

SEP 23 1988
BETTY MCGILLEN
YAKIMA COUNTY CLERK

YAKIMA RIVER BASIN
WATER RIGHTS ADJUDICATION

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

REPORT OF REFEREE
Re: Subbasin No. 1

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

REPORT OF REFEREE - VOLUME 3

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

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

No. 77-2-01484-5

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

REPORT OF REFEREE
Re: Subbasin No. 1
(Lake Cle Elum)

11 Plaintiff,)

12 v.)

13 JAMES J. ACQUAVELLA, et al.,)

14 Defendants.)
15

16 To the Honorable Judge of the above-entitled Court, the
17 following report is respectfully submitted:
18

19 I. BACKGROUND

20 This report concerns the determination of a portion of the
21 surface water rights of the Yakima River drainage basin,
22 specifically those rights located within Subbasin No. 1, which
23 is the Lake Cle Elum drainage basin in Kittitas County. The
24 criteria consisting of applicable law and bases for water right
25 determinations used by the Referee in the evaluation of claims
26 in this subbasin can be found in the Report of the Referee to
27 the Court, Preface to Subbasin and Major Category Reports,
Volume 2, dated May 18, 1988.

1 A prehearing conference was conducted by the Referee on
2 February 10, 1988, followed by the evidentiary trial on
3 March 30, 1988.

4 II. FIELD INVESTIGATIONS

5 Field surveys were conducted by the Department of Ecology
6 staff during May and June of 1987 to obtain information on
7 existing water use patterns in Subbasin No. 1 for use in the
8 adjudication proceedings. Ditches, pipelines, and pumps were
9 located and mapped. Map exhibits were prepared to show all
10 pertinent features. Aerial photographs and topographic maps of
11 the area in addition to county assessor's plats were utilized
12 in conjunction with on-site field investigation.

13 To gain a general familiarity with the drainage basin, the
14 Referee made a brief reconnaissance tour of the area
15 immediately prior to the hearing.

16 III. WATER DUTY

17 The volumes of water required for the purposes of domestic
18 supply and stock water were set forth during testimony by an
19 expert witness for the plaintiff. The Referee proposes to rely
20 upon such expert testimony.
21

22 The maximum duty of water for the various uses in Subbasin
23 No. 1 will be calculated by the Referee, in the absence of
24 definitive testimony or other evidence, according to the
25 following formulae:
26

1 Domestic Supply (recreational).....0.01 cfs; 0.5 acre-foot
per year per residence

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

4 Domestic supply and large lawn
5 and garden up to 1/2 acre.....0.02 cfs; 2 acre-feet
per year

6 Stock water (diversion).....0.01 cfs; 1 acre-foot
7 per year

8 9 IV. STIPULATIONS

10 No formal stipulations were adopted during the hearing;
11 however, at the prehearing conference the Referee announced
12 that certain operating guidelines were being incorporated into
13 this proceeding, and these were:

- 14 1. "All exhibits entered and all testimony taken at the
15 hearing on claims held beginning March 30, 1988, may
16 be utilized by any party in the proof of a claim or
the contesting of a claim whenever relevant and
material."
17 2. "The description of lands set forth in the claims of
18 the respective claimants is the correct description
19 of the lands for which the water right is claimed and
that such claim will constitute proof of the
ownership thereof in the absence of a contest as to
such title."

20 No objections were made to these guidelines and they have been
21 relied upon.

22 23 V. LAND DESCRIPTIONS

24 The Referee has chosen, in the interest of minimizing
25 future controversy and confusion, and where appropriate, to
26 reduce legal descriptions of properties relating to confirmed
27

1 rights to the smallest reasonable legal subdivisions in which
2 are contained the actual places of use. It is believed that
3 the basic integrity of the right will not only be preserved,
4 but strengthened by this measure.

6 VI. WATER RIGHT PRIORITIES

7 When the testimony and evidence leading to a confirmed
8 right is no more specific with respect to the priority date
9 than the year, the Referee has elected to use the 30th of June
10 as representing a midpoint of that particular year. In those
11 cases when the priority to be confirmed is no more specific
12 than the month, the last day of that month will be used. This
13 has been done in the interest of consistency and compatibility
14 with other rights.

16 VII. TESTIMONY AND REFEREE'S ANALYSES

17 Plaintiff Testimony

18 The Plaintiff State of Washington, Department of Ecology,
19 was represented by Peter Anderson, Assistant Attorney General.

20 The state introduced into evidence the following generic
21 exhibits:

22	<u>NUMBER</u>	<u>DESCRIPTION</u>
23	SE-1	Map -- Subbasin No. 1.
24	SE-2	Water Right Certificates, Permits, Claims,
25		Federal Withdrawals, and Relinquishments
26		Re: Subbasin No. 1.

1 Additionally, oral testimony was given by Richard Szymarek,
2 Field Crew Supervisor, Ecology Adjudication Section, and Todd
3 Kirk, Field Investigator, Ecology Adjudication Section.

4
5 Claimant Testimony

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

Court Claim No.	Name	Attorney	Page(s)
2151	Frank Abbott and Harry Hill, et al 2809 N.E. 77th Street Seattle, WA 98115		8, 20
2206	Boise Cascade Corporation Legal Department Attn: Joe Munson P. O. Box 50 Boise, ID 83707	E. P. Swain, Jr. Ferguson & Burdell 2900 One Union Square Seattle, WA 98101	9, 16
2179	Don F. Broughton, et al P. O. Box 1298 Ellensburg, WA 98926		8,16,26
0104	Burlington Northern Railroad Co. B. A. Cowles, Regional Manager Seattle, WA 98104		8,16,26
1293	City of Cle Elum 301 Pennsylvania Ave. Cle Elum, WA 98922	Darrel Ellis P. O. Box 347 Cle Elum, WA 98922	9, 17
1289	Robert Cook P. O. Box 71 Ronald, WA 98940	pro se	14, 19
1034	Fred B. and Florence W. Denney 788 Rodriguez St. #14 Watsonville, CA 95076		8, 16

	<u>Court Claim No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
1	0360	John X. and Elsie E. Foley	(formerly Sharp)	8, 16
2		Route 4, Box 945		
3		Vashon, WA 98070		
4	0983	Peter P. Horish		8, 18
5		312 West Second		
6		Cle Elum, WA 98922		
7	2344	Ben B. and Anne C. Johnson		8, 16
8		Route 2, Box 500		
9		Ellensburg, WA 98926		
10	0957	Lake Cle Elum Community Club	Michael E. Cooper	8, 18
11		P. O. Box 175	Frederick, Beckley & Cooper	
12		Cle Elum, WA 98922	P. O. Box 858	
13			Ellensburg, WA 98926	
14	0906	Roger I. Lewis		8, 16
15		P. O. Box 273		
16		Renton, WA 98057		
17	1735	Donald L. and Eve Manion		8, 16
18		and Jack O. and Marjorie Shopbell		
19		449 South Dawes		
20		Kennewick, WA 99336		
21	0152	John J. and Marjorie H. Murray		8, 16
22		4611 - 162nd Street S.E.		
23		Bothell, WA 98011		
24	0395	Holger and Flora M. Oakley		8, 25
25		7304 - 44th S.W.		
26		Seattle, WA 98136		
27	0615	J.W./Judith Parker		8, 22
		P. O. Box 1392		
		Ronald, WA 98940		
	1474	City of Roslyn		8, 17
		T.J. Denning, Mayor Pro Tem		
		City Hall		
		Roslyn, WA 98941		
	1059	W. O. and Hilda H. Salter		8, 16
		Route 6, Box 690		
		Ellensburg, WA 98926		

Court
Claim

<u>No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
1800	Landy D. and Candis A. Schubert 39524 200th Ave. S.E. Auburn, WA 98002		8, 23
0556	Thomas G. Starkovich P. O. Box 125 Ronald, WA 98940		8, 24
0798	David and Nadine Swap 15540 Lake Hills Blvd. Bellevue, WA 98004		8, 23
0154, 0794	Warren D. and Ann L. Taylor 265 98th N.E. Bellevue, WA 98004		8, 21
2417	United States of America	Charles E. O'Connell U.S. Dept. of Justice Todd Building - Rm 624 P. O. Box 44378 Washington, DC 20026	28
0415	Alexander V. and Vlasta M. Vdolek 1744 - 127th S.E. P. O. Box 4225 Bellevue, WA 98009		8, 21
1291	Robert J. Wadsworth 9911 18th Street N.E. Puyallup, WA 98371		8, 20
0589	Washington State Dept. of Natural Resources Public Lands Building Olympia, WA 98504	Paul Silver Assistant Attorney General Public Lands Building MS: QW-21 Olympia, WA 98504	8,16,26

The following listed claimants are those whose claims,
either in whole or in part, were recommended for confirmance

(See page 4) in the Plaintiff's Report to Referee, and from which no exceptions were taken.

<u>Name</u>	<u>Court Claim No.</u>
Frank Abbott and Harry Hill	2151
City of Roslyn	1474
Peter P. Horish	0983
Lake Cle Elum Community Club	0957
Holger and Flora M. Oakley	0395
J. W./Judith Parker	0615
Landy D. and Candis A. Schubert	1800
Thomas G. Starkovich	0556
David and Nadine Swap	0798
Warren D. and Ann L. Taylor	0154 & 0794
Alexander V. and Vlasta M. Vdolek	0415
Robert J. Wadsworth	1291

Specific elements of the proposed rights for each claimant are identified in the Findings of Fact commencing on page 16.

The remaining claims (consisting of those claims for which no recommendation for confirmance was made or claims to which exception was taken) were scheduled to be heard during the evidentiary trial held on March 30, 1988. Based upon the testimony and evidence provided to the Referee, the analysis of all remaining claims is as follows:

<u>Claimant Name</u>	<u>Court Claim Number</u>
Don F. Broughton, et al	2179
Burlington Northern Railroad Company	0104
Fred B. and Florence W. Denney	1034
John X. and Elsie B. Foley (formerly Sharp)	0360
Ben B. and Anne C. Johnson	2344
Roger I. Lewis	0906
Donald L. and Eve Manion and Jack O. and Marjorie Shopbell	1735
John J. and Marjorie H. Murray	0152
W. O. and Hilda H. Salter	1059
Washington State Dept. of Natural Resources	0589

1 The above listed claimants did not make an appearance
2 during the evidentiary hearing, thus providing no testimony to
3 the Referee upon which to base an affirmative finding.
4 Therefore, the Referee has no alternative but to recommend that
5 no rights be confirmed to the above defendants.

6
7 COURT CLAIM NO. 2206 -- Boise Cascade Corporation

8 In its initial claim to the Court, Boise Cascade
9 Corporation claimed water rights to two points of diversion
10 located within Subbasin No. 1. Prior to the Evidentiary
11 Hearing, this defendant, through Attorneys Ferguson and
12 Burdell, advised the Referee by letter dated February 12, 1988,
13 that Boise Cascade Corporation would not be participating in
14 the evidentiary hearings relative to this subbasin and further
15 requested that its claims be withdrawn with respect to the two
16 diversion points located within Subbasin No. 1.

17 Based upon the foregoing, it is the Referee's
18 recommendation that no rights be confirmed to this defendant.

19
20 COURT CLAIM NO. 1293 -- City of Cle Elum

21 The City of Cle Elum's water right claim asserts rights to
22 the use of the waters of the Cle Elum River in the amount of 3
23 cubic feet per second; 2,190 acre-feet per year for municipal
24 supply with a priority date of "prior to 1890". The City was
25 represented by Darrel Ellis, City Attorney. Delila Bannister,
26 City Clerk, testified with respect to this claim.

1 Several documents were offered into the record by the City
2 of Cle Elum: Defendant's Exhibit No. 1 - copies of city
3 ordinances enacted in 1902 indicating that the Town of Cle Elum
4 was a viable community at that time; Defendant's Exhibit No. 2
5 - a Notice of Water Appropriation filed in April of 1914
6 indicating the appropriation of 3 cubic feet per second of the
7 waters of Perrow Creek for municipal supply for the City of
8 Cle Elum; Defendant's Exhibit No. 3 - a contract between the
9 City of Cle Elum and the United States (U. S. Reclamation
10 Service) executed in 1922 for permission to extend a pipeline
11 across lands owned by the United States; and Defendant's
12 Exhibit No. 4 - a copy of a water contract between the United
13 States Bureau of Reclamation and the City of Cle Elum. This
14 contract, executed in 1940, provides for the United States to
15 deliver approximately 3 cubic feet per second to the City of
16 Cle Elum of water stored by the United States for an annual
17 payment of \$360.

18 Exhibit No. SE-2 (Plaintiff's Exhibit) contained water
19 right claims registered under the Water Right Claims
20 Registration Act (Chapter 90.14 RCW) which pertain to the water
21 rights purportedly held by the City of Cle Elum. Water Right
22 Claim Registry No. 000561 claims the right to divert 3 cubic
23 feet per second; 1120 acre-feet per year from the Cle Elum
24 River with a date of first use claimed of 1907. Water Right
25 Claim Registry No. 149146 asserts the right to the use of the
26 waters of the Cle Elum River in the amount of 3 cubic feet per
27

1 second; 2190 acre-feet per year with a first use date of 1906.
2 Both of these claims indicate a point of diversion located in
3 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11, T. 20 N., R. 14 E.W.M.

4 In addition, during the evidentiary hearing the Referee's
5 attention was invited to a federal publication, the C. R. Lentz
6 Review, Yakima Project Water Rights and Related Data, published
7 in December, 1974. This document was admitted into the record
8 as Exhibit No. 1 in the Case-In-Chief. ^{1/}

9 The testimony in this case was not particularly clear with
10 respect to the history of water use for the City of Cle Elum.
11 Nonetheless, the Referee has attempted to piece together from
12 the record enough of the significant historical events to
13 briefly encapsulate the history of the City's water use. Prior
14 to 1890, and perhaps as early as 1889, the municipal water
15 supply for the City of Cle Elum was derived from Para Creek
16 (Perrow Creek) tributary of the Cle Elum River. The point of
17 diversion was undoubtedly located in Sections 29 or 30 of T. 21
18 N., R. 14 E.W.M. since Para Creek flows only through these
19 sections. Subsequently, it was determined that Para Creek
20 afforded an inadequate flow of water to meet the needs of the
21 community and in 1896 a permit (presumably for right of way)
22 was obtained by the City from the United States to locate a
23 diversion point and pipeline at or near the present site of the
24

25
26 ^{1/}Hearing held February 17, 1982.

1 City's Cle Elum River intake which is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11,
2 T. 20 N., R. 14 E.W.M. That pipeline was apparently completed
3 in about 1906. In 1921 flooding caused a change in channel
4 configuration in the vicinity of the City's diversion works
5 which prompted the City, in 1922, to change their point of
6 diversion upstream on the Cle Elum River to a location above
7 the present Cle Elum Dam which, at that time, had not been
8 constructed. The upstream diversion point was utilized for
9 about nine years until the present Cle Elum Dam was constructed
10 necessitating relocation of the City's diversion works to its
11 former location in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11, its present site.

12 Based upon the record, the Referee believes the claim
13 relating to the 1889 priority on Para Creek has no validity
14 since that source was abandoned in the late 1890s or early
15 1900s in favor of the Cle Elum River which obviously enhanced
16 the water supply potential for the City over the original
17 source. Although Lentz supra, indicates the City's priority,
18 insofar as the Cle Elum River diversion is concerned, to be
19 1906, the Referee believes that is not the case. Although the
20 two water right claim registries indicate first use dates of
21 1906 and 1907, which are probably indicative of the completion
22 dates of the pipeline from the Cle Elum River source, the
23 Referee believes that neither of these dates are actually
24 reflective of the priority of the water right. The priority of
25 the right is generally governed by the "relation back"
26 doctrine, the key date for which was the time that steps were

1 first taken to initiate rights to the use of water. The
2 earliest date in the record that such steps were taken with
3 respect to the Cle Elum River source is 1896 which was the date
4 of "permit" or agreement between the City of Cle Elum and the
5 United States for the location of the Cle Elum River diversion
6 works. The Referee recognizes that the City of Cle Elum has
7 entered into a "water rental agreement" with the United States
8 for the use of certain waters presumably stored behind Lake
9 Cle Elum Dam for use by the City. There was no evidence or
10 testimony provided that would enable the Referee to make a
11 positive determination as to how these "rental waters" comport
12 to the City's water rights/water supply strategy. The Referee
13 can only speculate that the stored waters are released for use
14 by the City during times of extreme low flow of the Cle Elum
15 River wherein the natural flows in the river are inadequate to
16 meet the needs of the City and still satisfy existing water
17 rights with priorities superior to that of the City of
18 Cle Elum.

19 In addition, the Referee notes that Lentz supra, refers to
20 a 1932 court decision stating that the City of Cle Elum enjoyed
21 no water rights from the Cle Elum River except during flood
22 periods. The Referee cannot comment upon that decision since
23 it is not a matter of record in this case.

24 In view of the foregoing, the Referee recommends
25 confirmation of a water right to the City of Cle Elum with a
26 June 30, 1896, priority in the amounts of 3 cubic feet per
27

1 second; 1100 acre-feet per year for municipal supply for the
2 City of Cle Elum. The instantaneous flow rate is based upon
3 the existing capacity of the municipal water supply system, and
4 the annual rate has been derived from water use records
5 maintained by the City of Cle Elum. The annual consumptive use
6 equates to a daily per capita rate of approximately 240
7 gallons, which the Referee believes to be a reasonable
8 standard.

9
10 COURT CLAIM NO. 1289 -- Robert Cook

11 The Statement of Claim submitted to the Court by Robert
12 Cook asserts rights to the use of waters of Spring Creek for
13 domestic supply and lawn irrigation. Robert Cook appeared
14 pro se and gave testimony regarding his claim.

15 According to Mr. Cook, this claim is based on his
16 ownership of a tract of land located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34,
17 T. 21 N., R. 14 E.W.M. and Certificate of Surface Water Right
18 No. 2839. That certificate, contained in Plaintiff's Exhibit
19 No. SE-2, was originally issued to Charles A. Danielson, under
20 priority date of July 27, 1945, and authorized the diversion of
21 0.03 cubic foot per second of the waters of Spring Creek to be
22 used for domestic supply and the irrigation of two acres. The
23 place of use indicated in that certificate is the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and
24 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, T. 21 N., R. 14 E.W.M. Mr. Cook stated
25 that he uses water for domestic supply and lawn irrigation.
26
27

1 In its recommendations to the Referee the Plaintiff State
2 of Washington recommended confirmation of a right to Robert J.
3 Wadsworth under priority date of July 27, 1945, in the amounts
4 of 0.02 cubic foot per second; two acre-feet per year for
5 domestic supply including lawn and garden irrigation. Although
6 it is not specifically stated in the Plaintiff's Recommen-
7 dations to the Referee, by inference the Referee has determined
8 that the right proposed to be confirmed to the Wadsworth
9 interest has its origin in Certificate of Surface Water Right
10 No. 2839. The plaintiff's determination that the Wadsworth
11 residence was once the Danielson residence was corroborated by
12 Mr. Cook's testimony.

13 It would appear that the domestic right for a single
14 residence originally acquired and developed by Danielson does,
15 in fact, represent the use of water occurring on the Wadsworth
16 property, thus, in effect, encompassing the total scope of the
17 original Danielson water right as it relates to domestic
18 supply. Therefore, the Referee cannot confirm a right for
19 domestic supply to Defendant Cook. However, it should be noted
20 that the original Danielson right also issued for the
21 irrigation of two acres, only a portion of which was
22 recommended to be confirmed to the Wadsworth property. In the
23 absence of any information or testimony to the contrary, the
24 Referee believes that at least a portion of the irrigation
25 right originally perfected by Danielson can be assumed to have
26 existed on what is now the Cook property.

1 Therefore, the Referee recommends that a right be
2 confirmed to this defendant for the use of waters of Spring
3 Creek with a July 27, 1945, priority date in the amounts of
4 0.01 cubic foot per second; one acre-foot per year for the
5 irrigation of one-half acre of lawn.

6 Upon confirmation of the right herein proposed, it is
7 recommended that the Director of the Department of Ecology
8 cancel, rescind, or otherwise make null and void Certificate of
9 Surface Water Right No. 2839.

10
11 VIII. FINDINGS OF FACT

12 I, WILLIAM R. SMITH, as Referee in this proceeding, having
13 carefully examined the testimony and evidence and having
14 investigated Subbasin No. 1, do hereby make the following
15 findings of fact:

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

19 2. That the claims to any diversionary or withdrawal
20 rights within Subbasin No. 1 of the following named claimants
21 are denied in their entirety for reasons set forth in the body
22 of this report:

23 Don F. Broughton, et al
24 Boise Cascade Corporation
25 Burlington Northern Railroad Company
26 Fred B. and Florence W. Denney
27 John X. and Elsie E. Foley (formerly Sharp)
Ben B. and Anne C. Johnson
Roger I. Lewis
Donald L. and Eve Manion and Jack O. and Marjorie Shopbell

1 John J. and Marjorie H. Murray
2 W. O. and Hilda H. Salter
3 Washington State Dept. of Natural Resources

3 That the name of the claimant(s), court claim
4 number(s), sources of water, uses for which rights have been
5 established, time periods when water may be used, amounts of
6 water designated in the right, priority of water right,
7 location of points of diversion, and description of lands to
8 which water rights are appurtenant are as follows:
9

10 CLAIMANT NAME: City of Cle Elum COURT CLAIM NO. 1293

11 Source: Cle Elum River

12 Use: Municipal Supply

13 Period of Use: Continuously

14 Quantity: 3.0 cfs; 1100 acre-feet per year.

15 Priority Date: June 30, 1896

16 Point of Diversion: 350 feet north and 2380 feet west of the
17 southeast corner Section 11, being within
18 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11, T. 20 N., R. 14
E.W.M.

19 Place of Use: The service area of the City of Cle Elum.

20
21 CLAIMANT NAME: City of Roslyn COURT CLAIM NO. 1474

22 Source: Domerie Creek Tributary of Cle Elum River.

23 Use: Municipal supply.

24 Period of Use: Continuously for municipal supply.

25 Quantity: 3.14 cfs; 446.7 acre-feet per year.

26 Priority Date: September 2, 1908

27
REPORT OF REFEREE Re: Subbasin No. 1 - 17

1 COURT CLAIM NO. 1474
2 (Continued)

3 Point of Diversion: 660 feet south and 1100 feet east from the
4 northwest corner of Section 9, being within
5 the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T. 20 N., R. 14
6 E.W.M.

7 Place of Use: The service area of the City of Roslyn.

8 CLAIMANT NAME: Lake Cle Elum COURT CLAIM NO. 0957
9 Community Club

10 Source: Unnamed Spring Tributary of Lake Cle Elum.

11 Use: Community domestic supply including lawn and
12 garden irrigation for 30 recreational
13 residences.

14 Period of Use: Continuously for community domestic supply.

15 Quantity: 0.10 cfs; 7.3 acre-feet per year.

16 Priority Date: June 6, 1938

17 Point of Diversion: 250 feet south and 760 feet east from the
18 center of Section 2, being within the
19 NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 2, T. 20 N., R. 14 E.W.M.

20 Place of Use: The service area of the unincorporated Lake
21 Cle Elum Community Club which lies in the
22 SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,
23 Section 2, T. 20 N., R. 24 E.W.M.

24 CLAIMANT NAME: Peter P. Horish COURT CLAIM NO. 0983

25 Source: Unnamed spring tributary of Salmon La Sac Creek.

26 Use: Domestic supply for a single recreational cabin
27 and pond level maintenance.

Period of Use: Continuously for domestic supply.

Quantity: 0.01 cfs; 0.5 acre-foot per year for domestic
supply and 0.02 cfs; 2.0 acre-feet per year for
pond level maintenance

Priority Date: June 3, 1944

REPORT OF REFEREE Re: Subbasin No. 1 - 18

COURT CLAIM NO. 0983

(Continued)

Point of Diversion: 1300 feet south and 220 feet east from the northwest corner of Section 15, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T. 22 N., R. 14 E.W.M.

Place of Use: A tract of land described as follows: Beginning at a point 180 feet north of the south quarter corner of Section 9, T. 22 N., R. 14 E.W.M.; thence north 480 feet; thence west 660 feet; thence south 480 feet; thence east 660 feet to the point of beginning.

CLAIMANT NAME: Robert Cook COURT CLAIM NO. 1289

Source: Spring Creek tributary of Cle Elum Lake

Use: Irrigation of $\frac{1}{2}$ acre of lawn.

Period of Use: April 1 through October 31 for irrigation.

Quantity: 0.01 cfs; 1 acre-foot per year

Priority Date: July 27, 1945

Point of Diversion: 2100 feet south and 750 feet west of the northeast corner of Section 34, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 34, T. 21 N., R. 14 E.W.M.

Place of Use: That part of the N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, T. 21 N., R. 14 E.W.M. described as follows: Commencing at the southeast corner of said subdivision; thence N 89°39'09" W 555.93 feet to the true point of beginning; thence N 89°39'09" W 106.66 feet; thence N 0°17' E 35.48 feet; thence S 30°17' W 27.59 feet; thence S 74°27' W 49.65 feet; thence N 25°13'29" E 604.67 feet to the southerly right of way of the County Road (Salmon La Sac); thence S 29°50'18" E 246 feet along said right of way; thence S 53°54'18" W 160 feet; thence S 20°04'18" W 243 feet to the true point of beginning.

CLAIMANT NAME: Robert J. Wadsworth COURT CLAIM NO. 1291

Source: Spring Creek tributary of Cle Elum Lake.

Use: Domestic supply including lawn and garden irrigation for a single residence.

Period of Use: Continuously for domestic supply.

Quantity: 0.2 cfs; 2.0 acre-foot per year.

Priority Date: July 27, 1945

Point of Diversion: 2100 feet south and 750 feet west from the northeast corner of Section 34, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 34, T. 21 N., R. 14 E.W.M.

Place of Use: That portion of the S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 34, T. 21 N., R. 14 E.W.M., described as follows: Beginning at the point of intersection of the south line of said subdivision and the southwesterly right of way of the County Road (Salmon La Sac); thence west 160 feet more or less; thence N 29°59' W 211.71 feet; thence N 55°25'39" E 140.71 feet to the said right of way; thence southeasterly to the point of beginning.

CLAIMANT NAMES: Frank Abbott and COURT CLAIM NO. 2151
and Harry Hill

Source: An unnamed creek tributary of Cle Elum River.

Use: Domestic supply for 3 recreational cabins.

Period of Use: Continuously for group domestic supply.

Quantity: 0.03 cfs; 1.5 acre-feet per year.

Priority Date: February 11, 1955

Point of Diversion: 840 feet south and 750 feet east from the northwest corner of Section 10, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T. 22 N., R. 14 E.W.M.

1 COURT CLAIM NO. 2151
2 (Continued)

3 Place of Use: Lots 43, 44, and 45, of the plat of Paris
4 Creek Cabin Sites, located within the
5 NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T. 22 N., R. 14
6 E.W.M.

7 CLAIMANT NAME: Alexander V. and COURT CLAIM NO. 0415
8 Vlasta M. Vdolek

9 Source: Unnamed spring tributary of Spring Creek.

10 Use: Domestic supply for a recreational cabin.

11 Period of Use: Continuously for domestic supply.

12 Quantity: 0.01 cfs; 0.5 acre-foot per year.

13 Priority Date: July 25, 1960

14 Point of Diversion: 925 feet south and 2150 feet west of the
15 east quarter corner of Section 34, being
16 within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T. 21 N.,
17 R. 14 E.W.M.

18 Place of Use: The SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, T. 21 N.,
19 R. 14 E.W.M., EXCEPT that portion which
20 lies southwesterly of a line which begins
21 60 feet east from the southwest corner of
22 said subdivision; thence runs N 25°30' W to
23 the point of intersection with the west
24 line of said subdivision.

25 CLAIMANT NAME: Warren D. and COURT CLAIM NOS. 0154
26 Ann L. Taylor and 0794

27 Source: Unnamed spring tributary of Cle Elum River.

Use: Domestic supply for a single recreational cabin.

Period of Use: Continuously for domestic supply.

Quantity: 0.01 cfs; 0.5 acre-foot per year.

Priority Date: July 26, 1972

1 COURT CLAIM NOS. 0154 AND 0794
2 (Continued)

3 Point of Diversion: 580 feet south and 350 feet east of the
4 west quarter corner of Section 35, being
5 within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, T. 23 N.,
6 R. 14 E.W.M.

7 Place of Use: The south 160 feet of the north 650 feet
8 of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, T. 23 N.,
9 R. 14 E.W.M., lying westerly of the
10 Cle Elum River.

11 CLAIMANT NAME: J.W./Judith Parker COURT CLAIM NO. 0615

12 Source: Unnamed Spring tributary of Cle Elum River.

13 Use: Domestic supply, including lawn and garden
14 irrigation, for a single residence.

15 Period of Use: Continuously for domestic supply.

16 Quantity: 0.02 cfs; 2.0 acre-feet per year.

17 Priority Date: September 27, 1972

18 Point of Diversion: 1450 feet north and 1620 feet east from the
19 southwest corner of Section 1, being within
20 the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 20 N., R. 14
21 E.W.M.

22 Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1,
23 T. 20 N., R. 14 E.W.M., described as
24 follows: Commencing at the northwest
25 corner of the said SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence east 40
26 feet to the true point of beginning; thence
27 south 440 feet to the northerly margin of
the Northern Pacific right of way; thence
south 60° east along the said right of way
450.35 feet; thence north 667 feet; thence
west 390 feet to the true point of
beginning.

CLAIMANT NAME: Landy D. and COURT CLAIM NO. 1800
Candis A. Schubert

Source: Unnamed Spring tributary of Cle Elum River.

Use: Domestic supply for a single recreational cabin.

Period of Use: Continuously for domestic supply.

Quantity: 0.01 cfs; 0.5 acre-foot per year.

Priority Date: **September 27, 1972**

Point of Diversion: 1450 feet north and 1620 feet east from the southwest corner of Section 1, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 20 N., R. 14 E.W.M.

Place of Use: The following described parcel of land: Starting at the northeast corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T. 20 N., R. 14 E.W.M.; thence south 344.04 feet to a point on the north side of the Northern Pacific right of way; thence north 44°39' west 744.77 feet to the true point of beginning; thence north 45°21' east 450 feet; thence north 44°39' west 150 feet; thence south 45°21' west 450 feet; thence south 44°39' east 150 feet to the true point of beginning.

CLAIMANT NAME: David and Nadine Swap COURT CLAIM NO. 0798

Source: Unnamed Spring

Use: Domestic supply for a single recreational cabin.

Period of Use: Continuously for domestic supply.

Quantity: 0.01 cfs; 0.5 acre-foot per year.

Priority Date: **September 27, 1972**

Point of Diversion: 1450 feet north and 1620 feet east from the southwest corner of Section 1, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 20 N., R. 14 E.W.M.

1 COURT CLAIM NO. 0798
2 (Continued)

3 Place of Use: Those portions of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12,
4 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 20 N.,
5 R. 14 E.W.M. described as follows:
6 Beginning at the NE corner of said NW $\frac{1}{4}$ NW $\frac{1}{4}$
7 of Section 12; thence south 344.04 feet;
8 thence N 44°39' W 744.77 feet to the true
9 point of beginning; thence N 45°21' E 450
10 feet; thence south 44°39' E to the east
11 line of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1; thence
12 south to a point on the east line of said
13 SW $\frac{1}{4}$ SW $\frac{1}{4}$ which is 140.544 feet north of the
14 SE corner of said SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence N 43° W
15 100 feet, thence S 47° W to the margin of
16 the old railway right of way; thence N
17 44°39' W to the true point of beginning.

18 CLAIMANT NAME: Thomas G. Starkovich COURT CLAIM NO. 0556

19 Source: Big Boulder Creek tributary of Cle Elum River.

20 Use: Domestic supply for a single recreational cabin.

21 Period of Use: Continuously for domestic supply.

22 Quantity: 0.01 cfs; 0.5 acre-foot per year.

23 Priority Date: October 26, 1972

24 Point of Diversion: 570 feet north and 310 feet west from the
25 center of Section 35, being within Gov't.
26 Lot 4 of Section 35, T. 23 N., R. 14 E.W.M.

27 Place of Use: That part of Gov't. Lot 4, Section 35,
T. 23 N., R. 14 E.W.M. described as
follows: Commencing at the north quarter
corner of said section; thence S 37°06' W
1931 feet to the point of beginning; thence
east 330 feet; thence south 75 feet more or
less; thence S 30° W 250 feet more or less
to the north bank of Big Boulder Creek;
thence westerly along said bank 190 feet
more or less; thence north 255 feet more or
less to the point of beginning.

CLAIMANT NAME: Holger and COURT CLAIM NO. 0395
Flora M. Oakley

Source: Big Boulder Creek tributary of Cle Elum River.

Use: Group domestic supply for two recreational
cabins.

Period of Use: Continuously for group domestic supply.

Quantity: 0.02 cfs; 1.0 acre-foot per year.

Priority Date: June 27, 1974

Point of Diversion: 590 feet north and 340 feet west of the
center of Section 35, being within Gov't.
Lot 4 of Section 35, T. 23 N., R. 14 E.W.M.

Place of Use: A tract of land located in Gov't. Lot 4,
of Section 35, T. 23 N., R. 14 E.W.M., more
particularly described as follows:
Beginning at the north quarter corner of
Section 35; thence S 37°06' W 1931 feet to
United States Monument Marker No. 1; thence
S 44°30' E 575.8 feet to the true point of
beginning; thence N 30°30' E 177 feet to
the center of the top of a large boulder;
thence S 53°45' E 124.1 feet to an iron
pipe; thence S 32°10' W 129 feet to a
wooden stake; thence N 76°15' W 125.4 feet
more or less along the northerly bank of
Big Boulder Creek to the true point of
beginning.

4. The following de minimis water uses pertaining to
stock and wildlife uses are recognized as confirmed water
rights.

A. As to rights claimed for stock water uses from
naturally occurring springs or ponds relating to Subbasin 1,
such rights are confirmed as senior (or first) in priority,
regardless of other rights confirmed in this cause. This
confirmation relates to claimants and claim numbers as follows:

<u>Claimants</u>	<u>Court Claim Numbers</u>
Broughton, et al.; Don F.	2179
Burlington Northern Inc.	0104
WA ST Dept. of Natural Resources	0589

Said confirmed rights embody entitlements to amounts in the water bodies, when available naturally, as necessary to satisfy the watering needs of livestock when they drink directly therefrom.

B. Water in naturally occurring ponds and springs in the subbasin shall be retained for "in-spring" stock water uses, when such ponds and springs are located on or adjacent to lands which are now used as pasture or range for livestock, in the same amount and with the same priority as provided in Section 4. A. Regulation of the ponds and springs by the plaintiff shall be consistent with such retention requirements.

C. Waters in naturally occurring ponds and springs in the subbasin shall be retained for "in-spring" wildlife uses, when such ponds and springs are located on or adjacent to lands which are now used as pasture or range for wildlife, in the same amount and with the same priority as provided in Section 4. A. Regulation of the ponds and springs by the plaintiff shall be consistent with such retention requirements.

D. Waters in natural watercourses in the subbasin shall be retained for stock water uses in such watercourses as they flow across or are adjacent to lands, which are now used as pasture or range for livestock when available naturally, not to exceed 0.25 cubic-foot per second, as necessary to satisfy

1 the watering needs of livestock when they drink directly from a
2 stream. Regulations of these watercourses by the plaintiff
3 shall be consistent with such retention requirements.

4 E. Water in natural watercourses in the subbasin
5 shall be retained for wildlife watering uses in such
6 watercourses as they flow across or are adjacent to public
7 lands, which are now used as pasture or range for wildlife when
8 available naturally, not to exceed 0.25 cubic-foot per second,
9 as necessary to satisfy needs of wildlife when they drink
10 directly from the watercourses while grazing on adjacent
11 state-owned pasture lands. Regulations of these watercourses
12 by the plaintiff shall be consistent with such retention
13 requirements.

14 F. Nothing in Section 4. mandates that any lands,
15 associated with water rights or water retention as provided
16 herein, shall be reserved for wildlife purposes.

17 5. All prior claims for rights to surface water
18 including those claims filed under the provisions of Chapter
19 90.14 RCW from Subbasin No. 1 not expressly provided for herein
20 are denied. As a supplement to the "Water Rights Claims
21 Registry" identified in RCW 90.14.111, the Director of the
22 Department of Ecology should make appropriate notation in the
23 records of surface water right claims registered pursuant to
24 Chapter 90.14 RCW specifically identified in the "Water Right
25 Claims" section of Plaintiff's Exhibit No. SE-2.

1 6. Certificates of Water Right have been issued by the
2 Department of Ecology or predecessor agencies of the State of
3 Washington as follows:

4 Certificate of Surface Water Right

5 719	7650	S3+20379C
6 1781	8509	S3+20535C
7 2156	10289	S3+20573C
8 2839	11237	S3+21097C
9 3878	11287	S4-23265C
10 6892	S3+00387C	

11 Certificate of Change of Point of Diversion filed in
12 Volume 1, Page 223.

13 The aforesaid certificates will be made null and void by
14 the State of Washington. Certificates of Adjudicated Water
15 Right will be issued to those parties to whom rights were
16 confirmed through this proceeding.

17 7. The following is a list of defendants who have
18 claimed water rights within Subbasin 1 that fall within the
19 major claimant category as set forth in the Referee's
20 Prehearing Order No. 1 dated April 17, 1986.

21 Court	
22 <u>Claim No(s).</u>	<u>Claimant Name</u>

23 2417	United States of America
-------------------	--------------------------

24 Recommendations concerning the claims in this category will be
25 addressed in the Major Claimant Report to the Court.

26 8. As of August 4, 1987, records of the Department of
27 Ecology show the following, (1) surface water permits now in
effect; and (2) surface water applications upon which no
approval or disapproval action has been taken by the
Department:

<u>Name</u>	<u>Number</u>	<u>Date of Receipt</u>
United States Forest Service	S4-26755T	04-23-1980
United States Forest Service	S4-26757T	04-23-1980
United States Forest Service	S4-26760A	04-23-1980
Leavitt, Theodore L.	S4-28956T	05-30-1986

Numbers ending in (A) denote an Application filed pursuant to RCW 90.03.250, and (T) denotes a Temporary Permit issued by the Department pursuant to RCW 90.03.250.

The Referee takes notice of the aforementioned water right filings; however, no recommendation is made to the Court concerning their disposition.

IX. CONCLUSIONS OF LAW

Confirmation of Rights

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

Duty of Water

The diversion of water from sources of water contained within Subbasin No. 1 for irrigation purposes shall, unless otherwise specified, be limited at a maximum to 1.0 cubic-foot per second for each 50 acres irrigated and not to exceed a total of 2.0 acre-feet per acre during each irrigation season.

1 Irrigation Season

2 Unless otherwise identified within a specific water right,
3 the irrigation season shall be defined as that duration from
4 April 1 to and including October 31 of each year. The Referee
5 recognizes that extraordinary circumstances may dictate the
6 application of water prior to or subsequent to the defined
7 irrigation season, and, in that event, express approval from
8 the Department of Ecology must be obtained annually prior to
9 such deviation.

10
11 Certificates of Adjudicated Water Right

12 Upon entry of the final decree in this action, the
13 Director of the Department of Ecology is required to issue
14 Certificates of Adjudicated Water Right in accordance with the
15 provisions of RCW 90.03.240 upon payment of the statutory fee
16 as prescribed in RCW 90.03.470 (11), together with the
17 appropriate county auditor recording fee.

18
19 Administration of Water

20 The Director of the Department of Ecology should, through
21 the Department's administrative staff, regulate the use of
22 Subbasin No. 1 waters on the basis of Certificates of
23 Adjudicated Water Rights issued under this proceeding, and
24 under appropriation permits in effect prior to, and
25
26
27

1 appropriation permits and certificates issued subsequent to
2 October 12, 1977, under the appropriation procedures of Chapter
3 90.03 RCW. When available water in Subbasin No. 1 is
4 insufficient to supply all rights, regulation of subordinate
5 rights should be effected only when the Director determines
6 that regulation is required in the interests of satisfying
7 superior priority rights.

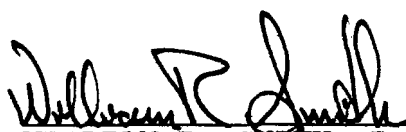
8 Whenever it has been determined that regulation of
9 subordinate priority rights is necessary, the Director of the
10 Department of Ecology or the Director's authorized
11 representative shall regulate diversion facilities including
12 headgates, ditches, pumps and other works, so as to apportion
13 the waters as herein provided, and for that purpose may enter
14 at reasonable times upon the lands of any and all parties
15 having rights adjudicated herein.

16 Confirmation of water rights in this proceeding does not
17 in any way guarantee or imply that a right-of-way or trespass
18 right exists upon private or public lands for the diversion
19 and/or transport of any water awarded to such right.

20 At the discretion of the Director, and consistent with RCW
21 90.03.360 and Chapter 508-64 WAC any person taking surface
22 waters from Subbasin No. 1 may be required to provide and
23 maintain, at the water user's expense, proper diversion works
24
25
26
27

1 and/or measuring devices. Approval of design, installation,
2 maintenance, and operation of such works and measuring devices
3 will be as prescribed by the Director.

4 SIGNED and DATED at Yakima,
5 this 15 day of June, 1988.

6
7
8 
9 WILLIAM R. SMITH, Referee
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27