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SUPERIOR COURT

**YAKIMA RIVER BASIN
WATER RIGHTS ADJUDICATION**



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

**SUPPLEMENTAL
REPORT OF REFEREE
Re: SUBBASIN NO. 5
(ELK HEIGHTS)**

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

SUPPLEMENTAL REPORT OF REFEREE - VOLUME 38A

13,866

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

3 IN THE MATTER OF THE DETERMINATION)
4 OF THE RIGHTS TO THE USE OF THE)
5 SURFACE WATERS OF THE YAKIMA RIVER)
6 DRAINAGE BASIN, IN ACCORDANCE WITH)
7 THE PROVISIONS OF CHAPTER 90.03,)

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

10 Plaintiff,)

11 v.)

12 James J. Acquavella, et al.,)

13 Defendants.)
14)
15)
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28)

No. 77-2-01484-5

REPORT OF REFEREE
PURSUANT TO ORDER ON
EXCEPTIONS OF
FEBRUARY 12, 1998
RE: SUBBASIN NO. 5
(ELK HEIGHTS)

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

14 The Order issued by the Court on February 12, 1998, ruled upon several
15 exceptions to the Report of Referee - Subbasin No. 5 (Elk Heights) and remanded
16 certain exceptions to the Referee, with instructions, for further evaluation and
17 subsequent recommendations to the Court.

18 The following are the claimant exceptions which were filed:

19 Patricia Ann Ackerman, Court Claim No. 00895

20 Raymond A. Drebaum, Court Claim No. 02216

21 Sherry Bertino and Margaret V. Peckinino, Court Claim No. 00394

22 George Burchak and Diane Burchak, Court Claim No. 05216

23 GRM Ranch, Court Claim No. 01279

24 Harold B. Iverson and Joann Iverson, Court Claim No. 01137

25 Stanley E. Moore, Court Claim No. 01290

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1 Robert R. Roseburg and Enid Roseburg, Court Claim No. 01280

2 The Estate of John E. Rothlisberger, Pete White and Christa White,
3 Lonny White, Michael White, Richard White and Jeanne Purple, Court Claim
Nos. 01296, 01297, 01298

4 Scott DeWolf Wilson and Jeanne Laurel O'Brien, Court Claim No. 11351 and
5 Court Claim No. 11352

6 Ecology took exception to the following claims: Steven and Elsie Bator,
7 Court Claim No. 02230; Theodore and Marion Bronkema, Court Claim Nos. 01268 and
8 02225; Cecil and Jo Ann Carveth and Frank and Nancy Maglietti, Court Claim
9 No. 01678; Gary and JoAnne Fudacz, Court Claim No. 00224. All of the preceding
10 are regarding the current points of diversion and the need for compliance with
11 RCW 90.03.380 change of point of diversion authorization.

12 Without naming each of the potentially affected claimants and their
13 respective Court claim numbers, Ecology suggested that the Referee attach a
14 "Conveyance Water" provision to each water right recommended as a portion of the
15 Younger Ditch appropriation.

16 Ecology took exception to the number of domestic units recommended for
17 confirmation for Sky Meadows Ranch Country Club, Court Claim No. 05636.

18 Additionally, Ecology identified several typographical errors that the Court
19 ordered the Referee to evaluate and correct: Frank Lewis and Doris Marie
20 Talerico, Court Claim No. 05671; Loyd and Shirley Garrett, Court Claim No. 01279;
21 George and Diane Burchak, Court Claim No. 05216; Sherry Bertino and Margaret
22 Peckinino, Court Claim No. 00394.

23 Ecology pointed out what they believed was an error in the Referee's analysis
24 of the claims of Richard and Jean Haas and Sharon Winslow, Court Claim No. 01279
25 regarding the 0.09 cfs instantaneous quantity at Page 81, Line 22 versus the
26

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1 0.08 cfs on Page 150, Line 20. The Court found no error since the quantity on
2 Page 81 includes the stock water.

3 The Court denied Ecology's exceptions regarding points of diversion and
4 compliance with RCW 90.03.380 for Bator, Bronkema, Carveth, Maglietti and Fudacz,
5 due to the water source being return flow from Younger Ditch which is collected in
6 the unnamed slough from which these claimants divert.

7 On April 11, 1996, the Court issued an Order reopening the record for
8 Subbasin No. 5 to allow introduction of testimony and evidence in support of
9 claimants Dennis L. and Kathy P. Hankins and Fred S. Talerico, who had been joined
10 to Court Claim No. 01279. The hearing date was set for July 9, 1998, by the Court
11 at which time the Referee took testimony and evidence offered by the claimants
12 Hankins and Talerico.

13 On July 9, 1998, the Court made an oral ruling ordering the Referee to take
14 testimony during the scheduled July 9, 1998, hearing and accept evidence presented
15 in behalf of Jerry and Marclyn McLane, Court Claim No. 01678. The Court had
16 granted the claimants' motion to be joined to Court Claim No. 01678 on June 23,
17 1998.

18 Hearings, for the purpose of opening the record for testimony and evidence
19 relating to the exceptions, were conducted by the Referee on April 21, 1998, and
20 April 22, 1998. The Department of Ecology (Ecology) was represented by Carol
21 Knudson.

22 The following attorneys made appearances: Richard T. Cole for Patricia Ann
23 Ackerman, Myron and Betty Olson and John and Marilyn Uribe, John Basterrechea and
24 Susan Storey, Harold B. and Joann Iverson, Stanley E. Moore, Robert R. and Enid
25 Roseburg, The Estate of John E. Rothlisberger, Pete and Christa White, Lonny White
26

1 and Michael White, Richard White and Jeanne Purple; Kenneth A. Berger for Raymond
2 Drebaum; John P. Gilreath for Sherry Bertino and Margaret V. Peckinino, George and
3 Diane Burchak; Jeff Slothower for Jerry N. and Marclyn A. McLane, Scott DeWolf
4 Wilson and Jeanne Laurel O'Brien.

5 The following claims and claimants are included in this report:

6 Court 7 Claim 8 No.	9 Name	10 Page
11 00895	12 Patricia Ann Ackerman	13 9
14 01688	15 Jacqueline Baker 16 & Bonita P. Morgan	17 71
18 02230	19 Steven C. Bator, Sr. 20 & Elsie Bator	21 9, 72
22 00394 23 (A)06098	24 Sherry Bertino 25 c/o John Bertino	26 13, 84, 85
27 01268 28 02225	29 Theodore Bronkema 30 & Marion Bronkema	31 73
32 05216	33 George Burchak 34 & Diane Burchak	35 19, 84, 93
36 01422	37 John M. Butkovich 38 & Jean M. Butkovich	39 92
40 01678	41 Cecil Frank Carveth 42 & Jo Ann Beverly Carveth	43 74
44 00985	45 Robert C. Clark, Jr. 46 & Shirley M. Clark	47 96
48 01679	49 Nellie G. Curry 50 Douglas D. Curry 51 & Lois A. Curry	52 87
53 00281	54 Dana R. Dinius 55 & Paula D. Dinius	56 70
57 02216	58 Raymond Drebaum	59 10

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1	01184	Walter W. Eyer	96
2	01185	& Valorie G. Eyer	
3	00689	John Forenpohar	95
		& Margaret E. Forenpohar	
4	01676	Brian Frederick	89
5	02222	& Elizabeth Frederick	
6	01676	Sandra Fredericksen	89
7	02224	Gary J. Fudacz	24, 75
		& Joanne Fudacz	
8	01279	Loyd Garrett	26, 76
9		& Shirley Garrett	
10	01279	GRM Ranch	26
11	01279	Richard Haas	26, 77
		& Jean Haas	
12	01279	Dennis L. Hankins	26, 78
13		& Kathy P. Hankins	
14	00365	Bernard I. Henshaw	79
		The Estate of Hazel Henshaw	
15	01137	Harold B. Iverson	37, 85, 86
16		& Joann Iverson	
17	00281	Kenneth B. Kerchner	70
		& Heather D. Kerchner	
18	00284	E.L. Knudson, Jr.	95
19	(A)04191	& Necia Knudson	
		Hart "K" Ranch	
20	00463	Frederick E. Krueger	97
21		& Linda R. Krueger	
22	01467	Harry James Masterson	69
	(A)03296	& Mary Lou Masterson	
23	01678	Jerry N. McLane	42
24		& Marclyn A. McLane	
25	01279	Pat Merritt	26, 80
		& Carolyn Merritt	

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1	01290	Stanley E. Moore	45
2	01688	Bonita P. Morgan	71
3	02189	James E. Murphy	94
4	00281	Shelley G. Muth & Joan M. Muth	70
5			
6	01676	Jon L. Newton & Cindy L. Newton	89
7	11351	Jeanne Laurel O'Brien	56 11352
8	00394	Margaret V. Peckinino	13, 84, 85
9	(A)06098		
10	01297 01298	Jeanne Purple	49, 88, 94
11	01676	Real Estate Investment Group	89
12	01676	Mack D. Richey & Susan R. Richey	89
13			
14	00284 (A)04191	Rocky Mountain Elk Foundation	95
15			
16	01280	Robert R. Roseburg & Enid Roseburg	48, 67
17	01296 01297	Estate of John E. Rothlisberger	49, 68, 69, 88, 94
18	01298		
19	00281	Theodore V. Ryan & Mildred E. Ryan	70
20			
21	05636	Sky Meadows Ranch Country Club	54, 97
22	01294 (A)05347	South Cle Elum, Town of	93
23	02152	Springwood Ranch Corporation	88
24	05671	Doris Marie Talerico	55, 81
25	01279 00281	Fred S. Talerico Donald L. Torgett & Marie E. Torgett	26, 82 70
26			

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1	01296	Lonny White	49, 68, 69
2	01296	Michael White	49, 68, 69
3	01296	Pete White	49, 68, 69
4		& Christa White	
5	01297	Richard White	49, 88, 94
	01298		
6	00281	Gary F. Williams	70
7		& Diane M. Williams	
8	00281	Richard J. Willoughby	70
9	11351	Scott DeWolf Wilson	56
	11352	Jeanne Laurel O'Brien	
10	01279	Sharon Winslow	26, 83

SPECIAL ISSUE

Ecology has suggested, and the claimants who elected to participate in the supplemental hearing have concurred, that the Report of Referee, Subbasin No. 5 (Elk Heights) should be amended to include a provision which will protect the conveyance loss quantities confirmed for Younger Ditch water users. Essentially, the concern expressed by Ecology is that relinquishment or temporary nonuse of individual water rights over time could diminish the conveyance water to a point where the remaining users of the ditch could not obtain their authorized water. In recognition of that possibility, the Referee will incorporate into each of the recommended Younger Ditch water rights the following provision:

In the event this water right is relinquished, or otherwise not used, the proportionate share of conveyance loss associated with this right shall revert to the remaining Younger Ditch water right holders whose certificates include a discreet quantity of water for the purpose of conveyance. The reversion of this quantity of water shall be to the extent necessary to deliver the authorized quantity of water to the remaining authorized places of use. The maximum quantity of water affirmed for the entire length of the ditch for the purpose of conveyance is 2.895 cubic feet per second (cfs).

The provision set forth above is taken from SE-81 which is the March 30, 1998, advisory letter Ecology sent to each of the known claimants affected by the proposed provision. The record reflects that there is no opposition to the inclusion of the provision. The following list includes all of the claimants who are recommended portions of the Younger Ditch water right and their respective conveyance loss quantities. The claimants marked by an asterisk participated in the supplemental hearing and testified in support of the provision.

<u>CLAIM NO.</u>	<u>CLAIMANT</u>	<u>QUANTITY</u>
01279	Pat & Carolyn Merritt	0.10
01279	Loyd & Shirley Garrett	0.16
01279	*Richard Haas	0.045
01279	*Sharon Winslow	0.045
01279	Dennis L. & Kathy P. Hankins	0.10
01279	Fred S. Talerico	0.125
01688	Jacqueline Baker & Bonita P. Morgan	0.15
02230	Steven C. Bator, Sr. & Elsie Bator	0.95
01268/	Theodore & Marion Bronkema	0.18
02225	" " "	
01678	Cecil Frank & Jo Ann Beverly Carveth	0.285
02224	*Gary J. Fudacz	0.33
00365	*Bernard I. Henshaw	0.30
05671	*Doris Marie Talerico	<u>0.125</u>
	TOTAL	2.895 cfs

1
2 ANALYSES

3 COURT CLAIM NO. 00895 -- Patricia Ann Ackerman

4 Patricia Ann Ackerman elected to not appear and present evidence or testimony
5 on the designated date of April 21, 1998. Mr. Richard T. Cole had been consulted
6 by Miss Ackerman regarding preparation for the hearing. Mr. Cole advised the
7 Referee that lacking proper foundation to support confirmation of a water right,
8 Patricia Ackerman elected to forgo the opportunity to appear at the hearing.
9 Lacking a factual record, the Referee cannot recommend confirmation of a
10 diversionary water right under Court Claim No. 00895. The lack of a confirmation
11 does not affect the previous stock water stipulation.

12 COURT CLAIM NO. 02230 -- Steven C. Bator, Sr.
13 & Elsie Bator

14 The Ecology exceptions filed regarding Court Claim No. 02230 were the Younger
15 Ditch conveyance loss provision as discussed on Pages 7 and 8 of this report and
16 the point of diversion and RCW 90.03.380 compliance discussed on Page 3. The
17 Bators were notified via letter from Ecology and the Referee's Notice of
18 Appearance that the conveyance loss issue would be a subject of discussion during
19 the supplemental hearing on April 22, 1998. Steven and Elsie Bator did not make
20 an appearance on the designated day to offer testimony regarding Younger Ditch
21 conveyance loss.

22 The Bator property is delivered water which is diverted from the Yakima River
23 into Younger Ditch therefore the conveyance loss proviso as discussed on Pages 7
24 and 8 of this report is applicable to Court Claim No. 02230. The Referee has
25 included in the Steven and Elsie Bator water right the "Limitation of Use"
26 provision referenced above. No other change has been made to the right

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1 recommended on Page 147 of the Report of Referee, Subbasin No. 5 (Elk Heights),
2 Volume 38.

3
4 COURT CLAIM NO. 02216 -- Raymond Drebaum

5 Exceptions to the Report of Referee for Subbasin No. 5 (Elk Heights) were
6 filed by Kenneth A. Berger, attorney for Raymond A. Drebaum. Mr. Drebaum sought
7 an opportunity to augment the record regarding historic beneficial use and
8 continued use for irrigation and domestic supply within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9,
9 T. 19 N., R. 15 E.W.M. The source of the water for which a water right is
10 asserted is Iron Mountain Creek. The only facility via which surface water enters
11 the Drebaum property is an open ditch from a point at the head of Iron Mountain
12 Creek which ditch terminates on the George Burchak farm in the SE $\frac{1}{4}$ of Section 4,
13 T. 19 N., R. 15 E.W.M. The Referee concluded in the original analysis of Court
14 Claim No. 02216 that the record did not support a recommendation for confirmation
15 of a right to Iron Mountain Creek water.

16 Raymond Drebaum and Russ Goddard, a professional arborist, attended the
17 supplemental hearing and provided testimony. The ditch used by George Burchak and
18 his predecessors crosses the entire north/south distance of the Drebaum property
19 from south to north along the east property line. The ditch lies upslope from a
20 group of old fruit trees located in the northeast corner of the Drebaum property.
21 According to estimates by Mr. Drebaum, there are about 40 trees in an area of 2 to
22 3 acres. According to Russ Goddard, some of the trees are as much as 80 or
23 90 years old while others are obviously considerably younger. Several trees have
24 died in the past several years from which Mr. Goddard cut cross sections for age
25 dating.

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1 It is uncontroverted that for many years the ditch has seasonally overflowed
2 above the area where the fruit trees are located. This annual occurrence has
3 created very wet soil conditions and has prevented the area from being cultivated
4 until well after the overflow ceases. Mr. Drebaum recently rebuilt the ditch
5 section with the intent to eliminate the overflow problem. In conjunction with
6 that construction, a 4-inch diameter pipeline was installed to divert water from
7 the ditch for irrigation and domestic supply. The assertion is that this pipe
8 simply replaces old facilities and allows continuation of historic beneficial uses
9 of the water from the ditch on the Drebaum property. The only previous
10 maintenance of the long ditch leading from Iron Mountain Creek to the north line
11 of the Drebaum property has been done by George Burchak or one of his
12 predecessors.

13 The new evidence Mr. Drebaum submitted in support of Court Claim No. 02216
14 includes testimony regarding discovery of an old $\frac{1}{2}$ -inch diameter steel pipe in the
15 area of some old building remnants south of the orchard. Although the pipe was
16 traced toward the south, no diversion from the ditch or any other source was
17 confirmed either currently or historically. Mr. Drebaum surmises that the pipe
18 must have come from the ditch as he knows of no other source of water on the
19 property. Testimony provided by George Burchak and statements made by Louie
20 Bohannon, the previous owner of the Burchak property, cover the period from 1946
21 until the present. They both assert that no water was diverted from the ditch for
22 the Drebaum orchard or former homesite near the orchard except as noted below.

23 It is uncontroverted that a building used for recreational housing for the
24 past 20-odd years by predecessors of Drebaum had on occasion been supplied with
25 water via a 1-inch plastic pipe from the ditch. That building has been moved by
26

1 Drebaum and converted into a residence. A 1-inch pipe runs to this structure from
2 the new 4-inch pipe recently installed by Drebaum. The Referee concludes that any
3 water use for this domestic purpose is of relatively recent origin and should not
4 have been initiated without compliance with RCW 90.03.250 (water right permit
5 application) procedures.

6 The record is less than clear as to the nature of older domestic structures
7 that may have been on the property and the periods during which water may have
8 been used. The source of any water used is also at best speculatively
9 identified. Certainly, there is no surface water source on or adjacent to the
10 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T. 19 N., R. 15 E.W.M.; therefore, the Riparian Doctrine has
11 no applicability to the property. While Mr. Drebaum and Mr. Goddard assert that
12 the fruit trees required irrigation water to attain their size and rate of growth,
13 no evidence of deliberate irrigation of those trees is in the record. In fact,
14 testimony of Burchak and Bohannon is that no deliberate irrigation has occurred
15 since 1946. Although Mr. Drebaum has augmented the record in support of Court
16 Claim No. 02216, definitive historic use records have not been provided for use of
17 water from Iron Mountain Creek.

18 The original Report of Referee discussed Surface Water Certificate (SWC)
19 No. 11609, which includes the Drebaum property within the place of use.
20 Mr. Drebaum emphatically stated that no water is or has been used on the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
21 Section 9, T. 19 N., R. 15 E.W.M. from any source originating in Section 10,
22 T. 19 N., R. 15 E.W.M. Therefore, SWC No. 11609 apparently has not been perfected
23 by any beneficial use on the Drebaum property.

24 Finally, the contention that the Tillman and Lundberg Notice of Appropriation
25 may be applicable to the Drebaum property cannot be substantiated from the
26

1 record. In particular, the Referee believes that the point of diversion
2 description is far too vague to be of any practical value; i.e., "1/4 mile from the
3 south line of the southwest quarter of Section 4." The stream upon which this
4 notice was filed is said to run northerly through Section 4, T. 19 N.,
5 R. 15 E.W.M. The Referee suspects that the stream discussed is Tillman Creek
6 which flows through the W1/2 of Section 4. There is no record regarding facilities
7 to divert or convey water to any land including the NW1/4NE1/4 of Section 9, T. 19 N.,
8 R. 15 E.W.M. In fact, Mr. Drebaum testified that the SW1/4 of Section 4, T. 19 N.,
9 R. 15 E.W.M. is located downhill from his property which is located in the NW1/4NE1/4
10 of Section 9, T. 19 N., R. 15 E.W.M.

11 The Referee concludes that the original recommendation contained on Page 35
12 of the Report of Referee for Subbasin No. 5 (Elk Heights) should be affirmed and
13 the Drebaum exceptions denied. It is further concluded that the place of use for
14 any right based upon SWC No. 11609 shall not include the NW1/4NE1/4 of Section 9,
15 T. 19 N., R. 15 E.W.M.

16
17 COURT CLAIM NO. 00394 -- Sherry Bertino
(A)06098 Margaret V. Peckinino

18 Exceptions to the Report of Referee were filed in behalf of the claimants by
19 their attorney, John P. Gilreath. The exceptions include priority date, acres
20 irrigated, instantaneous quantities and annual quantities. Also of concern to the
21 claimants is the Referee's apparent reliance on the face of the Ch. 90.14 RCW
22 water right claims as limits for the recommended water rights. Finally, an
23 assertion is made that one spring on the property is not subject to the current
24 surface water adjudication proceedings. Each of those points will be evaluated in
25 this supplemental report.
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1 In addition to the exceptions filed by claimants Bertino and Peckinino,
2 Ecology requests that the Referee correct a typographical error on Page 155 of the
3 report. The "range" number on Line 21 is hereby corrected from "16" to the proper
4 "15," which is consistent with the property ownership.

5 The first matter for consideration will be the appropriate priority date.
6 The Referee recommended April 21, 1899, and May 20, 1899, respectively, for the
7 rights to the domestic spring and Rabbit Creek based upon Notices of
8 Appropriation. All of the water sources claimed are on the claimants' property
9 within the SE $\frac{1}{4}$ of Section 12, T. 19 N., R. 15 E.W.M.; therefore, the Riparian
10 Doctrine is applicable. The John Groger "Location of Water" filed April 21, 1899,
11 states that the ditch for the domestic spring diversion was under construction in
12 May of 1888. The Referee concludes that the date of priority should be May 31,
13 1888, based upon the appropriative doctrine and applying the standard of using the
14 last date of the month when the day is not specified. Clearly, by May 31, 1888,
15 the land was settled and/or a homesite was being developed, which is one of the
16 first steps to separating land from Federal ownership. It should be noted that
17 the patent was issued on May 1, 1899. Relying on the Riparian Doctrine for
18 irrigation results in a common priority date of May 31, 1888, for the domestic
19 spring located 650 feet south and 775 feet west from the east quarter corner of
20 Section 12 and for the Rabbit Creek diversion.

21 Claimants Bertino and Peckinino are asserting that a second spring exists in
22 the SE $\frac{1}{4}$ of Section 12, which is at a point about 660 feet north and 250 feet west
23 of the southeast corner of said Section. John Bertino testified at the
24 supplemental hearing that the spring had been developed by a contractor for
25 Mr. Skougstad (Miss Peckinino's father) and a pipeline was run to the home about
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1 1500 feet north of the spring. That spring development was a continuing problem
2 due to plugging of the intake and consequently has not been used for many years,
3 although the pipeline still exists. The spring is described as arising on the
4 property and not flowing off the property and is asserted to be a surface water
5 source which is not public water of the state and is therefore not within the
6 jurisdiction of the current general adjudication. The Court has ruled accordingly
7 regarding a similar spring in its Opinion Re: Exception of Dwayne and Alvina
8 Dormaier (Claim No. 4706 Re Subbasin No. 21 (Burbank Creek)), since characterized
9 as the Dormaier Decision. Claimants are not asserting a water right through the
10 Court for this spring and insufficient evidence was presented regarding
11 characteristics of the spring, historic use, etc. to meet the evidentiary
12 guidelines set forth by the Court on Page 6 of Memorandum Opinion RE: Return Flow
13 Exceptions of Harry Masterson and Mary Lou Masterson entered July 16, 1996, and
14 Order entered the same day; therefore, the Referee will not make a recommendation
15 regarding confirmation of a water right, nor will the Referee make any
16 recommendation regarding possible applicability of the Dormaier Decision.

17 The exceptions regarding the number of acres historically irrigated in the
18 SE $\frac{1}{4}$ of Section 12 and the appropriate instantaneous and annual quantities are
19 highly interdependent and will be discussed collectively. The record contains
20 many references to conjunctive use of water from Rabbit Creek, a pond and a well
21 (or wells) via a 2-inch mainline system installed in 1980 (DE-33) Also described
22 by John Bertino is a "portable container" which he sets in the creek at various
23 locations. It is used in conjunction with a 1-inch plastic water line and
24 sprinklers to serve the "top part or any other part of the property." Although no
25 mention is made of a pump in the container, the Referee concludes one may be
26

1 involved to attain pressure to run the sprinklers. In any case, the capacity of
2 this diversion apparatus is not discussed in the record. The currently used well
3 is said to be the latest in a series of wells dug near Rabbit Creek since before
4 1900. This well may be as much as 30 feet deep and is constructed of concrete
5 tiles. The water withdrawn from the well is said to be Rabbit Creek water;
6 however at 30 feet depth, ground water is certainly a portion of the water
7 withdrawn.

8 John Bertino testified that he often draws the water level far below land
9 surface, and during dry periods must stop using the well after seven or eight
10 hours of use to allow the water level to recover to creek level. No pump is
11 described in the system either on the well, the creek or the pond. In fact, the
12 Richard Bain analysis (DE-182) describes a gravity flow condition through the
13 2-inch PVC mainline. Mr. Bain states that 125 pounds per square inch (psi) is
14 equivalent to 288.7 feet of elevation change. That elevation change is shown to
15 occur in a total distance of 300 feet from the diversion from Rabbit Creek to the
16 irrigated field. Exhibit DE-33 is a sketch of the well dug in 1980 and the
17 mainline and sprinkler system is used for 20 acres. Referring to the 1964 aerial
18 photograph (DE-180), the diversion is in the southerly center of the area
19 described as irrigated fields. Although the topography can't be determined from
20 the existing exhibits, it seems impossible to have slopes in the fields of nearly
21 one foot of fall per one foot horizontal. The Referee may be missing some facts
22 in the record which would clarify the physical setting.

23 There is no record regarding the historic irrigation system; i.e., the
24 gravity ditches. If the point of diversion has always been at the current
25 location, much of the 38 acres of fields would appear to have been higher than the
26

1 point of diversion. In the period 1983 to 1984, the pond was constructed below
2 the Rabbit Creek diversion to store water during low flow periods. The pond is
3 described as on a hill so gravity flow can serve the lower field of 20 acres (same
4 area served by the well).

5 John Bertino testified on April 30, 1991, that he alternates between the pond
6 and well to irrigate the lower 20 acres due to the very limited water supply
7 during low flow periods. There is no testimony that the pond water or creek water
8 is commingled with well water in the 2-inch PVC mainline. That seems improbable
9 since the well serves the domestic water to the house.

10 The higher fields (18 acres) are planted to alfalfa and the only source of
11 water for the sprinkler irrigation is Rabbit Creek. John Bertino testified that
12 they had also irrigated the fields west of Rabbit Creek in the 1970's. Exhibit
13 DE-181 depicts use of the portable intake structure at a point on Rabbit Creek
14 above the west field. The Referee can only conjecture as to the location of the
15 historic point of diversion as the record speaks only to the current circumstances
16 and even that record lacks sufficient detail regarding use of creek water.

17 The first decision to be made is the applicability of the current surface
18 water adjudication to the well since ground water is not being addressed in this
19 adjudication. Due to the apparent commingled surface and ground water intercepted
20 by the well and lack of evidence to define the quantity of surface water, a water
21 right for use of the well cannot be recommended.

22 The claimants assert that Ch. 90.14 RCW, Water Right Claim (WRC) No. 60970
23 filed in the name Edward J. Skougstad by Margaret V. Peckinino is not a limit to
24 the right which can be recommended for approval on Rabbit Creek. The argument
25 seems to be that Edward J. Skougstad was not competent to complete the claim due
26

1 to failing health and his advanced age of 86 years. The record establishes that
2 the claims filed were not completed by Edward J. Skougstad. They are said to have
3 been filled out at the Olympia office of the Department of Ecology by some unnamed
4 person other than Mr. Skougstad or Margaret V. Peckinino, the signatory as
5 designated representative.

6 Assuming that some employee of Ecology did put pen to paper to complete the
7 water right claim, the only source of answers to the questions would have been
8 Margaret V. Peckinino or Mr. or Mrs. Edward J. Skougstad who were apparently all
9 present at Ecology's office. The Referee finds that three adults, all with
10 personal knowledge of the property, should have had a fair and ample opportunity
11 to complete and submit a reasonably accurate water right claim. Mr. Skougstad did
12 not independently complete the form nor did he sign it. The claimants were
13 advised by the Referee of the option of seeking an amendment of WRC No. 60970 via
14 the procedures of RCW 90.14.065. According to transcript from the exception
15 hearing held for Subbasin No. 5 (Elk Heights) in October of 1997, they apparently
16 have elected to use that process. In any case, a copy of the Ecology decision for
17 the referenced amendment was not entered into the record.

18 The Referee has evaluated the entire record with the objective of
19 determining to what extent WRC No. 60970 should or should not define the limits of
20 any right to Rabbit Creek. It has been determined that the lack of a definitive
21 factual record as to historic water use is the overriding problem. The record
22 created at the supplemental hearing did not in many respects clarify the historic
23 use issues previously identified. For instance, a new sprinkler system, mainline
24 and well were installed in 1980, whereas the earliest use of Rabbit Creek must
25 have been via open ditches. That change may or may not have been part of the
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1 reason for the significant difference in irrigated acres. The record is not
2 helpful.

3 As recently as March 12, 1991, both Margaret V. Peckinino and John Bertino
4 signed an amended statement of claim which was recorded with the Clerk of the
5 Court as Document No. 6098. That claim identifies only 7 acres and 0.18 cfs for
6 irrigation from Rabbit Creek via a well. This information seems to be in conflict
7 with the record from the supplemental hearing and no explanation of the
8 differences was provided.

9 The Referee recommends approval of the amended priority date to reflect
10 May 31, 1888, as previously discussed and denial of the remaining exceptions filed
11 regarding Court Claim No. 00394. Thus, the Report of Referee should be affirmed
12 for claimants Sherry Bertino and Margaret V. Peckinino with the change of priority
13 date for the domestic spring and Rabbit Creek to May 31, 1888.

14 During review of the legal description of the place of use on Page 55 of the
15 Report of Referee, an error was noted where the "E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ " is listed. The correct
16 entry of "E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ " is used in this supplemental report.

17
18 COURT CLAIM NO. 05216 -- George Burchak
& Diane Burchak

19 George and Diane Burchak, through their attorney John P. Gilreath, filed
20 exceptions to the Referee's recommendations regarding Court Claim No. 05216. The
21 Burchaks own approximately 160 acres in two parcels and claim water from an
22 unnamed spring fed stream and Iron Mountain Creek. Their uses of water include
23 irrigation, domestic supply, stock water and a mink farm.

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1 In addition to the exceptions filed by the Burchaks, Ecology identified a
2 typographical error in the Report of Referee, Subbasin No. 5 (Elk Heights), which
3 will be dealt with by changing the range on Page 142, Line 13 from 25 to 15.

4 The Referee recommended confirmation of a water right from an unnamed stream
5 with a priority date of December 15, 1916, in the quantities of 0.02 cfs;
6 3 acre-feet per year for domestic supply and stock water. The Burchaks except to
7 the priority date which they assert should be January 23, 1905. The Referee
8 relied upon the date of an easement and water use agreement executed on
9 December 15, 1916, between James A. Taylor and J. W. Whiteman to establish the
10 recommended priority date. The Burchaks assert that Whiteman ownership of the
11 land on which the spring water is used, the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, began on
12 January 23, 1905, and that is the date that should be used for the water right.
13 While it is clear that water use began prior to the 1916 agreement with water
14 originally conveyed through an open ditch, there is no evidence in the record of
15 when that water use was initiated. The Whitemans did acquire the land in 1905;
16 however, there are a lot of possible dates when water use could have been
17 initiated before or after that purchase. The claimant has entered no evidence to
18 show what that date was. December 15, 1916, is the only certain date in the
19 record of water use therefore the Referee continues to recommend that the priority
20 date be December 15, 1916.

21 The claimant's exception also seems to contest the quantity of water that was
22 recommended, although it does not specifically state an exception. The claimants
23 have stated a belief that they have a right to all of the spring water, except
24 that used in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4. The quantities of water recommended from
25 the unnamed spring were primarily based upon the limits associated with filing of
26

1 a short form water right claim, which is what was filed for use of the spring.
2 There is no evidence in the record of the amount of water that has been
3 beneficially used from the spring. Additionally, the Referee notes that the 1916
4 agreement includes very specific and restrictive language as to quantity and
5 pipeline sizes, as well as release of the right to any quantities of water
6 formerly used above the capacity of the agreed to $\frac{3}{4}$ -inch pipeline. The Referee
7 believes that a $\frac{3}{4}$ -inch gravity pipeline over 1,100 feet in length will not convey
8 more than the 0.02 cfs as recommended and there has been no evidence that more
9 than that quantity has been put to beneficial use. The Report of Referee as it
10 relates to the unnamed spring should be affirmed as written.

11 The exceptions filed by the Burchaks relative to Iron Mountain Creek include
12 the instantaneous and annual quantities. Also involved is the question of whether
13 WRC No. 068270 limits the quantity of water to which a right can be confirmed to
14 2.0 cfs.

15 The Referee acknowledges that the combined 6-inch pipeline and gravity ditch
16 from the steel tank have the ability to jointly convey more than the 1.0 cfs
17 recommended by the Referee. Testimony provided by George Burchak at the
18 supplemental hearing was that up to 4.0 cfs can be delivered from Iron Mountain
19 Creek to the Burchak property in the $W\frac{1}{2}SE\frac{1}{4}$ and the $NE\frac{1}{4}SE\frac{1}{4}$ of Section 4, T. 19 N.,
20 R. 15 E.W.M.

21 In order to consider confirmation of a quantity of water above 2.0 cfs, the
22 Referee must first determine whether there is foundation for a water right to more
23 than 2 cfs (William Twomey Notice of Appropriation). The William Stevens Notice
24 of Appropriation for use of Summit Creek is cited as additional foundation for the
25 current use from Iron Mountain Creek. Burchak suggests that Iron Mountain Creek
26

1 and Summit Creek are actually the same source; however, that assertion is made
2 without any supporting documentation in the record. The William Stevens Notice of
3 Appropriation states it was posted near the point of diversion in the N $\frac{1}{2}$ of
4 Section 16, T. 19 N., R. 15 E.W.M. The creek referred to in this proceeding as
5 Iron Mountain Creek does not extend into the N $\frac{1}{2}$ of Section 16. According to the
6 testimony, the headwaters of Iron Mountain Creek is in a spring area in the NE $\frac{1}{4}$ of
7 Section 9. Review of State's Exhibit SE-1 shows another creek beginning in the N $\frac{1}{2}$
8 of Section 16 and flowing in a northwesterly direction. It is possible that a
9 diversion from this separate creek could have resulted in water being carried
10 either to Iron Mountain Creek or to the ditch that diverts from Iron Mountain
11 Creek. The claimant has not provided any evidence that Summit Creek and Iron
12 Mountain Creek are the same source of water or were used conjunctively. In fact,
13 on the statement of claim filed with the Court, Iron Mountain Creek and Summit
14 Creek are listed as two separate water sources. Additionally, other documents
15 submitted by the claimant indicate that the other name for Iron Mountain Creek was
16 "Nigger Baby Creek". Therefore, the Referee finds there is insufficient evidence
17 to conclude that the Stevens Notice of Appropriation established a right to use
18 Iron Mountain Creek.

19 There is nothing in the record to lead the Referee to conclude that a right
20 exists in excess of the 2 cfs claimed in WRC No. 068270, therefore, the Referee
21 will not address the substantial compliance arguments of the claimant.

22 The Referee agrees with Burchak that the historic use of water from Iron
23 Mountain Creek has been higher than 1.0 cfs as recommended in the original Report
24 of Referee. Clarification of the concurrent use of the 6-inch mainline and the
25 original ditch during high flow periods does not include any data regarding
26

1 measured flow, rather, Burchak asserts that 4.0 cfs is conveyed through the ditch
2 above the steel tank. In any case, the evidence has established that a right
3 exists for use of 2 cfs. The Referee concludes based upon the record that the
4 recommendation can be increased from 0.97 cfs for irrigation of 60 acres to
5 2.0 cfs and that 720 acre-feet per year or 12 acre-feet per acre is justified. It
6 seems obvious that in many years the claimant will not be able to deliver the full
7 720 acre-feet to his property due to the seasonal fluctuations in Iron Mountain
8 Creek; however in good water years, that quantity appears to be reasonably
9 consistent with the historic beneficial use. The 2 cfs shall be divided amongst
10 the uses being made of the water, i.e., 1.97 cfs for irrigation, 0.02 cfs for
11 domestic supply and 0.01 cfs for stock water. Page 142, Line 7½ of the Report of
12 Referee, Subbasin No. 5 (Elk Heights) is hereby revised to read 1.97 cfs;
13 720 acre-feet per year for irrigation. There is no change to the domestic and
14 stock water quantities.

15 During review of the Report of Referee, it was apparent that typographical
16 errors were made in the priority date for the Iron Mountain Creek water right.
17 The errors appear on Page 48, Line 12½ and Page 142, Line 9½. In both those
18 instances, the date 1877 is entered, whereas the appropriate priority date is 1887
19 as reflected on Page 47, Lines 4½ through 6½. The basis for the Iron Mountain
20 Creek water right is the Twomey Notice of Appropriation which is dated August 1,
21 1887. Due to the significance of the error, the Referee recommends that the
22 priority dates referenced above be corrected to read 1887.

23 The Referee has concluded that an error was made by Ecology when describing
24 the point of diversion from Iron Mountain Creek. On Page 46, Line 16½ through
25 Page 47, Line 1½, it is clear that the point of diversion chosen by the Referee
26

1 was based on the field investigation by Ecology. Evidence presented during the
2 supplemental hearing establishes that the true diversion is actually located in
3 the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9 in a spring area 325 feet north and 450 feet east of the
4 center of Section 9, T. 19 N., R. 15 E.W.M. The Burchak video tape (DE-179)
5 showing the long ditch leading from the spring around the side hill clearly
6 establishes that the point of diversion is at least one quarter mile via the ditch
7 contour south of the Drebaum property. Exhibit SE-69 is very misleading since it
8 shows the Burchak diversion system as beginning at the 300-gallon steel tank
9 installed on the ditch as it crosses the Drebaum property.

10 Exhibit DE-159 is a copy of the Ch. 90.14 RCW claim filed by the Conservative
11 Baptist Association containing a description of the point of diversion from
12 "numerous springs and stream" which the Referee believes fairly represents the
13 point where the Burchak ditch diversion from Iron Mountain Creek is located. That
14 point is described as being 325 feet north and 450 feet east of the center of
15 Section 9, T. 19 N., R. 15 E.W.M.

16 All the exceptions filed by George and Diane Burchak, Court Claim No. 05216,
17 should be denied except as discussed above.

18
19 COURT CLAIM NO. 02224 -- Gary J. Fudacz
& Joanne Fudacz

20 On April 22, 1998, during the supplemental hearing, Gary Fudacz made an
21 appearance before the Referee seeking an opportunity to augment the record
22 regarding Court Claim No. 02224. Gary and Joanne Fudacz did not file an exception
23 with the Court with regard to the Report of Referee for Subbasin No. 5 (Elk
24 Heights); however, Ecology's exception regarding the appropriate point of
25 diversion for the easterly Younger Ditch water users references Court Claim
26

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1 No. 02224. The Court denied that portion of Ecology's exceptions. On
2 February 12, 1998, the Court did remand to the Referee all of the Younger Ditch
3 claimants including Gary and Joanne Fudacz, but only to the extent necessary to
4 resolve the conveyance water provision (see Pages 7 and 8 of this report for a
5 discussion of the Younger Ditch conveyance loss provision). Mr. Fudacz testified
6 in support of the provision.

7 The Referee explained to Mr. Fudacz that his request amounted to a late
8 exception which could only be allowed by the Court. The express understanding was
9 that the augmented record would only be relied upon if the Court approved a
10 prospective late exception and remanded Court Claim No. 02224 to the Referee.
11 There is no indication in the record that Gary and Joanne Fudacz filed a late
12 exception with the Court or that Court Claim No. 02224 was remanded to the Referee
13 for any purpose other than conveyance water. Lacking authorization to evaluate
14 the supplemental record created in support of Court Claim No. 02224 on April 22,
15 1998, the Referee will not consider that record.

16 The Referee has included in the Gary J. and Joanne Fudacz Court Claim
17 No. 02224 water right the "Limitation of Use" provision referenced above. The
18 only other change which has been made to the right recommended on Page 149 of the
19 Report of Referee, Subbasin No. 5 (Elk Heights) is correction of a typographical
20 error which appears on Page 149, Line 15½ where "W½NE¼" is the correct legal
21 subdivision. This error was identified during review of the Report of Referee.
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1 COURT CLAIM NO. 01279 -- GRM Ranch
2 Loyd Garrett
3 & Shirley Garrett
4 Richard Haas
5 & Jean Haas
6 Dennis L. Hankins
7 & Kathy P. Hankins
8 Pat Merritt
9 & Carolyn Merritt
10 Sharon Winslow
11 Fred S. Talerico

12 Court Claim No. 01279 was filed by GRM Ranch in 1981; subsequently, numerous
13 parcels of land have been sold off from the GRM Ranch properties. After filing
14 motions with the Court, the following property owners have been joined to Court
15 Claim No. 01279:

16 Betty R. Danubio
17 Loyd and Shirley Garrett
18 Walter H. and Dixie M. Goenner
19 Richard and Jean Haas
20 Dennis L. and Kathy P. Hankins
21 Pat and Carolyn Merritt
22 Fred S. Talerico
23 Sharon Winslow

24 Each of the additional parties listed above (except Walter H. and Dixie M.
25 Goenner) has presented evidence in support of their proportionate interest in GRM
26 Ranch's Younger Ditch water rights. Analysis of those records is contained either
27 in the original Report of Referee, Subbasin No. 5 (Elk Heights) or in this
28 supplemental report.

29 Richard T. Cole, attorney for GRM Ranch, filed exceptions with the Court in
30 response to the Report of Referee, seeking an opportunity to augment the record
31 for water rights to Younger Ditch associated with portions of the GRM Ranch
32 properties not encompassed by any of the ownerships referenced above. The Court
33 remanded Court Claim No. 01279 to the Referee for inclusion in the supplemental
34 hearing schedule.

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1 On April 22, 1998, Richard T. Cole represented property owners John
2 Basterrechea and Susan Storey; Myron and Betty Olson and John and Marilyn Uribe
3 who purchased, respectively, Lots 2 and 3, Lot 1 and Lot 4 of a short plat
4 developed by GRM Ranch (Properties). None of these owners have petitioned the
5 Court seeking to be joined to Court Claim No. 01279, although Mr. Cole stated
6 during the supplemental hearing that each would seek to be joined. Exhibit
7 No. DI-228 was reserved during the hearing for production of a copy of the plat
8 map for the 4-lot short plat and legal descriptions of each of the lots. That set
9 of documents was not delivered to the Referee's Office or the Clerk's Office;
10 therefore, Exhibit DI-228 does not exist. Richard T. Cole represented only the
11 owners of the lots discussed above at the supplemental hearing, not GRM Ranch
12 itself. Since the Olsons, Uribes and John Basterrechea and Susan Storey are not
13 parties to the adjudication, the Referee will review the testimony and prepare the
14 analysis for claimant GRM Ranch.

15 WRC No. 33846 filed by GRM Ranch in 1974 includes within the place of use the
16 $W\frac{1}{2}NE\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M. The short plat within which Uribe,
17 Olson, Basterrechea and Storey own lots is located within the $W\frac{1}{2}NE\frac{1}{4}$ of
18 Section 31. The four lots appear to encompass approximately 20 acres being 5 to
19 6 acres each as testified to by Susan Storey and Marilyn Uribe. Also providing
20 testimony regarding the history of this immediate area was Gary Fudacz, owner of
21 the land adjacent and to the north.

22 Mr. Fudacz bought his 10 acres from GRM Ranch in 1976 and has personal
23 knowledge of the remnant pipes and ditches on his property as well as an abandoned
24 pump which he removed some years ago. Mr. Fudacz surmised that the pump may have
25 been part of an old system employed by GRM Ranch to irrigate land south of his
26

1 property. He has lived in the Cle Elum area his entire life and was high school
2 age in the early 1960s. He recalls his friends helping harvest hay raised by GRM
3 on portions of their ranch. Details regarding specific fields and use of
4 irrigation water from Younger Ditch or any other source was not provided. He did
5 have an opinion that most of the land in the area would require irrigation to
6 produce a hay crop, although some dry land hay could be produced on the better
7 soil and/or low areas. Mr. Fudacz could not testify that any of the short plat
8 area discussed above had been irrigated since 1967.

9 The course of the south branch of Younger Ditch lies one-quarter mile or more
10 north and west of the the northwest corner of the short plat. A head ditch
11 leading from Younger Ditch to the short plat area was not identified by any
12 witness or exhibit, although Mr. Fudacz and Bernard Henshaw testified that the
13 most likely source of water would have been Younger Ditch via a head ditch
14 beginning somewhere west of the north south center line of Section 31, T. 20 N.,
15 R. 16 E.W.M. Gary Fudacz, Bernard Henshaw and Susan Storey testified that crops
16 were grown by GRM Ranch and that some irrigation water was used; however, no facts
17 were presented of a specific nature. Mr. Henshaw pointedly stated that he has had
18 personal involvement with the operation of Younger Ditch since 1964 and that no
19 water had been delivered to any of the short plat area during that time. He did
20 confirm that in years prior to 1964 much more land had been irrigated from the
21 south branch of Younger Ditch. The Fudacz and Storey testimony was very general
22 about irrigation, but does suggest some use within the original GRM Ranch
23 properties during the mid 1960s.

24 Currently, there is no use of Younger Ditch on Lots 1 through 4 of the short
25 plat and there is no definable plan to initiate such use by the owners. They do
26

1 profess an interest in retaining the right to begin using Yakima River water at
2 some future date.

3 The Referee is faced with a total lack of evidence of irrigation use since
4 the mid 1960's and only inferences of use earlier. The claimants contend that
5 their parcels are irrigable and that the Referee should recommend confirmation of
6 water rights in quantities consistent with other rights recommended on Younger
7 Ditch. The Referee finds that course of action problematic. First, the record
8 has not been created which proves a quantifiable historic use of irrigation water
9 on the short plat described previously. RCW 90.14.160 provides that effective on
10 July 1, 1967, any person who fails to use water for a period of five successive
11 years without sufficient cause shall relinquish such right or portion thereof.
12 The apparent nonuse since the mid-1960s and application of RCW 90.14.160 leads the
13 Referee to conclude that any water rights associated with the former GRM Ranch
14 land discussed herein have relinquished. The evidence does not indicate any use
15 of water on this land since the mid 1960s and there has been no sufficient cause
16 shown to prevent relinquishment, if in fact a water right was ever perfected. The
17 record would indicate that recent nonuse has been voluntary.

18 Given the deficiencies described above, the probable relinquishment and the
19 Referee's analysis regarding GRM Ranch in the original report (Page 84, Line 18½
20 through Page 85, Line 14½), the Referee finds there is insufficient evidence upon
21 which to recommend a water right for any of the current GRM Ranch property or for
22 Lots 1 through 4 of the short plat lying within the W½NE¼ of Section 31, T. 20 N.,
23 R. 16 E.W.M.

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1 Loyd Garrett & Shirley Garrett

2 Ecology requested clarification of a typographical error in the schedule of
3 rights on Page 150 at Line 7 of the Report of Referee, Subbasin No. 5 (Elk
4 Heights). The instantaneous quantity of 0.16 cfs is corrected to 0.15 cfs as
5 described on Page 83, Line 6. Loyd and Shirley Garrett did not make an appearance
6 at the supplemental hearing although they were notified by Ecology. The Garrett
7 property is served by Younger Ditch and is subject to the conveyance loss
8 provision discussed on Pages 7 and 8 of this report. The provision has been added
9 to the previously recommended water right for Court Claim No. 01279, Loyd and
10 Shirley Garrett.

11
12 Richard Haas & Jean Haas/Sharon Winslow

13 Claimants Richard and Jean Haas and Sharon Winslow independently own parcels
14 of land formerly owned by GRM Ranch. Their properties lie within the place of use
15 of Yakima River water claimed by GRM via Court Claim No. 01279.

16 GRM Ranch filed Court Claim No. 01279 and Betty R. Danubio was joined to the
17 claim for Tract 3 of Airport Road tracts consisting of 5.02 acres lying within the
18 $E\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$ and the $W\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M. Danubio short
19 platted Tract 3 of the Airport Road Tracts into Lots 3A, 3B and 3C and sold 3A
20 and 3B to Sharon Winslow and Lot 3C to Richard and Jean Haas. Winslow and Haas
21 were substituted for Danubio prior to completion of the Report of Referee,
22 Subbasin No. 5 (Elk Heights), Volume 38. The Referee recommended confirmation of
23 4 acres of irrigation and stock water jointly to Winslow and Haas.

24 Although neither Winslow or Haas filed exceptions to the Report of Referee,
25 on January 10, 1998, Richard and Jean Haas advised Ecology and the Attorney
26 General's Office that the 4 acres of irrigation recommended should be

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1 proportionately divided to reflect the separate ownerships. No other exception
2 was noted in the Haas letter except to note a typographical error in spelling
3 their name.

4 Ecology had requested clarification of the instantaneous quantity recommended
5 believing there was a discrepancy between the quantity on Page 81 and that on
6 Page 150; however, the Referee's review revealed there was no discrepancy. Haas
7 and Winslow's interest in Court Claim No. 01279 was remanded to the Referee along
8 with all of the other claimants who receive their Yakima River water through
9 Younger Ditch to consider the conveyance water issue, as discussed on Pages 7
10 and 8 of this report.

11 Richard Haas and Sharon Winslow attended the supplemental hearing for
12 Subbasin No. 5 on April 22, 1998, and testified in support of their respective
13 interests in Court Claim No. 01279. Winslow owns Lots 3A and 3B of Danubio Short
14 Plat of Airport Road Tracts Kittitas County Short Plat SP-91-02. These lots are
15 1.0 acre each and Younger Ditch flows west to east across 3A. The 2 acres have
16 historically been irrigated from Younger Ditch although they are not now being
17 irrigated. The property has no buildings, but an access road to the Haas property
18 runs down the west margin of both lots. Winslow plans to develop either homes or
19 duplexes on the lots and to irrigate the property as needed from Younger Ditch.
20 Sharon Winslow testified that she needed no more of the recommended 4 acres than
21 the 2 acres historically irrigated.

22 Richard Haas urged a 60% to 40% split of the 4 acres of irrigation based on
23 lot sizes, but ultimately agreed 2 acres of irrigation was more likely consistent
24 with the irrigable area within his parcel. About 1 acre of the 3-acre lot is a
25 man made lake or is used for a home and other improvements.

1 Based upon the facts presented and what the Referee understands to be
2 agreement between the claimants, separate recommendations will be made of 2 acres
3 each and the stock water will also be split evenly.

4 Richard and Jean Haas requested that their names be removed and Atlantic
5 Construction Engineers, Inc. Profit Sharing Plan and Trust be substituted.
6 Mr. Haas was advised that substitutions could only be accomplished through a
7 motion filed with the Court. Having seen no substitution paperwork, there will be
8 no name change and Richard and Jean Haas will remain as the claimants for Lot 3C.

9 The Haas and Winslow water rights as recommended will contain the "Limitation
10 of Use" provision as discussed on Pages 7 and 8 of this report.

11
12 Dennis L. Hankins & Kathy P. Hankins

13 On May 12, 1998, Dennis L. and Kathy P. Hankins filed with the Court a motion
14 seeking to be joined as parties to GRM Ranch, Court Claim No. 01279, which the
15 Court approved the same day. The supplemental hearing had been conducted by the
16 Referee on April 21 and April 22, 1998; therefore, the Hankins filed a motion with
17 the Court on May 20, 1998, seeking a hearing date to present the original evidence
18 for their portion of the GRM Ranch. The Court approved that motion remanding the
19 Hankins' claim to the Referee for a hearing on July 9, 1998. Dennis Hankins
20 represented himself at that hearing and provided testimony regarding use of
21 irrigation and stock water on their 3.73 acre property since they purchased it in
22 1990.

23 The source of water is the Yakima River delivered via the south branch of the
24 Younger Ditch. A pump is installed on Younger Ditch on the Hankins property and
25 delivers up to 70 gallons per minute (gpm) to a sprinkler system for irrigation of
26 pasture. Between eight and fifteen sprinklers are utilized depending upon the

1 portion of the 3.5 acre pasture being irrigated. Cattle are grazed on the
2 property and have access to the channel of Younger Ditch for water during the
3 irrigation season. The pump is installed 50 feet south and 50 feet east of the
4 northwest corner of Section 31, T. 20 N., R. 16 E.W.M. being within Government
5 Lot 1 of said section. The place of use is Parcel A of that certain Short Plat
6 recorded in Volume 16 on Page 131 of the Records of Kittitas County being a
7 3.73 acre portion of Government Lot 1, Section 31, T. 20 N., R. 16 E.W.M. lying
8 south of the Cle Elum Airport Road and north of Highway 97.

9 Mr. Hankins did not testify as to the annual quantity of water required for
10 his pasture irrigation therefore the Referee will rely on testimony provided by
11 Richard Bain, consulting engineer for claimant Bernard I. Henshaw, a neighboring
12 water user, for the analysis of the annual water duty.

13 The Henshaw property is located northerly of the Hankins parcel on the north
14 branch of Younger Ditch. The soils are very similar and both properties are
15 irrigated via sprinkler systems; therefore, the water duty of 6 acre-feet per acre
16 recommended for the Henshaw property is appropriate or a total of 21 acre-feet per
17 year for the 3.5 acres irrigated. The record presented by the various claimants
18 who receive Yakima River water via Younger Ditch establishes historic irrigation
19 of portions of the GRM Ranch land including the portion now owned by the Hankins.
20 Mr. Hankins also testified that they have irrigated constantly since 1990 or 1991
21 and have had livestock on the property.

22 The priority date for Younger Ditch is June 5, 1886 (see Pages 7 through 10
23 of the Report of Referee, Subbasin No. 5 (Elk Heights) for the history of Younger
24 Ditch development).

1 The ditch loss in Younger Ditch is 20% of the flow from the point of
2 diversion from the river to the split where the south branch of Younger Ditch
3 begins (about 1500 feet west of the Hankins property). The ditch losses in the
4 south branch are 25% per 1000 lineal feet of ditch or $37\frac{1}{2}\%$ for the 1500 feet to
5 the Hankins property or 0.10 cfs for the combined loss from the river to the
6 Hankins pump. The pump capacity is 0.156 cfs.

7 The several cattle which use water from Younger Ditch drink a minimal
8 quantity of water therefore an instantaneous quantity of 0.01 cfs and an annual
9 quantity of 0.5 acre-feet is recommended for that purpose. The Referee recommends
10 confirmation of a water right for irrigation of 3.5 acres and stock water from
11 April 20 through September 30 with an instantaneous quantity of 0.156 cfs and an
12 annual quantity of 21 acre-feet for irrigation; 0.01 cfs, 0.5 acre-feet per year
13 for stock water and 0.10 cfs to satisfy the ditch loss in Younger Ditch. In order
14 to ensure adequate flow in Younger Ditch to satisfy the ditch losses a special
15 provision will be added to this recommended water right (see Pages 7 and 8 of this
16 report).

17
18 Pat & Carolyn Merritt

19 Pat and Carolyn Merritt did not file an exception to the Referee's
20 recommendation for their water right delivered via Younger Ditch and did not make
21 an appearance at the supplemental hearing. They had been advised that Ecology
22 would be pursuing inclusion of a water conveyance provision on each claimant's
23 recommended right under the Younger Ditch priority date of June 5, 1886. The
24 Merritt property does enjoy a proportionate share of the Younger Ditch water
25 right; therefore, the provision as discussed on Pages 7 and 8 of this report has
26 been added to the recommended water right.

1 Fred Talerico

2 Fred Talerico was joined as an additional party to Court Claim No. 01279, GRM
3 Ranch (GRM), on May 26, 1998. The Court approved reopening the record regarding
4 Court Claim No. 01279 to allow additional testimony and exhibits. Mr. Talerico
5 was scheduled to present his evidence to the Referee on July 9, 1998. He appeared
6 at the appointed time, represented himself, testified and offered one exhibit into
7 the record (DE-234, a plat map).

8 Historic water use on the portion of the GRM property which Mr. Talerico owns
9 was not specifically established at the original evidentiary hearing.

10 In 1974 WRC No. 003845 was filed with Ecology by John Mus representing
11 GRM Ranch. That claim asserts a right to 3.0 cfs of Yakima River water diverted
12 through Younger Ditch. Mr. Talerico's property is within the place of use
13 described on WRC No. 003845 and is served via Younger Ditch.

14 Fred Talerico purchased Tract A from GRM in 1973 and then the adjoining
15 Tract B in 1976. These parcels lie within the $N\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$ and/or the $N\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$ of
16 Section 31, T. 20 N., R. 16 E.W.M. Tract A was subsequently sold to
17 Mr. Talerico's parents, Frank and Doris Talerico, in 1980. Fred Talerico is
18 asserting a right to irrigate $3\frac{1}{2}$ acres of Tract B which is about 5 acres in size.

19 The crops vary from pasture to hay from year to year and a sprinkler system
20 is used to deliver 50 gpm from Younger Ditch via a 1 horsepower (hp) pump. Fred
21 Talerico did not testify about the annual quantity of water he uses; therefore,
22 the Referee will rely on the evidence presented by Richard Bain, a consultant
23 hired by other Younger Ditch users. Portions of GRM Ranch have been irrigated for
24 production of forage crops since before 1900 and includes part of the land served
25 at the time the Younger Ditch was constructed. Tract B has more or less been
26

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1 actively farmed and irrigated since the first delivery of water through Younger
2 Ditch. Mr. Talerico has irrigated $3\frac{1}{2}$ acres since 1976. Stock grazing on the
3 property drink from an excavated pond or a small stream which enters the property
4 from the west; therefore, the non-diversionary stock water stipulation described
5 on Page 5 of the Report of Referee, Subbasin No. 5 (Elk Heights) is applicable to
6 Fred Talerico's property and his name shall be added to the list of claimants on
7 Page 139.

8 The priority date for water rights for the Younger Ditch to the Fred Talerico
9 property is June 5, 1886, and the period of use is April 20 through September 30.
10 The annual water duty is 6.0 acre-feet per acre as established through testimony
11 of Richard Bain in behalf of Bernard Henshaw. Thus, the $3\frac{1}{2}$ acres irrigated on the
12 Fred Talerico parcel would require 21 acre-feet per year. The instantaneous
13 quantity recommended is 0.11 cfs which generally equates to the capacity of the
14 1 hp pump used to deliver water from Younger Ditch to the current sprinkler
15 system. The ditch loss component for this property would be essentially the same
16 as the 0.125 cfs recommended for Court Claim No. 05671, Frank and Doris Talerico.
17 Their property lies immediately adjacent to Fred Talerico's property to the north.

18 The Fred Talerico place of use is described as follows:

19 Beginning at the north quarter corner of Section 31, T. 20 N.,
20 R. 16 E.W.M.; thence east along the north section line of said
21 Section 31 305 feet; thence S $0^{\circ}32'39''$ W 487.70 feet to the true point
22 of beginning; thence continuing S $0^{\circ}32'39''$ W 218.36 feet; thence
S $89^{\circ}47'15''$ W 787.79 feet; thence N $0^{\circ}32'19''$ E 334.32 feet; thence
S $81^{\circ}48'57''$ E 794.88 feet to the point of beginning.

23 As discussed in the "Special Issue" section on Pages 7 and 8 of this report,
24 the individual ditch losses will be totaled and a limitation of use provision will
25 be added to each recommended water right under the Younger Ditch.

1 COURT CLAIM NO. 01137 -- Harold B. Iverson
2 & Joann Iverson

3 Harold B. and Joann Iverson filed exceptions regarding the Report of Referee,
4 Subbasin No. 5 (Elk Heights) seeking an opportunity to augment the record as to
5 historic irrigation practices and to provide the chain of title for their land.
6 Richard T. Cole, attorney, represented the Iversons at the supplemental hearing on
7 April 21, 1998. Harold B. and Joann Iverson represented themselves at the
8 original hearing on April 30, 1991, providing testimony and introducing exhibits.
9 The Iversons and Joseph Ozbolt testified in support of Court Claim No. 01137 at
10 the supplemental hearing on April 21, 1998.

11 The claimants established that all of their land in Section 36, T. 20 N.,
12 R. 15 E.W.M. was formerly owned by the State of Washington, being part of the
13 trust lands for schools. They contend that the land passed by multiple deeds into
14 private ownership prior to 1917 and before the end of 1932 all of their land was
15 being irrigated and water used for stock and other farm uses. It appears that the
16 current Iverson ownership in the S $\frac{1}{2}$ of Section 36, T. 20 N., R. 15 E.W.M. derives
17 from portions of at least three separate chains of title. The NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and
18 N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 36 was sold by the State to H. R. Weatherall on November 2, 1900
19 (Exhibit DE-218), and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of the section was sold by the State to
20 S. T. Packwood on June 6, 1902. The balance of the Iverson property lies within
21 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36. Evidence was not produced as to when and to whom the
22 State transferred the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 20 N., R. 15 E.W.M. The only deed
23 included in the record for that portion of the Iverson property is dated April 3,
24 1943, when the Iverson family acquired the land from Teofil Malawy.

25 The NE $\frac{1}{4}$ SW $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 36, T. 20 N., R. 15 E.W.M. are riparian to
26 the Yakima River and the unnamed stream. Therefore, the priority date for that

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1 land would be based upon the earliest date in the record leading to separation of
2 the land from the public domain. That date is February 22, 1889, when the
3 Washington State Enabling Act was signed into law. That act was the inception of
4 school trust lands for the future State of Washington.

5 It was agreed during presentation of the Iverson testimony at the
6 supplemental hearing that Exhibit DE-218 would be reserved for claimants to
7 produce a chain of title and copies of selected deeds. The post hearing briefing
8 schedule provided for submission of reserved exhibits. Mr. Cole filed with the
9 Court on June 29, 1998, documents (assigned number 13205) including the
10 transmittal letter, a partial title sheet and a copy of a November 2, 1900, deed
11 from the State of Washington to W. R. Weatherall for 160 acres. These documents
12 have been marked Exhibit DE-218. There are two significant attributes to the
13 documents which need to be considered. First: DE-218 seems to contradict a deed
14 contained in DE-217. Both deeds are dated the same and describe a land sale by
15 the State to H. R. Weatherall for a portion of Section 36, T. 20 N., R. 15 E.W.M.
16 Exhibit DE-218 is handwritten and DE-217 is typed. DE-217 describes an 80-acre
17 tract of land, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, whereas DE-218 describes
18 that 80 acres plus the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 36 for a total of 160 acres. It appears
19 to the Referee that DE-217 is a typed copy of DE-218, and the typed version
20 contains a typographical omission of the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 36. With that
21 conclusion drawn, the Referee will rely upon the deed contained in DE-218.
22 Second: The chain of title sheet is not complete. It contains no identification
23 as to the section, township and range and the heading appears to have been altered
24 during copying. The Referee believes that the chain of title sheet does relate to
25
26
27

1 Section 36, T. 20 N., R. 15 E.W.M.; but cannot rely on it due to these
2 deficiencies.

3 The tract of land without adequate chain of title documents is the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
4 Section 36. Since this 40 acres was not riparian to the unnamed stream, evidence
5 of historic water use prior to June 6, 1917, is needed to prove the existence of a
6 water right. Additionally, the only early ownership information in the record for
7 the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 36 is the deed from the State to Weatherall in 1900.

8 The Iversons contend that the deed for the sale of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36,
9 T. 20 N., R. 15 E.W.M. from Annie and Joseph Gongo to Teofil Malawy proves that
10 all the Iverson property has early water rights. That June 16, 1921, deed (see
11 DE-218) has a provision which states the following: "Included herewith is all
12 water and water rights belonging or appurtenant to said lands." Taking that
13 statement at face value and looking at the area of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36
14 currently irrigated by Iverson with creek water (see DE-34 and DE-216 maps),
15 17 acres appear to be down gradient from the ditches. The two $\frac{1}{2}$ hp pumps used by
16 the Iversons for their lawns and gardens appear to be for areas immediately
17 adjacent to the creek in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36. Testimony indicates this area
18 is where the Teofil Malawy home and gardens were located in the 1920s. The
19 estimated 17 irrigated acres mentioned above in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ includes the current
20 domestic irrigation uses.

21 Because of the gaps in the chain of title for the N $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
22 Section 36, T. 20 N., R. 15 E.W.M., the evidence of historic use in 1921 by Teofil
23 Malawy is not helpful. Malawy does not appear in the chain of title for the N $\frac{1}{2}$ SE $\frac{1}{4}$
24 of Section 36, 9.354 acres of which Iverson bought from Charles Landes on
25 March 30, 1951. The January 10, 1912, chain of lien filed by Baker-Taylor Lumber
26

1 Company against Teofil Malawy does not warrant any particular weight because the
2 land involved was in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 20 N., R. 15 E.W.M., outside the
3 Iverson ownership. Teofil Malawy's ownership of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36,
4 T. 20 N., R. 15 E.W.M. in 1910 is also of no significance because Iverson does not
5 irrigate any land in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36, T. 20 N., R. 15 E.W.M. with water
6 diverted from the unnamed stream.

7 Iversons' map (DE-34) shows about 11 acres irrigated in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
8 Section 36 and 17 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36. The Iversons contend that
9 Malawy was irrigating all of this land at least by the 1920s; however, they have
10 provided no evidence that he ever owned this land.

11 The Bain report (DE-216) establishes that prior to the Kittitas Reclamation
12 District (KRD) Canal turn on date in April, there is 3.2 cfs available in the
13 unnamed stream from natural flow sources. Although Mr. Bain did not provide flow
14 measurements at the Iverson property for any date except April 17, 1998, his
15 report for the Rothlisberger property (DE-188) does contain measurements on a very
16 similar stream at a location $\frac{3}{4}$ mile south-southwest from the Iverson measurement
17 point (Diversion No. 2). The Referee refers to that exhibit because it shows that
18 mid-April flows are likely to be the highest natural flow of most years. Mr. Bain
19 estimated over the irrigation season a reasonable expectation would be that the
20 natural flow would decline resulting in an average flow for the irrigation season
21 of 70% of the measured April flow. In the case of Iversons' unnamed stream
22 source, that would calculate to be 2.24 cfs. Mr. Bain suggests that these small
23 lowland streams should be expected to decline during the late summer and early
24 fall to half the normal spring flows. The significance of this discussion is that
25 the typical summer diversion of 5.0 cfs on the Iverson property would be more than
26

1 half return flow from KRD water. A maximum of 3.2 cfs of natural flow has been
2 established by Richard Bain early in the irrigation season with as much as 50%
3 reduction during summer and fall.

4 The annual crop demand estimated by Mr. Bain of 11.6 and 13.3 acre-feet per
5 acre, respectively, for Field 1 and Fields 3, 4 and 5 are reasonable for the
6 crops, soils and geographic area when rill irrigation is used. Therefore, the
7 Referee has employed those quantities to calculate the annual water duty for
8 Field 1 (comprised of 6 acres) and the 11 acres of Fields 3 and 4 located within
9 the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36. Field 1 requires 69.6 acre-feet and a diversion of
10 1.0 cfs. The point of diversion is located 500 feet south and 500 feet west of
11 the center of Section 36, T. 20 N., R. 15 E.W.M., being located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$
12 of said Section 36. The place of use is described as that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$
13 lying northerly of the former C.M. ST. P. and P. Railroad right of way (now John
14 Wayne Trail). The priority date is February 22, 1889.

15 Fields 3 and 4 receive water diverted from the unnamed stream at a point
16 1175 feet north and 900 feet west of the south quarter corner of Section 36 via a
17 gravity flow ditch. The natural flow available from this point during the early
18 irrigation season has been established by Richard Bain to be 3.2 cfs. The Bain
19 report does not establish the instantaneous flow required for each field. It is
20 necessary to break down the 5.0 cfs typically diverted into the ditch serving
21 Fields 3, 4 and 5 to reflect that portion delivered to the 11 acres lying within
22 the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36. Lacking testimony or documents directly relating to the
23 per acre flow rate, the Referee has elected to use the same flow recommended for
24 Field 1 or 1.0 cfs for 6 acres of irrigation (0.167 cfs per acre). With that
25 instantaneous demand, 11 acres would require 1.84 cfs. The annual crop demand is
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1 146.3 acre-feet for the 11 acres served by this ditch and the two $\frac{1}{2}$ hp pumps used
2 for the two Iverson homesites with the total diversion not to exceed 1.84 cfs.
3 Those pumps are located 1275 feet north and 750 feet west of the south quarter
4 corner of Section 36, in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and 1300 feet south and 775 feet west from
5 the center of Section 36, in the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, all in T. 20 N., R. 15 E.W.M. The
6 place of use is in that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36 lying southerly of the
7 John Wayne Trail.

8 Stock water use is incidental to delivery of irrigation water through fields
9 where stock are grazing; therefore, no separate instantaneous or annual quantity
10 of water is recommended for diversionary stock water use.

11 The Referee cannot recommend confirmation for any diversionary water use on
12 land lying within the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 36, T. 20 N., R. 15 E.W.M. due to lack of
13 early chain of title documentation and evidence of historical beneficial use on
14 this portion of the Iverson property. Although the Iversons assert that Malawy
15 owned the entire ranch from before 1917, the evidence does not exist to support
16 that assertion. Of particular importance to further water right determinations is
17 the chain of title information for the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36,
18 T. 20 N., R. 15 E.W.M. Possibly, a small corner of Field 5 lies within the S $\frac{1}{2}$ SW $\frac{1}{4}$
19 of Section 36 (see DE-216 and DE-34).

20
21 COURT CLAIM NO. 01678 -- Jerry N. McLane
22 & Marcllyn A. McLane

23 On June 23, 1998, the Court approved joining the McLanes as additional
24 parties to Court Claim No. 01678 and on July 9, 1998, granted their motion to
25 reopen the record for the supplemental hearing for Subbasin No. 5 (Elk Heights).
26 The McLanes were represented by their attorney, Jeff Slothower, at the

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1 evidentiary hearing conducted by the Referee on July 9, 1998.

2 The McLanes purchased 15 acres from Frank James and Nancy M. Maglietti in
3 1983 and an additional 10 acres in 1985. They were not joined to the Maglietti
4 Court Claim No. 01678 nor were they aware of the Yakima River Adjudication.
5 Cecil F. and Joanne B. Carveth also acquired 10 acres of the Maglietti property in
6 1985 and were joined to Court Claim No. 01678 in 1991. The Report of Referee,
7 Subbasin No. 5 (Elk Heights) at Pages 54 through 56 and Page 148 describes the
8 analysis of the Carveth claim to a portion of the Younger Ditch water right and
9 recommends confirmation of 10 acres of irrigation and stock water from the Yakima
10 River. That analysis, along with the evidence upon which the Younger Ditch right
11 to Yakima River water was based, is relied upon by the Referee in consideration of
12 the McLane claim due to the common property origin and historic water use. The
13 history of the development of the Younger Ditch is discussed in detail on Page 7
14 of the Report of Referee, Subbasin No. 5 (Elk Heights). As was the situation in
15 the Carveth analysis, the testimony of Richard Bain, Page 86 of the Report of
16 Referee, provides pertinent water duty and ditch loss information.

17 Jerry N. McLane testified at the July 9, 1998, hearing and five exhibits were
18 admitted into the record. Mr. McLane testified as follows when his attorney
19 inquired about aerial photo DE-157 and prior irrigation of their land: "I
20 understand it was at one time." McLane asserts that the Magliettis replanted
21 15 acres that lie within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the W2/3 of the north 15 acres of the
22 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M. in 1981 or 1982 and that no remnant
23 ditches were evident when the McLanes bought. The McLanes have not irrigated the
24 property since they acquired the 15 acres in 1983 and 10 additional acres in 1985;
25 however, they plan to use a 5 hp electric pump and a sprinkler system which they
26

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1 purchased in 1998. The Referee utilized Exhibits DE-236, DE-237 and SE-2 to
2 define the place of use described herein.

3 The Referee has consistently held that initiation of this adjudication in
4 October of 1977 stopped the clock on potential relinquishment of unused water
5 rights pursuant to RCW 90.14.160-.180. The basis for this position was
6 RCW 90.14.140(1)(d), which states that a sufficient cause for nonuse of water is
7 the operation of legal proceedings. Since the Referee has considered this
8 adjudication to be a "legal proceeding," relinquishment was not an issue if a
9 right was not exercised only during the time since the adjudication was
10 initiated. However, a recent Washington State Supreme Court decision brings that
11 practice into question. In the case of R. D. Merrill v. State, Pollution Control
12 Hearings Board, (Merrill), 137 Wn.2d, 118, (1999) the Court held that the legal
13 proceeding had to prevent the use of water in order for there to not be a
14 relinquishment. Since the McLanes did not know that the Yakima River Adjudication
15 was happening until 1998 and were absentee owners until 1996, it is apparent that
16 the nonuse was voluntary and did not result from the operation of the adjudication
17 proceeding. In any case, a general adjudication may introduce uncertainty as to
18 the validity and extent of the claimants' water rights but does not prevent use of
19 water. Therefore, the Referee must find that the right has been relinquished.
20 The Referee finds this conclusion to be particularly troubling since the Carveth
21 portion of the former Maglietti property has been recommended for approval of a
22 10-acre irrigation right. The facts in each are nearly identical with only the
23 Merrill case distinguishing. The Referee has followed the case law leaving any
24 equity ruling regarding application of Merrill, supra to the Court.

1 COURT CLAIM NO. 01290 -- Stanley E. Moore

2 Claimants Stanley and Hazel Moore filed exceptions with the Court regarding
3 the Referee's failure to recommend an irrigation water right under Court Claim
4 No. 01290. The Moores sought an opportunity to augment the record which the Court
5 granted.

6 Stanley Moore testified on April 22, 1998, at the supplemental hearing
7 conducted by the Referee. Exhibits DE-147 (claimant summary for the Moores) and
8 DE-148 (chain of title summary sheet and associated document copies) were admitted
9 into the record. Richard T. Cole, attorney, represented the Moores at the hearing.

10 The claimants' exception characterizes the Referee's recommendation to not
11 confirm a water right to be based on the content of the August 16, 1913, United
12 States Bureau of Reclamation (USBR) Limiting Agreement for Younger Ditch. The
13 Referee did point out areas of the agreement which raise questions as to the
14 perfection of a Yakima River water right via Younger Ditch for the Moore (formerly
15 Haas/Mayta) property. However, the lack of a recommended water right was due to
16 insufficient evidence to show that a water right was legally established for the
17 land (see Page 103, Lines 3½ to 5½).

18 The supplemental evidence produced by Moore unfortunately raised more
19 questions than it provided answers. Exhibit DE-230 (photo set) was put in the
20 record to establish that old irrigation pipes and ditches exist in the pasture
21 area of about 4 acres. Testimony by Stanley Moore clearly described the direction
22 of water flow would have been from south of the railroad and highway northerly, in
23 a pipe, into the south edge of the Moore property. The former source of water for
24 this system was not identified and, according to testimony of Mr. Moore, the
25 distribution system is not now operable nor has it been used since at least 1974
26

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1 when Mr. Mayta died. The Referee noted on Exhibit SE-I that the Yakima River
2 flows through the northwest quarter of Section 4, T. 19 N., R. 16 E.W.M. not far
3 southwest from the pipe and ditch system described above. This location is
4 approximately five miles downstream from the point of diversion for Younger Ditch.
5 The Moores are asserting a right to the Yakima River via Younger Ditch; however,
6 Younger Ditch ends several hundred feet northwest of the Moore property and could
7 not physically contribute to water flowing as described by Mr. Moore. Moore has
8 not established the relationship between what appears to be a water source from
9 the south of the property and a creek which enters the northwest corner of the
10 property and is identified as carrying return flow from the end of Younger Ditch
11 or return flow from fields served by Younger Ditch. Stanley Moore testified at
12 the supplemental hearing that no water is used for irrigation from the creek or
13 ditch/flume system now. Hazel Moore testified at the original evidentiary hearing
14 to use of lawn and garden water from the creek and in 1991 the Ecology field
15 inspector observed a 1½ hp pump on the creek at a point 250 feet south and
16 950 feet west from the north quarter corner of Section 4, T. 19 N., T. 16 E.W.M.
17 The Moores do not intend to use any irrigation water from the ditch/flume system
18 in the future, but do plan to pump from the creek at some unspecified future date.

19 WRC No. 130081, filed by Jean Mayta, is the only water right claim filed for
20 the Yakima River in the vicinity and which includes within the described place of
21 use the Moore property. It describes a point of diversion within Section 4,
22 T. 19 N., R. 16 E.W.M. for the irrigation of 110 acres. The point of diversion for
23 Younger Ditch is within the NW¼NE¼ of Section 35, T. 20 N., R. 15 E.W.M. about 4
24 to 5 miles upstream.

1 There continues to be no evidence of historical water use on the Moore
2 property via Younger Ditch deliveries. Additionally, there has been no evidence
3 of water use on the property, except possible lawn and garden irrigation and stock
4 water, since prior to 1974. The statement of Jean B. Mayta on WRC No. 130081
5 indicates there was no use of Yakima River water in June of 1974. Court Claim No.
6 01290 filed by Stanley E. Moore states the following: "Water was originally used
7 for irrigation purposes on the land above described, however, that use has
8 terminated and the water has, for many years, been used solely for stock water."
9 No record of actual use from the creek before 1917, or for that matter
10 December 31, 1932, has been created. Although Hasse and Mayta owned the S $\frac{1}{2}$ NW $\frac{1}{4}$ and
11 Government Lot 3 of Section 4, T. 19 N., R. 16 E.W.M. during the period from 1898
12 through 1977, the only linkage to Younger Ditch is the original agreement to form
13 a partnership ditch to which Hasse was a signatory in 1904. There is no evidence
14 that the ditch ever served what is now the Moore property, nor is there definitive
15 evidence about any water use. The ditch system described by Moore and depicted in
16 Exhibit DE-230 appears to have been used by Mayta on the Moore property, but the
17 water source is unknown as is the date of first use and the last date water was
18 used. There also is no Ch. 90.14 RCW water right claim that describes the Younger
19 Ditch diversion for the Moore property.

20 Based upon the current record, it appears that even if evidence could be
21 produced to support the perfection of a water right and that WRC No. 130081 is
22 applicable, any such right has been relinquished due to RCW 90.14.160-180 and
23 nonuse.

24 The Referee cannot recommend confirmation of an irrigation right from the
25 Yakima River under Court Claim No. 01290, Stanley and Hazel Moore.

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1 During review of the Report of Referee, Subbasin No. 5 (Elk Heights)
2 regarding Court Claim No. 01290, it was discovered that the Moores were not
3 included in the list of riparian non-diversionary stock water rights on Page 139,
4 although the narrative discussion describes the historic use of the property for
5 grazing and animal access to the stream for water. Therefore, the list on
6 Page 139 is hereby revised to include Stanley and Hazel Moore as having
7 non-diversionary stock water and wildlife rights.
8

9 COURT CLAIM NO. 01280 -- Robert R. Roseburg
& Enid Roseburg

10 Robert and Enid Roseburg's attorney, Richard T. Cole, filed an exception to
11 the Report of Referee, Subbasin No. 5 (Elk Heights). Roseburg seeks revision of
12 the Report of Referee to reflect a second point of diversion from the same spring
13 fed stream. No other change in the water right recommended by the Referee is
14 requested.

15 Upon review of the transcript and exhibits from the original evidentiary
16 hearing, the Referee acknowledges that two points of diversion were described as
17 historically used for irrigation.

18 The stream flow in excess of the quantity diverted at Point of Diversion
19 No. 1 flows north along the west line of Section 2 parallel to the 10-inch gated
20 irrigation pipe. At a point 400 feet south of the northwest corner of Section 2,
21 T. 19 N., R. 15 E.W.M., a concrete structure diverts water into a 2½-inch pipe
22 which runs due east to the farmstead and a 2-acre field east of the farmstead. A
23 booster pump supplies sprinkler pressure for irrigation of this field. The 2-acre
24 oat field described in the place of use on Page 143 of the Report of Referee is
25 the subject field. The second point of diversion as described above is added to
26

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the recommended water right on Page 143 of the Report of Referee and is reflected on Page 67 of this Supplemental Report of Referee.

COURT CLAIM NO. 01296 -- The Estate of John E. Rothlisberger
Pete White
 & Christa White
Lonny White
Michael White

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

The above claimants, through their attorney Richard T. Cole, filed exceptions to the Report of Referee, Subbasin No. 5 (Elk Heights). The claimants are heirs of the John E. Rothlisberger Estate. At the time each claimant was added to Court Claim Nos. 01296, 01297 and 01298, they provided legal descriptions of their respective ownership interests in the estate. The Referee recommended confirmation of three water rights in the original Elk Heights report, all with the Estate of John E. Rothlisberger as the principle claimant. An attempt was also made to recognize the ownership interests as between the heirs. That designation was not excepted to by the claimants; therefore, the Referee will use the same approach in this supplemental report.

The individual parcels as described at the time the additional claimants were added are as follows:

Jean Maria Purple: $E\frac{1}{2}E\frac{1}{2}E\frac{1}{2}W\frac{1}{2}SE\frac{1}{4}$ of Section 3 and $W\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$ of Section 10, all in T. 19 N., R. 15 E.W.M. Richard White: $E\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$ of Section 10 and that portion of the $W\frac{1}{2}E\frac{1}{2}E\frac{1}{2}W\frac{1}{2}SE\frac{1}{4}$ of Section 3 lying southerly of the Kittitas Reclamation District Canal, all in T. 19 N., R. 15 E.W.M.

Michael White: Government Lot 2 of Section 1, T. 19 N., R. 15 E.W.M.

Lonny White: The west 30 acres of Government Lot 4 of Section 1, T. 19 N., R. 15 E.W.M.

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1 Christa White and Peter A. White: 42.15 acres lying within
2 Government Lot 3 and the east quarter of Government Lot 4 in
3 Section 1, T. 19 N., R. 15 E.W.M.

4 The first exception of the claimants relates to the spring fed stream, which
5 runs northerly through the $W\frac{1}{2}W\frac{1}{2}NW\frac{1}{4}$ of Section 1, T. 19 N., R. 15 E.W.M. (see
6 Page 117 of the Report of Referee, Lines 1 through 13 $\frac{1}{2}$). The Referee lacked
7 evidence regarding the natural flow in the stream versus Kittitas Reclamation
8 District (KRD) return flow; therefore, a water right was not recommended for
9 confirmation. The Court has consistently held that rights cannot be awarded for
10 use of return flow generated by project or imported water. The claimants took
11 exception with the lack of confirmation and sought an opportunity to clarify the
12 record.

13 Peter White testified at the supplemental hearing on April 21, 1998, and a
14 report prepared by consulting engineer, Richard C. Bain, Jr. was admitted into
15 evidence as Exhibit DE-188.

16 The Bain letter/report contains stream flow measurements on an unnamed spring
17 fed creek and a discussion of the fields served with water diverted from the
18 creek. A description of the measurement location was included; i.e., "at a
19 concrete diversion structure south of Dozier Road." Testimony by Peter White
20 established that point as being 750 feet north and 500 feet east of the west
21 quarter corner of Section 1. Flows measured during the nonirrigation season in
22 late 1997 and early 1998 ranged from a low of 0.36 cfs in early February to
23 0.71 cfs on April 10, 1998, before the KRD Canal was operating. There was a 60%
24 decline measured from September 12, 1997, to November 2, 1997, reflecting the
25 canal shut down effect on stream flow.

1 The claimant asserts that the natural flow quantity should be acknowledged as
2 being as much as 0.70 cfs during the early irrigation season. The Referee agrees
3 that based on the Bain report during portions of most years 0.70 cfs is a
4 reasonable instantaneous quantity.

5 The Bain report specifically identifies only 5½ acres irrigated from this
6 stream with ½ acre solely from the creek and 5 acres supplemented via KRD
7 deliveries. In contrast, Peter White testified that water from this stream can be
8 delivered to a total area of 55½ acres via two earthen ditches served by the
9 diversion located 750 feet north and 500 feet east from the west quarter corner of
10 Section 1, T. 19 N., R. 15 E.W.M. Ecology's field inspectors reported 63 acres of
11 irrigation based on a May 25, 1990, inspection.

12 The claimants argue that the Elliason Notice of Appropriation dated June 10,
13 1886, establishes the appropriate priority date for this diversion. Although
14 Elliason asserted control of Section 1, T. 19 N., R. 15 E.W.M. in 1886, that
15 section was owned by the Northern Pacific Railroad, being one of the sections
16 granted to the railroad by the United States via a patent dated January 16, 1896.
17 The map of definite location for the Kittitas Valley railroad sections is dated
18 May 24, 1884. That date has been used by the Referee as the priority date for any
19 water right developed under the Riparian Doctrine on former railroad land. It
20 seems clear in this instance that irrigation development had occurred in
21 Government Lots 2, 3 and 4 of Section 1 before December 31, 1932. Therefore, the
22 Riparian Doctrine applies and the appropriate priority date is May 24, 1884, for
23 the irrigation in Government Lots 2, 3 and 4 in Section 1, T. 19 N., R. 15 E.W.M.

24 The extent of the irrigation within Government Lots 3 and 4 of Section 1,
25 T. 19 N., R. 15 E.W.M. in 1932 is asserted to be essentially as it exists today.

1 Both John E. Rothlisberger and Peter White testified regarding the history of
2 irrigation in the area. A deed which transferred Government Lots 3 and 4 from
3 John Pays to A. J. Carrico dated December 18, 1939, specifically describes a small
4 irrigation ditch which served 5 acres along the west edge of the $W\frac{1}{2}W\frac{1}{2}NW\frac{1}{4}$ of
5 Section 1, T. 19 N., R. 15 E.W.M. and conveyed all ditches and water rights. The
6 Referee is convinced that the unnamed stream was used to irrigate substantial
7 portions of Government Lots 3 and 4 of Section 1 before the end of 1932 to the
8 extent water was available.

9 A water right is recommended from an unnamed spring fed stream with a
10 priority date of May 24, 1884, in the quantity of 0.70 cfs for irrigation of
11 55.5 acres and stock water from April 1 through October 31. Based on the Bain
12 analysis, the average natural flow availability over the irrigation season could
13 be expected to be about 1 acre-foot per day (0.50 cfs average flow). Calculating
14 by using a 214-day irrigation season and 1 acre-foot per day, 212 acre-feet for
15 irrigation and 2 acre-feet for stock water can be utilized.

16 The point of diversion is 750 feet north and 500 feet east from the west
17 quarter corner of Section 1, T. 19 N., R. 15 E.W.M. being within the $NW\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$ of
18 said Section 1. The place of use is Government Lots 3 and 4 of Section 1.

19 Peter White testified that Rabbit Creek is a separate water course and is not
20 the appropriate name for the unnamed stream running north through the $W\frac{1}{2}E\frac{1}{2}$ of
21 Section 1, T. 19 N., R. 15 E.W.M. for which a water right was awarded. Therefore,
22 Line 17 $\frac{1}{2}$ on Page 152 of the Report of Referee is changed to read "Unnamed
23 stream." The references to Rabbit Creek on Page 115, Line 4 $\frac{1}{2}$ and Page 116,
24 Line 5 $\frac{1}{2}$ are also inappropriate and are hereby stricken. An exception was not
25 filed regarding the priority date for this recommended water right; however, since
26

1 the Riparian Doctrine is the basis for the right, the Referee recommends that the
2 priority date on Page 152, Line 22 be revised to reflect May 24, 1884, based on
3 the map of definite location for the railroad lands. The Referee also noted
4 during review of the recommended water right on Page 152 that the limitations of
5 use regarding availability of KRD water was inadvertently omitted. To be
6 consistent, the KRD advisory provision is being added.

7 Claimants Jean Purple and Richard White took exception to the Report of
8 Referee due to a right not being recommended for domestic use from the spring
9 located in the E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T. 19 N., R. 15 E.W.M. SWC No. 11655
10 authorized use for both single domestic and stock water. John E. Rothlisberger
11 testified that no domestic use was being made of the spring water and none was
12 planned; therefore, the Referee recommended that a right only for stock water be
13 confirmed. Peter White testified at the supplemental hearing that a private use
14 agreement between John E. Rothlisberger and an adjoining property owner allowed
15 use of the spring overflow for a domestic supply. The certificate authorizes use
16 of water within a specific area and there is no evidence that the procedures of
17 RCW 90.03.250 or RCW 90.03.380 were followed to gain authorization from Ecology to
18 obtain a permit for a new water right or change the place of use for the domestic
19 supply. Mr. White did not testify that domestic use is or has been occurring
20 within the place of use authorized by SWC No. 11655; therefore, the Referee cannot
21 recommend that a right be confirmed for domestic supply.

22 It was established that stock have direct access to the springs and streams
23 on the claimants' property; therefore, their names will be added to the list on
24 Page 139 for non-diversionary stock water and wildlife rights.

1 Upon issuance of the decree for the Yakima River Adjudication, the Director
2 of Ecology is directed to rescind or otherwise make null and void SWC No. 11655.
3

4 COURT CLAIM NO. 05636 -- Sky Meadows Ranch Country Club

5 Ecology filed with the Court an exception to the Report of Referee, Subbasin
6 No. 5 (Elk Heights) regarding Court Claim No. 05636. Ecology's assertion is that
7 lacking proof of beneficial use for the full 213 services, the Referee should have
8 restricted his recommendation to the 163 domestic supplies developed. Ecology
9 took no exception to any other component of the Referee's recommendation for Court
10 Claim No. 05636. The claim was remanded to the Referee to consider Ecology's
11 arguments and take additional evidence and testimony as necessary. Although Sky
12 Meadows was served a copy of Ecology's exception and the Referee's scheduling
13 order, there was no appearance at the supplemental hearing to respond to Ecology's
14 exception.

15 At the supplemental hearing, the Referee's attention was directed to a case
16 pending before the Washington State Supreme Court that would potentially provide
17 guidance in determining the extent of the right that should be awarded to Sky
18 Meadows. After the supplemental hearing was completed, a ruling in Department of
19 Ecology v. George Theodoratus, 135 Wn.2d 582 (1998), was filed by the Supreme
20 Court. The issue in Theodoratus was whether Ecology could provision a water right
21 permit such that the final certificate would issue only for the quantity of water
22 actually used and the number of homes constructed. The Court held that water
23 right certificates could be quantified only on the basis of the amount of water
24 actually put to beneficial use, not the capacity of the water delivery system.
25 Sky Meadows Ranch Country Club has served no more than 163 homes of the
26

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1 213 authorized for development by the permit that preceded Certificate
2 No. S3-22411C.

3 There was no response to Ecology's argument that beneficial use is the limit
4 of community domestic water rights. The Referee will rely on Theodoratus, supra
5 as the controlling authority. Therefore, the limit of the right that can be
6 confirmed is for service to the 163 units developed and currently being served.
7 The annual quantity of 13 acre-feet shall remain unchanged since it was calculated
8 using the 0.018 cfs continuously throughout the year.

9 It is recommended that the water right for Sky Meadows shall be modified on
10 Page 164, Line 15 to read: Community domestic supply for 163 units.

11 The Referee also noted when reviewing this claim that there was a
12 typographical error in the point of diversion described on Page 164, Line 19 of
13 the Report of Referee. The correct location of the diversion is 1000 feet north
14 and 1150 feet east of the west quarter corner. That error will be corrected.

15 Upon issuance of the decree for the Yakima River Adjudication, the director
16 of Ecology is directed to rescind or otherwise make null and void SWC
17 No. S3-22411C.

18
19 COURT CLAIM NO. 05671 -- Doris Marie Talerico

20 Ecology requested clarification of the legal description recommended on
21 Page 152, Lines 12 through 12½ of the Report of Referee, Subbasin No. 5 (Elk
22 Heights). Doris Talerico testified at the supplemental hearing and offered
23 Exhibits DE-231 and DE-232 into the record. Those documents are, respectively, a
24 legal description and plat map of the Talerico property. Ecology agreed that use
25 of the legal description on DE-231 will resolve the problem with the legal
26

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1 description on Page 152, Lines 12 and 12½. The following legal shall replace the
2 legal referenced above:

3 That portion of the NW¼NE¼ and the NE¼NW¼ of Section 31, T. 20 N.,
4 R. 16 E.W.M., Kittitas County, Washington which is bounded by a line
described as follows:

5 Beginning at the northwest corner of said NE¼, thence S 0°32'39" W,
6 30 feet to the true point of beginning; thence S 0°32'39" W, along the
east boundary of said NE¼NW¼, 200 feet; thence S 89°47'15" E, 305 feet;
7 thence S 0°32'39" W, 287.70 feet; thence N 81°48'57" W, 794.77 feet;
thence N 0°32'19" E, 376.63 feet; thence S 89°37'15" E, 482.80 feet to
8 the true point of beginning.

9 As discussed on Pages 7 and 8 of this report, a "Limitation of Use" provision
10 regarding conveyance loss is being added to the right confirmed to Younger Ditch
11 water users including this water right.

12 COURT CLAIM NO. 11351 -- Scott DeWolf Wilson
13 11352 Jeanne Laurel O'Brien

14 Claimants Scott DeWolf Wilson and Jeanne Laurel O'Brien filed with the Court
15 exceptions regarding the Report of Referee, Subbasin No. 5 (Elk Heights).
16 Exception was taken to the Referee's inclusion of their names in the list of
17 claimants whose claims to water rights were denied.

18 Scott Wilson and Jeanne O'Brien filed their statements of claim, Court Claim
19 Nos. 11351 and 11352, with the Court on February 20, 1996, after the evidentiary
20 hearing for Subbasin No. 5, but before the Report of Referee issued. The Court
21 directed the Referee to accept the original evidence and testimony for Court Claim
22 Nos. 11351 and 11352 at the supplemental hearing. Scott Wilson and Jeanne O'Brien
23 were represented at the supplemental hearing by their attorney, Jeff Slothower.
24 Scott Wilson testified at the hearing on April 22, 1998, in support of Court Claim
25 Nos. 11351 and 11352.

26
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1 Claimants also made reference to Court Claim No. 00281, Theodore Ryan, et
2 al. The statements regarding the Ryan property were read by the Referee to
3 address common early ownership (i.e., W. F. Lewis) and history of water
4 development, not necessarily as an exception to the Theodore Ryan, et al.
5 recommendation. There is no evidence in the record that claimants Theodore Ryan,
6 et al. were served a copy of the Wilson/O'Brien exception (Court Document
7 No. 12,595). Claimants Ryan, et al. did not file an exception to the Report of
8 Referee and were not scheduled for an appearance at the supplemental hearing for
9 Subbasin No. 5.

10 During presentation of the evidence in support of the Wilson/O'Brien claim at
11 the supplemental hearing, it became obvious to the Referee that evidence
12 supporting the exceptions was also being used to challenge facts presented by
13 Ryan, et al. in support of Court Claim No. 00281. Therefore, it is imperative to
14 consider the lack of notice to Theodore Ryan, et al. as discussed above. The
15 Referee concludes that Wilson/O'Brien were obliged to provide to Ryan (and each of
16 the other parties joined to Court Claim No. 00281) a copy of their exception (see
17 the Court's Notice of Setting Time for Hearing Exceptions to the Report of
18 Referee, Subbasin No. 5 (Elk Heights), Page 2, Lines 11 through 16). Failure to
19 comply with that requirement deprived Ryan, et al. of a fair opportunity to defend
20 their claim and to cross examine witnesses appearing in support of Court Claim
21 Nos. 11351 and 11352. As a consequence of the failure to notify Ryan, et al., the
22 Referee has determined that all testimony and facts which are directed to the
23 foundation for Court Claim No. 00281 will not be considered. The Ryan, et al.
24 water right recommended by the Referee on Page 145 of the report should be
25
26
27

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1 affirmed by the Court. The Referee will evaluate only the facts and testimony
2 that do not challenge Ryan, et al.'s water right, Court Claim No. 00281.

3 Wilson/O'Brien took exception to the inclusion of their name on the list of
4 denied claims. They correctly remind the Referee that the Court allowed them to
5 present their case in support of Court Claim Nos. 11351 and 11352 at the
6 supplemental hearing; therefore, the Referee had no basis to deny their claims.
7 In fact, the narrative discussion of Court Claim Nos. 11351 and 11352 on Page 134
8 of the Report of Referee, Subbasin No. 5 (Elk Heights) properly dealt with the
9 facts. The inclusion of Scott Wilson and Laurel O'Brien in the denied claims list
10 on Page 141 is due to an error. Their names are therefore stricken from the list.

11 Wilson/O'Brien assert rights to irrigation and stock water from Preston Creek
12 and from an unnamed stream. The two streams join near the northeasterly corner of
13 the Wilson/O'Brien property. The two points of diversion identified by claimants
14 are approximately $\frac{1}{2}$ mile upstream on the respective streams from their confluence.

15 Notices of Appropriation were filed on both streams by F. W. Lewis in 1886.
16 Lewis homesteaded the NE $\frac{1}{4}$ of Section 2, T. 19 N., R. 15 E.W.M. and constructed a
17 ditch to divert water from the unnamed stream running through the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
18 Section 2. Lewis claimed 100 miner's inches from this stream. The "water right"
19 was signed May 11, 1886, and filed with the Kittitas County Auditor on May 14,
20 1886.

21 Lewis also filed a "Notice of Water Right" on Preston Creek claiming a right
22 to 50 miner's inches via a ditch emanating in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T. 19 N.,
23 R. 15 E.W.M. The notice was signed and filed on May 4, 1886. Lewis states in
24 this notice that he had filed a homestead application on the NE $\frac{1}{4}$ of Section 2,
25
26

1 T. 19 N., R. 15 E.W.M. The Lewis homestead was riparian to both Preston Creek and
2 the unnamed stream.

3 The source of water claimed in Court Claim No. 11352 is Preston Creek from a
4 point of diversion described as 2550 feet south and 1700 feet east from the
5 northwest corner of Section 2, T. 19 N., R. 15 E.W.M. This diversion also serves
6 as the point of delivery for KRD water for some of the Wilson/O'Brien fields. A
7 total of 49 acres are claimed to be irrigated with water diverted from Preston
8 Creek. Twenty-nine of those 49 acres are described as lying in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of
9 Section 2, T. 19 N., R. 15 E.W.M. and 20 acres lie in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of said section.
10 It is important to note here that F. W. Lewis did not homestead the NW $\frac{1}{4}$ of
11 Section 2 nor did he claim a water right for that portion of Section 2.

12 Court Claim No. 11351 asserts a right to water from an unnamed stream. The
13 basis for this claim is the "Notice of Appropriation" filed on this stream by
14 F. W. Lewis. The point of diversion described is a dam located 2600 feet south
15 and 2000 feet west from the northeast corner of Section 2, T. 19 N., R. 15 E.W.M.
16 A total of 24 acres of irrigation is asserted with the place of use lying in the
17 W $\frac{1}{2}$ NE $\frac{1}{4}$ of said Section 2.

18 The claimants acknowledge that Ch. 90.14 RCW water right claims are a major
19 consideration as the Referee evaluates the record. That being the case, it seems
20 appropriate to deal with the various claims, or lack thereof, before delving into
21 the chain of title and historic use evidence.

22 S & W Properties (the prior owners of the Wilson/O'Brien property) filed WRC
23 No. 081437 on a ground water source asserting a right for domestic supply, lawn
24 and garden irrigation and stock water. Scott Wilson testified that his father was
25 a partner in S & W Properties and that the source described was the domestic well
26

1 at the farmstead lying in the N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T. 19 N., R. 15 E.W.M. This
2 claim was filed on a short form which RCW 90.14.051 restricts to use for purposes
3 equivalent to the ground water permit exemption in RCW 90.44.050. The claimants
4 suggest that WRC No. 081437 must have been intended to include a water source
5 other than the well because the use "Irrigation" was marked on the form.
6 Apparently, they did not read the form where the "Irrigation" option is qualified
7 with "(lawn and garden)." WRC No. 081437 seems to warrant no further
8 consideration since ground water is not being addressed through the "surface water
9 only" Yakima River Basin Adjudication, and there is a ground water source on the
10 property. Additionally, Scott Wilson testified that the farmstead where the well
11 is located and several acres of surrounding land had been sold several years ago.

12 Stanley D. Wilson filed WRC No. 042328 also on a short form indicating the
13 use was exclusively for a domestic supply. Scott Wilson testified that this
14 source is the domestic well for a cabin on the ranch where his father formerly
15 lived.

16 Recognizing the need to overcome the lack of Ch. 90.14 RCW claims to protect
17 the two irrigation rights from relinquishment, Wilson/O'Brien filed water right
18 claims with Ecology during the spring of 1998 pursuant to RCW 90.14.068.
19 Mr. Wilson testified that Ecology did not register the two claims submitted
20 because RCW 90.14.068(5) prohibits filing of surface water claims during the
21 pendency of active general adjudications. Exhibit DE-227 consists of copies of
22 the claims which Wilson/O'Brien sent to Ecology. Counsel for claimants advised
23 the Referee that Wilson/O'Brien were appealing Ecology's rejection of their two
24 claims to the Washington State Pollution Control Hearing Board and subsequently
25 through the Courts. The constitutionality of RCW 90.14.068(s) is also being
26

1 challenged by these claimants. The Court's ruling on that challenge will
2 determine whether the rejected claims may ultimately be used to protect any water
3 right that may exist.

4 The final argument offered by the claimants regarding compliance with
5 Ch. 90.14 RCW for their surface water irrigation sources relates to WRC
6 No. 161894. Theodore V. Ryan filed WRC No. 161894 in June of 1974 asserting a
7 right to an unnamed creek for irrigation of 60 acres. An instantaneous quantity
8 of 12.0 cfs is claimed from a point of diversion located in the center of the NE $\frac{1}{4}$
9 of Section 2, T. 19 N., R. 15 E.W.M. The place of use description entered by Ryan
10 on the Ch. 90.14 RCW claim is not in a typical legal description format; however,
11 the Referee believes it purports to describe Tax Lots 13 and 14 within the NE $\frac{1}{4}$ of
12 Section 2, T. 19 N., R. 15 E.W.M. Wilson/O'Brien assert that WRC No. 161894
13 describes all of the NE $\frac{1}{4}$ of Section 2 thereby including the 20.8 acres irrigated
14 from the unnamed stream by Wilson/O'Brien. They further assert that the 60 acres
15 described as irrigated by Ryan could not be explained unless the Wilson/O'Brien
16 irrigated acres are included. Ryan was recommended for confirmation of a right
17 for 31 acres of irrigation within Government Lot 1, the east 300 feet of the south
18 650 feet of Government Lot 2, the north 300 feet of the east 450 feet of the
19 NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the north 300 feet of the SE $\frac{1}{4}$ NE $\frac{1}{4}$, all in Section 2, T. 19 N.,
20 R. 15 E.W.M. Scott Wilson testified that only 20.8 acres are irrigated by Ryan
21 via gravity ditch from the unnamed stream described in WRC No. 161894.

22 Recognizing the less than perfect description provided by Ryan, the Referee
23 referred to the transcript from the original evidentiary hearing where Ryan
24 explained the 60 acres claimed. He testified that the 60 acres was inclusive of
25 all his irrigated land whether served by the creek, KRD or both. He described in
26

1 detail which fields or portions of fields were served creek water and provided a
2 map of the ditches and corrugations. The ultimate answer as to Mr. Ryan's intent
3 when he filed WRC No. 161894 rests with Ryan. There is no evidence that Ryan
4 intended to include the Wilson/O'Breen property. Wilson/O'Breen did not seek to
5 have Ryan testify, nor in fact did they advise Ryan that an exception had been
6 taken to the recommended confirmation of 31 acres under Court Claim No. 00281.
7 The Referee concludes that WRC No. 161894 does not constitute substantial
8 compliance under Ch. 90.14 RCW for irrigation practices on the Wilson/O'Breen
9 property. If in fact the Court were to rule for substantial compliance, the limit
10 of that compliance would only extend to lands irrigated from the unnamed stream
11 which are located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T. 19 N., R. 15 E.W.M.

12 Use of water for irrigation by Wilson/O'Breen from the unnamed stream in the
13 SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2 is reported to be on a 17.9 acre field (shown on aerial photo
14 DE-219 outlined in green). Included in the green outline at the southeast corner
15 is a 2.9 acre hay field also irrigated from the unnamed creek. The 20.8 acres are
16 irrigated with only creek water. The practice is to employ two 12-hour sets to
17 cover the entire 17.9-acre field and to repeat that application 10 to 14 times
18 annually. Water is released from an on-channel reservoir at an unspecified
19 instantaneous rate. Testimony was provided that the stream flows year around but
20 no estimates or measurements were provided. Scott Wilson testified that the
21 standard water duty of 0.03 cfs per acre adopted by the Referee for Subbasin No. 5
22 and 6 acre-feet per acre would closely correlate to the quantities used.

23 In 1988 Scott Wilson and Jeanne O'Breen purchased a tract of land consisting
24 of 50.149 acres described as follows:

1 That portion of the $W\frac{1}{2}NE\frac{1}{4}$, and a portion of the $NW\frac{1}{4}SE\frac{1}{4}$ of Section 2,
2 T. 19 N., R. 15 E.W.M. as described as follows:

3 Commencing at the northwest corner of the $NE\frac{1}{4}$ of said section said point
4 bears N $88^{\circ}33'14''$ W on the northerly boundary line of the $NE\frac{1}{4}$ of said
5 section a distance of 2649.11 feet from a found 2-inch steel pipe
6 monument marking the northeast corner of the $NE\frac{1}{4}$ of said quarter of said
7 section; thence S $0^{\circ}59'27''$ W on the westerly boundary line of the $NE\frac{1}{4}$ of
8 said section a distance of 1855.76 feet to the northeasterly corner of
9 the parcel described under the Auditor's File No. 479761, as found in
10 Volume 205 of Deeds, Pages 472 and 473, records of the Kittitas County
11 Auditor's Office. Said point being the intersection point of a thread
12 of an existing stream and the westerly boundary line of the $NE\frac{1}{4}$ of said
13 section said point also being the point of beginning; thence
14 N $0^{\circ}59'27''$ E on the westerly boundary line of the $NE\frac{1}{4}$ of said section a
15 distance of 23.41 feet; thence N $42^{\circ}05'08''$ E a distance of 1494.68 feet;
16 thence N $70^{\circ}52'14''$ E a distance of 359.53 feet to the easterly boundary
17 line of the Government Lot 2 of said section, said point being an angle
18 point on the northwesterly boundary line of the parcel described under
19 the Auditor's File No. 482201, as found in Volume 211 of Deeds,
20 Page 450, records of the Kittitas County Auditor's Office; thence
21 S $31^{\circ}07'16''$ W on the northwesterly boundary line of said parcel a
22 distance of 1208.60 feet to the westerly most corner of said parcel;
23 thence S $88^{\circ}33'44''$ E on the southerly boundary line of said parcel a
24 distance of 598.50 feet to the southeast corner of said parcel and to
25 the easterly boundary line of the $SW\frac{1}{4}NE\frac{1}{4}$ of said section; thence
26 S $1^{\circ}26'16''$ W on the easterly boundary line of the $SW\frac{1}{4}NE\frac{1}{4}$ of said
27 section; a distance of 988.56 feet to the southeast corner of the $SW\frac{1}{4}NE\frac{1}{4}$
28 of said section; thence S $0^{\circ}26'02''$ W on the easterly boundary line
NW $\frac{1}{4}SE\frac{1}{4}$ of said section a distance of 396.00 feet; thence N $89^{\circ}10'41''$ W a
distance of 1308.00 feet to the westerly boundary line of the NW $\frac{1}{4}SE\frac{1}{4}$ of
said section; thence N $0^{\circ}59'27''$ E on the westerly boundary line of the
NW $\frac{1}{4}SE\frac{1}{4}$ of said section a distance of 396.00 feet to the southwest corner
of the $NE\frac{1}{4}$ of said section; thence N $0^{\circ}59'27''$ E on the westerly boundary
line of the $SW\frac{1}{4}NE\frac{1}{4}$ of said section a distance of 768.82 feet to the
thread of an existing stream and to the point of beginning.

20 In 1994 Scott Wilson bought the following parcel of land:

21 Those portions of Government Lots 3 and 4 and that portion of the $S\frac{1}{2}NW\frac{1}{4}$
22 of Section 2, T. 19 N., R. 15 E.W.M., which lie east of the east
23 boundary line of the right of way for the county road;

23 Being that part of said Tract A more particularly described as:

24 Beginning at the northeast corner of said Government Lot 3, thence
25 running west along the north boundary line of said section,
26 22.12 chains; thence S $46^{\circ}45'$ E for 8.75 chains; thence S $35^{\circ}00'$ W
20 chains; thence S $16^{\circ}00'$ W 5 chains; thence S $45^{\circ}00'$ W 0.69 chains;
thence S $52^{\circ}57'$ E 19.25 chains, more or less, to a point on the south

1 boundary line of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 2, which is the true point of
2 beginning; thence N 52°57' W 1 chain, more or less, to a point on a line
3 parallel to the south boundary of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 2 and
4 40 feet north thereof when measured on a line perpendicular to said
5 south boundary; thence easterly on said parallel line 140 feet, more or
6 less, to the thread of a stream running approximately N 47°20' E; thence
7 continuing northeasterly along the thread of the stream to the point of
8 intersection between the thread of the stream and the centerline of said
9 Section 2; thence south along the center line of said Section 2 a
10 distance of 794 feet, more or less, to the south boundary line of the
11 S $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 2; thence west along the south boundary line of
12 the S $\frac{1}{2}$ NW $\frac{1}{4}$ of said Section 2, a distance of 13.72 chains more or less to
13 a point of beginning; EXCEPT COUNTY ROADS.

14 Since 1994 Scott Wilson has been farming the combined parcels of land described
15 above.

16 Mr. Wilson's father, as a partner in S & W Properties, Inc., bought 175 acres
17 including the land described above. Other than the family connection, Scott
18 Wilson did not describe the extent or timing of his personal knowledge of the
19 farming and irrigation operations. He did explain that his father is deceased and
20 Mr. Shanno, his partner, is 85 years old and remembers little about the irrigation
21 practices or history of water use. Scott Wilson testified that he believed
22 irrigation had been ongoing since the late 1800s and, in that same statement, he
23 identified the Lewis "Notices of Appropriation" as the foundation for that use of
24 water. Lewis did not homestead the NW $\frac{1}{4}$ of Section 2 where much of the irrigation
25 from Preston Creek takes place and no explanation was offered as to the apparent
26 contradiction.

27 Preston Creek is riparian to the place of use described in Court Claim
28 No. 11352. Nathan W. Preston received a homestead patent for the NW $\frac{1}{4}$ of
Section 2, T. 19 N., R. 15 E.W.M. on June 5, 1884. W. F. Lewis homesteaded the
NE $\frac{1}{4}$ of Section 2. The Wilson property lies partially in each of those homesteads.

1 It appears that by 1935 Lee B. and Alice Pays owned or controlled 255 acres
2 in Section 2, T. 19 N., R. 15 E.W.M. including the tracts currently owned by
3 Wilson/O'Brien and Ryan, et al. The land was administered by a trustee during
4 settlement of the Estate of Samuel Albert Lewis until April 26, 1945, when Roy
5 Thomas bought the entire 255 acres.

6 The record indicates that irrigation rights on both Preston Creek and an
7 unnamed stream were perfected by beneficial use. The priority date for those two
8 rights has been argued to be May 4, 1886, when W. F. Lewis filed two separate
9 "Notices of Appropriation." Alternatively, the riparian doctrine has been
10 suggested and first use of water does seem to predate December 31, 1932. The
11 Referee has elected to not resolve the priority date question or to attempt to
12 quantify a water right from either source. Due to the lack of water right claims
13 registered pursuant to Ch. 90.14 RCW as previously discussed, the Referee
14 concludes that any rights which had been perfected were waived and relinquished
15 due to failure to comply with the provisions of Ch. 90.14 RCW.

16 No diversionary water right can be recommended for approval under Court Claim
17 Nos. 11351 or 11352. The record reflects that stock have consistently been grazed
18 on the property and have had access to the streams and ponds on the ranch for
19 water. No water is diverted to satisfy stock water. Therefore, Scott DeWolf
20 Wilson and Jeanne Laurel O'Brien will be added to the list Claimants With
21 Recommended Non-diversionary Stock Water and Wildlife Rights (Page 139 of the
22 Report of Referee, Subbasin No. 5 (Elk Heights).

FINDINGS OF FACT

I, DOUGLAS CLAUSING, as Referee in this proceeding, having carefully examined the testimony and evidence, do hereby make the following Findings of Fact pursuant to the Order on Exceptions entered by this Court on February 12, 1998:

Based upon the additional testimony and evidence obtained at either the exception hearing or the supplemental hearings, the Report of Referee, Subbasin No. 5 (Elk Heights), dated July 7, 1997, should be modified as follows:

Scott DeWolf Wilson, Jeanne Laurel O'Brien; The Estate of John E. Rothlisberger, Peter White and Christa White, Lonny White, Michael White, Richard White, Jeanne Purple; Stanley E. Moore; Fred S. Talerico are added to the list of claimants with non-diversionary stock water rights appearing on Page 139 of the Report of Referee, Subbasin No. 5 (Elk Heights). Pages 142 through 164 are replaced with the following:

1 CLAIMANT NAME:

Robert R. Roseburg
& Enid Roseburg

COURT CLAIM NO. 01280

2
3 Source:

An unnamed stream

4 Use:

Irrigation of 42 acres and stock water

5 Period of Use:

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

6 Quantity:

1.00 cfs, 370 acre-feet per year for irrigation;
0.02 cfs, 2 acre-feet per year for stock watering

7
8 Priority Date:

December 21, 1882

9 Point of Diversion:

1300 feet south and 5 feet east of the northwest corner
of Section 2, being within Government Lot 4 of
Section 2, T. 19 N., R. 15 E.W.M. AND

400 feet south of the northwest corner of Section 2,
T. 19 N., R. 15 E.W.M., being within the $W\frac{1}{2}$ of
Government Lot 4 of Section 2, T. 19 N., R. 15 E.W.M.

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12
13 Place of Use:

The 40 acre hay field: Those portions of Government
Lots 3 and 4 lying west of Upper Peoh Point Road, and
that portion of the $N\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$ lying north of an unnamed
stream and west of Upper Peoh Point Road, less the
easterly 400 feet thereof, ALL in Section 2, T. 19 N.,
R. 15 E.W.M.

The 2 acre oat field: The easterly 400 feet of the
following described land: Those portions of Government
Lots 3 and 4 lying west of Upper Peoh Point Road, and
that portion of the $N\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$ lying north of an unnamed
stream and west of Upper Peoh Point Road, in Section 2,
T. 19 N., R. 15 E.W.M.

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20 Limitations of Use:

This land also receives water from the Kittitas
Reclamation District. A maximum of 370 acre-feet per
year can be used from all sources for irrigation of 42
acres

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27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME: The Estate of John E. Rothlisberger COURT CLAIM NO. 01296
2 Pete White
3 & Christa White
Lonny White
Michael White
4 Source: Unnamed creek
5 Use: Irrigation of 36 acres and stock watering
6 Period of Use: April 1 through October 31
7 Quantity: 0.80 cfs; 160 acre-feet per year for irrigation and
8 2 acre-feet per year for stock watering
9 Priority Date: May 24, 1884
10 Point of Diversion: 50 feet north and 400 feet east from the center of
11 Section 1, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1,
T. 19 N., R. 15 E.W.M.
12 Place of Use: Government Lot 2 of Section 1, T. 19 N., R. 15 E.W.M.
13 Limitations of Use: This property receives delivery of water provided by
14 the Kittitas Reclamation District in addition to the
15 water available from the creek
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27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME: The Estate of John E. Rothlisberger COURT CLAIM NO. 01296
2 Pete White
3 & Christa White
4 Lonny White
5 Michael White
6 Source: Unnamed stream
7 Use: Irrigation of 55.5 acres and stock water
8 Period of Use: April 1 through October 31
9 Quantity: 0.70 cfs; 212 acre-feet per year for irrigation and
10 2 acre-feet per year for stock water
11 Priority Date: May 24, 1884
12 Point of Diversion: 750 feet north and 500 feet east of the west quarter
13 corner of Section 1, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
14 Section 1, T. 19 N., R. 15 E.W.M.
15 Place of Use: Government Lots 3 and 4 of Section 1, T. 19 N.,
16 R. 15 E.W.M.
17 Limitations of Use: This property receives delivery of water provided by
18 the Kittitas Reclamation District in addition to the
19 water available from the creek
20
21 CLAIMANT NAME: Harry James Masterson COURT CLAIM NO. 01467
22 & Mary Lou Masterson (A)03296
23 Source: An unnamed spring
24 Use: Stock water
25 Period of Use: April 1 through October 31
26 Quantity: 0.005 cfs; 2 acre-feet per year
27 Priority Date: June 30, 1884
28 Point of Diversion: 800 feet north and 750 feet east of the center of
Section 20, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20,
T. 20 N., R. 16 E.W.M.
Place of Use: SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, T. 20 N., R. 16 E.W.M.

SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 5 (Elk Heights)

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

CLAIMANT NAME:

Theodore V. Ryan
& Mildred E. Ryan
Richard J. Willoughby
Dana R. Dinius
& Paula D. Dinius
Kenneth B. Kerchner
& Heather D. Kerchner
Donald L. Torgett
& Marie E. Torgett
Shelley G. Muth
& Joan M. Muth
Gary F. Williams
& Diane M. Williams

Source:

An unnamed stream

Use:

Irrigation of 31 acres and stock water

Period of Use:

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

Quantity:

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

Priority Date:

May 4, 1886

Point of Diversion:

600 feet east from the center of Section 2, being
within the $N\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$ or $S\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$ of Section 2, T. 19 N.,
R. 15 E.W.M.

Place of Use:

Government Lot 1, the east 300 feet of the south
650 feet of Government Lot 2, the north 300 feet of the
east 450 feet of the $NE\frac{1}{4}SW\frac{1}{4}NE\frac{1}{4}$, AND the north 300 feet
of the $SE\frac{1}{4}NE\frac{1}{4}$, ALL in Section 2, T. 19 N.,
R. 15 E.W.M.

SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME:

Jacqueline Baker
Bonita P. Morgan

COURT CLAIM NO. 01688

2
3 Source:

Yakima River

4 Use:

Irrigation of 7.5 acres and stock water

5 Period of Use:

April 20 through September 30 for irrigation and stock water

6 Quantity:

0.75 cfs, 49.0 acre-feet per year for irrigation;
0.01 cfs, 1 acre-foot per year for stock water;
0.15 cfs for conveyance loss

8 Priority Date:

June 5, 1886

9 Point of Diversion:

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

11 Place of Use:

The SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T. 20 N., R. 16 E.W.M.

12 Limitations of Use:

In the event this water right is relinquished, or otherwise not used, the proportionate share of conveyance loss associated with this right shall revert to the remaining Younger Ditch water right holders whose certificates include a discreet quantity of water for the purpose of conveyance. The reversion of this quantity of water shall be to the extent necessary to deliver the authorized quantity of water to the remaining authorized places of use. The maximum quantity of water affirmed for the entire length of the ditch for the purpose of conveyance is 2.895 cfs

27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME:

Steven C. Bator, Sr.
& Elsie Bator

COURT CLAIM NO. 02230

3 Source:

Yakima River

4 Use:

Irrigation of 9.5 acres and stock water

5 Period of Use:

April 20 through September 30 for irrigation and stock water

6 Quantity:

0.95 cfs, 116 acre-feet per year for irrigation;
0.01 cfs, 0.5 acre-foot per year for stock water;
0.95 cfs for conveyance loss

8 Priority Date:

June 5, 1886

9 Point of Diversion:

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

11 Place of Use:

That portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M. which is described as follows: A tract of land bounded by a line beginning at the intersection of the south boundary line of the County Road with the east boundary line of said quarter of quarter section and running thence S 0°43' E along said east boundary line 1193.4 feet; thence west 365 feet; thence N 0°43' W, 1193.4 feet to a point on the south boundary line of the County Road; thence east along said boundary line of said County Road, 365 feet to the point of beginning

17 Limitations of Use:

In the event this water right is relinquished, or otherwise not used, the proportionate share of conveyance loss associated with this right shall revert to the remaining Younger Ditch water right holders whose certificates include a discreet quantity of water for the purpose of conveyance. The reversion of this quantity of water shall be to the extent necessary to deliver the authorized quantity of water to the remaining authorized places of use. The maximum quantity of water affirmed for the entire length of the ditch for the purpose of conveyance is 2.895 cfs

27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME:

Theodore Bronkema
& Marion Bronkema

COURT CLAIM NO. 01268

COURT CLAIM NO. 02225

3 Source:

Yakima River

4 Use:

Irrigation of 6 acres

5 Period of Use:

April 20 through September 30 for irrigation

6 Quantity:

0.12 cfs, 36 acre-feet per year; 0.18 cfs for
conveyance loss

8 Priority Date:

June 5, 1886

9 Point of Diversion:

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

11 Place of Use:

E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M.

12 Limitations of Use:

In the event this water right is relinquished, or
otherwise not used, the proportionate share of
conveyance loss associated with this right shall revert
to the remaining Younger Ditch water right holders whose
certificates include a discreet quantity of water for
the purpose of conveyance. The reversion of this
quantity of water shall be to the extent necessary to
deliver the authorized quantity of water to the
remaining authorized places of use. The maximum
quantity of water affirmed for the entire length of the
ditch for the purpose of conveyance is 2.895 cfs

27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME:

Cecil Frank Carveth
& Jo Ann Beverly Carveth

COURT CLAIM NO. 01678

2
3 Source:

Yakima River

4 Use:

Irrigation of 10 acres and stock water

5 Period of Use:

April 20 through September 30 for irrigation and stock water

6 Quantity:

0.20 cfs, 60 acre-feet per year for irrigation;
0.01 cfs, 0.50 acre-foot per year for stock water;
0.285 cfs for conveyance loss

8 Priority Date:

June 5, 1886

9 Point of Diversion:

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

11 Place of Use:

The northerly 656.21 feet of the W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M.

13 Limitations of Use:

In the event this water right is relinquished, or otherwise not used, the proportionate share of conveyance loss associated with this right shall revert to the remaining Younger Ditch water right holders whose certificates include a discreet quantity of water for the purpose of conveyance. The reversion of this quantity of water shall be to the extent necessary to deliver the authorized quantity of water to the remaining authorized places of use. The maximum quantity of water affirmed for the entire length of the ditch for the purpose of conveyance is 2.895 cfs

27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME:

Gary J. Fudacz
& Joanne Fudacz

COURT CLAIM NO. 02224

3 Source:

Yakima River

4 Use:

Irrigation of 11 acres and stock water

5 Period of Use:

April 20 through September 30 for irrigation and stock water

6 Quantity:

0.33 cfs, 66 acre-feet per year for irrigation;
0.01 cfs, 1 acre-foot per year for stock water;
0.33 cfs for conveyance loss

8 Priority Date:

June 5, 1886

9 Point of Diversion:

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

11 Place of Use:

Gary J. and Jo Anne Fudacz

That portion of the $W\frac{1}{2}NE\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M., which is bounded by a line described as follows: Beginning at the intersection of the south boundary line of the County Road with the east boundary line of said $W\frac{1}{2}NE\frac{1}{4}$ and running thence S $0^{\circ}43'$ E, along the east boundary of said $W\frac{1}{2}NE\frac{1}{4}$, 1193.4 feet; thence west, 365 feet; thence N $0^{\circ}43'$ W, 379.4 feet to the true point of beginning; thence N $0^{\circ}43'$ W, 814.00 feet to the south right-of-way boundary of the County Road; thence west along said south right-of-way boundary, 567.23 feet; thence S $0^{\circ}43'$ E, 814.00 feet; thence east, 567.23 feet to the true point of beginning.

Fudacz Brothers

Parcel "A" of that certain survey as recorded February 27, 1990, in Book 16 of Surveys at Pages 113 and 114 under Auditor's File No. 527378, records of Kittitas County, State of Washington, being a portion of the $NE\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M.

27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 5 (Elk Heights)

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

1 Limitations of Use:

In the event this water right is relinquished, or otherwise not used, the proportionate share of conveyance loss associated with this right shall revert to the remaining Younger Ditch water right holders whose certificates include a discreet quantity of water for the purpose of conveyance. The reversion of this quantity of water shall be to the extent necessary to deliver the authorized quantity of water to the remaining authorized places of use. The maximum quantity of water affirmed for the entire length of the ditch for the purpose of conveyance is 2.895s

8 CLAIMANT NAME:

Lloyd Garrett
& Shirley Garrett

COURT CLAIM NO. 01279

10 Source:

Yakima River

11 Use:

Irrigation of 7.5 acres and stock water

12 Period of Use:

April 20 through September 30 for irrigation and stock water

13 Quantity:

0.15 cfs, 45 acre-feet per year for irrigation;
0.01 cfs, 0.5 acre-foot per year for stock water;
0.16 cfs for conveyance loss

15 Priority Date:

June 5, 1886

16 Point of Diversion:

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

18 Place of Use:

Tracts 2 and 4 of Airport Road Tracts, located within Government Lot 1 and the N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M.

20 Limitations of Use:

In the event this water right is relinquished, or otherwise not used, the proportionate share of conveyance loss associated with this right shall revert to the remaining Younger Ditch water right holders whose certificates include a discreet quantity of water for the purpose of conveyance. The reversion of this quantity of water shall be to the extent necessary to deliver the authorized quantity of water to the remaining authorized places of use. The maximum quantity of water affirmed for the entire length of the ditch for the purpose of conveyance is 2.895 cfs

27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME:

Richard Haas
& Jean Haas

COURT CLAIM NO. 01279

2
3 Source:

Yakima River

4 Use:

Irrigation of 2 acres and stock water

5 Period of Use:

April 20 through September 30 for irrigation and stock water

6 Quantity:

0.04 cfs, 12 acre-feet per year for irrigation;
0.005 cfs, 0.25 acre-foot per year for stock water and
0.045 cfs for conveyance loss

8 Priority Date:

June 5, 1886

9 Point of Diversion:

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

11 Place of Use:

Lot 3C of Danubio Short Plat of Airport Road Tracts, Kittitas County Short Plat No. SP-91-02, being a portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ and the W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M.

14 Limitations of Use:

In the event this water right is relinquished, or otherwise not used, the proportionate share of conveyance loss associated with this right shall revert to the remaining Younger Ditch water right holders whose certificates include a discreet quantity of water for the purpose of conveyance. The reversion of this quantity of water shall be to the extent necessary to deliver the authorized quantity of water to the remaining authorized places of use. The maximum quantity of water affirmed for the entire length of the ditch for the purpose of conveyance is 2.895 cfs

27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME: Dennis L. Hankins COURT CLAIM NO. 01279
2 & Kathy P. Hankins
3 Source: Yakima River
4 Use: Irrigation of 3½ acres and stock water
5 Period of Use: April 20 through September 30
6 Quantity: 0.156; 21 acre-feet per year for irrigation and 0.01;
7 0.5 acre-foot per year for stock water, 0.10 cfs for
8 conveyance loss
9 Priority Date: June 5, 1886
10 Point of Diversion: 750 feet south and 1150 feet east of the north quarter
11 corner of Section 35, being within the SE¼NW¼NE¼ of
12 Section 35, T. 20 N., R. 15 E.W.M.
13 Place of Use: Parcel A of that certain Short Plat recorded in
14 Volume 16 on Page 131 of the Records of Kittitas County
15 being a 3.73 acre portion of Government Lot 1 of
16 Section 31, T. 20 N., R. 16 E.W.M. lying south of Cle
17 Elum Airport Road and north of Highway 97.
18 Limitations of Use: In the event this water right is relinquished, or
19 otherwise not used, the proportionate share of
20 conveyance loss associated with this right shall revert
21 to the remaining Younger Ditch water right holders whose
22 certificates include a discreet quantity of water for
23 the purpose of conveyance. The reversion of this
24 quantity of water shall be to the extent necessary to
25 deliver the authorized quantity of water to the
26 remaining authorized places of use. The maximum
27 quantity of water affirmed for the entire length of the
28 ditch for the purpose of conveyance is 2.895 cfs

SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME: The Estate of Hazel Henshaw COURT CLAIM NO. 00365
2 Bernard I. Henshaw
3 Source: Yakima River
4 Use: Irrigation of 75 acres and stock water
5 Period of Use: April 20 through September 30 for irrigation and stock
6 water
7 Quantity: 1.5 cfs, 450 acre-feet per year for irrigation;
8 0.02 cfs, 3 acre-feet per year for stock
9 water; 0.30 cfs for conveyance loss
10 Priority Date: June 5, 1886
11 Point of Diversion: 750 feet south and 1150 feet east of the north quarter
12 corner of Section 35, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
13 Section 35, T. 20 N., R. 15 E.W.M.
14 Place of Use: S $\frac{1}{2}$ S $\frac{1}{2}$ of Government Lot 3, Government Lot 4 and the
15 SE $\frac{1}{4}$ SW $\frac{1}{4}$ EXCEPT the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, ALL in Section 30,
16 T. 20 N., R. 16 E.W.M.
17 Limitations of Use: In the event this water right is relinquished, or
18 otherwise not used, the proportionate share of
19 conveyance loss associated with this right shall revert
20 to the remaining Younger Ditch water right holders whose
21 certificates include a discreet quantity of water for
22 the purpose of conveyance. The reversion of this
23 quantity of water shall be to the extent necessary to
24 deliver the authorized quantity of water to the
25 remaining authorized places of use. The maximum
26 quantity of water affirmed for the entire length of the
27 ditch for the purpose of conveyance is 2.895 cfs
28

SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME:

Pat Merritt
& Carolyn Merritt

COURT CLAIM NO. 01279

2
3 Source:

Yakima River

4 Use:

Irrigation of 4 acres and stock water

5 Period of Use:

April 20 through September 30 for irrigation and stock water

6 Quantity:

0.08 cfs, 24 acre-feet per year for irrigation;
0.01 cfs, 0.5 acre foot per year for stock water;
0.10 cfs for conveyance loss

8 Priority Date:

June 5, 1886

9 Point of Diversion:

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

11 Place of Use:

Tract 1 of Airport Road Tracts, located within the N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M.

13 Limitations of Use:

In the event this water right is relinquished, or otherwise not used, the proportionate share of conveyance loss associated with this right shall revert to the remaining Younger Ditch water right holders whose certificates include a discreet quantity of water for the purpose of conveyance. The reversion of this quantity of water shall be to the extent necessary to deliver the authorized quantity of water to the remaining authorized places of use. The maximum quantity of water affirmed for the entire length of the ditch for the purpose of conveyance is 2.895 cfs

27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 5 (Elk Heights)

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

CLAIMANT NAME: Doris Marie Talerico COURT CLAIM NO. 05671

Source: Yakima River

Use: Irrigation of 4 acres and stock water

Period of Use: April 20 through September 30 for irrigation and stock water

Quantity: 0.105 cfs, 22.5 acre-feet per year for irrigation;
0.01 cfs, 0.5 acre-feet per year for stock water;
0.125 cfs for conveyance loss

Priority Date: June 5, 1886

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

Place of Use: That portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T. 20 N., R. 16 E.W.M., Kittitas County, Washington which is bounded by a line described as follows:

Beginning at the northwest corner of said NE $\frac{1}{4}$, thence S 0°32'39" W, 30 feet to the true point of beginning; thence S 0°32'39" W, along the east boundary of said NE $\frac{1}{4}$ NW $\frac{1}{4}$, 200 feet; thence S 89°47'15" E, 305 feet; thence S 0°32'39" W, 287.70 feet; thence N 81°48'57" W, 794.77 feet; thence N 0°32'19" E, 376.63 feet; thence S 89°37'15" E, 482.80 feet to the true point of beginning.

Limitations of Use: In the event this water right is relinquished, or otherwise not used, the proportionate share of conveyance loss associated with this right shall revert to the remaining Younger Ditch water right holders whose certificates include a discreet quantity of water for the purpose of conveyance. The reversion of this quantity of water shall be to the extent necessary to deliver the authorized quantity of water to the remaining authorized places of use. The maximum quantity of water affirmed for the entire length of the ditch for the purpose of conveyance is 2.895 cfs

1 CLAIMANT NAME: Fred S. Talerico COURT CLAIM NO. 01279
2 Source: Yakima River
3 Use: Irrigation of 3½ acres
4 Period of Use: April 20 through September 30
5 Quantity: 0.11 cfs; 21 acre-feet per year for irrigation and
6 0.125 cfs for conveyance loss
7 Priority Date: June 5, 1886
8 Point of Diversion: 750 feet south and 1150 feet east of the north quarter
9 corner of Section 35, being within the SE¼NW¼NE¼ of
10 Section 35, T. 20 N., R. 15 E.W.M.
11 Place of Use: Beginning at the north quarter corner of Section 31,
12 T. 20 N., R. 16 E.W.M.; thence east along the north
13 section line of said Section 31 305 feet; thence
14 S 0°32'39" W 487.70 feet to the true point of beginning;
15 thence continuing S 0°32'39" W 218.36 feet; thence
16 S 89°47'15" W 787.79 feet; thence N 0°32'19" E
17 334.32 feet; thence S 81°48'57" E 794.88 feet to the
18 point of beginning.
19 Limitations of Use: In the event this water right is relinquished, or
20 otherwise not used, the proportionate share of
21 conveyance loss associated with this right shall revert
22 to the remaining Younger Ditch water right holders whose
23 certificates include a discreet quantity of water for
24 the purpose of conveyance. The reversion of this
25 quantity of water shall be to the extent necessary to
26 deliver the authorized quantity of water to the
27 remaining authorized places of use. The maximum
28 quantity of water affirmed for the entire length of the
ditch for the purpose of conveyance is 2.895 cfs

SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 5 (Elk Heights)

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

CLAIMANT NAME: Sharon Winslow COURT CLAIM NO. 01279

Source: Yakima River

Use: Irrigation of 2 acres and stock water

Period of Use: April 20 through September 30

Quantity: 0.04 cfs, 12 acre-feet per year for irrigation;
0.005 cfs, 0.25 acre-feet per year for stock water and
0.045 cfs for conveyance loss

Priority Date: June 5, 1886

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

Place of Use: Lots 3A and 3B of Danubio Short Plat of Airport
Road Tracts, Kittitas County Short Plat No. SP-91-02,
being a portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ and the W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 31, T. 20 N., R. 16 E.W.M.

Limitations of Use: In the event this water right is relinquished, or
otherwise not used, the proportionate share of
conveyance loss associated with this right shall revert
to the remaining Younger Ditch water right holders whose
certificates include a discreet quantity of water for
the purpose of conveyance. The reversion of this
quantity of water shall be to the extent necessary to
deliver the authorized quantity of water to the
remaining authorized places of use. The maximum
quantity of water affirmed for the entire length of the
ditch for the purpose of conveyance is 2.895 cfs

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

3 Source: Iron Mountain Creek

4 Use: Irrigation of 60 acres, stock water and domestic supply
for two residences

5 Period of Use: April 1 through October 31 for irrigation and
6 continuously for domestic supply and stock water

7 Quantity: 1.97 cfs, 720 acre-feet per year for irrigation;
8 0.02 cfs, 2 acre-feet per year for domestic supply;
0.01 cfs, 2 acre-feet per year for stock water

9 Priority Date: August 1, 1887

10 Point of Diversion: 325 feet north and 450 feet east of the center of
11 Section 9, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9,
T. 19 N, R. 15 E.W.M.

12 Place of Use: W $\frac{1}{2}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 19 N., R. 25 E.W.M.
13

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

15 Source: An unnamed stream (Rabbit Creek)

16 Use: Irrigation of 9 acres

17 Period of Use: April 1 through October 31

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

19 Priority Date: May 31, 1888

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

22 Place of Use: NE $\frac{1}{4}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 19 N.,
23 R. 16 E.W.M.
24
25
26

27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME:

Sherry Bertino
Margaret V. Peckinino

COURT CLAIM NO. 00394
(A)06098

2
3 Source:

An unnamed spring

4 Use:

Domestic supply

5 Period of Use:

Continuously

6 Quantity:

0.01 cfs; 1.0 acre-foot per year

7 Priority Date:

May 31, 1888

8 Point of Diversion:

650 feet south and 775 feet west from the east quarter
corner of Section 12, being within the $W\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$ of
Section 12, T. 19 N., R. 15 E.W.M.

9
10 Place of Use:

$E\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$ of Section 12, T. 19 N., R. 15 E.W.M.

11
12 CLAIMANT NAME:

Harold B. Iverson
& Joann Iverson

COURT CLAIM NO. 01137

13 Source:

An unnamed stream

14 Use:

Irrigation of 6 acres and stock water

15 Period of Use:

May 1 through September 30

16 Quantity:

1.0 cfs; 69.6 acre-feet per year

17 Priority Date:

February 22, 1889

18 Point of Diversion:

500 feet south and 500 feet west from the center of
Section 36, being within the $NE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$ of Section 36,
T. 20 N., R. 15 E.W.M.

19
20 Place of Use:

That portion of the $N\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$ of Section 36, T. 20 N.,
R. 15 E.W.M. lying northerly of the former C.M. St. P. and
P. Railroad right-of-way (John Wayne Trail)

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27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME:

Harold B. Iverson
& Joann Iverson

COURT CLAIM NO. 01137

2
3 Source:

Unnamed stream

4 Use:

Irrigation of 11 acres and stock water

5 Period of Use:

May 1 through September 30

6 Quantity:

1.83 cfs; 146.3 acre-feet per year

7 Priority Date:

February 22, 1889

8 Point of Diversion:

(1) 1175 feet north and 900 feet west of the south
quarter corner of Section 36, T. 20 N., R. 15 E.W.M.,
being within the $N\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$ of Section 36, T. 20,
R. 15 E.W.M.

(2) 1275 feet north and 750 feet west of the south
quarter corner of Section 36, T. 20 N., R. 15 E.W.M.,
being within the $NE\frac{1}{4}SE\frac{1}{4}SW\frac{1}{4}$ of Section 36, T. 20,
R. 15 E.W.M.

(3) 1300 feet south and 775 feet west of the center of
Section 36, T. 20 N., R. 15 E.W.M., being within the
 $S\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$ of Section 36, T. 20 N., R. 15 E.W.M.

15 Place of Use:

That portion of the $NE\frac{1}{4}SW\frac{1}{4}$ of Section 36, T. 20 N.,
R. 15 E.W.M. lying southerly of the former
C.M. ST. P. and P. Railroad right of way (John Wayne
Trail)

17 Limitations of Use:

The total diversion from the two pumps and the gravity
ditch shall not exceed 1.83 cfs of natural flow water

27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 5 (Elk Heights)

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

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

4 Source: An unnamed stream

5 Use: Domestic supply

6 Period of Use: Continuously

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

8 Priority Date: November 4, 1895

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

12 Place of Use: The N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 19 N., R. 15 E.W.M.

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

16 Source: Pressy Creek

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

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

20 Quantity: 0.02 cfs; 4 acre-feet per year

21 Priority Date: November 4, 1895

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

25 Place of Use: The N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 19 N., R. 15 E.W.M.

26
27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 5 (Elk Heights)

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

1 CLAIMANT NAME: The Estate of John E. Rothlisberger COURT CLAIM NO. 01297
2 Richard White
3 Jeanne Purple

3 Source: An unnamed spring

4 Use: Stock water

5 Period of Use: Continuously

6 Quantity: 0.01 cfs; 2 acre-feet per year

7 Priority Date: November 4, 1895

8 Point of Diversion: 150 feet north and 900 feet east from the south quarter
9 corner of Section 3, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
10 Section 3, T. 19 N., R. 15 E.W.M.

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

12 CLAIMANT NAME: Springwood Ranch Corporation COURT CLAIM NO. 02152

13 Source: An unnamed spring

14 Use: Domestic supply and stock water

15 Period of Use: Continuously

16 Quantity: 0.01 cfs, 1 acre-feet per year for domestic;
17 4 acre-feet per year for stock water

18 Priority Date: December 26, 1896

19 Point of Diversion: 1275 feet north and 300 feet west of the east quarter
20 corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
21 Section 29, T. 19 N., R. 17 E.W.M.

22 Place of Use: S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 lying west of the Yakima River
23 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, lying west of the Yakima
24 River, ALL in T. 19 N., R. 17 E.W.M.

27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 5 (Elk Heights)

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

1	CLAIMANT NAME:	Brian Frederick	COURT CLAIM NO. 02222
2		& Elizabeth Frederick	
3	CLAIMANT NAME:	Mack D. Richey	COURT CLAIM NO. 01676
4		& Susan R. Richey	
5		Brian Frederick	
6		& Elizabeth Frederick	
7		Real Estate Investment Group	
8		Jon L. Newton	
9		& Cindy L. Newton	
10		Sandra Fredericksen	
11	Source:	Yakima River	
12	Use:	Irrigation of 270 acres and stock water	
13	Period of Use:	May 1 through September 15	
14	Quantity:	5.8 cfs, 1585 acre-feet per year for irrigation; 4 acre-feet per year for stock water	
15	Priority Date:	June 30, 1900	
16	Point of Diversion:	750 feet south and 1150 feet east of the north quarter corner of Section 35, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, T. 20 N., R. 15 E.W.M.	
17	Place of Use:	<u>Brian and Elizabeth Frederick</u> A rectangular area commencing at the southwest corner of Section 29, T. 20 N., R. 16 E.W.M., thence north along the west boundary of said Section, 1210.00 feet; thence east perpendicularly along the south edge of an existing irrigation and drainage ditch, 1440.00 feet; thence south perpendicularly to the south boundary of said Section, 1210.00 feet; thence west along the south boundary of said Section, 1440.00 feet to the said southwest corner, the point of beginning	

SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 5 (Elk Heights)

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

Real Estate Investment Group

The west 1470.00 feet of the SW $\frac{1}{4}$ of Section 29, T. 20 N., R. 16 E.W.M., EXCEPT that portion thereof bounded by a line described as follows: Beginning at the southwest corner of said Section 29, the true point of beginning; thence N 1°03'17" E, 1222.00 feet along the west line of said Section; thence S 88°56'47" E, 1440.00 feet; thence S 1°03'17" W, 1212.00 feet to the south line of said Section; thence N 89°20'39" W, 1440.04 feet along said south line to the true point of beginning. Also, EXCEPT the following described tract: That portion of the west 1470.00 feet of the SW $\frac{1}{4}$ of Section 29, T. 20 N., R. 16 E.W.M., lying northerly of an existing ditch bounded by a line described as follows: Beginning at the northwest corner of said southwest quarter, the true point of beginning; thence S 1°03'17" W, 481.94 feet along the west line thereof to the centerline of said ditch; thence S 87°39'20" E, 96.00 feet along said ditch centerline; thence S 76°49'30" E, 329.00 feet along said ditch centerline; thence N 77°51'30" E, 378.00 feet along said ditch centerline; thence N 77°09'00" E, 705.00 feet along said ditch centerline to the east line of said west 1470.00 feet of the southwest quarter; thence N 1°03'17" E, 303.69 feet along said line to the north line of said southwest quarter; thence N 89°11'17" W, 1470.01 feet along said north line to the true point of beginning.

Jon L. and Cindy L. Newton

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

SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 5 (Elk Heights)

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

Sandra L. Fredericksen

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

That portion of the SE $\frac{1}{4}$ of Section 29, T. 20 N., R. 16 E.W.M., bounded by a line described as follows: Beginning at the northeast corner of said SE $\frac{1}{4}$, the true point of beginning; thence S 0°25'33" W, 1261.12 feet along the east line of said southeast quarter; thence N 89°11'17" W, 1744.50 feet to Point A; thence N 0°46'28" E, 273.44 feet; thence N 4°12'52" E, 381.54 feet; thence N 0°25'33" E, 606.79 feet to the north line of said southeast quarter; thence S 89°11'17" E, 1717.63 feet along said north line to the true point of beginning, containing 50 acres, more or less, and including the range, refrigerator, dishwasher, washer, dryer, wood stove and all lighting fixtures presently located on the premises.

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

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

CLAIMANT NAME:

John M. Butkovich
& Jean M. Butkovich

COURT CLAIM NO. 01422

Source:

- (1) An unnamed stream;
- (2) Roslyn Creek

Use:

Irrigation of 26 acres:

- (1) Unnamed stream: 2.5 acres;
- (2) Roslyn Creek: 23.5 acres

Period of Use:

April 1 through October 31

Quantity:

- (1) Unnamed stream: 0.075 cfs, 15.0 acre-feet per year;
- (2) Roslyn Creek: 0.67 cfs; 117.5 acre-feet per year

Priority Date:

June 30, 1904

Point of Diversion:

(1) Unnamed stream: 600 feet south and 350 feet west from the northeast corner of Section 20, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, T. 20 N., R. 15 E.W.M.

(2) Roslyn Creek: 1200 feet south and 300 feet east from the northwest corner of Section 21, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21, T. 20 N., R. 15 E.W.M.

Place of Use:

Those portions of the NW $\frac{1}{4}$ of Section 21, T. 20 N., R. 15 E.W.M. described as follows:

(1) All of Block 16 of the SOUTH ADDITION TO ROSLYN.

(2) Lots 13 to 24, inclusive, and vacated "B" Street of Block 17 of the SOUTH ADDITION TO ROSLYN, and that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said section described as follows: Beginning at the point of intersection of the south line of South Avenue with the southerly production of the east line of South "B" Street, as shown on the plat of Northwestern Improvement Company's South Addition to the City of Roslyn; thence S 22°30' E, 297.56 feet; thence S 26°39' E, 924.75 feet; thence N 63°20' E, 542.97 feet; thence northwesterly 1259.15 feet, more or less, along the Burlington Northern Railroad right-of-way; thence S 64°57' W, 310.34 feet to the point of beginning, and that portion of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ described as follows: Commencing at the west quarter corner of said section, thence east 390 feet, more or less, to the point of beginning; thence N 26°39' W, 490 feet, more or less; thence

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Re: Subbasin No. 5 (Elk Heights)

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1 N 63°21' E, 45 feet, more or less;; thence N 26°39' W,
2 345 feet, more or less; thence N 63°21' E, 347 feet,
3 more or less; thence southeasterly 96 feet, along the
4 southwesterly right of way of Shaft Street; thence
5 S 26°39' E, 839 feet, more or less; thence S 63°21' W,
6 460 feet, more or less; thence N 26°39' W, 120 feet,
7 more or less; to the point of beginning

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

10 Source: An unnamed stream

11 Use: Domestic supply and stock water

12 Period of Use: Continuously

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

14 Priority Date: December 15, 1916

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

18 Place of Use: E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 19 N., R. 15 E.W.M.
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27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 5 (Elk Heights)

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

1	CLAIMANT NAME:	South Cle Elum; Town of	COURT CLAIM NO. 01294
2			(A)05347
3	Source:	An unnamed spring	
4	Use:	Municipal supply	
5	Period of Use:	Continuously	
6	Quantity:	1.0 cfs; 168 acre-feet per year	
7	Priority Date:	June 12, 1957	
8	Point of Diversion:	200 feet north and 650 feet west from the east quarter corner of Section 5, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, T. 19 N., R. 15 E.W.M.	
9			
10	Place of Use:	The service area of the Town of South Cle Elum	
11			
12	CLAIMANT NAME:	The Estate of John E. Rothlisberger	COURT CLAIM NO. 01298
13		Richard White	
14		Jeanne Purple	
15	Source:	An unnamed spring	
16	Use:	Stock water	
17	Period of Use:	Continuously	
18	Quantity:	0.01 cfs; 1 acre-foot per year	
19	Priority Date:	May 12, 1965	
20	Point of Diversion:	950 feet north and 1200 feet east of the west quarter corner of Section 10, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T. 19 N., R. 15 E.W.M.	
21	Place of Use:	NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, and the east 1000 feet of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3, lying south of the Kittitas Reclamation District Canal, ALL in T. 19 N., R. 15 E.W.M.	
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27	SUPPLEMENTAL REPORT OF REFEREE		
28	Re: Subbasin No. 5 (Elk Heights)		

1 CLAIMANT NAME: James E. Murphy COURT CLAIM NO. 02189
2 Source: Unnamed spring and stream
3 Use: Domestic supply and stock water
4 Period of Use: Continuously
5 Quantity: 0.02 cfs; 2 acre-feet per year
6 Priority Date: May 24, 1965
7 Point of Diversion: 1000 feet north and 1000 feet east of the west quarter
8 corner of Section 10, being within the E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
9 Section 10, T. 19 N., R. 15 E.W.M.
10 Place of Use: NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T. 19 N., R. 15 E.W.M.

11 CLAIMANT NAME: John Forenpohar COURT CLAIM NO. 00689
12 & Margaret E. Forenpohar
13 Source: Two unnamed springs
14 Use: Domestic supply, stock water and mink propagation
15 Period of Use: Continuously
16 Quantity: 0.02 cfs; 4 acre-feet per year
17 Priority Date: July 1, 1965
18 Point of Diversion: 1250 feet north and 1095 feet east of the west quarter
19 corner of Section 10, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
20 Section 10, T. 19 N., R. 15 E.W.M.
21 Place of Use: NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T. 19 N., R. 15 E.W.M.
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27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 5 (Elk Heights)

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1 CLAIMANT NAME: E. L. Knudson, Jr. COURT CLAIM NO. 00284
2 & Necia Knudson (A)04191
3 Rocky Mountain Elk Foundation
4 Source: An unnamed stream
5 Use: Storage for continuous stock water, fish propagation
6 and recreation
7 Period of Use: Continuously
8 Quantity: 7.0 acre-feet per year
9 Priority Date: January 13, 1966
10 Point of Diversion: 800 feet north and 950 feet east from the west quarter
11 corner of Section 31, being within Government Lot 2 of
12 Section 31, T. 19 N., R. 17 E.W.M.
13 Place of Use: Government Lot 2 of Section 31, T. 19 N., R. 17 E.W.M.

14 CLAIMANT NAME: Walter W. Eyer COURT CLAIM NO. 01184
15 & Valorie G. Eyer
16 Source: An unnamed stream
17 Use: Domestic supply
18 Period of Use: Continuously
19 Quantity: 0.01 cfs; 2 acre-feet per year
20 Priority Date: August 15, 1966
21 Point of Diversion: 1300 feet south and 700 feet east from the west quarter
22 corner of Section 7, being within Government Lot 3 of
23 Section 7, T. 19 N., R. 16 E.W.M.
24 Place of Use: The west 308.26 feet of the north 330 feet of
25 Government Lot 3 of Section 7, T. 19 N., R. 16 E.W.M.

1 CLAIMANT NAME: Robert C. Clark, Jr.
2 & Shirley M. Clark

3 Source: An unnamed stream

4 Use: Single domestic supply and irrigation of 2 acres

5 Period of Use: (1) Continuously for domestic supply and (2) April 1
through October 1 for irrigation

6 Quantity: 0.01 cfs, 2.0 acre-feet per year for domestic use;
7 0.01 cfs, 2.0 acre-feet per year for irrigation

8 Priority Date: February 29, 1968

9 Point of Diversion: 1300 feet south and 700 feet east from the west quarter
10 corner of Section 7, being within Government Lot 3 of
Section 7, T. 19 N., R. 16 E.W.M.

11 Place of Use: The east 305 feet of the west 640.26 feet of the north
12 660 feet of Government Lot 3 of Section 7, T. 19 N.,
13 R. 16 E.W.M.

14 CLAIMANT NAME: Frederick E. Krueger
& Linda R. Krueger

15 Source: Indian John Spring

16 Use: Domestic supply and stock water

17 Period of Use: Continuously

18 Quantity: 0.01 cfs; 2 acre-feet per year

19 Priority Date: May 4, 1973

20 Point of Diversion: 1300 feet north and 500 feet east of the southwest
21 corner of Section 4, being within the $W\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$ of
Section 4, T. 19 N., R. 16 E.W.M.

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

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27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 5 (Elk Heights)

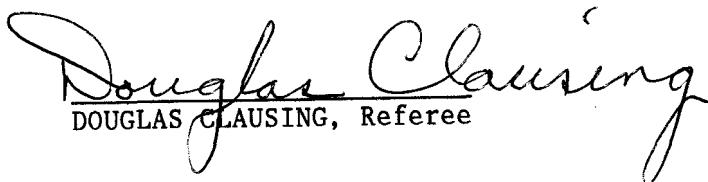
1 CLAIMANT NAME: Sky Meadows Ranch Country Club COURT CLAIM NO. 05636
2 Source: An unnamed spring
3 Use: Community domestic supply for 163 units
4 Period of Use: Continuously
5 Quantity: 0.018 cfs; 13.0 acre-feet per year
6 Priority Date: January 22, 1974
7 Point of Diversion: 1000 feet north and 1150 feet east of the west quarter
8 corner of Section 17, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 17, T. 19 N., R. 16 E.W.M.
9 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, the N $\frac{1}{2}$ of Section 17, EXCEPT
10 the NE $\frac{1}{4}$ NW $\frac{1}{4}$ thereof; and the NE $\frac{1}{4}$ of Section 18, ALL in
11 T. 19 N., R. 16 E.W.M.
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Yakima, WA 98902-3401

1 The aforementioned changes shall be incorporated into the Report of
2 Referee for Subbasin No. 5 (Elk Heights), dated July 7, 1997.
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4 SIGNED and DATED at Yakima, Washington this 10th day of May, 1999.
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7 
8 DOUGLAS CLAUSING, Referee
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