

YAKIMA RIVER BASIN
WATER RIGHTS ADJUDICATION

FILED
MAY 23 1996
KIM M. EATON, YAKIMA COUNTY CLERK

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

SUPPLEMENTAL
REPORT OF REFEREE

Re: SUBBASIN NO. 2
(EASTON)

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

REPORT OF REFEREE - VOLUME 21A

11, 674

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

IN THE MATTER OF THE DETERMINATION)
OF THE RIGHTS TO THE USE OF THE)
SURFACE WATERS OF THE YAKIMA RIVER)
DRAINAGE BASIN, IN ACCORDANCE WITH)
THE PROVISIONS OF CHAPTER 90.03,)
THE STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)

Plaintiff,)

v.)

James J. Acquavella, et al.,)

Defendants.)

No. 77-2-01484-5

REPORT OF REFEREE
PURSUANT TO ORDER ON
EXCEPTIONS OF
OCTOBER 12, 1995

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

The Order issued by the court on the October 12, 1995, ruled upon three exceptions to the Report of Referee and remanded certain exceptions to the Referee, with instructions, for further evaluation and subsequent recommendations to the Court.

The following exceptions were denied by the Court:

Silver Creek Road Maintenance Assoc, Claim No. 05119
Ecology's exception asking that the term "supplemental" be defined.

The exception by Plum Creek Timber Co., L.P., under Court Claim No. 00104 was granted by the Court. The only source of water used at the log chipping plant located within Subbasin No. 2 is from ground water, which is not being addressed in this proceeding.

The exceptions remanded to the Referee by the Court are identified as follows:

SUPPLEMENTAL
REPORT OF REFEREE
Re: Subbasin No. 2

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Yakima, WA 98902-3401

1 Big Creek Waterusers (Gerald Griffith, Earl E. and Valerie K. Gentry, Lee and
2 Jane Lune, et al., David L. and Marilyn E. Lund, Ranch Properties)

3 Edward J. Bogachus and Marcia J. Bogachus, Claim No. 05499

4 Dona Lee Bogan and James Harris Dobbs, Claim No. 06044

5 Estate of Michael Burchak and Marie Burchak and Dennis Burchak and Diana
6 Burchak, Claim No. 00888

7 Pat Burke and Mary Burke, Claim No. 01469

8 Burlington Northern Railroad Co. and Keith Anderson, et al. and Anna H.
9 Anderson and Joseph Maybo and Cecelia Maybo and WA State Park & Rec.
10 Commission and Roland Nelson and Margaret Nelson and Othel R. Reeves and
11 Lynora E. Reeves, Claim No. 00104

12 Leon Carlson and Clear Water Builders & Supply, Claim No. 01151

13 Andy Rolston and Kelli Rolston, Claim No. 01476

14 C. Frederick Darling, Claim No. 00176

15 Gary Ellson, Claim No. 07856

16 Earl E. Gentry and Valerie K. Gentry, Claim No. 00755

17 Gerald J. Griffith, Claim No. 00756

18 C. Ronald Lamb and Judy I. Lamb and Gerald Eaton, Claim No. 02030

19 Theodore L. Leavitt, Claim No. 06322

20 David L. Lund and Marilyn E. Lund, Claim No. 00456

21 Lee L. Lund and Jane E. Lund and Darrel W. Mervos and Bryan Ritter and
22 Charles M. Wallick and Jane M. Wallick, Claim No. 00353

23 Robert E. Monahan and Adele F. Monahan and Gerald L. Monahan and Marie C.
24 Monahan, Claim No. 01534

25 Emil Pasco and Lillian Pasco, Claim No. 02223

26 Arthur G. and Helen P. Pieters, Claim No. 01068 and
27 Warren G. Bungler and Sharon I. Bungler, Claim No. 01302

28 Ranch Properties, Inc., Claim No. 00339

Cecile B. Woods, Claim No. 00604

SUPPLEMENTAL

REPORT OF REFEREE

Re: Subbasin No. 2

Referee's Office
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1 Hearings, for the purpose of opening the record for testimony and evidence
2 relating to the exceptions, were conducted by the Referee on January 31, February 1
3 and 2 and March 14, 1996. Ms. Candy Pittman appeared on behalf of the Department
4 of Ecology. On February 1, 1996, counsel for Big Creek Water Users and the
5 claimants associated with the Big Creek Water Users presented to the Referee and to
6 the Court Clerk for filing a memorandum asserting that Ecology should not be
7 represented by a staff person, rather than an attorney, at hearings in this
8 proceeding. On April 11, 1996, the Court entered a Memorandum Opinion and Order
9 ruling that non-lawyer Ecology staff may represent the department at subbasin
10 evidentiary hearings.

11
12 BIG CREEK WATER USERS:

13 The Big Creek Water Users filed exceptions to the Report of Referee on
14 three issues: Quantification of stock water right, time of use, and supplemental
15 (surplus) water. The Big Creek Water Users are claimants in this proceeding who
16 receive water diverted from Big Creek and delivered through the Lund Ditch (also
17 called the Eastside Ditch). Those claimants are: Lee L. and Jane E. Lund (and
18 those individuals who have been joined to their claim), Claim No. 00353; David L.
19 and Marilyn E. Lund, Claim No. 00456; Gerald J. Griffith, Claim No. 00756; Earl
20 E. and Valerie K. Gentry, Claim No. 00755; and Ranch Properties, Inc., Claim No.
21 00339. The exceptions raised by the Big Creek Water Users are common to all
22 these claimants. Each claimant has raised other exceptions specific to their
23 claim, which will be addressed elsewhere in this supplemental report.

24 The Big Creek Water Users are represented by Attorney Lawrence E. Martin.
25 Richard C. Bain, Jr., a consultant hired by the group, testified at the
26

1 supplemental hearing, along with Lee Lund, David Lund, Gerald Griffith, Earl
2 Gentry, and Bryan Ritter.

3 The first exception raised by the water users was to the quantity of water
4 confirmed for stock watering, specifically during the winter months. Mr. Bain
5 and Lee Lund, who has lived in the area for his entire 84 years, testified
6 concerning the quantity of water that has historically been diverted for
7 wintertime stock watering. A Parshall Flume in the ditch with a staff gage is
8 the method for determining the flow in the ditch. During the winter, the staff
9 gage reading is generally between .5 to .6 feet on the gage, which converts to
10 2.6 cfs to 3.7 cfs. During severe cold spells in the winter, the higher quantity
11 must be diverted in order to build ice bridges which will allow the water to
12 continue to flow. When the winter temperatures are more moderate, and after the
13 ice bridges are formed, the lower quantity is sufficient to meet the stock water
14 needs through the length of the ditch. Mr. Bain testified that based on the
15 number of livestock routinely raised, the consumptive use by the stock would be
16 15 acre-feet during the May 1 to September 1 irrigation season. He did not
17 testify to the consumptive need from September 2 to April 30. The Referee
18 believes that a similar quantity would be needed. Although the period of time is
19 slightly longer, the daily water needs of the stock should be less because of the
20 cooler weather.

21 The various laterals that feed the irrigated fields owned by the various
22 landowners are not used to convey stock water during the winter months. The only
23 effort thus far has been to provide stock water in the main ditch. Mr. Gentry
24 implied that in the future the laterals may be used for stock watering and that
25 would require additional water.

1 The Referee believes from the testimony offered that the historic practice
2 has been to only provide water in the main ditch and only the quantity of water
3 needed for that practice can be confirmed. Any change in the practice of
4 delivering stock water must be made within the constraints of the quantity of
5 water historically used. The Referee recommends that a right be confirmed to the
6 Big Creek Water Users for the use of 2.6 cfs from September 2 to November 15, 3.7
7 cfs from November 16 to February 29, and 2.6 cfs from March 1 to April 30, 15
8 acre-feet per year for stock watering. This quantity will be divided amongst the
9 water user claimants according to the number of acres irrigated.

10 The second exception filed by the Big Creek Water Users was to the season
11 of use for the irrigation rights recommended for confirmation. Big Creek was
12 adjudicated in 1921. The Report of Referee for that adjudication established the
13 ordinary irrigation season in the area as May 1 to September 1. The decree
14 entered by Kittitas County Superior Court adopted the findings of the Referee,
15 including the irrigation season. The resulting certificates limited the period
16 of use for irrigation to May 1 to September 1. The recommendations of the
17 Referee in this proceeding incorporated that period of water use, which was
18 excepted to by the Big Creek Water Users.

19 The testimony of the various water users was that their farming practice
20 would be harmed if the irrigation season ended on September 1. Most of the
21 testimony centered around the effect on timothy hay of ending the irrigation
22 season on September 1. If the fall is dry, the lack of irrigation water would
23 have a negative impact on the timothy growth in the fall, allowing weed growth.
24 If timothy fields were reseeded in the fall, without irrigation water the crop
25 could be lost.

1 All of the arguments put forth on behalf of the Big Creek Water Users
2 addressed the detrimental effect of limiting the irrigation season. The Referee
3 believes that the doctrine of Res Judicata applies in this situation.

4 "Res Judicata occurs when a prior judgment has a concurrence of identity of
5 (1) subject matter; (2) cause of action; (3) persons and parties; and (4)
6 the quality of the persons for or against whom the claim is made." Rains
vs. State, 100 Wn.2d 660, 663; Mellor vs. Chamberlin, 100 Wn.2d 643, 645.

7 The Court in a Memorandum Opinion signed June 21, 1985, and Order signed
8 September 6, 1985, addressed the applicability of the doctrine of Res Judicata in
9 this case related specifically to post-1917 decrees. The Court ruled at page 5
10 of the memorandum opinion that "Even though, as noted above, rights set forth in
11 such decrees are not subject to relitigation as to the right itself, there may be
12 other factors which may have to be considered by the Referee." The water right,
13 including the irrigation season, was determined through the prior adjudication
14 and if the parties to that case were not satisfied with the season, it should
15 have been challenged when it was originally adopted by the Court. That was not
16 done, leading the Referee to conclude that the farming practices at that time
17 were apparently not detrimentally affected by that season. The Referee does not
18 believe that anything was presented at the supplemental hearing that would
19 provide a basis for deviating from the confirmations in the original
20 adjudication. Therefore, the Referee does not alter the original recommendation
21 that the irrigation season be May 1 to September 1.

22 The third exception filed by the water users was related to "supplemental
23 water." The decree in 1921 provided for the use of "surplus" water, up to a 100
24 percent increase, when it was available. When a claimant testified to taking
25 advantage of that provision, the Referee in this proceeding recommended that the
26 surplus water provision carry forward and be part of the right being confirmed.

1 However, the Referee did not adjust the annual quantity of water awarded to
2 accommodate the additional instantaneous quantity that might be diverted. The
3 water users exception asks that the annual quantity be adjusted upward to allow
4 for the use of a 100 percent increase in the annual quantity.

5 The Referee recognizes that the annual quantity awarded should be adjusted
6 upward to accommodate those years when surplus water is available and used.
7 However, it is not appropriate to adjust the annual quantity by 100 percent.
8 Surplus water will not be available the entire irrigation season, and based on
9 the Referee's experience, will only be available during the spring freshet, very
10 early in the irrigation season. By July 1 the snow melt is over and stream flows
11 in the Yakima Basin are declining, making it very unlikely that surplus water
12 will be available for the remainder of the irrigation season. The claimants did
13 not testify to their experience of when surplus water is available. Therefore,
14 the Referee recommends that the annual quantity of water awarded be changed to
15 recognize the potential for using surplus water during the months of May and
16 June. The availability of the surplus water will vary each year, as will the
17 number of days the surplus water will be used. The Referee will adjust the
18 annual quantities of water to reflect use of the surplus water for a maximum of
19 30 days during May and June.

20 Mr. Bain testified concerning the conveyance loss for the Lund Ditch and
21 the annual quantity of water needed to irrigate the lands served by the ditch.
22 According to Mr. Bain's testimony, many of the fields require in excess of 5
23 acre-feet per acre irrigated during the May 1 to September 1 irrigation season.
24 However, a continual diversion of the quantity authorized in the certificates
25 that issued as a result of the 1921 adjudication would result in 4.8 acre-feet
26

1 per acre irrigated being diverted. The rights confirmed herein are limited by
2 the awards made in the original adjudication and the Referee cannot increase the
3 quantity of water without evidence of additional rights having been established
4 subsequent to the Lund decree. The 1921 decree and resultant certificates
5 authorized a quantity of water to be diverted from Big Creek for each of the
6 water rights confirmed, without specifying a specific quantity for conveyance
7 loss, even though conveyance loss must have occurred at that time, as well as
8 now. The Referee will continue that practice.

9 Mr. Bain testified that, based on the staff gage readings he took, and
10 conversations with the waterusers, 6.8 cubic feet per second is diverted into the
11 Lund Ditch during irrigation season. Rust marks on the staff gage lead him to
12 conclude that in the past up to 9.5 cubic feet per second may have been diverted.
13 The testimony was that less water is being used currently, and in recent years,
14 than in the past. If all of the Big Creek Waterusers took advantage of the
15 provision that allowed for the use of twice their authorized instantaneous
16 quantity when surplus water is in the creek, the diversion into the ditch would
17 exceed 6.8 cubic feet per second. Since the testimony was that 6.8 cubic feet
18 per second is the maximum that is diverted into the ditch, the provision that
19 allows for the use of surplus water for the landowners who are part of the Big
20 Creek Waterusers will also state that the diversion into Lund Ditch is limited to
21 a maximum of 6.8 cubic feet per second.

22 The quantities of water for each of the claimants within the Big Creek
23 Water Users for both irrigation and winter stock watering will be identified as
24 each of their specific exceptions are addressed.

1 COURT CLAIM NO. 04599 -- Edward J. Bogachus
2 & Marcia J. Bogachus

3 Mr. and Mrs. Bogachus filed their claim with the Court subsequent to the
4 evidentiary hearing for Subbasin No. 2, therefore, there was no evidence submitted
5 in support of the claim. The Court remanded this claim to allow for presentation
6 of evidence at the supplemental hearing. On February 29, 1996, the claimants
7 withdrew their claim in a letter sent to the Referee and filed with the Court.
8 Therefore, the Referee does not recommend that a right be confirmed.
9

10 COURT CLAIM NO. 06044 -- Dona Lee Bogan
11 & James Harris Dobbs

12 On February 22, 1991, Dona L. Bogan and James H. Dobbs submitted a claim to
13 the Court for the use of waters from an unnamed spring for domestic supply and
14 irrigation. The claim was submitted subsequent to the evidentiary hearing for
15 Subbasin No. 2; therefore, no evidence was presented to the Referee. This resulted
16 in the Referee recommending that a right not be confirmed. The claim was remanded
17 to the Referee for the taking of evidence. Dona Bogan testified at the
18 supplemental hearing.

19 The claimants own the SE $\frac{1}{4}$ SW $\frac{1}{4}$, the S $\frac{1}{2}$ SE $\frac{1}{4}$ and a 2.5 acre portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$
20 of Section 2, T. 19 N., R. 14 E.W.M. and are asserting a right to use water from
21 two unnamed springs for irrigation and nonpotable domestic supply. One spring is
22 located near the southeast corner of Section 2, and is referred to as spring No. 1.
23 Spring No. 2 is located in the northwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2.

24 The evidence shows that the land was settled by August Rosburg in 1886 and he
25 received a patent on July 31, 1903. The water from spring No. 2 was used for
26 domestic supply at the homestead and both springs were used for some level of

27 SUPPLEMENTAL

28 REPORT OF REFEREE

Re: Subbasin No. 2

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

1 irrigation. A Notice of Appropriation of Water was filed by August Rosburg on
2 April 4, 1904, claiming a right to 160 inches (3.2 cfs) from springs rising in the
3 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T. 19 N., R. 14 E.W.M. for the purpose of irrigating 160 acres
4 in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, the S $\frac{1}{2}$ SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2. The water was to be diverted
5 by a ditch starting at the spring and running westerly about one mile.

6 According to Ms. Bogan's testimony, the original structures on the property
7 were burned in the early 1950's and were not replaced until after the claimants
8 acquired the property in 1987. From approximately 1961 until 1987 the land was
9 unoccupied, except for perhaps some use for cattle grazing, with the livestock
10 drinking directly from the surface water sources. Ms. Bogan was not able to
11 quantify the number of acres historically irrigated, referring to the Notice of
12 Appropriation filed by Mr. Rosburg, where he expressed an intent to irrigate the
13 entire 160 acres.

14 The evidence in the record leads the Referee to conclude that a water right
15 likely was established by August Rosburg for use of the two unnamed springs on the
16 claimants property, although the full extent of the right was not made clear
17 through the evidence presented. However, any right that may have existed
18 relinquished due to the long period of nonuse from at least 1961 until 1987. RCW
19 90.14.160 provides that any right that is not exercised for five or more successive
20 years after 1967, without a sufficient cause, relinquishes for nonuse. The
21 claimants have provided no evidence to show that one of the sufficient causes
22 provided in RCW 90.14.140 was the reason for nonuse.

23 Additionally, there was nothing entered into evidence by either the claimant
24 or Ecology to show that a water right claim was filed pursuant to the Claims
25
26

1 Registration Act, RCW 90.14. Failure to file a claim forfeits any right that may
2 have existed, RCW 90.14.071.

3 Therefore, based on the above, the Referee must recommend that rights not be
4 confirmed under Court Claim No. 6044 to Dona L. Bogan and James H. Dobbs.

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6 COURT CLAIM NO. 00714 -- Carl B. Benson, et al.
7 & Larraine E. Benson
8 Newton W. Galley
& Kathryn B. Galley

9 COURT CLAIM NO. 00888 -- Estate of Michael Burchak
10 & Marie Burchak
Dennis Burchak
& Diana Burchak

11 The Department of Ecology took exception to the legal descriptions used for
12 the rights that the Referee recommended be confirmed under Court Claim No. 00888
13 and 00714. Ecology found that the two legal descriptions overlapped and described
14 a portion of the same property. Upon review of the exhibits it was determined that
15 rather than use the legal description in the investigation report for Court Claim
16 No. 00888, the correct legal description for the Burchak property was contained in
17 Exhibit DE-155 submitted at the original evidentiary hearing. The Referee will
18 amend the place of use description for the right recommended under Court Claim No.
19 00888 to the following: The west 700 feet of Government Lot 3 and all of the east
20 356.16 feet lying south of the north 417.42 feet in Government Lot 4, all in
21 Section 2, T. 19 N., R. 14 E.W.M..

22 Dennis Burchak also filed an exception to the instantaneous quantity for the
23 right that the Referee recommended for confirmation. Mr. Burchak appeared and
24 testified at the supplemental hearing. The original recommendation by the Referee
25 was that a right be confirmed for the diversion from Fowler Creek of 0.21 cubic
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27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 foot per second, 40 acre-feet per year for the irrigation of 10 acres. At the
2 first hearing Mr. Burchak was not able to quantify the amount of water being
3 diverted. The recommendation by the Referee was based on the quantity of water
4 identified as being used in the Court Claim filed by Michael and Marie Burchak, the
5 original claimants who are Dennis Burchak's parents, and the quantity of water
6 claimed in Water Right Claim No. 031837, which is the same as that identified in
7 the Court Claim.

8 Mr. Burchak testified that the instantaneous quantity of water recommended is
9 not adequate for his method of irrigation. He again was not able to quantify how
10 much water is being diverted from the creek. He testified to having trouble with
11 gopher holes on the property. Since the land is flood irrigated, the gopher holes
12 are an impediment to irrigating the land. The Referee does not believe this is a
13 compelling reason for recommending an increased quantity of water. The landowner
14 in 1974 stated on the RCW 90.14 claim that 0.21 cubic foot per second was being
15 diverted. Again in 1981 when the Court Claim was filed by the same landowner
16 stated that 0.21 cubic foot per second was being used. Evidence of the actual
17 quantity of water being diverted has not been presented. It is not clear to the
18 Referee whether there is a need for more water because of the gopher holes, or a
19 larger quantity has always being used. If it is because of the gopher holes, the
20 claimant needs to eliminate the gophers.

21 The Referee recommends that the right confirmed under Court Claim No. 00888
22 not be changed from the original recommendation of 0.21 cfs, 40 acre-feet per year
23 for the irrigation of 10 acres.

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27 SUPPLEMENTAL

28 REPORT OF REFEREE

Re: Subbasin No. 2

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2 COURT CLAIM NO. 01469 -- Pat Burke
3 (A)05408 & Mary Burke

4 Pat and Mary Burke filed an exception to the language used by the Referee to
5 recommend that a diversionary right not be confirmed within Subbasin No. 2. As
6 stated in the Report of Referee, the Burkes' claim identified the Yakima River at
7 the Kittitas Reclamation District point of diversion as being a source of water to
8 which they claim a right. The Kittitas Reclamation District (KRD) is a Major
9 Claimant in this proceeding, whose rights were determined through the Major
10 Claimant Pathway established by the Court. The Burkes did not appear and testify
11 at the Subbasin No. 2 evidentiary hearing and review of their claim shows that
12 their land lies outside of Subbasin No. 2 and the only water they use originating
13 in Subbasin No. 2 is that delivered by the KRD.

14 The recommendations made by the Referee relate only to sources of water and
15 claimants within the subbasin being addressed. Kittitas Reclamation District is
16 not a claimant in Subbasin No. 2 and the recommendations of the Referee contained
17 in the Report of Referee for Subbasin No. 2 have no bearing on the claim of the
18 district. The recommendation of the Referee that a diversionary right not be
19 confirmed to the Burkes within Subbasin No. 2 has no effect on their claims in
20 other subbasins or to any rights they may enjoy as patrons to the KRD. It is the
21 Referee's intent that this explanation shall clarify the recommendation and resolve
22 the Burke's exception.

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27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

Referee's Office
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2 COURT CLAIM NO. 00104

-- Burlington Northern Railroad Co.
Keith Anderson, et al.
& Anna H. Anderson
Joseph Maybo
& Cecelia Maybo
WA State Park & Rec. Commission
Roland Nelson
& Margaret Nelson
Othel R. Reeves
& Lynora E. Reeves

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8 Keith C. and Anna H. Anderson, Roland and Margaret Nelson, Othel and Lynora
9 Reeves and Joseph and Cecelia Maybo filed an exception to the Report of Referee
10 asking that their claim be remanded to the Referee to allow presentation of
11 testimony and evidence in support of their claim. They are represented by Attorney
12 Richard T. Cole. Prior to the supplemental hearing Roland and Margaret Nelson
13 withdrew their exception, no longer having an interest in the land described in the
14 claim. Keith Anderson, Othel Reeves and Cecelia Maybo testified at the
15 supplemental hearing.

16 According to the testimony, the claimants own a portion of Government Lot 3 of
17 Section 21, T. 21 N., R. 13 E.W.M., along the southwest shore of Lake Kachess.
18 Each couple have a recreational cabin which is supplied water from an unnamed
19 spring located on U.S. Forest Service land in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 21 N.,
20 R. 13 E.W.M.. A two inch pipeline is used to deliver the water by gravity flow to
21 the cabins. Water is used both inside the cabins and to keep an area green around
22 the cabins for fire protection. It was estimated that less than 5,000 gallons per
23 day is used and less than one-half acre total is irrigated. Each of the claimants
24 has either owned or leased their cabin since the 1960's. The cabins are accessible
25 all year and at least the Anderson cabin is often used during the winter.

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27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 In compliance with RCW 90.14, the Claims Registration Act, Burlington
2 Northern, Inc., filed Water Right Claim No. 124841 asserting a right to use an
3 unnamed stream tributary of Lake Kachess for domestic supply and irrigation of less
4 than one-half acre of lawn and garden in Lot 3, Section 21, T. 21 N., R 13 E.W.M.,
5 specifically on Tracts 1, 2, 4, and 5 of unrecorded Plat "Lake Kachess Cabin
6 Sites."

7 According to the testimony, the water system was originally developed in 1954
8 when the land was being developed as a resort consisting of a campground and about
9 8 cabins. Water use has continued since that time. On March 18, 1981, Joseph and
10 Cecelia Maybo filed an application for a surface water permit with the Department
11 of Ecology pursuant to RCW 90.03, the State Surface Water Code. On July 18, 1985,
12 Ecology issued a temporary permit to the Maybos. The temporary permit bears the
13 priority date of March 18, 1981, the date the application was filed, and authorizes
14 the diversion of 0.05 cubic foot per second, 1.5 acre-feet per year for group
15 domestic supply for five recreational homes within Lots 1, 2, 3, 4, and 5 of the
16 unrecorded plat of Lake Kachess Cabin Sites West, in Government Lot 3 of
17 Section 21, T. 21 N., R. 13 E.W.M..

18 The claimants are asserting a right under the water right application filed
19 with Ecology in 1981 and are specifically asking that the Referee recommend that a
20 water right permit be issued based on that application with a 1954 priority date.
21 The priority date asked for is presumedly based on when the water system was first
22 constructed.

23 There has been no evidence offered, nor an assertion made, that a water right
24 was established under either the Prior Appropriation Doctrine or the Riparian
25 Doctrine. A water right for a use begun in 1954 could only have been established
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27 SUPPLEMENTAL

28 REPORT OF REFEREE

Re: Subbasin No. 2

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

1 by following the permitting procedures of RCW 90.03, which Mrs. Maybo did in 1981
2 by filing the water right application. RCW 90.03.340 states that the right
3 acquired by appropriation shall relate back to the date of filing the original
4 application with the department. The Surface Water Code does not provide for the
5 priority date to relate back to the date of first water use when water use predated
6 filing of the application.

7 Additionally, issuance of a temporary permit does not establish the water
8 right. A temporary permit is an authorization to use water until a final decision
9 is made on the application. During the pendency of this adjudication Ecology has
10 not been issuing new surface water permits. The Referee, through this
11 adjudication, cannot issue, or even recommend issuance, of a permit. That is a
12 responsibility resting solely with Ecology, RCW 90.03.245 and .290.

13 Based on the foregoing, the Referee cannot recommend that a water right be
14 confirmed under Court Claim No. 00104.

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16 COURT CLAIM NO. 01151 -- Leon Carlson
Clear Water Builders & Supply

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18 The claimant filed an exception to the Referee's recommendation that a water
19 right only be confirmed for the irrigation of 10 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13,
20 T. 20 N., R. 13 E.W.M.. The claim was remanded to the Referee to take additional
21 evidence at the supplemental hearing. Mr. Carlson and Clear Water Builders and
22 Supply are represented by Attorney Richard T. Cole and Mr. Carlson testified at the
23 supplemental hearing.

24 The claimants own, or have previously owned, that portion of the SW $\frac{1}{4}$ of
25 Section 13 lying southwest of the Kittitas Reclamation District (KRD) canal and
26 Lots 1 - 17 (except 13) and Lots 37 - 54 of Easton Ranchettes, lying within the

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 S $\frac{1}{2}$ NW $\frac{1}{4}$, the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 13, T. 20 N., R. 13 E.W.M.. Some of the lots
2 have been sold, but Mr. Carlson has assumed the responsibility of representing
3 those lot owners in this case. A right is being asserted for the irrigation of
4 Lots 3 - 13 and Lots 37 - 46 with water diverted from Tucker Creek. Each of the
5 lots is between 4.3 and 5.7 acres in size. Mr. Carlson was not clear whether the
6 total lot was being irrigated in every case, or only portions of some of the lots.
7 He did know that Lots 3, 4, 5, 6, 45 and 46 are irrigated in their entirety. The
8 KRD canal adjoins the lots to the south and water from the KRD canal is used to
9 irrigate Lots 1, 2, 49 - 54.

10 According to Mr. Carlson's testimony, water is diverted from Tucker Creek
11 where it crosses the south section line for Section 13 into a 10 inch pipe, which
12 reduces to 8 inch. The pipeline replaces an open ditch that previously served the
13 property. He estimates that 1.875 cubic feet per second is diverted into the
14 pipeline. Mr. Carlson learned from talking to neighboring landowners that a dairy
15 was operated on the land until Mr. Taylor purchased it. Mr. Taylor intended to
16 develop a golf course, but that didn't work out, so he subdivided the land into
17 approximately five acre lots. Mr. Carlson purchased from Mr. Taylor's widow.

18 The Referee originally recommended that a right be confirmed under Court Claim
19 No. 1151 for the diversion of 0.30 cubic foot per second for the irrigation of 10
20 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13. This recommendation was based on Surface Water
21 Certificate (SWC) No. 1040, with a priority date of August 25, 1933, which
22 authorized the diversion of 0.30 cubic foot per second for the irrigation of 18
23 acres in the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 13. An aerial photograph presented as an exhibit at
24 the original evidentiary hearing shows that only 10 acres were being irrigated
25
26

1 within the place of use on the certificate (the $W\frac{1}{2}SE\frac{1}{4}$ of Section 13). The aerial
2 photo is dated 1977 and the remainder of the $W\frac{1}{2}SE\frac{1}{4}$ is forested.

3 Mr. Carlson is asserting a right prior to 1933 for his property. The aerial
4 photo shows considerable irrigated land in that portion of the $S\frac{1}{2}NW\frac{1}{4}$ lying south of
5 the railroad tracks and the $N\frac{1}{2}SW\frac{1}{4}$ of Section 13. Mr. Carlson is asserting a water
6 right with a 1903 date of priority based on a water right recording by R. L.
7 McGinnis. Mr. McGinnis filed a Notice of Claim of Water on September 4, 1908 (the
8 Referee believes that the claimant misread the date, thinking it was 1903) stating
9 a claim to 1000 cubic foot of water per second from Tucker Creek for irrigating
10 with the intended use in the " $NE\frac{1}{2}NE\frac{1}{4}$ Sec. 24; $SE\frac{1}{2}SE\frac{1}{4}$ Sec. 13; $SW\frac{1}{2}SW\frac{1}{4}$ T. 20 R. 13
11 E.; Sec. 18 $NW\frac{1}{2}NW\frac{1}{4}$ Sec. 19, T. 20 R. 14 E.W."(sic). It further states an intention
12 to erect a dam in the creek where the east line of Sec. 23 T. 20 R. 13 crosses the
13 creek.

14 The claimant has not clarified for the Referee how this notice relates to his
15 claimed water use. There is no evidence that R. L. McGinnis was a prior owner of
16 the claimants property. The claimant is not asserting a right to use water on any
17 of the lands described in the notice and the point of diversion used by the
18 claimant is not that identified in the notice. Attached to the claimants exception
19 is a deed transferring the $SW\frac{1}{4}$ of Section 13 from Northwestern Improvement Co. to
20 Rose A. Cosgrove. There is no reference in this document of water use on the
21 property.

22 Based on the evidence that has been presented, the Referee can only continue
23 to conclude that the only water right that has been established for the claimants
24 property is that which is reflected in Surface Water Certificate No. 1040. A water
25 right is limited by beneficial use and, again, based on the record, the Referee
26

27 SUPPLEMENTAL

28 REPORT OF REFEREE

Re: Subbasin No. 2

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

1 must conclude that the limit of beneficial use under SWC No. 1040, at the time the
2 certificate issued and at least up to 1977, was irrigation of 10 acres in the
3 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13. Water rights for a use developed and perfected after 1977
4 could only have been obtained through compliance with the permitting requirements
5 of RCW 90.03. Therefore, the Referee stands by the earlier recommendation.

6
7 COURT CLAIM NO. 01476 -- Andy Rolston
8 & Kelli Rolston

9 There was no appearance at the original evidentiary hearing in support of
10 Court Claim No. 01476. Subsequent to the hearing, Andy and Kelli Rolston were
11 substituted for Mitchell and Jill Starkovich and asked that the claim be remanded
12 to the Referee to take evidence at the supplemental hearing. Andy Rolston
13 testified at the supplemental hearing in support of the claim.

14 The claimants own approximately 4.25 acres in the portion of Government Lot 6
15 and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T. 19 N., R. 15 E.W.M. bounded by a line beginning at
16 a point 1072.5 feet east of the west quarter corner of said section; thence south
17 330 feet; thence east 561 feet; thence north 330 feet; thence west 561 feet to the
18 place of beginning. Approximately three acres have been irrigated in the past with
19 water diverted from Bandy Creek (also sometimes known as Brandy Creek and Spex Arth
20 Creek). A diversion dam in the creek was built by a prior owner and diverts into a
21 ditch that crosses the easterly portion of the property. Laterals feed off the
22 main ditch. The land has not been irrigated since 1985.

23 The claimants are basing their water right on a 1909 Notice of Appropriation
24 and a 1919 Kittitas County Superior Court ruling. The Notice of Appropriation was
25 filed by Herman Spexarth claiming a right to all of the flood waters in "Brandy
26 Creek" in Section 6, T. 19 N., R. 15 E.W.M. and stated that the water is intended

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 to be used for irrigation. The stipulation and decree in Andrew Biros v. Herman
2 Spexarth, Louis Belmeyer and Mrs. Louis Belmeyer, Kittitas County Superior Court
3 (1919) provides additional information concerning the claim to water. The
4 stipulation identified that Herman Spexarth was the owner of Lots 3, 4 and 5 and
5 the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, T. 19 N., R. 15 E.W.M. and those lands had been irrigated
6 for more than ten years with water from Bandy Creek. Both the stipulation and the
7 final decree stated that Herman Spexarth was entitled to the first 35 inches of
8 water in Bandy Creek. The Rolston property is not part of the land owned by Herman
9 Spexarth and the Referee does not believe it would enjoy any of the water right
10 established by Herman Spexarth. Biros v. Spexarth only involved the water rights
11 of those two parties, so it does not provide any information about the potential
12 for a water right for lands not owned by those two parties.

13 The Rolstons entered Exhibit DE-211, which is a Patent Certificate, No. 818,
14 issued on September 18, 1891, to Christopf Lichter. The patent is for the E $\frac{1}{2}$ SW $\frac{1}{4}$
15 and Lots 6 and 7 of Section 6, T. 19 N., R. 15 E.W.M., which includes the Rolston
16 property. The Rolston property is riparian to Bandy Creek, also known as Spex Arth
17 Creek, and if there was evidence to show that the land had been irrigated prior to
18 December 31, 1932, the right would enjoy an 1891 date of priority. On June 17,
19 1940, Catherine Lichter conveyed to John Caveglia the land for which the patent had
20 issued, "together with all water rights and irrigating ditches appurtenant thereto
21 . . .". However, the evidence does not show the source of water for the irrigation
22 ditch referenced or when the use might have been initiated. The Kittitas
23 Reclamation District canal is immediately south of the property. The record does
24 not indicate whether the Rolstons own shares in the reclamation district.

1 Based on the foregoing, the Referee cannot recommend that a water right be
2 confirmed to the Rolstons under Court Claim No. 01476.

3
4 COURT CLAIM NO. 00176 -- C. Frederick Darling

5 C. Frederick Darling took several exceptions to the recommendations of the
6 Referee in the Report of Referee for Subbasin No. 2. His claim was remanded for
7 the taking of additional evidence. Mr. Darling appeared and testified at the
8 supplemental hearing.

9 The first exception was to the number of acres for which the Referee
10 recommended that a water right be confirmed. The recommendation was for a right to
11 irrigate 75 acres in Section 20, T. 20 N., R. 14 E.W.M.. That recommendation was
12 based on Mr. Darling's testimony that he was irrigating 75 acres in Section 20.
13 Mr. Darling's testimony at the supplemental hearing confirmed that at the time of
14 the original hearing he was only irrigating 75 acres. Since that time he has
15 cleared an additional 15 acres, which he intends to irrigate. He is seeking to
16 have a water right confirmed for those 15 additional acres. This adjudication is a
17 procedure to determine the extent of existing water rights in the Yakima River
18 Basin. Mr. Darling is asserting that his water rights derive from the 1924
19 adjudication of Big Creek. Certificate No. 241 from that adjudication, as changed
20 by Certificate of Change recorded in Volume 2, Page 849, is appurtenant to the
21 Darling property. It authorized the diversion of 3.0 cubic feet per second from
22 Big Creek for the irrigation of 150 acres in the SE $\frac{1}{4}$ of Section 20. The 1924
23 adjudication confirmed inchoate rights that were still being developed. The
24 measure and extent of the right is beneficial use, not possible future use,
25 Lawrence v. Southard, 192 Wash. 287, 73 P.2d 722 (1937). A water right established

26
27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 in 1887 and confirmed through a 1924 adjudication is ultimately limited to the
2 historical beneficial use and cannot reasonably be enlarged over 100 years after
3 the water right was initiated. With the facts at hand, the Referee sees no need to
4 delve into an analysis of due diligence for development and beneficial use of water
5 under authority of court decree inchoate rights. The right is limited to the 75
6 acres that have been historically irrigated.

7 The second exception was to the Referee not recommending that a water right be
8 confirmed for stock watering outside of the irrigation season. Mr. Darling had
9 testified to needing water for wintertime stock watering at the original
10 evidentiary hearing, but was not able to quantify the amount needed. At the
11 supplemental hearing he was not precise about the quantity of water needed, but
12 indicated a need similar to that testified to by the Big Creek Water Users, i.e.
13 2.5 to 3.7 cfs. Mr. Darling has up to 60 head of cattle on his property during the
14 winter and has a consumptive water need of 2 acre-feet per year for stock watering.
15 As was discussed in the Big Creek Water Users exception on Page 3, a large flow of
16 water is needed during cold periods in order to create ice bridges which will allow
17 the water to continue flowing.

18 The Referee believes that Mr. Darling's water right for wintertime stock
19 watering is limited to the proportionate quantity of water he is entitled to under
20 Certificate No. 241, which would be 1.5 cubic feet per second. The language on the
21 certificate leads the Referee to this conclusion. The certificate, in pertinent
22 part, states:

23 Christopher F. Diener of Easton, Washington is entitled to use, subject to the
24 laws of the State of Washington, the waters of said Big Creek for the purpose
25 of irrigation during the period from May 1 to September 1 each year and for
26 the purpose of stock and domestic use continuously.

1 That the amount of water to which said water right is entitled is limited to
2 the quantity which is reasonably and actually necessary for the purpose
3 aforesaid and shall not exceed 3 second feet for the irrigation of 150 acres
4 of the lands hereinafter described.

5 The Referee had previously determined that since Mr. Darling is only
6 irrigating 75 acres, the limit of his right is 1.5 cubic feet per second, which is
7 the proportionate share of the instantaneous quantity for 75 acres. Therefore, the
8 Referee believes that Mr. Darling's stock water right would be limited to 1.5 cubic
9 feet per second, 1.0 acre-feet per year. The Referee recommends that a stock water
10 right be confirmed to Mr. Darling with a June 30, 1887, date of priority for those
11 quantities.

12 The third exception was to the irrigation season contained in the Referee's
13 recommendation. This exception mirrors that of the Big Creek Water Users.
14 Mr. Darling also testified to the effects on his crops and farming practice of
15 ending the irrigation season on September 1. As with the Big Creek Water Users,
16 that was the only argument put forth in support of changing the end of the
17 irrigation season. Mr. Darling did not address the Res Judicata issue with the
18 prior decree and the certificates that resulted from that decree. The irrigation
19 season adopted by the Court in 1924 should have been challenged at that time if it
20 was in error. Therefore, the Referee does not alter the original recommendation
21 that the irrigation season be May 1 to September 1.

22 Mr. Darling also took exception to the recommendation to confirm a right for
23 stock watering to Earl E. and Valerie K. Gentry under Court Claim No. 00755 being
24 based on the historical use by prior owners, rather than the number of livestock
25 maintained by the Gentrys. The record shows that the Gentrys acquired their lands
26 between 1978 and 1988, after this adjudication was initiated. The water rights for
27 their property, as with all other claimants, is based on the historical practice on

1 the property prior to the initiation of this case. The use, or nonuse, of water by
2 claimants during the pendency of this adjudication has no effect on the water
3 rights. The Referee believes it is appropriate to recommend that water rights be
4 confirmed based on the historic practice and does not alter the recommendation
5 concerning the Gentrys' stock water right.

6 Ecology identified an error in the point of diversion location for both Fred
7 Darling and David Darling's water rights on Page 114 of the Report of Referee.
8 Review of the exhibits shows that the diversion is located 1000 feet north and 750
9 feet east of the south quarter corner of Section 29, within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
10 Section 29. This is the diversion location identified on Page 41 of the Report of
11 Referee and authorized by the certificate of change that issued on Certificate No.
12 241. The rights recommended for both the Darlings shall be amended to correct the
13 diversion location.

14
15
16 COURT CLAIM NO. 07856 -- Gary Ellson

17 Court Claim No. 07856 was submitted to the Court by Charles R. and Doris
18 Randall on October 26, 1992. This was subsequent to the evidentiary hearing for
19 Subbasin No. 2, so there was no evidence presented to the Referee in support of
20 this claim. On August 2, 1994, Gary Ellson was substituted for the Randalls on
21 this claim. The claim was remanded to the Referee and Mr. Ellson testified at the
22 supplemental hearing.

23 The water right asserted under Court Claim No. 07856 is based on Surface Water
24 Certificate (SWC) No. 2424, which issued on February 19, 1946, to Ethel May and
25 Portia B. Bruff with a May 16, 1919, date of priority, authorizing the diversion of
26

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 5.0 cubic feet per second from Telephone Creek for the irrigation of 120 acres,
2 domestic supply and power. The place of use described on the certificate is the
3 S $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T. 21 N., R. 12 E.W.M.. In November of
4 1973 Boise Cascade Corporation relinquished the portion of this certificate related
5 to power, specifically retaining all other rights held pursuant to the certificate.
6 Attached to this certificate in State's Exhibit SE-3 is Certificate of Change
7 recorded in Volume 1, Page 48, which issued to Jno. B. Bruff on October 6, 1926.
8 It authorized Mr. Bruff to change his point of diversion on Alaska Brook from the
9 NE $\frac{1}{4}$ of Section 36, T. 21 N., R. 12 E.W.M. to a point in the SW $\frac{1}{4}$ of Section 30,
10 T. 21 N., R. 13 E.W.M.. It is not clear to the Referee the relationship between
11 the certificate of change and SWC No. 2424, since each certificate authorizes a
12 different water source and the certificate of change does not state that the right
13 being changed is represented by the permit that preceeded SWC No. 2424. It is
14 possible that the certificate of change may represent a different right than that
15 reflected in SWC No. 2424.

16 Although an exact legal description is not in the record, it appears from
17 Mr. Ellson's testimony that he owns, or previously owned, approximately 30 acres
18 being the west 500 feet of Government Lots 1, 2, and 3 of Section 31, T. 21 N.,
19 R. 13 E.W.M.. The property is divided by Interstate 90 (I-90), with 10 acres lying
20 north of the highway and 20 acres lying south of the highway. He has recently sold
21 the south 20 acres and is not asserting a right for the land he sold. He also owns
22 land in Section 36, T. 21 N., R. 12 E.W.M., on which there is an R.V. park.

23 Charles Randall owned the land in Section 31 since approximately 1967. At
24 that time he intended to move Conifer Athletic Camp, Inc., from Snoqualmie summit
25 to Section 31 and use water from Telephone Creek in the camp. On November 7, 1973,
26

1 Conifer Athletic Camp filed an application to change the purpose of use under SWC
2 No. 2424 from irrigation, power and domestic supply to group domestic supply. That
3 application was never pursued and was cancelled in 1975. Gary Ellson testified
4 that Mr. Randall had originally intended to use water on the acreage that is now
5 north of I-90, but during the late 1960's or early 1970's, when I-90 was
6 constructed, the northerly 10 acres was land locked, with no access. The State
7 Department of Transportation apparently condemned a portion of Mr. Randall's land
8 for construction of the highway. The land south of I-90 was once known as Midway
9 Camp and it may be that water from Telephone Creek was used in that camp. Mr.
10 Ellson believed that at the time Mr. Randall bought the property there were rental
11 cabins on the land that is now south of I-90 that were receiving water from
12 Telephone Creek. That water use apparently ended when I-90 was constructed, as Mr.
13 Randall assumed the highway construction cut the water line. Mr. Ellson has
14 recently discovered that was not the case.

15 RCW 90.14.160 provides that a water right that is not exercised for five or
16 more consecutive years relinquishes for nonuse. There are several sufficient
17 causes cited in RCW 90.14.140 that prevent relinquishment of the right. It is not
18 clear that any of the sufficient causes apply in this situation. A right also will
19 not relinquish if it is claimed for a determined future development to take place
20 either within fifteen years of July 1, 1967, or the most recent beneficial use of
21 the water. The filing of the application for change in 1973 might be considered a
22 reflection of an intended future beneficial use, however, the application for
23 change was not pursued, which causes the Referee to question whether there truly
24 was an intended future use of the water. Since Mr. Ellson still has contact with
25 Mr. Randall, that information could be obtained.

1 A much bigger concern to the Referee, however, is the legal description on SWC
2 No. 2424. The certificate authorized the use of water in the S $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and
3 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T. 21 N., R. 12 E.W.M.. The land that Mr. Ellson is
4 asserting a water right for is in Section 31, T. 21 N., R. 13 E.W.M..
5 Additionally, Boise Cascade Corporation in 1973 relinquished the power generation
6 portion of the certificate, asserting that they were the holders of the right.
7 Boise Cascade is a claimant in this proceeding and is not asserting rights to, nor
8 do their exhibits show Boise Cascade ownership, of the lands described in the
9 certificate. Attached to Court Claim No. 07856 is a copy of the certificate, the
10 power relinquishment, the application for change filed by Conifer Athletic Club and
11 a hand drawn map that shows the diversion from the stream, the lay of the water
12 line and supposedly the termination of the water line and the area served. This
13 map shows the land being served as being a 500 foot wide strip of land along the
14 west section line of Section 31, appearing to be the lands now owned by Mr. Ellson.
15 The map does not depict any land in Section 36.

16 Due to the uncertainties about whether the certificate is actually appurtenant
17 to Mr. Ellson's lands and the strong potential that the right has relinquished due
18 to nonuse, the Referee cannot recommend that a water right be confirmed. If the
19 claimant is able to unearth information that would resolve these questions, he
20 might consider filing an exception to this recommendation.

21
22 COURT CLAIM NO. 00755 -- Earl E. Gentry
23 & Valerie K. Gentry

24 Earl E. and Valerie K. Gentry filed four exceptions to the recommendations of
25 the Referee in the Report of Referee for Subbasin No. 2. Their claim was remanded
26

1 to the Referee for the taking of additional testimony. The Gentrys are represented
2 by Attorney Lawrence E. Martin. Mr. Gentry testified at the supplemental hearing,
3 along with Richard C. Bain, Jr., a consultant hired by the Big Creek Water Users,
4 which includes the Gentrys.

5 The first exception filed by the Gentrys was to the number of acres that the
6 Referee recommended a right be confirmed. The Gentrys own 160 acres and assert
7 that a right should be confirmed for the irrigation of the entire 160 acres. The
8 Referee recommended that a water right be confirmed for the irrigation of 142
9 acres. The evidence presented at the first evidentiary hearing lead the Referee to
10 conclude that within the $W\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$ of Section 28 only two acres have been irrigated
11 in recent years. The right being asserted is based on Certificate No. 242 from the
12 1924 Big Creek Adjudication to H. A. Richards. That certificate authorized the
13 diversion of 2.4 cubic feet per second for the irrigation of 120 acres within the
14 $W\frac{1}{2}NE\frac{1}{4}$, $NE\frac{1}{4}NW\frac{1}{4}$ of Section 28, T. 20 N., R. 14 E.W.M.. The evidence indicates that
15 the Richards had developed and irrigated the land in $W\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$ of Section 28 when
16 they owned the land in the early 1900's. In subsequent years this 20 acre parcel
17 was not irrigated for a period of time. Mr. Gentry acquired the property in 1978.
18 At the original evidentiary hearing he testified that this 20 acre parcel is not
19 conducive to agricultural activities. It had been used for cattle grazing and
20 there is water to the property. A 1977 aerial photograph put into evidence at the
21 first hearing lead the Referee to conclude that the land was not being irrigated,
22 except for a two acre area in the southeast corner of the the parcel. There is a
23 sharp contrast on the aerial photo between this 20 acre parcel the surrounding area
24 that clearly is being irrigated. Fir or pine trees, fairly substantial in size,
25 are shown growing over the entire parcel, with several clusters of trees. At the
26

27 SUPPLEMENTAL

28 REPORT OF REFEREE

Re: Subbasin No. 2

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

1 supplemental hearing, aerial photographs, dated 1969 and 1993, were admitted that
2 show a ditch that once was used to irrigate the property. It is not clear to the
3 Referee that this ditch could have been used to irrigate the entire 20 acre parcel.
4 Apparently in the past there were laterals that served these lands. The 1969
5 aerial photo, although it does show a ditch through the property, also shows fir or
6 pine trees beginning to grow and perhaps sagebrush or other native vegetation. The
7 land clearly is not being cultivated. Several years of not irrigating or farming
8 land is necessary for the native vegetation and fir trees to reclaim the land. Mr.
9 Gentry testified to efforts on his part to re-clear part of the land.

10 RCW 90.14 was passed by the State Legislature in 1967. Section 90.14.160
11 provides for the relinquishment of a water right, or part of the water right, if it
12 is not exercised for five successive years. RCW 90.14.140 provides for several
13 sufficient causes that prevent relinquishment of the right, but there has been no
14 evidence presented of a sufficient cause that would prevent relinquishment. The
15 Referee believes that based on the evidence presented, most of the 20 acre parcel
16 was not irrigated since sometime prior to 1969 until at least 1977 and perhaps even
17 later. Therefore, the portion of Certificate No. 242 for the irrigation of 18
18 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28 has relinquished for nonuse. The Referee
19 affirms his recommendation that a right only be confirmed for the irrigation of 142
20 acres.

21 The second exception by the Gentrys was to the quantity of water confirmed for
22 wintertime stock water. This exception was discussed in detail as part of the Big
23 Creek Water Users exception on Page 3 of this report. The Referee recommends that
24 a right be confirmed to the Gentrys for the diversion of 1.37 cubic feet per second
25 from September 2 to November 15, 1.94 cubic feet per second from November 16 to
26

1 February 29, and 1.37 cubic feet per second from March 1 to April 30, 0.25 cubic
2 foot per second from May 1 to September 1, 7.88 acre-feet per year for stock
3 watering. The instantaneous quantity authorized for stock watering from May 1 to
4 September 1 is not in addition to that authorized for irrigation.

5 The third exception by the Gentrys was to the Referee not adjusting the annual
6 quantity of water confirmed for irrigation to accommodate the use of surplus water.
7 This was also discussed as part of the Big Creek Water Users exception on Page 3 of
8 this report. The Gentrys asked that their annual quantity of water be increased to
9 reflect use of surplus water the entire irrigation season. This would result in
10 1362.2 acre-feet per year being authorized for use. As discussed as part of the
11 Big Creek Water Users exception, surplus water will be available only early in the
12 irrigation season until the snow melts in the higher elevations, generally in May
13 and June. It is recommended that the provision allowing for the use of surplus
14 water be modified to allow for the use of an additional 147.3 acre-feet per year.

15 The last exception filed by the Gentrys asked that an additional point of
16 diversion be included in the Referee's Report for the Gentry property. Mr. Gentry
17 did not address this during the supplemental hearing, and the Referee's efforts to
18 solicit testimony about use of a second point of diversion failed.

19 Ecology took exception to the point of diversion location recommended for the
20 Gentrys. Three separate certificates from the 1924 adjudication are appurtenant to
21 the lands now owned by the Gentrys. Apparently in the late 1950's or early 1960's
22 the point of diversion for the Lund Ditch was changed. Some of the landowners at
23 that time complied with the requirements of RCW 90.03.380 concerning filing an
24 application for change with Ecology and obtaining authorization to change the point
25 of diversion. However, the owner of the land covered by Certificates No. 242 and
26

1 243 did not comply with those procedures. Both of those certificates authorize a
2 point of diversion in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29. The diversion into the Lund Ditch
3 is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29.

4 The Court has previously ruled that compliance with the change procedures in
5 RCW 90.03.380 is mandatory and cannot be circumvented through this adjudication.
6 Therefore, the portion of the right recommended for the Gentry property that is
7 based on Certificates No. 242 and 243 shall be separate and the point of diversion
8 will remain in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29. The Gentrys are directed to contact
9 Ecology's Central Regional Office in Yakima about the procedures for seeking
10 authorization to change their point of diversion.

11
12
13 COURT CLAIM NO. 00756 -- Gerald J. Griffith

14 Gerald J. Griffith filed several exceptions to the Report of Referee for
15 Subbasin No. 2. His claim was remanded to the Referee to take additional
16 testimony. Mr. Griffith is part of the Big Creek Water Users. He is represented
17 by Attorney Lawrence Martin. Mr. Griffith, along with Richard C. Bain, Jr., a
18 consultant hired by the Big Creek Waterusers, testified at the supplemental
19 hearing.

20 Mr. Griffith's first exception identified an error in the Report of Referee
21 which resulted in his name being placed on the list of those whose claims had been
22 denied in its entirety. This list appeared on Pages 107 and 108 of the Report of
23 Referee. By reference to the original report, Mr. Griffith's name is removed from
24 that list. Mr. Griffith also asked that Earl Gentry and Ray Johnson be removed
25 from the claim. They are prior owners of the property and Mr. Griffith is now the
26 owner outright. The other names have been removed from the claim.

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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Yakima, WA 98902-3401

1 Mr. Griffith joined the exceptions filed by the Big Creek Water Users
2 concerning stock watering and the period of use for irrigation. Those exceptions
3 are addressed in detail on Page 3 of this report. The proportionate share of the
4 water needed for wintertime stock watering for Mr. Griffith's property would be
5 0.156 cubic foot per second from September 2 to November 15, 0.222 cubic foot per
6 second from November 16 to February 29, 0.156 cubic foot per second from March 1 to
7 April 30. During irrigation season from May 1 to September 1, 0.02 cubic foot per
8 second would be used for stock watering, although that quantity is not in addition
9 to that being diverted for irrigation. The annual quantity needed for stock
10 watering is 0.90 acre-foot per year.

11 Mr. Griffith took exception to the quantity of water awarded for irrigation,
12 challenging the annual quantity awarded and the lack of consideration of the need
13 for water for conveyance. He correctly identified that the prior decree and the
14 resulting certificates did not provide for conveyance water, nor did they identify
15 an annual quantity of water. The certificates did not identify an annual quantity
16 of water, however, the Report of Referee did state that 4.8 acre-feet was required
17 to to adequately irrigate the lands. The decree adopted the findings of the
18 Referee. The testimony indicated that water was diverted continuous during the
19 irrigation season, and a continuous diversion of 0.02 cubic foot per second, which
20 is what was awarded for each irrigated acre, would result in a diversion of 4.8
21 acre-feet per acre. Therefore, this is the quantity the Referee used in the
22 original recommendations. As pointed out in the exceptions filed by Mr. Griffith,
23 the original recommendation did not make an adjustment in the annual quantity for
24 use of surplus water, so the recommendation for Mr. Griffith's right is amended to
25
26

1 allow for the use of an additional 20 acre-feet per year when surplus water is
2 available.

3 Mr. Bain testified about conveyance loss in the ditch and the need for a
4 higher water duty for Mr. Griffith's lands. However, the Referee can only
5 recommend water rights be confirmed within the rights authorized by the Lund
6 decree. The instantaneous quantity awarded in that decree, and carried forward to
7 the certificates, is the maximum quantity of water that can be diverted from Big
8 Creek, except when surplus water is available, for irrigation or any necessary
9 conveyance.

10 As discussed above, the recommendation for Mr. Griffith shall be amended to
11 include sufficient water wintertime stock watering and use of an additional 20
12 acre-feet per year for irrigation when surplus water is available.

13
14 COURT CLAIM NO. 02030 -- C. Ronald Lamb
15 & Judy I. Lamb
Gerald Eaton

16 C. Ronald and Judy I. Lamb filed an exception to the Referee not recommending
17 that water rights be confirmed for their property. The claim, as it pertains to
18 the Lamb property only, was remanded to the Referee to take additional evidence.
19 C. Ronald Lamb appeared at the supplemental hearing.

20 Sufficient evidence was presented at the original evidentiary hearing to allow
21 the Referee to conclude that a water right existed for the Lamb property for use of
22 waters from Little Creek. However, there was confusion over the proper legal
23 description for the Lamb property and, since a water right is appurtenant to the
24 property, the Referee declined to recommend confirmation of a water right until a
25
26

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 legal description for the Lamb property was presented. Attached to the exception
2 filed by the Lambs was a legal description for their property.

3 The Referee recommends that a water right be confirmed to the Lambs under the
4 Prior Appropriation Doctrine with a June 30, 1886, date of priority for the
5 diversion from Little Creek of 0.595 cubic foot per second, 85 acre-feet per year
6 for the irrigation of 17 acres and 0.01 cubic foot per second, 1 acre-foot per year
7 for stock watering. The place of use shall be Lot 21 of Timber Valley III, as per
8 plat thereof recorded in Volume 6 of Plats, pages 52 and 53, Records of Kittitas
9 County and that portion of the SW $\frac{1}{4}$ of Section 26 and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27,
10 T. 20 N., R. 14 E.W.M., bounded by a line described as follows: Beginning at the
11 southwest corner of said E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27, thence N 89°28'04" E along the south
12 boundary of said E $\frac{1}{2}$ SE $\frac{1}{4}$ 30.50 feet; thence N 0°31'41" W 1,509.50 feet; thence S
13 63°43'20" E, 377.96 feet to the true point of beginning; thence S 63°43'20" E,
14 152.03 feet; thence N 85°28'50" E, 308.20 feet; thence N 47°13'20" E, 105.00 feet;
15 thence N 0°00'00" E, 739.73 feet; thence N 90°00'00" W, 794.09 feet; thence S
16 2°41'14" E, 437.75 feet; thence S 39°56'54" E, 200.00 feet; thence S 24°33'00",
17 170.91 feet to the true point of beginning.

18 The Lambs are also asserting a right to use waters from Nelson Creek, which
19 flows through the easterly portion of their property. Water diverted from Nelson
20 Creek is used to irrigate the same 17 acres as is being irrigated from Little
21 Creek. The water sources are commingled. Mr. Lamb testified that it was his
22 understanding that use of water from Nelson Creek was developed at about the same
23 time as the use from Little Creek and that Nelson Creek has continued to be used on
24 the property since that time. The Lamb property is part of the Nelson homestead,
25 which was settled in 1881. The lands owned by the Nelsons at the time of settling
26

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 was riparian to Nelson Creek and the Lamb property continues to be riparian to the
2 Nelson Creek. Water rights established under the Riparian Doctrine enjoy a
3 priority date of when steps were first taken to sever the land from Federal
4 ownership. Settling on the land is often the first step to sever the land,
5 therefore, 1881 would be the appropriate date for riparian rights for the Nelson
6 homestead. Water Right Claim No. 154396 was filed by Mr. Lamb pursuant to the
7 requirements of RCW 90.14. It asserted a right to divert from Nelson Creek for the
8 irrigation of 20 acres. The place of use includes the Lamb property and
9 neighboring lands not now owned or farmed by the Lambs. The point of diversion
10 described is within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27. This diversion continues to be used.
11 Mr. Lamb testified that a pump has been placed on the creek to irrigate the lawn
12 and garden area around the house and a one acre pasture behind the house. The
13 Referee believes this represents an additional point of diversion beyond what was
14 historically used. Compliance with RCW 90.03.380 is necessary in order to gain
15 authorization to use the additional point of diversion.

16 Mr. Lamb was not able to provide any information about the rate of diversion
17 from Nelson Creek. Therefore, the Referee must use a standard diversion rate of
18 0.02 cubic foot per second per acre irrigated. It is recommended that a water
19 right be confirmed to C. Ronald and Judy I. Lamb with a June 30, 1881, date of
20 priority for the diversion of 0.34 cubic foot per second, 85 acre-feet per year
21 from Nelson Creek for the irrigation of 17 acres. This is the same land as is
22 being irrigated under the right being confirmed for Little Creek. Therefore, both
23 rights shall carry a provision that a maximum of 85 acre-feet per year can be used
24 to irrigate the 17 acres from the two sources.

1
2 COURT CLAIM NO. 06322 -- Theodore L. Leavitt

3 A Statement of Claim was filed by Theodore L. Leavitt on June 1, 1991,
4 asserting a right to use an unnamed spring for domestic supply. The claim was
5 filed after the evidentiary hearing had been held for Subbasin No. 2. As a result,
6 the Referee had to recommend that the claim be denied due to the lack of evidence.
7 The claim was remanded to the Referee to take testimony at the supplemental
8 hearing. Mr. Leavitt appeared and testified at the supplemental hearing.

9 According to Mr. Leavitt's testimony, he acquired the land described on the
10 claim in 1972. He first developed the spring in 1975 and build the cabin it serves
11 in 1977. In 1986 he filed an application for a water right with Ecology and later
12 that year was issued a temporary permit. In 1991 he was advised by unidentified
13 sources to become a claimant in this adjudication in order to protect his claim to
14 a water right.

15 The first use of water on Mr. Leavitt's property was clearly in 1977. At that
16 time, the only means to establish a water right was to comply with the permitting
17 requirements of RCW 90.03, the State's Surface Water Code. That is exactly what
18 Mr. Leavitt did in 1986 when he filed an application with Ecology. The temporary
19 permit issued to Mr. Leavitt does not establish a water right, however, it is an
20 authorization to use water until a final permitting decision is made by Ecology.
21 Ecology is not issuing permanent surface water permits in the Yakima River Basin
22 while this case is continuing.

23 The Referee cannot recommend that a water right be confirmed to Mr. Leavitt
24 under Court Claim No. 06322 because the evidence shows that a water right has not
25 been established for his use of water. The permit decision for the application he
26

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 filed with Ecology, for which the temporary permit has issued, is the appropriate
2 avenue for establishing a water right at this point.

3
4 COURT CLAIM NO. 00456 -- David L. Lund
5 & Marilyn E. Lund

6 David L. and Marilyn E. Lund filed an exception to the Referee not
7 recommending that a right be confirmed for stock watering and the irrigation right
8 not including a provision allowing for the use of surplus water. Attorney Lawrence
9 E. Martin, represented the Lunds at the supplemental hearing. David Lund, Lee
10 Lund, and Richard C. Bain, Jr., a consultant hired by the Big Creek Water Users,
11 testified at the evidentiary hearing.

12 The testimony was that livestock are raised on the Lund property and are
13 watered from the Lund Ditch. The Lunds are entitled to their proportionate share
14 of the quantity discussed beginning on Page 3 of this report under the Big Creek
15 Water Users exception. Their proportionate share would be 0.90 acre-feet per year
16 for stock watering, 0.01 cfs from May 1 to September 1, 0.078 cfs from September 2
17 to November 15, 0.111 cfs from November 16 to February 29, 0.078 cfs from March 1
18 to April 30. The instantaneous quantity authorized for stock watering from May 1
19 to September 1 is not in addition to that authorized for irrigaiton.

20 Mr. Lund also testified to using surplus water when it is available and asked
21 that his right be provisioned to allow for that use. Use of surplus water is also
22 discussed in detail under the exception filed by the Big Creek Water Users. The
23 Referee recommends that the right confirmed to David and Marilyn Lund be modified
24 to include the provision providing for use of surplus water. The provision will
25 allow for the use of up to 0.32 cubic feet per second and an additional 19
26

1 acre-feet per year when surplus water is available, as long as the diversion into
2 the Lund Ditch does not exceed 6.8 acre-feet per year.

3
4 COURT CLAIM NO. 00353 -- Lee L. Lund
5 & Jane E. Lund
6 Darrel W. Mervos
7 Bryan Ritter
8 Charles M. Wallick
9 & Jane M. Wallick

10 Lee L. and Jane E. Lund filed two exceptions to the Report of Referee for
11 Subbasin No. 2. The first related to their claim to a right for use of a spring or
12 well for domestic supply. The second was to the quantity of water recommended by
13 the Referee. The Lunds were represented by Attorney Lawrence E. Martin at the
14 supplemental hearing. Richard C. Bain, Jr., a consultant hired by the claimants
15 and the Big Creek Water Users, Lee Lund, and Bryan Ritter testified at the
16 supplemental hearing.

17 Subsequent to the original evidentiary hearing and the Report of Referee
18 issuing, further investigation was made into the water source being used for
19 domestic supply. Those investigations resulted in a conclusion that ground water
20 is being used, rather than surface water. This adjudication is only determining
21 the rights to use surface waters in the Yakima Basin, not ground water, therefore,
22 use of this source is not before the Referee.

23 Mr. Lund and Mr. Bain presented testimony to show that Mr. Lund is taking
24 advantage of the provision from the 1921 adjudication that allowed for the use of
25 surplus water when it is available. Therefore, the Referee shall alter the
26 original recommendation to include the provision which will allow for the use of
27 3.2 cubic feet per second and an additional 95 acre-feet per year when surplus
28 water is available. Since the evidence shows that 6.8 cubic feet per second is the

29 SUPPLEMENTAL
30 REPORT OF REFEREE
31 Re: Subbasin No. 2

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

1 maximum that is diverted into the Lund Ditch, see Page 3 of this report, the
2 provision shall also contain a restriction that when surplus water is being used, a
3 maximum of 6.8 cubic feet per second can be diverted into the Lund Ditch under all
4 rights to the ditch.

5 As discussed beginning on Page 3 of this report concerning the exception filed
6 on behalf of the Big Creek Water Users, the quantity awarded for stock watering
7 shall be modified to accommodate the need for higher ditch flows during the winter.
8 The proportionate share of the winter time stock water needs that would be
9 appropriate for the Lee and Jane Lund, et al, property is 0.767 cfs from September
10 2 to November 15, 1.09 cfs from November 16 to February 29, and 0.767 cfs from
11 March 1 to April 30, and 0.25 cubic foot per second from May 1 to September 1, with
12 a total use of 8.84 acre-feet per year. The instantaneous quantity authorized for
13 stock watering from May 1 to September 1 is not in addition to that authorized for
14 irrigation.

15
16 COURT CLAIM NO. 01534 -- Robert E. Monahan
17 & Adele F. Monahan
18 Gerald L. Monahan
& Marie C. Monahan

19 The claimants filed two exceptions to the recommendations contained in the
20 Report of Referee for Court Claim No. 01534. The claim was remanded to the Referee
21 to take additional evidence at the supplemental hearing. The claimants are
22 represented by Attorney Richard T. Cole. Victor Monahan, Gerald and Marie
23 Monahan's son, testified at the supplemental hearing.

24 The claimants asserted a right to divert water from Cabin Creek to fill a log
25 storage pond that was used in association with a mill on the property. The Referee
26 recognized that a water right existed for this use, but declined to recommend that

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 a water right be confirmed due to the lack of testimony of the rate of diversion
2 from Cabin Creek to the pond. Exhibit No. DE-189 entered at the supplemental
3 hearing is a letter from Allen Lang, P.E., an engineer who analyzed the diversion
4 and delivery system and determined that water is diverted at a rate of 75 gallons
5 per minute, or 0.167 cubic foot per second. When the pond was used for log
6 storage, water was diverted continuously. A continuous diversion of this quantity
7 would result in 121 acre-feet per year being diverted into the pond.

8 Use of the pond for log storage ended in 1975 when the mill burned. Recently
9 the pond has been used for fish and approximately two acres have been irrigated
10 with the water stored in the pond. The right that was originally perfected is for
11 filling a pond for log storage and the Referee will recommend that a right be
12 confirmed for this purpose. The testimony indicates that the claimants do not
13 intend to continue this use of water. They are directed to contact Ecology's
14 Central Regional Office in Yakima about the procedures for changing the purpose of
15 use of a water right.

16 It is recommended that a right be confirmed under the Riparian Doctrine with a
17 June 11, 1902, date of priority for the diversion of 0.167 cubic foot per second,
18 121 acre-feet per year from Cabin Creek for filling a log storage pond.

19 The second exception filed by the claimants was to the annual quantity of
20 water recommended for domestic supply from an unnamed stream and to a right for
21 irrigation not being confirmed as part of that right. There was no testimony
22 presented at the supplemental hearing about use of the unnamed stream for
23 irrigation; however, the original Report of Referee did acknowledge that water from
24 the stream was used for landscape irrigation around the cabins and the
25 recommendation of the Referee specifically stated that the use of water was
26

1 domestic supply, including landscape irrigation. If any other irrigation is being
2 made through this system, it was not made clear during the supplemental hearing.

3 The exception to the annual quantity of water for domestic supply was based on
4 Exhibit No. DE-191 entered at the Supplemental Hearing. That exhibit is a letter
5 from Allen Lang, P.E., that states that the Department of Health water source
6 production requirements for domestic supply require a daily minimum supply for 32
7 residences of 48,000 gallons, or a continuous flow of 33.3 gallons per minute and
8 that the average daily use per residence is 400 gallons per day, or 15 acre-feet
9 per year. Mr. Monahan did not testify that there was a flow of 33.3 gallons per
10 minute from the source. At the original evidentiary hearing he testified to a flow
11 of 0.02 cubic foot per second, or 10 gallons per minute. A continuous diversion at
12 that rate for the entire year would produce 14.6 acre-feet per year. The Referee
13 recommended that a water right be confirmed for 0.02 cubic foot per second, 14
14 acre-feet per year. The annual quantity is slightly less than what would be
15 realized through a continuous diversion of 0.02 cubic foot per second for the
16 entire year. The Referee did not presume a continuous diversion and use of water
17 because that is not how household use of water is made. There is a significant
18 period of time when water is not being used. In all likelihood, the annual
19 quantity recommended is generous considering the normal water use pattern in homes.
20 Had there been testimony of a larger diversion from the water source, an adjustment
21 of the annual quantity might be warranted, however, that testimony was not
22 presented, nor was there an exception taken to the instantaneous quantity
23 recommended. Therefore, the Referee stands by the original recommended that the
24 water right be confirmed for 0.02 cubic foot per second, 14 acre-feet per year.

27 SUPPLEMENTAL

28 REPORT OF REFEREE

Re: Subbasin No. 2

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

1
2 COURT CLAIM NO. 02223 -- Emil Pasco
3 & Lillian Pasco

4 Emil Pasco filed an exception to the Referee not recommending that a right be
5 confirmed for domestic supply. Mr. Pasco appeared and testified at the
6 supplemental hearing.

7 According to Mr. Pasco's testimony, he was a child in 1935 when his father
8 purchased the property described in Court Claim No. 2223. At that time a milk
9 house and a home were receiving water from the unnamed spring. Water was piped by
10 gravity flow to the milk house and then hauled to the home. The home was at an
11 elevation where gravity flow delivery was not possible. The home had been built
12 prior to 1906.

13 In 1958 the home had to be moved somewhat when Bonneville Power Administration
14 built power lines into the area. The testimony does not reflect how far the home
15 was moved. Subsequently, the home was replaced by a newer house. The date the
16 newer home was built is not in the record, nor is the distance from its location to
17 the location of the original home. Sometime after the Pasco family purchased the
18 property, a pump house was built and a pump installed to deliver the water directly
19 to the house. A one horsepower pump is currently being used. Water through this
20 system is used for in-house domestic supply, lawn and garden irrigation and stock
21 watering. A separate system is used to deliver irrigation water to the land. The
22 Referee recommended confirmation of a water right for irrigation in the initial
23 Report of Referee and that recommendation was not challenged, except for a
24 typographical error that was brought to the Court's attention by Ecology. The
25 place of use contained an error in the section number (it should have been 1
26 instead of 12).

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 A patent issued to Magnus Roseberg on July 31, 1903, for the S $\frac{1}{2}$ SW $\frac{1}{4}$ of
2 Section 1 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T. 19 N., R. 14 E.W.M.. It is
3 asserted that use of water for the homestead would have been at least commensurate
4 with the patent issuing. Water Right Claim No. 115883 was filed by Tony Pasco
5 pursuant to RCW 90.14, asserting a right to divert 600 gallons per minute from a
6 spring for irrigation of 60 acres, domestic supply and stock water. The date of
7 first water use identified on the claim form is May 1904.

8 Mr. Pasco did not testify to the quantity of water used for domestic supply
9 and stock watering, therefore, the Referee intends to use the standard water duty
10 of 0.02 cfs, 2 acre-feet per year for domestic supply with a lawn and garden and an
11 additional 1 acre-foot per year for stock watering.

12 It is recommended that a right be confirmed under Court Claim No. 2223 with a
13 July 31, 1903, date of priority for the diversion of 0.02 cubic foot per second, 2
14 acre-feet per year for domestic supply, including lawn and garden irrigation, and 1
15 acre-foot per year for stock watering.

16
17 COURT CLAIM NO. 01068 -- Arthur G. Pieters
18 (A)05149 & Helen P. Pieters
Warren G. Bunger
19 & Sharon I. Bunger

20 COURT CLAIM NO. 01302 -- Warren G. Bunger
(A)05132 & Sharon I. Bunger

21 Arthur and Helen Pieters and Warren and Sharon Bunger each filed an exception
22 to the Referee's recommendation that rights not be confirmed for domestic supply
23 from an unnamed spring. Arthur Pieters and Warren Bunger appeared and testified at
24 the supplemental hearing, as did C. Ron Lamb, a neighboring landowner with
25 knowledge of the property.

26
27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 The original Report of Referee did not recommend that water rights be
2 confirmed to the claimants for domestic supply due to the lack of testimony about
3 historic use of water for that purpose. The exception filed by the Bungers urge
4 the Referee to conclude that their spring was originally developed when the
5 homestead was settled, as it is the only source of domestic water. The exception
6 fails to recognize that the Bungers and Pieters jointly own only 10 acres within
7 the original 160 acre homestead. Andrew Anderson received a patent in 1903 for the
8 E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2, T. 19 N., R. 14 E.W.M.. Whitaker
9 Land Company owns the remaining 150 acres and during the presentation of their
10 claim at the original hearing provided evidence of development and use of a spring
11 in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 for domestic supply. Andrew Anderson filed a Notice of
12 Appropriation for the development and use of that spring. Water Right Claim No.
13 124763 was filed pursuant to RCW 90.14 for use of the spring.

14 The exception filed by Arthur Pieters stated that Charles and Swen Anderson,
15 sons of Andrew Anderson, built a log home on their property in 1933. That log home
16 was lived in by successive owners until it burned in April 1973. The log home was
17 replaced with a cabin on the five acres now owned by the Pieters, which was used
18 until the Pieters built their home in 1984. The Bungers bought five acres from the
19 Pieters in 1988 and built a home shortly thereafter. There was no evidence
20 presented to show continued use of water for domestic supply on the Bungers five
21 acres prior to their purchase.

22 The claimants submitted a statement from Ann Baker, Freida Ackerman and Esther
23 Faudree, daughters of Andrew Anderson, who originally homesteaded the property.
24 They state that the spring located in the SW $\frac{1}{4}$ of Section 2, within the Anderson
25 Homestead, now owned by the Pieters and Bungers was dug, improved, and used for
26

1 domestic water by their family by September 1915, and to the best of their
2 knowledge has been so used by subsequent owners of said property.

3 According to the testimony in the record, this land was originally used as a
4 chicken farm and then a mink farm. There were structures, such as sheds and barns,
5 on the land associated with both the chicken and mink farms. The three daughters'
6 statement that the spring was used for domestic supply beginning in 1915, even
7 though the first log home was not built until 1933, leads the Referee to conclude
8 that there must have been domestic water use associated with the farming operation.
9 The water use from the spring is strictly for in-house supply.

10 The Referee recommends that a water right be confirmed to Arthur and Helen
11 Pieters with a September 30, 1915, date of priority for the diversion of 0.02 cubic
12 foot per second, 1 acre-foot per year for single in-house domestic supply. Because
13 of the lack of evidence to show use of water for domestic supply on the Bunger
14 parcel prior to their construction, the Referee cannot recommend that a water right
15 be confirmed.

16 Recently, the Referee has considered the effect of the 1905 Federal Withdrawal
17 on water rights with dates of priority subsequent to the withdrawal. Documents
18 relating to the withdrawal and extensions to the withdrawal which are in the record
19 indicate that water rights could be established for de minimus water uses from
20 remote sources that would not have an effect on the Yakima Irrigation Project
21 (which was to benefit from the withdrawal). Therefore, the Referee does not
22 believe that the recommendation to confirm a right with a 1915 priority date is
23 contrary to the intent of the withdrawal.

1
2 COURT CLAIM NO. 00339 -- Ranch Properties, Inc.

3 Ranch Properties, Inc. filed three exceptions to the Report of Referee for
4 Subbasin No. 2. The first exception asked that the right confirmed to them allow
5 for the use of surplus water, the second exception related to their claim for use
6 of a spring or well for domestic supply and the third joined the Big Creek Water
7 Users exception. Ranch Properties, Inc., were represented by Attorney Lawrence
8 Martin at the supplemental hearing and Richard C. Bain, Jr., a consultant hired by
9 the Big Creek Water Users, and Lee Lund testified at the supplemental hearing.

10 Ranch Properties, Inc., withdrew their exception and claim related to the
11 water source used for domestic supply. Recent investigations into the water source
12 has lead to the conclusion that it is a ground water source. The adjudication is
13 only determining the rights to use surface water in the Yakima Basin, therefore,
14 ground water is beyond the scope of this proceeding.

15 The evidence presented shows that when it is available, surplus water has been
16 used on the Ranch Properties, Inc., lands. Therefore, the Referee proposes to
17 amend the recommendation for this claimant to include the provision that surplus
18 water, up to a 100 percent increase in the instantaneous quantity, can be used when
19 water is available in excess of the needs of all water users. As discussed
20 beginning on Page 3 of this report, the Referee will assume that surplus water is
21 available 30 days early in the irrigation season, and the annual quantity will be
22 increased by 28.5 acre-feet per year. The evidence presented at the supplemental
23 hearing was that the ditch is operated at a flow of 6.8 cubic feet per second
24 during irrigation season. If all of the Big Creek Water Users were exercising
25 their right to divert surplus water, they would be diverting 10.84 cfs. The record
26

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 does not reflect that this has been their practice. Therefore, the right
2 recommended for the claimants who are part of the Big Creek Water Users shall carry
3 an additional provision that when they are diverting surplus water, between all the
4 users no more than 6.8 cubic feet per second can be diverted into the ditch.

5 Ranch Properties joined the Big Creek Water Users exception to stock watering.
6 Their proportionate share of the quantity of water testified to by Mr. Bain would
7 be 0.02 cubic foot per second, 1.35 acre-feet for stock watering from May 1 to
8 September 1. The instantaneous quantity is not in addition to the quantity
9 confirmed for irrigation. Additionally, 0.234 cfs from September 2 to November 15,
10 0.333 cfs from November 16 to February 29, 0.234 cfs from March 1 to April 30, 1.35
11 acre-feet per year is recommended for stock watering from September 2 to April 30.

12 The Department of Ecology also filed an exception to the Referee's
13 recommendation for Ranch Properties. Their exception was to the place of use for
14 their right including lands in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 20 N., R. 14 E.W.M..
15 The certificate on which the claim was based only authorized water use in the N $\frac{1}{2}$ SW $\frac{1}{4}$
16 of Section 28. The Referee reviewed the evidence presented and finds that although
17 the State's Exhibit Map, SE-1 showed Ranch Properties' irrigated lands extending
18 into Section 29, the aerial photographs entered at the supplemental hearing do not
19 show any irrigated land in Section 29. Therefore, the Referee will modify the
20 place of use for the water right recommended for Ranch Properties to exclude the
21 SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29.

1
2 COURT CLAIM NO. 00604 -- Cecile B. Woods

3 Ms. Woods' claim was remanded to the Referee to take testimony about the
4 source of water used and compliance with the procedures for changing a point of
5 diversion in RCW 90.03.380. Ms. Woods testified at the supplemental hearing.

6 According to the documents submitted as part of the exception filed by
7 Ms. Woods, it is her belief that the source of water currently being used is the
8 same as that authorized for use under Surface Water Certificate No. 1474. The
9 diversion exercised at the time the certificate issued was located in Government
10 Lot 2 of Section 13, T. 19 N., R. 14 E.W.M.. Water was carried from the diversion
11 through a flume to the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T. 19 N., R. 14 E.W.M., where it was
12 used for domestic supply, fire protection and the irrigation of 40 acres. The
13 records show that immediately below the diversion the stream disappears into the
14 ground. Ms. Wood believes that this stream reemerges as a spring at her current
15 diversion in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12. To support that belief, Ms. Wood conducted
16 a test during which she poured cranberry concentrate into the stream immediately
17 above where it disappears into the ground, near the point of diversion authorized
18 by Certificate No. 1474. Approximately two hours later the water flowing from the
19 spring had a reddish purple color which she attributed to the cranberry
20 concentrate. The spring is at the approximate location where the flume from the
21 original diversion ended.

22 There was no evidence presented to contradict a conclusion that the spring
23 being used is the same source of water as that authorized by Surface Water
24 Certificate No. 1474. The spring is in almost a direct line to the north and
25 downstream from the original point of diversion and the location where the stream
26

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 sinks. Ms. Woods has brought sufficient evidence before the Referee in support of
2 her claim for the Referee to conclude that, to the extent water is still being
3 used, the right described in Certificate No. 1474 has not relinquished. Obviously,
4 the point of diversion being used by Ms. Wood is different than that authorized by
5 the certificate. Ms. Wood has informed the Referee that she filed an application
6 for change with the Central Regional Office of the Department of Ecology in order
7 to comply with the change procedures in RCW 90.03.380.

8 Certificate No. 1474 authorized the diversion of 0.50 cubic foot per second
9 for the irrigation of 40 acres, domestic supply and fire protection. According to
10 Ms. Woods earlier testimony, there are only 16 acres that have continued to be
11 irrigated and she is asserting a right for those 16 acres. Two homes use water
12 from this spring. One was constructed around 1909, when the land was originally
13 homesteaded and the other was constructed around 1934. Ms. Wood did not testify to
14 the quantity of water being diverted, however, she did indicate the water flow was
15 approximately 100 gallons per minute, which would be a reasonable quantity to be
16 used to irrigate 16 acres and provide domestic supply to two homes.

17 Besides the area served by the spring, Ms. Woods also owns a portion of
18 Government Lot 1 of Section 7, T. 19 N., R. 15 E.W.M.. In the 1960's a mobile home
19 was located on this land and water pumped from Spex Arth Creek to the mobile home.
20 Ms. Woods believes that Andrew Biros v. Herman Spexarth, Louis Belmeyer and Mrs.
21 Louis Belmeyer, Kittitas County Superior Court (1919) is the basis for a water
22 right for her land in Section 7 and the basis for an earlier priority date than
23 that reflected in Certificate No. 1474 for her land in the NE $\frac{1}{4}$ of Section 12. The
24 case involved a dispute between the named parties over the water flowing in Bandy
25 Creek, which apparently is now known as Spex Arth Creek. The Court ruled that
26

27 SUPPLEMENTAL

28 REPORT OF REFEREE

Re: Subbasin No. 2

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

1 Herman Spexarth had the superior right to the first 35 inches in Bandy Creek and
2 that Andrew Biros had the right to all of the remaining flow in Bandy Creek after
3 the 35 inches decreed to Spexarth. At that time, Andrew Biros owned the S $\frac{1}{2}$ NE $\frac{1}{4}$, the
4 NE $\frac{1}{4}$ NE $\frac{1}{4}$, and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 19 N., R. 14 E.W.M.. The Court found that
5 both parties had been using water from Bandy Creek to irrigate their land for more
6 than ten years prior to the case.

7 The Court in the referenced case did rule that water rights were established
8 around 1909 for use of Bandy Creek (or Spex Arth Creek), but it did not establish
9 how many acres were being irrigated from the creek or the quantity of water being
10 used. Ms. Woods has not asserted a water right to use Spex Arth Creek for
11 irrigation of her land, only for domestic supply for the mobile home in Section 7.
12 The decree only dealt with lands owned by Andrew Biros in Section 12 and did not
13 address lands in Section 7. Additionally, a mobile home placed on the land in 1960
14 could not enjoy a water right based on an irrigation practice on another piece of
15 land in 1909. A water right for a use developed in the early 1960's could only
16 have been established through complying with the procedures of RCW 90.03 and
17 obtaining a water right permit, just as Mr. Woods did in 1932 for use of the
18 unnamed stream.

19 Ms. Woods brought to the Referee's attention two RCW 90.14 claims that her
20 father attempted to register in 1971. One claim asserted a right, with a date of
21 first water use of 1932, to use an unnamed spring for domestic supply, irrigation
22 and fire protection based on Certificate No. 1474. The second claim asserted a
23 right with a date of first water of 1906 for use of springs and swamp for
24 irrigation, domestic supply for three homes, stock and mink. This claim was based
25 on Superior Court Case No. 6073 (the case previously described) and Patent issued
26

1 to A. E. Roseburg on October 28, 1907. Both claim forms were returned to Mr. Woods
2 with a letter telling him that he did not need to register the claims since he had
3 a certificate.

4 The Referee believes that Mr. Woods attempts to register claims pursuant to
5 RCW 90.14 in 1971 protects any right established prior to June 5, 1917, when the
6 Surface Water Code was established; however, the Referee does not believe the
7 evidence is sufficient to allow a recommendation to confirm a water right, other
8 than that represented by Certificate No. 1474. The 1919 Court case (No. 6073) did
9 establish that at that time, and since at least 1909, water had been diverted from
10 Bandy Creek (Spex Arth Creek) for use on lands in Section 12, that may have
11 included the Wood property. However, Ms. Woods is not asserting a right to use
12 Spex Arth Creek on those lands. There is nothing in the record to indicate that
13 water from Spex Arth Creek continued to be used after 1919; specifically, the
14 documentation presented in support of Certificate No. 1474 does not discuss any
15 existing water use on the property or the existence of any existing water rights.

16 The Referee does recommend that a water right be confirmed to Cecile B. Woods
17 under Court Claim No. 00604 with a November 12, 1932, date of priority for the
18 diversion of 0.22 cubic foot per second, 76.8 acre-feet per year for irrigation;
19 0.04 cubic foot per second, 4 acre-feet per year for domestic supply for two homes.
20 The place of use shall be the north 1500 feet of the east 1000 feet of Section 12,
21 T. 19 N., R. 14 E.W.M.. The point of diversion shall be that authorized by the
22 permit that preceded Certificate No. 1474. Although Certificate No. 1474
23 authorized fire protection as a use, the Referee's position has been that a water
24 right is not needed for fire protection. Should there be an emergency need of
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27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 water to fight a fire, whatever sources are available may be used in whatever
2 quantity is necessary. This use cannot be quantified.

3
4 **FINDINGS OF FACT**

5 I, DOUGLAS CLAUSING, as Referee in this proceeding, having carefully examined
6 the testimony and evidence, do hereby make the following Findings of Fact pursuant
7 to the Order on Exceptions entered by this court on October 12, 1995:

8 Based upon the additional testimony and evidence obtained at either the
9 exception hearing or the supplemental hearing, the Report of Referee - Subbasin No.
10 2, dated June 20, 1994, should be modified as follows:

11
12 Page 1, line 22 - change date to June 14, 1990

13 Page 40, line 13 - change to Superseding Certificate No. 247

14 Page 56, line 24 - change to June 30, 1886

15 Page 82, line 24½ - change to S½SW¼ of Section 1.

16 Page 108, line 9 - delete Gerald Griffith
line 25½ - add Roza Irrigation District and City of Ellensburg

17 Page 110, line 8 - change priority date to June 30, 1886

18 Page 110, Add the following:
19

20 CLAIMANT NAME:	C. Ronald Lamb & Judy I. Lamb	COURT CLAIM NO. 02030
21		
22 Source:	Nelson Creek	
23 Use:	Irrigation of 17 acres	
24 Period of Use:	May 1 to October 15	
25 Quantity:	0.34 cubic foot per second, 85 acre-feet per year	
26 Priority Date:	June 30, 1881	

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 Point of Diversion: 1100 feet north and 250 feet west from the southeast
2 corner of Section 27, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
3 Section 27, T. 20 N., R. 14 E.W.M.
4
5 Place of Use: Lot 21 of Timber Valley III, as per plat thereof recorded
6 in Volume 6 of Plats, pages 52 and 53, Records of Kittitas
7 County and that portion of the SW $\frac{1}{4}$ of Section 26 and the
8 E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27, T. 20 N., R. 14 E.W.M., bounded by a
9 line described as follows: Beginning at the southwest
10 corner of said E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27, thence N 89°28'04" E,
11 along the south boundary of said E $\frac{1}{2}$ SE $\frac{1}{4}$, 30.50 feet; thence
12 N 0°31'41" W, 1,509.50 feet; thence S 63°43'20" E, 377.96
13 feet to the true point of beginning; thence S 63°43'20" E,
14 152.03 feet; thence N 85°28'50" E, 308.20 feet; thence N
15 47°13'20" E, 105.00 feet; thence N 0°00'00" E, 739.73
16 feet; thence N 90°00'00" W, 794.09 feet; thence S 2°41'14"
17 E, 437.75 feet; thence S 39°56'54" E, 200.00 feet; thence
18 S 24°33'00" W, 170.91 feet to the true point of beginning.
19
20 Limitations of Use: A maximum of 85 acre-feet per year can be used from Nelson
21 Creek under this right and from Little Creek under the
22 right bearing a priority date of June 30, 1886.
23
24
25
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28

1 CLAIMANT NAME:

C. Ronald Lamb
& Judy I. Lamb

COURT CLAIM NO. 02030

2 Source:

Little Creek

3 Use:

Irrigation of 17 acres and stock water.

4 Period of Use:

May 1 to October 15

5 Quantity:

0.595 cubic foot per second, 85 acre-feet per year for
irrigation; 0.01 cubic foot per second, 1 acre-foot per
year for stock watering

6 Priority Date:

June 30, 1886

7 Point of Diversion:

1150 feet north and 1100 feet west from the southeast
corner of Section 28, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 28,
T. 20 N., R. 14 E.W.M.

8 Place of Use:

Lot 21 of Timber Valley III, as per plat thereof recorded
in Volume 6 of Plats, pages 52 and 53, Records of Kittitas
County and that portion of the SW $\frac{1}{4}$ of Section 26 and the
E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27, T. 20 N., R. 14 E.W.M., bounded by a
line described as follows: Beginning at the southwest
corner of said E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27, thence N 89°28'04" E
along the south boundary of said E $\frac{1}{2}$ SE $\frac{1}{4}$, 30.50 feet; thence
N 0°31'41" W, 1,509.50 feet; thence S 63°43'20" E, 377.96
feet to the true point of beginning; thence S 63°43'20" E,
152.03 feet; thence N 85°28'50" E, 308.20 feet; thence N
47°13'20" E, 105.00 feet; thence N 0°00'00" E, 739.73
feet; thence N 90°00'00" W, 794.09 feet; thence S 2°41'14"
E, 437.75 feet; thence S 39°56'54" E, 200.00 feet; thence
S 24°33'00" W, 170.91 feet to the true point of beginning.

9 Limitations of Use:

A maximum of 85 acre-feet per year can be used for
irrigation from Little Creek under this right and from
Nelson Creek under the right bearing a priority date of
June 30, 1881.

27 SUPPLEMENTAL

28 REPORT OF REFEREE

Re: Subbasin No. 2

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

Page 114, line 1 through 12, replace with:

CLAIMANT NAME: C. Frederick Darling COURT CLAIM NO. 00176

Source: Big Creek

Use: Irrigation of 75 acres and stock water

Period of Use: May 1 to September 1 for irrigation; continuously for stock water

Quantity: 1.5 cubic feet per second, 360 acre-feet per year for irrigation; 2.0 acre-feet per year for stock water

Priority Date: June 30, 1887

Point of Diversion: 1100 feet north and 750 feet east from the south quarter corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 20 N., R. 14 E.W.M.

Place of Use: The southeast quarter of Section 20 lying north of Nelson Siding Road, EXCEPT, the north 1200 feet of west 700 feet and the east 400 feet thereof. ALSO, the northerly 300 feet of the westerly 1700 feet of that portion of the southeast quarter of Section 20 lying parallel to and southerly of the Nelson Siding Road; ALL being within Section 20, T. 20 N., R. 14 E.W.M.

Page 114, line 20 and 21 - change point of diversion for David C. and Lavwane R. Darling to: 1100 feet north and 750 feet east of the south quarter corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 20 N., R. 14 E.W.M.

SUPPLEMENTAL

REPORT OF REFEREE

Re: Subbasin No. 2

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

1 Page 115, lines 1 through 16, replace with:

2 CLAIMANT NAME: Earl E. Gentry COURT CLAIM NO. 00755
3 & Valerie K. Gentry
4 Source: Big Creek
5 Use: Irrigation of 142 acres and stock water
6 Period of Use: May 1 to September 1 for irrigation, continuous for stock
7 water
8 Quantity: 2.84 cubic feet per second, 681.6 acre-feet per year for
9 irrigation, 1.36 cubic feet per second from September 2 to
10 November 15, 1.94 cubic feet per second from November 16
11 to February 29, and 1.37 cubic feet per second from March
12 1 to April 30, 0.25 cubic foot per second from May 1 to
13 September 1, 7.88 acre-feet per year for stock water
14 Priority Date: June 30, 1887
15 Point of Diversion: 1100 feet north and 750 feet east from the south quarter
16 corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
17 29, T. 20 N., R. 14 E.W.M.
18 Place of Use: That part of the W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 28 lying north of the
19 Kittitas Reclamation District Canal, the NE $\frac{1}{4}$ NW $\frac{1}{4}$, except
20 the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28, ALL within
21 T. 20 N., R. 14 E.W.M.
22 Limitations of Use: The instantaneous quantity authorized for stock watering
23 from May 1 to September 1 is not in addition to that
24 authorized for irrigation during that same period. When
25 there is a surplus of water in the creek and all of the
26 rights to the creek are being fully satisfied, up to 5.68
27 cubic feet per second and an additional 147.3 acre-feet
28 per year can be diverted under this right.

27 SUPPLEMENTAL

28 REPORT OF REFEREE

Re: Subbasin No. 2

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

Page 116, lines 1 through 12, replace with:

CLAIMANT NAME: David L. Lund COURT CLAIM NO. 00456
& Marilyn E. Lund

Source: Big Creek

Use: Irrigation of 8 acres and stock water

Period of Use: May 1 to September 1 for irrigation, continuous for stock water

Quantity: 0.16 cubic foot per second, 38.4 acre-feet per year for irrigation; 0.90 acre-foot per year for stock water; 0.01 cfs from May 1 to September 1, 0.078 cfs from September 2 to November 15, 0.111 cfs from November 16 to February 29, 0.078 cfs from March 1 to April 30 for stock water

Priority Date: June 30, 1887

Point of Diversion: 1100 feet north and 750 feet east from the south quarter corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 20 N., R. 14 E.W.M.

Place of Use: Those portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 20 N., R. 14 E.W.M. lying north of the Kittitas Reclamation District Canal and southeast of the private road connecting the Kittitas Reclamation District bridge crossing with the Nelson Siding Road.

Limitations of Use: When there is a surplus of water in the creek and all existing rights are being satisfied, up to 0.32 cfs and an additional 19 acre-feet per year may be diverted, provided no more than 6.8 cfs is being diverted into the Lund Ditch by the Big Creek Water Users. The instantaneous quantity authorized for stock water from May 1 to September 1 is not in addition to that authorized for irrigation.

SUPPLEMENTAL

REPORT OF REFEREE

Re: Subbasin No. 2

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

1 Page 117, lines 1 through 15, replace with:

2 CLAIMANT NAME: Lee L. Lund COURT CLAIM NO. 00353
3 & Jane E. Lund
4 Darrel W. Mervos
5 Bryan Ritter
6 Charles M. Wallick
7 & Jane M. Wallick

8 Source: Big Creek

9 Use: Irrigation of 80 acres and stock water

10 Period of Use: May 1 to September 1 for irrigation, continuous for stock
11 water

12 Quantity: 1.6 cubic feet per second, 384 acre-feet per year for
13 irrigation; 8.84 acre-feet per year for stock watering;
14 0.25 cfs from May 1 to September 1, 0.767 cfs from
15 September 2 to November 15, 1.09 cfs from November 16 to
16 February 29, 0.767 cfs from March 1 to April 30 for stock
17 watering

18 Priority Date: June 30, 1887

19 Point of Diversion: 1100 feet north and 750 feet east from the south quarter
20 corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
21 29, T. 20 N., R. 14 E.W.M.

22 Place of Use: Those portions of the S $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 28,
23 T. 20 N., R. 14 E.W.M. lying north of the Kittitas
24 Reclamation District Canal; EXCEPT the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and
25 EXCEPT those portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$
26 lying southeast of the private road connecting the canal
27 bridge crossing and the Nelson Siding Road.

28 Limitations of Use: The instantaneous quantity authorized for stock watering
from May 1 to September 1 is not in addition to that
authorized for irrigation. When there is a surplus of
water in the creek and all existing rights are being
satisfied, up to 3.2 cubic feet per second and an
additional 95 acre-feet per year can be diverted, provided
that no more than 6.8 cfs is diverted into the Lund Ditch
by all of the Big Creek Water Users on the ditch.

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 Page 118, lines 1 through 20, replace with:

2 CLAIMANT NAME: Ranch Properties, Inc. COURT CLAIM NO. 00339

3 Source: Big Creek

4 Use: Irrigation of 24 acres and stock watering

5 Period of Use: May 1 to September 1 for irrigation; continuous for stock
6 watering

7 Quantity: 0.48 cubic foot per second, 143.7 acre-feet per year for
8 irrigation; 2.7 acre-feet per year for stock watering;
9 0.01 cfs from May 1 to September 1; 0.234 cfs from
September 2 to November 15, 0.333 cfs from November 16 to
February 29, 0.234 cfs from March 1 to April 30 for stock
watering

10 Priority Date: June 30, 1887

11 Point of Diversion: 1100 feet north and 750 feet east from the south quarter
12 corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
29, T. 20 N., R. 14 E.W.M.

13 Place of Use: The NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, lying south of the
14 Kittitas Reclamation District Canal, AND the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 29, ALL within T. 20 N., R. 14 E.W.M.

15 Limitations of Use: When there is a surplus of water in the creek and all
16 existing rights are being satisfied, up to 0.96 cfs and an
17 additional 28.5 acre-feet per year can be diverted,
18 provided that no more than 6.8 cfs is diverted into the
19 Lund Ditch under all the existing rights served by the
ditch. The instantaneous quantity authorized for stock
watering from May 1 to September 1 is not in addition to
that authorized for irrigation.

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SUPPLEMENTAL

REPORT OF REFEREE

28

Re: Subbasin No. 2

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

1 Page 119, lines 1 through 14, replace with:

2 CLAIMANT NAME: **Gerald J. Griffith** COURT CLAIM NO. 00756
3 Source: **Big Creek**
4 Use: **Irrigation of 17 acres and stock watering**
5 Period of Use: **May 1 to September 1 for irrigation, continuous for stock**
6 **watering**
7 Quantity: **0.34 cubic foot per second, 81.60 acre-feet per year for**
8 **irrigation; 0.156 cubic foot per second from September 2**
9 **to November 15, 0.222 cubic foot per second from November**
10 **16 to February 29, 0.156 cubic foot per second from March**
11 **1 to April 30, and 0.02 cubic foot per second from May 1**
12 **to September 1 and 0.90 acre-foot per year for stock**
13 **watering**
14 Priority Date: **June 30, 1889**
15 Point of Diversion: **1100 feet north and 750 feet east from the south quarter**
16 **corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section**
17 **29, T. 20 N., R. 14 E.W.M.**
18 Place of Use: **That part of the S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 29, T. 20 N., R. 14 E.W.M.**
19 **lying south of the Kittitas Reclamation District Canal and**
20 **easterly of Big Creek, EXCEPT the east 400 feet thereof.**
21 Limitations of Use: **The instantaneous quantity authorized for stock watering**
22 **from May 1 to September 1 is not in addition to that**
23 **authorized for irrigation. When there is a surplus of**
24 **water in the creek and all existing rights are being**
25 **satisfied, up to 0.68 cubic foot per second and an**
26 **additional 20 acre-feet per year may be diverted as long**
27 **as no more than 6.8 cubic feet per second is being**
28 **diverted into the Lund Ditch by all of the Big Creek**
Waterusers.

27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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

1 Page 121, line 13, add:

2 CLAIMANT NAME: Robert E. Monahan COURT CLAIM NO. 01534
3 & Adele F. Monahan
4 Gerald L. Monahan
5 & Marie C. Monahan
6
7 Source: Cabin Creek
8 Use: Filling log storage pond
9 Period of Use: Continuous
10 Quantity: 0.167 cubic foot per second, 121 acre-feet per year
11 Priority Date: June 11, 1902
12 Point of Diversion: 500 feet south and 120 feet west from the center of
13 Section 9, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 20 N.,
14 R. 13 E.W.M.
15 Place of Use: NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 20 N., R. 13 E.W.M.

16 Page 125, line 11, add:

17 CLAIMANT NAME: Emil Pasco COURT CLAIM NO. 02223
18 & Lillian Pasco
19 Source: An unnamed spring
20 Use: Single domestic supply
21 Period of Use: Continuously
22 Quantity: 0.02 cubic foot per second, 2 acre-feet per year
23 Priority Date: July 31, 1903
24 Point of Diversion: 800 feet north and 100 feet west from the southeast corner
25 of Section 2, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2,
26 T. 19 N., R. 14 E.W.M.
27 Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 19 N., R. 14 E.W.M.

28 SUPPLEMENTAL
REPORT OF REFEREE
Re: Subbasin No. 2

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

1 Page 129, line 11, add:

2 CLAIMANT NAME: Cecile B. Woods COURT CLAIM NO. 00604
3 Source: An unnamed stream/spring
4 Use: Domestic supply for 2 homes and irrigation of 16 acres.
5 Period of Use: April 15 to October 15 for irrigation; continously for
6 domestic supply
7 Quantity: 0.22 cubic foot per second, 76.8 acre-feet per year for
8 the irrigation of 16 acres; 0.04 cubic foot per second, 4
9 acre-feet per year for domestic supply
10 Priority Date: November 12, 1932
11 Point of Diversion: 150 feet south and 1620 feet west from the northeast
12 corner of Section 13, being within Government Lot 2 of
13 Section 13, T. 19 N., R. 14 E.W.M.
14 Place of Use: The north 1500 feet of the east 1000 feet of Section 12,
15 T. 19 N., R. 14 E.W.M..
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27 SUPPLEMENTAL

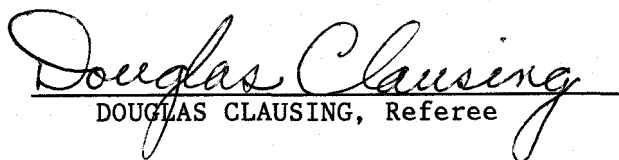
28 REPORT OF REFEREE

Re: Subbasin No. 2

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1 The aforementioned changes shall be incorporated into the Report of Referee
2 dated June 20, 1994.

3 SIGNED and DATED at Yakima, Washington this 23rd day of may,
4 1996.

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6 DOUGLAS CLAUSING, Referee
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27 SUPPLEMENTAL
28 REPORT OF REFEREE
Re: Subbasin No. 2

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