek
14
15 Limitations of Use: Of the annual quantity authorized for use, 126 acre-feet
per year is authorized for the irrigation of 31.5 acres
lying west of an irrigation ditch that flows through the
property from the first described diversion. The
remaining 46 acre-feet per year is to be used on the 43.5
acre field lying east of the irrigation ditch.

1
2 CLAIMANT NAME: Dana R. Lind COURT CLAIM NO. 06041
3 & Elizabeth Lind
4 Source: Reecer Creek
5 Use: Irrigation of 20 acres and stock water
6 Period of Use: March 15 through October 31
7 Quantity: 2 cubic feet per second, 200 acre-feet per year
8 Priority Date: June 30, 1879
9 Point of Diversion: 1900 feet south and 1100 feet west of the northeast
10 corner of Section 4, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
11 Section 4, T. 18 N., R. 18 E.W.M.
12 Place of Use: The S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 18 N.,
13 R. 18 E.W.M. lying west of Reecer Creek.

14
15 CLAIMANT NAME: J. P. Roan COURT CLAIM NO. 01419
16 & Jan Roan
17 Source: Reecer Creek
18 Use: Irrigation of 60 acres
19 Period of Use: April 1 to October 15
20 Quantity: 0.75 cubic foot per second, 267.3 acre-feet per year
21 Priority Date: June 30, 1879
22 Point of Diversion: 100 feet north and 500 feet west of the east quarter
23 corner of Section 17, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
24 Section 17, T. 19 N., R. 18 E.W.M.
25 Place of Use: That portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20, T. 19 N.,
26 R. 18 E.W.M. lying west of the ditch that exits the pond
27 located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20.
28 Limitations of Use: This land may also receive water from First Creek.

1
2 CLAIMANT NAME: John Hardy Shore COURT CLAIM NO. 06041
3 & Donna Shore
4 Source: Reecer Creek
5 Use: Irrigation of 50 acres and stock water
6 Period of Use: March 15 to October 31
7 Quantity: 2 cubic feet per second, 500 acre-feet per year
8 Priority Date: June 30, 1879
9 Point of Diversion: 1900 feet south and 1100 feet west of the northeast
corner of Section 4 in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, T. 18 N.,
R. 18 E.W.M.
10 Place of Use: That portion of Government Lot 1 lying east of Reecer
Creek and the N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, T. 18 N.,
R. 18 E.W.M.
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SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 7

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

1
2 CLAIMANT NAME: Nelson - Galvien Ranch COURT CLAIM NO. 01447
3 Source: Reecer Creek
4 Use: Irrigation of 65 acres
5 Period of Use: March 25 to October 15
6 Quantity: 0.825 cubic foot per second, 183.95 acre-feet per year
for irrigation
7 Priority Date: June 30, 1881
8 Point of Diversion: 540 feet south and 650 feet west of the center of
Section 21, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21,
T. 19 N., R. 18 E.W.M.
9
10 Place of Use: The W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27, T. 19 N., R. 18 E.W.M. lying
north of the Kittitas Reclamation District canal
11
12 Limitations of Use: The water authorized to be diverted herein is diverted
from Reecer Creek, dumped into Jones Creek and then
redistributed from Jones Creek. The diversion from Jones
Creek shall not exceed the quantity that is dumped into
Jones Creek from Reecer Creek. The total instantaneous
diversion under this right and all other rights confirmed
under Court Claim No. 01447 shall not exceed 2 cubic feet
per second.

1
2 CLAIMANT NAME: Milton M. Femrite COURT CLAIM NO. 01525
3 & Tracy S. Femrite
4 Source: Currier Creek
5 Use: Irrigation of 10 acres
6 Period of Use: April 1 to October 31
7 Quantity: 1.0 cubic foot per second, 70 acre-feet per year
8 Priority Date: April 30, 1882
9 Point of Diversion: 75 feet north and 125 feet east from the center of
10 Section 26, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26,
11 T. 19 N., R. 18 E.W.M.
12 Place of Use: Those portions of Section 26, T. 19 N., R. 18 E.W.M.
13 described as follows: the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying east of
14 Currier Creek; and the W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ lying north of the
15 Kittitas Reclamation District Canal.
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Limitations of Use: A maximum of 1 cubic foot per second can be diverted from
Currier Creek at any time under this right and the right
confirmed under Court Claim No. 01527 for the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$
of Section 26.

1
2 CLAIMANT NAME: Milton M. Femrite COURT CLAIM NO. 01527
3 & Tracy S. Femrite
4 Source: Currier Creek
5 Use: Irrigation of 10 acres
6 Period of Use: April 1 to October 31
7 Quantity: 1.0 cubic foot per second, 70 acre-feet per year
8 Priority Date: April 30, 1882
9 Point of Diversion: 1150 feet north and 650 feet east from the west quarter
10 corner of Section 23, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
11 Section 23, T. 19 N. R. 18 E.W.M.
12 Place of Use: NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T. 19 N., R. 18 E.W.M.
13 Limitations of Use: A maximum of 1 cubic foot per second can be diverted from
14 Currier Creek under this right and the right confirmed
15 under Court Claim No. 01525 for use on the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and
16 W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26.

1
2 CLAIMANT NAME: William J. Grueter COURT CLAIM NO. 01663
3 & Patricia M. Grueter (A)04913
4 Jeffrey A. Strole (A)04914
5 & Cindy Strole
6 Mike Stanavich
7 & Debra Stanavich

8 Source: Currier Creek
9
10 Use: Irrigation of 38 acres and stock water
11 Period of Use: April 1 to October 15
12 Quantity: 1 cubic foot per second, 300 acre-feet per year for
irrigation; 10 acre-feet per year for stock water
13 Priority Date: May 1, 1882
14 Point of Diversion: 800 feet south and 175 feet east from the north quarter
corner of Section 35, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 35, T. 19 N., R. 18 E.W.M.
15
16 Place of Use: That portion of the NW $\frac{1}{4}$ of Section 35, T. 19 N.,
R. 18 E.W.M. lying east of an unnamed stream flowing
through the section.

1 CLAIMANT NAME:

2 David Pethia
3 Charles Lyon

COURT CLAIM NO. 02261
(A)03072
(A)05691

4 Source:

Reecer Creek

5 Use:

Irrigation of 56 acres

6 Period of Use:

April 1 to October 31

7 Quantity:

2.98 cubic feet per second, 554.4 acre-feet per year

8 Priority Date:

May 16, 1882

9 Point of Diversion:

(1) 150 feet south and 700 feet west from the northeast corner of Section 28, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 18 N., R. 18 E.W.M.

(2) 800 feet north and 1100 feet west from the east quarter corner of Section 28, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 18 N., R. 18 E.W.M.

13 Place of Use:

That portion of the E $\frac{1}{2}$ of Section 28, T. 18 N., R. 18 E.W.M. lying north of State Highway 10, south of the Dry Creek Road and west of Reecer Creek

15 Limitations of Use:

This is the maximum quantity of water that can be used on this land with water diverted under this right or any right that may exist from the Olson Ditch Company.

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2 CLAIMANT NAME: David Pethia COURT CLAIM NO. 02261
3 Charles Lyon (A)03072
4
5 Source: An unnamed spring (A)05691
6 Use: Irrigation of one-half acre and stock water
7 Period of Use: April 1 to October 31 for irrigation; continuous for
8 stock watering
9 Quantity: 0.02 cubic foot per second, 2 acre-feet per year
10 Priority Date: May 16, 1882
11 Point of Diversion: 800 feet north and 1000 feet east from the center of
12 Section 28, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28,
13 T. 18 N., R. 18 E.W.M.
14 Place of Use: That portion of NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 18 N.,
15 R. 18 E.W.M. described as follows: Commencing at the
16 north quarter corner of said section, thence south to the
17 south right-of-way of Dry Creek Road; thence southeast
18 along said right-of-way 800 feet, more or less, to the
19 point of beginning; thence continuing along said right of
20 way 375 feet, more or less; thence S 30°W 300 feet more
21 or less; thence west 300 feet more or less; thence N 7°E
22 400 feet, more or less to the point of beginning.
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2 CLAIMANT NAME: Willowbrook Farms Ltd. Partnership COURT CLAIM NO. 00520
3 (A)05669
4 Source: An unnamed stream
5 Use: Irrigation of 65 acres
6 Period of Use: March 15 through October 15
7 Quantity: 2 cubic feet per second, 260 acre-feet per year
8 Priority Date: June 30, 1882
9 Point of Diversion: 1) 5 feet south and 5 feet west from the east quarter
10 corner of Section 8, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
11 Section 8, T. 18 N., R. 18 E.W.M.
12 2) 1000 feet south and 875 feet west from the east
13 quarter corner of Section 8, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$
14 of Section 8, T. 18 N., R. 18 E.W.M.
15 Place of Use: That portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8, T. 18 N.,
16 R. 18 E.W.M. lying south and east of an unnamed stream.
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2 CLAIMANT NAME: Van de Graaf Ranches, Inc. COURT CLAIM NO. 01503
3 Source: Currier Creek
4 Use: Irrigation of 105 acres and stock watering
5 Period of Use: April 1 through October 31
6 Quantity: 6.3 cubic feet per second, 630 acre-feet per year for
irrigation; 29 acre-feet per year for stock watering
7 Priority Date: August 15, 1882
8 Point of Diversion: 25 feet south and 25 feet west of the northeast corner of
Section 10, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10,
T. 18 N., R. 18 E.W.M.
9
10 Place of Use: That portion of the SE $\frac{1}{4}$ of Section 10, T. 18 N.,
R. 18 E.W.M. lying southeast of the irrigation ditch
11
12 Limitations of Use: This land may also receive water from the Kittitas
Reclamation District.
13
14 The annual quantity awarded for stock watering may also
include quantities consumed by the animals directly from
the creek.
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2 CLAIMANT NAME: Richard C. Bain COURT CLAIM NO. 01207
3 & Jeri L. Bain
4 Carl Donovan
5
6 Source: Yakima River
7
8 Use: Irrigation of 39.7 acres and stock water
9
10 Period of Use: April 1 to October 15 for irrigation; continuous for
11 stock watering
12
13 Quantity: 4.0 cubic feet per second, 867.58 acre-feet per year for
irrigation and stock watering from April 1 to October 15;
1.5 cubic foot per second, 5 acre-feet per year for stock
watering from October 16 to March 31
14
15 Priority Date: December 21, 1882
16
17 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
18
19 Place of Use: Those portions of Section 18, T. 18 N., R. 18 E.W.M.
described as follows: the E $\frac{1}{4}$ of Government Lot 1 lying
southwest of the Burlington Northern Railroad
right-of-way; the SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying southwest of the
Burlington Northern Railroad right-of-way (Bain) and the
N $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ (Donovan).
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2 CLAIMANT NAME: Jon Fitterer COURT CLAIM NO. 05175
3 Source: Yakima River
4 Use: Irrigation of 23 acres and stock water
5 Period of Use: April 1 to October 15
6 Quantity: 2.32 cubic feet per second, 342.7 acre-feet per year for
irrigation; 0.05 cubic foot per second, 5 acre-feet per
year for stock water
7 Priority Date: December 21, 1882
8 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
9 Place of Use: That portion of Parcel A lying in Section 18 and Parcel B
of that survey recorded January 20, 1988, in Book 15 of
Surveys, at page 126, under Auditor's File No. 510259,
records of Kittitas County, being a portion of Government
Lot 1 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, T. 18 N.,
R. 18 E.W.M. lying northeast of Highway 10.

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2 CLAIMANT NAME: Henry John Klocke, Jr. COURT CLAIM NO. 01696
3 & Beverly Lee Klocke
4 Source: Yakima River
5 Use: Irrigation of 1.5 acres and stock water
6 Period of Use: April 1 to October 31
7 Quantity: 0.06 cubic foot per second, 7.5 acre-feet per year for
irrigation; 0.01 cubic foot per second, 1 acre-foot per
year for stock water
8 Priority Date: December 21, 1882
9 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
10
11 Place of Use: That portion of Government Lot 1 of Section 18, T. 18 N.,
R. 18 E.W.M. described as follows: Commencing at the
northwest corner of said Lot; thence east 100 feet, more
or less, to a point on the north right-of-way of S.R. 10;
the point of beginning; thence east 300 feet, more or
less to Klocke Ditch: thence southeast along said ditch
to the north right-of-way of S.R. 10; thence northwest
along said right-of-way to the point of beginning.
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1 CLAIMANT NAME: Terance Clarke COURT CLAIM NO. 01767
2
3 Source: Dry Creek
4
5 Use: Irrigation of 40 acres and stock water
6
7 Period of Use: April 15 to October 31
8
9 Quantity: 1.90 cubic feet per second, 235 acre-feet per year for
irrigation; 5 acre-feet per year for stock watering
10
11 Priority Date: May 24, 1884
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13 Point of Diversion: 25 feet south and 10 feet east from the north quarter
corner of Section 17, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 17, T. 18 N., R. 18 E.W.M.
14
15 Place of Use: Those portions of Section 17, T. 18 N., R. 18 E.W.M.
described as follows: the W $\frac{1}{2}$ NE $\frac{1}{4}$ of said section lying
northeasterly of S.R. 131 and southwesterly of No. 335
Road, and the E $\frac{1}{2}$ NW $\frac{1}{4}$ lying northeasterly of S.R. 131.

14 CLAIMANT NAME: Lorne T. Dunning COURT CLAIM NO. 00166
& Jeanne M. Dunning (A)12208(A)
15 Source: An unnamed spring
16 Use: stock watering
17 Period of Use: Continuously
18 Quantity: 0.01 cubic foot per second, 0.50 acre-foot per year
19 Priority Date: May 24, 1884
20 Point of Diversion: 240 feet south and 1200 feet east of the west quarter
corner of Section 1, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 1, T. 19 N., R. 18 E.W.M.
21
22 Place of Use: The SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 19 N., R. 18 E.W.M.
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2 CLAIMANT NAME: Jon Fitterer COURT CLAIM NO. 05175
3 Source: Yakima River
4 Use: Irrigation of 2 acres and stock water
5 Period of Use: April 1 through October 15 for irrigation; continuous for
stock water
6 Quantity: 0.04 cfs, 4 acre-feet per year for irrigation; 0.02 cfs,
1 acre-foot per year for stock water
7 Priority Date: May 24, 1884
8 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
9
10 Place of Use: That portion of Parcel A of that survey recorded
January 20, 1988, in Book 15 of Surveys at page 126,
under Auditor's file No. 510259, lying in Government
Lot 4 of Section 7, T. 18 N., R. 18 E.W.M.
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1 CLAIMANT NAME: William J. Grueter COURT CLAIM NO. 01663
2 (A) 04913
3 (A) 04914

4 Source Currier Creek
5 Use: Irrigation of 22 acres and stock water
6 Period of Use: April 1 through October 15
7 Quantity: 2 cubic feet per second, 330 acre-feet per year
8 Priority Date: May 24, 1884
9 Point of Diversion:
10 1. 800 feet south and 175 feet east from the north
11 quarter corner of Section 35, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
12 of Section 35, T. 19 N., R. 18 E.W.M.
13 2. 550 feet north and 400 feet west from the center of
14 Section 35, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35,
15 T. 19 N., R. 18 E.W.M.
16 3. 700 feet south and 900 feet west of the center of
17 Section 35, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35,
18 T. 19 N., R. 18 E.W.M.
19 Place of Use: That portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 35, T. 19 N.,
20 R. 18 E.W.M. lying east of Currier Creek
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2 CLAIMANT NAME: James E. Hand COURT CLAIM NO. 00692
3 Patrick J. Hand, et al.
4 Cathy J. Heathman
5
6 Source: Dry Creek
7 Use: Irrigation of 40 acres and stock water
8 Period of Use: April 1 to October 31
9 Quantity: 2 cubic feet per second, 200 acre-feet per year
10 Priority Date: May 24, 1884
11 Point of Diversion: 1250 feet south and 450 feet east from the center of
12 Section 17, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17,
T. 18 N., R. 18 E.W.M.
13 Place of Use: The W $\frac{1}{2}$ SE $\frac{1}{4}$ lying east of Dry Creek and west of Highway 97
14 and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ lying west of Dry Creek, in Section 17,
T. 18 N., R. 18 E.W.M.
15 Limitations of Use: This land also is irrigated with water delivered from the
16 Cascade Irrigation District.
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CLAIMANT NAME: Laroy D. Holmes COURT CLAIM NO. 00487
& Lorie Holmes
Source: Yakima River
Use: Irrigation of 26.8 acres and stock water
Period of Use: April 1 through October 15
Quantity: 3.31 cubic feet per second, 675 acre-feet per year for
irrigation; 2 acre-feet per year for stock watering
Priority Date: May 24, 1884
Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
Place of Use: That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, lying north and
east of an unnamed slough and that portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, lying north of I-90, all in T. 18 N.,
R. 18 E.W.M.

1 CLAIMANT NAME: Dick Van de Graaf, Jr. COURT CLAIM NO. 01008
2 Maxine Van de Graaf

3 Source: Jones Creek

4 Use: Irrigation of 70 acres and stock water

5 Period of Use: April 1 to October 15

6 Quantity: 3.50 cubic feet per second, 280 acre-feet per year

7 Priority Date: May 24, 1884

8 Point of Diversion: 20 feet south and 1290 feet west from the northeast
9 corner of Section 3, being within the Government Lot 2 of
Section 3, T. 18 N., R. 18 E.W.M.

10 Place of Use: That portion of Government Lot 1, the S $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
11 Section 3, T. 18 N., R. 18 E.W.M. west of Jones Creek and
east of delivery ditch.

13 CLAIMANT NAME: Patrick J. Taylor COURT CLAIM NO. 00170
14 & Susan A. Taylor

15 Source: Dry Creek

16 Use: Irrigation of 9 acres and stock water

17 Period of Use: April 1 through October 15

18 Quantity: 1.287 cfs, 208.8 acre-feet per year

19 Priority Date: May 24, 1884

20 Point of Diversion: 5 feet south and 5 feet east of the center of Section 20,
21 being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, T. 18 N.,
R. 18 E.W.M.

22 Place of Use: That portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 18 N.,
23 R. 18 E.W.M. lying west of Willow/Scott Ditch and east of
Dry Creek.

1
2 CLAIMANT NAME: Patrick J. Taylor COURT CLAIM NO. 01745A
3 & Susan A. Taylor
4 Source: Cabin Creek
5 Use: Irrigation of 7 acres
6 Period of Use: April 1 through October 15
7 Quantity: 1.68 cfs, 81.2 acre-feet per year
8 Priority Date: May 24, 1884
9 Point of Diversion: 1300 feet north and 1125 feet west from the south quarter
corner of Section 20, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 20, T. 18 N., R. 18 E.W.M.
10 Place of Use: That portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, T. 18 N.,
R. 18 E.W.M. lying west of Dry Creek and north of a
slough or water course.
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2 CLAIMANT NAME: Dick Van de Graaf, Jr. COURT CLAIM NO. 01520
3 & Maxine Van de Graaf
4 Source: Currier Creek
5 Use: Irrigation of 174.5 acres and stock water
6 Period of Use: April 1 through October 15
7 Quantity: 10.5 cubic feet per second, 1047 acre-feet per year for
irrigation; 48.4 acre-feet per year for stock watering
8 Priority Date: May 24, 1884
9 Point of Diversion: (1) 1050 feet north and 650 feet east from the southwest
corner of Section 2, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 2, T. 18 N., R. 18 E.W.M.
10 (2) 25 feet south and 25 feet west from the northeast
corner of Section 10, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 10, T. 18 N., R. 18 E.W.M.
11 (3) 1200 feet south and 400 feet west from the northeast
corner of Section 10, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 10, T. 18 N., R. 18 E.W.M.
12
13 Place of Use: The W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 11; the NE $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ of
Section 15 lying west of Currier Creek, all in T. 18 N.,
R. 18 E.W.M.
14
15 Limitations of Use: Kittitas Reclamation District and Cascade Irrigation
Company water may also be used on some of this land.
16
17 The annual quantity of water for stock watering may also
include water that is consumed by the animals drinking
20 directly from the creek.
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1
2 CLAIMANT NAME: Dick Van de Graaf, Jr. COURT CLAIM NO. 01520
3 & Maxine Van de Graaf
4 Source: Jones Creek
5 Use: Irrigation of 6 acres and stock watering
6 Period of Use: April 1 through October 15
7 Quantity: 0.80 cubic foot per second, 24 acre-feet per year for
irrigation; 1.66 acre-feet per year for stock watering
8 Priority Date: May 24, 1884
9 Point of Diversion: 1260 feet south and 500 feet west from the east quarter
corner of Section 2, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 2, T. 18 N., R. 18 E.W.M.
10 Place of Use: That portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3 lying east of
the irrigation ditch, in T. 18 N., R. 18 E.W.M.
11 Limitations of Use: Kittitas Reclamation District water may also be used on
this land.
12
13 The instantaneous quantity of 0.80 cfs is not in addition
to that quantity awarded in the right with a April 1,
1890, date of priority for the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10
and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2. A maximum of 0.80 cfs may be
diverted at any one time between the two rights.
14
15 The annual quantity of water awarded for stock watering
may reflect the water that is consumed by the livestock
drinking directly from the creek.
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2 CLAIMANT NAME: Dick Van de Graaf, Jr. COURT CLAIM NO. 01520
3 & Maxine Van de Graaf
4 Source: Currier Creek
5 Use: Stock watering
6 Period of Use: April 1 through October 15
7 Quantity: 0.10 cubic foot per second, 9 acre-feet per year
8 Priority Date: May 24, 1884
9 Point of Diversion: 1050 feet north and 650 feet east of the southwest corner
of Section 2, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2,
T. 18 N., R. 18 E.W.M.
10 Place of Use: The W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11, T. 18 N., R. 18 E.W.M.
11
12 CLAIMANT NAME: Arloha M. Scott COURT CLAIM NO. 02140
(A)05733
13 Source: Dry Creek
14 Use: Irrigation of 40 acres and stock water
15 Period of Use: April 1 to October 31
16 Quantity: 1.58 cubic feet per second, 619 acre-feet per year for
the irrigation of 40 acres and stock water; 1.42 cubic
feet per second for conveyance loss
17 Priority Date: September 15, 1884
18 Point of Diversion: 320 feet north and 350 feet east from the south quarter
corner of Section 20, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 20, T. 18 N., R. 18 E.W.M.
19 Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, which lies east
of a line beginning at the southeast corner of the
W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 28 and ending at a point lying
310 feet east along the north boundary line from the
northwest corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said section. Also
that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28 lying west of
State Route 97. All of the above in T. 18 N.,
R. 18 E.W.M.

1
2 CLAIMANT NAME:

Paul Wyatt
& Brenda Wyatt

COURT CLAIM NO. 01558

3 Source: Yakima River

4 Use: Irrigation of one-half acre

5 Period of Use: April 1 to October 31

6 Quantity: 0.02 cubic foot per second, 2.76 acre-feet per year

7 Priority Date: October 30, 1884

8 Point of Diversion: 1500 feet south and 700 feet east from the northwest
9 corner of Section 3, being with the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 3, T. 17 N., R. 18 E.W.M.

10 Place of Use: That portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 17 N.,
11 R. 18 E.W.M. described as follows: A tract of land
12 bounded by a line beginning at the northeast corner of
13 said quarter/quarter section, and running thence west,
14 along the north boundary line thereof, 720 feet; thence
15 south 260 feet to a point in the middle of the Doughty
Ditch; thence southeasterly, along the center line of
said ditch to its intersection with the east boundary
line of said quarter/quarter section; thence north, along
said east boundary line, 455 feet to the point of
beginning.

1 CLAIMANT NAME: Pautzke Bait Company, Inc. COURT CLAIM NO. 01724
2
3 Source: Yakima River
4
5 Use: Irrigation of 117 acres and stock water
6
7 Period of Use: April 1 to October 15 for irrigation; continuous for
stock watering
8
9 Quantity: 11.5 cubic feet per second, 2808 acre-feet per year for
irrigation; 0.5 cubic foot per second, 12 acre-feet per
year for stock water
10
11 Priority Date: October 30, 1884
12
13 Point of Diversion: 1500 feet south and 700 feet east from the northwest
corner of Section 3, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 3, T. 17 N., R. 18 E.W.M.
14
15 Place of Use: That portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 lying east of the
Dike Road, EXCEPT the Interstate 90 right-of-way. And
that portion of the NE $\frac{1}{4}$ of Section 10 lying east of the
Dike Road and north of Damman Road, EXCEPT the Interstate
90 right-of-way, all in T. 17 N., R. 18 E.W.M.
16

17 CLAIMANT NAME: Pautzke Bait Company, Inc. COURT CLAIM NO. 01724
18 Source: Yakima River
19 Use: Irrigation of 78 acres
20
21 Period of Use: April 1 to October 15
22
23 Quantity: 3.9 cubic feet per second, 967.2 acre-feet per year
24
25 Priority Date: October 30, 1884
26
27 Point of Diversion: 1500 feet south and 700 feet east from the northwest
corner of Section 3, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 3, T. 17 N., R. 18 E.W.M.
28
29 Place of Use: The N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3, T. 17 N., R. 18 E.W.M.

1
2 CLAIMANT NAME: Ronald T. Anderson COURT CLAIM NO. 00296
3 & Robin L. Anderson
4 Source: Yakima River
5 Use: Irrigation of 60 acres
6 Period of Use: April 1 through October 15
7 Quantity: 1.56 cfs, 744 acre-feet per year
8 Priority Date: May 20, 1885
9 Point of Diversion: 300 feet north and 1200 feet east from the center of
10 Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
11 T. 18 N., R. 18 E.W.M.
12
13 Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, the E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ and that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$
14 lying southwest of the Northern Pacific Railroad, all in
15 Section 34, T. 18 N., R. 18 E.W.M.

16
17 CLAIMANT NAME: Ronald T. Anderson COURT CLAIM NO. 00637
18 & Robin L. Anderson
19 Source: Yakima River
20 Use: Irrigation of 9 acres
21 Period of Use: April 1 through October 15
22 Quantity: 0.225 cfs, 111.6 acre-feet per year
23 Priority Date: May 20, 1885
24 Point of Diversion: 300 feet north and 1200 feet east of the center of
25 Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
26 T. 18 N., R. 18 E.W.M.
27
28 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T. 18 N., R. 18 E.W.M.

1 CLAIMANT NAME: Ronald T. Anderson
2 & Robin L. Anderson COURT CLAIM NO. 00626

3 Source: Yakima River

4 Use: Irrigation of 40 acres

5 Period of Use: April 1 to October 15

6 Quantity: 1 cubic foot per second, 500 acre-feet per year

7 Priority Date: May 20, 1885

8 Point of Diversion: 300 feet north and 1200 feet east from the center of
9 Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
T. 18 N., R. 18 E.W.M.

10 Place of Use: The NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T. 18 N., R. 18 E.W.M.

12 CLAIMANT NAME: Ronald T. Anderson COURT CLAIM NO. 00636
13 & Robin L. Anderson
Mark T. Anderson

14 Source: Yakima River

15 Use: Irrigation of 12.5 acres

16 Period of Use: April 1 through October 15

17 Quantity: 0.324 cfs, 155 acre-feet per year

18 Priority Date: May 20, 1885

19 Point of Diversion: 300 feet north and 1200 feet east from the center of
20 Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
T. 18 N., R. 18 E.W.M.

21 Place of Use: That portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T. 18 N.,
R. 18 E.W.M. lying north of Dolarway Road.

1
2 CLAIMANT NAME: Jerry D. Barton COURT CLAIM NO. 00910
& Diane M. Barton COURT CLAIM NO. 01719

3 Source: Yakima River

4 Use: Irrigation of 25.5 acres

5 Period of Use: April 1 through October 31

6 Quantity: 0.662 cubic foot per second, 316.2 acre-feet per year

7 Priority Date: May 20, 1885

8 Point of Diversion: 300 feet north and 1200 feet east of the center of
9 Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
T. 18 N., R. 18 E.W.M.

10 Place of Use: The W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T. 18 N.,
11 R. 18 E.W.M.

12
13 CLAIMANT NAME: Roberta D. Lamb COURT CLAIM NO. 00908
& Estate of Harold F. Lamb
14 Randy H. Lamb, et al
Frank C. Lamb
15 Claudia J. Lamb Lofstrom

16 Source: Yakima River

17 Use: Irrigation of 50 acres

18 Period of Use: April 1 through October 15

19 Quantity: 4 cfs, 620 acre-feet per year

20 Priority Date: May 20, 1885

21 Point of Diversion: 300 feet north and 1200 feet east of the center of
22 Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
T. 18 N., R. 18 E.W.M.

23 Place of Use: The E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ east of Desmond Road and that portion of the
24 W $\frac{1}{2}$ NE $\frac{1}{4}$ lying south of Reed Ditch in Section 33, T. 18 N.,
R. 18 E.W.M.

1
2 CLAIMANT NAME: MILL DITCH COMPANY, INC. COURT CLAIM NO. 00626
3
4 Source: Yakima River
5
6 Use: Irrigation of 8.5 acres
7
8 Period of Use: April 1 through October 15
9
10 Quantity: 0.2125 cfs, 105.4 acre-feet per year
11
12 Priority Date: May 20, 1885
13
14 Point of Diversion: 300 feet north and 1200 feet east from the center of
15 Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
16 T. 18 N., R. 18 E.W.M.
17
18 Place of Use: The W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T. 18 N., R. 18 E.W.M.
19 (Dave Caraway)
20

21
22 CLAIMANT NAME: MILL DITCH COMPANY, INC. COURT CLAIM NO. 00626
23
24 Source: Yakima River
25
26 Use: Stock watering
27
28 Period of Use: Continuous
29
30 Quantity: 1.14 cfs, 375 acre-feet per year
31
32 Priority Date: May 20, 1885
33
34 Point of Diversion: 300 feet north and 1200 feet east from the center of
35 Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
36 T. 18 N., R. 18 E.W.M.
37
38 Place of Use: The SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$, southwest of Northern Pacific
39 Railroad, in Section 34, T. 18 N., R. 18 E.W.M.
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1 CLAIMANT NAME:

2 Frank Oechsner
3 Mary McManamy
4 Mary Patricia Seubert

COURT CLAIM NO. 00576

5 Source:

Reecer Creek

6 Use:

Irrigation of 56 acres and stock water

7 Period of Use:

April 1 to October 15 for irrigation; February 1 to
8 November 31 for stock water

9 Quantity:

4.33 cubic feet per second, 1075.2 acre-feet per year for
irrigation; 0.03 cubic foot per second, 3 acre-feet per
year for stock water

10 Priority Date:

June 30, 1885

11 Point of Diversion:

900 feet north and 1100 feet west from the east quarter
corner Section 28, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 28, T. 18 N., R. 18 E.W.M.

12 Place of Use:

That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T. 18 N.,
R. 18 E.W.M. lying southwesterly of the Burlington
Northern Railroad right-of-way, and that portion of the
NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said section described as follows: Commencing
at the southwest corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$; thence east 300
feet, more or less, to the point of beginning; thence
east 850 feet, more or less, to the Burlington Northern
Railroad right-of-way; thence northwesterly 1030 feet,
more or less, along said right-of-way; thence
southwesterly 720 feet, more or less, to the point of
beginning; and that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said section
lying east of Desmond Road.

1
2 CLAIMANT NAME: Mary McManamy & Mary Patricia Seubert COURT CLAIM NO. 00521
3 Source: Yakima River
4 Use: Irrigation of 38.2 acres
5 Period of Use: April 1 to October 31
6 Quantity: 4.29 cubic feet per second, 485.4 acre-feet per year
7 Priority Date: July 30, 1885
8 Point of Diversion: 500 feet south and 850 feet east from the center of
9 Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
10 Place of Use: That portion of the E $\frac{1}{2}$ of Section 18, T. 18 N.,
11 R. 18 E.W.M. lying southwest of the Burlington Northern
12 Railroad right of way and northeast of the Chicago,
Milwaukee, St. Paul and Pacific Railroad right-of-way.
13
14 CLAIMANT NAME: Steven C. Merten COURT CLAIM NO. 00750
15 Source: Yakima River
16 Use: Irrigation of 10.5 acres
17 Period of Use: April 1 to October 15
18 Quantity: 0.30 cubic foot per second, 124.7 acre-feet per year
19 Priority Date: July 30, 1885
20 Point of Diversion: 500 feet south and 850 feet east from the center of
21 Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
22 Place of Use: The west 1680 feet of that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and
23 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T. 18 N., R. 18 E.W.M. lying north
24 of the C.M. St. P and P Railroad right-of-way and that
portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T. 18 N.,
R. 18 E.W.M. lying south of the C.M. St. P and P Railroad
right-of-way and west of an unnamed slough running
through that subdivision.

1
2 CLAIMANT NAME: Olson Ditch COURT CLAIM NO. 00169
3 Source: Yakima River
4 Use: Irrigation of 70 acres and stock water
5 Period of Use: April 1 through October 31
6 Quantity: 2.3 cubic feet per second, 633.5 acre-feet per year
7 Priority Date: July 30, 1885
8 Point of Diversion: 500 feet south and 850 feet east from the center of
9 Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
10 Place of Use: That portion of the E $\frac{1}{2}$ of Section 18 lying south of the
11 county road and north of the BNRR right of way and that
portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17 lying south of the
county road; all in T. 18 N., R. 18 E.W.M.
12 Limitations of Use: A total of 70 acres is irrigated within the described
13 place of use under this right and the Olson Ditch right
with an 1876 date of priority. This right is not subject
to the Olson et al. limiting agreement.
14
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16 CLAIMANT NAME: Jim Eattock COURT CLAIM NO. 01963
17 & Claudia Eattock (A)02441
18 Source: An unnamed spring
19 Use: Stock watering
20 Period of Use: Continuously
21 Quantity: 0.01 cubic foot per second, 1 acre-foot per year
22 Priority Date: May 21, 1887
23 Point of Diversion: 425 feet north and 700 feet west from the east quarter
24 corner of Section 18, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 18, T. 18 N., R. 17 E.W.M.
25 Place of Use: The SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T. 18 N., R. 18 E.W.M.
26 lying southwest of McManamy Road.
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1
2 CLAIMANT NAME: Bill Haberman & Bill Haberman, Jr. COURT CLAIM NO. 02268
3
4 Source: Currier Creek
5 Use: Irrigation of 33 acres
6 Period of Use: April 1 to October 15
7 Quantity: 1.65 cubic feet per second, 402.5 acre-feet per year
8 Priority Date: August 18, 1888
9 Point of Diversion: 700 feet south and 140 feet west from the north quarter corner of Section 22, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T. 18 N., R. 18 E.W.M.
10 Place of Use: That portion of the NW $\frac{1}{4}$ lying east of an unnamed stream or drain that runs north to south through the NW $\frac{1}{4}$, in Section 22, T. 18 N., R. 18 E.W.M.
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1 CLAIMANT NAME:

Olson Ditch

COURT CLAIM NO. 00169

2 Source:

The Yakima River

3 Use:

Irrigation of 8 acres and stock water

4 Period of Use:

April 1 to October 31 for irrigation; continuous for
stock water

5 Quantity:

0.285 cubic foot per second, 86.34 acre-feet per year
from April 1 to October 31 for irrigation and stock
water; 0.169 cubic foot per second, 10.4 acre-feet per
year in November for stock watering; 0.031 cubic foot per
second, 3.25 acre-feet per year from December 1 to
March 31 for stock watering

6 Priority Date:

July 1, 1889

7 Point of Diversion:

500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.

8 Place of Use:

Eattock - that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18,
T. 18 N., R. 18 E.W.M. lying southwest of the Dry Creek
Road

9 Limitations of Use:

This right is not subject to the Olson et al. limiting
agreement.

1
2 CLAIMANT NAME: Dick Van de Graaf, Jr. COURT CLAIM NO. 01520
3 & Maxine Van de Graaf
4 Source: Jones Creek
5 Use: Irrigation of 17.5 acres and stock watering
6 Period of Use: April 1 to October 15
7 Quantity: 0.80 cubic foot per second, 70 acre-feet per year for
irrigation and 4.85 acre-feet per year for stock watering
8 Priority Date: April 1, 1890
9 Point of Diversion: 1260 feet south and 500 feet east from the west quarter
corner of Section 2, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 2, T. 18 N., R. 18 E.W.M.
10 Place of Use: That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10 and the
SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 18 N., R. 18 E.W.M., lying west
of Currier Creek.
11 Limitations of Use: This land may also receive water from the Kittitas
Reclamation District.
12 A maximum of 0.80 cubic foot per second can be diverted
from Jones Creek under this right and the right with a
May 24, 1884, priority for the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3.
13 The annual quantity confirmed for stock watering may
include water consumed by the livestock drinking directly
from the creek.
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2 CLAIMANT NAME: Dick Van de Graaf, Jr. COURT CLAIM NO. 01520
3 & Maxine Van de Graaf
4 Source: Currier Creek
5 Use: Irrigation of 26 acres and stock water
6 Period of Use: April 1 through October 15
7 Quantity: 1.56 cubic feet per second, 156 acre-feet per year for
irrigation; 7.2 acre-feet per year for stock water
8 Priority Date: April 1, 1890
9 Point of Diversion: 1) 1050 feet north and 650 feet east of the southwest
corner of Section 2, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 2, T. 18 N., R. 18 E.W.M.
10
11 2) 25 feet south and 25 feet west of the northeast corner
of Section 10, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10,
T. 18 N., R. 18 E.W.M.
12
13 Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and the E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$
of Section 10 lying east of Currier Creek, T. 18 N.,
R. 18 E.W.M.
14
15 Limitations of Use: Kittitas Reclamation District water may be available for
use on this land.
16
17 The annual quantity of water awarded for stock watering
may be consumed by animals drinking directly from the
creek.
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2 CLAIMANT NAME: Pautzke Bait Company, Inc. COURT CLAIM NO. 01724
3
4 Source: Reecer Creek
5
6 Use: Irrigation of 146 acres and stock water
7
8 Period of Use: April 1 through October 31
9
10 Quantity: 4.0 cubic feet per second, 1270 acre-feet per year
11
12 Priority Date: May 30, 1890
13
14 Point of Diversion: (1) 200 feet north and 1000 feet west from the south
quarter corner of Section 34, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$
of Section 34, T. 18 N., R. 18 E.W.M.

(2) 200 feet south and 200 feet west from the north
quarter corner of Section 3, being within Government Lot
3 of Section 3, T. 17 N., R. 18 E.W.M.
15
16 Place of Use: That portion of the N $\frac{1}{2}$ of Section 3, T. 17 N.,
R. 18 E.W.M. lying east of the west channel of Reecer
Creek and northeasterly of Interstate 90 right-of-way,
EXCEPT that portion described as follows: Beginning at
the north east corner of said section; thence west 1000
feet, more or less; thence south 380 feet; thence east
200 feet, more or less; thence south 480 feet, more or
less; thence east 470 feet, more or less; thence south
1564 feet, more or less; thence S 28° E, 427.68 feet,
more or less; thence east 137.45 feet; thence north 2760
feet, more or less, to the point of beginning; ALSO
except the north 300 feet of the south 534 feet of the
west 550 feet of Government Lot 1 of said section; ALSO
except the west 120 feet of the north 900 feet of said
Government Lot 1.
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1 CLAIMANT NAME: William J. Grueter COURT CLAIM NO. 01663
2 & Patricia M. Grueter (A)04913
3 (A)04914

4 Source: An unnamed stream, tributary to Jones Creek

5 Use: Irrigation of 19 acres and stock water

6 Period of Use: April 1 through October 15

7 Quantity: 1 cubic foot per second, 285 acre-feet per year

8 Priority Date: May 31, 1890

9 Point of Diversion: 650 feet south and 25 feet east from the north quarter
corner of Section 34, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 34, T. 19 N., R. 18 E.W.M.

11
12 CLAIMANT NAME: Patrick J. Taylor COURT CLAIM NO. 00170
& Susan A. Taylor

13 Source: Dry Creek

14 Use: Irrigation of 26 acres and stock water

15 Period of Use: April 1 through October 31

16 Quantity: 3.7 cfs, 603.2 acre-feet per year

17 Priority Date: December 5, 1890

18 Point of Diversion: 5 feet south and 5 feet east from the center of
Section 20, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20,
T. 18 N., R. 18 E.W.M.

20 Place of Use: The SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, T. 18 N., R. 18 E.W.M.

1
2 CLAIMANT NAME: Patrick J. Taylor COURT CLAIM NO. 01745A
3 & Susan A. Taylor
4 Source: Cabin Creek
5 Use: Irrigation of 30 acres and stock water
6 Period of Use: April 1 to October 15
7 Quantity: 7.2 cubic feet per second, 348 acre-feet per year
8 Priority Date: December 5, 1890
9 Point of Diversion: 1300 feet north and 1125 west from the south quarter
corner of Section 20, being NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20,
T. 18 N., R. 18 E.W.M.
10 Place of Use: The SE $\frac{1}{4}$ SW $\frac{1}{4}$ and that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20
11 lying west of Dry Creek, T. 18 N., R. 18 E.W.M.
12
13 CLAIMANT NAME: Donald E. Clapper COURT CLAIM NO. 01565
14 & Lois Clapper
15 Source: Yakima River
16 Use: Irrigation of 20 acres
17 Period of Use: April 1 to October 15
18 Quantity: 1 cubic foot per second, 100 acre-feet per year
19 Priority Date: April 7, 1891
20 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
21 Place of Use: That portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T. 18 N.,
R. 18 E.W.M. lying west of Cabin Creek.

1
2 CLAIMANT NAME: Olson Ditch COURT CLAIM NO. 00169
3
4 Source: The Yakima River
5
6 Use: Irrigation of 183.4 acres and stock water
7
8 Period of Use: April 1 to October 31 for irrigation; continuous for
9 stock water
10
11 Quantity: 15.0 cubic feet per second from April 1 to August 31 for
irrigation and stock water and 2.0 cfs for conveyance; 10
cubic feet per second in September for irrigation and
1.36 cubic feet per second for conveyance; 5.0 cubic feet
per second in October for irrigation and 0.68 cfs for
conveyance, 8179 acre-feet per year; 6.37 cubic feet per
second, 392 acre-feet per year in November and 1.15 cubic
feet per second, 118 acre-feet per year from December 1
to March 31 for stock water
12
13 Priority Date: April 7, 1891
14
15 Point of Diversion: 500 feet south and 850 feet east from the center of
Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
16
17 Place of Use: Hand (60 ac.) - That portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ lying southwest
of Olson Ditch; that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying south of
the Burlington Northern Railroad tracks and the NE $\frac{1}{4}$ SW $\frac{1}{4}$,
all in Section 20, T. 18 N., R. 18 E.W.M.
18
19 Rominger (38.6 ac.) - That portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ of
Section 21 lying south of the Olson Ditch and that
portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 lying northeast of
the Dry Creek Road, all in T. 18 N., R. 18 E.W.M.
20
21 Willett (8 $\frac{1}{2}$ ac.) - That portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 28, T. 18 N., R. 18 E.W.M. lying southwest of
Burlington Northern Railroad Tracks.
22
23 Mackner (32 ac.) - That portion of the E $\frac{1}{2}$ E $\frac{1}{2}$ of
Section 20, T. 18 N., R. 18 E.W.M. lying southwest of the
Olson Ditch and northeast of the NPRR right-of-way and
that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 lying southwest
of Dry Creek Road, except that portion described for
Betassa below.
25
26 Betassa (1 ac.) - That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 21, T. 18 N., R. 18 E.W.M. described as follows:
Beginning at a point on the south boundary line of the

1 NW $\frac{1}{4}$ SW $\frac{1}{4}$, which is 70.5 feet east of the southwest corner
2 of said subdivision, running thence N 10°23' W 290.9 feet
3 to the intersection of the west boundary line of said
4 section, with the south right-of-way line of the county
5 road; thence S 40°20' E, along said south right-of-way
line, 502 feet, to a point on the south boundary line of
said subdivision; and thence S 89°35' west to the point
of beginning.

6 Greene/Pethia (115.5 ac.) - That portion of the E $\frac{1}{2}$ of
7 Section 28, T. 18 N., R. 18 E.W.M. lying northeast of the
Burlington Northern Railroad right-of-way and southwest
8 of Reecer Creek

9 Small holdings (28.8 ac.) - That portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 28, T. 18 N., R. 18 E.W.M. lying south of the Dry
Creek Road and north of Highway 10.

10 Limitations of Use:

11 This right is subject to the Olson et al. limiting
agreement. A total of 24 cfs April through August; 16
12 cfs in September and 8 cfs in October can be diverted
under this right and the 1876 right that is also subject
13 to the limiting agreement.

1
2 CLAIMANT NAME: Richard C. Bain & Jeri L. Bain COURT CLAIM NO. 01207
3 Carl Donovan
4 Source: Yakima River
5 Use: Irrigation of 20.4 acres and stock water
6 Period of Use: April 1 to October 15 for irrigation; continuous for
7 stock water
8 Quantity: 2.5 cubic foot per second, 445.26 acre-feet per year for
irrigation and stock watering April 1 to October 15; 1.5
cubic feet per second, 5 acre-feet per year for stock
watering from October 16 to March 31.
9 Priority Date: April 25, 1891
10 Point of Diversion: 500 feet south and 850 feet east from the center of
11 Section 12, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12,
T. 18 N., R. 17 E.W.M.
12 Place of Use: Government Lot 2 of Section 18, T. 18 N., R. 18 E.W.M.
13 Limitation on Use: The quantity of water authorized to be diverted for
14 wintertime stock watering is not in addition to that
quantity authorized under the other right confirmed under
15 Court Claim No. 01207 with a December 21, 1882, date of
priority.

1 CLAIMANT NAME: Richard Van de Graaf Jr. COURT CLAIM NO. 01008
2 and Maxine Van de Graaf

3 Source: Jones Creek

4 Use: Irrigation of 17 acres and continuous stock water

5 Period of Use: April 1 to October 15

6 Quantity: 0.85 cubic foot per second, 68 acre-feet per year

7 Priority Date: May 13, 1891

8 Point of Diversion: 20 feet south and 1290 feet west from the northeast
9 corner of Section 3, being within Government Lot 2 of
Section 3, T. 18 N., R. 18 E.W.M.

10 Place of Use: That portion of the $W\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$ and the $W\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$ of
11 Section 2, T. 18 N., R. 18 E.W.M., lying west of Jones
Creek.

13 CLAIMANT NAME: Milton M. Femrite COURT CLAIM NO. 01528
14 & Tracy S. Femrite

15 Source: An unnamed spring

16 Use: Single domestic supply, including irrigation of 0.5 acre

17 Period of Use: Continuous for in-house domestic supply; April 1 through
October 31 for domestic irrigation

18 Quantity: 0.02 cubic foot per second, 2 acre-feet per year

19 Priority Date: August 20, 1892

20 Point of Diversion: 150 feet north and 50 feet west from the center of
21 Section 26, being within the $SE\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$ of Section 26,
T. 19 N., R. 18 E.W.M.

22 Place of Use: The $NE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$ of Section 26, T. 19 N., R. 18 E.W.M.

1
2 CLAIMANT NAME: Carla L. Thomas COURT CLAIM NO. 01959
3 Source: Jones Creek
4 Use: Irrigation of 24 acres and stock watering
5 Period of Use: April 1 to October 31
6 Quantity: 2 cubic feet per second, 604 acre-feet per year
7 Priority Date: October 15, 1892
8 Point of Diversion: 1275 feet north and 50 feet east from the south quarter
corner of Section 34, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 34, T. 19 N., R. 18 E.W.M.
9
10 1300 feet north and 50 feet west from the south quarter
corner of Section 34, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 34, T. 19 N., R. 18 E.W.M.
11
12 Place of Use: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T. 19 N.,
R. 18 E.W.M. lying west of Thomas Creek.
13 Limitations of Use: This land may also receive water from the Kittitas
Reclamation District.
14
15
16 CLAIMANT NAME: Carla L. Thomas COURT CLAIM NO. 01959
17 Source: Thomas Creek
18 Use: Irrigation of 17 acres and stock watering
19 Period of Use: April 1 to October 31
20 Quantity: 1.5 cubic feet per second, 208 acre-feet per year
21 Priority Date: October 15, 1892
22 Point of Diversion: 10 feet south and 600 feet east from the center of
Section 34, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34,
T. 19 N., R. 18 E.W.M.
23
24 Place of Use: That portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 34, T. 19 N.,
R. 18 E.W.M. lying east of Thomas Creek.
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2 CLAIMANT NAME: Calaway Pacific COURT CLAIM NO. 01720
3
4 Source: Yakima River
5
6 Use: Irrigation of 16 acres
7
8 Period of Use: April 1 to October 31
9
10 Quantity: 1.3 cubic feet per second, 96 acre-feet per year
11
12 Priority Date: May 6, 1893
13
14 Point of Diversion: 300 feet north and 1200 feet east of the center of
Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
T. 18 N., R. 18 E.W.M.
15
16 Place of Use: That portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 3, T. 17 N.,
R. 18 E.W.M. lying northeast of Interstate 90 and
southwest of the West Channel of Reecer Creek.
17
18

19 CLAIMANT NAME: Don Guy COURT CLAIM NO. 01983
20 & Lu Guy
21
22 Source: Yakima River
23
24 Use: Irrigation of 1.5 acres
25
26 Period of Use: April 1 to October 15
27
28 Quantity: 0.067 cubic foot per second, 3 acre-feet per year
29
30 Priority Date: May 6, 1893
31
32 Point of Diversion: 300 feet north and 1200 feet east from the center of
Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
T. 18 N., R. 18 E.W.M.
33
34 Place of Use: That portion of Government Lot 1, Section 3, T. 17 N.,
R. 18 E.W.M. described as follows: Beginning 1645 feet
north and 1076 feet west of the east quarter corner of
Section 3; thence west 300 feet; thence south 300 feet;
thence east 300 feet; thence north 300 feet to the point
of beginning.
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1 CLAIMANT NAME:

John G. Jewett
& Nancy A. Jewett

COURT CLAIM NO. 00140
(A)02098
(A)02105

2 Source:

Yakima River

3 Use:

Irrigation of 2 acres

4 Period of Use:

April 1 to October 15

5 Quantity:

0.50 cubic foot per second, 20 acre-feet per year

6 Priority Date:

May 6, 1893

7 Point of Diversion:

300 feet north and 1200 feet east from the center of
Section 29, being within SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
T. 18 N., R. 18 E.W.M.

8 Place of Use:

That portion of Government Lot 1 of Section 3, T. 17 N.,
R. 18 E.W.M. described as follows: Beginning at a point
1645 feet north and 776 feet west of the east quarter
corner of said section; thence west 300 feet; thence
north 300 feet; thence east 300 feet; thence south 300
feet to the point of beginning.

1
2 CLAIMANT NAME: Albert J. Lentz COURT CLAIM NO. 00637
3 & Glenna M. Lentz
4 Source: Yakima River
5 Use: Irrigation of 40 acres
6 Period of Use: April 1 through October 31
7 Quantity: 1.0 cfs, 483.6 acre-feet per year
8 Priority Date: May 6, 1893
9 Point of Diversion: 300 feet north and 1200 feet east of the center of
10 Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
11 T. 18 N., R. 18 E.W.M.
12 Place of Use: That portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 33, T. 18 N.,
13 R. 18 E.W.M. lying south of Dolarway Road and that
14 portion of Government Lots 3 and 4 of Section 3,
15 T. 17 N., R. 18 E.W.M. lying west of Reeser Creek and
16 east of I-90.

17
18 CLAIMANT NAME: MILL DITCH COMPANY, INC. COURT CLAIM NO. 00626
19 Source: Yakima River
20 Use: Stock watering
21 Period of Use: Continuous
22 Quantity: 1.14 cfs, 375 acre-feet per year
23 Priority Date: May 6, 1893
24 Point of Diversion: 300 feet north and 1200 feet east from the center of
25 Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
26 T. 18 N., R. 18 E.W.M.
27 Place of Use: Section 3, T. 17 N., R. 18 E.W.M.

1 CLAIMANT NAME: Pautzke Bait Company, Inc. COURT CLAIM NO. 01724
2
3 Source: Yakima River
4 Use: Irrigation of 146 acres and stock watering
5 Period of Use: April 1 to October 15 for irrigation; continuous for
stock watering
6 Quantity: 12.9 cubic feet per second, 1825 acre-feet per year from
April 1 to October 15 for irrigation and stock watering;
1.14 cubic feet per second, 375 acre-feet per year from
October 16 to March 31 for stock watering
7
8 Priority Date: May 6, 1893
9
10 Point of Diversion: 300 feet north and 1200 feet east from the center of
Section 29, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29,
T. 18 N., R. 18 E.W.M.
11
12 Place of Use: The N $\frac{1}{2}$ of Section 3, T. 17 N., R. 18 E.W.M. lying east of
the West Channel of Reecer Creek, EXCEPT that portion
described as follows: Beginning at the northeast corner
of said section; thence west 1000 feet, more or less;
thence south 380 feet; thence east 200 feet; thence south
480 feet; thence east 470 feet; thence south 1564 feet;
thence S 28° E, 427.68 feet; thence east 137.45 feet;
thence north 2760 feet to the point of beginning; ALSO
EXCEPT the following two parcels: 1) Beginning at a
point 1645 feet north and 776 feet west of the east
quarter corner of said section; thence west 300 feet;
thence north 300 feet; thence east 300 feet; thence south
300 feet to the point of beginning; 2) Beginning 1645
feet north and 1076 feet west of the east quarter corner
of Section 3; thence west 300 feet; thence south 300
feet; thence east 300 feet; thence north 300 feet to the
point of beginning.
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2 CLAIMANT NAME: Carla L. Thomas COURT CLAIM NO. 01144
Peoples National Bank of Washington

3 Source: Dry Creek

4 Use: Stock water

5 Period of Use: Continuous

6 Quantity: 0.03 cubic foot per second, 21.68 acre-feet per year

7 Priority Date: April 28, 1897

8 Point of Diversion: 650 feet south and 400 feet west from the east quarter
corner of Section 15, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 15, T. 19 N., R. 17 E.W.M.

9 Place of Use: The N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T. 19 N., R. 17 E.W.M.

10
11 CLAIMANT NAME: Ellensburg; City of COURT CLAIM NO. 02085

12 Source: Yakima River

13 Use: Municipal supply

14 Period of Use: April 20 through October 15

15 Quantity: 23.33 cubic feet per second, 6,000 acre-feet per year

16 Priority Date: May 10, 1905

17 Point of Diversion: The SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3 and the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 10,
T. 17 N., R. 18 E.W.M.

18 Place of Use: Land served by the Ellensburg Municipal Water System in
the Ellensburg urban area.

19
20 Limitations of Use: Water use under this right shall be consistent with the
contract signed between the City of Ellensburg, Kittitas
Reclamation District and United States, Department of
Interior, Bureau of Reclamation, on December 21, 1971,
and specifically the schedule of water delivery on page
11 of that contract and shall issue to the United States
Bureau of Reclamation as trustee for the City of
Ellensburg and its water users.

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2 CLAIMANT NAME: Russ Longacre COURT CLAIM NO. 00334
3 Source: Reecer Creek
4 Use: Irrigation of 19 acres and stock water
5 Period of Use: April 1 to October 31
6 Quantity: 0.40 cubic foot per second, 60 acre-feet per year for
irrigation; 0.02 cubic foot per second, 2 acre-feet per
year for stock watering
7 Priority Date: April 30, 1909
8 Point of Diversion: 1315 feet north and 1315 feet west from the east quarter
corner of Section 3, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 3, T. 17 N., R. 18 E.W.M.
9 Place of Use: The W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 17 N., R. 18 E.W.M.
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12
13 CLAIMANT NAME: Ivan Hutchinson COURT CLAIM NO. 00876
14 & Mildred Hutchinson (A)02389
15 Source: An unnamed pond
16 Use: Nonconsumptive washing and production of gravel and sand
17 Period of Use: April 15 to October 1
18 Quantity: 3 cubic feet per second (nonconsumptive)
19 Priority Date: April 16, 1971
20 Point of Diversion: 150 feet south and 1050 feet west from the west quarter
corner of Section 29, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 29, T. 18 N., R. 18 E.W.M.
21
22 Place of Use: Those portions of S $\frac{1}{2}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29,
T. 18 N., R. 18 E.W.M. lying northeast of Interstate 90.
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2 CLAIMANT NAME: Ivan Hutchinson & Mildred Hutchinson COURT CLAIM NO. 00876
3 (A)02389
4 Source: An unnamed pond
5 Use: Nonconsumptive washing and production of gravel and sand
6 Period of Use: October 1 to April 15
7 Quantity: 3 cubic feet per second (nonconsumptive)
8 Priority Date: May 12, 1975
9 Point of Diversion: 150 feet south and 1050 feet west from the east quarter corner of Section 29, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 18 N., R. 18 E.W.M.
10 Place of Use: Those portions of the S $\frac{1}{2}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 18 N., R. 18 E.W.M. lying northeast of Interstate 90.
11
12
13 CLAIMANT NAME: Lorne T. Dunning & Jeanne M. Dunning COURT CLAIM NO. 00166
14 (A)12208(A)
15 Source: An unnamed spring
16 Use: single domestic supply
17 Period of Use: Continuously
18 Quantity: 0.01 cubic foot per second, 1 acre-foot per year
19 Priority Date: February 1, 1979
20 Point of Diversion: 200 feet south and 1200 feet east of the west quarter corner of Section 1 being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 19 N., R. 18 E.W.M.
21 Place of Use: The SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 19 N., R. 18 E.W.M.
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The aforementioned changes shall be incorporated into the Report of Referee dated April 21, 1995.

SIGNED and DATED at Yakima, Washington, this 6 day of July, 1998.

Douglas Clauising
DOUGLAS CLAUSING, Referee