

YAKIMA RIVER BASIN
WATER RIGHTS ADJUDICATION

FILED
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KIM M. EATON, YAKIMA COUNTY CLERK

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

REPORT OF REFEREE

Re: SUBBASIN NO. 14
(ROZA)

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

REPORT OF REFEREE - VOLUME 27

11,231

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

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

No. 77-2-01484-5

THE STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)

REPORT OF REFEREE
Re: Subbasin No. 14
(Roza Creek)

Plaintiff,)

v.)

James J. Acquavella, et al.,)

Defendants.)

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

I. BACKGROUND

This report concerns the determination of the surface water rights of the Yakima River basin, specifically those rights located within Subbasin No. 14, the Roza Creek drainage basin. The criteria consisting of applicable law and bases for water right determinations used by the Referee in the evaluation of claims can be found in the Report of the Referee to the Court, Preface to Subbasin and Major Category Reports, Volume 2, dated May 18, 1988.

The former Referee, John E. Acord, conducted an evidentiary hearing on March 11, 1992.

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II. FIELD INVESTIGATIONS

Field surveys were conducted by Department of Ecology (DOE) staff during 1991, to obtain information regarding existing water use patterns in Subbasin No. 14. Aerial photographs, topographic maps, county assessor's plats, and on-site field investigations were used to prepare map exhibits showing the location of ditches, pipelines, pumps, wells and other pertinent features of the water systems.

III. WATER DUTY

The Plaintiff State of Washington submitted an exhibit entitled "Supplemental Documentary Information, Roza Creek Subbasin No. 14", which included information on soils, climate, irrigation and farming practices, and plant needs, meant to aid the Referee in determining irrigation water requirements within the subbasin. In addition, two expert witnesses for the U.S. Bureau of Reclamation testified at a hearing held June 12, 1991, to provide general information regarding crop irrigation requirements for water delivered to farms in the Lower Yakima River Basin. In the absence of definitive testimony or other evidence, the Referee proposes to rely upon such expert testimony, and will calculate the maximum duty of water for the various uses in Subbasin No. 14 according to the following formulae:

- A. Domestic Supply (in-house)
and Stock Water 0.01 cfs; 1 acre-foot per
year per residence
- Domestic supply (with small
lawn and garden) 0.01 cfs; 1 acre-foot per
year
- Domestic supply and large
lawn and garden up to
 $\frac{1}{2}$ acre 0.02 cfs; 2 acre-feet per
year
- Stock Water 1 acre-foot per year
(diversion)

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1 B. Irrigation Water -- In order to be reasonably lenient about irrigation
2 cropping patterns, the Referee will use an annual water duty of 5 acre-feet per
3 acre for irrigation of orchards and 6 acre-feet per acre for pasture/alfalfa. Such
4 duties represent a maximum annual water volume for prevalent irrigation uses in
5 this area and are approximately commensurate with duties utilized by the DOE in
6 quantity allocations under the water right permit system.

7 The maximum rate of diversion or withdrawal will be calculated on the basis
8 of 1.0 cubic foot per second (449 gallons per minute) for each 50 acres of
9 irrigation, irrespective of the type of crop. For each irrigated acre, the Referee
10 has calculated the maximum instantaneous rate of diversion to be 0.02 cubic foot
11 per second (9 gallons per minute). It is the Referee's opinion that the
12 aforementioned duties of water are reasonable maximum application rates for the
13 soil and topographic conditions in Subbasin No. 14.

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

18 IV. STIPULATIONS

19 Three stipulations were adopted during the hearing, as among all claimants
20 and their counsel. The first stipulation, concerning the use of exhibits and
21 testimony, reads as follows:
22

23 "It is hereby stipulated by all claimants in the above-entitled cause that
24 all exhibits entered and all testimony taken at the hearing on claims held
25 March 11, 1992, may be utilized by any party in the proof of a claim or the
26 contesting of a claim whenever relevant and material."
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1 The second stipulates to the description of properties identified in the
2 claims of the defendants to this action, as follows:

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

7 In the third, the parties stipulated to the following in relation to
8 "non-diversionary" stock and wildlife watering use with regards to Subbasin No. 14:

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

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

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

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

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1 and springs by the plaintiff shall be consistent with such retention
2 requirements.

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

6 V. LAND DESCRIPTIONS

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

11 VI. WATER RIGHT PRIORITIES

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

17 VII. TESTIMONY AND REFEREE'S ANALYSES

18 Plaintiff Testimony

19 Kerry O'Hara, Assistant Attorney General, represented the Plaintiff State of
20 Washington, Department of Ecology.

21 The State introduced into evidence the following generic exhibits:

22 Number Description

23 SE-1 Map of Subbasin No. 14
24

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1 SE-2 Water Right Certificates, Permits, Registration Claims and
 Relinquishments
 2 SE-3 Manual of Individual Water Supply Systems
 3 SE-4 Irrigation Requirements for Washington

4 Additionally, oral testimony was given by Clay Keown, Richard Carter, and
 5 Dave Zink, Field Investigators, Ecology Adjudication Section.

6 Claimant Testimony

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

Court Claim	<u>No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
	02321 (A)03063 (A)07358	Steven L. Alegria 11810 Marble RD Yakima, WA 98908-9152	J. Eric Gustafson, Attorney Lyon, Weigand, Suko & Gustafson, PS PO Box 1689 Yakima, WA 98907	8, 21
	01986	Mary E. Barrett 221 Turner Lane Yakima, WA 98901		9, 21
	00104	Burlington Northern Railroad Co. 3800 Continental Plaza 777 Main St Fort Worth, TX 76102	Elizabeth Hill, Attorney	9, 21
	01190	Coombs Ranch PO Box 70 Selah, WA 98942		10, 21
	01135	Lloyd L. Day & Kathryn M. Day 3021 NE 72nd Avenue, No. 9120 Vancouver, WA 98661-7300		12, 21
	02160	Chester W. Dyson, et al. 610 Pioneer Street Yakima, WA 98903		12, 21

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1	01911	William G. Evans & Jeannette M. Evans Route 6 Box 326F Yakima, WA 98908	James P. Hutton, Attorney 11, 21 Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	
2				
3				
4	02350	Evergreen State Properties, Inc. 6081 E Lake Sammamish Rd. SE Redmond, WA 98052		12, 21
5				
6	01299	John Fode 8605 Maple Street SW Tacoma, WA 98498		12, 21
7				
8	02334	Fred Holwegner & Sally Holwegner 1881 Houghton Road Zillah, WA 98953	J. Jarrette Sandlin, Attorney Sandlin Law Firm PO Box 1005 Zillah, WA 98953-1005	12, 21
9				
10				
11	00288	Home Company PO Box 9063 Yakima, WA 98909		12, 21
12				
13	00107	Arthur B. Palmer & Darlene A. Palmer 416 S 7th Street Mount Vernon, WA 98273		12, 21
14				
15	01258	Lynn L. Peterson & Betty J. Peterson 1813 Gilbert Road Zillah, WA 98953		12, 21
16				
17				
18	02335	Sandlin Farms, Inc. 2301 Houghton Road Zillah, WA 98953	J. Jarrette Sandlin, Attorney Sandlin Law Firm PO Box 1005 Zillah, WA 98953-1005	12, 21
19				
20				
21	01588 (A)03073 (A)05599	Terrace Heights Irrigation District 1910 S 44th AVE Yakima, WA 98903-2506	James E. Davis Talbot, Simpson et al. P.O. Box 590 Yakima, WA 98907-0590	13, 22, 23
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1	02109	WA State Dept of Fish and Wildlife PO Box 43200 Olympia, WA 98504-3200	William Frymire, AAG Wildlife PO Box 40100 Olympia, WA 98504-0100	20, 21
2				
3	00589	WA State Dept. of Natural Resources	Paul Silver, AAG	20, 21
4	(A)00590	Agricultural Resources P.O. Box 47061 Olympia, WA 98504-7061	DNR PO Box 40100 Olympia, WA 98504-0100	
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6				

There were no claims recommended for confirmation in the Plaintiff's Report to the Referee. Therefore, all of the claims were scheduled to be heard during the evidentiary trial held on March 11, 1992. Based upon the testimony and evidence provided to the Referee, the analysis of all remaining claims is as follows:

COURT CLAIM NO. 02321 -- Steven L. Alegria
 (A)03063
 (A)07358

The Statement of Claim was originally filed with the Court by Troy E. Wilmoth. Interest in the claim was transferred from Mr. Wilmoth to Mr. Alegria by Order of the Court in July 1986.

Mr. Alegria did not appear during the evidentiary hearing; however, his attorney, the late Randall Ommen, made a statement to the effect that the claim he is pursuing relates to the Roza Irrigation and any testimony regarding this claim will be presented in the Major Claimant Pathway. Roza Irrigation District's claim was heard in the Major Claimant Pathway and a Conditional Final Order has been entered. Attorney Ommen further stated that Mr. Alegria would be pursuing another

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1 claim from an unnamed stream in Subbasin No. 24. The Referee does not recommend
2 confirmation of a water right to Mr. Alegria in Subbasin No. 14.

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4 COURT CLAIM NO. 01986 -- Mary E. Barrett

5 The Statement of Claim submitted to the Court by Ms. Barrett claimed rights to
6 the use of drainage water from the Selah-Moxee Irrigation District and from the
7 Roza Irrigation District. Mary Barrett appeared pro se during the evidentiary
8 hearing to offer testimony in behalf of her claim.

9 Ms. Barrett testified that the source of water for irrigation of her lands was
10 from the Selah-Moxee Ditch and seepage water from that ditch which collects in a
11 small drainage in Subbasin No. 21. She further indicated that she had previously
12 offered testimony regarding her claim during the evidentiary hearings relative to
13 Subbasin No. 21.

14 Based upon the foregoing it is the opinion of the Referee that this claimant
15 is not asserting rights to waters originating in Subbasin No. 14 and as a
16 consequence recommends that this claim be denied.

17
18 COURT CLAIM NO. 00104 -- Burlington Northern Railroad Co.

19 Defendant, Burlington Northern, Inc., submitted a claim to the court regarding
20 use of waters from a spring for domestic supply. The defendant made no appearance
21 during the evidentiary hearing to either present or defend this claim. The
22 Referee, as a consequence, proposes and finds that no water rights relating to this
23 claim are confirmable.

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1 The Referee notes from the investigation report prepared by the Department of
2 Ecology that the source in question was claimed to be located within Section 23,
3 T. 16 N., R. 19 E.W.M., however, the investigator found that the point of diversion
4 location was apparently in error and such point should have been situated within
5 Section 33 of the aforementioned township and range. Ecology's investigator
6 further found that the claimant's property comprises approximately 40 acres and
7 lies adjacent to the west bank of the Yakima River. The spring in question was not
8 located, however, the investigator noted old foundations of buildings which
9 apparently served as support services for the railroad. No standing structures
10 exist.

11 COURT CLAIM NO. 01190 -- Coombs Ranch

12 This claim was originally submitted to the Court by Bruce A. and C'ceal
13 Coombs, and asserts rights for the irrigation of 290 acres of land with the source
14 of water being from the Roza Irrigation District. Coombs Ranch was substituted as
15 a claimant/party in February of 1993.

16 The late Randall Ommen, attorney at law, represented the Coombs Ranch at the
17 evidentiary hearing. Mr. Ommen stated that the only source of irrigation water for
18 this land was from the Roza Irrigation District and that the claimant would be
19 pursuing its claim simultaneously with the claim of the Roza Irrigation District.
20 Roza Irrigation District's claim was addressed through the Major Claimant Pathway
21 and a Conditional Final Order has been entered. Therefore, the Referee does not
22 recommend confirmation of a right under Court Claim No. 01190.
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2 COURT CLAIM NO. 01911 -- William G. Evans
& Jeannette M. Evans

3 The Evans' Statement of Claim asserts rights to the use of water from the Roza
4 Irrigation District for the irrigation of 300 acres. During the evidentiary
5 hearing Jay Carroll, attorney at law, appeared on behalf of these claimants. Mr.
6 Carroll stated that the Evans would not be present to provide testimony during the
7 hearing. Mr. Carroll further stated that the Evans' claim in this subbasin
8 consists only of water they received from the Roza Irrigation District and that
9 their claim would be pursued within the major claimant pathway when the Roza
10 Irrigation District presents its claim. Roza Irrigation District's claim was
11 addressed through the Major Claimant Pathway and a Conditional Final Order has been
12 entered. Therefore, the Referee does not recommend confirmation of a right under
13 Court Claim No. 01911.
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1 COURT CLAIM NO. 00107 -- Arthur B. Palmer
2 & Darlene A. Palmer
3 COURT CLAIM NO. 00288 -- Home Company
4 COURT CLAIM NO. 01299 -- John Fode
5 COURT CLAIM NO. 01135 -- Lloyd L. Day
6 & Kathryn M. Day
7 COURT CLAIM NO. 02160 -- Chester W. Dyson, et al.
8 COURT CLAIM NO. 02334 -- Fred Holwegner
& Sally Holwegner
9 COURT CLAIM NO. 02225 -- Sandlin Farms, Inc.
10 COURT CLAIM NO. 02350 -- Evergreen State Properties, Inc.

11 There was no appearance at the evidentiary hearing in support of the above
12 listed claims. Therefore, the Referee recommends that the claims be denied in
13 their entirety.

14 The Referee notes that all of the above claims are based upon water delivered
15 by the Roza Irrigation District. The claim of the Roza Irrigation District was
16 determined in the Major Claimant Pathway and a Conditional Final Order has been
17 entered.

18
19 COURT CLAIM NO. 01258 -- Lynn L. Peterson
20 & Betty J. Peterson

21 The Statement of Claim submitted by these defendants asserts rights to the use
22 of water delivered by the Roza Irrigation District for the irrigation of 32.5
23 acres, stock water, and frost protection. No testimony was offered by the
24 Petersons during the evidentiary hearing; however, the Petersons indicated to

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1 Assistant Attorney General O'Hara, who relayed this information to the Referee,
2 that they would not be pursuing this claim during the subbasin pathway. The
3 Peterson's sole source of water is from the Roza Irrigation District, whose claim
4 was pursued through the major claimant pathway and a Conditional Final Order has
5 been entered. The Referee, therefore, does not recommend confirmation of a right
6 under Court Claim No. 01258.

7
8 COURT CLAIM NO. 01588 -- Terrace Heights Irrigation District
9 (A)03073
10 (A)05599

11 The Terrace Heights Irrigation District (District), through Court Claim
12 No. 01588, is claiming water rights from the Yakima River in the amounts of 6.0 cfs
13 of natural flow and 2,208 acre-feet per year. In addition, the District is also
14 claiming rights associated with contracts for water with the United States of
15 America through the Bureau of Reclamation. The priority date being claimed is
16 November 9, 1884. The District is claiming these water rights for irrigation
17 purposes for approximately 565 acres of land and the water is used within the
18 exterior boundaries of the Terrace Heights Irrigation District. Alfred D.
19 Gallucci, president of the Terrace Heights Irrigation District, offered testimony
20 in behalf of this claim.

21 The following documents were offered into evidence by the defendant at the
22 evidentiary hearing:

23 DE-1 Map of the Terrace Heights Irrigation District showing the district
24 outline/service area.

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- 1 DE-2 Excerpt from the C.R. Lentz review/Yakima Project Water Rights
2 (page 63).
3 DE-3 Water quantity delivery schedule.
4 DE-4 Copy of pages 23, 24, and 62 through 66 - Lentz report.
5 DE-5 Copy of Limiting Agreement Between the United States and Selah and
6 Moxee Canal Company.
7 DE-6 Warren Act Contract I1r-430 dated November 15, 1920.
8 DE-7 Warren Act Contract I1r-639 dated March 24, 1931.
9 DE-8 Agreement between Terrace Heights Irrigation District and Roza
10 Irrigation District dated 1940.
11 DE-9 Supplemental Contract dated February 10, 1940, between the United
12 States, Roza Irrigation District, and Terrace Heights Irrigation
13 District.

14
15 The Plaintiff Department of Ecology offered into evidence exhibit SE-2 which
16 contained the following documents relating to the Terrace Heights Irrigation
17 District:

18 Certificate of Surface Water Right No. 8122 - issued to the
19 United States Bureau of Reclamation under priority date of May 10,
20 1905 for the appropriation of 2,200 cfs; 393,000 acre-feet per year
21 for power generation, domestic supply, and the irrigation of 72,600
22 acres within the Roza Irrigation District.

23 Certificate of Change of Point of Diversion Vol. I, page 188
24 authorizing the Terrace Heights Irrigation District to change their

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1 point of diversion from the intake of the Selah-Moxee Irrigation
2 District to that of the Roza Irrigation District.

3 Water Right Claim Registration No. 066288 filed by the Terrace
4 Heights Irrigation District and covering the District's natural
5 flow claimed water right. This filing served to preserve rights
6 established by the District's predecessors.

7 Water Right Claim Registration No. 112700 filed by the United
8 States Bureau of Reclamation, which relates to 4.62 cfs of the
9 Warren Act water supply to the Terrace Heights Irrigation District.

10 The Terrace Heights Irrigation District does not have a discreet water
11 delivery system diverting water from the Yakima River to District lands. The
12 District diverts water from the Roza Irrigation District Canal by means of seven
13 gravity turnouts from the main canal. Lands lying south of the Roza Canal and
14 within the Terrace Heights Irrigation District are irrigated by water delivered by
15 concrete head boxes and gravity flow pipelines. A series of underground pipelines
16 deliver water to individual parcels of land. Lands located north of the Roza Canal
17 and within the District are supplied water from the Roza Canal by a pump system
18 which diverts water from the canal northward by means of an underground pipeline.
19 The pipeline emerges into an open ditch which flows southeasterly to deliver water
20 to smaller underground pipelines to individual parcels of land. In general, each
21 individual parcel has separate pump and sprinkler systems for applying irrigation
22 water.

23 Based upon the testimony and the exhibits in evidence: Notice of
24 Appropriation of Water was filed by George S. Taylor on November 9, 1884. The

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1 point of diversion for this appropriation appears to be at the location of what is
2 now the Selah-Moxee Canal. Ditch construction commenced in 1889 and some water was
3 delivered to lands not within the Terrace Heights Irrigation District prior to
4 1900. Pumps were installed in the ditch in 1909 and first water delivered to lands
5 now within the Terrace Heights Irrigation District in 1910. In 1917 the
6 Selah-Moxee Irrigation District was organized, which district included the area
7 presently served by the Terrace Heights Irrigation District. All of the Terrace
8 Heights Irrigation District lands were served by pumping from the Selah-Moxee
9 Canal. The Terrace Heights Irrigation District was organized in 1924 and this
10 District's lands were severed from the Selah-Moxee Irrigation District at that
11 time. Pumping from the Selah-Moxee Canal continued until 1941, at which time the
12 Terrace Heights Irrigation District ceased pumping from the Selah-Moxee Canal and
13 changed their source of water to the Roza Canal. The Terrace Heights Irrigation
14 District was granted Certificate of Change of Point of Diversion Vol. I, page 186
15 by the State Supervisor of Hydraulics (predecessor agency to the Department of
16 Ecology) in April 1941.

17 The several contracts between the United States and the Terrace Heights
18 Irrigation District identified monthly and annual quantities of water to which the
19 District is entitled. In order to facilitate a better understanding of the
20 relationship of the natural flow water use and Warren Act contract deliveries, the
21 Referee considers it beneficial to consolidate in this narrative two tables from
22 the C.R. Lentz Report (page 64):

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AT ROZA DAM

AT
TERRACE HTS.
DELIVERY

<u>Month</u>	<u>1/ Natural Flow</u>	<u>2/ Selah-Moxee Cont. Trans.</u>	<u>3/ Terrace Hts. Contract</u>	<u>cfs</u>	<u>Total ac.ft.</u>	<u>cfs</u>	<u>ac.ft.</u>
April	6.0cfs	0.80cfs	1.48cfs	8.28	492.7	7.45	443.3
May	6.0	1.24	2.29	9.53	586.0	8.58	527.6
June	6.0	1.52	2.81	10.33	614.7	9.30	553.4
July	6.0	1.62	3.00	10.62	653.0	9.56	587.8
August	6.0	1.60	2.86	10.46	643.2	9.41	578.6
September	4.2	1.08	2.07	7.35	437.4	6.61	393.3
October	2.2			2.2	135.3	1.98	121.7

Total	3562.3	3,205.7
Warren Act	1354.2	1,218.8
Natural Flow	2208.1	1,986.9

1/ 10% of January 25, 1906 Limiting Agreement, Selah-Moxee, excepting 18 cfs

2/ 10% of Storage Contracts of November 15, 1920 and April 30, 1931
(10% of 3,000 and 1,757 = 475.7 ac-ft)

3/ Storage Contract of March 24, 1931 (878.5 ac-ft)

Based upon all of the foregoing, the Referee believes there has been sufficient evidence presented to recommend confirmation of water rights to the Terrace Heights Irrigation District. Quantification of such rights has been somewhat complicated by a substantial reduction in lands irrigated within the District.

Of considerable concern is the number of acres irrigated for which confirmation should be recommended. The Plaintiff's investigation report states that 290.5 acres have been irrigated within the District. The Statement of Claim asserts rights for the irrigation of 565 acres. According to Mr.

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1 Gallucci's testimony, the District assesses for about 507 acres, and of that
2 number about 160 acres have been lost to houses, driveways, roads, canal
3 rights-of-way, and other buildings, leaving a net irrigated area of about 347
4 acres. Mr. Gallucci further testified that this 347 acres included an 85 house
5 subdivision, "Country Meadows", located upon 20 acres that historically
6 received water but has not been irrigated in the last several years due to a
7 lack of delivery facilities. These facilities are now in the process of being
8 installed. The Plaintiff's acreage estimated did not include this tract.

9 In the opinion of the Referee the number of acres being irrigated should
10 be derived from the information provided by the Plaintiff, since that number
11 was based upon actual on-site field investigations and measurements made by the
12 state's expert witness. However, that number did not include the Country
13 Meadows development. Since the 20 acre tract is being transformed from an
14 irrigated parcel to an 85 home housing development, the Referee believes that
15 approximately 60% of the land will consist of irrigated lawns and gardens, thus
16 adding 12 acres to the Plaintiff's estimate of approximately 291 acres,
17 resulting in a total of 303 acres.

18 Historically, the Terrace Heights Irrigation District has theoretically
19 been provided about 3,206 acre-feet annually at the point(s) of delivery, which
20 amount would have provided 5.67 acre-feet per acre based upon a total of 565
21 irrigated acres. However, the character of the irrigated lands has changed
22 drastically since the District was first formed. Instead of the lands being
23 planted almost exclusively in orchard, the land is almost all in residential
24 development, resulting in an acreage reduction from over 500 to slightly more

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1 than 300. Notwithstanding the acreage reduction, the Referee believes that the
2 5.67 acre-feet per acre water duty still has merit and, in fact, compares
3 favorably with the 5.4 acre-feet per acre used by the Court in assessing the
4 claim of the Roza Irrigation District.

5 Therefore, the Referee recommends that the Court confirm two water rights
6 as follows;

7 (a) To the Terrace Heights Irrigation District - a natural flow water
8 right, under priority date of November 9, 1884 in the amounts of 6.0 cfs during
9 April through August, 4.2 cfs during September, and 2.2 cfs during October;
10 1,718 acre-feet per year for the irrigation of 303 acres.

11 (b) To the United States of America as Trustee for the Terrace Heights
12 Irrigation District - a supplemental water right, in the sense that it is to be
13 used only to make up any deficit in the annual natural flow water right
14 described in the preceding paragraph, under priority date of May 10, 1905, in
15 the amounts of 2.28 cfs in April, 3.53 cfs in May, 4.33 cfs in June, 4.62 cfs
16 in July, 4.46 cfs in August, and 3.15 cfs in September; 1,212.8 acre-feet per
17 year for the irrigation of 303 acres within the Terrace Heights Irrigation
18 District.

19 Under both rights the instantaneous rates of diversion are to be measured
20 at the Roza Irrigation District intake, and the annual quantities measured at
21 the delivery points to the Terrace Heights Irrigation District. Additionally,
22 the above-identified instantaneous rates of diversion provide for a 10%
23 transportation loss between the Roza Irrigation District point of diversion and
24 the Terrace Heights Irrigation District points of delivery.

25 REPORT OF REFEREE
26 Re: Subbasin No. 14

1 Upon confirmation of rights herein proposed the Director of the Department
2 of Ecology should cancel, rescind, or otherwise make null and void Certificate
3 of Change of Point of Diversion Vol. I, page 188. The Court through the Major
4 Claimant Pathway has addressed the non-power generation portions of Certificate
5 of Surface Water Right No. 8122 in its Order dated July 15, 1993. The water
6 rights regarding the power generation portion of the aforementioned certificate
7 have not yet been settled. Once the Court has determined the total scope of
8 the water rights of the United States the Department of Ecology will be
9 directed to cancel or rescind Surface Water Certificate No. 8122.

10
11 COURT CLAIM NO. 02109 -- WA State Dept of Fish and Wildlife

12 A Statement of Claim was submitted to the Court by the Washington State
13 Department of Wildlife. There was no appearance at the evidentiary hearing in
14 support of the claim, therefore, the Referee cannot recommend that right be
15 confirmed to the Department of Wildlife under Court Claim No. 02109. The
16 Plaintiff's Report to the Referee did recommend that a non-diversionary stock water
17 right be confirmed under the stipulation discussed on page 4 of this report.

18
19 COURT CLAIM NO. 00589 -- WA State Dept. of Natural Resources
(A)00590

20 A Statement of Claim was submitted to the Court by the Washington State
21 Department of Natural Resources. There was no appearance at the evidentiary
22 hearing in support of the claim, therefore, the Referee cannot recommend that a
23 right be confirmed under Court Claim No. 00589. The Plaintiff's Report to the
24

25 REPORT OF REFEREE
26 Re: Subbasin No. 14

1 Referee did recommend that a non-diversionary stock water right be confirmed under
2 the stipulation discussed on page 4 of this report.

3 Claimants With Recommended Non-Diversionary Stock Water And Wildlife Rights

4 WA State Dept of Fish and Wildlife
5 WA State Dept. of Natural Resources

6 VIII. FINDINGS OF FACT

7 I, Douglas Clausing, as Referee in this proceeding, having carefully examined the
8 testimony and evidence and having investigated Subbasin No. 14, do hereby make the
9 following Findings of Fact:

- 10 1. That the waters of Subbasin No. 14 and lands irrigated or waters otherwise
11 utilized therefrom are situated in Yakima County.
12 2. That the claims to any diversionary or withdrawal rights within Subbasin No.
13 14 of the following named claimants are denied in their entirety for the reasons
14 set forth in the body of this report:

15 Steven L. Alegria
16 Mary E. Barrett
17 Burlington Northern Railroad Co.
18 Coombs Ranch
19 Lloyd L. Day and Kathryn M. Day
20 Chester W. Dyson, et al.
21 William G. Evans and Jeannette M. Evans
22 Evergreen State Properties, Inc.
23 John Fode
24 Fred Holwegner and Sally Holwegner
25 Home Company
26 Arthur B. Palmer and Darlene A. Palmer
27 Lynn L. Peterson and Betty J. Peterson
Sandlin Farms, Inc.
WA State Dept of Fish and Wildlife
WA State Dept. of Natural Resources

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

6 REPORT OF REFEREE
7 Re: Subbasin No. 14

1 CLAIMANT NAME: Terrace Heights Irrigation Dist. COURT CLAIM NO. 01588
2 (A)03073
3 (A)05599

4 Source: Yakima River

5 Use: Irrigation of 303 acres

6 Period of Use: April 1 through October 31

7 Quantity: 6.0 cubic feet per second during April through August, 4.2
8 cubic feet per second during September, and 2.2 cubic feet
9 per second during October; 1,718 acre-feet per year.

10 Priority Date: November 9, 1884

11 Point of Diversion: 975 feet south and 75 feet west from the northeast corner
12 of Section 32, being within the $E\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ of Section 32, T.
13 15 N., R. 19 E.W.M.

14 Place of Use: Those portions of Sections 15, 16, 22 and 23, T. 13 N.,
15 R. 19 E.W.M. described as follows:

16 The $SW\frac{1}{4}$ of Section 15, EXCEPT the Plat of Sunnyside
17 Addition and Lot 177 of Terrace Heights Subdivision No. 1;
18 Lots 167, 168, 169, 170, and 171 of said subdivision which
19 lie in the $SW\frac{1}{4}SE\frac{1}{4}$ of said section.

20 Those portions of the $NW\frac{1}{4}SE\frac{1}{4}$, the $SW\frac{1}{4}SE\frac{1}{4}$ and the $SE\frac{1}{4}SE\frac{1}{4}$ of
21 Section 16 lying northeasterly of the Selah-Moxee Canal.

22 The $E\frac{1}{2}NE\frac{1}{4}$, EXCEPT the Plats of Hilltop Addition and Sky
23 Vista Homes and Blocks 9, 10, 22 and 23 of the Plat of
24 Terrace Park; the $N\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$; the $NE\frac{1}{4}NW\frac{1}{4}$; that portion of
25 the $NW\frac{1}{4}NW\frac{1}{4}$ lying northeasterly of the Selah-Moxee Canal;
26 that portion of the $E\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$ lying northeasterly of the
27 said canal; that portion of the $NE\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$ lying
easterly of the Roza Canal; that portion of the $E\frac{1}{2}SE\frac{1}{4}$
lying north of the Selah-Moxee Canal; ALL being within
Section 22.

That portion of the $W\frac{1}{2}NW\frac{1}{4}$ of Section 23 lying north of the
Roza Canal and south of the traverse of the Roza Pump
lateral.

28 REPORT OF REFEREE
29 Re: Subbasin No. 14

1 CLAIMANT NAME: United States of America, as COURT CLAIM NO. 01588
2 trustee for Terrace Heights (A)03073
3 Irrigation District (A)05599

4 Source: Yakima River

5 Use: Irrigation of 303 acres

6 Period of Use: April 1 through September 30

7 Quantity: 2.28 cubic feet per second during April, 3.53 cubic feet
8 per second during May, 4.33 cubic feet per second during
9 June, 4.62 cubic feet per second during July, 4.46 cubic
10 feet per second during August, and 3.15 cubic feet per
11 second during September; 1212.8 cubic feet per year.

12 Priority Date: May 10, 1905

13 Point of Diversion: 975 feet south and 75 feet west of the northeast corner of
14 Section 32, being within the $E\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ of Section 32, T. 15
15 N., R. 19 E.W.M.

16 Place of Use: Those portions of Sections 15, 16, 22, and 23, T. 13 M.,
17 R. 19 E.W.M. described as follows:

18 The $SW\frac{1}{4}$ of Section 15, EXCEPT the Plat of Sunnyside
19 Addition and Lot 177 of Terrace Heights Subdivision No. 1;
20 Lots 167, 168, 169, 170, and 171 of said subdivision which
21 lie in the $SE\frac{1}{4}SE\frac{1}{4}$ of said section.

22 Those portions of the $NW\frac{1}{4}SE\frac{1}{4}$, the $SW\frac{1}{4}SE\frac{1}{4}$ and the $SE\frac{1}{4}SE\frac{1}{4}$ of
23 Section 16 lying northeasterly of the Selah-Moxee Canal.

24 The $E\frac{1}{2}NE\frac{1}{4}$, EXCEPT the Plats of Hilltop Addition and Sky
25 Vista Homes and Blocks 9, 10, 22, and 23 of the Plat of
26 Terrace Park; the $N\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$; the $NE\frac{1}{4}NW\frac{1}{4}$, that portion of
27 the $NW\frac{1}{4}NW\frac{1}{4}$ lying northeasterly of the Selah-Moxee Canal;
that portion of the $E\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$ lying northeasterly of the
said canal; that portion of the $NE\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$ lying
easterly of the Roza Canal; that portion of the $E\frac{1}{2}SE\frac{1}{4}$
lying north of the Selah-Moxee Canal; ALL being within
Section 22.

That portion of the $W\frac{1}{2}NW\frac{1}{4}$ of Section 23 lying north of the
Roza Canal and south of the traverse of the Roza Pump
lateral.

REPORT OF REFEREE
Re: Subbasin No. 14

1 Limitation on Use: This right is supplemental to the Terrace Heights
2 Irrigation District right with an 1884 date of priority.
3 A maximum of 303 acres is irrigated under both rights.

4 4. All prior claims to rights for surface water from Subbasin No. 14,
5 including those claims filed under the provisions of Chapter 90.14 RCW, are denied,
6 unless expressly provided for herein. The "Water Rights Claims Registry" directed
7 by RCW 90.14.111 should be supplemented with appropriate notations to the records
8 of those claims specifically identified in the "Water Right Claims" section of
9 Plaintiff's Exhibit No. SE-3.

10 5. The following Certificates of Water Right or Certificates of Change,
11 issued by the Department of Ecology or its predecessor agencies of the State of
12 Washington, will be made null and void:

13 Certificates of Surface Water Right

14 Certificate of Change of Point of Diversion, recorded in Vol. 1, Page 188

15 In conformance with RCW 90.03.240, Certificates of Adjudicated Water Right
16 will be issued to those parties for whom rights were confirmed by the Court through
17 this proceeding.

18 IX. CONCLUSIONS OF LAW

19 Confirmation of Rights

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

25 REPORT OF REFEREE
26 Re: Subbasin No. 14

1 Duty of Water

2 Unless otherwise specified, the diversion of water from sources of water
3 contained within Subbasin No. 14 for irrigation purposes shall be limited, at a
4 maximum, to 1.0 cubic-foot per second for each 50 acres irrigated, not to exceed
5 during each irrigation season, a total of 5 acre-feet per acre for orchards and 6
6 acre-feet per acre for alfalfa/pasture.

7
8 Irrigation Season

9 Unless otherwise identified within a specific water right, the irrigation
10 season shall be defined as that period from April 1 to and including October 31 of
11 each year. The Referee recognizes that extraordinary circumstances may dictate the
12 application of water prior to or subsequent to the defined irrigation season, and,
13 in that event, express approval from the Department of Ecology must be obtained
14 annually prior to such deviation.

15
16 Certificates of Adjudicated Water Right

17 Upon entry of the final decree in this action, and upon payment of the
18 statutory fee prescribed in RCW 90.03.470(11), together with the appropriate county
19 auditor recording fee, the Director of the Department of Ecology is required to
20 issue Certificates of Adjudicated Water Right in accordance with the provisions of
21 RCW 90.03.240.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 14

1 Administration of Water

2 The use of Subbasin No. 14 surface waters should be regulated by the
3 Department of Ecology on the basis of Certificates of Adjudicated Water Rights
4 issued as a result of this proceeding, and on the basis of any permits and
5 certificates that may have issued outside of this proceeding under appropriation
6 procedures of Chapter 90.03 RCW. When available water in Subbasin No. 14 is
7 insufficient to supply all rights, and upon a finding that regulation is required,
8 the Department may regulate junior water rights in the interest of satisfying
9 senior water rights.

10 Whenever regulation of junior water rights is necessary, the Department may
11 enter at reasonable times upon the lands of any and all parties having rights and
12 shall regulate diversion facilities so as to apportion the waters as herein
13 adjudicated.

14 Confirmation of a water right does not guarantee nor imply that right-of-way
15 or trespass rights exist upon private or public lands for the diversion and/or
16 distribution system of that water.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 14

1 As provided by Chapter 90.03.360 RCW and Chapter 508-64 WAC, any person
2 authorized to use surface water from Subbasin No. 14 may be required to provide and
3 maintain, at the water user's expense, proper diversion works and/or measuring
4 devices. Design, installation, maintenance, and operation of such works and
5 measuring devices will be as prescribed by the Department.

6 SIGNED and DATED at Yakima, Washington, this 29th day of December,
7 1995.

8 
9 DOUGLAS/CLAUSING, Referee

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26 REPORT OF REFEREE
27 Re: Subbasin No. 14