

YAKIMA RIVER BASIN

WATER RIGHTS ADJUDICATION

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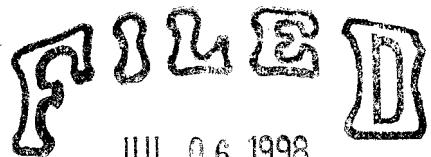
The State of Washington, Department of Ecology v.

James J. Acquavella, et al.

Yakima County Superior Court Cause No. 77-2-01484-5

SUPPLEMENTAL REPORT OF REFEREE

**Re: SUBBASIN NO. 4
(SWAUK)**

FILED 
JUL 06 1998

Submitted to:

The Honorable Walter A. Stauffacher
Yakima County Superior Court

KIM M. EATON, YAKIMA COUNTY CLERK

REPORT OF REFEREE - VOLUME 29A

13224

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

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

REPORT OF REFEREE
PURSUANT TO ORDER ON
EXCEPTIONS OF
DECEMBER 12, 1996
SUBBASIN NO. 4
(SWAUK CREEK)

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

22 The Order issued by the Court on the 12th day of December, 1996, ruled upon
23 several exceptions to the Report of Referee and remanded certain exceptions or
24 requests for clarification to the Referee, with instructions, for further
25 evaluation and subsequent recommendations to the Court.

26 The Court denied exceptions filed by Ecology requesting that the Court order
27 claimants Darrell and Mabel Clark, Court Claim No. 01087, and Del L. Holter,
28 Court Claim No. 01471, to submit "Applications for Change" to Ecology pursuant to
the requirements of RCW 90.03.380.

29 Additionally, the Court issued several orders accepting late claims filed:
30 Bernard Paul Knoll, Court Claim Nos. 12061 and 12062; Larry A. and Anna L. Smith,
31 Court Claim No. 12104; Frederick L. and Dixie S. Knoll, Court Claim No. 12110;
32 Steven A. and Karen R. Minalia, Court Claim No. 12137; Richard H. and Judy

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1 Anderson, Court Claim No. 12140; Mark K. and Michele Jones, Court Claim No. 12143
2 and Gerald R. and Barbara J. Peltola, Court Claim No. 12310.

3 Hearings, for the purpose of opening the record for testimony and evidence
4 relating to the exceptions and late claims, were conducted by the Referee
5 beginning on February 25, 1997. The Department of Ecology (Ecology) was
6 represented by Samuel Bailey and appearances were made by attorneys Craig
7 Gannett, Richard T. Cole, John P. Gilreath, Jeff Slothower, Lawrence E. Martin,
8 Thomas Pors, Dennis Dunphy and Neil J. Hoff.
9

10 CLAIMANT LIST

11 12140	Richard H. Anderson and Judy Anderson	62, 130, 139
12 01479	Mr. and Mrs. Marlyn Bateman Lookout Mountain Associates	5, 150
13 02206/(A)03119 14 (A)05238	Boise Cascade Corporation	5, 138
15 01475	Pat and Mary Burke	6, 113, 114 117, 118, 127
16 05721	Selma M. Burzenski Sheryle Bonnell and William E. Bonnell Janis G. Newbury and Paul R. Newbury	16, 124, 125, 126
18 01146	Bruce Coe	20, 118, 119 145, 151
20 01096	Columbia Cascade Land Company, Inc.	25, 149
21 00648	First Creek Water Users Association, Inc.	25, 112, 116
22 01561	Gold Placers, Inc.	43, 148
23 01789	John J. Hanson and Lila A. Hanson James A. Hanson and Susan D. Hanson	46
24 01790	John J. Hanson and Lila A. Hanson James A. Hanson and Susan D. Hanson William Hanson and Diana Hanson Michael Hanson and Ulrike Hanson	46

1	01685	Kenneth J. Hartman and Ruthie J. Hartman Donald A. Hartman and Ruth D. Hartman	48, 115, 128
2	01471	Del L. Holter	50, 123, 147
3	12061	Bernard Paul Knoll	54, 140
4	12062		
5	12143	Mark K. Jones and Michele M. Jones	62, 133
6	00163	Timothy M. Knoll	62
7	12110	Frederick L. Knoll and Dixie S. Knoll	62, 122, 137
8	06626	Lavinal Corporation	77
9	01738	Liberty Townsite	79, 117
10	12137	Steven A. Minalia and Karen R. Minalia	62, 141
11	12310	Gerald R. Peltola and Barbara J. Peltola	62, 144
12	00189	Estate of Freda L. Penkert and Wells Fargo Bank	81
13	02050		
14	02051	Wilma Preston	81, 151
15	02057	Douglas F. Sanders and Marcia H. Sanders Estate of Lester F. Sanders and Dollie C. Sanders	83, 129
16	01278	The Estate of William Siepmann and Elna Irene Siepmann	86, 146
17	12104	Larry A. Smith and Anna L. Smith	62, 131, 134
18	00970		
19	01063	Gordon C. Tang and Linda Tang	88, 119, 132
20	01064		
21	01065		
22	01066		
23	01144	Carla L. Thomas	94
24	02267	Wallace Ranch Limited Partnership	95, 120, 121 136
25			
26			
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28			

1 00519 The Estate of Paul P. Weaver 103, 132
2 and Mary B. Shelton
3 Craig N. Dickison and Therese B. Dickison
4 Mark T. Dickison
5
6 00520 Willowbrook Farms Ltd. Partnership 107
7 (A)05669

6 **SPECIAL ISSUES**

7 **Priority Date for Railroad Lands:**

8 Water rights established under the Riparian Doctrine for land that is
9 riparian to the water source being used have as their priority the date steps
10 were first taken to sever the land from Federal ownership. Frequently, when
11 claimants own land that was conveyed from the United States to a railroad
12 company, there has been little evidence offered to show when the railroad first
13 took steps to acquire the land. Often, the only date in the record is when the
14 railroad conveyed the land to an individual or the date the patent issued. The
15 Referee has used those as the priority date for riparian lands initially held by
16 the railroad.

17 Recently, the Referee has become familiar with the case Sander v. Bull,
18 76 Wash. 1, 135 Pac. 489 (1913), in which the Supreme Court ruled that the filing
19 of the map of definite location by the railroad set the priority date of riparian
20 rights established for railroad land. Some claimants in Subbasin No. 7 who filed
21 exceptions to the Report of Referee also cited to that case to support the
22 priority date they are asserting. The map of definite location for Kittitas
23 County was filed by the railroad on May 24, 1884. That is the appropriate
24 priority date for riparian rights established on lands that were held by the
25 railroad at that time and subsequently sold.

1 The Referee intends to use that date for rights being addressed in the
2 supplemental report for which exceptions were filed. However, there undoubtedly
3 are other claimants who are successors to the railroad for whom rights have been
4 recommended for confirmation who should have their priority rights adjusted.
5 Claimants can bring this to the Court's attention during the exception phase for
6 this supplemental report by filing an exception by the date designated in the
7 Notice of Hearing on Exceptions that accompanies this report. Their exception
8 should clearly state that their lands were originally held by the railroad and
9 they are seeking an adjustment on their priority date to reflect the date the map
10 of definite location was filed.

11

12 COURT CLAIM NO. 01479 -- Mr. Marilyn Bateman
13 & Mrs. Marilyn Bateman
14 Lookout Mountain Associates

15 Ecology, in their exceptions to the Report of Referee, requests correction
16 of a typographical error in the legal description on Pages 59 and 165.

17 On Page 165, Lines 14½ through 15 are amended such that the entry
18 "thence S 23°30' W 350 feet" is corrected to read "thence S 23°30' E 350 feet.
19 The identical correction is made on Page 59, Lines 15½ through 16.

20 COURT CLAIM NO. 02206 -- Boise Cascade Corporation
21 (A)03119
22 (A)05238

23 Ecology requested clarification of the point of diversion description for
24 the Boise Cascade Corporation (Boise) pump chances along that portion of First
25 Creek flowing through the S½ of Section 23, T. 20 N., R. 17 E.W.M. Although
26 Boise did not file an exception to the Report of Referee during the scheduled
27 time period, a late exception regarding the instantaneous quantity was raised

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1 during the exception hearing on September 12, 1996. The Court remanded Court
2 Claim No. 02206 to the Referee for the supplemental hearing and Boise is
3 represented by attorney Dennis J. Dunphy.

4 Boise did not object to inclusion of the words "various points of diversion
5 for pump chances" as proposed by Ecology; therefore, the Referee recommends
6 inserting the clarifying phrase on Page 160, Line 20.

7 Boise filed with Ecology a request seeking amendment of the instantaneous
8 quantity (see RCW 90.14.065) on Water Right Claim (WRC) No. 085719. Ecology has
9 approved Boise's request to change the instantaneous quantity from 5 gallons per
10 minute (gpm) to 260 gpm. The Referee initially recommended confirmation of a
11 right for 0.011 cfs due to the limited quantity of water on WRC No. 085719. As a
12 result of the amendment, the Referee recommends that the instantaneous quantity
13 confirmed for First Creek water be 0.58 cubic feet per second (cfs) instead of
14 0.011 cfs on Page 160, Line 18 and that the same adjustment be made on Page 22,
15 Line 18 of the Report of Referee. All the other conditions of the September 30,
16 1896, First Creek water right are to remain unchanged.
17

18 COURT CLAIM NO. 01475 -- Pat Burke
19 & Mary Burke

20 The Burkes filed a series of exceptions to the Report of Referee for
21 Subbasin No. 4 (Swauk Creek). The individual exceptions will be set forth
22 sequentially as the issues are analyzed. The Burkes are represented by attorney
23 Lawrence E. Martin and Pat Burke testified at the supplemental hearing.

24 The Burkes' claim for a water right for fire suppression was not recommended
25 for approval by the Referee because a water right is not required for such
26 emergency water use. Subsequent to the issuance of the Subbasin No. 4 Report of

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1 Referee, the Burkes and other claimants urged the Court to address this issue.
2 At the exception hearing on September 12, 1996, Mr. Martin filed a proposed
3 stipulation with the Court. The Court acknowledged the draft stipulation, but
4 urged Ecology and the Burkes to continue to work on specific language for a
5 stipulation. On December 12, 1996, the Court entered STIPULATION RE: WATER USE
6 FOR FIRE SUPPRESSION that defines fire suppression and establishes that water
7 rights for that purpose are not required. The Referee believes the stipulation
8 resolves the Burkes' fire suppression exception.

9 The Burkes, and their predecessors, have relied upon both diversionary and
10 riparian stock water sources since the earliest settlement of the various
11 properties encompassed within their current ownership. The appropriate
12 definition for riparian stock water sources has frequently been debated by
13 various claimants in the subbasins. The Burkes have been particularly articulate
14 on this subject, since their various ranch properties have a very diverse mix of
15 stock water sources. Obviously, grazing land is of no value if water is not
16 available for the stock. There seems to be no particular uncertainty regarding
17 diversionary stock water when a ditch or pipe conveys water away from the source
18 to the area where the stock have access to the water. The Referee therefore will
19 not pursue that topic further. On the other hand, riparian stock water sources
20 range from rivers, streams, springs, lakes, ponds and other insitu holding
21 facilities.

22 It seems safe to say that stock drinking from natural surface water bodies,
23 either flowing or standing which are riparian to the pasture or other grazing
24 area, satisfy the riparian stock water stipulation. Often the natural runoff is
25 confined to a few weeks or months and/or is diffuse to the extent that stock have
26

1 very limited access to the natural water. Ranchers have from early settlement
2 employed various techniques to enhance natural drainage features to make the
3 water more accessible to stock. Frequently a small check structure is
4 constructed across a draw and/or a shallow excavation is dug in the draw. This
5 improvement provides better access and also stores some water which would
6 otherwise dissipate or evaporate. Some excavations may penetrate into a shallow
7 aquifer which is present part of the season. The Burkes employ all of these
8 methods to provide maximum benefit from the limited available water. The volume
9 of water collected in these facilities is generally very small, although spring
10 and summer storms will likely replenish them from time to time. The Referee
11 concludes that these improved natural stock water sources are appropriate to
12 include within the riparian stock water stipulation. Water diverted into
13 troughs, tanks, ditches, ponds, etc., via a diversion and conveyance are water
14 rights which must be perfected and used based upon either the Prior Appropriation
15 or Riparian Doctrines. The Report of Referee for Subbasin No. 4 (Swauk Creek),
16 Page 38, Lines 15 through 19, is hereby amended to more fully describe the
17 applicability of the previously confirmed stock water stipulation for the Burke
18 property lying in Subbasin No. 4.

19 The Burkes took exception to the Referee's choice of wording regarding the
20 diversionary stock water right recommended for the Burke Ditch. Their concerns
21 relate to the distinction between the consumptive component and the carriage
22 water during the non-irrigation season. The Referee understands the Burke
23 position to be that the acre-feet per year recommended should equate to the
24 instantaneous quantity multiplied by the number of days water is diverted for the
25 stock water. That option would result in the following: 0.25 cfs x 89 days and

1 1.0 cfs x 62 days or a total of 106.5 acre-feet, whereas the stock require only
2 8.5 acre-feet. While reviewing the Report of Referee, an error was noted in that
3 January 15 through January 31 is not included in the season for stock water on
4 Page 33, Line 13. That error is hereby corrected so as to match the season
5 reflected on Page 155, Line 9. The Referee will also insert "consumptive use of"
6 (wording suggested by the Burkes) immediately preceding "8.5 acre-feet" on
7 Page 33, Line 13 and on Page 155, Line 9½.

8 The Burkes took exception to the Referee's recommendation for confirmation
9 of only 65 acres of irrigation through the Burke Ditch. The date of 1914
10 attributed to the ditch, based on the year it was built by Virden, is asserted to
11 be inappropriate as the priority date. This ditch has been established to be a
12 replacement ditch for the much earlier May Ditch dating from October 31, 1889.
13 Exhibits and testimony indicate that the full 98.4 acres irrigated from the Burke
14 Ditch was originally supplied by gravity flow from the May Ditch. The Referee
15 had recommended confirmation of 65 acres with a priority date of 1878 based upon
16 the riparian doctrine for the N½SE¼ and SW¼SE¼ of Section 28, T. 20 N.,
17 R. 17 E.W.M. That recommendation is revised to reflect the additional 13.4 acres
18 which appear to be irrigated within that 120 acre area and which will also have a
19 priority date of June 30, 1878. The total quantities recommended for that water
20 right are thus 78.4 acres; 588.6 acre-feet per year. No changes in the
21 instantaneous quantity, conveyance loss component or stock water quantities are
22 recommended. The Referee believes that flows somewhat higher than 2.00 cfs are
23 carried in the Burke Ditch in the spring; however, the record based upon the Bain
24 Report (DE-37) is that "an average of 2.00 cfs" is diverted. Bain's use of the
25 term "average" suggests a higher peak flow as does the original Notice of
26

Appropriation of B. K. May and the affidavits of Virden and Forbes (DE-41 and 42). Lacking definitive flow information and an exception to the recommended 2.00 cfs, the Referee will not amend the instantaneous quantity. Thus, the Report of Referee, Subbasin No. 4 (Swauk Creek), Page 155, Line 3½ and Line 7 will be amended to reflect 78.4 acres instead of 65 acres. Line 6½ is amended to reflect a total of 588.6 acre-feet for irrigation instead of 488 acre-feet. Also added is a provision regarding rotational ditch use (see below).

Testimony and exhibits presented during the supplemental hearing clarified the historic use via the former May-Burke Ditch thereby allowing the Referee to recommend a right for the upper portions of the fields. The point of diversion was above the confluence of First Creek and Swauk Creek until many years after 1917; therefore, the change of point of diversion to the Burke Ditch should have been preceded by compliance with the requirements of RCW 90.03.380. The record contains no evidence of a change authorization; therefore, the only alternative is to approve the original point of diversion.

An irrigation right with a priority date of October 31, 1889, is recommended for 20 acres lying below the May-Burke Ditch and within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, T. 20 N., R. 17 E.W.M. The instantaneous quantity, ditch loss and season are identical to the June 30, 1878, water right as the same point of diversion and ditch are used on a rotation basis. Since a second water right is being recommended, which involves use of the same point of diversion and ditch for an additional 20 acres, it will be necessary to add a provision to each of the rights reflecting alternate use of the ditch with a combined instantaneous total of 2.00 cfs. A separate stock water recommendation is not being included since the companion 1878 water right includes a full water

1 duty for the cattle carried on this portion of the Burke Ranch and the fields are
2 bisected by the same ditch. Although WRC No. 002826 and No. 158023, filed
3 respectively by Alice Burke and Pat Burke, do not describe the N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
4 Section 33, T. 20 N., R. 17 E.W.M. in the place of use for Swauk Creek water, it
5 is clear that the fields in that area are a continuation of the fields in the SE $\frac{1}{4}$
6 of Section 28 and are served by the same May-Burke ditch. The original May Ditch
7 point of diversion is not identified in a Ch. 90.14 RCW claim either; however,
8 the new diversion at the Burke Ditch is identified. The Referee therefore
9 concludes that WRC No. 002826 and/or No. 158023 substantially comply with the
10 requirements of Ch. 90.14 RCW and provide protection from relinquishment for the
11 10 acres of irrigation within the N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33 and the original May
12 Ditch point of diversion. It will be necessary for a change application to be
13 filed with Ecology per RCW 90.03.380.

14 The Burkes took exception only to the instantaneous quantity recommended for
15 the 1878 water right for the irrigation of 39.6 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
16 Section 28, T. 20 N., R. 17 E.W.M. This water right is exercised through use of
17 a partnership ditch, the Burke-Hartman Ditch. Testimony provided by Pat Burke
18 and Kenneth Hartman establish that the normal practice for at least 50 years has
19 been rotational use of the ditch between the Burkes and the Hartmans. This
20 bunching of water allows more rapid irrigation rotations and higher instantaneous
21 flow to get water over gravel bars in the head ditches and in the fields. The
22 Burkes' exception urges confirmation of a water right for their 39.6 acre field
23 in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28 north of Swauk Creek at 6.00 cfs instead of the
24 1.77 cfs recommended by the Referee. The Hartmans filed a reply to the Burke
25 exception in which they urge confirmation of the Referee's proportioned
26

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1 instantaneous flow and they question the 39.6 acres of irrigation recommended by
2 the Referee. The Hartman reply does not suggest an appropriate number of acres
3 to replace the 39.6 acres recommended and testimony provided by Kenneth Hartman
4 at the supplemental evidentiary hearing did not provide the necessary
5 clarification. The Referee will therefore retain the 39.6 acre recommendation
6 for the Burkes' share.

7 There are several reasons why the Referee recommended proportionate shares
8 of the 6.0 cfs Burke-Hartman Ditch capacity--to which Burke has not responded.
9 While it is true that a very practical rotation arrangement has been employed for
10 many years, no facts have been introduced into the record to show that a right to
11 6.0 cfs exists to support the Burkes' desire for confirmation of that quantity
12 for their 39.6 acres. In fact, Richard Bain's report (DE-37) indicates that the
13 appropriate average diversion for the Burkes' field would be 2.5 cfs. Mr. Bain
14 attributes to Pat Burke a statement that at times as much as 3.00 cfs had been
15 delivered into the Burke head ditch from the Burke-Hartman Ditch. The Referee
16 has extensively discussed all of the factual history regarding development and
17 use of the combined Burke-Hartman water rights (see Pages 29, 30, 95, 96 and 97
18 of the Report of Referee for Subbasin No. 4 (Swauk Creek) and Pages 48 through 50
19 of this supplemental report wherein the Hartman exceptions are analyzed).

20 In conclusion, the Referee recommends confirmation of the proportionate
21 instantaneous flow as contained in the Report of Referee, Volume 29. While
22 acknowledging the past practice of the Burkes and Hartmans, the Referee believes
23 that the reality of the vastly different priority dates in conjunction with the
24 often inadequate flow in Swauk Creek will ultimately cause conflicts in delivery
25 schedules. The purpose of a general adjudication is to accurately define the

1 priority and extent of each water right to provide certainty for future
2 management of the limited water resource.

3 The Burkes' exceptions regarding use of water from McCallum Spring relate to
4 augmentation of the record as to historic beneficial uses and the physical
5 characteristics of McCallum Spring. As described on Page 34 of the Report of
6 Referee, Volume 29, three Ch. 90.14 RCW claims were filed for water sources
7 located within the NW $\frac{1}{4}$ of Section 3, T. 19 N., R. 17 E.W.M. Although each of
8 those water right claims (Nos. 000185, 052951 and 158027) contain different
9 quantities, they apparently all are intended to describe McCallum Spring.

10 The spring arises near the center of the NW $\frac{1}{4}$ of Section 3 on the east side
11 of the state highway right of way. Water from the spring is piped under the
12 highway where the 2-inch pipe reduces to 1-inch pipe leading to a stock tank
13 about 300 feet westerly from the highway. Flow in excess of the 1-inch pipe
14 capacity spills into a natural draw which carries water below the stock tank into
15 an area where an old farmstead orchard still survives. The water sub-irrigates
16 the group of trees and enhances the native pasture grasses in an area of up to
17 10 acres. Before the state highway construction, some 15 to 20 years ago,
18 McCallum Spring produced more water and an estimated 18 acres of pasture
19 benefited from sub-irrigation from the spring-fed, discharge channel. Use of the
20 spring is claimed from 1887 based upon references in a biographical publication.
21 The Referee proposes to rely instead on a date of May 24, 1884, as previously
22 discussed for riparian rights on former Northern Pacific Railroad Company lands
23 (see Pages 4 through 5). McCallum Spring is riparian to the NW $\frac{1}{4}$ of Section 3 and
24 stock have riparian access to water from the spring on both sides of the highway,
25 in addition to the stock tank west of the highway. Approximately 60 pair of

1 cattle are pastured on the NW $\frac{1}{4}$ of Section 3 during peak use and cattle are
2 present to some extent year around. The testimony and photographs of the area
3 establish that diversionary irrigation use is not the historic practice from
4 McCallum Spring, whereas diversionary stock water is the historic practice. The
5 Referee therefore recommends confirmation of a diversionary stock water right of
6 0.045 cfs; 3 acre-feet per year with a priority date of May 24, 1884. The point
7 of diversion will be 1200 feet south and 1100 feet west from the north quarter
8 corner of Section 3, T. 19 N., R. 17 E.W.M. as described by the Ecology field
9 inspector. The place of use shall be that portion of the NW $\frac{1}{4}$ of said Section 3
10 lying westerly of the state highway. Stock have riparian access to McCallum
11 Spring or its outflow on both sides of the highway. A water right for irrigation
12 is not recommended since sub-irrigation does not involve perfection of a
13 diversionary water use and has consistently not been recommended for water rights
14 in the current general adjudication proceeding.

15 It appears that the Burkes intended to raise the question of applicability
16 of the Dormaier Decision (Opinion RE: Exception of Dwayne and Alvina Dormaier
17 (Claim No. 4706 Re Subbasin No. 21 (Burbank Creek)) (Dormaier) entered September
18 16, 1993, to use of McCallum Spring. Although the spring arises and dissipates
19 on the Burke property several miles from the nearest tributary of Swauk Creek,
20 other factors involved in the Dormaier analysis are lacking. The Burkes filed
21 Ch. 90.14 RCW claims on the spring, historic use has been documented for
22 diversionary stock water and a priority date has been established. In addition,
23 the irrigation benefits asserted are via sub-irrigation in a natural setting.
24 The Referee has recommended confirmation of a diversionary stock water right with

1 a May 24, 1884, priority date, which would appear to be compromised if Dormaier
2 is determined to apply.

3 The Burkes' exception to the Referee's recommendation for Dunford Spring is
4 that 10 acres are irrigated instead of the 5 acres recommended. Also, the Burkes
5 sought an opportunity to augment the record as to the physical setting and spring
6 flow, etc.

7 Diversionary stock water is supplied via pipeline to stock tanks between the
8 spring and the farmstead and domestic water was historically supplied to the home
9 until it burned. Water is still used for domestic purposes by people working in
10 the corrals. The Referee recommended confirmation of 0.01 cfs; 1 acre-foot per
11 year for stock water and 30 gpm (0.067 cfs), 28.25 acre-feet per year for
12 irrigation of 5 acres with a priority date of August 31, 1882.

13 The stock water quantities appear to be too low to serve the 100 to 200 head
14 of cattle pastured on this part of the Burke Ranch. Based on the potential
15 200 head, 0.03 cfs; 8 acre-feet are recommended for continuous stock water.

16 Use of water for irrigation is in part via sprinkler in a 1 acre area around
17 the barns and informal ditching delivers water to several acres above the
18 farmstead. The enhancement of pasture areas both north and south of the spring
19 via sub-irrigation, while of great value to the production of forage, cannot be
20 recommended for confirmation of a water right. Consistently throughout this
21 general adjudication, the Court has declined confirmation of water rights for
22 sub-irrigation. The Referee concludes that the 5 acre area recommended
23 previously is appropriate, therefore, no change in the recommendation for
24 irrigation is warranted, other than to correct the place of use description to
25 include the S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34 and to delete the E $\frac{1}{2}$ W $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said

1 Section 34. Testimony provided by Pat Burke during the supplemental hearing
2 clarified the place of use.

3
4 COURT CLAIM NO. 05721 -- Selma M. Burzenski
5 Sheryle Bonnell
6 & William E. Bonnell
7 Janis G. Newbury
8 & Paul R. Newbury

9
10 Exceptions to the Report of Referee for Subbasin No. 4 (Swauk Creek) were
11 filed with the Court by William E. and Sheryle Bonnell and Paul R. and Janis G.
12 Newbury regarding Court Claim No. 05721. Claimants Bonnell and Newbury are
13 represented by attorney Jeff Slothower and individually own portions of the
14 property to which Court Claim No. 05721 is appurtenant. Selma M. Burzenski owns
15 the remaining parcel of land associated with Court Claim No. 05721 and is
16 represented by attorney John P. Gilreath who filed separate exceptions on this
17 claim in behalf of Selma Burzenski. The respective parties seek to have the
18 Referee reevaluate the current record and to consider evidence and testimony
19 presented at the supplemental hearing. Glenn Burzenski filed Court Claim
20 No. 05721 as agent for the owners listed above and has not asserted ownership
21 interest in the property or water rights. On June 7, 1993, The Kittitas County
22 Superior Court entered Decree of Partition No. 92-2-00065-5 which defines the
23 exclusive interest of the owners who are represented by council as described
24 above. Glenn Burzenski is no longer agent for Court Claim No. 05721. The
25 Referee had declined to recommend confirmation of water rights for domestic use,
26 irrigation and diversionary stock water due primarily to questions regarding
27 quantification and priority date.

28 Claimants also seek to have Kittitas County Superior Court Decree Cause
No. 92-2-00065-5 incorporated into the Referee's recommendation since it provides

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1 detailed partitionment of the real property, including the appurtenant water
2 rights. Thus, the formerly undivided interests of the three owners are now
3 distinctly separate property interests.

4 The evidence introduced at the supplemental hearing establishes that
5 June 30, 1886, is the appropriate priority date for the former Dodge Alley water
6 right for use of Williams Creek based upon prior appropriation by early settlers
7 who preceded Alley on the property. Kittitas County Decree No. 7962 confirms
8 that Dodge Alley had progressively developed his early use of Williams Creek for
9 irrigation and had perfected an appropriative right to 65 inches miner's measure
10 with a 6-inch pressure or 0.025 cubic foot per second multiplied by 65, which
11 equals 1.625 cfs. The proportionate shares set forth by the Court Partition
12 Decree is 50% (0.813 cfs) to Selma M. Burzenski; 25% (0.406 cfs) to William E.
13 and Sheryle Bonnell; 25% (0.406 cfs) to Janis G. and Paul R. Newbury. The acres
14 irrigated on each of the three ownerships are as follows: Selma Burzenski -
15 24.5 acres; Bonnell - 15.0 acres and Newbury - 17.49 acres.

16 Mr. Bain testified to a water duty of 11.7 acre-feet per acre irrigated.
17 However, a continuous diversion of the instantaneous quantity apportioned to the
18 Bonnells and Newburys will not provide sufficient water over the irrigation
19 season to satisfy that water duty. Therefore, for those two claimants, the
20 annual water duty will be calculated based upon continuous diversion of the
21 recommended instantaneous quantity for the irrigation season of April 1 through
22 October 31. Thus, Burzenski will be recommended to receive a right for the use
23 of 286.7 acre-feet for the irrigation of 24.5 acres, based on the water duty of
24 11.7 acre-feet per acre. The Newburys will be recommended a right for
25 173.8 acre-feet for the irrigation of 17.49 acres. The Bonnells will be

1 recommended a right for 173.8 acre-feet for the irrigation of 15.0 acres. The
2 Bonnell tract includes a house, thus the small area reduction.

3 The instantaneous quantity of 1.625 cfs recognized by the Court in Kittitas
4 County Decree No. 7962 very closely matches diversion measurements taken by
5 Richard Bain during the early summer of 1991. It appears that the ditches are
6 collectively capable of diverting in excess of 1.625 cfs, the amount which the
7 Court had previously limited Dodge Alley to.

8 The Referee agrees with the claimants' argument that Ch. 90.14 RCW was
9 substantially complied with by filing WRC No. 151990 for use of Williams Creek
10 and its tributaries for irrigation purposes. The attachment to the claim
11 provides a precise legal description for the lands to which the right is
12 appurtenant and sufficient evidence has been presented to quantify the right.

13 Use of the non-diversionary spring sources for sub-irrigation and riparian
14 stock water is not covered by WRC No. 001990; however, no claim is required by
15 Ch. 90.14 RCW for these riparian uses. The question as to possible applicability
16 of the Court's Dormaier ruling to the various spring sources will therefore only
17 be addressed regarding diversionary use for the domestic supply at the home now
18 owned by the Bonnells (former Dodge Alley home). The domestic spring is
19 described as being removed from the creek channel by 200 to 300 feet and the
20 small flow dissipates near the spring box even during the winter months when the
21 supply pipe to the house is valved off. There is no Ch. 90.14 RCW claim in the
22 record for this spring and WRC No. 151900 was filed only for irrigation.
23 Recognizing the long-standing period of use and small volumes used, the Referee
24 concludes that this source does indeed meet the narrow factual standards of the
25 Dormaier Decision. Thus, the domestic spring described as being located near

1 Corner No. 11 of Homestead Entry Survey (H.E.S.) No. 161 in Section 36, T. 21 N.,
2 R. 17 E.W.M. is not public surface water within the jurisdiction of the Yakima
3 River general adjudication. No water right for diversionary use is therefore
4 recommended for this source.

5 Four points of diversion described as follows are used by the three property
6 owners to irrigate their respective parcels:

7 Point of Diversion No. 1 2145 feet east of the west quarter
8 corner of Section 31, being within the
E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ or E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31

9 Point of Diversion No. 2 1980 feet east and 60 feet north of
10 the west quarter corner of Section 31,
being within the W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31

11 Point of Diversion No. 3 1254 feet east and 100 feet south of
12 the west quarter corner of Section 31,
being within the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31

13 Point of Diversion No. 4 990 feet east and 225 feet south
14 of the west quarter corner of
Section 31, being within the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$
of Section 31

16 ALL being within T. 21 N., R. 18 E.W.M.

17 The place of use for each of the three owners are portions of H.E.S. No. 161
18 described as follows:

19 BURZENSKI: Parcels C and D of that certain survey as recorded
20 September 11, 1991, in Book 18 of Surveys at Page(s) 52-53 under
Auditor's File No. 542839, records of Kittitas County,
Washington; being a portion of Homestead Entry Survey No. 161, dated
January 19, 1927; located in the W $\frac{1}{2}$ of Section 31, T. 21 N.,
R. 18 E.W.M.

22 BONNELL: Parcel A of that certain survey as recorded September 11,
23 1991, in Book 18 of Surveys at Pages(s) 52-53, under Auditor's File
No. 542839, Records of Kittitas County, Washington; being a portion of
Homestead Entry Survey No. 161, dated January 19, 1927; located in the
E $\frac{1}{2}$ of Section 36, T. 21 N., R. 17 E.W.M. and in the W $\frac{1}{2}$ of Section 31,
T. 21 N., R. 18 E.W.M. and Parcel B-2 of the Plat Flag Mountain; a
portion of Homestead Entry Survey No. 161 located in Section 36,
T. 21 N., R. 17 E.W.M. and Section 31, T. 21 N., R. 18 E.W.M.

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1 NEWBURY: Parcels B-1, B-3 and B-4 of the Plat Flag Mountain; a
2 portion of Homestead Entry Survey No. 161 located in Section 36,
3 T. 21 N., R. 18 E.W.M. and Section 31, T. 21 N., R. 18 E.W.M. and a
4 parcel of land, containing 2 acres, more or less, located in
5 Section 31, T. 21 N., R. 18 E.W.M. and more specifically described as
6 follows: Beginning at a point which bears S 69°40' E, 733 feet from
7 the quarter section corner on the west side of Section 31, T. 21 N.,
8 R. 18 E.W.M., running thence S 54°40' W, 135.6 feet; thence
9 S 35°20' E, 200 feet; thence N 54°40' E, 435.6 feet; thence
10 N 35°20' W, 183 feet; thence S 76°5' W, 46 feet, along side a public
11 road; running thence S 54°40' W, 257 feet to the point of beginning;

12 Also, a tract of land described as follows: A strip of land 20 feet
13 in width, being 10 feet on each side of the middle line of the water
14 ditch hereinafter mentioned, beginning on the westerly line of the
15 tract above described, about 40 feet northerly from the southwesterly
16 corner of said tract and south of the channel of Williams Creek, where
17 said creek crosses the westerly line of said tract; and running thence
18 in a southerly direction, a distance of 30 rods, more or less, and to
19 the southerly side of said premises now owned by Grantor in Lot 3 of
20 said Section; said strip of land following the course of a water ditch
21 constructed during 1928 by Grantee through said premises.

22 COURT CLAIM NO. 01146 -- Bruce Coe

23 Court Claim No. 01146 was filed by Robert and Josephine Coe and exceptions
24 to the Report of Referee were filed in the name Coe Family Trust. Subsequently,
25 Bruce Coe was substituted as claimant. Essentially, Coe requests an opportunity
to supplement the record and address questions of fact raised by the Referee.
Mr. Bruce Coe, represented by attorney Lawrence E. Martin, testified in behalf of
Court Claim No. 01146 at the supplemental hearing.

26 Claimants had introduced numerous documents during the original evidentiary
27 hearing and Exhibits DE-260 through DE-267 were admitted at the supplemental
28 hearing. Before getting into the factual matters regarding water right
quantification, Exhibits DE-260, 266 and 267 need to be discussed. Exhibit
DE-260 is a patent for land lying within Section 32, T. 17 N., R. 20 E.W.M. Coe
asserts that patent is for the Benbow Homestead property which is now part of

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1 Hidden Valley Ranch. However, this patent describes land in the lower Kittitas
2 Valley, in T. 17 N., R. 20 E.W.M. NOT in T. 20 N., R. 17 E.W.M., which is the
3 location of Hidden Valley Ranch. It also appears that the homesteader was
4 William H. Binder, NOT Richard W. Benbow.

5 Exhibit DE-267 is the Marion J. Evens historical biographical and exhibit
6 DE-266 is also about Marion J. Evens. The predecessor to Coe was James M. Evans,
7 not Marion J. Evans. The Referee has concluded that the three referenced
8 exhibits are not appropriate foundation as to the historic facts relating to the
9 Coe property.

10 Ecology filed replies to exceptions filed by the Coes as to the claimants'
11 assertion of a water right for "emergent fire suppression" and to the requested
12 change in the claimants' name to reflect "The Coe Family Trust."

13 Bruce Coe has had personal knowledge of the family property on Swauk Creek
14 since at least 1972 and has been the irrigator, or assisted in ditch maintenance,
15 for many years. Testimony established that the 10 horsepower (hp), electric pump
16 located on the "reservoir" delivers Swauk Creek water to the 16 acre and 7 acre
17 fields depicted on Exhibit DE-95. These fields lie north of the pump location on
18 opposite sides of Swauk Creek and are both sprinkler irrigated. Mr. Coe
19 described the pump suction as being placed in a reservoir "sump well." The
20 reservoir which is west of Swauk Creek requires periodic excavation to clean out
21 flood debris. This pump installation was first used in 1975. The historic point
22 of diversion was located near the north property line at POD No. 1 on Exhibit
23 DE-95 and is located on Pat Burke's property in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28,
24 T. 20 N., R. 17 E.W.M. Prior to 1975, Bruce Coe testified that the 12 and
25 16 acre fields lying west of the creek were flood irrigated from POD No. 1.

1 Although the 7 acre field east of the creek has been farmed since before 1932,
2 there is no documentation in the record as to the date of first use of irrigation
3 water on that field. The record is silent as to use of this field between 1967
4 and 1975, except Ch. 90.14 RCW Claim No. 117338 asserts a Swauk Creek right for
5 irrigation of 36 acres from POD No. 1. Within the three northerly fields a total
6 of 35 acres have been and are being farmed. The 12 acre field apparently has not
7 been irrigated since 1975; however, the right associated with that field has not
8 been relinquished since the current general adjudication case was filed in 1977
9 and constitutes sufficient cause for non-use, RCW 90.14.140(1)(d). Lacking
10 details of the point of diversion for the 7 acre field, the Referee will consider
11 that the three northern fields were all irrigated from POD No. 1 prior to 1975
12 and the priority date will be May 24, 1884, based upon the Riparian Doctrine and
13 the contract purchase of the NW $\frac{1}{4}$ of Section 33, T. 20 N., R. 17 E.W.M. by
14 James M. Evans from the Northern Pacific Railroad Company. As discussed on
15 Pages 4 through 5 of this Supplemental Report, filing the map of definite
16 location on May 24, 1884, set the priority date under the Riparian Doctrine for
17 the Northern Pacific Railroad Company lands. Although WRC No. 117338 does not
18 assert a right to the full 2.5 cfs which the ditch carried, Bruce Coe explained
19 that his father apparently entered the capacity of the 10 hp, electric pump
20 instead of the ditch at peak demand. Currently, the lower two fields totaling
21 23 acres are irrigated via a pump and sprinklers at 0.54 cfs and the only method
22 available to irrigate the 12 acre, north field is POD No. 1 and the gravity
23 ditch. Historically, quantities of approximately 0.07 cfs; 7.5 acre-feet per
24 acre were required for flood irrigation and ditch loss; however, the 12 acre
25 field is nearest the head of the ditch, thus likely to require less instantaneous
26

1 quantity per acre. Although Coe did not specifically argue substantial
2 compliance for the full 2.5 cfs, the Referee will rule that Coe did substantially
3 comply with Ch. 90.14 RCW due to the historic facts regarding use and a
4 reasonable explanation for the 0.54 cfs claimed via WRC No. 117338. The quantity
5 recommended for confirmation is 1.25 cfs or half the ditch capacity for the
6 12 acre field and 0.54 cfs for 23 acres. The season of use extends from April 1
7 through October 15 and the annual quantity confirmed should be 4 acre-feet per
8 acre or 92 acre-feet per acre for 23 acres of sprinkler irrigation and
9 72 acre-feet per year for 12 acres of flood irrigation at 6.0 acre-feet per
10 acre. The place of use is within the $\text{W}_\frac{1}{2}\text{E}_\frac{1}{2}\text{NW}_\frac{1}{4}$ and the $\text{E}_\frac{1}{2}\text{W}_\frac{1}{2}\text{NW}_\frac{1}{4}$ of Section 33,
11 T. 20 N., R. 17 E.W.M. The point of diversion is being recommended at POD No. 1
12 and claimants are advised that an application for change per RCW 90.03.380 should
13 be submitted to Ecology seeking authority to use POD No. 2.

14 The Coes' exception regarding the applicability of the riparian doctrine to
15 the $\text{E}_\frac{1}{2}\text{SE}_\frac{1}{4}$ of Section 32, T. 20 N., R. 17 E.W.M. is well founded as Swauk Creek
16 cuts the southeast corner of that 80 acre parcel; therefore, the 5 acres which
17 have been historically irrigated within the $\text{SE}_\frac{1}{4}\text{SE}_\frac{1}{4}\text{SE}_\frac{1}{4}$ would have a riparian-based
18 priority date of April 9, 1901.

19 Bruce Coe testified that the ditch from POD No. 3 historically carried
20 1.5 cfs, whereas WRC No. 116936, filed on the ditch, asserts a right to 0.30 cfs
21 for irrigation of 20 acres lying within the $\text{W}_\frac{1}{2}\text{SW}_\frac{1}{4}$ of Section 33, the $\text{SE}_\frac{1}{4}\text{SE}_\frac{1}{4}$ of
22 Section 32, T. 20 N., R. 17 E.W.M. and Government Lot 1 of Section 5, T. 19 N.,
23 R. 17 E.W.M. WRC No. 116936 was completed and filed by Dr. Robert C. Coe, who
24 had little personal knowledge of the ditch capacities according to Bruce Coe's
25 testimony. Clearly, the ditch has always conveyed far in excess of the claimed

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1 0.30 cfs and the question of substantial compliance begs an answer. The Court
2 has ruled that the quantity on the face of a Ch. 90.14 RCW claim does not
3 absolutely limit the instantaneous quantity. Faced with the factual record at
4 hand, the Referee has elected to recommend confirmation of 1.5 cfs for irrigation
5 of 20 acres, 15 acres in the $W\frac{1}{2}SW\frac{1}{4}$ of Section 33 and 5 acres in the $SE\frac{1}{4}SE\frac{1}{4}$ of
6 Section 32. Mr. Coe testified that possibly as much as 32 acres had been
7 irrigated from POD No. 3, however, that number comes from a billing from a spray
8 company. Mr. Coe testified that the field contours would probably keep the
9 applicator's truck in or near the irrigated areas. In contrast to the 32 acres
10 sprayed is the 20 acres indicated on WRC No. 116936 and the field areas Mr. Coe
11 drew in on Exhibit SE-2, possibly 25 acres. Approximately five of those acres
12 lie in the $E\frac{1}{2}SW\frac{1}{4}$ of Section 33 or in Government Lot 1 of Section 5, T. 19 N.,
13 R. 17 E.W.M. The Coe family does not own the $E\frac{1}{2}SW\frac{1}{4}$ of Section 33 therefore that
14 small portion of the field has been disregarded. The record suggests that water
15 has not been delivered to the field in Government Lot 1 for many years.
16 Mr. Coe's testimony was not entirely clear; however, the record seems to indicate
17 that the Coes have not irrigated that small field during their ownership. The
18 water rights appurtenant to the 4 to 5 acres lying in Government Lot 1 of
19 Section 5 appear to have been waived and relinquished due to non-use of any right
20 which may have been appurtenant to that parcel (Ch. 90.14 RCW).
21

22 The Referee has elected to recommend a diversion location a few hundred feet
23 northeast of the point described on WRC No. 116936. The record contains at least
24 three descriptions for the actual ditch diversion with Bruce Coe's being chosen
25 for the recommendation.

26
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1 As previously discussed, the priority date under the Riparian Doctrine for
2 the 15 acres irrigated in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 33 is May 24, 1884.
3

4 COURT CLAIM NO. 01096 -- Columbia Cascade Land Company, Inc.
5

6 Ecology in its exceptions to the Report of Referee requested correction of
7 omissions in the schedule of rights for an unnamed stream on Page 162 and an
unnamed spring on Page 163.

8 The "Use" entry on Page 162, Line 13 $\frac{1}{2}$ should be "Fish propagation."
9

10 On Page 163, Line 6 $\frac{1}{2}$, the "Point of Diversion" should be "700 feet north and
11 100 feet east from the south quarter corner of Section 18, being within the
SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T. 21 N., R. 18 E.W.M."

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

14 Exceptions to the Report of Referee for Subbasin No. 4 were filed by the
15 First Creek Water Users Association (FCWUA) in behalf of its members and
separately by Neil J. Hoff, who is a member of the FCWUA. FCWUA is represented
16 by attorney Richard T. Cole. The properties of the members of the FCWUA,
17 including Neil Hoff, all lie within Subbasin No. 7 (Reecer Creek); therefore,
18 water originating in the Reecer Creek subbasin and water imported from First
19 Creek in Subbasin No. 4 (Swauk Creek) may be appurtenant to individual parcels of
20 land. The FCWUA has filed exceptions to both the Subbasin No. 4 and Subbasin
21 No. 7 Reports of Referee. Neil J. Hoff also filed an exception to the Subbasin
22 No. 4 Report of Referee and filed with the Court a late claim to water
23 originating within Subbasin No. 7, Court Document No. 12341.

24 In essence, the exception of the FCWUA relating to the Subbasin No. 7 Report
25 of Referee equates to a late claim since no assertion of water rights from
26

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1 sources in Subbasin No. 7 had been pursued by FCWUA at the initial evidentiary
2 hearings. FCWUA's claim to waters in Subbasin No. 7 will be addressed in that
3 supplemental report. Ecology filed with the Court a request for clarification
4 regarding what appear to be ministerial errors in the Subbasin No. 4 Report of
5 Referee. Those errors will be addressed in this analysis. This analysis will be
6 restricted to exceptions to the Report of Referee for Subbasin No. 4, although
7 much of the evidence and testimony presented during the supplemental hearing is
8 applicable to both Subbasins No. 4 and 7.

9 The first matter to be dealt with is Ecology's request for clarification.
10 Ecology suggests that the Referee's legal description of the FCWUA service area
11 presented on Page 61 contains an error. The portion of the description in
12 question is the Line 13 reference to part of Section 4, T. 19 N., R. 18 E.W.M.
13 which Ecology believes should read Section 5. The Referee reviewed the legal
14 description attached to Court Claim No. 00648 and found that Section 4 is
15 correct. It may be that Ecology referred to State Exhibit Map SE-2 which does
16 depict a Section 5 parcel and none in Section 4. In any case, the Referee finds
17 the legal description on Page 61 to be correct. It is of no particular
18 consequence because land as far north and east as either Section 4 or Section 5
19 is outside any possible area where First Creek water has been delivered and is in
20 fact located on a tributary to Reecer Creek.

21 Ecology correctly identifies an inconsistency between the discussion of the
22 Fanny O. Thomas portion of the Alex Munson rights (see Page 76, Line 17) and the
23 table on Page 69 which reflects the ownership interest for Thomas. The Page 76
24 reference to 35 inches and 35 acres of the November 2, 1877, right is in error
25 and should be 36.75 inches for irrigation of 36.75 acres, as reflected on Page

1 69. Thomas acquired a total of 124.25 inches of Munson's First Creek water right
2 for the irrigation of 124.25 acres. Thomas owned 160 acres (the N $\frac{1}{2}$ N $\frac{1}{2}$ of
3 Section 28, T. 19 N., R. 18 E.W.M.) of which only the west 90 acres lying west of
4 Reecer Creek appear to have been irrigated with First Creek water.

5 FCWUA asserts that the Referee is precluded from looking beyond the previous
6 Court Decrees, especially Wold and Munson vs May, Kittitas County Cause No. 784,
7 dated November 27, 1893 (DE-121). The Court in Wold and Munson vs May entered
8 its decision long before the State Water Code, Ch. 90.03 RCW, and the general
9 water rights adjudication statutes were adopted. The cause of action which the
10 Court resolved was a dispute between the named parties to use of First Creek
11 water delivered via the Wold-Munson Ditch. The Court ruled that May was
12 prohibited from interfering with any water carried in the Wold-Munson Ditch up to
13 and including the 1500 miner's inches to which Wold and Munson held prior
14 appropriative right. Claimants' argument consists of several components,
15 although their primary issue seems to be the 1500 miner's inches claimed by Wold
16 and Munson and recognized by the Court. The Referee concludes that it is
17 necessary and appropriate to evaluate the record regarding not only historic
18 beneficial use, but current beneficial use and potential relinquishment or
19 abandonment of a portion of the water right.

20 The record regarding capacity of the Wold-Munson Ditch contains only a few
21 measurements, all taken in the past several years by Richard C. Bain, consulting
22 engineer for FCWUA, or by Ecology. The highest flow measured was 13.9 cfs
23 measured by Richard Bain during June 1996, a far above average year for stream
24 discharge. The Referee proposes using 13.9 cfs (equivalent to 695 miner's
25 inches) as the maximum carrying capacity since spill over the ditch bank in
26

1 several areas occurs at this flow. It is recognized that in the spring runoff
2 some First Creek tributaries are intercepted by the Wold-Munson Ditch. According
3 to Mr. Bain, these sources are not perennial streams and the flow contribution is
4 only during early spring. Due to the ditch size in the upper several hundred
5 yards, the 13.9 cfs appears to represent the maximum that can be diverted from
6 First Creek, with some interception and several spill areas essentially
7 offsetting each other. It is interesting to note that Kittitas County Superior
8 Court Decree No. 6134, Cascal Investment Company vs Henry Washburn, et al.,
9 entered December 1, 1920, recognizes that the Wold-Munson Ditch intercepts water
10 in its course.

11 The record is somewhat contradictory regarding ditch losses, although it
12 seems certain that during periods of peak diversion at 13.9 cfs, only 10.1 cfs
13 reaches the first delivery point, the Green Canyon Ranch turnout, for a loss of
14 27% or 3.8 cfs. Mr. Bain testified that some of the loss could be avoided if
15 repair work were accomplished in areas of over topping. The current ditch loss
16 would equate to 13% to 14% per mile in the upper two miles. The next turnout,
17 which is for the Olson Ranch (White), is about $2\frac{1}{2}$ miles distant with an aggregate
18 loss of 24% of the flow past Green Canyon Ranch. Although measured loss down to
19 the Roan and Nelson turnouts was not provided, testimony suggests greater loss
20 for a given distance than in the upper ditch. It therefore appears that ditch
21 loss is at least 50% of the total diversion during periods when diversion is at
22 maximum capacity. Ditch loss during periods of lower flow has not been entered
23 into the record.

24 Although FCWUA urges reliance on the prior Court Decrees for the
25 instantaneous quantity, there is no factual record other than the decrees and
26

1 notices of appropriation which would support confirmation of a right to
2 1500 miner's inches or 30 cfs. In fact, FCWUA's testimony and evidence clearly
3 show that at least since the early 1940s the Wold-Munson Ditch capacity has been
4 similar to the current capacity. The measuring devices designed by the Soil
5 Conservation Service (SCS) in the 1940s were sized to measure a total flow of
6 12.8 cfs at the Green Canyon Ranch turnout. That design and the current farm
7 delivery weirs were based on flows of 1 miner's inch per acre irrigated with a
8 total of 640 acres/shares in the FCWUA. If water rights were ever perfected for
9 1500 miner's inches, the design capacity of the ditch since the 1940s is adequate
10 proof that the balance of the 1500 inches was abandoned. The Referee emphasizes
11 there is no proof that 1500 miner's inches were ever put to beneficial use.

12 Evidence introduced into the record in behalf of Neil Hoff during the
13 supplemental hearing for Subbasin No. 4 includes chain of title documents for the
14 Jacob Bowers' interest in the Wold water rights (Wold-Munson Ditch). This
15 evidence, which was not in the record when the initial report was written, allows
16 analysis of the extent of the Wold right transferred to other lands and much of
17 the chain of title for that water right. On May 1, 1891, Bowers purchased from
18 Peter Wold 160 acres lying within Sections 20 and 21, T. 18 N., R. 18 E.W.M.,
19 together with all of Wold's interest in the Wold-Munson Ditch and water rights.
20 The record presented in Subbasin No. 7 in behalf of Court Claim No. 06041
21 (Shore/Lind) reflects that Jacob Bowers owned other lands in 1891, including the
22 E $\frac{1}{4}$ of Section 4, T. 18 N., R. 18 E.W.M. Jacob Bowers died on December 24, 1912,
23 and on June 3, 1913, Ella V. Bowers (his widow) sold to W. W. Robinson about
24 2000 acres. Those lands did not include the Sections 20 and 21 parcel that
25 Bowers purchased from Wold. In any case, the entire Bowers interest in the Wold
26

1 half interest to the Wold-Munson Ditch was included with the 2000 acres which are
2 described as follows:

3 All of Section 9; the N $\frac{1}{2}$ of Section 8; the SE $\frac{1}{4}$ NE $\frac{1}{4}$, the E $\frac{1}{2}$ SE $\frac{1}{4}$, the
4 W $\frac{1}{2}$ SW $\frac{1}{4}$, the S $\frac{1}{2}$ NW $\frac{1}{4}$ and Lot 1, ALL in Section 4; the NE $\frac{1}{4}$ of Section 5;
and the NW $\frac{1}{4}$ of Section 3; ALL in T. 18 N., R. 18 E.W.M.

5 The E $\frac{1}{2}$ NE $\frac{1}{4}$ and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32; the SE $\frac{1}{4}$ of Section 33; and the
6 W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34, ALL in T. 19 N., R. 18 E.W.M., as described in
7 that certain quit claim deed from May L. McCoy to Henry Washburn,
dated April 25, 1933, of record in Book 53 of Deeds, Page 147, in the
office of the Kittitas County Auditor.

8 It is important to note that all of these lands lie southerly of the FCWUA
9 service area and that this change of place of use took place prior to adoption of
10 Ch. 90.03 RCW, so compliance with the change procedures was not required.
11 Subsequently, W. W. Robinson deeded (see DE-195-6) this entire 2000 acres,
12 including the Wold-Munson water right, to three parties. The shares of the water
13 right are expressed as follows: H. L. McIntyre 100/193, C. A. Morrison 73/193
14 and F. J. McKeown 20/193. This transaction did not identify the land division
15 between the three buyers, but the Referee has concluded that there was no change
16 in the place of use. The quit claim deed which documents the above transaction
17 (DE-195-6) is not a complete document. The most critical deficiencies being the
18 effective date of the transaction and the conditions agreed to. Since the water
19 right was divided by portions of 193, it seems appropriate to conclude that the
20 total irrigated acres were 193. The respective properties owned by Morrison,
21 McIntyre and McKeown are not in the record.

22 C. A. Morrison sold 73/1600 of an undivided half interest in the Wold-Munson
23 Ditch rights to Henry Washburn on October 13, 1920. The fractional reference in
24 this transaction seems to represent a ratio of Morrison's 73 acres to the
25 1600 gross acres claimed by Wold and Munson. This transaction does not describe

either lands from which the described water right was to be removed or lands to which Washburn intended to move the right. The Referee has concluded that it is more probable than not that Washburn did not change the place of use as will be addressed later in this chain of title analysis. In any case, this sale took place three years after Ch. 90.03 RCW was adopted and there is no evidence in the record that RCW 90.03.380 was complied with.

In October of 1926, McIntyre and McKeown sold to C. E. McCoy and May L. McCoy their combined 120/1600 interest in the undivided half interest of Wold's right to Wold-Munson Ditch. Up until this date, the right had apparently been appurtenant to the 2000 acres described as previously sold by Mrs. Bowers to W. W. Robinson and by Robinson to McIntyre, Morrison and McKeown. The McCoys subsequently sold this water right to Henry Washburn on April 25, 1933. As was the case in the Morrison sale to Washburn, the record is inconclusive as to whether a change in place of use was intended. If a change was intended, RCW 90.03.380 was not complied with, nor did McCoy or Washburn describe the land to which they were moving the water right.

The affidavit of Henry Washburn dated May 15, 1920 (DE-195-9), establishes that as of that date Washburn claimed no right to the waters of First Creek as delivered through the Wold-Munson Ditch. Washburn did assert a First Creek water right with a 1901 priority date as successor to Simeon Evans. Evans is reported to have constructed a point of diversion at a point on First Creek a short distance downstream from the Wold-Munson diversion and a separate diversion ditch parallel to the Wold-Munson Ditch and into Green Canyon. Kittitas County Superior Court Decree No. 6134, Cascal Investment Company vs Henry Washburn, et al., entered December 1, 1920, confirmed no water to Washburn from the

1 Wold-Munson diversion even though the Court made special reference to plaintiff
2 Morrison's interests being purchased earlier in 1920 by Washburn. The Court did
3 recognize his right to divert a certain spring into the Wold-Munson Ditch and to
4 subsequently divert a one-inch pipe of water from the ditch for his home and
5 garden. The Decree also acknowledged Washburn's use of the Simeon Evans First
6 Creek diversion and ditch to import an unspecified quantity of water into Green
7 Canyon. Due to co-mingling of the water from the two ditches in upper Green
8 Canyon, the Court required Washburn to measure his water into the common creek
9 channel and to measure out a like quantity.

10 On February 19, 1942, Washburn sold to Frank C. Reed (DE-195-13) water
11 rights described as being "appurtenant to the following described real property .
12 . ." That legal description describes the identical lands formerly owned by the
13 Bowers; i.e., the 2000 acres. This Warranty Deed also conveys as a separate
14 right to Reed all the Washburn water rights set forth in Decree No. 6134
15 (previously described) for the Green Canyon Ranch. This Water Transaction Deed
16 refers to a real property transaction dated December 24, 1941, from Washburn to
17 Frank C. Reed, which document was not included in the chain of title exhibit
18 DE-195. That document and/or others related to the Bowers ranch property would
19 no doubt resolve some of the lingering questions. Nonetheless, the Referee
20 concludes that on February 19, 1942, the Peter Wold undivided half interest in
21 the Wold-Munson Ditch water right was clearly still appurtenant to the following
22 described real property, as it had been since before 1917:

23 All of Section 9; the N $\frac{1}{2}$ of Section 8; the SE $\frac{1}{4}$ NE $\frac{1}{4}$, the E $\frac{1}{2}$ SE $\frac{1}{4}$, the
24 W $\frac{1}{2}$ SW $\frac{1}{4}$, the S $\frac{1}{2}$ NW $\frac{1}{4}$ and Lot 1, ALL in Section 4; the NE $\frac{1}{4}$ of Section 5;
and the NW $\frac{1}{4}$ of Section 3; ALL in T. 18 N., R. 18 E.W.M.

1 The E $\frac{1}{2}$ NE $\frac{1}{4}$ and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32; the SE $\frac{1}{4}$ of Section 33; and the
2 W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34; ALL in T. 19 N., R. 18 E.W.M., as described in
3 that certain quit claim deed from May L. McCoy to Henry Washburn,
4 dated April 25, 1933, of record in Book 53 of Deeds, Page 147, in the
5 office of the Kittitas County Auditor.

6 On February 24, 1943, William G. Reed, executor of the Frank Reed estate,
7 sold to Martha McLellan "Green Canyon Ranch" which included the following real
8 property:

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

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

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

27 Lot 3, Section 6, T. 19 N., R. 18 E.W.M.; EXCEPT: A tract of land
28 bounded by a line beginning at the northeast corner thereof and
29 running thence west along the north boundary line of said section
30 791 feet; thence south 395 feet; thence southeasterly parallel with
31 and 20 feet southwest of the "Bowers Ditch" 1244 feet to the east
32 boundary line of said lot; and thence north along said east boundary
33 line of said lot 1298 feet to the point of beginning;

34 The W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 7, T. 19 N., R. 18 E.W.M.; EXCEPT: A tract of land
35 bounded by line beginning at the northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
36 said section and running thence south along the east boundary line of
37 said quarter of quarter section to the north boundary line of the
38 right of way of the "Green Canyon" country road; thence northwesterly
39 along said north boundary line of said right of way to the north
40 boundary line of said section; and thence east along said north
41 boundary line of said section to the point of beginning;

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

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

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

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

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

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

15 Together with all water rights and irrigating ditches appurtenant to
16 the above described land or any part thereof, and including but not
17 limited to the water rights and irrigating ditches acquired by
Frank C. Reed under and by virtue of that certain deed, bearing date
of February 19, 1942, between Henry Washburn and Sarah Washburn, his
wife, as Grantors, and Frank C. Reed, as Grantee, which deed is
recorded in Volume 64 of Deeds, Page 544 and Volume 4 of Water Rights,
Page 443, records of Kittitas County, or otherwise acquired by
Frank C. Reed or first parties.

20 This property sale seems to confer onto Martha Mclellan all of the water
21 rights held by Reed including those confirmed through Decree No. 6134 for Green
22 Canyon Ranch and the former Wold rights as acquired by Bowers and successors.
23 This sale should have resulted in a change of place of use application as
24 required by RCW 90.03.380 for the Wold rights, but none appears to have been
25 filed. Portions of Green Canyon Ranch lie within the FCWUA service area.

1 On July 8, 1947, Mclellan sold Green Canyon Ranch to Harold L. Hull,
2 together with the water rights as acquired from Reed which included 193/1600 of
3 the Wold-Munson Ditch rights. Court Decree No. 2770, Francis C. Faulkner, et al.
4 vs James Hamilton, et al., established a water duty of 1 miner's inch under
5 4 inches of head per acre or 0.02 cfs per acre. With that formula, 3.80 cfs
6 would be the appropriate quantity of water for irrigation of 193 acres.
7 Claimants have argued that the 1 miner's inch was intended to be measured at the
8 property line, not at the First Creek diversion. The Referee agrees that is a
9 logical conclusion.

10 The next sale of Green Canyon Ranch was on September 16, 1948, from Harold
11 Hull to Earl R. Herring. This sale did not convey all of the water rights
12 described in the Reed to Mclellan deed. In fact, it appears that an undivided
13 39 inches of the "free water" out of the Wold and Munson right to 640 miner's
14 inches of water out of First Creek was conveyed to Herring in addition to "all
15 water rights and irrigation ditches." This transaction occurred after the SCS
16 measuring devices were installed on the ditch and FCWUA was incorporated based on
17 640 acres/shares. There is nothing in the record to suggest Harold Hull's
18 intention for the rest of the water rights. Again, there is no evidence of
19 compliance with the change procedures of RCW 90.03.380.

20 Earl Herring conveyed by warranty deed to Peter and Grace Smith some of
21 Green Canyon Ranch; however, the record (DE-195-17) is incomplete, lacking a
22 date, a full legal description and appurtenance provisions. In July of 1961,
23 Smith and LaCroix sold Green Canyon Ranch to Jesse W. Reeves (see DE-195-19).
24 This deed contains no reference to water rights of any kind. In 1965 Jesse
25 Reeves sold Green Canyon Ranch and a portion of Section 21, T. 19 N.,
26

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R. 18 E.W.M. to Pronghorn Cattle Company together with all water rights and ditches. Pronghorn Cattle Company in turn sold Green Canyon Ranch to Far West Industries, Inc. in January of 1970 with no reference to water rights. Far West Industries, Inc. sold to Neil J. Hoff, et al. on contract effective February 25, 1970. This contract contains no reference to water rights. Lots A4 and A5 of the survey of Green Canyon Ranch were purchased by Neil J. Hoff from the partnership together with 75% interest in the water rights held by grantors; i.e., 30 of 39 inches from the Wold-Munson Ditch. Presumably, the remaining 25% remained with the balance of the Green Canyon property.

Exhibit DE-195-18 is an October 31, 1950, deed from Harold Hull to Amos Brulotte for a parcel of land located generally within the N $\frac{1}{2}$ of Sections 27 and 28, T. 19 N., R. 18 E.W.M. including 128.5/640 of Wold-Munson water right and irrigation ditches. A portion of this water right, 122.25 inches, can be linked back to the Fanny Thomas portion of the Munson right. The Report of Referee, Page 76, Lines 13 through 16 (as previously corrected to 36.75 inches) describes the Fanny Thomas land and water right shares of the 1877 and 1881 rights. The Hull land lying within the S $\frac{1}{2}$ N $\frac{1}{2}$ of Section 28 and the N $\frac{1}{2}$ of Section 27 have not appeared in any documents in the various chain of title exhibits for the former Peter Wold water right. It therefore appears that Harold L. Hull separately conveyed 6 inches of Wold-Munson water right for which there is no apparent foundation. It should be noted that this land is now owned by James Nelson, Court Claim Nos. 00781 and 01447, who is also a patron of FCWUA and holds 128.5 shares of Wold-Munson water.

FCWUA asserts that Peter Wold and/or other unspecified owners of rights to the Wold-Munson Ditch abandoned their rights to First Creek water. While the

1 record presented to the Referee is less than complete as to the chain of title
2 for some of the portions of the Wold-Munson Ditch rights, that in and of itself
3 does not lead to a determination that rights have been abandoned. Even if
4 portions of the collective Wold-Munson rights were found to be abandoned, FCWUA
5 would need to prove that they had subsequently acquired a water right via state
6 permit through RCW 90.03.250.

7 FCWUA suggests that Peter Wold abandoned his undivided half interest in the
8 Wold-Munson Ditch and water rights. Wold sold his entire interest in that ditch
9 and attendant water rights to Jacob Bowers in 1891; therefore, no abandonment is
10 evident up to that time. In 1913 Jacob Bowers' widow, Ella V. Bowers, sold to
11 W. W. Robinson about 2000 acres of land together with the entirety of the
12 undivided half interest in the Wold-Munson Ditch as formerly owned by Peter
13 Wold. This property sale appears to be the culmination of a contract sale to
14 Henry Kleinberg who in 1909 filed a Notice of Appropriation for flood waters from
15 First Creek (see Page 63, Lines 3 through 20 of the Subbasin No. 4 Report of
16 Referee). That property sale and water right transaction predates the water
17 code; therefore, to the extent that the Wold-Munson Ditch water was beneficially
18 used on the new lands, that right was not abandoned as of 1913.

19 The Referee has concluded that the extent of the former Peter Wold water
20 rights in 1913 was 193 miner's inches for irrigation of 193 acres. The balance
21 of the rights claimed by Wold were not abandoned as there is no record that the
22 rights were ever perfected by beneficial use of First Creek water. The record
23 indicates that the Wold-Bowers 193-inch water right was the subject of numerous
24 purchase agreements periodically until recent years. It is apparent that the
25 February 19, 1942, deed from Henry Washburn to Frank C. Reed was intended to

1 clearly define what rights went with the sale of real property from Washburn to
2 Reed dated December 24, 1941. The Referee concludes that in 1942 the 193 inches
3 of Wold-Munson water right were still appurtenant to the former Bowers ranch of
4 2000 acres, although continued beneficial use of this water on these lands has
5 not been documented.

6 We are then confronted with the February 1943 sale of the the Green Canyon
7 Ranch portion of the Reed estate to Martha Mclellan with all of the Reed water
8 rights acquired, without compliance with RCW 90.03.380. Mclellan in turn sold
9 Green Canyon Ranch to Harold Hull in July of 1947 together with the water rights
10 acquired from Reed. In September of 1948, Hull sold Green Canyon Ranch to
11 Earl R. Herring together with 39 inches of "free water" out of Wold and Munson's
12 640 inches. This property sale raises a series of questions as to the water
13 rights implications. For instance, what is "free water" out of Wold and Munson
14 and is the legal basis for this water right separate from the Peter Wold derived
15 right to Wold-Munson Ditch? It is evident that the recently installed weirs on
16 the ditch as commissioned by the newly organized FCWUA were sized to deliver
17 39 inches to Green Canyon Ranch. An even more puzzling question is to what
18 property was the remaining or possibly the total 193 inches of Peter Wold right
19 appurtenant? All reference to Green Canyon Ranch water rights after this date
20 speak to 39 inches out of the Wold-Munson Ditch with the blessing of FCWUA.

21 Harold L. Hull obviously owned other land in the vicinity of the FCWUA
22 service area as he sold portions of Sections 27 and 28, T. 19 N., R. 18 E.W.M. to
23 Amos Brulotte in 1950, together with 128.5/640 of the undivided interest in the
24 Wold-Munson Ditch and including all rights to Reecer Creek water. Hull was
25 acknowledged to hold 167.5 inches of Wold-Munson water by the FCWUA on

1 October 23, 1947, and 39 inches were sold to Herring in September 1948 leaving
2 128.5 inches, which matches the Brulotte deed.

3 The N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 28, T. 19 N., R. 18 E.W.M. was included in that
4 transaction and is part of the land Fanny Thomas owned when she acquired part of
5 the Munson interest in the Wold-Munson water rights (see Page 76, Lines 13
6 through 19 of the Report of Referee for Subbasin No. 4 for a discussion of the
7 Fanny Thomas ownership and water rights). The record does not contain any
8 documents dated prior to June 1917 which show any other Wold-Munson water rights
9 for the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 28.

10 On March 5, 1965, Jesse W. Reeves sold Pronghorn Cattle Company, Green
11 Canyon Ranch, along with most of Section 21, T. 19 N., R. 18 E.W.M. This
12 property sale does not include any detail as to appurtenant water rights,
13 although the Subbasin No. 4 Report of Referee recommends confirmation of
14 192.5 inches of former Munson water rights for Section 21, T. 19 N.,
15 R. 18 E.W.M., excluding the NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said section. There
16 appears to be no chain of title documentation which would result in any of the
17 Peter Wold rights being appurtenant to Section 21.

18 The Referee concludes that lacking compliance with RCW 90.03.380, the
19 property transactions discussed above could not accomplish changes of place of
20 use. The net result is that none of the Peter Wold undivided half interest in
21 the Wold-Munson Ditch water rights can be traced to any parcel within the FCWUA
22 service area prior to adoption of the Surface Water Code of Washington and the
23 rights were not transferred through the procedures in RCW 90.03.380. Even
24 assuming that RCW 90.03.380 could prospectively be pursued, the current record is
25 highly suspect as to clear chains of title except possibly as to the 39 inches

1 transferred to Green Canyon Ranch. Although the reference to "free water"
2 delivered via Wold-Munson Ditch certainly raises a question as to what water
3 right the 39 inches might be applicable.

4 As a final issue, the Referee will consider FCWUA's assertion that the
5 rights to the full flow of First Creek water through the Wold-Munson Ditch have
6 been acquired by FCWUA through adverse possession. FCWUA cites to Lawrence v.
7 Southard, 192 Wash. 287, 73 P.2d 722, as precedent for being able to acquire
8 water rights in Washington State via adverse possession. They also contend that
9 the facts of FCWUA water right history are consistent with the facts in
10 Lawrence. The Referee respectfully disagrees in that the facts are not
11 consistent. Lawrence involved rights associated with a Federal project that were
12 established in accordance with State and Federal law, as well as interpretation
13 of a contract, and beneficial use defining the extent of a water right. The
14 water right in question had been established by 1911 and perfected through
15 beneficial use. In dicta the Court did acknowledge that the respondent had
16 enjoyed the beneficial use of the amount of water necessary to beneficially
17 irrigate the land for a period of 25 years without hindrance and by such use the
18 respondent had acquired a prescriptive right. The facts lead the Court to reach
19 that conclusion. However, the same facts are not presently before the Referee.
20

21 The facts for FCWUA are incomplete. It is clear that water rights were
22 established and First Creek water was conveyed through the Wold-Munson Ditch.
23 The extent of those rights as perfected through beneficial use have not been
24 fully established. FCWUA, while asserting that they have acquired water rights
25 by adverse possession, have not provided the evidence to prove this assertion.
26 Prescriptive rights are not favored by the law and the burden of proving the
27

1 existence of a prescriptive right is placed upon the one who would benefit. The
2 use must be open, notorious, exclusive, hostile and continuous. It must deprive
3 the owner of his right to use the water and cause damage. FCWUA has not provided
4 any evidence to show from whom they acquired the right through adverse
5 possession, that the use was open, notorious, exclusive, and hostile, or that it
6 deprived the landowner of his water and caused damage. The Referee does not know
7 what lands or owners FCWUA allegedly acted against. FCWUA's argument that they
8 have acquired a right to First Creek through adverse possession must fail.

9 Based on the preceding facts, the Referee recommends that the maximum
10 instantaneous diversion confirmed be increased from the 8.55 cfs previously
11 recommended to 13.9 cfs, which is the maximum ditch capacity near the point of
12 diversion. Of that quantity, 6.95 cfs will be confirmed to compensate for ditch
13 loss and 6.95 cfs for irrigation. The 1877 right will be recommended in the
14 quantities of 2.49 cfs for ditch loss and 2.49 cfs for irrigation of 124.5 acres
15 and stock watering. Although no evidence was presented as to the diversion rate
16 during the non-irrigation season for stock water, it seems reasonable to confirm
17 4.98 cfs, the full volume perfected under the 1877 priority date. That rate of
18 diversion should cover icing problems typically experienced in this part of the
19 Kittitas Valley and ditch loss through the very long ditch system down to the KRD
20 canal. Testimony established that approximately 700 pair of cattle are typically
21 carried on the portion of the FCWUA service area for which irrigation rights are
22 being recommended for confirmation. Recognizing that diversionary stock water
23 was confirmed by the Subbasin No. 7 Report of Referee for the Nelson Ranch, the
24 allowance for their 300 pair has been adjusted to 200 pair. The resulting

1 consumptive acre-foot total for the reduced FCWUA service area for stock water is
2 27 acre-feet per year with continuous water supply.

3 Diversion of 6.95 cfs from First Creek continuously for a 198-day irrigation
4 season (April 1 through October 15) would result in 2752 acre-feet being
5 delivered. This calculation assumes that the ditch is run full the entire season
6 at 13.9 cfs with a 50% conveyance loss. Mr. Bain's testimony establishes that
7 First Creek flows commonly decline sharply during mid to late summer to flows
8 well below 13.9 cfs. The Referee had concluded in the original report that
9 5 acre-feet per year per acre could be recommended, which is about 75 percent of
10 the volume possible if 13.9 cfs were diverted every day of the irrigation
11 season. That annual quantity appears to be reasonable given the stream flow
12 characteristics and the 50 percent ditch losses.

13 The Referee recommends that two rights be confirmed to FCWUA as follows:
14 With a November 2, 1877, date of priority, a right to divert 2.49 cfs,
15 622.5 acre-feet per year for the irrigation of 124.5 acres and 2.49 cfs for
16 conveyance loss from April 1 to October 15; 4.98 cfs, 27 acre-feet per year
17 (consumptive) for stock water from October 16 to March 31; and with a June 1,
18 1881, date of priority a right to divert 4.46 cfs, 1452.5 acre-feet per year for
19 the irrigation of 290.5 acres and 4.46 cfs for conveyance loss from April 1 to
20 October 15.

21 The Referee recommends denial of FCWUA's exceptions other than the
22 recommendations described above regarding the instantaneous quantity and
23 inclusion of stock water.

1 COURT CLAIM NO. 01561 -- Gold Placers, Inc.

2 Exceptions to the Report of Referee were filed by John P. Gilreath, attorney
3 for Gold Placers, Inc. (Gold Placers). The claimant requested an opportunity to
4 augment the record regarding the history of water use on the mining claims
5 comprising Gold Placers ownership. Del Holter testified at the supplemental
6 hearing in support of the claim.

7 Placer mining in the Liberty area dates back to 1873 and the claimant
8 asserts that prior owners of Gold Placers mining claims have used Williams and
9 Boulder Creek water from at least 1887. During the original evidentiary hearing,
10 Gold Placers chose to rely upon SWC No. 9156 as the basis for their water right
11 and no Ch. 90.14 RCW claim was identified for the mining claims now owned by Gold
12 Placers. At the supplemental hearing, the claimant asserted riparian and/or
13 appropriative rights to Williams and Boulder Creek based upon the early gravity
14 flow ditches used by the owners of the mining claims currently owned by Gold
15 Placers. Although there is considerable evidence regarding diversion of creek
16 water during the late 1880s, no water right claim filed pursuant to Ch. 90.14 RCW
17 has been identified which would have preserved any claimed right. The Referee
18 must therefore conclude that any surface water right to Williams and/or Boulder
19 Creeks, other than as set forth by SWC No. 9156, has been waived and relinquished
20 as provided by RCW 90.14.071.

21 Gold Placers has presented sufficient evidence to support a recommendation
22 for confirmation of a mining right based upon SWC No. 9156. Quantification of
23 that right will be based upon the record established by testimony of Del Holter,
24 the current operator under a mining claim management and utilization lease for
25 half of the claims owned by Gold Placers.

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1 Mining is conducted during every period of the year when severe winter
2 conditions are not a limiting factor. The season of use is therefore set as
3 March 1 through November 15 each year. In many years, the actual season will be
4 several weeks shorter due to weather conditions. Water is diverted from either
5 Boulder or Williams Creek via a $7\frac{1}{2}$ hp electric pump which has a capacity of
6 approximately 1.0 cfs open discharge into a holding pond. The current holding
7 pond is estimated to have a capacity of 1.5 acre-feet. After the pond is filled
8 in the spring, only make-up water is necessary to replace evaporative and seepage
9 losses from the otherwise non-consumptive placer mining process. The first
10 filling of the year requires a full week of pumping which would yield several
11 times over the holding pond 1.5 acre-foot capacity. Apparently, a sealing and
12 local recharge process is involved as the holding pond is reported to have
13 relatively low loss during the balance of the season (up to 400,000 gallons per
14 week of loss). The maximum season is about 35 weeks and the weekly make-up of
15 water should average about 1 acre-foot, plus 14 acre-feet for the first filling,
16 results in 49 acre-feet per year, most of which is lost to seepage and ultimately
17 returns to the creeks. The actual mining pump is diesel driven and has a far
18 higher capacity than 1.0 cfs, which is possible due to the holding pond and
19 return of the wash water to the pond.

20 Gold Placers urges confirmation of at least the 1.5 cfs authorized by
21 SWC No. 9156, although the current system for half the claims uses no more than
22 1.0 cfs from the creeks. Gold Placers has the option of mining both ends of the
23 two-mile long property at the same time, which would require more than one wash
24 plant. There was no testimony that such a scenario had ever occurred since
25 issuance of SWC No. 9156; however, the current operators do from time to time run

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1 a smaller test plant at other locations on the property while running the main
2 plant. The capacity of the pump for that plant was not entered into the record,
3 however, it is reasonable to assume that 0.50 cfs would be required for short
4 duration testing of mineral content. With this assumption, the Referee proposes
5 confirmation of the certificated 1.5 cfs, but limiting the acre-feet per year to
6 49 as discussed above. No annual quantity required for occasional testing was
7 established. The point of diversion will be moved from time to time as the
8 various claims are being mined. Therefore, the point of diversion for Boulder
9 Creek will be the creek channel at any location within the west 2000 feet of the
10 $S\frac{1}{2}SW\frac{1}{4}$ of Section 6, T. 20 N., R. 18 E.W.M. and the $SE\frac{1}{4}$, the $NE\frac{1}{4}SW\frac{1}{4}$ and the $SE\frac{1}{4}NW\frac{1}{4}$
11 of Section 1, T. 20 N., R. 17 E.W.M. For Williams Creek, the point of diversion
12 may be at any point on the creek channel within the $SE\frac{1}{4}NW\frac{1}{4}$ and $NW\frac{1}{4}SW\frac{1}{4}$ of
13 Section 1 and within the $SE\frac{1}{4}$ of Section 2, T. 20 N., R. 17 E.W.M.

14 The place of use will be defined as the $E\frac{1}{2}$ of Blackjack; Mineral Survey
15 No. 1203, Discovery and Theresa; Mineral Survey No. 343, Bigney; Mineral Survey
16 No. 1206, Elliot; Mineral Survey No. 1206, 1916; Mineral Survey No. 1159, Little
17 May; Mineral Survey No. 1159, Boulder Creek; Mineral Survey No. 1159, Nugget and
18 Gold Bar; Mineral Survey No. 1204, New Discovery; Mineral Survey No. 1205, Last
19 Chance, Golden Eagle and Snyder.

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SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4

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

1 COURT CLAIM NO. 01789 -- John J. Hanson
2 & Lila A. Hanson
3 James A. Hanson
4 & Susan D. Hanson

5 COURT CLAIM NO. 01790 -- John J. Hanson
6 & Lila A. Hanson
7 James A. Hanson
8 & Susan D. Hanson
9 William Hanson
10 & Diana Hanson
11 Michael Hanson
12 & Ulrike Hanson

13 The Hansons filed a comprehensive nine-part exception to the Report of
14 Referee for Subbasin No. 4 (Swauk Creek). John Hanson represented the family for
15 Court Claim Nos. 01789 and 01790 at the supplemental hearing on March 10, 1997,
16 providing testimony and offering exhibits in support of the claims. Much of the
17 concern expressed in the exceptions to the Report of Referee relates to the
18 narrative description used by the Referee in characterizing the historic land use
19 on the Hanson properties. It is undisputed that there is no existing spring or
20 water course on the Hanson properties or any natural ponds. Claimants Hanson are
21 not asserting a water right for any diversionary use of surface water; however,
22 they have testified and offered exhibits which demonstrate that stock water
23 collection structures have been used to enhance retention of seasonal
24 precipitation and local runoff. Also employed by the current and former owners
25 are a variety of erosion control and dryland farming practices which conserve
natural precipitation and retard runoff. The Hansons seek confirmation by the
Court of "private ownership" of all water falling on property until it leaves the
property. Ecology, in its Reply to Exceptions to the Report of Referee, Subbasin
No. 4 (Swauk Creek), requested a denial of this assertion and referred the
Referee to RCW 90.03.010 which provides that: "Subject to existing rights, all

1 waters within the state belong to the public, and any right thereto, or to the
2 use thereof, shall be hereafter acquired only by appropriation for a beneficial
3 use and in the manner provided and not otherwise; and as between appropriations,
4 the first in time shall be first in right."

5 John Hanson introduced Exhibit DE-246 which is an excerpt from the Court's
6 Memorandum Opinion RE: Return Flow Exceptions of Harry Masterson and Mary Lou
7 Masterson, Claim No. 01467 and (A)03296 Subbasin No. 3. Mr. Hanson refers the
8 Referee to Page 6 of the Court's opinion at Lines 5 and 11. The argument offered
9 is that language of the Court's opinion and case law confer absolute ownership of
10 water on personal property. The Referee respectfully submits that the referenced
11 language refers to either RCW 90.03.380 water right change procedures or to
12 capture and reuse of return flow water on lands which have an existing water
13 right. Factually, neither of those segments of the Washington water law are
14 applicable to the Hansons' arguments. The Hansons do not have an existing
15 appropriative surface water right; therefore, the change statute and capture and
16 reuse do not apply. Ecology correctly points out that RCW 90.03.010 (Surface
17 Water Code) declares that "all waters within the state belong to the public."

1 The Referee acknowledges that many matters relating to the details in the
2 Hanson exceptions and/or presented by John Hanson at the supplemental hearing are
3 not specifically addressed in this analysis. However, many of the issues raised
4 are not matters that can be addressed in this adjudication as a diversionary
5 water right is not being asserted by the claimants. John J. and Lila A. Hanson
6 are named on Page 151 of the Report of Referee as claimants with non-diversionary
7 stock water rights.

8 In summary, the exceptions submitted to the Court by the Hansons should be
9 denied as urged by Ecology and the Report of Referee confirmed as clarified in
10 this analysis.

11
12 COURT CLAIM NO. 01685 -- Kenneth J. Hartman
13 & Ruthie J. Hartman
14 Donald A. Hartman
15 & Ruth D. Hartman
16 Daniel V. Byrne
17 & Martha Wick's Byrne

18 The Hartmans, through their attorney, Jeff Slothower, filed exceptions with
19 the Court regarding the Referee's recommendations for Hartmans' Court Claim
20 No. 01685 and Court Claim No. 01475 filed by Pat and Mary Burke. Kenneth J.
21 Hartman testified at the supplemental hearing.

22 The Hartman exceptions regarding their claim relate to the number of acres
23 irrigated, the place of use description and the Referee's recommendation for a
24 separate instantaneous quantity for conveyance loss.

25 The place of use exception identifies an omission in the legal description
26 on Page 156, Lines 11½ through 12 wherein the phrase "lying southeast of the
27 county road" was intended as a qualifier. Page 156 is amended to incorporate the
28

SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4

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

1 missing words, thus reflecting the place of use as described on Page 97, Lines 2
2 and 3. Ecology requested clarification of this same legal description.
3

4 The Hartmans' exception regarding the inclusion of separate conveyance loss
5 was not pursued during the supplemental hearing; therefore, the Referee can only
6 respond to the exception in a generic manner. The Hartmans prefer that the
7 proposed water right simply include all of the instantaneous quantity under the
8 irrigation category. Their concern seems to be that the facts developed by
9 Mr. Bain for the Burkes should not be relied upon by the Referee for the Hartman
10 claim. The Referee routinely relies upon the record created by other claimants
11 if the facts presented add to the overall understanding of the use of water by
12 the affected claimants. The Burke-Hartman Ditch is used in common by the Burkes
13 and Hartmans and all of the Hartman water flows through the same main gravity
14 ditch used by the Burkes on their land lying north of Swauk Creek. Mr. Bain is
15 clearly qualified to evaluate conveyance loss values and was, in this case,
16 corroborated by work done by Ecology's hydrologist, Richard Carter. Lacking
17 testimony regarding specific errors in the data provided by Mr. Bain or a
18 challenge to his capability to conduct such evaluations, the Referee recommends
19 denial of the conveyance loss exception filed by the Hartmans.

20 The Hartmans requested an opportunity to add evidence to the record
21 regarding the question of "bunching" of the ditch water, as advocated by Burke,
22 versus the Referee's recommendation to assign proportionate shares to the
23 Burke-Hartman fields. The Hartmans support the proportionate share approach used
24 by the Referee (see Page 29 of the Pat and Mary Burke Court Claim No. 01475
25 analysis for a full discussion of the instantaneous water quantity). The Referee
26
27

1 recommends confirmation of the respective water rights based on proportionate
2 shares of the flow.

3 Kenneth Hartman testified that he believed the Burke field lying north of
4 Swauk Creek and within the SE $\frac{1}{4}$ of Section 28, T. 20 N., R. 17 E.W.M. has less
5 than the 39.6 acres recommended by the Referee. Mr. Hartman suggested that the
6 field may contain about 32 acres, although he offered no particular foundation
7 for that belief. The Burkes offered no response to Mr. Hartman's assertion
8 during their presentation regarding Court Claim No. 01475 during the supplemental
9 hearing. The Bain letter report (DE-37) establishes that the subject field
10 contains 39.6 acres. Mr. Bain relied upon the field sizes as reflected on the
11 Soil Conservation Service farm plan for the Burke property. Lacking definitive
12 evidence which brings into question this data, the Referee continues to recommend
13 confirmation of the proposed 39.6 acres to the Burkes.
14

15 COURT CLAIM NO. 01471 -- Del L. Holter

16 Del Holter, successor in interest to Jacob J. Kirsch, for Court Claim
17 No. 01471, filed exceptions with the Court regarding the Subbasin No. 4 (Swauk
18 Creek) Report of Referee. Mr. Holter requested an opportunity to augment the
19 record, especially as to use of water from Williams Creek. Del Holter appeared
20 at the supplemental hearing for Subbasin No. 4 on March 11, 1997, representing
21 himself and the domestic water users connected to the Jacob Kirsch spring.

22 The Referee erroneously concluded that the water source authorized for use
23 by SWC No. 8286 was shallow ground water. Testimony provided by Mr. Holter
24 clearly establishes that the buried collection system is designed to intercept
25 spring water via infiltration to maintain a potable water supply. The yield of
26 the spring varies significantly with the precipitation and season of the year.

1 As much as the allocated 0.04 cfs can be delivered to the four homes now
2 receiving water; however, as little as 1 gpm may be available during drought
3 years. SWC No. 8286 was perfected with four home sites receiving water and
4 limited mining uses were also perfected by Mr. Kirsch. In 1985 Mr. Kirsch
5 identified six individuals who had an interest in SWC No. 8286 as follows:
6 Jacob J. Kirsch, William Drager, Charles Liecke, Calvin Arndt, George Roach and
7 Jack Pickard. Mr. Holter testified that the current active connections are
8 Jacob J. Kirsch, Del Holter, George Roach and Jack Pickard with two or three
9 agreements for future connections. It appears that the homesites are all small
10 parcels sold by Jacob J. Kirsch, being portions of the Blackjack placer claim.
11 The Referee concludes that, although SWC No. 8286 does not specify the number of
12 domestic supplies, the limit should be no more than the current four homes which
13 appear to have been supplied since at least 1985, but more likely from the early
14 1960's. SWC No. 8286 also does not define the annual quantity of water. It is
15 clear that some gardening is accomplished; therefore, 1 acre-foot per home will
16 be recommended.

17 Water for mining from the spring seems to have been discontinued in the last
18 few years as Mr. Kirsch has turned the mining operation over to Del Holter. That
19 recent non-use has not resulted in relinquishment of the 0.03 cfs granted by
20 SWC No. 8286 for mining (see RCW 90.14.140(1)(d)). Testimony seems to indicate
21 that the total of 0.04 cfs granted by SWC No. 8286 is diverted during periods of
22 each year, but mining is not a current use. No record exists as to the annual
23 quantities perfected for mining, however, the inference is that it was for
24 sporadic panning, not for a high demand operation. Lacking a definite quantity,
25
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1 the Referee will use a figure of 2 acre-feet per year for mining and 4 acre-feet
2 per year for domestic supply.

3 It became apparent during review of the legal description of the place of
4 use for SWC No. 8286 that it contains an error. The inclusion of the
5 "SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ " limits the area to 2 $\frac{1}{4}$ acres, whereas the parcel described is
6 somewhat in excess of 10 acres. The Referee will therefore use the following
7 corrected legal description:

8 All of that portion of Blackjack Placer Mine, designated as
9 Survey No. 1203, located in Section 2, T. 20 N., R. 17 E.W.M. which is
10 described as follows: Commencing at corner No. 1, from which the
11 south quarter corner of said section bears south 46°29' east
12 421.22 feet distant, and running thence north 16°25' west 599.5 feet
13 to corner No. 2, thence north 63°25' east 727.3 feet; thence southerly
14 to a point in the southerly boundary line which is 702 feet
northeasterly from corner No. 1, measured along said south boundary
line; and thence south 62°15' west, along said south boundary line,
702 feet to the point of beginning, EXCEPT: 1. Easement for right of
way for logging railway over a strip 75 feet in width, conveyed to
Cascade Lumber Company by 57 of Deeds, Page 11. 2. Easement for
county road as conveyed by 58 of Deeds, Page 384.

15 Due to the clerical error, the Referee has recommended a corrected place of
16 use instead of suggesting that the RCW 90.03.380 change of place of use process
17 be followed.

18 The point of diversion from the unnamed spring is approximately 100 feet
19 south and 200 feet west of the center of Section 2, T. 20 N., R. 17 E.W.M.

20 The historic use of water from Williams Creek for mining was via a gravity
21 ditch which had a point of diversion located about 1660 feet west and 1730 feet
22 north of the southeast corner of Section 2, T. 20 N., R. 17 E.W.M. being within
23 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said section. The flume section of that ditch was destroyed by
24 1988 as a result of lack of maintenance. Water use since 1988 has been via
25 pumping from the creek. The record indicates that this ditch served mining

1 claims in the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 2 and probably in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 from the
2 late 1880's on. Mining activity has greatly diminished over that time; however,
3 it appears that no period exceeding five years of non-use occurred between 1967
4 and 1977 on the Kirsch claim. However, it appears that water use for mining this
5 claim ended at least by the early 1970s. The significance of those dates is that
6 the relinquishment statutes of Ch. 90.14 RCW were adopted in 1967 and 1977 is the
7 year the Yakima River Basin general adjudication was filed, which served as a
8 sufficient cause for any periods of non-use from 1977 up to the current time (see
9 RCW 90.14.140.160).

10 Jacob Kirsch filed WRC No. 095335 in 1974, thereby preserving any right to
11 water from Williams Creek for mining purposes on his property. Although 1.0 cfs
12 was claimed for the Kirsch mining properties, the assertion of Del Holter is that
13 the current 2 hp electric pump is sufficient to fill a holding pond and to
14 provide makeup of water during mining operations each season and 1 acre-foot for
15 garden irrigation. The pump yields 750 gallons per hour (gph) or approximately
16 0.03 cfs. During an 8-month mining season, 14 acre-feet could be pumped if the
17 pump were not shut off. It seems likely that operation of the creek pump would
18 not exceed 50% of the entire season, or 7 acre-feet per year.

19 Mr. Kirsch referred to a Notice of Appropriation posted by J. C. Pike on
20 May 29, 1886, for the waters of Swauk and Williams Creeks. A copy of that notice
21 is attached to Court Claim No. 01471.

22 The change of point of diversion to the pump on the southwest corner of the
23 Blackjack claim apparently was accomplished in the 1980s without compliance with
24 RCW 90.03.380, Ecology's change procedure. Therefore, the Referee will recommend
25 confirmation of a right to Williams Creek from the original gravity flow point of
26

1 diversion located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2. Mr. Holter is advised that he
2 needs to file an application for change of point of diversion with Ecology to
3 seek authorization for the current pump location. A right is recommended with a
4 May 29, 1886, date of priority for the diversion from Williams Creek of 0.03 cfs;
5 6 acre-feet for mining and 1 acre-foot for irrigation of less than 0.5 acre of
6 lawn and garden.

7 The Referee recommends that SWC No. 8286 be rescinded, cancelled or
8 otherwise made null and void by Ecology after confirmation by the Court of the
9 right recommended herein.

10 COURT CLAIM NO. 12061 -- Bernard Paul Knoll
11 12062

12 On December 5, 1996, Bernard Paul Knoll filed Statement of Claim Nos. 12061
13 and 12062 with the Court, each asserting a water right from Williams Creek. On
14 February 13, 1997, the Court accepted the two late claims for further processing
15 in this adjudication and referred them to the Referee. The Referee scheduled
16 Court Claim Nos. 12061 and 12062 for presentation at the supplemental evidentiary
17 hearing for Subbasin No. 4 (Swauk Creek). Mr. Knoll represented himself during
18 that hearing and presented evidence and testimony.

19 A total of five patented placer mining claims are in the immediate vicinity
20 of the Bernard Knoll property north and east of the Liberty Townsite. From north
21 to south those claims are Louis Queitsch, Big Nugget, Gold Bar, Fourth of July
22 and Jumbo. These claims encompass portions of the S $\frac{1}{2}$ of Section 36, T. 21 N.,
23 R. 17 E.W.M. and the N $\frac{1}{2}$ of Section 1, T. 20 N., R. 17 E.W.M. Portions of The
24 Fourth of July, Big Nugget and Gold Bar claims are within the Joe Cromarty Short
25 Plat No. 77-05, which has four lots.

26
27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 4

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

1 Bernard Knoll owns Lot 4 of Joe Cromarty Short Plat No. 77-05, which lies
2 within the E $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M. and that portion of the
3 NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T. 20 N., R. 17 E.W.M. lying between the Old and New
4 Williams Creek Roads.

5 Lot 4 contains portions of Fourth of July and Gold Bar mining claims and has
6 a gross area of 12.09 acres. A right is being asserted to irrigate 7 of those
7 acres. Although points of diversion "A" and "B" are claimed as diversions from
8 Williams Creek, the method of irrigation described by Bernard Knoll appears to be
9 predominantly sub-irrigation from the respective ditches or from local runoff and
10 underground seepage. Mr. Knoll testified that between 20 and 100 head of cattle
11 are and have historically been grazed on the property. Apparently, a previous
12 owner (Pettigrew) used this property as the winter feeding area for his herd of
13 100 cattle.

14 Considerable testimony provided by Bernard Knoll related to a wetland area
15 of some 1 $\frac{1}{2}$ to 2 acres in size and trees adjacent to that wetland which benefit
16 from subsurface seepage from the ditch emanating from point "A." Point of
17 diversion "A" is located approximately 1580 feet north and 130 feet east of the
18 south quarter corner of Section 36, within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, which is
19 about 700 feet upstream of the Knoll property. Uses of water and annual
20 quantities for which water rights are claimed by Bernard Knoll from point "A"
21 are: domestic supply, 5 acre-feet per year; stock water, 10 acre-feet per year;
22 mining, 40 acre-feet per year and irrigation of 5 acres, 50 acre-feet per year
23 plus water for fire control. Uses of water claimed from point "B" total
24 42 acre-feet per year for irrigation of 2 acres. Point of diversion "B" is

1 located approximately 110 feet north and 450 feet west of the quarter corner of
2 Section 36, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, within the Knoll property.

3 Both of these points of diversion are asserted to have a priority date of
4 1908 based upon facts contained in Mineral Survey No. 910 (DE-278). This survey
5 was conducted between 1907 and 1909 and provides extensive detail of the level of
6 development on the five mining claims included in the survey (which are the five
7 around, and partly within, the Knoll property). The survey appears to have been
8 a required step prior to the Federal government issuing patents for the mining
9 claims. As part of the survey, the federal mineral surveyor, Ernest I. Anderson,
10 prepared maps of the five placer claims which include the ditches and points of
11 diversion he observed between December 16, 1907, and January 21, 1909.

12 It is interesting that in 1909 the ditch fed from point "A" did not extend
13 beyond the center of Big Nugget Placer where two mine shafts had been
14 constructed. Point "B" and the associated southwesterly trending ditch through
15 Gold Bar and Fourth of July Placers was in existence on the west side of Williams
16 Creek. Less than 200 feet downstream of point "B," a diversion on the east side
17 of the creek fed water into a south and southwesterly trending ditch which passed
18 through the middle of Gold Bar, Fourth of July and Jumbo Placers terminating at
19 the complex of shafts and tunnels near the southwest corner of Jumbo Placer.

20 All of the shafts and tunnels were constructed years before Mineral
21 Survey 910, as the workings were reported in the survey as generally in disrepair
22 having long since been neglected. The Referee concludes that these various
23 ditches were no doubt constructed coincident with the earliest mining on these
24 four claims. The filing date for the Gold Bar placer claim was January 1, 1898,
25 thus the priority date recommended (see discussion on Page 63). This early

1 water use was obviously for mining; however, horses were used on the claims and
2 domestic water would have been needed. Use of water for irrigation must have
3 evolved as timber was cut for homes and buildings as well as timbers for the
4 shafts and tunnels.

5 In 1909 the federal mineral surveyor observed 12 to 15 acres of meadow
6 served by ditches in the northwest portion of Jumbo and the central areas of
7 Fourth of July and Gold Bar Placers. The ditches which could have served this
8 portion of the three claims are point "B" as previously described and a ditch
9 diversion below "B" and on the east side of Williams Creek. This latter point of
10 diversion appears to have been very near the location of the wetland described by
11 Bernard Knoll. This ditch would not have been useful on Bernard Knoll's property
12 for more than a fraction of an acre lying northwest of the old Williams Creek
13 Road and east of Williams Creek. No claim is apparently being asserted by any
14 party to this old point of diversion which may have served 8 to 10 acres of
15 pasture area below Bernard Knoll's Lot 4.

16 Diversion point "B" was mapped as being very nearly on the north line of
17 Gold Bar Placer, with a ditch running southwest a short distance west of the Old
18 Williams Creek Road. That location would preclude use on more than an acre of
19 Lot 4 of the Cromarty Short Plat of which part is wooded (DE-289, 1993 aerial
20 photo). These ditches are described by the surveyor as small--the westerly ditch
21 (Point "B") being about 1 x 0.5 feet in cross section (see 10th paragraph of
22 "Report Mineral Survey 910").

23 The ditch leading from point "B" may have supplied irrigation water to
24 7.5 acres west of Williams Creek on the Gold Bar, Fourth of July and Jumbo
25 Placers (DE-289, 1993 aerial photo). Of this area, the claimants Gerald R. and
26

1 Barbara J. Peltola, Richard H. and Judy Anderson, Mark K. and Michele M. Jones
2 and Larry A. and Anna L. Smith are asserting rights to 6.5 acres (see Pages 62
3 through 77 of this Supplemental Report of Referee for discussion of their
4 claims). In addition, Bernard Knoll is claiming a right to irrigation water
5 diverted through point "B."

6 Although Bernard Knoll offered extensive testimony and a number of documents
7 and photographs which are in the record, the lands west of Williams Creek for
8 which an irrigation claim is made are almost entirely upslope from point "B" and
9 the ditch and could not be served by gravity flow. Mr. Knoll claims two acres of
10 irrigation from point "B," whereas no more than 1 acre of pasture appears to lie
11 below the ditch, between it and Williams Creek. There is no record of historic
12 irrigation above the ditch; however, Mr. Knoll did mention plans for future
13 pumping to irrigate an area of about 2 acres of recently cleared and planted
14 pasture lying above the ditch. His testimony did not contain historic or current
15 facts regarding either the instantaneous or annual water quantities diverted for
16 Lot 4.

17 The purpose of a general adjudication is to determine the priority date and
18 extent of all preexisting rights, not to allocate water for future uses or to
19 establish new water rights of any kind (see RCW 90.03.110-.240). Lacking a clear
20 statement as to the acres historically irrigated below the ditch emanating at
21 point "B," the Referee has relied on aerial photograph (DE-289) to estimate the
22 pasture area lying between Williams Creek and ditch "B." That area appears to be
23 about 1 acre.

24 WRC No. 00599 filed by George L. Johnson pursuant to Ch. 90.14 RCW relates
25 to use of Williams Creek water from point "B," and asserts a right to use
26

1 1.5 cfs; 150 acre-feet per year for irrigation of 10 acres, domestic supply,
2 household irrigation and stock water. The place of use is a portion of the
3 Fourth of July and Gold Bar Placer Claims.

4 The evidence presented leads the Referee to conclude that rights could have
5 been established for the irrigation of only 1 acre. There was no evidence that a
6 water right was established for any other land on that portion of Lot 4 of
7 Cromarty's Short Plat west of Williams Creek; therefore, the Referee will
8 recommend confirmation of a right to irrigate 1 acre with a priority date of
9 May 17, 1886. Bernard Knoll did not present any evidence about the quantity of
10 water used from the ditch to irrigate the 1 acre. Therefore, the Referee will
11 use the evidence presented by other water users on the ditch whose rights are
12 addressed on Pages 62 through 77 of this supplemental report. It is recommended
13 that a right be confirmed for the diversion of 0.10 cfs; 10 acre-feet per year
14 for the irrigation of 1 acre. The point of diversion recommended for approval is
15 identified as point of diversion "B" located 110 feet north and 405 feet west of
16 the south quarter corner of Section 36, T. 21 N., R. 17 E.W.M. The place of use
17 is that portion of Lot 4 of Cromarty's Short Plat which lies west of Williams
18 Creek and east of the gravity flow ditch leading southwesterly from point "B"
19 diversion.

20 A second water right claim was filed by George L. Johnson asserting a right
21 to divert from Williams Creek 1.7 cfs; 300 acre-feet per year for the irrigation
22 of 30 acres, domestic supply, household, irrigation, and stock water. The
23 described point of diversion is point "A" located 1,580 feet north and 130 feet
24 east of the south quarter corner of Section 36, T. 21 N., R. 17 E.W.M. The ditch
25 from this diversion runs south, lying east of Williams Creek. The place of use

1 is the five mining claims. A third water right claim, WRC No. 097175, was filed
2 by Kelsey Pettigrew, asserting a right to divert 7.5 cfs; 120 acre-feet per year
3 from Williams Creek for irrigation of 30 acres, domestic supply and stock water.
4 The place of use is the five mining claims. It is noteworthy that none of the
5 claims discussed above lists mining as a purpose of use, although industrial use
6 is claimed which could be considered to include mining. The history of water use
7 on these properties began with placer mining.

8 Bernard Knoll is asserting a right to irrigate 5 acres lying east of
9 Williams Creek including a 2 acre wetland. This area is said to receive water
10 via the point "A" diversion and the ditch which runs south along the east side of
11 the Williams Creek valley. The plat map of Cromarty's Short Plat included in
12 Exhibit DE-305 indicates that the area in Lot 4 lying east of Williams Creek is
13 about 3 to 3.5 acres, of which the southerly portion is the wetland area. Much
14 of this long, narrow strip of land is wooded and lies between the old Williams
15 Creek Road and Williams Creek. The record contains no evidence of irrigation of
16 any of this area via ditches and traditional irrigation methods. In fact, the
17 2 acre wetland is separated from ditch "A" by a dry, timbered rise as attested to
18 by Bernard Knoll and shown in pictures introduced into the record. Apparently,
19 water sub-irrigates parts of this strip and spring-like underflow from the east
20 maintains the wetland. While it seems clear that Bernard Knoll's property lying
21 east of Williams Creek benefits from the point "A" diversion, a water right
22 cannot be recommended for sub-irrigation. Throughout this adjudication, the
23 Court has declined to confirm water rights for sub-irrigation.

24 The Referee observed on Exhibit DE-278 (Mineral Survey 910 maps) that in
25 1909 a ditch and point of diversion existed in the wetland area. In fact, that

1 ditch appears to have been the only developed source of water for mining and
2 irrigation on the east side of Williams Creek in Gold Bar, Fourth of July and
3 Jumbo Placers. The ditch originating at point "A" terminated near the center of
4 Big Nugget Placer at the mine shafts. Apparently, at some unidentified time,
5 this lower point of diversion was abandoned and ditch "A" was extended around the
6 hill--no doubt intersecting the preexisting ditch described above. There is no
7 discussion of these facts in the testimony of any of the various claimants and no
8 exhibit sheds any light on this, except the referenced map. The Referee has
9 elected to presume that the change in ditch alignment occurred soon after 1909 as
10 the five mining claims were in the process of being patented and the land use was
11 changing or had changed to cattle ranching. Without irrigation of the meadow
12 areas, the grasses would be very susceptible to summer drought and forage would
13 be very seasonal.

14 Due to the lack of evidence of historical and/or continued diversion and
15 beneficial use of water, the Referee recommends no Williams Creek water right
16 from point "A" for any of Lot 4 of the Cromarty Short Plat. Stock maintained
17 within Lot 4 have access to Williams Creek as it passes through that parcel of
18 land; therefore, Bernard Knoll's name will be added to the list of claimants who
19 are entitled to non-diversionary stock water rights (Page 151, Report of Referee,
20 Volume 29).

21 Claimant's assertion of a water right for fire protection has been addressed
22 by the Court's stipulation dated December 12, 1996, STIPULATION RE: WATER USE
23 FOR FIRE SUPPRESSION which states: "Use of water for fire suppression is a
24 recognized emergency use and does not require a water right."

1 Although a water right is asserted by Bernard Paul Knoll for domestic supply
2 and mining, no evidence was entered into the record regarding the methods or
3 quantities of use from Williams Creek on Lot 4 for those purposes historically or
4 currently. Mr. Knoll did testify that he had conducted some mining activity on
5 the property without providing any further detail. In addition, no quantitative
6 facts were provided upon which an evaluation could be based. Therefore, the
7 Referee recommends that rights not be confirmed for domestic supply and mining.
8

9 COURT CLAIM NO. 00163 -- Timothy M. Knoll
10 COURT CLAIM NO. 12104 -- Larry A. Smith
11 COURT CLAIM NO. 12110 -- Frederick L. Knoll
12 & Dixie S. Knoll
13 COURT CLAIM NO. 12137 -- Steven A. Minalia
14 & Karen R. Minalia
15 COURT CLAIM NO. 12140 -- Richard H. Anderson
16 & Judy Anderson
17 COURT CLAIM NO. 12143 -- Mark K. Jones
18 & Michele M. Jones
19 COURT CLAIM NO. 12310 -- Gerald R. Peltola
20 & Barbara J. Peltola

21 Timothy M. Knoll filed Court Claim No. 00163 which encompassed land owned by
22 himself and his brother, Frederick L. Knoll, for use of water from Williams
23 Creek. Neither Timothy nor Frederick Knoll made an appearance in defense of
24 Court Claim No. 00163 at the evidentiary hearing for Subbasin No. 4 (Swauk
Creek); therefore, the Referee could not recommend a water right for the
properties encompassed by Court Claim No. 00163.

25 Timothy Knoll filed a late exception to the Report of Referee Subbasin No. 4
26 (Swauk Creek) which the Court accepted and subsequently remanded Court Claim

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1 No. 00163 to the Referee for taking evidence. Claimants Frederick L. and
2 Dixie S. Knoll, Larry A. and Anna L. Smith, Mark K. and Michele M. Jones,
3 Richard H. and Judy Anderson, Steven A. and Karen R. Minalia and Gerald R. and
4 Barbara J. Peltola each filed late statements of claim with the Court and a
5 motion was filed with the Court seeking authorization to present evidence and
6 testimony at the supplemental hearing, which the Court granted. Although the
7 Peltolas did not file their late claim until early April of 1997, after the
8 supplemental hearing, the Referee agreed to perpetuate the evidence and testimony
9 by the Peltolas' in anticipation of their late claim and possible admission into
10 the adjudication by the Court. The Court granted Peltolas' motion on April 10,
11 1997, thus adding Court Claim No. 12310 to the Subbasin No. 4 parties. Timothy
12 and Frederick Knoll joined with the neighboring property owners identified above
13 in retaining Lawrence E. Martin to represent them for defense of their individual
14 claims. Since Timothy Knoll did not appear at the original evidentiary hearing,
15 all of the claimants were presenting original evidence.

16 Each of the properties owned by the claimants is a portion of five
17 contiguous, patented, mining claims located in the N $\frac{1}{2}$ of Section 1, T. 20 N.,
18 R. 17 E.W.M. and the S $\frac{1}{2}$ of Section 36, T. 21 N., R. 17 E.W.M. The claims are
19 described as follows from south to north:

20 JUMBO PLACER, filed July 3, 1893, comprised of 17.882 acres;
21 FOURTH OF JULY PLACER, filed July 3, 1891, comprised of 19.991 acres;
22 GOLD BAR PLACER, filed January 1, 1898, comprised of 19.999 acres;
23 BIG NUGGET PLACER, filed December 1, 1894, comprised of 18.424 acres;
24 LOUIS QUEITSCH, filed May 17, 1886, comprised of 17.690 acres
(Spelling for this claim varies in legal documents, however,
"Queitsch" will be used in this report unless text is a direct quote
then it will be marked by quotation marks).

25 Patents were signed for all of these claims during 1919, issuing in the name
26 of W. A. Wells, the owner of all the claims since 1905. Portions of each of the
27

1 five mining claims lie in the creek bottom adjacent to Williams Creek. The
2 properties of the seven claimants being addressed in this analysis have some
3 creek frontage or are bisected by the creek.

4 The land descriptions of the claimants and gross acres are as follows:

5 RICHARD H. AND JUDY ANDERSON: Lot 1 of Cromarty Short Plat
6 No. 77-05 recorded September 8, 1977, under Auditor's File
7 No. 416218 and filed in Volume "A" of Short Plats, Page 18, Lot 1
8 lies within the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 1, T. 20 N., R. 17 E.W.M. and
9 within a portion of the Fourth of July and Gold Bar Claims. It
contains 6.34 acres of which 3 acres are claimed as irrigated
pasture with 2 acres under point of diversion "B" and 1 acre
under point of diversion "A."

10 GERALD R. AND BARBARA J. PELTOLA: Lot 2 of the Cromarty Short
11 Plat No. 77-05 (also within the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 1 and a portion
12 of the Fourth of July and Gold Bar Claims), containing
13 6.35 acres of which 3 acres are claimed as irrigated pasture with
14 1 acre west of Williams Creek under point of diversion "B" and
15 2 acres east of the creek under point of diversion "A."

16 MARK K. AND MICHELE M. JONES: A portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
17 Section 1, T. 20 N., R. 17 E.W.M., in the County of Kittitas,
18 State of Washington, which is a portion of "JUMBO" PLACER CLAIM
19 and which is bounded by a line described as follows: Beginning
20 at Corner No. 4; thence south along west line of said "JUMBO"
21 PLACER CLAIM 243.51 feet to point of beginning; thence south
22 400 feet; thence east 218 feet; thence north 400 feet; thence
23 west 218 feet to point of beginning. One-half acre is claimed as
24 irrigated pasture under point of diversion "B."

25 LARRY A. AND ANNA L. SMITH: A portion of the Jumbo and Fourth of
26 July mining claims, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
27 Section 1, T. 20 N., R. 17 E.W.M. Four acres of the described
28 property are claimed to be irrigated pasture with 3 acres under
point of diversion "B" and 1 acre under point of diversion "A."

29 FREDERICK L. AND DIXIE KNOLL: A portion of the Louis Queitsch
30 Placer Mine in Section 36, T. 21 N., R. 17 E.W.M. and a portion
31 of the Gold Bar and Big Nugget Placer Mines in Section 36 and
32 Section 1, T. 20 N., R. 17. E.W.M., lying easterly of an existing
33 roadway known as the Old Williams Creek Road and northerly of an
existing road. Ten acres of the the Frederick Knoll property are
claimed as irrigated pasture all served via diversion "A" or a
diversion herein identified as "A(1)" which is 30 to 40 feet west
of diversion "A."

1
2 TIMOTHY L. KNOLL: A portion of the Louis "Quietsch" Placer claim
3 lying northerly and westerly of U. S. Forest Service Road 2101.E
4 and existing roadway known as Snowshoe Ridge Road and westerly of
5 Old Williams Creek Road. Three acres of the described parcel are
6 claimed as irrigated pasture with water delivered through point
7 of diversion "A."
8

9
10 STEVEN A. AND KAREN R. MINALIA: PARCEL A: A portion of Lot 3 of
11 Cromarty Short Plat, as described and delineated on Kittitas
12 County Short Plat No. 77-05, Recorded September 8, 1977, under
13 Auditor's File No. 416218, and filed in Volume "A" of Short
14 Plats, Page 18, Records of Kittitas County, State of Washington,
15 also known as Parcel 2 of survey filed in Volume 13 of Surveys,
16 Page 28, being within Government Lot 2 of Section 1, T. 20 N.,
17 R. 17 E.W.M.
18

19
20 PARCEL B: A portion of Lot 3, of Cromarty Short Plat, also known
21 as Parcel 1 of survey filed in Volume 13 of Surveys, Page 29,
22 being within Government Lot 2 of Section 1. Both parcels are
23 within the Gold Bar Claim and 5 acres are claimed as irrigated
24 pasture, served via diversion "A."
25

26
27 Williams Creek is a perennial stream with flows ranging from 50 cfs or more
28 during spring runoff to minimums of as little as 1.0 cfs during drought years.
29
30 This portion of the Williams Creek drainage basin lies between one-quarter and
31 one and one-half miles northeasterly from the Liberty Townsite. Each of the five
32 mining claims and the various parcels within them, can be characterized as
33 partially wooded with meadow openings in the creek bottom and rather steep
34 hillsides on both the east and west portions of the claims.
35

36
37 Although nearly all of the creek bottoms along Williams and Swauk Creeks
38 below Liberty Townsite have been rendered into waste rock dumps by over 100 years
39 of placer mining, none of the five claims encompassed in this analysis have been
40 substantially altered on the land surface. There has however been subsurface
41 mining via shafts and tunnels, etc., with the use of placer techniques on the
42 selected gold bearing soil and gravel. Bedrock contact in the creek bottom
43 appears to be at or near seventy feet below land surface. Elimination of excess
44
45

46
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1 ground water seems to have been a serious impediment to mining along the bedrock
2 contact surface.

3 Mineral Mining Survey No. 910 was conducted in 1909 and provides extensive
4 detail of the level of development at that time. The survey appears to have been
5 a required step prior to the Federal government issuing patents for the five
6 mining claims. The record clearly identifies that three ditches were used before
7 1909 for domestic supply, mining, irrigation and stock water within the five
8 mining claims. The original ditch running easterly of Williams Creek is fed from
9 point of diversion "A" located in the N $\frac{1}{2}$ of the Louis Queitsch claim, 1580 feet
10 north and 180 feet east from the south quarter corner of Section 36, T. 21 N.,
11 R. 17 E.W.M. (Mineral Survey No. 910, Map DE-278). In 1909 this ditch terminated
12 at the mining shaft of Big Nugget just east of the center of that claim. That
13 same map shows two additional ditches with points of diversion in the N $\frac{1}{2}$ of the
14 Gold Bar Claim. The second ditch to the east side of the creek ran south and
15 southwest across Gold Bar, Fourth of July and Jumbo Claims, terminating near the
16 center of Section 1, T. 20 N., R. 17 E.W.M., and is no longer in use. The
17 westerly ditch is still in use and is identified by the claimants as point of
18 diversion "B," which is located 110 feet north and 405 feet west of the south
19 quarter corner of Section 36, T. 21 N., R. 17 E.W.M. The west ditch (from
20 diversion "B") runs parallel to the Williams Creek Road to the west line of
21 Fourth of July. This ditch serves an estimated area of 7 $\frac{1}{2}$ acres lying westerly
22 of Williams Creek. The ditch runs southwesterly about 1500 feet to the west
23 boundary of the Fourth of July Placer terminating at a point west of the Old
24 Williams Creek Road, on the neighboring Kelsey R. Pettigrew property.
25
26
27

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1 It appears that at some time the two east side ditches were combined with
2 all the water diverted at diversion "A" on the Louis Queitsch Claim and the lower
3 diversion abandoned. Consequently, the lower east side diversion is not claimed
4 by any of the parties. A currently used point of diversion located within about
5 50 feet of diversion "A" does not appear in the 1907 survey map. This diversion,
6 which the Referee will refer to as diversion A(1) feeds a ditch which runs south,
7 lying westerly of the Old Williams Creek Road. It supplies water to a small
8 pasture between the road and Williams Creek. No date has been established for
9 first use of this ditch, although it is said to have come into use soon after the
10 Old Williams Creek Road was built. The purported purpose of the separate
11 diversion and ditch was to eliminate a ditch crossing the road from east to west
12 for this small pasture area. Prior to the road construction, this field would
13 have been contiguous with the other pasture or hay fields on Louis Queitsch.

14 It appears that the history of water use began with placer mining
15 activities, including associated domestic and stock water. As the mining camp
16 activity changed over time, areas suitable for grazing or farming began to be
17 developed with irrigation. This change was enhanced due to logging to provide
18 lumber for mining construction and structures to support the local residents. It
19 is not clear how much area within the five placer claims was meadow in the late
20 1880s and early 1890s, however, by 1909 when Mineral Survey No. 910 was
21 completed, there may have been 30 acres of meadow area and extensive fencing for
22 livestock. Although mining was the primary water use at first, that activity had
23 declined such that in 1909 all of the various shafts and tunnels on the five
24 claims were in a state of disrepair.

1 The riparian doctrine does not apply to these claims for early uses as the
2 first effort to separate the claims from the public domain was when W. A. Wells
3 sought patents on July 30, 1918 (DE-279). The Washington State Surface Water
4 Code Ch. 90.03 RCW was adopted on June 17, 1917. Section 90.03.010 states in
5 part: "Subject to existing rights all waters within the State belong to the
6 public, and any right thereto, or to the use thereof, shall be hereafter acquired
7 only by appropriation for a beneficial use" (emphasis added).

8 As previously set forth, the location dates for the five claims are in order:

9 May 17, 1886 Louis Queitsch;
10 July 3, 1891 Fourth of July;
11 July 3, 1893 Jumbo;
12 December 1, 1894 Big Nugget;
13 January 1, 1898 Gold Bar.

14 There is no evidence of water use on the various claims prior to the
15 location dates, but it is reasonable to conclude that water use, or efforts to
16 use water, would have begun shortly after the filing dates for the claim
17 locations. The Referee has concluded that locating placer mines on the channel
18 of a stream can reasonably be taken as a notice of intent to appropriate water.
19 Therefore, the Referee will use the location dates as the priority date for any
20 rights established under the Prior Appropriation doctrine. The record contains
21 numerous historic references to the methods of water use in the Swauk Mining
22 District with the period of development beginning in the 1870s.

23 The remaining problem then is the appropriate quantification of the five
24 water rights based upon beneficial uses perfected before 1917 and historic use
25 since that time. The quantity of water historically used on any one of the
claims cannot be ascertained from the record, other than from ditch sizes
presented in the 1909 Mineral Survey. Thus, the quantities used for various

1 purposes on each claim are for the most part estimates. A subset of this will be
2 determining the proportionate shares of those rights to which each of the
3 claimants is entitled and the appropriate point of diversion.

4 The apparent water uses in 1909 were irrigation, stock water and domestic
5 supply as reflected in Mineral Survey No. 910. The Referee concludes that
6 various amounts of irrigation, stock and domestic water were used on the five
7 claims dependent upon the actual development that had taken place. It appears
8 that water use for mining by 1909 had been replaced by irrigation and cattle
9 ranching. The record contains only vague references to current mining use by
10 these claimants, except on the Frederick and Dixie Knoll property. Frederick
11 Knoll testified that he operates as a mining business and provided records to
12 support that. He did not provide any proof however that water use has continued
13 on his property for mining nor is there any data of the instantaneous or annual
14 quantity that might be used. Mr. Knoll did testify that running a sluice could
15 take all the water running in ditch "A", but he did not testify that a sluice is
16 or has been routinely operated on the Knoll property. The numerous photographs
17 entered into the record show no mining spoils, but do capture family members with
18 gold pans near the creek.

19 Water right claims identified for these mining claims were filed pursuant to
20 Ch. 90.14 RCW by George Johnson, WRC No. 00600, and Kelsey R. Pettigrew, WRC
21 No. 097175. Mr. Johnson owned the claims in 1970 when WRC No. 00600 was filed
22 and Mr. Pettigrew owned the five claims in 1974 when he filed what is essentially
23 a redundant WRC No. 97175. The Johnson claim asserts a water right for domestic,
24 stock and irrigation purposes; whereas the Pettigrew claim includes those uses,
25 plus industrial and fire suppression uses. Mining is not specifically identified

1 as a use, although it is reasonable to interpret industrial broadly enough to
2 include mining.

3 Claimants Timothy Knoll, Larry and Anna Smith, Gerald and Barbara Peltola,
4 Steven and Karen Minalia, Richard and Judy Anderson and Mark and Michele Jones
5 each assert a right to water for mining; however, none of those parties provided
6 any evidence or testimony regarding quantities used on their various properties
7 either historically or currently. The limited evidence suggests that panning is
8 the method of operation, taking place along the channel of Williams Creek, with
9 no diversion of water. Lacking an adequate record to establish continued
10 beneficial use since earliest development and instantaneous and annual quantities
11 of water used for diversionary mining use, the Referee cannot recommend
12 confirmation of a mining water right for any of the referenced claimants.

13 The record seems to establish that some cattle and/or horses are grazed on
14 each of the claimant's properties. The record does not indicate whether each
15 ownership is fenced separately or the cattle have access to all the properties.
16 In any case, water is diverted year around through ditches "A" and "B" to provide
17 stock water. The properties all appear to be riparian to Williams Creek and the
18 various photographs in the record show cattle with direct access to Williams
19 Creek as the creek flows through pasture areas on the parcels. The number of
20 stock involved on each parcel is not identified however it appears that 30 to
21 50 head collectively are involved.

22 The practice for many years has been to divert similar quantities during the
23 summer and winter through ditches "A" and "B", with the water either dissipating
24 into the soil or being spilled back to Williams Creek, with no consideration
25 given to the quantity of water actually needed to water the livestock or convey

1 the water through the ditch. If the ditches were run at 2.2 cfs each (the
2 claimed quantities) for the 6-month non-irrigation season, 805 acre-feet would be
3 diverted from the creek to supply no more than 50 cattle. The cattle would
4 consume no more than 2 acre-feet of that 805 acre-feet, even if the ditches were
5 the only source for stock water. This practice is extremely wasteful. In
6 Ecology v. Grimes, 121 WN.2d 459, the Supreme Court held that:

7 "A particular use must not only be of benefit to the appropriator, but
8 it must also be a reasonable and economical use of the water in view
9 of other present and future demands upon the source of supply
(pp. 471-472)." (Cites Omitted.)

10 Although the claimants may operate in a customary manner, the Court also
11 held that:

12 "While customary irrigation practices common to the locality are a
13 factor for consideration, they do not justify waste of water."
Grimes, at 475. (Footnote Omitted).

14 Therefore, the Referee cannot recommend confirmation of a right to divert at
15 ditch capacity as only 0.002% of the water is put to a beneficial use. The
16 Referee is cognizant of the need to divert sufficient water for ditch losses and
17 to prevent ice buildup, which can require diversion of substantially more water
18 than is consumptively used in the distribution system. Clearly, water rights for
19 stock water were perfected on each of the ditches and have been preserved through
20 some beneficial use. The only question is how much instantaneous flow would be
21 put to beneficial use. The Referee concludes that a reasonable flow at both
22 diversions "A" and "B" would be 0.50 cfs and 1 acre-foot consumptively from
23 November 1 through April 30. During the irrigation season, stock water use is
24 incidental to delivery of water for irrigation, thus, 1 acre-foot per ditch is an
25 appropriate irrigation season quantity. There is no apparent method by which
26 these quantities could be proportionately split between the seven claimants

1 addressed in this report and Bernard Paul Knoll, Claims No. 12,601 and 12,602,
2 whose stock also have access to ditch "B." As an alternate solution, the Referee
3 will recommend an "in common" use of the ditches by the eight claimants. The
4 method chosen to accomplish that objective will be to confirm a right to 0.50 cfs
5 and 1 acre-foot for the winter season and 1 acre-foot during the irrigation
6 season to each claimant and ditch with the inclusion of the following limiting
7 provision:

8 "This stock water right is shared in common by the owners of land
9 through which this ditch passes. The total instantaneous and annual
10 quantities for stock water for the collective properties shall not
exceed 0.5 cfs; 1 acre-foot from November 1 through April 30, and
1 acre-foot per year for the period May 1 through October 31."

11 The irrigation rights perfected within the five mining claims were
12 historically limited by the irrigable acres lying between the ditches and
13 Williams Creek, excluding brush and timber areas. That area can best be
14 determined by referring to the Mineral Survey No. 910 maps contained in Exhibit
15 DE-278, Pages 52, 54 and 55. It appears that in Louis Queitsch about 3 acres lie
16 between ditch "A" and the west property lines of Frederick and Dixie Knoll and
17 Timothy Knoll. Timothy Knoll and Frederick and Dixie Knoll each own portions of
18 Louis Queitsch and are asserting irrigation rights. Timothy Knoll claims 3 acres
19 of irrigation and Frederick and Dixie Knoll assert 10 acres, 2 acres of which
20 possibly lie in Big Nugget. The Referee concludes that Timothy Knoll's property
21 is almost entirely wooded and lies northeast and upslope of ditch "A"; therefore,
22 historic irrigation through a gravity flow ditch would not have been possible.

23 Frederick and Dixie Knoll are asserting irrigation rights for land which
24 could not have been irrigated through a gravity flow ditch. Much of the claimed
25 10 acres lies above ditch "A" and includes areas within the timbered portion of

1 the property. Frederick Knoll testified to irrigating areas above the ditch via
2 a pump and using water around the cabins, etc., to keep the area green to
3 minimize fire danger. These uses began after 1975 when the Knolls bought the
4 property. The only historical irrigation use is in that area between the ditch
5 and their west property boundary. Compliance with the permit requirements of
6 Ch. 90.03 RCW is necessary for uses which began after June 6, 1917. Frederick
7 Knoll did not provide any specific evidence of the quantity of water used to
8 irrigate his lands. Considering the area, crop and method of irrigation (flood),
9 the Referee believes that a reasonable water duty would be 0.10 cfs and
10 10 acre-feet per acre irrigated. Thus a 3 acre irrigation right is recommended
11 for confirmation to claimants Frederick and Dixie Knoll with a May 17, 1886,
12 priority date, 0.30 cfs and 30 acre-feet per year from May 1 through October 31
13 and continuously for stock water for property within Louis Queitsch owned by
14 Frederick and Dixie Knoll. The point of diversion is diversion "A," 1580 feet
15 north and 130 feet east of the south quarter corner of Section 36, T. 21 N.,
16 R. 17 E.W.M. and diversion "A(1)" located 1560 feet north and 70 feet east of the
17 south quarter corner of Section 36, both being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36.,
18 T 21 N., R. 17 E.W.M.

19 Frederick and Dixie Knoll also own a portion of the Big Nugget Claim, which
20 is irrigated via ditch "A" and lies westerly of the ditch and easterly of the Old
21 Williams Creek Road. This area amounts to about 2 acres. The priority date for
22 the water right perfected is December 1, 1894; the instantaneous quantity is
23 0.20 cfs and 20 acre-feet per year for irrigation of 2 acres from May 1 through
24 October 31 and continuously for stock.

1 Frederick and Dixie Knoll also are claiming a water right for domestic
2 supply from Williams Creek. No domestic water is used on the portion of the
3 Knoll property within Big Nugget. It appears that in 1909 the home on Louis
4 Queitsch was located west of the old Williams Creek Road on land not owned by
5 Frederick and Dixie Knoll. The cabin on the east side of the claim was well east
6 and upslope from ditch "A" (see DE-278, Page 52). The current home is reported
7 to be supplied domestic water from a well, so presently there is no use of
8 surface water for domestic supply. Based upon the lack of evidence that a right
9 was established for domestic supply through water use prior to 1917, the Referee
10 cannot recommend confirmation of a right for domestic use under Court Claim
11 No. 12110, to Frederick and Dixie Knoll.

12 Gerald R. and Barbara J. Peltola, Court Claim No. 12310, are asserting water
13 rights from Williams Creek for domestic supply, stock water, mining, irrigation
14 and fire suppression. The Peltolas own 6.35 acres, 3 acres of which are said to
15 be irrigated--2 acres via ditch "A" and 1 acre via ditch "B." Review of Exhibit
16 DE-289 (aerial photograph 995) reflects only 1 acre of pasture between Williams
17 Creek and the timber on the east. Their property is within Gold Bar; therefore,
18 the priority date is January 1, 1898. Two points of diversion are recommended
19 for confirmation with 1 acre, 0.10 cfs and 10 acre-feet per year served from
20 diversion "B" and 1 acre, 0.10 cfs and 10 acre-feet per year served from
21 diversion "A." The home on Gold Bar in 1909 was not located within the lands
22 owned by the Peltolas and there was no evidence of a home being built between
23 1909 and adoption of the Surface Water Code in 1917; therefore, no domestic water
24 right appears to be appurtenant to the Peltola property. The Referee will

1 therefore recommend confirmation of a right to irrigate only 2 acres and stock
2 water and that rights not be confirmed for domestic supply and mining.

3 Richard H. and Judy Anderson, Court Claim No. 12140, are asserting a water
4 right from Williams Creek for irrigation of 3 acres, domestic supply, stock
5 water, mining and fire suppression. There is no evidence that a home existed on
6 either the Gold Bar or Fourth of July claims within the area now owned by the
7 Andersons; therefore, no domestic water right can be recommended. Due to the
8 irrigated acres lying within both claims, it is necessary to assign proportionate
9 shares to ditches "A" and "B" and to the two priority dates. The Referee
10 concludes that 1 acre is irrigated within Gold Bar from ditch "B" and 2 acres are
11 irrigated within Fourth of July, one from ditch "A" and one from ditch "B." The
12 priority date for the 1 acre within Gold Bar is January 1, 1898, and the priority
13 date for the 2 acres within Fourth of July is July 3, 1891. The water duty will
14 be 0.10 cfs and 10 acre-feet per acre irrigated.

15 Larry A. and Anna L. Smith, Court Claim No. 12104, are asserting water
16 rights from Williams Creek for irrigation of 4 acres, stock water, domestic
17 supply, mining and fire suppression. One acre is irrigated via ditch "A" and
18 3 acres are irrigated via ditch "B." The ownership lies within portions of Jumbo
19 and Fourth of July. It appears that approximately 1 acre within Fourth of July
20 is irrigated via ditch "B" with a priority date of July 3, 1891, 2 acres within
21 Jumbo are irrigated via ditch "B" with a priority date of July 3, 1893, and
22 1 acre in Jumbo is irrigated via ditch "A" also with a priority date of July 3,
23 1893.

24 It appears that a home was located on the Smith portion of Fourth of July in
25 1909; however, there was no evidence of domestic water use put in the record.

1 Therefore, the Referee proposes no confirmation of a water right for domestic
2 purposes. The Referee will use the same water duty as for the other rights.
3 Stock are grazed on this property and utilize water from ditches "A" and "B."

4 Mark K. and Michele M. Jones, Court Claim No. 12143, are asserting rights to
5 Williams Creek water for 0.5 acre of irrigation, stock water, domestic, mining
6 and fire suppression. The Joneses own a small portion of Jumbo Placer Claim in
7 Section 1, T. 20 N., R. 17 E.W.M. One-half acre of the Joneses' property is
8 irrigated via ditch "B" with a priority date of July 3, 1893. There is no
9 evidence that a home existed on this property historically; therefore, no
10 domestic water right will be recommended for approval. Stock are grazed on this
11 property and have access to water delivered via ditch "B."

12 Steven A. and Karen R. Minalia, Court Claim No. 12137, are asserting rights
13 to Williams Creek water for irrigation of 5 acres, domestic supply, stock water,
14 mining and fire suppression. It appears from review of Exhibit DE-289 (aerial
15 photograph 1993) that no more than 3.5 acres of pasture lie between the Old
16 Williams Creek Road and ditch "A"; therefore, the Referee recommends confirmation
17 of 3.5 acres with a priority date of January 1, 1898, for the Gold Bar claim. A
18 house and barn were located in the Minalia property in 1909, indicating that a
19 right for domestic supply may have been established; however, there was no
20 evidence of continued use for that purpose or what the source of water might have
21 been. Therefore, the Referee does not recommend confirmation of a water right
22 for domestic supply.

23 All of the claimants assert a right for use of water for fire suppression.
24 As a result of exceptions raised by other parties in this adjudication, the Court
25 on December 12, 1996, entered STIPULATION RE: WATER USE FOR FIRE SUPPRESSION,

1 which defined fire suppression and found that "Use of water for fire suppression
2 is a recognized emergency use and does not require a water right." Therefore,
3 the Referee will not recommend confirmation of a water right to any of these
4 claimants for fire suppression.

5
6 COURT CLAIM NO. 06626 -- Lavinal Corporation

7 Lavinal, Inc. (Lavinal) through their attorney, Lawrence E. Martin, filed
8 exceptions to the Report of Referee for Subbasin No. 4 (Swauk Creek). Gerald
9 Sweeney, who owns half of the corporation, testified at the supplemental hearing
10 in support of the claim.

11 Three areas of concern to Lavinal are raised in relation to the failure of
12 the Referee to recommend confirmation of a water right. First, Lavinal requests
13 an opportunity to augment the record regarding historic water use and current
14 use. Second is the question of compliance with Ch. 90.14 RCW, specifically as to
15 the lack of an identified claim for water from Swauk Creek for the Lavinal
16 property. Finally, the claimant asserts a right to water for fire suppression
17 and dust control. In the Gerald T. Sweeney letter attached to their exception,
18 Lavinal also asserts rights to ground water. That ground water question was
19 raised during the original hearing and the Referee failed to specifically deal
20 with that part of the Court claim. The general adjudication of the Yakima River
21 and its tributaries specifically excludes claims to ground water rights;
22 therefore, no further discussion of the ground water portion of Court Claim
23 No. 06626 will be presented.

24 The second issue to be dealt with is Ch. 90.14 RCW and substantial
25 compliance arguments presented by Lavinal. Frank Kerstetter filed the original
26 mining claims on this property November 28, 1899, although placer mining began in

1 the Swauk Creek - Liberty area around 1873. Kerstetter also filed a Notice of
2 Appropriation for 100 inches of Swauk Creek water on August 27, 1899. The notice
3 which was recorded on November 28, 1899, indicated that the point of diversion
4 was in common with Samuel Swisher's prior right and the place of use was on the
5 Pawnee Placer Claim. The conveyance was to be down "Old By Wash" to a dam
6 Kerstetter had built across the wash. A patent dated May 7, 1918, was issued to
7 William T. Burcham, Frank Kerstetter, Eva Kerstetter and Anna Burcham for the
8 following mining claims: Ben Hur, Sioux, Comanche and Pawnee (a total of
9 80 acres). Respectively, the claims are described as follows: BEN HUR, E $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$
10 of Section 3; Sioux, W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3; Comanche, S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3;
11 Pawnee, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, all in T. 20 N., R. 17 E.W.M.

12 Lavinal contends that Clifford W. Burcham filed a Ch. 90.14 RCW claim with
13 Ecology during 1974 for use of Swauk Creek. There is only one recorded claim in
14 the record filed by Clifford W. Burcham, which is WRC No. 136707 filed for use of
15 Williams Creek water, not Swauk Creek water. Lacking a Ch. 90.14 RCW claim for
16 Swauk Creek water for the Lavinal property, the Referee must conclude that any
17 rights which might have existed were relinquished as set forth in RCW 90.14.071.
18 Although Lavinal refers to the Burcham claim for Williams Creek water, testimony
19 establishes that no functional ditch exists to obtain that water nor has Lavinal
20 ever utilized any Williams or Swauk Creek water. Even if Lavinal were asserting
21 a right to Williams Creek water, it appears that long periods of non-use from
22 that source would have resulted in relinquishment of any former right as provided
23 in RCW 90.14.130-180.

24 There is also attached to the Lavinal court claim a copy of a short form
25 filled out by Mr. Burcham; however, the lower left corner of the form does not

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1 contain an Ecology registration number and the upper left corner contains no
2 receipt date stamp. The Referee can only conclude that the form was not
3 submitted to Ecology for recording. In any case, the claimed source of water is
4 ground water and the short form would have limited the claim to 5,000 gallons per
5 day (gpd).

6 In conclusion, the Referee urges the Court to deny Lavinal's exceptions and
7 to affirm the Report of Referee.

8

9 COURT CLAIM NO. 01738 -- Liberty Townsite

10 Exceptions to the Report of Referee were filed by Liberty Townsite.
11 Claimants sought an opportunity to augment the record with exhibits and testimony
12 regarding instantaneous and annual quantities used. Wesley Engstrom provided
13 testimony and attorney Lawrence E. Martin represented Liberty Townsite.

14 The extent of the place of use for Williams Creek water is the Liberty
15 Townsite comprised of 17.362 acres. There are a total of 20 lots in the
16 Townsite, of which one is a community common area. The original point of
17 diversion and ditch from Williams Creek serving these lots was constructed May 1,
18 1884. Although a ditch historically served the townsite, a pipeline was buried
19 in the ditch in the early 1970s to solve continuing maintenance problems. The
20 current pipeline is 8 inches in diameter reduced to 6 inches in diameter and
21 finally 4 inches in diameter with a 1-inch return pipe to Williams Creek. The
22 pipeline has very little fall resulting in a maximum rate of diversion of 500 gpm
23 (1.12 cfs). Claimant asserts a right to irrigate a total of 2 acres of lawn or
24 garden area at 2 acre-feet per acre. Periodic demonstration runs of an arrastra
25 requires 35 gpm through a pump operating off the main pipeline and a total annual
26 demand of 2 acre-feet per year with the water used to rotate the arrastra

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1 returned to Williams Creek. The season of use extends from April 1 through
2 October 31. During the above defined season, a 1-inch pipe discharges water to
3 Williams Creek to maintain water quality in the mainline and to prevent freezing
4 on extra cold nights. If the pipe is assumed to discharge 0.02 cfs; 8 acre-feet
5 per year would be involved. The historic open ditch system would have required
6 many times the 14 acre-feet per year currently diverted. The 500 gpm (1.12 cfs)
7 peaking quantity is likely only used when fire fighting water is required;
8 however, that is the quantity potentially diverted into the pipe. Fire fighting
9 is accomplished by use of several underground storage tanks in conjunction with
10 pumps and/or via portable gasoline pumps directly out of Williams Creek. Water
11 for the fire system is an integral part of the seasonal operation described
12 above, until a fire is being fought. The Referee proposes confirmation of no
13 separate quantities for fire suppression, although fire fighting will be included
14 within the purpose of use definition for the water right. On December 12, 1996,
15 the Court entered a stipulation regarding emergent fire suppression which is
16 applicable to every claimant.

17 The Referee proposes that the place of use be Liberty Townsite, comprised of
18 17.362 acres lying within portions of the S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1 and
19 the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2 all in T. 20 N., R. 17 E.W.M. The point of diversion
20 is located 50 feet north and 1300 feet east from the west quarter corner of
21 Section 1, T. 20 N., R. 17 E.W.M. being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said section. It
22 was agreed that the certificate of water right issue in the name of the
23 Historical Liberty Homeowners Association in the quantities of 1.12 cfs;
24 14 acre-feet per year.

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1 COURT CLAIM NO. 00189 -- Estate of Freda L. Penkert
2 Wells Fargo Bank

3 Exceptions to the Report of Referee and a request to augment the record were
4 filed by Richard T. Cole, attorney representing the Freda L. Penkert Trust.
5 Wells Fargo Bank is reported to be the current trust managers as successors to
6 First Interstate Bank of Washington, the original trust managers.

7 The exceptions of this claimant were scheduled to be heard by the Referee on
8 March 10, 1997. On the appointed day of the supplemental hearing, Mr. Cole made
9 an appearance in behalf of the Freda L. Penkert Trust. The record reflects that
10 no additional exhibits and witnesses could be located; therefore, the claimant
11 has elected to rely on the current record and the Report of Referee dated
12 March 25, 1996. As such, the original recommendation at Pages 125 through 128
13 and Pages 151 through 152 of the Report of Referee for Subbasin No. 4 will remain
14 unchanged.

15 COURT CLAIM NO. 02050 -- Wilma Preston
16 02051

17 Wilma and Jack Preston filed late exceptions with the Court regarding the
18 Report of Referee for Subbasin No. 4 (Swauk). Claimants had not made an
19 appearance at the original evidentiary hearing or at the exception hearing held
20 by the Court on September 12, 1996. The Court allowed the Prestons an
21 opportunity to appear on the final day of the supplemental hearing for Swauk
22 Creek, March 12, 1997.

23 Mr. and Mrs. Preston provided testimony and offered into the record a copy
24 of the land patent for their property. The Prestons are asserting water rights
25 on Williams Creek and an unnamed spring.

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1 SWC No. S4-23221C with a priority date of June 26, 1974, is the foundation
2 for use of water from the unnamed spring in the quantity of 0.002 cfs;
3 0.5 acre-foot per year. Water was pumped from this spring during portions of
4 each year between 1981 and 1988 by a lessee of the property for domestic supply
5 and possibly some mining. The use was for seasonal trailer occupancy; however,
6 SWC No. S4-23221C authorizes use continuously for a single domestic supply.
7 Although no use has occurred since 1988, the water right has not been
8 relinquished. The Yakima River Basin general adjudication is a legal proceeding
9 which expressly involves this water right; therefore, relinquishment procedures
10 are not applicable (see RCW 90.14.140(1)(d)). The Referee recommends
11 confirmation of a water right based upon SWC No. S4-23221C without any changes in
12 parameters.

13 The Prestons assert a water right on Williams Creek via a gravity ditch from
14 a point within the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 2, T. 20 N., R. 17 E.W.M. Mrs. Preston
15 testified that water has run in the ditch since they bought the property in 1960,
16 but no beneficial use of that water on their property was described by
17 Mrs. Preston. Mining operations did occur on the property between 1981 and 1988;
18 however, the source of water for that mining was not identified other than some
19 small quantity used from the domestic spring. WRC Nos. 117867 and 136706 were
20 filed by Wilma Preston during 1974 for Williams Creek water. Those claims seem
21 to be for the same water right, but with several small changes. WRC No. 117867
22 has what appears to be an error in the legal description where the NE $\frac{1}{4}$ SW $\frac{1}{4}$ is
23 described instead of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3. WRC No. 136706 is not signed or
24 dated; however, it was recorded by Ecology. Both claims assert a right to
25 1.0 cfs and contain statements that 1.00 cfs was claimed and in use; however,

1 Mrs. Preston could not describe for the record how water was historically used on
2 the property or how much was used. The record does establish that extensive
3 mining took place on the property under prior ownership, but the water source and
4 quantities have not been described.

5 The Referee concludes that without evidence of historical and continued
6 beneficial use of water from Williams Creek, a right cannot be recommended for
7 confirmation.

8 The Referee recommends that upon entry of the decree for the Yakima River
9 adjudication, SWC No. S4-23221C be cancelled by Ecology.

10 COURT CLAIM NO. 02057 -- Douglas F. Sanders
11 & Marcia H. Sanders
12 Estate of Lester F. Sanders
13 & Dollie C. Sanders

14 The claimants filed exceptions to the Report of Referee for Subbasin No. 4
15 and requested that the report be amended to correct errors and to provide
16 clarification. The Referee believes that the report for Court Claim No. 02057,
17 on Pages 128 through 130, contains numerous misleading or inaccurate components
18 relating to both historic and current water use which are clarified below.

19 Douglas F. Sanders attended the supplemental hearing on March 5, 1997, and
20 his son, Daniel Sanders, testified for the claimants. Exhibits submitted during
21 the supplemental hearing include a copy of the claimants' detailed exception
22 statement including a series of photographs depicting the creek and spring which
23 are utilized. Mr. Sanders testified regarding flow measurements he had taken on
24 the creek between December of 1995 and October of 1996. The observed low flow
25 was measured at 8.5 gpm in August of 1996 and the highest flow was measured at
14.7 gpm in May of 1996. Mr. Sanders noted that the creek has never been

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1 observed to go dry even during extreme drought periods and the flows depicted
2 above are representative of the creek flow since the drainage basin was logged in
3 the 1960's. Prior to the logging, 25 gpm was frequently available during the
4 early summer. The current claim is asserting only the available 14 to 14½ gpm
5 from the spring-fed stream.

6 Historic water use was initiated by George Hampton at least by April of 1890
7 and likely prior to that time. Hampton developed an elaborate mining operation
8 between 1890 and 1897. The diversion point was high on the mining claim and
9 consisted of a series of sluice boxes in a cedar plank flume system which
10 terminated 400 feet below the spring source at the water wheel for the arrastra
11 mill. That system was functional to some limited degree until 1969 when the
12 U. S. Forest Service burned the sluice boxes and the cabin in the interest of
13 eliminating fire hazards. A metal pipe system was used to run the arrastra
14 without diverting water through the flume and sluice boxes. The pipe diversion
15 was located 125 feet downstream for the source spring, whereas the flume
16 diversion was 175 feet below the spring. The Hampton mining operation involved
17 seasonal use of all the available water produced by the spring/stream to provide
18 domestic water for a crew of four to fifteen miners and water for sluicing,
19 panning and operation of the arrastra (up to 25 gpm).

20 Current uses are domestic supply for up to ten people for short periods and
21 use of 0.02 cfs (9 gpm) to operate a modern sluice box system and/or to pump
22 water to the tunnels. Operation of the sluice box for thirty, 12-hour days (as
23 has been the claimants' practice) plus miscellaneous panning, washing, etc.
24 should require about 1.0 acre-foot per season. Although claimants assert that
25

1 1 gpm is adequate for domestic use, the instantaneous demand is likely closer to
2 0.005 cfs ($2\frac{1}{4}$ gpm) for showers, clothes washing, etc.

3 The claimants request confirmation of 10 gpm and 16 acre-feet per year which
4 is continuous use of 10 gpm for an entire year. The evidence establishes an
5 intermittent pattern of use during the period of April 15 through October 15, and
6 the domestic supply is associated with camping at the site, which requires less
7 water than a permanent structure occupied continuously. The Referee will
8 recommend an annual quantity of 0.50 acre-foot (760 gpd).

9 The priority date will be based upon the appropriative doctrine with a date
10 of April 30, 1890, commensurate with the George Hampton mining claim filing and
11 the camp development. The place of use is within the Southern Star Mining Claim
12 being portions of the SE $\frac{1}{4}$ of Section 13 and the NE $\frac{1}{4}$ of Section 24, both in
13 T. 21 N., R. 17 E.W.M. One point of diversion is at the spring source where a
14 holding pond is constructed, 1550 feet west and 150 feet south of the northeast
15 corner of Section 24 being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 24. The second
16 point of diversion is located 175 feet downstream. Defendants have personally
17 used water for mining and domestic purposes from this source each year since
18 1954. In addition to the holding pond, a hose diverts water from the stream at a
19 point 175 feet below the pond and discharges to an excavated pond which also
20 intercepts water from a separate spring area. This point of diversion was not
21 established as part of the historic delivery system and is consequently not
22 recommended as a third point of diversion.

1 COURT CLAIM NO. 01278 -- The Estate of William Siepmann
2 & Elda Irene Siepmann

3 On December 11, 1996, Lawrence E. Martin, attorney for the Estate of William
4 Siepmann and for Elda Irene Siepmann, filed with the Court a motion to file a
5 late exception to the Report of Referee for Subbasin No. 4 (Swauk). The Court
6 approved that motion and the Siepmann claim was scheduled for the supplemental
7 hearing on March 12, 1997. Mr. Martin appeared in behalf of Elda I. Siepmann and
8 her son, Harry Siepmann, provided testimony and exhibits were admitted.

9 The Siepmanns sought an opportunity to supplement the record for Court Claim
10 No. 01278 and a chance to present further facts regarding compliance with
11 Ch. 90.14 RCW claims registration for the various water sources utilized on the
12 Siepmann property.

13 The record seems fairly clear that efforts were made as early as June 4,
14 1903, by George McFry to divert 100 inches of water from a spring at the head of
15 Wildcat Gulch for irrigation of his homestead within the S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of
16 Section 15, T. 20 N., R. 17 E.W.M. McFry also filed notices of appropriation for
17 water sources in Mill Gulch for use on the same lands. No claim to water other
18 than from Wildcat Gulch and a small unnamed spring is asserted by the Siepmann.
19 The current sprinkler system for irrigation of about 40 acres was installed by
20 the Siepmanns in about 1975. It replaced the former gravity ditch system and
21 allowed the upper (westerly), 15 acre field to be irrigated instead of the field
22 in the southeasterly part of the property. That lower parcel was sold in 1978
23 without the irrigation water right. The limited supply of water from Wildcat
24 Gulch made a ditch irrigation system very difficult and wasted considerable
25 water. The current pump yields 55 gpm and is said to be run about 35 days per
26 year for a total of 8.5 acre-feet per year. This very limited supply of water

1 would allow 0.21 acre-foot per acre for the 40 acres of alfalfa. The irrigation
2 season is reported to run from April 15 through September 15.

3 The irrigated fields lie within the W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
4 Section 15, T. 20 N., R. 17 E.W.M. The point of diversion from the stream in
5 Wildcat Gulch is located approximately 1200 feet west and 50 feet south of the
6 north quarter corner of Section 15.

7 Having evaluated the record, it seems probable that a water right was
8 perfected for irrigation around 1903 by McFry and that use of the Wildcat Creek
9 water continued until the present time, to the extent that water is available.
10 Use of water from the currently used domestic spring is for one home, a small
11 trailer and stock water. The record indicates this spring was the source for a
12 very old stage stop for travelers between Cle Elum and Wenatchee. Harry Siepmann
13 testified that the current holding basin and pipeline were installed during the
14 Siepmann ownership, but earlier use or an older pipeline are not addressed in any
15 detail. Although counsel for the Siepmanns did not specifically argue that the
16 domestic spring meets the criterion of a so-called "Dormaier Right," the Referee
17 concludes that the water in question may not be waters of the State. The Court
18 has repeatedly ruled that in those rare instances where de minimis springs arise
19 and dissipate within a single property and the source is so remote from the
20 nearest surface water body that no contribution can be anticipated and the use of
21 water began before 1917, the Dormaier Decision may be applicable.

22 As is the usual circumstance when a Dormaier right is asserted, the
23 Siepmanns have not produced a Ch. 90.14 RCW claim which would have protected any
24 prior right to the spring. The threat to the Siepmanns is loss of the sole
25 source of domestic water for a home and trailer plus winter stock water at the

1 farmstead trough. Lacking definitive evidence of pre-1917 use, the Referee
2 cannot recommend to the Court that the Siepmanns' domestic spring warrants "A
3 Dormaier Right."

4 The Siepmanns' claim to a right for use of Wildcat Gulch is supported by the
5 record and if it were not for the Ch. 90.14 RCW short form limitation, at least a
6 modest irrigation right could be recommended. As was addressed in the original
7 Report of Referee, use of a short form limits the right that can be confirmed to
8 irrigation of 0.5 acre or less. No other Ch. 90.14 RCW claim was identified that
9 could have protected more of a right. Therefore, the recommendation follows:
10 That a right be confirmed with a priority date of June 4, 1903; for the
11 irrigation of 0.5 acre and diversionary stock water; the instantaneous quantity
12 is 0.03 cfs; the annual quantity is 2 acre-feet for irrigation and 1 acre-foot
13 for stock water; the point of diversion is 1200 feet west and 50 feet south of
14 the north quarter corner of Section 15; the place of use is the W $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the
15 W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T. 20 N., R. 17 E.W.M. to accommodate the stock drinking
16 from the two ponds and ditch plus a 0.5 acre plot of irrigation of the claimants'
17 choice.
18

19 COURT CLAIM NO. 00970 -- Gordon C. Tang
20 01063 & Linda Tang
01064
01065
01066
21

22 Exceptions to the Report of Referee for Subbasin No. 4 (Swauk) were filed in
23 behalf of Gordon C. Tang by his attorney, Lawrence E. Martin.

24 The first matter to be addressed is Mr. Tang's request and/or notice that
25 Linda Tang no longer has an interest in the property or the five claims
26
27

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1 referenced above. The appropriate means to accomplish an assignment of interest
2 in the claims is via a motion to the Court for substitution of parties. Since
3 the record does not contain a copy of an order of the Court transferring Linda
4 Tang's interest in the claim, the Referee cannot remove her name.

5 The claimant seeks an opportunity to augment the record regarding chain of
6 title documents, clarification of points of diversion and place of use,
7 quantities of water historically used and dates of first use of the various water
8 sources. Key exhibits entered into the record during the supplemental hearing
9 include patent records, maps and photographs of the several sources of water.

10 The irrigated land on the Tang ranch all lies within Sections 17 and 20,
11 T. 19 N., R. 17 E.W.M. The five fields which were irrigated before December 31,
12 1932, are all adjacent to Swauk Creek, the source of the irrigation water
13 delivered via ditches both east and west of the creek. Fields 1 through 4 lie in
14 the W $\frac{1}{2}$ of Section 17 and Field No. 5 lies in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 20. The
15 portion of the NW $\frac{1}{4}$ of Section 20, T. 19 N., R. 17 E.W.M., within which Field
16 No. 5 lies, was homesteaded and a copy of the Receiver's Receipt dated
17 September 21, 1892, is an attachment to the Tang exception. That receipt is the
18 earliest document in the record showing efforts to separate the land from Federal
19 ownership. Based upon that receipt, the priority date under the Riparian
20 Doctrine for the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 20 is September 21, 1892. Thus, the 8 acres in
21 Field No. 5 would enjoy the 1892 priority.

22 Northern Pacific Railroad Company received a patent for Section 17 on
23 April 23, 1897; however, the map of definite location for the railroad was filed
24 on May 24, 1884, establishing the priority date for rights under the Riparian

1 Doctrine. A total of 17 acres are in Field Nos. 1 through 4 within the SW $\frac{1}{4}$ of
2 Section 17.

3 The Referee believes the evidence shows that rights were established under
4 the Riparian Doctrine for the irrigation of a total of 25 acres. The historic
5 irrigation practice was use of two gravity flow ditches and flood irrigation on
6 Field Nos. 1 through 5. Mr. Davis, the owner preceding Tang, changed the point
7 of diversion and place of use during the 1960s.

8 A 20 hp electric pump was installed on the creek at a point approximately
9 1000 feet north and 1000 feet east of the southwest corner of Section 17. This
10 point is approximately three-fourths of a mile downstream from the upper historic
11 point of diversion located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T. 19 N., R. 17 E.W.M.
12 The place of use was changed from Field Nos. 1 through 5 to Field No. 6, which
13 according to Exhibit DE-225 lies on a bench 200 feet above Swauk Creek and west
14 of the canyon through which the creek flows. Mr. Ben George, a lessee from Tang,
15 testified that 16 acres have been irrigated within Field No. 6 using a handline
16 sprinkler system, which Richard Bain testified would require 150 gpm to operate.
17 Mr. Bain's estimate is consistent with the expected capacity of a 20 hp pump and
18 the physical setting previously described. There is no evidence of compliance
19 with RCW 90.03.380 requirements for the new point of diversion or the change of
20 place of use from Fields Nos. 1 through 5 to Field No. 6.

21 Warren J. Davis filed WRC No. 130507 asserting a right to 2.0 cfs diverted
22 from Swauk Creek for irrigation of 35 acres within portions of the W $\frac{1}{2}$ of
23 Section 17 and the NW $\frac{1}{4}$ of Section 20, T. 19 N., R. 17 E.W.M. The legal
24 description of the area irrigated as set forth in WRC No. 130507 does not seem to
25 fit entirely with the five fields indicated on Exhibit DE-225.

1 The failure of Mr. Davis to follow the change application procedures set
2 forth in RCW 90.03.380 will require the Referee to rely on the original points of
3 diversion and place of use. WRC No. 130507, filed by Warren J. Davis, asserts a
4 right to use 2 cfs; 600 acre-feet per year for the irrigation of 35 acres within
5 the NW $\frac{1}{4}$ and portions of the SW $\frac{1}{4}$ of Section 17 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20,
6 and stock watering in Sections 17 and 8 and the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 20, all in
7 T. 19 N., R. 17 E.W.M. Although a right was asserted for the irrigation of
8 35 acres, it is clear that the extent of beneficial use is the 16 acres that have
9 continued to be irrigated since the mid-1960's. Five years of continuous non-use
10 following the effective date of Ch. 90.14 RCW (1967) and preceding the 1977
11 initiation of the current general adjudication case results in relinquishment of
12 the unused portion of the right (see RCW 90.14.140 -.180).

13 The Referee will recommend confirmation of a water right for the 16 acres
14 that have continued to be irrigated from Swauk Creek within the Tang ownership.
15 However, due to lack of compliance with RCW 90.03.380, the recommendation must be
16 to confirm the right to a portion of the land that was historically irrigated at
17 at the points of diversion for the gravity ditches. The Tangs should contact
18 Ecology concerning the application for change process required by RCW 90.03.380.

19 The Referee recommends confirmation of a water right from Swauk Creek in the
20 quantity of 0.167 cfs; 80 acre-feet per year from a point of diversion located
21 600 feet south and 2000 feet west of the northeast corner of Section 17 being
22 within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ for irrigation of 8 acres within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20,
23 T. 19 N., R. 17 E.W.M. The priority date is September 21, 1892, based on the
24 riparian doctrine. The season of use is April 1 through October 15.

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1 A second water right is recommended with a priority date of May 24, 1884,
2 for use of water from Swauk Creek for irrigation of 8 acres, 0.167 cfs;
3 80 acre-feet per year from a point of diversion located 2500 feet west and
4 1000 feet south of the northeast corner of Section 17, T. 19 N., R. 17. E.W.M.
5 being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17. The place of use for the irrigation is
6 within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, ALL in Section 17, T. 19 N.,
7 R. 17 E.W.M.

8 Although stock water was delivered through the irrigation ditches
9 historically, the ditches were abandoned in the 1960s when the pump was
10 installed. Since that time, stock have gone to the creek or springs as no
11 diversionary stock water has been provided in Field Nos. 1 through 5 in the
12 canyon area. The Referee proposes no confirmation of stock water from Swauk
13 Creek other than the non-diversionary stock water which was recommended for
14 Gordon C. and Linda Tang in the original Report of Referee on Page 151, Line 15 $\frac{1}{2}$.

15 The Tang Ranch relies on natural and/or excavated on-channel ponds for much
16 of the riparian stock water for their various parcels of range land. Exhibits
17 DE-204 through DE-210 are color photographs and contour maps of eleven such water
18 sources. These facilities are described as enhanced collection points on natural
19 drainage features. Although water is retained in the ponds, there are no
20 diversions as such. It is obvious from the pictures that low dikes or small
21 retention dams are commonly incorporated with excavation to create easy access to
22 the water by grazing stock. Some of the ponds dry up every year and a few never
23 dry up, apparently being spring fed. It is the Referee's recommendation that
24 these stock water sources be classified as non-diversionary and included under
25 the stock water stipulation. While it might be argued that those ponds with a
26

1 low dam are in fact diversions, that approach would gain nothing in terms of
2 improved water management and would needlessly complicate the determination of
3 water rights. The likelihood of interference with downstream uses of water is
4 minimal or non-existent (see Pages 7 and 8 of the Pat and Mary Burke Court Claim
5 No. 01475 analysis for a full discussion of riparian stock water issues).

6 The various creek channels on the ranch are all accessible to the stock
7 grazing in the adjoining pastures; therefore, the non-diversionary stock water
8 stipulation provides adequate protection for these uses.

9 There are two springs (Horse Canyon and Beaver Slide) which have been
10 developed with diversions, pipelines and stock tanks. Both of those sources are
11 currently used without the tanks due to lack of maintenance. Claimants intend to
12 repair or replace those diversion facilities. The record does not establish when
13 the first diversions were constructed and used; however, the current trough
14 located at Beaver Slide was installed in the 1950s according to Mr. George's
15 testimony. It should be noted that Exhibit DE-203 (map of ranch and stock water
16 sources) does not match the location for Beaver Slide Spring as depicted on
17 DE-216, nor can a water right claim be matched to Beaver Slide Spring. WRC
18 No. 130510 appears to describe Horse Canyon Spring as being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
19 Section 17, T. 19 N., R. 17 E.W.M. with 15 gpm claimed for stock water. The
20 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17 is part of the railroad land that would have a May 24, 1884,
21 date of priority for any rights established under the Riparian Doctrine.

22 The single stock water source which may have a diversionary stock water
23 right is therefore Horse Canyon Spring, if the tank was installed and the spring
24 for stock watering before December 31, 1932. However, there was no evidence
25 entered into the record to show that the spring was developed and diversionary

1 stock water use initiated prior to December 30, 1932. Therefore, the Referee
2 recommends that no diversionary right be confirmed for Horse Canyon Spring or any
3 of the other riparian stock water sources. As previously mentioned,
4 non-diversionary rights exists under the stock water stipulation where the
5 livestock drink directly form the water source.

6
7 COURT CLAIM NO. 01144 -- Carla L. Thomas

8 Carla Thomas, through her attorney Jeff Slothower, filed an exception to the
9 Report of Referee, seeking an opportunity to augment the record concerning
10 non-diversionary stock water use. Mr. Slothower represented Ms. Thomas at the
11 supplemental hearing. Due to ownership of land by this claimant in both Subbasin
12 Nos. 4 and 7, testimony was combined into a single appearance. Ms. Thomas
13 testified and exhibits were admitted into the record for both subbasins.

14 The purpose of the Thomas exception regarding riparian stock water use on
15 the SE $\frac{1}{4}$ of Section 9, T. 19 N., R. 17 E.W.M. is to be sure that the pond
16 improvement (excavation) to give grazing stock easier access to the spring water
17 is not interpreted to constitute a diversionary use of the water. The Referee
18 has recommended that Court Claim No. 01144, Carla Thomas, be included in the
19 riparian stock water list which is hereby restated with the following
20 clarification: On Page 141, Lines 16 $\frac{1}{2}$ through 17 $\frac{1}{2}$, replace the sentence
21 beginning "The stock" with the following: "Riparian stock have access to a
22 spring area, the natural flow channel and an on-channel stock pond" (see Pages 7
23 and 8 of the Pat and Mary Burke Court Claim No. 01475 analysis for a more
24 in-depth discussion of riparian stock water sources).

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1 COURT CLAIM NO. 02267 -- Wallace Ranch Limited Partnership

2 Exceptions to the Report of Referee for Subbasin No. 4 (Swauk) were filed in
3 behalf of M. Marvin Wallace by his attorney, Thomas Pors. The exceptions
4 encompass factual supplements to the record concerning historic water use and
5 system capacities. Wallace also sought an opportunity to enter chains of title
6 and aerial photographs into the record. Subsequent to the exception hearing,
7 Wallace petitioned the Court for approval of a substitution of parties which was
8 granted. Thus, M. Marvin Wallace was replaced by Wallace Ranch Limited
9 Partnership as claimant.

10 The legal description of the Wallace properties lying east of the Yakima
11 River is within the E $\frac{1}{2}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11, the SW $\frac{1}{4}$ of Section 12, the NW $\frac{1}{4}$ of
12 Section 13 and the NE $\frac{1}{4}$ of Section 14, T. 19 N., R. 16 E.W.M. It was brought to
13 the Referee's attention that the description of the Wallace property on Page 142,
14 Lines 10 through 13 of the original Report of Referee did not include the E $\frac{1}{2}$ SW $\frac{1}{4}$
15 of Section 11, T. 19 N., R. 16 E.W.M., within which lies all of Field No. 1 and
16 portions of Field Nos. 2 and 3.

17 Sections 11 and 13, T. 19 N., R. 16 E.W.M. were patented to the Northern
18 Pacific Railroad Company on January 16, 1896; however, the map of definite
19 location which sets the priority date for riparian rights for railroad land was
20 filed on May 24, 1884. The railroad subsequently sold tracts to several
21 settlers. The Wallace lands in Sections 11 and 13 were acquired in the early
22 1900's by John T. Taylor and William Taylor, and after passing through several
23 ownerships ultimately were owned by the Dubinsky family by 1938. The Dubinskys
24 also acquired the SW $\frac{1}{4}$ of Section 12 in 1938. The patent for the SW $\frac{1}{4}$ of
25 Section 12 issued on May 20, 1909, to Grant Hull. The original Dubinsky land was
26

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1 the NE $\frac{1}{4}$ of Section 14 which was acquired on November 20, 1907. The patent for
2 this land issued to George E. Myers on September 25, 1894. The irrigated land
3 lies within the S $\frac{1}{2}$ of Section 11 and the NE $\frac{1}{4}$ of Section 14.

4 The first water use to be dealt with will be the unnamed spring-fed stream,
5 locally known as Hart Creek. Water is ditched to a field in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of
6 Section 11 and reportedly has been used to irrigate Field No. 8 since the ditch
7 was dug in 1922. Water from Hart Creek provided sub-irrigation in Field No. 7
8 for many years prior to the 1922 ditch being dug. Exhibit No. DE-178 is an
9 October 14, 1960, Decree resolving a dispute between Dubinsky and Adams, which
10 was resolved through a Stipulated Agreement. That agreement awards the entire
11 flow of the springs to Adams (who owned the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11, T. 19 N.,
12 R. 16 E.W.M.) from October 1 through May 31 each season and all the flow from
13 June 1 through September 30 to Dubinsky for his use within the W $\frac{1}{2}$ SE $\frac{1}{4}$ of
14 Section 11. The 1960 complaint identifies 10 acres as the area historically
15 irrigated and the flow as 0.16 cfs; therefore, the Referee believes that quantity
16 would be appropriate for this proceeding. The Court decree sets the season as
17 June 1 through September 30. Stock water is available from the stream or the
18 ditches during the irrigation season described above. A total of 39 acre-feet
19 would be available if 0.16 cfs were diverted from June 1 through September 30 or
20 3.9 acre-feet per acre for the 10 acres historically irrigated. Since this is
21 part of the former railroad land, the priority date would be May 24, 1884.

22 The stock water springs located in the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, the N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$
23 of Section 13 and W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13 are all described as improved riparian
24 springs and/or ponds with no diversion facilities. WRC Nos. 140816, 140815,
25 140817 respectively were filed for these spring locations in compliance with the

1 requirements of Ch. 90.14 RCW. This type of non-diversionary stock watering is
2 covered by the stock water stipulation discussed on Page 4 of the original Report
3 of Referee. Wallace is included in the non-diversionary stock water list on
4 Page 151 of the Report of Referee so these and the other riparian stock water
5 sources are adequately covered.

6 The spring located in the $\text{N} \frac{1}{2} \text{NE} \frac{1}{4} \text{NE} \frac{1}{4}$ of Section 14, T. 19 N., R. 16 E.W.M. is
7 described in WRC No. 140814 and was described during testimony as supplying a
8 home and 1 to 2 acres of irrigation near the house. This spring is developed
9 with a pipe and cistern. Richard Bain reports in DE-88 that the house spring
10 does not supply sufficient water to serve the lawn and garden; therefore, the
11 annual quantity needed for in-house domestic supply would be 1 acre-foot per acre
12 per year. The priority date would be September 25, 1894, the patent date for the
13 George Myers homestead. The place of use would be in the $\text{SW} \frac{1}{4} \text{NE} \frac{1}{4} \text{NE} \frac{1}{4}$ of
14 Section 14, T. 19 N., R. 16 E.W.M. The point of diversion is described as being
15 300 feet south and 600 feet west from the northeast corner of Section 14.
16 Although the actual quantity available from the spring has not been provided, the
17 Referee for want of better information suggests the quantity of 0.01 cfs and
18 1.0 acre-foot per year.

19 The final spring to evaluate is really a spring area located near the
20 northeast corner of Field No. 8 in the $\text{S} \frac{1}{2} \text{NW} \frac{1}{4} \text{SE} \frac{1}{4}$ of Section 11 and described in
21 WRC No. 140813. The claimed quantity is $7 \frac{1}{2}$ gpm for irrigation of 25 acres. The
22 spring area is located 1550 feet north and 1350 feet west from the southeast
23 corner of Section 11, being within the $\text{SE} \frac{1}{4} \text{NW} \frac{1}{4} \text{SE} \frac{1}{4}$ of said Section 11. Water from
24 this spring area is used in conjunction with the Hart Creek water to irrigate a
25 portion of Field No. 8 via gravity flow ditch and/or sub-irrigation. Clearly,

1 $7\frac{1}{2}$ gpm is not adequate to irrigate 25 acres, especially through ditches.
2 However, water from the spring and Hart Creek is commingled with water pumped
3 from the Yakima River through the pipeline and sprinkler system. This spring
4 area has been utilized since earliest settlement and is riparian to the $W\frac{1}{2}SE\frac{1}{4}$ of
5 Section 11, within which Field No. 8 is situated. The priority date would be
6 May 24, 1884. The season of use for irrigation is April 15 through October 31
7 and continuous for stock water. Stock water is provided through the irrigation
8 ditches. The number of acres which may have benefited from irrigation via
9 diversionary ditches is not definitively addressed in the record. Certainly the
10 asserted 25 acres located in Field Nos. 6 and 8 could not be accomplished. The
11 total production possible at $7\frac{1}{2}$ gpm is 7 acre-feet per season or roughly the
12 water duty for 1 acre. The Referee will suggest $3\frac{1}{2}$ acres as an appropriate size
13 since the source is used to augment water from Hart Creek in Field No. 8. The
14 place of use can therefore be refined to the $SE\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$ of Section 11, T. 19 N.,
15 R. 16 E.W.M.

16 There is sufficient evidence to establish that a gravity flow irrigation
17 system was developed from the Yakima River well before December 31, 1932, capable
18 of delivering water to Field Nos. 1 through 6 and 8. Field Nos. 1, 2, 6, 8 and a
19 portion of Field No. 3 lie in the $S\frac{1}{2}$ of Section 11 and the remaining portion of
20 Field No. 3 and Field Nos. 4 and 5 lie in the $NE\frac{1}{4}$ of Section 14. WRC No. 140805
21 was filed pursuant to Ch. 90.14 RCW for the Yakima River. A definitive date for
22 first use of this ditch is not in the record; however, considering the riparian
23 nature of the lands in the $S\frac{1}{2}$ of Section 11 and the $NE\frac{1}{4}$ of Section 14, T. 19 N.,
24 R. 16 E.W.M., the riparian doctrine is the appropriate basis for the respective
25 priority dates; i.e., May 24, 1884, for those portions of Field No. 3 lying
26

1 within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 and all of Field Nos. 1, 2, 6 and 8 and a
2 priority date of September 25, 1894, for the NE $\frac{1}{4}$ of Section 14, T. 19 N.,
3 R. 16 E.W.M. It is important to note that Field No. 1 is shown as 19.5 acres on
4 the field map attached to DE-188, whereas the 1937 aerial photograph DE-189 shows
5 at least one-third of that area in river bottom brush and trees. Mr. Wallace
6 testified that the cut bank between Field Nos. 1 and 2 was recontoured during the
7 Wallace ownership around 1975 to 1977 resulting in a continuous farmable area.
8 The Referee believes that approximately 6 acres were added to the irrigated area
9 as a result of that contouring. It is a long held principal that a landowner had
10 a reasonable period of time after adoption of the Surface Water Code in 1917 to
11 put to beneficial use riparian rights. In 1985 the Supreme Court ruled in
12 Department of Ecology v. Abbott, 103 Wn.2d 686, 694 P.2d 1071, that the
13 reasonable time for riparian landowners to put to use any unexercised riparian
14 rights ended on December 31, 1932; therefore, the additional six acres that were
15 first irrigated around 1977 could not have a riparian right. The landowner would
16 have had to obtain a separate water right for that land through the permit
17 procedures of Ch. 90.03 RCW. There is no evidence that occurred. Therefore, the
18 Referee proposes that an appropriate acreage in Field No. 1 would be the
19 13.0 acres historically irrigated. Because the water right for the lands in the
20 SE $\frac{1}{4}$ of Section 11 will have a different priority date than the water right for
21 the lands in the NE $\frac{1}{4}$ of Section 14, it is necessary to estimate the portion of
22 Field No. 3 in each of the two sections. A reasonable allocation between the SE $\frac{1}{4}$
23 of Section 11 and NE $\frac{1}{4}$ of Section 14 for Field No. 3 looks to be 3 acres in the
24 NE $\frac{1}{4}$ of Section 14 and 28.5 acres in Section 11. Finally, the easterly portion of
25 Field No. 8 lies within the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11, which was separated from
26

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1 Northern Pacific Railroad Company ownership and riparian status April 10, 1900.
2 It is not established that irrigation was taking place in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11
3 before April 10, 1900. Thus, we come to an irrigated area prior to
4 December 31, 1932, of 92.2 acres. The remaining 3.0 acres irrigated in Field
5 No. 3 and Field Nos. 4, 5 and 9 were developed within the George Myers homestead
6 which the Dubinskys purchased in 1907. This 38.3 acres would have a riparian
7 based priority date of September 25, 1894.

8 The current point of diversion for all of the Wallace property from the
9 Yakima River is near the Dubinsky water wheel 200 feet south and 200 feet east of
10 the north quarter corner of Section 14, T. 19 N., R. 16 E.W.M. The record is
11 clear that in 1937 or 1938 a new water wheel was constructed. The new water
12 wheel appears to be a replacement for other water wheels that had previously
13 served the Dubinsky property, but had been destroyed. It is reasonable to
14 conclude that the diversion to the water wheel likely did not change as a result
15 of replacing the water wheels. At about the time the last water wheel was
16 constructed, the Dubinsky family acquired additional lands including irrigated
17 land in the S $\frac{1}{2}$ of Section 11. The record indicates that a diversion upstream of
18 the property served a gravity flow ditch used to irrigate the fields in
19 Section 11. At some point, that diversion was no longer used and the diversion
20 at the water wheel was used instead. The water wheel would lift the water to the
21 ditch. There is no evidence in the record of when this occurred. However, the
22 Dubinsky family acquired the land in 1938 and it is likely that the change
23 occurred in that timeframe. There is no reason to believe that the Dubinsky
24 diversion and water wheel would have been used before 1938 to irrigate land not
25 owned by them. Richard Bain's letter of February 21, 1997, Exhibit DE-224,

1 indicates that the point of diversion could have been upstream of the Wallace
2 lands in the N $\frac{1}{2}$ of Section 11. Exhibit DE-189 seems to reflect a structure and
3 ditch located a little further upstream in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 which in turn
4 leads to what appears to be a ditch along the east side of Field Nos. 6 and 8 and
5 southeasterly into the NE $\frac{1}{4}$ of Section 14. Therefore, any water rights confirmed
6 for the irrigation of land in Section 11 will have as the recommended point of
7 diversion a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2. The point of diversion for the
8 lands in Section 14 will be the diversion currently exercised. The claimant
9 should contact Ecology about the procedures for changes of point of diversion as
10 set forth by RCW 90.03.380.

11 The capacity of the original ditch has only vaguely been inferred and that
12 ditch has not been used to convey Yakima River water since at least 1964 when
13 Wallace bought Dubinsky's ranch, but possibly many years earlier. The electric
14 pump used by Wallace has a calculated capacity of approximately 1500 gpm with the
15 physical setting and equipment in use. That 1500 gpm serves the fields in
16 Section 11 and in Section 14, therefore, any rights ultimately recommended must
17 contain a use provision which describes the instantaneous quantity under both the
18 1884 and 1894 rights to be no more than 1500 gpm. The season of use for
19 irrigation from the Yakima River is reported to be April 15 through October 1.
20

21 Mr. Bain testified that 7.3 acre-feet were needed to irrigate the fields on
22 the Wallace ranch or 673.06 acre-feet for the 92.2 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$
23 of Section 11 and 279.6 acre-feet per year for the 38.3 acres in the NE $\frac{1}{4}$ of
24 Section 14. The instantaneous rate of diversion would be 3.35 cfs with the
25 limiting provision discussed above.
26
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1 The place of use for the September 25, 1894, right would be that portion of
2 the NE $\frac{1}{4}$ of Section 14, T. 19 N., R. 16 E.W.M. lying between the railroad and the
3 Yakima River with 38.3 acres being irrigated.

4 As was discussed in the original Report of Referee, Wallace filed seven
5 Ch. 90.14 RCW claims relative to the property previously discussed. Each of
6 those claims contains a serious defect in that no place of use description was
7 entered under Item No. 6 on the claims. The Referee did not identify this in the
8 original report as the defect is not apparent unless you closely analyze the
9 information on the claim. It is only upon reading the actual narrative contained
10 in Item No. 6 that it was discovered that those descriptions are actually
11 detailed point of diversion locations rather than a place of use description.
12 Wallace, as the long-time owner of the property, has presented adequate evidence
13 of the lands owned at the time the claims were filed and a good description of
14 the current water delivery systems and an adequate set of facts regarding water
15 uses which were perfected before December 31, 1932. Therefore, the Referee does
16 not find this defect fatal to recommending confirmation of water rights. Based
17 on the evidence presented at the supplemental hearing, the Referee recommends
18 that the following water rights be confirmed under Court Claim No. 02267:

19 With a May 24, 1884, date of priority a right to divert 0.16 cfs,
20 39 acre-feet per year from Hart Creek for the irrigation of 10 acres
in that portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11 northeast of the highway.

21 With a September 25, 1894, date of priority, a right to divert 0.01
22 cubic foot per second, 1 acre-foot per year from an unnamed spring for
in-house domestic supply within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14.

23 With a May 24, 1884, date of priority, a right to divert 0.016 cfs,
24 7 acre-feet per year from an unnamed spring for the irrigation of
3.5 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11.

1 With a May 24, 1884, date of priority, a right to divert 3.35 cfs,
2 673.06 acre-feet per year from the Yakima River for the irrigation of
92.2 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11.

3 With a September 25, 1894, date of priority, a right to divert 3.35
4 cfs, 279.6 acre feet per year for the irrigation of 38.2 acres in the
NE $\frac{1}{4}$ of Section 14 northeast of the Yakima River.

5
6 The two Yakima River water rights will contain a provision that the maximum
7 instantaneous quantity of water that can be diverted between the two rights is
8 3.35 cfs.
9

10 COURT CLAIM NO.00519 -- The Estate of Paul P. Weaver
11 & Mary B. Shelton
Craig N. Dickison
& Therese B. Dickison
Mark T. Dickison

12 Exceptions to the Report of Referee as it relates to Court Claim No. 00519
13 were filed by Lawrence E. Martin, attorney for Mary B. Shelton and the
14 Dickisons. Subsequent to the initial evidentiary hearing, Mary B. Shelton bought
15 Robert Weaver's half of the property and sold her half to Craig Dickison,
16 Mrs. Therese B. Dickison and Mark T. Dickison. The Dickisons have been added as
17 additional parties to Court Claim No. 00519.

18 Claimants Shelton and Dickison take exception to the Referee not
19 recommending confirmation of a water right and seek an opportunity to supplement
20 the record as to place of use, points of diversion, priority dates, quantities of
21 water, acres irrigated, annual water duty, purpose of use and to address
22 compliance with RCW 90.14.065. Claimants also reserved an opportunity to brief
23 the validity of post-1905 appropriations if that becomes an issue of consequence
24 and assert a right for fire control. Ecology filed a response to the
25 Shelton/Dickison exceptions which concurs with the Referee's reference to
26

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1 possible applicability of RCW 90.14.065 and draws a distinction between
2 substantial compliance with Ch 90.14 RCW and the amendment procedures for
3 RCW 90.14.065.

4 Mrs. Shelton owns the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 31, T. 21 N., R. 18 E.W.M. and the
5 Dickisons jointly own the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 31, T. 21 N., R. 18 E.W.M. Claimants
6 desire to have individual water rights recommendations for the the N $\frac{1}{2}$ and S $\frac{1}{2}$ of
7 the said NE $\frac{1}{4}$ of Section 31.

8 On December 12, 1996, the Court addressed use of water for fire suppression
9 by entering STIPULATION RE: WATER USE FOR FIRE SUPPRESSION, which recognized that
10 fire suppression is a recognized emergency use of water not needing a water
11 right, which should resolve the fire control component of this exception.

12 Ecology requested correction of two entries on Page 148, Line 3 of the
13 Report of Referee. The spelling of the first word in the line is corrected to
14 read "and" and the entry "SE $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ " is corrected to read "SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$." The
15 Referee also noted that the distance west of the northeast corner for the Price
16 Creek diversion should be "1500 feet," not the "1800 feet" reflected on Page 148,
17 Line 3, therefore, that correction is made.

18 The supplemental record established for the water uses lying within the
19 SW $\frac{1}{4}$ NE $\frac{1}{4}$ provides a clear record as to the extent of the perfected rights as of
20 1922 (DE-251). The method of irrigation is gravity ditch and flood irrigation as
21 has been the practice since the early 1890s. Although claimants did not testify
22 in detail about the annual crop demand, they requested that the Referee refer to
23 the report of Richard Bain (DE-11) submitted in support of Court Claim No. 05721,
24 Selma M. Burzenski, Paul R. and Janis G. Newbury and William E. and Sheryle
25 Bonnell. The properties are essentially adjacent with the Shelton land lying

1 east and upslope of Burzenski. The crops and soil types are described as
2 comparable. Bain reports that 11.7 acre-feet per acre are necessary to maximize
3 forage production with the described physical setting, method of irrigation and
4 crops. The 20 acres of land being irrigated would therefore require a total of
5 234 acre-feet per year. The Referee recommends confirmation of the following
6 water right in the name of Mary B. Shelton, with a priority date of June 30,
7 1892, for 2.00 cfs; 234 acre-feet per year for the irrigation of 20 acres and
8 stock water from Price Creek (a tributary of Williams Creek) from a point of
9 diversion located 2200 feet south and 1500 feet west from the NE $\frac{1}{4}$ of Section 31,
10 T. 21 N., R. 18 E.W.M. being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 31, which
11 is also the place of use. The 20 acres is described as including the area around
12 the cabin. Stock water is provided either from the irrigation ditches or
13 directly from the streams to the cattle or sheep. The Referee has included
14 claimants Shelton and Dickison in the list of parties recommended
15 non-diversionary stock water and stock water will be included as a use authorized
16 for the Price Creek diversion. An annual quantity of only 1.0 acre-foot will be
17 separately established as the stock water is incidental to delivery of the
18 irrigation water.

19 The point of diversion recommended for irrigation and stock water is
20 reasonably consistent with the point described on WRC No. 125940. That claim
21 asserts a right to irrigation and stock water only. The current domestic point
22 of diversion is about 500 feet easterly of the irrigation diversion. It is clear
23 that domestic water has been used since 1892 from Price Creek; however, WRC
24 No. 125940 does not include that use. With the current record, it would appear
25 that the right for domestic use has been waived and relinquished due to failure

1 to include that use on WRC No. 125940. Although claimant argues substantial
2 compliance with the intent of Ch. 90.14 RCW, the Referee agrees with Ecology's
3 argument that adding a purpose of use is beyond the Referee's discretion. If it
4 is ultimately demonstrated that the perfected domestic right has not been
5 relinquished, the Referee would recommend an instantaneous quantity of 0.02 cfs
6 and an annual quantity of 1.0 acre-foot per year. Until that issue is resolved,
7 the Referee cannot recommend confirmation of the domestic right.

8 Although claimants assert a right to an irrigation diversion located about
9 700 feet upstream from the previously described point on Price Creek, that
10 diversion is not included in WRC No. 125940 nor is the SE $\frac{1}{4}$ NE $\frac{1}{4}$ included in the
11 place of use described. The small field irrigated through this ditch is separate
12 from the field located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and cannot be irrigated via the lower
13 ditch. Claimant Shelton did not present any additional evidence regarding this
14 diversion or the small field it serves at the supplemental hearing. The Referee
15 therefore proposes no right for this use of Price Creek.

16 Claimants Dickison assert a right to divert water from Williams Creek for
17 irrigation of about 10 acres and for stock water. The historic basis for this
18 right is the homestead of John H. and Anna B. Price, as is the Shelton portion of
19 Court Claim No. 00519. There is a distinct difference between the N $\frac{1}{2}$ NE $\frac{1}{4}$ of
20 Section 31 and the S $\frac{1}{2}$ NE $\frac{1}{4}$ in terms of historic water use. Exhibit DE-251 contains
21 statements of Anna Price; W. R. Cox, Mineral Examiner; Ben Kerstetter and John
22 Carse dated 1919 through 1922. Each of those statements provides detailed
23 descriptions of development on the S $\frac{1}{2}$ NE $\frac{1}{4}$ including irrigation, whereas each
24 statement says no development had occurred on the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 31. Craig
25 Dickison testified at the supplemental hearing regarding a diversion from

1 Williams Creek which feeds a ditch running northwest and delivering water to a
2 field of some 10 acres. Mrs. Shelton also testified regarding the existence of
3 this ditch and an irrigation practice back to the mid-1940s. There is a
4 significant gap in the record between the no development status in 1922 and
5 10 acres of irrigation when the Weaver family bought the land in 1945.
6 Mrs. Price was over 60 years old in 1922 and lived on the homestead alone. It
7 seems logical that she was not capable of the development work needed to build an
8 800 to 1000 foot ditch. In any case, evidence is lacking to support perfection
9 of a riparian right for the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 31 before December 31, 1932.
10 Lacking that proof, the Referee cannot recommend any diversionary right for the
11 Dickison portion of Court Claim No. 00519.

12
13 COURT CLAIM NO. 00520 -- Willowbrook Farms Ltd. Partnership
(A)05669

14 Willowbrook Farms was not recommended confirmation of a water right for the
15 irrigation of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8 from water sources in either Subbasin No. 7
16 or Subbasin No. 4; therefore, they filed exceptions to the Subbasin No. 4 and
17 Subbasin No. 7 Reports of Referee. Court Claim No. 00520 did not originally
18 assert a right to use of water originating in Subbasin No. 4; therefore, no
19 analysis of the Court claim was included in the Swauk Creek Report of Referee.
20 The exception to the Subbasin No. 4 Report of Referee actually is an amendment to
21 include First Creek as a source of water to which a claim is asserted.
22 Willowbrook Farms is represented by attorney Jeff Slothower and Paul Harrell
23 testified at the combined Subbasin No. 4 and 7 supplemental hearing.

24 Willowbrook Farms Limited Partnership (Willowbrook) owns and irrigates
25 65 acres lying within the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M. Willowbrook

27
28 SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4

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

1 is successor to Alex Munson who received a patent to the SE $\frac{1}{4}$ of said Section 8 in
2 1892. Alex Munson was co-developer of the Wold-Munson Ditch which served water
3 to the SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M. and several other parcels of land
4 from First Creek tributary to Swauk Creek in Subbasin No. 4.

5 Willowbrook asserts a water right to divert from First Creek via the
6 Wold-Munson Ditch as successor to Alex Munson for the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8,
7 T. 18 N., R. 18 E.W.M. The Report of Referee for Subbasin No. 4 (Swauk Creek) at
8 Page 65, Line 23 through Page 66, Line 11 describes Kittitas County Superior
9 Court Decree 2770. Of particular interest to the Willowbrook claim is the fact
10 that in 1899 Francis G. Faulkner and Henry C. Sanders were owners of the SE $\frac{1}{4}$ of
11 Section 8, T. 18 N., R. 18 E.W.M. together with 160 inches of First Creek water
12 right as perfected by Alex Munson via the Wold-Munson Ditch. There is no
13 evidence in the record that this right was ever transferred from the SE $\frac{1}{4}$ of
14 Section 8. The Referee did find an error in the Subbasin No. 4 Report of Referee
15 on Page 70, Lines 18 and 19 where it is stated that Faulkner and Sanders owned
16 the E $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 17, T. 18 N., R. 18 E.W.M. The appropriate
17 description of the combined Faulkner/Sanders properties is the SE $\frac{1}{4}$ of Section 8,
18 T. 18 N., R. 18 E.W.M.

19 Testimony and evidence presented in behalf of Willowbrook's claim to First
20 Creek water establishes that the variously described surface water channels
21 (drain, ditch, unnamed stream) from which Willowbrook diverts water is probably
22 the historic Wold-Munson Ditch. The ditch system as described by Paul Harrell
23 consists of natural drainages linked by segments of crossover ditch between
24 drainage features ultimately linking into Green Canyon and ultimately First
25 Creek. Mr. Harrell testified that only in the last year did he attempt to follow

1 the unnamed ditch/stream updrainage to Lower Green Canyon and discover that First
2 Creek was potentially one of the sources of water. Mr. Harrell attributes the
3 water available in this ditch at the northeast corner of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8,
4 T. 18 N., R. 18 E.W.M. to several sources. Although Willowbrook has not
5 quantified the contributions by source, water is said to include KRD return flow,
6 ground water discharge, local runoff, KRD deliveries and First Creek water.
7 Mr. Harrell's long-term observations of the flow suggest that 20 cfs or more is
8 available in early spring (March to April) before the KRD canal is filled
9 followed by a fairly quick decline of natural flow and increasing KRD deliveries
10 and/or return flow. Paul Harrell was unable to verify the quantity and timing of
11 any First Creek water which contributes to the water available at his headgate at
12 the east quarter corner of Section 8. That headgate is approximately 13 miles
13 from the point of diversion for the Wold-Munson Ditch on First Creek. Since at
14 least 1947, operation and maintenance of the Wold-Munson diversion and ditch has
15 been exclusively accomplished by the members of FCWUA (see Subbasin No. 4, Report
16 of Referee, Volume 29, Court Claim No. 00648, Pages 60 through 81 and Pages 25
17 through 43 of this report regarding the same claim). Willowbrook is not a member
18 of that association and the lands of the members lie 6 to 9 miles north and
19 updrainage from Willowbrook Farms. Testimony of the various FCWUA members is
20 that First Creek water is not allowed to leave their service area during the
21 irrigation season.

22 WRC No. 024269, filed by Paul Harrell pursuant to Ch. 90.14 RCW, indicates
23 that it was filed on an unnamed drain which had ground water as its source. The
24 point of diversion is given as very near the east quarter corner of Section 8,
25 T. 18 N., R. 18 E.W.M. Water use is identified for the irrigation of 30 acres

1 and stock water with the first use taking place in 1932. Willowbrook urges the
2 Court to accept WRC No. 024269 as substantially complying with Ch. 90.14 RCW and
3 thus the foundation for a right to water from First Creek. The Referee
4 respectfully submits that WRC No. 024269 could not satisfy the requirements of
5 Ch. 90.14 RCW because the source claimed is not First Creek and the described
6 point of diversion is some 13 miles from First Creek, so it is not simply a
7 matter of misidentifying the appropriate name of the water source. If WRC
8 No. 24269 were to be recognized to substantially comply with Ch. 90.14 RCW, it
9 seems reasonable that intent to file on First Creek water would be required. The
10 Referee has concluded that lacking knowledge that First Creek was the origin of
11 the water, Paul Harrell could not have intended to file a claim to that source.
12 Further, the purpose of Ch. 90.14 RCW was not satisfied because a reasonable
13 person would not have been able to determine this was a claimed right to First
14 Creek without the extensive record now available for consideration.

15 The Referee finds that any right to First Creek water was waived and
16 relinquished due to failure to file a water right claim (RCW 90.14.071) on that
17 source for use on the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 18 E.W.M. Due to the
18 relinquishment, the Referee recommends denial of Willowbrook's exception to the
19 Subbasin No. 4 (Swauk Creek) Report of Referee. Willowbrook's claim to Subbasin
20 No. 7 water rights and their exception to the Subbasin No. 7 Report of Referee
21 will be addressed in the Supplemental Report of Referee for that subbasin.

1 FINDINGS OF FACT

2 I, DOUGLAS CLAUSING, as Referee in this proceeding, having carefully
3 examined the testimony and evidence, do hereby make the following Findings of
4 Fact pursuant to the Order on Exceptions entered by this court on December 12,
5 1996:

6 Based upon the testimony and evidence obtained at either the exception
7 hearing or the supplemental hearing, the Report of Referee - Subbasin No. 4,
8 dated March 25, 1996, should be modified as follows:

1 CLAIMANT NAME: First Creek Water COURT CLAIM NO. 00648
2 Users Association, Inc.
3 Source: First Creek, tributary to Swauk Creek
4 Use: Irrigation of 124.5 acres and stock water
5 Period of Use: April 1 through October 15 for irrigation; continuous
for stock watering
6 Quantity: 2.49 cfs; 622.5 acre-feet per year for irrigation and
stock watering during irrigation season; 2.49 cfs for
conveyance loss; 4.98 cfs, 27 acre-feet per year
(consumptive) for stock watering from October 16 to
March 31
7 Priority Date: November 2, 1877
8 Point of Diversion: 800 feet south and 100 feet east from the north
quarter corner of Section 30, being within
Government Lot 1, Section 30, T. 20 N., R. 18 E.W.M.
9 Place of Use: The SW $\frac{1}{4}$ of Section 17; the E $\frac{1}{2}$ NW $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of
Section 20, the W $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21,
that portion of the N $\frac{1}{2}$ of Section 21, which is
described as follows: A tract of land bounded by a
line beginning at a point on the west boundary line
of the NE $\frac{1}{4}$ of said section, 66 feet north of the
southwest corner of said quarter section, and running
thence east 66 feet; thence north on a line parallel
with the west boundary line of said quarter section
1,650 feet; thence west 66 feet to the west boundary
line of said quarter section; thence north to the
north boundary line of said quarter section; thence
west to the northwest corner of said section; thence
south on the west boundary line of said section
to the southwest corner of the NW $\frac{1}{4}$ of said section;
thence east on the south boundary line of said NW $\frac{1}{4}$
of said section 990 feet; thence north 66 feet;
and thence east on a line parallel with the south
boundary line of said quarter section 1,650 feet
to the point of beginning; the N $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$
of Section 28, and the NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 29,
ALL in T. 19 N., R. 18 E.W.M.

27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 4

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

1 CLAIMANT NAME: Pat Burke COURT CLAIM NO. 01475
2 & Mary Burke
3 Source: Swauk Creek
4 Use: Irrigation of 39.6 acres and stock water
5 Period of Use: April 1 through October 31
6 Quantity: 1.69 cfs; 297 acre-feet per year for irrigation;
7 1 acre-foot per year for stock water and 0.08 cfs for
conveyance loss
8 Priority Date: June 30, 1878
9 Point of Diversion: 200 feet south and 1,200 feet east from the northwest
corner of Section 27, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
10 Section 27, T. 20 N., R. 17 E.W.M.
11 Place of Use: That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28 lying north
of Swauk Creek and south of the Burke-Hartman Ditch

SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4

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

1 CLAIMANT NAME: Pat Burke COURT CLAIM NO. 01475
2 & Mary Burke

3 Source: Swauk Creek

4 Use: Irrigation of 78.4 acres and stock water

5 Period of Use: April 1 through October 31 for irrigation; continu-
ously for stock water (see instantaneous flow limits)

6 Quantity: 2.00 cfs total April 1 through October 31; 1.75 cfs,
588.6 acre-feet per year for irrigation of 78.4 acres
and 1 acre-foot per year for stock water; 0.25 cfs
April 1 through October 31 for conveyance loss;
0.25 cfs November 1 through November 30 and
February 1 through March 31, 1.0 cfs December 1
through January 31, consumptive use of 8.5 acre-feet
per year for stock water

7 Priority Date: June 30, 1878

8 Point of Diversion: 1,000 feet south and 600 feet east of the northwest
corner of Section 27, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 27, T. 20 N., R. 17 E.W.M.

9 Place of Use: That portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28,
T. 20 N., R. 17 E.W.M. lying southeast of Swauk Creek

10 Limitations of Use: This water right is appurtenant to lands adjacent
to 20 acres of October 31, 1889, priority water
right land. Both tracts are irrigated via a common
point of diversion and ditch. The capacity is
2.0 cfs; therefore, the 1878 and 1889 rights of
2.0 cfs each are not exercised simultaneously, but
rather in rotation.

1 CLAIMANT NAME: Kenneth J. Hartman COURT CLAIM NO. 01685
2 & Ruthie J. Hartman
3 Donald A. Hartman
4 & Ruth D. Hartman
5
6 Source: Swauk Creek
7 Use: Irrigation of 20 acres
8 Period of Use: April 1 through October 15
9 Quantity: 0.85 cfs; 150 acre-feet per year for irrigation,
10 0.04 cfs for conveyance loss
11 Priority Date: June 30, 1878
12 Point of Diversion: 200 feet south and 1,200 feet east from the
13 northwest corner of Section 27, being within the
14 NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T. 20 N., R. 17 E.W.M.
15 Place of Use: That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 20 N.,
16 R. 17 E.W.M. lying southeast of the county road
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SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4

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

1 CLAIMANT NAME: First Creek Water COURT CLAIM NO. 00648
2 Users Association, Inc.
3 Source: First Creek, tributary to Swauk Creek
4 Use: Irrigation of 290.5 acres and stock watering
5 Period of Use: April 1 through October 15 for irrigation,
continuously for stock watering
6 Quantity: 4.46 cfs; 1452.5 acre-feet per year for irrigation
and stock watering during irrigation season, 4.46 cfs
for conveyance loss
7 Priority Date: June 1, 1881
8 Point of Diversion: 800 feet south and 100 feet east of the north
quarter corner of Section 30, being within
Government Lot 1, Section 30, T. 20 N.,
R. 18 E.W.M.
9 Place of Use: The SW $\frac{1}{4}$ of Section 17, the E $\frac{1}{2}$ NW $\frac{1}{4}$ and the E $\frac{1}{2}$ SW $\frac{1}{4}$ of
Section 20, the W $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21,
that portion of the N $\frac{1}{2}$ of Section 21, which is
described as follows: A tract of land bounded by a
line beginning at a point on the west boundary line
of the NE $\frac{1}{4}$ of said section; 66 feet north of the
southwest corner of said quarter section, and
running thence east 66 feet; thence north on a line
parallel with the west boundary line of said quarter
section 1,650 feet; thence west 66 feet to the west
boundary line of said quarter section; thence north
to the north boundary line of said quarter section;
thence west to the northwest corner of said section;
thence south on the west boundary line of said
section to the southwest corner of the NW $\frac{1}{4}$ of said
section; thence east on the south boundary line
of said NW $\frac{1}{4}$ of said section 990 feet; thence north
66 feet; and thence east on a line parallel with the
south boundary line of said quarter section
1,650 feet to the point of beginning; the N $\frac{1}{2}$ NW $\frac{1}{4}$ and
NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, and the NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ of
Section 29, ALL in T. 19 N., R. 18 E.W.M.

27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 4

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

1 CLAIMANT NAME: Pat Burke COURT CLAIM NO. 01475
2 & Mary Burke
3 Source: Dunford Spring
4 Use: Irrigation of 5 acres and stock water
5 Period of Use: April 1 through October 31 for irrigation;
continuously for stock water
6 Quantity: 0.067 cfs; 28.25 acre-feet per year for irrigation
and 0.03 cfs; 8 acre-feet per year for stock water
7 Priority Date: August 31, 1882
8 Point of Diversion: 1,100 feet south and 1,100 feet west from the
center of Section 34, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 34, T. 20 N., R. 17 E.W.M.
9 Place of Use: The W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 34, T 20 N. R. 17 E.W.M.

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13 CLAIMANT NAME: Historical Liberty COURT CLAIM NO. 01738
Homeowners Association
14 Source: Williams Creek
15 Use: Irrigation of 2 acres, mining and fire suppression
16 Period of Use: April 1 through October 31
17 Quantity: 1.12 cfs, 14 acre-feet per year; 4 acre-feet per
year for irrigation, 2 acre-feet per year for
mining and 8 acre-feet per year for non-consumptive
system flow
18 Priority Date: May 1, 1884
19 Point of Diversion: 50 feet north and 1,300 feet east of the west
quarter corner of Section 1, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$
of Section 1, T. 20 N., R. 17 E.W.M.
20 Place of Use: Liberty Townsite being a total of 17.362 acres lying
within portions of the S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ of
Section 1 and the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, all being
within T. 20 N., R. 17 E.W.M.

1 CLAIMANT NAME: Pat Burke COURT CLAIM NO. 01475
2 & Mary Burke

3 Source: McCallum Spring

4 Use: Stock water

5 Period of Use: Continuously

6 Quantity: 0.045 cfs; 3 acre-feet per year

7 Priority Date: May 24, 1884

8 Point of Diversion: 1,200 feet south and 1,100 feet west of the north
quarter corner of Section 3, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T. 19 N., R. 17 E.W.M.

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10 Place of Use: That portion of the NW $\frac{1}{4}$ of Section 3 lying westerly
of the state highway in T. 19 N., R. 17 E.W.M.

11

12 CLAIMANT NAME: Bruce Coe COURT CLAIM NO. 01146

13 Source: Swauk Creek

14 Use: Irrigation of 35 acres

15 Period of Use: April 1 through October 15

16 Quantity: 1.79 cfs; 164 acre-feet per year* (see "Limitations
of Use" below)

17 Priority Date: May 24, 1884

18 Point of Diversion: 600 feet north and 300 feet east of the south
quarter corner of Section 28, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T. 20 N., R. 17 E.W.M.

19

20 Place of Use: E $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 33, T. 20 N.,
R. 17 E.W.M.

21

22 Limitations of Use: 23 acres are irrigated via a pump and sprinklers at
1.25 cfs; 4.0 acre-feet per acre, 12 acres are
irrigated via flood irrigation at 0.54 cfs;
6.0 acre-feet per acre

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1 CLAIMANT NAME: Bruce Coe COURT CLAIM NO. 01146
2 Source: Swauk Creek
3 Use: Irrigation of 15 acres
4 Period of Use: April 1 through October 15
5 Quantity: 1.5 cfs; 112.5 acre-feet per year
6 Priority Date: May 24, 1884
7 Point of Diversion: 1,100 feet south and 1,000 feet west of the center
8 of Section 33, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33,
T. 20 N., R. 17 E.W.M.
9 Place of Use: W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 33, T. 20 N., R. 17 E.W.M.
10
11 CLAIMANT NAME: Gordon C. Tang & Linda Tang COURT CLAIM NO. 00970
12 Source: Swauk Creek
13 Use: Irrigation of 8 acres
14 Period of Use: April 1 through October 15
15 Quantity: 0.167 cfs; 80 acre-feet per year
16 Priority Date: May 24, 1884
17 Point of Diversion: 1,000 feet south and 2,500 feet west of the
18 northeast corner of Section 17, being within the
NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T. 19 N., R. 17 E.W.M.
19 Place of Use: SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, ALL in Section 17,
20 T. 19 N., R. 17 E.W.M.
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SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4

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

1 CLAIMANT NAME: Wallace Ranch COURT CLAIM NO. 02267
2 Limited Partnership
3 Source: Yakima River
4 Use: Irrigation of 92.2 acres
5 Period of Use: April 15 through October 1
6 Quantity: 3.35 cfs; 673.06 acre-feet per year
7 Priority Date: May 24, 1884
8 Point of Diversion: 1,000 feet north and 600 feet east of the southwest
corner of Section 2, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 2, T. 19 N., R. 16 E.W.M.
9
10 Place of Use: E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11, T. 19 N.,
R. 16 E.W.M.
11 Limitations of Use: The instantaneous quantity under both the 1894
and 1896 rights to Yakima River water is limited
to no more than 3.35 cfs
12
13

14 CLAIMANT NAME: Wallace Ranch COURT CLAIM NO. 02267
15 Limited Partnership
16 Source: Unnamed spring
17 Use: Irrigation of 3.5 acres
18 Period of Use: April 15 through October 31
19 Quantity: 0.016 cfs, 7 acre-feet per year
20 Priority Date: May 24, 1884
21 Point of Diversion: 1,550 feet north and 1,350 feet west from the
southeast corner of Section 11, being within the
SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 19 N., R. 16 E.W.M.
22 Place of Use: SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 19 N., R. 16 E.W.M.
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1 CLAIMANT NAME: Wallace Ranch COURT CLAIM NO. 02267
2 Limited Partnership

3 Source: Unnamed spring-fed stream (locally known as Hart
4 Creek)

5 Use: Irrigation of 10 acres

6 Period of Use: June 1 through September 30

7 Quantity: 0.16 cfs; 39 acre-feet per year

8 Priority Date: May 24, 1884

9 Point of Diversion: 1,550 north and 1,350 feet west of the southeast
corner of Section 11, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 11, T. 19 N., R. 16 E.W.M.

10 Place of Use: S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11, T. 19 N., R. 16 E.W.M.
11 northeast of the highway

1 CLAIMANT NAME: Frederick L. Knoll & Dixie S. Knoll COURT CLAIM NO. 12110
2
3 Source: Williams Creek
4 Use: Irrigation of 3 acres and stock water
5 Period of Use: May 1 through October 31 for irrigation and continuously for stock water
6 Quantity: 0.30 cfs; 30 acre-feet per year for irrigation, 1 acre-foot for stock water May 1 through October 31 and 0.50 cfs; 1 acre-foot for stock water from November 1 through April 30
7
8 (See "Limitations of Use" provision below for stock water)
9
10 Priority Date: May 17, 1886
11 Point of Diversion: POD A: 1,580 feet north and 130 feet east of the south quarter corner of Section 36, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.
12
13 POD A(1): 1,560 feet north and 70 feet east of the south quarter corner of Section 36, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.
14
15 Place of Use: Patented mining claims in Section 36, T. 21 N., R. 17 E.W.M. Kittitas County, Washington and in Section 1, T. 20 N., R. 17 E.W.M., described as follows: Beginning, for description "Louis Quietsch" Placer Claim, at corner No. 1, identical with corner No. 2 of Big Nugget from whence said south quarter section corner bears S 35°04'20" W 1036.49 feet distant; thence north 1150.13 feet to corner No. 2; thence west 670 feet to corner No. 3; thence south 1150.13 feet to corner No. 4; thence east 670 feet to corner No. 1, point of beginning. EXCEPT: That portion of said "Louis Quietsch" Placer Mining Claim location described as follows: Beginning at corner No. 4 of said location; thence north along the west boundary line of said location 1150.13 feet to corner No. 3; thence east along the north boundary line of said location 316.6 feet; thence southwesterly along a straight line to the point of beginning; EXCEPT that portion of the previously described "Louis Quietsch" Placer Mine lying (cont.)
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SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4

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

1 (cont.)

2 northerly and easterly of U. S. Forest Service Road
3 2101-E and an existing roadway known as Snowshoe
Ridge Road.

4 Limitations of Use:

5 This stock water right is shared in common by the
6 owners of land through which this ditch passes. The
7 total instantaneous and annual quantities for stock
water for the collective properties shall not exceed
0.5 cfs; 1 acre-foot from November 1 through
April 30, and 1 acre-foot per year for the period
May 1 through October 31

8 CLAIMANT NAME:

9 Del L. Holter

10 COURT CLAIM NO. 01471

11 Source:

12 Williams Creek

13 Use:

14 Mining and Domestic Supply (Irrigation of gardens)

15 Period of Use:

16 March 15 through November 15

17 Quantity:

18 0.03 cfs; 6 acre-feet per year for mining and
19 1 acre-foot per year for domestic garden irrigation
20 of 0.5 acre or less

21 Priority Date:

22 May 29, 1886

23 Point of Diversion:

24 1,730 feet north and 1,660 feet west of the
25 southeast corner of Section 2, being within the
NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T. 20 N., R. 17 E.W.M.

26 Place of Use:

27 All of that portion of Blackjack Placer Mine,
28 designated as Survey No. 1203, located in
Section 2, T. 20 N., R. 17 E.W.M. which is
described as follows: Commencing at Corner No. 1,
from which the south quarter corner of said section
bears S 46°29' E 421.22 feet distant, and running
thence N 16°25' W 599.5 feet to Corner No. 2;
thence N 63°25' E 727.3 feet; thence southerly to a
point in the southerly boundary line which is
702 feet northeasterly from Corner No. 1, measured
along said south boundary line; and thence
S 62°15' W, along said south boundary line,
702 feet to the point of beginning. EXCEPT:
1. Easement for right of way for logging railway
over a strip 75 feet in width, conveyed to Cascade
Lumber Company by 57 of Deeds, Page 11. 2. Easement
for county road as conveyed by 58 of Deeds,
Page 384

29 SUPPLEMENTAL REPORT OF REFEREE
30 Re: Subbasin No. 4

31 Referee's Office
32 15 W. Yakima Ave Ste. 200
33 Yakima, WA 98902-3401

1 CLAIMANT NAME: Sheryle Bonnell COURT CLAIM NO. 05721
2 & William E. Bonnell

3 Source: Williams Creek

4 Use: Irrigation of 15 acres

5 Period of Use: April 1 through October 31

6 Quantity: 0.406 cfs; 173.8 acre-feet per year

7 Priority Date: June 30, 1886

8 Point of Diversion: POD 1: 2,145 feet east of the west quarter corner
of Section 31, being within the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ or the
E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31

9
10 POD 2: 60 feet north and 1,980 feet east of the west
quarter corner of Section 31, being within the
W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31

11
12 POD 3: 100 feet south and 1,254 feet east of the west
quarter corner of Section 31, being within the
N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31

13
14 POD 4: 225 feet south and 990 feet east of the west
quarter corner of Section 31, being within the
N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31

15
16 ALL being within T. 21 N., R. 18 E.W.M.

17 Place of Use: Parcel A of that certain survey as recorded
September 11, 1991, in Book 18 of Surveys at
Pages(s) 52-53, under Auditor's File No. 542839,
Records of Kittitas County, Washington; being a
portion of Homestead Entry Survey No. 161, dated
January 19, 1927; located in the E $\frac{1}{2}$ of Section 36,
T. 21 N., R. 17 E.W.M. and in the W $\frac{1}{2}$ of Section 31,
T. 21 N., R. 18 E.W.M. and Parcel B-2 of the Plat
Flag Mountain; a portion of Homestead Entry Survey
No. 161 located in Section 36, T. 21 N., R. 17 E.W.M.
and Section 31, T. 21 N., R. 18 E.W.M.

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27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 4

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1 CLAIMANT NAME: Selma M. Burzenski COURT CLAIM NO. 05721
2 Source: Williams Creek
3 Use: Irrigation of 24.5 acres
4 Period of Use: April 1 through October 31
5 Quantity: 0.813 cfs; 286.7 acre-feet per year
6 Priority Date: June 30, 1886
7 Point of Diversion: POD 1: 2,145 feet east of the west quarter corner
8 of Section 31, being within the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ or E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$
9 of Section 31
10 POD 2: 60 feet north and 1,980 feet east of the west
quarter corner of Section 31, being within the
W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31
11 POD 3: 100 feet south and 1,254 feet east of the west
12 quarter corner of Section 31, being within the
N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31
13 POD 4: 225 feet south and 990 feet east of the west
14 quarter corner of Section 31, being within the
N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31
15 ALL being within T. 21 N., R. 18 E.W.M.
16 Place of Use: Parcels C and D of that certain survey as recorded
17 September 11, 1991, in Book 18 of Surveys at
18 Page(s) 52-53 under Auditor's File No. 542839,
records of Kittitas County, Washington; being a
portion of Homestead Entry Survey No. 161, dated
January 19, 1927; located in the W $\frac{1}{2}$ of Section 31,
T. 21 N., R. 18 E.W.M.

1 CLAIMANT NAME: Janis G. Newbury & Paul R. Newbury COURT CLAIM NO. 05271
2
3 Source: Williams Creek
4 Use: Irrigation of 17.49 acres
5 Period of Use: April 1 through October 31
6 Quantity: 0.406 cfs; 173.8 acre-feet per year
7 Priority Date: June 30, 1886
8 Point of Diversion: POD 1: 2,145 feet east of the west quarter corner
of Section 31, being within the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ or the
E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31
9
10 POD 2: 60 feet north and 1,980 feet east of the
west quarter corner of Section 31, being within the
W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31
11
12 POD 3: 100 feet south and 1,254 feet east of the
west quarter corner of Section 31, being within the
N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31
13
14 POD 4: 225 feet south and 990 feet east of the
west quarter corner of Section 31, being within the
N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31
15
16 ALL being within T. 21 N., R. 18 E.W.M.
17 Place of Use: Parcels B-1, B-3 and B-4 of the Plat Flag Mountain;
a portion of Homestead Entry Survey No. 161 located
in Section 36, T. 21 N., R. 18 E.W.M. and Section 31,
T. 21 N., R. 18 E.W.M. and a parcel of land,
containing 2 acres, more or less, located in
Section 31, T. 21 N. R. 18 E.W.M. and more
specifically described as follows: Beginning at a
point which bears S 69°40' E, 733 feet from the
quarter section corner on the west side of
Section 31, T. 21 N., R. 18 E.W.M., running thence
S 54°40' W, 135.6 feet; thence S 35°20' E, 200 feet;
thence N 54°40' E, 435.6 feet; thence N 35°20' W,
183 feet; thence S 76°5' W, 46 feet, along side a
public road; running thence S 54°40' W, 257 feet
to the point of beginning; (cont.)

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27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 4

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Also, a tract of land described as follows: A strip of land 20 feet in width, being 10 feet on each side of the middle line of the water ditch hereinafter mentioned, beginning on the westerly line of the tract above described, about 40 feet northerly northerly from the southwesterly corner of said tract and south of the channel of Williams Creek, where said creek crosses the westerly line of said tract; and running thence in a southerly direction, a distance of 30 rods, more or less, and to the southerly side of said premises now owned by Grantor in Lot 3 of said section; said strip of land following the course of a water ditch constructed during 1928 by Grantee through said premises.

10 CLAIMANT NAME: Pat Burke COURT CLAIM NO. 01475
11 & Mary Burke
12 Source: Swauk Creek
13 Use: Irrigation of 20 acres
14 Period of Use: April 1 through October 31
15 Quantity: 2.00 cfs total; 1.75 cfs, 150 acre-feet per year
for irrigation of 20 acres and 0.25 cfs for
conveyance loss
16 Priority Date: October 31, 1889
17 Point of Diversion: 600 feet south and 1,200 feet east of the west
quarter corner of Section 22, being within the
 $NW\frac{1}{4}NW\frac{1}{4}$ of Section 22, T. 20 N., R. 17 E.W.M.
18
19 Place of Use: That portion of the $SE\frac{1}{4}SE\frac{1}{4}$ of Section 28 and the
 $N\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$ of Section 33, T. 20 N., R. 17 E.W.M. lying
westerly of the May-Burke Ditch.
20
21 Limitations of Use: This water right is appurtenant to lands adjacent to
78.4 acres of June 30, 1878, priority water right
land. Both tracts are irrigated via a common point
of diversion and ditch. The capacity is 2.0 cfs;
therefore, the 1878 and 1889 rights of 2.0 cfs each
are not exercised simultaneously, but rather in
rotation.
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SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4

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1 CLAIMANT NAME: Kenneth J. Hartman COURT CLAIM NO. 01685
2 & Ruthie J. Hartman
3 Donald A. Hartman
4 & Ruth D. Hartman
Daniel V. Byrne
& Martha Wyckoff Byrne

5 Source: Swauk Creek

6 Use: Irrigation of 75 acres

7 Period of Use: April 1 through October 15

8 Quantity: 3.20 cfs; 562.5 acre-feet per year for irrigation
and 0.14 cfs for conveyance loss

9 Priority Date: September 20, 1889

10 Point of Diversion: 200 feet south and 1,200 feet east from the
11 northwest corner of Section 27, being within
the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T. 20 N., R. 17 E.W.M.

12 Place of Use: E $\frac{1}{2}$ SW $\frac{1}{4}$ and that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ lying northwest
13 of Swauk Creek and southeast of the county road, all
in Section 28, T. 20 N., R. 17 E.W.M.

1 CLAIMANT NAME: Douglas F. Sanders COURT CLAIM NO. 02057
2 & Marcia H. Sanders
3 Estate of Lester F. Sanders
4 & Dollie C. Sanders

5 Source: An unnamed spring-fed stream

6 Use: Domestic supply and mining

7 Period of Use: April 15 through October 15

8 Quantity: 0.005 cfs; 0.5 acre-foot per year for domestic and
9 0.02 cfs; 1.0 acre-foot per year for mining

10 Priority Date: April 30, 1890

11 Point of Diversion: POD 1: 150 feet south and 1,550 feet west of the
12 northeast corner of Section 24, being within the
13 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 21 N., R. 17 E.W.M.
POD 2: 200 feet south and 1,625 feet west of the
14 northeast corner of Section 24, being within the
15 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 21 N., R. 17 E.W.M.

16 Place of Use: The Southern Star Mining claim lying within portions
17 of the SE $\frac{1}{4}$ of Section 13 and the NE $\frac{1}{4}$ of Section 24,
18 both in T. 21 N., R. 17 E.W.M.

1 CLAIMANT NAME: Richard H. Anderson COURT CLAIM NO. 12140
2 & Judy Anderson

3 Source: Williams Creek

4 Use: Irrigation of 2 acres and stock water

5 Period of Use: May 1 through October 31 for irrigation and
continuously for stock water

6 Quantity: POD A: 0.10 cfs; 10 acre-feet per year for
irrigation, 1 acre-foot per year for stock water
from May 1 through October 31 and 0.50 cfs;
1 acre-foot per year for stock water November 1
through April 30

7 POD B: 0.10 cfs; 10 acre-feet per year for
irrigation, 1 acre-foot per year for stock water
from May 1 through October 31 and 0.50 cfs;
1 acre-foot per year for stock water November 1
through April 30

8 (See "Limitations of Use" provision below for stock
water)

9 Priority Date: July 3, 1891

10 Point of Diversion: POD A: 1,580 feet north and 130 feet east of the
11 south quarter corner of Section 36, being within the
12 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.

13 POD B: 110 feet north and 450 feet west of the south
quarter corner of Section 36, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$
14 of Section 36, T. 21 N., R. 17 E.W.M.

15 Place of Use: Lot 1 of the Cromarty Shot Plat, as described and
delineated on Short Plat No. 77-05 recorded
16 September 8, 1977, under Auditor's File No. 416218
and filed in Volume "A" of Short Plats, Page 18,
Records of Kittitas County, being a portion of
Section 36, T. 21 N., R. 17 E.W.M. and Section 1,
T. 20 N., R. 17 E.W.M.

17 Limitations of Use: This stock water right is shared in common by the
18 owners of land through which this ditch passes. The
total instantaneous and annual quantities for stock
water for the collective properties shall not exceed
0.5 cfs; 1 acre-foot from November 1 through
April 30, and 1 acre-foot per year for the period
May 1 through October 31

1 CLAIMANT NAME: Larry A. Smith COURT CLAIM NO. 12104
2 & Anna L. Smith

3 Source: Williams Creek

4 Use: Irrigation of 1 acre and stock water

5 Period of Use: May 1 through October 31 for irrigation and
continuously for stock water

6 Quantity: 0.10 cfs; 10 acre-feet per year, 1 acre-foot for
stock water from May 1 through October 31 and
0.50 cfs; 1 acre-foot for stock water from
November 1 through April 30

7 (See "Limitations of Use" provision below for stock
water)

8 Priority Date: July 3, 1891

9 Point of Diversion: POD B: 110 feet north and 450 feet west of the
10 south quarter corner of Section 36, being within the
11 $SE\frac{1}{4}SW\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.

12 Place of Use: That portion of the following described parcel lying
13 within Fourth of July mining claim: Portions of
Jumbo and Fourth of July mining claims located in
14 Section 1, T. 20 N., R. 17 E.W.M. which are bounded
by a line described as follows: Beginning at the
15 south quarter corner of Section 36, thence
S $16^{\circ}44'41''$ W, 1,434.09 feet; thence S $00^{\circ}23'20''$ E,
16 319.89 feet to the true point of beginning; thence
N $53^{\circ}49'00''$ W, 897.62 feet to the southeast right
17 of way/of Forest Service right of way dated April 9,
18 1968, for Williams Creek Road #2102, thence
S $36^{\circ}11'00''$ W along the southeast right of way of
19 Forest Service Road 10 feet; thence on a curve to
the right along the right of way a radius of 330 feet
20 an arc distance of 94.59 feet; thence S $00^{\circ}34'10''$ E,
140.34 feet; thence S $89^{\circ}35'11''$ W, 127.90 feet;
21 thence S $00^{\circ}44'08''$ E, 247.07 feet; thence
N $89^{\circ}18'38''$ E, 218.06 feet; thence S $00^{\circ}34'34''$ E,
22 401.34 feet; thence S $89^{\circ}38'48''$ W, 217.34 feet;
23 thence S $00^{\circ}14'22''$ E, 199.83 feet; thence
N $89^{\circ}30'36''$ E, 917.70 feet; thence N $00^{\circ}23'20''$ W,
24 525.84 feet to the true point of beginning
(cont.)

1 (cont.)

2 Limitations of Use:

3 This stock water right is shared in common by the
4 owners of land through which this ditch passes. The
5 total instantaneous and annual quantities for stock
6 water for the collective properties shall not exceed
7 0.5 cfs; 1 acre-foot from November 1 through
8 April 30, and 1 acre-foot per year for the period
9 May 1 through October 31

10 CLAIMANT NAME: The Estate of Paul P. Weaver COURT CLAIM NO. 00519
11 & Mary B. Shelton

12 Source: Price Creek

13 Use: Irrigation of 20 acres and stock water

14 Period of Use: April 1 through October 15

15 Quantity: 2.0 cfs; 234 acre-feet per year for irrigation and
16 1.0 acre-foot per year for stock water

17 Priority Date: June 30, 1892

18 Point of Diversion: 2,200 feet south and 1,500 feet west of the
19 northeast corner of Section 31, being within the
20 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 21 N., R. 18 E.W.M.

21 Place of Use: SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 21 N., R. 18 E.W.M.

22 CLAIMANT NAME: Gordon C. Tang COURT CLAIM NO. 00970
23 & Linda Tang

24 Source: Swauk Creek

25 Use: Irrigation of 8 acres

26 Period of Use: April 1 through October 15

27 Quantity: 0.167 cfs; 80 acre-feet per year

28 Priority Date: September 21, 1892

Point of Diversion: 600 feet south and 2,000 feet west of the northeast
corner of Section 17 being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 17, T. 19 N., R. 17 E.W.M.

Place of Use: NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T. 19 N., R. 17 E.W.M.

SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 4

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

1 CLAIMANT NAME: Mark K. Jones COURT CLAIM NO. 12143
2 & Michele M. Jones

3 Source: Williams Creek

4 Use: Irrigation of 0.5 acre and stock water

5 Period of Use: May 1 through October 31 for irrigation and
continuously for stock water

6 Quantity: 0.05 cfs; 5 acre-feet per year for irrigation of
0.5 acre, 1 acre-foot for stock water May 1 through
October 3 and 0.50 cfs; 1 acre-foot for stock water
November 1 through April 30
9 (See "Limitations of Use" provision below for stock
water)

10 Priority Date: July 3, 1893

11 Point of Diversion: POD B: 110 feet north and 450 feet west of the
south quarter corner of Section 36, being within the
 $SE\frac{1}{4}SW\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.

12 Place of Use: That portion of Section 1, T. 20 N., R. 17 E.W.M. in
the County of Kittitas, State of Washington, which
is a portion of "JUMBO" PLACER CLAIM and which is
bounded by a line described as follows: Beginning at
Corner No. 1 of "JUMBO" PLACER CLAIM, from whence
the standard South $\frac{1}{4}$ of Section 36, T. 21 N.,
R. 17 E.W.M. bears N $16^{\circ}44'41''$ E 1438.45 feet distant
distant; thence South 846.51 feet to Corner No. 2;
thence West 920 feet to Corner No. 3; thence North
846.51 feet to Corner No. 4; thence South along West
line of said "JUMBO" PLACER CLAIM 243.51 feet to
point of beginning; thence South 400 feet; thence
East 218 feet; thence North 400 feet; thence West
218 feet to point of beginning.

13 Limitations of Use: This stock water right is shared in common by the
owners of land through which this ditch passes. The
total instantaneous and annual quantities for stock
water for the collective properties shall not exceed
0.5 cfs; 1 acre-foot from November 1 through
April 30, and 1 acre-foot per year for the period
May 1 through October 31

1 CLAIMANT NAME: Larry A. Smith COURT CLAIM NO. 12104
2 & Anna L. Smith

3 Source: Williams Creek

4 Use: Irrigation of 3 acres and stock water

5 Period of Use: May 1 through October 31 for irrigation and
continuously for stock water

6 Quantity: POD A: 0.10 cfs; 10 acre-feet for irrigation of
1 acre, 1 acre-foot for stock water May 1 through
October 31 and 0.50 cfs; 1 acre-foot for stock water
November 1 through April 30

7 POD B: 0.20 cfs; 20 acre-feet for irrigation of
2 acres, 1 acre-foot for stock water May 1 through
October 31 and 0.50 cfs; 1 acre-foot for stock water
November 1 through April 30

8 (See "Limitations of Use" provision below for stock
water)

9 Priority Date: July 3, 1893

10 Point of Diversion: POD A: 1,580 feet north and 130 feet east of the
11 south quarter corner of Section 36, being within the
NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.

12 POD B: 110 feet north and 450 feet west of the south
quarter corner of Section 36, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$
13 of Section 36, T. 21 N., R. 17 E.W.M. (cont.)

1 (cont.)

2 Place of Use:

3 That portion of the following described parcel lying
4 within Jumbo mining claim: Portions of Jumbo and
5 Fourth of July mining claims located in Section 1,
6 T. 20 N., R. 17 E.W.M. which are bounded by a line
7 described as follows: Beginning at the south
8 quarter corner of Section 36, thence S $16^{\circ}44'41''$ W,
9 1,434.09 feet; thence S $00^{\circ}23'20''$ E, 319.89 feet to
10 the true point of beginning; thence N $53^{\circ}49'00''$ W,
11 897.62 feet to the southeast right of way of Forest
12 Service right of way dated April 9, 1968, for
13 Williams Creek Road #2102, thence S $36^{\circ}11'00''$ W along
14 the southeast right of way of Forest Service Road
15 10 feet; thence on a curve to the right along the
16 right of way a radius of 330 feet an arc distance of
17 94.59 feet; thence S $00^{\circ}34'10''$ E, 140.34 feet; thence
18 S $89^{\circ}35'11''$ W, 127.90 feet; thence S $00^{\circ}44'08''$ E,
19 247.07 feet; thence N $89^{\circ}18'38''$ E, 218.06 feet;
20 thence S $00^{\circ}34'34''$ E, 401.34 feet; thence
21 S $89^{\circ}38'48''$ W, 217.34 feet; thence S $00^{\circ}14'22''$ E,
22 199.83 feet; thence N $89^{\circ}30'36''$ E, 917.70 feet;
23 thence N $00^{\circ}23'20''$ W, 525.84 feet to the true point
24 of beginning

25 Limitations of Use:

26 This stock water right is shared in common by the
27 owners of land through which this ditch passes. The
28 total instantaneous and annual quantities for stock
water for the collective properties shall not exceed
0.5 cfs; 1 acre-foot from November 1 through
April 30, and 1 acre-foot for the period May 1
through October 31

1 CLAIMANT NAME: Wallace Ranch COURT CLAIM NO. 02267
2 Limited Partnership

3 Source: Yakima River

4 Use: Irrigation of 38.2 acres

5 Period of Use: April 15 through October 1

6 Quantity: 3.35 cfs; 279.6 acre-feet per year

7 Priority Date: September 25, 1894

8 Point of Diversion: 200 feet south and 200 feet east of the north
9 quarter corner of Section 14, being within the
NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T. 19 N., R. 16 E.W.M.

10 Place of Use: That portion of the NE $\frac{1}{4}$ of Section 14, T. 19 N.,
11 R. 16 E.W.M. lying between the railroad and the
Yakima River

12 Limitations of Use: The instantaneous quantity under both the 1894 and
13 1896 rights to Yakima River water is limited to no
more than 3.35 cfs

14 CLAIMANT NAME: Wallace Ranch COURT CLAIM NO. 02267
15 Limited Partnership

16 Source: Unnamed spring

17 Use: Single, in-house domestic supply

18 Period of Use: Continuously

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

20 Priority Date: September 25, 1894

21 Point of Diversion: 300 feet south and 600 feet west from the
22 northeast corner of Section 14, being within the
N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T. 19 N., R. 16 E.W.M.

23 Place of Use: SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T. 19 N., R. 16 E.W.M.

1 CLAIMANT NAME: Frederick L. Knoll COURT CLAIM NO. 12110
2 & Dixie S. Knoll

3 Source: Williams Creek

4 Use: Irrigation of 2 acres and stock water

5 Period of Use: May 1 through October 31 for irrigation and
continuously for stock water

6 Quantity: 0.20 cfs; 20 acre-feet per year for irrigation,
1 acre-foot for stock water May 1 through October 31
and 0.50 cfs; 1 acre-foot from November 1 through
April 30 for stock water

7 (See "Limitations of Use" provision below for stock
water)

8 Priority Date: December 1, 1894

9 Point of Diversion: POD A: 1,580 feet north and 130 feet east of the
10 south quarter corner of Section 36, being within the
11 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.

12 Place of Use: That portion of Big Nugget and Gold Bar Placer
mining claim locations lying easterly of an existing
roadway known as the "Old Williams Creek Road" and
northerly of an existing road more fully described
as follows: Beginning at the intersection of the
centerline of an existing road and the east
property boundary line of Gold Bar Placer claim,
said point being S 61°49'48" E a distance of
304.59 feet from the south one quarter corner
of Section 36, T. 21 N., R. 17 E.W.M.; thence
N 58°21'25" W a distance of 115.27; thence
N 78°02'17" W a distance of 153.65 feet; thence
N 16°03'16" W a distance of 100.98 feet; thence
N 04°23'14" W a distance of 132.49 feet; thence
N 25°38'56" W a distance of 91.50 feet; thence
N 71°19'49" W a distance of 70.42 feet; to a point
to which point is the intersection of the centerline
of the previously described road with the centerline
of the "Old Williams Creek Road." (cont.)

1 (cont.)

2 Limitations of Use:

3 This stock water right is shared in common by the
4 owners of land through which this ditch passes. The
5 total instantaneous and annual quantities for stock
water for the collective properties shall not exceed
0.5 cfs; 1 acre-foot from November 1 through
April 30, and 1 acre-foot per year for the period
May 1 through October 31

6 CLAIMANT NAME:

Boise Cascade Corporation

COURT CLAIM NO. 02206

(A)03119

(A)05238

7 Source:

First Creek

8 Use:

Timber management (road watering)

9 Period of Use:

May 1 through December 1

10 Quantity:

0.58 cfs; 1.84 acre-feet per year

11 Priority Date:

September 30, 1896

12 Point of Diversion:

Various points of diversion for pump chances between
the east and west boundaries of Section 23, being
within the S $\frac{1}{2}$ of Section 23, T. 20 N., R. 17 E.W.M.

13 Place of Use:

The S $\frac{1}{2}$ of Sections 23, T. 20 N., R. 17 E.W.M.

27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 4

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

1 CLAIMANT NAME: Richard H. Anderson COURT CLAIM NO. 12140
2 & Judy Anderson

3 Source: Williams Creek

4 Use: Irrigation of 1 acre and stock water

5 Period of Use: May 1 through October 31 for irrigation and
continuously for stock water

6 Quantity: 0.10 cfs; 10 acre-feet per year for irrigation of
1 acre and 1 acre-foot per year for stock water from
May 1 through October 31 and 0.50 cfs; 1 acre-foot
per year from November 1 through April 30 for stock
water

7 (See "Limitations of Use" provision below for stock
water)

8 Priority Date: January 1, 1898

9 Point of Diversion: POD B: 110 feet north and 450 feet west of the
10 south quarter corner of Section 36, being within the
SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.

11 Place of Use: That portion of the following described parcel
12 lying northeast of Williams Creek: Lot 1 of the
Cromarty Short Plat, as described and delineated on
13 Short Plat No. 77-05 recorded September 8, 1977,
under Auditor's File No. 416218 and filed in
Volume "A" of Short Plats, Page 18, Records of
14 Kittitas County, being a portion of Section 36,
T. 21 N., R. 17 E.W.M. and Section 1, T. 20 N.,
R. 17 E.W.M.

15 Limitations of Use: This stock water right is shared in common by the
16 owners of land through which this ditch passes.
The total instantaneous and annual quantities for
17 stock water for the collective properties shall not
exceed 0.5 cfs; 1 acre-foot from November 1 through
April 30, and 1 acre-foot per year for the period
18 May 1 through October 31

1 CLAIMANT NAME: Bernard Paul Knoll COURT CLAIM NO. 12061/12062
2 Source: Williams Creek
3 Use: Irrigation of 1 acre and stock water
4 Period of Use: May 1 through September 30 for irrigation and
5 continuously for stock water
6 Quantity: 0.10 cfs; 10 acre-feet per year for irrigation and
0.01 cfs; 1 acre-foot per year for stock water
7 (See "Limitations of Use" provision below for stock
water)
8 Priority Date: January 1, 1898
9 Point of Diversion: 110 feet north and 450 feet west of the south
10 quarter corner of Section 36, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$
11 of Section 36, T. 21 N., R. 17 E.W.M.
12 Place of Use: That portion of Lot 4 Cromarty Short Plat 77-05
13 lying westerly of Williams Creek and easterly of the
ditch served by point of diversion "B" being a
portion of Section 1, T. 20 N., R. 17 E.W.M.
14 Limitations of Use: This stock water right is shared in common by the
15 owners of land through which this ditch passes. The
total instantaneous and annual quantities for stock
water for the collective properties shall not exceed
0.5 cfs; 1 acre-foot from November 1 through April 30
and 1 acre-foot for the period May 1 through
October 31

1 CLAIMANT NAME: Steven A. Minalia & Karen R. Minalia COURT CLAIM NO. 12137
2
3 Source: Williams Creek
4 Use: Irrigation of 3.5 acres and stock water
5 Period of Use: May 1 through October 31 for irrigation and continuously for stock water
6 Quantity: 0.35 cfs; 35 acre-feet per year for irrigation of 3.5 acres; 1 acre-foot for stock water May 1 through October 31 and 0.50 cfs; 1 acre-foot per year for stock water November 1 through April 30
7
8 (See "Limitations of Use" provision below for stock water)
9
10 Priority Date: January 1, 1898
11 Point of Diversion: POD A: 1,580 feet north and 130 feet east of the south quarter corner of Section 36, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.
12
13 Place of Use: PARCEL A: That portion of Lot 3 of Cromarty Short Plat, as described and delineated on Kittitas County Short Plat No. 77-05, recorded September 8, 1977, under Auditor's File No. 416218, and filed in Volume "A" of Short Plats, Page 18, Records of Kittitas County, State of Washington, being a portion of Section 36, T. 21 N., R. 17 E.W.M., and a portion of Section 1, T. 20 N., R. 17 E.W.M., Kittitas County, State of Washington, which is described as follows: Commencing at the existing Iron Pin Monument marking the southeast corner of the patented mining claim known as Gold Bar Placer Mine and the southeast corner of said Lot 3, said point being the true point of beginning: Thence N 32°49'59" W, a distance of 768.64 feet to the westerly boundary line of said Lot 3; thence on the following courses, and distances on the boundary line of said Lot 3; (A) Northeasterly on a 272.97 foot radius curve concave to the northwest an arc distance of 1.37 feet, the long chord of said curve being N 19°15'05" E, a distance of 1.37 feet; (B) N 19°06'27 E, a distance of 67.63 feet; (C) Northeasterly on a 430.00 foot radius curve concave to the northwest an arc distance of 108.30 feet, the long chord of said curve being N 11°53'33" E, a distance of 108.01 feet; (cont.)

27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 4

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

1 (cont.)

- 2 (D) N 04°40'39" E, a distance of 85.30 feet;
3 (E) Northeasterly on a 10.00 foot radius curve
4 concave to the southeast an arc distance of
5 18.15 feet, the long chord of said curve being
6 N 56°40'25" E, a distance of 15.76 feet;
7 (F) Southeasterly on a 15.66 foot radius curve
8 concave to the southwest an arc distance of
9 12.48 feet, the long chord of said curve being
S 48°29'23" E, a distance of 12.16 feet;
10 (G) S 25°38'57" E, a distance of 25.34 feet;
11 (H) Southeasterly on a 220.00 foot radius curve
12 concave to the southwest an arc distance of
13 81.64 feet, the long chord of said curve being
S 15°01'05" E, a distance of 81.17 feet;
14 (I) S 04°23'14" E, a distance of 73.30 feet;
15 (J) Southeasterly on a 150.00 foot radius curve
16 concave to the northeast an arc distance of
17 30.54 feet, the long chord of said curve being
S 10°13'15" E, a distance of 30.49 feet;
18 (K) S 16°03'16" E, a distance of 16.64 feet;
19 (L) Southeasterly on a 150.00 foot radius curve
20 concave to the northeast an arc distance of
21 162.27 feet, the long chord of said curve being
22 S 47°02'47" E, a distance of 154.47 feet;
23 (M) S 78°02'17" E, a distance of 46.88 feet;
24 (N) Southeasterly on a 170.00 foot radius curve
25 concave to the southwest an arc distance of
26 58.40 feet, the long chord of said curve being
S 68°11'51" E, a distance of 58.11 feet;
(O) S 58°21'25" E, a distance of 93.39 feet;
(P) S 00°18'31" E, a distance of 496.48 feet to the
true point of beginning.

(Also known as Parcel 2 of survey filed in Volume 13
of Surveys, Page 28)

PARCEL B: That portion of Lot 3, of Cromarty Short Plat, as described and delineated on Short Plat No. 77-05, recorded September 8, 1977, under Auditor's File No. 416218, and filed in Volume "A" of Short Plats, Page 18, being a portion of Section 36, T. 21 N., R. 17 E.W.M., and Section 1, T. 20 N., R. 17 E.W.M., Kittitas County, State of Washington, which is described as follows: Commencing at the existing Iron Pin Monument marking the southeast quarter of the patented mining claim known as Gold Bar Placer Mine and the southeast corner of Said Lot 3, said point being the true point of beginning:
(cont.)

1 (cont.)

2 Thence on the following courses and distances on the
3 boundary line of said Lot 3: (A) S $88^{\circ}47'44''$ W, a
4 distance of 205.89 feet; (B) N $36^{\circ}49'57''$ W, a
5 distance of 551.68 feet; (C) N $01^{\circ}18'42''$ E, a
6 distance of 66.75 feet; (D) Northeasterly on a
7 210.00 foot radius curve concave to the northwest
8 an arc distance of 59.80 feet, the long chord of
9 said curve being N $54^{\circ}40'50''$ E, a distance of
10 59.60 feet; (E) Northeasterly on a 272.97 foot
11 radius curve concave to the northwest an arc distance
12 of 129.24 feet, the long chord of said curve being
13 N $32^{\circ}57'31''$ E, a distance of 128.04 feet; (F) Thence
14 S $32^{\circ}49'59''$ E, a distance of 768.64 feet to the true
15 point of beginning.

16 (Also known as Parcel 1 of survey filed in
17 Volume 13 of Surveys, Page 28).

18 Limitations of Use:

19 This stock water right is shared in common by the
20 owners of land through which this ditch passes. The
21 total instantaneous and annual quantities for stock
22 water for the collective properties shall not exceed
23 0.5 cfs; 1 acre-foot from November 1 through
24 April 30, and 1 acre-foot per year for the period
25 May 1 through October 31

1 CLAIMANT NAME: Gerald R. Peltola & Barbara J. Peltola COURT CLAIM NO. 12310
2

3 Source: Williams Creek

4 Use: Irrigation of 2 acres and stock water

5 Period of Use: May 1 through October 31 for irrigation and continuously for stock water

6 Quantity: POD A: 0.10 cfs; 10 acre-feet per year (see below) and 1 acre-foot per year from May 1 through October 31 for stock water
POD B: 0.10 cfs; 10 acre-feet per year and stock water from November 1 through April 30
Diversions A and B shall be limited to 0.50 cfs; 1 acre-foot each for stock water
(See "Limitations of Use" provision below for stock water)

Priority Date: January 1, 1898

Point of Diversion: POD A: 1,580 feet north and 130 feet east of the south quarter corner of Section 36, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.
POD B: 110 feet north and 450 feet west of the south quarter corner of Section 36, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T. 21 N., R. 17 E.W.M.

Place of Use: Lot 2 of the Cromarty Short Plat, as described and delineated on Short Plat No. 77-05 recorded September 8, 1977, under Auditor's File No. 416218 and filed in Volume "A" of Short Plats, Page 18, Records of Kittitas County, being a portion of Section 36, T. 21 N., R. 17 E.W.M. and Section 1, T. 20 N., R. 17 E.W.M.

Limitations of Use: This stock water right is shared in common by the owners of land through which this ditch passes. The total instantaneous and annual quantities for stock water for the collective properties shall not exceed 0.5 cfs; 1 acre-foot from November 1 through April 30, and 1 acre-foot per year for the period May 1 through October 31

1 CLAIMANT NAME: Darrell Clark & Mabel Clark COURT CLAIM NO. 01087
2
3 Source: Yakima River
4 Use: Irrigation of 50 acres
5 Period of Use: April 15 through October 15
6 Quantity: 1 cfs; 250 acre-feet per year
7 Priority Date: July 27, 1899
8 Point of Diversion: 220 feet north and 300 feet east from the center of
Section 28, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28,
T. 19 N., R. 17 E.W.M.
9
10 Place of Use: The S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33, T. 19 N., R. 17 E.W.M.

11 CLAIMANT NAME: Bruce Coe COURT CLAIM NO. 01146
12 Source: Swauk Creek
13 Use: Irrigation of 5 acres
14 Period of Use: April 1 through October 15
15 Quantity: 0.375 cfs; 37.5 acre-feet per year
16 Priority Date: April 9, 1901
17 Point of Diversion: 1,100 feet south and 1,000 feet west of the center
of Section 33, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 33, T. 20 N., R. 17 E.W.M.
18
19 Place of Use: SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 20 N., R. 17 E.W.M.
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SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4

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

1 CLAIMANT NAME: The Estate of William Siepmann COURT CLAIM NO. 001278
2 & Elna Irene Siepmann

3 Source: Wildcat Gulch

4 Use: Irrigation of 0.5 acre and stock water

5 Period of Use: April 15 through September 15

6 Quantity: 0.03 cfs; 3 acre-feet per year

7 Priority Date: June 4, 1903

8 Point of Diversion: 50 feet south and 1,200 feet west of the north
quarter corner of Section 15, being within the
 $\text{NE} \frac{1}{4} \text{NW} \frac{1}{4}$ of Section 15, T. 20 N., R. 17 E.W.M.

9 Place of Use: $\text{W} \frac{1}{2} \text{NE} \frac{1}{4} \text{SW} \frac{1}{4}$ and $\text{W} \frac{1}{2} \text{SE} \frac{1}{4} \text{NW} \frac{1}{4}$ of Section 15, T. 20 N.,
R. 17 E.W.M.

1 CLAIMANT NAME: Del L. Holter COURT CLAIM NO. 01471
2 Source: Unnamed spring
3 Use: Domestic supply for 4 homes and mining
4 Period of Use: Continuously for domestic supply and March 15
through November 15 for mining
5
6 Quantity: 0.01 cfs; 4 acre-feet per year for domestic supply
and 0.03 cfs; 2 acre-feet per year for mining
7 Priority Date: June 19, 1960
8 Point of Diversion: 100 feet south and 200 feet west of the center of
Section 2, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2,
T. 20 N., R. 17 E.W.M.
9
10 Place of Use: All of that portion of Blackjack Placer Mine,
designated as Survey No. 1203, located in Section 2,
T. 20 N., R. 17 E.W.M. which is described as
follows: Commencing at Corner No. 1, from which the
south quarter corner of said section bears
S 46°29' E 421.22 feet distant, and running
thence N 16°25' W 599.5 feet to Corner No. 2;
thence N 63°25' E 727.3 feet; thence southerly
to a point in the southerly boundary line which is
702 feet northeasterly from Corner No. 1, measured
along said south boundary line; and thence
S 62°15' W, along said south boundary line,
702 feet to the point of beginning. EXCEPT:
1. Easement for right of way for logging railway
over a strip 75 feet in width, conveyed to Cascade
Lumber Company by 57 of Deeds, Page 11. 2. Easement
for county road as conveyed by 58 of Deeds, Page 384.
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SUPPLEMENTAL REPORT OF REFEREE
Re: Subbasin No. 4

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

1 CLAIMANT NAME: Gold Placers, Inc. COURT CLAIM NO. 01561
2 Source: Boulder Creek and Williams Creek
3 Use: Placer Mining
4 Period of Use: March 1 through November 15
5 Quantity: 1.5 cfs; 49 acre-feet per year
6 Priority Date: December 18, 1961
7 Point of Diversion: Boulder Creek: At any point on the creek channel
8 within the west 2,000 feet of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 6,
T. 20 N., R. 18 E.W.M. and the SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$
9 of Section 1, T. 20 N., R. 17 E.W.M.
10 Williams Creek: At any point on the creek channel
11 within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1 and within
the SE $\frac{1}{4}$ of Section 2, T. 20 N., R. 17 E.W.M.
12 Place of Use: The E $\frac{1}{2}$ of Blackjack; Mineral Survey No. 1203,
Discovery and Theresa; Mineral Survey No. 343,
BIGney; Mineral Survey No. 1206, Elliot; Mineral
Survey No. 1206, 1916; Mineral Survey No. 1159,
Little May; Mineral Survey No. 1159, Boulder Creek;
Mineral Survey No. 1159, Nugget and Gold Bar, Mineral
Survey No. 1204, New Discovery; Mineral Survey
No. 1205, Last Chance, Golden Eagle, Snyder
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1 CLAIMANT NAME: Columbia Cascade Land Co., Inc. COURT CLAIM NO. 01096
2 Source: An unnamed stream
3 Use: Fish propagation
4 Period of Use: Continuously
5 Quantity: 0.50 cubic foot per second
6 Priority Date: June 30, 1965
7 Point of Diversion: 550 feet north and 650 feet east from the southwest
8 corner of Section 17, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$
9 Section 17, T. 21 N., R. 18 E.W.M.
10 Place of Use: The S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18, T. 21 N., R. 18 E.W.M.
11 Limitations of Use: The diversion intake shall be tightly screened at
12 all times with wire having a mesh opening not
13 greater than 0.125 (1/8) inch.

14 CLAIMANT NAME: Columbia Cascade Land Co., Inc. COURT CLAIM NO. 01096
15 Source: An unnamed spring
16 Use: Group domestic supply
17 Period of Use: Continuously
18 Quantity: 0.006 cubic foot per second, 2 acre-feet per year
19 Priority Date: June 30, 1965
20 Point of Diversion: 700 feet north and 100 feet east from the south
quarter corner of Section 18, being within the
SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T. 21 N., R. 18 E.W.M.
21 Place of Use: The Plat of Liberty Mountain No. 1; and Plat of
22 Liberty Mountain No. 2; and the unplatte portion of
the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 18; ALL within the S $\frac{1}{2}$ Section 18,
T. 21 N., R. 18 E.W.M.

1 CLAIMANT NAME: Mr. Marilyn Bateman
2 & Mrs. Marilyn Bateman
3 Lookout Mountain Associates

COURT CLAIM NO. 01479

4 Source: Pump House Spring

5 Use: Domestic supply for two residences and stock water

6 Period of Use: Continuously

7 Quantity: 0.00222 cfs (1 gpm), 1.0 acre-foot per year for
domestic supply; 0.50 acre-foot per year for stock
water

8 Priority Date: August 16, 1969

9 Point of Diversion: 700 feet south and 300 feet west from the northeast
corner of Section 11 being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 11, T. 19 N., R. 16 E.W.M.

10 Place of Use: The following parcels in T. 19 N., R. 16 E.W.M. in
Kittitas County, Washington:

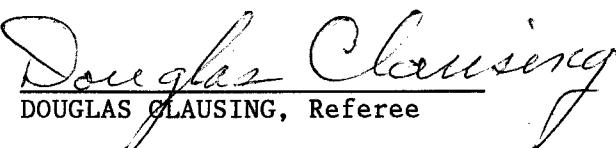
11 Beginning at the northwest corner of the NE $\frac{1}{4}$ of
Section 12, which is the true point of beginning;
thence southerly along the west line of the said
NE $\frac{1}{4}$ 890 feet; thence east 660 feet; thence south
175 feet; thence S 23°30' E 350 feet; thence
N 65°30' E 610 feet; thence in a north-northwesterly
direction to a point on the north line of Section 12
which is 900 feet easterly of the northwest corner of
the NE $\frac{1}{4}$ of Section 12; thence westerly along said
north line of Section 12 to the true point of
beginning; AND beginning at the southwest corner
of Section 1, thence northerly along the west line of
Section 1, 230 feet to the true point of beginning;
thence easterly along a line parallel to the south
line of Section One 1,000 feet; thence north
300 feet; thence in a northwesterly direction to a
point on the west line of Section 1 which is
1230 feet north of the southwest corner of
Section 1; thence southerly along the west line
of Section 1 to the true point of beginning

1 CLAIMANT NAME: Bruce Coe COURT CLAIM NO. 01146
2 Source: An unnamed spring
3 Use: Group domestic supply and stock water
4 Period of Use: Continuously
5 Quantity: 0.06 cfs; 6 acre-feet per year for group domestic
6 supply and 1 acre-foot per year for stock water
7 Priority Date: June 18, 1974
8 Point of Diversion: 1,200 feet south and 1,200 feet west of the center
9 of Section 33, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33,
T. 20 N., R. 17 E.W.M.
10 Place of Use: The NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T. 20 N., R. 17 E.W.M.

11 CLAIMANT NAME: Wilma Preston COURT CLAIM NO. 02050
12 Source: Unnamed spring
13 Use: Domestic supply (single)
14 Period of Use: Continuously
15 Quantity: 0.002 cfs; 0.5 acre-foot per year
16 Priority Date: June 26, 1974
17 Point of Diversion: 1,750 feet north and 990 feet west of the southeast
18 corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 3, T. 20 N., R. 17 E.W.M.
19 Place of Use: NE $\frac{1}{4}$ SE $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T. 20 N.,
R. 17 E.W.M.

1
2 The aforementioned changes shall be incorporated into the Report of Referee
3 dated March 25, 1996.

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

6 
7 DOUGLAS CLAUSING, Referee
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27 SUPPLEMENTAL REPORT OF REFEREE
28 Re: Subbasin No. 4

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