

**YAKIMA RIVER BASIN  
WATER RIGHTS ADJUDICATION**

**FILED**  
JUN 29 2000

**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

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**REPORT OF REFEREE**

**Re: SUBBASIN NO. 9  
(WILSON-NANEUM)**

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

**REPORT OF REFEREE - VOLUME 43, PART I**

*14514*

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

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

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

## I. BACKGROUND

This report concerns the determination of the surface water rights of the Yakima River basin, specifically those rights located within Subbasin No. 9, the Wilson-Naneum drainage basin. The criteria consisting of applicable law and bases for water right determinations used by the Referee in the evaluation of claims can be found in the Report of the Referee to the Court, Preface to Subbasin and Major Category Reports, Volume 2, dated May 18, 1988.

The Referee conducted evidentiary hearings between January 7, 1991, and March 12, 1991.

Report of Referee  
Subbasin No. 9

## II. FIELD INVESTIGATIONS

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

### III. WATER DUTY

The Plaintiff State of Washington submitted an exhibit (SE-3) entitled "Supplemental Documentary Information, Wilson-Naneum Subbasin No. 9", which included information on soils, climate, irrigation and farming practices, and plant needs, meant to aid the Referee in determining irrigation water requirements within the subbasin. In addition, two expert witnesses for the U.S. Bureau of Reclamation testified to provide general information regarding crop irrigation requirements for water delivered to farms in the subbasin. In the absence of definitive testimony or other evidence, the Referee proposes to rely upon such expert testimony, and will calculate the maximum duty of water for the various uses in Subbasin No. 9 according to the following formulae:

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

Domestic supply (with small  
 lawn and garden) ..... 0.01 cfs; 1 acre-foot per year

Domestic supply and large  
 lawn and garden up to  
 $\frac{1}{2}$  acre ..... 0.02 cfs; 2 acre-feet per year

Stock Water ..... 1 acre-foot per year  
 (diversion)

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1           B. Irrigation Water -- In order to be consistent with the water duties  
2 awarded in many of the prior decrees that have been entered addressing water  
3 rights in this area (see pages 7 of this report), the Referee will use an annual  
4 water duty of 5 acre-feet per acre. The maximum rate of diversion or withdrawal  
5 for each irrigated acre will be 0.02 cubic foot per second (9 gallons per  
6 minute). It is the Referee's opinion that the aforementioned duties of water  
7 are reasonable maximum application rates for the soil and topographic conditions  
8 in most of Subbasin No. 9. The lower part of the subbasin, along the Yakima  
9 River, was not addressed in the decrees. If the claimant provides evidence of  
10 water use that exceeds 0.02 cubic foot per second and 5 acre-feet per year, that  
11 quantity will be used in any water right that is recommended for confirmation.  
12

13           It should be noted that the use of water under all irrigation rights is  
14 limited to the amount of water that can be beneficially applied to the number of  
15 acres identified in the water right. The number of irrigated acres cannot be  
16 increased in the future without obtaining an additional water right.  
17

#### IV. STIPULATIONS

18           Three stipulations were adopted during the hearing, as among all claimants  
19 and their counsel. The first stipulation, concerning the use of exhibits and  
20 testimony, reads as follows:  
21

22           "It is hereby stipulated by all claimants in the above-entitled cause  
23 that all exhibits entered and all testimony taken at the hearing on  
24 claims held beginning January 7, 1991, may be utilized by any party in  
25 the proof of a claim or the contesting of a claim whenever relevant and  
26 material."

27           The second stipulates to the description of properties identified in the  
28 claims of the defendants to this action, as follows:  
29

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

6 In the third, the parties stipulated to the following in relation to  
7 "non-diversionary" stock and wildlife watering use with regards to Subbasin  
8 No. 9:

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

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

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

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

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

4              Additionally, on October 9, 1997, the Court entered an Amended Order RE:  
5       Non-Diversionary Stock Water Rights. This Order elevated the stock water  
6       stipulation to an Order of the Court. In the Order the Court recognized an  
7       historic right for non-diversionary stock water use upon riparian grazing lands  
8       in the Yakima Basin and that owners of riparian lands which are used for pasture  
9       or range for livestock have a right for non-diversionary stock water.

10                                  V. LAND DESCRIPTIONS

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

15                                  VI. WATER RIGHT PRIORITIES

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

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1                   VII. SPECIAL ISSUES

2                   A. Major Claimants

3                 Within Subbasin No. 9, several major claimants in this proceeding deliver  
4                 water. It is very common for a claimant in Subbasin No. 9 to be asserting a  
5                 right to use one of the creeks or a spring and also receive water delivered by a  
6                 major claimant. The water rights for major claimants are being determined by  
7                 the Court in the Major Claimant Pathway and those rights will not be addressed  
8                 in this report. The major claimants who deliver water to landowners in Subbasin  
9                 No. 9 are the Kittitas Reclamation District (KRD), Cascade Irrigation District  
10                (CID) and Ellensburg Water Company (EWC). The rights of KRD and EWC have been  
11                determined and the Conditional Final Orders issued; for KRD see Report of the  
12                Court, Volume 14, Supplemental Report of the Court, Volume 14A and the  
13                Conditional Final Order entered on June 1, 1994; for EWC see Report of the  
14                Court, Volume 37, Supplemental Report of the Court, Volume 37A and Conditional  
15                Final Order entered on March 12, 1998. The Report of the Court for CID, Volume  
16                41, issued on October 8, 1999. The Conditional Final Order for CID has not been  
17                entered.

18               B. Relinquishment

19               Sections 90.14.130 through 90.14.180 of the Revised Code of Washington  
20               (RCW) provides for relinquishment of water rights if the right, or a portion of  
21               the right, is not exercised for five or more successive years. Section  
22               90.14.140 provides for "sufficient causes" for nonuse that prevent  
23               relinquishment. One of the sufficient causes (90.14.140(1)(d)) is operation of  
24               legal proceedings. At the time the evidentiary hearings were held for Subbasin  
25               No. 9, the Court and the Referee had taken the position that the adjudication

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was a legal proceeding that would prevent relinquishment of a water right. Therefore, if a water right had not been exercised, and the nonuse started after this case was filed in 1977, relinquishment of the right has not been an issue. The law of this case was that the adjudication provided a "sufficient cause" to prevent the relinquishment of surface water rights.

However, the Washington State Supreme Court in R. D. Merrill v. State, Pollution Control Hearings Board, 137 Wn.2d 118, (1999) (Merrill) held that a legal proceeding had to prevent the use of water in order for there to not be a relinquishment if there has been five or more years of nonuse. As a result of this ruling, the Court has directed the Referee in this proceeding to follow the guidance provided by the Supreme Court in Merrill. See Report of the Court on Remand For the Yakima-Tieton Irrigation District, Volume 16B, pages 25 through 30. Therefore, in order for the adjudication to be considered a sufficient cause to prevent relinquishment when there has been five or more successive years of nonuse, a claimant must prove that the adjudication prevented the use of water.

Because the Merrill ruling came out long after the evidentiary hearings for Subbasin No. 9, claimants will have to address this issue as part of their exceptions to the Report of Referee.

### C. Existing Decrees

Several miscellaneous decrees have been entered in Kittitas County Superior Court relating to use of waters from Wilson or Naneum Creeks and their distributaries. The Referee intends to apply the doctrine of res judicata using the guidance provided by the Court in its Memorandum Opinion and September 6,

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1985, Order related to res judicata and the existing decrees within the Yakima  
1 River Basin. The following decrees are being relied on as the basis for many of  
2 the claims to water rights in Subbasin No. 9:  
3

4       Carl A. Sander v. J. B. Jones, et al., Cause No. 96 (1890) was an action to  
5 determine water rights on Wilson Creek. The decree stated that the water was  
6 measured in miners inches under four inch pressure, or 0.02 cfs per inch and  
7 that the quantity of water provided in the decree was to be used for irrigation,  
8 stock or domestic purposes during the months of May and June and one-half that  
9 quantity was to be used the other months of the year. The decision that  
10 preceded the decree stated that one inch of water was needed for each acre  
11 during May and June and one-half inch during the rest of the year. The decree  
12 determined the rights of the parties to the waters of Lyle and Wilson Creeks.  
13 The decree did not identify the lands owned by the parties to the case, however,  
14 the decision that preceded the decree did identify the lands owned by many, but  
15 not all of the parties. The decision also in many cases identified when the  
16 land was first settled by a party, whether it was railroad land, and when the  
17 patent issued. The Sander v. Jones decree set several classes and priority  
18 dates, for the water rights awarded to each party, apparently based on the year  
19 water was first used and then each annual increase in quantity thereafter.  
20 After a landowner started using water a right was established for the quantity  
21 of water used the first year and then each year additional water was  
22 appropriate, a new priority date was assigned for each year the quantity of  
23 water diverted and used was increased. Some of the parties to that case had 10  
24 different priority dates assigned. The Court appeared to not recognize the  
25 theory that the right to divert water for irrigation relates back to the date of  
26

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the original appropriation, as long as development of that right is pursued with  
1 diligence, see Kendall v. Joyce, 48 Wash. 489, 93 Pac. 1091 (1908). The water  
2 rights as awarded in Sander v. Jones are not manageable and it would be  
3 impossible to determine the appropriate lands to assign to the different  
4 priorities, as there was no evidence presented to show the sequence by which the  
5 land was developed. The Referee believes that the decrees show that the land  
6 was developed and water put to use with diligence. Therefore, the Referee  
7 intends to apply the rulings of the Supreme Court in Kendall v. Joyce, and each  
8 of the rights awarded in Sander v. Jones will have a single priority date.  
9

10       James Ferguson, v. United States National Bank of Portland, Oregon, et al.,  
11 Cause No. 2607 (1901). This was an action to determine the relative water  
12 rights of the plaintiff, defendants and intervenors to the use of waters from  
13 Naneum Creek and distributaries. The Findings of Fact and Conclusions of Law  
14 that preceded the decree stated that water was measured in miners inches under  
15 four inch pressure. An inch of water, therefore equals 0.02 cubic foot per  
16 second. An inch of water flowing continuously was necessary for the irrigation  
17 of one acre during May and June and one-half inch was needed after July 1. For  
18 the most part, the Findings of Fact and Conclusions of Law identified the lands  
19 of each party on which water was being used and the date of settlement and  
20 appropriation of water. The decree itself only identified the name of the  
21 party, the class of their water right, and the number of inches to which they  
22 have a water right. Subsequent to entry of the decree the Court issued  
23 Additional Amendatory and Supplemental Findings and Decree, making modifications  
24 to a few of the water rights identified in the original decree. After entry of  
25 the decree, an unknown person drafted a schedule of water rights that purports  
26

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to identify the class of the water right, number of inches of water awarded, the  
1 description of lands where the water is used and the name of the landowner.  
2 Frequently the name of the landowner is different than the name in the decree,  
3 which leads the Referee to believe that the schedule was prepared at least a few  
4 years after the decree was entered. The description of lands on which water is  
5 used on the schedule of rights is generally consistent with the Findings of Fact  
6 and Conclusions of Law entered by the Court. However, it does not incorporate  
7 the changes made by the Court in the Additional Amendatory and Supplemental  
8 Findings and Decree. The findings and decree, as amended, are binding and the  
9 schedule will not be relied upon when it differs from those.

Carl A. Sander and Olive Sander v. Ellensburg Water Supply Co. v. Charles Wilson, et al., Decree No. 3142 (1903) was an action that determined that Carl A. and Olive Sander were entitled to 1075 inches of water from Wilson Creek and Ellensburg Water Supply Co. was entitled to 225 inches of water from Wilson Creek, senior to the rights of the defendants (Wilson et al.) and also addressed the Sanders' right to replace and rebuild the bank of Wilson Creek at their diversion. The defendants were enjoined from interfering with the plaintiff's ability to divert those quantities when naturally flowing. Several claimants have pointed to this case as foundation for the Referee to change the regulation of flow between Dry Creek and Wilson Creek provided in the 1973 Order Pendente Lite in Cause No. 18145 (see discussion below). As the claimants point out, regulation of Dry Creek was established in Wilson so that the lands of senior water right holders (Sander, Haley and Ellensburg Water Supply Co.) were satisfied before the flow into Dry Creek was increased beyond its historical flow. This issue clearly is regulatory in nature and will be driven by the

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priority of the rights confirmed herein. The quantity of water that needs to  
remain in Wilson Creek, rather than diverted down Dry Creek, will be governed by  
the relative priority of the rights and the flow in the creeks.

Olive Sander, et al., v. Charles Bull and Kate Bull, et al., Decree No. 4121  
(1911) was a judgment against the defendants determining that Olive Sander and  
Ellensburg Water Supply Co. are entitled to the prior right to use 1280 inches  
from the combined flow of Wilson and Naneum Creeks, through Wilson Creek  
(Ellensburg Water Supply Co. entitled to 225 inches and the remainder belonging  
to Olive Sander), Thomas and Vanche Haley are entitled to 200 inches of water  
through the same channel. The decree did not determine the ranking of the  
rights between the three plaintiffs. The rights of 13 Intervenors were also  
specifically determined, but no priority was assigned to the rights, just that  
they were prior to the rights of the defendants. The rights of the defendants  
were not determined in this proceeding. The decree specified that an inch of  
water was under four inch pressure, which would equal 0.02 cubic foot per  
second. Although the rights of the defendants in this case were not determined,  
the Referee believes that it is reasonable to conclude that if a person was a  
defendant in this case, they were making some use of waters from either Wilson  
or Naneum Creeks. However, this decree does not establish the priority or the  
extent of the right, nor does it show where any water was used by the  
defendants. That must still be proven in the Acquavella proceeding. It is  
clear that the rights of the plaintiffs and the intervenors were determined to  
be senior to those of the defendants.

William H. Rader v. Olive Sander, et al., (1916) determined the rights of  
William H. Rader and one defendant, C. R. and Grace Hovey, to the waters of Lyle

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Creek and Wilson Creek. Olive Sander was dismissed from the case because there  
had been a prior action that determined the rights of the plaintiff against  
Olive Sander. C. R. and Grace Hovey were determined to have a senior right to  
10 inches of water from Wilson Creek to be diverted above the head of Lyle Creek  
and conveyed to the Hovey property. William Rader was determined to have a  
right to 60 inches of water, junior to the 10 inches for Hovey, but senior to  
the rights of all other defendants. Exact priority dates for the Rader and  
Hovey rights were not established. The defendants were enjoined from interfering  
with that water. The decree did not identify the lands owned by William Rader,  
nor did it determine the rights of any of the defendants, except Hovey.

W. R. Thomas v. James T. Roberts, et al., Decree No. 5653 (1925) determined  
the quantity of water that each party had a right to divert from Wilson or  
Naneum Creeks and the ranking of the rights between the parties to the case.  
The only lands that were described in the decree were those belonging to the  
plaintiff, W. R. Thomas. Actual priority dates were not included in the decree,  
merely statements of whether a defendants rights were senior or junior to those  
of the plaintiff. However, the Findings of Fact and Conclusions of Law that  
preceded the decree in many cases did identify the lands owned by each of the  
parties, when the land was settled and when water was first used. The  
information in the Findings of Fact will be used to assist in assignment of  
priority dates to Subbasin No. 9 claimants who are successors to parties to  
Thomas. This decree recognized the existence of water rights for landowners who  
were not parties to any of the prior decrees. This supports a conclusion that  
water rights existed in the Wilson-Naneum Creek area beyond those recognized in  
the prior decrees.

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Mary and Lelias Lawrence v. Fred D. Adams, et al., Decree No. 8402 (1933),

ordered the defendants and the Supervisor of Hydraulics (predecessor to Ecology) to be perpetually prohibited from diverting or allowing to be diverted through the Adams Ditch any of the water owned or claimed by James Ferguson or Henry Wager under Decree No. 2607. They were also prohibited from diverting the water from any other point above the lands of the plaintiffs.

Robert Wallace v. J. E. Powless, et al., Decree No. 82 (1890) addressed use of water from Dry Creek (also known as Lone Pine) and a dry natural channel known as Galloway Creek. The Findings of Fact described portions of sections, but not the township and range and provided information of when the parties first diverted water for beneficial use. The Referee believes that what has been called Galloway Creek may be lower Whiskey Creek, near the City of Ellensburg. This case will benefit Acquavella claimants who can show they are successors to the named parties to the extent that it shows water use in the late 1800's.

The last case is Hartvig Roseburg and Ida Roseburg v. Tony Mohar and Annie Mohar, Ella May Rothlisberger and Emil Rothlisberger. This case relates to use of a spring and does not provide sufficient information to determine the location of the spring or of the land owned by the parties. The only indication that this case relates to waters originating in Subbasin No. 9 is the index of the binder entered into the record by Ecology as part of its case in chief. The binder contains copies of all court decrees entered in the Yakima River Basin and the index identifies the subbasin within which the waters addressed in each decree lie.

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Some of the decrees did not identify the lands that were owned by the  
1 various parties, or only identified the lands owned by some of the parties. If  
2 the decree or any supporting documentation does not identify the lands owned by  
3 a party to a decree that was awarded a water right, the parties in the  
4 Acquavella proceeding must submit evidence to prove they are a successor to a  
5 party who was awarded a right and show evidence of where the water was used. In  
6 some instances the decree identifies the land that was owned by the parties, but  
7 it is clear that more land was owned than was awarded a right. A clear example  
8 of that is C. R. and Grace Hovey, defendants in Rader v. Sander, who were  
9 awarded a right to 10 inches of water. They were identified as owning Section  
10 19, the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 20, the NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30 and a portion of  
11 the NW $\frac{1}{4}$  of Section 29. Obviously the 10 inches of water was used to irrigate  
12 only a small portion of their property, but it is not clear from the decree  
13 where the irrigated land is located within the land they owned.  
14

Compliance with the claims registration requirements of RCW 90.14 is also  
15 needed in order for the Referee to recommend confirmation of a water right. The  
16 Referee will also consider evidence of relinquishment according to the  
17 provisions of RCW 90.14.140 -.180.  
18

On November 5, 1971, the Department of Ecology filed a Motion for an Order  
19 of Reference, Service of Summons and Hearing Date initiating a general  
20 adjudication of the Wilson-Naneum Creek Basin, Department of Ecology v. Art  
21 Carlson, et al., Cause No. 18145. Kittitas County Superior entered an Order of  
22 Reference on November 19, 1971, and Charles E. Corker was appointed Referee.  
23 Claims were filed in that proceeding and evidentiary hearings held in 1972. The  
24 Department of Ecology took the position that a complete adjudication of the  
25

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1 basin should not be accomplished until after June 30, 1974, the date by which  
2 water right claims were to be filed pursuant to RCW 90.14.041. Ecology felt  
3 that utilization of the claims would reduce the cost incurred by the state and  
4 claimants in conducting the adjudication. On June 15, 1972, the Report of  
5 Referee was filed, however, the Report of Referee did not recommend confirmation  
6 of water rights to the claimants. Instead it recommended that the Court enter a  
7 decree of interim adjudication to maintain the status quo as of 1970 in order to  
8 allow the Department of Ecology to promulgate a regulation under which parties  
9 could apply for appropriations of water below the Highline Canal. The parties  
10 represented by counsel objected to the report, primarily due to the Referee not  
11 recommending a schedule of rights. George E. Maddox, an employee with the  
12 Department of Ecology was directed by the Court to prepare a report that  
13 summarized the testimony and evidence presented at the evidentiary hearings and  
14 prepare a schedule of rights. The Court issued an Order Pendente Lite, which  
15 included the schedule of rights for use of waters from Wilson and Naneum Creeks  
16 upstream of the Highline Canal, as amended and ordered that it remain effective  
17 during the pendency of the case, or until amended or withdrawn by the Court.  
18 Signing of this order on June 29, 1973, was the last action taken regarding  
19 Cause No. 18145.

20 The Referee intends to use the information contained in the Report of  
21 Referee and the Report of George E. Maddox to assist in determining the rights  
22 of the claimants herein. However, the Order Pendente Lite was not a final  
23 determination of the water rights of the parties to that case. The evidence  
24 presented during the Subbasin No. 9 hearing may lead this Referee to a different  
25 conclusion than that reached by Mr. Maddox. Certain claimants in Subbasin No. 9

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have taken the position that the Order Pendente Lite in Cause No. 18145 should  
1  
be treated as a binding order on those parties. However, it is clear to the  
2  
Referee that the intent of the Court was for it to be temporary in nature  
3  
pending completion of that adjudication.  
4

5  
VIII. TESTIMONY AND REFEREE'S ANALYSES  
6

7  
Plaintiff Testimony

8  
Ms. Ceil Buddeke and Ms. Kerry O'Hara, Assistant Attorneys General,  
9  
represented the Plaintiff State of Washington, Department of Ecology.

10  
The State introduced into evidence the following generic exhibits:

11  
Number Description

12  
SE-1 Subbasin No. 9 Map  
SE-2 Subbasin No. 9 Inset Map  
SE-3 Supplemental Documentary Information Report  
SE-4 Conveyance Loss/Gain Report  
SE-5 Binder of Water Right Permits, Certificates, Water Right  
Claims and the Federal Withdrawal (Binders A - F)

15  
Claimant Testimony

16  
242 defendants filed statements of claim or notices of appearance. All  
17  
claimants and their legal counsel, if so represented, are as follows:  
18

Court	Claim	No.	Name	Attorney	Page(s)
		01958	A.C.X. Trading, Inc. 2350 W. 17th Street Long Beach, CA 90813	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg WA 98926-1088	335 592

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REPORT OF REFEREE

27  
Re: Subbasin No. 9

1	02298	Charles Adams 141 W. 8th Street Ajo, AZ 85321-1703	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	46, 591	
2	05072	Don Akehurst & Barbara Akehurst 2151 Brick Mill Road Ellensburg, WA 98926		49, 645 589	
3	01823	Paul Alderman & Paula Alderman 100 South Pfenning Road Ellensburg, WA 98926	F. Steven Lathrop, Attorney PO Box 1088 Ellensburg, WA 98926	51, 591	
4	01974	Alfred Anderson 2208 Judge Ronald Road Ellensburg, WA 98926	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg WA 98926-1088	53, 591	
5	00666	Gerald E. Anderson & Janis Anderson 1671 Thomas Road Ellensburg, WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926	56, 592	
6	01004	Harold W. Anderson 410 Game Farm Road Ellensburg, WA 98926		587 591	
7	01233	Jim Anspach & Paige Anspach 4220 Hungry Junction Road Ellensburg, WA 98926		56, 591	
8	02297	Joseph Antonich 1941 Lyons Road Ellensburg, WA 98926	Kenneth D. Beckley, Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926-2939	58, 589 600	
9	01155	Glen Armistead		60, 589	
10	01156	Bonnie Spurrier		705-707	
11	01158	131 Woodhouse Road Ellensburg, WA 98926-8493			
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1	01006	Ida Joseph Nason Aronica c/o Allen Aronica 12381 Naneum Road Ellensburg, WA 98926	63, 589 598
2	00575	Don H. Bacon & Gabriella R. Bacon Bacon Family Trust 1492 Thomas Road Ellensburg, WA 98926	66, 589 591
3	01879	Dimitri Bader & Lenora Bader 2602 Judge Ronald Road Ellensburg, WA 98926-9393	67, 591
4	00552	Stanley J. Baker and Gena L. Baker 330 McCullough Road Ellensburg WA 98926	Richard T. Cole, Attorney 70, 591 PO Box 499 Ellensburg, WA 98926-0499
5	00903	Everett O. Barney	Vernon E. Fowler, Jr. 72, 205
6	00928	& Lanita M. Barney P. O. Box 11081 Yakima, WA 98909-2081	Peters & Fowler 589, 670 115 S Second St. 671 Selah WA 98942
7	00708	E. Eugene Barnhart, Jr. 1850 Colockum Road Ellensburg, WA 98926	75, 703
8	00708	Kenneth E. Barnhart	J. Jay Carroll, Attorney 75, 78
9	00968	& Susan Barnhart 2441 Schnebly Road Ellensburg, WA 98926	Velikanje, Moore & 601, Shore, Inc., PS 703 405 E Lincoln Avenue Yakima, WA 98901
10	00708	Estate of May S. Barnhart c/o E. Eugene Barnhart 1790 Colockum Road Ellensburg, WA 98926	75, 703
11	01831	Frank J. Beard	81, 589
12	(A) 05373	& Charlot M. Beard 7490 Naneum RD Ellensburg, WA 98926	686

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27 Re: Subbasin No. 9

1	01841	James Russell Bender & Florence E. Bender 160 Tjossem RD Ellensburg, WA 98926	587 591
2	14379	Joyce L. Bloxham 3080 Rader Road Ellensburg, WA 98926	84, 591
3	02206	Boise Cascade Corporation	
4	(A) 03119	Legal Department	84, 589,
5	(A) 05238	PO Box 50	Attorney 670-676
6		Boise, ID 83707	1420 5th Avenue #3400 702, 709
7			Seattle, WA 98101-2339 710
8	01718	Dwight Bolton 630 Alford Road Ellensburg, WA 98926	372, 589 677
9	01567	Thomas H. Borger PO Box 101 Ellensburg, WA 98926	587 591
10	00185	Victor Boykiw	Donald D. Bundy, Attorney 91
11	(A) 00824	& Darlene Boykiw	28313 Redondo Way S. 591
12	(A) 02484	791 Ringer Loop	Unit 201
13		Ellensburg, WA 98926-9756	Des Moines WA 98198-8258
14	00825	James & Mary Bridge and Cy Morgan PO Box 99218 Tacoma WA 98499-0218	John P. Gilreath, Attorney 92, 589
15			PO Box 499 617, 632
16			Ellensburg WA 98926-0499 695
17	01608	William Brown & Marilyn Brown 5801 Naneum RD Ellensburg, WA 98926	Jeff Slothower, Attorney 587
18			Lathrop Firm 591
19	00460	Greg Brozovich 231 Lyons Road Ellensburg, WA 98926	PO Box 1088
20			Ellensburg WA 98926-1088
21	02124	Gerald F. Brunner & Ruth Ann Brunner 8190 Wilson Creek Road Ellensburg, WA 98926	586
22			591
23			Richard T. Cole, Attorney 97, 633
24			PO Box 499 667
25			Ellensburg WA 98926-0499
26	REPORT OF REFEREE		
27	Re: Subbasin No. 9		

1	12929	Jeff T. Brunson 1585 Tjossem Road Ellensburg, WA 98926	100 591
2	01955	Curtis B. Bull & Lucille E. Bull 1215 E. Mountain View Avenue Ellensburg, WA 98926	108 591
3	01944	John A. Bull, Jr., et al. c/o Walter T. Bull 670 Berry Road Ellensburg, WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499
4	01955	Thomas W. Bull, II & Jonelle M. Bull 43 Red Mountain Drive Ellensburg, WA 98926	108 591
5	00886 (A) 04207	Bull Canal Company, Inc. 1585 Tjossem Road Ellensburg, WA 98926	Lawrence E. Martin Halverson & Applegate, P.S. PO Box 22730 Yakima WA 98907-2715
6	00185 (A) 00824 (A) 02484	U.S. Department of the Interior Bureau of Land Management 1103 N. Fancher	91, 254 591
7	00900	Spokane WA 99212-1275	
8	01181 (A) 06158	Alan Burke 201 Church Street Newark, NY 14513	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926-0499
9	02295	Peter Burkholder 1500 Sanders Road Ellensburg, WA 98926	116 591
10	00726	Shird J. Burks & Audrey E. Burks 199 2nd Ave S Baxter, TN 38544-5129	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901
11	00103	Burlington Northern Railroad 3800 Continental Plaza 777 Main St Fort Worth, TX 76102	Elizabeth Hill, Attorney 118 591
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27	REPORT OF REFEREE Re: Subbasin No. 9	20	Referee's Office 15 W. Yakima Ave Ste. 200 Yakima, WA 98902-3401
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1	00857	Orren Busby Ruth Busby PO Box 414 Ellensburg WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499	119 589 646
2	00185	Central Washington University (A) 00824 400 E. 8TH AVENUE (A) 02484 Ellensburg, WA 98926-7474		91 591
3	01832	Ron G. Carlson & Toni D. Carlson 661 Carlson Road Ellensburg, WA 98926		121 700
4	00612	James F. Carmody & Dorothy Carmody 1312 Sanders Road Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	125 635 691
5	00967	D. Winslow Charlton & Anna Charlton 4451 Naneum RD Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	138 589 591
6	00481	Larry L. Charlton 8191 Wilson Creek Road Ellensburg, WA 98926	James K. Adams, Attorney Wagner & Luloff 110 N. 5th Ave. Ste. 200 Yakima, WA 98902-2642	134 591
7	02174	Larry L. Charlton & Marilyn Charlton 8191 Wilson Creek Road Ellensburg, WA 98926	James K. Adams, Attorney Wagner & Luloff 110 N. 5th Ave. Ste. 200 Yakima, WA 98902-2642	130 591
8	00481	Estate of Naomi Charlton c/o Larry L. Charlton 8191 Wilson Cr. Road Ellensburg, WA 98926	James K. Adams, Attorney Wagner & Luloff 110 N. 5th Ave. Ste. 200 Yakima, WA 98902-2642	134 696
9	00967	Ralph G. Charlton & Nancy L. Charlton 3151 Brick Mill Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	138 589 601 625

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Re: Subbasin No. 9

1	02232	Ralph G. Charlton 3151 Brick Mill Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	554 591
2	00724	Fred Christen & Mollie Christen 3580 Vantage HWY Ellensburg, WA 98926		586 591
3	01451	Fred Christen 3580 Vantage HWY Ellensburg, WA 98926		587 591
4	00253 (A) 02103 (A) 02104	Dick Colasurdo & Anna Colasurdo 15440 SE May Valley Road Renton, WA 98059		214 591
5	00884	Charles W. Cole & Ethel M. Cole 18450 Summitview Road Tieton, WA 98947		143 589 678
6	01209	Curtis S. Conner & Ruth J. Conner 2471 Ferguson Road North Ellensburg, WA 98926		145 589 609
7	00740	Gwendolyn Cooke & Robert Cooke 2281 Ferguson Road North Ellensburg, WA 98926		153 626
8	01454 (A) 04171	Gwendolyn Cooke 2281 Ferguson Road North Ellensburg, WA 98926	Kenneth D. Beckley, Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926-2939	147 610
9	00819	Guy F. Couture & Judy A. Couture 1613 E Capitol Avenue Ellensburg, WA 98926		155 679
10	02270	Robert Dean PO Box 377 Elma, WA 98541-0377		588 591

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1	00766	Robert G. Dier & Diane C. Dier 2815 Wilson Creek Road Ellensburg, WA 98926	586 592
3	00603	Harvey L. Dodge 1150 Lyons RD Ellensburg, WA 98926	157 589 629
5	00396	Larry Douglass & Denece Douglass 500 Cherry Lane Apt. C-1 Ellensburg, WA 98926-3867	160 592
8	00726	John Scott Downey 3590 Wilson Creek Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore 405 E Lincoln Avenue Yakima WA 98901
10	02035	Gordon L. Dudley & Anita M. Dudley PO Box 645 Ellensburg, WA 98926-0645	161 592
13	02035	Stefan Dudley PO Box 2508 Redmond, OR 97756-0560	161 592
15	01785	Maurice L. Dufault & Florence J. Dufault 1306 Vista Road Ellensburg, WA 98926	587 592
18	01891 (A) 01892	Beulah M. Dunn 3308 W Birchfield Road Yakima, WA 98901	587 592
20	02279	Alvia S. Dunnagun & Janet G. Dunnagun 3250 Kris Kringle Drive North Pole, AK 99705-6352	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926
22	00598	Jeanne M. Dunning 3880 Brick Mill Road Ellensburg WA 98926	401 589 683

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27 Re: Subbasin No. 9

1	00166 (A) 12208	Lorne T. Dunning & Jeanne M. Dunning 3990 Brick Mill RD Ellensburg, WA 98926	167, 589 623, 701 702
3	00504	Darrel Eason & Janet Rae Eason 371 McCullough RD Ellensburg, WA 98926	Hugh M. Spall, Attorney PO Box 831 Ellensburg, WA 98926 173 592
5	01254	Jack Eaton 12771 State Route 821 Ellensburg, WA 98926	177 589 592
8	00634	John N. Eaton & Christi Eaton 473 Thrall Road Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499 179 589 592
10	00635	Timothy E. Eckert Marcia N. Eckert 3451 Lyons Road Ellensburg WA 98926	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg, WA 98926-1088 182 624
13	00461	Ron Elkins & Peggy Elkins 2660 Wilson Creek DR Ellensburg, WA 98926-7235	430 592
15	05283	Ronald D. Elkins & Marguerite A. Elkins 2660 Wilson Creek Road Ellensburg, WA 98926-7235	430 592
18	02085	Ellensburg; City of 109 E Third Suite 2 Ellensburg, WA 98926	Paul E. Sullivan, Jr. Ellensburg City Attorney 420 N Pearl Street Ellensburg WA 98926-3112 185 592
21	00786	William E. Erickson & Glenda L. Erickson 6980 Wilson Creek RD Ellensburg, WA 98926	190 592
23	00984	Farmers Home Administration 1606 Perry Street Suite #D Yakima, WA 98902	Charles E. O'Connell Jr. 414 Unites States Dept. of Justice 592 PO Box 44378 Washington DC 20026-4378

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27 Re: Subbasin No. 9

1	02275	Walter L. Farrar	532
	02282	& Gail Farrar	592
2		1650 Game Farm Road	
		Ellensburg, WA 98926-7277	
3	01815	Harry Ferguson	193
4	(A) 02786	& Concetta Ferguson	592
		714 East 5th Ave	
5		Ellensburg, WA 98926	
6	00480	Ralph Fields	586
		& Gwyla A. Fields	592
7		Box 141	
		Ellensburg, WA 98926	
8	01171	Charles R. Fischer	194
9		& Ellen Fischer	592
10		9580 Thorp Highway North	
		Thorp, WA 98946	
11	00536	Joseph C. Fitterer	196
		& Bettie E. Fitterer	592
12		1706 E Capitol Avenue	
		Ellensburg, WA 98926	
13	01028	Ruth Floyd	587
14		603 East Tacoma	592
		Ellensburg, WA 98926	
15	06016	David Arnold Fogle	198
16		& Linda Rose Fogle	592
17		123 E Idaho Street	
		Ellensburg, WA 98926	
18	01777	Gerald French	200
19		& Maxine French	589
		917 Sanders Road	691
		Ellensburg, WA 98926	
20	02232	Ronald J. Freytag	554
21		& Mary Styron Freytag	589
22		6728 Cliffbrook DR	599
		Dallas, TX 75240-7904	687
23	00900	G.R. Hughes; Enterprises LP	254
24		625 SW 155th Suite B-2	592
		Seattle, WA 98166	
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1	00778 (A) 06178	Gary Melvin Galbraith & Jacquelyn J. Galbraith 1090 Thomas Road Ellensburg, WA 98926	202 692
3	00903	Estate of Charles Gearheart PO Box 115 LaCrosse, WA 99143	205 592
5	00903	Leona Gearheart PO Box 115 LaCrosse, WA 99143	205 592
7	00884	Fred K. Gerlach & Shirley E. Gerlach PO Box 1026 Ellensburg, WA 98926-1026	143 589 678
10	00605 (A) 01749	Stephen K. German & Donna German 11040 Fairview Road Ellensburg, WA 98926	481 652
12	01607	Howard L. Gibson & Ruth A. Gibson 17506 32nd Avenue E Tacoma, WA 98446	587 592
15	02130	Earl T. Glauert & Ellen E. Glauert 1112 N B STREET APT 2 Ellensburg, WA 98926-2590	209 603
17	01870	Terry E. Goodrich & Carol Goodrich PO Box 2148 Mattawa, WA 99349-0902	213 589 604
20	00253 (A) 02103 (A) 02104	Jay Gorman 104 S Pearl Ellensburg, WA 98926	216 592
22	01945	Jeff Gorman & Sheryl Gorman 130 Lawrence Road Ellensburg, WA 98926-9788	218 592

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27 Re: Subbasin No. 9

1	01232	Gary Griffith 22806 NE 64th Street Redmond, WA 98053	290 592
2	01531	Allan R. Grigg & Teresa M. Grigg 161 Canyon View Lane Ellensburg, WA 98926	220 589 592
3	02268	Bill Haberman & Bill Haberman, Jr. 2730 Hungry Junction RD Ellensburg, WA 98926	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg WA 98926-1088
4	00620	Dale Haberman & Kathy Haberman 1950 Lyons Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore 405 E Lincoln Avenue Yakima WA 98901-2416
5	00620	George Haberman & Ruby Haberman 408 W. 12th Avenue Ellensburg, WA 98926-2416	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901-2416
6	01232	Haidas Ranches, LLC 2041 Kimberly Lane Ellensburg, WA 98926	225, 589 647, 693
7	01941	Larry Hansen 6214 Watchtower Road Tacoma, WA 98422	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499
8	01559	Patrice Hardisty 615 Wanapum DR LaConner, WA 98257-9527	587 592
9	00903	Carol Hartlaub PO Box 1135 Ellensburg, WA 98926-1135	205 589 680
10	01649	Thomas Haven & Sara Haven 1006 E. 4th Avenue Ellensburg, WA 98926-3530	230 589 648
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27	Re: Subbasin No. 9	27	Referee's Office 15 W. Yakima Ave Ste. 200 Yakima, WA 98902-3401
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1	02214	Betty Hawk & Randy Hawk 270 Meadowlark Lane Ellensburg, WA 98926	588 592
3	02264	Alice A. Henderson 100 Naneum Camp Lane Ellensburg, WA 98926	233 589 699
5	02264	James Henderson & Karen Henderson 14101 Naneum RD Ellensburg, WA 98926	233 589 699
8	02264	Le Moyne Henderson 100 Naneum Camp Lane Ellensburg, WA 98926	Kenneth D. Beckley, Law Office of Ken Beckley 701 M Pine Street Ellensburg WA 98926-2939
10	00663	Herbert J. Herbert & Rita Herbert 4890 Brick Mill Road Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499
13	02296	Mark Herbert & Kathy Herbert 3441 Rader Road Ellensburg, WA 98926	239 592
15	02172	Charles L. Hiatt, Sr. & Carolyn M. Hiatt 1900 Brooklane St. Apt. I-5 Ellensburg, WA 98926-2259	588 592
18	05820 (A) 05906	Richard M. Hilliard 830 Lyons Road Ellensburg, WA 98926	243 592
20	02296	Lyndell G. Hobbs & Vicki Diehl-Hobbs 10511 Fairview Road Ellensburg, WA 98926	239 592
22	06006	Wm. Ralph Hooper & Patricia Julia Hooper 310 Rosebriar Lane Ellensburg, WA 98926	245 589 592

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 27 Re: Subbasin No. 9

1	00661	Kenneth R. Huber & Sharon L. Huber (no address available)	246 589 635
2	01721	John Hultquist & Nancy Hultquist 11041 Naneum RD Ellensburg, WA 98926	249 589 655
3	02294	Mary Hundley 851 Prairie Lane Cle Elum, WA 98922	252 592
4		Kenneth D. Beckley, Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926-2939	
5	00568	HMH Enterprises Inc.	254
6	(A) 05601	150 - 4th St SW Brewster, OH 44613	592
7	00606	Gerhard Jansen & Bertha Jansen 4761 Number 6 Road Ellensburg, WA 98926	257 592
8	00930	Harold W. Jenkins & Gladys D. Jenkins 6181 Wilson Creek RD Ellensburg, WA 98926	259, 589 605, 648 662, 711
9	00932	Patrick M. Jenkins & Vicki K. Jenkins 6221 Wilson Creek Road Ellensburg, WA 98926	259, 589 618, 656
10	01463	Gary Lee Johnson 810 Stone Road Ellensburg, WA 98926	587 592
11	02374	Ralph Johnson & Cecile Johnson	589 592
12	02374	Walter R. Kaminski 11043 Naneum RD Ellensburg, WA 98926-9307	588 592
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26	REPORT OF REFEREE		
27	Re: Subbasin No. 9	29	Referee's Office 15 W. Yakima Ave Ste. 200 Yakima, WA 98902-3401
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1	01234 (A) 06380	Sam Kayser & Lonni Kayser	James K. Adams Wagner & Luloff	284 650	
2	01263	Sam Kayser 12141 Fairview Road Ellensburg, WA 98926	110 N 5th Ave. Ste. 200 Yakima WA 98902-2642	281 661	
3					
4	00991	Kayser Ranch, Inc. 12260 Fairview Road Ellensburg, WA 98926		271, 589, 605 635, 636, 649 650, 696	
5					
6	00667	Robert O. Kelley & Paula K. Kelley PO Box 782 Ellensburg, WA 98926		288, 589 619, 627	
7					
8	01232	Bobby F. Kennedy 802133 Crooked River Highway Prineville, OR 97754		290 589 592	
9					
10	02128	Barry C. Kent, et ux. 411 SW 200th Seattle, WA 98166		588 592	
11					
12	01732	Kittitas County 205 W 5th Ellensburg, WA 98926	David A. Pitts Prosecuting Attorney 205 W 5TH, ROOM 213 Ellensburg, WA 98926	587 592	
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14					
15	01128	Daniel S. Kivi 3181 North Ferguson Road Ellensburg, WA 98926-8102		293 611	
16					
17	00818	Adolph Kjelmyhr Merle D. Lott 4370 Brick Mill Road Ellensburg, WA 98926-9528		296 625	
18					
19	00662	Robert B. Klindworth & Linda W. Klindworth 1605 E Capitol Ellensburg, WA 98926		297 683	
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22	00256	Les S. Knudsen & Barbara J. Knudsen 1003 E 11th Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore 405 E Lincoln Avenue Yakima WA 98901	300 589 631	
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1	01954	Ray Knudson & Linda Knudson 3791 Brown Road Ellensburg, WA 98926	302 593	
3	01601	Frances Knutson 908 S 40th Avenue Yakima, WA 98909-3801	587 589 593	
5	01138	Pamela Sue Kollman 451 Lewis Lane Ellensburg, WA 98926	302 593	
7	01960	Conrad Kraft PO BOX 1345 ALLYN, WA 98524-1345	494 593	
9	01939	Fabian Kuchin, Jr. 1404 W Dry Creek Road Ellensburg, WA 98926	Jeff Slothower, Attorney PO Box 1088 Ellensburg WA 98926	303 596 628
11	00909	Robert D. Lamb & Estate of Harold F. Lamb 802 E Mountain View Ave Apt 234 Ellensburg, WA 98926-4804	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	306 593
14	00784	Dale Lee & Sandy Lee 1101 N Columbia Street Ellensburg, WA 98926	545 593	
17	00784	Steven Lee & Debbie Lee 3090 Kilmore Road Ellensburg, WA 98926-7837	545 593	
19	00952 (A) 04815	David M. Leffert & J. Christine Leffert 8300 Naneum Road Ellensburg, WA 98926	311 589 663	
21	01960	John Libenow 1111 Howard Rd Ellensburg, WA 98926	494 593	

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27 Re: Subbasin No. 9

1	00621	Myron Linder & Sandy Linder 4961 Naneum Road Ellensburg, WA 98926	315 589 688
3	00904	John H. Ludwick & Anne C. Ludwick c/o Fitch and Ludwick 900 - 4th Avenue, Suite 4104 Seattle, WA 98164	318 593
6	00175	Brian Luque & Teresa Luque 1306 Greenwood Lane CENTRALIA, WA 98531-1633	321 645
9	01970	Kenneth R. MacRae & Sandra MacRae 1800 Vantage Highway Ellensburg, WA 98926	Richard T. Cole, Attorney 324 PO Box 499 Ellensburg, WA 98926-0499 593
12	02245	Madeleine Villa, Inc. 5925 47th Avenue NE Marysville, WA 98270	James P. Hutton, Attorney 327 Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901 651
15	01416	Louaine A. Magnuson & Kevin Halley 10681 Naneum Road Ellensburg WA 98926	331 656
18	01958	Brian Maier & Sheila Maier mail to attorney only	Jeff Slothower, Attorney 335 Lathrop Firm PO Box 1088 Ellensburg WA 98926-1088 593
20	05297	Nick A. Mandelas 10620 Naneum Road Ellensburg, WA 98926	Richard T. Cole, Attorney 336 PO Box 499 Ellensburg WA 98926-0499 593
23	02175	William R. Marquiss & Billie R. Marquiss 608 E Tacoma Ellensburg, WA 98926	589 593

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27 Re: Subbasin No. 9

1	00769	Bernard L. Martin & Marlene F. Martin 1300 Brick Mill RD Ellensburg, WA 98926	340 589 606 619
2	02354	John F. Marvich 437 S. 181st Seattle, WA 98148	588 593
3	01707	Don E. Mays & Paula Mays 5323 Wilson Creek RD Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901
4	02268	Kevin McDowell & Becky McDowell PO Box 1082 Ellensburg, WA 98926	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg, WA 98926-1088
5	01747	Art W. McFarland 1109 Anderson Road Ellensburg, WA 98926	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg WA 98926-1088
6	02035	Ronald P. McGee & Joy A. McGee 2231 Thomas Road Ellensburg, WA 98926-9369	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499
7	00495	Estate of Byrl A. McNeil 1411 Alford RD Ellensburg, WA 98926	346 590 607
8	00484 (A) 04498	Mark McWhorter 6821 Ravensgate Way Yakima, WA 98908	Bryan Myre Lyon Law Office P.O. Box 1689 Yakima, WA 98907
9	01202	Grace M. Menig 240 Woodhouse LP Ellensburg, WA 98926	357 709
10	01814	Jeffrey Chris Merrick c/o A.G. Connolly, custodian 8765 Battle Point Drive NE Bainbridge Island, WA 98110	587 593

26 REPORT OF REFEREE  
 27 Re: Subbasin No. 9

1	01669	Howard Miles 1942 Bar 14 Road Ellensburg, WA 98926	359 590
2	01801	Andrew J. Mills & Stephanie Mills 1150 Thomas Road Ellensburg, WA 98926	363 590 693
3	02289	James M. Mills DEH Area 6 APO San Francisco, CA 96271	366 593
4	00951	Vernon Mills & Lorraine Mills 24315 NE Redmond Fall City Road Redmond, WA 98053-5418	368 593
5	00899	Donna Minielly 2320 W Sylvester Street, Apt. 16 Pasco, WA 99301-4572	370 590 616
6	01718	Floyd A. (Buck) Minor & Merna Minor 7411 Wilson Creek Road Ellensburg, WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926 372 590 636 682
7	01717	Jean G. Minor 5490 Smithson Rd Ellensburg, WA 98926-8879	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926 376 637
8	05349	Ron Mitchell 1351 Naneum Road Ellensburg, WA 98926-6967	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499 379 637
9	02133	Michael Kelly Moeur, Sr.	John P. Gilreath, Attorney 380
10	02134	& Michael Kelly Moeur, Jr.	PO Box 499 590
11	02135	181 Ringer Loop	Ellensburg WA 98926-0499 683
12	02136	Ellensburg, WA 98926	704
13	02137		
14	01263	Chet Morrison & Judy Morrison Morrison Ranches 2607 Judge Ronald Road Ellensburg, WA 98926	281 593

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1	01263	Thomas V. Morrison & Ginger D. Morrison 1607 W Dollar Way Road Ellensburg, WA 98926	281 593
2	01264	Morrison Ranches	
3	01265	2607 Judge Ronald Road	Jeff Slothower, Attorney 389, 394
4	01266	Ellensburg, WA 98926	Lathrop Firm 396, 398
5	01267		PO Box 1088 590, 593
			Ellensburg WA 98926 612, 628
			642, 689, 708
6	00460	Joe Morrow 391 Lyons Road Ellensburg, WA 98926	586 593
7	01252	N. N. Eaton & Sons 12771 State Route 821 Ellensburg, WA 98926	401 593
8	00598	Estate of Dorothy R. Nelson & Estate of Paul Nelson c/o Jeanne Dunning 3880 Brick Mill Road Ellensburg WA 98926	401 590 684
9	01866	G. Jay Nelson, et al. Crown J. Cattle Company 5380 Wilson Creek Road Ellensburg, WA 98926	John P. Gilreath, Attorney 404 PO Box 499 590 Ellensburg WA 98926-0499 651 684
10	02289	Mr. & Mrs. George Nelson 721 Willett RD Ellensburg, WA 98926	366 593
11	00672	Leonard L. Newman & Loree Newman 802 E. Mountain View Ave. Apt. #112 Ellensburg, WA 98926-3874	410 593
12	02232	Harriett Nichols 1001 S. Chestnut St., Unit 124 Ellensburg, WA 98926-4800	554, 590 599, 689
13	00866	Sarah Nickel 406 Oak Street Ellensburg, WA 98926	435 593

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1	01575	Brian Norelius 791 Grindrod Road Ellensburg, WA 98926-7048	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499	411 708
2	01956	Northwest Rainier c/o Kennedy-Wilson Properties Ltd PO Box 52850 Bellevue, WA 98015-2850		416 593
3	01895	Clinton A. Noyes & Laverne Noyes 1105 E 2nd Ellensburg, WA 98926		588 593
4	00968	Joseph J. O'Leary & Mary E. O'Leary 4091 Brick Mill Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	78 590 593
5	00984	Timothy P. O'Neill & Deborah S. O'Neill (no address available)		416 593
6	01701	Patrick R. O'Shaughnessy & Marilyn O'Shaughnessy PO Box 598 Ellensburg, WA 98926		587 593
7	00899	Maurice Olney & Ruth Ann Olney 40428 - 202nd AVE SE Enumclaw, WA 98022		370 590 616
8	01208	Gene Panattoni & Sally Panattoni 570 Thorp Highway South Ellensburg, WA 98926		587 593
9	00535	David Papineau 440 Ringer Loop Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	419 593
10	00825	Nick Parsel & Kim Parsel 791 Look Road Ellensburg, WA 98926		92, 590 617, 632 695

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1	01724	Pautzke Bait Company, Inc. PO Box 36 Ellensburg, WA 98926-0036	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	422 593
2	01836	David T. Pearson & Marguerite L. Pearson 2110 N Reecer Creek Road Ellensburg, WA 98926		425 590 593
3	01702	John M. Pearson & Julie Ann Pearson 801 Sanders Road Ellensburg, WA 98926		425 593
4	01182	Dorothy Pease & Estate of Murl Pease PO Box 655 Ellensburg, WA 98926		427 593
5	01247	Jill M. Perry 1093 Gillette Lane Ronan, MT 59864		428 590 593
6	00461	Robert Perry 206 W. Tacoma Ave. Ellensburg, WA 98926-3615		430 593
7	01451	William R. Peterson 862 Alford Road Ellensburg, WA 98926		587 593
8	01952	Carol W. Phelps & Joy M. Turner 27637 43rd Place S Auburn, WA 98001		588 593
9	01129	Frank W. Phelps P.O. Box 13469 Burton, WA 98013-0469	Roger K. Garrison, Attorney PO Box 269 Sunnyside WA 98944-0269	432 590 698
10	00866	Gerald E. Platt, et al. 306 Oak Street Ellensburg, WA 98926		435 593
11	02178	Ponderosa Properties, Inc. PO Box 460 Ellensburg, WA 98926		437 593

26 REPORT OF REFEREE  
 27 Re: Subbasin No. 9

1	02380	Herman R. Potts & Janet A. Potts 812 Anderson Road Ellensburg, WA 98926	437 593
2	00717	James A. Powell & Joyce Powell 411 N Mount Stuart Ellensburg, WA 98926	586 593
3	00739	Kay E. Powers 1041 Thomas Road Ellensburg, WA 98926	439 590 665
4	01454	Terry Powers	J. Jay Carroll, Attorney
5	(A) 04171	2691 Ferguson Road North Ellensburg, WA 98926	Velikanje, Moore & Shore 405 E Lincoln Avenue Yakima WA 98901
6	00782	Chas. A. Priebe & Carrie Priebe 510 E Bender Road Ellensburg, WA 98926	446 593
7	00356	M. Joanne Pugh & Estate of Durward Pugh c/o Greg Pugh 208 South Sprague Street Ellensburg, WA 98926-3718	447 593
8	01329	Merton Purnell 7151 Brick Mill RD Ellensburg, WA 98926	448, 660 697, 701
9	00969	Larry Raap 3301 Fairview Road Ellensburg, WA 98926	453 590 614
10	00825	Katherine M. Rasmussen 25293 Gallup Circle Laguna Hills, CA 92653-6125	92, 590 617, 632 695
11	00577	William W. Razey & Donna Razey PO Box 1084 Ellensburg, WA 98926-1084	586 587 593
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26	REPORT OF REFEREE		
27	Re: Subbasin No. 9		
28	38	Referee's Office 15 W. Yakima Ave Ste. 200 Yakima, WA 98902-3401	

1	01236	Gayle V. Redd & Karen K. Redd 1202 N Cora Street Ellensburg, WA 98926-9461	456 594	
3	00892	Ronald C. Rees	457, 461	
4	01981	11034 - 131st Avenue N.E. Kirkland, WA 98033	590, 594 638, 664	
5	00461	John Ressler & Diana Ressler PO Box 296 Palm Springs, CA 92263-0296	430 594	
8	01163	Kent D. Richards & Carolyn E. Richards 561 Rader RD Ellensburg, WA 98926	463 590 639	
10	02232	Charles Rimer & Faye Rimer 1200 Tibbling Road Selah, WA 98942-9722	554 590 599 689	
13	01818	Gerald R. Rimpler & Janet L. Rimpler 3510 Vantage Highway Ellensburg, WA 98926	587 594	
15	01048	Merle Ringer 5971 Number 6 Road Ellensburg, WA 98926	Jeff Slothower, Attorney PO Box 1088 Ellensburg, WA 98926	465 590 616
18	00461	James S. Ritter 1625 - 108th Avenue NE Bellevue, WA 98004	430 594	
20	04349	Doss Roberts & Edra Roberts 3080 Thomas Road Ellensburg, WA 98926	468 590 594	
22	00495	Arlene Rosenburg 1411 Alford Road Ellensburg, WA 98926	346 590 607	

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Re: Subbasin No. 9

1	02117	Keith S. Rowbotham & Margaret I. Rowbotham 540 Tipton Road Ellensburg, WA 98926	588 594	
2	01677	Sam Rust & Diane Rust 1581 Game Farm RD Ellensburg, WA 98926	587 594	
3	00396	Lonnie Sala & Kathleen J. Sala 1003 N Water Street Ellensburg, WA 98926	160 594	
4	01444	Schaake Packing Company PO Box 128 Ellensburg WA 98926-0128	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	470 590 699
5	02301	Evan A. Scheik 1020 Woodhouse Loop Ellensburg, WA 98926		475 594
6	00577	Andrew J. Schmidt William D. Schmidt & Melva M. Schmidt 1131 Wilson Creek Road Ellensburg, WA 98926		586 594
7	00979	Fred Schnebly	477	
8	(A) 04783	6451 Fairview Road	594	
9	(A) 05073	Ellensburg, WA 98926		
10	00979	Henry J. Schnebly, et al.	477	
11	(A) 04783	6281 Brick Mill RD	594	
12	(A) 05073	Ellensburg, WA 98926		
13	00979	Jim Schnebly	477	
14	(A) 04783	4500 Brick Mill Road	594	
15	(A) 05073	Ellensburg, WA 98926		
16	00605	Albert F. Scott	480	
17	(A) 01749	& Dorothy Scott PO Box 2085 North Bend, WA 98045-2085	652	
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26	REPORT OF REFEREE			
27	Re: Subbasin No. 9			

1	02232	Robert Shannon & Cathy Shannon 1241 Charlton Road Ellensburg, WA 98926-7381	554 590 599 690
3	02270	Mel Shenyer & Jodee Shenyer c/o Richard T. Cole	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499
5	01977	Melvin Shenyer PO Box 722 Ellensburg, WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499
7	01941	Jack G. Sikes & Ada M. Sikes c/o Jack Sikes, Jr. 23233 East Settler Drive Liberty Lake, WA 99019-8524	484 594
10	01130	John L. Silva & Janet E. Silva 3451 Game Farm Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901
13	01552	George Simpson	488
14	(A) 08870	& Barbara Simpson 806 E Sanders Ellensburg, WA 98926	594
16	02232	Don C. Smith & Jane K. Smith 7644 SE 22ND ST MERCER ISLAND, WA 98040-2119	554 590 600 690
18	02262	Patrick Smith PO Box 611 Ellensburg, WA 98926	Kenneth D. Beckley, Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926-2939
21	01960	William Z. Smith & Jean Smith 14108 W. Casa Linda Drive Sun City West, AZ 85375-5507	494 594
23	00366	Richard A. Snowden 190 Umptanum RD Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499

REPORT OF REFEREE

Re: Subbasin No. 9

1	00529	Howard P. Sorensen & Bernice H. Sorensen 802 E Mountain View Ave Apt 240 Ellensburg, WA 98926-4805	Lawrence E. Martin Halverson & Applegate, P.S. PO Box 22730 Yakima WA 98907-2715	500 594
2	00673	Morris P. Sorensen & Patricia E. Sorensen 1360 Berry RD Ellensburg, WA 98926		507 594
3	01081	Anita Sorenson 500 5th Avenue W Apt 56 Seattle, WA 98119-3935		587 594
4	00462	Wallace M. Stampfly	Ken Beckley, Attorney	508
5	00355	Walter & Thelma Stampfly 2453 Charlton Road Ellensburg WA 98926	Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926	694 697
6	01975	Jane Stark 309 N 9th Avenue Holbrook, AZ 86025-2316		588 594
7	00497	Robert G. Stewart & Shirley D. Stewart 1140 140th Avenue NE #D Bellevue, WA 98005-2905	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	513 704
8	02311	Chester Vernon Stokes	Vernon E. Fowler, Jr.	518, 590
9	02312	& Roma B. Stokes	Peters & Fowler	608, 684
10	02313	9720 Wilson Creek RD Ellensburg, WA 98926	115 S Second Street Selah WA 98942	693
11	02314	Chester Vernon Stokes 9720 Wilson Creek RD Ellensburg, WA 98926	Vernon E. Fowler, Jr. 115 S Second Street Selah WA 98942	518 685
12	01870	Ralph D. Strand & Kathryn A. Strand 1171 Brickmill RD Ellensburg, WA 98926-7216		213 590 604
13	02275	Charles Strickland & Linda Strickland 26957 Ice Harbor Drive Burbank, WA 99323-9725	Kenneth D. Beckley, Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926-2939	532 594
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26	REPORT OF REFEREE			
27	Re: Subbasin No. 9			

1	01957	Steven T. Sturdevant & Debi L. Sturdevant 236 Hololani Street Pukalani, HI 96788	588 594
2			
3	05934	Clint Swanstrum & Becky Swanstrum 8521 Wilson Creek Road Ellensburg, WA 98926	534 590 685
4			
5	01052	James C. Swayze	537
6	(A) 05592	& Dianne Morrison 513 N. Front Street, Ste. I Yakima, WA 98901-2351	590 640
7			
8	01861	Robert Swedberg & Lorene Swedberg 10870 Naneum RD Ellensburg, WA 98926	541 590 643
9			
10	01862	Taco Bell Corporation c/o PepsiCo Real Estate 17901 Von Karman Irvine, CA 92714	588 594
11			
12	01747	Vivian I. Teter (no address available)	544, 501 594
13			
14			
15	00739	Sandra Thomas	147, 439
16	01454	P.O. Box 512	590, 615
17	(A) 04171	308 South Chestnut Ellensburg, WA 98926	666
18			
19	02035	Arthur Tirotta & Susan Tirotta 10541 Naneum Road Ellensburg, WA 98926	161 590 660
20			
21	02279	Robert Tobin & Linda Tobin 6631 Crooked Tree Drive Anchorage, AK 99516	545 594
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26	REPORT OF REFEREE		
27	Re: Subbasin No. 9		
28	43	Referee's Office 15 W. Yakima Ave Ste. 200 Yakima, WA 98902-3401	

1	00967	Donald G. Toman & Cynthia R. Toman 3631 Brick Mill Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	138 590 594
2	01952	Estate of Glenn Turner (no address available)		588 594
3	00784	Jerry Tyler 1890 Wood House Loop Ellensburg, WA 98926	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg WA 98926-1088	545 594
4	01520	Dick Van de Graaf, Jr. & Maxine Van de Graaf 1695 Midvale Road Sunnyside, WA 98944	Lawrence E. Martin Halverson & Applegate P.S. PO Box 22730 Yakima WA 98907-2715	549 594
5	00661	Jim Vasquez 4781 Vantage Highway Ellensburg, WA 98926		246 590 635
6	00866	Ron Voshall PO Box 1018 Ellensburg, WA 98926		435 594
7	00990	Steve Wallace & Deborah L. Wallace 11011 Fairview RD Ellensburg, WA 98926		551 654
8	00986	David W. T. Watt & Dorothy A. Watt 1775 Lakeshore DR Sagle, ID 83860-9768		586 594
9	01575	Kevin & Gail Weyand 541 Tjossem Road Ellensburg WA 98926		411 594
10	02232	John L. Whittaker & Barbara Whittaker (no address available)		554 594
11	00377	Jessie E. Wikstrom 9426 S "A" Street Tacoma, WA 98444		586 594

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1	00582	J. Marilyn Wilkinson 13621 Wilson Creek RD Ellensburg, WA 98926	559 594
2	00726	Stephan A. Willard & Ruby Willard 2000 124th Avenue NE Suite B 100 Bellevue, WA 98005	565 590 597 622
3	06737	Stephan A. Willard Son Vida I 2000 124th Avenue NE Suite B 100 Bellevue, WA 98005	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926
4	00893	Barbara Williams 406 W 15th Ellensburg, WA 98926	571 594
5	00461	Gerry Williams & Laura Williams PO Box 36 Ellensburg, WA 98926	430 594
6	00351	Keith Williams & Margaret Williams PO Box 36 Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499
7	01806	Mark G. Williams & Kathleen S. Williams 1013 W Dry Creek Road Ellensburg, WA 98926	587 594
8	01681	Philip C. Wilson 1607 B Street Ellensburg, WA 98926	574 594
9	01552	Ken Wolfe	488
10	(A) 08870	2420 Airport Road Ellensburg, WA 98926	594
11	05316	William P. Woods & Priscilla A. Woods 350 Bar 14 Road Ellensburg, WA 98926-7200	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499
12			575 590 641

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1	00589	WA State Dept. of	Ms. Maryanne McGovern, AAG	579
	(A) 00590	Natural Resources	Attorney Geneeral's Office	590
2		Agricultural Resources	PO Box 40100	594
		PO Box 47061	Olympia WA 98504-0100	
3		Olympia WA 98504-7061		
4	01600	WA State Park & Rec. Commission	Joe Shorin, AAG	580
		Resources Development Division	WA State Parks and Rec.	590
5		P.O. Box 42650	Commission	594
		Olympia, WA 98504-2650	P.O. Box 40100	
6			Olympia, WA 98504-0100	
7	00363	Stanley P. Youngberg		582
	(A) 01686	9140 Naneum Road		661
8		Ellensburg, WA 98926		
9	00364	Winona P. Youngberg		584
	(A) 01687	9140 Naneum Road		590
10		Ellensburg, WA 98926		642

11 All of the claims in Subbasin No. 9 were scheduled to be heard during the  
12 evidentiary trial which commenced on January 7, 1991. Based upon the testimony  
13 and evidence provided to the Referee, the analysis of all remaining claims is as  
14 follows:

16 COURT CLAIM NO. 02298 -- Charles Adams

17 Charles Adams submitted a claim to the Court for use of waters from Naneum  
18 Creek and a drain for irrigation and stock watering. The claimant was  
19 represented by Attorney J. Jay Carroll at the evidentiary hearing. Mr. Adams  
20 and Ralph Charlton, whose family owned the land for many years, testified at the  
21 hearing.

22 Mr. Adams owns that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21 lying east of the  
23 Naneum Creek Road and the westerly 840 feet of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21, which  
24 consists of a total of 40 acres. He is irrigating 37 acres of hay and pasture

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1 with water diverted from Naneum Creek and delivered by the Kittitas Reclamation  
2 District. He also has four or five head of livestock on the property all year  
3 and about 40 head for a 30 day period in the fall. The livestock drink directly  
4 from the creek and a pond on the property. Mr. Adams acquired the land in 1980  
5 and at that time converted the open ditch system to a pipe system. The land is  
6 rill irrigated using gated pipe. Water is diverted from a branch of Naneum  
7 Creek on the Lippencott property in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16. Mr. Adams  
8 testified to a second diversion lower on the creek that serves seven acres,  
9 however, the location of the diversion was not identified. Mr. Adams testified  
10 to needing 8 acre-feet per year per irrigated acre to irrigate his land.

11 Water Right Claim (WRC) No. 002489 was filed by L. N. Sinclair and asserts  
12 a right to divert 2 cfs, 1460 acre-feet per year from Naneum Creek for the  
13 irrigation of 40 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21, T. 18 N., R. 19 E.W.M. The  
14 point of diversion described is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, very near the point  
15 of diversion described in the State's investigation report for this claim. Mr.  
16 Sinclair also filed WRC No. 002490 asserting a right to use 0.30 cfs, 1250  
17 acre-feet per year from a tile drain for irrigation of 15 acres and livestock in  
18 the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21. Mr. Adams testified that a drain feeds the pond on  
19 his property that is used only for non-diversionary stock watering.

20 The claimant is basing his claim on the Ferguson decree, which awarded a  
21 Class 2 right, which would have an 1872 date of priority, to John Olding, John  
22 Malcolm, and Charles Einkemeier for the use of 320 inches of water on the NW $\frac{1}{4}$ NW $\frac{1}{4}$   
23 of Section 21, T. 18 N., R. 19 E.W.M. However, in December of 1911, John G. and  
24 Elizabeth Olding, J. M. and Nettie Galvin and H. W. and Eugenia Wager sold to P.  
25 H. and Bertha Adams all of their water rights. At that time the Oldings owned

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the N½NE¼ and the NW¼ of Section 21, T. 18 N., R. 19 E.W.M., except for a ten  
1 acre parcel owned by the Galvins. The Galvins also sold their water rights to  
2 the P. H. and Bertha Adams. Exhibit No. DE-1268 was put into the record by  
3 Kayser Ranch, who are successors to P. H. Adams. The Oldings, Galvins and  
4 Wagers were selling their water rights to Naneum Creek in anticipation of  
5 construction of the KRD canal, which would serve their lands after it was  
6 constructed. This agreement was reached and documented in 1911, six years prior  
7 to adoption of RCW 90.03, the 1917 Surface Water Code, which provided for an  
8 administrative procedure for transferring water rights. In 1911 a water right  
9 could be transferred upon agreement by the parties, unless it was successfully  
10 challenged by another water user. There was no evidence offered to show that  
11 the transfer from Olding to P. H. Adams was challenged or that it was not  
12 executed, except for the apparent continued use of the water by Charles Adams  
13 and his predecessors. In fact, DE-1267 is a document executed in 1927 that  
14 states that the 1911 agreement had been fulfilled at that time.  
15

16       In light of the rights awarded in the Ferguson decree having been  
17 transferred to P. A. Adams in 1911 and there being no evidence offered to show  
18 that other water rights had been established for the land, the Referee  
19 recommends that a diversionary water right not be confirmed in this proceeding  
20 under Court Claim No. 02298. Livestock drinking from the creek and the pond are  
21 covered by the non-diversionary stock water stipulation discussed on page 4 and  
22 no other water right is necessary for that use.  
23  
24  
25

26       REPORT OF REFEREE  
27       Re: Subbasin No. 9

1 COURT CLAIM NO. 05072 -- Don Akehurst  
2 & Barbara Akehurst  
3 Eugene F. and Georgine Wheeler

4 Eugene F. and Georgine Wheeler submitted a claim to the Court asserting a  
5 right to use Wilson Creek/Lile (sic) Creek for irrigation and stock water. On  
6 January 29, 1991, Don and Barbara Akehurst were joined to the claim as  
7 additional parties. The Akehursts were represented by Attorney Michael Bauer  
8 and Mr. Akehurst testified at the evidentiary hearing.

9 The Akehursts bought the property described in the claim from the Wheelers  
10 immediately before the evidentiary hearing began. The property is described as  
11 the E $\frac{3}{4}$ NW $\frac{1}{4}$  of Section 20, T. 18 N., R. 19 E.W.M., within which 72 acres of  
12 pasture and grass are rill irrigated. Two springs located on the property are  
13 used for stock watering only. The location of the springs was not identified,  
14 nor were they addressed in the Statement of Claim form. The KRD delivers to the  
15 land water for the irrigation of 40 acres. Mr. Akehurst estimated that 2 cubic  
16 feet per second is diverted from Lyle Creek for irrigation. The diversion  
17 currently being used is located 780 feet south of the north quarter corner of  
18 Section 20.

19 Ira Burton received a patent for the NW $\frac{1}{4}$  of Section 20, T. 18 N.,  
20 R. 19 E.W.M. on August 18, 1888. Mr. Burton filed a statement of water right in  
21 1890 stating that he had constructed a ditch from "Lile" Creek and had initially  
22 appropriated 100 inches and then enlarged the ditch in 1883 and then  
23 appropriated an additional 75 inches. In 1903 Mr. Burton sold the land to Frank  
24 Bailey and the deed mentioned existing water rights and ditches. In 1909 Mr.  
25 Bailey sold the E $\frac{3}{4}$ NW $\frac{1}{4}$  to William Copeland together with ditches and water rights

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27 Re: Subbasin No. 9

1 consisting of an adjudicated right to 41 inches from Wilson Creek. The claimant  
2 put into the record three other deeds that also reference water rights for 41  
3 inches from Wilson Creek.  
4

5 The Referee believes that the 41 inches referenced in the deeds is part of  
6 a right awarded to I. L. Burton in the Sander v. Jones decree. In that decree  
7 Burton was awarded a right to 82 inches of water for the NW $\frac{1}{4}$  of Section 20. The  
8 Findings of Fact that preceded the decree stated that the appropriation was  
9 initiated in 1880 and increased until 82 inches were being appropriated in  
10 1889. The deeds associated with the E $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20 show that one-half of  
11 that quantity went with each half of the NW $\frac{1}{4}$ . The Sander v. Jones decree  
12 awarded one inch of water for each acre irrigated through June 30 and one-half  
13 inch per acre irrigated from July 1 through the remainder of the irrigation  
14 season. Therefore, the E $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20 had a right to use 41 inches for the  
irrigation of 41 acres.

15 Pursuant to the requirements of RCW 90.14, E. F. Wheeler filed Water Right  
16 Claim No. 124002 asserting a right to use 2 cfs, 1200 acre-feet per year from  
17 Wilson Creek for the irrigation of 40 acres and stock watering in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
18 Section 20, T. 18 N., R. 19 E.W.M. The diversion described is the point where  
19 Lyle Creek separates from Wilson Creek. This claim would seem to indicate that  
20 Mr. Wheeler was using his water from Wilson Creek (or Lyle Creek) only on the  
SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20. The ditch that Mr. Akehurst drew on State's Exhibit SE-2  
21 is mid-way into the NW $\frac{1}{4}$ .

22 The historical record is a bit confusing about the source of water being  
23 used, but that does not prevent a recommendation to confirm a water right. It  
24 is clear that when the right was established it involved use of water carried in  
25

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what is today called Lyle Creek. Lyle Creek separates from Wilson Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 18 N., R. 19 E.W.M., at the point described in the water right claim. The line of questioning by Ecology implies an uncertainty about whether Lyle Creek is a natural creek or a ditch. The historical record does not help. The water right document filed by Ira Burton called the source of water "Lile Creek", yet Sander v. Jones confirms a right to Wilson Creek.

The Referee recommends that a right be confirmed with a June 30, 1880, date of priority for the diversion from Lyle Creek, a branch of Wilson Creek, of 0.82 cubic foot per second from April 1 through June 30 and 0.41 cubic foot per second from July 1 through October 15, 200 acre-feet per year for the irrigation of 40 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20, T. 18 N., R. 19 E.W.M.

Mr. Akehurst testified that livestock drink from two springs on the property, the location of which is not in the record. This non-diversionary stock water use is covered by the stock water stipulation discussed on page 4 of this report.

COURT CLAIM NO. 01823 -- Paul Alderman  
& Paula Alderman

The Aldermans submitted a claim to the Court asserting a right to use waters from Lyle Creek for irrigation. The Aldermans are represented by Attorney John P. Winbauer. Mr. Alderman testified at the evidentiary hearing.

The Aldermans own approximately 2 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1, T. 17 N., R. 18 E.W.M., which is riparian to Lyle Creek. They irrigate 0.75 acre of lawn, garden and landscape plantings. Water is diverted from Lyle Creek

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and piped to a pond. Water is then withdrawn from the pond using a 1½ HP pump to a sprinkler system.

The Aldermans purchased the property from James Cobb, who owned the land from 1952 until 1977. The home on the property was completed in 1954 and the blueprints show the pond in existence at that time. Mr. Alderman testified that Mr. Cobb irrigated the land. There was no evidence of water use on the land prior to the Cobbs owning the land. A 1944 deed that transferred this land and other land referenced shares in Ellensburg Water Company, but did not mention use of Lyle Creek. Under the Riparian Doctrine, in order for there to be a water right for use of Lyle Creek, there needs to be evidence of water use prior to December 31, 1932. That evidence is lacking.

Water Right Claim No. 124382 was filed by James and Lois Cobb pursuant to the requirements of RCW 90.14. It asserts a right to use 2 cubic feet per second, 65 acre-feet per year from Lyle Creek for the irrigation of 4 acres. The place of water use includes the land now owned by the Aldermans. The Referee notes that the form states that water was first put to use in April of 1954. If that date is accurate, it is over 20 years later than necessary to establish a water right. The claimant did not address Water Right Claim No. 124382 or the actual date of first water use.

Due to the lack of evidence to show that a water right was established through use prior to December 31, 1932, the Referee cannot recommend that a water right be confirmed.

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1 COURT CLAIM NO. 01974 -- Alfred Anderson

2 Don and June Cobain submitted a claim to the Court. On January 30, 1991,  
3 Alfred Anderson was substituted for the Cobains. Both of the Cobains testified  
4 at the evidentiary hearing. On Janueary 30, 1991, Alfred Anderson was  
5 substituted for the Cobains.

6 The Cobains are asserting rights for two separate and distinct pieces of  
7 property. Each will be addressed separately. One parcel lies in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$   
8 of Section 31, T. 18 N., R. 19 E.W.M. and is located on Lyle Creek. A right is  
9 being asserted for stock watering and the irrigation of 3 acres. Water is  
10 diverted from Lyle Creek to a pond on the property. A pump withdraws water from  
11 the pond for a sprinkler irrigation system. There are remnants of a rill  
12 irrigation system on the property. Mr. Cobain testified that part of the water  
13 that is used is from Cascade Irrigation District, however, he did not indicate  
14 whether he was a patron of the district. Cascade is a Major Claimant in this  
15 proceeding whose rights are being determined through the Major Claimant  
16 pathway. Therefore, the right to use any water delivered by the district will  
17 not be addressed herein.

18 Water Right Claim No. 113253 was filed by Donald Cobain pursuant to the  
19 requirements of RCW 90.14. It asserts a right to divert 45 gallons per minute,  
20 15 acre-feet per year from Lyle Creek for the irrigation of 3 acres and stock  
21 watering. The place of use described is the lands for which the Cobains are  
22 asserting a right.

23 Mr. Cobain provided very little information about the history of water use  
24 on the land. There was not sufficient information provided to determine whether

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1 a water right had been legally established for the land. This land is also not  
2 addressed in any of the prior court decrees that address water rights in this  
3 area. Due to the lack of evidence to show that a water right had been  
4 established, the Referee cannot recommend confirmation of a water right.  
5

6 Although Alfred Anderson was substituted for the Cobains on this claim, it  
7 appears from the testimony presented that he only acquired the land in  
8 Section 31, T. 18 N., R. 19 E.W.M. The Cobains also own land that lies in the  
9 SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, both in T. 19 N.,  
10 R. 19 E.W.M. As far as the Referee can determine, they still own that land and  
11 Mr. Anderson should have been joined to the claim instead of substituted for the  
12 Cobains.

13 The Cobains are asserting a right to use waters from Naneum Creek and  
14 unnamed springs for stock watering and irrigation. They own 5.9 acres and are  
15 seeking a right to irrigate 2.25 acres and water their stock. They intend to  
16 raise three to five head of cattle and two horses. There is a pump on the  
17 spring that will withdraw 60 gallons per minute. The spring will be used to  
18 irrigate the area in front of their house and Naneum Creek will be used to  
irrigate a small garden and orchard.

19 The ownership history of the property was traced. The land was in the  
20 Bennett family from the time it was settled until 1921. Then it was owned by  
21 the Nylen family until 1956 when it was sold to Milton Lewis. Lewis owned it  
22 until 1971 and then Ralph Klein owned it for two years before selling it to the  
23 Cobains. Mrs. Cobain referenced two court decrees as the basis for their water  
24 rights. The first is the Ferguson decree. The Ferguson decree awarded a 30  
25 inch water right to Mrs. J. L. Bennett, who at the time owned the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ ,

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NW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M. The decree did not specify which of the Bennett lands the water right was appurtenant. The right was addressed again in W. R. Thomas v. James T. Roberts, et al., Decree No. 5653, which was signed on March 1, 1924. This decree clarified that the 30 inches was appurtenant to the "Rogers Tract", which was settled by Rogers in 1885. The Rogers Tract was further identified as being the S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, land that is not owned by the Cobains. The claimants have not directed the Referee to any other water right addressed in Ferguson that might cover their land.

The second decree referred to by the claimants was Philip Lawrence v. Bynum E. Roberts, Decree No. 11044 entered on December 7, 1944. This decree settled a dispute between the parties over use of a spring in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, which the claimants contend is the spring they are using. This decree, however, addressed use of the spring within Government Lot 1 of Section 5, T. 18 N., R. 19 E.W.M., which is not the claimants' property. This decree does not assist in establishing that a water right exists for the claimants' property.

Mrs. Cobain's testimony leads the Referee to conclude that the water use on their property has only very recently been developed. They have owned the property since 1973 and it appears that their water use began not long before the evidentiary hearing. If, in fact, there were a water right for the property, it appears that it would have relinquished due to the long period of nonuse, see RCW 90.14. Additionally, the Referee cannot identify a water right claim filed pursuant to RCW 90.14 that would be appurtenant to the claimants' property. The State's Investigation Report references Water Right Claims No. 117401 and 117402, however, those claims describe lands in the SW $\frac{1}{4}$  of

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Section 33, T. 19 N., R. 19 E.W.M. east of the claimants' land. Failure to file  
1 a claim relinquishes any right that may have existed, RCW 90.14.071. Therefore,  
2 the Referee cannot recommend that a right be confirmed.

Court Claim No. 00666 was filed by the Andersons asserting a right to divert water from Naneum Creek. The Andersons did not make an appearance at the evidentiary hearing in support of the claim. On June 9, 1994, the Andersons filed a Motion to Allow Presentation of Evidence and Testimony Regarding Claimants Claim. The Court entered an Order allowing the presentation of evidence and historical documents during the exceptions hearing phase for Subbasin No. 9. Therefore, even though the Referee cannot recommend that a water right be confirmed to the Andersons, it is recognized that their claim shall be scheduled when the supplemental hearing for Subbasin No. 9 is set.

Lester and Beverly Sperline submitted a statement of claim to the Court  
18 asserting a right to use Whiskey Creek and an unnamed drain for irrigation and  
19 stock watering. On February 19, 1997, Jim and Paige Anspach were substituted as  
20 claimants in this proceeding. The Sperlines were still active claimants at the  
21 time of the evidentiary hearing and were represented by Attorney Hugh Spall.  
22

Mr. Sperline testified at the hearing.

24 The property described in the claim lies in the NW $\frac{1}{4}$  of Section 23,  
T. 18 N., R. 18 E.W.M. The irrigated land lies in the southeasterly 2/3 of that

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quarter section. Water is diverted from Whiskey Creek near the west quarter  
1 corner of Section 13, T. 18 N., R. 18 E.W.M., on land owned at the time of the  
2 hearing by Dippel Brothers. There is a second diversion where Whiskey Creek  
3 enters Section 23, approximately 600 feet west of the northeast corner of the  
4 section. Mr. Sperline testified to diverting 3 cubic feet per second from the  
5 creek to irrigate 50 acres of pasture. Cattle are raised on the land and the  
6 number varies by year. The maximum is 100 cow/calf pairs or 250 yearlings.  
7 Water is diverted for irrigation between April 1 and October 15 and all year for  
8 stock watering. The flow in the creek declines around July 1 and KRD water is  
9 relied upon later in the season.  
10

Water Right Claim No. 096698 was filed by Lester Sperline in response to  
11 RCW 90.14. It asserts a right to divert 5 cfs, 500 acre-feet per year from  
12 Whiskey Creek for the irrigation of 90 acres and stock watering in the NW $\frac{1}{4}$  of  
13 Section 23.

The claimant put into the record three deeds showing transfer of portions  
15 of the land. The Northern Pacific Railroad sold the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 23 to  
16 Pauline Kreidel on September 25, 1915. The S $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 23 was sold by J.  
17 C. Hubbell to William Spurling on May 16, 1905. There is nothing in the record  
18 to show how long J. C. Hubbell owned it or how he acquired the land. However,  
19 Since N.P.R.R. owned the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , it is reasonable to assume they also at one time  
20 owned the S $\frac{1}{4}$ NW $\frac{1}{4}$ . Little else is known about the ownership of the land until 1965  
21 when the Sperlines acquired the entire NW $\frac{1}{4}$  of Section 23. Mr. Sperline points  
22 to a Water Right Affidavit as evidence that a water right was established for  
23 the NW $\frac{1}{4}$  of Section 23. W. W. Spurling, R. A. Maple and Lyman S. Burrell filed  
24 an affidavit on May 1, 1885, stating that on May 20, 1884, they constructed a  
25

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ditch from a branch of Wilson Creek, beginning near the west quarter corner of  
1 Section 13, T. 18 N., R. 18 E.W.M. and running in a southwesterly direction to  
2 the northeast corner of Section 22. The ditch capacity was 225 inches (4.5  
3 cfs), which was appropriated in 1884 and used on Section 22. The claimant  
4 suggests that since the ditch ended at the northeast corner of Section 22, which  
5 is also the northwest corner of Section 23, it must have been used to also  
6 irrigate the NW $\frac{1}{4}$  of Section 23. Additionally, Spurling, named in the affidavit  
7 at one time owned a portion of the claimants' land. William Spurling did own  
8 the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 23. However, he acquired it almost 20 years after the  
9 affidavit was filed and the water appropriated. The affidavit states that the  
10 entire flow in the ditch was used to irrigate Section 22. If that is the case,  
11 in order to serve the lands in Section 23 the ditch would have had to be  
12 enlarged. There is no evidence that occurred. Additionally, there is no  
13 evidence of when water was first used on the claimants' land. When Mr. Sperline  
14 testified in support of the Dippel Brothers claim he stated that he first moved  
15 into the area in 1949, so his knowledge of the area cannot precede that date.  
16 He did not testify to any knowledge of actual water use on the land prior to his  
17 purchase.

18 Based on the lack of evidence to show that a water right was established  
19 for this land, the Referee cannot recommend that a right be confirmed.

21 COURT CLAIM NO. 02297 -- Joseph Antonich

22 Joseph Antonich submitted a claim to the Court for use of waters from  
23 Naneum Creek for irrigation and stock watering. Mr. Antonich testified at the  
24 evidentiary hearing.

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The claimant's land lies in the NW $\frac{1}{4}$  of Section 28, T. 18 N., R. 19 E.W.M.  
and he is asserting a right to irrigate 155 acres with water diverted from  
Naneum Creek. Water is diverted from the creek at five different locations,  
most of which are on the claimant's property. One diversion is into the  
Ferguson Ditch, which diverts from Naneum Creek in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16,  
T. 18 N., R. 19 E.W.M. and carries water through several sections. Mr. Antonich  
then diverts from the Ferguson Ditch at two locations as it goes through his  
property. Most of the claimant's land is planted in Timothy hay, with about 15  
acres around the buildings in pasture. Mr. Antonich rill irrigates the fields  
and usually after getting two cuttings of hay will put livestock in to graze the  
hay stubble. The livestock raised include 400 sheep and 100 head of cattle. The  
livestock drink directly from Naneum Creek or one of its branches that flows  
through the property. The land is also assessed by the KRD and district water  
is used in addition to creek water to irrigate the 155 acres.

15           Mr. Antonich did not know much about the history of the property. He  
16           acquired it in 1976 and has continued the irrigation practice of his  
17           predecessor. Review of the Ferguson decree reveals that the NW $\frac{1}{4}$  of Section 28  
18           was owned by Elijah M. Topliff at the time of the decree. The findings of fact  
19           that preceded the decree stated that the land was settled in April of 1872 by  
20           McDonald, who appropriated water from Naneum Creek to irrigate the land that  
21           same year. The Ferguson decree awarded Topliff a Class 2 right, which would  
22           have an 1872 date of priority, for 160 inches, or 3.20 cubic feet per second.  
23           The decree provided that quantity could in May and June and half of that  
24           quantity could be used the rest of the year.

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Water Right Claim No. 06546 was filed by a predecessor in compliance with  
1 the requirements of RCW 90.14. WRC No. 06546 asserts a right to divert 2 cubic  
2 feet per second, 800 acre-feet per year from Naneum Creek for the irrigation of  
3 154 acres and stock watering within the NW $\frac{1}{4}$  of Section 28, T. 18 N.,  
4 R. 19 E.W.M. The claim identified only one point of diversion, that being 1340  
5 feet east of the northwest corner of Section 28. The diversion into the  
6 Ferguson Ditch and the four other diversions within the claimant's property were  
7 not described. The Referee does not know whether the other diversions were  
8 added after the claim was filed and an error was made when the form was being  
9 completed. Regardless of the reason, the Referee can only recommend that the  
10 right confirmed include the one diversion described in WRC No. 06546.  
11

The Referee recommends that a right be confirmed to Joseph Antonich under  
12 Court Claim No. 02297 with an April 30, 1872, date of priority for the diversion  
13 of 3.20 cubic feet per second in May and June and 1.6 cubic feet per second in  
14 April and July 1 through October 31, 775 acre-feet per year for the irrigation  
15 of 155 acres and stock watering.  
16

COURT CLAIM NO. 01155 -- Glen Armistead  
18                   01156                 Bonnie Spurrier  
19                   01158

Court Claims No. 01155 and 01156 were filed by Merle Schmith and Court  
20 Claim No. 01158 was filed by her sister Florence Trautman. Merle Schmith  
21 testified at the evidentiary hearing in support of all three claims. On  
22 December 16, 1999, Glen Armistead and Bonnie Spurrier were substituted for Ms.  
23 Schmith and Ms. Trautman on all three claims.  
24

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The three claims each assert a right to use water from an unnamed pond for  
1 irrigation on four adjoining lots located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13,  
2 T. 17 N., R. 18 E.W.M. A right is being asserted to irrigate approximately  
3 one-half acre of lawn, garden and landscape on each parcel. Attached to the  
4 claim is a map that identifies the parcels as Lots 15, 16, 14 and 17 (lots 14  
5 and 17 treated as one parcel). It appears that a portion of the pond is on each  
6 parcel. A 1 HP centrifugal pump is on the pond and sprinklers are used to  
7 irrigate the three parcels. The pond is also used to raise fish.  
8

Mrs. Schmith testified that their land is part of the Tjossem Ranch and  
9 that Peter Tjossem planted fish in the pond in 1907 following an AYP  
10 Expedition. No other fish have been planted in the pond, but there has  
11 continued to be fish in the pond since 1907. Mrs. Schmith's parent's acquired  
12 the land from the Tjossem family in 1947 and began irrigating from the pond in  
13 1955. Prior to their acquiring the land, the Tjossems irrigated with water from  
14 a flume. Mrs. Schmith was not sure of the source of water for the flume. The  
15 flume was destroyed in 1948. Neighboring landowners, Judith Nickerson and Brian  
16 Norelius entered exhibits that provide evidence of a ditch constructed and used  
17 by the Tjossems. Part of Exhibit De-1597 is a copy of an affidavit by Albert  
18 Tjossem and an agreement between John Hanks and R. P. Tjossem. Both discuss  
19 ditches serving the Tjossem land and other land and the consolidation of several  
20 ditches into one. It is not clear from the record when the Tjossem Ditch was  
21 first constructed, except that by 1902 it was being consolidated with other  
22 parallel ditches. With no other date in the record, the Referee proposes to use  
23 1902 as the priority date.  
24

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1 Water Right Claim No. 120775 was filed by Merle M. Schmith pursuant to the  
2 requirements of RCW 90.14. It asserts a right to divert 0.5 cfs, 300 acre-feet  
3 per year from a pond for the irrigation of 2 acres within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
4 Section 13, T. 17 N., R. 18 E.W.M.

5 The claimant did not testify to how much water is being used, however, the  
6 Referee estimates that a 1 HP centrifugal pump would be expected to withdraw 30  
7 to 35 gallons per minute.

8 The Referee concludes that there has been sufficient evidence presented to  
9 show that a water right was established for use of the Yakima River conveyed  
10 through the Tjossem Ditch on the Tjossem Ranch, which includes the claimants'  
11 land. In the late 1940's use of this ditch ceased and in 1955 when irrigation  
12 resumed it was from the pond on the property. In order to use this pond rather  
13 than a diversion from the Yakima River, the Referee believes that the landowner  
14 at the time should have filed an application to change the point of diversion  
15 for the water right, as required by RCW 90.03.380. That was not done. A ditch  
16 lateral that carries water initially conveyed through the Tjossem Ditch passes  
17 within a few feet of the pond and on State's Exhibit SE-2 it appears to have a  
18 connection to the pond, although Ms. Schmith did not testify to a connection.

19 The Referee recommends that a water right be confirmed with a June 30,  
20 1902, date of priority for the diversion of 0.02 cubic foot per second, 2.5  
21 acre-feet per year from the Yakima River for the irrigation of one-half acre for  
22 each of the claims (total of 0.06 cfs, 7.5 acre-feet for 1.5 acres) and fish  
23 propagation.

24

25

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1 COURT CLAIM NO. 01006 -- Ida Joseph Nason Aronica

2 Mrs. Aronica filed a claim with the Court asserting a right to use waters  
3 from Naneum Creek for irrigation and stock watering. Mrs. Aronica was  
4 represented by Attorney Jack Fiander at the evidentiary hearing. Her son, Allen  
5 Aronica, testified at the hearing.

6 The property described in Court Claim No. 01006 is the W $\frac{1}{4}$  of Section 28,  
7 T. 19 N., R. 19 E.W.M. Mrs. Aronica, and her son Allen, are enrolled members of  
8 the Yakama Indian Nation. The NW $\frac{1}{4}$  of Section 28 is held in trust by the United  
9 States for Mrs. Aronica and her family and is identified as Yakima Public Domain  
10 Allotment HA355. The United States initially intended to put on evidence in  
11 support of this portion of the claim through the Federal Reserved Rights Pathway  
12 in this proceeding. However, the Court determined it would be more appropriate  
13 for the evidence in support of this claim be presented as part of the subbasin  
14 proceedings. On April 11, 1991, the Court entered an Order Amending Pretrial  
15 Order No. 8 to allow consideration of the claims for public domain Indian trust  
16 allotments to be made in the Subbasin Pathway. The United States intends to  
17 address the claim for Allotment HA355 during the exception phase and  
18 supplemental hearing for Subbasin No. 9.

19 The SW $\frac{1}{4}$  of Section 28 is owned by Mrs. Aronica and evidence in support of  
20 water rights for that land was offered at the Subbasin No. 9 hearing. The  
21 claimant and her son irrigate 115 acres of hay, grain and pasture in the SW $\frac{1}{4}$  of  
22 Section 28 with water diverted from Naneum Creek. Water is diverted at five  
23 points on the creek. The claimant is asserting a right to divert a maximum of  
24 2.5 cfs from the creek. This land has been in the Aronica family since it was  
25

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1 first settled. Mr. Aronica's familiarity began in the late 1940's when as a  
2 child he helped his father on the farm. The irrigation practice at the time of  
3 the hearing was consistent with what he remembered as a child. The land is rill  
4 irrigated with dirt ditches and gated pipe. Livestock are on the property all  
5 year. It is not clear whether diversions are continued after the irrigation  
6 season for stock watering or whether the livestock drink from the creek, which  
7 flows through the property. Non-diversionary stock water use is covered by the  
8 stock water stipulation discussed on page 4 of this report.

9 The SW $\frac{1}{4}$  of Section 28 was settled on by Charley Nason, who received a  
10 patent on January 18, 1887. Although Mr. Nason was not a party to any of the  
11 cases involving Wilson and Naneum Creek, the Ferguson decree recognized that he  
12 had the superior water right to Naneum Creek for 25 inches (0.50 cfs) with a use  
13 initiated prior to 1872. This indicates to the Referee that Nason had settled  
14 on the land prior to 1872. Mrs. Aronica, who is Charley Nason's  
15 daughter-in-law, was 100 years old at the time of the evidentiary hearing and  
16 not available to testify. Exhibit DE-141 was presubmitted on behalf of the  
17 claim. It contains a statement from Mrs. Aronica that summarizes her memory of  
18 the history of the land and its development. Mr. Nason gave permission to  
19 construct the Adams and Charlton Ditches across his land and how he helped with  
20 construction of the ditches. Initially a small garden area was irrigated near  
21 the house and then pasture land was developed. The claimant's land is riparian  
22 to Naneum Creek and the priority for the water right would be the date the land  
23 was settled, which is when steps were first taken to sever the land from Federal  
24 ownership. Based on Mrs. Aronica's statement it would appear that members of  
25 her family were on the land prior to the first white settlers. However, "prior  
26

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1 to 1872" is the only date in the record, so 1871 will be the date used by the  
2 Referee for any right awarded. Since the land is riparian to Naneum Creek, the  
3 landowners had until 1932 to develop the land and still maintain a 1871 date of  
4 priority. Mr. Aronica testified that based on his conversations with his  
5 parents and an old ditch walker that lived with them in the 1960's their  
6 irrigation practice is consistent with historical use.

7 Mrs. Aronica is claiming an 1855 priority date based on the Treaty with the  
8 Yakama Indian Nation. However, there has been no evidence presented to show  
9 that the claimant's ownership of the SW $\frac{1}{4}$  of Section 28 is related to the Treaty  
10 or that it would enjoy a right based on the Treaty. Charley Nason received  
11 title to the land through a homestead certificate.

12 Mrs. Aronica is also asserting a right to a 10 cfs instream flow in Naneum  
13 Creek for religious practices and traditional water use for growing traditional  
14 foods and medicines along the riparian gallery adjacent to the creek. The claim  
15 includes use of the creek as a usual and accustomed fishery resource. This  
16 claim would be based on provisions in the Yakama Treaty for taking fish at all  
17 usual and accustomed places. The Referee believes this instream flow claim  
18 would best be addressed as part of the claim for the trust land in the NW $\frac{1}{4}$  of  
19 Section 28, since both are based on the Treaty and Federal reserved rights,  
20 rather than state rights. The United States will be addressing the potential  
21 existence of a Federal reserved right for the NW $\frac{1}{4}$  of Section 28 and should also  
22 address the claim for the instream flow right, that appears to also be based on  
23 a Federal reserved right.

24 Mrs. Aronica filed two water right claims pursuant to the requirements of  
25 RCW 90.14. Water Right Claim (WRC) No. 004139 asserts a right to divert 2 cfs,

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1       600 acre-feet per year from Naneum Creek for the irrigation of 95 acres and  
2       stock watering in the SW $\frac{1}{4}$  of Section 28. The diversion into the Adams Ditch  
3       (#1) is described in this claim. WRC No. 004140 asserts a right to divert 2  
4       cfs, 400 acre-feet per year from Naneum Creek for the irrigation of 90 acres in  
5       the SW $\frac{1}{4}$  of Section 28. The diversion into Nason Ditch (#2) is described in this  
6       claim. It is obvious that since only 115 acres are being irrigated, there is  
7       some duplication in the acreage described in the two claims. Although the two  
8       water right claims jointly assert a right to 4 cubic feet per second, Mrs.  
9       Aronica is only asserting a right to divert 2.5 cfs in this proceeding.

Based on the evidence in the record, the Referee recommends that a right be confirmed under the Riparian Doctrine with a June 30, 1871, date of priority for the diversion of 2.5 cubic feet per second, 575 acre-feet per year for the irrigation of 115 acres and stock watering in that portion of the SW $\frac{1}{4}$  of Section 28, T. 19 N., R. 19 E.W.M. lying east of Naneum Creek and below the Carlson Ditch. Since the two water right claims filed only describe two points of diversion, only those diversions will be authorized. It may be necessary for the claimant to contact Ecology concerning the process for adding the other three points of diversion.

20 COURT CLAIM NO. 00575 -- Don H. Bacon  
20 & Gabriella R. Bacon

21 The claimants filed Claim No. 00575 with the Court asserting a right to use  
22 waters from Naneum Creek for stock watering. Mr. Bacon appeared and testified  
23 at the evidentiary hearing.

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The Bacons own 24 acres lying in the E $\frac{1}{2}$ SE $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 32 and the  
1 W $\frac{1}{2}$ SW $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 33, T. 19 N., R. 19 E.W.M. Naneum Creek runs through the  
2 portion of the land lying in the SE $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 32. The Bacons are seeking a  
3 right for non-diversionary stock watering. They have a maximum of 25 head of  
4 stock on the land at one time, with there generally being closer to 10 or 12.  
5 The livestock drink directly from Naneum Creek. During the spring, a culvert  
6 under Thomas Road causes flood water into a dry wash on their property. The  
7 flood water spreads over their pasture, actually irrigating the land. However,  
8 the Bacons do not intentionally divert water for irrigation and are not seeking  
9 a water right for that use. They simply take advantage of flood water when and  
10 if it crosses their fields.  
11

The non-diversionary stock water use being made is covered by the stock  
12 water stipulation discussed on page 4 of this report. Additionally, on  
13 October 9, 1997, the Court entered an Amended Order Re: Non-diversionary  
14 Stockwater Rights, which elevated the stock water stipulation to an order of the  
15 Court. This order shall apply to the Bacons and their name is on the list of  
16 claimants with non-diversionary stock water rights appearing on page 4 of this  
17 report. It is recommended that no other right be confirmed under Court Claim  
18 No. 00575.  
19

COURT CLAIM NO. 01879 -- Dimitri Bader  
21 & Lenora Bader

Richard W. and Marilyn J. Hemstad submitted a claim to the Court for use of  
22 waters from Whiskey Creek for irrigation and stock watering. Mrs. Hemstad,  
23 Carol Rasmussen, a prior owner of the property, Victor Munz, a neighboring  
24

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landowner, and Michael Moeur, who leased the land from both the Rasmussens and  
1 the Hemstads, testified at the evidentiary hearing. On October 28, 1991,  
2 Dimitri and Lenora Bader were substituted for the Hemstads.  
3

The claimants' property lies in the SW $\frac{1}{4}$  of Section 23, T. 18 N.,  
4 R. 18 E.W.M. lying north and east of the Cascade Canal. According to the  
5 testimony, approximately 50 acres is irrigated. The crops over the years have  
6 varied somewhat, but have predominately been hay, pasture and grain. The land  
7 has been flood irrigated, but is now rill irrigated. Mr. Moeur kept  
8 approximately 60 cow-calf pairs on the land and the livestock drink directly  
9 from the creek. Mr. Moeur estimated that an average of 2 cubic feet per second  
10 is used, with a maximum of 5 cubic feet per second and up to 8 acre-feet per  
11 acre irrigated.  
12

The Rasmussens acquired the land in 1947 and kept it until they sold to the  
13 Hemstads in 1976. The land was irrigated pasture when they acquired it. Victor  
14 Munz was raised on property immediately southwest of the claimants' land. He  
15 was born in 1914 and from his earliest memories recalls it being irrigated. He  
16 would walk across this land to get to sagebrush areas to hunt rabbits. He  
17 recalls head ditches running just inside the fence line on the property.  
18

The claimants point to a deed from Hubert Jonas to Henry Kleinberg  
19 conveying the SW $\frac{1}{4}$  of Section 23, "together will all water rights appurtenant  
20 thereto.", as evidence of the existence of water rights for the property.  
21 Unfortunately, the Referee has found this language to often appear on deeds when  
22 there are in fact no water rights. However, Mr. Munz's testimony clearly  
23 establishes that the claimants' property was being irrigated with water from  
24 Whiskey Creek as early as the 1920's. The land is riparian to Whiskey Creek.  
25

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Under the Riparian Doctrine, a water right is established through separating the  
land from Federal ownership and putting the water to beneficial use prior to  
December 31, 1932. The evidence supports a conclusion that water was being used  
prior to that date. This land was originally part of the land acquired by  
Northern Pacific Railroad for construction of a railroad. It obviously had  
passed from N.P.R.R. ownership into private ownership prior to 1912. Riparian  
rights for former railroad land have a priority date of when the map of definite  
location was filed, which for Kittitas County was May 24, 1884.

The Referee concludes that a water right was established for the claimant's  
land with a May 24, 1884, date of priority. However, there is no evidence that  
the Rasmussens, who would have owned the land between 1969 and 1974, filed a  
water right claim as required by RCW 90.14. RCW 90.14.071 provides that failure  
to file a claim as required waives and relinquishes any right that may have  
existed. RCW 90.14.041 required the filing of a claim by all persons using or  
claiming the right to withdraw or divert and make beneficial use of public  
surface or ground waters of the state, unless the right is based on a permit or  
certificate issued by the department of ecology or one of its predecessor  
agencies.

The Referee, therefore, cannot recommend that a water right be confirmed  
due to the lack of a RCW 90.14 claim for the property.

Should the claimant find an RCW 90.14 claim for the property and file an  
exception to allow presentation of the claim, the Referee suggests that  
additional evidence on the quantity of water used be presented also. The  
testimony would indicate that the claimant is asserting a right to use 5 cubic  
feet per second for irrigating 50 acres. That is an extremely high quantity of

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water in an area where Courts in the past have found that 0.02 cfs per acre  
1 irrigated, or 1.0 cfs for 50 acres is sufficient. The claimants should be  
2 prepared to explain why their land is different and would need so much more  
3 water than is needed on neighboring lands.  
4

5 COURT CLAIM NO. 00552 -- Stanley J. Baker  
6 & Gena L. Baker

7 Court Claim No. 00552 was submitted by the Bakers asserting a right to use  
8 waters from an unnamed creek and Little Naneum Creek. The Bakers were  
9 represented by Attorney Richard T. Cole at the evidentiary hearing and Mr. Baker  
10 testified at the hearing.

11 The Bakers own the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, T. 17 N., R. 19 E.W.M., which is  
12 ten acres in size. They are asserting a right to irrigate 9.25 acres with water  
13 diverted from what they call Little Naneum Creek. They lease the land to  
14 Darrell Eason, who owns adjoining land to the north. Mr. Eason told the Bakers  
15 he uses between 9.25 and 9.5 acre-feet per acre irrigated, but did not provide  
16 any information about the instantaneous quantity diverted from the creek. Mr.  
17 Baker has upgraded the irrigation system to include a concrete ditch and  
18 aluminum, gated pipe. Mr. Eason grows Timothy hay, which is rill irrigated. In  
19 the past up to 16 head of cattle were raised on the property and watered from  
20 the creek.

21 The Bakers hold shares in Ellensburg Water Company (EWC), but Mr. Baker has  
22 never called for his EWC water. A deed in the record shows that the land has 10  
23 shares from EWC. According to the Report of the Court that issued for EWC, .75  
24 share is sufficient for one acre, so ten shares would be more than sufficient  
25

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for 9.25 acres. Although Mr. Baker testified to never having called for EWC  
1 water, the Referee does not know if Mr. Eason might have. The channel that Mr.  
2 Baker calls Little Naneum Creek is not named on State's Exhibit No. SE-2. It  
3 does not seem to connect at all with Naneum Creek, which makes the Referee  
4 wonder whether it really is a branch of the Naneum Creek. It seems to be  
5 immediately below the Cascade Canal in the S $\frac{1}{2}$  of Section 32, T. 18 N.,  
6 R. 19 E.W.M. and flows south. Mr. Baker did testify that there is water in the  
7 channel after the irrigation ditches turn off and it continues to flow until the  
8 weather is so cold the water in the channel freezes. During the presentation of  
9 evidence for EWC, the company's manager testified to using Lower Naneum Creek  
10 (distinguished from Naneum Creek) for delivery of EWC water. The Referee  
11 wonders if Lower Naneum Creek and Little Naneum Creek are the same water course.  
12

The Bakers were not able to present any evidence of historic water use  
13 during the time frame necessary to show that a water right was established. The  
14 historical evidence for their land is limited to a copy of the patent that John  
15 T. Greenwood received on February 23, 1889, for the SW $\frac{1}{4}$  of Section 8, T. 17 N.,  
16 R. 19 E.W.M. The Bakers put in evidence of a water right for the NW $\frac{1}{4}$  of  
17 Section 8, and suggested that their land would have been developed and irrigated  
18 at about the same time. However, there is no evidence to support that  
19 position.

Water Right Claim No. 042450 was filed by Stanley J. Baker pursuant to the  
21 requirements of RCW 90.14. It asserts a right to divert 40 gpm, 4 acre-feet per  
22 year from a unnamed stream for the irrigation of 10 acres and stock watering in  
23 the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, T. 17 N., R. 19 E.W.M. The date of first water use  
24

25

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1 shown on the claim form is March of 1967. The inconsistency between this date  
2 and the priority date asserted by the claimant (1880), was not addressed.  
3

4 Due to the lack of evidence to show that a water right was established  
5 through beneficial use of the water prior to 1917, the Referee cannot recommend  
6 that a right be confirmed to the Bakers. This recommendation does not affect  
7 the claimants right to use water delivered by EWC, a major claimant in this  
8 proceeding, whose rights have been determined in the Major Claimant Pathway (see  
9 Report of the Court, Supplemental Report of the Court and Conditional Final  
Order).  
10

11 COURT CLAIM NO. 00928 -- Everett O. Barney  
12 & Lanita M. Barney

13 Court Claim No. 00928 asserts a right to use waters from Nanum Creek and an  
14 unnamed spring for irrigation and stock watering. The claimants are represented  
15 by Attorney Vernon Fowler. Everett and Lanita Barney and Milton Lewis, a  
previous owner of the property testified at the evidentiary hearing.

16 The claimants own a portion of Government Lot 1 of Section 5, T. 18 N.,  
17 R. 18 E.W.M. Their ownership is a total of 13.5 acres, with 12 acres being  
18 irrigated from Naneum Creek, which flows through the property, and approximately  
19 3 acres are also irrigated from an unnamed spring. A 2 HP pump feeds a three  
20 inch mainline and sprinklers that are used to irrigate the land east of the  
21 creek. Mrs. Barney estimated that 0.1337 cubic foot per second and 18 acre-feet  
22 per year is used on the three acres east of the creek, which are irrigated from  
23 early April until October 1. The land west of the creek, consisting of 9 acres,  
24 is flood and rill irrigated and the Barneys estimate that 0.35 cubic foot per  
25

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second and 54 acre-feet per year is used west of the creek. Irrigation season  
1 starts a little later on the land west of the creek as it is prone to flooding.  
2 The claimants also use a spring-fed stream that enters their property from the  
3 north. The springs that feed the stream originate on land owned by Don Bacon  
4 and the D. Cobain property to the north and northeast. Livestock raised on the  
5 property drink directly from the stream and it is also used to flood irrigate  
6 the three acres east of the creek. Mr. Barney has never measured the quantity  
7 of water used from the spring for irrigation. The Barneys will have as many as  
8 118 head of cattle on their land, with an average of 75 head.  
9

Mr. Lewis testified about his knowledge of the land. He first became  
10 familiar with it in 1922 when he was asked to work there, assisting with chores  
11 and cattle herding. He later became a partner with the nephew of the  
12 landowners, acquiring half interest in the land in 1939. A dairy farm was  
13 operated on this and other land to the west. Mr. Lewis testified to it being  
14 irrigated hay, grain, and pasture. Although there have been numerous  
15 controversies over water rights associated with Wilson and Naneum Creeks, this  
16 land appears to have not been involved in any of the past litigation. Section 5  
17 was originally railroad land, and Government Lots 1, 2, and 3 were sold by  
18 Northern Pacific Railroad to S. W. Prater. It changed hands numerous times,  
19 until the Lawrence family acquired it in 1912 and it stayed in that family until  
20 half interest was sold to Lewis.  
21

Two water right claims were filed pursuant to RCW 90.14, by E. F. Wheeler,  
22 who owned this property during the early 1970's. Water Right Claim No. 123998  
23 asserted a right to use 1 cubic foot per second, 700 acre-feet per year from  
24 Naneum Creek for the irrigation of 40 acres and stock water in the NE<sup>1/4</sup>NE<sup>1/4</sup> of  
25

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Section 5, T. 18 N., R. 19 E.W.M. Government Lot 1 lies where the NE $\frac{1}{4}$ NE $\frac{1}{4}$  would  
1 be in Section 5. Water Right Claim No. 124000 asserted a right to use 1 cubic  
2 foot per second, 700 acre-feet per year from Wilson Creek for the irrigation of  
3 40 acres and stock watering, also within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5. There does  
4 not appear to be an RCW 90.14 claim for use of the unnamed spring.  
5

The evidence clearly shows that the claimant's land has been farmed and  
6 irrigated since at least the 1920's. The land is riparian to Naneum Creek and  
7 under the Riparian Doctrine, as former railroad land, would have a priority date  
8 of May 24, 1884, the date the map of definite location was filed in Kittitas  
9 County. The Referee recommends that a right be confirmed with that priority  
10 date for the diversion of 0.4837 cubic foot per second, 72 acre-feet per year  
11 from Naneum Creek for the irrigation of 12 acres and 5 acre-feet per year for  
12 stock watering. The claimants are seeking to have two points of diversion  
13 authorized. However, the testimony would indicate that a second diversion at  
14 the pump location was added by the Barneys after they acquired the property.  
15 Certainly when the right was originally established water was only conveyed  
16 through gravity flow ditches and a diversion utilizing a pump had to have been  
17 added at a later date. The Referee will only authorize use of the diversion  
18 into the ditch that serves the westerly field. The claimants should contact  
19 Ecology's Central Regional Office about the process for obtaining authorization  
20 to add a point of diversion. The Referee cannot recommend that a right be  
21 confirmed for use of the unnamed spring fed stream due to the lack of a RCW  
22 90.14 claim for that source of water. The non-diversionary use of this source  
23 for stock watering is covered by the stock water stipulation on page 4 of this  
24

25

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1 report and the Court's Amended Order Re: Non-Diversionary Stockwater Rights and  
2 that use can continue.  
3  
4

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

9 A Statement of Claim was filed with the Court by May S. Barnhart and E.  
10 Eugene Barnhart, Jr., for the use of waters from Naneum Creek and Coleman  
11 Creek. Coleman Creek is located in Subbasin No. 10, Kittitas, and rights to the  
12 use of that water will be addressed in the Report of Referee for Subbasin No.

13 10. The Barnharts were represented by Attorney Willima Almon and Eugene  
14 Barnhart testified at the evidentiary hearing. Mr. Almon has since withdrawn as  
their attorney. On April 28, 1998, Kenneth E. and Susan Barnhart were joined as  
additional parties to this claim.

15 The Barnharts are irrigating 39.5 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2,  
16 T. 18 N., R. 19 E.W.M. with water diverted from Naneum Creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
17 Section 28, T. 19 N., R. 19 E.W.M. The water is carried in the Adams ditch to  
18 Section 34 where it is dumped into Schnebly Creek and then diverted from  
19 Schnebly Creek in the NW $\frac{1}{4}$  of Section 2 for use on the claimants' land. Mr.  
20 Barnhart has never measured the quantity of water applied to his land. The land  
21 is planted to hay and grain and approximately 100 head of cattle are pastured on  
22 it at various times in the fall and winter. Mr. Barnhart testified that water  
23 is generally available for the priority he is claiming until the end of June,  
24 but he does use water if it is available after that date.

25  
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Mr. Barnhart entered into evidence two Affidavits of Water Right as the  
basis for his claim. The first affidavit was filed on May 30, 1890, by Larson  
and Keister asserting a right to 16 cfs from Naneum Creek conveyed in ditches  
constructed in June of 1880 for use on lands in Sections 2 and 11 and the NE $\frac{1}{4}$  of  
Section 3, owned by Keister, and Sections 2, 3 and 10, on lands owned by  
Larson. The affidavit did not specify exactly which portion of the sections  
cited were owned. Keister and Larson were parties to Ferguson and the Court's  
findings described the lands owned by Keister as the NW $\frac{1}{4}$ , NW $\frac{1}{4}$  and SW $\frac{1}{4}$ , NW $\frac{1}{4}$  of  
Section 11, the SE $\frac{1}{4}$ , SW $\frac{1}{4}$  of Section 2 and the NE $\frac{1}{4}$  of Section 3, and the lands  
owned by Larson as the W $\frac{1}{2}$ , SW $\frac{1}{4}$  and W $\frac{1}{2}$ , NW $\frac{1}{4}$  of Section 2 and the S $\frac{1}{2}$ , SE $\frac{1}{4}$  of Section 3,  
none of which are owned by the Barnharts. Therefore, the Referee can only  
conclude that this affidavit does not establish a water right for the Barnhart  
property.

The second affidavit was filed by Philip H. Schnebly and Peter Kuchen on  
May 23, 1890, claiming a right to waters from Naneum Creek from a point in  
Section 28 for a ditch running through Sections 28, 33 and 34, into Section 2,  
T. 18 N., R. 19 E.W.M. The ditch was constructed in May 1887 and used to  
irrigate 320 acres. P. H. Schnebly was a defendant in Ferguson and, according  
to the Court's findings owned and irrigated since 1887 the E $\frac{1}{2}$ NW $\frac{1}{4}$  and the W $\frac{1}{2}$ NE $\frac{1}{4}$   
of Section 3, also lands not owned by the Barnharts. There is no indication  
that Peter Kuchen was a party to Ferguson or that he ever owned the claimants'  
land.

23 A patent issued on June 12, 1882, to F. D. Schnebley for the S $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$   
24 and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2. During the various suits to determine the water rights  
for Naneum Creek the NE $\frac{1}{4}$ SW $\frac{1}{4}$  was owned either by F. D. Schnebley or Charles P.

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Schnebley. Charles P. Schnebley is Mr. Barnhart's grandfather. According to  
1  
Mr. Barnhart, his parents began farming the land in 1923 and he took over in  
2  
1952. His grandfather farmed it before his parents. It is his belief that it  
3  
is being farmed in much the same manner now as when his parents and grandparents  
4  
were farming.

5  
Mr. Barnhart was a party to Ecology v. Carlson in 1973 and the Order  
6  
Pendente Lite recognized a right with an 1897 date of priority for the use of  
7  
0.80 cubic foot per second for the irrigation of 39.5 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
8  
Section 2. Pursuant to the requirements of RCW 90.14, Ernest Barnhart filed  
9  
Water Right Claim No. 119575 asserting a right to divert 1 cfs, 365 acre-feet  
10  
per year from Naneum Creek for the irrigation of 40 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
11  
Section 2.

12  
In this proceeding Mr. Barnhart is asserting a right with a priority date  
13  
of 1887, apparently based on the Affidavit of Water Right filed by Philip  
14  
Schnebley and Peter Kuchen. However, the evidence does not support a conclusion  
15  
that said affidavit was filed for use of water on the claimants' land. As far  
16  
as the Referee can determine neither Philip Schnebley nor Peter Kuchen ever  
17  
owned the Barnhart land. The Referee can find no basis for a priority date  
18  
prior to that identified in the 1973 Order Pendente Lite.

19  
Therefore, it is recommended that a right be confirmed with a June 30,  
20  
1897, date of priority for the diversion of 0.80 cubic foot per second, 197.5  
21  
acre-feet per year for the irrigation of 39.5 acres and 0.10 cubic foot per  
22  
second, 5 acre-feet per year for stock watering.

23  
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1 COURT CLAIM NO. 00968 -- Kenneth E. Barnhart  
2 & Susan Barnhart  
3 Joseph J. O'Leary  
4 & Mary E. O'Leary

5 The Charltons filed Court Claim No. 00968 asserting a right to use Naneum  
6 Creek for the irrigation of 150 acres and stock watering. On April 18, 1989,  
7 Kenneth E. and Susan Barnhart and Joseph J. and Mary E. O'Leary were joined to  
8 the claim. The testimony offered at the evidentiary hearing made it clear that  
9 the Charltons no longer have any interest in the claim or the land described in  
10 the claim. Attorney J. Jay Carroll represented the Barnharts and the O'Learys  
11 at the hearing and Kenneth Barnhart and Joseph O'Leary testified.

12 The O'Learys own the west 840 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and that portion of the  
13 SE $\frac{1}{4}$ NW $\frac{1}{4}$  lying east of the Naneum road in Section 21, T. 18 N., R. 19 E.W.M. They  
14 acquired the property from the Charltons in 1984. The land is planted in  
15 pasture and they raise 70 head of cattle and 5 horses. The livestock drink from  
16 Naneum Creek, which flows through the property. Two points of diversion serve  
17 the land. One diversion is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M.,  
18 and serves the portion of the O'Leary property lying east of Naneum Creek. The  
19 second diversion is in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21, near the O'Leary's north  
20 property line and is used to irrigate the portion of the property lying west of  
21 Naneum Creek.

22 The Barnharts own the rest of the land described in Court Claim No. 00968,  
23 which is the east 1800 feet of the NE $\frac{1}{4}$  of Section 21. They irrigate 113 acres,  
24 which is planted in Timothy hay with a grain rotation. After the last hay  
25 cutting in the fall, they run 160 head of cattle in the fields until around  
26 December 15. Naneum Creek does not flow through the Barnharts land, so they

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1 continue to divert from Naneum Creek for stock watering while they have cattle  
2 on the property. They use the diversion that is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
3 Section 16. The land is rill and flood irrigated with concrete ditches.  
4 Neither of these two claimants testified to the quantity of water that is  
5 diverted and used to irrigate their land, but agreed that 8 acre-feet per year  
6 is needed.

7 Water Right Claim (WRC) No. 119177 was filed by Ralph Charlton asserting a  
8 right to use 2.2 cfs, 440 acre-feet per year for the irrigation of 110 acres and  
9 stock watering in the east 1800 feet of the NE $\frac{1}{4}$  of Section 21, T. 18 N.,  
10 R. 19 E.W.M. The point of diversion described is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16.  
11 The place of use on WRC No. 119177 only includes the Barnhart land and does not  
12 include the land owned by the O'Learys. Failure to file a claim waives and  
13 relinquishes any right that may have existed, RCW 90.14.071.

14 The claimants are basing their claim on the Ferguson decree, which awarded  
15 a Class 2 right, which would have an 1872 date of priority, to John Olding, John  
16 Malcolm and Charles Einkemeier for the use of 320 inches of water on the N $\frac{1}{4}$  of  
17 Section 21, T. 18 N., R. 19 E.W.M. However, in December of 1911, John G. and  
18 Elizabeth Olding, J. M. and Nettie Galvin and H. W. and Eugenia Wager sold to P.  
19 H. and Bertha Adams all of their water rights. At that time the Oldings owned  
20 the N $\frac{1}{4}$ NE $\frac{1}{4}$  and the NW $\frac{1}{4}$  of Section 21, T. 18 N., R. 19 E.W.M., except for a ten  
21 acre parcel owned by the Galvins. The Galvins also sold their water rights to  
22 the Adams. Exhibit No. DE-1268 was put into the record by Kayser Ranch, who are  
23 successors to the Adams. The Oldings, Galvins and Wagers were selling their  
24 water rights to Naneum Creek in anticipation of construction of the KRD canal,  
25 which would serve their lands after it was constructed. This agreement was

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reached and documented in 1911, six years prior to adoption of RCW 90.03, the  
1 1917 Surface Water Code, which provided for an administrative procedure for  
2 transferring water rights. In 1911 a water right could be transferred upon  
3 agreement by the parties, unless it was successfully challenged by another water  
4 user. There was no evidence offered to show that the transfer from Olding to  
5 Adams was challenged or that it was not executed, except for the apparent  
6 continued use of the water by the claimants and their predecessors. In fact,  
7 DE-1267 is a document executed in 1927 that states that the 1911 agreement had  
8 been fulfilled at that time. After this transfer, the only water rights still  
9 remaining would be 80 inches for the S $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21.

In light of the rights awarded in the Ferguson decree having been  
11 transferred to P. A. Adams in 1911 and there being no evidence offered to show  
12 that other water rights had been established for the land, the Referee cannot  
13 recommend that a water right be confirmed for the Barnhart property that lies in  
14 the N $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21. A right can be recommended for the Barnharts for the  
15 54 acres they own in the S $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21. The decree allowed for the use of  
16 1 inch of water (or 0.02 cfs) for each irrigated acre in May and June and  
17 one-half inch (or 0.01 cfs) for each acre the rest of the year. A maximum of 5  
18 acre-feet per acre can be diverted based on that instantaneous quantity.  
19 Therefore, a right with a June 30, 1872, date of priority is recommended, for  
20 the diversion of 1.08 cubic foot per second in May and June, 0.54 cubic foot per  
21 second in April and July 1 through October 15, 270 acre-feet per year for the  
22 irrigation of 54 acres in the east 1800 feet of the S $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21,  
23 T. 18 N., R. 19 E.W.M. Mr. Barnhart testified to diverting water after the  
24 irrigation season for stock watering, however, he did not testify to how much  
25

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water is diverted. Since the Ferguson decree only addressed irrigation rights,  
1 the Referee cannot assume that the quantity of water awarded for irrigation  
2 would also be used for stock watering after the irrigation season is completed.  
3 In order to award a water right for that use, evidence of the quantity of water  
4 used must be placed in the record.  
5

Although the O'Leary's land also retained its water rights after the 1911  
6 sale to the Adams, the Referee could find no evidence of a water right claim  
7 having been filed pursuant to RCW 90.14 for their property. As previously  
8 noted, failure to file a claim relinquishes any right that may have existed.  
9 Therefore, the Referee cannot recommend that a water right for irrigation be  
10 confirmed for Joseph J. and Mary E. O'Leary under Court Claim No. 00968.  
11 Non-diversionary stock watering, such as livestock drinking from Naneum Creek is  
12 covered by the stock water stipulation discussed on page 4 of this report and  
13 that stipulation does apply to the O'Leary property.  
14

COURT CLAIM NO. 01831 -- Frank J. Beard  
16 (A) 05373 & Charlot M. Beard

The referenced court claim, as amended, asserts a right to irrigate land in  
17 the NE $\frac{1}{4}$  of Section 9, T. 18 N., R. 19 E.W.M. with water diverted from Naneum  
18 Creek. Charlot M. Beard testified at the evidentiary hearing.  
19

The Beards own all of the NE $\frac{1}{4}$  of Section 9, but are asserting a right to  
20 irrigate with water from Naneum Creek only that portion lying north of the  
21 Kittitas Reclamation District (KRD) Highline Canal. They own 35 acres north of  
22 the canal and, according to a map they submitted and the State's Investigation  
23 Report, irrigate 32 of those 35 acres. The land is pasture and they have  
24

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1 between 20 and 40 head of cattle depending on the time of year. Due to their  
2 location at the end of the ditches, much of the water that is used is return  
3 flow coming off of irrigated land in Section 4, immediately north and northwest  
4 of their land. The return flow water is generated by the application of water  
5 diverted from Naneum Creek. It appears that the diversion that is intended to  
6 serve the Beard property is located 500 feet south and 600 feet east of the  
7 northwest corner of Section 4, being within Government Lot 4 of Section 4. Mrs.  
8 Beard did not have an estimate of the quantity of water being used on her land.  
9 The pasture is flood irrigated. One of the drainages goes under the KRD canal  
10 and is used to supply water to livestock grazing on land south of the KRD  
11 canal. Approximately 100 horses and bulls are on that property. The land south  
12 of the KRD canal is irrigated with water delivered by KRD. There is a total of  
13 125 acres below the canal and 90 acres are assessed by KRD. The KRD is a Major  
14 Claimant in this proceeding, whose rights have been determined by the Court in  
15 the Major Claimant Pathway, see Report of the Court, Supplemental Report of the  
16 Court and Conditional Final Order for Kittitas Reclamation District.

17 The Beard property was originally patented to the Northern Pacific Railroad  
18 and was then sold to James E. Burke on January 18, 1892. J. E. Burke was a  
19 defendant in Ferguson and the Findings of Fact and Conclusions of Law stated  
20 that he owned the NE $\frac{1}{4}$  of Section 9, T. 18 N., R. 19 E.W.M. and had 100 acres in  
21 cultivation and water had been diverted from Naneum Creek for irrigation  
22 beginning in 1884. A Class 13 right was awarded to J. E. Burke for 100 inches,  
23 consistent with the Court's findings that one inch of water was sufficient for  
24 the irrigation of one acre until July 1, when one-half inch of water would then  
25 be sufficient.

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The Beards submitted numerous documents dealing with Section 9, many referencing the existence of water rights and also historical documents dealing with the KRD.

Water Right Claim No. 000069 was filed by Bernard Iverson, a prior owner of  
the Beard property, pursuant to RCW 90.14. WRC No. 000069 asserted a right to  
divert 0.50 cubic foot per second, 180 acre-feet per year from Naneum Creek for  
the irrigation of 36 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9. The described point of  
diversion is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, which is correctly identified as  
Government Lot 4 of Section 4 (the point of diversion the Referee believes would  
be used were the claimant not able to rely on return flow from neighboring  
lands). A typed version of WRC 000069 is also in the record, a version that  
appears to have been filed with the Kittitas County Clerk's office as part of  
the Carlson proceeding.

14 Since Mrs. Beard was not able to testify to the quantity of water being  
15 used, the Referee will recommend a right based on one inch per acre as awarded  
16 in the Ferguson decree. Based on that instantaneous quantity, an annual  
17 quantity of 160 acre-feet per year can be diverted during the irrigation  
18 season. The Referee recommends that a right be confirmed with a June 30, 1884,  
19 date of priority for the diversion of 0.64 cubic foot per second from April 1  
20 through June 30, 0.32 cubic foot per second from July 1 through October 15, 160  
21 acre-feet per year for irrigation of 32 acres and 2 acre-feet per year for stock  
watering.

23        The channel that goes under the KRD canal carries some water the entire  
24        year and livestock on the property drink directly from the channel. However,  
              the diversion from Naneum Creek is only during irrigation season, therefore, the

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confirmed right will authorize a diversion only during the irrigation season.

It will contain a provision that shows that stock watering from the channel continues during the winter as the channel accumulates return flow and perhaps some naturally occurring, but unquantified water.

COURT CLAIM NO. 14379 -- Joyce L. Bloxham

On March 14, 2000, Joyce L. Bloxham filed a claim with the Court asserting a right to use waters from Naneum Creek. The Court issued an Order Granting Further Processing of Claim No. 14379 Relating to Subbasin No. 9 on May 11, 2000. This claim will be scheduled for presentation of evidence when the supplemental hearing for Subbasin No. 9 is set.

COURT CLAIM NO. 02206 -- Boise Cascade Corporation

(A) 03119

(A) 05238

Boise Cascade Corporation submitted to the Court a Statement of Claim asserting rights numerous surface water sources in the Yakima River Basin, including several in Subbasin No. 9. Boise Cascade is represented by Attorney Dennis J. Dunphy and John P. Hess, Chief Region Forester for Boise Cascade's Central Washington Region, testified at the evidentiary hearing. Additionally, written expert testimony was submitted by Robert E. Ficken, Ph.D., a professional historian.

Boise Cascade is asserting a right to use numerous springs, streams, and creeks in Subbasin No. 9 for stock watering and timber harvesting on land the company owns in the upper part of the Wilson-Naneum subbasin. The stock water use is associated with grazing leases on land owned by Boise Cascade. According

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to the testimony use of this land for summer livestock grazing dates back to the  
1 late 1800's when the land was being settled and first used for timber  
2 harvesting. Sheep are the predominant livestock that graze on the Boise Cascade  
3 land. Mr. Hess testified that the average livestock use is 700 animal unit  
4 months (AUM's), and 5 sheep equal 1 AUM. Based on standard estimates of water  
5 needs for livestock, Mr. Hess testified to the use of 450 gallons per AUM or  
6 approximately 1 acre-foot per year. This annual quantity is spread over the  
7 entire Boise Cascade ownership in the upper part of the Wilson-Naneum subbasin.  
8 Approximately 26 locations were identified as sources for stock watering. Mr.  
9 Hess did not testify to the nature of any one of the sources, some are  
10 identified as springs and others are streams or creeks. The State's  
11 Investigation Report indicates that the inspector visited only a few of the  
12 identified sites, and that the development of the sources is very simple, most  
13 with berms to pool the water so that livestock can drink directly from the  
14 source. Non-diversionary stock watering is covered by the stock water  
15 stipulation discussed on page 4 of this report and no additional water right is  
16 needed for that type of use. In order to recommend that a diversionary stock  
17 water right be confirmed for any of the stock water sources, the Referee would  
18 need specific information concerning the source, such as a description of the  
19 facility and an estimate of the quantity of water being diverted. Due to the  
20 lack of evidence to show the existence of diversionary stock water use, the  
21 Referee does not recommend confirmation of any stock water rights beyond that  
22 addressed in the stock water stipulation.

23           Boise Cascade is also asserting a right to use springs, streams and creek  
24 for timber harvesting. Mr. Hess in his testimony and Mr. Ficken in his sworn  
25

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statement went into the history of timber harvesting in this area. It is clear  
1 from the testimony that the upper Wilson-Naneum basin was recognized as a source  
2 for timber harvesting during the late 1800's. During that time period it was  
3 common to have portable mill sites that would operate at the site of timber  
4 harvesting operations and then be moved when the timber supply in the immediate  
5 area had been exhausted. Records for these small mills were not well kept. Mr.  
6 Ficken was able to find sufficient information to be able to identify the  
7 probable location of three mills within the area now owned by Boise Cascade, the  
8 Damman Mill, the Leonhard Mill and the Tjossem Mill. These mills were powered  
9 by water diverted from the nearby streams. Additionally, water was used from  
10 the streams and springs in the area for domestic supply for the workers and to  
11 water the livestock that were used to haul the lumber into town. During the  
12 late 1800's and early 1900's timber harvesting was conducted by individuals or  
13 small groups. In the early 1920's Cascade Lumber Company began buying up much of  
14 the land, taking over the timber harvesting operations. Cascade Lumber Company  
15 is a predecessor to Boise Cascade Corporation. The use of portable saw mills  
16 ceased during the early part of this century and timber was hauled to mills  
17 closer to town. As that transition occurred use of the water changed from  
18 running the mills to maintaining roads that were being constructed for hauling  
19 the logs. Initially the logs were hauled on wagons drawn by livestock and then  
20 logging trucks were used. Water is used to keep dust down on the roads and for  
21 road maintenance and grading. The ultimate use is still timber harvesting.  
22

Additionally, Boise Cascade is asserting a right to use the water for fire  
23 protection. Many claimants in this proceeding have asserted rights to use water  
24 for fire protection. Because that use is impossible to quantify and it is  
25

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1 recognized that if water is needed to fight a fire, whatever water is available  
2 will be used irrespective of what the water rights might be, the Court has been  
3 reluctant to grant rights specifically for fire protection. In order to resolve  
4 this issue, the Court signed a stipulation that was presented by the Department  
5 of Ecology. The stipulation defines fire suppression and states that use of  
6 water for fire suppression is a recognized emergency use and does not require a  
7 water right. The stipulation was signed by the Court on December 12, 1996.  
8 Therefore, the Referee does not proposed to recommend that a right be awarded to  
9 Boise Cascade specifically for fire protection or suppression.

10 Exhibit No. De-1695 is a map of the upper Wilson-Naneum basin on which Mr.  
11 Hess has marked each source of water to which Boise Cascade is asserting a water  
12 right. Those sources used for timber harvesting are identified by a red circle  
13 colored in blue. Twenty-six sites were identified where tank trucks are filled  
14 for timber harvesting purposes (specifically for road maintenance). Mr. Hess  
15 testified that water is diverted at a rate of 260 gallons per minute (0.57 cfs)  
16 each time a tank is filled and that a maximum of 40 acre-feet per year is used  
17 from all the sources. Not every identified source is used every year, as there  
18 is a rotation in the areas where timber is being harvested and only when  
19 harvesting activities are ongoing in the area of the water sources is it used.

20 Boise Cascade filed over 100 water right claims pursuant to the  
21 requirements of RCW 90.14 for water sources within the Wilson-Naneum Subbasin.  
22 These claims assert rights to divert between 3 and 5 gallons per minute and 2 to  
23 4 acre-feet per year for stock watering, fire protection, and road maintenance.  
24 Mr. Hess has testified to diverting 260 gallons per minute when tanker trucks  
25 are being filled, well above the quantity identified on the claim forms. RCW

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90.14.065 provides a mechanism to amend a water right claim, particularly where  
1  
an error was made in estimating the quantity of water used. In order for the  
2  
Referee to recommend that diversionary water rights be awarded in the quantity  
3  
that is being used, Boise Cascade must go through the process to amend those  
4  
claims. The Referee notes that this same situation occurred in Subbasin No. 4  
5  
and Boise Cascade successfully amended its water right claims and rights were  
6  
confirmed consistent with the quantities being used.  
7

Exhibit SE-1695 identifies the diversion location, the number Boise Cascade  
8  
has assigned to the diversion point and the water right claim filed pursuant to  
9  
RCW 90.14 that describes that water source and diversion. There are six  
10  
diversions marked on the map for which there is no RCW 90.14 claim identified.  
11  
It may be that Boise Cascade needs to add additional points of diversion on some  
12  
of its claims, as many of the diversions for which there is no claim are on a  
13  
stream where another diversion is located with a water right claim.  
14

Following is a list of diversion locations that the Referee proposes to  
15  
confirm a water right. The number assigned by Boise to the diversion location is  
16  
also indicated:  
17

<u>Source</u>	<u>quarter</u>	<u>S-T-R</u>	<u>Number</u>	<u>Quantity</u>
un. stream	SE $\frac{1}{4}$ SW $\frac{1}{4}$	33-21-19	407	0.01 cfs, 1 acre-foot
un. spring	NE $\frac{1}{4}$ NW $\frac{1}{4}$	03-20-19	367	0.01 cfs, 1 acre-foot
un. spring	NW $\frac{1}{4}$ SE $\frac{1}{4}$	04-20-19	368	.006 cfs, 1 acre-foot
Dot Cr.	SE $\frac{1}{4}$ SE $\frac{1}{4}$	08-20-19	372	0.01 cfs, 1 acre-foot
Pearson Cr	SW $\frac{1}{4}$ SW $\frac{1}{4}$	10-20-19	377	0.01 cfs, 1 acre-foot
Swift Cr.	NE $\frac{1}{4}$ SW $\frac{1}{4}$	11-20-19	379	0.01 cfs, 1 acre-foot
un. spring	NW $\frac{1}{4}$ NE $\frac{1}{4}$	11-20-19	384	0.01 cfs, 1 acre-foot
Dot Creek	NW $\frac{1}{4}$ NW $\frac{1}{4}$	15-20-19	388	0.01 cfs, 1 acre-foot
Swift Cr.	SW $\frac{1}{4}$ SE $\frac{1}{4}$	15-20-19	387	0.01 cfs, 1 acre-foot
High Cr	SW $\frac{1}{4}$ NE $\frac{1}{4}$	19-20-19	395	0.01 cfs, 1 acre-foot
un. spring	SW $\frac{1}{4}$ NW $\frac{1}{4}$	23-20-19	403	0.01 cfs, 1 acre-foot
Boulder Cr	SE $\frac{1}{4}$ SE $\frac{1}{4}$	23-20-19	402	0.01 cfs, 1 acre-foot
Wilson Cr	N $\frac{1}{2}$ N $\frac{1}{2}$	31-20-19	405	0.01 cfs, 1 acre-foot
Leonard Sp	SE $\frac{1}{4}$ SE $\frac{1}{4}$	05-19-19	337	0.01 cfs, 1 acre-foot

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1      un. stream      NW $\frac{1}{4}$ NE $\frac{1}{4}$       06-19-19      341      0.01 cfs, 1 acre-foot  
Naneum Cr      NE $\frac{1}{4}$ NE $\frac{1}{4}$       09-19-19      349      0.01 cfs, 1 acre-foot  
2      un. spring      SE $\frac{1}{4}$ NE $\frac{1}{4}$       01-18-19      334      0.01 cfs, 1 acre-foot

3      Several other pump chance locations are identified on the map, however,  
4      there are no RCW 90.14 claims identified for the source or that particular  
5      diversion from the source. Part of Exhibit DE-1522 suggests that the claimant  
6      is attempting to amend a RCW 90.14 claim to cover these locations, however,  
7      amendments can only be made pursuant to RCW 90.14.065, not by the Referee.

8      Following is a list of those pump chance locations (some have been numbered by  
9      Boise Cascade, and if so, that number is included):

10     NW $\frac{1}{4}$ NE $\frac{1}{4}$  29-18-19 unnamed spring  
11     SW $\frac{1}{4}$ SW $\frac{1}{4}$  21-19-19 unnamed spring  
12     SW $\frac{1}{4}$ SW $\frac{1}{4}$  08-19-19 unnamed stream  
13     NW $\frac{1}{4}$ NW $\frac{1}{4}$  08-19-19 Nealey Creek (272A)  
14     SE $\frac{1}{4}$ NE $\frac{1}{4}$  13-19-19 unnamed spring or stream (385B)  
15     SW $\frac{1}{4}$ NW $\frac{1}{4}$  33-20-19 Pearson Creek

16      Most of the land that is now owned by Boise Cascade, and for which a water  
17      right is asserted, was conveyed by the United States to Northern Pacific  
18      Railroad or to private individuals in the late 1800's or early 1900's. It is  
19      reasonable to conclude that the timber harvesting activities testified to by Mr.  
20      Hess and discussed in Robert E. Ficken's statement, were conducted on this  
21      private land and that use of water had begun prior to adoption of the Surface  
22      Water Code in 1917. However, the land now owned by Boise Cascade in the SE $\frac{1}{4}$  of  
23      Section 6 was in Federal ownership until 1931 when it was conveyed to Walter  
24      Crocker who owned the land until 1956 when it was sold to Cascade Lumber  
25      Company. Additional evidence is needed to show that there was water use on this  
26      property prior to 1917. In order for there to be a right under the Riparian  
27      Doctrine, efforts to sever the land from Federal ownership would have to have

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begun prior to 1917. Since the patent did not issue until 1931, the Referee cannot presume that occurred. Boise Cascade is asserting a right to divert from Bear Canyon Creek at two points, identified as Nos. 339 and 340 on Exhibit DE-1695.

The Referee recommends that water rights be confirmed to Boise Cascade Corporation for the 17 water sources listed above for the quantities of water and locations identified. Based on the evidence in the record, the priority dates for each right will be as follows:

For the water sources in Section 33, T. 21 N., R. 19 E.W.M. and Sections 3, 7 11, 15, 19, 23, and 31, T. 10 N., R. 19 E.W.M., Sections 5 and 9, T. 19 N., R. 19 E.W.M. and Section 1, T. 18 N., R. 19 E.W.M. (all former Northern Pacific Railroad land) the priority date shall be May 24, 1884, which is the date the map of definite location in Kittitas County was filed by NPPR. The priority date for the water right on Pearson Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 20 N., R. 19 E.W.M. shall be November 13, 1895; the priority date for the unnamed stream in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6, T. 19 N., R. 19 E.W.M. shall be March 4, 1909; the priority date for Dot Creek in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 20 N., R. 19 E.W.M. shall be April 25, 1910, (the Referee recognizes the last two dates are after the 1905 Federal withdrawal, however, this comports with the Courts prior rulings concerning de minimis water uses established after the Federal withdrawal in the Yakima basin).

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1 COURT CLAIM NO. 00185 -- Victor Boykiw  
2 (A) 00824 & Darlene Boykiw  
3 (A) 02484 Central Washington University  
U.S. Department of the Interior

4 Court Claim No. 00185 was filed by Insurance Management, Inc. for use of  
5 surface waters in the Yakima River Basin. Central Washington University  
6 Foundation was joined to the claim for a portion of the lands. In 1989 Victor  
7 and Darlene Boykiw were substituted for Insurance Management, Inc. The United  
8 States Department of Interior, Bureau of Land Management were joined to the  
9 claim in 1995.

10 During the Subbasin No. 9 evidentiary hearing, this claim was scheduled to  
11 be heard on February 19, 1991. On February 14, 1991, Mr. Boykiw faxed to the  
12 Referee a letter requesting a continuance on his hearing, with the original  
13 being received on February 19. Mr. Boykiw requested a 60 day continuance, which  
14 the Referee was not able to allow. The Referee did reschedule the claim to  
15 March 12, 1991, which was the final day of hearings for Subbasin No. 9. On  
16 March 8, 1991, the Referee received a letter from Mr. Boykiw stating that he  
17 would not be able to attend the March 12 hearing. The letter asked the Referee  
18 to consider statements in the letter, attachments to the letter and his  
19 pre-filed exhibits, including written expert testimony offered on his behalf by  
20 George Maddox. Neighboring landowners and Ecology had challenged the expert  
21 testimony offered by Mr. Maddox and, complying with the pre-hearing schedule for  
22 Subbasin No. 9, asked that Mr. Maddox be presented to be cross-examined. Mr.  
23 Boykiw did not produce Mr. Maddox at the hearing. Due to the failure of Mr.  
24 Boykiw to appear at the evidentiary hearing in support of the claim, the Referee  
25

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cannot recommend that a water right be confirmed under Court Claim No. 00185.

Mr. Boykiw was advised by the Referee and the Court in this adjudication that if an exception was filed to this Report of Referee, the claim could be scheduled for presentation of evidence at the supplemental hearing. The parties that have recently been joined to the claim have the same ability. If at the supplemental hearing any of the parties joined to this claim wish to rely on George Maddox's expert written testimony, Mr. Maddox must be available for cross-examination.

COURT CLAIM NO. 00825 -- James Bridge  
                          & Mary Bridge  
                          Cy Morgan  
                          Nick Parsel  
                          & Kim Parsel  
                          Katherine M. Rasmussen

The Bridges and Cy Morgan submitted a claim to the Court for use of waters from a branch of Wilson Creek known as Dry Creek and an unnamed spring. On February 6, 1989, Kim Parsel and Katherine M. Rasmussen were joined to the claim. The Bridges and Mr. Morgan are represented by Attorney John P. Gilreath. Nick Parsel, Kim Parsel's husband, testified at the evidentiary hearing. Kim Parsel is Cy Morgan's daughter.

Court Claim No. 00825 asserts a right to irrigate 114 acres and water stock from Dry Creek and an unnamed spring. The place of water use at the time the claim was filed was the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  lying west of the county road and the N $\frac{1}{2}$ SE $\frac{1}{4}$  north of Sanders Road and west of Look Road, in Section 25, T. 18 N., R. 18 E.W.M. Since that time the land has been subdivided and a portion conveyed to Katherine M. Rasmussen and another portion conveyed to Kim and Nick Parsel. The Bridges and Morgan still own Parcel A of that certain

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1 survey recorded June 15, 1984, in Book 13 of Surveys at page 1 under Auditor's  
2 File No. 479868, records of Kittitas County. Rasmussen owns Parcel B of that  
3 same survey. There was no legal description provided for the land now owned by  
4 the Parsels, however, Mr. Parsel did draw their property on SE-2, and it is  
5 roughly the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25.

6 Within Parcel A, the Bridges and Morgan are irrigating 52 acres. Water is  
7 diverted from Dry Creek within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25, approximately 400 feet  
8 north of the Parsel's property. The Referee believes this diversion serves all  
9 of the land originally described in Court Claim No. 0825. Besides creek water,  
10 water from the KRD is used on the Bridges and Morgan land and the Rasmussen  
11 land. According to the claimant, 114 acres were irrigated within the lands  
12 described in the original claim. The State's Investigation Report showed 130  
13 acres being irrigated, however, the Referee will rely on the testimony. DE-1615  
14 is an aerial photo taken in 1977 also showing that the lands described in Claim  
15 No. 0825 are irrigated. With 52 irrigated acres lying within the area retained  
16 by Bridges/Morgan, that leaves 62 irrigated acres in the area sold. SE-2 shows  
17 the land owned by Parsel as not being irrigated, however, Mr. Parsel testified  
18 to irrigating his lawn and small garden with creek water. Mr. Parsel did not  
19 testify to the size of his lawn and garden, but the Referee will presume it is  
20 no larger than one-half acre, leaving 61.5 irrigated acres within the area now  
21 owned by Rasmussen.

22 All of the land described in Court Claim No. 0825 was owned by Carl A.  
23 Sander in the late 1800's, however, independent water rights were established as  
24 different parcels were settled. William H. Snyder settled on the E $\frac{1}{4}$ SE $\frac{1}{4}$  and  
25 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 on October 1, 1873, and received a patent for the land on

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August 15, 1875. He sold it to Carl Sander on December 18, 1876. Carl Sander  
1 settled on the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 on May 8, 1877. The land was  
2 owned by Northern Pacific Railroad at that time. Sander remained on the land  
3 under license from the railroad until he purchased it on July 15, 1887. During  
4 the summer of 1887, Carl Sander purchased the SW $\frac{1}{4}$ NE $\frac{1}{4}$  from Howard C. Wright and  
5 immediately cultivated and irrigated that tract. The Sander v. Jones decree  
6 awarded Carl Sanders 450 inches of water to be used on lands he settled or had  
7 acquired from Chapman and Snyder. Water for those lands was first appropriated  
8 in 1873, undoubtedly on the Snyder land. Therefore, the portion of the  
9 claimants land that is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 would have an 1873  
10 priority date. The last appropriation was made in 1887, which was on the land  
11 acquired from Howard C. Wright, so the irrigated land in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section  
12 25 would have an 1887 date of priority. The Referee believes that the land in  
13 the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 would share an 1877 date of priority.  
14

15       Sander v. Jones awarded 1 miners inch of water for each acre irrigated in  
16 May and June and one-half inch the rest of the year. The claimant discusses in  
17 detail how to measure that miners inch, whether 50 inch equals 1 cfs or 40  
18 inches equals 1 miners inch. However, that question is answered in the decree  
19 and by the Supreme Court in Sander v. Bull. In both instances the Court states  
20 that the miners inch is measured under four inch pressure, which results in 50  
21 miners inches equaling 1 cfs. The claimant also calculates the annual quantity  
22 of water used based on using one inch of water in April. The decree provides  
23 that one inch is used in May and June and one-half inch the rest of the year.  
24 Therefore, only one-half inch can be used in April.  
25  
26

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1 Bridges and Morgan submitted three water right claims pursuant to the  
2 requirements of RCW 90.14. Water Right Claim (WRC) No. 117208 asserted a right  
3 to use 2 cfs, 300 acre-feet per year from Wilson Creek for the irrigation of 114  
4 acres and stock water. The described point of diversion is on Wilson Creek,  
5 near the north quarter corner of Section 30, T. 18 N., R. 19 E.W.M. WRC No.  
6 125748 asserts a right to use 3 cfs, 400 acre-feet per year from Dry Creek for  
7 the irrigation of 114 acres and stock watering. The point of diversion is in  
8 the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25. WRC No. 125747 asserts a right to use an unnamed  
9 spring for the irrigation of 114 acres and stock watering. The spring is  
10 located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25. The place of use on all the claims is the  
11 lands described in Court Claim No. 0825.

12 Although L. D. Rasmussen did not appear at the evidentiary hearing,  
13 sufficient evidence was presented to show that a water right was established for  
14 that portion of the property and beneficial use has continued. The Referee's  
15 preference would be to award a proportionate share of the water right to each of  
16 the parties that have been joined to Court Claim No. 0825, however, that is not  
17 possible. Due to the manner in which the claimant's land was settled, the  
18 Referee concludes that three separate water rights were established with three  
19 different priority dates. One right and priority date would be for the lands in  
20 the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , a second right and priority date would be for the lands in the  
21 SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$ , with a third for the NE $\frac{1}{4}$ SE $\frac{1}{4}$ . The Referee knows that the  
22 Bridges and Morgan now own Parcel A of the survey and Rasmussen owns Parcel B of  
23 the survey. However, without a copy of the survey, the Referee cannot tell how  
24 the parcels lie in the section. Mr. Parsel roughly drew it on the exhibit map,

25

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however, that is not sufficiently accurate. The Referee also does not have a  
1 legal description for the land the Parsels own.  
2

As a result, the Referee will recommend that rights be confirmed in the  
3 names of all the parties joined to the claim. At the exception phase, the  
4 claimants can submit a copy of the survey and a legal description for the Parsel  
5 land and ask to have discrete rights awarded for each party.  
6

The Referee recommends that a right be confirmed with a June 30, 1873 date  
7 of priority, for the diversion of 0.6 cfs in May and June, 0.3 cfs in April and  
8 July 1 through October 31, 150 acre-feet per year for the irrigation of 30 acres  
9 and stock watering in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25; with a June 30, 1877, date of  
10 priority 0.88 cfs in May and June and 0.44 cfs in April and July 1 through  
11 October 31, 220 acre-feet per year for the irrigation of 44 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$   
12 and SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25; with a June 30, 1887, date of priority 0.80 cfs in May  
13 and June, 0.40 cfs in April and July 1 through October 31, 200 acre-feet per  
14 year for the irrigation of 40 acres and stock water in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section  
15 25.  
16

Mr. Parsel testified to stock drinking from creeks and drains on the  
17 property. That use is covered by the non-diversionary stock water stipulation  
18 discussed on page 4 of this report and no additional right is necessary.  
19

A right is also being asserted for use of a spring located approximately  
20 670 feet south and 1200 feet east of the center of Section 25, on the southerly  
21 portion of the claimants' property. Other than recognition that the spring  
22 exists, there was no other evidence put in the record concerning the spring.  
23 The Referee does not know to what purpose the water is used, quantity of water  
24 used, or even if the spring has been developed and put to use. In order to  
25

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recommend that a right be confirmed there would need to be evidence of water use  
prior to 1932. The evidence is lacking. Therefore, the Referee cannot recommend  
that a right be confirmed for use of the spring.

COURT CLAIM NO. 02124 -- Gerald F. Brunner  
& Ruth Ann Brunner

The Brunners submitted a Statement of Claim to the Court for the use of  
waters from Wilson Creek for the irrigation of 18 acres. The Brunners are  
represented by Attorney Richard T. Cole and Mrs. Brunner testified at the  
evidentiary hearing.

Although Court Claim No. 02124 identifies the place of use as being a  
portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 18 N., R. 19 E.W.M., evidence presented  
at the hearing shows that the Brunners also own a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 8. The record shows that they own the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  and the north 790 feet  
of the west 507.3 feet of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8. Within that area they are  
irrigating 18 acres of pasture with water diverted from Wilson Creek. The  
diversion from Wilson Creek is located near the northeast corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$   
of Section 5, T. 18 N., R. 19 E.W.M. The land is flood irrigated. Mrs. Brunner  
testified that she had never measured the amount of water diverted, but assumed  
it was between 1.5 and 2 cfs. They are asserting a right to use 2 cfs, 120  
acre-feet per year. Mrs. Brunner testified that as far as she knew that land  
was being irrigated in much the same manner when her husband acquired it in  
1964.

Gerald Brunner filed WRC No. 143469 pursuant to the requirements of RCW  
90.14. It asserts a right to divert 2 cfs, 72 acre-feet per year from Dry Creek

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(a branch of Wilson Creek) for the irrigation of 18 acres and livestock water.

The point of diversion is described as being in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5 and the place of use is the S $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  and N $\frac{1}{4}$ N $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8. The point of diversion described is not where the Brunners divert their water from Wilson Creek, but instead is a point where Wilson Creek branches.

The portion of the Brunner land located in the S $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8 is part of the land homesteaded by James Jude, who received a patent on August 12, 1890, for the N $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 18 N., R. 19 E.W.M. James Jude was a defendant in Sander v. Jones. The decree awarded James Jude 20 inches of water and indicated that the water was appropriated between 1883 and 1887. The decree provided that one inch of water was sufficient for the irrigation of one acre, therefore, the 20 inches of water awarded to Jude would have been sufficient for 20 acres. The Jude property was riparian to Wilson Creek. There are two other claimants in this adjudication who are asserting a right based on being successors to Jude. Ronald Rees, under Court Claim No. 00892, and William Wood, under Court Claim No. 05316, own and are asserting rights for lands within the NW $\frac{1}{4}$  of Section 8. Mr. Rees is irrigating 12 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and Mr. Wood is asserting a right to 20 acres in the N $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ . Rights are being asserted for the irrigation of a total of 52 acres, but the extent of the right based on the decree is 20 acres. There has been no evidence offered to show that an additional right beyond that awarded in Decree No. 96 is appurtenant to the property. Mr. Rees owns a total of approximately 40 acres within the area for which a right was awarded, Mr. Wood owns 20 acres and Mr. Brunner owns 20 acres. There is insufficient evidence to show where the 20 acre right was being exercised within the Jude land when the right was

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1 established in the 1800's and the Referee doubts that information is available  
2 today. Attorney John P. Gilreath, represented William Wood, asserted that the  
3 land in the N $\frac{1}{2}$ NW $\frac{1}{4}$  should have half of the Jude water right. The Referee agrees  
4 with that position, however, since there are two claimants who are asserting  
5 rights in the N $\frac{1}{2}$ NW $\frac{1}{4}$ , Mr. Wood would only have a right to one-quarter and the  
6 Brunners would have one-quarter of the right.

7 Both Mr. Cole and Mr. Gilreath presented exhibits that raise a question  
8 concerning the extent of the Jude water right. The Sanders v. Jones Decree, No.  
9 96, shows that James Jude had a right to a total of 20 inches. This is the  
10 quantity in both the typed version of the Decree and Findings of Fact that is in  
11 evidence. However, both the Brunners and Wood put into evidence a portion of a  
12 Schedule of Rights for the Sanders v. Jones Decree that show James Jude as  
13 having 30 inches of water. There was no explanation of the difference offered,  
14 nor was there any evidence of additional rights being acquired by Jude or his  
15 successors. Without further explanation, the Referee must conclude that the  
16 limit to the right is 20 inches.

17 Therefore, the Referee will divide the 20 acre right amongst the three  
18 claimants, based on the number of acres they own within the original Jude  
19 property. Based on this Mr. Rees will have one-half of the right, or ten acres,  
20 and Mr. Wood and the Brunners will each have one-quarter of the right, or five  
21 acres each.

22 The portion of the Brunner property in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8 was not  
23 homesteaded by James Jude. A patent issued to William Coon on March 17, 1892,  
24 for the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8. In May of 1890, William Coon filed a water right  
25 document that stated he owned the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8 and the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of

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1 Section 7 and that since May 8, 1884, he had taken 100 inches of water out of  
2 Dry Creek in Section 5 and that he had appropriated 25 inches from Wilson Creek  
3 through the Van Alstine Ditch, which diverts from Wilson Creek in Section 5.  
4 William Coon does not appear to have been a party to Sanders v. Jones, nor was  
5 his land addressed in any manner. Although all of the neighboring land was  
6 addressed in case, since it was not a general adjudication, rights can exist  
7 outside of those described in the decree. The Brunner land in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
8 Section 8 is approximately 9 acres in size and it appears that all of it is  
9 being irrigated.

10 The Referee recommends that a right be confirmed under the Riparian  
11 Doctrine to Gerald and Ruth Ann Brunner with a June 30, 1877, date of priority  
12 for the diversion of 0.10 cfs from May 1 to June 30 and 0.05 cfs in April and  
13 from July 1 through October 15; 26 acre-feet per year for the irrigation of 5  
14 acres and 0.5 acre-foot per year for stock water in the S $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8,  
15 and with a May 8, 1884, date of priority a right for the diversion of 0.18 cubic  
16 foot per second, 46.8 acre-feet per year for the irrigation of 9 acres and 1  
17 acre-foot per year for stock watering in the north 790 feet of the west 507.3  
18 feet of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8.

19  
20 COURT CLAIM NO. 12929 -- Jeff T. Brunson

21 Jeff T. Brunson filed a claim with the Court on March 20, 1998, asserting a  
22 right to use waters from an unnamed stream in Subbasin No. 9. On July 9, 1998,  
23 the Court entered Order Granting Further Processing of Claim No. 12929 Relating  
24 to Subbasin No. 9. Since the evidentiary hearing for Subbasin No. 9 had  
25  
26

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concluded several years prior to the claim being filed, there was no evidence  
1 presented to allow the Referee to determine whether a right exists. Therefore,  
2 the Referee cannot in this report recommend that a right be confirmed under  
3 Court Claim No. 12929. However, Court Claim No. 12929 shall be included in the  
4 schedule when the supplemental hearing for Subbasin No. 9 is set.  
5

6 COURT CLAIM NO. 00886 -- Bull Canal Company, Inc.  
7 (A) 04207

8 Bull Canal Company, Inc., filed a claim with the Court asserting a right o  
9 use waters from the Yakima River, Wilson Creek, two branches of Naneum Creek and  
10 Coleman Creek. The claimants were represented by Attorney Mark Marsing. Morris  
11 Sorensen, President of the canal company testified at the evidentiary hearing.  
12 Entered into evidence was an Engineering Report for the Bull Canal Company,  
13 prepared by Richard C. Bain, Jr., a consulting engineer hired by the claimants.  
14 The report was prepared in October of 1990 and is marked as exhibit DE-1524.  
15 Much of the information about the canal operation is gleaned from this report.

16 Bull Canal diverts from the Yakima River in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3,  
17 T. 17 N., R. 18 E.W.M. and conveys water to the south and east through  
18 Section 10 into the NW $\frac{1}{4}$  of Section 11, where it intercepts Wilson Creek. Water  
19 is carried in Wilson Creek for several hundred feet and then withdrawn from  
20 Wilson Creek in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11. Bull Canal continues to the south and  
21 east, intercepting two branches of Naneum Creek in the SE $\frac{1}{4}$  of Section 18,  
22 T. 17 N., R. 19 E.W.M. The canal ends at Coleman Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
23 Section 19, T. 17 N., R. 19 E.W.M. Prior to 1970, the canal continued south of  
24 Coleman Creek and served additional lands. However, a right is not being  
25

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asserted in this proceeding for lands south of Coleman Creek. Historically, the  
1 canal has served 1210 acres, but at this time is serving 980 acres and that is  
2 the number of acres the canal company is seeking a right to irrigate. The lands  
3 served at the time of the evidentiary hearing lie in the SW $\frac{1}{4}$  of Section 12,  
4 Section 13, east of the Canyon Road, both in T. 17 N., R. 18 E.W.M. and Sections  
5 18 and 19 of T. 17 N., R. 19 E.W.M. All of the irrigated land lies below the  
6 Bull Canal, except a 7.6 acre field owned by the Sorensens in the SW $\frac{1}{4}$  of  
7 Section 12. This field is also the only area served that lies north of  
8 Interstate 90. A legal description for the proposed place of use for Bull Canal  
9 Company was not placed in the record. The claimant appears to be relying on two  
10 maps to delineate its place of use. A map was attached to Court Claim No. 00886  
11 and a map was included in the Bain report.

Bull Canal Company was formed in the late 1800's, although the exact date  
13 is not clear. The Articles of Incorporation were dated March 26, 1898, and the  
14 State of Washington issued a License to the company on May 14, 1898. The first  
15 minutes of the company are also dated 1898. However, attached to the Court  
16 claim is a copy of what appear to be right of way agreements for the Bull Canal.  
17 The handwriting is difficult to read and the edges of the agreements did not  
18 copy, but the Referee believes they are agreements related to construction of  
19 the Bull Canal and they are dated 1885. The evidence shows that Bull Canal was  
20 originally constructed beginning with a diversion from Wilson Creek in the NE $\frac{1}{4}$   
21 of Section 11. The claimant asserts this right was established in 1885 and the  
22 right of way agreements attached to the Court claim would support that  
23 assertion. Sometime after that a ditch was constructed from the Yakima River to  
24 Wilson Creek. The date this occurred is not clear. The claimant's counsel  
25

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stated in his opening remarks that it occurred around 1899, however, there are  
1 no records to support that date.  
2

Exhibit DE-658 are copies of the minutes from the canal company shareholder  
3 meetings beginning in 1898 and running through 1941. The minutes suggest that  
4 it was in 1907 that the canal company first decided to divert water from the  
5 Yakima River. The minutes of March 30, 1907, state that a motion was made and  
6 carried to build a ditch to the Yakima River. A committee was formed to  
7 supervise the construction of the new ditch. Later minutes discuss the  
8 possibility of extending either the Ice and Cold Storage Ditch or the Grinrod  
9 Ditch rather than building a totally new ditch. The company appeared to decide  
10 to build a new ditch. These minutes would suggest that water from the Yakima  
11 River was not diverted until after 1907.

However, in reviewing the C. R. Lentz Review of Yakima Project Water Rights  
13 & Related Data, December 1974, the Referee finds evidence that there was a  
14 diversion from the Yakima River prior to 1905. The Bull Canal Company is  
15 included on a list of ditches for which limiting agreements were not obtained.  
16 If the canal was not diverting from the Yakima River, there would be no reason  
17 for it to appear on the list. Additionally, the reclamation service prepared a  
18 schedule of canals, ditches and private users showing capacities and average  
19 diversions from the Yakima River and major tributaries for August of 1905. Bull  
20 Canal Company is also on this list with an average diversion of 23 cubic feet  
21 per second (page 10).

Included in the Bain report are diversion records for the Bull Canal that  
23 appear to have been obtained from the Bureau of Reclamation. The records begin  
24 in 1924 and conclude in 1984. However, the records for 1959 to 1976 are  
25

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"correlated data", correlated with the Olson Canal. The nature of this data was  
1 not addressed at the hearing or in the report, but the Referee concludes that  
2 the data is not from actual diversion records. Therefore, those years will have  
3 less significance in determining the extent of the claimant's water right than  
4 the other years. The data is reported by water year, which is October through  
5 September, so the Referee had to adjust the totals to irrigation season usage.  
6 The annual diversions have fluctuated significantly over the years. After a few  
7 years of higher diversions in the 1920's, in the range of 8,000 to slightly more  
8 than 10,000, the annual diversions have ranged between 5,000 and 7,000 acre-feet  
9 per year. There have been two diversions above 10,000 acre-feet per year, one  
10 in 1952 and one in 1981, but the Referee will discount those as anomalies.  
11 Although a right may have been perfected for diverting in excess of 8,000  
12 acre-feet per year through diversions in the early 1920's and before, use of  
13 that quantity has not continued. The extent of a water right must be based on  
14 beneficial use. Also of significance is the relinquishment statute that was  
15 adopted by the legislature in 1967, which provides that any portion of a right  
16 that goes unexercised for five or more successive years without a sufficient  
17 cause is relinquished. If the Referee uses the correlated date between 1967 and  
18 1975, which unfortunately may be necessary, diversions have consistently been in  
19 the 5,000 to 6,000 range, until 1978 when they drop to between 3,300 and 5,000.  
20 The claimants have testified that since 1981, when the Bureau of Reclamation  
21 adopted the "flip/flop" operation of the Yakima Project, less water has been  
22 diverted from the Yakima River in September and October than historically and  
23 more water diverted from Wilson Creek. However, the diversions records do not  
24

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reflect a significant difference between the diversions after 1981 in September  
1 and October and those prior to that year.  
2

Mr. Bain apparently did not measure the flow in the Bull Canal, as that  
3 information is not included in his report. Ecology staff measured the canal  
4 near the Yakima River diversion twice and those measurements are reported both  
5 in the Bain report and in Ecology's Exhibit DE-4. One measurement was between  
6 June 20 and 22, 1989 and the second was on August 8 or 9, 1989. The primary  
7 purpose of the measurement was to assist in determining conveyance loss in the  
8 canal. Both measurements show a loss of approximately 5% of the diverted  
9 quantity in the 1,000 feet between the two measuring points. During both  
10 measurements, the canal was carrying approximately 20 cubic feet per second at  
11 the first measuring point. The record does not contain the annual diversion  
12 records for 1989, so the Referee is not able to determine whether these  
13 measurements are "normal". However, since they are the only record of the  
14 instantaneous quantity diverted into the ditch, the Referee will rely on them.  
15

There were no diversion records put in the record for either Wilson Creek  
16 or Naneum Creek. Mr. Bain's report indicates that the quantity of water  
17 diverted from Wilson Creek is that necessary to make up for the loss from the  
18 canal between the Yakima River and Wilson Creek. That is approximately 5,000  
19 feet and using Ecology's conveyance loss figures, a maximum of 1 cfs per 1,000  
20 feet is lost or a total of 5 cfs. That would lead the Referee to conclude that  
21 5 cubic feet per second is the maximum that is diverted from Wilson Creek. The  
22 instantaneous quantity diverted from the two branches of Naneum Creek was not  
23 addressed at all.  
24

25

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When Bull Canal Company was formed there were 50 shares issued within the  
1 first few years and that number is consistent in the historical records  
2 provided. The most complete list of share holders is in the minutes of the  
3 March 30, 1907, meeting. Each share was worth 20 inches of water, so the 50  
4 shares were for 20.0 cubic feet per second of water. That is consistent with  
5 the quantity of water measured in the canal by Ecology. Nowhere in the record  
6 is there any evidence of the lands served by the canal company when it was first  
7 built, nor evidence of the lands owned by the early shareholders.  
8

The claimant filed five water right claims (WRC) pursuant to the  
9 requirements of RCW 90.14, the Claims Registration Act. WRC No. 029321 asserts  
10 a right to divert 10 cubic feet per second, 6,050 acre-feet per year from the  
11 Yakima River for the irrigation of 1210 acres. The point of diversion described  
12 is 1340 feet south and 1760 feet west of the northeast corner of Section 10,  
13 being within the NE $\frac{1}{4}$  of Section 10, T. 10 N., R. 17 E.W.M. The diversion from  
14 the Yakima River at the time of the hearing was in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3. It  
15 appears that a change in point of diversion may have been made. An attached map  
16 has an area darkened, which the Referee believes is intended to show the area  
17 served by the canal company.  
18

WRC No. 029322 asserts a right to divert 15 cfs, 5400 acre-feet per year  
19 from Wilson Creek for the irrigation of 1210 acres. The point of diversion  
20 described is 2840 feet south and 1640 feet west of the northeast corner of  
21 Section 11, being within the NE $\frac{1}{4}$  of Section 11, T. 17 N., R. 18 E.W.M. The  
22 Wilson Creek diversion is in the NE $\frac{1}{4}$  of Section 11, however, the dimensions  
23 described on WRC No. 029322 would place the diversion in the SE $\frac{1}{4}$  of Section 11.  
24 The Referee suspects that an error was made in the dimensions of the point of  
25

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1 diversion location, as the map attached to the claim places the diversion in the  
2 NE% of Section 11.

3 WRC No. 029323 asserts a right to divert 8 cfs, 2880 acre-feet per year  
4 from Nanum Creek for the irrigation of 320 acres. The point of diversion is  
5 1250 feet north and 640 feet west of the southeast corner of Section 18, which  
6 is the approximate location of the currently used point of diversion. WRC No.  
7 029324 asserts a right to divert 3 cfs, 1080 acre-feet per year from Nanum Creek  
8 for the irrigation of 320 acres. The point of diversion described is 2200 feet  
9 west and 2075 feet north of the southeast corner of Section 19, being within the  
10 SE% of Section 19. The diversion from the second branch of Nanum Creek is  
11 actually in the SE% of Section 18. The Referee does not know if an error was  
12 made in completing the water right claim or if there has been some change in the  
13 diversion point or flow of this branch of Nanum Creek. WRC No. 029325 asserts a  
14 right to divert 6 cfs, 2160 acre-feet per year from Coleman Creek for the  
15 irrigation of 160 acres. The claimant is no longer asserting a right to use  
16 waters from Coleman Creek. Attached to all of the claims is the same map  
17 intended to depict the place of use of the water delivered by the Bull Canal  
18 Company, Inc.

19 The Referee finds that there are many unanswered, and perhaps previously  
20 unasked, questions that prevent recommendations to confirm water rights to Bull  
21 Canal Company. The Referee believes a right is being asserted to divert 20 cfs  
22 from the Yakima River, yet WRC 29321 asserts a right to divert 10 cfs. The  
23 Court has granted the Referee the latitude to confirm rights in excess of the  
24 quantity identified on the claim, however, the Referee believes doubling the  
25 quantity without the claimant amending the RCW 90.14 claim pursuant to RCW

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90.14.065 is inappropriate and beyond what the Court intended. Additionally,  
1 the claimant did not provide any information about the quantity of water  
2 actually diverted from the creeks, but only provided estimates of water need  
3 based on evaluating the irrigation practices on some fields. There is no  
4 evidence of what lands were served when the right was established in the late  
5 1800's and early 1900's, nor was there a legal description provided of the  
6 proposed place of use for any right confirmed to the claimant. These  
7 deficiencies must be eliminated before the Referee can recommend that water  
8 rights be confirmed.  
9

10 COURT CLAIM NO. 01944 -- John A. Bull, Jr., et al.

11 COURT CLAIM NO. 01955 -- Thomas W. Bull, II  
12 & Jonelle M. Bull  
13 Curtis B. Bull  
& Lucille E. Bull

14 Court Claim No. 01944 was filed by the Bull family for use of waters from  
15 Lyle Creek and waste water or drainage water on lands in the W $\frac{1}{2}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$  of  
16 Section 12, T. 17 N., R. 18 E.W.M. Court Claim No. 01955 was filed for use of  
17 waters from Lyle Creek and waste water or drainage water on lands in the  
18 S $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 1, and the SE $\frac{1}{4}$  of Section 12 south of Interstate 90, both in  
19 T. 17 N., R. 18 E.W.M. Thomas Bull testified at the evidentiary hearing in  
20 support of both claims.

21 The land in the E $\frac{1}{2}$  of Section 12 north of Interstate 90 is 175 acres, all  
22 of which is irrigated. The land is planted to a variety of crops, i.e. hay,  
23 pasture, corn, grain and other row crops. Mr. Bull testified that the land has  
24 been irrigated since the Ellensburg Water Company (EWC) project was completed  
25

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and that the bulk of the water used on the land comes from EWC. Water enters  
1 the property near the northeast corner. According to Mr. Bull's testimony there  
2 is no diversion from Lyle Creek to this land. Livestock have in the past been  
3 raised on the property; at one time it was used as a dairy and another time as a  
4 feedlot. Currently, fewer livestock are on the land. What livestock are there,  
5 drink directly from Lyle Creek, which crosses the northwest corner of the  
6 property. The testimony by Mr. Bull does not show that water rights were  
7 established for use of Lyle Creek on this property, except for non-diversionary  
8 stock watering from the creek. That type of stock water use is covered by the  
9 stock water stipulation discussed on page 4 of this report.  
10

The Bull land in that portion of the SE $\frac{1}{4}$  of Section 12 lying south of  
11 Interstate 90 was originally part of the parcel just discussed. Construction of  
12 I-90 separated this piece from the larger parcel. It is 8.08 acres in size,  
13 with 7.5 acres being irrigated, also with water delivered by Ellensburg Water  
14 Company. There was no evidence presented to show the existence of a water right  
15 for use of Lyle Creek. Water Right Claim No. 033160 was filed by Thomas Bull  
16 pursuant to the requirements of RCW 90.14. It asserts a right to use 5 cfs,  
17 1000 acre-feet per year from Lyle Creek for irrigation of 200 acres in the SE $\frac{1}{4}$   
18 and W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 12, T. 17 N., R. 18 E.W.M.  
19

The Referee recommends that no diversionary water right be confirmed for  
20 the land in Section 12 due to the lack of evidence to show that a water right  
21 was established for use of Lyle Creek. Additionally, the testimony did not show  
22 that Lyle Creek water was being used on the land at the time of the hearing.  
23 The claimants use of EWC water is not affected by this recommendation. EWC is a  
24  
25

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major claimant in this proceeding, whose rights have been determined through the major claimant pathway.

The parcel of land in the S½SW¼SE¼ of Section 1, T. 17 N., R. 18 E.W.M. is approximately 8 acres in size, with four acres being irrigated with water diverted from Lyle Creek. Livestock are also raised on this piece, drinking directly out of the creek. Mr. Bull did not provide any evidence of how much water is used to irrigate this parcel. Water Right Claim No. 033164 filed pursuant to RCW 90.14 asserts a right to use 1 cubic foot per second, 50 acre-feet per year from Lyle Creek for the irrigation of 10 acres within this parcel. Mr. Bull testified to his belief that the land has been irrigated since 1888, but provided no foundation for this belief.

All of Section 1 was conveyed by the United States to the Northern Pacific Railroad. The railroad sold the SE $\frac{1}{4}$  of Section 1 to Samuel Packwood in 1888, which appears to be the basis for the 1888 date asserted by Mr. Bull. Lyle Creek flows through the property, so in order to show that a water right was established under the Riparian Doctrine, there needs to be evidence of water use on the land prior to the end of 1932.

The Referee does not recommend that a water right be confirmed for the land in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 1 until evidence of water use prior to the end of 1932 is provided.

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1 COURT CLAIM NO. 01181 -- Alan Burke  
2 (A) 06158

3 A Statement of Claim was filed by Michael J. and Blanche L. Burke for use  
4 of waters in the Wilson-Naneum Subbasin. On June 24, 1985, Alan Burke was  
5 substituted for his parents. Dr. Burke is represented by Attorney Richard T.  
6 Cole. Brent Minor, who leased and farmed the property, testified at the  
7 evidentiary hearing.

8 Dr. Burke owns two separate parcels of land; the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31,  
9 T. 18 N., R. 19 E.W.M. lying north of the Cascade Canal and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
10 Section 32 and the west 500 feet of the north 2400 feet of the NW $\frac{1}{4}$  of  
11 Section 33, both in T. 18 N., R. 19 E.W.M. Each parcel will be addressed  
12 separately.

13 Dr. Burke is asserting a right to divert water from Naneum Creek for the  
14 irrigation of 70 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32 and the west 500 feet of the  
15 north 2400 feet of Section 33. The land is in pasture and up to 200 head of  
16 cattle and a few horses graze on it. The livestock drink directly from Naneum  
17 Creek as it flows through the fields. This type of non-diversionary stock water  
18 use is covered by the stock water stipulation discussed on page 4 of this report  
19 and no other water right will be confirmed for this use. The pasture is flood  
20 irrigated with water diverted from Naneum Creek at two points. One diversion is  
21 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21 and carried in a ditch that is about one and  
22 half miles long. This ditch is primarily used to irrigate the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
23 Section 32. A second diversion is near the northwest corner of Section 33 and  
24 is used to irrigate the land in the W $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33. Mr. Minor marked a  
25

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1 diversion location on the map, however, that appears to be on the ditch that  
2 carries water after it is diverted from the creek. The Referee believes the  
3 diversion from the creek is just a few feet south and east of the northwest  
4 corner of Section 33. Mr. Minor estimated that between 2 and 3 cubic foot per  
5 second is used when available. The creek flow diminishes after early June and  
6 generally is not available.

7 Water Right Claim No. 145063 was filed pursuant to RCW 90.14 asserting a  
8 right to use 2 cfs, 400 acre-feet per year from Naneum Creek for irrigation of  
9 85 acres and stock watering in the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 32 and the W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$  of  
10 Section 33, T. 18 N., R. 19 E.W.M.

11 Sections 32 and 33 were settled by different individuals and have a  
12 different ownership history until the Burkes acquired it. The NW $\frac{1}{4}$  of Section 33  
13 was originally conveyed to Northern Pacific Railroad, who sold it to a C. M.  
14 McDonald. By 1890, it was owned by F. S. McDonald, who along with A. J. Sliger  
15 filed a Claim of Water Right attesting to having constructed a ditch with a  
16 diversion in the SW $\frac{1}{4}$  of Section 28. Construction began on May 15, 1877, and the  
17 ditch had a capacity of 150 inches. The claim stated it was used to irrigate  
18 land owned by McDonald in the NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 33 and land owned by  
19 Sliger in the SW $\frac{1}{4}$  of Section 33. Both McDonald and Sliger were parties to the  
20 Ferguson decree. McDonald was awarded a Class 9 right, which would have an 1878  
21 date of priority, for the use of 100 inches of water. The Findings of Fact that  
22 preceded the decree only referenced the land in the NW $\frac{1}{4}$  of Section 33,  
23 therefore, the Referee believes that is where the 100 inches was appurtenant.  
24 About 30 acres are irrigated within the land the claimant owns in Section 33.  
25 The rest of the NW $\frac{1}{4}$  of Section 33 is owned by Ron Mitchell who is asserting a

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1 claim in this proceeding under Court Claim No. 05349. Mr. Mitchell, who  
2 ironically is also represented by Attorney Richard T. Cole, is asserting a right  
3 to irrigate 90 acres. The basis for his claim is also the 100 inches awarded to  
4 McDonald in the Ferguson decree. Between the two claimants in the NW $\frac{1}{4}$  of  
5 Section 33, a right is being asserted for the irrigation of 120 acres. The  
6 Ferguson decree awarded one inch of water for each acre irrigated, therefore,  
7 there exists a right to irrigate 100 acres. Mr. Cole did not address this  
8 obvious conflict between his clients. However, the Referee is not able to  
9 recommend that a water right be confirmed to Ron Mitchell due to a lack of RCW  
10 90.14 claim for his land. See page 379 for a full discussion of the Mitchell  
11 claim.

12 The Referee recommends that a right be confirmed under Court Claim No.  
13 01181 with a June 30, 1878, date of priority for the diversion of 0.60 cfs in  
14 May and June and 0.30 cfs in April and July 1 through October 15, 150 acre-feet  
15 per year for the irrigation of 30 acres in the west 500 feet of the north 2400  
16 feet of Section 33.

17 The NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32 was settled by Leroy L. Holcomb, who received a  
18 patent on March 25, 1891, for the N $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32,  
19 T. 18 N., R. 19 E.W.M. Holcomb filed a Claim to Water Right in 1890 attesting  
20 to having constructed three ditches from Naneum Creek for irrigating land in the  
21 NE $\frac{1}{4}$  of Section 32. Construction of the first ditch began on April 15, 1883,  
22 with a diversion near the southeast corner of Section 29. The remaining two  
23 ditches had diversions in the W $\frac{1}{4}$  of Section 28, with construction of the last  
24 ditch being finished on April 15, 1889. One ditch carried 15 inches, one 25  
25 inches and the last one 60 inches. The claimant points to the Ferguson decree

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as the basis for the right for this land also. A Class 6 right was awarded to  
1 Mrs. L. J. Holcomb for 120 inches. However, upon review of the Findings of Fact  
2 that preceded the decree, it indicates that L. J. Holcomb is the owner of the  
3 N $\frac{1}{2}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 22, T. 18 N., R. 19 E.W.M. and indicates  
4 the land was settled and water first used in 1882, an earlier date than  
5 contained in the Holcomb Claim to Water Right filed in 1890. The Referee has  
6 checked two different typed versions of the Findings of Fact and both state the  
7 Holcomb property is in Section 22. Mr. Cole did not address this. It may be  
8 that a typographical error was made when the Findings of Fact were first typed.  
9 However, that assertion was not made by the claimant and the Referee is  
10 reluctant to reach that conclusion without any facts in support or argument in  
11 that regard. The Referee does not know whether the Holcombs also owned land in  
12 Section 22, which is located such that water from Naneum Creek could be diverted  
13 and carried to the land. The Referee suggests this be addressed by the claimant  
14 or counsel during the exception phase by located a copy of the handwritten  
15 Findings of Fact or the Holcomb Answer that would likely describe the lands for  
16 which they were asserting a right.  
17

The last land to be addressed is the parcel lying in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
18 Section 31 north of the Cascade Canal. A right is being asserted for the  
19 irrigation of 18 acres with water diverted from Wilson Creek. This land is also  
20 pasture, with evidence that hay was once grown. Section 31 was originally  
21 conveyed by the United States to Northern Pacific Railroad, who sold it to Earl  
22 B. Peck in 1889. Rights to the use of Wilson Creek were addressed in Sander v.  
23 Jones and Earl Peck would have owned this land at the time that decree was  
24 entered. Peck was not a party to the case. Besides the chain of title that was  
25

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1 presented for the NE $\frac{1}{4}$  of Section 31, no other information about the history of  
2 the property was provided. Mr. Minor was only able to testify about water use  
3 on the property during the three years he owned it and observations of the  
4 Burkes irrigation practices during their ownership. The Burkes acquired the  
5 property in 1953 and there was no testimony about the condition of the land at  
6 that time. In order for the Referee to recommend that a right be confirmed for  
7 this land, there must be evidence that water was diverted from Wilson Creek and  
8 used to irrigate the land in the late 1800's or early 1900's. That evidence is  
9 lacking.

10 Two water right claims were filed pursuant to RCW 90.14 for the Section 31  
11 land. WRC No. 145062 asserted a right to divert 2 cfs, 800 acre-feet per year  
12 from an unnamed drain for the irrigation of 18 acres and stock water in the  
13 NW $\frac{1}{4}$ , NE $\frac{1}{4}$  of Section 31. The claim says water was first used in 1915. WRC No.  
14 137488 was filed for use of Wilson Creek. It asserts a right to use 0.50 cfs,  
15 90 acre-feet per year for irrigation of pasture and hay land and stock watering  
16 on a portion of the NW $\frac{1}{4}$ , NE $\frac{1}{4}$  and NE $\frac{1}{4}$ , NW $\frac{1}{4}$  of Section 31. A riparian right is  
17 claimed with date of first use prior to 1915. Although a riparian right is  
18 asserted, the described land is not riparian to Wilson Creek.

19 Due to the deficiencies identified for the land in Sections 31 and 32, the  
20 Referee cannot recommend confirmation of a water right under Court Claim No.  
21 01181.

22

23

24

25

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1 COURT CLAIM NO. 02295 -- Peter Burkholder

2 Court Claim No. 02295, originally filed by Lawrence Spannagel, asserts a  
3 right to use waters from Wilson Creek for irrigation. On March 28, 1989, Peter  
4 M. Burkholder was substituted for Mr. Spannagel. Mr. Burkholder testified at  
5 the evidentiary hearing.

6 The claimants land lies in a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25, T. 18 N.,  
7 R. 18 E.W.M. lying south of Sanders Road and north of the Cascade Canal. The  
8 land is 2.3 acres in size and 2 acres are irrigated. A lawn, garden and  
9 numerous trees planted to serve as windbreaks are sprinkler irrigated. The  
10 irrigation water comes from an underground pipeline that leaves the neighboring  
11 Bridge/Morgan property to the north and enters the claimants property near its  
12 northwest corner. The water is collected into a concrete-lined, madmade pond  
13 and then pumped into the sprinkler system. The pond was built sometime prior to  
14 1970. Prior owners of the land have raised livestock and used water for stock  
15 watering. However, Mr. Burkholder is not asserting a right for that purpose.  
16 He has stocked fish in the pond and testified to several different species of  
17 wildlife that drink from and congregate around his pond. Overflow pipes from  
18 the pond discharge into the Cascade Canal. Mr. Burkholder has made many  
19 modifications to the irrigation system during his ownership and testified to the  
20 historic system used for irrigation prior to his acquiring the land and evidence  
21 of an even older, abandoned system used long ago.

22 The claimants land is part of the land owned by Carl and Olive Sanders.  
23 Carl Sander settled on the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 on May 8, 1877. The  
24 land was owned by Northern Pacific Railroad at that time. Sander remained on  
25

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the land under license from the railroad until he purchased it on July 15,  
1  
1887. The Sander v. Jones decree awarded Carl Sanders 450 inches of water to be  
2 used on lands he settled or had acquired from Chapman and Snyder. The Referee  
3 believes that the land in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 would share an  
4 1877 date of priority. Sander v. Jones awarded 1 miners inch of water for each  
5 acre irrigated in May and June and one-half inch the rest of the year.  
6

RCW 90.14, the Claims Registration Act, required that water right claims be  
7 filed for all uses of water for which a permit or certificate had not been  
8 issued by the State of Washington. One of the specific intents of RCW 90.14 was  
9 to provide documentation of claims to water rights based on water use begun  
10 prior to adoption of the Surface Water Code in 1917. It also provided that  
11 failure to file a claim waived and relinquished any right that might have  
12 existed, see RCW 90.14.071. The State's Investigation Report for this property  
13 states that Water Right Claim Registration Nos. 125747 and 125748 may be  
14 appurtenant. However, as the claimant points out in his testimony, his land is  
15 excluded from the description of lands on which water is used. Adjoining lands  
16 on either side of his parcel are specifically described, but his is not. Mr.  
17 Burkholder surmised that since Cy Morgan sold his parcel to a W. Lee Flood prior  
18 to when the RCW 90.14 claims were filed, the parcel was omitted from the  
19 described lands. Mr. Flood did not file a water right claim pursuant to RCW  
20 90.14.  
21

The State's Investigation Report also mentions that Kittitas Reclamation  
22 District (KRD) water may be commingled with creek water during portions of the  
23 year. Mr. Burkholder did not know with any certainty whether he was a patron of  
24 the KRD, however, he testified to receiving a statement from someone for  
25

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28

irrigation water for 2 acres. The Referee suspects that since the claimants  
1 land lies above all the other delivery canals in the area, that it is very  
2 likely that Mr. Burkholder is a KRD patron. KRD is a major claimant in this  
3 proceeding and its rights have been determined by the Court through the Major  
4 Claimant Pathway, see Report of the Court and Supplemental Report of the Court  
5 for Kittitas Reclamation District, Volumes 14 and 14A.  
6

The evidence presented at the hearing is sufficient to show that a water  
7 right was established for the claimants property for use of Wilson Creek and  
8 that beneficial use of the water has continued. However, the Referee cannot  
9 recommend that a water right be confirmed under Court Claim No. 02295 due to the  
10 lack of an RCW 90.14 water right claim for the property.  
11

COURT CLAIM NO. 00103 -- Burlington Northern Railroad Co.  
13

Burlington Northern Railroad Company filed a claim in this proceeding for  
14 use of waters from several water sources in the Yakima River Basin. A portion  
15 of the claim was for use of water at their railroad station and associated  
16 grounds in Ellensburg. The property is in Section 2, T. 17 N., R. 18 E.W.M.,  
17 which is within Subbasin No. 9. The source of water is not identified. There  
18 was no appearance at the evidentiary hearing by Burlington Northern Railroad  
19 Company. Therefore, the Referee cannot recommend that a water right be  
20 confirmed within Subbasin No. 9.  
21

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26

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27

1 COURT CLAIM NO. 00857 -- Orren Busby  
2 & Ruth Busby

3 The Busbys filed a claim with the Court asserting a right to use waters  
4 from Naneum Creek. The claimants are represented by Attorney Richard T. Cole  
5 and Donald Berger, the ranch manager, testified at the evidentiary hearing.

6 The claimants' land is in the E½E%SE½ of Section 29, T. 18 N.,  
7 R. 19 E.W.M. They irrigate the land that lies west of Taylor Creek with water  
8 from the creek. The land is planted in pasture and is rill irrigated. The area  
9 east of the creek is used as a feedlot. Pens for the cattle are built with  
10 narrow strips intersecting the creek so that the cattle can drink directly from  
11 the creek. This type of non-diversionary stock water use is covered by the  
12 stock water stipulation discussed on page 4 of this report. Two wells are also  
13 used for stock watering. Neither the claimant, nor the ranch manager, have  
14 measured the quantity of water diverted from the creek, but a right to divert 1  
15 cfs on a continuous basis is being asserted. Mr. Berger has been the ranch  
16 manager for seven years prior to the hearing and testified that he continued the  
17 irrigation practice that was in place.

18 At the time of the Ferguson decree, the claimants' land was part of that  
19 which was owned by F. A. Ploeger, who owned all of the SE% of Section 29,  
20 T. 18 N., R. 19 E.W.M. The Findings of Fact stated that Ploeger's land was  
21 first occupied in 1880 and in 1883 water was diverted from the West Branch of  
22 Naneum Creek and used for irrigation. It also stated that 100 acres were under  
23 cultivation. The decree awarded Ploeger a Class 13 right to use 100 inches of  
24 water. The SE% of Section 29 is riparian to the West Branch of Naneum Creek;

25  
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the west branch is also called Taylor Creek. The Class 13 designation was based  
1 on water not being used until 1883. However under the Riparian Doctrine the  
2 priority date for the right is set when the land is settled, which for this land  
3 would be 1880, rather than 1883. The claimant is asserting a right to divert 1  
4 cubic foot per second to irrigate 30 acres. However, the Ferguson decree  
5 provided that one inch of water, or 0.02 cfs, was sufficient for the irrigation  
6 of one acre and awarded water rights based on that limitation. Therefore, the  
7 claimants' land would be entitled to 0.60 cubic foot per second. The claimant  
8 also asserted a right to use the 1 cfs continuously. The decree awarded one  
9 inch of water for use in May and June and one-half inch of water the rest of the  
10 year. Therefore, except in May and June, the claimant would have a right to  
11 only 0.30 cubic foot per second.

Water Right Claim No. 064729 was filed by Orren Busby pursuant to the  
13 requirements of RCW 90.14. It asserts a right to use 1 cubic foot per second,  
14 430 acre-feet per year from Naneum Creek for the irrigation of 30 acres in the  
15 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29, T. 18 N., R. 19 E.W.M. The claimant irrigates  
16 approximately 15 acres in the E $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29 and irrigates an additional  
17 15 acres in the E $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29. As far as the Referee can determine,  
18 there was no water right claim filed for lands within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29.  
19 The Referee does not know whether Mr. Busby made an error in completing the form  
20 when he described the lands on which water was used as being only in the NE $\frac{1}{4}$ SE $\frac{1}{4}$   
21 or whether at that time he owned the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29 and was irrigating 30  
22 acres in that subdivision. The inconsistency between the description where  
23 water was being used on WRC No. 064729 the description of lands for which a  
24 right is being asserted was not addressed at the evidentiary hearing. Failure

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1 to file a claim waives and relinquishes any right that may have existed, RCW  
2 90.14.071. Since there is no RCW 90.14 claim filed for the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
3 Section 29, any right that may have existed has been waived or relinquished.  
4

5 The Referee, therefore, can only recommend that a water right be confirmed  
6 for that portion of the claimants property lying in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29.  
7 The Referee recommends that a right be awarded under Court Claim No. 00857 with  
8 a June 30, 1880, date of priority for the diversion of 0.30 cubic foot per  
9 second in May and June and 0.15 cubic foot per second in April and July 1  
10 through October 15, 75 acre-feet per year for the irrigation of 15 acres in that  
11 portion of the E $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29, T. 18 N., R. 19 E.W.M. lying west of  
12 Taylor Creek.  
13

14 COURT CLAIM NO. 01832 -- Ron G. Carlson  
15 & Toni D. Carlson

16 The Carlsons submitted a claim to the Court for use of waters from  
17 Wilson-Naneum Creeks. They were represented by Attorney William F. Almon at the  
18 evidentiary hearing. Mr. Almon has since withdrawn as their attorney. Ron  
19 Carlson and his father, Art Carlson, testified at the evidentiary hearing.  
20 Additionally, Andy Gustafson testified by deposition taken on March 15, 1990.

21 The Carlsons own the W $\frac{1}{4}$ W $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34 and the E $\frac{1}{4}$ E $\frac{1}{4}$  and the  
22 E $\frac{1}{4}$ W $\frac{1}{4}$ SE $\frac{1}{4}$ , except the south 426 feet, of Section 33, T. 19 N., R. 19 E.W.M. They  
23 are asserting a right to irrigate 360 acres with water diverted from  
24 Wilson-Naneum Creek. The land is planted in hay, grain and pasture and 250  
25 cow/calf pairs are generally on the land. The livestock are watered from the  
26 irrigation ditches and two springs on the property. Stock water is carried in  
27

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the ditches during the winter months. The claimants have owned the land since  
1  
1974 and during their ownership they have gradually upgraded the irrigation  
2  
system from dirt ditches to gated pipe. The claimants obtained the land from  
3  
Mr. Carlson's father, who got it from his own father. The documents show that  
4  
Ron Carlson's grandfather acquired the land in 1932 from C. H. Kresge, who had  
5  
owned it since 1909.  
6

The Carlsons pointed to the Order Pendente Lite and the Maddox report that  
7  
preceded the order in Department of Ecology v. Carlson to support their claim.  
8  
The Pendente Lite Order recognized a Class 19 "right" with a 1916 priority date  
9  
for 3.0 cfs for irrigation and livestock on 280 acres of land in the E½E½ of  
10  
Section 33 and the W½W½ of Section 34, T. 19 N., R. 19 E.W.M. According to the  
11  
Maddox report, Art Carlson had testified to irrigating 280 acres and the 1916  
12  
priority date was based on Art Carlson's earliest memory of the land being  
13  
irrigated. Neither the NE½SW½ of Section 34 or the E½W½SE½ of Section 32 were  
14  
included in the lands for which a right was addressed in the Pendente Lite  
15  
Order. Ron Carlson acquired the E½W½SE½ of Section 32 from the Sorensens after  
16  
the Pendente Lite Order was entered. The Sorensens do not appear in either the  
17  
Maddox report or the Pendente Lite Order, nor was there any other evidence  
18  
presented about the history of the land or water use prior to the Carlsons  
19  
acquiring it.  
20

Andy Gustafson testified about his memory of the Carlson land. His initial  
21  
testimony was that he did not have knowledge of early water use on that land.  
22  
He did recall the Carlson Ditch being nearly fully developed and upon further  
23  
questioning stated that some of the Carlson property was irrigated.  
24

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The claimants indicated the land had not been addressed in any of the prior  
1 decrees. However, at the time of the Sander v. Bull case, the E&E% of  
2 Section 33 and the W&W% of Section 34 were owned by C. H. Kresge. Charles  
3 Kresge was one of the named defendants in Sander v. Bull. That decree did not  
4 determine or even identify the rights of the defendants. It recited the rights  
5 of the Plaintiffs as against the defendants and ordered that the defendants  
6 restrain from hindering or interfering with the use and enjoyment of the  
7 plaintiffs of the amounts of water awarded to the plaintiffs. Although the  
8 rights of the defendants were not identified, it is clear that the defendants  
9 were using water from Wilson and/or Naneum Creeks at the time of the judgement.  
10 Kayser Ranch entered Exhibit DE-1526, which is a copy of the Transcript of  
11 Testimony and Proceedings for Sander v. Bull. Mr. Almon pointed the Referee to  
12 the pages where Charles Kresge testified about his use of the land after he had  
13 acquired it and the testimony of John Filer, whose mother owned the property in  
14 the late 1800's. According to Mr. Kresge's testimony he was irrigating 160  
15 acres in 1911 with water diverted from Naneum Creek and carried in the Wilkins  
16 Ditch and an unnamed ditch that diverted upstream of the Wilkins Ditch. John  
17 Filer testified that in 1891, when his mother owned the land, he constructed a  
18 ditch from the Wilkins Ditch to her property and irrigated about 65 acres. He  
19 was aware that later another ditch was used to irrigate additional land. He did  
20 not know when that second ditch was built and first used.

It is clear from the evidence in the record that in 1911, 160 acres within  
22 the E&E% of Section 33 and the W&W% of Section 34 were being irrigated with  
23 water diverted from Naneum Creek and carried through two ditches. It is also  
24 apparent that since that time, more land has been irrigated and additional  
25

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ditches used. However, the Referee cannot recommend that a water right be  
1 confirmed for the additional acreage. Apparently over 100 acres have been put  
2 under irrigation since 1911, which is after the 1905 United States withdrawal of  
3 all unappropriate waters in the Yakima River Basin, which prevented the  
4 establishment of additional water rights without the consent of the United  
5 States. Additionally, if the additional acreage was developed after 1917,  
6 compliance with the permitting requirements of RCW 90.03, the State Surface  
7 Water Code, would have been required. There is no evidence of compliance with  
8 that law.  
9

Water Right Claim No. 049412 was filed by C. A. Carlson pursuant to the  
10 requirements of RCW 90.14 asserting a right to divert 2 cfs, 600 acre-feet per  
11 year from Nanum Creek for the irrigation of 250 acres in the W $\frac{1}{2}$  of Section 34  
12 and the E $\frac{1}{2}$ E $\frac{1}{2}$  of Section 33, T. 19 N., R. 19 E.W.M. The point of diversion  
13 described is 1080 feet south and 570 feet east of the northwest corner of  
14 Section 28, being within the NW $\frac{1}{4}$  of Section 28, T. 19 N., R. 19 E.W.M., which  
15 would be the location of the diversion into the Carlson Ditch. The Referee has  
16 concluded that the Carlson Ditch is the upper ditch referred to in the Sander v.  
17 Bull testimony. That testimony indicated that the Wilkins Ditch also served the  
18 Carlson property. However, the Wilkins Ditch today does not flow to the Carlson  
19 property and could not carry water to irrigate that land. The Referee believes  
20 that the lower ditch historically used is what is today called the Keister  
21 Ditch, which diverts from the creek in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28 and crosses the  
22 lower half of the claimant's land. Although this diversion is not described in  
23 WRC No. 049412, it is apparent it has been used since the right was initiated.  
24

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28

The claimant also testified to using two springs located near the center of  
the property, in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34. One spring located above the barn  
has been developed and piped into the corral for wintertime stock watering and  
the second spring, near the house, is piped to a pond behind the house and also  
used for stock watering. There was no testimony about when the springs were  
developed, although the Referee was left with the impression that it was after  
the Carlson family acquired the land in 1932. It would have been necessary to  
obtain a permit for use of the springs under the procedures in RCW 90.03. There  
is no evidence that was accomplished. If the use did begin prior to 1932, which  
would have allowed establishment of a right under the Riparian Doctrine, there  
is apparently no RCW 90.14 claim for the springs. In either case, the Referee  
cannot recommend that a water right be confirmed for use of the springs.

The Referee does recommend that a right be confirmed to the Carlsons with a  
June 30, 1891, date of priority for the diversion of 3.20 cubic feet per second  
in May and June and 1.60 cubic feet per second in April and July 1 through  
October 15, 800 acre-feet per year from Wilson-Naneum Creeks for the irrigation  
of 160 acres and stock watering and 1.60 cubic feet per second, 5 acre-feet per  
year from October 16 through March 31 for stock watering in the E½E½ of  
Section 33 and the W½W½ of Section 34, T. 19 N., R. 19 E.W.M.

22 James F. and Dorothy Carmody filed a Statement of Claim asserting a right  
23 to use waters from Wilson Creek for irrigation and stock watering. The Carmodys  
24 are represented by Attorney John P. Gilreath and Mr. Carmody testified at the

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1 evidentiary hearing.

2       The Carmody property lies in that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  lying north of the  
3 CID canal and south of Sanders Road and a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  also lying north  
4 of the Cascade Irrigation District (CID) canal and south of Sanders Road, all in  
5 Section 25, T. 18 N., R. 18 E.W.M. Dry Creek is used to irrigate the claimants'  
6 land in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25. They irrigate 5 acres of pasture and 1.5  
7 acres of lawn, garden, and landscape area around their house. Water is diverted  
8 from what the claimant calls Dry Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 into an open  
9 ditch that carries the water along the southside of Sanders Road. When it  
10 reaches the claimants land the water is piped underground a short distance and  
11 then placed in an open ditch until it reaches the landscape area, where it is  
12 again piped. Water is again carried in an open ditch along the pasture west of  
13 the house. An underground pipe also carries creek water across the claimants'  
14 land to a pond that is located south of their house. An underground pipe exits  
15 the pond and carries water to the neighboring Burkholder property to the  
16 southeast. Mr. Carmody did not testify to how much water is used to irrigate  
17 this land. Dry Creek is a branch of Wilson Creek.

18       This portion of the claimants land is part of the land formerly owned by  
19 Carl and Olive Sander. Carl Sander settled on the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
20 25 on May 8, 1877. The land was owned by Northern Pacific Railroad at that  
21 time. Sander remained on the land under license from the railroad until he  
22 purchased it on July 15, 1887. The Sander v. Jones decree awarded Carl Sanders  
23 450 inches of water to be used on lands he settled or had acquired from Chapman  
24 and Snyder (which is in the E $\frac{1}{4}$ SE $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 and the W $\frac{1}{4}$ NE $\frac{1}{4}$  and  
25 W $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 18 N., R. 19 E.W.M.). The Referee believes that the

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land in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 would share an 1877 date of priority. Sander v. Jones awarded 1 miners inch of water for each acre irrigated in May and June and one-half inch the rest of the season. The claimants are asserting that in spite of the decree allowing a maximum of one inch per acre, they should have a right to 1.22 inches of water based on the Sanders having a right to 1075 inches for irrigating 880 acres according to the "King Summary" (the Referee believes the "King Summary" is the schedule of rights for Sanders that was prepared sometime after the decree was entered). The claimant has presented no evidence to show that the language in the "King Summary" should prevail over the clear language in the decree. Therefore, the Referee will limit the right to one inch per acre May through June and one-half inch in April and July 1 through October. The claimants assert a right to use 46.25 acre-feet per year, which is based on 1.22 inches of water being used April through June. The decree, however, only allows for using one-half inch of water in April. If a continuous diversion is made of one inch per acre in May and June and one-half inch the rest of the irrigation season, a maximum of 35.26 acre-feet per year can be diverted and used from Dry Creek.

The claimant is also asserting a right for stock watering for 18 head of cattle raised on the land. Since 35.26 acre-feet per year is the maximum quantity that can be diverted from Dry Creek under the existing water right, stock water as a use will be considered incidental to irrigation and no additional water will be allocated.

The portion of the claimants' land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  is 3.5 acres of pasture that is irrigated with water diverted from Mercer Creek. The diversion from the creek is in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25 into a ditch that parallels the creek

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and carries water into the French property directly north of the 3.5 acre  
1 pasture. A ditch then carries water south through the French property to the  
2 claimants pasture. The Carmodys are asserting a right for this land based on an  
3 Affidavit of Water Right filed by Michael Pott on June 2, 1890. The affidavit  
4 states that Pott claims water to irrigate his lands by means of two ditches.  
5 One ditch diverted from Mercer Creek in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 25 and traveled  
6 west of south in a southerly direction into the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25. That  
7 ditch was constructed in May of 1885 and enlarged in 1886 to a capacity of 250  
8 inches (5 cfs). The second ditch takes out of the Rollinger Ditch, which  
9 diverts from Mercer Creek in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 24. The second ditch has a  
10 capacity of 200 inches (4 cfs) and was built in May of 1890. The affidavit  
11 states that Pott is irrigating all of his 160 acres from these two ditches and  
12 has appropriated 260 inches of water (5.2 cfs). The Carmody land was originally  
13 owned by the Northern Pacific Railroad, who in 1889 conveyed it, along with the  
14 SE $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25 to Michael Pott. The deed indicates that Michael  
15 Pott took out a mortgage to buy the property in 1881, which the Referee  
16 concludes is evidence he was on the property at that time. Mr. Carmody did not  
17 testify to how much water he uses to irrigate this pasture. He is claiming a  
18 right to use 0.11 cubic foot per second, based on a proportionate share of the  
19 right asserted in the affidavit, and 43.9 acre-feet per year based on a  
20 continuous diversion of that quantity during the irrigation season.  
21

Without evidence that this is the quantity of water actually being used to  
22 irrigate the property, the Referee is not willing to award a water right for so  
23 much more water than on the claimants' land immediately to the west. The Courts  
24 in the late 1800's consistently awarded only one inch of water for each acre of  
25

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1 land being irrigated. Even though Michael Pott claimed an appropriation in that  
2 quantity, there is no evidence that much water was used or has continued to be  
3 used. Therefore, the Referee will recommend that a right be confirmed for use  
4 of one inch of water per acre irrigated.

5 The claimants purchased their land from Bridge and Morgan in 1967, the only  
6 evidence of a water right claim filed pursuant to RCW 90.14 is the claims filed  
7 by Bridge and Morgan in 1974. Although the claims filed do not completely  
8 reflect the claimants' current practice, the Referee believes that they are  
9 sufficient to prevent relinquishment of any rights enjoyed by the claimants.

10 Water Right Claim (WRC) No. 125748 asserts a right to use water from "A  
11 branch of Wilson Creek now designated as Dry Creek on Department of Ecology map  
12 dated March, 1972". The point of diversion is very near where the claimants  
13 divert from Mercer Creek. A right is asserted for diversion of 3 cfs, 114  
14 acre-feet per year for the irrigation of 114 acres. The place of use includes  
15 lands owned by Bridge and Morgan in the S $\frac{1}{2}$ NE $\frac{1}{4}$  and that portion of the SE $\frac{1}{4}$  of  
16 Section 25 north of Sanders Road, along with two parcels south of Sanders Road,  
17 including that portion of the Carmody land lying in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25.  
18 Although the portion of the Carmody land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  is omitted from the legal  
19 description, the Referee does not believe that is fatal to confirming a right to  
20 that same acreage. The field in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 extends into the SW $\frac{1}{4}$   
21 and it is understandable that might not be recognized when completing a form  
22 such as the 90.14 claim form.

23 WRC No. 117208 asserts a right to divert 2 cfs, 300 acre-feet per year from  
24 Wilson Creek for the irrigation of 114 acres. The place of use is the same as  
25 that on WRC No. 125748, which includes the Carmody property in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of

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Section 25. The point of diversion is in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30, which is at  
1 a diversion into a ditch that runs due west to the channel the claimants refer  
2 to as Dry Creek. The claimants divert from the channel. The Referee believes  
3 that the water right claim form was attempting to describe diversion from the  
4 main branch of Wilson Creek that feeds the branch they divert from. Again, the  
5 Referee concludes there has been sufficient compliance with RCW 90.14 to protect  
6 the water right.  
7

The Referee recommends that two water rights be confirmed to the Carmodys  
8 under Court Claim No. 00612: With a June 30, 1877, date of priority, a right  
9 for the diversion of 0.13 cfs in May and June, 0.065 cfs in April and July 1  
10 through October 31, 35.26 acre-feet per year from Wilson Creek/Dry Creek for the  
11 irrigation of 6.5 acres and stock watering. The place of use shall be the  
12 Carmody property lying in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  south of Sanders Road and north of the CID  
13 canal. With a May 30, 1885, date of priority, a right for the diversion of 0.07  
14 cubic foot per second, 29 acre-feet per year from Mercer Creek for the  
15 irrigation of 3.5 acres and stock watering from April 1 through October 31 for  
16 that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25 lying south of Sanders Road and north  
17 of the CID Canal.  
18

COURT CLAIM NO. 02174 -- Larry L. Charlton  
20 & Marilyn Charlton  
21

The Charltons submitted a statement of claim to the Court asserting a right  
22 to use waters from Dry Creek for irrigation and stock watering. The Charltons  
23 were represented by Attorney William F. Almon as the evidentiary hearing. Mr.  
24  
25

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1 Almon has since withdrawn as their attorney. Larry Charlton and Merton Purnell  
2 testified at the hearing.

3       The Charlton property described in Claim No. 02174 lies in the N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
4 Section 7, T. 18 N., R. 19 E.W.M. They own a total of 20 acres and are  
5 irrigating all of that land except where their home is located. Most of the  
6 land lies east of Dry Creek and is irrigated from a ditch that diverts from Dry  
7 Creek in the SW $\frac{1}{4}$  of Section 5, T. 18 N., R. 19 E.W.M. The portion of the land  
8 that lies west of Dry Creek, the Referee estimates it is about 4 acres, is  
9 irrigated from a ditch that carries water off of the Swanstrum property directly  
10 north. The land is planted to pasture and hay and up to 120 sheep and a few  
11 horses are on the land, drinking from the irrigation ditches. The Charltons are  
12 asserting a right to 2 cubic feet per second, 50 acre-feet per year. Water is  
13 diverted from Dry Creek beginning in April. By July 15 the creek is generally  
14 dry and KRD water is used the remainder of the irrigation season. An 1890  
15 priority date is being asserted based on the date the land passed from Northern  
16 Pacific Railroad to William Coon. It is the claimant's belief that water use  
17 had begun by that date. The Charltons have owned the property since 1965. The  
18 irrigation ditches were in place and being used in much the same manner as  
19 today.

20       Merton Purnell testified about his knowledge of water use on the land. His  
21 father owned the property from 1933 until 1943, although the documents imply  
22 that the Purnells had an interest in the land as early as 1928. Even though he  
23 could not recall specifics, Merton Purnell, who was born in 1932, testified that  
24 the land was irrigated at the time his family owned it. He did not testify to  
25 the source of water being used to irrigate the land. It is Mr. Charlton's

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opinion that sufficient water is not available from KRD through the Highline  
1 Canal to adequately irrigate a crop, suggesting that when Mr. Purnell was aware  
2 of the land being irrigated creek water must have been used in addition to KRD  
3 water.  
4

In support of his position that a water right exists for the land, Mr.  
5 Charlton pointed to a Statement of Water Right filed by J. W. Coon on May 17,  
6 1890 (DE-588 submitted by Chester Stokes). In the document, Mr. Coon states he  
7 is the owner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6, has a NPPR contract for the N $\frac{1}{4}$ NE $\frac{1}{4}$  and  
8 SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7 (both in T. 18 N., R. 19 E.W.M.), and that he has a valid  
9 claim and the enjoyment of 100 inches of water from Dry Creek for agricultural  
10 and domestic purposes carried to his ranch in three separate ditches. The  
11 document describes the three ditches and states that since March of 1888 he has  
12 appropriated 50 inches of water on his ranch through ditches one and two and  
13 prior to April of 1890 constructed the third ditch that carries 50 inches.  
14

The statement clearly establishes a water right from Dry Creek for  
15 irrigating the Coon land described in the document, the N $\frac{1}{4}$ NE $\frac{1}{4}$  and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
16 Section 7 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6. However, the land owned by the Charltons  
17 lies in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, an area not described in the J. W. Coon  
18 statement. According to the documents submitted by the Charltons as part of  
19 DE-1220, the Coon family owned discrete portions of the NE $\frac{1}{4}$  of Section 7. Prior  
20 to 1890, J. W. Coon owned the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7 and in 1890 sold it to William  
21 Coon. Likewise, prior to 1890 William Coon owned the rest of the NE $\frac{1}{4}$  of  
22 Section 7 and sold it to J. W. Coon.  
23

Pursuant to the requirements of RCW 90.14, Larry L. Charlton filed Water  
24 Right Claim No. 026217 asserting a right to divert 2 cubic feet per second, 50  
25

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1 acre-feet per year from Dry Creek for the irrigation of 20 acres in the  
2 N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ . The claim does not state the section, township and range for the  
3 legal description of the lands on which the water is used. However, the  
4 described point of diversion is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 18 N.,  
5 R. 19 E.W.M. The Referee believes it is reasonable to conclude that is the  
6 section where the irrigated land is located.

7 Use of water from the various creeks in this area was the subject of  
8 numerous court cases in the late 1800's and early 1900's. However, none of  
9 those cases addressed water rights or use on the land described in Court Claim  
10 No. 02174. The Referee has confirmed water rights in this proceeding for lands  
11 not addressed in prior court cases, however, documents to show that a water  
12 right was legally established have generally been offered into the record. That  
13 type of documentation is lacking in this case.

14 During the presentation of the claims of Chester V. Stokes and Patrick  
15 Jenkins, those claimants both testified to their knowledge of water from Wilson  
16 Creek or Dry Creek being used on lands in Sections 7 and 8, including that owned  
17 by Larry Charlton in Section 7. Both Mr. Stokes and Mr. Jenkins testified to  
18 water from the creek being used since the land was first settled. Mr. Stokes  
19 was born in the Kittitas Valley in 1923 and has lived there all his life and Mr.  
20 Jenkins has been in the area since the mid-1940's. While their testimony is  
21 compelling, the Referee is still left with concern over the Charlton land being  
22 omitted from the Statement of Water Right filed by J. W. Coon. If in fact there  
23 was water being used on that land when the statement was filed, why was it not  
24 included in the statement? By the time both Mr. Stokes and Mr. Purnell were old  
25 enough to have a memory of the land, the KRD Highline Canal had been built and

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1 was delivering water into this area. The land may have only been irrigated from  
2 the KRD canal.

3 Based on the record, the Referee does not recommend that a water right be  
4 confirmed under Court Claim No. 02174. If the Charltons choose to file an  
5 exception, it is suggested that they attempt to find either some documentation  
6 to show the existence of a water right or someone with more specific knowledge  
7 of historic water use on the land.

8

9 COURT CLAIM NO. 00481 -- Estate of Naomi Charlton  
10 & Larry L. Charlton

11 Court Claim No. 00481 asserts a right for the use of 2 cfs from Naneum  
12 Creek for the irrigation of 100 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 34, T.  
13 19 N., R. 19 E.W.M. The Charltons were represented at the evidentiary hearing  
14 by Attorney William Almon. Mr. Almon has since withdrawn as their attorney.  
15 Larry Charlton and Art Carlson, a neighboring landowner, testified at the  
16 hearing. The Referee was also referred to the deposition of Andy H. Gustafson,  
17 which was taken on March 15, 1990.

18 Water is diverted from Naneum Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 20, T. 19 N.,  
19 R. 19 E.W.M. into the Charlton-Fleming Ditch. This ditch serves both the  
20 Charlton land in Section 34 and the Stampfly land in Sections 27 and 28. The  
21 Charltons are irrigating 100 acres in the W $\frac{1}{2}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 34 and are  
22 asserting a right to 2.0 cfs and 500 acre-feet per year. Livestock are raised  
23 and graze on the land, drinking from the irrigation ditches that cross the  
24 fields. Up to 200 cow/calf pairs and 50 horses have been kept on the fields

25

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1 during irrigation season. Approximately 5 acre-feet per year would be used for  
2 stock watering during the irrigation season. It is not clear to the Referee  
3 that water is diverted during the winter months for stock watering. Mr.  
4 Charlton testified that water is usually diverted into the Charlton Ditch  
5 beginning between April 1st and the 15th until August. At a later point in his  
6 testimony he did say that the gates are opened again for stock watering, but he  
7 did not indicate during which months of the year this occurs or how much water  
8 is diverted for stock when he is not irrigating. Water Right Claims (WRC) No.  
9 000108 and 061074 were filed by Naomi Charlton pursuant to the requirements of  
10 RCW 90.14. Both water right claims assert rights to use water from Naneum Creek  
11 for the irrigation of the Charlton land and WRC No. 061074 mirrors the claim  
12 asserted in this proceeding.

13 The land described in the claim has been in the Charlton family since it  
14 separated from Federal ownership. The patent, which issued to George Charlton,  
15 is not in the record, however a copy of the Final Receiver's Receipt, dated  
16 December 20, 1888, is an exhibit showing Mr. Charlton's final steps toward  
17 acquiring the patent. Also in the record is a document that appears to have  
18 been filed with Kittitas County Superior Court. It was filed "In the Matter of  
19 Statement of Claim of Water Right From Naneum Creek: Names of Claimants -  
20 George C. Charlton, Robert Fleming and C. A. Dibble." It states that about  
21 November 1, 1886, they jointly began construction of a ditch known as "The  
22 Pleasant Hill Ditch" and completed the ditch in April 1888. The ditch was  
23 jointly constructed in order to irrigate the lands owned or claimed by each of  
24 them. The head of the ditch was described as being about 1.25 miles above where  
25 Wilson and Naneum Creeks separate, near the east half of Section 20, T. 19 N.,

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R. 19 E.W.M. The lands to be irrigated were described as: George C. Charlton -  
1  
E½NW¼ and W½NE¼ of Sec. 34, T. 19 N., R. 19 E.W.M.; W. W. Dibble's claim of 100  
2 acres in the (unreadable) Sec. 27, T. 19 N., R. 19 E.W.M.; and Robert Fleming -  
3 the SE¼ of Section 28, T. 19 N., R. 19 E.W.M.  
4

George C. Charlton was a defendant in Ferguson v. United States National  
5  
Bank of Portland, and was decreed a right for the use of 70 inches. The  
6 Findings of Fact and Conclusions of Law that preceded the decree stated that  
7 in 1887 he diverted water from Naneum Creek for the irrigation of 70 acres.  
8 The Findings of Fact also stated that one inch of water was sufficient for the  
9 irrigation of one acre and that after July 1, one-half inch of water was  
10 sufficient for the irrigation of one acre. It is clear to the Referee that the  
11 Charlton land had, in 1901, a right with an 1887 date of priority for the use of  
12 70 inches (1.4 cfs) for the irrigation of 70 acres.  
13

The Charltons are now asserting a right for 100 inches for the irrigation  
14 of 100 acres. During the testimony for this proceeding, there was no evidence  
15 presented to show that an additional water right was legally established. The  
16 Referee was referred to the Department of Ecology v. Carlson Pendente Lite  
17 Order, as a basis for the quantity of water for which they are asserting a  
18 right. That Order contained a schedule of rights and priorities recognized at  
19 that time. Naomi Charlton was listed as having an 1887 right for 1.40 cfs for  
20 the irrigation of 70 acres and a 1912 right for 0.60 cfs for the irrigation of  
21 30 acres, all in the W½NE¼ and the E½NW¼ of Section 34. However, there was no  
22 basis shown for the 1912 "right". The testimony given in 1973 was very vague  
23 with respects to the second right, with most of the testimony revolving around  
24

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disputes over the water, with very little discussion of the history of the water  
right.

The Referee notes that by 1912 the United States had withdrawn all of the unappropriated surface waters in the Yakima River Basin in order to pursue design and construction of the Yakima Irrigation Project. During the withdrawal, water rights could not be established unless the water intended for use was released by the Federal government, RCW 90.40. This Court has ruled that rights to de minimis water uses that would not have an affect on the project could have been established. The Referee does not consider a right to irrigate 30 acres to be de minimis. In order for the Referee to consider recommending that a water right be confirmed for the additional 30 acres (and 0.60 cfs) there must be evidence presented to show when this use was initiated and if it occurred after 1905 that a release was obtained from the Federal government or the Federal government felt the use would not have an affect on the project.

The Referee, therefore, recommends that a right be confirmed under Court  
16  
Claim No. 00481 under the Prior Appropriation Doctrine with a June 30, 1887,  
17  
date of priority for the diversion of 1.40 cfs in May and June and 0.70 cfs in  
18  
April and July 1 through October 15, 350 acre-feet per year for the irrigation  
19  
of 70 acres and an additional 5 acre-feet per year for stock watering from  
20  
April 1 to October 15. Review of aerial photos that were put into the record by  
21  
the claimant show that there appears to be 70 acres irrigated within the north  
22  
half of the claimant's property. The place of use for the right herein  
23  
recommended, therefore, shall be the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 34.

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1 COURT CLAIM NO. 00967 -- Ralph G. Charlton  
2 & Nancy L. Charlton  
3 D. Winslow Charlton  
4 & Anna Charlton  
Donald G. Toman  
& Cynthia R. Toman

5 Ralph G. and Nancy L. Charlton filed Court Claim No. 00967 asserting a  
6 right to use waters from Naneum Creek for the irrigation of 220 acres in the NW $\frac{1}{4}$   
7 of Section 21 west of Naneum Road and the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 21, T. 18 N.,  
8 R. 19 E.W.M. On April 18, 1989, Donald and Cynthia Toman and D. Winslow and  
9 Anna Charlton were joined to the claim. J. Jay Carroll represented all of the  
10 claimants associated with the claim at the evidentiary hearing. Ralph G.  
11 Charlton and Don Toman testified at the evidentiary hearing.

12 As previously mentioned, Ralph Charlton originally owned all of the land.  
13 His father bought the land from the Olding estate in 1927 and the Charlton  
14 family moved onto the property in 1928, when Ralph was 4 years old. His father  
15 had previously homesteaded other land further up the Naneum and bought this  
16 ranch because it had such good water rights. Mr. Charlton testified that the  
17 land has always been irrigated the same as when his father bought over sixty  
18 years ago. There are several branches of Naneum Creek through the property. In  
19 addition to the general historical testimony provided by Mr. Charlton, he also  
20 provided testimony for specific parcels.

21 The W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 21 is now owned by his son, Ralph Charlton, III and  
22 his ex-wife Nancy. It is 80 acres in size and is irrigated with a diversion  
23 from Naneum Creek in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21. The land is rill irrigated and  
24 is planted in hay and pasture. Up to 100 head of cattle have been raised on the

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land and the livestock drink from the creek. Mr. Charlton did not testify to  
the quantity of water being used to irrigate the land, but is seeking a right to  
8 acre-feet per irrigated acre, or 640 acre-feet for this parcel. It also  
receives KRD water.

Pursuant to the requirements of RCW 90.14, the Claims Registration Act,  
Water Right Claim No. 94857 was filed asserting a right to use 2 cfs, 800  
acre-feet for the irrigation of 78 acres in the West 80 acres of the SW $\frac{1}{4}$  of  
Section 21. The point of diversion is described as being in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 21.

Mr. Charlton cited to the Ferguson decree as the basis for the water right  
for this land. The decree awarded a Class II right, with an 1872 date of  
priority for 320 inches to Elijah M. Topliff, who owned the NW $\frac{1}{4}$  of Section 28  
and the S $\frac{1}{4}$ S $\frac{1}{4}$  of Section 21 and to F. R. Clement a Class IV right with an 1875  
date of priority for 160 inches for lands in the N $\frac{1}{4}$ S $\frac{1}{4}$  of Section 21. The S $\frac{1}{4}$  of  
Section 21 then had 320 inches, which would result in the SW $\frac{1}{4}$  having 160 inches  
and the W $\frac{1}{4}$ SW $\frac{1}{4}$  having 80 inches, 40 inches of Class II and 40 inches of Class  
IV. The testimony indicates that this water has continued to be used over the  
years. The decree provided for one inch of water in May and June for each acre  
irrigated and one-half inch of water the rest of the year. One inch equals 0.02  
cfs.

The land in the SW $\frac{1}{4}$  of Section 21 was owned by H. W. Wagar by 1911, when he  
sold the water rights from Naneum Creek to P. H. Adams. The water rights for  
the creek were sold in anticipation of construction of the KRD canal. The sale  
occurred in 1911, but the actual transfer of the water right was not to occur

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until the KRD canal was built. In 1920 the sale was cancelled. Therefore the  
1 water rights remain appurtenant to the SW $\frac{1}{4}$  of Section 21.  
2

The Referee recommends that a right be confirmed under Court Claim No.  
3 00967 with a June 30, 1872, date of priority for the diversion of 0.80 cubic  
4 foot per second in May and June and 0.40 cubic foot per second in April and  
5 July 1 through October 15, 200 acre-feet per year for the irrigation of 40 acres  
6 in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 21 west of the county road and with a June 30, 1875,  
7 date of priority for the diversion of 0.80 cubic foot per second in May and June  
8 and 0.40 cubic foot per second in April and July 1 through October 15, 200  
9 acre-feet per year for the irrigation of 40 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 21  
10 west of the county road. Livestock drinking from the creek is covered by the  
11 stock water stipulation discussed on page 4 of this report and no additional  
12 right is needed.  
13

Ralph Charlton continues to own the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$   
14 lying west of the Naneum Road, all in Section 21, T. 18 N., R. 19 E.W.M. He  
15 irrigates a total of 50 acres within those two parcels with water diverted from  
16 Naneum Creek or one of its branches. Of the 50 irrigated acres, 23 are assessed  
17 by KRD. Three diversions on either Naneum Creek or a branch of Naneum Creek are  
18 used. One is located on the north section line of Section 21, at approximately  
19 the northwest corner of Section 21; the second is located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
20 Section 21, approximately 550 feet south and 1100 feet west of the north quarter  
21 corner of Section 21; and the third is located at the northwest corner of the  
22 SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21. The first two diversions serve most of the land, with the  
23 third being used to irrigate about 3 acres around the home and to fill a pond  
24

25  
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28

1 that is used for wildlife habitat and fish. The claimants land is planted in  
2 Timothy hay and pasture and is rill irrigated from concrete ditches.  
3

4 D. Winslow and Anna Charlton own a portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21.  
5 They acquired the land in 1977 from Ralph Charlton. The land is planted to  
6 pasture and approximately 30 head of cattle are raised on the land. The cattle  
7 drink directly from the creek as it flows through the property. The diversion  
8 from a branch of Naneum Creek (called Ferguson Creek in the testimony) near the  
9 center of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21 serves this land. Seven acres are assess by  
10 the KRD.  
11

12 Don Toman owns the remainder of the NW $\frac{1}{4}$  of Section 21, having acquired it  
13 in 1985 from Ralph Charlton. He irrigates a total of 70 acres, all except a two  
14 acre pasture is planted to Timothy hay. The pasture is used to raise 4 head of  
15 livestock that are on the land all year. Up to 80 head of cattle are kept on  
16 the property from two to six weeks in the fall. The livestock drink directly  
17 from the creeks or are watered from a well on the property. The diversion on  
18 Naneum Creek on the north section line of Section 21 is used on the Toman  
19 property. The land is rill irrigated with concrete ditches and gated pipe.  
20

21 Pursuant to the requirements of RCW 90.14, Mr. Charlton filed WRC No.  
22 119176 asserting a right to use 2.8 cfs, 560 acre-feet per year from Nanum Creek  
23 for the irrigation of 140 acres in that portion of the NW $\frac{1}{4}$  lying west of Naneum  
24 Road, Sec. 21, T. 18 N., R. 19 E.W.M. This claim covers the land owned by all  
25 three claimants who own land in the NW $\frac{1}{4}$  of Section 21.

26 The claimants are basing their claim on the Ferguson decree, which awarded  
27 a Class 2 right, which would have an 1872 date of priority, to John Olding, John  
28 Malcolm, and Charles Einkemeier for the use of 320 inches of water on the NW $\frac{1}{4}$  of

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Section 21, T. 18 N., R. 19 E.W.M. However, in December of 1911, John G. and  
1 Elizabeth Olding, J. M. and Nettie Galvin and H. W. and Eugenia Wager sold to P.  
2 H. and Bertha Adams all of their water rights. At that time the Oldings owned  
3 the N $\frac{1}{2}$ NE $\frac{1}{4}$  and the NW $\frac{1}{4}$  of Section 21, T. 18 N., R. 19 E.W.M., except for a ten  
4 acre parcel owned by the Galvins. The Galvins also sold their water rights to  
5 the Adams. Exhibit No. DE-1268 was put into the record by Kayser Ranch, who are  
6 successors to the Adams. The Oldings, Galvins and Wagers were selling their  
7 water rights to Naneum Creek in anticipation of construction of the KRD canal,  
8 which would serve their lands after it was constructed. This agreement was  
9 reached and documented in 1911, six years prior to adoption of RCW 90.03, the  
10 1917 Surface Water Code, which provided for an administrative procedure for  
11 transferring water rights. In 1911 a water right could be transferred upon  
12 agreement by the parties, unless it was successfully challenged by another water  
13 user. There was no evidence offered to show that the transfer from Olding to  
14 Adams was challenged or that it was not executed, except for the apparent  
15 continued use of the water by Mr. Charlton and his predecessors. In fact,  
16 DE-1267 is a document executed in 1927 that states that the 1911 agreement had  
17 been fulfilled at that time. Mr. Charlton's father purchased the land directly  
18 from Mr. Olding, so it is interesting that there apparently was no knowledge of  
19 the sale of the water rights by Mr. Charlton.  
20

In light of the rights awarded in the Ferguson decree having been  
21 transferred to P. A. Adams in 1911 and there being no evidence offered to show  
22 that other water rights had been established for the land, the Referee  
23 recommends that a diversionary water right not be confirmed under Court Claim  
24 No. 00967 for use of water in the NW $\frac{1}{4}$  of Section 21, T. 18 N., R. 19 E.W.M.  
25

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1 Livestock drinking from the creek and the pond are covered by the  
2 non-diversionary stock water stipulation discussed on page 4 and no other water  
3 right is necessary for that use.  
4

5 COURT CLAIM NO. 00884 -- Charles W. Cole  
6 & Ethel M. Cole  
7 Fred K. Gerlach  
8 & Shirley E. Gerlach

9 Charles W. and Ethel M. Cole submitted a claim to the Court asserting a  
10 right to use waters from Dry Creek for irrigation. On March 11, 1991, the Court  
11 entered an Order joining Fred K. and Shirley E. Gerlach as additional parties to  
12 this claim. Fred Gerlach and Milton Lewis, who once owned the property,  
13 testified at the evidentiary hearing.

14 The Gerlachs own 3.24 acres within Government Lot 2 of Section 5, T. 18 N.,  
15 R. 19 E.W.M. They purchased all of the land owned by the Coles, but were joined  
16 to the claim because the Coles were not available to sign substitution papers.  
17 A right is being asserted to irrigate 3 acres and provide water for livestock  
18 from Dry Creek, a branch of Wilson Creek. A map attached to the claim shows  
19 that Dry Creek flows through the property and Mr. Gerlach's testimony also  
20 indicated the creek flows through his land. State's Exhibit SE-2 shows Dry  
21 Creek as being west of the property. A 1HP pump is placed in the creek feeding  
22 a sprinkler system that is used to irrigate the land. Most of the land is  
23 pasture, with a small area of lawn, garden and a few fruit trees. Mr. Gerlach  
24 testified that 40 gallons per minute is used to irrigate and he usually  
25 irrigates 3 days a week.

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Milton Lewis testified about the condition of the property during his ownership. He first became familiar with the property in 1922 when he worked with the nephew of two ladies who owned the property. Mr. Lewis bought the property in 1937 and owned it until 1971. During the time he owned or helped farm the property it was part of a larger 130 acre parcel. Hay was planted on the northerly portion, which includes the Gerlachs' land. A diversion from Wilson Creek, identified by Mr. Lewis as diversion No. 60 on SE-2, was used to irrigate the land during Mr. Lewis' ownership. Wilson Creek lies just east of the claimant's property.

Neither Mr. Lewis or Mr. Gerlach testified about the historic ownership of the land. However, exhibits entered by Everett and Lanita Barney for neighboring land also described the Gerlach land. Those exhibits show that the land was originally conveyed to the Northern Pacific Railroad Company who sold to Sarah Prater Government Lots 1, 2 and 3 of Section 5, T. 18 N., R. 19 E.W.M. The land was sold many times in the late 1800's and early 1900's, with many of the deeds referencing existing irrigation ditches. By 1912 the land was owned by Lillian Lawrence and stayed in the Lawrence family until Mr. Lewis acquired it. Mr. Lewis worked for Lilius and Mary Lawrence in the early 1920's.

Water Right Claim No. 160581 was filed by Leo C. Beck pursuant to the requirements of RCW 90.14. It asserts a right to divert 2 cfs, 1440 acre-feet per year from Dry Creek for the irrigation of 15 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5, T. 18 N., R. 19 E.W.M. Government Lot 2 is basically the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5.

The evidence clearly shows that the claimants' land has been farmed and irrigated since at least the 1920's. The land was once part of a larger parcel

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that was riparian to Wilson Creek when water was first used. As former railroad  
1 land, under the Riparian Doctrine a water right to Wilson Creek would have a  
2 priority date of May 24, 1884, the date the map of definite location was filed.  
3 The evidence shows that a water right was established for use of Wilson Creek  
4 and sometime in the past the diversion was moved from Wilson Creek to a pump on  
5 Dry Creek as it flows through the claimants' property. There is no evidence  
6 that the procedures in RCW 90.03.380 for obtaining authorization to change the  
7 point of diversion were followed. Therefore, the Referee can only recommend  
8 that a water right be confirmed at the point where it was historically  
9 exercised.

10 The Referee recommends that a right be confirmed under Court Claim No.  
11 00884 for the diversion of 0.08 cubic foot per second, 15 acre-feet per year  
12 from Wilson Creek for the irrigation of 3 acres.

13 It is recommended that the claimant contact the Central Regional Office of  
14 the Department of Ecology concerning the process for obtaining authorization to  
15 use the pump located on their property.

17 COURT CLAIM NO. 01209 -- Curtis S. Conner  
18 & Ruth J. Conner

19 Court Claim No. 01209 was originally filed by Paul R. and Alice H. Hart.  
20 Ruth and Curtis Conner were substituted for the Harts on September 8, 1988.  
21 Ruth Conner appeared and testified at the evidentiary hearing in support of the  
22 claim.

23 The Conners property is a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, T. 17 N.,  
24 R. 19 E.W.M. It is 18.6 acres in size with approximately 18.5 acres irrigated

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1 with water diverted from Naneum Creek. Most of the land is pasture, which is  
2 flood irrigated, with about 0.4 of an acre in lawn, garden and trees around the  
3 Conner home. The Conners raise sheep, goats and a horse that are watered from  
4 the creek. It is not clear whether the livestock drink directly from the creek,  
5 which flows through the property, or from the irrigation ditches, or a  
6 combination of the two. Water is diverted from Naneum Creek at two points in  
7 Section 4, both on the Edith Thomas property, just northeast of the Conner's  
8 land. Mrs. Conner did not testify to how much water is being used to irrigate,  
9 but is asserting a right to the proportionate share of the right that was  
10 awarded to James Ferguson in the Ferguson decree. Mrs. Conner testified that  
11 the land was being irrigated and used to raise livestock when they acquired it.

12 As stated in Mrs. Conner's testimony, this land was part of what was owned  
13 by James Ferguson at the time of the Ferguson decree. James Ferguson was  
14 awarded a right to 160 inches of water for the E $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
15 Section 4, T. 17 N., R. 19 E.W.M. The proportionate share that would be  
16 appurtenant to the Conner property would be 18.6 inches or 0.372 cubic foot per  
17 second. The decree awarded that quantity for use in May and June and half of  
18 that quantity the rest of the year.

19 Water Right Claims No. 57576 and 57577 were filed by Mrs. Don Bates, who  
20 owned the property at the time of the Claims Registration period required by RCW  
21 90.14. Both claims asserted a right to use waters from Naneum Creek for the  
22 irrigation of 160 acres and stock watering on the lands now owned by the  
23 claimants. Obviously, there is not 160 acres irrigated, as there is only 18.6  
24 acres in the parcel. Additionally, Mrs. Bates was one of the named parties in  
25 Certificate of Change recorded in Volume 2, page 882, authorized changing the

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point of diversion from Naneum Creek, from a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16  
1 to a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16. The Referee notes that diversion is not  
2 presently being used to serve the Conner property and as far as can be  
3 determined, the point of diversion for this property has not been approved for  
4 change. It is not clear when the two points of diversion currently being used  
5 were first developed and used.

The Referee recommends that a right be confirmed under Court Claim No. 01209 with a July 5, 1872, date of priority for the diversion of 0.372 cubic foot per second in May and June and 0.186 cubic foot per second in April and July 1 through October 15, 92.5 acre-feet per year for the irrigation of 18.5 acres and stock watering. Livestock drinking directly from the creek are also covered by the non-diversionary stock water stipulation discussed on page 4 of this report. The point of diversion that will be described in the right shall be that authorized in Certificate of Change recorded in Volume 2, page 882.

COURT CLAIM NO. 01454 -- Gwendolyn Cooke  
(A) 04171 Terry Powers  
Sandra Thomas

Court Claim No. 01454 was originally filed by Burrill Ferguson. On  
19 December 30, 1988, Gwendolyn Cooke and Edith Thomas were substituted for Mr.  
20 Ferguson. On February 9, 1989, Terry Powers was joined to the claim. On  
21 February 24, 2000, Sandra Thomas was substituted for her mother, Edith Thomas.  
22 Attorney J. Jay Carroll represented Mrs. Thomas and Mr. Powers at the  
23 evidentiary hearing. Edith Thomas, Gwendolyn Cooke and Terry Powers all  
24 testified at the hearing. Court Claim No. 00739 was also filed by Edith Thomas

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1 and describes land in Section 32, T. 19 N., R. 19 E.W.M. along with the land she  
2 owns that is described in Claim No. 01454. The Referee has chosen to address  
3 the land described only in Court Claim No. 01454 in this discussion and the land  
4 in Section 32, T. 19 N., R. 19 E.W.M. will be considered under Court Claim No.  
5 00739.

6 All of the claimants associated with Claim No. 01454 are descendants of  
7 James and Elizabeth Ferguson, the original homesteaders who established the  
8 water rights for the property. Edith Thomas and Gwendolyn Cooke are the  
9 Ferguson's granddaughters, Sandra Thomas is Mrs. Thomas' daughter and Terry  
10 Powers is Edith Thomas' grandson. Edith Thomas and Mrs. Cooke were raised on  
11 the property and are familiar with the history of land, including water use.

12 All of the land described in Court Claim No. 01454 lies in the S $\frac{1}{4}$ NW $\frac{1}{4}$  of  
13 Section 4, T. 18 N., R. 19 E.W.M. and it shares a common history. James  
14 Ferguson was the plaintiff in Ferguson v. United States National Bank of  
15 Portland, Oregon, (Ferguson) and the Findings of Fact that preceded the decree  
16 indicated that he settled on the E $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4,  
17 T. 17 N., R. 19 E.W.M. on July 5, 1872 and Ferguson first cultivated and  
18 diverted water from Nanum Creek for irrigation of those lands in 1873. The  
19 testimony of Mrs. Thomas and Mrs. Cooke would indicate they understood that  
20 their grandfather settled on the land in 1871. However, the Referee will not  
21 disturb the date that was used to establish priority of rights in the Ferguson  
22 decree. The land was riparian to Naneum Creek when the water rights were  
23 established and the Riparian Doctrine would apply, even though because of the  
24 land being subdivided, portions of it are no longer riparian to the creek. The  
25 Ferguson decree awarded a right for 160 inches of water for the Ferguson land.

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The decree awarded one inch of water for each irrigated acre in May and June and  
one-half inch of water the rest of the year. The claimants' land would have a  
portion of that right if beneficial use of the water continued. The testimony  
indicates that beneficial use has in fact continued.

Ben Ferguson filed Water Right Claim (WRC) No. 062609 asserting a right to  
divert 3.3 cubic feet per second, 2400 acre-feet per year from Naneum Creek for  
the irrigation of 160 acres. The place of water use attached to the claim  
includes the land owned by the claimants. Additionally, Certificate of Change  
of Point of Diversion, recorded in Volume 2, page 882 authorized several  
individuals, including Ben Ferguson, to change their point of diversion from a  
point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16 to a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, both  
in T. 18 N., R. 19 E.W.M. Mrs. Thomas testified to the need for this change as  
a result of actions taken by the owner of the land where the original point of  
diversion was located. The first point of diversion was on the main Naneum  
Creek channel and the newly authorized point of diversion was on a branch of  
Naneum Creek called Neally Creek. The point of diversion authorized in  
Certificate of Change 882 serves the lands owned by Terry Powers, Gwendolyn  
Cooke and the five acre parcel owned by Edith Thomas immediately south of Frank  
Phelps' land.

Mrs. Thomas' land through which Naneum Creek flows is irrigated from two  
diversions, one on her north property line, which is described in WRC No. 062609  
and a second diversion about 350 feet north of her south property line. Edith  
Thomas owned and irrigated 26.5 acres of land. The land west of Naneum Creek  
was planted to hay and rill irrigated with corrugated ditches. Her land east of  
the creek was pasture ground and was rill irrigated. She did not personally own

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any livestock, however, her sister and grandson used her pasture for raising  
1 livestock. When on the property, the livestock drink from Naneum Creek.  
2  
3 Non-diversionary stock watering, where the livestock drink directly from the  
4 water source, is covered by the stock water stipulation discussed on page 4 of  
5 this report. Mrs. Thomas' land would have a right to 26.5 inches or 0.53 cubic  
6 foot per second. There was testimony about the need for 8 acre-feet per acre to  
7 adequately irrigate this land. However, based on the instantaneous quantity  
8 limitations placed in the Ferguson decree, only 5.12 acre-feet per acre can be  
9 diverted during the irrigation season. Therefore, that will be the limit of the  
10 right awarded to these claimants.

Terry Powers owns approximately 10 acres that is planted to either hay or  
11 used for pasture, depending on the expectations for water each year. The ground  
12 is flood irrigated. Up to 30 head of cattle are raised. During the irrigation  
13 season, the livestock can drink from the irrigation ditch. The livestock also  
14 have access to the creek through Mr. Powers' grandmother's land. Mr. Powers' 10  
15 acres would have a right to 0.20 cubic foot per second during May and June and  
16 0.10 cubic foot per second the rest of the irrigation season.

Mrs. Cooke owns 10 acres described in Court Claim No. 01454. She owns an  
18 additional 7 acres described in Court Claim No. 00740, which is addressed on  
19 page 153 of this report. Her ten acres is planted in hay and is flood  
20 irrigated. She would also have a right for 0.20 cubic foot per second in May  
21 and June and 0.10 cubic foot per second the rest of the irrigation season.

Based on the foregoing, the Referee recommends that a right be confirmed to  
23 Sandra Thomas (as successor to Edith Thomas) with a July 5, 1872, date of  
24 priority for the diversion of 0.53 cubic foot per second in May and June and  
25

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0.265 cubic foot per second in April and July 1 through October 15, 135.68  
1 acre-feet per year for the irrigation of 26.5 acres. The place of use shall be:  
2 That portion of the NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M. described as  
3 follows: Beginning at the south quarter corner of said Section 4, thence N  
4 1°50' W 3871.68 feet along the centerline of the county road; thence S 86°52'40"  
5 W 759.79 feet to the true point of beginning; thence N 6°22'40" E 119.54 feet;  
6 thence S 86°17'00" W 688.66 feet; thence S 6°35'40" W 1354.00 feet; thence N  
7 87°38'50" E 691.15 feet; thence N 6°22'40" E 1250.30 feet to the true point of  
8 beginning. AND the north 300 feet of the following described parcel: Beginning  
9 at the south quarter corner of said Section 4; thence N 1°0' W 3671.61 feet  
10 along the centerline of the county road to the true point of beginning; thence S  
11 86°2'40" W, 729.79 feet; thence S 6°22'40" W, 1250.30 feet; thence N 87°38'50"  
12 E, 907.65 feet to the centerline of the county road; thence N 1°50' W to the  
13 True Point of Beginning, EXCEPT the county road.  
14

The Referee recommends that a right be confirmed to Gwendolyn Cooke with a  
15 July 5, 1872, date of priority for the diversion of 0.20 cubic foot per second  
16 in May and June and 0.10 cubic foot per second in April and July 1 through  
17 October 15, 51.2 acre-feet per year for the irrigation of 10 acres in the S $\frac{1}{4}$  of  
18 that portion of the NW $\frac{1}{4}$  of Section 4, T. 19 N., R. 19 E.W.M. bounded by a line  
19 described as follows: beginning at the south quarter corner of Section 4;  
20 thence N 1°50' W along the centerline of the county road 2601.68 feet; thence S  
21 87°06' W, 30 feet to the true point of beginning; thence S 87°06'W 912.90 feet;  
22 thence N 6°30' E 14.32 feet; thence N 6°22'40" E to a point which is S 86°52'40"  
23 W of a point on said county road which latter point is 3576.68 feet N 1°50' W  
24 from the said south quarter corner of said section; thence N 86°52'40" E to the  
25

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1 west right-of-way line of the county road; thence S 1°50' W along said  
2 right-of-way line to the point of beginning.

3       The Referee recommends that a right be confirmed to Terry Powers with a  
4 July 5, 1872, date of priority for the diversion of 0.20 cubic foot per second  
5 in May and June and 0.10 cubic foot per second in April and July 1 through  
6 October 15, 51.2 acre-feet per year for the irrigation of 10 acres in the NW $\frac{1}{4}$  of  
7 that portion of the NW $\frac{1}{4}$  of Section 4, T. 19 N., R. 19 E.W.M. bounded by a line  
8 described as follows: beginning at the south quarter corner of Section 4;  
9 thence N 1°50' W along the centerline of the county road 2601.68 feet; thence S  
10 87°06' W, 30 feet to the true point of beginning; thence S 87°06' W 912.90 feet;  
11 thence N 6°30' E 14.32 feet; thence N 6°22'40" E to a point which is S 86°52'40"  
12 W of a point on said county road which latter point is 3576.68 feet N 1°50' W  
13 from the said south quarter corner of said section; thence N 86°52'40" E to the  
14 west right-of-way line of the county road; thence S 1°50' W along said  
15 right-of-way line to the point of beginning.

16       The point of diversion that shall be authorized for all of these rights is  
17 the diversion described in Certificate of Change recorded in Volume 2, page  
18 882. If the diversion used on the Sandra Thomas property was added after the  
19 certificate of change issued, compliance with RCW 90.03.380 (the section of the  
20 surface water code that addresses changes in points of diversion) was necessary.

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1 COURT CLAIM NO. 00740 -- Gwendolyn Cooke  
2 & Robert Cooke

3 The claimants filed a Statement of Claim with the Court asserting a right  
4 to use Naneum Creek and Coleman Creek for irrigation and stock watering.  
5 Coleman Creek lies in Subbasin No. 10 (Kittitas) and rights to the use of that  
6 water will be addressed in the Report of Referee for Subbasin No. 10. Mrs.  
7 Cooke testified at the evidentiary hearing.

8 The claimants' land for which they are asserting a right from Naneum Creek  
9 lies in the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M. It is a parcel of  
10 land approximately 7 acres in size. It is planted in alfalfa and grass hay  
11 mixture with cows pastured after the last cutting in the fall.

12 According to Mrs. Cooke's testimony the land was originally settled by a  
13 Mr. McEwen in 1871 and Mrs. Cooke's grandmother (Elizabeth Ferguson) bought it  
14 in 1911. Mr. McEwen was Mrs. Ferguson's brother. Mrs. Cooke thought McEwen's  
15 first name was William, however, a Notice of Appropriation of Water that was put  
16 in the record was filed by a James W. McEwen. That notice states that McEwen  
17 was claiming a right to 100 inches of water for irrigation. The water is taken  
18 from Naneum Creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M. and is  
19 conveyed by ditch in a southeasterly direction through his land. The ditch was  
20 one-half mile long. The notice stated that the water had been used by McEwen  
21 for about 17 years prior to the notice being filed on February 20, 1892. That  
22 would place the date of first water use as being 1875. The claimants did not  
23 put into the record a chain of title or any other documents to show what lands  
24 Mr. McEwen owned between 1875 and 1892. DE-55 is a series of documents that

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1 relate to survey and construction of the Naneum Creek Road. William McEwen is  
2 included in a list of names of landowners along the route of the road. Also in  
3 that packet of documents is a map that shows the area and on the map is marked  
4 J. Ferguson's house and McEwen's house at approximately the location of the land  
5 described in Court Claim No. 00740. There is a document signed by W. J. McEwen  
6 and J. H. McEwen concerning the road and asking for a change in the location as  
7 it crosses their land and that of James Ferguson in Section 4, T. 17 N.,  
8 R. 19 E.W.M.

9 Mr. McEwen was not a party to the suit that resulted in the Ferguson  
10 decree. Mrs. Cooke testified to her memory that the land has always been  
11 irrigated with water diverted from Naneum Creek. Although the water right  
12 notice states that the water is diverted from the creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
13 Section 4, and there is a diversion in that quarter/quarter section, it appears  
14 that water was being diverted in Section 16, T. 18 N., R. 19 E.W.M. and carried  
15 in the Ferguson Ditch. Since the Ferguson family acquired the land around 1911,  
16 it is not unreasonable to believe that after they acquired the land it was  
17 irrigated in conjunction with their other land and the same delivery system  
18 used.

19 Water Right Claim No. 062609 filed by Ben Ferguson asserts a right to  
20 divert 3.3 cubic feet per second, 2400 acre-feet per year from Naneum Creek for  
21 the irrigation of 160 acres of land that predominantly lies in the NW $\frac{1}{4}$  of  
22 Section 4, T. 17 N., R. 19 E.W.M., but also includes the claimant's land in the  
23 NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4.

24 In spite of a right not being awarded in the Ferguson decree for this land,  
25 and because Mr. McEwen was not a party to that action, the Referee concludes

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there has been sufficient evidence offered to show that a water right was  
1 established for this land. Since the Court in the Ferguson decree found that  
2 0.02 cfs was sufficient water to irrigate one acre for neighboring land, the  
3 Referee will use that quantity for the Cooke property.

It is recommended that a right be confirmed with a June 30, 1875, date of priority for the diversion of 0.14 cubic foot per second, 35 acre-feet per year for the irrigation of 7 acres and stock watering.

9 COURT CLAIM NO. 00819 -- Guy F. Couture  
9 & Judy A. Couture

Court Claim No. 00819 asserts a right to use waters from Lyle Creek for irrigation and stock watering. Guy Couture testified at the evidentiary hearing.

The Coutures property lies within Block 20 of Smithson's Addition to the City of Ellensburg, within the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1, T. 17 N., R. 18 E.W.M. They own approximately two acres and are asserting a right to irrigate 1.75 acres. Part of the irrigated land is pasture, there are 10 to 11 fruit trees and a lawn and garden area. Most of the irrigation water is provided by the Town Ditch, which is operated by Ellensburg Water Company (EWC). Water is available from the Town Ditch generally from April 15 through October 15. The claimants are seeking a right to use water from Lyle Creek from October 15 through December 15 and March 15 through April 15. EWC is a Major Claimant in this proceeding whose water rights have been determined through the Major Claimant Pathway. The right to use water delivered by Ellensburg Water Company will not be further addressed.

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Water is diverted from Lyle Creek at a point in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 6,  
T. 17 N., R. 19 E.W.M. and carried in a ditch that passes through the Couture  
property. Water is withdrawn from the ditch into a sprinkler system that is  
used to irrigate the land. Mr. Couture estimated that 20 gallons per minute is  
used to irrigate. Although livestock have been raised on the property before,  
since the Coutures acquired the land in the early 1970's there have not been  
stock on the land and water has not been used for that purpose. Any  
diversionary stock water right that may have existed has relinquished due to  
more than five successive years of non-use, see RCW 90.14.160.

Mr. Couture testified to his belief that water from Lyle Creek has been  
used on his land since at least the early 1900's. This belief is supported by  
two affidavits that were attached to Court Claim No. 00819 when it was  
originally filed. They are affidavits by Bertha Wilson (formerly Bertha Cobain)  
and Charles C. Cobain, children of John James Cobain who at one time owned all  
of Block 20, Smithsons Addition to Ellensburg and all of Block E, Sunnyside  
Addition to Ellensburg. The affidavits state that for more than 50 years water  
from Lyle Creek had been used for irrigating and stock water within those two  
blocks. Their affidavits were made in 1962 and also state that for at least  
the prior 10 years water had continued to be used by successors to their father  
and by themselves while they owned portions of the land.

Water Right Claim No. 051309 was filed by Guy and Judy Couture pursuant to  
the requirements of RCW 90.14. It asserts a right to use 10 gallons per minute,  
1.0 acre-feet per year from Lyle Creek for the irrigation of 1 acre and stock  
watering from March 15 to April 15 and October 15 to December 15.

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1       The claimants did not present much information to establish the priority  
2 date. The affidavits show that water was being used as early as 1912. Mr.  
3 Couture referenced an earlier court case that might provide additional  
4 information, but that case is not in the record. Lyle Creek flows through the  
5 E½NE¼ of Section 1, but not through the Couture property. Neighboring  
6 claimants, Paul and Paula Alderman, whose land is also in the E½NE¼ of  
7 Section 1, submitted into evidence the chain of title for the NE¼ of Section 1.  
8 It shows that Northern Pacific Railroad originally acquired the entire NE¼ of  
9 Section 1 and then conveyed it to John Smithson. It was in Smithson ownership  
10 until 1944. The priority date for riparian rights on former railroad land is  
11 May 24, 1884, the date the map of definite location was filed with Kittitas  
12 County.

13       The Referee recommends that a right be confirmed with a May 24, 1884, date  
14 of priority for a diversion from Lyle Creek of 0.04 cubic foot per second, 1.0  
15 acre-foot per year for irrigation of 1.75 acres from October 16 to October 31  
16 and March 15 to April 14.

17       COURT CLAIM NO. 00603 -- Harvey L. Dodge  
18

19       The Haberman family filed a claim with the Court asserting a right to use  
20 waters from Naneum Creek and a branch of Naneum Creek for irrigation. The  
21 family was represented by Attorney J. Jay Carroll at the evidentiary hearing.  
22 John Haberman and Ralph Charlton, a neighboring landowner, testified at the  
23 hearing. On August 2, 1991, Harvey L. Dodge was substituted for the Habermans.  
24 The Referee notes that at the time of the evidentiary hearing in February 1991,  
25 Mr. Dodge was leasing and farming the portion of the property owned by John

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Haberman, not the portion owned by the rest of the Haberman family. The Motion  
1 to Substitute Parties was treated as a substitution for the entire claim, since  
2 Mr. Haberman had indicated that Mr. Dodge had succeeded to all of the claim.  
3 However, since John Haberman was the one completing the form, it is possible  
4 that his intent was only to substitute Mr. Dodge for John Haberman's interest in  
5 the claim, not the entire claim. It is hoped that the Haberman's attorney will  
6 inquire of his clients to insure that the claim is in the proper name.  
7

The claimant's property lies in the NE $\frac{1}{4}$  of Section 29, T. 18 N.,  
8 R. 19 E.W.M. A total of 122 acres is owned and irrigated. The northerly  
9 portion is irrigated with water delivered by the Kittitas Reclamation District  
10 (KRD) and the southerly portion is irrigated with water diverted from Naneum  
11 Creek or one of its branches and water delivered by KRD. Since KRD is a major  
12 claimant in this proceeding whose rights were determined in the major claimant  
13 pathway, that water will not be addressed further. The claimants land is  
14 planted in Timothy hay, alfalfa hay, pasture and grain. It was first acquired  
15 by the Haberman family in 1925 and had been irrigated in much the same manner  
16 since then. At one time a dairy was on the property and later beef cattle were  
17 raised. Livestock on the property drink from the water sources that flow  
18 through the property. That type of non-diversionary stock water use is covered  
19 by the stock water stipulation discussed on page 4 of this report.  
20

Water Right Claim No. 002188 was filed by John Haberman pursuant to the  
21 requirements of RCW 90.14. It asserts a right to divert 0.64 cubic foot per  
22 second, 200 acre-feet per year for the irrigation fo 122 acres in the NE $\frac{1}{4}$  of  
23 Section 29.  
24

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1       Mr. Haberman did not testify to the quantity of water actually used to  
2       irrigate the land. The land is rill irrigated with diversions from what Mr.  
3       Haberman referred to as Taylor Creek. Taylor Creek flows along the east section  
4       line of Section 29 and appears to be fed by diversions from Naneum Creek in the  
5       SE $\frac{1}{4}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21. The Referee would be inclined to consider what  
6       Mr. Haberman calls Taylor Creek a ditch, except that in the Findings of Fact  
7       that preceded the Ferguson decree, the Court states that the NE $\frac{1}{4}$  of Section 29  
8       is riparian to Taylor Creek. There is another channel that goes through the  
9       center of the NE $\frac{1}{4}$  of Section 29 that does not now carry creek water, only KRD  
10      water. The testimony indicates that this was once a creek bed that was  
11      straightened. The State's Investigation Report describes the channel along the  
12      east section line as being Taylor Creek, so the Referee will also consider that  
13      to be Taylor Creek.

14      The Ferguson decree awarded a Class 8 right to C. E. Crane for 160 inches  
15      of water. The Findings of Fact stated that the land was settled on December 20,  
16      1876 and water diverted from Naneum Creek in the spring of 1877. It also stated  
17      that the 160 acres were in cultivation. The decree awarded a water right for  
18      the entire NE $\frac{1}{4}$  of Section 29, however, the claimants are only asserting a right  
19      to irrigate 65 acres in the southerly portion of the NE $\frac{1}{4}$  of Section 29. The  
20      decree awarded one inch of water for each acre irrigated in May and June and  
21      one-half inch of water the rest of the year. Therefore, the claimant's land  
22      would have a right to 65 inches of water or 1.30 cubic feet per second. Mr.  
23      Haberman testified that the irrigation practice is to irrigate for one week, lay  
24      off for two weeks and then repeat. Based on that testimony, it is apparent that  
25      water is not used continuously and the Referee estimates that based on that

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1 practice water would be diverted and used approximately 110 days during the  
2 irrigation season. The Referee concludes that 3 acre-feet per year for each  
3 irrigated acre is reasonable considering the claimant's irrigation practice.  
4

5 Based on the foregoing, the Referee recommends that a right be confirmed  
6 under Court Claim No. 00603 with a December 20, 1876, date of priority for the  
7 diversion of 1.3 cubic feet per second in May and June and 0.65 cubic foot per  
8 second in April and July 1 through October 15, 195 acre-feet per year for  
irrigation of 65 acres and stock watering.

9  
10 COURT CLAIM NO. 00396 -- Larry Douglass  
11 & Denece Douglass  
12 Lonnie Sala  
13 & Kathleen J. Sala

14 The Douglasses filed a Statement of Claim with the Court asserting a right  
15 to use Mercer Creek for lawn and garden irrigation. Lonnie and Kathleen Sala  
16 bought the property from the Douglasses in 1986 but were only joined to the  
17 claim on October 16, 1998. Mr. and Mrs. Douglass are deceased, so were not able  
18 to transfer the claim directly to the Salas.

19 The property is Lots 9, 10, and 11 of Block 23 of Ellensburg's First  
20 Railroad Addition and lies in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 35, T. 18 N.,  
21 R. 18 E.W.M. Mr. Sala is irrigating about one-quarter acre of lawn and garden  
22 from Mercer Creek. A small pump is placed on the creek to withdraw the water.  
According to Mr. Sala's testimony, the irrigation system from the creek was put  
in place by Larry Douglass after he acquired the property in 1971. Domestic  
water is provided by the City of Ellensburg.

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1           Mr. Douglass filed Water Right Claim No. 093873 pursuant to RCW 90.14  
2 asserting a right to divert 10 gallons per minute, 2 acre-feet per year from  
3 Mercer Creek for the irrigation of one-half of lawn and garden. Mr. Sala was  
4 under the impression that this filing by Mr. Douglass established a water right  
5 for the property. Unfortunately, that is not the case. The intent of RCW 90.14  
6 was to have water right claims filed for uses of water that were initiated prior  
7 to adoption of the Surface Water Code in 1917 or the Ground Water Code in 1945.  
8 The water use initiated by Mr. Douglass clearly was not prior to 1917. At the  
9 time that Mr. Douglass began diverting water from Mercer Creek (1971) the only  
10 mechanism to establish a water right was through the permitting process spelled  
11 out in RCW 90.03, which is the Surface Water Code. There is no evidence that  
12 Mr. Douglass followed that process and obtained a permit.

13           Due to there not being a water right permit or certificate for the water  
14 use initiated in 1971, the Referee cannot recommend that a water right be  
15 confirmed under Court Claim No. 00396.

16  
17           COURT CLAIM NO. 02035   -- Gordon L. Dudley  
18    & Anita M. Dudley  
19    Stefan Dudley  
20    Arthur Tirotta  
21    & Susan Tirotta  
22    Ronald P. McGee  
23    & Joy A. McGee

24  
25  
26           The Dudleys filed Court Claim No. 02035 asserting rights from Wilson and  
27 Naneum Creeks. On April 20, 1989, Arthur and Susan Tirotta were joined to the  
28 claim and on July 20, 1989, Clyde M. Rees was joined to the claim. Ronald McGee  
was joined to the Rees portion of the claim on January 10, 1991. Ronald McGee

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1 and Susan Tirotta testified at the evidentiary hearing. The McGees are  
2 represented by Attorney Richard T. Cole.

3       The Statement of Claim filed by the Dudleys describes land in Section 33,  
4 T. 19 N., R. 19 E.W.M. and land in Section 5, T. 18 N., R. 19 E.W.M. Mr. Rees,  
5 the Tirottas and the McGees acquired the land in Section 33 and that land will  
6 be addressed first in this discussion. The land once owned by the Dudleys lies  
7 in the SW $\frac{1}{4}$  of Section 33. The McGees have acquired two parcels, each  
8 approximately 7 acres in size. One parcel appears to be approximately the north  
9 300 feet of that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33 lying west of Naneum Creek  
10 Road (parcel 1 for further reference). The second parcel is roughly the west  
11 300 feet of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, except the northerly 300 feet thereof  
12 (parcel 2 for further reference). When the McGees acquired the land in 1990,  
13 parcel 1 was not being irrigated and they had no idea how long it had been since  
14 it was irrigated. There was a line of questioning by Mrs. Tirotta concerning  
15 the elevation difference between parcel 1 and the ditch that goes through the  
16 Tirotta property that would suggest that parcel 1 could not have been irrigated  
17 by gravity flow from that ditch. There are old ditches on the property that Mr.  
18 McGee believed had once been used to irrigate the field, but not with water  
19 carried in the ditch off of the Tirotta land.

20       Parcel 2 was being irrigated when the McGees purchased the property and  
21 that irrigation continued. A small pond in the southerly part of the property  
22 is fed by a ditch from Naneum Creek. A 2 HP pump is used to withdraw water from  
23 the pond into a sprinkler system. Handlines are used to irrigate the field.  
24 Mr. McGee estimated that 1 cfs is used to irrigate the land, but it appears that  
25 testimony was based on his understanding of the potential pump capacity, rather

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than measurement. The Referee notes that a typical 2 HP pump used in  
1 conjunction with a sprinkler system will deliver closer to 0.20 cubic foot per  
2 second.  
3

The McGees property was part of land that was conveyed by the Federal  
4 Government to Northern Pacific Railroad. John Cate made application to N.P.R.R. in  
5 1882 to purchase the land, but N.P.R.R. ultimately conveyed to Josiah L. Bennett the  
6 W $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 33, T. 19 N., R. 19 E.W.M. Mrs. J. L.  
7 Bennett was a defendant in the Ferguson case. The Findings of Fact that  
8 preceded the decree stated that she owned the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , the E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32,  
9 the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , the S $\frac{1}{4}$ SW $\frac{1}{4}$  and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M. and  
10 that about 30 acres were irrigated with waters from Naneum Creek. The decree  
11 awarded Mrs. Bennett a Class 11 right for the use of 30 inches of water, or 0.60  
12 cfs. The legal description in the Findings of Fact for the Bennett land does  
13 not include the McGee land. Neighboring landowners, John and Nancy Hultquist  
14 and Louaine A. Magnuson, a neighboring landowner, contend that the copy of the  
15 Findings of Fact that several claimants have put into the record contains a  
16 typographical error in the paragraph that describes the lands owned by Mrs.  
17 Bennett. The claimants point out that there is no evidence that the Bennetts  
18 owned land in the SW $\frac{1}{4}$  of Section 32 and that the legal description as written  
19 describes the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32 twice. Chester Vernon Stokes, Andrew Mills  
20 and Gary Galbraith are claimants who own land in the S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
21 Section 32. The evidence they put in the record in support of their claims  
22 shows that property as being owned by W. R. Thomas at the time of the Ferguson  
23 case. W. R. Thomas was a named defendant in Ferguson, but did not assert a  
24 claim in the proceeding. The Thomas rights were determined in Thomas v. Roberts  
25

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and a right was awarded in that proceeding to Mr. Thomas. Mr. Hultquist  
1 testified to visiting the Washington State Archive in Ellensburg and reviewing  
2 the Findings of Fact that is in the archive records. According to Mr.  
3 Hultquist's testimony, the copy there describes the NW $\frac{1}{4}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
4 Section 33. Exhibit SE-641 is an excerpt from that copy of the Findings of  
5 Fact. Mr. Hultquist also placed in the record a copy of the transcript of  
6 testimony from the Ferguson case showing the testimony in support of Mrs.  
7 Bennett's claim. That testimony also refers to the land in Section 33 and the  
8 testimony was that it was being irrigated.  
9

The Referee concludes that sufficient evidence has been placed in the  
10 record to show that a typographical error was made on the version of the  
11 Findings of Fact in the record and that the 30-inch Bennett water right is  
12 appurtenant to the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{4}$ SW $\frac{1}{4}$  of  
13 Section 33. There are no claims filed in this proceeding for the former Bennett  
14 lands in Section 32.  
15

It is apparent from Mr. McGee's testimony that parcel 1 had not been  
16 irrigated for a number of years prior to their purchase in 1990. RCW 90.14.160  
17 through .170 provides that any water right, or portion of a water right, that  
18 goes unused for five or more successive years relinquishes for nonuse. Although  
19 Mr. McGee's testimony was not specific that there had been more than five years  
20 of non-use, the Referee is left with that impression. In order to recommend  
21 that a water right be confirmed, the Referee needs evidence of continued  
22 beneficial use of the water. Therefore, the Referee cannot recommend that a  
23 water right be confirmed for parcel 1.  
24

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Water Right Claims No. 126772 and 126773 were filed by Gordon and Anita  
1 Dudley and describes the land they owned in the SW $\frac{1}{4}$  of Section 33. Between the  
2 two claims a right is asserted for using 20 gallons per minute, 55 acre-feet per  
3 year for the irrigation of 11 acres.  
4

Arthur and Susan Tirotta bought 11.02 acres from the Dudleys in 1986 and  
5 are asserting a right to irrigate 10 acres with water diverted from Wilson  
6 Creek. There is six acres of pasture irrigated from the Wilson Ditch and 4  
7 acres of pasture irrigated from the Wilkins Ditch. They irrigate approximately  
8 2 $\frac{1}{2}$  days each week and divert a total of 85 acre-feet during the irrigation  
9 season. Mrs. Tirotta estimated that half of the diverted water is used for  
10 conveyance. They raise horses on the property and had 8 at the time of the  
11 hearing. They were expecting to have 12 the next year.  
12

A portion of the property is in the south 300 feet of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and a  
13 portion is in the south 300 feet of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33. The land in the  
14 NW $\frac{1}{4}$ SW $\frac{1}{4}$  has a different ownership history than that in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33.  
15 The NW $\frac{1}{4}$ SW $\frac{1}{4}$  has the same history as the land owned by the McGees (see earlier  
16 discussion). Therefore, it would have a proportionate share of the 30 inch  
17 Bennett water right. The Referee estimates that approximately 4.5 acres are  
18 irrigated from the J. I. Wilson Ditch within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, the  
19 remaining 5.5 acres are in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33.  
20

The NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33 is part of a larger parcel that George W. Gilkey  
21 obtained from the Northern Pacific Railroad in 1904. Gilkey then immediately  
22 sold to John Filer who in 1906 sold to Elizabeth Drake. None of the deeds  
23 referenced water rights. The land stayed in the Drake family until 1937 and the  
24 deed that year included the language, "together with all water rights and  
25

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irrigation ditches." Part of the Tirotta's exhibits is an Affidavit by Howard  
1 Thomas dated December 18, 1933, stating he was 30 years old and for the past 25  
2 years (since he was five years old) he had been familiar with the E $\frac{1}{2}$ SW $\frac{1}{4}$  and  
3 W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 33. That ever since he could remember John Filer used ten  
4 inches of water of the 11th class under the Ferguson decree and used that for  
5 irrigation until 1920 when Fred C. Drake purchased 35 inches in the 14th Class  
6 from Oliver Fields and since then had used both the 10 inches and the 35  
7 inches. The Affidavit also states that the water was diverted from Naneum Creek  
8 through two ditches, one having its intake in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, known as  
9 the Keister Ditch and the other having it intake in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33.  
10 The second was also used to serve land owned by G. A. Nylen, who takes out 20  
11 inches of water for his farm in the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 33. A copy of document  
12 conveying water from Oliver Fields to Fred C. Drake is also part of the record.  
13

None of the documents put in the record establish where the 10 inches of  
14 Class 11 water referenced in the affidavit came from. If they were transferred  
15 from another water user, there should be a sales agreement or deed to document  
16 the sale. Additionally, the ten inches were described as being used on 160  
17 acres of land. The affidavit does not indicate which lands within those  
18 described were irrigated. Certainly they were not all irrigated with the ten  
19 inches. The 35 inches clearly were sold and transferred in 1920. However, 1920  
20 is after adoption of the Surface Water Code on June 6, 1917, now codified as RCW  
21 90.03. Section 90.03.380 required that in order to change the point of  
22 diversion and/or place of use of a water right approval from the state was  
23 required. There was no evidence offered to show that approval was obtained.  
24

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1 Due to these deficiencies, the Referee cannot recommend that a water right  
2 be confirmed to the Tirottas for irrigating their land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
3 Section 33. The Referee does recommend that water rights be confirmed to the  
4 Tirottas for their parcel in the S $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33 and the McGees for  
5 parcel 2, in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33 as follows:

6 For the McGees, with a June 30, 1882, date of priority a right for the  
7 diversion of 0.12 cubic foot per second in May and June, 0.06 cubic foot per  
8 second in April and July 1 through October 15, 30 acre-feet per year for the  
9 irrigation of 6 acres and stock watering.

10 For the Tirottas, also with a June 30, 1882, date of priority a right for  
11 the diversion of 0.09 cubic foot per second in May and June and 0.045 cubic foot  
12 per second in April and July 1 through October 31, 22.5 acre-feet per year for  
13 the irrigation of 4.5 acres and stock watering.

14  
15 COURT CLAIM NO. 00166 -- Lorne T. Dunning  
16 (A) 12208 (A) & Jeanne M. Dunning

17 The Dunnings filed a Statement of Claim with the Court asserting rights to  
18 the use of waters from Wilson Creek and Naneum Creek. Mr. Dunning testified at  
the evidentiary hearing.

19 The Dunnings own four parcels of land described in Court Claim No. 00166  
20 and each will be addressed separately. Mr. Dunning also testified about a  
21 parcel of land in the N $\frac{1}{4}$  of Section 29, for which Court Claim No. 00598 was  
22 filed. Water Rights for that parcel are addressed separately under Claim No.  
23 00598. First to be considered is Section 19, T. 19 N., R. 19 E.W.M..  
24 Section 19 is riparian to Wilson Creek. The Dunnings own all of this section,

25  
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1 except 10 acres lying in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of the section. Section 19 is riparian  
2 to Wilson Creek. They are asserting a right to irrigate five acres in the  
3 portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19 they still own.

4 According to the evidence, C. R. Hovey acquired Section 19 from the  
5 Northern Pacific Railroad pursuant to a contract signed on May 22, 1902. The  
6 deed transferring the property was signed in 1907. Mr. Hovey also owned the  
7 W $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20, the NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30 and the west 280 feet of  
8 the NW $\frac{1}{4}$  of Section 29. Mr. Hovey testified as part of the proceedings in  
9 Sanders v. Bull that he began irrigating a 20 acre orchard in 1907 and had 40  
10 acres in cultivation. In Rader v. Sander, C. R. Hovey was decreed to have a  
11 right to 10 inches of water senior to all other parties to that case. Mr.  
12 Dunning can find evidence of a 10 acres of orchard having been irrigated in the  
13 SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19. He has maintained irrigation on five acres of the  
14 orchard. Water is diverted from Wilson Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18,  
15 T. 19 N., R. 19 E.W.M., which is marked with a "1" on State's Exhibit Map SE-2.  
16 Sufficient water is received to keep the trees alive, but not to produce a  
17 crop. Mr. Dunning did not testify to the quantity of water that is used to  
18 irrigate the five acres.

19 There is nothing in the record to show that the Dunnings complied with the  
20 requirements of RCW 90.14 by filing a water right claim for this portion of  
21 their property. Failure to file a claim waives and relinquishes any right that  
22 may have existed, RCW 90.14.071. Therefore, the Referee cannot recommend that a  
23 water right be confirmed for this parcel of land.

24 The second parcel addressed by Mr. Dunning is the NW $\frac{1}{4}$  of Section 20,  
25 T. 19 N., R. 19 E.W.M., which is riparian to Wilson Creek. This parcel was

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settled by Byron Chisholm, who filed a homestead application on December 12,  
1  
1894. Frank M. Stanley acquired the property in 1898 and at that time 10 to 12  
2  
acres were being irrigated with water diverted from Wilson Creek. At the time  
3  
of testimony during the Sanders v. Bull proceeding 35 to 40 acres were being  
4  
cultivated, part of which was an orchard. The Dunnings are asserting a right to  
5  
irrigate 19 acres within the NW $\frac{1}{4}$  of Section 20. Mr. Dunning testified that he  
6  
uses 100 acre-feet to irrigate those 19 acres, but needs 150 acre-feet to do  
7  
justice to the crop. He did not testify to the instantaneous quantity he  
8  
diverts from the creek. Rights being confirmed in this case are based on the  
9  
evidence of historic beneficial use within the laws of this state. The Referee  
10  
can only recommend confirmation of a right consistent with beneficial use, not  
11  
based on potential need in addition to that being used. Most of the decrees  
12  
that were entered for use of Wilson and Naneum Creeks identified that 1 miners  
13  
inch of water under four inch pressure (or 0.02 cubic foot per second) was  
14  
sufficient to irrigate each acre. The Referee proposes to use that quantity  
15  
herein.

Frank M. Stanely was a defendant in the Sanders v. Bull case. The water  
17  
rights of the defendants in that case were not determined, only those of the  
18  
plaintiffss. The 1973 Order Pendente Lite from Carlson identified a right with a  
19  
1915 date of priority for Mr. Dunning for the diversion of 1.68 cubic feet per  
20  
second for the irrigation of 84.32 acres in the W $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 20,  
21  
T. 19 N., R. 19 E.W.M..

The States Exhibit No. SE-5, which contain copies of the RCW 90.14 claims  
23  
registered with Ecology does not contain a claim for the NW $\frac{1}{4}$  of Section 20.  
24  
However, Ecology has offered copies of several water right claims that were  
25

26  
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1 filed with the Kittitas County Superior Court in 1972 and 1973, during the  
2 Ecology v. Carlson proceeding. One such claim was filed on behalf of Lorne T.  
3 Dunning, Jr., asserting a right to divert 1 cubic foot per second 250 acre-feet  
4 per year from Wilson Creek for the irrigation of 11 acres in the NW $\frac{1}{4}$  of  
5 Section 20, T. 19 N., R. 19 E.W.M.. The circumstances under which these claims  
6 were filed with Kittitas County Superior Court are not entirely clear to the  
7 Referee. Some claimants have asserted that the claims were given to the  
8 Assistant Attorney General representing Ecology in Ecology v. Carlson with the  
9 assurance that they would be properly registered.

10 The Referee believes that the claimants' attempts to comply with RCW 90.14,  
11 although somehow thwarted, were adequate to prevent relinquishment of any right  
12 under RCW 90.14.071 and that the claimant substantially complied with those  
13 requirements. Although during the Carlson proceeding recognized a "right" for  
14 84.32 acres, there has been no evidence presented to show that a right was  
15 established to that extent. The Referee notes that 1915 is well after the 1905  
16 Federal withdrawal of all unappropriated surface waters in the Yakima Basin.  
17 Without the concurrence of the Federal government, a surface water right could  
18 not have been established in 1915. Although the water right claim filed with  
19 Kittitas County states 11 acres were being irrigated, it is apparent from the  
20 evidence that a right was established for 19 acres and that use has continued.  
21 The difference between the two is small and since the claim was not available  
22 for Ecology to rely on in administering the basin, the intent of RCW 90.14 will  
23 not be undermined by recommending a right for the 19 acres. Therefore, it is  
24 recommended that a right be confirmed under the Riparian Doctrine with a  
25 December 12, 1894, date of priority for the diversion of 0.38 cubic foot per

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1 second, 100 acre-feet per year for the irrigation of 19 acres in that portion of  
2 the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20 lying north and west of Wilson Creek.  
3

4 The third parcel owned by the Dunnings is the E $\frac{1}{4}$ SW $\frac{1}{4}$  and W $\frac{1}{4}$ SE $\frac{1}{4}$  of  
5 Section 20, T. 19 N., R. 19 E.W.M.. They are asserting a right to irrigate 70  
6 acres with water diverted from Wilson Creek. A Homestead patent issued to  
7 William Sherman on November 25, 1892, for this land. Mr. Sherman testified in  
8 Sanders v. Bull that he had 60 to 70 acres of land in cultivation that was  
9 irrigated from two ditches out of Wilson Creek. He testified that it took one  
10 inch per acre to irrigate the land. William Sherman was also a named defendant  
11 in Sanders v. Bull. Mr. Dunning testified to using 400 acre-feet per year to  
12 irrigate the 70 acres, but that he needed 750 acre-feet per year to do a good  
13 job.

14 Two water right claim forms were filed with Kittitas County Superior Court  
15 on February 15, 1972, on behalf of Lorne T. Dunning, Jr., that describe the  
16 Dunning land in the S $\frac{1}{4}$  of Section 20 (See previous discussion on this issue).  
17 One asserted a right to divert 1 cubic foot per second, 250 acre-feet per year  
18 from Wilson Creek for the irrigation of 35 acres in the W $\frac{1}{4}$  of Section 20 and a  
19 portion of the E $\frac{1}{4}$  of Section 20. The described point of diversion is in the NW $\frac{1}{4}$   
20 of Section 20. The second claim asserted a right to divert 2 cubic feet per  
21 second, 500 acre-feet per year from Wilson Creek for the irrigation of 85 acres  
22 in the W $\frac{1}{4}$  of Section 20 and a portion of the E $\frac{1}{4}$  of Section 20. The point of  
23 diversion is described as being in the NE $\frac{1}{4}$  of Section 19. Both claims also  
24 assert a right for stock watering. Mr. Dunning testified that livestock on the  
25 property drink directly from Wilson Creek, which is covered by the stock water  
26 stipulation discussed on page 4 of this report.

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1 It is recommended that a right be confirmed under the Riparian Doctrine  
2 with a November 25, 1892, date of priority for the diversion of 1.4 cubic feet  
3 per second, 400 acre-feet per year for the irrigation of 70 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$   
4 and W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 20.

5 The last parcel of land addressed in this claim is located several miles  
6 south of the land previously discussed and lies in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 21,  
7 T. 18 N., R. 19 E.W.M. The Dunnings irrigate 35 acres of hay, grain and pasture  
8 and raise varying numbers of livestock. The livestock drink directly from  
9 Naneum Creek as it flows through the property. This type of non-diversionary  
10 stock water use is also covered by the stock water stipulation. The land is  
11 rill irrigated, with water diverted from a branch of Naneum Creek. Some  
12 claimants have referred to the branch as being a ditch and others have called it  
13 a naturally occurring branch of the creek. It is not clear to the Referee which  
14 is correct, as no one has presented evidence in either direction. The branch  
15 separates from Naneum Creek in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 16. Mr. Dunning diverts  
16 from the branch just above his north property line, in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
17 Section 21. This diversion also serves the Guise property immediately east of  
18 the Dunnings.

19 Water Right Claim No. 000091 was filed by Mr. Dunning asserting a right to  
20 divert 1 cfs, 100 acre-feet per year from Naneum Creek for the irrigation of 40  
21 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 21. The diversion described in WRC No. 000091 is  
22 in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21.

23 The Dunnings are basing their claim to a water right on the Ferguson  
24 decree. The decree awarded a Class IV right, which would have a 1874 date of  
25 priority, to F. R. Clement for the use of 160 inches in the N $\frac{1}{2}$ S $\frac{1}{2}$  of Section 21,

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T. 18 N., R. 19 E.W.M. The decree allowed for the use of one inch of water on each irrigated acre in May and June and one-half inch of water the rest of the year. Based on that, the Dunning would have a right to 0.70 cubic foot per second in May and June and 0.35 cubic foot per second the rest of the irrigation season. A maximum of 5 acre-feet can be diverted during irrigation season. Mr. Dunning testified to his belief that the land has continued to be irrigated since the right was established. He has owned the land since at least 1970.

Based on the foregoing, the Referee recommends that a right be confirmed to Lorne T. and Jeanne M. Dunning, under Court Claim No. 00166 with a June 30, 1874, date of priority for the diversion of 0.70 cubic foot per second in May and June and 0.35 cubic foot per second in April and July 1 through October 15, 175 acre-feet per year for the irrigation of 35 acres from April 1 through October 15.

COURT CLAIM NO. 00504 -- Darrel Eason  
& Janet Rae Eason

The Easons submitted a claim to the Court asserting a right to use waters from an unnamed drain. They were represented by Attorney Hugh Spall at the evidentiary hearing and Mr. Eason testified at the hearing.

The Easons' property is the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5, T. 17 N., R. 19 E.W.M., within which they irrigate 39 acres. Three acres are pasture and lawn area around their home and the remaining 36 acres is planted in Timothy hay with a grain rotation. They irrigate with water diverted from what they call a drain that flows through their property. The drain is fed by a spring that appears in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, T. 17 N., R. 19 E.W.M., return flow from irrigated

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farms north of their property, and water delivered by the Ellensburg Water  
1 Company. The landowners north of the claimants' property are not parties to  
2 Acquavella, so the Referee must conclude they are irrigating with water  
3 delivered by EWC. Therefore, the return flow contribution would be considered  
4 foreign return flow for which a water right could not be confirmed. EWC is a  
5 major claimant in this proceeding, whose rights were determined through the  
6 Major Claimant Pathway (see Report of the Court, Supplemental Report of the  
7 Court and Conditional Final Order for EWC).  
8

The only right, therefore, that the Referee can address is the right to use  
9 waters from the spring located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5. Mr. Eason estimated  
10 that at times the spring produces up to 2 cubic feet per second. He measured  
11 the ditch at his property line in 1989 and there was 2.9 cubic feet per second  
12 flowing at that time. Based on Mr. Eason's irrigation practice, 361.7 acre-feet  
13 per year is used to irrigate his land. This would include the spring water,  
14 direct deliveries from EWC and use of the return flow that contributes to the  
15 ditch.  
16

The claimants' land was settled on by Clinton H. King, who received a  
17 patent for the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 17 N., R. 19 E.W.M. on  
18 May 23, 1889. There are two documents in the record that deal with water rights  
19 for the King property. DE-1661 is a Water Ditch Agreement between Gustav  
20 Walters and C. H. King dated May 12, 1884. The agreement addresses a ditch  
21 intended to carry water to Walters land in the SE $\frac{1}{4}$  of Section 7. The ditch will  
22 cross the land of King and it was agreed that King could take water out of the  
23 ditch as necessary to irrigate his land below the ditch. The course of the  
24 ditch was not discussed, so the Referee does not know which of the King lands  
25

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could have been served by this ditch or the source of water for the ditch. A  
1 second document was offered by Stanley Baker, who owns land south of the  
2 Easons. Exhibit DE-852 is an Affidavit of Water Right filed on May 24, 1890, by  
3 J. Kryger and C. H. King. It describes two ditches that would take water out of  
4 Ripple Creek, a branch of Naneum Creek, and a third ditch that would take water  
5 out of Back Creek, also a branch of Naneum Creek, for use on the Kryger and King  
6 land. The affidavit describes the course of the ditch, however, the  
7 descriptions related to property lines for lands owned by Kryger and David  
8 Kincade. The description of the land they own is not provided, so it is not  
9 possible to accurately find the head of any of the three ditches. It does state  
10 that the Kryger land is in Section 5, T. 17 N., R. 18 E.W.M. It also states  
11 that between King and Kryger 400 acres are intended to be irrigated.  
12

None of the exhibits offered to show the existence of a water right for the  
13 Eason property reference use of a spring. The source of water in both instances  
14 appears to be a creek. The claimant has not made the assertion that the ditch  
15 or drain that carries the spring water to his property might be a creek, nor has  
16 he suggested that it is the creek referred in the documents. Mr. Eason has  
17 lived in the general area of this land all his life and knew the prior owners of  
18 the land. He recalls the land always being irrigated. However, his memory  
19 would not precede the time when EWC would have begun delivering water in this  
20 area. Mr. Eason testified that he holds 30 shares from EWC, which would be  
21 sufficient water to irrigate 37.5 acres.

Several water right claims were filed pursuant to RCW 90.14 that include  
23 the Eason property or a portion of the Eason property. H. K. McCullough, from  
24 whom the Easons purchased the land, filed Water Right Claims No. 007913, 007914,  
25

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007916. WRC No. 007913 asserts a right to use 3 cfs, 300 acre-feet per year from Little Naneum Creek for irrigation of 60 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 8, T. 17 N., R. 19 E.W.M. The point of diversion is described as being 1320 feet south and 1470 feet west from the northeast corner of Section 8, which would place it in the W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 8. WRC No. 007914 asserts a right to use 2 cfs, 200 acre-feet per year from an unnamed water course for irrigation of 40 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 8, T. 17 N., R. 19 E.W.M. The point of diversion is described as being 1320 feet south and 3960 feet west from the northeast corner of Section 8, which would place it in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, which is very near where the claimant diverts from the drain that carries the spring water. WRC No. 007916 asserts a right to use 1 cfs, 100 acre-feet per year from an unnamed water course for the irrigation of 20 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 8, T. 17 N., R. 19 E.W.M. The point of diversion is described as being 1320 feet south and 3170 feet west from the northeast corner of Section 8, which would place it in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8. Darrel Eason also filed WRC 104856 which asserts a right to use a ground water sources (no other description of the water source is given) for domestic, stock watering, and irrigation (lawn and garden) on a 2.5 acre portion of his property. Mr. Eason asserted at the evidentiary hearing that the source for which this claim was filed was the spring in Section 5 and that he thought it was appropriate to describe a spring as ground water. WRC No. 104856 is a short form, which could only be used to claim small water uses, i.e. domestic supply, stock watering and lawn and garden irrigation. The form specifically states that the irrigation use claimed is only lawn and garden. Additionally, the legal description placed on the form is a very small portion of the claimants' property, that portion in

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the southeast corner of the property. WRC No. 104856 could not protect any  
water right that might be appurtenant to the rest of the property because of the  
limited scope of a short form claim and the legal description provided for the  
lands on which water was used. The Referee believes that WRC No. 007914, which  
was filed for a diversion off of the water course that is fed by the spring,  
would protect any right that the claimant might have.

In order to recommend that a water right be confirmed to the Easons, the  
Referee needs additional information to show that at least one of the water  
right documents from the 1800's relate to use of either the spring or the water  
course into which the spring flows. The legal descriptions for the lands owned  
by Kryger and Kincade might assist in that. The Referee does not recommend that  
a water right be awarded to the Easons under Court Claim No. 00504.

COURT CLAIM NO. 01254 -- Jack Eaton

Court Claim No. 01254 was filed by Jack Eaton asserting a right to use  
unnamed drainage sloughs for irrigation and stock water. Mr. Eaton testified at  
the evidentiary hearing.

The land described in Court Claim No. 01254 is most of the NE $\frac{1}{4}$  of  
Section 4, T. 17 N., R. 18 E.W.M. lying east of State Highway 97, also known as  
the Canyon Road. Although Mr. Eaton filed the claim, the land apparently is  
owned by the Washington State Department of Transportation. Mr. Eaton has  
leased the property since 1977 and prior to that his family leased under the  
name N. N. Eaton and sons. The land in the past has been irrigated from  
drainage ditches constructed by the Department of Transportation along the north  
and westerly perimeter of the land. Mr. Eaton implied that there had once been

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a diversion from Wilson Creek to the land. For the past several years the land  
1 has been irrigated from a pond in the southeasterly portion of the property. A  
2 20 HP pump capable of withdrawing 1 cfs from the pond feeds a mainline that runs  
3 through the center of the field. A wheel line and a big gun sprinkler are  
4 connected to the mainline. Mr. Eaton was familiar with the land since the  
5 1940's and it has always been irrigated. Prior to using the pond, the land was  
6 flood irrigated.  
7

Mr. Eaton was aware that the land was first settled by Emil Pederson, who  
8 received a patent for the W $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24, T. 17 N.,  
9 R. 18 E.W.M. on March 25, 1891. On April 3, 1900, Pederson sold all of the land  
10 to Joel Clarke. A neighboring landowner and claimant in this case, Judith  
11 Nickerson, put in the record Exhibit DE-1597, which included a statement by  
12 Albert Tjossem made on October 31, 1933, concerning operation of the Tjossem  
13 Ditch and the Steen McLeod and Clark Ditch. He indicated who the users on the  
14 Clark branch of the Steen McLeod and Clark Ditch were at that time, and one user  
15 was Almina Adams, who according to records submitted by Grace Menig, owned the  
16 W $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 24 (Grace Menig owns a small portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
17 Section 24). The statement also indicates that the users on the Clark Branch  
18 were successors to Joel Clark, who was one of the prior owners of the claimant's  
19 property. The record is not clear about when the Steen McLeod and Clark Ditch  
20 was built. Attachments to DE-1597 clearly show that it was constructed prior to  
21 October 1902, when agreement was made to consolidate the upper portion of the  
22 ditch with the Tjossem Ditch. It would appear that a water right was  
23 established to irrigate the land described in Court Claim No. 01254 from the  
24 Yakima River. However, according to Mr. Eaton's testimony, water from the  
25

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Yakima River has not been used to irrigate this land for a very long time. Mr.  
1  
Eaton's testimony seems to indicate that the only other source of water that has  
2  
been used is Wilson Creek. There is no evidence that a water right was  
3  
established for use of Wilson Creek.  
4

5 Additionally, there is no evidence that a water right claim was filed for  
6 this property pursuant to RCW 90.14. RCW 90.14.071 provides that failure to  
7 file a claim waives and relinquishes any right that may have existed.  
8

9 Based on the foregoing, the Referee recommends that a water right not be  
10 confirmed under Court Claim No. 01254.

11 COURT CLAIM NO. 00634 -- John N. Eaton  
12 & Christi Eaton

13 The Eatons submitted a claim to the Court asserting a right to use waters  
14 from Wilson Creek for irrigation and stock watering. The Eatons are represented  
15 by Attorney John P. Gilreath and Mr. Eaton testified at the evidentiary  
16 hearing. At the hearing the claim was amended to also assert a right to use  
17 waters from Naneum Creek and Coleman Creek. Coleman Creek lies in Subbasin No.  
18 10 and rights to the use of Coleman Creek will not be addressed in this Report  
of Referee.

19 The Eatons own that portion of the E $\frac{1}{2}$  of Section 30, T. 17 N., R. 19 E.W.M.  
20 lying west of Interstate 82. They irrigate approximately 80 acres from a  
21 diversion on Wilson Creek located in SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30 and a second  
22 diversion located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30. The diversion in the NE $\frac{1}{4}$  of  
23 Section 30 is immediately above where the combined flows of Naneum Creek and  
24 Coleman Creek flow into Wilson Creek and the diversion in the SE $\frac{1}{4}$  of Section 30  
25

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is below. A right is also being asserted for using a spring that surfaces on  
1 the neighboring Lamb property. Water is delivered to the northerly portion of  
2 the property (field 1) through dirt and concrete lined ditches and that field is  
3 rill irrigated. A pump at the lower diversion feeds a wheel line sprinkler  
4 system in the southerly portion of the property (fields 2, 3, and 4). Mr. Bain  
5 measured the flow to field 1 at 2.7 cfs and based on the Eatons irrigation  
6 practice determined that 263.9 acre-feet per year is used to irrigate that  
7 field. The sprinklers use 0.60 cubic foot per second with a total of 255  
8 acre-feet per year used on fields 2, 3, and 4. Mr. Bain's report indicates that  
9 field 2 could be used to grow Timothy hay and if that were the case it would be  
10 rill irrigated and an additional 184 acre-feet per year would be used. Mr.  
11 Bain's report indicates that the livestock raised on the ranch drink directly  
12 from the water sources on the land, such as Wilson Creek and the drainage from  
13 the spring. That type of non-diversionary stock water use is covered by the  
14 stock water stipulation discussed on page 4 of this report and no other right is  
15 needed.

16 Water Right Claim No. 000085 was filed by Earl V. Elkington pursuant to the  
17 requirements of RCW 90.14. It asserts a right to use 1.6 cubic feet per second,  
18 320 acre-feet per year from Wilson Creek for the irrigation of 80 acres in the  
19 W $\frac{1}{2}$ SE $\frac{1}{4}$  and SE $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 30, T. 17 N., R. 19 E.W.M. Although not identified  
20 by Mr. Eaton, Mr. Elkington must have been a prior owner of the Eaton land in  
21 the SE $\frac{1}{4}$  of Section 30. There is no evidence that a water right claim was filed  
22 pursuant to RCW 90.14 for the Eaton property in the NE $\frac{1}{4}$  of Section 30. However,  
23 according to Mr. Bain's report the irrigated land all lies in the SE $\frac{1}{4}$  of  
24 Section 30.

25  
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1 Mr. Eaton put into the record two patents that cover his land. A patent  
2 issued to Luther J. Keach on September 5, 1873, for the N $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$   
3 of Section 30 and a patent issued to Patrick Lynch on November 25, 1879, for the  
4 SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30 and the E $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29. There is no  
5 information about settlement of the NE $\frac{1}{4}$  of Section 30, but again since the  
6 irrigated land does not lie in that portion of the section, the lack of  
7 information is not material. By 1885 the Eaton property was owned by Walter A.  
8 Bull. In the record are documents associated with a complaint brought by Walter  
9 A. Bull against several parties concerning use of water from Coleman Creek. The  
10 complaint calls the creek Smith's Creek and Dry Creek, however, the settlement  
11 document refers to rights to Coleman Creek. One of the documents, DE-768,  
12 states that when water is high parties will be entitled to 160 inches for 160  
13 acres of land (or one inch per acre) and 80 inches for an additional 160 acres  
14 (or one-half inch per acre) and that would constitute the outside limit to any  
15 party and that the water at this stage was to be divided equally between the  
16 parties. When the flow dropped there was provisions for how the water was to be  
17 divided. DE-769 states that Walter A. Bull shall have for his share of the  
18 water one-tenth of the waters of the creek above William Dennis' irrigating  
19 ditch. With Mr. Bull's signature on the settlement is a statement that he has  
20 160 acres purchased from T. Hauser in 1870 and 40 acres purchased from H. M.  
21 Bryant -- water for which was appropriated in 1871. The settlement was made in  
22 1887.

23 All of these historical documents relate to the use of waters from Coleman  
24 Creek. There is no mention of use of any other water source, even though Wilson  
25 Creek now flows through a portion of what was then the Bull property.

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1 Construction of Interstate 82 and Fiorito Pond have altered the creek channels  
2 in this area, so it is difficult to get a good idea of how water might have been  
3 carried from Coleman Creek to serve the Bull, now Eaton, property. Coleman  
4 Creek lies in Subbasin No. 10 and the rights to use that creek will be addressed  
5 in the Report of Referee for Subbasin No. 10. It does not appear to the Referee  
6 that there was any appearance at the Subbasin No. 10 hearing by John and Christi  
7 Eaton. Since the claim was filed only for Wilson Creek and there is no active  
8 diversion from Coleman Creek, the Eatons likely were not included in the  
9 schedule prepared by the Referee and there is nothing in the file to indicate  
10 that they attempted to be added to the schedule. If the claimants believe there  
11 is sufficient evidence to support a conclusion that a right exists for Coleman  
12 Creek, they may want to participate in the exception phase for Subbasin No. 10.

13 Due to the lack of evidence to show that a water right was established for  
14 use of Wilson Creek -- evidence of water use prior to December 31, 1932, the  
15 Referee cannot recommend that a water right be confirmed to the Eatons under  
16 Court Claim No. 00634.

17  
18 COURT CLAIM NO. 00635 -- Timothy E. Eckert  
19 & Marcia N. Eckert

20 The Statement of Claim was originally submitted to the Court by Eugene W.  
21 and Sally Jo Eckert. On February 21, 1991, Timothy E. and Marcia N. Eckert were  
22 substituted as claimants. There were represented by Attorney Hugh Spall at the  
23 evidentiary hearing. Timothy Eckert and Eugene Eckert, his father, testified at  
24 the hearing.

25  
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The Eckerts' property is the W $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 27, T. 18 N., R. 19 E.W.M.

They are asserting a right to irrigate 80 acres and water livestock with waters diverted from Naneum Creek and Spring Creek. Spring Creek lies in Subbasin No. 10 (Kittitas) and the rights to use Spring Creek will be addressed in the Report of Referee for Subbasin No. 10. Water is diverted from Naneum Creek in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M., carried east along the south line of Section 16, to the northwest corner of Section 22, where the ditch turns south along the west line to the west quarter corner of Section 22 where a ditch goes east along the north line of Dr. Herbert's property, then turning south along the east property line into Section 27. This ditch borders the Eckerts' east property line and is used to irrigate the easterly portion of their property. A second ditch goes south along the west line of Section 22 into Section 27. It continues south along the claimants' west property line. This ditch is used to irrigate the westerly portion of the property. The "ditch" along the east property line appears to be a continuation of Spring Creek. That relationship will be pursued further during consideration of the claim for Spring Creek water in the Subbasin No. 10 Report of Referee. The testimony indicated that water could also be diverted from a branch of Naneum Creek in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21, which would reduce the distance the water is conveyed in a ditch. It is not clear whether this diversion is used or to what extent it is used.

The Eckerts are asserting a right to use 1.6 cubic feet per second from Naneum Creek and 370 acre-feet per year from a combination of Naneum Creek and Spring Creek. They are assessed by KRD for 40 acres.

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The property has been in the Eckert family for a long time. Rufus  
1 Schnebly, who is Eugene Eckert's father-in-law acquired the land in the 1920's  
2 and was farming it when Mr. Eckert first became acquainted with it in 1946. Mr.  
3 Eckert worked there a few years prior to acquiring it from his father-in-law.  
4 It has been irrigated in much the same manner over the years as it is now. The  
5 crops have varied some with grain, hay and pasture being the predominant crops.  
6 Livestock drink directly from the irrigation ditches during irrigation season.  
7

At the time of the Ferguson decree the land was owned by Elijah M. Topliff  
8 who was awarded a Class 4 right, which would have an 1874 date of priority, for  
9 the use of 160 inches in the N $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28 and the W $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 27,  
10 both in T. 18 N., R. 19 E.W.M. The proportionate share of the right the Eckert  
11 property would enjoy is 80 inches or 1.6 cubic feet per second. The decree  
12 provided that quantity could be used in May and June and one-half that quantity,  
13 or 0.80 cubic foot per second the rest of the year.  
14

Water Right Claim No. 063562 was filed by Eugene and Sally Eckert pursuant  
15 to the requirements of RCW 90.14. It asserts a right to use 3 cfs, 160  
16 acre-feet per year from Naneum Creek for the irrigation of 80 acres and stock  
17 watering in the W $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 27, T. 18 N., R. 19 E.W.M.  
18

The Referee recommends that a right be confirmed under Court Claim No.  
19 00635 to the Eckerts with a June 30, 1874, date of priority for the use of 1.6  
20 cubic feet per second in May and June and 0.80 cubic foot per second in April  
21 and July 1 through October 31, 370 acre-feet per year for the irrigation of 80  
22 acres and stock watering in the W $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 27, T. 18 N., R. 19 E.W.M.  
23 Since the claimant testified that 370 acre-feet per year is the maximum that is  
24 used from Naneum Creek and Spring Creek, the right will contain a provision  
25

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1 stating that 370 acre-feet per year is the maximum that can be used under both  
2 rights, if a right is awarded in the Subbasin No. 10 Report of Referee for use  
3 of Spring Creek.

4 COURT CLAIM NO. 02085 -- Ellensburg; City of  
5

6 The City of Ellensburg submitted a Statement of Claim to the Court for the  
7 use of several surface water sources in the Yakima River Basin, including Naneum  
8 Creek. The city was represented by City Attorney Glenna Bradley-House. Ralph  
9 Charlton, who leases the city property along Naneum Creek, Albert Imhoff, who  
10 lived on the city property in the 1950's, and Thomas Chini, City Engineer and  
11 Public Works Director, testified at the evidentiary hearing.

12 The city owns the E $\frac{1}{2}$ NE $\frac{1}{4}$  and the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 20, T. 19 N.,  
13 R. 19 E.W.M. There is a diversion from Naneum Creek near the southeast corner  
14 of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 20, on the city property. According to the testimony,  
15 for a period of time water from Naneum Creek was diverted, chlorinated, and used  
16 in the municipal water system. Mr. Imhoff was caretaker on the land where the  
17 diversion was located from 1952 to 1954. At that time water was still being  
18 diverted from Naneum Creek, chlorinated and piped to a reservoir on Sanders  
19 Road. Water was also used in a home on the city property and to irrigate the  
20 fields around the home. Mr. Imhoff irrigated a small orchard, garden and hay  
21 field. The diversion to the reservoir had ended prior to 1968 when Tom Chini  
22 was hired by the city.

23 Currently water from Naneum Creek is being used to irrigate 10 acres of  
24 pasture that is farmed by Mr. Charlton. Mr. Charlton testified that up to 20  
25 acres have been irrigated in the past and 15 acres could be irrigated at this

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time. His knowledge of the property dates back to the early 1930's, at which time his family owned neighboring lands. He recalls the land which he is now irrigating as being irrigated from Naneum Creek at that time. Mr. Charlton testified to needing, and using, 4 acre-feet per acre to irrigate the field. There was no estimate of the instantaneous quantity being used.

The land owned by the city separated from Federal ownership on April 21, 1891, when a patent issued to Caspar B. Fettters. The record includes documents showing the transfer of the land over the years between 1893 and 1920, when it was sold to Ellensburg Gas and Water Company. The city also put in the record a Notice of Appropriation of Water filed by John A. Shoudy on June 6, 1910, however, the Referee does not believe this document supports the city's assertion of a water right. The notice was filed for use of 100 cubic feet of water per second from Naneum Creek for the irrigation of lands in Section 2 and 3, T. 18 N., R. 18 E.W.M. and Sections 24, 34, and 35, T. 19 N., R. 18 E.W.M., which, of course, is not the city land for which they are asserting a water right. The only reference to Section 20 is the that the point of diversion being used by Mr. Shoudy is in the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 20.

The City of Ellensburg filed Water Right Claim (WRC) No. 005764 pursuant to the requirements of RCW 90.14 asserting a right to divert 4.5 cfs, 3,285 acre-feet per year from Naneum Creek for municipal supply in the City of Ellensburg. The date of first water use is September 23, 1911, and based the claim on Court Decree No. 4121, May 15, 1911, Superior Court of Kittitas Washington. The city also filed WRC No. 116736, which asserted a right to divert 3.2 cfs, 800 acre-feet per year from Wilson Creek for the irrigation of 196 acres. The place of water use identified on this water right claim is

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1 portions of Section 11, 13, and 14, T. 17 N., R. 18 E.W.M. The diversion and  
2 the place of use is several miles south of the land for which evidence was  
3 submitted at the hearing, near the city limits of Ellensburg. The city is not  
4 now asserting a right to any waters from Wilson Creek.

5 The decree cited to in WRC No. 005764 resolved the case of Olive Sander,  
6 Thomas and Vanche Haley and the Ellensburg Water Supply Company v. Charles and  
7 Kate Bull, et al. (Sander v. Bull), which determined the rights of Olive Sander,  
8 Thomas and Vanche Haley and Ellensburg Water Supply Company to waters of the  
9 combined Wilson and Naneum Creeks. The decree stated that the plaintiff's were  
10 entitled to a specific quantity of water to be taken from Wilson Creek, below  
11 the junction of Wilson and Naneum Creeks. The City of Ellensburg did not  
12 present any evidence to show they are successors to any of the plaintiffs in  
13 Sanders v. Bull. However, this case was appealed to the State Supreme Court,  
14 and in its decision Sanders v. Bull, 76 Wash. 1, 135 Pac. 489 (1913), the Court  
15 does stated that Ellensburg Water Supply Company diverted the water it acquired  
16 from Sander to the city of Ellensburg for use by its inhabitants.

17 There was some confusion in the record concerning the source of water for  
18 which the city is asserting a right, Wilson Creek or Naneum Creek. Mr. Vernon  
19 Stokes attempted to explain the confusion, suggesting that years earlier the  
20 city had changed from Wilson Creek to Naneum Creek. The city and state asked  
21 the Referee to discount this unsolicited testimony. Although unsolicited, the  
22 testimony was very accurate. Although not cited to by the city, the Referee has  
23 reviewed Haberman v. Ellensburg Gas & Water Co., 100 Wash. 229, 170 Pac. 571  
24 (1918), which is instructive concerning the water rights held by the City of  
25 Ellensburg and supports Mr. Stokes' statements. This Supreme Court case

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resulted from an appeal of a Kittitas County Superior Court ruling upholding a  
1 change in point of diversion by Ellensburg Gas and Water Company for supplying  
2 water to the City of Ellensburg. A predecessor to Ellensburg Water Supply  
3 Company, was awarded 225 inches of water in Sanders v. Jones, et al., which was  
4 used to supply the city of Ellensburg. Water was diverted from Wilson Creek  
5 several miles downstream from where the city's property is located on Naneum  
6 Creek. In November of 1911, the water company changed its point of diversion to  
7 Naneum Creek (at the current location of the city property in the NE% of Section  
8 20) and diverted 225 inches of water to the City of Ellensburg's reservoir and  
9 into the city. After the change was accomplished and the water company made  
10 preparations to remove the original diversion works, the appellants brought an  
11 action to prevent the change in point of diversion from Wilson Creek to Naneum  
12 Creek above the lands of the appellant. No temporary restraining order was  
13 applied for or issued by the Court, therefore, the diversion was changed and the  
14 original diversion works removed and water was being supplied to the city. The  
15 Supreme Court ruled that as a public service corporation, the only remedy that  
16 the appellants had was for damages and allowed the change in point of diversion  
17 to stand.  
18

This case shows that an historic water right for 225 inches, or 4.5 cubic  
19 feet per second, from Naneum existed for supplying the city of Ellensburg with  
20 water. Referring to the Sander v. Bull case, the Referee finds that the water  
21 was first appropriated in 1881. The water right for described in the above  
22 cited cases was held by a private company, the Ellensburg Water Supply Company.  
23 There is no evidence that the right was transferred to the City of Ellensburg.  
24 Use of the water within the city ceased between 1954 and 1968 and has not been  
25

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used for that purpose since. The general rule in western water law is that  
1 nonuse is evidence of intent to abandon, and long periods of nonuse raise a  
2 rebuttable presumption of intent to abandon, shifting the burden of proof to the  
3 holder of the right to explain reasons for the nonuse, Okanogan Wilderness  
4 League v. Twisp, 133 Wn. 2d 769, 947 P.2d 732 (1997). Additionally, RCW  
5 90.14.160 provides that if a right is not exercised for five or more successive  
6 years beginning in 1967, that right relinquishes. Rights claimed for municipal  
7 water supply purposes are exempt from relinquishment, RCW 90.14.140(2)(d).  
8 Although the city is claiming a right for municipal purposes, the Referee does  
9 not believe there are sufficient facts to show that the water right held by the  
10 Ellensburg Water Supply Company or the Ellensburg Water and Gas Company was a  
11 municipal supply water right. The right was held by a private company, not a  
12 municipality, and the Court has dealt with the distinction between a company and  
13 a municipality in defining the nature of a right in the Report of the Court  
14 Concerning the Water Rights For the Naches Cowiche Canal Company, filed on  
15 October 10, 1994, and the Report of the Court Concerning the Water Rights for  
16 the City of Yakima, et al., filed October 27, 1997. While the issues are  
17 slightly different as the Court was dealing with irrigation rights that were not  
18 delivered within a municipality, the direction taken is informative. The city  
19 seems to be arguing that they hold a municipal water right that has not been  
20 exercised for at least 30 years. They presented evidence that use might resume  
21 in the future, specifically in the area around the diversion facilities, but  
22 that water from this source would not be used for human consumption. The  
23 Referee believes that the issue of potential abandonment or relinquishment of  
24 the right needs to be more fully addressed by the City of Ellensburg.  
25

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1 Mr. Charlton's testimony about use of water for irrigation on the property  
2 near the diversion as early as the 1930's could lead to a conclusion that a  
3 right was established for a limited amount of irrigation within the E½E½ of  
4 Section 20. However, as far as the Referee can determine the only RCW 90.14  
5 claim filed by the city was for the use of Naneum Creek water for municipal  
6 supply within the City of Ellensburg. There was no RCW 90.14 claim filed for  
7 use of the water to irrigate lands in Section 20. While the lands in Section 20  
8 are owned by Ellensburg, the Referee does not believe it would be accurate to  
9 say they lie within the City of Ellensburg.

10 Due to the uncertainty about the status of the water right for use within  
11 the City of Ellensburg and the lack of a RCW 90.14 claim for the lands in  
12 Section 20, the Referee cannot recommend that a water right be confirmed under  
13 Court Claim No. 02085.

14 COURT CLAIM NO. 00786 -- William E. Erickson  
15 & Glenda L. Erickson

16 William E. and Glenda L. Erickson submitted a statement of claim asserting  
17 a right to use waters from Lyle Creek for irrigation and stock watering. Mr.  
18 Erickson testified at the evidentiary hearing.

19 The Erickson's property is a portion of the S½SW¼ of Section 8, T. 18 N.,  
20 R. 19 E.W.M. lying east of Wilson Creek Road. They own 18 acres and irrigate  
21 all of the land, except where there are buildings. The irrigated land is  
22 pasture, on which they raise cattle. Generally there are 12 cow/calf pairs and  
23 12 yearlings on the property. The livestock drink from the irrigation ditches  
24 and from springs that are in the pasture. Water from the springs is not

25  
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1 diverted, the livestock drink directly from the source. This type of stock  
2 water use is covered by the stock water stipulation discussed on page 4 of this  
3 report and no additional right is needed for that use.  
4

5 The pasture is rill irrigated with water diverted from Lyle Creek in the  
6 SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8. The diversion happens to be located in a stretch of the  
7 creek where it is unclear to the Referee whether the source is Wilson Creek or  
8 Lyle Creek. However both the claimant and Ecology have described the source as  
9 Lyle Creek. The Erickson land is rocky, which according to Mr. Erickson  
10 requires more water to adequately irrigated. It also is a factor in his  
11 decision not to switch to a sprinkler system. Leveling the land so that  
12 sprinklers could be used would be expensive and the frequency of high winds in  
13 the area make sprinklers less useful. The Ericksons are patrons of the Kittitas  
14 Reclamation District, which generally delivers 28 acre-feet per year to the  
15 property. During most years, natural creek flow is only available from April  
16 until sometime in June, at which time KRD water is used.  
17

18 Water rights for the SW $\frac{1}{4}$  of Section 8 were addressed in the Sander v. Jones  
19 decree. Mary A. Thomas acquired the SW $\frac{1}{4}$  of Section 8 from James R. Van Alstine  
20 who received a patent for the land in 1889. She also purchased the N $\frac{1}{4}$ SE $\frac{1}{4}$  of  
21 Section 7 from the Northern Pacific Railroad Company in 1887. Mary Thomas  
22 appropriated 225 inches of water, or 4.5 cubic feet per second in 1889 for use  
23 on her lands in Sections 7 and 8. The record shows that James R. Van Alstine  
24 had been in possession of the land since 1877. The SW $\frac{1}{4}$  of Section 8 is riparian  
25 to Wilson Creek, so under the Riparian Doctrine the priority of the right would  
26 be 1877, when steps were first taken to acquire the land. There are several  
27 other claimants who own land and are asserting rights within the area covered by  
28

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1 the 225 inches, but the total rights being asserted are less than the 225 acres  
2 that might have a water right. It is reasonable to conclude that part of the  
3 water right awarded to Mary A. Thomas in Sander v. Jones is appurtenant to the  
4 Erickson land.

5 The State's Investigation Report identified Water Right Claim No. 079488 as  
6 potentially appurtenant to the claimants' land. However, the Referee does not  
7 reach that conclusion. WRC No. 079488 was filed by Floyd A. Minor asserting a  
8 right to irrigate 130 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7 and part of the W $\frac{1}{2}$ SW $\frac{1}{4}$  of  
9 Section 8. Although the Referee was not able to recommend that a right be  
10 confirmed to Mr. Minor for irrigating 130 acres, he is, in fact, irrigating  
11 slightly more than 130 acres within the area described in WRC No. 079488. The  
12 chain of title submitted by Mr. Erickson shows that Mr. Minor never owned the  
13 Erickson property and that the Ericksons owned at least a portion of their  
14 property during the time frame when RCW 90.14 required the filing of claim  
15 forms. RCW 90.14.041 required the filing of a claim form by all persons using  
16 or claiming the right to withdraw or divert and make beneficial use of public  
17 surface waters. RCW 90.14.071 provided that failure to file a claim waives and  
18 relinquishes any right that may have existed.

19 The Referee can find nothing in the record to show a claim was filed  
20 pursuant to RCW 90.14 for the Erickson property. Therefore, the Referee cannot  
21 recommend that a water right be confirmed under Court Claim No. 00786.  
22  
23  
24  
25

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1 COURT CLAIM NO. 01815 -- Harry Ferguson  
2 (A) 02786 & Concetta Ferguson

3 Edwin and Virginia Weikal submitted a claim to the Court asserting a right  
4 to use waters from Wilson Creek for irrigation. The Weikals were represented by  
5 Attorney Jeff Slothower and Mr. Weikal testified at the evidentiary hearing. On  
6 October 30, 1996, Harry and Concetta Ferguson were substituted for the Weikals.

7 The claimants' property is Lots 7 and 8 of Block 53 of Shoudy's Second  
8 Addition to Ellensburg, lying within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 1, T. 17 N.,  
9 R. 18 E.W.M. The Weikals acquired Lot 8 in 1963 and Lot 7 in 1969. According  
10 to Mr. Weikal's testimony when he acquired the land there was evidence that a  
11 pump had been used on Lot 7, but was not in place at the time of his  
12 acquisition. The only reference to water rights for the land in the record is a  
13 deed for Lot 7 in 1969. These two lots are part of a much larger parcel for  
14 which Frederick Essige received a patent on June 30, 1876. Essige sold to John  
15 Shoudy on April 2, 1885, and by August of that same year Shoudy had subdivided  
16 the land into Shoudy's Second Addition to Ellensburg. Several deeds showing the  
17 sale of the land over the years were entered as exhibits. Only the 1969 deed  
18 references water rights. Mr. Weikal did not testify to any water use prior to  
19 his purchase, nor was there any evidence presented to show that water rights  
20 were established for the property.

21 Mr. Weikal attempted to file a water right claim for the property pursuant  
22 to RCW 90.14. Exhibit DE-1697 is the water right claim he attempted to file,  
23 the envelope it was mailed in and a letter from the Department of Ecology  
24 returning the form. The claim form was returned to Mr. Weikal because the

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1 postmark on the envelope was July 1, 1974. RCW 90.14 as it read in 1974,  
2 required that water right claims be filed no later than June 30, 1974.  
3 According to the letter, water right claims were accepted after June 30, 1974,  
4 if they were postmarked by June 30. The claim form was dated June 28, 1974 and  
5 the check that accompanied the form was dated June 28, 1974. Mr. Weikal  
6 testified to putting the form in the mail before July 1 and could not understand  
7 whey it was postmarked July 1. The letter returning the claim form directed the  
8 recipient to the Department of Ecology's regional office if the use of water was  
9 other than for domestic purposes. Mr. Weikal did not testify whether he  
10 contacted the regional office.

11 Although the lack of a water right claim timely filed pursuant to RCW 90.14  
12 would be an obstacle to recommending that a water right be confirmed, an equally  
13 big obstacle is the lack of evidence to show that a water right was legally  
14 established for this property. Based on these factors, the Referee cannot  
15 recommend that a water right be confirmed under Court Claim No. 01815.

16  
17 COURT CLAIM NO. 01171 -- Charles R. Fischer  
18 & Ellen Fischer

19 The Fischers filed a Statement of Claim with the Court asserting a right to  
20 use waters from the combined flow of Reecer and Wilson Creeks for irrigation of  
21 2 acres. Mr. Fischer testified at the evidentiary hearing.

22 The claimants property lies in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, T. 17 N.,  
23 R. 18 E.W.M. and is a total of 1.66 acres in size. There are three rental units  
24 on the property and two outbuildings. The rest of the land is irrigated. A 2  
25 HP pump is placed on the creek and feeds a sprinkler system. A portion has an

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underground system and the rest is irrigated with garden hoses. The claimants  
1 bought the property from Mr. Fischer's parents, who had bought it from Irene  
2 Witner. Ms. Witner owned it in the late 1940's or early 1950's. At that time  
3 it was a slough and Ms. Witner brought in fill material and reclaimed the land.  
4 Mr. Fischer testified to a large amount of fill material being brought onto the  
5 land. Although not specifically stated, it is apparent that the land was not  
6 irrigated until after it had been reclaimed sometime around 1950.  
7

Mr. Fischer filed Water Right Claim No. 150648 asserting a right to use  
8 Wilson Creek for lawn and garden irrigation. The claim was filed pursuant to  
9 the requirements of RCW 90.14. The intent of RCW 90.14 was to have water right  
10 claims filed for uses of water that were initiated prior to adoption of the  
11 Surface Water Code in 1917 or the Ground Water Code in 1945. The water use on  
12 this property clearly was not initiated prior to 1917. At the time that water  
13 from the creek was first used (1950 or so), the only mechanism to establish a  
14 water right was through the permitting process spelled out in RCW 90.03, which  
15 is the Surface Water Code. There is no evidence that Ms. Witner or any of the  
16 Fischers followed that process and obtained a permit.  
17

Since there is no water right permit or certificate that authorizes use of  
18 Wilson Creek or Mercer Creek on the claimant's land (or any other water source  
19 for that matter), the Referee cannot recommend that a water right be confirmed  
20 under Court Claim No. 01171.  
21

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1 COURT CLAIM NO. 00536 -- Joseph C. Fitterer  
2 & Bettie E. Fitterer

3 The claimants are asserting a right to use waters from Lyle Creek for  
4 irrigation and stock watering. They are represented by Attorney John P.  
5 Gilreath. Their son, Jon Fitterer, testified at the evidentiary hearing.

6 The claimants' land lies in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 1, T. 17 N.,  
7 R. 18 E.W.M. They are asserting a right to irrigate six acres and water  
8 livestock with water diverted from Lyle Creek. The diversion from the creek is  
9 located near the northeast corner of their property. A 3 HP pump is used to  
10 withdraw water from either the creek or the ponds located on the property. The  
11 pump will withdraw 80 gallons per minute, or 0.178 cubic foot per second. Of  
12 the six acres, 5.5 acres are pasture and one-half acre is lawn and garden area.  
13 A portion of the land is rill irrigated. Mr. Fitterer testified to needing 6.5  
14 acre-feet per acre irrigated, or 39 acre-feet per year. An additional one  
15 acre-foot per year is needed for stock watering. Up to 10 head of livestock are  
16 pastured.

17 Mr. Fitterer filed Water Right Claim No. 119597 pursuant to the  
18 requirements of RCW 90.14. It asserts a right to use 0.03 cfs per acre, 6  
19 acre-feet per year per acre for the irrigation of 10 acres and stock watering.  
20 The source of water is described as "withdrawal". However, the point of  
21 diversion described is on Lyle Creek, very near the point where the State's  
22 Investigation Report shows the diversion currently being used. The legal  
23 description of lands on which the water is used states "see enclosed  
24 description". Unfortunately, there is no description attached to the copy of

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1 the claim that is in SE-5. The Referee believes it is reasonable to conclude  
2 that as the point of diversion described is on Lyle Creek on the claimants'  
3 property, that this water right claim is intended to describe a use of water on  
4 the property described in Court Claim No. 00536. The Referee notes that the  
5 date of first putting water to use shown on the claim form is November of 1946.  
6 Court Claim No. 00536 states that the date of commencement of use is May 8,  
7 1945.

8 The claimants' property is riparian to Lyle Creek. In order for there to  
9 be a water right for use of the creek, there must be evidence to show that  
10 waters from Lyle Creek were used prior to December 31, 1932. Mr. Fitterer  
11 testified that his father acquired the land in 1946 and irrigated it continually  
12 since that time. His own personal knowledge of the land begins in 1954. Mr.  
13 Fitterer also testified to his belief that the land was irrigated prior to the  
14 time it was acquired by his father.

15 As evidence of prior water use, the claimant points to an agreement in 1888  
16 that was primarily intended to show a commitment to obtain a deed for the  
17 property from Northern Pacific Railroad and then convey the land to Walters and  
18 Company. The agreement states that the land would be conveyed along with all  
19 improvements, including two shares in Oriental Ditch and all of the shares in  
20 the Ellensburg Water Company. Oriental Ditch Company was a defendant in Sanders  
21 v. Bull, which resulted in a Decree entered August 12, 1890, determining the  
22 rights of the parties to use waters from Wilson Creek and Lyle Creek. The  
23 Decision that preceded the decree found that although Oriental Ditch Company had  
24 diverted water, apparently from Wilson Creek, there was no proof that the  
25 persons upon whose lands the waters had been applied were entitled to use the

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water. The Court concluded that the Oriental Ditch Company was never entitled  
1 to take any of the water, nor had it acquired any interest in the water.  
2

Since the only evidence of historic water use on the land was based on  
3 shares to Oriental Ditch Company, and no rights were awarded to the ditch  
4 company in Sanders v. Bull, and since documents prepared by the claimant state  
5 water was first used in 1945, the Referee cannot recommend that a water right be  
6 confirmed.  
7

It appears that the land at one time had shares in Ellensburg Water Company  
8 (EWC), and may still have those shares. EWC delivers water to some of its  
9 patrons through Lyle Creek, see Report of the Court, Re: Ellensburg Water  
10 Company, page 9, line 5. In addition to showing water use prior to the end of  
11 1932, the claimant needs to show that a right existed for taking Lyle Creek  
12 water, as opposed to water provided by EWC. This recommendation does not in any  
13 way affect the claimants use of water delivered by EWC if they are company  
14 patrons. The water rights for EWC were determined through the Major Claimant  
15 Pathway.  
16

COURT CLAIM NO. 06016 -- David Arnold Fogle  
17 & Linda Rose Fogle  
18

David Fogle appeared at the evidentiary hearing for Subbasin No. 9 with his  
19 neighbor, Charles Priebe, a claimant in this proceeding. In conjunction with  
20 providing testimony related to Mr. Priebe's property, Mr. Fogle also testified  
21 to use of water from Mercer Creek. The Referee allowed the testimony and  
22 advised Mr. Fogle of the need to file a claim with the Court on his own behalf.  
23  
24

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25  
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27

1 Shortly after appearing at the hearing, the Fogles filed a claim with the Court  
2 and the Court allowed the claim for further processing.  
3

4 The Fogles are asserting a right to use waters from Mercer Creek for  
5 irrigation of 22 acres. Their property lies within a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  and  
6 NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, T. 18 N., R. 18 E.W.M. A complete legal description of  
7 the property was not provided. In the past water has been diverted from Mercer  
8 Creek at a point approximately 1320 feet south and 2115 feet east of the  
9 northwest corner of Section 25. The ditch carried water to the west and south  
10 through the NE $\frac{1}{4}$  of Section 26 into the SE $\frac{1}{4}$  of Section 26. This water was used  
11 by W. D. Strong in the NE $\frac{1}{4}$  and several other landowners in the SE $\frac{1}{4}$  of  
12 Section 26, including Charles Priebe. Only Mr. Priebe and Mr. Fogle are  
13 claimants in this proceeding and Mr. Priebe has decided not to pursue his claim,  
see page 447 of this report.

14 According to the testimony, the channel of Mercer Creek was altered when  
15 the airport was built in the early 1940's and either the ditch that served this  
16 area or the creek channel itself was disrupted. Mr. Strong ran a new ditch from  
17 the creek using a bulldozer. Mr. Fogle testified to there being an undershot at  
18 the Cascade Canal, which would indicate the ditch was in place when the canal  
was built.

19 In 1986 the Department of Ecology issued an order to Mr. Strong, Order No.  
20 DE-86-C324, identifying that he diverted water from Mercer Creek for stock  
21 watering and that the department's records showed that there was no claim filed  
22 pursuant to RCW 90.14 or a permit issued under the provisions of RCW 90.03 for  
23 his water use. The department ordered Mr. Strong to cease diverting water.  
24 Apparently this diversion not only served Mr. Strong's property but also other  
25

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landowners in the SE $\frac{1}{4}$  of Section 26. Mr. Strong apparently complied with the  
order and water has not been diverted since then. Mr. Fogle testified to his  
belief that his land was irrigated from Mercer Creek prior to the airport being  
built and likely prior to the Cascade Canal being built. However, he did not  
provide any evidence to support this belief. Mr. Fogle did not provide the  
names of any of the prior owners of his land.

Mr. Fogle did not identify that he was aware of a water right claim being  
filed pursuant to RCW 90.14 for his property. Without knowing who might have  
owned the property during the claims registration period (1969 through 1974),  
the Referee is not able to independently determine whether there might be one  
appurtenant to his property. Failure to file a claim relinquishes any right  
that might have existed. RCW 90.14.071.

Based on the lack of historic evidence to show that a water right was  
established through beneficial use of water prior to June 6, 1917, and not  
knowing whether a claim was filed pursuant to RCW 90.14, the Referee cannot  
recommend that a water right be confirmed under Court Claim No. 06016.

COURT CLAIM NO. 01777 -- Gerald French  
& Maxine French

Gerald and Maxine French submitted Court Claim No. 01777 asserting a right  
to use waters from Mercer Creek for irrigation and stock watering. Mr. French  
testified at the evidentiary hearing.

The French's property lies in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 25, T. 18 N.,  
R. 18 E.W.M. Approximately 32 acres of pasture are irrigated with water  
diverted from Mercer Creek. The pasture is flood irrigated and up to 30 head of

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cattle are raised on the land. The livestock drink from the irrigation ditches  
1 and a pond on the claimants property. During the winter when the pond freezes,  
2 the claimant's domestic well is used for stock watering. The claimants also  
3 receive Kittitas Reclamation District water for 12 acres. That water is usually  
4 used beginning in August when the flow in the creek diminishes. Mr. French  
5 explained that the prior owners only got 12 acres of KRD water because only 12  
6 acres were planted in crops and farmed when KRD was being built and the rest of  
7 the land was in pasture. So, KRD water was only bought for the cropland. At  
8 some point one of the prior owners put the entire acreage in pasture. Mr.  
9 French did not testify to how much water is used on his land.

The French property was originally owned by the Northern Pacific Railroad,  
11 who in 1889 conveyed it, along with the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25 to Michel  
12 Pott. The deed indicates that Michel Pott took out a mortgage to buy the  
13 property in 1881. Mr. French was able to identify many prior owners of his  
14 land, including Goodwin Chase, Ed Lord and John Bunker. He believe that the  
15 land has been irrigated from Mercer Creek since it was originally settled, but  
16 did not provide any evidence to show that a water right was established.  
17 However, neighboring claimants, James and Dorothy Carmody, entered Exhibit  
18 DE-789, which is an Affidavit of Water Right filed on June 2, 1890, by Michael  
19 Pott. The affidavit states that Pott claims water to irrigate his lands by  
20 means of two ditches. One ditch diverted from Mercer Creek in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
21 Section 25 and traveled west of south in a southerly direction into the SW $\frac{1}{4}$ SW $\frac{1}{4}$   
22 of Section 25. That ditch was constructed in May of 1885 and enlarged in 1886  
23 to a capacity of 250 inches (5 cfs). The second ditch takes out of the  
24 Rollinger Ditch, which diverts from Mercer Creek in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 24.

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1       The second ditch has a capacity of 200 inches (4 cfs) and was built in May of  
2       1890. The affidavit states that Pott is irrigating all of his 160 acres from  
3       these two ditches. The French property is part of the 160 acres.  
4

5       Pursuant to the requirements of RCW 90.14, Mr. French filed Water Right  
6       Claim No. 116743 asserting a right to divert 0.02 cfs, 4 acre-feet per acre from  
7       Mercer Creek for the irrigation of 26 acres and stock watering in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
8       Section 25, T. 18 N., R. 18 E.W.M. Although the claimants are irrigating a few  
9       more acres than what was asserted on WRC No. 116743, the Referee believes that  
10      the claimants have substantially complied with the requirements of the law and a  
11      small error in estimating the number of acres actually irrigated will not  
12      prevent confirmation of a water right.  
13

14      Since Mr. French did not testify to the quantity of water being used to  
15      irrigate his land, the Referee will use the quantities identified on WRC No.  
16      116743. Therefore, the Referee recommends that a right be confirmed under Court  
17      Claim No. 01777 with a May 30, 1885, date of priority for the diversion of 0.64  
18      cubic foot per second, 128 acre-feet per year for the irrigation of 32 acres and  
19      2 acre-feet per year for stock watering within that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
20      Section 25, T. 18 N., R. 18 E.W.M. lying north of the Cascade Canal.  
21

22      COURT CLAIM NO. 00778    -- Gary Melvin Galbraith  
23                                  (A) 06178                                  & Jacquelyn J. Galbraith  
24

25      The Galbraiths submitted a claim with the Court asserting a right to use  
26      waters from Wilson Creek for irrigation and stock water. Mr. Galbraith  
27      testified at the evidentiary hearing.  
28

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The Galbraiths' property is approximately five acres in size and lies  
1 within a portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M. They  
2 irrigate 2.5 acres with water diverted from Wilson Creek in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
3 Section 32. A portion of the land is pasture irrigated with surface ditches and  
4 a portion is sprinkler irrigated hay. A small pond is on the property and  
5 Wilson Creek water is run into the pond and then pumped into the sprinkler  
6 system. Livestock drink from the pond and the surface ditches during irrigation  
7 season. Mr. Galbraith did not testify to the number of stock, but the State's  
8 Investigation Report mentioned two cows were observed on the property. When Mr.  
9 Galbraith bought the property in 1972, it was all pasture that was irrigated  
10 with ditches.

The Galbraith property is part of a larger parcel for which William Rogers  
12 received a patent on January 13, 1893. The Rogers homestead consisted of the  
13 S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M. By August of 1901 the  
14 land, along with other land in the area, was owned by W. R. Thomas and remained  
15 in the Thomas family until 1950. Water rights for the Thomas property was  
16 addressed in W. R. Thomas v. James T. Roberts, et al., Decree No. 5653 signed on  
17 March 1, 1924. In the Findings of Fact for that decree, it was stated that W.  
18 R. Thomas owned the S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M.,  
19 known as the Rogers Tract, and that Rogers settled on the land in 1886 and water  
20 was first diverted for irrigating this tract in 1885. The amount of water that  
21 had been diverted and was being used was 30 inches. This decree identified  
22 other water rights that are appurtenant to other lands owned by W. R. Thomas.  
23 Besides the Galbraiths, Andrew J. and Stephanie Mills and Chester Vernon & Roma  
24 B. Stokes own land within the S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 and are asserting a  
25

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water right. Their claims are addressed on pages 363 and 519, respectively.  
1 Between the three claimants, rights are being asserted for the irrigation of a  
2 total of 33 acres. Based on the record, a right exists for the irrigation of a  
3 maximum of 30 acres, which is the maximum of acres to which the Referee can  
4 recommend that rights be confirmed. There is an additional three acres being  
5 irrigated beyond the historic water right. There is insufficient evidence in  
6 the record to show where the additional three acres are located, therefore, the  
7 Referee will recommend that the right confirmed to each claimant be only a  
8 portion of what they are asserting a right. Thirty acres is 91 percent of the  
9 total acreage being irrigated, so each claimant will be recommended a right for  
10 91 percent of the land they are irrigating. Therefore, for the Galbraiths, a  
11 right will be recommended for irrigating 2.27 acres.  
12

A reading of the Findings of Fact that preceded the Ferguson decree would  
13 suggest that another right is appurtenant to lands that include the S $\frac{1}{4}$ SW $\frac{1}{4}$  and  
14 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. The Findings of Fact state that Mrs. J. L. Bennett owned  
15 the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, with 30 acres being  
16 irrigated. However, the evidence presented by Mr. Stokes clearly shows that  
17 Mrs. Bennett did not own the S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. Claimants in the  
18 S $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, (Tirotta and Magnuson) have put into the record evidence to  
19 show that Bennett owned the S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 33, not Section 32. See  
20 pages 161 and 331 of this report for discussion of their claims.  
21

Water Right Claim No. 050563 was filed by Gary and Jacquelyn Galbraith  
22 pursuant to the requirement of RCW 90.14. It asserts a right to divert 1 inch  
23 per acre from Wilson Creek for the irrigation of 5 acres. The place of use is  
24

25  
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28

the Galbraith property and the point of diversion described is in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
1 Section 32.

2 Mr. Galbraith did not address the annual quantity of water being used on  
3 his property. Based on the instantaneous quantity contained in the decree, one  
4 inch per acre, an annual use of five acre-feet is reasonable and consistent with  
5 other neighboring water users. An additional 0.50 acre-foot per year for stock  
6 watering should be sufficient.  
7

8 The Referee recommends that a right be confirmed under Court Claim No.  
9 00778 with a June 30, 1885, date of priority for the diversion of 0.045 cubic  
10 foot per second in May and June, 0.0225 cubic foot per second in April and  
11 July 1 through October 15, 11.35 acre-feet per year for the irrigation of 2.27  
12 acres and 0.5 acre-foot per year for stock watering. The point of diversion  
13 shall be in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32.  
14

15 COURT CLAIM NO. 00903 -- Leona Gearheart  
16 & Estate of Charles Gearheart  
17 Everett O. Barney  
18 & Lanita M. Barney  
Carol Hartlaub

19 Leona and Charles Gearheart submitted a claim to the Court for use of  
20 waters from Wilson Creek for irrigation and stock watering. Leona Gearheart and  
21 Milton Lewis, a prior owner of the land, testified at the evidentiary hearing.  
22 Subsequent to the hearing portions of the property were sold to Everett O. and  
23 Lanita Barney and Carol A. Hartlaub and they were joined to the claim.  
24

The property described in the claim lies in Government Lot 2 east of Wilson  
25 Creek and Government Lot 1 of Section 5, T. 18 N., R. 19 E.W.M. The Gearhearts  
26

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originally owned 25 acres and have sold 10 acres to the Barneys and 15 acres to  
1 Ms. Hartlaub. Mrs. Gearheart has stayed attached to the claim as she is  
2 carrying the contract on the land. The Gearhearts acquired the land in 1975, at  
3 which time it was flood irrigated with water diverted from Wilson Creek. Mr.  
4 Gearheart installed a new system in order to make it more efficient. He piped  
5 the water from Wilson Creek to a pond and then pumped from the pond into a  
6 handline sprinkler system. Initially a 25 HP pump was used, but that was  
7 replaced with a 10 HP pump. The diversion used is in Government Lot 2 of  
8 Section 5, just north of the claimants' property. Alfalfa and Timothy hay was  
9 raised on the east ten acres and pasture on the rest of the land. At the time  
10 Ecology conducted the field inspection summarized in its investigation reports,  
11 Mr. Gearheart had died and the land was not being irrigated. Subsequently, the  
12 land was leased and then sold and irrigation resumed. Mrs. Gearheart estimates  
13 that 21 of the 25 acres are irrigated. They have raised up to 10 head of cattle  
14 and 5 horses, which are watered from the creek.

Pursuant to the requirements of RCW 90.14, Leo C. Beck filed Water Right  
16 Claim No. 160581 asserting a right to divert 2 cubic feet per second, 1440  
17 acre-feet per year from Dry Creek for the irrigation of 15 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$   
18 of Section 5, T. 18 N., R. 19 E.W.M. Government Lot 2 is predominantly where  
19 the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of the section would be located.

Mrs. Gearheart did not present any information in the way of chain of title  
21 or evidence of actual water use. However, the Referee did refer to exhibits  
22 placed in the record by neighboring landowners, Vernon Stokes and Everett and  
23 Lanita Barney (at the time of hearing the Barneys owned land in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
24 Section 5 and later acquired a portion of the Gearheart land and were joined to  
25

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the claim). At the time the land was settled, the claimant's land and a portion  
1 of Mr. Stokes' land was commonly owned. This land was initially owned by  
2 Northern Pacific Railroad. On December 15, 1892, the railroad sold Government  
3 Lots 1, 2 and 3 of Section 5 to S. W. Prater, who in 1898 sold it to Charles M.  
4 Hildreth. The land was sold many times between 1898 and 1912, when it was  
5 acquired by Lillian Lawrence. In 1918 Lawrence sold a portion of Government Lot  
6 3 to Mary C. LeClerc and the remaining land stayed in the Lawrence family until  
7 1939 when half interest in the land was sold to Milton Lewis. Mr. Lewis'  
8 partner, Phil Lawrence, was the nephew of the Lillian Lawrence and in 1916 he  
9 began farming the land and leasing it from his aunts.  
10

Milton Lewis testified about historic water use on the land. In 1922 he  
11 was hired by Phil Lawrence, who later became his partner, to assist with chores  
12 and herding cattle on the farm and worked there summers and weekends. Mr. Lewis  
13 raised and irrigated hay, grain, and pasture. The claimants' land was part of a  
14 larger parcel at one time owned by Mr. Lewis, on which he had a dairy farm. Mr.  
15 Lewis testified at length about the various controversies over water in the  
16 area, but this land was never involved in any of the past litigation.  
17

The Referee has reviewed the various decrees and judgments regarding Wilson  
18 and Naneum Creeks and none of the owners of the land during the time of the  
19 litigation were parties to any of the cases. Exhibit No. DE-1307 offered by Mr.  
20 Stokes is an Affidavit of Water Right filed by J. F. LeClerc and W. A. Jordin  
21 dated February 22, 1883, stating that during the year 1872 Uman Galloway dug a  
22 ditch capable of conveying 700 inches of water and appropriated 400 inches of  
23 water. The ditch reportedly commenced near the center of Section 32, T. 19 N.,  
24 R. 19 E.W.M. and ran in a southwesterly direction. The ditch was taken out for  
25

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the purpose of irrigating land in Sections 5, 6, and 7 in T. 18 N., R. 19  
1 E.W.M. There is nothing in the record to show that the individuals that filed  
2 the affidavit of water right had any interest in the claimants land. The  
3 affidavit states the ditch commenced near the center of Section 32. The state's  
4 exhibit map does not show a natural water course near the center of Section 32.  
5 The Referee recognizes that the creeks in the area may have changed courses over  
6 the years. Wilson Creek and Whiskey Creek both flow through Section 32, but not  
7 near the center of the Section.

Milton Lewis was a party to Ecology v. Carlson and was identified in the  
9 Order Pendente Lite as having a right with an 1872 date of priority for use of  
10 0.67 cubic foot per second. Review of the report shows that this award was  
11 based on the Affidavit of Water Right discussed in the previous paragraph. Mr.  
12 Maddox in his report chose to assume that the water right was appurtenant to all  
13 of the irrigated lands in Sections 5, 6 and 7, irrespective of whether there was  
14 any evidence that water had actually been delivered to the land in the late  
15 1800's and early 1900's. This Referee will not make that assumption.

The evidence clearly shows that the claimants' land has been farmed and  
17 irrigated since at least the 1920's. The land is riparian to Wilson Creek and  
18 under the Riparian Doctrine, as former railroad land, would have a priority date  
19 of May 24, 1884, the date the map of definite location was filed. The Referee  
20 recommends that a right be confirmed under Court Claim No. 00903 for the  
21 diversion from Wilson Creek of 0.42 cubic foot per second, 84 acre-feet per year  
22 for the irrigation of 21 acres in a portion of Government Lot 2 east of Wilson  
23 Creek and a portion of the W½W½ of Government Lot 1, both in Section 5,  
24 T. 18 N., R. 19 E.W.M.

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Since the land has been subdivided and sold, the Referee will divide the  
right amongst the two parcels. Although the state's exhibit map, SE-2 shows all  
of the land irrigated, Mrs. Gearheart testified that 21 of the 25 acres are  
irrigated, or 84% of the total land. The record does not show where the 4  
unirrigated acres lie, so, each of the current landowners will get a water right  
for 84% of their parcel, which results in the Barneys getting a right for 0.168  
cubic foot per second, 33.6 acre-feet per year for the irrigation of 8.4 acres  
and Ms. Hartlaub a right for 0.252 cubic foot per second, 50.4 acre-feet per  
year for the irrigation of 12.6 acres. An additional one acre-foot per year  
will be allowed on each right for stock watering.

Court Claim No. 00903 also asserts a right to use an unnamed spring for  
irrigation. However, there was no testimony about use of the spring.  
Therefore, the Referee has no facts by which to determine whether a water right  
exists for use of the spring. The Referee cannot recommend confirmation of a  
water for use of the spring.

COURT CLAIM NO. 02130 -- Earl T. Glauert  
& Ellen E. Glauert

The Glauerts submitted a Statement of Claim to the Court asserting a right  
to used waters from an unnamed creek tributary to Wilson Creek for irrigation,  
stock watering and fish propagation. Mr. Glauert appeared and testified at the  
evidentiary hearing.

The Glauerts own approximately 20 acres in a portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 18 and a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 19, T. 18 N., R. 19 E.W.M.  
They are asserting rights to an unnamed stream that flows through their property

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1 and to springs that emerge on the property. They irrigate a 16 acre pasture and  
2 about 5 acres of lawn, garden and landscape around their home. Although the  
3 source of water is described as an unnamed stream, the Referee believes it is a  
4 continuation of a ditch that diverts water from Wilson Creek and captures return  
5 flows off the neighboring Mays property. The springs that emerge on the  
6 property also flow into the ditch. The Glauerts are seeking a right to use 8  
7 acre-feet per acre irrigated. They did not testify to the instantaneous  
8 quantity of water used. Don Mays has farmed and run cattle on the pasture since  
9 the early 1980's. There are three ponds on the property that are fed by shallow  
10 ground water. Mr. Glauert testified to a conversation with the daughter of the  
11 original homesteader, John B. Jones, who said one of the ponds was built on a  
12 swampy area.

13 Several water right claims (WRC) were filed by the Glauerts and one was  
14 filed by a prior owner of a portion of the property, C. L. Malone. WRC No.  
15 140578 asserts a right to use 50 gpm, 40 acre-feet per year from an unnamed  
16 stream for irrigation of 8 acres and stock water, with water first being used in  
17 1879. WRC No. 140580 asserts a right to use 90 gpm, 36 acre-feet per year from  
18 spring (No. 1) for irrigation of 12 acres stock water and to fill a pond for  
19 fish propagation with a date of first water use of 1879. WRC No. 140581 asserts  
20 a right to use 75 gpm, 30 acre-feet per year from spring (No. 2) for irrigation  
21 of 12 acres, stock water, and to fill a pond for fish propagation with a date of  
22 first use in 1879. WRC No. 140582 asserts a right to use 15 gpm, 6 acre-feet  
23 per year from spring (No. 3) for irrigation of 12 acres, stock water, and fish  
24 propagation, with first water use in 1879. Attached to these claims filed by  
25 the Glauerts are several maps of their property showing the location of the

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stream, springs and ponds. One map contains a statement from Mrs. N. J.  
1 Stonebraker, daughter of John B. Jones, in which she says that several springs  
2 located north of the house were used for household, stock and irrigation  
3 purposes during the years her family owned the property. Lastly, WRC No. 144872  
4 was filed by C. L. Malone asserting a right to use 5 cfs, 1800 acre-feet per  
5 year from Wilson Creek for the irrigation of 300 acres in the S $\frac{1}{2}$  of Section 18,  
6 T. 18 N., R. 19 E.W.M.

The Glauerts home is built where the original John B. Jones homestead was  
8 located. Jones was a defendant in Sander v. Jones (the Jones in the title of  
9 the case). The Decision that preceded the decree stated that Mr. Jones owned  
10 the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 18 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 19, both in T. 18 N.,  
11 R. 19 E.W.M. and had a possessory right to the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19 under  
12 contract to purchase with the Northern Pacific Railroad. It further identified  
13 that Jones and his predecessor, Jordin, had begun appropriating water from  
14 Wilson Creek in 1872 and by 1885 had appropriated 60 inches and since 1885 Jones  
15 appropriation had been 60 inches. The decree then confirmed a right to Jones  
16 for the use of 60 inches. The decree also stated that one inch of water was  
17 sufficient to irrigate one acre until the end of June and after than one-half  
18 inch of water was sufficient for each acre. Therefore, the Referee concludes  
19 that Jones had a right to use 60 inches of water for the irrigation of 60  
20 acres.

Besides the Glauerts, two other claimants in this proceeding own and  
22 irrigate land that was owned by John B. Jones at the time of the decree. Ralph  
23 Strand owns approximately 30 acres within the former Jones ownership and is  
24 asserting a right to irrigate his entire ownership. Don and Paula Mays are

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irrigating between 100 and 110 acres of land once owned by John B. Jones with  
1 water diverted from Wilson Creek.  
2

The ideal situation would be for the Referee to know exactly where the 60  
3 irrigated acres were in 1890 when the Sander v. Jones decree was entered.  
4 However, that is not possible. Therefore, the Referee intends to divide the 60  
5 acres proportionately between the three claimants who own portions of the land  
6 owned by Jones at the time the decree was entered. Since both the Mays and Mr.  
7 Strand own land that was not owned by Jones at the time the decree was entered,  
8 the Referee will only consider that portion that was described in the decree.  
9 The Referee has concluded that the Mays own approximately 66 percent of the land  
10 described in the decree, Mr. Strand 22 percent and the Glauerts 11 percent.  
11 Therefore, the Referee intends to recommend that a right be confirmed to the  
12 Mays for 39.8 acres, to Mr. Strand for 13.4 acres and to the Glauerts 6.8  
13 acres.  
14

As previously mentioned, the Referee believes that the unnamed stream used  
15 by the Glauerts carries Wilson Creek water. However, it is fed by the springs  
16 that are located on the property. The statement by Mrs. Stonebraker indicates  
17 that the springs were in use when the land was settled. There was no testimony  
18 about the quantity of water that flows from the springs into the ditch, nor was  
19 there an estimate of the number of acres that is being irrigated from the  
20 springs. Therefore, the Referee will not at this time recommend confirmation of  
21 a water right for use of the springs, even though it is apparent a right does  
22 exist. Until there is testimony about the extent of the beneficial use of that  
23 right, there will be no recommendation to confirm. The Referee is also not  
24 recommending that a right be confirmed for filling the ponds for fish  
25

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propagation. There has been no testimony about historic use of water for this purpose. Mrs. Stonebraker's statement does not mention fish propagation. It has been the Referee's experience that this type of use is fairly modern, not one that occurred in the late 1800's when the rights for this land were being established. The claimants would need to seek authorization from Ecology to add a purpose of use to any right herein confirmed.

The Referee recommends that a right be confirmed under Court Claim No. 02130 with a June 30, 1872, date of priority for the diversion of 0.136 cubic foot per second from May 1 through June 30 and 0.068 cubic foot per second, 34 acre-feet per year in April and from July 1 through October 15, for irrigation of 6.8 acres and stock watering in a portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 19.

COURT CLAIM NO. 01870 -- Terry E. Goodrich  
                                  & Carol Goodrich  
                                  Ralph D. Strand  
                                  & Kathryn A. Strand

The Goodrichs filed Court Claim No. 01870 asserting a right to use waters from Wilson Creek for the irrigation of 175 acres and stock watering. Ralph D. and Kathryn A. Strand were joined to the claim on January 23, 1991. Mr. Strand testified at the evidentiary hearing.

According to Mr. Strand's testimony, he and his wife acquired the land in 1990 from Farmers Home Administration. The Goodriches had owned it since 1979, when it was bought from Charles Malone. The Strands own a total of 198 acres lying in Government Lots 1 and 2, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , most of the S $\frac{1}{4}$ NE $\frac{1}{4}$  lying west of

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1 Wilson Creek and a portion of that part of the N $\frac{1}{4}$ NE $\frac{1}{4}$  lying west of Wilson Creek,  
2 all in T. 18 N., R. 19 E.W.M. The land was pasture at the time of the hearing,  
3 but had been in hay and grain previously. Besides Wilson Creek, water delivered  
4 by the Kittitas Reclamation District is also used to irrigate the land.

5 Mr. Strand was not able to testify about historical water use on the  
6 property, however, he did note old structures and ditches. He traced the chain  
7 of title for Government Lots 1 and 2 of Section 19 and recited that chain at the  
8 hearing. A portion of the Strand property was addressed in the Sanders v. Jones  
9 decree. The Decision that preceded the decree stated that Mr. Jones owned the  
10 S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18 and the N $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 19, both in T. 18 N., R. 19 E.W.M.  
11 and had a possessory right to the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19 under contract to  
12 purchase with the Northern Pacific Railroad. Mr. Strand owns about 30 acres of  
13 the land that was owned by John B. Jones at the time of the decree. It further  
14 identified that Jones and his predecessor, Jordin had begun appropriating water  
15 from Wilson Creek in 1872 and by 1885 had appropriated 60 inches and since 1885  
16 Jones appropriation had been 60 inches. The decree then confirmed a right to  
17 Jones for the use of 60 inches. The decree also stated that one inch of water  
18 was sufficient to irrigate one acre until the end of June and after than  
19 one-half inch of water was sufficient for each acre. Therefore, the Referee  
20 concludes that Jones had a right to use 60 inches of water for the irrigation of  
21 60 acres.

22 The Strands are irrigating almost 200 acres, most of which with water  
23 diverted from Wilson Creek. They have presented no evidence to show that an  
24 additional water right was established for their land after entry of the Sander  
25 v. Jones decree, or that the land not addressed in the decree had other legally

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1 established water rights. Additionally, two other claimants in this proceeding  
2 own and irrigate land that was owned by John B. Jones at the time of the  
3 decree. Earl Glauert owns approximately 20 acres and is asserting a right 19  
4 acres and Don E. and Paula Mays own approximately 100 acres within the former  
5 Jones ownership and is asserting a right to irrigate their entire ownership.

6 The ideal situation would be for the Referee to know exactly where the 60  
7 irrigated acres were in 1890 when the Sander v. Jones decree was entered.  
8 However, that is not possible. Therefore, the Referee intends to divide the 60  
9 acres proportionately between the three claimants who own portions of the land  
10 owned by Jones at the time the decree was entered. Since both the Mays and Mr.  
11 Strand own land that was not owned by Jones at the time the decree was entered,  
12 the Referee will only consider that portion that was described in the decree.  
13 The Referee has concluded that the Mays own about 66 percent of the land  
14 described in the decree, Mr. Strand 22 percent and the Glauerts 11 percent.  
15 Therefore, the Referee intends to recommend that a right be confirmed to the  
16 Mays for 39.8 acres, to Mr. Strand for 13.4 acres and to the Glauerts 6.8  
17 acres.

18 Two water right claims (WRC) were filed pursuant to the requirements of RCW  
19 90.14 by C. L. Malone, who owned the Strand land during the filing period. One  
20 claim, WRC No. 144873 asserts a right to use 5 cubic feet per second, 1800  
21 acre-feet per year from Wilson Creek for the irrigation of 300 acres and stock  
22 water in the N $\frac{1}{2}$  of Section 19, T. 18 N., R. 19 E.W.M., with a date of first  
23 water use prior to 1900.

24 Based on the foregoing, the Referee recommends that a right be confirmed  
25 under Court Claim No. 01870 with a priority date of June 30, 1872, for the

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1 diversion from Wilson Creek of 0.268 cubic foot per second from May 1 through  
2 June 30 and 0.134 in April and from July 1 through October 15, 67 acre-feet per  
3 year for the irrigation of 13.4 acres and stock watering in a portion of the  
4 NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18.

5 Since the claimant has not shown that water rights were established for the  
6 remainder of the land, no other rights are recommended for confirmation.  
7

8 COURT CLAIM NO. 00253 -- Jay Gorman  
9 (A) 02103 Dick Colasurdo  
10 (A) 02104 & Anna Colasurdo

11 John (Jay) and Diane Gorman submitted a claim to the Court for use of  
12 waters from three infiltration trenches, Whiskey Creek and Currier Creek. Only  
13 the right to use waters from Whiskey Creek will be addressed in this report.  
14 Currier Creek lies in Subbasin No. 7 and the claim to use that water was  
15 addressed in the Subbasin No. 7 Report of Referee. Infiltration trenches  
16 generally are means to withdraw shallow-occurring ground water. Rights to the  
17 use of ground water are not being considered in this adjudication. Therefore,  
18 unless evidence is presented to show that the infiltration trenches are means to  
19 use surface waters, they will not be considered. On September 5, 1990, Dick and  
20 Anna Colasurdo were joined to the claim. Mr. Gorman testified at the  
21 evidentiary hearing.

22 The claimants' property lies predominantly in Section 27, T. 18 N.,  
23 R. 18 E.W.M. Their ownership does extend into Section 28, however, according to  
24 Mr. Gorman's testimony, that land is not irrigated with water diverted from  
25 Whiskey Creek. The Gormans own a 4.5 acre parcel that lies in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
26 Section 27, however, that parcel is not irrigated with Whiskey Creek water.

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Therefore, the Referee does not recommend that a water right be confirmed to  
1 John (Jay) and Diane Gorman under Court Claim No. 00253.

2 Dick and Anna Colasurdo purchased 59.6 acres from the Gormans and  
3 approximately 12 acres of that are irrigated with water diverted from Whiskey  
4 Creek. The crop on the 12 acres has varied over the years; including grain,  
5 Timothy hay, alfalfa hay and pasture. When livestock are on the property, they  
6 have access to Whiskey Creek and drink directly from the creek. They also can  
7 drink from the irrigation ditches. The Gormans bought the property in 1973 from  
8 the Wippel family. Mr. Wippel told Mr. Gorman that his father bought the land  
9 when he came from England in the late 1800's. Mr. Gorman understood that the  
10 Wippels continuously farmed the land from the time they acquired it. A priority  
11 date of 1883 is being asserted. However, a chain of title for Section 27  
12 attached to Amended Claim (A)2104, indicates that 1911 was the year Simon Wippel  
13 first acquired land in Section 27. The chain sheet does not show which land in  
14 Section 27 he acquired. Mr. Gorman testified that copies of water right  
15 documents filed by Simon and Gertrude Wippel were in the office of the Lathrop  
16 Law Firm. Those documents are not in the record and would be very useful in  
17 determining what water rights might be appurtenant to the property, as wells as  
18 the appropriate priority date.

19 Water Right Claim No. 023890 was filed by Melvin Wippel pursuant to RCW  
20 90.14. It asserts a right to divert 0.06 cfs, 12 acre-feet per year from  
21 Whiskey Creek for the irrigation of 3 acres. The place of water use described  
22 on the claim is the S $\frac{1}{2}$ SW $\frac{1}{4}$ S $\frac{1}{4}$ SW $\frac{1}{4}$ . The section, township and range are not  
23 identified. However, the point of diversion is described as being 780 feet  
24 north and 12 feet west of the south quarter corner of Section 27, T. 18 N.,

25  
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R. 18 E.W.M. It would not be unreasonable to conclude that the place of use is  
1 also in Section 27. As noted, the described place of use would then be the  
2 SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 27. The 12 acres irrigated from Whiskey Creek mostly lie in  
3 the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 27. Additionally, WRC No. 023890 asserts a right to  
4 irrigate 3 acres, not the 12 currently irrigated. These discrepancies were not  
5 addressed at the hearing.

6 Due to the discrepancies between WRC No. 023890 and the claimants actual  
7 irrigation practice and the lack of evidence to show that a water right was  
8 established for use of Whiskey Creek, the Referee cannot recommend that a water  
9 right be confirmed to the Colasurdos under Court Claim No. 00253.  
10

11 COURT CLAIM NO. 01945 -- Jeff Gorman  
12 & Sheryl Gorman

13 The referenced Court claim was filed asserting a right to use waters from  
14 Reecer Creek, Whiskey Creek, Dry Creek, an unnamed spring and wastewater.  
15 Reecer and Dry Creeks are within Subbasin No. 7 and rights to the use of that  
16 water was addressed in the Report of Referee for Subbasin No. 7. Jay Gorman,  
17 who is Jeff's father, testified at the evidentiary hearing.

18 The Gorman's property lies in the E $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 27, T. 18 N.,  
19 R. 18 E.W.M. It is 3.5 acres in size. The southerly two acres has been sold to  
20 Balbir Singh and the Gormans continue to own the northerly 1.5 acres. Mr. Singh  
21 has not been joined to the claim, in spite of the Referee advising that it  
22 should be done. Whiskey Creek, diverted near the northeast corner of the land,  
23 is used to irrigate both the land retained by the Gormans and that bought by Mr.  
24 Singh. Alfalfa hay is planted and the land is rill irrigated.  
25

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1       The land described in Court Claim No. 01945 is part of land once owned by  
2       the Wippel family. Mr. Gorman testified that Simon Wippel acquired the land in  
3       the 1800's when he arrived from England. However, a chain of title attached to  
4       the claim shows that Wippel first acquired land in Section 27 in 1911. The  
5       chain of title does not show the location in Section 27 of the lands he  
6       acquired. Mr. Gorman testified that water right documents filed by Wippel are  
7       in the Lathrop Law Firm office. Those documents were not offered as exhibits.

8       Water Right Claim (WRC) No. 023890 was filed by Melvin Wippel pursuant to  
9       the requirements of RCW 90.14. It asserts a right to divert 0.06 cfs, 12  
10      acre-feet per year from Whiskey Creek for the irrigation of 3 acres. The place  
11      of water use described on the claim is the S%SW%SW%. The section, township and  
12      range are not identified. However, the point of diversion is described as being  
13      780 feet north and 12 feet west of the south quarter corner of Section 27,  
14      T. 18 N., R. 18 E.W.M. It would not be unreasonable to conclude that the place  
15      of use is also in Section 27. As noted, the described place of use would then  
16      be the S%SW%SW% of Section 27. The land Gorman/Singh land is in the S%SE%SW% of  
17      Section 27, which is not described on the claim. Additionally, a right is being  
18      asserted by Dick and Anna Colasurdo under Court Claim No. 00253 for the  
19      irrigation of 12 acres and WRC No. 023890 is the only RCW 90.14 claim that could  
20      possibly cover their use. That results in rights being asserted for the  
21      irrigation of 15 acres with a right only being asserted in the 90.14 claim for 3  
22      acres. The inconsistency between WRC No. 023890 and the right being asserted in  
23      this proceeding were not addressed at the hearing.

24       Due to the discrepancies between WRC No. 023890 and the claimants actual  
25      irrigation practice and the lack of evidence to show that a water right was

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1 established for use of Whiskey Creek, the Referee cannot recommend that a water  
2 right be confirmed to the Colasurdos under Court Claim No. 01945.  
3

4 COURT CLAIM NO. 01531 -- Allan R. Grigg  
5 & Teresa M. Grigg

6 Allan R. and Teresa M. Grigg submitted a claim to the Court for the use of  
7 waters from Wilson Creek. Mr. Grigg testified at the evidentiary hearing.  
8 Although not formally representing the Griggs, Attorney John P. Gilreath  
9 assisted Mr. Grigg with the presentation of his testimony and evidence in  
support of the claim.

10 The Grigg's property is a small part of Government Lot 2 and approximately  
11 the N½ of Government Lot 3 in Section 19, T. 17 N., R. 17 E.W.M. They own 12.75  
12 acres and are asserting a right to irrigate 8 acres of pasture and approximately  
13 4 acres of lawn and garden area with water diverted from Wilson Creek. The  
14 diversion from the creek is located approximately 1250 feet north and 100 feet  
15 east of the west quarter corner of Section 19, being near the northwest corner  
16 of Government Lot 2 of Section 19. Mr. Grigg testified to diverting 1 cubic  
17 foot per second for irrigation and using 10 acre-feet per year on each irrigated  
18 acre. Up to 8 head of livestock are raised on the land, drinking from the  
19 ditches, a spring with outflow along the north property line and a small pond  
20 dug in the northwest corner of the property. The spring appears to be the  
21 primary source of stock watering during the months when irrigation water is not  
22 in the ditch. The land is flood irrigated with some of the lawn and garden area  
23 also sprinkler irrigated from the domestic well. The diversion from Wilson Creek  
24 does not feed the small pond, which captures shallow ground water. There is no  
25

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1 withdrawal of water from the pond. Livestock have access to drink directly from  
2 the pond.

3 Water Right Claim No. 200009 was filed by Mary Wippel, a former owner of  
4 the land, pursuant to the requirements of RCW 90.14. It asserts a right to  
5 divert 3.5 cfs, 500 acre-feet per year from Wilson Creek for the irrigation of  
6 61 acres in that portion of Government Lots 2 and 3 lying south and west of  
7 Wilson Creek. The point of diversion described on WRC No. 200009 is near the  
8 southwest corner of Section 18, T. 17 N., R. 19 E.W.M. State's Exhibit SE-2  
9 does show a diversion near the southwest corner of Section 18, just off of  
10 Wilson Creek with a ditch running south along the west section line of  
11 Section 19.

12 The claimants' land was originally conveyed by the United States to  
13 Northern Pacific Railroad Company, who sold it to George W. Carver on August 9,  
14 1889. Carver owned the land until 1905, when he sold to the Fitterer Brothers.  
15 The Griggs submitted three documents into the record that specifically address  
16 water rights. DE-1030 is a Water Right Statement by S. W. Maxey and Jacob  
17 Powell stating that in May of 1885 Maxey constructed a ditch from Wilson Creek  
18 and appropriated 200 inches of water. The head of the ditch was at a slough,  
19 emptying into Wilson Creek, just above the beaver dam on said creek in Section  
20 19, T. 17 N, R. 19 E.W.M. near the northeast corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19  
21 and running in a southwesterly direction about one-half mile into Section 25,  
22 T. 17 N., R. 18 E.W.M. There is no mention of water use from this ditch in  
23 Section 19. Part of the evidence put in the record in support of Claim No.  
24 2133, Michael Moeur, was a copy of the C. H. Swigart Survey for this area, which  
25 does show ditches off of Wilson Creek. However, there is no ditch shown

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1 diverting from Wilson Creek in the SW $\frac{1}{4}$  of Section 19. There does seem to be two  
2 diversions in the NW $\frac{1}{4}$  of Section 19 and a diversion near the southwest corner of  
3 Section 18, labeled Fitterer #1 and Fitterer #2. F. G. Fitterer sold Government  
4 Lots 1, 2 and 3 of Section 19, which would include the Grigg land in 1909 to  
5 Luttrell and McIntire together with one share of the Bull Canal Stock. No other  
6 water rights are mentioned. The Fitterer family apparently got the land back  
7 and Frank Fitterer sold Government Lots 1, 2 and 3 of Section 19, along with a  
8 portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 24, along with one share of Bull Ditch stock  
9 and 20 inches of water in the McLeod, Clark and Stein Ditch. The Referee  
10 believes that the water from the McLeod, Clark and Stein Ditch were appurtenant  
11 to the described lands in Section 24. Also in the record as part of the Moeur  
12 claim is DE-1627 which is three statements that address the Tjossem Ditch and  
13 the Steen (Stein) McLeod and Clark Ditch. These statements identify those  
14 individuals using the ditch, that they are all successors to Joel Clark, and the  
15 sections where their land lies. The Griggs are not successors to Clark and  
16 their land does not lie in the identified sections, which includes Section 24.  
17 The Stein McLeod and Clark Ditch carries water diverted from the Yakima River  
18 and the Griggs are not asserting a right to the Yakima River and have offered no  
19 evidence to show that Yakima River has ever been used on their land.

20       Although the Maxey-Powell water right statement would indicate that a ditch  
21 potentially had been constructed across the claimants property, none of the  
22 deeds reference the ditch or any easement related to the ditch. The statement  
23 indicates the ditch was intended to service lands owned by Maxey and Powell.  
24 There is no evidence the claimants' land was ever owned by either of these  
25 people. The claimants also did not present any testimony to show that their land

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had been irrigated prior to their acquiring ownership. Additionally, the  
1 existence of Bull Ditch Company stock and the lands being situated within the  
2 Bull Ditch Company service area needs to be addressed.  
3

In light of the uncertainty that a water right was established to use  
4 Wilson Creek for irrigation purposes on this land, the Referee cannot recommend  
5 that a water right be confirmed. Livestock drinking directly from the pond and  
6 the outflow from the spring is covered by the stock water stipulation (see page  
7 4 of this report) and no additional right is necessary for that use.  
8

9  
10 COURT CLAIM NO. 02268 -- Bill Haberman  
11 & Bill Haberman, Jr.  
Kevin McDowell  
& Becky McDowell

12 The Habermans submitted a statement of claim to the Court asserting a right  
13 to use several water sources in the upper Yakima River basin, including Whiskey  
14 Creek. On February 28, 1989, Kevin and Becky McDowell were joined to the  
15 claim. All the claimants were represented by Attorney Hugh Spall at the time of  
16 the evidentiary hearing and Bill Haberman, Sr. and Kevin McDowell testified at  
17 the hearing. In 1998 Mr. Spall withdrew as their attorney and Jeff Slothower  
18 filed a Notice of Appearance for all of the claimants associated with Claim No.  
19 02268.

20 When the claim was originally filed, the Habermans owned the SW $\frac{1}{4}$ SE $\frac{1}{4}$  and  
21 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, T. 18 N., R. 18 E.W.M. Subsequently, the SW $\frac{1}{4}$ SE $\frac{1}{4}$  was  
22 deeded to Kevin and Becky McDowell. The McDowells are asserting a right to  
23 irrigate 38 acres within the parcel they now own. The Habermans still own the  
24

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1 NE $\frac{1}{4}$ SE $\frac{1}{4}$  and are asserting a right to irrigate ten acres in that parcel with water  
2 diverted from Whiskey Creek.

3 Water is diverted from Whiskey Creek on the Dippel Brothers property near the  
4 west quarter corner of Section 13, T. 18 N., R. 18 E.W.M. and is carried in an  
5 open ditch to the claimants' land. Mr. Haberman estimated that he diverts 2 cfs  
6 to irrigate his ten acres and Mr. McDowell estimated that he used 4 cfs.

7 Pasture grass is grown on the property, which is used to raise livestock. Mr.  
8 Haberman has approximately 30 cow/calf pairs on his land and Mr. McDowell has  
9 had 200 sheep or 50 yearlings on his parcel.

10 A right is being asserted with a priority date of 1889, which according to  
11 the testimony is when the patent issued. The patent was not placed in the  
12 record. According to Mr. Haberman, it is not possible to grow pasture and raise  
13 livestock in this area without irrigation water, therefore, he believes that  
14 water was used on the land from the time it was homesteaded. However, he was  
15 unable to provide any evidence of this. He testified that his uncle George  
16 Rominger owned the land at one time and he was sure his uncle irrigated. That  
17 does not assist in determining if a water right was established. Mr. Rominger  
18 sold to the Habermans in 1953, so the fact he was irrigating does not show that  
19 a water right was legally established. Evidence of water use in the early  
20 1900's is necessary to show that a water right was legally established. That  
21 evidence is missing.

22 Additionally, there is no record that a claim was filed pursuant to RCW  
23 90.14. RCW 90.14.071 provides that any person failing to file a claim waives  
24 and relinquishes any right that may have existed.

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1           Due to the lack of evidence to show that a water right was legally  
2           established through use prior to June 6, 1917, and failure to file a claim  
3           pursuant to RCW 90.14, the Referee cannot recommend that a right be confirmed.  
4

5           COURT CLAIM NO. 00620    -- George Haberman  
6    & Ruby Haberman  
7    Dale Haberman  
8    & Kathy Haberman

9           George and Ruby Haberman filed Court Claim No. 00620 asserting rights to  
10          irrigate lands with water diverted from Whiskey Creek and Naneum Creek. Dale  
11          and Kathy Haberman were joined to the claim for lands irrigated from Naneum  
12          Creek in Section 28, T. 18 N., R. 18 E.W.M. Attorney J. Jay Carroll represented  
13          the Habermans at the evidentiary hearing for the lands in Section 28. Joe  
14          Haberman, the claimant's son, appeared pro se at the hearing for the lands  
15          irrigated with water diverted from Whiskey Creek.

16          The George Habermans are asserting a right to irrigate 140 acres in the  
17          SWSE% of Section 31, T. 19 N., R. 18 E.W.M. and Government Lots 1 and 2 in  
18          Section 6, T. 18 N., R. 18 E.W.M. with water diverted from Whiskey Creek.  
19          According to Mr. Haberman's testimony, this land has been in the Haberman family  
20          since 1896.

21          There was very little evidence presented to show the historical ownership  
22          of the land. A statement by Ruby Haberman, DE-1186, was the only exhibit  
23          offered for the portion of the claim related to use of Whiskey Creek. When Mrs.  
24          Haberman was a child, her family owned land in the Wilson Creek Canyon. Around  
25          1910 to 1912, Mrs. Haberman would travel on weekends from Ellensburg, where she  
26          stayed to attend school, to the family farm and would pass the Lovelace farm.

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She recalls there being a small orchard, two or three acres in size, and  
1 irrigated alfalfa fields behind the orchard. At that time the land was owned by  
2 the Habermans, who would later become her in-laws. The statement provided no  
3 specifics on number of acres or source of water being used to irrigate the  
4 land. The exhibit indicates that the Lovelace farm was in the N $\frac{1}{2}$ NE $\frac{1}{4}$  of  
5 Section 6.

Attached to the court claim are two Affidavits of Water Right. The first  
7 was filed by William Lovelace on May 17, 1890. The affidavit states that  
8 Lovelace had constructed a ditch known as the Lovelace Ditch in 1885 from  
9 Galloway Creek and had appropriated 100 inches of water (2 cubic feet per  
10 second) for use in the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 6, T. 18 N., R. 19 E.W.M. The Referee  
11 is not aware of any creeks in the area named Galloway Creek. Whiskey Creek is  
12 the only creek shown on the map near the claimant's property.  
13

A second Affidavit of Water Right was filed by J. F. LeClerc and W. A.  
14 Jordan on May 19, 1890, stating that Amanda Galloway in 1872 had constructed the  
15 Galloway and Jordan Ditch capable of conveying 700 inches of water and that  
16 LeClerc and Jordan had appropriated 400 inches of water (8 cubic feet per  
17 second) to be carried in the ditch. The ditch started in Section 32, T. 19 N.,  
18 R. 18 E.W.M., ran in a southwesterly direction and it was constructed to  
19 irrigate Sections 5, 6, and 7, T. 18 N., R. 19 E.W.M. Whiskey Creek runs  
20 through Section 32, as does Wilson Creek. Considering the sequence of events,  
21 the Referee suspects that Galloway Creek referred to in the Lovelace affidavit  
22 is really Galloway Ditch.  
23

There is no evidence in the record about historical water use or ownership  
24 of the lands in the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 31. Mr. Haberman testified in general that  
25

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the land has been irrigated since his family acquired it, however, nothing has  
1  
been offered to show that water rights were established for the lands in  
2  
Section 31. The affidavits of water rights, along with Mrs. Haberman's  
3  
statement do show establishment of a right and beneficial use of water on the  
4  
lands in the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 6, but that type of evidence is lacking for the  
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lands in Section 31.  
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Of the 140 acres irrigated, the Referee estimates that 60 irrigated acres lie below the ditch in the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 31 and that all of the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 6 is irrigated. Mr. Haberman testified to efforts to measure water and to his belief that at least 3 cubic feet per second is used to irrigate the land. The flow in the creek declines over the summer and the creek is pretty much dry by mid-July. After that they only use water periodically as it is available. He did not testify to the annual quantity of water used on the property. A maximum of 50 cow/calf pairs are kept on the land for up to 120 days each year. One acre-foot of water per year would be sufficient for that number of stock.

Water Right Claim No. 002481 was filed pursuant to the requirements of RCW 90.14 asserting a right to divert 2 cubic feet per second, 600 acre-feet per year from Whiskey Creek for the irrigation of 120 acres and stock water in the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 31 and the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 6. The 2 cubic feet per second is consistent with the Lovelace Affidavit of Water Right. The 600 acre-feet per year identified on the claim for the irrigation of 120 acres is 5 acre-feet per year per acre irrigated, which is not unreasonable for this area. Lacking definitive testimony of the annual quantity of water used, the Referee will use 5 acre-feet per year per acre irrigated.

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There has been sufficient evidence presented to show that a water right was  
1 established for Government Lots 1 and 2 (N $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 6, and that use has  
2 continued to the present. Therefore, the Referee recommends that a right be  
3 confirmed with a June 30, 1885, date of priority for the diversion of 2 cubic  
4 feet per second, 400 acre-feet per year from Whiskey Creek for the irrigation of  
5 80 acres and 1 acre-foot per year for stock watering in Government Lots 1 and 2  
6 of Section 6, T. 18 N., R. 19 E.W.M. The point of diversion is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
7 Section 32, T. 19 N., R. 19 E.W.M.

The Referee cannot recommend confirmation of a water right for the lands in  
9 the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 because there has been no evidence presented to show  
10 that a water right was legally established.

The claimants also own and irrigate 155 acres of land in the SW $\frac{1}{4}$  of  
12 Section 28, T. 18 N., R. 19 E.W.M. The land is planted in Timothy hay, pasture  
13 and grain, all of which is irrigated with a combination of open ditches, rills  
14 and gated pipe. Up to 90 head of cattle are raised on the land and drink from  
15 Naneum Creek as it flows through the property. This type of non-diversionary  
16 stock water use is covered by the stock water stipulation discussed on page 4 of  
17 this report. George and Ruby Haberman acquired the land in 1941, however, the  
18 family's knowledge of the land preceded that date as other members of the  
19 Haberman family owned and farmed land in the NE $\frac{1}{4}$  of Section 29. Water is  
20 diverted from Naneum Creek at three points; the northern most is into the  
21 Ferguson Ditch in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, a second diversion is in the  
22 SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28, on the Antonich property and a third diversion is on  
23 the claimants' land in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28. There was no testimony about

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1 the quantity of water diverted from the creek for use on the land, however, the  
2 claimant is asserting a right to 1240 acre-feet per year.  
3

4       The Habermans are basing their water right on the Ferguson decree, which  
5 awarded a Class 10 right, which would have an 1880 date of priority, to Norman  
6 Burroughs, who owned the land at that time. The right awarded was for the use  
7 of 100 inches of water, or 2.0 cubic feet per second. The Findings of Fact  
8 stated that Burroughs owned 160 acres in the SW $\frac{1}{4}$  of Section 28, but 100 acres  
9 were under cultivation at that time. The decree awarded one inch of water in  
10 May and June for each acre irrigated and one-half inch of water the rest of the  
11 year. An award of 100 inches was based on 100 acres having been cultivated and  
12 irrigated at the time of the decree. In spite of the decree awarding a right to  
13 irrigate 100 acres, the claimants are asserting a right to irrigate 155 acres.  
14 Additionally, John Silva, who owns 5 acres in the southwest corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$   
15 of Section 28 is asserting a right to irrigate 4.5 acres based on the right  
16 awarded to Burroughs in the Ferguson decree. There has been no evidence  
17 presented to show that an additional water right was established beyond that  
18 recognized in the Ferguson decree. Mr. Haberman did testify that 115 acres are  
assessed by the Kittitas Reclamation District.

19       Water Right Claims No. 002480 and 002445 were filed by George Haberman in  
20 compliance with the requirements of RCW 90.14. Between the two claims, they  
21 assert a right to use 2.5 cfs, 1085 acre-feet per year for the irrigation of 155  
22 acres and stock watering within the SW $\frac{1}{4}$  of Section 28.

23       Since there has been no evidence presented to show establishment of a water  
24 right beyond that recognized in the Ferguson decree, the Referee can only  
25 recommend that water rights be confirmed for irrigating a total of 100 acres in

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the SW $\frac{1}{4}$  of Section 28. Since John Silva is also asserting a right in this proceeding, it would not be appropriate to award the entire 100 acre water right to the Habermans. Therefore, the Referee shall recommend that the Habermans and Mr. Silva each receive a proportionate share of the right. The Referee recommends that a right be confirmed to the Habermans under Court Claim No. 00620 with a June 30, 1880, date of priority a right for the diversion of 1.94 cubic feet per second in May and June and 0.97 cubic foot per second in April and July 1 through October 15, 388 acre-feet per year for the irrigation of 97 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28. The Referee is awarding 4 acre-feet per year per acre irrigated based on Mr. Haberman's testimony that in conjunction with deliveries from KRD, 4 acre-feet per acre would be sufficient to adequately irrigate the land.

COURT CLAIM NO. 01649 -- Thomas Haven  
& Sara Haven

The Havens filed a claim with the Court asserting a right to use waters from Wilson Creek. Mr. Haven testified at the evidentiary hearing.

The claimants' property mostly lies within that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 17, T. 18 N., R. 19 E.W.M. lying west of Wilson Creek Road. A small portion of their property is also within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18, T. 18 N., R. 19 E.W.M., however, State's Exhibit SE-2 shows the irrigated land to be within Section 17, as does the investigation report prepared for this claim. The Havens own approximately 5 acres and irrigate less than 1.5 acres with water diverted from Wilson Creek. A portion of the land is pasture and the rest of the irrigated land is lawn, garden and a few fruit trees. A 1HP pump on the

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1 creek feeds four sprinklers. Mr. Haven testified that 27 gallons per minute is  
2 used to irrigate.  
3

4 Mr. Haven pointed to the evidence put into the record by Earl Glauert, who  
5 is a neighboring landowner in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18. However, since the  
6 irrigated land primarily lies within the SW $\frac{1}{4}$  of Section 17, the evidence put in  
7 the record by G. Jay Nelson, et al., is more informative.  
8

9 Water rights for the S $\frac{1}{4}$  of Section 17 were addressed in both the Ferguson  
10 decree and in Sander v. Jones. According to the Findings of Fact and  
11 Conclusions of Law from the Ferguson case, J. H. Crawford owned the S $\frac{1}{4}$  of  
12 Section 17, T. 18 N., R. 19 E.W.M. and in 1882 diverted and used water from  
13 Naneum Creek for the irrigation of 100 acres. Crawford was awarded a Class 12  
14 right to 100 inches (2 cfs). Since the land is not riparian to Naneum Creek,  
15 1882 would be the priority date of the right. The Havens are not asserting a  
16 right to use waters from Naneum Creek, so the right awarded in the Ferguson  
17 decree will not be addressed further.  
18

19 J. H. Crawford was also awarded water rights to Wilson Creek in Sander v.  
20 Jones. The Findings of Fact states that the allegations by J. H. Crawford in  
21 his answer are true, except that it does not appear that he diverted water over  
22 all his land. It does not describe the lands owned, however, since by 1901,  
23 when the Ferguson case was filed he owned the S $\frac{1}{4}$  of Section 17, the Referee  
24 believes it is not unreasonable to conclude he would have owned the same lands  
25 in 1890. Beginning in 1880 water was diverted from Wilson Creek, in steadily  
26 increasing quantities until by 1889 he was diverting 80 inches of water.  
27

28 Water Right Claim No. 004574 was filed pursuant to the requirements of RCW  
29 90.14 by James L. Bridge, Jr., who must have owned the S $\frac{1}{4}$  of Section 17 during  
30

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the claims registration period. It asserts a right to divert 2 cfs, 1460  
1 acre-feet per year from Lyle Creek (Wilson) for the irrigation of 110 acres in  
2 the S $\frac{1}{2}$  of Section 17, T. 18 N., R. 19 E.W.M. The described point of diversion  
3 is 2300 feet south and 2000 feet west from the northeast corner of Section 17,  
4 which would be in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17.

5 The right that was confirmed in the Sander v. Jones decree must be divided  
6 between the Nelsons who own most of the S $\frac{1}{2}$  of Section 17 and the Havens. The  
7 proportionate share that the Havens would be entitled to is sufficient water to  
8 irrigate one acre. The decree awarded one inch of water (or 0.02 cfs) for each  
9 acre irrigated in May and June and one-half inch of water for each acre the rest  
10 of the year.

11 Therefore the Referee recommends that a right be confirmed under Court  
12 Claim No. 01649 for the use of 0.02 cfs in May and June and 0.01 cfs in April  
13 and July 1 through October 15, 5 acre-feet per year for the irrigation of 1 acre  
14 and stock water. The diversion currently used by the landowner is a pump on  
15 Wilson Creek as it flows by the property. Historically, the S $\frac{1}{2}$  of Section 17 has  
16 been served by a diversion on Lyle Creek near the center of Section 17. There  
17 is no evidence that approval to add the point of diversion was obtained through  
18 the provisions of RCW 90.03.380. Therefore, the Referee must recommend that the  
19 right be confirmed on Lyle Creek at the historic point of diversion. The  
20 claimant should contact Ecology's Central Regional Office about the procedure to  
21 seek a change in point of diversion.

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1 COURT CLAIM NO. 02264 -- Le Moyne Henderson  
2 James Henderson  
3 & Karen Henderson  
Alice A. Henderson

4 The Statement of Claim filed by the Hendersons asserts a right to irrigate  
5 lands within the E½SE¼ of Section 20, T. 19 N., R. 19 E.W.M. with water diverted  
6 from Naneum Creek. James Henderson testified at the evidentiary hearing.

7 According to Mr. Henderson's testimony, the land has been in the Henderson  
8 family since approximately 1950. At that time approximately 8 to 10 acres were  
9 being irrigated with water diverted from Naneum Creek. In the early 1960's his  
10 grandparents increased the irrigated acreage to about 18 acres, which continues  
11 to be irrigated. Mr. Henderson estimated that 3 acre-feet per acre is used to  
12 irrigate the land using a sprinkler irrigation system. The testimony lead the  
13 Referee to conclude that the livestock on the property drink directly from the  
14 creeks, which is a non-diversionary use covered by the stock water stipulation  
15 discussed on page 4 of this report.

16 Several historical documents were offered in support of the claim. These  
17 documents show that Caspar Fettters obtained a patent for the E½NE¼ and E½SE¼ of  
18 Section 20, T. 19 N., R. 19 E.W.M. on April 21, 1891. This is the only date in  
19 the record demonstrating steps to sever the land from Federal ownership. On  
20 September 23, 1911, J. L. Manning, who at that time owned what is now the  
21 Henderson property, conveyed a right of way across his land to the Ellensburg  
22 Water Supply Company, allowing for the construction of a water pipe and  
23 construction of a dam on Naneum Creek for the diversion of water. The agreement  
24 allowed Mr. Manning to divert from the dam sufficient water to fill an existing

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1 flume on his property. Mr. Henderson has seen maps showing approximately 8 to  
2 10 acres being irrigated as early as 1924.

3 Water Right Claim No. 070750 was filed by Clyde Henderson pursuant to the  
4 requirements of RCW 90.14, asserting a right to divert 1 cfs, 500 acre-feet per  
5 year from Naneum Creek for the irrigation of 10 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
6 Section 20, T. 19 N., E. 19 E.W.M.

7 The Henderson property is riparian to Naneum Creek. Water rights  
8 established under the Riparian Doctrine enjoy a priority date based on the date  
9 steps were first taken to sever the land from Federal ownership. The right,  
10 however, is limited to the beneficial use being made prior to December 31, 1932,  
11 Department of Ecology v. Abbott, 103 Wn.2d 686, 694 P.2d 1071 (1985).  
12 Therefore, a water right can only be confirmed for the number of acres being  
13 irrigated historically, and not for the additional acres developed in the  
14 1960's.

15 Mr. Henderson did not testify to the instantaneous quantity of water being  
16 diverted from the creek, however, if 3 acre-feet per acre irrigated is  
17 sufficient, it is very likely that no more than 0.02 cfs per acre irrigated is  
18 being diverted. The Referee recommends that a right be confirmed under the  
19 Riparian Doctrine with an April 21, 1891, date of priority for the diversion of  
20 0.20 cfs, 30 acre-feet per year for the irrigation of 10 acres in that part of  
21 the E $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 20 lying south of Naneum Creek Road.

22 At the evidentiary hearing Mr. Henderson amended the claim to also assert a  
23 right for stock watering in the NE $\frac{1}{4}$  of Section 28, T. 19 N., R. 19 E.W.M. from  
24 the Charlton Ditch, which carries Naneum Creek water, and water from Cave  
25 Creek. The subbasin boundary line between Subbasins No. 9 and 10 runs through

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Section 28 and Cave Creek drains to the east and is in Subbasin No. 10. Rights  
1 to the use of that source will be addressed in the Subbasin No. 10 Report of  
2 Referee.  
3

4 Mr. Henderson presented very little evidence of historic water use for the  
5 NE% of Section 28. However, evidence provided by other claimants shows that the  
6 Charlton Ditch was constructed between 1886 and 1888 to serve lands in Sections  
7 27, 28 and 34. The ditch crosses the southwest corner of the Henderson property  
8 and when livestock are grazing in this area drink from the ditch. The Referee  
9 believes this is a permissive use and incidental to the delivery of irrigation  
10 water to the lands intended to be served from the ditch. There is no evidence  
11 that the ditch was intended to be used to deliver stock water to the Henderson  
12 property. Neither the claimant nor Ecology identified a RCW 90.14 claim that  
13 was filed for this specific purpose. The Referee does not believe it would be  
14 appropriate to recommend that a water right be confirmed for stock watering,  
15 however, it is recognized that as long as this ditch continues to be used to  
16 convey irrigation water and the land continues to be used for cattle grazing,  
17 the livestock will drink from the ditch.

18  
19 COURT CLAIM NO. 00663 -- Herbert J. Herbert  
20 & Rita Herbert

21 The Herbarts filed a claim with the Court asserting a right to use waters  
22 from Naneum Creek for irrigation and stock watering. The claimants are  
23 represented by Attorney John P. Gilreath and Dr. Herbert testified at the  
24 evidentiary hearing.

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The claimants property lies in the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 22 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
1 Section 21, T. 18 N., R. 19 E.W.M. They are asserting a right to irrigate 80  
2 acres in Section 22 and 26 acres in Section 21. Water is diverted from a branch  
3 of Naneum Creek, sometimes called Neally Creek. The point of diversion is in  
4 the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21 and a ditch carries water from this point due east to  
5 the claimant's property. The ditch also serves the Dunning and Guise properties  
6 in the SE $\frac{1}{4}$  of Section 21. The land is rill irrigated with concrete ditches and  
7 gated pipe. The land is planted in hay and pasture and up to 106 cow/calf pairs  
8 graze on the pasture. The livestock drink from the irrigation ditches. The  
9 land is also assessed by and receives water from the Kittitas Reclamation  
10 District.

11 The foundation for a water right on the claimants' land is the Ferguson  
12 decree. Two water rights were awarded in that decree that are appurtenant to  
13 portions of the claimant's property. A Class 4 right, with a 1874 date of  
14 priority, was awarded to F. R. Clement for the use of 160 inches in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
15 Section 21, T. 18 N., R. 19 E.W.M. The proportionate share of that right that  
16 would appurtenant to the claimants' land in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 21 would be 26  
17 inches (one inch per irrigated acre). A Class 5 right, with an 1875 date of  
18 priority, was awarded to the U. S. National Bank of Portland, Oregon, for the  
19 use of 160 inches in the SW $\frac{1}{4}$  of Section 22, T. 18 N., R. 19 E.W.M. The W $\frac{1}{2}$ SW $\frac{1}{4}$   
20 would have a right to 80 inches of water. The Ferguson decree awarded one inch  
21 of water for each irrigated acre in May and June and one-half inch the rest of  
22 the year.

23 During the presentation of the claim and in Exhibit DE-1639, the annual  
24 quantity of water claimed was based on using one inch of water per acre in  
25

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1 April, rather than the one-half inch allowed in the decree. Also, the claimant  
2 added the annual quantity of water needed for stock watering to the quantity  
3 sought for irrigation. However, since the annual quantity sought for irrigation  
4 is based on a constant diversion of the authorized instantaneous quantity, it  
5 would not be appropriate to add the stock water quantity, as it would not be  
6 physically possible to divert that water. Therefore, the Referee proposes to  
7 authorize the annual quantity that could be diverted from the creek between  
8 April 1 and October 15 based on the authorized instantaneous quantities, and  
9 include stock water as a use along with irrigation.

10 Water Right Claim No. 071282 was filed by Dr. Herbert under the provisions  
11 of RCW 90.14. It asserts a right to divert 1 cubic foot per second, 700  
12 acre-feet per year for the irrigation of 80 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 22,  
13 T. 18 N., R. 19 E.W.M. The described point of diversion is in the SW $\frac{1}{4}$  of  
14 Section 16, which is where "Neally Creek" separates from the main Naneum Creek.  
15 Also in the record is Certificate of Change of Point of Diversion recorded in  
16 Volume 1, page 5, dated July 25, 1918. It authorizes P. H. Schnebly to change  
17 his point of diversion from the NW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M. to a  
18 point in the SW $\frac{1}{4}$  of Section 9, T. 18 N., R. 19 E.W.M. Attached to the  
19 Certificate of Change is a map that shows the original point of diversion and  
20 the proposed new point of diversion. Also marked on the map are the lands  
21 irrigated by the applicant. The map shows those lands as being in the SW $\frac{1}{4}$  of  
22 Section 22 and the NW $\frac{1}{4}$  of Section 27. The State's Exhibit Map does not show a  
23 diversion from Naneum Creek in the SW $\frac{1}{4}$  of Section 9, although a ditch does  
24 parallel the south section line of Section 9 and begins near the southeast  
25 corner of the SW $\frac{1}{4}$  of Section 9.

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There is nothing in the record to show that a water right claim was filed  
1 pursuant to RCW 90.14 for the claimants' lands in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 21.  
2 Ecology generally researches potentially applicable water right claims and  
3 references them on the investigation report prepared for the claim. However,  
4 the Court Claim No. 00663 did not assert a water right for the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
5 Section 21, so it is possible that the state's investigation report also did not  
6 address that land. The record is not clear in that regard. The claimant did  
7 not point the Referee to a water right claim that might be appurtenant to the  
8 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 21. The Referee did review the summary list of water right  
9 claims that is part of SE-5, but could only find WRC No. 071282 filed by Dr.  
10 Herbert. If the Herberts did not own the land at the time of the claims  
11 registration, a claim might be in another name, however, that information also  
12 was not provided to the Referee. Failure to file a claim relinquishes any right  
13 that may have existed, RCW 90.14.071.

Due to the lack of a water right claim pursuant to RCW 90.14 for the NE $\frac{1}{4}$ SE $\frac{1}{4}$   
15 of Section 21, the Referee cannot recommend that a water right be confirmed for  
16 that land. The Referee does recommend that a right be confirmed with a June 30,  
17 1875, date of priority for the diversion from Naneum Creek of 1.6 cubic feet per  
18 second in May and June and 0.80 cubic foot per second in April and July 1  
19 through October 15, 410.20 acre-feet per year for the irrigation of 80 acres and  
20 stock watering in the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 22, T. 18 N., R. 19 E.W.M.

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1 COURT CLAIM NO. 02296 -- Mark Herbert  
2 & Kathy Herbert  
3 Lyndell G. Hobbs  
4 & Vicki Diehl-Hobbs

5 Court Claim No. 02296 was originally filed by Ward Hobbs, who appeared and  
6 testified at the evidentiary hearing. On January 11, 1996, Lyndell G. Hobbs,  
7 Vicki Diehl-Hobbs and Mark and Kathy Herbert were substituted for Mr. Hobbs as  
claimants.

8 Court Claim No. 02296 asserts a right to use waters from Naneum Creek,  
9 Wilkins Ditch (which diverts from Naneum Creek), and an unnamed creek for  
10 irrigation of 130 acres and stock watering in the W $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$  and NW $\frac{1}{2}$ SE $\frac{1}{4}$  of  
11 Section 10, T. 18 N., R. 19 E.W.M. The unnamed creek that is described in the  
12 Court claim originates in Subbasin No. 10 (Kittitas) and the right to use that  
13 water will be addressed in the Report of Referee for Subbasin No. 10.

14 According to Mr. Hobbs testimony, he acquired the land from Emil Stampfly  
15 in 1968. The Stampfly family had owned the land since at least the early 1920's  
16 and were parties to the Thomas v. Roberts decree. Mr. Hobbs testified about two  
17 water courses on his property. One enters his property from the west and was  
18 described as a natural water course. The second enters his property from the  
19 north and he believes it is called Wilkins Ditch, which diverts from Naneum  
20 Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, T. 19 N., R. 19 E.W.M. Mr. Hobbs did not  
21 testify to actually using water from the westerly water course, but that  
22 testimony was not entirely clear. Water is used from the Wilkins Ditch. A  
23 total of 210 acres are being irrigated within the property described in Court  
24 Claim No. 02296, although a right is being asserted for use of Naneum Creek to  
25

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1 irrigate approximately 50 acres. The land is also assessed by and receives  
2 water from the Kittitas Reclamation District (KRD). Creek water and KRD water  
3 is mixed and creek water is not used on discrete portions of his land.

4 Several Water Right Claims (WRC) were filed by Mr. Hobbs pursuant to RCW  
5 90.14. WRC No. 120734 asserts a right to use 0.50 cfs, 100 acre-feet per year  
6 from Naneum Creek for the irrigation of 25 acres and stock watering in the  
7 SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 18 N., R. 19 E.W.M. The Referee notes  
8 that the irrigation fo 25 acres is claimed with a place of use description of  
9 only 20 acres. WRC No. 120741 asserts a right to use the Wilkens Ditch,  
10 claiming a right to 0.05 cfs, 100 acre-feet per year for the irrigation of 25  
11 acres and stock watering. The place of use described is in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
12 Section 3, T. 18 N., R. 19 E.W.M., however, the Referee believes this may be in  
13 error. The point of diversion described is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3. A  
14 diversion at this point could not physically deliver water by gravity flow to  
15 the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 3. The described diversion is on the Wilkins Ditch, near  
16 where it enters the claimants' land in the NW $\frac{1}{4}$  of Section 10. The Referee  
17 suspects that when completing the claim, the section number of the point of  
18 diversion was inadvertently placed in the place of use description.  
19 Additionally, the quantity of water claimed is 0.05 cfs, which is only 22  
20 gallons per minute, is inadequate for irrigating the claimed 25 acres. It may  
21 be that the numbers were transposed and it should have been 0.50 cfs.  
22 Unfortunately, none of the perceived errors were addressed by the claimant  
23 during his testimony. There is a mechanism to correct ministerial errors made  
24 on these claims, see RCW 90.14.065. The claimants may want to pursue this

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amendment process if they are not satisfied with the recommendations contained  
1 herein.

2 Mr. Ward filed several water right claims asserting rights to use springs  
3 located on his property. There was no evidence presented concerning those  
4 springs, nor does it appear that rights are being asserted in this proceeding  
5 for use of those springs. Therefore, the Referee will not discuss those water  
6 right claims further.  
7

8 Merton Purnell filed two water right claims that describe the property at  
9 issue here. WRC No. 117960 asserts a right to 1.25 cfs, 63 acre-feet per year  
10 from the Wilkins Ditch for the irrigation of 21 acres and stock watering in the  
11 NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10. WRC No. 117961 asserts a right to 1.25 cfs, 63 acre-feet  
12 per year from the Wilkins Ditch for the irrigation of 27 acres and stock  
13 watering in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15.

14 Most of the property described in Court Claim No. 02174 was addressed in  
15 both the Ferguson and Thomas v. Roberts decrees. The Ferguson decree awarded  
16 100 inches of water for lands owned by Edwin and Lois Cooke, who owned the NW $\frac{1}{4}$ ,  
17 the SW $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 18 N., R. 19 E.W.M. The Findings of Fact  
18 that preceded the decree stated that 300 acres were in cultivation, with 100  
19 acres irrigated with water from Naneum Creek. It did not identify how that 100  
20 inches was distributed within the 360 acres described. Diversion of water to  
21 these land began between 1880 and 1886, but the exact date was not known. The  
22 Thomas v. Roberts decree did identify somewhat how the water was distributed  
23 within the described lands and stated that the water was first used in 1882. In  
24 that decree 50 inches of water was identified as being for the W $\frac{1}{4}$ SW $\frac{1}{4}$  and W $\frac{1}{4}$ NW $\frac{1}{4}$   
25 of Section 10, lands not described in Court Claim No. 2296; 25 inches were for

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the E $\frac{1}{2}$ NW $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, all of which is described in Court Claim No. 1  
2296; and 25 inches were for use in the SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, of which  
2 only the N $\frac{1}{2}$ SE $\frac{1}{4}$  is described in Court Claim No. 2296. Lacking anything more  
3 definitive, the Referee concludes that the lands described in Court Claim No.  
4 2296 are entitled to 37.5 inches of the total right, or 0.75 cubic foot per  
5 second for the irrigation of 37.5 acres. The Ferguson decree called for a 50  
6 percent reduction in the instantaneous quantity diverted after July 1.  
7

8 The claimants own 200 acres and the Referee is not inclined to decide where  
9 the 37.5 acres which can be irrigated from Naneum Creek should be located.  
10 Ideally, we would have evidence of the 37.5 acres historically irrigated from  
11 the creek. However, that is not in the record, nor is it likely available,  
12 since KRD water has been mixed with creek water and used for over 60 years.

13 The Referee concludes that a right exists with an 1882 date of priority for  
14 the use of 0.75 cubic foot per second, 150 acre-feet per year for the irrigation  
15 of 37.5 acres and stock watering. However, it is recommended that a right not  
16 be confirmed under Court Claim No. 02296 until the claimant submits a place of  
17 use description for the 37.5 acres. The claimant should also pursue amending  
18 WRC No. 120734 and 120741 as provided in RCW 90.14.065 to correct the errors the  
19 Referee identified on both of those claims. The Referee can only recommend  
20 confirmation of a water right for land described in a water right claim.  
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1 COURT CLAIM NO. 05820 -- Richard M. Hilliard  
2 (A) 05906

3 On December 6, 1990, Ruth E. Reukauf and Jana L. Tracy submitted a Claim to  
4 the Court asserting a right to use waters from Wilson Creek. The Court issued  
5 an order allowing further processing of the claim on January 11, 1991, and Ms.  
6 Reukauf appeared at the evidentiary hearing on February 28, 1991, to present  
7 evidence in support of the claim. On May 21, 1992, Richard M. Hilliard was  
8 substituted as claimant.

9 The claimant's land is a 100 foot wide strip of land along the west line of  
10 the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29, T. 18 N., R. 19 E.W.M., consisting of slightly less  
11 than 2 acres. A right is being asserted to irrigate approximately 1.5 acres of  
12 pasture with water from Wilson Creek. Ms. Reukauf and Ms. Tracy bought the  
13 property for people named Newman, who had not irrigated the land during their  
14 ownership. A neighboring landowner flood irrigates his fields and the runoff  
15 from his field would also to a degree irrigate the claimant's land. The prior  
16 owners apparently did not find it necessary to irrigate. There were irrigation  
17 ditches on the property indicating that the land had previously been irrigated.  
18 The claimants' intend to place a pump on the ditch that runs along the property  
19 and pump into a sprinkler system. The land is pasture and Ms. Reukauf testified  
20 to an intent to raise horses and perhaps a few cattle in the future so stock  
21 water would also be needed. The claimants are asking for a right to use 1.5  
22 inches of water, or 0.03 cubic foot per second. The testimony did not indicate  
23 how long it had been since the land had been irrigated. If it had been five or

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more successive years, the any right that might have existed may have relinquished for nonuse, see RCW 90.14.160.

The claimant's land is part of a larger piece (the entire SE $\frac{1}{4}$  of Section 29) that was bought from the Northern Pacific Railroad by Fredrick A. Ploeger on October 6, 1891. Mr. Ploeger was a party to the Ferguson decree and was awarded a Class 13 water right for the use of 100 inches of water. The Findings of Fact that preceded the decree indicated that within his 160 acre ownership, 100 acres were being irrigated with water diverted from a branch of Naneum Creek. The SE $\frac{1}{4}$  of Section 29 is riparian to the West Branch of Naneum Creek; the west branch is also called Taylor Creek. The Class 13 designation was based on water not being used until 1883. However under the Riparian Doctrine the priority date for the right is set when the land is settled, which for this land would be 1880, rather than 1883. The only other claimant in this proceeding that is claiming a portion of the Ploeger water right is Orren Busby, who is asserting a right for 30 acres. The Referee concludes that the claimants land would enjoy a right to 1.5 inches of water (0.03 cfs) for the irrigation of 1.5 acres as part of the Ploeger land.

However, the Referee cannot find a water right claim filed pursuant to RCW 90.14 that would preserve that right. RCW 90.14 required the filing of a water right claim for any use of water under a right initiated prior to adoption of the Surface Water Code in 1917 or the Ground Water Code in 1945. The water right for the claimant's property clearly fits that requirement. A prior owner of the land, Pete Stobbe filed Water Right Claim No. 147720, which asserted a right to use water from a well for domestic supply. Attached to the claim is a map of the property showing the location of the well on the property, along with

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the location of the house and a barn. There was no mention of use of either  
1 Wilson Creek or Naneum Creek. RCW 90.14.071 provides that failure to file a  
2 claim waives or relinquishes any water right that may have existed.  
3

Therefore, the Referee must recommend to the Court that a water right not  
4 be confirmed under Court Claim No. 05820.  
5

6  
7 COURT CLAIM NO. 06006 -- Wm. Ralph Hooper  
8 & Patricia Julia Hooper

9 The Hoopers filed a claim with the Court on February 7, 1991, and the Court  
10 entered an Order on March 8, 1991, allowing the claim for further processing in  
11 Subbasin No. 9. The claim was scheduled for hearing on March 11, 1991, and  
12 Patricia Hooper appeared at the hearing and testified in support of the claim.

13 The claimants' land lies in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 29, T. 18 N.,  
14 R. 19 E.W.M. They own approximately 38 acres, most of which is irrigated with  
15 water delivered by the Kittitas Reclamation District (KRD). Water rights for  
16 KRD were addressed in the Major Claimant Pathway and will not be considered in  
17 this report. There is approximately 8 acres of the claimants' land through  
18 which Lyle Creek flows and two springs emerge. The creek and the springs are  
19 primarily used for stock watering, with the livestock drinking directly from the  
20 sources. This type of non-diversionary stock watering is covered by the stock  
21 water stipulation discussed on page 4 of this report. No additional right is  
22 necessary for this use.

23 Mrs. Hooper also indicated that to some degree Lyle Creek is also used to  
24 irrigate a portion of the eight acres. However, the Referee concludes from the  
25

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1 testimony offered that the irrigation is incidental to high water occurrences in  
2 the creek and not through deliberate acts by the claimants. Mrs. Hooper's  
3 testimony seemed to indicate that the Lyle Creek would overflow its banks  
4 occasionally and that water would irrigate some of their ground. The Referee  
5 concludes this is not a diversionary use for which a water right could be  
6 confirmed. There was no evidence submitted by the claimants to show that a  
7 water right was established for the property through use initiated prior to  
8 December 31, 1932.

9 Water Right Claim No. 059114 was filed by Mr. Hooper pursuant to RCW  
10 90.14. It asserts a right to use a spring for stock watering and lawn and  
11 garden irrigation. There is no evidence that a water right claim was filed for  
12 use of Lyle Creek. Failure to file a claim waives and relinquishes any right  
13 that may have existed, see RCW 90.14.071.

14 The Referee recommends that a water right not be confirmed under Court  
15 Claim No. 06006 beyond that afforded by the stock water stipulation due to the  
16 lack of evidence to show that a diversionary water right was legally established  
17 and due to the lack of a water right claim filed pursuant to RCW 90.14 for Lyle  
18 Creek.

19  
20 COURT CLAIM NO. 00661 -- Kenneth R. Huber  
21 & Sharon L. Huber  
22 Jim Vasquez

23 Kenneth R. and Sharon L. Huber filed a claim with the Court for the use of  
24 waters from Naneum Creek for irrigation and stock water. On February 26, 1991,  
25 Wilbur M. Mills was joined to the claim and on December 7, 1998, Jim Vasquez  
substituted for Mr. Mills. Wilbur Mills testified at the evidentiary hearing.

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At the time of the evidentiary hearing in February of 1991, Mr. Mills had  
1 only owned the property for 7 months and had moved onto the property that  
2 winter. His knowledge of water use on the property was limited. The prior  
3 owner of the land had leased to a neighbor, who raised cattle. Up to 20 head of  
4 cattle were pastured and the land was irrigated with a sprinkler system.  
5 Ditches along and through the fields provided evidence that it had once been  
6 rill irrigated. Mr. Mills estimated that five acres within the approximately 7  
7 acre parcel is irrigated.  
8

The land described in Court Claim No. 00661 lies within the W $\frac{1}{4}$ E $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
9 Section 33, T. 18 N., R. 19 E.W.M. Mr. Mills knew very little about the history  
10 of the land, except that he believed that it was addressed in the Ferguson  
11 decree. A neighboring claimant to the north, James Swayze, provided  
12 documentation in support of his claim that also is applicable to the  
13 Mills/Vasquez property. At the time of the Ferguson decree in 1901, the SW $\frac{1}{4}$  of  
14 Section 33 was owned by A. J. Sliger, who was awarded a Class 8 water right for  
15 100 inches (2 cfs) of water from Naneum Creek. A Class 8 right has a priority  
16 date of 1877. Several deeds were placed in the record showing the sale or  
17 transfer of the land from 1907 to 1923. On April 10, 1912, John S. Evans, who  
18 at the time owned the SW $\frac{1}{4}$  of Section 33 sold half of the water right to J. E.  
19 Gebhart. In 1916 Gebhart conveyed the water right back to the Evans family.  
20 That same year the land now owned by the claimants, along with the west 1789.6  
21 feet of that portion of the SW $\frac{1}{4}$  of Section 33 south of the Cascade canal was  
22 sold, along with one-half of the water rights awarded for the quarter section to  
23 A. J. Sliger in the Ferguson decree. In 1923 the SW $\frac{1}{4}$  of Section 33 was  
24 transferred to the Razey family. The rest of the deeds conveying this land  
25

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1 continue to have a statement that one-half of the Sliger water right transferred  
2 with the land. Based on that language, it is reasonable to conclude that the  
3 claimants' land, along with the west 1789.6 feet of the SW $\frac{1}{4}$  of Section 33 south  
4 of the canal is entitled to 50 inches of water. The decree provided that one  
5 inch of water was sufficient for one acre. Therefore, there exists a right to  
6 irrigate 50 acres. The only other claim in this proceeding asserting to have a  
7 portion of the Sliger water right is Court Claim No. 01052 (James C. Swayze &  
8 Dianne Morrison), which is asserting a right to irrigate 25 acres or less.

9 Pursuant to the requirements of RCW 90.14, Raymond Razey filed Water Right  
10 Claim No. 100012 asserting a right to divert 50 inches of water from Naneum  
11 Creek for the irrigation of 32 acres. The point of diversion described on the  
12 claim is in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33. A very poor copy of the claim is in the  
13 record and the portion of the claim which asks for the legal description of  
14 lands on which the water is used is either blank or ink was so light it did not  
15 copy. However, it is clear that he is asserting a right for the 50 inches from  
16 the Ferguson decree that is appurtenant to lands that include the claimants and  
17 the Razey family did in the past own the claimants land. The record from the  
18 Swayze claim indicates that the mid-1970's is when the Razey family began  
19 selling their land. The Referee believes it is reasonable to conclude that the  
20 intent of Mr. Razey when he filed the claim was to cover the lands to which the  
21 50 inch water right was appurtenant. The Referee concludes that WRC No. 100012  
22 complied with the requirements of RCW 90.14 for the Mills/Vasquez land.

23 It is recommended that a right be confirmed under Court Claim No. 00661  
24 with a June 30, 1877, date of priority for the diversion from Naneum Creek of  
25 0.10 cubic foot per second from May 1 through June 30 and 0.05 cubic foot per

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1 second from July 1 through October 15 and April 1 through April 30, 25 acre-feet  
2 per year for irrigation of 5 acres.  
3

4 Livestock drinking from Naneum Creek is covered by the non-diversionary  
5 stock water stipulation discussed on page 4 of this report and no other right is  
6 necessary.  
7

8 COURT CLAIM NO. 01721 -- John Hultquist  
9 & Nancy Hultquist  
10

11 Court Claim No. 01721 was originally filed by Okey and Jennie Bartrug. On  
12 September 18, 1989, the Hultquists were substituted for the Bartrugs. Mr.  
13 Hultquist testified at the evidentiary hearing.  
14

15 The Hultquists property is the west 933.38 feet of the north 933.38 feet of  
16 the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, T. 19 N., R. 19 E.W.M. They are asserting a right to  
17 irrigate 10 acres and water livestock with water diverted from Naneum Creek.  
18 Most of the land is hay and pasture, which is rill irrigated. A sprinkler  
19 system is used to irrigate the lawn and garden area. A pump is placed on the  
20 ditch that goes through the claimant's property in order to withdraw water form  
21 the ditch. Mr. Hultquist had reviewed several aerial photographs of the area in  
22 order to confirm that his land has been irrigated over the years. He noted that  
23 earlier photos showed an area along the west property line that was previously  
24 irrigated, but has not been irrigated since prior to 1977. The Hultquists are  
25 not asserting a right to irrigate that portion of their land.  
26

27 The Hultquists had Richard C. Bain, Jr., a consulting engineer, measure the  
28 flow in the ditch as it entered the claimant's property in May and August of  
1990. The flow in the ditch in May was 0.80 cubic foot per second and in August  
29

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1 was 0.10 cubic foot per second. The ditch also serves land south of the the  
2 Hultquist property. Livestock on the property drink from the ditches and a  
3 spring area on the property. The non-diversionary stock watering from the  
4 spring is covered by the stock water stipulation discussed on page 4 of this  
report.

5 Water Right Claim No. 096246 was filed by Okey Bartrug pursuant to the  
6 requirements of RCW 90.14. It asserts a right to use 75 gallons per minute from  
7 Naneum Creek for the irrigation of 15 acres and water livestock in the land now  
8 owned by the Hulquists.

9 The record shows that the claimants' land was part of a larger parcel owned  
10 by J. L. Bennett in the late 1800's. Mr. Bennett acquired the W $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$  and  
11 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 33, T. 19 N., R. 19 E.W.M. from the Northern Pacific Railroad  
12 by deed dated June 25, 1890. Bennett also homesteaded and received a patent for  
13 the S $\frac{1}{4}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. Mr. Bennett's widow was a party to the  
14 Ferguson case and was awarded a Class 11 right for the use of 30 inches of water  
15 from Naneum Creek. The Findings of Fact that preceded the decree described the  
16 lands owned by Mrs. Bennett and to which the water right would be appurtenant.  
17 The Hultquists and Louaine A. Magnuson, a neighboring landowner, contend that  
18 the copy of the Findings of Fact that several claimants have put into the record  
19 contains a typographical error in the paragraph that describes the lands owned  
20 by Mrs. Bennett. The description is "The persons described in paragraphs XLV  
21 hereof (the heirs to J. L. Bennett) are the owners of the southeast quarter of  
22 the northeast quarter and the east half of the southeast quarter of Section 32,  
23 the northwest quarter of the southwest quarter, the south half of the southwest  
24 quarter and the southwest quarter of the southeast quarter of Section 32,  
25

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Township 19 North of Range 19 E.W.M. The claimants point out that there is no  
1 evidence that the Bennetts owned land in the SW $\frac{1}{4}$  of Section 32 and that the  
2 legal description as written describes the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32 twice. The  
3 Referee also notes that when describing other lands, if all of the property is  
4 in one section, the section number is only shown once. Chester Vernon Stokes,  
5 Andrew Mills and Gary Galbraith are claimants who own land in the S $\frac{1}{4}$ SW $\frac{1}{4}$  and  
6 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. The evidence they put in the record in support of their  
7 claims shows that property as being owned by W. R. Thomas at the time of the  
8 Ferguson case. W. R. Thomas was a named defendant in Ferguson, but did not  
9 assert a claim in the proceeding. The Thomas rights were determined in Thomas  
10 v. Roberts and a right was awarded in that proceeding to Mr. Thomas. Mr.  
11 Hultquist testified to visiting the Washington State Archive in Ellensburg and  
12 reviewing the Findings of Fact that is in the archive records. According to Mr.  
13 Hultquist's testimony, the copy there describes the W $\frac{1}{4}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
14 Section 33. Exhibit SE-641 is an excerpt from that copy of the Findings of  
15 Fact. Mr. Hultquist also placed in the record a copy of the transcript of  
16 testimony from the Ferguson case showing the testimony in support of Mrs.  
17 Bennett's claim. That testimony also refers to the land in Section 33 and the  
18 testimony was that it was being irrigated.

The Referee concludes that sufficient evidence has been placed in the  
20 record to show that a typographical error was made on the version of the  
21 Findings of Fact in the record and that the 30 inch Bennett water right is  
22 appurtenant to the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{4}$ SW $\frac{1}{4}$  of  
23 Section 33. There were no claims filed in this proceeding for the lands in  
24 Section 32. The claimants in this proceeding who own portions of the land in  
25

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Section 33, besides the Hultquists and Ms. Magnuson are Ronald McGee, Arthur and  
1 Susan Tirotta, Gary Anderson and Barbara Williams. Neither Mr. Anderson nor Ms.  
2 Williams appeared to defend their claim. The claim of Mr. McGee and the Tirotta  
3 is on page 161 of this report. Between the claimants who appeared to defend  
4 their claims, rights for the irrigation of a total of 28.3 acres are being  
5 asserted.

6 Mr. Hultquist is asserting a right for more water than the Referee is  
7 recommending for confirmation. However, the quantity is limited by the Ferguson  
8 decree, see page 7 of this report for a discussion of the decrees. The Referee  
9 recommends that a right be confirmed to John and Nancy Hultquist with a June 30,  
10 1882, date of priority for the diversion of 0.20 cubic foot per second in May  
11 and June, 0.10 cubic foot per second in April and July 1 through October 15, 50  
12 acre-feet per year for the irrigation of 10 acres and stock watering.

13  
14 COURT CLAIM NO. 02294 -- Mary Hundley  
15

16 Mary Hundley submitted a Claim to the Court asserting a right to use waters  
17 from Mercer Creek for irrigation. Ms. Hundley, represented by Attorney Michael  
18 Bauer, testified at the evidentiary hearing.

19 Most of the claimant's property has been sold to Pautzke Bait Company who  
20 is asserting rights for the property they acquired under Court Claim No. 1724.  
21 Ms. Hundley still owns approximately 4.8 acres and she is asserting a right to  
22 irrigate most of that land. Prior to the time of the hearing Ms. Hundley had  
23 leased the land to Glenn Gregory, so she had little knowledge about water use on  
24 the property. Mr. Gregory passed away just before the hearing. Ms. Hundley's  
25 land lies in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, T. 17 N., R. 18 E.W.M. An exact legal

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1 description is not in the record. It is not clear to the Referee what source of  
2 water is being used on the property. Initially Ms. Hundley testified to using  
3 Mercer Creek, but then also indicated that water from the Kline-Coble Ditch is  
4 used. While Mercer Creek lies within Subbasin No. 9 and is appropriately  
5 considered in this report, the Kline-Coble Ditch diverts water from the Yakima  
6 River in Subbasin No. 7. Water rights for lands served by that ditch were  
7 addressed in the Subbasin No. 7 Report of Referee. However, review of that  
8 report indicates that Ms. Hundley did not testify at the Subbasin No. 7  
9 hearing. The only investigation report that is in the record for this claim was  
10 entered as part of the Subbasin No. 7 exhibits and states that the land retained  
11 by Ms. Hundley is irrigated from Mercer Creek.

12 Ms. Hundley provided little historical information about the property,  
13 except that she and her husband bought it in 1952 from Clarence and Hazel  
14 Anderson and that water was being used on the land when they bought it. The  
15 Anderson owned considerable acreage in the area, raising hay crops. The  
16 claimant asked that the Referee refer to the evidence placed in the record by  
17 Pautzke Bait Company, as the history for their land in Section 2 should be the  
18 same. Pautzke Bait did put in historical evidence for Section 2. William  
19 Merrill received a patent on August 15, 1888, for the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, which  
20 is riparian to Mercer Creek. Under the Riparian Doctrine, were there evidence  
21 of when water was first used for irrigation, the patents could be used to  
22 establish a priority date since there is not specific information of when the  
23 settlers first took action to sever the land from Federal ownership.

24 Neither Ms. Hundley or Pautzke Bait put into evidence any information  
25 showing that a water right was actually established for use of Mercer Creek. At

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1 this point in the basin, Mercer Creek is below the KRD canal, Cascade Canal and  
2 Town Ditch. All three use Mercer Creek as a mechanism to deliver their water.

3 In order to show that there is a water right to use Mercer Creek, the claimant  
4 not only has to show water use prior to December 31, 1932, the date by which  
5 riparian rights could be established through beneficial use of water, but the  
6 claimant also needs to show that natural creek flow is being used.

7 Documentation of a right being established or actual water use prior to  
8 construction of the canals or testimony of use prior to when the canals begin  
9 operating each season, if the use is prior to 1932 would be helpful.

10 A second issue must be addressed by the claimant. There is no evidence in  
11 the record that a claim was filed pursuant to RCW 90.14 for use of Mercer Creek  
12 water on this land. At the time that claims were to be filed, the land was  
13 owned by the Hundley family. The Referee could find no claim filed in that name  
14 for Mercer or Wilson Creek. Failure to file a claim relinquishes any right that  
15 may have existed. RCW 90.14.170.

16 Due to the lack of evidence to show that a water right was established for  
17 the land and lack of a water right claim filed pursuant to RCW 90.14, the  
18 Referee cannot recommend that a water right be confirmed to Mary Hundley under  
19 Court Claim No. 02294.

20  
21 COURT CLAIM NO. 00568 -- HMH Enterprises Inc.  
(A) 05601

22 Robert H. and Shirley A. Lindberg filed a claim with the Court asserting a  
23 right to use Wilson Creek for irrigation of 30 acres. On August 20, 1990, they  
24  
25

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1 amended their claim to add the Yakima River as a source of non-diversionary  
2 stock watering. Mr. Lindberg testified at the evidentiary hearing. On  
3 January 6, 1994, HMH Enterprises, Inc., was substituted as claimant.  
4

5 The property lies in the very southerly tip of Subbasin No. 9 and does not  
6 appear on the State's Exhibit Map, SE-2. The Lindbergs owned Government Lot 5  
7 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 6, T. 16 N., R. 19 E.W.M. They are asserting a right  
8 to irrigate 30 acres with water diverted from Wilson Creek. The basis for this  
9 assertion is Surface Water Certificate No. 470 which issued to Carl E. Noll, a  
10 prior owner of their property. With a April 23, 1923, date of priority, it  
11 authorized the diversion of 0.60 cfs from Wilson Creek for the irrigation of 30  
12 acres in Lot 5 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 6, T. 16 N., R. 19 E.W.M. Apparently  
13 when this right was established, there was a diversion from Wilson Creek just  
14 above the confluence of Wilson Creek with the Yakima River. A ditch carried  
15 water to the claimant's property. In 1957 a flood destroyed the intake and  
16 changed the channel of both Wilson Creek and the Yakima River. Since then,  
17 Wilson Creek has not been used to irrigate the claimant's land.

18 Mr. Lindberg testified to irrigating a total of 145 acres with water  
19 delivered by the Kittitas Reclamation District (KRD). He wished to maintain the  
20 water right to Wilson Creek for years when he does not receive sufficient water  
21 from KRD. He irrigates hay and pasture. The pasture is between the county road  
22 and the Yakima River and the livestock grazing on the pasture drink directly  
23 from the river. The non-diversionary stock water stipulation discussed on page  
24 4 of this report covers this use.

25 It is clear that a water right for use of Wilson Creek was established and  
26 is documented in Surface Water Certificate No. 470. However, that right has not  
27

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been exercised for over 30 years. RCW 90.14.180 provides that any person  
1 entitled to divert water through an appropriation authorized under RCW  
2 90.03.330, who voluntarily fails for a period of five successive years to use  
3 the water relinquishes that right. The Referee finds that the right embodied in  
4 Surface Water Certificate No. 470 has relinquished and recommends that a water  
5 right not be confirmed under Court Claim No. 00568. The Referee also recommends  
6 that Certificate No. 470 be made null and void by the Department of Ecology at  
7 the conclusion of this case.

8 This determination does not have affect on the claimant's use of water  
9 delivered by KRD.

10  
11  
12 COURT CLAIM NO. 00900 -- G.R. Hughes; Enterprises LP  
13 U.S. Department of the Interior

14 Court Claim No. 00900 was originally field by Calvin and Rhonda Jansen and  
15 asserted rights to use waters from Coleman Creek on land in Sections 17 and 20,  
16 T. 17 N., R. 19 E.W.M. and Farrell Slough on land in Section 25, T. 17 N.,  
17 R. 18 E.W.M. On February 10, 1989, G. R. Hughes Enterprises, LP were  
18 substituted for the Jansens for the land in Section 25, T. 17 N., R. 18 E.W.M.  
19 and on January 17, 1995, the U. S. Department of Interior, Bureau of Land  
20 Management were joined to that portion of the claim. Farrell Slough lies within  
21 Subbasin No. 9, however, there was no appearance at the Subbasin No. 9  
22 evidentiary hearing in support of that claim. Therefore, the Referee cannot  
23 recommend that a water right be confirmed under Court Claim No. 00900.

24  
25  
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The Jansens retain the portion of the land described in Court Claim No. 1  
0900 that lies along Coleman Creek. Rights to the use of Coleman Creek will be  
2 addressed in the Report of Referee for Subbasin No. 10 (Kittitas).

6 The Jansens submitted a claim to the Court for use of waters from Naneum  
7 Creek. Calvin Jansen, their son, testified at the evidentiary hearing.

The Jansens own the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18, T. 17 N., R. 19 E.W.M. and irrigate most of the land with water diverted from Naneum Creek or delivered by Bull Canal Company or Ellensburg Water Company (EWC). Mr. Jansen testified that 28 acres are irrigated with water from Naneum Creek and there are 34 acres of Bull Ditch water and 8 acres of Town Ditch water. Town Ditch is part of the EWC delivery system. The Jansen delivery system consists of a cement ditch and gated pipe, with a small section of open ditch. A 1 HP pump is used in conjunction with a buried sprinkler system for lawn and garden irrigation around the house. It is not clear whether the pump is on the ditch or on the creek. Mr. Jansen testified that he irrigates approximately 100 days each irrigation season and uses between 1 and 2 cubic feet per second from the creek. He also testified to using 240 acre-feet per year. Livestock are on the property a portion of the year and drink directly from the creek. Non-diversionary stock watering, such as this, is covered by the stock water stipulation discussed on page 4 of this report. No other right is necessary for this use.

23 The claimants' property is part of that which John L. Amlin received a  
24 patent on March 12, 1887. The patent issued for the S%SE%, NE%SE% and SE%NE% of

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Section 18, T. 17 N., R. 19 E.W.M. Prior to the patent issuing, Amlin sold all  
1 of his land to Janey Amy Laurendeau. On December 22, 1894, all of the land sold  
2 at public auction to satisfy a debt that resulted from a lawsuit. The  
3 certificate of sale following the auction mentioned that the land was conveyed  
4 to the purchaser together with all irrigation ditches and water rights. Mr.  
5 Jansen points to this language to show that by 1894, water rights were  
6 appurtenant to the property. Mr. Jansen also related that a prior owner of the  
7 property, Ed Clerf, had told him that the land had been irrigated in the late  
8 1800's.

Water Right Claim No. 048981 was filed by Ed Clerf as a result of the  
10 requirements of RCW 90.14, the Claims Registration Act. It asserted a right to  
11 use 2 cfs, 1200 acre-feet per year from Naneum Creek for the irrigation of 30  
12 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18, T. 17 N., R. 19 E.W.M. The point of  
13 diversion described on the claim is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18, at about  
14 the same location as described in the State's Investigation Report for this  
15 claim.

Although the 1894 certificate of sale shows the existence of irrigation  
17 ditches and water rights on the land being sold, the Referee does not believe  
18 there has been sufficient evidence presented to show the existence of a valid  
19 water right to use waters from Naneum Creek. Construction of the Town Ditch  
20 began in 1885 and was completed prior to 1894 and Bull Canal Company began  
21 construction of its canal also in 1885. It is just as likely that the ditches  
22 and water rights referred to in the certificate of sale related to EWC and Bull  
23 Canal Company as Naneum Creek. Nothing has been offered into the record to show  
24 that a water right was established pursuant to the Riparian Doctrine for Naneum

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1 Creek through water use prior to 1932. Until that proof is presented, the  
2 Referee cannot recommend that a water right be confirmed to the Jansens under  
3 Court Claim No. 00606.

4  
5 COURT CLAIM NO. 00930 -- Harold W. Jenkins  
6 & Gladys D. Jenkins

7 COURT CLAIM NO. 00932 -- Patrick M. Jenkins  
8 & Vicki K. Jenkins

9 Harold and Gladys Jenkins submitted Court Claim No. 00930 asserting a right  
10 to use several surface water sources in Subbasin No. 9. Patrick and Vicki  
11 Jenkins filed Court Claim No. 00932 for use of waters from Naneum Creek. The  
12 lands described in both Court claims are farmed together and the evidence was  
13 jointly presented for both claims, therefore, the Referee will address both  
14 claims in one analysis. The Jenkins were represented by Attorney Hugh Spall at  
15 the evidentiary hearing. Mr. Spall has since withdrawn as their attorney.  
16 Harold Jenkins, Patrick Jenkins and Glenn Cooke testified at the hearing in  
17 support of the claim. Richard C. Bain, Jr., a consulting engineer hired by the  
18 claimants prepared an Engineering Report for the Jenkins Ranches, which is  
19 Exhibit DE-1517. This report provides information about water use on the  
Jenkins land.

20 The Jenkins claim covers several different sections of land that have  
21 different ownership and water right histories. The Referee will deal with each  
22 segment separately.

23 The first to be addressed will be the lands referred to by the Jenkins as  
24 the Home Place. It lies in the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7 and the NE $\frac{1}{4}$  of Section 18,  
25 T. 18 N., R. 19 E.W.M. Although the deeds show that the Jenkins own the S $\frac{1}{2}$ SE $\frac{1}{4}$

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of Section 7 and the Bain report indicates that the Home Place is in Sections 7  
1 and 18, the testimony only addressed water use in Section 18. Additionally, the  
2 State's Investigation Reports only indicate irrigation of lands in Section 18.  
3 It may be that the Home Place does in fact include the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7, but  
4 all of the irrigated land is in the NE $\frac{1}{4}$  of Section 18. Although Mr. Bain's  
5 report indicates that the Home Place is 200 acres in size, with 166 acres being  
6 irrigated, the NE $\frac{1}{4}$  of Section 18 is only 160 acres.  
7

The irrigated land on the Home Place is either Timothy hay (90 acres) or  
8 irrigated pasture. The claimants raise 50 cow/calf pairs and 8 horses on the  
9 land and these animals are there all year. Neither the Jenkins nor Mr. Bain's  
10 report indicated whether diversionary stock watering continues after the end of  
11 the irrigation season. The NE $\frac{1}{4}$  of Section 18 is riparian to Wilson Creek, so  
12 the livestock could drink directly from the creek during the winter months.  
13 Non-diversionary stock watering is covered by the stock water stipulation  
14 discussed on page 4 of this report. Mr. Bain's report indicates that 4 acre-feet  
15 per year would be needed for stock watering. Lacking information to do  
16 otherwise, the Referee will presume that half of that is used during irrigation  
17 season and half the remainder of the year.  
18

Two diversions from Wilson Creek are used to serve the Home Place. One  
19 diversion (TO-1) is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8 and the second (TO-2) is  
20 in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, both in T. 18 N., R. 19 E.W.M. Mr. Bain measured  
21 the flow in the ditch fed from TO-1 in Section 8 in April of 1990 at 2.5 cubic  
22 feet per second. TO-2 was not measured.  
23

Several water right claim (WRC) forms were filed by Harold Jenkins pursuant  
24 to RCW 90.14. The following claims are for the Home Place and assert rights to  
25

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use waters from Wilson Creek: WRC No. 096638 asserts a right to use 3.0 cfs, 50  
1 acre-feet per year for the irrigation of 10 acres in the NE $\frac{1}{4}$  of Section 18,  
2 T. 18 N., R. 19 E.W.M. The point of diversion described is in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
3 Section 18. Mr. Bain's report did not address this diversion, nor did the  
4 testimony at the hearing. WRC No. 096639 asserts a right to divert 1.0 cfs, 50  
5 acre-feet per year for the irrigation of 10 acres in the NE $\frac{1}{4}$  of Section 18. The  
6 point of diversion is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17 (at TO-2). WRC No. 096640  
7 asserts a right to divert 2.40 cfs, 800 acre-feet per year for the irrigation of  
8 160 acres in the NE $\frac{1}{4}$  of Section 18. The point of diversion is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
9 Section 8 (TO-1). None of the claims include Section 7 within the described  
10 place of water use.

Water rights for the NE $\frac{1}{4}$  of Section 18 were addressed in the Sander v. Jones decree. The Decision that preceded the decree stated that I. M. Thomas owned the NE $\frac{1}{4}$  of Section 18, that he had settled on the land in 1880, and received a patent on May 23, 1889. The Decision identified that use of water began in 1880 and by 1887 Thomas was using 65 inches of water. The decree then awarded I. M. Thomas a right to use 65 inches of water (or 1.30 cubic feet per second). The decision stated that one inch of water was sufficient to irrigate one acre in May and June, and half that quantity was sufficient the rest of the year. Therefore, a right to use 65 inches of water would be sufficient to irrigate 65 acres. There was no evidence presented to show that an additional water right was established beyond the 65 inches awarded in the Sander v. Jones decree.

Therefore the Referee can only recommend that a right be confirmed consistent with the decree. It is noted that KRD assesses the Jenkins for 128

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1       acres, which would allow for the irrigation of additional land beyond that for  
2       which a right to Wilson Creek exists. The Referee recommends that a right be  
3       confirmed to Harold D. and Gladys W. Jenkins with a June 30, 1880, date of  
4       priority for the diversion of 1.30 cubic feet per second in May and June and  
5       0.65 cubic foot per second in April and July 1 through October 15, 325 acre-feet  
6       per year for the irrigation of 65 acres and an additional 2 acre-feet per year  
7       for stock watering in the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 18, T. 19 N., R. 19 E.W.M.

8       The next land to be dealt with is called the Bar 14 Ranch, which lies in  
9       the S $\frac{1}{2}$ NE $\frac{1}{4}$ , the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , and the SE $\frac{1}{4}$  of Section 5, the W $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
10      Section 4, that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 north of the KRD canal and  
11      that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9 north of the KRD canal, all in T. 18 N.,  
12      R. 19 E.W.M. The Jenkins own a total of 353 acres in these sections and  
13      irrigate approximately 300 acres with water diverted from Wilson Creek and  
14      Naneum Creek, along with reuse of return flows captured within the ranch. The  
15      land is irrigated pasture for raising cattle and is rill irrigated with dirt  
16      ditches and gated pipe. Approximately 250 cow/calf pairs are raised each year.  
17      The land in Section 5 is riparian to Wilson Creek and the land in Sections 4 and  
18      9 are riparian to Naneum Creek. There was no testimony about diversion of water  
19      during the winter for livestock and since most of the land is riparian, the  
20      Referee will presume that during the remainder of the year the livestock drink  
21      directly from the creeks and there is no diversionary stock water use. The  
22      stock water stipulation discussed on page 4 of this report covers  
23      non-diversionary stock watering. Mr. Bain's report indicates that a total of 20  
24      acre-feet per year is needed for stock watering. The Referee will award half of  
25      that or 10 acre-feet per year during the irrigation season and part of the

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1 diversionary right with the expectation that the remaining will be a  
2 non-diversionary use.

3 Water Right Claim No. 090378 was filed by Ralph C. Klein pursuant to the  
4 requirements of RCW 90.14. Mr. Klein filed a "short form" stating a claim to  
5 use Naneum Stream and Wilson Stream for stock watering and irrigation (lawn and  
6 garden) within the S $\frac{1}{2}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 4; the S $\frac{1}{2}$ NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  of  
7 Section 5; that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 8 and that portion of the W $\frac{1}{2}$   
8 Section 9 lying north and above the right of way of North Branch Canal of  
9 Kittitas Reclamation District. The short form was specifically provided for in  
10 RCW 90.14.051 for any claim for those uses described in the exemption from the  
11 permit requirements of RCW 90.44.050. Those uses were stock watering, watering  
12 of a lawn or noncommercial garden not exceeding one-half acre in size, single or  
13 group domestic supply or industrial use not exceeding 5,000 gallons per day.  
14 The short form only required the name of the claimant, the source of water,  
15 purpose of use and legal description. It did not require that the person filing  
16 the claim identify a point of diversion, quantity of water being used or date by  
17 which water was first used, as the other water right claim form required. Mr.  
18 Klein included on the form a Note that stated: "This water right claim refers  
19 to Order Pendente Lite No. 18145 in the Superior Court of the State in 1973;  
20 Note: the claimant's number which Richard C. Klein, owner, and Ralph C. Klein,  
21 is power of attorney, recorded in Kittitas County, is shown under the former  
22 owners name of Lawrence A. Manly. Claimant No 16, on page 5; Claimant No. 16 on  
23 page 9; Claimant No 16 on page 8; Claimant No 16 on page 10; No 16 on page  
24 14;". The purpose of RCW 90.14, as stated in Section 90.14.010, is to provide  
25 adequate records for efficient administration of the state's waters, . . .

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1 Although the short form itself did not provide sufficient information about the  
2 extent of the right being asserted to meet the stated purpose of RCW 90.14, it  
3 referred to a document that would provide that information. The Order Pendente  
4 Lite referred to on the form resulted from an action initiated by Ecology to  
5 determine the valid water rights in the Wilson-Naneum drainage basin. It is  
6 part of Ecology's records and the evidence indicates it was used by Ecology for  
7 regulatory purposes in the basin. Since WRC No. 090378 specifically referred to  
8 claimant number and page number in the Pendente Lite Order so that the extent of  
9 the right being asserted could be easily determined, the Referee finds that the  
10 claimant substantially complied with the requirements of RCW 90.14.

11 The Bar 14 Ranch itself consists of parts of several different homesteads  
12 with different ownership histories and distinct water rights. The Referee finds  
13 three different water rights, with three different priority dates appurtenant to  
14 portions of what is now Bar 14 Ranch. Because the testimony and evidence of  
15 irrigation usage was put in for the ranch as a whole, the Referee will attempt  
16 to determine how many acres are being irrigated within each of the historic  
17 ownerships. If the claimants do not agree with the conclusions reached by the  
18 Referee, exception should be taken so that the differences can be addressed.

19 Water rights for the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 were addressed in the Ferguson  
20 decree. At the time of that action, John Bloomquist owned the N $\frac{1}{2}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$   
21 of Section 8 and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5. The Findings of Fact that preceded  
22 the decree stated that he had the entire 160 acres under cultivation and that  
23 water was diverted beginning in 1873. A water right was awarded to Bloomquist  
24 in the decree for use of 160 inches. The Referee estimates there are 25 acres  
25 irrigated in that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 lying north of the KRD

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canal and 28 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5. Therefore, the Referee  
1 recommends that a right be confirmed with a June 30, 1873, date of priority on  
2 Naneum Creek for 1.06 cubic feet per second in May and June, 0.53 cubic foot per  
3 second in April and July 1 through October 15, 265 acre-feet per year for the  
4 irrigation of 53 acres and 1 acre-foot per year for stock watering in that  
5 portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 north of the KRD canal and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
6 Section 5, except the westerly 400 feet thereof. The point of diversion is in  
7 the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5.  
8

The portion of the Bar 14 Ranch in the W $\frac{1}{2}$ W $\frac{1}{2}$  of Section 4 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
9 Section 9 were part of land that was owned by George Cooke at the time of the  
10 Ferguson decree. The Findings of Fact states that Cooke owned the S $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{2}$   
11 of Section 4 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9, consisting of 320  
12 acres and all of that land was cultivated with water first diverted from Naneum  
13 Creek in 1882. The Referee estimates that there are 90 acres in Section 4 and  
14 15 acres in Section 9 that are irrigated. Although the decree awarded a right  
15 to use water from Naneum Creek, it appears that water from Wilson Creek is also  
16 used to irrigate some of this land. The point of diversion from Naneum Creek  
17 that is used is in the southwest corner of Government Lot 4. The Referee  
18 recommends that a right be confirmed to the Jenkins with a June 30, 1882, date  
19 of priority for the diversion of 2.10 cubic feet per second in May and June and  
20 1.05 cubic foot per second in April and July 1 through October 15, 525 acre-feet  
21 per year for the irrigation of 105 acres and 3.5 acre-feet per year for stock  
22 watering in that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9 north of the KRD canal, the  
23 W $\frac{1}{2}$ SW $\frac{1}{2}$  and the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, T. 18 N., R. 19 E.W.M.  
24

25  
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Most of the rest of the lands owned by the Jenkins in Section 5 were  
1 addressed in both the Ferguson and the Sander v. Jones decrees. The Decision  
2 that preceded the Sander decree (which was entered in 1890) stated that A.  
3 Haberman owned the land described in his answer since July 1887, having  
4 purchased from N.P.R.R. In 1883 he began diverting water from Wilson Creek and by  
5 1889 had appropriated 49 inches of water. He was awarded a right to use 49  
6 inches from Wilson Creek. In the Ferguson Findings of Fact, August Haberman  
7 owned the S $\frac{1}{2}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$  and the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, upon which he settled in  
8 August 1883. In 1884 he began diverting water from Naneum Creek and irrigated a  
9 total of 70 acres. He was awarded a right to use 70 inches of water. Water is  
10 diverted out of both Wilson Creek and Naneum Creek to irrigate this portion of  
11 Section 5 and the evidence presented shows that a right to irrigate a total of  
12 119 acres in Section 5 were established at the time of the earlier decrees.  
13 There was no evidence offered to show that additional water rights were  
14 established following entry of the decrees. Therefore, the extent of the right  
15 that the Referee can recommend for confirmation is a right to irrigate 49 acres  
16 from Wilson Creek and 70 acres from Naneum Creek. Because there is nothing in  
17 the record to assist in designating a smaller place of use than the entire ranch  
18 in Section 5, the Referee will designate a place of use for each right based on  
19 the location of the ditch(es) from each creek.  
20

The Referee recommends that a right be confirmed for use of Wilson Creek  
21 with a June 30, 1883, date of priority for the diversion of 0.98 cubic foot per  
22 second in May and June and 0.49 cubic foot per second in April and July 1  
23 through October 15, 245 acre-feet per year for the irrigation of 49 acres and  
24

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1       2.5 acre-feet per year for stock watering in the S $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
2       Section 5, except the westerly 400 feet thereof.

3                  With a June 30, 1883, date of priority, a right for the diversion from  
4       Naneum Creek of 1.40 cubic feet per second in May and June and 0.70 cubic foot  
5       per second in April and July 1 through October 15, 350 acre-feet per year for  
6       the irrigation of 70 acres and 3.5 acre-feet per year for stock watering in the  
7       N $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , and S $\frac{1}{4}$ NE $\frac{1}{4}$ , except the westerly 400 feet thereof, all in Section 5.

8                  The last portion of the Jenkins property to be considered is known as the  
9       Cooke Place, which consists of all of Section 6, T. 18 N., R. 19 E.W.M., except  
10      the SE $\frac{1}{4}$ SE $\frac{1}{4}$  and Government Lot 1 and except that portion of Government Lot 2  
11      lying north of the irrigation ditch. A total of 524 acres is owned, with  
12      approximately 255 acres irrigated with water diverted from Whiskey Creek and/or  
13      the Kittitas Reclamation District canal. Ninety acres lying below the KRD canal  
14      are irrigated with both KRD and Whiskey Creek water. Four take-outs (TO's) on  
15      Whiskey Creek are used to divert water that is ditched to the property. TO-1 is  
16      in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M. and is used to fill a stock  
17      watering pond located in the northeast corner of Government Lot 3 of Section 6  
18      and is also used to irrigate approximately 36 acres in the NW $\frac{1}{4}$  of Section 6. It  
19      is estimated that between 3 and 4 cfs is diverted at this takeout. TO-2 is  
20      located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5 and that diversion was measured at 2.0 cfs  
21      in April of 1990. TO-3 is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6 and was measured at  
22      2.62 cfs in April of 1990. TO-4, 5 and 6 are on the KRD canal and were not  
23      measured. TO-7 is on Whiskey Creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6 and TO-8 is on  
24      a drain below the KRD canal. Neither of these last two takeouts were measured.  
25      Based on an analysis made by Mr. Bain in 1990, the fields need between 6.1 and

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9.1 acre-feet per year for each acre irrigated. The land is pasture and hay  
1 ground that is rill irrigated using dirt ditches and gated pipe. The land above  
2 the KRD canal often is not irrigated late in the irrigation season because  
3 sufficient water is not available. Up to 250 cow/calf pairs are raised on the  
4 land, needing 20 acre-feet per year. Whiskey Creek flows through the SE $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
5 the SE $\frac{1}{4}$  and the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6. The testimony did not indicate whether  
6 water is diverted from Whiskey Creek in the winter for stock watering or whether  
7 the livestock drink directly from the creek and the pond in Government Lot 3.  
8 Non-diversionary stock water is covered by the stock water stipulation discussed  
9 on page 4 of this report and no additional right is necessary. Undoubtedly,  
10 livestock drink from the irrigation ditches during the irrigation season, so the  
11 Referee will allocate 10 acre-feet for diversionary stock watering incidental to  
12 irrigation.

Pursuant to the requirements of RCW 90.14, Harold Jenkins filed five water  
14 right claims for use of Whiskey Creek on lands within Section 6, T. 18 N.,  
15 R. 19 E.W.M. Those claims are WRC No. 096632, 096633, 096634, 096641, 096642,  
16 and between them assert a right to divert 6.5 cubic feet per second, 1250  
17 acre-feet per year for the irrigation of 250 acres in that portion of Section 6  
18 owned by the Jenkins. Each claim describes a different point of diversion and  
19 takeouts 1, 2, 3 and 7 are described, along with a diversion in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
20 Section 31, T. 19 N., R. 19 E.W.M., which is not presently used. Several water  
21 right claims were also filed for use on springs in Section 6, however, there was  
22 no testimony and evidence put in the record about use of those springs.

The land in Section 6 was settled by three different individuals and there  
24 is evidence of water rights being established by two of the three. William A.  
25

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Jordan received a patent on January 11, 1892, for the E $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6. On May 19, 1890, he and J. F. LeClerc filed an Affidavit of Water Right stating that in 1872 Amana Galloway constructed a ditch capable of carrying 700 inches of water and appropriated 400 inches of water, which was carried in said ditch. The head of the ditch is in Section 32 and the purpose of said ditch was to irrigate lands in Sections 5, 6 and 7. The evidence in the record shows that at the time the affidavit was filed Jordan owned the E $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6, and the NW $\frac{1}{4}$  of Section 7. LeClerc owned the S $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$  and Lot 4 of Section 5. Although the Report of George Maddox that preceded the 1973 Order Pendente Lite assumed that the 400 inches were used on all of Sections 5, 6 and 7, it is more reasonable to conclude that the water was used on the land within those sections owned by the individuals who filed the affidavit, i.e. Jordan and LeClerc. That is the intention of the Referee. There is no evidence to show how many acres were irrigated within each of the parcels of land. The Court decrees entered in the late 1800's and early 1900's allowed the use of one inch of water for each acre irrigated. The Referee concludes that the 400 inches identified in the Affidavit could have been used to irrigate a maximum of 400 acres. In addition to the Jenkins, Chester Vernon Stokes, and Byrl McNeil are asserting rights to irrigate portions of land owned by Jordan and LeClerc. The evidence presented by the claimant does not show how many acres are irrigated within each of the original homesteads. The Referee, therefore, must make that determination from the evidence in the Bain Report and Exhibit SE-2. The Referee estimates that there are 130 acres being irrigated within the lands homesteaded by William Jordan. Those lands would have a right with a priority date of 1872.

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A patent issued to William J. Knox for Government Lots 3, 4, 5 and 6 of  
1 Section 6. Although Knox did not obtain the patent until 1910, he sold the land  
2 to Patrick Thomas in 1909. That sale references water rights and a water ditch  
3 used for irrigation and includes rights of egress and ingress over lands in the  
4 SE $\frac{1}{4}$  of Section 18 and in Section 19 for maintenance of a ditch used to carry 50  
5 inches of water diverted from Wilson Creek. Also in the record is a copy of the  
6 deed for the easement for the ditch across Sections 18 and 19. The deed was  
7 signed in January of 1907, but clearly indicates that the ditch was in place and  
8 used prior to execution of the deed. It does not identify when that ditch was  
9 constructed. There is a diversion in the SE $\frac{1}{4}$  of Section 18 that conveys water  
10 from Wilson Creek southerly toward Section 6. Currently that ditch ends about a  
11 mile above the claimants' land. The Jenkins are now using Whiskey Creek and the  
12 diversion in Section 32 to serve this land. Glen Cooke's testimony was that the  
13 land is being irrigated at the time of the hearing in much the same manner as  
14 when his father acquired it in 1938. Until 1917 the point of diversion of a  
15 water right could be changed without complying with an administrative process as  
16 long as there was no detrimental effect on other water users. Lacking any  
17 evidence to the contrary, the Referee will conclude that the change occurred  
18 prior to 1917. The Referee estimates there are 35 acres being irrigated within  
19 the lands settled by Knox. The date when this appropriate was initiated is not  
20 in the record, just that the ditch was complete and in use in 1907. Review of  
21 the decrees that are in the record indicates that it often took at least two  
22 years to construct a ditch to serve acreage of this size. Therefore, the  
23 Referee intends to use May 1, 1905, as the priority date.  
24

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1 A patent issued to Isaac Carlton on July 6, 1893, for the W $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$  and  
2 SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6, within which the Referee estimates there are 90 acres being  
3 irrigated. The only historical information put in the record as far as the  
4 Referee can determine is the patent. There was no evidence offered to show that  
5 a water right was established for this land. Lacking that evidence, the Referee  
6 cannot recommend that a water right be confirmed for that portion of the Jenkins  
7 land.

8 It is recommended that a right be confirmed with a June 30, 1872, date of  
9 priority for the diversion of 2.6 cubic feet per second, 910 acre-feet per year  
10 from Whiskey Creek for the irrigation of 130 acres and 5 acre-feet per year for  
11 stock watering in the E $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$  and that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  lying north  
12 of the KRD canal in Section 6. The point of diversion shall be in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
13 Section 6.

14 It is recommended that a right be confirmed with a May 1, 1905, date of  
15 priority for the diversion of 0.70 cubic foot per second, 245 acre-feet per year  
16 for the irrigation of 35 acres and 2 acre-feet per year for stock watering in  
17 Government Lot 4, the S $\frac{1}{4}$  of Government Lot 3, that portion of Government Lot 5  
18 north of the KRD canal and that portion of the the southwest corner of  
19 Government Lot 2 lying southwest of the irrigation ditch, all in Section 6. The  
20 point of diversion shall be in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32.

21 COURT CLAIM NO. 00991 -- Kayser Ranch, Inc.

22 Court Claim No. 00991 was filed by Kayser Ranch, Inc., asserting a right to  
23 use waters from the Wilson-Naneum Drainage basin for irrigation and stock  
24 water. The claimant is also asserting rights to use Schnebly Creek and unnamed

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1 springs that are located on the ranch. The springs and Schnebly Creek are  
2 located on portions of the ranch that lie in Subbasin No. 10, Kittitas, and any  
3 rights that may exist to those waters will be addressed in the Report of  
4 Referee for Subbasin No. 10. Kayser Ranch, Inc., was represented by Attorney  
5 William Almon, who has since withdrawn, at the evidentiary hearing. Mark Kayser  
6 testified at the hearing in support of the claim.  
7

8 Kayser Ranch, Inc., lies in Sections 34 and 35 of T. 19 N., R. 19 E.W.M.  
9 and in Sections 2 and 3 of T. 18 N., R. 19 E.W.M. The only lands that the  
10 Referee intends to address in detail as part of this report are those lands that  
11 are irrigated with waters diverted from Wilson-Naneum Creek. Those lands are in  
12 the N $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34 and the S $\frac{1}{2}$ S $\frac{1}{4}$  of Section 35, south of  
13 Adams Ditch, T. 19 N., R. 19 E.W.M., the N $\frac{1}{2}$  Section 2 and the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  and the  
14 N $\frac{1}{2}$  of Section 3, T. 18 N., R. 19 E.W.M. A right is being asserted for the  
15 diversion of 14 cubic feet per second, 3,000 acre-feet per year to irrigate 740  
16 acres and stock water for 200 head of mature cattle, 350 yearlings and six  
horses.  
17

18 Kayser Ranch, Inc., filed several Water Right Claims (WRC) pursuant to RCW  
19 90.14. Following are the water right claims that were filed for water sources  
20 that lie within Subbasin No. 9. WRC No. 118061 asserts a right to divert 2.67  
21 cfs, 1080 acre-feet per year from Wilson-Naneum Creek for the irrigation of 270  
22 acres and stock watering. The points of diversion described are in the W $\frac{1}{2}$ W $\frac{1}{4}$  of  
23 Section 28 T. 19 N., R. 19 E.W.M. into the Adams and Keister Ditch. The  
24 described place of water use is the W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 2, T. 18 N., R. 19 E.W.M.  
25 and the NE $\frac{1}{4}$  of Section 3, T. 18 N., R. 19 E.W.M. The claimant filed as an  
exhibit a Notice of Scrivener's Error and of Intent to Amend Water Right Claim  
26  
27

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1 No. 124771. The claim number referenced is in error. The notice referenced the  
2 date stamp number, which appears in the upper right corner of the claim form.  
3 The actual claim number is 118061, which is stamped in the lower right corner of  
4 the claim form. The notice states that the claimant seeks to amend the water  
5 right claim to include additional waters appurtenant to the NW $\frac{1}{4}$  of Section 3 T.  
6 18 N., R. 19 East arising from Sanders v. Bull, and additional waters  
7 appurtenant to the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3 pursuant to Wilkins Ditch Co. v. F. C.  
8 Drake. The notice also states that the water right claim should refer to waters  
9 from Schnебly Creek for the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 34 T. 19 N., R. 19 E.W.M., lying  
10 westerly of Schnebly Creek. The Referee notes that RCW 90.14.065 provides a  
11 process for amending a water right claim under certain circumstances. Although  
12 the Referee is not certain that amendments to the claim proposed by Kayser Ranch  
13 can be made under the statute, that is the only mechanism for amending a water  
14 right claim filed pursuant to RCW 90.14. The Referee cannot make that amendment  
15 as part of this proceeding (see Court's Memo Opinion RE: RCW 90.14 and  
16 Substantial Compliance, entered February 10, 1995, at pages 8-9).  
17

18 WRC No. 118064 asserts a right to divert 5.2 cfs, 1040 acre-feet per year  
19 from Wilson-Naneum Creek for the irrigation of 260 acres and stock water. The  
20 location of the diversion is in the W $\frac{1}{2}$ W $\frac{1}{2}$  of Section 28 into the Adams and  
21 Keister Ditches. The lands on which water is used are described as the NW $\frac{1}{4}$ ,  
22 W $\frac{1}{2}$ NE $\frac{1}{4}$ , Lots 2 and 3 of Section 2, T. 18 N., R. 19 E.W.M.; the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
23 and NW $\frac{1}{2}$ SE $\frac{1}{2}$  of Section 34, T. 19 N., R. 19 E.W.M. WRC No. 118065 asserts a right  
24 to divert 1.80 cfs, 400 acre-feet per year from Wilson-Naneum Creek for the  
25 irrigation of 100 acres and stock watering. The diversion is also in the W $\frac{1}{2}$ W $\frac{1}{2}$   
26 of Section 28 and the place of water is described as the NW $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ ,

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and Lots 2 and 3 of Section 2, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ , and N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 34. WRC  
No. 118062 asserts a right to 6.4 cfs, 46,720 acre-feet per year from Naneum  
Creek for the irrigation of 700 acres and irrigation. The described place of  
water use is the W $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Lots 2 and 3 of Section 2 T. 18 N., R.  
19 E.W.M., the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 34 and the S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 35,  
T. 19 N., R. 19 E.W.M. The claim form indicates there was no water use at the  
time it was filed. Mr. Kayser was questioned about the statement on the form  
that no water was being used at the time the claim was filed. He believes that  
was in error and water was being used at that time as described in the claim  
form. The Referee notes that not using water during one season would not have  
an affect on the water rights. There was no assertion by any party that water  
right appurtenant to the Kayser property may have been relinquished due to five  
or more successive years of nonuse, (see RCW 90.14.170).

The Kayser Ranch property was owned by defendants in the various  
litigations that have occurred over the years concerning water rights to Wilson  
and Naneum Creeks. The following rights were awarded in the Ferguson decree and  
in most cases again addressed in the Thomas v. Roberts decree (or the Courts  
Findings of Fact that preceded the decree): With an 1887 date of priority 100  
inches (2 cfs) for the E $\frac{1}{2}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ NE $\frac{1}{4}$  of Sec. 2 (Schnebly), with an 1880 date  
of priority 331/3 inches (0.66 cfs) for the W $\frac{1}{2}$ NW $\frac{1}{4}$  of Sec. 2, T. 18 N., R. 19  
E.W.M. (Larsen); with an 1880 date of priority 120 inches (2.4 cfs) for the NE $\frac{1}{4}$   
of Sec. 3.

Subsequent to entry of the Ferguson Decree, predecessors to Kayser Ranch  
bought water rights from other Ferguson defendants and transferred those rights  
to some of the lands now owned by Kayser Ranch. Those transfers are documented

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through agreements and deeds executed between the involved parties. Those  
1 transfers occurred between 1911 and 1918 and involved individuals who owned  
2 lands that would lie below the proposed Highline Canal, which was to be part of  
3 the Kittitas Reclamation District project that was proposed for construction.  
4 The agreement between Olding, Galvin, Wager and P. H. and Bertha Adams, which is  
5 Exhibit DE-1268, was executed in 1911, but the physical transfer of the water  
6 was to occur after the Highline Canal was constructed. In 1920 the portion of  
7 the agreement pertaining to Wager was cancelled. The Referee notes that the  
8 case of Lawrence v. Adams, Decree No. 8402 (1933) specifically prohibited James  
9 Ferguson and/or Henry Wagar from transferring the water to which they were  
10 entitled under Decree No. 2607 to P. H. Adams. Olding and Galvin transferred to  
11 Adams their rights to Naneum Creek from the Ferguson decree. Olding and Galvin  
12 owned the N½N% and S½NW% of Section 21 T. 18 N., R. 19 E.W.M. which was awarded  
13 240 inches (4.8 cfs) with a priority date of 1872. In 1927 a document was  
14 executed showing that the agreement between Adams and Olding and Galvin had been  
15 satisfied. In 1916 William T. Evans transferred to P. H. Adams one-half of the  
16 rights to Naneum Creek decreed to A. J. Sliger in Ferguson, which amounted to 50  
17 inches (1 cfs) (see Exhibit DE-1263). Evans owned the lands to which the Sliger  
18 right was appurtenant. In 1918 Charles and Kate Bull sold to P. H. Adams 1/20  
19 of the right to Naneum Creek water decreed to F. R. Clement and Elijah Topliff  
20 in Ferguson, which would be 40 inches (0.8 cfs). There is nothing in the  
21 evidence to show that the Bulls owned the land to which the Clement/Topliff  
22 water right was appurtenant. The Findings of Fact and Conclusions of Law in  
23 Thomas v. Roberts acknowledges this transfer, and the quantity of water awarded  
24 to P. H. Adams in the resulting decree included this right. The document  
25

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supporting the transfer (a deed) is dated May 18, 1918, more than a year after  
adoption of the Surface Water Code, which included a provision that changes in  
place of use and points of diversion must be approved by the Department of  
Ecology predecessor agency. Although there is no evidence this was done, the  
Court in Thomas v. Roberts nevertheless included this right in the water awarded  
to Adams.

The Findings of Fact and Conclusions of Law do not mention the transfer  
of the Olding/Galvin right to P. H. Adams, perhaps due to the fact that the  
transfer was not complete at the time the case was decided. Nevertheless, the  
record is clear this transfer occurred. An assertion was made at the  
evidentiary hearing that compliance with the change procedures of RCW 90.03.380  
was necessary since the physical transfer did not occur until around 1927. The  
Referee cannot agree with this assertion. It is clear that the right was sold  
or transferred in 1911 with the understanding that the physical change would not  
occur until construction of the Highline Canal. Construction of that canal was  
not in the control of the parties to the agreement and the Referee is aware that  
construction of the various canals under the entire Yakima Irrigation Project  
took a number of years, requiring numerous extensions on the Federal  
Government's withdrawal of the surface waters in the Yakima Basin. The Referee  
believes that the intent of the parties was clear and the transfer was pursued  
with as much due diligence as possible.

22 The Thomas Findings of Fact also states that P. H. Adams is the owner of  
23 160 inches of water purchased through one Peter Kuchen with the right initiated  
24 in 1887. It goes on to state the water is being used on the lands owned by the  
Adams. The Referee can find no deed for this conveyance. Kayser Ranch

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submitted documents to show that in 1891 Peter Kuchen bought from Northern  
1 Pacific Railroad Lots 3, 4 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  (which comprises most of the NW $\frac{1}{4}$ ) of  
2 Section 3, T. 18 N., R. 19 E.W.M., and now owned by Kayser Ranch. Peter Kuchen  
3 lost the land through foreclosure to Pennsylvania Mortgage Investment Company in  
4 1897 and there is nothing else in the record concerning ownership of this land  
5 until it was acquired by Kayser Ranch. The owner(s) of the NW $\frac{1}{4}$  of Section 3 at  
6 the time of the various decrees dealing with Wilson/Naneum Creek(s) were, as  
7 far as the Referee can determine, not parties to any of the actions. Kayser  
8 Ranch is asserting a right to irrigate the NW $\frac{1}{4}$  of Section 3 with water from  
9 Wilson-Naneum Creek, yet the record would indicate that water rights established  
10 by Peter Kuchen were transferred to the lands owned by P. A. Adams in 1925  
11 (portions of N $\frac{1}{4}$  of Section 2 and S $\frac{1}{4}$  of Section 34). Except for the reference in  
12 the Thomas Findings of Fact, there is no evidence that water rights were  
13 established by Peter Kuchen, or for what lands they might have been  
14 established. Although the Thomas Findings of Fact stated that Adams was using  
15 this water, the quantity of water awarded to Adams in the final decree did not  
16 include this water. The Referee needs additional evidence before a right can be  
17 recommended for this water.  
18

19 Mr. Kayser testified to his belief that the ranch is being irrigated in  
20 much the same manner as in the past and that the same number of acres are being  
21 irrigated. Art Carlson, a neighboring landowner who grew up on land adjoining  
22 Kayser Ranch, testified to his observations as a child of irrigation on the  
23 Kayser Ranch and the various ditches that serve the ranch. Andy Gustafson, who  
24 grew upon neighboring land, testified through a deposition taken on March 15,  
25 1990, to his memory of water use on what is now Kayser Ranch.  
26

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Milton Lewis, who owned lands irrigated with water from Naneum Creek  
1 testified about his memory of transfers of water rights involving Adams in the  
2 late 1920's and early 1930's and a court case that resulted from one attempt to  
3 transfer water. That case, Haberman v. Sanders and Adams, 166 Wash. 453 (1932),  
4 resulted from an attempt to transfer a portion of Olive Sanders' water right to  
5 Wilson Creek to lands owned by Phil Adams and to be diverted from the combined  
6 flow of Wilson-Nanem Creeks through the Adams Ditch. The Court found that the  
7 proposed transfer was subject to the change procedures of the Surface Water  
8 Code, RCW 90.03.380, and that the change could only be made if it would not be  
9 detrimental to existing rights. The Court found with the facts before it that  
10 the proposed change would be detrimental to existing rights and ordered that the  
11 change not be made.  
12

Mr. Kayser is not asserting a right to any of the water rights confirmed to  
13 Sanders, but to rights confirmed to others who were parties to the Ferguson.  
14 The only similarity between the transfers asserted by Mr. Kayser and the  
15 transfer that was addressed in Haberman v. Sander, is that the lands which the  
16 rights were transferred from lie below the Highline Canal. Most of the  
17 transfers occurred prior to adoption of the Surface Water Code when there was no  
18 statute that addressed the effect a transfer might have on existing rights.  
19 The one that occurred after adoption of the Surface Water Code was confirmed in  
20 the Thomas v. Roberts. It is not clear whether the claimants in this proceeding  
21 who are contesting the transfers are successors to parties to Thomas v.  
22 Roberts. Nevertheless, if that transfer was to be challenged, 1925 was the time  
23 to do so, when it was before Kittitas County Superior Court.  
24

25  
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28

The Referee is not able to recommend that water rights be confirmed for all  
1 that land irrigated by Kayser Ranch. The Referee is recommending that rights be  
2 awarded for the irrigation of 613.3 acres. However, there are over 700 acres  
3 being irrigated. The record does not show to which lands the purchased water  
4 rights were transferred, just that it was to lands now owned by Kayser Ranch.  
5 The Referee intends to recommend that those purchased rights be confirmed and  
6 will specify a place of use for those rights. The claimant may during the  
7 exception phase of this proceeding request an opportunity to clarify the place  
8 of use for these rights if necessary.  
9

The Referee recommends that the following water rights be awarded to Kayser  
10 Ranch under Court Claim No. 00991:

With a priority date of June 30, 1872, a right to divert 4.8 cubic feet per  
12 second in May and June, 2.4 cubic feet per second in April and July 1 through  
13 October 15, 1200 acre-feet per year from Wilson-Naneum Creek for the irrigation  
14 of 240 acres and stock watering in the S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$  of Section 3,  
15 T. 18 N., R. 19 E.W.M. and the W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, T. 19 N., R. 19 E.W.M.  
16 The point of diversion shall be into the Keister Ditch in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
17 Section 28, T. 19 N., R. 19 E.W.M.

With a priority date of June 30, 1877, a right to divert 1.30 cfs in May  
19 and June and 0.65 cfs in April and July 1 through October 15, 325 acre-feet per  
20 year from Wilson-Naneum Creek for the the irrigation of 65 acres and stock  
21 watering in that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 34 lying below the Adams Ditch  
22 and the E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, T. 19 N., R. 19 E.W.M. The point of diversion  
23 shall be into the Adams Ditch in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28, T. 19 N.,  
24 R. 19 E.W.M.

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With a priority date of June 30, 1877, a right to divert 1.0 cfs in May and  
1 June, 0.50 cfs in April and July 1 through October 15, 250 acre-feet per year  
2 for the irrigation of 50 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 2,  
3 T. 18 N., R. 19 E.W.M. The point of diversion shall be into the Adams Ditch in  
4 the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28, T. 19 N., R. 19 E.W.M.

With a priority date of June 30, 1880, a right to divert 0.50 cfs in May  
6 and June and 0.25 cfs in April and July 1 through October 15, 125 acre-feet per  
7 year from Wilson-Naneum Creek for the irrigation of 25 acres and stock watering  
8 in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, T. 18 N., R. 19 E.W.M. The point of diversion shall  
9 be into the Wilkins Ditch in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, T. 19 N., R. 19 E.W.M.  
10

With a priority date of June 30, 1880, a right to divert 2.4 cfs in May and  
11 June and 1.2 cfs in April and July 1 through October 15, 600 acre-feet per year  
12 from Wilson-Naneum Creek for the irrigation of 120 acres and stock watering in  
13 the E $\frac{1}{2}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 3, T. 18 N., R. 19 E.W.M. The point of  
14 diversion shall be into the Keister Ditch in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, T. 19 N.,  
15 R. 19 E.W.M.  
16

With a June 30, 1880, priority date, a right to divert 0.66 cubic foot per  
17 second in May and June and 0.33 cubic foot per second in April and July 1  
18 through October 15, 166.5 acre-feet per year from Wilson-Naneum Creek for the  
19 irrigation of 33.3 acres and stock watering in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 2,  
20 T. 18 N., R. 19 E.W.M. The point of diversion shall be into the Keister Ditch  
21 in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, T. 19 N., R. 19 E.W.M.  
22

With a June 30, 1887, date of priority, a right to divert 2 cfs in May and  
23 June and 1 cfs in April and July 1 through October 15, 500 acre-feet per year  
24 from Wilson-Naneum Creek for the irrigation of 100 acres and stock watering in  
25

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the S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 2, T. 18 N., R. 19 E.W.M. The point of  
1 diversion shall be into the Adams Ditch in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28, T. 19 N.,  
2 R. 19 E.W.M.

3  
4  
5 COURT CLAIM NO. 01263 -- Sam Kayser  
6 Thomas V. Morrison  
7 & Ginger D. Morrison  
8 Chet Morrison  
9 & Judy Morrison

10  
11 The Statement of Claim was originally filed by Thomas V. and Virginia D.  
12 Morrison for use of waters from Naneum Creek. On March 30, 1989, Farm Credit  
13 Bank of Spokane (formerly Federal Land Bank of Spokane) was joined to the claim  
14 having acquired the land through a public auction by the Kittitas County  
15 Sheriff's office. On April 27, 1990, Sam Kayser was joined to the claim and was  
16 substituted for the Farm Credit Bank of Spokane on March 22, 1993. On February  
17 25, 1993, Chet Morrison, Jr. and Judy Morrison were joined to the claim. Mr.  
18 Kayser objected to their being joined to claim, asserting they had no interest  
19 in the land described in the claim. Sam Kayser, represented by Attorney William  
20 Almon, and his father, Mark Kayser, testified at the evidentiary hearing.

21  
22 Mr. Kayser owns the S $\frac{1}{2}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ SE $\frac{1}{4}$ , except the west 600 feet of the south  
23 1200 feet of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , of Section 4, T. 18 N., R. 19 E.W.M., and is irrigating  
24 between 140 and 150 acres. At the time of the hearing the land was irrigated  
25 pasture that supported 200 cow/calf pairs and several horses. The livestock  
26 drink directly from a spring not specifically located on the property and from  
27 the irrigation ditches that cross the land. Mr. Kayser is asserting a right to  
28 divert 1.82 cubic feet per second and 3.64 acre-feet per year for each acre

29  
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irrigated, or 546 acre-feet per year. He has not measured the quantity of water  
1 he uses, but believes that is what is being used to irrigate the land.  
2

According to the testimony the current irrigation practice is consistent  
3 with that which has occurred during the 1960's and 1970's. Neither of the  
4 Kaysers who testified had knowledge of the property prior to 1960. Two water  
5 right claims were filed by Thomas V. Morrison for this property, consistent with  
6 the requirements of RCW 90.14. Water Right Claim No. 125069 asserted a right to  
7 divert 1.82 cubic feet per second, 3.64 acre-feet per year for the irrigation of  
8 150 acres and stock watering the S $\frac{1}{4}$ NE $\frac{1}{4}$  and the E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 18 N.,  
9 R. 19 E.W.M. (an exception to this was described, excluding land in the W $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$   
10 of Section 4). The point of diversion described was for the Wilson Ditch,  
11 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33, T. 19 N., R. 19 E.W.M.. Water Right Claim  
12 No. 125070 asserted the same claim, except identifying the point of diversion as  
13 being into the Wilkins Ditch located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, T. 19 N.,  
14 R. 19 E.W.M.. The annual quantity asserted in both claims obviously is per acre  
15 irrigated. Both asserted a date of first water use of 1883.  
16

Mr. Kayser is basing his claim on Ferguson v. United States National Bank  
17 of Portland, Oregon and the Order Pendente Lite from Department of Ecology v.  
18 Carlson, et al.. A patent issued to James I. Wilson on January 11, 1888, for  
19 the E $\frac{1}{4}$ SE $\frac{1}{4}$  and S $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 4, T. 18 N., R. 19 E.W.M.. Mr. Wilson filed a  
20 Statement of Water Right dated May 26, 1890, identifying the lands he owned and  
21 stating he had a valid water right to 100 inches from Naneum Creek. The notice  
22 states that the water was appropriated in May 1883. Ferguson recognized a Class  
23 13 right for J. I. Wilson for 100 inches from Naneum Creek. The Findings of  
24 Fact that preceded the decree showed that J. I. Wilson owned the E $\frac{1}{4}$ SE $\frac{1}{4}$  and S $\frac{1}{4}$ NE $\frac{1}{4}$   
25

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of Section 4, T. 18 N., R. 19 E.W.M., which was first settled in the fall of  
1  
1882. One hundred inches of water were diverted from Naneum Creek in the spring  
2  
of 1883. According to the decree, 100 inches would have been sufficient for the  
3  
irrigation of 100 acres.  
4

The Order Pendente Lite from Ecology v. Carlson, identified a right with an  
5  
1883 date of priority for Thomas Victor Morrison for 1.0 cubic foot per second  
6  
for the irrigation of 80 acres in the S $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 4 and 0.82 cubic foot per  
7  
second for the irrigation of 41.15 acres in that portion of the E $\frac{1}{4}$ SE $\frac{1}{4}$  of  
8  
Section 4, except that parcel described as: Beginning at the southeast corner  
9  
of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4; thence N 89°49'20" W along the south boundary of the  
10  
SE $\frac{1}{4}$ SE $\frac{1}{4}$  1349.00 feet; thence N 1°32'20" E 1156.72 feet; thence S 89°49'20" E  
11  
565.03 feet; thence S 1°32'20" W 1156.72 feet; thence N 89°49'20" W 565.03 feet  
12  
to the true point of beginning. Another claimant in both that proceeding and  
13  
the instant case, David Leffert, was awarded a right for 0.18 cubic foot per  
14  
second, allegedly for the balance of the Wilson right identified for the E $\frac{1}{4}$ SE $\frac{1}{4}$   
15  
of Section 4. The claim by Mr. Kayser is consistent with the quantity in the  
16  
Order Pendente Lite.  
17

The Order Pendente Lite is a interim document during the pendency of an  
18  
adjudication of Wilson-Naneum Creeks, which was initiated in 1971 and never  
19  
completed. The Referee concludes that based on the findings in the Ferguson  
20  
case, the extent of the water right for the S $\frac{1}{4}$ NE $\frac{1}{4}$  and E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4 is 100  
21  
inches of water for the irrigation of 100 acres. Between Mr. Kayser and David  
22  
M. and J. Christine Leffert, who own the W $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, rights are being  
23  
asserted for the irrigation of 155 to 160 acres within an 160 acre area.  
24  
However, the evidence in the record supports a conclusion that a right exist for  
25

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only 100 acres. The Referee will divide that 100 acres proportionately between  
1 Mr. Kayser and the Lefferts. Mr. Kayser owns 90.6 percent of the lands owned by  
2 J. I. Wilson when the water right was established and would then have 90.6  
3 percent of the 100 inch right and the Lefferts own 9.4 percent of the land and  
4 would hav 9.4 percent of the water right.  
5

The Referee recommends that a right be confirmed to Sam Kayser under Court  
6 Claim No. 01263 with a May 30, 1883, date of priority for the diversion of 1.82  
7 cubic feet per second, 453 acre-feet per year for the irrigation of 90.6 acres  
8 and 5 acre-feet per year for stock watering. A right is being recommended for  
9 stock watering only during the irrigation season, as the claimant did not  
10 testify to diverting water outside of the irrigation season.  
11

Although Chet Morrison, Jr. and Judy Morrison were joined to the claim and  
12 asserted that testimony was presented by Mr. Kayser relative to land they now  
13 own, it is not clear to the Referee that any of the testimony and evidence  
14 related to land other than that owned by Mr. Kayser in the S $\frac{1}{2}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ SE $\frac{1}{4}$  of  
15 Section 4. Therefore, the Referee does not recommend confirmation of a water  
16 right under Court Claim No. 1263 to the Morrisons.  
17

COURT CLAIM NO. 01234 -- Sam Kayser  
19 (A) 06380 & Lonni Kayser

Court Claim No. 01234 was originally filed by Margaret Kooy and Jack Kooy  
20 asserting a right to use waters from Naneum Creek for the irrigation of the  
21 W $\frac{1}{2}$ SW $\frac{1}{4}$  and that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 lying above the KRD canal. On  
22 March 23, 1989, Sam and Lonni Kayser were substituted for the Kooy's. Attorney  
23 William F. Almon represented the Kaysers at the evidentiary hearing. Mr. Almon  
24

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has since withdrawn as their attorney. Sam Kayser and Henry Schnebly testified  
1 in support of the claim.

The Kaysers own that portion of the W $\frac{1}{4}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2,  
2 T. 18 N., R. 19 E.W.M. lying north of the Kittitas Reclamation District (KRD)  
3 canal. There is some issue about whether the claim was also filed for that  
4 portion of the W $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 lying south of the KRD canal, which stayed in  
5 the Kooy family and at the time of the hearing was owned by Michael Kooy.  
6 Michael Kooy was served notice of the hearing, but did not make an appearance.  
7 The testimony offered in support of the claim dealt strictly with land lying  
8 north of the canal.

Mr. Kayser testified that he owns between 70 and 75 acres and irrigates it  
11 all with water diverted from Naneum Creek and carried in the Keister Ditch. He  
12 raises hay and uses the ground to pasture cows after the first hay cutting in  
13 June. Up to 150 head of cattle are on the ground while the pasture lasts.  
14 Since he has owned the property, Mr. Kayser replaced some of the dirt ditches  
15 with gated pipe, but other than that has continued the irrigation practice in  
16 place when he acquired the land, which was in the mid-1980's. Henry Schnebly  
17 has lived in the area all of his life (he was 73 at the time of the Subbasin No.  
18 9 hearings) and recalls the claimants' land being irrigated. His family at one  
19 time owned the land, along with other neighboring lands. Mr. Schnebly's father  
20 was born on the claimants' land. Although Mr. Schnebly did not provide any  
21 specifics it is clear from his testimony that the Kayser land discussed herein  
22 was being irrigated from a ditch that carried water from Naneum Creek as far  
23 back as Mr. Schnebly can remember.

25

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Pursuant to RCW 90.14, Water Right Claim No. 062732 was filed by Jacob Kooy  
1 asserting a right to use 0.84 cubic foot per second, 240 acre-feet per year from  
2 Naneum Creek for the irrigation of 60 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$  and part of the SE $\frac{1}{4}$ SW $\frac{1}{4}$   
3 of Section 2, T. 18 N., R. 19 E.W.M. The point of diversion described is at  
4 approximately the location of the diversion into the Keister Ditch. Water Right  
5 Claim No. 062732 states as the basis of the claim Cause No. 18145, Superior  
6 Court Kittitas County May 1973, with is the Department of Ecology v. Carlson  
7 case. The Pendente Lite Order in that case gave Jacob Kooy a right to 0.84 cfs  
8 for the SE $\frac{1}{4}$ SW $\frac{1}{4}$  north of the KRD and the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2. The Report of  
9 George E. Maddox that preceded the Order stated that a total of 70 acres were  
10 irrigated in the portion of the Kooy property that was north of the canal, and  
11 of that 70, 17 acres were irrigated in that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2  
12 north of the canal.  
13

Water rights for the Kayser property were addressed in the Ferguson  
14 decree. At the time of that action, the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 was owned by  
15 William Keister and the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2 was owned by Eric Larson. Keister  
16 and Larson constructed a ditch in 1880 from Naneum Creek to their lands in  
17 Sections 2, 3, 10 and 11. The Ferguson decree awarded a right to Keister for  
18 the use of 200 inches May 1 through June 15 and 100 inches the rest of the year  
19 for use on the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11, the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 and the NE $\frac{1}{4}$   
20 of Section 3. In 1918 Charles Bull owned the NW $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11 and  
21 the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, all of which he sold to H. H. Adams along with 4/10 of  
22 the Keister water right. Four-tenths of that right would be 80 inches or 1.60  
23 cubic feet per second. The SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 would have one-quarter of that  
24 right and Kayser would have one-half of that one-quarter, or 10 inches (0.20 cfs  
25

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May 1 through June 15). The Ferguson decree awarded a right to Eric Larson for  
1 the use of 100 inches of water from May 1 through June 15 (for some reason this  
2 particular right was reduce after June 15 instead of June 30 i the Ferguson  
3 decree) for the W $\frac{1}{2}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 2 and the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 3. In  
4 1919 Charles Bull sold to Charles Gustafson the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2 and the S $\frac{1}{2}$ SE $\frac{1}{4}$   
5 of Section 3 along with 2/3 of the water from Naneum Creek decreed to Eric  
6 Larson in the Ferguson case (which would be 66.6 inches or 1.332 cubic feet per  
7 second). In 1922 Charles Gustafson sold the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2 together with 50  
8 inches of that right, leaving 16.6 inches for use in the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 3.  
9

Based on these documents, the Referee concludes that the Kayser property is  
10 entitled to 60 inches of water (or 1.20 cfs) with an 1880 priority date. This  
11 is more than was recognized in the Order Pendente Lite, however, there is no  
12 evidence that the deeds that conveyed land with specific portions of the water  
13 right were in the record. The Ferguson decree provided that one inch of water  
14 was used for each acre irrigated and the Findings of Fact shows that when the  
15 right was established the number of acres irrigated were the same as the inches  
16 awarded. Although Mr. Kayser is now irrigating 70 acres, the Referee must  
17 conclude that a right exists only for the irrigation of 60 acres.  
18

The Referee, therefore, recommends that a right be confirmed with a  
19 June 30, 1880, date of priority for the diversion of 1.20 cubic feet per second  
20 from May 1 through June 15 and 0.60 cubic foot per second in April and June 16  
21 through October 15, 300 acre-feet per year for the irrigation of 60 acres and  
22 stock watering in that portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$  and SE $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2, T. 18 N.,  
23 R. 19 E.W.M. In the post-hearing brief filed in support of this claim a right  
24 was asserted for continuous stock watering, however, Mr. Kayser did not testify  
25

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1 to diverting water after the irrigation season for stock watering. Rather he  
2 testified that livestock are on the land until the pasture "runs out". That  
3 would indicate that the livestock are not on the land all year. The time period  
4 when they would be on the property was not discussed, other than beginning at  
5 the first cutting of hay. Therefore, the Referee only recommends a right for  
6 stock watering during the irrigation season.  
7

8 COURT CLAIM NO. 00667 -- Robert O. Kelley  
9 & Paula K. Kelley

10 Court Claim No. 00667 was submitted by Gerald E. and Janis Anderson. On  
11 October 24, 1988, Robert O. and Paula K. Kelley were substituted for the  
12 Andersons on the claim. Mr. Kelley testified at the evidentiary hearing.

13 The Kelleys own the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and S $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , except the easterly 328 feet  
14 thereof, in Section 28, T. 18 N., R. 19 E.W.M. and are asserting a right to  
15 irrigate 48 acres with water diverted from Naneum Creek. A branch of Naneum  
16 Creek, called Neally Creek, flows through the claimants' property. Water is  
17 diverted from Neally Creek about 300 feet north of the claimants' north property  
18 line, in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21 and carried in a ditch through the  
19 claimants' property. About 40 acres is planted in Timothy hay and 8 acres are  
20 in pasture. The claimants' have 3 or 4 horses on the property and varying  
21 numbers of cattle, ranging from 6 up to 30. The land is flood irrigated using  
22 concrete ditches and gated pipe. The land is also assessed by the Kittitas  
23 Reclamation District.

24 Water rights for this land stem from the Ferguson decree. The claimants'  
25 land was owned by Elijah M. Topliff at the time of that case. Topliff was  
26

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awarded several water rights in the decree due to his extensive land holdings.  
1 Portions of a Class 4 (1873 priority date) and a Class 7 (1875 priority date)  
2 right are appurtenant to the claimants' land. A Class 4 right for the use of  
3 160 inches in the W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 27 and the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 28 was awarded to  
4 Topliff. The claimants land in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28 would have a portion of  
5 that right. A Class 4 right was awarded for 160 inches in the N $\frac{1}{2}$ SE $\frac{1}{4}$  and S $\frac{1}{2}$ NE $\frac{1}{4}$   
6 of Section 28 and a portion of that right would be appurtenant to the claimants'  
7 land in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28. The decree allowed for the use of one inch of  
8 water for each acre irrigated in May and June and one-half inch of water the  
9 remainder of the year. The claimants own 16 acres within the S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  and 21  
10 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28.  
11

Although it is clear that a water right was established for the land in the  
12 late 1800's and that beneficial use has continued, the Referee can find no  
13 evidence that a water right claim was filed pursuant to RCW 90.14, the Claims  
14 Registratiton Act. This Act was passed by the legislature in 1967 and required  
15 the filing of a water right claim for any water use initiated prior to adoption  
16 of the state water codes (the Surface Water Code was adopted in 1917 and the  
17 Ground Water Code was adopted in 1945). Claims were to be filed between  
18 January 1, 1969 and June 30, 1974. Failure to file a claim waived or  
19 relinquished any right that may have existed, RCW 90.14.071. Therefore, the  
20 Referee cannot recommend that a water right be confirmed under Court Claim No.  
21 00667.  
22

Livestock drinking directly from the creek is covered by the  
23 non-diversionary stock water stipulation discussed on page 4 of this report.  
24

25  
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28

1 COURT CLAIM NO. 01232 -- Bobby F. Kennedy  
2 Haidas Ranches, LLC  
3 Gary Griffith

4 Court Claim No. 01232 was originally filed by Dippel Brothers. On  
5 April 21, 1994, Bobby F. Kennedy was substituted as claimant. On April 19,  
6 1999, Haidas Ranches LLC was joined as an additional party to the claim and on  
7 November 22, 1999, Gary Griffith was joined. The land was still owned by Dippel  
8 Brothers at the time of the evidentiary hearing, and they were represented by  
9 Attorney Hugh Spall. Jill Perry, ranch manager, and Les Sperline, who actually  
10 irrigated the land, testified at the hearing.

11 Dippel Brothers owned approximately 950 acres and irrigated 935 acres with  
12 waters from Whiskey Creek, Dry Creek and the Kittitas Reclamation District  
13 (KRD). Their ownership can generally be described as: the NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
14 except the east 350 feet, in Section 12, all of Section 13, except the SW $\frac{1}{4}$ SW $\frac{1}{4}$   
15 and the W $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , T. 18 N., R. 18 E.W.M. and the NW $\frac{1}{4}$  of Section 18, T. 18 N.,  
16 R. 19 E.W.M. The land in Section 13 is riparian to both Dry Creek and Whiskey  
17 Creek, the land in Section 12 is riparian to Whiskey Creek and the land in  
18 Section 18 is riparian to Dry Creek. Section 13 was originally held by the  
19 Northern Pacific Railroad, and the railroad sold portions of it to individual  
20 settlers between 1887 and 1892. Riparian rights for lands originally held by  
21 the railroad enjoy a priority date of the date the map of definite location was  
22 filed with Kittitas County, which is May 24, 1884, see Sander v. Bull, 76 Wash.  
23 1, 135 Pac. 489 (1913).

24 The claimant entered into evidence two patents showing when the NE $\frac{1}{4}$ SE $\frac{1}{4}$  and  
25 SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12 and E $\frac{1}{4}$ NW $\frac{1}{4}$  and Government Lot 1 of Section 18 separated from

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federal ownership. However, there was nothing in the record concerning the rest  
1 of the NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12, or Government Lot 2 of Section 18, lands  
2 that were owned and irrigated by the Dippels.  
3

Jill Perry testified about the management of the ranch. The 935 irrigated  
4 acres are pasture for cattle. A maximum of 800 pair of cattle are grazed on the  
5 land. The cattle have access to and drink from the creeks, irrigation ditches  
6 and springs that emerge on the land. She believes that the land has always been  
7 used to raise livestock and that would not be possible without irrigation  
8 water. She noted that there is an old log structure on the property with wooden  
9 pegs and square metal nails, indicating that it has been there for a long time.  
10 Very large willow and cottonwood trees, which need water to survive are also on  
11 the property. She did not indicate on which part of the property the trees and  
12 log structure were located. The land also receives water delivered by KRD,  
13 however, Ms. Perry did not know how many acres are accessed by KRD.  
14

Les Sperline testified about the irrigation practice on the property.  
15 Several maps were entered into the record showing the locations of the  
16 diversions and ditches used to irrigate the fields. Diversion 1 through 6 are  
17 on Dry Creek and diversions 8 through 14 are on Whiskey Creek. At one point Mr.  
18 Sperline testified that a maximum of 7 cfs is diverted from Dry Creek and a  
19 maximum of 13 cfs is diverted from Whiskey Creek. However, later in his  
20 testimony, Mr. Sperline stated that only half of that is taken at one time. The  
21 Referee is unclear about how much is actually diverted from either creek. It  
22 takes about a month to irrigate the entire ownership. Irrigation season begins  
23 around April 1 and ends in early October. Mr. Sperline began farming the  
24 property in 1955 for a previous owner and continued when Dippel Brothers  
25

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1 acquired it in 1972. He also believes that it is not possible to raise  
2 livestock on the land without irrigation water. He moved into the area in 1949  
3 and the land has continuously been irrigated since that time.  
4

5 Pursuant to the requirements of RCW 90.14, a prior owner of the land filed  
6 water right claims (WRC). WRC No. 046379 asserts a right to use 17 cfs, 5200  
7 acre-feet per year from Whiskey Creek for the irrigation of 843 acres and stock  
8 water. The legal description of where the water is used describes all of the  
9 Dippel Brothers land. Seven points of diversion are described and for the most  
10 part these points are at or near the currently used diversions. WRC No. 046380  
11 asserts a right to divert 12 cfs, 3600 acre-feet per year from Dry Creek for the  
12 irrigation of 843 acres. The place of water use is also all of the Dippel  
13 Brothers land. Six points of diversion are described, which for the most part  
14 are very close to the points of diversion shown on the claimants maps. WRC Nos.  
15 055273, 055274, 055275 and 055276 were filed by Dippel Brothers for unnamed  
16 springs in Section 31, T. 19 N., R. 18 E.W.M. and Section 6, T. 18 N.  
17 R. 18 E.W.M. These springs are located outside of Subbasin No. 9 (in Subbasin  
18 No. 7) and will not be addressed in this report.

19 None of the land owned by Dippel Brothers (now owned by Kennedy and Haidas  
20 Ranches) was addressed in the many decrees that been entered addressing water  
21 rights in the Wilson-Naneum basin. That does not necessarily mean that a water  
22 right does not exist. However, in order for the Referee to find that a water  
23 right exists under the Riparian Doctrine, which would lead to a recommendation  
24 that a right be confirmed, there must be evidence that beneficial use of the  
25 creek water was made prior to December 31, 1932. That evidence is lacking. The  
26 testimony expressed a belief that the land could not be used to raise livestock

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without irrigation of land. However, since KRD water is also used, that does  
1 not necessarily show that creek water has always been used on the land or when  
2 creek water was likely first used. The diversions from both Whiskey Creek and  
3 Dry Creek that are used on the claimants' land are below the KRD Highline canal  
4 and are greatly influenced by return flows generated by use of KRD water. There  
5 needs to be evidence to show that use of the creeks was begun prior to KRD  
6 coming on line. Additionally, if KRD water is delivered through the creek, the  
7 claimant needs to attempt to quantify how much natural creek flow is diverted.  
8

Due to the lack of evidence to show that water rights were legally  
9 established for the lands described in Court Claim No. 01232, the Referee cannot  
10 recommend that a right be confirmed.  
11

The livestock grazing on the claimants' land drink from the creeks that  
12 flow through the land and springs that emerge on the claimants' land. That  
13 non-diversionary stock water use is covered by the stock water stipulation  
14 discussed on page 4 of this report and no additional right is necessary.  
15

COURT CLAIM NO. 01128 -- Daniel S. Kivi  
16

Frank W. Phelps, Sr. filed a claim with the Court for use of waters from  
18 Naneum Creek. Mr. Phelps was represented by Attorney Roger K. Garrison at the  
19 evidentiary hearing and Mr. Phelps testified in support of the claim. On  
20 September 29, 1999, Daniel S. Kivi was substituted for Mr. Phelps.  
21

The Phelps property lies in Government Lot 3 of Section 4, T. 17 N.,  
22 R. 19 E.W.M. west of Ferguson Road and is 20.60 acres in size. Water is  
23 diverted from a branch of Naneum Creek in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16 and carried  
24 through the west half of Sections 21, 28 and 33 of T. 18 N., R. 19 E.W.M. to the  
25

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1 north section line of Section 4. At that point Mr. Phelps diverts from that  
2 ditch to irrigate his fields. The land is planted to pasture and hay. All of  
3 the land, except where the house is located is irrigated. The Referee estimates  
4 that probably 20.25 acres are being irrigated. Up to 15 cow/calf pairs can be  
5 raised on the land and when creek water is available they are watered from the  
6 irrigation ditches. Mr. Phelps testified that in many years between mid-July  
7 and mid-August creek water does not make it to his property, in spite of his  
8 land having a very high priority water right.

9 The claimant's land is part of the land owned by James Ferguson at the time  
10 the Ferguson decree was entered. James Ferguson is Mr. Phelps' grandfather.  
11 According to the Findings of Fact, Ferguson settled on the E $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  and  
12 SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M. on July 5, 1872. The decree awarded  
13 him 160 inches of water from Naneum Creek for use on that land. The decree  
14 stated that one inch of water would be used to irrigate one acre of land in May  
15 and June and one-half inch of water for each acre the rest of the year. Mr.  
16 Phelps asserted a right for use of 21 inches of water, which would be 0.42 cubic  
17 foot per second, based on his land being almost 21 acres in size, and his  
18 proportionate share of the Ferguson water right.

19 Besides Mr. Phelps (now Kivi), there are several other claimants in this  
20 proceeding who are successors to James Ferguson and share a portion of the water  
21 right. Those claimants are: Gwendolyn and Robert Cooke, Edith Thomas, Morrison  
22 Ranches, Laurance D. Raap, Maurice and Ruth Ann Olney. Their claims are  
23 addressed elsewhere in this report (see table of contents).

24 Water Right Claim No. 200070 was filed by Mr. Phelps asserting a right to  
25 divert 0.40 cubic foot per second, 116 acre-feet per year for the irrigation of

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1       20 acres and stock watering. The place of use described on the claim is a  
2 portion of the E $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M. and the point of  
3 diversion described is the point where the water is diverted from the main ditch  
4 into the lateral for use on the claimant's property. Additionally, Certificate  
5 of Change of Point of Diversion recorded in Volume 2, page 882 (signed on  
6 December 6, 1965) may apply to the claimant's water right. It authorized  
7 several people, including Bessie Phelps to change the point of diversion of 3.2  
8 cubic feet per second (which would be 160 inches) from Naneum Creek from a point  
9 in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M. to a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
10 Section 16. Mr. Phelps testified that his mother changed the point of  
11 diversion, so the Referee believes it is reasonable to conclude that Bessie  
12 Phelps is Frank Phelps' mother.

13       Based on the foregoing, the Referee recommends that a right be confirmed  
14 under Court Claim No. 01128 for the use of waters from Naneum Creek with a  
15 July 5, 1872, date of priority for the diversion of 0.42 cubic foot per second  
16 in May and June and 0.21 cubic foot per second in April and July 1 through  
17 October 15 and 101.25 acre-feet per year for the irrigation of 20.25 acres and  
18 stock watering in that portion of the E $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M.  
19 described as follows: Beginning at the south quarter corner of Section 4;  
20 thence N 1°50' W 3871.68 feet along the center line of Ferguson County Road;  
21 thence S 86°52'40" W 30 feet to the True Point of Beginning; thence S 86°52'40"  
22 W 729.79 feet to the west boundary line of said E $\frac{1}{4}$ NW $\frac{1}{4}$ ; thence N 6°22'40" E  
23 119.54 feet, more or less, to the northwest 1/16 corner; thence N 5°10' E 1207.7  
24 feet, more or less, along the west line of the E $\frac{1}{4}$ NW $\frac{1}{4}$  to the south right of way  
25 of State Road No. 7; thence N 87°17' E 422 feet along the south right of way;

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1            thence N 86°05' E 111 feet along the south right of way to the west right of way  
2            of Ferguson County Road; thence S 3°19' E 1295.5 feet, more or less, along the  
              west right-of-way to the true point of beginning.

5 COURT CLAIM NO. 00818 -- Adolph Kjelmyhr  
Merle D. Lott

L. E. and Ellen E. Guise submitted a claim to the Court for use of waters from Naneum Creek for the irrigation of 10 acres in the W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 21, T. 18 N., R. 19 E.W.M. Their neighbor, Lorne Dunning, appeared at the evidentiary hearing on their behalf and presented testimony in support of the claim. On February 5, 1992, Adolph Kjelmyhr and Merle D. Lott were substituted for the Guises.

According to Mr. Dunning's testimony the diversion in the SW<sup>1/4</sup>NE<sup>1/4</sup> of Section 21 that serves his property also delivers water to the Guise property. Approximately 9 acres of pasture is rill or flood irrigated. Livestock are also raised on the property. Mr. Dunning said the number varies, but that he would put up to 30 head on for two weeks, rotate them off for six weeks and then back on for a couple more weeks. He suggested that the equivalent of one animal unit per month (an unit is a cow/calf pair) is on the property. One acre-foot of water should be sufficient for that level of stock watering during the irrigation season. There was no discussion of diversions for livestock during the winter. The property is also assessed by KRD and that water is delivered in the same ditch as the creek water.

Water Right Claim No. 112401 was filed by Mr. Guise asserting a right to divert 1.0 cubic foot per second, 300 acre-feet per year from Naneum Creek for

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the irrigation of 10 acres and stock watering in the W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 21,  
1  
T. 18 N., R. 19 E.W.M. The diversion described on the claim is at the location  
2  
of the presently used diversion on a branch of Naneum Creek.  
3

4 Mr. Dunning cited to the Ferguson Decree as the basis for the water right.  
5 The decree awarded a Class 4 right, which would have a 1874 date of priority, to  
6 F. R. Clement for the use of 160 inches in the N $\frac{1}{2}$ S $\frac{1}{2}$  of Section 21, T. 18 N.,  
7 R. 19 E.W.M. The decree allowed for the use of one inch of water on each  
8 irrigated acre in May and June and one-half inch of water the rest of the year.  
9 Based on that, the claimants would have a right to 0.20 cubic foot per second in  
10 May and June and 0.10 cubic foot per second the rest of the irrigation season.  
11 A maximum of 5 acre-feet per acre can be diverted during irrigation season. Mr.  
12 Dunning testified to his belief that the right had continued to be exercised  
13 after it was established in 1874.

14 The Referee recommends that a right be confirmed with a June 30, 1874, date  
15 of priority for the use of 0.18 cubic foot per second in May and June and 0.09  
16 cubic foot per second in April and July 1 through October 15, 45 acre-feet per  
17 year for irrigation of 9 acres and one acre-foot per year for stock watering in  
18 the W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 21, T. 18 N., R. 19 E.W.M.

19  
20 COURT CLAIM NO. 00662 -- Robert B. Klindworth  
21 & Linda W. Klindworth

22 Robert and Linda Klindworth submitted a claim to the Court asserting a  
23 right to use waters from Lyle Creek for irrigation and stock watering. Guy  
24 Couture, their neighbor, testified at the evidentiary hearing.  
25

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The Klindworth property is a portion of Block 20 of Smithson's Addition to  
1 Ellensburg. They own approximately 2.3 acres and are asserting a right to  
2 irrigate all of their land, except where their home is constructed. Mr. Couture  
3 estimated they would be irrigating about 2 acres. Most of their land is  
4 pasture, with a lawn and garden area around their home. The Klindworths  
5 generally raise two head of cattle for which they are asserting a stock water  
6 right.  
7

Most of the irrigation water is provided by the Town Ditch, which is  
8 operated by Ellensburg Water Company (EWC). Water is available from the Town  
9 Ditch generally from April 15 through October 15. The claimants are seeking a  
10 right to use water from Lyle Creek from October 15 through December 15 and  
11 March 15 through April 15. Mr. Couture did not testify to what the water was  
12 being used for from October 15 to December 15. If it were for stock watering,  
13 it seems that water would be needed all winter. He did testify to using the  
14 creek water to irrigate in the spring before EWC turns on around April 15. EWC  
15 is a Major Claimant in this proceeding whose water rights have been determined  
16 through the Major Claimant Pathway, see Report of the Court, Supplemental Report  
17 of the Court and Conditional Final Order for Ellensburg Water Company. The  
18 right to use water delivered by EWC will not be further addressed.  
19

Water is diverted from Lyle Creek at a point in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 6,  
20 T. 17 N., R. 19 E.W.M. and carried in a ditch that passes through the  
21 neighboring Couture property. Water is withdrawn from the ditch into a  
22 sprinkler system that is used to irrigate the land. Mr. Couture estimated that  
23 20 gallons per minute is used to irrigate.  
24

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1 Mr. Couture testified to his belief that water from Lyle Creek has been  
2 used on his neighbor's land since at least the early 1900's. This belief is  
3 supported by two affidavits that were attached to Court Claim No. 00819 (Mr.  
4 Couture's claim) when it was originally filed. They are affidavits by Bertha  
5 Wilson (formerly Bertha Cobain) and Charles C. Cobain, children of John James  
6 Cobain who at one time owned all of Block 20, Smithson's Addition to Ellensburg  
7 and all of Block E, Sunnyside Addition to Ellensburg. The affidavits state that  
8 for more than 50 years water from Lyle Creek had been used for irrigating and  
9 stock water within those two blocks. Their affidavits were made in 1962 and  
10 also state that for at least the prior 10 years water had continued to be used  
11 by successors to their father and by themselves while they owned portions of the  
12 land.

13 Water Right Claim No. 012022 was filed pursuant to the requirements of RCW  
14 90.14 by a prior owner of the Klindworth property. It asserts a right to use 30  
15 gallons per minute, 2.0 acre-feet per year for the irrigation of 3.3 acres.

16 The claimants did not present much information to establish the priority  
17 date. The affidavits show that water was being used as early as 1912. Mr.  
18 Couture referenced an earlier court case that might provide additional  
19 information, but that case is not in the record. Lyle Creek flows through the  
20 ~~E~~N~~E~~% of Section 1, but not through the Klindworth property. A neighboring  
21 claimant, Paul Alderman, who also owns land in the NE% of Section 1 submitted  
22 into evidence a chain of title for the NE% of Section 1. It shows that Northern  
23 Pacific Railroad originally received the patent for the entire NE% and then  
24 conveyed it to John Smithson. The land stayed in the Smithson name until 1944.  
25 The priority date for riparian rights on land owned by the railroad is May 24,

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1884, the date that the map of definite location was filed with Kittitas  
1 County.

2 Because the claimants did not indicate what use would be made of the water  
3 between November 1 and December 15, the Referee will authorize a season of use  
4 when water could be put to beneficial use for irrigation. The Referee  
5 recommends that a right be confirmed with a May 24, 1884, date of priority for a  
6 diversion from Lyle Creek of 0.04 cubic foot per second, 2.0 acre-feet per year  
7 for irrigation of 2.0 acres and stock watering from October 16 through  
8 October 31 and March 15 through April 15.  
9

10 COURT CLAIM NO. 00256 -- Les S. Knudsen  
11 & Barbara J. Knudsen

12 The Knudsens filed a claim with the Court asserting a right to use waters  
13 from the combined flow of Wilson and Naneum Creeks for irrigation and stock  
14 watering. The claimants are represented by Attorney J. Jay Carroll and Mr.  
15 Knudsen testified at the evidentiary hearing.

16 The Knudsens land lies in the W<sup>1/4</sup>NE<sup>1/4</sup> of Section 30, T. 18 N., R. 19 E.W.M.,  
17 except the east 400 feet of the south 1100 feet thereof. They have owned the  
18 land since 1963. It previously had been in pasture for raising cattle, but  
19 presently is planted to hay and grain crops. After the final cutting in the  
20 fall, up to 50 cow/calf pairs graze on the grain stubble. Exhibit DE-1520 is an  
21 Engineering Report for the Knudsen Ranch prepared by Richard C. Bain, Jr., a  
22 consulting engineer hired by the claimants. This report contains most of the  
23 details of the claimants' irrigation system. According to the report 74 of the  
24 76 acres are irrigated, with 69 acres assessed by the Kittitas Reclamation  
25

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District. Water is diverted from Wilson Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19 and  
1 conveyed to the claimants' property in an unlined ditch to a distribution box at  
2 the northeast corner of the the property. The land is rill irrigated with gated  
3 pipe. The report shows that an average of 3.06 cubic feet per second was used  
4 to irrigate and that 10.3 acre-feet per acre irrigated was used during the  
5 season.

Water Right Claim No. 123956 was filed by Les Knudsen pursuant to the  
7 requirements of RCW 90.14. It asserts a right to divert 4 cubic feet per  
8 second, 5 acre-feet per year for the irrigation of 76.3 acres and stock  
9 watering. The Referee presumes that the intent was to claim 5 acre-feet per  
10 year per acre irrigated. The place of use is the Knudsen land. The point of  
11 diversion described on the claim is 590 feet south and 70 feet west of the  
12 northeast corner of Section 32, T. 19 N., R. 19 E.W.M., which is where Wilson  
13 and Naneum Creeks separate, with Wilson Creek continuing southerly toward the  
14 claimants' property.

The claimants' land is part of what was originally settled by Gary Chapman  
16 on June 15, 1877, with a patent issuing to Mr. Chapman on December 30, 1882. On  
17 March 21, 1883, Chapman sold the land to Carl Sander, who continued to own it at  
18 the time of the Sander v. Jones decree. The findings of fact that preceded the  
19 decree states that Sander and/or his predecessors began appropriating water in  
20 1873 and by 1887 had appropriated a total of 450 inches for irrigation  
21 purposes. The priority date for the right appurtenant to the Knudsen property  
22 would be 1877, when the land was settled, since the land would not have been  
23 irrigated prior to it being settled. With the decree providing one inch of  
24 water in May and June and one-half inch of water the remainder of the year. In  
25

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1 spite of Mr. Bain's report of what was being used, the Knudsen property would be  
2 entitled to 74 inches in May and June and 37 inches the remainder of the year,  
3 (or 1.48 cfs in May and June and 0.74 cubic foot per second the rest of the  
4 year). At that rate of diversion, a maximum of 5 acre-feet per year can be  
5 applied to the land.

6 Therefore, the Referee recommends that a right be confirmed to the Knudsens  
7 with a June 15, 1877, date of priority for the diversion of 1.48 cubic foot per  
8 second in May and June and 0.74 cubic foot per second in April and July 1  
9 through October 15, 370 acre-feet per year for the irrigation of 74 acres and  
10 stock watering.

11 COURT CLAIM NO. 01954 -- Ray Knudson  
12 & Linda Knudson

13 Court Claim No. 01954 was filed by Edward M. Tucker, Jr. and Susan E.  
14 Tucker asserting rights to use waters from Wilson Creek. On February 9, 1989,  
15 Ray and Linda Knudson were substituted for the Tuckers as claimant. There was  
16 no appearance at the evidentiary hearing in support of the claim. At the time  
17 of the field investigation the Tuckers indicated the land had been sold for  
18 commercial development. The Referee cannot recommend that a water right be  
19 confirmed since there was no evidence presented in support of the claim.

20  
21 COURT CLAIM NO. 01138 -- Pamela Sue Kollman

22 Paul and Mary T. Thiry filed a claim with the Court asserting a right to  
23 use waters from Wilson Creek. On February 20, 1986, they sent a letter to the  
24 Yakima County Superior Court Clerk's Office and the Referee's office indicating  
25

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that they wished to withdraw from the case. However, on February 2, 1991,  
1  
Pamela Sue Kollman was substituted for the Thiry's. Ms. Kollman was scheduled to  
2  
appear at the hearing held on March 12, 1991, however, she did not appear and  
3  
testify. Therefore, the Referee cannot recommend that a water right be  
4  
confirmed under Court Claim No. 01138.  
5

6  
COURT CLAIM NO. 01939 -- Fabian Kuchin, Jr.  
7

Court Claim No. 01939 was filed by Fabian and Sandra Kuchin asserting  
8  
rights to use wastewater, runoff, Dry Creek and Currier Creek for irrigation of  
9  
82.5 acres. On November 7, 1984, A & L Cattle Company and Marlis M. Lawler were  
10  
substituted for the Kuchins. On February 21, 1989, Fabian Kuchin, Jr. was  
11  
substituted back as the claimant. Mr. Kuchin, who testified at the evidentiary  
12  
hearing, is represented by Attorney Jeff Slothower.  
13

Mr. Kuchin's property lies in that portion of the NW $\frac{1}{4}$  and W $\frac{1}{4}$ NE $\frac{1}{4}$  of  
14  
Section 34, T. 18 N., R. 18 E.W.M. southwest of the Dry Creek Road and northeast  
15  
of State Highway No. 3. He owns a total of 76 acres and irrigates approximately  
16  
38 acres with water diverted from Whiskey Creek. State's Exhibit SE-2 was  
17  
corrected to show land owned by Mr. Kuchin, but not irrigated with Whiskey Creek  
18  
water. The land is planted to hay and pasture. During the summer months  
19  
approximately 70 head of cattle are on the land and during the winter 25 head.  
20  
The livestock drink directly from Whiskey Creek. Additionally, water from an  
21  
underground drain is also used to water the stock. Mr. Kuchin also holds shares  
22  
in Ellensburg Water Company and receives water from the Town Ditch for  
23  
irrigating the land. EWC water is released from Town Ditch into Whiskey Creek,  
24  
which conveys it to the Kuchin property. Water is diverted from Whiskey Creek  
25

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1 at a point approximately 500 feet west and 100 feet south of the north quarter  
2 corner of Section 34. Mr. Kuchin testified to using 2.6 cubic feet per second  
3 from the creek. He also testified to taking seven days to cover the fields and  
4 irrigating 12 times each season. That irrigation practice would result in 432  
5 acre-feet per year being used to irrigate the 38 acres, or 11.38 acre-feet per  
6 acre irrigated. The testimony leads the Referee to conclude that this is the  
7 quantity of water that is used from both natural creek flow and EWC water.

8       The claimants land was originally owned by Robert Wallace, who received a  
9 patent for the NW $\frac{1}{4}$  of Section 34 on April 13, 1875, and for the W $\frac{1}{4}$ N $\frac{1}{4}$ E $\frac{1}{4}$  of  
10 Section 34 on March 30, 1882. Robert Wallace was the plaintiff in a dispute  
11 over use of water in what was at that time called Galloway Creek. The findings  
12 of fact stated that he had occupied the NW $\frac{1}{4}$  of Section 34 since 1870 and the  
13 W $\frac{1}{4}$ N $\frac{1}{4}$ E $\frac{1}{4}$  of Section 34 since 1875. The findings of fact relate the history of  
14 diversion of water from Dry Creek into a dry natural channel known as Galloway  
15 Creek for use by Wallace and others. The Court concluded that Wallace was  
16 entitled to one-fourth of the waters in Galloway Creek, which is one-half of the  
17 waters flowing through the Wallace and Fisher channel. The decree did not  
18 quantify how much water that would entitle Wallace to use, however, the decree  
19 also stated that one of the defendants, Rebeca A. Clemans was entitled to 100  
20 inches of waters of Galloway Creek, which is one-half of the waters coming to  
21 the "Forks" and that the other one-half of the water at the "Forks" would flow  
22 into the Wallace Branch. The Referee then concludes that since Wallace was  
23 entitled to one-half of the water in the Wallace Branch and 100 inches was to  
24 flow into the Wallace Branch, then Wallace would be entitled to 50 inches, or 1  
25 cubic foot per second.

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The claimant did not suggest that the Galloway Creek discussed in the  
1 decree is Whiskey Creek. The decree discusses Galloway Creek separating from  
2 Dry Creek. Other claimants in this proceeding have identified Dry Creek as a  
3 stream that separates from Wilson Creek in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, T. 18 N.,  
4 R. 19 E.W.M. and the decree does state that Galloway Creek ran several miles to  
5 Wallaces property. Documents put into the record by claimants McNeil/Roseburg  
6 include an Affidavit of Water Right by LeClerc and Jordin that discusses  
7 diversion of water by Galloway, which suggests that Whiskey Creek was called Dry  
8 Creek in the late 1800's. There is also discussion of a Galloway Creek. The  
9 Referee recognizes that the names of some of the creeks in this area have  
10 changed over the years and concludes that the decree did recognize use of water  
11 on the claimant's land and that the most likely source of that water is what is  
12 today called Whiskey Creek. The decree does identify that 1 cubic foot per  
13 second is the extent of the right. Although Mr. Kuchin testified to diverting  
14 2.6 cubic feet per second from the creek, he also testified that his Town Ditch  
15 water is part of what is diverted from the creek. The land owned by the  
16 claimant in the NW $\frac{1}{4}$  of Section 34 was settled in 1870 and under the Riparian  
17 Doctrine that would be the priority date. The land in the NE $\frac{1}{4}$  of Section 34 was  
18 settled in 1875, which would be the priority date for that land. Therefore, the  
19 Referee must estimate how many irrigated acres lie in each quarter section.  
20

The Referee recommends that a right under the Riparian Doctrine be  
21 confirmed with a June 30, 1870, date of priority for the diversion of 0.65 cubic  
22 foot per second, 100 acre-feet per year from Whiskey Creek for the irrigation of  
23 25 acres in that portion of the E $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 34 lying northeast of State  
24 Highway No. 3 and southwest of Whiskey Creek; and with a June 30, 1875, date of  
25

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priority for the diversion of 0.338 cubic foot per second, 52 acre-feet per year  
1 from Whiskey Creek for the irrigation of 13 acres in that portion of the W $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{4}$   
2 of Section 34 lying northeast of State Highway No. 3 and southwest of Whiskey  
3 Creek.  
4

The Referee cannot recommend that a water right be confirmed for use of the  
5 underground drain. The testimony indicates that part of the water from the  
6 drain is ground water which is not subject to this adjudication. Additionally,  
7 drains by their very nature capture return flow and seepage water from other  
8 lands. Since EWC and Cascade Irrigation District canals are both updrainage  
9 from the drain (along with Kittitas Reclamation District, albeit much further  
10 updrainage), the drain surely is capturing imported return flows, for which a  
11 water right cannot be awarded. A right for livestock drinking from the drain  
12 and directly from Whiskey Creek is covered by the stock water stipulation  
13 discussed on page 4 of this report.  
14

COURT CLAIM NO. 00909 -- Roberta D. Lamb  
16 & Estate of Harold F. Lamb

Court Claim No. 00909 was submitted by the Lambs asserting a right to use  
17 waters from Wilson Creek. The Lambs are represented by Attorney John P.  
18 Gilreath. Harold Lamb testified at the evidentiary hearing.  
19

The Lambs own 145 acres in that portion of the NW $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
20 Section 30, T. 17 N., R. 19 E.W.M. lying northeasterly of State Route 97 (the  
21 Canyon Road). They irrigate 140 acres with water diverted from Wilson Creek and  
22 a drain located in the southerly portion of the property. They grow Timothy hay  
23 with a grain rotation and pasture. Up to 160 head of cattle are raised each  
24

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1 year. The Lambs also own a small parcel in the southwest corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$   
2 of Section 19, where their home is located. The testimony did not indicate that  
3 any of the irrigated land is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19.

4 Richard C. Bain, Jr., consulting engineer, prepared an Engineering Report  
5 (DE-1515) for the property. Water is diverted from Wilson Creek at two  
6 locations, one in Government Lot 2 of Section 19, approximately three-quarters  
7 of a mile north of the property and a second diversion located just off the  
8 property in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30. The most northerly diversion serves  
9 fields 1, 2, 3, and 4, the lower diversion serves field 6 and the drain is used  
10 to irrigate field 5. The drain collects runoff from irrigation of the fields  
11 above it and water released from the ditch system served by the upper  
12 diversion. The Lambs irrigate from the first of April through mid-October. The  
13 fields are rill irrigated. Mr. Bain measured the water that enters the farm  
14 from the upper diversion at 3.8 cubic feet per second and considering the  
15 irrigation practice determined that 1128.6 acre-feet per year is used to  
16 irrigate fields 1 through 4. The ditch was also measured just below the  
17 diversion out of Wilson Creek and at that point 5.1 cfs was flowing in the  
18 ditch, indicating that the ditch lost 1.3 cfs before entering the farm. Neither  
19 Mr. Bain in his report or Mr. Lamb in his testimony provided information on the  
20 quantity of water diverted at the lower diversion on Wilson Creek. The claimant  
21 summary (DE-1688) also only discusses the instantaneous diversion at the upper  
22 point. Therefore, the Referee must conclude that the maximum quantity of water  
23 that is diverted from the creek is 5.1 cfs.

24 The Lambs have owned the land since 1954. The property they own was part  
25 of three different homesteads that were ultimately pieced together. Most of

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their land was at one time owned by George Gillespie. In the record is a patent  
1 that issued on June 30, 1883, to Gillespie for the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 19,  
2 T. 17 N., R. 19 E.W.M. and the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 24, T. 17 N., R. 18 E.W.M. The  
3 Lambs own a very small parcel in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19 and do not appear  
4 to be asserting a right to irrigate any land in this parcel with Wilson Creek  
5 water. Sometime prior to 1882 Gillespie also had acquired other land, including  
6 the NW $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 30, which is part of what is now owned by the  
7 Lambs. On December 2, 1882, Gillespie sold to S. W. Maxey the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and the  
8 S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 19, the NW $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 30, all in T. 17 N.,  
9 R. 19 E.W.M., along with the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 24 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25,  
10 both in T. 17 N., R. 18 E.W.M. Although not part of the Lamb's evidence, the  
11 Referee took note of Exhibit DE-1030 submitted by claimant Allan Grigg (who is  
12 also represented by Attorney Gilreath). That exhibit is a Water Right Statement  
13 by S. W. Maxey and Jacob Powell stating that in May of 1885 Maxey constructed a  
14 ditch from Wilson Creek and appropriated 200 inches of water. The head of the  
15 ditch was into the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19 and running in a southwesterly direction  
16 about one-half mile in Section 25. As previously mentioned, in 1885 S. W.  
17 Maxey owned a portion of the Lamb property in the NW $\frac{1}{4}$  of Section 30 along with  
18 land in Sections 19, 24, and 25. A ditch carrying Wilson Creek water into  
19 Section 25 could easily have served Section 30. The land Maxey owned in  
20 Section 19 was sold in 1905 and 1919 with one-half of the water right to Wilson  
21 Creek. The deeds excluded that land in Section 19 that is now owned by the  
22 Lambs. This land is now owned by the U. S. Farmers Home Administration, who is  
23 asserting a right to Wilson Creek, see page 414 of this report for a discussion  
24 of their claim. That would leave one-half of the water right that would be  
25

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1 appurtenant to the Maxey land in Sections 24, 25 and 30. The Maxey land in the  
2 S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24 is now owned by Michael Moeur, also a client of Mr.  
3 Gilreath, who is asserting a right to irrigate a portion of those lands with  
4 water diverted from Wilson Creek. The NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 was owned by Victor  
5 Boykiw at the time of the evidentiary hearing and is now owned by the Bureau of  
6 Land Management. There was no appearance at the evidentiary hearing in support  
7 of that claim, however, the documents in the record seem to suggest that Spring  
8 Creek is the source of water to which a right is sought.

9 Based on the evidence in the record, 100 inches of the Maxey water right,  
10 or 2 cfs, would be appurtenant to the Lamb property in the N $\frac{1}{4}$ NW $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
11 Section 30 and the Moeur property in the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24.

12 The Lamb property in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30 is part of what was settled  
13 by Luther Keach, who received a patent on September 5, 1873, for the N $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
14 SW $\frac{1}{4}$ SE $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30. There was no evidence presented to show that a  
15 water right was established for this land. The Lamb property in Government Lot  
16 2 of Section 30 (basically the SW $\frac{1}{4}$ NW $\frac{1}{4}$ ) was settled by William McLeod who  
17 received a patent for the SE $\frac{1}{4}$ SW $\frac{1}{4}$  and Government Lots 2, 3 and 4 of Section 30.  
18 There is considerable evidence in the record provided by claimants Robert  
19 Stewart and Michael Moyer concerning the Steen, McLeod and Clark Ditch that  
20 carried water diverted from the Yakima River and initially carried through the  
21 Tjossem Ditch. However the Lambs are not asserting a right to use water from  
22 the Yakima River and there is no evidence that Yakima River water is used on  
23 their property.

24 Water Right Claim No. 050930 was filed by Harold Lamb asserting a right to  
25 divert 6 cfs, 1800 acre-feet per year from Wilson Creek for the irrigation of

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125 acres in the NW $\frac{1}{4}$  of Section 30. The point of diversion is in the NW $\frac{1}{4}$  of  
1  
Section 19. Water Right Claim No. 050931 asserts a right to divert 2 cfs, 600  
2  
acre-feet per year from Wilson Creek for the irrigation of 20 acres in the  
3  
NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30. The point of diversion is described as being in the NW $\frac{1}{4}$   
4  
of Section 30.

5  
Although the claimant presented evidence of when homesteads issued for the  
6  
land, there was little evidence presented to show that water rights were  
7  
established through beneficial use of water. A portion of the land is riparian  
8  
to Wilson Creek, which would require evidence of water use prior to December 31,  
9  
1932. Because the homestead evidence is lacking for all of the NW $\frac{1}{4}$  except  
10  
Government Lot 2, the Referee is not sure how much of the NW $\frac{1}{4}$  was riparian to  
11  
Wilson Creek at the time it separated from Federal ownership.

12  
Counsel for the Lambs has asserted that in order for a homestead to issue,  
13  
the land had to be cultivated, which means it was irrigated. The Referee does  
14  
not believe that is an accurate statement. Dryland farming is not uncommon in  
15  
the this area, so land could be cultivated and farmed without it being  
16  
irrigated. Except for the Maxey Water Right Statement, there is no evidence to  
17  
show that the land was irrigated with water diverted from Wilson Creek during  
18  
the time frame necessary to establish a water right. The maximum water right  
19  
that the Maxey water right statement might show for the Lamb property is 100  
20  
inches, and that likely is shared with the Mouer property in the S $\frac{1}{4}$ SE $\frac{1}{4}$  of  
21  
Section 24.

22  
At this point the Referee concludes there is insufficient evidence to allow  
23  
confirmation of a water right for the Lamb property. Additional evidence is  
24  
needed of historical water use. The Referee also notes that the Lamb property

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1 is within the service area for the Bull Canal Company. The claimant did not  
2 mention whether they receive water from the canal company or have in the past  
3 received water.  
4

5 COURT CLAIM NO. 00952 -- David M. Leffert  
6 (A) 04815 & J. Christine Leffert

7 The Lefferts submitted a Statement of Claim to the Court asserting a right  
8 to use waters from Naneum Creek for irrigation. David Leffert testified at the  
9 evidentiary hearing.

10 The Lefferts own 15 acres lying in the W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 18 N.,  
11 R. 18 E.W.M. Water is diverted from Naneum Creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33,  
12 T. 19 N., R. 18 E.W.M. into the J. I. Wilson Ditch and used to irrigate 13.5  
13 acres. The land is in hay, pasture and lawn around the Leffert's home and is  
14 rill irrigated. Livestock raised on the property drink from the irrigation  
15 ditches and from two ponds on the property. Up to 35 cow/calf pairs are raised  
16 on the property. The claimant filed a "Request To Correct Department of Ecology  
17 Records in Regard to the Stipulation Relating to Non-Diversionary Stock and  
18 Wildlife Watering Uses -- Subbasin 9 (Wilson-Naneum Subbasin). The Lefferts  
19 name appears on the list of claimants who have recognized instream,  
20 non-diversionary stock water rights that are covered by the stock water  
21 stipulation. There appears to be concern that being on the list means the only  
22 source of water for the livestock is the ponds on the property. The Referee  
23 recognizes from the testimony that livestock do drink from available water  
24 sources, including the irrigation ditches. Being placed on the list of claimants  
25

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1 with non-diversionary stock water uses does not prevent a claimant from being  
2 confirmed a diversionary stock water right.  
3

4 The claimants' land is part of land for which James I. Wilson received a  
5 patent on January 11, 1888. Mr. Wilson filed a Statement of Water Right dated  
6 May 26, 1890, identifying that he owned the E $\frac{1}{2}$ SE $\frac{1}{4}$  and S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 4,  
7 T. 18 N., R. 19 E.W.M. and that he had a valid water right to 100 inches from  
8 Naneum Creek. The notice states that the water was appropriated in May 1883.  
9 Ferguson recognized a Class 13 right for J. I. Wilson for 100 inches from Naneum  
10 Creek. The decree did not identify the lands irrigated by the parties to the  
11 action or the number of acres irrigated. However, the Findings of Fact and  
12 Conclusions of law that preceded the decree did state that Wilson owned the same  
13 lands for which he received a patent and described in his Notice of Water  
14 Right.

15 David Leffert was a party to State of Washington Department of Ecology v.  
16 Art Carlson, et ux., et al., and the Order Pendente Lite included him with a  
17 Class 8 right with an 1883 date of priority for 0.18 cubic foot per second for  
18 irrigation and livestock. The place of use described is the 15 acres described  
19 in Court Claim No. 00952. The Ferguson Findings of Fact and Conclusions of Law  
20 found that one inch of water is necessary for the proper irrigation of an acre  
21 during the spring months and half an inch is sufficient after July 1. The Order  
22 Pendente Lite is a interim document during the pendency of an adjudication of  
23 Wilson-Naneum Creeks, which was initiated in 1971 and never completed. The  
24 Referee concludes that based on the findings in the Ferguson case, the extent of  
25 the water right for the S $\frac{1}{2}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4 is 100 inches of water for  
26 the irrigation of 100 acres. Between the Lefferts and Sam Kayser, who owns the  
27

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rest of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  and the S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 4, rights are being asserted for the  
irrigation of 155 to 160 acres within an 160 acre area. However, the evidence  
in the record supports a conclusion that a right exist for only 100 acres. The  
Referee will divide that 100 acres proportionately between Mr. Kayser and the  
Lefferts. Mr. Kayser owns 90.6 percent of the lands owned by J. I. Wilson when  
the water right was established and would then have 90.6 percent of the 100 inch  
right and the Lefferts own 9.4 percent of the land and would hav 9.4 percent of  
the water right.

The Referee reviewed State's Exhibit SE-5, which consists of copies of  
water right claims filed pursuant to RCW 90.14 and Surface Water Permits and  
Certificates issued pursuant to RCW 90.03, along with printouts which list the  
claims and could not find a claim for the Leffert property. This was confirmed  
by Mr. Leffert, who explained his efforts to file a claim in 1973. At that time  
he was involved in the Carlson and action and the Attorney General for Ecology  
offered to deliver the claim to Olympia on his behalf. The claim was not  
registered in Olympia and subsequently it was discovered that it, along with  
several other claims, were filed with the Kittitas County Clerk's office as part  
of the Carlson filings. Ecology obtained copies of those claims and they have  
been entered into evidence in this proceeding and Mr. Leffert offered a copy of  
his claim as DE-63. It asserts a right to divert 0.1875 cubic foot per second,  
6 acre-feet per year for the irrigation of 15 acres and stock watering. The  
place of use described on the claim is the Leffert property and the point of  
diversion is into the J. I. Wilson Ditch. The Referee believes that the 6.0  
acre-feet claimed is intended to be per irrigated acre, not a total of 6.0

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1 acre-feet. The Referee concludes that the claimant substantially complied with  
2 the requirements of RCW 90.14.

3 Apparently the point of diversion for the claimants' land has been changed  
4 sometime in the recent past. Mr. Leffert has filed an application for change of  
5 water right with Ecology. That form identifies that prior to 1960, the land was  
6 served by a diversion in the NW~~1/4~~ NW~~1/4~~ of Section 33, approximately 1,130 feet  
7 south and 290 feet east of the northwest corner of Section 33, T. 19 N.,  
8 R. 19 E.W.M. This point is identified as diversion No. 15 on the State's Map,  
9 SE-2. Ecology apparently has not taken action on this application for change.

10 Mr. Leffert testified to using as much as 2.0 cubic feet per second in the  
11 spring when creek flows are high and then reducing his diversion to 0.18 cfs as  
12 the creek flow declines. There are times during some summers when water is not  
13 available for this land based on the priority of the right. The Referee has  
14 heard other claimants testify to using higher quantities of water during the  
15 spring, however, a right to the higher quantity can only be confirmed if there  
16 is evidence to show historic use of that higher quantity. That does not exist  
17 in this case. The only evidence of a water right being legally established is  
18 the 100 inch Wilson right, to which the Leffert property enjoys a portion. Mr.  
19 Leffert did not testify to the annual quantity of water used on his property.  
20 Considering the instantaneous quantity of water authorized in the Ferguson  
21 decree and the reduction that occurs on July 1, 48.43 acre-feet per year is  
22 maximum that might be used.

23 Therefore, the Referee recommends that a right be confirmed with a June 30,  
24 1883, date of priority for the diversion of 0.18 cubic foot per second from  
25 April 1 through June 30 and 0.09 cubic foot per second from July 1 through

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1           October 15; 45 acre-feet per year for the irrigation of 9 acres and 0.5  
2           acre-foot per year for stock watering.  
3

4           COURT CLAIM NO. 00621    -- Myron Linder  
5    & Sandy Linder

6           Court Claim No. 00621 was filed by C. E. Lippencott, Jr. and Inez  
7           Lippencott. They both were deceased at the time of the evidentiary hearing and  
8           since then Myron and Sandy Linder purchased the property from the estate and  
9           were substituted on the claim. Attorney J. Jay Carroll represented the  
10           Lippencott estate and Ralph Charlton, a neighboring landowner whose wife was the  
11           administrator of the estate, and Charles Adams, who leased the property for  
12           three years prior to the hearing, testified at the evidentiary hearing.

13           The Lippencotts property was a portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 16,  
14           T. 18 N., R. 19 E.W.M. They owned 75 acres and asserted a right to irrigate 63  
15           acres. Mr. Charlton testified that all of the 75 acres, except a small area  
16           around the homestead, was being irrigated. Mr. Charlton also indicated that the  
17           Lippencotts land extended easterly to Naneum Road. The State's map exhibit,  
18           SE-2, showed the property all lying west of a ditch that ran parallel to Naneum  
19           Road. Review of the claim by the Referee discloses that the legal description  
20           submitted by the Lippencott with their claim excludes the land lying east of the  
21           ditch. This is the only legal description in the record, so the Referee must  
22           consider it to be the correct description for the land addressed by Court Claim  
23           No. 00621. Excluding the land east of the ditch results in there being 74 acres  
24           within the area described. Although Mr. Charlton testified to all of the land  
25           being irrigated, which would be around 74 acres, the original claim stated 63

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1       acres were being irrigated, as did the State's Investigation Report. Since the  
2       claim and the investigation report are consistent, and lacking any specific  
3       evidence other than Mr. Charlton's testimony and no explanation about the  
4       difference, the Referee will use 63 irrigated acres.  
5

6       The Lippencotts acquired the land in 1979 and made modifications to the  
7       irrigation system after they purchased. In 1979, three diversions were used to  
8       irrigate the land. Two of the diversions have ceased being used and only one  
9       located approximately 1300 feet north and 300 feet west of the south quarter  
10      corner of Section 16 is being used. That diversion feeds a lateral that runs  
11      parallel to the north property line. The land is planted to hay and pasture and  
12      has been used to raise livestock. Mr. Adams did not have livestock on the land,  
13      but it had consistently been used for that purpose by the owners. The livestock  
14      drink directly from the creek as it flows through the property. The land is  
15      assessed by the Kittitas Reclamation District, which generally delivers 4  
16      acre-feet per acre when that quantity is available. Mr. Charlton testified to  
17      needing 8 acre-feet from all sources to irrigate the land. Neither Mr. Charlton  
18      or Mr. Adams testified to the instantaneous quantity being diverted from the  
19      creek to serve the land.

20       Water rights for this property were addressed in the Ferguson decree. A  
21      Class 14 right, which would have an 1884 date of priority, was awarded to John  
22      Clifton for the use of 130 inches in the SW $\frac{1}{4}$  of Section 16, T. 18 N.,  
23      R. 19 E.W.M. The Findings of Fact and Conclusions of Law stated that Clifton  
24      had 130 acres in cultivation. The decree allowed for the use of one inch of  
25      water for each irrigated acre in May and June and one-half inch the rest of the  
26      year. With no other guidance offered in the decree, the Referee concludes that  
27

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half of the awarded quantity would be appurtenant to the N $\frac{1}{2}$ SW $\frac{1}{4}$  and half of the  
1 quantity would be appurtenant to the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 16. The Lippencotts were  
2 the only claimants in the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 16, and considering they are  
3 irrigating 63 acres, the Referee finds that 65 inches, or 1.3 cubic feet per  
4 second, would be appurtenant to the claimant's land. Although there was no  
5 testimony about the quantity of water being diverted from the creek, it is not  
6 unreasonable to conclude that the landowners have diverted at least that  
7 quantity since the property has continued to be irrigated.  
8

Three water right claim forms were filed pursuant to RCW 90.14 that include  
9 the claimants' land within the place of water use described on the claim. They  
10 were all three filed by James L. Bridge, Jr. Water Right Claim (WRC) No. 004577  
11 asserts a right to divert 1 cfs, 730 acre-feet per year from Nanum Creek for the  
12 irrigation of 20 acres in the SW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M. The  
13 point of diversion described is on the most westerly water course that flows  
14 through the claimant's property. On SE-2 the water course is not named and is  
15 not shown as originating on Naneum Creek. WRC No. 004576 asserts a right to use  
16 4 cfs, 1500 acre-feet per year from Nanum Creek for the irrigation of 60 acres  
17 in the SW $\frac{1}{4}$  of Section 16. The point of diversion is on the main branch of  
18 Naneum Creek as it flows through the claimant's property. WRC No. 004569  
19 asserts a right to use 4 cfs, 1500 acre-feet per year for the irrigation of 60  
20 acres in the SW $\frac{1}{4}$  of Section 16. The point of diversion is on the water course  
21 that flows along the easterly boundary of the claimants' property and is the  
22 point of diversion currently being used. All three described diversions are  
23 along the property's north line. The Referee suspects these are the three  
24 diversions being used prior to the modifications made to the irrigation system  
25

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1 by the Lippencotts. The two easterly diversions appear to have been used to  
2 irrigate the same ground. Although there have been modifications to the points  
3 of diversions, it appears that the currently used diversion has always been used  
4 to serve most, if not all of the currently irrigated land. Since the historic  
5 irrigation practice is not entirely clear, it is not clear that compliance with  
6 the procedures for changing a point of diversion as outline in RCW 90.03.380 is  
7 required. Therefore, the Referee will recommend confirmation of a water right  
at the currently used point of diversion.

The Referee recommends that a right be confirmed with a June 30, 1884, date  
of priority for the diversion of 1.30 cubic feet per second in May and June and  
0.65 cubic foot per second in April and July 1 through October 15, and 315  
acre-feet per year for the irrigation of 63 acres in that portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$   
of Section 16, T. 18 N., R. 19 E.W.M. lying west of the irrigation ditch that  
parallels Nanum Road (more particularly spelled out in the findings of fact).  
The livestock drinking from the creek is covered by the nondiversionary stock  
water stipulation discussed on page 4 of this report.

18 COURT CLAIM NO. 00904 -- John H. Ludwick  
& Anne C. Ludwick

Mary Wipple submitted Court Claim No. 00904 asserting rights to use Lyle and Wilson Creeks. On March 27, 1991, John H. and Anne C. Ludwick were substituted for Mrs. Wipple. Mr. Ludwick, along with Dan Brunson, who owned the property in 1989 and 1990, testified at the evidentiary hearing.

Court Claim No. 00904 asserts rights to use waters from Lyle Creek to irrigate a portion of the NW $\frac{1}{4}$  of Section 19, T. 17 N., R. 19 E.W.M. and from

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1 Wilson Creek to irrigate portion of Government Lots 2 and 3 of Section 19  
2 southwest of Wilson Creek. The claimant owns all of Government Lot 2, except a  
3 small fraction of an acre in the southwest corner of the lot and owns an 8 acre  
4 triangle that extends into Government Lot 3. State's Exhibit SE-2 does not  
5 accurately reflect the claimant's ownership. Continuing the practice of the  
6 prior owners, the Ludwicks irrigate 61 acres of hay and pasture with water  
7 diverted from Lyle Creek and 24 acres of hay and pasture with water diverted  
8 from Wilson Creek. Lyle Creek is used on the land north and east of Wilson  
9 Creek and Wilson Creek is used on the lands south and west of Wilson Creek.  
10 Most of the land irrigated with Lyle Creek water lies in Government Lots 1 and  
11 2, with a small portion being in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 19. The diversion from  
12 Lyle Creek is in Government Lot 4 of Section 18 (the SW $\frac{1}{4}$ SW $\frac{1}{4}$ ) very near where  
13 Lyle Creek flows into Wilson Creek. The diversion from Wilson Creek is very  
14 near the northwest corner of Section 19. The State's Investigation Report had  
15 identified a diversion further downstream as serving the property, but the  
16 testimony indicates that is incorrect. The land is flood and rill irrigated.  
17 Mr. Brunson testified to diverting between 2.5 and 3 cfs and 390 acre-feet per  
18 year from Lyle Creek and 2 cfs and 244 acre-feet per year from Wilson Creek.

19 The Ludwicks property is part of two separate homesteads. Initially a  
20 portion of Section 19 was conveyed by the Federal Government to the Northern  
21 Pacific Railroad. In 1889 Government Lots 1, 2 and 3 were conveyed by N.P.R.R. to  
22 George W. Carver after fulfillment of a contract entered into in 1881. In 1883  
23 William M. Johnston received a patent for the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 19, along with  
24 other lands. Mr. Ludwick testified that during a telephone conversation Mary  
25 Wipple that her father-in-law used the land as a dairy for 100 cows and feed for

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those cows was grown. The testimony was that Paul Wipple, Mary's father-in-law  
1 owned the land beginning in June of 1916, however, that must have been for the  
2 land in the E½NW¼ of Section 19. Claimant Allan Grigg, who owns a portion of  
3 Government Lots 2 and 3 put into evidence several deeds and real estate  
4 contracts that show Government Lots 1, 2 and 3 were owned by others until 1956  
5 when Paul Wipple acquired it. There was no chain of title put into evidence for  
6 the E½NW¼ of Section 19.

In compliance with the requirements of RCW 90.14, Mary Wipple filed Water  
8 Right Claims (WRC) No. 200009 and 2000011 during 1979 when the Claims  
9 Registration Act was reopened and filing of additional claims was allowed. WRC  
10 No. 200009 asserts a right to divert 3.5 cfs, 500 acre-feet per year from Wilson  
11 Creek for the irrigation of 61 acres in those portions of Lots 2 and 3 of  
12 Section 19, T. 17 N., R. 19 E.W.M. lying south and west of Wilson Creek. The  
13 point of diversion location described is near the southwest corner of  
14 Section 18. WRC No. 2000011 asserts a right to divert 3 cfs, 448 acre-feet per  
15 year from Lyle Creek for the irrigation of 56 acres in part of the NW¼ of  
16 Section 19, T. 17 N., R. 19 E.W.M. lying east of Wilson Creek. Both claims  
17 state the date of first water use as being 1885.

According to the testimony, other portions of the claimants' land is  
19 irrigated with water delivered by Bull Canal Company. The water rights  
20 associated with Bull Canal Company are being addressed through the Court claim  
21 submitted by the canal company. See page 101 of the report. The claimant  
22 directed the Referee to the record created by Bull Canal Company to support his  
23 claim. Review of the Bull Canal exhibits show that George Carver was one of the  
24 original organizers of Bull Canal Company and when the company was formed was

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awarded 7 shares, or 1/6 of the ditch. As far as the Referee knows, the only  
1 land owned by George Carver within the Bull Canal Company service area is  
2 Government Lots 1, 2 and 3 of Section 19. The Bull Canal Company records would  
3 indicate that water delivered by the Bull Canal Company was being used to  
4 irrigate the Carver land. Although the claimant's land is now being irrigated  
5 with water from Wilson and Lyle Creeks, there was no evidence offered to show  
6 when that water was first used. In order for there to be a right to use Wilson  
7 Creek, under the Riparian Doctrine water had to have been used on the property  
8 prior to 1932. In order for there to be a right to Lyle Creek under the Prior  
9 Appropriation Doctrine, water had to have been first used prior to June 6,  
10 1917. Although Mrs. Wipple had told Mr. Ludwick that the land had been farmed  
11 and irrigated since at least 1916, since it appears that Bull Canal Company  
12 water was being used at that time, there is no evidence to show that water  
13 rights were established for use of the creeks.  
14

Therefore, the Referee cannot recommend that water rights be confirmed  
15 under Court Claim No. 00904.

COURT CLAIM NO. 00175 -- Brian Luque  
18 & Teresa Luque

Frank M. and Janice R. Gates filed a Statement of Claim with the Court  
20 asserting a right to use unnamed ditch water for irrigation of one acre. Mr.  
21 Gates testified at the evidentiary hearing. On September 18, 1995, Brian and  
22 Teresa Luque were substituted for the Gates.

The property now owned by the Luques lies in the southwest corner of the  
24 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 18 N., R. 19 E.W.M. Water is diverted from a drain  
25

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1 that enters their property and is used to irrigate their lawn, garden and a  
2 small pasture. The Gates at times had a horse on the property, which drank from  
3 the ditch. The land is sprinkler irrigated. The Gates bought the property in  
4 1974. The home that is on the property was built in 1948 by Walt Bates. Prior  
5 to the Gates buying it, the land had been irrigated for years from a creek or  
6 ditch that came down the front of the property. The land is also assessed by  
7 the Kittitas Reclamation District (KRD), however, they are not able to get KRD  
8 water to the property.

9 Mr. Gates testified that the land was once part of the Pinckard estate.  
10 Edith Pinckard is one of the heirs of Olive Sander, the plaintiff in many of the  
11 lawsuits filed in the late 1800's and early 1900's concerning water rights on  
12 Wilson and Naneum Creek. Although Mr. Gates did not provide any documents  
13 relating to the history of the land, a neighboring claimant did. Don Hay and  
14 Shird Burks, landowners to the north and west submitted several documents that  
15 show that most of Section 30, including the land now owned by the Luques, was  
16 owned by the Sanders family in the late 1800's and early 1900's. The W~~%~~SE~~%~~ of  
17 Section 30 was originally settled by Cary Chapman, in June of 1877. On  
18 March 21, 1882, Chapman sold the land to Carl Sander and the patent issued on  
19 December 30, 1882. Water rights to this property were addressed in Sanders v.  
20 Jones. By the time this case was filed, Carl Sanders owned the Chapman  
21 property. A total of 450 inches of water from Wilson Creek were awarded to Carl  
22 Sanders, with dates of water use running from 1873 to 1887. Since the lands  
23 purchased from Chapman were first settled in June of 1877, that is the earliest  
24 that water could have been used on what is now the Luque land.

25

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1 Mr. Gates had testified to using water from a ditch or drain, not from  
2 Wilson Creek. However, all of the land around his property is irrigated with  
3 water diverted from Wilson Creek. Undoubtedly, the water in the ditch is Wilson  
4 Creek water that has been diverted above this property for initial use by the  
5 neighboring landowners. There are several diversions on the neighboring Hay  
6 property that would convey water toward the Luque property.

7 Water Right Claim No. 158855 was filed by Frank Gates in compliance with  
8 the requirements of RCW 90.14. It asserts a right to use waters from a runoff  
9 ditch along Game Farm Road for domestic supply and irrigation of lawn and  
10 garden. Mr. Gates used a short form, which was provided for in RCW 90.14, for  
11 claiming a right to use up to 5,000 gallons per day for domestic supply, stock  
12 watering, industrial use and irrigation of up to one-half acre of lawn and  
13 non-commercial garden. That is the extent of the right that could be protected  
14 by filing a short form. Although Mr. Gates had testified to irrigating  
15 approximately one acre, because a short form was filed, a right can only be  
16 recommended for one-half acre of non-commercial irrigation.

17 The Referee recommends that a right be confirmed under Court Claim No.  
18 00175 with a June 30, 1878, date of priority for 0.01 cubic foot per second, 2.5  
19 acre-feet per year for the irrigation of one-half acre of lawn and garden area.

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1 COURT CLAIM NO. 01970 -- Kenneth R. MacRae  
2 & Sandra MacRae

3 The MacRaes filed a Statement of Claim with the Court asserting a right to  
4 divert water from Naneum Creek for irrigation and stock watering. The claimants  
5 are represented by Attorney Richard T. Cole and Dr. MacRae testified at the  
6 evidentiary hearing.

7 The MacRaes' property is a portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 17 N.,  
8 R. 19 E.W.M. They are asserting a right to irrigate 17 acres and provide water  
9 for livestock. They divert water from a water course that flows through  
10 Section 8 just east of their property. There is a diversion near the northeast  
11 corner of their property. Water is diverted into a concrete ditch that flows  
12 along the claimants' north property line. They also receive water delivered by  
13 Ellensburg Water Company (EWC). The land is in hay and pasture and is rill  
14 irrigated. Dr. MacRae was familiar with the land prior to his purchase and it  
15 has continually been irrigated since the early 1960's and he presumes earlier  
16 than that. The water course that the claimants are using is shown on the  
17 State's Exhibit map SE-2 as beginning immediately below the Cascade Irrigation  
18 District (CID) Canal in Section 32, T. 18 N., R. 19 E.W.M. and then flowing  
19 south through Sections 5 and 8. Although the claimant is claiming a right to  
20 use Naneum Creek water, there is no connection between Naneum Creek and this  
21 water course. There is some land east of the water course that is irrigated  
22 with Naneum Creek water and return flows from that land may contribute to the  
23 flow. However, there is a lot of land between the water course origin and the  
24 claimants' land where the owners are not parties to Acquavella and if the land  
25

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1 is irrigated, it must be from either CID or EWC. Return flow water from either  
2 of those two entities would be considered foreign return flow and the Referee  
3 could not recommend confirmation of a water right for those sources.  
4

5 The claimants' land is part of what was settled on by Clinton H. King, who  
6 received a patent for the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 17 N.,  
7 R. 19 E.W.M. on May 23, 1889. There are two documents in the record that deal  
8 with water rights for the King property. DE-1661 is a Water Ditch Agreement  
9 between Gustav Walters and C. H. King dated May 12, 1884. The agreement  
10 addresses a ditch intended to carry water to Walters land in the SE $\frac{1}{4}$  of  
11 Section 7. The ditch will cross the land of King and it was agreed that King  
12 could take water out of the ditch as necessary to irrigate his land below the  
13 ditch. The course of the ditch was not discussed, so the Referee does not know  
14 which of the King lands could have been served by this ditch or the source of  
15 water for the ditch. A second document was offered by Stanley Baker, who owns  
16 land south of the MacReas. Exhibit DE-852 is an Affidavit of Water Right filed  
17 on May 24, 1890, by J. Kryger and C. H. King. It describes two ditches that  
18 would take water out of Ripple Creek, a branch of Naneum Creek, and a third  
19 ditch that would take water out of Back Creek, also a branch of Naneum Creek,  
20 for use on the Kryger and King land. The affidavit describes the course of the  
21 ditch, however, the descriptions related to property lines for lands owned by  
22 Kryger and David Kincade. The description of the land they own is not provided,  
23 so it is not possible to accurately find the head of any of the three ditches.  
24 It does state that the Kryger land is in Section 5, T. 17 N., R. 18 E.W.M. It  
25 also states that between King and Kryger 400 acres are intended to be irrigated.  
26

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Several water right claims were filed pursuant to RCW 90.14 that include a portion of the MacRea property. H. K. McCullough filed Water Right Claims No. 007913, 007914, 007916. WRC No. 007913 asserts a right to use 3 cfs, 300 acre-feet per year from Little Naneum Creek for irrigation of 60 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 8, T. 17 N., R. 19 E.W.M. The point of diversion is described as being 1320 feet south and 1470 feet west from the northeast corner of Section 8, which would place it in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8. WRC No. 007914 asserts a right to use 2 cfs, 200 acre-feet per year from an unnamed water course for irrigation of 40 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 8, T. 17 N., R. 19 E.W.M. The point of diversion is described as being 1320 feet south and 3960 feet west from the northeast corner of Section 8, which would place it in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8. WRC No. 007916 asserts a right to use 1 cfs, 100 acre-feet per year from an unnamed water course for the irrigation of 20 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 8, T. 17 N., R. 19 E.W.M. The point of diversion is described as being 1320 feet south and 3170 feet west from the northeast corner of Section 8, which would place it in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, at approximately the location where the claimants divert water.

In order to recommend that a water right be confirmed to the MacRaes, the Referee needs additional information to show that at least one of the water right documents from the 1800's relate to use of the water course used by the claimants and additional evidence about the source of water in the water course. Since it appears to begin flowing immediately below the CID canal, the implication is that the initial source of water is either leakage or spills from the canal. The legal descriptions for the lands owned by Kryger and Kincade might assist in that. The Referee does not recommend that a water right be

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awarded to the MacRaes under Court Claim No. 01970. This does not affect the  
1 claimants' ability to use water delivered by the Ellensburg Water Company.  
2

3 COURT CLAIM NO. 02245 -- Madeleine Villa, Inc.  
4

5 Madeleine Villa, Inc., submitted a claim to the Court for use of Wilson and  
6 Lyle Creeks. The claimant is represented by J. Jay Carroll and John Downey, who  
7 owns Madeleine Villa, Inc., testified at the hearing.  
8

9 The claimant owns the S $\frac{1}{4}$  of Section 20 and the E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19,  
10 T. 18 N., R. 19 E.W.M. and is asserting a right to irrigate 80 acres in the west  
11 2,000 feet of the SW $\frac{1}{4}$  of Section 20 and 35 acres in that portion of the E $\frac{1}{4}$ SE $\frac{1}{4}$  of  
12 Section 19 east of Wilson Creek. The land was acquired from Stuart Bledsoe in  
13 1972. The land in the SW $\frac{1}{4}$  of Section 20 is irrigated with water diverted from  
14 Lyle Creek at a point about 600 feet west of the center of Section 20. There is  
15 a 53 acre Timothy hay field in the northerly portion of the SW $\frac{1}{4}$  of Section 20,  
16 with the remaining 27 irrigated acres being pasture for cattle. Up to 200 head  
17 of cattle are on this field on a rotational basis. A concrete head ditch runs  
18 along the north property line carrying water to the feeder ditches for the hay  
19 field. A buried pipeline in the lower field is used to convey water for the  
20 pasture. The pipeline was installed in 1982; prior to that there was an open  
ditch in its place.  
21

22 Mr. Downey testified that Lyle Creek is dry until the Kittitas Reclamation  
23 District (KRD) turns on in mid-April and is then dry again after KRD turns off  
24 in late September or early October. This would lead the Referee to conclude  
25 that the water being used is return flow from fields irrigated with KRD water or  
seepage from the KRD canal. A water right cannot be confirmed for use of return  
26

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flows that are the result of the use of Yakima Project waters. However, Mr.  
1 Downey testified that only in the last few years prior to the hearing had Lyle  
2 Creek been dry prior to KRD turning on. He suspected that someone above was  
3 "stealing" water. Mr. Downey testified that the house on the property was built  
4 very early in the century and that it was his understanding that the land had  
5 always been irrigated. Water rights for this land were addressed specifically  
6 in the Sander v. Jones decree and possibly discussed in other decrees. At the  
7 time of the Sander v. Jones case in 1890, the SW $\frac{1}{4}$  of Section 20, along with  
8 other land, was owned by John Haley. According to the findings of fact that  
9 preceded the decree, John Haley appropriated 30 inches of water in 1880 and by  
10 1889 had appropriated a total of 135 inches for use on the SW $\frac{1}{4}$  of Section 20 and  
11 "other land acquired from Northern Pacific Railroad". The source of water was  
12 Wilson Creek or one of its branches. Lyle Creek is a branch of Wilson Creek.  
13 The Ferguson decree, which was entered in 1901, primarily dealt with Naneum  
14 Creek, and awarded 60 inches of water to John Haley without any indication of  
15 the lands he owned. Based on the Sander v. Jones decree, the Referee concludes  
16 that a water right exists for the claimant's land in the SW $\frac{1}{4}$  of Section 20.  
17

The claimant is asserting a right to divert 2.3 cubic feet per second, 640  
18 acre-feet per year from Lyle Creek for irrigating the 80 irrigated acres in the  
19 SW $\frac{1}{4}$  of Section 20. However, Sander v. Jones awarded 1 inch of water, or 0.02  
20 cubic foot per second, per acre irrigated, during May and June of each and half  
21 that the remaining months of the year that water is diverted. The claimant then  
22 would be entitled to 1.6 cubic feet per second in May and June and 0.80 cubic  
23 foot per second the rest of the year for the 80 acres. At that rate, if water  
24 was available the entire irrigation season, a maximum of 5 acre-feet per acre  
25

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could be used. The Referee recognizes that natural flow water is generally not  
1 available from Lyle Creek the entire irrigation season. Mr. Downey had  
2 testified that Lyle Creek is dry except when KRD is turned on. The Referee  
3 believes that is a man-induced phenomenon that will vary by year. The right the  
4 Referee is awarding is not to use the project generated return flows, but any  
5 natural creek flow that might be available. The land in the SW $\frac{1}{4}$  of Section 20  
6 is also irrigated with water delivered by KRD.  
7

Pursuant to the requirements of RCW 90.14, Water Right Claim No. 141697 was  
8 filed by Madeleine Villa Corp. asserting a right to divert 3 cubic feet per  
9 second, 452 acre-feet per year from Lyle Creek for the irrigation of 113 acres  
10 in the W $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20, T. 18 N., R. 19 E.W.M. The Referee notes that the  
11 place of use extends a bit beyond the W $\frac{1}{4}$ SW $\frac{1}{4}$ . A right to irrigate 113 acres is  
12 claimed, yet the W $\frac{1}{4}$ SW $\frac{1}{4}$  is only 80 acres in size. An 80 acre parcel was  
13 described within a larger ownership, with the field actually extending into the  
14 E $\frac{1}{4}$ SW $\frac{1}{4}$ . The Referee concludes that the claim substantially complied with the  
15 requirements of RCW 90.14.  
16

The Referee recommends that a right be confirmed to Madeleine Villa, Inc.,  
17 with a June 30, 1880, date of priority for the diversion of 1.60 cubic foot per  
18 second in May and June and 0.80 cubic foot per second in April and July 1  
19 through October 15, 400 acre-feet per year for the irrigation of 80 acres and  
20 stock watering in the west 2000 feet of the SW $\frac{1}{4}$  of Section 20, T. 18 N.,  
21 R. 19 E.W.M.  
22

The claimants are also asserting a right to irrigate 35 acres in the E $\frac{1}{4}$ SE $\frac{1}{4}$   
23 of Section 19 with water diverted from Wilson Creek. The diversion is in the  
24 SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19 and water is diverted from the creek into earthen  
25

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ditches. They begin diverting from Wilson Creek in mid-March and water is  
1 available until sometime in June. After June there is only sufficient water for  
2 the livestock. The 35 acres irrigated from Wilson Creek do not have KRD water;  
3 there is another 35 acres in the SE $\frac{1}{4}$  of Section 19 that KRD water is used on.  
4

The 35 acres irrigated with Wilson Creek water lie in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
5 Section 19, which was settled in 1878 by Thomas Haley under a contract with  
6 Northern Pacific Railroad. Thomas Haley was a party in many of the suits  
7 involving Wilson Creek water in the late 1800's and early 1900's. He was a  
8 defendant in Sander v. Jones, (1890) and was awarded 118 inches of water with  
9 the first appropriation occurring in 1878. He was a plaintiff in Sander v.  
10 Bull, (1911) with the Court recognizing a right to 200 inches of water. It may  
11 be that there were additional appropriations by Thomas Haley between 1890 and  
12 1911. The claimants in the Acquavella proceeding that own the land formerly  
13 held by Thomas Haley are asserting rights for considerably less than the 118  
14 acres awarded in Sander v. Jones. The Referee concludes that a right exists  
15 under the referenced decrees for the claimant's land in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
16 Section 19. As with the lands in Section 20, the right is limited to one inch  
17 of water per acre in May and June and one-half inch the remainder of the year.  
18

Water Right Claim No. 141698 was filed by Madeleine Villa Corp. asserting a  
19 right to use 2.0 cubic feet per second, 140 acre-feet per year from Wilson Creek  
20 for the irrigation of 35 acres and stock watering in the E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 20,  
21 T. 18 N., R. 19 E.W.M. The point of diversion described is in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
22 Section 20. Wilson Creek does not flow through the SE $\frac{1}{4}$  of Section 20. The  
23 Referee suspects that an error was made in writing the section number on the  
24 form, that it should have been Section 19, not Section 20. However, neither the  
25

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1 claimant or his counsel addressed this discrepancy. The Referee cannot assume  
2 that is the case and recommend that a water right be confirmed. Particularly  
3 since the claimant apparently owns, or at one time did own, the SE $\frac{1}{4}$  of  
4 Section 20. RCW 90.14 provides a process to amend water right claims. RCW  
5 90.14.065 allows a claim to be amended if an error was made in estimation of the  
6 quantity of water used; there was a change in circumstances in the manner of  
7 diversion or transportation of the water not foreseeable at the time the claim  
8 was filed or the amendment is ministerial in nature. The only opportunity for  
9 an amendment such as that needed by the claimant is to show that the change is  
10 ministerial in nature. It is suggested that the claimant pursue this process.

11 The Referee cannot recommend that a right be confirmed for the lands in the  
12 SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19 due to there not being a RCW 90.14 claim filed for use of  
13 Wilson Creek water on this land, RCW 90.14.071.

14 COURT CLAIM NO. 01416 -- Louaine A. Magnuson  
15 Kevin Halley

16 Louaine A. Magnuson filed a claim with the Court asserting a right to use  
17 waters from Naneum Creek. On September 22, 1992, her husband, Kevin Halley, was  
18 joined to the claim. Ms. Magnuson testified at the evidentiary hearing.

19 Ms. Magnuson owns 6.86 acres within a portion of the E $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  and W $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$   
20 of Section 33, T. 19 N., R. 19 E.W.M. She has two 1.3 acre fields that she  
21 irrigates. One field is irrigated from the Wilkins Ditch and one field is  
22 irrigated from the J. I. Wilson Ditch. Both fields are in hay and pasture and  
23 she there are two horses that graze on the property. One field is in the

24  
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1 E $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  and one field is in the W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33. Both fields are rill  
2 irrigated.

3 Ms. Magnuson is asserting a right to use 0.08 cubic foot per second, 10  
4 acre-feet per year to irrigate each field. Ms. Magnuson filed two water right  
5 claims pursuant to the requirements of RCW 90.14. Water Right Claim No. 117401  
6 asserts a right to use 1 cfs, 300 acre-feet per year from Naneum Creek (Wilkins  
7 Ditch) for the irrigation of 2 acres. Water Right Claim No. 117402 asserts a  
8 right to use 1/25 cfs, 12 acre-feet per year from Naneum Creek for the  
9 irrigation of 2 acres. The place of use for both is the Magnuson property.  
10

11 The field in the E $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  is part of land that was once owned by J. L.  
12 Bennett. Mr. Bennett acquired the W $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 33,  
13 T. 19 N., R. 19 E.W.M. from the Northern Pacific Railroad by deed dated June 25,  
14 1890. Bennett also homesteaded and received a patent for the S $\frac{1}{2}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ SE $\frac{1}{4}$   
15 of Section 32. Mr. Bennett's widow was a party to the Ferguson case and was  
16 awarded a Class 11 right for the use of 30 inches of water from Naneum Creek.  
17 The Findings of Fact that preceded the decree described the lands owned by Mrs.  
18 Bennett and to which the water right would be appurtenant. The Hultquists and  
19 Louaine A. Magnuson, a neighboring landowner, contend that the copy of the  
20 Findings of Fact that several claimants have put into the record contains a  
21 typographical error in the paragraph that describes the lands owned by Mrs.  
22 Bennett. The description is "The persons described in paragraphs XLV hereof  
23 (the heirs to J. L. Bennett) are the owners of the southeast quarter of the  
24 northeast quarter and the east half of the southeast quarter of Section 32, the  
25 northwest quarter of the southwest quarter, the south half of the southwest  
26 quarter and the southwest quarter of the southeast quarter of Section 32,  
27  
28

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1 Township 19 North of Range 19 E.W.M. The claimants point out that there is no  
2 evidence that the Bennetts owned land in the SW $\frac{1}{4}$  of Section 32 and that the  
3 legal description as written describes the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32 twice. The  
4 Referee also notes that when describing other lands, if all of the property is  
5 in one section, the section number is only shown once. Chester Vernon Stokes,  
6 Andrew Mills and Gary Galbraith are claimants who own land in the S $\frac{1}{4}$ SW $\frac{1}{4}$  and  
7 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. The evidence they put in the record in support of their  
8 claims shows that property as being owned by W. R. Thomas at the time of the  
9 Ferguson case. W. R. Thomas was a named defendant in Ferguson, but did not  
10 assert a claim in the proceeding. The Thomas rights were determined in Thomas  
11 v. Roberts and a right was awarded in that proceeding to Mr. Thomas. Mr.  
12 Hultquist testified to visiting the Washington State Archive in Ellensburg and  
13 reviewing the Findings of Fact that is in the archive records. According to Mr.  
14 Hultquist's testimony, the copy there describes the W $\frac{1}{4}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
15 Section 33. Exhibit SE-641 is an excerpt from that copy of the Findings of  
16 Fact. Mr. Hultquist also placed in the record a copy of the transcript of  
17 testimony from the Ferguson case showing the testimony in support of Mrs.  
18 Bennett's claim. That testimony also refers to the land in Section 33 and the  
19 testimony was that it was being irrigated.

20 The Referee concludes that sufficient evidence has been placed in the  
21 record to show that a typographical error was made on the version of the  
22 Findings of Fact that has been put into the record and that the 30-inch Bennett  
23 water right is appurtenant to the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$  and  
24 S $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33. There are no claims filed in this proceeding for the  
25 Bennett lands in Section 32.

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The Referee recommends that a right be confirmed to Ms. Magnuson under  
1 Court Claim No. 01416 with a June 30, 1882, date of priority for the diversion  
2 of 0.026 cubic foot per second in May and June, 0.013 cubic foot per second in  
3 April and July 1 through October 15, 6.5 acre-feet per year for the irrigation  
4 of 1.3 acres in the portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33 that she owns.  
5

The remaining irrigated land lies in the W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33. This land  
6 has a different ownership history than the other land. The NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33  
7 is part of a larger parcel that George W. Gilkey obtained from the Northern  
8 Pacific Railroad in 1904. Gilkey then immediately sold to John Filer who in  
9 1906 sold to Elizabeth Drake. None of the deeds referenced water rights. The  
10 land stayed in the Drake family until 1937 and the deed that year included the  
11 language, "together with all water rights and irrigation ditches." Part of the  
12 Tirotta's exhibits is an Affidavit by Howard Thomas dated December 18, 1933,  
13 stating he was 30 years old and for the past 25 years (since he was five years  
14 old) he had been familiar with the E $\frac{1}{2}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 33. That ever  
15 since he could remember John Filer used ten inches of water of the 11th class  
16 under the Ferguson decree and used that for irrigation until 1920 when Fred C.  
17 Drake purchased 35 inches in the 14th Class from Oliver Fields and since then  
18 had used both the 10 inches and the 35 inches. The Affidavit also states that  
19 the water was diverted from Naneum Creek through two ditches, one having its  
20 intake in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, known as the Keister Ditch and the other  
21 having its intake in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33. The second was also used to serve  
22 land owned by G. A. Nylen, who takes out 20 inches of water for his farm in the  
23 W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 33. A copy of document conveying water from Oliver Fields to  
24 Fred C. Drake is also part of the record.  
25

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None of the documents put in the record establish where the 10 inches of  
1 Class 11 water referenced in the affidavit came from. If they were transferred  
2 from another water user, there should be a sales agreement or deed to document  
3 the sale. Additionally, the ten inches were described as being used on 160  
4 acres of land. The affidavit does not indicate which lands with those described  
5 were irrigated. Certainly they were not all irrigated with the ten inches. The  
6 35 inches clearly were sold and transferred in 1920. However, 1920 is after  
7 adoption of the Surface Water Code on June 6, 1917, now codified as RCW 90.03.  
8 Section 90.03.380 required that in order to change the point of diversion and/or  
9 place of use of a water right approval from the state was required. There was  
10 no evidence offered to show that approval was obtained.  
11

The Referee cannot recommend that a water right be confirmed for the  
12 portion of the Magnuson property in the W½NE½SW½ of Section 33 due to the lack  
13 of evidence to show that a water right was established for the land.  
14

COURT CLAIM NO. 01958 -- Brian Maier  
16 & Sheila Maier  
17 A.C.X. Trading, Inc.

Court Claim No 01958 was originally filed by Egon R. and Pam Wegner  
18 asserting a right to use waters from Naneum Creek. Brian and Sheila Maier were  
19 substituted as claimants on May 4, 1991 and A.C.X. Trading, Inc. was joined to  
20 the claim on August 20, 1998. Attorney Jeff Slothower represented the Maiers at  
21 the evidentiary hearing. David Tollett, who works for the Maiers, testified at  
22 the hearing.  
23

The claimants' property lies in the S½SE½ and NE½SE½ of Section 33,  
24 T. 18 N., R. 19 E.W.M. At the time of the Ferguson decree the land was owned by  
25

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J. S. Dysart, who was awarded a Class 6 right for 100 inches of water. However,  
1 when the Cascade Irrigation District was constructed, Mr. Dysart sold his creek  
2 water rights and irrigation district water has been used on the land ever  
3 since. The Maiers are not asserting a right to use water from Naneum Creek.  
4 Cascade Irrigation District is a major claimant in this proceeding whose rights  
5 are being determined through the Major Claimant Pathway.  
6

The claimants land lies within Subbasin No. 10 (Kittitas) and is riparian  
7 to Coleman Creek. They are asserting a non-diversionary stock water right out  
8 of Coleman Creek and presented evidence about that use at the Subbasin No. 9  
9 hearing. Non-diversionary stock water uses are covered by the stock water  
10 stipulation that is contained in each Report of Referee. The claimants should  
11 refer to the Subbasin No. 10 Report of Referee when it is issued to insure they  
12 are listed as claimants with stock water rights.  
13

Since the claimant is not asserting a right to use any water originating in  
14 Subbasin No. 9, the Referee does not recommend that a water right be confirmed  
15 under Court Claim No. 01958 for use of Subbasin No. 9 waters.  
16

COURT CLAIM NO. 05297 -- Nick A. Mandelas  
17

Court Claim No. 05297 was filed on May 7, 1990, several years after the  
19 original filing period in this case. The Court granted Mr. Mandelas request  
20 that the claim be allowed for further processing and it was scheduled to be  
21 heard at the Subbasin No. 9 evidentiary hearing. Mr. Mandelas, represented by  
22 Attorney Richard T. Cole, testified at the hearing.  
23

Mr. Mandelas owns approximately 16 acres that is a portion of the W½W½SE¼  
24 and E½SW¼ east of the county road, in Section 33, T. 19 N., R. 19 E.W.M.  
25

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27

Because the claim was filed after Ecology conducted its field work for Subbasin  
1 No. 9, there is no investigation report for the claim, nor does it appear on  
2 exhibit SE-2. Mr. Mandelas roughly drew his property on the exhibit, along with  
3 providing exhibit DE-1669. The property is used to grow hay and pasture for 20  
4 steers that are raised on the land each year. The livestock drink from the  
5 irrigation ditches that cross the property. Fifteen acres is rill irrigated  
6 with gated PVC pipe. Water is diverted from Naneum Creek at two locations. One  
7 diversion is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28 and diverts into the Wilkins  
8 Ditch and the second is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28 and diverts into the Keister  
9 Ditch. The Wilkins Ditch branches above the claimant's property, with both  
10 branches flowing through the property. A right is being asserted for the use of  
11 1.5 cubic feet per second, 105 acre-feet per year.

The claimant is basing his claim on rights awarded in the Ferguson decree  
13 and submitted three affidavits in support of this claim. The three affidavits  
14 were completed by Philip Laurence, Victor Zumbrunnen and Howard Thomas, who had  
15 been acquainted with the land for 18, 30 and 25 years respectively. Each  
16 affidavit states that 10 inches of Class 11 water from the Ferguson decree had  
17 been used to irrigate land within the E $\frac{1}{2}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 33, T. 19 N.,  
18 R. 19 E.W.M. until 1920 when 35 inches of Class 14 water was acquired and since  
19 then 45 inches has been used to irrigate 70 acres. The affidavit states that  
20 the water was carried in the Keister Ditch with a diversion in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
21 Section 28 and a second ditch with a diversion in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33  
22 (which is where the Wilkins Ditch branches).

The Ferguson decree was entered in 1901. According to the chain of title  
24 for this land, it was held by the Northern Pacific Railroad until 1903 when it  
25

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1 was sold to George W. Gilkey. It has been the Referee's experience that the  
2 purchaser of railroad land generally resides on the land and farms it under  
3 license from the railroad prior to actually acquiring title in the land. It is  
4 reasonable to conclude the George Gilkey was living on the land at the time of  
5 the Ferguson case. The Referee cannot find where a water right was awarded to  
6 him. Claimant's council suggests that since the decree only referenced names  
7 and the Findings of Fact that preceded the decree did not in every instance  
8 describe the lands, that it would be difficult to determine whether Mr. Mandelas  
9 land was awarded a water right. However, through review of the Ferguson  
10 documents and exhibits submitted by claimants in this proceeding, the Referee  
11 has been able to determine the lands owned by those awarded rights at the time  
12 of the Ferguson decree. The individuals who were awarded Class 11 rights did  
13 not own land in Section 33, T. 19 N., R. 19 E.W.M. It may be that one of them  
14 sold a portion of their water right and it was transferred to the claimant's  
15 land. However, there has been no evidence of that provided. The affidavits  
16 that discuss the use of Ferguson water on the claimant's land clearly state that  
17 35 inches of Class 14 water was acquired in 1920. That is after adoption of the  
18 State Surface Water Code in 1917, which required that changes to water rights be  
19 approved by the State through compliance with RCW 90.03.380. There is no  
20 evidence that occurred.

21 Additionally, in order to protect any water right that might be appurtenant  
22 to the claimants property, a water right claim needed to be filed pursuant to  
23 RCW 90.14, the Claims Registration Act. The only water right claim that has  
24 been brought to the Referee's attention was Water Right Claim (WRC) No. 160175  
25 filed by Nick Mandelas. It asserts a right to use ground water for domestic,

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1 stock watering, and irrigation (lawn and garden). WRC No. 160175 is a short  
2 form. RCW 90.14 provided for use of a short form to claim small uses of water.  
3 Those uses are limited to the uses described in the exemption from the permit  
4 requirements of RCW 90.44.050 (the State Ground Water Code) and are domestic  
5 supply, stock watering, irrigation of up to one-half acre of lawn or  
6 non-commercial garden domestic supply, and industrial use not exceeding 5,000  
7 gallons per day. Therefore, the only water right that the Referee could  
8 recommend would be limited to those uses if sufficient proof was made to  
9 recommend that a water right be confirmed. Mr. Mandelas testified that he  
10 misunderstood the term ground water, as opposed to surface water; thinking that  
11 surface water was only lakes and ponds and that ground water was water running  
12 on top of the ground. That may be. However, the Referee notes that Mr.  
13 Mandelas also testified to having a well on his property which he uses for  
14 domestic purposes. It is just as reasonable to conclude that WRC No. 160175 was  
15 filed for use of the well, which is in fact a ground water source that is being  
16 used for at least some of the purposes indicated on the claim form.

17 Because the claimant has not established the existence of a valid water  
18 right for the property and because there is not RCW 90.14 claim for use of  
19 Naneum Creek for irrigation of 15 acres, the Referee cannot recommend that a  
20 water right be confirmed for the property.

21

22

23

24

25

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1 COURT CLAIM NO. 00769 -- Bernard L. Martin  
2 & Marlene F. Martin

3 Court Claim No. 00769 was filed asserting a right to use waters from Wilson  
4 Creek and springs for irrigation of 2 acres, stock water, and domestic supply.  
5 Mr. Martin appeared and testified at the evidentiary hearing.

6 The Martin property is approximately 4 acres in size and lies in the SE $\frac{1}{4}$ NE $\frac{1}{4}$   
7 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, T. 18 N., R. 19 E.W.M. They own two adjoining  
8 parcels that were acquired in separate purchases. They have a large house and  
9 garden area and one acre of pasture. The pasture is irrigated from Wilson Creek  
10 and the lawn and garden are irrigated from a spring that is in the basement of  
11 the old brick mill that is on the northerly parcel. The spring also provides  
12 in-house domestic supply for the Martin home and a neighboring home further up  
13 the lane. Overflow from the spring also goes to a pond from which livestock  
14 drink. Livestock also have access to Wilson Creek. Creek water is pumped into  
15 a sprinkler system used to irrigate the pasture, which lies west of the house.  
16 Mr. Martin did not testify to the quantity of water being used. The Referee  
17 believes that all of the water use is being made on the parcel of land that lies  
18 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19.

19 The Martins placed into evidence several documents addressing the history  
20 of the land. A patent issued to Robert N. Canaday on August 20, 1878, for the  
21 S $\frac{1}{4}$ NE $\frac{1}{4}$  and the N $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, T. 18 N., R. 19 E.W.M. That same year,  
22 one-half interest in the land was conveyed to Milton Canaday. R. N. Canaday and  
23 M. Canaday were defendants in Sander v. Jones. The Findings of Fact does not  
24 describe the lands owned by the Canadays, but does state they acquired the lands

25  
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1 by patents issued June 30, 1876, and August 20, 1878. The Referee believes that  
2 at least a portion of the land discussed and for which a water right was awarded  
3 is the N $\frac{1}{2}$ SE $\frac{1}{4}$  and S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 19. The Findings of Fact goes on to state  
4 that in 1873 the Canadays built a mill on their land to be run by water power  
5 and appropriated 400 inches of water from Wilson Creek for the purpose of  
6 running the mill. In addition to the water appropriated for mill purposes,  
7 Canaday appropriated for farming purposes on their land a total of 275 inches,  
8 with the appropriation beginning in 1872 and the full 275 inches were being used  
9 by 1889. Recognizing that the decree awarded one inch of water for each acre  
10 irrigated, an award of 275 inches is obviously for more than the 160 acres  
11 described in the patent that issued on August 20, 1878. The other lands owned  
12 by Canaday are not in the record. Mr. Martin is the only claimant in this  
13 proceeding asserting a right in the S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 19. Madeleine Villa, Inc.  
14 and J. Downey are claimants owning a portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 19.

15 The Sander v. Jones decree only addresses use of Wilson Creek water, not  
16 the springs for which the Martins are also asserting a water right. Mr. Martin  
17 testified that the development around the spring appears to be quite old.  
18 Knowing that the mill was built in 1873, it is not unreasonable to conclude that  
19 the nearby spring would have been for domestic supply at the mill and at the  
20 Canaday homesite. Clear evidence of historic use of springs is often difficult  
21 because there rarely is a conflict between water users that would make it  
22 necessary to have documentation about the use.

23 Bernard and Marlene Martin filed two water right claims (WRC) pursuant to  
24 the requirements of RCW 90.14. WRC No. 079445 asserts a right to use springs  
25 and Wilson Creek in the amount of 0.04 cfs, 8 acre-feet per year for the

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irrigation of 2 acres and stock watering on the Martin property. WRC No. 079446  
1 asserts a right o use 15 gpm, 2 acre-feet from springs for domestic supply.  
2

Also in the record is Certificate of Change Recorded in Volume 1, page 297,  
3 which authorized Brickmill Ranch, once a owner of the claimants' land, along  
4 with other land in Section 19, to change the place of use of a portion of a  
5 right awarded in Sander v. Jones. The certificate of change authorized changing  
6 the place of use for 0.30 cfs being diverted from Wilson Creek from the S $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
7 NE $\frac{1}{4}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19 to the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19. The claimant did  
8 not address the significance of this change to his claim.  
9

The Referee recommends that the following rights be confirmed under Court  
10 Claim No. 00769: With a June 30, 1872, date of priority, a right to divert 0.02  
11 cfs, in May and June and 0.01 cfs in April and from July 1 through October 15, 5  
12 acre-feet per year from Wilson Creek for the irrigation of one acre and with a  
13 June 30, 1873, date of priority a right to divert 0.02 cfs , 2 acre-feet per  
14 year from a spring for domestic supply, including lawn and garden irrigation of  
15 up to one-half acre, and stock water.  
16

Livestock drinking from the creek is covered from the non-diversionary  
17 stock water stipulation discussed on page 4 of this report and no additional  
18 right is necessary.  
19

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1 COURT CLAIM NO. 01707 -- Don E. Mays  
2 & Paula Mays

3 Don E. and Paula Mays submitted a claim to the Court asserting a right to  
4 use waters from Wilson Creek for irrigation of 300 acres. The Mays are  
5 represented by Attorney J. Jay Carroll. Don Mays testified at the evidentiary  
6 hearing.

7 The Mays property is in the W $\frac{1}{2}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , a portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$  all in  
8 Section 18, T. 18 N., R. 19 E.W.M. and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
9 Section 19, T. 18 N., R. 19 E.W.M. They own and irrigate 270 acres of pasture  
10 land. The land previously had grown hay. Wilson Creek water is used to some  
11 degree on all 270 acres, however, there is 100 to 110 acres on which Wilson  
12 Creek is primarily used. That land is primarily in the SE $\frac{1}{4}$  of Section 18 and  
13 the N $\frac{1}{2}$  of Section 19, except the northwesterly corner. The Mays are patrons of  
14 the Kittitas Reclamation District (KRD) and KRD water is also used on 160  
15 acres. Small ponds have been constructed on the land to collect runoff water.  
16 The Mays raise cattle and depending on the time of year, as few as 300 head and  
17 as many as 3,000 head are on the property. Mr. Mays has also managed  
18 neighboring land owned by Ralph Strand and Earl Glauert and his cattle have  
19 grazed on their land also. The livestock drink from ponds and ditches that  
20 cross the land. Mr. May testified in some years he will begin irrigating as  
21 early as March 15 and will irrigate until early October, however, Wilson Creek  
22 water is generally not available after July 1. The Mays bought their property  
23 in 1978 from Charles Malone.

24  
25  
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Two water right claims (WRC) were filed by C. L. Malone pursuant to the  
1 requirements of RCW 90.14. WRC No. 144872 asserts a right to divert 5 cubic  
2 feet per second, 1800 acre-feet per year from Wilson Creek for the irrigation of  
3 300 acres and stock water in the S $\frac{1}{2}$  of Section 18, T. 18 N., R. 19 E.W.M. WRC  
4 No. 144873 asserts a right to use 5 cubic feet per second, 1800 acre-feet per  
5 year from Wilson Creek for the irrigation of 300 acres and stock water in the N $\frac{1}{2}$   
6 of Section 19, T. 18 N., R. 19 E.W.M. Both claims state that water was first  
7 used prior to 1900.

The claimants presented little historical information about water use on  
9 their land. When they first bought the land in 1978, Mr. Mays was aware of  
10 depressions in the fields that he has since realized are old ditches previously  
11 used to irrigate and there were old boards and concrete structures on the land.  
12 He did not identify what those structures and board were related to. The Mays  
13 did provide chain of title documents for the land and cited to the Sander v.  
14 Jones decree as the basis for their water right. At the time that decree was  
15 entered, the Mays land was owned by John B. Jones, who was a defendant in that  
16 case (in fact the Jones in the case title). The Findings of Fact that preceded  
17 the decree stated that Mr. Jones owned the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 18 and the N $\frac{1}{2}$ NE $\frac{1}{4}$  of  
18 Section 19, both in T. 18 N., R. 19 E.W.M. and had a possessory right to the  
19 NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19 under contract to purchase with the Northern Pacific  
20 Railroad. It further identified that Jones and his predecessor, Jordin had  
21 begun appropriating water from Wilson Creek in 1872 and by 1885 had appropriated  
22 60 inches and since 1885 Jones appropriation had been 60 inches. The decree  
23 then confirmed a right to Jones for the use of 60 inches. The decree also  
24 stated that one inch of water was sufficient to irrigate one acre until the end  
25

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of June and after than one-half inch of water was sufficient for each acre.

Therefore, the Referee concludes that Jones had a right to use 60 inches of water for the irrigation of 60 acres.

The Mays are irrigating between 100 and 110 acres with water diverted from Wilson Creek. They have presented no evidence to show that an additional water right was established for their land after entry of the Sander v. Jones decree. Additionally, two other claimants in this proceeding own and irrigate land that was owned by John B. Jones at the time of the decree. Earl Glauert owns approximately 20 acres and is asserting a right to 19 acres and Ralph Strand owns approximately 30 acres within the former Jones ownership and is asserting a right to irrigate his entire ownership.

The ideal situation would be for the Referee to know exactly where the 60 irrigated acres were in 1890 when the Sander v. Jones decree was entered. However, that is not possible. Therefore, the Referee intends to divide the 60 acres proportionately between the three claimants who own portions of the land owned by Jones at the time the decree was entered. Since both the Mays and Mr. Strand own land that was not owned by Jones at the time the decree was entered, the Referee will only consider that portion that was described in the decree. The Referee has concluded that the Mays own approximately 66 percent of the land described in the decree, Mr. Strand 22 percent and the Glauerts 11 percent. Therefore, the Referee intends to recommend that a right be confirmed to the Mays for 39.8 acres, to Mr. Strand for 13.4 acres and to the Glauerts 6.8 acres.

The Referee recommends that a right be confirmed under Court Claim No. 01707 with a June 30, 1872, date of priority for the diversion of 0.796 cubic

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foot per second in May and June and 0.398 cubic foot per second from March 15 to  
1 April 30 and July 1 through October 15 and 202 acre-feet per year for the  
2 irrigation of 39.8 acres and stock watering within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18 and  
3 the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 19. Livestock drinking from any ponds or  
4 drains on the property is covered by the non-diversionary stock water  
5 stipulation discussed on page 4 of this report and no additional right is  
6 necessary for that use.  
7

8 COURT CLAIM NO. 00495 -- Estate of Byrl A. McNeil  
9 & Arlene Rosenburg

10 Byrl A. and Arlene McNeil submitted a statement of claim to the Court  
11 asserting a right to use waters from Whiskey Creek for irrigation and stock  
12 watering. Mr. McNeil is now deceased and Mrs. McNeil has remarried and her name  
13 is now Arlene Rosenburg. Mrs. Rosenburg appeared and testified at the  
14 evidentiary hearing in support of the claim.

15 The claimant owns the NW $\frac{1}{4}$  and E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 7, T. 18 N., R. 19 E.W.M.  
16 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 12, T. 18 N., R. 18 E.W.M. Water is  
17 diverted from Whiskey Creek at six points and used to irrigate 126 acres, which  
18 are riparian to Whiskey Creek. The claimants are also patrons of the Kittitas  
19 Reclamation District (KRD) and 176 acres are assessed by KRD. A drain, which is  
20 primarily fed by seepage from the KRD Highline Canal, is used to irrigate 55  
21 acres in the W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 7. Whiskey Creek is used to irrigate 50 acres  
22 adjacent to the creek in the NW $\frac{1}{4}$  of Section 7, 60 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$  of  
23 Section 12 east of Whiskey Creek are irrigated from Whiskey Creek and 14 acres  
24 in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12 are also irrigated from the creek. Although not  
25

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1 specifically testified to by Mrs. Rosenburg, the Referee concludes from the  
2 evidence presented that all of the irrigated land is assessed by KRD, with  
3 Whiskey Creek water being used when it is available on 124 acres.  
4

5 Mrs. Rosenberg testified to using three diversions to irrigate the NW $\frac{1}{4}$  of  
6 Section 7. The main diversion just below the north section line, is located  
7 approximately 800 feet west of the north quarter corner. It is used to irrigate  
8 the 50 acres in the NW $\frac{1}{4}$  of Section 7. A diversion 1100 feet south and 900 feet  
9 east of the northwest corner of the section is used to irrigate approximately 4  
10 acres that lie west of Whiskey Creek. The third diversion is 1500 feet south  
11 and 950 feet east of the northwest corner of the section and is used to irrigate  
12 2 acres around the barn.

13 Byrl A. McNeil filed Water Right Claim No. 052437 pursuant to RCW 90.14  
14 asserting a right to divert 4 cubic feet per second, 1200 acre-feet per year  
15 from Whiskey Creek for the irrigation of 160 acres and stock watering in the NW $\frac{1}{4}$   
16 of Section 7, T. 18 N., R. 19 E.W.M. and the S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 12, T. 18 N.,  
17 R. 18 E.W.M. The point of diversion described in WRC No. 052437 is closest to  
18 the northerly most diversion, which is the one used to irrigate most of the  
19 land. Mrs. Rosenberg did not explain whether the other diversions had been  
20 added since the claim was filed or simply omitted from the claim. The land  
21 owned and irrigated in the W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 7 was excluded from WRC No. 052437,  
22 however, that is not significant since the testimony indicates that land is  
23 irrigated with either direct deliveries from KRD or from a ditch fed by seepage  
24 from the KRD canal and KRD return flows. Use of that water is covered by the  
25 KRD water right and the Referee cannot recommend that an individual water right  
26 be confirmed for use of that water.

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28

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1       The claimant is asserting that the basis of a right for the lands in the  
2 NW $\frac{1}{4}$  of Section 7 is an Affidavit of Water Right filed by J. F. LeClerc and W. A.  
3 Jordin dated February 22, 1883. The affidavit states that during the year 1872  
4 Aman Galloway dug a ditch capable of conveying 700 inches of water and  
5 appropriated 400 inches of water. The ditch commenced near the center of  
6 Section 32, T. 19 N., R. 19 E.W.M. and ran in a southwesterly direction. The  
7 ditch was taken out for the purpose of irrigating land in Sections 5, 6, and 7,  
8 in T. 18 N., R. 19 E.W.M. As a result of documents submitted by the claimant  
9 and by Chester V. Stokes, a neighboring claimant, the Referee has been able to  
10 determine that J. F. LeClerc owned the S $\frac{1}{2}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$  and Lot 4 of Section 5 and  
11 W. A. Jordin owned the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6 and the NW $\frac{1}{4}$  of  
12 Section 7. Mr. Stokes and Harold Jenkins, who owns the land in Section 6 are  
13 also asserting rights based on the Jordin/LeClerc affidavit.

14       This area has been heavily litigated, however, the lands owned by Jordin  
15 and LeClerc were not involved in any of the numerous lawsuits and resultant  
16 miscellaneous decrees. The Courts have consistently held that 0.02 cubic foot  
17 per second is sufficient water to irrigate one acre of land. Even though this  
18 land was not covered by any of the decrees, the Referee intends to use the same  
19 standard as set forth in those decrees. Mrs. Rosenberg is asserting a right to  
20 use 1200 acre-feet per year to irrigate the 124 acres adjacent to Whiskey  
21 Creek. However, that annual quantity of water is not consistent with what the  
22 courts have previously found to be sufficient, and available, for use in this  
23 area. The Referee proposes 5 acre-feet per year for each acre irrigated.  
24 Additional water may be available through deliveries from KRD.

25

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1       The Jordin/LeClerc affidavit states that the diversion into the ditch was  
2       near the center of Section 32, which is approximately where Whiskey Creek  
3       separates from Wilson Creek. There has been some discussion at the hearing that  
4       Whiskey Creek actually is the ditch referred to in the affidavit. However, the  
5       evidence was not conclusive, so the Referee will continue to refer to it as a  
6       creek. Whiskey Creek flows through the land in the NW $\frac{1}{4}$  of Section 7, therefore,  
7       the Riparian Doctrine would be applicable. Water rights based on the Riparian  
8       Doctrine enjoy a priority date of when first efforts were made to separate the  
9       land from Federal ownership, if that information is in the record. Title to  
10      Section 7 was originally held by Northern Pacific Railroad and the priority date  
11      under the Riparian Doctrine for railroad land is the date the map of definite  
12      location was filed for construction of the railroad. That date in Kittitas  
13      County is May 24, 1884. However, the affidavit states that construction of the  
14      ditch began in 1872 with the intent of serving the described lands. Based on  
15      the information in the record, the Referee concludes that a right was  
16      established under the Prior Appropriation Doctrine in 1872, prior to the land  
17      separating from the Federal government. Milton Lewis testified to assisting  
18      with farming the land in the mid-1920's.

19       Although there was historical evidence presented to show the existence of a  
20      water right for the land in the NW $\frac{1}{4}$  of Section 7, the same cannot be said for  
21      the land owned by the claimants in the S $\frac{1}{4}$  of Section 12, T. 18 N., R. 18 E.W.M.  
22      The claimants submitted a chain sheet showing the history of the ownership of at  
23      least a portion of the land, however, there was nothing entered to show that a  
24      water right was established through beneficial use of the water. Since the land  
25      in the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12 is riparian to Whiskey Creek, there needs to be

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evidence of when that portion of the section separated from Federal ownership.

The Referee was unable to pick that date out of the chain sheet. Additionally there needs to be evidence that water was used on this land prior to December 31, 1932. The land in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12 is not riparian to Whiskey Creek and in order for the Referee to conclude a right exists for that land, evidence is needed to show use of water prior to June 6, 1917. That evidence is also lacking.

The Referee recommends that a right be confirmed under the Prior Appropriation Doctrine for Court Claim No. 00495 with a June 30, 1872, date of priority for the use of 1.0 cubic foot per second, 250 acre-feet per year for the irrigation of 50 acres and stock watering in that portion of the NW $\frac{1}{4}$  of Section 7, T. 18 N., R. 19 E.W.M. lying southeast of Whiskey Creek, except the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of said section. The original right established by LeClerc and Jordin only described one diversion, that being near the center of Section 32, T. 19 N., R. 19 E.W.M., which is where Whiskey Creek separates from Wilson Creek. It is reasonable that diversions from Whiskey Creek would then have been developed to each parcel of land. The only diversion described on WRC No. 052437 in the one in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, therefore, that is the only diversion proposed for inclusion on the recommended right.

COURT CLAIM NO. 00484 -- Mark McWhorter  
(A) 04498

The McWhorters filed a Statement of Claim with the Court for several water sources in the Yakima River Basin. The claim was amended in 1989 to include use of Naneum Creek and Lyle Creek located in Subbasin No. 9. The property lying in

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Subbasin No. 9 is owned solely by Mark McWhorter, who was represented by  
1 Attorney James P. Hutton. Mark McWhorter testified at the evidentiary hearing  
2 in support of the claim.  
3

Mr. McWhorter's land lies in the E½NE¼, south of the KRD canal, and SE¼ of  
4 Section 8, the W½ of Section 9 south of the KRD canal, and the NE¼ of  
5 Section 17, all in T. 18 N., R. 19 E.W.M. This land has been in his family's  
6 ownership since the mid-1960's and has been operated as a cattle ranch. Hay,  
7 pasture and grain are the predominant crops grown, with a small orchard in the  
8 southeast corner of Section 8. Water is diverted from Naneum Creek, Lyle Creek  
9 and Wilson Creek, along with deliveries from the Kittitas Reclamation District  
10 (KRD), to irrigate the land. Sufficient water is generally available from the  
11 creeks to irrigate until around the first of July; after that the creek flows  
12 decline considerably and KRD water is relied upon. Most of the fields are  
13 irrigated over a 12 day period and are irrigated between four and five times  
14 each year. Within Section 8 there are 199.6 acres irrigated, 162 of those are  
15 assessed by KRD; within Section 9 there are 259.4 acres irrigated and 169 of  
16 those are assessed by KRD; and within Section 17 148 acres are irrigated, with  
17 124 acres assessed by KRD. During a year when there are no restrictions on KRD  
18 deliveries, 1801 acre-feet will be delivered by KRD to the McWhorter property.  
19

Several water right claims were filed by Mark McWhorter pursuant to the  
20 requirements of RCW 90.14. Water Right Claim (WRC) No. 005561 asserts a right  
21 to divert 4 cfs, 400 acre-feet per year from Wilson Creek for the irrigation of  
22 50 acres in the SE¼ of Section 8. The point of diversion described is 2340 feet  
23 east and 980 feet south of the northwest corner of Section 8, being within the  
24 NW¼ of Section 8. This point is marked as #3 on Mr. McWhorter's Exhibit  
25

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28

1 DE-1573. Lyle Creek separates from Wilson Creek on the McWhorter's property at  
2 the point described in WRC 005561. The Referee will consider this water right  
3 claim to also address use of Lyle Creek.

4 WRC No. 005565 asserts a right to divert 10 cfs April 1 to Aug. 1 and 4 cfs  
5 Aug 2 to March 29, 4680 acre-feet per year from Naneum Creek for the irrigation  
6 of 600 acres in the W $\frac{1}{2}$  of Section 9 (the Referee notes there are only 320 acres,  
7 not 600 in the W $\frac{1}{2}$  of Section 9, which may explain the statement on the claim  
8 that 200 acres were presently irrigated). The point of diversion described is  
9 920 feet south and 1300 feet east of the northwest corner of Section 9, being  
10 within the NW $\frac{1}{4}$  of Section 9. This is identified as #7 on DE-1573.

11 WRC No. 005568 asserts a right to divert 1/5 cfs, 140 acre-feet per year  
12 from a spring in the NW $\frac{1}{4}$  of Section 9 for stock watering in the W $\frac{1}{2}$  of  
13 Section 9. The spring is described as being 1610 feet east and 2230 feet south  
14 of the northwest corner of Section 9, in the NW $\frac{1}{4}$  of Section 9.

15 These claims were all cited to by Ecology in its investigation reports for  
16 the claim. In addition, Mr. McWhorter directed the Referee to two water right  
17 claims that he filed describing the source as being ground water. The Referee  
18 suspects that because of the ground water designation on the claim, they were  
19 not included in Ecology's exhibits. WRC No. 005562 asserts a right to use 3  
20 cfs, 320 acre-feet per year from a drain for the irrigation of 150 acres and  
21 stock watering in the E $\frac{1}{2}$  of Section 8. The diversion from the drain is 610 feet  
22 west and 800 feet south of the northeast corner of Section 8, in the NE $\frac{1}{4}$  of  
23 Section 8. Diversion #4 on DE-1573 appears to be at that location. WRC No.  
24 005564 asserts a right to use 3 cfs, 320 acre-feet per year from a drain for the  
25 irrigation of 350 acres and stock watering in parts of the W $\frac{1}{2}$  of Section 9, the

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1 SE $\frac{1}{4}$  of Section 8 the SW $\frac{1}{4}$  of Section 8 and the NE $\frac{1}{4}$  of Section 17 (Mr. McWhorter  
2 is not asserting rights in this proceeding for the SW $\frac{1}{4}$  of Section 8). The  
3 diversion from the drain is described as being 920 feet south and 890 feet east  
4 of the northwest corner of Section 9, in the NW $\frac{1}{4}$  of Section 9. Diversion #6 on  
5 DE-1573 appears to be at that location.

6 According to Mr. McWhorter's testimony these drains capture run off water  
7 from the Jenkins property to the north. The Jenkins property is irrigated with  
8 water diverted from both Wilson Creek and Naneum Creek (see discussion of the  
9 Jenkins claim on page 259 of this report). Therefore, the run off, or return  
10 flow water, is the result of the application of water that naturally occurs in  
11 this basin and would not be considered either foreign or Yakima project return  
12 flows. Mr. McWhorter did not testify to when these drains were constructed and  
13 first used. If use began prior to June 6, 1917, a right could have established  
14 under the Prior Appropriation Doctrine. However, there is insufficient  
15 historical information in the record to reach that conclusion.

16 Water rights for the McWhorter property were addressed in both the Ferguson  
17 and Sanders v. Jones decrees. The land in the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 8 is part of  
18 land once owned by John Bloomquist, who was awarded a Class 3 right in the  
19 Ferguson decree for 160 inches of water from Naneum Creek. The Bloomquist right  
20 was for the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8. The land  
21 was first settled and water diverted in 1873, which would be the priority date  
22 for the right. The entire 160 acres were cultivated, resulting in an award of  
23 160 inches, or 3.2 cubic feet per second. The proportionate share of the right  
24 that would be appurtenant to the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 8 is 80 inches or 1.6 cubic  
25 feet per second. The Referee estimates that Mr. McWhorter owns and irrigates 60

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1       acres of land south of the KRD canal, and would therefore, have a right to 60  
2       inches or 1.20 cubic feet per second. John Bloomquist was also a defendant in  
3       Sanders v. Jones but was not awarded a right in that proceeding. A Class 3  
4       right for 160 inches from Naneum Creek was also awarded in Ferguson to George  
5       Cooke for what was referred to as the Stinson property. The Stinson property is  
6       the S $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9. Mr. McWhorter owns all of this, so  
7       the entire 160 inches, or 3.2 cubic feet per second is appurtenant to his land.  
8       A Class 11 right was awarded to George Cooke for the use of 320 inches of water  
9       from Naneum Creek for use in the N $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9 and the  
10      S $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 4. Half of this right, or 160 inches (1.6 cfs) is  
11      appurtenant to land in Section 9. Approximately 45 acres in the N $\frac{1}{4}$ NW $\frac{1}{4}$  of  
12      Section 9 is not owned by Mr. McWhorter, leaving 115 acres and a water right for  
13      115 inches (2.3 cubic feet per second). The land was first occupied and  
14      cultivated in 1882, which would be the priority date for the right. The NE $\frac{1}{4}$  of  
15      Section 17 was owned by W. Rader at the time of the Ferguson decree and it was  
16      awarded a Class 12 right, with an 1882 date of priority for 100 inches of water  
17      or 2.0 cubic feet per second from Naneum Creek. The Sander v. Jones decree also  
18      awarded a right to use 20 inches of water from Lyle Creek with an 1881 date of  
19      priority. The SE $\frac{1}{4}$  of Section 8, then owned by A. J. Rader, was also awarded a  
20      Class 12 right, but for only 40 inches of water, or 0.80 cubic foot per second  
21      from Naneum Creek.

22       Clearly water rights were established for the McWhorter property and  
23       confirmed in the Ferguson and Sanders v. Jones decrees. However, the number of  
24       acres being irrigated on portions of the property exceeds the acres for which  
there is evidence of a water right. Within Section 8, Mr. McWhorter testified

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1 to irrigating 199.6 acres, however, rights for the irrigation of 100 acres were  
2 awarded in Ferguson. In Section 9, a total of 259.4 acres are being irrigated,  
3 however, right to 220 acres were awarded in Ferguson and in the NE $\frac{1}{4}$  of  
4 Section 17, 148 acres are being irrigated and rights for the irrigation of 120  
5 acres were awarded in Ferguson and Sander v. Jones. The Referee can only  
6 recommend to the Court that rights be confirmed if the evidence shows that a  
7 water right was legally established. There was no evidence presented to show  
8 that additional rights were established beyond those described in the decrees.  
9 It may be that more land was irrigated after the KRD canal was constructed into  
10 the area. The claimant is asserting a right to use Wilson Creek, Lyle Creek and  
11 Naneum Creek. Except for the 20 inch right to Lyle Creek for the NE $\frac{1}{4}$  of  
12 Section 17, all of the water rights addressed in the Ferguson decree were for  
13 use of waters from Naneum Creek.

14 The Referee notes that the only RCW 90.14 claim on file for the E $\frac{1}{2}$ NE $\frac{1}{4}$  of  
15 Section 8 is WRC No. 005562, which was filed for use of a drain. Although it  
16 does not describe Naneum Creek as a source of water, the drain captures run off  
17 water from fields irrigated with water diverted from Naneum Creek.

18 Mr. McWhorter has identified on Exhibit DE-1573 over a dozen diversions  
19 that are used to irrigate his property. However, the two water right claims  
20 that have been filed for the creeks each only describe one diversion.  
21 Therefore, the Referee is limited to confirming rights at the diversion points  
22 described on the claim forms or historically used. It is not clear whether the  
23 diversions described are the ones historically used, however, they are the only  
24 ones documented.

25

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The Referee recommends that the following rights be confirmed under Court

The Referee also recommends that a right be confirmed with a June 30, 1881,  
date of priority for the diversion of 0.40 cubic foot per second in May and June

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1 and 0.20 cubic foot per second in April and July 1 through October 15, 100  
2 acre-feet per year for the irrigation of 20 acres in the NE $\frac{1}{4}$  of Section 17,  
3 lying west of Lyle Creek.

4 Livestock are raised on the claimant's property and drink from irrigation  
5 ditches and creek channels. Up to 1500 head of livestock can be on the  
6 claimant's land. Recognizing that not all of the stock water use is  
7 diversionary, the Referee will award an additional annual quantity under each  
8 right for stock watering. Livestock drinking directly from the water source is  
9 covered by the stock water stipulation discussed on page 4 of this report.

10 COURT CLAIM NO. 01202 -- Grace M. Menig

11 Mrs. Grace Menig submitted a claim to the Court asserting a right to use  
12 surface waters for irrigation of 2.77 acres. Mrs. Menig testified at the  
13 evidentiary hearing.

14 Mrs. Menig's property lies in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 24, T. 17 N.,  
15 R. 18 E.W.M. She owns a total of 2.77 acres and irrigates with Yakima River  
16 water carried initially in the Tjossem Ditch and ultimately in the Steen McLeod  
17 and Clark Ditch. She has several buildings on her property leaving the Referee  
18 to conclude that no more than 2 acres are actually irrigated. Over the years  
19 she has had problems with upditch water users taking all of the water in the  
20 ditch and her not getting any water. This lack of water in the ditch is  
21 reflected in the State's Investigation Report and the water right claim filed by  
22 Mr. Menig in 1974. That is a periodic problem, but according to Mrs. Menig's  
23 testimony, she irrigates from the ditch whenever water is available to her. She  
24 irrigates about 1.5 acres of pasture and 0.5 acre of lawn and garden area. She  
25

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uses a pump to withdraw water from the ditch and according to the Statement of  
1 Claim, it is a 1½ HP pump. This size pump would easily withdraw sufficient  
2 water from the ditch to irrigate 2 acres. The Referee estimates that  
3 approximately 0.06 cfs could reasonably be expected to be used on the claimant's  
4 property.

5 Mrs. Menig's land is part of a larger parcel that was homesteaded by Emil  
6 Pederson, who received a patent for the W½NE¾, SE¼NE¾ and NW¼SE¾ of Section 24,  
7 T. 17 N., R. 18 E.W.M. on March 25, 1891. On April 3, 1900, Pederson sold all  
8 of the land to Joel Clarke. Mrs. Menig and her husband acquired their land, and  
9 several other acres that they have since sold, in 1946. Mrs. Menig knew very  
10 little about the property prior to their purchase, except that sheep were raised  
11 on it and it had water rights.

12 A neighboring landowner and claimant in this case, Judith Nickerson, put in  
13 the record Exhibit DE-1597, which included a statement by Albert Tjossem made on  
14 October 31, 1933, concerning operation of the Tjossem Ditch and the Steen  
15 McLeod and Clark Ditch. He indicated who the users on the Clark branch of the  
16 Steen McLeod and Clark Ditch were at that time, and one user was Almina Adams,  
17 who according to Mrs. Menig's records owned the W½NE¾ of Section 24. The  
18 statement also indicates that the users on the Clark Branch were successors to  
19 Joel Clark, who was one of the prior owners of the Menig property. The record  
20 is not clear about when the Steen McLeod and Clark Ditch was built. Attachments  
21 to DE-1597 clearly show that it was constructed prior to October 1902, when  
22 agreement was made to consolidate the upper portion of the ditch with the  
23 Tjossem Ditch. Lacking any other information to establish an earlier priority  
24 date, 1902 shall be used.

25  
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Water Right Claim No. 144966 was filed by Bert A. Menig pursuant to the  
1 requirements of RCW 90.14. It asserts a right to divert 8 acre-feet per year  
2 from the Yakima River for the irrigation of 2.77 acres and stock water. The  
3 point of diversion described is where the Tjossem Ditch diverts from the Yakima  
4 River. The place of use described is all of the NE $\frac{1}{4}$  of Section 24, however,  
5 clearly the intent of Mr. Menig was to preserve a right for the 2.77 acres he  
6 owns in the NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , NE $\frac{1}{4}$  of Section 24.

Based on the foregoing, the Referee recommends that a right be confirmed  
8 under Court Claim No. 01202 with a June 30, 1902, date of priority for the  
9 diversion of 0.06 cfs, 8 acre-feet per year from the Yakima River for the  
10 irrigation of 2 acres in the North 337 feet of the west 350.6 feet of the  
11 NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , NE $\frac{1}{4}$  of Section 24, T. 17 N., R. 18 E.W.M.

COURT CLAIM NO. 01669 -- Howard Miles

Howard Miles filed a Statement of Claim asserting a right to use waters  
15 from Naneum Creek for irrigation and stock water. Mr. Miles testified at the  
16 evidentiary hearing.

Mr. Miles property lies in that portion of the easterly 2000 feet of the  
18 NW $\frac{1}{4}$ , NW $\frac{1}{4}$  of Section 9, T. 18 N., R. 19 E.W.M. lying north of the Kittitas  
19 Reclamation District Highline Canal. He owns slightly more than 23 acres and is  
20 asserting a right to irrigate 18 acres with water diverted from Naneum Creek.  
21 The land is pasture and both cattle and horses have been raised in the past.  
22 Mr. Miles and his father acquired the land from Ralph Klein in 1976 and his  
23 father lived on the property, raised cattle, and irrigated pasture with water  
24 diverted from Naneum Creek. Following his father's death in 1980, Howard Miles

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1 moved onto the property. The diversion to the property is in the S $\frac{1}{2}$ SW $\frac{1}{4}$  of  
2 Section 4, T. 18 N., R. 19 E.W.M., approximately 700 feet north of the  
3 claimant's property. That diversion had not been used during the time that  
4 Howard Miles was on the land. Runoff from the Morrison and Jenkins Ranches to  
5 the north was sufficient to irrigate the land to the extent desired by Mr.  
6 Miles. His intent at the time of the hearing was to resume a more intensive  
7 irrigation of the property which would require use of the direct diversion from  
8 Naneum Creek. Naneum Creek is the source of water used to irrigate the Morrison  
9 and Jenkins Ranches, so the runoff water used by Mr. Miles is essentially a  
10 reuse of Naneum Creek water. Since the land has continued to be irrigated to  
11 some extent with Naneum Creek water, the Referee does not find relinquishment of  
12 any right that may exist to be an issue.

13 Mr. Miles did not provide much history about the land, other than it was  
14 being irrigated at the time he and his father acquired it. They bought from  
15 Ralph Klein and prior to that it was part of the Bar 14 Ranch. The Referee has  
16 reviewed the evidence placed in the record by Mark McWhorter, who owns the  
17 portion of the NW $\frac{1}{4}$  of Section 9 below the KRD canal. That shows water rights  
18 for the NW $\frac{1}{4}$  of Section 9 were addressed in both the Ferguson and Sanders v.  
19 Jones decrees. A Class 11 right was awarded to George Cooke in the Ferguson  
20 decree for the use of 320 inches of water in the N $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
21 Section 9 and the S $\frac{1}{2}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 4. Half of this right, or 160  
22 inches (1.6 cfs) is appurtenant to land in Section 9. Approximately 45 acres in  
23 the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 9 is north of the KRD canal with rights being asserted by  
24 Mr. Miles and Patrick Jenkins and approximately 115 acres are below the canal  
25 and owned by Mark McWhorter. See page 351 of this report for a discussion of

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27 Re: Subbasin No. 9

the McWhorter claim. The land was first occupied and cultivated in 1882, which  
1 would be the priority date for the right. The Ferguson decree provided for the  
2 use of one inch of water for each acre irrigated in May and June and one-half  
3 inch of water the remainder of the year. Therefore, Mr. Miles would have a  
4 right to 18 inches, or 0.36 cubic foot per second in May and June and 0.18 cubic  
5 foot per second the remainder of the year. At that rate of diversion, a maximum  
6 of 5 acre-feet per acre irrigated could be used during the irrigation season.  
7

Mr. Miles testified to a spring on his property that has not been  
8 developed. Livestock drink from the spring area and outflow from the spring.  
9 Livestock also have access to Naneum Creek as it flows through the property.  
10 Non-diversionary stock watering is covered by the stock water stipulation  
11 discussed on page 4 of this report and no additional right is necessary.  
12

Two water right claims were filed pursuant to RCW 90.14 that include the  
13 claimant's property. Water Right Claim (WRC) No. 005565 was filed by Mark  
14 McWhorter asserting a right to divert 10 cfs, 4680 acre-feet per year from  
15 Naneum Creek for the irrigation of 600 acres in the W $\frac{1}{2}$  of Section 9, T. 18 N.,  
16 R. 19 E.W.M. It is not clear to the Referee that Mr. McWhorter intended this  
17 claim to protect water rights for any land other than his own, however, it does  
18 describe Mr. Miles property and asserted a right large enough for the entire  
19 half section. Additionally, WRC No. 090378 was filed by Ralph C. Klein. It  
20 asserts a right to use Naneum Stream and Wilson Stream for stock watering and  
21 irrigation (lawn and garden) and describes portions of several sections as the  
22 place of water use, including that portion of the W $\frac{1}{2}$  of Section 9 lying north of  
23 the right of way of the North Branch Canal of KRD. This claim was filed on a  
24 short form. RCW 90.14 allowed for the use of the short form to claim small uses  
25

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of water that are exempt from the permitting requirements described in RCW  
1  
90.44. Those uses are up to 5,000 gallons per day for stock watering,  
2  
industrial supply, domestic supply or irrigation of up to one-half acre of lawn  
3  
and non-commercial garden. The Referee and the Court in this case have  
4  
routinely found that use of the short form limits the right that can be  
5  
confirmed to those small uses. However, in this case, Mr. Klein added a note to  
6  
the claim form that states: "This water right claim refers to Order Pendente  
7  
Lite No. 18145 in the Superior Court of the State in 1973; Note: the claimant's  
8  
number which Richard C. Klein, owner and Ralph C Klein, is power of attorney,  
9  
recorded in Kittitas County, is shown under the former owners name of Lawrence A  
10  
Many. Claimant No. 16, on page 5; Claimant No. 16 on page 9; Claimant No. 16 on  
11  
page 8; Claimant No. 16 on page 10; No 16 on page 14;" Pendente Lite Order No.  
12  
18145 was an interim order issued for use in regulating water rights in the  
13  
Wilson-Naneum basin following the attempt to adjudicate those creeks in the  
14  
early 1970's. The order would provide all of the information needed to  
15  
determine the extent of the right being asserted by Mr. Klein. The Referee  
16  
believes that sufficient information was contained in the short form to meet the  
17  
expressed intent of RCW 90.14 and finds that Mr. Klein substantially complied  
18  
with those requirements.

19  
Based on the foregoing, the Referee recommends that a right be confirmed to  
20  
Howard Miles under Court Claim No. 01669 with a June 30, 1882, date of priority  
21  
for the diversion of 0.36 cubic foot per second in May and June and 0.18 cubic  
22  
foot per second in April and July 1 through October 15, 90 acre-feet per year  
23  
for the irrigation of 18 acres.

24  
25  
26  
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**REPORT OF REFEREE  
SUBBASIN NO. 9  
SEE PART II FOR  
PAGES 363 – 713**

**YAKIMA RIVER BASIN  
WATER RIGHTS ADJUDICATION**

**F I L E D**  
JUN 29 2000

**KIM M. EATON  
YAKIMA COUNTY CLERK**

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

**REPORT OF REFEREE**

**Re: SUBBASIN NO. 9  
(WILSON-NANEUM)**

RECEIVED

• 00 JUN 29 AM 9 37

CLERK'S OFFICE  
YAKIMA COUNTY COURT  
YAKIMA, WASHINGTON

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

1 COURT CLAIM NO. 01801 -- Andrew J. Mills  
2 & Stephanie Mills

3 The Mills submitted a claim to the Court asserting a right to irrigate with  
4 waters from Wilson Creek. Mr. Mills testified at the evidentiary hearing.

5 The Mills own 16.5 acres and irrigate 13 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32  
6 with water diverted from Wilson Creek. Most of the land is irrigated pasture  
7 and up to 10 horses and 15 to 20 head of cattle are at times raised on the  
8 property. Water is diverted from the creek in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 into  
9 what is sometimes called Rogers Ditch. This is the historical diversion point  
10 that served the property and is now used to irrigate 10 acres that are surface  
11 irrigated. The remaining three acres are now sprinkler irrigated and a second  
12 diversion with a pump on the claimants' property is used for that three acres.  
13 The sprinkler system was installed in the early 1980's and the Referee presumes  
14 that is when the second point of diversion was added. There was no indication  
15 that the claimants obtained approval from Ecology pursuant to the provisions of  
16 RCW 90.03.380 for adding the additional point of diversion.

17 The Mills property is part of a larger parcel for which William Rogers  
18 received a patent on January 13, 1893. The Rogers homestead consisted of the  
19 S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M. By August of 1901 the  
20 land, along with other land in the area, was owned by W. R. Thomas and remained  
21 in the Thomas family until 1950. Water rights for the Thomas property were  
22 addressed in W. R. Thomas v. James T. Roberts, et al., Decree No. 5653 signed on  
23 March 1, 1924. In the Findings of Fact for that decree, it was stated that W.  
24 R. Thomas owned the S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M.,

25  
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known as the Rogers Tract, and that Rogers settled on the land in 1886 and water  
1 was first diverted for irrigating this tract in 1885. The amount of water that  
2 had been diverted and was being used was 30 inches. This decree identified  
3 other water rights that are appurtenant to other lands owned by W. R. Thomas.  
4 Besides the Mills, Gary M. and Jacquelyn J. Galbraith and Chester Vernon & Roma  
5 B. Stokes own land within the S $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 and are asserting a  
6 water right. Their claims are addressed on pages 202 and 519, respectively.  
7 Between the three claimants, rights are being asserted for the irrigation of a  
8 total of 33 acres. Based on the record, a right exists for the irrigation of a  
9 maximum of 30 acres, which is the maximum the Referee can recommend that rights  
10 be confirmed. There is an additional three acres being irrigated beyond the  
11 historic water right. There is insufficient evidence in the record to show  
12 where the additional three acres are located, therefore, the Referee will  
13 recommend that the right confirmed to each claimant be only a portion of what  
14 they are asserting a right. Thirty acres is 91 percent of the total acreage  
15 being irrigated, so each claimant will be recommended a right for 91 percent of  
16 the land they are irrigating. The proportionate share of the 30 acres that the  
17 Mills would enjoy is 11.8 acres.  
18

A reading of the Findings of Fact that preceded the Ferguson decree would  
19 suggest that another right is appurtenant to lands that include the S $\frac{1}{2}$ SW $\frac{1}{4}$  and  
20 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. The Findings of Fact state that Mrs. J. L. Bennett owned  
21 the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, with 30 acres being  
22 irrigated. However, the evidence presented by Mr. Stokes clearly shows that  
23 Mrs. Bennett did not own the S $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. Claimants in the  
24 S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 33, (Tirotta and Magnuson) have put into the record evidence to  
25

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1 show that Bennett owned the S $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 33, not Section 32. See  
2 page 161 and 331 of this report for discussion of their claims.  
3

4 There are no water right claims filed pursuant to RCW 90.14 in State's  
5 Exhibit DE-5 that the Referee can clearly conclude are appurtenant to the Mills  
6 property. However, Ecology offered SE-224, which is a Motion to Allow Admission  
7 of Additional 90.14 Water Right Claims Relating to Subbasin No. 9,  
8 Wilson-Naneum. The water right claims attached to the motion were located in  
9 the Kittitas County Superior Court file No. 18145, State v. Carlson, et ux., et  
10 al.. The claims registration period under RCW 90.14 ended on June 30, 1974 and  
11 the filings and hearings related to State v. Carlson, supra were held in 1972  
12 and 1973. Apparently some of the claims that were intended to be filed pursuant  
13 to RCW 90.14 ended up in the Kittitas County records. There is not definitive  
14 information in the record to explain how or why this happened. The Referee  
15 finds that those landowners whose claims were inadvertently filed at the  
16 Kittitas County Courthouse rather than with Ecology have substantially complied  
17 with RCW 90.14.

18 One of the claims attached to the State's motion was signed by Ed Buchanan,  
19 who owned the Mills property in the early 1970's. It claims a right to divert  
20 0.24 cubic foot per second from Wilson Creek for the irrigation of 13 acres.  
21 The point of diversion is in the SW $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 32. Unfortunately, a  
22 description of the lands on which water is used is not included. Written on the  
23 document is "See attached", however, there is nothing attached. Ed Buchanan was  
24 a party to the Carlson case in 1971 and was listed in the Order Pendente Lite  
25 with a Class 10 right (1885) for the land now owned by the Mills. The Order  
26 authorized the use of 0.22 cfs from Wilson Creek for irrigation and stock

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watering. The Referee believes that it is reasonable to conclude that the water  
right claim filed by Mr. Buchanan in 1973 is intended to be for the same land.

The Referee recommends that a right be confirmed under Court Claim No. 01801 with a June 30, 1885, date of priority for the diversion of 0.236 cubic foot per second in May and June, 0.118 cubic foot per second in April and July 1 through October 14, 59 acre-feet per year for the irrigation of 11.8 acres and stock watering. The point of diversion shall be in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. The claimant should contact the Department of Ecology concerning compliance with RCW 90.03.380 for the additional point of diversion.

COURT CLAIM NO. 02289 -- James M. Mills  
Mr. & Mrs. George Nelson

Barbara Owen filed a Statement of Claim asserting a right to use an unnamed source of water for irrigation and stock watering. On June 13, 1990, George M. and Belva J. Nelson were joined to the claim. On December 19, 1990, James M. Mills and Suni Mazur-Mills were joined to the claim. On February 19, 1993, Ms. Owen transferred her interest in the claim to James M. Mills. Attorney Michael Bauer appeared at the evidentiary hearing representing the Nelsons and Ms. Owen. Mr. Nelson testified at the hearing.

The property described in Court Claim No. 02289 is the West 307 feet of Lots 1 and 2 of Highway Addition to Kittitas County, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6, T. 17 N., R. 19 E.W.M. Mr. Nelson testified that he owns 1.5 acres and Ms. Owen owned 2 acres. The Nelsons acquired their land in 1988. About half of the land is in pasture and the rest is lawn, garden, trees, and the Referee presumes, a home. Two horses are pastured during the irrigation

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Re: Subbasin No. 9

1 season. Water is diverted from Lyle Creek near the center of Section 31,  
2 T. 18 N., R. 19 E.W.M. and carried to the claimants' property in a ditch. Mr.  
3 Nelson diverts from the ditch into a 55 gallon drum, on which a 2 HP pump has  
4 been placed. Water is pumped from the drum into a sprinkler system. Up to ten  
5 sprinklers can be operated at one time. Mr. Nelson did not know how much water  
he uses. Mr. Nelson also was not familiar with the irrigation system used on  
6 the Owen property. He believes that the Owen parcel has been irrigated and is  
7 also pasture land, with 5 horses on the pasture. A large ditch separates his  
8 parcel from the Owen parcel.

9  
10 Mr. Nelson has lived in the area since 1929 and was aware that this land  
11 was part of a larger farm or ranch. He is sure it was irrigated at that time,  
12 but does not know any particulars about how it was irrigated or how much water  
13 was used. There was no historical record provided for this land in the way of a  
14 patent to show when the larger parcel separated from Federal ownership or any of  
15 the ownership history. The Sander v. Bull decree addresses water rights on Lyle  
16 Creek, however, without knowing who owned the land at the time this decree was  
17 entered, it is not possible to determine whether a water right was awarded.

18 Water Right Claim No. 070389 was filed by Steven and Barbara Farkas,  
19 apparently owners of the land during the claims registration period. It asserts  
20 a right to divert 0.02 cubic foot per second, 4 acre-foot per year for each acre  
21 irrigated. A right was asserted for stock water and the irrigation of two acres  
22 in the west 307 feet of Lots 1 and 2 of Highway Addition. However, at the time  
23 the claim was filed in 1974, there was no land being irrigated.

24 The Referee concludes that there is insufficient information in the record  
25 at this time to recommend that a water right be confirmed. Although Mr. Nelson

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recalls the land being irrigated in 1929, there is no evidence of when that use  
1 might have begun and no historical record to use to establish a potential  
2 priority date for the water right. Additionally, there was insufficient  
3 testimony about continued water use on the Owen property to allow for  
4 confirmation of a water right. Testimony of the quantity of water being used is  
5 also lacking, as is a legal description for each parcel.

COURT CLAIM NO. 00951 -- Vernon Mills  
 & Lorraine Mills

9       Elmer C. and Alta Cobain submitted a claim to the Court for use of waters  
10      from Lyle Creek for stock watering. On November 13, 1990, Vernon and Lorraine  
11      Mills were substituted for the Cobains. Mr. Mills and Don Cobain, Elmer and  
12      Alta Cobain's son, testified at the evidentiary hearing.

The land described in Court Claim No. 00951 is the W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31,  
T. 18 N., R. 19 E.W.M. and is 20 acres in size. Lyle Creek flows diagonally  
through the property. The Court claim asserts a right to use one gallon per  
minute, one acre-foot per year for stock watering. A right was not being  
asserted for irrigation. However, at the evidentiary hearing, Mr. Mills  
requested to amend the claim to also assert a right to use waters from Lyle  
Creek for irrigation. The land is pasture and up to 30 head have been pastured  
on the land. Livestock have access to, and drink directly from, the creek.

21       Don Cobain testified that his parents bought the property in 1958. At that  
22 time it was a dairy. His father irrigated about two acres out of Lyle Creek.  
23 It is not clear that there was any water from Lyle Creek diverted and used to  
24 irrigate the land prior to when the Cobains bought it in 1958. There was no

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1 testimony of water use prior to 1958. The Referee was not able to find any  
2 reference to this property in any of the prior decrees, nor is there any  
3 information in the record about the owner of the land at the time the decrees  
4 were entered.

5 Water Right Claim No. 042141 was filed by Elmer C. Cobain pursuant to the  
6 requirements of RCW 90.14. It asserts a right to 1 gallon per minute, 1  
7 acre-foot per year for stock watering. The claim states that the diversions are  
8 along the entire channel of the creek through the property. This implies a  
9 non-diversionary use, where the livestock simply drink from the creek channel.  
10 This type of use is covered by the stock water stipulation discussed on page 4  
11 of this report.

12 Elmer Cobain asserted a right for non-diversionary stock watering in both  
13 the claim he filed with the Court in this proceeding and in the claim filed  
14 pursuant to RCW 90.14. This leads the Referee to conclude that is the extent of  
15 the right he believed was appurtenant to the land. Nothing has been provided to  
16 show otherwise. Based on the foregoing, the Referee cannot recommend  
17 confirmation of a water right beyond that covered by the stock water  
18 stipulation.

19 A right is also being asserted by Vernon and Lorraine Mills for use on a  
20 three acre parcel south of Ronald Road in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 31. This  
21 parcel is not described in Court Claim No. 00951. Mr. Mills is asserting a  
22 right to irrigate the 3 acres and water stock from Lyle Creek. As with the  
23 other parcel, there is little information about historical water use on the  
24 land. It also was not described in any of the earlier decrees dealing with use  
25 of Lyle Creek or Wilson Creek water. Additionally, there is no evidence that a

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1 claim was filed pursuant to RCW 90.14 for this particular parcel. Failure to  
2 file a claim relinquishes any right that may have existed, RCW 90.14.071.  
3

4 Due to the lack of evidence to show that a right was legally established  
5 for the land and lack of an RCW 90.14 claim, the Referee cannot recommend that a  
6 right be confirmed.  
7

8 COURT CLAIM NO. 00899 -- Donna Minielly  
9 Maurice Olney  
10 & Ruth Ann Olney

11 A statement of claim was filed by Donna and Wally M. Minielly for use of  
12 waters from Naneum Creek. On December 20, 1989, Clifford Gage was joined to the  
13 claim and on February 17, 1994, Maurice and Ruth Ann Olney were substituted for  
14 Mr. Gage. Clifford Gage, represented by Attorney John P. Gilreath, testified at  
15 the evidentiary hearing.

16 The property described in Court Claim No. 00899 is basically the W $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$   
17 of Section 4, T. 17 N., R. 19 E.W.M. and is 20 acres in size. The claimants are  
18 asserting a right to irrigate the entire 20 acres and the State's Investigation  
19 Report indicates 20 acres are being irrigated. The claimant also has up to 25  
20 cow/calf pairs that are watered from the irrigation ditches and drink directly  
21 from Naneum Creek as it crosses the southeast corner of the property. A right  
22 is being asserted for 20 inches of water or 0.40 cubic foot per second, and  
23 158.4 acre-feet per year.

24 The claimant's land is part of the land owned by James Ferguson at the time  
25 the Ferguson decree was entered. Mrs. Gage is James Ferguson's granddaughter.  
26 According to the Findings of Fact, Ferguson settled on the E $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$  and  
27 SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M. on July 5, 1872. The decree awarded

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him 160 inches of water from Naneum Creek for use on that land. The decree  
1 stated that one inch of water would be used to irrigate one acre of land in May  
2 and June and one-half inch of water for each acre the rest of the year.  
3  
4 Although the claimants are asserting a right to 158.4 acre-feet per year, only  
5 102.4 acre-feet per year can be diverted from the creek during irrigation season  
6 at the instantaneous rate allow for in the decree.

7 Besides the Olneys, there are several other claimants in this proceeding  
8 who are successors to James Ferguson and share a portion of the water right.  
9 Those claimants are: Gwendolyn and Robert Cooke, Edith Thomas, Morrison  
10 Ranches, Frank Phelps, and Laurance Raap. Their claims are addressed elsewhere  
11 in this report (see table of contents).

12 Water Right Claim No. 129604 was filed by Wally Minielly asserting a right  
13 to use 1 cfs, 160 acre-feet per year from Naneum Creek for the irrigation of 20  
14 acres and stock watering in the west 650 feet of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4,  
15 T. 17 N., R. 19 E.W.M. Additionally, Certificate of Change of Point of  
16 Diversion recorded in Volume 2, page 882 appears to apply to the claimant's  
17 water right. It authorized several people, including Wally Minielly to change  
18 the point of diversion of 3.2 cubic feet per second (which would be 160 inches)  
19 from Naneum Creek from a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N.,  
20 R. 19 E.W.M. to a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16. The diversion that feeds a  
21 ditch that goes south through Sections 21, 28 and 33, T. 18 N., R. 19 E.W.M. is  
22 in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16. This ditch feeds the neighboring Phelps (now Kivi)  
23 property and could have been used to serve the claimant's land in the past.

24 The Referee recommends that a right be confirmed under Court Claim No.  
25 00899 with a July 5, 1872, date of priority for the diversion of 0.40 cubic foot

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per second in May and June and 0.20 cubic foot per second in April and July 1  
1 through October 15, 102.4 acre-feet per year for the irrigation of 20 acres and  
2 stock watering in the W $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M. The point  
3 of diversion will be that authorized in Certificate of Change recorded in volume  
4 2, page 882.  
5

6 COURT CLAIM NO. 01718 -- Floyd A. (Buck) Minor  
7 & Merna Minor  
8 Dwight Bolton

9 Floyd A. and Merna Minor submitted a claim to the Court for the use of  
waters from Wilson Creek and an unnamed spring. The Minors are represented by  
10 Attorney Richard T. Cole and Floyd Minor testified at the evidentiary hearing.  
11 On June 23, 1998, Dwight Bolton was joined to the claim.  
12

13 The Minor's property lies in the SE $\frac{1}{4}$  of Section 7, excluding the south 603  
feet, and a portion of the SW $\frac{1}{4}$  of Section 8, both in T. 18 N., R. 19 E.W.M.  
14 They are asserting a right to irrigate 136 acres within land they currently own  
15 and an additional 20 acres on land in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7 which they have  
16 sold to other parties. Water is diverted from Wilson Creek from points in the  
17 NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7 and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8. They flood irrigate pasture and  
18 hay ground and are seeking a right to use 3 acre-feet per acre and to divert 3  
cfs from each diversion point, for a total of 6 cfs. It is not clear whether  
19 this instantaneous quantity is also used on the lands in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7  
20 sold to other parties. Up to 150 head of cattle are on the land from  
21 July through November and 90 head over the winter months. A spring in the  
22 NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8 is used solely for stock watering. The spring at one  
23 time supplied domestic water to the Minor home and that of William Erickson,  
24

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whose property is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8. The domestic use was discontinued  
many years ago and a right is not being asserted for that use.

The land sold by Mr. Minor that he is including within his claim lies in  
the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7. Approximately 20 acres were sold to Dr. J. A. Bourdeau  
and 7.36 acres were sold to Dwight Bolton. Only Mr. Bolton has been joined to  
the claim. Although the testimony about irrigation was very general, the  
Referee concludes that it was intended to show continued irrigation on the lands  
sold to Dr. Bourdeau and Mr. Bolton. However, Mr. Minor testified to there  
being 20 acres irrigated within the area he sold. Between the two new owners,  
there is a total of 27 acres owned, with no specifics about where the 20  
irrigated acres are within the 27 acre total ownership. Therefore, each will  
get a proportionate share of the 20 acres.

Three water right claims were filed pursuant to the requirements of RCW  
90.14 for lands addressed in Court Claim No. 01718. Water Right Claim No.  
079486 asserts a right to divert 3 cfs, 620 acre-feet from a creek for  
irrigation of 130 acres and stock watering in the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 8 and the  
E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7. The described point of diversion is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 8, on Wilson Creek. WRC No. 079489 asserts a right to divert 2 cfs, 180  
acre-feet per year from a creek for the irrigation of 45 acres and stock  
watering in part of the SE $\frac{1}{4}$  of Section 7. The described point of diversion is  
in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, on what is often referred to as Dry Creek (which  
separates from Wilson Creek about a mile upstream). WRC No. 079491 was also  
filed for use of the spring in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, asserting a right to  
use it for stock watering.

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Water rights for the SW $\frac{1}{4}$  of Section 8 and the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7 were  
1 addressed in the Sander v. Jones decree. Mary A. Thomas acquired the SW $\frac{1}{4}$  of  
2 Section 8 from James R. Van Alstine who received a patent for the land in 1889.  
3 She purchased the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7 from the Northern Pacific Railroad Company  
4 in 1887. Mary Thomas appropriated 225 inches of water, or 4.5 cubic feet per  
5 second in 1889. The record shows that James R. Van Alstine had been in  
6 possession of the land since 1877. The SW $\frac{1}{4}$  of Section 8 is riparian to Wilson  
7 Creek, so under the Riparian Doctrine the priority of the right would be 1877,  
8 when steps were first taken to acquire the land. Section 7, including the  
9 NW $\frac{1}{4}$ SE $\frac{1}{4}$ , is riparian to Dry Creek, the branch of Wilson Creek used to irrigate the  
10 Minor property in that section. Since it is former railroad land, the priority  
11 date would be the date that the map of definite location was filed for Kittitas  
12 County, May 24, 1884. There are several other claimants who own land and are  
13 asserting rights within the area covered by the 225 inches, but the total rights  
14 being asserted are less than the 225 acres to which the water would be  
15 appurtenant. Therefore, the irrigated land owned by Mr. Minor or his successors  
16 in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  would enjoy the proportionate share of the right. However, there  
17 is no evidence of a right for the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7. The only historical  
18 evidence put in the record by the claimant was referencing the prior decrees,  
19 none of which cover the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7. With no evidence to show that a  
20 water right was established for that land, the Referee cannot recommend  
21 confirmation of a water right for that part of the Minor property. Within the  
22 NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7 still owned by Mr. Minor, there are approximately 45.32 acres  
23 being irrigated and Mr. Minor testified to 20 acres being irrigated within the  
24 land he had sold. Additionally, within the SW $\frac{1}{4}$  of Section 8, there are 50.14  
25

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1      acres being irrigated for a total of 115.46 acres being irrigated within the  
lands covered by Court Claim No. 01718.

The Sanders v. Jones decree found that one inch of water was sufficient for  
the irrigation of one acre during May and June and one-half inch of water was  
sufficient the remainder of the year. Therefore, the award of 225 inches of  
water would have been sufficient for 225 acres. The claimant is asserting a  
right in excess of one inch per acre, but the Referee is constrained by the  
findings in Sanders v. Jones. Mr. Minor testified that by July 1 the flow in  
Wilson Creek is very low and water is not always available. The requested 3  
acre-feet per year per acre is reasonable considering the instantaneous quantity  
that can be authorized.

The Referee recommends that three rights be confirmed under Court Claim No. 12  
01718 as follows: With a June 30, 1877, date of priority, a right for the 13  
diversion of 1.0 cubic foot per second, from May 1 through June 30 and 0.50 14  
cubic foot per second in April and from July 1 through October 15, 150.42 15  
acre-feet per year for the irrigation of 50.14 acres and 2.5 acre-feet per year 16  
for stock watering within the W½SW¼ of Section 8 lying west of Wilson Creek; 17  
with a May 24, 1884, date of priority a right for the diversion of 1.21 cubic 18  
feet per second from May 1 through June 30 and 0.60 cubic foot per second in 19  
April and from July 1 through October 15, 180.96 acre-feet per year for the 20  
irrigation of 60.32 acres (15 of which are owned by Dr. J. Bourdeau) and 2.5 21  
acre-feet per year for stock watering; also with a May 24, 1884, date of 22  
priority to Dwight Bolton, 0.10 cubic foot per second from May 1 through June 30 23  
and 0.05 cubic foot per second in April and from July 1 through October 15, 45 24  
acre-feet per year for the irrigation of 5 acres.

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The claimant was also asserting a right to use an unnamed spring in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8 for stock watering. The testimony was that there is no diversion works in place and the livestock drink directly from the source. This type of use is covered by the stock water stipulation discussed on page 4 of this report and no other right is needed.

COURT CLAIM NO. 01717 -- Jean G. Minor

Jean G. Minor submitted a claim to the Court for use of waters from Wilson Creek for irrigation and stock watering. She is represented by Attorney Richard T. Cole and her son, Floyd A. Minor testified on her behalf at the evidentiary hearing.

Mrs. Minor owns 20 acres, which appears to be the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7, T. 18 N., R. 19 E.W.M. Mr. Minor estimated that 12 acres lie east of Wilson Creek Road and 8 acres lie west of the road. The aerial photograph put in the record for the claim, DE-1577, has the property outlined and points of diversion marked. Although the claimant is asserting a right to irrigate the entire 20 acres, the aerial photograph shows that much of the land west of the road has not been developed, remaining in native vegetation. There appears to be about one acre around the buildings west of the road that is irrigated. There also appears to be about one acre east of the road that is in native vegetation and not farmed. The Referee estimates that the total number of acres that are farmed and irrigated is 12 acres. The State's Investigation Report indicates that the land is not irrigated with water diverted from any of the creeks in the area. However, that conclusion was a result of a misunderstanding. The ditch

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1 that serves the Minor property goes through the Rees (formerly Stoltman)  
2 property to the north and there is not a diversion from the creek that goes  
3 directly to Mrs. Minor's property.

4 The land is planted to pasture and 15 to 20 head of cattle are raised,  
5 drinking from the irrigation ditches. Mr. Minor testified that one of the  
6 ditches carries water through the winter months and is used for stock watering.  
7 Mr. Minor testified to using 2 cubic feet per second for irrigation.

8 Two water right claims were filed pursuant to RCW 90.14 that include Mrs.  
9 Minor's property. WRC No. 079474 asserts a right to divert 2 cubic foot per  
10 second, 60 acre-feet per year from a creek for the irrigation of 15 acres in  
11 part of the E $\frac{1}{2}$ NE $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 8, T. 18 N., R. 19 E.W.M. The point of  
12 diversion is in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8. WRC No. 079475 asserts a right to  
13 divert 1.5 cubic foot per second, 80 acre-feet per year from a creek for the  
14 irrigation of 20 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8. The point of diversion is in  
15 the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8.

16 Water rights for the SW $\frac{1}{4}$  of Section 8 were addressed in the Sander v. Jones  
17 decree. Mary A. Thomas acquired that quarter section from James R. Van Alstine  
18 who received a patent for the land in 1889. She also owned the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
19 Section 7, having purchased that land from the Northern Pacific Railroad Company  
20 in 1887. Mary Thomas appropriated 225 inches of water, or 4.5 cubic feet per  
21 second in 1889. The record shows that James R. Van Alstine had been in  
22 possession of the land since 1877. The SW $\frac{1}{4}$  of Section 8 is riparian to Wilson  
23 Creek, so under the Riparian Doctrine the priority of the right would be 1877,  
24 when steps were first taken to acquire the land. Mrs. Minor's land would enjoy  
25 the proportionate share of the 225 inches. There are several other claimants

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1 who own land and are asserting rights within the area covered by the 225 inches,  
2 but the total rights being asserted are less than the 225 acres to which the  
3 water would be appurtenant.

4 The Sanders v. Jones decree found that one inch of water was sufficient for  
5 the irrigation of one acre during May and June and one-half inch of water was  
6 sufficient the remainder of the year. Therefore, the award of 225 inches of  
7 water would have been sufficient for 225 acres. The claimant is asserting a  
8 right in excess of one inch per acre, but the Referee is constrained by the  
9 findings in Sanders v. Jones. Mr. Minor testified that by July 1 the flow in  
10 Wilson Creek is very low and water is not always available. A diversion of 0.02  
11 cfs in May and June and 0.01 cfs the remainder of the irrigation season, results  
12 in approximately 5 acre-feet per acre being available for use, were those  
13 quantities available in the creek the entire season. That, of course, is not  
14 always the case.

15 The Referee recommends that a right be confirmed with a June 30, 1877, date  
16 of priority for the diversion of 0.24 cubic foot per second from May 1 through  
17 June 20 and 0.12 cubic foot per second in April and from July 1 through  
18 October 15, 60 acre-feet per year for the irrigation of 12 acres and 0.50  
19 acre-foot per year for stock watering from May 1 through October 15; 0.12 cubic  
20 foot per second, 0.5 acre-foot per year for stock watering from October 16  
21 through March 31.

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1 COURT CLAIM NO. 05349 -- Ron Mitchell

2 Ron Mitchell submitted a statement of claim to the Court on June 4, 1990,  
3 and the Court signed an Order allowing further processing of the claim on  
4 September 14, 1990. Mr. Mitchell, who testified at the evidentiary hearing, is  
5 represented by Attorney Richard T. Cole.

6 Mr. Mitchell owns all of the NW $\frac{1}{4}$  of Section 33, T. 18 N., R. 19 E.W.M.,  
7 except approximately the west 500 feet thereof, which is owned by neighboring  
8 claimant Alan Burke. Mr. Mitchell is asserting a right to irrigate 40 acres of  
9 hay, grain and pasture that lie in the E $\frac{1}{2}$ NW $\frac{1}{4}$  with water diverted from Naneum  
10 Creek. He testified to his belief that his land is riparian to Naneum Creek.  
11 He believed that the channel that flows through the easterly part of the  
12 property is Naneum Creek. However, the maps submitted by Ecology and other  
13 claimants shows Naneum Creek as flowing along the west section line for  
14 Section 33. The Referee believes that the channel referred to by the claimant  
15 is actually a ditch that diverts from the creek in the NW $\frac{1}{4}$  of Section 16,  
16 T. 18 N., R. 19 E.W.M. At one point in his testimony Mr. Mitchell referred to  
17 it as the Ferguson Channel.

18 The NW $\frac{1}{4}$  of Section 33 was originally conveyed to Northern Pacific Railroad,  
19 who sold it to a C. M. McDonald. By 1890, it was owned by F. S. McDonald, who  
20 along with A. J. Sliger filed a Claim of Water Right attesting to having  
21 constructed a ditch with a diversion in the SW $\frac{1}{4}$  of Section 28. Construction  
22 began on May 15, 1877, and the ditch had a capacity of 150 inches. The claim  
23 stated it was used to irrigate land owned by McDonald in the NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
24 Section 33 and land owned by Sliger in the SW $\frac{1}{4}$  of Section 33. Both McDonald and

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Sliger were parties to the Ferguson decree. McDonald was awarded a Class 9  
right, which would have an 1878 date of priority, for the use of 100 inches of  
water. The Findings of Fact that preceded the decree only referenced the land  
in the NW $\frac{1}{4}$  of Section 33, therefore, the Referee believes that is where the 100  
inches was appurtenant. Besides Mr. Mitchell, Alan Burke is also asserting a  
right to a portion of the 100 inches. He is irrigating 30 acres and is basing  
his claim on the right awarded in Ferguson. The Referee recommended that a  
right be confirmed for that use, see page 111 of this report for a discussion of  
the Burke claim.

During the presentation of the Mitchell claim, it was acknowledged that the  
prior owner, Joe Bresnans did not file a claim pursuant to RCW 90.14. The  
Referee has also reviewed the summary of RCW 90.14 claims filed for this  
subbasin and was not able to locate one filed by Mr. Bresnans, who was the  
landowner during the claims registration period. Failure to file a claim  
relinquishes any right that may have existed, RCW 90.14.071.

The Referee cannot recommend that a right be confirmed due to the right  
having been relinquished for failure to file a claim.

COURT CLAIM NO. 02133 -- Michael Kelly Moeur, Sr.  
                  02134 & Michael Kelly Moeur, Jr.  
                  02135  
                  02136  
                  02137

Five Statements of Claim were submitted to the Court by the claimant  
asserting rights to use five surface water sources within Subbasin No. 9. All  
five claims will be considered herein. The claimants are represented by

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1 Attorney John P. Gilreath and Michael K. Moeur, Sr., testified at the  
2 evidentiary hearing.

3 The claimants own approximately 300 acres along the Yakima River in  
4 Sections 24 and 25, T. 17 N., R. 18 E.W.M. They are asserting a right to  
5 irrigate 150 of those acres with water diverted from the Yakima River, carried  
6 in the Tjossem Ditch; Wilson Creek, carried in the Scott Ditch; Spring Creek,  
7 the Yakima River diverted into Spring Creek; and a lake constructed on the  
8 property. The specific lands for which they are asserting rights include the  
9  $\text{N}\frac{1}{4}\text{NE}\frac{1}{4}$  of Section 25, the  $\text{SE}\frac{1}{4}$  of Section 24 west of the Burlington Northern  
10 Railroad tracks and portions of the  $\text{E}\frac{1}{4}\text{SW}\frac{1}{4}$  of Section 24. Most of the irrigated  
11 land (142 acres) is planted to a grain and hay rotation, with 8 acres in  
12 pasture. The claimants raise 150 cow/calf pairs on their land. The livestock  
13 drink from all available water sources, including the irrigation ditches, Spring  
14 Creek and the lake on the property. Water that is carried in the Tjossem Ditch  
15 and Scott Ditch is ditched to the lake and then pumped into sprinkler irrigation  
16 systems. A 30 HP and a 5 HP pump is on the lake. The pumping capacities were  
17 not provided. The claimant irrigates 140 days during the irrigation season. A  
18 right is being asserted to divert 5.4 cubic feet per second into Tjossem Ditch,  
19 of which 3 cfs is used on the property. A right is being asserted for the  
20 diversion of 7 cfs from Wilson Creek, of which 4 cfs is used on the property.  
21 From Spring Creek, the claimant is asserting a right to use 4 cubic feet per  
22 second.

23 Spring Creek is used to irrigate 33 acres. A 20 acre field lies west of  
24 the creek and is flood irrigated. A 13 acre field identified as being below the  
25 corral is sprinkler irrigated. The claim to Spring Creek is based on a 1945

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Judgment and Decree in Kittitas County Superior Court Cause No. 11052, R. D.  
1                   Ringer and Emma E. Ringer, and Albert T. Gleason and Edna E. Gleason v. Charles  
2                   Stone, and the Court's Memo-Decision that preceded the decree. The Moeurs are  
3                   successors to the defendant, Charles Stone. The Court determined that the  
4                   plaintiffs had the superior rights to use Spring Creek, to the extent of 200  
5                   inches. The decree did not define the water rights of Stone, but found that he  
6                   could divert and use irrigation water from Spring Creek so long as the same does  
7                   not interfere with the prior and superior rights of the plaintiffs. The  
8                   Memo-Decision indicates that approximately 23 acres were being irrigated prior  
9                   to the Decree on what is now the Moeur property, although Stone's answer to the  
10                  complaint indicated he was irrigating about 30 acres. The judgment was entered  
11                  in 1945 and at that time only 23 acres were being irrigated. In 1945, the only  
12                  mechanism by which a right could be established to irrigate more lands was  
13                  through the procedures set forth in the Surface Water Code, RCW 90.03. The  
14                  Referee can find no evidence that those procedures were complied with in order  
15                  to obtain a right to irrigate an additional 10 acres. The Referee can find  
16                  nothing in that judgment that would indicate that Stone, who again is the  
17                  Moeurs' predecessor, had a right to divert 4 cfs from Spring Creek. A diversion  
18                  of 4 cfs to irrigate 33 acres is excessive and there has been no basis  
19                  established for needing that quantity of water. The claimant did not testify to  
20                  how much water actually is diverted from Spring Creek for irrigation or provide  
21                  any specifics on how they irrigate the two fields that are irrigated from Spring  
22                  Creek.

23                  Water Right Claim (WRC) No. 018040 was filed by D. M. McAusland, a prior  
24                  owner of the claimants' property pursuant to RCW 90.14. It asserts a right to

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use 3 cubic feet per second, 800 acre-feet per year from Spring Creek for the  
irrigation of 50 acres. The legal description attached to the claim includes  
the lands now irrigated from Spring Creek. The point of diversion described is  
3150 feet west and 2740 feet south of the northeast corner of Section 24,  
T. 17 N., R. 18 E.W.M. That diversion appears to be a point where what is  
called Spring Creek diverts from a side channel of the Yakima River. The  
Referee notes that the water right claim initially had identified Yakima River  
as the water source and that was crossed off and Spring Creek added. The  
Referee will consider WRC No. 018040 to address use of naturally occurring water  
in Spring Creek and contributions from the Yakima River to the creek.

The land being irrigated from Spring Creek is riparian to Spring Creek and  
would enjoy a priority date of when steps were first taken to sever the land  
from Federal ownership. The irrigated lands lie in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25 and  
the only evidence relating to settlement of this land is the patent to Northern  
Pacific Railroad for much of Section 25, including the NW $\frac{1}{4}$ NE $\frac{1}{4}$ . The record does  
not reflect when the railroad sold it into private ownership, but it is part of  
the lands owned by Charles Stone. The priority date under the Riparian Doctrine  
for former railroad lands is May 24, 1884, the date the map of definite location  
was filed for Kittitas County.

As previously mentioned, the claimant did not testify to the quantity of  
water actually being used from Spring Creek to irrigate. Many of the historical  
decrees in the subbasin have limited the use of 0.02 cfs for each acre  
irrigated, or 1 cfs for 50 acres. Recognizing the more porous soils along the  
river, it is reasonable to conclude that a larger quantity of water would have  
been needed to irrigate this land. Therefore, the Referee will recommend 0.03

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cfs for each irrigated acres and an annual quantity of 7 acre-feet per acre  
1 irrigated. Therefore, under Court Claim No. 02133 the Referee recommends that a  
2 right be confirmed with a May 24, 1884, date of priority for the diversion of  
3 0.69 cubic foot per second, 161 acre-feet per year from Spring Creek for the  
4 irrigation of 23 acres and an additional 6 acre-feet per year for stock watering  
5 in that portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25, T. 17 N., R. 18 E.W.M. lying  
6 southwest of Spring Creek.  
7

The claimant is asserting a right to divert 5.4 cfs from the Yakima River  
8 carried through the Tjossem Ditch. The diversion into that ditch is in the  
9 SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, T. 17 N., R. 18 E.W.M. The Tjossem Ditch carries water  
10 southeasterly through Section 14, into Section 13 where two laterals continue to  
11 the south. The second lateral carries water to the claimants' land. This  
12 lateral is generally referred to as the Clark Ditch.  
13

An agreement between John Hanks and R. P. Tjossem et al. in 1902 provides  
14 history on the ditch. The agreement allowed for consolidating two ditches into  
15 one and disposed of one of the ditches. A. Steen, William McLeod and Joel Clark  
16 were third parties to the agreement and the end result was that their previously  
17 used ditch was being consolidated with the Tjossem Ditch, which would carry  
18 sufficient water to irrigate their 340 acres, not exceeding 600 inches. Steen  
19 and McLeod would each get one-fourth of the water and Clark would get one-half.  
20 Affidavits by Peter R. Tjossem and John Hanks made in 1935 provide additional  
21 detail. They appear to have been made in support of identifying the water  
22 rights for the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 24, which is part of the Steen/McLeod ditch and  
23 delivery area. It does identify that water users on the Clark branch of the  
24 ditch, which carries 300 inches are successors to Joel Clark: Lydia Putman,  
25

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1 Alminie Adams, Ollie Cripe, Walter Clark, Martha M. Clark, Charlie Stone, T. W.  
2 Farrell and Art Donald.

3       The Moeurs are successors to Charlie Stone and T. W. Farrell and suggest  
4 that the remaining named water users own very small acreages. The Moeurs are  
5 asserting a right to 270 of the 300 inches. This assertion is based on their  
6 ownership of 150 acres of land that they believe is part of 340 acres identified  
7 in the Hanks/Tjossem agreement. With there being 600 inches for the 340 acres,  
8 each acre would get 1.76 inches or 0.035 cubic foot per second. Assuming that  
9 the Moeurs have 150 of the 340 acres, then they would have a right to 5.25 cubic  
10 feet per second. There would be more support for this argument if more  
11 information was available about the lands owned by all the parties named in the  
12 1902 agreement and the 1935 affidavits. The 1935 affidavit clearly states that  
13 300 inches went down the Clark branch and 300 inches went down the Steen/McLeod  
14 branch. Charlie Stone owned land that is currently not owned by the Moeurs.  
15 The testimony was that 33 acres are irrigated from Spring Creek, which would  
16 result in 117 acres of the 150 irrigated acres potentially having a right to  
17 water delivered through the Clark Ditch. Additionally, much of the Charlie  
18 Stone land was once owned by E. C. Stonebreaker, who sold it to T. W. Farrell,  
19 along with water rights from Tjossem Ditch, except for 50 inches sold to Ernest  
20 Stewart. This provision would appear to reduce by 50 inches the potential right  
21 that might be appurtenant to the claimants' land. The record does not show what  
22 land was owned by Ernest Stewart. Although the claimants are seeking a right to  
23 divert 5.4 cfs into the ditch, they testify to 3 cfs being in the ditch at the  
24 point of entry to the property. Richard C. Bain, Jr., a consultant hired by  
25 neighboring claimants who also use the Tjossem Ditch, conducted measurements of

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the ditch to determine if there was a conveyance loss associated with the  
1 ditch. He found that it neither gained nor loss water. Therefore, if 3 cfs is  
2 what the claimants need on their property, additional water need not be diverted  
3 for conveyance.

Determining the priority date for the claimants' land is a bit  
4 challenging. A right under the Riparian Doctrine is being asserted. However,  
5 that is not appropriate for most of the property. The lands in the SE $\frac{1}{4}$  of  
6 Section 24 are not riparian to the Yakima River. Three different individuals  
7 homesteaded portions of the SE $\frac{1}{4}$  of Section 24, and a totally different  
8 individual homesteaded the SW $\frac{1}{4}$  of Section 24, which is riparian to the Yakima  
9 River. Lands cannot be made riparian to a water source through an individual  
10 buying up lands that are adjoining a piece that is riparian. Therefore, the  
11 Riparian Doctrine can only apply to those irrigated lands in the SW $\frac{1}{4}$  of  
12 Section 24. The NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25 was not railroad land, it was patented  
13 directly to George Gillespie on September 5, 1873. However, there is no  
14 evidence that water was diverted from the Yakima River and used on the property  
15 during Gillespie's ownership. The only date in the record that is of assistance  
16 is the 1902 agreement. The ditch was clearly in place prior to that agreement,  
17 but it does not say for how many years prior. The Referee concludes 1900 is a  
18 reasonable date to use for the lands in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25, as that date  
19 is just prior to 1902, when we know the ditch was in place. The claimant is  
20 urged to further research the records to determine if there is better evidence  
21 of when this ditch was constructed.

22  
23 WRC No. 018037 was filed by D. M. McAusland asserting a right to divert 4  
24 cubic feet per second, 1200 acre-feet per year from the Yakima River for the  
25

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irrigation of 80 acres and stock watering. Attached to the claim is the place  
of water use which includes the lands the claimants irrigate with Yakima River  
water. The point of diversion is described as 1790 feet west and 2980 feet  
south of the northeast corner of Section 24, which appears to be the point where  
the ditch dumps water into the lake on the claimants' land. The river water is  
dumped into the lake and then pumped from the lake to sprinkler systems.

The Referee recommends that a right be confirmed under Court Claim No. 2136  
under the Prior Appropriation Doctrine with a June 30, 1900, date of priority  
for the diversion of 3 cubic feet per second, 831.6 acre-feet per year for  
irrigation and 12 acre-feet per year for stock watering from the Yakima River  
for the irrigation of 117 acres and stock watering in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25  
and the SE $\frac{1}{4}$  of Section 24 west of the Burlington Northern Railroad tracks. The  
annual quantity is based on diverting 3 cubic feet per second for 140 days  
during the irrigation season, which is consistent with the claimant's  
testimony.

A right is also being asserted to divert 7 cubic feet per second from  
Wilson Creek and use of 4 cfs of that for irrigation and stock watering. Water  
is diverted from Wilson Creek in Government Lot 2 of Section 19, T. 17 N., R. 19  
E.W.M. into Scott Ditch and carried to the lake on the claimants land where it  
is commingled with Yakima River water. It is then pumped from the lake into the  
irrigation system.

The primary evidence of a water right to Wilson Creek is contained in the  
Ringer and Gleason v. Stone decree. The Court stated that the plaintiff's had a  
right to 50 inches of water from Scott Ditch and the defendant had a right to  
450 inches (9 cfs) of water. The Court found that the plaintiff's right to 50

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inches was superior to that of the defendants. The Moeurs put into the record DE-1570 which is a 1924 warranty deed between C. J. Ringer and P. J. Michela for the sale of land in Section 30, T. 17 N., R. 19 E.W.M. The deed states that with the land went 49 inches of water from the Scott Ditch. Although the deed is for lands not owned by the Moeurs, it does support the quantity of Wilson Creek water the Court found was held by Ringer and Gleason.

The Moeurs own much of the land previously owned by Charley Stone, but not all of it. The claimants are asserting a right to divert 7 of the 9 cfs mentioned in the Court decree. It is not clear on what that quantity is based, as there was no indication of whether the diversion or ditch was measured. In order to recommend that a water right be confirmed it is important to know how much water is being diverted and used, not the quantity for which a right is being asserted.

WRC No. 018039 was filed pursuant to RCW 90.14, asserting a right to divert 3 cubic feet per second, 900 acre-feet per year from Wilson Creek for the irrigation of 31 acres and stock watering. The claim was filed for less than half the quantity of water for which a right is being asserted. The acreage identified as being irrigated is also considerably less than that being asserted herein. The 90.14 claim was filed at about the time the lake on the claimants' property was being constructed. It seems likely to the Referee that a different method of irrigating was in place prior to the lake being constructed. The claimants indicated that the land was previously rill or flood irrigated. Less land may have been irrigated by gravity flow than is now being irrigated with sprinklers. Although the Ringer and Gleason v. Stone decree clearly indicates that the claimants' land enjoyed a right to Wilson Creek, it is not clear to

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what extent beneficial use continued at the time McAusland owned the land and  
1 filed WRC No. 018039.  
2

3 Since the claimant did not address the significant difference between the  
4 water right asserted in WRC No. 018039 and the right being asserted in this  
5 proceeding, the Referee will not recommend that a right be confirmed for use of  
6 Wilson Creek. It is suggested that the claimants address those issues, and also  
7 address the actual quantity of water being used during the exception phase of  
8 this subbasin.

9  
10 COURT CLAIM NO. 01267 -- Morrison Ranches

11 Court Claim No. 01267 was submitted to the Court asserting a right to use  
12 water from Naneum Creek for irrigation and stock watering. The claimant is  
13 represented by Attorney Jeff Slothower and Bertha Morrison and Chester Morrison  
14 testified at the evidentiary hearing.

15 The land described in Court Claim No. 01267 lies in the E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  and  
16 W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M. A right is being asserted for the  
17 irrigation of 35 acres that is planted in hay with a grain rotation. Water is  
18 diverted from Naneum Creek at two locations, one into the Ferguson Ditch in the  
19 SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M. and the second in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
20 Section 4, just north of the irrigated land. The claimants testified to using  
21 0.5 cubic foot per second out of the Ferguson Ditch to irrigate about 3 acres in  
22 the northeast corner of the property. An additional 1.6 cubic feet per second  
23 is diverted from the creek at the diversion in Section 4 and used to irrigate  
24 the remainder of the property. Based on the irrigation practice of the  
25 claimant, approximately 6.6 acre-feet per acre is used on the three acres

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irrigated from the Ferguson Ditch and 13.86 acre-feet per acre is used on the  
1 remainder of the land. A third ditch, called Bull Ditch (not to be confused  
2 with the Bull Canal Company Ditch further down the valley) provides stock  
3 watering when livestock are on the land. The Bull Ditch comes off of the  
4 Cooke/Thomas property to the north. The Referee believes that the source for  
5 the Bull Ditch is water delivered from the Ferguson Ditch.  
6

The Morrisons are successors to James Ferguson. Bertha Morrisons's husband  
7 is one of Mr. Ferguson's grandsons. She has been familiar with the property  
8 since 1939 and testified to it being irrigated in much the same manner then as  
9 today. The portion of the property in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4 is part of the  
10 land for which James Ferguson was awarded a right in Ferguson v. United States  
11 National Bank of Portland, Oregon, (Ferguson). The Findings of Fact that  
12 preceded the decree indicated that James Ferguson settled on the E $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$   
13 and NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M. on July 5, 1872 and first  
14 cultivated and diverted water from Naneum Creek for irrigation of those lands in  
15 1873. The land was riparian to Naneum Creek when the water rights were  
16 established and the Riparian Doctrine would apply, even though because of the  
17 land being subdivided, portions of it are no longer riparian to the creek. The  
18 Ferguson decree awarded a right for 160 inches of water for the Ferguson land.  
19 The decree awarded one inch of water each irrigated acre in May and June and  
20 one-half inch of water the rest of the year. The claimants' land would have  
21 portion of that right if beneficial use of the water had continued. The  
22 testimony indicates that beneficial use has in fact continued.  
23

A portion of the Morrison property lies in the W $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4.  
24 According to the testimony of Gwendolyn Cooke, who owns the E $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
25

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Section 4, this land was originally settled by a Mr. McEwen in 1871 and  
1 Elizabeth Ferguson bought it in 1911. Mr. McEwen was Mrs. Ferguson's brother.  
2 A Notice of Appropriation of Water was filed by a James W. McEwen stating that  
3 he was claiming a right to 100 inches of water for irrigation. The water is  
4 taken from Naneum Creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M. and  
5 is conveyed by ditch in a southeasterly direction through his land. The ditch  
6 was one-half mile long. The notice stated that the water had been used by  
7 McEwen for about 17 years prior to the notice being filed on February 20, 1892.  
8 That would place the date of first water use as being 1875. A chain of title  
9 for the property was not put in the record, nor was any other documents to show  
10 what lands Mr. McEwen owned between 1875 and 1892. DE-55 offered by the Cookes  
11 is a series of documents that relate to survey and construction of the Naneum  
12 Creek Road. William McEwen is included in a list of names of landowners along  
13 the route of the road. Also in that packet of documents is a map that shows the  
14 area and on the map is marked J. Ferguson's house and McEwen's house at  
15 approximately the location of the land described in Court Claim No. 00740 filed  
16 by the Cookes. There is a document signed by W. J. McEwen and J. H. McEwen  
17 concerning the road and asking for a change in the location as it crosses their  
18 land and that of James Ferguson in Section 4, T. 17 N., R. 19 E.W.M. Mr. McEwen  
19 was not a party to the suit that resulted in the Ferguson decree. The  
20 Morrison's testimony implied that all of their property was covered by the  
21 Ferguson decree as part of the James Ferguson land.  
22

Water Right Claim No. 119609 was filed by Chester J. Morrison asserting a  
23 right to use 0.80 cfs from Naneum Creek for the irrigation of 40 acres and stock  
24 watering in the W $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M.  
25

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1       The point of diversion described in the claim is in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4,  
2       where the Morrisons currently divert their water a portion of their water.

3           Additionally, Certificate of Change recorded in Volume 2, pagge 882, issued  
4       to several parties, including Chet Morrison, permitting the change in point of  
5       diversion of 3.2 cubic feet per second from Naneum Creek. The original point of  
6       diversion was in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16 and the changed diversion was in the  
7       SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, both in T. 18 N., R. 19 E.W.M. The new point of diversion  
8       is into the Ferguson Ditch.

9           The claimant's land in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, is part of the land for  
10      which James Ferguson was awarded a water right in the Ferguson decree. They are  
11      irrigating 20 acres in what is very nearly the W $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4 and would  
12      have a right to use 0.40 cubic foot per second in May and June and 0.20 cubic  
13      foot per second the rest of the year from Naneum Creek for the irrigation of  
14      those 20 acres. The testimony leads the Referee to conclude that a water right  
15      was also established for the E $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, even though it was not  
16      described in the Ferguson decree. Since McEwen was not a party to that suit, a  
17      water right can exist even though a right was not awarded in the decree.

18           The Referee recommends that two rights be confirmed to Morrison Ranches for  
19      use of Naneum Creek: With July 5, 1872, date of priority, a right for the  
20      diversion of 0.40 cubic foot per second in May and June and 0.20 cubic foot per  
21      second in April and July 1 through October 15, 100 acre-feet per year for  
22      irrigation of 20 acres in that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, T. 17 N.,  
23      R. 19 E.W.M. bounded by a line described as follows: Beginning at the center  
24      west sixteenth corner (NW corner of NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 4; thence along the  
25      sixteenth line S 4°36' W 573.0 feet to the north right of way line of the C.M.

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St. P. & P. Ry.; thence along the right of way line N 78°30'W 571.0 feet to the center of gateway in right of way fence; thence N 4°46' E 420.3 feet to a stake in the east and west mid-section line; thence along the mid-section line N 86°10' E 572.5 feet to the place of beginning. Also, beginning at the southwest sixteenth corner (SW corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 4; thence S 85°44' W along the sixteenth line 641.4 feet; thence N 4°46' E 827.0 feet to the south right of way line of the C. M. St. P. & P. Ry; thence along the right of way line S 78°30' E 641.4 feet to a post on the north and south sixteenth line; thence along the sixteenth line S 4°46' W 652.0 feet to the point of beginning.

With a June 30, 1875, date of priority, a right for the diversion of 0.30 cubic foot per second, 75 acre-feet per year for the irrigation of 15 acres and 5 acre-feet per year for stock watering in the W $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M.

The quantity of water awarded is less than what Mr. Morrison testified to using. The right awarded in the Ferguson decree is limited by that decree. The Referee believes that since the Courts in the early 1900's found that one inch of water (or 0.02 cfs) was sufficient to irrigate one acre, it would be reasonable to use that quantity for rights not specifically identified in the decree, unless there is evidence of the quantity of water actually used when the other right was established. That information is lacking in this instance.

COURT CLAIM NO. 01266 -- Morrison Ranches

Court Claim No. 01266 asserts a right to use water from Wilson Creek for irrigation and stock watering. Morrison Ranches is represented by Attorney Jeff

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1 Slohower. Bertha Morrison, Chester "Tuffy" Morrison, and Fred Zumbrunnen  
2 testified at the evidentiary hearing.

3 The claimants are asserting a right to irrigate 200 acres in the W $\frac{1}{4}$  of  
4 Section 30, T. 19 N., R. 19 E.W.M. with water diverted from Wilson Creek. The  
5 diversion is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18, and water is carried over a  
6 mile and a half through the Seaton-Johnson Ditch. The land is in pasture, which  
7 is rill irrigated with dirt ditches and gated pipe. Approximately 200 head of  
8 cattle are periodically kept on this land during the irrigation season. They  
9 drink from the irrigation ditch. The quantity of water used to irrigate the  
10 land has not been measured, however, Mr. Morrison estimated it was about 3 cfs.  
11 The claimants have also developed a pond that is used for stock watering. The  
12 pond is near the center of the NW $\frac{1}{4}$  of Section 30 and is approximately 20 feet  
13 long and 10 feet wide. The pond is fed by a spring and is used for  
14 non-diversionary stock watering, which is covered by the stock water stipulation  
15 discussed on page 4 of this report.

16 Pursuant to the requirements of RCW 90.14, Chester J. Morrison filed Water  
17 Right Claim No. 119598 asserting a right to use 2 cubic feet per second, 4  
18 acre-feet per year from Wilson Creek for the irrigation of 150 acres and stock  
19 watering. The Referee believes the intent was to claim 4 acre-feet per year per  
20 acre irrigated. The place of water use is the W $\frac{1}{4}$  of Section 30, T. 19 N.,  
21 R. 19 E.W.M. The point of diversion is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18, at the  
22 location of the presently used diversion.

23 The NW $\frac{1}{4}$  of Section 30 was originally settled by Victor Zumbrunnen on  
24 March 9, 1906, but in the fall of 1908 he relinquished his claim to the land.  
25 Thomas Hodgson then filed a homestead entry application in November of 1908 and

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ultimately received a patent on September 23, 1914. Thomas Hodgson's answer to  
1 the complaint filed in the Sander v. Bull case states that after Victor  
2 Zumbrunnen settled in 1906 he cultivated a small portion of the land and  
3 appropriated a small amount of water. Hodgson began in the spring of 1909 to  
4 improve and cultivate his land, ultimately appropriating 80 inches of water from  
5 Wilson Creek.

6 Victor Zumbrunnen received a patent on September 21, 1911, for the SW $\frac{1}{4}$  of  
7 Section 30. In 1910 he filed a notice of water right stating he had  
8 appropriated 2 cfs from Wilson Creek for irrigation, stock watering and domestic  
9 supply for his lands in the SW $\frac{1}{4}$  of Section 30. The notice stated that water was  
10 carried in a ditch that diverted from the creek near the north boundary line of  
11 the SE $\frac{1}{4}$  of Section 18. This diversion is still being used to serve the land.  
12

13 The claimant also put in the record as Exhibit DE-435 a Notice of Water  
Right filed by Victor Zumbrunnen in 1904. However, this notice does not  
14 describe the lands for which a right is being asserted in Court Claim No.  
15 01266. This document asserts a right to use waste waters from the NE $\frac{1}{4}$  of  
16 Section 30, T. 18 N., R. 18 E.W.M., to the extent of 2 cfs, on the SE $\frac{1}{4}$  of  
17 Section 30. The Referee is aware through review of the Subbasin No. 9 exhibits  
18 that Victor Zumbrunnen owned other lands besides those in Section 30, T. 19 N.,  
19 R. 19 E.W.M.  
20

21 The testimony put in the record by Chester Morrison and Fred Zumbrunnen  
show that water from Wilson Creek has been used to irrigate the claimant's land  
22 in the W $\frac{1}{4}$  of Section 30. However, it is apparent from the evidence in the  
23 record that water use did not start until at least 1906 and the actual water  
24 right may not have been established until 1909 for the NW $\frac{1}{4}$  and 1910 for the SW $\frac{1}{4}$   
25

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of Section 30. All of the potential dates for establishment of a water right  
1 are after the United States on May 10, 1905, withdrew all of the unappropriated  
2 surface waters in the Yakima River Basin. After May 10, 1905, surface water  
3 rights could not be established in the Yakima River Basin without the written  
4 concurrence of the United States. There was no evidence presented to show that  
5 concurrence was obtained. The Court in this adjudication has ruled that rights  
6 could have been established for only the use of de minimis quantities of water  
7 if that use would not have impacted the Yakima Project. A right for the  
8 irrigation of 200 acres cannot be considered de minimis.  
9

Therefore, the Referee cannot recommend that a water right be confirmed  
10 under Court Claim No. 01266.

COURT CLAIM NO. 01264 -- Morrison Ranches

Court Claim No. 01264 was filed for use of waters from Wilson Creek on the  
14 SE% of Section 18, T. 19 N., R. 19 E.W.M. Morrison Ranches is represented by  
15 Attorney Jeff Slothower. Bertha Morrison, Chester "Tuffy" Morrison and Fred  
16 Zumbrunnen testified at the evidentiary hearing.

Morrison Ranches is asserting a right to irrigate between 15 and 20 acres  
18 in that portion of the SE% of Section 18 lying between Wilson Creek and the  
19 Seaton-Johnson Ditch. The state's investigation report estimates that 16 acres  
20 are being irrigated in this area. Water is diverted from Wilson Creek in the  
21 NE%SE% of Section 18 and carried in the Seaton-Johnson Ditch. The irrigated  
22 land is pasture on which about 200 head of cattle graze for a couple weeks in  
23 the early summer and again in the fall. Cattle drink from the irrigation ditch  
24

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1 and directly from Wilson Creek. Non-diversionary stock water use from the creek  
2 is covered by the stock water stipulation discussed on page 4 of this report.  
3

4 According to the evidence in the record, this land was originally settled  
5 on in 1878 by John Lillard, who prior to 1885 appropriated 8 or 9 inches of  
6 water for irrigating purposes. Lillard then conveyed his possession of the land  
7 and improvements to Alexander W. Seaton (see Sander v. Bull, 76 Wash. 1, 135  
8 Pac. 489 (1913)). Seaton received a patent for the SE $\frac{1}{4}$  of Section 18 on  
9 April 25, 1898. The Supreme Court found that the land enjoyed a right to 8  
inches prior to those who appropriated subsequent to 1885, but not prior to  
those who derive title from the railroad. The water rights were again  
10 addressed in Thomas v. Roberts in the Findings of Fact dated March 1, 1924, and  
11 the decree that was entered the next year. The Findings of Fact found that 9  
12 inches of water were appropriated in 1884 and that appropriation had increased  
13 to 20 inches. The decree found that the 9 inches were senior to or equal to the  
14 rights of the plaintiff in that case.  
15

16 Water Right Claim No. 119600 was filed by Chester Morrison pursuant to the  
17 requirements of RCW 90.14. It asserts a right to divert 0.80 cfs, 1.6 acre-feet  
18 per year for the irrigation of 40 acres and stock water in the SE $\frac{1}{4}$  of  
19 Section 18, T. 19 N., R. 19 E.W.M. The point of diversion is the point  
20 currently used to divert water to the land. It is clear that when completing  
21 WRC No. 119600, Mr. Morrison did not understand how to estimate the annual  
22 quantity of water being used, as 1.6 acre-feet per year is not even enough water  
23 to irrigate one acre. The instantaneous quantity of water claimed is consistent  
24 with the rights confirmed in both the Sander v. Bull and Thomas v. Roberts  
25 decrees.  
26

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1 Mr. Morrison and Mr. Zumbrunnen both testified about their memory of the  
2 land being irrigated in much the same manner as at the time of the hearing.  
3

4 Based on the record presented to the Referee, it is recommended that a  
5 right be confirmed under the Riparian Doctrine with a June 30, 1884, date of  
6 priority for the diversion of 0.40 cubic foot per second in May and June, 0.20  
7 cubic foot per second in April and July 1 through October 15, 100 acre-feet per  
8 year for the irrigation of 20 acres and stock watering in that portion of the  
9 SE $\frac{1}{4}$  of Section 18, T. 19 N., R. 19 E.W.M. lying between the Seaton-Johnson Ditch  
and Wilson Creek.

10 COURT CLAIM NO. 01265 -- Morrison Ranches  
11

12 The claimants are asserting a right to use waters from Naneum Creek for  
13 irrigation and stock watering. They were represented by Attorney Jeff  
14 Slothower at the evidentiary hearing. Bertha Morrison, Chester "Tuffy"  
15 Morrison and Fred Zumbrunnen testified at the hearing.

16 Morrison Ranches owns the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 4, T. 18 N., R. 19 E.W.M. and  
17 are asserting a right to irrigate most of that land with water diverted from two  
18 diversions on Naneum Creek. According to the testimony, they irrigate 55 acres  
19 of hay and 22 acres of pasture with Naneum Creek water. The rest of the land is  
20 the homesite, corrals and other buildings. The first diversion from Naneum  
21 Creek is in Government Lot 4 of Section 4, about 2,000 feet north of the  
22 claimant's land. The second diversion is near the southeast corner of the  
23 SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, just outside the northwest corner of the claimant's land.  
24 There is also a drain near the center of the land where they capture and reuse  
25 irrigation return flows. Mr. Morrison testified to using about 3 cfs from the

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1 northern diversion and 1.5 cfs from the southerly diversion. The land is still  
2 irrigated with dirt ditches and gated pipe.

3 Water Right Claim No. 119599 was filed by Chester Morrison pursuant to the  
4 requirements of RCW 90.14. It asserts a right to use 1.6 cfs from Naneum Creek  
5 for the irrigation of 80 acres in the E $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4. The point of  
6 diversion described is in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, and the dimensions are very  
7 close to the southerly diversion at the northwest corner of the claimant's  
8 property. The Referee believes that it was Mr. Morrison's intent to describe  
9 that diversion.

10 The E $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4 was originally settled by Samuel C. Thomas, who on  
11 August 16, 1889 received a patent for the E $\frac{1}{4}$ SW $\frac{1}{4}$  and W $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4. In 1890  
12 the land was sold to John Clifton who was a party to the Ferguson case. The  
13 Findings of Fact stated that Clifton owned 160 acres in the E $\frac{1}{4}$ SW $\frac{1}{4}$  and W $\frac{1}{4}$ SE $\frac{1}{4}$  of  
14 Section 4, which was riparian to Naneum Creek. All of the land was under  
15 cultivation, with water taken from the creek for irrigation beginning in 1878.  
16 The decree awarded Clifton a right for 160 inches, or 3.20 cfs. Half of that,  
17 or 1.6 cfs, would be appurtenant to the Morrison Ranches property. It appears  
18 to the Referee that the claimants are attempting to assert a right to the entire  
19 160 inches, or 3.20 cfs. However, half of that is appurtenant to the W $\frac{1}{4}$ SE $\frac{1}{4}$  of  
20 Section 4.

21 The Referee recommends that a right be confirmed under the Riparian  
22 Doctrine with a September 30, 1877, date of priority for the diversion of 1.6  
23 cubic feet per second in May and June and 0.80 cubic foot per second in April  
24 and July 1 through October 15, 385 acre-feet per year for the irrigation of 77  
25 acres and stock watering in the E $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, T. 18 N., R. 19 E.W.M. The

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1 point of diversion to be authorized will be in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, since  
2 that is the only diversion described on the claim form. The Referee recognizes  
3 that WRC No. 119599 describes the point as being in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4,  
4 rather than the SW $\frac{1}{4}$ NW $\frac{1}{4}$ ; however, the diversion is within a few feet of the  
5 corner that the two quarter/quarter sections share. Clearly the intent of the  
6 claim was to describe the diversion being used by the claimant.

7 A right is also being asserted for use of a spring that is located about  
8 300 feet north of the claimant's property, in the S $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4 (on land  
9 owned by Stan Youngberg). The spring has been developed and is used for  
10 domestic supply on the claimants land. According to a statement by Mrs.  
11 Morrison's mother, the spring was first developed and used in 1902. That use  
12 has continued to the present. Mrs. Morrison's home is at the same location as  
13 John Clifton's house, which at one time burned and the present home built in its  
14 place. There was no testimony about the quantity of water used from the  
15 spring. Water Right Claim No. 119603 asserts a right to use 10 gallons per  
16 minute (0.02 cfs) and 0.90 acre-foot per year for domestic supply from that  
17 spring. The quantity claimed is reasonable for domestic supply. Lacking any  
18 other evidence as to the quantity of water used, the Referee will use the amount  
19 claim in Water Right Claim No. 119603.

20 The Referee recommends that a right be confirmed with a June 30, 1902, date  
21 of priority for the use of 0.02 cfs, 0.90 acre-foot per year for single domestic  
22 supply in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4.

23  
24  
25  
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1 COURT CLAIM NO. 01252 -- N. N. Eaton & Sons

2 Court Claim No. 01252 was filed by N. N. Eaton & Sons asserting rights to  
3 use 40 springs and 3 ponds. The Department of Ecology placed this claim within  
4 Subbasin No. 9 and, therefore, it was placed on the schedule for this subbasin.  
5 The Referee reviewed the claim and does not believe any of the water sources  
6 lies within Subbasin No. 9. The claimants also had Court Claim No. 01236, for  
7 which they did appear at the evidentiary hearing and present testimony. There  
8 was no testimony presented related to any other water sources besides those  
9 described in Court Claim No. 01236. The Referee does not recommend that a water  
10 right be confirmed under Court Claim No. 01252 as none of the sources appear to  
11 lie in Subbasin No. 9 and there was no testimony presented in support of the  
12 claim. Rights to the use of 31 springs and 2 ponds were addressed in the  
13 Subbasin No. 21 Report of Referee and the Referee believes the balance of the  
14 claims lie in Subbasin No. 10 and will be addressed in that report of referee.

15

16 COURT CLAIM NO. 00598 -- Estate of Dorothy R. Nelson  
17 & Estate of Paul Nelson  
18 Jeanne M. Dunning

19 A Statement of Claim was filed by Dorothy R. Nelson for the use of waters  
20 from Wilson Creek. Jeanne M. Dunning is Mrs. Nelson's successor and Loren  
21 Dunning, her husband, testified at the evidentiary hearing.

22 Court Claim No. 00598 was filed for the N $\frac{1}{2}$  of Section 29, T. 19 N.,  
23 R. 19 E.W.M., the Nelsons and now Mrs. Dunning only own that portion of the N $\frac{1}{2}$   
24 of Section 29 lying east of the Wilson Creek Road. A right is being asserted  
25 for the irrigation of 100 acres, although it appears to the Referee that quite a

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bit more than 100 acres is currently being irrigated. Water is diverted from  
1 Wilson Creek in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{3}{4}$ NW $\frac{1}{4}$ , and NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20, T. 19 N.,  
2 R. 19 E.W.M. to serve this land. According to the testimony, four hundred  
3 acre-feet per year is used to irrigate the land, but Mr. Dunning testified to a  
4 need for 750 acre-feet to adequately irrigate. However, rights being confirmed  
5 in this case are based on historic beneficial use, rather than potential optimum  
6 use. Therefore, the Referee can recommend rights be confirmed only for the  
7 quantity that has been historically used.

The first settler on this land was George Wilson, who acquired it from the  
9 Northern Pacific Railroad. The map of definite location for the railroad was  
10 filed on May 24, 1884, and Mr. Wilson settled on the land in 1885. Some  
11 improvements had been made to the land prior to Mr. Wilson settling, however,  
12 most were accomplished after the land was conveyed from Wilson to W. R. Thomas.  
13 W. R. Thomas was a defendant in Sander v. Bull,, however, the Court in that  
14 proceeding did not determine the rights of the defendants. The defendants were  
15 restrained from interfering with the use of water from Naneum and Wilson Creeks  
16 by the plaintiff. Although the rights of the defendants were not determined, it  
17 is clear from the language in the decree that they were using water to the  
18 detriment of the plaintiffs. He also was the plaintiff in W. R. Thomas v. James  
19 T. Roberts, et al. In the later case the Court recognized a right to use 75  
20 inches (1.5 cubic feet per second) in the N $\frac{1}{4}$  of Section 29 with an 1884 date of  
21 priority. The Thomas right for this land was ranked against the defendants in  
22 that proceeding, being senior to some and junior to others.

Pursuant to the requirements of RCW 90.14 Paul Nelson filed Water Right  
24 Claim No. 000093 asserting a right to divert 3 cubic feet per second, 300  
25

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1 acre-feet per year from Wilson Creek for the irrigation of 100 acres in the NW  
2 of Section 29, T. 19 N., R. 19 E.W.M. The point of diversion described is in  
3 the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20, T. 19 N., R. 19 E.W.M. Mr. Nelson also filed Water  
4 Right Claim No. 000094 asserting rights to use of a spring; however, there was  
5 no testimony about use of this source of water. Two claims were filed on Paul  
6 Nelson's behalf with Kittitas County Superior Court in 1972, each asserting a  
7 right for 2 cubic feet per second, 500 acre-feet per year from Wilson Creek for  
8 irrigation in the NW $\frac{1}{4}$  of Section 29. One claim described a point of diversion in  
9 the NE $\frac{1}{4}$  of Section 19 and one described a diversion in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
10 Section 20.

11 Paul Nelson was a party to the 1973 Order Pendente Lite, which listed  
12 rights and priorities recognized at that time. The Order identified a right  
13 with an 1884 priority for the diversion of 1.50 cfs for the irrigation of 75  
14 acres in the NW $\frac{1}{4}$  of Section 29, less land lying west of the county road.

15 Marilyn J. Wilkinson, under Court Claim No. 00582, Walter and Gail Farrar,  
16 under Court Claim No. 02282, and Wallace Stampfly, under Court Claim No. 00462,  
17 are also asserting rights to irrigate small portions of the NW $\frac{1}{4}$  of Section 29,  
18 west of Wilson Creek Road. Their respective claims are addressed on pages 533,  
19 509, 560 of this report. The ultimate recommendation under those claims was to  
20 not confirm a water right for the portion of the NW $\frac{1}{4}$  of Section 29 they own.

21 Mr. Dunning's testimony was that 100 acres were being irrigated and he is  
22 seeking a right for that acreage. However, the decrees that were entered in the  
23 early 1900's generally awarded one inch of water for each acre being irrigated,  
24 which would indicate that 75 acres were being irrigated at the time of the  
25 Thomas v. Roberts decree. The Referee will only recommend confirmation of a

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water right for 75 acres, since that appears to be what was being irrigated in  
1 1924 and in 1973 when the Pendente Lite Order was entered. Any increase in the  
2 number of acres since either of those two dates would have required that a new  
3 water right be obtained through the procedures in the Surface Water Code, RCW  
4 90.03. Although the Dunnings are irrigating land in the NW $\frac{1}{4}$  of Section 29, the  
5 Referee intends to only authorize use of water in the NE $\frac{1}{4}$ , so that the place of  
6 use is closer to the size of the acres being authorized for irrigation.  
7

The Referee recommends that a right be confirmed under the Riparian  
8 Doctrine with a May 24, 1884, date of priority for the diversion of 1.50 cubic  
9 feet per second, 375 acre-feet per year for the irrigation of 75 acres in that  
10 portion of the NE $\frac{1}{4}$  of Section 29, T. 19 N., R. 19 E.W.M. lying northwest of  
11 Wilson Creek. Mr. Dunning testified that livestock raised on this land drink  
12 from naturally occurring water sources, which is covered by the stock water  
13 stipulation discussed on Page 4 of this report.  
14

COURT CLAIM NO. 01866 -- G. Jay Nelson, et al.

Court Claim No. 01866 was submitted to the Court asserting a right to use  
17 waters from five unnamed springs, Lyle Creek and Wilson Creek. The claimants  
18 are represented by Attorney John P. Gilreath. G. Jay Nelson testified at the  
19 evidentiary hearing.  
20

The claimants own the W $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 17, T. 18 N., R. 19 E.W.M. and  
21 irrigate 440 acres with water from the unnamed springs, Lyle Creek, Wilson  
22 Creek, a source they call Wilson-Lyle, Naneum Creek and Kittitas Reclamation  
23 District (KRD). Half of the land is used to produce hay and the other half is  
24 pasture. Up to 3,000 head of cattle can be raised on the ranch. A right is  
25

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being asserted for 120 acre-feet per year for stock watering. Livestock drink  
1 from the ditches, the ponds and from the spring areas. Exhibit DE-1584 is an  
2 aerial photograph of Section 17 on which the claimants have drawn their water  
3 delivery system. Water is diverted from Wilson Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
4 Section 8, T. 18 N., R. 19 E.W.M. piped under Wilson Creek Road and Rader Road  
5 into an open ditch that flows to the southwest across the portion of the  
6 claimants land in the NW $\frac{1}{4}$  of Section 17. A diversion from Wilson-Lyle Creek is  
7 near the north quarter corner of Section 17 and feeds an open ditch that runs  
8 west along the north property line to the ditch from Wilson Creek.  
9

Additionally, a pond has been constructed on the Wilson-Lyle Creek channel in  
10 the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 17 that, besides capturing the creek water, also is fed by  
11 a spring near the pond and irrigation return flows. Water from the pond is used  
12 for irrigation and stock watering. A diversion from Lyle Creek is located in  
13 the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, which feeds gated pipe that runs along the north and  
14 east line of the SW $\frac{1}{4}$  of Section 17. According to the testimony, a ditch that  
15 runs along the east section line of Section 17 carries KRD water and Naneum  
16 Creek water, however, a diversion from Naneum Creek was not identified. The  
17 State's map exhibit SE-2 does not show any connection between Naneum Creek and  
18 this ditch.  
19

Five springs located on the Nelson property are also used. Three of the  
20 springs are located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, one is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
21 Section 17, near the pond, and the last is located in the northeast corner of  
22 the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17. The claimant estimated that 520 acre-feet per year is  
23 used from the five springs.  
24

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28

Water rights for the Nelson property were addressed in both the Ferguson  
1 decree and in Sander v. Jones. The portion of the property in the S $\frac{1}{2}$  of  
2 Section 17 was addressed in Ferguson. According to the Findings of Fact and  
3 Conclusions of Law from the Ferguson case, J. H. Crawford owned the S $\frac{1}{2}$  of  
4 Section 17, T. 18 N., R. 19 E.W.M. and in 1882 diverted and used water from  
5 Naneum Creek for the irrigation of 100 acres. Crawford was awarded a Class 12  
6 right to 100 inches (2 cfs). Since the land is not riparian to Naneum Creek,  
7 1882 would be the priority date of the right.  
8

J. H. Crawford was also awarded water rights to Wilson Creek in Sander v.  
9 Jones. The Decision that preceded the decree states that the allegations by J.  
10 H. Crawford in his answer are true, except that it does not appear that he  
11 diverted water over all his land. It does not describe the lands owned;  
12 however, by 1901, when the Ferguson case was filed, he owned the S $\frac{1}{2}$  of  
13 Section 17. The Referee believes it is not unreasonable to conclude he would  
14 have owned the same lands in 1890. Beginning in 1880 water was diverted from  
15 Wilson Creek, in steadily increasing quantities, until by 1889 he was diverting  
16 80 inches of water.  
17

The NW $\frac{1}{4}$  of Section 17 was owned by J. H. Thomas who purchased it from the  
18 Northern Pacific Railroad Co. on June 28, 1887. The land is riparian to Wilson  
19 Creek and the priority date for riparian rights would be the date the map of  
20 definite location was filed by N.P.R.R., which was May 24, 1884. The Decision state  
21 that in 1885 Thomas' predecessors appropriated 3 inches and by 1889 was  
22 appropriating a total of 32 inches. The last increase in appropriation was 2  
23 inches in 1889. The 2 inch figure appears in both the handwritten, signed  
24 version of the Decision and the typed version, both of which are in the record.  
25

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The Schedule of Rights for the Sander decree also shows the 1889 appropriation  
1 as being an additional 2 inches. The claimant put into the record a typed copy  
2 of the decree that is different than other typed versions of the decree. Some  
3 of the water rights that were awarded to I. M. Thomas in the Decision have the  
4 name J. H. Thomas associated with them in the copy of the decree that is part of  
5 Exhibit DE-1583. Review of the Decision shows that I. M. Thomas owned different  
6 land than J. H. Thomas (the NE $\frac{1}{4}$  of Section 18, T. 18 N., R. 19 E.W.M.) and a  
7 right is being asserted by Harold Jenkins in this proceeding for that land. The  
8 version of the Decree in DE-1583 also shows that last right awarded to J. H.  
9 Thomas in 1889 as being 200 inches. Obviously a significant difference. If the  
10 200 inches is correct, the decree would have awarded Thomas 230 inches to use in  
11 irrigating 160 acres, which is contrary to the specific holdings in the decree.  
12 A copy of the handwritten, signed decree is not in the record. What is in the  
13 record is clearly a copy, typed subsequent to entry of the decree. The Referee  
14 will not disregard the hand written and signed Decision in favor of this copy of  
15 the decree when there is such a significant difference that has not been  
16 addressed. The Referee suggests that every effort be made to secure a copy of  
17 the handwritten decree so that the quantities may be verified. That will also  
18 provide an opportunity to clarify the distinction between I. M. Thomas and J. H.  
19 Thomas and the rights awarded to each.

20 Several water right claims were filed by G. Jay Nelson in compliance with  
21 RCW 90.14. Water Right Claim (WRC) No. 004563 asserts a right to divert 3 cfs,  
22 200 acre-feet per year from Lyle Creek for the irrigation of 100 acres in the  
23 NW $\frac{1}{4}$  of Section 17. The described point of diversion is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
24 Section 8, where the stream splits into two channels immediately prior to

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1 entering Section 17. WRC No, 004568 asserts a right to divert 4 cfs, 500  
2 acre-feet per year from Wilson Creek for the irrigation of 120 acres in the NW $\frac{1}{4}$   
3 of Section 17. The point of diversion described is the point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
4 Section 8 where the claimant currently diverts water from Wilson Creek. WRC  
5 004565 asserts a right to divert 1 cfs, 730 acre-feet per year from a spring  
6 located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17 for the irrigation of 80 acres and stock  
7 watering in the NW $\frac{1}{4}$  of Section 17. WRC No. 04566 asserts a right to divert 0.50  
8 cfs, 365 acre-feet per year from a second spring in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17 for  
9 stock watering and the irrigation of 20 acres in the NW $\frac{1}{4}$  of Section 17. WRC No.  
10 004574 asserts a right to divert 2 cfs, 1460 acre-feet per year from Lyle Creek  
11 (Wilson) for the irrigation of 110 acres in the S $\frac{1}{4}$  of Section 17, T. 18 N.,  
12 R. 19 E.W.M. The described point of diversion is 2300 feet south and 2000 feet  
13 west from the northeast corner of Section 17, which would be in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
14 Section 17. Additionally, WRC No. 004571, 004572 and 004578 were filed for use  
15 of springs in the S $\frac{1}{4}$  of Section 17.

16 Although the claimant is asserting a right to use Naneum Creek, there were  
17 no claims filed pursuant to RCW 90.14 for use of waters from Naneum Creek and  
18 the claim filed with the Court does not assert a right to that creek. Failure  
19 to file a claim waives and relinquishes any right that may have existed, RCW  
20 90.14.071. Additionally, there was no testimony about actual use of Naneum  
21 Creek, just an indication that one ditch carries Naneum Creek water along with  
22 KRD water. There was no diversion identified on Naneum Creek that would serve  
23 this ditch. Therefore, the Referee cannot recommend that water rights be  
24 confirmed for use of Naneum Creek.

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There also was no testimony about the history of water use from the  
springs. The historical record that was relied on was the existing decrees,  
which address use of water from the creeks and does not provide any evidence  
concerning use of the springs. Undoubtedly the springs are influenced to some  
degree by the use of KRD water on updrainage lands. Where there exists either  
project or foreign return flows intermixed with naturally occurring waters it is  
important for the Referee to have estimates of the amount of naturally occurring  
water available for use.

In light of the lack of evidence to show that a water right was established  
for use of the springs in Section 17 through use prior to December 31, 1932, the  
Referee cannot recommend that a water right be confirmed for the springs. Due  
to the lack of testimony to show that beneficial use of Naneum Creek water has  
continued and lack of a RCW 90.14 claim for Naneum Creek, the Referee also  
cannot recommend that a right be confirmed for that source.

The Referee does find that a recommendation can be made to confirm a right  
to use of waters from Wilson Creek. However, due to the inconsistency between  
the handwritten Decision and Schedule of Rights and the typed copy of the decree  
for the lands in the NW $\frac{1}{4}$  of Section 17, the Referee recommends that a right be  
confirmed for 32 acres. It is suggested the claimant pursue further research to  
locate a copy of the handwritten and signed decree. The right is recommended  
with a May 24, 1884, date of priority for the diversion of 0.64 cubic foot per  
second from May 1 through June 30 and 0.32 cubic foot per second in April and  
from July 1 through October 15, 160 acre-feet per year for irrigation of 32  
acres and stock watering in the NW $\frac{1}{4}$  of Section 17. Although this place of use  
is rather large considering the number of acres authorized for irrigation, the

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Referee anticipates that an exception will be filed in an effort to obtain a  
1 larger water right. If that is not the case, the claimant shall specify where  
2 within the NW $\frac{1}{4}$  of Section 17 the 32 acres lies that will continue to be  
3 irrigated from Wilson Creek.  
4

It is also recommended that a right be confirmed for use of Lyle Creek to  
5 irrigate lands within the SW $\frac{1}{4}$  of Section 17. In addition to the Nelsons, Thomas  
6 and Sara Haven (Court Claim No. 1649) are asserting a right to irrigate land in  
7 the SW $\frac{1}{4}$  of Section 17 from Wilson Creek, see page 230 of this report. They own  
8 5 acres most of which is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 17 west of Wilson Creek Road.  
9 They are entitled to a portion of the right. Their proportionate share would be  
10 1 acre, leaving 79 acres for the Nelson property. Therefore, the Referee  
11 recommends that a right be confirmed under Court Claim No. 01866 with a June 30,  
12 1880, date of priority for the diversion of 1.58 cubic feet per second in May  
13 and June and 0.79 cubic foot per second in April and July 1 through October 15,  
14 395 acre-feet per year for the irrigation of 79 acres and stock watering in the  
15 SW $\frac{1}{4}$  of Section 17.  
16

Livestock drinking directly from the spring areas and ponds is covered by  
17 the stock water stipulation discussed on page 4 of this report and the claimants  
18 shall be placed on the list of those enjoying rights under the stipulation.  
19

COURT CLAIM NO. 00672 -- Leonard L. Newman  
21 & Loree Newman

The Newmans submitted a claim to the Court for the use of water delivered  
22 through Bull Ditch for irrigation and stock watering. Mr. Newman testified at  
23 the evidentiary hearing.  
24

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The Newmans' property lies in the N $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 13, T. 17 N., R. 18 E.W.M., north and east of Wilson Creek. The claimants provided very limited historical information on the property. It is part of a larger piece that was conveyed by the Federal government to Northern Pacific Railroad, who in 1887 conveyed it to R. P. Tjossem. Apparently, at one time water was diverted from Wilson Creek for irrigation purposes. However, since 1970 their irrigation water has been provided by Bull Canal Company. There was insufficient evidence submitted for the Referee to conclude that the Newmans' property had a water right for use of Wilson Creek. Bull Canal Company is a claimant in this proceeding and is asserting a right on behalf of its patrons. See page 101 of this report. The Referee will not recommend confirmation of individual water rights for the canal company patrons. Therefore, the Referee does not recommend that a right be confirmed under Court Claim No. 00672.

COURT CLAIM NO. 01575 -- Brian Norelius  
Kevin Weyand  
& Gail Weyand

Robert N. and Laurel L. Bynum submitted a claim to the Court asserting a right to use water from the Yakima River conveyed in the Tjossem Mill Ditch for irrigation and stock watering. On March 23, 1989, Brian Norelius and Judith Nickerson were substituted for the Bynums. Both Mr. Norelius and Ms. Nickerson are represented by Attorney Richard T. Cole, and testified at the evidentiary hearing. On March 27, 2000, Kevin and Gail Weyand were substituted for Ms. Nickerson.

The property originally owned by the Bynums was approximately 12.7 acres in size lying in the S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13, T. 17 N., R. 18 E.W.M. Mr. Norelius

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now owns 9.89 acres and Ms. Nickerson owned approximately 3 acres. Water is  
1 diverted from the Yakima River into the Tjossem Mill Ditch near the southwest  
2 corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, T. 17 N., R. 18 E.W.M. The ditch travels  
3 southeast across the N $\frac{1}{4}$  of Section 14 and enters Section 13 about 1,000 feet  
4 south of the west quarter corner of Section 13. In the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 13 a  
5 pump forces the water through a 12 inch pipe that runs underground beneath the  
6 Millpond Manor mobile home park. After the pipeline resurfaces on the east side  
7 of Millpond Manor, water is conveyed across the Norelius property to the  
8 Nickerson land and further to the south. Prior to Norelius and Nickerson  
9 purchasing the property it was irrigated pasture and hay. Ms. Nickerson had not  
10 irrigated her parcel since she acquired it in May of 1988. Mr. Norelius has  
11 continued to irrigated his parcel in the same manner as the Bynums, which is  
12 with flood irrigation. Mr. Norelius estimates that he uses between 1.0 and 1.5  
13 cubic feet per second. Ms. Nickerson is seeking a right to use 0.50 cubic foot  
14 per second. Mr. Norelius raises livestock and has had up to 12 animals on his  
15 property and that of Ms. Nickerson, who has allowed him to use her pasture, even  
16 though it has not been irrigated. It is not clear whether water is diverted  
17 into the Tjossem Ditch during the winter months for stock watering.  
18

The claimants are asserting a right based on the initial appropriation for  
19 the Tjossem Mill Ditch; however, they did not place anything in the record to  
20 establish what that date might be. Mr. Cole suggested that additional  
21 historical information might be placed in the record by other claimants who use  
22 the Tjossem Ditch. According to the chain of title submitted as Exhibit DE-913,  
23 the S $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13 was originally conveyed to the Northern Pacific  
24 Railroad, who in 1887 sold it to Joseph McLeod. By March of 1899 the land was  
25

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1 owned by Albert Tjossem and stayed in the Tjossem family until the Bynums  
2 acquired it in 1945. Two historical documents appear to be applicable to this  
3 claim. An agreement between John Hanks, et ux. and R. P. Tjossem et al.  
4 (including Albert Tjossem) was made on October 7, 1902. The agreement granted  
5 to the Tjossems property for constructing, operating, etc., an irrigation  
6 canal. The land conveyed was a 50 foot strip on either side of a ditch, which  
7 description started about 396 feet south of the east quarter corner of  
8 Section 14, which is approximately the location of where the Tjossem ditch  
9 enters Section 13, and went to the west across the NE $\frac{1}{4}$  of Section 14. The  
10 agreement required the Tjossems to abandon another ditch that crossed the NW $\frac{1}{4}$ NE $\frac{1}{4}$   
11 of Section 14, through which they had been conveying water. It is clear that  
12 the Tjossems had constructed a ditch and diverted water prior to 1902, however,  
13 the exact date is not in the record. Part of Exhibit DE-1597 is an affidavit by  
14 Albert Tjossem that states he has been a resident of Kittitas County since 1877  
15 and a member of the firm of R. P. Tjossem and Son since it was organized. It is  
16 clear that the purpose of the affidavit is to document the source of water and  
17 means of conveying that water for use on lands in Section 24 specifically and to  
18 document the merger of the top part of the Steen McLeod and Clark Ditch with the  
19 canal belonging to R. P. Tjossem and Son. The affidavit does state that at the  
20 time of the 1902 agreement between Hanks and Tjossem (see discussion above) the  
21 Tjossems had for many years diverted water from the Yakima River for their mill  
22 and that third parties to the agreement (identified as William McLeod and  
23 others) had diverted irrigation water from the Yakima River for their lands in  
24 Sections 13 and 24.

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Pursuant to the requirements of RCW 90.14, Robert N. Bynum and Associates submitted Water Right Claim No. 119386 asserting a right to divert 4 cubic feet per second, 1440 acre-feet per year from the Yakima River from April 15 to October 15 for the irrigation of 30 acres (5 parcels). The date of first water use is shown as 1903. The diversion is at the point where Tjossem Ditch diverts from the Yakima River. At the time the claim was filed in 1974, it states that 2.8 cubic feet per second, 1008 acre-feet per year for the irrigation of 20 acres was being used. The place of use describes the Bynum property and the R. Bender property, which lies to the south, across the Tjossem Road from the claimants' property.

Although the claimants' are asserting a right for stock watering and based on the testimony, seem to seek a year around right for that purpose, the RCW 90.14 claim does not assert a right for that purpose and it identifies that water is diverted only during irrigation season, i.e. April 15 to October 15. The Referee concludes that use of water for stock watering is incidental to irrigation and, therefore, only occurs during the irrigation season.

The Referee concludes that sufficient evidence has been presented to show that a water right was established for irrigating the claimants land with water diverted from the Yakima River and delivered through the Tjossem Ditch. The priority date for this right is not clear. The claimants assert that the Tjossem Ditch was constructed in the 1880's, however, no evidence has been submitted to support that date. Clearly the ditch was constructed and in use by 1902, but that is the only date in the record that can be relied upon for the priority date.

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The Referee concludes that a right can be confirmed to Brian Norelius with  
1 a June 30, 1902, date of priority for the diversion of 1.0 cubic foot per  
2 second, 54 acre-feet per year for the irrigation of 9 acres and stock watering  
3 from April 15 through October 15. However, the Referee is not able to recommend  
4 that a right be confirmed to Judith Nickerson (now the Weyands). At the time of  
5 the hearing in January of 1991, Ms. Nickerson had owned the land for three  
6 irrigation seasons and had not irrigated it during that time. She testified  
7 that she did not intend to abandon her water right, but she did not testify to  
8 an intent to resume irrigating the land in the near future. At the time of the  
9 hearing, it was believed by the Referee that the adjudication was a legal  
10 proceeding that prevented relinquishment of a water right, see RCW 90.14.140.  
11 However, since then the Washington Supreme Court in the case of R.D. Merrill v.  
12 Pollution Control Hearings Board has ruled that the legal proceeding needs to  
13 prevent the use of water in order for it to be a sufficient cause to prevent  
14 relinquishment. Therefore, in order for the Referee to recommend that a water  
15 be confirmed to Ms. Nickerson's successors, there needs to be evidence that  
16 beneficial use of the water occurred prior to there being five successive years  
17 of non-use. RCW 90.14.160. It is suggested that the Weyands file an exception  
18 to this report if they are able to testify to beneficial use of water on their  
19 land within two years of the evidentiary hearing. Additionally, evidence of  
20 when the Tjossem Canal was constructed and first used could lead to an earlier  
21 priority date than that currently recognized.  
22

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1 COURT CLAIM NO. 01956 -- Northwest Rainier

2 Court Claim No. 01956 was originally filed by Park Place Properties and was  
3 scheduled for the Subbasin No. 9 evidentiary hearing. Their attorney, Jeff  
4 Slothower, notified the Referee that the claimants would not appear at the  
5 evidentiary hearing and they did not appear. As there was no testimony or  
6 evidence put in the record to support the claim, the Referee cannot recommend  
7 that a water right be confirmed under Court Claim No. 01956. On January 5,  
8 2000, Northwest Rainier was substituted as claimant.

9

10 COURT CLAIM NO. 00984 -- Timothy P. O'Neill  
11 & Deborah S. O'Neill  
12 Farmers Home Administration

13 Timothy and Deborah O'Neill submitted a claim to the Court asserting rights  
14 to use waters from Wilson Creek and Naneum Creek. On May 3, 1990, the Court  
15 ordered that the Farmers Home Administration be substituted for the O'Neills.  
16 Farmers Home Administration is represented by Attorney Charles E. O'Connell,  
17 Jr., with the U. S. Department of Justice. Clifford Bird and Andrew Mills  
18 testified at the evidentiary hearing in support of the claim.

19 The claimant's land lies within the E $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19,  
20 T. 17 N., R. 19 E.W.M. A right is being asserted through the statement of claim  
21 to use 2 cfs, 600 acre-feet per year from Wilson Creek to irrigate 100 acres and  
22 0.16 cfs, 16 acre-feet per year from Naneum Creek to irrigate 8 acres. Mr. Bird  
23 farmed and irrigated the land from 1941 through 1980 and during that time it was  
24 planted in hay, grain and pasture. Up to 200 head of livestock have been raised  
25 on the property. Mr. Bird first rented the land from 1941 until 1957 and then

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1 purchased it. The house that was on the property while he was renting was  
2 estimated to have been constructed in the early 1900's, as it had square nails.  
3 After Mr. Bird bought the land he had a new house built. In 1980 he sold to the  
4 O'Neills. Mr. Bird testified that after he bought the land in 1957 he cleared  
5 and planted additional land, about 13 acres in size, east of Wilson Creek and  
6 drained additional land about 15 acres in size below the house, which he also  
7 put in irrigation. Mr. Bird did not testify to how many acres in total were  
8 being irrigated during the time he farmed the land. The State's Investigation  
9 Report indicates that 90 acres are irrigated from Wilson Creek and 10 acres are  
10 irrigated from Naneum Creek. Mr. Bird also did not testify to how much water is  
11 diverted from the creek for irrigation, nor did he describe the irrigation  
12 practices he used when he farmed the land.

13 Andrew Mills is the county supervisor for the Farmers Home Administration  
14 in Ellensburg. He testified briefly about the chain of title documents that  
15 were entered into the record in support of the claim. He specifically testified  
16 about a contract dated September 23, 1905, between Stephen Woodhouse and Lucius  
17 Winters, which talked about construction of a ditch or drain in the NW $\frac{1}{4}$  of  
18 Section 30 to carry water from a slough in that section and a second slough in  
19 the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19. It was Mr. Mills opinion that the sloughs would have  
20 been created as a result of irrigation of the land in the SW $\frac{1}{4}$  of Section 19, and  
21 the accumulation of that irrigation water in the sloughs made it necessary to  
22 construct the drain. The Referee does not find that sufficient to prove that a  
23 water right was established for use of either Wilson Creek or Naneum Creek on  
24 the claimant's land.

25

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However, a second document in the record as part of Exhibit DE-181 is a  
1 deed between William Ross and Thomas Donald conveying the land in question. The  
2 deed states that conveyed with the land is one-half interest in the waters  
3 conveyed in a ditch that takes water from Wilson Creek. This language also  
4 appears in a 1910 deed conveying the land from Lucius Winters to William Ross.  
5 The provision does establish that water was being used from Wilson Creek in the  
6 early 1900's. This land is riparian to Wilson Creek and under the Riparian  
7 Doctrine the priority for the right would extend to the date steps were first  
8 taken to sever the land from Federal ownership. That date is not known. The  
9 chain of title indicates that a patent issued on October 29, 1884, which is the  
10 only date in the record that can be used for the priority date. Neighboring  
11 claimant Allan Grigg put into the record Exhibit DE-1030, which is a water right  
12 statement by S. W. Maxey and Jacob Powell stating that in May 1885 Maxey  
13 constructed a ditch from Wilson Creek and appropriated 200 inches of water. The  
14 head of the ditch was in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19 and the ditch ran in a  
15 southwesterly direction about one-half mile into Section 25. Harold Lamb placed  
16 in the record exhibits that showed S. W. Maxey owned the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{2}$ SW $\frac{1}{4}$  of  
17 Section 19, along with other land at the time this statement was filed. The  
18 Referee believes this may be the water right that was referenced in the deeds  
19 that conveyed one-half interest in the water right, which would result in 100  
20 inches of water, or 2 cfs, being appurtenant to the claimant's land.  
21

Two water right claims were filed by Clifford Bird pursuant to the  
22 requirements of RCW 90.14. Water Right Claim (WRC) No. 033787 asserts a right  
23 to use 0.16 cfs, 16 acre-feet per year from Naneum Creek for the irrigation of 8  
24 acres on the lands described in Court Claim No. 0984. WRC No. 033788 asserts a  
25

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right to use 2 cfs, 600 acre-feet per year from Wilson Creek for the irrigation  
1 of 100 acres, also on the lands described in Court Claim No. 0984.  
2

Following the presentation of the evidence offered in support of the claim,  
3 Attorney John P. Gilreath, appearing on behalf of other claimants scheduled to  
4 appear on the same day objected to the claimant not putting on any testimony or  
5 evidence to quantify the right, i.e. quantity of water diverted and used on the  
6 property and the number of acres irrigated. Mr. O'Connell responded that the  
7 claim speaks for itself and no objections were made to the claim.  
8

While the claim does express the right that was being asserted by the  
9 O'Neill's, it is very common for the claim to be different than the actual water  
10 use. The Referee must have sufficient testimony to show that beneficial use has  
11 continued and the extent of that use, i.e. number of acres irrigated, quantity  
12 of water used, etc. Although the historical documents do convince the Referee  
13 that a right exists for the land and Mr. Bird's testimony indicates that  
14 beneficial use of the right existed during the time he owned the land, there  
15 needs to be evidence presented to show that beneficial use continued after 1980  
16 and to quantify that beneficial use.  
17

Therefore, the Referee does not recommend that a water right be confirmed  
18 under Court Claim No. 00984 until that evidence is presented.  
19

COURT CLAIM NO. 00535 -- David Papineau  
21

Court Claim No. 00535 asserts a right to use Spring Creek for irrigation  
22 and stock watering. Mr. Papineau, who is represented by Attorney John P.  
23 Gilreath, testified at the evidentiary hearing.  
24

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28

The Papineau property lies in Government Lot 4 and that portion of  
1 Government Lots 2 and 3 and the E $\frac{1}{2}$ SW $\frac{1}{4}$  lying west of the Burlington Northern  
2 Railroad line, all in Section 30, T. 18 N., R. 19 E.W.M. He owns 93 acres and  
3 irrigates 91 acres, primarily with water diverted out of Spring Creek, which is  
4 augmented with Yakima River water. A right is also being asserted for use of  
5 Wilson Creek water carried in Scott Ditch.  
6

Water is pumped from Spring Creek at two locations; a 10 BHP pump is on the  
7 creek near the northwest corner of Government Lot 2 of Section 30 and a 15 BHP  
8 pump is on the creek just after it crosses into Government Lot 3 of Section 30.  
9 Two wheel lines and a big gun sprinkler are used to irrigate 45 acres of hay and  
10 46 acres of pasture. Mr. Papineau also testified to floe irrigating his fields  
11 occasionally, however, that system was not discussed in any detail. Mr.  
12 Papineau testified to using 1.5 cubic feet per second from the two pumps. He  
13 also indicated more water is used when he flood irrigates, but did not testify  
14 to how much water is used. He also did not testify about whether he still pumps  
15 from the creek when he is flood irrigating. Up to 91 cow/calf pairs are raised  
16 on the property, drinking directly from Spring Creek as it flows through the  
17 property.  
18

Several documents were placed in the record in support of the claim. C. J.  
19 Ringer filed an affidavit dated April 19, 1923, stating that for the preceding  
20 14 years he had owned Lot 4 and that part of Lots 2 and 3 and the E $\frac{1}{2}$ SW $\frac{1}{4}$  lying  
21 west of the N.P.R.R. in Section 30, T. 17 N., R. 19 E.W.M. and during that time he  
22 had farmed the land and irrigated it using 200 inches from Spring Creek. He had  
23 been told the water had been used for 8 years prior to his ownership. This  
24

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28

affidavit suggests Spring Creek was first used in 1901 on the claimant's land.  
1  
No mention is made of use of Wilson Creek water.  
2

A deed from Ringer to Michaela in 1933 transferred the same land with 49  
3 inches from Scott Ditch and 3/4 of all water rights in Spring Creek. The  
4 property was transferred in 1944 to Gleason, a plaintiff in Ringer and Gleason  
5 v. Stone. That decree found that Gleason had a right to 150 inches from Spring  
6 Creek and 49 inches from Scott Ditch. One hundred and fifty inches of water is  
7 equal to 3 cubic feet per second and 49 inches is equal to slightly less than 1  
8 cubic foot per second.  
9

Water Right Claim No. 024243 was filed by Emery Papineau pursuant to RCW  
10 90.14. It asserts a right to use 3 cfs, 900 acre-feet per year from the Yakima  
11 River (Spring Creek) for the irrigation of 55 acres and stock watering. The  
12 point o diversion described is 2690 feet south and 500 feet east of the  
13 northwest corner of Section 30, which is near one of the pump locations. The  
14 legal description of the place water is used on the claim form is the NW $\frac{1}{4}$  of  
15 Section 30, T. 17 N., R. 19 E.W.M.  
16

The current water use is not consistent with WRC No. 024243. Mr. Papineau  
17 is asserting a right to, and indicates he is, irrigate 91 acres, while WRC No.  
18 024243 states 55 acres are being irrigated and is the number of acres for which  
19 a right is claimed. Additionally, the place of water use described on WRC No.  
20 024243 is the NW $\frac{1}{4}$  of Section 30, which is where Government Lot 2 is located.  
21 However, Government Lots 3 and 4 are located in the SW $\frac{1}{4}$  of Section 30. The  
22 Referee estimates that no more than 30 acres are being irrigated within the NW $\frac{1}{4}$   
23 of Section 30. The claimant did not address the inconsistency between WRC No.  
24 024243 and the right being asserted in this proceeding.  
25

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1        Although not stated in Court Claim No. 0535, a right is also being asserted  
2        for use of Wilson Creek. The testimony indicates that water from Wilson Creek  
3        was not being used and that the claimant wanted to retain the right for future  
4        use. In order to recommend that a water right be confirmed in this proceeding,  
5        the Referee needs evidence to show continued beneficial use of the water. That  
6        evidence is lacking. Additionally, the Referee can find no evidence to show  
7        that a water right claim was filed pursuant to RCW 90.14 for use of Wilson  
8        Creek. Failure to file a claim relinquishes any right that may have existed,  
9        RCW 90.14.071.

10      Due to the lack of evidence of beneficial use and lack of an RCW 90.14  
11     claim, the Referee cannot recommend that a right be confirmed for use of Wilson  
12     Creek. Due to the significant inconsistency between WRC No. 24243 and the claim  
13     being asserted in this proceeding and that inconsistency not having been  
14     addressed by the claimant or his counsel, the Referee cannot recommend  
15     confirmation of a water right for use of Spring Creek.

16      COURT CLAIM NO. 01724 -- Pautzke Bait Company, Inc.  
17

18      Pautzke Bait Company, Inc. asserts rights under Court Claim No. 01724 for  
19     use of several surface water sources in the Yakima River Basin, including use of  
20     Mercer Creek, which lies in Subbasin No. 9. Most of the sources claimed were  
21     addressed in the Report of Referee and Supplemental Report of Referee for  
22     Subbasin No. 7 (Reecer Creek). Only the claim for a right to use Mercer Creek  
23     will be addressed herein. Pautzke Bait Company, Inc. is represented by Attorney  
24     John P. Gilreath, who appeared on their behalf at the Subbasin No. 9 evidentiary  
25     hearing. The claimant asked that the testimony and evidence entered at the

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Subbasin No. 7 evidentiary hearing be used in evaluating their claim to a water right for Mercer Creek. With no objections from other parties, the Referee granted that request. Richard C. Bain, a consultant hired by the claimant, and Darrell Eason, who farms the land, testified at the Subbasin No. 7 hearing. No additional testimony was offered at the Subbasin No. 9 hearing. Three exhibits were entered into evidence as part of the presubmittals for this subbasin and will be considered herein.

The Pautzke Bait property that is irrigated with water from Mercer Creek is a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, T. 17 N., R. 18 E.W.M. east of Mercer Creek and west of Anderson Road. The field is designated by the claimant as field 7 and is 13 acres in size. It is pasture that is sprinkler irrigated. A 10 HP pump is placed on the creek and feeds handlines on which 42 sprinklers with 9/64 inch nozzles are placed. With an operating pressure of 60 psi, to which Mr. Bain testified, the 42 sprinklers would use 0.42 cubic foot per second. The field is irrigated 7 times during the irrigation season. Mr. Bain testified to using 81.7 acre-feet per year.

The portion of the property in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 is part of the land to which William Dennis received a patent on June 30, 1876. The claimant is arguing that a priority date of 1871 would be appropriate, as Dennis would have had to be on the property at least five years prior to the time he received the patent. The Court has previously ruled on this argument and directed the Referee to not make an automatic relation back based on this type of theory, see Memorandum Opinion Re: Priority Date -- Date of Patent or Date of Entry, January 15, 1995. Therefore, there has to be evidence of when the land was settled, or any intervening actions prior to the patent issuing for an earlier date to be

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used. William Merrill received a patent on August 15, 1888, for the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
1 Section 2. Both pieces are riparian to Mercer Creek and were there evidence of  
2 when water was first used for irrigation, the patents could be used to establish  
3 a priority date, lacking specific information of when the settlers first took  
4 action to sever the land from Federal ownership. However, the claimant did not  
5 put into evidence any information about a water right actually being established  
6 for use of Mercer Creek. At this point in the basin, Mercer Creek is below the  
7 Kittitas Reclamation District canal, the Cascade Irrigation District Canal and  
8 Ellensburg Water Company's Town Ditch. All three use Mercer Creek as a  
9 mechanism to deliver their water. In order to show that there is a water right  
10 to use Mercer Creek, the claimant not only has to show water use prior to  
11 December 31, 1932, the date by which riparian rights could be established  
12 through beneficial use of water, but the claimant also needs to show that  
13 natural creek flow is being used. This can best be demonstrated by showing use  
14 prior to construction of the three canals.

15 A second issue must be addressed by the claimant. There is no evidence in  
16 the record that a claim was filed pursuant to RCW 90.14 for use of Mercer Creek  
17 water on this land. At the time that claims were to be filed, the land was  
18 owned by the Hundley family. The Referee could find no claim filed in that name  
19 for Mercer or Wilson Creek. Failure to file a claim relinquishes any right that  
20 may have existed. RCW 90.14.071.

21 Therefore, due to the lack of evidence to show that a water right was  
22 established for the land and lack of a RCW 90.14 claim for the property, the  
23 Referee cannot recommend that a water right be confirmed for use of Mercer  
24 Creek.

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1 COURT CLAIM NO. 01836 -- David T. & Marguerite L. Pearson

2 Court Claim No. 01836 was filed for use of Whiskey Creek on the  
3 claimant's property in the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 27, T. 18 N., R. 18 E.W.M. The  
4 Pearsons communicated with the Referee's office prior to the hearing stating  
5 that the only right they were seeking was for non-diversionary stock watering,  
6 as covered by the stock water stipulation, and that they were no going to attend  
7 the evidentiary hearing. As a result, the only right recommended under Court  
8 Claim No. 01836 is that provided in the stock water stipulation discussed on  
9 page 4 of this report.

10

11 COURT CLAIM NO. 01702 -- John M. Pearson  
12 & Julie Ann Pearson

13 The Pearsons submitted a claim to the Court asserting a right to use  
14 waters from Mercer Creek for irrigation and stock watering. Mr. Pearson  
15 testified at the evidentiary hearing.

16 According to the Statement of Claim, the Pearsons own that portion of the  
17 E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 25, T. 18 N., R. 18 E.W.M. lying south of the Cascade  
18 Irrigation District (CID) canal. However, the State's map exhibit, SE-2 also  
19 shows them owning a portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 25, which would appear  
20 to be where the Pearson home is located. Mr. Pearson testified to irrigating  
21 about one acre of lawn and landscape around his home. They also irrigate 9.5  
22 acres of pasture. The pasture can either be flood irrigated or can be irrigated  
23 with handlines. When handlines are used, an 8 HP pump is placed on the creek.  
24 Mr. Pearson did not testify about how much water is used to irrigate the land.

25

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The property is also assessed by CID. CID water is delivered to the Pearson  
1 property through Mercer Creek. During the irrigation season, comingled water is  
2 used.

According to Mr. Pearson, his land was part of the land conveyed by the  
Federal Government to Northern Pacific Railroad in the late 1800's. This is  
consistent with information provided by other claimants who own land in  
Section 25. Mr. Pearson did not provide the name of the first individual  
landowner when Northern Pacific sold the property, nor did he provide any  
evidence that a water right was legally established through beneficial use of  
the water prior to December 31, 1932. Because CID water is delivered through  
Mercer Creek, proof of establishment of a water right would need to include use  
of water from the creek prior to construction of the CID canal or use during the  
irrigation season prior to the canal delivering water (1904).

14 Water Right Claim No. 041162 was filed by a prior owner of the claimant's  
15 property pursuant to the requirements of RCW 90.14. It asserts a right to use  
16 0.16 cfs, 32 acre-feet per year from Wilson Creek for the irrigation of 8 acres  
17 in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 25, T. 18 N., R. 18 E.W.M. The point of diversion  
described is on Mercer Creek just below where the CID canal crosses the creek.

19 Due to the lack of evidence to show that a water right was established  
20 through beneficial use of the creek water, the Referee cannot recommend that a  
water right be confirmed under Court Claim No. 01702.

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1 COURT CLAIM NO. 01182 -- Dorothy Pease  
2 & Estate of Murl Pease

3 Dorothy Pease submitted a claim to the Court on behalf of herself and the  
4 Estate of Murl Pease. She asserts a right to use waters from an unnamed drain  
5 and natural waterway for lawn and garden irrigation. Mrs. Pease testified at  
6 the hearing.

7 Mrs. Pease's property lies in a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 34,  
8 T. 18 N., R. 18 E.W.M. lying north of Cascade Way. She irrigates about  
9 one-quarter acre of lawn and garden with water diverted from a waterway she  
10 called Whiskey Creek. It appears to the Referee that Whiskey Creek flows west  
11 of the claimant's land. It is not clear from State's Exhibit SE-2 the exact  
12 source of the water used by Mrs. Pease. She testified that in 1960 they acquired  
13 an easement to install an underground pipeline across a neighbor's land. The  
14 State's Investigation Report states that an unnamed drain is the source of water  
15 used. A drain in the area of the claimant's land would undoubtedly capture  
16 return flows generated by use of Whiskey Creek water, Cascade Irrigation  
17 District and Ellensburg Water Company. Mrs. Pease did not testify to the  
18 quantity of water used to irrigate her lawn and garden.

19 Water Right Claim No. 003673 was filed by Mr. Pease for use of a drain and  
20 natural waterway.

21 Mr. and Mrs. Pease bought their property in 1937 from B. F. Reed and  
22 immediately began irrigating. Mrs. Pease testified that her land is part of a  
23 larger parcel once owned by Reed and the land was being irrigated when they  
24 bought. There was an open ditch and a flume across the B. F. Reed Mill Ditch.  
25

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Mrs. Pease did not testify to the source of water for the ditch and flume.  
1  
Clearly the land was being irrigated in 1937. Identifying the source of water  
2  
carried in the ditch and flume would help in establishing the potential  
3  
existence of a water right. However, in order for there to be a water right for  
4  
the land, there must be evidence that the land was irrigated by December 31,  
5  
1932, if the land is riparian to the water source or by June 6, 1917, if the  
6  
land is not riparian to the water source. That evidence is lacking. As a  
7  
result, the Referee cannot recommend that a water right be confirmed under Court  
8  
Claim No. 01182.  
9

10 COURT CLAIM NO. 01247 -- Jill M. Perry  
11

Jill Perry submitted a Claim to the Court for use of waters from Naneum  
12 Creek. Ms. Perry, who was represented by Attorney Hugh Spall, testified at the  
13 evidentiary hearing. Mr. Spall has withdrawn from representing Ms. Perry.  
14

Ms. Perry's property lies in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 28, T. 18 N.,  
15 R. 19 E.W.M. She runs a large cattle feeding operation on the land and  
16 irrigates primarily pasture ground, with a grain rotation. Hay has been raised  
17 in the past. The land is irrigated with water from Naneum Creek and the  
18 Kittitas Reclamation District (KRD). There are three diversions that serve the  
19 property, two of which deliver Naneum Creek water. One diversion is in the  
20 NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28, where comingled KRD and creek water are carried in an  
21 underground pipe through the NE $\frac{1}{4}$  into the Perry property. A pump is on the  
22 creek near the intersection of Schnebly and Naneum Roads, near the northwest  
23 corner of the property. A pump is also on a lateral or drain that carries KRD  
24 water only to the east half of the property. The person who irrigates the  
25

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1 property was not available to testify, so there were no specifics provided about  
2 the irrigation practice. Ms. Perry testified that the water duty is very  
3 similar to that on the Dipple Farm, which she manages and referred the Referee  
4 to the testimony for that ranch. According to Ms. Perry, approximately 30 acres  
5 are irrigated with Naneum Creek water and the rest is irrigated with KRD water.

6 Water rights for this land were addressed in the Ferguson decree. At that  
7 time Elijah M. Topliff owned the S $\frac{1}{4}$ NE $\frac{1}{4}$  and N $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 28, T. 18 N.,  
8 R. 19 E.W.M. and was awarded a Class 7 right for 160 inches, or one inch for  
9 each acre. Ms. Perry's property would be entitled to 80 inches or 1.6 cubic  
10 feet per second for 80 acres. There is a total of 72 acres irrigated within her  
11 ownership, of which 30 acres are irrigated with Naneum Creek water.

12 The Referee could find no evidence that a claim was filed for the Perry  
13 property pursuant to the requirements of RCW 90.14. Ms. Perry thought that her  
14 husband had filed a claim; however, the Referee could not locate one in either  
15 the Perry name or Harold Hawley, from whom they purchased in 1971. Failure to  
16 file a claim relinquishes any right that may have existed, RCW 90.14.071.  
17 Therefore, the Referee cannot recommend that a water right be confirmed to Ms.  
18 Perry under Court Claim No. 01247. The Referee notes that a branch of Naneum  
19 Creek, known as Neally Creek, flows through the claimants property. If  
20 livestock raised on the property drink directly from the creek, there is a  
21 non-diversionary stock water right covered by the stock water stipulation  
22 discussed on page 4 of this report.

23  
24  
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1 COURT CLAIM NO. 00461 -- Robert Perry  
2 John Ressler  
3 & Diana Ressler  
4 Gerry Williams  
5 & Laura Williams  
Ron Elkins  
6 & Peggy Elkins  
James S. Ritter

7 COURT CLAIM NO. 05283 -- Ronald D. Elkins  
8 & Marguerite A. Elkins

9 Court Claim No. 00461 was originally filed by Henry Bongiorni. In January  
10 of 1990, John and Diana Ressler, Gerry and Laura Williams, Ron and Peggy Elkins  
11 and Robert Perry were joined to the claim. Mr. Bongiorni's remaining interest  
12 in the claim was conveyed to James S. Ritter on August 31, 1990. Ron and Peggy  
13 Elkins were the only parties associated with the claim represented at the  
14 evidentiary hearing. Charles W. Elkins, Ron Elkins brother appeared on their  
15 behalf and testified. Additionally on April 30, 1990, Ronald and Marguerite  
16 filed Court Claim No. 5283, which was filed for the portion of the lands  
17 described in Court Claim No. 00461 owned by the Elkins.

18 Due to their failure to appear at the evidentiary hearing, the Referee  
19 cannot recommend that water rights be confirmed under Court Claim No. 00461 to  
20 James S. Ritter, Gerry and Laura Williams, John and Diana Ressler, and Robert  
21 Perry.

22 According to Charles Elkins' testimony, the Elkins own 10 acres of land  
23 that lies in the S $\frac{1}{4}$ N $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 29, T. 18 N., R. 19 E.W.M. Most of the  
24 land is pasture, with the exception of a home and lawn area. The pasture is  
leased to a neighbor who raises horses. The number of horses varies based on  
the pasture conditions. Water for the horses is provided from shallow wells on

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1 the property. The pasture is flood irrigated with water diverted from Lyle  
2 Creek. The diversion on the creek is in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 29, into a ditch  
3 that appears to serve property north and south of that owned by the Elkins.  
4 Water is taken from the ditch at the northeast corner of the Elkin property.

5 The Elkins property was acquired in two purchases. Five acres were bought  
6 from Mrs. Elkins mother and five acres were bought from another, unnamed party.  
7 Although the Elkins were joined to the Bongiorni claim, it does not appear that  
8 the land was owned by Mr. Bongiorni. However, the legal description of land on  
9 which water is being put to beneficial use on Court Claim No. 00461 includes the  
10 Elkins land. Mr. Elkins testimony implied there were documents in the record  
11 that would show historical ownership of the land. However, that is not the  
12 case. The court claim states that a patent issued to Northern Pacific Railroad  
13 for the land and that it was owned by William and Margaret Lyles when the claim  
14 was adjudicated in 1890. The Referee assumes that the Sanders v. Jones case is  
15 what is being referred to. The Findings of Fact that preceded the decree in  
16 Sanders v. Jones does show that the Lyles (also spelled Liles) were parties to  
17 the case. It does not describe the lands owned by them. The Referee needs  
18 documentation to show that the claimants are successors to the Lyles, or some  
19 other party to the case, since there is no other evidence of historical water  
20 use.

21 Additionally, it is not clear to the Referee that a water right claim was  
22 filed for the claimants' property pursuant to RCW 90.14. Henry Bongiorni filed  
23 Water Right Claim No. 118465 which asserted a right to divert 2 cfs, 600  
24 acre-feet per year from Lyle Creek for the irrigation of 35 acres. The place of  
25 water use described on the claim is the N $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{4}$ S $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of

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Section 29, T. 18 N., R. 19 E.W.M. A small portion of the Elkins property may  
1 be included in the N $\frac{1}{2}$ SE $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 29, but the rest of their land is not  
2 included. Additionally, Water Right Claim No. 094505 was filed by William Z.  
3 Smith asserting a right to use 2 cfs, 125 acre-feet per year from Lyle Creek for  
4 the irrigation of 25.5 acres in part of the NW $\frac{1}{4}$  of Section 29. The Elkins  
5 property does lie in "part of the NW $\frac{1}{4}$ ", however, the Referee is not convinced  
6 that the intent was to cover the Elkin property. When Mr. Smith appeared at the  
7 hearing, his testimony was that he at one time owned over 20 acres and was  
8 asserting rights on behalf of those to whom he had sold land. There is no  
9 evidence that William Smith once owned the Elkins land. The record does not  
10 contain a legal description for the Elkins property, only a hand drawn map that  
11 shows the general location of their parcel within the NW $\frac{1}{4}$  of Section 29.  
12

The Referee cannot recommend that a water right be confirmed to the Elkins  
13 under Court Claim Nos. 00461 and 5283 due to the lack of evidence to show that a  
14 water right was established through beneficial use of the water prior to June 6,  
15 1917. Historical documentation to show that their land was owned by one of the  
16 parties to Sanders v. Jones and was awarded a right in that case would be very  
17 helpful. Additional evidence about compliance with RCW 90.14 is also necessary,  
18 along with a legal description for the property.  
19

COURT CLAIM NO. 01129 -- Frank W. Phelps  
20  
21

Frank W. Phelps filed Court Claim No. 01129 asserting a right to use  
22 unnamed springs for irrigation and stock watering. Mr. Phelps, represented by  
23 Attorney Roger Garrison, testified at the evidentiary hearing.  
24

25  
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The property described in Court Claim No. 01129 is a portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$   
1 of Section 26, T. 18 N., R. 18 E.W.M. Mr. Phelps is asserting a right to  
2 irrigate 7 acres in a 10.6 acre parcel and also provide water for up to 50 head  
3 of cattle. The land is planted to hay and also used for pasture. It is rill  
4 irrigated. Mr. Phelps had the spring output measured and testified to 0.25  
5 cubic foot per second coming from the springs. Drains were constructed to  
6 capture the spring flow sometime prior to when Mr. Phelps owned the property.  
7 He believes that Schaake Packing Company owned the land at the time the drains  
8 were built. The spring water could not be used for irrigation until the drains  
9 were constructed. Since he grew up in the area, he remembers the land being  
10 irrigated as far back as 1930 and there being a hay crop at that time. The  
11 primary source of irrigation water is water delivered by the Cascade Irrigation  
12 District. The spring water is used prior to Cascade turning on in April and  
13 after it turns off in October. The spring water is very warm and is  
14 particularly important for stock watering during the winter months.  
15

Mr. Phelps had limited knowledge about the history of the land. Attached  
16 to a water right claim he filed pursuant to RCW 90.14, are several documents.  
17 Although the copies are very difficult to read, it is apparent that a Receivers  
18 Receipt dated December 3, 1887, acknowledged receipt of final payment for land  
19 that included the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 26, T. 18 N., R. 18 E.W.M. The payee was  
20 John Teofill. December of 1887 is the priority date asserted on Court Claim No.  
21 01129. Also attached was a deed dated May 25, 1903, that acknowledged  
22 fulfillment of a mortgage between John Teofill and John Robinson. Mr. Phelps  
23 purchased the land in 1963 and there had been several intervening owners. Water  
24 Right Claim No. 2000072 filed by Mr. Phelps asserts a right to use 0.17 cubic  
25

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1 foot per second, 67 acre-feet per year from and unnamed spring for irrigation of  
2 15 acres and stock watering. Mr. Phelps no longer owns a portion of the  
3 property described in WRC No. 20072 and is now asserting a right to irrigate 7  
4 acres.

5 Although Mr. Phelps has knowledge that the land was being irrigated in  
6 1930, since it also receives water from Cascade Irrigation District, that alone  
7 is not proof that the springs were a source of the irrigation water. Since the  
8 claimant was not able to testify to when the drains were constructed that  
9 allowed use of the spring water for irrigation, the Referee cannot conclude that  
10 the springs were used for that purpose during a time frame that would result in  
11 establishment of a water right. However, it is reasonable to conclude that due  
12 to the warm water in the springs they would have been used for stock watering,  
13 particularly during the winter months, very soon after the land was settled.

14 Since the springs are located on the claimant's land, the Riparian Doctrine  
15 would apply, with the priority date being established when first efforts were  
16 made to sever the land from Federal ownership. The earliest date in the record  
17 of that happening is December 31, 1887, when the Receiver's Receipt issued. The  
18 Referee recommends that a right be confirmed under the Riparian Doctrine with a  
19 December 31, 1887, date of priority for the use of 0.25 cubic foot per second, 2  
20 acre-feet per year from the unnamed springs for continuous stock watering within  
21 that portion of the W $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 18 N., R. 18 E.W.M. described as  
22 follows: Beginning 30 feet south of the northeast corner of the W $\frac{1}{4}$ SW $\frac{1}{4}$  of Section  
23 26; thence S 00°41' E 1752.3 feet along the east line of the W $\frac{1}{4}$ SW $\frac{1}{4}$ ; thence S  
24 87°35' W 311.6 feet; thence S 19°48' W 373.0 feet to the north bank of the  
25 Ellensburg Water Company's canal; thence N 73°14' W 7.7 feet along said canal;

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thence N 00°41' W 1330.7 feet; thence N 89°38' E 207.0 feet; thence N 00°41' W 778.1 feet to the south right of way of the County road; thence N 89°38' E along the right-of-way to the point of beginning.

COURT CLAIM NO. 00866 -- Gerald E. Platt, et al.

Ron Voshall  
Sarah Nickel

Court Claim No. 00866 was originally filed by Edith Courson. On January 10, 1989, Gerald E. Platt, Ron Voshall and Sarah Nickel were substituted for Mrs. Courson. Larry Nickel testified at the evidentiary hearing on behalf of all three claimants.

The claimants' property lies mostly within the S $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , with about two acres being in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , all in Section 1, T. 17 N., R. 18 E.W.M. The land has been subdivided, with Platt owning 10 acres, Voshall owning 6 acres and Nickel owning 2.83 acres. Platt irrigates about 9.5 acres of pasture and at the time of the hearing had 6 horses; Voshall irrigates pretty much the entire 6 acres and had 4 horses and 6 cows; and Nickel irrigates about 2 acres and had one horse. The number of livestock may vary somewhat each year.

Mr. Nickel testified that the three current landowners continued the irrigation practice that was in place when they purchased the land from Edith Courson, which includes use of a 3 HP pump on the creek and sprinkler systems. Put into evidence was a letter dated December 19, 1979, from Thelma Cornwall to Edith Courson discussing the property. The letter indicates Ms. Cornwall's belief that the home that is owned by Sarah Nickel was build by George Champie, who had homesteaded the property long before she became acquainted with it in 1921. Her letter indicates that the property is in pasture and there is a

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1 spring in the pasture. There is no mention of irrigation or the source of water  
2 that might be used.

3 Also put into evidence is a chain of title, but it does not identify the  
4 land for which the chain was prepared. However, comparing it to one that was  
5 submitted by Joseph Fitterer for neighboring land, it is apparent it is for the  
6 SE $\frac{1}{4}$  of Section 1, T. 17 N., R. 18 E.W.M. It appears that George Champie  
7 acquired a portion of the SE $\frac{1}{4}$  of Section 1 in 1905. The chain of title does not  
8 show which portions of the SE $\frac{1}{4}$  are covered by each entry, so it is difficult to  
9 track the claimants' property back to George Champie.

10 Mr. Nickel testified that the property has three shares of Ellensburg Water  
11 Company. It is not clear whether he was referring to only the Nickel property  
12 or all three parcels. The claim filed by Mrs. Courson also indicates use of  
13 water delivered by Ellensburg Water Company.

14 The Coursons filed several water right claims (WRC) in response to RCW  
15 90.14. It appears that three claims were filed by Mr. Courson in 1970 and two  
16 additional claims were filed by Mrs. Courson in 1974. The three claims filed on  
17 creeks, which all appear to be on Lyle Creek, assert a right to irrigate 14  
18 acres if they are considered to be additive.

19 The testimony and evidence provided indicate water use on the property for  
20 an extended period of time. However, there was no evidence that a water right  
21 was established for use of water from Lyle Creek. Ellensburg Water Company  
22 (EWC) uses Lyle Creek to convey water to its patrons, see Report of the Court,  
23 Re: Ellensburg Water Company, page 9, line 5. The water that is being  
24 withdrawn from the creek could be EWC water.

25

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1 Due to the lack of evidence to show that a water right has been established  
2 for the property for use of Lyle Creek the Referee cannot recommend that a water  
3 right be confirmed under Court Claim No. 0866. The water received from  
4 Ellensburg Water Company as a result of the shares owned by the claimants is  
5 separate from this claim. The water rights for Ellensburg Water Company, a  
6 major claimant in this proceeding, have been determined through the Major  
7 Claimant Pathway.

8  
9 COURT CLAIM NO. 02178 -- Ponderosa Properties, Inc.

10 Ponderosa Properties, Inc. filed a claim with the Court asserting a right  
11 to use waters from Wilson Creek for irrigation. Prior to the evidentiary  
12 hearing the claimant notified the Referee's office that they no longer owned the  
13 property. A Motion to Substitute Parties was sent to the claimant, but was not  
14 submitted to the Court. Therefore, the claim remains in the name of Ponderosa  
15 Properties. There was no appearance at the hearing in support of the claim,  
16 therefore, the Referee must recommend that a water right not be confirmed for  
17 the property.

18  
19 COURT CLAIM NO. 02380 -- Herman R. Potts  
20 & Janet A. Potts

21 The Potts submitted a claim to the Court for use of water from the combined  
22 flow of Wilson and Reecer Creeks. Mr. Potts testified at the evidentiary  
23 hearing.

24 The Potts property lies in a portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  west of Mercer Creek  
25 and east of Anderson Road. They are irrigating 1.5 acres of alfalfa hay with

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water diverted from Mercer Creek. Although the statement of claim indicates the source as Reecer and Wilson Creeks, Mr. Potts testified and the map clearly shows that the source of water is Mercer Creek. The Referee understands that there has been confusion concerning the name of many of the creeks in this area. Mr. Potts withdraws water from the creek using a 1 HP pump and irrigates with sprinklers. In the past livestock have been raised on the property and will be again in the future. The Potts have owned the property since 1974.

Attached to the Statement of Claim are several documents. Some of them are very difficult to read, but they appear to be quit claim deeds transferring land, including that owned by the claimants. The more recent deeds state the land is transferred "together with water rights and irrigation ditches appurtenant thereto". A deed in 1922 transferred land in the SE $\frac{1}{4}$  of Section 3 and portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2. It also conveyed all water rights and irrigating ditches appurtenant to the premises herein conveyed including all interest of the granters in and to that certain ditch known as the Klein-Coble-Castle and Regel ditch from the Yakima River". This document was reviewed for a neighboring landowner in the Subbasin No. 7 Supplemental Report of Referee. The SE $\frac{1}{4}$  of Section 3 was owned by one of the parties who constructed the Klein-Coble-Castle and Regel Ditch, however, there is no evidence that lands in Section 2 were owned by any one with a direct interest in the ditch. Because the language is not specific, it is not clear that the land in Section 2 was irrigated from that ditch. Mr. Potts is not asserting a right to use water from the Klein-Coble-Castle Ditch.

None of the documents attached to the claim reference water rights to Mercer Creek or use of water from the creek. The Referee finds there is not

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sufficient evidence to conclude that a water right was established for use of  
1 Mercer Creek. There would need to be evidence of use of that water prior to  
2 December 31, 1932, the date by which water had to be used in order to have a  
3 right under the Riparian Doctrine. Additionally, by 1932, Cascade Irrigation  
4 District's canal and Ellensburg Water Company's Town Ditch both crossed Mercer  
5 Creek with CID making deliveries of water through the creek. The claimant would  
6 have to show that naturally occurring creek water was being used. In order to  
7 do so, it may be necessary to show that use of the water predated construction  
8 of those canal.

However, efforts to prove the existence of a water right will not resolve a  
10 major obstacle to a recommendation to confirm a water right. As far as the  
11 Referee can determine, there was no water right claim filed for the property as  
12 required by RCW 90.14. The Claims Registration Act required that a water right  
13 claim be filed for all uses of water initiated prior to adoption of the Surface  
14 Water Code in 1917 and the Ground Water Code in 1945. Failure to file a water  
15 right claim waives and relinquishes any right that may have existed. RCW  
16 90.14.071.

Therefore, due to the lack of proof that a right was established for use of  
18 Mercer Creek and the lack of a RCW 90.14 claim for the property, the Referee  
19 cannot recommend that a right be confirmed under Court Claim No. 02380.

21 COURT CLAIM NO. 00739 -- Kay E. Powers  
22 Sandra Thomas

24 Mrs. Edith Thomas submitted the referenced claim to the Court asserting a  
25 right to use waters from Wilson and Naneum Creeks for irrigation and stock

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watering. Mrs. Thomas, who was represented by Attorney James P. Hutton,  
1 testified at the evidentiary hearing in support of the claim. Since the  
2 evidentiary hearing, Mrs. Thomas has passed away and her daughters, Kay Powers  
3 and Sandra Thomas, have succeed her as claimants.  
4

Court Claim No. 00739 asserts rights for lands in Section 32, T. 19 N., R.  
5 19 E.W.M. and in the NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M. Rights for the  
6 lands in Section 4 are also being asserted through Court Claim No. 01454, which  
7 was originally filed by Burrill Ferguson. Mrs. Thomas, along with two others,  
8 have been joined as parties to that claim. The Referee shall address assertions  
9 of water rights for the lands in Section 4 as part of Court Claim No. 01454,  
10 rather than as part of Claim No. 00739, see page 147 of this report.  
11

Mrs. Thomas owned the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 and she  
12 asserted a right to divert 3 cfs, 980 acre-feet per year for the irrigation of  
13 140 acres. According to Mrs. Thomas, water is diverted from the combined  
14 Wilson/Naneum Creeks at diversion No. 10 in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29 T. 19 N.,  
15 R. 19 E.W.M. to irrigate most of the land she owns in Section 32. This  
16 diversion serves a head ditch that feeds her flood irrigation system. A second  
17 diversion is on Wilson Creek, immediately below where Wilson Creek and Dry Creek  
18 split in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. This diversion is used to irrigate her lawn  
19 and fruit trees, an area approximately 1/3 acre in size. A third diversion is  
20 on Whiskey Creek, also in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, where a 1/2 HP pump is used  
21 to withdraw water from the creek into a 5/8 inch hose that is used to sprinkle  
22 irrigate her garden.  
23

Several water right claims (WRC) were filed by James Thomas, Mrs. Thomas'  
24 husband, in response to RCW 90.14. WRC No. 026205 was filed asserting a right  
25

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to divert 2 cfs, 720 acre-feet per year from Naneum Creek for the irrigation of  
1 70 acres and stock water in the NE $\frac{1}{4}$  and a portion of the SE $\frac{1}{4}$  of Section 32, T.  
2 19 N., R. 19 E.W.M. The described point of diversion is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
3 Section 29. The date of first water use shown is spring of 1884. WRC No.  
4 026210 asserts a right to divert 0.5 cfs, 100 acre-feet per year from Wilson  
5 Creek for the irrigation of 1 acre and stock water in a portion of the SE $\frac{1}{4}$  of  
6 Section 32. The point of diversion described is in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32.  
7 The date of first water use shown is spring of 1943. WRC No. 056723 duplicates  
8 WRC 026210, except the date of first water use shown is spring of 1884. WRC  
9 No. 026204 asserts a right to divert 0.80 cfs, 300 acre-feet per year for the  
10 irrigation of 40 acres, stock water and domestic supply in the NE $\frac{1}{4}$  of Section  
11 32, T. 19 N., R. 19 E.W.M. The point of diversion described is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
12 Section 29.

Both the State's Investigation Report for the Thomas claim and the RCW  
14 90.14 claims filed by James Thomas describe diversions from Wilson-Naneum Creek  
15 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29. The State's map exhibit Insert A, SE-2 shows a  
16 diversion in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29, marked with No. 10, to a ditch that  
17 traverses the SE $\frac{1}{4}$  of Section 29 and enters Section 32 near the north quarter  
18 corner and continues south through Section 32 along the west line of the Thomas  
19 property. This ditch leads from the diversion to which Mrs. Thomas testified.  
20 Two diversions that are not numbered are located on a braid of the creek in the  
21 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29 and ditches from the diversions flow through the SE $\frac{1}{4}$  of  
22 Section 29 into the NE $\frac{1}{4}$  of Section 32. Mrs. Thomas did not testify to using  
23 those diversions.

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In addition to the water right claims filed for Wilson and Naneum Creeks  
1 previously discussed, Mr. Thomas also filed several claims pursuant to RCW 90.14  
2 for use of springs located in the NE $\frac{1}{4}$  of Section 32. However, there were no  
3 rights asserted in this proceeding for use of any of the springs.  
4

This land has been in the Thomas family since 1894, when Mrs. Thomas'  
5 father-in-law, W. R. Thomas, acquired the land. Mrs. Thomas and her husband  
6 acquired ownership of the land in 1936. At that time 100 acres were being  
7 irrigated. Shortly thereafter her husband began clearing and developing an  
8 additional 40 acres and 140 acres have been irrigated since the late 1930's or  
9 early 1940's. Mrs. Thomas familiarity with the property extends to the early to  
10 mid 1920's. As a child she accompanied her grandparents to the Thomas property  
11 to pick cherries and at that time 100 acres were also being irrigated.  
12

W. R. Thomas was a party to three Kittitas County Superior Court cases  
13 related to water use on Wilson and/or Naneum Creeks. He was a defendant in  
14 Ferguson v. The United States National Bank of Portland, Oregon, et al., a 1901  
15 proceeding to determine the rights amongst the parties to the waters of Upper  
16 Wilson and Naneum Creeks, the combined Wilson-Naneum Creek and Lower Naneum  
17 Creek (resulting in Decree No. 2607). During that proceeding W. R. Thomas  
18 disclaimed any right in the waters being litigated. He was also a defendant in  
19 Olive Sander, et al, v. Charles Bull and Kate Bull, et al., a 1911 proceeding  
20 that resulted in Decree No. 4121. The decree did not determine the rights of  
21 the various defendants between themselves, but determined the rights of the  
22 plaintiffs against the defendants. The only water rights that were defined in  
23 the decree were those of the plaintiffs and intervenors. Therefore, the decree  
24 itself is not helpful in defining the water rights that may be appurtenant to  
25

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the Thomas property. It does show that Thomas was using water from  
1 Wilson-Naneum Creek and that the plaintiffs alleged that use was to their  
2 detriment. However, a claimant in the Acquavella proceeding, Kayser Ranch,  
3 entered Exhibit No. DE-1526, which is a copy of the testimony and proceedings  
4 for Sanders v. Bull. W. R. Thomas testified in that proceeding about the land  
5 he owned in Section 32, along with other lands he owned at that time. According  
6 to Mr. Thomas' testimony in 1911, he was farming approximately 75 acres of land  
7 and 65 of those acres were being irrigated with water diverted from  
8 Wilson-Naneum Creeks. He testified that there was additional land that was  
9 susceptible to irrigation.  
10

W. R. Thomas was the plaintiff in Thomas v. Roberts, et al., which was  
11 initiated in 1919 to settle disputes over the rights to use water from both  
12 Wilson and Naneum Creeks and the combined flows of Wilson-Naneum Creek. A  
13 decree was entered on November 16, 1925. The decree prioritized the rights of  
14 each of the parties as they related to each other and established the quantity  
15 of water to which each party was entitled. W. R. Thomas owned three separate  
16 parcels for which he was asserting a right. The Court found that he was  
17 entitled to 65 inches of the combined flow of Wilson-Naneum Creek for use on  
18 what was referred to as the "Shelton Tract", except as affected by the case of  
19 Ferguson v. United States National Bank of Portland, et al.. The Shelton Tract  
20 is the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M. (The  
21 Referee notes that the Thomas decree and findings of fact describe the Shelton  
22 tract as being the NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. However, Attorney  
23 Hutton filed a Notice of Scrivener's Error on November 13, 1989, identifying  
24 that an error had been made in describing the lands owned by W. R. Thomas at the  
25

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time of the proceeding. No one objected to this notice and a 1913 map showing  
1 land ownerships at that time, which was submitted as an exhibit by Kayser Ranch,  
2 confirms this position). The Court stated that the right to 65 inches was  
3 initiated in the spring of 1884, which is the priority date asserted by Edith  
4 Thomas. The Court in the Thomas opinion did not specify what was meant by  
5 "except as affected by the Ferguson decree. However, the decree ranked the  
6 parties of the case against each other and the Thomas' entitlement to water  
7 initiated in 1884 was ranked inferior to entitlements with subsequent initiation  
8 dates if the other person was also a party to Ferguson and awarded a water  
9 right. Therefore, although the right resulting from the Thomas decree for this  
10 property has a priority date of 1884, it is subordinate to rights with later  
11 priority dates that were awarded in the Ferguson decree.

The Thomas land is riparian to Wilson Creek. Although only 65 acres were  
13 being irrigated in 1911 at the time of the Sanders v. Bull proceeding, Thomas  
14 had until December 31, 1932, to perfect the water right being established under  
15 the Riparian Doctrine, see Department of Ecology v. Abbott, 103 Wn.2d 686, 694  
16 P.2d 1071 (1985). According to Mrs. Thomas' testimony, 100 acres were being  
17 irrigated by 1932. Since that time, in the late 1930's the Thomas' increased  
18 the number of acres being irrigated to 140 acres and are asserting a right to  
19 divert 3 cfs, rather than the 1.30 cfs that was recognized in Thomas v.  
20 Roberts. The quantity of water recognized in the Thomas v. Roberts decree was  
21 based on irrigating 65 acres and awarded 0.02 cubic foot per second per acre  
22 irrigated. The Referee believes that it would be reasonable to use the same per  
23 acre quantity for the additional 35 acres that were first irrigated after 1911.  
24 Therefore, a right for the use of 2.0 cubic feet per second for the irrigation

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of 100 acres is appropriate. An additionaly 40 acres were developed and  
1 irrigated after 1936. At that time, the only way to establish a new water right  
2 was through compliance with the permitting procedures of RCW 90.03. There is no  
3 evidence in the record that occurred.  
4

Ms. Thomas is asserting a right to use 7 acre-feet per acre irrigated,  
5 which would be 700 acre-feet per year for the 100 acres for which the Referee  
6 believes a right exists. However, that quantity cannot be withdrawn at the  
7 instantaneous diversion of 2.0 cfs. Five acre-feet per acre irrigated is a much  
8 more realistic figure to expect to be used if the diversion is limited to the  
9 quantity for which a right exists.  
10

The Referee recommends that a water right be confirmed to Ms. Thomas from  
11 the combined flow of Wilson-Naneum Creek for the diversion of 2.0 cubic feet per  
12 second, 500 acre-feet per year for irrigation of 100 acres and 2 acre-feet per  
13 year for stock watering. Although Mrs. Thomas testified to using three points  
14 of diversion, the historic record indicates that only one diversion was used  
15 when the water right was established. Clearly the diversion that utilizes a  
16 pump on the creek was established long after the adoption of the water code and  
17 the second diversion from Wilson Creek for use on the lawn and fruit trees  
18 likely also was established after adoption of the water code. Since 1917,  
19 points of diversion could only be added to a water right through compliance with  
20 the change provisions of RCW 90.03.380. There is no evidence this occurred.  
21  
The Referee recommends that the only point of diversion for the confirmed right  
22 be in the SE~~N~~E~~N~~ of Section 29.  
23

In order to reduce the place of use for the right being recommended for  
24 confirmation to reflect an area more closely the size of the acres authorized to  
25

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28

be irrigated, the Referee has referred to exhibit No. DE-1179 submitted by Mrs. Thomas. This is an aerial photograph of Section 32. Upon review of that photograph, the Referee recommends that the place of use for the 100 acres authorized for irrigation be the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , the S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32. Due to the creek flowing through this land and the claimants house being located within this area, it appears to the Referee that most of this described area is being irrigated.

Each of Mrs. Thomas' daughters own a portion of the land that the Referee intends to designate as the place of use. In hopes of clarifying the right, the Referee will divide the recommendation between Ms. Thomas and Ms. Powers based on what is in the record and submitted with the Motions to Join and Substitute Parties. If necessary this division can be revised during the exception phase of this proceeding if an exception is filed by either party.

The Referee recommends that a right for 34 acres be awarded for the lands now owned by Sandra Thomas and a right for 66 acres be awarded for the lands now owned by Kay Powers.

COURT CLAIM NO. 00782 -- Chas. A. Priebe  
& Carrie Priebe

The Priebes filed a Statement of Claim asserting a right to use waters from an unnamed stream tributary of Mercer Creek for stock watering. Mr. Priebe testified at the evidentiary hearing. Recently, Mr. Priebe contacted the Referee's office and stated his intent to not pursue the claim. He has sufficient water for his needs from the Cascade Irrigation District and his domestic well. Based on that contact, the Referee will give the claim no

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1 further consideration and it is recommended that a water right not be  
2 confirmed.

3 COURT CLAIM NO. 00356 -- M. Joanne Pugh  
4 & Estate of Durward Pugh

5 Court Claim No. 00356 was filed by the Pughs asserting a right to use  
6 waters from Reecer Creek for the irrigation of 1.4 acres. Greg Pugh, the  
7 claimants' son testified at the evidentiary hearing.

8 The claimants property is that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2,  
9 T. 17 N., R. 18 E.W.M. lying west of Mercer Creek. Court Claim No. 00356 and  
10 Water Right Claim No. 052031, which was filed by a prior owner of the Pugh land,  
11 describes the creek as being Reecer Creek. However, State's Exhibit SE-2 and  
12 the testimony by other claimants show it as being Mercer Creek. Approximately  
13 one-half acre of lawn and garden is irrigated with water from Mercer Creek. A  
14 pump is placed on the creek which feeds an underground sprinkler system. Mr.  
15 Pugh believes that the system was put in place when the house was built around  
16 1974. There are small ditches on the property, providing evidence that it was  
17 surface irrigated in the past. Mr. Pugh was not able to provide any history for  
18 the property beyond his parent's ownership. Greg Pugh is now the owner of the  
19 property, however, the paperwork has not been filed to transfer the claim into  
20 his name.

21 Water Right Claim No. 052031 was filed by Willard Hudson pursuant to the  
22 requirements of RCW 90.14. It asserts a right to divert 30 gallons per minute 8  
23 acre-feet per year from Reecer Creek for the irrigation of 2.4 acres in that  
24 portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 west of Reecer Creek. The Referee is

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1 aware of there being confusion about the correct names of creeks in the  
2 Ellensburg area. The creek referred to is Mercer Creek, not Reecer Creek.  
3

4 The Referee cannot recommend that a water right be confirmed under Court  
5 Claim No. 00356. There has not been sufficient evidence presented to show that  
6 a water right was established under the Riparian Doctrine through beneficial use  
7 of the water prior to December 31, 1932.  
8

9 COURT CLAIM NO. 01329 -- Merton Purnell  
10

11 The statement of claim was filed with the Court asserting rights to use  
12 several sources of water in Subbasins No. 9 and 10. Those sources lying within  
13 Subbasin No. 10 will be addressed in the Report of Referee for that subbasin.  
14 Mr. Purnell, who was represented by Attorney Hugh Spall, testified at the  
15 evidentiary hearing. In addition Pat Jenkins, who leases the land, and his  
16 father Harold Jenkins a prior owner of the land testified at the hearing. On  
17 March 15, 1990, Andy H. Gustafson was deposed and the deposition published in  
18 open Court on January 16, 1991. Mr. Gustafson, who was 88 years old at the time  
19 of the deposition lived in the area and at one time owned the Purnell property.  
20

21 Mr. Purnell owns and is asserting a water right for the SE $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{2}$ SE $\frac{1}{4}$  of  
22 Section 10; the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 15 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 14,  
23 all in T. 18 N., R. 19 E.W.M. He irrigates 175 acres in Sections 10 and 15 and  
24 an additional 13 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 14. The crops are pasture and  
25 hay and up to 150 cow/calf pairs are raised, drinking from the various ditches  
26 and water sources on the property. The land is also assessed by the Kittitas  
27 Reclamation District.  
28

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The land in Sections 10 and 15 is irrigated with water diverted from the  
1 combined flows of Wilson-Naneum Creeks. The diversion is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
2 Section 28, T. 19 N., R. 19 E.W.M. and the ditch is over three miles in length,  
3 going through several different properties. The land is irrigated by flood and  
4 rill practices. Mr. Jenkins testified that there are two places where creek  
5 water enters the property, one crosses over the Highline Canal where the flow  
6 was measured at 0.75 cubic foot per second and the second is a undershot to the  
7 canal that carries between 0.50 and 1.0 cubic foot per second. Usually creek  
8 water is not available after July 1 and KRD water is relied upon. When creek  
9 water is available he will irrigate two or three times, with a 10 day rotation,  
10 for a total of 30 days of water use. A use of 1.75 cubic feet per second for a  
11 30 day period would result in the use of 103.95 acre-feet per year.  
12

Mr. Purnell bought the property from Harold Jenkins in 1969 and the land is  
13 being irrigated in the same manner as was being done at that time. Water rights  
14 for the land were addressed in both the Ferguson decree and the Thomas v.  
15 Roberts decree. The Ferguson decree awarded 100 inches with an 1882 date of  
16 priority for the NW $\frac{1}{4}$ , SW $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 18 N., R. 19 E.W.M. Mr.  
17 Purnell's land in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10 is entitled to a proportionate share  
18 of that water. The Roberts decree stated that 50 inches of that water was being  
19 used on the W $\frac{1}{2}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 10, leaving 50 inches for the E $\frac{1}{2}$ SW $\frac{1}{4}$ ,  
20 E $\frac{1}{2}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10. Mr. Purnell is asserting a right for 9 of those  
21 50 inches. The NW $\frac{1}{4}$  of Section 15 was also entitled to a water right for 100  
22 inches with a priority date of 1891 and Mr. Purnell is asserting a right to 25  
23 inches. The N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 15 was awarded a right with an 1887 date of  
24 priority for 40 inches of water. Mr. Purnell is irrigating sufficient acreage  
25

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1 within the lands described to support his claim. He is also claiming a right  
2 for 8 and 1/3 inches based on Ferguson, that the Referee has not been able to  
3 track down in the decree. The sections of the decree cited in the claimants  
4 post hearing brief do not appear to pertain to the Purnell property.

5 The Referee can find foundation in the decrees for 74 inches of water, or  
6 1.48 cubic feet per second. Mr. Jenkins testified to using between 1.5 and 1.75  
7 cubic feet per second on the lands in Sections 10 and 15. The Referee could not  
8 find anything in the decrees to show that a water right has been established for  
9 the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10 and a right for only 9 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10  
has been identified.

10 The following water right claims were filed by Mr. Purnell pursuant to the  
11 requirements of RCW 90.14:

12 WRC No. 117961 asserts a right to divert 1.25 cfs, 63 acre-feet per year  
13 from Wilkins Ditch for the irrigation of 27 acres and stock watering in the  
14 NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15 and the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 18 N., R. 19 E.W.M. WRC  
15 No. 117956 asserts a right to divert 2.5 cfs, 249 acre-feet per year from  
16 Wilkins Ditch for the irrigation of 83 acres and stock watering in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
17 Section 10 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T. 18 N., R. 19 E.W.M. Wilkins Ditch  
18 diverts from Wilson-Naneum Creek. WRC No. 117958 asserts a right to divert 2.5  
19 cfs, 210 acre-feet per year from a drain for the irrigation of 42 acres and  
20 stockwatering in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15, T. 18 N., R. 19 E.W.M. WRC No.  
21 117959 asserts a right to divert 2.5 cfs, 483 acre-feet per year from a wastewater  
22 for the irrigation of 96 acres and stock watering in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10  
23 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T. 18 N., R. 19 E.W.M. WRC No. 117962 asserts a  
24 right to divert 0.25 cfs, 89 acre-feet per year from a drain for the irrigation  
25

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of 6 acres and stock watering in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
1 Section 15, T. 18 N., R. 19 E.W.M. WRC No. 117965 asserts a right to divert  
2 0.50 cfs, 148 acre-feet per year from a wastewater for the irrigation of 23 acres  
3 and stock watering in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T. 18 N., R. 19 E.W.M. WRC No.  
4 117957 was filed asserting a right to use water diverted from the Highline  
5 Canal. The Highline Canal carries and deliver water diverted by the Kittitas  
6 Reclamation District, which is a major claimant whose rights have been  
7 determined through the Major Claimant Pathway.  
8

Four of the water right claims describe the source of water as being drains  
9 or wasteways (No. 117958, 117959, 117962 and 117965). The State's map, SE-2  
10 shows ditches carrying water diverted from Wilson-Naneum Creek at approximately  
11 the locations of the drains and wasteways described in the water right claim  
12 forms. Undoubtedly those ditches capture return flow or wastewater from  
13 updrainage lands irrigated with Wilson-Naneum Creek. However, the source of  
14 that water is the creek and the Referee believes that if the evidence  
15 establishes that a right to creek water exists, describing the sources as drains  
16 and waste water on the water right claims will not prevent confirmation of a  
17 water right. Although the claimant is asserting a right to irrigate the S $\frac{1}{4}$ SE $\frac{1}{4}$   
18 of Section 10, the only water right claim that asserts a right for that area is  
19 WRC No. 117962, which asserts a right to irrigate 6 acres lying in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
20 Section 10 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15.  
21

Based on the testimony and evidence in the record, the Referee concludes  
22 that rights exist to the extent they were addressed in the Ferguson and Roberts  
23 decrees. There is no evidence of a water right for the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10. In  
24 order to prevent the place of use from being considerably larger than the number  
25

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of acres authorized for irrigation, the Referee will refine the description  
1 somewhat. The claimant through the exception phase can seek modification of  
2 recommended place of use. The Referee recommends that the following water rights  
3 be confirmed for use of Wilson-Naneum Creek under Court Claim No. 01329:  
4

With a June 30, 1882, date of priority, a right for the diversion of 0.18  
5 cubic foot per second from May 1 through June 30 and 0.09 cfs in April and from  
6 July 1 through October 15, 28 acre-feet per year for the irrigation of 9 acres  
7 and stock water in the S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 18 N., R. 19 E.W.M.; with a  
8 June 30, 1891, date of priority, a right for the diversion of 0.50 cubic foot  
9 per second from May 1 through June 30 and 0.25 cubic foot per second in April  
10 from July 1 through October 15, 100 acre-feet per year for the irrigation of 25  
11 acres and stock water in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15, T. 18 N., R. 19 E.W.M.; with  
12 a June 30, 1887, date of priority a right for the diversion of 0.80 cubic foot  
13 per second from May 1 through June 30 and 0.40 cubic foot per second in April  
14 and from July 1 through October 15, 160 acre-feet per year for the irrigation of  
15 40 acres and stock water in that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 15, T. 18 N.,  
16 R. 19 E.W.M. lying west of Schnebly Creek.  
17

At the hearing the claimant also asserted a right to use waters from  
18 Wilson-Naneum Creek for the irrigation of 13 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 14,  
19 T. 18 N., R. 19 E.W.M. This land was addressed in the Roberts decree, where it  
20 was stated that Carrie E. Kregness and her husband were the owners of the SW $\frac{1}{4}$ SW $\frac{1}{4}$   
21 of Section 14, the E $\frac{1}{4}$ NW $\frac{1}{4}$ , the W $\frac{1}{4}$ NE $\frac{1}{4}$ , and the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 23, T. 18 N.,  
22 R. 19 E.W.M. and in the year 1886, Eric Erickson appropriated 115 inches of  
23 water from Naneum and Wilson Creeks for the irrigation of those lands. The  
24 decree awarded 115 inches of water for those lands. Mr. Purnell is asserting a  
25

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right to 19 inches of water to irrigate 13 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 14.  
At the time of the hearing that water had not been used for several years. At  
least by 1987 the ditch that served this land had been covered over by upstream  
neighbors. Mr. Purnell expressed a desire to resume using that water, but did  
not indicate when that might be. The issue was not pursued further because at  
that time it was felt that the adjudication was a legal proceeding that was a  
sufficient cause to prevent relinquishment of a water right, RCW 90.14.140.  
However, due to the Merrill ruling, relinquishment is now being applied in this  
proceeding. Additionally, the Referee could not identify a claim filed pursuant  
to RCW 90.14 that describes the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 14. Failure to file a claim  
waives or relinquishes any right that may have existed, see RCW 90.14.071. Due  
to the period of nonuse and the need to address whether the right has  
relinquished for five or more years of nonuse and the lack of an RCW 90.14 water  
right claim, the Referee does not recommend that a right be confirmed for using  
water out of Wilson-Naneum Creek for irrigating the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 14.

COURT CLAIM NO. 00969 -- Larry Raap

Court Claim No. 00969 was originally filed by David and Margaret Baker  
asserting the right to use waters from Naneum Creek for irrigation and stock  
watering. Larry Raap was substituted for the Bakers on November 30, 1988. Mr.  
Raap testified at the evidentiary hearing.

Mr. Raap's property lies in Government Lot 3 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4,  
T. 17 N., R. 19 E.W.M. He is irrigating 17 acres with water diverted from  
Naneum Creek. Water is diverted from a branch of Naneum Creek that is piped  
under the Cascade Irrigation District Canal. The land is rill irrigated with a

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concrete ditch along the north side of the field and rills running north to  
1 south. The land is planted to hay, but periodically livestock are on the  
2 property. He owns other land that is irrigated solely with water delivered by  
3 the Cascade Irrigation District. The Referee believes that land lies in the NE $\frac{1}{4}$   
4 of Section 4. The land that is irrigated from Naneum Creek does not receive any  
5 other water.

6 Mr. Raap's land is part of the land owned by James Ferguson at the time the  
7 Ferguson decree was entered. According to the Findings of Fact, Ferguson  
8 settled on the E $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M. on  
9 July 5, 1872. The decree awarded him 160 inches of water from Naneum Creek for  
10 use on that land. The decree stated that one inch of water would be used to  
11 irrigate one acre of land in May and June and one-half inch of water for each  
12 acre the rest of the year.

13 Besides Mr. Raap, there are several other claimants in this proceeding who  
14 are successors to James Ferguson and share a portion of the water right. Those  
15 claimants are: Gwendolyn and Robert Cooke, Edith Thomas, Morrison Ranches,  
16 Frank Phelps, Maurice and Ruth Ann Olney. Their claims are addressed elsewhere  
17 in this report (see table of contents).

18 Water Right Claim No. 003458 was filed by David G. Baker pursuant to the  
19 requirements of RCW 90.14. It asserts a right to divert 2 cubic feet per  
20 second, 600 acre-feet per year from Naneum Creek for the irrigation of 17.97  
21 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  L 3, Tx 19, Section 4, T. 17 N., R. 19 E.W.M. The point of  
22 diversion is described as being in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, T. 17 N.,  
23 R. 19 E.W.M. Additionally, Certificate of Change of Point of Diversion recorded  
24 in Volume 2, page 882 may apply to the claimant's water right. It authorized  
25

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several people, including David G. Baker (from whom Mr. Raap purchased) to  
1 change the point of diversion of 3.2 cubic feet per second (which would be 160  
2 inches) from Naneum Creek from a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N.,  
3 R. 19 E.W.M. to a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16. The branch of Naneum Creek  
4 used by Mr. Raap separates from the main Naneum Creek near the center of the NW $\frac{1}{4}$   
5 of Section 16 and then separates again in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16. It has not  
6 been made clear to the Referee whether this lower separation is a diversion into  
7 a ditch or a stream. The State's Map Exhibit seems to show it as a stream  
8 continuing on to the south, with a ditch going off to the west and then south.  
9 Many claimants have called the branch Neally Creek. The water right claim filed  
10 by Mr. Baker describes the point of diversion as a point where the stream  
11 separates.

12       The Referee recommends that a right be confirmed under Court Claim No.  
13 00969 for the use of waters from Naneum Creek with a July 5, 1872, date of  
14 priority for the diversion of 0.34 cubic foot per second in May and June and  
15 0.17 cubic foot per second in April and July 1 through October 15, 85 acre-feet  
16 per year for the irrigation of 17 acres in that portion of Government Lot 3 of  
17 Section 4, T. 17 N., R. 19 E.W.M. described as follows: beginning at a point on  
18 the quarter section line which is 30 feet S 5°55' W of the quarter section  
19 corner on the north boundary line of said Section 4, thence S 5°55' W on said  
20 quarter section line 1,238.6 feet; thence S 85°38' W 579.0 feet to the east  
21 boundary line of the right of way of the county road; thence N 3°18' W along  
22 said boundary line 1,211.5 feet to the south boundary line of the right of way  
23 of State Road No. 7; thence N 82°12' E 295 feet; thence N 86°51' E 484 feet to  
24 the point of beginning.

25  
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1 COURT CLAIM NO. 01236 -- Gayle V. Redd  
2 & Karen K. Redd

3 Court Claim No. 01236 was originally filed with the Court by N. N. Eaton  
4 and Sons. On March 1, 1991, Gayle V. and Karen K. Redd were substituted for the  
5 Eatons. Jack Eaton and Gayle Redd testified at the evidentiary hearing.

6 The land described in the claim lies in the ~~NE%~~ of Section 19, T. 17 N.,  
7 R. 19 E.W.M. lying east of Interstate-82 and consists of approximately 58  
8 acres. The land is planted in pasture and flood irrigated. Varying numbers of  
9 cattle are on the ground depending on the time of year. The primary source of  
10 irrigation water is Bull Ditch. Bull Ditch and one of the branches of Naneum  
11 Creek join on the Jansen property just north of the claimants' land and are one  
12 through the ~~NE%~~ of Section 19. Although the Court claim appears to also assert  
13 a right to use waters from Naneum Creek, the testimony led the Referee to  
14 conclude that it is actually Bull Ditch water, which includes water from Naneum  
15 Creek, that is being used. The claimant is also asserting a right to use water  
16 from a spring that emerges near the northeast corner of Section 19. The Eatons  
17 installed tile in the spring area to allow for the flow to be carried over to  
18 Naneum Creek/Bull Ditch. Livestock drink from the spring and the channel that  
19 leads to the creek. Although the spring has been developed somewhat, the  
20 Referee believes that it is a non-diversionary stock water use that is being  
21 made of the water. This use is covered by the stock water stipulation discussed  
22 on page 4 of this report and no other right is needed. There is a slough along  
23 I-82, near the claimants' westerly boundary line that is also used for stock  
24 watering. The slough captures drainage and return flows from neighboring

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lands. The testimony did not indicate that there was a diversion from the  
1 slough.

2 Water Right Claim No. 120718 was filed by N. N. Eaton & Sons pursuant to  
3 RCW 90.14. It asserts a right to divert 5 gallons per minute, 8 acre-feet per  
4 year from a spring for stock watering. The place of use on the claim is  
5 Section 19, T. 17 N., R. 19 E.W.M. The spring location on the claim is  
6 approximately the same location marked on the map for the spring to which Mr.  
7 Eaton testified. The Referee can find no RCW 90.14 claim filed specifically for  
8 use of Naneum Creek water on the Eaton property (besides the claims filed by  
9 Bull Canal Company).

10 Based on the evidence presented, the Referee concludes there is a  
11 non-diversionary stock water right associated with the spring and slough that is  
12 covered by the stock water stipulation discussed on page 4 of this report. No  
13 other right will be recommended for confirmation under Court Claim No. 01236.

14 Bull Canal Company is a claimant in this proceeding, whose claim is being  
15 addressed on page 101 of this report.

17 COURT CLAIM NO. 00892 -- Ronald C. Rees

18 Court Claim No. 00892 was originally filed by Joseph E. Stoltman. On  
19 January 11, 1991, Clyde M. Rees was substituted for Mr. Stoltman. Mr. Rees  
20 appeared at the evidentiary hearing and testified in support of the claim. On  
21 May 10, 1995, Ronald C. Rees was substituted for Clyde M. Rees.

22 The land described in Court Claim No. 00892 consists of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , the  
23 NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and approximately the north 178 feet of the S $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , all in Section 8,  
24 T. 18 N., R. 19 E.W.M. There was some confusion about the area originally owned

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1 by the Stoltmans, as more land was mapped on State's Exhibit SE-2. However, the  
2 claim clearly describes the land and the Rees family succeeded to all of the  
3 land described in the Court claim. The claim describes three sources of water,  
4 Wilson Creek, Lyle Creek and Mountain Creek. Mountain Creek is not identified  
5 on SE-2. Wilson Creek does split in the N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 8, with an unnamed  
6 branch flowing through the Rees property. This may be what is being called  
7 Mountain Creek. Lyle Creek separates from Wilson Creek south of the Rees  
8 property, so Wilson Creek is the actual source of water.

9         Approximately four acres are irrigated with a diversion located in the SW $\frac{1}{4}$   
10 of Section 5. The four acres lies in the middle of the N $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8  
11 west of the previously mentioned branch of Wilson Creek. Seventeen acres lying  
12 in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8 east of the branch of Wilson Creek are  
13 irrigated with water diverted from the branch of Wilson Creek. All of the land  
14 is flood or rill irrigated. Livestock are raised on the property and between 20  
15 and 30 head have access to the creek and irrigation ditches. Often one cutting  
16 of hay is raised and after it is cut the fields are used for cattle grazing.  
17 Mr. Rees was not real familiar with the history of the land, but the Stoltmans  
18 had owned it for 37 years and farmed it in much the same way as it is presently  
19 being farmed. Vernon Stokes testified to irrigating grain on the property in  
20 the early 1950's.

21         Joe E. Stoltman filed two water right claims pursuant to the requirements  
22 of RCW 90.14. WRC No. 002115 asserted a right to divert 2 cfs, 5 acre-feet per  
23 year from Lyle Creek for the irrigation of 16 acres within the land presently  
24 owned by Mr. Rees. WRC No. 002116 asserts a right to divert 1 cfs, 5 acre-feet  
25 per year from Mountain Creek for the irrigation of 10 acres within the land

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1 presently owned by Mr. Rees. The Referee believes that the 5 acre-feet per year  
2 claimed in both is meant to be 5 acre-feet per acre.

3       Although Mr. Rees did not provide historical information, other claimants  
4 who own land in the NW $\frac{1}{4}$  submitted exhibits that are helpful. Additionally, the  
5 Referee reviewed the Decree No. 96 and the Decision in Sander v. Jones, dated  
6 August 12, 1890. The claimants land in the NW $\frac{1}{4}$  of Section 8 was part of a  
7 larger parcel for which James Jude received a patent on January 22, 1890. That  
8 larger parcel was the N $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 18 N.,  
9 R. 19 E.W.M. James Jude was a defendant in Sander v. Jones. The decree awarded  
10 James Jude 20 inches of water and indicated that the water was appropriated  
11 between 1883 and 1887. The decree provided that one inch of water was  
12 sufficient for the irrigation of one acre, therefore, the 20 inches of water  
13 awarded to Jude would have been sufficient for 20 acres. The Jude property was  
14 riparian to Wilson Creek. Approximately 12 irrigated acres lie within the Rees  
15 land that was homesteaded by the Judes. There are two other claimants in this  
16 adjudication who are asserting a right based on being successors to Jude.  
17 William P. Woods, under Court Claim No. 05316, and Gerald and Ruth Brunner,  
18 under Court Claim No. 02214, each are asserting a claim for the irrigation of 20  
19 acres. Rights are being asserting for the irrigation of a total of 52 acres,  
20 but the extent of the right based on the decree is 20 acres. There has been no  
21 evidence offered to show that an additional right beyond that awarded in Decree  
22 No. 96 is appurtenant to the property. Mr. Rees owns a total of approximately  
23 40 acres within the area for which a right was awarded, Mr. Wood owns 20 acres  
24 and Mr. Brunner owns 20 acres. There is insufficient evidence to show where the  
25 20 acre right was being exercised within the Jude land when the right was

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1 established in the 1800's and the Referee doubts that information is available  
2 today. Therefore, the Referee will divide the 20 acre right amongst the three  
3 claimants, based on the number of acres they own within the original Jude  
4 property. Based on this, Mr. Rees will have one-half of the right, or ten  
5 acres, and Mr. Wood and the Brunners will each have a right to one-quarter of  
6 the right, or five acres.

7 Mr. Rees also owns and irrigates land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8. This  
8 land was never owned by James Jude, so the water right just discussed is not  
9 appurtenant to this land. The Referee estimates that 9 acres are irrigated  
10 within the land owned by Mr. Rees in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8. At the time of  
11 the Sander v. Jones litigation that land was owned by Mary A. Thomas, who owned  
12 the entire SW $\frac{1}{4}$  of Section 8 and the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7. The Findings of Fact  
13 states that in 1889 she appropriated 225 inches of water. The land was  
14 originally homesteaded by James R. Van Alstine, who proved up on the homestead  
15 on April 14, 1887, but had been in possession of the land since 1877. The land  
16 was riparian to Wilson Creek. There are several other claimants who own  
17 portions of the land for which Mary A. Thomas was awarded a water right, but  
18 claims are being made for the irrigation of less than 225 acres, therefore,  
19 there does not appear to be a conflict between the claimants.

20 Mr. Rees did not provide testimony about the quantity of water used,  
21 however, the decree limited the right to one miner's inch per acre in May and  
22 June and one-half miners inch per acre the rest of the irrigation season. Were  
23 this quantity available the entire irrigation season, up to 5 acre-feet per acre  
24 could be used. The Referee proposes to use this quantity. An additional one  
25 acre-foot per year may be used for stock watering.

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The Referee recommends that a right be confirmed to Ronald C. Rees under  
1 the Prior Appropriation Doctrine for the use of Wilson Creek with a June 30,  
2 1883, date of priority for the diversion of 0.20 cubic foot per second from  
3 May 1 through June 30 and 0.10 cubic foot per second in April and from July 1  
4 through October 15, 50 acre-feet per year for the irrigation of 10 acres and  
5 one-half acre-foot per year for stock watering in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8 and  
6 under the Riparian Doctrine with a June 30, 1877, date of priority for the  
7 diversion of 0.18 cubic foot per second from May 1 through June 30 and 0.09  
8 cubic foot per second in April and from July 1 through October 15, 45 acre-feet  
9 per year for irrigation of 9 acres and one-half acre-foot per year for stock  
10 watering in in that portion of the N $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and north 178 feet of the S $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$   
11 of Section 8 lying east of the branch of Wilson Creek that flows through the  
12 property.  
13

COURT CLAIM NO. 01981 -- Ronald C. Rees

Richard and Mary Liliedahl filed a claim with the Court for use of waters  
16 from Whiskey Creek for irrigation and stock watering. On January 25, 1991,  
17 Clyde M. Rees was substituted for the Liliedahls. Mr. Rees and Victor Munz,  
18 whose family owned the land from 1918 until 1960, testified at the evidentiary  
19 hearing. On May 10, 1995, Ronald C. Rees was substituted for Clyde Rees.

The claimant's land lies in the E $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 27, T. 18 N., R. 18 E.W.M.  
21 lying southeast of Whiskey Creek. Water is diverted from Whiskey Creek at a  
22 point 400 feet south and 5 feet west of the northeast corner of Section 27 and  
23 used to irrigated 40 acres of pasture. The land is flood irrigated. There was  
24 no testimony about the quantity of water used to irrigate the land. The land  
25

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1 lies just below the Cascade Irrigation District canal and the claimant is  
2 assessed and receives Cascade water for all of the land.

3 According to Mr. Munz's testimony, when his family acquired the property in  
4 1918, a portion of the land now owned by Rees was Timothy hay and a portion was  
5 an apple orchard. His father removed the orchard. According to Mr. Munz, prior  
6 to construction of the Cascade Canal, the land was irrigated solely from the  
7 creek. A priority date of 1890 was asserted on the Court claim, however,  
8 neither Mr. Munz or Mr. Rees could provide anything to support that date. There  
9 is nothing in the record to show ownership of the land prior to the Munz family  
10 purchasing it in 1918. Section 27 very likely was conveyed by the Federal  
11 government to Northern Pacific Railroad, as most odd numbered sections went to  
12 N.P.R.R. for potential construction of the railroad and then lands on which the  
13 railroad was not constructed were sold to private parties.

14 The claimant's land is riparian to Whiskey Creek. The evidence shows that  
15 use of the creek began prior to 1918 and has continued to the present. Cascade  
16 Irrigation District water is also used on the land, but Mr. Munz was very  
17 specific about releases from the canal into the creek and use of creek water.  
18 However, in order to establish a priority date it is necessary to know when  
19 steps were first taken to sever the land from Federal ownership. Additional  
20 evidence is also needed about the quantity of creek water used.

21 RCW 90.14, the Claims Registration Act, was passed by the legislature in  
22 1967 requiring that water right claims be filed for uses of water begun prior to  
23 adoption of the state's water code and for which permits or certificates had not  
24 issued. There is no evidence that a water right claim was filed for the  
25 claimants use of Whiskey Creek water. Failure to file a claim as required in

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1 RCW 90.14 waives and relinquishes any right that may have existed, RCW  
2 90.14.071.

3 Due to the lack of an RCW 90.14 claim for the water use, and insufficient  
4 evidence to establish a priority date, the Referee cannot recommend that a water  
5 right be confirmed under Court Claim No. 01981. This recommendation does not  
6 affect the claimant's use of water delivered by Cascade Irrigation District, a  
7 major claimant in this proceeding, whose rights are being determined through the  
8 Major Claimant Pathway.

9  
10 COURT CLAIM NO. 01163 -- Kent D. Richards  
11 & Carolyn E. Richards

12 Kent D. and Carolyn E. Richards submitted a statement of claim for the use  
13 of waters from Lyle Creek and unnamed springs for irrigation and stock water.  
14 Mr. Richards testified at the evidentiary hearing.

15 The Richards' property lies in the south 1200 feet of the east 375 feet of  
16 the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, T. 18 N., R. 19 E.W.M. They own 10 acres and irrigate  
17 8 acres with water diverted from what they and their neighbors call Lyle Creek.  
18 There is some uncertainty about the creek channel they use actually being Lyle  
19 Creek or a portion of Wilson Creek. However, since the claimants in the area,  
20 and Ecology in its investigation reports, call the source Lyle Creek, so shall  
21 the Referee. The claimants' land is pasture, on which sheep are raised. The  
22 number of sheep varies, with 22 being the maximum. A small pond has been  
23 constructed on the property that captures creek water, irrigation return flows  
24 and ground water. The sheep drink from the pond, springs on the property and  
the irrigation ditches when water is available in the ditches. Livestock

25  
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drinking from natural sources, such as the springs and pond, is a use that is  
1 covered by the non-diversionary stock water stipulation discussed on page 4 of  
2 this report and no other water right is needed.  
3

Mr. Richards testified that creek water is generally available during the  
4 early spring months until sometime in June when the flow diminishes  
5 significantly. The claimants are patrons of the Kittitas Reclamation District  
6 (KRD), however, there was no testimony about the number of acres assessed by KRD  
7 or the quantity of water delivered to them. According to the testimony, the  
8 Richards property is at the end of a long delivery ditch for carrying KRD water  
9 and delivery to them is inconsistent.  
10

Water rights for the SW $\frac{1}{4}$  of Section 8 were addressed in the Sander v. Jones  
11 decree. Mary A. Thomas acquired the SW $\frac{1}{4}$  of Section 8 from James R. Van Alstine  
12 who received a patent for the land in 1889. The record shows that James R. Van  
13 Alstine had been in possession of the land since 1877. She also purchased the  
14 NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7 from the Northern Pacific Railroad Company in 1887. Mary  
15 Thomas appropriated 225 inches of water, or 4.5 cubic feet per second in 1889  
16 for use on her lands in Sections 7 and 8. The SW $\frac{1}{4}$  of Section 8 is riparian to  
17 Wilson Creek, so under the Riparian Doctrine the priority of the right would be  
18 1877, when steps were first taken to acquire the land.  
19

Water Right Claim No. 131420 was filed by Kent D. Richards for use of  
20 waters from Lyle Creek. It asserts a right to use 1 cfs, 730 acre-feet per year  
21 for the irrigation of 7 acres, stock water and pond filling, although it states  
22 that 0.10 cfs and 73 acre-feet per year are actually being used to irrigate the  
23 7 acres. The described point of diversion is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8 and the  
24 place of water use is the East 375 feet of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, T. 18 N.,  
25

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1 R. 19 E.W.M. Mr. Richards also filed WRC 131419 for use of an unnamed spring  
2 located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8 for irrigation of 2 acres and stock watering.  
3

4 The proportionate share of the Mary Thomas water right awarded in Sander v.  
5 Jones that would be appurtenant to the Richards property is 0.14 cubic foot per  
6 second, which is very close to the quantity stated as being used on WRC No.  
7 131420. Mr. Richards did not directly testify to the quantity of water diverted  
8 from the creek, but since the right is limited to that which was awarded in  
9 Sander v. Jones, which is consistent with WRC No. 131420, that is the quantity  
10 the Referee shall recommend for confirmation. The quantity awarded in Sander v.  
11 Jones is available for use from May 1 through June 30 and one-half that quantity  
12 the rest of the year. Additionally, the Sander v. Jones decree found that one  
13 inch of water (or 0.02 cfs) would be sufficient for one acre of land. The  
14 number of inches awarded was based on the number of acres being irrigated.  
15 Therefore, 0.14 cfs could be used to irrigate 7 acres.

16 Based on the foregoing, the Referee recommends that a right be confirmed  
17 with a June 30, 1877, date of priority for the diversion of 0.14 cubic foot per  
18 second from May 1 through June 30 and 0.07 cubic foot per second in April and  
19 from July 1 through October 15, 35 acre-feet per year from Lyle Creek for the  
irrigation of 7 acres and stock watering.

20 COURT CLAIM NO. 01048 -- Merle Ringer  
21

22 Court Claim No. 01048 was filed for use of waters diverted from Naneum  
23 Creek. Mrs. Ringer, represented by Attorney Jeff Slothower, testified at the  
24 evidentiary hearing, along with Cal Jansen, who farms the property, and her son  
25 Tom Ringer.

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1           The property lies in the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 19, T. 17 N., R. 19 E.W.M. east  
2       of Interstate-82. Approximately 18.5 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19 are  
3       irrigated with water diverted from Naneum Creek. The water is diverted at a  
4       point approximately 800 feet south and 400 feet east of the center of  
5       Section 19, just east of I-82. Prior to construction of I-82, water was  
6       diverted on the O'Neill property, a few hundred feet upstream and carried by  
7       wooden flume onto the claimants land. An additional 8 acres were irrigated from  
8       Naneum Creek prior to I-82 being constructed. The land is currently planted in  
9       Timothy hay. Mr. Jansen testified to using 1 cubic foot per second, 75  
10      acre-feet per year to irrigate what he calls Field A, which is 7.5 acres in  
11      size. Field B, which is 10.9 acres in size is irrigated with an additional 1  
12      cubic foot per second and 147.15 acre-feet per year. Field B is irrigated  
13      almost continuously because of the soil conditions. Field A is not irrigated  
14      continually, so the water duty is slightly less. In the fall cattle or sheep  
15      are placed on the fields for a period of time and they drink directly from  
16      Naneum Creek. This type of non-diversionary stock watering is covered by the  
17      stock water stipulation discussed on page 4 of this report and no other right is  
18      needed.

19           Water delivered by the Bull Canal Company is used to irrigate 25 acres that  
20      lie east of Fields A and B and west of Coleman Creek. The diversion from Bull  
21      Ditch is described in the State's Investigation Report for this claim and lies  
22      in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18, T. 17 N., R. 19 E.W.M. Bull Canal Company is a  
23      claimant in this proceeding and is asserting rights for its patrons. See page  
24      101 of this report for a discussion of that claim. The claimant is also  
25      asserting a right through Court Claim No. 01047 to use waters from Coleman

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1 Creek. Coleman Creek lies in Subbasin No. 10 (Kittitas) and that claim will be  
2 addressed in the Report of Referee for Subbasin No. 10.  
3

4 The Ringer family has owned this land since 1917 and farmed it since 1909,  
5 when it was owned by Grant Bull. Mrs. Ringer first became acquainted with the  
6 land in 1930 when she met her future husband. She and her husband acquired the  
7 land in 1951. They would hunt in the area around Naneum Creek and were familiar  
8 with the wooden flume that was in place prior to construction of I-82. In the  
9 1930's the flume was aging and had some of its boards replaced. She believes it  
10 was at least 20 years old at that time. The irrigation practices maintained by  
11 her husband, and continuing at the time of the hearing, are consistent with the  
12 practices during the 1930's.

13 A patent issued to Thomas Haley on August 1, 1872, for lands that included  
14 the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19. A patent issued to William Johnson on June 5, 1873,  
15 for lands that included the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19. The NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19 is  
16 riparian to Naneum Creek and under the Riparian Doctrine the water right to  
17 Naneum Creek would have a priority date of when steps were first taken to sever  
18 the land from Federal ownership. The only date in the record is the patent  
date.

19 Water Right Claim No. 056833 was filed by Harold Ringer pursuant to the  
20 requirements of RCW 90.14. It asserts a right to divert 1 cubic foot per  
21 second, 360 acre-feet per year from Naneum Creek for the irrigation of 35 acres  
22 and stock watering within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, T. 17 N., R. 19 E.W.M. The  
23 point of diversion described on the claim form is not clear. It is clear that  
24 the historic diversion has always been in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, although it  
25 has been moved a little downstream as a result of the highway construction. The

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1 diversion remains in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, which is described in WRC No.  
2 056833.

3 WRC No. 056833 is asserting a right to divert 1 cubic foot per second, yet  
4 Mr. Jansen testified to using at times 2 cfs. The difference was not  
5 explained. Since there was a change in the diversion, the claimant needs to  
6 address whether that change is what precipitated the increased diversion or  
7 whether an error was made when the claim was initially completed.

8 Based on the evidence in the record, the Referee recommends that a right be  
9 confirmed under Court Claim No. 01048 to Merle Ringer with a June 5, 1873, date  
10 of priority for the diversion of 1 cfs, 222.15 acre-feet per year for the  
11 irrigation of 18.5 acres in that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, T. 17 N.,  
12 R. 19 E.W.M. lying east of Interstate-82.

13  
14 COURT CLAIM NO. 04349 -- Doss Roberts  
15 & Edra Roberts

16 The Roberts submitted a Statement of Claim to the Court asserting a right  
17 to irrigate 90 acres with waters from Naneum Creek. Mr. Roberts testified at  
18 the evidentiary hearing in support of the claim. In addition, David Leffert, a  
19 neighboring claimant, also presented evidence concerning a spring to which the  
20 Roberts are also asserting a right.

21 The claimants own Government Lots 1, 2, 3 and 4 of Section 4, T. 18 N.,  
22 R. 19 E.W.M. and according to Mr. Roberts' testimony irrigate 105 acres with  
23 water diverted from Naneum Creek, springs, and seepage water. The Roberts  
24 family first acquired the land in 1938, and Mr. and Mrs. Roberts acquired it in  
25 1988. There are six diversions from Naneum Creek that are used to serve

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1 portions of the property. The land is planted to hay and pasture and up to 80  
2 head of livestock are raised on the property, drinking from the irrigation  
3 ditches and springs.  
4

5 A patent issued to Christy Halpin for the property, with a receiver's  
6 receipt dated April 26, 1888, in the record. This land was addressed in  
7 Ferguson v. U. S. National Bank of Portland, Oregon, 1901. Sullivan Savings  
8 Institution was the owner of the land at the time of Ferguson and was awarded a  
9 Class 14 right for 70 inches to be used in Government Lots 1, 2, 3 and 4 of  
10 Section 4. The decree stated that the land was settled in the autumn of 1883  
11 and water first used in the spring of 1884. As provided in the decree, 70 acres  
12 would have been irrigated with 70 inches of water (1.4 cfs).  
13

14 It is clear that a right existed for the use of 1.4 cfs from Naneum Creek  
15 for the irrigation of 70 acres within the land owned by the Roberts. Based on  
16 Ferguson that is the extent of the right that existed in 1901. It may be that  
17 subsequent to that, an additional right was established for the irrigation of 35  
18 acres. However, the claimant has not presented any evidence to show that  
19 occurred. Therefore, the Referee must conclude that the extent of the right was  
20 1.4 cfs for the irrigation of 70 acres.  
21

22 RCW 90.14, which was passed by the legislature in 1967, required that any  
23 claiming a right to use water based on a use begun prior to adoption of the  
24 water codes (the Surface Water Code was adopted in 1917) to file a water right  
25 claim with Ecology. Section 90.14.071 provided that anyone who fails to file  
26 such a claim relinquishes any right that might have existed. The Referee can  
27 find no water right claim in the record for the Roberts property. Due to the  
28 lack of a claim filed pursuant to RCW 90.14, the Referee cannot recommend that a

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water right be confirmed under Court Claim No. 04349. To the extent that  
1 livestock have access to Naneum Creek and unnamed springs for drinking, that use  
2 is covered by the non-diversionary stock water stipulation addressed on page 4  
3 of this report.  
4

5  
6 COURT CLAIM NO. 01444 -- Schaake Packing Company  
7

8 Schaake Packing Company submitted a claim to the Court asserting rights to  
9 use waters from the Yakima River, Mercer Creek and Wilson Creek. Their claim to  
use water from the Yakima River is being addressed in Subbasin No. 7 and will  
not be considered herein. The claimant is represented by Attorney John P.  
10 Gilreath and Paul Weaver, with Schaake Packing Company, testified at the  
11 evidentiary hearing.  
12

13 Schaake Packing is asserting a right to irrigate 7 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
14 Section 11, T. 17 N., R. 18 E.W.M. with water diverted from Mercer Creek. Water  
15 is diverted from the creek at a point approximately 200 feet north and 1250 feet  
east of the west quarter corner of Section 2, and is within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
16 Section 2, T. 17 N., R. 18 E.W.M. Water is carried in an open, unlined dirt  
17 ditch that flow southeasterly parallel to the Burlington Northern railway.  
18 Shortly after the ditch enters the NE $\frac{1}{4}$  of Section 11 it splits and water is  
19 carried to the Schaake Packing property. The land is flood or rill irrigated  
20 pasture ground and up to 30 head of livestock are raised on the property.  
21 Schaake is asserting a right to divert 1.5 cubic feet per second. They use 88  
22 acre-feet per year to irrigate the pasture, but if the land was planted to  
23 Timothy hay, which it potentially could be, it would need 132 acre-feet per  
24

25  
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28

1 year. Neighboring land is planted to Timothy and Mr. Weaver believed that prior  
2 to Schaake purchasing the land Timothy had been grown.  
3

4 The land irrigated from Mercer Creek is part of that for which Frederick  
5 Ludi received a patent on March 13, 1881. A right under the Riparian Doctrine  
6 is being asserted, which would result in a priority date of when efforts were  
7 first made to sever the land from Federal ownership. The patent is the only  
evidence in the record that could be used for a priority date.  
8

9 Pursuant to the requirements of RCW 90.14, Water Right Claim (WRC) No.  
10 119374 was filed by Schaake Packing Company asserting a right to divert 0.50  
11 cubic foot per second, 60 acre-feet per year for the irrigation of 8 acres and  
12 stock watering. The Referee notes that the claimant is asserting a right in  
13 this proceeding for three times the quantity of water stated in WRC No. 119374.  
14 The place of use is that part of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11, T. 17 N.,  
15 R. 18 E.W.M. lying north and east of Wilson Creek, which accurately describes  
the location of the irrigated field.  
16

17 The claimant has not provided any information to show that a water right  
18 was established for this property. The claimant provided testimony about  
19 current use of the property, but provided no history of the property other than  
20 a copy of the patent. Both Ellensburg Water Company's Town Ditch and the  
21 Cascade Irrigation District (CID) canal cross Wilson Creek and CID uses the  
22 creek to deliver water and for operational spills. Besides providing evidence  
23 to show that a water right was established, such as historical use of Mercer  
24 Creek on the property, the claimant needs to address whether the water used was  
natural creek flow or imported water from the districts.  
25

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1       Based on the lack of evidence to show that a water right was established  
2       for the land irrigated from Mercer Creek, the Referee recommends that a right  
3       not be confirmed for use of Mercer Creek.  
4

5       The claimant is also asserting a right to irrigate 35 acres with water  
6       diverted from Wilson Creek. This land is located in the SE $\frac{1}{4}$  of Section 11,  
7       south of Interstate 90 and west of the Burlington Northern Railroad and a  
8       portion of the NE $\frac{1}{4}$  of Section 14 west of Wilson Creek, all in T. 17 N.,  
9       R. 18 E.W.M. The diversion from Wilson Creek is located 600 feet east and 1150  
10      feet north of the south quarter corner of Section 11, within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
11      Section 11. Water is carried in an open, unlined dirt ditch and is used to  
12      flood irrigate pasture ground. There are three separate fields that are  
13      irrigated: One 7 acre field is north of Wilson Creek, solely in the SE $\frac{1}{4}$  of  
14      Section 11, one field is 22 acres and is in the SE $\frac{1}{4}$  of Section 11 south of  
15      Wilson Creek and a portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 14. Both of these fields are  
16      irrigated directly from the ditch. The third field is 6 acres in size and is  
17      located south of the feedlots. It is irrigated with water pumped from a pond  
18      that captures water diverted from Wilson Creek. According to Mr. Weaver's  
19      testimony, 1.5 cubic feet per second is used to irrigate the fields. The  
20      pasture requires 150 acre-feet per year to adequately irrigate it, but if it  
21      were planted to Timothy hay, 658 acre-feet per year would be needed.

22       WRC No. 119372 was filed by Schaake Packing asserting a right to use 6  
23      cubic feet per second, 1600 acre-feet per year from Wilson Creek for the  
24      irrigation of 213 acres, stock watering and feedlot operations. The place of  
25      water use is very extensive and the Referee believes it describes all of the  
26      Schaake land holdings in this area.

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The portion of the Schaake land for which they are asserting a water right  
1 was settled by two different individuals. Frank Hinton received a patent on  
2 May 23, 1889, for the N $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, T. 17 N.,  
3 R. 18 E.W.M. The receiver's receipt for this land is dated December 28, 1887,  
4 which is the earliest date in the record that can be used to establish a  
5 priority date under the Riparian Doctrine. According to the Chain of Title  
6 sheet sometime prior to 1901 John Hanks had acquired the Hinton property. The  
7 SE $\frac{1}{4}$  of Section 11 was conveyed by the United States to Northern Pacific Railroad  
8 for construction of the railway. Prior to 1919, William Doughty acquired the  
9 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11 and sold it to a Park B. Hanks.  
10

John Hanks filed a Water Location Notice dated May 15, 1902, giving notice  
11 of his intent to appropriate 160 inches from Wilson Creek at a point 410 feet  
12 south and 120 feet east of the northwest corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11.  
13 The ditch would flow southerly across the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11 into the NE $\frac{1}{4}$  of  
14 Section 14. Hanks stated his intent to use the water to irrigate 160 acres in  
15 the N $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14.  
16

The point of diversion described in the Hanks notice is located such that  
17 the ditch could not have served by gravity flow most of the Schaake land that is  
18 irrigated from Wilson Creek in the SE $\frac{1}{4}$  of Section 11. Additionally, the notice  
19 states Hanks intent to use the water to irrigate lands only in Section 14. The  
20 Referee believes this document establishes a water right for the Schaake land in  
21 Section 14, but not the land in Section 11. Obviously, sometime after 1902 the  
22 diversion was moved from a point in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11 to the current  
23 diversion over a quarter mile upstream. It is not clear whether that change  
24 happened after Schaake acquired the property or was accomplished by a prior  
25

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1 owner. The lands in the SE $\frac{1}{4}$  of Section 11 likely were first irrigated after the  
2 point of diversion was changed.

3       The Referee finds there is sufficient evidence to recommend that a water  
4 right be confirmed for the irrigated lands in the NE $\frac{1}{4}$  of Section 14. A portion  
5 of the 22 acre field is in the NE $\frac{1}{4}$  of Section 14 and a portion is in the SE $\frac{1}{4}$  of  
6 Section 11. The Referee estimates that the portion lying in the NE $\frac{1}{4}$  of  
7 Section 14 is about 7 acres in size. John Hanks appropriated one inch of water  
8 for each acre he intended to irrigate, which is consistent with the rest of the  
9 water rights established for use of Wilson Creek. The claimant argued that they  
10 are entitled to use the inches that would have been appurtenant to portions of  
11 the Hanks property they own, but do not irrigate. In order for that to be the  
12 case, the claimant would have had to follow the procedures of RCW 90.03.380 to  
13 transfer the water from the land to which it is appurtenant to land that already  
14 had a water right. The Referee can find no evidence that occurred, nor has the  
15 claimant made an effort to suggest that type of transfer occurred. There is no  
16 evidence that Schaake elected to stop irrigating a portion of the land that was  
17 being irrigated when they purchased it and moved the water rights to other  
18 land.

19       The claimant has argued that although they have been using approximately  
20 4.3 acre-feet per acre to irrigate the pasture, they should be confirmed a right  
21 for sufficient water to allow for the irrigation of Timothy hay. They suggested  
22 that prior to Schaake acquiring the land it may have been planted in Timothy hay  
23 and the larger quantity of water used to irrigate. Since Schaake has owned the  
24 property it has been in pasture. Schaake acquired some of the land in the  
25 1940's and other in 1972. The Referee can only confirm a right for the quantity

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1 of water that has continued to be beneficially used. If a lesser quantity has  
2 been used over the past 25 years, the unused portion has relinquished, see RCW  
3 90.14.170.

4 The Referee recommends that a right be confirmed under the Riparian  
5 Doctrine with a December 28, 1887, date of priority for the diversion of 0.26  
6 cubic foot per second, 55.9 acre-feet per year for the irrigation of 13 acres  
7 and stock water. The place of use shall be the W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
8 Section 14, T. 17 N., R. 18 E.W.M. lying west of Wilson Creek and south or east  
9 of the feedlot. In addition to livestock drinking from the ditch, they also  
10 drink from Wilson Creek and a pond on the property. This non-diversionary stock  
11 water use is covered by the stock water stipulation discussed on page 4 of this  
12 report.

13 COURT CLAIM NO. 02301 -- Evan A. Scheik

14 Janet Van de Brake submitted the claim to the Court asserting a right to  
15 use waters from Lyle Creek for irrigation and stock watering. On May 2, 1989,  
16 Evan A. Scheik and Judy Scheik were substituted for Ms. Van de Brake. Mrs.  
17 Scheik testified at the evidentiary hearing.

18 The Scheik property is the north 1300 feet of the west 300 feet of  
19 Government Lot 1 of Section 19, T. 17 N., R. 19 E.W.M. They own a total of 9  
20 acres and irrigate pasture on most of the land. Except where the house and barn  
21 are located, the rest is irrigated. Mrs. Scheik was uncertain how many acres  
22 were irrigated, however, the State's Investigation Report estimated that 6 acres  
23 were irrigated. The investigation report also shows that the pasture is rill  
24 and flood irrigated with a diversion from Lyle Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
25

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Section 18, T. 17 N., R. 19 E.W.M. Ten horses are raised on the property and  
they drink directly from Wilson Creek that borders the property on the east.  
The non-diversionary stock water stipulation discussed on page 4 of this report  
cover this use and no other right is necessary. The Scheik's name will be  
placed on the list of those claimants with non-diversionary stock water rights.

Pursuant to the requirements of RCW 90.14, Janet Van de Brake filed Water  
Right Claims (WRC) No. 200007 and 200134, each asserting a right to use 200 gpm  
(0.45 cubic foot per second), 64 acre-feet per year from Lyle Creek for the  
irrigation of 8 acres and stock water. The point of diversion on both forms is  
described at approximately the same location described on the State's  
Investigation Report for the claimant's property and the place of use is the  
Scheik land. Mrs. Scheik did not know much about the history of the land,  
except that it was part of the Wippel ranch. The Referee will refer to the  
historical evidence put in the record by claimant John Ludwick, who owns the  
portion of Government Lot 1 of Section 19 lying east of Wilson Creek.

In 1889 Government Lots 1, 2 and 3 were conveyed by the Northern Pacific  
Railroad to George W. Carver after fulfillment of a contract entered into in  
1881. Mr. Ludwick testified that during a telephone conversation Mary Wippel  
stated that her father-in-law used the land as a dairy for 100 cows and to grow  
feed for those cows was grown. The testimony was that Paul Wippel, Mary's  
father-in-law owned the land beginning in June of 1916, however, that must have  
been for land he owned in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 19. Claimant Allan Grigg, who  
owns a portion of Government Lots 2 and 3 put into evidence several deeds and  
real estate contracts that show Government Lots 1, 2 and 3 were owned by others  
until 1956 when Paul Wippel acquired it. Mr. Ludwick directed the Referee to

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the record created by Bull Canal Company to support his claim. Review of the  
1 Bull Canal exhibits show that George Carver was one of the original organizers  
2 of Bull Canal Company and when the company was formed was awarded 7 shares, or  
3 1/6 of the ditch. As far as the Referee knows, the only land owned by George  
4 Carver within the Bull Canal Company service area is Government Lots 1, 2 and 3  
5 of Section 19. The Bull Canal Company records would indicate that water  
6 delivered by the Bull Canal Company was being used to irrigate the Carver land.  
7 Bull Canal Company is a claimant in this proceeding, whose rights are addressed  
8 on page 101 of this report. There is no evidence to show that a water right was  
9 established to use Lyle Creek for irrigation on the claimant's land.  
10

Due to the lack of evidence to show that a water right was established for  
11 use of Lyle Creek initiated prior to 1917, the Referee cannot recommend that a  
12 water right be confirmed for this land.  
13

COURT CLAIM NO. 00979 -- Henry J. Schnebly, et al.  
15 (A) 04783                    Fred Schnebly  
16 (A) 05073                    Jim Schnebly  
17

The Schnebly family initially submitted Court Claim No. 00979 asserting  
18 rights to use waters from Coleman Creek and other surface water sources in  
19 Subbasin No. 10 (Kittitas). However, in 1989 the claim was amended to also  
20 assert a right to use waters from Naneum Creek. The Schneblys were represented  
21 by Attorney William Almon and Henry Schnebly, Jim Schnebly and Robert Edwards  
22 testified at the evidentiary hearing.  
23

The Schneblys own over 1100 acres and are asserting a right to use waters  
24 from Naneum Creek for the irrigation of 551 acres and water livestock. The land  
25 on which they use Naneum Creek water lies in the S $\frac{1}{2}$ NE $\frac{1}{4}$  (40 acres) and S $\frac{1}{2}$  (142  
26

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28

1       acres) of Section 15; That portion of Section 22 lying east of Moreau Road (262  
2       acres) and the NW $\frac{1}{4}$  of Section 27 (107 acres) all in T. 18 N., R. 19 E.W.M. The  
3       lands in Sections 22 and 27 have been in the Schnebly family since the late  
4       1800's and the land in Section 15 was acquired from Robert Edward in 1977. In  
5       addition to Naneum Creek, the claimants are asserting rights to use water from  
6       Schnebly Creek, Spring Creek and Coleman Creek, along with using water delivered  
7       by the Kittitas Reclamation District (KRD). At the present time there is no  
8       diversion from Naneum Creek to the property. The diversions ceased being used  
9       years ago. According to Henry Schnebly, they stopped direct diversions from  
10      Naneum Creek after the KRD canal was built, as KRD took over the diversion works  
11      and delivery system. The water they use that originates in Naneum Creek is  
12      return flow from neighboring lands that enters drains, Spring Creek and Schnebly  
13      Creek. Mr. Schnebly did not quantify how much water that might be, except to  
14      estimate they were using 3 acre-feet per year per irrigated acre. There were at  
15      least two diversions from Naneum Creek historically used on the Schnebly  
16      property, one was into the Wilkins Ditch. Mr. Schnebly testified to the  
17      existence of the diversions, but did not locate them on the map.

18           The Schneblys provided considerable testimony about the irrigation system  
19      in place to irrigate the ranch. It is a very complex system, with many  
20      diversions that serve specific areas of the ranch. Since none of the diversions  
21      are on Naneum Creek, the Referee will not go into any detail about the system.  
22           The Schneblys testified about the creeks and ditches capturing return flow water  
23      from neighboring lands. This return flow is generated from the irrigation of  
24      the neighboring lands with water diverted from Naneum Creek, water delivered by  
25      the KRD and water diverted from Coleman and Schnebly Creeks. There is no

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obvious way to determine how much of this water might be the result of use of  
1 Naneum Creek water.

2 Water rights for a portion of the Schnebly property were addressed in the  
3 Ferguson decree. A Class 3 right was awarded to U. S. National Bank of Portland  
4 Oregon for the use of 80 inches in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 27, T. 18 N.,  
5 R. 19 E.W.M. and a Class 5 right was also awarded to the bank for using 160  
6 inches in the SW $\frac{1}{4}$  of Section 22, T. 18 N., R. 19 E.W.M. However, there is no  
7 evidence that water rights were established for use of Naneum Creek on any other  
8 of the Schnebly land.  
9

10 Amended Claim (A)4783 was filed after Ecology conducted its investigations  
11 for Subbasin No. 9, therefore, there is no investigation report for the  
12 property. The Referee has review State's Exhibit SE-5, which is the compilation  
13 of water right claims filed pursuant to RCW 90.14 and certificates issued by the  
14 State. The Referee was not able to locate a water right claim for use of waters  
15 from Naneum Creek for any of the lands described above. Failure to file a claim  
16 relinquishes any right that might have existed, RCW 90.14.071. However, it may  
17 not have been necessary for the Schneblys to file a claim. RCW 90.14.041  
18 provided that "Neither this section nor RCW 90.14.068 apply to any water rights  
19 which are based on the authority of a permit or certificate issued by the  
20 department of ecology or one of its predecessors." Also in SE-5 is a copy of  
21 Certificate of Change recorded in Volume 1, at page 5, which issued to P. H.  
22 Schnebly on July 25, 1919, authorizing him to change the point of diversion of  
23 water from a point in the NW $\frac{1}{4}$  of Section 16 to the SW $\frac{1}{4}$  of Section 9, both in  
24 T. 18 N., R. 19 E.W.M. The diversions described would be on Naneum Creek, so  
25 this certificate of change obviously was for a right to use Naneum Creek water.  
26

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1 However, in order to conclude that this certificate of change was for lands in  
2 questions now the Referee would need evidence to show that connection. That  
3 evidence, however, would not change the fact that Naneum Creek water has not  
4 been diverted for use on the Schnebly land for a number of years. Based on  
5 that, the Referee finds that any right that may have existed has relinquished  
6 for nonuse, see discussion of Merrill case and relinquishment on page 6 of this  
7 report. The Referee does not recommend that a right be confirmed for use of  
8 Naneum Creek under Court Claim No. 00979.

9  
10 COURT CLAIM NO. 00605 -- Albert F. Scott  
11 (A) 01749 & Dorothy Scott  
Stephen K. German  
& Donna German

12 Albert F. and Dorothy Scott submitted a Statement of Claim to the Court for  
13 several surface water sources, including Naneum Creek. The other sources are  
14 located in Subbasin No. 10, Kittitas, and will be addressed in that Report of  
15 Referee. The Scotts are represented by Attorney Richard T. Cole and Mr. Scott  
16 testified at the evidentiary hearing. Stephen K. and Donna German were joined  
17 to the claim on June 23, 1998.

18 The Scotts own that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  and the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 lying  
19 below the Kittitas Reclamation District (KRD) canal, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  and that  
20 portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  lying west and below the KRD canal in Section 11, all in  
21 T. 18 N., R. 19 E.W.M. They are asserting a right to divert 10 cubic feet per  
22 second, 800 acre-feet per year from Naneum Creek for the irrigation of 145 acres  
23 and stock water for 75 pair of cattle. The land is currently pasture, but has  
24 been planted in Timothy hay and grain in the past. Water is diverted from

25  
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Naneum Creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28, T. 19 N., R. 19 E.W.M., carried in the  
Keister Ditch through Sections 28 and 34 and dumped into Schnebly Creek on the  
east section line of Section 34. Secondary diversions from Schnebly Creek are  
used as it traverses the Scott property in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 and in  
Section 11. The Scotts are patrons of KRD and receive KRD water for 85 acres.  
The remaining 60 irrigated acres only receive Naneum Creek water. The KRD is a  
major claimant, whose rights were determined in the Major Claimant Pathway. A  
priority date of 1880 is being claimed for Naneum Creek. Mr. Scott testified  
that there are approximately 25 acres he now irrigates, that due to efficiency  
improvements he made to the irrigation system, were not historically irrigated.  
He did not indicate where those 25 added acres are located.

Water Right Claim (WRC) No. 097150 was filed pursuant to RCW 90.14  
asserting a right to divert 2 cubic feet per second, 792 acre-feet per year from  
Naneum Creek for the irrigation of 148 acres. The place of water use is the  
same lands described in Court Claim No. 00605 and the claim identifies a  
diversion from Naneum Creek into the Keister Ditch and then 7 secondary  
diversions from Schnebly Creek. WRC No. 097149 was filed by the Scotts for use  
of a spring for domestic supply, lawn and garden irrigation and stock watering  
on their property. However, there was no testimony offered about use of a  
spring.

The Scotts' land separated from Federal ownership under three different  
patents. On June 26, 1882, a patent issued to F. D. Schnebly for the S $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
NW $\frac{1}{4}$ SE $\frac{1}{4}$ , and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, T. 18 N., R. 19 E.W.M. Although a portion of  
the Scotts' land lies in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 2, it is not clear to the Referee  
that any of the irrigated land lies in this area. On October 31, 1884, a patent

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1 issued to William Keister for the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, the NW $\frac{1}{4}$ NW $\frac{1}{4}$   
2 of Section 11. Most of the Scott land is covered by this patent. Northern  
3 Pacific Railroad Company received a patent on January 16, 1896, for the NE $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
4 SE $\frac{1}{4}$ NE $\frac{1}{4}$  and E $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11. The Scotts own that portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
5 Section 11 lying west and below the KRD canal, but it is not clear to the  
6 Referee that the land in this area is irrigated with water diverted from Naneum  
7 Creek.

8 On May 31, 1890, Erick Larson and W. H. Keister filed an Affidavit of Water  
9 Right asserting a right to 16 cubic feet per second from Naneum Creek conveyed  
10 through ditches constructed in June of 1880 for use on lands in Sections 2 and  
11 11 and the NE $\frac{1}{4}$  of Section 3, owned by Keister, and Sections 2, 3 and 10, on  
12 lands owned by Larson. The affidavit did not specify exactly which portion of  
13 the sections cited were owned, but did state that the water was used to irrigate  
14 240 acres owned by Keister and 160 acres owned by Larson. Keister and Larson  
15 were parties to Ferguson and the Court's findings described the lands owned by  
16 Keister as being the NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11, the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 and  
17 the NE $\frac{1}{4}$  of Section 3 and the lands owned by Larson as the W $\frac{1}{4}$ SW $\frac{1}{4}$  and W $\frac{1}{4}$ NW $\frac{1}{4}$  of  
18 Section 2 and the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 3.

19 Although Mr. Scott testified he was not basing his claim on the Ferguson  
20 decree, the Court in Ferguson awarded a right to Keister for the use of 200  
21 inches (4 cfs) until June 15 each year and 100 inches thereafter. The Scotts  
22 own all of Keister's land except the NE $\frac{1}{4}$  of Section 3, which is owned by Kayser  
23 Ranch, and that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 north of the KRD canal, which  
24 is owned by Sam Kayser. The Scotts were not parties to Department of Ecology v.  
25 Carlson, therefore they were not include in the Order Pendente Lite.

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In 1918, Charles Bull owned the N $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11 and the  
1 SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, all of which he sold to P. H. Adams along with 4/10 of the  
2 Keister water right. Four-tenths of that right would be 80 inches, or 1.60  
3 cfs. Mr. Scott owns all of that land, except that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
4 Section 2 above the KRD canal, owned by Sam Kayser. The SE $\frac{1}{4}$ SW $\frac{1}{4}$  would have  
5 one-quarter of the right and the portion north of the KRD Canal (which is very  
6 close to the N $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ) would have one-eighth of the right. The proportionate  
7 share of that right appurtenant to the Scott property would be a total of 1.40  
8 cfs for the irrigation of 70 acres.  
9

Mr. Scott is claiming a right to divert 10 cubic feet per second from  
10 Naneum Creek, however, he did not present evidence of historic use of this  
11 quantity. He did not know how much water is used to irrigate his land. The  
12 Court in Ferguson determined that one inch of water was needed to irrigate each  
13 acre of land early in the irrigation season. Mr. Scott testified that 120 acres  
14 have historically been irrigated within his property, with 25 additional acres  
15 being irrigated now due to system efficiencies. The additional 25 acres were  
16 first irrigated after the Scotts acquired ownership of the land in 1963. At that  
17 time in order to acquire a water right to irrigate additional acreage,  
18 compliance with the permitting requirements of RCW 90.03 would have been  
19 necessary. There is no evidence that occurred. Since the Court in Ferguson  
20 established that the Scotts' predecessor was entitled to one inch of water from  
21 May 1 to June 15 for each acre irrigated and one-half inch after that, the  
22 Referee is constrained to recommend confirmation consistent with that prior  
23 decree. There was no evidence presented to show that water rights for use of  
24

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Naneum Creek were established for the property beyond those recognized in the  
1 Ferguson decree.

The Referee recommends that a right be confirmed under the Prior  
3 Appropriation Doctrine with a June 1, 1880, date of priority for the diversion  
4 of 1.4 cubic feet per second from May 1 through June 15 and 0.70 cubic foot per  
5 second in April and June 16 through October 15, 350 acre-feet per year for the  
6 irrigation of 70 acres and 5 acre-feet per year for stock watering.  
7

COURT CLAIM NO. 01941 -- Jack G. Sikes  
9 & Ada M. Sikes  
10 Larry Hansen

Jack G. and Ada M. Sikes filed Court Claim No. 01941 asserting a right to  
11 use the East and West Branches of Naneum Creek and Coleman Creek. On  
12 February 2, 1989, Larry Hansen was joined to the claim. Mr. Hansen, who is  
13 represented by Attorney Richard T. Cole, testified at the evidentiary hearing,  
14 along with Ron Poulson, who leases and farms the property.  
15

The land is described as the NW $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17, T. 17 N.,  
16 R. 19 E.W.M. The portion of the property in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17 is  
17 irrigated only with water diverted from Coleman Creek, which lies in Subbasin  
18 No. 10 (Kittitas). Due to the water source being in Subbasin No. 10, the  
19 claimant did not put on any evidence related to use of that water, as that  
20 evidence will be presented during the Subbasin No. 10 evidentiary hearing. The  
21 only claim addressed herein is the claim to use waters from the branches of  
22 Naneum Creek.  
23

Approximately 32 acres within the NW $\frac{1}{4}$  of Section 17 are irrigated with  
24 water diverted from Naneum Creek. The diversion from the creek is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$   
25

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of Section 17. The claimant also owns 70 shares from Ellensburg Water Company  
and that water is used to supplement the creek water on the 32 acres and to  
irrigate the remaining 38 acres that are irrigated in the N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 17.  
Larry Hansen acquired the land in 1987 and it was being irrigated at that time.  
Ron Poulson was leasing and farming the land when Hansen purchased it and  
continued to do so. Timothy hay is planted on the land and is rill irrigated  
using concrete ditches and gated pipe. A one horsepower pump is also used to  
supply water for lawn and garden irrigation around the house. The claimant  
testified to also raising livestock on the property, with a maximum of 20 cattle  
and 3 horses. The livestock drink directly from the creek. This type of  
non-diversionary stock watering is covered by the stock water stipulation  
discussed on page 4 of this report and no additional right is needed. Mr.  
Poulson's family farmed land next to the land described in the claim and he  
testified that he can recall the land being farmed for 25 to 28 years.

The land in the N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 17 was originally settled by James  
Montgomery, who received a patent on January 18, 1887. The receiver's receipt  
for the land was signed on November 11, 1886. There was no other evidence  
presented concerning the history of the land. The earliest date of water use  
that was put in the record was 1962 based on Mr. Poulson's testimony.

Pursuant to the requirements of RCW 90.14 Jack Sikes submitted two water  
right claims asserting rights to use a branch of Naneum Creek. Water Right  
Claim (WRC) No. 065522 asserts a right to use 0.02 cubic foot per second and 4  
acre-feet per year per acre from the West Branch of Naneum Creek for the  
irrigation of 35 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 17. The point of diversion is  
described as being in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 17. The date of first water use

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1 shown on the claim is 1889. WRC No. 065526 asserts a right to use 0.02 cubic  
2 foot per second, 4 acre-feet per year per acre for the irrigation of 35 acres in  
3 the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 17. The point of diversion described is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
4 Section 17, very close to the currently exercised point of diversion. This  
5 claim also cites to an 1889 date of first water use.  
6

7 Although the two water right claims state that water was first used in  
8 1889, there has been no evidence offered to support that date. Since the land  
9 is riparian to Naneum Creek, the Riparian Doctrine would apply. In order to  
10 recommend that a water right be confirmed for the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 17, there  
11 would need to proof of actual use of Naneum Creek water prior to 1932. Since  
12 water delivered by the EWC is also used on the land and EWC was in place by the  
13 early 1900's, the evidence would also have to show that it was creek water, not  
EWC water, that was being used.

14 Therefore, the Referee cannot recommend that a right be confirmed to the  
15 claimants under Court Claim No. 01941.  
16

17 COURT CLAIM NO. 01130 -- John L. Silva  
18 & Janet E. Silva  
19

20 The Silvas filed a claim with the Court asserting a right to use waters  
from Naneum Creek. They were represented by Attorney J. Jay Carroll at the  
evidentiary hearing. Mr. Silva testified at the hearing.  
21

22 The Silva's property lies in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, T. 18 N.,  
23 R. 19 E.W.M. They own approximately 5 acres which they acquired from the  
Haberman family, who owns the rest of the SW $\frac{1}{4}$  of Section 28. They irrigate  
approximately 4.5 acres of pasture with water diverted from Naneum Creek. The  
24  
25

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28

1 land west of the creek is rill or flood irrigated and the land east of the creek  
2 is irrigated with sprinklers. The claimants' have had between 2 and 5 horses on  
3 the property at various times.

4 The history for the property is identical to that for the rest of the SW $\frac{1}{4}$   
5 of Section 28. George and Ruby Haberman acquired the SW $\frac{1}{4}$  of Section 28 in 1941,  
6 however, the family's knowledge of the land preceded that date as other members  
7 of the Haberman family owned and farmed land in the NE $\frac{1}{4}$  of Section 29.

8 The Silvas are basing their water right on the Ferguson decree, which  
9 awarded a Class 10 right, which would have an 1880 date of priority, to Norman  
10 Burroughs, who owned the land at that time. The right awarded was for the use  
11 of 100 inches of water, or 2.0 cubic feet per second. The Findings of Fact  
12 stated that Burroughs owned 160 acres in the SW $\frac{1}{4}$  of Section 28, but 100 acres  
13 were under cultivation at that time. The decree awarded one inch of water in  
14 May and June for each acre irrigated and one-half inch of water the rest of the  
15 year. An award of 100 inches was based on 100 acres having been cultivated and  
16 irrigated at the time of the decree. In spite of the decree awarding a right to  
17 irrigate 100 acres, a right is being asserted between the Silvas and the  
18 Habermans to irrigate the entire 160 acres in the SW $\frac{1}{4}$  of Section 28. There has  
19 been no evidence presented to show that an additional water right was  
20 established beyond that recognized in the Ferguson decree.

21 Since there has been no evidence presented to show establishment of a water  
22 right beyond that recognized in the Ferguson decree, the Referee can only  
23 recommend that water rights be confirmed for irrigating a total of 100 acres in  
24 the SW $\frac{1}{4}$  of Section 28. Therefore, the Referee shall recommend that the  
25 Habermans and Mr. Silva each receive a proportionate share of the right.

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1           In compliance with the requirements of RCW 90.14, John Silva filed Water  
2       Right Claims No. 149874, 149875, and 149876, each asserting a right to divert 1  
3       cfs, 25 acre-feet per year from Naneum Creek for the irrigation of 5 acres and  
4       stock watering in portions of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, T. 18 N.,  
5       R. 19 E.W.M.

6           The Referee recommends that a right be confirmed to the Silvas under Court  
7       Claim No. 01130 with a June 30, 1880, date of priority for the diversion of 0.06  
8       cubic foot per second in May and June and 0.03 cubic foot per second in April  
9       and July 1 through October 15, 15 acre-feet per year for the irrigation of 3  
10      acres.

11  
12      COURT CLAIM NO. 01552    -- George Simpson  
13                                  (A) 08870           & Barbara Simpson  
14                                  Ken Wolfe

15      Court Claim No. 01552 was originally filed by Richard P. and Mona S. Ross.  
16      On February 9, 1989, Ken Wolfe was joined to the claim and on May 12, 1989, the  
17      Rosses remaining interest in the claim was transferred to George and Barbara  
18      Simpson. On January 5, 1994, Ken Wolfe filed an amendment to Court Claim No.  
19      01552 (A08870) adding to the place of water use lands he had acquired that were  
20      formerly owned by the Rosses. Mr. Wolfe testified at the evidentiary hearing.  
21      There was no appearance by the Simpsons.

22      Mr. Wolfe's testimony related only to the land he owned and is described in  
23      amended claim (A) 08870. Mr. Wolfe did not provide a legal description for his  
24      property. Amended Claim (A) 08870 describes the land as being 13.5 acres in the  
25      SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25, T. 18 N., R. 18 E.W.M., which is the approximate  
26      location Mr. Wolfe drew on State's Exhibit SE-2. However, the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of

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1       Section 25 is only 10 acres in size. If Mr. Wolfe in fact does own 13.5 acres,  
2       the legal description for his land that is in the record is incomplete.  
3

4           Mr. Wolfe's property is pasture that is flood irrigated. Cattle have been  
5       raised in the past and when they are in the pasture they have access to Mercer  
6       Creek and drink directly from the creek. Mr. Wolfe testified that the creek  
7       feeds a pond from which he pumps to irrigate a large lawn area. Mr. Wolfe did  
8       not identify a point where he diverts water from the creek, nor did he indicate  
9       that he has actually irrigated the land, except for the lawn that is irrigated  
from the pond.

10          Mr. Wolfe was not familiar with the history of the land. He knew that at  
11       one time it was part of the Infield Dairy and that Central Washington University  
12       owns land to the south and east. Attached to the amended claim was a chain of  
13       title. Although the chain is very general, it appears that this portion of  
14       Section 25 was originally conveyed by the United States to Northern Pacific  
15       Railroad Company for potential use for construction of a railway. Northern  
16       Pacific sold this portion of Section 25 to Michael Rollinger, who owned it until  
17       approximately 1909. There is no evidence that Mr. Rollinger established a water  
18       right for the land.

19          Richard P. Ross submitted two water right claims pursuant to the  
20       requirements of RCW 90.14. Water Right Claim (WRC) No. 140575 asserts a right  
21       to use 35 acre-feet per year from a branch of Wilson Creek for the irrigation of  
22       17.5 acres, stock water and fish propagation in a portion of the W<sub>1</sub>NW<sub>1</sub>SW<sub>1</sub> and  
23       the north 150 feet of the W<sub>1</sub>SW<sub>1</sub>SW<sub>1</sub> of Section 25, T. 18 N., R. 18 E.W.M. The  
24       point of diversion from the creek described on the form is near the northeast  
25       corner of the the W<sub>1</sub>NW<sub>1</sub>SW<sub>1</sub> of Section 25. WRC No. 140577 asserts a right to use

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1       30 gallons per minute, 12 acre-feet per year from a spring for irrigation of 3  
2       acres, stock water and fish propagation. The place of water use is the same as  
3       that described on WRC No. 140575. The spring location described on the claim is  
4       described as being within the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 25. Mr. Wolfe did not testify  
5       about use of a spring on his land.

6           Mr. Wolfe did testify that he is assessed by Cascade Irrigation District  
7       (CID) but was not aware of any mechanism to deliver CID water to his property.  
8       The CID canal crosses Mercer Creek less than half a mile upstream from the  
9       claimant's property. The Referee is aware that CID and other districts in the  
10      Kittitas Valley often use the creeks as a mechanism for delivery of their  
11      water. A neighboring landowner, John Pearson, testified to that occurring. Mr.  
12      Wolfe may want to contact the district to see if they have been turning his  
13      water into the creek for his use.

14           There has been no evidence to show that a water right was established for  
15      this land through beneficial use of Mercer Creek prior to December 31, 1932, the  
16      date necessary to have used water in order to establish a right under the  
17      Riparian Doctrine. Additionally, it is not clear that use of Mercer Creek has  
18      continued. Therefore, if Mr. Wolfe were able to prove that a water right was  
19      legally established for his land, he would also need to provide evidence of how  
20      much water has been diverted from the creek and how many acres are being  
21      irrigated.

22           If CID is delivering water to the Wolfe property by means of Mercer Creek,  
23      use of that water can continue in spite of the Referee not being able to  
24      recommend that a water right be confirmed. Non-diversionary stock water use,

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such as livestock drinking directly from the creek, is covered by the stock  
water stipulation discussed on page 4.

Following conclusion of the evidentiary hearing for Subbasin No. 9, Mr. Wolfe filed a motion to be allowed to introduce additional testimony and evidence in support of Claim No. 01552. On May 26, 1992, the Court issued an order stating that the Wolfes would be allowed to present evidence and testimony during the exception hearing phase for this subbasin. Therefore, the Wolfe's claim shall be included in the schedule when the supplemental hearing for Subbasin No. 9 is set.

COURT CLAIM NO. 02262 -- Patrick Smith

Patrick Smith submitted a claim to the Court for use of the combined flow of Wilson and Naneum Creeks for irrigation. Mr. Smith testified at the evidentiary hearing.

Mr. Smith's property lies in Government Lot 4 and a small portion of Government Lot 3 in Section 30, T. 18 N., R. 19 E.W.M. He is asserting a right to irrigate 32.5 acres with water diverted from Wilson Creek. There is 7.5 acres of lawn, garden and landscape area that is sprinkler irrigated and 25 acres of pasture that in the past has been flood or rill irrigated. During the time that Mr. Smith has owned the property the pasture has not been irrigated, except for being sub-irrigated. Mr. Smith did not describe the means by which the pasture is subirrigated. The pasture has been leased to a neighboring landowner (the Hay property) and 35 to 40 head of cattle have been on the land during the summer months. The lawn, garden and landscape area is irrigated with water pumped from a pond on the claimants property. The pond is fed by water

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diverted from Wilson Creek. The diversion is located approximately 300 feet  
1 north of the northeast corner of the claimant's property. The water is carried  
2 initially in wood and tile underground pipeline and then in an open ditch  
3 system. Cottonwood trees have grown up around the pipeline, which is generally  
4 in a state of disrepair. The open ditch goes through a series of small ponds  
5 and ultimately into the large pond from which the claimant pumps. A 2 HP pump  
6 is place on the pond during irrigation season. Overflow from the large pond  
7 returns to Wilson Creek. Mr. Smith is seeking a right to divert water into the  
8 pond the entire year, which has been his practice. He suggests that since some  
9 of the trees are not native to this area and climate, they need water all year.  
10 Although he did not testify to the quantity of water diverted from the creek and  
11 carried in the ditch, Mr. Smith did attest to a need for a "brisk flow" to keep  
12 the ditch from freezing in the winter and to prevent stagnation in the ponds  
13 during the summer.

Water Right Claim No. 132989 was filed by James B. Pinckard pursuant to the  
15 requirements of RCW 90.14. It asserts a right to divert 4 cubic feet per  
16 second, 2880 acre-feet per year from the combined flow of Wilson and Naneum  
17 Creeks for the irrigation of 36 acres and stock watering in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
18 Section 30, T. 18 N., R. 19 E.W.M.

The claimant's land in the W $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30 was settled by Carl Sander  
20 in the early 1870's. Mr. Smith purchased his property from Carl Sander's  
21 grandson, James Pinckard, and the original Sander home is still on the  
22 property. In 1910 landscape architects established a 7 acre park around the  
23 home. The Referee believes this is most of the lawn and landscape area still  
24 irrigated by the claimant. On April 20, 1871, Sander settled on the E $\frac{1}{4}$ NW $\frac{1}{4}$  and

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1 Government Lots 2 and 3 of Section 30 (155.39 acres) and received the patent on  
2 February 10, 1875. On June 1, 1874, Sander settled on the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{4}$ SW $\frac{1}{4}$  of  
3 Section 30 (117.77 ac.) and received the patent on December 1, 1882. This land  
4 is riparian to Wilson Creek. Rights were awarded to Carl Sander for this land  
5 and others he owned in the Sander v. Jones decree. The Findings of Fact that  
6 preceded the decree stated that Sander first appropriated 20 inches from Wilson  
7 Creek in 1873 and steadily increased his appropriation until by 1887 he was  
8 appropriating a total of 450 inches. Additional water was appropriated by  
9 Sander for running a mill. As previously mentioned, the decree stated that one  
10 inch of water was needed to irrigate one acre in May and June and one-half inch  
11 the rest of the year.

12 Under the Riparian Doctrine, the priority date for a water right is the  
13 date steps were first taken to sever the land, which in this case would be the  
14 date that Carl Sander settled on the land. The land was settled in two blocks,  
15 therefore, two separate water rights must be awarded. The land in Government Lot  
16 3 would have a priority date of April 20, 1871 and the land in Government Lot 4  
17 would have a priority date of June 1, 1874.

18 However, Mr. Smith testified to not having irrigated the 26 acres of  
19 pasture during his ownership. A statement by Mr. Smith entered as Exhibit  
20 DE-182 indicates he acquired the land in 1981. RCW 90.14.170 provides that if a  
21 water right, or portion of a water right, is not exercised for five successive  
22 years, the unused portion is relinquished. There are several sufficient causes  
23 that prevent relinquishment, but Mr. Smith has not brought to the Referee's  
24 attention any that might apply. Therefore, the Referee can only recommend that  
25 a water right be confirmed for the irrigation of the 7.5 acres that have

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continued to be irrigated. Mr. Smith asks that a right be allowed for diversion  
1 of water into the pond the entire year. However, irrigation rights are limited  
2 to the season when water can beneficially be used for irrigation purposes. Due  
3 to the climate in the Ellensburg area, irrigation water is not applied in the  
4 winter months. Mr. Smith has provided no evidence to show that water can  
5 beneficially be used for irrigation on his property during the winter months.  
6 Lacking that evidence, the Referee will not recommend that the right be  
7 exercised all year.

The Referee recommends that a right be confirmed with a June 1, 1874, date  
9 of priority for the diversion of 0.15 cubic foot per second in May and June and  
10 0.075 cubic foot per second in April and July 1 through October 31, 37.5  
11 acre-feet per year for the irrigation of 7.5 acres.

Mr. Smith testified that livestock grazing in the pasture drink from the  
13 pond, which is covered by the stock water stipulation discussed on page 4 of  
14 this report.

COURT CLAIM NO. 01960 -- William Z. Smith  
17 & Jean Smith  
18 John Libenow  
Conrad Kraft

The Smiths submitted a claim to the Court asserting a right to use waters  
19 from Wilson and Lyle Creeks for irrigation and stock water. Mr. Smith testified  
20 at the evidentiary hearing. On April 4, 1991, John Libenow and Conrad Kraft  
21 were joined to the claim.

At the time the claim was filed, the Smiths owned approximately 21 acres.  
23 Since then they sold 10 acres to John Libenow and 7 acres to Conrad Kraft. The  
24

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Smiths retained approximately 4 acres. According to Mr. Smith's testimony the entire 20 plus acres has been irrigated from Lyle Creek with water placed in the creek by the Kittitas Reclamation District (KRD). The only system for delivering KRD water is through Lyle Creek. The land is pasture and at times rented to neighbors, who raised cattle and horses. The livestock drink directly from the creek. Of the property still owned by the Smiths, only their lawn is irrigated with water diverted from the creek. Three acres are subirrigated, so it has never needed to be irrigated.

A spring located in the middle of the 10 acres owned by John Libenow flows into Lyle Creek. When the flow in Lyle Creek is down, the spring produces enough water for the livestock. Mr. Smith also testified about a spring located on the neighboring Overton property, but it is not clear whether any of the water is used on the claimants' land.

Water Right Claim No. 094505 was filed by William Z. Smith asserting a right to use 2.0 cfs, 125 acre-feet per year from Lyle Creek for the irrigation of 25.5 acres and stock watering.

Very little historical information about the property was placed into the record at the hearing. Mr. Smith testified that the land was included in a patent that issued to Northern Pacific Railroad on January 16, 1896. When Court Claim No. 01960 was filed, a copy of Decree 96, Sanders v. Jones, was included with the claim. Also included were two chain of title sheets, showing the chain of title for a portion of Section 29, T. 18 N., R. 19 E.W.M. One sheet shows NPPR conveying land in 1888 to Wm. G. and Margaret Liles, who then conveyed it to Andrew Ford. The second sheet shows NPPR conveying land to John Haley. John Haley was a party to Sanders v. Jones and was awarded 135 inches of water. A

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portion of his land was described in the Findings of Fact that preceded the  
1 decree, but the land he acquired from NPPR was not. It may be that if the  
2 claimants own land that was originally owned by John Haley, they may enjoy a  
3 portion of that right. However, it is not clear to the Referee that they are  
4 successors to John Haley. The legal description for the chain of title sheet is  
5 not on the sheet. Additionally, it is not clear that the claimants are using  
6 natural flow water from Lyle Creek. Mr. Smith testified to using water placed  
7 in the creek by KRD. Rights to the use of water delivered by KRD are not being  
8 addressed in the subbasin pathway. KRD is a major claimant whose rights have  
9 been determined through the Major Claimant Pathway.

10  
11 Due to the lack of evidence to show that natural creek water is being used,  
12 as opposed to water delivered by KRD and lack of evidence to show that a water  
13 right was established through historic water use, the Referee cannot recommend  
14 that a right be confirmed.

15 Non-diversionary stock watering from either the creek or springs is covered  
16 by the stock water stipulation discussed on page 4 of this report.  
17

18 COURT CLAIM NO. 00366 -- Richard A. Snowden

19 Richard Snowden filed a Statement of Claim with the Court asserting a right  
20 to use waters from Mercer Creek for irrigation and stock water. Mr. Snowden is  
21 represented by Attorney John P. Gilreath. Don Snowden, the claimant's son  
22 testified at the evidentiary hearing.

23 According to Mr. Snowden's testimony and Exhibit DE-1622, the claimants  
24 property lies in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, T. 17 N., R. 18 E.W.M.  
Within that area 39 acres are irrigated with water diverted from Mercer Creek.

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Nine acres are planted in grain, 9 acres in mixed grasses and 21 acres are  
1 pasture. Up to 150 head of sheep are raised on the land. The sheep have access  
2 to the irrigation ditch and Wilson Creek. Water is diverted from Mercer Creek  
3 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 2, T. 17 N., R. 18 E.W.M. and carried in an open,  
4 unlined dirt ditch that parallels the Burlington Northern railway. The ditch  
5 splits after it enters the NE $\frac{1}{4}$  of Section 11 with the westerly branch going to  
6 the Schaake property and the easterly branch going to the Snowden property. The  
7 land is flood and rill irrigated. Mr. Snowden estimated that the flow of water  
8 coming onto the property and used to irrigate is 2 cubic feet per second and  
9 that he uses 547 acre-feet per year to irrigate the 39 acres (14 acre-feet per  
10 acre). An additional 6 acre-feet per year is needed for stock watering.  
11 Livestock drinking directly from Wilson Creek is covered by the stock water  
12 stipulation discussed on page 4 of this report.

14 Water Right Claim (WRC) No. 043215 was filed by Richard A. Snowden pursuant  
15 to the requirements of RCW 90.14. It asserts a right to use 1.5 cubic feet per  
16 second, 200 acre-feet per year from Mercer Creek for the irrigation of 35 acres  
17 in that portion of the NE $\frac{1}{4}$  of Section 11, T. 17 N., R. 18 E.W.M. known as tax 27  
18 and that portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, T. 17 N., R. 18 E.W.M., both tracts  
19 west of the right of way of the Burlington Northern Railroad. The Referee notes  
20 that the claim does not include the SE $\frac{1}{4}$  of Section 11, which is where a portion  
21 of the irrigated land lies. Neither the witness nor the claimant's counsel  
22 addressed the discrepancy between the 90.14 claim and the place of use described  
23 on WRC No. 043215. The point of diversion described is very near the diversion  
24 currently used.

25  
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1       Section 11 was originally conveyed to the Northern Pacific Railroad for  
2 construction of the railway. On November 8, 1887, N.P.R.R. conveyed to Edwin  
3 Leaming the E $\frac{1}{2}$ SE $\frac{1}{4}$  and NW $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 11 and according to Mr. Snowden on  
4 November 22, 1900, conveyed to a Schlotfelt the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11. There are  
5 no documents in the record concerning the ownership history for the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
6 Section 11, except for a real estate contract that shows by 1933 the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
7 Section 11 was in the Snowden family.

8       The Referee discovered in the Schaake Packing Company exhibits two  
9 documents that appear to relate to the Snowden property. DE-812 is a Notice of  
10 Appropriation of Water filed by E. H. Snowden on October 22, 1913. It states  
11 that on that day Snowden appropriated and converted to beneficial use 120 miner  
12 inches of water at a point in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, about 350 feet above  
13 where the currently used ditch enters the Snowden property. The notice states  
14 that the water is an accumulation from springs, underground drainage and  
15 ditches. "The same heretofore going to waste, to be conveyed by flume, pipes  
16 and ditches and used for irrigation on the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 11,  
17 T. 17 N., R. 18 E.W.M." DE-811 is an Appropriation of Water dated January 24,  
18 1918, by E. H. Snowden that includes a "Map showing accumulation of waste water  
19 from irrigation, drainage, springs and other sources, in the County Road, on the  
20 South Side of the N $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Section 11 T. 17 N. R. 18 E.W.M. the same  
21 heretofore going to waste, is hereby appropriated by E. H. Snowden to be used  
22 for irrigation purposes, on the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  and the north  $\frac{1}{4}$  of the SE $\frac{1}{4}$  of  
23 said Section eleven." The drawing shows the location of the 1913 appropriation  
24 and the Appropriation of waste water by E. H. Snowden in 1918.

25  
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The appropriations do not suggest that there is any other water use on the  
1 property. Both Cascade Irrigation District and Ellensburg Water Company deliver  
2 water to lands updrainage from the claimants lands. The terms in the notices of  
3 appropriation suggest that something other than creek water was being captured  
4 and used and in fact use the words waste water. Although Mr. Snowden testified  
5 that his family farmed and irrigated the land, it now appears that the water  
6 used was not from Mercer Creek. Attached to the claim summary (DE-1621) is a  
7 map that includes the claimant's property outlined in red. The map was prepared  
8 by C. H. Swigart as part of the surveys done prior to construction of the Yakima  
9 Irrigation Project. This 1915 map shows a branch of Wilson Creek going through  
10 the claimant's property, as it does today. However, Mercer Creek is not shown.  
11 The course of Mercer Creek was changed in the 1940's when the airport north of  
12 Ellensburg was constructed. With this map not showing Mercer Creek, the Referee  
13 must question whether it flowed at a location that would have allowed a  
14 diversion to the claimant's property. There are no ditches shown coming to the  
15 claimant's property. That certainly is not conclusive, because this map appears  
16 to have been intended to show diversions and ditches off the Yakima River, not  
17 its tributaries. However, there are many ditches off of tributaries that are  
18 shown.  
19

In light of the discrepancy between the RCW 90.14 claim and the lands to  
20 which the claimant is asserting a right, which appear to be the lands the  
21 Snowden family have owned for over 70 years, the Referee will not at this time  
22 recommend that a water right be confirmed. If the claimant made an error in  
23 completing WRC No. 043215, he may need to seek an amendment to the claim through  
24 RCW 90.14.065. As the Snowden family has owned the land for such an extended  
25

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1 period of time, additional information should be available about the nature of  
2 the water used and the history of that use.  
3

4 COURT CLAIM NO. 00529 -- Howard P. Sorensen  
5 & Bernice H. Sorensen

6 The Sorensens submitted a claim to the Court for the use of waters from  
7 Lyle Creek, Wilson Creek and Little Wilson Creek. The claimants are represented  
8 by Attorney Lawrence E. Martin and their son, Morris Sorensen, testified at the  
evidentiary hearing.

9 The claimants' land lies in the S $\frac{1}{4}$ NW $\frac{1}{4}$ , the N $\frac{1}{4}$ SW $\frac{1}{4}$  north of I-90 and the  
10 SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, that portion of the E $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
11 Section 11 east of a branch of Wilson Creek (called Little Wilson Creek by the  
12 claimants) and that portion of the NW $\frac{1}{4}$  lying northeast of I-90 and the  
13 N $\frac{1}{4}$ NP $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 13, all in T. 17 N., R. 18 E.W.M. The Sorensens own a  
14 total of 388 acres, of which 348.3 acres are irrigated. Within the land lying  
15 north of I-90, 162.7 acres are irrigated and 170.8 acres south of I-90 are  
16 irrigated, mostly with water delivered through Bull Ditch. The claimants are  
17 not asserting a right individually for water delivered through Bull Ditch. Bull  
18 Canal Company is a claimant in this proceeding and is asserting rights on behalf  
19 of its patrons; see page 101 of this report.

20 Lyle Creek is diverted near the northeast corner of the property and is  
21 used to irrigate land both north and south of I-90. Mr. Sorensen testified to  
22 irrigating 183 acres with water diverted from Lyle Creek. However, the  
23 Engineering Report prepared by Richard Bain, a consultant hired by the claimant,  
24 states that Lyle Creek, through takeout (TO) 1 is used to irrigate fields, 1, 2

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1 and 3, with a total of 120.9 acres and fields 9 and 11, which have 45.3 acres;  
2 for a total of 166.2 acres in the five fields. Water delivered by Bull Ditch is  
3 also used on Fields 9 and 11. Water delivered by Ellensburg Water Company (EWC)  
4 is also used to irrigate fields 1, 2 and 3. EWC dumps its water into Lyle Creek  
5 for delivery to the Sorensen property. Mr. Sorensen testified to diverting 4  
6 cfs from Lyle Creek, but believes half of that is EWC water, so 2 cfs is creek  
7 water. Lyle Creek borders the east edge of the property in Section 12.  
8 Approximately 110 head of cattle, along with 2 horses, graze on the property and  
9 drink directly from the creek. Non-diversionary stock watering is covered by  
10 the stock water stipulation discussed on page 4 of this report.

11 Little Wilson Creek is used to irrigate fields 4 and 5. Field 5 is 25  
12 acres in size and is irrigated solely with Little Wilson Creek Water. Mr.  
13 Sorensen testified that field 4 is 10 acres in size and is primarily irrigated  
14 with creek water, but other sources can be used in an emergency. Although Mr.  
15 Sorensen testified to it being 10 acres in size, a map attached to the claim,  
16 which matches the map in the Bain report, shows it being 8 acres. 2.3 cubic  
17 feet per second is diverted from Little Wilson Creek. Wilson Creek is used to  
18 irrigate 34.5 acres lying south of Wilson Creek and east of the Canyon Road. 6  
19 cubic feet per second is diverted from Wilson Creek.

20 A pond is located in the W½W¾ of Section 12. A small pond existed on the  
21 property and was enlarged in the early 1960's when I-90 was built. Prior to the  
22 enlargement, the small pond was not used. The pond is now 13 acres in size and  
23 is used when water is not available from the primary sources, i.e. the creeks  
24 and EWC. Two pumps are located on the pond, one at the north end and one at the  
25 south. There is no diversion into the pond, it captures return flow from

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1 neighboring irrigated fields and shallow ground water. The pond is used as a  
2 backup water supply and is only used when water is not available from the creeks  
3 or EWC.  
4

Howard Sorensen filed three water right claims pursuant to the requirements  
of RCW 90.14. Water Right Claim (WRC) No. 049533 asserts a right to divert 4  
cubic feet per second, 1200 acre-feet per year from Wilson Creek for the  
irrigation of 50 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 13, T. 17 N., R. 18 E.W.M. The  
described point of diversion is near the center of the NW $\frac{1}{4}$  of Section 13, on  
Wilson Creek. WRC No. 049534 asserts a right to use 6 cubic feet per second,  
1800 acre-feet per year from Lyle Creek for the irrigation of 280 acres in the  
S $\frac{1}{2}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 12, the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 13, T. 17 N.,  
R. 18 E.W.M. The point of diversion described is near the northeast corner of  
the Sorensen property, near the north-south half section line. WRC No. 049535  
asserts a right to use 4 cubic feet per second, 1200 acre-feet per year from  
Wilson Creek for the irrigation of 52 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$  and N $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$  of  
Section 11, T. 17 N., R. 18 E.W.M. The point of diversion described is in the  
NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, on what has been described by Morris Sorensen as Little  
Wilson Creek. All three of the claims assert that water was first used in 1895  
and besides asserting a right for irrigation, also assert a right for stock  
watering.

The Referee notes that not all of the Sorensen irrigated land is described  
in the claims filed pursuant to RCW 90.14. WRC No. 049533 only describes the  
E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 13 as the lands on which water is used. Field 8 lies in the  
NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13; however, the Referee concludes from the information in the  
Bain report that this field is irrigated exclusively from Bull Ditch.

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1      Similarly, WRC No. 049534 does not include the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, where field  
2      7 is located, as lands on which Lyle Creek water is used. The Bain Report also  
3      leads the Referee to conclude that this field (#7) is irrigated from Bull  
4      Ditch.

5      Additionally, there was no RCW 90.14 claim filed for use of the pond. Since  
6      the pond was enlarged in the early 1960's and first used after the enlargement,  
7      the only mechanism for obtaining a water right was through the permit procedures  
8      of RCW 90.03, so filing a claim under RCW 90.14 would not have been  
9      appropriate. There is no evidence that a permit was acquired by the claimants  
10     for use of the pond. To the extent that the claimant is using return flow water  
11     generated from the irrigation of his fields that surround the pond, no  
12     additional water right is needed beyond that held for the water used for the  
13     initial irrigation of the land. The Referee cannot recommend that a water  
14     right be confirmed for use of the pond as there is no evidence a right was  
15     established for use of any naturally occurring water in the pond.

16     Several different people owned the land in Sections 11, 12 and 13 in the  
17     late 1800's and the claimants own portions of several different homesteads. The  
18     claimant has put into the record several documents that relate to settling of  
19     the land.

20     The claimants land in Section 12 was settled by two individuals. William  
21     Berry received a patent on July 1, 1874, for the SW $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
22     Section 12; the Sorensens own the SW $\frac{1}{4}$ NW $\frac{1}{4}$  and E $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12. According to  
23     the homestead documents, Berry had settled on the land on June 10, 1872, and  
24     before the patent issued had plowed and cultivated 140 acres. There was no  
25     reference in the documents to irrigation on the land. Jacob Galladay received a

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1 patent on January 22, 1890, for the NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12. The  
2 homestead documents show that he settled on the land on September 25, 1882, and  
3 that by 1888 had 120 acres farmed in wheat, oats barley, and garden. The  
4 documents also show he spent \$1000 on water rights and irrigation ditches. The  
5 parcel that Galladay homesteaded was riparian to Lyle Creek. The Sorensens own  
6 the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12.

7 David Small received a patent on June 13, 1876, for the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , and  
8 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13. The Sorensens own all of this land, except for a portion  
9 of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ . Section 13 was originally awarded to Northern Pacific Railroad  
10 Company as potential land for construction of a railroad. In 1874, N.P.R.R.  
11 relinquished its interest in the land to Small. According to the homesteading  
12 documents, Small settled on the land on June 10, 1872, and prior to the patent  
13 issuing had 6 acres plowed and cultivated. This land is riparian to Wilson  
14 Creek.

15 Most of the land owned by the claimants in Section 11 lies in the E $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
16 which was settled by William Berry, who received a patent for lands including  
17 the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11 on June 5, 1873. This land is riparian to Little  
18 Wilson Creek. The Sorensens also own that portion of the E $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11  
19 lying east of Little Wilson Creek. The SE $\frac{1}{4}$  of Section 11 was originally  
20 conveyed to Northern Pacific Railroad for potential siting of a railroad. There  
21 is no evidence in the record of when it passed into private ownership. The  
22 NE $\frac{1}{4}$ SE $\frac{1}{4}$  is also riparian to Little Wilson Creek.

23 The record does not contain the names of who would have owned the  
24 claimants' land at the time of either the Ferguson or Sanders decree. The  
25 decrees, or the Findings of Fact that preceded the decree describe the lands

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1 owned by some of the parties, but not all of them. The lands described do not  
2 include the land owned by the claimants and without knowing who owned their land  
3 at the time of those cases, the Referee cannot find where rights were awarded  
4 for the claimants' land. While the homesteading documents in the record  
5 reference clearing and cultivating land, with one exception, there is no  
6 discussion about irrigating the land or expenses noted that relate to  
7 irrigation. The one exception is land for which the patent issued in 1890 and  
8 the reference to spending \$1000 for water rights and irrigation ditches. This  
9 particular homestead is for lands that are served by Ellensburg Water Company.  
10 Construction of the Town Ditch began in 1885 and water was delivered shortly  
11 thereafter. It is not possible to know whether the water right and irrigation  
12 ditch referenced is for use of creek water or water delivered by EWC.

13 The claimants have not put in any evidence to show that water rights were  
14 established for use of the creeks. Three documents were entered with that  
15 intent, however, they fail. Exhibit DE-682 is a Notice of Water Right filed by  
16 S. R. Geddis. However, the water sources and lands described do not pertain to  
17 the claimants land or water use. Manastash Creek and Reed Creeks are discussed,  
18 which lie on the other side of the Yakima River from the claimants' land. When  
19 lands are described, often the range is left off of the location. However, the  
20 Referee recognizes the names in the notice as landowners in the Manashtash Creek  
21 area during the late 1800's. Exhibit DE-683 is an Appropriation of Water by E.  
22 H. Snowden. It asserts a right by Snowden to use accumulated water water for  
23 use in the SW<sup>1</sup>NE<sup>4</sup> and the N<sup>1</sup>SE<sup>4</sup> of Section 11. There is no evidence that  
24 Snowden owned the portion of the N<sup>1</sup>SE<sup>4</sup> of Section 11 now owned by the  
25 claimants. The Referee notes that there is a Snowden who is a claimant for land

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1 in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11. The map attached to the document shows  
2 the water the land southwest of the NPPR line, which is not where the claimants'  
3 land lies. Lastly, there is Decree No. 11,460, Exhibit No. DE-685, which  
4 settles a dispute between George W. and Edna P. Schreiner and Richard A. and  
5 Helen Snowden about use of water. The decree orders that the parties use water  
6 on alternate weeks during the months of May through September of each year. It  
7 does not identify the source of water in dispute, although the Referee surmises  
8 that it might be the waste water discussed in the Snowden appropriation document  
9 previously discussed. The Snowden property is again described as being in the  
10 SW $\frac{1}{4}$ NE $\frac{1}{4}$  and N $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11 and the Schreiner property is a portion of the  
11 NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11. If the claimants were to provide information to show that  
12 Snowden owned their land and that these documents support a conclusion that a  
13 water right exists, they only own about 3 acres within the N $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11  
14 and the source of water addressed is clearly not the source of water currently  
15 being used on that portion of the claimant's land, i.e. Little Wilson Creek.

16 The deeds in the record show that the Sorensens acquired a portion of the  
17 land in Section 12 in 1952. It is not clear when the rest of the land was  
18 acquired, although Morris Sorensen's testimony would indicate the rest was  
19 acquired at about the same time.

20 Due to lack of evidence to show that water rights were established for use  
21 of the creeks, the Referee cannot recommend that water rights be confirmed. In  
22 order to support their claim, there needs to be evidence that creek water was  
23 diverted and beneficially used on their land prior to December 31, 1932. Since  
24 EWC and Bull Ditch water is also used, evidence of water use without  
25 identification of the sources is not adequate.

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1 COURT CLAIM NO. 00673 -- Morris P. Sorensen  
2 & Patricia E. Sorensen

3 The Sorensens are asserting a right to use water from unnamed drains for  
4 the irrigation of 28.09 acres in the E $\frac{1}{2}$  of Section 13, T. 17 N., R. 19 E.W.M.  
5 Morris Sorensen appeared and testified at the evidentiary hearing.

6 The Sorensen property is approximately the south 686 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and  
7 the north 825 feet of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13. All of the land was irrigated  
8 with water delivered by Bull Canal Company until 1970. In 1970 the pond on the  
9 property was constructed and resulted in Bull Ditch not being able to serve the  
10 12.5 acres that is around the pond. There are 14.5 acres lying generally to the  
11 north of the pond that is still irrigated from Bull Ditch. The Sorensens are  
12 asserting a right to irrigate the 12.5 acres from the pond. They are claiming a  
13 right to use 5 acre-feet per acre irrigated. Mr. Sorensen did not testify to  
14 the instantaneous quantity used. A diesel pump is placed on the pond  
15 withdrawing water to a sprinkler system. The 12.5 acres is pasture land that  
16 has up to 110 head of cattle on it from time to time during the irrigation  
17 season. As the cattle eat the grass down they are moved to another pasture to  
18 allow it to regrow. The livestock drink directly from the pond. When the land  
19 was served by Bull Ditch, they drank from the ditch. Mr. Sorensen testified to  
20 consistently irrigating the field, although he may not do so every year.  
21 Weather conditions and diesel prices are factored into his decision to  
22 irrigate. He irrigates the field at least every couple of years. Mr. Sorensen  
23 is asserting a priority date for use of the pond consistent with the Bull Canal  
24 Company priority date.

25  
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The Referee cannot recommend confirmation of a water right for a use  
1 initiated in 1970. At that time, compliance with the permit requirements of RCW  
2 90.03 was needed in order to establish a new water right. However, it appears  
3 that rather than establishing a new water right, the Sorensens may have changed  
4 their water right from Bull Canal to the pond. Mr. Sorenson did not testify to  
5 the source of the water in the pond, but bearing in mind the location of Bull  
6 Ditch in relation to the pond and the neighboring fields irrigated with Bull  
7 Ditch water, it is very likely that much of the water pumped from the pond is in  
8 fact Bull Ditch water. RCW 90.03.380 provides a process for changing a water  
9 right. The claimant may want to contact Ecology's Central Regional Office to  
10 inquire about the need and process to seek a change for any water he has a right  
11 to under the Bull Canal Company. The canal company is a claimant in this  
12 proceeding, whose claim is addressed on page 101 of this report.

16 COURT CLAIM NO. 00462 -- Wallace M. Stampfly

17 Wallace M. Stampfly filed Court Claim No. 00462 for the use of waters from  
18 Wilson Creek, Naneum Creek and Cave Creek and Walter and Thelma Stampfly filed  
19 Court Claim No. 0355 for use of Naneum Creek and Cave Creek. The Stampflys were  
20 represented by Attorney Kenneth Beckley at the evidentiary hearing and Wallace  
21 Stampfly testified on behalf of both claims at the hearing.

22 The first claim to be addressed is for the use of waters diverted from  
23 Wilson Creek for the irrigation of 70 acres in the S $\frac{1}{2}$ N $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{4}$ S $\frac{1}{4}$ NE $\frac{1}{4}$  and N $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$   
24 of Section 30 and a portion of the W $\frac{1}{2}$ W $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ W $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29, T. 19 N.,

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R. 19 E.W.M. Water is diverted from Wilson Creek in the SE $\frac{1}{4}$  of Section 18 and  
1 carried through Sections 18 and 19, into Section 30. Claimants Wilkinson,  
2 Dunning and Morrison also use this ditch. The land is flood and rill irrigated,  
3 which is believed to have been the historic practice.  
4

Mr. Stampfly is asserting an 1885 priority date, but provided no basis for  
5 that assertion. According to the evidence presented as part of Marilyn  
6 Wilkinson's claim for the land she owns in the NE $\frac{1}{4}$  of Section 30 and the NW $\frac{1}{4}$  of  
7 Section 29, Christian Johnson received a patent on January 11, 1890, for the NE $\frac{1}{4}$   
8 and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30 and at some point acquired the west 280 feet of the NW $\frac{1}{4}$   
9 of Section 29, which includes the portion of the NW $\frac{1}{4}$  owned by Mr. Stampfly. In  
10 a deed dated June 10, 1893, Christian Johnson transferred the land described in  
11 the patent, along with the west 280 feet of the NW $\frac{1}{4}$  of Section 29 to Mrs.  
12 Elizabeth Searles, along with the water right appropriated in 1887. Christian  
13 Johnson and John Lelard filed a Notice of Location of Ditch and Water Right  
14 providing notice of construction of a ditch from the North Fork Wilson Creek to  
15 the ranch of Christian Johnson in the NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30. A right was  
16 asserted for 300 inches of water with the appropriation of water occurring  
17 between March 24 and April 14, 1887.  
18

Two prior decrees address water rights for land which includes the Stampfly  
19 property. In Rader v. Sander, (1917) a right to the use of 10 inches diverted  
20 from Wilson Creek above Lyle Creek for use in Section 19, the W $\frac{1}{4}$ SW $\frac{1}{4}$  of  
21 Section 20, the NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30 and the NW $\frac{1}{4}$  of Section 29 was  
22 identified for C. R. and Grace Hovey as being senior to the plaintiff, William  
23 H. Rader. The decree did not identify where the irrigated land was located.  
24

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Claimants Lorne Dunning and Marilyn Wilkinson are also asserting rights to this water.

Although Christian Johnson had filed a notice of water right asserting a right to 300 inches of water, a right to only 10 inches was recognized in Rader v. Sander for what was formerly the Johnson property. None of the claimants who own portions of the Christian Johnson property have attempted to explain the difference or provide a basis for their claimed water right.

The Stampfly property was owned by Lawrence A. Manly during the 1972 action, Ecology v. Carlson, which resulted in the 1973 Order Pendente Lite. Mr. Manly was recognized as having a right to 0.05 cubic foot per second for use in the NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30 and a portion of the NW $\frac{1}{4}$  of Section 29. There is no evidence that he filed any claims pursuant to RCW 90.14 for his property. Due to this and the lack of information concerning the historic place of use for the 10 inches recognized in Rader v. Sander and no other water rights having been awarded in Rader, supra, the Referee cannot recommend that water rights to Wilson Creek be confirmed for the Stampfly land in either Sections 29 or 30.

Rights are being asserted for the use of water from Naneum Creek for the irrigation of 250 acres in the SE $\frac{1}{4}$  of Section 28 and the SW $\frac{1}{4}$  of Section 27, both in T. 19 N., R. 19 E.W.M.. Water is diverted from the creek at a point in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 20 and carried to the property through the Charlton-Fleming Ditch. Hay and irrigated pasture are planted on the property, which is flood and rill irrigated. Mr. Stampfly testified to diverting up to 10 cubic feet per second into the ditch early in the irrigation season for his use and that of Larry Charlton for lands in the NW $\frac{1}{4}$  of Section 34. Irrigation begins in

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mid-April and generally by August water can only be diverted for stock watering  
1 in order to satisfy senior rights on Naneum Creek.

2 The Northern Pacific Railroad Company (NPRR) received a patent for the W $\frac{1}{4}$   
3 of Section 27 on May 27, 1896. Prior to that, on August 2, 1890, they conveyed  
4 that land to Charles Dibble. The land was sold four times between 1890 and 1903  
5 when Robert Fleming purchased it from Elizabeth Dickson. The deeds transferring  
6 the land each referenced water rights and irrigation ditches. Robert Fleming  
7 received a patent for the SE $\frac{1}{4}$  of Section 28 on June 3, 1910, and immediately  
8 sold both the SE $\frac{1}{4}$  of Section 28 and the W $\frac{1}{4}$  of Section 27 to Ernest Marks.  
9

10 On May 22, 1890, Robert Fleming filed with the county a Statement of Water  
11 Right in which he stated that he owned the SE $\frac{1}{4}$  of Section 28 and in April 1885  
12 dug a ditch from Stone Creek beginning in the SE $\frac{1}{4}$  of Section 21 for irrigating  
13 his land. In April 1887 he enlarged the ditch to irrigate 160 acres. It also  
14 went on to say that C. W. Dibble and Jesse Gilkey helped with construction of  
15 the ditch and claimed an interest in it, but have since abandoned their interest  
16 in the ditch. The Referee believes that Stone Creek is now called Cave Canyon  
17 Creek, which is in the neighboring Subbasin No. 10, Kittitas. Rights to use of  
18 that water will be addressed in the Subbasin No. 10 Report of Referee.

19 On May 31, 1890, George C. Charlton, Robert Fleming, and C. W. Dibble,  
20 filed a Statement of Claim Of Water Right stating that on November 1, 1886, they  
21 began construction of a ditch known as the Pleasant Hill Ditch, and completed  
22 the ditch in April 1888. The ditch was constructed by them jointly for the  
23 purpose of irrigating their lands. Charlton claimed land in the E $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{4}$ NE $\frac{1}{4}$   
24 of Section 34, T. 19 N., R. 19 E.W.M., C. W. Dibble claimed 100 acres in the W $\frac{1}{4}$   
25 of Section 27, T. 19 N., R. 19 E.W.M., and Robert Fleming claimed the SE $\frac{1}{4}$  of

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1           Section 28, T. 19 N., R. 19 E.W.M. The Notice did not identify the quantity of  
2           water claimed, the capacity of the ditch or the number of acres actually  
3           irrigated.

4           Robert Fleming, who owned the SE $\frac{1}{4}$  of Section 28, and John Farwell, who at  
5           the time owned the SW $\frac{1}{4}$  of Section 27, were defendants in Ferguson v. United  
6           States National Bank of Portland, Oregon, (1901). They were both awarded Class  
7           16 rights, Farwell in the amount of 30 inches and Fleming in the amount of 45  
8           inches. There is nothing in the Ferguson decree to indicate what the priority  
9           date would be for a Class 16 right. The deed transferring the SE $\frac{1}{4}$  of Section 28  
10          and the SW $\frac{1}{4}$  of Section 27 from Robert Fleming to Ernest Marks stated that the  
11          sale included 75 inches of water awarded in Ferguson, 45 inches awarded to  
12          Robert Fleming and 30 inches awarded to John Farwell.

13          Pursuant to the requirements of RCW 90.14 two water right claims were filed  
14          asserting rights to Naneum Creek. Water Right Claim (WRC) No. 023630 asserted a  
15          right to divert 2 cubic feet per second, 800 acre-feet per year from the creek  
16          for the irrigation of 90 acres in the SW $\frac{1}{4}$  of Section 27. WRC No. 023636  
17          asserted a right to divert 3 cubic feet per second, 1080 acre-feet per year from  
18          Naneum Creek for the irrigation of 145 acres in the SE $\frac{1}{4}$  of Section 28.

19          The Order Pendente Lite which issued in 1973 as part of the Ecology v.  
20          Carlson proceeding recognized a right for 0.90 cfs for the irrigation of 45  
21          acres in the SE $\frac{1}{4}$  of Section 28 and 0.60 cfs for the irrigation of 30 acres in  
22          the SW $\frac{1}{4}$  of Section 27, both with an 1887 date of priority. The Order Pendente  
23          Lite was an interim order for management of the water until an adjudication was  
24          complete and cannot be considered to be a final determination of the water  
25          rights to Wilson and Naneum Creeks. There is, however, sufficient evidence in

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the record, primarily the Ferguson decree in 1901, to allow the Referee to  
conclude that water rights were established for the irrigation of of 45 acres in  
the SE $\frac{1}{4}$  of Section 28 and 30 acres in the SW $\frac{1}{4}$  of Section 27. The Referee  
believes that if rights in excess of that were in use at the time of the  
Ferguson decree, they should have been asserted at that time. Additional rights  
could have been established subsequent to entry of the decree, however, there is  
insufficient information in the record to allow the Referee to reach that  
conclusion.

The Referee recommends that a right be confirmed under Court Claim No.  
00462 with a November 1, 1886, date of priority for the diversion of 0.90 cubic  
foot per second in May and June and 0.45 cubic foot per second in April and  
July 1 through October 15, 225 acre-feet per year for the irrigation of 45 acres  
in the SE $\frac{1}{4}$  of Section 28 lying south of the Charlton-Fleming Ditch and north of  
the Keister Ditch and under Court Claim No. 00355 a right with a June 30, 1887,  
date of priority for the diversion of 0.60 cubic foot per second in May and June  
and 0.30 cubic foot per second in April and July 1 through October 15, 150  
acre-feet per year for the irrigation of 30 acres in the N $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 27  
lying below the Charlton-Fleming Ditch.

COURT CLAIM NO. 00497 -- Robert G. Stewart  
& Shirley D. Stewart

The Stewarts filed a Statement of Claim with the Court asserting a right to  
use waters from the Yakima River and an unnamed spring for irrigation and stock  
watering. The claimants are represented by Attorney John P. Gilreath. John  
Eaton who has leased and farmed the property since 1976 testified at the

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evidentiary hearing. Exhibit DE-1513 is an Engineering Report prepared by  
1 Richard C. Bain, Jr., a consulting engineer hired by the claimants. The report  
2 contains information about the irrigation system and water use on the property.  
3

The Stewarts' property lies in the NW $\frac{1}{4}$  of Section 24, T. 17 N.,  
4 R. 18 E.W.M. lying west of Stone Road and east of the Yakima River. They  
5 irrigate 88 acres planted in hay and pasture grass. Up to 300 head of cattle  
6 are raised on the property. The hay ground which is 46 acres is rill irrigated  
7 and the pasture is sprinkler irrigated and is 42 acres. Water is diverted from  
8 the Yakima River in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, T. 17 N., R. 18 E.W.M. and carried  
9 to the property through the Tjossem Ditch. Takeout (TO)-1 on the ditch is used  
10 to irrigate 34 acres on the claimants property and 30 acres owned by the county  
11 and farmed by Mr. Eaton in the SW $\frac{1}{4}$  of Section 13. The estimated flow at TO-1  
12 was 4.0 cubic feet per second. TO-2 is used to irrigate the rest of the Stewart  
13 property. The flow at TO-2 was not mentioned, however, the Bain report did  
14 indicate that a maximum of 4.8 cubic feet per second is used from the Tjossem  
15 Ditch (and the Clark lateral off the ditch) to irrigate the Stewart property.  
16 Mr. Bain measured the Tjossem Ditch near its intake from the river and again at  
17 the fish screen above TO-1 and found that there was no loss or gain associated  
18 with the ditch. A right is also being asserted for use of a spring that is  
19 located near the southerly property line. A pump is placed on the spring and is  
20 used to provide additional water to about 70 acres. The Bain report indicates  
21 that 1.2 cfs is used from the spring.  
22

Mr. Bain determined the annual quantity of water used on the fields based  
23 on the flow at TO-1 and Mr. Eaton's irrigation schedule. Because the rill  
24 irrigated hay ground is so near the river and the ground is very porous, 21.7  
25

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1 acre-feet per year was used to irrigate those fields. The sprinkler irrigated  
2 pasture used 7.9 acre-feet per year per acre irrigated. The claimants are  
3 seeking an additional 12 acre-feet per year for stock watering.

4 David R. Campbell received a patent on May 21, 1891, for the E $\frac{1}{2}$ NW $\frac{1}{4}$  and  
5 E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 24, T. 17 N., R. 18 E.W.M. He then conveyed to William McLeod  
6 the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 24, consisting of 80 acres along with all water rights and  
7 ditches appurtenant thereto. McLeod sold the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 24 to G. F. Dyer  
8 in 1913 and that deed specifically referenced that it included one-half interest  
9 in a water right to the Yakima River conveyed in the ditch used jointly by  
10 Tjossem, Steen, Clark and McLeod. McLeod later sold the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 24 to  
11 the Dyer family and that deed also referenced water rights conveyed in the  
12 Tjossem, Steen, Clark and McLeod Ditch. An agreement in 1902 between John Hanks  
13 and R. P. Tjossem et al deals with abandoning an existing ditch and construction  
14 of a new ditch from the Yakima River. McLeod is one of the parties to the  
15 agreement. The third page of the agreement is missing and the Referee believes  
16 that page identifies how much water each of the parties would have a right to  
17 use from the ditch.

18 Attached to Court Claim No. 00497 are affidavits by Peter R. Tjossem,  
19 Albert Tjossem and John Hanks that attest to the use of water on the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
20 Section 24, and that the water right appurtenant to that ground is 75 inches of  
21 water appropriated from the Yakima River. It summarizes the agreement between  
22 Hanks and Tjossem et al. and states that McLeod's interest in the ditch was 150  
23 inches for the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 24. It also states that for many years prior to  
24 the 1902 agreement R. P. Tjossem and Son were the owners of a power and  
25 irrigation canal and appropriated water from the Yakima River to their mill in

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Section 13 and the third parties to the agreement (including McLeod) were owners  
of a power and irrigation canal from the Yakima River to their lands in Section  
13 and 24 and the two canals ran in the same general direction and were to some  
extent parallel. Since the agreement was entered into the third parties have  
used the canal of the second parties to divert their water from the Yakima River  
to a point in Section 13 where it is diverted from said canal to the lands of  
the third parties. The water for the Steen McLeod and Clark ditch is diverted  
from the Tjossem Ditch and 300 inches are carried, 75 inches for Roy Brown, 75  
inches for John Whittendale and 150 inches for C. F. Lauderdale. Another ditch,  
called the Clark Branch carries water from the Tjossem Ditch for the successors  
in interest of Joel Clark. The Referee believes that John Whittendale is a  
predecessor to the claimants for the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 24. That would result in  
the claimants' land enjoying a right to 150 inches or 3 cubic feet per second.

There were no historical records offered concerning the W $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 24, except testimony that a patent issued to a Thompson on June 30,  
1922. There also was no evidence of historical water use on this land. All the  
evidence shows water use only in the E $\frac{1}{4}$ NW $\frac{1}{4}$  and since it was public land at the  
time the ditches were being constructed, it is not reasonable to conclude that  
there was beneficial use of water on that land. Although counsel for the  
claimants has repeatedly stated there are 88 acres being irrigated in the E $\frac{1}{4}$ NW $\frac{1}{4}$   
of Section 24, since there are no government lots involved in this section, the  
E $\frac{1}{4}$ NW $\frac{1}{4}$  is only 80 acres in size (that number is referenced in most of the deeds  
also). Additionally, review of the maps and aerial photographs lead the Referee  
to conclude that some of the irrigated land (at least 8 acres) does lie in the  
W $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 24. The Referee concludes that there has been sufficient

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1 evidence presented to prove the existence of a right to use 3 cfs for the  
2 irrigation of 80 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 24.

3 Water Right Claim No. 027375 was filed in 1974 by a prior owner of the  
4 property pursuant to the requirements of RCW 90.14. It asserts a right to  
5 divert 5 cfs, 1800 acre-feet per year from the Yakima River for the irrigation  
6 of 160 acres in the NW $\frac{1}{4}$  of Section 24, T. 17 N., R. 18 E.W.M. It also states  
7 that at the time the claim was filed water was only being used for stock  
8 watering. Mr. Eaton was able to establish that by 1976 water was being used for  
9 irrigation, which is less than the five years needed to show that the right had  
10 relinquished, RCW 90.14.170. Water Right Claim No. 027374 was also filed for  
11 the property. It asserts a right to use 0.50 cfs, 180 acre-feet per year for  
12 the irrigation of 160 acres in the NW $\frac{1}{4}$  of Section 24. There is a note on the  
13 claim that the spring water helps irrigate the land along with the water used  
14 from the Yakima River. Although the claimant is asserting a right to use the  
15 spring, there was no evidence put in the record to show that the spring was used  
16 during a time frame that would allow establishment of a water right (prior to  
17 December 31, 1932). The spring is located near the southerly property line and  
18 a pump is used to convey the water to the irrigated land. Most water conveyance  
19 systems in place during the time period when water rights could be established  
20 under either the Prior Appropriation Doctrine or the Riparian Doctrine were  
21 gravity flow systems, not involving use of pumps. The Referee concludes there  
22 is not sufficient information in the record to conclude that a water right was  
23 established through beneficial use of the spring prior to December 31, 1932.

24 The Referee is faced with determining the appropriate annual quantity of  
25 water to award to the claimants. The information presented in the Bain report

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1 is based on use of approximately 6 cubic feet per second. However, the Referee  
2 has found that the evidence supports a recommendation for only 3 cubic feet per  
3 second. At one point in the Bain Report, it states that water is used for 150  
4 days during the irrigation season. The Referee will use that figure. Three  
5 cubic feet per second diverted over a 150 day period would result in 891  
6 acre-feet per year being diverted from the Yakima River for use on the  
7 property.

8       The claimant has suggested that the priority date should be based on the  
9 Riparian Doctrine, which would be the earliest date in the record for efforts to  
10 sever the land. However, the land is not riparian to the Yakima River,  
11 therefore, the priority date would be based on the first efforts to actually  
12 appropriate the water. That date is not in the record. The priority date the  
13 Referee will use will be the date McLeod obtained the property, since the ditch  
14 being used is named the Steen, McLeod Ditch. The Referee recommends that a  
15 right be confirmed with a June 30, 1898, date of priority, for the diversion of  
16 3 cubic feet per second 891 acre-feet per year from the Yakima River for the  
17 irrigation of 80 acres and stock watering in the E½NW¼ of Section 24, T. 17 N.,  
18 R. 18 E.W.M.

19  
20 COURT CLAIM NO. 02311 -- Chester Vernon Stokes  
21                          02312                          & Roma B. Stokes  
22                          02313

23 COURT CLAIM NO. 02314 -- Chester Vernon Stokes

24       The referenced Court claims were filed asserting rights to Wilson and  
25 Naneum Creeks. The claimants are represented by Attorney Vernon E. Fowler, Jr.  
26 Mr. Stokes testified at the evidentiary hearing.

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1       The Stokes own approximately 400 acres in two sections and are irrigating  
2       between 190 and 200 of those acres. Mr. Stokes has lived his entire life in the  
3       Wilson-Naneum area and became familiar with the lands he now owns when as a  
4       child he helped his father cut wood further up the creek. Each of the claims  
5       filed appears to be based on a different water right, so each claim will be  
6       addressed individually.

7              Court Claim No. 02311 asserts a right to use waters from Wilson Creek to  
8       irrigate lands in the S $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M. He  
9       purchased this land in 1958 from Howard Thomas. According to Mr. Stoke's  
10      testimony, approximately 15 acres are irrigated above the Haberman Ditch and 2  
11      acres are irrigated below the ditch. Livestock also are raised on this land,  
12      with a maximum of 400 head on all of the Stokes property. Four hundred head  
13      would need 20 acre-feet per year, or 10 acre-feet during the irrigation season.  
14      The total area described in Claim No. 02311 is about 40 acres, or one-tenth the  
15      total area. One-tenth of the water needed for stock watering will be included  
16      in any right confirmed under Court Claim No. 02311. The 15 acres were  
17      originally irrigated from a ditch that diverted water from Wilson Creek at a  
18      point in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29, T. 19 N., R. 19 E.W.M., over a mile  
19      upstream. When that diversion was used the land was flood irrigated, using  
20      considerably more water than is used at this time. Currently the land is  
21      irrigated with water pumped from a barrow pit that is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
22      Section 32. In 1974 Mr. Stokes changed the irrigation system, along with  
23      changing the point of diversion for his water. There is no evidence he complied  
24      with the change requirements in RCW 90.03.380. This barrow pit captures return  
25      flow water off of the Edith Thomas property to the north and is also fed by

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water diverted from Wilson Creek and/or Whiskey Creek. The land is sprinkler  
1 irrigated, with 30 to 34 sprinklers operated at one time. Based on the  
2 information provided by Mr. Stokes, 0.50 cubic foot per second and 45 acre-feet  
3 per year is currently being used to irrigate the 15 acres. The two acres below  
4 the Haberman Ditch is irrigated with water diverted into the Haberman Ditch from  
5 Whiskey Creek and 1.0 cubic foot per second, 9 acre-feet per year is used on the  
6 two acres. Mr. Stokes described the irrigated land below the Haberman Ditch as  
7 "wild pasture". When it is available, he uses a large quantity of water to  
8 irrigate the field quickly and then shuts it off, which is why such a high  
9 volume is used.

Water rights for the the land in the S $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 were  
11 addressed in W. R. Thomas v. James T. Roberts, et al., Decree No. 5653 signed on  
12 March 1, 1924. In the Findings of Fact for that decree, it was stated that W.  
13 R. Thomas owned the S $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M.,  
14 known as the Rogers Tract, and that Rogers settled on the land in 1886 and water  
15 was first diverted for irrigating this tract in 1885. The amount of water that  
16 had been diverted and was being used was 30 inches. This decree identified  
17 other water rights that are appurtenant to other lands owned by W. R. Thomas.  
18 Besides the Stokes, Andrew J. and Stephanie Mills and Gary M. and Jacquelyn J.  
19 Galbraith own land within the S $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 and are asserting a  
20 water right. Their claims are addressed on pages 363 and 202, respectively.  
21 Between the three claimants, rights are being asserted for the irrigation of a  
22 total of 33 acres. Based on the record, a right exists for the irrigation of a  
23 maximum of 30 acres, which is the number of acres for which the Referee can  
24 recommend that rights be confirmed. Obviously there is an additional three  
25

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1       acres being irrigated beyond the historic water right. There is insufficient  
2       evidence in the record to show where the historically irrigated 30 acres are  
3       located, therefore, the Referee will recommend that the right confirmed to each  
4       claimant be for only a portion of what they are asserting a right. Thirty acres  
5       is 91 percent of the total acreage being irrigated, so each claimant will be  
6       recommended a right for 91 percent of the land they are irrigating. The  
7       proportionate share of the right that the Stokes land would enjoy would be for  
8       the irrigation of 15.5 acres, and based on the award in the decree of 1 inch of  
9       water (or 0.02 cfs) for each acre irrigated, an instantaneous quantity of 0.31  
10      cubic foot per second.

11      A reading of the Findings of Fact that preceded the Ferguson decree would  
12      suggest that another right is appurtenant to lands that include the S $\frac{1}{4}$ SW $\frac{1}{4}$  and  
13      SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. The Findings of Fact state that Mrs. J. L. Bennett owned  
14      the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, with 30 acres being  
15      irrigated. However, the evidence presented by Mr. Stokes clearly shows that  
16      Mrs. Bennett did not own the S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. Claimants in the  
17      S $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, (Tirotta and Magnuson) have put into the record evidence to  
18      show that Bennett owned the S $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 33, not Section 32. See  
19      page 161 and 331 of this report for discussion of their claims.

20      Water Right Claim No. 149672 was filed by Mr. Stokes pursuant to the  
21      requirements of RCW 90.14. It asserted a right to divert 0.25 cubic foot per  
22      second, 75 acre-feet per year from Naneum - Wilson Creeks (combined flow) for  
23      the irrigation of 15 acres and stock water in the S $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32. The  
24      place of use description on the claim does not include the lands irrigated in  
25      the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. Very little of the Stokes land lies outside of the

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1 S<sub>W</sub>S<sub>W</sub>% of Section 32, therefore, the Referee finds that it would be very easy to  
2 mistakenly believe that all of the irrigated land lies within the area described  
3 on the claim. Therefore, the omission of the lands in the SW<sub>W</sub>SE% of Section 32  
4 from WRC No. 149672 will not be considered a defect in confirming a right for a  
5 portion of that land.

6 The Referee recommends that a right be confirmed with a September 30, 1885  
7 date of priority, for the diversion of 0.31 cubic foot per second in May and  
8 June and 0.16 cubic foot per second in April and July 1 through October 15,  
9 47.79 acre-feet per year from Wilson Creek for the irrigation of 15.5 acres and  
10 stock watering. The place of use shall be that portion of the SE<sub>W</sub>SW% of  
11 Section 32 lying north of the Haberman Ditch and that portion of the W<sub>W</sub>SW<sub>W</sub>SE% of  
12 Section 32 west of Wilson Creek and east of Whiskey Creek. The point of  
13 diversion shall be in the SE<sub>W</sub>NE% of Section 29. The claimants should contact  
14 the Department of Ecology about compliance with the change of point of diversion  
15 procedures in RCW 90.03.380.

16 Court Claim No. 02312 asserts a right to irrigate 20 acres within  
17 Government Lot 3 of Section 5, T. 18 N., R. 19 E.W.M. with waters diverted from  
18 Wilson Creek and Whiskey Creek and 5 acres from an unnamed spring. Livestock  
19 are also raised on this portion of the Stokes property. Up to 400 head can be  
20 on all of the 400 acres owned by the Stokes in any given year, although the  
21 average is around 190 head. Since this parcel is one-tenth of the total  
22 ownership, one-tenth of the water needed for stock watering will be included in  
23 any right confirmed under Court Claim No. 2312. Four hundred head of livestock  
24 would need 20 acre-feet each year, or 10 acre-feet during the irrigation  
25 season. One-tenth of that would be 1 acre-foot per year. Eighteen acres lying

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1 east of Whiskey Creek are irrigated from a diversion in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
2 Section 32. Two acres in the southeasterly corner of Government Lot 3 lie east  
3 of Wilson Creek and are irrigated with water diverted from Wilson Creek at a  
4 point in Government Lot 2 of Section 5. Mr. Stokes indicates that 1.5 cfs is  
5 diverted at each point. A spring located approximately 360 feet north and 600  
6 feet east of the southwest corner of Government Lot 3 is also used to irrigate  
7 the southerly five acres that are east of Whiskey Creek and west of Wilson  
8 Creek. The Referee believes that this 5 acres are part of the 18 acres also  
9 irrigated from Whiskey Creek. The flow from the spring was estimated as being  
10 between 0.25 cfs and 1 cfs. Considering the spring's location, it is very  
11 likely it is fed by return flow during the irrigation season. Therefore, a  
12 separate water right will not be considered for the spring.

13 At the time the land was settled, this portion of the claimant's land  
14 along with other land in Section 5 was initially owned by Northern Pacific  
15 Railroad. On December 15, 1892, the railroad sold Government Lots 1, 2 and 3 of  
16 Section 5 to S. W. Prater, who in 1898 sold it to Charles M. Hildreth. The land  
17 was sold many times between 1898 and 1912, which is when it was acquired by  
18 Lillian Lawrence. In 1918 Lawrence sold one acre in the southwest corner of  
19 Government Lot 3 to Mary C. LeClerc and the remaining land stayed in the  
20 Lawrence family until 1939 when half interest in the land was sold to Milton  
21 Lewis. Mr. Lewis' partner, Phil Lawrence, was the nephew of Lillian Lawrence  
22 and in 1916 he began farming the land and leasing it from his aunts. Milton  
23 Lewis testified on behalf of Mrs. Gearhart, a neighboring landowner whose land  
24 has the same historical ownership, about past water use on the land. In 1922 he  
25 was hired to assist with chores and herding cattle on the farm, and that he was

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1 familiar with the land from that time until he sold it in 1971. Mr. Lewis raised  
2 hay, grain, and pasture. For a time the land was a dairy farm. Mr. Lewis  
3 testified at length about the various controversies over water in the area, but  
4 this land was never involved in any of the past litigation.

5 The Referee has reviewed the various decrees and judgments regarding Wilson  
6 and Naneum Creeks and none of the owners of this land during the time of the  
7 litigation were parties to any of the cases. Exhibit No. DE-1307 offered by Mr.  
8 Stokes is an Affidavit of Water Right filed by J. F. LeClerc and W. A. Jordin  
9 dated February 22, 1883, stating that during the year 1872 Aman Galloway dug a  
10 ditch capable of conveying 700 inches of water and appropriated 400 inches of  
11 water. The ditch commenced near the center of Section 32, T. 19 N.,  
12 R. 19 E.W.M. and ran in a southwesterly direction. The ditch was taken out for  
13 the purpose of irrigating land in Sections 5, 6, and 7 in T. 18 N., R. 19  
14 E.W.M. There is nothing in the record to show that the individuals that filed  
15 the affidavit of water right had any interest in the claimants' land. The  
16 affidavit states the ditch commenced near the center of Section 32. The state's  
17 exhibit map does not show a natural water course near the center of Section 32.  
18 The Referee recognizes that the creeks in the area may have changed course over  
19 the years. If Wilson Creek had flowed nearer the center of Section 32 than at  
20 present, a ditch taking off to the southwest would most likely have been serving  
21 the W% of Section 5, particularly since it was also intended to deliver water to  
22 Sections 6 and 7, which are to the west of Section 5.

23 Milton Lewis was a party to Ecology v. Carlson and was identified in the  
24 Order Pendente Lite as having a right with an 1872 date of priority for use of  
25 0.67 cubic foot per second. Review of the report shows that this award was

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based on the Affidavit of Water Right discussed in the previous paragraph. Mr. Maddox in his report chose to assume that the water right was appurtenant to all of the irrigated lands in Sections 5, 6 and 7, irrespective of whether there was any evidence that water had actually been delivered to the land in the late 1800's and early 1900's. This Referee will not make that assumption. In fact, Mr. Stokes has put into evidence documents that clarify the lands owned by LeClerc and Jordin. Chain of title documents show that the LeClerc property was originally settled by Amasa Galloway, with a patent issuing on June 30, 1876. In October of 1876 Fournier LeClerc (also referred to as J. F. LeClerc) acquired the S $\frac{1}{2}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$  and Lot 4 of Section 5, T. 18 N., R. 19 E.W.M. Exhibit DE-603 is a transcript of testimony. The proceeding under which the testimony was given is not identified, nor is the date, however, it would appear to be in the late 1800's or early 1900's. Amasa Galloway is testifying about his knowledge of Wilson, Naneum, Whiskey (then called Dry) and Galloway Creeks. He settled in the area in 1871 along with Father Jordan (his father-in-law), William Jordan, John Bloomquist, Aaron Mercer and Robert Canaday. Mr. Galloway testified some about the William Jordan property and the attorney asking the questions identified the William Jordan land as being the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 6, T. 18 N., R. 18 E.W.M. The Referee believes that the lands in Sections 5 and 6 intended to be served under the Notice of Water right are limited to the lands owned by LeClerc and Jordin. Documents submitted in support of Claim No. 00495, Burl McNeil, show that William Jordin owned the NW $\frac{1}{4}$  of Section 7, receiving a title to the land on October 28, 1889. The land owned by the Stokes in Government Lot 3 of Section 5 do not benefit from this notice,

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however, much of the Stokes' land described in Court Claim No. 02313 will  
1 benefit and will be further discussed below.  
2

The testimony offered by Milton Lewis establishes that the land was being  
3 irrigated by the mid-1920's at the latest. Government Lot 3 is riparian to  
4 Whiskey Creek (also known as Dry Creek). Under the Riparian Doctrine, a right  
5 is established when steps are first taken to sever the land from Federal  
6 ownership contingent on putting the water to beneficial use prior to  
7 December 31, 1932, Department of Ecology v. Abbott, 103 Wn.2d 686, 694, P.2d  
8 1071 (1985). The appropriate date for severing the land from Federal ownership  
9 for lands originally patented to the railroad is May 24, 1884, the date when the  
10 map of definite location was filed for Kittitas County.  
11

WRC No. 149667 was filed by Mr. Stokes pursuant to RCW 90.14. It asserts a  
12 right to divert 0.67 cfs, 90 acre-feet per year from Dry Creek for the  
13 irrigation of 15 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5, which actually is Government  
14 Lot 3 of Section 5. The point of diversion described in the water right claim  
15 is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. WRC No. 149671, also filed by Mr. Stokes,  
16 asserts a right to divert 0.8 cfs, 280 acre-feet per year from field drains and  
17 a spring for the irrigation of 40 acres in the NW $\frac{1}{4}$  of Section 5, which would  
18 include Government Lot 3.  
19

The Referee concludes that sufficient evidence has been presented to show  
20 that a water right exists for use of Whiskey and Wilson Creeks for the  
21 irrigation of 20 acres in Government Lot 3 of Section 5. Although Mr. Stokes  
22 indicated a use of 1.5 cfs from each diversion, the Referee finds that it would  
23 be inappropriate to confirm a right for that quantity when the courts have  
24 consistently held that one miner's inch, or 0.02 cfs, was sufficient for the  
25

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irrigation of each acre in this area. Therefore, the Referee recommends that a  
right be confirmed with a May 24, 1884, date of priority for the diversion of  
0.40 cfs, 100 acre-feet per year for the irrigaiton of 20 acres and 1 acre-foot  
per year for stock watering in Government Lot 3 of Section 5 east of Whiskey  
Creek.

Court Claim No. 02314 was filed for what is referred to as the DeWeese place, which is the SW $\frac{1}{4}$ SW $\frac{1}{4}$  and E $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5. Within that area, 56 acres are irrigated from two points of diversion. One diversion is in either the S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  or N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5 and diverts to the east of Mercer Creek. This diversion is immediately downstream from the point where Mercer Creek separates from Wilson Creek. It is used to rill irrigate a 21 acre field. A right is being sought for the diversion of 1.25 cfs, 126 acre-feet per year. The second diversion is a 30 HP pump on Mercer Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5. This pump is used to sprinkler irrigate a field approximately 15 acres in size west of Mercer Creek and north of the KRD canal and a smaller field also in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, but east of Mercer Creek. A right is being sought for the diversion of 2 cfs, 105 acre-feet per year from this diversion. The pump is also used part of the season to irrigate the 21 acre field that is rill irrigated from the upper diversion. Although Mr. Stokes' testimony and his claim summary indicate a total 56 acres being irrigated, because of the overlap between the area served by the two diversions, less acres are being irrigated within the DeWeese place. Mr. Stokes did not testify to the maximum number of acres being irrigated under Claim No. 02314. The State's Investigation Report shows 40 acres being irrigated and review of aerial photo submitted by Mr. Stokes (DE-1555) leads the Referee to conclude that is fairly accurate, so 40

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1       acres is the number the Referee intends to use. The livestock raised on the  
2       Stokes property also have access to this land, which is three-tenths of the  
3       total area, so three-tenths of the water needed for stock watering, or 3  
      acre-feet per year, will be part of any right confirmed under this claim.

The DeWeese place was also originally railroad land, acquired by John H. Filer in 1891. By April of 1911 the land was owned by George W. and Allie DeWeese, who granted the Ellensburg Water Supply Company a right of way across the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5 for construction of a water pipeline. The right of way contained language that Ellensburg Water Supply Company would be responsible for any actual damage to crops caused by the construction and maintenance of the pipeline. This would indicate the existence of crops on the land. The DeWeeses were also named in Decree No. 5411, William H. Rader v. Olive Sander, et al., which was entered on January 3, 1917. The decree did not identify with any specifics the water right held by the DeWeeses, but it did state that the defendant had a prior right against the plaintiff and co-defendants including George and Allie DeWeese. Again this indicates to the Referee that there was water use on the property. When the Stokes family first acquired the land, it was being irrigated and had evidence of past use, including old fruit trees, barns and a home that appeared to have been built in the early 1900's.

Two water right claims describe land that includes the DeWeese place. WRC  
20  
No. 150664 asserted a right to use 2.0 cfs, 500 acre-feet per year from  
21  
Mercer/Dry Creek for the irrigation of 120 acres and stock watering. The place  
22  
of use is the S3/4W $\frac{1}{2}$  of Section 5 and the described point of diversion is in the  
23  
SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5. This diversion is at approximately the same location as  
24  
the upper most diversion currently being used. WRC No. 152102 asserts a right

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1 to use 1.98 cfs, 720 acre-feet per year from Whiskey Creek for the irrigation of  
2 180 acres and stock watering. The place of use is the NW $\frac{1}{4}$  and SW $\frac{1}{4}$  of Section 5  
3 and the point of diversion is described as being in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5.  
4 This diversion is not currently being used. The second diversion being used by  
5 the claimant requires the use of a pump to irrigate the land. When the water  
6 right was established in the late 1800's pumps were not in use. It is very  
7 likely that the diversion in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5 was used to deliver water  
8 by gravity flow to the field now irrigated with the pump. There is no evidence  
9 that the procedures for changing the point of diversion on a water right  
10 provided for in RCW 90.03.380 were complied with.

11 As with the rest of the Stokes' property, the land described in Court Claim  
12 02314 is riparian to the water source being used, Mercer and Wilson Creeks, and,  
13 therefore, the rights were established under the Riparian Doctrine with a  
14 May 24, 1884, date of priority. The Stokes are seeking a right to divert 3.25  
15 cfs for the irrigation of approximately 40 acres. In light of the repeated  
16 findings by Kittitas County Superior Court in the late 1800's and early 1900's  
17 that 0.02 cfs per acre is sufficient water for irrigation in this area, the  
18 Referee will adopt that finding. Mr. Stokes' testified that when rill  
19 irrigating he uses 6 acre-feet per acre and when he sprinkler irrigates, he uses  
20 3 acre-feet per acre. Some of the land covered by this claim is both sprinkler  
21 and rill irrigated and there was no clear indication how many acres are only  
22 sprinkler irrigated and how many are only rill irrigated. Therefore, the  
23 Referee proposes to use an average of 4.5 acre-feet per irrigated acre. The  
24 Referee recommends that a right be confirmed under Court Claim No. 02314 for the  
25 diversion of 0.80 cubic foot per second, 180 acre-feet per year for the

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irrigation of 40 acres and 3 acre-feet per year for stock watering. The Referee  
1 will authorize use of the two diversions described in the RCW 90.14 claims and  
2 it is suggested that Mr. Stokes contact Ecology about the process for seeking a  
3 change in point of diversion to his pump location. The last claim to be  
4 addressed in Court Claim No. 02313, which was filed for land referred to as the  
5 Coble Place in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NW $\frac{1}{4}$  (Government Lot 4) of Section 5.  
6  
7 Mr. Stokes testified to the number of acres served by each of the five  
8 diversions, but not to the total number of acres being irrigated within the  
9 described area. Because some of the diversions serve land that is also served  
10 by another diversion, the Referee cannot simply add up the acres served by each  
11 diversion and reach a total number of acres irrigated. Mr. Stokes testified to  
12 irrigating between 190 and 200 acres, which is also consistent with the State's  
13 investigation reports for the property. Under the other three claims 82 acres  
14 are being irrigated, which leaves 118 acres being irrigated within the lands  
15 described in Court Claim No. 02313. According to Mr. Stoke's testimony some of  
16 the diversions have been added in recent years without compliance with the  
17 change procedures in RCW 90.03.380. Any rights recommended for confirmation  
18 will authorize use of the historic points only and Mr. Stokes should approach  
19 Ecology about compliance with RCW 90.03.380.

This land is part of the land owned by J. F. LeClerc and W. A. Jordon at  
20 the time they filed the Affidavit of Water Right previously discussed. The  
21 affidavit stated that they had appropriated 400 inches of water (8 cfs) for  
22 irrigating lands in Sections 5, 6, and 7. The ditch being used began in  
23 Section 32 and ran southwesterly. There has been some discussion that Whiskey  
24 Creek was originally a ditch that diverted from Wilson Creek in Section 32.  
25

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1 Amana Galloway initially constructed the ditch in 1872 and he was the first  
2 owner of what is now described as the Coble place. Mr. Stokes is seeking a  
3 right to divert up to 8.25 cfs from Whiskey Creek. He made it clear that this  
4 quantity is only diverted during high flow periods and that as the creek flow  
5 declines, so does his diversion of water. The Referee believes that the  
6 claimant is taking advantage of flood waters as they are available, without  
7 evidence that has been the historic practice when fewer diversions were being  
8 used. The appropriation that was the basis for this right was limited to 8 cfs  
9 to be used between three sections. The Courts consistently in litigation  
10 involving this area found that one miners inch of water, or 0.02 cfs, is  
11 sufficient for each acre irrigated. The Referee intends to adopt that finding.  
12 Livestock are also grazed on this land, which is about half of the total area  
13 owned by the Stokes, therefore, the right recommended for confirmation will have  
14 a stock water right for half of the water needed, or 5 acre-feet per year.

15 It is recommended that a right be confirmed under Court Claim No. 02313  
16 with a June 30, 1872, priority date for the diversion from Whiskey Creek and  
17 Mercer Creek of 2.36 cubic feet per second, 678 acre-feet per year for the  
18 irrigation of 118 acres and 5 acre-feet per year for stock watering. The  
19 authorized points of diversion shall be those described on the water right claim  
20 forms. The place of use shall be the W $\frac{1}{2}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$   
21 west of Mercer Creek, in Section 5, T. 18 N., R. 19 E.W.M.

22 Under all of the Court claims addressed herein rights are asserted for use  
23 of water from springs and drains on the property to supplement the irrigation  
24 water diverted from the creeks. There was little testimony about historic use  
25 of these springs and Mr. Stokes testified that the springs and drains capture

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1 runoff or return flow water from his irrigated fields. Capturing and reusing  
2 water in this matter is a landowner and water right holders management option  
3 and reflects efficient use of the available water. However, there is  
4 insufficient information available to allow the Referee to determine that  
5 separate water rights exist for use of the springs. The Referee would need to  
6 know the flow from the springs prior to irrigation season beginning to assess  
7 how much natural flow is available and testimony about the condition of the  
8 springs when the Stokes family acquired the land. At this time the Referee  
9 declines to recommend that any rights be confirmed for use of the springs. If  
10 any of the springs are used for non-diversionary stock watering, that use is  
11 covered by the stock water stipulation discussed on page 4 of this report.

12  
13 COURT CLAIM NO. 02275 -- Charles Strickland  
14 & Linda Strickland  
Walter L. Farrar  
& Gail Farrar

15 COURT CLAIM NO. 02282 -- Walter L. Farrar  
16 & Gail Farrar

17 Court Claim No. 02275 was filed by Charles and Linda Strickland for the  
irrigation of 38 acres within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 29 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
18 Section 30, T. 19 N., R. 19 E.W.M. with waters diverted from Wilson Creek. On  
19 June 26, 1990, Walt and Gail Farrar were joined to this claim. Court Claim No.  
20 02282 was originally filed by Robert Prall for the irrigation of 6 acres within  
21 the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 29 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30, T. 19 N., R. 19 E.W.M.  
22 with waters diverted from Wilson Creek. On June 14, 1993, Walt and Gail Farrar  
23 were substituted for Mr. Prall as a claimant. Mr. Farrar testified at the  
24 evidentiary hearing.  
25

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The Farrars own that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 29 west of the  
1 Wilson Creek Road and the S $\frac{1}{4}$ S $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30. Mr. Farrar estimated that they  
2 irrigate 20 to 25 acres in Section 30 and 5 acres in Section 29. Mr. Farrar did  
3 not provide testimony concerning historic water use on the property, beyond  
4 conversations with owners of adjoining lands. However, another claimant in this  
5 proceeding who also owns a portion of the NE $\frac{1}{4}$  of Section 30 and a portion the of  
6 the NW $\frac{1}{4}$  of Section 29 lying west of Wilson Creek Road, Marilyn Wilkinson,  
7 presented considerable history about the land, see page 560 of this report. The  
8 bill of sale for the land mentions having a portion (20/135th interest) in the  
9 Lawrence Manly water right. Lawrence Manly was a party to the 1973 Pendente  
10 Lite Order. That order recognized that Lawrence Manly was asserting a right in  
11 that proceeding with an 1883 date of priority for 0.05 cfs for irrigation and  
12 stock watering in the NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30 and the west 280 feet of  
13 the NW $\frac{1}{4}$  of Section 29. Although the Order Pendente Lite issued to allow parties  
14 an opportunity to comply with the requirements of RCW 90.14 to file water right  
15 claims, there is no evidence in the record that Mr. Manly filed any water right  
16 claims for this property in Sections 29 and 30. Failure to file a water right  
17 claim waives and relinquishes any right that might have existed, RCW 90.14.071.  
18

19 Due to the lack of a RCW 90.14 claim for this property, and the lack of  
20 evidence of historic use of water on this land, the Referee cannot recommend  
21 that a right be confirmed under Court Claims No. 02282 or 02275.  
22  
23  
24  
25

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1 COURT CLAIM NO. 05934 -- Clint Swanstrum  
2 & Becky Swanstrum

3 Doris Jean Swanstrum filed a claim with the Court on January 18, 1991. The  
4 Court signed an Order on February 8, 1991, allowing further processing of the  
5 claim, which was scheduled to be heard at the evidentiary hearing held on  
6 March 11, 1991. Mrs. Swanstrum, represented by Attorney Richard T. Cole, and  
7 her son, Clint Swanstrum, testified at the hearing. Clint and Becky Swanstrum  
8 were substituted as claimants in 1996.

9 Mrs. Swanstrum owned the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7,  
10 T. 18 N., R. 19 E.W.M. A water right is being asserted to irrigate 10 acres in  
11 the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7 with water diverted from Dry Creek, a branch of Wilson  
12 Creek. Since no rights are being asserted for the land in Section 6, no  
13 additional consideration will be given to that land. Mrs. Swanstrum and her  
14 husband acquired the land in June of 1952. At that time the irrigation system  
15 and ditches were in place and the land was being irrigated. Mr. Swanstrum  
16 initially continued irrigating in the same manner. The diversion from the creek  
17 at that time was approximately 600 feet north and 600 feet east of the southwest  
18 corner of Section 5. In the late 1960's or early 1970's the diversion was moved  
19 downstream a short distance, still within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5. The  
20 testimony indicates that when these two diversions were utilized the land was  
21 flood or rill irrigated. Some time after the early 1970's the diversion from  
22 the creek was changed again to a pump location on the claimant's property. A 2  
23 HP pump is now used to withdraw water from the creek for a sprinkler system.  
24 The pump withdraws water at a rate of 40 gallons per minute. Twelve handlines  
25

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1 and sprinklers are now used to irrigate the land. The claimant is asserting a  
2 right to use 1 cubic foot per second, 50 acre-feet per year from the creek for  
3 irrigation. The land irrigated from the creek is planted to hay. Approximately  
4 20 cow/calf pairs are raised, along with a few other head of livestock; the  
5 livestock drink directly from the creek as it flows through the property. It is  
6 not clear to the Referee whether the gravity flow diversion is still maintained  
7 or if the pump is now the only mechanism for diverting water.

8 Water Right Claim No. 096871 was filed by Clark A. Swanstrum pursuant to  
9 the requirements of RCW 90.14. It asserts a right to divert 1 cubic foot per  
10 second, 50 acre-feet per year form Dry Creek for the irrigation of 10 acres in  
11 the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7. The point of diversion described is the original  
12 diversion that served the property. There is nothing in the record to show that  
13 the claimant complied with the requirements of RCW 90.03.380 to obtain approval  
14 to change their point of diversion. That definitely would have been required  
15 when use of the pump began, but may not have been required when the diversion  
16 was just moved a few hundred feet downstream.

17 The claimant put in historical documents to show the ownership history for  
18 the property. The NE $\frac{1}{4}$  of Section 7 was originally conveyed by the Federal  
19 government to Northern Pacific Railroad Company, who sold it to William Coon on  
20 June 17, 1890. William Coon quit claimed the property to John Coon, who sold  
21 the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, along with other land to William Jordin on March 22,  
22 1892. In September of 1895 the land was sold to The New England Mortgage  
23 Security Company. That deed conveyed the land along with water, water rights,  
24 irrigating ditches, aqueducts and canals. Many of the later transfers of the  
25 land did not reference water rights. However, on May 17, 1890, J. W. Coon

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1 prepared and signed a Statement of Water Ditch, see Exhibit DE-588 put in the  
2 record by Chester Vernon Stokes. It stated that he owned the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
3 Section 6 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7 and that he had a valid claim to  
4 100 inches of water from Dry Creek for agricultural and domestic purposes. The  
5 water was carried by three separate ditches from Dry Creek. In April 1888 50  
6 inches of water were appropriated and carried in ditches 1 and 2, which diverted  
7 from Dry Creek in Section 5) and in April 1890 appropriated an additional 50  
8 inches of water carried in ditch 3, which diverted from Dry Creek in the NE $\frac{1}{4}$ NE $\frac{1}{4}$   
9 of Section 7. The statement does not indicate how many acres were irrigated.  
10 The decrees entered by the Courts in the late 1800's and early 1900's for this  
11 area all indicated that one inch of water was sufficient for irrigating one acre  
12 of land. Therefore, the Referee will presume the 100 inches were used to  
13 irrigate 100 acres. Mrs. Swanstrum is only asserting a right to irrigate 10  
14 acres. Even though the affidavit indicates that 1888 was when water was first  
15 appropriate, under the Riparian Doctrine, the priority date is set when steps  
16 are first taken to sever the land from Federal ownership. For land conveyed  
17 from the Federal Government to the railroad, as is the case with Section 7, the  
18 priority date is the date when the map of definite location was filed, which  
19 would be May 24, 1884.

20 The Referee recommends that a right be confirmed under the Riparian  
21 Doctrine with a May 24, 1884, date of priority for the diversion of 0.20 cubic  
22 foot per second, 50 acre-feet per year for the irrigation of 10 acres in that  
23 portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 18 N., R. 19 E.W.M. lying southeast of  
24 Dry Creek. The diversion to be authorized will be in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5,  
25 where water was diverted until the early 1970's. The change to the pump

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1 location on the creek was made without complying with the procedures for  
2 changing points of diversion provided for in RCW 90.03.380.

3  
4 COURT CLAIM NO. 01052 -- James C. Swayze  
(A) 05592 & Dianne Morrison

5 Court Claim No. 01052 was filed by Gerald & Ida Mae Thomas, Robert A. &  
6 Lovelia L. Case, Leonard E. & Betty Thayer, and Donald & Virginia Garrity. On  
7 November 4, 1988, James C. Swayze and Dianne Morrison were substituted for the  
8 original claimants. Mr. Swayze testified at the evidentiary hearing.

9 The claimants' own approximately 30 acres in a portion of the N $\frac{1}{4}$ SW $\frac{1}{4}$  of  
10 Section 33, T. 18 N., R. 19 E.W.M. lying north of the Cascade Irrigation  
11 District canal. They acquired the land in 1985 and moved onto the property in  
12 1986. They raise Arabian horses and cattle and use the land as pasture for  
13 those animals. The land has also historically been used as pasture. There are  
14 two branches from Naneum Creek that go through the property. The Referee  
15 believes the easterly channel is actually a ditch that carries water diverted  
16 from Naneum Creek. The main Naneum Creek is on the west side of the claimants'  
17 land and the pasture west of the creek can only be irrigated with creek water.  
18 The claimants are patrons of the Kittitas Reclamation District (KRD) and are  
19 assessed for 25 acres. KRD water can only be used on the land east of Naneum  
20 Creek.

21 Prior to the claimants acquiring the land, a makeshift dam in the creek  
22 diverted water onto their land. When the claimants moved onto the property,  
23 they inquired of Ecology concerning the status of the adjudication and their  
24 ability to use creek water. According to Mr. Swayze, he was told that until the

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1 adjudication was over, any removal of water from the creek might be construed as  
2 improper. Therefore, the only water he has intentionally used is water he  
3 believed was delivered by KRD. As a result, the land west of the creek has not  
4 been irrigated since 1986. The claimants' KRD water is delivered through the  
5 branch of Naneum Creek, or ditch, that is on the east end of their property.

6 The claimants purchased their property from Raymond Razey. The land has  
7 been in the Razey family since 1923. Several deeds were placed in the record  
8 showing the sale or transfer of the land from 1907 to 1923. At the time of the  
9 Ferguson decree in 1901, the SW $\frac{1}{4}$  of Section 33 was owned by A. J. Sliger, who  
10 was awarded a Class 8 water right for 100 inches (2 cfs) of water from Naneum  
11 Creek. A Class 8 right has a priority date of 1877. On April 10, 1912, John S.  
12 Evans, who at the time owned the SW $\frac{1}{4}$  of Section 33 sold half of the water right  
13 to J. E. Gebhart. In 1916 Gebhart conveyed the water right back to the Evans  
14 family. That same year the land now owned by the claimants, along with the west  
15 1789.6 feet of that portion of the SW $\frac{1}{4}$  of Section 33 south of the Cascade  
16 Irrigation District canal was sold, along with one-half of the water rights  
17 awarded for the quarter section to A. J. Sliger in the Ferguson decree. The  
18 rest of the deeds conveying this land continue to have a statement that one-half  
19 of the Sliger water right transferred with the land. Based on that language, it  
20 is reasonable to conclude that the claimants' land, along with the west 1789.6  
21 feet of the SW $\frac{1}{4}$  of Section 33 south of the canal is entitled to 50 inches of  
22 water. The decree provided that one inch of water was sufficient for one acre.  
23 Therefore, there exists a right to irrigate 50 acres. Besides Court Claim No.  
24 01052, the only other claim in this proceeding is Court Claim No. 00661 (Kenneth

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1 Huber/Wilber Mills/Jim Vasquez), which is asserting a right to irrigate 7 acres  
2 of the former Sliger right.

3 Pursuant to the requirements of RCW 90.14, Raymond Razey filed Water Right  
4 Claim No. 100012 asserting a right to divert 50 inches of water from Naneum  
5 Creek for the irrigation of 32 acres. The point of diversion described on the  
6 claim is in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33. A very poor copy of the claim is in the  
7 record and the portion of the claim which asks for the legal description of  
8 lands on which the water is used is either blank or ink was so light it did not  
9 copy. However, the record is clear that Raymond Razey owned the claimant's land  
10 during the claims registration period. There is no evidence he owned other land  
11 besides that in the SW $\frac{1}{4}$  of Section 33. The Referee concludes that WRC No.  
12 100012 complied with the requirements of RCW 90.14.

13 It is clear that a portion of the water right awarded to A. J. Sliger in  
14 the Ferguson decree is appurtenant to the claimants' property. At the time of  
15 the evidentiary hearing the claimants were not using water. RCW 90.14.160 -  
16 .180 provides that water rights, or portions of a water right, that are not used  
17 for five consecutive years relinquish unless there is a sufficient cause for the  
18 nonuse. One of the sufficient causes for nonuse is a legal proceeding that  
19 prevents the use of water. In 1988 the Referee in this proceeding issued a  
20 preface report that, among other things, concluded that the adjudication was a  
21 legal proceeding that provided a sufficient cause for nonuse, thereby preventing  
22 relinquishment. However, a recent Washington Supreme Court case, R. D. Merrill  
23 v. Pollution Control Hearings Board, 137 Wn.2d 118 (1999) addressed  
24 relinquishment and the Court ruled that the legal proceeding had to prevent use  
25 of the water in order to protect the right of relinquishment. This adjudication

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1 does not prevent the use of water. However, it appears that the claimants may  
2 have gotten advise from Ecology that could have lead them to believe that they  
3 could not use water because of the adjudication. In light of this, and since  
4 the land has continued to be irrigated from another source, the Referee does not  
5 find that the right has relinquished.

6 The record is not clear about how many acres the claimants are asserting a  
7 right to irrigate. They own approximately 30 acres. The Court claim appears to  
8 assert a right to irrigate 10 acres from Naneum Creek. The State's  
9 Investigation Report indicates that approximately 25 acres have been irrigated  
10 on the property. However, that includes the land irrigated with water from  
11 KRD. Mr. Swayze in his testimony did not make clear the extent of the right  
12 they are seeking, but did testify that there are 7 acres that can only be  
13 irrigated from Naneum Creek.

14 The Referee recommends that a right be confirmed under Court Claim No.  
15 01052 with a June 30, 1877, date of priority for the diversion of 0.20 cubic  
16 foot per second from May 1 through June 30 and 0.10 cubic foot per second from  
17 July 1 through October 15 and April 1 through April 30, 40 acre-feet per year  
18 for the irrigation of 10 acres and stock watering in that portion of the NW&SW&  
19 of Section 33 lying north of the Cascade Irrigation District Canal. Livestock  
20 on the property also drink directly from the creek and that use is covered by  
21 the non-diversionary stock water stipulation discussed on page 4 of this  
22 report.

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1 COURT CLAIM NO. 01861 -- Robert Swedberg  
2 & Lorene Swedberg

3 The claimants are asserting a right to use waters from Naneum Creek for  
4 irrigation and stock watering. They were represented by Attorney William F.  
5 Almon, who has since withdrawn as their attorney, and Mr. Swedberg testified at  
6 the evidentiary hearing along with Art Carlson. Additionally, Andy H. Gustafson  
7 testified by deposition taken on March 15, 1990.

8 The Swedbergs own almost all of the NW $\frac{1}{4}$  and W $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 33, T. 19 N.,  
9 R. 19 E.W.M. They own a total of 225 acres and are asserting a right to irrigate  
10 160 acres and water stock with water diverted from Naneum Creek. They obtained  
11 the property in 1953 and the land was being irrigated at the time they  
12 purchased. They have upgraded the system some, putting in a sprinkler system in  
13 1968 and gated pipe in 1982. They also began using the Adams Ditch to irrigate  
14 a portion of their land that lies west of the ridge that runs through the  
15 property. Adams Ditch had not been used to serve the land prior to their  
16 ownership. Mr. Swedberg has never measured the quantity of water being used  
17 when he irrigates.

18 Mr. Swedberg filed several water right claims pursuant to the requirements  
19 of RCW 90.14. Water Right Claims (WRC) No. 117908, 117911, 117912, 117914 and  
20 117915 claim a right between the five of them to use 4 cfs, 1350 acre-feet per  
21 year for the irrigation of 84 acres in the NW $\frac{1}{4}$  of Section 33. WRC No. 117916  
22 asserts a right to use 3 cfs, 900 acre-feet per year to irrigate 63 acres in the  
23 NW $\frac{1}{4}$  of Section 33. Each of the claim forms describes a different diversion from  
24 Naneum Creek.

25  
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The history of ownership for the NW $\frac{1}{4}$  of Section 33 is different from that  
1 for the NE $\frac{1}{4}$  of Section 33. The NW $\frac{1}{4}$  was conveyed by the Northern Pacific  
2 Railroad (NPRR) to Sven Pearson on April 14, 1888. By the time the Findings of  
3 Fact and Conclusion of Law were entered preceding the Ferguson decree, the NW $\frac{1}{4}$   
4 of Section 33 was owned by F. S. McDonald. The Findings state that the land was  
5 first settled in March of 1878 and waters from Naneum Creek diverted that year.  
6 One hundred acres were under cultivation. The Ferguson decree awarded McDonald  
7 a right to use 100 inches of water in the NW $\frac{1}{4}$  of Section 33. The W $\frac{1}{2}$ NE $\frac{1}{4}$  of  
8 Section 33 was also originally owned by NPPR, who sold it to George Gilkey. In  
9 November of 1904, Gilkey sold it to Charles Bregg. As far as the Referee can  
10 determine Gilkey was not a party to any of the decrees that determined the water  
11 rights for Wilson and Naneum Creeks. Charles Bregg also acquired the NW $\frac{1}{4}$  of  
12 Section 33 in 1904.

On September 26, 1918, J. B. and Annie T. Marquette sold to Charles Bregg  
14 all of the waters of Naneum Creek appurtenant to the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 5,  
15 T. 17 N., R. 19 E.W.M., including one-half of the water awarded to David Kinkade  
16 in the Ferguson decree, the one-half interest being 75 inches in the 10th  
17 Class. David Kinkade was awarded a Class 10 right in the Ferguson decree for  
18 150 inches and he owned the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 5 at the time the decree was  
19 entered. The Swedbergs have put into evidence documents to show that the  
20 Marquettes owned the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 5 at the time they sold the water right to  
21 Charles Bregg.

However, September 26, 1918, is obviously after the adoption of the State  
23 Surface Water Code on June 6, 1917. That code established procedures to be  
24 followed to change the point of diversion and place of use for a water right.

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There is no indication those procedures were followed. Charles Bregg was a  
1 party to W. R. Thomas v. James T. Roberts, decree entered on November 16, 1925.  
2 The Findings of Fact stated that Charles Bregg was the owner of the E $\frac{1}{2}$ NE $\frac{1}{4}$  and  
3 NW $\frac{1}{4}$  of Section 33, T. 19 N., R. 19 E.W.M. and that water for irrigating said  
4 tract was diverted from the combined streams shortly after said land became the  
5 property of the Northern Pacific Railway Company and at the present time (1925)  
6 seventy-five inches of water is being diverted for said purpose. The decree  
7 then stated that Charles Bregg was entitled to seventy-five inches of water from  
8 the waters of Wilson and Nanum prior to the right of the plaintiff.  
9

It is clear to the Referee that in 1925 the Court did not recognize the  
10 additional water right that apparently was sold to Charles Bregg in 1918.  
11 Although the quantity of water awarded in Thomas is less than what was awarded  
12 in the Ferguson decree, the Referee will recommend that right be confirmed  
13 herein. Due to lack of compliance with the change procedures in RCW 90.03.380,  
14 the Surface Water Code, the Referee cannot recommend that a right be confirmed  
15 for the additional 1.5 cfs claimed.  
16

It is recommended that a right be confirmed with a March 30, 1878, date of  
17 priority for the diversion of 2.0 cubic feet per second in May and June, 1.0  
18 cubic foot per second in April and July 1 through October 15, 500 acre-feet per  
19 year for the irrigation of 100 acres and stock water in the NW $\frac{1}{4}$  of Section 33,  
20 T. 19 N., R. 19 E.W.M.; 1.0 cfs, 10 acre-feet per year for stock watering from  
21 October 16 through March 31.  
22

The right being recommended will have three points of diversion authorized.  
23 The diversion into Adams Ditch will not be included, as use of this diversion  
24

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1 began in the 1950's apparently without compliance with the provisions of RCW  
2 90.03.380 for adding a point of diversion.

3  
4 COURT CLAIM NO. 01747 -- Vivian I. Teter  
Art W. McFarland

5 Vivian I. Teter filed a Statement of Claim with the Court asserting a right  
6 to use ground water and a slough for irrigation of one acre, stock water and  
7 domestic. On January 22, 1990, Mr. McFarland was joined to the claim. Mr.  
8 McFarland testified at the evidentiary hearing.

9 The property lies in a portion of the the SE $\frac{1}{4}$ , NW $\frac{1}{4}$ , NW $\frac{1}{4}$  of Section 11,  
10 T. 17 N., R. 18 E.W.M. known as Lot 1 of Teter Short Plat. The only right that  
11 Mr. McFarland is asserting is for non-diversionary stock watering. Livestock on  
12 his property drink from a water source not specifically identified in the  
13 testimony. The Referee must assume it is the slough cited in the Court claim as  
14 a source of water. The State's map exhibit does not show a water source on the  
15 property, but the investigation report does state there is a slough. Water for  
16 domestic supply and irrigation of up to one-half acre is from two wells on the  
17 property. Rights to the use of ground water are not being addressed in this  
18 adjudication.

19 Non-diversionary stock watering, such as that described by Mr. McFarland is  
20 covered by the stock water stipulation discussed on page 4 of this report. That  
21 stipulation will adequately all of the claim being asserted and no other right  
22 is recommended for confirmation.

23  
24  
25  
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1 COURT CLAIM NO. 02279 -- Robert Tobin  
2 & Linda Tobin  
3 Alvia S. Dunnagun  
4 & Janet G. Dunnagun

5 Robert and Melinda Tobin filed a claim with the Court asserting a right to  
6 use waters from Naneum Creek and a spring. On March 10, 1989, Alvia S. and  
7 Janet B. Dunnagun were joined to the claim. There was no appearance at the  
8 evidentiary hearing in behalf of this claim. On November 20, 1991, the  
9 Dunnaguns filed a Motion to Allow the Presentation of Evidence in relation to  
10 this claim. The Court issued an Order May 26, 1992, stating that the Dunnaguns  
11 would be allowed to introduce testimony and evidence during the exceptions  
12 hearing phase for Subbasin No. 9. The Referee at this point cannot recommend  
13 that a water right be confirmed under Court Claim No. 02279, but recognizes that  
14 it is the intent of the Court that the Dunnaguns be scheduled to present  
evidence when the supplemental hearing for Subbasin No. 9 is set.

15  
16 COURT CLAIM NO. 00784 -- Jerry Tyler  
17 Steven Lee  
18 & Debbie Lee  
Dale Lee  
& Sandy Lee

19 Steven C. and Gloria E. Wright filed a Statement of Claim asserting a right  
20 to use waters from Wilson Creek. On March 25, 1987, Jerry Tyler and Steven and  
21 Debbie Lee were substituted for the Wrights. Mr. Tyler and the Lees own two  
22 separate, adjoining parcels that were once owned by the Wrights. Mr. Tyler,  
23  
24  
25

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1 represented by Attorney Jeff Slothower, appeared at the evidentiary hearing and  
2 presented testimony concerning his land. There was no appearance on behalf of  
3 the Lees.

4 Mr. Tyler's property is approximately in the southwest quarter of  
5 Government Lot 3 of Section 19, T. 17 N., R. 19 E.W.M. He owns 8.1 acres and is  
6 asserting a right to irrigate 7.5 acres of pasture and water livestock with  
7 water diverted from Wilson Creek. Irrigation water is delivered through a  
8 pipeline from the Grigg property that lies immediately north. In 1980 Mr. Grigg  
9 and Mr. Tyler repaired the ditch that carries Wilson Creek water onto the Grigg  
10 property, removed an old flume that conveyed water over a swamp, filled in the  
11 swamp and built a section of ditch through the former swamp area. The testimony  
12 indicates that Mr. Tyler, Mr. Grigg and the person leasing the Ludwick property  
13 in the NW% of Section 19 coordinate the timing of their irrigation so that one  
14 irrigator's practice does not interfere with another. Mr. Tyler irrigates during  
15 times when Mr. Grigg is not. Mr. Tyler estimated that he uses 1 cubic foot per  
16 second and irrigates about 20 days each irrigation season, which would result in  
17 40 acre-feet per year being used (he estimated about 5.5 acre-feet per acre and  
18 40 acre-feet equals 5.3 acre-feet per acre). The livestock on the property,  
19 generally 7 or 8 cows, drink from a ditch that serves Harold Lamb's property to  
20 the south. Mr. Tyler does not withdraw any water from this ditch, the stock  
21 simply drink directly from the ditch. The State's Investigation Report  
22 indicates that the land was not being irrigated at the time of the state's  
23 inspection. Mr. Tyler testified that there was a three year period in the late  
24 1980's when Mr. Lamb's ditch would backup and water would overflow and flood the  
25 Tyler property. Mr. Tyler did not want to put any additional water on the land,

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1 so he did not irrigate. That problem was resolved by the time the hearing was  
2 held and irrigation had resumed.  
3

4 Clifford Bird, who is familiar with the property, also testified at the  
5 hearing. His knowledge of the land extends back to 1941 and at that time it was  
6 owned by the Fitterer Brothers and was irrigated pasture. The Fitterers had a  
7 dairy operation.  
8

9 In compliance with the requirements of RCW 90.14, Mary Wippel filed Water  
10 Right Claim (WRC) No. 200009 during 1979 when the Claims Registration Act was  
11 reopened and filing of additional claims was allowed. WRC No. 200009 asserts a  
12 right to divert 3.5 cfs, 500 acre-feet per year from Wilson Creek for the  
13 irrigation of 61 acres in those portions of Lots 2 and 3 of Section 19,  
14 T. 17 N., R. 19 E.W.M. lying south and west of Wilson Creek. The point of  
15 diversion location described is near the southwest corner of Section 18, T.  
16 17 N., R. 19 E.W.M.  
17

18 The claimants' land is part of a larger piece in Section 19 that was  
19 originally conveyed by the United States to Northern Pacific Railroad Company,  
20 who sold it to George W. Carver on August 9, 1889. Carver owned the land until  
21 1905, when he sold to the Fitterer Brothers. The Griggs submitted three  
22 documents into the record that specifically address water rights. DE-1030 is a  
23 Water Right Statement by S. W. Maxey and Jacob Powell stating that in May of  
24 1885 Maxey constructed a ditch from Wilson Creek and appropriated 200 inches of  
25 water. The head of the ditch was at a slough, emptying into Wilson Creek, just  
26 above the beaver dam on said creek in Section 19, T. 17 N., R. 19 E.W.M. near  
27 the northeast corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19 and running in a southwesterly  
28 direction about one-half mile into Section 25, T. 17 N., R. 18 E.W.M. There is

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no mention of water use from this ditch in Section 19. Part of the evidence put  
1 in the record in support of Claim No. 2133, Michael Moeur, was a copy of the C.  
2 H. Swigart Survey for this area (DE-697), which does show ditches off of Wilson  
3 Creek. However, there is no ditch shown diverting from Wilson Creek in the SW%  
4 of Section 19. There does seem to be two diversions in the NW% of Section 19  
5 and a diversion near the southwest corner of Section 18, labeled Fitterer #1 and  
6 Fitterer #2. F. G. Fitterer sold Government Lots 1, 2 and 3 of Section 19,  
7 which would include the Grigg land, in 1909 to Luttrell and McIntire together  
8 with one share of the Bull Canal Stock. No other water rights are mentioned.  
9  
The Fitterer family apparently got the land back and Frank Fitterer sold  
10 Government Lots 1, 2 and 3 of Section 19, and a portion of the SE%NE% of  
11 Section 24, along with one share of Bull Ditch stock and 20 inches of water in  
12 the Stein, McLeod, and Clark Ditch. The Referee believes that the water from  
13 the Stein, McLeod, and Clark Ditch were appurtenant to the described lands in  
14 Section 24. Also in the record as part of the Moeur claim is DE-1627 which  
15 contains three statements that address the Tjossem Ditch and the Steen (Stein),  
16 McLeod and Clark Ditch. These statements identify those individuals using the  
17 ditch, that they are all successors to Joel Clark, and the sections where their  
18 land lies. Mr. Tyler is not a successor to Clark and his land does not lie in  
19 the identified sections, which includes Section 24. The Stein, McLeod and Clark  
20 Ditch carries water diverted from the Yakima River and Mr. Tyler is not  
21 asserting a right to the Yakima River and have offered no evidence to show that  
22 Yakima River has ever been used on their land.  
23

24 Although the Maxey-Powell water right statement would indicate that a ditch  
25 potentially had been constructed across the claimants property, none of the  
26

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1       deeds reference the ditch or any easement related to the ditch and the Swigart  
2       survey, which all agree was made between 1902 and 1912 does not show a ditch in  
3       the SW $\frac{1}{4}$  of Section 19. There is no evidence that water from this ditch was used  
4       on the Tyler property. Additionally, the existence of Bull Ditch Company stock  
5       and the lands being situated within the Bull Ditch Company service area needs to  
be addressed.

Therefore, the Referee does not recommend that a water right be confirmed to Jerry Tyler under Court Claim No. 00784. Due to the lack of appearance by Steven and Debbie Lee in support of their portion of Court Claim No. 00784, the Referee also does not recommend that a water right be confirmed to the Lees.

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

Dick and Maxine Van de Graaf submitted a statement of claim to the Court asserting rights to use several sources of water in the Yakima Basin, including Whiskey Creek, which lies in Subbasin No. 9. The other sources of water will be addressed in their respective subbasins. The Van de Graafs are represented by Attorney Lawrence E. Martin, and Mr. Van de Graaf testified at the evidentiary hearing.

The claimants are asserting a right to use water from Whiskey Creek for the irrigation of up to 100 acres and stock watering for 500 head of cattle and a few horses. The land is currently pasture, although hay has been raised in the past. The claimants' land lies in the W $\frac{1}{4}$  of Section 11, T. 18 N., R. 18 E.W.M. Water is diverted from Whiskey Creek at a point near the center of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of

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1           Section 6, T. 18 N., R. 19 E.W.M. into a ditch that crosses the N $\frac{1}{2}$  of Section 12  
2           and goes through most of Section 11. The pasture is rill irrigated.  
3

4           Mr. Van de Graaf's knowledge of the property dates back to 1953 when an  
5           easement was granted for the ditch to cross neighboring land to get to the W $\frac{1}{2}$  of  
6           Section 11. He knows that from that time forward the land has been irrigated  
7           with water from Whiskey Creek, but has no knowledge of water use on the land  
8           prior to 1953. Court Claim No. 01520 states that in 1953 water was appropriated  
9           from Whiskey Creek. This land is not mentioned in any of the decrees that were  
10          entered by Kittitas County Superior in the late 1800's and early 1900's for  
11          waters in the Wilson - Naneum Creek drainage.

12          Water Right Claim No. 118274 was filed by Dick Van de Graaf, Jr., pursuant  
13          to RCW 90.14. It asserts a right to use 6 cubic feet per second, 600 acre-feet  
14          per year from Whiskey Creek for the irrigation of 300 acres and stock watering  
15          in the W $\frac{1}{2}$  of Section 11, T. 18 N., R. 18 E.W.M. The claim states that water was  
16          first used in August 1953.

17          The Referee concludes based on the testimony and evidence in the record  
18          that 1953 was when water was first diverted from Whiskey Creek for the  
19          irrigation of the Van de Graaf land. The only way to establish a water right at  
20          that time was through the permit procedures prescribed in RCW 90.03. There is  
21          no water right permit in the record for this land. The Referee concludes that a  
22          water right was not legally established and therefore cannot recommend  
23          confirmation of a right in this proceeding.

24          The Referee notes that the Van de Graafs are patrons of the Kittitas  
25  
26          Reclamation District (KRD) and the testimony was that this same ditch can be

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1 used to carry KRD water. This recommendation has no effect on the claimants use  
2 of water delivered by the Kittitas Reclamation District.  
3

4 COURT CLAIM NO. 00990 -- Steve Wallace  
5 & Deborah L. Wallace

6 Steve and Deborah Wallace submitted a claim to the Court asserting a right  
7 to use waters from Wilson-Naneum Creeks. The Wallaces were represented by  
8 Attorney William F. Almon, who has withdrawn as their attorney, and Mr. Wallace  
9 testified at the evidentiary hearing. Additionally, the claimant is relying on  
the testimony of Andy H. Gustafson taken by Deposition on March 15, 1990.

10 The Wallaces own the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 3 and the NE $\frac{1}{4}$  of Section 10, in  
11 T. 18 N., R. 19 E.W.M. They own 240 acres and are asserting a right to irrigate  
12 20 acres in that part of the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 3 above the Kittitas Reclamation  
13 District Highline Canal and 107 acres on the portion of their land that lies  
14 below the canal. The 107 acres below the canal are assessed by KRD and district  
15 water is used on that land along with Wilson-Naneum Creek water. Since the  
16 Wallaces acquired the land in the late 1970's, they have replaced most of the  
17 dirt ditches used to irrigate the land with gated pipe, concrete ditches and  
18 irrigate a portion fo the land with 70 sprinkler heads. Creek water is delivered  
19 to the land through the Keister and Wilkins Ditches. The Keister Ditch diverts  
20 from the combined flow of Wilson-Naneum in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, T. 19 N.,  
21 R. 19 E.W.M. and Wilkins Ditch diverts from the creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
22 Section 28. The claimants irrigate hay, grain and pasture and use their land to  
23 raise cattle. The number of cattle on the property varies seasonally, and  
24 includes 300 or so yearling steers and/or 300 cow/calf pairs that are watered  
25

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1 out of the ditches that serve the land. Water is diverted into the ditches all  
2 year for stock watering.

3 Water Right Claim No. 090086 was filed pursuant to RCW 90.14 by Henry  
4 Vander Vate, a prior owner of their land. It asserts a right to use 1.50 cfs,  
5 760 acre-feet per year for the irrigation of 156 acres within the claimant's  
6 land. The point of diversion described is the diversion into the Wilkins  
7 Ditch. The claim did not identify the diversion into Keister Ditch as being  
8 used. If use of that ditch was initiated after WRC No. 090086 was filed, the  
9 claimant should contact Ecology about the procedures in RCW 90.03.380 for adding  
10 a point of diversion. If Keister Ditch has always been used, there is a process  
11 provided for in RCW 90.03.065 for amending a water right claim to correct  
12 errors. Again, Ecology should be contacted about that process.

13 The claim filed with the Court and the assertions of the claimant's counsel  
14 base their water rights on the Ferguson decree, the Roberts decree and the  
15 Carlson decree. As mentioned on page 14 of this report, the Carlson decree was  
16 an interim order and did not determine with any finality the extent or validity  
17 of the rights being asserted. Additionally, it only dealt with lands above the  
18 Highline Canal.

19 The Ferguson decree did address a portion of the claimant's land. The  
20 Additional Amendatory and Supplemental Findings and Decree that the Court  
21 entered on June 1, 1901, modified the prior Findings of Fact and the Decree. It  
22 awarded to Eric Larson, who owned the  $\frac{1}{4}$ SW $\frac{1}{4}$ ,  $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 2 and the  $\frac{1}{4}$ SE $\frac{1}{4}$  of  
23 Section 3, T. 18 N., R. 19 E.W.M., a right for the use of 100 inches of water  
24 from Naneum Creek. It indicated that 150 acres were being irrigated with that  
25 100 inches until June 15 and after that 50 inches were used. Construction of

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the ditch began in 1880. Andy Gustafson's testimony was that the portion of the  
1 Wallace property above the Highline Canal was irrigated at the time he was  
2 familiar with the land, which was in the 1920's. Sam Kayser offered Exhibits  
3 DE-1277 and DE-1278 in support of his claim. These exhibits are deeds conveying  
4 the Larson land to new owners. DE-1277 conveyed the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2 and the  
5 S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 3 to Charles Gustafson, together with 2/3 of the water from  
6 Naneum Creek decreed to Eric Larson in the Ferguson case (66-2/3 inches).  
7 DE-1278 is a copy of a deed that subsequently conveyed the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2,  
8 together with 50 inches of that right, leaving 16.6 inches for use in the S $\frac{1}{2}$ SE $\frac{1}{4}$   
9 of Section 3.  
10

The Referee can find no indication in any of the decrees that water rights  
11 were established for the Wallace property in the NE $\frac{1}{4}$  of Section 10. In fact,  
12 Mr. Gustafson testified that portion of the land was undeveloped during the time  
13 he was familiar with it. After June 6, 1917, the only method for obtaining a  
14 water right for land that is not riparian to the water source was through the  
15 permit procedures established in RCW 90.03. There is no evidence that the  
16 Wallace's predecessors complied with those procedures and obtained a water right  
17 permit for use of Wilson-Naneum Creek in the NE $\frac{1}{4}$  of Section 10. Even though  
18 Water Right Claim No. 090086 asserts a right to irrigate the land in Section 10  
19 from Wilson-Naneum Creek, the claim can only protect rights that were properly  
20 established prior to June 6, 1917. Therefore, the Referee cannot recommend that  
21 a water right be confirmed for the portion of the claimant's land lying in the  
22 NE $\frac{1}{4}$  of Section 10. This does not affect water delivered to the property by KRD,  
23 who is a major claimant in this proceeding, whose rights were determined in the  
24 Major Claimant Pathway.  
25

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1       The Referee does recommend that a right be confirmed with a June 30, 1880,  
2       date of priority for the diversion of 0.33 cubic foot per second from May 1  
3       through June 15 and 0.165 cubic foot per second in April and June 16 through  
4       October 15, 78.4 acre-feet per year for irrigation of 20 acres and stock  
5       watering; 0.165 cfs and 5 acre-feet per year from October 16 to March 31 for  
6       stock watering.

7  
8       COURT CLAIM NO. 02232    -- John L. Whittaker  
9                                  & Barbara Whittaker  
10                                 Ralph G. Charlton  
11                                 Ronald J. Freytag  
12                                 & Mary Styron Freytag  
13                                 Robert Shannon  
14                                 & Cathy Shannon  
15                                 Harriett Nichols  
16                                 Charles Rimer  
17                                 & Faye Rimer  
18                                 Don C. Smith  
19                                 & Jane K. Smith

20       The referenced Court claim was initially filed by John L. and Barbara  
21       Whittaker for use of waters from Wilson Creek and Naneum Creek for irrigation  
22       and stock watering. Subsequent to filing the claim the other listed parties  
23       were joined as additional parties. Ralph Charlton, who owned much of the land  
24       described in the Court claim in the early 1980's and subsequently sold the land,  
25       and Cathy Shannon testified at the evidentiary hearing.

26       At the time the Court claim was filed, the Whittakers owned the S% of  
27       Section 29, T. 19 N., R. 19 E.W.M. and at this time no longer have any interest  
28       in the lands. Neither Mr. Charlton nor Mrs. Shannon provided historical  
29       information about the land. However, documents in the record presented by other  
30       claimants and information from the 1972 Ecology v. Carlson action that resulted

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in the Order Pendente Lite are useful in determining whether there is a  
1 foundation for a water right in the S% of Section 29.  
2

In the early 1970's the land in question was owned by G. L. Blattner. The  
3 Order Pendente Lite listed two "rights" in his name. The first is identified as  
4 a Class 1 right with no date established for the use of 0.20 cubic foot per  
5 second for the irrigation of 10 acres and livestock in the S% of Section 29,  
6 T. 19 N., R. 19 E.W.M. The second right is a Class IX with an 1884 date of  
7 priority for 1.30 cubic feet per second for the irrigation of 65 acres in the S%  
8 of Section 29. Mr. Blattner also filed two water right claims in response to  
9 RCW 90.14, The Claims Registration Act. Water Right Claim (WRC) No. 007995  
10 asserts a right to use 0.5 cubic foot per second, 100 acre-feet per year from  
11 Wilson Creek for the irrigation of 20 acres in the S% of Section 29, with the  
12 notation to see #1 on sketch. The Referee believes the note was referring the  
13 reader to field #1 designated on the sketch attached to WRC No. 007995, which  
14 would appear to be in the NE%SW% of Section 29 and to point of diversion #1 on  
15 the sketch, in the NW% of Section 20. WRC No. 007996 asserts a right to use 1  
16 cubic foot per second, 275 acre-feet per year from the combined waters of Wilson  
17 and Naneum Creek for the irrigation of 60 acres in the S% of Section 29. The  
18 claim describes three points of diversion being used, all in the E%SE% of  
19 Section 29.  
20

A map attached to the water right claims shows seven fields all in the S%  
21 of Section 29. As previously mentioned, field #1 is in the NE%SW%, field #2 is  
22 in the E%SW%SW%, fields #3 and #4 are in the NE%SE%, Field #5 is in the E%SW%SE%  
23 and field 6 and 7 are in the SE%SE%, all in Section 29, T. 19 N., R. 19 E.W.M.  
24

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1 A prior owner of the land was a defendant in the case Thomas v. Roberts, et  
2 al., which was decided in Kittitas County Superior Court with a decree being  
3 entered on November 16, 1925. That decree awarded T. W. Farrell 10 inches of  
4 water from Naneum and Wilson Creeks prior to the rights of the plaintiff, but  
5 did not state a priority date for that right. Farrell also was awarded 65  
6 inches of water that would have an 1884 date of priority. The decree does not  
7 state what lands were owned by Farrell; however, in the record as Exhibit  
8 DE-1527 (by Kayser Ranch), is a map created in 1912 , that shows the ownership  
9 of lands in this part of Kittitas County. T. W. Farrell is shown as owning the  
10 S% of Section 29. The Referee believes this decree is the basis for the  
11 "rights" recognized in the 1973 Order Pendente Lite.

12 Mr. Charlton testified in general about continued water use on the land.  
13 This testimony, along with the information contained in the water right claims  
14 filed by Mr. Blattner, and the conclusions reached in the Order Pendente Lite,  
15 lead the Referee to conclude that a recommendation can be made to confirm water  
16 rights under Court Claim No. 02232. John Whittaker apparently acquired the land  
17 shortly after the Order Pendente Lite was issued and then within a few years  
18 began selling the land. The current ownership of the land appears to be as  
19 follows: Harriett Nichols - the S%SE%SW%SE% of Section 29; Donald Smith - the  
20 E%SE% of Section 29, except the W%SW%SE%SE%; Ronald J. and Mary S. Freytag - the  
21 NE%SW%, NW%SE%, SW%SE% (except the SE%SW%SE%), N%SE%SW%, and the E%SW%SW% of  
22 Section 29; Robert and Cathy Shannon - the N%SE%SW%SE% and the W%SW%SE%SE% of  
23 Section 29. There are two additional parcels that were previously owned by the  
24 Whittakers, the W%SW%SW% and the NW%SW%, for which the current owners were not  
25  
26

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provided, nor was there any testimony about current water use on the land or an assertion that there is a water right for the land.

There are three diversions from the combined channel of Wilson-Naneum and one diversion from Wilson Creek that serve ditches that convey water to and through the S $\frac{1}{4}$  of Section 29. One diversion is in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29 (the Referee believes this is diversion #2 on WRC No. 007996, although it is a couple hundred feet further north than was described); the second diversion is in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29 (diversion #4 on sketch attached to WRC 007996, again the dimensions are off by a couple hundred feet) and the third diversion is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29 (diversion #3 on sketch attached to WRC 007996). A diversion in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20 is to a ditch used to irrigate lands in the SW $\frac{1}{4}$  of Section 29, the Freytags own land in this quarter section.

According to the evidence, the Freytags are irrigating 12 acres in the W $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29, which is where field 1 is located on the attachment to the water right claims, and 6 acres in the E $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , which is where field 2 is located. Mrs. Nichols/Charles & Faye Rimer own a five acre tract in the S $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29, a portion of field 5, and irrigate three acres. The Shannons own ten acres in the N $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  and the W $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , a portion of fields 5 and 6, and irrigate 8 acres. Donald Smith owns the NE $\frac{1}{4}$ SE $\frac{1}{4}$ , and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , except the W $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , consisting of 75 acres, which would be the remainder of field 6, field 7 and fields 3 and 4. Mr. Charlton testified that 44 acres are being irrigated within the Smith ownership. Within the various ownerships, a total of 73 acres are being irrigated, which is consistent with the historic rights and with the water right claims filed pursuant to RCW 90.14.

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The Referee recommends that water rights be confirmed under Court Claim No. 1  
02232 consistent with the continued beneficial use. Because there are two  
2 different water rights appurtenant to the land with different priority dates,  
3 the rights must be divided amongst the landowners in the proportion of the  
4 irrigated land they own. As a result, Smith will get 60 percent, Freytag will  
5 get 25 percent, Shannon will get 11 percent and Nichols/Rimer will get 4  
6 percent. It is recommended that the rights be confirmed as follows:  
7

To Don C. and Jane K. Smith, with a June 30, 1871, date of priority, 0.12  
8 cubic foot per second, 30 acre-feet per year for the irrigation of 6 acres and  
9 stock watering and with a June 30, 1884 date of priority, 0.78 cubic foot per  
10 second, 190 acre-feet per year for the irrigation of 38 acres and stock watering  
11 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ , and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , except the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , all in Section 29,  
12 T. 19 N., R. 19 E.W.M. The authorized points of diversion will be the lower two  
13 diversions on Wilson - Naneum Creek in the SE $\frac{1}{4}$  of Section 29.  
14

To Ronald J. and Mary S. Freytag, with a June 30, 1871, date of priority,  
15 0.05 cubic foot per second, 12.5 acre-feet per year for the irrigation of 2.5  
16 acres and stock watering and with a June 30, 1884, date of priority, 0.325 cubic  
17 foot per second, 77.5 acre-feet per year for the irrigation of 15.5 acres and  
18 stock watering in the W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29. The point of  
19 diversion shall be from Wilson Creek in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20.  
20

To Robert and Cathy Shannon, with a June 30, 1871, date of priority, 0.022  
21 cubic foot per second, 5.5 acre-feet per year for the irrigation of 1.1 acres  
22 and stock watering and with a June 30, 1884, date of priority 0.143 cubic foot  
23 per second, 34.5 acre-feet per year for the irrigation of 6.9 acres and stock  
24

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water in the N $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  and the W $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29. The upper two  
1 points of diversion from Wilson-Naneum Creek in Section 29 shall be authorized.  
2

To Harriet Nichols/Charles & Faye Rimer, with a June 30, 1871, date of  
3 priority, 0.008 cubic foot per second, 2 acre-feet per year for the irrigation  
4 of 0.4 acres and stock watering; with a June 30, 1884, date of priority, 0.052  
5 cubic foot per second, 13 acre-feet per year for the irrigation of 2.6 acres and  
6 stock watering in the S $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29. The authorized point of  
7 diversion shall be the upper two diversions from Wilson-Naneum Creek in  
8 Section 29.

COURT CLAIM NO. 00582 -- J. Marilyn Wilkinson  
11 05055

Court Claim No. 00582 was originally filed by Margaret Juul for use of  
12 waters from Wilson Creek. On February 20, 1991, J. Marilyn Wilkinson was  
13 substituted for Ms. Juul. On January 30, 1990, J. Marilyn Wilkinson filed Court  
14 Claim No. 05055 for the use of waters from Wilson Creek. Ms. Wilkinson  
15 testified at the evidentiary hearing in support of both claims.

A right is being asserted under Court Claim No. 00582 for the irrigation of  
16 13 acres in that portion of the North 659 feet of the NW $\frac{1}{4}$  of Section 29 west of  
17 Wilson Creek Road and the North 659 feet of the NE $\frac{1}{4}$  of Section 30, both in  
18 T. 19 N., R. 19 E.W.M.. According to Ms. Wilkinson's testimony, she is  
19 irrigating 13 acres with water diverted from Wilson Creek at a point in the SE $\frac{1}{4}$   
20 of Section 18. Of the 13 acres, approximately 4 are located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
21 Section 29 and 9 are in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30. Livestock raised on the  
22 property drink from the irrigation ditch.

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Christian Johnson received a patent on January 11, 1890, for the NE $\frac{1}{4}$  and  
1 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 19 N., R. 19 E.W.M. and at some point acquired a  
2 portion of the NW $\frac{1}{4}$  of Section 29, including the land now owned by Ms.  
3 Wilkinson. In a deed dated June 10, 1893, he transferred the land in Section 30  
4 along with the portion of the NW $\frac{1}{4}$  of Section 29 he owned to Mrs. Elizabeth  
5 Searles, along with the water right appropriated in 1887. Christian Johnson and  
6 John Lelard filed a Notice of Location of Ditch and Water Right providing notice  
7 of construction of a ditch from the North Fork Wilson Creek to the ranch of  
8 Christian Johnson in the NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30. A right was asserted for  
9 300 inches of water with the appropriation of water occurring between March 24  
10 and April 14, 1887.

Two prior decrees address the land described in Court Claim No. 00582. In  
12 Rader v. Sander a right to the use of 10 inches diverted from Wilson Creek above  
13 Lyle Creek for use in Section 19, W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 20, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
14 Section 30 and the NW $\frac{1}{4}$  of Section 29 was identified for C. R. and Grace Hovey as  
15 being senior to the plaintiff, William H. Rader. That decree did not identify  
16 where the irrigated land was located. Loren Dunning, under Court Claim No.  
17 00166 is asserting a right to the 10 inches of water for irrigation of five  
18 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19. Ms. Wilkinson, under Court Claim No. 05055,  
19 is asserting a right for the irrigation of 10 acres she owns in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
20 Section 19. That claim will be addressed in more detail below.

In W. R. Thomas v. James T. Roberts, Decree No. 5653, a water right was  
22 identified for W. R. Thomas in the amount of 75 inches (1.5 cfs) for use in the  
23 NW $\frac{1}{4}$  of Section 29 with a priority date of 1884. Jeanne Dunning and the estate of  
24 Dorothy R. and Paul Nelson, under Court Claim No. 00598, are asserting rights

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for the portion of the N $\frac{1}{2}$  of Section 29 not owned by Ms. Wilkinson. A right is  
1 being asserted under Court Claim No. 00598 for the irrigation of 100 acres.  
2

Water Right Claim No. 000093 was filed by Paul Nelson asserting a right to  
3 divert 3 cubic feet per second, 300 acre-feet per year from Wilson Creek for the  
4 irrigation of 100 acres in the N $\frac{1}{2}$  of Section 29, T. 19 N., R. 19 E.W.M.. This  
5 claim was filed pursuant to the requirements of RCW 90.14. Two claims were  
6 filed on Paul Nelson's behalf with Kittitas County Superior Court in 1972, each  
7 asserting a right for 2 cubic feet per second, 500 acre-feet per year from  
8 Wilson Creek for irrigation in the N $\frac{1}{2}$  of Section 29.  
9

During the time when claims were to be filed under RCW 90.14, the Wilkinson  
10 land was owned by Lawrence Manly. There were no water right claims filed by Mr.  
11 Manly for any of the lands owned by Mrs. Wilkinson. Mr. Manly was a party to  
12 the 1973 Order Pendente Lite, which listed a potential right with an 1883 date  
13 of priority for the diversion of 0.05 cfs for irrigation in the NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
14 Section 30 and the west 280 feet of the NW $\frac{1}{4}$  of Section 29. The Wilkinson  
15 property is within this area. The Referee considered whether it would be  
16 appropriate to conclude that WRC No. 000093 filed by Paul Nelson protected any  
17 water right that might be appurtenant to the lands owned by Ms. Wilkinson in the  
18 N $\frac{1}{2}$  of Section 29. While the first inclination might be to do just that, it  
19 would not be appropriate. Mr. Nelson clearly did not own the land now owned by  
20 Ms. Wilkinson at the time WRC No. 000093 was filed and the water use described  
21 in the water right claim mirrors what is now being asserted in this proceeding.  
22 Were the Referee to find that this water right claim protected Ms. Wilkinson's  
23 land, the same conclusion would apply to the claims of Walt and Gail Farrar and  
24 Wallace Stampfly, who also own land in the N $\frac{1}{2}$  of Section 29 west of Wilson Creek  
25

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Road and are also successors to Lawrence Manly. Any rights that might be  
1 confirmed to these parties as a result of the claim asserted in WRC No. 000093,  
2 would result in a reduction in the quantity of water and number of acres that  
3 could be recommended to Jeanne Dunning, who now owns the Nelson property. The  
4 Referee finds it very interesting that Mr. Manly would participate in the  
5 Pendente Lite, which was a proceeding to suspend an adjudication of Wilson and  
6 Naneum Creeks to allow for filing claims pursuant to RCW 90.14, but then did not  
7 proceed with filing the claim. Nevertheless, the Referee finds that a right  
8 cannot be recommended for confirmation under Court Claim No. 00582 due to the  
9 failure of Ms. Wilkinson's predecessor to file a water right claim pursuant to  
10 RCW 90.14.

Court Claim No. 05055 was filed by Ms. Wilkinson for the irrigation of 10  
12 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, T. 19 N., R. 19 E.W.M. and 4.5 acres in  
13 the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20, T. 19 N., R. 19 E.W.M.. This is part of the land  
14 owned by C. R. Hovey, for which he testified in the Sanders v. Bull proceeding  
15 and for which he was awarded a right for 10 inches in Rader v. Sander. The  
16 Rader v. Sanders decree stated that Hovey owned Section 19, the W $\frac{1}{4}$ SW $\frac{1}{4}$  of  
17 Section 20 the NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30 and the west 280 feet of the NW $\frac{1}{4}$  of  
18 Section 29, but did not indicate where the 10 inches was being used. A water  
19 right claim form, completed by Lorne T. Dunning, Jr., pursuant to the  
20 requirements of RCW 90.14 was filed with the Kittitas County Clerk's Office on  
21 February 15, 1972. It asserted a right to divert 2 cubic feet per second, 500  
22 acre-feet per year from Wilson Creek for the irrigation of 85 acres in the W $\frac{1}{4}$  of  
23 Section 20 and part of the E $\frac{1}{4}$  of Section 20, T. 19 N., R. 19 E.W.M..

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The 1973 Order Pendente Lite pursuant to State of Washington Department of Ecology v. Carlson, et al. divided the Hovey 10 inches of water, giving Lorne T. Dunning, Jr. 0.15 cubic foot per second for use in Section 19 and Lawrence A. Manly, a predecessor of Ms. Wilkinson, 0.05 cubic foot per second for the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30 and the west 280 feet of the NW $\frac{1}{4}$  of Section 29. None of the water was for the SW $\frac{1}{4}$  of Section 20. However, Mr. Manly testified in 1972 that the 10 inches was only for use in Section 19. The reports that issued prior to the 1973 Order Pendente Lite divided the 10 inches proportionately between the two landowners who were successors to C.R. Hovey, Lawrence A. Manly and Lorne T. Dunning, Jr.. However, the record does not indicate whether this division was based on evidence of historic water use.

The Referee can find no water right claims pursuant to RCW 90.14 filed either with the Department of Ecology or with Kittitas County Superior Court for the lands in the SE $\frac{1}{4}$  of Section 19 or the NE $\frac{1}{4}$  of Section 30. Therefore, there can be no recommendation to confirm a water right for those lands. Lorne T. Dunning, Jr. filed with Kittitas County Superior Court a RCW 90.14 claim form asserting a right to divert 1 cubic foot per second from Wilson Creek for the irrigation of 35 acres in the W $\frac{1}{4}$  of Section 20 and a portion of the E $\frac{1}{4}$  of Section 20. Mr. Dunning owns all of the W $\frac{1}{4}$  of Section 20, except for the 4.5 acres owned by Ms. Wilkinson. At the time of the filing requirements for RCW 90.14, Ms. Wilkinson's land was owned by Lawrence A. Manly and, as far as the Referee can determine, was never owned by Mr. Dunning. It is not clear to the Referee that Mr. Dunning intended to include Ms. Wilkinson's land in his filing. Since the two claimants are asserting to have a portion, or all, of the 10 inch water right from Rader v. Sander, the Referee will not assume that the

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water right claim filed by Mr. Dunning protects rights claimed by Ms. Wilkinson  
1 for her parcel in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20.  
2

The Referee, therefore, does not recommend confirmation of a water right  
3 under Court Claim No. 05055.  
4

COURT CLAIM NO. 06737 -- Stephan A. Willard  
6 Son Vida I

On November 21, 1991, Son Vida I and Steve Willard filed Court Claim No.  
7 06737 asserting a right to divert water from Wilson Creek and two unnamed  
8 springs. Since The Referee held the evidentiary hearings for Subbasin No. 9 in  
9 January of 1991, well before the late claim was filed. The Court on January 9,  
10 1992, signed an order allowing further processing of the claim by the Referee.  
11 On May 26, 1992, the Court signed an Order granting the claimants the right to  
12 participate in the Subbasin No. 9 proceeding by introducing their evidence and  
13 testimony through the exceptions hearing that will be scheduled by the Court for  
14 Subbasin No. 9. Although the Referee cannot recommend that a water right be  
15 confirmed due to the lack of testimony, it is recognized that Court Claim No.  
16 06737 will be scheduled when the supplemental hearing for Subbasin No. 9 is  
17 set.  
18

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1 COURT CLAIM NO. 00726 -- Stephan A. Willard  
2 & Ruby Willard  
3 Shird J. Burks  
4 & Audrey E. Burks  
5 John Scott Downey

6 Donald R. and James B. Hay were the original claimants under Court Claim  
7 No. 00726. On October 4, 1989, Shird J. and Audrey E. Burks and John Scott  
8 Downey were joined to the claim; on January 20, 1993, Stephen A. and Ruby  
9 Willard were substituted for the Hays on their remaining interest in the claim.  
10 The claimants were represented by Attorney J. Jay Carroll at the evidentiary  
11 hearing. Donald Hay, Shird Burks and John Downey testified at the hearing in  
12 support of the claim.

13 Court Claim No. 00726 asserts a right to irrigate 450 acres and water  
14 livestock with water diverted from the combined flows of Wilson and Naneum  
15 Creeks. The lands described in the claim are: The W $\frac{1}{2}$ SE $\frac{1}{4}$  and E $\frac{1}{2}$ SW $\frac{1}{4}$  of  
16 Section 19, the NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 30, T. 18 N.,  
17 R. 19 E.W.M. The land is planted to hay and pasture, with grain rotation, and  
18 its primary purpose is raising of cattle. A right is being asserted for the  
19 diversion of 10 cubic feet per second, 2000 acre-feet per year. Water Right  
20 Claim No. 123683 was filed by the Hays pursuant to RCW 90.14 and asserts the  
21 same right as described in Court Claim No. 00726. The point of diversion  
22 described in both the Court claim and the RCW 90.14 claim is in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
23 Section 32, T. 19 N., R. 19 E.W.M., which is the point where Wilson and Naneum  
24 Creeks separate. It does not describe the location of any diversions from  
25 Wilson Creek itself. Wilson Creek flows through much of the claimant's  
26 property, where there are five points of diversion. Since the water right claim

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1 does not describe points of diversion, the Referee proposes to recommend the  
2 point of diversion being used to irrigate the land at the time of the hearing.  
3

4 John Scott Downey is now the owner of the E $\frac{1}{2}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 19,  
5 T. 18 N., R. 19 E.W.M. The State's Investigation Report for this property shows  
6 that 142 acres are irrigated with water carried in a head ditch that parallels  
7 the north property line. The investigation report indicates that there is no  
8 diversion from Wilson Creek to this ditch, that it captures runoff water from  
9 irrigated fields to the north. However, Mr. Downey testified to a diversion  
10 from Wilson Creek into the ditch just east of the northeast property corner. A  
11 buried PVC pipe carries the water from the creek to the ditch. Although Court  
12 Claim No. 00726 did not do so, Mr. Downey is also asserting a right to irrigate  
13 Government Lots 3 and 4 of Section 19 with water diverted from Wilson Creek.  
14 Mr. Downey testified to owning and irrigating a total of 200 acres. The Referee  
15 believes that something less than that is actually being irrigated. The State's  
16 Map, SE-2, shows a strip of land between two branches of Wilson Creek in the  
17 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19 as not being irrigated. It would be difficult to irrigate  
18 the small strip of land between the two branches. Additionally, according to  
19 the map, Mr. Downey only owns that portion of Government Lots 3 and 4 lying east  
20 of Look Road; the Referee believes there is approximately 15 acres lying west of  
21 the road that appears to be owned by Kittitas County. Mr. Downey did not  
22 testify to the map being inaccurate. Mr. Downey is assessed by Kittitas  
23 Reclamation District for 153 acres and uses KRD water on this land. The land is  
24 planted to hay and pasture, with the hay fields being rill irrigated and the  
25 pasture flood irrigated. Up to 200 head of cattle are grazed on the pasture and  
26 are rotated from the neighboring Madeleine Villa, Inc. property. Livestock

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1 drink directly from the creek. The Referee notes that Water Claim No. 123683  
2 does not include within the description of lands on which water is used the  
3 portion of Section 19 lying in Government Lots 3 and 4. The Referee has not  
4 been directed to any other RCW 90.14 claims that might describe this land.

5 The land in the E $\frac{1}{2}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 19 was originally settled by  
6 Milton and Robert Canaday, parties to Sanders v. Jones. The Canadays settled on  
7 the land in 1871, obtained title from the Federal Government and sold to Carl  
8 Sanders in 1900. The Canadays apparently owned other land in the area, as they  
9 were awarded a total of 275 inches of water for irrigating. The Findings of  
10 Fact that preceded the decree provided that one inch of water was sufficient for  
11 the irrigation of one acre. Therefore, 275 inches would have been used on 275  
12 acres. The E $\frac{1}{2}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  are 160 acres in size and would be entitled to 160  
13 inches of water. The decree provided that one inch of water per acre could be  
14 used in May and June and one-half inch could be used the remainder of the year.  
15 There is no indication that the Canadays owned Government Lots 3 and 4 of  
16 Section 19, nor is there any information in the record of who might have owned  
17 that land. As far as the Referee can determine, there was no water right  
18 awarded in Sanders v. Jones for Government Lots 3 and 4 and there was evidence  
19 of a water right being established subsequent to that decree being entered.  
20 Therefore, the Referee will not recommend confirmation of a water right for that  
21 land.

22 Based on the evidence presented, the Referee recommends that a right be  
23 confirmed with a June 30, 1872, date of priority for the diversion of 2.84 cubic  
24 feet per second in May and June, 1.42 cubic feet per second in April and from  
25 July 1 through October 31, 710 acre-feet per year for the irrigation of 142

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1           acres and stock watering in the E $\frac{1}{2}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 19, T. 18 N.,

2           R. 19 E.W.M.

3           Shird and Audrey Burks own the W $\frac{1}{2}$ SE $\frac{1}{4}$  and the east 400 feet of the south  
4           1100 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30, T. 18 N., R. 19 E.W.M. They are  
5           asserting a right to irrigate 75 acres and water stock with water diverted from  
6           Wilson Creek. Pasture, Timothy hay and barley are grown on the land. The land  
7           is flood irrigated. Approximately 60 pair of cattle are raised. Water is  
8           diverted from Wilson Creek at a point approximately 1200 feet north and 1300  
9           feet east from the south quarter corner of Section 19, and carried in a ditch  
10           that ultimately borders the east line of the Burks property. The Burks are  
11           assessed by KRD for 72 acres.

12           The Burks land was originally settled by Gary Chapman on June 15, 1877, and  
13           a patent received on December 30, 1882. Carl Sanders bought the land from  
14           Chapman on March 21, 1883. It was owned by Sanders at the time of the Sanders  
15           v. Jones suit. In that decree, Sanders was awarded a right for 450 inches of  
16           water used on lands he settled or acquired from Chapman and Snyder. The  
17           Decision that preceded the decree states that Sanders and/or his predecessors  
18           began appropriating water in 1873 and by 1887 had appropriated a total of 450  
19           inches for irrigation purposes. The priority date for the portion appurtenant  
20           to the Burks property would be 1877, when the land was settled. With the decree  
21           providing one inch of water in May and June and one-half inch of water the  
22           remainder of the year, the Burks property would be entitled to 75 inches in May  
23           and June and 37.5 inches the remainder of the year.

24           Based on the foregoing, the Referee recommends that a right be confirmed to  
25           Shird and Audrey Burks with a June 15, 1877, date of priority for the diversion

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1 of 1.5 cubic foot per second in May and June, 0.75 cubic foot per second in  
2 April and from July 1 through October 15, 375 acre-feet per year for the  
3 irrigation of 75 acres and stock watering in the W $\frac{1}{2}$ SE $\frac{1}{4}$  (minus the exception) and  
4 the east 400 feet of the south 1100 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30, T. 18 N.,  
5 R. 19 E.W.M.

6 The remaining portion of the claim is now in the name of Stephan and Ruby  
7 Willard. Their land predominately lies in the W $\frac{1}{2}$  of Section 30, plus a small  
8 sliver of land in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 lying east of Look Road and north of  
9 Sanders Road. Most of Government Lot 4 and the southerly 400 feet of Government  
10 Lot 3 east of Wilson Creek are owned by Patrick Smith, who is also a claimant in  
11 this proceeding. Don Hay testified at the hearing about use of this land. It  
12 was planted in pasture and hay, with a grain rotation. They could have 1500 to  
13 2000 head of cattle on the pasture during the irrigation season, or up to 300  
14 head year around. That practice would vary over the years. Approximately 236  
15 acres of the 270 acre total area is irrigated with water diverted from Wilson  
16 Creek. KRD also delivers water for 200 acres.

17 The land in the W $\frac{1}{2}$  of Section 30 was settled on by Carl Sanders in the  
18 early 1870's. On April 20, 1871, Sander settled on the E $\frac{1}{2}$ NW $\frac{1}{4}$  and Government  
19 Lots 2 and 3 of Section 30 (155.39 acres) and received the patent on February  
20 10, 1875. On June 1, 1874, Sander settled on the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30  
21 (117.77 ac.) and received the patent on December 1, 1882. Although the claimant  
22 is asserting a right for Government Lot 1 of Section 30, there is no evidence  
23 that it was owned by Carl Sander, nor is there any evidence at all in the record  
24 about historic ownership or water use on this specific parcel. Approximately 15  
25 acres are irrigated within Government Lot 1. This land is riparian to Wilson

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1 Creek. Rights were awarded to Carl Sander for this land and other land he owned  
2 in the Sander v. Jones decree. The Decision that preceded the decree stated  
3 that Sander first appropriated 20 inches from Wilson Creek in 1873 and steadily  
4 increased his appropriation until by 1887 he was appropriating a total of 450  
5 inches. Additional water was appropriated by Sander for running a mill. As  
6 previously mentioned, the decree stated that one inch of water was needed to  
7 irrigate one acre in May and June and one-half inch the rest of the year.  
8

9       Although the claimant testified to irrigate 236 acres with water diverted  
10 from Wilson Creek, 15 of those acres lie within Government Lot 1, for which  
11 there has been no evidence submitted to show the existence of a water right.  
12 Therefore, the Referee cannot recommend that a right be confirmed for those 15  
13 acres, leaving 221 acres for which a water right can be recommended. Under the  
14 Riparian Doctrine, the priority date for a water right is the date steps were  
15 first taken to sever the land, which in this case would be the date that Carl  
16 Sander settled on the land. The land was settled in two blocks, therefore, two  
17 separate water rights must be awarded. The land in the E $\frac{1}{4}$ NW $\frac{1}{4}$ , and Government  
18 Lots 2 and 3 (SW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 30 would have a priority date of  
19 April 20, 1871 and the remaining land would have a priority date of June 1,  
20 1874. The Referee concludes that 150 irrigate acres will have a priority date  
21 of April 20, 1871, and 71 acres will have a priority date of June 1, 1874. The  
22 claimant at the exception phase can seek to have a different distribution of the  
23 acres if evidence in support of that can be presented.

24       Therefore, the Referee recommends that a right be confirmed with an  
25 April 20, 1871, date of priority for the diversion of 3 cubic foot per second in  
26 May and June, 1.5 cubic foot per second in April and July 1 through October 15,

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750 acre-feet per year for the irrigation of 150 acres and stock watering in the  
1 E $\frac{1}{4}$ NW $\frac{1}{4}$ , Government Lots 2 and 3, except that portion of Government Lot 3  
2 described as follows: Beginning at the southeast corner of said lot, thence S  
3 89°28' W along the south line of said lot 904.3 feet; thence north 26°08' E 242  
4 feet; thence N 70°05' E 496 feet; thence N 83°05' E 167 feet; thence S 83°07' E  
5 73 feet; thence S 13°03' E 400.7 feet to the point of beginning, in Section 30,  
6 T. 18 N., R. 19 E.W.M. With a June 1, 1874, date of priority, a right to divert  
7 1.42 cubic feet per second in May and June, 0.71 cubic foot per second in April  
8 and July 1 through October 15, 355 acre-feet per year for the irrigation of 71  
9 acres and stock watering in the E $\frac{1}{4}$ SW $\frac{1}{4}$  and that portion of Government Lot 4  
10 roughly lying north of Sanders Road and west of Wilson Creek, in Section 30, T.  
11 18 N., R. 19 E.W.M.

12 In addition to drinking from the irrigation ditches, livestock grazing on  
13 the claimants' land may have access to Wilson Creek, which is covered by the  
14 stock water stipulation discussed on page 4 of this report.

16 COURT CLAIM NO. 00893 -- Barbara Williams

17 Ms. Williams filed a claim with the Court asserting a right to use an  
18 unnamed spring for domestic supply, stock watering and irrigation. Ms. Williams  
19 son-in-law, William Erickson, testified at the evidentiary hearing.

20 The claimant's property lies in the S $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, T. 19 N.,  
21 R. 19 E.W.M. There appears to be some confusion in the record about the actual  
22 legal description for the property. The description in the claim is as  
23 follows: "That portion of the S $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 33, T. 19 N., R. 19 E.W.M.,  
24 which is bounded by a line described as follows: beginning at the SW corner of

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the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, thence N 2°10'44" W along the west boundary of said  
1 SE $\frac{1}{4}$ SE $\frac{1}{4}$ , 30 feet; thence N 88°39' E 616.39 feet; thence N 01°47' W 335.71 feet;  
2 thence N 88°39' E 654.7 feet; thence S 0°2'40" E 335.59 feet to the true point  
3 of beginning." Discounting the two apparent typographical errors, the legal  
4 description appears to describe the southerly 335 feet of the westerly 600 or so  
5 feet of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33. Yet the State's Investigation Report and SE-2  
6 describe the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, except the southerly 341 feet -- which  
7 would appear to exclude the portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  described in Court Claim No.  
8 00893. The State's Investigation Report identifies two water right claims filed  
9 pursuant to RCW 90.14 that may be appurtenant to the claimant's property. They  
10 describe basically the same land as described on the claim form itself, not on  
11 the investigation report. Mr. Erickson referred to a claim filed by Leonard  
12 Bakeman as being for the spring and the property, however, that claim describes  
13 the land described in the investigation report and mapped on the exhibit, not  
14 the land described in Court Claim No. 00893. The Referee is confused about  
15 which land is owned by Barbara Williams.

16 Mr. Erickson testified that a spring on the property is used for irrigation  
17 of approximately 2 acres of pasture. The outflow of the spring was measured by  
18 his brother-in-law at 55 gallons per minute, but he believed that the flow  
19 fluctuated over the year. Prior to his mother-in-law acquiring the land, there  
20 was a wooden pipe, approximately six inches in diameter into the spring. They  
21 have since constructed a concrete box around the spring. He believes that the  
22 original spring development is very old. However, he was not able to provide  
23 any history about the property and, therefore, nothing definitive to establish  
24 when the spring was first developed and used. When his mother-in-law acquired  
25

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the land in 1975 the spring was also used for domestic supply. However,  
1 subsequently a well was drilled for the domestic use. Mr. Erickson testified  
2 that a stream flows through the property and livestock drink from the stream.  
3 However, the Referee believes the stream is actually a ditch that carries water  
4 diverted from Naneum Creek just to the northwest of the claimant's property.  
5 There was no evidence presented to show that a water right was established for  
6 use of Naneum Creek for stock watering.  
7

There are three water right claim forms filed pursuant to RCW 90.14 that  
8 may be appurtenant to the claimant's property. They are Water Right Claims No.  
9 112083 filed by Leonard Bakeman, No. 007250 filed by Floyd L. Porter, and No.  
10 119731 filed by Mr. and Mrs. Steven Hall and Mr. and Mrs. John Bennett. Only  
11 WRC No. 112083 asserts a right to use a spring.  
12

There has been no evidence presented to show that a water right was legally  
13 established for use of the spring. Additionally, the correct legal description  
14 of the claimant's land is in question. Therefore, the Referee cannot recommend  
15 that a water right be confirmed to Barbara Williams under Court Claim No. 00893.  
16

COURT CLAIM NO. 01681 -- Philip C. Wilson  
17

Joe Thomas, Sr. filed a statement of claim with the Court asserting a right  
19 to use waters from Wilson Creek for irrigation and stock water. On October 31,  
20 1989, Philip C. Wilson was substituted for Mr. Thomas as claimant. Mr. Wilson  
21 testified at the evidentiary hearing.  
22

The claimant's land is 1.6 acres in size and lies in a portion of the  
23 SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 35, T. 18 N., R. 18 E.W.M. Mercer Creek flows through the  
24 property. Mr. Wilson is asserting a right to irrigate his lawn and garden with  
25

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water diverted from Mercer Creek. Water is pumped from the creek near the  
1 northeast corner of the claimant's land. The irrigation system was in place  
2 when Mr. Wilson bought the property from Joe Thomas, Sr.'s estate.  
3

Entered into evidence is a copy of the receiver's receipt dated August 27,  
4 1886, from Annie Michels for the W $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 35,  
5 T. 18 N., R. 18 E.W.M. Payment to the receiver is the last step prior to a  
6 Homestead Patent issuing, so it is evidence that Ms. Michels in the process of  
7 acquiring the land by 1886. On October 30, 1889, Henry Michels sold to Charles  
8 Robinson an 6 acre parcel that included the land now owned by Mr. Wilson. Mr.  
9 Wilson also put in the record a summary of the chain of title for his property.  
10 Although Mr. Wilson believes that it is likely that the land has been irrigated  
11 since it was first settled, he has provided no evidence to show that a water  
12 right was established for use of Mercer Creek. Both the Ellensburg Water  
13 Company and Cascade Irrigation District deliver water in this area and Cascade  
14 Irrigation District uses Mercer Creek as a mechanism to deliver their water.  
15 Without evidence to show that water from Mercer Creek was used in the late  
16 1800's or early 1900's, the Referee cannot recommend that a water right be  
17 confirmed for the property.  
18

Additionally, the Referee can find no evidence that a water right claim was  
19 filed for the property pursuant to RCW 90.14. The land apparently was owned by  
20 the Mundy family at the time of the claims registration. It does not appear  
21 that they filed a water right claim for use of Mercer Creek. Failure to file a  
22 claim relinquishes any right that may have existed. RCW 90.14.071.  
23

24

25

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1 COURT CLAIM NO. 05316 -- William P. Woods  
2 & Priscilla A. Woods

3 William P. and Priscilla A. Woods submitted a Statement of Claim to the  
4 Court on May 11, 1990, and the Court on June 8, 1990, entered an Order accepting  
5 the claim for further processing. The claimants are represented by Attorney  
6 John P. Gilreath, who appeared on their behalf at the evidentiary hearing. Mr.  
7 Gilreath presented their claim to the Court and during the testimony of a  
8 neighboring claimant, C. Vernon Stokes, solicited testimony about his knowledge  
9 of the property.

10 The Woods land consists of a total of 20 acres in the N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
11 Section 8, T. 18 N., R. 19 E.W.M. Although the land was not being irrigated  
12 when the Woods acquired it in 1990, there was evidence of past irrigation. A  
13 ditch from Wilson Creek goes under the Kittitas Reclamation District canal,  
14 which is just north of the property. Although the claimants are asserting a  
15 right to irrigate the entire 20 acres, Mr. Stokes testified to his belief that  
16 between 5 and 8 acres have been irrigated in the past. Mr. Stokes did not  
17 believe the land east of the driveway had been irrigated. He described the land  
18 as "subby" because of seepage from the KRD canal. He also described rock bars  
19 on the property that were not irrigable and a borrow pit in the northwest  
20 corner. Review of attachment G to DE-1574 confirms some of Mr. Stokes'  
21 testimony -- the borrow pit in the northwest corner and the existence of rock  
22 outcrops that certainly would not be irrigated. Ditches have been drawn on the  
23 face of the document and the ditch from Wilson Creek does not appear to serve  
24 the land east of the driveway. There is a ditch draw somewhat parallel to the

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KRD canal and Mr. Gilreath suggested it captured seepage water and was used to  
1 irrigate the land. Mr. Stokes acknowledge the existence of that ditch, but  
2 indicated it was built "not too long ago". Mr. Stokes testimony raises a  
3 question as to the number of acres that have historically been irrigated on the  
4 land. The land has been used to pasture livestock which drink from the  
5 irrigation ditch and unnamed springs located on the property. Stock watering  
6 from the springs is nondiversionary in nature.  
7

Pursuant to the requirements of RCW 90.14, Orie Pratt submitted two water  
8 right claims. WRC No. 09751 asserts a right to use springs for domestic supply  
9 and livestock. The springs are located on the claimants property. Based on the  
10 presentation at the hearing, the Referee concludes this is the non-diversionary  
11 stock water use discussed and covered by the stock water stipulation. WRC No.  
12 09752 asserts a right to divert 1 cfs, 700 acre-feet per year from Wilson Creek  
13 for the irrigation of 5 acres. The point of diversion described on the claim  
14 appears to be at approximately the location of the borrow pit on the property.  
15 Mr. Stokes testified that water was diverted from the creek into the borrow pit  
16 and then used for irrigation, so it appears that Mr. Pratt was describing the  
17 point where the water entered his irrigation system, rather than the point where  
18 the water was diverted from Wilson Creek. The Referee notes that Mr. Pratt was  
19 asserting a right to irrigate 5 acres. The difference between that and the 20  
20 acres now being asserted was not addressed by Mr. Gilreath.  
21

The claim is based on a water right established by James Jude, who received  
22 a patent on August 12, 1890, for the NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8,  
23 T. 18 N., R. 19 E.W.M. James Jude was a defendant in Sander v. Jones. The  
24 decree awarded James Jude 20 inches of water and indicated that the water was  
25

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appropriated between 1883 and 1887. The decree provided that one inch of water  
1 was sufficient for the irrigation of one acre, therefore, the 20 inches of water  
2 awarded to Jude would have been sufficient for 20 acres. The Jude property was  
3 riparian to Wilson Creek. There are two other claimants in this adjudication  
4 who are asserting a right based on being successors to Jude. Ronald Rees, under  
5 Court Claim No. 00892, and Gerald and Ruth Brunner, under Court Claim No. 02214  
6 own and are asserting rights for lands within the NW $\frac{1}{4}$  of Section 8. Mr. Rees is  
7 irrigating 12 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the Brunners are irrigating 20 acres  
8 in the S $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ . Rights are being asserting for the irrigation of a total of 52  
9 acres, but the extent of the right based on the decree is 20 acres. There has  
10 been no evidence offered to show that an additional right beyond that awarded in  
11 Decree No. 96 is appurtenant to the collective properties, or specifically for  
12 the Wood property. Mr. Rees owns a total of approximately 40 acres within the  
13 area for which a right was awarded, Mr. Wood owns 20 acres and Mr. Brunner owns  
14 20 acres. There is insufficient evidence to show where the 20 acre right was  
15 being exercised within the Jude land when the right was established in the  
16 1800's and the Referee doubts that information is available today. Mr. Gilreath  
17 asserted that the land in the N $\frac{1}{4}$ NW $\frac{1}{4}$  should have half of the Jude water right.  
18 The Referee agrees with that position, however, since there are two claimants  
19 who are asserting rights in the N $\frac{1}{4}$ NW $\frac{1}{4}$ , Mr. Wood would only have a right to  
20 one-quarter and the Brunners would have one-quarter of the right.  
21

Mr. Gilreath presented an exhibit that raises a question concerning the  
22 extent of the Jude water right. The Sander v. Jones Decree, No. 96, shows that  
23 James Jude has a right to a total of 20 inches. This is the quantity in both  
24 the typed version of the Decree and Findings of Fact that is in evidence and the  
25

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handwritten Findings of Fact that is part of DE-1574. However, also part of  
1 DE-1574 is a portion of a typed document titled "Wilson Creek - Sander vs. Jones  
2 et al.". The Referee has encountered this type of document in many subbasins  
3 and has referred to it as a "Schedule of Rights" for the referenced decree.  
4 These Schedules were apparently prepared by someone responsible for  
5 interpreting and enforcing the various decrees entered in Kittitas County.  
6 Although there is not definitive statement as to when the schedules were  
7 prepared, or by whom, the Referee believes it was the Kittitas County  
8 Watermaster, who would have been responsible for administering the decrees prior  
9 to enactment of the Surface Water Code in 1917. The particular Schedule of  
10 Rights at issue here is only partially in the record, the first page and the  
11 page with the James Jude water right are identified as Exhibit E. James Jude is  
12 shown as having a right to 30 inches, 10 more than appears in the Decree or  
13 Findings of Fact. The first 20 inches are recited in the same order as they  
14 appear in the Decree and Findings of Fact (6 inches, then 7, then 3, then 4)  
15 with the extra 10 inches following. There was no explanation offered concerning  
16 the difference between the 20 inches awarded in the decree and the 30 inches in  
17 the schedule. Without further explanation, the Referee must conclude that the  
18 Jude right is limited to 20 inches and 20 acres.  
19

Therefore, the Referee will divide the 20 acre right amongst the three  
20 claimants, based on the number of acres they own within the original Jude  
21 property. Based on this, Mr. Rees will have one-half of the right, or ten  
22 acres, and Mr. Wood and the Brunners will each have a right to one-quarter of  
23 the right, or five acres. The recommendation for five acres is also consistent  
24 with WRC No. 09751 filed pursuant to RCW 90.14.  
25

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The Referee recommends that a right be confirmed under Court Claim No. [REDACTED]

05316 with a June 30, 1877, date of priority for the diversion from Wilson Creek of 0.10 cubic foot per second in May and June, 0.05 cfs in April and July 1 through October 15, 25 acre-feet per year for the irrigation of 5 acres and 0.5 acre-foot per year for stock watering. A non-diversionary stock water right also exists for the property under the stock water stipulation.

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

The Washington State Department of Natural Resources (DNR) filed a claim for use of numerous sources of water within the Yakima River Basin, including several within Subbasin No. 9. Miriam I. Laukers, a Program Specialist with DNR, and Larry Charlton, a DNR Land Manager, testified in support of the claim.

DNR is asserting rights to use water from Wilson and Naneum Creeks, unnamed streams and unnamed springs in Subbasin No. 9 for stock watering, timber harvesting and fire suppression. According to the testimony the stock watering use is nondiversionary in nature, with the livestock drinking directly from the source. This type of stock water use is covered by the stock water stipulation discussed on page 4 of this report. Mr. Charlton testified that there also was no diversionary use of water for timber harvesting. Water is diverted from all available water sources for fire fighting when needed. Pumper trucks are filled and helicopters dip water from the sources. The area averages one to five fires each year. The amount of water needed for fire fighting each year is unpredictable, as is determining which sources within the area will be used.

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1       The Referee recognizes that use of water for fire fighting is very  
2       important, but this use cannot be quantified and is unpredictable. Although the  
3       Referee cannot recommend that a specific right be confirmed for fire fighting,  
4       it is acknowledged that water will be used as needed for that purpose.  
5

6       COURT CLAIM NO. 01600 -- WA State Park and Rec. Commission  
7

8       The Washington State Parks and Recreation Commission submitted a claim to  
9       the Court asserting a right to use several surface water sources in the Yakima  
10      River Basin. Within Subbasin No. 9, a right is being asserted for Wilson Creek  
11      and an unnamed lake. Kris Kauffman testified at the evidentiary hearing and a  
12      Sworn Statement by Ted Clausing with the then Washington State Department of  
13      Wildlife was entered as Exhibit DE-1512.

14      The commission owns a portion of the N½ of Section 31, T. 17 N.,  
15      R. 19 E.W.M. lying east of State Route 97 (the Canyon Road). The land was  
16      acquired in 1973 and comprises the Helen McCabe State Park. At the time of the  
17      hearing the land had not been developed for public use, but was being held for  
18      future development as a park. A riparian right to Wilson Creek and littoral  
19      right to the lake are being asserted for recreation and aesthetics. The  
20      commission is not asserting a diversionary right and Mr. Kauffman was not aware  
21      of any historical irrigation rights for the property. The land is being leased  
22      to John Eaton who uses it for cattle grazing. Ted Clausing's sworn statement  
23      addressed the wildlife and birds that inhabit or make use of the park and the  
24      waters within the park and their dependency on the riparian habitat along the  
25      creek and lake. Mr. Kauffman referenced the stock and wildlife water  
26      stipulations in his presentation.

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The testimony and evidence references an artesian well on the property.

The flow from the well contributes to the lake, along with Wilson Creek and the high ground water table in the area. The well, of course, is ground water, which is not within the jurisdiction of this Court. Rights to the use of the well will not be addressed.

Livestock, wildlife and birds accessing Wilson Creek and the lake is covered by the stock water and wildlife stipulation that is discussed on page 4 of this report and the claimant will appear on the list of those who have rights under the stipulation. Mr. Kauffman points to RCW 90.54.020(3)(a) which provides for protection of perennial rivers and streams with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values and lakes and ponds being retained substantially in their natural condition. The purpose of RCW 90.54, as stated in 90.54.010(2) is to set forth fundamentals of water resource policy for the state to insure that waters of the state are protected and fully utilized for the greatest benefit to the people and provide direction to the Department of Ecology in carrying out water resources programs.

Adjudications are governed by RCW 90.03.110 through 90.03.245 and are a process to determine the extent and validity of existing rights based on the evidence and testimony presented. The only existing right that may exist for this property is that covered by the stipulations previously discussed.

Maintaining water courses and lakes as provided in the policy statements in RCW 90.54 relates to future decisions of local and state governments, rather than in the process of determining the validity of water rights in an adjudication.

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Beyond the rights protected by the stock and wildlife water stipulation, the Referee recommends that no other rights be confirmed in Subbasin No. 9 under Court Claim No. 01600.

COURT CLAIM NO. 00363 -- Stanley P. Youngberg  
(A) 01686

A Statement of Claim was filed by the Court for use of Naneum Creek for the irrigation of 50 acres in a portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 4, T. 18 N., R. 19 E.W.M. Mr. Youngberg, who was represented by Attorney Michael Bauer, testified at the evidentiary hearing.

Mr. Youngberg's land lies predominantly in the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 4, east of Naneum Creek. Fifty acres of hay and pasture are irrigated with water diverted from Naneum Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, T. 19 N., R. 19 E.W.M. Livestock grazing on the property drink from the ditches. Up to 50 cow/calf pairs are raised. The land was originally settled by Andrew S. Burbank, who on May 1, 1896, received a patent for the S $\frac{1}{2}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 4, T. 18 N., R. 19 E.W.M. On May 31, 1890, A. S. Burbank filed a Statement of Water Right, describing the lands he owned and that in the spring of 1881, he constructed a ditch for the purpose of conveying water onto his claim for irrigation. The ditch was constructed about 160 feet north of the north line of his claim from a stream flowing from Wilson Creek to Naneum Creek and the ditch had a capacity of 500 inches of water flowing under no pressure. He had appropriated about half of that quantity. He named the ditch the Sheppard Ditch. He also constructed a ditch in 1881 from Naneum Creek and he claimed an appropriation of 30 inches of water. He made another small ditch from Nanum Creek in the spring of 1890, and

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appropriated about 20 inches of water through the ditch. The two ditches from  
1 Naneum Creek were named Burbank's Ditch No. 1 and No. 2.  
2

This land was also addressed in the Ferguson decree. A Class 11 right was  
3 awarded to George Cooke for 320 inches for the S $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{3}{4}$ SW $\frac{1}{4}$  of Section 4 and the  
4 NW $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9. A portion of this right, 50 inches for the  
5 irrigation of 50 acres, was appurtenant to the land now owned by Mr. Youngberg.  
6

Water Right Claim No. 090378 was filed by Ralph C. Klein pursuant to the  
7 requirements of RCW 90.14. RCW 90.14 was passed by the legislature in 1967 and  
8 required that anyone using surface waters who did not have a permit or  
9 certificate had to file a water right claim. Mr. Klein used a "short form",  
10 which according to Section 90.14.051 could be used only for uses of water  
11 described in the exemption from the permit requirements of RCW 90.44.050 (use of  
12 up to 5,000 gallons per day for domestic supply, stock watering, irrigation of  
13 up to one-half acre, or industrial supply). When using the short form, the only  
14 information needed was that sufficient to identify the claimant, source of  
15 water, purpose of use and legal description of the land upon which the water is  
16 used. Mr. Klein in completing the form provided more information than was  
17 required by including a note on the form referring to Order Pendente Lite No.  
18 18145 and the rights identified in that order for Lawrence A. Manly, claimant  
19 No. 16, on pages 6, 9, 8, 10 and 14. The purpose of RCW 90.14, as stated in  
20 Section 90.14.010, is to provide adequate records for efficient administration  
21 of the state's waers, . . ." Although the short form itself did not provide  
22 sufficient information about the extent of the right being asserted to meet the  
23 stated purpose of RCW 90.14, it referred to a document that would provide that  
24 information. The Order Pendente Lite referred to on the form resulted from an  
25

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27

Re: Subbasin No. 9

action initiated by the Department of Ecology to determine the valid water  
1 rights in the Wilson-Naneum drainage basin. It is part of Ecology's records and  
2 the evidence in this proceeding is that it used by Ecology for regulatory  
3 purposes. The Referee finds that WRC No. 090378 substantially complies with the  
4 requirements of RCW 90.14.

5 Therefore, the Referee recommends that a right be confirmed with a June 30,  
6 1882, date of priority for the diversion from Naneum Creek of 1.0 cubic foot per  
7 second in May and June, 0.50 cubic foot per second in April and July 1 through  
8 October 15, 250 acre-feet per year for the irrigation of 50 acres in that  
9 portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 4, T. 18 N., R. 19 E.W.M. lying east of Naneum  
10 Creek.

11  
12 COURT CLAIM NO. 00364 -- Winona P. Youngberg  
13 (A) 01687

14 Mrs. Youngberg submitted a claim to the Court for the use of Naneum Creek  
15 and an unnamed spring for the irrigation of 80 acres and stock watering.  
16 Mrs. Youngberg was represented at the evidentiary hearing by Attorney Michael  
17 Bauer. Her son, Stan Youngberg, testified in support of the claim.

18 Mrs. Youngberg owns the W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4, T. 18 N., R. 19 E.W.M. and  
19 irrigates the entire tract with water diverted from Naneum Creek. The spring  
20 cited in the claim is used strictly for stock watering, particularly during low  
21 flow periods when water is not available from Naneum Creek. Mrs. Youngberg  
22 acquired the property in 1938. The patent for the land issued to Samuel C.  
23 Thomas on August 16, 1889, and included the Youngberg property along with the  
24 E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 4. S. C. Thomas filed a Notice of Water Right stating that in

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the spring of 1878 he dug an irrigation ditch capable of carrying 500 inches and  
appropriated 400 inches of water. The ditch commenced where the section line  
between Section 4, T. 18 N., R. 19 E.W.M. and Section 33, T. 19 N., R. 19 E.W.M.  
crosses Naneum Creek and the ditch runs in a southeasterly direction for one and  
a half miles.

Water rights for this land were addressed in the Ferguson decree. A Class  
9 right was awarded to Margaret Clifton for 160 inches for the E $\frac{1}{2}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$   
of Section 4. The Findings of Fact stated that the land was settled in  
September of 1877 and irrigated from Naneum Creek beginning in 1878. The  
diversion currently used diverts into the Youngberg Morrison Ditch in Government  
Lot 4 of Section 4. This point is about 700 feet downstream of the point  
described in the notice of water right filed by S. C. Thomas. Prior to 1917  
points of diversion could be changed without any state oversight and there is no  
evidence in the record of when the change occurred.

Water Right Claim (WRC) No. 000860 was filed by Mrs. Youngberg asserting a  
right to divert 1.6 cfs, 400 acre-feet per year from Naneum Creek for the  
irrigation of 80 acres in the W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4. The point of diversion  
described in WRC No. 000860 is slightly different than the location described in  
the State's investigation report, but is in the same vicinity. WRC No. 000862  
was also filed by Mrs. Youngberg. It asserts a right to use 0.25 cfs, 3  
acre-feet per year for stock watering from an unnamed spring that is very close  
to the half section line between the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4. Water from  
the spring flows into an excavated area and stream that emanates from the  
spring. Livestock drink from the excavated area and the stream. The testimony  
was not clear on whether the channel leaving the spring is a natural stream or a

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1 ditch. If it is a stream the non-diversionary stock water stipulation discussed  
2 on page 4 of this report would cover the use. Since the testimony was not  
3 definitive, the Referee will consider it a non-diversionary use and apply the  
4 stipulation.

5 The Referee recommends that a right be confirmed with a September 30, 1877,  
6 date of priority for the diversion of 1.60 cubic feet per second in May and June  
7 and 0.80 cubic foot per second in April and July 1 through October 31, 400  
8 acre-feet per year for the irrigation of 80 acres and stock water from April 1  
9 through October 31. The Referee recognizes because of the fluctuations in the  
10 stream flow, this quantity may not be available the entire irrigation season.

11 COURT CLAIM NO. 00351 -- Keith Williams  
12 & Margaret Williams

13 COURT CLAIM NO. 00377 -- Jessie E. Wikstrom

14 COURT CLAIM NO. 00460 -- Greg Brozovich  
15 Joe Morrow

16 COURT CLAIM NO. 00480 -- Ralph Fields  
17 & Gwyla A. Fields

18 COURT CLAIM NO. 00577 -- William W. Razey  
19 & Donna Razey  
Andrew J. Schmidt  
William D. & Melva M. Schmidt

20 COURT CLAIM NO. 00717 -- James A. Powell  
21 & Joyce Powell

22 COURT CLAIM NO. 00724 -- Fred Christen  
23 & Mollie Christen

24 COURT CLAIM NO. 00766 -- Robert G. Dier  
25 & Diane C. Dier

26 COURT CLAIM NO. 00986 -- David W. T. Watt  
27 & Dorothy A. Watt

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1 COURT CLAIM NO. 01004 -- Harold W. Anderson  
2 COURT CLAIM NO. 01028 -- Ruth Floyd  
3 COURT CLAIM NO. 01081 -- Anita Sorenson  
4 COURT CLAIM NO. 01208 -- Gene Panattoni  
5 & Sally Panattoni  
6 COURT CLAIM NO. 01451 -- Fred Christen  
7 William R. Peterson  
8 COURT CLAIM NO. 01463 -- Gary Lee Johnson  
9 COURT CLAIM NO. 01559 -- Patrice Hardisty  
10 COURT CLAIM NO. 01567 -- Thomas H. Borger  
11 COURT CLAIM NO. 01601 -- Frances Knutson  
12 COURT CLAIM NO. 01607 -- Howard L. Gibson  
13 & Ruth A. Gibson  
14 COURT CLAIM NO. 01608 -- William Brown  
15 & Marilyn Brown  
16 COURT CLAIM NO. 01677 -- Sam Rust  
17 & Diane Rust  
18 COURT CLAIM NO. 01701 -- Patrick R. O'Shaughnessy  
19 & Marilyn O'Shaughnessy  
20 COURT CLAIM NO. 01732 -- Kittitas County  
21 COURT CLAIM NO. 01785 -- Maurice L. Dufault  
22 & Florence J. Dufault  
23 COURT CLAIM NO. 01806 -- Mark G. Williams  
24 & Kathleen S. Williams  
25 COURT CLAIM NO. 01814 -- Jeffrey Chris Merrick  
26 COURT CLAIM NO. 01818 -- Gerald R. Rimpler  
27 & Janet L. Rimpler  
28 COURT CLAIM NO. 01841 -- James Russell Bender  
29 & Florence E. Bender

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1 COURT CLAIM NO. 01862 -- Taco Bell Corporation  
2 COURT CLAIM NO. 01891 -- Beulah M. Dunn  
3 (A) 01892 -- William W. Razey  
4 COURT CLAIM NO. 01895 -- Clinton A. Noyes  
5 & Laverne Noyes  
6 COURT CLAIM NO. 01952 -- Estate of Glenn Turner  
7 Carol W. Phelps  
8 -- & Joy M. Turner  
9 COURT CLAIM NO. 01957 -- Steven T. Sturdevant  
10 -- & Debi L. Sturdevant  
11 COURT CLAIM NO. 01975 -- Jane Stark  
12 COURT CLAIM NO. 01977 -- Melvin Shenyer  
13 COURT CLAIM NO. 02117 -- Keith S. Rowbotham  
14 -- & Margaret I. Rowbotham  
15 COURT CLAIM NO. 02128 -- Barry C. Kent, et ux.  
16 COURT CLAIM NO. 02172 -- Charles L. Hiatt, Sr.  
17 -- & Carolyn M. Hiatt  
18 COURT CLAIM NO. 02175 -- William R. Marquiss  
19 -- & Billie R. Marquiss  
20 COURT CLAIM NO. 02214 -- Betty & Randy Hawk  
21 COURT CLAIM NO. 02270 -- Mel & Jodee Shenyer  
22 -- Robert Dean  
23 COURT CLAIM NO. 02354 -- John F. Marvich  
24 COURT CLAIM NO. 02374 -- Ralph & Cecile Johnson  
25 -- Walter R. Kaminski

26 The above listed claims were all filed asserting rights to use waters  
27 within Subbasin No. 9. There was no appearance at the evidentiary hearing in  
28 support of these claims. Therefore, the Referee cannot recommend that water  
rights be confirmed to any of the listed claimants.

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Re: Subbasin No. 9

Claimants With Recommended Non-Diversionary Stock Water And Wildlife Rights

1 Don Akehurst and Barbara Akehurst  
2 Joseph Antonich  
3 Glen Armistead and Bonnie Spurrier  
4 Ida Joseph Nason Aronica  
5 Don H. Bacon and Gabriella R. Bacon  
6 Everett O. Barney and Lanita M. Barney  
7 Frank J. Beard and Charlot M. Beard  
8 Boise Cascade Corporation  
9 Dwight Bolton  
10 James Bridge and Mary Bridge and Cy Morgan  
11 Orren Busby and Ruth Busby  
12 D. Winslow Charlton and Anna Charlton  
13 Ralph G. Charlton and Nancy L. Charlton  
14 Charles W. Cole and Ethel M. Cole  
15 Curtis S. Conner and Ruth J. Conner  
16 Harvey L. Dodge  
17 John Scott Downey  
18 Jeanne M. Dunning  
19 Lorne T. Dunning and Jeanne M. Dunning  
20 Jack Eaton  
21 John N. Eaton and Christi Eaton  
22 Gerald French and Maxine French  
23 Ronald J. Freytag and Mary Styron Freytag  
24 Fred K. Gerlach and Shirley E. Gerlach  
25 Terry E. Goodrich and Carol Goodrich  
26 Allan R. Grigg and Teresa M. Grigg  
27 Dale Haberman and Kathy Haberman  
28 George Haberman and Ruby Haberman  
29 Haidas Ranches, LLC  
30 Carol Hartlaub  
31 Thomas Haven and Sara Haven  
32 Alice A. Henderson  
33 James Henderson and Karen Henderson  
34 Le Moyne Henderson  
35 Wm. Ralph Hooper and Patricia Julia Hooper  
36 Kenneth R. Huber and Sharon L. Huber  
37 John Hultquist and Nancy Hultquist  
38 Harold W. Jenkins and Gladys D. Jenkins  
39 Patrick M. Jenkins and Vicki K. Jenkins  
40 Kayser Ranch, Inc.  
41 Robert O. Kelley and Paula K. Kelley  
42 Bobbie Kennedy  
43 Les S. Knudsen and Barbara J. Knudsen  
44 Fabian Kuchin, Jr.  
45 David M. Leffert and J. Christine Leffert  
46 Myron Linder and Sandy Linder  
47 Bernard L. Martin and Marlene F. Martin

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27 Re: Subbasin No. 9

Don E. Mays and Paula Mays  
1 Art W. McFarland  
Ronald P. McGee and Joy A. McGee  
2 Estate of Byrl A. McNeil and Arlene Rosenburg  
Mark McWhorter  
3 Howard Miles  
Andrew J. Mills and Stephanie Mills  
4 Donna Minielly  
Floyd A. (Buck) Minor and Merna Minor  
5 Michael Kelly Moeur, Sr. and Michael Kelly Moeur, Jr.  
Morrison Ranches  
6 Estate of Dorothy R. Nelson and Estate of Paul Nelson  
G. Jay Nelson, et al.  
7 Harriett Nichols  
Joseph J. O'Leary and Mary E. O'Leary  
8 Maurice Olney and Ruth Ann Olney  
Nick Parsel and Kim Parsel  
9 David T. Pearson and Marguerite L. Pearson  
Jill M. Perry  
10 Frank W. Phelps  
Kay E. Powers  
11 Larry Raap  
Katherine M. Rasmussen  
12 Ronald C. Rees  
Kent D. Richards and Carolyn E. Richards  
13 Charles Rimer and Faye Rimer  
Merle Ringer  
14 Doss Roberts and Edra Roberts  
Schaake Packing Company  
15 Robert Shannon and Cathy Shannon  
John L. Silva and Janet E. Silva  
16 Don C. Smith and Jane K. Smith  
Patrick Smith  
17 Richard A. Snowden  
Chester Vernon Stokes and Roma B. Stokes  
18 Ralph D. Strand and Kathryn A. Strand  
Clint Swanstrum and Becky Swanstrum  
19 James C. Swayze and Dianne Morrison  
Robert Swedberg and Lorene Swedberg  
20 Vivian I. Teter  
Sandra Thomas  
21 Arthur Tirotta and Susan Tirotta  
Donald G. Toman and Cynthia R. Toman  
22 Jim Vasquez  
Stephan A. Willard and Ruby Willard  
23 William P. Woods and Priscilla A. Woods  
WA State Dept. of Natural Resources  
24 WA State Park and Rec. Commission  
Winona P. Youngberg

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VIII. FINDINGS OF FACT

I, DOUGLAS CLAUSING, as Referee in this proceeding, having carefully examined the testimony and evidence and having investigated Subbasin No. 9, do hereby make the following Findings of Fact:

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

A.C.X. Trading, Inc.

Charles Adams

Paul Alderman and Paula Alderman

Alfred Anderson

Gerald E. Anderson and Janis Anderson

Harold W. Anderson

Jim Anspach and Paige Anspach

Don H. Bacon and Gabriella R. Bacon

Dimitri Bader and Lenora Bader

Stanley J. Baker and Gena L. Baker

James Russell Bender and Florence E. Bender

Joyce L. Bloxham

Thomas H. Borger

Victor Boykiw and Darlene Boykiw

William Brown and Marilyn Brown

Greg Brozovich

Jeff T. Brunson

Curtis B. Bull and Lucille E. Bull

John A. Bull, Jr., et al.

Thomas W. Bull, II and Jonelle M. Bull

Bull Canal Company, Inc.

U.S. Department of the Interior (00185 & 00900)

Peter Burkholder

Burlington Northern Railroad Co.

Central Washington University

D. Winslow Charlton and Anna Charlton

Larry L. Charlton and Marilyn Charlton (only for Claim No. 02174)

Ralph G. Charlton (only for Claim No. 02232)

Fred Christen (00724 & 01451)

Dick Colasurdo and Anna Colasurdo

Robert Dean

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1 Robert G. Dier and Diane C. Dier  
2 Larry Douglass and Denece Douglass  
3 Gordon L. Dudley and Anita M. Dudley  
4 Stefan Dudley  
5 Maurice L. Dufault and Florence J. Dufault  
6 Beulah M. Dunn  
7 Alvia S. Dunnagun and Janet G. Dunnagun  
8 Darrel Eason and Janet Rae Eason  
9 Jack Eaton  
10 John N. Eaton and Christi Eaton  
11 Ron Elkins and Peggy Elkins  
12 Ronald D. Elkins and Marguerite A. Elkins  
13 Ellensburg; City of  
14 William E. Erickson and Glenda L. Erickson  
15 Farmers Home Administration  
16 Walter L. Farrar and Gail Farrar (02275 & 02282)  
17 Harry Ferguson and Concetta Ferguson  
18 Ralph Fields and Gwyla A. Fields  
19 Charles R. Fischer and Ellen Fischer  
20 Joseph C. Fitterer and Bettie E. Fitterer  
21 Ruth Floyd  
22 David Arnold Fogle and Linda Rose Fogle  
23 G.R. Hughes; Enterprises LP  
24 Leona Gearheart and Estate of Charles Gearheart  
25 Howard L. Gibson and Ruth A. Gibson  
26 Jay Gorman  
27 Jeff Gorman and Sheryl Gorman  
28 Gary Griffith  
1 Allan R. Grigg and Teresa M. Grigg  
2 Bill Haberman and Bill Haberman, Jr.  
3 Haidas Ranches, LLC  
4 Larry Hansen  
5 Patrice Hardisty  
6 Betty Hawk and Randy Hawk  
7 Mark Herbert and Kathy Herbert  
8 Charles L. Hiatt, Sr. and Carolyn M. Hiatt  
9 Richard M. Hilliard  
10 Lyndell G. Hobbs and Vicki Diehl-Hobbs  
11 Wm. Ralph Hooper and Patricia Julia Hooper  
12 Mary Hundley  
13 HMH Enterprises Inc.  
14 Gerhard Jansen and Bertha Jansen  
15 Gary Lee Johnson  
16 Ralph Johnson and Cecile Johnson  
17 Walter R. Kaminski  
18 Bobby F. Kennedy  
19 Barry C. Kent, et ux.  
20 Kittitas County  
21 Ray Knudson and Linda Knudson

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27 Re: Subbasin No. 9

Frances Knutson  
1 Pamela Sue Kollman  
Conrad Kraft  
2 Roberta D. Lamb and Estate of Harold F. Lamb  
Dale Lee and Sandy Lee  
3 Steven Lee and Debbie Lee  
John Libenow  
4 John H. Ludwick and Anne C. Ludwick  
Kenneth R. MacRae and Sandra MacRae  
5 Brian Maier and Sheila Maier  
Nick A. Mandelas  
6 William R. Marquiss and Billie R. Marquiss  
John F. Marvich  
7 Kevin McDowell and Becky McDowell  
Art W. McFarland  
8 Jeffrey Chris Merrick  
James M. Mills  
9 Vernon Mills and Lorraine Mills  
Ron Mitchell  
10 Chet Morrison and Judy Morrison  
Thomas V. Morrison and Ginger D. Morrison  
11 Morrison Ranches (01266)  
Joe Morrow  
12 N. N. Eaton & Sons  
Mr. George Nelson and Mrs. George Nelson  
13 Leonard L. Newman and Loree Newman  
Sarah Nickel  
14 Northwest Rainier  
Clinton A. Noyes and Laverne Noyes  
15 Joseph J. O'Leary and Mary E. O'Leary  
Timothy P. O'Neill and Deborah S. O'Neill  
16 Patrick R. O'Shaughnessy and Marilyn O'Shaughnessy  
Gene Panattoni and Sally Panattoni  
17 David Papineau  
Pautzke Bait Company, Inc.  
18 David T. Pearson and Marguerite L. Pearson  
John M. Pearson and Julie Ann Pearson  
19 Dorothy Pease and Estate of Murl Pease  
Jill M. Perry  
20 Robert Perry  
William R. Peterson  
21 Carol W. Phelps and Joy M. Turner  
Gerald E. Platt, et al.  
22 Ponderosa Properties, Inc.  
Herman R. Potts and Janet A. Potts  
23 James A. Powell and Joyce Powell  
Chas. A. Priebe and Carrie Priebe  
24 M. Joanne Pugh and Estate of Durward Pugh  
William W. Razey and Donna Razey

25  
  
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27 Re: Subbasin No. 9

1 Gayle V. Redd and Karen K. Redd  
Ronald C. Rees (only for Claim No. 01981)  
John Ressler and Diana Ressler  
2 Gerald R. Rimpler and Janet L. Rimpler  
James S. Ritter  
3 Doss Roberts and Edra Roberts  
Keith S. Rowbotham and Margaret I. Rowbotham  
4 Sam Rust and Diane Rust  
Lonnie Sala and Kathleen J. Sala  
5 Evan A. Scheik  
Andrew J. Schmidt  
6 William D. Schmidt and Melva M. Schmidt  
Fred Schnebly  
7 Henry J. Schnebly, et al.  
Jim Schnebly  
8 Mel Shenyer and Jodee Shenyer  
Melvin Shenyer  
9 Jack G. Sikes and Ada M. Sikes  
George Simpson and Barbara Simpson  
10 William Z. Smith and Jean Smith  
Richard A. Snowden  
11 Howard P. Sorensen and Bernice H. Sorensen  
Morris P. Sorensen and Patricia E. Sorensen  
12 Anita Sorenson  
Jane Stark  
13 Charles Strickland and Linda Strickland  
Steven T. Sturdevant and Debi L. Sturdevant  
14 Taco Bell Corporation  
Vivian I. Teter  
15 Robert Tobin and Linda Tobin  
Donald G. Toman and Cynthia R. Toman  
16 Estate of Glenn Turner  
Jerry Tyler  
17 Dick Van de Graaf, Jr. and Maxine Van de Graaf  
Ron Voshall  
18 David W. T. Watt and Dorothy A. Watt  
Kevin and Gail Weyland  
19 John L. Whittaker and Barbara Whittaker  
Jessie E. Wikstrom  
20 J. Marilyn Wilkinson (00582 & 05055)  
Stephen Willard and Son Vida I (only for Claim No. 06737)  
21 Barbara Williams  
Gerry Williams and Laura Williams  
22 Keith Williams and Margaret Williams  
Mark G. Williams and Kathleen S. Williams  
23 Philip C. Wilson  
Ken Wolfe  
24 WA State Dept. of Natural Resources  
WA State Park and Rec. Commission  
25

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1       3. That the name of the claimant(s), court claim number(s), sources of  
2 water, uses for which rights have been established, time periods when water may  
3 be used, amounts of water designated in the right, priority of water right,  
4 location of points of diversion, and description of lands to which water rights  
5 are appurtenant are as follows:  
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Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

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1 CLAIMANT NAME: **Fabian Kuchin, Jr.** COURT CLAIM NO. 01939  
2 Source: Whiskey Creek  
3 Use: Irrigation of 25 acres  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.65 cubic foot per second, 100 acre-feet per year  
6 Priority Date: **June 30, 1870**  
7 Point of Diversion: 450 feet south and 400 feet west from the north  
8 quarter corner of Section 34, being within the  
NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 34, T. 18 N., R. 18 E.W.M.  
9 Place of Use: That part of the E $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 34, T. 18 N., R. 18  
10 E.W.M., lying north and east of the northeasterly  
11 right-of-way of State Highway No. 3, and south and  
west of Whiskey Creek, EXCEPT: highway and railroad  
rights-of-way.  
12 Limitations of Use: This land also receives water from Ellensburg Water  
13 Company

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1 CLAIMANT NAME:

Stephan A. Willard  
& Ruby Willard

COURT CLAIM NO. 00726

2 Source:

Wilson Creek

3 Use:

Irrigation of 150 acres and stock water

4 Period of Use:

April 1 through October 15

5 Quantity:

3 cubic feet per second in May and June, 1.5 cubic feet per second in April and July 1 through October 15, 750 acre-feet per year

7 Priority Date:

April 20, 1871

8 Point of Diversion:

(1) 50 feet north and 200 feet east from the south quarter corner of Section 19, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, T. 18 N., R. 19 E.W.M.

(2) 800 feet south and 100 feet west from the north quarter corner of Section 30, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 30, T. 18 N., R. 19 E.W.M.

(3) 1000 feet north and 500 feet west from the center of Section 30, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 30, T. 18 N., R. 19 E.W.M.

(4) 200 feet south and 1100 feet west from the center of Section 30, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30, T. 18 N., R. 19 E.W.M.

16 Place of Use:

The E $\frac{1}{4}$ NW $\frac{1}{4}$ , Government Lots 2 and 3, of Section 30, T. 18 N., T. 19 E.W.M., except that portion of Government Lot 3 described as follows: Beginning at the southeast corner of said lot; thence S 89°28' along the south boundary line of said lot, 904.3 feet; thence N 26°08' 242.0 feet; thence N 70°05' E 496.0 feet'; thence N 83°05' E 167.0 feet; thence S 83°07' E 73.0 feet; thence S 13°30' E 400.7 feet to the point of beginning.

21 Limitations of Use:

This land may also receive water delivered by the Kittitas Reclamation District.

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1 CLAIMANT NAME: **Ida Joseph Nason Aronica** COURT CLAIM NO. 01006

2 Source: Naneum Creek

3 Use: Irrigation of 115 acres and stock water

4 Period of Use: April 1 through October 15

5 Quantity: 2.5 cubic feet per second, 575 acre-feet per year

6 Priority Date: **June 30, 1871**

7 Point of Diversion: Adams Ditch - 150 feet north and 600 feet east from  
the west quarter corner of Section 28, within the  
SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28, T. 19 N., R. 19 E.W.M.

8 Nason Ditch #1 - 550 feet south and 600 feet east  
from the west quarter corner of Section 28, within  
the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, T. 19 N., R. 19 E.W.M.

10 Place of Use: That portion of the SW $\frac{1}{4}$  of Section 28, T. 19 N.,  
R. 19 E.W.M., lying south and west from the Carlson  
Ditch, and east of the easternmost channel of Naneum  
Creek, EXCEPT rights-of-way for the Naneum Creek and  
Carlson Roads.

14 CLAIMANT NAME: **Ronald J. Freytag** COURT CLAIM NO. 02232  
& **Mary Styron Freytag**

16 Source: Wilson Creek

17 Use: Irrigation of 2.5 acres and stock water

18 Period of Use: April 1 through October 31

19 Quantity: 0.05 cubic foot per second, 12.5 acre-feet per year

20 Priority Date: **June 30, 1871**

21 Point of Diversion: 300 feet north and 1250 feet west from the center of  
Section 20, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20,  
T. 19 N., R. 19 E.W.M.

23 Place of Use: The W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29,  
T. 19 N., R. 19 E.W.M.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

2                   Harriett Nichols  
3                   Charles Rimer  
4                   & Faye Rimer

COURT CLAIM NO. 02232

5 Source:

6                   Wilson-Naneum Creeks

7 Use:

8                   Irrigation of 0.4 acres and stock water

9 Period of Use:

10                  April 1 to October 31

11 Quantity:

12                  0.008 cubic foot per second, 2 acre-feet per year

13 Priority Date:

14                  June 30, 1871

15 Point of Diversion:

16                  #1 - 200 feet north and 450 feet west of the east  
17                  quarter corner of Section 29, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$   
18                  of Section 29;  
19                  #2 - 650 feet south and 525 feet west from the east  
20                  quarter corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$   
21                  of Section 29  
22                  ALL in T. 19 N., R. 19 E.W.M.

23 Place of Use:

24                  The S $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29, T. 19 N., R. 19 E.W.M.

25 CLAIMANT NAME:

26                  Robert Shannon  
27                  & Cathy Shannon

COURT CLAIM NO. 02232

28 Source:

29                  Wilson - Naneum Creek

30 Use:

31                  Irrigation of 1.1 acres and stock water

32 Period of Use:

33                  April 1 through October 31

34 Quantity:

35                  0.022 cubic foot per second, 5.5 acre-feet per year

36 Priority Date:

37                  June 30, 1871

38 Point of Diversion:

39                  #1 - 200 feet north and 450 feet west from the east  
40                  quarter corner of Section 29, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$   
41                  of Section 29;  
42                  #2 - 650 feet south and 525 feet west of the east  
43                  quarter corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$   
44                  of Section 29, ALL in T. 19 N., R. 19 E.W.M.

45 Place of Use:

46                  The N $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  and the W $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29,  
47                  T. 19 N., R. 19 E.W.M.

48 REPORT OF REFEREE

49 Re: Subbasin No. 9

1 CLAIMANT NAME: **Don C. Smith** COURT CLAIM NO. 02232

2 Source: Wilson - Naneum Creek

3 Use: Irrigation of 6 acres and stock water

4 Period of Use: April 1 through October 31

5 Quantity: 0.12 cubic foot per second, 30 acre-feet per year

6 Priority Date: **June 30, 1871**

7 Point of Diversion: #1 - 650 feet south and 525 feet west from the east  
quarter corner of Section 29, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 29, T. 19 N., R. 19 E.W.M.  
#2 - 1200 feet south and 400 feet west from the east  
quarter corner of Section 29, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 29, T. 19 N., R. 19 E.W.M.

10 Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$  and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , except the W $\frac{1}{2}$ SW $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
11 Section 29, T. 19 N., R. 19 E.W.M.

13 CLAIMANT NAME: **Joseph Antonich** COURT CLAIM NO. 02297

14 Source: Naneum Creek

15 Use: The irrigation of 155 acres and stock watering.

16 Period of Use: April 1 through October 15

17 Quantity: 3.20 cubic feet per second in May and June, 1.60  
cubic feet per second in April and July 1 through  
18 October 15, 775 acre-feet per year

19 Priority Date: **April 30, 1872**

20 Point of Diversion: 100 feet north and 1300 feet east from the southwest  
corner of Section 21, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
21 Section 21, T. 18 N., R. 19 E.W.M.

22 Place of Use: The NW $\frac{1}{4}$  of Section 28, T. 18 N., R. 19 E.W.M.

23 Limitations of Use: Water delivered by the Kittitas Reclamation District  
24 may also be used on this land.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

28 600

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

1 CLAIMANT NAME: **Kenneth E. Barnhart** & Susan Barnhart COURT CLAIM NO. 00968  
2 Source: Naneum Creek  
3 Use: Irrigation of 54 acres.  
4 Period of Use: April 1 through October 15  
5 Quantity: 1.08 cubic foot per second in May and June, 0.54 cubic foot per second in April and July 1 through October 15, 270 acre-feet per year  
6 Priority Date: **June 30, 1872**  
7 Point of Diversion: 250 feet north and 250 feet west from the south quarter corner of Section 16, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M.  
8 Place of Use: The east 1800 feet of the S $\frac{1}{2}$ NE $\frac{1}{2}$  of Section 21, T. 18 N., R. 19 E.W.M.  
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12 CLAIMANT NAME: **Ralph G. Charlton** & Nancy L. Charlton COURT CLAIM NO. 00967  
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14 Source: Naneum Creek  
15 Use: Irrigation of 40 acres  
16 Period of Use: April 1 through October 15  
17 Quantity: 0.80 cubic foot per second in May and June, 0.40 cubic foot per second in April and from July 1 through October 15, 200 acre-feet per year  
18 Priority Date: **June 30, 1872**  
19 Point of Diversion: 300 feet north and 1200 feet east from the west quarter corner of Section 21, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21, T. 18 N., R. 19 E.W.M.  
20 Place of Use: The NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 21, T. 18 N., R. 19 E.W.M.  
21 Limitations of Use: A portion of this land also receives water from the Kittitas Reclamation District.  
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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
28

1 CLAIMANT NAME: **John Scott Downey** COURT CLAIM NO. 00726  
2 Source: Wilson Creek  
3 Use: Irrigation of 142 acres and stock watering  
4 Period of Use: April 1 through October 15  
5 Quantity: 2.84 cubic feet per second in May and June, 1.42  
cubic foot per second in April and July 1 through  
October 15; 710 acre-feet per year  
6 Priority Date: **June 30, 1872**  
7 Point of Diversion: 25 feet south and 950 feet west of the east quarter  
corner of Section 19, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 19, T. 18 N., R. 19 E.W.M.  
8 Place of Use: The E $\frac{1}{4}$ SW $\frac{1}{4}$  and W $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, T. 18 N.,  
R. 19 E.W.M.  
9 Limitations of Use: This land may also receive water delivered by the  
Kittitas Reclamation District.

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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: Earl T. Glauert COURT CLAIM NO. 02130  
2 & Ellen E. Glauert  
3 Source: Wilson Creek  
4 Use: Irrigation of 6.8 acres and stock water  
5 Period of Use: March 15 through October 15  
6 Quantity: 0.136 cubic foot per second from May 1 through  
7 June 30, 0.068 cubic foot per second in April and  
8 from July 1 through October 15; 34 acre-feet per year  
9 Priority Date: June 30, 1872  
10 Point of Diversion: 850 feet north and 400 feet west from the east  
11 quarter corner of Section 18, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$   
12 of Section 18, T. 18 N., R. 19 E.W.M.  
13 Place of Use: That portion of the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18 and the N $\frac{1}{4}$ NE $\frac{1}{4}$   
14 of Section 19, T.18 N., R. 18 E.W.M. bounded by a  
15 line described as follows: Beginning at the  
16 southeast corner of said Section 18; thence S 89°37' W along the south boundary of said Section 18 269.14  
feet to the true point of beginning; thence N 9°01'10" E 239.99 feet; thence N 21°41' W 579.33  
feet; thence S 80°33'20" W, 685.55 feet; thence S 4°34' W, 261.37 feet; thence S 47°05'40" W 244.24  
feet; thence S 20°36'40" W, 322.92 feet; thence S 1°01'30" W 138.19 feet; thence S 89°57'30" E 1135.91  
feet; thence N 9°01'10" 208.25 feet to the true point  
of beginning.  
17 Limitations of Use: This land may also receive water delivered by the  
18 Kittitas Reclamation District  
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REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME:

2 Terry E. Goodrich  
3 & Carol Goodrich  
4 Ralph D. Strand  
5 & Kathryn A. Strand

COURT CLAIM NO. 01870

6 Source: Wilson Creek

7 Use: Irrigation of 13.4 acres and stock watering

8 Period of Use: April 1 through October 15

9 Quantity: 0.268 cubic foot per year from May 1 through June 30,  
10 0.134 cubic foot per second in April and from July 1  
11 through October 15, 67 acre-feet per year

12 Priority Date: **June 30, 1872**

13 Point of Diversion: 130 feet south and 150 feet west of the northeast  
14 corner of Section 19, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
15 Section 19, T. 18 N., R. 19 E.W.M.

16 Place of Use: The following described tract of land located within  
17 Section 19, T. 18 N., R. 19 E.W.M.: commencing at  
18 the NE corner of said Section 19; thence south 210  
19 feet; thence west 485 feet to the true point of  
20 beginning; thence west 960 feet, more or less; thence  
21 S 1° E 162 feet, more or less; thence S 45° W 639  
22 feet, more or less; thence S 20° W 574 feet, more or  
23 less; thence east 1520 feet, more or less; thence N  
24 5° E 592 feet, more or less; thence west 70 feet,  
25 more or less; thence N 520 feet, more or less, to the  
26 true point of beginning.

27 Limitations of Use: This land may also receive water delivered by the  
28 Kittitas Reclamation District

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: **Harold W. Jenkins** COURT CLAIM NO. 00930  
2 Source: Whiskey Creek  
3 Use: Irrigation of 130 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 2.6 cubic feet per second, 910 acre-feet per year for  
irrigation, 5 acre-feet per year for stock watering  
6 Priority Date: **June 30, 1872**  
7 Point of Diversion: 500 feet north and 250 feet west from the east  
quarter corner of Section 6, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6, T. 18 N., R. 19 E.W.M.  
8 Place of Use: The E $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$  and that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 6, T. 18 N., R. 19 E.W.M. lying northerly of  
the Kittitas Reclamation District (North Branch  
Canal).  
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11 CLAIMANT NAME: **Kayser Ranch, Inc.** COURT CLAIM NO. 00991  
12  
13 Source: Wilson - Naneum Creek  
14 Use: Irrigation of 240 acres and stock water  
15 Period of Use: April 1 through October 15  
16 Quantity: 4.8 cubic feet per second in May and June, 2.4 cubic  
feet per second in April and July 1 through  
October 15, 1200 acre-feet per year  
17 Priority Date: **June 30, 1872**  
18 Point of Diversion: 1050 feet south and 550 feet east from the west  
quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 28, T. 19 N., R. 19 E.W.M.,  
19 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  and the NW $\frac{1}{4}$ , of Section 3,  
T. 18 N., R. 19 E.W.M. and the W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 34, T. 19 N., R. 19 E.W.M.  
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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
28

1 CLAIMANT NAME:                   **Bernard L. Martin**                   COURT CLAIM NO. 00769  
2                                       **& Marlene F. Martin**  
3                                      Source:                           Wilson Creek  
4                                      Use:                             Irrigation of 1 acre  
5                                      Period of Use:             April 1 through October 15  
6                                      Quantity:                    0.02 cubic foot per second in May and June, 0.01  
7                                      Priority Date:             June 30, 1872  
8                                      Point of Diversion:       40 feet south and 950 feet west from the east quarter  
9                                      corner of Section 19, within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
10                                     Place of Use:             That portion of NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, T. 18 N.,  
11                                     R. 19 E.W.M., lying east of Wilson Creek, EXCEPT the  
12                                     right of way for the county road located on the north  
13                                     boundary thereof.  
14 CLAIMANT NAME:                   **Don E. Mays**                   COURT CLAIM NO. 01707  
15                                     & Paula Mays  
16                                      Source:                           Wilson Creek  
17                                      Use:                             Irrigation of 39.8 acres and stock watering  
18                                      Period of Use:             March 15 through October 15  
19                                      Quantity:                     0.796 cubic foot per second in May and June, 0.398  
20                                     cubic foot per second from March 15 through April 30  
21                                     and July 1 through October 15, 202 acre-feet per year  
22                                      Priority Date:             June 30, 1872  
23                                      Point of Diversion:       850 feet north and 400 feet west of the east quarter  
24                                     corner of Section 18, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
25                                     Section 18, T. 18 N., R. 19 E.W.M.  
26                                      Place of Use:             The SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18 and the E $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  and  
27                                     W $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 19, T. 18 N., R. 19 E.W.M.

REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME: **Estate of Byrl A. McNeil** COURT CLAIM NO. 00495  
2 & Arlene Rosenburg  
3 Source: Whiskey Creek  
4 Use: Irrigation of 50 acres and stock water  
5 Period of Use: April 1 through October 15  
6 Quantity: 1.0 cubic foot per second, 250 acre-feet per year  
7 Priority Date: **June 30, 1872**  
8 Point of Diversion: 10 feet south and 800 feet west from north quarter  
corner of Section 7, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 7, T. 18 N., R. 19 E.W.M.  
9 Place of Use: The NW $\frac{1}{4}$  of Section 7, T. 18 N., R. 19 E.W.M. lying  
southeasterly of Whiskey Creek; EXCEPT, the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
said section.  
10 Limitations of Use: This land may also receive water delivered by the  
Kittitas Reclamation District  
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REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME:

2 Chester Vernon Stokes  
3 & Roma B. Stokes

4 COURT CLAIM NO. 02313

5 Source:

6 Whiskey Creek and Dry (Mercer) Creek

7 Use:

8 Irrigation of 118 acres and stock water

9 Period of Use:

10 April 15 through October 15

11 Quantity:

12 2.36 cubic feet per second, 678 acre-feet per year  
13 for irrigation; 5 acre-feet per year for stock  
14 watering

15 Priority Date:

16 June 30, 1872

17 Point of Diversion:

18 Whiskey Creek: 900 feet south and 800 feet west from  
19 the north quarter corner of Section 5, within  
20 Government Lot 3 of Section 5, T. 18 N., R. 19 E.W.M.  
21 Dry Creek: 1540 feet south and 400 feet west from the  
22 north quarter corner of Section 5, within Government  
23 Lot 3 of Section 5, both in T. 18 N., R. 19 E.W.M.  
24 Whiskey Creek: 500 feet north and 150 feet west from  
25 the south quarter corner of Section 32, being within  
26 the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32, T. 19 N., R. 18 E.W.M.

27 Place of Use:

28 The NW $\frac{1}{4}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ , and that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
1 NW $\frac{1}{4}$ SW $\frac{1}{4}$ , lying west from Wilson Creek, ALL in Section 5,  
1 T. 18 N., R. 19 E.W.M.

2 REPORT OF REFEREE

2 Re: Subbasin No. 9

1 CLAIMANT NAME: **Curtis S. Conner** COURT CLAIM NO. 01209

2 Source: Naneum Creek

3 Use: Irrigation of 18.5 acres and stock watering.

4 Period of Use: April 1 through October 15

5 Quantity: 0.372 cubic foot per second in May and June; 0.186  
6 cubic foot per second in April and July 1 through  
October 15, 92.5 acre-feet per year

7 Priority Date: **July 5, 1872**

8 Point of Diversion: 650 feet north and 300 feet west of the south quarter  
9 corner of Section 16, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 16, T. 18 N., R. 19 E.W.M.

10 Place of Use: Tract 1: Beginning at the west quarter corner of  
11 Section 4, T. 17 N., R. 19 E.W.M., thence N 86° 10' E  
12 751.5 feet along the mid section line; thence S 4°46'  
13 W 420.3 feet to the north right of way line of the  
14 Chicago, Milwaukee, St. Paul and Pacific Railroad;  
15 thence N 78°30' W 749.5 feet along said right of way  
16 to the west line of Section 4; thence N 5°20' E 220  
17 feet along the section line, 220 feet to the point of  
18 beginning. EXCEPT the east 190 feet of the north 80  
19 feet thereof. Tract 2: Beginning at the  
intersection of the west line of Section 4, T. 17 N.,  
R. 19 E.W.M., with the south right of way line of the  
Chicago, Milwaukee, St. Paul and Pacific Railroad;  
thence along the right of way line, S 78°30' E 678.6  
feet; thence S 4°46' W 827.0 feet; to a point in the  
east-west 1/16 line; thence S 85°44' W 673.0 feet to  
the south 1/16 corner on the west line of Section 4;  
thence N 4°04' E 1012 feet on the west line of  
Section 4 to the point of beginning.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Gwendolyn Cooke

COURT CLAIM NO. 01454

(A) 04171

2 Source: Naneum Creek

3 Use: Irrigation of 10 acres and stock watering

4 Period of Use: April 1 through October 15

5 Quantity: 0.20 cubic foot per second in May and June, 0.10  
6 cubic foot per second in April and July 1 through  
October 15; 51.20 acre-feet per year

7 Priority Date: July 5, 1872

8 Point of Diversion: 750 feet north and 300 feet west of the south quarter  
9 corner of Section 16, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 16, T. 18 N., R. 19 E.W.M.

10 Place of Use: The S $\frac{1}{4}$  of that portion of the NW $\frac{1}{4}$  of Section 4,  
11 T. 19 N., R. 19 E.W.M. bounded by a line described as  
12 follows: beginning at the south quarter corner of  
13 Section 4; thence N 1°50' W along the centerline of  
14 the county road 2601.68 feet; thence S 87°06' W, 30  
feet to the true point of beginning; thence S 87°06' W  
15 912.90 feet; thence N 6°30' E 14.32 feet; thence N  
16 6°22'40" E to a point which is S 86°52'40" W of a  
17 point on said county road which latter point is  
3576.68 feet N 1°50' W from the said south quarter  
corner of said section; thence N 86°52'40" E to the  
west right-of-way line of the county road; thence S  
1°50' W along said right-of-way line to the point of  
beginning.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

28 610

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

1 CLAIMANT NAME: **Daniel S. Kivi** COURT CLAIM NO. 01128  
2 Source: Naneum Creek  
3 Use: Irrigation of 20.25 acres and stock watering  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.42 cubic foot per second in May and June, 0.21  
cubic foot per second in April and July 1 through  
October 15, 101.25 acre-feet per year  
6 Priority Date: **July 5, 1872**  
7 Point of Diversion: 300 feet north and 300 feet west from the south  
quarter corner of Section 16, being within the  
SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M.  
8 Place of Use: That part of the E $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19  
E.W.M. described as follows: Beginning at the south  
quarter corner of Section 4; thence N 1°50' W 3871.68  
feet along the center line of Ferguson County Road;  
thence S 86°52'40" W 30 feet to the True Point of  
Beginning; thence S 86°52'40" W 729.79 feet to the  
west boundary line of said E $\frac{1}{4}$ NW $\frac{1}{4}$ ; thence N 6°22'40" E  
119.54 feet, more or less, to the northwest 1/16  
corner; thence N 5°10' E 1207.7 feet, more or less,  
along the west line of the E $\frac{1}{4}$ NW $\frac{1}{4}$  to the south  
right-of-way of State Road No. 7; thence N 87°17' E  
422 feet along the south right-of-way; thence N  
86°05' E 111 feet along the south right-of-way to the  
west right-of-way of Ferguson County Road; thence S  
3°19' E 1295.5 feet, more or less, along the west  
right-of-way to the True Point of Beginning.

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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Morrison Ranches** COURT CLAIM NO. 01267

2 Source: Naneum Creek

3 Use: Irrigation of 20 acres

4 Period of Use: April 1 through October 15

5 Quantity: 0.40 cubic foot per second in May and June, 0.20  
cubic foot per second in April and July 1 through  
October 15; 100 acre-feet per year

6 Priority Date: **July 5, 1872**

7 Point of Diversion: 400 feet north and 800 feet east of the west quarter  
corner of Section 4, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 4, T. 17 N., R. 19 E.W.M.

8 Place of Use: That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, T. 17 N.,  
R. 19 E.W.M. bounded by a line described as follows:  
Beginning at the center west sixteenth corner (NW  
corner of NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 4; thence along the  
sixteenth line S 4°36' W 573.0 feet to the north  
right-of-way line of the C.M. St. P. & P. Ry.; thence  
along the right-of-way line N 78°30'W 571.0 feet to  
the center of gateway in right-of-way fence; thence N  
4°46' E 420.3 feet to a stake in the east and west  
mid-section line; thence along the mid-section line N  
86°10' E 572.5 feet to the place of beginning. Also,  
beginning at the southwest sixteenth corner (SW  
corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 4; thence S 85°44' W  
along the sixteenth line 641.4 feet; thence N 4°46' E  
827.0 feet to the south right-of-way line of the C.  
M. St. P. & P. Ry; thence along the right-of-way line  
S 78°30' E 641.4 feet to a post on the north and  
south sixteenth line; thence along the sixteenth line  
S 4°46' W 652.0 feet to the point of beginning.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: Terry Powers COURT CLAIM NO. 01454  
2 (A) 04171

3 Source: Naneum Creek

4 Use: Irrigation of 10 acres and stock watering

5 Period of Use: April 1 through October 15

6 Quantity: 0.20 cubic foot per second in May and June, 0.10  
cubic foot per second in April and July 1 through  
October 15; 51.20 acre-feet per year

7 Priority Date: July 5, 1872

8 Point of Diversion: 750 feet north and 300 feet west of the south quarter  
9 corner of Section 16, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 16, T. 18 N., R. 19 E.W.M.

10 Place of Use: The N $\frac{1}{4}$  of that portion of the NW $\frac{1}{4}$  of Section 4,  
11 T. 19 N., R. 19 E.W.M. bounded by a line described as  
12 follows: beginning at the south quarter corner of  
13 Section 4; thence N 1°50' W along the centerline of  
14 the county road 2601.68 feet; thence S 87°06' W, 30  
feet to the true point of beginning; thence S 87°06'  
W 912.90 feet; thence N 6°30' E 14.32 feet; thence N  
6°22'40" E to a point which is S 86°52'40" W of a  
15 point on said county road which latter point is  
3576.68 feet N 1°50' W from the said south quarter  
corner of said section; thence N 86°52'40" E to the  
16 west right-of-way line of the county road; thence S  
1°50' W along said right-of-way line to the point of  
beginning.

26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Larry Raap** COURT CLAIM NO. 00969  
2 Source: Naneum Creek  
3 Use: Irrigation of 17 acres  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.34 cubic foot per second in May and June, 0.17  
cubic foot per second in April and July 1 through  
October 15  
6 Priority Date: **July 5, 1872**  
7 Point of Diversion: 2600 feet west and 10 feet south of the northwest  
corner of Section 4, being within the  $\frac{N}{4} \frac{N}{4}$  of  
Section 4, T. 17 N., R. 19 E.W.M.  
8 Place of Use: That portion of Government Lot 3 of Section 4,  
T. 17 N., R. 19 E.W.M. described as follows:  
beginning at a point on the quarter section line  
which is 30 feet S  $5^{\circ}55'$  W of the quarter section  
corner on the north boundary line of said Section 4,  
thence S  $5^{\circ}55'$  W on said quarter section line 1,238.6  
feet; thence S  $85^{\circ}38'$  W 579.0 feet to the east  
boundary line of the right of way of the county road;  
thence N  $3^{\circ}18'$  W along said boundary line 1,211.5  
feet to the south boundary line of the right of way  
of State Road No. 7; thence N  $82^{\circ}12'$  E 295 feet;  
thence N  $86^{\circ}51'$  E 484 feet to the point of beginning.

26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Sandra Thomas

COURT CLAIM NO. 01454

(A) 04171

2 Source: Naneum Creek

3 Use: Irrigation of 26.5 acres and stock watering

4 Period of Use: April 1 through October 15

5 Quantity: 0.53 cubic foot per second in May and June, 0.265  
6 cubic foot per second in April and July 1 through  
October 15; 135.68 acre-feet per year

7 Priority Date: July 5, 1872

8 Point of Diversion: 750 feet north and 300 feet west from the south  
9 quarter corner of Section 16, being within the  
SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M.

10 Place of Use: That portion of the NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 19  
11 E.W.M. described as follows: Beginning at the south  
quarter corner of said Section 4, thence N 1°50' W  
12 3871.68 feet along the centerline of the county road;  
thence S 86°52'40" W 759.79 feet to the true point of  
beginning; thence N 6°22'40" E 119.54 feet; thence S  
13 86°17'00" W 688.66 feet; thence S 6°35'40" W 1354.00  
feet; thence N 87°38'50" E 691.15 feet; thence N  
14 6°22'40" E 1250.30 feet to the true point of  
beginning. AND the north 300 feet of the following  
15 described parcel: Beginning at the south quarter  
corner of said Section 4; thence N 1°0' W 3671.61  
16 feet along the centerline of the county road to the  
true point of beginning; thence S 86°2'40"W, 729.79  
feet; thence S 6°22'40" W, 1250.30 feet; thence N  
17 87°38'50" E, 907.65 feet to the centerline of the  
18 county road; thence N 1°50' W to the true point of  
beginning, EXCEPT the county road.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Donna Minielly** COURT CLAIM NO. 00899  
2 **Maurice Olney**  
3 & Ruth Ann Olney

4 Source: Naneum Creek

5 Use: Irrigation of 20 acres and stock water

6 Period of Use: April 1 through October 15

7 Quantity: 0.40 cfs in May and June, 0.20 cfs in April and July 1 through October 15, 102.5 acre-feet per year

8 Priority Date: **December 5, 1872**

9 Point of Diversion: 300 feet north and 300 feet west of the south quarter corner of Section 16, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M.

10 Place of Use: Beginning at the west quarter corner of Section 4, T. 17 N., R. 19 E.W.M.; thence N 5°20' E 565 feet along the section line; thence N 3°55' E 783 feet to the north sixteenth corner, thence N 84°25' E 651 feet; thence S 4°59' W 1367 feet to the east-west mid section line; thence S 86°10' W 637 feet to the point of beginning.

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15 CLAIMANT NAME: **Merle Ringer** COURT CLAIM NO. 01048

16 Source: Naneum Creek

17 Use: Irrigation of 18.5 acres

18 Period of Use: April 1 through October 1

19 Quantity: 1 cubic foot per second, 222.15 acre-feet per year

20 Priority Date: **June 5, 1873**

21 Point of Diversion: 800 feet south and 400 feet west of the center of Section 19, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, T. 17 N., R. 19 E.W.M.

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23 Place of Use: That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, T. 17 N., R. 19 E.W.M. located east of the Interstate Highway 82.

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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME:

James Bridge  
& Mary Bridge  
Cy Morgan  
Nick Parsel  
& Kim Parsel  
Katherine M. Rasmussen

COURT CLAIM NO. 00825

2 Source: Dry Creek (branch of Wilson Creek)

3 Use: Irrigation of 30 acres and stock water

4 Period of Use: April 1 through October 31

5 Quantity: 0.60 cfs in May and June, 0.30 cfs in April and  
6 July 1 through October 31, 150 acre-feet per year

7 Priority Date: June 30, 1873

8 Point of Diversion: 850 feet south and 10 feet west from the northeast  
9 corner of Section 25, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
10 Section 25, T. 18 N., R. 18 E.W.M.

11 Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25, of Section 25, T. 18 N.,  
12 R. 18 E.W.M. lying northerly of Sanders Road.

13 Limitations of Use: This land also receives water delivered by the  
14 Kittitas Reclamation District

25 REPORT OF REFEREE

26 Re: Subbasin No. 9

1 CLAIMANT NAME: **Patrick M. Jenkins**  
2 & **Vicki K. Jenkins** COURT CLAIM NO. 00932  
3  
4 Source: Wilson Creek  
5 Use: Irrigation of 53 acres and stock watering  
6 Period of Use: April 1 through October 15  
7 Quantity: 1.06 cubic feet per second in May and June. 0.53  
8 cubic foot per second in April and July 1 through  
9 October 15; 265 acre-feet per year for irrigation; 1  
10 acre-foot per year for stock watering  
11 Priority Date: **June 30, 1873**  
12 Point of Diversion: 600 feet north and 600 feet east of the center of  
13 Section 5, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5,  
14 T. 18 N., R. 19 E.W.M.  
15 Place of Use: That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 18 N.,  
16 R. 19 E.W.M. lying north of the KRD canal and the  
17 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 18 N., R. 19 E.W.M., less the  
18 westerly 400 feet thereof.

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22 REPORT OF REFEREE  
23 Re: Subbasin No. 9  
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1 CLAIMANT NAME: **Robert O. Kelley** COURT CLAIM NO. 00667  
2 & **Paula K. Kelley**  
3 Source: Naneum Creek (Neally Creek)  
4 Use: Irrigation of 16 acres and stock watering.  
5 Period of Use: April 1 through October 15  
6 Quantity: 0.32 cubic foot per second in May and June, 0.16  
7 cubic foot per second in April and July 1 through  
8 October 15; 80 acre-feet per year  
9 Priority Date: **June 30, 1873**  
10 Point of Diversion: 300 feet south and 800 feet east from the north  
11 quarter corner of Section 28, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28, T. 18 N., R. 19 E.W.M.  
12 Place of Use: The SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28, T. 18 N., R. 19 E.W.M.,  
13 EXCEPT the easterly 328 feet thereof.  
14 Limitations of Use: Water delivered by the Kittitas Reclamation District  
15 is also used on this land.  
16 CLAIMANT NAME: **Bernard L. Martin** COURT CLAIM NO. 00769  
17 & **Marlene F. Martin**  
18 Source: Unnamed springs  
19 Use: Single domestic supply, including irrigation of  
one-half acre of lawn and garden, and stock watering  
20 Period of Use: Continuously for single domestic supply and stock  
watering; April 1 through October 15 for irrigation  
of lawn and garden  
21 Quantity: 0.02 cubic foot per second, 2 acre-feet per year  
22 Priority Date: **June 30, 1873**  
23 Point of Diversion: 75 feet north and 800 feet west from the east quarter  
corner of Section 19, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 19, T. 18 N., R. 19 E.W.M.  
24 Place of Use: That portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19,  
T. 18 N., R. 19 E.W.M. lying east of Wilson Creek

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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Mark McWhorter** COURT CLAIM NO. 00484  
2 Source: Naneum Creek (A) 04498  
3 Use: Irrigation of 60 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 1.20 cubic feet per second in May and June, 0.60  
cubic foot per second in April and July 1 through  
October 15, 300 acre-feet per year for irrigation and  
4 acre-feet per year for stock watering  
6 Priority Date: **June 30, 1873**  
7 Point of Diversion: 920 feet south and 1300 feet east of the northwest  
corner of Section 9, being within the NW<sup>1/4</sup>NE<sup>1/4</sup> of  
Section 9, T. 18 N., R. 19 E.W.M.  
8 Place of Use: The SW<sup>1/4</sup>NE<sup>1/4</sup> of Section 8, T. 18 N., R. 19 E.W.M. lying  
south of the KRD canal  
9 Limitations of Use: Water delivered by the Kittitas Reclamation District  
may also be used on this land.  
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REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME: **Mark McWhorter** COURT CLAIM NO. 00484  
2 Source: Naneum Creek (A) 04498  
3 Use: Irrigation of 160 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 3.20 cubic feet per second in May and June, 1.60  
cubic feet per second in April and July 1 through  
October 15, 800 acre-feet per year for irrigation and  
4 acre-feet per year for stock watering.  
6 Priority Date: **June 30, 1873**  
7 Point of Diversion: 920 feet south and 1300 feet east of the northwest  
corner of Section 9, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 9, T. 18 N., R. 19 E.W.M.  
8 Place of Use: The SW $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, T. 18 N.,  
R. 19 E.W.M.  
9 Limitations of Use: Water delivered by the Kittitas Reclamation District  
may also be used on this land.  
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14 CLAIMANT NAME: **Patrick Smith** COURT CLAIM NO. 02262  
15 Source: Wilson Creek  
16 Use: Irrigation of 7.5 acres  
17 Period of Use: April 1 through October 31  
18 Quantity: 0.15 cubic foot per second in May and June, 0.075  
cubic foot per second in April and July 1 through  
October 31, 37.5 acre-feet per year  
19 Priority Date: **June 1, 1874**  
20 Point of Diversion: 750 feet south and 1280 feet east from the west  
quarter corner of Section 30, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 30, T. 18 N., R. 19 E.W.M.  
21 Place of Use: That portion of Government Lot 4, Section 30,  
T. 18 N., R. 19 E.W.M., lying east of Wilson Creek  
and the County Road and north of the Cascade  
Irrigation Canal.  
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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
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1 CLAIMANT NAME: Stephan A. Willard COURT CLAIM NO. 00726

2 Source: Wilson Creek

3 Use: Irrigation of 71 acres and stock water

4 Period of Use: April 1 through October 15

5 Quantity: 1.42 cubic foot per second in May and June, 0.71  
6 cubic foot per second in April and from July 1  
through October 15, 355 acre-feet per year

7 Priority Date: June 1, 1874

8 Point of Diversion: (1) 1000 feet north and 500 feet west from the center  
9 of Section 30, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 30,  
T. 18 N., R. 19 E.W.M.

10 (2) 200 feet south and 1100 feet west from the  
11 center of Section 30, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 30, T. 18 N., R. 19 E.W.M.

12 (3) 1000 feet south and 1300 feet west from the  
13 center of Section 30, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 30, T. 18 N., R. 19 E.W.M.

14 Place of Use: The E $\frac{1}{4}$ SW $\frac{1}{4}$  and that portion of Government Lot 4  
15 described as follows: Beginning at a point on the  
16 north line of said lot, 33.8 feet east of the  
17 northwest corner thereof, being the intersection of  
18 the north line of said lot with the east line of the  
right of way of the county road; thence southeasterly  
20 along the east boundary line of said right of way  
21 239.0 feet; thence N 30°22' E 149.0 feet; thence S  
22 89°28' W 275.0 feet to the point of beginning, all in  
23 Section 30, T. 18 N., R. 19 E.W.M.

24 Limitations of Use: This land may also receive water delivered by the  
25 Kittitas Reclamation District.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Lorne T. Dunning  
& Jeanne M. Dunning

COURT CLAIM NO. 00166  
(A) 12208

2 Source: Naneum Creek

3 Use: Irrigation of 35 acres

4 Period of Use: April 1 through October 15

5 Quantity: 0.70 cubic foot per second in May and June and 0.35  
6 cubic foot per second in April and July 1 through  
October 15

7 Priority Date: **June 30, 1874**

8 Point of Diversion: 100 feet north and 400 feet east of the center of  
9 Section 21, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21,  
T. 18 N., R. 19 E.W.M.

10 Place of Use: The NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 21, T. 18 N., R. 19 E.W.M.

11 Limitations of Use: This land may also receive water from the Kittitas  
12 Reclamation District.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Timothy E. Eckert**  
2 & **Marcia N. Eckert** COURT CLAIM NO. 00635  
3  
4 Source: Naneum Creek  
5 Use: Irrigation of 80 acres and stock water.  
6 Period of Use: April 1 through October 31  
7 Quantity: 1.6 cubic feet per second in May and June, 0.80 cubic  
8 foot per second in April and July 1 through  
9 October 31, 370 acre-feet per year  
10 Priority Date: **June 30, 1874**  
11 Point of Diversion: 200 feet north and 200 feet west of the south quarter  
12 corner of Section 16 being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
13 Section 16, T. 18 N., R. 19 E.W.M.  
14 Place of Use: W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 27, T. 18 N., R. 19 E.W.M.  
15 Limitations of Use: If a right is awarded for use of Spring Creek for  
16 these same lands in the Subbasin No. 10 Report of  
17 Referee, the maximum annual quantity of water that  
18 can be used under both rights is 370 acre-feet per  
19 year.

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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Adolph Kjelmyhr** COURT CLAIM NO. 00818  
2 **Merle D. Lott**

3 Source: Naneum Creek

4 Use: Irrigation of 9 acres and stock watering

5 Period of Use: April 1 through October 15

6 Quantity: 0.18 cubic foot per second in May and June, 0.09  
7 cubic foot per second in April and July 1 through  
October 15, 45 acre-feet per year for irrigation; 1  
acre-foot per year for stock watering

8 Priority Date: **June 30, 1874**

9 Point of Diversion: 100 feet north and 400 feet east of the center of  
Section 21, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21,  
T. 18 N., R. 19 E.W.M.

10 Place of Use: The W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 21, T. 18 N., R. 19 E.W.M.

11 Limitations of Use: This land may also receive water from the Kittitas  
Reclamation District.

12 CLAIMANT NAME: **Ralph G. Charlton** COURT CLAIM NO. 00967  
13 & **Nancy L. Charlton**

14 Source: Naneum Creek

15 Use: Irrigation of 40 acres

16 Period of Use: April 1 through October 15

17 Quantity: 0.80 cubic foot per second in May and June, 0.40  
cubic foot per second in April and from July 1  
through October 15 and 200 acre-feet per year

18 Priority Date: **June 30, 1875**

19 Point of Diversion: 300 feet north and 1200 feet east from the west  
quarter corner of Section 21, being within the  
SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21, T. 18 N., R. 19 E.W.M.

20 Place of Use: The SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 21, T. 18 N., R. 19 E.W.M.

21 Limitations of Use: A portion of this land also receives water from the  
Kittitas Reclamation District.

22 REPORT OF REFEREE

23 Re: Subbasin No. 9

1 CLAIMANT NAME: **Gwendolyn Cooke**  
2 & **Robert Cooke** COURT CLAIM NO. 00740  
3  
4 Source: Naneum  
5 Use: Irrigation of 7 acres and stock watering  
6 Period of Use: April 1 through October 31  
7  
8 Quantity: 0.14 cubic foot per second, 35 acre-feet per year  
9 Priority Date: **June 30, 1875**  
10 Point of Diversion: 300 feet north and 300 feet west from the south  
11 quarter corner of Section 16, being within the  
12 SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M.  
13 Place of Use: That portion of the W $\frac{1}{4}$  of Section 4, T. 17 N.,  
14 R. 19 E.W.M. described as follows: Beginning at the  
15 south quarter corner of said Section 4, thence N  
16 1°50' W 2601.68 feet along the centerline of the  
17 county road; thence S 87°06' W 30.00 feet to the true  
18 point of beginning; thence S 1°50' E 835.98 feet;  
19 thence N 77°00'50" W 463.82 feet; thence N 6°13'10" E  
20 717.63 feet; thence N 87°06' E 348.15 feet to the  
21 true point of beginning.  
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27 REPORT OF REFEREE  
28 Re: Subbasin No. 9

1 CLAIMANT NAME: **Herbert J. Herbert** & Rita Herbert COURT CLAIM NO. 00663  
2 Source: Naneum Creek  
3 Use: Irrigation of 80 acres and stock watering  
4 Period of Use: April 1 through October 15  
5 Quantity: 1.60 cubic feet per second in May and June, 0.80  
6 cubic foot per second in April and July 1 through  
October 15, 410.20 acre-feet per year  
7 Priority Date: **June 30, 1875**  
8 Point of Diversion: 100 feet north and 400 feet east of the center of  
9 Section 21, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21,  
T. 18 N., R. 19 E.W.M.  
10 Place of Use: The W $\frac{1}{2}$ SW $\frac{1}{2}$  of Section 22, T. 18 N., R. 19 E.W.M.  
11 Limitations of Use: This land may also receive water from the Kittitas  
12 Reclamation District.

13 CLAIMANT NAME: **Robert O. Kelley** & Paula K. Kelley COURT CLAIM NO. 00667  
14 Source: Naneum Creek (Neally Creek)  
15 Use: Irrigation of 32 acres and stock watering  
16 Period of Use: April 1 through October 15  
17 Quantity: 0.64 cubic foot per second in May and June, 0.32  
18 cubic foot per second in April and July 1 through  
October 15, 160 acre-feet per year  
19 Priority Date: **June 30, 1875**  
20 Point of Diversion: 300 feet south and 800 feet east from the north  
21 quarter corner of Section 28, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$   
of Section 28, T. 18 N., R. 19 E.W.M.  
22 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28, T. 18 N., R. 19 E.W.M.,  
23 EXCEPT the easterly 328 feet thereof.  
24 Limitations of Use: Water delivered by the Kittitas Reclamation District  
25 is also used on this land.

26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Fabian Kuchin, Jr.** COURT CLAIM NO. 01939

2 Source: Whiskey Creek

3 Use: Irrigation of 13 acres

4 Period of Use: April 1 through October 15

5 Quantity: 0.338 cubic foot per second, 52 acre-feet per year

6 Priority Date: **June 30, 1875**

7 Point of Diversion: 450 feet south and 400 feet west from the north  
quarter corner of Section 34, being within the  
 $\text{NE}\frac{1}{4}\text{NE}\frac{1}{4}\text{NW}\frac{1}{4}$  of Section 34, T. 18 N., R. 18. E.W.M.

8 Place of Use: That part of the  $\text{W}\frac{1}{2}\text{NE}\frac{1}{4}$  of Section 34, T. 18 N.,  
R. 18 E.W.M., lying north and east of the  
northeasterly right-of-way line of State Highway No.  
3, and south and west of Whiskey Creek.

9 Limitations of Use: This land also receives water from the Ellensburg  
Water Company

10 CLAIMANT NAME: **Morrison Ranches** COURT CLAIM NO. 01267

11 Source: Naneum Creek

12 Use: Irrigation of 15 acres and stock water

13 Period of Use: April 1 through October 15

14 Quantity: 0.30 cubic foot per second, 75 acre-feet per year for  
irrigation and 5 acre-feet per year for stock  
watering

15 Priority Date: **June 30, 1875**

16 Point of Diversion: 1. 750 feet north and 30 feet west from the south  
quarter corner of Section 16, within the  $\text{SE}\frac{1}{4}\text{SW}\frac{1}{4}$  of  
Section 16, T. 18 N., R. 19 E.W.M.

17 2. 400 feet north and 800 feet east of the west  
quarter corner of Section 4, being within the  $\text{SW}\frac{1}{4}\text{NW}\frac{1}{4}$   
of Section 4, T. 17 N., R. 19 E.W.M.

18 Place of Use: The  $\text{W}\frac{1}{2}\text{NE}\frac{1}{4}\text{SW}\frac{1}{4}$  of Section 4, T. 17 N., R. 19 E.W.M.,  
excluding the railroad right-of-way.

19 REPORT OF REFEREE

20 Re: Subbasin No. 9

1 CLAIMANT NAME: **Harvey L. Dodge** COURT CLAIM NO. 00603  
2 Source: Taylor Creek (a branch of Naneum Creek)  
3 Use: Irrigation and stock watering.  
4 Period of Use: April 1 through October 15  
5 Quantity: 1.3 cubic feet per second in May and June, 0.65 cubic  
foot per second in April and July 1 through  
October 15, 195 acre-feet per year  
6 Priority Date: **December 20, 1876**  
7 Point of Diversion: No. 1: 1200 feet north and 10 feet west from the  
east quarter corner of Section 29, being within the  
SE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 29;  
No. 2: 850 feet south and 10 feet west from the  
northeast corner of Section 29, being within the  
NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29; ALL within T. 18 N., R. 19  
E.W.M.  
8 Place of Use: That portion of the S $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29, T. 18 N., R.  
19 E.W.M. lying northerly and easterly of the right  
of way of the Kittitas Reclamation District ditch  
EXCEPT the west 495 feet thereof and the right of way  
for Burroughs Road.  
10 Limitations of Use: Water delivered by the Kittitas Reclamation District  
is also used on this property  
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REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME:

2 **Shird J. Burks**  
3 & **Audrey E. Burks**

4 COURT CLAIM NO. 00726

5 Source: Wilson Creek

6 Use: Irrigation of 75 acres and stock water

7 Period of Use: April 1 through October 15

8 Quantity: 1.5 cubic feet per second in May and June, 0.75 cubic  
9 foot per second in April and from July 1 through  
10 October 15; 375 acre-feet per year

11 Priority Date: **June 15, 1877**

12 Point of Diversion: 1200 feet north and 1200 feet east of the south  
13 quarter corner of Section 19, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$   
14 of Section 19, T. 18 N., R. 19 E.W.M.

15 Place of Use: The W $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, except that portion  
16 described as follows: Commencing at south quarter  
17 corner of said section; thence east 492 feet; thence  
18 north 200 feet; thence west 492 feet; thence south  
19 200 feet to the true point of beginning. Also the  
20 east 400 feet of the south 1100 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
21 Section 30, all in T. 18 N., T. 19 E.W.M.

22 Limitations of Use: This land may also receive water delivered by the  
23 Kittitas Reclamation District.

24 REPORT OF REFEREE

25 Re: Subbasin No. 9

1 CLAIMANT NAME:

2 Les S. Knudsen  
3 & Barbara J. Knudsen

4 COURT CLAIM NO. 00256

5 Source: Wilson Creek

6 Use: Irrigation of 74 acres and stock water

7 Period of Use: April 1 through October 15

8 Quantity: 1.48 cubic feet per second in May and June, 0.74  
9 cubic foot per second in April and July 1 through  
10 October 15; 370 acre-feet per year

11 Priority Date: June 15, 1877

12 Point of Diversion: 1200 feet north and 1300 feet east from the south  
quarter corner of Section 19, being within SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 19, T. 18 N., R. 19 E.W.M.

13 Place of Use: The W $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30, T. 18 N., R. 19 E.W.M.  
EXCEPT, the east 450 feet of the south 1100 feet  
thereof.

14 Limitations of Use: This land also receives water from the Kittitas  
15 Reclamation District.

16 REPORT OF REFEREE

17 Re: Subbasin No. 9

**CLAIMANT NAME:**

James Bridge  
& Mary Bridge  
Cy Morgan  
Nick Parsel  
& Kim Parsel  
Katherine M. Rasmussen

COURT CLAIM NO. 00825

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: **Gerald F. Brunner**  
2 & **Ruth Ann Brunner** COURT CLAIM NO. 02124  
3 Source: Wilson Creek  
4 Use: Irrigation of 5 acres and stock water  
5 Period of Use: April 15 through October 15  
6 Quantity: 0.10 cubic foot per second in May and June, 0.05  
7 cubic foot per second in April and July 1 through  
October 15, 26 acre-feet per year for irrigation; 0.5  
acre-foot per year for stock water  
8 Priority Date: **June 30, 1877**  
9 Point of Diversion: 1250 feet north and 200 feet west from the south  
quarter corner of Section 5, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$   
of Section 5, T. 18 N., R. 19 E.W.M.  
10 Place of Use: The S $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 18 N., R. 19 E.W.M.  
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REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME: **James F. Carmody** COURT CLAIM NO. 00612

2 Source: Dry Creek (a branch of Wilson Creek)

3 Use: Irrigation of 6.5 acres and stock watering

4 Period of Use: April 1 through October 31

5 Quantity: 0.13 cubic foot per second in May and June, 0.065  
6 cubic foot per second in April and July 1 through  
October 31, 35.26 acre-feet per year

7 Priority Date: **June 30, 1877**

8 Point of Diversion: 650 feet south and 1200 feet west from the east  
9 quarter corner of Section 25, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$   
of Section 25, T. 18 N., R. 18 E.W.M.

10 Place of Use: That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25, T. 18 N.,  
R. 18 E.W.M. described as follows: Commencing at the  
11 center of said section; thence south approximately 28  
feet to the south line of Sanders Road; thence  
12 southeasterly 854.25 feet; thence southwesterly  
13 253.92 feet to the north line of the Cascade Canal;  
thence northwesterly 690.8 feet; thence northeasterly  
14 304.58 feet to the point of beginning.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: Kenneth R. Huber  
2 & Sharon L. Huber  
3 Jim Vasquez

COURT CLAIM NO. 00661

4 Source: Naneum Creek

5 Use: Irrigation of 5 acres

6 Period of Use: April 1 through October 15

7 Quantity: 0.10 cubic foot per second from May 1 through  
June 30, 0.05 cubic foot per second from July 1  
through October 15 and April 1 through April 30; 25  
acre-feet per year

8 Priority Date: June 30, 1877

9 Point of Diversion: 1260 feet north and 720 feet east from the southwest  
10 corner of Section 33, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 33, T. 18 N., R. 19 E.W.M.

11 Place of Use: Lot 1 of Short Plat 77-9 being a portion of the  
12 W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, T. 18 N. R. 19 E.W.M.

13 CLAIMANT NAME: Kayser Ranch, Inc. COURT CLAIM NO. 00991

14 Source: Wilson-Naneum Creek

15 Use: Irrigation of 65 acres and stock water

16 Period of Use: April 1 through October 15

17 Quantity: 1.30 cubic feet per second in May and June, 0.65  
18 cubic foot per second in April and July 1 through  
October 15, 325 acre-feet per year

19 Priority Date: June 30, 1877

20 Point of Diversion: 150 feet north and 600 feet east of the west quarter  
21 corner of Section 28, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 28, T. 19 N., R. 19 E.W.M.

22 Place of Use: The W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 34 lying below the Adams Ditch  
23 and the E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, T. 19 N.,  
R. 19 E.W.M.

24 REPORT OF REFEREE  
25 Re: Subbasin No. 9

1 CLAIMANT NAME: **Kayser Ranch, Inc.** COURT CLAIM NO. 00991  
2 Source: Wilson-Naneum Creek  
3 Use: Irrigation of 50 acres and stock watering  
4 Period of Use: April 1 through October 15  
5 Quantity: 1.0 cubic foot per second in May and June, 0.50 cubic  
6 foot per second in April and July 1 through October  
15, 250 acre-feet per year  
7 Priority Date: **June 30, 1877**  
8 Point of Diversion: 150 feet north and 600 feet east of the west quarter  
9 corner of Section 28, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 28, T. 19 N., R. 19 E.W.M.  
10 Place of Use: The NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 2, T. 18 N.,  
R. 19 E.W.M.  
11

12 CLAIMANT NAME: **Floyd A. (Buck) Minor & Merna Minor** COURT CLAIM NO. 01718  
13 Source: Wilson Creek  
14 Use: Irrigation of 50.14 acres and stock water  
15 Period of Use: April 1 through October 15  
16 Quantity: 1.0 cubic foot per second in May and June, 0.50 cubic  
17 foot per second in April and from July 1 through  
October 15, 150.42 acre-feet per year for irrigation;  
2.5 acre-feet per year for stock watering  
18 Priority Date: **June 30, 1877**  
19 Point of Diversion: Wilson Creek: 700 feet north and 600 feet west from  
20 the center of Section 8, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 8, T. 18 N., R. 19 E.W.M.  
21 Place of Use: That portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 8, T. 18 N.,  
R. 19 E.W.M. west of Wilson Creek.  
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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
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1 CLAIMANT NAME: **Jean G. Minor** COURT CLAIM NO. 01717  
2 Source: Wilson Creek  
3 Use: Irrigation of 12 acres and stock water  
4 Period of Use: May 1 through October 15 for irrigation, continuous  
for stock watering  
5 Quantity: 0.24 cubic foot per second from May 1 through June 30  
and 0.12 cubic foot per second in April and from  
July 1 through October 15; 60 acre-feet per year for  
irrigation, 0.50 acre-foot per year for stock water;  
0.12 cubic foot per second, 0.5 acre-foot per year  
for stock watering from October 16 to March 31  
6 Priority Date: **June 30, 1877**  
7 Point of Diversion: 650 feet north and 600 feet west from the center of  
Section 8, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 8,  
T. 18 N., R. 19 E.W.M.  
8 Place of Use: The south 750 feet of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8,  
T. 18 N., R. 19 E.W.M.  
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REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME: **Ronald C. Rees** COURT CLAIM NO. 00892  
2 Source: An unnamed branch of Wilson Creek (may be locally known as Lyle Creek)  
3 Use: Irrigation of 9 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.18 cubic foot per second from May 1 through June 30, 0.09 cubic foot per second in April and from July 1 through October 15; 45 acre-feet per year for irrigation; one-half acre-foot per year for stock watering  
6 Priority Date: **June 30, 1877**  
7 Point of Diversion: 1500 feet south and 200 feet west from the north quarter corner of Section 8, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 18 N., R. 19 E.W.M.  
8 Place of Use: That portion of the following described land lying east of the branch of Wilson Creek that flows through the property: N $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8 and that portion of the S $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, described as follows: Beginning at a point 711 feet south of the center of Section 8; thence west 1221.9 feet; thence south 178 feet; thence east 1221.9 feet; thence north 178 feet to the point of beginning, all in T. 18 N., R. 19 E.W.M.

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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
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1 CLAIMANT NAME:

Kent D. Richards  
& Carolyn E. Richards

COURT CLAIM NO. 01163

2 Source:

Lyle Creek

3 Use:

Irrigation of 7 acres and stock water

4 Period of Use:

April 1 through October 15

5 Quantity:

0.14 cubic foot per second from May 1 through June 30  
and 0.07 cubic foot per second in April and from  
July 1 through October 15, 35 acre-feet per year

7 Priority Date:

**June 30, 1877**

8 Point of Diversion:

400 feet north and 200 feet east from the center of  
Section 8, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 18 N.,  
R. 19 E.W.M.

10 Place of Use:

The south 1170 feet of the east 375 feet of the  
southwest quarter of Section 8, T. 18 N.,  
R. 19 E.W.M. lying west of Wilson Creek

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **James C. Swayze** COURT CLAIM NO. 01052  
2 & **Dianne Morrison** (A) 05592

3 Source: Naneum Creek

4 Use: Irrigation of 10 acres and stock water

5 Period of Use: April 1 through October 15

6 Quantity: 0.20 cubic foot per second from May 1 through  
July 1 through October 15; 40 acre-feet per year

7 Priority Date: **June 30, 1877**

8 Point of Diversion: 75 feet south and 400 feet east from the west quarter  
corner of Section 33, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 33, T. 18 N., R. 19 E.W.M.

9

10 Place of Use: That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, T. 18 N., R.  
11 19 E.W.M. lying northerly of the Cascade Irrigation  
12 Company canal EXCEPT: the west 165 feet thereof; and  
13 EXCEPT right of way for county road on the easterly  
14 boundary thereof; and EXCEPT the following: Beginning  
15 at the southeast corner of said SW $\frac{1}{4}$ ; thence N  
16 2°45'11" W 2277.82 feet along the east line to the  
True Point of Beginning; thence S 87°02'19" W 406.98  
feet; thence N 2°45'11" W 464.22 feet to the north  
line of said quarter section; thence N 88°59'47" E  
407.17 feet to the northeast corner of said quarter  
section; thence S 2°45'11" E along the east line of  
said quarter section 450.31 feet to the True Point of  
Beginning.

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26 REPORT OF REFEREE

27 Re: Subbasin No. 9

28

1 CLAIMANT NAME: **William P. Woods** COURT CLAIM NO. 05316  
2 & **Priscilla A. Woods**

3 Source: **Wilson Creek**

4 Use: **Irrigation of 5 acres and stock watering**

5 Period of Use: **April 1 through October 15**

6 Quantity: **0.10 cubic foot per second in May and June, 0.05  
7 cubic foot per second in April and July 1 through  
October 15, 25 acre-feet per year for irrigation;  
0.50 acre-foot per year for stock watering**

8 Priority Date: **June 30, 1877**

9 Point of Diversion: **900 feet north and 850 feet east of the southwest  
corner of Section 5, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 5, T. 18 N., R. 19 E.W.M.**

10 Place of Use: **That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 18 N.,  
R. 19 E.W.M. described as follows: Beginning at a  
point 20 feet south of a point 27 feet east of the  
northwest corner of said Section 8, thence N 88°57' E  
along the south boundary of the right of way for the  
county road 1360.3 feet; thence S 1°42' W 642.0 feet;  
thence S 88°57' W 1360.3 feet to the east boundary  
line of the right of way of said county road; thence  
N 1°42' E 642.0 feet to the point of beginning;  
except right of way for the canal of the Kittitas  
Reclamation District.**

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Morrison Ranches** COURT CLAIM NO. 01265  
2

3 Source: Naneum Creek  
4

5 Use: Irrigation of 77 acres and stock water  
6

7 Period of Use: April 1 through October 15  
8

9 Quantity: 1.60 cubic feet per second in May and June, 0.80  
10 cubic foot per second in April and July 1 through  
11 October 15; 385 acre-feet per year  
12

13 Priority Date: **September 30, 1877**  
14

15 Point of Diversion: 50 feet north and 1020 feet east from the west  
16 quarter corner of Section 4, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
17 Section 4, T. 19 N., R. 19 E.W.M.  
18

19 Place of Use: The E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 4, T. 18 N., R. 19 E.W.M.  
20

21 CLAIMANT NAME: **Winona P. Youngberg** COURT CLAIM NO. 00364  
22 (A) 01687  
23

24 Source: Naneum Creek  
25

26 Use: Irrigation of 80 acres and stock water  
27

28 Period of Use: April 1 through October 31  
29

30 Quantity: 1.6 cubic feet per second in May and June, 0.80 cubic  
31 foot per second in April and July 1 through  
32 October 31, 400 acre-feet per year  
33

34 Priority Date: **September 30, 1877**  
35

36 Point of Diversion: 750 feet south and 600 feet east from the northwest  
37 corner of Section 4, within Government Lot 4 of  
38 Section 4, T. 18 N., R. 19 E.W.M.  
39

40 Place of Use: W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4, T. 18 N., R. 19 E.W.M.  
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42 REPORT OF REFEREE

43 Re: Subbasin No. 9

1 CLAIMANT NAME:

2 Robert Swedberg  
3 & Lorene Swedberg

4 COURT CLAIM NO. 01861

5 Source: Naneum Creek

6 Use: Irrigation of 100 acres and stock water

7 Period of Use: April 1 through October 15 for irrigation; continuous  
8 for stock watering

9 Quantity: 2.0 cubic feet per second in May and June, 1.0 cubic  
10 foot per second in April and July 1 through  
11 October 15, 500 acre-feet per year for irrigation and  
12 stock watering; 1.0 cfs, 10 acre-feet per year from  
13 October 16 through March 31 for stock watering

14 Priority Date: March 30, 1878

15 Point of Diversion: #1 - 1050 feet south and 550 feet east from the west  
16 quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
17 Section 28, T. 19 N., R. 19 E.W.M.,  
18 #2 - 550 feet south and 600 feet east from the west  
19 quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
20 Section 28, T. 19 N., R. 19 E.W.M.,  
21 #3 - 500 feet north and 250 feet east from the  
22 southwest corner of Section 28, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
23 Section 28, T. 19 N., R. 19 E.W.M.

24 Place of Use: The NW $\frac{1}{4}$  of Section 33, T. 19 N., R. 19 E.W.M.

25 REPORT OF REFEREE

26 Re: Subbasin No. 9

1 CLAIMANT NAME: Alan Burke COURT CLAIM NO. 01181  
2 Source: Naneum Creek (A) 06158  
3 Use: Irrigation of 30 acres and stock watering  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.60 cubic foot per second from May 1 through  
6 June 30, 0.30 cubic foot per second in April and from  
7 July 1 through October 15; 150 acre-feet per year  
8 Priority Date: June 30, 1878  
9 Point of Diversion: 10 feet south and 10 feet west from the northwest  
corner of Section 33, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
10 Section 33, T. 18 N., R. 19 E.W.M.  
11 Place of Use: That portion of the W $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33, T. 18 N., R.  
12 19 E.W.M., described as follows: Commencing at the  
13 west quarter corner of Section 33, thence east on the  
mid-section line 495.5 feet; thence north parallel to  
the west boundary line 2420.0 feet; thence N 34°04' E  
14 110.8 feet; thence N 51° E 194.0 feet; to the south  
line of the right of way of the county road; thence N  
87°49' W along said right of way line 708.5 feet to  
the west boundary of Section 33; thence south on said  
west boundary 2642.0 feet to the point of beginning.

26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Brian Luque** COURT CLAIM NO. 00175  
2 & **Teresa Luque**

3 Source: Wilson Creek (delivered through an unnamed drain)

4 Use: Irrigation of one-half acre

5 Period of Use: April 1 through October 15

6 Quantity: 0.01 cubic foot per second, 2.5 acre-feet per year

7 Priority Date: **June 30, 1878**

8 Point of Diversion: 150 feet south and 1000 feet west from the center of  
Section 30, within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30, T. 18  
N., R. 19 E.W.M.

9 Place of Use: The south 88.5 feet of the west 492 feet of the  
SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 19 N., R. 19 E.W.M.,  
EXCEPT a 30 feet road right of way along the south  
boundary.

10 CLAIMANT NAME: **Don Akehurst** COURT CLAIM NO. 05072  
11 & **Barbara Akehurst**

12 Source: Lyle Creek (branch of Wilson Creek)

13 Use: Irrigation of 40 acres

14 Period of Use: April 1 through October 15

15 Quantity: 0.82 cubic foot per second in May and June, 0.41  
cubic foot per second in April and from July 1  
through October 15, 200 acre-feet per year

16 Priority Date: **June 30, 1880**

17 Point of Diversion: 780 feet south of the north quarter corner of Section  
20, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20, T. 18 N.,  
R. 19 E.W.M.

18 Place of Use: The SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20, T. 18 N., R. 19 E.W.M.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

2 **Orren Busby**  
3 & Ruth Busby

4 COURT CLAIM NO. 00857

5 Source:

6 Taylor Creek, a branch of Naneum Creek

7 Use:

8 Irrigation of 15 acres .

9 Period of Use:

10 April 1 through October 15

11 Quantity:

12 0.30 cubic foot per second in May and June, 0.15  
13 cubic foot per second in April and July 1 through  
14 October 15, 75 acre-feet per year

15 Priority Date:

16 **June 30, 1880**

17 Point of Diversion:

18 No. 1: 50 feet south and 150 feet west of the east  
19 quarter corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$   
20 of Section 29;  
21 No. 2: 450 feet south and 50 feet west of the east  
22 quarter corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$   
23 of Section 29, ALL being within T. 18 N., R. 19 E.W.M.

24 Place of Use:

25 That portion of the E $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29, T. 18 N.,  
26 R. 19 E.W.M. lying west of Taylor Creek.

27 REPORT OF REFEREE

28 Re: Subbasin No. 9

1 CLAIMANT NAME:

George Haberman  
& Ruby Haberman  
Dale Haberman  
& Kathy Haberman

COURT CLAIM NO. 00620

2 Source: Naneum Creek

4 Use: Irrigation of 97 acres and stock water

5 Period of Use: April 1 through October 15

6 Quantity: 1.94 cubic feet per second in May and June and 0.97  
7 cubic foot per second in April and July 1 through  
October 15, 388 acre-feet per year.

8 Priority Date: **June 30, 1880**

9 Point of Diversion: No. 1 - 1150 feet south and 1100 feet east from the  
10 northwest corner of Section 28, within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$   
of Section 28, T. 18 N., R. 19 E.W.M.  
No. 2 - 650 feet north and 300 feet west of the south  
quarter corner of Section 16, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$   
of Section 16, T. 18 N., R. 19 E.W.M.

12 Place of Use: The E $\frac{1}{4}$ SW $\frac{1}{4}$  and that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section  
13 28, T. 18 N., R. 19 E.W.M., lying east of Naneum  
14 Creek.

15 Limitations of Use: Some of this land may also receive water delivered by  
the Kittitas Reclamation District

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Thomas Haven** COURT CLAIM NO. 01649

2 Source: **Lyle Creek**

3 Use: **Irrigation of 1 acre and stock water**

4 Period of Use: **April 1 through October 15**

5 Quantity: **0.02 cubic foot per second in May and June, 0.01  
cubic foot per second in April and July 1 through  
October 15, 5 acre-feet per year**

6 Priority Date: **June 30, 1880**

7 Point of Diversion: **100 feet south and 100 feet east from the center of  
Section 17, within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17,  
T. 18 N., R. 19 E.W.M.**

8 Place of Use: **That portion of SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 17, T. 18 N.,  
R. 19 E.W.M., lying west of Wilson Creek Road.**

9 CLAIMANT NAME: **Harold W. Jenkins** COURT CLAIM NO. 00930  
& Gladys D. Jenkins

10 Source: **Wilson Creek**

11 Use: **Irrigation of 65 acres and stock water**

12 Period of Use: **April 1 through October 15**

13 Quantity: **1.30 cubic feet per second in May and June, 0.65  
cubic foot per second in April and July 1 through  
October 15, 325 acre-feet per year for irrigation and  
2 acre-feet per year for stock watering.**

14 Priority Date: **June 30, 1880**

15 Point of Diversion: **1250 feet north and 850 feet east from the southwest  
corner of Section 8, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 8, T. 18 N., R. 19 E.W.M.**

16 Place of Use: **That portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18, T. 18 N.,  
R. 19 E.W.M. lying westerly of a Kittitas Reclamation  
District lateral.**

17 Limitations of Use: **This land may also receive water delivered by the  
Kittitas Reclamation District**

18 REPORT OF REFEREE

19 Re: Subbasin No. 9

1 CLAIMANT NAME: **Kayser Ranch, Inc.** COURT CLAIM NO. 00991  
2 Source: Wilson-Naneum Creek  
3 Use: Irrigation of 25 acres and stock watering  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.50 cubic foot per second in May and June, 0.25  
cubic foot per second in April and July 1 through  
October 15, 125 acre-feet per year  
6 Priority Date: **June 30, 1880**  
7 Point of Diversion: 500 feet north and 250 feet east of the southwest  
corner of Section 28, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 28, T. 19 N., R. 19 E.W.M.  
8 Place of Use: The SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, T. 18 N., R. 19 E.W.M.  
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13 CLAIMANT NAME: **Kayser Ranch, Inc.** COURT CLAIM NO. 00991  
14 Source: Wilson-Naneum Creek  
15 Use: Irrigation of 120 acres and stock watering  
16 Period of Use: April 1 through October 15  
17 Quantity: 2.4 cubic feet per second in May and June, 1.2 cubic  
feet per second in April and July 1 through  
October 15, 600 acre-feet per year  
18 Priority Date: **June 30, 1880**  
19 Point of Diversion: 1050 feet south and 550 feet east from the west  
quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 28, T. 19 N., R. 19 E.W.M.,  
20  
21 Place of Use: E $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 3, T. 18 N.,  
R. 19 E.W.M.  
22  
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25  
26

REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME: **Kayser Ranch, Inc.** COURT CLAIM NO. 00991

2 Source: Wilson-Naneum Creek

3 Use: Irrigation of 33.3 acres and stock watering

4 Period of Use: April 1 through October 15

5 Quantity: 0.66 cubic foot per second in May and June, 0.33  
cubic foot per second in April and July 1 through  
October 15, 166.5 acre-feet per year

6 Priority Date: **June 30, 1880**

7 Point of Diversion: 1050 feet south and 550 feet east from the west  
quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 28, T. 19 N., R. 19 E.W.M.,

8 Place of Use: The SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 2, T. 18 N., R. 19 E.W.M.

11 CLAIMANT NAME: **Sam Kayser & Lonni Kayser** COURT CLAIM NO. 01234  
12 (A) 06380

13 Source: Wilson and Naneum Creeks

14 Use: Irrigation of 60 acres and stock water

15 Period of Use: April 1 through October 15

16 Quantity: 1.20 cubic feet per second May 1 through June 15,  
0.60 cubic foot per second in April and June 16  
through October 15, 300 acre-feet per year

18 Priority Date: **June 30, 1880**

19 Point of Diversion: 1050 feet south and 550 feet east from the west  
quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 28, T. 19 N., R. 19 E.W.M.

21 Place of Use: That portion of the W $\frac{1}{4}$ SW $\frac{1}{4}$  and the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 2, T. 18 N., R. 19 E.W.M., lying north of the  
Highline Canal, EXCEPT the right-of-way for the  
Highline Canal.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Madeleine Villa, Inc.** COURT CLAIM NO. 02245

2 Source: Lyle Creek

3 Use: Irrigation of 80 acres and stock water

4 Period of Use: April 1 through October 15

5 Quantity: 1.60 cubic feet per second in May and June, 0.80  
cubic foot per second in April and July 1 through  
October 15, 400 acre-feet per year.

6 Priority Date: **June 30, 1880**

7 Point of Diversion: 30 feet south and 600 feet west from the center of  
Section 20, within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20,  
T. 18 N., R. 19 E.W.M.

8 Place of Use: The west 2000 feet of the SW $\frac{1}{4}$  of Section 20,  
T. 18 N., R. 19 E.W.M.

9 Limitations of Use: This land also receives water from the Kittitas  
Reclamation District.

10 CLAIMANT NAME: **G. Jay Nelson, et al.** COURT CLAIM NO. 01866

11 Source: Lyle Creek

12 Use: Irrigation of 79 acres and stock water

13 Period of Use: April 1 through October 15

14 Quantity: 1.58 cubic feet per second in May and June, 0.79  
cubic foot per second in April and July 1 through  
October 15, 395 acre-feet per year

15 Priority Date: **June 30, 1880**

16 Point of Diversion: #1 - 30 feet south and 300 feet east from the north  
quarter corner of Section 17, within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 17,  
#2 - 10 feet south and 550 feet east from the center  
of Section 17, within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17, ALL  
in T. 18 N., R. 19 E.W.M.

17 Place of Use: That portion of the SW $\frac{1}{4}$  of Section 17, T. 18 N.,  
R. 19 E.W.M., lying east of Wilson Creek Road.

18 REPORT OF REFEREE

19 Re: Subbasin No. 9

1 CLAIMANT NAME:

Albert F. Scott  
& Dorothy Scott  
Stephen K. German  
& Donna German

COURT CLAIM NO. 00605

(A) 01749

2 Source: Naneum Creek

3 Use: Irrigation of 70 acres and stock water

4 Period of Use: April 1 through October 15

5 Quantity: 1.40 cubic feet per second from May 1 through  
June 15, 0.70 cubic foot per second in April and from  
June 16 through October 15. 350 acre-feet per year  
for irrigation, 5 acre-feet per year for stock  
watering.

6 Priority Date: June 30, 1880

7 Point of Diversion: 1050 feet south and 550 feet east from the west  
quarter corner of Section 28, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$   
of Section 28, T. 19 N., R. 19 E.W.M.

8 Place of Use: The NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11 and that portion of the  
SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 lying south of the KRD Canal,  
both in T. 18 N., R. 19 E.W.M.

9 Limitations of Use: This land may also receive water delivered by the  
Kittitas Reclamation District. Secondary diversion  
points on Schnebly Creek are used to convey Naneum  
Creek water to this property. Additional water from  
Schnebly Creek may also be used on this land.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: John L. Silva COURT CLAIM NO. 01130  
2 Source: Naneum Creek  
3 Use: Irrigation of 3 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.06 cubic foot per second in May and June, 0.03  
6 cubic foot per second in April and July 1 through  
October 15, 15 acre-feet per year  
7 Priority Date: June 30, 1880  
8 Point of Diversion: No. 1: 1150 feet north and 1100 feet east from the  
west quarter corner of Section 28, being within the  
NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28, T. 18 N., R. 19 E.W.M.  
No. 2: 30 feet south and 600 feet east from the west  
quarter corner of Section 28, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$   
of Section 28, T. 18 N., R. 19 E.W.M.  
10 Place of Use: The south 440 feet of the west 500 feet of  
11 Section 28, T. 18 N., R. 19 E.W.M.  
12  
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REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME:

2 **Steve Wallace**  
3 & **Deborah L. Wallace**

COURT CLAIM NO. 00990

4 Source:

5 Wilson and Naneum Creeks (combined flow)

6 Use:

7 Irrigation of 20 acres and stock water

8 Period of Use:

9 April 1 through October 15 for irrigation,  
10 continuously for stock watering

11 Quantity:

12 0.33 cubic foot per second from May 1 through  
13 June 15, 0.165 cubic foot per second in April and  
14 June 16 through October 15, 78.4 acre-feet per year  
15 for irrigation and stock watering; 0.165 cubic foot  
16 per second, 5 acre-feet per year from October 16  
17 through March 31 for stock watering

18 Priority Date:

19 **June 30, 1880**

20 Point of Diversion:

21 1050 feet south and 550 feet east from the west  
22 quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
23 Section 28, T. 19 N., R. 19 E.W.M.,

24 Place of Use:

25 That portion of the S $\frac{1}{4}$ SE $\frac{1}{4}$  Section 3, T. 18 N.,  
26 R. 19 E.W.M., lying north of the KRD Highline Canal

27 REPORT OF REFEREE

28 Re: Subbasin No. 9

654

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

1 CLAIMANT NAME: **Mark McWhorter** COURT CLAIM NO. 00484  
2 Source: Lyle Creek (A) 04498  
3 Use: Irrigation of 20 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.40 cubic foot per second in May and June, 0.20  
cubic foot per second in April and July 1 through  
October 15; 100 acre-feet per year for irrigation and  
1 acre-foot per year for stock water.  
6  
7 Priority Date: **June 30, 1881**  
8 Point of Diversion: 10 feet south and 100 feet east of the north quarter  
corner of Section 17, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 17, T. 18 N., R. 19 E.W.M.  
9  
10 Place of Use: That portion of the NE $\frac{1}{4}$  of Section 17, T. 18 N.,  
R. 19 E.W.M. lying west of Lyle Creek.  
11  
12 Limitations of Use: Water delivered by the Kittitas Reclamation District  
may also be used on this land.  
13  
14 CLAIMANT NAME: **John Hultquist & Nancy Hultquist** COURT CLAIM NO. 01721  
15 Source: Naneum Creek  
16 Use: Irrigation of 10 acres and stock water  
17 Period of Use: April 1 through October 15  
18 Quantity: 0.20 cubic foot per second in May and June, 0.10  
cubic foot per second in April and July 1 through  
October 15, 50 acre-feet per year  
19  
20 Priority Date: **June 30, 1882**  
21 Point of Diversion: 1000 feet north and 400 feet east from the west  
quarter corner of Section 33, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 33, T. 19 N., R. 19 E.W.M.  
22  
23 Place of Use: That portion of the west 933.38 feet of the north  
933.38 feet of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, T. 19 N.,  
R. 19 E.W.M., lying east of Naneum Creek.  
24  
25  
26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
28

1 CLAIMANT NAME: **Patrick M. Jenkins** & Vicki K. Jenkins COURT CLAIM NO. 00932  
2 Source: Naneum Creek  
3 Use: Irrigation of 105 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 2.10 cubic feet per second in May and June, 1.05 cubic foot per second in April and July 1 through October 15, 525 acre-feet per year for irrigation and 3 acre-feet per year for stock watering  
6  
7 Priority Date: **June 30, 1882**  
8 Point of Diversion: 1250 feet south and 250 feet east from the northwest corner of irregular Section 4, within Government Lot 4 (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ) of Section 4, T. 18 N., R. 19 E.W.M.  
9  
10 Place of Use: The NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9 lying north of the Kittitas Reclamation District canal and the W $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, in T. 18 N. R. 19 E.W.M.  
11  
12  
13 CLAIMANT NAME: **Louaine A. Magnuson** & Kevin Halley COURT CLAIM NO. 01416  
14  
15 Source: Naneum Creek  
16 Use: Irrigation of 1.3 acres  
17 Period of Use: April 1 through October 15  
18 Quantity: 0.026 cubic foot per second in May and June, 0.013 cubic foot per second in April and July 1 through October 15, 6.5 acre-feet per year  
19  
20 Priority Date: **June 30, 1882**  
21 Point of Diversion: 520 feet north and 275 feet east from the west quarter corner of Section 33, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33, T. 19 N., R. 19 E.W.M.  
22  
23 Place of Use: The east 300 feet of the south 398.15 feet of the north 933.38 feet of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 33, T. 19 N., R. 19 E.W.M.  
24  
25  
26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
28

1 CLAIMANT NAME: Ronald P. McGee COURT CLAIM NO. 02035

2 Source: Naneum Creek

3 Use: Irrigation of 6 acres and stock water

4 Period of Use: April 1 through October 15

5 Quantity: 0.12 cubic foot per second in May and June, 0.06  
6 cubic foot per second in April and July 1 through  
October 15, 30 acre-feet per year

7 Priority Date: June 30, 1882

8 Point of Diversion: 1000 feet north and 400 feet east from the west  
9 quarter corner of Section 33, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 33, T. 19 N., R. 19 E.W.M.

10 Place of Use: The west 300 feet of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33,  
11 T. 19 N., R. 19 E.W.M., except the north 300 feet  
thereof.

12 CLAIMANT NAME: Mark McWhorter COURT CLAIM NO. 00484  
13 (A) 04498

14 Source: Naneum Creek

15 Use: Irrigation of 40 acres and stock water

16 Period of Use: April 1 through October 15

17 Quantity: 0.80 cubic foot per second in May and June, 0.40  
18 cubic foot per second in April and July 1 through  
October 15, 200 acre-feet per year for irrigation and  
2 acre-feet per year for stock watering

19 Priority Date: June 30, 1882

20 Point of Diversion: 920 feet south and 1300 feet east of the northwest  
21 corner of Section 9, being within the N $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 9, T. 18 N., R. 19 E.W.M.

22 Place of Use: The SE $\frac{1}{4}$  of Section 8, T. 18 N., R. 19 E.W.M. lying  
east of Lyle Creek.

23 Limitations of Use: Water delivered by the Kittitas Reclamation District  
is also used on this land.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Mark McWhorter

COURT CLAIM NO. 00484

(A) 04498

2 Source: Naneum Creek

3 Use: Irrigation of 115 acres and stock water

4 Period of Use: April 1 through October 15

5 Quantity: 2.30 cubic feet per second in May and June, 1.15  
cubic feet per second in April and July 1 through  
October 15, 575 acre-feet per year for irrigation and  
4 acre-feet per year for stock watering.

6 Priority Date: June 30, 1882

7 Point of Diversion: 920 feet south and 1300 feet east of the northwest  
corner of Section 9, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 9, T. 18 N., R. 19 E.W.M.

8 Place of Use: That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  lying south of the KRD  
canal, the SW $\frac{1}{4}$ NW $\frac{1}{4}$ , and NW $\frac{1}{4}$ SW $\frac{1}{4}$ , all in Section 9,  
T. 18 N., R. 19 E.W.M.

9 Limitations of Use: Water delivered by the Kittitas Reclamation District  
may also be used on this land.

26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Mark McWhorter** COURT CLAIM NO. 00484  
2 Source: Naneum Creek (A) 04498  
3 Use: Irrigation of 100 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 2.00 cubic feet per second in May and June, 1.0 cubic  
6 foot per second in April and July 1 through  
7 October 15, 500 acre-feet per year for irrigation and  
8 4 acre-feet per year for stock watering.  
9 Priority Date: **June 30, 1882**  
10 Point of Diversion: 920 feet south and 1300 feet east of the northwest  
11 corner of Section 9, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
12 Section 9, T. 18 N., R. 19 E.W.M.  
13 Place of Use: That portion of the NE $\frac{1}{4}$  of Section 17, T. 18 N.,  
14 R. 19 E.W.M. lying east of Lyle Creek  
15 Limitations of Use: Water delivered by the Kittitas Reclamation District  
16 may also be used on this land.  
17  
18 CLAIMANT NAME: **Howard Miles** COURT CLAIM NO. 01669  
19 Source: Naneum Creek  
20 Use: Irrigation of 18 acres.  
21 Period of Use: April 1 through October 15  
22 Quantity: 0.36 cubic foot per second in May and June, 0.18  
23 cubic foot per second in April and July 1 through  
24 October 15, 90 acre-feet per year  
25 Priority Date: **June 30, 1882**  
26 Point of Diversion: 700 feet north and 1320 feet east from the southwest  
27 corner of Section 4, being within the NS $\frac{1}{4}$ SW $\frac{1}{4}$  of  
28 Section 4, T. 18 N., R. 19 E.W.M.  
Place of Use: That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, T. 18 N., R.  
19 E.W.M. lying east of Naneum Creek and north of the  
Kittitas Reclamation District Canal.

## 26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Merton Purnell** COURT CLAIM NO. 01329  
2 Source: Wilson-Naneum Creeks  
3 Use: Irrigation of 9 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.18 cubic foot per second from May 1 through  
June 30, 0.09 cubic foot per second in April and from  
July 1 through October 15; 28 acre-feet per year.  
6 Priority Date: **June 30, 1882**  
7 Point of Diversion: 500 feet north and 200 feet east from the southwest  
corner of Section 28, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 28, T. 19 N., R. 19 E.W.M.  
8 Place of Use: The S $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 18 N., R. 19 E.W.M.  
9 Limitations of Use: This land may receive water delivered by the Kittitas  
Reclamation District.  
10  
11  
12

13 CLAIMANT NAME: **Arthur Tirotta** COURT CLAIM NO. 02035  
14 & Susan Tirotta  
15 Source: Naneum Creek  
16 Use: Irrigation of 4.5 acres and stock water  
17 Period of Use: April 1 through October 31  
18 Quantity: 0.09 cubic foot per second in May and June, 0.045  
cubic foot per second in April and July 1 through  
October 15, 22.5 acre-feet per year  
19 Priority Date: **June 30, 1882**  
20 Point of Diversion: 1000 feet north and 400 feet east from the west  
quarter corner of Section 33, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 33, T. 19 N., R. 19 E.W.M.  
21 Place of Use: That portion of the S $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, T. 19 N.,  
R. 19 E.W.M. lying east of Naneum Creek  
22  
23  
24  
25  
26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
28

1 CLAIMANT NAME: **Stanley P. Youngberg** COURT CLAIM NO. 00363

2 Source: Naneum Creek

3 Use: Irrigation of 50 acres and stock water

4 Period of Use: April 1 to October 15

5 Quantity: 1.0 cubic foot per second in May and June, 0.50 cubic  
6 foot per second in April and July 1 through October 15;  
7 250 acre-feet per year

8 Priority Date: **June 30, 1882**

9 Point of Diversion: 850 feet north and 550 feet east from the southwest  
10 corner of Section 33, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
11 Section 33, T. 19 N., R. 19 E.W.M.

12 Place of Use: That portion of the S $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 4, T. 18 N.,  
13 R. 19 E.W.M. lying east of Naneum Creek

14 CLAIMANT NAME: **Sam Kayser** COURT CLAIM NO. 01263

15 Source: Naneum Creek

16 Use: Irrigation of 90.6 acres and stock water

17 Period of Use: April 1 to October 31

18 Quantity: 1.82 cubic feet per second in May and June, 0.91  
19 cubic foot per second in April and July 1 through  
20 October 15, 453 acre-feet per year for irrigation; 5  
21 acre-feet per year for stock water

22 Priority Date: **May 30, 1883**

23 Point of Diversion: Wilkins Ditch - (14) 500 feet north and 250 feet east  
24 from the southwest corner of Section 28, within the  
SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28;  
Lewis (Wilson) Ditch/Naneum Creek #1 - (21) 520 feet  
north and 275 feet east from the west quarter corner  
of Section 33, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 33, BOTH  
within T. 19 N., R. 19 E.W.M.

25 Place of Use: S $\frac{1}{4}$ NE $\frac{1}{4}$  and the E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 18 N.,  
26 R. 19 E.W.M., EXCEPT the south 1200 feet of the west  
27 600 feet of said E $\frac{1}{4}$ SE $\frac{1}{4}$ .

28 REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: **Harold W. Jenkins** & Gladys D. Jenkins COURT CLAIM NO. 00930  
2 Source: Naneum Creek  
3 Use: Irrigation of 70 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 1.40 cubic feet per second in May and June, 0.70  
6 cubic foot per second in April and July 1 through  
7 October 15, 350 acre-feet per year for irrigation and  
8 3.5 acre-feet per year for stock watering.  
9 Priority Date: **June 30, 1883**  
10 Point of Diversion: 350 feet south and 400 feet west from the northeast  
11 corner of Section 5, being within Government Lot 1 of  
12 Section 5, T. 18 N., R. 19 E.W.M.  
13 Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5, T. 18 N., R. 19  
14 E.W.M., EXCEPT the westerly 400 feet thereof.  
15 CLAIMANT NAME: **Harold W. Jenkins** & Gladys D. Jenkins COURT CLAIM NO. 00930  
16 Source: Wilson Creek  
17 Use: Irrigation of 49 acres and stock water  
18 Period of Use: April 1 through October 15  
19 Quantity: 0.98 cubic foot per second in May and June, 0.49  
20 cubic foot per second in April and July 1 through  
21 October 15, 245 acre-feet per year for irrigation,  
22 2.5 acre-feet per year for stock water.  
23 Priority Date: **June 30, 1883**  
24 Point of Diversion: 550 feet north and 500 feet east from the center of  
25 Section 5, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5,  
26 T. 18 N., R. 19 E.W.M.  
27 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  and the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 18 N.,  
28 R. 19 E.W.M.  
  
REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME:

2 David M. Leffert  
3 & J. Christine Leffert

4 COURT CLAIM NO. 00952

5 (A) 04815

6 Source: Naneum Creek

7 Use: Irrigation of 9 acres and stock water

8 Period of Use: April 1 through October 15

9 Quantity: 0.18 cubic foot per second in May and June, 0.09  
10 cubic foot per second in April and from July 1  
11 through October 15; 45 acre-feet per year for  
12 irrigation, 0.50 acre-foot per year for stock watering

13 Priority Date: June 30, 1883

14 Point of Diversion: 1130 feet south and 290 feet east from the northwest  
15 corner of Section 33, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
16 Section 33, T. 19 N., R. 19 E.W.M.

17 Place of Use: That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 18 N.,  
18 R. 19 E.W.M., bounded by a line described as  
19 follows: Beginning at the southeast corner of said  
20 Section, thence N 89°49'20" W along the south  
21 boundary of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ , 1349.90 feet; thence N  
22 1°32'20" E, 30.01 feet to the true point of  
23 beginning; thence N 1°32'20" E, 1156.72 feet; thence  
24 S 89°49'20" E, 565.03 feet; thence S 1°32'20" W,  
25 1156.72 feet; thence N 89°49'20" W, 565.03 feet to  
26 the true point of beginning.

27 REPORT OF REFEREE

28 Re: Subbasin No. 9

1 CLAIMANT NAME: **Ronald C. Rees** COURT CLAIM NO. 00892  
2 Source: Unnamed branch of Wilson Creek (perhaps aka Lyle Creek)  
3 Use: Irrigation of 10 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.20 cubic foot per second from May 1 through June 30, 0.10 cubic foot per second in April and from July 1 through October 15; 50 acre-feet per year for irrigation; one-half acre-foot per year for stock water  
6 Priority Date: **June 30, 1883**  
7 Point of Diversion: 1) 1500 feet south and 200 feet west from the north quarter corner of Section 8, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 18 N., R. 19 E.W.M.  
8 2) 350 feet north and 300 feet west from the south quarter corner of Section 5, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, T. 18 N., R. 19 E.W.M.  
9 Place of Use: The E $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, east of the branch of Wilson Creek that flows through the property and four acres near the center of the N $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8 west of the branch of Wilson Creek, in T. 18 N., R. 19 E.W.M.

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13 REPORT OF REFEREE  
14 Re: Subbasin No. 9  
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1 CLAIMANT NAME: **Kay E. Powers** COURT CLAIM NO. 00739  
2 Source: Wilson-Naneum Creeks  
3 Use: Irrigation of 66 acres and stock water.  
4 Period of Use: April 1 through October 15  
5 Quantity: 1.32 cubic feet per second, 330 acre-feet per year  
for irrigation, 1 acre-foot per year for stock  
watering  
6 Priority Date: **April 15, 1884**  
7 Point of Diversion: 500 feet north and 450 feet west from the east  
quarter corner of Section 29, within the ~~SE<sup>1/4</sup>~~<sup>NE<sup>1/4</sup> of  
Section 29, T. 19 N., R. 19 E.W.M.  
8 Place of Use: The ~~W<sup>1/2</sup>NE<sup>1/4</sup>~~ and ~~NW<sup>1/4</sup>SE<sup>1/4</sup>~~ of Section 32, T. 19 N.,  
R. 19 E.W.M., except that portion that lies in Parcel  
A of that certain survey as recorded on August 31,  
1999, in Book 24 of Surveys at pages 124-125, under  
Auditor's file No. 199908310013.  
9 Limitations of Use: This right is inferior to the rights of the parties  
in the Ferguson v. United States National Bank of  
Portland, et al. decree  
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REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME: **Sandra Thomas** COURT CLAIM NO. 00739  
2 Source: Wilson-Naneum Creeks  
3 Use: Irrigation of 34 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.68 cubic foot per second, 170 feet per year for irrigation, 1 acre-foot per year for stock watering  
6 Priority Date: **April 15, 1884**  
7 Point of Diversion: 500 feet north and 450 feet west from the east quarter corner of Section 29, within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29, T. 19 N., R. 19 E.W.M.  
8 Place of Use: Parcel A of that survey recorded on August 31, 1999, in Book 24 of Surveys at pages 124-125 under Auditor's File No. 199908310013, being a portion of NW $\frac{1}{4}$ NE $\frac{1}{4}$ , and NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M.  
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10 Limitations of Use: This right is inferior to the rights of parties to the Ferguson v. United States National Bank of Portland, et al. Decree.  
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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
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1 CLAIMANT NAME: **Gerald F. Brunner** & **Ruth Ann Brunner** COURT CLAIM NO. 02124  
2 Source: Wilson Creek  
3 Use: Irrigation of 9 acres and stock watering  
4 Period of Use: April 15 through October 15  
5 Quantity: 0.18 cubic foot per second, from May 1 through  
6 June 30, 0.09 cubic foot per second in April and from  
July 1 through October 15, 46.8 acre-feet per year  
7 Priority Date: **May 8, 1884**  
8 Point of Diversion: 1250 feet north and 200 feet west of the south  
9 quarter corner of Section 5, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$   
of Section 5, T. 18 N., R. 19 E.W.M.  
10 Place of Use: The north 790 feet of the west 507.3 feet of the  
11 SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 18 N., R. 19 E.W.M.  
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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
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1 CLAIMANT NAME: **Everett O. Barney**  
2 & **Lanita M. Barney** COURT CLAIM NO. 00928  
3  
4 Source: Naneum Creek  
5 Use: Irrigation of 12 acres and stock water  
6 Period of Use: April 1 through October 1  
7 Quantity: 0.4837 cubic foot per second, 72 acre-feet per year  
8 for irrigation; 5 acre-feet per year for stock  
9 watering  
10 Priority Date: **May 24, 1884**  
11 Point of Diversion: 50 feet north and 450 feet west from the southeast  
12 corner of Section 32, within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
13 32, T. 19 N., R. 19 E.W.M.  
14 Place of Use: That portion of Government Lot 1 of Section 5,  
15 T. 18 N., R. 19 E.W.M., described as follows:  
16 beginning at the northeast corner of said Lot 1,  
17 thence S 10°48'06" W along the east boundary of said  
18 Government Lot 1, 1535.88 feet; thence S 88°01'17" W,  
19 678.53 feet; thence N 2°57'12" E, 1090.61 feet;  
20 thence N 88°43'12" E 336.66 feet; thence N 4°24'32"  
21 E, 423.12 feet; thence N 88°33'21" E 540.85 feet to  
22 the point of beginning.  
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REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME: **Everett O. Barney** & **Lanita M. Barney** COURT CLAIM NO. 00903  
2 Source: Wilson Creek  
3 Use: Irrigation of 8.4 acres and stock water  
4 Period of Use: April 1 through October 31  
5 Quantity: 0.168 cubic foot per second, 33.6 acre-feet per year  
for irrigation; 1 acre-foot per year for stock water  
6 Priority Date: **May 24, 1884**  
7 Point of Diversion: 600 feet south and 875 feet east from the north  
quarter corner of Section 5, within Government Lot 2  
of Section 5, T. 18 N., R. 19 E.W.M.  
8 Place of Use: That portion of Government Lots 1 and 2 of Section 5,  
T. 18 N., R. 19 E.W.M. described as follows:  
Beginning at the northeast corner of said Government  
Lot 1; thence S 88°34'21" W along the north boundary  
of said Government Lot 1, 1354.10 feet; thence S  
1°54'48" E, 175.48 feet; thence S 44°12'12" W, 347.10  
feet; thence N 88°43'12" E, 680.26 feet to the true  
point of beginning; thence S 88°43'12" W, 710.00  
feet; thence S 2°56'27" W, 35.01 feet; thence S  
85°54'50" E, 319.19 feet; thence S 2°56'27" W, 1010.6  
feet more or less to the south boundary of said  
Government Lot 1; thence easterly along said south  
boundary 389.62 feet to a point being S 2°57'12" W  
from the true point of beginning; thence N 2°57'12" E  
to the true point of beginning.

26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
2 (A) 03119  
3 (A) 05238

4 Source: An unnamed stream  
5 Use: Timber management/harvest, including road maintenance  
6 Period of Use: May 1 through December 1  
7 Quantity: 0.01 cubic foot per second, 1 acre-foot per year  
8 Priority Date: **May 24, 1884**  
9 Point of Diversion: 550 feet north and 200 feet west from the south  
10 quarter corner of Section 33, SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33,  
11 T. 21 N., R. 19 E.W.M.  
12 Place of Use: The SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, T. 21 N., R. 19 E.W.M.

13 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
14 (A) 03119  
15 (A) 05238

16 Source: An unnamed spring  
17 Use: Timber management/harvest, including road maintenance  
18 Period of Use: May 1 to December 1  
19 Quantity: 0.01 cubic foot per second, 1 acre-foot per year  
20 Priority Date: **May 24, 1884**  
21 Point of Diversion: 1240 feet south and 2175 feet east of the northwest  
22 corner of Section 3, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
23 Section 3, T. 20 N., R. 19 E.W.M.  
24 Place of Use: The NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 3, T. 20 N., R. 19 E.W.M.

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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
2 (A) 03119  
3 (A) 05238  
4  
5 Source: Swift Creek  
6 Use: Timber management/harvest, including road maintenance  
7 Period of Use: May 1 through December 1  
8 Quantity: 0.01 cubic foot per second, 1 acre-foot per year  
9 Priority Date: **May 24, 1884**  
10 Point of Diversion: 2480 feet north and 40 feet west of the south quarter  
11 corner of Section 11, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
12 Section 11, T. 20 N., R. 19 E.W.M.  
13 Place of Use: The NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, T. 20 N., R. 19 E.W.M.  
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26 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
27 (A) 03119  
28 (A) 05238  
29 Source: An unnamed spring  
30 Use: Timber management/harvest, including road maintenance  
31 Period of Use: May 1 through December 1  
32 Quantity: 0.01 cubic foot per second, 1 acre-foot per year  
33 Priority Date: **May 24, 1884**  
34 Point of Diversion: 830 feet south and 1810 feet west from the northeast  
35 corner of Section 11, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
36 Section 11, T. 20 N., R. 19 E.W.M.  
37 Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, T. 20 N., R. 19 E.W.M.

26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
2 (A) 03119  
3 (A) 05238  
4  
5 Source: Dot Creek  
6 Use: Timber management/harvest, including road maintenance  
7 Period of Use: May 1 through December 1  
8 Quantity: 0.01 cubic foot per second, 1 acre-foot per year  
9 Priority Date: **May 24, 1884**  
10 Point of Diversion: 600 feet south and 50 feet east of the northwest corner of Section 15, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15 T. 10 N., R. 19 E.W.M.  
11 Place of Use: The NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15, T. 10 N., R. 19 E.W.M.  
12

13 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
14 (A) 03119  
15 (A) 05238  
16 Source: Swift Creek  
17 Use: Timber management/harvest, including road maintenance  
18 Period of Use: May 1 through December 1  
19 Quantity: 0.01 cubic foot per second, 1 acre-foot per year  
20 Priority Date: **May 24, 1884**  
21 Point of Diversion: 200 feet north and 600 feet east of the south quarter corner of Section 15, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 15, T. 20 N., R. 19 E.W.M.  
22 Place of Use: The SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 15, T. 20 N., R. 19 E.W.M.  
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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
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1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
2 (A) 03119  
3 (A) 05238

4 Source: High Creek  
5 Use: Timber management/harvest, including road maintenance  
6 Period of Use: May 1 through December 1  
7 Quantity: 0.01 cubic foot per second, 1 acre-foot per year  
8 Priority Date: **May 24, 1884**  
9 Point of Diversion: 1860 feet south and 2325 feet west of the northeast  
10 corner of Section 19, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
11 Section 19, T. 20 N., R. 19 E.W.M.  
12 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 19, T. 20 N., R. 19 E.W.M.

13 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
14 (A) 03119  
15 (A) 05238

16 Source: Unnamed spring  
17 Use: Timber management/harvest, including road maintenance  
18 Period of Use: May 1 through December 1  
19 Quantity: 0.01 cubic foot per second, 1 acre-foot per year  
20 Priority Date: **May 24, 1884**  
21 Point of Diversion: 180 feet north and 1200 feet east of the west quarter  
22 corner of Section 23, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
23 Section 23, T. 20 N., R. 19 E.W.M.  
24 Place of Use: The SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 23, T. 20 N., R. 19 E.W.M.

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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Boise Cascade Corporation

COURT CLAIM NO. 02206

(A) 03119

(A) 05238

2 Source: Boulder Creek

3 Use: Timber management/harvest, including road maintenance

4 Period of Use: May 1 through December 1

5 Quantity: 0.01 cubic foot per second, 1 acre-foot per year

6 Priority Date: May 24, 1884

7 Point of Diversion: 530 feet north and 530 feet west of the southeast  
corner of Section 23, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 23, T. 20 N., R. 19 E.W.M.

8 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 23, T. 20 N., R. 19 E.W.M.

11 CLAIMANT NAME:

Boise Cascade Corporation

COURT CLAIM NO. 02206

(A) 03119

(A) 05238

14 Source: Wilson Creek

15 Use: Timber management/harvest, including road maintenance

16 Period of Use: May 1 through December 1

17 Quantity: 0.01 cubic foot per second, 1 acre-foot per year

18 Priority Date: May 24, 1884

19 Point of Diversion: 250 feet south and 240 feet east of the north quarter  
corner of Section 31, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 31, T. 20 N., R. 19 E.W.M.

21 Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31, T. 20 N., R. 19 E.W.M.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

28 674

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

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
2 (A) 03119  
3 (A) 05238

4 Source: Leonard Spring

5 Use: Timber management/harvest, including road maintenance

6 Period of Use: May 1 through December 1

7 Quantity: 0.01 cubic foot per second, 1 acre-foot per year

8 Priority Date: **May 24, 1884**

9 Point of Diversion: 990 feet north and 265 feet west of the southeast  
corner of Section 5, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 5, T. 19 N., R. 19 E.W.M.

10 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 19 N., R. 19 E.W.M.

11

12 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
13 (A) 03119  
14 (A) 05238

15 Source: An unnamed stream

16 Use: Timber management/harvest, including road maintenance

17 Period of Use: May 1 through December 1

18 Quantity: 0.01 cubic foot per second, 1 acre-foot per year

19 Priority Date: **May 24, 1884**

20 Point of Diversion: 200 feet south and 1650 feet west of the northeast  
corner of Section 6, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 6, T. 19 N., R. 19 E.W.M.

21 Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6, T. 19 N., R. 19 E.W.M.

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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Boise Cascade Corporation

COURT CLAIM NO. 02206

(A) 03119

(A) 05238

2 Source:

Naneum Creek

3 Use:

Timber management/harvest, including road maintenance

4 Period of Use:

May 1 through December 1

5 Quantity:

0.01 cubic foot per second, 1 acre-foot per year

6 Priority Date:

May 24, 1884

7 Point of Diversion:

300 feet south and 200 feet west of the northeast corner of Section 9, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9, T. 19 N., R. 19 E.W.M.

8 Place of Use:

The NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9, T. 19 N., R. 19 E.W.M.

11 CLAIMANT NAME:

Boise Cascade Corporation

COURT CLAIM NO. 02206

(A) 03119

(A) 05238

14 Source:

An unnamed spring

15 Use:

Timber management/harvest, including road maintenance

16 Period of Use:

May 1 through December 1

17 Quantity:

0.01 cubic foot per second, 1 acre-foot per year

18 Priority Date:

May 24, 1884

19 Point of Diversion:

330 feet north and 595 feet west of the east quarter corner of Section 1, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1, T. 19 N., R. 19 E.W.M.

21 Place of Use:

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

26 REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: **Dwight Bolton** COURT CLAIM NO. 01718  
2 Source: Dry Creek  
3 Use: Irrigation of 5 acres  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.10 cubic foot per second from May 1 through June  
6 30, 0.05 cubic foot per second in April and from July  
1 through October 15, 15 acre-feet per year.  
7 Priority Date: **May 24, 1884**  
8 Point of Diversion: 1000 feet north and 1100 feet west from the east  
9 quarter corner of Section 7, being within the  
NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 18 N., R. 19 E.W.M.  
10 Place of Use: That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7, T. 18 N.,  
11 R. 19 E.W.M. described as follows: Beginning at the  
center of Section 7, thence east 400 feet to the True  
Point of Beginning, thence continuing east 623.50  
feet; thence south 544 feet; thence west 623.50 feet;  
thence north 544 feet to the true point of  
beginning.  
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REPORT OF REFEREE  
Re: Subbasin No. 9

**CLAIMANT NAME:**

Charles W. Cole  
& Ethel M. Cole  
Fred K. Gerlach  
& Shirley E. Gerlach

COURT CLAIM NO. 00884

Source: Wilson Creek

**Use:** Irrigation of 3 acres and stock water

Period of Use: April 1 through October 15

**Quantity:** 0.08 cubic foot per second, 15 acre-feet per year

Priority Date: **May 24, 1884**

Point of Diversion: 900 feet north and 1100 feet east from the south quarter corner of Section 32, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M.

Place of Use: That portion of Government Lot 2, Section 5,  
T. 18 N., R. 18 E.W.M. described as follows:  
Commencing at the northeast corner of said section;  
thence S 88° 34' 21" W 1889.59 feet to the true point  
of beginning; thence S 8° 04' 48" E 420.40 feet;  
thence S 81° 39' 20" W 314.35 feet; thence N 9° 44'  
32" W 460.27 feet; thence N 88° 34' 21" E 329.92 feet  
to the true point of beginning.

**REPORT OF REFEREE**

Re: Subbasin No. 9

1 CLAIMANT NAME: Guy F. Couture COURT CLAIM NO. 00819  
2 Source: Lyle Creek  
3 Use: Irrigation of 1.75 acres  
4 Period of Use: March 15 through April 14 and October 16 through  
5 October 31  
6 Quantity: 0.04 cubic foot per second, 1 acre-foot per year  
7 Priority Date: May 24, 1884  
8 Point of Diversion: 1200 north and 200 feet east from the west quarter  
9 corner of Section 6, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 6, T. 17 N., R. 19 E.W.M.  
10 Place of Use: That portion of Block 20, Smithson's Addition to the  
11 City of Ellensburg, within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1,  
T. 17 N., R. 18 E.W.M., described as follows:  
12 Beginning at an iron pipe on the north boundary of  
Capitol Avenue, said pipe being S 0°41'E 51 feet and  
N 87°28'E 2027.06 feet from the center of Section 1,  
thence N 01°39'30" W 202.78 feet; thence S 87°28' W  
20.17 feet; thence N 01°41'30" W 180.10 feet; thence  
N 87°42'30" E 251.24 feet to the right-of-way of  
Pfenning Road; thence S 01°38' W along said  
right-of-way, 282.8 feet to the north boundary of  
Capitol Avenue, thence S 87°28' W (more or less) 209  
feet to the point of beginning.

26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Carol Hartlaub** COURT CLAIM NO. 00903  
2  
3 Source: Wilson Creek  
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5 Use: Irrigation of 12.6 acres stock water  
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7 Period of Use: April 1 through October 31  
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9 Quantity: 0.252 cubic foot per second, 50.4 acre-feet per year  
for irrigation; 1 acre-foot per year for stock  
watering  
10  
11 Priority Date: **May 24, 1884**  
12  
13 Point of Diversion: 600 feet south and 875 feet east from the north  
quarter corner of Section 5, within Government Lot 2  
of Section 5, T. 18 N., R. 19 E.W.M.  
14  
15 Place of Use: That portion of Government Lots 1 and 2 of Section 5,  
T. 18 N., R. 19 E.W.M. bounded by a line described as  
follows: Beginning at the northeast corner of said  
Government Lot 1; thence S  $88^{\circ}34'21''$  W along the  
north line of said Government Lot 1, 1354.10 feet;  
thence S  $1^{\circ}54'48''$  E 175.48 feet; thence S  $44^{\circ}12'12''$   
W, 347.10 feet to the true point of beginning; thence  
S  $88^{\circ}43'12''$  W, 79.16 feet; thence S  $9^{\circ}00'35''$  W, 83.37  
feet; thence S  $41^{\circ}11'03''$  W, 60.51 feet; thence S  
 $50^{\circ}52'00''$  W 141.77 feet; thence S  $5^{\circ}53'42''$  W, 203.25  
feet; thence S  $85^{\circ}44'32''$  W, 23.15 feet; thence S  
 $2^{\circ}38'40''$  W, 458.21 feet; thence S  $65^{\circ}09'10''$  E, 44.37  
feet; thence S  $12^{\circ}17'20''$  W, 211.78 feet; thence N  
 $88^{\circ}01'17''$  E, 936.39 feet; thence N  $2^{\circ}57'12''$  E,  
1090.61 feet; thence S  $88^{\circ}43'12''$  W, 680.26 feet to  
the true point of beginning; EXCEPT: That portion  
described as follows: Beginning at the northeast  
corner of said Government Lot 1; thence S  $88^{\circ}34'21''$  W  
along the north boundary of said Government Lot 1,  
1354.10 feet; thence S  $1^{\circ}54'48''$  E, 175.48 feet;  
thence S  $44^{\circ}12'12''$  W, 347.10 feet; thence N  $88^{\circ}43'12''$   
E, 680.26 feet to the true point of beginning; thence  
S  $88^{\circ}43'12''$  W, 710.00 feet; thence S  $2^{\circ}56'27''$  W,  
35.01 feet; thence S  $85^{\circ}54'50''$  E, 319.19 feet; thence  
S  $2^{\circ}56'27''$  W, 1010.6 feet more or less to the south  
boundary of said Government Lot 1; thence easterly  
along said south boundary 389.62 feet to a point  
being S  $2^{\circ}57'12''$  W from the true point of beginning;  
thence N  $2^{\circ}57'12''$  E to the true point of beginning.  
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27 REPORT OF REFEREE  
Re: Subbasin No. 9  
28

1 CLAIMANT NAME:

2 Robert B. Klindworth  
3 & Linda W. Klindworth

4 COURT CLAIM NO. 00662

5 Source:

6 Lyle Creek

7 Use:

8 Irrigation of 2 acres and stock water

9 Period of Use:

10 March 15 through April 14 and October 16 through  
11 October 31

12 Quantity:

13 0.04 cubic foot per second, 2 acre-feet per year

14 Priority Date:

15 May 24, 1884

16 Point of Diversion:

17 1200 feet north and 200 feet east from the west  
18 quarter corner of Section 6, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
19 Section 6, T. 17 N., R. 19 E.W.M.

20 Place of Use:

21 Block 20 EXCEPT the south 208 feet of the east 208  
22 feet thereof, within Smithson's Addition to the City  
23 of Ellensburg and the vacated streets adjacent  
24 thereto, AND Block "E" Sunnyside Addition to  
25 Ellensburg (now vacated), ALL within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
26 Section 1, T. 17 N., R. 18 E.W.M.

27 REPORT OF REFEREE

28 Re: Subbasin No. 9

1 CLAIMANT NAME:

Floyd A. (Buck) Minor  
& Merna Minor

COURT CLAIM NO. 01718

2 Source: Dry Creek and Wilson Creek

3 Use: Irrigation of 60.32 acres and stock water

4 Period of Use: April 1 through October 15

5 Quantity: 1.21 cubic feet per second from May 1 to June 30;  
0.60 cubic foot per second in April and from July 1  
through October 15; 180.96 acre-feet per year for  
irrigation; 2.5 acre-feet per year for stock water

6 Priority Date: May 24, 1884

7 Point of Diversion: Dry Creek: 1000 feet north and 1100 feet west from  
the east quarter corner of Section 7, being within  
the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 18 N., R. 19 E.W.M.  
Wilson Creek: 700 feet north and 600 feet west from  
the center of Section 8, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 8, T. 18 N., R. 19 E.W.M.

8 Place of Use: That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7, T. 18 N.,  
R. 19 E.W.M. lying east of Dry Creek; except the  
following described parcel: Beginning at the center  
of Section 7, thence east 1023.50 feet; thence south  
544 feet; thence west 1023.50 feet; thence north 544  
feet to the point of beginning.

9 Limitations of Use: 15 acres of this right (0.30 cfs from 5/1 to 6/30 and  
0.15 cfs in April and from 7/1 to 10/15 and 45  
acre-feet per year is appurtenant to land owned by  
Dr. J. Bourdeau.

10 REPORT OF REFEREE

11 Re: Subbasin No. 9

1 CLAIMANT NAME: **Michael Kelly Moeur, Sr.** COURT CLAIM NO. 02133  
2 & **Michael Kelly Moeur, Jr.**

3 Source: Spring Creek/Yakima River

4 Use: Irrigation of 23 acres and continuous stock water.

5 Period of Use: April 1 through October 15

6 Quantity: 0.69 cubic foot per second, 161 acre-feet per year  
for irrigation, 6 acre-feet per year for stock  
watering

7 Priority Date: **May 24, 1884**

8 Point of Diversion: 400 feet south and 1000 feet west from the center of  
9 Section 24, within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 24,  
T. 17 N., R. 18 E.W.M.

10 Place of Use: That portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 25, T. 17 N.,  
11 R. 19 E.W.M., lying south and west from Spring Creek.

12 CLAIMANT NAME: **Estate of Dorothy R. Nelson** COURT CLAIM NO. 00598  
13 & **Estate of Paul Nelson**  
14 **Jeanne M. Dunning**

15 Source: Wilson Creek

16 Use: Irrigation of 75 acres

17 Period of Use: April 1 to October 31

18 Quantity: 1.50 cubic feet per second, 375 acre-feet per year

19 Priority Date: **May 24, 1884**

20 Point of Diversion: 1100 feet south and 500 feet east from the center of  
21 Section 20, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 20, ALL  
in T. 19 N., R. 19 E.W.M.

22 Place of Use: That portion of the NE $\frac{1}{4}$  of Section 29, T. 19 N., R.  
23 19 E.W.M., lying northwest of Wilson Creek.

24 REPORT OF REFEREE

25 Re: Subbasin No. 9

1 CLAIMANT NAME: **G. Jay Nelson, et al.** COURT CLAIM NO. 01866  
2 Source: Wilson Creek  
3 Use: Irrigation of 32 acres  
4 Period of Use: May 1 through October 15  
5 Quantity: 0.64 cubic foot per second from May 1 through  
June 30, 0.32 cubic foot per second in April and from  
July 1 through October 15, 160 acre-feet per year  
6 Priority Date: **May 24, 1884**  
7 Point of Diversion: 600 feet north and 500 feet east from the southwest  
corner of Section 8, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8,  
T. 18 N., R. 19 E.W.M.  
8 Place of Use: That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, T. 18 N.,  
R. 19 E.W.M., lying east of Wilson Creek Road.  
9  
10  
11  
12 CLAIMANT NAME: **Chester Vernon Stokes** COURT CLAIM NO. 02312  
13 & Roma B. Stokes  
14 Source: Wilson Creek  
15 Use: Irrigation of 20 acres and stock water  
16 Period of Use: April 15 through October 15  
17 Quantity: 0.40 cubic foot per second, 120 acre-feet per year  
for irrigation; 1 acre-foot per year for stock  
watering.  
18 Priority Date: **May 24, 1884**  
19 Point of Diversion: 500 feet north and 400 feet east of the south quarter  
corner of Section 32, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 32, T. 18 N., R. 19 E.W.M.  
20 Place of Use: That portion of Government Lot 3 of Section 5,  
T. 18 N., R. 19 E.W.M. lying east of Whiskey Creek.  
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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
28

1 CLAIMANT NAME: **Chester Vernon Stokes** COURT CLAIM NO. 02314  
2

3 Source: Dry Creek  
4

5 Use: Irrigation of 40 acres and stock water  
6

7 Period of Use: April 15 through October 15  
8

9 Quantity: 0.80 cubic foot per second, 180 acre-feet per year  
10 for irrigation; 3 acre-feet per year for stock water  
11

12 Priority Date: **May 24, 1884**  
13

14 Point of Diversion: 1. 650 feet west from the center of Section 5,  
15 within either the N $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  or the S $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
16 Section 5, T. 18 N., R. 19 E.W.M.  
17 2. 850 feet south and 800 feet west of the north  
18 quarter corner of Section 5, being within Government  
19 Lot 3 of Section 5, T. 18 N., R. 19 E.W.M.  
20

21 Place of Use: That portion of the E $\frac{1}{4}$ SW $\frac{1}{4}$  lying west of Wilson Creek,  
22 and that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  lying north of the  
23 Kittitas Reclamation District's North Branch Canal,  
24 BOTH in Section 5, T. 18 N., R. 19 E.W.M.  
25

26 CLAIMANT NAME: **Clint Swanstrum** COURT CLAIM NO. 05934  
27 & **Becky Swanstrum**  
28

Source: Dry Creek

Use: Irrigation of 10 acres

Period of Use: April 1 through October 15

Quantity: 0.20 cubic foot per second, 50 acre-feet per year

Priority Date: **May 24, 1884**

Point of Diversion: 150 feet north and 125 feet east of the Southwest  
corner of Section 5, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 5, T. 18 N., R. 19 E.W.M.

Place of Use: That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 18 N.,  
R. 19 E.W.M. lying southeast of Dry Creek

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME:

2 **Frank J. Beard**  
3 & Charlot M. Beard

4 COURT CLAIM NO. 01831

5 (A) 05373

6 Source: Naneum Creek

7 Use: Irrigation of 32 acres and stock watering.

8 Period of Use: April 1 through October 15

9 Quantity: 0.63 cubic foot per second from May 1 through  
10 June 30, 0.32 cubic foot per second in April and from  
July 1 through October 15; 160 acre-feet per year for  
irrigation; 2 acre-feet per year for stock water

11 Priority Date: **June 30, 1884**

12 Point of Diversion: 500 feet south and 600 feet east from the northwest  
corner of Section 4, being within Government Lot 4 of  
Section 4, T. 18 N., R. 19 E.W.M.

13 Place of Use: For irrigation: That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
14 Section 9, T. 18 N., R. 19 E.W.M. lying north of the  
Kittitas Reclamation District Canal. For stockwater:  
15 The NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9, T. 18 N., R. 19 E.W.M.

16 Limitations of Use: The stock water use is a year around use, however,  
17 diversion from Naneum Creek does not occur outside  
the irrigation season. The channel that is used for  
18 stock watering continues to capture return flow water  
and perhaps some natural flow during the winter  
months and livestock drink from that channel.

19 REPORT OF REFEREE

20 Re: Subbasin No. 9

1 CLAIMANT NAME: Ronald J. Freytag COURT CLAIM NO. 02232

2 Source: Wilson Creek

3 Use: Irrigation of 15.5 acres and stock water

4 Period of Use: April 1 through October 31

5 Quantity: 0.325 cubic foot per second, 77.5 acre-feet per year

6 Priority Date: June 30, 1884

7 Point of Diversion: 300 feet north and 1250 feet west from the center of  
8 Section 20, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20,  
T. 19 N., R. 19 E.W.M.

9 Place of Use: The W $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and the E $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29,  
10 T. 19 N., R. 19 E.W.M.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Myron Linder  
& Sandy Linder

COURT CLAIM NO. 00621

2 Source: Naneum Creek

3 Use: Irrigation of 63 acres

4 Period of Use: April 15 through October 15

5 Quantity: 1.30 cubic feet per second in May and June, 0.65  
6 cubic foot per second in April and July 1 through  
October 15, 315 acre-feet per year

7 Priority Date: **June 30, 1884**

8 Point of Diversion: 1300 feet north and 300 feet west of the south  
9 quarter corner of Section 16, being within the  
NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M.

10 Place of Use: The S $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, T. 18 N., R. 19 E.W.M.,  
11 except that portion described as follows: Beginning  
12 on the north boundary, 20 feet west of the northeast  
corner of the S $\frac{1}{4}$ SW $\frac{1}{4}$ ; thence S 1°35' E along the west  
13 right of way of the KRD lateral, 1,241.2 feet to a  
point on the county road; thence S 27°34' W 45.9  
feet; thence S 45°10' W 75.3 feet; thence S 53°20' W  
91.2 feet; thence S 89°17' W 184.2 feet; thence N  
4°33' W 45.1 feet; thence N 15°40' E 265.7 feet;  
thence N 1°35' E 430.5 feet; thence N 70°45' E 27.8  
feet; thence N 16°25'W 175.2 feet; thence N 14°33' E  
193.6 feet; thence N 00°13' W 68.3 feet; thence N  
50°49' W 73.5 feet; thence N 00°33' E 154.7 feet;  
thence N 85°51' east on the 1/16 section line 247.4  
feet to the point of beginning (the described  
exception is basically the land lying east of the KRD  
lateral).

26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Morrison Ranches** COURT CLAIM NO. 01264

2 Source: Wilson Creek

3 Use: Irrigation of 20 acres and stock water

4 Period of Use: April 1 through October 15

5 Quantity: 0.40 cubic foot per second in May and June, 0.20  
cubic foot per second in April and July 1 through  
October 15, 100 acre-feet per year

6 Priority Date: **June 30, 1884**

7 Point of Diversion: 50 feet south and 750 feet west from the east quarter  
corner of Section 18, within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 18, T. 19 N., R. 19 E.W.M.

8 Place of Use: That portion of the SE $\frac{1}{4}$  of Section 18, T. 19 N.,  
R. 19 E.W.M. lying between the Seaton-Johnson Ditch  
and Wilson Creek.

12 CLAIMANT NAME: **Harriett Nichols** COURT CLAIM NO. 02232

13 **Charles Rimer**  
**& Faye Rimer**

15 Source: Wilson - Naneum Creek

16 Use: Irrigation of 2.6 acres and stock water

17 Period of Use: April 1 through October 31

18 Quantity: 0.052 cubic foot per second, 13 acre-feet per year

19 Priority Date: **June 30, 1884**

20 Point of Diversion: #1 - 200 feet north and 450 feet west of the east  
quarter corner of Section 29, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$   
of Section 29;  
#2 - 650 feet south and 525 feet west from the east  
quarter corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$   
of Section 29 ALL in T. 19 N., R. 19 E.W.M.

23 Place of Use: The S $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29, T. 19 N., R. 19 E.W.M.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

2 Robert Shannon  
3 & Cathy Shannon

COURT CLAIM NO. 02232

4 Source: Wilson - Naneum Creek

5 Use: Irrigation of 6.9 acres and stock water

6 Period of Use: April 1 through October 31

7 Quantity: 0.143 cubic foot per second, 34.5 acre-feet per year

8 Priority Date: June 30, 1884

9 Point of Diversion: #1 - 200 feet north and 450 feet west from the east  
10 quarter corner of Section 29, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$   
11 of Section 29;  
12 #2 - 650 feet south and 525 feet west of the east  
13 quarter corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$   
14 of Section 29, ALL in T. 19 N., R. 19 E.W.M.

15 Place of Use: The NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  and the W $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29,  
16 T. 19 N., R. 19 E.W.M.

17 CLAIMANT NAME:

18 Don C. Smith  
19 & Jane K. Smith

COURT CLAIM NO. 02232

20 Source: Wilson Creek - Naneum Creek

21 Use: Irrigation of 38 acres and stock water

22 Period of Use: April 1 through October 31

23 Quantity: 0.78 cubic foot per second, 190 acre-feet per year

24 Priority Date: June 30, 1884

25 Point of Diversion: #1 - 650 feet south and 525 feet west from the east  
26 quarter corner of Section 29, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
27 Section 29, T. 19 N., R. 19 E.W.M.,  
#2 - 1200 feet south and 400 feet west from the east  
quarter corner of Section 29, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 29, T. 19 N., R. 19 E.W.M.

28 Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$  and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , except the W $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 29, T. 19 N., R. 19 E.W.M.

29 REPORT OF REFEREE

30 Re: Subbasin No. 9

1 CLAIMANT NAME: **James F. Carmody  
& Dorothy Carmody** COURT CLAIM NO. 00612

2 Source: Mercer Creek

3 Use: Irrigation of 3.5 acres and stock water

4 Period of Use: April 1 through October 31

5 Quantity: 0.07 cubic foot per second, 29 acre-feet per year

6 Priority Date: **May 30, 1885**

7 Point of Diversion: 850 feet south and 50 feet west from the northeast corner of Section 25, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 25, T. 18 N., R. 18 E.W.M.

8

9 Place of Use: That portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 25, T. 18 N., R. 18 E.W.M. lying south of Sanders Road and north of the Cascade Irrigation District canal.

10

11

12 CLAIMANT NAME: **Gerald French  
& Maxine French** COURT CLAIM NO. 01777

13

14 Source: Mercer Creek

15 Use: Irrigation of 32 acres and stock water

16 Period of Use: April 1 through October 15

17 Quantity: 0.64 cubic foot per second, 128 acre-feet per year for irrigation; 2 acre-feet per year for stock watering

18

19 Priority Date: **May 30, 1885**

20 Point of Diversion: 1350 feet north and 70 feet east from the center of Section 25, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25, T. 18 N., R. 18 E.W.M.

21

22 Place of Use: That portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 25, T. 18 N., R. 18 E.W.M. lying northerly of the Cascade Canal.

23 Limitations of Use: Water delivered by the Kittitas Reclamation District may also be used on this land.

24

25

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Gary Melvin Galbraith**      COURT CLAIM NO. 00778  
2 & **Jacquelyn J. Galbraith**      (A) 06178  
3  
4 Source: Wilson Creek  
5 Use: Irrigation of 2.27 acres and stock water  
6 Period of Use: April 1 to October 31  
7 Quantity: 0.045 cubic foot per second in May and June, 0.0225  
8 cfs in April and July 1 through October 15, 11.35  
9 acre-feet for irrigation; 0.5 acre-foot for stock  
10 water  
11 Priority Date: **June 30, 1885**  
12 Point of Diversion: 900 feet south and 1100 feet east from the center of  
13 Section 32, within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19  
14 N., R. 19 E.W.M.  
15 Place of Use: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N.,  
16 R. 19 E.W.M., which is bounded by a line described as  
17 follows: Beginning at the southeast corner of the  
18 SE $\frac{1}{4}$  of said Section 32, thence S 88°34'21" W, along  
19 the south boundary of said SE $\frac{1}{4}$ , 1353.22 feet to the  
20 southeast corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ ; thence N 25°06'50" W,  
21 844.90 feet to the true point of beginning; thence W  
22 434.34 feet; thence N 12°19'40" W, 157.14 feet;  
23 thence N 16°27'40" E, 366.21 feet; thence S 88°54'27"  
24 E, 377.88 feet; thence S 1°34'13" W, 497.96 feet to  
25 the true point of beginning.

26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: George Haberman COURT CLAIM NO. 00620  
2 & Ruby Haberman

Dale Haberman  
& Kathy Haberman

3 Source: Whiskey Creek  
4 Use: Irrigation of 80 acres and stock water  
5 Period of Use: April 1 through October 31  
6 Quantity: 2 cubic feet per second, 400 acre-feet per year  
7 Priority Date: June 30, 1885  
8 Point of Diversion: 500 feet north and 150 feet west from the south  
9 quarter corner of Section 32 within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 32, T. 19 N., R. 19 E.W.M.  
10 Place of Use: Government Lots 1 and 2 of Section 6, T. 18 N., R. 19  
11 E.W.M.

12 CLAIMANT NAME: Andrew J. Mills COURT CLAIM NO. 01801  
13 & Stephanie Mills

14 Source: Wilson Creek  
15 Use: Irrigation of 11.8 acres stock water  
16 Period of Use: April 1 through October 31  
17 Quantity: 0.236 cubic foot per second in May and June, 0.118  
18 cubic foot per second in April and July 1 through  
October 31, 59 acre-feet per year for irrigation; 1  
acre-foot per year for stock watering  
19 Priority Date: June 30, 1885  
20 Point of Diversion: 900 feet south and 1100 feet east from the center of  
21 Section 32, within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32,  
T. 19 N., R. 19 E.W.M.  
22 Place of Use: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 19 N.,  
23 R. 19 E.W.M., lying east of Dry Creek, EXCEPT the  
24 north 497.96 feet of the west 434.34 feet and  
right-of-way located on the south boundary.

25 REPORT OF REFEREE

26 Re: Subbasin No. 9

1 CLAIMANT NAME: **Chester Vernon Stokes** COURT CLAIM NO. 02311  
2 & Roma B. Stokes  
3 Source: Wilson Creek  
4 Use: Irrigation of 15.5 acres and stock water  
5 Period of Use: April 15 through October 15  
6 Quantity: 0.31 cubic foot per second in May and June, 0.155  
7 cubic foot per second in April and July 1 through  
October 15, 47.79 acre-feet per year for irrigation;  
1.0 acre-foot per year for stock watering.  
8 Priority Date: **September 30, 1885**  
9 Point of Diversion: 200 feet north and 450 feet west from the east  
10 quarter corner of Section 29, within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 29, T. 19 N., R. 19 E.W.M.  
11 Place of Use: That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  north of the Haberman  
12 Ditch and that portion of the W $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  west of Wilson  
Creek and east of Whiskey Creek, ALL in Section 32,  
T. 19 N., R. 19 E.W.M.  
13  
14 CLAIMANT NAME: **Wallace M. Stampfly** COURT CLAIM NO. 00462  
15 Source: Naneum Creek  
16 Use: Irrigation of 45 acres and stock water  
17 Period of Use: April 1 to October 31  
18 Quantity: 0.90 cubic foot per second in May and June and 0.45  
cubic foot per second in April and July 1 through  
October 15, 225 acre-feet per year  
19 Priority Date: **November 1, 1886**  
20 Point of Diversion: Charlton and Fleming Ditch - 400 feet south and 900  
feet west from the east quarter corner of Section 20,  
within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 20, T. 19 N.,  
R. 19 E.W.M.  
21 Place of Use: That portion of the SE $\frac{1}{4}$  of Section 28, T. 19 N.,  
R. 19 E.W.M., lying south of the Charlton-Fleming  
Ditch and north of the Keister Ditch.  
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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9  
28

1 CLAIMANT NAME:

2           **James Bridge**  
3            & Mary Bridge  
4            Cy Morgan  
5            Nick Parsel  
6            & Kim Parsel  
7            Katherine M. Rasmussen

COURT CLAIM NO. 00825

8 Source: Dry Creek

9 Use: Irrigation of 40 acres and stock water

10 Period of Use: April 1 through October 31

11 Quantity: 0.80 cubic foot per second in May and June, 0.40  
12           cubic foot per second in April and July 1 through  
13           October 31, 200 acre-feet per year

14 Priority Date: **June 30, 1887**

15 Point of Diversion: 850 feet south and 10 feet west from the northeast  
16           corner of Section 25, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
17           Section 25, T. 18 N., R. 18 E.W.M.

18 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 25, T. 18 N., R. 18 E.W.M.

19 Limitations of Use: This land also receives water delivered by the  
20           Kittitas Reclamation District

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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Estate of Naomi Charlton** & Larry L. Charlton COURT CLAIM NO. 00481

2 Source: Naneum Creek

3 Use: Irrigation of 70 acres and stock water

4 Period of Use: April 1 through October 15

5 Quantity: 1.40 cubic feet per second in May and June, 0.70 cubic foot per second in April and July 1 through October 15, 350 acre-feet per year for irrigation and 5 acre-feet per year for stock watering

6

7 Priority Date: **June 30, 1887**

8 Point of Diversion: 300 feet south and 800 feet west from the east quarter corner of Section 20, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 20, T. 19 N., R. 19 E.W.M.,

9

10 Place of Use: The NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 34, T. 18 N., R. 19 E.W.M.

11

12

13 CLAIMANT NAME: **Kayser Ranch, Inc.** COURT CLAIM NO. 00991

14 Source: Wilson-Naneum Creek

15 Use: Irrigation of 100 acres and stock watering

16 Period of Use: April 1 through October 15

17 Quantity: 2.0 cubic feet per second in May and June, 1.0 cubic foot per second in April and July 1 through October 15, 500 acre-feet per year

18

19 Priority Date: **June 30, 1887**

20 Point of Diversion: 150 feet north and 600 feet east of the west quarter corner of Section 28, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28, T. 19 N., R. 19 E.W.M.

21

22 Place of Use: The S $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 2, T. 18 N., R. 19 E.W.M.

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25

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Merton Purnell** COURT CLAIM NO. 01329  
2 Source: Wilson - Naneum Creek  
3 Use: Irrigation of 40 acres and stock water  
4 Period of Use: April 1 through October 15  
5 Quantity: 0.80 cubic foot per second from May 1 through  
June 30, 0.40 cubic foot per second in April and from  
July 1 through October 15; 160 acre-feet per year  
6 Priority Date: **June 30, 1887**  
7 Point of Diversion: 500 feet north and 200 feet east from the southwest  
corner of Section 28, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 28, T. 19 N., R. 19 E.W.M.  
8 Place of Use: That portin of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T. 18 N.,  
R. 19 E.W.M. lying west of Schnebly Creek.  
9 Limitations of Use: This land may receive water delivered by the Kittitas  
Reclamation District  
10  
11 CLAIMANT NAME: **Walter R. Stampfly** COURT CLAIM NO. 00355  
12 & **Thelma D. Stampfly**  
13 Source: Naneum Creek via the Charlton-Flemming Ditch  
14 Use: Irrigation of 30 acres and stock water  
15 Period of Use: April 1 through October 15  
16 Quantity: 0.60 cubic foot per second in May and June and 0.30  
cubic foot per second in April and July 1 through  
October 15, 150 acre-feet per year  
17 Priority Date: **June 30, 1887**  
18 Point of Diversion: 400 south and 900 feet west from the east quarter  
corner of Section 20, within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 20, T. 19 N., R. 19 E.W.M.  
19 Place of Use: The NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 27, T. 19 N., R. 19 E.W.M., lying  
south of the Charlton-Fleming Ditch.

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21 REPORT OF REFEREE  
22 Re: Subbasin No. 9

1 CLAIMANT NAME: **Frank W. Phelps** COURT CLAIM NO. 01129  
2 Source: Unnamed springs.  
3 Use: Stock watering.  
4 Period of Use: Continuously  
5 Quantity: 0.25 cubic foot per second, 2 acre-feet per year  
6 Priority Date: **December 3, 1887**  
7 Point of Diversion: POD No. 1: 50 feet south and 1300 feet east from the  
8 west quarter corner of Section 26, being within the  
NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 18 N., R. 18 E.W.M.  
9 POD No. 2: 800 feet south and 1300 feet east from  
the west quarter corner of Section 26, being within  
the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 18 N., R. 18 E.W.M.  
10 Place of Use: That portion of the W $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 18 N., R.  
11 18 E.W.M. described as follows: Beginning 30 feet  
12 south of the northeast corner of the W $\frac{1}{4}$ SW $\frac{1}{4}$  of Section  
13 26; thence S 00°41' E 1752.3 feet along the east line  
14 of the W $\frac{1}{4}$ SW $\frac{1}{4}$ ; thence S 87°35' W 311.6 feet; thence S  
15 19°48' W 373.0 feet to the north bank of the  
16 Ellensburg Water Company's canal; thence N 73°14' W  
17 7.7 feet along said canal; thence N 00°41' W 1330.7  
18 feet; thence N 89°38' E 207.0 feet; thence N 00°41' W  
19 778.1 feet to the south right of way of the County  
20 road; thence N 89°38' E along the right-of-way to the  
21 point of beginning.  
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REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME: **Schaake Packing Company** COURT CLAIM NO. 01444

2 Source: Wilson Creek

3 Use: Irrigation of 13 acres and stock water

4 Period of Use: April 1 through October 31

5 Quantity: 0.26 cubic foot per second, 55.9 acre-feet per year

6 Priority Date: **December 28, 1887**

7 Point of Diversion: 750 feet north and 1000 feet west from the southeast  
corner of Section 11, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 11, T. 17 N., R. 18 E.W.M.

8 Place of Use: That portion of the W $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 14 lying westerly of Wilson Creek and south  
and east of the feedlot, in T. 17 N., R. 18 E.W.M.

9 CLAIMANT NAME: **Le Moyne Henderson** COURT CLAIM NO. 02264  
10 **James Henderson**  
11 **& Karen Henderson**  
12 **Alice A. Henderson**

13 Source: Naneum Creek

14 Use: Irrigation of 10 acres

15 Period of Use: April 1 through October 31

16 Quantity: 0.20 cubic foot per second, 30 acre-feet per year

17 Priority Date: **April 21, 1891**

18 Point of Diversion: 500 feet south and 900 feet west from the east  
quarter corner of Section 20, within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 20, T. 19 N., R. 19 E.W.M.

19 Place of Use: That portion of the E $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 20, T. 19 N.,  
R. 19 E.W.M. lying south of the Naneum Creek Road.

20 REPORT OF REFEREE

21 Re: Subbasin No. 9

1 CLAIMANT NAME: Ron G. Carlson COURT CLAIM NO. 01832  
2 Source: Wilson - Naneum Creeks  
3 Use: Irrigation of 160 acres and stock watering  
4 Period of Use: April 1 through October 15 for irrigation; continuous  
5 for stock watering  
6 Quantity: 3.20 cubic feet per second in May and June, 1.60  
7 cubic feet per second in April and July 1 through  
8 October 15; 800 acre-feet per year for irrigation and  
stock watering; 1.60 cubic feet per second, 5  
acre-feet per year October 16 through March 31 for  
stock watering  
9 Priority Date: June 30, 1891  
10 Point of Diversion: #1 - 1050 feet north and 550 feet east from the west  
quarter corner of Section 28, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 28, T. 19 N., R. 19 E.W.M.;  
#2 - (12) 1050 feet south and 550 feet east from the  
west quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$   
of Section 28, T. 19 N., R. 19 E.W.M.  
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13 Place of Use: E $\frac{1}{2}$ E $\frac{1}{2}$  of Section 33 and the W $\frac{1}{2}$ W $\frac{1}{2}$  of Section 34, ALL in  
T. 19 N., R. 19 E.W.M.  
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REPORT OF REFEREE  
Re: Subbasin No. 9

700

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

1 CLAIMANT NAME: **Merton Purnell** COURT CLAIM NO. 01329  
2

3 Source: Wilson - Naneum Creek  
4

5 Use: Irrigation of 25 acres and stock water  
6

7 Period of Use: April 1 through October 15  
8

9 Quantity: 0.50 cubic foot per second from May 1 through  
10 June 30, 0.25 cubic foot per second in April and from  
11 July 1 through October 15; 100 acre-feet per year  
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13 Priority Date: **June 30, 1891**

14 Point of Diversion: 500 feet north and 200 feet east from the southwest  
15 corner of Section 28, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
16 Section 28, T. 19 N., R. 19 E.W.M.  
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18 Place of Use: The NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15, T. 18 N., R. 19 E.W.M.  
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20 Limitations of Use: This land may also receive water delivered by the  
21 Kittitas Reclamation District  
22

23 CLAIMANT NAME: **Lorne T. Dunning** COURT CLAIM NO. 00166  
24 & **Jeanne M. Dunning** (A) 12208  
25

26 Source: Wilson Creek  
27

28 Use: Irrigation of 70 acres  
29

30 Period of Use: April 1 to October 31  
31

32 Quantity: 1.4 cubic feet per second, 400 acre-feet per year  
33

34 Priority Date: **November 25, 1892**  
35

36 Point of Diversion: 1. 700 feet south and 200 feet east from the  
37 northwest corner of Section 20, being within the  
38 NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20,  
39 2. 300 feet north and 1250 feet west from the center  
40 of Section 20, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20,  
41

42 Place of Use: The W $\frac{1}{4}$ SE $\frac{1}{4}$  and E $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 20, T. 19 N.,  
43 R. 19 E.W.M.  
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45 REPORT OF REFEREE  
46

47 Re: Subbasin No. 9  
48

1 CLAIMANT NAME: **Lorne T. Dunning** COURT CLAIM NO. 00166  
2 & **Jeanne M. Dunning** (A) 12208

3 Source: Wilson Creek

4 Use: Irrigation of 19 acres

5 Period of Use: April 1 to October 31

6 Quantity: 0.38 cubic foot per second, 100 acre-feet per year

7 Priority Date: **December 12, 1894**

8 Point of Diversion: 350 feet north and 50 feet west from the southeast corner of Section 18, within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18, T. 19 N., R. 19 E.W.M.

9 Place of Use: That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 20, T. 19 N., R. 19 E.W.M. lying northwest of Wilson Creek.

10  
11 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
12 (A) 03119  
13 (A) 05238

14 Source: Pearson Creek

15 Use: Timber management/harvest, including road maintenance

16 Period of Use: May 1 through December 1

17 Quantity: 0.01 cubic foot per second, 1 acre-foot per year

18 Priority Date: **November 13, 1895**

19 Point of Diversion: 980 feet north and 200 feet east from the southwest corner of Section 10, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 20 N., R. 19 E.W.M.

20 Place of Use: The SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 20 N., R. 19 E.W.M.

21 REPORT OF REFEREE

22 Re: Subbasin No. 9

1 CLAIMANT NAME: **Estate of May S. Barnhart** & E. Eugene Barnhart, Jr. COURT CLAIM NO. 00708  
2 Kenneth E. Barnhart & Susan Barnhart

3 Source: Naneum Creek

4 Use: Irrigation of 39.5 acres and stock water

5 Period of Use: April 1 through October 15 for irrigation; continuous  
6 for stock water

7 Quantity: .80 cubic foot per second, 200.5 acre-feet per year  
for irrigation and stock watering April 1 to  
October 15; 0.10 cubic foot per second, 2 acre-feet  
8 per year for stock water October 16 through March 30

9 Priority Date: **June 30, 1897**

10 Point of Diversion: Adams Ditch - 150 feet north and 600 feet east from  
the west quarter corner of Section 28, within the  
SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28, T. 19 N., R. 19 E.W.M.

11 Place of Use: NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, T. 18 N., R. 19 E.W.M.

12

13 CLAIMANT NAME: **Robert G. Stewart** & Shirley D. Stewart COURT CLAIM NO. 00497

14

15 Source: Yakima River

16 Use: Irrigation of 80 acres and stock water

17 Period of Use: April 1 through October 15

18 Quantity: 3.0 cubic feet per second, 891 acre-feet per year

19 Priority Date: **June 30, 1898**

20 Point of Diversion: 300 feet north and 1200 feet east from the southwest  
corner of Section 11, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section  
21 11, T. 17 N., R. 18 E.W.M.

22 Place of Use: The E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 24, T. 17 N., R. 18 E.W.M.

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26 REPORT OF REFEREE

27 Re: Subbasin No. 9

28

1 CLAIMANT NAME: **Michael Kelly Moeur, Sr.** COURT CLAIM NO. 02136  
2 & **Michael Kelly Moeur, Jr.**

3 Source: Yakima River

4 Use: Irrigation of 117 acres and stock water

5 Period of Use: April 1 through October 15

6 Quantity: 3 cubic feet per second, 831.6 acre-feet per year for irrigation and 12 acre-feet per year for stock watering

7 Priority Date: **June 30, 1900**

8 Point of Diversion: 300 feet north and 1200 feet east from the southwest corner of Section 11, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, T. 17 N., R. 18 E.W.M.

9

10 Place of Use: That portion of the SE $\frac{1}{4}$  of Section 24 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 25, T. 17 N., R. 18 E.W.M., lying west of the Burlington Northern Railroad right of way; EXCEPT, the north 300 feet of the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  Section 24, T. 17 N., R. 18 E.W.M.

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26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Glen Armistead  
Bonnie Spurrier

COURT CLAIM NO. 01155

2 Source:

Yakima River with secondary diversion from an unnamed pond

3 Use:

Irrigation of one-half acre and fish propagation

4 Period of Use:

April 15 through October 15

5 Quantity:

0.02 cubic foot per second, 2.5 acre-feet per year

6 Priority Date:

June 30, 1902

7 Point of Diversion:

From Yakima River: 300 feet north and 1200 feet east from the southwest corner of Section 11, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, T. 17 N., R. 18 E.W.M.  
From the pond: 270 feet north and 170 feet east from the south quarter corner of Section 13, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13, T. 17 N., R. 18 E.W.M.

11 Place of Use:

That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13, T. 17 N., R. 18 E.W.M., described as follows:  
Beginning 20 feet north and 130 feet east from the south quarter corner of said section; thence east 162 feet, thence north 120 feet; thence east 110 feet; thence north 230.4 feet; thence S 82°30' W 282 feet; thence S 13°30' W 145.4 feet; thence S 64° W 40 feet to the northeasterly right of way of Highway SR 97; thence southeasterly 174 feet along the said right of way to the point of beginning (also knowns as Lot 16).

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Glen Armistead**  
2 **Bonnie Spurrier** COURT CLAIM NO. 01156  
3  
4 Source: Yakima River with secondary diversion from an unnamed  
5 pond  
6 Use: Irrigation of one-half acre  
7 Period of Use: April 15 through October 15  
8 Quantity: 0.02 cubic foot per second, 2.5 acre-feet per year  
9 Priority Date: **June 30, 1902**  
10 Point of Diversion: From Yakima River: 300 feet north and 1200 feet east  
from the southwest corner of Section 11, within the  
SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, T. 17 N., R. 18 E.W.M.  
From the pond: 270 feet north and 170 feet east from  
the south quarter corner of Section 13, within the  
SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13, T. 17 N., R. 18 E.W.M.  
11 Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13,  
T. 17 N., R. 18 E.W.M., described as follows:  
Beginning 290 feet north of the south quarter corner  
of said section; thence north 221 feet, thence east  
406 feet; thence south 132.6 feet; thence S 82°30' W  
282 feet; thence S 13°30' W 145.4 feet; thence  
S 64° W 40 feet to the northeasterly right-of-way of  
Highway SR 97; thence northwesterly 120 feet along  
said right-of-way to the point of beginning (also  
known as Lot 15).  
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REPORT OF REFEREE  
Re: Subbasin No. 9

1 CLAIMANT NAME: **Glen Armistead** COURT CLAIM NO. 01158  
2 **Bonnie Spurrier**

3 Source: Yakima River with secondary diversion from an unnamed pond

4 Use: Irrigation of one-half acre and fish propagation

5 Period of Use: April 15 through October 15

6 Quantity: 0.02 cubic foot per second, 2.5 acre-feet per year

7 Priority Date: **June 30, 1902**

8 Point of Diversion: From Yakima River: 300 feet north and 1200 feet east from the southwest corner of Section 11, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, T. 17 N., R. 18 E.W.M.  
9 From the pond: 270 feet north and 170 feet east from the south quarter corner of Section 13, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13, T. 17 N., R. 18 E.W.M.

10 Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , of Section 13, T. 17 N., R. 18 E.W.M. described as follows:  
11 Beginning 20 feet north and 292 feet east from the south quarter corner of said section; thence north 120 feet; thence east 110 feet; thence north 363 feet; thence east 100 feet; thence south 483 feet; thence west 210 feet to the point of beginning (also known as Lots 14 and 17).

12 CLAIMANT NAME: **Grace M. Menig** COURT CLAIM NO. 01202  
13 Source: Yakima River via the Tjossem and Clark Ditches

14 Use: Irrigation of 2.0 acre of lawn and garden

15 Period of Use: April 15 through October 15

16 Quantity: 0.06 cubic foot per second, 8 acre-feet per year

17 Priority Date: **June 30, 1902**

18 Point of Diversion: 300 feet north and 1200 feet east from the southwest corner of Section 11, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, T. 17 N., R. 18 E.W.M.

19 Place of Use: The north 337 feet of the west 350.6 feet of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 24, T. 17 N., R. 18 E.W.M.

## 26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Morrison Ranches** COURT CLAIM NO. 01265

2 Source: An unnamed spring

3 Use: Single domestic supply

4 Period of Use: Continuously

5 Quantity: 0.02 cubic foot per second, 0.90 acre-foot per year

6 Priority Date: **June 30, 1902**

7 Point of Diversion: 100 feet north and 1350 feet west of the center of  
Section 4, being within the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 4,  
T. 18 N., R. 19 E.W.M.

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

10 CLAIMANT NAME: **Brian Norelius** COURT CLAIM NO. 01575

11 Source: Yakima River

12 Use: Irrigation of 9 acres and stock water

13 Period of Use: April 15 through October 15

14 Quantity: 1.0 cubic foot per second, 54 acre-feet per year

15 Priority Date: **June 30, 1902**

16 Point of Diversion: 300 feet north and 1200 feet east from the southwest  
corner of Section 11, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section  
11, T. 17 N., R. 18 E.W.M.

18 Place of Use: The south 495 feet of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13,  
T. 17 N., R. 18 E.W.M., lying east of Bull Road and  
north of Tjossem Road, EXCEPT that portion described  
as follows: Beginning at a point on the east  
boundary line of said quarter/quater section which  
is 30 feet north of the center of the SE $\frac{1}{4}$  of said  
section and on the north boundary line of the right  
of way of the Tjossem County Road; thence N 0°45' W  
along the east boundary of said quarter/quater  
section 455 feet; thence N 88°35' W 287 feet; thence  
S 0°45' E 355 feet; thence S 88°33' E 117 feet;  
thence S 0°45' E 100 feet; thence S 88°33' E along  
the north boundary of said Tjossem Road 170 feet to  
the point of beginning.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Harold W. Jenkins** COURT CLAIM NO. 00930  
2 & Gladys D. Jenkins

3 Source: Whiskey Creek

4 Use: Irrigation of 35 acres and stock water

5 Period of Use: April 1 through October 15

6 Quantity: 0.70 cubic foot per second, 245 acre-feet per year  
for irrigation; 2 acre-feet per year for stock  
watering

7 Priority Date: **May 1, 1905**

8 Point of Diversion: 500 feet north and 100 feet west from the south  
quarter corner of Section 32, being within the  
 $SE\frac{1}{4}SE\frac{1}{4}SW\frac{1}{4}$  of Section 32, T. 19 N., R. 19 E.W.M.

10 Place of Use: Government Lot 4, the  $S\frac{1}{2}$  of Government Lot 3, that  
portion of Government Lot 5 north of the KRD canal  
and that portion of the southwest corner of  
Government Lot 2 lying south of the irrigation ditch,  
all in Section 6, T. 18 N., R. 19 E.W.M.

14 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
15 (A) 03119  
16 (A) 05238

17 Source: An unnamed spring

18 Use: Timber management/harvest, including road maintenance

19 Period of Use: May 1 through December 1

20 Quantity: 0.01 cubic foot per second, 1 acre-foot per year

21 Priority Date: **June 21, 1909**

22 Point of Diversion: 2470 feet north and 1400 feet west of the southeast  
corner of Section 4, being within the  $NW\frac{1}{4}SE\frac{1}{4}$  of  
Section 4, T. 20 N., R. 19 E.W.M.

23 Place of Use: The  $NW\frac{1}{4}SE\frac{1}{4}$  of Section 4, T. 20 N., R. 19 E.W.M.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
2 (A) 03119  
3 (A) 05238

4 Source: Dot Creek  
5 Use: Timber management/harvest, including road maintenance  
6 Period of Use: May 1 through December 1  
7 Quantity: 0.01 cubic foot per second, 1 acre-foot per year  
8 Priority Date: **April 25, 1910**  
9 Point of Diversion: 850 feet north and 1200 feet west of the southeast  
corner of Section 8, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 8, T. 20 N., R. 19 E.W.M.  
10 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 20 N., R. 19 E.W.M.

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26 REPORT OF REFEREE  
27 Re: Subbasin No. 9

4. All prior claims to rights for surface water from Subbasin No. 9,

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

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

9 Certificates of Surface Water Right

10 S4-23575C            S4-23578C            S4-23579C  
11 S4-23582C            S4-26125C            S4-23580C  
12 Certificate of Change, Vol. 1, Page 5  
13 Certificate of Change, Vol. 1, Page 297  
13 Certificate of Change, Vol. 2, Page 882  
13 Certificate of Change, Vol. 1-4, Page 275

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

17 IX. CONCLUSIONS OF LAW

18 Confirmation of Rights

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

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1           Duty of Water

2           Unless otherwise specified, the diversion of water from sources of water  
3         contained within Subbasin No. 9 for irrigation purposes shall be limited, at a  
4         maximum, to 1.0 cubic-foot per second for each 50 acres irrigated, not to exceed  
5         during each irrigation season, a total of 5 acre-feet per acre.

6           Irrigation Season

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

14           Certificates of Adjudicated Water Right

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

21           Administration of Water

22           The use of Subbasin No. 9 waters should be regulated by the Department  
23         of Ecology on the basis of Certificates of Adjudicated Water Rights issued as a  
24         result of this proceeding, and on the basis of any permits and certificates that

26         REPORT OF REFEREE

27         Re: Subbasin No. 9

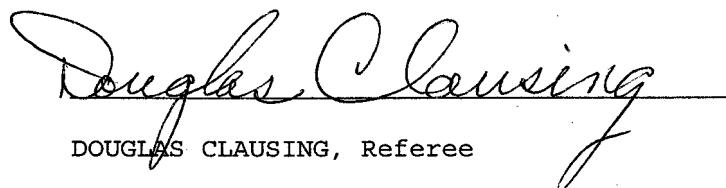
may have issued outside of this proceeding under appropriation procedures of  
1 Chapter 90.03 RCW. When available water in Subbasin No. 9 is insufficient to  
2 supply all rights, and upon a finding that regulation is required, the  
3 Department may regulate junior water rights in the interest of satisfying senior  
4 water rights.

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

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

12 As provided by Chapter 90.03.360 RCW and Chapter 508-64 WAC, any person  
13 authorized to use surface water from Subbasin No. 9 may be required to provide  
14 and maintain, at the water user's expense, proper diversion works and/or  
15 measuring devices. Design, installation, maintenance, and operation of such  
16 works and measuring devices will be as prescribed by the Department.

17 SIGNED and DATED at Yakima, Washington this 29<sup>th</sup> day of June, 2000.

18  
19   
20 DOUGLAS CLAUSING, Referee  
21  
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23  
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26

REPORT OF REFEREE  
27 Re: Subbasin No. 9