

YAKIMA RIVER BASIN
MAY 9 1954
WATER RIGHTS ADJUDICATION

FILED
MAY 9 1954

KIM M. EATON, YAKIMA COUNTY CLERK

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

REPORT OF REFEREE

**RE: SUBBASIN NO. 6
(TANEUM)**

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

REPORT OF REFEREE - VOLUME 18

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,)

No. 77-2-01484-5

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

REPORT OF REFEREE
Re: Subbasin No. 6
(Taneum Creek)

10 Plaintiff,)

11 v.)

12 James J. Acquavella, et al.,)

13 Defendants.)
14

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

18 I. BACKGROUND

19 This report concerns the determination of the surface water rights of the
20 Yakima River Basin, specifically those rights located within Subbasin No. 6, the
21 Taneum¹ Creek drainage basin. The criteria consisting of applicable law and bases
22 for water right determinations used by the Referee in the evaluation of claims can
23 be found in the Report of the Referee to the Court, Preface to Subbasin and Major
24 Category Reports, Volume 2, dated May 18, 1988.
25

26
27 ¹Over the years, the spelling of Taneum Creek has varied and includes Tenem,
28 Teanum and Taenum. Throughout this report, the Referee shall use whichever
29 spelling is used in the document being cited and otherwise shall use Taneum.

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1 The Referee conducted evidentiary hearings on September 12 - 14, 1989.

2
3 II. FIELD INVESTIGATIONS

4 Field surveys were conducted by Department of Ecology (DOE) staff during
5 1988, to obtain information regarding existing water use patterns in
6 Subbasin No. 6. Aerial photographs, topographic maps, county assessor's plats, and
7 on-site field investigations were used to prepare map exhibits showing the location
8 of ditches, pipelines, pumps and other pertinent features of the water systems.
9

10 III. Objections to the Plaintiff's Report to the Referee

11 Teanum Canal Company, through their attorney, Harrison K. Dano, filed an
12 objection to the Plaintiff's Report to the Referee. The objection was to Section I
13 - General Considerations Relating to Recommendations for Confirmation and
14 specifically to the diversion rates being used for recommended rights, water
15 requirements for non-irrigation uses, use of Washington State University Research
16 Bulletin entitled Irrigation Requirements for Washington - Estimates and
17 Methodology, including irrigation system efficiencies, and to crop irrigation
18 requirements for pasture and alfalfa. Teanum Canal Company also objected to the
19 water right claims recommended for confirmation and the non-diversionary stock
20 water stipulation. The last two objections were withdrawn at the prehearing
21 conference held on June 15, 1989. On November 9, 1989, the canal company amended
22 its objections to the Plaintiff's Report to again object to the stock water
23 stipulation; however, the Referee believes this to be an untimely objection that
24 did not conform to the requirements of Subsection VII.A. of this Court's Pretrial
25
26

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1 Order No. 8 or the Referee's Order Scheduling Date for Filing Objections; Notice of
2 Prehearing Conference; Notice of Hearing, RE: Subbasin No. 6 (Taneum Creek).

3 In raising the objections concerning water diversion rates and requirements,
4 the Teanum Canal Company did not make clear the relief being sought. The diversion
5 rates and water requirement figures in the Plaintiff's Report dealt strictly with
6 those claims that were being recommended for confirmation in that report. This
7 information is available for the Referee's use if a claimant is not able to present
8 testimony or evidence about his/her water use. The canal company's claim was not
9 one of those being recommended. The canal company appeared at the evidentiary
10 hearing and presented testimony and evidence concerning the rate of diversion into
11 its canal and the water requirement for irrigation within the company's service
12 area. The Referee intends to use that testimony and evidence in determining the
13 water right to be confirmed for Teanum Canal Company. Therefore, the Referee notes
14 the objection, but takes no further action.

15 16 IV. WATER DUTY

17 The Plaintiff State of Washington submitted two exhibits entitled "Water
18 Duty, Taneum Creek Subbasin No. 6" which included information on climate,
19 irrigation and farming practices, and plant needs, and "Irrigation Requirements for
20 Washington -- Estimates and Methodology", a research bulletin published by the
21 Agricultural Research Center, Washington State University, meant to aid the Referee
22 in determining irrigation water requirements within the subbasin. Many of the
23 claimants also provided testimony or evidence of their individual water
24 requirements. In the absence of definitive testimony or other evidence, the
25 Referee proposes to rely upon these exhibits and the testimony of any neighboring
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claimants that may be appropriate and will calculate the maximum duty of water for the various uses in Subbasin No. 6 according to the following formulae:

- A. Domestic Supply (in-house)
and Stock Water 0.01 cfs; 1 acre-foot per
year per residence
- Domestic supply (with small
lawn and garden) 0.01 cfs; 1 acre-foot per
year
- Domestic supply and large
lawn and garden up to
 $\frac{1}{2}$ acre 0.02 cfs; 2 acre-feet per
year
- Stock Water 1 acre-foot per year
(diversion)

B. Irrigation Water -- In order to be reasonably lenient about irrigation cropping patterns, the Referee will use an annual water duty of 6.6 acre-feet per acre unless there is specific testimony that would allow the Referee to conclude a different water duty is appropriate. That duty represents a maximum annual water volume for prevalent irrigation uses by the largest water user in this subbasin and appears resonable given the soil characteristics and climate in Subbasin No. 6

The maximum rate of diversion or withdrawal will be calculated on the basis of 1.0 cubic foot per second (449 gallons per minute) for each 50 acres of irrigation, irrespective of the type of crop. For each irrigated acre, the Referee has calculated the maximum instantaneous rate of diversion to be 0.02 cubic foot per second (9 gallons per minute). It is the Referee's opinion that, lacking specific testimony of actual water use, the aforementioned duties of water are reasonable maximum application rates for the soil and topographic conditions in Subbasin No. 6.

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

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

3
4 V. STIPULATIONS

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

8 "It is hereby stipulated by all claimants in the above-entitled cause that
9 all exhibits entered and all testimony taken at the hearing on claims held
10 beginning September 12, 1989, may be utilized by any party in the proof of a
11 claim or the contesting of a claim whenever relevant and material."

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

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

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

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

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

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

6 4. Waters in naturally occurring ponds and springs (with no surface
7 connection to a stream) in the subbasin shall be retained for wildlife
8 watering uses, when such ponds and springs are located on or adjacent to
9 lands which are now used as pasture or range for wildlife. Said uses embody
10 entitlements to a level in the water bodies sufficient to provide water for
wildlife drinking directly therefrom while ranging on riparian lands, and
with the same priority as provided in paragraph 2. Regulation of the ponds
and springs by the plaintiff shall be consistent with such retention
requirements.

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

13 14 VI. LAND DESCRIPTIONS

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

19 20 VII. SPECIAL ISSUES

21 Rights to the use of waters from Taneum Creek have been addressed previously
22 in two Kittitas County Court Decrees. In the case of Tenem Ditch Company v. F. M.
23 Thorp, (hereinafter Tenem I) Fourth Judicial District at Ellensburg (1888), the
24 Court ruled that in 1873 the predecessor to the Tenem Ditch Company had constructed
25 a ditch and appropriated water from Tenem Creek. Two-thirds of the flow in Tenem
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1 Creek was awarded to the ditch company. The Court also found that the defendants
2 in that case had, subsequent to 1873, settled on land and appropriated water from
3 Tenem Creek. They were awarded one-third of the creek's flow. The decree did not
4 identify the lands on which water was being used.

5 A second suit was brought in 1906 in the case of Tenem Ditch Company v. James
6 Shellenberger, et al., (hereinafter Tenem II) Kittitas County Superior Court
7 (1906). That case affirmed the 1888 decree and further identified that from the
8 end of winter until approximately May 20, Tenem Creek flows approximately 6,000
9 inches and that Tenem Ditch Company had a right to use 4,000 inches and defendants
10 Splawn and Bruton, as successors to the defendants in 1888, had a right to use
11 2,000 inches. The only other defendant that was found to be entitled to use water
12 was L. F. Ellison, who was using water to power a sawmill, but was not entitled to
13 use water for any other purpose or divert water from the stream. Again this decree
14 did not identify the lands on which water was being used.

15 Several claimants in this proceeding provided the Court with a document
16 entitled "Taenum Creek - Taenum Ditch Co. vs. Thorp et al.", (Superior Court Decree
17 - Journal A, Page 438). The document stated that W. B. Bruton owned the land
18 previously owned by F. M. Thorp and John E. Hale, and was allowed one-third of the
19 water from the creek. The land owned by Bruton was described as being the NE $\frac{1}{4}$ NE $\frac{1}{4}$,
20 the NW $\frac{1}{4}$, and the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4; the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 6; and all of Section 5,
21 in T. 18 N., R. 17 E.W.M. Attached to the document was a list of individuals who
22 held shares in the Taenum Canal Company, the number of shares they held and a
23 description of the land they owned. With a few minor exceptions, the lands
24 described lie within the legal description for the Taenum Canal Company provided
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1 this Court. The introduction of this document as an exhibit was not challenged nor
2 was its authenticity questioned.

3 This Court is bound by the previous two decrees in determining the rights to
4 use waters from Taneum Creek. In order for a claimant in this proceeding to enjoy
5 a portion of the right to one-third of the creek's flow, there must be evidence
6 that the land was owned by C. A. Splawn or W. D. Bruton in 1906. Continued
7 beneficial use must be shown. Additionally, a water right claim must have been
8 filed pursuant to the requirements of RCW 90.14, the Claims Registration Act. The
9 total rights herein confirmed for claimants other than Teanum Canal Company shall
10 not exceed 40 cubic feet per second and may be less if the evidence shows a lesser
11 quantity has been used.

12 13 VIII. WATER RIGHT PRIORITIES

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

19 20 IX. TESTIMONY AND REFEREE'S ANALYSES

21 Plaintiff Testimony

22 Charles B. Roe, Jr., Senior Assistant Attorney General, represented the
23 Plaintiff State of Washington, Department of Ecology.

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The State introduced into evidence the following generic exhibits:

Number Description

| | |
|------|--|
| SE-1 | Subbasin No. 6 Map |
| SE-2 | Water Right Certificates, Permits, Surface Water Claims, RE: Subbasin No. 6 |
| SE-3 | Water Duty and Conveyance Loss/Gains |
| SE-7 | Irrigation Requirements for Washington - Estimates and Methodology |

Additionally, oral testimony was given by Todd Kirk, Field Investigator, and Richard Szymarek, Ecology Adjudication Section.

Claimant Testimony

Twenty-six defendants filed statements of claim or notices of appearance. All claimants and their legal counsel, if so represented, are as follows:

Court
Claim

| <u>No.</u> | <u>Name</u> | <u>Attorney</u> | <u>Page(s)</u> |
|------------|---|--|----------------|
| 01972 | Warren E. Brain | | 13, 42, |
| 01973 | & Lillian T. Brain 5454 Lake Washington Blvd. SE Bellevue, WA 98006 | | 43 |
| 01304 | Dan H. Brunson, Jr. & Georgia Brunson Route 6 Box 1700 Ellensburg, WA 98926 | | 42, 43 |
| 02180 | Cecelia S. Buck & Estate of Donald A. Buck 4460 Forest Avenue SE Mercer Island, WA 98040 | | 14, 43 |
| 02200 | David Carpenter PO Box 187 Thorp, WA 98946-0187 | James P. Hutton, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901 | 15, 43 |

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| | | | |
|----|--------------------|---|--|
| 1 | 00178 | James M. Daly & Pamela Jo Daly Route 6 Box 1715 Ellensburg, WA 98926 | 42, 43 |
| 2 | | | |
| 3 | 00195 | Mike Emerick | James P. Hutton, Attorney 17, 42, |
| 4 | (A)03177 | Route 1 Box 150 Thorp, WA 98946 | Velikanje, Moore & 49, 51 Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901 |
| 5 | | | |
| 6 | 02074 | Audrey Irene Evans | James E. Hurson, Attorney 20, 43 |
| 7 | | Box 560 DD Route 1 Ellensburg, WA 98926 | Kittitas County Prosecutor's Office 5th and Main Ellensburg, WA 98926 |
| 8 | | | |
| 9 | 02046 | Elwin Gibson | 21, 43 |
| 10 | | & Patricia Gibson Route 1 Box 305 Thorp, WA 98946 | |
| 11 | | | |
| 12 | 02046 | Wesley Gibson, et al. PO Box 73 Thorp, WA 98946 | James E. Hurson, Attorney 21, 43 Kittitas County Prosecutor's Office 5th and Main Ellensburg, WA 98926 |
| 13 | | | |
| 14 | | | |
| 15 | 01292 | Merle T. Gordon & Marianne V. Gordon Route 1 Box 174 Thorp, WA 98946 | 22, 43 |
| 16 | | | |
| 17 | 01628 | Bruce Hagemeyer & Paula Hagemeyer Route 1 Box 50 Thorp, WA 98946 | 24, 47 |
| 18 | | | |
| 19 | | | |
| 20 | 00193 | David L. Keithly 307 N. 96th Avenue Yakima, WA 98908 | 42, 43 |
| 21 | | | |
| 22 | 01628 | Donald F. Knoke & Ruth G. Knoke PO Box 196 Thorp, WA 98946-0196 | Donald Bond, Attorney 24, 48 Halverson & Applegate, Inc. PO Box 526 Yakima, WA 98907 |
| 23 | | | |
| 24 | | | |
| 25 | | | |
| 26 | | | |
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| | | | |
|----|----------|-------------------------------|-----------------------------------|
| 1 | 00284 | E.L. Knudson, Jr. | 27, 42, |
| 2 | (A)04191 | & Necia Knudson | 50 |
| 3 | | Route 1 Box 535 | |
| 4 | | Ellensburg, WA 98926 | |
| 5 | 01295 | Rod Lang | 30, 52 |
| 6 | | & Tana Lang | |
| 7 | | 1904 E Tolman Road | |
| 8 | | Ellensburg, WA 98926 | |
| 9 | 01628 | Rod A. Lang | 24, 49 |
| 10 | | Route 1 Box 106 | |
| 11 | | Thorp, WA 98946 | |
| 12 | 02046 | Irwin Loukes | James E. Hurson, Attorney 21, 43 |
| 13 | | & Dorothy Loukes | Kittitas County |
| 14 | | Route 1 Box 255 | Prosecutor's Office |
| 15 | | Thorp, WA 98946 | 5th and Main |
| 16 | | | Ellensburg, WA 98926 |
| 17 | 02193 | Estate of Bill J. Morton | 33, 42, |
| 18 | | c/o Jacky Crawford | 43 |
| 19 | | 7004 Ahtanum Road | |
| 20 | | Yakima, WA 98903-9415 | |
| 21 | 01811 | Jeff Nesmith | 33, 42, |
| 22 | | Route 1 Box 160 | 46 |
| 23 | | Thorp, WA 98946 | |
| 24 | 01421 | Alan E. Nourse | 36, 43 |
| 25 | | & Ann Morton Nourse | |
| 26 | | Route 1 Box 173 | |
| 27 | | Thorp, WA 98946 | |
| 28 | 00287 | Frank Ragland | 36, 42, |
| 29 | | 3646 Issaquah Pine Lake Road | 43 |
| 30 | | Issaquah, WA 98027 | |
| 31 | 00284 | Rocky Mountain Elk Foundation | Grant D. Parker, Attorney 27, 42, |
| 32 | (A)04191 | Box 8249 | Tawney & Dayton 50 |
| 33 | | Missoula, MT 59803 | 310 W Spruce ST |
| 34 | | | Missoula, MT 59802-4108 |
| 35 | 00644 | William T. Speir | 13, 53 |
| 36 | | & Vera J. Speir | |
| 37 | | 690 W Columbia Street | |
| 38 | | Monroe, WA 98272 | |

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| | | | | |
|----|----------|---|--------------------------|---------|
| 1 | 01943 | Springwood Investment Corporation | Jeff Slothower, Attorney | 37, 42 |
| 2 | | PO Box 100 | Lathrop Firm | 45 |
| 3 | | Thorp, WA 98946 | 201 W 7th | |
| | | | PO Box 1088 | |
| | | | Ellensburg, WA 98926 | |
| 4 | 00411 | Teanum Canal Company | H.K. Dano, Attorney | 38, 44 |
| 5 | (A)03028 | Route 1 Box 719 | Dano Law Firm | |
| 6 | (A)03236 | Ellensburg, WA 98926-9801 | PO Box 1159 | |
| | | | Moses Lake, WA 98837 | |
| 7 | 00658 | Robert A. Tugwell | | 41, 43 |
| 8 | | & Wauneta M. Tugwell | | |
| | | Route 6 Box 1760 | | |
| | | Ellensburg, WA 98926 | | |
| 9 | 02276 | United States of America ² | Charles E. O'Connell | |
| 10 | (A)03074 | | United States Dept. of | |
| 11 | (A)05548 | | Justice | |
| | | | Indian Resources Section | |
| | | | PO Box 44378 | |
| | | | Washington, DC | |
| | | | 20026-4378 | |
| 13 | 01629 | West Side Irrigating Company ³ | Donald Bond, Attorney | |
| 14 | (A)03036 | 416 N Sprague Street | Halverson & Applegate, | |
| 15 | (A)03195 | Ellensburg, WA 98926-3390 | Inc. | |
| | | | PO Box 526 | |
| | | | Yakima, WA 98907 | |
| | | | 3390 | |
| 16 | 02109 | WA State Department of Wildlife | William Frymire, AAG | 41, 42, |
| 17 | | PO Box 43200 | Wildlife | 43 |
| 18 | | Olympia, WA 98504-3200 | PO Box 40100 | |
| | | | Olympia, WA 98504-0100 | |

²Major Claimant in this proceeding, whose rights will be addressed in the Major Claimant Pathway provided for in Pretrial Order No. 8

³Also a Major Claimant whose right will be addressed in the Major Claimant Pathway

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1 00589 WA State Dept. of Natural Resources Paul Silver, AAG 42, 43
2 (A)00590 Division of Lands and Minerals DNR
3 PO Box 47014 PO Box 40100
4 Olympia, WA 98504-7014 Olympia, WA 98504-0100

5 The following claimants are the ones whose claims, either in whole or in
6 part, were recommended for confirmation (See Page 9 in the Plaintiff's Report to
7 the Referee), and to which no exceptions were taken.

| <u>Name</u> | <u>Court Claim No.</u> |
|--------------------------------------|------------------------|
| 8 William T. Speir and Vera J. Speir | 00644 |

9 Specific elements of the proposed rights for the claimants are identified in
10 the Findings of Fact commencing on Page 43.

11 The remaining claims (consisting of those claims for which no recommendation
12 for confirmation was made) were scheduled to be heard during the evidentiary
13 hearing which commenced on September 12, 1989. Based upon the testimony and
14 evidence provided to the Referee, the analysis of all remaining claims is as
15 follows:
16

17
18
19 COURT CLAIM NO. 01972 -- Warren E. Brain
20 01973 & Lillian T. Brain

21 A Statement of Claim was submitted to the Court by Warren E. and Lillian T.
22 Brain. There was no appearance at the evidentiary hearing in support of the claim,
23 therefore, the Referee cannot recommend that a right be confirmed to the Brains
24 under Court Claims No. 01972 and 01973. The Plaintiff's Report to the Referee
25 recommended that a non-diversionary stock water right be confirmed for these
26 claimants under the stipulation mentioned on Page 5 of this report.

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3 COURT CLAIM NO. 02180 -- Cecelia S. Buck
4 & Estate of Donald A. Buck

5 Donald A. and Cecelia S. Buck submitted a Statement of Claim to the Court for
6 the use of waters from the Yakima River for irrigation. Mrs. Buck testified at the
7 evidentiary hearing.

8 The Bucks own a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, T. 19 N., R. 17 E.W.M.
9 lying south of the Yakima River and north of the Thorp Highway. The parcel of
10 land is approximately six acres in size and they are claiming a right to irrigate
11 one and a half acres. Water is pumped from the river into a sprinkler system to
12 irrigate alfalfa hay. According to Mrs. Buck's testimony the hay field was planted
13 and first irrigated in approximately 1960, which was four years prior to their
14 purchase.

15 Water Right Claim No. 129062 was filed pursuant to the requirements of RCW
16 90.14 asserting a right to use water from the Yakima River for the irrigation of
17 1.5 acres. April of 1960 is the date of first water use shown on the claim. Water
18 Right Claim No. 129063 was also filed claiming a right to use waters from a pond
19 for the same purpose. There was no testimony about water use from the pond.

20 The record shows that the land was patented to Kishahum Pohlster on
21 January 25, 1892. The Bucks are basing their claim to a water right on an
22 agreement between Cascade Canal Company and Kishahum Pohlster in which Cascade
23 Canal Company agrees to deliver from its canal five inches of water to be used on
24 Kishahum Pohlster's lands in the E $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, T. 19 N.,
25 R. 17 E.W.M.. This agreement was signed on July 22, 1910. A portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$
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1 and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34 lies on each side of the Yakima River. Mr. and Mrs.
2 Buck's land lies south of the river and the Cascade Canal and the lands served by
3 the canal company lie north of the river. There is no way that the Cascade Canal
4 Company could deliver water to those portions of the described subdivisions lying
5 south of the river. Lacking evidence to the contrary, the Referee can only
6 conclude that the intent of the agreement was for the canal company to serve that
7 portion of the described lands lying north of the Yakima River. This agreement
8 does not appear to provide any basis for a water right for the lands the Bucks own
9 south of the river.

10 In order for there to be a right to use Yakima River water, there must be
11 evidence that water was first used to irrigate the land prior to December 31, 1932,
12 or there must be a permit or certificate issued by the Department of Ecology or one
13 of its predecessor agencies pursuant to the requirements of RCW 90.03. There is
14 nothing in the record to show these exist.

15 Therefore, the Referee cannot recommend that a right be confirmed under Court
16 Claim No. 02180 to Donald A. and Cecelia S. Buck.

17
18
19 COURT CLAIM NO. 02200 -- David Carpenter

20 David Carpenter filed a Statement of Claim with the Court for the use of
21 waters from Taneum Creek for stock watering. Mr. Carpenter was represented by
22 Attorney J. Jay Carroll and testified at the evidentiary hearing.

23 Mr. Carpenter owns a portion of Government Lots 1 and 8 of Section 1,
24 T. 18 N., R. 16 E.W.M.. He purchased the land in 1977 from Alden See, Jr. At the
25 time of his purchase there were two ditches that crossed the property. One ditch
26 is near the northerly property line, adjacent to the Taneum Creek Road, and is not

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1 being used. The second is closer to Taneum Creek, is still being used, and diverts
2 water from the creek approximately 1000 feet south and 700 feet west of the
3 northeast corner of Section 1. It traverses the Bill Morton and Carpenter
4 properties into Government Lot 4 of Section 6 onto Merl Gordon's property, a
5 neighboring claimant. A rock dam diverts water into the ditch.

6 Mr. Carpenter testified that the land appeared irrigated prior to his purchase
7 and he believed was used to pasture livestock. He irrigates four acres of pasture
8 with water from Taneum Creek, pumping sometimes from the ditch and sometimes from
9 the creek itself. Mr. Carpenter did not know how much water he uses to irrigate
10 the pasture. The ditch winds its way through a corral on the claimants' property
11 and horses kept in the corral drink from the ditch. Mr. Carpenter's land is
12 riparian to Taneum Creek, however, according to the State's Map Exhibit SE-1 it
13 appears that a home is constructed near the creek and the livestock would not have
14 access to the creek.

15 Alden and Ernestine See filed Water Right Claim No. 058328 pursuant to the
16 requirements of RCW 90.14. They used the "short form" which could be used to claim
17 a right for domestic supply, irrigation of one-half acre or less of lawn and garden
18 and stock water if less than 5,000 gallons per day are being used. Claim No.
19 058328 claimed a right to use Taneum Creek for lawn and garden irrigation.

20 Mr. Carpenter was unable to provide any testimony of historical water use on
21 this property. In order for there to be a water right for this property there must
22 be evidence that water use began prior to June 6, 1917, if a right is being
23 asserted under the Prior Appropriation Doctrine or prior to December 31, 1932, if a
24 right is being asserted under the Riparian Doctrine. Additionally, there would
25
26

1 have to be evidence that the owner of Mr. Carpenter's land was a party to the 1888
2 court case Tenem I. None of this evidence was presented at the hearing.

3 Based on the foregoing, the Referee cannot recommend that a right be confirmed
4 to David Carpenter under Court Claim No. 02200.

5
6 COURT CLAIM NO. 00195 -- Mike Emerick
7 (A)03177

8 Mike Emerick submitted a Statement of Claim to the Court for the use of waters
9 from Taneum Creek and on September 15, 1986, amended that claim. Mr. Emerick was
10 represented by Attorney J. Jay Carroll. Appearing at the evidentiary hearing to
11 testify in support of the claim were Mr. Emerick; Richard C. Bain, Jr., a
12 consultant hired by Mr. Emerick; Dale Wells, a neighboring landowner and Ben
13 George, a neighboring landowner and Director of the Taneum Canal Company.

14 According to the testimony and evidence, Mr. Emerick purchased the property
15 described in the claim in 1977 from C. C. Lawler. The land lies in that portion of
16 Governments Lot 3 and 4 lying south of an unnamed ditch; that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$
17 lying north of the Taneum Road; that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ lying northwest of the
18 Lang property; all in Section 5, T. 18 N., R. 17 E.W.M. and that portion of the
19 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, T. 18 N., R. 17 E.W.M. lying between the Brunton Ditch and
20 Interstate 90. Mr. Emerick testified that this land was part of the F. M. Thorp
21 homestead and passed from Thorp to Splawn to W. D. Bruton, who owned it during the
22 1906 litigation. The testimony shows that this land has consistently been
23 irrigated over the years. Currently it is divided into six fields, with five of
24 those fields being irrigated with water from the Taneum Creek delivered through the
25 Mann or Brunton Ditches. A small six acre field in the southeast corner of the
26

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1 property is irrigated with water provided by the Teanum Canal Company and will not
2 be considered as part of this claim. Mr. Emerick irrigates hay and pasture and
3 raises up to 130 head of cattle on this land. Water is diverted into the Brunton
4 Ditch during the winter months to provide stock water to the livestock.

5 Mr. Bain testified that he measured the flow in Mann Ditch, which is used to
6 irrigate a 22 acre field, at 1.28 cubic feet per second. Mann Ditch also serves
7 the Knudson property in Sections 5 and 6 and the Springwood Investment, Inc.
8 property directly west of the 22 acre field. Mr. Emerick testified that the users
9 of this ditch rotate their irrigation to best utilize the available water. The
10 flow in the Brunton Ditch was measured at 1.06 cubic feet per second, but
11 Mr. Emerick felt this was considerably less than its maximum flow in the spring.
12 The Department of Ecology measured the flow in Brunton Ditch at 2.0 cubic feet per
13 second when they were investigating ditch conveyance gain/loss. Mr. Bain testified
14 that 8.1 acre-feet per acre irrigated was needed and has been historically used to
15 irrigate the Emerick property.

16 No evidence was presented on how much water is diverted into Brunton Ditch in
17 the winter for stock watering. The livestock would need approximately 0.10 cubic
18 foot per second, 5 acre-feet per year. The State's conveyance gain/loss exhibit
19 shows Brunton Ditch loosing an insignificant amount of water during the irrigation
20 season. However, Mr. Bain surmised that is probably the result of return flows
21 generated from the irrigation of neighboring fields raising the water table and
22 effecting the normal losing nature of the ditch. He believes that during the
23 winter months when the ground water table would naturally be lower, the ditch will
24 lose a greater quantity of water. The Court recognizes this situation and the need
25 to divert more water than is needed to water the stock in order to convey that
26

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1 water down the ditch. However, there was no testimony of the quantity of water
2 needed or historically used for conveyance. Due to the lack of testimony, the
3 Referee is limited to only recommending confirmation of a water right for the
4 quantity of water actually needed for the stock watering.

5 Mr. Emerick's land is riparian to Taneum Creek and would enjoy a right under
6 the Riparian Doctrine based on the date the land separated from Federal ownership.
7 However, that information is not in the record. It is clear from the record that
8 water was being appropriated prior to 1886. The Findings of Fact and Conclusions
9 of Law that preceded the decree in Tenem II, stated that the defendants, C. A.
10 Splawn and W. D. Bruton, who are Mr. Emerick's predecessors, began using water many
11 years prior to 1886. A Notice of Water Right dated July 9, 1883, was filed by John
12 Russell and Richard Mann for construction of what is now called Mann Ditch for the
13 irrigation of Section 5 and all lands accessible between the head of the ditch and
14 its terminus. July 9, 1883, would appear to be the appropriate date for initiation
15 of the water right for the lands served by the Mann Ditch. However, there is
16 nothing in the record to establish the date water rights were initiated for the
17 lands not served by the Mann Ditch. The Referee, therefore, will use the mid-point
18 of the year prior to 1886 as the priority for the other lands.

19 As prior owners of the Emerick property, C. C. and Hazel Lawler filed Water
20 Right Claim No. 004876 pursuant to the requirements of RCW 90.14 claiming a right
21 to use waters from Taneum Creek for irrigation and stock water. A date of first
22 water use of prior to March 5, 1888, was claimed.

23 Based on the foregoing, the Referee recommends that rights be confirmed to
24 Mike Emerick under Court Claim No. 00195 with a June 30, 1885, date of priority for
25 the diversion of 2 cubic feet per second, 380.7 acre-feet per year from Taneum
26

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1 Creek at a point in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 5, T. 18 N., R. 17 E.W.M., for the
2 irrigation of 47 acres and 0.10 cubic foot per second, 5 acre-feet per year for
3 stock water; and with a July 9, 1883, date of priority for the diversion of 1.28
4 cubic foot per second, 178.2 acre-feet per year from Taneum Creek at a point in
5 Government Lot 3, Sec. 6, T. 18 N., R. 17 E.W.M., for the irrigation of 22 acres.

6 The Plaintiff's Report to the Referee recommended that a right be confirmed to
7 Mr. Emerick for non-diversionary stock watering under the stipulation mentioned on
8 Page 5 of this report.

9
10 COURT CLAIM NO. 02074 -- Audrey Irene Evans

11 Ms. Evans filed a Statement of Claim with the Court for the use of several
12 water sources in the Kittitas Valley, including Taneum Creek located in Subbasin
13 No. 6. Attorney Richard Cole represents Ms. Evans, who testified at the
14 evidentiary hearing.

15 Ms. Evans owns land in the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, T. 18 N., R. 17 E.W.M. and
16 irrigates approximately four acres of raspberries. She is claiming a right to
17 withdraw water from the Teanum Canal Company Ditch to irrigate her four acres. The
18 land lies above the canal and she has a pump that is placed on the ditch to
19 withdraw water. Ms. Evans believes she uses approximately 0.25 cubic foot per
20 second and 6.2 acre-feet per year per acre irrigated. The testimony indicates she
21 has irrigated the land above the ditch since 1975, which is the year she acquired
22 10 shares of Teanum Canal Company stock. She also raises livestock that drink from
23 the ditch. She did not testify to how many head of stock she routinely has on her
24 property.

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1 Ben George, Chairman of the Teanum Canal Company testified that Ms. Evans'
2 pumping from the ditch is in violation of the company's directives and that her
3 land is not serviced by the canal company. Mr. Cole objected to this testimony as
4 dealing more with the regulations of the canal company rather than determining
5 water rights.

6 Ms. Evans did not provide any testimony about use of water from Taneum Creek
7 via the ditch prior to 1975, nor is there any evidence that a claim was filed
8 pursuant to RCW 90.14. In order for there to be a valid water right for this use
9 there needs to be evidence that it began prior to June 6, 1917, and a water right
10 claim had to have been filed. The Teanum Canal Company filed a water right claim
11 for their service area, but it does not appear that Ms. Evans' land lies within the
12 canal company's service area and the canal company is asserting that it does not.

13 Based on the foregoing, the Referee cannot recommend confirmation of a water
14 right to Audrey Irene Evans under Court Claim No. 02074.

15
16 COURT CLAIM NO. 02046 -- Wesley Gibson, et al.
17 Elwin Gibson
18 & Patricia Gibson
19 Irwin Loukes
20 & Dorothy Loukes

21 Court Claim No. 02046 was filed with the Court by the Gibsons for the use of
22 waters from West Side and Mill Race Ditch. On August 31, 1989, Irwin and Dorothy
23 Loukes were joined to the claim. Patti Gibson appeared at the evidentiary hearing
24 to testify in support of this claim.

25 West Side Irrigating Company diverts water from the Yakima River as it flows
26 through Subbasin No. 6. However, the company is a major claimant whose claim will
27 be addressed during the Major Claimant Pathway. Therefore, any rights that the

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1 claimants may enjoy as a result of being patrons of the irrigating company will be
2 determined at that time. The other source of water identified in the claim is the
3 Mill Race Ditch. That ditch diverts water from the Yakima River as it flows
4 through Subbasin No. 8, Thorp. The appropriate place for these claimants to pursue
5 their claim for water conveyed through the Mill Race Ditch is the evidentiary
6 hearing for Subbasin No. 8. The Gibsons and Loukes did appear to testify at the
7 hearing and will be provided with a copy of the Report of Referee for Subbasin
8 No. 8.

9 Based on the foregoing, the Referee does not recommend confirmation of a water
10 right under Court Claim No. 02046.

11
12 COURT CLAIM NO. 01292 -- Merle T. Gordon
13 & Marianne V. Gordon

14 The Gordons filed a Statement of Claim with the Court for the use of waters
15 from Taneum Creek for irrigation and stock water. Merle Gordon and Rodney Dean
16 Evans, the Gordon's son-in-law and co-owner of the property described in the claim,
17 testified at the evidentiary hearing.

18 The Gordons and Evans own a portion of Government Lot 4 of Section 6,
19 T. 18 N., R. 17 E.W.M.. They are claiming a right to use 0.04 cubic foot per
20 second, 12 acre-feet per year to irrigate 2.5 acres and water livestock. Water is
21 diverted from the creek in Government Lot 1 of Section 1, T. 18 N., R. 16 E.W.M.
22 and carried via an earthen ditch to the property.

23 According to Mr. Gordon's testimony, his father acquired the subject property
24 in 1941 and Merle Gordon then purchased it in 1972. He believes that the ditch
25 currently being used was constructed shortly before his father moved onto the
26

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1 property. An older ditch that was constructed prior to 1925 once flowed through
2 the property, but was abandoned years ago. Although Mr. Gordon recalls the older
3 ditch he does not have any recollection of whether the property he now owns was
4 irrigated prior to construction of the newer ditch in 1941. He does recall that
5 his father and a Johnny Ellison operated area sawmills that used water from Taneum
6 Creek.

7 Mr. Gordon is asserting that his right to use Taneum Creek emanates from Tenem
8 I. As stated earlier in this report on Page 6, that decision allocated 2/3 of the
9 creek flow to the Tenem Ditch Co. and the remaining 1/3 to the other parties to the
10 litigation. Mr. Gordon has presented sufficient evidence to show that the owner of
11 his land in 1887 was a party to that case. Additionally, a document submitted by
12 other claimants in this case, entitled Taenum Creek - Taenum Ditch Co. vs. Thorp et
13 al. (Superior Court Decree - Journal A, Page 438) shows that the Gordon property
14 was included in the 1/3 split. Harrison K. Dano, attorney for the Teanum Ditch
15 Company objected to Mr. Gordon offering as an exhibit a copy of the Tenem I
16 findings and decree. This decree has been offered by numerous claimants in this
17 case and admitted by the Referee. For each claimant it will be given the weight it
18 deserves. Following the testimony of the witness for this claim, Mr. Dano stated
19 he would prove that there is no relationship between the decree and the Gordon
20 property. However, no proof was put on to show that this property does not enjoy a
21 portion of the water allocated in that decree.

22 Mr. Gordon filed Water Right Claim No. 141252 pursuant to the requirements of
23 RCW 90.14, claiming a right to use waters from Taneum Creek for the irrigation of
24 six acres. Filing of this claim protects any right this property may enjoy.

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1 Although the property described in Court Claim No. 01292 was owned by a party
2 to the 1888 decree and the property is within the lands described on the Taneum
3 Creek document earlier discussed, there has been no testimony that would allow the
4 Referee to conclude that the land has historically been irrigated for a sufficient
5 period of time to establish a legal right to use water. The land is not riparian
6 to Taneum Creek, so a right could not have been established under the Riparian
7 Doctrine. In order for a right to have been established under the Prior
8 Appropriation Doctrine, the use of water must have been initiated prior to June 6,
9 1917. In addition, due to the decree in 1888 and the subsequent decree in 1906, it
10 would be necessary to show use of water prior to 1900.

11 Therefore, the Referee cannot recommend that a right be confirmed under Court
12 Claim No. 01292.

13
14 COURT CLAIM NO. 01628 -- Donald F. Knoke
15 & Ruth G. Knoke
16 Bruce Hagemeyer
& Paula Hagemeyer
17 Rod A. Lang

18 A Statement of Claim was filed by Donald F. and Ruth G. Knoke for the use of
19 waters from the Yakima River for irrigation and stock water. The Knokees were
20 represented by Attorney Gregory McElroy. Mr. Knoke; Steve Maeder, who works for
21 Mr. Knoke; Richard C. Bain, Jr., a consultant hired by Mr. Knoke; and Todd Kirk,
22 the Department of Ecology field investigator for this claim, testified at the
23 evidentiary hearing concerning this claim. On December 24, 1990, Bruce C. and
24 Pauline E. Hagemeyer were joined to the claim and on November 30, 1993, Rod A. Lang
25 was joined to the claim.

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1 The Knoke are claiming a right to irrigate 136 acres with waters from the
2 Yakima River. The water they use is diverted by the West Side Irrigating Company
3 into their canal and carried approximately 1600 feet to the fish screen located on
4 the canal. Immediately below the fish screen, a headgate releases water from the
5 canal into the Knoke Ditch, which delivers the water to the Knoke property. The
6 Knoke are not patrons of the West Side Irrigating Company, but have their water
7 delivered through the West Side canal as a result of an agreement between West Side
8 and prior owners of the Knoke property. The evidence reflects that homestead
9 applications were filed by L. F. Ellison and C. A. Splawn in 1881 and water first
10 appropriated on May 10, 1883. Water Right Claim No. 021590 was filed by Mr. Knoke
11 in response to RCW 90.14 claiming a right to use waters from the Yakima River for
12 irrigation and stock water.

13 The Plaintiff's Report to the Referee for Subbasin No. 6 recommended that a
14 water right be confirmed to the Knoke for the diversion of 4.08 cubic feet per
15 second, 612 acre-feet per year for the irrigation of 136 acres; 0.01 cubic foot per
16 second, 0.50 acre-feet per year for stock water; and 0.68 cubic feet per second for
17 conveyance loss. It was recommended that the right have a priority date of May 10,
18 1883. The Knoke took exception to the quantity of water recommended for
19 irrigation and conveyance loss.

20 Richard Bain investigated the quantity of water being used on the Knoke
21 property and found that a maximum of 16.1 cubic feet per second and a minimum of 5
22 cubic feet per second is diverted. Of that quantity, up to 2.2 cubic feet per
23 second is conveyance loss in the portion of the ditch from the West Side Canal to
24 the Knoke's farm. The average diversion over the season is 8 cubic feet per
25 second, resulting in an annual water use of 2,356 acre-feet per year or 17.3

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1 acre-feet per year per acre irrigated. This quantity of water is considerably
2 higher than that used to irrigate neighboring farms. The testimony had shown that
3 other farms in the immediate area use between 6 and 8 acre-feet per year per acre
4 irrigated. Mr. Bain testified that the difference is caused by the location of the
5 Knoke farm immediately adjacent to the Yakima River which results in the soils
6 being underlaid with river gravels. The soils on this farm are also very porous.
7 These two factors result in the on-farm delivery efficiencies being very low.

8 Mr. Maeder, who works for the Knoke, has also worked on farms in the
9 Manastash Subbasin to the southeast and testified that this farm needs
10 substantially more water per acre than the farms he has worked on in that subbasin.
11 Over the objection of Charlie Roe, the State's Attorney General, Todd Kirk
12 testified that he believed the quantity of water recommended in the Plaintiff's
13 Report for the Knoke claim was less than what they had been diverting and less than
14 what was needed to irrigate their land.

15 While the Knoke are using considerably more water than is normally needed in
16 this area for irrigation, the evidence supports their need for that quantity and
17 there was nothing presented by the State or any of the other claimants requiring
18 the Referee to determine that a lesser quantity of water would be sufficient or
19 that there was any waste of the water being diverted.

20 Based on the foregoing, it is recommended that a right to use waters from the
21 Yakima River be confirmed under Court Claim No. 01628 with a May 10, 1883, date of
22 priority for the diversion of 13.9 cubic feet per second, 2,356 acre-feet per year
23 for the irrigation of 136 acres; 0.01 cubic foot per second; 0.5 acre-feet per year
24 for stock water; and 2.2 cubic feet per second for conveyance loss.

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1 The motions filed to join additional parties to this claim indicate that Bruce
2 Hagemeyer irrigates 5.25 and Rod A. Lang irrigates 17 of the original 136 acres,
3 leaving the Knoles with 113.75 acres. The right herein being recommended for
4 confirmation shall be divided between the parties as follows: Bruce Hagemeyer,
5 0.537 cubic foot per second, 90.83 acre-feet per year for the irrigation of 5.25
6 acres; Rod Lang, 1.739 cubic feet per second, 294.1 acre-feet per year for the
7 irrigation of 17 acres; and the Knoles, 11.625 cubic feet per second, 1967.885
8 acre-feet per year for the irrigation of 113.75 acres and 0.01 cubic foot per
9 second, 0.5 acre-feet per year for stock water.

10 The Plaintiff's Report to the Referee recommended that a right be confirmed
11 under Court Claim No. 01628 for non-diversionary stock watering under the
12 stipulation mentioned on Page 5 of this report. The land purchased by Rod Lang and
13 Bruce Hagemeyer does not appear to have a natural water source, therefore, the
14 stock water stipulation would apply to the lands retained by the Knoles.

15
16 COURT CLAIM NO. 00284 -- E.L. Knudson, Jr.
17 (A)04191 & Necia Knudson
18 Rocky Mountain Elk Foundation

19 The Knudsons filed a Statement of Claim for the use of waters from Taneum
20 Creek for irrigation. On January 25, 1989, they amended their claim to also claim
21 waters from an unnamed pond located in Subbasin No. 5 and added the uses of stock
22 water, fish propagation and recreation. Rights for the use of waters lying in
23 Subbasin No. 5 will be addressed in the Report of Referee for that subbasin. The
24 Rocky Mountain Elk Foundation were joined to the claim on January 31, 1991. The
25 Knudsons were represented by Attorney Darrel R. Ellis and Mr. Knudson testified at

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1 the evidentiary hearing. Rocky Mountain Elk Foundation was represented by Attorney
2 Grant D. Parker.

3 The Knudsons property lies within Government Lots 1, 2 and 3 of Section 6,
4 Government Lots 2, 3 and 4, the S $\frac{1}{2}$ NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, all in T. 18 N.,
5 R. 17 E.W.M. They irrigate 160 acres of pasture and hay and are claiming a right
6 to divert 12 cubic feet per second, 1440 acre-feet per year from Taneum Creek for
7 that purpose. They also water up to 500 head of cattle from the creek. The cattle
8 drink from the ditches that traverse the property during irrigation season and
9 directly from the creek during the winter months. The winter time non-diversionary
10 stock water use is covered by the stock water stipulation. Mr. Knudson did not
11 testify to the quantity of water he needed for stock watering. Using the
12 Department of Ecology's guidelines for stock watering, a herd of 500 cattle would
13 need 0.40 cubic foot per second, 40 acre-feet per year.

14 Mr. Knudson testified that water use on his property dates back to 1880 when
15 John Russell and Richard Mann received patents for the property he now owns.
16 However, the record does not support that date. Richard Mann received a patent on
17 March 2, 1889, for Government Lots 1, 2 and 3 of Section 6. There are no documents
18 in the record showing the actual patent date for the NW $\frac{1}{4}$ of Section 5. However,
19 Russell and Mann filed a Notice of Water Right dated July 9, 1883, stating they
20 were constructing a ditch beginning in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6 and flowing east
21 through the NE $\frac{1}{4}$ of Section 6 into Section 5 for irrigating Section 5 and all lands
22 accessible between the head of the ditch and its terminus. Filing of the notice
23 established a right under the Prior Appropriation Doctrine with a July 9, 1883,
24 date of priority for those lands subsequently irrigated from that ditch. That
25 ditch is referred to as the Mann Ditch and serves all of the Knudson's land that
26

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1 lies north of Taneum Creek. Springwood Investment, Inc. and Mike Emerick also use
2 Mann Ditch to deliver their water. There are 20 acres in Government Lots 1 and 2
3 of Section 6 that lie south of Taneum Creek and are irrigated with a diversion in
4 Government Lot 2 of Section 6. Although the Notice of Water Right does not mention
5 a second diversion from Taneum Creek, it would be reasonable for the Referee to
6 assume that water was appropriated for this 20 acre field at approximately the same
7 time.

8 A predecessor owner of the Knudson property was a part to the Tenem I case
9 discussed on Page 6 of this report and it appears this land enjoys a portion of the
10 1/3 flow of Taneum Creek allocated in that decree.

11 Water Right Claim No. 000009 was filed by the Knudsons pursuant to RCW 90.14
12 protecting the rights they enjoy to use waters from Taneum Creek. Additionally
13 Certificate of Change Recorded in Volume 1, Page 428 issued to Mr. Knudson pursuant
14 to RCW 90.03.380, authorizing him to add a point of diversion to the right he
15 enjoyed to a portion of 1/3 of the flow of Taneum Creek.

16 Based on the foregoing, it is recommended that a right be confirmed to E. L.
17 and Necia Knudson and Rocky Mountain Elk Foundation under Court Claim No. 00284
18 with a July 9, 1883, date of priority, 12 cubic feet per second, 1440 acre-feet per
19 year for the irrigation of 160 acres and 0.40 cubic foot per second, 40 acre-feet
20 per year for stock water.

21 Upon confirmation of the proposed right, it is recommended that the Director
22 of the Department of Ecology cancel, rescind or otherwise make null and void
23 Certificate of Change recorded in Volume 1, Page 428.

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1 COURT CLAIM NO. 01295 -- Rod Lang
2 & Tana Lang

3 A Statement of Claim was submitted by Rod and Tana Lang for the use of waters
4 from Taneum Creek. The Langs were represented by Attorney Darrel Ellis, and
5 Mr. Lang testified at the evidentiary hearing in support of the claim.

6 According to the testimony, the Langs have owned the property described in the
7 claim since 1977 and have lived on the property since 1979. The property is 42
8 acres in size, with 36 acres of timothy hay being rill irrigated. The land lies in
9 that portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Sec. 4 northeast of Interstate 90 and west of the
10 county road and that portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Sec. 4 southwest of the county road
11 and east of the ditch flowing to the northeast from the Taneum Canal, in T 18 N.,
12 R. 17 E.W.M..

13 Mr. Lang testified that his land was part of the F. M. Thorp homestead and
14 passed from Thorp to Splawn to W. D. Bruton who owned it during the 1906
15 litigation. Mr. Lang believes his property is entitled to 1/7 of the 1/3 flow
16 allocated by the Courts to the individuals in the early litigation. In 1906 the
17 Court determined that 1/3 of the flow would be 50 cfs, and 1/7 of that would be 7
18 cfs, which is an extremely high quantity of water for the irrigation of 36 acres.
19 Mr. Lang testified to using 1 to 1.5 cfs and up to 150 acre-feet per year. The
20 Referee would consider 1 cfs, 150 acre-feet per year to be a reasonable quantity of
21 water to be used to irrigate 36 acres. Fourteen acres of this property is assessed
22 by the Kittitas Reclamation District, which delivers 4 acre-feet per year per acre
23 assessed. KRD is a Major Claimant whose claim will be addressed through the Major
24 Claimant pathway.

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1 The record shows that this land has been irrigated over the years with waters
2 from Taneum Creek. Originally the Brunton Ditch delivered the water, but since Mr.
3 Lang acquired it, and possibly earlier, water has been diverted from the Teanum
4 Canal. Mr. Lang is not a patron of the canal company and is using the canal to
5 deliver his privately held water. Mr. Lang testified that the basis for his using
6 the Teanum Canal is an agreement signed on March 8, 1923 between the Teanum Canal
7 Company and the Kittitas Reclamation District for the delivery of KRD water through
8 the Teanum Canal. This agreement provided that the KRD would deliver water into
9 Taneum Creek just above the intake of the Teanum Canal for the irrigation of all
10 lands in the district lying below the canal. The agreement also provided for the
11 delivery of KRD water to some land now irrigated from the Teanum Canal, including
12 47 acres owned by W. D. Bruton. Mr. Lang contends this 47 acres includes the 42
13 acres he now owns and that contention was not contested. However, this agreement
14 specifically deals with the delivery of KRD water, not natural flow from Taneum
15 Creek. The Referee considers use of the canal to be a private matter between the
16 Langs and the Teanum Canal Company.

17 At the time of the State's investigation of Mr. Lang's property and during
18 testimony, Mr. Lang stated a claim to use waters from Rattlesnake Canyon and Joe
19 Watt Canyon to irrigate his lands. According to the State's Map Exhibit,
20 Rattlesnake Canyon flows into the Teanum Canal in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5 and
21 Mr. Lang indicated that Joe Watt Canyon flows into the Teanum Canal in the NE $\frac{1}{4}$ SE $\frac{1}{4}$
22 of Section 5, near that section's east line. Mr. Lang testified that he and
23 previous owners of his property, W. D. Bruton and Patricia Lang, used water flowing
24 from those two canyons. Mr. Lang did not provide any testimony of how much water
25 has been used from either of the two canyons. It appears from his testimony that
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1 the water flows into the canal and is co-mingled with Taneum Creek and KRD (Yakima
2 River) water already in the canal.

3 Mr. Lang's predecessor, C. C. and Hazel Lawler filed Water Right Claim No.
4 004876 pursuant to the requirements of RCW 90.14. This claim was filed for the use
5 of waters from Taneum Creek for irrigation and stock water. Mr. Lang did not
6 testify to having livestock that he waters from the creek. There is nothing in the
7 record to show that water right claims were filed to use waters from Rattlesnake or
8 Joe Watt Canyons. Failure to file a claim for a particular source forfeits any
9 right that may have existed, RCW 90.14.071.

10 Mr. Lang's property is not riparian to Taneum Creek, so the priority of the
11 water rights for his property cannot be determined by the date patents issued for
12 the land. Both the Court Claim and the water right claim filed pursuant to RCW
13 90.14 state water was first used prior to March 5, 1888. However, the decree
14 issued by the Court in 1906 stated water was used prior to 1886 by predecessors to
15 C. A. Splawn and W. D. Bruton. Lacking a better date, the Referee will use the
16 mid-point of the previous year, June 30, 1885, as the date of priority. Based on
17 the foregoing, the Referee recommends that a right be confirmed with a June 30,
18 1885, date of priority for the diversion of 1 cubic foot per second, 150 acre-feet
19 per year from Taneum Creek for the irrigation of 36 acres.

20 The right being recommended for confirmation will contain a provision that a
21 portion of the land receives supplemental water from the Kittitas Reclamation
22 District through the Teanum Canal Company ditch.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 6
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1 COURT CLAIM NO. 02193 -- Estate of Bill J. Morton

2 A Statement of Claim was filed with the Court by Bill J. Morton for the use of
3 waters from Taneum Creek for irrigation and stock water. Mr. Morton is deceased
4 and his daughter, Kelly Morton Carpenter, testified at the evidentiary hearing on
5 behalf of the claim.

6 According to Ms. Carpenter's testimony, her father purchased the property
7 along Taneum Creek in Government Lots 1 and 8 of Section 1, T. 18 N., R. 16 E.W.M.
8 in 1974 from a man by the name of Fisher. Mr. Fisher raised livestock on the
9 property, but she did not know if he irrigated the land. Ms. Carpenter did not
10 testify to any current or past use of water from Taneum Creek on the property.
11 Review of the record does not reveal the existence of a RCW 90.14 claim for this
12 property. RCW 90.14 required the filing of a water right claim for uses of water
13 begun prior to adoption of the State Surface Water Code. Failure to file a claim
14 waives or relinquishes any right that may have existed, RCW 90.14.071.

15 Based on the foregoing, the Referee cannot recommend that a right be confirmed
16 under Court Claim No. 02193. The land is riparian to Taneum Creek and any
17 livestock raised on the property have access to drink directly from the creek. The
18 non-diversionary stock water stipulation protects this type of use.

19
20
21 COURT CLAIM NO. 01811 -- Jeff Nesmith

22 Dorsey D. Schnebly filed a Statement of Claim with the Court for the use of
23 waters from Taneum Creek and an unnamed spring for irrigation and stock water. On
24

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27 REPORT OF REFEREE
28 Re: Subbasin No. 6

1 March 31, 1989, Jeff Nesmith was substituted for Mr. Schnebly. Sharla Bailes, Mr.
2 Nesmith's fiancée, testified at the evidentiary hearing and amended the claim to
3 include use of water from the spring for domestic supply.

4 Mr. Nesmith owns 4.9 acres within that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5,
5 T. 18 N., R. 17 E.W.M. lying between Taneum Creek and Taneum Road. A home is
6 located on the property and approximately one-half acre of pasture and one-quarter
7 acre of lawn and garden area are irrigated with waters from Taneum Creek delivered
8 through the Brunton Ditch.

9 The NE $\frac{1}{4}$ of Section 5 was homesteaded by F. M. Thorp, who received a patent
10 dated September 13, 1882. A Notice of Water Right was filed on July 9, 1883,
11 stating water had been appropriated from Taneum Creek for use in Section 5
12 beginning on July 20, 1880. The point of diversion identified is where the Mann
13 Ditch diverts from Taneum Creek in Government Lot 3 of Section 6. Ms. Bailes
14 testified it was her understanding Mr. Nesmith's land had been irrigated the entire
15 century. The evidence in the record supports the conclusion that this land would
16 enjoy its proportionate share of the 1/3 flow in Taneum Creek awarded to F. M.
17 Thorp, et al. in 1887.

18 Water Right Claim No. 030160 was filed by Dorsey Schnebly pursuant to the
19 requirements of RCW 90.14. It asserted a right to use waters from Taneum Creek for
20 irrigation of 4 acres and stock water.

21 Ms. Bailes did not identify the instantaneous rate of water delivery to the
22 land, but did state that 20 acre-feet per year was used. The Referee finds this an
23 extremely high water duty when considering that less than one acre is being
24 irrigated. Neighboring land owners have testified that between 6.6 and 8.1
25 acre-feet per year per acre irrigated are needed to raise their crops. Because Ms.

26
27 REPORT OF REFEREE
28 Re: Subbasin No. 6
29

1 Bailes did not provide a basis for needing that quantity of water, the Referee
2 shall consider 8 acre-feet per acre to be a reasonable quantity for land that is
3 flood irrigated.

4 The land is riparian to Taneum Creek and livestock raised on the property
5 drink directly from the creek. There was no testimony of a diversionary stock
6 water use. A claim is also being asserted for a right to use an unnamed spring for
7 domestic supply. The spring is located on the property, approximately 150 feet
8 east of the home. There was no testimony of when the spring was first developed
9 and used for domestic supply or when the home on the property was first built.
10 Additionally, there is no evidence that a claim was filed pursuant to RCW 90.14 for
11 use of this spring or a permit obtained from the Department of Ecology pursuant to
12 the requirements of RCW 90.03.

13 Based on the lack of testimony of historic use and lacking a claim filed
14 pursuant to RCW 90.14 or a permit issued pursuant to RCW 90.03, the Referee cannot
15 recommend that a water right be confirmed for use of the spring. However, the
16 Referee does recommend that a right be confirmed with a July 20, 1880, date of
17 priority for the use of 0.02 cubic foot per second, 6 acre-feet per year from
18 Taneum Creek for the irrigation of three-quarters of an acre. Livestock drinking
19 directly from the creek is covered by the non-diversionary stock water stipulation.
20 An additional right for that use will not be recommended.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 6
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1 COURT CLAIM NO. 01421 -- Alan E. Nourse
2 & Ann Morton Nourse

3 A Statement of Claim was filed with the Court by Alan E. and Ann Morton Nourse
4 for the use of waters from Taneum Creek for irrigation. Alan Nourse testified at
5 the evidentiary hearing.

6 The Nourse property lies in Government Lot 4 of Section 6, T. 18 N.,
7 R. 17 E.W.M.. According to Mr. Nourse's testimony, they purchased the property in
8 1963 or 1964. At that time it was raw, cottonwood bottom land. They cleared three
9 acres and built a vacation home. In 1972 they began drawing water from the creek
10 for use around the home. In 1980 they drilled a well that has been their source of
11 water since. Water Right Claim No. 133136 was filed pursuant to RCW 90.14 claiming
12 a right to use Taneum Creek.

13 The testimony shows that water use did not start until 1972. In order for
14 there to be a right to use of water begun at that time, a permit or certificate
15 issued pursuant to the provisions of RCW 90.03 would be necessary. There is
16 nothing in the record to show that the Nourses complied with the requirements of
17 RCW 90.03 when they began using water. Therefore, the Referee cannot recommend
18 that a right be confirmed under Court Claim No. 01421.

19
20 COURT CLAIM NO. 00287 -- Frank Ragland

21 A Statement of Claim was submitted to the Court by Robert D. Myers. On
22 November 14, 1990, Frank Ragland was substituted for Mr. Myers as claimant. There
23 was no appearance at the evidentiary hearing in support of the claim, therefore,
24 the Referee cannot recommend that a right be confirmed to Frank Ragland under Court
25 Claim No. 00287. The Plaintiff's Report to the Referee recommended that a right be
26

27 REPORT OF REFEREE
28 Re: Subbasin No. 6
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1 confirmed for non-diversionary stock watering under the stipulation mentioned on
2 Page 5 of this report.

3
4 COURT CLAIM NO. 01943 -- Springwood Investment Corporation

5 A Statement of Claim was submitted by Edna Mae Schnebly Sadler, Charles Henry
6 Schnebly, and Billie Louise Schnebly Parker for the use of waters from Taneum
7 Creek. On January 4, 1989, Springwood Investment Corporation, was substituted for
8 the original claimants. Attorney John Winbauer represented Springwood Investment
9 Corp.. Mike Emerick, who farms the property, and Richard C. Bain, Jr., a
10 consultant hired by the claimant, testified at the evidentiary hearing.

11 Springwood Investment Corporation owns considerable land in the area, but is
12 only claiming a right to irrigate with waters from Taneum Creek seven acres lying
13 within Government Lot 1 of Section 5, T. 18 N., R. 17 E.W.M.. According to the
14 evidence, water is diverted from the creek into Mann Ditch at a point in Government
15 Lot 3 of Section 6 and carried over a mile to the Springwood property. Mr. Bain
16 testified that 0.67 cubic foot per second is diverted to irrigate this land and 8.5
17 acre-feet per acre irrigated is used. The land is planted to alfalfa hay and is
18 rill irrigated.

19 The rights to water from Taneum Creek date to the Tenem I decision in 1888
20 discussed on Page 6 of this report. The claimant's land was owned by John Thorp,
21 one of the parties to the case. He received a patent for the land on June 30,
22 1876, and according to the findings that preceded the decree, he began using water
23 on that land shortly after it was settled.

24 Water Right Claim No. 030158 was filed pursuant to RCW 90.14 protecting any
25 water rights this land might enjoy.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 6

1 Based on the foregoing information, the Referee recommends that a right be
2 confirmed to Springwood Investment Corporation under the Riparian Doctrine with a
3 June 30, 1876, date of priority, a right for the diversion of 0.67 cubic foot per
4 second, 59.5 acre-feet per year from Taneum Creek for the irrigation of 7 acres in
5 Government Lot 1 of Section 5, T. 18 N., R. 17 E.W.M.

6 The Plaintiff's Report to the Referee recommended that a non-diversionary
7 stock water right be confirmed under the stipulation discussed on Page 5 of this
8 report.

9
10 COURT CLAIM NO. 00411 -- Teanum Canal Company
11 (A)03028
12 (A)03236

13 A Statement of Claim was submitted to the Court by the Teanum Canal Company
14 for the use of waters for Taneum Creek for irrigation and stock water. Attorney
15 Harrison K. Dano represented the canal company. Ben George, Chairman of the
16 company's Board of Directors; Richard C. Bain, Jr., a consultant hired by the
17 company; Charlie McKinney, WSU Extension Agent for Kittitas County; and Jack
18 Wheatley, an agronomist and farmer served by the company, testified at the
19 evidentiary hearing.

20 Teanum Canal Company is asserting a right to divert from Taneum Creek 80 cubic
21 feet per second, 9,620 acre-feet per year for the irrigation of 3,700 acres. The
22 testimony indicates that during drought years diversions begin in late February and
23 normally begin by March 15 in other years. By the end of June the natural flow in
24 the creek has diminished such that the creek is for all practical purposes dry. As
25 the creek flow diminishes, water delivered by the Kittitas Reclamation District is
26 used as a supplemental supply. KRD dumps its water for Teanum Canal Company

27 REPORT OF REFEREE
28 Re: Subbasin No. 6

1 patrons into Taneum Creek immediately above the canal company's diversion,
2 resulting in the canal company's system being used to deliver KRD water.

3 Teanum Canal Company was organized in 1879 and following its organization
4 acquired from W. Kilmore an irrigation ditch and associated appropriation rights.
5 Mr. Kilmore and his associates had constructed the ditch in 1873. By 1887
6 controversy over the use of waters from Taneum Creek resulted in an action in the
7 District Court of the Fourth Judicial District in Ellensburg in the case of
8 Tenem Ditch Company v. F. M. Thorp (1888). On March 5, 1888, Decree No. 14 was
9 entered awarding the Tenem Ditch Company (now the Teanum Canal Company) two-thirds
10 of the water flowing in Tenem Creek and one-third to the defendants. By 1906
11 another action was brought, this time in Kittitas County Superior Court in the
12 case of Tenem Ditch Company, v. James Shellenberger, et al. (1906). The findings
13 of fact that preceded the decree found that Teanum Creek flows 6,000 inches or more
14 from the end of winter until approximately May 20 and then the flow decreases down
15 to 300 inches during low flow periods. The Court upheld the two-third/one-third
16 split of water previously decided in 1888, finding that the ditch company had a
17 right to 4,000 inches and defendants Splawn and Bruton, as successor to the
18 defendants in 1888, had a right to 2,000 inches. According to the testimony of
19 Mr. Bain the conversion traditionally used in Kittitas County is 50 miners inches
20 to one cubic foot per second. Therefore, the ditch company would have a right to
21 80 cubic feet per second and the successors to Splawn and Bruton would have a right
22 to 40 cubic feet per second total.

23 According to Mr. Bain, 80 cubic feet per second, and sometimes slightly more,
24 is diverted by the Teanum Canal Company when available beginning as early as the
25 end of February and continuing into June. By the end of June there is insufficient
26

27 REPORT OF REFEREE
28 Re: Subbasin No. 6
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1 natural flow in the creek. Use of KRD water begins in May and continues until the
2 end of the irrigation season or water is no longer available from KRD. KRD
3 delivers 4 acre-feet per acre assessed. Mr. Bain identified in Exhibit DE-20 that
4 approximately 18.3 cubic feet per second of the maximum diverted quantity is
5 conveyance loss in the ditch.

6 The canal company is also claiming a right for stock watering. According to
7 the testimony water diverted during irrigation season for irrigation purposes
8 satisfies the diversionary needs for stock watering and the stock utilize no more
9 than 20 acre-feet during the irrigation season. The animal consumption during the
10 winter months is similar to that during the irrigation season, however sufficient
11 water must be carried in the ditch to prevent the ditch from becoming iced over.
12 The testimony shows that approximately 30 cubic feet per second is needed to
13 prevent the ice problem and that in excess of 10,000 acre-feet is diverted during
14 the winter months. All but about 20 acre-feet of that water diverted is carriage
15 water and is not consumed by the animals. In previous Reports of Referee, the
16 quantity of water confirmed for conveyance loss has been expressed in an
17 instantaneous quantity only because the water is used as a mechanism to move water
18 through the ditch and quickly returns to the river system. The Referee intends to
19 continue this practice and will only recommend that water for conveyance be
20 expressed as an instantaneous quantity.

21 Based on the foregoing, the Referee recommends that a right for use of waters
22 from Taneum Creek be confirmed to the Teanum Canal Company with a June 30, 1873,
23 date of priority for the diversion from February 20 to June 30 of 61.7 cubic feet
24 per second, 9,620 acre-feet per year for the irrigation of 3700 acres; 20 acre-feet
25 for stock watering; 18.3 cubic feet per second for conveyance loss and from
26

27 REPORT OF REFEREE
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29

1 October 1 to February 19 1.2 cubic feet per second, 20 acre-feet per year for stock
2 watering and 28.8 cubic feet per second for conveyance loss and carriage water.

3 The right shall carry the provision that supplemental water from the Kittitas
4 Reclamation District is carried through the canal company system to the lands
5 served by the company.
6

7 COURT CLAIM NO. 00658 -- Robert A. Tugwell
8 & Wauneta M. Tugwell
9 Thomas W. Tugwell & Pamela Tugwell

10 Robert A. and Wauneta M. Tugwell filed a Statement of Claim with the Court for
11 the use of drainage from irrigated fields. On July 1, 1991, Thomas W. and Pamela
12 Tugwell were joined to the claim. Because their claim referenced owning shares of
13 water from West Side Irrigating Company, the Tugwells were scheduled to testify at
14 the evidentiary hearing. Mr. Tugwell appeared at the hearing and stated he is not
15 claiming a water right for any water originating in Subbasin No. 6. The West Side
16 Irrigating Company is a major claimant whose claim will be addressed through the
17 Major Claimant Pathway. Based on the foregoing, it is recommended that a right not
18 be confirmed under Court Claim No. 00658.
19

20 COURT CLAIM NO. 02109 -- WA State Department of Wildlife

21 A Statement of Claim was submitted to the Court by the Washington State
22 Department of Wildlife. There was no appearance at the evidentiary hearing in
23 support of the claim, therefore, the Referee cannot recommend that a right be
24 confirmed to the Department of Wildlife under Court Claim No. 02109. The
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27 REPORT OF REFEREE
28 Re: Subbasin No. 6
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1 Plaintiff's Report to the Referee did recommend that a non-diversionary stock water
2 right be confirmed under the stipulation discussed on Page 5 of this report.

3
4 COURT CLAIM NO. 00589 -- WA State Dept. of Natural Resources
5 (A)00590

6 A Statement of Claim was submitted to the Court by the Washington State
7 Department of Natural Resources. There was no appearance at the evidentiary
8 hearing in support of the claim, therefore, the Referee cannot recommend that a
9 right be confirmed under Court Claim No. 00589 and A00590. The Plaintiff's Report
10 to the Referee did recommend that a non-diversionary stock water right be confirmed
11 under the stipulation discussed on Page 5 of this report.

12
13 Claimants Who Did Not Appear At The Evidentiary Hearing

14 There was no appearance at the evidentiary hearing in support of the
15 following listed claims. Therefore, the Referee recommends that the claims be
16 denied in their entirety:

17 Court Claim No. 01304 - Dan H. Brunson, Jr. & Georgia Brunson
18 Court Claim No. 00178 - James M. and Pamela Jo Daly
Court Claim No. 00193 - David L. Keithly

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

20 Warren E. Brain and Lillian T. Brain
Mike Emerick
21 Donald F. Knoke and Ruth G. Knoke
E.L. Knudson, Jr. and Necia Knudson
22 Estate of Bill J. Morton
Jeff Nesmith
23 Frank Ragland
Rocky Mountain Elk Foundation
24 Springwood Investment Corporation
WA State Department of Wildlife
25 WA State Dept. of Natural Resources

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27 REPORT OF REFEREE
28 Re: Subbasin No. 6

VIII. FINDINGS OF FACT

I, JOHN E. ACORD, as Referee in this proceeding, having carefully examined the testimony and evidence and having investigated Subbasin No. 6, do hereby make the following Findings of Fact:

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

2. That the claims to any diversionary or withdrawal rights within Subbasin No. 6 of the following named claimants are denied in their entirety for reason set forth in the body of this report:

Warren E. Brain and Lillian T. Brain (01972 & 01973)
Dan H. Brunson, Jr. and Georgia Brunson
Cecelia S. Buck and Estate of Donald A. Buck
David Carpenter
James M. Daly and Pamela Jo Daly
Audrey Irene Evans
Elwin Gibson and Patricia Gibson
Wesley Gibson, et al.
Merle T. Gordon and Marianne V. Gordon
David L. Keithly
Irwin Loukes and Dorothy Loukes
Estate of Bill J. Morton
Alan E. Nourse and Ann Morton Nourse
Frank Ragland
Robert A. Tugwell and Wauneta M. Tugwell
WA State Department of Wildlife
WA State Dept. of Natural Resources

3. That the name of the claimant(s), court claim number(s), sources of water, uses for which rights have been established, time periods when water may be used, amounts of water designated in the right, priority of water right, location of points of diversion, and description of lands to which water rights are appurtenant are as follows:

REPORT OF REFEREE
Re: Subbasin No. 6

CLAIMANT NAME:

Teanum Canal Company

COURT CLAIM NO. 00411

(A) 03028

(A) 03236

Source:

Taneum Creek

Use:

Irrigation of 3700 acres and stock water

Period of Use:

February 20 to June 30 for irrigation; January 1 to June 30 and October 1 to December 31 for stock water

Quantity:

61.7 cubic feet per second; 9,620 acre-feet per year for irrigation; 20 acre-feet per year for stock water; 18.3 cubic feet per second for conveyance loss from February 20 to June 30 and 1.2 cubic feet per second; 20 acre-feet per year for stock water and 28.8 cubic feet per second for conveyance loss and carriage from October 1 to February 19

Priority Date:

June 30, 1873

Point of Diversion:

300 feet north and 1,000 feet east of the west quarter corner of Section 5, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, T. 18 N. R. 17 E.W.M.

Place of Use:

Beginning at the intersection of the downstream end of the fishscreen and Taneum Canal being in the NW $\frac{1}{4}$ of Section 5, T. 17 N., R. 18 E.W.M.; thence following in a generally southeast direction along the Taneum Canal to a point approximately six and one-half miles downstream of the canal to a point which is 1,000 feet west of the SW corner of the NE $\frac{1}{4}$ of Section 25, T. 18 N., R. 17 E.W.M., in the County of Kittitas; thence running east to the SE corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 25; thence north to the intersection with the West Side Canal; thence following the canal in a northwesterly direction to a point immediately north of the Thorp Highway and immediately north of the West Side Canal; thence due N 750 feet; thence on a line N 30° W 1,000 feet more or less to the intersection of the Thorp Highway; thence on a line approximately N 60° W 750 feet more or less to the west boundary line of the West Side Canal; thence following the West Side Canal northwesterly to its point of diversion in the Yakima River; thence southwesterly along the south bank of the Yakima River to the confluence with Taneum Creek; thence following Taneum Creek upstream to the point opposite the point of beginning; thence southwesterly to the point of beginning.

REPORT OF REFEREE

Re: Subbasin No. 6

1 Limitations of Use: Supplemental water is supplied to the described lands by
2 the Kittitas Reclamation District through the canal
3 company's delivery system.

4 CLAIMANT NAME: Springwood Investment Corporation COURT CLAIM NO. 01943

5 Source: Taneum Creek

6 Use: Irrigation of 7 acres

7 Period of Use: April 1 to October 31

8 Quantity: 0.67 cubic foot per second, 59.5 acre-feet per year

9 Priority Date: June 30, 1876

10 Point of Diversion: 660 feet south and 700 feet west of the north quarter
11 corner of Section 6, being within Government Lot 3 of
Section 6, T. 18 N., R. 17 E.W.M.

12 Place of Use: That portion of Government Lot 1 of Section 5, T. 18 N.,
13 R. 17 E.W.M. which lies north of Taneum Creek, south of
14 the Mann Ditch, and east of a line which begins
15 approximately 1125 feet north and 1040 feet west for the
16 east quarter corner of said section; thence N 10° E 900
17 feet, more or less, to a terminus on the south bank of
18 said ditch.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 6
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1 CLAIMANT NAME: Jeff Nesmith COURT CLAIM NO. 01811
2 Source: Taneum Creek
3 Use: Irrigation of 3/4 acre
4 Period of Use: April 1 to October 31
5 Quantity: 0.02 cubic foot per second, 6 acre-feet per year
6 Priority Date: July 20, 1880
7 Point of Diversion: 2220 feet south and 1000 feet west of the northeast corner
8 of Section 5, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5,
9 T. 18 N., R. 17 E.W.M.
10 Place of Use: That portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, T. 18 N.,
11 R. 17 E.W.M. described as follows: Beginning at a point
12 860 feet north and 110 feet west of the east quarter
13 corner of said Section 5; thence N 1° 26' E 289.7 feet;
14 thence S 85° 20' W 210.3 feet; thence N 13° 57' W 75 feet;
15 thence S 74° 28' W 290.5 feet; thence N 44° 01' W 104.2
16 feet; thence N 88° 53' W 50.1 feet; thence S 10° 16' E
17 274 feet to the northern margin of Taneum Road; thence
18 southeasterly along said road to the point of beginning.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 6
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CLAIMANT NAME:

**Bruce Hagemeyer
& Paula Hagemeyer**

COURT CLAIM NO. 01628

Source:

Yakima River

Use:

Irrigation of 5.25 acres

Period of Use:

April 1 to October 31

Quantity:

0.537 cubic foot per second, 90.83 acre-feet per year

Priority Date:

May 10, 1883

Point of Diversion:

1275 feet north and 350 feet west of the southeast corner of Section 33, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T. 19 N., R. 17 E.W.M.

Place of Use:

Parcel A of survey recorded July 25, 1990, in Book 16 of Surveys at Page 156 under Auditors File No. 531480, records of Kittitas County, being a portion of the NE $\frac{1}{4}$ of Section 34, T. 19 N., R. 17 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 6

CLAIMANT NAME:

Donald F. Knoke
& Ruth G. Knoke

COURT CLAIM NO. 01628

Source:

Yakima River

Use:

Irrigation of 113.75 acres and stock watering

Period of Use:

April 1 through October 31

Quantity:

11.625 cubic feet per second, 1967.885 acre-feet per year for irrigation; 0.01 cubic foot per second, 0.5 acre-feet per year for stock water; 2.2 cubic feet per second for conveyance loss

Priority Date:

May 10, 1883

Point of Diversion:

1275 feet north and 350 feet west of the southeast corner of Section 33, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T. 19 N., R. 17 E.W.M.

Place of Use:

A portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, which lies south and west of the Thorp Highway, EXCEPT that portion which lies within Parcel A of survey recorded July 25, 1990, in Book 16 of Surveys at Page 157, under Auditors File No. 531480, records of Kittitas County; and a portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, which lies north of the Burlington Northern Railroad, and that portion of the SE $\frac{1}{4}$ of Section 34 which lies west of Thorp Highway and north and east of Burlington Northern Railroad, EXCEPT that portion which lies within Parcels 1, 2 and 3 of survey recorded June 2, 1992, in Book 18 of Surveys, Page 173 under Auditors File No. 549390, records of Kittitas County; all in T. 19 N., R. 17 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 6

1 CLAIMANT NAME: Rod A. Lang COURT CLAIM NO. 01628
2 Source: Yakima River
3 Use: Irrigation of 17 acres
4 Period of Use: April 1 to October 31
5 Quantity: 1.739 cubic feet per second, 294.1 acre-feet per year
6 Priority Date: May 10, 1883
7 Point of Diversion: 1275 feet north and 350 feet west of the southeast corner
8 of Section 33, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T.
9 19 N., R. 17 E.W.M.
10 Place of Use: Parcels 1, 2 and 3 of survey recorded June 2, 1992, in
11 Book 18 of Surveys, Page 173 under Auditors File No.
12 549390, records of Kittitas County, being within the SE $\frac{1}{4}$
13 of Section 34, T. 19 N., R. 17 E.W.M.

14 CLAIMANT NAME: Mike Emerick COURT CLAIM NO. 00195
15 (A)03177
16 Source: Taneum Creek
17 Use: Irrigation of 22 acres
18 Period of Use: April 1 to October 31
19 Quantity: 1.28 cubic feet per second, 178.2 acre-feet per year
20 Priority Date: July 9, 1883
21 Point of Diversion: 660 feet south and 700 feet west of the north quarter
22 corner of Section 6, being within Government Lot 3 of
23 Section 6, T. 18 N., R. 17 E.W.M.
24 Place of Use: That portion of the NW $\frac{1}{4}$ of Section 4, T. 18 N.,
25 R. 17 E.W.M. which lies north of Taneum Creek and south of
26 the Mann Ditch.

27 REPORT OF REFEREE
28 Re: Subbasin No. 6
29

CLAIMANT NAME:

E.L. Knudson, Jr.
& Necia Knudson
Rocky Mountain Elk Foundation

COURT CLAIM NO. 00284
(A)04191

Source:

Taneum Creek

Use:

Irrigation of 160 acres and stockwater

Period of Use:

April 1 to October 31

Quantity:

12 cubic feet per second, 1440 acre-feet per year for
irrigation; 0.40 cubic foot per second, 40 acre-feet per
year for stock water

Priority Date:

July 9, 1883

Point of Diversion:

(1) 660 feet south and 700 feet west of the north quarter
corner of Section 6, being within Government Lot 3 of
Section 6, T. 18 N., R. 17 E.W.M.
(2) 1500 feet south and 400 feet east of the north quarter
corner of Section 6, being within Government Lot 2 of
Section 6, T. 18 N., R. 17 E.W.M.

Place of Use:

(1) That portion of the NW $\frac{1}{4}$, Government Lot 2 and the
SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5 lying north of Taneum Creek and south
of Taneum and Thorp Cemetary Roads; and those portions of
Government Lots 1, 2, and 3, Section 6 lying north of
Taneum Creek and south Taneum Road; ALL in T. 18 N.,
R. 17 E.W.M.

(2) Those portions of Government Lots 1 and 2 lying south
of Taneum Creek in Section 6, T. 18 N., R. 17 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 6

1 CLAIMANT NAME:

Mike Emerick

COURT CLAIM NO. 00195

(A)03177

3 Source:

Taneum Creek

4 Use:

Irrigation of 47 acres and stock water

5 Period of Use:

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

6 Quantity:

7 2 cubic feet per second, 380.7 acre-feet per year for
irrigation; 0.10 cubic foot per second; 5 acre-feet per
year for stock water

8 Priority Date:

June 30, 1885

9 Point of Diversion:

10 650 feet north and 1000 feet west of the east quarter
corner of Section 5, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5,
T. 18 N., R. 17 E.W.M.

11 Place of Use:

12 That portion of the NW $\frac{1}{4}$ of Section 4 which lies south of
Taneum Creek and north of Taneum Road, EXCEPT the most
southeasterly 6 acres thereof. The most westerly 10 acres
13 of that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4 which lies
northerly of Interstate Highway 90 and southerly of Taneum
14 Road. That portion of SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 5 which lies
northerly of Interstate 90 and southerly of Taneum Road.
15 ALL being within T. 18 N., R. 17 E.W.M.

27 REPORT OF REFEREE

28 Re: Subbasin No. 6

1 CLAIMANT NAME:

Rod Lang
& Tana Lang

COURT CLAIM NO. 01295

2
3 Source:

Taneum Creek

4 Use:

Irrigation of 36 acres

5 Period of Use:

April 15 to October 15

6 Quantity:

1 cubic foot per second, 150 acre-feet per year

7 Priority Date:

June 30, 1885

8 Point of Diversion:

500 feet north and 900 feet east of the west quarter corner of Section 5, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, T. 18 N., R. 17 E.W.M.

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10 Place of Use:

That portion of the W $\frac{1}{2}$ of Section 4, T. 18 N., R. 17 E.W.M. described as follows: A tract of land bounded by a line beginning at the northwest corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4; thence N 87°07'E, 688.8 feet to the true point of beginning; thence N 24°45' W, 532.3 feet; thence N 0°05' W, 496.6 feet; thence N 14°14' W, 176.7 feet; thence N 6°44' W, 247 feet; thence N 77°16' E, 299.4 feet; thence N 9°56' E, 540.0 feet; thence N 24°47' E, 200 feet; thence N 70°48' E, 507 feet to the south boundary line of the right of way of the county road; thence S 55°51' E along the south boundary line of the right of way of said county road, 1098.8 feet; thence along the arc of the curve on the south and west boundary line of the right of way of said county road, 702.4 feet; thence S 0°33' W along the west boundary line of the right of way of said county road, 1090.4 feet; thence S 87°04' W, 1961.3 feet to the true point of beginning. EXCEPT that portion lying south of Interstate Highway 90.

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19 Limitations of Use:

A portion of this land (14 acres) receives supplemental water from the Kittitas Reclamation District delivered through the Taneum Canal Company ditch.

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27 REPORT OF REFEREE

Re: Subbasin No. 6

1 CLAIMANT NAME:

William T. Speir
& Vera J. Speir

COURT CLAIM NO. 00644

2 Source:

Unnamed Spring

3 Use:

Continuous domestic supply for recreational use

4 Period of Use:

Continuous

5 Quantity:

0.01 cubic foot per second, 0.5 acre-foot per year

6 Priority Date:

November 21, 1974

7 Point of Diversion:

410 feet north and 1185 feet west from the southeast
corner of Section 24, being within SE $\frac{1}{4}$ SE $\frac{1}{4}$ of T. 19 N.,
R. 15 E.W.M.

8 Place of Use:

Blue Rock Mining Claim #1 lying within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 24, T. 19 N., R. 15 E.W.M.

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

18 5. The following Certificates of Water Right, issued by the Department of
19 Ecology or its predecessor agencies of the State of Washington, will be made null
20 and void:

21 Certificates of Surface Water Right

22 1474

S4-23648C

23 Certificate of Change Recorded in Volume 1, Page 428

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27 REPORT OF REFEREE

28 Re: Subbasin No. 6

1 In conformance with RCW 90.03.240, Certificates of Adjudicated Water Right
2 will be issued to those parties for whom rights were confirmed through this
3 proceeding.

4 5 IX. CONCLUSIONS OF LAW

6 Confirmation of Rights

7 The priority date, source, point of diversion, location, maximum
8 instantaneous diversion rate, annual quantity, period of use, nature of beneficial
9 use, and place of use which are shown in the foregoing Findings of Fact for each
10 claimant therein referred are recommended to be confirmed as water rights of those
11 claimants.

12 13 Duty of Water

14 Unless otherwise specified, the diversion of water from sources of water
15 contained within Subbasin No. 6 for irrigation purposes shall be limited, at a
16 maximum, to 1.0 cubic-foot per second for each 50 acres irrigated, not to exceed
17 during each irrigation season, a total of 6.6 acre-feet per acre.

18 19 Irrigation Season

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

26
27 REPORT OF REFEREE
28 Re: Subbasin No. 6

1 Certificates of Adjudicated Water Right

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

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8 Administration of Water

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

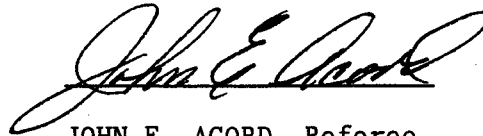
16 Whenever regulation of junior water rights is necessary, the Department may
17 enter at reasonable times upon the lands of any and all parties having rights and
18 shall regulate diversion facilities so as to apportion the waters as herein
19 adjudicated.

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

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27 REPORT OF REFEREE
28 Re: Subbasin No. 6

1 As provided by Chapter 90.03.360 RCW and Chapter 508-64 WAC, any person
2 authorized to use surface water from Subbasin No. 6 may be required to provide and
3 maintain, at the water user's expense, proper diversion works and/or measuring
4 devices. Design, installation, maintenance, and operation of such works and
5 measuring devices will be as prescribed by the Department.

6 SIGNED and DATED at Yakima
7 this 9th day of May, 1994.

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10 JOHN E. ACORD, Referee

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27 REPORT OF REFEREE
28 Re: Subbasin No. 6
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